

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

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

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

Date: June 24, 2015
Volume 1 of 2
Pages 1 - 200

B E F O R E:

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

TRANSCRIPT ORDERED BY:

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

Audio Recorded by: C. Ortiz

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METRO TRANSCRIPTS, L.L.C.

Mary Nelson
316 Ann Street
Randolph, New Jersey 07869
(973) 659-9494

////////////////////////////////////

A P P E A R A N C E S:

BRUCE D. GREENBERG, ESQ.,
(Lite, DePalma, Greenberg, L.L.C.),
Attorney for the Plaintiffs.

THOMAS KESSLER, ESQ.,
-and-

JAMES L. BROMLEY, ESQ.,
-and-

LINA BENSMAN, ESQ.,
(Cleary, Gottlieb, Steen & Hamilton, L.L.P.),
Attorney For the Plaintiffs.

DAVID C. DINIELLI, ESQ.,
(Southern Poverty Law Center),
Attorney for the Plaintiffs.

MICHAEL P. LAFFEY, J.D.,
(Messina Law Firm, P.C.),
Attorney for the Defendants.

CHARLES S. LI MANDRI, ESQ.,
-and-
PAUL M. JONNA, ESQ.,
(Freedom of Conscience Defense Fund),
Attorney for the Defendants.

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316 Ann Street
Randolph, New Jersey 07869
(973) 659-9494

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I N D E X
June 24, 2015

SUMMATION

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Colloquy

THE COURT: All right. Docket number L-5473-12, JONAH et al, versus Ferg -- Ferguson et al versus JONAH et al, my apologies.

May I please have counsel's appearances for the record?

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

THE COURT: 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.

THE COURT: Good morning.

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

THE COURT: Good morning.

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

THE COURT: Good morning.

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1 MR. LI MANDRI: Good morning, Your Honor.
2 Charles LiMandri, L-I capital M-A-N, D as in David, R-
3 I, of the Freedom of Conscience Defense Fund, on behalf
4 of the defendants.

5 THE COURT: Good morning.

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

9 MR. LAFFEY: Good morning, Your Honor.
10 Michael Laffey, L-A-F-F-E-Y, from the Messina Law Firm,
11 on behalf of the defendants.

12 THE COURT: Good morning. Please be seated.
13 Just a couple of items I wanted to discuss before we
14 bring the jury out. I have -- we've now agreed on the
15 jury instructions, as well as the verdict sheet. I've
16 given you both a copy of the jury instructions that I
17 formatted, so that it's a little easier for me to read.
18 Basically all I did was enlarge them. And I made one
19 correction.

20 I think, Mr. LiMandri, you, you saw something
21 on page nine of the old charge. I don't know what page
22 it is on here. But the word "not" needed to come out
23 when we talked about circumstantial evidence. So I
24 removed that. --

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

1 THE COURT: -- You were, you were correct on
2 that. That was a typo. Also, we can discuss it, but
3 I, you know, I, I have done in the past and I have an
4 extra copy of the jury instructions. I have on other
5 occasions given the jury instructions to the jury to
6 bring into the jury room. You can let me know how you
7 feel about that before I charge the jury.

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

11 MR. LI MANDRI: Sure.

12 MS. BENSMAN: Yes.

13 MR. BROMLEY: Yes, Your Honor.

14 MR. DINIELLI: Yes, Your Honor.

15 THE COURT: Okay. Kathy, then we can put the
16 pads on their seats.

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

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

21 MS. BENSMAN: Yes, Your Honor. We suggest a
22 tab labeled P, a tab labeled D, a tab labeled J and
23 pulling out the tabs that are in evidence under each
24 and putting them in, in consecutive order.

25 THE COURT: And putting them in each one,

1 okay, all right.

2 MS. BENSMAN: And we've provided those tabs
3 to the clerk.

4 THE COURT: All right. And then we'll take a
5 look at those maybe at lunchtime. Before I charge you
6 could take a look at them and make sure we're on
7 agreement of exactly what will go into the room?

8 MR. LI MANDRI: Yes, Your Honor.

9 THE COURT: Anything else that we need --

10 MR. DINIELLI: No, Your Honor.

11 THE COURT: Okay. Just a reminder for the
12 new faces that are here, just a reminder, no cell
13 phones are permitted in the courtroom for use. They
14 have to be on silent mode or off and stowed in your
15 pocket, bag or whatever you have with you.

16 My officer will take your phone if your phone
17 comes out. So there's no cell phone usage permitted in
18 this courtroom. Anyone who has their authorizations
19 are certainly free to use their electronic equipment
20 other than a cell phone.

21 If anyone is -- has their slip for
22 photography, I think most of you aware, but let me just
23 remind everyone. You cannot take photographs of the
24 jury, all right?

25 All right, is everyone here, Officer? Do we

1 have all the jurors? Do you want to check just to make
2 sure?

3 And also, there is no food or beverages
4 permitted in the courtroom other than counsel at
5 counsel table and the jurors.

6 Counsel, are you going to use a podium?

7 MR. LI MANDRI: Yes, Your Honor.

8 THE COURT: Which one?

9 MR. LI MANDRI: The one in the corner there.

10 THE COURT: So why don't we bring that out --

11 MR. LI MANDRI: Sure, I'll do it right now.

12 THE COURT: -- and put it over here. And
13 then you can just wheel it forward closer to the jury.
14 And let's turn the microphones and we make sure.

15 MR. LI MANDRI: Thank you, Counsel.

16 (The attorneys have an unrelated discussion)

17 THE COURT: Yeah, pull it back for now and
18 then when the jurors are set --

19 They're all here? Okay. Let's bring them
20 out.

21 The camera has to be in the rear of the
22 courtroom. Anywhere you want in the back. You cannot
23 photograph or do any video of the jurors. If you want
24 to come up on the side over there, if that helps, I'll
25 allow you to come up there. But not, not over here.

1 (Jury enters the courtroom)

2 THE COURT: All right. All seven jurors are
3 present and accounted for.

4 Good morning, ladies and gentlemen. And once
5 again, thank you for your continued promptness. It's
6 much appreciated.

7 UNIDENTIFIED: Your Honor, I'm sorry. If he
8 sets up, up over there and he's aiming at the jury,
9 could he set up on this side and just aim at your and
10 the, and the attorneys?

11 THE COURT: The only, the only problem is if
12 he sets up there he's blocking aisle access to here.
13 If he wants to set up on that side he can, but it has
14 to be in the back.

15 UNIDENTIFIED: But you don't want the jury
16 photographed, correct?

17 THE COURT: No. He can come over here. Do
18 you want to go on the end of the row there?

19 UNIDENTIFIED: Right, right here?

20 THE COURT: No, it's got to be back. He
21 can't block the access aisle. It's a violation.

22 UNIDENTIFIED: Sure, back here.

23 THE COURT: Don't worry, they're not
24 permitted to -- you're not going to be on the video.
25 No, you don't have to worry about it. I've already

1 ordered them. You're not going to be photographed and
2 you're not going to be in the video.

3 JUROR: Judge, I'm going to be like this.

4 THE COURT: No, no, --

5 MR. LI MANDRI: No, you're --

6 THE COURT: I want, I want you to forget,
7 seriously, forget that there's a camera in the
8 courtroom. You have been extraordinary for almost four
9 weeks paying attention to this trial. It's now the
10 time for closing arguments. Just pretend that the
11 camera is not here and please pay attention to counsel.
12 And especially this afternoon when you get my charge,
13 okay?

14 They are not going to video you. You are not
15 going to be on any photographs. Because they've
16 already been told before you came out here. And I'll
17 repeat, if they do, they have violated my order and
18 we'll address that separately. But they're
19 professionals and I'm sure that you don't have to worry
20 about it. Don't let that concern you at all. You pay
21 attention to the summation, all right?

22 UNIDENTIFIED: That's right, Your Honor. Can
23 I just set this microphone where the attorneys are
24 going to speak?

25 MR. LI MANDRI: I don't care, Your Honor.

1 THE COURT: Okay.

2 UNIDENTIFIED: Thank you. Okay.

3 THE COURT: Okay. And as I said to you in my
4 preliminary instructions, we now do the closing
5 argument in the reverse order that we did the openings.
6 And as I told you, and you'll hear me in the charge,
7 this is not evidence. This is just the attorneys now
8 telling you on behalf of their clients their assessment
9 of what you've heard, okay?

10 All right. Are we ready, Counsel?

11 MR. LI MANDRI: Yes, Your Honor.

12 THE COURT: All right.

13 MR. LI MANDRI: Thank you.

14 Counsel, can I use (Indiscernible)?

15 MR. DINIELLI: Of course.

16 MR. LI MANDRI: Thank you. That's fine. I
17 don't (Indiscernible).

18 Good morning, ladies and gentlemen. It has
19 been a long three weeks and I appreciate your patience
20 and your attention. This is my opportunity to give the
21 summation or closing argument and go over some of the
22 evidence that we heard here both on the witness stand
23 and then exhibits that you have seen displayed.

24 I plan to first kind of start out the way I
25 did opening statement, talking about promises made,

1 whether they were kept or not. Then I'm going to want
2 to go to my outline and talk about some of the evidence
3 that you've heard from the witnesses and from the
4 exhibits, talk a little bit about the experts and some
5 of the studies Dr. Beckstead himself addressed, and
6 that I read from some of those studies that were
7 mentioned in his report. And I'll talk about a couple
8 of those.

9 And then I need to go over some the jury
10 instructions. I don't want to charge you, but I want
11 to talk about some of them. I think you should bring
12 -- I should bring your attention to. And then I'll
13 finish with the verdict form. So that's what I plan to
14 do this morning.

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

20 There's no dispute that my clients, Arthur
21 Goldberg and Elaine Berk, both had adult gay sons.
22 Both their families struggled with their sons, trying
23 to work through the issues, so that they can be as
24 happy as possible. Both their sons decided to stay
25 gay. They're both loved by the families and are part

1 of the families. And that's fine.

2 But because there were no resources available
3 to my clients, not -- certainly not in the Jewish
4 community, and they're both practicing Jews, they
5 wanted to help others, so that others faced with the
6 same situation would not have to struggle the way they
7 did, regardless of whether or not the child wanted to
8 gay identify or not gay identify. At least have
9 resources and information available, so that choices
10 could be made available. So that's why they started
11 JONAH. Again, no dispute about that.

12 Or the fact the inspiration for the name came
13 to Elaine Berk while she was in synagogue and, and
14 mentioned how, you know, Jonah, out of all the prophets
15 of the Old Testament in the Bible, what the Christians
16 call the Old Testament, what the Jews call the Torah,
17 that Jonah was the only one who did two things
18 different from all the others.

19 He actually went outside the Jewish community
20 and preached to the non-Jews and called for repentance
21 and they listened. He was successful. All the other
22 prophets, people didn't listen and God's justice was
23 brought down on them for that. But Ninevah where he
24 preached was saved.

25 So JONAH seemed to be a fitting title and a

1 fitting focus for their mission. So they formed the
2 nonprofit. You've seen the nonprofit documents
3 certified by the state of New Jersey. And they're a
4 Jewish educational organization with a worldwide
5 mission to help people who want to be informed on
6 issues related to homosexuality from a Jewish
7 perspective.

8 And they started just ministering to Jews.
9 And then because of the demand for their services
10 outside the Jewish community they expanded it to
11 include non-Jews. And then further expanded it to
12 include issues other than homosexuality that people
13 were struggling with, including pornography addictions,
14 which, you know, are apparently, obviously a serious
15 problem these days for many people unfortunately. And
16 then heterosexual obsessive/compulsive addictions,
17 promiscuity, whatever nature of a sexual issue people
18 want help with, JONAH is there to act as a free
19 referral service for the people who come to them.

20 They don't pay JONAH because JONAH is a
21 nonprofit. They get money through donations or they
22 get money from referral fees from the counselors who
23 charge the clients a regular price, but give JONAH some
24 money, so that they can pay their operations, their
25 minimal office staff, bookkeeper, secretary, whatever.

1 It's undisputed that Elaine Berk and Arthur
2 Goldberg never made a dime. Over the last 15 years
3 they put in many thousands of hours of their own time
4 and a great deal of their own money as a labor of love
5 because they feel called, as they said, by God to
6 fulfill this mission helping other people, which they
7 said brings them great joy.

8 When they get the wedding invitations and
9 wedding announcements and baby shower announcements and
10 they see the joy on the faces of these people they've
11 helped in their retirement, after they've finished with
12 gainful employment over their many years. Now they're
13 doing this as a way to give back and to help other
14 people.

15 And I'll briefly mention, as you know, Arthur
16 Goldberg, 25 years ago he had a felony conviction. He
17 paid his debt to society and then some. He served
18 whatever time he had to. And he's had a perfectly
19 clean record, no further charges, no convictions, no
20 lawsuits. And as far as JONAH goes, in 25 (sic) years
21 no complaints. Nothing by the Consumer Affairs and not
22 by any former clients, of the hundreds of people that
23 have gone through JONAH have ever complained.

24 Nor indeed, and the evidence is undisputed,
25 did any of the four men who came to them for assistance

1 until long after they left the JONAH program early by
2 their own choice, which is fine. Free country. People
3 have the right to change their minds if they want to
4 change their minds. The question will be do they have
5 the right to sue for compensation after they do that if
6 they don't have a just basis. And that's what we're
7 going to be talking about when we get into the evidence
8 and the law.

9 Before I do that, let's talk about what we
10 know about the plaintiffs, which is also undisputed.
11 Everything said so far about my clients, there's not
12 going to be any factual dispute about that.

13 As to the plaintiffs, all of them came from
14 strong, religious backgrounds. Three of them were
15 raised in Orthodox Jewish homes, one in a devout Mormon
16 home. All of them were troubled, conflicted and
17 confused about same sex attractions. It's very
18 important, ladies and gentlemen, because there's a lot
19 of talk about what it means to go from gay to straight.
20 And quite frankly, it's not 100 percent clear because
21 everybody has a different way of looking at it given
22 their own background and their own expectations and
23 such.

24 But we do know this. None of the plaintiffs
25 identified as gay when they came to JONAH. That's

1 undisputed. And none of them wanted to identify as gay
2 when they came to JONAH. And that's undisputed. What
3 they all said they wanted, all four of them, was to get
4 married to a woman and raise their own families. That
5 was what they wanted. So that's what they told my
6 clients. That was their choice. And they had the
7 right to seek for help. And my clients had the right
8 to be there to provide that help if they wanted it.
9 And that's why my clients set up JONAH, to help people
10 in that situation.

11 Now what else do we know about the plaintiffs
12 that is undisputed? They all had had various degrees
13 of attraction to women. Sheldon Bruck, who was
14 probably the farthest along in terms of believing that
15 he had issues with a potential gay identity, although
16 he was also, you'll see when you look at some of the
17 exhibits, and you'll remember from the testimony, was
18 conflicted and confused and also, like the others,
19 wanted to have a family and raise them up in a
20 traditional Jewish household.

21 And then on the other end of the spectrum
22 you've got Michael Ferguson, who had dated numerous
23 girls, that had expressed an interest in marrying a
24 couple of them. And one of them went with his family
25 to Grand Cayman and he wanted to propose to her. And

1 that didn't work out and he changed his mind, decided
2 he wanted to gay identify, which was his right.

3 But let's not make any mistake about the fact
4 that that's not what they wanted when they came to
5 JONAH, not any of them. They all had troubled
6 backgrounds sadly. Common patterns that you've heard
7 witnesses say doesn't mean people who have these
8 problems or -- we call these wounds, and my clients,
9 being of Jewish background. Christians refer to it
10 largely the same way sometimes. We have wounds that
11 need to be healed. It's not unique to homosexuals. It
12 applies to heterosexuals.

13 We all react differently to our life
14 experiences. We all have painful life experiences.
15 Hopefully they heal on their own. Most of the time
16 they do. Sometimes they don't. And they manifest
17 themselves in different ways. And sometimes it can
18 manifest itself in an unhealthy way. You can have
19 heterosexual obsessive/compulsive addictions. And you
20 could have homosexual obsessive/compulsive addictions.

21 Now it's undisputed all four of these young
22 men said they did have sexual addictions, pornography
23 addictions or trying to hook up with men on the
24 internet, which Chaim Levin said when he came to JONAH
25 his counselor at the time, Dr. Shapiro said that's very

1 dangerous.

2 You know, you're 17, 18 at that time when he
3 was doing that. I don't know. But he was 18 when he
4 came to JONAH. And, you know, you don't know what some
5 strange guy is going to do. You don't know the person.
6 You're going to meet up with him to have anonymous,
7 random sex. It could be very dangerous. And so she
8 was concerned for him and rightly so.

9 Now Chaim Levin has testified he's changed
10 his view that's perfectly acceptable behavior. That's
11 his right, okay? But at the time he came to JONAH,
12 obviously he was concerned.

13 Just like Jonathan Hoffman realized when he
14 was a minor, having sex with adult men on a repeated
15 basis, that he was never happy. That that was not a
16 healthy way to be living your life. And we heard that
17 from many of the witnesses.

18 Now again, people have the choice to identify
19 however they want in terms of their sexual orientation.
20 And now these days even in terms of their gender. But
21 people also have the right if they're unhappy to seek
22 help and stay in an orientation or a gender that's
23 consistent with their anatomy, their biology and their
24 view of what God intended for them.

25 And from a Torah-based standpoint -- I'm not

1 going to give a theology lesson. But my clients said
2 it's very clear in the Book of Genesis for both Jews
3 and Christians, three things: God made us male and
4 female in his image and likeness; God made us as
5 helpmates to each other. This is what my clients said.
6 This is what the Bible said. Are helpmates to each
7 other and are complimentary of male and female, so that
8 we could, the third thing, be fruitful and multiply,
9 fill the earth.

10 Okay, that's a perception that many people
11 have had. In fact billions of people for thousands of
12 years. And people can have different perceptions. And
13 that's fine, and that's fine. But my client is a
14 Torah-based organization. That's their perspective.
15 That's what their nonprofit status says. That's what
16 their mission statement says. And I want to take a
17 quick look at that in a minute, but I want to finish
18 this story about what promises were kept and what the
19 evidence will show.

20 The evidence will show that not only did the
21 plaintiffs have troubled backgrounds, a detached
22 father. Most of them had bullying in their background
23 unfortunately. They've had body shame issues, envy of
24 other men. Very similar to what other people have
25 testified. Is that true of all gay people? I'm sure

1 it's not, okay? But for those who are in distress and
2 those who come to JONAH for help, these are the issues
3 that tend to repeat themselves over and over. And
4 these are the issues that need to be addressed by
5 reducing shame.

6 Now why is that important? Well you've heard
7 even from Dr. Beckstead, the sex expert called by the
8 plaintiff, if you reduce shame, oftentimes the
9 intensity of the same sex attraction decreases for
10 these people who are distressed over their same sex
11 attraction.

12 So the plaintiffs fit these common patterns.
13 And it's undisputed they all had gone to some type of
14 therapist, psychologist, psychiatrist before they even
15 came to JONAH. And they had all seen various religious
16 counselors, rabbis, or in the case of Mr. Ferguson,
17 bishops in his own Mormon faith.

18 So this is not a situation where they came to
19 JONAH, where JONAH was trying to pitch them something
20 they didn't want. And they were completely trouble-
21 free. And they left JONAH early with all these
22 problems.

23 They left JONAH with problems in most cases
24 that they took with them to JONAH, but in most cases
25 they were able to improve on various issues, given the

1 time that they had with JONAH and the work that they
2 put into their own personal growth and development.
3 And we see that reflected in e-mail after e-mail while
4 they're in the program, thanking JONAH for helping them
5 instill self-confidence, instill a sense of
6 authenticity, instill a sense of integrity.

7 You know, we heard that word "integrity" over
8 and over, ladies and gentlemen, what it means to stay
9 in integrity. It actually is part of the idea of being
10 integrated. And I found it interesting to learn the
11 patron saint of lawyers and judges, St. Thomas More was
12 the first to use, to be integrated in that sense of
13 integrated in all aspects of your personality.

14 So here he is, the top lawyer of the land,
15 Lord Chancellor of England, writing about you
16 incorporate your faith, you're integrated in all
17 aspects of your personality and of your work and of
18 your service. And he did that as a brilliant lawyer
19 and judge, and he did it as a great saint because you
20 can't have a dichotomy.

21 So when we talk about JONAH's religious
22 perspective, we talk about integrity. We talk about
23 being integrated. It means you're not walking around
24 saying one thing and doing something else, and that
25 you're incorporating your beliefs in all aspects of

1 your life. And that you're exercising your faith in a
2 manner consistent with what we understand to be our
3 rights as Americans, a free exercise of religion under
4 the First Amendment, not just a belief. So --

5 MR. BROMLEY: Objection, Your Honor.

6 THE COURT: Counsel, let's stay away from the
7 First Amendment please. --

8 MR. LI MANDRI: Will do, Your Honor.

9 THE COURT: We have rulings on that. Thank
10 you.

11 MR. LI MANDRI: Okay.

12 So in any event, we have the right to have
13 our personal beliefs and have them honored and
14 respected by our fellow Americans. And that's largely
15 what this is about.

16 Okay. So I'm getting a little bit far from
17 my story. Let me finish it and then get to the
18 evidence. Because I don't want to run out of time.

19 In terms of the plaintiffs it's not disputed
20 that Sheldon Bruck stayed something like six weeks with
21 the program. There's been testimony. It typically
22 takes two to four years. It could be one year for some
23 people if they come with no other issues or problems.
24 Five years maybe at the outside if you've got problems
25 that have to be dealt with other than same sex

1 attraction.

2 We know Sheldon Bruck was told by Thaddeus
3 Heffner he should be seen by a specialist for clinical
4 depression. He was afraid that he may have a form of
5 depression that required something like antidepressant
6 medicine. So that's an issue that had to be addressed
7 and it was. The JONAH counselor, appropriate and very
8 early on, saw that and sent it out to someone more
9 qualified to handle that.

10 With respect to, for example, Benjamin Unger,
11 Alan Downing saw he was having repeated problems and
12 issues reoccurring in his mind, thoughts circulating in
13 his mind, patterns that he couldn't break through in
14 his thought process. And that's reflected in Alan
15 Downing's notes.

16 And the opposition has seized on some things
17 that Alan Downing wrote because, as Benjamin Unger
18 admitted, he did have an attraction to what he called,
19 you know, male posteriors. That wasn't the word he
20 used. I'm trying to be polite. And so obviously that
21 showed up in the notes.

22 But sooner or later Alan Downing realized
23 this had to be addressed by a specialist because it
24 wasn't stopping. It wasn't going away. So he referred
25 him out, gave him two names. Mr. Lewis, a specialist

1 in OCD, Dr. Phillipson. And thank goodness that Mr.
2 Unger got the help he, he needed.

3 But that was a complicating factor in what
4 lack of progress he felt he was experiencing. And, and
5 he left after what, if you string it together, would be
6 38 weeks. Normally we're talking about --

7 MR. BROMLEY: Objection, Your Honor. It
8 misstates the record.

9 MR. LI MANDRI: I said if you string the
10 amount of weeks together he actually went.

11 THE COURT: The objection is overruled. The
12 jury will recall what the testimony is.

13 MR. LI MANDRI: I think it was ten months he
14 was there, but he wasn't there consistently. That's my
15 point. Your recollections will be the ones that will
16 matter most, okay? But clearly he did not stay two
17 years.

18 And Chaim Levin stayed longer in terms of
19 time, but shorter in terms of visits. Roughly around
20 the same period of weeks if you take the, the weeks
21 that he actually -- what would have been consecutive
22 instead of being gone for weeks and months at a time.
23 Certainly even if you take the total time, it was well
24 under two years. And Chaim Levin said, he just gave up
25 at some point. And it was too hard. He didn't want to

1 keep doing it.

2 And that followed right after him writing the
3 friends on the -- in the group that he was in, saying
4 please, I want to come back. I want to really dedicate
5 myself to this. I want to be committed. I'm sorry.
6 I've not been there. This is what I want to do. And
7 this again, was all after that exercise he had with Mr.
8 Downing regarding the nudity issue, which I want to
9 talk about too this morning.

10 But I want to get through the facts. The
11 plaintiffs all left early. Mr. Ferguson was there
12 roughly about three months. I'm not even sure that was
13 three consecutive or 12 consecutive weeks.

14 But regardless, none of them stayed anywhere
15 near the time that would be expected to reach the goals
16 they identified they wanted for themselves when they
17 came to the JONAH program.

18 So you have to ask yourselves from the outset
19 it is fair that someone enters a program, committing to
20 do certain things and stay a length of time -- and
21 remember, JONAH is just a referral service. So they're
22 going to work that out with their individual
23 counselors. In the case of Mr. Bruck it was Thaddeus
24 Heffner. In the case of the others it was Alan
25 Downing. But you've heard from Mr. DiJiacomo. He saw

1 another JONAH counselor, Baxter Pfeffer.

2 So there's different JONAH counselors one or
3 two of them has seen. Dr. Joseph Nicolosi in
4 California, he's a referral counselor for JONAH as
5 well. So they're all over the country. The referral
6 counselors set the program in conjunction with the
7 person, depending on their goals, on their issues and
8 what they want to accomplish. So JONAH has nothing to
9 say about that. And that's an undisputed fact.

10 Now JONAH does have shabbatons, which are
11 religious retreats, and for the Jewish members of the
12 community that come to them. They have the Listserv,
13 which is based on Torah values. If we have time we'll
14 take another quick look at the rules. It's only for
15 people that share those values, that Jewish world view.
16 And there's no gay bashing allowed on the JONAH
17 Listserv.

18 And then JONAH also tries to integrate into
19 its program, Jewish spirituality, particularly around
20 the concept you've heard repeatedly of teshuvah, which
21 is a sense of healing and is a sense of repentance,
22 which again, is certainly not exclusive to the Jewish
23 faith. Those are Christians. I would imagine the same
24 for Muslims. Healing, repentance is a recurrent theme
25 on what we're called to do bring our lives back into

1 conformity with God's will for us and purpose for us as
2 expressed in whatever Holy Scriptures we adhere to.

3 All right. So that much I don't believe is
4 disputed in terms of what the purposes of the
5 plaintiffs were and what the defendants' mission was
6 and how they were intended to mesh. The plaintiffs
7 left early without complaints to anyone, speaking
8 glowingly of JONAH. None of that is in dispute.

9 Two of them -- three of them attended People
10 Can Change JIM weekends. None of them went on the
11 Journey Beyond, the more advanced weekend. They all
12 though the JIM weekends was a very powerful experience.
13 They spoke glowingly of it. Two of them wanted to come
14 back as volunteer staffers they liked it so much.

15 So there's no issue here that none of these
16 plaintiffs thought that they were harmed in any way by
17 the JIM weekend. In fact, Michael Ferguson, much
18 longer after he left is encouraging other people to go
19 on JIM weekends, planning to return himself and also
20 planning to resume coaching sessions with Alan Downing.

21 Now remember, this is a guy who is what, 26,
22 27 I think when he broke off contact. He was 28. He
23 had been in his second year of medical school. Now
24 he's in a Ph.D program. He had dated various women.
25 He had been outside the parents' home for a long time.

1 He had lived in another state when he did his Mormon
2 mission.

3 These -- this idea that these were all very
4 young, very vulnerable, very inexperienced men is just
5 not true, ladies and gentlemen. It's just not true.
6 They all had, although even Benjamin Unger denied it at
7 first about having sex with other men, you know, when
8 you looked at his intake form it was quite clear that
9 he had been doing that as a teenager long before he
10 came to JONAH.

11 And again, Sheldon Bruck was the youngest and
12 least experienced, but he was only at JONAH for six
13 weeks and -- not at JONAH specifically because he never
14 came to the JONAH headquarters. But dealing with a
15 JONAH referral counselor. And he never went to a JIM
16 program, never even met any of the defendants and is
17 not even a plaintiff in this case. So his situation is
18 quite unique.

19 But what's not unique is they all left early,
20 long before they had any hope of accomplishing their
21 goals. And to their credit, even Michael Ferguson and
22 Sheldon Bruck they didn't expect a change at all in the
23 amount of time that they spent at JONAH.

24 So when they did leave and left on good
25 terms, what happened? How did it all change? Dr.

1 Lalich, who's been here in court surprisingly every
2 day, considering you don't see two of the plaintiffs in
3 court every day, the two mothers who sued, yet Dr.
4 Lalich is here every day. She would have you say that
5 the plaintiffs never complained for days, weeks, months
6 -- actually over a year and a half for Chaim Levin,
7 when he first said he realized this nudity exercise he
8 told Jonathan Hoffman was very helpful to him and very
9 empowering and very positive, he realized oh, gee, I
10 think it was hurtful and now I want to write about it
11 and tell the whole world and go on Nightline and argue
12 with reporters for the New York Times and elsewhere why
13 they're not covering my story.

14 And then writing Wayne Besen, the notorious
15 gay activist, saying thank you for making an instant
16 celebrity with the YouTube video. And then being the
17 face of the Southern Poverty Law Center's campaign to
18 end conversion therapy nationwide, all of which he
19 admitted he was happy to do.

20 By the way, with no mention of JONAH,
21 particularly when Sam Wolfe of the Southern Poverty Law
22 Center and Lee Beckstead, their expert, and Wayne Besen
23 were all doing panel discussions around the country on
24 the evils of conversion therapy and looking for people
25 who might be interested in bringing claims. It wasn't

1 about JONAH. JONAH's name wasn't even being mentioned
2 there. But they had to start somewhere, so we're all
3 here in a courtroom now in Jersey City.

4 Why? Because Chaim Levin and Benjamin Unger
5 and Sheldon Bruck soon joined the Jewish Queer Youth,
6 which is the antithesis of JONAH.

7 JONAH stands in conformity with the Torah and
8 Jewish tradition, saying if you want to live your life
9 in conformity with our Jewish values, we're here to
10 help you. The Jewish Queer Youth stands opposite them
11 and says forget all that. If you have same sex
12 attractions you not only have the right, you should act
13 on them. And they have the right to say that and
14 people have the right to listen to them.

15 What they don't have the right to do is
16 engage in underhanded sabotage-type tactics where all
17 of a sudden now we have Benjamin Unger trying to
18 sabotage the JONAH Listserv by writing letters outside
19 the Listserv procedures, outside the JONAH Listserv
20 administrator, to all the people on the Listserv,
21 trying to undermine the purpose of the very Listserv
22 that he agreed when he joined the Listserv --

23 Your Honor, counsel standing is a distraction
24 to me. If there's a problem I'd appreciate if the
25 Court addresses it.

1 MR. BROMLEY: I'm just waiting for a period
2 to say objection.

3 THE COURT: Well you --

4 MR. BROMLEY: There's no evidence in the
5 record, Your Honor, about any motivations of Jewish
6 Queer Youth.

7 THE COURT: I'm going to overrule the
8 objection. The jury has heard the testimony. This is
9 argument by counsel. The jury will determine the basis
10 of it. And they will be properly instructed by me what
11 -- how to consider the evidence.

12 MR. LI MANDRI: Thank you, Your Honor. The
13 evidence is undisputed, ladies and gentlemen. Benjamin
14 Unger did write that letter to the Listserv. It was
15 reviewed by Jewish Queer Youth people, who we said were
16 present in the courtroom and tweeting during the trial
17 about what a hero and courageous man he was. That was
18 --

19 MR. BROMLEY: Objection, Your Honor, there's
20 no evidence about that.

21 MR. LI MANDRI: Yes.

22 THE COURT: Counsel, I'm going to overrule
23 the objection. There was testimony about the Listserv
24 and there was testimony about the review of the letter.
25 The jury will give it the weight that it deems

1 appropriate.

2 MR. BROMLEY: Okay. Your Honor, I was
3 referring to the tweeting. There's no evidence of that
4 in the record.

5 THE COURT: Oh, I apologize for that. I
6 don't recall hearing any tweeting.

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

9 THE COURT: The jury -- it is your
10 recollection, ladies and gentlemen, not mine and not
11 counsel's. And I will repeat that for you when you get
12 my instructions.

13 MR. LI MANDRI: Thank you, Your Honor. You
14 know, one of the things I love about this work and I
15 found in my years doing it by people much wiser than
16 myself who were doing it much longer, about the beauty
17 of this system of justice, not only do we have
18 brilliant judges to be able to rule on objections and
19 make sure people follow proper procedure, but the
20 genius of the American jury system is we have people
21 who collectively have hundreds of years of human
22 experience.

23 Among you, your recollections are so much
24 better than mine, counsel or anyone else in the
25 courtroom. And among you, you have a mass of human

1 experience and wisdom to bring to bear on these issues.
2 So if I do misstate something, and it is possible, and
3 if I do, I'm sure my esteemed colleague will point it
4 out. I'm doing my best not to. But you will know
5 among you, among you.

6 You've heard all the evidence. You've
7 understood all of the evidence and collectively you'll
8 be able to do justice based on, on that evidence. And
9 it is a privilege to be here and to be working as part
10 of a system that allows that kind of justice. Because
11 very few countries in the world -- as a matter of fact,
12 my understanding is we're the only one that has a jury
13 that decide civil cases like this. So it is -- it's an
14 honor and a distinction for the attorneys to be able to
15 take part in it.

16 But getting back to our story, there was no
17 dispute that Benjamin Unger did write that letter, did
18 try to undermine the Listserv. At the same time, long
19 before he realized that the nudity exercise supposedly
20 was so horrible to him, we have Chaim Levin working
21 behind the scenes with Jewish Queer Youth, sending them
22 confidential communications from the JONAH Listserv.

23 So they accomplished their purpose. They've
24 effectively destroyed the Listserv. Because it was a
25 place where people like them, when they wanted to be

1 part of it, could speak their minds freely and get the
2 benefit and support of like-minded individuals who
3 shared their values and shared their struggles and
4 wanted to help each other. They destroyed that.

5 And the Jewish Queer Youth unquestionably
6 reviewed and revised Unger's letter and was getting the
7 communications from, from Chaim Levin. And at the same
8 time -- I'll get to it. I only have 12 exhibits I want
9 to show you. One of them is the e-mail that Chaim
10 Levin sent to Arthur Goldberg, copying Jewish Queer
11 Youth, we have this teenager castigating this man in
12 his seventies, saying you're doing horrible work,
13 you're hurting Jewish people. You call it a sickness.
14 You call it an illness. And Arthur Goldberg wrote back
15 and said I don't speak that way about it, you know that
16 Chaim. And why can't we be friends. Not knowing that
17 he's just being a shill, a patsy for Jewish Queer
18 Youth.

19 The evidence is undisputed that Erez Harari
20 is the one who got Chaim Levin to develop this story
21 about how horrible his experience was with JONAH and
22 using the nudity exercise, which we knew could so
23 easily be twisted and distorted and presented in a
24 mischaracterization and in a way that would make Alan
25 Downing look bad under any set of circumstances, even

1 though Chaim Levin, through his own testimony, said he
2 knew five people who had gone through it. No one had
3 complained. They all thought it was helpful.

4 You heard Jonathan Hoffman explain it, hey,
5 to me it sounds weird. I wouldn't want to go through
6 taking my clothes off in front of other men in that
7 context. But I don't have the background. I'm talking
8 about JIM. I'm talking about all of it, that these
9 people have, where they have -- I've got body shame
10 issues, but not like that. And most of us probably
11 don't. So it sounds weird to us and we wouldn't want
12 to probably do that.

13 But for them it was helpful and liberating.
14 And you heard the testimony from people who have gone
15 through it. It was anything but homoerotic. It was
16 anything but shaming. It enabled them to see hey, I am
17 like other men. I don't need to envy them. I don't
18 need to sexualize them. I don't need to have all my
19 encounters with other men in bath houses and gay strip
20 clubs or whatever else you heard from people like David
21 DiJiacomo and Jeremy Schwab, who said they had over
22 1000 partners and were out of control, out of control.
23 It was obsessive, it was compulsive and it was
24 destructive.

25 And they both said by the grace of God, and

1 if you're a God-fearing person, it's all by the grace
2 of God. I don't care what it is. I don't care who you
3 are. You don't have to believe it. But if you're a
4 God-fearing person and you want to believe it and you
5 want to allow it to work in your life -- I read one of
6 the articles from Dr. Beckstead's report, how people
7 who have those beliefs tend to live healthier, happier,
8 longer, more productive lives. It's one of the things
9 I wanted to go over.

10 And tragically people who allow themselves to
11 be caught up in any sexual addiction, but sadly in the
12 homosexual community it is more prevalent from the
13 studies we showed, read with Dr. Beckstead that are not
14 in dispute and they will not say otherwise. And I did
15 not want to have to cover this. And I said it in
16 opening statement. I hope they don't make me go into
17 these issues about certain unhealthy practices. But
18 then they made me do it by getting up and saying these
19 are all scare tactics.

20 And I was thinking well yeah, I guess they're
21 scare tactics. Is that bad? And I, you know, I
22 remembered when I was learning to drive and I had to
23 take driver's training and they showed all the videos
24 of anthropomorphic dummies not wearing seat belts being
25 thrown against windshields or thrown out of cars or

1 rolling around inside cars because they don't wear seat
2 belts, that was scary. And as a 16-year-old I got in
3 my head I better wear seat belts. And I have ever
4 since.

5 So sometimes being scared because you don't
6 want to engage in a, in a practice or develop habits
7 that are unhealthy or potentially dangerous is a good
8 thing. And telling people that having unprotected sex,
9 which is what these articles said is very prevalent
10 among people who come out openly gay -- and I've got
11 the study. I could re-read it again. Is causing a
12 very large problem with, with health issues. --

13 MR. BROMLEY: Objection, Your Honor, --

14 MR. LI MANDRI: -- I'll move past this, but

15 --

16 THE COURT: Yeah, can we move away from this,
17 Counsel?

18 MR. LI MANDRI: Right.

19 THE COURT: Thank you. Sustained.

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

25 Now I'm going to go back to my outline as

1 soon as I finish this one line of thought, which was
2 what happened after Mr. Harari got involved, convinced
3 Mr. Levin go to public. The evidence is undisputed he
4 introduced him to Wayne Besen. Wayne Besen took over,
5 who did the YouTube video. And then the whole thing
6 took off. All the newspaper reporters, the articles,
7 the TV interviews. The plaintiffs working with these
8 people, sending people into JONAH undercover,
9 pretending they're clients, trying to take videos and
10 trying to get incriminating statements.

11 And I'm only telling you this because who are
12 the victims and who are the victimizers? Are these the
13 people that Dr. Lalich would have you believe were
14 under some type of coercive influence by my clients or
15 were they under influence of someone else who wanted to
16 use my clients in this case to push an agenda forward
17 that had very little to do with what the plaintiffs
18 experienced in their dealings with my clients.

19 And you need to be aware of that as you
20 listen to the evidence from the other side as to what
21 was motivating the clients in terms of their
22 credibility and in terms of their bias and giving
23 testimony about things they now say happened, which
24 they never said happened when they were at JONAH and
25 for a long time afterwards until they decided to gay

1 identify and become gay activists.

2 And as Benjamin Unger said, he traded in his
3 religious community for the LGBTQ (sic), which he's
4 entitled to do. But he's not entitled to use that as a
5 platform to say a bunch of things that are not true and
6 seek compensation he's not entitled to.

7 And so that's why we're here. Now when His
8 Honor reads you the jury instructions one of the
9 plaintiffs' claims -- I'm sure you're going to be
10 hearing a lot about, is my clients said homosexuality
11 was a mental illness, a mental disease, a mental
12 disorder, psychological disorder or something the
13 equivalent thereof, all right?

14 Now let's clear the air on that issue right
15 now. There have been thousands of documents produced
16 according to the evidence, and you have seen dozens of
17 e-mails and other communications and the JONAH website,
18 and Arthur Goldberg's book, 575 pages. He spent five
19 years writing.

20 Nowhere has anyone shown you, and I don't
21 believe anywhere you'll find in the evidence the words
22 "mental illness, mental disease, mental disorder" used
23 in talking about homosexuality. How does Elaine Berk
24 talk about homosexuality and Arthur Goldberg? Do they
25 use the term "disorder"? Yes, they say they always do

1 from a religious perspective.

2 You've seen it in a few e-mails that Elaine
3 Berk compares it to things that are not diagnosable
4 mental conditions, you'd go to a psychiatrist or a
5 psychologist for like bipolar disorder or clinical
6 depression. Things like they sent Sheldon Bruck to be
7 evaluated for or Benjamin Unger to be evaluated for.

8 They're referring to other things, which are
9 -- you could call it a human failing. If you're a
10 religious person you can call it sinful activity, you
11 know, gluttony, obesity. It could be gambling. It
12 could be -- if it's out of control or if it's being
13 used destructive (sic). If you're -- I suppose you're
14 gambling away your family's -- your wages. Or it could
15 be something like a drug addiction.

16 Those things generally -- you don't refer
17 someone to a psychiatrist or psychologist. They go to
18 self-help programs, AA, whatever. It's very different
19 from saying someone has a disease, where they have to
20 go through a treatment regimen, maybe take medication
21 or something like that. It is a disorder that can be
22 handled by lay people, lay counselors.

23 Arthur Goldberg -- this book is J-50. It's
24 in evidence. Arthur Goldberg refers to himself as a
25 lay counselor in the book. He's also been called a

1 mentor. He's obviously very knowledgeable, spending
2 five years researching this issue. And like Elaine
3 Berk, 15 years helping people. Page 484 he refers to
4 himself as a JONAH -- a, a lay counselor.

5 Lots of lay counselors are helping people
6 with these kinds of issues that are considered
7 disorders. Jeremy Schwab said as a Catholic, he
8 founded a Catholic ministry. It was in the Catholic
9 catechism as an intrinsic disorder to engage in certain
10 homosexual acts. And it's true it's a disorder to
11 engage in certain heterosexual acts in the Catholic
12 catechism.

13 But the bottom line is from a religious
14 perspective it's considered a disorder. If my clients
15 used it that way, it's not actionable under the
16 Consumer Fraud Act of New Jersey. They cannot be found
17 liable in this case.

18 And based upon my clients, how they formed
19 the organization and the purpose they formed it for --
20 and I've got to look at these exhibits. We'll start
21 with J-65 please, which is a joint exhibit. It's the
22 JONAH mission statement again. You've seen it before,
23 so I won't spend a lot of time on it.

24 But the first paragraph, if we can enlarge it

25 --

1 THE COURT: Just one second, Counsel.

2 I just want to remind the jurors, as I've
3 said, same thing holds true. If you're unable to see
4 the screen, please feel free to move about the jury
5 box. Just stay in the box please.

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

7 THE COURT: Sorry, Counsel.

8 MR. LI MANDRI: I appreciate it. No, thank
9 you. The first paragraph just --

10 MR. BROMLEY: Your Honor, just one quick --
11 What number is this, Counsel?

12 MR. LI MANDRI: Well I have it, Counsel, as
13 J-65. Am I wrong?

14 MR. BROMLEY: I'm sorry, I thought you, I
15 thought you said J-64. That's fine.

16 MR. LI MANDRI: "JONAH, Jews Offering New
17 Alternatives for Healing is a nonprofit, international
18 organization dedicated to educating the worldwide
19 Jewish community about the social, cultural and
20 emotional factors which lead to same sex attraction."

21 It doesn't say it's a mental illness. It
22 doesn't say they're going to send you to a psychiatrist
23 or a psychologist or you're going to have to get some
24 kind of operation or, or shock treatments or
25 medication.

1 "JONAH works with those struggling with
2 unwanted same sex sexual attraction, SSA, and with
3 families whose loved ones are involved in
4 homosexuality."

5 The same thing it says on the nonprofit
6 statement, which is also in evidence. I'll give you
7 that number. But I don't need to read both of them.
8 They say the same thing. In the second paragraph:

9 "Our rabbinical sages explain that because
10 being kind has been endowed by our creator with a free
11 will, everyone has the capacity to change.
12 Furthermore, the rabbis emphasize that parents,
13 teachers and counselors have a special responsibility
14 to educate, nurture and provide an opportunity for
15 those struggling with unwanted same sex attractions to
16 journey out of homosexuality. Through psychological
17 and spiritual counseling, peer support, self-
18 empowerment, JONAH seeks to reunify families, to heal
19 the wounds surrounding homosexuality and to provide
20 hope."

21 That's what they do. That's why they were
22 formed. That's a service they provide that was not
23 available to Arthur Goldberg and Elaine Berk when they
24 were looking for it. And you've heard now from
25 numerous individuals. I said nine success stories in

1 opening statement. We shortened the evidence because
2 it was getting repetitive.

3 But you heard from Rich Wyler and eight
4 people basically say they went through their own
5 journey, out of what they considered unwanted same sex
6 attractions, are now leading healthier, happier lives
7 as heterosexuals.

8 What does that mean, the capacity to change?
9 We'll get into that. Elaine Berk's got an e-mail where
10 she, she talks about it. But since I'm on the subject
11 and there's so much I want to cover, and I don't want
12 to forget anything, let me deal with it now because
13 it's important. It means different things to different
14 people obviously.

15 For some, like David DiJiacomo and Sean
16 Hennigan, after living lives of rampant homosexuality
17 with numerous partners -- David DiJiacomo talked about
18 the bath houses. Sean Hennity (sic) said he was
19 having, you know, sex with people in parks. They now
20 have zero homosexual attractions, okay? They both said
21 it could --

22 MR. BROMLEY: Objection, Your Honor,
23 misstates the record.

24 THE COURT: Counsel, I understand it's
25 counsel's argument and as I told the jury, what counsel

1 says is not evidence. It's what their recollection is
2 of the evidence.

3 Counsel, I'd be careful because I think --

4 MR. LI MANDRI: I'll be -- let me rephrase.

5 THE COURT: All right. I think DiJiacomo
6 said it ranges from zero to three, okay? My memory is
7 not perfect. Collectively yours is. But at times at
8 zero. And he did say he's dating women. And he's
9 looking to get married.

10 And Sean Hennigan, I thought he said it's
11 gone. Now if you have a different recollection. My
12 recollection is Sean Hennigan said it's gone. In any
13 event, he's living happily as a heterosexual and
14 looking forward also to getting married.

15 I think Jeremy Schwab says it's been reduced
16 by 90 percent. Again, look at your own memories and
17 your notes. But he also said he had had over 1000
18 sexual encounters with men. And now he's living a life
19 free of those types of pulls that are causing him to
20 engage in behaviors that were making him very unhappy.
21 Okay.

22 In terms of what JONAH tells people on this
23 issue of what's disorder and what's not, I showed you
24 J-49. It's a JONAH psycho-educational model for
25 healing homosexuality. Let's go to the last paragraph

1 again. You've seen it before.

2 First of all, right above that --

3 THE COURT: Counsel, just wait one second. I
4 apologize.

5 UNIDENTIFIED: I'm sorry, Your Honor.

6 MR. LI MANDRI: May I resume?

7 THE COURT: Yes.

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

9 "JONAH uses a holistic approach, combining
10 elements from several gender affirming processes, a
11 program designed to fill in developmental gaps. They
12 have been praised by our members. We note a
13 synergistic effect, which in turn resulted in
14 acceleration of feelings."

15 So it's not just talk therapy. "With these
16 various aspects of the healing model are combined,
17 particularly when compared to those who only receive
18 individual, private therapy, we found a marked
19 difference in the ability of the struggler to achieve
20 changes in identity, behavior, arousals and fantasies."

21 Now change, anybody can change their
22 identity. All three of the plaintiffs' experts -- well
23 Dr. Lalich didn't cover that I don't think. But Dr.
24 Bernstein and Dr. Beckstead certainly did. If you want
25 to change your identity you can change your identity.

1 You can say I'm a heterosexual, I'm a homosexual, I'm a
2 bisexual or whatever. But is it meaningful if you
3 don't change your behavior?

4 Changing behavior is probably the key. And
5 you've heard numerous people say, including Pret
6 Dahlgren and Jeff Bennion, although they have some same
7 sex attraction, they changed their behavior and they're
8 faithful to their wives and their children, okay?

9 They've changed identity, they've changed the
10 behavior. Some people don't like the labels at all. I
11 can't remember which one -- or which at that point.
12 But that doesn't really matter. Behavior is more the
13 key.

14 And then you've got to deal with arousals and
15 fantasies. For some people those don't stop. I mean,
16 any -- you're a heterosexual man -- well I don't know
17 any. I would assume most. If you get married you
18 might still be attracted to other women, but, you know,
19 you want to be faithful to your wife, keep the promises
20 of your marriage, and so you learn to control your
21 arousals and fantasies. You don't dwell on them. You
22 don't let them take over your life. And you try to
23 stay true to your -- what do you call when you --
24 exchange vows, true to your vows. Okay.

25 "In fact experiential, spiritual and

1 emotional work done by the client outside of the
2 therapist's office was reported to be critically
3 important to implement the cognitive understandings he
4 may receive during the therapy session."

5 So the experiential has, has been explained
6 by multiple witnesses now, involves the body part of
7 it, obviously the spiritual. You can get it through
8 the shabbatons, through the prayer, through the
9 reflections, through the numerous bibliotherapy and
10 religious references that JONAH has. And then they
11 have the talk therapy, which you get through life
12 coaches, counselors, some licensed, some not depending
13 on what your needs are. But it is a holistic approach.

14 "However, even at the cognitive level the
15 variety of additional resources, again, such as
16 bibliotherapy ... which is all the reading materials.
17 "... or participation in support groups, whether in in-
18 person, teleconference or e-groups, accelerate recovery
19 of the client. This -- in fact this holistic approach
20 to intervention resulted in assessing the member's
21 inner drives ... whatever. It's cut off. But you get
22 the idea.

23 So that's JONAH's main approach. Part of the
24 psycho-social model -- we don't need to keep turning
25 the pages. That will take time. But they list the

1 various things. And right in the middle, you've seen
2 before is Jewish spiritual development. And we've got
3 a whole section on Jewish spiritual development, which
4 goes in, in detail and says, "When we understand that
5 the ... I should probably show this because it bears on
6 the issue of disorder. So it's page -- it's still
7 document J-49. It's page five of ten. And it says
8 "when", which is the third paragraph.

9 "When we understand that the homosexual
10 cohabitation prohibited by Leviticus 18:22 and
11 explained in the Talmud ...

12 And then around 51A. "... is a mistaken
13 response to an unfulfilled emotional need, we are able
14 to remove an oppressive guilt from the person who was
15 mistakenly led most often by forces initially beyond
16 his or her control into such activity."

17 So they're not blaming anybody. And, and
18 same sex attraction, they're not saying anyone is at
19 fault for it. They're not saying anyone is doing
20 anything wrong by having these attractions. No one is
21 being condemned for their attractions.

22 What's the next paragraph say, the very next
23 paragraph please. "By understanding the root causes
24 and unfulfilled needs for which behavior and fantasy
25 attempts to compensate, a program of remediation

1 becomes achievable, we find it helpful to employ a
2 combination of both the Jewish concept of teshuvah, a
3 process of performing one's inner being, commonly
4 translated as return to repentance, and the secular
5 understanding to the gender affirming therapies."

6 You'll hear the plaintiffs want to, at every
7 opportunity, tear those apart as if they cannot exist
8 together. But we will tell you they cannot exist
9 apart. The whole JONAH program is based upon teshuvah
10 combined with the secular understanding. Or else
11 there's no need for JONAH to exist. There's other
12 programs that are purely secular in every respect.
13 Okay. There are these counselors are mainly purely
14 secular. They're referral counselors with their own
15 practices.

16 But when Arthur and Elaine speak, they're
17 speaking from the perspective on which they founded
18 JONAH, which is a Torah, value-based perspective. So
19 you need to -- whenever you see e-mails or writings
20 that they've written, that's where they're coming from.
21 No, they're not mental -- trained mental health care
22 practitioners and they don't profess to be.

23 People have used an honorary title for Arthur
24 Goldberg as doctor, but he's never put MD after his
25 name or Ph.D after his name. He's put JD after his

1 name because he's got a juris doctor and he earned that
2 degree. And he's entitled to do it.

3 He also has an honorary degree. And he has a
4 great deal of experience. And he's held in high esteem
5 by many people in the field. He's been the founding
6 president of PATH, which is multiple organizations that
7 do this work, some religious, including Evangelical,
8 including Mormon, including Catholic. Of course, his
9 is a Jewish organization. And he's in a bunch of
10 secular ones.

11 So people hold him in high regard. And
12 bringing him down will be very important for his
13 adversaries. But Arthur Goldberg has earned the
14 respect which he's been given. And, you know, you'll
15 hear evidence that well when he applied for these
16 certifications he put down he had not been convicted of
17 a felony. And you'll get to see the application. It
18 says, "Do you have any ethical violations within ten
19 years?" The very next sentence says, "Do you have any
20 felonies?" He read it to be ten years. And he filled
21 this out long after ten years had passed. And there
22 was a misunderstanding.

23 And they're going to try to say look, he was
24 a convicted felon 25 years ago. He's still a liar.
25 Well listen to all the people who know him, who work

1 with him, who love him. And what do they say? In fact
2 what did David DiJiacomo say? His JONAH counselor and
3 Arthur Goldberg were the only men that he had sex -- or
4 a thousand men, that they only men to ever say I love
5 you, I love you. And he teared up over it. That's the
6 kind of man Arthur Goldberg is.

7 You have not heard one person other than the
8 plaintiffs and their paid experts and soon their lawyer
9 say what a horrible, miserable, wretched man is (sic).
10 And these words that have been used like snake oil
11 salesman or slick salesman were never used by anyone
12 ever before they were heard in this courtroom about
13 Arthur Goldberg. Perhaps in the plaintiffs' papers
14 filed in this court, but never before this lawsuit,
15 never by anyone except people that want to destroy him
16 and his work and his mission.

17 Okay. With regard to Elaine Berk, she too
18 has written a great deal. I'm not going to go through
19 the statistics that are unsavory in this D-243 about
20 certain aspects of the gay lifestyle. But I think it's
21 important when we talk about this article she wrote,
22 "Is Homosexuality Natural, Healthy and Good", because
23 there was an answer she gave as to whether or not the
24 term "psychological disorder" was ever used. She said
25 well it's in relation to, it would depend upon the

1 context.

2 And on page one of four -- so if you go down
3 to "lifetime prevalence of DSM-III psychiatric
4 disorders", which is this is an exhibit in evidence.
5 And this would be page one of four it says, but it's
6 the second page of the exhibit.

7 We need to put it in context -- right there
8 -- of what would she potentially be referring to.
9 Because we know a lot of people have what they call
10 comorbid conditions. And it needs to be explained and
11 understood. Homosexuality is not a mental disease, is
12 not a mental disorder, but it can be associative, like
13 any other condition, with certain types of diseases,
14 disorder. This is from the archives of general
15 psychiatry, is cited in the paper in evidence. And
16 look at --

17 MR. BROMLEY: Your Honor, objection. There's
18 no expert testimony on this stuff.

19 MR. LI MANDRI: Well, Your Honor, this is an
20 exhibit in evidence. And I need to explain the
21 psychological disorder.

22 THE COURT: This is in evidence?

23 MR. LI MANDRI: Yes, Your Honor.

24 THE COURT: Well it's in the document and
25 counsel can comment on the evidence --

1 MR. LI MANDRI: Thank you.

2 THE COURT: -- without giving expert opinion.

3 MR. LI MANDRI: No.

4 THE COURT: You can simply say what the
5 document says.

6 MR. LI MANDRI: That's what I intend to do.

7 THE COURT: Okay.

8 MR. LI MANDRI: And I'm only putting it up
9 because this is in Elaine Berk's document. And there
10 will be testimony as to what she understands and
11 whether or not she has a basis to have made certain
12 statements. They're not calling homosexuality a
13 disorder. They're just pointing out a comparison. And
14 we have that from Dr. -- one of the research articles
15 Dr. Beckstead, which if I have a chance I'll get to,
16 which is very consistent with this.

17 So yes, people can have this as -- Benjamin
18 Unger and Sheldon Bruck had conditions which would
19 require professional help. Although homosexuality
20 obviously does not, in and of itself, or else my
21 clients could not be using life coaches. They could
22 not be using unlicensed counselors along with licensed
23 counselors like Sheldon Bruck (sic) or psychiatrists
24 like Joseph Nicolosi or other licensed people.

25 But this is what she would be referring to.

1 And it's not calling homosexuality, in and of itself, a
2 psychiatric condition or psychological condition or
3 psychological disorder. And that's my only point
4 showing you that.

5 In fact if you look at J-35, it should only
6 be one e-mail. And I want to look at the first
7 paragraph. And it's an e-mail, I believe the only
8 exchange in writing between Arthur Goldberg and
9 plaintiff, Jo Bruck. And it says, "Your son, Sheldon,
10 has been in touch with us at JONAH concerning his
11 personal struggle with the perception ... and he's the
12 only one who came out and used these words. "...
13 perception he is gay, while also having feelings for a
14 girl he knows.

15 He has expressed great confusion about his
16 sexuality and contacted us since we at JONAH are the
17 only Jewish-based organization in the world that works
18 with those unhappy with their sexual confusion in order
19 to help them realize their heterosexual potential.

20 We have letters of affirmation from numerous
21 rabbis including, for example ... and then they list
22 several rabbis.

23 And then the very next paragraph, just the
24 first sentence. "Sheldon has been very up-front and
25 stating I'm 17, struggling as a gay teenager. I want

1 to change. And I try to make the inappropriate gay
2 thoughts I have disappear, but it's hard. I want to
3 marry a girl who I love and have children. I need
4 help." There's an explanation point. "I'm getting to
5 the point where I am losing touch with orthodoxy ... it
6 goes on. He fears his relationship with God.

7 Nowhere is Arthur Goldberg coming back and
8 saying -- we can take that down. That he needs to see
9 anyone other than a referral counselor, not a
10 psychiatrist, not a psychologist, and potentially a
11 rabbi. And indeed, Sheldon Bruck (sic) got him in the
12 hands of not only a competent psychiatrist, but also a
13 competent rabbi who was sensitive to his situation and
14 understanding of his situation and was not condemning
15 of his situation. And that was all accomplished in, in
16 six weeks.

17 But I showed that because these are the
18 communications Arthur Goldberg has. He's not saying
19 your son's suffering from a mental disorder, we need to
20 have that addressed immediately. And indeed, exhibit
21 J-2, we've seen this before. I don't want to send a
22 lot of time on it. It's the standard JONAH form for
23 people that want to consider using JONAH's service. It
24 was used by Sheldon Bruck because it's a form that
25 Thaddeus Heffner gives clients referred by JONAH.

1 Because Alan Downing uses a life coaching
2 form for different purposes. Obviously not all his
3 clients are not going to just for same sex attraction.
4 Some have other relationship issues. It could be work
5 related issues. It could be any number of things.

6 But on, on this form I want to show you again
7 on page two, first paragraph under part three under
8 sexual orientation distress, "Some of the treatment
9 offered by the JONAH Institute is with the goal of
10 decreasing homosexual attractions and increasing
11 heterosexual responsiveness. This is a controversial
12 form of treatment because there are those in the mental
13 health professions that contend that sexual orientation
14 cannot or should not be changed and that homosexuality
15 is normal, healthy and need not be changed."

16 Now if Dr. Lalich is right and JONAH has this
17 bounded choice concept where, using her words, is one
18 path to salvation, that one size fits all, and it's a
19 cult-like environment where they under control of
20 everybody and shove the Torah down their throat and
21 make them feel like they're going to be damned to hell
22 if they don't do it this way and only this way, why
23 would he be telling people there's other ways to
24 approach this?

25 And many people feel homosexuality is normal,

1 healthy and need not be changed. And you have to
2 decide for yourself. Some consider this controversial.
3 That is not what a cult leader does. He doesn't go out
4 and tell people there are other ways to do this and you
5 want to explore them and find out.

6 And then it says in the same form and you
7 have it in evidence, four times that success rates are
8 not guaranteed. You have to do the work. But it's not
9 guaranteed. And Jo Bruck initialed those paragraphs.
10 And she said she understood those paragraphs. That she
11 was responsible for her son. Her son said he wanted a
12 guarantee. When he realized he couldn't have one, he
13 quit. He decided after the second session. That's
14 fine, that's his right.

15 But who comes into court and sues after being
16 told four times there's no guarantee, no promises are
17 being made. They're told it's controversial. You may
18 want to consider that this is not necessary for you.
19 And then comes in and says they were defrauded when
20 they admit they didn't give it a fair try and they
21 weren't hurt by it.

22 Now plaintiffs had three experts. By the
23 way, if you add up -- this is in the record -- their
24 expert fees, it's over \$60,000, \$60,000 for the three
25 experts. JONAH had one expert. They came in and

1 testified with no charge, a public service, because
2 they said how important this case was. He didn't want
3 to see treatment made of -- not being made available
4 for people if they wanted the treatment and felt they
5 needed the treatment, that that was wrong.

6 And that expert, Dr. Berger, who's got
7 preeminent qualifications. He's double board
8 certified, not single board certified. Dr. Lalich has
9 no board certifications. Dr. Beckstead has no board
10 certifications. And I would imagine Dr. Bernstein
11 does, but you'll see when we go through her testimony,
12 she might as well be called by the Defense.

13 Dr. Bernstein admitted the APA takes the
14 position and thus, why it's not an issue in this case,
15 as to what causes people to be homosexual. No one
16 knows exactly. I read the statement and she agreed.
17 Many experts thinks (sic) there's a biological and
18 environmental of developmental component. So that's,
19 that's not an issue.

20 My clients can't be found to have violated
21 the Consumer Fraud statute if their view of people are
22 born innately heterosexual when it's not an issue as to
23 what causes it. So that's an opinion, that they say we
24 think people are born gay, because there's no consensus
25 as to what causes to be gay. So that's not the issue.

1 But she did say if people are in distress
2 they have the right to seek help. And ethical people
3 have the right to provide help. It's not a violation
4 of ethics if people are in distress. If they're not in
5 distress leave them alone.

6 Nobody dragged the plaintiffs into JONAH. It
7 would be wrong to be going to any gay person and saying
8 you have to change. It's wrong. But my clients aren't
9 doing that. They're just providing help for people who
10 want to change.

11 And the proof, ladies and gentlemen -- and
12 you know now the big lie would be if nobody can change.
13 But we have brought in witness after witness who have
14 experienced various degrees of change and they are
15 happier.

16 Now the plaintiffs' attorneys can get up and
17 argue, but they still feel they're attracted to men,
18 and Jonathan Hoffman slipped up at least twice. Okay.
19 We all slip up. And, and you'll see e-mails from
20 Elaine Berk, it's two steps forward, one step back.
21 That's the way it is. I don't know about you, how many
22 times I started diets and hey, I never stay on them. I
23 mean, we are weak creatures. And, and all of us
24 struggle with various things.

25 You know, from a Judeo-Christian perspective

1 we believe that's the nature of our condition. God
2 made us that way, so we have to go to Him for help and
3 that's how we keep the connection. If you don't want
4 to believe that, you don't have to believe that. But
5 my clients believe that. And that's that whole concept
6 of teshuvah. God, I'm sorry, heal me, every one of us,
7 heal me, because I'm weak.

8 And they are being told basically that
9 philosophy, that belief system, that religious
10 perspective is a violation of the Consumer Fraud
11 statute because that motivates and animates everything
12 my clients do and say.

13 And there is no evidence to the contrary
14 because they have no monetary incentive. They're being
15 sued for commercial fraud in a case where they made no
16 money at all. It's unheard of. They're being sued
17 because they've dedicated their lives to helping people
18 save their lives in a way that they can live them and
19 be as happy and productive as possible. And if someone
20 doesn't want that, they have a different path, again,
21 that's fine.

22 One thing I want to call to your attention
23 because you'll be seeing Listserv communications in my
24 opponents' opening (sic) statement I would imagine.
25 And again, just to remind you, looking at D-261, which

1 is in evidence, and it's the Listserv rules. And I'm
2 only going to show you the first paragraph because
3 you've seen them. There's many things I would like to
4 show you, but there's no time and no need because
5 you're going to remember it anyhow.

6 But these Listserv communications, it says,
7 "We are an e-mail support list dedicated to helping
8 each other deal with unwanted homosexual feelings in a
9 Torah true way." So everything that's supposed to be
10 said on this Listserv reflects this statement, Torah
11 true way.

12 Does that mean Elaine Berk has to use God or
13 religion in every e-mail she sends? No, it would get
14 tedious and laborious. But this is the perspective
15 that's reflected in these e-mails.

16 "Those of us who have a same sex attraction
17 disorder, they're seeing this as part of their view of
18 a Torah true way, abbreviated as SSAD rather than gay,
19 have been given a unique challenge by HaShem, God ...

20 Interesting how the Jews won't spell out the
21 word "God" because for them God is so great and
22 awesome, you don't even get to write his whole name.
23 Christians look at it a little differently and write
24 God all the time.

25 "... to find appropriate alternative to SSAD

1 condition." They're not saying it's a mental illness
2 or a psychiatric disorder. And in fact you'll see in
3 other e-mails, she again refers to it in the same way
4 as things that the rabbis call conditions that you need
5 to address not just physically or intellectually, but
6 spiritually. Be it gambling, be it obesity, be it drug
7 abuse or she also uses heterosexual promiscuity.

8 They're all part of having to seek a HaShem,
9 God in a Torah true way and to find teshuvah.

10 "Together we hope to explore these feelings and
11 behaviors and begin our journeys out of homosexuality."

12 Everything on the Listserv needs to be looked
13 at in that perspective. But specifically, what does
14 she say on these issues? And I'm going to run through
15 a few of them real quick from the Listserv. D-331
16 please. This is a Listserv communication from Elaine
17 Berk in 2005. This was her philosophy before the
18 plaintiffs came.

19 Chaim Levin said he went back on all Listserv
20 communications. Who knows if he saw it? But this is
21 what's gone into evidence. She says in the first
22 paragraph, "You seem to be looking for a cure from SSA,
23 which means you are comparing it to a disease. SSA is
24 not a disease, so there is no cure. That's why we call
25 SSA a disorder or syndrome or whatever."

1 This is a lay person trying to describe
2 something that does not require the help of a
3 professional psychiatrist or a licensed psychologist.
4 That's something that lay people can help each other
5 with to indicate that it is a complex issue. And
6 leaving SSA behind requires a variety of methods.

7 The comparable issues are obesity,
8 alcoholism, drug addiction, gambling, heterosexual
9 promiscuity. Hey, heterosexual promiscuity, if
10 someone's fooling around, you're trapped in an
11 adulterous relationship and you're unhappy, the first
12 thought generally is not to send you to a psychiatrist.
13 Send you to a priest, send you to a rabbi, send you to
14 someone who will be help gain control of your lives.
15 That's what we're talking about here. It's not a
16 mental disorder. It is not a violation of the Consumer
17 Fraud Act to say these things.

18 "There are no cures for these issues, just
19 lots of hard work, soul searching, education groups and
20 therapy." Then she goes on to say, "You can overcome
21 SSA, but there's no magic bullet. I just read in Ben
22 Arwig (phonetic) ... an author obviously on the
23 subject. "... that he considers the process to be like
24 climbing a ladder that has no specific top step that
25 you know about when you start your climb. Each step

1 you climb on the ladder helps you understand your
2 issues better and brings you closer to your goal of
3 leaving homosexual (sic) behind."

4 What did Jonathan Hoffman say and so many
5 others? It's a lifelong process for all of us wherever
6 -- gay, straight, men, women, Jew, Christian. You've
7 got to take a realistic perspective. We're not going
8 to reach perfection in this life and we're going to
9 have to work every day to be the best that we can be
10 and better hopefully than we were yesterday.

11 There's nothing that violates the Consumer
12 Fraud Act in this way of thinking. In addition, the
13 last paragraph, "I can understand you're getting tired
14 of talk, talk, talk. And that's why we have the men's
15 groups, the Journey Into Manhood weekends. At those
16 times you get out of your head and down into your heart
17 and God. I strongly suggest you get involved in both
18 men's groups and in the experiential weekends, which
19 will add many dimensions to your journey, Elaine."

20 Well why would she be saying this if she
21 didn't believe it? JONAH doesn't get any kickbacks
22 from People Can Change. Does People Can Change refer
23 people to JONAH counselors? Maybe, but Elaine and
24 Arthur don't make any money. Of course they want
25 people to go to JONAH counselors. They're in business

1 so that JONAH counselors can help people. And whatever
2 referrals they get go to pay the staff, go to pay to
3 keep the Listserv or whatever else running. And
4 nothing goes into their pocket.

5 So if you start getting the impression from
6 the presentation from my esteemed opposition, that
7 somehow they got a monetary motive in all this, we know
8 for a fact that is simply not true because they don't
9 make a dime.

10 Do they need to keep the doors open? Does
11 Arthur Goldberg need to run a nonprofit like a business
12 so it's not shut down? Yeah. Was he a businessman?
13 Yes. Is there anything wrong with that? No. Because
14 if you don't have some sense of how you're going to pay
15 your staff and pay your rent and pay for supplies, you
16 can't operate a nonprofit and provide the services.

17 But the heart of it always to help people.
18 D-323. This is from Elaine Berk. It's another Shamash
19 Listserv. At the bottom of it, the page -- I don't
20 need to go there. They can see it when they look at
21 the exhibits if they want. They Jewish Network of
22 Service of Hebrew College. This is a very Jewish
23 endeavor of running this Listserv.

24 And she says in the second paragraph, as I
25 said she would, as you've heard, "The process is

1 difficult with two steps forward and one step back.
2 The high you'll feel after a JIM doesn't usually last
3 in the beginning and falling back to earth can be a big
4 disappointment after feeling a really -- after feeling
5 really good for awhile."

6 Now you heard Dr. Lalich say they get you all
7 hyped up, all this high arousal business, just so you
8 can crash. And nobody tells you or warns you. Elaine
9 is telling people right here, okay, that it may not
10 last. You've got to do the hard work.

11 And Rich Wyler said that's why they have
12 support groups. They have phone therapy sessions.
13 They have all kinds of lifelines to keep people on
14 track. Why do people want to keep coming back? They
15 want to come back as volunteer staff just so they can
16 be a part of the experience and see the joy and
17 happiness on other men's faces when they experience a
18 major breakthrough.

19 And what does it take to do that? Apparently
20 doing some things that seem very odd to the rest of us,
21 running the gauntlet and all these various processes.
22 But, you know, I'm sure -- you've heard Rich Wyler say
23 they have these experiential weekends all over the
24 country.

25 And psychodrama is not unique to JIM or to

1 JONAH. Dr. Beckstead said he uses it and his
2 colleagues use it. Interesting because Dr. Lalich said
3 it should never be used. But Rich Wyler said it's
4 taught at major universities and it's used all over the
5 country. And Dr. Beckstead has no problem with that.

6 "The process ... continuing on in the
7 document, "... is about truth, honesty and
8 authenticity. Be who you are in the moment. All you
9 can do is tell your wife ... and she goes on to help
10 him with his particular issue.

11 And then skipping down to the last paragraph,
12 "Again, cure is not a word we use." If homosexuality
13 was being compared to a mental illness, mental disease,
14 mental disorder, you would need to find a cure, because
15 you can't be walking around crazy, whatever it is. If
16 it was bipolar disorder, clinical depression or
17 schizophrenia or something that would need a
18 psychiatrist, you could call it a cure.

19 And she again says, "For many men, growing
20 out of SSA is like growing out of alcoholism or drug
21 addiction, and you will need to be involved in healing
22 for a long time."

23 She doesn't say for all men. But for people
24 like DiJiacomo and Schwab and Hennigan, who were
25 involved in addictive behaviors, it was like growing

1 out of alcoholism or drug addiction. And for the
2 plaintiffs that all said, again, they had addictive
3 behaviors they wanted to grow out of. And JONAH was
4 helping them do that.

5 Even if the plaintiffs left JONAH early,
6 which we know they did, and claimed they were not
7 helped, we know that they focused on some of these
8 other issues. Chaim Levin spoke to Alan Downing about
9 his marijuana addiction. Every day he was using
10 marijuana. Obviously you can't be addicted to
11 marijuana, I don't know. But he thought it was a
12 problem for him. He was using it every day. And then
13 he had a smoking problem. He was satisfied he was
14 addicted to nicotine. So there are all kinds of
15 issues.

16 You know, Michael Ferguson is now saying it
17 was all about same sex attraction. He had been to six
18 or eight different groups for same sex attraction
19 issues. He went to his Mormon bishop. He went to
20 Sexaholic Anonymous. He went to Exodus. I can't
21 remember them all. He went to some other guy in Utah,
22 Salt Lake City, that he said they were thinking of
23 suing, but instead they ended up suing JONAH when they
24 were looking for someone to sue. He went to all kinds
25 of groups.

1 But for Alan Downing he was interested in
2 gender wholeness. He said those are buzz words for
3 same sex attraction. Are they? Because all his -- the
4 discussions, and you have the notes, are all about
5 masculinity issues and, and concerned about the church
6 becoming too feminized. He was very much wanting to
7 talk about what it means to be a man.

8 Are those issues for him still? I don't
9 know. He admits he dresses in drag. May -- if he's
10 happy with that, I suppose that's fine. But don't come
11 and say that Alan Downing was only trying to change his
12 same sex attraction, which wasn't impossible, when he
13 put on the table all these other issues regarding his
14 gender identity and regarding things that JIM is
15 designed specifically to address. So you can be with
16 men in a non-sexual atmosphere, a non-challenging --
17 well challenging, yes. You'd have to push yourself to
18 improve. But not to the point of being shamed or set
19 up for failure.

20 And Rich Wyler said each process ends with a
21 victory, unlike what Dr. Lalich or Dr. Beckstead might
22 have you believe, never having been to one of these
23 weekends, not knowing the processes. Every process
24 ends with a victory. They want the person to feel
25 better. They want to replace negative messages, ugly

1 messages, sometimes ugly words with positive, healthy,
2 wholesome, good, uplifting, powerful messages. And
3 that's what they did. And then men found it effective
4 and found it was a breakthrough.

5 One more cure document and we're done with
6 these, just so you get the point. Because the
7 opposition, having gone through thousands and thousands
8 of e-mails, will try to pull out -- I don't know what
9 they're going to pull out. They're not going to pull
10 out mental illness and mental disorder. But D-325.

11 Now this is a response to a question, not on
12 Shamash Listserv, but on the JONAH website, where
13 someone at the very bottom of the page -- you don't
14 need to show it. I can read it. They'll have it.

15 The class -- this was an academic thing.
16 Someone's writing for the Judaism, Homosexuality and
17 Judaism class. I didn't know there was such a thing.
18 "Was wondering what your success rate is in curing same
19 sex attractions." And she responds, "Again, cure is
20 not the word we use to describe the change that occurs
21 when men and women journey away from same sex
22 attractions." It goes on. Let's go to the last
23 paragraph, so I don't have to keep repeating what she
24 compares it to.

25 "As for success, of those who stick to our

1 program for a few years, one-third usually become
2 comfortably heterosexual, one-third feels substantial
3 improvement. They feel much better about themselves as
4 people. And one-third don't see much change in the
5 SSA, but feel better about themselves."

6 Now that was a question. Arthur Goldberg
7 will generally only use these statistics if there's a
8 question. Thaddeus Heffner says he'll tell people up
9 front. That's his policy. And then he'll reference
10 the Spitzer study. You'll recall, the Spitzer study I
11 went through also with Dr. Beckstead because he
12 referenced it in his report he did on the Mormon group.

13 Dr. Spitzer is anything but anti-gay. He's
14 the esteemed psychiatrist who is, it came out in
15 evidence, past president of the American Psychiatric
16 Association, who made the motion to take homosexuality
17 out of the DSM and --

18 MR. BROMLEY: Objection, Your Honor.

19 MR. LI MANDRI: It's in evidence, Your Honor.

20 THE COURT: There was testimony to that, but
21 let's, let's stay within the framework as to how the
22 report was used please.

23 MR. LI MANDRI: Okay. I read from Dr.
24 Beckstead's report, the Spitzer study, 200 people. And
25 you'll see, it's also mentioned in Arthur's book. It

1 was mentioned by Thaddeus Heffner, that people
2 experience success rates that could break down roughly
3 along those lines. And that's what Thaddeus Heffner
4 testified to. Okay.

5 One more exhibit -- actually two more from
6 Elaine and then we're done with that. D-327. And this
7 one in the second paragraph in the second sentence she
8 talks about what change means in a manner consistent
9 with what I tried to explain I think.

10 "The change will range from those who
11 experience no more SSA to those who still experience
12 SSA occasionally, but understand what it means and
13 don't let it define them, so they feel much better
14 about themselves as men."

15 So when the opposition says well you promised
16 people they could change from gay to straight, this is
17 what they tell people change means. This doesn't mean
18 you're going to necessarily have 100 percent loss of
19 same sex attractions.

20 Indeed, in Arthur Goldberg's book, which is
21 in evidence as J-50, he says there are some people that
22 just can't change. I mean, he's got 575 pages here to
23 explain this stuff. But he actually says some people,
24 given their experience and their life conditions,
25 they're not going to be able to change. And they're

1 going to continue to stay gay and gay identify. I was
2 going to give you the page, but I can't find it right
3 now. Yeah, it's page 573.

4 And he says some people, no matter what,
5 because of the issues they're dealing with -- but he
6 also goes on to say that there's no one who cannot
7 benefit from our program in terms of self-discovery,
8 self-respect, social adjustment and spiritual growth.

9 So there can be positive change even if
10 sexual orientation does not change, even for those
11 people. And remember, the one-third, the last one-
12 third of people that do not tend to accomplish their
13 goals.

14 That's what people are told when they ask for
15 statistics. But statistics are not given as a sales
16 pitch. You won't find any JONAH material, brochures
17 you've been shown, anything on the website saying come
18 to us, we guarantee two-thirds people are going to
19 change.

20 Arthur Goldberg does say in his book that in
21 general 66 percent will get some benefit from it in
22 terms of their sexual orientation. And he also, you
23 know, quotes rabbis. By the way, this book, which is
24 in evidence, it has endorsements from distinguished
25 people. You heard who Dr. Nicholas Cummings was, Ph.D,

1 distinguished professor, who it was mentioned he has a
2 lifetime achievement award in psychology. And for the
3 American Psychological Association, he's the one who
4 made the motion to have homosexuality also removed or
5 recognizes that.

6 But Dr. Cummings, here's what he says about
7 Arthur Goldberg's book. "This profoundly, scholarly
8 book is a most important contribution to the
9 understanding of homosexuality and same sex attraction.
10 Not only for its clear and factual presentation of the
11 clinical and scientific evidence, but also for its
12 resounding message of hope for those who would seek
13 change."

14 And then a rabbi -- I don't know his --
15 Daniel Lapin (phonetic) says, "A powerful and practical
16 blueprint for deliverance, a valuable volume of courage
17 and guidance derived from ancient Jewish wisdom."

18 And what Goldberg himself says, what he's
19 trying to do on page two, "For Judeo components this
20 text is my own 'lay understanding' of traditional
21 Judaism." He's not a rabbi, but he's very
22 knowledgeable. And this is probably the most
23 comprehensive work on the subject between Judaism and
24 homosexuality.

25 "What I have learned from rabbinical scholars

1 and spiritual leaders has been buttressed by my own
 2 independent research and thorough study of complex
 3 religious and psychological material, all in an effort
 4 to synthesize psychological and religious principles to
 5 healing homosexuality."

6 So again, the opposition should not be
 7 permitted to try to split apart the religious beliefs
 8 in the statements about what homosexuality means
 9 because it all comes from their religious perspective.

10 One other thing I'll read from this, another
 11 rabbi on page 115, note 83, Rabbi Barry Frenedo
 12 (phonetic), "Homosexuality and Judaism ... and he wrote
 13 in the Jewish Journal, Journal of (Indiscernible), he
 14 said, "We are told by the Talmud that God does not play
 15 tricks on his creations, particularly as the area of
 16 sexuality is an area of such deeply personal
 17 implications to any individual, it is difficult to
 18 imagine God creating a situation wherein those feel
 19 themselves to possess a homosexual orientation cannot
 20 change and consequently locked in a living prison with
 21 no exit and no key. Therefore, some method or methods
 22 must exist to successfully change the sexual
 23 orientation to motivated individuals."

24 And then the Frenedo, this rabbi, cites in his
 25 work that more than 70 percent success rate documented

1 by Masters and Johnson, and they're a sex treatment
 2 program published in the American Journal of
 3 Psychiatry.

4 So religion and, and --

5 MR. BROMLEY: Objection, that's not --

6 THE COURT: Counsel, he's reading from the
 7 book and the book is in evidence. The jury is going to
 8 read exactly what he's reading. The objection is
 9 overruled.

10 MR. LI MANDRI: Thank you. So again, you're
 11 going to hear from the opposition there's no science
 12 and there's no statistics. Okay. We have from Dr.
 13 Beckstead all the articles I read that disagreed with
 14 him. Dr. Bernstein testified people can and do change.
 15 I've got the APA statement I read from that said for
 16 some people sexual orientation is fluid and flexible.
 17 That's the APA. If it's fluid and flexible, ladies and
 18 gentlemen, then why can't someone help you?

19 And the plaintiffs' experts all said -- I
 20 don't know if Dr. Lalich addressed it. Dr. Bernstein
 21 and Dr. Beckstead did. Because Dr. Beckstead thinks
 22 there's more bisexuals than homosexuals. If that's
 23 true, and someone's in that spectrum from zero to
 24 whatever, seven or ten, I forget what the outside
 25 number is, why can't you be helped to move along the

1 spectrum?

2 Why can't you be helped if you're a five and
3 you're attracted to men and women, as many people are
4 apparently more than I realized, that are, are married,
5 why can't you be helped, so you can be faithful to your
6 spouse and good father and husband to stay towards more
7 exclusive heterosexual attractions, okay? It only
8 makes sense.

9 And put that way, Dr. Bernstein and Dr.
10 Beckstead yes (sic) -- said yes. And many JONAH
11 clients are married and want that help for that
12 purpose.

13 Okay. One more document from Elaine and then
14 we're done with Elaine. And then we have just one from
15 Arthur and then we're done with these exhibits that are
16 e-mails. D-361 please, D-361. And we want to go --
17 you have to go all the way to -- there you go. There's
18 just one part of this document where she's responding
19 to someone and she says, "As to whether SSA ... now you
20 can't get more clear than this, ladies and gentlemen.
21 You cannot get more clear than this, on this issue as
22 to whether my clients say homosexuality is a mental
23 disease or a mental disorder or a mental illness.

24 "As to whether SSA is a mental illness, it is
25 not an illness like depression or bipolar disorder,

1 okay? Those are clinical. If it's clinical
2 depression, bipolar disorder, those are things you
3 would need a professional, licensed mental health care
4 practitioner. It is more in the category of a habit,
5 an addiction disorder like obesity, alcoholism,
6 gambling, et cetera. Each person is unique in the
7 particular causes of SSA, although there's a common
8 pattern." And we talked about some of those.

9 But right there -- and you will not find a
10 statement contrary to this in any document in evidence
11 where my clients have said it's a mental illness, go
12 see a mental health care practitioner.

13 So I'm making a big deal about this because
14 when you hear the jury instructions you'll hear a
15 couple of times that if my client said it's a mental
16 illness, mental disorder, mental disease or the
17 equivalent thereof, they violated the Consumer Fraud
18 Act. But if they say it from a religious perspective
19 it's not.

20 And it's our position, and I believe the
21 evidence bears it out very well, that my clients always
22 used it from that framework. That's why JONAH exists.
23 And that's what Arthur Goldberg and Elaine Berk said.
24 If it wasn't for the Torah and their devout Jewish
25 beliefs regarding the Torah values, JONAH would not

1 exist.

2 Okay. Then I've got one document from Arthur
3 Goldberg and we're done with e-mails. And that's
4 exhibit D-128. And this one's interesting because it's
5 to Chaim Levin in response to an e-mail Chaim Levin
6 sent him. So let's start with the second page of D-
7 128.

8 Now this is when Chaim Levin has left JONAH
9 after leaving on good terms. Now remember, he had
10 wanted to be a spokesperson for JONAH. He wanted to be
11 a staff for PCC. Arthur Goldberg didn't feel that he
12 was ready to be a spokesperson for JONAH. Alan Downing
13 didn't feel he was ready to go to New Warriors. And,
14 you know, being of a man of his own, he went anyway.
15 There's more nudity at New Warriors than at any People
16 Can Change JIM weekend. There's certainly more nudity
17 than what he said he experienced in his last session
18 with Alan Downing.

19 But you have Chaim Levin who's castigating
20 this man with all this experience and says in the last
21 paragraph, "I respect you because I know I must respect
22 my elders out of moral character." Boy that's
23 flattering. "However, I am dumbfounded and angry by
24 the lies and hatred you're spreading with your message
25 that anyone can change, and that homosexuality is a

1 sickness."

2 This is when he is in with Jewish Queer Youth
3 and he's copying this e-mail, the evidence shows, to
4 the people at Jewish Queer Youth, as well as copying
5 Arthur's response. They wrote this as a set-up letter
6 to see what he said about homosexuality being a
7 sickness. They wanted him to come out and say yes, it
8 is a sickness. It's like a mental illness or mental
9 disorder.

10 But he says in the second sentence on the
11 third -- on the first paragraph, actually it's the
12 first paragraph. "Please understand that I do not say
13 that homosexuality is a sickness. I'm sure you've
14 heard me say any number of times that if someone's
15 happy being gay then the Jewish phrase, go in good
16 health."

17 He's not saying that you need to get help
18 because you're crazy, okay? He's not saying that.
19 He's -- I do not care -- a sickness. There's only one
20 e-mail we've seen out of hundreds or some guy who was
21 from, meaning Orthodox Jew, who's married, he's
22 struggling with same sex attractions. And he says my
23 life is a living hell.

24 And Arthur Goldberg wrote to him and, and the
25 guy himself called it an illness or sickness. And

1 that's the only time Arthur Goldberg used his words to
2 refer to his situation, where this guy says his life
3 was a living hell. That's a spiritual form of
4 sickness. And that's what he says he's referring to.
5 And he referred the guy to the book. You can have a
6 spiritual sickness.

7 And you heard Arthur and Elaine say some
8 rabbis refer to when your life becomes a living hell
9 because of any sin, it is spiritual sickness. But if
10 you don't see it as a sin and it's not causing you any
11 distress, again, go in good health. That's what Arthur
12 says.

13 Now Levin will say that's highly insulting.
14 I've never heard anybody tell, tell me go in good
15 health and I took it as a, as a terrible insult. Okay.
16 I said I would -- that's it on the exhibits. I said I
17 would look quickly at some of what Dr. Beckstead had to
18 say, which proves the science behind what my client
19 does.

20 Because there were articles cited in his
21 report, including -- I asked him about the report of
22 the (Indiscernible) committee he was on and a document
23 they published called Appropriate Therapeutic Responses
24 to Sexual Orientation by the American Psychological
25 Association task force he was on, which was like six or

1 seven people who were all gay identified or gay
2 supporters. There's testimony on that.

3 And I read to him that same sex attraction
4 and behavior occur in a variety of contexts and sexual
5 orientations and sexual orientation identity. And for
6 some, sexual orientation identity, individual or group
7 membership and affiliations are self-labeling, is fluid
8 or has an indefinite outcome.

9 That was his committee of people who were all
10 gay or gay activists. They wouldn't let anyone else on
11 who did the kind of work my client does.

12 And then I asked him if there was in fact any
13 scientifically sound research on SOCE that said it was
14 harmful and reluctantly he agreed, as did Dr.
15 Bernstein, there is not.

16 There is no scientific evidence or studies
17 that actually state it's harmful. And in fact I, I
18 read back to Dr. Beckstead repeatedly his own study,
19 "Mormon Clients' Experiences of Conversion Therapy, a
20 Need for a New Treatment Approach" by Dr. Lee
21 Beckstead, University of Utah, and he -- and Susan
22 Morrow at the University of Utah. Talking about the
23 Spitzer report, I don't need to go through that again,
24 which he cited.

25 Again, I talked to him about the fact his own

1 study showed a 50 percent success rate. There were --
2 out of 38 men, 20 of them reported that they had a
3 positive response. So maybe a little more than half.
4 And they called them proponents. And the average time
5 period to get the positive response was four years,
6 some much less, but some much longer. So it was four
7 years.

8 And he said that congruence is very
9 important, in that having your behavior and identity
10 incongruent (sic) with your values was very important.

11 But yet, then he went on to say he has been
12 in a war with people who don't share his views, a
13 professional war. And he brought that war to this
14 courtroom. And he tried to make it clear that although
15 he's friends with Mr. Matheson, who wrote the JIM
16 script, co-founded JIM and they're trying to build
17 bridges, and he met with Rich Wyler, trying to build
18 bridges, he came into court and completely disparaged
19 everything that they do and everything that they try to
20 accomplish to help men who are struggling with these
21 issues, even though he says 30 to 40 percent of his
22 clients who struggle with these issues decide to stay
23 with the heterosexual identity.

24 So obviously it works if the plaintiffs' own
25 sex expert on sexual orientation comes in and says he's

1 able to help people with same sex attractions among his
2 own patients stay 30 to 40 percent.

3 And isn't it interesting that he's a
4 therapist for Michael Ferguson, but didn't talk about
5 any harm to Michael Ferguson? Nobody talked about any
6 harm specifically to Chaim Levin. Nobody talked about
7 any harm specifically to Sheldon Bruck.

8 The only person that came in to say anybody
9 was harmed in a way they could possibly get
10 compensation from you folks on the jury for any care
11 they received after JONAH was Benjamin Unger, who
12 brought in a Dr. Phillipson who basically said he
13 thought there was some percentage of visits he saw Mr.
14 Unger. But he didn't keep any records except for one,
15 where Unger said he was angry at God, not JONAH.

16 And you heard from Dr. Bernstein, who does
17 the examination for psychologists who want to be board
18 certified, thus -- they're psychiatrists, want to be
19 board certified. That's completely unacceptable. If
20 you have a problem with your doctor, you've still have
21 to give good service to your patients. You have to
22 keep notes. You can have someone transcribe the notes.
23 You can have them dictate it.

24 But you can't not have notes. And you can't
25 come into court asking for money for dozens of supposed

1 visits where you talked about a problem they're trying
2 to pin on my client, who we know Unger struggled with a
3 lot of problems before he came to JONAH. There was
4 weird things going on in his, in his house he said,
5 with his mother walking around naked. And then in the
6 records it says he saw his stepsister naked and that
7 got him all mixed up.

8 There's a lot of things that were happening
9 with Mr. Unger that had nothing to do with my clients.
10 But yet, they want to have you believe he's entitled to
11 therapy. And you have award that money when in fact
12 Dr. Phillipson said he didn't even know who Alan
13 Downing was. But yet supposedly Unger was complaining
14 about Alan Downing.

15 And if Mr. Unger wants to make a claim in
16 court and say that you should award him money,
17 shouldn't he have some proof that he made the payments?
18 What he said was, completely unbelievably, is that he
19 was basically bedridden for three months, hardly left
20 the house except maybe to go to a doctor's visit. So
21 it obviously wasn't working. We know his current job
22 is a part-time bartender. So how did he get the money
23 to pay Dr. Phillipson? And it had to come from him.
24 It couldn't come from his parents' account.

25 Now all he had to show us, ATM receipts, bank

1 statements, something show -- showing it came out of
2 his account. If he can't do that, you can't believe
3 his oral testimony, which is completely defeated by the
4 evidence, that he can produce zero documentation, a
5 supposed \$17,000 he paid in cash to Dr. Phillipson,
6 okay, there's something seriously wrong that he can't
7 do that.

8 So he can't meet an element of his case, that
9 he has any out-of-pocket expenses. His parents paid
10 for his JONAH care, so he can't claim that. And his
11 parents are not plaintiffs.

12 Chaim Levin claims that he paid for some of
13 his JONAH care, so he has a right to be a plaintiff,
14 okay? But we know from Chaim Levin's testimony and
15 from the testimony of Richard Wyler and Alan Downing
16 that Chaim Levin's checks bounced, those written on his
17 accounts. And we know from his mother, she thought
18 they paid for all of it.

19 So how could Chaim Levin claim he's entitled
20 to make a claim here in court when he can't produce any
21 competent evidence that he paid for any JONAH care.
22 And he's not claiming for post JONAH care.

23 So if anybody made any insinuation, any
24 questions which were never answered about suicide --
25 you know, that's not an issue in this case. You heard

1 His Honor's statement to that effect. So I'm not going
2 to address that further. There is no claim by Chaim
3 Levin for anything that happened after JONAH in terms
4 of any monetary damages. And he can't prove he paid
5 anything out-of-pocket for JONAH.

6 Sheldon Bruck is no longer a plaintiff. And
7 as far as Michael Ferguson goes, he can't even begin to
8 prove that there were any misrepresentations made to
9 him. He never spoke to Arthur Goldberg or Elaine Berk
10 except once to Arthur Goldberg where he said the 75-
11 year-old guy was sitting on the floor with him. But
12 even then he didn't claim that he told them anything
13 that would rise to the level of a misrepresentation of
14 fact under the Consumer Fraud Act. And he wasn't a
15 JONAH client ever. So Michael Ferguson has no case.

16 I wanted to finish up and then talk about the
17 jury instructions. With respect to a couple of the
18 articles mentioned by Dr. Beckstead, one of them he
19 wrote, Conversion Therapy for Same Sex Attracted
20 Clients in a Religious Conflict Context. And he
21 mentions several groups that provide -- and I brought
22 this to his attention, this type of service. And he
23 groups them all together, including Catholic Courage,
24 JONAH and Evergreen, which was a Mormon group at the
25 time. And then goes on to disparage all of them.

1 I only mention that because you've heard from
2 numerous witnesses it's not just about shutting down
3 JONAH. This is about getting --

4 MR. BROMLEY: Objection, Your Honor.

5 THE COURT: Sustained.

6 MR. LI MANDRI: You also heard me read from
7 the Dr. Beckstead's report where he cited various
8 articles, including one, Prevalence and Stability of
9 Sexual Orientation Components During Adolescence and
10 Young Adulthood, which would include the clients, the
11 plaintiffs or the ones suing in this case.

12 And he's -- this article that he cites that I
13 read states, "Although most -- 97 percent heterosexuals
14 maintain their heterosexual identity, non-
15 heterosexuals, meaning gay and bisexual people,
16 maintain -- non-heterosexuals frequently change their
17 identity label over the course of their lifetime."

18 And then he says, "39 percent of gay males
19 change their sexual orientation over their lifetime.
20 65 percent of lesbians change their sexual orientation.
21 And 66 percent of male bisexuals, 77 percent of female
22 bisexuals."

23 So we know people are changing their sexual
24 orientation. We know it's not immutable. The other
25 side can't get up and say sexual orientation is

1 immutable. Dr. Beckstead tried to, but the evidence
2 that he himself cites in his report directly
3 contradicts it. So there is no basis.

4 I'm not going to get into the disease stuff
5 anymore. Okay. That's it on the articles for Dr.
6 Beckstead.

7 I need to talk about the jury instructions a
8 (Indiscernible) a little bit before I close, Your
9 Honor. Should I proceed to try to finish now?

10 THE COURT: It's up to you. Do you want --
11 How does the jury feel? Are you able to go a
12 little longer or do you want to take a break? I'll
13 leave it up to you. Do you want to take a break?
14 Okay. Why don't we take a 15-minute break. And let's
15 resume at 11:05, okay?

16 Just leave your pads there. Please remember,
17 do not discuss the case among yourselves. Do not
18 discuss the case with anyone else. Please do not try
19 to do any research or look up anything during our
20 break. You've heard me say this, I know, but I want to
21 make sure that you do what you have been doing. And
22 that is wait until you hear both summations and more
23 importantly, you hear my instructions on the law, so
24 you will understand what it is you need to discuss.
25 It's extremely important.

1 We're almost at the end when I'll finally be
2 able to tell you that you can discuss the case, but
3 we're not there yet. So please don't, don't be tempted
4 and don't talk about the case, all right? And we'll
5 see you at 11:05. If you would just walk out the rear
6 door. I just have to say something on the record.
7 Thank you very much.

8 (Jury leaves the courtroom)

9 THE COURT: All right. Please be seated. I,
10 I just want to put on the record, Counsel, twice I
11 heard you say in your summation that you're running out
12 of time or you don't have time. I want the record
13 reflect I put no time limitations on anybody. And
14 twice you told this jury that -- once you said you're
15 running out of time and the second time you said you
16 have no time or before you have no time. I don't
17 recall making a ruling and putting time impositions on
18 anybody. So --

19 MR. LI MANDRI: That's correct. And let me
20 explain. I'm sorry if I gave that impression that you
21 were doing it. I had in my own mind, I wanted to
22 finish before the break, so that I could give --

23 THE COURT: Okay.

24 MR. LI MANDRI: -- counsel an opportunity to
25 do theirs before the break. So I -- that was my own

1 self-imposed time limitation, --

2 THE COURT: All right.

3 MR. LI MANDRI: -- not the one the Court
4 imposed. And I'm sorry if I gave that impression.

5 THE COURT: No, you don't have to apologize.
6 I just want to keep the record clear that I don't
7 recall making a ruling --

8 MR. LI MANDRI: You did not, Your Honor.

9 THE COURT: -- where I imposed time on
10 anybody. --

11 MR. LI MANDRI: I, I, I --

12 THE COURT: -- I just wanted the record to
13 reflect that.

14 MR. LI MANDRI: Thank you, Your Honor. I
15 appreciate that.

16 THE COURT: All right. I'll see everyone at
17 11:05. Thank you. Off the record.

18 (Recording paused)

19 (Recording turned on at this point)

20 THE COURT: -- your closing?

21 MR. BROMLEY: Well, Your Honor, we were
22 discussing the same thing. I just had a conversation
23 with Mr. LiMandri during the break. He said he thinks
24 he has about another 15 minutes. Given the time our
25 view would be that perhaps at the end of that we should

1 break for an early lunch, for an hour, and then come
2 back, so that we could start without having the risk of
3 interruption.

4 MR. LI MANDRI: Your Honor, that was 15
5 minutes on the jury instructions. But I, I got more
6 points on my outline, so I'd like 30 minutes.

7 THE COURT: Well if we're not going to end
8 until almost 12:00, that's going to -- that may present
9 a problem in terms of whether we should start or not.
10 I, I was hoping that you would be able to start at
11 11:30 and go an hour and then break for lunch. But
12 let's, let's -- if Mr. LiMandri finishes by 11:30 I'd
13 like to start the summation, but advise the jury that
14 we're going to break.

15 MR. BROMLEY: And how long would we have for
16 that before we break?

17 THE COURT: Well I'd hope to give you an
18 hour.

19 MR. BROMLEY: Because I think if we went to
20 1:00 we could finish it, although I, I actually -- if
21 it's 30 minutes I would prefer that we simply stop at
22 the quarter of and --

23 THE COURT: I just think 11:35 is early to
24 send them to lunch. And I would prefer at least, you
25 know, -- do you -- it sounds like you're going to be

1 approximately an hour and a half roughly, maybe a
2 little more?

3 MR. BROMLEY: Roughly, Your Honor.

4 THE COURT: So maybe we should do the same
5 thing. Well let -- you know what? Let's see where we
6 are when Mr. LiMandri finishes. And let's take -- I'll
7 take the jury's view also. What we'll do is when Mr.
8 LiMandri is finished, let me see what time it is and
9 we'll see where we go.

10 MR. BROMLEY: Okay, thank you, Your Honor.

11 THE COURT: Okay? All right, let's bring the
12 jury out.

13 (Jury enters the courtroom)

14 THE COURT: All right. All seven of our
15 jurors are present and accounted for.

16 And, ladies and gentlemen, once again, thank
17 you very much for your promptness. I apologize for the
18 brief delay. There were a couple of things that I
19 needed to attend to. So we are now going to continue
20 with the closing argument of Mr. LiMandri.

21 Counsel?

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

23 Before I get to the jury instructions, ladies
24 and gentlemen, in looking at my outline I missed a
25 couple of points I wanted to cover. So please bear

1 with me because, you know, I only have this one
2 opportunity to speak with you. Then my opponents get
3 to speak with you. And I want to make sure that I've
4 done the best job I can for my clients as I'm duty-
5 bound to do and as I want to do.

6 So I'm going to cover just a few points.
7 I'll be a little bit out of order because I don't want
8 to backtrack over the same ground we've already
9 covered.

10 I did want to mention there's two documents
11 that I've aware of where the term "psychological
12 disorder" were used, not by my clients, but by Sheldon
13 Bruck in supposedly telling his father in one case and,
14 and an English composition he wrote long after he left
15 JONAH.

16 In another case in a letter to his father.
17 As I recall it, he wanted to leave Yeshiva. He wasn't
18 happy there. He was -- he told his parents that he
19 needed to go to New Jersey and couldn't be in school if
20 you're going to be doing that. So he wanted to be out
21 of the Yeshiva. He said -- testified to something a
22 little different I think on the stand. So that's what
23 I recall the reason he was giving.

24 But regardless, it was him telling his father
25 what he wanted his father to believe, so that he can

1 get what he wanted at that time. And he was putting
2 words in Mr. Goldberg's mouth, Mr. Goldberg has never
3 said and never written psychological disorder. No
4 witness has ever heard him say that. We've produced
5 many neutral witnesses.

6 And if I didn't point it out before, I'm sure
7 you're aware that the plaintiffs have not called any
8 witnesses that are neutral witnesses. It's just
9 themselves and their three experts. We called in
10 people that not only had nothing to gain, but had to
11 subject themselves to some searing questioning
12 regarding very personal, private, sensitive matters
13 that nobody wants to be talking about, particularly in
14 court, in public and on a public record. But they did
15 that and they subjected themselves to that
16 embarrassment because they believed very firmly in my
17 clients' case and in their cause.

18 But Mr. Bruck, in the same English
19 composition where he talks about the psychological
20 disorder language, also says that people who do this
21 work will make you lay down and put ammonia in your
22 nose and when you think about having sex people of the
23 same sex, which is ludicrous. Nobody does that. He
24 admits that Thaddeus Heffner didn't do that.

25 But he's got apparently a furtive

1 imagination. And no doubt in accusing Thaddeus Heffner
2 of yelling at him, you heard Thaddeus Heffner testify.
3 You saw him. He's very mild-mannered, in the extreme,
4 mild-mannered. We had to have him speak up and all
5 that to be heard. He's not going to be yelling at
6 anybody, particularly a client.

7 So Thaddeus Heffner is much more credible
8 than Sheldon Bruck. Sheldon Bruck is simply not
9 believable when he says these things. Plus he said
10 Thaddeus Heffner told him to snap a rubber band on his
11 wrist if he thinks of men. That's again, ridiculous.
12 Thaddeus Heffner doesn't do that with anybody. His
13 mother didn't see Sheldon Bruck with a rubber band on
14 his wrist. He just was making stuff up.

15 I mean, I'm not saying he's exaggerating.
16 I'm saying he's lying. He's just flat out lying. The
17 plaintiffs are flat out liars. And I'm sorry to say
18 that. But the, the record is very clear.

19 How many times did I show videotape testimony
20 that directly contradicted what they were saying in
21 court? With every one of the plaintiffs I had to show
22 video clip after video clip where they swore under oath
23 at their deposition one thing and came into court and
24 told you something completely different. Now that did
25 not happen with my witnesses and my clients. You did

1 not see the repeated playing of contradictory videotape
2 testimony.

3 And that's very important when you evaluate
4 the credibility of the witnesses. Because when it
5 comes right down to it as to who's telling the truth or
6 not as a matter of how credible they are -- and they
7 say the one thing that juries are best at because you
8 may not all have degrees in psychiatry and psychology,
9 nor do the lawyers. But they say juries are best at
10 determining who's lying and who's telling the truth.
11 Because you've got all that collective wisdom and human
12 experience. And you're looking at these people. And
13 you can evaluate their demeanor and you can weigh it
14 against other things they've said. And you can say
15 does that really make sense to me in my life
16 experience, do I really think that that makes sense.

17 So I'm going to leave it in your good hands
18 as to whether or not you can believe Sheldon Bruck on
19 those issues. And remember, he's not even a party to
20 this case.

21 As to Mr. Unger, one of the points I wanted
22 to make, he got up there on the stand and lied and said
23 Alan Downing called homosexuality a disease, okay? No
24 one has every heard Alan Downing call it a disease.
25 Alan Downing doesn't think homosexuality is a disease.

1 Nobody in the courtroom that is on our side of the
2 table, and I'm sure their side too, would call
3 homosexuality a disease. It would be offensive to
4 refer to it that way. And Alan Downing certainly did
5 not say that.

6 Now Benjamin Unger had his own ideas that
7 were causing him a lot of disturbance. And it was
8 obvious from the notes when you see them, Alan Downing
9 is writing down what Benjamin Unger told him. Why
10 would he write down "disease" as if it's some type of
11 diagnosis? Who would do that? Who would write down --
12 first of all, if there was a disease you'd probably say
13 what it was. If you go to the doctor and you've got,
14 you know, pneumonia, he's not going to write down
15 disease in the notes without specifying it's pneumonia.
16 So it makes no sense at all. He's just lying when he
17 tries to put those words in Alan Downing's mouth, so
18 that he can get you to award him money he's not
19 entitled to.

20 The other thing I wanted to mention before I
21 talk more specifically about Alan Downing, but there's
22 going to be in the jury instructions one of the claims
23 of the plaintiffs is that JONAH used success rates or
24 statistics and had no basis for doing so. We've
25 already gone through some of them. I don't need to

1 repeat all the information. Thaddeus Heffner based
2 one-third, one-third, one-third, he said on Spitzer.
3 We talked about Spitzer. Dr. Beckstead used Spitzer.
4 Arthur Goldberg cites Spitzer as a basis for that.

5 Jonathan Hoffman testified that from his
6 knowledge of the group that he was in with Mr. Downing,
7 which included the plaintiffs, staying in touch with
8 those guys, knowing those who are married, some are
9 fathers now. Some are dating. He said about 60
10 percent of them are leading heterosexual lives. So
11 that (sic) what Jonathan Hoffman actually knowing these
12 people.

13 Arthur Goldberg said anecdotally those that
14 finish, which will take typically two to four years,
15 they'll be aware of them. They'll go to JIM programs.
16 They'll go to shabbatons. They'll come by the office.
17 Like I said, he gets the wedding invitations and such.
18 Those who finish, it's even a higher percentage, 70, 75
19 percent. But those generally who just go through the
20 program, many who drop out like the plaintiffs, it's
21 more than one-third, one-third, one-third. So we've
22 got evidence from his own personal knowledge, like
23 Hoffman's personal knowledge.

24 We heard Mr. Ferguson testify that he went to
25 a JIM weekend and they gave him a brochure where they

1 said their success rates were 60 to 80 percent. That
2 was Mr. Ferguson's testimony from the stand here in
3 court. And then I've already told you about Beckstead,
4 50 percent.

5 So there is lots of statistical evidence both
6 in terms of the general scientific surveys based upon
7 our clients' personal experience. And then based upon
8 what they have seen and what they have read and what
9 has been discussed with the plaintiffs, and some of
10 which by -- has been written by and conveyed to the
11 plaintiffs from very distinguished practitioners.

12 Okay. And that includes again, Dr. Beckstead
13 recognizes some very distinguished practitioners who
14 disagree with him. And then of course, you have the
15 success story witnesses.

16 All right. Else-wise (sic) on my outline
17 that will come up with the jury instructions. Does
18 JONAH change people from gay to straight? I've already
19 talked mainly about that, but I wanted to focus your
20 attention.

21 The eight success story witnesses gave
22 compelling stories. And Rich Wyler said actually 170
23 people were willing to come forward. Obviously they
24 can't all testify and didn't.

25 Mr. Schwab said he's got 700 individuals

1 internationally he's working with, with Joel 2:25
2 group. And that he's never seen anyone harmed. And
3 many people have been helped. So all of that is
4 evidence that goes to whether or not there is a basis
5 for this, in addition to scientific studies.

6 I wanted to mention with regard to Mr. Unger,
7 Mr. Dahlgren testified that he was at the same JIM
8 weekend as Mr. Unger. They had shared experiences.
9 They had moments of what he thought were genuine
10 friendship. And he conveyed those in a rather
11 sensitive way. And he said he was shocked when he saw
12 Mr. Unger's YouTube video where he basically, he said,
13 rewrote history.

14 And you have to evaluate who's more credible
15 on that, Mr. Dahlgren or Mr. Unger. Who's more
16 credible on Mr. Levin's experience with various
17 exercises, including the nudity one? Mr. Hoffman, who
18 basically bared his soul, and fessed up to his own
19 slip-ups as he called it, and was very matter of fact
20 in his explanation of everything. And hopefully you
21 got a chance to get a good view of him and his --
22 evaluating his credibility. Or Mr. Levin, who again, I
23 had to impeach over and over and over with videotapes
24 and documents that discredited him and contradicted him
25 and made him out to be the liar he was.

1 Was that done once with Mr. Hoffman, who gave
2 the longest testimony in court here? Did -- were they
3 able to once point out that Mr. Hoffman is -- was lying
4 about something? You evaluate. He fessed up, again,
5 to his own transgressions, paid the price, was
6 basically put on probation for up to two years with
7 JIM.

8 Okay. Can JONAH heal you in two to four
9 years? Again, healing is not because you're curing a
10 disease. It's healing those inner wounds that we all
11 carry, that these men have distress associated with
12 their same sex attraction. And two to four years,
13 you've heard from various witnesses how long it took
14 them. That's roughly true for Hoffman and roughly true
15 for DiJiacomo.

16 And remember, his JONAH counselor continued
17 to treat him for free. Boy, these are really bad guys
18 here, you're being asked to rule against. The JONAH
19 counselor, Baxter Pfeffer continued helping DiJiacomo
20 when he couldn't afford to pay. JIM offered and gave
21 Ferguson scholarship money to attend a JIM weekend.
22 Elaine Berk offered Chaim Levin scholarship money, so
23 that he can continue with JONAH. Who does that, offers
24 money to someone to continue with the service they
25 believe can help them, and then they get not -- not

1 only are not paid, Chaim Levin leaves, having written
2 bad checks to Alan Downing and to JIM. And then he
3 turns around sues them.

4 Okay. So there's plenty of evidence as to
5 the time frame issue. Okay. Now Mr. Downing,
6 everybody who knows Mr. Downing -- I have to mention
7 Bella Levin first. She's the only plaintiff I think I
8 didn't talk about. She came in saying that Arthur
9 Goldberg molested her son. And then she said no, it
10 was Alan Downing, but he didn't molest him. I mean,
11 how credible is anything she has to say? Who would
12 come into court and accuse somebody of molesting
13 someone else and have the exact wrong person, and then
14 be wrong about the fact that a molestation even
15 occurred? I mean, that's outrageous. I mean, that's
16 outrageous.

17 I mean, that's what she said in her
18 deposition. You'd think people were going to be
19 prepared if they're going to go under oath on a
20 deposition. And again, she took it back in court. But
21 she's got zero credibility. And Chaim Levin was not
22 complimentary about his home life growing up. I don't
23 need to go into those details. But he said it was
24 nothing less than horrible or terrible. I forget the
25 exact words.

1 Okay. And as Dr. Berger said, there's lots
2 of reasons why these guys have problems now, but it's
3 not because of JONAH. But did nothing to try to help
4 them, including especially Alan Downing. People
5 describe Alan Downing as gifted. He's a big, warm-
6 hearted guy. He loves his work. He left corporate
7 America and a much higher salary, so that he can do
8 this work, so that he can help people, people that are
9 struggling, people that are suffering, people that are
10 reaching out for help.

11 The plaintiffs saw him that way long after
12 leaving. Michael Ferguson wrote him and said let's get
13 together. I want another one of those warm Alan
14 Downing hugs. Now they have the audacity, the audacity
15 to come into court and say it's homoerotic. Shame on
16 them. If they're telling everybody how much they love
17 that guy and how wonderful he is. And after Chaim
18 Levin told Jonathan Hoffman within a few days of, of
19 the exercise with Alan Downing, how wonderful and
20 empowering it was, to come in and spread these horrible
21 lies about people.

22 Now the nudity thing, you know, it didn't
23 bother these guys at all. Chaim Levin went to New
24 Warriors weekend where there is far more of it, okay?
25 And then the nudity exercise was nothing to him. And I

1 don't mean to belittle the pain he must have suffered
2 growing up. But when he came to JONAH he was in a very
3 bad cycle of behavior. And it required something to
4 break him out of that envy situation. And that
5 exercise has been told to help numerous people.

6 Now would he do any more? Probably not after
7 this. Who would? But even Thaddeus Heffner said he
8 only wouldn't do it because of -- it could be
9 mischaracterized and misrepresented. And Jonathan
10 Hoffman said much the same thing. But the truth is
11 Hoffman said it was very helpful to him. And they
12 haven't brought in anybody else, not one person who
13 went through that exercise with Alan Downing to say it
14 was harmful.

15 Okay. Well People Can Change weekend, Rich
16 Wyler said that Alan Downing is a wonderful leader.
17 Did he have the road process early on? Sure he does.
18 They evaluate their people. That's the responsible
19 thing to do. And there were some things he could
20 improve on and he did improve on. And now he's great.
21 The guys love Alan Downing, one after another said that
22 they love Alan Downing. And so did the plaintiffs, and
23 so did the plaintiffs. And so did Benjamin Unger when
24 he wanted after the JIM weekend, let's all take Alan
25 Downing out to dinner.

1 Now these are not children. Please don't let
2 them say these are like little kids. They don't know.
3 They're just -- you know, they're under some evil
4 influence. These are adults. They're all over 18.
5 They can serve our, our country. They can sign
6 contracts. They can get married, okay? So please
7 don't let them try to sell you a bill of goods that
8 these guys were somehow under some type of evil
9 influence. They have been, but it was not my clients.

10 They made Alan Downing out to be something
11 he's not. He's a father. He's a grandfather. He's a
12 loving man. He's got more than triple the graduate
13 psychology courses of Dr. Lalich, who said all these
14 terrible things about him. She knows nothing about his
15 work and knows nothing about psychodrama, which again,
16 is taught at major universities and used by other
17 practitioners who are licensed, including Mr. Beck --
18 Dr. Beckstead and his colleagues.

19 And Mr. Downing was under the supervision of
20 a licensed therapist. There's actually a note in his
21 records in evidence where he took to this therapist,
22 Dr. McGreer, who's a licensed psychologist, issues he
23 had with Mr. Unger relating to seeing the stepsister
24 naked or something in that triggering issues for him,
25 probably hearkening back to when he was a kid and he

1 saw his mother walking around the house naked.

2 But Alan Downing sought out help if he needed
3 it from someone more experienced and then again,
4 referred Mr. Unger out, which he wouldn't do -- if my
5 clients are trying to control these guys and exercise
6 coercion, why would they be sending them out to other
7 people? Why would Arthur Goldberg be so stupid as a
8 cult leader to send people out to independent
9 contractors and lose all control and influence over
10 them?

11 The whole theory is ludicrous in the extreme
12 to suggest that these guys were under some kind of
13 influence of a cult-like figure.

14 Okay. As far as this nudity exercise, again,
15 it was a remove shame people have with their own
16 bodies. With Benjamin Unger, he didn't want to be seen
17 in public. He was ashamed of his body hair. He liked
18 the boyish, hairless appearance. But after he went
19 through this exercise with Mr. Downing he was out
20 riding public transportation without a shirt on.

21 So that had nothing to do with it. Really?
22 You didn't want to be seen by family members without
23 your shirt on. So, you know, you can't knock this
24 stuff, as crazy as it sounds, if it's working. And
25 people came in and said it works. You get comfortable

1 with the male body and you become less shamed -- less
2 ashamed of it, in particular -- as a matter of fact,
3 there's -- Arthur's book long before the plaintiffs, he
4 talked about a guy who came home and went undressing
5 himself, saw his naked body and said oh, my God, I'm a
6 man. Why am I thinking and acting like a child? I've
7 got to get out of this, and became a better husband and
8 father.

9 I mean, I don't know why these things work
10 and why people need them to work. But the simple fact
11 is they do work.

12 So in any event, this is a consumer fraud
13 action case. No one of these processes is a
14 misrepresentation. And to prove it's unconscionable
15 conduct I'm going to read that in one minute from the
16 jury instructions. It's got to be dishonest. There's
17 got to be some type of falsity to it. I'll read the
18 instruction in that one thing because none of it rises
19 to the level of unconscionable, even if you disagree
20 with it, even if it may have been imprudent given a
21 current political climate, it was not a violation of
22 the Consumer Fraud Act. And it was helpful to many
23 people. Or you would hear more people in here who
24 experienced it telling you otherwise.

25 The definition that Dr. Lalich gave of

1 "coercive influence" would apply to almost any
2 organization, any one of your churches, your boy
3 scouts, your sports teams. You have a command
4 structure. You've got peer pressure to stay involved.
5 You've got rigid rules. You know, try telling the
6 umpire that you get four strikes. You don't like their
7 rigid rules, or three strikes. Give me a frigging
8 (sic) break.

9 This definition of coercive influence can be
10 applied to anybody in any situation. And none of it
11 makes sense. Alan Downing is too tall. Arthur
12 Goldberg is too charismatic. The peer pressure of
13 apparently the Jewish faith. It is something to be
14 completely made up to apply to a set of facts that
15 don't match it at all.

16 She said that if 10,000 people were helped at
17 JIM it wouldn't change her opinion. Well that's very
18 nice of her. Thousands of people have been helped at
19 JIM. She thinks that SOCE is bad in general. She's
20 openly gay. And she thinks that it should be banned
21 entirely. And that there's no gay agenda. Really?
22 Then why is Dr. Lalich here every day.

23 Dr. Beckstead is also openly gay, but he
24 agrees that people should be able to live their lives
25 in conformity with their values. But he is admittedly

1 saying that he's been waging a war for two decades
2 against people that disagree with him after he was
3 removed from his own church. But yet, he doesn't tell
4 Mormon clients who come to him, trying to live their
5 lives in conformity with religion and faith, that he
6 was excommunicated as a, as a Mormon.

7 He admits though that any natural process,
8 including eating, can be turned into a disorder, not a
9 psychiatric, mental disorder, but just compulsive
10 eating could be.

11 And he says if someone comes in with a
12 religious viewpoint or belief that homosexual (sic) is
13 sinful, he'll explore with them their viewpoints and
14 try to provide more accurate information. What does
15 that mean? Well rip out the page in Leviticus because
16 it's not a sin. He wants to do reverse conversion
17 therapy on anybody who wants to follow a biblical
18 perspective on human sexuality. Well at least he was
19 honest about that.

20 But we're not at that point where people
21 can't have their own beliefs based on a book that was
22 written thousands of years ago. And people have chosen
23 to live their lives by it ever since, has been the best
24 selling book in the history of the human race from the
25 day it came off the Guttenberg press in the last 1400's

1 until today. It's still the most popular book in the
2 world. But Dr. Beckstead is going to explore with them
3 if there's more accurate information.

4 However, this is what he, he did say in his
5 own report and then on the stand, and I elicited this.
6 I read it back to him. Dr. Beckstead agrees that some
7 aspects of sexuality are malleable to change through
8 self-effort and psychotherapy to produce healthy
9 sexuality and resolution of conflicts, including --
10 this is what you can change.

11 Dr. Beckstead, the sex expert, this is what
12 you can change. You can change your motivations for
13 sex, how you feel about your sexuality, how you think
14 about it, how you tell people about it, how you act on
15 it, your behaviors, your identity, your group
16 membership, how you integrate it or not with other
17 aspects of yourself, compulsivity, addictive qualities,
18 self-knowledge and self-awareness. You can change all
19 that, but you can't change your sexual orientation.
20 What the heck is left?

21 You can change your behavior and your
22 motivations and you can change certain feelings and
23 aspects of yourself, self-awareness. I don't care what
24 degrees they have. But what they're saying makes no
25 sense. As His Honor has pointed out when every expert

1 has taken to the stand and been qualified as an expert,
2 you get to decide what's credible.

3 And the one thing I'll say about the
4 plaintiffs' experts -- they're going to show you their
5 pictures. They'll show you their credentials and show
6 you their degrees. They all admitted that as to this
7 case they based their assumptions and opinions and
8 conclusions on the plaintiffs' testimony, not my
9 clients. They didn't read my clients' depositions.
10 Dr. Bernstein said she skimmed through it. But she
11 read the plaintiffs and found them, including Chaim
12 Levin, credible. Dr. Beckstead said the same thing. I
13 believe Dr. Lalich said the same thing.

14 If they think Chaim Levin is credible after
15 everything that went down that you heard from the
16 witness stand, then you have to truly evaluate whether
17 their opinions have any merit at all, not because
18 they're not smart people or not knowledgeable or don't
19 have good degrees, but because their opinions are based
20 upon very, very shaky ground and won't stand up to
21 scrutiny.

22 Also, Dr. Beckstead says there is touching
23 and hugging at the male survivor weekend, and he saw
24 that it's healthy. Dr. Lalich said you should never do
25 that. Never do psychodrama. Never touch, never hug.

1 That's coercive. That's homoerotic. But not for Dr.
2 Beckstead and his colleagues who do gay affirming
3 therapy.

4 Dr. Beckstead admitted that the APA is not
5 against psychodrama. And there's official publications
6 on the APA website which we looked at, which say
7 psychodrama is appropriate when used appropriately.

8 And he also knows there's licensed
9 practitioners in good standing in the mental health
10 community who disagree with his views on sexual
11 orientation. And he did admit that certain people can
12 and do report a change in sexual orientation, as he did
13 in his study, and they feel (sic) a very and positive
14 life and can sustain themselves in that.

15 Dr. Bernstein said the principles of medical
16 ethics do not specifically address helping people with
17 unwanted same sex attraction. She's not seen anything
18 in writing that the defendants refer to homosexuality
19 as a mental disorder. And she did at least skim their
20 deposition, does not remember that they ever said that.
21 But she does agree they're entitled to their beliefs.
22 She also admitted that psychodrama is not always
23 unethical. And she agrees that it's possible for
24 people to change their sexual behavior and identity.

25 She also said she cannot testify if any of

1 the plaintiffs suffered harm in this case. None of
2 their experts can. Dr. Berger did. He reviewed the
3 records.

4 But she agreed that if a patient fails to
5 follow up with appointments or just gives up, doesn't
6 come see her, it's very difficult for her to do
7 anything to help them.

8 She agrees a therapist should not try to
9 force their personal values on a patient, the way
10 apparently Dr. Beckstead does. But she would not deter
11 a client who approaches her if they have a goal of
12 getting married and having a family. And finally as
13 to Dr. Bernstein, she agrees that just because
14 homosexuality or anything is not a mental disorder,
15 does not mean that someone should not be in a position
16 to seek help for it, specifically help for unwanted
17 same sex attractions.

18 Okay. You're going to hear, when I look at
19 these jury instructions now, that if there is a
20 document -- I'll wait and I'll read it, so I went to
21 get it precise. So let's look at the jury
22 instructions. His Honor is going to read these to you.
23 One of them will be about deposition testimony being
24 played or read into the record. That's evidence, just
25 like testimony live from the stand. You've heard

1 various videotape witnesses.

2 There's also one that stipulations are
3 evidence if they're placed on the record. So the
4 stipulation that Chaim Levin's check bounced to JONAH
5 and Alan Downing is also -- speaking of Alan Downing.
6 I needed to finish one thing on Alan Downing. I'm
7 sorry.

8 Just that all the, the plaintiffs other than
9 Chaim Levin, admitted there was never any pressure to
10 do any exercise including that nudity one. And when
11 Chaim Levin said when he first underwent it, it was
12 just very light reminding, okay? When he did a letter
13 right afterwards, after talking to Erez Harari 18
14 months after it occurred the first time, he said he
15 realized it caused no harm because Erez Harari said we
16 could use. He said he was lightly reminded. That's
17 not pressure.

18 And everything else that's been said about
19 Alan Downing by anyone else, as I pointed out, has been
20 very positive. And he has helped many people. And he
21 should be, as with Arthur Goldberg and Elaine Berk,
22 entitled to be able to keep helping people for a long
23 time to come because he's good at it and he's doing
24 good work.

25 All right. As to the jury instructions, the

1 felony conviction I already mentioned. You'll be
2 reminded you may not use that for anything other than
3 to determine credibility or believability of Mr.
4 Goldberg. You cannot use it to conclude he violated
5 the Consumer Fraud Act in this case or he was more
6 likely to have violated the Consumer Fraud Act in this
7 case because of something that happened 25 years ago.
8 We're all entitled to a second chance, particularly if
9 you had a clean record and two and a half decades have
10 gone by.

11 I've already gone over the issue of
12 statistics. I've gone over the science. I've gone
13 over this whole thing about changing from gay to
14 straight, how it can mean different things to different
15 people, and people know that.

16 Now what I wanted to point out about the e-
17 mails, when you look at them ask yourself this. In
18 this action the plaintiffs have the burden -- no,
19 that's not it, but I need to cover this.

20 Plaintiffs have the burden of proving a
21 preponderance of the evidence all facts necessary to
22 prove every aspect of their case, including whether any
23 of my clients made an alleged misrepresentation or they
24 engaged in any unconscionable practice.

25 So the plaintiffs will not tell you

1 differently. My clients have to prove nothing.
2 They're the defendants, okay? They don't have a burden
3 of proof. They're not asking for any relief. They're
4 just asking for justice.

5 The plaintiffs have to come in and prove
6 there was a misrepresentation or there was an
7 unconscionable business practice. They need to do that
8 by a preponderance of the evidence. His Honor will
9 explain to you. So I'm not going to do that. But
10 they've got to show the weight of the evidence supports
11 them. And they can't rely on the jury instructions
12 that say a mere possibility. They have to have
13 competent evidence that weighs in their favor against
14 all the evidence my clients have presented in order to
15 prove there's a misrepresentation or an unconscionable
16 business practice.

17 And here's what I was looking for. In this
18 case you've seen and heard certain evidence in the form
19 of written and instruc -- misrepresentations -- start
20 over.

21 In this case you have seen and heard certain
22 evidence in the form written and oral representations
23 by the defendants to persons other than the plaintiffs
24 in this lawsuit. If the plaintiffs did not see or hear
25 such representations, those representations in and of

1 themselves cannot be the basis for a Consumer Fraud Act
2 violation.

3 Let me explain. If I tell something to my
4 colleague, Paul Jonna, that's a misrepresentation in
5 the sale of a product or a good or a service --

6 MR. BROMLEY: Objection, Your Honor.

7 THE COURT: That's sustained. Counsel cannot
8 explain the Court's instructions. The Court will give
9 the instructions to the jury.

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

12 All I ask you is when you look at any
13 document that's shown, ask yourselves, in light of the
14 instructions the Court's going to give you, did the
15 plaintiffs see or hear that instruction or that, that
16 e-mail, that memo, that letter, was that to them.

17 Because a lot of this stuff on the Listserv
18 was before the plaintiffs were ever on the Listserv.
19 In some of the e-mails I'll show you weren't even
20 Listserv e-mails. They were the third parties, like
21 that -- from the Jewish guy who said I'm -- I feel like
22 I have a sickness. My life is a living hell. That was
23 to some person. The plaintiffs never saw that, okay?

24 All right. As to credibility, you have to
25 look at whether the contradictions in the witnesses'

1 testimony. I've already talked about that. As to
2 expert testimony, you have to consider the person's
3 reasons for testifying. Experts are entitled to
4 compensation, but you get to weigh that, if that
5 perhaps can bear on their credibility, depending on
6 what they had to say and how much they were paid for
7 their testimony.

8 You, as jurors, have to decide whether the
9 facts they rely on actually exist, okay? To the facts
10 that the plaintiffs' experts relied on about what goes
11 on at JIM and what goes on in JONAH, do those facts
12 actually exist. If not, the opinions are not entitled
13 to weight.

14 Okay. What's unconscionable commercial
15 practice? His Honor will instruct you it's an activity
16 that's basically unfair or unjust, which materially
17 departs from standards of good faith, honesty and fact
18 and fair dealing in the public marketplace. To be
19 unconscionable there must be a factual dishonesty and
20 lack of fair dealing.

21 Are any one of the things that my clients did
22 show factual dishonesty or lack of fair dealing,
23 they're unfair or unjust, that depart from fair dealing
24 in the public marketplace? Are we talking about the
25 public marketplace if we're talking about some of these

1 processes? These are questions you'll have to answer.
2 His Honor will give you the instructions.

3 But a misrepresentation has to be an untrue
4 statement about a fact which is important or
5 significant to the sale or advertisement and is
6 communicated to another person to create the
7 possibility that another person will be misled.

8 So it's important in the sale or
9 advertisement -- are all these Listserv e-mail
10 communications sales or advertisements? I suppose
11 what's on the JONAH website could be, whatever
12 brochures they sent out. But answering questions to
13 one of 30 or 40 or 50 people on a Listserv, you'll have
14 to decide if those are, are those misrepresentations
15 significant to the sale or advertisement for something.

16 I already told you about the important
17 instruction. Is disease, disorder or mental illness,
18 mental disease, mental disorder used in the context of
19 what would be considered a somewhat religious
20 perspective? I don't need to go over that again. I
21 don't need to go over statistics again.

22 MR. BROMLEY: Objection, Your Honor.

23 THE COURT: To --

24 MR. BROMLEY: To the phrasing "in the
25 context". We've had quite a lot of discussion about

1 that.

2 THE COURT: Yes, --

3 MR. LI MANDRI: Yeah, okay. I'll --

4 THE COURT: -- sustained. Counsel, would --
5 if you're going to refer to the instructions, as I
6 cautioned both of you, read directly from the
7 instructions. Do not give the jury a sense that what
8 you're saying are my instructions.

9 MR. LI MANDRI: That's fine. I thought you
10 wanted us not to read them exactly.

11 THE COURT: No, no, I, I said if you're going
12 to refer to the charge, then you have to refer to the
13 language in the charge.

14 MR. LI MANDRI: That's fine. That makes it
15 easier for me. Thank you, Your Honor, because it's
16 hard to paraphrase on the spur of the moment and be
17 right all the time.

18 THE COURT: If you're going to paraphrase,
19 then tell the jury that. Don't give --

20 MR. LI MANDRI: Got it.

21 THE COURT: -- them the impression that
22 you're reading my words. That's what I --

23 MR. LI MANDRI: Got it.

24 THE COURT: -- cautioned people about,
25 talking about the charge.

1 MR. LI MANDRI: That makes sense and I
2 appreciate (sic). That makes it easier for me. Let me
3 see if I can find that specifically.

4 THE COURT: Are you talking about on page 20,
5 the last paragraph?

6 MR. LI MANDRI: Yes. I was actually looking
7 for the one about the religious perspective.

8 THE COURT: Because that's what it says.

9 MR. LI MANDRI: Page 20, the last paragraph?

10 THE COURT: Yeah, did you -- are you looking
11 at the one I just gave you? No, you're not.

12 MR. LI MANDRI: No, you reformatted it. I'm
13 sorry. Let me, let me use that. Thank you, Your
14 Honor. I highlighted my copy last night, so it was
15 easier.

16 THE COURT: That's okay.

17 MR. LI MANDRI: That's it. Thank you, Your
18 Honor.

19 This is what I was trying to convey, so
20 please let me read it to you. With regard to whether
21 it's a mental illness, mental disorder. "On the other
22 hand, with respect to the alleged misrepresentation of
23 homosexuality as a 'disorder', if you find that every
24 time the defendants describe homosexuality as a
25 disorder, they describe homosexuality as a disorder

1 from a religious perspective and not as a mental
2 illness, disease, disorder or the equivalent thereof,
3 then the defendants did not violate the Consumer Fraud
4 Act with respect to this alleged misrepresentation."

5 Okay. So again, from a religious perspective
6 and not as a mental illness, disease or disorder is
7 what the operative words --

8 MR. BROMLEY: Objection, Your Honor, "or the
9 equivalent thereof".

10 MR. LI MANDRI: Well I do have to read every
11 word?

12 THE COURT: No, let's try not to continue to
13 read my instructions. The jury will hear it from the
14 Court.

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

16 THE COURT: Please.

17 MR. LI MANDRI: Yes. And then finally with
18 regard to the issue of damages, I want to make sure I
19 get this, this right. You will hear from His Honor
20 exactly the way it's, it's worded. I am paraphrasing.
21 If you find for any one or all of the plaintiffs and
22 award an ascertainable loss, a monetary amount, then
23 the law will require the Court to treble those damages.
24 The trebling will be to punish the defendants for
25 committing fraud.

1 And in addition, if you find that the
2 defendants did violate the Consumer Fraud Act --

3 MR. BROMLEY: Objection, Your Honor, again,
4 we're reading directly from the --

5 MR. LI MANDRI: I'm paraphrasing.

6 THE COURT: Well you said paraphrase, but
7 then you're reading it.

8 MR. LI MANDRI: Well I --

9 MR. BROMLEY: Right. So -- and not reading
10 exactly.

11 THE COURT: If you want to make an argument
12 to the jury, make your argument.

13 MR. LI MANDRI: Okay. Two things you need to
14 know about damages. And I'm paraphrasing. If you find
15 a violation of the Consumer Fraud Act and you award any
16 ascertainable loss on the verdict form -- and we'll
17 take a look at the verdict form and I'll finish with
18 that. Then the Court will be required to treble those
19 damages as a punishment because you found fraud, okay?
20 And fraud is defined. Misrepresentation is defined.
21 The Court will define those.

22 And the law also requires the Court to award
23 reasonable attorneys' fees. And you need to be aware
24 of that, is what -- treble damages and attorneys' fees
25 would be awarded to the plaintiffs if you find for any

1 one of them against the defendants.

2 Now the verdict form itself, you're going to
3 get it in the jury room. It's eight pages. It
4 consists of 20 questions. It breaks down three
5 questions for each of the plaintiffs against the
6 defendants. And if you answer a question yes, if you
7 find that by a preponderance of the evidence that
8 there's a misrepresentation or unconscionable conduct,
9 then you go onto the next question.

10 And the next question will be whether you
11 find a preponderance of the evidence that a
12 misrepresentation or an unconscionable commercial
13 practice was the proximate cause of an ascertainable
14 loss for one of the plaintiffs. If you answer yes to
15 that, then you go onto the next question, are asked to
16 award the total amount of ascertainable loss for
17 whichever plaintiff that questions applies to as
18 against any defendant.

19 So if you keep answering yes, you're going to
20 go from finding liability against the defendant,
21 finding it caused harm, and then the amount of harm.

22 If you find no, then you skip to the next set
23 of questions for the next party. So you're going to
24 have to deliberate on those and reach a fair and just
25 verdict. It's a our position that a fair and just

1 verdict is to answer no to those questions, not get to
2 the question of ascertainable loss as to any one of the
3 defendants, in favor of any one of the plaintiffs, in
4 that you're going to sign and return the verdict form,
5 awarding no monetary amount that's going to be trebled
6 and entitle the plaintiffs to an award of attorneys'
7 fees.

8 So finally and in conclusion, I want to thank
9 you very much for your service. I want to thank you
10 very much for your kind attention and for your
11 patience. I want to thank His Honor for giving us a
12 fair trial. And I want you to keep in mind what I've
13 said when you hear the arguments from my distinguished
14 opponent because I will not have an opportunity to come
15 back.

16 But you've heard all the evidence and you
17 know what my response will be. And you'll have an
18 opportunity when you deliberate to go over the evidence
19 and find out for yourself if there's any question about
20 who's being accurate about a particular point or not.

21 So with that, I leave the fate of my clients
22 in your hands with my sincere gratitude and deepest
23 thanks.

24 Thank you, --

25 THE COURT: Thank you, --

1 MR. LI MANDRI: -- Your Honor.

2 THE COURT: -- Mr. LiMandri.

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

11 So unless you have strong objections, I think
12 we should break now for lunch and resume at 1:00 with
13 plaintiffs' summation if that's acceptable to you.
14 Does that make sense to you?

15 All right. So why don't we take our lunch
16 break? And then we will resume at 1:00 with the
17 plaintiffs' summation. Then we'll take our afternoon
18 break. And hopefully I'll be able to charge you on the
19 law. And you can at least start your deliberations
20 today. But we'll see how our afternoon goes. And
21 that's my game plan.

22 Again, please don't discuss this case.
23 Please don't let anyone else discuss this case with
24 you. Please don't try to do any research over the
25 lunch break. As I said, we still need the closing

1 argument of the plaintiff. And most importantly, you
2 need my instructions on the law.

3 I just want to caution you. You've heard
4 some comments from counsel reading instructions,
5 paraphrasing. You may also hear some in the
6 plaintiffs' summation. You will understand that I will
7 give you the charge and you are to follow the charge as
8 I give it to you and not how you might have heard it in
9 the summations, okay?

10 All right, thank you very much. Enjoy your
11 lunch. It's a little cooler today by maybe four or
12 five degrees, not in here. Outside I'm told.

13 (Jury leaves the courtroom)

14 THE COURT: All right. I'll see everybody at
15 1:00. Thank you very much.

16 MR. BROMLEY: Thank you, Your Honor.

17 MR. DINIELLI: Thank you.

18 THE COURT: Enjoy lunch. Off the record, Kat
19 (sic).

20 (Recording paused)

21 THE COURT: All right. We're back on the
22 record in Ferguson v JONAH. Bring our the jurors
23 please.

24 (Jury enters the courtroom)

25 THE COURT: All right. All seven jurors are

1 present and accounted for.

2 And, ladies and gentlemen, once again, thank
3 you for your promptness. It is much appreciated by the
4 Court and all counsel.

5 At this time we will now proceed with the
6 summation or closing argument on behalf of the
7 plaintiffs.

8 Counsel?

9 MR. BROMLEY: Thank you, Your Honor.

10 Ladies and gentlemen of the jury, my name is
11 James Bromley. I've been here at counsel table for the
12 past several weeks. And first I want to thank you very
13 much for all of the work you've done over the past
14 several weeks. We really appreciate your efforts, the
15 plaintiffs appreciate your efforts and dedication.

16 Benji Unger, Chaim Levin, Michael Ferguson
17 and Sheldon Bruck needed help. They were desperate.
18 They were young. They were deeply religious. And they
19 were gay. But they did not want to be gay. More than
20 anything else in the world they wanted to be straight.
21 And that desire to be straight led these young, gay men
22 to JONAH, to Arthur Goldberg and to Alan Downing.

23 Almost four weeks ago my colleague, David
24 Dinielli, started this trial with a few phrases. My
25 clients needed help. They went to JONAH. JONAH lied

1 and JONAH made it worse.

2 And since you heard those words you've heard
3 the evidence. You've listened to the testimony.
4 You've listened to the four young men who desperately
5 needed help. You listened to the two mothers, Jo Bruck
6 and Bella Levin, devout women who loved their sons, who
7 wanted to protect their sons and wanted them to be
8 happy.

9 You heard from the three experts the
10 plaintiffs put up. Dr. Carol Bernstein, one of the
11 leading figures in the world of psychiatry and the head
12 of the residency program at the New York University
13 School of Medicine. Dr. Janja Lalich, a sociologist
14 who's a leading figure in the study of coercive
15 influence. And Dr. Lee Beckstead, who's a leading
16 psychologist with a specialization in sexual
17 orientation and sexual abuse.

18 Each of them told you what real mental health
19 professionals have to do to become qualified and
20 licensed. Each of them told you that they would never
21 do or say what Alan Downing, Arthur Goldberg or Elaine
22 Berk did and said.

23 Dr. Bernstein told you that what Alan
24 Downing, Elaine Berk and Arthur Goldberg did would have
25 led to disciplinary action if they were in her school

1 of medicine.

2 They told you that the JONAH was completely
3 inappropriate, absolutely irresponsible and
4 unconscionable. They used words like unethical,
5 dangerous, harmful, sadistic, completely inappropriate
6 and reckless.

7 They said the JONAH program was not
8 legitimate. Dr. Beckstead said it was like snake oil.
9 The definition of a false product sold with false
10 promises. And most importantly they told you the JONAH
11 program has no scientific basis.

12 Now you also heard from the defendants. Now
13 you'll notice the defendants did not deny any of the
14 most important events that occurred in this case. They
15 never denied the things that happened in JONAH's
16 offices here in Jersey City. They've never denied the
17 nudity exercises. They never denied the duct tape, the
18 healthy holding among men attracted to other men. They
19 never denied the blindfolds, the shouted taunts or the
20 obscenities. They haven't denied any of this.

21 Instead from the defendants, amateurs posing
22 as mental health professionals, you heard excuses. You
23 heard excuses from Arthur Goldberg, a disbarred lawyer.
24 Excuses from Alan Downing, who has a degree in music
25 and theater. Excuses from Elaine Berk, who's retired

1 from a job at the New York City -- from New York City.
2 None of them have any mental health training at all.

3 Now I ask you, ladies and gentlemen, would
4 you trust yourself or anyone you love to any kind of
5 processes or treatments with these people?

6 You also heard from success story witnesses,
7 a lot of them. But remember, not a single success
8 story witness was present for a single conversation
9 between any of the plaintiffs and any of the
10 defendants. Not one of the success story witnesses
11 heard a single word that Arthur Goldberg or Alan
12 Downing said to any of Benji, Chaim, Sheldon, Michael,
13 Bella or Jo, not a single word.

14 You also saw with each of those success story
15 witnesses -- you're going to have to make up your own
16 mind on this -- whether or not they were actually
17 success stories. Whether or not any of them are
18 actually straight.

19 You were able to look in the eyes of each of
20 the witnesses. You were able to size them up and
21 figure out who's telling the truth, who has an
22 incentive to not tell the truth, and who has a history
23 of not telling the truth.

24 And you saw documents, lots of documents.
25 And some of them are quite shocking. And you should be

1 shocked. I know we were. The testimony of documents
2 give you all the support you need to conclude that the
3 plaintiffs were lied to over and over again both before
4 and after they started treatment. And that the
5 defendants' business practices were unconscionable.
6 There simply can be no doubt that the plaintiffs have
7 proven their case.

8 I'd like to pause for a moment and talk about
9 the burden of proof. Mr. LiMandri discussed the burden
10 of proof with you. And I'd like to talk a bit with you
11 about it as well. And it's a legal term for what the
12 plaintiffs to prove in order to succeed.

13 Now this case is a civil case. And that
14 means that the standard is that we have to prove our
15 case beyond the preponderance of the credible evidence.
16 That's just over 50 percent, 50.1 percent.

17 This is not a criminal case. This is not
18 beyond a reasonable doubt. And here we firmly believe
19 that the plaintiffs have met that burden and met it in
20 an overwhelming fashion.

21 Now you've heard the term "consumer fraud".
22 Before I get to the evidence I'd like to talk to you a
23 little bit about that. These are common words and
24 they're easy to understand. And they mean what they
25 say. And when you're in the jury room deliberating you

1 need to use your common sense when you're thinking
2 about the term "consumer fraud".

3 Consumer fraud means that when you're selling
4 something, whether it's a good or a service, that you
5 have to tell the truth. If you put an ad up on a
6 billboard it has to be true. If you advertise for
7 something on the internet it has to be true.

8 If you give a sales pitch in-person or on the
9 phone, it has to be true. And when you're doing
10 business, you have to do business in a fair, reasonable
11 and appropriate way. Your business practices should
12 not shock your conscience.

13 So, ladies and gentlemen, if you're selling
14 something and you say something about it to a potential
15 customer, it has to be true however, whenever and
16 wherever you say it. That's just common sense.

17 And there's no doubt that Alan Downing,
18 Arthur Goldberg, JONAH and Elaine Berk were selling
19 something. They were all in business together selling
20 the JONAH program. You heard how they share office
21 space here in Jersey City, less than two miles from the
22 courthouse. You've heard how they have a system to
23 share fees. You heard how Downing and Goldberg both
24 attended JIM weekends. And at those JIM weekends they
25 recruited clients. Remember, every client that comes

1 to Alan Downing, 20 percent of it goes to JONAH.

2 You heard how Alan Downing was the director
3 of counseling for the JONAH Institute of Gender
4 Affirmation. You saw how Alan Downing advertised
5 things on the Listserv. Young men's groups hosted by
6 Alan Downing, advertised on the Listserv.

7 And you've heard the, the testimony from our
8 clients, that this program was sold to the plaintiffs
9 as being able to change them from gay to straight.
10 Arthur Goldberg uses those words. He used them here in
11 this courtroom.

12 The JONAH program needs to be viewed in the
13 same way as if you bought a new mattress and had it
14 delivered to your home in the Heights. And that
15 mattress wasn't what you ordered or wasn't the right
16 price, or the salesman in the store lied to you when
17 you were buying it.

18 You have to look at it the same way if you
19 went to a tire store to have your rims fixed over on
20 Schuyler Avenue in Kearny, where I was born. And
21 somebody sold you a bill of goods and you didn't get
22 what you paid for, that's consumer fraud. And that's
23 what we're talking about here.

24 And it's the same thing here. It doesn't
25 matter if JONAH was a not for profit entity. It

1 doesn't matter whether JONAH was founded by people of
2 faith. And it doesn't matter whether the services were
3 coaching or referring or basket weaving. All that
4 matters is that something was sold and money was paid
5 for it. And we've proved that something was sold and
6 money was paid for it. Each of our plaintiffs paid for
7 services that they obtained from the defendants.

8 This is not a case about what the defendants
9 believe. It's not a case about what the defendants
10 meant. It's a case about what the defendants said.
11 And so when you're considering the statements that were
12 made by Goldberg and Berk and Downing, you have to take
13 into account what they said and how it was heard by the
14 plaintiffs.

15 You have to think about how the plaintiffs
16 understood what was said, what appeared on the Listserv
17 in determining whether or not they were lied to. --

18 MR. LI MANDRI: I'm going to object, Your
19 Honor. I believe the standard, with the reason of what
20 the average person believes, not the plaintiffs
21 objectively.

22 THE COURT: Yes, the jury will be instructed
23 on, on the law and how it applies in the case.

24 MR. BROMLEY: Thank you.

25 THE COURT: It's not a subjective standard.

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

2 MR. BROMLEY: So while the defendants now
3 argue that everything they said was soaked in religion,
4 the only that matters is whether the ordinary consumer
5 heard it that way. And the evidence is overwhelming
6 that Goldberg, Berk and Downing were selling non-
7 religious services to solve non-religious disorders.

8 Now you'll recall from the opening statement
9 that Mr. Dinielli outlines six misrepresentations.
10 We'll put them back up on the board for you. First,
11 that homosexuality is a disease or disorder. Two, that
12 JONAH has a program with specific success rates.
13 Three, the JONAH program can heal you within two to
14 four years. Four, the JONAH program is based on
15 science. Five, the JONAH program effectively treats
16 homosexuality. And six, the JONAH program can change
17 you from gay to straight.

18 You'll also recall that Mr. Dinielli stated
19 that the plaintiffs would have to prove the defendants
20 engaged in unconscionable business practices.

21 So now I'd like to turn to the evidence. We
22 started this case with a conversation about Benji
23 Unger. And I'd like to start with Benji as well. You
24 remember Benji. He was the first of our witnesses. He
25 came from a deeply religious Orthodox Jewish background

1 from Brooklyn, New York. He attended Yeshivas, not
2 public schools where the lessons focused on Jewish
3 studies exclusively.

4 He had no education in human sexuality. He
5 had been attracted to young men since he was a young
6 teenager, but he had never met an openly gay member of
7 his community. Benji was troubled by this. He knew he
8 was attracted to men, to teenagers at that time.

9 You heard about Benji making a phone call to
10 Arthur Goldberg. He made that phone call from his
11 father's office, an office in their home in Brooklyn.
12 And you heard that Arthur Goldberg gave Benji a sales
13 pitch, a sales pitch about the JONAH program. It would
14 not be the last time that you would hear about a sales
15 pitch from Arthur Goldberg.

16 So what did Benji testify about hearing in
17 that sales pitch? He said that Rabbi Arthur Goldberg
18 told him that JONAH's program is scientific and can
19 absolutely take him from gay to straight in two to four
20 years. He just needed to put in the work. It would
21 not be the last time you heard that phrase either.

22 You heard Benji tell you that Goldberg told
23 him that homosexuality is a disorder and that he could
24 fix it. How did Benji respond to Arthur Goldberg's
25 sales pitch. Well he told you that he was thrilled.

1 He had finally found something to turn him straight.

2 Because remember in that Jewish community, at
3 the age of 18 or 19, you're in Yeshiva. By 20 or 21
4 you're supposed to be married. You're supposed to be
5 having children. You're supposed to be contributing
6 back into that same community. And Benji was in a
7 panic because he didn't see that happening for him
8 because he was gay.

9 And what did Arthur Goldberg tell you when he
10 sat on that stand about that conversation? Not much.
11 In fact, Goldberg doesn't remember a single thing about
12 the conversation with Benji Unger, not one thing.

13 Now when Mr. LiMandri talked to you about
14 evidence he said there's something called
15 circumstantial evidence. Well there's also something
16 called direct evidence. Direct evidence is the
17 testimony you hear. Benji Unger said I got a sales
18 pitch and this is what it said. Arthur Goldberg said I
19 don't remember a sales pitch, I don't remember
20 anything.

21 Benji also told you that in his sales pitch
22 Arthur Goldberg did not explain what the JONAH program
23 was about or what was going to happen. Now this wasn't
24 the first time you were to hear about JONAH's policy of
25 surprise.

1 Benji also told you that Goldberg recommended
2 that he work with Alan Downing. And he described Alan
3 Downing to Benji as ex-gay, who's now straight. Then
4 Benji came and told you about that therapy with Alan
5 Downing. Remember at the beginning he had to fill out
6 a questionnaire, kind of what are you looking for in
7 this therapy? What did he say in that questionnaire?
8 He said he wanted to desiring men and start desiring
9 women. In fact Alan Downing's notes, the first
10 session, say that Benji came out to his parents in
11 2006.

12 Now what have the defendants said about Benji
13 and the other men here? They didn't come to us gay.
14 Mr. LiMandri just told you that. You have to figure
15 out whether that's right or not. You have to use your
16 common sense. Benji sat there and he told you that he
17 was gay. And there's a questionnaire he filled out
18 before he went to Alan Downing, saying I want to stop
19 desiring men and start desiring women. If this was a
20 multiple choice test about what does gay mean, that
21 would be the correct answer.

22 Benji also told you that Alan Downing told
23 him that homosexuality is a disease. Now obviously
24 Alan Downing testified that I didn't say that. Well
25 you're going to have to figure out who's telling the

1 truth. Look at the context and look at what's at-
2 stake.

3 Benji also told you that Alan Downing told
4 him I still feel attractions to men. We had Alan
5 Downing on the stand and he admitted that. He tried to
6 say well not in a sexual way. You're going to have to
7 figure out whether he really meant that, particularly
8 in light of the other evidence about all of the nudity,
9 the Journey Beyond script that he co-created, the 50
10 Journey Into Manhood weekends, the healthy holding.

11 Benji told you about the initial sessions
12 that he had with Alan Downing. What do those initial
13 sessions, what do they involve? They involve primarily
14 Benji telling Alan Downing about the different types of
15 men, teenagers in this circumstance, that he found
16 attractive.

17 Benji was 18, 19-years-old. Most 18, 19-
18 year-olds have sex on the mind. I think there's -- I
19 think we can all accept that. Alan Downing sat there
20 and made a chart, name, age, physical description, shir
21 -- smooth-skinned, butts. Went down one by one, one
22 after the other.

23 You heard Benji testify that he was confused
24 why that was the constant attention of these sessions.
25 You saw in Alan Downing's own handwriting in the middle

1 of those notes a question, "What's behind his fear of
2 mature, hairy men?" I'm not sure. I don't think we
3 got an answer to that. But that is in Alan Downing's
4 handwriting in Benji Unger's treatment notes right in
5 the middle of a description of all the attributes that
6 Benji finds attractive.

7 You heard how Alan insisted that Benji
8 process his mother issues. You heard a lot of code
9 words in this case and you'll hear some more in my
10 summation. Process is one of them. Mother issues are
11 one of those childhood wounds that Mr. LiMandri talked
12 about. There's also father issues and peer issues and
13 sexual abuse.

14 You heard how in response to those questions
15 Benji shut out his mother. Remember when Benji sat on
16 the stand and told you about the time his mother came
17 and picked him up to drive him someplace. Benji got in
18 the front seat next to her and he wouldn't talk to her.
19 And his mother kept saying, "What's wrong Benji? Have
20 I done something to you?" And what did Benji say,
21 after having had this -- these sessions with Alan
22 Downing, "You know what you've done to me, mom." And
23 that's all he said. And she broke down in tears.

24 Benji didn't think he had any mother issues
25 until he walked into that room with Alan Downing. He

1 sure felt it when he walked out though.

2 You heard how in a closed room less than two
3 miles from here Alan Downing instructed Benji to take
4 off his clothes. And Benji took off his shirt and his
5 undershirt. You heard how Downing stood behind Benji
6 and placed his hands on his shoulders, and stood so
7 close to him that he could feel Downing's breath on his
8 neck. And you heard how Downing's next request was to
9 take off your pants, which he refused to do.

10 And what did Alan Downing have to say about
11 this? Well this was because Benji was suffering from
12 body shame. Here's another code word. Ever heard of
13 body shame before, it wasn't the first time you were
14 going -- it was the first time you heard about it in
15 the case, but it wouldn't be the last.

16 It's funny how Chaim Levin also had body
17 shame. And so did Jonathan Hoffman. And they ended up
18 in that same room, standing in front of that same
19 mirror without any clothes on.

20 Downing also told you that he never
21 instructed Benji to take off his clothes. He invited
22 him to do so. But you also heard Mr. Downing say that
23 he also challenged people. He challenged people.
24 Because you need to put in the work in order to get the
25 benefit. And the benefit, of course, is becoming

1 straight. And that's what these guys want, to be
2 straight.

3 This was not the first time -- this was the
4 first time you heard about the invitations, but it
5 wouldn't be the last.

6 Now in his opening Mr. LiMandri said yeah, we
7 admit that Benji took off his shirt, no big deal.
8 Those are the words he used to you in the opening, no
9 big deal. Sorry, ladies and gentlemen, we think it is
10 a really big deal.

11 Mr. LiMandri asked Dr. Lalich some questions
12 about well people take shirts off at the beach. This
13 wasn't at the beach. This wasn't the beach. This
14 wasn't Point Pleasant. This wasn't Asbury Park. This
15 was Jersey City on the second floor of Grand Avenue
16 with the door shut and all alone.

17 Now you also heard from our experts, tell you
18 that that kind of exercise has no therapeutic benefit
19 whatsoever. There's no science behind it. In fact you
20 heard from our experts that that kind of exercise is
21 inappropriate and harmful.

22 You also head Mr. LiMandri talk about
23 feelings for girls for all the plaintiffs. They all
24 had feelings for girls, so that means they weren't gay,
25 at least not when they came to us. Well first of all,

1 use your common sense. In light of everything that
2 you've heard, do you think anyone walks into JONAH's
3 office for anything other than the fact that they're
4 gay and they don't want to be? Have you seen anything
5 that advertises that they treat pornography addiction
6 or heterosexual issues? Not a bit of evidence.

7 JONAH's all about people who don't want to be
8 gay. That's their entire business. And that's what
9 the evidence shows. So what about those girl feelings?
10 Well Benji Unger sat there and said yes, I tried, I
11 tried. And you know what, no sexual attraction
12 whatsoever, zero.

13 It wouldn't be the first time -- the last
14 time you'd hear that either. You heard it from every
15 one of our witnesses. Every time they talked about a
16 relationship with a girl or a woman, every one of those
17 relationships terminated because our plaintiffs had no
18 sexual attraction to those women. Zero. And why is
19 that? Because they're gay.

20 You also heard from Mr. LiMandri that our
21 plaintiffs never complained. They never asked for
22 their money back. Well first of all, Judge Bariso will
23 instruct you on the law. You don't have to ask for
24 your money back. Second, you heard from Dr. Lalich and
25 Dr. Beckstead that it's entirely understandable that

1 people in these types of situations are not going to
2 complain.

3 You heard Chaim Levin on the stand say I
4 didn't want to be the guy known as having taken off my
5 clothes in front of my life coach in Jersey City.

6 There's been a lot of talk about shame. Our
7 plaintiffs were ashamed to have gone through this
8 process. But the fact of the matter is, is that there
9 were complaints. There were issued raised. Benji
10 Unger raised an issue.

11 You may remember we saw evidence that on
12 January 8th 2008, while Benji was still in the program,
13 nine months after starting it, and after having already
14 been to a JIM weekend, he wrote to the Listserv. We'll
15 put it up on the screen. It's a little small. I'll
16 try to read it to you.

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

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

1 cries for help.

2 And we've heard Elaine Berk is the master of
3 the Listserv. And what did she say in response? She
4 didn't respond to the questions. She didn't tell him
5 that changing from gay to straight was not possible.
6 She told him that he needed to focus on the underlying
7 issues. You have to do the work.

8 If the JONAH program didn't work for you,
9 it's your own fault. That's what we're hearing from
10 the defendants in this case. They didn't do it long
11 enough. They didn't put in enough effort.

12 That's one of the problems with the JONAH
13 program. There's no solution that's based in science.
14 And when it doesn't work they blame you. It's your own
15 fault.

16 You heard Benji on the stand. He left the
17 program. He was still attracted to men. Not one
18 element of the program, the nudity, the JIM weekends,
19 the beating of a pillow until his hands bled helped him
20 change his sexual attractions.

21 Funny, while under cross-examination Mr.
22 LiMandri asked Benji, did your hand really bleed. You
23 may recall that when Mr. Downing was in the, the box he
24 went through that guts list. One of the things on the
25 guts list were utility gloves. Utility gloves to wear

1 while you're holding the tennis racket or the baseball
2 bat and you're beating it, because you might hurt your
3 hands. That was Mr. Downing's testimony.

4 Now what is Benji looking for out of this
5 case? Well first of all, remember what he said about
6 how he felt after he left JONAH. He was praying every
7 night that he wouldn't wake up in the morning. He
8 couldn't get out of bed and he was a wreck.

9 Now you heard this morning that we should
10 disregard that, but that's what he testified to. And
11 he went to see Dr. Steven Phillipson, a New York
12 psychologist. He went for a total of 63, 6-3 at \$250
13 each.

14 And you remember Dr. Phillipson. He came in
15 and testified. He treated Benji after he went to the
16 JONAH program. And he testified that the problems
17 caused by the JONAH program were discussed about 50
18 percent of the sessions. That's over 30 sessions. And
19 of those sessions, about 70 percent of the time was
20 spent on JONAH. That amounts to about \$5500 that Benji
21 spent on Dr. Phillipson for help in fixing the problems
22 that JONAH caused.

23 Now the defendants asked you to conclude that
24 Benji didn't actually pay. But don't fall for it.
25 You're going to hear that oral testimony is just as

1 good as documentary testimony. That's direct evidence.

2 The defendants focus on a lack of documents.
3 But why would Dr. Phillipson come here and say he'd
4 been paid if he hadn't been paid? So now I ask you
5 what 19-year-old kid keeps records of anything, keeps
6 ATM slips or a checkbook?

7 You'll remember that Benji explained there
8 was a discount for paying in cash. We've all heard of
9 those sorts of discounts. Dr. Phillipson came and said
10 yes, there is a discount. It's five percent. And, you
11 know, I treated a lot of Orthodox Jews and a lot of
12 them pay in cash. Benji wants his money back. And
13 he's entitled to that under the law.

14 Now let's talk about Chaim Levin. You
15 remember Chaim, young, Orthodox Jewish, Brooklyn,
16 Yeshivas, a background very similar to Benji's, if not
17 even a little more religious. He knew nothing about
18 homosexuality prior to JONAH. He knew that he was
19 attracted to men, but he also knew there was no room
20 for that sort of person in his community.

21 He had seen ads for JONAH in the local Jewish
22 News newspaper, which we saw, which is published in
23 Brooklyn. And a rabbi from France, Rabbi Blume
24 (phonetic), had recommended JONAH. And this led Chaim
25 to send an e-mail to the JONAH website.

1 Elaine Berk responded to that e-mail and said
2 you should talk to Alan -- Arthur Goldberg. Chaim then
3 came over to New Jersey and met with Arthur Goldberg.
4 And he got the sales pitch. And what was in that sales
5 pitch? Chaim said that Goldberg told him that
6 homosexuality was a curable disease. That he could
7 change from gay to straight within two to four years.
8 And he urged him to go to a JIM weekend as quickly as
9 possible. He told Chaim a JIM weekend is worth six
10 months of therapy.

11 It was essentially the same sales pitch that
12 Goldberg gave to Benji. And that makes sense because
13 Goldberg did tell us that he essentially says the same
14 thing to everyone.

15 Now what is -- how did Chaim respond to that?
16 He told you he was on a high. He was really relieved.
17 And he immediately signed up to go to a JIM weekend.
18 Now what does Arthur Goldberg recall about that
19 meeting? Nothing. He doesn't recall anything.

20 So after the sales pitch and signing up for
21 JIM, Chaim goes to the JIM weekend. It's the first
22 time he's outside of his Orthodox community. And what
23 happened? He wasn't told anything about what would
24 happen, because we like surprise. Surprise is good for
25 you. You heard that from Alan Downing. You heard that

1 from Rich Wyler. You heard that from Jonathan Hoffman.
2 You know who said surprise isn't good for
3 you? Dr. Bernstein. Dr. Beckstead said there's no a
4 single therapeutic benefit to surprise.

5 What met Chaim at the JIM weekend? Well a
6 man in a black hood holding a long staff and asking him
7 what is a man. At that weekend Chaim, who had been
8 sexually abused as a child, was told he was suffering
9 wounds as a result of that abuse, more of these
10 childhood wounds. And that reenacting that abuse would
11 help him get rid of those wounds.

12 Chaim supplied the words of his abuser. And
13 people acted it out in front of him. Those words you
14 may recall were "If you don't give me a blow job I
15 won't love you anymore." Standing just a few feet away
16 Chaim watched as that was reenacted in his presence.
17 He watched that sexual abuse, his sexual abuse
18 reenacted a few feet from him with the same words that
19 had been used to him, in a process that was designed
20 and run by amateurs. And Alan Downing was present.

21 You heard from Dr. Beckstead that you don't
22 do something like that to somebody who has suffered
23 from childhood sexual abuse. But they did it to Chaim.

24 It was also at that first weekend, the first
25 JIM weekend, that Chaim was introduced to healthy

1 touch. I think it was the first time you heard that
2 phrase, but it wouldn't be the last. You heard that
3 Chaim was reluctant to engage in healthy touch. But
4 that Alan Downing challenged him and got him to agree,
5 to allow him to have his arm put around his shoulder.
6 So there's Downing putting his arm around Chaim.
7 There's no doubt that Chaim enjoyed JIM for a time.

8 One piece of consistent testimony that you
9 folks have heard is that people go to JIM and have a
10 high, but it crashes. You heard that over and over
11 again. Not only did Chaim crash, his mother came in
12 and said he crashed. Remember she said I was sitting
13 at home. It was late on a Sunday night. I'm in my
14 bedroom. Chaim comes in and gives me this enormous hug
15 and said it's the best thing that I ever experienced.
16 And less than two days later he's banging things and
17 yelling. He's a wreck in the house.

18 Her comments were and what happened, you
19 liked this just a couple of days ago, what's going on.
20 It wouldn't be the first time -- the last time you had
21 heard this.

22 You heard it from Wyler. You heard it from
23 Downing. You heard it from Lalich. These types of
24 exercises are manipulative. They try to create the
25 huge emotional peak. And there's going to be a crash

1 after.

2 Now after he got back from that JIM weekend
3 Chaim started seeing Alan Downing. And he saw him over
4 -- for a period over a year. It wasn't just a couple
5 of weeks. Yeah, there was some time off here and
6 there. But I think it was a total of 75 weeks that he
7 was attending sessions with Alan Downing.

8 You recall the last session, the last
9 individual session. That's the session here in Jersey
10 City where Chaim took all his clothes off in that same
11 room where Benji was, in front of that same mirror.
12 Chaim took all of his clothes off.

13 He told you that he was uncomfortable, but
14 that he was challenged to do it. Because that was the
15 work he needed to do in order to get the benefit. If
16 he wanted to become straight, you have to put in the
17 work. The guy who's in charge is telling you to put in
18 the work. He's inviting you to do it. Chaim did it.

19 Chaim is standing there in front of the
20 mirror naked. His testimony was that Alan Downing said
21 feel your masculinity, touch your masculinity. Chaim's
22 testimony was he then touched his penis.

23 Alan Downing didn't deny when he was on the
24 stand that he told Chaim to touch his body. Remember?
25 He was sitting and he was going like this. I want

1 people in those nudity exercises to feel themselves, to
2 feel their manhood.

3 When you're watching the video of Jonathan
4 Hoffman he said the exact same thing. He got naked in
5 that same room with Alan Downing. He used the exact
6 same words that Chaim used. Alan told me to feel my
7 masculinity. What did you do, Mr. Hoffman? I touched
8 my penis. It's the exact same testimony from Jonathan
9 Hoffman, one of their success witnesses, who also
10 testified I don't describe myself as a success witness.
11 I don't think of myself that way.

12 The fact that Mr. Hoffman liked that or
13 enjoyed or claimed to on the video doesn't mean it was
14 good for Chaim Levin. Because remember, Chaim had been
15 sexually abused as a child. And when we asked Mr.
16 Beckstead about that, he didn't like it at all.

17 When we asked Chaim's mother, she didn't like
18 it at all. Bella Levin said yeah, I think Alan Downing
19 sexually abused my son. She got the names mixed up
20 because in the deposition defendant's counsel got the
21 names mixed up. But she knew that the guy that was in
22 that room did something wrong.

23 Mr. LiMandri tells you don't pay any
24 attention to Bella Levin. She's crazy, saying her son
25 was sexually abused.

1 Lee Beckstead, Dr. Lee Beckstead who
2 specializes in sexual abuse, has 12 years of education,
3 a Ph.D from the University of Utah, he said that kind
4 of exercise with a victim of sexual abuse is itself
5 sexual abuse.

6 When Chaim was at the end of his testimony we
7 asked him a few questions. Did any of those processes
8 work. The answer was no. Did it help reduce your same
9 sex attraction? Another code work. No, it did not.
10 Chaim went in gay and left gay.

11 As a matter of fact, he left shortly after
12 that nudity exercise. He went to one more group
13 session and then left. They asked -- we asked Chaim
14 about his attraction to girls, how he had gone on a few
15 dates. And what did he say? I wanted it so bad I was
16 trying to make it work. Were you sexually attracted to
17 those women? No, never, zero.

18 What's Chaim looking for? Chaim spent \$1150
19 of his own money on the JONAH program. He testified
20 that he paid for several sessions with Downing, a guts
21 day at the JONAH offices and two or three JONAH group
22 sessions.

23 Now there's a red herring here. There was a
24 bounced check. There aren't any records of him paying
25 it. There's no evidence Chaim didn't pay. There is

1 evidence that he did pay. He sat on the stand and told
2 you I paid. Chaim Levin did not get what Arthur
3 Goldberg told him that he would get. Chaim Levin wants
4 his money back.

5 We talked briefly about Bella, Bella Levin.
6 Bella also got a sales pitch from Arthur Goldberg.
7 Remember, she was sitting on the stand and she said I
8 was in the car with my husband. We had just gone food
9 shopping. I got the phone call from Goldberg. I
10 listened to what he had to say. Did you talk more or
11 did he talk more? Oh, he talked more, maybe about a
12 half an hour.

13 What did he tell you? He told you that
14 homosexuality was a sickness. That JONAH could make
15 Chaim straight by the time he was 21 through therapy.
16 How did Bella feel when she heard that? She was
17 ecstatic. She said I hung up the phone ecstatic. I
18 said to my husband, this is great, we have to pay
19 whatever it costs to get this treatment for Chaim.

20 Can you imagine that? She knows her son is
21 gay. She knows that her community wants him to be
22 married and have children by the time he's 21. And
23 there's a man on the phone telling her that he can do
24 it. And not just any man. A man who talks her
25 language, who's cut from the same cloth. A man who

1 knows how to speak the Orthodox Jewish community
2 language. Bella Levin paid \$4000 towards Chaim's
3 therapy and these weekends. Bella Levin wants her
4 money back.

5 Now you remember Sheldon Bruck? Who can
6 forget Sheldon, right? He was a happy kid. He always
7 knew he was gay. His mother, Jo Bruck, testified she
8 always knew he was gay. But he wanted to fit into his
9 Orthodox community. He lived in Chicago. But again,
10 Orthodox Jewish, he knew that the plan was he was
11 supposed to go to Yeshiva. He was supposed to get
12 married. He was supposed to have children and have a
13 family.

14 Sheldon and his mom both found JONAH
15 separately. Remember his mom said I found JONAH
16 because my husband's name is Jonah. I was googling my
17 husband's name and I found this.

18 Arthur Goldberg called Sheldon. Arthur
19 Goldberg gave Sheldon the sales pitch, the same sales
20 pitch he always gives. He told Sheldon that
21 homosexuality was a psychological disorder, that it
22 could be fixed through therapy.

23 Sheldon wrote down what Arthur Goldberg told
24 him at the time. And you saw that. Remember, Sheldon
25 was writing letters to his mom and dad. He even

1 referred to mom as mommy. And this one says, "After
2 telling mom, she looked online and found an
3 organization called JONAH. JONAH is an organization
4 for gay Jews who are struggling."

5 Sheldon testified that he wrote the next
6 thing down after hearing it from Arthur Goldberg. And
7 remember, this was written down at the time. "They
8 believe that being gay is a psychological disorder and
9 they have helped many ... in caps. "... people
10 overcome this 'disorder'. A psychologist and man who
11 runs this, Arthur Goldberg, told me many reasons that
12 caused this disorder and they all fit me perfectly."

13 That's what Sheldon wrote at the time. He
14 didn't write it down now. He didn't write it down
15 after the lawsuit took place. He wrote this to his mom
16 after he was on the phone call with Arthur Goldberg.

17 He wrote something else about a year later,
18 but again, well before any lawsuit. Where he said,
19 "JONAH claims that homosexuality is psychological and
20 can be fixed through reparative therapy." And he
21 continues on and he says that the child can develop
22 this psychological illness.

23 This is what Arthur Goldberg was saying at
24 the time. This is what our clients have told you on
25 the stand that they heard in the sales pitch. And this

1 is Sheldon's recollection, writing it down at the time,
2 right after he got the sales pitch.

3 So how did Sheldon feel after he talked to
4 Arthur Goldberg? He was really hopeful. He was so
5 excited. I felt JONAH was it. They all felt the same
6 way. And what did Arthur Goldberg recall? Not much,
7 nothing specific. I get too many calls to recall any
8 one with any specificity.

9 Now one of the things that the defendants
10 have been saying about Sheldon is he only put in four
11 sessions or five sessions. How can you expect to
12 actually get anything out of the program if you only go
13 for four or five?

14 Well I say thank God that Sheldon was able to
15 figure this out after five sessions. He thought it was
16 a sham. He didn't think it was working. He had been
17 put on Skype and telephone with a guy who wasn't even
18 Jewish from Tennessee named Thaddeus Heffner who came
19 in.

20 He realized it wasn't going to work and he
21 got out quickly. The fact that he got out quickly
22 actually says volumes about his maturity. But again,
23 he didn't get out before they paid \$500, \$100 for each
24 of those sessions. And again, remember Mr. Heffner has
25 a deal with Mr. Goldberg, gives him 20 percent of

1 everything he gets in terms of referrals. Sheldon
2 didn't pay for that. His mother did. That's why
3 Sheldon is not the plaintiff and why his mother is.

4 You've also heard about a consent form. Mr.
5 LiMandri brought up that consent form this morning.
6 There are no guarantees it says in the consent form.
7 We're not saying there were any guarantees. We're
8 saying there was a sales pitch. And in that sales
9 pitch, which Arthur Goldberg gave to everyone, that
10 same sales pitch, he said certain things that were
11 absolutely incorrect, that he couldn't back up.

12 But when you're thinking about those consent
13 forms don't be fooled. Don't think that they're an
14 answer that helps the defendants get out of this.
15 First of all, there are two types of consent forms and
16 they've only shown you the one that Thaddeus Heffner
17 signed -- oh, wait a second. Thaddeus Heffner didn't
18 sign it.

19 That consent form isn't signed by Thaddeus
20 Heffner. It's only signed by Jo Bruck. It's not
21 signed by Thaddeus Heffner. It's not signed by Arthur
22 Goldberg. It's not signed by Elaine Berk. It's not
23 signed by Alan Downing. It's a consent form that has
24 no counter signatures on it.

25 It's also a form that's entirely different

1 from the forms that Alan Downing used. As Mr. LiMandri
2 showed you a couple of phrases, those phrases, at best,
3 in an unsigned document relate only to Sheldon Bruck.
4 They don't relate at all to Benji Unger. And they
5 don't relate at all to Chaim Levin. And there's no
6 testimony at all that there even was a form for Michael
7 Ferguson.

8 So when you go back in the jury room and
9 you're thinking about the consent forms, think about
10 that. There's a lot more to the story, a lot more.

11 Jo Bruck, she heard the same sales pitch from
12 Arthur Goldberg. She also came away with the same
13 view. I'm being -- I'm having a conversation with
14 somebody who gets me, somebody from my community,
15 somebody who knows who I am and what I need.

16 Jo told you that Goldberg told her that
17 homosexuality wasn't real. It was a glitch that
18 happened to Sheldon when he was a teenager. Goldberg
19 told her, according to her testimony, that JONAH could
20 make Sheldon a heterosexual and that JONAH's methods
21 were accepted in the psychiatric world and that their
22 methods were scientific.

23 When asked why you signed that form even
24 though Thaddeus Heffner never signed it, her response
25 was look, Sheldon desperately wanted it. I needed to

1 sign it. My son desperately needed it. I had no
2 choice. I didn't really read it. Jo Bruck spent \$500
3 on these therapies and she wants her money back.

4 Now let's talk about Michael Ferguson.
5 Michael Ferguson came to JONAH in a different way. He
6 started at a JIM weekend. And at that JIM weekend he
7 met Arthur Goldberg and he met Alan Downing. You'll
8 recall that. But he got the sales pitch. He got the
9 sales pitch sitting in a cabin in the woods next to
10 Arthur Goldberg on the floor.

11 He told you effectively the same things that
12 the other plaintiffs have told you, that Arthur
13 Goldberg said that they have a program that works, you
14 should come, you should use it. Oh, Alan Downing
15 happens to be here as well and he's Mormon.

16 Goldberg doesn't have any recollection of
17 that conversation either. He may have seen Michael at
18 JONAH's offices, but he doesn't remember seeing him at
19 the JIM weekend.

20 Michael Ferguson was gay. Michael Ferguson
21 is still gay. He came to JIM gay and he left gay. The
22 defendants have been trying to mince words about
23 Michael Ferguson. Well he was trying to deal with
24 masculine issues. Yes, he was trying to deal with
25 masculine issues. And you know what those masculine

1 issues were? I like men. Those were the masculine
2 issues, right? He was using some of the code words
3 that he had learned at the JIM weekend when he filled
4 out the form. But that's exactly what was going on.

5 And Michael told you that notwithstanding the
6 fact that there were women he was trying to find a way
7 to find attractive, it never worked. He was never
8 sexually attracted to women. You remember that Alan
9 Downing talked to Michael about his mother wounds, his
10 mother issues. You remember that Alan Downing invited
11 Michael to take his clothes off in that same room in
12 Jersey City just two miles from here.

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

21 Michael was one of the persons that Jonathan
22 Hoffman acted out with. And Michael was one of the per
23 -- was the person who got Jonathan Hoffman in trouble
24 at the Journey Into Manhood weekends. Remember those
25 healthy touch guidelines, the ones that say this is not

1 supposed to be erotic? Well -- and this is
2 instructions that go to the staff at the JIM weekends.
3 Well Jonathan Hoffman was a member of the staff at the
4 JIM weekend.

5 So when Michael met Goldberg and Downing, he
6 also met Hoffman. What a trifecta for the weekend.
7 And what happened with that weekend is that afterwards
8 Michael and Jonathan Hoffman hooked up. And you heard
9 testimony that it was effectively admitted by Jonathan
10 Hoffman that they shared the same bed. They shared the
11 same shower. They engaged in oral sex. They engaged
12 in mutual masturbation. They had a sexual
13 relationship. And it wasn't just a one off sexual
14 relationship.

15 Remember that sexual relationship? That's
16 the one that got Jonathan Hoffman put on probation by
17 Rich Wyler, by the creator of People Can Change. That
18 was the sexual relationship -- and remember, Hoffman
19 testified to several, to Josh Chadwick I believe as
20 well that he testified about. But he testified to
21 several of these sexual relationships. That's what got
22 him in trouble. He had to go on probation and he
23 couldn't staff JIM weekends for some period of time.

24 But you also heard that Mr. Wyler was able to
25 come to some sort of conclusion that he's over that and

1 that now Mr. Wyler (sic) is a life coach on his own in
2 Israel. And People Can Change recommends him. --

3 MR. LI MANDRI: Mr. Hoffman you mean.

4 MR. BROMLEY: I'm sorry, Hoffman, correct.
5 Recommends Hoffman in Israel. You just have to go to
6 the website and click through and there's Jonathan
7 Hoffman.

8 Michael Ferguson paid Alan Downing over \$1000
9 for his treatment, for the sessions that took place
10 here in Jersey City. 20 percent of all that went to
11 JONAH. Michael Ferguson wants his money back.

12 Now let's talk about the defendants. Arthur
13 Goldberg, now you saw that he describes himself as a
14 born salesman, that he had a long career on Wall Street
15 and that he was well-known for being able to take
16 complex issues and make them easy for people to
17 understand. That's what he testified on the stand.

18 You heard that he created the JONAH Institute
19 for Gender Affirmation, but that there really wasn't
20 anything behind that. It was a label. A label used to
21 attract non-Jews and to make JONAH sound more
22 scientific.

23 Now aside from the testimony where we have
24 our plaintiffs saying this is what Arthur Goldberg said
25 and Arthur Goldberg on the stand saying I don't

1 remember anything, there are some documents. There's a
2 bunch of documents, but I'd like to point you to a few.

3 Let's take the first one. This is exhibit P-
4 253. This is an e-mail which Arthur Goldberg says, "So
5 the first part of your statement may be correct.
6 Homosexuality is an illness, although to phrase it more
7 politically correct, we prefer saying it is an
8 emotional adaptation typically to emotional pain
9 experienced in early childhood."

10 In P-245, which is another e-mail, it talks
11 about success rates. "Substantial means somewhere
12 between 65 and 75 percent of the men who go through our
13 program successfully heal. What healing looks like is
14 either a total elimination of homosexual fantasies,
15 arousals, identity and behavior or a significant
16 diminishment of same."

17 These are things that Arthur Goldberg wrote.
18 They're entirely consistent with what our plaintiffs
19 have said Arthur Goldberg said. When you look at the
20 second one, the success rates, indeed Mr. LiMandri
21 doesn't deny that Arthur Goldberg said things like
22 that. That he also said one-third, one-third, one-
23 third.

24 But you recall when Mr. Goldberg was in the
25 witness stand he also said that JONAH keeps no records,

1 no records whatsoever. If you were giving out numbers
2 like this you might think well if we had 100 clients
3 and I went into the records and I said okay, 65 of
4 those 100 said yes or I have proof that they did it.
5 There are no records. JONAH has none. They never kept
6 them.

7 They say they don't need to keep them or why
8 would we keep them? We're just a referral service. As
9 a matter of fact we're not even allowed to know what
10 the success rates are. Well then you're not allowed to
11 say it. You can't have it both ways. You can't say I
12 don't keep any records and I'm not allowed to keep any
13 records and then go out and tell people that I have
14 statistics. You can't do it. You can't have it both
15 ways.

16 But the fact is, is that we also have, and
17 I'll show you in a minute, e-mails from Elaine Berk
18 saying you know what, we're not just a referral
19 service. We actually provide counseling. We have on-
20 staff counselors. Again, you can't have it both ways.
21 Either you have the records and you do the stuff and
22 you put the numbers out there for people to see or you
23 don't. Remember, if you're going to say it, it has to
24 be true.

25 Now let's go to the next one. And this is an

1 e-mail to Chaim. It's again relating to statistics.
2 Chaim had said something like 85 percent and Arthur
3 says, "No, no, that's not 85 percent. That's not a
4 number I've ever used. 70 to 75 percent who both
5 starting and complete out program is what I have said
6 concerning a healing figure. And this is realistic."

7 There's also not a bit of evidence that
8 supports that, other than the fact he said it. And he
9 said it to one of our clients.

10 You heard a lot about religion. JONAH may
11 have been founded by people who are Jewish, but it
12 never has been advertising itself as providing therapy
13 to solve a Jewish problem.

14 This is an e-mail on the Listserv where
15 Arthur Goldberg is correcting Elaine Berk. "As Elaine
16 said in her e-mail, we have many resources to offer
17 your son that have nothing to do with religion. JONAH
18 offers coaching, therapy, which is psychologically
19 based and not based on religious concepts."

20 This is an e-mail to a person who's looking
21 for help from JONAH, who wants to buy services from
22 JONAH. And what is Arthur Goldberg saying? Arthur
23 Goldberg is saying we have resources that have nothing
24 to do with religion, we offer coaching and therapy that
25 is psychologically based and not based on religious

1 concepts.

2 You know, you're not allowed to sell
3 something and tell lies and say well it's about
4 religion and get away with it. You're not allowed to
5 sell a chicken and call it a kosher chicken unless it's
6 a kosher chicken. You're not allowed to sell holy
7 water at St. Patrick's Cathedral if it's not holy
8 water.

9 Arthur Goldberg has told clients that the
10 JONAH program has a scientific basis. He's also said
11 that a purely religious approach to same sex attraction
12 would not be effective. That's because the JONAH
13 program is based on psychological techniques.

14 Now before I move on, we have to mention that
15 Arthur Goldberg was convicted of a crime. Mr. LiMandri
16 told you about it. And he was absolutely right. That
17 you can't take into account in determining whether he
18 committed consumer fraud. But you can take that into
19 account when determining whether Arthur Goldberg is
20 telling the truth.

21 Arthur Goldberg was convicted of fraud and a
22 conspiracy to defraud the United States government 25
23 years ago. He spent time in prison. And a few years
24 ago he sought to get counseling certificates from an
25 organization, and he obtained those certificates in

1 2009. He filled out applications to get them. They
2 were taken away from in 2011. Mr. LiMandri talked to
3 you about this.

4 The applications required you to certify he
5 had never been convicted of a felony. And he didn't
6 certify that he had never been convicted -- that he had
7 been convicted of a felony. He said he hadn't. Mr.
8 Goldberg now says conveniently that that was just a
9 misunderstanding.

10 But you also saw that Mr. Goldberg tried to
11 tell that organization that it was a misunderstanding,
12 I read the form incorrectly, sorry about that. And the
13 organization said no dice, no certificate period. That
14 happened in 2011.

15 Arthur Goldberg is also economically
16 important to a lot of the people that you heard testify
17 in the defendants' case. And you should take that into
18 account when you're judging the credibility of those
19 witnesses.

20 Alan Downing testified that virtually all his
21 business relating to same sex attraction, and there's
22 no evidence that he has any business other than that,
23 comes from Arthur Goldberg.

24 Rich Wyler was on the stand and testified
25 that People Can Change gets lots of clients from JONAH.

1 And that he makes money every time JONAH sends someone
2 to a People Can Change weekend, whether it's JIM or
3 Journey Beyond or something else. And we know Mr.
4 Wyler gets a salary from People Can Change. And Mr.
5 Wyler is the lead referral life coach on the People Can
6 Change website. There are two others that are there.
7 Arthur Gold -- there's a whole bunch. But Arthur
8 Goldberg is there as a counselor even though he's not
9 one. So is Mr. Downing.

10 You heard that Jonathan Hoffman kicks back 20
11 percent of what he makes on referrals relating to PCC.
12 And you heard that Thaddeus Heffner kicks back 25
13 percent of anything he gets for a client related to
14 JONAH.

15 They're all in business together. They all
16 make money off of each other. And you need to take
17 that into account when you're deciding who is telling
18 the truth.

19 Now let's talk about Alan Downing. Is Alan
20 Downing a gentle giant or is he a freight train?
21 You've heard him described as both. We do know that
22 Alan Downing has no medical training. He has no
23 licenses of any kind. We know that his counseling is
24 not religious. We know the great majority of Downing's
25 clients come from JONAH. And that he maintains an

1 office here at JONAH's building in Jersey City.

2 We also heard yesterday when Mr. Wyler was
3 testimo -- testifying about a board meeting that took
4 place in 2006 for People Can Change. Mr. Wyler said
5 this was a performance review relating to Mr. Downing.

6 Now remember, this board meeting took place
7 in December of 2006. Mr. Wyler said oh, well, you
8 know, he's gotten much better. He's been able to
9 really pull it together. That was one of our leaders.

10 But remember when all this happened Benji
11 Unger and Chaim Levin first met Alan Downing in April
12 of 2007, less than six months after People Can Change
13 wrote these very words. In December of 2006 People Can
14 Change thought Alan Downing was codependent. That he
15 was actually feeding off of the problems of the people
16 that he was supposed to be helping.

17 People Can Change said that he was a freight
18 train, that he gets anxious, loud and tense, that he's
19 not a healthy warrior, that he's a tired warrior based
20 on anxiety. That he gets someplace where he doesn't
21 listen. And that People Can Change don't trust him to
22 lead without a strong mentor. This is less than six
23 months before he's sitting in a room here in Jersey
24 City as an unlicensed life coach treating Benji Unger
25 and Chaim Levin. But words that aren't on that

1 performance review are gentle giant.

2 Now you recall that when Mr. Downing was
3 testified he invite -- he said that he invited all
4 three male plaintiffs except for -- Sheldon's not a
5 plaintiff, but he didn't treat Sheldon. As well as Mr.
6 Hoffman to remove their clothes in front of him during
7 the individual coaching sessions. He didn't walk away
8 from that. He didn't deny that that happened. He said
9 it's a good thing, nudity is good. There's a lot of
10 benefit you can get out of that.

11 There were also things he talked about. He
12 said he was the co-creator of Journey Beyond. Now when
13 Mr. Downing was on the stand we hadn't heard yet from
14 Mr. Hoffman. So what does it mean to be the co-creator
15 of Journey Beyond? Remember Mr. Hoffman's testimony?
16 Remember he talked about how, how many people went to
17 Journey Beyond -- actually it was Mr. Downing who said
18 how many people went to Journey Beyond. 20 or 30
19 participants and 70 or 80 staff members. That's over
20 100 people are at a Journey Beyond weekend. Almost two
21 to one or more than two to one staff versus
22 participants.

23 Mr. Hoffman said there's a session on the
24 second day everyone, all the staff, all the
25 participants, all get naked, right? They all go out

1 and they dance around, playing music for an hour. Mr.
2 Hoffman described it as boyish energy, fun stuff. I'm
3 sorry, but it's pretty strange, right?

4 And what happened after an hour's worth of
5 nude dancing out in a field on the Journey Beyond
6 weekend, well then you hit the showers. And what did
7 Mr. Hoffman say? Well you spend time, you know,
8 washing mud off of each other and cake. Cake? You're
9 in a communal shower with 100 men and you're washing
10 mud and cake off of each other?

11 The next day there's another nude session
12 where you're processing the issues relating to puberty.
13 And again, there's 100 people all naked, all looking at
14 each other. Co-created by Alan Downing.

15 Mr. Wyler was here yesterday. He came after
16 Mr. Hoffman. Mr. Wyler is the guy who owns Journey
17 Beyond. Did he sit there and tell you that anything
18 that Jonathan Hoffman told you about Journey Beyond was
19 incorrect? He did not. He didn't sit there and we
20 don't do the nude happy dance for an hour. We don't
21 have showers where we wash cake and mud off of each
22 other. We don't sit around in a big circle for another
23 hour then next day and look at each other naked. He
24 didn't say that didn't happen.

25 Indeed, he said no, I've been there, a lot of

1 naked stuff goes on. Yeah, I've seen these people nude
2 and they've seen me nude.

3 Downing told you that he's been to JIM
4 weekends as a staffer 40 or 50 times. He told Benji
5 that -- some things about erections. Benji, remember,
6 is gay. And he was concerned because when he sees men
7 he feels groinal (sic) sensations. Another term we've
8 never heard before. And what did Mr. Downing say?
9 Well don't worry about it. We all feel it. It's kind
10 of like what you feel when you have your nephew in your
11 lap. Mr. Downing really didn't deny that when he was
12 on the stand.

13 Mr. Downing created Journey Beyond, co-
14 creator. Mr. Hoffman told us that he starred as the
15 wild father in the Journey Beyond exercises. You
16 should take that all into account when you're sitting
17 and thinking about what should and shouldn't have been
18 done in the JONAH program and who should and shouldn't
19 have been doing it. And whether or not those elements
20 of the JONAH program shock the conscience.

21 Let's talk about Elaine Berk. Elaine Berk
22 describes herself as the power behind the throne. When
23 she speaks, she speaks for JONAH. There are two co-
24 directors of JONAH. JONAH is a corporate entity, a not
25 for profit as Mr. LiMandri has said. But there's only

1 two people that are JONAH, and that's Elaine Berk and
2 Arthur Goldberg. When either of them speaks, JONAH is
3 speaking. And JONAH is a defendant.

4 So let's take a look at some of the things
5 that we saw from Elaine Berk during her testimony.
6 Just bring the first one down. In plaintiffs' 09,
7 "Homosexuality is not natural, normal and good. It is
8 the same sex attraction disorder similar to alcoholism,
9 drug addiction and obesity. We don't call these
10 disorders normal, natural and good."

11 Mr. LiMandri was talking to you earlier about
12 mental diseases. He kind of stopped there. He kept
13 talking about disease, mental disease. The accusations
14 that we've made is that they've described it as a
15 mental disease, disorder or equivalent thereof.

16 Here's Elaine Berk on the Listserv calling it
17 a disorder. But she compares it to drug addiction and
18 alcoholism. And you heard Mr. LiMandri talk about that
19 a lot. It's just like drug addiction. It's just like
20 alcoholism.

21 But you'll remember Dr. Bernstein, right, the
22 former head of the American Psychiatric Association.
23 You remember the DSM, which is the bible of
24 psychiatrists and psychologists. And every
25 psychiatrist and psychologist is going to have a copy

1 of this book on their desk or loaded onto their
2 computer, because it lists all of the mental disorders
3 and diseases that have been diagnosed by the American
4 Psychiatric Association. And you know what's in this
5 book? Alcoholism and drug addiction. They're both
6 designated as mental diseases by the DSM.

7 You can't walk away from the fact that you're
8 using the word "disorder". And you can't walk away
9 from the fact that you're comparing it to two other
10 mental diseases or disorders. It's a, it's a package.
11 You can't sit there and say well wait a second.
12 Homosexuality, it's not a disease. It's like
13 alcoholism. Well the DSM says alcoholism is a disease.
14 You can't have it both ways.

15 Let's look at the next one. So remember this
16 bit on the Listserv where Ms. Berk said, "You begin to
17 build up new neural pathways that help you reach your
18 goal of growing out of SSA."

19 Remember when we asked her about that? And
20 Ms. Berk said she has no idea what a neural pathway is.
21 Well of course she doesn't. She's not a doctor, she's
22 not a psychiatrist. And, you know, when she writing
23 this out to everyone on the Listserv, there's nothing
24 that's saying don't pay any attention to what I'm
25 saying about neural pathways because I don't even know

1 what they are because I'm not qualified to talk about
2 them, right? That's not there. It just tells you
3 about neural pathways. There's no disclaimer that says
4 I don't know what I'm talking about and I'm not
5 qualified to talk about.

6 Let's go to the next one. If you could
7 narrow it down this way. Actually bring it
8 (Indiscernible) a little bit. "So are we able to
9 successfully alleviate that homosexual behavior,
10 identity, fantasies through the gender affirming
11 process?" Squeeze it down a little bit. It says, "are
12 able to successfully alleviate".

13 Here's, here's Elaine Berk on the Listserv
14 saying we are able to successfully alleviate these
15 things. This is one of our misrepresentations. Are
16 they saying they can do it? Here's Elaine Berk on the
17 Listserv saying that I can do it and we do, do it.

18 Remember earlier I said about whether or not
19 they actually, in terms of keeping records? And the
20 argument is well we're not -- we're a referral,
21 Counsel. We refer people out, so we don't have
22 records. Well here's Elaine Berk saying we started as
23 a referral service, but we're now a comprehensive
24 program offering individual and group therapy. Again,
25 what are you?

1 I mean, when you don't want to keep records,
2 you say I can't keep records because I'm a referral
3 service. But when you're trying to get people to buy
4 your services you say I'm not just a referral service;
5 I'm a comprehensive program. It just doesn't add up.
6 You can't have it both ways.

7 This next one is Elaine Berk as well, talking
8 about success rates. "The success rates of programs
9 like JONAH's are fully double the success rate of
10 faith-based programs." Okay. This says a couple of
11 things. We're not a faith-based program. And our
12 success rates are double those programs. "We encourage
13 clients to be involved in both religious and secular
14 aspects. But the Christian programs that only have a
15 faith component show about one-third of the clients
16 have substantially improved. Ours show two-thirds."

17 She's giving out statistics. And again,
18 there's not a bit of evidence in the record that they
19 had any records to back up those statistics. "And once
20 again, the majority of the work our men do to walk away
21 from homosexuality is not based on religion, but
22 rather, on men's work and psychology."

23 I have no doubt that Elaine Berk and Arthur
24 Goldberg are devout Jews. That's not what they're
25 selling.

1 I'd like to show you one document. And this
2 is D-331, that Mr. LiMandri showed you. He showed you
3 an awful lot of documents, but this is an example. Mr.
4 LiMandri read you this sentence. "SSA is not a
5 disease, so there is no cure." And that's all he
6 showed you on this document, D-331. He didn't read you
7 the next sentence, which is, "That's why we call SSA a
8 disorder or a syndrome or whatever."

9 Virtually every document that Mr. LiMandri
10 showed you has something like that in it, where he
11 highlighted one thing, and if you've read another line
12 further on you'd see it described in a manner that is
13 consistent with what we said.

14 Another example of that is this JONAH psycho-
15 educational model for healing. You've seen this,
16 right? This is on the website today. You can pull it
17 down off of the JONAH website today. Mr. LiMandri read
18 you some stuff from the beginning. I'm going to read
19 you something from the back.

20 "There is no magic bullet for healing, even
21 though it is frequently wished for by those suffering
22 from a same sex attraction disorder. And while
23 individual psychotherapy is critical to help
24 individuals heal from the same sex attraction disorder
25 ... and so on. Today on the JONAH website they still

1 call it a disorder.

2 Now let's talk about our experts. You heard
3 from Carol Bernstein. Carol is the APA person.
4 There's her bio. Former president of the American
5 Psychiatric Association, participated in the creation
6 of the DSM-V. What did she tell you?

7 Well she started out by telling you that when
8 she graduated from medical school she took the
9 hippocratic oath, which includes the phrase, "do no
10 harm", which I think we've all heard.

11 She also talked to you about the code of
12 ethics, the American Psychiatric Association's code of
13 ethics. Mr. LiMandri mentioned in that big code of
14 ethics there's not going to be anything that says that
15 what the defendants are doing is wrong. And that
16 itself is wrong.

17 The code of ethics has a FAQ, a set of
18 frequently asked questions, where people can send in
19 something that says is this okay. I'm thinking about
20 doing this, do you think it's all right.

21 We read to you from the stand, that included
22 something which said what do you think about conversion
23 or reparative therapy. And the ethics committee wrote
24 back and said it's harmful, don't do it if it's
25 something that says that homosexuality is based on a

1 disease or disorder. That's what the APA says. You
2 can go onto their website and find it. It's there
3 today. That's what Dr. Bernstein told you.

4 She also told you that homosexuality is
5 normal. There may not be a lot of people that are
6 homosexual, but those that are, are normal. And anyone
7 who's bisexual are normal too. It's not that you're
8 broken. It's not that it's a disease or disorder.

9 The DSM doesn't say it is.

10 She also talked to you a little bit about
11 what it took to become a therapist and what the
12 therapists do. She told you that you can't teach
13 yourself to become a therapist. Self-study is not the
14 way to do it. You're not able to go online and
15 download things and read and all of a sudden become an
16 expert who's qualified to start tinkering with people's
17 brains, right?

18 She also said that no technique is more
19 effective becomes -- because it comes as a surprise to
20 the patient. And that if a patient happens to like a
21 particular treatment, that doesn't mean it's any good.

22 She said that anger transference, beating a
23 pillow with a tennis racket, healthy holding, nudity,
24 guts work, none of them are appropriate therapeutic
25 techniques. All of them can harm patients. And all of

1 them would be grounds for expulsion from medical
2 school. She also told you that legitimate options
3 exist for people who want to alleviate the distress
4 they feel from being attracted to the same sex.

5 Now let's talk about Dr. Janja Lalich. She
6 wrote this book, Crazy Therapies. She testified about
7 coercion. You've heard the word "cults" when
8 describing her. But she talked about the hallmark
9 factors of coercive groups that are dangerous to their
10 members.

11 Why did we have her as an expert witness?
12 Well because you have a lot of people who have said
13 they like this stuff or at least they said it for a
14 moment. Why do people have this enormous high and then
15 have this immediate crash? Why do people keep coming
16 back if it seems so bad?

17 Well she went through the coercive influences
18 used in the JONAH program, starting out vulnerable
19 members. Remember our plaintiffs? Young guys, members
20 of very Orthodox communities, including Michael
21 Ferguson, a devout Mormon. The idea of this powerful
22 leader, like an Arthur Goldberg or an Alan Downing, who
23 are saying the only -- we have the sole solution.

24 Now you've heard well people don't have to
25 come here. They can go off. They can go do something

1 else. But you've also heard secrecy, confidentiality.
2 We're not going to tell you what's going on. You're
3 going to love it when you get there. That's the
4 weekend in the woods.

5 Now here's the peer pressure. Imagine you're
6 off in the woods. You're out in the woods in Virginia
7 or Pennsylvania someplace. You've driven to the end of
8 a dirt road. You come to a parking lot. You're in a
9 car with three or four people you've never met before.
10 One of those people in that car is charged with taking
11 your cell phone away from you and turning it off and
12 locking it in the glove compartment of that car.

13 And then you get up and you walk away. And
14 you walk into the woods. You walk up a path and you
15 come to a guy in a black hood with a staff in his hand,
16 wearing mirrored sunglasses who says, "What is a man?"
17 And he doesn't just say it like hey, what's a man. He
18 bangs the staff on the ground and he barks it at you,
19 what is a man. And then you're supposed to respond.
20 You're not allowed to talk to anybody else.

21 And then you're herded to the next guy. He
22 asks you the same question. You go to the next guy.
23 He asks you again. Then you're led into the cabin and
24 you're not allowed to talk to anybody.

25 The JIM script, remember that? Who would

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

7 And who doesn't know this, anything about
8 this? The participants. They don't have a cell phone.
9 They don't have a watch. That's also been locked in
10 the glove compartment. And they don't know what's
11 going to happen next. And you know, you know who said
12 that's good? Alan Downing says it's good. Rich Wyler
13 says it's good. Jonathan Hoffman says it's good.
14 Surprise is good.

15 This document tells you that what you're
16 going to do is we're going to have a session where
17 you're going to beat something. It's called anger
18 transference. We're going to have that immediately
19 followed by healthy holding. Nobody knows the healthy
20 holding is coming up except the people that are going
21 to be doing the holding, right? The people who are
22 there as the participants have no idea what's coming
23 next. And that's good.

24 That's exactly what Dr. Lalich said. You do
25 something like this, you take people and you isolate

1 them, you put them into this situation -- they
2 desperately want to be straight. They're being told if
3 you do this you will become straight. These high
4 arousal techniques, the constant communication, every
5 single minute scripted, that's why we have Dr. Lalich
6 here, to try to explain this.

7 She said that the intent of the JIM weekend
8 is to soften up people and to open them up to make them
9 vulnerable to points of views and processes that
10 they're going to have to go through. That the JONAH
11 program is structured around the illusion of choice,
12 even though you're not told what you need to do to
13 participate.

14 She told you there's no scientific basis to
15 believe that catharsis holding or nudity has any
16 benefit. She also told you that the entire weekend is
17 homoerotic. Now you had a lot of people saying it's
18 not homoerotic. I'm not sure what homoerotic means
19 after this past few weeks. But it certainly seems to
20 me that this might fit the definition.

21 And remember when we had Mr. Wyler up on the
22 stand and we asked him about an article that was
23 written by a man who had infiltrated, having nothing to
24 do with this lawsuit. And he wrote entirely about the
25 homoeroticism. That Mr. Wyler tried to stop that from

1 being published, that he was unsuccessful in stopping
2 it, and that he hasn't sue for libel.

3 Now let's talk a little about Dr. Beckstead.
4 The phrase that strikes me when I think of Dr.
5 Beckstead is the phrase, "you found us out, but in a
6 nice way". Dr. Beckstead, according to Mr. LiMandri,
7 did this survey when he was doing his Ph.D program and
8 that proved that people actually liked going through
9 conversion therapy, that there's a success rate of 50
10 percent.

11 But that's not the entire story. Dr.
12 Beckstead knew before he even started the survey, as he
13 testified, that 50 percent of the people said they
14 liked it. He wanted to figure out what that meant. He
15 found out, as he testified, is that no one changed
16 their sexual attraction. They may have been able to
17 successfully change their identity or their behavior,
18 but not their attraction. And that's important.

19 When you're sitting here talking about what
20 Arthur Goldberg and Alan Downing promised our clients
21 -- it wasn't that, you know what, come to JONAH, go
22 through the JONAH program, and you can have a lifetime
23 like Jeff Bennion. You can have a lifetime where
24 you're primarily attracted to men, that you spend an
25 awful lot of time cuddling with those men and going to

1 weekends in the woods with those mean, and spending
2 time nude with those men, creating the broth --
3 International Brotherhood of Electrical Workers, where
4 there's a lot of nudity. And being able to manage to
5 be married and manage to have a wife and a child.
6 That's not what Arthur Goldberg was saying.

7 So when Dr. Beckstead was testifying, right,
8 he focused on those three boxes: attraction, identity
9 and behavior. And yeah, he deals with a lot of devout
10 Mormons who are attracted -- men who are attracted to
11 men, who are married to women and have children. And
12 he helps them learn to live with that. He doesn't tell
13 them you can change from being attracted to men. He
14 helps them learn to live with it.

15 So when we talk about gay affirming therapy,
16 what you heard from the defendants is gay affirming
17 therapy is like go be a gay activist, dress yourself up
18 in drag and get out in a parade. You're going to enjoy
19 it. That's not gay affirming therapy. That's not.
20 Gay affirming therapy is recognizing you're gay and
21 recognizing that that provides a lot of issues for
22 people, particularly when they're in devout, religious
23 environments.

24 Does sometimes that mean that somebody says
25 you know what, I'm going to have to end up leaving that

1 relationship? Sometimes. Dr. Beckstead has 30 to 40
2 percent of his clientele who have made the other
3 decision. And he helps them live with it. Dr.
4 Beckstead is the example of the right way to do this.
5 He's not the example of the wrong way.

6 Dr. Beckstead also talked about something
7 that we need to focus on, which is there's a difference
8 between homosexuality and unhealthy sexuality. And
9 we've had some really odd examples of unhealthy
10 sexuality in this case.

11 Remember Mr. DiJiacomo? He had 1000 sexual
12 partners. He testified by video. Mr. Schwab, he said
13 he had 1000 too. Their sexual partners were men. But
14 that doesn't mean that homosexuality equals unhealthy
15 sexuality. We could have had a man on the stand saying
16 I'm heterosexual and married and I've had sex with 1000
17 women in the past ten years. It would still be
18 unhealthy.

19 What the defendants keep mixing up is that
20 homosexuality doesn't mean unhealthy sexuality. Dr.
21 Bernstein has told us it's normal. And the fact that
22 Mr. DiJiacomo is no longer out prowling is great. But
23 remember, Mr. DiJiacomo testified that the reason he
24 stopped was that he had a religious conversion. He was
25 at the Cathedral of the Immaculate Conception. And he

1 touched the foot of a statue of St. Joseph on Holy
2 Thursday. He was saying seven rosaries in seven
3 churches. And he touched the foot and he said I'm
4 never going to do it again. And he went back and he
5 took everything, all of his pornography and put it in a
6 black bag and put it out on the curb.

7 That has nothing to do with anything that the
8 defendants are selling. If St. Joseph spoke to Mr.
9 DiJiacomo and got him to stop doing it, fantastic. But
10 don't take credit for it. And remember, there's a
11 difference between unhealthy sexuality and
12 homosexuality.

13 Mr. LiMandri talked a lot about this Spitzer
14 study. One thing to remember about the Spitzer study,
15 Dr. Beckstead said I looked at it, I looked at the
16 back-up and it was lousy. The only reason he cited it
17 was to cite it to say that it doesn't mean what people
18 think it means.

19 So I'd like to talk a little bit now, as I'm
20 getting near the end, about the defendant's case. This
21 is not a case about conspiracy theories. This is not a
22 case about the Jewish Queer Youth. This is a case
23 about the sales pitch of Arthur Goldberg and Alan
24 Downing and Elaine Berk.

25 You need to use your common sense. You need

1 to get real. You know that straight guys don't hang
2 out with other straight guys naked in order to make
3 themselves feel more straight. You know that straight
4 guys are not going to decrease their attraction to
5 women by hanging out with nude women. It just doesn't
6 make any sense. And that is what this entire program
7 is based on.

8 Our plaintiffs did not want to become the
9 sort of straight guy that Jonathan Hoffman claims he
10 is, a person who sleeps around, showers, cuddles,
11 sleeps and acts out with their male friends. I don't
12 think anyone would that's the definition of a straight
13 man.

14 You have to use your common sense. Just
15 think about all the words that we've heard, the
16 language that doesn't make any sense. You feel a
17 charge. Is that a sexual attraction? It is to some
18 people. It's not to other people. It is, it is a
19 sexual attraction, SSA. We're not going to say gay.
20 We're going to say same sex attraction, because gay
21 means one thing. That being attracted to a man if
22 you're a man means something else.

23 Challenge, we're going to challenge you to do
24 things. Remember Mr. Downing? He challenges people.
25 But he uses his intuition to decide when to continue to

1 press that challenge.

2 Acting out, slipping up is having sex with
3 other men. We're going to process that. Mr. Hoffman
4 said, you know, in that Journey Beyond weekend thing,
5 if everybody is nude in a circle and someone gets an
6 erection, we take them outside and we process it. We
7 didn't hear what that means.

8 Healthy touch, grown men are going to hold
9 each other and they're going to hold each other for a
10 half an hour. They're going to listen to soft music.
11 And that's going to make them less gay. That healthy
12 touch doesn't just happen at JIM weekends. You heard
13 that healthy touch happens in basements in Utah with
14 Mr. Bennion and Mr. Dahlgren. It happens today. It
15 continues to happen.

16 You heard about guts work. Remember that
17 list? Duct tape, handcuffs, a bucket to vomit into, a
18 sheet to wrap you up in. A baseball bat, golden father
19 energy.

20 The defendants have said it's not a big deal.
21 You know what, sometimes it sounds a little weird, but
22 it works. I think that's one of the things you have to
23 ask yourselves, ladies and gentlemen. We had these
24 success story witnesses appear in court. We had them
25 up on the video screen. Nothing that any of them

1 represented is what was sold to our clients. Not a
2 single one of them is straight in the way that any of
3 us would define straight to be. And not a single one
4 of them is neutral.

5 Mr. LiMandri said I brought neutral
6 witnesses. These are guys who just want to help out.
7 They weren't paid to be here. He also said there was a
8 selection process and we had 100 or something of them.
9 Those success story witnesses, ladies and gentlemen,
10 are the best they could do. Those are the success
11 stories that made it through the process, to come here
12 to tell you that they're a success.

13 Ladies and gentlemen, as you go into the jury
14 room to deliberate I want to leave you with one final
15 thought. Please remember what Dr. Bernstein said about
16 the tools of the mental health professional. She said
17 that the tools -- the words of a mental health
18 professional are like a scalpel in the hands of a
19 surgeon. You would never want to go under the knife of
20 an amateur surgeon. And you would never want to have
21 to face the words of an amateur mental health
22 professional. And that's what the defendants are,
23 amateurs.

24 Too many years out of an office here in
25 Jersey City, less than two miles from this courthouse,

1 Goldberg, Berk and Downing had been operating with
2 scalpels on the minds of young gay men from around the
3 world. They've been operating without licenses.
4 They've been operating without training. And they have
5 been operating without science to back-up any of their
6 crackpot theories. They lied and that is wrong.

7 Goldberg, Berk and Downing lied to my
8 clients. They lied when they said that there's no such
9 as homosexuality and that instead it is equivalent to a
10 mental disease or disorder. They lied when they told
11 my clients that JONAH had specific success rates when
12 in fact they had zero records showing success.

13 They lied when they told my clients that they
14 could be cured within two to five years. They lied
15 when they told my clients that the JONAH is based on
16 science. They lied when they told my clients that the
17 JONAH program effectively treats homosexuality. And
18 they lied when they told my clients that they could
19 change from gay to straight. They lied and that's just
20 wrong.

21 Ladies and gentlemen, the plaintiffs have
22 proven by a preponderance of the evidence that the
23 defendants have violated the New Jersey Consumer Fraud
24 law. Please return a verdict in favor of the
25 plaintiffs on all counts. Thank you very much.

1 Thank you, Your Honor.

2 THE COURT: Thank you, Counsel.

3 All right, ladies and gentlemen. We'll now
4 take our afternoon break. You can leave your pads on
5 the chair. Let's resume at 3:00 when I will do the
6 charge. Then you'll be able to start your
7 deliberations, okay?

8 So until then, please don't talk about the
9 case among yourselves. Please don't talk about the
10 case with anyone else. You've heard some things about
11 you can look it up today. I don't want you to look it
12 up today. I don't want you to do any research. I want
13 you to decide this case on the evidence that has been
14 presented and in accordance with the instructions that
15 I will give you at 3:00, all right? Thank you very
16 much. Enjoy your short break.

17 (Jury leaves the courtroom)

18 THE COURT: Let's just make sure we review
19 the evidence and agree on what goes into the jury room,
20 please?

21 MS. BENSMAN: Your Honor, we have one
22 request. If you could please let the jury know when
23 you explain to them that they'll get to take this
24 binder back with them, that joint exhibit 83 can be a
25 reference if they did write down during testimony that

1 a particular exhibit was used with a particular
2 witness, but they're not able to find it in the binder.
3 For example, with Alan Downing's notes. That we've
4 placed joint exhibit 83 in their for their reference.
5 So that if they want to look back at a document,
6 they'll be able to find it.

7 MR. LI MANDRI: No problem.

8 THE COURT: Joint exhibit 83? Okay.

9 MS. BENSMAN: That's right. And I have
10 another copy for you if you'd like.

11 THE COURT: All right. Okay.

12 MS. BENSMAN: Thank you.

13 THE COURT: Thank you.

14 (Recording paused)

15 THE COURT: All right. We're back on the
16 record in Ferguson versus JONAH. I wanted to review
17 something with counsel. Given the fact that it's a
18 little after 3:00, I intended, unless there's an
19 objection, to let the jury decide whether they want me
20 to charge them now since the charge is probably going
21 to take approximately an hour together with reviewing
22 the verdict sheet. I review the entire verdict sheet
23 with the jurors.

24 So I was going to ask the jurors what their
25 preference was, whether they wanted to be charged today

1 and -- which would really give them a very short time
2 to start their deliberations. Or whether they would
3 prefer starting in the morning with my charge and
4 beginning their deliberations. Does counsel have --

5 MR. DINIELLI: Your Honor, the plaintiffs'
6 preference would be to give them the option. And I
7 think that you had told us that you would give them the
8 option of staying until 6:00 when the courthouse
9 closes. I think they should be given that option.
10 They've been going quite a long time. --

11 THE COURT: Yeah, I mean, I was going to let
12 them --

13 MR. DINIELLI: -- And I think especially if
14 there's any to prevent this going through the weekend,
15 we should give them that option.

16 THE COURT: Yeah, I mean, I was going to let
17 them make the call. But I just want to let them know
18 that the charge is going to be a little over an hour,
19 which means they would have absorbed an awful lot. And
20 I'm just, off the top of my head, thinking I'm not sure
21 how long I would want to deliberate after listening to
22 a whole day. And I would let them make the call.

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

1 to do that as well. I'll let them know that too.

2 MR. DINIELLI: Thank you.

3 THE COURT: Okay?

4 MR. LI MANDRI: Yes, Your Honor, agreed.

5 THE COURT: All right.

6 MR. LI MANDRI: My assumption would be if
7 they get the charge they wouldn't deliberate today. I
8 mean, it will be 4:00. But --

9 THE COURT: Well that's what I mean. They
10 would have very little time to deliberate. And this --

11 MR. LI MANDRI: But --

12 THE COURT: -- isn't the type of case that,
13 you know, could have a -- well I don't want to speak
14 for them. I don't envision this as the type of case,
15 given the verdict sheet that we're going to give them,
16 that it's going to be short deliberations.

17 MR. LI MANDRI: No, but there's no reason why
18 if they want the charge, you can do that. --

19 THE COURT: No, if they want --

20 MR. LI MANDRI: -- And they can deliberate
21 tomorrow.

22 THE COURT: -- I'm going, I'm going to give
23 them the choice. --

24 MR. LI MANDRI: Okay.

25 THE COURT: -- I'm just asking you if either

1 side has an objection to me giving them the choice.

2 MR. LI MANDRI: No.

3 THE COURT: All right.

4 MS. BENSMAN: Your Honor, may I very briefly
5 -- just one clarifying question about a document?

6 THE COURT: Okay.

7 MS. BENSMAN: Yesterday we discussed a short
8 list of disputes that plaintiffs had with defendants
9 about documents. And one of those concerned
10 defendants' 88. --

11 THE COURT: Right.

12 MS. BENSMAN: -- Plaintiffs had objected the
13 form of that exhibit, but the defendants agreed to
14 modify the form and --

15 THE COURT: Yes.

16 MS. BENSMAN: -- satisfy the problem that we
17 had. And we both agree that defendants' 88 should come
18 into evidence. I just wanted to make sure that it's
19 clear because there was some confusion.

20 THE COURT: Yeah, that's -- I was just
21 talking to my court clerk about that.

22 MS. BENSMAN: Okay, great.

23 THE COURT: If it's now in the form that both
24 sides agree, we'll mark --

25 (Continuation of proceedings in Volume 2)

CERTIFICATION

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2
3 I, Mary Nelson, the assigned transcriber, do
4 hereby certify the foregoing Transcript of Proceedings
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6 June 24, 2015 and recorded on CD 6/24/15, Index Numbers
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