

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

4 TED BERNSTEIN,

5 Plaintiff,

6 -vs-

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

9 Defendants.

10 TRIAL BEFORE THE HONORABLE
11 JOHN L. PHILLIPS
12 VOLUME 2 PAGES 117 - 260

13 Tuesday, December 15, 2015
14 North County Courthouse
15 Palm Beach Gardens, Florida 33410
16 9:43 a.m. - 4:48 p.m.

17 Reported By:
18 Shirley D. King, RPR, FPR
19 Notary Public, State of Florida
20 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.

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 un genuine 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.)
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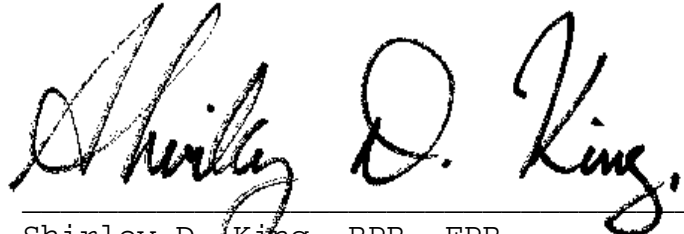
C E R T I F I C A T E

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.



Shirley D. King, RPR, FPR

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