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1 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
2 PROBATE/GUARDIANSHIP DIVISION IY  
3 CASE NO.: 502011CP000653XXXXSB

4 IN RE: THE ESTATE OF:  
SHIRLEY BERNSTEIN,  
Deceased

5 \_\_\_\_\_/  
ELIOT IVAN BERNSTEIN, PRO SE,  
6 Petitioner,

vs.

7  
8 TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA  
(BOTH PERSONALLY & PROFESSIONALLY); DONALD  
9 R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY);  
THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL  
10 REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH  
PERSONALLY & PROFESSIONALLY); AND JOHN AND JANE  
11 DOE'S (1-5000),  
Respondents.

12 \_\_\_\_\_/  
13 TRANSCRIPT OF PROCEEDINGS  
14 BEFORE  
15 THE HONORABLE MARTIN H. COLIN  
16  
17 South County Courthouse  
200 West Atlantic Avenue, Courtroom 8  
18 Delray Beach, Florida 33344  
19  
20 Friday, September 13, 2013  
1:30 p.m. - 2:15 p.m.

21  
22  
23  
24 Stenographically Reported By:  
JESSICA THIBAULT

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1 APPEARANCES  
2  
3 On Behalf of the Petitioner:  
4 ELIOT IVAN BERNSTEIN, PRO SE  
2753 NW 34th Street  
5 Boca Raton, Florida 33434  
6

7  
8 On Behalf of the Defendants:

9 LAW OFFICE OF MARK MANCERI, P.A.  
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10 Fort Lauderdale, Florida 33308  
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11 mrmlaw@comcast.net  
BY: MARK MANCERI, ESQ.

12  
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20  
21 Also present:  
22 Robert Spallina, Esq.  
23 Theodore Bernstein  
24 Mrs. Bernstein, Petitioner's wife  
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1 P R O C E E D I N G S

2 THE COURT: All right, we're here on the  
3 Shirley Bernstein estate, 2011CP000653.  
4 Counsel, make your appearances.

5 MR. MANCERI: Good afternoon, your Honor,  
6 Mark Manceri. I'm here on behalf of Robert  
7 Spallina and Donald Tescher, named respondents.

8 MR. ELIOT BERNSTEIN: Good afternoon, your  
9 Honor, my name is Eliot Bernstein, and I'm  
10 representing myself pro se.

11 MR. THEODORE BERNSTEIN: Your Honor, Ted  
12 Bernstein, trustee of the estate, and I'm here  
13 representing myself today.

14 THE COURT: Okay, thanks.

15 Let me just get the case up on the  
16 computer, please.

17 All right, so I set oral argument based  
18 upon Mr. Bernstein's emergency motions, and I  
19 did so with the cautionary language in the  
20 notice of hearing that I assume both of you  
21 have, that indicates that I first want to hear  
22 what makes this matter emergency as defined by  
23 our law, so, because you're pro se,  
24 Mr. Bernstein, I want to make sure you're aware

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of that particular aspect of what I just said.

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1 Counsel knows. This is not an emergency in  
2 your mind. It's an emergency as the law calls  
3 it an emergency. You're probably going to show  
4 me a case or an administrative order and tell  
5 me how this is an emergency.

6 The second part of it is what type of  
7 evidentiary hearing we need to have, so you're  
8 up first.

9 MR. ELIOT BERNSTEIN: Okay, you want me to  
10 step up or?

11 THE COURT: You could do it right from  
12 there.

13 MR. ELIOT BERNSTEIN: It's an emergency  
14 because three of the beneficiaries --

15 THE COURT: Say again? I couldn't -- you  
16 mumbled, I couldn't hear you.

17 MR. ELIOT BERNSTEIN: It's an emergency  
18 because three of the beneficiaries of the  
19 estates lives have been put in danger.

20 THE COURT: Okay, so they're about to be  
21 killed?

22 MR. ELIOT BERNSTEIN: They're about to be  
23 cut off of school, insurance, the necessary  
24 care that was set aside in the estates.

25 THE COURT: So it's not physical harm?

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1 MR. ELIOT BERNSTEIN: No.

2 THE COURT: So it's financial harm?

3 MR. ELIOT BERNSTEIN: Correct.

4 THE COURT: Educational harm?

5 MR. ELIOT BERNSTEIN: Correct.

6 THE COURT: Show me in either the law or  
7 the administrative order where that is defined  
8 as an emergency.

9 MR. ELIOT BERNSTEIN: If it's not then I  
10 made a mistake.

11 THE COURT: You're supposed to know that.  
12 That's why we're having this hearing.

13 MR. ELIOT BERNSTEIN: Well, I'm pro se.

14 THE COURT: I know. We brought all this  
15 judicial effort here. No, sir, this is not a  
16 free shot for you.

17 MR. ELIOT BERNSTEIN: I thought that it  
18 was an emergency.

19 THE COURT: No, it's not your thought.

20 MR. ELIOT BERNSTEIN: Okay.

21 THE COURT: I cautioned you in the notice  
22 of hearing you so came today -- I kind of  
23 cautioned you whether this is an emergency,  
24 okay? So you need to demonstrate to me where  
25 under our laws this situation that you say the

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1 evidence would show is imminently happening,  
2 imminent means today, okay, where an emergency  
3 exists.

4 The last two emergencies I did, someone  
5 was on the way to the airport waiting to be  
6 taken illegally to Iran, a non-hate convention  
7 country. We had to get an order out so that  
8 Homeland Security would rush down with armed  
9 guards and protect a child from going overseas  
10 and never coming back to the U.S.

11 The other one was we had to get an order  
12 so police could break down the door to prevent  
13 someone from being physically killed or harmed  
14 physically.

15 Those two were emergencies. Is this an  
16 emergency like that?

17 MR. ELIOT BERNSTEIN: I believe so.

18 THE COURT: Okay, all right, so let me  
19 tell you, I'm going to let you go forward. If  
20 I do not believe so, get your checkbook out.

21 MR. ELIOT BERNSTEIN: Okay.

22 THE COURT: You're going to personally pay  
23 for the cost of this.

24 MR. ELIOT BERNSTEIN: Okay.

25 THE COURT: It doesn't seem so based upon

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1 what you've told me, but you have this belief  
2 that it is. Remember, show me that it's a  
3 legal emergency like I gave the example of it.  
4 Someone is going to die, be taken out of the  
5 jurisdiction, someone's wellbeing today is  
6 going to be -- you know, they're going to be  
7 without food, they'll be on the street  
8 tomorrow.

9 MR. ELIOT BERNSTEIN: Okay.

10 THE COURT: So is that the type of hearing  
11 I need?

12 MR. ELIOT BERNSTEIN: Yes.

13 THE COURT: Okay. So tell me how that --  
14 what evidence is there that this is an  
15 emergency along those lines?

16 MR. ELIOT BERNSTEIN: Okay, the estate  
17 representatives when my parents died told us  
18 that they were understanding the special  
19 circumstances me and my three children are in,  
20 and that funds had been set aside and not to  
21 worry, there would be no delay of paying their  
22 living costs and everything that my father and  
23 mother had been paying for years to take care  
24 of them, and then they were paying that out of  
25 a bank account at Legacy Bank.

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1 THE COURT: Who is they?

2 MR. ELIOT BERNSTEIN: Mr. Spallina had  
3 directed Rachel Walker to pay the expenses of a  
4 Legacy bank account. It was being paid. And  
5 then Mr. Spallina stated that I should or that  
6 Rachel should -- she was fired, she should now  
7 turn the accounts over to my wife to start  
8 writing checks out of an account we've never  
9 seen.

10 So I said I didn't feel comfortable  
11 writing checks out of an account, especially  
12 where it appeared my dad was the signer, so I  
13 called Legacy Bank with Rachel and they were  
14 completely blown away that checks had been  
15 being written out of a dead person's account.  
16 Nobody had notified them that Simon had  
17 deceased. And that no -- by under no means  
18 shall I write checks out of that account, and  
19 so then Mr. Spallina told me to turn the  
20 accounts over to Janet Craig of Oppenheimer,  
21 and Oppenheimer was going to pay the bills as  
22 it had been done by Rachel in the past. And so  
23 we sent her the Legacy account. We thought all  
24 that was how things were being done and, you  
25 know, he doesn't give us any documents

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1 whatsoever in the estate, so we don't know, you  
2 know, what he's operating out of, but  
3 Oppenheimer then started to pay the things --  
4 first they said, wait a minute, these are  
5 school trust funds -- well, they actually said  
6 that after they started paying, and they were a

7 little hesitant that these funds were being  
8 used for personal living expenses of everybody,  
9 which the other Legacy account had been paying  
10 for through an agreement between and my  
11 parents. And then what happened was  
12 Mr. Spallina directed them to continue, stating  
13 he would replenish and replace the funds if he  
14 didn't get these other trusts he was in the  
15 process of creating for my children in place  
16 and use that money he would replenish and  
17 replace it.

18 So the other week or two weeks or a few  
19 week ago Janet Craig said that funds are  
20 running low and she contacted Mr. Spallina who  
21 told her that he's not putting any money into  
22 those trusts and that there's nothing there for  
23 me, and that basically when that money runs out  
24 the kids' insurance, school, their home  
25 electricity and everything else I would

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1 consider an emergency for three minor children  
2 will be cut off, and that was not --

3 THE COURT: Let me ask you a question.

4 MR. ELIOT BERNSTEIN: Yes, sir.

5 THE COURT: At the time when you say  
6 things were as they should be, your parents  
7 were alive and they were paying bills of you  
8 and your children?

9 MR. ELIOT BERNSTEIN: Correct,  
10 100-percent, through an agreement.

11 THE COURT: An agreement with them?

12 MR. ELIOT BERNSTEIN: Yes.

13 THE COURT: Okay. Then who died first?

14 MR. ELIOT BERNSTEIN: My mom.

15 THE COURT: Because this is what -- you  
16 filed it under your mom's estate.

17 MR. ELIOT BERNSTEIN: Okay.

18 THE COURT: Is your father alive or dead?

19 MR. ELIOT BERNSTEIN: My father is  
20 deceased today a year ago.

21 THE COURT: All right. So you're saying  
22 that after your father died, however it  
23 happened, bills for you and your children  
24 continued to be paid somehow?

25 MR. ELIOT BERNSTEIN: First out of an

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1 account that they shouldn't have been being  
2 paid out of.

3 THE COURT: And then it stopped?

4 MR. ELIOT BERNSTEIN: It stopped. Then it  
5 was transferred to Oppenheimer.

6 THE COURT: And they paid for a little  
7 while?

8 MR. ELIOT BERNSTEIN: Correct.

9 THE COURT: And when did that stop?

10 MR. ELIOT BERNSTEIN: Correct, just on  
11 August 28th, with one-day's notice.

12 THE COURT: Okay. So the bills that they  
13 were paying for you were what bills?

14 MR. ELIOT BERNSTEIN: All of them.

15 THE COURT: All the bills.

16 MR. ELIOT BERNSTEIN: Health insurance,  
17 electricity, water, food, clothing, everything,  
18 100-percent.

19 THE COURT: When did the emergency take  
20 place?

21 MR. ELIOT BERNSTEIN: On August 28th.  
22 They told me if I didn't sign releases that  
23 Robert wanted me to sign and turn the money  
24 over to my brother, the remaining corpus of the  
25 trust, that they were going to shut the funds

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1 off as of that day.

2 THE COURT: And they did?

3 MR. ELIOT BERNSTEIN: I'm not 100-percent  
4 sure, because then I asked them for their  
5 operating documents that Mr. Spallina had sent  
6 them, and once again we've got un-notarized  
7 documents --

8 THE COURT: We'll talk about the notary  
9 thing in a second.

10 MR. ELIOT BERNSTEIN: Okay. Then we have  
11 new improperly notarized documents authorizing  
12 the trust to operate, and they sent me  
13 incomplete documents which are unsigned on  
14 every page of the trust agreement, so they're  
15 telling me and I've asked them three times if  
16 they have signed copies and three times they've  
17 sent me unsigned copies.

18 THE COURT: Okay, but what bills today --

19 MR. ELIOT BERNSTEIN: All of them.

20 THE COURT: What bills are unpaid as  
21 overdo today?

22 MR. ELIOT BERNSTEIN: Health insurance is  
23 one.  
24 THE COURT: What's overdue today?  
25 MR. ELIOT BERNSTEIN: Health insurance is

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1 one.  
2 THE COURT: All right, name the health  
3 insurance company.  
4 MR. ELIOT BERNSTEIN: It's COBRA.  
5 THE COURT: COBRA is not a company.  
6 MR. ELIOT BERNSTEIN: Blue Cross.  
7 THE COURT: Blue Cross, okay. How much is  
8 overdue to Blue Cross today?  
9 MR. ELIOT BERNSTEIN: \$2,000 or so.  
10 THE COURT: It's not \$2,000 a day.  
11 MR. ELIOT BERNSTEIN: A month.  
12 THE COURT: \$2,000 a month is the health  
13 insurance bill?  
14 MR. ELIOT BERNSTEIN: Correct.  
15 THE COURT: When was that bill due?  
16 MR. ELIOT BERNSTEIN: Well, this is the  
17 problem. All of the bills are going to them  
18 and they don't share with me any of that.  
19 THE COURT: So how do you know that you  
20 don't have health insurance coverage?  
21 MR. ELIOT BERNSTEIN: Only because it's  
22 paid by them on that date. Usually on the  
23 first.  
24 THE COURT: September 1st?  
25 MR. ELIOT BERNSTEIN: Yes. As of

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1 September 1st I don't believe they have --  
2 THE COURT: Is the coverage in effect  
3 today?  
4 MR. ELIOT BERNSTEIN: I don't know.  
5 THE COURT: If you don't know, how do you  
6 know that it's an emergency?  
7 MR. ELIOT BERNSTEIN: I just know they  
8 haven't paid it.  
9 THE COURT: Okay, so --  
10 MR. ELIOT BERNSTEIN: I don't have --  
11 THE COURT: So you have coverage you said  
12 as of August 31st you had coverage?  
13 MR. ELIOT BERNSTEIN: We don't know. We  
14 don't have an accounting if she stated that,  
15 I'm sorry.



16 THE COURT: Okay, so you may be covered,  
17 you may not be covered?

18 MR. ELIOT BERNSTEIN: Correct.

19 THE COURT: What other bill is unpaid as  
20 of today.

21 MR. ELIOT BERNSTEIN: And that's my wife  
22 and my children too.

23 THE COURT: Okay.

24 MR. ELIOT BERNSTEIN: Again, they have all  
25 the bills, so when they're due, like the

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1 electric was due on the 28th, then they usually  
2 pay it. I don't even get the bills. So the  
3 bills are going straight to Oppenheimer.

4 THE COURT: How do you know  
5 authoritatively that they're not being paid?

6 Ma'am, you can't speak. You're not a  
7 lawyer, right?

8 MRS. BERNSTEIN: No.

9 THE COURT: Up, move to the back.

10 MR. ELIOT BERNSTEIN: You want her to go  
11 back?

12 THE COURT: Yes, because she's disruptive.  
13 I can't speak to you and hear her.

14 MR. ELIOT BERNSTEIN: Okay.

15 THE COURT: So stay there in absolute  
16 silence. You could write something if you  
17 want, is that agreed?

18 MRS. BERNSTEIN: Yes.

19 THE COURT: Okay, go ahead. How do you  
20 know these monthly bills are not being paid?  
21 How do you know the way you know today is  
22 Friday, you know what your name is, know  
23 meaning indisputable knowledge.

24 MR. ELIOT BERNSTEIN: I can't say for  
25 certainty since I don't receive it and manage

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1 and pay the bills.

2 THE COURT: Well then how is it an  
3 emergency if you don't know?

4 MR. ELIOT BERNSTEIN: Well, because we  
5 know that within this next month if electricity  
6 isn't paid and there's no money to pay it and  
7 he doesn't reimburse the trusts that all those  
8 bills on whatever date they were due were  
9 lapsing in the next few hours.

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10 THE COURT: From today?  
11 MR. ELIOT BERNSTEIN: From the 28th.  
12 THE COURT: The 28th of August?  
13 MR. ELIOT BERNSTEIN: Correct, sir.  
14 THE COURT: All right. So you don't know  
15 if they've been paid or not. You still have  
16 your electric on?  
17 MR. ELIOT BERNSTEIN: Yes.  
18 THE COURT: Are any services shut off?  
19 MR. ELIOT BERNSTEIN: No.  
20 MR. ROTHMAN: Maybe like things like lawn  
21 and stuff, the lawn guys have been coming, said  
22 we owe them money, which we've never heard that  
23 from this guy knocking on the door.  
24 THE COURT: All right. Is the lawn an  
25 emergency situation?

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1 MR. ELIOT BERNSTEIN: No. You just asked  
2 if any bills --  
3 THE COURT: These are not emergencies  
4 then.  
5 MR. ELIOT BERNSTEIN: Okay.  
6 THE COURT: Remember, you filed a motion  
7 that stopped the courthouse from working.  
8 MR. ELIOT BERNSTEIN: I'm very sorry.  
9 THE COURT: We thought you were ready to  
10 die on the day you filed the motion.  
11 MR. ELIOT BERNSTEIN: I'm very sorry.  
12 THE COURT: Okay.  
13 MR. ELIOT BERNSTEIN: I believed it was an  
14 emergency. The minor children are in there.  
15 THE COURT: Let me ask, how old are you?  
16 MR. ELIOT BERNSTEIN: I'm 50.  
17 THE COURT: Can you pay an electric bill?  
18 MR. ELIOT BERNSTEIN: No.  
19 THE COURT: Why not?  
20 MR. ELIOT BERNSTEIN: I don't have any  
21 employment.  
22 THE COURT: Why not? If there's an  
23 emergency and you're not eating and you have  
24 children --  
25 MR. ELIOT BERNSTEIN: It's very

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1 complicated, but --  
2 THE COURT: Well, could you work to pay  
3 your electric bill? If that made a difference?

4 MR. ELIOT BERNSTEIN: No, I haven't been  
5 able to gain employment due to  
6 Ricco-related-type crimes that have been  
7 committed against me and my family.

8 THE COURT: So your kids are without food,  
9 you would have them starve rather than go over  
10 to Burger King or Dunkin Donuts and get a job  
11 doing --

12 MR. ELIOT BERNSTEIN: I've tried all those  
13 things.

14 THE COURT: And they won't hire you?

15 MR. ELIOT BERNSTEIN: Let me explain.

16 THE COURT: Will they hire you to make  
17 enough money?

18 MR. ELIOT BERNSTEIN: No. And that's why  
19 my father and mother had set aside these funds  
20 to pay those bills because they understood the  
21 gravity --

22 THE COURT: So here's what we'll do, we're  
23 going to have a hearing, tell me if you're  
24 comfortable, whether there's any employment you  
25 could get, so I'm going to bring the people

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1 from Florida State Employment who tell me  
2 there's hundreds of jobs today that you could  
3 work.

4 MR. ELIOT BERNSTEIN: Okay.

5 THE COURT: You could start today as a  
6 laborer right outside this courthouse. Why  
7 don't you do that?

8 MR. ELIOT BERNSTEIN: Well, because if I  
9 do that I have tax liens that are --

10 THE COURT: Who cares? You want to feed  
11 your children. They're going to pay you money  
12 to feed your children.

13 MR. ELIOT BERNSTEIN: Okay, I'll explain.  
14 I have tax liens which are under investigation  
15 by the inspector general of the tax  
16 administration department, currently ongoing,  
17 that were put on me as part of the efforts in a  
18 Ricco-related lawsuit that I'm involved in.  
19 These are just the facts, I'm just telling  
20 you --

21 THE COURT: What's to stop you from  
22 working as a laborer?

23 MR. ELIOT BERNSTEIN: Because they then  
24 attach my wages --

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THE COURT: They don't even know that

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1 you're working, and you have an emergency, you  
2 could feed your children.

3 MR. ELIOT BERNSTEIN: They know I'm  
4 working.

5 THE COURT: How do they know you're  
6 working?

7 MR. ELIOT BERNSTEIN: Well, actually, if  
8 you read the last articles I put in the  
9 petition six or five, one of those two, I put  
10 in the articles that have been released in the  
11 press that say that they were misusing joint  
12 terrorism task force funds and resources to  
13 monitor and violate our rights through the  
14 Patriot Act violations, and that they have done  
15 that to me in the related cases in the federal  
16 court.

17 THE COURT: All right, whatever you say.  
18 I don't think you want -- if you want a hearing  
19 on whether you could go to work today,  
20 physically go to work and pay, I'll give you  
21 that hearing right now and I'll get someone  
22 from Florida Employment. Here's the deal, you  
23 lose all your motions as soon as they tell you  
24 that you could go outside and work.

25 Do you want that hearing or not? You

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1 could physically earn enough money to pay for  
2 food for your children today, you tell me you  
3 can't do -- that someone is going to tackle you  
4 and stop you from working outside as a laborer  
5 to get enough money to feed your children?  
6 That's the emergency, your children are  
7 starving. You're a parent. You're going to  
8 tell me you're going to let your children  
9 starve and not work to earn enough money to  
10 feed them, that's what you're telling me,  
11 correct?

12 MR. ELIOT BERNSTEIN: No. Well, I won't  
13 tell you that because, I guess, if you say  
14 there's some job that you could get me I'll get  
15 it.

16 THE COURT: There's tons of jobs.

17 MR. ELIOT BERNSTEIN: I know, I've applied  
18 for so many over the years --

19 THE COURT: I mean maybe not as a CEO of a  
20 company. \$10, \$9.00 an hour jobs --

21 MR. ELIOT BERNSTEIN: I've applied for  
22 minimum wage and had trouble, believe me.

23 THE COURT: I'm talking about getting work  
24 today -- if you tell me you can't work today  
25 I'll have a hearing on that.

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1 MR. ELIOT BERNSTEIN: I can work today.

2 THE COURT: Well, then you could feed your  
3 children today.

4 MR. ELIOT BERNSTEIN: Okay, if I could get  
5 a job --

6 THE COURT: That's not an emergency. You  
7 might have a hearing on it down the line, but  
8 it's not an emergency.

9 MR. ELIOT BERNSTEIN: Okay.

10 THE COURT: An emergency means my kids are  
11 starving, they haven't eaten, there's no food,  
12 and I can't legally get them food because I  
13 can't work. I have people who are blind, who  
14 have no arms and legs, and they can't work.

15 MR. ELIOT BERNSTEIN: Okay.

16 THE COURT: That's different, that's not  
17 you.

18 MR. ELIOT BERNSTEIN: Okay.

19 THE COURT: Okay. Can't work and don't  
20 want to work, think they're reasons not to work  
21 are two different things.

22 MR. ELIOT BERNSTEIN: Okay.

23 THE COURT: Okay. What's your position on  
24 the emergency before we go to some of these  
25 others issues which concern me about what he

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1 said.

2 MR. MANCERI: Good afternoon, your Honor.  
3 As I stated in my opening, I represent Robert  
4 Spallina and Mr. Tescher. I would like to  
5 apologize --

6 THE COURT: So their roles are what in  
7 this case?

8 MR. MANCERI: They were counsel or are  
9 counsel for the estate of Shirley Bernstein, as  
10 well as counsel for the estate of Simon  
11 Bernstein, who is in front of Judge French.

12 THE COURT: Okay.

13 MR. MANCERI: But before I make my  
14 presentation, I would just like to apologize  
15 for Mr. Tescher's absence. He's out of town  
16 for the holiday.

17 THE COURT: Okay. Who are the PR's that  
18 you represent?

19 MR. MANCERI: Well, Shirley Bernstein  
20 there is no technically any PR because we had  
21 the estate closed.

22 THE COURT: Okay.

23 MR. MANCERI: And what emanated from  
24 Mr. Bernstein's 57-page filing, which falls  
25 lawfully short of any emergency, was a petition

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1 to reopen the estate, so technically nobody has  
2 letters right now.

3 Simon Bernstein, your Honor, who died a  
4 year ago today as you heard, survived his wife,  
5 Shirley Bernstein, who died December 10, 2010.  
6 Simon Bernstein was the PR of his wife's  
7 estate.

8 As a result of his passing, and in attempt  
9 to reopen the estate we're looking to have the  
10 estate reopened. So nobody has letters right  
11 now, Judge. The estate was closed.

12 THE COURT: So you agree that in Shirley's  
13 estate it was closed January of this year,  
14 there was an order of discharge, I see that.  
15 Is that true?

16 MR. ELIOT BERNSTEIN: I don't know.

17 THE COURT: Do you know that that's true?

18 MR. ELIOT BERNSTEIN: Yes, I believe.

19 THE COURT: So final disposition and the  
20 order got entered that Simon, your father --

21 MR. ELIOT BERNSTEIN: Yes, sir.

22 THE COURT: -- he came to court and said I  
23 want to be discharged, my wife's estate is  
24 closed and fully administered.

25 MR. ELIOT BERNSTEIN: No. I think it

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1 happened after --

2 THE COURT: No, I'm looking at it.

3 MR. ELIOT BERNSTEIN: What date did that  
4 happen?

5 THE COURT: January 3, 2013.

6 MR. ELIOT BERNSTEIN: He was dead.

7 MR. MANCERI: That's when the order was  
8 signed, yes, your Honor.

9 THE COURT: He filed it, physically came  
10 to court.

11 MR. ELIOT BERNSTEIN: Oh.

12 THE COURT: So let me see when he actually  
13 filed it and signed the paperwork. November.  
14 What date did your dad die?

15 MR. ELIOT BERNSTEIN: September. It's  
16 hard to get through. He does a lot of things  
17 when he's dead.

18 THE COURT: I have all of these waivers by  
19 Simon in November. He tells me Simon was dead  
20 at the time.

21 MR. MANCERI: Simon was dead at the time,  
22 your Honor. The waivers that you're talking  
23 about are waivers from the beneficiaries, I  
24 believe.

25 THE COURT: No, it's waivers of

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00026

1 accountings.

2 MR. MANCERI: Right, by the beneficiaries.

3 THE COURT: Discharge waiver of service of  
4 discharge by Simon, Simon asked that he not  
5 have to serve the petition for discharge.

6 MR. MANCERI: Right, that was in his  
7 petition. When was the petition served?

8 THE COURT: November 21st.

9 MR. SPALLINA: Yeah, it was after his date  
10 of death.

11 THE COURT: Well, how could that happen  
12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve  
15 a petition after he's dead?

16 MR. MANCERI: Your Honor, what happened  
17 was is the documents were submitted with the  
18 waivers originally, and this goes to  
19 Mr. Bernstein's fraud allegation. As you know,  
20 your Honor, you have a rule that you have to  
21 have your waivers notarized. And the original  
22 waivers that were submitted were not notarized,  
23 so they were kicked back by the clerk. They  
24 were then notarized by a staff person from  
25 Tescher and Spallina admittedly in error. They

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In Re\_ The Estate of Shirley Bernstein.txt  
1 should not have been notarized in the absentia  
2 of the people who purportedly signed them. And  
3 I'll give you the names of the other siblings,  
4 that would be Pamela, Lisa, Jill, and Ted  
5 Bernstein.

6 THE COURT: So let me tell you because I'm  
7 going to stop all of you folks because I think  
8 you need to be read your Miranda warnings.

9 MR. MANCERI: I need to be read my Miranda  
10 warnings?

11 THE COURT: Everyone of you might have to  
12 be.

13 MR. MANCERI: Okay.

14 THE COURT: Because I'm looking at a  
15 formal document filed here April 9, 2012,  
16 signed by Simon Bernstein, a signature for him.

17 MR. MANCERI: April 9th, right.

18 THE COURT: April 9th, signed by him, and  
19 notarized on that same date by Kimberly. It's  
20 a waiver and it's not filed with The Court  
21 until November 19th, so the filing of it, and  
22 it says to The Court on November 19th, the  
23 undersigned, Simon Bernstein, does this, this,  
24 and this. Signed and notarized on April 9,  
25 2012. The notary said that she witnessed Simon

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00028

1 sign it then, and then for some reason it's not  
2 filed with The Court until after his date of  
3 death with no notice that he was dead at the  
4 time that this was filed.

5 MR. MANCERI: Okay.

6 THE COURT: All right, so stop, that's  
7 enough to give you Miranda warnings. Not you  
8 personally --

9 MR. MANCERI: Okay.

10 THE COURT: Are you involved? Just tell  
11 me yes or no.

12 MR. SPALLINA: I'm sorry?

13 THE COURT: Are you involved in the  
14 transaction?

15 MR. SPALLINA: I was involved as the  
16 lawyer for the estate, yes. It did not come to  
17 my attention until Kimberly Moran came to me  
18 after she received a letter from the Governor's  
19 Office stating that they were investigating  
20 some fraudulent signatures on some waivers that  
21 were signed in connection with the closing of



In Re\_ The Estate of Shirley Bernstein.txt  
22 the estate.

23 THE COURT: What about the fact, counsel,  
24 let me see who signed this. Okay, they're all  
25 the same as to -- so let me ask this, I have a

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00029

1 document where Eliot, you're Eliot, right?

2 MR. ELIOT BERNSTEIN: Yes, sir.

3 THE COURT: Where you purportedly waived  
4 accounting, agreed to a petition to discharge  
5 on May 15th, and you signed that. Do you  
6 remember doing that? Do you remember that or  
7 not? I'm looking at it.

8 MR. ELIOT BERNSTEIN: I remember signing  
9 it and sending it with a disclaimer that I was  
10 signing it because my father was under duress  
11 and only to relieve this stress that he was  
12 being --

13 THE COURT: Well, I don't care -- I'm not  
14 asking you why you signed it.

15 MR. ELIOT BERNSTEIN: I also signed it  
16 with the expressed -- when I signed it I was  
17 coned by Mr. Spallina that he was going to send  
18 me all the documents of the estate to review.  
19 I would have never lied on this form when I  
20 signed it. It's saying that I saw and I never  
21 saw --

22 THE COURT: Let me ask you --

23 MR. ELIOT BERNSTEIN: I lied.

24 THE COURT: Did you have your signature  
25 notarized?

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1 MR. ELIOT BERNSTEIN: No.

2 THE COURT: Kimberly Moran never signed or  
3 notarized his signature?

4 MR. MANCERI: Yes, your Honor, and that's  
5 been addressed with the Governor's office.

6 THE COURT: You need to address this with  
7 me.

8 MR. MANCERI: I am going to address it  
9 with you.

10 THE COURT: Here's what I don't understand  
11 because this is part of the problem here, is  
12 that Shirley has an estate that's being  
13 administered by Simon.

14 MR. MANCERI: Correct.

15 THE COURT: There comes a time where they

In Re\_ The Estate of Shirley Bernstein.txt  
16 think it's time to close out the estate.

17 MR. MANCERI: Correct.

18 THE COURT: Waivers are sent out, that's  
19 kind of SOP, and people sign off on that.

20 MR. MANCERI: Right.

21 THE COURT: And why are they held up for  
22 six months, and when they're filed it's after  
23 Simon is already deceased?

24 MR. MANCERI: They were originally filed  
25 away, your Honor, under the signature of the

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00031

1 people.

2 THE COURT: No, they weren't filed, that's  
3 the whole thing. I'm looking at the file date,  
4 filed with The Court.

5 MR. MANCERI: No, they were returned by  
6 the clerk because they didn't have  
7 notarization. We have affidavits from all  
8 those people, Judge.

9 THE COURT: Well you may have that they  
10 got sent up here.

11 MR. MANCERI: We have affidavits from all  
12 of those people.

13 MR. ELIOT BERNSTEIN: Including Simon?

14 THE COURT: Slow down. You know how we  
15 know something is filed? We see a stamp.

16 MR. MANCERI: It's on the docket sheet, I  
17 understand.

18 THE COURT: So it's stamped in as filed in  
19 November. The clerk doesn't have -- now, they  
20 may have rejected it because it wasn't  
21 notarized, and that's perhaps what happened,  
22 but if in the meantime waiting cured the  
23 deficiency of the document, two things happen  
24 you're telling me, one, Simon dies.

25 MR. MANCERI: Correct.

♀

00032

1 THE COURT: And when those documents are  
2 filed with the clerk eventually in November  
3 they're filed and one of the documents says, I,  
4 Simon, in the present.

5 MR. MANCERI: Of Ms. Moran.

6 THE COURT: No, not physically present, I  
7 Simon, I would read this in November Simon  
8 saying I waive -- I ask that I not have to have  
9 an accounting and I want to discharge, that

In Re\_ The Estate of Shirley Bernstein.txt  
request is being made in November.

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MR. MANCERI: Okay.

THE COURT: He's dead.

MR. MANCERI: I agree, your Honor.

THE COURT: Who filed that document?

MR. MANCERI: Robert, do you know who  
filed that document in your office?

MR. SPALLINA: I would assume Kimberly  
did.

MR. MANCERI: Ms. Moran.

THE COURT: Who is she?

MR. MANCERI: She's a staff person at  
Tescher and Spallina.

THE COURT: When she filed these, and one  
would think when she filed these the person who  
purports to be the requesting party is at least

♀

00033

1 alive.

2 MR. MANCERI: Understood, Judge.

3 THE COURT: Not alive. So, well -- we're  
4 going to come back to the notary problem in a  
5 second.

6 MR. MANCERI: Okay.

7 THE COURT: In the meantime, based upon  
8 all that I discharge the estate, it's closed.

9 Here's what I don't understand on your  
10 side, you're representing yourself, but the  
11 rules still apply. You then file, Eliot  
12 Bernstein, emergency petitions in this closed  
13 estate, it's closed.

14 MR. ELIOT BERNSTEIN: You reopened it.

15 THE COURT: When did I reopen it?

16 MR. MANCERI: No, it hasn't been reopened,  
17 your Honor.

18 THE COURT: There's an order that I  
19 entered in May of 2013 denying an emergency  
20 petition to freeze assets. You filed this one  
21 in May. Do you remember doing that?

22 MR. ELIOT BERNSTEIN: I believe so.

23 THE COURT: And what you said was there's  
24 an emergency in May, you want to freeze the  
25 estate assets appointing you PR, investigate

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00034

1 the fraud documents, and do a whole host of  
2 other things, and the estate had been closed.  
3 The reason why it was denied among other

4 things, one, it may not have been an emergency,  
5 but, two, the case was not reopened. There's  
6 no reopen order.

7 MR. ELIOT BERNSTEIN: I paid \$50 to  
8 someone.

9 THE COURT: You may have paid to file what  
10 you filed, but there's no order reopening the  
11 estate.

12 MR. ELIOT BERNSTEIN: Okay, that's my  
13 mistake.

14 THE COURT: It's closed, the PR is  
15 discharged, they all went home.

16 MR. ELIOT BERNSTEIN: And I filed to  
17 reopen because we discovered the fraudulent  
18 documents.

19 THE COURT: But then you still had to ask  
20 to reopen --

21 MR. ELIOT BERNSTEIN: And notice, your  
22 Honor, that they haven't come to you in all of  
23 that time, he said he just got notified from  
24 the governor the other day about this fraud, I  
25 put it in your court and served him months ago

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00035

1 and he never came to me or you or anybody else  
2 to know that the police are calling him, the  
3 sheriff and the governor's Office.

4 THE COURT: Then you filed another  
5 emergency similarly, served you folks, Tescher  
6 and Spallina. I denied it because it wasn't an  
7 emergency because nothing was happening I  
8 thought had to happen on the day or two after.

9 MR. ELIOT BERNSTEIN: Well, now that I  
10 understand emergency --

11 THE COURT: The estate wasn't open and it  
12 really wasn't an emergency at the time. And  
13 then you filed a motion in the ordinary course  
14 to have things heard, and a motion to -- bunch  
15 of other motions, to remove PR.

16 MR. ELIOT BERNSTEIN: Well, with each  
17 successive crime we found -- by the way, that's  
18 kind of why this is an emergency because with  
19 the use of these fraudulent documents a bunch  
20 of other crimes are taking place.

21 THE COURT: Okay. Representing yourself  
22 is probably not the easiest thing.

23 MR. ELIOT BERNSTEIN: I had counsel, your  
24 Honor, but Mr. Spallina abused her so much and

In Re\_ The Estate of Shirley Bernstein.txt  
she ran up a \$10,000 bill.

25

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00036

1 THE COURT: Doesn't help me.

2 MR. ELIOT BERNSTEIN: Doesn't help you,  
3 okay.

4 THE COURT: Then in August you started  
5 again, September you started again, and at  
6 least I set the hearing because it's kind of  
7 hard when I read your allegations I couldn't  
8 figure it out. Now I think, okay -- so now let  
9 me ask you this, counsel.

10 MR. MANCERI: Yes, sir.

11 THE COURT: So the pleadings get filed,  
12 the estate gets closed.

13 MR. MANCERI: Correct.

14 THE COURT: Simon dies. So what happened  
15 with Shirley's estate?

16 MR. MANCERI: Shirley's estate is closed,  
17 as you said.

18 THE COURT: I know the administration is  
19 closed. What happened with her estate? Where  
20 did that go? Did she have a will?

21 MR. MANCERI: Her assets went into trusts,  
22 and her husband had a power of appointment  
23 which he exercised in favor of Mr. Bernstein's  
24 children.

25 THE COURT: Okay.

♀

00037

1 MR. MANCERI: And that leads to the trust  
2 that he mentioned at Oppenheimer which he  
3 misled The Court as to what's happening with  
4 that.

5 THE COURT: Let me slow you down.

6 MR. MANCERI: Okay.

7 THE COURT: So her estate assets went into  
8 a trust?

9 MR. MANCERI: Correct.

10 THE COURT: And that trust is --

11 MR. MANCERI: And Ted Bernstein, I  
12 believe, is the trustee of that trust.

13 THE COURT: And you're brothers?

14 MR. THEODORE BERNSTEIN: That's correct.

15 THE COURT: All right. So then -- so  
16 Simon really wasn't alive long when he died as  
17 trustee?

18 MR. MANCERI: Not terribly long.

19 THE COURT: All right. So he was a  
20 trustee. Was she a trustee as well?

21 MR. MANCERI: He died, your Honor. Again  
22 she died December 10, 2010. He died September  
23 of 2012.

24 THE COURT: Right, but was he a trustee  
25 also of Shirley's trust?

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00038

1 MR. MANCERI: Yes.

2 THE COURT: So she dies, the estate is  
3 closed, her assets are in a trust. Simon then  
4 dies. What happened with his estate? Judge  
5 French is hearing it, but tell me what  
6 happened.

7 MR. MANCERI: My understanding is that  
8 money went into a trust for the grandchildren.

9 THE COURT: Grandchildren of Eliot?

10 MR. MANCERI: Well there's actually ten of  
11 them, ten grandchildren, which he has three.

12 THE COURT: So the beneficiary level for  
13 Simon was he skipped over his children and gave  
14 everything to the grandchildren?

15 MR. MANCERI: That's correct.

16 MR. ELIOT BERNSTEIN: No.

17 THE COURT: That's not what happened with  
18 your father's estate?

19 MR. ELIOT BERNSTEIN: No.

20 THE COURT: That's not what the rule says  
21 to do?

22 MR. ELIOT BERNSTEIN: No.

23 THE COURT: What does the rule say to do?

24 MR. ELIOT BERNSTEIN: The rule is not  
25 properly notarized. He didn't appear --

♀

00039

1 THE COURT: What did the will say that The  
2 Court used?

3 MR. ELIOT BERNSTEIN: The Court filed a  
4 will and amended trust, both improperly  
5 notarized.

6 THE COURT: You didn't answer my question,  
7 so stop speaking.

8 MR. ELIOT BERNSTEIN: Okay.

9 THE COURT: If you don't answer me you  
10 give up your right to participate. Stop, don't  
11 speak, all right, because you waived your right  
12 because you refused to answer my question,

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okay. So I'll let you answer it.

MR. MANCERI: If I can, your Honor.

THE COURT: Go ahead.

MR. MANCERI: The ten grandchildren shares -- and I want to be clear on this, this gentleman is only a tangible personal property beneficiary. He and his own proper person. And the mother. That's all he's entitled to. No cash request, nothing directly to him, because of his financial problems among other issues.

THE COURT: Okay.

MR. MANCERI: He has been asked to

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establish accounts for the benefit of his children and he refused to do it.

THE COURT: I'm not interested in that, here's what I'm interested in.

MR. MANCERI: All right.

THE COURT: So before this latest realm of pleadings were filed, both parents are deceased?

MR. MANCERI: Yes.

THE COURT: They both have trusts?

MR. MANCERI: Right.

THE COURT: Simon's trusts are for the benefit of the grandchildren?

MR. MANCERI: Correct.

THE COURT: And Shirley's trust is for the benefit of who?

MR. MANCERI: The grandchildren now because Simon died.

THE COURT: So children-level, Eliot, Ted were skipped over as beneficiaries?

MR. MANCERI: That's correct, your Honor.

THE COURT: Now, tell me the best you can the way Eliot described that there was some deal that had been in effect with Shirley and Simon while they were alive that kept on going

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after Shirley died to help support his children.

MR. MANCERI: That I can't comment on personally, your Honor, because I never met either one of them.

THE COURT: Do you know anything about

7 that?

8 MR. MANCERI: He was the draftsman. His  
9 firm was the draftsman.

10 THE COURT: So did Shirley and --

11 MR. ELIOT BERNSTEIN: They didn't draft --

12 THE COURT: Stop. Next time you speak out  
13 of turn you will be held in contempt of court.

14 MR. ELIOT BERNSTEIN: Sorry.

15 THE COURT: Why get yourself in trouble?  
16 You're being rude.

17 MR. ELIOT BERNSTEIN: Sorry.

18 THE COURT: So is it true that when they  
19 were alive they were helping to support Eliot's  
20 family?

21 MR. SPALLINA: To the best of my  
22 knowledge, yes, sir.

23 THE COURT: So after Shirley died, did  
24 that continue?

25 MR. SPALLINA: Yes, I assume so, that Si

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00042

1 was paying bills.

2 THE COURT: And when he died in September  
3 of last year, what happened, if anything?

4 MR. SPALLINA: There was an account that  
5 we set up in the name of Bernstein Family  
6 Reality. That was owned by three old trusts  
7 not that we created, but were created by  
8 Mr. Bernstein in 2006 that owned the house that  
9 the family lives in, so there was an LLC that  
10 was set up, Bernstein Family Realty, LLC,  
11 there's the three children's trust that own the  
12 membership interest in that, and there was a  
13 bank account at Legacy Bank that had a small  
14 amount of money that Si's assistant Rachel had  
15 been paying the bills out of on behalf of the  
16 trusts.

17 When Mr. Bernstein died, Oppenheimer, as  
18 trustee of the three trusts and in control of  
19 the operations of that entity, assigned  
20 themselves as manager, had the account moved  
21 from Legacy to Oppenheimer, and continued to  
22 pay the bills they could with the small amount  
23 of money that was in the Legacy account.

24 At this time, the Legacy account was  
25 terminated because there were no funds left,

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00043



1 they started using the funds inside the three  
2 trusts at Oppenheimer to pay for health,  
3 education, maintenance and support --

4 THE COURT: Of the grandchildren?

5 MR. SPALLINA: Of the grandchildren. And  
6 it was probably at the time that Mr. Bernstein  
7 died about \$80,000 in each of those trusts last  
8 September.

9 THE COURT: Okay, so then what happened?

10 MR. SPALLINA: So over the course of the  
11 last year -- the kids go to private school,  
12 that's an expensive bill that they pay, think  
13 it's approximately \$65,000. There were other  
14 expenses throughout the year. The trust assets  
15 as of this week I spoke to Janet Craig, have  
16 depleted down collectively across the three  
17 trusts for about \$25,000.

18 THE COURT: Total left?

19 MR. SPALLINA: Total left in the three  
20 trusts.

21 THE COURT: Any other trusts?

22 MR. SPALLINA: Again, this is not part of  
23 the estate right now, so let's leave the estate  
24 of Shirley and Si completely separate. Just  
25 trying to get to the issue that Mr. Bernstein

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1 spoke about first.

2 THE COURT: Right.

3 MR. ELIOT BERNSTEIN: Oppenheimer called  
4 me and said that the trusts are coming to the  
5 end of their useful life, it doesn't pay to  
6 administer them anymore. They're going to make  
7 final distribution to Mr. Bernstein and his  
8 wife as the guardians of their children.

9 They sent out standard waivers and  
10 releases for him to sign in exchange for the  
11 remaining money that was there. There was a  
12 disagreement that ensued and I have the e-mail  
13 correspondence between Eliot and Janet Craig at  
14 Oppenheimer that this is extortion and that  
15 Mr. Spallina and you have devised a plan not to  
16 give us the rest of the money. That's not the  
17 case at all. In fact, we told them to  
18 distribute the rest of the money, there's been  
19 \$12,000 in bills submitted to them that they  
20 are either paying today or on Monday, and the  
21 \$14,000 or some-odd dollars that would be left

22 are in securities that they have to liquidate,  
23 supposedly they would have good funds today,  
24 but there was some threats of litigation and so  
25 they said that it might be prudent to hold onto

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00045

1 this. There's also some expenses outstanding  
2 on accounting fees and tax preparation fees.

3 THE COURT: Let me ask you this, what's  
4 the other part of the estate planning that  
5 Shirley or Simon had, another trust?

6 MR. SPALLINA: Both of their estates say  
7 that at the death of the second of us to die,  
8 pursuant to Si's exercise over his wife's  
9 assets, that all of those assets would go down  
10 to ten grandchildren's trust created under  
11 their dockets.

12 Mr. Bernstein was on a call while his  
13 father was alive with his other four siblings  
14 where he had called me and said, Robert, I  
15 think we need to do a phone call with my  
16 children to explain to them that I'm going to  
17 give this to the ten grandchildren.

18 THE COURT: And that happened?

19 MR. SPALLINA: And that happened.

20 THE COURT: So right now the status,  
21 there's a trust that deals with that, or more  
22 than one trust.

23 MR. SPALLINA: There's both Si's estates  
24 and Shirley's estates basically say after and  
25 again there is some litigation.

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1 THE COURT: And that's different than this  
2 \$14,000 --

3 MR. SPALLINA: Yeah, those are three  
4 trusts that were just designed to hold.

5 THE COURT: Who's administering those  
6 trusts?

7 MR. SPALLINA: Those trusts, Ted Bernstein  
8 is the trustee of his mother's trust and holds  
9 three assets.

10 THE COURT: Who is the trustee of the  
11 father's trust?

12 MR. SPALLINA: Don Tescher and myself.

13 THE COURT: And what are those trusts  
14 doing with trust assets?

15 MR. SPALLINA: On the estate side there

In Re\_ The Estate of Shirley Bernstein.txt  
16 was a claim filed by a former employee of  
17 Mr. Bernstein for \$2.5 million-plus, so there's  
18 litigation that's been pending in the estate  
19 now for basically since this date, and those  
20 funds are just sitting in a partnership account  
21 at JP Morgan with no distributions that have  
22 been made at all.  
23 THE COURT: So what's the total corpus of  
24 the what I'll call the ten grandchildren's  
25 trust of both grandparents?

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1 MR. SPALLINA: Not taking into account the  
2 litigation?  
3 THE COURT: Well, no, you haven't paid  
4 anything out yet.  
5 MR. SPALLINA: I would say it's  
6 approximately \$4 million.  
7 THE COURT: So there's litigation going on  
8 in Simon's --  
9 MR. SPALLINA: Estate.  
10 THE COURT: And at some point when that  
11 claim is resolved the trust will then be  
12 administered by your firm and...  
13 MR. SPALLINA: No, that's not the case.  
14 Each of the adult children for their own  
15 children are designated to serve as trustee of  
16 their children's trust.  
17 THE COURT: So a distribution takes place  
18 then once the money gets to the trust age?  
19 MR. SPALLINA: Correct, and today again  
20 the Shirley Bernstein trust does have liquid  
21 assets in it. There was two properties, real  
22 estate properties, the residential home and a  
23 condo on the beach. The condo on the beach  
24 sold back in April or May. There were funds  
25 that came into the account at that time. Ted

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00048

1 was going to make partial distribution. He  
2 sent out an e-mail with tax I.D. numbers and  
3 the naming of the trust to the five children  
4 for the purposes of them opening up the  
5 accounts.  
6 THE COURT: Okay, what happened?  
7 MR. SPALLINA: Seven of ten accounts were  
8 opened and were actually funded this week with  
9 \$80,000.

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THE COURT: Total or each?  
MR. SPALLINA: Each.  
THE COURT: Three of Eliot's --  
MR. SPALLINA: Are not open. And we've  
asked multiple --  
THE COURT: And he executed documents to  
open \$240,000 immediately or very quickly go  
into those accounts?  
MR. SPALLINA: Yes, sir.  
THE COURT: Go ahead.  
MR. SPALLINA: Now, there was a question  
from our client as trustee of his mother's  
trust because he has apprehension as do the  
other siblings as to whether or not  
Mr. Bernstein is the proper trustee for that  
trust.

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THE COURT: Okay, all right.  
MR. SPALLINA: We had discussions about  
possibly making emergency distributions to pay  
the expenses, but not necessarily --  
THE COURT: Not giving the money directly  
to him.  
MR. SPALLINA: Not necessarily put in all  
\$80,000 in all three of those trusts.  
THE COURT: Does the trust pay expenses  
directly or give money to the parent who pays  
the expenses? Do you pay the electric bill or  
do you give money to Eliot to pay the electric  
bill?  
MR. SPALLINA: Today?  
THE COURT: Now, how does that work with  
the others kids?  
MR. SPALLINA: They were just funded, but  
normally the trustee of the trust would pay for  
expenses on behalf of the beneficiary if  
they're minor children. Some of the children  
here are adults. So to the extent they're  
adults they would make distribution.  
THE COURT: So what's the resolution of  
the notary problem? Has that been resolved?  
MR. SPALLINA: I can speak to it.

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MR. MANCERI: Please, Robert, go ahead.  
The Judge is addressing you, be my guest.  
MR. SPALLINA: In April of last year we

In Re\_ The Estate of Shirley Bernstein.txt  
4 met with Mr. Bernstein in April of 2012 to  
5 close his wife's estate.

6 THE COURT: No, I know that part.

7 MR. SPALLINA: Okay.

8 THE COURT: I mean everyone can see he  
9 signed these not notarized. When they were  
10 sent back to be notarized, the notary notarized  
11 them without him re-signing it, is that what  
12 happened?

13 MR. SPALLINA: Yes, sir.

14 THE COURT: So whatever issues arose with  
15 that, where are they today?

16 MR. SPALLINA: Today we have a signed  
17 affidavit from each of the children other than  
18 Mr. Bernstein that the original documents that  
19 were filed with The Court were in fact their  
20 original signatures which you have in the file  
21 attached as Exhibit A was the original document  
22 that was signed by them.

23 THE COURT: It was wrong for Moran to  
24 notarize -- so whatever Moran did, the  
25 documents that she notarized, everyone but

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00051

1 Eliot's side of the case have admitted that  
2 those are still the original signatures of  
3 either themselves or their father?

4 MR. SPALLINA: Yes, sir.

5 THE COURT: I got it.

6 MR. MANCERI: And we can file those  
7 affidavits, Judge, at any time.

8 THE COURT: So now I'm trying to deal with  
9 the oral argument for today.

10 So I only have in front of me Shirley's  
11 estate. Shirley's estate is closed.

12 MR. MANCERI: Your Honor, could I bring  
13 you up to speed on one thing maybe you're not  
14 seeing on your docket.

15 THE COURT: Yes.

16 MR. MANCERI: We actually filed a motion  
17 to actually reopen the estate when we learned  
18 about the deficiency in the affidavit issue.

19 THE COURT: Okay.

20 MR. MANCERI: And that was signed  
21 August 28th of this year. Do you have a copy  
22 of that, Judge, can I approach?

23 THE COURT: Hold on, it should be here,  
24 but let's see. Because I have an August 28th

In Re\_ The Estate of Shirley Bernstein.txt  
file, I have that.

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00052

1 MR. MANCERI: You have that.  
2 THE COURT: Motion to reopen the estate.  
3 MR. MANCERI: Right, your Honor. We set  
4 it for an evidentiary hearing.  
5 THE COURT: When is it set?  
6 MR. MANCERI: It's set for October 28th,  
7 your Honor, for an hour at 11:00 a.m.  
8 THE COURT: I'm going to decide on  
9 Shirley's case whether to open it and how to  
10 deal with whatever issues pertain to this, but,  
11 Eliot, on your side you have an emergency  
12 motion to freeze assets of the estate, so I  
13 would say to you with a closed estate where the  
14 PR, Simon, has been already discharged, and a  
15 petition for discharge approved, what assets  
16 are there in a closed estate where the estate  
17 assets have already been distributed that I can  
18 now in your motion freeze?  
19 MR. ELIOT BERNSTEIN: The petition --  
20 THE COURT: Listen to my question. It's  
21 artful. What assets now that the estate's been  
22 closed, that the estate's been fully  
23 administered, and the estate has been  
24 discharged, can I freeze that I could identify  
25 still belong to Shirley's estate?

♀

00053

1 MR. ELIOT BERNSTEIN: I can't tell you  
2 because I never got a document regarding the  
3 assets.  
4 THE COURT: But when you say it's an  
5 emergency hearing --  
6 MR. ELIOT BERNSTEIN: But I was supposed  
7 to get those documents, correct?  
8 THE COURT: Well, I don't know what  
9 documents --  
10 MR. ELIOT BERNSTEIN: I was a beneficiary,  
11 unlike they said, me, my brother was cut out of  
12 my mother's estate and my older sister.  
13 THE COURT: They said you were a  
14 beneficiary of personal property.  
15 MR. ELIOT BERNSTEIN: No, I was the third  
16 beneficiary to the entire estate.  
17 THE COURT: All right, I don't know.  
18 MR. SPALLINA: At one point he was.

19 MR. MANCERI: Early on, your Honor.  
20 THE COURT: But on the will that was  
21 probated?  
22 MR. MANCERI: No.  
23 THE COURT: Okay, so maybe you don't know  
24 then, your mother changed her will, they say.  
25 MR. ELIOT BERNSTEIN: Did my mother change

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00054

1 her will?  
2 MR. SPALLINA: You know that your father  
3 did.  
4 MR. ELIOT BERNSTEIN: No, he asked if my  
5 mother did.  
6 MR. SPALLINA: Oh, yes.  
7 THE COURT: Okay, all right --  
8 MR. ELIOT BERNSTEIN: After she was dead  
9 using alleged --  
10 THE COURT: Not after she was dead.  
11 MR. ELIOT BERNSTEIN: No, your Honor, my  
12 father went back into my mother's estate and  
13 made changes after we believe he was dead using  
14 documents that are signed forged, by the way  
15 those documents you're looking at --  
16 THE COURT: Here's the thing.  
17 MR. ELIOT BERNSTEIN: Yes.  
18 THE COURT: You want me to freeze assets  
19 of an estate that's already been fully  
20 probated. I can't freeze something that  
21 doesn't exist.  
22 MR. ELIOT BERNSTEIN: Can you reopen it  
23 because it was closed on fraudulent documents?  
24 THE COURT: They asked for the estate to  
25 be reopened. They want to have a hearing on

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00055

1 that.  
2 MR. ELIOT BERNSTEIN: Okay.  
3 THE COURT: Do you have responses to your  
4 motion?  
5 MR. MANCERI: Mr. Spallina filed it, but I  
6 don't believe so yet, your Honor.  
7 THE COURT: So we know one person wants to  
8 reopen it, Eliot, correct? Who did you notice  
9 of that motion?  
10 MR. MANCERI: This motion was served on  
11 Ted Bernstein, Pamela --  
12 THE COURT: Ted, do you want the estate

In Re\_ The Estate of Shirley Bernstein.txt  
13 reopened, Shirley's estate reopened?

14 MR. THEODORE BERNSTEIN: I think you're  
15 asking me a legal question, your Honor.

16 THE COURT: Does anyone represent you?

17 MR. MANCERI: Not at the moment, your  
18 Honor. I may depending on how far this goes.

19 THE COURT: All right, well, what I'm  
20 getting at is, is anyone opposing the reopening  
21 of the estate?

22 MR. MANCERI: No, your Honor. We want to  
23 open it to cure what his allegation is.

24 THE COURT: First step, one, is reopen.

25 MR. MANCERI: Correct.

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00056

1 THE COURT: So why do we have to wait  
2 until the end of October to reopen the estate  
3 when we could do that in mid-September?

4 MR. MANCERI: No reason, your Honor.

5 THE COURT: Any reason why we need to  
6 wait?

7 MR. ELIOT BERNSTEIN: No.

8 THE COURT: All right, so...

9 MR. MANCERI: You haven't heard any  
10 objections to this from anybody else, have you  
11 Robert?

12 MR. SPALLINA: No.

13 THE COURT: All right, so get me up an  
14 agreed order that I could open up the estate.

15 MR. MANCERI: Okay, you'll take care of  
16 that, Robert?

17 MR. SPALLINA: Uh-Huh.

18 MR. MANCERI: We'll take the October  
19 hearing off your docket.

20 THE COURT: You don't need an evidentiary  
21 hearing to prove it, I'm going to do it, and  
22 under these circumstances that makes sense.

23 Okay, so I'm going to have it reopen the  
24 estate. So now the question is --

25 MR. MANCERI: Your Honor, just so I'm

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1 clear.

2 THE COURT: Yes, Shirley's estate.

3 MR. MANCERI: The reason we asked to  
4 reopen it is to cure or address this alleged  
5 fraud.

6 THE COURT: But all I'm physically doing



In Re\_ The Estate of Shirley Bernstein.txt  
7 is saying, Rich, reopen.

8 MR. MANCERI: Agreed. I just wanted to be  
9 clear.

10 THE COURT: I don't want you to get rid of  
11 the hearing.

12 MR. MANCERI: Oh, you don't, okay.

13 THE COURT: So at the hearing whatever it  
14 is in relief that you want now that the estate  
15 is open, I'll hear that.

16 MR. MANCERI: Okay.

17 THE COURT: And, Mr. Bernstein, whatever  
18 you want relief-wise to happen with respect to  
19 Shirley's estate, not Shirley's trust, but  
20 Shirley's estate, you could have a hearing on  
21 that. I'll combine everyone who has an  
22 interest in getting some relief.

23 MR. MANCERI: Only thing I was going to  
24 say, your Honor, after this was noticed I got  
25 into this matter. I have a conflict on the

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00058

1 28th at that hour. If we could move it to the  
2 afternoon I'd appreciate it.

3 THE COURT: I'll get my book and see.  
4 Maybe I can, I don't know.

5 MR. MANCERI: That's my only issue on the  
6 28th.

7 THE COURT: I don't know, I'll look.

8 So let me try to make some progress, all  
9 right.

10 So today is whether in Shirley's estate  
11 there's an emergency, here is my order, no.  
12 Okay?

13 MR. MANCERI: Okay.

14 THE COURT: Next, whether -- what type of  
15 evidentiary hearing, if any, needs to be held.  
16 For Shirley's estate purposes I guess I have to  
17 figure out the following: It appears that  
18 there could be some problem in the documents  
19 that took place to lead Shirley's estate to be  
20 closed and distributed as it took place, okay  
21 because --

22 MR. MANCERI: Right.

23 THE COURT: It took place pursuant to  
24 documents that may have been improperly  
25 notarized. Now. That doesn't mean that

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00059

1 anything happened, it just means the documents  
2 may have a taint to them themselves.

3 MR. MANCERI: Right.

4 THE COURT: But I'll take a look at it and  
5 see whether there's anything that has to happen  
6 differently than what already happened with  
7 respect to that.

8 MR. MANCERI: Judge, in furtherance in  
9 making that determination, would you like us to  
10 submit these to you?

11 THE COURT: What are those?

12 MR. MANCERI: These are the original  
13 affidavits. I haven't made copies.

14 THE COURT: File them.

15 MR. MANCERI: Just file them, okay. Very  
16 good, we'll file them and serve them.

17 THE COURT: Mr. Bernstein, I want you to  
18 understand something. Let's say you prove what  
19 seems perhaps to be easy, that Moran notarized  
20 your signature, your father's signature, other  
21 people's signatures after you signed it, and  
22 you signed it without the notary there and they  
23 signed it afterwards. That may be a wrongdoing  
24 on her part as far as her notary republic  
25 ability, but the question is, unless someone

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00060

1 claims and proves forgery, okay, forgery,  
2 proves forgery, the document will purport to be  
3 the document of the person who signs it, and  
4 then the question is, will something different  
5 happen in Shirley's estate then what was  
6 originally intended? Originally intended they  
7 say, the other side, was for Simon to close out  
8 the estate. The estate they say was small.  
9 The estate gave everything to the trust and  
10 that's what it did, and that was the end of the  
11 estate.

12 Remember, this is not everything about  
13 your parents and their estate planning. This  
14 is one small component, Shirley's estate alone,  
15 not her trust, and nothing to do with what  
16 happened with Simon, okay, because that's not  
17 before me. Simon's case is before Judge  
18 French.

19 Having said that, one of the other reasons  
20 why I have to consider whether your matter is  
21 an emergency, even if there was something that

22 I could enter an order on or have a hearing on  
23 immediately that could free up money from  
24 Shirley that you personally would be entitled  
25 to, you tell me you don't even know that you

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00061

1 were not a beneficiary of the estate, so  
2 certainly you're not doing your groundwork to  
3 tell me if it's an emergency or not because it  
4 could be an emergency if you were a beneficiary  
5 of her will that was probated, but you don't  
6 even know one way or the other. So you could  
7 be a stranger to the estate. She may have  
8 disinherited you from the estate. She may have  
9 chosen to only give you personal property. So  
10 if you're not entitled to anything, you don't  
11 have an emergency. You're not entitled to  
12 anything. Go ahead.

13 MR. ELIOT BERNSTEIN: I never was  
14 noticed --

15 THE COURT: It doesn't matter.

16 MR. ELIOT BERNSTEIN: -- by the estate  
17 planner when she died.

18 THE COURT: Okay.

19 MR. ELIOT BERNSTEIN: So he's supposed to  
20 notify the beneficiaries.

21 THE COURT: Who?

22 MR. ELIOT BERNSTEIN: Mr. Spallina.

23 THE COURT: Of what?

24 MR. ELIOT BERNSTEIN: That there are  
25 beneficiaries of the estate.

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00062

1 THE COURT: But what if you weren't a  
2 beneficiary?

3 MR. ELIOT BERNSTEIN: I was at that time.  
4 My dad doesn't change that until a  
5 year-and-a-half later. Are you following?

6 THE COURT: This may be about it, but  
7 you're interested in some financial relief. If  
8 you don't want to go out and get a laborer job  
9 today to feed your children that's your choice.

10 MR. ELIOT BERNSTEIN: I didn't say that.

11 THE COURT: I'm not in charge of feeding  
12 your children or paying your electric bills,  
13 you are. You have to do what a parent does to  
14 take care of their children. It doesn't sound  
15 like you're doing everything that you can, but

16 that's technically not before me.  
17 But in the meantime not knowing a whole  
18 lot about this case, it's my first time I'm  
19 really having this type of dialogue. I heard  
20 some voice that said there's cash to feed your  
21 children that could become readily in your  
22 pocket or in someone's pocket to pay bills that  
23 could help your children. I heard that. They  
24 say the stumbling block to your children  
25 getting the benefit of that money is you. I

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00063

1 don't know whether that's true or not, but if  
2 you want your children to imminently get money  
3 and they have imminent money to give your  
4 children, maybe you want to sit with Ted and  
5 that other side and see if there's some money  
6 that could come to your children.

7 MR. ELIOT BERNSTEIN: Excuse me.

8 THE COURT: Sure.

9 MR. ELIOT BERNSTEIN: That's like asking  
10 me to participate in what I allege is a fraud.

11 THE COURT: No, it doesn't --

12 MR. ELIOT BERNSTEIN: Listen, if the money  
13 comes to my children and it was supposed to  
14 have gone to me, and these documents that are  
15 all shady and unsigned wills with --  
16 un-notarized wills and trusts don't stand. The  
17 money comes to me personally, Eliot Bernstein.

18 MR. MANCERI: Your Honor --

19 THE COURT: Let me just say this to you.  
20 Maybe two, three years from now as a result of  
21 the same trust litigation you'll be right, but  
22 in the meantime according to you there's money  
23 that could feed your children that you don't  
24 want to touch because you think the money  
25 should go to you instead of your children that

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00064

1 they're willing to --

2 MR. ELIOT BERNSTEIN: Well, I think there  
3 are other beneficiaries.

4 THE COURT: -- put in accounts to go for  
5 the benefit of your children.

6 MR. ELIOT BERNSTEIN: I think there are  
7 other beneficiaries that are also --

8 THE COURT: They signed off.

9 MR. ELIOT BERNSTEIN: No, just their

In Re\_ The Estate of Shirley Bernstein.txt  
10 parents have. The children don't even know.  
11 They're not even represented.

12 THE COURT: Well, the parents represent  
13 the child.

14 MR. ELIOT BERNSTEIN: No, but they have  
15 conflicting interests.

16 THE COURT: Well, you say that --

17 MR. ELIOT BERNSTEIN: Our attorney wrote a  
18 subpoena and said it. I had to get two lawyers  
19 because my attorney couldn't represent both  
20 sides of this.

21 MR. MANCERI: I'm very concerned about  
22 something Mr. Bernstein just told The Court.  
23 He's the one objecting they're in conflict,  
24 he's stating from what I'm piecing together  
25 that he believes that his children are getting

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1 money that the parents really was supposed to  
2 go to him personally. He's got the inherent  
3 conflict with that mindset.

4 MR. ELIOT BERNSTEIN: I'm not saying I  
5 don't.

6 THE COURT: Okay, here's the point, if  
7 you're at a point where you're asking The Court  
8 for an emergency because you can't feed  
9 children, and there's someone around the corner  
10 that's holding out a \$20 bill and says you  
11 could have it to feed your children, and you  
12 go, you know, I'm not going to take that to  
13 feed my children because I want to have a court  
14 determine that it really was mine, then I don't  
15 know that you're treating this as an emergency.  
16 Emergencies mean you figure out a way of  
17 getting the money to your children sooner than  
18 later, and they say it's happening imminently,  
19 cash that could pay bills for your children.  
20 That's what they say. If it's an emergency and  
21 your kids are starving, and you as the parent  
22 say that might be my money and not my kids', so  
23 I want to wait for two or three years and let  
24 the money stay in a bank account until I could  
25 figure it out, and not feed my children, I

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1 think you need to reflect upon some of your  
2 decisions.

3 MR. MANCERI: Your Honor --

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THE COURT: What?  
MR. MANCERI: I'm not saying we're going to do this, Judge, but this sounds like this may need an ad litem for these kids.  
THE COURT: Well, I don't know, let's not add fuel to the fire.  
MR. MANCERI: Because I'm troubled by what he's saying.  
THE COURT: All right, so --  
MR. ELIOT BERNSTEIN: Here's why I have not taken that money.  
THE COURT: Why?  
MR. ELIOT BERNSTEIN: Because if you told me, your Honor, that you just murdered him, and here's \$20 from his pocket to feed your kids from the crime --  
THE COURT: If they were starving I would take the \$20.  
MR. ELIOT BERNSTEIN: On that advice, I'll take the money.  
THE COURT: If they were starving --  
MR. ELIOT BERNSTEIN: On that advice --

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THE COURT: Your kids are starving. I'm not giving you advice.  
MR. ELIOT BERNSTEIN: On that advice, I will --  
THE COURT: The \$20 didn't murder anybody, did it? Did the \$20-bill murder someone?  
MR. ELIOT BERNSTEIN: It's stealing money from people.  
THE COURT: They're not -- this isn't stolen money. This is your parents' money.  
MR. ELIOT BERNSTEIN: If I take that money and put it in my kids' accounts, it's actually taking money from what we believe are the true and proper beneficiaries --  
THE COURT: Which is you.  
MR. ELIOT BERNSTEIN: No, through -- one of, through --  
THE COURT: So meanwhile if your kids are starving and you don't take the money, all I could say to you, there's obviously -- if you look at the documents I mean you're not going to confess to killing Kennedy as part of receiving the money, but if they want to give you money for your children and you don't want

In Re\_ The Estate of Shirley Bernstein.txt  
25 to take it because you think it's yours, and

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1 you want to wait years --

2 MR. ELIOT BERNSTEIN: That's not why I  
3 want to dispute it.

4 THE COURT: You think that there's some --

5 MR. ELIOT BERNSTEIN: I think that it's  
6 part of a fraud that forged documents were used  
7 to --

8 THE COURT: But it's still your parents  
9 money --

10 MR. ELIOT BERNSTEIN: -- convert estate  
11 assets to the wrong beneficiary.

12 THE COURT: But they want to now get it to  
13 you.

14 MR. ELIOT BERNSTEIN: No, not me.

15 THE COURT: To your children.

16 MR. ELIOT BERNSTEIN: Listen, I'll take  
17 the money without explanation on it. I agree.  
18 Listen, the only reason I didn't want to take  
19 the money was so I wouldn't be part of a fraud.

20 THE COURT: You're not, obviously no one  
21 is accusing you of fraud. If they give you  
22 money to care for --

23 MR. ELIOT BERNSTEIN: But then I could  
24 accuse them of fraud if I'm participating.

25 THE COURT: I mean all you're doing is

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1 signing a receipt. You don't know where the  
2 money came from. You're not signing off --  
3 you're not saying that you make a declaration  
4 that the money came from them, the other side  
5 to you in only legal means. You're just  
6 signing a receipt.

7 MR. MANCERI: But he is signing off on  
8 that he's going to honor the terms of the  
9 trust. If he is signing off to that --

10 THE COURT: If it comes to you as trustee  
11 for your children, you are -- you have a duty  
12 to only use it for the children, not yourself.  
13 Not you. You still have to work for you. Now,  
14 you don't have to work for your children,  
15 maybe. You still have to support yourself.

16 MR. ELIOT BERNSTEIN: Yeah.

17 THE COURT: The money has to get spent on  
18 your children if that's how you get it.

19 MR. ELIOT BERNSTEIN: Right.  
20 THE COURT: That's all we're talking about  
21 is money to feed your children.  
22 MR. ELIOT BERNSTEIN: You see, if the  
23 money came to me, it's also for me and my wife  
24 and feeds our children.  
25 THE COURT: That's not what they said. It

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1 does not go to support you and your wife.  
2 MR. ELIOT BERNSTEIN: If the money comes  
3 to me as a beneficiary, it does. If all these  
4 nonsense documents that are forged and --  
5 THE COURT: If they want to give it to you  
6 only under their condition this is because  
7 their version is it belongs to your children.  
8 MR. ELIOT BERNSTEIN: Right.  
9 THE COURT: Don't accept it, you don't get  
10 it. If you accept it, it goes to your  
11 children. You may not like that, but it only  
12 could be used for your children, because that's  
13 the deal that they make. You take that deal  
14 because you don't want your kids to starve.  
15 You may not like it, you want to be  
16 supported too, but they don't want to support  
17 you. They don't think it's your money, they  
18 think it's your children's money. So why turn  
19 that -- maybe you're entitled to it, but why  
20 turn down money that could help support your  
21 children in the meantime.  
22 MR. ELIOT BERNSTEIN: If your logic is  
23 correct, your Honor, I agree.  
24 THE COURT: Well, I don't know if my logic  
25 is correct.

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00071

1 MR. ELIOT BERNSTEIN: Here's the legal  
2 problem --  
3 THE COURT: Stop, no, the hearing is over.  
4 I'm not giving more legal advice. Your hearing  
5 goes on, okay, see you.  
6 MR. MANCERI: Your Honor, any chance of  
7 resetting it?  
8 THE COURT: I'm going to ask my office to  
9 flip it around to the afternoon. I'll take  
10 care of that.  
11 MR. MANCERI: Thank you, your Honor.  
12 We'll submit an order to your Honor.



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THE COURT: Okay, clear it with him and see if you could actually get something that makes sense. It's really narrow.

MR. MANCERI: It's very narrow. We've got the transcript, Judge.

THE COURT: It's only really that there's no emergency here. Everything everyone raises on the 28th.

MR. MANCERI: Very good, Judge. Do you think we can do it in an hour, Judge?

THE COURT: We'll try.

MR. MANCERI: Okay.

MR. ELIOT BERNSTEIN: I'm sorry, your

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00072

1 Honor, for calling an emergency.

2 THE COURT: All right. Just there's a lot  
3 of work when you call something an emergency.

4 MR. ELIOT BERNSTEIN: I didn't understand  
5 what you go through.

6 THE COURT: Okay, bye.

7 MR. MANCERI: It's an evidentiary, Judge,  
8 we're going to call witnesses.

9 THE COURT: Witnesses and evidence.

10 MR. MANCERI: Very good.

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12 (The proceeding was concluded at 2:15 p.m.)

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1 CERTIFICATE OF REPORTER

2

3 STATE OF FLORIDA )

4 COUNTY OF PALM BEACH )

5

6 I, Jessica Thibault, a Court Reporter,

7 certify that I was authorized to and did  
8 stenographically report the proceedings in the  
9 above-styled cause before the Honorable Martin H.  
10 Colin, pages 1 through 72; and that the transcript  
11 is a true record of my stenographic notes.  
12

13 I further certify that I am not a  
14 relative, employee, attorney, or counsel of any of  
15 the parties, nor am I a relative or employee of any  
16 of the parties' attorneys or counsel connected with  
17 the action, nor am I financially interested in the  
18 action.  
19

20 Dated this 17th day of September, 2013.  
21

22 \_\_\_\_\_  
23 Jessica Thibault  
24 Court Reporter  
25

♀