

IN THE COURT OF COMMON PLEAS  
IN AND FOR THE COUNTY OF MONTGOMERY, PENNSYLVANIA  
ORPHANS' COURT DIVISION

- - -

IN RE: : NO. 2021-X2110  
JANE T. HERRING, AN ALLEGED :  
INCAPACITATED PERSON :  
:

- - -

Petition for Adjudication of Incapacity and to Appoint  
a Guardian of the Estate and/or Person

- - -

Thursday, July 29, 2021  
Commencing at 9:04 a.m.

- - -

Courtroom 15  
Montgomery County Courthouse  
Norristown, Pennsylvania  
Amy Boyer, Official Court Reporter

- - -

BEFORE: THE HONORABLE GAIL A. WEILHEIMER, JUDGE

- - -

COUNSEL APPEARED AS FOLLOWS:

BRITTANY J. CAMP, ESQUIRE  
for the Petitioner Jill Scott Herring

DAVID A. JASKOWIAK, ESQUIRE  
for the Alleged Incapacitated Person

ALSO PRESENT:

ARTHUR HERRING, III  
Pro se Respondent

- - -

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**I N D E X**

PETITIONER'S EVIDENCE

<u>Witness</u>	<u>Voir Dire</u>	<u>Direct</u>	<u>Cross</u>	<u>Redir</u>	<u>Recr</u>
Jill Scott Herring		165			
by Mr. Jaskowiak			215		
by Mr. Herring			230		
	- - -				

JANE T. HERRING'S EVIDENCE

<u>Witness</u>	<u>VDire</u>	<u>Direct</u>	<u>Cross</u>	<u>Redir</u>	<u>Recr</u>
George Ledakis, PhD	18	22			
by Ms. Camp			73		
by Mr. Herring			86		
	- - -				

**E X H I B I T S**

PETITIONER'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
P-3	Durable General Power of Attorney of Jane T. Herring dated July 9, 2004	171	285
P-4	Jane T. Herring Power of Attorney Supplemental Directive of Ronald W. Fenstermacher, Jr. dated May 7, 2020	191	285
P-5	Will of Jane T. Herring dated November 26, 2018	193	285
P-6	Agreement of Trust of Jane T. Herring dated April 26, 1993, as amended and restated on November 26, 2018	195	285

PETITIONER'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
P-7	Franconia Township Police Department Incident Report dated February 24, 2020	180	285
P-8	February 15, 2021 Email from Arthur Herring, III to Jill Scott Herring	198	285
P-9	Power of Attorney of Jane T. Herring dated December 3, 2020	198	285
P-14	Harleysville Bank letter to Jill Scott Herring dated March 9, 2021	201	285
P-15	May 26, 2021 Email exchange between Brittany J. Camp, Esquire and Michelle Beck, V.P. Harleysville Bank	202	286
P-16	Jane Herring Raymond James Account -764 Miscellaneous Activity Detail from January 21, 2020 to May 28, 2021	203	286

- - -

JANE T. HERRING'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
H-1	Dr. George Ledakis's Curriculum Vitae	19	73
H-2	Dr. George Ledakis's Report and Evaluation	35	73
H-8	Checks from Raymond James' Account (17)	218	

- - -

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

ARTHUR HERRING, III'S

<u>Number</u>	<u>Description</u>	<u>Marked</u>	<u>Rec'd</u>
AH-1	Joint Delegation Agreement for the Benefit of Jane T. Herring	264	

- - -

1  
2 THE COURT: Good morning, everyone. We  
3 are here for the plenary guardianship hearing of Jane  
4 Herring, Case No. 2021-X2110. We were together for a  
5 conference on July 8, 2021, at which time we tried to  
6 determine if a resolution could be reached. That was  
7 not successful, so we did schedule this matter orally  
8 at that time for today, meaning the 29th of July. All  
9 parties received oral notification at that time.

10 We do have all parties present, being  
11 Arthur Herring, pro se -- he was represented by Carol  
12 Cornelison at the time of the conference, and has since  
13 released her as counsel -- Jill Herring, who is the  
14 petitioner, represented by Brittany Camp; Dave  
15 Jaskowiak is present, who is court-appointed counsel  
16 for Jane Herring.

17 And it's my understanding,  
18 Mr. Jaskowiak, you are waiving Ms. Herring's presence?

19 MR. JASKOWIAK: That is correct, Your  
20 Honor. We've not only talked to Arthur, who has  
21 requested that his mother not be present, but we do  
22 concur that to be here today may prove very upsetting  
23 to Mrs. Herring, who may not be able to process all the  
24 information, and, for that reason, I request that she  
25 not be required to appear. Dr. Ledakis's report also

1 notes the possibility of her being upset with this;  
2 although, he didn't specifically request her presence  
3 being waived, I am making that request now.  
4

5 THE COURT: Okay. Is there any  
6 objection to Ms. Herring's presence being waived today?

7 MS. CAMP: No, Your Honor.

8 MR. HERRING: Well, she wanted to be  
9 here, Your Honor. But, if you recall, you basically  
10 made --

11 THE COURT: Okay. It's just a "yes" or  
12 "no." Are you objecting or not?

13 MR. HERRING: Yes, I'm going to object.

14 THE COURT: Okay. Mr. Herring, you do  
15 remember that you sent a letter to me asking that she  
16 not have to attend; correct?

17 MR. HERRING: Off the top of my head,  
18 no, I don't recall it.

19 THE COURT: Okay. Over the objection of  
20 Mr. Herring, Ms. Jane Herring's presence will be waived  
21 from today's hearing, at the request of her attorney  
22 and in light of the information presented both in  
23 Dr. Ledakis's expert report and the Court's concern as  
24 expressed at the conference, in light of the expert  
25 report, what hearing this testimony would do for

1  
2 Ms. Herring, as she is already upset about the conflict  
3 between her children.

4 MR. JASKOWIAK: Your Honor, I'd also  
5 like to note for the record that I've submitted -- as  
6 all parties, I believe, have submitted their intended  
7 exhibits. Attached as Exhibit H-9 -- for "Herring 9,"  
8 meaning those are my exhibits, on behalf of my  
9 client -- I have the email from Arthur Herring that was  
10 sent to Your Honor's chambers on Saturday, July 17,  
11 2021 at 11:45, which states "Ms. Copestick, I have  
12 talked to my mother about appearing in court. She and  
13 I agree it would be best if she did not appear, as much  
14 as she wanted to say in Court how much she wants me to  
15 be her legal guardian, if needed, and speak for  
16 herself. Please inform Judge Weilheimer of the  
17 decision." And that is consistent, I believe, Your  
18 Honor, with what Mr. Herring has previously represented  
19 to me, that he did not believe that his mother should  
20 be in court, and that she was expressing the same  
21 sentiment.

22 THE COURT: Okay. Thank you.

23 The other issue that has been raised in  
24 Mr. Herring's correspondence which the Court will  
25 address on the record is access to Dr. Ledakis's

1  
2 report. Dr. Ledakis prepared an independent medical  
3 examination for the Court. Once that report was  
4 completed, it was provided to all counsel. At the  
5 time, Mr. Herring was represented by Carol Cornelison.  
6 The Court instructed all counsel that they are not to  
7 provide a copy of this to their clients, but their  
8 clients have the right to review the report that was  
9 done both at the request of Ms. Herring's counsel, as  
10 well as for the Court's concern that this report not be  
11 used to upset Jane Herring due to its content or the  
12 conflict between her children; and, as Arthur Herring  
13 lives with his mother, that was an additional concern  
14 for the Court.

15 Mr. Herring was given the opportunity  
16 and did review the report in Ms. Cornelison's office  
17 prior to the July 8 conference. After the July 8  
18 conference Mr. Herring did, in fact, dismiss his  
19 attorney and is proceeding pro se, which is his right.  
20 The Court provided Mr. Herring the opportunity to come  
21 and review the report last Wednesday, July 21, asked  
22 that he appear by 10 o'clock, and would have been given  
23 the entire day to review the report and take whatever  
24 notes he wished to. Mr. Herring failed to appear last  
25 Wednesday and, as such, waived his right to have an



1 additional advanced review of the report. We will give  
2 Mr. Herring a copy of the report here in court for his  
3 use in examination, and if admitted into evidence,  
4 we'll address that regarding moving forward.  
5

6 MR. JASKOWIAK: Your Honor, and as a  
7 part of my exhibits I have premarked Dr. Ledakis's  
8 report and his curriculum vitae and I provided them in  
9 the package to Mr. Herring in court here today for the  
10 use in court today. We can address, perhaps after  
11 that, you know, what should happen with that copy of  
12 the report in light of your previous rulings, I  
13 believe. But I just gave it to him this morning upon  
14 my arrival here.

15 THE COURT: Okay. So we have an extra  
16 copy. But if you already have it in your binder, then  
17 we don't need to provide an additional copy.

18 MR. JASKOWIAK: It is H-1 and H-2, Your  
19 Honor. The curriculum vitae is H-1 and the expert  
20 report with the narrative report are combined as H-2.

21 THE COURT: Okay.

22 Yes, Mr. Herring?

23 MR. HERRING: Yes. Your Honor,  
24 pertaining to the report, Mr. Ledakis's report, I spent  
25 about two hours with my former lawyer --

1 THE COURT: Okay. Let me just interrupt  
2 for a second. Are you fully vaccinated?

3 MR. HERRING: No.

4 THE COURT: Then you need to put your  
5 mask over your nose too.

6 MR. HERRING: Okay. I was able to only  
7 see the report for about two hours. And as far as  
8 seeing this report, again, 27, 28 pages, I just could  
9 not spend -- or I was not able to spend more time than  
10 those two hours, and I wanted to come back to see it  
11 again. But, as I said -- or as was pointed out, I did  
12 fire Ms. Cornelison because of her attitude and also  
13 certain comments she made. I just did not feel she was  
14 the proper lawyer to have.

15 As far as seeing it in a conference  
16 room, there was no specifics on where that was going to  
17 be, under what condition --

18 THE COURT: That actually isn't -- sir,  
19 you had to confirm with the Court the day before by  
20 noon if you were going to appear. You did not confirm  
21 with my chambers. We would have given you the details  
22 if you confirmed you were coming. In an abundance of  
23 caution, I still had someone present, with the report,  
24 ready to meet with you should you have happened to just  
25

1 show up. You have been to my courtroom before. You  
2 had no communications. You did not confirm you were  
3 going to come and you did not, in fact, come. You have  
4 written me multiple letters asking multiple questions.  
5 If you truly had a concern about where to come you  
6 would have asked. You didn't come; you have waived  
7 your right.

8  
9 Okay. With that, we are going to  
10 proceed. The issue today is narrow. Number one, does  
11 Jane Herring need a guardian? Is she incapacitated and  
12 in need of a guardian? And, number two, who should  
13 that guardian be?

14 The initial petition asked for her  
15 daughter to be a guardian. She is no longer making  
16 that request and is instead asking -- Ms. Scott Herring  
17 is asking for an independent guardian. Arthur Herring  
18 is asking for himself to be appointed as the guardian.  
19 The Court will consider all of that as part of this  
20 hearing. But that is the scope of this hearing.

21 So, with that, we proceed first with the  
22 petitioner.

23 Mr. Herring, to make you aware of the  
24 procedure, Ms. Camp will call witnesses first as she is  
25 the petitioner. She will ask questions of those

1  
2 witnesses. Mr. Jaskowiak will ask questions next. And  
3 then if you have any questions you will have the right  
4 to question the witnesses after Mr. Jaskowiak. As a  
5 reminder of court procedure, I take notes during the  
6 hearing on a computer. So if I'm not looking at the  
7 witness or any of you, I'm still paying attention. I  
8 always defer to the court reporter as to when she needs  
9 a break. So if anyone needs a personal break you'll  
10 have to bring it to my attention, because I'm focusing  
11 on her and you will have to let me know if you need a  
12 break. Otherwise, I wait for a natural breaking point.

13 MR. HERRING: Your Honor, could you --  
14 for my sake, can you kind of repeat what you said as  
15 far as how this procedure, again, please?

16 THE COURT: Sure. Ms. Camp calls  
17 witnesses first, she asks the witness questions. After  
18 she finishes her questioning, Mr. Jaskowiak will  
19 cross-examine first, and then you will cross-examine.  
20 After Ms. Camp calls all of her witnesses and they've  
21 all been cross-examined, Mr. Jaskowiak -- well, he'll  
22 go last because he represents your mom -- you'll have  
23 the right to call any witnesses that you wish to call  
24 today, or you yourself will have the right to testify.  
25 Any witnesses you call will be able to be

1  
2 cross-examined by Mr. Jaskowiak and Ms. Camp, including  
3 yourself. Mr. Jaskowiak, after you, will call any  
4 witnesses he has last. After all testimony is  
5 presented, we will hear argument. Argument from  
6 Mr. Jaskowiak will go first, then you, then Ms. Camp,  
7 as she's the petitioner and has the burden of proof, so  
8 she will go last. Okay? Any other procedural  
9 questions?

10 MR. HERRING: Well, I'd like to have  
11 them written down, but I guess that's not possible.

12 THE COURT: You'd like to have what  
13 written down?

14 MR. HERRING: I appreciate the Court's  
15 time; again, I am pro se. If I went to law school I'm  
16 sure I would have known these things, but, again, this  
17 is all brand new to me. I've never gone through  
18 something like this before with a legal guardian  
19 matter.

20 THE COURT: Right. But, sir, as I told  
21 you in my letter to you, you have the right to proceed  
22 pro se; but anyone in any court -- whether be it for a  
23 first-degree murder case or a custody case -- who  
24 chooses to proceed pro se must proceed understanding  
25 and complying with the rules of court as if they are

1  
2 legally trained. You have no obligation to hire a  
3 lawyer, but you do so at your peril because you may or  
4 may not know the rules of court. It is your choice to  
5 proceed pro se, you absolutely have the right, and as  
6 you've told me multiple times in your correspondence,  
7 you have been in court for 41 years as a criminal  
8 investigator, so you have seen court proceedings.

9 MR. HERRING: With all due respect, Your  
10 Honor, I have not been in court for 41 years, I have  
11 never testified on my business or any tests that I've  
12 done.

13 As far as pro se, yes, it's true that a  
14 person might -- well, again, the law books, as you  
15 know, are written in whatever can be called as  
16 legalese. The majority of people cannot read it,  
17 cannot understand it. And there is no law that says a  
18 person has to have money set aside in case he ever  
19 needs to contact a lawyer, and, again, lawyers charge  
20 money for that. So basically it's saying you can be  
21 your own lawyer, but if you don't understand or can't  
22 read the law books, you're out of luck. And if you  
23 don't have the money to hire a lawyer to explain it in  
24 plain English, you're out of luck. So it --

25 THE COURT: Sir, it was your right to

1  
2 dismiss Ms. Cornelison. In the Court's experience,  
3 Ms. Cornelison is not just competent counsel, but  
4 really stellar counsel. I've had her many, many times.  
5 It doesn't mean you have to like her. It doesn't mean  
6 you have to continue with her. But you have chosen to  
7 proceed pro se and I've explained to you the procedure.  
8 So not complaining about whether or not pro se is  
9 appropriate, do you have any questions about the  
10 procedure before we begin?

11 MR. HERRING: Well, again, I'll probably  
12 be asking you again as far as what happens next or  
13 whatever.

14 THE COURT: I'll make that clear to  
15 everyone as we go along.

16 MR. HERRING: And, again, money was -- I  
17 had just come out of bankruptcy, my money was limited.  
18 I had paid her \$7,000, and basically I just could not  
19 accept that she was -- some of the remarks she was  
20 making, she did not seem to really care about my case.  
21 So whatever --

22 THE COURT: And, again, that is your  
23 right, sir, but we're going to start the case.

24 So, with that, Ms. Camp.

25 MS. CAMP: Your Honor, if I may? Just

1  
2 to go back on the scope of the issues, I just wanted to  
3 clarify on the incapacity issue that from the order  
4 that was issued on June 1 with respect to the IME, that  
5 we are actually doing incapacity back to January 1,  
6 2020 --

7 THE COURT: Yes --

8 MS. CAMP: -- for the retrospective --

9 THE COURT: -- that is correct.

10 MS. CAMP: -- with respect to the  
11 documents that have been signed?

12 THE COURT: Correct. And thank you for  
13 the clarification. So there is, in accordance with  
14 this Court's IME order, a retrospective evaluation, as  
15 there was a change in legal documents and whether or  
16 not there is capacity to do so.

17 MS. CAMP: Correct.

18 THE COURT: So thank you, Ms. Camp, for  
19 the clarification.

20 MR. HERRING: Your Honor, what --

21 MR. JASKOWIAK: And I have a question,  
22 Your Honor. The doctor is not technically Ms. Camp's  
23 witness, he is the Court's witness.

24 THE COURT: Correct.

25 MR. JASKOWIAK: And I've spoken to



1  
2 Ms. Camp and I don't -- if no parties have a problem  
3 with this, I don't have a problem in taking the lead to  
4 question Dr. Ledakis, but that is clearly up to the  
5 Court and with the concurrence of both parties.

6 THE COURT: I have no objection to you  
7 taking the lead as Ms. Herring's counsel. Dr. Ledakis  
8 was appointed as a court evaluator, not hired by any  
9 individual party. So if there is no objection to  
10 that --

11 MS. CAMP: No objection, Your Honor.

12 THE COURT: -- that's fine. Okay. Then  
13 we'll have Mr. Jaskowiak take the direct examination,  
14 and then go to Ms. Camp, and then Mr. Herring, for  
15 examination.

16 And your question, Mr. Herring, was  
17 about what does it mean, the retroactive?

18 MR. HERRING: No. "IME."

19 THE COURT: Independent Medical  
20 Evaluation. That was the order I issued. So the Court  
21 hired Dr. Ledakis to perform the evaluation.  
22 Dr. Ledakis was not hired by your sister,  
23 Mr. Jaskowiak, or you; the Court engaged him to do the  
24 evaluation. So he is independent of all parties and  
25 was engaged by the Court to do an independent medical

1 evaluation of your mother.

2 MR. HERRING: Was Ms. Cornelison allowed  
3 to have the expert to examine --  
4

5 THE COURT: Any person has the right to  
6 hire their own expert. The Court wanted an independent  
7 person. That does not mean you, or when you were  
8 represented your attorney, or any attorney could not  
9 hire their own person. It would have cost them their  
10 own money, it would not have been paid for by the  
11 Court. But the Court hired, engaged someone who has  
12 experience with being able to do comprehensive  
13 evaluations, and to do so in an independent manner, so  
14 not having any bias on behalf of any individual party.

15 So, with that, we will call Dr. Ledakis.  
16 Come forward, sir.

17 - - -

18 **GEORGE E. LEDAKIS, Ph.D.**, having been  
19 duly sworn/affirmed, was examined and  
20 testified as follows:

21 THE COURT: All right. Mr. Jaskowiak is  
22 going to start off asking you some questions.

23 Counsel, you may proceed.

24 MR. JASKOWIAK: Thank you, Your Honor.

25 VOIR DIRE EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. JASKOWIAK:

Q Good morning, Dr. Ledakis.

A Good morning.

Q It's a pleasure to see you here after many months of no one being in court. Would you please tell the Court what your educational background and professional experience is?

A Sure. So my -- I'm a clinical neuropsychologist, licensed in the state of Pennsylvania as a clinical psychologist with a specialty in clinical adult neuropsychology.

My education: I received my doctoral degree from Drexel University; that incorporated an internship at the Coatesville VA Medical Center. Thereafter, I completed a two-year postdoctoral residency at University of Pennsylvania and Children's Hospital of Philadelphia.

(Dr. George Ledakis's Curriculum Vitae marked Jane T. Herring's Exhibit H-1 for identification.)

BY MR. JASKOWIAK:

Q I noted in your curriculum vitae, which is marked as Exhibit H-1, that you did a dissertation -- tell the Court -- without me putting words in your mouth, tell

1 the Court what your dissertation was about, please.

2 A So my dissertation was retrospective, looking at  
3 data from thousands of individuals diagnosed with  
4 dementia, and using that data to devise a system to be  
5 able to differentiate between different types of  
6 dementia -- specifically, in that case, it was a  
7 vascular dementia -- and Alzheimer's disease.

8 Q As a part of your clinical practice since you got  
9 your doctorate in June of 2000, have you engaged in  
10 various evaluations where cognitive impairment and  
11 potential incapacity were evaluated?  
12

13 A Yes. Yes. The majority of my evaluations take  
14 that into account, given the population that I work  
15 with.

16 Q Approximately how many evaluations over the course  
17 of the last 20 years would you say that you've done?

18 A About 3,500 or so.

19 Q Have you testified in court previous to today as a  
20 neuropsychologist, as an expert in that field?

21 A I have.

22 Q And that testimony -- have you given testimony  
23 regarding whether or not legal incapacity was present  
24 and whether or not someone was suffering from a  
25 cognitive impairment of any kind?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A I have.

Q And have you testified in this court?

A I have.

Q Has your testimony been accepted as an expert?

A It has.

Q Okay. Approximately, if you're able to estimate, how many times have you testified during your career in court?

A In person this is my 12th time, I believe.

Q In the course of your practice, have you been asked to evaluate the different types of capacity, such as what the law may refer to as decisional capacity or requisite testamentary capacity?

A I have, yes.

Q And we'll get more into the details of that in terms of your report. But are you able to delineate between the three, to point out what their uses are and what the standards are?

A Yes.

MR. JASKOWIAK: I offer Dr. Ledakis as an expert in the field of neuropsychology, Your Honor, subject to any questions on his qualifications that others might have.

THE COURT: And you have marked his CV

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

as H-1.

MR. JASKOWIAK: And I offer Exhibit H-1,  
as his curriculum vitae, into evidence.

THE COURT: Ms. Camp, do you wish to  
voir dire on qualifications?

MS. CAMP: No, Your Honor.

THE COURT: Okay.

Mr. Herring, do you wish to voir dire on  
qualifications? And that means do you wish to ask  
Dr. Ledakis any questions about his background only,  
not about the evaluation he did.

MR. HERRING: Not at this time.

THE COURT: Okay. All right.

MR. JASKOWIAK: Dr. Ledakis --

THE COURT: So I do accept Dr. Ledakis  
as an expert in the area of neuropsychology. With  
that, you may proceed.

MR. JASKOWIAK: Thank you.

DIRECT EXAMINATION

BY MR. JASKOWIAK:  
Q Dr. Ledakis, at the request of the Court in the  
beginning of June 2021, as a result of the Court's  
order, did you undertake an evaluation of my client,  
Jane T. Herring -- a neuropsychological evaluation --

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

to determine capacity, with a retrospective to  
January 1, 2020 to the present?

A I did.

Q And would you tell us, if you would, how you went  
about doing your evaluation in terms of the information  
you reviewed, the people that you spoke with, and the  
methodology that you used to evaluate capacity?

A Sure. Well, I saw Ms. Jane Herring in person on  
the 15th of June, as well as on the 29th of June.

THE COURT: I'm just going to interrupt  
you, Dr. Ledakis. I know you have a long report. If  
at any point there is a specific detail that you need  
to refresh your recollection by looking at your report,  
just let us know.

THE WITNESS: Sure. Thank you, Your  
Honor.

BY MR. JASKOWIAK:

Q And speak into the mike a little bit, if you  
would, so that the court reporter can hear and your  
voice carries.

And I want to ask you about the  
importance of evaluating somebody for this purpose on  
two different dates, seeing them on two different  
dates. Is there a significance there, sir?

1  
2 A There is. In great part for looking at  
3 consistency of responses. When you have somebody whose  
4 memory is impaired, you want to see to what degree that  
5 information that is presented at a first setting  
6 carries over to a second setting, or if not, looking  
7 for consistency in responses. Individuals with memory  
8 impairment also have a tendency to confabulate  
9 information; that is, to create a reality not  
10 intentionally, but as a result of their memory  
11 impairment.

12 But, also, you know, one of the purposes  
13 for me was also just to further kind of validate my  
14 initial opinion impressions of Ms. Herring, and I  
15 wanted to, you know, proceed forward with presenting  
16 that information, but have greater certainty and  
17 confidence in my results. So I wanted to speak with  
18 her again, and gleaning some more information.

19 Q And before we get to the findings of what you  
20 learned from Ms. Herring, who else did you speak with  
21 in preparing your report, doing your analysis?

22 A Sure. I spoke with her son, Mr. Arthur Herring,  
23 the day of the evaluation briefly. I spoke with him  
24 thereafter via telephone -- clinical interview via  
25 telephone, I believe, on the 24th of June. And I also



1  
2 spoke with Ms. Herring's daughter, Jill Herring, on the  
3 phone, again, on the 30th of June, the day after I met  
4 with Ms. Herring the second time.

5 I also requested medical records from  
6 Ms. Herring's primary care physician, Dr. Kuhar.

7 THE COURT: I'm sorry. Mr. Jaskowiak,  
8 can you just spell that?

9 MR. JASKOWIAK: K-u-h-a-r. First name  
10 Kim.

11 THE WITNESS: Which included office  
12 progress notes dating back to 2018 to the present, also  
13 included a neurologic consultation report and a CT scan  
14 of the brain report and some lab results, some more  
15 recent lab results. And I believe that's it.

16 BY MR. JASKOWIAK:

17 Q So when you initially met with Ms. Herring, can  
18 you tell us what you observed and how she presented?

19 A So Ms. Herring presented as -- I mean, she was  
20 extremely pleasant, very cordial, very appropriate in  
21 her behavior. She -- I introduced myself and what my  
22 role is. She had an understanding of the fact that  
23 there is a petition that's been filed, but really  
24 wasn't clear about the details of that petition other  
25 than the fact that it was filed by her daughter -- or

1  
2 was initiated by her daughter, I should say. I  
3 explained to her, again, my role. I asked her about  
4 you and what your relationship is.

5 Q What did she tell you about me?

6 A I believe at that first time you may have been --  
7 she knew that she met with you -- well, she indicated  
8 that she had met with you the week prior, but failed to  
9 really recognize what your role is, I believe you were  
10 a financial advisor at that time. And -- but, again, I  
11 explained to her again what your role is, why I was  
12 there. She consented to the evaluation. She was very  
13 pleasant and appropriate throughout the evaluation.

14 Q Were you alone with her, just Mrs. Herring and  
15 yourself, or were there any other parties that were  
16 there?

17 A After brief introductions with Mr. Herring, he  
18 excused himself, actually left the home. He did return  
19 a little earlier than expected toward the end, but he  
20 was not visible or serving as a distraction for  
21 Ms. Herring for my evaluation, which was conducted in  
22 the dining room of the home side by side.

23 Q As you went into the home, just in terms of how  
24 the home even presented itself, was it a well-cared-for  
25 home?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A It was.

Q So when you sat down with Mrs. Herring, was she able to give you any details about herself -- an autobiographical sketch of sorts -- of who she was and what her background was?

A Some, but limited. And I say "limited" in the sense that she had difficulty conveying information that you would expect someone who, you know, is cognitively intact would be able to convey. She could not tell me the high school that she attended. She knew that her husband had passed, could not tell me really the year that he had passed or the situation surrounding his passage; really had very limited understanding of her medical history -- her own medical history -- including kind of negating -- neglecting to tell me about her history, that there was a history of bladder cancer; really wasn't aware of any surgeries that she had had. Just so it was very -- and her appreciation of time and being able to date things and appreciate time passage was really rather limited and poor.

Q Did she appear to acknowledge at any time any awareness of a possible memory deficit, a failure to recollect?

1  
2 A It was very limited. As -- you know, she  
3 acknowledged that her memory was not what it was, but  
4 really had a poor appreciation of the nature, the  
5 scope, the breadth of her cognitive impairments and,  
6 really, their functional impact. So, yeah, I mean,  
7 from a clinical perspective, you know, I would say her  
8 insight was rather poor.

9 Q Did she mention the use of any cues or reminders,  
10 calendars, or things like that, prompts that she  
11 utilized in order to overcome any deficits that she  
12 might otherwise have?

13 A Sure. You know, she indicated that she has a  
14 calendar, that there is a whiteboard in the house.  
15 There is kind of a long-standing tendency to kind of  
16 collect business cards from various individuals that  
17 she's come across, including mine; there is a rather  
18 extensive collection of those in the kitchen. You  
19 know, she readily acknowledged her reliance on her son,  
20 Arthur, in regards to managing some aspects of  
21 higher-level activities of daily living. You know, she  
22 readily acknowledged, you know, her dependence on him  
23 in that regard.

24 Q Did she exhibit any loss of ability to find the  
25 right word or aphasia or anything like that?

1  
2 A Yes. You know, her speech was -- you know, it was  
3 clear, so it was not dysarthric, it was not garbled as  
4 you would see with somebody maybe who had suffered a  
5 stroke. So it was very clear and articulate, but it  
6 was rather vague at times, kind of lacking of details.  
7 There was -- there were paraphasias in her speech,  
8 which means word substitution errors. You know, under  
9 normal circumstances people may replace one name for  
10 another; but with individuals that have dementia you  
11 start to see replacement of words with substitution,  
12 something that is similar but not the accurate word.  
13 That increases in frequency, so there were frequent  
14 paraphasias in her speech. And, like I said, her  
15 speech was rather vague at times, it just wasn't --  
16 there was kind of a poverty of detail, there just  
17 wasn't a whole lot of detail there.

18 Q Did you observe any instances where she lost her  
19 train of thought?

20 A Yeah. That was rather frequent. She could  
21 certainly answer questions directly when it was, you  
22 know, a very pointed question, a very specific and a  
23 short response. But when she had to elaborate on  
24 information, she had both a difficult time providing  
25 detail with that, but also a tendency to go on a

1  
2 tangent and lose her train of thought and respond, you  
3 know, with a more relevant response to the original  
4 question.

5 Q Were you able to determine if she was oriented to  
6 time and place? I mean, she obviously knew she was in  
7 her home.

8 A She did. She did. She was oriented to her home.  
9 She was generally oriented to herself in the sense that  
10 she could tell me her name, she could tell me her date  
11 of birth. She was uncertain as to her age. I believe  
12 her response was she was 96 or 98, which, you know, I  
13 don't necessarily put too much stock on that at that  
14 age. I sometimes question myself, so ...

15 Q Some people can't count to five. And a woman  
16 shouldn't have to reveal her age. I get that.

17 A But her orientation to time was impaired. She was  
18 not oriented to the year, she was not oriented to the  
19 month. Her birthday had just passed the month before I  
20 had seen her, and usually that is -- even individuals  
21 who may have some cognitive impairment can usually use  
22 that as a marker to kind of re-orient themselves when  
23 they can't initially spontaneously come up with the  
24 month and be able to say, oh, yeah, that's right, I  
25 just celebrated a birthday, so therefore it must be

1  
2 thereafter. She believed that her birthday was  
3 actually coming up when, in fact, it had actually  
4 passed a month earlier than that. And I believe the  
5 year that she believed it was was 2018 at the time.

6 Q What about things like did you ever -- did you ask  
7 her who the president was or who the former guy was?

8 A I did. She was not able to come up with Biden on  
9 her own. I cued her; initial cues did not help.

10 Eventually, when I indicated that he was from Delaware,  
11 that seemed to strike a chord and she was able to come  
12 up with Biden. She was able to come up with Trump, but  
13 wasn't able to really come up with anybody thereafter  
14 preceding Trump, and even had a difficult time  
15 consistently recognizing individuals from their  
16 pictures. So I presented her with pictures of former  
17 U.S. presidents -- recent former U.S. presidents from  
18 Trump through Carter, I believe -- and she was really  
19 inconsistent with being able to recognize those  
20 individuals.

21 Q In terms of her activities of daily living -- and  
22 you used the word "praxis," which I found to be an  
23 intriguing word. Would you explain, first of all, what  
24 you meant in your report by the term "praxis" and how  
25 it relates, also, to activities of daily living?

1  
2 A Sure. Praxis is the ability to accurately  
3 sequence movements in a manner that leads to the  
4 correct execution of an activity. So, you know, for  
5 example, you know, how to brush your teeth involves the  
6 correct sequencing of taking out the toothbrush, taking  
7 out the toothpaste, placing the toothpaste onto the  
8 toothbrush, and proceeding to now brush your teeth.  
9 But even that you can break down into several various  
10 steps; you know, there is a correct sequence of  
11 movements to accurately be able to brush your teeth.

12 We talk about praxis in development, you  
13 know, with infants into toddlers, children develop  
14 these praxis skills. You know, you see a two-year-old  
15 try to eat in a high chair, more food winds up on the  
16 floor and the ceiling and their lap than winds up in  
17 their mouth because they're still developing those  
18 sequence of movements. Eventually they develop those.  
19 But as a result of dementia, in particular Alzheimer's  
20 disease, what you see is you start to see a breakdown  
21 in those praxis skills. So people start losing the  
22 ability to correctly sequence those movements and you  
23 see an impact on some basic activities of daily living  
24 like --

25 Q How did she fare on the praxis portion of it?



1  
2 A She did fine, you know, in that regard. And  
3 functionally, to my understanding -- even though it  
4 wasn't observed -- she doesn't have any issues with  
5 dressing, grooming herself, showering, doing those  
6 basic activities of daily living, because her praxis  
7 skills are still intact.

8 Q You also reference emotional lability. Explain  
9 what you mean by that and how Mrs. Herring's emotional  
10 state was compared to what you may have been told.

11 A So emotional lability refers to one's -- the  
12 stability of one's emotions. So being able -- somebody  
13 who is emotionally labile is one that their emotional  
14 expression can vacillate very significantly from  
15 tearfulness to anger to anxiety. So, you know, the  
16 description that I got from both of Ms. Herring's  
17 children was that there was some emotional lability, it  
18 was -- what was consistent between the reports was that  
19 it tended to be very circumscribed to situations, so  
20 with the immediate situation or the topic of discussion  
21 at the time, but nothing that seemed to kind of carry  
22 forth beyond that immediate scenario.

23 Q No vacillation while you were -- in her emotional  
24 state while you were alone with her doing this  
25 evaluation?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A There was not, no. No.

Q So, any other things of note in terms of your interview with Mrs. Herring that you think are important to point out to the Court?

A The interview itself you're saying?

Q Yes. Yeah, the interview portion of it.

A I don't believe there are.

Q Okay. So after the interview with Mrs. Herring what did you do next? Did you do testing?

A I did.

Q Okay.

A I did.

Q Tell us about the testing, what kind of testing and what results you found.

A Sure. I went through --

May I ask, Your Honor, is it possible at this point to have a copy of --

THE COURT: Of course.

THE WITNESS: -- my report?

MR. JASKOWIAK: If you look at the smaller binder that's in front of you -- well, it was.

THE WITNESS: No. It's in the back.

MR. JASKOWIAK: There is an Exhibit P-2, Dr. Ledakis.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: Your H-2.

MR. JASKOWIAK: H-2. I'm sorry. I'm alphabetically challenged this morning.

THE COURT: That's okay. You're representing someone different than usual.

(Dr. George Ledakis's Report and Evaluation marked Jane T. Herring's Exhibit H-2 for identification.)

BY MR. JASKOWIAK:

Q H-2 contains not only your expert report, but also your narrative report that you prepared at the request of the Court; correct?

A Correct.

Q Okay. So feel free at any time to reference either of those -- the expert report or your narrative report -- to answer any of the questions that I may have.

So in terms of the testing, what kind of test did you do and what kind of findings did you make?

A Sure. The testing is broken down and it's not -- the order that I presented here is not necessarily the order that the tests were administered. It's just my approach to just organization and the report writing. But the testing, you know, typically starts with just

1  
2 some gross mental status examinations, so the Court is  
3 probably very familiar with the mini-mental state exam.  
4 And that is just simply just a gross measure of -- just  
5 to gain some initial understanding really of kind of  
6 where we are with one's mental state.

7 I do some testing that looks at  
8 premorbid intellect. So you want to gauge -- you know,  
9 I can tell you how the person is now, but how were they  
10 at one time before? It becomes less relevant when you  
11 have somebody who has more advanced dementia. It  
12 becomes more relevant in cases where you have somebody  
13 who has more subtle deficits who may not necessarily  
14 fall in the impaired range; but, nonetheless, their  
15 results may still reflect a decline from where they  
16 were previously. So there is measures that allow you  
17 to get a good estimate of their premorbid function or  
18 their prior level of functioning.

19 There is some motor tasks, tasks of  
20 simple attention. So these tasks are a combination of  
21 oral, orally administered; some are written, where the  
22 person writes, but also draws; obviously, there are  
23 some motor tasks that I asked for her to do to gain not  
24 only praxis but also her fine motor dexterity, her fine  
25 motor skills. There are tests of language, both

1  
2 expressive language, and within that what's called  
3 semantic knowledge.

4           You asked me about her speech earlier.  
5 Semantic knowledge refers to the information that we've  
6 gathered over our time on this earth. Individuals  
7 glean semantic knowledge through formal education, but  
8 through formal experience too. Every day that you're  
9 on this earth you gain a bit of knowledge that you add  
10 to your repertoire. We don't lose semantic knowledge  
11 as a normal part of aging, but you do lose semantic  
12 knowledge as a result of certain neurologic conditions,  
13 specifically Alzheimer's disease. So these tests  
14 assess for the preservation of one's semantic network  
15 or a semantic knowledge base.

16           There were tests of comprehension, oral  
17 comprehension, and within those tests there is  
18 different levels of comprehension that you look at.  
19 There is obviously tests of memory. Everybody that  
20 comes in to my -- to see me, at some point usually  
21 there is a complaint about memory. It's the most  
22 sensitive area, the most salient problem that people  
23 complain about.

24           But memory is not the only thing that  
25 the brain is responsible for. So when you look at, you

1  
2 know, questions of decisional capacity, it goes beyond  
3 just one's memory preservation or one's memory  
4 impairment, but also there are other cognitive  
5 abilities too, tests of basic judgment and some mood  
6 assessment measures, looking at depression, for anxiety  
7 symptoms, and such.

8 Q And after administering these tests, can you tell  
9 us what findings you were able to make with regard to  
10 Mrs. Herring and her overall capacity?

11 A Sure.

12 Q And we'll break it down a little bit in terms of  
13 the three different types -- decisional and whatnot --  
14 later on. But in terms of her overall capacity, are  
15 you able to give us your basic findings of what you  
16 determined?

17 A Sure. Just to be clear, are you asking me about  
18 the specific results of my testing?

19 Q Yeah. Let's --

20 A Or jump to the question about capacity?

21 Q Well, let's go with the specific results of your  
22 testing.

23 A Sure.

24 Q That's maybe the easiest way to break it down.

25 A Okay.

1  
2 Q Okay. And you started with things like the MMSE.  
3 So what did you find and how -- and what significance  
4 was that finding?

5 A Sure. Her result on the MMSE was in the mildly  
6 impaired range; you know, she scored a 23 out of 30 on  
7 that measure, which is relatively consistent with what  
8 Dr. Kuhar's, you know, findings were in her  
9 examinations of her in the past. Any scores of below a  
10 26 are indicative of cognitive impairment.

11 Q And is that the test where you, among other  
12 things, ask them to draw a clock, you'll ask them how  
13 many animals they can name, they will --

14 A (Shakes head from side to side.)

15 Q Or is that other parts of that?

16 A That's other parts of that.

17 Q Other parts of that.

18 A Yeah. This is more -- it's based -- it's very  
19 much a rudimentary screening exam.

20 Q Got it.

21 A It's been somewhat bastardized and incorporated  
22 into being used as a measure of dementia severity, and  
23 it -- I can -- this is a matter for another time, but I  
24 don't believe it's -- it's not a very good measure for  
25 that regard. It's been incorporated and used with that

1  
2 measure in that manner, but it's simply -- I use it  
3 simply just as a screening tool, just so you can get a  
4 very quick impression of the person --

5 Q Okay.

6 A -- to help guide where I'm going to go with more  
7 detailed testing. But it's very heavily weighted on  
8 orientation, so she lost a lot of points on just being  
9 oriented to time, to her age, as well as tests of just  
10 a very brief screening of memory as well.

11 But I go on with my testing. What I  
12 find that is her most glaring deficits are in memory,  
13 specifically what's called anterograde memory, memory  
14 -- it's new learning, it's the ability to form new  
15 memories and retain that information over time.

16 Q Retrograde is what happened in the past, as  
17 opposed to anterograde is the --

18 A Correct.

19 Q -- ability to learn new things?

20 A Correct. The layperson sometimes refers to  
21 anterograde memory as short-term memory and retrograde  
22 memory as a more long-term memory. It's not  
23 necessarily -- from a clinical perspective I don't  
24 necessarily find that an accurate description; but,  
25 yes, that is what it is. So anterograde --



1  
2 Q Why is the anterograde memory -- I didn't mean to  
3 interrupt. I apologize. But why is that so  
4 significant for us carrying on our activities of  
5 living? Why do we need that?

6 A Sure. Because it may not necessarily -- somebody  
7 who has even significant anterograde memory impairment  
8 may not -- that may not necessarily affect their  
9 ability to perform a task in and of itself, that  
10 deficit doesn't interfere with the ability to perform a  
11 task, but it interferes with one's ability to  
12 consistently move forward with a task that is scheduled  
13 to be performed, for example, like paying bills, taking  
14 their medications. Again, it doesn't preclude that  
15 person from being able in and of itself to be able to  
16 pay bills or to perform the act of taking their  
17 medication, but to be able to remember to do those  
18 things moving forward.

19 I also assess informally -- it's not an  
20 objective test, but I also assess what's called  
21 prospective memory, which is memory to remember to do  
22 something, memory moving forward. So Ms. Herring's  
23 ability, anterograde memory, it was rather pronounced,  
24 severe to profoundly impaired across all measures and  
25 indices within those measures, regardless of whether it

1  
2 was verbal or visual information, which is consistent  
3 with Alzheimer's disease. Alzheimer's disease doesn't  
4 select, you know, verbal memory being impaired and your  
5 visual memory being intact; it impacts the parts of the  
6 brain that are responsible for all memory formation in  
7 that regard.

8           As we age our memory of what I call  
9 functional memory can be affected, people have a more  
10 difficult time retrieving information, they may not as  
11 readily be able to come up with the information that  
12 they have in storage as efficiently, as timely as they  
13 once were, but with cues or just time passage that  
14 information is there so they can retrieve it. But with  
15 a condition like Alzheimer's disease that memory is not  
16 formed, it's not -- and it's not retained over time,  
17 so, thereby, when the person -- it's not there to be  
18 retrieved later on. We saw that consistently on her  
19 tests of anterograde memory. She also had  
20 difficulty -- although, to a lesser extent -- on tests  
21 of retrograde memory. So her ability to really  
22 recognize significant media events from the past was  
23 inconsistent, was impaired, as was --

24 Q       And that includes where you went to high school,  
25 who was the president, those kinds of basic

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

information --

A That's another facet of -- yes, another facet of retrograde memory.

Q Right.

A But also, as you already inquired about earlier about being able to name the former presidents, you know, significant information that you would expect one to have, you know, irregardless of advanced age or not.

THE COURT: Does retrograde memory affect more objective measures like the president, months, things that most of us would know, or does it also apply to her individual memories, like a child's birth or graduating from high school?

THE WITNESS: So they are discrete constructs, but you -- I would say rarely, if not ever -- see somebody who has retrograde memory impairment -- significant retrograde memory impairment that doesn't have anterograde memory impairment. In the progression of things, anterograde memory -- or new learning -- is impacted first, and as the disease progresses it starts to encompass retrograde memory thereafter.

So unless it's a very specific injury, like a traumatic brain injury where someone doesn't have a recollection of a certain part of their past in

1  
2 any other neurologic condition, including Alzheimer's  
3 disease, if you see somebody that has retrograde memory  
4 impairment, you can guarantee without even assessing it  
5 they are going to have notable anterograde memory  
6 impairment. It kind of falls on a continuum. Does  
7 that answer your question?

8 THE COURT: It does. Thank you. Or it  
9 makes me understand what I was thinking even if it  
10 didn't directly answer my question. So thank you.

11 THE WITNESS: Okay. Would you like me  
12 to try again?

13 THE COURT: No. You answered the  
14 question, but not in the way I asked it. So thank you.

15 THE WITNESS: Okay.

16 BY MR. JASKOWIAK:

17 Q By the way, you mention in your report the term  
18 "premorbid abilities." Is that to establish -- try to  
19 establish a baseline of where Mrs. Herring was at some  
20 point in time in the past to see where she is now  
21 compares to that?

22 A Yes. Yes. That's exactly what it's for.

23 Q And did you find any -- make any findings of  
24 significance in that regard as to where she -- what her  
25 baseline was as opposed to where she was now?

1  
2 A Yes. As I mentioned earlier, you know, when you  
3 have individuals who, let's say, their cognitive  
4 profile -- meaning their performance on tasks, on  
5 objective tasks -- all fall within normal limits. So  
6 normal limits are defined by any scores from low  
7 average to above. So if you have somebody whose  
8 performance has fallen -- live performance has fallen  
9 into the low-average range, you can make the argument  
10 that compared to their peers they're still normal,  
11 they're not displaying a degree of problem that this  
12 cognitive deficit would immediately lead to a  
13 diagnosis -- or a clinical diagnosis.

14 However, in situations like that where  
15 you have -- as a neuropsychologist you look for  
16 premorbid functioning because if you have somebody  
17 whose intellect is -- their intellectual functioning  
18 and their premorbid functioning is estimated to be in  
19 the high-average range, but yet, on testing currently  
20 they're displaying a low-average range of performances,  
21 that's a deficit, that's a decline, there's a  
22 discrepancy there between their current level of  
23 functioning and what the expected level of functioning  
24 would be for that person.

25 We're all built differently. There is

1  
2 plenty of people who intellectually are in the  
3 low-average range, and they're normal psychologically  
4 when it comes to memory, executive skills, and other  
5 things would also be in the low-average range. But you  
6 have to hold the person to a higher standard when their  
7 premorbid functioning is at a higher stage. It becomes  
8 -- that matter of premorbid functioning becomes less  
9 clinically -- well, I don't want to say -- it becomes  
10 less relevant in coming up with a diagnosis, so to  
11 speak, on the clinical level when you have somebody who  
12 has performances in the severe and in the profoundly  
13 impaired range compared to their peers. It's not as  
14 important at that point to know how they were before  
15 when clearly, right now, when you compare them to their  
16 peers, they're performing well below expectation. And  
17 your peers are defined by individuals of your same age  
18 and same level of education and sex in some instances.

19 Q You reference executive control in your report.  
20 Can you tell us what it is and how Mrs. Herring fared  
21 in terms of that concept?

22 A So when you say executive -- so specifically  
23 within executive functions, there is an aspect --

24 Q And it's referenced on Page 18 of your report.

25 A Yeah. Executive control or mental control is

1  
2 really just the ability to hold information in  
3 temporary storage and be able to manipulate that  
4 information or carry that information forward. It's,  
5 you know, kind of if somebody tells you their phone  
6 number -- although you don't have to do that anymore,  
7 now with cell phones you put everything in. But  
8 someone tells you that cell phone number; can you hold  
9 it in your memory long enough to dial it? And it's  
10 simply just that, it's that immediate memory of  
11 information.

12                   So she -- let's see. She fared fairly  
13 well with that. Oh. Performed in the low-average  
14 range. So lower than expectation, but not necessarily  
15 to the point of impairment.

16 Q     And you made a mention about performance on a  
17 measure of maintaining alternating mental sets, you  
18 know, the Trails being --

19 A     Yes.

20 Q     -- severely impaired. What, if any, is the  
21 significance of that finding?

22 A     So, first of all, that's actually one of the most  
23 sensitive tests. When you look at the research, there  
24 are a few tests that stand out as being extremely  
25 sensitive to cognitive impairment as a whole, not

1  
2 necessarily specific to a condition, whether  
3 Alzheimer's disease or a traumatic brain injury or  
4 whatever. But individuals who have some degree of  
5 neurologic compromise, there are tests that have shown  
6 consistent sensitivity in the research. And Trails B  
7 is one of those tests. It's one of those tests that's  
8 been kind of adapted and put into the public domain in  
9 various forms because of its sensitivity and its  
10 popularity.

11 Ms. Herring couldn't even -- she  
12 couldn't complete the task. I actually had to  
13 discontinue it because she couldn't grasp the task  
14 instructions, which are basically you're looking at  
15 one's ability to hold two cognitive ideas or two sets  
16 of information, essentially just numbers and letters,  
17 and being able to alternate: 1A, 2B, 3C, 4D. It's a  
18 very simple task, but becomes, you know, excruciatingly  
19 difficult for individuals that have significant  
20 cognitive impairment. She couldn't even get past the  
21 practice trial where you try to establish the  
22 instructions.

23 Q Now, there is a term that's similar, executive  
24 functioning. How does executive functioning relate to  
25 the term executive control and, you know -- explain



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

what executive functioning is.

A Sure.

Q I suspect there is some differences there.

A Sure. So executive functioning is kind of an umbrella term. It's a higher -- it's a category of cognitive abilities. So executive functions include other cognitive abilities. Within that are mental control, which is kind of very basic attention, essentially, to more complex attention or divided attention like we just talked about with Trails B. So it's a subset of executive -- those are examples of aspects of executive functions.

Executive functions are the higher-level cognitive abilities that really interplay and interact and influence other cognitive abilities as well. So memory is impacted by executive functions, language skills are impacted by executive functions. But on a functional level -- you know, throwing out the data for a second and just looking at one's ability to manage life tasks, carry forth, handle life responsibilities -- executive functions are far beyond -- above and beyond the most influential cognitive abilities that have an impact on one's ability to live independently, to manage their affairs,

1  
2 to make consistent decisions. You know, so executive  
3 functions include planning and organization skills,  
4 self-monitoring skills, being able to ensure that you  
5 act in accordance to your intentions; you know, you may  
6 intend to do something a certain way, but do you carry  
7 forth and behave in the manner that's consistent with  
8 what you intended. An example of that is people that  
9 are impulsive; they know what the right thing to do is,  
10 but do they actually act on that knowledge. So ability  
11 to adapt to change, ability to handle the sequencing of  
12 events and the timeliness of events. I mentioned  
13 planning and organizational skills, but judgment,  
14 reasoning, conceptualization skills, all those fall  
15 under executive functions.

16           And what you see with executive  
17 functions is even a mild degree of compromise in those  
18 abilities can have pretty devastating effects on one's  
19 ability to really manage independently. People can --  
20 if their cognitive deficit is circumscribed and limited  
21 to memory, so all they really have a problem with is  
22 memory, you can compensate for a terrible memory, you  
23 know, whether it be using, you know, your calendar or  
24 using written notes, you know, reliance on some kind of  
25 external strategies and compensatory strategies. You

1  
2 can work around a lousy memory, but if your executive  
3 skills start to be affected, you know, the wheels start  
4 falling off the cart at that point, people really have  
5 a more difficult time, you know, managing and living --  
6 not only living, but managing, you know, certain  
7 aspects of daily skills independently.

8 Q How did Ms. Herring fare in the area of executive  
9 functioning? Break it down into as many subsets as you  
10 can.

11 A Sure. Sure. She clearly had deficits in  
12 executive function; not quite as pronounced as her  
13 memory impairment, but still significantly notable,  
14 clinically notable.

15 Her planning and organization skills  
16 were impaired. Her self-monitoring skills were  
17 impaired. So her ability to keep track of her actions,  
18 being able to be aware of errors in her actions. You  
19 know, it's not always making the error that gets us in  
20 trouble; it's not realizing that we made the error and  
21 not correcting that error that usually gets us into  
22 trouble. And her awareness of her errors was not very  
23 good.

24 She wasn't impulsive. You know, we  
25 mentioned her simple attention was fine. Her parallel

1  
2 processing or her divided attention was significantly  
3 impaired. And, interestingly, that is the one thing  
4 that she readily acknowledged when we were -- during  
5 the clinical interview. She said, "Once I'm distracted  
6 from a task that I'm doing, there's a good chance I may  
7 not get back to that task." So her --

8 Q Did you witness that when you were talking with  
9 her and testing her, that distraction?

10 A Yes. Yeah, on the testing where she had  
11 difficulty, you know, sustaining the rules of the task  
12 and just needed cues to kind of get back on to task.

13 You know, I didn't witness it  
14 functionally in kind of daily skills, but -- you know,  
15 there is -- well, one example of that -- yeah, I guess  
16 I did -- was that, you know, she could tell me about  
17 her medications being in the bathroom, but wasn't able  
18 to find where they were kept in the bathroom. So we  
19 proceeded to search the medicine cabinet, the closet --  
20 or the -- I guess the pantry, linen closet in the  
21 bathroom -- and then another adjacent closet. And at  
22 some point during that task she -- or at some point  
23 during that search she commented on, "What are you  
24 asking me for," like, "What are we looking for?" So  
25 she lost track of the fact that we were looking for her

1  
2 medications. Just one functional example of that.

3 But her higher-level conceptualization  
4 skills are limited. You know, on some basic verbal  
5 abstract reasoning tasks she did fine, she performed in  
6 the average range; but when information becomes more  
7 complicated and you have to reason through it, she had  
8 a tough time with that, was impaired with that.

9 Her functional -- so I -- I separate the  
10 idea of basic judgment and functional judgment, which  
11 are both executive functions. And individuals -- basic  
12 judgment is one's ability to verbalize what the correct  
13 action to take is when you're presented with a  
14 situation. So if I present you with a scenario and ask  
15 you tell me what you would do in that scenario,  
16 somebody who has, you know, still preserved basic  
17 judgment can do that, they can tell you that this is  
18 the action that I would take. She had a tough time  
19 even doing that. Her responses were very simplistic.  
20 She appreciated the need to act in the situation, but  
21 really couldn't problem-solve through what she would do  
22 in those situations.

23 So I commented in the report that even  
24 though basic judgment is okay, her independent, you  
25 know, problem-solving skills really kind of still

1  
2 compromised that. Where that -- how that fares  
3 functionally is, you know, this is not someone who I  
4 see being an immediate safety risk if left alone for  
5 short periods of time. This is not somebody who's  
6 impulsive. This is not somebody who has a tendency to  
7 wander. This is not someone who's really going to act  
8 in an egregious way and put themselves in very  
9 compromising positions. But if a novel situation or  
10 emergent situation were to arise, she really couldn't  
11 problem-solve her way out of that situation, how to  
12 handle that situation.

13 More notably, talk about functional  
14 judgment. And some of that is already -- I kind of  
15 described there. But functional judgment is different  
16 than basic judgment in that somebody may be able to  
17 tell you what the right thing to do or how to handle a  
18 situation is, but how do they act when you actually  
19 present them with a situation, you know, when there is  
20 a -- there can be a discrepancy between what one knows  
21 to do and what one actually does in the situation. And  
22 functional judgment is, obviously, very much more  
23 sensitive to compromise in individuals with dementia.

24 So individuals with dementia who may  
25 still be able to tell you what to do and display good

1  
2 basic judgment may have rather impaired functional  
3 judgment. And, you know, her functional judgment is  
4 impaired. And it's impaired because of her limited  
5 problem-solving, her limited conceptualization skills,  
6 her memory clearly plays a role there as well, and  
7 really her poor insight, her poor understanding of the  
8 nature of her limitations.

9 Q And I think it's probably related to what you've  
10 already said, but in terms of her reasoning abilities,  
11 is she able to carry out simple reasoning abilities  
12 and/or more complex reasoning when presented with a  
13 situation?

14 A It's -- so basic reasoning -- and, you know,  
15 considering that as a construct when you do testing,  
16 you know, the tasks of basic reasoning are rather  
17 simple: you ask people to identify the relationships  
18 shared between items; you ask people to interpret  
19 proverbs, you know, what the meaning behind proverbs  
20 are. Are they able to conceptualize? And, you know,  
21 if I were to say to you "don't judge a book by its  
22 cover," somebody who has very little or concrete, has  
23 impaired basic reasoning will tell you, well, it's  
24 about a book that, you know, well, you look at the  
25 cover and if the cover looks pretty cool, looks pretty

1  
2 exciting, then the book's going to be really exciting  
3 to read; but you shouldn't do that, you shouldn't judge  
4 a book simply by its cover, as opposed to a more  
5 abstract, you know, understanding of the metaphor,  
6 which is really don't judge somebody on first  
7 impressions or by how they look. She even had  
8 difficulty with some of those tasks, with some of those  
9 proverbs. Some of them she was able to interpret  
10 figuratively and give an accurate response; and then  
11 other ones were a little bit more concrete.

12                   But beyond that higher-level reasoning,  
13 that was -- she clearly had difficulty with that. And  
14 a lot of that is based on the clinical evidence,  
15 through the clinical interview part of my interactions  
16 with her. Tests that really get into higher-level  
17 reasoning either, I think, are inappropriate to  
18 administer to someone with this degree of cognitive  
19 impairment, because they're going to do terribly on  
20 those and it can be rather distressing for people like  
21 that, they're just beyond this capabilities.

22                   But also on one test of auditory  
23 comprehension I couldn't get past the initial -- to get  
24 to the higher level of reasoning component you have to  
25 -- the person has to be able to demonstrate that they



1  
2 can comprehend information orally first at a more  
3 simple explicit level. So when you read very short  
4 vignettes to the person, are they able to comprehend  
5 the explicit meaning of that vignette and answer  
6 questions accordingly? She couldn't do that  
7 consistently enough to allow me to get into the more  
8 implicit meaning of that conversation. So by default  
9 really you can deduce that her higher-level reasoning  
10 is impaired just from that. But I saw that on the exam  
11 as well.

12 Q You reference three kinds of capacities in your  
13 report; correct?

14 A I did, yes.

15 Q Okay. And let's start with what you called  
16 decisional capacity. Can you explain to the Court what  
17 you mean by that?

18 A Sure. So decisional capacity is one's ability to  
19 essentially make informed decisions about their  
20 healthcare, their welfare, and, you know, their ability  
21 to manage their finances or make decisions leading to  
22 the management of their finances. You know, the law  
23 has set a definition for how to -- you know, what goes  
24 into, what entails decisional capacity. So I look at  
25 that as the criteria for coming to conclusions about

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

one's decisional capacity.

Q Based on your interview with Mrs. Herring, the test that you administered, the interviews with Arthur Herring, with her daughter Jill Scott Herring, and all the information which you took into account, along with your professional experience and education, were you able to form an opinion within a reasonable degree of professional certainty whether or not Mrs. Herring met the definition, the criteria of an incapacitated person under the law to make decisions?

A Yes, I did.

Q And tell us what that opinion is, please.

A That she meets the criteria for an incapacitated person -- a totally incapacitated person, based on criteria set forth by law.

Q Were you able to form an opinion as to whether or not you believe that she was susceptible to persuasion and undue influence in attempting to make decisions?

A Yes. Yes, I was.

Q And what made you believe that she was? If you can just summarize that.

THE COURT: Well, let me just stop. The question is "Were you able to make a decision?" And you said yes. So what was your decision as it related

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

to her --

THE WITNESS: Yes.

MR. JASKOWIAK: I'm sorry.

THE COURT: -- her ability to be --

THE WITNESS: I was able to make a decision, and my opinion on the matter was that Ms. Herring is susceptible to undue influence.

BY MR. JASKOWIAK:

Q Did you have any concerns whether or not she would be at risk for any kind of financial exploitation or mismanagement of her funds if she did not have someone looking out for those funds --

A Yes.

Q -- a guardian or somebody else?

A Yes. The nature of her cognitive impairment is such that she is very susceptible to that.

Q One of the things that the Court asked you to do was to do a retrospective evaluation of Mrs. Herring going back to January of 2020, and -- so basically a year and a half or so. In trying to make that evaluation, how did you go about -- first of all, I assume that you were able to do that; correct? You were able to go back and to evaluate as to what her condition was going back to January of 2020?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A So yes. In my report I documented in December of 2020, simply because of the --

Q The POA?

A Yes. And the -- yes. But I was able to opine on that.

Q Did it preexist -- did your opinion about her incapacity go back beyond the December 2020 power of attorney, et cetera, that were drawn up? The power of attorney, the trust, the will, that kind of thing. Did your finding of incapacity extend back further in time beyond November, December of 2020 when they were brought up?

A If the question is beyond the last -- that year, yes. I probably could not provide an opinion, you know, five years before that, but yes. No, certainly for the last year, yes, I can --

Q You reviewed Dr. Kuhar's reports you said?

A I did.

Q Did you take into account, at least in part in forming your opinion, the reports and records of Dr. Kuhar? In part.

A Yeah. It's a hard -- I hesitate because there was some inconsistencies in Dr. Kuhar's report. You know, she references mild cognitive impairment, then

1 dementia, then going back to mild cognitive impairment  
2 later on, and sometimes uses it interchangeably, which  
3 is not -- it's not possible. One progresses from mild  
4 cognitive impairment to dementia, if you're using that  
5 as a clinical diagnoses.  
6

7 But, yes, I did use her notes as a way  
8 to at least glean some opinion from her as a  
9 professional who has seen Ms. Herring on a number of  
10 occasions. But my opinion is -- and also on the fact  
11 that there is a relative stability in her cognitive  
12 decline, as noted by Dr. Kuhar over the course of the  
13 last year -- at least the last year. So I wouldn't  
14 expect a dramatic degree of change in that point of  
15 time in the last year.

16 But really, my final opinion, really, is  
17 based upon my knowledge of the course of the disease.  
18 Knowing what I know about Alzheimer's disease and  
19 specifically dementia as a whole, you can easily come  
20 to an opinion about how one would fare going back  
21 several months.

22 Q In your professional opinion today, what is the  
23 most accurate opinion of -- the most accurate diagnosis  
24 of Mrs. Herring's condition?

25 A That she has Alzheimer's disease, which is

1  
2 resulting in diagnosis of dementia. It's alternatively  
3 termed "major neurocognitive disorder." It's of  
4 early-moderate severity. So early-moderate severity is  
5 defined by the fact that the person is no longer able  
6 to independently compensate for their cognitive  
7 deficits despite the use of external supports, and  
8 cannot independently compensate for their deficits  
9 despite the use of external supports, so they're more  
10 reliant on other individuals to manage those aspects of  
11 daily living.

12 Q Do you have a belief as to whether or not  
13 Mrs. Herring needs a guardian of the estate and/or a  
14 guardian of the person?

15 A I do.

16 Q And what is that opinion, sir?

17 A That she is in need of a plenary guardian of the  
18 estate and of the person.

19 Q And that moves me to the second part. You talk  
20 about requisite capacity. And, in part, requisite  
21 capacity, we're talking about the powers of attorney,  
22 the will, the trust that were redone at the end of last  
23 year. Explain, if you would, for the Court your  
24 understanding of what requisite capacity is as opposed  
25 to decisional.

1  
2 A Sure. You know, my understanding of requisite  
3 capacity is it is a separate legal construct than  
4 decisional capacity. It's in some ways can be looked  
5 at as kind of a lower-level capacity. Someone can have  
6 impaired decisional capacity, but may still retain  
7 requisite capacity. But, specifically, my  
8 understanding of requisite capacity is that does the  
9 person have the ability to draft a will, revoke an old  
10 will, and re-draft a new one? I'm sorry. Not  
11 "will" -- excuse me. Power of attorney. Excuse me.

12 Q Thank you. Does that include the ability to  
13 understand the authority that you're giving an agent?

14 A Yes. Yeah. So there is -- you know, the three  
15 accepted criteria that I noted in my report that I use  
16 to help guide my opinion, based on my clinical exam of  
17 Ms. Herring, so the person has to be able to understand  
18 the nature of the authority that they give the agent.  
19 Their power of attorney, they have to essentially  
20 understand their assets and, you know, what they own,  
21 and that are subject to that power that they give to  
22 the agent. And that they have to be able to  
23 understand, you know, just the plain language of the  
24 document that they are -- you know, that they are  
25 signing.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Let's start with the idea of what Mrs. Herring has that would be subject to the power of attorney. Does she have the requisite capacity to understand what assets she owns? Does she know what she owns?

A It's very limited. She knows she owns her house. She knows she owns a car. She knows that she has money, really could not venture a guess as to what her estate is worth. Her go-to response to that was repeatedly, you know, "That is something that the men handle." I'm paraphrasing there. But it was consistently that was her default response as to not really having kind of awareness of the nature of her estate; that is, "This is something that the men handled in my generation," and something her husband handled.

She wasn't surprised when I shared what information I had about the extent of her estate, so she wasn't surprised by that. But, you know, any venture of a guess of what she's worth was nil. She even actually estimated her home initially to be between six and seven thousand dollars, I believe; which is not necessarily a reflection of lack of knowledge of -- that is -- when you look at that response, that is much more of a reasoning, an impaired



1 reasoning response. Anyone -- you know, you may not  
2 know what the value of your home may actually be, but  
3 you can reason through the fact that it's clearly going  
4 to be worth much more than six or seven thousand  
5 dollars in this day and age. So that was just one  
6 example.

7  
8 She really couldn't tell me where her  
9 money was invested. She was able to recognize the  
10 investment firm when I named them, but she couldn't  
11 tell me the bank that she has her accounts in. And  
12 it's just one example of kind of being susceptible to  
13 influence, you know. She said, "Well, it's down on  
14 309, Route 309, and I believe it starts with a C." So  
15 I don't know what's at 309, but I ventured a guess and  
16 said Citizens Bank, which she promptly agreed that that  
17 was the bank. But that's not accurate; it's  
18 Harleysville. And I just didn't have that information  
19 at that time about the bank.

20 Q Do you have an opinion as to whether or not she  
21 would be able to understand the gravity of the  
22 authority that she would be giving to an agent under  
23 power of attorney and if she were to sign a power of  
24 attorney?

25 A No, she does not. She can -- she has a fair

1  
2 understanding of what a power of attorney means at a  
3 very superficial level. But really understanding what  
4 the nature of the power that she gives to someone in  
5 that role as agent, she really does not -- she does not  
6 understand.

7 Q And do you have an opinion within a reasonable  
8 degree of professional certainty as to whether or not  
9 she would have been able to understand that in  
10 approximately November of 2020, December of 2020, when  
11 a new power of attorney was drafted?

12 A I do have an opinion. I believe that she did not  
13 have the capacity at that time.

14 Q Okay. And the third is the testamentary capacity.  
15 There is another legal standard for that; all  
16 similarly, obviously, related to one another, but  
17 slightly different in the way it's articulated under  
18 the law.

19 A Yes.

20 Q You mentioned the first standard about  
21 understanding the natural objects of her bounty. She  
22 knew who her two children were; correct?

23 A She did. Yes.

24 Q Okay. We've already talked about the estate, what  
25 her estate consists of, which would be the second

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

criteria. She did not know what her estate was;  
correct?

A Yeah. No, she did not know what her estate was.

Q And what about the -- about what was being done  
with it or how it was being administered or any of  
that?

A So she expressed her opinion on that -- or her  
wishes to that. It was very vague, it wasn't very  
specific. And it was -- essentially she said she  
wanted Art to have a little more than Jill, really  
couldn't provide me with the specifics of what "a  
little more" meant. She tended to focus on the fact  
that she wanted Art to have the house: Art lives here,  
he helps me, he deserves the house. Jill's already  
settled, she doesn't need the house.

But also went on to express her concerns  
about what -- if she didn't will the house to Art, what  
Jill would do with that, that she would not allow Art  
to stay there and that she wants the house to herself.  
Really couldn't provide me any details as to how she  
came to those beliefs. And it wasn't -- I don't  
believe that it was lack of -- I think her inability to  
not be able to provide those details, her inability to  
not be able to provide those details -- or her

1  
2 inability to provide those details was a reflection of  
3 her dementia. You know, she has this idea that's  
4 there, but really has nothing grounding it to evidence  
5 and reasoning behind it, which raised my concern about  
6 her -- again, her testamentary capacity. Even though  
7 she could tell me, you know, who her children are, she  
8 really couldn't tell you what the nature of her estate  
9 was. But I certainly had a feel that she does not have  
10 a good understanding as to why the will needs to be  
11 changed from its original form.

12 Q Did you have any concerns about the possibility of  
13 undue influence or suggestibility of any kind with her?

14 A I do, yes. By the -- again, by the nature of her  
15 cognitive impairment, her dementia, she is more  
16 susceptible to influence, she's very suggestible. I  
17 saw that in my exam, on objective testing, and on just  
18 interaction, my interaction, my clinical interaction  
19 with her. Just the tendency to confabulate, create --  
20 you know, a reality that is not accurate in its detail  
21 which she does recall.

22 You know, in speaking with her daughter,  
23 you know, Jill, you know, she notes that this  
24 confabulation, she described it in clinical interview  
25 as kind of some delusions and paranoia. And even

1  
2 though clinically I would not characterize them as  
3 delusions by definition, there is this element of  
4 paranoia. And it's more because of this kind of  
5 confabulation that's kind of created a belief system  
6 that may not be based in true reality. And a lot of  
7 that can certainly be the result of what is being said  
8 to her, whether about Jill or about the situation as a  
9 whole.

10 Q You mentioned that Mrs. Herring couldn't tell you  
11 why she changed the will or the trust or the POA. But  
12 was she able to articulate with any specificity as to  
13 what was changed --

14 A No.

15 Q -- from what to what?

16 A No, she could not. She couldn't tell me what  
17 changes were made or even the fact that changes were  
18 made to the distribution of the estate. Her response  
19 to that was, "That's something that I still have to  
20 look into"; even though, in reality, it's already been,  
21 you know, decided, you know, the new will has been  
22 drafted.

23 THE COURT: Did she recognize she had  
24 even made changes?

25 THE WITNESS: She -- it was very

1  
2 inconsistent, it was very vague. She knew that she had  
3 met with someone, but really could not tell me the  
4 nature of the -- you know, the details or the nature of  
5 that meeting and really what the end result was, which  
6 is the distribution of the estate.

7 BY MR. JASKOWIAK:

8 Q Did she share with you how she got to the attorney  
9 who prepared those documents in November and December  
10 of 2020?

11 A That I do not recall. I don't want to -- I don't  
12 want to speculate. Yeah, I don't want to speculate on  
13 that. But it's -- she really could not provide me any  
14 details on that.

15 Q And --

16 A Of note, you know, just to add -- just of note,  
17 her longtime estate planning attorney Ronald  
18 Fenstermacher -- I'm probably butchering his name  
19 there.

20 Q It's easier than Jaskowiak; you did a good job.

21 A Yeah. She recognized the name, but really had --  
22 just was very vague in really kind of even explaining  
23 to me what her relationship to him was, which is rather  
24 surprising in some ways, given, I guess, the  
25 long-standing relationship that they had.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Did you ask both of her children whether or not they had seen a decline in their mother's cognitive abilities?

A I did.

Q Okay. And did either or both children acknowledge a decline to you that they had observed?

A Yes, they both did, although to different degrees.

Q Okay. So in some -- based on everything that you reviewed, all the documentation you reviewed, the interviews that you had, the tests that you took, your education and your experience, do you believe that Mrs. Herring is an incapacitated individual who requires a guardian of her estate and person?

A I do.

Q Have all of the opinions that you've given today, have they all been within a degree of professional certainty?

A They are.

Q And the report that is marked as H-2, with the -- both the report and the narrative, did you prepare both of those?

A I did.

Q Okay. You made a recommendation in the report portion of it, the expert report portion of it, about

1  
2 her being able to remain at home with an aide. Is that  
3 a part of your recommendation today, that Mrs. Herring,  
4 at present, can stay remaining in her home provided  
5 that she has proper assistance?

6 A Yes. It doesn't necessarily -- the template  
7 doesn't allow for me to change aide to something else,  
8 so I checked that box. But the nature of my response  
9 there is that, yes, she's appropriate to remain in her  
10 home as she is right now with daily supervision. So  
11 she definitely needs daily supervision. She does not  
12 necessarily, at this point in time, still need 24-hour  
13 supervision; although, as close to that as she can I  
14 would recommend, given the nature of her functional  
15 judgment impairments if anything were to arise, you  
16 can't predict when that's going to be. So ...

17 Q So if something should arise at 2 o'clock in the  
18 morning, would you question whether or not she has the  
19 judgment, the insight, the reasoning to be able to deal  
20 with that new situation which might come up?

21 A I don't think that she -- I think that she would  
22 have a tough time in being able to handle that on her  
23 own. The presumption being that at 2 o'clock in the  
24 morning there would be somebody there with her. You  
25 know, if her son is living with her, I would presume



1 that he would be there at that time.

2 Q Is this condition going to stay the same, improve,  
3 or decline?  
4

5 A It's going to decline. By definition dementia is  
6 a progressive neurologic condition.

7 Q Thank you.

8 MR. JASKOWIAK: That's all I have. And  
9 I would offer H-2 into evidence, Your Honor.

10 THE COURT: Okay. And I don't know if  
11 we've admitted H-1, but we will admit both --

12 MR. JASKOWIAK: H-1 was the curriculum  
13 vitae.

14 THE COURT: Correct. I just didn't know  
15 -- I don't think we admitted it into evidence.

16 MR. JASKOWIAK: Oh. Okay. H-1 I would  
17 also.

18 (Jane T. Herring's Exhibits H-1 and H-2  
19 received in evidence.)

20 THE COURT: With that, Ms. Camp?

21 CROSS-EXAMINATION

22 BY MS. CAMP:

23 Q Good morning, Dr. Ledakis. Thank you for being  
24 here.

25 A Good morning.

1  
2 Q Just getting myself together here. Kind of  
3 preliminarily, in connection with your appointment by  
4 the court, the court also authorized you to obtain and  
5 review any medical records or health-related records of  
6 Ms. Herring in order to prepare your report. How was  
7 the historical records -- how were they obtained?

8 A How were they obtained?

9 Q Are you aware?

10 A So I actually -- I reached out to Dr. Kuhar's  
11 office myself and asked for them to send me any  
12 available records dating back, you know, as far back as  
13 they could send me. And they sent me records from 2018  
14 onward.

15 Q Did you happen to ask Arthur Herring for any  
16 medical records or health-related information of  
17 Mrs. Herring in connection with your report?

18 A I did not ask him personally for that information.

19 Q Did you review any other neuropsychological  
20 reports or psychological reports such as yours that  
21 would traditionally be submitted at a guardianship  
22 hearing like today?

23 A I did not review. I am aware that there was some  
24 evaluation done in the past, but I did not.

25 Q Did Arthur articulate that to you, that there was

1 an evaluation in the past? Do you recall?

2 A Yes. Arthur, at one point, did indicate that. I  
3 don't recall if it was our first meeting or our second  
4 meeting, but he indicated that there was.

5 Q Did he happen to mention what the finding of that  
6 evaluation was?

7 A That I do not recall.

8 Q And we've talked a little bit about Mrs. Herring's  
9 current residential situation with Arthur in the home.  
10 Should he stop residing in the home at some point in  
11 the future, what would you recommend in terms of the  
12 care that she might need?

13 A I'm sorry. Do you mind repeating that question?

14 Q Sure.

15 A Just I want to make sure I'm answering the  
16 correct --

17 Q Yes. So if Mrs. Herring's son no longer resides  
18 in the home with her and she's living at home alone,  
19 what recommendations might you have in order for her to  
20 safely stay in the home?

21 A So if Arthur is not capable of continuing to  
22 reside with her or chooses not to reside with her, she  
23 will need someone there daily. At this point in time  
24 she does not need 24-hour supervision, but I would -- I  
25

1  
2 would recommend that as close to 24-hour supervision as  
3 you can get, it would be in her best interest.

4 This is a condition that is progressive  
5 and, you know, again based on concerns about her  
6 functional judgment. You know, you can't predict when  
7 emergent situations are going to arise and I think if  
8 one were to arise she's not going to be able to handle  
9 it. Again, her basic safety is fine, she's not going  
10 to wander. At this point in time, she's not -- I don't  
11 fear that she's going to set the house on fire or  
12 behave in a manner or put herself in a position that is  
13 very compromising. But, again, if anything were to  
14 arise which you can't predict it would be a problem.

15 Q And I'm flipping through your expert report here.  
16 On Page 3 we have -- there is a section in the table at  
17 No. 9, the ability to provide -- to give informed  
18 consent. You have marked "needs some help." Can you  
19 explain what kind of help Mrs. Herring might need in  
20 order to give informed consent?

21 MR. HERRING: Your Honor, what -- I'm  
22 sorry. I didn't hear what she was saying.

23 MS. CAMP: Sure. Page 3 of the expert  
24 report, No. 9, and it's the third one down.

25 THE COURT: Are you there, Mr. Herring?

1  
2 MR. HERRING: Ability to give informed  
3 consent?

4 MS. CAMP: Correct.

5 THE COURT: Right. That's what she's  
6 asking about. Are you at that place?

7 MR. HERRING: Yes.

8 THE COURT: Okay.

9 Go ahead and ask your question,  
10 Ms. Camp.

11 THE WITNESS: So Ms. Herring is -- she's  
12 able to process information that is presented to her in  
13 a straightforward, simple manner. However, beyond  
14 that, her ability to really consider the options or  
15 consider the different options that lead to a decision  
16 and the consequences -- even if there are foreseeable  
17 consequences to those decisions -- I think is where she  
18 falls short, she would be impaired. Again, these are  
19 my opinion about her decisional capacity. But I think  
20 in that regard she can't really give informed consent  
21 to certain things because of this inability to properly  
22 weigh and consider the different options and the  
23 consequences of going with one decision versus going  
24 with another.

25 BY MS. CAMP:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q So we talked a little bit about your discussion with Mrs. Herring about her finances, you know, mostly her assets. But in terms of the regular management of her finances -- I don't know if we covered this already -- did she discuss at all with you how her bills are paid?

A Yes. She mentioned -- her response to that question to me was that she handles her bills, that she pays her bills. Art helps her with writing out the checks or mailing -- or mailing the checks, I believe, but not -- but she handles her bills is her belief on that.

Q And in your discussions with Arthur or Jill, were you told otherwise?

A Yeah. That's not accurate.

Q Actually, I just want to point to Page 14 of your neuropsychological evaluation. I think we have a little bit of more specific detail here. It's in this middle paragraph, halfway down in the paragraph. You state, "Her son reported that all reoccurring monthly bills are set up for auto deduction from her checking account and that his mother will typically only write out checks for her hairdressers appointments." Is that right?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A Yeah.

MR. HERRING: Where are we?

THE COURT: In Exhibit 2, H-2. At the top right-hand corner it says Page 14. On the bottom it says 19 of 32.

MR. JASKOWIAK: I'm showing Mr. Herring.

THE COURT: The third full paragraph.

MR. HERRING: Thank you.

Thank you, Your Honor.

THE COURT: Are you there?

MR. HERRING: Yeah, I'm here.

THE COURT: All right.

Continue, Ms. Camp. You were asking about the automatic bill pay.

BY MS. CAMP:

Q Yes, the automatic bill pay and that you were informed that she only writes checks for her hairdresser appointments. Is that right?

A Yes. That's what I was told by Mr. Herring at the time.

Q All right. And I know Mr. Jaskowiak just asked you a little bit about Mrs. Herring's recollection of signing these new documents and your discussion with her about that. I'd like to turn to Page 23 of the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

neuropsych evaluation at Page 2.

THE COURT: Ms. Camp, just so we're clear, 23. Are you using Dr. Ledakis's numbers at the top?

MS. CAMP: Numbers at the top, correct. I'm sorry, Your Honor.

MR. JASKOWIAK: On the exhibit, Your Honor, it's Page 28 out of 32.

MR. HERRING: Twenty-eight now?

THE COURT: So the same report, sir.

MR. HERRING: Yeah. Right. Right.

But --

THE COURT: If you look at the bottom it says 28 of 32 --

MR. JASKOWIAK: Those.

THE COURT: -- and if you look at the top right-hand corner it says 23. They're just legal -- two different --

MR. HERRING: Okay. Thank you.

BY MS. CAMP:

Q So the last full paragraph towards the end there, about halfway through you state, "She was clearly unaware, however, as to whether this designation was just for financial power of attorney or both health



1 care and financial power of attorney. She also could  
2 not confidently state when this change occurred, the  
3 means by which this was facilitated, or who facilitated  
4 the drafting and execution of the document." So does  
5 that refresh your recollection a little bit more --

7 A Yes.

8 Q -- about whether she knew who the new scrivener  
9 was?

10 A Yes. That is what I thought, but I, again, did  
11 not want to perjure myself.

12 Q That's why I made a note of it.

13 We talked a little bit about  
14 confabulation. Am I saying that correctly?

15 A You are.

16 Q So in the confabulation, can you just go through  
17 that a little bit more with me here on -- is that --  
18 can you just explain what confabulation is for her?

19 A Sure. Sure. So confabulation is -- in and of  
20 itself confabulation is not a pathologic symptom, you  
21 know, we all confabulate. I'll use the example of all  
22 of us are at a bus stop and we're just waiting for the  
23 bus, minding our own business, and we witness an  
24 accident, a car accident. So police arrive to the  
25 scene, we have several witnesses, take statements from

1  
2 whoever was there. The gist of your story is probably  
3 going to be the same as the gist of my story, and the  
4 gist of yours is going to be the same as mine, but your  
5 details may be a little different than yours, or versus  
6 mine.

7           So when our memory is functioning  
8 normally, that doesn't -- we all confabulate, we all  
9 create some memories that are not accurate. We don't  
10 process everything we think we process; there is always  
11 little gaps in our memory. But the way your brain  
12 works is it doesn't like piecemeal information, it  
13 doesn't like gaps. It likes a complete story in order  
14 to make sense, in order for that information to be  
15 retained for long-term storage. So you fill in those  
16 gaps with what sound logical.

17           And when one's memory is not impaired,  
18 under normal conditions, those gaps are very small.  
19 But as people develop dementia, in particular with  
20 Alzheimer's disease, their ability to form new memories  
21 is increasingly impaired. As a result of that, those  
22 gaps are now wider, they're bigger.

23           And if you put yourself in the position  
24 of someone with dementia who goes back to try to recall  
25 a recent event that occurred and they constantly came

1  
2 up with a blank because that memory was never stored  
3 and not retained, you would be in -- that person would  
4 be in a constant state of distress. It would be very  
5 anxiety-provoking when you go back to try to recollect  
6 something and you came up blank every time.

7           So what your brain does to help  
8 compensate for that, to protect itself from the disease  
9 so to speak, is to confabulate, to create a reality, so  
10 when a person goes back to reach for that information  
11 they pull something out. In most cases that  
12 information is relevant and appropriate. If you ask  
13 somebody what they ate for breakfast today, you know,  
14 they'll usually defer to a response that is something  
15 typical of what they normally would eat every day, even  
16 though in reality that may not be accurate. But as the  
17 dementia progresses the confabulation can skew a little  
18 bit more from reality -- well, by definition at that  
19 point it is skewed from reality, but it can become a  
20 little bit more pathologic and distressing or  
21 problematic in how that person recalls the information.

22           THE COURT: So, Dr. Ledakis, am I  
23 hearing you correctly: Confabulation may not be  
24 accurate information that's being delivered from a  
25 person with dementia, but it's not intentionally

1  
2 dishonest?

3 THE WITNESS: That's correct. It's not  
4 volitional. The person doesn't -- isn't lying about  
5 what they recall. And in most cases, most cases  
6 they're not even aware that they're doing it. They're  
7 reaching into their repertoire of knowledge of memories  
8 and pulling out what they think is accurate. So the  
9 person -- the people around them that know them and  
10 know the accuracy of the information can pick up on the  
11 fact, wait, that's not true, that's not what happened,  
12 but the person themselves believes it to be true. But,  
13 again, it's not volitional.

14 THE COURT: Thank you.

15 Ms. Camp.

16 BY MS. CAMP:

17 Q Can confabulation be exacerbated by information  
18 that's provided to you from third parties?

19 A Absolutely. That's a lot to do with undue  
20 influence, you know, just presenting information can  
21 lead to the creation of reality. And, again,  
22 especially when you have somebody whose ability to  
23 reason through information is impaired as well.

24 Q And we talked a little bit about your discussion  
25 with Mrs. Herring about her feelings of mistrust maybe

1  
2 towards her daughter. We're not exactly sure why it is  
3 that they don't see eye to eye, I think you said, at  
4 one point in a report. Based on your evaluation of  
5 her, is it your opinion confabulation may be what is  
6 leading to that conclusion of hers?

7 A Yes. Yeah, I do believe that.

8 MR. HERRING: I'm sorry. I did not hear  
9 her last question.

10 THE COURT: She asked if confabulation  
11 is what is causing that, meaning "that" is your  
12 mother's opinion of Jill. And the answer was yes.

13 BY MS. CAMP:

14 Q And you may not have covered this in your  
15 discussion with Mrs. Herring, which is fine, but did  
16 she happen to talk to you at all about the last time  
17 she saw or spoke with Jill?

18 A I do not recall that that was specifically a  
19 question that I had asked or gotten a response to.

20 Q That's fine. And you had previously testified  
21 about her orientation to time is severely impaired at  
22 this point. Do you believe that Mrs. Herring would be  
23 able to accurately articulate when the last time was  
24 that she spoke to or saw Jill?

25 A Not with any degree of confidence that I would

1  
2 have in that.

3 Q And I just have one final question, just a little  
4 bit of a curveball. In speaking with Mrs. Herring or  
5 reviewing her records, are you aware of whether or not  
6 she's received the vaccine for COVID-19?

7 A I am aware that she has not received the vaccine.

8 Q Thank you.

9 MS. CAMP: I have no further questions,  
10 Your Honor.

11 THE COURT: All right. Mr. Herring, it  
12 is your opportunity to cross-examine Dr. Ledakis now.

13 CROSS-EXAMINATION

14 BY MR. HERRING:

15 Q The two times that you saw my mother, the first  
16 time, how much -- do you know --

17 THE COURT: Actually, Mr. Herring, I'm  
18 going to ask you to bring the microphone close to you.

19 MR. HERRING: Okay.

20 THE COURT: If you could just move it  
21 forward and make sure it's on? Thank you.

22 BY MR. HERRING:

23 Q The first time you saw my mother, how much time,  
24 approximately, did you spend with her?

25 A About three hours, I believe.

1  
2 Q Would it surprise you to know that you only spent  
3 two and a half hours? I mean, given --

4 A It wouldn't surprise me because it was  
5 somewhere -- okay, two, two and a half hours. It was  
6 probably a little closer to three.

7 Q I don't mean to be sarcastic, but doesn't that  
8 imply that your memory is not perfect?

9 THE COURT: That's not an appropriate  
10 question. That would be argumentative. So that's  
11 sustained. So these are questions about his testimony.

12 MR. HERRING: Okay.

13 BY MR. HERRING:

14 Q The second time, approximately how much time did  
15 you spend with her?

16 A I spent about a little over an hour with her.

17 Q The reason why I brought it up, I was just curious  
18 because --

19 THE COURT: You don't get to -- this is  
20 just questions. You will have an opportunity to  
21 testify. You don't need explanations. It's just  
22 questioning time.

23 MR. HERRING: Okay.

24 BY MR. HERRING:

25 Q Approximately how much time did you spend when you

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

were talking to me on the phone?

A Probably close to an hour.

Q Approximately how much time did you spend talking to the former plaintiff?

THE COURT: Her name is Jill, we'll all use that. And she's not the former plaintiff, she is the petitioner.

How much time did you spend speaking to Ms. Scott Herring approximately?

THE WITNESS: Probably approximately an hour as well.

BY MR. HERRING:

Q Can you state whatever comments that she made to you about her mother?

A Can -- can I state what kinds of comments?

Q Are you able to state what some of the comments that were made by the plaintiff -- or petitioner --

THE COURT: Let me stop. Are you asking what Jill told him as part of his evaluation?

MR. HERRING: Yes.

THE COURT: Okay. Let's just ask that. What did Jill tell you about her mom as part of your evaluation?

THE WITNESS: Sure. A lot of it is in



1 the report or summarized in my report. But she  
2 expressed her concerns about the declines that she has  
3 seen in her mother dating back to 2018. She told me  
4 about the -- her attempts to intervene and have her  
5 primary care physician, Dr. Kuhar, address those  
6 issues. She informed me of the starting of a  
7 medication -- specifically Aricept, or donepezil by its  
8 generic name -- for the treatment of her dementia. She  
9 indicated to me that there were -- that medication,  
10 even though she felt that there was some benefit to  
11 that medication with respect to some of the emotional  
12 lability that she had seen in her mom in her  
13 interactions with her, but that medication was  
14 discontinued soon after it was started. I believe that  
15 was discontinued December of '19 -- or, actually,  
16 January of '20 -- because of supposed side effects,  
17 which included auditory hallucinations, she was hearing  
18 music.

20 She expressed to me her concerns about  
21 the -- this -- the progression of her mother's -- your  
22 mother's -- cognitive decline, her memory impairment,  
23 her difficulties with organizational skills, the  
24 concerns that she was seeing what she was describing as  
25 delusions. Again, I don't see that as necessarily

1 delusions, but confabulations, but increasingly  
2 interfering with her ability -- meaning, I'm sorry,  
3 Jill's ability -- to assist your mother with respect to  
4 communicating with her financial advisors, her  
5 accountant, because of this kind of increased paranoia  
6 that she was displaying toward Jill. That is --  
7 offhand that is what I recollect. Like I said, I  
8 summarize the nature of that discussion in the report.

9  
10 BY MR. HERRING:

11 Q Well, I don't know if you had heard, but I had  
12 only about a two-hour ability to review the report. So  
13 I apologize if I'm asking you questions that you had in  
14 your report.

15 You just stated something about she --  
16 the petitioner had some kind of paranoia to her. Can  
17 you explain that?

18 A That petitioner had paranoia?

19 Q That's Ms. Herring.

20 THE COURT: That wasn't part of --

21 BY MR. HERRING:

22 Q You said something about --

23 THE COURT: That wasn't part of his  
24 answer.

25 MR. HERRING: I'm sorry. What?

1 THE WITNESS: I don't think I understand  
2 your question.

3 MR. HERRING: Okay.

4 THE WITNESS: Can you restate your  
5 question, please?

6 BY MR. HERRING:

7 Q You just said something about that Ms. Herring  
8 said something about Jane, my mother, had some kind of  
9 paranoia to her or something?

10 A Yes.

11 Q Can you explain what you're referring to or what  
12 she said or something?

13 A That she was -- she would grow increased -- that  
14 she, in her more recent interactions, in an attempt to  
15 serve as a liaison with communicating with the  
16 financial advisors, with the financial institutions, in  
17 her role in assisting with the management of her  
18 mother's -- your mother's -- finances, your mother has  
19 become increasingly suspicious, paranoid, resistant to  
20 allowing her to communicate and becoming more verbally  
21 accusatory and emotionally responsive or labile in  
22 those situations.

23 Q Okay. So, in other words, when Ms. Herring was --  
24 had asked the question, or whatever, my mother was

1  
2 maybe a little argumentative with her? Is that how I'm  
3 trying to understand this, that my mother didn't always  
4 agree with what she was saying?

5 MR. JASKOWIAK: Your Honor, I have a  
6 request that for the purpose of keeping the record  
7 clear since we have three people named Herring in this  
8 picture, instead of referring to his sister as  
9 "Ms. Herring," if he could refer to her as either "my  
10 sister" or as "Jill"? I think it would be clearer for  
11 the purpose of the record because it is going to get  
12 awfully confusing otherwise. Potentially.

13 THE COURT: Right. So we will refer to  
14 the petitioner as "Jill" or "sister" or "daughter";  
15 Mrs. Herring as either "Jane" or "Mom"; and Mr. Herring  
16 is either -- we only have one Mr. Herring, so we can go  
17 with "Mr. Herring" or "Arthur" or "son."

18 So, with that, your question,  
19 Mr. Herring.

20 BY MR. HERRING:

21 Q All right. So, in other words, if the daughter  
22 said something to my mother and my mother disagreed  
23 with it, was that an indication, supposedly, by the  
24 daughter that she was paranoid or something?

25 A I don't know the specifics of those conversations

1  
2 or those incidents. But that -- my impression was that  
3 this was a change in behavior, that for a number of  
4 years preceding this change in behavior Ms. Herring,  
5 your mother, was agreeable to allowing Jill, your  
6 sister, to assist her with communicating and assisting  
7 with communication and connecting her with her  
8 financial advisors and accountants. But that recently  
9 that had become -- there had been this display of  
10 change in behavior over the last year where she was no  
11 longer as -- was no longer allowing her to do that and  
12 was also falsely recalling information that she  
13 believes was said to her or just misconstruing  
14 conversations that were had.

15 Q That my mother was misunderstanding conversations  
16 and so forth?

17 A Yes. That had taken place between your sister and  
18 your mother.

19 Q So you blame that all on dementia and Alzheimer's;  
20 is that correct?

21 A It is a symptom of dementia and Alzheimer's.

22 Q So but -- so there could not have been any other  
23 reason why my mother suddenly stopped accepting things  
24 that the daughter said or what the daughter wanted  
25 to -- it was only because of Alzheimer's and dementia?

1  
2 And I'm using them interchangeably, I know there is a  
3 little difference. But do I understand you correctly,  
4 you're basically saying all those reasons that my  
5 mother did not want to trust her anymore or wanted to  
6 deal with, trust her in financial matters, all that was  
7 blamed -- you're claiming is because she has dementia  
8 and Alzheimer's?

9 A I am saying that it is a symptom consistent with  
10 dementia and Alzheimer's disease specifically --

11 Q But you're --

12 A Let me finish my answer. Now I lost my train of  
13 thought.

14 Q Oh.

15 A I'm saying it is a symptom of dementia or  
16 Alzheimer's. I am not -- there could have been another  
17 reason. But when I asked your mother to elaborate on  
18 the reasoning behind her distrust or mistrust of her  
19 daughter, your sister, she could not provide me with  
20 any details to that, which is also symptomatic of  
21 dementia, specifically of this confabulatory belief  
22 system, where someone holds a belief but doesn't have  
23 any foundation to that belief system, that belief just  
24 simply exists.

25 Q Well, I know, obviously, you're not a woman, but a

1 woman would understand about maternal love and motherly  
2 love. You don't leave any room, margin that maybe my  
3 mother just didn't want to admit that her daughter was  
4 doing things against her and had done things that were  
5 documented that would indicate why she didn't trust her  
6 anymore? I mean, isn't that a far more plausible  
7 reason than just writing it off with dementia and  
8 Alzheimer's?  
9

10 A Your mother was clearly explained the nature of my  
11 visit and what my role was there. She was aware of the  
12 petition that's -- that was filed for consideration of  
13 her incapacity. Someone who is not cognitively  
14 impaired and doesn't -- and has good judgment would be  
15 cooperative with the evaluation and provide information  
16 that would be able to substantiate their thinking,  
17 their decisions. Your mother, Ms. Herring, was not  
18 able to do that. She has a belief and simply kind of  
19 expresses that belief in generalities without any  
20 specific detail.

21 Q Well, once again, her feelings were coming into  
22 play where she was not going to want to have to admit  
23 to a stranger that her daughter had been stealing from  
24 her for years, had been diverting money from her. And  
25 doesn't that basically tell you that --

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. JASKOWIAK: Objection, Your Honor.

MS. CAMP: Objection, Your Honor.

THE COURT: Sustained. That's not a proper question. So I'm going to phrase the question what I think Mr. Herring is getting to.

If there is some emotional protective behavior in Mother not wanting to say something negative about her daughter in responding to your questions, how could you differentiate that from the dementia and confabulation you described?

THE WITNESS: I think, to be honest, Your Honor, I think it would be difficult to do that. But what I saw collectively in Ms. Herring's clinical presentation leads me to strongly suspect and opine on the fact that her lack of detail or lack of -- or inability to provide me with an understanding of or reasoning behind why there is a mistrust of her daughter is due to her dementia, not a reflection of her just trying to save face or protect her daughter.

She expressed -- she repeatedly expressed her upset that her children can't get along. She even specifically expressed her upset with the fact that she doesn't trust her daughter and that making these decisions would be upsetting to her. You know,



1 she hates to admit, she said, you know, that she feels  
2 this way, but she could not really -- pressing her for  
3 details, she was not able to tell me why there were --  
4 why those feelings are in existence.

5  
6 But to answer, I guess, your original  
7 question and your rephrasing of the question, I don't  
8 think that this is a reflection of a mother trying to  
9 protect her daughter; I think it's a reflection of the  
10 nature of her neurologic condition dementia.

11 THE COURT: Okay. Thank you.

12 Mr. Herring, your next question.

13 MR. HERRING: Yes.

14 BY MR. HERRING:

15 Q So, in other words, there doesn't exist families  
16 that want to keep problems to themselves and not talk  
17 to outside strangers about it? That doesn't exist in  
18 your opinion?

19 THE COURT: Okay. That was asked and  
20 answered by the doctor answering my rephrasing of your  
21 question. So next question. He already answered that  
22 question.

23 MR. HERRING: Well, I did not understand  
24 his answer. The fact that --

25 THE COURT: His answer was --

1  
2 MR. HERRING: Is he stating if my mother  
3 was half her age --

4 THE COURT: I'm going to have you stop.  
5 He said while that is something that could happen, in  
6 his expert opinion that was not what was occurring for  
7 your mother in this circumstance, and he gave his  
8 reasons why he reached that conclusion.

9 BY MR. HERRING:

10 Q But you do not know for sure that your reason was  
11 the only reason?

12 THE COURT: Sir, he's answered the  
13 question. Let's move on to the next question.

14 BY MR. HERRING:

15 Q In the very beginning you said you noticed the  
16 whiteboard, the business cards, and forth. Isn't it  
17 true I pointed them out to you when -- the first time  
18 you were there?

19 A You did, yes.

20 Q Okay. And doesn't that show a deliberate attempt  
21 to organize, which takes brain ability to have things  
22 in certain places that it would be easy to always  
23 easily access that information?

24 A It reflects some degree of organizational skills  
25 that are crystallized and basically behaviors that have

1  
2 been long in existence. I also -- when we had spoken  
3 you had indicated that you also assist with that level  
4 of organization as well.

5 Q Okay. Rephrase that in plain English.

6 A So, yes, it reflects some level of organizational  
7 skills. I am not arguing that -- if the question is  
8 that your mother doesn't -- I feel that your mother has  
9 no level of organizational skills, that's not true.

10 But on a -- when I talk about planning and  
11 organizational skills, what I saw on testing shows that  
12 there is compromise in those abilities. She can still  
13 utilize some behavioral strategies to help with some of  
14 that organization, but she also could not independently  
15 navigate her calendar when I was with her as far as the  
16 -- navigating where we were with respect to the date.  
17 So her dementia interferes with some rudimentary  
18 planning -- organizational skills that she may have.

19 Q Isn't it true that everybody forgets to some  
20 degree? In other words, doctors make notes in your  
21 files because they forget, lawyers use yellow pads  
22 because they forget, and 3M, the company, makes  
23 billions of dollars each year by selling Post-its.

24 THE COURT: Mr. Herring.

25 BY MR. HERRING:

1  
2 Q So everybody forgets, don't they?

3 THE COURT: Mr. Herring, we don't need  
4 the descriptive; we just need the question.

5 So the question was isn't it true that  
6 everybody forgets to some degree?

7 THE WITNESS: Yes. There is -- well,  
8 there is memory -- yeah. There is a level of  
9 forgetting that is normal, and there is a level of  
10 change in memory or memory decline that is normal for  
11 advanced age. That type of memory decline is based on  
12 the inability to effectively and efficiently retrieve  
13 information, meaning that the person can learn new  
14 information, can hold on to it over time; but when  
15 they're put on the spot and have to independently pull  
16 it out in a timely and efficient manner, that is where  
17 older adults -- cognitively intact older adults  
18 struggle. People often talk about a senior moment,  
19 they can't get the word, they can't find the  
20 information as quickly as they once did.

21 BY MR. HERRING:

22 Q So --

23 A Your mother does not display that type of memory  
24 impairment. Ms. Herring, your mother, displays severe  
25 anterograde memory impairment that's at the level of

1  
2 encoding, meaning that she cannot consistently and  
3 effectively form new -- hold on to -- form new memories  
4 by holding on to learned information and taking it  
5 forward and retaining it over time.

6 Q Well, basically, everybody, you know, loses their  
7 train of thought, they forget the word that they were  
8 searching for; people, when they're in front of a large  
9 audience, they get stage fright and --

10 MS. CAMP: Your Honor, objection. He's  
11 going to have a chance to testify. Is this a question  
12 or is this testimony?

13 THE COURT: Sustained.

14 MR. HERRING: Well, give me a minute.  
15 I'll phrase it into a question.

16 THE COURT: Well, we don't do the  
17 lead-up to a question. Just ask the question. Ask  
18 whatever your question is.

19 MR. HERRING: Well, again, I will phrase  
20 it --

21 THE COURT: We're not going to have the  
22 lead-up. You're not testifying. Ask a question.

23 MR. HERRING: Okay. All right. I'll go  
24 to the next question.

25 BY MR. HERRING:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Did you audio record your conversations with my mother in any way?

A I did not.

Q Why is that?

A Because I don't audio-record my conversations in my evaluations. I take notes of my evaluations, but I don't audio-record them.

Q Don't you feel it would be far more effective to be able to review the information later as far as how the person said it, what they said exactly, so you can concentrate more at the time on what they're saying?

A I do a fine job being able to concentrate on what I do with my patients. I do not find it necessary to audio-record those sessions and, quite frankly, I would feel that that would be deleterious to the evaluation itself. I think individuals would grow much more anxious knowing that they're being recorded, and what you would be measuring thereafter is their anxiety as opposed to their true cognitive abilities. When people are anxious their memory is not as accurate, is not as good, their ability to concentrate, their processing speed is not as great.

I think I do a good job in developing rapport with my patients and spend a good amount of

1  
2 time initially doing that to alleviate any anxieties  
3 that they may have. And to answer your original  
4 question again, no, I don't feel that there is any need  
5 to audio-record my evaluations.

6 Q Well, you just said when people are anxious they  
7 tend to kind of close down or -- again, so doesn't that  
8 basically say, yeah, when here is a stranger coming  
9 into the house asking all these weird questions, isn't  
10 that going to make somebody anxious, especially a  
11 96-year-old woman?

12 MS. CAMP: Your Honor, I believe this  
13 was asked and answered like five times at this point.

14 THE COURT: Okay. This one's actually  
15 not. Overruled. It's just a confusing question.

16 Could you explain how the anxiety of  
17 being evaluated may affect the results?

18 THE WITNESS: Sure.

19 I think you misinterpreted my response.  
20 I never said that anxiety -- that I felt that anxiety  
21 was going to keep people from sharing information,  
22 going back to your original question a few questions  
23 back. That's not what I said. That is a possibility  
24 in some cases.

25 But what I said was that anxiety

1  
2 interferes with one's performance on tests of memory,  
3 on tests of concentration. So their ability to focus,  
4 their ability to attend is -- can be impacted by  
5 anxiety. So I take great measures initially to try to  
6 make the situation as comfortable as possible for them,  
7 given the circumstances.

8 Your mother was extremely pleasant,  
9 cordial, inviting, engaging from the very beginning and  
10 throughout the course of the evaluation and thereafter  
11 on next day that I -- the next time I met with her.  
12 There was no evidence of anxiety playing a role or  
13 influencing the test results, my exam results, and,  
14 thereafter, my conclusions based on those exam results.

15 BY MR. HERRING:

16 Q Because you're basically guessing at that;  
17 correct?

18 A I'm not guessing at that. I'm a clinical  
19 neuropsychologist and I have the capability of  
20 assessing whether or not one is anxious or not.

21 Q So your accuracy is a hundred percent; is that  
22 correct?

23 A It's accurate enough to a reasonable doubt that I  
24 can determine whether anxiety is playing a role in my  
25 assessment. That does not mean that there haven't been



1 situations where a person has been anxious during my  
2 situation. Everybody comes into the situation a little  
3 bit differently, and there are people whose anxiety is  
4 so significant -- even if it's not to the point of  
5 panic, but significant enough that I feel that it would  
6 interfere with my ability to accurately assess their  
7 capabilities and to draw informed, you know, clinical  
8 conclusions about their abilities, and I have noted  
9 that. Whether it's -- I've discontinued the evaluation  
10 and tried again later or I have at least considered  
11 that in my final results.

12  
13 That is not the situation with your  
14 mother. Your mother was not anxious while she was  
15 meeting with me.

16 Q But you're still guessing. There is no --

17 A I am not.

18 THE COURT: Okay. That's argumentative.  
19 Question. You're not going to argue with this witness.  
20 You're going to ask appropriate questions. You will be  
21 given the opportunity to testify. What is a question  
22 that you have based on his expert report or his  
23 testimony? Question.

24 MR. HERRING: The question is isn't that  
25 still guessing --

1 THE COURT: Okay.

2 MR. HERRING: -- no matter how much --

3 THE COURT: And that question is  
4 stricken. Next question. You ask the same question  
5 again we're going to strike it again. Next question.  
6 BY MR. HERRING:

7 Q Now, you said as far as the MMSE, the mini-mental  
8 state exam, you said your score with -- you stated  
9 earlier that you really don't believe in it that much  
10 or you don't think it's that accurate. What is  
11 your ...

12 A I said that -- by history, the mini-mental state  
13 exam was used as an extension of the Glasgow Coma  
14 Scale, which was a scale that was used to measure  
15 people's ability after emerging from a coma. So the  
16 Glasgow Coma Scale originally topped out at a certain  
17 score and you couldn't measure how much better people  
18 were emerging coma.

19 What clinicians have done after the  
20 development of the MMSE back in the '60s, they've kind  
21 of incorporated into their exam of their patients and  
22 have used it as a measure to determine whether or not  
23 someone has cognitive impairment and leading to the  
24 decision that this is -- is this, you know, dementia or  
25

1 not, and noting their progression over time. It does a  
2 decent job with some populations and that, but it's not  
3 a very good measure beyond what I use it for, which is  
4 simply just a quick screen of the individual that leads  
5 to further, more comprehensive testing.  
6

7 Q So, in your opinion, what's the accuracy of it, of  
8 the MMSE?

9 A Accuracy of it to do what?

10 Q To do whatever it's being inserted into the  
11 evaluation for.

12 THE COURT: Well, he did testify  
13 regarding how this exam factors into the big picture.

14 THE WITNESS: Yes.

15 THE COURT: So he's already testified as  
16 to that. Do you have a more specific question that  
17 might help him answer what you're looking for?

18 MR. HERRING: Well, basically, what I'm  
19 trying to say is if you have 5, 10, 20 unreliable,  
20 unverifiable tests, then you're still not going to get  
21 any type of accuracy if it's all just guessing.

22 THE COURT: Okay. That's not a question  
23 so we'll strike that.

24 MR. HERRING: Okay. I'm trying to  
25 explain why I'm trying to ask that question. So that's

1  
2 why I said --

3 THE COURT: Okay. So let's -- the  
4 doctor has already explained how the mini-mental state  
5 exam factors in to the big picture. You will be able  
6 to have argument as to whether or not you think I  
7 should be able to rely on his conclusion and make  
8 arguments of how you think the MMSE factors in to that.  
9 But do you have a specific question for the doctor?

10 THE WITNESS: And I can certainly  
11 answer --

12 THE COURT: If you think you understand  
13 the question you can answer it.

14 THE WITNESS: I think so. I can try.

15 THE COURT: I thought you already  
16 answered it, but go ahead.

17 THE WITNESS: It is an accurate measure  
18 in the sense of measuring progression. It's the reason  
19 that everyone in this room knows of, to some degree,  
20 the MMSE, the mini-mental state exam, is because it's  
21 widely used in research as a tracking measure.

22 Where it has its limitations is often in  
23 individuals of higher level of education. So people  
24 with college degrees and above may perform in the  
25 normal range on that measure, but yet may still display

1 a dementia. So it's not sensitive for a lot of  
2 individuals that have higher levels of education.

3  
4 Now, in your mom's case she's got 12  
5 years of education; right? So it's -- she doesn't  
6 really fall in that population that would raise a  
7 concern about its validity in that. But I don't use  
8 it, I don't put weight in and of itself on coming to  
9 any conclusions based on an MMSE. I come to my  
10 conclusions based upon the remainder of tests, which  
11 all have both reliability -- have been demonstrated to  
12 have reliability and validity, as well as ecological  
13 validity, meaning the predictive measures of functional  
14 abilities.

15 BY MR. HERRING:

16 Q Are you aware that the same MMSE test has  
17 different scoring conclusions?

18 A "Different scoring conclusions" you'll have to  
19 explain because I don't know what you mean by that.

20 Q Okay. In your MMSE you gave a score to my mother  
21 of 23, which you said that implies mildly impaired;  
22 correct?

23 A It falls in the mildly impaired range, yes.

24 Q Okay. Now, Dr. Kuhar -- and I just spoke to her a  
25 week or so ago --

1  
2 THE COURT: Okay. You can't tell us  
3 what Dr. Kuhar says. Just what's your question?

4 MR. HERRING: Okay.

5 BY MR. HERRING:

6 Q In Dr. Kuhar's two MMSE tests -- one in June of  
7 this year and, again, I think it was in June of last  
8 year -- her scores were 26, which according to two  
9 different MMSE tests that I downloaded from the  
10 internet, the exact same ones, but they had  
11 different --

12 THE COURT: Okay. What's your question?  
13 Dr. Kuhar's results were different. Do you want to  
14 know why? I mean, what's your question? It's not  
15 about what you've done. What is your question for this  
16 witness?

17 MR. HERRING: I'm trying to explain  
18 why --

19 THE COURT: But you don't get to  
20 explain. It's not a paragraph before you ask a  
21 question, it's a question.

22 Dr. Kuhar had results of 26 out of 30,  
23 Dr. Ledakis had 23 out of 30. What's your question  
24 relating to that?

25 BY MR. HERRING:

1  
2 Q Why is there different scoring conclusions based  
3 on the different MMSE tests? Of the same test, why are  
4 there different scoring conclusions?

5 A Because sometimes administrative error or change  
6 in administration can have an impact. So how the  
7 individual -- even though it's a simple test, you can  
8 administer it incorrectly. That could certainly have  
9 an influence. There is some degree of variability in  
10 performance. Like I said initially when we talked  
11 about this -- a couple hours ago it seems now -- the  
12 MMSE is heavily weighted on memory and orientation. So  
13 if somebody is cognitively intact other than their  
14 memory being impaired, they could fall easily into the  
15 mildly impaired range and beyond simply because they  
16 lose points on orientation.

17 This is the reason why I don't use it to  
18 come to any clinical conclusions. It's simply just to  
19 get a flavor of what am I dealing with here beyond the  
20 clinical interview. I usually have a good  
21 understanding of what I'm dealing with after the  
22 hour-long clinical interview that I spend with patients  
23 often. But it's simply just as a guide, it's nothing  
24 more than that. I don't base -- I could take that out  
25 of my assessment, the MMSE, and still come to the same

1 conclusions. It really doesn't add too much value  
2 beyond just the screening tool.

3  
4 Q But if other neuropsychologists are using it don't  
5 you feel it's important that there is a standard  
6 established for that type of -- for a test, or any  
7 other test? Shouldn't there be a standard among all  
8 the neuropsychologists?

9 A What do you mean by -- I don't understand what you  
10 mean by "standard."

11 Q Well, if you're giving a test, the same test by  
12 five different people, then how can you have five  
13 different scoring criteria that determines a specific  
14 conclusion of that person or of that test?

15 MR. JASKOWIAK: Objection, Your Honor.  
16 There is no indication that there are five different  
17 scoring criteria. There may be five different results  
18 on five different days by five different people who  
19 have been trained five different ways.

20 THE COURT: So sustained as to the  
21 misstatement.

22 THE WITNESS: So --

23 THE COURT: You don't have to answer  
24 that. The question has been sustained.

25 THE WITNESS: Okay.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. HERRING:

Q Well, again, I'm lost in that if there is a test being used by the psychological community then why are there different scoring --

THE COURT: The testimony is not that there are different scoring criteria. The testimony is that there were different results when the test was given.

MR. HERRING: No. That's --

THE COURT: Yes. That's the testimony that was presented.

MR. HERRING: Okay. But that was --

THE COURT: That may be different from your research, but you're not testifying right now. The testimony presented is that there were different test results between Dr. Kuhar and Dr. Ledakis. So if you have a question about that you are welcome to ask it.

MR. HERRING: Okay.

BY MR. HERRING:

Q Why would there be a difference in those test scores?

A Because, like I said, the test is heavily weighted on orientation. So you lose a lot of points -- you can

1  
2 lose up to 10 points. So you can start off with a 20  
3 out of 30 from the get-go if you are not properly  
4 oriented to your place and your time.

5 Now, it's also heavily weighted on  
6 memory. There is variability in patients, in  
7 individuals with dementia, with respect to the degree  
8 of impact that their memory impairment and that their  
9 disorientation has in that moment. That does not mean  
10 that they vacillate between being quote/unquote  
11 neurologically normal to severely impaired; but there  
12 can certainly be some variation in their day-to-day  
13 functioning in those regards.

14 Like I said, this test is not -- is not  
15 a measure that I put a lot of weight on to coming to  
16 any conclusions about diagnosis, the level of severity  
17 of dementia. Like I said, your mother scored in the  
18 mildly impaired range on that, but her clinical  
19 presentation is indicative of somebody who has  
20 early-moderate stage dementia.

21 The difference in scoring is not  
22 actually that great when you look at Dr. Kuhar's  
23 records and mine. I got a 23 out of 30; she got 26 on  
24 one occasion, she got a 23 on another occasion. So  
25 it's still -- you know, 26 is in the mildly -- is the

1  
2 start of the mildly impaired range. Twenty-three is in  
3 the mildly impaired range. We're still within the same  
4 range; there is not a great degree of variability  
5 there.

6 Q Okay. So, again, for your test -- did you only  
7 give the MMSE one time to my mother?

8 A I did.

9 Q Okay. So when Dr. Kuhar gave it --

10 THE COURT: We're moving off this. We  
11 have beaten this one down. We are moving off the MMSE.  
12 Next area of questioning.

13 MR. HERRING: Okay.

14 BY MR. HERRING:

15 Q You had been talking about my mother was not able  
16 to remember past presidents and so forth. Would you  
17 assign any type of cognitive impairment to students in  
18 school if they did not know the past presidents or  
19 current events or whatever?

20 MS. CAMP: Your Honor, objection --

21 THE COURT: Sustained.

22 MS. CAMP: -- as to relevance.

23 THE COURT: Sustained.

24 That is not a relevant question. This  
25 is not a comparison to school-age students. This is a

1  
2 cognitive assessment as to a 96-year-old woman's --  
3 whether or not she needs a guardian and who that  
4 guardian should be.

5 MR. HERRING: Okay. The reason why I  
6 brought it up was --

7 THE COURT: It's not -- I don't want the  
8 reason. I just want you to ask an appropriate  
9 question. Next question.

10 BY MR. HERRING:

11 Q Can you give me some examples of -- I think you  
12 called it "executive impairment." Was that the correct  
13 term, "executive impairment"?

14 A Executive functioning. Yes.

15 Q Executive functioning. Okay. What does that  
16 mean?

17 A So executive functions are -- it's an umbrella  
18 term. It's a category of cognitive abilities that  
19 can -- that oversee and interact with other cognitive  
20 abilities. So memory is dependent, in some ways, on  
21 executive functions; language skills are dependent on  
22 executive functions.

23 There are -- but more importantly,  
24 executive functions have implications on how one  
25 manages independently in life; how they're able to

1  
2 plan, to organize their agenda for the day; how they're  
3 able to self-direct their behavior; how they're able to  
4 assure that they are behaving in a manner that's  
5 consistent with their intentions; their ability to  
6 problem-solve; their ability to come to make informed  
7 decisions, being able to reason through things. All of  
8 those are aspects or facets of executive functions.

9           People can have deficits in some  
10 executive functions but still have preservation of  
11 other executive skills. And that is the case with your  
12 mother. Some aspects of executive skills are still  
13 reasonably intact for a 96-year-old woman, but there is  
14 a number of dysexecutive impairment -- or executive  
15 impairment that I saw across my exam.

16 Q       Can you put that in plain English, please?

17           THE COURT: No. That was his answer.

18           MR. HERRING: Well, that's --

19           THE WITNESS: Executive skills interfere  
20 with one being able to live independently, manage  
21 independently, come to informed decisions, and behave  
22 in a manner that's in keeping with what is their  
23 intentions and what are the right thing to do. When  
24 people start to show deficits in executive skills, even  
25 if those deficits are relatively mild, they start to

1  
2 have challenges in life in being able to manage  
3 independently.

4           Your mother displays deficits in  
5 executive skills that are beyond the memory impairment.  
6 I'm putting that aside for a second. But there are  
7 deficits in executive skills that interfere with her  
8 ability to live independently, to manage her affairs,  
9 manage her finances, manage her health care, manage  
10 even the follow-through of appointments and possibly  
11 the scheduling of appointments. So those daily  
12 activities that you and I can do independently she  
13 cannot do because of the deficits that she has in  
14 executive skills or executive functions, again, above  
15 and beyond just her memory impairment.

16 BY MR. HERRING:

17 Q     Other than sitting at the table where you gave her  
18 these paper and pencil tests and asked her some  
19 questions, did she do anything? Did you observe  
20 anything that showed she could not live independently?

21 A     So that is -- I would -- that is not a feasible --  
22 that's not feasible in the scope of the evaluation.  
23 But neuropsychologists have developed, through years of  
24 research, measures that have ecological validity, which  
25 means that these tests we know represent not only

1 specific brain functions, that they're not just  
2 measuring, yes, this person's memory or this person's  
3 executive skills, but they are specific -- they have a  
4 predictive quality to them in being able to extrapolate  
5 that information from a test to how that person is  
6 capable of managing in life and, you know, correlating  
7 -- the study of neuropsychology, by definition, is the  
8 study of brain-behavior relationships; and that means  
9 looking at brain function and correlating it with  
10 behaviors. So these -- I have a lot of faith in my  
11 tests that I administer and the results of those tests  
12 in determining where someone may have struggles,  
13 difficulties in managing certain aspects of life. I do  
14 not base all my conclusions simply on those -- on the  
15 numbers, the test results, but also on my clinical  
16 exam.

17  
18 Q Would you agree that lab work is not equal to  
19 reality as far as accuracy?

20 THE COURT: I don't understand the  
21 question.

22 THE WITNESS: I think I do.

23 THE COURT: If you understand the  
24 question go ahead.

25 THE WITNESS: Are you referring to that

1 performance on tests do not translate into reality,  
2 meaning --

3 BY MR. HERRING:

4 Q Real-life situations, how to handle them, how to  
5 evaluate them, and so forth.

6 A Sure. Sure. As I answered before, these tests do  
7 have ecological validity. What ecological --

8 Q What do you mean by -- I'm sorry.

9 A Ecological validity means that they have a strong  
10 correlation between the test score and behavior that  
11 people see. So through research, as these tests are  
12 developed and looked at on how to be used clinically,  
13 researchers look at if someone scores poorly on this  
14 test, what does that mean in real life? How does that  
15 correlate with what people report? Usually reliable  
16 informants, caregivers -- you know, whether  
17 professional caregivers or family members -- what they  
18 report on how this person behaves.

19 On other measures they look at the  
20 actual behaviors as well. It depends on what research  
21 you're looking at. But widely used measures like the  
22 ones I use are found to be ecologically valid, that you  
23 can make predictions and extrapolate the data to opine  
24 on how people would manage day to day in certain  
25



1 aspects of life.

2 The majority of my clinical practice is  
3 not in the courtroom. I do not do this. This is a  
4 very small percentage of my practice. The vast  
5 majority of my practice is clinical. People come to me  
6 with concerns, with symptoms; I test and evaluate them.  
7 I correlate the results that I see on tests with the  
8 symptoms that they're reporting. I help come to a  
9 diagnosis and help the patient and their caregivers  
10 understand why they're seeing the behaviors that  
11 they're seeing. It's usually a very enlightening  
12 moment when they're sitting in my office and I'm  
13 correlating the test results with their subjective  
14 report of the symptoms. And what that leads to are  
15 treatment recommendations -- both pharmacologic  
16 treatment recommendations and behavioral treatment  
17 recommendations, what does this person need in order to  
18 help them function at the best of their ability in the  
19 nature -- or in the context of their neurologic  
20 disease?

21 Q What is the percentage of error would you give to  
22 those clinical tests or evaluations as far as what is  
23 done that is used?

24 A I don't have those numbers directly in front of

1 me. But tests that are validated and widely published  
2 and specifically widely used tend to have a very strong  
3 ecological validity score, meaning that they -- again,  
4 the data could be used for diagnosis and prediction  
5 about one's functional abilities.

7 Q But you can --

8 A I can choose what test I want to administer. I  
9 choose the ones that I know are -- have good predictive  
10 ability.

11 Q But you can't give a percentage of error for those  
12 different tests?

13 THE COURT: He says he does not have  
14 that with him.

15 THE WITNESS: And, quite honestly, it's  
16 not -- in and of itself, it's not -- it's not relevant  
17 in the sense that it does not detract from the  
18 diagnosis and the clinical presentation that you see.  
19 Clinical neuropsychologists don't use just the  
20 information that they glean from a specific test to  
21 opine about one's capabilities and the diagnosis,  
22 whether it be in the court or in a clinical setting.  
23 You use clinical judgment; that you don't get from a  
24 test. Anybody can administer a test. What the test  
25 means and how you interpret it is what a clinical

1  
2 neuropsychologist does. You can get a technician to  
3 administer a test; what you glean from that test is  
4 where clinical expertise comes in.

5 BY MR. HERRING:

6 Q You had mentioned -- a while ago you talked about  
7 my mother's decisional capacity. Excuse me if I didn't  
8 get that right. Do you recall talking about that?

9 A I do.

10 Q Okay. Those -- that capability or the capacity is  
11 based -- what did you base that on? What did you base  
12 that conclusion on?

13 A I based that conclusion on the legal -- first of  
14 all, the legal standard of decisional capacity, how  
15 that's defined in a legal setting. But using both a  
16 combination of the test results and my clinical exam in  
17 understanding how your mother, how -- is she capable of  
18 meeting that criteria based on what I saw.

19 Q And in your opinion --

20 A She does not meet the criteria for somebody who  
21 has decisional capacity. The level of her dementia and  
22 the scope and nature of her cognitive deficits is such  
23 that it impairs her ability to come to an informed  
24 decision about her health care, welfare, and finances.

25 She may be able to process -- she meets

1  
2 part of that criteria, she can initially process  
3 information; but what she does with it thereafter at  
4 the next level of considering options and reasoning  
5 through options -- and even, honestly, to be able to  
6 make consistent decisions from one time to the other,  
7 because of her memory impairment, is compromised to the  
8 point that she meets -- she meets the legal criteria  
9 for an incapacitated person.

10 Q So "decisions." What type of decisions are you  
11 referring to that you don't think she's capable of  
12 making?

13 A That her ability to make decisions about her  
14 health care, whether -- her ability -- if she were to  
15 be posed with different options about whether if she  
16 needed a surgery of some sort to treat an ailment, that  
17 she does not have the full capacity to understand what  
18 the consequences of making -- of considering her  
19 different options and appreciating what may be  
20 foreseeable consequences to those decisions.

21 She may be able to hear the doctor and  
22 what the doctor has to say to her about, you know, why  
23 she needs the surgery. But in her taking it to the  
24 next level and being able to reason through the  
25 decision that she comes to is impaired, based on what I

1 see on the clinical exam.

2 That also goes with respect to her  
3 finances. A large part of that is I think she is  
4 influenced by her -- by individuals that, if presented  
5 information in a certain manner, if consistently being  
6 exposed to certain experiences, I think that she has a  
7 tendency to not be able to differentiate between is  
8 this accurate information, is this something I can  
9 reason through, or is this something that she just  
10 simply just absorbs? Some of it isn't going to get  
11 retained because of her memory impairment, but there  
12 can be lasting impressions not based on reason, not  
13 based on being able to conceptualize through things.

14 Q Do you have any specific examples of her not being  
15 able to make -- made the proper decisions? Do you have  
16 any specific examples where she did not make a logical  
17 decision pertaining to her finances?  
18

19 A The fact that there has been a change in behavior  
20 from allowing her daughter -- who once, for a number of  
21 years, assisted her in the managing of her finances to  
22 not allowing her to do that. I have examples that may  
23 be considered hearsay. So I --

24 Q You can spit them out if you want.

25 A Sure. There's been -- you know, Jill had reported

1 that in her interactions -- that in your mother's  
2 interactions with the accountant and her financial  
3 advisors they themselves had expressed concerns about  
4 her ability to process what the nature of the  
5 conversation was about, the decisions that she was  
6 looking -- you know, the decisions she was looking to  
7 make, the changes that she was looking to make. They  
8 were concerned about that to the point where, as I see  
9 in the petition, that these institutions -- these  
10 financial institutions have seized certain accounts,  
11 have frozen certain accounts, and not allowed for  
12 things to be moved because of concern about her  
13 capacity and any documentation that came thereafter.

14 Q But do you know the background information of any  
15 of that?

16 A I do not know that.

17 Q Okay.

18 A But that's not what I base my clinical opinion on;  
19 I base my clinical opinion on my exam.

20 Q Well, isn't that important to know what the facts  
21 are behind an accusation, to determine how credible  
22 that accusation is?

23 THE COURT: That is not what was  
24 relevant or the basis of his evaluation. You asked him  
25

1  
2 for examples and you decided that the hearsay was  
3 admissible and he gave you an answer. That was not a  
4 basis for his evaluation and, therefore, this follow-up  
5 question is not relevant. Next question.

6 BY MR. HERRING:

7 Q You had mentioned earlier about that she was under  
8 the influence or susceptible to influence. Do you want  
9 to elaborate a little bit on that?

10 A Based on my clinical exam, your mother has a --  
11 she has a high degree of confabulation.

12 Q What's that?

13 A What is confabulation?

14 Q Yes.

15 THE COURT: He already testified as to  
16 confabulation. Do we need it repeated?

17 MR. HERRING: Please excuse me, but I am  
18 not a psychologist or whatever so I don't know the  
19 word.

20 THE COURT: He testified and explained  
21 confabulation for a few minutes during his questioning  
22 from Ms. Camp when you were here.

23 MR. HERRING: I'm sure I was, Your  
24 Honor, and I certainly understand that point of yours.  
25 But, again, I have to ask because this is something of

1  
2 a very important nature to me, my mother.

3 THE COURT: No. No. No. No. If you  
4 were present for the testimony, we don't repeat  
5 testimony when you were here for it. Is there  
6 something specific that you didn't understand about his  
7 previous definition of confabulation or were you just  
8 not paying attention?

9 MR. HERRING: No, Your Honor. I am  
10 doing the best I can to pay attention and try to  
11 understand what is being said and how it's being said.  
12 So I apologize to the Court if I am not as astute as  
13 the attorneys here or --

14 THE COURT: Sir, it's not about being  
15 astute. It's about watching and listening.

16 Could you give a brief review of your  
17 description of confabulation? You gave us a very  
18 detailed one -- which was helpful -- during Ms. Camp's  
19 evaluation; but if you could, again, repeat a summary  
20 of it for Mr. Herring?

21 THE WITNESS: Confabulation is the  
22 creation of a false memory. It's where the person  
23 believes information to be true which, in fact, is not  
24 accurate and is not true. However, as Your Honor asked  
25 and indicated, it's not a volitional act, the person is



1 not choosing to lie about the information; they truly  
2 believe the information to be true.

3  
4 And it's a -- the degree of  
5 confabulation that your mother displays is a symptom of  
6 her dementia; you see confabulation with dementia at  
7 that degree, and it only increases as the dementia  
8 progresses.

9 THE COURT: Can we stop for a moment?  
10 Dr. Ledakis, you've been testifying for about three  
11 hours. My goal is to finish you before we take a lunch  
12 break, but do you need a personal break before we  
13 continue?

14 THE WITNESS: I think I'm okay.

15 Is everyone fine to continue? All  
16 right. Then we'll keep going.

17 Mr. Herring, your next question.

18 BY MR. HERRING:

19 Q To finish your answer about being under -- you  
20 thought my mother was under the influence or could be  
21 influenced --

22 THE COURT: Susceptible to undue  
23 influence. Is there a question related to that?  
24 That's what his testimony and his report says, that he  
25 thinks your mother is at risk of undue influence or

1 financial exploitation. Do you have a question about  
2 that?  
3

4 MR. HERRING: Okay.

5 BY MR. HERRING:

6 Q Would that include, say, by phone scams or  
7 something to that nature?

8 A It could, yeah. It can include being susceptible  
9 to that. But it's not limited to that and it's not  
10 exclusive to that, if that's what your question is.

11 Q Would there be something wrong with her taking the  
12 advice of a sibling if she thought that advice was good  
13 advice? Could that be considered influence?

14 MR. JASKOWIAK: I'm unclear, Your Honor.

15 A sibling. To my knowledge, Mrs. Herring --

16 THE COURT: Well, let's separate out  
17 sibling.

18 MR. JASKOWIAK: She doesn't have any  
19 siblings.

20 THE COURT: It doesn't matter.

21 That's --

22 MR. HERRING: -- brother and sister.

23 THE COURT: Okay. Stop.

24 MR. HERRING: Okay.

25 THE COURT: What I believe Mr. Herring

1 is asking is if she took advice from someone who was  
2 giving good advice and the advice was to her benefit,  
3 how, if at all, does that factor in with being  
4 susceptible to undue influence or financial  
5 exploitation?  
6

7 THE WITNESS: Sure. Thank you for that,  
8 Your Honor.

9 MR. HERRING: Thank you.

10 THE WITNESS: I believe that her -- the  
11 problem lies in her inability to reason through, to  
12 come to her own conclusions about whether or not that  
13 advice is good advice or not, and separate that, her  
14 own conclusions, from the relationship that she has  
15 with the individual offering the advice. So if there  
16 is an inherent trust or distrust in an individual, that  
17 will influence her decision more so than her own  
18 ability to break down the information, look at her  
19 options, reason through why it's better to go with this  
20 option than in this option, and be able to foresee the  
21 consequences of making this decision versus making this  
22 decision or not making a decision. That ability, which  
23 at its foundation defines decisional capacity, is what  
24 your mother lacks. That doesn't mean that she -- that  
25 if someone presented her with good advice that she's

1 not capable of taking that good advice, but she can't  
2 independently decide on her own whether that good  
3 advice -- that advice is good or not or in her best  
4 interest or not.

5 BY MR. HERRING:

6 Q Can you cite one example that she could not -- or  
7 that she did not make a decision on her own that was  
8 logical or correct?

9 A The --

10 Q "Yes" or "no" is fine.

11 A I'm trying to think on the spot right now. Her  
12 responses to my questions -- which you have argued are  
13 because she wants to save face or does not want to  
14 express -- are clearly based on -- or are not clearly  
15 based on evidence that she herself holds, but simply  
16 beliefs that she has. That raises great suspicion in  
17 me that there is influence here.

18 That was not the -- that was not a  
19 question that I was asked to answer directly about any  
20 sources of influence, but the nature of her  
21 presentation clinically, what I see, make her very  
22 susceptible to being influenced by individuals more so  
23 than individuals that she does trust and has feelings  
24 for.  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q You mentioned about influence pertaining to the will, the POA, and the power of attorney, and so forth. Did you read those documents?

A Did I read the --

Q I don't know what --

A No. I don't think they were --

Q I don't know what documents you had access to.

THE COURT: Well, let me ask you that. There was an original will, and then there was a modification in 2020. Did you read any of them?

THE WITNESS: I read the original will.

BY MR. HERRING:

Q Did you read the new power of attorney?

A No. I do not -- no, I did not. I read Exhibits A through -- I'm assuming that they're still the same. No, I did not. I did not read that one.

Q So when documents are changed or updated, it can be for the better of the situation, for the better of possible problems or issues or whatever; isn't that correct?

A It is correct.

Q Okay.

A As long as the person has the capacity to make those changes.

1  
2 Q So you did not read those documents, so you cannot  
3 say that those changes in the documents were  
4 detrimental to my mother's wishes; correct?

5 A I cannot directly say whether those changes in the  
6 documents were detrimental to your mother's wishes.  
7 But your mother could not confidently indicate to me  
8 what the reasoning behind her wishes was, was unaware  
9 of the fact that some of those documents had been  
10 changed. So there is no recollection of the details of  
11 what her wishes expressed legally on paper were. And  
12 could just -- and even when -- even when that  
13 information is presented to her, she cannot rationalize  
14 and confidently explain why there is any need to make  
15 those changes.

16 Q Well, considering, again, she's 96 and she does  
17 have, I estimate, about a 20 or so percent of instant  
18 recall, loss-of-memory-type issue, isn't it perfectly  
19 acceptable or understandable that people don't remember  
20 specifically what something was about and why they  
21 changed it maybe eight months earlier? I mean, we're  
22 talking about a 96-year-old woman. Wouldn't it?

23 A Okay. There is a couple layers to that question.  
24 I'm going to answer them as best as I can.

25 Q Okay.

1  
2 A First of all, no, that's not reasonable. You  
3 would expect someone who has changed their power of  
4 attorney and their will recently -- seven months ago,  
5 right, or even beyond that -- they should have good  
6 recollection of having done that and what the nature of  
7 those changes were. Your mother did not. Your mother  
8 cannot give me reason as to why those changes were  
9 made. She could not reason through why those changes  
10 were made.

11 The other question was it's reasonable  
12 for somebody who's 96. As we age, the incident rate of  
13 Alzheimer's disease goes up exponentially every five  
14 years. At 96 years of age, the incident rate of  
15 Alzheimer's disease is over 60 percent. So you're more  
16 likely to have -- I'm sorry, over the age of 90. I  
17 stand corrected. Sorry. I misspoke. Over the age of  
18 90 the incident rate of Alzheimer's disease is over  
19 60 percent, so you're more likely to have Alzheimer's  
20 disease than not to have it.

21 So even if someone is doing reasonably  
22 well at 96 -- which, in some ways, she is -- that does  
23 not exclude the fact that she -- because simply due to  
24 age she has Alzheimer's disease. She has the form of  
25 Alzheimer's disease that is associated with her

1 advanced age. If we all lived long enough, we'd all  
2 develop Alzheimer's disease. A lot of us die before we  
3 have the opportunity to develop it. But if you live  
4 long enough, you'll develop it. And she's at that  
5 point where she meets the moderate staging of -- she's  
6 in the moderate stages of that process.

8 I do not agree with you that her memory  
9 impairment is at 20 percent. I'm not sure where your  
10 statistics are with that, you've questioned my  
11 statistics of where -- of my test. But your 20 percent  
12 gauge of her memory is way off, it's not at 20 percent.  
13 She performed in the severely to profoundly impaired  
14 ranges on tests in comparison to her peers -- not to  
15 the general population, but to other individuals of her  
16 age and education which are cognitively intact at that  
17 age.

18 Q Well, aren't there --

19 A I'm sorry. Go ahead.

20 Q Finish your question.

21 A That's the end of my response.

22 Q Well, generally, that -- you know, when you say  
23 "generally," but aren't you also -- shouldn't you also  
24 be including the fact there are exceptions to every  
25 generalization?



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A I'm not sure I understand the context of the term "generally."

Q Well, you just basically explained that generally people of a certain age, they have certain capabilities or lack of capabilities. What I'm saying is isn't it true there is always exceptions that you -- that people, if they're 96, may not be able to maybe recall something instantly, but also the fact they could be doing everything else exceptionally well?

A I still don't know if I understand the question.

Q All right. I'll withdraw the question. I'll withdraw the question.

MR. HERRING: Your Honor, I'm not quite clear on the timeline, time frames as far as you were talking about you wanted to --

THE COURT: We're finishing this witness before we take a lunch break. So how many more questions do you have?

MR. HERRING: Okay. After we get back from the lunch break then I will be able to ask him other questions?

THE COURT: No. He's done. We are finishing this witness before lunch.

MR. HERRING: Well, I understood there

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

was going to be a cross-examination, and then --

THE COURT: You are doing the cross-examination right now, that's what you're doing.

MR. HERRING: Yeah. But then I want to direct question --

THE COURT: There is nothing else.

MR. HERRING: Huh?

THE COURT: This witness will be finished after you finish questioning him.

MR. HERRING: Well, again, I apologize to the Court, but it's my understanding that after a person is cross-examined, then I can then ask him questions that I have.

THE COURT: No. These are the questions you have. There are no other questions for you.

MR. HERRING: But it was pertaining to what he had said. That's how I understand cross-examination.

THE COURT: This is the witness. If you have questions for him, you have -- the only reason this witness is here is for his expertise, his report, his conclusions. So you can ask him about those things and the testimony he has given. He's not being called again. This is your opportunity to ask questions.

1  
2 MR. HERRING: All right. Then I have  
3 questions I want to ask him then.

4 THE COURT: And they have to not have  
5 been repeating what you've already asked him and they  
6 have to be relevant to this proceeding.

7 MR. HERRING: They will be.

8 THE COURT: We'll see.

9 MR. HERRING: Okay.

10 MS. CAMP: Your Honor.

11 THE COURT: Take a personal break?

12 MS. CAMP: Yes.

13 THE COURT: Okay. All right. Let's  
14 take a five-minute recess and we'll reconvene.

15 Dr. Ledakis, you are in the middle of  
16 testifying, so please don't discuss your testimony with  
17 anyone. Understood?

18 THE WITNESS: Understood.

19 THE COURT: But you are welcome to step  
20 down and take a personal break.

21 - - -

22 (Recess 12:12 - 12:23 p.m.)

23 - - -

24 THE COURT: All right. Mr. Herring, you  
25 can continue with your cross-examination of

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Dr. Ledakis.

BY MR. HERRING:

Q Is there any type of assigned secrecy assigned to your report either by the government or by this court?

MR. JASKOWIAK: Objection, Your Honor.

THE COURT: Sustained. And I will state for the record the report was conducted at the order of this Court, provided to the Court, and distributed under Court direction. So next question.

MR. HERRING: Is there a reason why only the lawyers were allowed to get --

THE COURT: That is not a question for this witness. This is a question that you have for this witness.

MR. HERRING: Okay.

THE COURT: I've already made my ruling as it relates to the report.

BY MR. HERRING:

Q Okay. Are there any industry standards in your business for your type of evaluations, standards that would include how much time is spent with a subject, how many questions to ask, why type of questions to ask, et cetera?

A So the question is is there a set amount of time

1 that a neuropsychologist needs to --

2 Q I can repeat the question.

3 A -- utilize --

4 Q I can repeat the question if you want.

5 THE COURT: No, I don't need you to  
6 repeat the question.

7 THE WITNESS: I'm just --

8 THE COURT: I'm going to phrase the  
9 question. Is there an industry standard or a procedure  
10 that is a requirement that all neuropsychologists must  
11 follow when completing this type of evaluation? Just  
12 "yes" or "no."

13 THE WITNESS: No.

14 THE COURT: Okay. Next question.

15 MR. HERRING: Okay.

16 BY MR. HERRING:

17 Q Is the title "neuropsychologist" earned or is it  
18 simply self-given that simply indicates what area you  
19 spend your most time?

20 A The state of Pennsylvania recognizes me as a  
21 psychologist. So you're licensed in the state of  
22 Pennsylvania as a psychologist.

23 Neuropsychology is a discipline within  
24 -- it's a specialty within neuropsychology that you --

1  
2 so one calls himself a neuropsychologist when they have  
3 the adequate training that goes with the title, which  
4 includes a two-year postdoctoral residency in  
5 neuropsychology, which I do have.

6 Q So it is an earned title?

7 THE COURT: Yes.

8 THE WITNESS: It is an earned title,  
9 yes.

10 BY MR. HERRING:

11 Q Okay. Are there any type of routine tests yearly  
12 given, twice a year or so forth, for neuropsychologists  
13 to determine if their accuracy meets a certain level of  
14 expertise?

15 A No tests are given. But as other professions, we  
16 have to meet continuing education requirements that  
17 vary from one state to the other, in order for our  
18 license to be renewed.

19 THE COURT: And are you compliant with  
20 your continuing education requirements?

21 THE WITNESS: I am, Your Honor.

22 BY MR. HERRING:

23 Q So it's basically just how many hours you do each  
24 year of education? It's not a specific test; it's just  
25 a number of hours that you have to perform or dedicate

1 to --

2 A In order for my license to be renewed, yes.

3 Q And how many hours is that?

4 A In the state of Pennsylvania it's 30.

5 Q Sorry.

6 A In the state of Pennsylvania it's a minimum of 30.

7 But I typically do exceed that number.

8 Q How many paper and pencil tests did you perform  
9 with my mother?  
10

11 A Those tests are listed on the report. I will have  
12 to hand-count them if --

13 Q Well, approximately.

14 THE COURT: I don't need you -- it is  
15 stated on Page 6 of Exhibit H-2. They're all listed.

16 BY MR. HERRING:

17 Q Okay. Do any of those paper and pencil tests that  
18 you give have any independent accuracy studies  
19 verifying its accuracy when you give a test?

20 A If the question is asking about the test's  
21 reliability and validity, yes, they are studies that  
22 show that. In fact, before a test is published and  
23 made available to the profession they have to  
24 demonstrate the validity and reliability studies that  
25 they have conducted and what the results of those are

1  
2 to allow the examiner, the user of the test, to make an  
3 educated decision about whether or not this is a test  
4 that they want to incorporate in their practice.

5 Q Are they reviewed by any certain board?

6 A They are peer-reviewed. So the --

7 Q What does that mean in your business?

8 A Meaning peers, other neuropsychologists, typically  
9 in academia or research, look at the data and determine  
10 whether this is a publishable result.

11 Q But is it -- I'm sorry. Finish your question.

12 A That is the end of my question --

13 Q But is there -- but there is a board --

14 A -- or my answer.

15 Q -- that certifies this -- a paper and pencil test  
16 as --

17 THE COURT: Asked and answered. He gave  
18 you the answer it's peer-reviewed. There is not a  
19 board; it's a peer review before it becomes an  
20 acceptable --

21 BY MR. HERRING:

22 Q And how many of those peers are used? One peer?  
23 Five peers? Ten peers?

24 THE COURT: How is this relevant to this  
25 proceeding?



1  
2 MR. HERRING: Well, I'm trying to find  
3 out more specifically if paper and pencil tests are  
4 used, just how are they validated, and who does it.  
5 And he said peer-reviewed. I just asked how many peers  
6 --

7 THE COURT: Sir, this is not a fishing  
8 expedition. The issue is does your mother have  
9 capacity. If you have a counter expert -- which you  
10 have not noticed us of -- a counter expert to this one  
11 who may provide contrary information you'll get it out  
12 through that person. If you have some document  
13 challenging one of these reports you can present that  
14 to the witness and ask about it. But we are not doing  
15 a Ph.D. education for you on neuropsychology. That's  
16 not what we do here. Ask a question relevant to this  
17 proceeding. Next.

18 BY MR. HERRING:

19 Q When you were -- okay. Did you perform any type  
20 of medical test as part of your evaluation such as an  
21 eye test, hearing test, and so forth?

22 A Well, those are not medical tests. I'm not a  
23 physician so I didn't perform medical tests. There  
24 were lab results, there was a CAT scan, and there was a  
25 neurologic -- a report that corresponded with a

1  
2 neurologic exam that was conducted. Those results  
3 are -- I did review those results in my report.

4 Q I used the word "medical" as opposed to paper and  
5 pencil.

6 A Sure.

7 Q Okay. Are you aware that my mother has about a  
8 25 percent hearing loss?

9 A So there is -- her hearing is within functional  
10 limits for the nature of the exam. We are not -- we  
11 were not working in a construction site, we were not  
12 working in a restaurant with loud background noise or  
13 ambient noise. We were working at her dining room  
14 table with no distractions and she was perfectly  
15 capable of processing what I was saying to her at a  
16 normal tone.

17 And I indicated that in the report, that  
18 her ability to process and respond to my questions, my  
19 direct questions, was always appropriate. She could  
20 answer questions when they were posed in a very simple  
21 manner where she could just provide a very quick  
22 answer. Where her problems lied were when she had to  
23 expand on that answer, being able to hold her train of  
24 thought and follow her reasoning through that. Any  
25 hearing loss that she may exhibit and may be

1  
2 experiencing did not influence the results of this  
3 evaluation.

4 Q I'm going to ask this question. On Page 13, top  
5 paragraph.

6 THE COURT: Okay. Give him a moment to  
7 get there. And are you using Page 13 in the top  
8 right-hand corner? Is that what you're using?

9 MR. HERRING: Yes, ma'am.

10 THE COURT: Okay. Dr. Ledakis, are you  
11 there?

12 THE WITNESS: Getting there, Your Honor.

13 THE COURT: Okay. And when you're  
14 saying Page 13, Mr. Herring, are you talking about the  
15 first full paragraph or the very top paragraph?

16 THE WITNESS: Well, it's the middle and  
17 the top paragraph, Your Honor.

18 THE COURT: Okay. So, Dr. Ledakis, are  
19 you there?

20 THE WITNESS: I'm at the paragraph, yes,  
21 Your Honor.

22 THE COURT: Go ahead, Mr. Herring.

23 MR. HERRING: Yes.

24 BY MR. HERRING:

25 Q It pertains to in your statement you said, and I

1  
2 quote, "Jill expressed her beliefs of her brother  
3 engaging in a romantic campaign with their mother  
4 (providing multiple examples supporting her suspicions)  
5 which in retrospect she noted started in 2017 and which  
6 continued and intensified until him formally moving in  
7 to live with their mother in 2020."

8 Now, my question is what does that mean?  
9 What did that -- what was she trying to say or what was  
10 that about?

11 A I simply reported that in my interview with Jill  
12 she -- quote/unquote "romantic campaign" were her  
13 words, and I'm simply reporting that.

14 Q Did you question her --

15 A And --

16 Q I'm sorry. I'm sorry to interrupt you. Go.  
17 Finish, please.

18 A I did not -- she offered information. I did not  
19 question her on that for a couple reasons. One is that  
20 was not the scope of my evaluation. My -- the scope of  
21 my evaluation was to assess your mother's decisional  
22 capacity, testamentary capacity, requisite capacity.  
23 It was not to engage either you or Jill and hear  
24 hearsay about what the other person says or does. So I  
25 did not question her. I did allow her to speak her

1 mind at that time, and that's what I documented here.

2 Q What were you -- did you do any type of  
3 verification of any of the information that either her  
4 daughter or I gave?  
5

6 A No. I reported here as subjective reports of one  
7 of your own clinical -- or your own, excuse me -- your  
8 own subjective impressions of your mother's  
9 capabilities or shortcomings and the same with that of  
10 your sister. My --

11 THE COURT: That's it. You've answered  
12 the question.

13 Next question.

14 BY MR. HERRING:

15 Q I might have asked this. Did you read the  
16 petition by the former plaintiff?

17 THE COURT: By Jill?

18 THE WITNESS: Yes. Yes, I did.

19 BY MR. HERRING:

20 Q What conclusions did you draw from that?

21 A I understand what the nature of the petition is,  
22 the reasoning behind the -- I guess the expressed  
23 reasoning behind the need for the petition and for  
24 adjudication as an incapacitated person, and that  
25 the -- that Jill was asking to be guardian of your

1  
2 mother's person and estate. So I didn't read the  
3 petition and understand what the reasoning behind it  
4 is, what the -- not expected outcome, but desired  
5 outcome.

6 Q When you talked to -- say in the situation like  
7 this, if you talk to brother and sister -- whatever --  
8 do you normally not check out the information that they  
9 are giving you to see just who is more or less telling  
10 the truth and who is not telling the truth?

11 MS. CAMP: Your Honor, objection. I  
12 believe that's been asked and answered.

13 THE COURT: It has. Sustained.

14 And, also, just to be clear,  
15 Mr. Herring, this expert had a very narrow focus based  
16 on the Court's appointment. He was not an investigator  
17 as to what the truth was or what you or your sister was  
18 saying. He was simply to assess the capacity of your  
19 mother and whether or not she's in need of a guardian.

20 BY MR. HERRING:

21 Q Why were we interviewed if that was your --

22 THE COURT: Okay. This is not time for  
23 you to ask me questions.

24 MR. HERRING: No. That's what I'm  
25 saying.

1  
2 BY MR. HERRING:

3 Q Why did you contact the brother and sister -- for  
4 what reason did you do so?

5 A Because I would do that with any clinical exam. I  
6 glean information from various sources and I look at  
7 that information and it gives me some understanding as  
8 to what your impressions of your mother are, your  
9 understanding of her condition, versus Jill's  
10 understanding of the condition, and compare that to  
11 what I see clinically. So there is no way to verify  
12 all of that information, and that's why it's reported  
13 as subjective reports. So it's one's impression,  
14 personal opinion impression. My results are -- my  
15 results incorporate objective testing as well.

16 Q But if one person's testimony was not accurate,  
17 wouldn't that taint your opinion of or taint part of  
18 what you were -- of what your conclusion might be?

19 A No, it doesn't. I base my conclusions on my exam.  
20 There are many times when I don't have collateral  
21 information to incorporate into that.

22 Q Now, I have talked to several neuropsychologists.  
23 One gives a one-hour exam evaluation.

24 MR. JASKOWIAK: Objection, Your Honor.

25 THE COURT: Sustained.

1 This is not your time to testify about  
2 what you did. This is a question for this --

3 MR. HERRING: I am going to phrase it --

4 THE COURT: No. You don't get -- sir,  
5 this is probably the sixth time I've said this to you.  
6 This is not a narrative before you get to the question.  
7 Ask just the question.

8 MR. HERRING: Okay.

9 BY MR. HERRING:

10 Q How many hours do you feel should be spent when  
11 you're evaluating a subject?

12 A It depends on the scope of the question. What is  
13 the question that is being asked of you? My  
14 evaluations typically, for individuals who are not, you  
15 know, profoundly impaired globally, meaning somebody  
16 who has a severe level of dementia -- which, obviously,  
17 you can't spend that much time gleaning information  
18 from, you can get a very clear picture very quickly.  
19 But typically someone who, like your mother, is a very  
20 typical case for what I see on a regular basis, my  
21 evaluations, the person-to-person time with them are  
22 somewhere in the neighborhood of two and a half to  
23 three hours.

24 Q If somebody only -- if a neuropsychologist only



1  
2 gives a one-hour evaluation, would you say that was  
3 less than a proper evaluation to give?

4 A Not necessarily. I like to -- I like to spend  
5 more time with the patient because I want to glean more  
6 information. And I also want to examine abilities,  
7 whether it be memory, language skills, semantic  
8 knowledge, receptive language -- whatever it is I'm  
9 going to comment on and opine about. I usually measure  
10 things in triplicate because of the liability issue,  
11 you want to see whether or not what you -- a test  
12 performance is an accurate reflection of that person's  
13 true abilities. If it is, then you're going to see  
14 some degree of consistency across tests, different  
15 tests that purport to measure the same thing. So that  
16 makes the evaluation longer.

17 I also tend to look at a lot more  
18 details in that person's background that -- in my  
19 clinical evaluation. So I probably do spend more than  
20 a lot of my colleagues doing that, but it doesn't  
21 necessarily mean that spending an hour with somebody,  
22 you can't -- that that would be an invalid assessment.  
23 You may not just be able to get the breadth of  
24 information that you need. It all depends on the  
25 question.

1  
2 Q And if a neuropsychologist spends seven hours with  
3 somebody, isn't that getting more information than  
4 you're getting?

5 A Probably not. There is a point where you plateau  
6 on how much information that you've actually gained.

7 Q So you feel --

8 A You're probably losing the person after -- you  
9 know, if you're going to spend seven hours with a  
10 person -- which you would not, no neuropsychologist  
11 would be spending seven hours with a person unless it  
12 was across multiple visits.

13 Q Yes. I apologize. Yes. The one I was referring  
14 to for seven hours, it was over two days. I apologize  
15 for that. But the different neuropsychologists, in  
16 your profession, there is no standard of number of  
17 hours to spend with somebody to come to an evaluation  
18 conclusion?

19 A There is no standard that one has to follow,  
20 whether it be ethically or clinically, to come to  
21 conclusions. A lot of it depends on the  
22 neuropsychologist. A lot of it depends on -- a lot of  
23 it also depends on the referral question, what you're  
24 being asked to evaluate.

25 Q You admitted or you stated you spent about three

1  
2 hours with my mother and you got your information from  
3 that. The fact that I have been with my mother every  
4 day for eight and a half years, that's three thousand  
5 one hundred --

6 THE COURT: Okay. I'm going to stop  
7 you. This witness is not going to assess who should be  
8 given more credibility when it comes to this Court's  
9 decision. That's my decision and I will take that into  
10 consideration. Next question.

11 BY MR. HERRING:

12 Q Did my mother ever cook you dinner?

13 THE COURT: Not relevant. Next  
14 question.

15 MR. HERRING: Well, it shows --

16 THE COURT: Not relevant. Next  
17 question. This is an expert who did a particular  
18 clinical analysis of your mother. That's the  
19 appropriate area of questioning. He didn't live in  
20 your house with you. He didn't grow up with you.  
21 These are questions for this expert only. And if you  
22 don't have any more, we will conclude the questioning.  
23 Any relevant questions for this witness?

24 MR. HERRING: Well, it goes to the point  
25 of --

1  
2 THE COURT: I am not asking what it goes  
3 to. I'm telling you what --

4 MR. HERRING: Okay.

5 THE COURT: -- to ask a relevant  
6 question for this witness. You will be given the  
7 opportunity to testify.

8 BY MR. HERRING:

9 Q Did you find any examples where my mother had  
10 misused her finances in any way such as writing checks  
11 in bizarre amounts or above her savings or to people  
12 that don't exist?

13 THE COURT: Asked and answered. You've  
14 already asked this witness if he did any independent  
15 investigation. He has given you an answer regarding  
16 his questioning regarding changing of certain legal  
17 documents. Asked and answered.

18 BY MR. HERRING:

19 Q You had mentioned about that she -- and, again, I  
20 don't mean to not quote you correctly, but you had  
21 talked earlier about she had delusions of paranoia.  
22 Did I remember that correctly?

23 A No, I never said that she had delusions of  
24 paranoia. I said that Jill used those words in her  
25 subjective report of her experience and interactions

1  
2 with your mother. I clarified it in the sense that,  
3 yes, I see some suspiciousness and paranoia there.

4 "Delusions" are a clinical term, and I  
5 don't think that that term is used appropriately. And  
6 I just wanted to clarify that in my report, that I did  
7 not feel that she had a psychotic disorder which  
8 incorporates delusions and hallucinations and such;  
9 but, instead, that her -- what Jill was describing was  
10 paranoia that was based on confabulation, which we've  
11 already discussed.

12 Q Did I understand you correctly that you feel that  
13 my mother needs daily supervision?

14 A I do, yes.

15 Q You do?

16 A You understood me correctly when I said that.

17 Q And what does that involve?

18 A That means that she cannot live independently and  
19 that someone needs to be with her on a daily basis.

20 Q "Daily" meaning 24-hour?

21 A No, daily does not mean 24 hours.

22 Q What does that mean?

23 A Daily means that someone throughout the course of  
24 the day needs to be with her for extended periods of  
25 time. In fact -- or inversely explained, it's that the

1  
2 time that she spends alone should be limited. I don't  
3 feel that she, at this point in time, really requires  
4 24-hour supervision.

5 Q Do you feel she's a menace or a danger to herself?

6 MS. CAMP: Your Honor, he's already  
7 testified to this.

8 THE COURT: So objection, asked and  
9 answered?

10 MS. CAMP: Objection.

11 THE COURT: Sustained.

12 BY MR. HERRING:

13 Q How many hours do you feel should somebody be  
14 there to be with her?

15 THE COURT: Sir, he has answered this.  
16 He said she cannot be left alone all day every day, she  
17 needs someone with her. But she can be left alone for  
18 short periods of time without being a danger to  
19 herself. He testified about this extensively.

20 MR. HERRING: Well, I don't remember the  
21 hours --

22 THE COURT: Well, if you don't remember  
23 I'm sorry, but he did testify about this extensively.

24 MR. HERRING: I am sure he did, Your  
25 Honor.

1  
2 THE COURT: And you don't get to go --  
3 the appropriate objection is asked and answered. The  
4 question was asked of him, he's already given the  
5 answer. We are going on to a new topic then.

6 BY MR. HERRING:

7 Q You felt that her -- she was going to decline in  
8 her abilities. How do you know that? How can you say  
9 that?

10 A Because by definition dementia is a progressive  
11 neurologic disease process, "progressive" meaning that  
12 the person will continue to decline in their cognitive  
13 capabilities, which eventually translates into  
14 functional decline too.

15 So, by definition, if someone is  
16 diagnosed with dementia, the expectation is that they  
17 will decline.

18 Q Are you --

19 A It's not a static illness.

20 Q Medically has it ever been established that it's  
21 going to be 1 percent, 5 percent, or nobody knows?

22 A That is based -- it's not -- there is no -- there  
23 is no rules to that. You cannot -- you can predict it  
24 up to a certain extent. Certain conditions that are in  
25 place impact the rate of decline, certain things in the

1 person's history can impact the rate of decline. So  
2 there is no -- every person progresses differently.

3 Q So you are not able to say if it's going to be  
4 1 percent or 5 percent over 10 years or --

5 THE COURT: That's what he just  
6 testified to. Everyone progresses differently, that  
7 was his testimony. Asked and answered.

8 BY MR. HERRING:

9 Q You had testified about my mother had said that  
10 she pays some bills, was it, or all the bills are paid  
11 automatically?

12 A She reported to me that she handles her finances  
13 and that you simply mail out the checks that she  
14 writes. That was her report to me.

15 Q So if she does write checks, then she certainly  
16 knows how to write those checks; isn't that true?

17 A Sure. She --

18 Q And she knows that she cannot write amounts over a  
19 certain amount; correct?

20 A No, that doesn't equate. That doesn't equate.  
21 She has the capability of writing out a check. I have  
22 already testified on the fact that her praxis skills  
23 are still intact. So she has the capability of  
24 physically writing out a check. What she writes out a  
25



1  
2 check for is a different -- that's a different story  
3 altogether. That wasn't -- where you're reading is  
4 what her report of what she does in the management of  
5 her IADLs, or instrumental activities of daily living.  
6 That's her subjective report.

7 Q What tests or what lines of questioning, whatever,  
8 did you do that shows whether or not she knew right  
9 from wrong and did she have common sense?

10 MR. JASKOWIAK: Objection, Your Honor.

11 THE COURT: Sustained. Next question.  
12 That's not the scope of his report.

13 MR. HERRING: Well, if he's a --

14 THE COURT: It's not the scope of his  
15 report. Sir, we've gone over what the scope of his  
16 report is. Next question that's relevant to this  
17 witness.

18 MR. HERRING: I guess that's all, Your  
19 Honor.

20 THE COURT: Okay. Mr. Jaskowiak, do you  
21 have any redirect?

22 MR. JASKOWIAK: No redirect. I just ask  
23 that the report be admitted into evidence, along with  
24 the CV, H-1, and H-2.

25 THE COURT: The report has previously

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

been admitted into evidence.

Dr. Ledakis, that concludes your testimony. We do thank you for your patience today and your good explanations and you may be excused.

THE WITNESS: Thank you, Your Honor. Have a good afternoon.

THE COURT: You too. You can leave all of that.

Okay. It is now five minutes before one o'clock. We are going to take a lunch recess until two o'clock today, and then when we return we will reconvene.

I believe, Ms. Camp, you have Mr. Fenstermacher available on Zoom. If you can let him know we are not getting to him --

MS. CAMP: Yes.

THE COURT: -- at one o'clock. But we can get to him promptly at two.

MR. JASKOWIAK: Your Honor, I don't know if -- did Mr. Fenstermacher get the Zoom link? Because I got an email from him at one point that he had not.

THE COURT CLERK: I did prepare a Zoom link. I gave it to Karen. However, I know Ms. Camp asked me to send it. I just need an email for him.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MS. CAMP: Sure.

- - -

(Discussion off the record.)

- - -

(At 12:54 p.m., a recess was taken until  
2:06 p.m. of the same day.)

- - -

THE COURT: Good afternoon, everyone.

Mr. Jaskowiak, since we started with  
your examination of the expert, I'm just going to go to  
you. Do you have any additional evidence or testimony  
you wish to present on behalf of your client? You, of  
course, will be able to make argument at the end.

MR. JASKOWIAK: No. Not at this time,  
Your Honor. I believe that that is the information on  
-- the evidence on incapacity, that we need to  
establish whether or not my client is incapacitated.

Obviously, there will be testimony about  
the guardian if there is no less restrictive  
alternative that is acceptable. So I think we still  
have the various witnesses that the parties --

THE COURT: Right. I'm just asking you  
if you personally have any additional witnesses to call  
on behalf --

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. JASKOWIAK: No.

THE COURT: -- of Mrs. Herring.

MR. JASKOWIAK: No. No. Not at this time.

THE COURT: All right. Ms. Camp.

MS. CAMP: So Mr. Fenstermacher had a short window of time, and I don't believe we'll be able to do that today. So I plan to call my client next. And then as Mr. Jaskowiak said, you know, to the extent this Court determines that a guardian is needed, I expect that we'll have whoever that guardian might be provide testimony at a different time probably. And, you know, I'd like to request that if it turns out that we need Mr. Fenstermacher to appear at that point if we're kind of running over, maybe we can have my client and Arthur, to the extent he'd like to provide testimony, try to do that today.

THE COURT: Let's see what we can get through. That would be great. Okay. So you're going to call your client at this time?

MS. CAMP: Correct. Yes.

THE COURT: Okay. So, ma'am, come forward.

- - -

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**JILL SCOTT HERRING**, having been duly sworn/affirmed, was examined and testified as follows:

THE COURT: Ms. Camp, whenever you're ready you may proceed.

MS. CAMP: All right.

DIRECT EXAMINATION

BY MS. CAMP:

Q And, Jill, I'm going to refer to you as "Jill" to avoid some confusion for the record; and also I'm going to refer to Arthur as "Arthur"; to avoid any confusion, your mother as "Mother," "Jane," or "Mrs. Herring."

So can you please state your address for the record?

A 4383 Buttercup Circle, Collegeville, 19426, Pennsylvania.

Q And what is your relationship to Jane Herring?

A She is my mother.

Q And how old is your mother?

A My mother is 96 as of May the 15th.

Q Where does your mother currently live?

A At 26 Chancery Court, Souderton, 18964, Pennsylvania.

Q And how long has she lived there?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A I believe since 1999.

Q Does your mother have any other children?

A Arthur.

Q And where does your brother live?

A My brother lives at my mother's home.

Q And, to the best of your knowledge, do you know where he lived before he began residing with your mother?

A I believe Melody Lakes, wherever that is.

Q And what is your understanding of why your brother began living with your mother?

A I saw an eviction and I saw a bankruptcy proceedings and a million dollar judgment documentation, so I believe that he moved in. And, you know, my mother provides him total living.

Q And what is your understanding that he did begin living in the home?

A February 20th, I believe, that Saturday, 2020.

Q Is your mother currently married?

A No. She's a widow.

Q And when did your father die?

A My father died January 21, 2013.

Q And what was the cause of your father's death?

A He had Lewy body dementia.

1  
2 THE COURT: I'm sorry. You said 2013?  
3 Is that when your dad died?

4 THE WITNESS: Yes.

5 THE COURT: Okay. Thank you.

6 MR. JASKOWIAK: If the witness could  
7 pull the microphone a little closer to her, because  
8 she's rather soft-spoken?

9 THE WITNESS: I'm really on top of it.  
10 I'm sorry. I'll talk louder.

11 THE COURT: Even being that close is  
12 better.

13 MR. JASKOWIAK: Yes. Thank you.

14 BY MS. CAMP:

15 Q And when did your father's health begin to decline  
16 in connection with his Lewy body disease?

17 A Well, I was living in Annapolis, I had bought a  
18 retirement home in Annapolis. And my parents visited  
19 me over the weekend once every month. I also attended  
20 events that my father was involved in and my mother was  
21 involved in at the Philadelphia Navy league. We went  
22 on bus trips and so forth. So I had pretty continual  
23 contact with my father.

24 I noticed changes. He had AFib,  
25 hypertension, falls, and memory loss, and he really

1  
2 depended on me with a lot of business questions and  
3 advice. I'd say it started about two years before his  
4 death I saw a significant decline.

5 Q When did you -- you said you bought a home in --

6 A Annapolis.

7 Q -- Annapolis. When did you relocate to  
8 Pennsylvania?

9 A I bought -- I moved -- what was the date? I think  
10 November of 2008 I moved to Korman's in Blue Bell. I  
11 rented because I was leaving behind a career, my  
12 retirement home. I lost 70,000 selling my retirement  
13 home, it was during the great recession. So I moved  
14 into an apartment and started a whole new career in  
15 health care with a grant from the State of  
16 Pennsylvania.

17 Q So your move from Annapolis to Pennsylvania, was  
18 that for a career change or was that for you to help --

19 A Oh, no.

20 Q -- take care of your parents?

21 A No. I'm sorry. No. I moved -- I saw Dad's  
22 significant decline. And he would call me in the  
23 middle of the night and I saw his terrible fear and  
24 anxiety with his disease. We didn't know it was Lewy  
25 body until he went to Eagleville and it was diagnosed



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

there.

But he was almost begging me to -- you know, to help him. I first asked my parents to move in with me in Annapolis. My father's extended family was there. There was just so much there that he loved, the water and the Navy and so forth. I wanted them to move in. Dad, you know, wanted to, but my mother refused.

Q And prior to your father's death -- and immediately prior to his death -- who helped manage your parents' finances?

A Well, they've had Matt Fisher and Matt Pruitt to manage their finances, oh, for a couple decades, since the '90s. They were originally with Morgan Stanley. And then the summer of 2019 Pruitt and Fisher moved to Raymond James. And, you know, Dad and I -- after I moved back to Philadelphia, Dad and I would go to different brokers because he had accumulated a portfolio outside or off the platform of Morgan Stanley, so we went to brokers, went to different financial institutions. But as best I could, I wanted to dig into what was going on in his office.

But he got very emotional and upset with, you know, his disease because he knew he couldn't handle it anymore. And so he felt comfortable going

1  
2 outside to brokers, but he just couldn't deal with the  
3 details. But he recommended clients to me and I would  
4 call the clients as well as, you know, us going on  
5 office visits to them.

6 Q I don't mean to interrupt you but I'm going to.

7 A I'm sorry.

8 Q I want to be a little more specific in my  
9 question. When your father was declining in maybe the  
10 year or two before he died, who was helping pay his  
11 bills?

12 A I guess it was my mother.

13 Q While your father was still alive, did your mother  
14 ever primarily manage the joint finances with your  
15 father?

16 A No.

17 Q And then after --

18 THE COURT: I'm sorry. Was that yes or  
19 no?

20 THE WITNESS: No.

21 THE COURT: No. Okay.

22 BY MS. CAMP:

23 Q Following your father's death, did she primarily  
24 manage her own finances or did she have assistance from  
25 someone else?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A Prior to my father's death?

Q Following your father's death.

A Oh, following. I'm sorry. I assumed all responsibility for both my mother's personal finances as well as the huge portfolio -- "huge" meaning about five, six hundred thousand -- of stocks and bonds and variable annuities -- all kinds of types of annuities, actually -- variable insurance, whole life. And then I also consolidated -- well, I streamlined her personal finance and, you know, I was, you know, the center of communications with all of the advisors, the legal, accounting, and financial.

Q So at the time of your father's death in 2013, did your mother have a financial or a healthcare power of attorney?

A Yes.

Q I'd like to point your attention to -- hopefully my binder is up there, the big one.

THE COURT: The one right there to your right.

(Durable General Power of Attorney of Jane T. Herring dated July 9, 2004 marked Petitioner's Exhibit P-3 for identification.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MS. CAMP:

Q If you could flip to Tab 3. Are you familiar with this document?

A Yes. Generally.

Q And so this is marked as P-3 at the bottom. It says Durable Power of Attorney of Jane T. Herring. It's signed and dated at the bottom. Is that your mother's signature?

A Yes.

Q And what's the date on that document?

A July 9, 2004.

Q And then if you flip to the very last page of that tab, is that your signature on the acknowledgment?

A Yes, it is.

Q Okay. So this document you've seen before, and this is the power of attorney that was in place at the time your father died in 2013?

A Mm-hmm. Yes.

Q And do you know who prepared this document?

A Ron Fenstermacher.

Q And who is Ron Fenstermacher in relation to your mother?

A He is her trust attorney.

Q Do you know approximately about how long he had

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

been representing your mother?

A Yes. I believe since 2004.

Q So he represented both of your parents before your father died?

A Yes. And I, about the six months before Dad died -- actually, March 2012 -- I called a meeting of all the advisors to my parents' home because I wanted them to have the opportunity to solidify the estate plan and just, as specialists, ask each other any questions or my parents any questions. So both my parents were in attendance and it took the better part of the afternoon, and I think it was very productive.

THE COURT: And what year was that?

THE WITNESS: March 2012, about six months before my father passed.

BY MS. CAMP:

Q If you'd flip to the second page of that P-3, power of attorney --

A What tab was that again? I'm sorry.

Q Tab 3.

A P-3.

Q I'm just going to ask you to flip to the second page. Although, I think you know the answer, but it says it right there. Who did your mother name as

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

agents under this power of attorney?

A Jill Scott Herring and Arthur Herring, III.

Q And then what is that next line? Could you read that?

A "Agree on any decision that must be made by" --

Q Oh, no. I'm sorry. Right after. So it has your name, Jill S. Herring and Arthur Herring --

A "Should my children be unable to agree on any decision that must be made, my attorney, Ronald W. Fenstermacher, Jr., shall make the final decision."

Q Okay. And is it your understanding that this power of attorney covers financial affairs as well as healthcare matters?

A Yes.

Q And so although you and Arthur are both named as co-agents under this document, did Arthur assist you at all with managing your mother's finances?

A No. No.

Q And what is your understanding as to why both of you were named if you were primarily managing the finances?

A Well, I think it -- both my parents, and many times, were concerned that there would be someone that would intervene if there was not an agreement about a

1  
2 major issue, and so Ron was effectively the tiebreaker  
3 for any disagreement or any time when we could not  
4 agree.

5 Q In addition to your mother's financial affairs  
6 following your father's death, did you assist her at  
7 all with arranging for her medical appointments or  
8 anything regarding her personal safety at the house?

9 A Did you say before my father's death?

10 Q Following your father's death. I'm sorry.

11 A I always miss that.

12 Q Yes. We're going forward.

13 A Yes. Upon my father's passing I set up a medical  
14 mobile system. I researched the different medical  
15 mobile systems, alert systems. And Mother and I put  
16 into place one where there was a cellular base in her  
17 kitchen where she could push a button and be in  
18 immediate contact with representatives, and then also a  
19 pendant around her neck where she could press a button  
20 and if she -- you know, they would come on to ask her  
21 to respond. And if she didn't respond within seconds  
22 then they would go ahead and call an ambulance and  
23 emergency services. So it was very proactive on their  
24 part as well if she -- as a matter of fact, one time  
25 she rolled over in the bed and she activated the

1 pendant and, you know. But it was a very good system.  
2 I know I called them once or twice a year just to make  
3 sure, you know, the services were in place and so  
4 forth.  
5

6 And, you know, medically I saw her  
7 prescriptions, I had access to the Grand View Hospital  
8 portal to corresponded to Dr. Kuhar. So I saw, you  
9 know, any change in prescriptions or office visits or  
10 anything that the doctor would put in the portal until  
11 Arthur cut off my access for a year, so I have been  
12 unable to get any information through the portal.

13 I tried to go to -- or I did go to a  
14 couple of Mother's office visits with Dr. Kuhar and had  
15 private conversations with her. And, you know, I saw  
16 her on a -- obviously, a regular basis, talked to her  
17 every day, and took her on 16 different trips. She  
18 loved to go to the shore, so we went on 16 vacations,  
19 which she loved, after my father passed. Let's see  
20 what else.

21 Q Well, let me stop you there. You're getting ahead  
22 of me.

23 THE COURT: Let Ms. Camp ask you the  
24 next question.

25 BY MS. CAMP:



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Okay. So you did attend some appointments with your mother with Dr. Kuhar, who's her primary care physician; is that right?

A Yes. Yes.

Q Okay. Did Arthur ever attend any of those appointments with --

A Yes --

Q -- you as well --

A -- he did.

Q -- with your mother? So the three of you would jointly sometimes go and attend these medical appointments?

A Yes. Actually, Dr. Kuhar invited the three of us in the room, in the examining room.

Q Did you ever express any concerns to Dr. Kuhar about your mother's cognitive condition?

A Yes, I did. I did a timeline of all of my emails that contain medical references. And I -- the first one that I saw was in March of 2018, and -- but that was the first one. And a year later. So I had talked to Kuhar's office and talked to the nurse one time in 2018, and then another -- and then the following year, in March or April of 2019, I talked to the physician's assistant or nurse again. And they were going to relay

1  
2 that to Dr. Kuhar. And then I sent messages through  
3 the portal.

4 THE COURT: But just to clarify, the  
5 first time you raised a concern about cognitive decline  
6 with Dr. Kuhar -- either directly or through someone in  
7 the office -- was 2018?

8 THE WITNESS: Yes.

9 BY MS. CAMP:

10 Q Did your brother express any similar concerns  
11 about your mother's cognitive condition --

12 A No. In fact --

13 Q -- to Dr. Kuhar?

14 A -- in June 5th or 3rd or something 2019 I was with  
15 her in the examining room and I was trying to get  
16 Mother to be frank and honest. As a matter of fact, I  
17 said, Mother, this is your doctor, you know, speak to  
18 her honestly. And Artie spoke over me, really insulted  
19 me, and continued to insult me for about an hour during  
20 the whole exam. And he would really answer for the  
21 doctor, and then Mother would say yes. But, you know,  
22 Mother didn't really respond to the doctor; it was  
23 Artie, and then Mother agreed.

24 Q Okay. And you testified earlier that it's your  
25 understanding that Arthur began residing in your

1  
2 mother's home around February 2020. Did you visit with  
3 your mother at her home at any point in February of  
4 2020?

5 A Yes. I had arrived at her home on a Saturday  
6 morning to spend the day with her. We'd spend Saturday  
7 and we'd go to church and church functions on Sunday.  
8 So I arrived and Artie was unloading boxes from his car  
9 and the basement was filled with boxes and I didn't  
10 know what was going on.

11 Q Okay. Have you had any incidents where Arthur has  
12 displayed physical aggression towards you?

13 A I'm sorry?

14 Q Any incidents where Arthur has displayed physical  
15 aggression towards you?

16 A Yes. That day.

17 Q Do you recall that date?

18 A That was the 20th that he was moving in,  
19 February 20. I think it was -- it was that Saturday.  
20 Was it the 20th?

21 Q I think it's that.

22 A Yeah. Mother and I and Artie were down in the  
23 basement, I was just watching all of these boxes being,  
24 you know, loaded down there. And Artie took out his  
25 phone and video and started laughing maniacally. And

1 his eyes rolled back in his head and my mother said --  
2 was screaming to "Stop it. Stop it. Stop it." And he  
3 just taunted her and made fun of her. And I just  
4 wanted to get out. I mean, it was very frightening, I  
5 mean to see someone's eyes roll back.

6  
7 And so I was going -- I think I -- we  
8 went upstairs and then I started down the stairs again  
9 and Artie pushed me against the wall with his body and  
10 I was trying to -- and I was holding on to the rail.  
11 And I think I would have -- I would have, you know -- I  
12 mean, I felt that he was trying to push me down the  
13 stairs.

14 And then I ran out to the car with my  
15 stuff and he kicked me in the back and told me never to  
16 come back. And then he left and he went -- he was  
17 going in the house and he said, I'm going to call the  
18 police. And --

19 Q Okay. I'm going to stop you there. Did you end  
20 up filing a police report regarding that incident?

21 A Yes, I did.

22 (Franconia Township Police Department  
23 Incident Report dated February 24, 2020  
24 marked Petitioner's Exhibit P-7 for  
25 identification.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MS. CAMP:

Q Can you flip to Tab 7 in the binder? It's the exhibit marked P-7. Are you familiar with this document?

A Yes.

Q And what is this document?

A This is the incident report I gave over the phone. And then I went to the police station and spent about an hour with the chief of police at Franconia Township.

Q Okay.

A And they said that they would give me an escort to the home whenever I wanted to, to make sure that I saw my mother if I wanted.

Q Did you end up filing any formal charges against Arthur?

A No. I wasn't injured.

Q Have you been inside visiting with your mother in her home since that date?

A Have I been inside? No. What I do is pick her up. She comes out the -- you know, the kitchen door into the garage and I -- you know, I meet her there and then take her to my car and we go out.

Q Did you end up filing any other reports with any other --

1  
2 A Yes.

3 Q -- agencies? Which --

4 A I filed a report with the Montgomery County Senior  
5 Services Elder Abuse and they immediately came to my  
6 house the next day to interview me at 9 o'clock. And  
7 they handed the report over to an investigator and they  
8 got in contact with Raymond James and asked for various  
9 statements. I don't know what they asked, but, you  
10 know, I was told that they were in long-term contact  
11 with them.

12 And then the investigator called me and  
13 said she was going to call my mother. And she did call  
14 my mother and just simply said that, "We understand  
15 there is abuse in your house," words to that effect.

16 And my mother said, "Who is this?" And  
17 they said that's not important, but "We want you to  
18 know that." And I don't -- you know, my mother was not  
19 friendly, you know. She was surprised, I mean, you  
20 know, to be -- she didn't ...

21 Q So following this incident in February of 2020,  
22 this is actually -- I think the incident report is  
23 dated -- the date of the report is February 24, and it  
24 says it occurred on Saturday, which actually would have  
25 been February 22. Does that sound right?

1  
2 A Mm-hmm. Mm-hmm. Yes.

3 Q After that time when Arthur began living in the  
4 home, did you notice any change in your mother's  
5 condition cognitively?

6 A Absolutely. Even though my email to -- my first  
7 email was about Mother's -- I called it "dementia," I  
8 -- you know, I want to say that in no -- if I use any  
9 terms they're not meant to be diagnostic terms, you  
10 know, in any way, shape, or form. It's just my  
11 impression, the words that I thought was appropriate at  
12 the time.

13 So my first email was to Ron  
14 Fenstermacher in March of 2018 and I said that --

15 Q I'm going to stop you. We're in February 2020.  
16 We're moving forward.

17 A Oh, moving forward.

18 Q Moving forward.

19 A Yeah.

20 Q After Arthur began living in the home and  
21 following the assault incident --

22 A Yeah.

23 Q -- in February of 2020, did you notice any change  
24 in your mother's behavior in the months that followed?

25 A Oh. All right. Yes. 2019, I think, was the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

worst year --

Q Jill.

THE COURT: She's orienting you --

THE WITNESS: Oh, 2020.

MS. CAMP: Yes.

THE COURT: After Arthur moved in.

THE WITNESS: Okay.

THE COURT: So she'll ask you follow-up  
-- she's good at what she does. Let her --

THE WITNESS: 2020.

THE COURT: Listen to the question she  
asks you and answer that question. So the question is  
after Arthur moved in, what, if any, changes did you  
notice in Mom?

THE WITNESS: Mother --

BY MS. CAMP:

Q Here, I'll ask a more specific question. Does  
your mother have a housekeeper?

A Yes.

Q What's her name?

A Kerry Minio.

Q And what does she do for your mom?

A She's a cleaning woman.

Q Does she come every week?



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A No. About every five or six weeks.

Q Okay.

A I know what you're -- umm --

Q And she's been coming to your mother's house for a number of years or how long has she had Kerry?

A A number of years.

Q Okay. So after Arthur moved into the home, was there any change reported from Ms. Minio --

A Yes.

Q -- about her arrangement with your mother cleaning the home?

A Yes. Kerry called me in May 2020 and said that she's seen a noticeable difference in Mother, she's very restrictive on the phone, she's just not her normal self, and she connected Artie in a way. And she was actually frightened of Artie and she said fortunately he stays upstairs. But she was just really worried.

THE COURT: Let me just clarify. When you said she was scared of Artie, when you're saying "she," did you mean the housekeeper or Mom?

THE WITNESS: Housekeeper.

THE COURT: Okay.

BY MS. CAMP:

1  
2 Q You testified earlier that you would attend  
3 medical appointments with your mother. Were there any  
4 appointments that were scheduled that ended up getting  
5 cancelled out of the ordinary?

6 A Yes. I wanted to attend Mother's visits with  
7 Dr. Kuhar, and she would tell me not to come or she  
8 didn't want to go. And then I found out later that  
9 Artie went with her and that she did go.

10 But Boardman-Hamilton, the insurance  
11 company that my father sold, his insurance agency, too,  
12 called me and said Artie was harassing them. And the  
13 account manager said that whenever Artie calls the  
14 president of the company is now going to handle it,  
15 Gary Dix.

16 And also Buxmont Accounting, Barbara  
17 Hagan [ph] called me and said, "Your mother is  
18 extremely confused on the phone," she really can't have  
19 good conversations with her or productive  
20 conversations, and --

21 Q What about in connection with her financial  
22 affairs? So you've testified that you basically  
23 assumed full responsibility for managing your mother's  
24 affairs. How would you -- would you go to her house  
25 and obtain mail? How would you collect her documents?

1  
2 A Yeah. I really had a system that she would set  
3 aside the mail and twice a week I would go through the  
4 mail to look for communications or things I needed to  
5 address. And it was extremely labor-intensive after  
6 dad died, because --

7 Q Well, I want to stop you.

8 A This is 2020.

9 Q I know. We're staying in 2020. We're on a  
10 forward train here.

11 THE COURT: And, again, this is not like  
12 a normal conversation. I want you to listen to the  
13 question from Ms. Camp and just answer that question.

14 BY MS. CAMP:

15 Q So you had a system. You would go over, she'd put  
16 mail aside for you, you'd collect documents, figure out  
17 what was important, and help her with bill payment; is  
18 that right?

19 A But that goes back to after my father died.

20 Q I understand that. But in February 2020 and  
21 moving forward as 2020 is progressing, was that system  
22 still working out or were there --

23 A No. No.

24 Q Okay. Why was that system not working out?

25 A Well, I didn't want to go in the house, I was not

1  
2 welcome. I was afraid Artie would attack me and I just  
3 didn't want to -- you know, I stayed out of the house.

4 And Mother, more and more in 2020, told  
5 me not to come and see her. She didn't want to go to  
6 church. She didn't want to go out to lunch, dinner. I  
7 mean, we did a million things -- movies, plays, I mean,  
8 you name it we did it. And all of that was cancelled  
9 in a systematic -- I mean --

10 Q I'm going to stop you. Sorry.

11 A Yeah.

12 Q So is it fair to say that you experienced  
13 difficulty in fulfilling your role as agent under this  
14 2004 power of --

15 A Yes.

16 Q -- attorney?

17 A Yes.

18 THE COURT: And let me --

19 Ms. Camp, you may be getting to this,  
20 but I'm going to jump ahead. Prior to 2020 how  
21 often -- let's say in just the two years leading up to  
22 that time frame, how often did you take your mom to  
23 church?

24 THE WITNESS: Oh. Weekly.

25 THE COURT: And when in 2020 did Mom

1 start either -- did she stop going to church or did her  
2 attendance begin to decline with you?  
3

4 THE WITNESS: With me it declined and it  
5 stopped in the fall.

6 THE COURT: Okay. And you said Mom told  
7 you to stop coming to the house?

8 THE WITNESS: Um-hmm.

9 THE COURT: When did that occur  
10 approximately?

11 THE WITNESS: It's in my emails. I  
12 would say after Artie moved in. I mean, 2020.

13 THE COURT: Let me orient you this way.

14 THE WITNESS: I'd say summer.

15 THE COURT: Okay. So summer in 2020.

16 And how about prior to February of 2020  
17 when Arthur moved in, how often would you see Mom for a  
18 lunch date, movie, something social?

19 THE WITNESS: Every Saturday, every  
20 Sunday, and during the week, you know, she would come  
21 over for lunch. I work full-time for Main Line Health,  
22 I've been an employee for ten years as a medical coder.

23 So I would -- she would come over for  
24 lunch -- she was driving then -- or we'd go out to  
25 dinner, something like that. But we would, you know,

1  
2 talk several times a day.

3 THE COURT: And when in 2020 did that  
4 change? Approximately. Again, I'm not looking for an  
5 exact day.

6 THE WITNESS: I'd say spring.

7 THE COURT: Okay.

8 All right. Ms. Camp, I'll turn it back  
9 to you.

10 BY MS. CAMP:

11 Q That's a great segue to my next question. So you  
12 experienced difficulty exercising your duties as power  
13 of attorney. Did you have any conversations with Ron  
14 Fenstermacher about your difficulty because he,  
15 obviously, is the tiebreaker, you know, for lack of a  
16 better term, if -- for you and your brother. Did you  
17 talk to Ron about that?

18 A Yes. In the spring of 2020. It -- I just really  
19 couldn't function. Artie's presence in the home just  
20 impacted my effectiveness in working with all of the  
21 outside off-platform financial companies and  
22 investments. And I didn't know if I was in compliance  
23 with them, I couldn't get documents, checkbooks would  
24 disappear, Mother would stash checks in drawers. And  
25 I'd spend hours on a Saturday hide and seek, trying to

1 find documents in folders and things. It was just --  
2 it was horrible. And --

3  
4 Q I'm going to stop you. So did Mr. Fenstermacher  
5 end up exercising his authority under that 2004 power  
6 of attorney to be a tiebreaker, to the best of your  
7 knowledge?

8 A Yes.

9 Q Okay.

10 A And he suggested the supplemental directive, which  
11 would divide our responsibilities so that Arthur would  
12 be a guardian of her personal health care because he  
13 was living there. And I would -- since I had already  
14 been for, you know, ten years -- you know, seven,  
15 eight, nine years -- seven years, let's put it that way  
16 -- handling all the financial affairs.

17 (Jane T. Herring Power of Attorney  
18 Supplemental Directive of Ronald W.  
19 Fenstermacher, Jr. dated May 7, 2020  
20 marked Petitioner's Exhibit P-4 for  
21 identification.)

22 BY MS. CAMP:

23 Q Can you turn to Tab 4 in the exhibit binder there?  
24 It is the exhibit marked P-4.

25 MR. HERRING: What tab was that?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. JASKOWIAK: P-4.  
THE COURT: P-4.

BY MS. CAMP:

Q It's entitled Jane T. Herring Power of Attorney Supplemental Directive. Is this the supplemental directive that you were referring to?

A Yes.

Q And can you flip to -- it's only two pages -- the second page? When is this dated?

A May 7, 2020.

Q Okay. So Ron executed this document. This has his name right there and his signature, which you're probably familiar with?

A Yes.

Q So this is the document by which you were authorized to continue, but you were going to continue as sole agent of financial affairs for your Mother, and Arthur would continue to serve in the role as agent for healthcare matters.

Okay. Did Mr. Fenstermacher prepare any other estate planning documents for your mother, a will or a trust?

A In 2020?

Q Ever.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A Oh, yes. When he was retained as --

Q So I'm --

A -- attorney.

(Will of Jane T. Herring dated November 26, 2018 marked Petitioner's Exhibit P-5 for identification.)

BY MS. CAMP:

Q I'm going to have you flip to Tab 5, and it's marked as Exhibit P-5. Does this look like -- are you familiar with this document?

A Yes.

Q And if you flip to the third page, when is this document dated?

A November 26, 2018.

Q And is that your mother's signature there?

A Yes.

Q All right. So this is her November 26, 2018 will that was prepared by Ron Fenstermacher; is that right?

A Yes.

Q Okay. And, actually, let's go back to the first page and this item First, it's kind of the second paragraph down. Does it say who the executor is?

MR. HERRING: Where are we?

THE COURT: The first page of P-5.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. HERRING: P-5.

THE COURT: So the will.

THE WITNESS: Ronald W. Fenstermacher.

THE COURT: Wait till he gets there.

Mr. Herring, are you there?

MR. HERRING: Yes, ma'am.

THE COURT: Okay. So she's asking questions about executor on Page 1.

BY MS. CAMP:

Q Okay. And then if you skip down to -- it says Third, next it says Residue. You can -- where does it say that your mother's residue of her estate goes?

A To the trust. To the trust created herein -- therein.

Q So you're looking at the second line down. "To the trustee under my agreement of trust dated April" --

A (Unintelligible)

THE COURT STENOGRAPHER: I'm sorry.

THE COURT: When you're --

THE COURT STENOGRAPHER: You're mumbling.

THE COURT: -- reading to yourself she can't write it down.

So, Amy, I'll read it. It says the

1  
2 Residue, and then jumping ahead -- "give and devise to  
3 the trustee under my agreement of trust."

4 (Agreement of Trust of Jane T. Herring  
5 dated April 26, 1993, as amended and  
6 restated on November 26, 2018 marked  
7 Petitioner's Exhibit P-6 for  
8 identification.)

9 BY MS. CAMP:

10 Q I'm going to have you flip to Tab 6, and this is  
11 Exhibit P-6. Are you familiar with this document?

12 A Yes.

13 Q All right. And if you flip to the second-to-last  
14 page, what is the date of this document?

15 A November 26, 2018.

16 Q And is that your mother's signature there?

17 A Yes.

18 Q All right. So this is dated the same date as the  
19 will. Is this document also prepared by  
20 Mr. Fenstermacher?

21 A Yes.

22 Q All right. And I'm going to have you go to the  
23 second page of this P-5.

24 THE COURT: P-5 or P-6?

25 MS. CAMP: Oh, I'm sorry. P-6. Thank

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

you, Your Honor.

MR. HERRING: What page? Second page?

THE COURT: Second page of P-6.

BY MS. CAMP:

Q It's the second paragraph down and it starts with  
Second, Residuary Trust. In this section it -- can you  
read that section right after Residuary Trust for me?

A "After my death, the trustee shall divide the  
balance of principal into as many equal shares as there  
shall be children of mine, Jill S. Herring and Arthur  
Herring, III, surviving me."

Q So this is equal shares to you and your brother.  
Was that always your understanding of your --

A Yes.

Q -- mother's estate plan?

A Absolutely. For decades. Since my father and  
mother first talked about it in the '70s.

Q And so this sounds like you were pretty involved.  
And, obviously, Ron Fenstermacher's in touch with you  
and your brother with respect to the supplemental  
directive. Was your mother historically transparent  
about her estate planning with you and your brother?

A Oh, absolutely. And after dad died, I mean, I had  
access to everything in the house. And I had to

1  
2 reconstruct, you know, many filing cabinets and all of  
3 dad's office --

4 Q I'm going to stop you.

5 A Okay.

6 Q Was she transparent --

7 A Yes. Yes, I had access to everything. And  
8 organized Mother's documents and labeled them for her  
9 and weekly went over things with her.

10 Q So at some point did you later learn that a new  
11 power of attorney had been signed by your mother?

12 A Yes.

13 Q Do you recall who notified you that a new power of  
14 attorney had been signed by your mother?

15 A Yes. Matt Fisher.

16 Q Do you remember when that was approximately?

17 A February or something.

18 Q February of what year?

19 A 2021.

20 Q Okay.

21 A January, February. It was the beginning of the  
22 year.

23 Q So your recollection is that Matt Fisher -- and  
24 where is he, for the record?

25 A Matt Fisher is with Raymond James.

(February 15, 2021 Email from Arthur Herring, III to Jill Scott Herring marked Petitioner's Exhibit P-8 for identification.)

BY MS. CAMP:

Q Raymond James. Can you flip to Tab 8, I marked as Exhibit P-8? Are you familiar with this document?

A Yes.

Q And what is this document?

A It's an email from Artie to me summarily saying he has power of attorney and you don't and Ron is no longer trust attorney.

Q And what is the date of this email?

A February 15, 2021.

Q Okay. So is this when you first received a copy of the power of attorney?

A Yes.

(Power of Attorney of Jane T. Herring dated December 3, 2020 marked Petitioner's Exhibit P-9 for identification.)

BY MS. CAMP:

Q We're going to flip to Tab 9, Exhibit P-9. Is this the document that was attached to the email that

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Arthur sent you?

A Yes.

Q Okay. And what is the date of this document on that first page?

A December 3, 2020.

Q Okay. Are you familiar with who prepared this document?

A No, I'm not familiar with him.

Q Has your mother ever spoken to you about this --

A No.

Q -- new 2020 power of attorney?

A Nope.

Q So Matt Fisher notified you about this power of attorney. To the best of your knowledge, did Raymond James honor that power of attorney and allow Arthur to take care of your mother's accounts?

A No, they didn't. And a compliance letter was forwarded to me and they named several reasons why they could not accept it.

Q Do you know what -- was anybody able to access your mother's accounts at that time when the 2020 power of attorney was produced?

A At some point Raymond James froze the accounts, the two IRAs, the two trust accounts, and the managed

1  
2 account. The only account that had to remain open --  
3 and that was according to the attorney at Raymond  
4 James -- was the cash account.

5 Q Were you notified of any other fraud alerts or  
6 account freezes placed on your mother's other financial  
7 assets?

8 A Yes. I got a call from the fraud department at  
9 Lincoln Financial Group in March, was it, of this year.  
10 And they said that they --

11 Q Lincoln Financial Group. What kind of assets does  
12 your mother have there?

13 A She has, I think, universal life.

14 Q A life insurance policy?

15 A Yes. Two.

16 Q So the life insurance company called you about --

17 A Yes.

18 Q -- a fraud alert? What kind of fraud would  
19 someone be trying to do on a life insurance policy?

20 A They said that Artie was impersonating Mother and  
21 trying to get money.

22 Q Okay. Has your mother ever had any accounts at  
23 Harleysville Bank?

24 A Yes.

25 Q Were you ever notified by Harleysville Bank that



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

those accounts had been closed?

A Yes.

(Harleysville Bank letter to Jill Scott Herring dated March 9, 2021 marked Petitioner's Exhibit P-14 for identification.)

BY MS. CAMP:

Q Okay. Can you flip to Tab 14, Exhibit P-14. Are you familiar with this document?

A Yes.

Q And what is this document?

A They informed me that the account had been closed due to a Court order.

Q And what is -- that middle line, can you read that, please?

A "Please ask Arthur Herring, III if you have any questions regarding these accounts."

Q Okay.

A The branch manager, the vice president, and Mother had authorized me -- or Mother authorized me in front of the branch manager and the vice president to have power of attorney over the Harleysville account.

Q Okay. So in that last paragraph in the letter represents a safe deposit box. Your mother had a safe

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

deposit box at Harleysville as well?

A Yes.

Q And this letter states that that box was still open as of March 9, 2021; is that right?

A Yes.

(May 26, 2021 Email exchange between Brittany J. Camp, Esquire and Michelle Beck, V.P. Harleysville Bank marked Petitioner's Exhibit P-15 for identification.)

BY MS. CAMP:

Q Can you flip to P-15?

A Mm-hmm.

Q The exhibit marked P-15. And this is actually an email exchange between myself and Michelle Beck at Harleysville which I had forward to you. It was after Mr. Jaskowiak was appointed as counsel and I was notifying a variety of financial institutions that they would be contacted by Mr. Jaskowiak and provided with a court order, so they knew who he was. Can you read that first line at the top from Michelle to me?

A "Yes. She has no open relationships at Harleysville Bank."

Q Okay. So sometime between, I guess, March 9 and

1  
2 May 26, the safe deposit box was closed. Did you close  
3 that safe deposit box yourself?

4 A No, I didn't.

5 Q Are you aware of what happened to that safe  
6 deposit box or its contents?

7 A No, I did not.

8 Q Thank you.

9 All right. And, as you know,  
10 Judge Weilheimer authorized you as agent under the 2004  
11 power of attorney as modified by Mr. Fenstermacher's  
12 supplemental directive to proceed with having your  
13 mother's 2020 Income Tax Returns prepared. Have you  
14 collected documents in order to have those returns  
15 prepared?

16 A Yes, I did. And I put them through the portal of  
17 Buxmont Accounting. And they are in the hands of the  
18 CEO of Buxmont Accounting.

19 Q And those returns are in the process of being  
20 prepared?

21 A Yes, they are.

22 (Jane Herring Raymond James Account -764  
23 Miscellaneous Activity Detail from  
24 January 21, 2020 to May 28, 2021 marked  
25 Petitioner's Exhibit P-16 for

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

identification.)

BY MS. CAMP:

Q I'm going to have you flip to Tab 16, the exhibit marked P-16.

A Yes.

Q Are you familiar with these documents?

A Yes.

Q Okay. And what are these documents?

A It's a statement of activity detail of Raymond James and it's Jane Herring's individual cash account.

Q And is this a portion of the documentation that you reviewed in connection with preparing your mother's 2020 income tax returns?

A Yes.

Q We're going to go in chronological order here. What I'd like to do is -- you see the date on the left-hand corner?

A Mm-hmm.

Q What I'd like to do is I'll read the date, if you can find it -- and I'll help direct you to it. If you could read the amount of payment and the payee, which is listed all the way to the right-hand side in the Additional Detail?

A Okay.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q So this first one, it's three down, it's a check on January 21, 2020, it's Check No. 530. Do you see the payment amount?

A Yeah. The amount is 5,000 and it's payable to Jane Herring.

Q And if you flip to the very next page, two -- actually, it's three down. It's a date of February -- it's 2/4/2020, Check 576. What is the amount of that check?

A One thousand five hundred, payable to Jane Herring.

Q To the best of your knowledge, was it common for your mother to write checks to herself?

A Absolutely not. No.

Q So within a two-week period she wrote checks of \$6,500 to herself?

A Yes.

Q Totally out of the ordinary?

A Yes, it is.

Q All right. And on the following page, the first entry on 2/18/2020, Check No. 577.

MR. HERRING: I'm sorry. Where are we?

THE COURT: The third page of Exhibit P-16. The date is 2/20/20.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Am I correct, Ms. Camp?

MS. CAMP: 2/18/2020.

THE COURT: 2/18. I'm sorry.

MS. CAMP: It's the very first line entry, Check No. 577.

THE WITNESS: The amount is \$200 and payable to McCullough Law.

BY MS. CAMP:

Q All right. The very next page, which is the fourth page of the document. I should have numbered these. The first line entry, 3/24/2020, Check No. 538.

A The amount is \$1,000, payable to Nahrgang & Association. Nahrgang. Maybe it's a --

Q I think that's right, Nahrgang.

The very next page, so it would be the fifth one, seven down, at -- the date is 4/24/2020, Check No. 619.

A The amount is \$3,335, and it's payable to Matthew Nahrgang, Esq.

Q Okay. Flip to the very next page, the sixth page of the document. We're going to go, actually, three from the bottom, 8/12/2020, Check No. 545.

A The amount is \$1,500, payable to Jack J. Hetherington, Esq.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q We're going to flip to the very next page, Page No. 7. We're going to go four down, the date is 6/19/20, Check No. 627.

A The amount is \$2,500, payable to Nahrgang & Associates.

Q Then we're going to go three from the bottom, 6/26/2020, Check No. 630.

A Amount is \$2,500, payable to Matt Nahrgang.

Q All right. Flip to the very next page, that would be the eighth page. We're going to go six down, it's dated 9/25/2020, Check No. 594.

A The amount is \$2,234.56, payable to Jim O'Brien.

MR. HERRING: Your Honor, to speed up this process since there is a lot of pages, I would be happy to explain where those checks went to.

THE COURT: That's not where we are right now.

MR. HERRING: Okay.

THE COURT: I appreciate it. You will have a chance to testify. But right now --

MS. CAMP: There aren't too many more. I know this is a little excruciating. We'll go to the very next page.

MR. HERRING: What about the one at the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

bottom?

THE COURT: Again, this is for --

Ms. Camp can ask the questions she wants --

MR. HERRING: Okay. I'm sorry.

THE COURT: -- and you will have the opportunity to testify.

MR. HERRING: Sorry.

BY MS. CAMP:

Q We can put the one on the bottom in. Why not? So still on that page with the 9/25/2020 payment to Jim O'Brien --

A \$125 to Alpha Dermatology.

Q Okay. We'll flip to the next page. Four from the bottom, 11/9/2020, Check No. 661.

A The amount is \$2,130, payable to Robert E. Franvel.

MR. HERRING: Fravel.

THE COURT: You're not testifying, sir.

MR. HERRING: Sorry. I was just trying to correct an error.

THE COURT: This is not --

MR. HERRING: What page are we on and where are we?

THE COURT: We are on the page where it



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

says 31 of 50 at the bottom.

MR. HERRING: Okay. Thank you.

BY MS. CAMP:

Q All right. And the following page, we're two from the bottom, 12/8/2020, Check No. 664.

A The amount is \$2,150, payable to Travel Law.

Q And the following page, it says 8 of 14 at the bottom. So it's in this Activity Detail section kind of halfway through the page, it's the second entry on 1/4/2021, Check No. 669.

A The amount is \$125 payable to Jim O'Brien.

Q And then the next page, it has 10 of 14 at the bottom. It's going to be the third one down from that, like, line in the middle, for 1/29/2021, Check No. 676.

A Amount is \$1,266.76, payable to the Law Office of Robert Fravel.

Q I think it might be \$1,286.75, just for the record.

A Yes.

Q That's an awful lot of lawyers. Are you familiar with any of these payees?

A No.

Q Are you familiar with any of these payees and how they might relate to your mother?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A I assume they're lawyers that Artie hired for his legal issues.

Q This is your mother's account. If you look at the top of the Activity Detail, it says Jane Herring IND account.

A Mm-hmm.

THE COURT: In the time that you were handling your mom's finances, who was the lawyer you know that she was using?

THE WITNESS: Ron Fenstermacher.

THE COURT: Was there ever anyone else in the time you were handling your mom's finances?

THE WITNESS: No.

THE COURT: Continue, Ms. Camp.

BY MS. CAMP:

Q I am going to flip to -- the next page is the last page of this P-16. I'm going to go five up from the bottom, on 5/26/2021, Check No. 692.

A It is in the amount of \$1,000, payable to Kenneth R. Carroll.

Q Are you familiar with Kenneth R. Carroll?

A No.

Q No idea how he might be related to your mother?

A No.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q When was the last time you were able to see or speak with your mother?

A We went to church in March and there was an incident where I -- when I brought her home and she was getting out of the car -- of my car, Artie was glaring at her and got in his car and made some, I guess, frightening looks at her because she started screaming "Artie, Artie, what's the matter? Where are you going?" And then he took off and she was really upset afterwards. That was one time in March.

And then her birthday. A couple days after her birthday, because she couldn't go out with me on her birthday, and I took her to lunch. And that was really the last time saw her.

THE COURT: That was in May?

THE WITNESS: May -- I think it was the 18th.

THE COURT: Okay.

BY MS. CAMP:

Q And you -- we confirmed on the record the last time we appeared here, but, you know, you're testifying now so I'll have you do it again. When we initially filed this petition you were seeking to be appointed as guardian of your mother's person and estate; is that

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

correct?

A Yes.

Q And have you since withdrawn that request to be guardian?

A Yes.

Q And what is your proposal now?

A That a third-party guardian should have that role.

Q Do you have any concerns if this Court were to appoint your brother as sole or co-guardian of either your mother's person or estate?

A Absolutely. One hundred percent. I want my mother's health and safety to be paramount.

Secondly, I want to restore the love and relationship -- the deep love and relationship I had with my mother for my entire life. And I want caregivers to give her the dignity and respect and compassion that I would give her if I was guardian.

Q Have you and your brother been able to communicate meaningfully and civilly regarding your mother's affairs?

A No.

THE COURT: Have you ever been able to?

THE WITNESS: No.

MR. HERRING: I'm sorry. I didn't hear

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

it.

THE COURT: I asked if you and Jill have ever been able to communicate civilly about your mother's affairs and the answer was no.

BY MS. CAMP:

Q And have these increasing difficulties and the events of the last -- since February 2020 it seems like, is that what led you to file the petition for guardianship here today?

A Yes. It was a -- it was something of last resort. I mean, it's not something that I'm doing very lightly. But it -- you know, my brother started trying to turn my brother's uncle Ronald against me, and my retired Captain Ned Herring in Annapolis, who I'm very close to, their family, you know. It was -- there were just so many things that just -- it was impossible for Ron or me -- well, Artie turned -- let's put it this way, Artie turned every financial advisor -- mother against every financial advisor: Mark Brion [ph], Matt Fisher, Matt Pruitt, and Ron Fenstermacher, and me. So he isolated her and all of the advisors were sealed off, they couldn't visit her and they couldn't talk to her on the phone.

Q And this is my last couple questions. You've read

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Dr. Ledakis's expert report and you've heard his lengthy testimony earlier here today. Do you agree with Dr. Ledakis's determination that your mother is totally incapacitated?

A Yes.

Q Do you agree with his determination that she is in need of plenary guardians of her person and estate?

A Yes.

Q Do you also agree that your mother did not have the capacity to sign any documents in 2020?

A Yes.

MS. CAMP: No further questions, Your Honor.

THE COURT: Okay. Mr. Jaskowiak.

MR. JASKOWIAK: Thank you.

THE COURT: Excuse me. Mr. Herring, you put your hand up. As I told you, you go last when it comes to these questions.

MR. HERRING: Okay. I was just going to ask for a five-minute break.

THE COURT: Oh. If you need a personal break that's fine. You can.

MR. HERRING: Okay.

THE COURT: We'll take a five-minute

1 recess.

2  
3 Mrs. Herring, do you understand you're  
4 in the middle of testifying so you cannot discuss your  
5 testimony with anyone, including your attorney?

6 THE WITNESS: Okay.

7 - - -

8 (Recess, 3:08 - 3:28 p.m.)

9 - - -

10 THE COURT: Okay. You remain under  
11 oath. If you need water just remember to lift the lid  
12 or it spills all over you. So, with that,  
13 Mr. Jaskowiak.

14 MR. JASKOWIAK: Thank you very much,  
15 Your Honor.

16 CROSS-EXAMINATION

17 BY MR. JASKOWIAK:

18 Q Jill, I'll try to move this along to keep the  
19 testimony moving. If you could turn real quick to  
20 P-16, the first page of that? I have a follow-up  
21 question for you about the \$5,000 check payable to your  
22 mother.

23 A Yes.

24 Q Number one, do you know whether or not your mother  
25 kept an actual check ledger for the Raymond James

1  
2 account where she would write in, as we all do, the  
3 deposits and the checks --

4 A She used to.

5 Q She used to. Do you know whether she still does  
6 that now?

7 A I have no idea. No.

8 Q Okay. I notice in there it looks like the cash  
9 balance went into the negative when she wrote that  
10 \$5,000 check.

11 A Mm-hmm.

12 Q Did you see that?

13 A Yes.

14 Q Do you have any understanding of what happens with  
15 the Raymond James account if she basically writes an  
16 overdraft?

17 A They'll cover it. I mean --

18 Q They'll cover it?

19 A Yeah. She's at a level at Raymond James as a  
20 client that they will cover it and --

21 Q Do you have to notify Raymond James that --

22 A No.

23 Q -- I need to cover it or they automatically do it?

24 A No. They do it automatically.

25 Q Do you know why your mother would have deposited



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

that \$5,000 into Harleysville Savings Bank?

A I have no idea, because she never wanted to keep more than one to two thousand in Harleysville.

Q Do you know what Harleysville was being used for at that time in 2020?

A Yeah. Convenience. I consolidated and streamlined her personal finances and set up a new system for her so there would be automatic transfers and direct deposits so she would almost have to do no work at all, it ran itself. And that took considerable, considerable labor and time. But Harleysville, I think at any time there was never more than 3,500 there.

Q What was that money -- whatever the amount was, what was it to be used for at Harleysville --

A Just convenience.

Q -- at Harleysville Bank?

She's good but she's not God; she can only take down one of us.

A I'm sorry.

Just convenience. Mother just wanted a bank so she could go there and cash or get money, cash for her pocketbook, you know, \$50 or \$25 or cash a check that she got. I don't know.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Since January 2020 have you ever seen the actual statements for Harleystville up until the point where the account closed?

A Since January 2020?

Q Yes.

A I have a couple of statements in my bag. Probably not.

(Checks from Raymond James' Account (17) marked Jane T. Herring's Exhibit H-8 for identification.)

BY MR. JASKOWIAK:

Q Okay. If you can, open the other binder for a minute, the small binder, to Tab 8, H-8, the very last page on 8.

- - -  
(Discussion off the record.)

BY MR. JASKOWIAK:

Q And go to the very last page, which is Page 17 in H-8.

MR. HERRING: I'm sorry. Where?  
- - -  
(Discussion off the record.)

- - -

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. JASKOWIAK:

Q That is the check that she wrote that corresponds to the entry on P-16; correct?

A Yes. Mm-hmm.

Q Okay. So did she typically deposit money herself into Harleysville?

A Not for that amount. If she got a dividend check or something like that she might have put it in Harleysville. But not for that amount.

THE COURT: Well, let me follow up with what Mr. Jaskowiak just asked. In your experience with working with your mom around January of 2020, would your mom physically go to the bank herself to deposit checks?

THE WITNESS: She may have if someone took her. She was driving, but very limited then.

THE COURT: And was that her typical practice? Would she ever ask you to take her to Harleysville --

THE WITNESS: Yes.

THE COURT: -- to deposit checks?

THE WITNESS: Not deposit checks, but we often went for various things.

THE COURT: In your experience when you

1  
2 were working with her finances, did Mom ever write  
3 herself a check --

4 THE WITNESS: No.

5 THE COURT: -- and go to Harleysville  
6 and deposit it?

7 THE WITNESS: No.

8 THE COURT: Mr. Jaskowiak.

9 BY MR. JASKOWIAK:

10 Q How many checking accounts did your mother have at  
11 Harleysville, if you know?

12 A Just one.

13 Q Okay. And the reason I asked that is because  
14 there is a stamp on the back of that check, if you  
15 notice, that has an account which appears to be ending  
16 with 2361. Do you see that? It says Harleysville  
17 Bank, and then there is --

18 A Yes.

19 Q -- a nine-digit number ending in 2361; correct?

20 A Yes.

21 Q Okay. Harleysville Bank was the same bank that  
22 was involved in a writ of execution at some point in  
23 time by a creditor that had a judgment against Arthur;  
24 correct?

25 A Yes.

1  
2 Q Okay. And as a result of that, because the  
3 account -- whatever they executed against -- was in  
4 both names, they took money out of that account, if I  
5 got my facts straight? Am I correct about that, from  
6 your understanding?

7 A Yes.

8 Q Okay. And the reason I'm asking that, if you go  
9 back to the big binder on P-14, it references a  
10 checking account ending in 7371, which is a different  
11 number?

12 A What tab again?

13 Q Fourteen, P-14. Ms. Beck wrote a letter talking  
14 about withdrawn out of your checking account ending in  
15 7371. I assume it was written to you because you were  
16 the POA listed somehow on that account.

17 A Right.

18 Q Do you understand that that's a different number  
19 than what's on the back of this check?

20 A Yeah. Mm-hmm.

21 Q So do you have any knowledge whether or not there  
22 might be a second Harleysville Bank account that was  
23 created at some point in time?

24 A Yes. I mean, I was there when they closed the  
25 account -- oh, gosh. They closed the account with

1  
2 Artie's judgment or problems, the legal problems, and  
3 they opened a new account. And it was for -- you know,  
4 because of the legal issues with Artie and this  
5 judgment.

6 Q So this account that this money went into, the  
7 \$5,000, you don't know whether that was an account in  
8 your mother's name alone or an account which had been  
9 created in Arthur and your mother's name; correct?

10 A No.

11 Q Okay. Fair enough.

12 If you'd flip back -- I'm just going to  
13 spend a couple minutes on the checks -- to Page 16 out  
14 of 17 on Exhibit H-8. There is a Check No. 576 in the  
15 amount of \$1,500 made payable to Jane Herring.

16 MR. HERRING: I'm sorry. Where are we  
17 now?

18 MR. JASKOWIAK: Same exhibit.

19 MR. HERRING: Same little book?

20 MR. JASKOWIAK: Yes. Same little book,  
21 Page 16 out of 17 on Exhibit H-8.

22 THE COURT: So the page before,  
23 Mr. Herring.

24 MR. HERRING: Okay.

25 BY MR. JASKOWIAK:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Do you know whose handwriting that is?

A That's mine.

Q On the Payable to the Order of Jane Herring?

A Yes.

Q Okay. Do you know what this check was used for?

A No. I have -- it could have been taxes that -- it could have been taxes. It's about the time that we would have paid our, I think, Pennsylvania taxes. And I just wrote it out and Mother signed it.

Q And the reason --

A Oh, wait a minute. Jane Herring. Oh. Oh. I'm sorry. I have no idea.

Q Okay.

THE COURT: But this is your handwriting?

THE WITNESS: That's my handwriting. I have no idea why I didn't ...

BY MR. JASKOWIAK:

Q So the Pay to the Order of, where that's written "Jane Herring," that's your handwriting?

A Yes.

Q But your mother signed the check?

A Yes.

Q Okay. And then the account number, it says

1  
2 Deposit Into, it has a handwritten account number of  
3 2128. But then it's stamped with the Harleysville Bank  
4 stamp --

5 A To --

6 Q -- again.

7 A That could have been the new account at  
8 Harleysville that was replenished with the Raymond  
9 James money. A new account that we had to open at  
10 Harleysville and we used the Raymond James account to  
11 fund that new account.

12 Q My point is there seem to be now three numbers of  
13 bank accounts that we can't identify that are tied in  
14 with Harleysville Bank: one is stamped 2316; one is --  
15 Britain [ph] is 2128; and the third one is on the  
16 letter from Ms. Beck on P-14 that says 7371.

17 A I'd have to go back to some of my records. I just  
18 don't know off the top of my head.

19 Q That's fine.

20 A But I do remember that that's an amount that -- I  
21 think we did open that new account with -- I mean, we  
22 funded the new Harleysville account with after the  
23 other one was closed because the Harleysville ...

24 Q Okay. The check before that. We're going to stay  
25 on H-8 for just a couple minutes. H-8, Page 15.



1  
2 Melody Lakes. That is the landlord for Arthur at his  
3 former residence; correct?

4 A Yes.

5 Q And that would be February of 2020?

6 A Yes.

7 Q Do you know why your mother was paying Arthur's  
8 rent?

9 A He had no money and he was evicted. Yeah, he had  
10 no money.

11 Q Okay. The page preceding, Page 14, immediately  
12 before that check, there is a check for McCullough Law?

13 A Mm-hmm.

14 Q It would appear that McCullough Law was also, at  
15 one point, McCullough Eisenberg, the law firm of  
16 McCullough Eisenberg. Does that name ring a bell to  
17 you at all?

18 A No.

19 Q The check before that, Nahrgang & Associates. And  
20 there are going to be a few of these, Page 13, Page 12.  
21 Matthew Nahrgang --

22 A No.

23 Q -- those -- that is the attorney that your brother  
24 had in the bankruptcy, isn't it, at one point in time?

25 A I know he had bankruptcy attorneys, you know, I

1  
2 didn't know the names.

3 Q Jack Hetherington is Page 11, the late Jack  
4 Hetherington, the \$1,500?

5 A Mm-hmm.

6 Q Do you have any familiarity at all with  
7 Mr. Hetherington?

8 A No.

9 Q Do you know what kind of law he practiced?

10 A No.

11 Q If I were to tell you he was an elder law  
12 attorney, does that surprise you that someone wrote a  
13 retainer to him in June of 2020?

14 A June 2020? It doesn't -- I mean, I just -- I have  
15 no comment.

16 Q Did you ever talk to your mother about the payment  
17 of fees -- her payment of fees on behalf of your  
18 brother for his legal fees? Did you ever have any  
19 discussions with her about that?

20 A No. I did bring -- I'm sorry.

21 Q Go ahead.

22 A When I was doing her taxes for 2020 I did ask her  
23 on the phone, you know, "I just came across" -- "Did  
24 you know that Artie retained" -- I don't know, I said a  
25 half a dozen lawyers, whatever. "Did you know about

1  
2 that activity, those payments?" And she started to  
3 cry.

4 And she said, you know, that -- one time  
5 she said, "Even if he murdered someone I would defend  
6 him." But this time she just started to cry and said,  
7 you know, "I just can't talk about it."

8 Q I want to follow up on something that was raised  
9 in the testimony of the Court's IME expert Dr. Ledakis  
10 this morning, and I want your explanation on the  
11 record, if we would. "Jill expressed her beliefs of  
12 her brother engaged in a romantic campaign with their  
13 mother." Would you please explain for the Court  
14 exactly what you meant by that terminology and what led  
15 you to use that description?

16 A Yes. I was rather shocked when Artie -- when I  
17 saw blown up pictures of Artie or Artie and Mother all  
18 over the first floor, in the bedroom, on the mirrors,  
19 in the living room, in the den. I mean, everywhere.  
20 And there were no pictures of my father. I mean, it  
21 was just Artie, you know, everywhere in the house.

22 And then I would see love letters and  
23 cards and constant flowers. And then just creepy, you  
24 know, physical kissing or hugging. I mean, just  
25 creepy.

1  
2 And then when we were on a couple of the  
3 last vacations Artie was calling every couple hours and  
4 asked Mother if I was safe with her. And --

5 MR. HERRING: I'm sorry. What was that?  
6 I didn't hear it.

7 THE COURT: "If I was safe with her."

8 THE WITNESS: If Mother, not I -- I'm  
9 sorry. If Mother was safe with me. I mean, Artie  
10 would be asking Mother --

11 THE COURT: If she was safe with you?

12 THE WITNESS: -- if she was safe with  
13 me.

14 And so it was just so intense and it was  
15 just such an obvious, you know, constructed stage of --  
16 you know, to try to really -- you know, I don't know,  
17 exploit her emotionally and take advantage of her  
18 vulnerability and her mental state. And, yes, I called  
19 it a romantic campaign. And it lasted for almost two  
20 years.

21 BY MR. JASKOWIAK:

22 Q There was an order issued last week, at the end of  
23 last week, that was to allow you to visit your mother  
24 over the weekend with me being in attendance. Do you  
25 recall receiving that order at the end of last week?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A Yes.

Q Were you able to visit your mother?

A No.

Q Okay. That's all I have. Thank you.

THE COURT: Mr. Herring, it's now your opportunity to question Jill. And I'm just going to remind you that Jill is not asking to be the guardian. So this is not anything where I am going to be interested in any background about whether or not she is appropriate financially or for her personal affairs, because she is not being considered in that regard. Jill is here as the petitioner asking for a guardian to be appointed, believing your mother is incapacitated, so that is the scope of this, as well as any testimony she has already presented.

MR. HERRING: Your Honor, my questions are going to be at least an hour or so.

THE COURT: That's fine. But --

MR. HERRING: I didn't know when you were going to call it.

THE COURT: We are going to finish this witness; but, again, the questions are going to have to be relevant. I understand, from the multitude of emails you have sent, you have lots of personal

1  
2 conflict with Jill and that you think that she has  
3 history that would make her an inappropriate guardian.  
4 And while that may be, she is not asking to be the  
5 guardian and, therefore, that is not relevant to this  
6 proceeding. So just orienting you to the scope of this  
7 witness.

8 MR. HERRING: Well, I'll try; but,  
9 again, this is something where you can tell me no, I  
10 mean, if I ask certain --

11 THE COURT: I will.

12 MR. HERRING: -- documents -- I  
13 understand.

14 CROSS-EXAMINATION

15 BY MR. HERRING:

16 Q You stated approximately February 20th of 2020 I  
17 had moved into the house; is that correct?

18 A Yes.

19 Q And what gave you that indication I was moving in?

20 A You had moved in. Mother said you had moved in.  
21 Although, Dr. Ledakis had told me on the phone that you  
22 told him you just moved in a few weeks ago.

23 Q Well, as the checks have been made clear, I still  
24 had a house in Melody Lakes and I was still paying lot  
25 rent on it. So why would I be living at my mother's

1 house if I had a house furnished in Melody Lakes?

2 A I have no idea. I only -- you know, I only know  
3 what Mother tells me. I only know the basement is  
4 filled with your boxes. You say you're there every  
5 single day and night. And you've done that since  
6 February.

7 Q Does it make sense that somebody is going to be  
8 living at somebody's house and, yet, they have a house  
9 they're paying \$800 a month for lot rent?

10 A You say that --

11 THE COURT: Okay. Let's stop. That's  
12 argumentative. Let's go to a factual question, please.

13 Counsel, there is nothing that prohibits  
14 you from objecting.

15 MR. JASKOWIAK: Your Honor was just  
16 quicker than I was. I was letting him finish the  
17 question.

18 THE COURT: All right. Mr. Herring.

19 BY MR. HERRING:

20 Q You stated earlier Mom pays for everything. How  
21 can you say that?

22 A I see the activity. I see -- I know that she's  
23 given you credit cards, that you -- she pays for  
24 everything. She tells me she does.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q You're stating my mother said she has given me credit cards?

A Yes. You use her credit card, the Raymond --

THE COURT: There wasn't a question to you.

THE WITNESS: Okay.

THE COURT: You answered the question.

Next question, Mr. Herring.

BY MR. HERRING:

Q Is that in any way illegal to use a debit card if my mother allows it?

MS. CAMP: Your Honor, objection.

MR. JASKOWIAK: Objection.

THE COURT: Sustained as not relevant to this.

No. You know what? Overruled.

Mr. Herring is asking to be the guardian and whether or not he is appropriately engaging in financial interactions with his mother is relevant. So I'm just going to modify --

MR. JASKOWIAK: I was only objecting as to the, like, "is it legal?"

THE COURT: Correct. So I'm going to modify the question.



1  
2 Do you have any idea if your mother has  
3 given your brother the authority to use her credit card  
4 or her debit card? Do you know, yes or no?

5 THE WITNESS: Not formally that I know  
6 of. But she tells me that she gives him the credit  
7 card --

8 THE COURT: Okay.

9 THE WITNESS: -- to buy food and  
10 everything.

11 THE COURT: Okay.

12 Mr. Herring.

13 BY MR. HERRING:

14 Q You stated her health had declined about two  
15 years -- oh, I'm sorry. You stated my father's health  
16 declined about two years before his death. Is that  
17 correct?

18 A Yes.

19 Q Okay. Can you state whether or not he was still  
20 going to Boardman-Hamilton to a certain point?

21 MR. HERRING: Objection, Your Honor.  
22 Relevance.

23 THE COURT: It's outside the scope of  
24 this. Sustained.

25 BY MR. HERRING:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q You stated in November of 2008 you moved into a townhouse in Blue Bell; is that correct?

A An apartment. Yes.

Q Okay. And how long did you live there?

A Until November 2011.

Q And then what happened after November 2011?

A I bought a home in Collegeville.

Q Okay. And how did you pay for that home?

MS. CAMP: Your Honor --

MR. JASKOWIAK: Objection, Your Honor.

MS. CAMP: -- relevance.

THE COURT: Sustained. It's not relevant. This woman is not asking to be the guardian of your mother.

MR. HERRING: Well, I --

THE COURT: It's not relevant.

MR. HERRING: It's --

BY MR. HERRING:

Q Is it true that you received a \$100,000 loan from both our parents?

MS. CAMP: Objection.

MR. JASKOWIAK: Objection. Your Honor, it's an issue for, perhaps, another proceeding, but not here.

1  
2 THE COURT: No. It is an issue because  
3 the question -- well --

4 MR. HERRING: It's going towards --

5 THE COURT: Stop.

6 MR. HERRING: Sorry.

7 THE COURT: You are right. It may be  
8 relevant as to an accounting as power of attorney, but  
9 not for the guardianship proceeding. So sustained as  
10 to this proceeding.

11 MR. HERRING: So I can't get an answer  
12 on that?

13 THE COURT: No. Because it's not --  
14 again, there might be a difference, sir, if she was  
15 asking to be the guardian. And then anything she may  
16 have done improperly as it relates to your mom's  
17 finances would be relevant. But she's not asking to  
18 have any authority over your mom's finances or over her  
19 person. So, therefore, it's not relevant to this  
20 proceeding.

21 BY MR. HERRING:

22 Q You stated you assumed all financial  
23 responsibilities of my parents -- you stated you  
24 assumed all financial responsibilities. What was that  
25 pertaining to?

1  
2 A Off-platform, meaning Morgan Stanley at the time,  
3 when Matt and Fisher were at Morgan Stanley.  
4 Off-platform assets that Dad had accumulated and  
5 personal finance.

6 Q And when did you start doing that?

7 A Before Dad passed and at least seven years daily  
8 after that. I wore multiple hats. In addition to my  
9 full-time job.

10 Q Did you ever abuse those financial  
11 responsibilities?

12 A Absolutely not. There were financial advisors --

13 THE COURT: Wait. That's your only --  
14 you answered no. That's all we need.

15 BY MR. HERRING:

16 Q You stated I had never helped my mother in  
17 financial affairs; is that correct?

18 A What?

19 Q You stated earlier that I have never helped my  
20 mother in financial affairs. Is that correct?

21 A No. I never said that.

22 MR. HERRING: Can the court stenographer  
23 read that back?

24 THE COURT: No. And I don't recall that  
25 being said either, so ...

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. HERRING: Well, I wrote it down.

THE COURT: It is my recollection that controls here and my recollection that is important. It's whether or not I remember --

MR. HERRING: Okay.

THE COURT: -- things occurring. So we're not going to have the court reporter read back something that I don't need.

MR. HERRING: Okay.

BY MR. HERRING:

Q You stated that I had cut off access to Dr. Kuhar; is that correct?

A No, I never said that. I said -- I think you're referring to the statement that I made that you cut off my portal access to Grand View Hospital. That was Dr. Kuhar's portal through Grand View Hospital.

Q So, in other words, I cut off your access to Dr. Kuhar?

A To Dr. -- yes. In the portal access at Grand View Hospital.

Q And approximately when was that?

A Last -- after you moved in.

Q You keep saying that's when I moved in and yet you have no proof other than you saw some --

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MS. CAMP: Your Honor --

MR. JASKOWIAK: Objection.

Argumentative.

THE COURT: Sustained. Argumentative.

These are questions about the facts. You'll have the ability to make argument at the conclusion of the case.

BY MR. HERRING:

Q Isn't it true that your access was cut off because Dr. Kuhar and her staff were constantly being berated by you and you were obstructing her business by --

A No.

THE COURT: Let him -- just make sure he finishes the question before you answer.

Did you finish the question, Mr. Herring?

MR. HERRING: Yes.

THE COURT: Okay.

THE WITNESS: Absolutely not.

BY MR. HERRING:

Q You stated, I believe, in the --

A I was told.

THE COURT: No. You don't have a question to you right now. Let him ask the next question.

1 THE WITNESS: It was --

2 THE COURT: No.

3 THE WITNESS: Okay.

4 THE COURT: You answered the question.

5 Let him ask the next one.

6 THE WITNESS: Okay.

7 BY MR. HERRING:

8 Q Did you state you took Mother on 16 different  
9 trips? Is that correct?

10 A Yes.

11 Q And, basically, all of them were just day trips to  
12 Ocean City; isn't that correct?

13 A No. They were weekend trips, for one or two  
14 nights.

15 Q So every trip was overnight?

16 A Yes.

17 MS. CAMP: Objection. Relevance.

18 THE COURT: It was raised in direct. So  
19 overruled.

20 BY MR. HERRING:

21 Q Isn't it true Mother paid for half of that cost?

22 A No. They were my presents. Holiday, Christmas,  
23 Easter, birthday presents to Mother.

24 Q You stated approximately 2018 Mother started a  
25

1 decline in cognitive behavior; is that correct?

2 A I said that my emails in March of 2018 referenced  
3 -- since 2017, and it just became more and more  
4 serious. And the first email that I mentioned dementia  
5 and cognitive impairment was to Ron Fenstermacher and  
6 Mark Brion and -- and I talked on the phone to Matt  
7 Pruitt and Matt Fisher.

8  
9 THE COURT: And just to narrow the  
10 scope, that was in 2018 or a different year?

11 THE WITNESS: 2018.

12 THE COURT: Okay.

13 BY MR. HERRING:

14 Q So you basically started a campaign of sending out  
15 emails to basically everybody my mother was doing  
16 business with and telling them that she really wasn't  
17 knowing what she was doing anymore?

18 A No. There were serious --

19 MR. JASKOWIAK: Objection.  
20 Argumentative.

21 THE COURT: Objection, argumentative?  
22 Sustained.

23 BY MR. HERRING:

24 Q Do you recall the time in Dr. Kuhar's office where  
25 you started a very verbal argument, as you described,



1 and stomped out of the office? Do you remember that  
2 one?

3  
4 A No. Those were lies you put in emails and gave to  
5 my mother.

6 Q I'm sorry. What was that answer?

7 THE COURT: She said those were lies you  
8 put in emails and gave to her mother.

9 BY MR. HERRING:

10 Q So if Dr. Kuhar would come in next time she would  
11 say that never happened, that you were screaming at my  
12 mother, accusing her of all different -- being crazy  
13 and nutty and so forth and --

14 A Absolutely.

15 Q -- she had --

16 A That is a boldfaced lie.

17 Q So if Dr. Kuhar comes in here next time, either by  
18 video conference -- and she says you did and then you  
19 ran out of the room, stomped out of the room --

20 A Stomped?

21 MS. CAMP: Objection. Argumentative.

22 MR. HERRING: I'm asking the question.  
23 How would --

24 THE COURT: But she already answered it.  
25 She said no. So now you're just asking the same

1 question again. So it's --

2 MR. HERRING: Okay.

3 THE COURT: -- asked and answered. So  
4 sustained.

5 And, ma'am, you need to wait until he  
6 finishes the question before you answer it because,  
7 otherwise, you're torturing the court reporter. We  
8 don't want to do that.

9 BY MR. HERRING:

10 Q Going to February -- what was it -- 24th, the  
11 situation where I was unloading a couple of boxes and I  
12 was putting them in the basement --

13 MR. JASKOWIAK: Objection, Your Honor.  
14 He's testifying now.

15 THE COURT: Let's get to the end of the  
16 question.

17 MR. JASKOWIAK: Okay.

18 THE COURT: Because he's reorienting her  
19 to the testimony that she presented. I thought it was  
20 February 20, but regardless.

21 MR. JASKOWIAK: Okay. I'll be patient.

22 BY MR. HERRING:

23 Q How many boxes did you claim you saw me take into  
24 the basement?  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A Dozens.

Q Dozens?

A Mm-hmm. The basement was filled with boxes.

Q And my boxes are the only thing that's in the basement?

A It was at that time. Never was before.

Q So there was no office furniture that my father used for his business?

A That was in the other half of the basement. I'm talking about the back basement. The basement was split. It was a huge basement. You had dozens and dozens of boxes piled.

THE COURT: Okay. Question,

Mr. Herring?

BY MR. HERRING:

Q You stated that I kicked you in the back; is that correct?

A Yes. And you pushed me on the stairs.

Q Wasn't it true we were going both downstairs while I was carrying a box?

A No, you weren't carrying a box.

Q You stated that my -- you saw me with my eyes rolled back --

A Yep.

1  
2 Q -- into my head. How does somebody roll their  
3 eyes back into their head unless they're dead?

4 MR. JASKOWIAK: Objection, Your Honor.

5 THE COURT: Sustained as to the phrasing  
6 of the question. I'm going to rephrase it.

7 Could you describe what you mean by  
8 rolling his eyes back in his head? Like what did you  
9 see occurring?

10 THE WITNESS: I saw eyes rolled back.  
11 It's almost demonic. And I talked to Ron Fenstermacher  
12 about it --

13 THE COURT: I'm just asking you what you  
14 saw. So that's what you saw?

15 THE WITNESS: Yes.

16 THE COURT: Okay.

17 THE WITNESS: And that happens to some  
18 people.

19 THE COURT: Okay. And was there any  
20 other behaviors occurring when you saw --

21 THE WITNESS: Yes. He was laughing  
22 maniacally, crazily. And he was taunting Mother,  
23 making fun of her while she was screaming to stop it.

24 THE COURT: Okay.

25 Mr. Herring, your next question.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. HERRING:

Q I'm referring to P-7 in the --

THE COURT: In the large binder?

MR. HERRING: Yeah, in the big --

THE COURT: Okay.

MR. HERRING: -- binder.

BY MR. HERRING:

Q The police report. Could you demonstrate now how I kicked you in the back?

A I was walking to the car with my coat on and my pocketbook and you kicked me in the back and you laughed, told me not to come back again to this house. And then you went into the garage and you said, "I'm going to call the police on you" --

Q Can we have it again? I didn't --

A -- in a ridiculous way.

Q I didn't catch that acting. Can you do that again, please?

MR. JASKOWIAK: Objection.

THE COURT: Sustained.

MR. HERRING: Well, could I stand up, Your Honor? I want to show the Court --

THE COURT: No.

MR. JASKOWIAK: No.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: You're not --

MR. JASKOWIAK: Objection.

THE COURT: -- testifying.

MR. HERRING: Well --

THE COURT: No. You can stand up to question her, but you are not testifying. You can ask questions. But you're welcome to stand at your table if you're more comfortable doing that.

MR. HERRING: No. I was going to try to ask how that was done, how the kicking in the back was done.

THE COURT: Sir --

MR. HERRING: Okay.

THE COURT: -- it is a relevant line of questioning for you to engage in this because there is a question of whether or not you are the appropriate guardian. The demonstrative aspect of it is not relevant here. So ...

MR. HERRING: I was just simply challenging what she --

THE COURT: Just ask a question, please, sir.

MR. HERRING: Okay.

BY MR. HERRING:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q At the police station, according to the report, you gave them the same story, that I supposedly had kicked you. Did they ever ask -- did the police ever ask you or did they ever say that they wanted to take pictures of your supposedly injury?

A I said there were no injuries.

Q So you mean somebody can kick you in the back with a shoe, a very --

A I had my --

MR. JASKOWIAK: Objection.

THE COURT: Two things. One, let him finish. Number two, I will let you -- the question is was there any injury to you?

THE WITNESS: No.

THE COURT: Okay.

Next question.

BY MR. HERRING:

Q But they did offer to take pictures; is that correct?

A No. I went to the police station after I filed a telephone report and talked to the chief of police at Franconia Township for an hour.

Q And that was my question. Did they suggest or ask you of, "Can we take a picture of where it happened?"

1  
2 THE COURT: Okay. Sir, she has already  
3 answered no pictures were taken and she said there was  
4 no injury. I understand you want to make the argument  
5 that if there was an injury someone would have taken  
6 pictures of it. That's an argument you can make at the  
7 end of the case in closing if you think it's relevant  
8 to this proceeding. But this is not time for you to  
9 argue with your sister, this is time for you to  
10 challenge the facts she's presented as it relates to  
11 whether or not your mother is incapacitated and whether  
12 or not she is in need of a guardian. That's it.

13 MR. HERRING: Okay. I was simply asking  
14 did they ask that. That's all I was saying.

15 THE COURT: Just ask the next question.

16 MR. HERRING: Okay.

17 BY MR. HERRING:

18 Q You stated you contacted the Montgomery County  
19 senior citizen department. And they -- according to  
20 the petition they said that they don't make visits  
21 because of the virus; is that correct?

22 A Yes. At that time.

23 Q Okay. Are you aware that the police departments  
24 do wellness checks all the time?

25 A What am I supposed to say?



1  
2 MR. JASKOWIAK: Objection, Your Honor.  
3 First, we're talking about two different things.

4 THE COURT: Correct, that's a separate  
5 question. But he did --

6 Are you aware if the police, at the time  
7 you made the complaint to the Office of Adult Aging  
8 Services, were conducting well visits? Just "yes" or  
9 "no." Were you aware?

10 THE WITNESS: No. They said they were  
11 not because of COVID.

12 THE COURT: Well, this is different.  
13 That was the agency you contacted.

14 THE WITNESS: Yeah.

15 THE COURT: Your brother's question was  
16 a little different. Were you aware -- just yes or no  
17 -- if the police at that time, separate from the  
18 agency --

19 THE WITNESS: Oh.

20 THE COURT: -- were conducting well  
21 visits?

22 THE WITNESS: I do not.

23 THE COURT: Just "yes" or "no."

24 THE WITNESS: I do not.

25 THE COURT: Okay. Next question.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. HERRING:

Q You have stated you've been very concerned about my mother's welfare, and especially since I was a violent person according to the police report. Why didn't you think to ask them would they do a wellness check on a regular basis? Wouldn't that be a logical request?

THE COURT: Yeah. Sir, that's -- we're going to sustain that as to the form of the question. I'm going to help you rephrase it.

After determining from the Adult Aging Services that they were not conducting in-person visits due to COVID, did you contact the police or anyone else for assistance at that time?

THE WITNESS: Just the advisors, Ron Fenstermacher.

THE COURT: Okay.

THE WITNESS: And he tried to make a visit to see Mother and Artie cancelled it, he wouldn't allow him to come.

THE COURT: Okay.

BY MR. HERRING:

Q Did you call Mr. Fenstermacher on the phone or did you email him?

1  
2 A Both.

3 Q Both. So you will have a copy of that if that is  
4 requested?

5 THE COURT: So the question to her is,  
6 Do you have a copy of that?

7 Yes or no? Do you have a copy of that  
8 email with you today to Mr. Fenstermacher?

9 THE WITNESS: Not today. I have an  
10 abstract --

11 THE COURT: That's the answer. Okay.

12 BY MR. HERRING:

13 Q So it would appear to have --

14 THE COURT: We're not doing discovery.  
15 I've already ruled that there is no discovery because  
16 this person is not asking to be the guardian.

17 MR. HERRING: But she's making  
18 statements and I would like to be able to have that  
19 proof.

20 THE COURT: And the answer's no because  
21 it's not relevant here. What is relevant is whether or  
22 not your mother is incapacitated and whether or not  
23 she's in need of a guardian and who that guardian  
24 should be. This all may be relevant if Jill was asking  
25 to be the guardian, but she's not.

1  
2 MR. HERRING: But, Your Honor, she is  
3 making statements that reflect upon me as a possible  
4 candidate. And just like in the petition --

5 THE COURT: But that's not -- and you  
6 can challenge that, sir. You are going to be able to  
7 testify. Mr. Fenstermacher is going to testify. You  
8 can ask Mr. Fenstermacher questions to determine  
9 whether or not his testimony comports with your  
10 sister's testimony. You have that right. But her  
11 answer is what it is. So next question.

12 BY MR. HERRING:

13 Q You stated there were changes to Mother after I  
14 moved in theoretically in February of 2020. What were  
15 those changes?

16 A That she became more and more distant from me and  
17 wouldn't -- our normal relationship, loving  
18 communications and visits, were reduced to, over a  
19 period of time, just treating me like a stranger and/or  
20 -- the relationship was gone, I was someone that she --  
21 that I felt was a -- you know, I mean, there was very  
22 little relationship.

23 Q Are you aware that since my father died eight and  
24 a half years ago I have been there literally every day  
25 for about six hours a day, start about from 3 o'clock

1  
2 to about 9 o'clock? Are you aware of that?

3 A No. I don't think you were because my mother said  
4 you weren't.

5 Q I wasn't living there. I just said I was there  
6 for dinner, starting from about 3 o'clock to about  
7 9 o'clock --

8 MS. CAMP: Objection.

9 BY MR. HERRING:

10 Q -- where I would go home.

11 MS. CAMP: He's testifying.

12 THE COURT: So that's testifying. So  
13 that's sustained.

14 Do you know how often and for how long  
15 your brother was at the house beginning with the death  
16 of your father?

17 THE WITNESS: Yes. My mother told me  
18 that sometimes he would come Thursday or Friday night  
19 and sometime Sunday night. And that was all.

20 THE COURT: But that's from your mom?

21 THE WITNESS: Yes.

22 THE COURT: Do you personally know from  
23 directly observing him or having personal interactions  
24 with him?

25 THE WITNESS: Yeah. His car was not

1  
2 there if I drove over. And I would often have to drive  
3 over to get Mother to sign things or whatever in  
4 handling her finances. Yeah, there was no one living  
5 there. He did put signs up that the third floor was  
6 his residence and --

7 THE COURT: But when --

8 THE WITNESS: No.

9 THE COURT: -- you would go after your  
10 dad died -- were you working full-time here?

11 THE WITNESS: Oh, yes.

12 THE COURT: So during the week when you  
13 would go see your mom if you needed to during the week,  
14 would it be after work hours?

15 THE WITNESS: No. Sometimes it was  
16 during lunch or she would come over to my home.

17 THE COURT: Did you ever go to Mom's  
18 home in the years between when your dad died and  
19 February of 2020 between the hours of three in the  
20 afternoon to nine in the evening?

21 THE WITNESS: Of course.

22 THE COURT: And what percentage of time  
23 when you would go to Mom's house did you see your  
24 brother's car there or see your brother?

25 THE WITNESS: Almost never until --

1 almost never.

2 THE COURT: Okay.

3 Mr. Herring.

4 BY MR. HERRING:

5 Q Did I hear you correctly you said there were signs  
6 all around saying --

7 A Yeah.

8 Q -- "my room"?

9 A Yes.

10 Q What type of signs?

11 A A sign on the steps going to the third floor  
12 saying "my residence." And the cleaning woman, Kerry  
13 Minio, observed that sign and could not go up.

14 Q Is she here today?

15 MR. JASKOWIAK: Objection, Your Honor.

16 THE COURT: He can ask the question.

17 But I think it's probably evident from looking around  
18 that she's not here today.

19 But is she here today?

20 THE WITNESS: Nope.

21 BY MR. HERRING:

22 Q Did she sign any statement to which you have  
23 claimed?

24 A No. She talked to me on the phone.

1  
2 THE COURT: Just "no" was fine. Just  
3 answer it like -- same with Ms. Camp. Just listen to  
4 the question and answer just the question that's asked  
5 of you.

6 THE WITNESS: All right.

7 BY MR. HERRING:

8 Q You stated that the maid was frightened of me.

9 A Mm-hmm.

10 Q Is that correct?

11 A Mm-hmm.

12 THE COURT: You have to actually answer  
13 out loud.

14 THE WITNESS: Yes. Yes. Yes.

15 BY MR. HERRING:

16 Q And what was she frightened of or about?

17 A I don't know. She didn't say. She thought you  
18 were just strange, she said. But mostly it was about  
19 how Mother has changed since you moved in and you  
20 were ...

21 Q You stated about Boardman-Hamilton claimed.

22 Boardman-Hamilton was the insurance brokerage that my  
23 father merged with --

24 A It's not a brokerage.

25 THE COURT: The business.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. HERRING: What was that comment?

THE COURT: The business. Doesn't matter.

MR. HERRING: Okay. I was explaining that to the Court because I don't --

THE COURT: Okay. I don't need the explanation.

MR. HERRING: Okay.

THE COURT: I just need you to ask questions.

MR. HERRING: Okay.

BY MR. HERRING:

Q You had stated earlier Boardman-Hamilton claimed I was harassing them?

A Yes.

Q In what ways?

A That's what they said.

Q Who said it?

A You were calling, you were trying to change insurance, you were argumentative, you were harassing. To the point where the account manager told the president Gary Dix and Dix said, "From now on when he calls I am to take the phone call."

Q And when was this?

1  
2 A This was in mid 2020.

3 Q You stated you picked up the mail from the  
4 documents in the beginning; is that correct?

5 A Yes. After dad passed I made arrangements with  
6 Mother that she would set aside the mail so that I  
7 could review it when I came over, usually twice a week,  
8 and to look at the mail, just to be able to promptly  
9 respond to any communications or deadlines or requests  
10 that came because I was heavily into organizing the  
11 financial affairs at that time.

12 Q And for how long did you do that?

13 A Until, I guess, you moved in, until February of  
14 2020. But then I did my -- you know, Mom's taxes this  
15 year.

16 Q You did your mother's taxes also for last year?

17 A No. I mean I helped -- I organized the taxes and  
18 the amounts and so forth for Buxmont Accounting. I  
19 shouldn't say that I did the taxes. But I was, you  
20 know, the primary contact as well.

21 Q Isn't it true that my mother used to always take  
22 the taxes to Buxmont to be done?

23 A She would -- sometimes if I was working she would  
24 take whatever I prepared. Yes.

25 Q Are you aware that she fired Buxmont Accounting

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

about three years ago?

A No, she did not.

Q Isn't it true that for the last two years you've told her you were going to do the taxes?

A Yes, I did. And I did.

Q Isn't it true, for the two thousand --

A Artie --

THE COURT: You have to wait until there is a question for you.

THE WITNESS: Okay.

THE COURT: Next question.

BY MR. HERRING:

Q For the 2019 taxes, in which I drove my mother over there for them to be done -- do you recollect that?

MS. CAMP: Objection. Relevance. What does the 2019 taxes have to do with this?

THE COURT: Sustained. That's not relevant to this proceeding.

MR. HERRING: Well, I was going to ask something about that, Your Honor.

THE COURT: But it doesn't matter. She's not asking to be the guardian. She's not asking to be in charge of the finances any further. The

1 question -- she is saying that you're not an  
2 appropriate guardian. So if there is something you did  
3 you're going to be able to testify to that and you may  
4 ask her about that if she testified to it. But whether  
5 or not she did something correctly financially isn't  
6 relevant today because she's not asking to be the  
7 guardian.

8  
9 I think a lot of the questions you have  
10 or the thoughts that you have would be an appropriate  
11 line of questioning if she was asking to be the  
12 guardian, but she's not.

13 MR. HERRING: But, again, it goes to the  
14 authenticity of what she was saying.

15 THE COURT: No. These questions don't  
16 go -- that specific question does not go to her  
17 credibility. So the objection's sustained and we'll  
18 have the next question.

19 BY MR. HERRING:

20 Q In 2020 do you recall a delegate authority that  
21 was created?

22 A I don't know.

23 THE COURT: I just didn't hear you. You  
24 said, "I don't know what you mean"? Is that what you  
25 said?

1 THE WITNESS: Yeah. I don't --

2 THE COURT: Okay. So that was the  
3 answer.

4 BY MR. HERRING:

5 Q You don't know what I'm referring to?

6 A No, I do not.

7 Q Do you remember the attorney's name Cavanaugh  
8 [ph], a woman in Delaware County?

9 A Yeah.

10 Q And what was the purpose of you going there?

11 A After your assault Ron Fenstermacher suggested  
12 that I retain an attorney. And she and Ron developed  
13 the joint directive -- delegated the joint directive.

14 Q What type of attorney this was Cavanaugh? What  
15 was her practice?

16 A Family.

17 Q Family law?

18 A Yeah.

19 Q Well, you just said "family"; I didn't know what  
20 you were referring to.

21 And she was in Delaware County; is that  
22 correct?

23 A Yes.

24 Q Okay. So it was -- was it both her and  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Mr. Fenstermacher that created this delegate authority?

A Yes.

Q Why did it take both of them to do it?

MS. CAMP: Objection. I don't understand the relevance of this line of questioning.

THE COURT: Sustained. It's not relevant.

BY MR. HERRING:

Q Referring to P-4, the power of attorney supplemental directive, did Mother ever sign that, or was it just Fenstermacher?

THE COURT: I'm sorry. Just what exhibit, sir?

MR. HERRING: P-4.

THE COURT: Thank you.

THE WITNESS: It was Ron Fenstermacher. He asked you to sign and me to sign. You refused so Ron signed.

THE COURT: Okay. But the question was did Mom sign it? So --

THE WITNESS: No.

THE COURT: -- Mom didn't sign it?

MR. HERRING: Can I introduce the delegate authority?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: If you want -- sir, you can show it to her. You can have it shown to her, see if she's familiar with it. If she is you'll be able to ask questions about it. If she's not, then --

MS. CAMP: It is already marked.

THE COURT: Oh, is that one --

MS. CAMP: Yes. It's part of --

THE COURT: This is the same thing as what you have, sir.

MS. CAMP: Yes. He's referring to my binder.

THE COURT: Okay.

MS. CAMP: So it is already --

THE COURT: P-4. It's already been identified and she has it in front of her. So you can ask her questions about it.

MR. HERRING: Well, if I'm looking at P-4 in this book, that's not the delegate authority that I was going to hand out.

THE COURT: So you have something different?

MR. HERRING: Yes.

THE COURT: Okay. Then show it to each counsel. They have to see it first. And it should

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

have been provided, actually, before today.

MR. HERRING: Should it be labeled, Your Honor?

THE COURT: Yes. We'll make it AH-1.  
(Joint Delegation Agreement for the Benefit of Jane T. Herring marked Arthur Herring, III's Exhibit AH-1 for identification.)

MR. HERRING: Is that how you would like future --

THE COURT: It will be AH with each subsequent number.

MR. HERRING: Okay.

THE COURT: But we're not going to hand it to the witness yet; we're going to give counsel an opportunity to review it.

MR. JASKOWIAK: I'd just like the record to reflect it's an unsigned document. I don't know if he's going to be able to authenticate who prepared it, what the circumstances --

THE COURT: Okay.

MR. JASKOWIAK: -- were, but --

THE COURT: Well, it doesn't -- okay.  
So we'll show the witness AH-1.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. JASKOWIAK: Do you have copies for anybody?

MR. HERRING: I just gave you one.

MR. JASKOWIAK: This is my copy?

MR. HERRING: Yes, sir.

MR. JASKOWIAK: Okay.

THE COURT: Okay. So if you just want to show it to the witness.

All right. So, ma'am, I'm going to ask you to look at what we will mark in a moment as AH-1. Look it over and let me know when you're finished looking at it.

THE WITNESS: No, this isn't correct.

THE COURT: Well, hold on one second. So you've had the opportunity to review AH-1?

THE WITNESS: Mm-hmm.

THE COURT: Have you ever seen that before today?

THE WITNESS: I probably have. I don't remember it, but I probably have. I saw all the drafts from --

THE COURT: Okay.

THE WITNESS: -- Cavanaugh and Fenstermacher.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: And when you said you think it's a draft, what do you believe it to be a draft of?

THE WITNESS: Of the final joint directive.

THE COURT: Which is P-4?

THE WITNESS: P-4.

THE COURT: Okay. Mr. Herring, do you have any additional questions at this time about this document?

BY MR. HERRING:

Q That is the document that -- is that the -- I just want to put it on record. Is that the document that you intended for me to sign, for both of us to sign?

A It was a draft with your name on a signature line.

Q But are you acknowledging that that is the final version --

A No, it's not the final. It was a draft.

Q That was the draft that Mr. -- okay.

Are you aware in the middle of 2020 Harleysville -- or I should say my mother went to Harleysville Bank and cancelled your power of attorney and took your name off of the two other accounts there?

A No. Two other accounts?

Q Yes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. HERRING: Can I explain to the Court  
or --

THE COURT: No. You're going to get to  
testify. This is just the time for questions.

MR. HERRING: Okay. I'm trying to find  
questions so I don't offend you, Your Honor.

THE COURT: Well, it's not offending me.  
It's just whether or not they're relevant to this  
proceeding. So, again, you're going to have full  
opportunity to testify, but this is just questions for  
your sister on the scope that I've instructed you on.

MR. HERRING: Okay.

BY MR. HERRING:

Q You stated you saw Mother for the last time on  
March 17; is that correct?

A No. I said I saw her --

Q I'm sorry. May. I'm sorry, May 17.

A Or 18th. It was that Monday after her birthday of  
the 16th. Yes.

Q Okay. Was there a reason why you didn't take her  
out on the 16th, her birthday?

A She said you did not want me -- you did not want  
her to go out with me on the birthday, that you had  
taken that day to see Mother, and that I could not see

1 her on her birthday.

2 Q And isn't it true on May 17 was the same day you  
3 signed the petition for legal guardianship?  
4

5 A I can't remember. I mean, whatever.

6 THE COURT: She said she doesn't  
7 remember.

8 MR. HERRING: Okay.

9 BY MR. HERRING:

10 Q Did -- at any time -- you discuss your intentions  
11 with my mother as far as obtaining a legal  
12 guardianship?

13 A No.

14 Q Why not?

15 A Why not?

16 Q Why didn't you want to discuss something as  
17 serious as obtaining a legal guardianship for her?

18 A Because it wasn't a subject that anyone brought  
19 up. There was no -- I did not want a guardian. All I  
20 wanted to do was to normalize my relationship with my  
21 mother.

22 Q Did you just say you did not want to be a  
23 guardian?

24 A I said I did not want to raise the subject because  
25 I -- it hadn't entered my head, my mind. What are you

1  
2 talking about? I mean --

3 THE COURT: It's just your job to answer  
4 the question.

5 THE WITNESS: I don't even understand  
6 the --

7 THE COURT: So the question is why  
8 didn't you talk to your mom about your trying to get a  
9 guardian for her and become her guardian?

10 THE WITNESS: When?

11 THE COURT: After you -- either leading  
12 up to or after you filed the petition for guardianship.

13 THE WITNESS: Why? Because you would  
14 have been on the phone and I couldn't have an honest  
15 telephone call with my mother and I did not -- and I  
16 was not welcome in the house by you.

17 BY MR. HERRING:

18 Q Well, as the police pointed out, my mother owns  
19 the house and she would be the one that decides --

20 A No. No.

21 THE COURT: Okay.

22 BY MR. HERRING:

23 Q So you did not feel that something as drastic as  
24 having somebody basically literally be a person that  
25 is -- has full legal powers over that can make

1  
2 decisions for her, whether she likes it or not, you did  
3 not think something as drastic as that is important to  
4 discuss with her, and you've just said how much of a  
5 loving mother-daughter relationship you've had with  
6 her?

7 MS. CAMP: Objection. Argumentative and  
8 irrelevant.

9 THE COURT: Sustained.

10 Next question.

11 BY MR. HERRING:

12 Q Did you ever discuss it with me?

13 A No.

14 Q So our mother, the future of our mother's welfare  
15 and happiness, you didn't think to discuss the matter  
16 with me?

17 MR. JASKOWIAK: Objection.

18 MS. CAMP: Objection.

19 THE COURT: Sustained.

20 She said no, sir. That's the answer.

21 BY MR. HERRING:

22 Q You filed this petition -- when you filed the  
23 petition you wanted to be the legal guardian of our  
24 mother; is that correct?

25 A At one time.

1  
2 Q You spent -- or did you spend many thousands of  
3 dollars for your lawyer to do that process?

4 MS. CAMP: Objection.

5 MR. JASKOWIAK: Objection.

6 MS. CAMP: Relevance.

7 THE COURT: Sustained.

8 I mean, sir, certain things are evident.  
9 I know she filed a petition, I know she has a lawyer.  
10 It doesn't matter how much she paid the lawyer; I know  
11 that's the effort she made to be here today.

12 MR. HERRING: Well, I was leading up to  
13 -- the next question would be after two months of doing  
14 such, why did she suddenly drop out?

15 MR. JASKOWIAK: Objection.

16 MS. CAMP: Objection.

17 THE COURT: Overruled. It doesn't  
18 matter.

19 Oh, I'm sorry. Sustained.

20 BY MR. HERRING:

21 Q You stated I tried to turn Ron -- or Uncle  
22 Ronald -- he's our uncle -- you claimed I tried to turn  
23 Ronald Herring against you. What is your -- would you  
24 explain?

25 MR. JASKOWIAK: We're going off on --

1  
2 objection. Relevance.

3 THE COURT: Well, overruled because it  
4 did come up during direct. So overruled.

5 So could you explain what you meant by  
6 that?

7 THE WITNESS: That's what I was told by  
8 Ronald -- Ronald Herring called Ned Herring, and that's  
9 what Ronald told Ned and Ned told me.

10 THE COURT: So triple hearsay.

11 BY MR. HERRING:

12 Q You stated that I had turned every financial  
13 advisor against you.

14 A No.

15 Q Who was that? Or how --

16 A No.

17 Q -- was that done?

18 THE COURT: So you're saying that's not  
19 what you said?

20 THE WITNESS: That's not what I said. I  
21 said you turned --

22 THE COURT: All right. That's the  
23 question. Hold on. You just have to stop.

24 THE WITNESS: I'm sorry.

25 THE COURT: Let him ask the next



1 question.

2 So she doesn't agree with your premise  
3 that she said you turned every financial advisor  
4 against her.

5 BY MR. HERRING:

6 Q You stated that my mother is totally  
7 incapacitated; is that correct?

8 A She's incapacitated in terms of exactly what  
9 Dr. Ledakis had testified to.

10 Q Well, what have you actually observed, other than  
11 a little memory loss, that indicates that she is  
12 totally incapacitated?

13 A Years and years after Dad died I was intimately  
14 and daily, almost hourly, working with her and talking  
15 to her.

16 Q And? You just said --

17 A And there were literally hundreds of issues that  
18 arose that I had to email and document to Ron  
19 Fenstermacher. And Matt Fisher and Matt Pruitt agreed  
20 that Mother was losing memory, she was incapacitated,  
21 she could not -- she could not work with them, that I  
22 should be appointed the person for communication of  
23 issues. And Barbara Hagan and Mark Brion said the same  
24 thing at Buxmont.  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Well, did she ever write checks that were of a nature that would call attention to -- bizarre checks to Santa Claus, a billion dollar check, whatever? Did she ever --

MS. CAMP: Objection. Argumentative.

THE COURT: Sustained as to the phrasing.

In the time leading up to your petition, had you ever observed her writing inappropriate checks or behavior concerning financial -- concerning financial decisions in addition to the ones you've highlighted in your exhibits?

THE WITNESS: Major, major problems of putting expired -- I mean, checks so they would have to expire from annuities in drawers, she was creating incredible debt in her Chase credit account. She would write checks that -- she said she wrote them, but she didn't, with Buxmont Accounting for taxes. It just goes on and on. I mean, I could document -- as I said, there is just dozens and dozens of major issues.

BY MR. HERRING:

Q Will you be able to actually document that the next time?

MS. CAMP: Objection.

1  
2 THE COURT: Sustained. We're not doing  
3 discovery here. Your question was --

4 MR. HERRING: But I'm saying the next  
5 time we meet --

6 THE COURT: No. No. Because we're not  
7 doing discovery. And she's going to be finished  
8 testifying today. The question is whether or not your  
9 mom is currently incapacitated. These are reasons that  
10 your sister had concerns which led to her filing the  
11 petition. Whether or not those concerns are true is  
12 not relevant to this Court today. This provides the  
13 background and the basis for her filing the petition,  
14 and I allowed you to ask about that. The question is  
15 whether or not she is currently incapacitated and is in  
16 need of a guardian.

17 MR. HERRING: Well, I had asked. Okay.  
18 So -- okay.

19 BY MR. HERRING:

20 Q You have -- the issue was brought up about the  
21 different checks that were in your attorney's file  
22 here, about the different checks for the different  
23 people. And there were some checks that were written  
24 out to lawyers; is that correct?

25 A Yes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Okay.

A Well, I mean -- yes. I mean, there were checks that were payable to lawyers, yes.

Q Because you have such a close relationship, as you have claimed, with my mother, did you ever call her up and ask her about those checks?

A Yes.

Q And what did she tell you about those different people?

A She said she was not aware of it and then she started to cry.

Q She was not aware that she was writing checks? She was --

A She was not aware of the half a dozen lawyers that she -- that checks were being paid to. She was not aware. And she started to cry. And I have it in an email, what she said, because I sent it to Ron --

Q You have it in an email what she said to you? Did I just hear that?

A Yes. She cried and she was saying -- I mean, I don't want to try to say something that --

Q No. You just stated --

A -- I can't remember.

Q -- she said to you in an email --

1  
2 A No. No. I said the words -- I have to look at my  
3 emails, okay? I don't have --

4 THE COURT: So let me just go to the  
5 question. The question was did you directly contact  
6 Mom about the checks that you raised --

7 THE WITNESS: Yes.

8 THE COURT: -- in this hearing?

9 THE WITNESS: Okay.

10 THE COURT: Your answer was yes --

11 THE WITNESS: Yes.

12 THE COURT: -- and that she cried. What  
13 was she crying about?

14 THE WITNESS: She was not aware of the  
15 checks being written to the lawyers, payable to the  
16 lawyers, and the amounts. And I read the amounts  
17 because I was preparing the 2020 taxes for Buxmont and  
18 I came across what is shown in the exhibits, the  
19 activity detail in those checks. And she said, "No, I  
20 was not aware," and then she started to cry.

21 THE COURT: Okay. Next question.

22 BY MR. HERRING:

23 Q Did you ever get copies of those checks?

24 A I got copies of -- I get copies of all RJ  
25 statements.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Q Not the statements, the checks.

A I said -- no.

Q Did you get copies of the checks?

A No, I don't get copies of the checks. No.

MS. CAMP: The checks have been produced.

MR. HERRING: The what?

THE COURT: It doesn't matter. Overruled. The answer is no. But the checks have been produced; you have them.

MR. HERRING: No, I don't have copies of the checks themselves.

THE COURT: Yes, you do.

MR. JASKOWIAK: Your Honor, I can --

THE COURT: They're Exhibit 8 --

MR. JASKOWIAK: -- represent I obtained the checks --

THE COURT: But it doesn't matter --

MR. JASKOWIAK: -- pursuant to my authority and they have been provided to Mr. Herring in Exhibit P-8.

THE COURT: Correct.

You have copies of them, Mr. Herring. They're in P-8. We've already gone through them.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. HERRING: Okay. Then -- P-8 was it?

MR. JASKOWIAK: Or H-8. I'm sorry.

THE COURT: I'm sorry. H-8. We've already gone through these.

MR. JASKOWIAK: I'm sorry. Mea culpa.

MR. HERRING: H-8. Okay.

BY MR. HERRING:

Q All the checks seem to be written by my mother. Are you saying -- okay. The checks appear to be written by my mother. Would you like to look at them to see?

MS. CAMP: Objection.

THE COURT: Sustained. That's not a question.

Don't answer anything unless I tell you to.

That's not a question, sir. That's not an appropriate question.

MR. HERRING: Well, I'm trying to raise the issue of am I being accused of forgery or did my mother actually write the checks and she didn't recall what they were for or how --

THE COURT: Let's ask that.

So, ma'am, are you contending that your

1  
2 mom wrote the checks and doesn't remember, wrote the  
3 checks at the suggestion of someone and may not  
4 remember, or that someone else wrote the checks?

5 THE WITNESS: I'm suggesting one or two.

6 THE COURT: Okay.

7 BY MR. HERRING:

8 Q What do you mean one or two? What kind of an  
9 answer --

10 THE COURT: Because I gave her three  
11 options. The first option was whether or not your mom  
12 wrote the checks and doesn't remember; that's Option 1.  
13 Number two, that Mom wrote the checks at the suggestion  
14 of someone else and doesn't remember. Or, number  
15 three, that someone wrote the checks for her. She said  
16 it's either one or two, it's not that someone else  
17 wrote the checks for her.

18 BY MR. HERRING:

19 Q Are you aware that each of us gets \$14,000 a year  
20 in gift money?

21 A I certainly am.

22 Q Okay. And are you aware that when I got first  
23 sued back in July of 2018 that I informed my mother  
24 that I could not or I did not want to get any of that  
25 money because --



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MS. CAMP: Objection.

THE COURT: Finish the question, please, sir.

MR. HERRING: Okay. That I did not want to get those checks because if I deposit them they could be seized? Are you aware of that?

THE COURT: Overruled.

You can answer that.

THE WITNESS: Yes. I know that as a matter of law. And, yes, everyone knew that. Harleysville knew it, everyone knew it.

THE COURT: The question is did you know it? Yes or no?

THE WITNESS: Yes, I knew it.

THE COURT: Okay. Next question.

BY MR. HERRING:

Q Okay. And then when I entered bankruptcy -- when the second bankruptcy was filed -- that was about February or so of last year -- once again I could not deposit any checks into any bank account or they would be seized. Are you aware --

THE COURT: Sir, these are all things that you can testify to. Your questions for this witness should be based on, again, the relevant scope

1 of whether or not your mom is incapacitated.

2 So, you know, you want to assert  
3 yourself as a guardian. If there is things you need to  
4 justify, you'll be able to do that. So just ask her  
5 questions about either what she's testified to, the  
6 exhibits that have been put into evidence, or the  
7 relevant scope.  
8

9 MR. HERRING: That's what I'm trying to  
10 do, Your Honor.

11 THE COURT: Right. But that --

12 MR. HERRING: I'm trying to question  
13 what she has said.

14 THE COURT: That wasn't -- so that  
15 question is sustained. The objection is sustained --  
16 or my own objection is sustained. And we'll go to the  
17 next question.

18 BY MR. HERRING:

19 Q You had talked about that two-year romantic  
20 relationship that you're claiming I have with my  
21 mother. Are you suggesting incest?

22 A I'm not suggesting -- I'm saying what I'm saying.

23 Q Well, when you talk about a romantic relationship  
24 that includes sexual behavior. Are you saying that my  
25 mother and I are engaging in any type of incest?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A I refer you to Dr. Ledakis.

THE COURT: No. You actually have to answer the question. Just yes or no.

THE WITNESS: I guess no.

THE COURT: Okay.

BY MR. HERRING:

Q Well, it's in his report that you stated that.

MR. JASKOWIAK: Objection.

THE COURT: Sustained. It's in his report that she referred to a romantic relationship or romantic overtures. There are no allegations of incest in the report.

MR. HERRING: Well, she stated --

THE COURT: Sir, I've read the report. I was here for the testimony. You just asked the question -- which was an appropriate question -- and you got your answer.

MR. JASKOWIAK: Your Honor, it was "romantic campaign," quote/end quote.

THE WITNESS: Right.

THE COURT: Thank you.

THE COURT STENOGRAPHER:

MR. JASKOWIAK: Page 11 -- I'm sorry -- 13 of the report.

1  
2 MR. HERRING: Well, it was explained  
3 that the witness thought it was creepy that there were  
4 pictures of myself and my mother --

5 THE COURT: Sir, she testified --

6 MR. HERRING: -- and flowers.

7 THE COURT: Sir, she testified to that.  
8 You had an appropriate question about how far is she  
9 going with this. The question was answered. She said  
10 she's not making allegations of incest. So you'll be  
11 able to make arguments if you think that this is going  
12 too far or bias or something. But let's go to the next  
13 question.

14 MR. HERRING: I don't have any more  
15 questions at this time, Your Honor.

16 THE COURT: Okay. Ms. Camp, any  
17 redirect?

18 MS. CAMP: I do not have any redirect,  
19 although, I would like to move into evidence a number  
20 of the --

21 THE COURT: Okay.

22 MS. CAMP: -- documents.

23 THE COURT: So, ma'am, you may step  
24 down. Your testimony is concluded.

25 All right. I have marked and was used

1  
2 in testimony P-3, P-4, P-5, P-6, P-7, and P-14 on  
3 Page 1.

4 MR. JASKOWIAK: There was also P-8 and  
5 P-9, Your Honor.

6 THE COURT: Oh, I apologize. You are  
7 correct.

8 MR. JASKOWIAK: And P-14, -15, and -16.

9 THE COURT: I'm only on Page 1 now. So  
10 let's go --

11 MR. JASKOWIAK: I'm sorry.

12 MS. CAMP: So P-3 through -9.

13 THE COURT: And 14 on Page 1; right?

14 MS. CAMP: 14, 15, and 16. Yes, 14 on  
15 Page 1, and then the following two on --

16 THE COURT: Okay. All right.

17 Any objection?

18 MR. JASKOWIAK: No objection.

19 THE COURT: So moved.

20 (Petitioner's Exhibits P-3, P-4, P-5,  
21 P-6, P-7, P-8, P-9, and P-14 received in  
22 evidence.)

23 THE COURT: And on Page 2 I have 15 and  
24 16. Is there anything that I missed?

25 MS. CAMP: No, Your Honor.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

THE COURT: All right. Any objection to 15 and 16?

MR. JASKOWIAK: No objection, Your Honor.

THE COURT: All right. So moved.  
(Petitioner's Exhibits P-15 and P-16 received in evidence.)

THE COURT: All right. So that will conclude our testimony for today. We will need a second day. On the second day we'll have Mr. Fenstermacher and Mr. Herring testify. I would like to do this sooner rather than later --

MR. JASKOWIAK: I agree, Your Honor.

THE COURT: -- so it remains fresh in all of our minds.

Mr. Jaskowiak, you said next Thursday does not work for you; correct?

MR. JASKOWIAK: Your Honor, Judge Murphy has me for Thursday.

THE COURT: Okay.

MR. JASKOWIAK: I really think that is a case that should not go the full two days it's been allotted, but I've been wrong before. I understand the tightness of your schedule and --

1 THE COURT: And I appreciate that,  
2 because while --

3 MR. JASKOWIAK: If that could be --

4 THE COURT: Amy, we don't need this on  
5 the record.

6 - - -

7 (Discussion off the record.)

8 - - -

9 THE COURT: I had an off-the-record  
10 conversation with the parties to determine whether or  
11 not the Court issuing a subsequent order to provide  
12 Jill Scott Herring the opportunity to see her mother  
13 prior to the next hearing date would be appropriate or  
14 not. At that time Mr. Jaskowiak informed the Court  
15 that when he called Mrs. Herring to determine her  
16 willingness to do that, he first had a 12- to 15-minute  
17 conversation with Arthur Herring, in which he  
18 subsequently -- and Arthur Herring gave his clear  
19 opinion that his mother did not want to see her  
20 daughter, and Arthur Herring then handed the phone over  
21 to Jane, who was present during Arthur's conversation  
22 with Mr. Jaskowiak, after which Jane said she was not  
23 interested in seeing Jill Herring.

24 Arthur Herring then spoke up today in  
25

1 court saying that his mother clearly does not want to  
2 see her daughter because his mother has seen what this  
3 charade has done to Arthur. And I want to say very  
4 clearly on the record there is nothing about the  
5 petition that was filed in this court for guardianship  
6 that is improper or a charade. It is appropriate to  
7 bring this action in front of the Court. It is  
8 appropriate to bring the concerns -- if anyone has  
9 concern over a cognitive decline or inappropriate  
10 treatment of any potentially incapacitated person, it  
11 is an appropriate action to bring to the Court.  
12 Whether or not the Court will find and agree with the  
13 petitioner or not will be determined at the conclusion  
14 of the hearing. But the petition that was filed had  
15 merit, it had value, and it deserves to have its day in  
16 court.

17  
18 And just because you don't like your  
19 sister and she clearly doesn't like you does not mean  
20 that this Court does not have to look out for what is  
21 in the best interest of Jane Herring, which is what we  
22 are doing here.

23 So, with that, the Court is issuing an  
24 order that gives Jill the opportunity to see her mother  
25 if and only if Mr. Jaskowiak, in a private conversation



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

with Jane, without any outside influences, deems it appropriate. So, with that, you are all excused.

MR. JASKOWIAK: Thank you, Your Honor.

THE COURT: I will see you all on August 6th at 1:30.

(At 4:57 p.m., proceedings were concluded.)

- - -

C E R T I F I C A T E

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me in the above cause and that this is a correct transcript of the same.

Amy Boyer  
Official Court Reporter

- - -