

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CASE No. 502014CP003698XXXXNB

TED BERNSTEIN,

Plaintiff,

-vs-

DONALD R. TESCHER, ELIOT IVAN BERNSTEIN,  
LISA SUE FRIEDSTEIN, JILL MARLA IANTONI, et al.,

Defendants.

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TRIAL BEFORE THE HONORABLE  
JOHN L. PHILLIPS  
VOLUME 1 PAGES 1 - 114

Tuesday, December 15, 2015  
North County Courthouse  
Palm Beach Gardens, Florida 33410  
9:43 a.m. - 4:48 p.m.

Reported By:  
Shirley D. King, RPR, FPR  
Notary Public, State of Florida  
West Palm Beach Office Job #1358198 - VOL 1

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APPEARANCES:

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WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
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1 P R O C E E D I N G S

2 - - -

3 THE COURT: We're here on the Bernstein case.  
4 Everybody ready to go?

5 MR. ROSE: Good morning, Your Honor. Yes.  
6 Alan Rose on behalf of the plaintiff, Ted S.  
7 Bernstein, as successor trustee.

8 THE COURT: Okay.

9 MR. ROSE: And with me is my partner, Greg  
10 Weiss. May not be for the whole trial, but he is  
11 with us for the beginning.

12 THE COURT: Okay. Well, great. Thanks for  
13 coming.

14 And who's on the other side?

15 MR. BERNSTEIN: Eliot Bernstein, pro se, sir.

16 THE COURT: Okay. You're not going to have  
17 any counsel? Who's with you at the table?

18 MR. BERNSTEIN: That's my lovely wife,  
19 Candice.

20 THE COURT: All right. And why are you at the  
21 table?

22 MR. BERNSTEIN: That's one of the questions I  
23 would like to address. I'm here individually.

24 THE COURT: Right.

25 MR. BERNSTEIN: And I was sued individually.

1 But I'm also here on behalf, supposedly, of my  
2 minor children, who aren't represented by counsel.  
3 And I'm sued as a trustee of a trust that I've  
4 never possessed.

5 THE COURT: Are you asking me a question?

6 MR. BERNSTEIN: Yes.

7 THE COURT: What's the question?

8 MR. BERNSTEIN: Well, my children are being  
9 sued.

10 THE COURT: What's the question?

11 MR. BERNSTEIN: And I was sued as their  
12 trustee, but I'm --

13 THE COURT: Stop, please.

14 MR. BERNSTEIN: Yes, sir.

15 THE COURT: I would love to talk with you all  
16 day --

17 MR. BERNSTEIN: Okay.

18 THE COURT: -- but we're not going to have  
19 that happen.

20 MR. BERNSTEIN: Okay.

21 THE COURT: This is not a conversation. This  
22 is a trial. So my question is, What is your  
23 question? You said you had a question.

24 MR. BERNSTEIN: I tried to get counsel for my  
25 children who was willing to make a pro hoc vice --

1 THE COURT: When will you ask me the question?  
2 Because this is all --

3 MR. BERNSTEIN: Well, I'd like to stay the  
4 proceeding.

5 THE COURT: Okay. The request for a  
6 continuance is denied. Thank you.

7 MR. BERNSTEIN: Have you read the filing I  
8 filed? Because my children are minor --

9 THE COURT: Was that your question?

10 MR. BERNSTEIN: Well, my children are  
11 minors --

12 THE COURT: Please stop.

13 MR. BERNSTEIN: -- and they're not represented  
14 here.

15 THE COURT: What is your name again, sir?

16 MR. BERNSTEIN: Eliot Bernstein.

17 THE COURT: Okay. Mr. Bernstein, I'll be  
18 courteous, unless it doesn't work; then I'll be  
19 more direct and more aggressive in enforcing the  
20 rules that I follow when I conduct trials.

21 I've asked you several times if you had  
22 questions. You finally asked me one, and it was,  
23 Did you read my filing? No, I did not. You asked  
24 for a continuance. I have denied that because it's  
25 untimely.

1           Now I'm turning back to the plaintiff, and  
2       we're going forward with this trial. That is one  
3       day set on my docket. We're going to have this  
4       trial done by the end of the day. You'll have half  
5       the time to use as you see fit; so will the other  
6       side. I'll not care if you waste it, but I'll not  
7       participate in that. Thank you.

8           Now, from the plaintiff's side, what is it  
9       that the Court is being asked to decide today?

10          MR. ROSE: Before I answer, could  
11       Mr. Morrissey make an appearance, sir?

12          THE COURT: All right.

13          MR. MORRISSEY: Yes, I'm here on behalf of  
14       four of the defendants, Judge, four adult  
15       grandchildren, Alexandra Bernstein, Eric Bernstein  
16       Michael Bernstein and Molly Simon, all of whom have  
17       joined in the plaintiff's complaint today.

18          THE COURT: Okay. Last time I'll ask this  
19       question of the plaintiff. What is it that I'm  
20       asked to decide today?

21          MR. ROSE: We are asking you to decide whether  
22       five testamentary documents are valid, authentic  
23       and enforceable. And that is set forth in count  
24       two of the amended complaint in this action. The  
25       five documents are a 2008 will of Shirley



1 Bernstein, a 2008 trust of Shirley Bernstein, and  
2 an amendment by Shirley Bernstein to her 2008  
3 trust.

4 THE COURT: When was the amendment?

5 MR. ROSE: Amendment was in November of 2008.

6 THE COURT: All right. So there's also a 2008  
7 amendment?

8 MR. ROSE: Yes, sir. In fact, I have a -- I  
9 don't know if you can read it, but I did put up  
10 here on the -- there are seven testamentary  
11 documents. We believe five of them to be valid and  
12 operative, and two of them to have been with --  
13 revoked by later documents.

14 So for Shirley, there are three documents that  
15 count two seeks you to determine are valid,  
16 authentic and enforceable according to their terms.

17 And for Simon Bernstein, he has a 2012 will,  
18 and a 2012 amended and restated trust agreement.  
19 And we're asking that these five documents be  
20 validated today.

21 There also is a 2008 will and trust that  
22 you'll hear testimony were prepared, but have been  
23 revoked and superseded by later documents.

24 THE COURT: Does everybody agree that Simon's  
25 2008 will and trust are invalid or is there some

1 claim that they're valid?

2 MR. ROSE: I can't answer.

3 THE COURT: All right. I'll ask.

4 Are you claiming that the Simon Bernstein 2008  
5 will or 2008 trust are valid, or do you agree that  
6 they are invalid?

7 MR. BERNSTEIN: Well, I individually disagree.

8 THE COURT: Okay. Thank you.

9 MR. BERNSTEIN: And my children --

10 THE COURT: I just wanted to know --

11 MR. BERNSTEIN: -- aren't represented by  
12 counsel, so they can't have an opinion --

13 THE COURT: Okay.

14 MR. BERNSTEIN: -- even though they're parties  
15 to the case.

16 THE COURT: Okay. Like I say, you can waste  
17 all your time you want. I won't object to it, but  
18 I won't participate in it.

19 You can put on your first witness.

20 MR. ROSE: Thank you. Plaintiff will call  
21 Robert Spallina.

22 Thereupon,

23 (ROBERT SPALLINA)

24 having been first duly sworn or affirmed, was examined  
25 and testified as follows:

1 THE WITNESS: I do.

2 MR. ROSE: May I approach, Your Honor?

3 THE COURT: Sure. All approaches are okay.

4 MR. ROSE: Okay. I brought for Your Honor --  
5 would you like a book instead of the exhibits?

6 THE COURT: Nothing better than a huge book.

7 MR. ROSE: We may not use all of them, but  
8 we'll adjust it later.

9 THE COURT: All right.

10 MR. ROSE: And then I was going to hand the  
11 witness the original for the admission into the  
12 court file as we go.

13 THE COURT: All right.

14 MR. ROSE: I have a book for Mr. Eliot  
15 Bernstein.

16 DIRECT EXAMINATION

17 BY MR. ROSE:

18 Q. Would you state your name for the record?

19 A. Robert Spallina.

20 Q. Did you know Simon and Shirley Bernstein,  
21 Mr. Spallina?

22 A. Yes, I did.

23 Q. And when did you first meet Simon and Shirley  
24 Bernstein?

25 A. In 2007.

1 Q. What was your occupation at the time?

2 A. I was working as an estate planning attorney.

3 Q. With a law firm?

4 A. Yes.

5 Q. And what was the name of the law firm?

6 A. Tescher, Gutter, Chaves, Rubin, Ruffin and  
7 Forman and Fleisher.

8 Q. And did Simon and Shirley Bernstein retain  
9 your law firm?

10 A. Yes, they did.

11 Q. I'm going to approach with Exhibit No. 9 --  
12 Plaintiff's Exhibit 9. Ask if you'd identify that  
13 document?

14 A. This was an intake sheet to open up the file,  
15 dated November 16th of 2007.

16 Q. And the clients are Simon and Shirley  
17 Bernstein?

18 A. The clients were Simon and Shirley Bernstein,  
19 yes.

20 MR. ROSE: I would move Exhibit 9 into  
21 evidence, Your Honor.

22 THE COURT: Any objection?

23 [No verbal response]

24 THE COURT: No objection being stated, I'll  
25 receive that as Plaintiff's 19.

1 (Plaintiff's Exhibit No. 9 was received into  
2 evidence.)

3 BY MR. ROSE:

4 Q. Now, what was the purpose of Simon and Shirley  
5 Bernstein retaining your law firm?

6 A. They wanted to review and go over their  
7 existing estate planning and make changes to their  
8 documents.

9 Q. I'm going to hand you Exhibit No. 10, and ask  
10 you if you can identify for the record Exhibit 10.

11 A. These are meeting notes, my meeting notes,  
12 and -- and then partner Don Tescher's meeting notes from  
13 several different meetings that we had with Si and  
14 Shirley during the time following them retaining us as  
15 clients.

16 Q. And is it your standard practice to take notes  
17 when you're meeting with clients?

18 A. Yes.

19 Q. And were these notes kept in your company's  
20 files and were they produced with Bates stamp numbers?

21 A. Yes, they were.

22 MR. ROSE: I would move Exhibit 10 into  
23 evidence, Your Honor.

24 THE COURT: Is there any objection to the  
25 exhibit?

1 [No verbal response].

2 THE COURT: No objection being stated, they'll  
3 be received as Plaintiff's 10.

4 (Plaintiff's Exhibit No. 10 was received into  
5 evidence.)

6 BY MR. ROSE:

7 Q. Now, for today's purposes, are those notes in  
8 chronological or reverse chronological order?

9 A. This is reverse chronological order.

10 Q. Okay. Can you go to the bottom of the stack  
11 and start with the earliest notes. Do they reflect a  
12 date?

13 A. Yes. 11/14/07.

14 Q. And if you'd turn to the last page, is that  
15 your partner's notes that are in evidence?

16 A. Yes. We both would always take notes at the  
17 meetings.

18 Q. And so the first -- was that the first meeting  
19 with Mr. Simon or Shirley Bernstein?

20 A. I believe so, yes.

21 Q. Now, before you met with Simon and Shirley  
22 Bernstein, did you have any prior relationship with  
23 them?

24 A. No, we did not.

25 Q. Did you personally know either of them before

1 that date?

2 A. No, I did not.

3 Q. 11/14/2007. Okay. And if you'd just flip  
4 back to the client intake. I think that was dated  
5 November the 26th?

6 A. It was two days later, 11/16. The file was  
7 opened two days later.

8 Q. So file open.

9 Now, did you know in advance of the meeting  
10 what they were coming in to talk about?

11 A. Yeah. They were coming in to talk about their  
12 estate planning.

13 Q. And did they provide you in advance of the  
14 meeting with any of their prior estate planning  
15 documents?

16 A. I believe we had copies of documents. I don't  
17 know if they provided them at that meeting or if they  
18 provided them before for us to look at, or after, but I  
19 know that there were existing documents that were in our  
20 file.

21 Q. Okay. Let me approach and hand you  
22 Exhibit 40A, which is -- bears Tescher Spallina  
23 Number 1.

24 Does that appear to be an envelope from  
25 Stephen Greenwald --

1 A. Yes.

2 Q. -- directed to Simon Bernstein?

3 A. Yes, it is.

4 Q. And copy of this was in your files when they  
5 were produced?

6 A. Yes.

7 Q. And was Stephen Greenwald the prior lawyer  
8 that represented Simon and Shirley Bernstein, as far as  
9 you know?

10 A. Yes. Yes, he was.

11 Q. I'm going to hand you Exhibit 40B, which is a  
12 letter from Mr. Greenwald to Simon and Shirley  
13 Bernstein.

14 Is that also -- is that also provided in your  
15 files?

16 A. Yes, sir.

17 Q. Does it bear a Bates stamp of your law firm?

18 A. Yes, it does.

19 Q. Okay. And does Mr. Greenwald, in that letter,  
20 disclose what he is sending to Simon --  
21 Mr. and Mrs. Simon L. Bernstein?

22 A. Yes, he did. Their estate planning documents,  
23 including their ancillary documents, their wills, their  
24 trusts, health care powers, durable powers and living  
25 wills.



1 Q. And if -- I'll show you 40C, D, E and F, and  
2 ask if you can identify these as some of the documents  
3 that were included with the letter from Mr. Greenwald?

4 A. We have each of the first codicils to  
5 Mr. and Mrs. Bernstein's wills, and we have each of  
6 their wills.

7 MR. ROSE: I would move Exhibit 40A through F  
8 into evidence, Your Honor.

9 THE COURT: Any objection?

10 [No response.]

11 THE COURT: No objection being stated, I'm  
12 going to receive this as Plaintiff's 40A through F.

13 (Plaintiff's Exhibit Nos. 40A-F were received  
14 into evidence.) A B C D E F

15 BY MR. ROSE:

16 Q. Within Exhibit 40, is there a will and a --  
17 for Simon and a will for Shirley?

18 A. Yes, there is.

19 Q. And could you tell the Court the date of those  
20 documents?

21 A. August 15, 2000.

22 THE COURT: Are both documents the same date?

23 THE WITNESS: Yes, they are, Your Honor.

24 THE COURT: All right. Thanks. I just wanted  
25 to make sure I don't get confused.

1 BY MR. ROSE:

2 Q. Can you generally describe what the estate  
3 plan reflected in Exhibit 40 would be, who are the  
4 beneficiaries and what percentages?

5 A. Okay. Just give me a minute. I haven't seen  
6 these in...

7 The plan under the documents -- and let me  
8 just make sure it's the same under both documents. The  
9 plan under the documents was to provide all the assets  
10 to the survivor of Shirley and Si, and that at the death  
11 of the survivor of the two of them, assets would pass  
12 to -- it appears to be Ted, Pam, Eliot, Jill and Sue and  
13 Lisa -- and Lisa. So it looks to be a typical estate  
14 plan; everything would pass to the survivor at the first  
15 death, and then at the second death everything to the  
16 children.

17 Q. How many of the children under the 2000  
18 documents?

19 A. This shows all five. The will shows all five.

20 Q. What page are you looking at?

21 A. The first page of the will. Is this -- oh,  
22 no. That's just as to tangible personal property. I'm  
23 sorry.

24 Q. That's okay. Are you on -- are you in Simon's  
25 or Shirley's?

1           A.    I'm in -- on both documents, to make sure the  
2 disposition was the same.

3           Q.    Okay.  So on the page -- the first page, it  
4 talks under --

5           A.    It speaks to tangible personal property.

6           Q.    Split equally among the five children?

7           A.    Among the five children.

8           Q.    Let me just stop you one second right there.  
9 If you would, turn --

10           MR. ROSE:  This might help, Your Honor, if  
11 you'd turn to Tab 7.  It may be out of order.  
12 Might be a good time just to go over the family  
13 tree and let -- get everyone on the same page of...

14           We prepared a chart, and I'm going to put  
15 the -- it lists Simon and Shirley and the names of  
16 their children on the second line, and then under  
17 each child with arrows, the names of the  
18 grandchildren and which parents they belong to.

19           THE WITNESS:  This looks accurate.

20           MR. ROSE:  I would move Exhibit 7 into  
21 evidence, Your Honor.

22           THE COURT:  Any objection?

23           [No response.]

24           THE COURT:  No objection being stated, that's  
25 in evidence as Plaintiff's 7.

1                   (Plaintiff's Exhibit No. 7 was received into  
2 evidence.)

3 BY MR. ROSE:

4           Q.     So under the 2000 documents, for personal  
5 property, it's split among the five children.

6                   And when you get to the residuary estate or  
7 the amount that was put into trusts, who are the  
8 beneficiaries?

9           A.     Again, at the death of the survivor of the two  
10 of them, tangible personal property would go to the five  
11 children, and the residuary of the estate would go to  
12 four of the five children. It appears that Pam is cut  
13 out of these documents. And I recall that now, yes.

14          Q.     Okay. So under the 2000 documents, Eliot  
15 Bernstein would get 25 percent of the residuary?

16          A.     Correct.

17          Q.     Now, if you look at page 5, it talks  
18 about -- page 5, near the top, it says "upon the death  
19 of my husband," then "the principal of his trust shall  
20 pass," and then the next sentence says "to the extent  
21 that said power of appointment -- oh, "and such shares  
22 equal or unequal and subject to such lawful trust terms  
23 and conditions as my husband shall by will appoint."

24                   Do you see what I'm talking about?

25          A.     Yes, I do.

1 Q. That's a power of appointment?

2 A. Correct.

3 Q. And then it says, the next sentence, To the  
4 extent the power of appointment is not effectively  
5 exercised, then it goes to the four of the five  
6 children?

7 A. Correct.

8 Q. So under the 2000 documents, the survivor  
9 would have the power to give it all to one?

10 A. Correct.

11 Q. And theoretically change it and give some to  
12 Pam?

13 A. That's true, by the language of this document.

14 Q. Okay. So I'm just going to write. We have a  
15 power of appointment, which we don't need to belabor, in  
16 favor of the survivor; and then if it's not exercised,  
17 Eliot gets 25 percent, and three other siblings get the  
18 balance?

19 A. 25 percent each.

20 Q. Okay.

21 A. Equal shares.

22 Q. Now, when Simon and Shirley came to you, did  
23 they give you an indication whether they wanted to keep  
24 in place the 2000 structure?

25 A. No. They wanted to change the dispositions

1 under their documents.

2 Q. Okay. So if we work through your notes now,  
3 which are in evidence as Exhibit No. 10, the first  
4 meeting was November the 14th, 2007. You had a  
5 discussion about Simon's net worth -- Simon and  
6 Shirley's net worth, how much money they had at that  
7 time?

8 A. Yes.

9 Q. Okay. I'm going to show you Exhibit No. 12  
10 before we --

11 Do you recognize the handwriting on  
12 Exhibit 12?

13 A. No.

14 Q. Okay. I believe it's Simon Bernstein's  
15 statement of his net worth.

16 But you have seen this document before?

17 A. I don't recall.

18 Q. Okay. And you're not familiar with his  
19 handwriting to --

20 A. No. Other than his signature.

21 Q. That's fine.

22 But during the discussion, did you discuss  
23 Simon's net worth?

24 A. Yes. Both my partner and I.

25 Q. And if I look at Mr. Tescher's notes, which

1 are a little easier to read, he lists the joint  
2 brokerage account, some money for Simon, Simon, a  
3 house -- the house appears to have a million dollar  
4 mortgage -- a condo, some miscellaneous and some life  
5 insurance. And he totals -- that totals to 13 million,  
6 and then he lists 5 million for 33 shares of the  
7 company.

8 Do you see that?

9 A. Yes, I do.

10 Q. Okay. So if I add up what Mr. Tescher wrote  
11 in his notes, I get to about \$18 million.

12 And this is on November the 14th of '07,  
13 around 18 million, but that includes life insurance?

14 A. Yes, it does.

15 Q. Okay. Now, did you meet with them -- how long  
16 were these meetings with Simon and Shirley Bernstein?

17 A. They could be an hour; sometimes more.

18 Q. Now, if we flip through your notes, does it  
19 reflect a second meeting?

20 A. Yes, it does.

21 Q. And what's the date of the second meeting?

22 A. 12/19/07.

23 Q. And do you have any -- I'm sorry. 12/19?

24 A. 12/19/07.

25 Q. Okay. And what's the -- let's just put all

1 the dates up here. That was the second meeting.

2 Are there notes from a third meeting?

3 A. The next meeting was January 31, '08.

4 Q. Okay. Is there a fourth meeting?

5 A. March 12 of '08.

6 Q. Now, just to put this in perspective, the  
7 document that we are going to -- well, the document  
8 that's been admitted into probate in this case is a will  
9 of Shirley Bernstein that bears a date of May 20, 2008.

10 Does that sound consistent with your memory?

11 A. Yeah, it was clearly 2008.

12 MRS. CANDICE BERNSTEIN: Excuse me. Can you  
13 turn that so we can see it?

14 THE WITNESS: Sure. Sorry.

15 THE COURT: Ma'am, you are not a party. You  
16 are not an attorney. And you are not really  
17 supposed to be sitting there. I'm letting you sit  
18 there as a courtesy. If you ask for and inject  
19 yourself any further in the proceeding than that,  
20 I'll have to ask you to be seated in the gallery.  
21 Do you understand?

22 MRS. CANDICE BERNSTEIN: Yes, sir.

23 THE COURT: Thank you.

24 BY MR. ROSE:

25 Q. So you have four meetings with Simon and



1 Shirley Bernstein.

2 And did it take that long to go over what they  
3 wished to do with their estate planning documents?

4 A. It was more of us, you know, trying to get a  
5 handle on everything that they had, the business, prior  
6 planning. From the first meeting to the March meeting,  
7 it was only a couple of months. The holidays were in  
8 there. So it wasn't uncommon for us to meet with a  
9 client more than once or twice when they had a  
10 sophisticated plan and asset schedule.

11 Q. At this time --

12 A. By the last meeting, we knew what we needed to  
13 do.

14 Q. And around this -- based on your notes, did  
15 Simon Bernstein believe he had a net worth all in of  
16 about 18 million when he met with you?

17 A. Yeah, it appears that way, 18, 19 million  
18 dollars.

19 Q. And did he discuss at all with you that he was  
20 involved in a business at that time, an insurance  
21 business?

22 A. Yes.

23 Q. And did he give you an indication of how well  
24 the business was doing at around the times of these  
25 meetings between November 2007 and March or May of 2008?

1           A.    Yeah, the business was doing well at that  
2   time.  He was -- he was very optimistic about the future  
3   of the business.

4           Q.    Now, did you do any -- did you prepare any  
5   documents before the will was signed in May?  Did you  
6   prepare drafts of the documents?

7           A.    Yes, we did.  We always prepare drafts of  
8   documents.

9           Q.    And did you share the drafts with Simon and  
10  Shirley?

11          A.    Yes, we did.

12          Q.    Okay.  I'm going to hand you Exhibit 11, and  
13  ask if you can identify that for the record?

14          A.    This is a letter from our firm dated April 19  
15  of 2008.  It's transmitting the documents to the client,  
16  with an explanation that they could follow, better than  
17  reading their documents -- a summary of the documents.

18          Q.    Is that a true and authentic copy of a  
19  document that you created?

20          A.    Yes, it appears to be.

21                MR. ROSE:  I would move Exhibit 11 into  
22  evidence, Your Honor.

23                THE COURT:  All right.  Any objection?

24                [No response.]

25                THE COURT:  All right.  Then that's in

1 evidence as Plaintiff's 11.

2 (Plaintiff's Exhibit No. 11 was received into  
3 evidence.)

4 BY MR. ROSE:

5 Q. And if I read Exhibit 11, the first three  
6 words say, "Enclosed are drafts of each of your wills  
7 and revocable trusts, the children's family trust, each  
8 of your durable powers of attorney, designations of  
9 health care surrogate and living wills," correct?

10 A. Yes.

11 Q. So about a month and 11 days before anything  
12 was signed, documents were sent by Federal Express to  
13 Simon and Shirley Bernstein?

14 A. Correct.

15 Q. And it appears to have gone to Simon's  
16 business?

17 A. Yes.

18 Q. Now, if you look at -- does your -- does your  
19 letter, sort of in laymen's terms, rather than reading  
20 through the legalese of a will, explain what the estate  
21 planning was under the documents that have yet to be  
22 signed but that you were preparing?

23 A. Yes, it does, as much as possible in laymen's  
24 terms.

25 Q. Can you just give us a short -- well, the will

1     itself for both Simon and Shirley was a relatively  
2     simple will that poured over into a revocable trust, one  
3     for each?

4             A.     Yes, poured over wills for both.

5             Q.     And whoever died first would inherent the  
6     personal property?

7             A.     All tangible personal property under the will  
8     would pass to the survivor.

9             Q.     So assuming Simon survived Shirley, he would  
10    be the sole beneficiary of her estate?

11            A.     Correct.

12            Q.     And then any of her residuary would go into a  
13    trust?

14            A.     That's correct.

15            Q.     And he, in fact, outlived Shirley?

16            A.     He did.

17            Q.     Okay. Now, if you go to the second page, at  
18    the top, you describe the will of Shirley Bernstein.  
19    It's essentially identical to Si -- it says "Si."

20                    Just for the record, that's Simon shorthand?

21            A.     Yes.

22            Q.     Si is the personal representative of Shirley's  
23    estate, and Ted is designated as successor if Simon is  
24    unable to serve.

25                    That was what was in the document you sent in

1 April?

2 A. Yes. I believe so, yes.

3 Q. And that provision remained in the final  
4 documents you signed?

5 A. Yes.

6 Q. Now, did Ted eventually become a successor  
7 personal representative upon Simon's death?

8 A. Yes, he did.

9 Q. Then you next start to talk about the Simon L.  
10 Bernstein trust agreement.

11 And theoretically, that was going to be the  
12 primary testamentary document?

13 A. Correct, it was.

14 Q. And that's fairly standard?

15 A. Yes. When a client wants to avoid probate, we  
16 use a revocable trust to title assets in prior to death.  
17 Those assets remain confidential; they're not part of  
18 the court record. And the trust is also used to avoid  
19 the need for the appointment of a guardian in the event  
20 of incapacity, because there's a successor trustee  
21 mechanism.

22 Q. Okay. Now, under Simon's trust agreement,  
23 moving down to the third paragraph, under that heading,  
24 it says that both trusts provide for mandatory income  
25 distributions. And then the next sentence starts, "Upon

1 Shirley's death, she has been given a special power to  
2 appoint the remaining assets of both the marital trust  
3 and the family trust to any of your lineal descendants  
4 and their spouses, a power to redirect and reallocate."

5 Do you see that?

6 A. Yes.

7 Q. Now, is that consistent with the way the  
8 documents were intended to be drafted?

9 A. Yes, it is.

10 Q. And I guess it's sort of similar to what  
11 existed in the 2000 wills?

12 A. Yes. Typically, you give the survivor of the  
13 spouse a power to appoint in the event that they want to  
14 change any of the estate planning of the first to die.  
15 Found in most first marriage documents with only  
16 children from that marriage.

17 Q. And this is a first marriage with all five  
18 children being the product of the same marriage --

19 A. Yes.

20 Q. -- as far as you know?

21 A. As far as I know.

22 Q. And as far as you know, Simon and Shirley  
23 Bernstein, they each married only once in their  
24 lifetime, to each other?

25 A. That's all I know.

1           Q.    If you flip to the next page, there's a  
2 shorter paragraph for Shirley.

3                   It basically says -- it's virtually identical,  
4 except that Simon is the initial successor, and after  
5 that, Ted would be Simon's replacement if he passed  
6 away?

7           A.    Correct.

8           Q.    And is that the mechanism by which Ted  
9 Bernstein became the successor trustee in this lawsuit?

10          A.    Yes, it is.

11          Q.    Now, if Shirley died first, then did the  
12 documents give Simon the same power of appointment over  
13 the assets in her trust that was provided for in the  
14 Simon document if he died?

15          A.    Same power of appointment was in both  
16 documents. They were identical documents, with one  
17 exception.

18          Q.    And what was the exception; the name of the  
19 successor trustee?

20          A.    The name of the successor trustee.

21          Q.    And then Simon wanted his then business  
22 partner, Bill Stansbury, to be his successor trustee in  
23 both his will and his trust, and Shirley wanted her  
24 oldest son, Ted, to be her successor in both documents?

25          A.    Correct. The signer, non-survivor.

1 Q. Okay. And Shirley, I guess it says here, also  
2 made a specific gift of \$200,000 to someone named  
3 Matthew Logan?

4 A. Correct.

5 Q. If you look at our family tree chart, I think  
6 Matthew Logan is under Ted.

7 He is the son of Ted's second wife, Deborah?

8 A. Correct.

9 Q. Okay. So there was a \$200,000 special gift to  
10 Matthew that was in the documents that you sent on  
11 April 9th?

12 A. Correct.

13 Q. Then you prepared family trusts for the  
14 children.

15 Were those trusts created at the time?

16 A. Yes, they were.

17 Q. Now, after you sent your letter on April 9th,  
18 did you have a further discussion with Simon and Shirley  
19 before the documents were signed?

20 A. I can't recall, but we probably -- we probably  
21 did, to set up a meeting and talk -- you know, either,  
22 A, talk about the documents, the draft documents, any  
23 changes that they wanted to make on the draft documents.  
24 It would be typical of us to do that, although I don't  
25 have any meeting notes that showed that, so...



1           Q.    Now, under -- we'll talk -- let's talk about  
2   the ones that matter.

3                    Because Shirley died first, her 2008 trust  
4   became the beneficiary of her estate?

5           A.    Correct.

6           Q.    And then Simon had a power of appointment,  
7   correct?

8           A.    Um-hum.

9           Q.    And if -- you have to say yes or no.

10          A.    Yes.

11          Q.    And if he didn't exercise the power of  
12   appointment, was there a default set of beneficiaries  
13   that were designated in the documents you drafted in  
14   2008?

15          A.    Yes.

16          Q.    And what was the default set of beneficiaries?

17          A.    Simon had and Shirley had in their documents  
18   excluded Pam and Ted at the death of the survivor of the  
19   two of them.

20          Q.    Okay.  So if the power of appointment was not  
21   properly exercised, it would just go to three, and Eliot  
22   would end up with 33 and a third percent and two of the  
23   other sisters would get the balance?

24          A.    That's correct.

25          Q.    Did Simon and Shirley eventually execute

1 documents in 2008?

2 A. Yes, they did.

3 Q. I'm going to hand you Exhibit No. 1, which  
4 is --

5 A. A copy of Si's will from --

6 Q. Do you have Exhibit 1?

7 A. Excuse me. Sorry. Shirley's will.

8 Q. Is that a conformed copy of the document?

9 A. Yes, it is.

10 MR. ROSE: I would move Exhibit 1 into  
11 evidence.

12 THE COURT: Any objection?

13 [No response.]

14 THE COURT: That's in evidence as  
15 Plaintiff's 1.

16 (Plaintiff's Exhibit No. 1 was received into  
17 evidence.)

18 BY MR. ROSE:

19 Q. Now, that says "conformed copy." If I turn to  
20 the last page, there's no handwritten signatures.

21 A. Correct.

22 Q. Do you know where the original of that  
23 document sits today?

24 A. It was filed with the court.

25 Q. Okay. So somewhere in the courthouse, the

1 original goes.

2 And that's something that the client would  
3 keep?

4 A. Correct. This is what we would send to the  
5 client to include with their files.

6 Q. When you filed the original with the court,  
7 did anyone object while Simon was alive?

8 A. No.

9 Q. Okay. I'm going to hand you Exhibit No. 2.  
10 Do you recognize that document?

11 A. Yes. This is Shirley's trust agreement that  
12 she executed in 2008.

13 Q. Now, does that document have copies of her  
14 signature?

15 A. Yes. These are actual copies of the signing  
16 parties and their signatures.

17 Q. And how many originals would have been created  
18 of this document?

19 A. We always created three originals of the trust  
20 agreements.

21 Q. Okay. Now, if you turn to the next -- if you  
22 turn to the last page, it says that Shirley put a dollar  
23 into her trust when it was created.

24 A. Yes.

25 Q. And that's to make it a valid trust?

1           A.    Yeah, I mean, it's not required today, but  
2   it's pretty much just form to show a dollar.  She had  
3   certainly funded it more than that.

4           Q.    And eventually Shirley put some assets into  
5   the trust?

6           A.    Yes.

7           Q.    Okay.  And if you go to the page before that,  
8   page 27, it appears to be a signature page, correct?

9           A.    Yes.

10          Q.    Now, were you one of the witnesses to the  
11   signature of Shirley Bernstein on Exhibit 2?

12          A.    Yes, I was.

13          Q.    And were you present with Shirley Bernstein  
14   and the other witness, Traci Kratish, at the time of the  
15   execution of the documents?

16          A.    Yes, I was.

17          Q.    And they're notarized by someone named  
18   Kimberly Moran.

19                Does she work for your office?

20          A.    Yes, she did.

21          Q.    And through her involvement with your firm  
22   and -- did she personally know Shirley and Traci  
23   Kratish, as well as yourself?

24          A.    Yes, she did.

25          Q.    Now, at the same time that Shirley signed her

1 documents, did Simon sign a similar set of 2008 will and  
2 trust, similar to the drafts that were sent in April?

3 A. Yes, he did. We were all sitting in the main  
4 conference area in their offices together.

5 Q. In Simon's office or your office?

6 A. In Simon's offices.

7 Q. Okay. So why would someone from your office  
8 come to Simon's office rather than rely on the notary  
9 that they have there?

10 A. Because we wanted to accommodate Shirley and  
11 Si in their offices and not have them travel.

12 Q. You personally went there. Did you personally  
13 go through to make sure that the documents were signed  
14 with all the formalities required under Florida law to  
15 make them valid and enforceable?

16 A. Yes, we did. That's why we were there.

17 Q. And if Simon did not have a 2008 will  
18 and -- sorry.

19 If Simon did not have a 2002 will and trust,  
20 would it be your belief that the 2008 will and trust  
21 would be valid?

22 A. Yes.

23 Q. Were they properly signed with all the same  
24 testamentary formalities required by Florida law?

25 A. Yes, they were.

1 Q. Okay. Did Shirley at some point amend her  
2 trust agreement?

3 A. Yes, she did.

4 Q. And do you recall why she amended it?

5 A. She amended it to remove Matt Logan from the  
6 document that she had included previously as a specific  
7 device.

8 Q. Do you know why Matt was removed?

9 A. It's attorney-client privilege.

10 Does it matter?

11 Q. I'll withdraw the question.

12 Was Matthew removed at the direction of  
13 Shirley?

14 A. Yes.

15 Q. I'll withdraw --

16 A. Yes. Yes. Yes.

17 Q. Did Shirley sign a document that effectively  
18 removed Matthew?

19 A. Yes, she did.

20 Q. Let me hand you Exhibit No. 3, and ask you if  
21 you recognize that document?

22 A. Yes, I do.

23 Q. Now, was this document signed with the same  
24 testamentary formalities as the 2008 trust?

25 A. Yes, it was.

1 MR. ROSE: We would move Exhibit 3 into  
2 evidence, Your Honor.

3 THE COURT: Any objection?

4 [No response.]

5 THE COURT: All right. That's in evidence as  
6 Plaintiff's 3.

7 (Plaintiff's Exhibit No. 3 was received into  
8 evidence.)

9 BY MR. ROSE:

10 Q. Now, if you look -- there's a paragraph 1 and  
11 a paragraph 3, but no paragraph 2.

12 Do you know why that is?

13 A. It's just a mistake in drafting.

14 Q. And did you specifically discuss with Shirley,  
15 whose privilege I technically would control -- my client  
16 would control --

17 Did you specifically discuss with Shirley the  
18 fact that the effect of the first amendment would be to  
19 remove the specific gift that she had made for Matthew  
20 Logan?

21 A. Yes. Even prior to the signing of the  
22 document.

23 Q. And is this the last relevant testamentary  
24 document that Shirley ever signed that you're aware of?

25 A. Yes, it is.

1 Q. Did you meet with Simon and Shirley in person  
2 to talk about this amendment?

3 A. Si had called me and said that Shirley had a  
4 change to her documents, and asked me to give her a call  
5 and have lunch with her. I called her. We arranged for  
6 a meeting in her house to execute the document.

7 Q. Now, you brought your -- you brought Kimberly  
8 with you to get -- for convenience and to make sure the  
9 documents were properly executed?

10 A. Correct. She had -- she had her personal  
11 assistant that was there, Rachel Walker, to serve as  
12 another witness.

13 Q. Just so I don't have to go back, what's the  
14 date of the amendment?

15 A. November 18th, 2008.

16 Q. So now we five documents that exist; 2008,  
17 will, trust, will, trust, and an amendment to Shirley's  
18 trust.

19 Did you share any of those documents with any  
20 of Simon and Shirley's children at that time?

21 A. No, we did not.

22 Q. Did any of the -- did any of the children play  
23 any role in bringing Simon or Shirley to your offices?

24 A. Not that I'm aware, no.

25 Q. Did any of the children accompany them



1 to -- any time they came to visit you, did any of the  
2 children come with them, drag them along?

3 A. No.

4 Q. So you prepared -- did you do some other  
5 estate planning in addition to the 2008 testamentary  
6 documents?

7 A. Yes, we did.

8 Q. Can you briefly describe some of the things  
9 you did?

10 A. We had set up a Florida limited partnership.  
11 We created a general partner entity for that  
12 partnership, a limited liability company.

13 Q. What's the name of the Florida limited  
14 partnership?

15 A. Bernstein Family Investments, LLLP.

16 Q. Was that an entity that was in existence or  
17 was it created under your direction?

18 THE COURT: Can I stop you a second? Is this  
19 going to help me figure out the validity of the  
20 testamentary documents?

21 MR. ROSE: Only in the very narrowest sense.  
22 I'm just trying to establish that they had a very  
23 lengthy and extensive relationship, and they did a  
24 lot of estate planning for Simon and Shirley. But  
25 I'll be very brief.

1           THE COURT: Well, if that becomes relevant  
2           later, perhaps you could come back to it. But I  
3           don't see the relevance at this point, so I'll ask  
4           you to move on.

5           MR. ROSE: Yes, sir.

6 BY MR. ROSE:

7           Q. Now, was Simon concerned at all about asset  
8           protection as part of some of the things you discussed?

9           A. Yes, he was.

10          Q. Now, we have -- did you have any discussion  
11          with him about who was expected to live longer or if  
12          either of them had health problems that you had any  
13          knowledge of?

14          A. Si was not -- he was in good health, but he  
15          had had some heart issues. And Shirley had had other  
16          issues as well. And I think it -- early on, he didn't  
17          know, but as the relationship went on, we kind of knew  
18          that Shirley was sicker than him and would probably pass  
19          first.

20          Q. So Shirley died -- it's in the public  
21          record -- but December --

22          A. 2010, yeah.

23          Q. -- 8th. So Simon was her -- he survived her;  
24          he becomes the sole beneficiary as far as tangible  
25          personal property under her will?

1 A. Yes, he does.

2 Q. The residuary goes into the Shirley Bernstein  
3 Trust?

4 A. That's correct.

5 Q. He's the sole successor trustee and the sole  
6 beneficiary --

7 A. Yes, he is.

8 Q. -- during the term of his life?

9 A. Correct.

10 Q. Now, was there a great deal of effort put into  
11 inventorying the assets, things like that?

12 A. No, there wasn't. For purposes of opening up  
13 Shirley's probate, we had asked Si to estimate the value  
14 of, you know, her tangible personal property. And  
15 that's what we included on the inventory that was filed  
16 in the probate.

17 Q. Now, if I'm correct, 2010 was the year there  
18 were no estate taxes at all?

19 A. No estate taxes.

20 Q. Simon's the sole beneficiary?

21 A. Sole beneficiary. Even if there were taxes,  
22 there wouldn't have been any tax on the first death,  
23 because everything went to Si, and there was a marital  
24 deduction.

25 Q. While Simon was alive, did Ted have any access

1 to the documents, as far as you know? Did you ever send  
2 the testamentary documents of Simon or Shirley to Ted?

3 A. No, we did not.

4 Q. Did Ted play any role in the administration of  
5 the estate while Simon was alive?

6 A. No, he did not.

7 Q. Did any of the other children play any role in  
8 the administration of the estate while Simon was alive?

9 A. No, they did not.

10 Q. Now, did you have to -- well, strike that.

11 Because it was only Simon, was it sort of the  
12 decision by Simon, That I don't want to spend a lot of  
13 time and money in this estate because it's just wasting  
14 my own money?

15 A. Yes.

16 Q. And that's not unusual in a situation where  
17 you have a surviving spouse that's the sole beneficiary?

18 A. Correct.

19 Q. Now, did there come a point in time when Pam,  
20 who was not a named beneficiary of the -- Shirley's  
21 documents, learned of the fact that she had been  
22 excluded?

23 A. Yes, there was.

24 Q. Okay. And did you get involved with  
25 discussions with Pam or her lawyer?

1           A.     She had hired an attorney, who had made a  
2     request to get a copy of her mother's documents. And I  
3     called Si, spoke to Si about it, and he authorized me  
4     giving Pam those documents -- or her attorney those  
5     documents.

6           Q.     Were they provided to any of the other  
7     children; that would be Ted or his brother, Eliot, or  
8     his two sisters, Lisa or Jill?

9           A.     No, they were not.

10          Q.     And did Simon Bernstein at some point decide  
11     to change his testamentary documents?

12          A.     Yes, he did.

13          Q.     Do you recall approximately when that  
14     happened?

15          A.     Early 2012, he called and requested that we  
16     meet to go over his documents.

17          Q.     I'm going to hand you an exhibit marked  
18     Exhibit 13, and ask you if you recognize those as your  
19     own notes?

20          A.     Yes. These are my notes from that meeting in  
21     2012.

22                 MR. ROSE: I would move Exhibit 13 into  
23     evidence, Your Honor.

24                 THE COURT: Any objection?

25                 [No response.]

1 THE COURT: All right. That's in evidence as  
2 Plaintiff's 13 then.

3 (Plaintiff's Exhibit No. 13 was received into  
4 evidence.)

5 BY MR. ROSE:

6 Q. Now, during this meeting, did Simon discuss  
7 the possibility of altering his estate plan?

8 A. Yes, he did.

9 Q. Did you also go over his current finances?

10 A. Yes, we did.

11 Q. Now, we've seen from 2007 that he had  
12 disclosed about \$18 million.

13 As part of the meeting in February of 2012, he  
14 gave you sort of a summary of where he stood at that  
15 time?

16 A. Yes, he did.

17 Q. And what was the status of the Shirley  
18 Bernstein probate administration in early 2012, about  
19 13 months after she passed away?

20 A. It was still not closed.

21 Q. Do you know why it was not closed?

22 A. I think that we were still waiting -- I'm not  
23 sure that -- we were still waiting on waivers and  
24 releases from the children to close the estate, to  
25 qualify beneficiaries under the estate if Si were to

1 die. We had to get waivers and releases from them.

2 Q. Standard operating procedure?

3 A. Standard operating procedure.

4 Q. Okay. So Simon here, it says -- it says at  
5 the top "SIPC receivable."

6 Do you know what that is?

7 A. Yes, I do. That was -- Si had made an  
8 investment in a Stanford product that was purported to  
9 be a CD; it was an offshore CD. And when the Stanford  
10 debacle hit, I guess he filed a claim with SIPC to get  
11 those monies back, because it was supposedly a cash  
12 investment.

13 Q. And so he invested in a Ponzi scheme and lost  
14 a bunch of money?

15 A. Correct.

16 Q. Some of the 18 million he had in 2007 he lost  
17 in the next four and a half years in investing in a  
18 Ponzi scheme?

19 A. That's correct.

20 Q. And then the maximum that the SIPC -- which is  
21 like the FDIC for investments.

22 You're familiar with that, correct?

23 A. Yes.

24 Q. The maximum is 500,000.

25 You don't actually necessarily recover

1 500,000? You have a receivable, right?

2 A. Yes.

3 Q. Do you know how much he actually realized from  
4 the SIPC?

5 A. I believe he never received anything.

6 Q. Okay. And then it said, LIC receivable,  
7 \$100,000.

8 Am I reading that correct?

9 A. Yes.

10 Q. And LIC was the company he was involved, with  
11 others?

12 A. Yes.

13 Q. Okay. So I put here 600 that he put, but the  
14 600 is really probably closer to 100 if you didn't get  
15 the SIPC money?

16 A. Correct.

17 Q. So I'm going to just put a little star here  
18 and put it's really 100,000, and sort that out.

19 So then he says -- he has -- Si's estate, this  
20 would be his personal assets. He's got an interest in  
21 the LLLP.

22 That is not relevant to discuss how it was  
23 formed, but there was an LLLP that was owned, some by  
24 Si's trust, some by Shirley's trust?

25 A. Correct.



1 Q. And at the time, he thought the value was  
2 1,150,000 for his share?

3 A. That's correct.

4 MR. BERNSTEIN: Can I object, Your Honor?

5 THE COURT: What's the objection?

6 MR. BERNSTEIN: Relevance.

7 THE COURT: Overruled.

8 MR. BERNSTEIN: Okay.

9 BY MR. ROSE:

10 Q. And then he had an IRA that says 750,000.

11 A. Correct.

12 Q. And those two things totaled 1,550,000?

13 A. No. They totaled one million nine. Right?

14 Q. Okay. You're right.

15 You wrote next to it "estate tax."

16 What does that mean, on the side next to it?

17 A. I think what I had done was offset the value  
18 of the assets in his estate by the loans that were  
19 outstanding at the time.

20 Q. And it shows a million seven in loans?

21 A. A million seven in loans.

22 Q. So we had loans back in 2008 -- I'm sorry.

23 November of 2007 time period -- or 2008, which were  
24 only -- so we have loans now, you said, a million seven?

25 A. Well, he had a \$1.2 million loan with

1 JP Morgan that was collateralized with the assets of the  
2 LLLP.

3 Q. And then you list -- just to speed up, then  
4 you have -- underneath that, it says Shirley's asset was  
5 empty, right? Because whatever was in had gone to  
6 Simon?

7 A. Yeah, her estate had nothing in it.

8 Q. She had a Bentley, I think, when she died.  
9 Do you know what happened to the Bentley?

10 A. I wasn't aware that she had a Bentley.

11 Q. Did you come to learn that she had a Bentley  
12 and Simon gave it to his girlfriend, and she traded it  
13 in at the dealership and got a Range Rover?

14 A. Much, much, much later on --

15 Q. But you know --

16 A. -- after Si's death.

17 Q. But you know that to be the case?

18 A. I wasn't aware that it was traded for the  
19 Range Rover. I thought he bought her the Range Rover.  
20 I didn't realize he used a Bentley to do it.

21 Q. Okay. Somehow you know the Bentley became  
22 something for Maritza?

23 A. Yes.

24 Q. That's the name of his girlfriend?

25 A. Yes.

1 Q. Okay. Then it says, in Shirley's trust,  
2 condo, one million -- I'm sorry. I should go to the  
3 next column. It says "FMV."

4 That would be shorthand for Fair Market Value?

5 A. Yes.

6 Q. So condo, 2 million, which is here; house,  
7 3 million; half of the LLLP, which is Shirley's half  
8 after -- I assume, after the deduction of the loan, was  
9 800,000?

10 A. Um-hum.

11 Q. Then it says "LIC." That's the company Life  
12 Insurance Concepts that Mr. -- that Simon, his son Ted,  
13 and a gentleman named Bill Stansbury had formally been  
14 involved, another attorney, shares by then. Because  
15 we're in February of 2012.

16 But, in any event, that's Simon's company?

17 A. Correct.

18 Q. And he told you in 2007 it was worth --  
19 Mr. Tescher's -- notes, like -- his interest was worth  
20 5 million.

21 What did he tell you it was worth in 2012?

22 A. Zero.

23 Q. Then underneath that -- I put zero here, so  
24 zero today.

25 So his net worth -- and then there was a home

1 that he owned for -- that Eliot lives in, right? He  
2 didn't really own it, but he controlled it, Simon?

3 A. Yes.

4 Q. Okay. Did you set up the entity that owned  
5 the home?

6 A. Yes, I did.

7 Q. Just to save time, there's an entity called  
8 Bernstein Family Realty that owns the house.

9 Simon controlled that entity while he was  
10 alive?

11 A. Yes, he did.

12 Q. And his estate holds a mortgage on the house  
13 for 365,000?

14 A. Correct.

15 Q. So there's some interest there.

16 He didn't put it on his sheet when he talked  
17 to you, but that still would have existed in some form,  
18 right?

19 A. Yes.

20 Q. And it still exists to this day.

21 We don't know the value of it, but there still  
22 is a mortgage, right?

23 A. Yes.

24 Q. Okay. But either way, the point of this whole  
25 story is, his net worth went down significantly between

1 2007 and 2012?

2 A. Yes, it did.

3 Q. And in your world, that's not uncommon, with  
4 the stock market crash, the depression, things like  
5 that, that a lot of clients with high net worth would  
6 have suffered losses during that time?

7 A. Many, many of them did. And even the values  
8 that are on this sheet were not the real values.

9 Q. We know that the --

10 A. Clients have a tendency to overstate their net  
11 worth.

12 Q. All right. And we know the Ocean Drive house  
13 sold for about a million four?

14 A. Correct.

15 Q. And the Court -- there's an order that  
16 approved the sale, the gross sale price of a million one  
17 for St. Andrews?

18 A. Correct.

19 Q. Okay. So that's still -- that's less than  
20 half, even then, Simon thought he would get.

21 Now, if you look at the bottom of the  
22 Exhibit No. 13, it says a word, begins with an "I." I  
23 can't really read it.

24 Can you read that?

25 A. Insurance.

1 Q. Well, did you have some discussions with Simon  
2 about his insurance?

3 A. Yes, we did.

4 Q. In fact, I think -- Mr. Spallina, we talked  
5 about he had -- I'm sorry.

6 Mr. Tescher's notes had a \$2 million life  
7 insurance?

8 A. Correct.

9 Q. Okay. Is this the same life insurance?

10 A. Yes, it is.

11 Q. And was there a discussion about -- I guess it  
12 says 1 million --

13 That's one million seven-fifty?

14 A. A million 75 -- yeah, one million seven-fifty  
15 was the value of the policy.

16 Q. And the death benefit was a million six?

17 A. Million six. There was a small loan or  
18 something against the policy.

19 Q. Okay. And then it says "Maritza."

20 What was Maritza down there for?

21 A. Si was considering changing -- the purpose of  
22 the meeting was to meet, discuss his assets. And he  
23 was, you know, having a lot of, I guess, internal -- he  
24 had received another letter from his daughter -- he  
25 asked me to read the letter from Pam -- that she still

1 was not happy about the fact that she had been  
2 disinherited under her mother's documents if the assets  
3 were to pass under the documents and he didn't exercise  
4 his power of appointment. And this meeting was to kind  
5 of figure out a way, with the assets that he had, to  
6 take care of everybody; the grandchildren, the children,  
7 and Maritza.

8 And so he thought maybe that he would change  
9 the beneficiary designation on his life insurance to  
10 include her. And we had talked about providing for her,  
11 depending on -- an amount -- an increasing scale,  
12 depending on the number of years that he was with her.

13 Q. So if you look at the bottom, it says 0 to  
14 2 years, 250.

15 Is that what you're referring to?

16 A. Yes. Two to four years, 500,000. And then  
17 anything over plus-four years would be -- I think that's  
18 600,000.

19 Q. Now, during this discussion, was Simon  
20 mentally sharp and aware of what was going on?

21 A. Oh, yeah. Yeah, he was -- he was the same  
22 Simon. He was just -- you know, he was struggling with  
23 his estate now. He was getting -- he felt -- I guess he  
24 was getting pulled. He had a girlfriend that wanted  
25 something. He had his daughter who, you know, felt like

1 she had been slighted. And he wanted to try to make  
2 good by everybody.

3 Q. And at that point in time, other than the  
4 house that he had bought that Eliot lived in, were you  
5 aware that he was supporting Eliot with a very  
6 significant amount of money each year?

7 A. I was not.

8 MR. BERNSTEIN: Object to the relevance.

9 THE COURT: Overruled.

10 BY MR. ROSE:

11 Q. Okay. So that's February.

12 A. Yes.

13 Q. What happens next in relation to Simon coming  
14 in to meet with you to talk about changing his  
15 documents?

16 A. He had called me on the phone and he -- we  
17 talked again about, you know, him changing his  
18 documents. He had been thinking about giving his estate  
19 and Shirley's estate to his grandchildren. And at the  
20 February meeting, I did not think it was a great idea  
21 for him to include his girlfriend, Maritza, as a  
22 beneficiary of the life insurance policy.

23 Q. He took your advice? He didn't change that,  
24 as far as you know?

25 A. He did not.



1 Q. Okay. I'm sorry. Continue.

2 A. He did not.

3 I had suggested that he provide for her in  
4 other ways; a joint account that would pass to her at  
5 his death, but not to mix her in with his family in  
6 their dispositive documents. And he ultimately took  
7 that advice and decided that he wanted to give his  
8 estate to his ten grandchildren, and that the policy --  
9 which I had never seen a copy of the policy, but, you  
10 know -- he had had. And I knew that he was paying for  
11 it, because -- it almost lapsed, or did lapse at one  
12 point, and it got reinstated -- that that policy was to  
13 pass to an insurance trust that named his five children  
14 as beneficiaries.

15 Q. And that's something Simon specifically  
16 discussed with you when you were going over his estate  
17 planning in 2012?

18 A. Correct -- or something that we had known  
19 about before that meeting. But he was -- at the  
20 meeting, he was starting to talk about doing a change to  
21 the beneficiary designation to include Maritza, and I  
22 wanted to talk him out of that.

23 Q. And at some point, he made a decision to  
24 actually change his documents, correct?

25 A. He did. He did.

1 Q. And did he direct you to set up any kind of a  
2 communication with his children?

3 A. Yes. He said, I want you to get -- put  
4 together a conference call with me and you and my five  
5 children so I can talk to them about what I want to do  
6 with my estate and Shirley's estate.

7 THE COURT: All right. This would be a good  
8 time for us to take a pause for a morning break.  
9 We'll be in session again in 10 minutes.

10 As far as time use goes, so far Plaintiff's  
11 side has used 60 minutes. So you have 90 remaining  
12 in your portion of the day. And that's where we  
13 stand.

14 MR. ROSE: We'll be well within our time, sir.

15 THE COURT: Great. Okay.

16 We'll be in recess for ten minutes. Is ten  
17 minutes enough time for everybody? That's what  
18 it'll be then.

19 (A break was taken.)

20 THE COURT: We're ready to proceed. Please  
21 continue.

22 MR. ROSE: Thank you.

23 BY MR. ROSE:

24 Q. I think we were when Shirley died in December  
25 of 2010, and you meet with Si, according to

1 Plaintiff's 13, on February 1st of 2012.

2 I think by May of 2012 was when this  
3 conference call that you mentioned was?

4 A. Yes, it was.

5 Q. Okay. And did the five children attend the  
6 conference call?

7 A. Yes, they all did.

8 Q. Were you present on the call?

9 A. Yes, I was.

10 Q. Was Simon present?

11 A. Yes, he was.

12 Q. Where was Simon physically during the call?

13 A. His office -- I believe his office.

14 Q. Were you in the same room as Simon?

15 A. No, I was not.

16 Q. You were in your office?

17 A. I was in my office.

18 Q. Okay. Generally, what was discussed during  
19 this conference call?

20 A. Simon wanted to talk to his children about  
21 providing for his estate and his wife's estate to go to  
22 the ten grandchildren; wanted to have a discussion with  
23 his children and see what they thought about that.

24 Q. And was he asking them for their approval or  
25 permission or...

1           A.     Well, I think he wanted to see what they all  
2     thought, you know, based on things that had happened in  
3     the past and documents that had been created in the  
4     past. And I don't know that it was going to sway his  
5     opinion, but when he told me, you know, to -- you know,  
6     to have the conference call, to contact his -- he said,  
7     This is what I'm going to do, so...

8           Q.     During the call, did Simon ask his children if  
9     anybody had an objection to him leaving his and  
10    Shirley's wealth to the ten grandchildren?

11          A.     Yes. He asked what everybody thought.

12          Q.     Did Eliot respond?

13          A.     Yes, he did.

14          Q.     What did he say?

15          A.     I'm paraphrasing, but he said something to the  
16    effect of, Dad, you know, whatever you want to do,  
17    whatever makes you happy, that's what's important.

18          Q.     Did you also discuss during that call the need  
19    to close Shirley's estate?

20          A.     Yes, we did. We had told Si that we needed to  
21    get back the waivers of accounting, the releases, and we  
22    asked -- he asked them to get those back to us as soon  
23    as possible.

24          Q.     Okay. If I hand you Exhibit 14, it appears to  
25    be an email from Eliot Bernstein to you addressing the

1 waiver that he needed to sign?

2 A. Yes, it is.

3 MR. ROSE: I move Exhibit 14 into evidence.

4 THE COURT: Any objection?

5 [No response.]

6 THE COURT: All right. That's in evidence  
7 then as Plaintiff's 14.

8 (Plaintiff's Exhibit No. 14 was received into  
9 evidence.)

10 MR. ROSE: As a matter of housekeeping, Your  
11 Honor, I think I might have failed to move in  
12 Exhibit 2, which is Shirley Bernstein's 2008 trust  
13 agreement, which I would move, to the extent it's  
14 not in evidence, 1, 2 and 3, which are the  
15 operative documents Mr. Spallina's already  
16 testified about.

17 THE COURT: Any objection?

18 MR. BERNSTEIN: What was that? I'm sorry.

19 THE COURT: Is there any objection to  
20 Plaintiff's 1, which is the will of Shirley  
21 Bernstein, Plaintiff's 2, which is the Shirley  
22 Bernstein Trust Agreement, and Plaintiff's 3, which  
23 is the First Amendment to the Shirley Bernstein  
24 Trust Agreement?

25 MR. BERNSTEIN: No.

1 THE COURT: All right. Those are all in  
2 evidence then as Plaintiff's 1, 2 and 3.

3 (Plaintiff's Exhibit No. 2 was received into  
4 evidence.)

5 BY MR. ROSE:

6 Q. Okay. This email is dated May -- May 17,  
7 2012, from Eliot, correct?

8 A. Yes, it is.

9 Q. This would have been after the conference  
10 call?

11 A. This, I believe, was after the conference  
12 call, yep.

13 Q. And he says he's attached the waiver  
14 accounting and portions of petition for discharge,  
15 waiver of service for a petition for discharge, and  
16 receipt of beneficiary and consent to discharge that he  
17 had signed.

18 Did you receive those from Eliot?

19 A. Yes, I did. We received -- that was the first  
20 waivers that we received.

21 Q. Then it says "as I mentioned in the phone  
22 call."

23 Did you have any separate phone calls with  
24 Eliot Bernstein, you and he, or is he referring to the  
25 conference call?

1           A.    I think he's referring to the conference call.

2           Q.    Okay.  I have not yet -- "I have not seen any  
3 of the underlying estate documents or my mother's will  
4 at this point, yet I signed this document after our  
5 family call so that my father can be released of his  
6 duties as personal representative and put whatever  
7 matters that were causing him stress to rest."

8                   Do you see that?

9           A.    Yes, I do.

10          Q.    Now, while Simon was alive, did you ever get  
11 authorization to share the testamentary documents with  
12 Eliot Bernstein?

13          A.    I did not.

14          Q.    Now, after the call and after the discussion  
15 with the siblings, did you prepare a draft of -- of new  
16 documents for Simon?

17          A.    Yes, I did.

18          Q.    I'm going to hand you Exhibit 15; ask if  
19 that's a letter that you sent to Simon Bernstein  
20 enclosing some new drafts?

21          A.    Yes, it is.

22          Q.    Now, what's the date of that?

23          A.    May 24th, 2012.

24          Q.    And what's -- what is the summary -- well,  
25 strike that.

1           You sent this letter to Simon Bernstein?

2           A.    Yes, I did.

3           Q.    By FedEx to his home?

4           A.    Yes, I did.

5           MR. ROSE:  I would move Exhibit 15 in  
6           evidence.

7           THE COURT:  Any objection?

8           [No response.]

9           THE COURT:  All right.  That's in evidence as  
10          Plaintiff's 15.

11          (Plaintiff's Exhibit No. 15 was received into  
12          evidence.)

13       BY MR. ROSE:

14          Q.    Okay.  So then first page says, "Dear Si, we  
15          have prepared drafts of a new will and an amended and  
16          restated trust agreement."

17          Are those the 2012 documents that were his  
18          final ones?

19          A.    Yes, they are.

20          Q.    Okay.  Then you sort of do the same thing you  
21          did in 2008; you give a little summary of what the  
22          estate plan is.

23          "Your amended and restated trust provides that  
24          on your death, your assets will be divided among and  
25          held in separate trusts for your then living



1 grandchildren," correct? I was reading paragraph -- the  
2 middle paragraph.

3 A. Yes, I see that. Yes.

4 Q. I actually skipped the part above, which is  
5 probably more important, which says -- in the middle of  
6 the first paragraph, it says, "In addition, you have  
7 exercised the special power of appointment granted to  
8 you under Shirley's trust agreement in favor of your  
9 grandchildren who survive you."

10 Do you see that?

11 A. Yes.

12 Q. Okay. And so that was Simon's intent as  
13 discussed on the conference call?

14 A. Yes, it was.

15 Q. Do you know if you made any changes to these  
16 draft documents from May 24th until the day they were  
17 signed?

18 A. I don't believe so. If I did, it was for  
19 grammar or something else. The dispositive plan that  
20 was laid out in this memo was ultimately the subject of  
21 the documents that he executed in July.

22 Q. I'm going to hand you Exhibit 16, which is a  
23 durable power of attorney.

24 If you flip to Exhibit 16, the last page, does  
25 it bear a signature of Simon Bernstein?

1 A. Yes, it does.

2 Q. And it indicates you were a witness to the  
3 signature?

4 A. Yes.

5 Q. Along with Kimberly Moran, who is someone from  
6 your office?

7 A. Correct.

8 Q. And someone named Lindsay Baxley notarized the  
9 documents?

10 A. Yes, she did.

11 Q. Do you know who Lindsay Baxley was?

12 A. Lindsay Baxley worked in Ted and Si's office.

13 Q. She was like a secretary?

14 A. Assistant to Ted, I believe, maybe.

15 Q. Okay. And if you look at --

16 MR. ROSE: Well, first of all, I'll move  
17 Exhibit 16 into evidence.

18 THE COURT: Any objection?

19 [No response.]

20 THE COURT: No objection made, then I'll  
21 receive this as Plaintiff's 16.

22 (Plaintiff's Exhibit No. 16 was received into  
23 evidence.)

24 BY MR. ROSE:

25 Q. If you look at the last page where the notary

1 block is there, it says "personally known" with an  
2 underline, or "produced identification" with an  
3 underline. And she's checked the box "personally  
4 known" -- or she's checked the line.

5 Do you see that?

6 A. Yes.

7 Q. So do you believe that -- did you know Lindsay  
8 Baxley by that point in time?

9 A. Yes, I did.

10 Q. And you believe -- she obviously knew Simon,  
11 she knew Kim Moran from other dealings between your  
12 offices?

13 A. Yes.

14 Q. Okay. And did you all sign this durable power  
15 of attorney with testamentary formalities?

16 A. Yes, we did.

17 Q. And what's the date of that?

18 A. July 25, 2012.

19 Q. I'm going to approach with Exhibit 4, and ask  
20 you if you recognize Exhibit 4?

21 A. Yes, I do.

22 Q. Okay. And what is Exhibit 4?

23 A. This is Si's new will that he executed in  
24 2012, on July 25th, the same day as that durable power  
25 of attorney.

1           Q.    Now, were you present when Simon executed his  
2 new will, which is Exhibit 4?

3           A.    Yes, I was.

4           Q.    If you turn to the last page --

5                Well, actually, if you turn to the first page,  
6 does it say "copy" and bear a clerk's stamp?

7           A.    It does.

8           Q.    Okay.

9                MR. ROSE:  I would represent to the Court that  
10 I went to the clerk's office -- unlike with  
11 Shirley's will, I went to the clerk's office and  
12 obtained a -- like, a copy made by the clerk of the  
13 document itself, rather than have the typewritten  
14 conformed copy.

15           MR. BERNSTEIN:  Can I object to that?

16           THE COURT:  What's the objection?

17           MR. BERNSTEIN:  Is he making a statement?  I'm  
18 not sure --

19           THE COURT:  You're asking me a question.  I  
20 don't know.

21           MR. BERNSTEIN:  I'm objecting.  Is that a  
22 statement?

23           THE COURT:  The objection is?  What are you  
24 objecting to?

25           MR. BERNSTEIN:  With the statement being

1 from --

2 THE COURT: Okay. That was a statement by  
3 somebody who's not a sworn witness, so I'll sustain  
4 the objection.

5 MR. BERNSTEIN: And the chain of custody of  
6 the document, I'm just trying to clarify that.  
7 Okay.

8 THE COURT: The objection was to the  
9 statement. I've sustained the objection.

10 Next question, please.

11 BY MR. ROSE:

12 Q. Unlike the trust, how many originals of a will  
13 do you have the client sign?

14 A. There's only one.

15 Q. And then you give the client the one with the  
16 typewritten -- you call it conformed copy?

17 A. We conform the copy of the will.

18 Q. And after Simon died, was your law firm  
19 counsel for the personal representative of the Estate of  
20 Simon Bernstein?

21 A. Yes, we were.

22 Q. Did you file the original will with the court?

23 A. Yes, we did.

24 Q. Is it your belief that the original of this  
25 document is somewhere in the Palm Beach County Court

1 system with the clerk's office?

2 A. Yes, I do.

3 MR. ROSE: I'd move Exhibit 4 in evidence,  
4 Your Honor.

5 THE COURT: All right. Any objection?

6 [No response.]

7 MR. BERNSTEIN: No objection stated, I'll  
8 receive this as Plaintiff's 4.

9 (Plaintiff's Exhibit No. 4 was received into  
10 evidence.)

11 BY MR. ROSE:

12 Q. Now, if you turn to the next to the last page  
13 of Exhibit --

14 A. Yes.

15 Q. -- Exhibit 4, you'll see it bears a signature  
16 of Simon Bernstein and two witnesses, yourself and  
17 Kimberly Moran, who all assert that you signed in the  
18 presence of each other?

19 A. Yes.

20 Q. And then in the next page, it has what would  
21 be a self-proving affidavit?

22 A. Correct.

23 Q. Now, if you look at the signature block where  
24 the notary signed, where it says "who is personally  
25 known to me," it doesn't seem to have a check box there.

1 It just says "who is personally known to me or who has  
2 produced [blank] as identification," right?

3 A. Correct.

4 Q. Is this the same person who notarized the  
5 exhibit we just put in evidence, Exhibit 15, the durable  
6 power of attorney -- 16, the durable power of attorney?

7 A. Yes.

8 Q. Okay. And again, with regard to  
9 Exhibit 4 -- strike that.

10 Do you recall where you signed Exhibit 4?

11 A. Yes.

12 Q. In whose office?

13 A. This was also done in Si's office.

14 Q. Okay. So you took -- you went personally  
15 again, along with Kim Moran, as your practice, to make  
16 sure that the documents were signed properly; true?

17 A. Correct.

18 Q. And that's important because, if the documents  
19 aren't properly signed, they might not be valid and  
20 enforceable?

21 A. That's correct.

22 Q. And I'm going to hand you Exhibit 5. This is  
23 the Simon L. Bernstein Amended and Restated Trust  
24 Agreement.

25 Was that signed the same day, at the same

1 time, with the same procedures?

2 A. Yes, it was.

3 Q. And would this have been signed with three  
4 originals?

5 A. Yes, it would be.

6 MR. ROSE: I would move Exhibit 5 into  
7 evidence, Your Honor.

8 THE COURT: Any objection?

9 [No response.]

10 THE COURT: All right. That's in evidence as  
11 Plaintiff's 5.

12 (Plaintiff's Exhibit No. 5 was received into  
13 evidence.)

14 BY MR. ROSE:

15 Q. Now, we looked at the history when you did the  
16 first set of documents. In the second set, you started  
17 in February through July.

18 Did you have a number of telephone conferences  
19 with Simon during that time?

20 A. Yes, we did.

21 Q. And at least a couple of face-to-face  
22 meetings?

23 A. Yes, we did.

24 Q. Did at any time Simon give you any indication  
25 that he was not fully mentally sharp and aware and



1 acting of his own volition?

2 A. Nope. He was Si that we had known since 2007.

3 Q. I'll close with Exhibit 17. This is a letter  
4 you sent to Simon Bernstein, enclosing a copy of his  
5 conformed will for him.

6 A. Yes, it is.

7 Q. And it's dated the 26th, the day after he  
8 signed the documents?

9 A. Correct.

10 Q. And did you also leave him with two of the  
11 originals of his trust?

12 A. Yes, we did.

13 MR. ROSE: I move -- did I move 17 in? Or I  
14 will move it in.

15 THE COURT: Number 7, is it?

16 MR. ROSE: Seventeen, sir.

17 THE COURT: Oh, I'm sorry.

18 Any objection?

19 [No response.]

20 THE COURT: All right. Then that's in  
21 evidence as Plaintiff's 17.

22 (Plaintiff's Exhibit No. 17 was received into  
23 evidence.)

24 BY MR. ROSE:

25 Q. Now, Simon passed away on September 13, 2012.

1 Does that sound right?

2 A. Yes, it does.

3 Q. I have Exhibit 18 as his death certificate.

4 MR. ROSE: I'll just move 18 into evidence.

5 THE COURT: Any objection?

6 [No response.]

7 THE COURT: All right. That's in evidence as  
8 Plaintiff's 18.

9 (Plaintiff's Exhibit No. 18 was received into  
10 evidence.)

11 BY MR. ROSE:

12 Q. So that's the death certificate for Simon  
13 Bernstein.

14 Did you have any further discussions or  
15 meetings with Simon after he signed the will and trust  
16 in 2012 and before he died?

17 A. Not that I recall, no.

18 Q. And you filed a notice of administration,  
19 opened an asset, published it in the Palm Beach Daily  
20 Review, did what you had to do?

21 A. Yes, we did.

22 Q. And you and Mr. Tescher were the personal  
23 representatives of the estate?

24 A. Yes, we were.

25 Q. And you and Mr. Tescher became the successor

1 trustees of Simon's amended trust after he passed away?

2 A. Yes, we did.

3 Q. I guess while he was still alive, he was still  
4 the sole trustee of his trust, which was revocable  
5 still?

6 A. Correct.

7 Q. And then upon his death, at some point, did  
8 Ted Bernstein become aware that he was going to become  
9 the successor trustee to the Shirley trust?

10 A. Yes. We had a meeting with Ted.

11 Q. And that was the first time he learned about  
12 the contents of her trust, as far as you know?

13 A. Correct.

14 Q. Initially, did anybody object to the documents  
15 or the fact that the beneficiaries were supposed to be  
16 the 10 grandchildren?

17 A. No.

18 Q. When was there first some kind of an objection  
19 or a complaint?

20 A. I can't recall exactly when it happened.

21 Q. Okay. Did you at some point get a letter from  
22 a lawyer at the Tripp Scott firm?

23 A. Yes, we did.

24 Q. Okay. I think she was asking you about  
25 something called the status of something called I View

1 It Company? Do you recall that?

2 A. Vaguely.

3 Q. Did you know what the Iviewit company was  
4 before you received a letter from the Tripp Scott  
5 lawyer?

6 A. I'm not sure. I'm not sure. I know today. I  
7 can't tell if I'm answering because I know about it  
8 today or if I knew about it at that time.

9 Q. Okay. And did -- was she asking for some  
10 documents from you?

11 A. Is this Ms. Yates?

12 Q. Yes.

13 A. Yes.

14 Q. And did you provide her with certain  
15 documents?

16 A. She had asked for copies of all of Shirley's  
17 and Si's estate planning documents.

18 Q. And did you provide her with all of the  
19 documents?

20 A. Yes, we did.

21 Q. Was one of the documents that you provided her  
22 not an accurate copy of what Shirley had executed during  
23 her lifetime?

24 A. That is true.

25 Q. Okay. And I guess I'll hand you Exhibit 6,

1 and this -- is Exhibit 6 a document that is not a  
2 genuine and valid testamentary document of Shirley  
3 Bernstein?

4 A. That's correct.

5 Q. Can you explain to the Court why Exhibit 6 was  
6 prepared and the circumstances?

7 A. It was prepared to carry out the intent of  
8 Mr. Bernstein in the meeting that he had had with his  
9 five children, and perhaps a vague -- or a layman -- a  
10 layman can make a mistake reading Shirley's documents  
11 and not understand who the intended beneficiaries were  
12 or what powers I had. So this document was created.

13 Q. Is it your belief that under the terms of  
14 Shirley's document from -- the ones she actually signed,  
15 that Simon had the power to appoint the funds to the ten  
16 grandchildren?

17 A. Yes. We -- we prepared the documents that  
18 way, and our planning transmittal letter to him  
19 reflected that.

20 Q. And this document is, I think you said, to  
21 explain it to a layperson in simpler fashion?

22 A. It was created so that the person that, you  
23 know, didn't read estate planning documents and prepare  
24 estate planning documents for a living -- you know,  
25 there was no intent to cut out Pam and Ted's children,

1 basically.

2 Q. Now, did you ever file this exhibit in the  
3 courthouse?

4 A. No, we did not.

5 Q. Did you ever use it for any purpose?

6 A. No, we did not.

7 Q. Was it at one point provided to Eliot's  
8 counsel?

9 A. Yes, it was.

10 Q. Now, the fact -- putting aside this document,  
11 were any of the other documents that we're talking about  
12 in any way altered or changed from the ones that were  
13 signed by Shirley or Simon?

14 A. No, they were not.

15 Q. Now, after these issues came to light, did  
16 Mr. Eliot Bernstein begin to attack you through the  
17 internet and through blogging and things like that?

18 A. He was doing that long before this document  
19 came to light.

20 Q. Okay. What was Eliot doing?

21 A. His first thing that he did was -- with  
22 respect to the courts, was to file an emergency petition  
23 to freeze assets and after his brother as successor  
24 trustee of his mother's trust had sold the condo.

25 MR. BERNSTEIN: Your Honor, can I object to

1           this line of questioning for relevance to validity?

2           THE COURT:  What's the line of questioning  
3           you're talking about?

4           MR. BERNSTEIN:  The slander defamation going  
5           on about me with, you know, what I do and --

6           THE COURT:  Well, I wasn't aware there's a  
7           line of questioning going on.  There is a question.  
8           You've objected to it.

9           MR. BERNSTEIN:  Yes.

10          THE COURT:  What's the objection to that  
11          question?

12          MR. BERNSTEIN:  The relevancy to a validity  
13          hearing.

14          THE COURT:  Okay.  Can I have the court  
15          reporter read the question back?

16          (A portion of the record was read by the  
17          reporter.)

18          THE COURT:  What is the relevance of whether  
19          this guy's posting on Facebook that's negative or  
20          not?

21          MR. ROSE:  Well, a couple of things, but,  
22          primarily, we're just trying to determine whether  
23          these documents are valid.

24          THE COURT:  Right.

25          MR. ROSE:  And he is the only one who's saying

1       they're not valid, so I want to give some  
2       explanation as to why he's saying they're not  
3       valid, as opposed to --

4               THE COURT: I don't care why he's saying  
5       they're valid or invalid. I'll wait to see what  
6       the facts are. So I'll sustain the objection.

7               MR. ROSE: That's fine.

8 BY MR. ROSE:

9       Q. Did Simon Bernstein make any special  
10      arrangements, other than -- strike that.

11              Did Simon or Shirley make any special  
12      arrangements, other than the testamentary documents that  
13      are admitted into evidence, for special benefits for  
14      Eliot Bernstein and his family?

15      A. No, they did not.

16      Q. Any special education trusts, other than  
17      the -- these five documents? And I believe there was  
18      some shares of stock that were put in trust for all ten  
19      grandchildren, right?

20      A. There was no special arrangements made other  
21      than the estate planning documents.

22      Q. After Simon died, did Eliot claim to you that  
23      Simon was supposed to have made some special  
24      arrangements for him?

25              MR. BERNSTEIN: Object to the relevancy again.



1 THE COURT: Overruled.

2 THE WITNESS: Yes, he did.

3 BY MR. ROSE:

4 Q. Did he ever give you an indication how much  
5 money he thought he was going to inherit when his  
6 father died, or his children would inherit when his  
7 father died?

8 A. Through his subsequent attorney, yes, he did.

9 Q. And how much money did he indicate he thought  
10 there should be?

11 A. I heard a number from one of his attorneys of  
12 40- to a \$100 million.

13 Q. Are you aware of any assets that Simon  
14 Bernstein had other than what he disclosed to you at the  
15 two times that we've looked at in 2007 and again in  
16 February of 2012?

17 A. No, I am not.

18 MR. ROSE: No further questions, Your Honor.

19 THE COURT: All right. Thanks.

20 Is there any cross?

21 MR. BERNSTEIN: Yes.

22 MR. MORRISSEY: Judge, I have questions as  
23 well.

24 THE COURT: Okay. Well, then, let me have the  
25 direct finished. That way, all the

1 cross-examination can take place without  
2 interruption. So everybody make sure you're  
3 fitting within the Plaintiff's side of the room's  
4 time limitations. We'll strictly obey those.

5 CROSS (ROBERT SPALLINA)

6 BY MR. MORRISSEY:

7 Q. Good afternoon, Mr. Spallina. My name's John  
8 Morrissey. I represent four of the adult grandchildren  
9 of Simon Bernstein.

10 And since we're here today about validity, I'm  
11 just going to go over, and try to be very brief,  
12 concerning the execution of these documents and your  
13 knowledge about the execution.

14 Exhibit 1, which has been entered as the will  
15 of Shirley Bernstein, I'd ask you to direct your  
16 attention to that document. And I'm looking here at  
17 page 7. I ask that you turn to page 7 of Exhibit 1.

18 Were you a witness of this document, this will  
19 that was executed by Shirley Bernstein on May 20th of  
20 2008?

21 A. Yes, I was.

22 Q. And was Diana Banks the other witness?

23 A. Yes, she was.

24 Q. And did you and Diana witness Mrs. Bernstein's  
25 execution of this document?

1 A. Yes, we did.

2 Q. You were present during her execution?

3 A. Yes, we were.

4 Q. And was she present during your execution of  
5 this document as a witness?

6 A. Yes, she was.

7 Q. And was she, Shirley Bernstein, present during  
8 Diana Banks' execution of this document?

9 A. Yes, she was.

10 Q. Okay. And I'm again focused on this  
11 Exhibit No. 1, this will of Shirley Bernstein dated  
12 May 20th of 2008.

13 Is it your opinion that at the time Shirley  
14 Bernstein executed this document she understood  
15 generally the nature and extent of her property?

16 A. Yes, she did.

17 Q. Okay. And at the time Shirley Bernstein  
18 executed Exhibit 1, did she have a general understanding  
19 of those who would be the natural objects of her bounty?

20 A. Yes, she did.

21 Q. Okay. And at the time she -- Shirley  
22 Bernstein executed Exhibit 1, did she have a general  
23 understanding of the practical effect of this will?

24 A. I believe she did.

25 Q. Okay. And in your opinion, was Shirley

1 Bernstein unduly influenced by any beneficiary of  
2 Exhibit 1 in connection with its execution?

3 A. Not to my knowledge.

4 Q. Okay. And do you have any knowledge of any  
5 beneficiary or anyone actively procuring Exhibit 1?

6 A. No, I do not.

7 Q. Okay. Moving on to Exhibit 2, which is  
8 Shirley Bernstein's trust executed on the same date,  
9 that is May 20th of 2008, I'll direct your attention to  
10 page 27 of Exhibit No. 2. And it appears that Shirley  
11 Bernstein executed that document on May 20th of 2008.  
12 And the witnesses were yourself and Traci -- I can't  
13 read her last name.

14 A. Traci Kratish.

15 Q. Okay. Did Shirley Bernstein execute  
16 Exhibit No. 2 in the presence of both you and Traci  
17 Kratish?

18 A. Yes, she did.

19 Q. Okay. And did you execute Exhibit No. 2 in  
20 the presence of Shirley Bernstein and Traci Kratish?

21 A. Yes, I did.

22 Q. Okay. And did Traci Kratish execute  
23 Exhibit No. 2 in your presence and Shirley Bernstein's  
24 presence?

25 A. Yes, she did.

1           Q.    Okay.  And at the time Shirley Bernstein  
2   executed Exhibit No. 2, which is her 2008 trust, is it  
3   your opinion that she had a general understanding of the  
4   nature and extent of her property?

5           A.    Yes, she did.

6           Q.    Okay.  And at the time that Shirley Bernstein  
7   executed Exhibit No. 2, is it your opinion that she  
8   understood generally the relationship of those who  
9   would -- were the natural objects of her bounty?

10          A.    Yes.

11          Q.    Okay.  And at the time Shirley Bernstein  
12   executed Exhibit No. 2, is it your opinion that she  
13   generally understood the practical effect of this  
14   document?

15          A.    I believe she did.

16          Q.    Okay.  And did you have any belief that  
17   Shirley Bernstein was unduly influenced in connection  
18   with -- by any beneficiary in connection with her  
19   execution of Exhibit No. 2?

20          A.    Not to my knowledge.

21          Q.    Okay.  And do you know or have any information  
22   about any beneficiary or anyone else actively procuring  
23   Exhibit No. 2?

24          A.    I do not.

25          Q.    Okay.  And with respect -- now we'll move on

1 to Exhibit No. 3, which is the first amendment of  
2 Shirley Bernstein's trust, executed on November 18th of  
3 2008. And I'll direct your attention on that Exhibit 3  
4 to Page No. 2. And on Page No. 2 --

5 Well, let me ask this question. Did Shirley  
6 Bernstein execute Exhibit No. 3 in the presence of both  
7 you and Rachel Walker?

8 A. Yes, she did.

9 Q. Okay. And did you execute Exhibit No. 3 in  
10 the presence of Shirley Bernstein and Rachel Walker?

11 A. Yes, I did.

12 Q. And did Rachel Walker execute this document,  
13 Exhibit No. 3, in the presence of Shirley Bernstein and  
14 yourself?

15 A. Yes, she did.

16 Q. Okay. And at the time Exhibit No. 3 was  
17 executed, is it your opinion that Ms. Bernstein  
18 understood generally the nature and extent of her  
19 property?

20 A. Yes, I believe so.

21 Q. And is it your opinion that at the time  
22 Shirley Bernstein executed Exhibit No. 3, she generally  
23 understood the relationship of those who would be the  
24 natural objects of her bounty?

25 A. Yes, I believe so.

1           Q.    Okay.  And at the time Shirley Bernstein  
2   executed Exhibit No. 3, is it your opinion that she  
3   generally understood the practical effect of this trust  
4   amendment?

5           A.    Yes, I believe so.

6           Q.    Okay.  And do you have any knowledge or  
7   information about any beneficiary or any other person  
8   unduly influencing Shirley Bernstein to execute  
9   Exhibit No. 3?

10          A.    I do not.

11          Q.    Okay.  And do you have any knowledge or  
12   information about any person, beneficiary or otherwise,  
13   actively procuring Exhibit No. 3?

14          A.    I do not.

15          Q.    Okay.  Moving on to Exhibit No. 4 then, which  
16   is the will of Simon Bernstein, and that is a will that  
17   Mr. Bernstein executed on July -- yes, July 25 of 2012.  
18   And let me direct your attention to page 7 of that will,  
19   Exhibit No. 4.

20                And did Simon Bernstein execute this document  
21   in the presence of you and Kimberly Moran on July 25,  
22   2012?

23          A.    Yes, he did.

24          Q.    And did you execute this document,  
25   Exhibit No. 4, as a witness in the presence of Simon

1 Bernstein and Kimberly Moran on that date?

2 A. Yes, I did.

3 Q. And did Kimberly Moran execute Exhibit No. 4  
4 as a witness in the presence of Simon Bernstein and  
5 yourself?

6 A. Yes, she did.

7 Q. Okay. And on this date -- or at the time of  
8 execution on this date of July 25, 2012, did Simon  
9 Bernstein understand in a general way the nature and  
10 extent of his property?

11 A. Yes, he did.

12 Q. Okay. At the time that Exhibit No. 4 was  
13 executed, did Simon Bernstein generally understand the  
14 relationship of those who would be the natural objects  
15 of his bounty?

16 A. Yes, he did.

17 Q. And at the time Exhibit No. 4 was executed,  
18 did -- in your opinion, did Simon Bernstein understand  
19 the practical effect of this will?

20 A. Yes, he did.

21 Q. Okay. And do you have any knowledge or  
22 information about any person, whether beneficiary or  
23 otherwise, actively procuring this Exhibit No. 4?

24 A. No, I do not.

25 Q. Do you have any information about any person,



1 beneficiary or otherwise, unduly influencing Simon  
2 Bernstein to execute Exhibit No. 4?

3 A. I do not.

4 Q. Okay. And moving on to the last document  
5 then, Exhibit No. 5, which is the Simon Bernstein  
6 Amended and Restated Trust Agreement, and I'll direct  
7 your attention to page 24 of that Exhibit No. 5.

8 On July 25, 2012, did Simon Bernstein execute  
9 this trust agreement in the presence of you and Kimberly  
10 Moran?

11 A. Yes, he did.

12 Q. And did you execute this trust, Exhibit No. 5,  
13 as a witness in front of Simon Bernstein and Kimberly  
14 Moran?

15 A. I did.

16 Q. And did Kimberly Moran execute Exhibit No. 5  
17 as a witness in front of Simon Bernstein and yourself?

18 A. She did.

19 Q. Okay. And at the time Simon Bernstein  
20 executed Exhibit No. 5, in your opinion, did he  
21 generally understand the nature and extent of his  
22 property?

23 A. He did.

24 Q. And at the time Exhibit No. 5 was executed,  
25 did Simon Bernstein, in your opinion, generally

1 understand the relationship of those who would be the  
2 natural objects of his bounty?

3 A. He did.

4 Q. And did Simon Bernstein, when Exhibit No. 5  
5 was executed, understand generally the practical effect  
6 of this trust agreement?

7 A. Yes, he did.

8 Q. And at the time Exhibit No. 5 was executed, do  
9 you have any knowledge about any person, whether  
10 beneficiary or otherwise, unduly influencing  
11 Mr. Bernstein, Simon Bernstein, to execute this  
12 Exhibit No. 5?

13 A. Nothing that I'm aware of.

14 Q. Okay. And do you have any knowledge or  
15 information about any person, whether beneficiary or  
16 otherwise, actively procuring Exhibit No. 5?

17 A. I do not.

18 MR. MORRISSEY: I have no further questions,  
19 Judge.

20 THE COURT: All right. Thanks.

21 Now, is there any cross? You're not required  
22 to ask any questions, but you just need to let me  
23 know if you're going to.

24 MR. BERNSTEIN: Oh, are you asking me? I had  
25 no idea.

1           THE COURT: I'm not asking you. I'm just  
2           telling you, if you have questions for the witness,  
3           this is your opportunity to ask them; if you don't  
4           have any questions, you don't have to ask any. But  
5           if you're going to, you have to start now.

6                   CROSS (ROBERT SPALLINA)

7 BY MR. BERNSTEIN:

8           Q. Mr. Spallina, you were called today to provide  
9           some expert testimony, correct, on the --

10          A. No, I was not.

11          Q. Oh, okay. You're just going based on your  
12          doing the work as Simon Bernstein's attorney and Shirley  
13          Bernstein's attorney?

14          A. Yes.

15          Q. Okay. Are you still an attorney today?

16          A. I am not practicing.

17          Q. Can you give us the circumstances regarding  
18          that?

19          A. I withdrew from my firm.

20          Q. Are you under a consent order with the SEC?

21                   MR. ROSE: Objection. Relevance.

22                   THE COURT: Sustained.

23 BY MR. BERNSTEIN:

24          Q. Did you sign a consent order for insider  
25          trading --

1           A.    Yes, I did.

2           Q.    -- with the SEC?

3                    You did.  Can you give us the circumstances of  
4 your consent order?

5           MR. ROSE:  Objection.  Relevance.

6           THE COURT:  That won't be relevant.  Please  
7 move on to the next question.

8           MR. BERNSTEIN:  Okay.

9 BY MR. BERNSTEIN:

10          Q.    Were you -- did you plead to a felony crime?

11          MR. ROSE:  Objection.  Relevance.

12          THE COURT:  Overruled.

13          MR. BERNSTEIN:  Well, it's relevant as to --

14          THE COURT:  I didn't ask for argument.

15          MR. BERNSTEIN:  Well, what did you say?

16          THE COURT:  I didn't ask for argument.  I  
17 sustained the objection -- no, I sustained the last  
18 objection.  This one I'm overruling.

19                 You can answer.

20          MR. BERNSTEIN:  I can't ask him if he's a  
21 felon?

22          THE COURT:  You're asking the wrong guy.

23          MR. BERNSTEIN:  Okay.  Are --

24          THE COURT:  The witness is -- you asked the  
25 question.

1 BY MR. BERNSTEIN:

2 Q. Are you a convicted felony?

3 THE COURT: Let's back up a second.

4 MR. BERNSTEIN: Yes, sir.

5 THE COURT: When you're asking for a ruling,  
6 and I make one, then we're going to have the  
7 witness answer.

8 MR. BERNSTEIN: Okay.

9 THE COURT: I made my ruling. I'm letting the  
10 witness answer your earlier question, unless you're  
11 withdrawing it. Are you withdrawing your earlier  
12 question?

13 MR. BERNSTEIN: No.

14 THE COURT: You can answer the question, which  
15 is, did you plead to a felony?

16 MR. BERNSTEIN: Sorry, sir.

17 THE WITNESS: I have not.

18 THE COURT: Okay. Next question.

19 BY MR. BERNSTEIN:

20 Q. Have you pled guilty to a misdemeanor?

21 A. I have not.

22 Q. Were you involved in a insider trading case?

23 MR. ROSE: Objection. Relevance.

24 THE COURT: Sustained. Next question.

25 MR. BERNSTEIN: Does that mean he doesn't have

1 to answer that?

2 THE COURT: How many times have you been in  
3 court?

4 MR. BERNSTEIN: Just a few where I've had to  
5 do this.

6 THE COURT: You know how this works.

7 MR. BERNSTEIN: I really don't.

8 THE COURT: All right. If I sustain an  
9 objection, that's means he does not answer the  
10 question.

11 MR. BERNSTEIN: Okay. And overruled?

12 THE COURT: If I overrule an objection, that  
13 means the witness does answer the question.

14 MR. BERNSTEIN: Okay.

15 THE COURT: And I've asked you to ask your  
16 next question.

17 MR. BERNSTEIN: Okay.

18 BY MR. BERNSTEIN:

19 Q. Is that your picture on the Florida Law  
20 Review, SEC case settled against Florida attorneys?

21 MR. ROSE: Objection. Relevance.

22 THE COURT: Sustained.

23 Do you have any questions on the issues that I  
24 have to decide in this case?

25 MR. BERNSTEIN: Well, his testimony is based

1 on his truthfulness.

2 THE COURT: My question is, do you have any  
3 questions you want to ask about the issues relevant  
4 to this case?

5 MR. BERNSTEIN: Yes. This is relevant to this  
6 case.

7 THE COURT: I disagree.

8 MR. BERNSTEIN: Oh, okay.

9 THE COURT: I thought I made that very clear  
10 in my ruling. You probably want to move on to a  
11 relevant issue.

12 MR. BERNSTEIN: Okay.

13 BY MR. BERNSTEIN:

14 Q. Mr. Spallina, have you been in discussion with  
15 the Palm Beach County Sheriff's Office regarding the  
16 Bernstein matters?

17 MR. ROSE: Objection. Relevance.

18 THE COURT: Overruled.

19 You can answer that.

20 THE WITNESS: Yes, I have.

21 BY MR. BERNSTEIN:

22 Q. And did you state to them that you  
23 fraudulently altered a Shirley trust document and then  
24 sent it through the mail to Christine Yates?

25 A. Yes, I did.

1 Q. Have you been charged with that by the Palm  
2 Beach County Sheriff yet?

3 A. No, I have not.

4 Q. Okay. How many times were you interviewed by  
5 the Palm Beach County Sheriff?

6 MR. ROSE: Objection. Relevance.

7 THE COURT: Sustained.

8 BY MR. BERNSTEIN:

9 Q. Did you mail a fraudulently signed document to  
10 Christine Yates, the attorney for Eliot Bernstein's  
11 minor children?

12 MR. ROSE: Objection. Relevance.

13 THE COURT: Overruled.

14 THE WITNESS: Yes.

15 BY MR. BERNSTEIN:

16 Q. And when did you acknowledge that to the  
17 courts or anybody else? When's the first time you came  
18 about and acknowledged that you had committed a fraud?

19 A. I don't know that I did do that.

20 Q. Well, you just said you went to the Palm Beach  
21 County Sheriff and admitted altering a document and put  
22 it in the mail.

23 THE COURT: Let me stop you there. If you  
24 want to ask the witness questions, you're permitted  
25 to do that. If you would like to argue with the



1 witness, that's not -- do you have any questions  
2 you want to ask?

3 MR. BERNSTEIN: Yes.

4 BY MR. BERNSTEIN:

5 Q. So you sent a fraudulent document to Eli  
6 Bernstein's minor children's counsel.

7 Can you tell us what that document did to  
8 affect the dispositive Shirley trust document?

9 A. It has no effect.

10 Q. What was its intended effect of altering the  
11 document?

12 A. To carry out your father's wishes in the  
13 agreement that he had made with the five of you for a  
14 layperson that would be reading the documents.

15 Q. You were carrying out his wishes by  
16 fraudulently altering a document?

17 MR. ROSE: Objection.

18 THE COURT: Sustained.

19 That's argumentative. I don't want you to  
20 argue with the witness. That's an argument.

21 MR. BERNSTEIN: Okay.

22 BY MR. BERNSTEIN:

23 Q. Did the fraudulently altered document change  
24 the beneficiaries that were listed in Shirley's trust?

25 A. They did not.

Untrue it added  
Ted Bernstein  
children back into  
the trust

1 Q. Who are the beneficiaries of Shirley's trust?

2 A. It depends on -- under the trust instrument,  
3 in the absence of Si exercising his power of  
4 appointment, it would be yourself and your two sisters,  
5 Lisa and Jill.

6 Q. Oh. So the only beneficiaries in Shirley's  
7 trust are me, Lisa and Jill.

8 Is that directly or through a family trust?

9 A. Your father had established -- your parents  
10 had established family trusts for the three of you to  
11 receive assets from the trust.

12 Q. Okay. So in that document that you sent to  
13 Christine Yates, did you include Ted and Pam's lineal  
14 descendants under the amendment that you fraudulently  
15 drafted and sent to her?

16 MR. ROSE: Objection. Argumentative.

17 THE COURT: Sustained.

18 BY MR. BERNSTEIN:

19 Q. Did in any way the document that you  
20 fraudulently altered and sent to Yates change the  
21 beneficiaries from Eliot, Lisa and Jill and their lineal  
22 descendants to anybody else?

23 THE COURT: May I ask a question?

24 MR. BERNSTEIN: Yes, sir.

25 THE COURT: This document that you're

1 referring to, is anybody asking me to probate that  
2 document?

3 MR. BERNSTEIN: Well, it's part of the estate  
4 plan. It's part --

5 THE COURT: Is anybody seeking relief, either  
6 you or the other side, under that document?

7 MR. BERNSTEIN: Yeah. They're seeking to  
8 change the beneficiaries of my mom's trust through  
9 that document and others.

10 THE COURT: You're misperceiving my question.

11 MR. BERNSTEIN: Oh, okay. Sorry.

12 THE COURT: That document, which  
13 is -- nobody's put it in evidence; I don't know  
14 what it is, but it's -- that thing that you're  
15 asking the witness about, is somebody seeking  
16 relief based upon that document?

17 MR. ROSE: Absolutely not. The opposite.

18 THE COURT: All right. Are you seeking relief  
19 based upon that document?

20 MR. BERNSTEIN: Yeah. Oh, absolutely.

21 THE COURT: All right. Are you claiming that  
22 that document is subject to probate?

23 MR. BERNSTEIN: Yeah.

24 THE COURT: Is the lady who's giving you  
25 advice your attorney?

1 MR. BERNSTEIN: No.

2 THE COURT: Ma'am, are you admitted to the bar  
3 in Florida? Remember what I told you earlier.  
4 I've let you sit there as a courtesy. Generally, I  
5 don't let wives or friends or anybody else sit at  
6 the table where the parties are because it confuses  
7 me. But you're giving that guy advice and you're  
8 also not listening to me, which I find odd, because  
9 I'm going to have you move you back to the gallery  
10 now. Please have a seat in the gallery. Please  
11 have a seat in the gallery. Please have a seat in  
12 the gallery. Soon. When courtesy is not returned,  
13 courtesy is withdrawn. Please have a seat in the  
14 gallery. Thank you.

15 Do you have any other questions of the  
16 witness?

17 MR. BERNSTEIN: Can I submit this as evidence  
18 to the Court?

19 THE COURT: Is that the document you've been  
20 asking the witness about?

21 MR. BERNSTEIN: Yeah.

22 THE COURT: All right. Any objection to it  
23 being received as an exhibit?

24 MR. ROSE: I don't have any objection to it  
25 being received as an exhibit. But as Your Honor

1   noted, we aren't seeking to probate it, and we're  
2   not suggesting it's valid in the first place.

3           THE COURT: All right. Well, let me see what  
4   that document is, so then I'll see if I can make  
5   some sense out of it.

6           You can't -- Gary's always afraid that if  
7   somebody's not a member of the bar, they might do  
8   something bad to me. Officers of the court aren't  
9   allowed to do things bad to the judge. Other folks  
10   don't know that. And so Gary watches out carefully  
11   for my well-being.

12          MR. BERNSTEIN: Gotcha.

13          THE COURT: Okay. So this is a document  
14   that's titled "First Amendment to Shirley Bernstein  
15   Trust Agreement."

16          MR. BERNSTEIN: Correct.

17          THE COURT: And it's in the book that I've  
18   been given earlier by the plaintiff as Tab 6.  
19   You're seeking to put it into evidence as  
20   Defendant's 1?

21          MR. BERNSTEIN: Okay.

22          THE COURT: Right?

23          MR. BERNSTEIN: Sure. Yes, sir.

24          THE COURT: You're offering it as an exhibit?

25          MR. BERNSTEIN: No, Evidence 1.

1 THE COURT: The objection to it is that it's  
2 not relevant?

3 MR. ROSE: Not relevant. Right, relevance.  
4 And it's also not something we're seeking to be  
5 probated or treated as authentic and genuine.

6 THE COURT: Well, the other side is seeking to  
7 use the terms of this document instead of the terms  
8 of the amendment that's in evidence, right?

9 MR. ROSE: I don't believe that's what he's  
10 doing.

11 THE COURT: I'm not sure what he's doing, but  
12 in an abundance of caution, I'm going to receive it  
13 for what relevance it might have. I don't perceive  
14 any yet, but we'll see what happens.

15 So this is Defendant 1.

16 (Defendant's Exhibit No. 1 was received into  
17 evidence.)

18 THE COURT: Any other questions of the  
19 witness?

20 MR. BERNSTEIN: Sure.

21 BY MR. BERNSTEIN:

22 Q. You've testified here about Kimberly Moran.  
23 Can you describe your relationship with her?

24 A. She's been our long-time assistant in the  
25 office.

1 Q. Was she convicted of felony fraudulent  
2 notarization in the Estate of Shirley Bernstein?

3 MR. ROSE: Objection. Relevance.

4 THE COURT: Overruled.

5 You're asking if she was convicted of a felony  
6 with respect to the Estate of Shirley Bernstein?

7 You can answer the question.

8 MR. BERNSTEIN: Correct.

9 THE WITNESS: I believe she was.

10 BY MR. BERNSTEIN:

11 Q. And what was she convicted for?

12 A. She had notarized the waiver releases of  
13 accounting that you and your siblings had previously  
14 provided, and we filed those with the court.

15 Q. We filed those with the court.

16 Your law firm submitted fraudulent documents  
17 to the court?

18 A. No. We filed -- we filed your original  
19 documents with the court that were not notarized, and  
20 the court had sent them back.

21 Q. And then what happened?

22 A. And then Kimberly forged the signatures and  
23 notarized those signatures and sent them back.

24 Judge Colon has a rule in his court to have  
25 those documents notarized, even though that's not the

1 requirement under the Florida Probate Code.

2 Q. So when you didn't follow the rule, you  
3 frauded [sic] and forged the document?

4 MR. ROSE: Objection. Argumentative.

5 THE COURT: Sustained.

6 THE WITNESS: I had nothing to do with that.

7 THE COURT: You've got to stop a second.

8 MR. BERNSTEIN: Yes, sir.

9 THE COURT: If you continue to argue with the  
10 witness, then I'll assume you don't have any more  
11 questions. I sustained that last objection to  
12 argumentative.

13 MR. BERNSTEIN: I'm a little confused --

14 THE COURT: I'm sorry about your confusion,  
15 but there are ways you could have dealt with that  
16 before this trial. If you are confused during the  
17 trial, you better get unconfused as quickly as you  
18 can because bad things will happen. And I don't  
19 want bad things to happen. I want to get the facts  
20 so that I can accurately decide the case on its  
21 merits.

22 Stop arguing, ask questions, let the witness  
23 answer, and listen to any rulings that I make on  
24 the objections. That's the last time I'll repeat  
25 that advice to you. Thank you.



1 BY MR. BERNSTEIN:

2 Q. What law firm submitted those documents to the  
3 court?

4 A. Tescher & Spallina, P.A.

5 Q. Are you a partner in that firm?

6 A. I was.

7 Q. So your firm that you were a partner with sent  
8 in documents that were fraudulent to the court?

9 MR. ROSE: Objection. Cumulative.

10 THE COURT: Sustained.

11 BY MR. BERNSTEIN:

12 Q. Did Tescher & Spallina law firm submit  
13 Kimberly Moran's forged and fraudulent document waivers  
14 to the court?

15 MR. ROSE: Objection. Cumulative.

16 THE COURT: He already said he did.

17 MR. BERNSTEIN: What is that?

18 THE COURT: Cumulative means you've already  
19 had that answer given.

20 MR. BERNSTEIN: No, I didn't have that.

21 THE COURT: He's already said that he did.

22 MR. BERNSTEIN: I'm asking if they deposited  
23 them with the court.

24 THE COURT: And he said they didn't.

25 MR. BERNSTEIN: Well, I asked him, and he

1       said --

2               THE COURT: I won't argue with you. Do you  
3       want to go on to the next item or not?

4               MR. BERNSTEIN: Oh, okay, I do.

5               THE COURT: Okay. Next question, please.

6 BY MR. BERNSTEIN:

7       Q. Did your office -- did you submit documents to  
8       close the estate of Shirley with Simon as the personal  
9       representative at a time Simon was dead?

10      A. We did.

11      Q. You did? Excuse me? I didn't hear an answer.

12      A. I said yes.

13      Q. So Shirley's estate was closed by a dead  
14      personal representative.

15              Can you give me the time that the estate was  
16      closed by Simon while he was dead?

17              MR. ROSE: Objection. Argumentative.

18              THE COURT: Overruled.

19              You can answer.

20              THE WITNESS: I believe it was October,  
21      November 2012.

22 BY MR. BERNSTEIN:

23      Q. Do you want to check your records on that?

24      A. I believe it was after his death. I know he  
25      died September 13, 2012. And we had received late from

1 one of your sisters the signed waiver. So it was  
2 probably in November, somewhere around there.

3 Q. You stated that Simon -- that Kimberly did  
4 five waivers for the siblings that she sent back in  
5 fraudulently to the court through your law firm.

6 Did she also do a fraudulent forged signature  
7 of a waiver for Simon?

8 A. I'm not sure. I guess if you're saying she  
9 did --

10 Q. Well, the court has on file a waiver of  
11 Simon's that she's admitted to.

12 A. We filed all of the waivers originally with  
13 the court all signed by the appropriate parties, and the  
14 court kicked those back. And she forged and notarized  
15 new documents and sent them to the court. She felt she  
16 had made a mistake.

17 Q. Okay. Are you aware of an April 9th full  
18 waiver that was allegedly signed by Simon and you?

19 A. Yeah. That was the waiver that he had signed.  
20 And then in the May meeting, we discussed the five of  
21 you, all the children, getting back the waivers of the  
22 accountings.

23 Q. Okay. And in that April 9th full waiver you  
24 used to close my mother's estate, does Simon state that  
25 he has all the waivers from all of the parties?

1           A.    He does.  We sent out -- he signed that, and  
2 we sent out the waivers to all of you.

3           Q.    Okay.  So on April 9th of 2012, Simon signed,  
4 with your presence, because your signature's on the  
5 document, a document stating he had all the waivers in  
6 his possession from all of his children.

7                   Had you sent the waivers out yet as of  
8 April 9th?

9           THE COURT:  What is it that you want the  
10 witness to answer?  There was several questions.

11           MR. BERNSTEIN:  Oh, compounded a little bit?

12           THE COURT:  Yes.

13           MR. BERNSTEIN:  Sorry.

14           THE COURT:  So you even --

15           MR. BERNSTEIN:  I'll kick that back.

16           THE COURT:  So you even know the lingo of the  
17 objections.

18           MR. BERNSTEIN:  I'll kick that back to one at  
19 a time, because it's an important point.

20 BY MR. BERNSTEIN:

21           Q.    April 9th, 2012, you have a signed full waiver  
22 of Simon's that says that he is in possession of all of  
23 the signed waivers of all of the parties?

24           A.    Standard operating procedure, to have him  
25 sign, and then to send out the documents to the kids.

1 Q. Was Simon in possession -- because it's a  
2 sworn statement of Simon saying, I have possession of  
3 these waivers of my children on today, April 9th,  
4 correct, the day you two signed that?

5 Okay. So if you hadn't sent out the waivers  
6 yet to the --

7 A. I'm not certain when the waivers were sent  
8 out.

9 Q. Were they sent out after the --

10 A. I did not send them out.

11 Q. Okay. More importantly, when did you receive  
12 those? Was it before April 9th or on April 9th?

13 A. We didn't receive the first one until May.  
14 And it was your waiver that we received.

15 Q. So how did you allow Simon, as his attorney,  
16 to sign a sworn statement saying he had possession of  
17 all of the waivers in April if you didn't get mine 'til  
18 May?

19 MR. ROSE: Objection. I think it's relevance  
20 and cumulative. He's already answered.

21 THE COURT: What's the relevance?

22 MR. BERNSTEIN: Oh, this is very relevant.

23 THE COURT: What is the relevance on the issue  
24 that I have to rule on today?

25 MR. BERNSTEIN: On the validity? Well, it's

1       relevant. If any of these documents are relevant,  
2       this is important if it's a fraud.

3               THE COURT: I'll sustain the objection.

4               MR. BERNSTEIN: Okay. Can I -- okay.

5 BY MR. BERNSTEIN:

6       Q. When did you get -- did you get back prior to  
7       Simon's death all the waivers from all the children?

8       A. No, we did not.

9       Q. So in Simon's April 9th document where he  
10      says, he, Simon, on April 9th has all the waivers from  
11      his children while he's alive, and you didn't even get  
12      one 'til after he passed from one of his children, how  
13      could that be a true statement?

14              MR. ROSE: Objection. Relevance. Cumulative.

15              THE COURT: Sustained.

16              Here's what I'm going to decide at the end of  
17      the day; I'm going to decide whether Shirley's 2008  
18      will and trust and 2008 amendment are valid and  
19      enforceable. I'm going to decide whether Simon's  
20      2012 will and 2012 trust documents are valid and  
21      enforceable. You have a lot more on your mind than  
22      I have on mine. You do. Right? But those are the  
23      things that I'm working on. So I'm focused like a  
24      laser and you're focused more like a shotgun. I'm  
25      telling you this so that you can focus more tightly

1 on the questions you're asking and the facts you're  
2 developing so they'll help me make an accurate  
3 decision on those things that I'm going to decide  
4 today. You can keep asking questions that don't go  
5 anywhere, but I would hope that you'll adjust your  
6 approach so that you'll help me make an accurate  
7 decision.

8 MR. BERNSTEIN: Okay.

9 BY MR. BERNSTEIN:

10 Q. And on validity, let's just get right to that  
11 real quick. You've testified to a lot of documents here  
12 today, correct, of the estate documents you drafted,  
13 correct?

14 A. Yes, I did.

15 Q. Did you gain any pecuniary interest, did you  
16 gain any titles in those documents?

17 A. Pecuniary interest? No. I was named by your  
18 father as personal representative and trustee of his  
19 trust.

20 Q. And so you executed -- you drafted the  
21 documents, you signed them as a witness, and you gained  
22 interest in the documents, correct?

23 A. No, I did not.

24 Q. You didn't gain interest as a trustee --

25 MR. ROSE: Objection.

1 BY MR. BERNSTEIN:

2 Q. -- or a personal representative of those  
3 documents?

4 MR. ROSE: Objection. Cumulative. Asked and  
5 answered.

6 THE COURT: Overruled.

7 THE WITNESS: I was named as his personal  
8 representative and trustee, along with my partner.

9 BY MR. BERNSTEIN:

10 Q. Did you witness the document?

11 A. I did.

12 Q. Did you draft the document?

13 A. I did.

14 Q. Okay. You mentioned there was Kimberly Moran  
15 there at the signing of these documents, correct?

16 A. She was.

17 Q. Okay. Can you point her out, because I'm  
18 going to need her to testify as to the validity?

19 A. I do not see her in the courtroom.

20 Q. Okay. You mentioned a Traci Kratish. Can you  
21 point her out in the courtroom today to validate the  
22 documents?

23 A. I don't see Traci in the room either.

24 Q. So she was another witness that is not here  
25 present to validate the documents today? Well, it's



1     awful -- okay.

2             Is Kimberly Moran here who notarized the  
3     documents.

4             MR. ROSE:  Objection.  Cumulative.  Asked that  
5     a minute ago.

6             MR. BERNSTEIN:  I didn't -- did I?  Was it  
7     Moran --

8             THE COURT:  No, I thought it was some other  
9     name.

10            MR. BERNSTEIN:  So did I.

11            THE COURT:  Is Kimberly here?

12            THE WITNESS:  She's not.

13            THE COURT:  Okay.  Next question.

14     BY MR. BERNSTEIN:

15            Q.     Okay.  Being a former estate planning  
16     attorney.  To validate a document, wouldn't you have the  
17     parties who witnessed and notarized and signed present?

18            MR. ROSE:  Objection.  Relevance.

19            Misstates --

20            THE COURT:  Sustained.

21     BY MR. BERNSTEIN:

22            Q.     Is it necessary to validate documents with the  
23     necessary notaries and witnesses present?

24            MR. ROSE:  Objection.  Calls for a legal  
25     conclusion.

1 THE COURT: Well, I'm the one that's going  
2 make that decision. I don't care what the witness  
3 says about the law.

4 MR. BERNSTEIN: I gotcha. Okay.

5 THE COURT: So this would be a good time for  
6 us to take a pause. We're not making headway.

7 You ever here of cavitation when it comes to  
8 boat propellers?

9 MR. BERNSTEIN: No.

10 THE COURT: Okay. I don't know a lot about  
11 the physics of it, but a boat goes forward based on  
12 a propeller spinning in the water. And it happens  
13 sometimes in racing boats, maybe other boats too,  
14 that you get the propeller going so fast or you do  
15 something so much with the propeller that it  
16 cavitates, which means that it's not actually  
17 pushing in the water. It's making a lot of noise.  
18 It's spinning like crazy. It's furiously working,  
19 but it's not propelling the boat forward. I want  
20 to suggest to you that you've hit a point of  
21 cavitation. So this would be a good time for us to  
22 take our lunch break so that when we get back we'll  
23 go forward with this ship that is our trial.

24 MR. BERNSTEIN: How long?

25 THE COURT: It'll be until 1:30.

1 MR. BERNSTEIN: Okay.

2 THE COURT: That'll give everybody a time to  
3 revive, if necessary, and we'll reconstitute  
4 ourselves at 1:30. Thanks.

5 (A break was taken.)

6 (Proceedings continued in Volume 2.)

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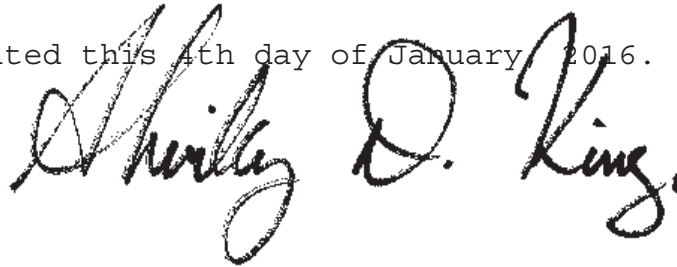
C E R T I F I C A T E

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, Shirley D. King, Registered Professional  
Reporter, State of Florida at large, certify that I was  
authorized to and did stenographically report the  
foregoing proceedings and that the transcript is a true  
and complete record of my stenographic notes.

Dated this 4th day of January 2016.

A handwritten signature in black ink that reads "Shirley D. King". The signature is written in a cursive, flowing style with a large initial 'S'.

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Shirley D. King, RPR, FPR

Job #1358198-VOL 1

<hr/> <p><b>\$</b></p> <hr/> <p><b>\$1.2</b> 49:25  <b>\$100</b> 81:12  <b>\$100,000</b> 48:7  <b>\$18</b> 23:11 46:12  <b>\$2</b> 54:6  <b>\$200,000</b> 32:2,9</p> <hr/> <p><b>0</b></p> <hr/> <p><b>0</b> 55:13  <b>07</b> 23:12  <b>08</b> 24:3,5</p> <hr/> <p><b>1</b></p> <hr/> <p><b>1</b> 15:23 34:3,6,  10,15,16 39:10  54:12 61:14,20  62:2 82:14,17  83:11,18,22  84:2,5 101:20,  25 102:15,16  <b>1,150,000</b> 49:2  <b>1,550,000</b> 49:12  <b>10</b> 13:9,10,22  14:3,4 22:3  58:9 75:16  <b>100</b> 48:14  <b>100,000</b> 48:18  <b>11</b> 26:12,21  27:1,2,5,11  <b>11/14/07</b> 14:13  <b>11/14/2007</b> 15:3  <b>11/16</b> 15:6  <b>12</b> 22:9,12 24:5  <b>12/19</b> 23:23  <b>12/19/07</b> 23:22,  24  <b>13</b> 23:5 45:18,  22 46:2,3,19  53:22 59:1  73:25 106:25  <b>14</b> 60:24 61:3,  7,8  <b>14th</b> 22:4 23:12  <b>15</b> 17:21 63:18  64:5,10,11</p>	<p>71:5  <b>16</b> 65:22,24  66:17,21,22  71:6  <b>16th</b> 12:15  <b>17</b> 62:6 73:3,  13,21,22  <b>18</b> 23:13 25:16,  17 47:16 74:3,  4,8,9  <b>18th</b> 40:15 86:2  <b>19</b> 12:25 25:17  26:14  <b>1st</b> 59:1</p> <hr/> <p><b>2</b></p> <hr/> <p><b>2</b> 35:9 36:11  39:11 51:6  55:14 61:12,  14,21 62:2,3  84:7,10,16,19,  23 85:2,7,12,  19,23 86:4  <b>20</b> 24:9  <b>2000</b> 17:21  18:17 20:4,14  21:8,24 30:11  <b>2002</b> 37:19  <b>2007</b> 11:25  12:15 22:4  25:25 46:11  47:16 49:23  51:18 53:1  73:2 81:15  <b>2008</b> 8:25 9:1,  2,5,6,21,25  10:4,5 24:9,11  25:25 26:15  33:3,14 34:1  35:12 37:1,17,  20 38:24  40:15,16 41:5  49:22,23 61:12  64:21 82:20  83:12 84:9,11  85:2 86:3  110:17,18  <b>2010</b> 42:22  43:17 58:25  <b>2012</b> 9:17,18  45:15,21</p>	<p>46:13,18  51:15,21 53:1  57:17 59:1,2  62:7 63:23  64:17 67:18,24  73:25 74:16  81:16 87:17,22  88:8 89:8  106:21,25  108:3,21  110:20  <b>20th</b> 82:19  83:12 84:9,11  <b>24</b> 89:7  <b>24th</b> 63:23  65:16  <b>25</b> 20:15 21:17,  19 67:18  87:17,21 88:8  89:8  <b>250</b> 55:14  <b>25th</b> 67:24  <b>26th</b> 15:5 73:7  <b>27</b> 36:8 84:10</p> <hr/> <p><b>3</b></p> <hr/> <p><b>3</b> 38:20 39:1,6,  7,11 51:7  61:14,22 62:2  86:1,3,6,9,13,  16,22 87:2,9,  13  <b>31</b> 24:3  <b>33</b> 23:6 33:22  <b>365,000</b> 52:13</p> <hr/> <p><b>4</b></p> <hr/> <p><b>4</b> 67:19,20,22  68:2 70:3,8,9,  15 71:9,10  87:15,19,25  88:3,12,17,23  89:2  <b>40</b> 17:16 18:3  <b>40-</b> 81:12  <b>40A</b> 15:22 17:7,  12  <b>40A-F</b> 17:13</p>	<p><b>40B</b> 16:11  <b>40C</b> 17:1</p> <hr/> <p><b>5</b></p> <hr/> <p><b>5</b> 20:17,18 23:6  51:20 71:22  72:6,11,12  89:5,7,12,16,  20,24 90:4,8,  12,16  <b>500,000</b> 47:24  48:1 55:16</p> <hr/> <p><b>6</b></p> <hr/> <p><b>6</b> 76:25 77:1,5  101:18  <b>60</b> 58:11  <b>600</b> 48:13,14  <b>600,000</b> 55:18</p> <hr/> <p><b>7</b></p> <hr/> <p><b>7</b> 19:11,20,25  20:1 73:15  82:17 87:18  <b>75</b> 54:14  <b>750,000</b> 49:10</p> <hr/> <p><b>8</b></p> <hr/> <p><b>800,000</b> 51:9  <b>8th</b> 42:23</p> <hr/> <p><b>9</b></p> <hr/> <p><b>9</b> 12:11,12,20  13:1  <b>90</b> 58:11  <b>9th</b> 32:11,17  107:17,23  108:3,8,21  109:3,12  110:9,10</p> <hr/> <p><b>A</b></p> <hr/> <p><b>absence</b> 98:3</p>
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
CASE No. 502014CP003698XXXXNB

TED BERNSTEIN,

Plaintiff,

-vs-

DONALD R. TESCHER, ELIOT IVAN BERNSTEIN,  
LISA SUE FRIEDSTEIN, JILL MARLA IANTONI, et al.,

Defendants.

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TRIAL BEFORE THE HONORABLE  
JOHN L. PHILLIPS  
VOLUME 2 PAGES 117 - 260

Tuesday, December 15, 2015  
North County Courthouse  
Palm Beach Gardens, Florida 33410  
9:43 a.m. - 4:48 p.m.

Reported By:  
Shirley D. King, RPR, FPR  
Notary Public, State of Florida  
West Palm Beach Office Job #1358198- VOL 2

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P R O C E E D I N G S

- - -

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THE COURT: We're ready to resume. Our  
witness is still under oath.

Is there any further cross-examination?

MR. BERNSTEIN: Yes.

THE COURT: Okay.

CROSS (ROBERT SPALLINA) (Cont'd)

BY MR. BERNSTEIN:

Q. Mr. Spallina, just to clarify --

MR. ROSE: Your Honor, can he just stand at  
the podium?

THE COURT: Okay. Well, use the podium. Your  
microphone will help explain your questions. But  
you can walk up there. If you need to show the  
witness a document or something, that's fine.

MR. BERNSTEIN: Okay.

BY MR. BERNSTEIN:

Q. Did you -- are you a member of the Florida  
Bar?

A. Yes, I am.

Q. Currently?

A. Yes, I am.

Q. Okay. You said before you surrendered your



1 license.

2 A. I said I withdrew from my firm. It wasn't  
3 that I was not practicing.

4 Q. Okay. In the chain of custody of these  
5 documents, you stated that there were three copies made?

6 A. Yes.

7 Q. Do you have those three original trust copies  
8 here?

9 A. I do not.

10 MR. BERNSTEIN: Does anybody?

11 THE COURT: Do you have any other questions of  
12 the witness?

13 MR. BERNSTEIN: Yeah. I wanted to ask him  
14 some questions on the original documents.

15 THE COURT: Okay. Keep going.

16 BY MR. BERNSTEIN:

17 Q. Okay. So the original documents aren't in the  
18 court?

19 A. I don't have them.

20 Q. Your firm is not in possession of any of the  
21 original documents?

22 A. I'm not sure. I'm not at the firm anymore.

23 Q. When you left the firm, were there documents  
24 still at the firm?

25 A. Yes, there were.

1 Q. Were you ordered by the court to turn those  
2 documents over to the curator, Benjamin Brown?

3 A. I don't recall.

4 MR. ROSE: Objection. Can he clarify the  
5 question, which documents? Because I believe the  
6 curator was for the estate, and the original will  
7 was already in file, and the curator would have no  
8 interest in the trust --

9 THE COURT: Which documents? When you say  
10 "those documents," which ones are you referring to?

11 MR. BERNSTEIN: Any of the trusts and estate  
12 documents.

13 THE COURT: Okay. That's been clarified.  
14 You can answer, if you can.

15 THE WITNESS: I believe that he was given -- I  
16 believe all the documents were copied by  
17 Mr. Pollock's office, and that he was given some  
18 type of zip drive with everything. I'm not sure,  
19 though. I couldn't --

20 BY MR. BERNSTEIN:

21 Q. Did the zip drive contain the original  
22 documents?

23 A. Did not. I believe the original documents  
24 came back to our office. Having said that, we would  
25 only have -- when we made and had the client execute

1 three documents, two originals of those documents would  
2 remain with the client, and then we would keep one  
3 original in our file, except -- including, most of the  
4 time, the original will, which we put in our safe  
5 deposit box. So we would have one original of every  
6 document that they had executed, including the original  
7 will, and they would keep two originals of everything,  
8 except for the will, which we would give them conformed  
9 copies of, because there was only one original will.

10 Q. Okay. I asked a specific question. Did your  
11 firm, after the court order of Martin Colin, retain  
12 documents, original documents?

13 MR. ROSE: Objection. Sorry. I should have  
14 let him finish.

15 MR. BERNSTEIN: -- original documents?

16 THE WITNESS: I believe --

17 MR. ROSE: Relevance and misstates the --  
18 there's no such order.

19 THE COURT: Well, the question is, Did your  
20 firm retain the original documents?

21 Is that the question?

22 MR. BERNSTEIN: Yes, sir.

23 THE COURT: Overruled.

24 Answer, please.

25 THE WITNESS: I believe we had original

1 documents.

2 BY MR. BERNSTEIN:

3 Q. After the date you were court ordered to  
4 produce them to the curator?

5 MR. ROSE: Object -- that's the part I object  
6 to.

7 THE COURT: Sustained.

8 MR. BERNSTEIN: Okay.

9 BY MR. BERNSTEIN:

10 Q. To your knowledge -- so, to your knowledge,  
11 the documents can't all be here since they may be at  
12 your firm today?

13 A. I don't practice at the firm anymore, so I'm  
14 not sure where the documents are.

15 Q. Okay. And you said you made copies of all the  
16 documents that you turned over to the curator? Did you  
17 turn over any original documents as ordered by the  
18 court?

19 MR. ROSE: Objection. Same objection.  
20 There's no court order requiring an original  
21 document be turned over.

22 THE COURT: What order are you referring to?

23 MR. BERNSTEIN: Judge Colin ordered when they  
24 resigned due to the fraudulent alteration of the  
25 documents that they turn over --

1 THE COURT: I just said, what order are you  
2 referring to?

3 MR. BERNSTEIN: It's an order Judge Colin  
4 ordered.

5 THE COURT: All right. Well, produce that  
6 order so I can see it, because Judge Colton's [sic]  
7 been retired for six or seven years.

8 MR. BERNSTEIN: Okay. I don't have it with  
9 me, but...

10 THE COURT: Well, Judge Colton's a retired  
11 judge. He may have served in some other capacity,  
12 but he doesn't enter orders, unless he's sitting as  
13 a replacement judge. And that's why I'll need to  
14 see the order you're talking about, so I'll know if  
15 he's doing that. Okay. Thanks. Next question.

16 BY MR. BERNSTEIN:

17 Q. Okay. Has anyone, to the best of your  
18 knowledge, seen the originals while you were in custody  
19 of them?

20 A. Yes.

21 Q. Okay. Who?

22 A. I believe Ken Pollock's firm was -- Ken  
23 Pollock's firm was the firm that took the documents for  
24 purposes of copying them.

25 Q. Did anybody ask you, refer copies to inspect

1 the documents?

2 A. Other than Ken Pollock's office, I don't  
3 recall.

4 Q. Did I ask you?

5 A. Perhaps you did.

6 MR. BERNSTEIN: Okay. I'd like to go through  
7 some of the documents with him real quick. But I  
8 don't have my wife to hand me the documents, so  
9 it's going to take me incredibly long. These are  
10 just copies I have. Can I approach him?

11 THE COURT: All approaches are okay.

12 MR. BERNSTEIN: Okay.

13 BY MR. BERNSTEIN:

14 Q. Are these the documents that you drafted,  
15 Shirley's will and Shirley's trust agreement?

16 MR. ROSE: Your Honor, could I see what he's  
17 handing the witness before he hands it to them?

18 THE COURT: Say again.

19 MR. ROSE: I don't know what he's handing the  
20 witness.

21 THE COURT: All right. You'll need to show  
22 the other side the documents that you're handing to  
23 the witness so that they're looking at the same  
24 thing you're talking about.

25 MR. ROSE: These are not accurate. These are

1 multiple things stapled together. I'd object to  
2 the exhibit -- or the use of it.

3 THE COURT: Ma'am, if you come back up past  
4 that bar one more time, you'll be in contempt of  
5 court. I don't want you to be in contempt of  
6 court. Do you understand my instruction?

7 MRS. BERNSTEIN: Yes.

8 THE COURT: Thank you.

9 MR. ROSE: I don't know if that's filed with  
10 the court and I don't know that these are genuine.  
11 And the second document has attached to it --

12 THE COURT: Well, you don't need to tell me  
13 what the papers are. The thing that the person  
14 who's asking the questions has to do is show you  
15 the documents that he's going to show the witness.

16 MR. ROSE: Okay.

17 THE COURT: Then I intend to move forward. I  
18 expect he'll show the witness the documents and  
19 then he'll probably ask a question.

20 Am I right?

21 MR. BERNSTEIN: Do you want to see those?

22 THE COURT: Nope.

23 So then if there's an objection to the  
24 documents coming in, if at some time they're  
25 proffered as an exhibit, then I'll take the

1 objection.

2 Have you seen the documents that are in his  
3 hand that are going to be shown to the witness?

4 MR. ROSE: Oh, yes, sir. I'm sorry.

5 THE COURT: Okay. That's fine.

6 Proceed.

7 BY MR. BERNSTEIN:

8 Q. Okay. Can you look at the initials on the  
9 pages of that document and describe them -- describe  
10 what they look like?

11 A. The initials?

12 Q. Yes.

13 A. On each page, there's an SB --

14 Q. Okay.

15 A. -- for your mother's initials.

16 Q. And it's clearly SB?

17 A. Is it clearly SB?

18 Q. Yeah. Looks like SB?

19 A. Yes, it's clearly SB.

20 Q. Okay. And on this will signed on the same  
21 date by my mother in your presence, is that my mom's  
22 initials? And does it look like an SB? Do they even  
23 look similar?

24 A. Well, your mother was asked to sign these  
25 documents.



1 Q. Okay.

2 A. When we execute a will, unlike the bottom of  
3 the trust agreement where we initial the trust pages, on  
4 the bottom of the will, she's supposed to sign her  
5 signature. And which she has done at the bottom of each  
6 page, is sign her signature consistent with the  
7 signature page that she signed.

8 Q. So what you're saying is, she signed this  
9 document, that she initialed this document?

10 A. Right. We only ask that for purposes of the  
11 trust that they initial each page. For purposes of the  
12 will, that they sign each page.

13 So this is the signature that she has -- this  
14 is her signature on the bottom of this document.

15 Q. Well, there's no line saying that's her  
16 signature, correct? There would be --

17 A. But that was our practice.

18 Q. Okay.

19 A. That was our practice, to have --

20 Q. Okay. You testified to my dad's state of mind  
21 that he was fine.

22 Si was usual when you saw him from May through  
23 his death; is that correct?

24 A. Are you speaking about 2012?

25 Q. Yes.

1 A. Correct.

2 Q. Are you aware of any medical problems my  
3 father was having at that time?

4 A. No, I'm not.

5 Q. Are you aware of any stress he was under?

6 A. No, I was not.

7 Q. Mr. Rose had you read into or -- read into the  
8 record a letter that I wrote with my waiver, saying,  
9 anything -- I haven't seen the dispositive documents,  
10 but I'll do anything, 'cause my dad is under stress, to  
11 relieve him of his stress.

12 Do you know what stress I was referring to?

13 A. I don't.

14 Q. Were you in the May meeting with my father,  
15 May 10, 2012?

16 A. I was -- are you talking about on the  
17 telephone call?

18 Q. Correct.

19 A. I wasn't together with him.

20 Q. Okay. Were you together with anybody on that  
21 call?

22 A. No. I was on -- in my -- my office phone.

23 Q. Okay. And at that meeting, did Si state that  
24 he was having this meeting to end disputes among certain  
25 parties and himself?

1 A. I don't recall.

2 Q. Were there any disputes you were aware of?

3 A. The only thing that he ever brought to my  
4 attention was the letter that Pam had sent him.

5 Q. And what did Pam's letter state, basically?

6 A. I can't remember it. I mean, it was the  
7 letter that he showed me in February of 2012. But the  
8 general gist of that letter was that she was unhappy  
9 about not being part of their estates.

10 Q. Just her or her and her children?

11 A. She may have spoke to her children.

12 Q. Was there anybody else who was left out of the  
13 wills and trusts?

14 A. That was causing him stress?

15 Q. No. Just anybody at this point that was left  
16 out, other than Pam.

17 A. Yes. Ted.

18 Q. And are you aware of anything Ted and Pam were  
19 doing to force upon Si changes?

20 A. Not to my knowledge, other than the letter  
21 that Pam had sent to him just expressing her  
22 dissatisfaction.

23 Q. You said you talked to her attorney?

24 A. I talked to her attorney.

25 Q. And you told her attorney, while Si was

1 living, that she had been cut out of the estates and  
2 trusts with her brother Ted?

3 A. I don't recall the conversation with the  
4 attorney, but, ultimately, Si gave me authorization to  
5 send documents to the attorney. So we may have had a  
6 conversation about it.

7 Q. So you're stating that Si told you to -- he  
8 authorized you to tell his daughter that she had been  
9 cut out of the estates and trusts?

10 A. He authorized me to send documents to the  
11 attorney.

12 Q. Did you send those documents to the attorney?

13 A. I believe we did, yes.

14 Q. Okay. Was Ted and his lineal descendants  
15 disinherited?

16 A. They were, under the original documents.

17 Q. Well, under Shirley's document that's  
18 currently theirs, Ted considered predeceased for all  
19 purposes of disposition according to the language in the  
20 document you drafted?

21 A. To the extent that assets passed to him under  
22 the trust.

23 Q. Well, the document says, for all purposes of  
24 disposition, Ted Bernstein is considered predeceased,  
25 correct?

1           A.     You'll have to state the question again.

2           Q.     Does the document you drafted say that Ted  
3 Bernstein is both considered predeceased under the  
4 beneficiary definition with his lineal descendants and  
5 considered predeceased for all purposes of dispositions  
6 of the trust?

7           MR. ROSE:  Objection.  Best evidence.  The  
8 document's in evidence.

9           THE COURT:  Sustained.

10          MR. BERNSTEIN:  I'll have him read it.

11          THE COURT:  Well, I mean, I can read it.  It's  
12 in evidence.  So when it comes time, just point me  
13 to the part that you want me to read, and I'll read  
14 it.  But I don't need to have the witness read it  
15 to me.  That's of no benefit.

16          MR. ROSE:  Your Honor, and for the record,  
17 those issues are part of the other counts and  
18 aren't being tried today.

19          MR. BERNSTEIN:  Page 7, Your Honor, of the  
20 Shirley trust.

21          THE COURT:  What exhibit number is that?

22          MR. BERNSTEIN:  You want me to enter it as my  
23 exhibit?

24          THE WITNESS:  Plaintiff's Exhibit 2, Your  
25 Honor.

1 THE COURT: All right. Let me go to page 7 of  
2 Plaintiff's 2.

3 MR. BERNSTEIN: Can I enter this one into the  
4 record?

5 THE COURT: Is it the same as the one I  
6 already have?

7 MR. BERNSTEIN: According to Alan, it's not.

8 THE COURT: According to who?

9 MR. BERNSTEIN: Mr. Rose.

10 THE COURT: All right. Well, if it comes time  
11 for you to put any exhibits in on your case, if  
12 that's not a duplicate of an exhibit that's already  
13 in, you're welcome to put it into evidence. But  
14 this is not the time when you put evidence in.  
15 This is the time when you're cross-examining the  
16 plaintiff's witness.

17 MR. BERNSTEIN: Okay.

18 THE COURT: So on Page 7 of Plaintiff's 2, you  
19 can go on with your questioning.

20 BY MR. BERNSTEIN:

21 Q. Are you there and are we on the same page?

22 Yes?

23 A. Yes, I am.

24 Q. Okay. In the definition of -- under E1, do  
25 you see where it starts "notwithstanding the foregoing"?

1 A. Yes.

2 Q. Okay. Can you read that?

3 A. "Notwithstanding the foregoing, as I have  
4 adequately provided for them during my lifetime, for  
5 purposes of the dispositions made under this trust to my  
6 children, Ted S. Bernstein and Pamela B. Simon and their  
7 respective lineal descendants shall be deemed to have  
8 predeceased the survivor of my spouse and me, provided,  
9 however, if my children Eliot Bernstein, Jill Iantoni  
10 and" --

11 Q. Okay, that's -- you can stop there.

12 Would you consider making distributions a  
13 disposition under the trust?

14 A. It would it depend on other factors.

15 Q. What factors?

16 MR. ROSE: Objection. Relevancy.

17 THE COURT: Sustained.

18 BY MR. BERNSTEIN:

19 Q. Is a validity hearing a disposition of the  
20 trust?

21 MR. ROSE: Objection. Calls for a legal  
22 conclusion.

23 THE COURT: Sustained.

24 MR. BERNSTEIN: Well, he drafted the document,  
25 so I'm trying to get what his meaning was when he

1 put it in. And it's relevant to the hearing today.

2 THE COURT: I ruled it's not relevant.

3 MR. BERNSTEIN: Oh, you did rule that?

4 THE COURT: Do you have another question of  
5 the witness? Or we're moving on.

6 MR. BERNSTEIN: Okay.

7 BY MR. BERNSTEIN:

8 Q. So for purposes of disposition, Ted, Pam and  
9 her lineal descendants are considered predeceased,  
10 correct?

11 MR. ROSE: Objection. Relevancy, cumulative  
12 and best evidence.

13 THE COURT: Sustained.

14 The document says what it says.

15 MR. BERNSTEIN: Okay.

16 THE COURT: When you ask a witness if it says  
17 what it says, I don't pay any attention to his  
18 answer, because I'm reading what it says.

19 MR. BERNSTEIN: Okay.

20 BY MR. BERNSTEIN:

21 Q. Did you produce a fraudulent copy of the  
22 Shirley trust agreement?

23 A. No, I did not.

24 Q. So when you sent to Christine Yates this trust  
25 agreement with the attached amendment that you've



1 already admitted you fraudulently altered, was that  
2 producing a not valid copy of the trust that was  
3 distributed to a party?

4 A. We've already talked about the amendment was  
5 not a valid amendment.

6 Q. No, I'm asking, did you create a not valid  
7 trust of my mother's and distribute it to Christine  
8 Yates, my children's attorney?

9 MR. ROSE: Objection. Cumulative. He's  
10 covered this.

11 MR. BERNSTEIN: Well, it has to go to the  
12 validity, Your Honor, because --

13 THE COURT: The question I'm figuring out is,  
14 have we already covered this?

15 MR. BERNSTEIN: We touched on a piece of it.  
16 The more important part --

17 THE COURT: Okay. Then I'll let you reask  
18 your question to cover something that we've not  
19 already covered.

20 MR. BERNSTEIN: Okay. And we covered that  
21 the --

22 THE COURT: You don't have to remind me.

23 MR. BERNSTEIN: Oh, okay.

24 THE COURT: Listen, see, this -- look at this.  
25 I take notes. I write stuff down. Now, a lot of

1 times, if you see me not writing and I'm doodling,  
2 that means you're not scoring any points.

3 MR. BERNSTEIN: You've got to show me --

4 THE COURT: The point is, I should be writing  
5 notes. So that means you're not doing any good.

6 MR. BERNSTEIN: Gotcha.

7 THE COURT: So, please, the reason I write it  
8 is so we don't have to repeat things.

9 BY MR. BERNSTEIN:

10 Q. Okay. You've already stated that you created  
11 a fraudulent amendment.

12 Did you attach it to a Shirley trust document?

13 A. No. We included the amendment with the  
14 documents that we transmitted to her.

15 Q. So it was included as part of the Shirley  
16 trust document as an amendment, correct?

17 A. It was included as an amendment.

18 Q. To the Shirley trust document.

19 Thereby, you created a fraudulent copy, a not  
20 valid copy of the Shirley trust, correct?

21 MR. ROSE: Objection. Argumentative.

22 Cumulative.

23 THE COURT: Overruled.

24 You can answer. Did that create a fraudulent  
25 version of the trust?

1 THE WITNESS: It could have, yes, Your Honor.

2 BY MR. BERNSTEIN:

3 Q. Can you explain why it couldn't have?

4 A. Because Si ultimately exercised his power of  
5 appointment, which was broader than the definitional  
6 provision in the document.

7 Q. That's not my question. I'll just say it was  
8 asked and not answered.

9 Okay. So there are not validly -- not valid  
10 Shirley trust agreements in circulation, correct?

11 A. That's not true.

12 Q. Well, the Shirley trust agreement you said  
13 sent to Christine Yates you've just stated was invalidly  
14 produced.

15 A. To Christine Yates.

16 Q. Yeah, okay. So I said "in circulation."

17 Is Christine Yates out of circulation?

18 A. I don't know what Christine Yates did with the  
19 documents.

20 Q. Well, I got a copy, so they're even more in  
21 circulation.

22 So my point being, you sent from your law firm  
23 fraudulent -- a non-valid copy of the document --

24 A. Which document?

25 Q. -- the Shirley trust and her amendment to

1 Christine Yates, right?

2 MR. ROSE: Objection. Cumulative.

3 THE COURT: Sustained.

4 MR. BERNSTEIN: Okay. We'll move on from  
5 that.

6 BY MR. BERNSTEIN:

7 Q. Would you know about when you did that  
8 fraudulent alteration of the document?

9 A. January 2013.

10 Q. And you were a fiduciary -- or you were  
11 counsel to the alleged fiduciary, Ted Bernstein, of the  
12 Shirley Bernstein trust, correct?

13 A. Yes, we were.

14 Q. And you were counsel to Ted Bernstein as the  
15 alleged personal representative of Shirley's estate?

16 A. Yes, we were.

17 Q. And as Ted's counsel in the Shirley trust, can  
18 you describe what the not valid trust agreement that was  
19 sent to Ms. Yates did to alter the beneficiaries of the  
20 document?

21 MR. ROSE: Objection. Cumulative.

22 THE COURT: Overruled.

23 What alterations did that make to the  
24 beneficiaries?

25 THE WITNESS: It didn't make any alterations

1 to the beneficiaries. The document's not a valid  
2 document and so it couldn't have made any changes  
3 to the estate planning.

4 BY MR. BERNSTEIN:

5 Q. Okay. But what did it intend to do?

6 MR. BERNSTEIN: Sorry. Excuse me, Your Honor.  
7 What did you say?

8 THE COURT: Next question.

9 BY MR. BERNSTEIN:

10 Q. Okay. What did it intend to do?

11 A. I answered that question earlier.

12 THE COURT: I can't let the witness object to  
13 questions. That won't work.

14 THE WITNESS: I'm sorry, Your Honor. Earlier  
15 you asked me the question, and I responded to you  
16 that it was to carry out your father's intent and  
17 the agreement that you all had made prior to his  
18 death, on that telephone call, and to have a  
19 document that would provide, perhaps, clarity to a  
20 vague misinterpretation of your mother's document.

21 BY MR. BERNSTEIN:

22 Q. So instead of going to the court, you just  
23 frauded a document to an attorney, who's representing  
24 minor children in this case -- produce a fraudulent copy  
25 of the trust document, making us have total trouble

1 understanding what's real and not, especially with your  
2 firm's history of fraudulent and forged documents  
3 submitted to the court in this case.

4 THE COURT: Okay. Thanks. You're just  
5 ranting. Ranting is not allowed.

6 MR. BERNSTEIN: Sorry.

7 THE COURT: If you'd like to ask a question,  
8 I'll let you do that. If I have to call you on  
9 this too many more times, I'm going to assume that  
10 you're done questioning the witness.

11 MR. BERNSTEIN: Okay.

12 BY MR. BERNSTEIN:

13 Q. When did you first meet my parents?

14 A. 2007.

15 Q. And how did you meet them?

16 A. I met them through someone that made a  
17 referral to them to our office.

18 Q. You didn't know Ted Bernstein prior to meeting  
19 Si?

20 A. I don't recall who we met first. I'm not  
21 sure.

22 Q. What firm were you with at the time?

23 A. Tescher, Gutter, Chaves, Josepher, Rubin and  
24 Ruffin and Forman.

25 Q. And how long were you with them?

1 A. Five-plus years.

2 Q. And where were you before that?

3 A. I was in school.

4 Q. Okay. Did you work at Sony Digital ever?

5 A. I did.

6 Q. You did. And when was that, before school or  
7 after?

8 A. That was from 1994 to '96.

9 Q. So after school?

10 A. After college.

11 Q. Okay. So that was -- you just forgot about  
12 that one in your history.

13 Is there any other parts of your biography I'm  
14 missing?

15 MR. ROSE: Objection. Argumentative.

16 THE COURT: Sustained.

17 BY MR. BERNSTEIN:

18 Q. Can you repeat, since I'm -- there was a  
19 little clarification error there. Your history, you  
20 started --

21 THE COURT: That's not necessary to repeat the  
22 history. Do you have a new question?

23 MR. BERNSTEIN: Well, I'm trying to get the  
24 history.

25 THE COURT: I don't want him to repeat what

1 he's already said. That moves the case backwards.

2 I want to go forward. You're cavitating.

3 MR. BERNSTEIN: Okay.

4 BY MR. BERNSTEIN:

5 Q. Did the altered trust document sent to  
6 Christine Yates attempt to convince Yates and others she  
7 sent that document to that Ted and Pam's lineal  
8 descendants were actually inside the document?

9 A. Say the question again.

10 Q. Well, we read the section where they're  
11 considered predeceased, Ted and Pam and their lineal  
12 descendants.

13 When you altered that amendment that you said  
14 you were just doing Si's wishes postmortem by altering a  
15 document, my question is, did you put language in there  
16 that would have made Ted and Pam's lineal descendants  
17 now beneficiaries of Shirley's trust?

18 MR. ROSE: Objection. I think it's  
19 cumulative. We've covered this.

20 THE COURT: Sustained.

21 MR. BERNSTEIN: Okay.

22 BY MR. BERNSTEIN:

23 Q. Can the beneficiary of Shirley's trust be Ted,  
24 Pam or their lineal descendants?

25 A. If the assets of her trust were to pass under



1 the trust, no --

2 Q. Okay.

3 A. -- under the trust.

4 Q. So in the trust language of the Shirley trust

5 document, Ted's lineal descendants and Pam's lineal

6 descendants can get no dispositions, distributions,

7 whatever you want to call it?

8 A. You have to ask the question in a different

9 way, because I answered the question. I said, if it

10 passes under the trust, that they would not inherent.

11 If.

12 Q. Okay. When Shirley died, was her trust

13 irrevocable at that point?

14 A. It was.

15 Q. Who were the beneficiaries?

16 A. Simon Bernstein.

17 Q. And who were the beneficiaries -- well, Simon

18 Bernstein wasn't a beneficiary. He was a trustee.

19 A. No, he became the beneficiary of her trust

20 when she died. He was the sole beneficiary of her trust

21 when she died.

22 Q. Okay. And then who would it go to when he

23 died?

24 MR. ROSE: Objection. Cumulative.

25 THE COURT: Sustained.

1 BY MR. BERNSTEIN:

2 Q. Okay. When Simon died, who would the benefits  
3 of Shirley's trust go to?

4 MR. ROSE: Objection. Cumulative.

5 THE COURT: Are you asking him to tell you  
6 what would happen if the mother died first, then  
7 the father died second, and we have the trust  
8 documents and the wills that are in place so far  
9 that have been testified to at the trial?

10 MR. BERNSTEIN: Correct.

11 THE COURT: I already know all that stuff.

12 MR. BERNSTEIN: Well --

13 THE COURT: So what is the new question you  
14 want to ask that's not cumulative?

15 MR. BERNSTEIN: Okay. Well, I'm trying to get  
16 to a very significant point there.

17 THE COURT: Get there. Just go there and see  
18 what happens.

19 MR. BERNSTEIN: I just have to learn to ask  
20 these questions a little more like a lawyer.

21 THE COURT: Yes.

22 MR. BERNSTEIN: So I have to rethink how to  
23 ask that.

24 BY MR. BERNSTEIN:

25 Q. Do you recall talking to Detective Ryan

1 Miller?

2 MR. ROSE: Objection. Relevance.

3 THE COURT: Sustained.

4 BY MR. BERNSTEIN:

5 Q. Can you tell me all the roles you had in these  
6 estates and trusts, and your partner, Don Tescher?

7 A. We were the attorneys to your parents. Upon  
8 your dad's death, we became counsel to his estate and  
9 served as co-PRs and co-trustees under his documents.

10 Q. Any other roles?

11 A. Served as counsel for -- we served as counsel  
12 for Ted as fiduciary under your mother's documents.

13 Q. And who served as your counsel as trustee  
14 PR -- co-trustee, co-PR?

15 A. Mark Manceri.

16 Q. Mark Manceri submitted that he was your  
17 attorney?

18 A. I believe so, yes.

19 Q. Did you take a retainer out with him?

20 MR. ROSE: Objection. Relevance.

21 THE WITNESS: I'm sorry.

22 THE COURT: What's the relevance of the  
23 retainer question?

24 THE WITNESS: I'm sorry. I take that back.

25 Mark Manceri was not counsel to us with respect to

1 the estate, except on a very specific matter.

2 THE COURT: The question that was objected to  
3 was, did you take out a retainer? What's the  
4 relevance of that?

5 MR. BERNSTEIN: Well, I'm trying to figure out  
6 if he was properly representing before the court  
7 these documents, and to his credibility, meaning  
8 his --

9 THE COURT: I'll sustain the objection.

10 MR. BERNSTEIN: Okay.

11 BY MR. BERNSTEIN:

12 Q. And a question about the court. How long  
13 before you notified the court as a personal  
14 representative fiduciary that you had produced a  
15 fraudulent trust of Shirley's?

16 A. To whom? I don't know that we ever  
17 represented the document to the court, and I don't know  
18 that anyone ever came to the court and said that we did.

19 Q. Well, I did in a petition I filed and served  
20 on you --

21 MR. ROSE: Objection.

22 BY MR. BERNSTEIN:

23 Q. -- of January -- excuse me -- petition that I  
24 served on you exposing a fraud of what happened with  
25 Christine Yates after you admitted that to the police.

1 MR. ROSE: Objection. Relevance.

2 THE COURT: Sustained.

3 BY MR. BERNSTEIN:

4 Q. Okay. How many times have you spoken with  
5 Alan Rose in the last three months?

6 A. Twice.

7 Q. Did you prepare for this hearing in any way  
8 with Alan Rose?

9 A. I did.

10 Q. Okay. Was that the two times you spoke to  
11 him?

12 A. Yes.

13 Q. Do you see any other of the parties that would  
14 be necessary to validate these trust documents in the  
15 court today?

16 MR. ROSE: Objection. Cumulative.

17 THE COURT: Sustained.

18 BY MR. BERNSTEIN:

19 Q. And you gave testimony to the total net worth  
20 of Simon today, when you were asked by Mr. Rose; is that  
21 correct?

22 A. Yes.

23 Q. How long did you serve as the co-trustee and  
24 co-personal representative?

25 A. Of your father's estate? Since the date of

1 his death.

2 Q. And his trust?

3 A. Same.

4 Q. Okay. Did you produce an accounting to  
5 support those claims you made today?

6 MR. ROSE: Objection. Relevancy.

7 THE COURT: Sustained.

8 MR. BERNSTEIN: Well, can I argue that or --

9 THE COURT: No.

10 MR. BERNSTEIN: Not even close. Does that  
11 mean I have to ask it a different way?

12 THE COURT: Well, I can't answer questions.  
13 I'm not allowed to give anybody legal advice.

14 MR. BERNSTEIN: Okay. That was procedural, I  
15 thought. But okay.

16 THE COURT: Well, that's legal advice.

17 Procedure is a legal issue.

18 BY MR. BERNSTEIN:

19 Q. As a fiduciary of the estate of Simon and the  
20 trust of Simon, did your law firm produce a accounting?

21 MR. ROSE: Objection. Relevance.

22 MR. BERNSTEIN: Well, it's relevant to, if  
23 he's a fiduciary, his conduct. I mean, there's --

24 THE COURT: Here's the way I handle  
25 objections --

1 MR. BERNSTEIN: Okay.

2 THE COURT: -- somebody asks a question, and  
3 somebody in the courtroom says objection, and then  
4 I have them state the legal objection and stop.  
5 The other side doesn't say anything, unless I say,  
6 Is there any argument one side or the other?  
7 Because usually I can figure this stuff out without  
8 having to waste time with arguments.

9 I didn't ask for any argument, right? Okay.  
10 Sustained. Next question.

11 BY MR. BERNSTEIN:

12 Q. Mr. Rose asked you about Shirley's Bentley.

13 Are you aware -- you became aware of Shirley's  
14 Bentley, correct?

15 A. Yes.

16 Q. When you became aware of Shirley's Bentley,  
17 did you put in an amended inventory to account for it?

18 THE COURT: What's this going to help me  
19 decide on the validity of the wills or trusts?

20 MR. BERNSTEIN: I'm just responding to the  
21 statements that were brought up.

22 THE COURT: I wish you would have objected to  
23 the relevancy then, but you didn't.

24 MR. BERNSTEIN: I did.

25 THE COURT: I don't think so.

1 MR. BERNSTEIN: No?

2 THE COURT: I'm a car guy, so I pay attention  
3 if somebody's asking questions about Bentleys just  
4 because it's interesting.

5 MR. BERNSTEIN: Well, it's so important, Your  
6 Honor, because --

7 THE COURT: No, it's not. Right now what is  
8 tied is, are the wills and trusts bound?

9 MR. BERNSTEIN: We have to question his  
10 competency.

11 THE COURT: And so what's in the estate or  
12 what's in the trust is not of any interest to me  
13 right now. So if that Bentley should have been in  
14 the estate or should not have been in the estate,  
15 it should have been accounted for, not accounted  
16 for, I'm not going to figure out today. But I want  
17 to get all the evidence I possibly can to see  
18 whether these wills and trusts that are in front of  
19 me are valid or not valid. And I'm hoping that  
20 you'll ask some questions that'll help me figure  
21 that out.

22 MR. BERNSTEIN: Are those originals that you  
23 have?

24 THE COURT: See, I'm not the witness. I'm the  
25 judge. So I'm not sworn in and I have no knowledge



1 of the facts of this case, other than what the  
2 witnesses tell me.

3 MR. BERNSTEIN: I'm winding down. I'll check  
4 my list.

5 THE COURT: All right.

6 BY MR. BERNSTEIN:

7 Q. Are you familiar with a document the Bernstein  
8 Family Realty LLC agreement?

9 A. Yes, I am.

10 Q. Did you draft that document?

11 A. Yes, I did.

12 Q. Was it part of Simon's estate planning?

13 A. It was part of his estate planning -- well,  
14 yes --

15 Q. And what was --

16 A. -- in a roundabout way.

17 Q. What was it designed to do?

18 A. It was designed to hold title to the home that  
19 you and your family live in.

20 Q. Oh, okay. And so it was -- who's the owners  
21 of that?

22 A. The three kids -- your three kids, Josh,  
23 Daniel -- your three kids' trusts that your father  
24 created -- and Jake -- that he created in -- I believe  
25 he created those trusts in 2006.

1 Q. And the prior testimony was, there were no  
2 special documents under Simon's estate plan for my  
3 family; is that correct?

4 A. Right. None that we prepared. Those were not  
5 documents that we prepared.

6 Q. Okay. I think he asked you if you knew of  
7 any.

8 So you knew of these, correct?

9 A. You're making me recall them. Yes.

10 Q. Oh, okay. Because you answered pretty  
11 affirmatively no before, that you weren't aware of any  
12 special --

13 THE COURT: Do you have any questions for the  
14 witness?

15 MR. BERNSTEIN: Okay. I get it.

16 BY MR. BERNSTEIN:

17 Q. You referenced an insurance policy.

18 MR. BERNSTEIN: Can I -- well, I can't ask him  
19 anything.

20 BY MR. BERNSTEIN:

21 Q. You referenced an insurance policy earlier,  
22 life insurance policy, that you said you never saw; is  
23 that correct?

24 A. Yes.

25 Q. And was that part of the estate plans?

1           A.     We never did any planning with that. That was  
2     an insurance policy that your father had taken out  
3     30 years before. He had created a trust in 1995 for  
4     that. That was not a part of any of the planning that  
5     we did for him.

6           Q.     Did you file a death benefit claim on behalf  
7     of that policy?

8           MR. ROSE: Objection. Relevancy.

9           THE COURT: Sustained.

10    BY MR. BERNSTEIN:

11           Q.     Is Christine Yates, who you sent the  
12     fraudulently altered Shirley trust document that's not  
13     valid, a layman?

14           MR. ROSE: Objection. Argumentative.

15           MR. BERNSTEIN: Excuse me.

16    BY MR. BERNSTEIN:

17           Q.     Is she an attorney at law?

18           THE COURT: Now you're asking a different  
19     question.

20           MR. BERNSTEIN: Okay.

21           THE COURT: Thanks.

22    BY MR. BERNSTEIN:

23           Q.     Is she a layman, as you described prior?

24           A.     She's an attorney.

25           Q.     Okay. So you were sending that document that

1    you said you altered to make a layman understand the  
2    language in the trust better?

3                MR. ROSE:  Objection.  Cumulative.

4                THE COURT:  Let me have you finish your  
5    questioning.

6    BY MR. BERNSTEIN:

7                Q.    But you sent it to Christine Yates, an  
8    attorney, who's not a layman?

9                A.    We did.

10              Q.    Okay.  So it could be that you sent that  
11    document to an attorney to commit a fraud upon her  
12    clients, my children, minor children, correct?

13              A.    The intent was not to commit a fraud.

14              Q.    Okay.

15              A.    Again, the intent was to carry out your dad's  
16    wishes.

17              Q.    By fraudulently altering documents?

18              MR. ROSE:  Objection.  Argumentative.

19              THE COURT:  Sustained.

20              If you ask one more argumentative question, I  
21    will stop you from asking the other things, because  
22    I'll figure that you're done.  Is that clear?

23              MR. BERNSTEIN:  Yes.

24              THE COURT:  I'm done warning you.  I think  
25    that's just too much to have to keep saying over

1 and over again.

2 BY MR. BERNSTEIN:

3 Q. When Shirley died, were her wishes upheld?

4 A. Your dad was the sole survivor of her  
5 estate -- he was the sole beneficiary of her estate and  
6 her trust.

7 Q. So her wishes of her trusts when Simon died  
8 were to make who the beneficiaries?

9 MR. ROSE: Objection. Cumulative.

10 THE COURT: Sustained.

11 BY MR. BERNSTEIN:

12 Q. Who did Shirley make -- are you familiar with  
13 the Eliot Bernstein Family Trust?

14 A. I am.

15 Q. And is that trust under the Shirley trust?

16 A. No, it's not.

17 Q. It's a separate trust?

18 A. It is.

19 Q. Is it mentioned in the Shirley trust?

20 A. It may be.

21 Q. As what?

22 A. As a receptacle for Shirley's estate.

23 Q. Her trust?

24 A. A potential receptacle for Shirley's trust.

25 Q. So there were three, the Eliot Bernstein

1 Family Trust, Lisa Friedstein and Jill Iantoni Family  
2 Trust, that are mentioned as receptacles. I would  
3 assume that's the word, beneficiary --

4 MR. ROSE: Objection.

5 BY MR. BERNSTEIN:

6 Q. -- of the Shirley trust, correct?

7 MR. ROSE: Objection. Cumulative.

8 THE COURT: Sustained.

9 BY MR. BERNSTEIN:

10 Q. Okay. On Simon's medical state eight weeks  
11 before he died, when these documents of the Simon trust  
12 are alleged by you to have been signed, are you aware of  
13 any conditions of Simon's at that time medically?

14 A. I was not.

15 Q. Were you aware of any medicines he was on?

16 A. I was not.

17 Q. Were you aware he was seeing a psychiatrist?

18 A. I was not.

19 Q. Were you aware that he was going for a brain  
20 scan?

21 A. I was not.

22 Q. Were you aware that he was brought in to  
23 multiple doctors during that time for brain problems;  
24 that they ended up doing a brain biopsy at Delray  
25 Medical right around that time that he's said to sign

1 these documents?

2 A. He did not make us aware of any medical issues  
3 that he had.

4 Q. Okay. Did you ask him at the time you were  
5 signing those amended documents if he was under any  
6 medical stress?

7 A. No, I did not.

8 Q. Okay.

9 A. He --

10 MR. BERNSTEIN: Can I ask him to read that?

11 BY MR. BERNSTEIN:

12 Q. Can you look at that document and --

13 MR. BERNSTEIN: Judge, would you like a look  
14 at this?

15 THE COURT: I don't look at anything that's  
16 not an exhibit.

17 MR. BERNSTEIN: I'm exhibiting it to him.

18 THE COURT: Okay. Well, that's fine, but I  
19 want you to go ahead and ask your question. I  
20 don't look at things that aren't exhibits in  
21 evidence --

22 MR. BERNSTEIN: Okay.

23 THE COURT: -- unless I have to mark them.

24 But no, I don't have a curiosity to look at pieces  
25 of paper.

1 MR. BERNSTEIN: Should I exhibit it as  
2 evidence -- can I exhibit it as --

3 THE COURT: If it comes into evidence, I'll  
4 look at it.

5 MR. BERNSTEIN: Okay. Can I submit it as  
6 evidence?

7 THE COURT: Well, have you asked any questions  
8 to establish what it is?

9 BY MR. BERNSTEIN:

10 Q. Is this a letter from your law firm -- prior  
11 law firm?

12 A. I did not prepare this letter --

13 Q. Okay.

14 A. -- but it appears to be, yes.

15 Q. Prepared by?

16 A. Donald Tescher.

17 MR. BERNSTEIN: Okay. Now can I submit it?

18 THE COURT: So you're offering it as an  
19 exhibit --

20 MR. BERNSTEIN: Please.

21 THE COURT: -- as Defendant's 2.

22 Is there any objection?

23 MR. ROSE: No objection.

24 THE COURT: All right. I'll take a look at  
25 it. And that'll be in evidence as Defendant's 2.



1 Thank you.

2 (Defendant's Exhibit No. 2 was received into  
3 evidence.)

4 BY MR. BERNSTEIN:

5 Q. Can you just read into the record  
6 paragraph 2 --

7 THE COURT: Well, I'm reading it. The  
8 document is in the record.

9 MR. BERNSTEIN: Oh, okay.

10 THE COURT: I'm reading paragraph 2 even as we  
11 speak, so I don't need the witness to read it for  
12 me. But if you want to ask him a question, you can  
13 go ahead with that.

14 BY MR. BERNSTEIN:

15 Q. Okay. That letter states that Si's power of  
16 appointment for Simon could not be used in favor of Pam,  
17 Ted and their respective children; is that correct?

18 A. Yes. Don appears to have written that.

19 Q. Did you get a copy of this letter?

20 A. I don't recall getting a copy of it, but  
21 doesn't mean that I didn't.

22 Q. But you are partners in that firm?

23 A. Yes, we were partners in that firm.

24 Q. Now, that -- this document --

25 MR. ROSE: Your Honor, can I just -- I don't

1 want to go out of order, but this is only relevant  
2 if the documents are valid. And if he's -- the  
3 whole point is the documents are valid. And he  
4 wants to argue the second part, of what they mean,  
5 then we should not have wasted a whole day arguing  
6 over the validity of these five documents.

7 THE COURT: Well, waste of time is what I do  
8 for a living sometimes. Saying we shouldn't be  
9 here doesn't help me decide anything.

10 I thought I was supposed to decide the  
11 validity of the five documents that have been  
12 pointed out; some of them might be valid and some  
13 of them might be invalid. And I'm struggling to  
14 decide what's relevant or not relevant based upon  
15 the possibility that one of them might be invalid  
16 or one of them might not. And so I'm letting in a  
17 little bit more stuff than I normally think I  
18 would.

19 MR. ROSE: I'm concerned we're arguing the  
20 second -- the second part of this trial is going to  
21 be to determine what the documents mean and what  
22 Simon's power of attorney could or couldn't do.  
23 And this document goes to trial two and not trial  
24 one, although I didn't object to its admissibility.

25 THE COURT: Well, since it's in evidence,

1 we'll leave it there and see what happens next.

2 Do you have any other questions of the  
3 witness?

4 MR. BERNSTEIN: Yeah.

5 BY MR. BERNSTEIN:

6 Q. It says that the document that you  
7 fraudulently altered creating the invalid copy of the  
8 Shirley trust had some kind of paragraph 2 that was  
9 missing from the original document --

10 MR. ROSE: Objection. Argumentative.

11 BY MR. BERNSTEIN:

12 Q. -- from my understanding.

13 THE COURT: You may finish your question. And  
14 make sure it's a question and not an argument.  
15 Because you know what happens if this is an  
16 argument.

17 MR. BERNSTEIN: I'm not arguing. I'm just  
18 asking --

19 THE COURT: I want you to ask your question.

20 BY MR. BERNSTEIN:

21 Q. It says here that there was a blank spot that  
22 you -- a Paragraph No. 2 which modified the definitional  
23 language by deleting words.

24 According to this document, the power of  
25 appointment by Simon could not alter the Shirley trust

1 agreement, correct?

2 A. Don seems to be suggesting that in the second  
3 paragraph. I don't necessarily believe that that's the  
4 case.

5 Q. Did you review this document with Don?

6 MR. ROSE: Objection. Cumulative.

7 THE COURT: The question is, Did you go over  
8 this document with Don?

9 MR. BERNSTEIN: Correct.

10 THE COURT: Overruled.

11 You can answer.

12 THE WITNESS: No.

13 BY MR. BERNSTEIN:

14 Q. So he's -- Don, in this letter, is describing  
15 your actions, correct?

16 A. Yes.

17 Q. Okay. Did you write a letter to anybody  
18 describing your actions?

19 A. I did not.

20 Q. You did not.

21 And what have you done to correct the damages  
22 caused by that to my family?

23 MR. ROSE: Objection. Relevance.

24 THE COURT: Sustained.

25 MR. BERNSTEIN: Okay.

1 BY MR. BERNSTEIN:

2 Q. And are you aware of an autopsy that was done  
3 on my father the day -- or ordered the day he died?

4 MR. ROSE: Objection. Relevance.

5 THE COURT: Sustained.

6 BY MR. BERNSTEIN:

7 Q. Are you aware -- well, are you aware of a  
8 heavy metal poison test that was done by the Palm Beach  
9 County coroner?

10 MR. ROSE: Objection. Relevance.

11 THE COURT: Sustained.

12 MR. BERNSTEIN: Well, it's --

13 THE COURT: Next question.

14 MR. BERNSTEIN: I'm trying to figure that out.

15 Your Honor, is -- I can't ask you that question.

16 BY MR. BERNSTEIN:

17 Q. Competency. Based on everything you know  
18 about Simon, when he signed those documents, he was  
19 competent?

20 A. To my knowledge, he was of sound mind and  
21 body.

22 Q. Now, are you a medical expert?

23 A. I'm not.

24 Q. Are you aware of any other fraudulent activity  
25 that took place in anything in the estate and trusts of

1 Simon Bernstein by yourself or your employees?

2 A. Are you referring back to the closing of your  
3 mother's estate?

4 Q. I'm referring to any other --

5 A. -- we've talked about.

6 Q. So can you list those and then just say that's  
7 all that you're aware of?

8 MR. ROSE: Objection. Cumulative.

9 THE COURT: Sustained.

10 BY MR. BERNSTEIN:

11 Q. Other than the fraud that you've admitted to  
12 in the documents of Shirley, the Moran forged and  
13 fraudulent waivers, the April 9th waiver that you and Si  
14 signed stating he had all the waivers when he couldn't  
15 have, are there any other frauds that you're aware of  
16 that took place with these estate and trust documents?

17 A. Not to my knowledge.

18 Q. When you were first interviewed by the Palm  
19 Beach County Sheriff with Kimberly Moran, did you notify  
20 them at that first interview that you had fraudulently  
21 altered a document?

22 MR. ROSE: Objection. Relevance.

23 THE COURT: Sustained.

24 BY MR. BERNSTEIN:

25 Q. When did you notify the sheriff that you

1 fraudulently altered a document?

2 MR. ROSE: Objection. Relevance.

3 THE COURT: Sustained.

4 BY MR. BERNSTEIN:

5 Q. You have these exhibits. This will says  
6 "conformed copy" on Exhibit 1 of their exhibits; is that  
7 correct?

8 A. Yes, it does.

9 Q. Does a conformed copy have to have the clerk  
10 of the court's signature on it?

11 A. Conformed copy would not be sent to the clerk  
12 of the courts.

13 Q. Conformed copy -- okay.

14 Is that your signature on the document? This  
15 is Exhibit 2, Shirley trust agreement, of the  
16 plaintiff's exhibit book, 2, page 27.

17 A. Yes, it appears to be.

18 Q. It appears to be?

19 A. Yes.

20 Q. All right. And is that Traci Kratish's  
21 signature?

22 A. She was there. I can't speak to her  
23 signature.

24 Q. Did you witness her sign it?

25 A. I did.

1 Q. Okay. Is that my mom's signature on page 28?

2 A. Yes, it is.

3 Q. On this first amendment to Shirley's trust --

4 MR. BERNSTEIN: Exhibit 3, Your Honor, page 1  
5 of 3, I guess. It's the first page in that  
6 exhibit.

7 BY MR. BERNSTEIN:

8 Q. Is that document -- do you recall that  
9 document?

10 A. Yes.

11 Q. Okay. And you recall the day it's signed and  
12 notarized, allegedly?

13 A. November 18th, 2008.

14 Q. On the front page of that document, what day  
15 is the document dated?

16 A. It's not dated.

17 Q. Is that typical and customary in your office?

18 A. Sometimes clients forget to put the date at  
19 the top.

20 Q. You forget?

21 A. I said, sometimes clients forget to put the  
22 date at the top.

23 Q. Well, did you check the document before making  
24 it a part of a will and trust?

25 A. It was notarized as a self-proving document.



1           Q.    Are you aware that Kimberly Moran's  
2   notarization of the Simon trust has been found by the  
3   Governor Rick Scott's notary public division to be  
4   deficient?

5                   MR. ROSE:  Objection.  Hearsay.

6                   THE COURT:  Sustained.

7   BY MR. BERNSTEIN:

8           Q.    Are you aware of Kimberly Moran of your office  
9   being contacted by the governor's office in relation to  
10 these wills and trusts?

11                   MR. ROSE:  Objection.  Hearsay.

12                   THE COURT:  Sustained.

13                   What do I care if he's aware of that or not?  
14 How does that help me decide the validity of these  
15 documents?

16                   MR. BERNSTEIN:  Well, the governor's already  
17 made a claim that --

18                   THE COURT:  But you're asking the witness if  
19 he's aware of.  Are you aware the sky is blue right  
20 now?  It doesn't matter to me if he's aware of it  
21 or not.  Are you aware Rick Scott has started an  
22 investigation of a moon landing?  It doesn't matter  
23 to me if he knows that or not.  You asked him are  
24 you aware of somebody from Rick Scott's office  
25 doing something.  It doesn't matter to me if he's

1       aware of that or not. I've got to figure out the  
2       validity of these documents, so I need to know  
3       facts about that, please. Any other questions of  
4       the witness on that?

5               MR. BERNSTEIN: Yes.

6 BY MR. BERNSTEIN:

7       Q. Is that my father's signature?

8       A. I'm not an expert on your father's signature.  
9 But if it's on his will, at the bottom of his will, that  
10 must have been a copy that was obtained from the clerk  
11 of the courts, because that will was filed, and we would  
12 have conformed copies in our file, which would not have  
13 his signature at the bottom. Apparently, it is.

14       Q. But it does say on the document that the  
15 original will's in your safe, correct?

16       A. For your mother's document, it showed that.

17       Q. Oh, for my father's -- where are the originals  
18 of my father's?

19       A. Your father's original will was deposited in  
20 the court. As was your mother's.

21       Q. How many copies of it were there that were  
22 original?

23       A. Only one original. I think Mr. Rose had  
24 stated on the record that he requested a copy from the  
25 clerk of the court of your father's original will, to

1 make a copy of it.

2 Q. Certified?

3 A. I'm not sure if he said it was certified or  
4 not.

5 Q. Is that your signature on my father's will?

6 MR. BERNSTEIN: This is Exhibit 4, Your Honor,  
7 Page 7.

8 THE WITNESS: Yes, it is.

9 BY MR. BERNSTEIN:

10 Q. Okay. Is that my father's signature?

11 A. Appears to be.

12 Q. Whose signature is that?

13 A. That's my signature.

14 Q. Oh, okay. So the only two witnesses you see  
15 on this document are you and Kimberly Moran; is that  
16 correct?

17 A. On that page.

18 Q. And both you and Kimberly Moran have had  
19 misconduct in these cases?

20 MR. ROSE: Objection. Relevance.

21 THE COURT: Overruled. But it's cumulative.

22 MR. ROSE: It's cumulative.

23 THE COURT: How many times do I need to know  
24 this?

25 MR. BERNSTEIN: What does that mean exactly,

1 cumulative? I don't get that. I'm sorry.

2 THE COURT: Let's say you hit me over the head  
3 with a two-by-four. That's one time. If you do it  
4 twice, that's cumulative. Cumulative's not  
5 allowed.

6 MR. BERNSTEIN: That's an objection, is that  
7 I've asked it --

8 THE COURT: Yes.

9 MR. BERNSTEIN: -- and it was answered? Is  
10 that what it's kind of saying?

11 THE COURT: Yes, asked and answered. That's  
12 another way of saying it.

13 MR. BERNSTEIN: Now I got it.

14 THE COURT: Asked and answered is a similar  
15 way to say it.

16 MR. BERNSTEIN: Okay. Sorry.

17 BY MR. BERNSTEIN:

18 Q. Is that my father's signature, to the best of  
19 your knowledge?

20 A. Appears to be, yes.

21 Q. And is that your signature?

22 A. Yes, it is.

23 Q. And here, did Kimberly Moran properly notarize  
24 this document?

25 A. Kimberly did not notarize the document.

1 Q. Or Lindsay Baxley, did she check one -- either  
2 the person was personally known or produced  
3 identification?

4 A. No. This is what Mr. Rose had gone over  
5 earlier.

6 Q. No, those, I believe, are in other documents  
7 we'll get to.

8 So this notarization, as far as you can tell,  
9 is incomplete?

10 MR. ROSE: Objection. Are we on Exhibit 2?

11 MR. BERNSTEIN: No.

12 THE COURT: We're on Exhibit 4, as far as I  
13 recall.

14 MR. BERNSTEIN: He does not miss a thing.

15 Your Honor, page 8.

16 THE WITNESS: This is Si's documents.

17 MR. ROSE: Got it.

18 BY MR. BERNSTEIN:

19 Q. Okay. So on Simon's trust, weeks before he  
20 dies, the notarization's improper?

21 A. This was the same document we spoke about  
22 before. Yes, she did not circle "known to me,"  
23 although...

24 Q. So she didn't know you or Simon?

25 A. No, she knew all of us. She just neglected to

1 circle "known to me."

2 Q. And that's one of the three functions of a  
3 notary, to the best of your knowledge, to determine the  
4 person is in the presence that day by some form of I  
5 either know you or you gave me a license; is that  
6 correct?

7 A. Yes.

8 Q. So your firm -- have you done anything since  
9 knowing this document's improperly notarized to correct  
10 it with the courts?

11 MR. ROSE: Objection. It misstates facts. He  
12 didn't say it was improperly notarized.

13 THE COURT: Just state the objection, please.

14 MR. ROSE: Well, calls for a legal conclusion.

15 THE COURT: Sustained.

16 MR. MORRISSEY: Another objection. It  
17 misstates the law.

18 THE COURT: Sustained.

19 BY MR. BERNSTEIN:

20 Q. Is that Lindsay -- oh, you can't answer that.

21 So, to the best of your ability, regarding  
22 your signature, Kimberly or Lindsay Baxley has failed to  
23 state that you either were known to her or produced  
24 identification?

25 MR. ROSE: Objection. Cumulative.

1 THE COURT: Sustained.

2 MR. BERNSTEIN: Okay. We'll go on to  
3 document 5.

4 BY MR. BERNSTEIN:

5 Q. Is that my father's initials, to the best of  
6 your knowledge?

7 A. Appears to be, yes.

8 Q. Do these initials look similar to you, this  
9 one on page 2, next to this one on page 3, next to that  
10 thing on page 4?

11 A. Initials typically don't look perfect page to  
12 page, and they don't necessarily look similar page to  
13 page. I have seen clients execute a lot of documents,  
14 and by the time they get to, you know, the second and  
15 third document, their signatures and their initials do  
16 not necessarily look --

17 Q. Look at page 13, for example. I mean, this is  
18 almost -- if we go through page by page, tell me if you  
19 see any that are even similar. On page -- let's start  
20 back at the beginning, if that'll help you.

21 That? Do those look similar to you as you're  
22 flipping through those?

23 A. Yeah, they have a lot of the same -- similar  
24 ending marks. Your father's ending mark was that line.  
25 I mean, it's on every single solitary page.

1 Q. Okay. So your testimony today is those are my  
2 father's initials?

3 A. That they were.

4 Q. Okay.

5 A. I was there when he was...

6 Q. And you've looked at all of these, page 19,  
7 page 20? Those look similar to what you're saying -- or  
8 why don't you just look at them. If you go through them  
9 all, they all look different. But okay.

10 A. They all look different, and they all look  
11 consistent at the same time.

12 Q. Okay. Is that -- on page 24, is that my  
13 father's signature?

14 A. Appears to be.

15 Q. Is that your signature?

16 A. Yes, it is.

17 Q. Okay. Now, this is another trust document  
18 that Lindsay Baxley did that's supposed to be notarized,  
19 a will and trust, I believe, and the amended and  
20 restated.

21 Can you tell that Simon Bernstein was present  
22 or produced -- or present that day by the notarization?

23 A. She again failed to mark that he was  
24 personally known, but she worked for him.

25 Q. So these dispositive documents are improperly



1 notarized?

2 MR. ROSE: Objection. Cumulative. Legal  
3 conclusion.

4 THE COURT: Sustained.

5 BY MR. BERNSTEIN:

6 Q. Okay. And then let's go to the first  
7 amendment to Shirley Bernstein's trust. Is this a  
8 document prepared --

9 MR. BERNSTEIN: Your Honor, that would be 6.

10 THE COURT: All right.

11 BY MR. BERNSTEIN:

12 Q. Is that a document prepared by your law firm?

13 A. Yes, it is.

14 Q. And do you see where it's, "Now therefore by  
15 executing this instrument I hereby amend the trust  
16 agreement as following"? And what is it -- what are the  
17 numbering sequences there?

18 A. It says, I hereby delete a paragraph of  
19 article --

20 Q. What number is that?

21 A. Paragraph B -- it's number 1.

22 Q. Okay. And what's Number 2?

23 MR. ROSE: Objection. Best evidence. It's in  
24 evidence. And it's cumulative.

25 THE COURT: Two is in evidence, as is

1 paragraph one and paragraph three. And I've  
2 read --

3 MR. BERNSTEIN: Oh, no. But Number 1, Your  
4 Honor, take a look real quick. Number 1; there's  
5 no Number 2.

6 THE COURT: The objection came on your next  
7 question, and that was dealing with paragraph 2,  
8 which says it's already in evidence. And it is.

9 MR. BERNSTEIN: No, no, not paragraph 2. Look  
10 at down below. Under the "now therefore," there's  
11 a Number 1, and I was asking him what Number 2  
12 reads.

13 THE COURT: I know you were.

14 MR. BERNSTEIN: And there is no Number 2.

15 THE COURT: You've asked me to look at  
16 Exhibit No. 6, right? Plaintiff's Exhibit 6 has,  
17 under the therefore clause, a one, a two and a  
18 three. Are you asking me to look at a different  
19 document?

20 MR. BERNSTEIN: Can I approach?

21 THE COURT: Sure. All right. So that's a  
22 different Number 6 than I have. So let's see your  
23 Number 6.

24 MR. BERNSTEIN: What do I do on that?

25 THE COURT: That's not my decision.

1 MR. BERNSTEIN: That's his book, not my book,  
2 just so you know.

3 THE COURT: Well, that Tab 6 is different than  
4 my Tab 6. So there you go.

5 MR. BERNSTEIN: Okay. Well, which -- what do  
6 I go off there?

7 THE COURT: I have no --

8 MR. BERNSTEIN: Can I submit that into  
9 evidence?

10 THE COURT: I have no preference.

11 MR. BERNSTEIN: Okay. I'd like to submit  
12 this, because I'm not sure if the other one is in  
13 evidence wrong.

14 THE COURT: All right. Any objection?

15 MR. ROSE: Could I just see the book? Would  
16 you mind?

17 THE COURT: Here, I'll show you my book. You  
18 can look at that book and see what's going on.

19 And this will be a good time for us to take a  
20 short break, and let you all straighten it out. So  
21 we'll be back in session in 15 minutes. And then  
22 we'll go to the bitter end. Each of you has about  
23 60 minutes remaining.

24 MR. BERNSTEIN: Your Honor, when you say  
25 "60 minutes remaining," we haven't got through all

1 the witnesses yet.

2 THE COURT: Well, we will have by the end of  
3 60 minutes on each side.

4 This trial is over at five o'clock. I told  
5 you when we started each of you has half of the  
6 time; please use it wisely; use it as you wish.  
7 I've tried to encourage both sides to be efficient.  
8 When your time is gone, that's the end of the trial  
9 for you.

10 MR. BERNSTEIN: Well, the case manager --

11 THE COURT: When their trial is gone --

12 MR. BERNSTEIN: At the case management, they  
13 said it would take a day. I argued and said to you  
14 it would take days. I mean, they've got  
15 10 witnesses. I need to have all the people who  
16 witnessed these documents here.

17 THE COURT: Remember when I said a moment ago  
18 we're in recess? I was serious. Thanks. We'll go  
19 back in session 15 minutes from now.

20 (A break was taken.)

21 THE COURT: We're ready to resume. Are there  
22 any further questions for the witness on cross?

23 MR. BERNSTEIN: Okay. We were just working  
24 out that 1, 2, 3, Exhibit No. 6, so that we get the  
25 record straight.

1 THE COURT: Okay.

2 MR. BERNSTEIN: Shall I get a copy of yours,  
3 you get a copy of mine? Or how do you want to do  
4 that?

5 MR. ROSE: Your Honor, I tried to work it out.

6 THE COURT: Listen, I don't have any  
7 preference as to how we do anything. You all tell  
8 me how you've worked it out, and if I agree with  
9 it, I'll accept it.

10 MR. ROSE: The copy that's been marked for the  
11 witness, the copy in my book and the copy in your  
12 book are all identical. I don't know what's in his  
13 book, and he wouldn't show me his book on the  
14 break.

15 THE COURT: Okay.

16 MR. ROSE: But I'm fine. It's a three-page  
17 document. And if he wants to put it in evidence,  
18 even though it's not operative, I have no  
19 objection.

20 THE COURT: Okay. So are you putting  
21 something into evidence?

22 MR. BERNSTEIN: Yeah. The one that I --

23 THE COURT: Have you showed it to the other  
24 side yet? You can't put secret documents into  
25 evidence, only after they've been seen by everyone.

1 Let's at least show it to the other side so they  
2 know the document that's being proffered as an  
3 exhibit. If they still have no objection, I'll  
4 receive it as Defendant's 3.

5 MR. ROSE: This is in evidence already as  
6 Exhibit No. -- as Plaintiff's No. 3.

7 MR. BERNSTEIN: So what's 6? So now I don't  
8 even have the right 6 document.

9 MR. ROSE: The 6 that the witness has is three  
10 pages. It's the same 6 that's in your book and  
11 it's in my book. It's three consecutive pages of  
12 the production from Tescher & Spallina law firm.  
13 It has the inoperative first amendment as page 1,  
14 then it has the operative first amendment as  
15 page 2, and the signature page as page 3. It's the  
16 same document in everybody's book. That's all I  
17 can tell you.

18 THE COURT: Okay.

19 MR. BERNSTEIN: Your Honor, in my book, 3 and  
20 6 are the identical documents --

21 THE COURT: Okay.

22 MR. BERNSTEIN: -- so I would need --

23 THE COURT: Are there any other questions of  
24 the witness?

25 MR. BERNSTEIN: Well, I was going to ask him

1 questions on this document.

2 THE COURT: All right. Well, then, let's go.

3 MR. BERNSTEIN: Okay. I need a -- I don't  
4 have the 6 that everybody else is referring to. My  
5 sinks is the same as --

6 THE COURT: There you go. Take whatever you  
7 need.

8 MR. BERNSTEIN: Okay. Thank you. I think we  
9 missed 6. It's just short on 6.

10 THE COURT: All right. Then here's my Tab 6.

11 MR. BERNSTEIN: Thank you, sir.

12 THE COURT: The idea is to keep moving.

13 MR. BERNSTEIN: Okay. I'll move on. I'm  
14 almost done here.

15 BY MR. BERNSTEIN:

16 Q. Okay. So on Exhibit 3, can you list the  
17 numbers there?

18 MR. ROSE: Objection. Best evidence.  
19 Cumulative.

20 THE COURT: Sustained.

21 You need to refer to which page. That's a  
22 multi-page document, and both pages have numbered  
23 paragraphs on them.

24 MR. BERNSTEIN: Page 1 of 2.  
25

1 BY MR. BERNSTEIN:

2 Q. The Roman Numeral -- or the numerals, can you  
3 give the sequence of those numbers?

4 A. One and three. It's skipping two.

5 Q. And this is a document you allege to be part  
6 of the Shirley trust that you're claiming is valid?

7 A. That's the amendment that Shirley executed in  
8 November of 2008.

9 Q. And would there be a reason why your law firm  
10 numbers one, three?

11 MR. ROSE: Objection. Cumulative.

12 THE COURT: Overruled.

13 You can answer.

14 THE WITNESS: Human error.

15 BY MR. BERNSTEIN:

16 Q. Okay. But it is an error in the document that  
17 you're claiming is valid Shirley trust?

18 A. It's a numbering error.

19 Q. In the document, you're claiming this is a  
20 valid amendment, correct?

21 A. Correct.

22 Q. Okay. And then in number 6 from the judge,  
23 what's the numbering sequence?

24 A. One, two, three.

25 Q. Okay. So you added in a number two?



1 A. Yes.

2 Q. Okay. How did you go about doing that?

3 A. There was a paragraph two inserted between one  
4 and three.

5 Q. Well, the paragraph that's inserted between  
6 one and three wouldn't fit there.

7 So what did you do?

8 A. The document was opened up and a paragraph was  
9 inserted.

10 Q. Okay. So you increased the spacing on the  
11 document, correct, by adding a number three, correct?

12 A. Adding number two, yes.

13 Q. By adding number two, correct.

14 Okay. So you actually had to alter the  
15 chronology as it was placed on the document? You didn't  
16 just put a number two there in between one and three?  
17 You actually went and expanded the document with words  
18 that were inserted by you fraudulently, right?

19 MR. ROSE: Objection. Argumentative.

20 Cumulative.

21 THE COURT: Sustained.

22 MR. BERNSTEIN: Okay.

23 MR. ROSE: Your Honor, the witness does have  
24 the exhibits in front of him. If Mr. Bernstein  
25 could be at the podium.

1 MR. BERNSTEIN: I don't know if he has all the  
2 exhibits.

3 THE COURT: Well, do you have the exhibit that  
4 I gave you from the Court's?

5 MR. BERNSTEIN: Oh, jeez.

6 THE COURT: Because I'd like to have it back  
7 so that that doesn't get lost.

8 MR. BERNSTEIN: Okay. You gave me the one  
9 with one, two, three.

10 Can I get a copy of this from the clerk?

11 THE BAILIFF: There is no clerk.

12 THE COURT: Can I have the document back,  
13 please? He's not a clerk.

14 MR. BERNSTEIN: Marshall, sheriff, officer,  
15 sir. Sorry about that.

16 THE COURT: He does not make copies.

17 MR. BERNSTEIN: Okay.

18 THE COURT: Thanks. Any other questions of  
19 the witness? Your time is rapidly disappearing.

20 MR. BERNSTEIN: Just going through that.

21 THE COURT: And I think you said earlier you  
22 have no objection to Plaintiff's 6 being received  
23 as an exhibit?

24 MR. ROSE: Correct.

25 THE COURT: Okay.

1 MR. ROSE: Thank you.

2 THE COURT: Then it's in evidence as  
3 Plaintiff's 6. I'm making it Plaintiff's 6, rather  
4 than Defendant's 3, because it's already marked and  
5 it's been referred to by that number.

6 (Plaintiff's Exhibit No. 6 was received into  
7 evidence.)

8 BY MR. BERNSTEIN:

9 Q. Are these your notes?

10 A. No, they're not. Those are Don's.

11 Q. Do you know the date on that note?

12 A. 3/12/08.

13 Q. Did you take any notes in the meeting?

14 A. Those are my notes there.

15 Q. These are? Oh, so this is a compilation of  
16 Don's and your notes?

17 A. Those are my notes, yes.

18 Q. And those were taken on that day?

19 A. Correct.

20 Q. Whose notes are those?

21 A. I just saw those for the first time today. I  
22 believe they're your father's notes.

23 Q. How would you know those are my father's  
24 notes?

25 A. Mr. Rose introduced that document earlier.

1 Q. Document 12, did it come from your offices?

2 A. I don't know where it came from.

3 Q. Did you Bates stamp this document as part of  
4 your documents?

5 A. I don't recall ever seeing that document.

6 Q. And it doesn't have your Bates stamp from your  
7 production, right?

8 A. Correct.

9 Q. You were supposed to turn over all your  
10 records, correct?

11 MR. ROSE: Objection. He's testified it  
12 wasn't in his --

13 THE COURT: What's the objection to the  
14 question?

15 MR. ROSE: Cumulative.

16 THE COURT: Sustained.

17 MR. BERNSTEIN: All right. Your Honor, I'm  
18 done.

19 THE COURT: All right. Thank you.

20 Is there any redirect?

21 MR. ROSE: Brief, Your Honor.

22 REDIRECT (ROBERT SPALLINA)

23 BY MR. ROSE:

24 Q. Assuming the documents are valid, they'll have  
25 to be a later trial to determine the effect of Simon's

1 exercise of his power of appointment?

2 A. Yes.

3 Q. It doesn't have any direct bearing on whether  
4 these five documents are valid?

5 A. No.

6 Q. And I take it you don't necessarily agree with  
7 Mr. Tescher's view as expressed in his letter of  
8 January 14th, 2014?

9 A. Again, I'm seeing that here. Surprised to see  
10 that.

11 Q. The original documents, the wills, you  
12 retained at all times of Shirley and Simon in your firm?

13 A. Prior to their death, yes.

14 Q. And that's consistent practice for a trust and  
15 estate lawyer, to keep it in your will vault or in your  
16 safe deposit box?

17 A. Yes. I would say most attorneys do that just  
18 because there's only one original of the will, and very  
19 often documents can get lost if clients take documents  
20 home. So, typically, they're kept in a safe deposit box  
21 or a safe or something like that, and left with the  
22 attorney.

23 Q. I want to make sure I understand and the Court  
24 understands what happened with the waiver forms.

25 While Simon was alive, he signed a petition

1 for discharge; is that correct?

2 A. Correct. April of '08.

3 Q. And --

4 MR. BERNSTEIN: What exhibit? Excuse me.

5 What number are we looking at?

6 MR. ROSE: None -- well, actually, it's in my  
7 book. If you want to follow along, it's Tab 28.

8 But it's not in evidence.

9 BY MR. ROSE:

10 Q. And Simon also then filed a waiver of  
11 accounting himself?

12 A. Correct.

13 Q. And is it necessary for Simon, even though  
14 he's the personal representative, to sign a waiver of  
15 accounting because he's a beneficiary?

16 A. I mean, we do it as a matter of course.

17 Q. And the signature of Simon Bernstein on  
18 April 9th, that's genuinely his signature?

19 A. Can I see?

20 Q. Exhibit 28 is a petition that was filed with  
21 the court. I'm going to just show you the exhibits.  
22 Exhibit A says "Petition for discharge full waiver."

23 Is this a document you would have prepared for  
24 Simon Bernstein to sign?

25 A. Yeah, our firm would prepare that.

1 Q. Okay. And it's a three-page document.

2 Is that Simon Bernstein's signature --

3 A. Yes, it is.

4 Q. -- April 9th, 2012?

5 A. Yes, he signed the document.

6 Q. And he was alive when he signed the document?

7 A. Yes, he was.

8 Q. Okay. Then he had to sign a waiver of  
9 accounting, which he signed on the same day?

10 A. Correct.

11 Q. And you have a document waiver of accounting  
12 on the next page signed by Eliot Bernstein on May 15th?

13 A. Correct.

14 Q. And there's no doubt that's Eliot's signature  
15 because he's the one who emailed you the document,  
16 correct?

17 A. And sent us the original by mail.

18 Q. Right. And we already have an exhibit which  
19 is his email that sent you his waiver form?

20 A. Correct.

21 Q. And the waiver forms of Ted, Pam, Lisa and  
22 Jill are all valid, signed by them on the date that they  
23 indicated they signed it?

24 A. To the best of my knowledge, yes.

25 Q. So then these got submitted to the court.

1           Is there anything wrong with submitting waiver  
2 forms to the court signed by Simon while he's alive  
3 after he had passed away?

4           A.    Maybe we should have made a motion to, you  
5 know, have a successor PR appointed and file the  
6 documents through the successor PR.

7           Q.    Were you trying to just save expenses because  
8 there was nothing in the estate?

9           A.    Correct.

10          Q.    And if Judge Colin had not rejected -- or his  
11 assistant had not rejected the documents, and the estate  
12 was closed, it would have been closed based on  
13 legitimate, properly signed documents of Simon and his  
14 five children?

15          A.    Correct.

16          Q.    So then they get kicked back to your law firm,  
17 and you could file a motion and undertake some expense,  
18 instead --

19               MR. BERNSTEIN:  Object.  This has been asked  
20 and answered.

21               THE COURT:  Sustained.

22 BY MR. ROSE:

23          Q.    Now, does the fact that -- well, strike that.

24               At the time that Simon signed his 2012 will  
25 and 2012 trust, had there been ever anyone question a



1 signature or a notarization of any document that had  
2 been prepared by your law firm?

3 A. No, there was not.

4 Q. You didn't see anything or observe anything or  
5 any behavior of Simon Bernstein during the course of any  
6 meeting you had with him that would call into question  
7 his competence or his ability to properly execute a  
8 testamentary document?

9 A. We did not.

10 MR. ROSE: Nothing further, Your Honor.

11 THE COURT: All right. Thanks.

12 Thank you, sir. You can step down.

13 MR. ROSE: At this time, we would rest our  
14 case.

15 THE COURT: Okay. Thank you.

16 Any evidence from the defendant's side?

17 MR. BERNSTEIN: Well, I'd like -- can I call  
18 back Spallina?

19 THE COURT: If you want to call him as a  
20 witness on your behalf, sure.

21 MR. BERNSTEIN: Yeah, sure.

22 THE COURT: All right. Mr. Spallina, you're  
23 still under oath, and you're being called as a  
24 defense witness now.

25 DIRECT EXAMINATION

1 BY MR. BERNSTEIN:

2 Q. Mr. Spallina, when Simon died on  
3 September 12th -- or September 13th -- sorry -- 2012,  
4 and you were responsible as his attorney to appoint Ted  
5 as the successor, correct, you were in charge of his  
6 wills and trusts?

7 THE COURT: You just asked three questions in  
8 a row.

9 MR. BERNSTEIN: Oh, sorry.

10 THE COURT: Which question would you like the  
11 witness to answer?

12 BY MR. BERNSTEIN:

13 Q. Okay. When Simon died, was Shirley's estate  
14 closed?

15 A. No, it was not.

16 Q. Okay. Did you appoint a successor to Simon  
17 who was the personal representative of Shirley on the  
18 day he died?

19 A. I don't understand the question.

20 Q. Well, on the day Simon died, there was a  
21 successor to him in the will, correct?

22 A. That's correct. Ted.

23 Q. Okay. Did you appoint Ted?

24 A. I did not appoint Ted. Si did.

25 Q. Si appointed Ted?

1           A.     Si appointed Ted as a successor trustee under  
2     the document -- I mean, Shirley appointed Ted as the  
3     successor trustee to Si under the document.

4           Q.     So Simon didn't appoint Ted?

5           A.     Simon did not appoint Ted.

6           Q.     Okay.

7           A.     He was the named successor under your mother's  
8     document.

9           Q.     Okay. So when Simon died -- just so I get all  
10    this clear, when Simon died, your law firm knew Ted was  
11    the successor, correct?

12          A.     That's correct.

13          Q.     According to your story. Okay.

14          A.     Under Shirley's documents, you're talking  
15    about.

16          Q.     Under the alleged Shirley document.

17                 Okay. But yet did Simon then -- after he  
18    died, did he not close the estate of Shirley while he  
19    was dead?

20                 MR. ROSE: Objection. Argumentative. It's  
21    cumulative.

22                 THE COURT: Sustained.

23                 MR. ROSE: And I believe this whole line of  
24    questioning's been covered ad nauseam in the first  
25    cross-examination.

1 THE COURT: Well, it's important not to ask  
2 the same thing over and over again. You have  
3 finite time to work with.

4 MR. BERNSTEIN: Okay.

5 BY MR. BERNSTEIN:

6 Q. The estate of Shirley was closed in January,  
7 correct, of 2013?

8 A. I don't recall, but it sounds -- it has to be  
9 sometime after November.

10 Q. Okay. So it was closed by Simon, who was dead  
11 at that time, correct?

12 MR. ROSE: Objection. Relevance.

13 THE COURT: Sustained.

14 BY MR. BERNSTEIN:

15 Q. Did Ted Bernstein close the Estate of Shirley  
16 Bernstein as the successor personal representative?

17 A. No.

18 Q. Who closed the Estate of Shirley Bernstein?

19 A. The documents were filed with the court based  
20 on the original petition that your father signed.

21 Q. Did you close the estate?

22 MR. ROSE: Objection. Relevance.

23 THE COURT: What's the relevance?

24 MR. BERNSTEIN: Well, I'm trying to figure out  
25 who closed my mom's estate.

1 THE COURT: What's the relevance I've got to  
2 figure out?

3 MR. BERNSTEIN: Okay. The documents, they  
4 were bringing up these waivers. There's relevance  
5 to this.

6 THE COURT: Well, I'll sustain the objection.

7 MR. BERNSTEIN: Okay.

8 BY MR. BERNSTEIN:

9 Q. On this petition for discharge that Mr. Rose  
10 brought up on his cross -- and I can't remember where I  
11 just pulled that -- I'm going to take a look. That  
12 would be 28.

13 MR. BERNSTEIN: Can I admit this into  
14 evidence, Your Honor, since I believe Mr. Rose  
15 stated it wasn't?

16 THE COURT: You're just picking up a piece of  
17 paper and walking up to me and saying, can I admit  
18 this into evidence?

19 MR. BERNSTEIN: Well, they didn't admit it.

20 THE COURT: Is there a foundation laid for its  
21 admissibility?

22 MR. BERNSTEIN: Yes.

23 THE COURT: Do I know what it is so that I can  
24 make a ruling?

25 MR. BERNSTEIN: Oh. It's a petition for

1 discharge.

2 THE COURT: Did anybody testify to that, or  
3 are you just --

4 MR. BERNSTEIN: Yeah, he just did.

5 THE COURT: If you have a piece of paper you  
6 want to have me consider as an exhibit, the other  
7 side has to have seen it and the witness has to  
8 have seen it so I'll know what it is.

9 MR. BERNSTEIN: Okay. They were just talking  
10 about it.

11 MR. ROSE: Your Honor, just to speed things  
12 along, we have no objection to this document coming  
13 into evidence. It is part of our Exhibit 28. The  
14 whole 28 could come in evidence. That's fine with  
15 me. Then it would all be in evidence. Or however  
16 you wish to do it.

17 THE COURT: I'm letting this party take charge  
18 of his own case.

19 Are you asking that to be received as an  
20 exhibit? There's no objection. So that'll be  
21 Defendant's 3. Hand that up, and I'll mark it.

22 MR. BERNSTEIN: Thank you.

23 (Defendant's Exhibit No. 3 was received into  
24 evidence.)

25

1 THE COURT: So are you done with it?

2 MR. BERNSTEIN: No. Can I use it still?

3 THE COURT: Anything that's supposed to be an  
4 exhibit in evidence has to come back to me.

5 MR. BERNSTEIN: Gotcha.

6 BY MR. BERNSTEIN:

7 Q. Okay. On this document, it's a petition for a  
8 discharge, a "full waiver," it says.

9 Was this document sent back to your firm as  
10 not notarized by Judge Colin's office?

11 A. I'm not sure. I didn't get the documents  
12 back.

13 Q. Is it notarized?

14 A. No, it's not.

15 Q. Did you sign as the notary?

16 MR. ROSE: Objection. Cumulative.

17 THE COURT: Overruled.

18 The question was, is it notarized? The answer  
19 was no. Then you asked if -- somebody else, if  
20 they'd sign, and then the witness if he signed as a  
21 notary.

22 THE WITNESS: I signed it as the attorney for  
23 the estate.

24 BY MR. BERNSTEIN:

25 Q. Okay. On April 9th with Simon Bernstein?

1           A.    Yeah, it appears that way.

2           Q.    Could it be another way?

3           A.    It didn't -- this document did not require  
4   that I witness Si's signature.  So I believe that that  
5   document was sent to Si, and he signed it, sent it back,  
6   we signed it and filed it.

7           Q.    So you sent it to Si, he signed it, then sent  
8   it back, and you signed it all on April 9th?

9           A.    It doesn't -- it's what day he signed it  
10   that's relevant.  He signed it on April 9th.

11          Q.    And what day did you sign it?

12          A.    I could have signed it April 11th.

13          Q.    Well, where does it say April 11th?

14          A.    My signature doesn't require a date.  His  
15   does.

16          Q.    Why?

17          A.    Just doesn't.

18          Q.    Well, the date that the document says this  
19   document's being signed on April 9th.

20          A.    I did not sign that exhibit.

21          Q.    Next question.  On September 13, 2013, the  
22   year after my father died, in Judge Martin Colin's  
23   court, when he discovered this document, did he threaten  
24   to read you your Miranda Rights, stating he had enough  
25   evidence to read you Mirandas?



1 MR. ROSE: Objection. Relevance.

2 THE COURT: Sustained.

3 BY MR. BERNSTEIN:

4 Q. Did you deposit this document, this April 9th  
5 full discharge, with the court?

6 A. Did I personally do it?

7 Q. Did your law firm?

8 A. No, the law firm did, yes.

9 Q. Okay. And on whose behalf?

10 MR. ROSE: Objection. Cumulative.

11 THE COURT: Sustained.

12 MR. ROSE: And relevance.

13 THE COURT: Sustained.

14 BY MR. BERNSTEIN:

15 Q. Simon was dead when this document was  
16 deposited with the court, correct?

17 MR. ROSE: Objection. Cumulative. Relevance.

18 THE COURT: I've got that he is dead written  
19 down here several times. It's clear in my mind.

20 You're not moving in a positive direction.

21 MR. BERNSTEIN: I understand that part.

22 THE COURT: All right. New question, please.

23 MR. BERNSTEIN: Okay.

24 BY MR. BERNSTEIN:

25 Q. Is this document sworn to and attested by my

1 father? Is it a sworn statement? Does it say "under  
2 penalties of perjury"?

3 A. It does.

4 Q. Okay. So under penalties of perjury, on  
5 April 9th, my father and you signed a document, it  
6 appears, that states that Simon has fully administered  
7 the estate.

8 Was that done?

9 A. Yes, it was.

10 Q. He had settled the estate, made dispositions  
11 of all claims of Shirley's estate?

12 A. He was the only beneficiary of the estate.  
13 The creditor period had passed.

14 Q. He was the only beneficiary of the will?

15 A. He was the only beneficiary of the will if  
16 he -- that's if he survived your mother.

17 Q. Did you say earlier that the five children  
18 were tangible personal property devisees or  
19 beneficiaries under the will?

20 A. I did not. I said your father was the sole  
21 beneficiary of your mother's estate by virtue of  
22 surviving her.

23 Q. I thought you mentioned -- can I take a look  
24 at the will?

25 Okay. On Simon's will, which is Exhibit 4

1 here --

2 A. This is your mother's will we're talking  
3 about.

4 Q. Well, hold on. Well, you did state there were  
5 mirror documents, correct, at one point? That's okay.  
6 I'll proceed. That part seems to be in error.

7 Does the document say, "I, Shirley Bernstein,  
8 of Palm Beach County, Florida hereby revoke all of my  
9 prior wills and codicils and make this will my spouse's  
10 assignment. My children are Ted, Pam -- Pamela Simon,  
11 Eliot Bernstein, Jill Iantoni and Lisa Friedstein"?

12 MR. ROSE: Objection. Best evidence and  
13 cumulative.

14 THE COURT: Sustained.

15 MR. BERNSTEIN: Okay.

16 BY MR. BERNSTEIN:

17 Q. Was there a separate written memorandum  
18 prepared for this will?

19 A. No, there was not.

20 Q. And if Simon didn't survive, the property  
21 would be going to the children, correct?

22 MR. ROSE: Objection.

23 THE WITNESS: Correct.

24 MR. ROSE: Best evidence and cumulative.

25 THE COURT: Sustained.

1 MR. BERNSTEIN: What was -- I missed that.

2 Can I not ask him that question I just asked?

3 THE COURT: I sustained the objection. You  
4 can ask a new question of him.

5 MR. BERNSTEIN: Okay.

6 BY MR. BERNSTEIN:

7 Q. Is there any chance that the children could be  
8 beneficiaries of anything under this will?

9 A. Not at the time of your mother's death. Your  
10 father survived.

11 Q. So at the time of her death, you're saying  
12 that -- if they both died together, would the  
13 children --

14 MR. ROSE: Objection. Relevancy.

15 BY MR. BERNSTEIN:

16 Q. -- be beneficiaries?

17 THE COURT: Sustained.

18 MR. BERNSTEIN: Okay. I'm done with him.

19 MR. ROSE: No questions.

20 THE COURT: Okay. Thank you. You can step  
21 down now.

22 Next witness, please.

23 MR. BERNSTEIN: My next witness, are you  
24 saying?

25 THE COURT: If you have another witness, now's

1 the time to call him or her.

2 MR. BERNSTEIN: Okay. Ted Bernstein -- well,  
3 one second.

4 Is Kimberly Moran, your witness, here? Is  
5 Kimberly Moran, an exhibited witness, here,  
6 Mr. Rose?

7 THE COURT: Listen, it's your case. I've  
8 asked if you have any other witnesses. Do you have  
9 any other witnesses?

10 MR. BERNSTEIN: No, I don't. I was going to  
11 call some of their witnesses, but they're not here.

12 THE COURT: Okay. So you aren't going to call  
13 anybody?

14 MR. BERNSTEIN: Yes, I'm going to call Ted  
15 Bernstein.

16 THE COURT: Well, that's a witness, right?

17 MR. BERNSTEIN: Yeah, yeah. I just was  
18 looking for the other ones on the witness list. I  
19 didn't know if they were sitting outside.

20 Thereupon,

21 (TED BERNSTEIN)  
22 having been first duly sworn or affirmed, was examined  
23 and testified as follows:

24 THE WITNESS: I do.

25 DIRECT EXAMINATION

1 BY MR. BERNSTEIN:

2 Q. Ted --

3 THE COURT: You've got to ask the witness his  
4 name. The record needs to reflect who's  
5 testifying.

6 MR. ROSE: And could I just ask that he stay  
7 at the podium?

8 THE COURT: Okay. You need to stay near the  
9 microphone so that I can hear and the court  
10 reporter can accurately hear you. And then if you  
11 need to go up to the witness stand for some reason,  
12 you're allowed to do that.

13 BY MR. BERNSTEIN:

14 Q. State your name for the record.

15 A. Ted Bernstein.

16 Q. Is that your full formal name?

17 A. That is.

18 Q. Do you go by Theodore Stuart Bernstein ever?

19 A. I do not.

20 Q. Okay. Is that your name on your birth  
21 certificate?

22 A. Which one?

23 Q. Theodore Stuart Bernstein?

24 A. It is not.

25 Q. Okay. Ted, you were made aware of Robert

1 Spallina's fraudulent alteration of a trust document of  
2 your mother's when?

3 A. I believe that was in the early 2013 or '14.

4 Q. Okay. And when you found out, you were the  
5 fiduciary of Shirley's trust, allegedly?

6 A. I'm not sure I understand the question.

7 Q. When you found out that there was a fraudulent  
8 altercation [sic] of a trust document, were you the  
9 fiduciary in charge of Shirley's trust?

10 A. I was trustee, yes. I am trustee, yes.

11 Q. And your attorneys, Tescher and Spallina, and  
12 their law firm are the one who committed that fraud,  
13 correct, who altered that document?

14 A. That's what's been admitted to by them,  
15 correct.

16 Q. Okay. So you became aware that your counsel  
17 that you retained as trustee had committed a fraud,  
18 correct?

19 A. Correct.

20 Q. What did you do immediately after that?

21 A. The same day that I found out, I contacted  
22 counsel. I met with counsel on that very day. I met  
23 with counsel the next day. I met with counsel the day  
24 after that.

25 Q. Which counsel?

1           A.     Alan Rose.

2           Q.     Oh.   Okay.   So he was -- so Tescher and  
3   Spallina were your counsel as trustee, but Alan Rose  
4   became that day?

5           A.     I'm not sure when, but I consulted him  
6   immediately.   You asked me when.

7           MR. ROSE:   Can I caution the witness that it's  
8   fine to say who he consulted with.   I think the  
9   advice was the attorney-client privilege I would  
10   instruct him on.

11          THE COURT:   All right.   The attorney-client  
12   privilege is available, and your client is on the  
13   stand.   Counsel's reminding him that it exists.

14          Are there any other questions?   What is the  
15   time period that you're asking about here?

16          MR. BERNSTEIN:   Right after he discovered that  
17   there had been a fraudulent, invalid will created.

18          THE COURT:   Right.   And you're asking him what  
19   he did afterwards?

20          MR. BERNSTEIN:   Right afterwards.

21          THE COURT:   Okay.   Have your mother and father  
22   both passed away at the time you're asking him  
23   that?

24          MR. BERNSTEIN:   Correct.

25          THE COURT:   So the validity of the documents



1       that I've got to figure out won't have anything to  
2       do with the questions you're asking him now about  
3       his actions at trustee, will they?

4               MR. BERNSTEIN:  Yes.

5               THE COURT:  Tell me how.

6               MR. BERNSTEIN:  Okay.  Because, Your Honor,  
7       when he found out that there was fraud by his  
8       attorneys that he retained, the question is, what  
9       did they do with those documents?  Did he come to  
10      the court to correct --

11              THE COURT:  The question you're asking him is  
12      what did he do.

13              MR. BERNSTEIN:  Yeah.

14              THE COURT:  Well, that doesn't tell me  
15      anything about what the attorneys did.  So I'll  
16      sustain my own objection.  I want to keep you on  
17      track here.  You're running out of time, and I want  
18      you to stay focused on what I've got to figure out.  
19      You've got a lot more on your mind than I do.  I  
20      explained that to you earlier.  Do you have any  
21      other questions on the issues that I've got to  
22      resolve at this point?

23              MR. BERNSTEIN:  Yeah.

24      BY MR. BERNSTEIN:

25      Q.     Have you seen the original will and trust of

1 your mother's?

2 A. Can you define original for me?

3 Q. The original.

4 A. The one that's filed in the court?

5 Q. Original will or the trust.

6 A. I've seen copies of the trusts.

7 Q. Have you done anything to have any of the

8 documents authenticated since learning that your

9 attorneys had committed fraud in altering dispositive

10 documents that you were in custody of?

11 MR. ROSE: Objection. Relevance.

12 THE COURT: Overruled.

13 THE WITNESS: I have not.

14 BY MR. BERNSTEIN:

15 Q. So you as the trustee have taken no steps to

16 validate these documents; is that correct?

17 A. Correct.

18 Q. Why is that?

19 A. I'm not an expert on the validity of

20 documents.

21 Q. Did you contract a forensic analyst?

22 A. I'm retained by counsel, and I've got counsel

23 retained for all of this. So I'm not an expert on the

24 validity of the documents.

25 Q. You're the fiduciary. You're the trustee.

1 You're the guy in charge. You're the guy who hires your  
2 counsel. You tell them what to do.

3 So you found out that your former attorneys  
4 committed fraud. And my question is simple. Did you do  
5 anything, Ted Bernstein, to validate these documents,  
6 the originals?

7 THE COURT: That's already been answered in  
8 the negative. I wrote it down. Let's keep going.

9 MR. BERNSTEIN: Okay.

10 BY MR. BERNSTEIN:

11 Q. As you sit here today, if the documents in  
12 your mother's -- in the estates aren't validated and  
13 certain documents are thrown out if the judge rules them  
14 not valid, will you or your family gain or lose any  
15 benefit in any scenario?

16 A. Can you repeat that for me, please? I'm not  
17 sure I'm understanding.

18 Q. If the judge invalidates some of the documents  
19 here today, will you personally lose money, interest in  
20 the estates and trusts as the trustee, your family, you?

21 A. I will not.

22 Q. Your family?

23 A. My -- my children will.

24 Q. So that's your family?

25 A. Yes.

Contradicts what  
Spallina said  
earlier that  
beneficiaries were  
not changed.

1 Q. Okay. So do you find that as a fiduciary to  
2 be a conflict?

3 MR. ROSE: Objection.

4 THE WITNESS: No.

5 MR. ROSE: I think it calls for a legal  
6 conclusion.

7 THE COURT: Sustained.

8 BY MR. BERNSTEIN:

9 Q. Well, would it matter to you one way or the  
10 other how these documents are validated?

11 A. What would matter to me would be to follow the  
12 documents that are deemed to be valid and follow the  
13 court orders that suggest and deem that they are valid.  
14 That would be what I would be charged to do.

15 Q. So you can sit here today and tell me that the  
16 validity of these documents, even though your family  
17 will lose 40 percent, has no effect on you?

18 A. It has no effect on me.

19 Q. Okay. And you don't find that to be adverse  
20 to certain beneficiaries as the trustee?

21 MR. ROSE: Objection. Calls for a legal  
22 conclusion.

23 THE COURT: Well, what difference does it make  
24 to me? I mean, what he thinks about his role is  
25 just not relevant to me.

1 MR. BERNSTEIN: Well, Your Honor --

2 THE COURT: So the next question, please.

3 That's not relevant.

4 BY MR. BERNSTEIN:

5 Q. So in no way have you tried to authenticate  
6 these documents as the trustee?

7 THE COURT: He has already said that. That's  
8 the third time you've asked it, at least. And I've  
9 written it down. It's on my papers.

10 MR. BERNSTEIN: Okay. I'll let it go. I'll  
11 let him go today.

12 THE COURT: Okay. You have no further  
13 questions of the witness.

14 Is there any cross?

15 MR. ROSE: Briefly.

16 CROSS (TED BERNSTEIN)

17 BY MR. ROSE:

18 Q. You did a few things to authenticate the  
19 documents, didn't you? You filed a lawsuit?

20 A. Yes.

21 Q. In fact, we're here today because you filed a  
22 lawsuit to ask this judge to determine if these five  
23 documents are valid, correct?

24 A. That's correct.

25 Q. And you fired Mr. Tescher and Spallina on the

1 spot?

2 A. Correct.

3 Q. Called the bar association?

4 A. The next business day.

5 Q. You consulted with counsel, and we retained  
6 additional probate counsel over the weekend?

7 A. We did.

8 Q. So as far as authenticating the documents, you  
9 personally believe these are genuine and valid  
10 documents, right?

11 A. I do.

12 Q. And you, in fact, were in your office the day  
13 your father signed them?

14 A. That's correct.

15 Q. And witnessed Mr. Spallina and the notary  
16 coming to the office to sign the documents?

17 A. Yes, that's right.

18 Q. And you had been on a conference call with  
19 your father, your brother and your three sisters where  
20 your father told you exactly what he was going to do?

21 A. That is also correct.

22 Q. And the documents that we're looking at today  
23 do exactly what your father told everybody, including  
24 your brother, Eliot, he was going to do on the  
25 conference call in May of 2012?

1           A.    Yes, that is correct also.

2           Q.    Now, I think you were asked a good question.

3                   Do you care one way or the other how these  
4 documents are decided by the Court?

5           A.    Absolutely not.

6           Q.    Did you care when your father or mother made a  
7 document that did not specifically leave any money to  
8 you?

9           A.    I did not.

10          Q.    Now, did you care for anybody other than  
11 yourself?

12          A.    I cared for the -- for the sake of my  
13 children.

14          Q.    And why did you care for the sake of your  
15 children?

16          A.    My parents had a very good relationship with  
17 my children, and I did not want my children to  
18 misinterpret what the intentions of their grandparents  
19 were and would have been. And for that reason, I felt  
20 that it would have been difficult for my children.

21          Q.    Did you ever have access to the original will  
22 of your father or mother that were in the Tescher &  
23 Spallina vaults?

24          A.    I have no access, no.

25          Q.    Did you ever have access to the original

1 copies of the trusts that Mr. Spallina testified were  
2 sitting in their firm's file cabinets or vaults?

3 A. I did not.

4 Q. Now, did you find in your father's possessions  
5 the duplicate originals of the trusts of him and your  
6 mother that we've talked about?

7 A. I did.

8 Q. And do you have any reason to believe that  
9 they aren't valid, genuine and signed by your father on  
10 the day that he -- your father and your mother on the  
11 days that it says they signed them?

12 A. None whatsoever.

13 Q. You need to get a ruling on whether these five  
14 documents are valid in order for you to do your job as  
15 the trustee, correct?

16 A. Yes, that is correct.

17 Q. Whichever way the Court rules, will you follow  
18 the final judgment of the Court and exactly consistent  
19 with what the documents say, and follow the advice of  
20 your counsel in living up to the documents as the Court  
21 construes them?

22 A. Always. A hundred percent.

23 MR. ROSE: Nothing further, sir.

24 THE COURT: All right. Thank you.

25 Is there any redirect?



1 REDIRECT (TED BERNSTEIN)

2 BY MR. BERNSTEIN:

3 Q. You just stated that you came to the court and  
4 validated the documents in this hearing today; is that  
5 correct?

6 MR. ROSE: Objection. It mis --

7 BY MR. BERNSTEIN:

8 Q. You filed a motion to validate the documents  
9 today?

10 THE COURT: Wait. You've got to let me rule  
11 on the objection.

12 MR. BERNSTEIN: Oh, sorry. I don't hear any  
13 objection.

14 THE COURT: I'll sustain the objection.

15 BY MR. BERNSTEIN:

16 Q. Okay. Since -- did you file a motion that  
17 we're here for today for validity?

18 A. Explain motion.

19 Q. A motion with the court for a validity hearing  
20 that we're here at right now.

21 A. Do you mean the lawsuit?

22 Q. Well, yeah.

23 A. Yes, we did file a lawsuit, yes.

24 Q. Okay. Do you know when you filed that?

25 A. No. I don't know, Eliot. I don't know when I

1 filed it. I don't have it committed to memory.

2 Q. Do you have an idea?

3 MR. ROSE: Objection. I think the court file  
4 will reflect when the case was filed.

5 THE COURT: Overruled.

6 The question was answered, I don't know. Next  
7 question.

8 MR. BERNSTEIN: Okay.

9 BY MR. BERNSTEIN:

10 Q. Prior to filing this lawsuit, Mr. Rose said  
11 you couldn't do anything because you didn't know if the  
12 documents were valid.

13 My question is, did you do anything from the  
14 time you found out the documents might not be valid and  
15 needed a validity hearing to today at this validity  
16 hearing?

17 MR. ROSE: Objection. Relevance.

18 THE COURT: What's the relevance?

19 MR. BERNSTEIN: Well, he knew about these  
20 documents being fraudulent for X months.

21 THE COURT: What will that help me decide on  
22 the validity of the five documents?

23 MR. BERNSTEIN: Why, Your Honor, they didn't  
24 come to the court knowing that they needed a  
25 validity hearing, and instead disposed and

1 disbursed of assets while they've known all this  
2 time --

3 THE COURT: I'll sustain the objection.

4 I'm not called to rule upon that stuff. I'm  
5 called to rule upon the validity of these five  
6 paper documents. That's what I'm going to figure  
7 out at the end of the day.

8 BY MR. BERNSTEIN:

9 Q. Mr. Rose asked you if you found documents and  
10 they all looked valid to you, and you responded yes.

11 Are you an expert?

12 A. I am not.

13 Q. Can you describe what you did to make that  
14 analysis?

15 A. They looked like they were their signatures on  
16 the documents. I had no reason whatsoever to think  
17 those weren't the documents that were their planning  
18 documents. I had no reason at all to think that.

19 Q. Even after your hired attorneys that were  
20 representing you admitted fraud, you didn't think there  
21 was any reason to validate the documents?

22 MR. ROSE: Objection. Argumentative.

23 THE COURT: Sustained.

24 BY MR. BERNSTEIN:

25 Q. Did you find any reason to validate these

1 documents forensically?

2 A. I think I answered that by saying that we  
3 filed a lawsuit.

4 Q. No, I'm asking you to have a  
5 forensic -- you're the trustee. And as a beneficiary --  
6 to protect the beneficiaries, do you think you should  
7 validate these documents with a handwriting expert due  
8 to the fact that we have multiple instances of fraud by  
9 your counsel who were acting on your behalf?

10 MR. ROSE: Objection. Cumulative and  
11 argument.

12 THE COURT: The question is, does he think  
13 something. I've already told you when you ask a  
14 question do you think, I stop listening. It's not  
15 relevant what the witness thinks.

16 So I'll sustain the objection.

17 BY MR. BERNSTEIN:

18 Q. As a trustee, would you find it to be your  
19 fiduciary duty upon learning of document forgeries and  
20 frauds by your counsel to have the dispositive documents  
21 you're operating under validated by a professional  
22 handwriting expert, forensic expert, et cetera?

23 MR. ROSE: Objection. Cumulative.

24 THE COURT: Sustained.

25

1 BY MR. BERNSTEIN:

2 Q. Do you think these documents should be  
3 validated -- you're the trustee.

4 Do you think these documents should be  
5 validated by a professional firm forensically?

6 MR. ROSE: Objection. Cumulative.

7 THE COURT: It's not relevant. You just asked  
8 him if he thinks he should have had them validated.  
9 I don't care what he thinks. In making my  
10 decisions today, what he thinks he should have done  
11 or not done isn't relevant. I'm looking for facts.  
12 So I really wish you would address your questions  
13 to facts.

14 BY MR. BERNSTEIN:

15 Q. So, to the best of your knowledge, have these  
16 documents been forensically analyzed by any expert?

17 MR. ROSE: Objection. Cumulative.

18 THE COURT: No, they are not. I already know  
19 that. I wrote it down. He's already said they've  
20 not been.

21 MR. BERNSTEIN: Okay.

22 BY MR. BERNSTEIN:

23 Q. Ted, when your father signed, allegedly, his  
24 2012 documents in July, were you aware of any medical  
25 problems with your father?

1 A. I don't think so.

2 Q. Were you aware that I took him for a biopsy of  
3 his brain?

4 A. I'm not aware of that, no.

5 Q. Were you aware of the headaches he was  
6 suffering that caused him to go for a biopsy of his  
7 brain?

8 A. I don't believe he had a biopsy of his brain.  
9 But if he did, then I'm not aware of it.

10 Q. Oh, okay. Were you aware of headaches your  
11 father was suffering?

12 A. I recall he was having some headaches.

13 Q. Were you aware that he was seeing a  
14 psychiatrist?

15 A. Yes.

16 Q. Were you aware of the reasons he was seeing a  
17 psychiatrist?

18 A. Absolutely not.

19 Q. Were you ever in the psychiatrist's office  
20 with him?

21 A. Yes.

22 Q. For what reason?

23 A. I wanted to have a conversation with him.

24 Q. About?

25 A. About some personal issues that I wanted to

1 discuss with him.

2 Q. Personal issues such as?

3 MR. ROSE: Can I get clarification? Are you  
4 talking about you wanted to -- he may have a  
5 privilege.

6 You were discussing Simon's issues or your own  
7 personal issues?

8 THE WITNESS: They were both intertwined  
9 together.

10 MR. ROSE: I think it's subject to a  
11 privilege.

12 THE COURT: All right. Well, you've been  
13 warned by your attorney you've got a  
14 psychologist-client privilege, so use it as you  
15 will.

16 MR. BERNSTEIN: He's not a client of the  
17 psychiatrist, I don't think.

18 THE COURT: I beg to differ with you.

19 MR. BERNSTEIN: Oh, he is?

20 THE COURT: Because the answer just clarified  
21 that he was in part seeking to be a client. Did  
22 you listen to his clarification of his answer?

23 MR. BERNSTEIN: No.

24 THE COURT: Well, I did very closely.

25 MR. BERNSTEIN: What was it?

1 THE COURT: Next question, please.

2 MR. BERNSTEIN: Okay. I'll just see it on the  
3 transcript.

4 BY MR. BERNSTEIN:

5 Q. Were you aware of any medical conditions,  
6 depression, anything like that your father was  
7 experiencing prior to his death?

8 A. I never found our father to suffer from any  
9 kind of depression or anything like that during his  
10 lifetime.

11 Q. So after your mother died, he wasn't  
12 depressed?

13 A. No.

14 MR. ROSE: Could I again ask Mr. Bernstein to  
15 step to the podium and not be so close to my  
16 client?

17 THE COURT: If you speak into the microphone,  
18 it'll be even more easy to hear your questions.

19 Thank you.

20 BY MR. BERNSTEIN:

21 Q. So, according to you, your father's state of  
22 mind was perfectly fine after his wife died of -- a  
23 number of years --

24 A. I didn't say that.

25 Q. Okay. He wasn't depressed?



1 A. That's what I said.

2 Q. Were you aware of any medications he was on?

3 A. I was, yes.

4 Q. Such as?

5 A. From time to time, he would take something for  
6 your heart when you would have angina pains. But that  
7 he was doing for 30 years, for a good 30 years, that I  
8 knew dad was taking, whatever that medicine is when you  
9 have some chest pain.

10 Q. Did you have any problems with your father  
11 prior to his death?

12 MR. ROSE: Objection. Relevance.

13 THE COURT: The question is, did you have any  
14 problems with your dad before he died?

15 I'll sustain the objection.

16 BY MR. BERNSTEIN:

17 Q. Are you aware of any problems between you and  
18 your father that were causing him stress?

19 MR. ROSE: Objection. Relevance.

20 THE COURT: Sustained.

21 BY MR. BERNSTEIN:

22 Q. Were you aware that your father was changing  
23 his documents allegedly due to stress caused by certain  
24 of his children?

25 A. No.

1 Q. Were you on a May 10th phone call?

2 A. Yes.

3 Q. In that phone call, did your father --

4 MR. ROSE: Objection. It's beyond the  
5 scope -- well --

6 MR. BERNSTEIN: It has to do with the changes  
7 of the documents and the state of mind.

8 THE COURT: Do you have a question you want to  
9 ask? He's withdrawn whatever he was saying, so you  
10 can finish your question.

11 BY MR. BERNSTEIN:

12 Q. Okay. So on May 10th, at that meeting, your  
13 father stated that he was having trouble with certain of  
14 his children, and this would solve those problems.

15 Are you aware of that?

16 A. No, I don't -- not from the way you're  
17 characterizing that phone call.

18 Q. Well, how do you characterize that?

19 A. He wanted to have a conversation with his five  
20 children about some changes he was making to his  
21 documents.

22 Q. And you had never talked to him about the  
23 changes, that your family was disinherited?

24 A. No.

25 Q. Prior to that call?

1 A. No.

2 Q. When did you learn that you were disinherited?

3 A. I think when I first saw documents with --  
4 maybe after dad -- once dad passed away.

5 Q. Were you aware of the contact with your sister  
6 Pam regarding her anger at your father for cutting both  
7 of you out of the will?

8 A. I'm aware of that.

9 Q. So that was before your father passed?

10 A. Excuse me. Can you ask -- say the end of that  
11 sentence again.

12 MR. BERNSTEIN: Can you read that back?

13 (A portion of the record was read by the  
14 reporter.)

15 THE WITNESS: I'm sorry. You asked me a  
16 question, and I had answered too quickly. What was  
17 the end of the question prior to that?

18 (A portion of the record was read by the  
19 reporter.)

20 THE WITNESS: I'm aware that she was angry  
21 with him about how -- that he -- she was not in his  
22 documents.

23 BY MR. BERNSTEIN:

24 Q. You didn't learn right there that you weren't  
25 in the documents?

1           A.    I can't remember if it was then or if it was  
2 when dad died.

3           Q.    Well, this is very important so can you think  
4 back to that time.

5                   While your father was alive, did I invite you  
6 to a Passover holiday at my home?

7           MR. ROSE:  Objection.  Relevance.

8           THE WITNESS:  I don't recall.

9           MR. BERNSTEIN:  Okay.

10          THE COURT:  What's the relevance?

11          MR. BERNSTEIN:  Well, it's relevance to the  
12 state of mind my dad was in while --

13          THE COURT:  Well, you're asking did this guy  
14 get invited to your home.  You didn't ask about  
15 your dad, so I'll sustain the objection.

16 BY MR. BERNSTEIN:

17          Q.    Okay.  Did you get invited to a Passover  
18 dinner at my home that your father was attending?

19          A.    I don't recall the circumstances of  
20 what -- whatever it is you're referring to.

21          Q.    Do you recall saying you wouldn't come to the  
22 Passover dinner?

23          MR. ROSE:  Objection.  Relevance.

24          THE COURT:  Sustained.

25

1 BY MR. BERNSTEIN:

2 Q. Do you recall writing me a email that stated  
3 that your family was dead for all intensive [sic]  
4 purposes?

5 MR. ROSE: Objection. Relevance.

6 THE COURT: What's the relevance to the  
7 validity of these documents?

8 MR. BERNSTEIN: If Si was in the right state  
9 of mind or if he was being, you know, forced at a  
10 gun to make these changes by children who had --

11 THE COURT: Your question asked this witness  
12 if he wrote you a letter that said his family was  
13 dead for all intents and purposes. What's that got  
14 to do with the validity of these documents?

15 MR. BERNSTEIN: Well, it establishes Simon's  
16 state of mind.

17 THE COURT: Okay. I'll sustain the objection.

18 MR. BERNSTEIN: Okay. All right. Well, then,  
19 I'm all done then.

20 THE COURT: All right.

21 Is there any cross?

22 MR. ROSE: I already crossed.

23 THE COURT: Oh, that's true. So you're all  
24 set. You're done. Thank you.

25 Next witness, please.

1 MR. BERNSTEIN: Alan Rose.

2 MR. ROSE: I object. Improper.

3 THE COURT: You've got 11 minutes yet.

4 MR. BERNSTEIN: Well, he's a witness to the  
5 chain of custody in these documents.

6 THE COURT: Well, you can call anybody you  
7 want. I just wanted you to know how much time you  
8 had left.

9 MR. BERNSTEIN: Oh, okay.

10 MR. ROSE: He wants to call me, and I object  
11 to being called as a witness.

12 THE COURT: Okay.

13 MR. ROSE: I don't think that's proper.

14 THE COURT: I don't think that's proper to  
15 call an attorney from the other side as your  
16 witness. So I accept the objection. Anybody else?

17 MR. BERNSTEIN: Your Honor, I would agree with  
18 that normally --

19 THE COURT: Well, thanks.

20 MR. BERNSTEIN: -- but there's a small  
21 problem. The chain of custody we're trying to  
22 follow in these documents for other reasons, other  
23 criminal reasons, is Mr. Rose has pertinent  
24 information to; meaning, he claims to have  
25 discovered some of these documents and taken them

1 off the property.

2 THE COURT: I thought you said you wanted a  
3 chain of custody?

4 MR. BERNSTEIN: Right. Meaning --

5 THE COURT: Well, the chain of custody to me  
6 means the chain of custody after the time they were  
7 executed.

8 MR. BERNSTEIN: Right.

9 THE COURT: All right. He wasn't around when  
10 they were executed.

11 MR. BERNSTEIN: No, but he found documents  
12 that are being inserted into this court case as  
13 originals, second originals that he found  
14 personally, and wrote a letter stating, I just  
15 happened to find these documents in Simon's home --

16 THE COURT: Well, I'm going to sustain the  
17 objection to you calling him as a surprise witness.  
18 He's a representative of your own. Do you have any  
19 other witnesses?

20 MR. BERNSTEIN: No. I'm good.

21 THE COURT: Okay. So you rest?

22 MR. BERNSTEIN: I rest.

23 THE COURT: Okay. Is there any rebuttal  
24 evidence from the plaintiff's side?

25 MR. ROSE: No, sir.

1 THE COURT: Okay. So the evidence is closed.  
2 We'll have time for brief closing arguments. And  
3 I'll take those now. Let me hear first from the  
4 plaintiff's side.

5 MR. ROSE: I'm sorry. Did you say it was time  
6 for me to speak?

7 THE COURT: Yes. I'm taking closing arguments  
8 now.

9 MR. ROSE: Okay. Thank you. May it please  
10 the Court.

11 We're here on a very narrow issue. And  
12 we -- you know, I apologize to the extent I put on  
13 a little bit of background. We've had an extensive  
14 litigation before Judge Colin. This is our first  
15 time here. And if any of my background bored you,  
16 I apologize.

17 There are five documents that are at issue,  
18 which we talked about before we started; the 2008  
19 will and trust of Shirley Bernstein, as well as the  
20 amendment that she signed, and then the 2012 will  
21 and trust of Simon Bernstein.

22 So the uncontroverted evidence that you've  
23 heard was from Robert Spallina, who is an attesting  
24 witness to the documents and he was a draftsman of  
25 the documents.



1 I don't believe it's directly relevant to your  
2 inquiry, but you certainly heard evidence that what  
3 Simon Bernstein intended and what he communicated  
4 were his wishes; the exercise of a power of  
5 appointment through a will, the changing of the  
6 beneficiaries of his trust document by way of an  
7 amended and restated 2012 document, to give his  
8 money -- leave his wealth to his ten grandchildren.  
9 The final documents as drafted and signed are  
10 consistent with what.

11 But what we're here to decide is, are these  
12 documents valid and enforceable? And there are  
13 self-proving affidavits attached to the documents.  
14 And by themselves, if you find the self-proving  
15 affidavits to be valid, then the wills themselves  
16 are valid and enforceable.

17 Now, the only question that's been raised as  
18 to the self-proving affidavit is an issue with  
19 notarization. And we have two cases to cite to the  
20 Court on the notarization issue. One is from the  
21 Florida Supreme Court called The House of Lyons,  
22 and one is from a sister court in the State of  
23 North Carolina.

24 THE COURT: Just a second.

25 Sir, would you just have a seat. You're

1 making me nervous.

2 MR. BERNSTEIN: Sure.

3 THE COURT: Thanks.

4 MR. BERNSTEIN: Just aching.

5 THE COURT: Well, I understand. But just have  
6 a seat. That'll be better. Thanks.

7 And I'm sorry for the interruption.

8 MR. ROSE: No, that's all right.

9 If I may I approach with the two cases we  
10 would rely on.

11 THE COURT: All right.

12 MR. ROSE: The House of Lyons. The second is  
13 a case from Georgia. The House of Lyons case is  
14 from the Florida Supreme Court. It deals in a  
15 slightly different context, but it deals with  
16 notarization. And so what you have here is, we've  
17 put on evidence. The documents that are in  
18 evidence, that these documents were signed  
19 properly. The witnesses were in the presence of  
20 each other, and the testator and the notary  
21 notarized them.

22 Shirley's documents from 2008, there's no  
23 question that all the boxes were checked. There is  
24 a question that's been raised with regard to  
25 Simon's 2012 will and his 2012 trust; that the

1 notary -- rather than the law firm employee  
2 notarizing them, these were notarized by Simon's --  
3 the testimony is by an employee of Simon's company,  
4 not a legal expert. And if on the face of the two  
5 documents -- and for the record, these would be  
6 Exhibits 4, which is Simon's will, and Exhibit 5,  
7 which is Simon's trust.

8 On Exhibit 4, there's no box to check. The  
9 whole information is written out. And I don't  
10 believe there's any requirement that someone  
11 circled the word -- if you just read it as an  
12 English sentence, the notary confirmed that it was  
13 sworn to and ascribed before me the witness is  
14 Robert L. Spallina, who is personally known to me  
15 or who has produced no identification.

16 So I think the natural inference from that  
17 sentence is that person was known to him, Kimberly  
18 Moran, who was personally known to me, and Simon  
19 Bernstein, who was personally known to me. So on  
20 its face, I think it -- the only inference you  
21 could draw from this is that the person knew them.

22 Now, we've established from testimony that she  
23 in fact knew the three of them, and we've  
24 established by way of Exhibit 16, which was signed  
25 on the same day and notarized by the same person.

1 And Exhibit 16, unlike Exhibit 4, which doesn't  
2 have a little check mark, Exhibit 16 has a check  
3 mark, and the notary properly checks personally  
4 known to the people that she was notarizing.

5 So I believe -- and the In Re Lyon case stands  
6 for substantial compliance with a notary is  
7 sufficient. And the North Carolina case is  
8 actually more directly on point. The Florida  
9 Supreme Court case, Lyons -- and we've highlighted  
10 it for the Court, but it says, clerical errors will  
11 not be permitted to defeat acknowledges --  
12 acknowledgments when they, considered either alone  
13 or in connection with the instrument acknowledged  
14 and viewed in light of the statute controlling  
15 them, fairly show a substantial compliance with the  
16 statute.

17 The North Carolina case is a will case, In Re  
18 Will of Durham. And there it's exactly our case.  
19 The notary affidavit was silent as to whether the  
20 person was personally known or not. And the Court  
21 held the caveat was self-proving. The fact that  
22 the notary's affidavit is silent as to whether  
23 decedent was personally known to the notary or  
24 produced satisfactory evidence of his identity does  
25 not show a lack of compliance with the notary

1 statute, given the issues of personal knowledge or  
2 satisfactory evidence are simply not addressed in  
3 that affidavit.

4 So we have a Florida case and we have the  
5 North Carolina case, which I think is -- it's  
6 obviously not binding, but it is sort of  
7 persuasive. If they're self-proved, we would win  
8 without any further inquiry. The reason we had a  
9 trial and the reason we had to file a complaint was  
10 everything in this case -- you've slogged through  
11 the mud with us for a day, but we've been slogging  
12 through the mud for -- basically, I got directly  
13 involved in January of 2014, after the Tescher  
14 Spallina firm -- after the issues with the firm  
15 came to light. So we've been slogging through  
16 this.

17 But we did file a complaint. We went the next  
18 step. So the next step says to you, assume the  
19 notaries are invalid, which they aren't invalid;  
20 but if they were, all we need to establish these  
21 documents is the testimony of any attesting  
22 witness. So we put on the testimony of an  
23 attesting witness, Mr. Spallina. He testified to  
24 the preparation of the documents. And I do think  
25 it's relevant and it will give the Court comfort in

1 making findings of fact that there was an extensive  
2 set of meetings between Mr. Spallina and his  
3 clients when they did the documents.

4 I mean, we documented for the first set of  
5 documents, you know, four meetings, a letter with  
6 some drafts, then a meeting to sign the documents,  
7 some phone calls and some amending the documents.  
8 And in 2012, we've documented at least one meeting  
9 with notes involving Simon; telephone conferences  
10 between Simon and his client; eventually, when a  
11 decision was made, a conference call of all the  
12 children; drafts of the documents sent; the  
13 document being executed.

14 And so I think if you look at the evidence,  
15 the totality of the evidence, there's nothing to  
16 suggest that these five documents do not reflect  
17 the true intent of Simon and Shirley Bernstein.  
18 There's nothing to suggest that they weren't  
19 prepared by the law firm; that they weren't signed  
20 by the people that purport to sign them; that  
21 undisputed testimony from an attesting witness was  
22 that all three people were present, and it was  
23 signed by the testator and the two witnesses in the  
24 presence of each other.

25 So under either scenario, you get the document

1 admitted. In fact, the documents are in evidence.  
2 They've been admitted to probate. But the  
3 testimony under 732.502, 503, the testimony of the  
4 drafting attorney, who attested -- who was an  
5 attesting witness, is sufficient for these  
6 documents.

7 There's absolutely no evidence put on the  
8 Court that Simon Bernstein lacked mental capacity.  
9 In fact, the evidence is directly to the contrary.  
10 Every witness testified that he was mentally sharp;  
11 making intelligent decisions; having a conference  
12 call with his children to explain his wishes. And  
13 there's simply no evidence in the record to  
14 determine that he lacked testamentary capacity.

15 So if I have Mr. Bernstein, Simon Bernstein,  
16 with testamentary capacity signing documents in the  
17 presence of two subscribing witnesses, the 2012  
18 documents should be upheld. I don't know if  
19 there's a question at all even about Shirley  
20 Bernstein's 2008 document, but the testimony is  
21 undisputed that the documents were consistent with  
22 her wishes. You saw a draft letter that explained  
23 to her exactly what was happening. She signed the  
24 documents. The self-proving affidavits for the  
25 Shirley documents are all checked perfectly. And

1 even if they weren't, we have an attesting witness  
2 here.

3 And, frankly, I think Eliot Bernstein likes  
4 these documents. And all he wants to do is argue  
5 what they mean and how much money you get from  
6 them. And we didn't really need to spend a day  
7 arguing this, but we have and we're here. And we  
8 believe that the evidence conclusively demonstrates  
9 that these documents are valid.

10 Now, you've heard some nonsense and some  
11 shenanigans. There were a couple of problems in  
12 the case; one with the notarization of documents.  
13 And it's sort of a sad and tortured story, but  
14 it's -- it was clearly wrong for someone to send  
15 documents into Judge Colin's courtroom that had  
16 been altered. The correct documents were submitted  
17 and the estate should have been closed.

18 And when the documents were returned, someone  
19 should have gone and filed a motion with Judge  
20 Colin to accept the un-notarized documents, since  
21 there was no dispute they were signed. And we  
22 wouldn't be here. But for whatever reason, that  
23 happened. And it's unfortunate that happened, but  
24 there's no evidence that Ted Bernstein, either of  
25 his sisters, or Eliot Bernstein, or any of the



1 grandchildren played any role in the fabrication of  
2 that document -- the false notarization.

3       The fabricated amendment to Shirley's trust  
4 document is a very disturbing fact, and we took  
5 immediate action to correct it. No one's purported  
6 to validate that document. We filed an action to  
7 have the Court construe the documents, tell us  
8 which are valid, tell us what they mean. And  
9 that's where we should be focusing our time on.  
10 And this is, in my view, step one toward that.

11       But if you look at the evidence we've  
12 presented, if you -- I understand you've got to  
13 deal with the witnesses that you're handed. And I  
14 think Mr. Spallina's testimony, notwithstanding the  
15 two issues that we addressed, was persuasive, it  
16 was un rebutted.

17       And we would ask that you uphold the five  
18 documents and determine, as we have pled, that the  
19 five testamentary documents that are in evidence, I  
20 believe, as 1, 2, 3, 4, and 5 be upheld and  
21 determined to be the valid and final testamentary  
22 documents of Simon and Shirley Bernstein. To the  
23 extent there's any question the document that has  
24 been admitted to be not genuine be determined to be  
25 an inoperative and ungenuine document, we would ask

1 that you enter judgment for us on Count II and  
2 reserve jurisdiction to deal with the rest of the  
3 issues as swiftly as we can.

4 THE COURT: All right. Thank you.

5 Any closing argument from the other side?  
6 Okay.

7 I keep forgetting that you've got a right to  
8 be heard, so please forgive me.

9 MR. MORRISSEY: Judge, if I may approach, I  
10 have some case law and statutes that I may refer  
11 to. And I'll try to be brief and not cumulative.

12 MR. BERNSTEIN: Could I get the other case law  
13 that was submitted? Do you have a copy of that?

14 MR. ROSE: Sure.

15 MR. MORRISSEY: Judge, the relevant statute  
16 with respect to the execution of wills is 732.502.  
17 It says that every will must be in writing and  
18 executed as follows. And I'll just recite from the  
19 relevant parts, that is to say relevant with  
20 respect to our case.

21 The testator must sign at the end of the will  
22 and it must be in the presence of at least two  
23 attesting witnesses. And if we drop down to  
24 Subsection C, the attesting witnesses must sign the  
25 will in the presence of the testator and in the

1 presence of each other.

2 Judge, that was established and uncontroverted  
3 in connection with Mr. Spallina's testimony. So  
4 732.502 was complied with.

5 Now, I think that we -- there was kind of a  
6 distraction with respect to the self-proving  
7 affidavits at the end. As Your Honor's aware, a  
8 self-proving affidavit is of no consequence in  
9 connection with the execution of a will. Execution  
10 of a will as dealt with in 732.502 merely requires  
11 execution at the end by the testator or the  
12 testatrix, and then two witnesses who go ahead and  
13 attest as to the testator's signature.

14 Now, the self-proving affidavit at the end is  
15 in addition to. So the fact that there may or may  
16 not have been a proper notarization is of no  
17 consequence in connection with a determination of  
18 the validity of any of these documents. So that's  
19 number one.

20 Number two, I've also provided Your Honor with  
21 another -- a statutory section, 733.107, and it's  
22 titled "The Burden of Proof in Contest." And it  
23 says there, in Subsection 1, "In all proceedings  
24 contesting the validity of a will, the burden shall  
25 be upon the proponent of the will to establish,

1    prima facie, its formal execution and attestation."

2           I would submit to the Court that that was done  
3    today. We had Mr. Spallina's testimony, which was  
4    uncontroverted, that indicated that 732.502 was  
5    complied with. The statute goes on to state, "A  
6    self-proving affidavit executed in accordance with  
7    733.502 or an oath of an attesting witness executed  
8    as required under the statutes is admissible and  
9    establishes, prima facie, the formal execution and  
10   attestation of the will."

11          So, once again, I would submit to the Court  
12   that there were self-proving affidavits with  
13   respect to all of these testamentary documents.  
14   They were proper in form, and therefore comply or  
15   comport with the second sentence of the statute.  
16   But even if not, we had Mr. Spallina testify today  
17   so as to comply with this second sentence of  
18   Subsection 1.

19          So if we drop down to the third sentence of  
20   this Subsection 1, it says that, "Thereafter, the  
21   contestant shall have the burden of establishing  
22   the grounds on which probate of the will is opposed  
23   or revocation is sought."

24          That was not done today by Mr. Eliot  
25   Bernstein. He did not present any evidence or meet

1 any burden to overturn these valid wills.

2 Judge, there is the competency argument. The  
3 testamentary competency, I'm now going to quote  
4 from In Re Wilmott's Estate, 66 So.2d 465. "A  
5 testamentary competency means the ability to  
6 understand generally the nature and extent of one's  
7 property, the relationship of those who would be  
8 the natural objects of the testator's bounty, and  
9 the practical effect of the will."

10 The only testimony, I elicited that from  
11 Mr. Spallina. His is the only testimony that we  
12 have in this regard. And it's uncontroverted that  
13 both of these decedents met those very specific  
14 criteria which -- with respect to each and every  
15 one of the five documents that are submitted for  
16 your Court's validation today.

17 There's also case law, In Re Estate of Weihe,  
18 W-E-I-H-E. That's 268 So.2d 446. That's a Fourth  
19 DCA case that says, "Competency is generally  
20 presumed and the burden of proving incompetency is  
21 on the contestant." So even if we didn't have  
22 Mr. Spallina's testimony today, which I elicited,  
23 competency on the part of both Shirley and Si  
24 Bernstein would be presumed. And it would be the  
25 contestant, Mr. Eliot Bernstein, who would have to

1     come up with the -- or would have the burden of  
2     showing that they were incompetent. He presented  
3     no evidence today in that regard or in that  
4     respect.

5             Lastly, there's the In Re Carnegie's estate,  
6     153 Florida 7. It's a 1943 case. That says that  
7     testamentary capacity refers to competency at the  
8     time that the will was executed, so on that date.

9             The only testimony we have with respect to any  
10    issues of competency on the date -- on the specific  
11    dates that these testamentary documents were signed  
12    was from Mr. Spallina. And on all such dates and  
13    times, Mr. Spallina testified that these requisites  
14    with respect to competency -- or testamentary  
15    competency were met.

16            Finally, Judge, undue influence, that would be  
17    a reason for invalidating a will. Mr. Bernstein,  
18    once again, did not present any evidence to go  
19    ahead and suggest that these wills or trusts  
20    documents should be overturned on the grounds of  
21    undue influence. And in that regard, I provided  
22    Your Honor with the Estate of Carpenter, 253 So.2d  
23    697. To prove undue influence, one must  
24    demonstrate that a beneficiary had a confidential  
25    relationship with the decedent and actively

1     procured the will or trust.

2             Mr. Eliot Bernstein did not even suggest today  
3     that any of the beneficiaries actively procured the  
4     document. Why? Beneficiaries are essentially --  
5     are ultimately the ten grandchildren.

6     Mr. Bernstein, Eliot Bernstein, did not suggest  
7     today that any one of the ten grandchildren, who  
8     are ultimately beneficiaries, were active in  
9     procuring any of the five documents, nor did  
10    Mr. Bernstein submit to the Court any evidence of  
11    confidential relationship by anyone in connection  
12    with the various criteria to raise the presumption  
13    of undue influence, nor did Eliot Bernstein raise  
14    the presumption by satisfying any or enough of the  
15    criteria under the Carpenter case to go ahead and  
16    raise the presumption that anyone, any substantial  
17    beneficiary, had committed undue influence with  
18    respect to any of these documents.

19            For those various, multifarious reasons,  
20    Judge, I would submit to the Court that these  
21    documents are valid and should be held as such.

22            THE COURT: All right. Thank you.

23            Any closing from the defendant's side?

24            MR. BERNSTEIN: Oh, yeah.

25            THE COURT: You've got eight minutes

1 remaining.

2 MR. BERNSTEIN: Okay. Your Honor, we're  
3 really here today because of a complex fraud on the  
4 court and on beneficiaries like myself and my  
5 children. The only witness they procured to  
6 validate these documents has consented to the SEC  
7 and felony charges recently with his partner for  
8 insider trading. He came up on the stand and  
9 admitted that he committed fraud, and that his law  
10 firm forged documents and frauded documents, and  
11 then submitted them not only to the court, but  
12 beneficiaries' attorneys as part of a very complex  
13 fraud to not only change beneficiaries, but to  
14 seize dominion and control of the estates through  
15 these very contestable documents.

16 They've been shown by the governor's office to  
17 not be properly notarized. The two people who are  
18 going -- well, one is --

19 MR. ROSE: I don't want to object to --

20 MR. BERNSTEIN: -- has no --

21 MR. ROSE: Can I object? He's so far talking  
22 about things that aren't in evidence.

23 THE COURT: Sustained.

24 You can only argue those things that were  
25 received in evidence.



1 MR. ROSE: And I realize Your Honor has a good  
2 memory of the evidence --

3 MR. BERNSTEIN: I put in evidence that  
4 Mr. Spallina was SEC --

5 THE COURT: No, I sustained objections to  
6 those questions.

7 MR. BERNSTEIN: Oh, okay.

8 THE COURT: You can only argue those things  
9 that came into evidence.

10 MR. BERNSTEIN: Okay. They didn't bring in  
11 any of the necessary parties to validate these  
12 documents, other than Mr. Spallina, who admitted to  
13 the Court today that he fraudulently altered the  
14 trust document. Can I now say that?

15 THE COURT: It's not good for you to ask me  
16 questions. I've got to rule on objections, and I'm  
17 trying to give you some guidance so that you don't  
18 screw up. But I can't answer your legal questions.

19 MR. BERNSTEIN: Okay. So the only witness has  
20 admitted in this very case that his law firm  
21 submitted forged and fraudulent documents to the  
22 Court already in this case; that he himself did  
23 those frauds. And we're relying on his sole  
24 testimony.

25 None of the other people who signed these

1 documents are here today to validate or even  
2 confirm his statements. So it's a highly  
3 uncredible [sic] witness to the documents,  
4 especially when Mr. Spallina drafted, signed as a  
5 witness, gained interest in the documents himself  
6 personally as a trustee, and seems to clearly have  
7 then taken it upon himself to mislead beneficiaries  
8 as to the actual documents.

9 I have asked for production of these  
10 documents. Today there were no originals produced  
11 to this Court for you to examine.

12 And more importantly, there's a few last  
13 things I wanted to state to the Court. My children  
14 are not represented here today as beneficiaries.  
15 They were supposed to be represented by a trustee  
16 of a trust that does not exist in our possession.  
17 So they were -- I was sued as a trustee of a trust  
18 I've never been given to represent my children, who  
19 are alleged beneficiaries by these guys. And the  
20 estate's done nothing to provide counsel to three  
21 minor children, and left them here today without  
22 counsel, and me as a trustee of a trust that  
23 doesn't exist, as far as we know. I've never  
24 signed it. They haven't submitted it to the Court,  
25 to anybody.

1 I want to bring up Rule 1.20, pretrial  
2 procedure, case management conference process  
3 provides, "The matter to be considered shall be  
4 specified in the order of notice setting the  
5 conference."

6 So I just want to say that we had a status  
7 conference in Simon Bernstein's estate, and only  
8 Simon Bernstein's estate, and that this trial was  
9 scheduled in Simon's status conference, which  
10 violates that very rule. So this trial, in my  
11 view, was conducted improperly.

12 Like I said, if you look at the hearing  
13 transcript of that day, you'll see that Mr. Rose  
14 misleads the Court to think that all these cases  
15 were noticed up that day. But Mr. O'Connell, the  
16 PR, had only noticed it up for Simon's estate. So  
17 what I'm doing here at a trial in Shirley's trust  
18 violates Rule 1.20.

19 There are some other things that are violated  
20 and not -- I believe we didn't get to discuss  
21 the -- at the case management, the fact that, you  
22 know -- and I did try to get this out -- that we  
23 would need a lot more time for a competency  
24 hearing, for a removal of Ted process, which should  
25 have come first before doing this and letting them

1     argue, where it's been alleged that there's some  
2     serious problems with Ted Bernstein's  
3     representation, including the fact that the PR of  
4     the estate of Simon has filed with this Court  
5     notice that he's not a valid trustee.

6           MR. ROSE:  Objection.  Outside -- not in  
7     evidence.

8           THE COURT:  Okay.  If you're not going to  
9     argue the facts that are in evidence in this trial,  
10    then I'm going to ask you to stop.

11          MR. BERNSTEIN:  Okay.  Well, I'll keep going  
12    on my -- see, that's what's confusing.  What trial?  
13    We had a case management.  I was prepared for a  
14    Simon, where I have Simon trust construction, all  
15    those things ready, and I didn't come with any  
16    notes about Shirley.  And I've tried to notice the  
17    Court that under 1.200, this trial was scheduled  
18    improperly in the estate of Simon, and should have  
19    been reheard or rescheduled or something.

20          But that seems not to matter.  It doesn't  
21    matter that we follow the rules.  I follow the  
22    rules, but it seems that the other side doesn't  
23    follow any of the rules; doesn't submit documents  
24    properly to courts; commits frauds on courts; and  
25    then wants you to believe the validity of these

1 documents based on a felony statement to the Court,  
2 who's under a consent with the SEC.

3 THE COURT: You've got two minutes remaining.

4 MR. BERNSTEIN: There were outstanding  
5 discovery requests. I was denied all these  
6 documents. I was denied the trust that I'm sued  
7 under representing my children. So I can't get any  
8 of those documents. We would have brought all that  
9 up at a real status conference had it been a real  
10 status conference and not a corralling or, as you  
11 called it, a wrangling of octopuses.

12 THE COURT: That's vivid imagery. Isn't it?  
13 I pride myself on that one.

14 MR. BERNSTEIN: Oh, yeah. Well, I was  
15 wrangled, technically, into the wrong case here  
16 today, in a status conference that you should have  
17 corrected upon learning about this. And Mr. Rose  
18 has been aware of his mistake in misleading the  
19 Court that all these cases were noticed up, when  
20 they weren't. And he didn't come to the Court to  
21 correct it. Kind of like they didn't come to the  
22 Court to correct the validity of these documents  
23 before acting under them, knowing they needed to be  
24 not only challenged on validity, but on  
25 construction of terms, which will come next, which

1 is going to just go right back into the same circle  
2 of fraud.

3 So their star witness is a felon. Their star  
4 witness has committed fraud upon this Court in this  
5 case. That's who they're relying on, and hoping  
6 you bank on his words to validate documents.

7 I, Your Honor, am asking that you don't  
8 validate the documents; that we move forward to  
9 have the documents properly forensically analyzed.  
10 They were the subject of ongoing criminal  
11 investigations, which are just getting kicked off.  
12 In fact, I got 7200 documents from Mr. Spallina,  
13 where almost, I think, 7200 are fraud.

14 THE COURT: Your time is more than elapsed. I  
15 was letting you finish up as a courtesy, but you're  
16 getting off into things that aren't in evidence --

17 MR. BERNSTEIN: Okay. Well, I don't think the  
18 trial was conducted fairly. I think that my due  
19 process rights have been denied under the law.

20 THE COURT: Your time is more than up. Thank  
21 you.

22 MR. BERNSTEIN: Okay.

23 THE COURT: Is there any rebuttal?

24 MR. BERNSTEIN: And I still would like to move  
25 for your disqualification, on the record.

1 THE COURT: On the record doesn't count.  
2 You've got to put it in writing.

3 MR. BERNSTEIN: Are you sure? I thought I saw  
4 in the rules --

5 THE COURT: I'll tell you what. You proceed  
6 under your understanding of the law and the rules.  
7 That's fine.

8 MR. BERNSTEIN: Okay.

9 THE COURT: Before I take this --

10 MR. BERNSTEIN: I rest.

11 THE COURT: -- before I take this rebuttal  
12 argument, I'll let you put your request for recusal  
13 in writing. We'll be out of session five minutes.

14 Is that something you want me to read?

15 MR. ROSE: I just want to make my final --

16 THE COURT: I just want to make sure that  
17 there's been no possibility that this gentleman  
18 won't have his moment to shine.

19 So go ahead and go put that in writing, sir.  
20 Be back in five minutes.

21 (A break was taken.)

22 THE COURT: Did you get that written down?

23 MR. BERNSTEIN: Can I approach?

24 THE COURT: Sure. All approaches are okay.

25 MR. BERNSTEIN: Do you want to wait for

1 everybody?

2 THE COURT: Do you have something that you  
3 wanted to file, a written motion to recuse?

4 MR. BERNSTEIN: Yeah. In freestyle.

5 THE COURT: All right. I'll take a look at  
6 it. Thank you.

7 MR. BERNSTEIN: Can I ask a question?

8 THE COURT: I'll be in recess. I'll take a  
9 look at this written motion. Thank you. It'll  
10 take me just a minute. Don't anybody go away.

11 (A break was taken.)

12 THE COURT: The stack of documents handed up  
13 to me by the defendant are duplicates of documents  
14 that he filed, it looks like, twice with the clerk  
15 on December 4th, and they've already been ruled  
16 upon by me. But I am also ruling today by  
17 handwritten order on the face of one of the  
18 documents that the disqualification motion is  
19 denied as legally insufficient; already ruled upon  
20 in the order of 12/8/15, at Docket Entry No. 98;  
21 identical to motions filed by defendant on  
22 12/4/2015 at Docket Entries Nos. 94 and 98; done in  
23 order of John Phillips, 12/15/15. And since I have  
24 skills, I made copies of my handwritten order for  
25 everybody.



1 Gary, if you could, just hand these out.

2 That'll take care of all that.

3 Now we can go back to talking about the case.

4 I was going to take the rebuttal argument from  
5 Plaintiff's side. I'd take that now.

6 MR. ROSE: I have just the exhibits that we  
7 put in evidence on the plaintiff's side, if that's  
8 easier for the Court.

9 THE COURT: That would be much easier. Thank  
10 you.

11 MR. ROSE: And I have a proposed final  
12 judgment. And I wanted to talk about one paragraph  
13 of the final judgment in particular.

14 MR. BERNSTEIN: I haven't had time to review  
15 any final judgment or anything.

16 THE COURT: You're interrupting the argument.  
17 Thank you.

18 MR. ROSE: So the complaint alleges -- and I  
19 realize we didn't cover every issue in the entire  
20 case, but we do it within the four corners of Count  
21 II of the complaint. Count II of the complaint was  
22 stated in paragraph 79 through 88 of the complaint.

23 And the answer that's filed in this case on  
24 Count II at paragraph 80 alleges that there's been  
25 a fraud on the court by Ted Bernstein, including,

1 but not limited to, proven forgery, fraudulent  
2 notarizations, fraud on the court, altercation  
3 [sic] of trust documents, et cetera, et cetera.

4 And in paragraph 82, the answer says that Ted  
5 should be removed for his ongoing involvement in  
6 fraud which is dealing with these documents.

7 Ted Bernstein is serving as a fiduciary.  
8 You've heard -- that was the defense to this case.  
9 That's stated in the complaint. You heard no  
10 evidence that Ted Bernstein was involved in the  
11 preparation or creation of any fraudulent  
12 documents. In fact, the evidence from Mr. Spallina  
13 was to the contrary.

14 So our final judgment in paragraph 5 asks the  
15 Court to make a ruling on the issues that are pled  
16 in the answer, specifically that there was no  
17 evidence that Ted was involved and that the  
18 evidence was to the contrary.

19 So we have no rebuttal. We believe we've  
20 established our case, and we proposed a final  
21 judgment for Your Honor's consideration that  
22 discusses that this is an action to adjudicate five  
23 documents to be the testamentary documents. Based  
24 on the evidence presented, they're genuine,  
25 authentic, valid and enforceable; has the requisite

1 findings. Paragraph 5, which I've explained, the  
2 reason we believe it's appropriate in the final  
3 judgment, given the pleadings that were made and  
4 the lack of evidence on those pleadings. And we  
5 didn't get into it today, but --

6 THE COURT: Well, if we didn't get into it  
7 today, then it's not proper for argument.

8 MR. ROSE: Well, it's alleged in the complaint  
9 and not proven, so I think it's appropriate to make  
10 a finding on it. You didn't actually hear  
11 testimony that was relevant to those issues about  
12 Ted Bernstein. And I would ask you to consider  
13 that 5 is supported by the evidence and the  
14 pleadings.

15 And 6, we would like you to declare the  
16 unauthorized one invalid, because it does change  
17 potentially something, and we want to know what  
18 we're doing going forward. And I don't think  
19 anyone disputes that Exhibit 6 that's in evidence  
20 was not valid. And then it just states this is  
21 intended to be a final order under the rules of  
22 probate code.

23 So that's our order. We would ask you to  
24 enter our judgment or a judgment similar to it;  
25 find in favor of the plaintiff; reserve

1 jurisdiction for numerous other matters that we  
2 need to deal with as quickly as we can. But,  
3 hopefully, with the guidance we get today, we'll be  
4 able to do it more quickly and more efficiently.  
5 So thank you.

6 THE COURT: All right. Thanks.

7 We'll be in recess. It was fun spending time  
8 with you all.

9 Sir, do you have any proposed final judgment  
10 you want me to consider? I've received one from  
11 the plaintiff's side. Is there some from the  
12 defendant's side?

13 MR. BERNSTEIN: No. I haven't received one  
14 from them. And seeing theirs --

15 THE COURT: Okay. Thank you.

16 Then we'll be in recess. Thank you all very  
17 much. I'll get this order out as quickly as I can.

18 (At 4:48 p.m. the trial was concluded.)  
19  
20  
21  
22  
23  
24  
25

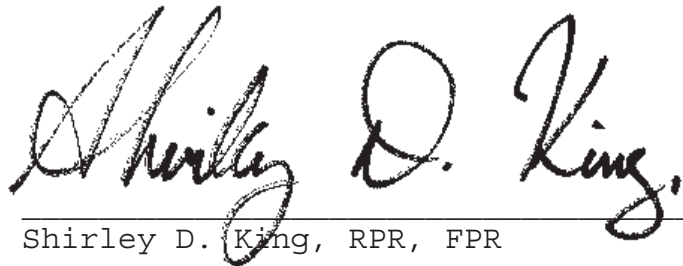
C E R T I F I C A T E

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, Shirley D. King, Registered Professional  
Reporter, State of Florida at large, certify that I was  
authorized to and did stenographically report the  
foregoing proceedings and that the transcript is a true  
and complete record of my stenographic notes.

Dated this 4th day of January, 2016.



Shirley D. King, RPR, FPR

Job #1358198-VOL 2

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