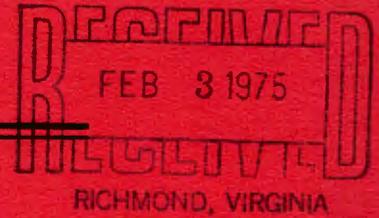


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SUPREME COURT OF VIRGINIA



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 740877

JESSIE H. DUNN, et al
Appellants

v.

ETHELYN R. STRONG, Individually, etc, et al
Appellees

JOINT APPENDIX

HOWARD I. LEGUM
FINE, FINE, LEGUM & FINE
720 Law Building
Granby & Plume Streets
Norfolk, Virginia

Counsel for Appellants

STANLEY E. SACKS
405 F & M National Bank Bldg.
Norfolk, Virginia

Counsel for Appellees

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BILL OF COMPLAINT

1. Complainants are the sister and brother of Willow D. Knight who died on April 10, 1973.
2. A paper writing, signed by the decedent, dated October 6, 1963, was probated in the Clerk's Office of this Court on April 26, 1973.
3. A paper writing dated February 14, 1973, bequeathing the estate of the said decedent to the defendants, was probated in the Clerk's Office of this Court on April 27, 1973.
4. Said paper writing dated February 14, 1973, is not the true last will and testament of said decedent.
5. The true last will and testament of decedent is the paper writing admitted to probate and dated October 6, 1963.
6. Said decedent did not know that the paper writing, dated February 14, 1973, purporting to have her mark thereon, was in fact her last will and testament.
7. On February 14, 1973, said decedent was blind and was unable to read said paper writing which was not explained to her prior to her allegedly placing her mark thereon.
8. On February 14, 1973, said decedent was gravely ill, feeble, aged, and infirmed.
9. On February 14, 1973, the defendant, Ethelyn R. Strong, exerted undue influence upon the mind of the decedent to such an extent that any purported signing of her mark thereto was not her own free will and agency.
10. On February 14, 1973, the said decedent was not mentally competent to execute a will.

WHEREFORE, they pray that a jury be impanelled to try the issue devisavet vel non to determine which of the two paper writings is the last will and testament of decedent, that a judgement be entered declaring the paper writing admitted to probate dated October 6, 1963, is the true last will and testament of said decedent; and that they may have general relief.

00001

FINAL DECREE

This cause came on this day to be heard upon complainant's motion to set aside the verdict previously found for the defendants upholding the paper writing admitted to probate, dated February 14, 1973, as the Last True Will and Testament of Willow D. Knight, Deceased, and was argued by counsel.

Upon consideration whereof, the complainant's motion is overruled and judgement is herewith entered upon the verdict, to which action of the Court the complainants except.

* * * * *

Entered
5/15/74

00062

NOTICE OF APPEAL

Complainants, Jessie H. Dunn and Phenetha L. Harden, Administratrix of the Estate of Arthur Ratcliff, Deceased, appeal from the final decree entered by the Circuit Court of the City of Portsmouth on May 15, 1974, in a Chancery suit in which Jessie H. Dunn and Arthur Ratcliff were complainants and thereafter Arthur Ratcliff died intestate and Phenetha Harden qualified in the Clerk's Office of this Court as Administratrix of the Estate of Arthur Ratcliff, Deceased and Ethelyn R. Strong, individually and as Executrix of the Estate of Willow D. Knight, Deceased, William (Billy) Ratcliffe, Flossie Smith, Arlester Ratcliff, Jr., and Joseph W. C. Ratcliff were defendants.

ASSIGNMENTS OF ERRORS

* * * *

3. The Court erred in granting instruction number 10.

* * * *

4. The Court erred in granting instruction number 9.

* * * *

7. The Court erred in granting instruction number 7.

* * * *

Filled
6/4/74

00003

INSTRUCTION NO. 7

The Court instructs the Jury that the evidence of physicians on the question of mental capacity, especially those who attended Willow D. Knight at the time of her last illness is entitled to great weight.

INSTRUCTION NO. 9

The Court instructs the Jury that "undue influence" which is sufficient to void a Will must amount to force and coercion, destroying free agency.

Mere resistible persuasion, solicitation, advice, suggestions, and importunity do not constitute "undue influence

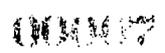
Therefore, even if you should believe from the evidence that there was advice, suggestions, persuasions or solicitations on the part of Ethelyn R. Strong, you cannot find from any such evidence alone that there was "undue influence".

INSTRUCTION NO. 10

The Court instructs the Jury that before the Will of Willow D. Knight, Deceased, dated February 14, 1973, can be declared invalid, the burden rests upon the plaintiffs, Jessie H. Dunn and the Administrator of the Estate of Arthur Ratcliff, deceased, to prove by a preponderance of the evidence that Willow D. Knight was deprived of her volition to dispose of her property as she wished. And, further, the plaintiffs must prove by a preponderance of the evidence that the defendant, Ethelyn R. Strong, committed such acts that thus manifested irresistible coercion which controlled and directed Willow D. Knight to leave her estate as she did in the Will of February 14, 1973.

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Complainants except to the action of the Court in granting Instruction Number 7 on the ground that it's not a complete instruction, that it's not a correct statement of the law, that it should have included a statement that the finances were considerable during her last illness and especially so in the case of the physician attending the testatrix through her last illness when the will was executed as set forth in Eason versus Eason, 203 Va. 246, 123 S.E. 2nd 361, found in the 1972 Supplement of Abbot and Solomon in Volume 3 at page 16, Section 142-125.



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Complainants except to the action of the Court in granting Instruction Number 9 on the grounds that it is not a complete instruction and on the further ground it is not a correct statement of the law. The first paragraph is taken from the first sentence of the instruction found on page 1661 of said Instruction Book, Section 142-139, third paragraph thereof, and does not include the remaining part of said instruction. In addition, the second and third paragraphs are taken from the Dicta found in the case of Wilroy versus H-a-l-n-e-a-b, from January 14th, 1974, by the Supreme Court and that there is no evidence to justify the second and third paragraphs of the instruction. The defendant, Mrs. Strong, denied that she persuaded, solicited, advised, suggested or importuned Mrs. Knight to make a will. In addition the first paragraph of the instruction conflicts with Instruction C, which does not mention that undue influence must amount to force and coercion and to which no objection or exception

1 was made by counsel for defendant.

2 Complainants except to the action of
3 the Court in granting Instruction Number 10
4 on the ground that it is an incorrect statement
5 of the law. It omits two elements: Number one,
6 the instruction granted by the Court as
7 Instruction B that if Mrs. Knight thought she
8 was signing a power of attorney, not a will
9 then the jury should find that February 14th, '73
10 will was not her true last will and testament.
11 And secondly, it omits and ignores the issue
12 of mental incapacity. And it's prejudicial
13 and erroneous, and it's reversible error
14 because it limits itself to undue influence and
15 says that before the will can be declared
16 invalid the burden rests on the plaintiffs
17 to prove that she was too deprived of her
18 volition to dispose of the property and that
19 Mrs. Strong committed such acts that manifest
20 irresistible coercion, controlled and directed
21 the decedent when the burden of proof in this
22 case to prove that it was the last true will
23 and testament throughout the course of trial
24 rested on the defendants.
25

1 THE COURT: Well, gentlemen, let's
2 take a short recess before we start taking
3 testimony.

4 (The trial recessed at 11:42 a.m. and
5 at 12:00 p.m. the trial proceeded as follows:)

6 THE COURT: All right, gentlemen.

7 MR. SACKS: Your Honor, I would like
8 to call Mr. Dennis McMurrans as a witness, please.

9 THE COURT: Swear Mr. McMurrans please.

10 (The witness was first duly sworn.)
11

12 -----oOo-----
13

14 DENNIS MCMURRAN, called as a witness on behalf
15 of the defendant, having been first duly sworn, was
16 examined and testified as follows:
17

18 DIRECT EXAMINATION
19

20 BY MR. SACKS:

21 Q Would you tell us your name, please sir?

22 A Dennis McMurrans.

23 Q And Mr. McMurrans, what is your
24 profession?

25 A Attorney at law.

1 Q And are you licensed to practice law
2 in the Commonwealth of Virginia?

3 A Yes, sir.

4 Q You remember what year you became
5 licensed?

6 A In 1962.

7 Q And could you tell us very briefly
8 where were you educated?

9 A All right. I was educated in the
10 Portsmouth School System, graduated from Wilson High
11 School in 1956, attended Old Dominion University at
12 the Norfolk Division, graduated 1959 and graduated from
13 the University of Richmond T. C. Williams Law School
14 in 1962 and took the bar in '62 and passed and started
15 practicing at that time.

16 Q All right, sir. Have you continuously
17 then practiced law in the City of Portsmouth since 1962?

18 A Yes, except when I was in the service
19 for a brief period of time.

20 Q You are actively engaged at this time
21 in the practice of law?

22 A Yes, sir. I am a law partner in the
23 firm of Moody, McMurrin and Miller.

24 Q All right. Now, Mr. McMurrin, did
25 there come a time back in 1973 when you prepared a will or

1 had anything to do with the preparation of a will for
2 one Willow D. Knight?

3 A Yes, sir.

4 Q And do you have a file with you
5 containing some or containing whatever papers you do have
6 in your office concerning that?

7 A Yes, sir, I do.

8 Q Now, Mr. McMurrin, drawing on your
9 own recollection and refreshing your memory from your
10 file as necessary, can you tell us how a request to
11 draw a will came to your attention?

12 A All right. Mrs. Ethelyn Strong or
13 Dr. Strong, as I know her -- I am on the Child and Family
14 Service Board in the City of Portsmouth and have gotten
15 to know Dr. Strong through doing this work.

16 Q Is she on the Board too?

17 A She is on the Board too, and we are
18 Child and Family Service Board that comes under the
19 Portsmouth United Fund that assists in various domestic
20 affairs. And there are a number of people on the Board,
21 and Dr. Strong is on the Board. And I happen to be on
22 that Board and thereby I have gotten to know Dr. Strong.
23 And she asked me if I would draw the will for her
24 aunt Willow D. Knight from my best recollection, the
25 best I can recall.

1 Q All right, sir. Now, Mr. McMurrin,
2 approximately how long then have you known her from
3 service on that Board?

4 A I have been on the Board six years,
5 and I don't know how long Dr. Strong has been on the
6 Board. But I mean I have known her for several years.

7 Q All right, sir. Now, do you recall
8 whether or not she, that is Dr. Strong, came to your
9 office in connection with this?

10 A She did come to the office. I think
11 she may have mentioned it when we were at one of those
12 Board meetings. We met once a month, but she did come
13 down to the office, and I got the information from her
14 and also my secretary, Nancy Robertson, is also here
15 to testify, went up to witness the will. She was in
16 the room because normally I let her take it down in
17 shorthand, any notes that we have to draw the will up.

18 Q You mean Nancy Robertson, your secretary,
19 was in your office room when you were talking with
20 Dr. Strong.

21 A That's right.

22 Q At the time you were talking to
23 Mrs. Strong about a will for another person, was there
24 any explanation of why the other person wasn't there,
25 Willow Knight?

1 A Yes, my understanding that she was
2 an elderly lady that had some physical problems of getting
3 around, I mean being able to come down. I think my
4 recollection is that Mrs. Knight was in her eighties.

5 Q All right. Now, did you then obtain
6 whatever information you thought was necessary in order
7 to prepare a will?

8 A Yes, sir, I did.

9 Q All right. And did you yourself
10 prepare -- that is actually dictate the legal terms
11 in all provisions of that will?

12 A Yes, sir, I did.

13 Q And what was done towards having the
14 will executed or signed by the lady?

15 A All right. What happened is that
16 Mrs. Knight lived -- she lived on County Street. I
17 believe the exact address I have here somewhere.
18 According to my notes, not my notes, these are notes
19 that my secretary typed up after obtaining the information.
20 And this is not complete. This is just some of the
21 information as to the names, but Mrs. Knight lived at
22 1208 County Street, Portsmouth, Virginia.

23 Q All right, sir.

24 A And what happened is that I made
25 arrangements to go up there because my understanding

1 Mrs. Knight cannot come to the office. I won't say that
2 she couldn't, but I understood that she had some problems
3 getting around physically. So made arrangements to go
4 up to her house. And one morning Nancy Robertson,
5 my secretary, and myself went up to her house.

6 Q So you went there in person?

7 A Went there in person, yes, sir.

8 Q Now, was that in the morning you say?

9 A Yes, sir. My recollection of somewhere
10 around nine or nine-fifteen in the morning.

11 Q And to your knowledge who was in
12 Mrs. Willow Knight's home during that time when you got
13 there?

14 A Now, I have a copy of a will here
15 because the way -- when I draw a will by legal interpretations
16 there is only one will in existence. And so you only
17 have one will executed. And my copy has no names on it.

18 Q You mean names of witnesses?

19 A Names of witnesses. I would have to
20 take the will if I may because it would have some names
21 on it.

22 Q Certainly. Well, were there any other
23 people there then besides Willow Knight and yourself
24 and Nancy Robertson?

25 A Yes, sir.

1 Q I hand you an envelope from this Court
2 and or the clerk's office and ask you to see what those
3 papers are in there.

4 A First of all this is just a jacket we
5 put the will in normally. Last will and testament of
6 Willow D. Knight. That's something we just have a jacket.

7 Q That's part of your office supplies?

8 A Part of my office supplies.

9 Q All right.

10 A There is also a copy from the clerk's
11 office of the Court of Hustings dated April 27th, 1973,
12 on the date we came to the clerk's office. I would be
13 glad to read that.

14 Q I think maybe we can do the will first.
15 That paper would pertain, would it not, to after her
16 death?

17 A That's right, after her death.

18 Q That is the actual will itself.

19 A Actually it's a part, but it was
20 altogether when we went up there.

21 Q Now, can you hold that up? It's got
22 some writing. What does it say?

23 A It says last will and testament of
24 Willow D. Knight. This is the paper that we used in
25 our office. This was dictated to my secretary, and my

1 secretary has typed it up.

2 Q Now, looking at it, Mr. McMurrin, are
3 you able to identify that paper then as being the will
4 that you prepared in your office?

5 A Yes, sir. I was looking at the first
6 page of the last will and testament. At the bottom is
7 my initials down here D. F. M. and there are also
8 initials S. P. and N. R. R. That's Nancy Reed Robertson.

9 Q What does the P. stand for?

10 A Mrs. Susie A. Petersen according to the
11 will. I did not know the lady. This was at Mrs. Willow
12 Knight's home the day we went up there, which was on
13 February 14th, 1973.

14 Q Then did Mrs. Susie Petersen -- did you
15 ask her to act as a witness to the signing of the will?

16 A Yes, sir.

17 Q All right. And who were the other
18 two witnesses to the signing of the will?

19 A Nancy Reed Robertson, my secretary
20 and myself, Dennis F. McMurrin.

21 Q All right, sir. At the end of the will
22 after the place for the testator, the person who signs
23 the will, did you have another clause prepared,
24 Mr. McMurrin?

25 A Yes, sir. First of all let me explain the

1 first page, the reason that it's marked here with her X.
2 Mrs. Knight could not write her name. She only marked it
3 with an X mark then it's got her mark above it. And
4 that's my writing next to it, Willow D. Knight. And I
5 think that's my secretary's writing says her mark above
6 it. The reason I have the first page -- and also it has
7 our initials. The reason I have each page of a will signed
8 or in this case signed with a mark is that in Virginia
9 cases my understanding they claim that if you sign it
10 only at the end that the pages before it had been inserted.
11 So I always try to have each page signed so we can
12 identify each page as being a part of the will.

13 Q How many pages to the will?

14 A There are only two pages. So that's
15 why the first page we have her mark on there and also
16 our initials and her name is written by initials.

17 Q All right, sir. Now, can you tell us
18 as you recall it what occurred then essentially when you
19 walked in with your secretary to Willow Knight's home?

20 A All right. My recollection, and again
21 I'll have to state that I went up there and I didn't
22 make a lot of notes about going up to this lady's house.
23 I remember going there, and I could state something that
24 I am sure that might be in conflict because of some one
25 else's recollection, but my recollection is we went up and

1 we parked -- I parked my car, Nancy Robertson went up
2 with me and I parked in the parking lot next door to
3 where Mrs. Knight lived, which is that chicken place on
4 the corner of Elm Avenue and County Street. I believe
5 it's some chicken place. But we parked right there in
6 the lot and went around. And her house was the first
7 house on County Street when you came off of Elm going
8 in a westerly direction on the north side of Elm. We
9 went in the house. I recall that Dr. Strong was there.
10 The lady that's the witness was certainly there,
11 Mrs. Susie Petersen. Mrs. Knight was there and there
12 may have been some one else there. I really don't
13 remember. I think there was, but I don't recall. But I
14 do know that we went in. Do you want me to go ahead?

15 Q Yes, if you will please.

16 A Mrs. Knight, Willow Knight, came into
17 the front living room and she was sitting in a chair
18 in the front living room. At that time Dr. Strong I
19 remember was somewhere around and I told Dr. Strong that
20 since she was a part of this will she should not be
21 present. I don't know when I said it, but that's what
22 was in my mind. I had Nancy Robertson there as a
23 witness, myself and I also asked this other lady to come
24 in and be a witness.

25 Q Where was Dr. Strong at the time you had

1 any conversations with Willow Knight about her will?

2 A About her will. Dr. Strong was not in
3 the room, was not present.

4 Q Did you have a conversation with
5 Willow Knight?

6 A Yes, we did. Mrs. Knight was sitting
7 in the chair as I say in the living room. And my
8 recollection is that Mrs. Petersen, the other witness,
9 was sitting on the sofa which was right beside. It was
10 a chair and then on the other side -- not on the other
11 side of the room, but adjacent to it she was sitting on
12 the sofa, and Nancy Robertson -- I was either standing
13 next to Mrs. Knight or was in close proximity to her.
14 Nancy Robertson read the will to her because Mrs. Knight --
15 my understanding was she was blind although I couldn't
16 testify to that because I mean her eyes again were open
17 like any person. I mean it wasn't a matter of being
18 closed, that type of blindness. So I don't know what
19 she could really see.

20 Q But you understood she was blind?

21 A I understood she was blind.

22 Q But did you handle the reading of the
23 will to her as if she were blind?

24 A Yes, we did. Nancy Robertson read the
25 entire will and then I recall when she finished reading the

1 will, I asked Mrs. Knight did she understand this will
2 and was this what she wanted, words to that effect. I am
3 not going to say that was exactly because I didn't write
4 them down, but I always do that. I did it in this case.
5 I do recall that, and Mrs. Knight said yes, that's what
6 I want. But she indicated that was the way she wanted it,
7 and I also asked Mrs. Knight did she desire for the three
8 of us that were in the room to be a witness and she said
9 that she did. And at that point was when up until that
10 point when she signed the will that she would be just
11 a mark, but that's all she could sign. And it was placed
12 there and again next to it is Willow D. Knight. And
13 there is a mark and it has her mark. And I think that's
14 my secretary's writing above her mark and it's my
15 writing that says Willow D. Knight. That's done on the
16 first page, the same manner, and then of course I signed
17 it as a witness. I have Dennis F. McMurrin, 35 Washington
18 Street, Portsmouth, Virginia, February 14th, 1973. And
19 of course the adoption clause was read by the witnesses
20 and the witnesses all, of course, Nancy and I understood
21 we were going up there to execute it. Mrs. Petersen
22 was there and present at all times. I do know that
23 because all the witnesses are always in the room at the
24 same time the will is executed.

25 Q Mr. McMurrin, the clause that you had

1 reference to, it's a short clause. Could you read it to
2 us, please?

3 A The clause is under the signature or
4 actually the mark of Mrs. Knight, says signed, sealed,
5 published and declared by Willow D. Knight as and for
6 her last will and testament in the presence of us who
7 in her presence, in the presence of each other and at
8 her request have hereunto set their names as witnesses.

9 Q All right, sir. Now, Mr. McMurrin,
10 as an attorney is it your understanding that the essence
11 of the attestation clause that is that it be the lady's
12 will and the witnesses are requested to be witnesses and
13 do it in everybody's presence, is it your understanding
14 as an attorney that that's required under Virginia law?

15 A That is my understanding.

16 Q Is that a attestation clause that you
17 use in that will in your legal opinion the accepted
18 usual attestation clause?

19 A It is.

20 Q Were you as an attorney especially
21 careful to see that what the attestation clause says was
22 actually accomplished?

23 A Yes, sir. We were all present and
24 at all times when we were signing it.

25 Q Is that your testimony today were all

1 reference to, it's a short clause. Could you read it to
2 us, please?

3 A The clause is under the signature or
4 actually the mark of Mrs. Knight, says signed, sealed,
5 published and declared by Willow D. Knight as and for
6 her last will and testament in the presence of us who
7 in her presence, in the presence of each other and at
8 her request have hereunto set their names as witnesses.

9 Q All right, sir. Now, Mr. McMurrin,
10 as an attorney is it your understanding that the essence
11 of the attestation clause that is that it be the lady's
12 will and the witnesses are requested to be witnesses and
13 do it in everybody's presence, is it your understanding
14 as an attorney that that's required under Virginia law?

15 A That is my understanding.

16 Q Is that a attestation clause that you
17 use in that will in your legal opinion the accepted
18 usual attestation clause?

19 A It is.

20 Q Were you as an attorney especially
21 careful to see that what the attestation clause says was
22 actually accomplished?

23 A Yes, sir. We were all present and
24 at all times when we were signing it.

25 Q Is that your testimony today were all

1 three witnesses together at the signing of the will and
2 at the signing by each witness of each other?

3 A Yes, sir.

4 Q If any witness would recall that they
5 left the room and didn't do that would your testimony
6 be still that they were altogether that you saw that that
7 happened?

8 A Yes, sir.

9 Q All right. Now, did you actually see
10 then Mrs. Knight put her mark to the paper?

11 A Yes, sir, I did.

12 Q Did she do it? Did she hold the pen?

13 A She held the pen and my recollection
14 again was that because of the fact that she was blind
15 she said something about where -- I don't know whether
16 she used the word sign it or where do I put my name. And
17 my secretary had to help her to get her in the right
18 spot, but my secretary did not help her make the mark
19 in any way. But she directed her hand down to the spot
20 on the papers so that she could sign or make a mark.

21 Q Is that necessary twice for the bottom
22 of the first page and at the end of the will?

23 A Her mark twice, once on the second page
24 and once on the first page of the will.

25 Q All right. Now, Mr. McMurrin, did you

1 have other than what you have just told us, now did you
2 have any kind of conversation at all with Mrs. Knight
3 for anything?

4 A Yes, sir. What happened was that
5 Mrs. Knight after executing this will, she was sitting
6 in a chair, I recall, and we were -- I was standing in
7 the room, and my secretary was standing there. And I
8 think Dr. Strong came back in the room. I am not positive
9 about that. And as I said I think there was another
10 person there, but I am not sure of that. But Mrs. Knight
11 started talking and she talked to me about the fact that
12 my father a number of years ago had represented she and
13 her husband. And she talked about owning some of the
14 property up there on County Street right where she was
15 living. And I don't know whether she said a couple of
16 houses down the street or something. And I remember that
17 conversation because that's one thing I was thinking
18 about the passage of time here -- not anything, but I
19 mean the fact he had represented them years ago and that
20 I was here at this point.

21 Q Well, now, Mr. McMurrin and did she
22 seem -- well, did she volunteer that to you that your
23 father had represented her?

24 A She volunteered it and we just had a
25 conversation. It was just a normal type conversation.

1 That's all, and that's what she said. And I remember I
2 told her that was very interesting. And we had a few
3 comments, and I don't remember exactly what was said.

4 Q But she did remember those past events?

5 A That's right.

6 Q And how did conversing with her appear
7 to be, normal or not normal?

8 A It appeared normal and quite honestly
9 I have to state this: I would not execute a will if
10 I didn't think a will could be executed. I am not
11 trying to pass on another ultimate question and I think
12 Mr. Legum wouldn't want me to say that. All I can say
13 the woman appeared to be normal to me. And, of course,
14 I would rather have a person to sign their name and not
15 an X mark, but of course you take a person as they are,
16 and as far as making the signature that was the way she
17 signed it was an X mark. But we have to write these things
18 on the will, but as far as conversing with her that's
19 a normal type conversation.

20 Once she made a mark, I remember her
21 doing the mark as I understood legally acceptable. And
22 we tried to put her there, we marked it, we put above it
23 her mark and then I put her name. That's my writing
24 there next to it.

25 Q That's your understanding what is legally

1 acceptable?

2 A Legally what's acceptable.

3 Q Well then at any time on that day from
4 the time you got there until the time you left, did you
5 observe anything unusual concerning this Willow Knight's
6 behavior or her mental abilities or capacities?

7 A Nothing about her mental ability or
8 capacity.

9 MR. SACKS: Your Honor, I would like
10 to introduce the will.

11 THE COURT: Mr. Legum, have you see this?
12 (Document shown to opposing counsel
13 for examination.)

14 MR. LEGUM: Yes, I have seen it.

15 MR. SACKS: All right.

16 THE COURT: Now, I'll receive this
17 will as Defendant's Exhibit Number 1 with the
18 understanding that when this trial is over a
19 Xeroxed copy will be made because a will as
20 you know once it's probated it remains forever
21 with the papers in the clerk's office.

22 MR. SACKS: Certainly, Your Honor,
23 absolutely.

24 MR. LEGUM: We have no objection.

25 THE COURT: All right.

1 office is the one that actually went over the information
2 with her.

3 Q Now, you said come down and to where
4 did you come?

5 A We came right here to the clerk's
6 office right here, the Circuit Court now. It was the
7 Court of Hustings at that time in the City of Portsmouth.

8 Q Is that the legal requirement after the
9 death of some one, their original will is brought to the
10 clerk's office to the court where they live and is
11 probated.

12 A Yes, sir.

13 Q Were you there yourself that day?

14 A Yes, sir, I was.

15 Q Did as a part of probating a will or
16 are the witnesses who witnessed the signature to the will,
17 are they required to come to the clerk's office?

18 A Yes, sir.

19 Q Did any of the witnesses to the signing
20 of Mrs. Willow Knight's will come to this clerk's office?

21 A Yes, sir. This is in the matter of the
22 probate of the last will and testament of Willow D. Knight
23 deceased and Mrs. Susie A Peters en and Nancy Reed
24 Robertson of lawful age, etcetera. The documents here
25 being duly sworn on their respective corporeal oaths do

1 saw that there was a suit filed I told her
2 quite honestly I couldn't be involved, and I
3 thought it was going to be a point of interest.
4 I believe I have a copy of the bill of
5 complaint. I do have a copy of the bill of
6 complaint with the clerk's -- let me check.
7 I believe that's a photostatic copy we made
8 in our office.
9

10 BY MR. LEGUM:

11 Q And you considered yourself as the
12 attorney for the estate prior to the filing of this
13 suit.

14 A Yes, sir. I helped Dr. Strong with it,
15 and I told her I would go ahead and proceed with the
16 essential estate problems that were involved.

17 MR. LEGUM: All right, Thank you.

18 THE COURT: Anything further?

19 MR. SACKS: Just one or two.
20

21 REDIRECT EXAMINATION
22

23 BY MR. SACKS:

24 Q Drawing your attention now back to
25 the morning from the time you got there and these events

1 took place, did you ever, yourself, tell Mrs. Willow Knight
2 that this paper she was signing was something to carry
3 on her business affairs or anything other than a will?

4 A No, sir. This was a will, and the whole
5 conversation was about a will. And I was talking about
6 we were there to be witnesses. And I would never do
7 anything like that.

8 Q Did you hear any one else tell her
9 while you were there this was anything other than a will?

10 A No, sir. As a matter of fact my
11 secretary read it and it appeared she understood it.
12 That's what she wanted and the other witnesses were
13 there. And it was like any other will I would execute.

14 Q And finally did you at any time on
15 that morning or at any time did you see any evidence of
16 undue influence or coercion by Ethelyn Strong as to
17 Mrs. Willow Knight?

18 A No, sir. I wouldn't have executed the
19 will if I had seen anything that I thought was improper
20 there.

21 MR. SACKS: Thank you, Mr. McMurrin,
22 and that's all I have.

23
24
25

1 please.

2 THE COURT: Nancy, you were sworn
3 earlier, weren't you?

4 MRS. ROBERTSON: No, sir.

5 THE COURT: Swear the witness, please.

6 (The witness was first duly sworn.)
7

8 -----oOo-----
9

10 NANCY REED ROBERTSON, called as a witness on
11 behalf of the defendant, having been first duly sworn,
12 was examined and testified as follows:
13

14 DIRECT EXAMINATION
15

16 BY MR. SACKS:

17 Q Would you tell us your name, please?

18 A Nancy Reed Robertson.

19 Q And what is your employment?

20 A I am a secretary to Dennis McMurrin.

21 Q And how long have you been employed
22 that way?

23 A I started working with him in
24 September of 1966.

25 Q And you have been working continuously

1 ever since?

2 A Yes.

3 Q Are you resident of Portsmouth?

4 A Yes, I am.

5 Q How long have you lived here?

6 A Roughly -- well, since I was about
7 five years old.

8 Q Sixteen years?

9 A Yes.

10 Q Mrs. Robertson, do you have any
11 recollection of efforts concerning the preparation of
12 a will for a Willow D. Knight by Mr. McMurren?

13 A Yes.

14 Q Could you tell us what you first
15 observed, yourself, about that situation?

16 A Dr. Strong came in the office, and
17 Mr. McMurren called me in to take notes.

18 Q Did you take notes?

19 A Yes.

20 Q What generally did that conversation
21 have to do with you were taking notes about?

22 A Well, what was to be in her aunt's will.

23 Q All right. And after that were you
24 requested or directed by Mr. McMurren to type up
25 anything?

1 A Yes, sir.

2 Q What did you do?

3 A I drew the will, typed the will.

4 Q When you got through with it did you

5 give it back to Mr. McMurrin?

6 A Yes.

7 Q Did there come a time when you and he

8 went anywhere with that will?

9 A Yes.

10 Q Where did you go?

11 A We went to Mrs. Knight's home on

12 County Street.

13 Q All right. Now, I show you a paper

14 which is introduced in this as Defendant's Exhibit

15 Number 1 and ask you whether or not you have seen that

16 paper before?

17 A Yes.

18 Q What is that?

19 A It's the will of Mrs. Knight.

20 Q Typed by you?

21 A Yes.

22 Q Now, at Mrs. Knight's home, do you

23 recall who was there?

24 A When we arrived Dr. Strong met us at

25 the door and then she brought her aunt in and another

1 neighbor lady, I understood to be a witness as well as
2 Mr. McMurrin and myself.

3 Q Now, can you tell us as best you recall
4 what happened when you arrived there at Mrs. Knight's
5 home?

6 A Well, Dr. Strong brought Mrs. Knight
7 in from the back of the house. It appeared to me to
8 be probably back in the kitchen or the dining room. And
9 she sat down in an armchair there in the living room,
10 and Mrs. -- the witness was seated on the sofa. And
11 Mr. McMurrin was on the right of Mrs. Knight and I was
12 on her left.

13 Q All right. Was there any conversation
14 between Mr. McMurrin and Mrs. Knight?

15 A Just general conversation. I don't
16 recall just what it was.

17 Q All right. Now, were you within hearing
18 of the conversation going on between them?

19 A Oh, yes, I was right there.

20 Q What did you observe, if anything,
21 yourself, about the lady, Mrs. Knight?

22 A Well, she just seemed to be elderly
23 and rather feeble.

24 Q And how about her? What did you observe
25 about her mental capacity, that is, her ability to

1 converse and understand what was going on?

2 A She seemed to be normal as far as I
3 could tell.

4 Q Now, was anything discussed with
5 Mrs. Knight what you all were there for and what she
6 was to do?

7 A Oh I am certain that it was mentioned
8 that this was her will and that we were here to witness
9 the will.

10 Q All right. Now, do you recall whether
11 or not the will was read out loud?

12 A Yes, I read it to her myself.

13 Q Did you read it entirely?

14 A I did.

15 Q Did Mrs. Knight have any question or
16 any reservation about anything in the will?

17 A No. I took care to read it very slowly
18 and distinctly so that she would understand it. And
19 I even stooped down by her chair so I would be close to
20 her and she could understand me and hear me. And I
21 would read each section and hesitate to see if there
22 was any question. And she -- I don't recall what words
23 were used -- but she indicated that as I went along
24 that each one was as she wanted it.

25 Q Now, when the reading of the will to her,

1 the prepared will, was completed, do you recall whether
2 or not she indicated that she agreed to that that that's
3 what she wanted?

4 A I don't recall the exact words, but the
5 standard procedure we say you know that we have written
6 the will. Now, is that what you want and do you want
7 us to be your witnesses, which is routine. I don't
8 recall in every case, but it's routine thing that we do.

9 Q All right. At any time, Mrs. Robertson,
10 did Mrs. Knight indicate any reluctance or any doubt
11 or any unwillingness?

12 A No, I didn't see any.

13 Q All right. Now, when the time came
14 for witnesses signatures, what occurred?

15 A Well, Mrs. -- what is her name --
16 the witness -- she was on the sofa. We had, of course,
17 Mrs. Knight was just in a normal armchair. We had to
18 get a magazine off the table for her to bear on and
19 I gave her a pen and placed it in her hand. And she was
20 marking her mark. I had to show her where she should
21 make her mark on the will.

22 Q All right.

23 A And then the other three of us signed
24 as witnesses.

25 Q Now, when Mrs. Knight was marking her

1 mark, were each of you three witnesses there in her
2 presence in that room?

3 A Yes, we were.

4 Q Did each of the witnesses then after
5 Mrs. Knight made her mark sign their names in the
6 presence of Mrs. Knight and each witness?

7 A Yes, sir.

8 Q Did you at any time, Mrs. Robertson,
9 see anything to indicate that Mrs. Knight was told that
10 this was anything other than a will?

11 A No, sir.

12 Q Do you recall whether or not Dr. Strong
13 was in the room at that time or not?

14 A No, she had left the room -- myself,
15 Mr. McMurrin and Mrs. Knight and the witness.

16 Q All right. Did you see anything yourself
17 that day in Mrs. Knight's home that was evidence of any
18 undue influence or coercion against Mrs. Knight by
19 Dr. Strong?

20 A No.

21 Q All right. Now, did there come a time
22 after that when you came down to the clerk's office of
23 this Court concerning this will?

24 A Yes.

25 Q And do you remember being in the clerk's

1 office and being questioned about your signature as
2 a witness?

3 A I assume that I was. Miss Williams
4 called me down quite frequently when I am a witness on
5 different wills. I don't recall this particular occasion.

6 Q But have you been in the clerk's office
7 with Mrs. Williams, the Deputy Clerk on a number of
8 occasions to verify your signature as a witness to a will?

9 A Yes, sir.

10 Q Let me just ask you whether or not --
11 I show you a portion of -- Your Honor, is this all
12 marked as just one exhibit?

13 THE COURT: No, sir. Each one is
14 marked.

15
16 BY MR. SACKS:

17 Q I show you an exhibit, Defendant's
18 Exhibit Number 2, a statement of the clerk of the court
19 and ask you does that bear your signature?

20 A Yes, it does.

21 Q And looking at that, do you recall
22 signing that in the clerk's office?

23 A Yes, I recall.

24 Q And whose signature apparently is
25 right above your signature?

1 A That's Mrs. Petersen who was the other
2 witness on the will.

3 Q Do you recall her being down here when
4 you came with the will to verify your signature? Was
5 she here?

6 A I don't recall. I know Mrs. Williams
7 calls me to come in. Sometimes I just stop in on my
8 lunch hour.

9 Q I see. All right, and this is your
10 signature?

11 A Yes, sir.

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DIRECT EXAMINATION

1
2
3 BY MR. SACKS:

4 Q Would you tell us your name, please?

5 A Susie Petersen.

6 Q Mrs. Petersen, how old are you?

7 A Fifty-four.

8 Q Where do you live?

9 A 1114 County Street in Portsmouth.

10 Q Now, did you know Mrs. Willow Knight?

11 A Yes.

12 Q How long would you judge roughly you
13 had known her before she died?

14 A Well, I was a tenant of Mrs. Knight's
15 for eight years.

16 Q All right. Now, you then knew her
17 husband Mr. Knight too, didn't you?

18 A Yes.

19 Q Now, did there come a time that you
20 were asked to give some help to Mrs. Knight making
21 breakfast or things of that sort?

22 A Yes.

23 Q How did that come about?

24 A Well, it was in December '72 Mr. Knight
25 come to me and he told me that he was sick, but he was

1 doing all the cooking for his wife and himself. He was
2 sick and he wasn't able to do it any more. He asked me
3 would I please come there because his wife was blind.
4 She couldn't see. He didn't want her to make no fires
5 because he was scared she would set herself afire. He
6 wanted me to come fix her breakfast, make a fire and
7 fix her breakfast, see to her eating, fix whatever she
8 wanted to eat. And the house that I was living in, I
9 could just stay there and pay the taxes every three months
10 and just do that for him.

11 Q In other words, you could live on that
12 property rent free in exchange for those services.

13 A Just pay taxes.

14 Q And what you have just told us that
15 Mr. Knight asked you to do, that's about what he wanted
16 you to do; isn't it?

17 A Yes.

18 Q All right. Now, did you then do those
19 things?

20 A Yes, I did.

21 Q Now, you dated that in December of 1972.

22 A Yes.

23 Q Do you know how long after you started
24 doing that at Mr. Knight's request that Mr. Knight died?

25 A Yes.

1 Q About how long?

2 A He died on the 19th of January.

3 Q The January following that December?

4 A Yes, that's right.

5 Q So maybe in the months time or so he
6 died.

7 A That's right.

8 Q Now, did that leave anybody living in
9 the home with Mrs. Knight?

10 A Yes, Scott, the roomer was staying there.

11 Q What's his name, please?

12 A Milton Scott.

13 Q And had he been a roomer there even
14 before you started doing cooking the breakfast?

15 A Yes.

16 Q Was anybody else that lived home with
17 Mrs. Knight but that roomer, Mr. Scott?

18 A That's all.

19 Q All right. Now, did you continue then
20 to do those things after Mr. Knight's death? Did you
21 continue to do those things for Mrs. Knight?

22 A Yes, I continued to fix her breakfast.

23 Q Did you continue to have the same
24 arrangement, that is rent free in the property that you
25 were living in?

1 A Yes.

2 Q Did you discuss that with Mrs. Knight
3 after her husband's death whether you should continue
4 doing those things and continue to live rent free?

5 A Yes.

6 Q Do you remember -- well, you said the
7 date that Mr. Knight died, when, January what?

8 A January 19th.

9 Q January 19th. Would you be able to give
10 us any idea of when you discussed with Mrs. Knight
11 continuing your rent free arrangement and your rendering
12 service?

13 A Did I discuss that with her, do I know?

14 Q Yes, do you know?

15 A The 15th of February.

16 Q Do you remember that?

17 A Yes.

18 Q Well, when you said you had known her
19 at least about eight years --

20 A Uh-huh.

21 Q When you discussed with Mrs. Knight on
22 the 15th of February your own situation about living
23 rent free, was she able to discuss it with you?

24 A Yes.

25 Q Did she understand it?

1 A Yes, I guess she did.

2 Q Did you continue to live there rent
3 free?

4 A Yes.

5 Q All right. Was there anything about
6 Mrs. Knight's appearance to you or her ability to discuss
7 that with you on February 15th of 1973 that was
8 different from what, from as long as you had ever known
9 her?

10 A May I explain that? When I asked her
11 about this on the 15th I was asking her did I have to pay
12 lease rent or continue paying the tax. She said yes,
13 you can continue paying the tax like you have been doing,
14 don't worry about it. It's all in that paper you signed
15 yesterday, and that's all she said to me.

16 Q Well, was there anything different
17 about her appearance during the time you were asking
18 her about your own affairs and when you had ever known
19 her before?

20 A No more than she was just despondent
21 since Mr. Knight -- Mrs. Knight just got really really
22 sick after Mr. Knight's death. She was just sick.

23 Q Well, I mean are you saying that she
24 was sadden and despondent over her loss of her husband?

25 A Yes.

1 Q All right. Now, I show you a paper
2 which is marked Defendant's Exhibit Number 1 and ask
3 you on the second page is that your signature?

4 (Document shown to witness for
5 examination.)

6 THE WITNESS: Yes.

7
8 BY MR. SACKS:

9 Q And did you write in your address too?

10 A Uh-huh.

11 Q Is that the X mark that Mrs. Knight
12 made at that time?

13 A Yes, she made an X mark on the paper.

14 Q All right. And do you know whether or
15 not the one on the first page, is that -- you said she
16 did it twice.

17 A Yes.

18 Q All right. Now, did you hear anybody
19 at any time in there say anything to make her sign when
20 she didn't want to?

21 A No, not while I was in there.

22 Q Did Mrs. Knight -- you said you had
23 known her for some years -- did she appear to you to be
24 doing something she didn't want to do?

25 A I don't know what you mean. She was just

1 sitting there in the chair with the walking stick. That's
2 all, and she made the X and I came out.

3 Q All right. Now, did you come down to
4 this building sometime after that, after Mrs. Knight had
5 died?

6 A Uh-huh.

7 Q And did you go into the office of
8 the clerk of this court? Do you remember that?

9 A Yes, I remember it.

10 Q And did they ask you about what had
11 happened or did they ask you to verify your signature
12 on the paper that I have just shown you?

13 A When it happened the lady asked me was
14 you in the room when this will was drawn up. I said yes.
15 She said was the person there over twenty-one years old.
16 I said yes. Was she in her right mind. I said as far
17 as I know. That's what I said to them.

18 Q All right. But when you came down here,
19 did she ask you to raise your hand?

20 A Yes, she did.

21 Q Did you swear to tell the truth?
22 Did they give you the oath?

23 A Uh-huh.

24 Q Then they asked you certain questions
25 and you made certain answers.

1 A That's right.

2 Q And after you made those certain answers,
3 did the lady in there who was asking those questions,
4 did she prepare a paper and present it to you for your
5 signature in the clerk's office?

6 A Yes, she did.

7 Q And I show you now Defendant's Exhibit 2,
8 a paper from the clerk's office, and ask you is that
9 your signature on there where it says Mrs. Susie A. Petersen?

10 (Document shown to witness for
11 examination.)

12 THE WITNESS: Yes.

13
14 BY MR. SACKS:

15 Q You signed that?

16 A Uh-huh.

17 Q All right. Mrs. Petersen, was
18 Dr. Strong in the room at all that you saw on the day
19 that Mrs. Knight signed her will?

20 A In the same room with us, no.

21 Q All right.

22 A She was in the next room.

23 Q Just now to go back for just a minute
24 then I'll be through with my questions, but going back
25 in events after Mr. Knight died and while Mrs. Knight was

1 still living there, did Mrs. Knight ever say anything
2 to you about what she wanted Dr. Strong to do for her?

3 A Yes.

4 Q What did Mrs. Knight tell you?

5 A She told me that she wanted her niece
6 to be her power of attorney to take care of her business
7 because Mr. Knight was dead and he couldn't do it.

8 Q Did she say anything one way or the
9 other about Mrs. Strong's capabilities or ability to
10 take care of business?

11 A That's all she said to me is what I
12 told you.

13 MR. SACKS: I thank you very much.
14 If you will answer this gentleman, please.

15
16 CROSS-EXAMINATION

17
18 BY MR. LEGUM:

19 Q Mrs. Petersen, how many days a week
20 did you cook breakfast and make the fire for Mrs. Knight?

21 A Six days.

22 Q And which day that you did not cook
23 breakfast?

24 A On a Sunday.

25 Q And that started in December of '72?

1 Q Was it ever explained to Mrs. Knight
2 on that day, February 14th, '73, by the lawyer who is
3 Mr. McMurrin that you were signing a will?

4 A Not in my presence, sir.

5 Q What did you believe you were signing
6 your name to?

7 MR. SACKS: Well, Your Honor, just a
8 minute. I don't know what answer her answer
9 is going to be, but what she thinks is not
10 material.

11 THE COURT: No, I sustain the objection.

12 MR. LEGUM: I would like to note my
13 exception for the record, Judge, and I would
14 like at the proper time to vouch the record
15 what she would testify to if permitted to do so.

16 THE COURT: All right, sir.

17
18 BY MR. LEGUM:

19 Q Now, before the February 14th, '73, had
20 Mrs. Knight ever told you she was going to draw a new
21 will?

22 A I don't know nothing about no will.

23 Q After February 14th, '73, did Mrs. Knight
24 ever tell you that she had signed a new will?

25 A Mrs. Knight have never said anything to me

1 about a will.

2 Q Now, before February 14th, '73, and
3 after her husband's death, what did Mrs. Knight tell you
4 that she was going to sign and some lawyer was going to
5 type up for her?

6 A Mrs. Knight told me that a lawyer was
7 going up to the house because she wanted to make her
8 niece her power of attorney because Mr. Knight was dead
9 and he couldn't take care of the business. And she was
10 going to make her niece it so she could tend to her
11 business.

12 Q Now, the day following the paper you
13 signed, which would have been February 15th, '73, did
14 Mrs. Knight talk to you as to what the paper was that
15 she signed?

16 A Well, I brought the conversation up.
17 It was on the 15th, and I come to make breakfast. She
18 was sitting in the room. I said Mrs. Knight, you done
19 made your niece your power of attorney. Now, what should
20 I do, continue paying the taxes or pay money to your
21 niece to take care of it. She said I told my niece to
22 tend to my business because I made her the power of
23 attorney to take care of the business. But I told her
24 don't bother you, you stay right there doing what you
25 are doing. She said don't worry about it. It's all in

1 the paper you signed yesterday.

2 Q Did she at any time after February 14th,
3 '73, tell you that the paper she signed was a will?

4 A No, that's all she said about the paper.
5 It was in the paper that I signed and that's all she
6 ever said to me about it.

7 Q Now, Mrs. Petersen, before February 14th, '73,
8 where did Mrs. Knight sleep -- upstairs or downstairs?

9 A Upstairs.

10 Q And was she able to go to the bathroom
11 by herself?

12 A Yes, she went there. Sometime you
13 had to help her. Before she could see.

14 Q Did she have a bedpan upstairs?

15 A She did.

16 Q She did have a bedpan?

17 A Yes, a night pot.

18 Q And how long was she using the bedpan?

19 A Well, she was using one when I first
20 went there. I know I emptied it in the morning for her.

21 Q And that was starting in December, '72?

22 A December, uh-huh.

23 Q And was she able to dress herself
24 before February 14th, '73?

25 A Well, she was when I first went there.

1 Q During the time you were taking care of
2 her, was she able to see?

3 A No.

4 Q Now, before she signed this will on
5 February 14th, '73, did she ever talk to you about having
6 seen little children standing around her bed?

7 A You said before the will.

8 Q February 14th.

9 A No, but she did it right afterwards.

10 Q She did?

11 A Uh-huh.

12 Q What did she say?

13 A Well, this was about a couple of weeks.
14 She was in the bed. She couldn't even get up. I was
15 fixing her bed. She told me look at all those little
16 children standing around her. I would ask her where are
17 the children and she would say they are all around the
18 bed. "What do you want? I guess they were hungry."

19 Q Were there any children?

20 A Around the bed -- nobody in the room
21 but her and I.

22 Q Now, before her husband died was she
23 able to eat all right?

24 A Yes, she would eat pretty good because
25 him and her would sit at the table together. I would make

1 breakfast for the two of them, and they would sit across
2 from each other and she ate real good.

3 Q Now, after her husband's death what
4 happened to her appetite from what you observed?

5 A She wouldn't half eat. I would make
6 breakfast for her, but she would just pick on it and
7 she just wouldn't eat.

8 Q When she came down to the living room,
9 how would she spend her time?

10 A Well, she had --

11 Q I am talking about after her husband's
12 death and before the will was signed, how did she spend
13 her time?

14 A Well, she had a little gas heater there,
15 and she had a rocking chair to sit right in front of
16 it. She would sit in the rocking chair with the walking
17 stick on it. Most of the time she would sit.

18 Q Did she talk about anything?

19 A Not to me.

20 Q She did not?

21 A No.

22 Q She was quiet the entire time?

23 A While I was there, sir.

24 Q Did you see any change in her condition
25 after her husband died up to the time she signed this paper

1 on February 14th, '73?

2 A Well, just as I said she got so she
3 wouldn't half eat and she just rocked like she was worried
4 about Mr. Knight. And I know she told me I'll be glad
5 when the lawyer come. I am going to sleep and I am going
6 to sleep for two weeks, and she told me that.

7 Q Going to sleep for two weeks?

8 A That's what she told me.

9 Q Now, before Mr. Knight died, had you
10 ever seen Mrs. Strong at the house?

11 A No, I had not.

12 Q Had you ever seen her mother before?

13 A No.

14 Q Now, do you know Mrs. Dunn here?

15 A Yes.

16 Q And how did you come to know her?

17 A Well, when I first went down before and
18 started to cooking for Mrs. Knight, she used to call
19 every morning and ask me how her sister was, was she
20 eating and how she was doing. This was in December and
21 then during Christmas I went down there Christmas, the
22 day after Christmas after I cooked for them at home.
23 I went the day after Christmas, Mrs. Knight told me that
24 her sister had brought some turkey dressing, ham and
25 potatoes, all this stuff there. And she called me up again

1 Q Now, were those people in that room
2 together, that is, Mr. McMurrin and the lawyer and his
3 secretary and Mrs. Knight before you were called in from
4 the kitchen?

5 A Yes.

6 Q You do or do not know what went on
7 when you weren't in there?

8 A I don't know before. As I said
9 Mrs. Knight was in the front room. The lawyer come in
10 the kitchen, he come to the front door and called me.

11 Q Once Mr. McMurrin came to you and told
12 you what you have told us, you went into the room. Did
13 you hear a statement made by Mr. McMurrin to Mrs. Knight
14 about reading the will?

15 A Yes, I did.

16 Q What did Mr. McMurrin say in your
17 presence when you came into the room to Mrs. Knight?

18 A He looked at me and said you don't
19 have -- it isn't necessary for you to know what's in here.
20 All I want you to do is witness a signature. He looked
21 at Mrs. Knight -- "I done read this to you. Is that
22 what you want?" And she said, "Uh-huh." Like that and
23 then he said okay, make your X.

24 Q All right. But you did then hear
25 Mr. McMurrin say to her I have read this to you now, is

1 that what you want.

2 A I heard him say that.

3 Q Did he say I have read this will to
4 you?

5 A That no because I didn't know it was
6 a will. He said I have read this to you. Is that what
7 you want. That's what he said.

8 Q Now, at any time that you were in there,
9 did you hear anybody tell Mrs. Knight that it was
10 anything else other than a will?

11 A No, I witnessed my name. I came out of
12 there, and ain't nobody else said nothing.

13 Q What I am saying is you didn't hear
14 anybody say it was a will; you didn't hear anybody tell
15 her it's anything but a will?

16 A No.

17 Q You didn't hear them say this is a
18 power of attorney.

19 A I ain't heard nobody say nothing.

20 Q All right. Now, you have answered the
21 other gentleman's questions about Mrs. Knight's physical
22 situation -- slow in coming down the steps and not
23 eating well. Now, you had or had not witnessed or seen
24 anything about her ability to understand. There wasn't
25 any change in that up until the time of the will, was there?

1 BY MR. LEGUM:

2 Q Did you pursuant to an order of the
3 Court bring the hospital records of Willow D. Knight for
4 the months of March and April, '73?

5 A Yes, I have.

6 Q And what do the records indicate as
7 to the date of the admission in March and when she was
8 discharged?

9 A It shows that she was admitted on
10 March 15th, 1973.

11 Q And when was she discharged?

12 A And discharged March 31st, 1973.

13 Q When was she readmitted into your
14 hospital in April?

15 A She was readmitted on April 9th, 1973,
16 and expired on April 10th, 1973.

17 THE COURT: Just a second, Mrs. Cuthrell.
18 You say she was initially admitted March 15th, '73
19 and discharged April --

20 THE WITNESS: Discharged March 31st.

21 THE COURT: Oh, March 31st. And then she
22 was readmitted.

23 THE WITNESS: April 9th.

24 THE COURT: April 9th, and died when?

25 THE WITNESS: Expired April 10th at

1 9:45 a.m.

2 THE COURT: All right, fine.

3
4 BY MR. LEGUM:

5 Q And is the record on this lady kept
6 in chronological order in the regular course of business
7 of the hospital?

8 A I am sorry. I didn't quite understand
9 your question.

10 Q Is the record kept in chronological
11 order, that is the dates?

12 A Yes, it is.

13 Q And is that a part of the official
14 hospital records?

15 A Yes, it is.

16 Q All right.

17 MR. LEGUM: I would like to also
18 admit that in evidence, if Your Honor please.

19 THE COURT: All right. The hospital
20 records will be received and admitted into
21 evidence and identified as Complainant's
22 Exhibit Number 2.

23 (So marked by the Court.)

24 MR. LEGUM: Answer Mr. Sacks.
25

DIRECT EXAMINATION

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BY MR. LEGUM:

Q Will you state your full name and occupation, please?

A I am Joyce Duck, manager of the savings department at Merchants and Farmers Bank.

Q Did you bring with you records pertaining to the savings account of Willow D. Knight pursuant to court order?

A Yes, sir.

Q Will you tell us, please, the date the account of Willow D. Knight was changed from her name to her name and or Mrs. Ethelyn Strong?

A February 8th, 1973.

Q What was the balance in the account at that time?

A Five thousand two hundred forty-three dollars and eighty-three cents.

Q How was the account closed and then reopened in the name of the two ladies?

A The original account was closed, yes.

Q All right. And did Mrs. Knight sign any form, a withdrawal slip to close the account?

A Her mark is on the withdrawal slip.

1 the next one.

2 (Document shown to opposing counsel
3 for examination.)

4 MR. LEGUM: I would offer this in
5 evidence if Your Honor please.

6 THE COURT: What is this now?

7 MR. LEGUM: This is the original
8 signature card of Willow D. Knight showing
9 her actual signature.

10 THE COURT: You mean when she originally
11 opened her own account.

12 Very well, the signature card of
13 Mrs. W. D. Knight received and admitted in
14 evidence and identified as Complainant's
15 Exhibit Number 5.

16 (So marked by the Court.)

17
18 BY MR. LEGUM:

19 Q Now, do you have another signature
20 card in front of you?

21 A Yes.

22 Q And what date is that signature card?

23 A February 27th, 1970.

24 Q And whose name or names is it in?

25 A Mrs. W. D. Knight or Arlester Radcliff.

1 Q And does that show Mrs. Knight's
2 signature or does it show a mark by her?

3 A She signed it.

4 Q May I see it, please?

5 MR. LEGUM: I would like to offer this
6 in evidence, if Your Honor please.

7 THE COURT: All right, sir. Now, that
8 is the signature card of Mrs. Knight and
9 Arlester Radcliff, be received and admitted
10 in evidence and identified as Complainant's
11 Exhibit Number 6. That was February 7th, 1970.

12 (So marked by the Court.)

13 THE COURT: All right, sir.

14
15 BY MR. LEGUM:

16 Q Now, under the terms of the signature
17 card of February 8th, '73, how many signatures did it
18 require to mark a withdrawal?

19 A One.

20 Q That means that either Mrs. Knight or
21 Ethelyn Strong could withdraw?

22 A Yes.

23 Q And according to your -- printed on the
24 reverse side of the signature card of February 8th, '73,
25 as far as your bank was concerned upon the death of either

1 who would it go to, the balance?

2 A The survivor.

3 Q The survivor. Did you, yourself, know

4 Mrs. Knight?

5 A No, sir.

6 Q Did you know Mrs. Strong here?

7 A No, sir.

8 MR. LEGUM: All right. I have no
9 further questions, Your Honor.

10

11 CROSS-EXAMINATION

12

13 BY MR. SACKS:

14 Q Mrs. Duck, how long have you been in
15 the bank?

16 A Twelve years.

17 Q And I understood you to say you are
18 the manager of the savings department?

19 A Yes, sir.

20 Q You have held that position how long
21 approximately?

22 A As manager of this particular function
23 of savings, three.

24 Q But you are familiar with savings in
25 banking. Have you been doing that for all the twelve years?

1 examination.)

2 THE WITNESS: Yes, sir.

3
4 BY MR. SACKS:

5 Q Is there any way to know the vintage,
6 the age of that?

7 A No, because most of our signature cards
8 were either damaged or destroyed or remade.

9 Q All right. Now, that bears a signature
10 which purports to be Willow -- what does it say?

11 A Willow D. Knight.

12 Q All right. Now, are you able to say
13 one way or the other whether she actually signed that?

14 A No, sir.

15 Q It appears to be her signature?

16 A Yes, sir.

17 Q Now, I show you -- and, of course that
18 was written out in those words Willow D. Knight. Now,
19 I show you the withdrawal slip, which is Complainant's
20 Exhibit Number 3 that was a photostat of February 8th,
21 when it changed from an individual account into a
22 joint account. At that time Willow D. Knight did not
23 sign her name, but she made a mark.

24 A Yes, sir.

25 Q Now, and was it notarized?

1 A Yes, sir.

2 Q Does it show on the very records that
3 you have that a notary signed her name as having
4 witnessed the making of the mark? Is there a notary's
5 name on it?

6 A Yes, sir.

7 Q Can you read the notary's name?

8 A Yes, sir.

9 Q Who is it?

10 A Maggie F. Corprew.

11 Q All right. Do you happen to know
12 Miss Corprew?

13 A No, sir, I do not.

14 Q Now, I show you Complainant's Exhibit
15 Number 4. Is that not the card that on February 8th --
16 now, that's the signature card that started up the joint
17 account.

18 A Yes.

19 Q Now, over on the back of it, Mrs. Duck,
20 it makes reference to the fact that you okayed the
21 account. What are the words on that?

22 A Transfer from present savings account.
23 Okayed by Joyce Duck.

24 Q And I assume it means what it says.
25 This was brought to your attention and you okayed it.

1 A I approved this, yes, sir.

2 Q And you saw that it was a mark with
3 the notary.

4 A Right.

5 Q All right. Now, did you know that
6 lady from when the same account, the account originally
7 started, had gone blind or lost her vision? Did you know
8 that at that time?

9 A At this time, yes.

10 Q When you saw a mark and a notary, was
11 it brought to your attention that she had lost her
12 eyesight?

13 A Yes.

14 Q All right. You reviewed those records,
15 and you okayed the transfer.

16 A Yes, sir.

17 Q All right. Now, Mrs. Duck, finally
18 I show you a card which is Complainant's Exhibit
19 Number 6, and that's -- you talked about it. What's
20 the date of that signature card?

21 A This is February 27th, 1970.

22 Q 1970. Now, at that time was that the
23 starting of a new joint account apparently between
24 Willow D. Knight and somebody else?

25 A This was not a new account. It was a

1 call Mr. Roper of the Bank of Virginia, please.

2
3 -----oOo-----
4

5 ALBERT C. ROPER, called as a witness on behalf
6 of the complainants, having been first duly sworn, was
7 examined and testified as follows:
8

9 DIRECT EXAMINATION
10

11 BY MR. LEGUM:

12 Q Will you state your name and your
13 position with the Bank of Virginia, sir?

14 A I am Albert C. Roper. I am assistant
15 vice president and assistant branch manager for the
16 Bank of Virginia on Washington Street.

17 Q And have you pursuant to court order
18 produced the records of the bank concerning the savings
19 account of Willow D. Knight?

20 A As far back as '64 when they were
21 readily available. We couldn't go beyond that.

22 Q All right. Did you also pursuant to
23 court order bring the signature card relating to this
24 particular savings account?

25 A Yes, I did.

1 Q How far back do they date?

2 A They go back to '54.

3 Q '54?

4 A Yes, sir.

5 Q Now, would you let me -- first of all,
6 on what date was the account of Willow D. Knight changed
7 in the name of Willow D. Knight and Ethelyn Strong in
8 your bank?

9 A February 8th of 1973.

10 Q And on that day what was the balance
11 in that account?

12 A The account was opened with an amount
13 of five thousand eight hundred twenty-seven dollars and
14 four cents.

15 Q And do you have the signature card in
16 connection with the February 8th, '73 account?

17 A Yes, I have.

18 MR. LEGUM: I would like to offer this
19 in evidence, if Your Honor please.

20 THE COURT: All right, sir. What is
21 this now?

22 MR. LEGUM: Signature card of Ethelyn R.
23 Strong -- Mrs. Knight and Mrs. Strong.

24 THE COURT: What is the date?

25 MR. LEGUM: February 8th, '73.

1 BY MR. LEGUM:

2 Q Do you have in your possession any
3 other signature cards?

4 A I missed your last question.

5 Q Do you have any other signature cards
6 in this account?

7 A Yes.

8 Q Tell us, please, when the date and
9 what names are on them?

10 A Wait just a second.

11 THE COURT: You gentlemen talk a
12 little louder. I don't think we will have any
13 trouble.

14 THE WITNESS: We have the same type
15 of request on November 17th, 1969 with which
16 Mrs. Knight requested us to change the account
17 from one account to account of Mrs. W. D. Knight
18 or Mrs. Jessie H. Dunn. Then a signature card
19 dated that same date showing the two
20 signatures. These numbers aren't going to
21 match because in May of 1955 we changed our
22 type of accounting from hand posted to one
23 machine posted. The balance was transferred,
24 and you can see the difference in her name.

25

1 Bank.

2 Your Honor, may I circulate these,
3 please?

4 THE COURT: Come on up here, Mr. Lawrence.

5
6 -----OO-----

7
8 RAYMOND J. LAWRENCE, called as a witness on
9 behalf of the complainants, having been first duly sworn,
10 was examined and testified as follows:

11
12 DIRECT EXAMINATION

13
14 BY MR. LEGUM:

15 Q Will you state your name and position
16 with the American National Bank?

17 A Raymond J. Lawrence, assistant
18 vice president, American National Bank, Portsmouth.

19 Q And have you brought to the courtroom
20 pursuant to court order the records pertaining to the
21 savings account of Willow D. Knight deceased?

22 A I have.

23 Q Do you have with you a signature card
24 opening up an account in the name of Willow Knight or
25 Ethelyn Strong?

1 A I do.

2 Q What is the date of that signature
3 card?

4 A 2-6 of '73 is the date on the card.

5 Q That's February 6th, '73, and do you
6 have the amount that was the balance that was in the
7 account at that time?

8 A It was opened with fifty-five hundred
9 twenty-five dollars and seventy cents.

10 Q All right. May I see the signature
11 card, please. That is a photostat and not the original
12 card; is that right?

13 A That's correct.

14 MR. LEGUM: I would like to offer
15 this in evidence, if Your Honor please.

16 THE COURT: Very well. The signature
17 card -- photostat of the signature card of
18 Willow D. Knight and Ethelyn R. Strong dated --
19 looks like February 6th, 1973, for the
20 amount of five thousand five hundred twenty-five
21 dollars and seventy cents is received and
22 admitted in evidence and identified as
23 Complainant's Exhibit Number 16.

24 All right, sir.

25 (So marked by the Court.)

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A In a different number.

Q Who signed that?

A That was signed by an X mark and her mark and it was witnessed, the mark was witnessed.

Q And what is the amount, sir?

A That's \$5,525.07.

Q May I have that, please?

A That's the withdrawal slip and --

Q That was payable to cash on February 7th, '73.

MR. LEGUM: I would like to offer this in evidence.

THE COURT: Very well. The withdrawal slip of February 7th, '73, I suppose photocopy, is received and admitted in evidence and identified as Complainant's Exhibit Number 17.

(So marked by the Court.)

BY MR. LEGUM:

Q Do you have with you any other signature cards for this account?

A I have this photostatic copy of this card that read Mrs. W. D. Knight, James E. Knight.

Q What date is it, sir?

1 A The date on this card is November 17th,
2 1969.

3 Q How did Mrs. Knight sign her name by
4 a mark or by her name?

5 A It's just signed, Mrs. W. D. Knight.

6 Q Signed Mrs. W. D. Knight.

7 May I see it, please?

8 MR. LEGUM: I would like to offer this
9 in evidence.

10 THE COURT: What is this?

11 MR. LEGUM: That's the account.

12 THE COURT: This is the signature,
13 the 1969 signature card of Mrs. W. D. Knight
14 and James E. Knight is received and admitted
15 in evidence and identified as Complainant's
16 Exhibit Number 18.

17 All right, sir.

18 (So marked by the Court.)

19
20 BY MR. LEGUM:

21 Q Do you have with you any other
22 signature cards?

23 A No, I don't.

24 Q Now, referring to the February 6th, '73
25 signature card, how many signatures did your bank require

1 In the Circuit Court of Portsmouth,
2 Portsmouth, Virginia, at 10:00 a.m., February 11, 1974,
3 before the Honorable R. Winston Bain, Judge of said Court
4 and jury pursuant to adjournment.

5 Appearances same as heretofore noted.

6
7 -----oOo-----

8
9 THE COURT: Good morning, gentlemen.
10 Well, let's see now. Mr. Legum --

11 MR. LEGUM: Yes, Your Honor.

12 THE COURT: Are you ready to proceed?

13 MR. LEGUM: Yes, Your Honor. I want
14 to call Georgie Simmons.

15
16 -----oOo-----

17
18 GEORGIE SIMMONS, called as a witness on
19 behalf of the complainants, having been first duly sworn,
20 was examined and testified as follows:

21
22 DIRECT EXAMINATION

23
24 BY MR. LEGUM:

25 Q Will you state your full name, please?

1 A Georgie Simmons.

2 Q Where do you live?

3 A 2719 North Street.

4 Q That's in Portsmouth?

5 A Portsmouth.

6 Q What is your age? How old are you?

7 A Eighty-four.

8 Q Did you know Mrs. Willow D. Knight?

9 A I did.

10 Q How long did you know her?

11 A I've been knowing her from child I reckon.

12 Q And do you know approximately how old

13 Mrs. Knight was when she died?

14 A No, I don't know exactly, but she

15 might have been in her eighties. I don't know exactly

16 how much.

17 Q All right. Were you related to her?

18 A No, I wasn't related, just friends.

19 Q Now, Mrs. Simmons, how often did you

20 used to visit Mrs. Willow Knight?

21 A Well, I used to go there about every

22 Sunday for a while and then after Mr. Knight died I

23 didn't go as often as I did when he was living. But I

24 used to go there about twice a month anyway.

25 Q All right. And were you a close friend of

1 Mrs. Knight?

2 A Yes, we were very close.

3 Q Now, Mrs. Simmons, did you visit

4 Mrs. Knight when her husband died on January 19th, 1973?

5 A Yes, I did.

6 Q And did you attend his funeral?

7 Did you attend Mr. Knight's funeral?

8 A I did.

9 Q Did Mrs. Willow Knight attend Mr. Knight's
10 funeral?

11 A No, she didn't. She wasn't able.

12 Q When you say she wasn't able, what
13 was wrong with her to prevent her from attending?

14 A For one thing she had got arthritis.
15 That's what she said and her knees were stiff. And
16 then she said she just couldn't stand to go.

17 Q All right. Did you visit her after
18 Mr. Knight's death and before February 14th, 1973?

19 A Yes, I did.

20 Q And will you tell His Honor and members
21 of the jury what you observed about Mrs. Knight during
22 that period of time?

23 A Well, I used to go there and I would
24 talk to her. And while I would talk she would hold her
25 head down and she wouldn't have nothing much to say. So

1 after she -- I went there and she called me, said
2 Georgie, and I said yes, and so she never did tell me
3 nothing. So I asked her did she want me to do something
4 for her, did she want some water, but she never would
5 say.

6 Q She didn't answer at all?

7 A At all.

8 Q How many times would you say you
9 visited her from the time of Mr. Knight's death until
10 February 14th, 1973?

11 A Well, as well as I can think it was
12 I think -- it was six or seven times I went there. I
13 knows it was that much.

14 Q Now, Mrs. Simmons, I am going to ask
15 you upon what you saw and knew of Mrs. Willow D. Knight
16 before February 14th, '73, and what you knew and
17 observed of her and the condition of her memory and
18 mind up to the time of her death on April 10th, '73,
19 in your judgment did she have a sound mind and disposing
20 memory on the 14th day of February '73 when she placed
21 her mark on this paper writing purporting to be her
22 will.

23 MR. SACKS: Your Honor, just a minute
24 please. I would object to -- I think a
25 lay witness can give testimony as to what she

1 saw and it's for the fact finder to draw their
2 conclusions. But I don't think the opinion
3 of lay witnesses would be admissible on that.
4 I would object to that.

5 MR. LEGUM: Your Honor, I have a Virginia
6 case that says it is admissible.

7 THE COURT: All right. Well, let's
8 go in the conference room.

9 Gentlemen, excuse us for a few moments,
10 will you please?

11 (Whereupon the Court, counsel for both
12 sides and the court reporter adjourned to the
13 conference room, which argument is deleted,
14 and the following occurred:)

15 -----oOo-----
16

17
18 SUSIE PETERSEN, recalled as a witness on
19 behalf of the complainants, having been first duly
20 sworn, was examined and testified as follows:

21
22 DIRECT EXAMINATION (Rec.)

23
24 BY MR. LEGUM:

25 Q You are Susie Petersen?

1 Q That's right.

2 A And you testified on Friday; is
3 that right?

4 A Yes, sir.

5 Q I asked you the question on Friday
6 which Mr. Sacks objected to, which the Judge sustained,
7 you were not permitted to answer when you signed your
8 name to the paper writing on February 14th, 1973, what
9 did you believe you were signing your name to? What type
10 of paper?

11 A Well, sir, I thought it was a power
12 of attorney giving Mrs. Strong the right to take care
13 of Mrs. Knight's business because Mrs. Knight had been
14 telling me for over a week that a lawyer was coming to
15 the house and for her to make Ethelyn, her niece, a
16 power of attorney to tend to her business because
17 Mr. Knight was dead and he could go to the bank and do
18 nothing for her any more. And that's what I thought
19 it was.

20 Q All right.

21

22 CROSS-EXAMINATION (Rec.)

23

24 BY MR. SACKS:

25 Q But, Mrs. Petersen, nobody told you that's

1 what it was, did they?

2 A That day they didn't, but I thought
3 that was did because she told me the lawyer was coming
4 there for that reason. That's why I thought it.

5 MR. LEGUM: All right, thank you.

6 Suppose you go back to the witness room.

7 THE COURT: Don't leave.

8 (The Court, counsel for both sides and
9 the court reporter entered the courtroom
10 where the following occurred:)

11
12 BY MR. LEGUM:

13 Q Mrs. Simmons, I will repeat my question
14 that I asked you before Mr. Sacks made his objection.
15 And listen to it carefully, if you will, please.
16 Basing your opinion upon what you saw and knew of
17 Willow D. Knight before February 14th, '73, and further
18 basing your opinion upon what you know and observed of
19 her and the condition of her memory and mind up to the
20 time of her death on April 10th, '73, in your judgment
21 did Mrs. Knight have a sound mind and disposing memory
22 on the 14th day of February, 1973, when she placed her
23 mark on a paper writing purporting to be her will? What
24 is your opinion?

25 A No. I wouldn't say that she had a sound

1 mind.

2 Q All right.

3 A Not to my idea, I wouldn't.

4 Q Now, Mrs. Simmons, what did you observe
5 about the relationship between Mrs. Knight and her
6 sister, Mrs. Jessie Dunn?

7 A Well, they were very close, very close.

8 Q And when you say very close, what did
9 you observe to indicate that they were very close?

10 A Well, that was all her talking.
11 Everything she had she wanted her and Sonny to have after
12 her death.

13 Q Who is she? Who said that?

14 A That's what Mrs. Knight said, her sister.

15 Q And who is Sonny?

16 A Sonny is her brother.

17 Q That's Arthur Radcliff?

18 A That's right.

19 Q All right. And do you know what
20 Mrs. Dunn did for Mrs. Knight in Mrs. Knight's lifetime?

21 A Know what she did -- well, she did
22 everything she could until she got disabled herself.

23 Q All right. What specifically do you
24 know that Mrs. Dunn did do for her?

25 A Say what?

1 MR LEGUM: Thank you. She may be
2 excused, Your Honor.

3 THE COURT: You are excused now. You
4 may stay in the courtroom or leave if you like.

5 MR. LEGUM: I think she has to go to
6 a funeral, Judge.

7 THE COURT: That's all right. You are
8 excused.

9
10 -----oOo-----

11
12 MARTIN ABRAHAM, called as a witness on behalf
13 of the complainants, having been first duly sworn, was
14 examined and testified as follows:

15
16 DIRECT EXAMINATION

17
18 BY MR. LEGUM:

19 Q Would you tell us your name, please?

20 A Martin Abraham.

21 Q And what is your occupation?

22 A I am an attorney.

23 Q Where do you have your office,

24 Mr. Abraham?

25 A In Portsmouth.

1 Q In what building do you have it in?
2 A What did you say?
3 Q In what building?
4 A In the New Kirn Building in Portsmouth.
5 Q How long have you been practicing law
6 in Portsmouth?
7 A About thirty years.
8 Q And are you active at the bar now?
9 A Yes.
10 Q And you are licensed to practice?
11 A That's right.
12 Q In the State of Virginia?
13 A Yes.
14 Q Now, Mr. Abraham, did you know a lady
15 named Willow D. Knight or Willow Dawson Knight?
16 A Yes, I did. She was a client of mine.
17 Q And I ask you, sir, if you drew her
18 will which is dated October 6th, 1963?
19 A Yes, I did.
20 Q I show you this will and ask you if
21 this is the will you drew, if that bears Mrs. Knight's
22 signature?
23 A Yes, I did.
24 MR. LEGUM: I would like to offer this
25 in evidence, if Your Honor please.

1 Q And she left her personal property to
2 her husband.

3 A That's true.

4 Q All right. Now, Mr. Abraham, did
5 you also draw Mr. Knight's will?

6 A Yes, I did. He left --

7 MR. SACKS: Well, Your Honor, for
8 brevity's sake I would object to going into
9 Mr. Knight's will.

10 THE COURT: I don't see where that has
11 any thing to do with that anyway.

12
13 BY MR. LEGUM:

14 Q Now, Mr. Abraham, you say you were
15 her attorney; is that right?

16 A That's right.

17 Q And how long were you her attorney prior
18 to the drawing of a will and subsequent thereto?

19 A Ever since about 1960 -- 1959 or '60.

20 Q You were her attorney?

21 A Yes.

22 Q Did Mrs. Knight ever tell you that she
23 ever wanted to leave anything or change her will in
24 favor of Mrs. Strong, her niece?

25 A No, she never did. I was quite surprised.

1 a knowledgeable lawyer?

2 A Yes, he does.

3 MR. SACKS: That's all I have. Thank
4 you.

5 THE COURT: All right. Mr. Abraham,
6 you are excused now.

7 THE WITNESS: All right, sir. Thank
8 you.

9
10 -----oOo-----

11
12 REVEREND EUGENE CHEEKS, called as a witness
13 on behalf of the complainants, having been first duly
14 sworn, was examined and testified as follows:

15
16 DIRECT EXAMINATION

17
18 BY MR. LEGUM:

19 Q Reverend, will you state your name,
20 please?

21 A Reverend Eugene Cheeks.

22 Q Where do you live?

23 A 2224 King Street.

24 Q In Portsmouth?

25 A Yes, sir.

1 Q What is your age?
2 A Sixty-five.
3 Q And what is your occupation?
4 A Ministry.
5 Q And you are the minister of what
6 church?
7 A Formerly of Afgan Baptist of Cherry Stone.
8 Q How long have you been a minister?
9 A I was licensed in '35.
10 Q All right, sir. Did you know a lady
11 named Mrs. Willow D. Knight?
12 A Yes, sir.
13 Q How did you come to know her?
14 A I moved in her home in 1949.
15 Q And how long did you remain in her
16 home?
17 A I stayed there for approximately nine
18 years.
19 Q And where was she living at that time?
20 A At 1208 County Street.
21 Q In Portsmouth?
22 A Yes, sir.
23 Q Who else was living there during that
24 period of time?
25 A When I first moved there no one, but while

1 my stay there she married.

2 Q And whom did she marry?

3 A Mr. Knight, James Knight.

4 THE COURT: Excuse me. Did you say
5 1945 when you moved in with Mrs. Knight?
6 What year did you move there?

7 THE WITNESS: '49, yes, sir.

8
9 BY MR. LEGUM:

10 Q And during that period of time did
11 you get to know her well?

12 A Yes, sir.

13 Q Did you have any difficulty conversing
14 with her during that period of time?

15 A Not during that period of time until
16 I left, no, sir.

17 Q All right. Now, after you moved out
18 of Mrs. Knight's home which would be around '58 --
19 you said you lived there nine years.

20 A Yes, sir.

21 Q How often did you used to visit her?

22 A I used to visit Mrs. Knight at least
23 once a month.

24 Q And how long was your average visit?
25 How long would you stay there?

1 A Oh, I stayed there approximately a
2 half hour by all means.

3 Q All right. Now, when you were rooming
4 there what was the condition of her eyesight?

5 A The condition of eyesight during my
6 stay there, it wasn't very well at that time.

7 Q It was not?

8 A No, sir.

9 Q Could she see at all?

10 A I can't say.

11 Q All right. Now, how many years ago
12 did you first observe that she was not able to see at
13 all?

14 A I guess about three or four years ago
15 I observed that.

16 Q All right. Now, in the later years of
17 her life, did you observe any change in being able to
18 communicate with her?

19 A Yes, sir, very much so.

20 Q When did you first notice this change?

21 A I noticed that about two years when
22 I was in her home that she was sick and what not, feeble,
23 and I visited since then a lot of times. I visited
24 during the period her deceased husband was laying in
25 state. I visited her during that period, and she didn't

1 recognize me at all.

2 Q When you say she didn't recognize you,
3 what do you mean?

4 A Until I made myself known, I entered
5 into the room. Mrs. Petersen allowed -- escorted me
6 in the room and as I entered the room she was sitting
7 in a chair with her feet on a hassock and she was looking
8 up in the top of the house and what not. And then I
9 walked in and I said Mrs. Knight, don't you know me.
10 She didn't seem to know me so I drew near to her and
11 put my arm around her shoulder and I said I lived here
12 with you about nine years, and she said oh yes, it's
13 Reverend Cheeks.

14 Q Were you able to converse with her
15 at the time of her husband's death?

16 A Yes, sir.

17 Q Now, do you know her sister, Mrs. Dunn?

18 A Yes, sir, very well.

19 Q Do you know her brother, Mr. Arthur
20 Radcliff?

21 A Yes, sir.

22 Q What did you observe about the
23 relationship between Mrs. Knight and sister and brother?

24 A They were very cordial.

25 Q Do you know this lady, Mrs. Strong?

1 A No, sir. I never saw her at their
2 home during my stay.

3 Q Never saw her at all?

4 A Never during my stay.

5 Q How about when you visited Mrs. Knight
6 after when you moved out? Did you ever see Mrs. Strong?

7 A No, sir.

8 Q Did Mrs. Knight ever talk about
9 Mrs. Strong?

10 A Not to me, no, sir.

11 Q Did she ever talk to you about Mrs. Strong's
12 brother, that is Joseph Radcliff and Arthur Radcliff, Jr.?

13 A No, sir.

14 Q Now, you say that you observed that
15 Mrs. Knight was feeble as much as two years before she
16 died; is that right?

17 A Yes, sir.

18 Q Would you tell His Honor and members
19 of the jury what you observed about Mrs. Knight that
20 indicated that she was feeble?

21 A What I observed about her -- well,
22 Mrs. Knight, she didn't seem to be able to reason and
23 to comprehend as such. I tried to talk with her and
24 console during my period of time there when her husband
25 demised, and seemed she was in a foreign state. In that

1 respect and several times I went to visit her prior to
2 her husband's death, she didn't seem to be able to
3 comprehend and to have reason facilities as she should.
4 In other words, as she would when I was living with her.

5 Q Are you related to Mrs. Knight?

6 A No, sir.

7 Q Are you related to Mrs. Dunn or
8 Mrs. Arthur Radcliff?

9 A No, sir.

10 Q Now, Reverend Cheeks, basing your
11 opinion upon what you saw and knew of Mrs. Knight before
12 February 14th, '73 and further basing your opinion upon
13 what you knew and observed of her and the condition of
14 her memory and mind up to the time of her death on
15 April 10th, '73, in your judgment did she have a sound
16 mind and disposing memory on the 14th day of February, 1973
17 when she placed her mark on a paper writing purporting
18 to be her will?

19 MR. SACKS: Your Honor, I would object,
20 Your Honor, on the ground that the opportunity
21 he had and the facts that he has related are
22 not sufficient basis for him to be able to
23 express an opinion. And I would object to it.

24 THE COURT: For the reasons previously
25 stated, I'll overrule you.

1 MR. SACKS: I will except.

2
3 BY MR. LEGUM:

4 Q Did you understand my question?

5 A Yes, sir.

6 Q Did she have sound disposing mind
7 and memory on the 14th day of February, 1973?

8 A No, sir, definitely not. No, sir.

9 Q In your occupation or position as a
10 minister, are you called upon to console people who are
11 feeble minded or feeble; are you?

12 A Yes, sir.

13 Q And do you have an opportunity to
14 observe them and see what they know and what they don't
15 know?

16 A Yes, sir.

17 Q And based upon what you observed and
18 your experience as a minister, is there any doubt in
19 your mind that Mrs. Knight did not have the disposing
20 mind and memory on February 14th, '73? Is there any
21 doubt in your mind?

22 A No, sir, it's no doubt that she did not.
23 I remember living with her from '49 to '58 and then I
24 could discern the maturity and what not from that time
25 on to my last visit of her. She did not have the facilities

1 your testimony.

2 THE WITNESS: I may remain in the
3 courtroom?

4 THE COURT: Yes, sir, if you would
5 like to.

6 Gentlemen, let's take a short recess.

7 (The trial recessed at 11:45 a.m. and
8 at 12:10 p.m. the trial continued as follows:)

9 THE COURT: All right, sir.

10 MR. LEGUM: Your Honor, Dr. Green is
11 here. He hasn't been sworn yet.

12 (The witness was first duly sworn.)
13
14

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15

16 JAMES L. GREEN, called as a witness on behalf
17 of the complainants, having been first duly sworn, was
18 examined and testified as follows:
19

20 DIRECT EXAMINATION
21

22 BY MR. LEGUM:

23 Q Doctor, would you state your name,
24 please?

25 A James L. Green.

1 Q Where do you have your office?

2 A 1818 Portsmouth Boulevard.

3 Q In Portsmouth?

4 A In Portsmouth.

5 Q And what is your occupation?

6 A Physician.

7 Q And do you specialize in any branch
8 of medicine?

9 A Internal medicine.

10 Q How long have you been practicing
11 medicine in Portsmouth?

12 A Approximately thirty-one years.

13 Q And where did you receive your medical
14 education?

15 A Howard University.

16 Q And in what year did you graduate?

17 A '37.

18 Q And where did you receive your training
19 after you graduated from medical school?

20 A I spent three years at Credence
21 Hospital connected with Howard University and two and
22 a half years at Veterans Administration.

23 Q And what briefly is internal medicine
24 that you specialize in?

25 A You say what branch?

1 Q No, my question, what is internal
2 medicine? You are a specialist. What is internal
3 medicine?

4 A Internal medicine is diagnosis and
5 treatment of diseases and diagnostic procedures and
6 therapeutic procedures.

7 Q All right. Now, Doctor, did you in
8 the month of March, 1973, have under your care a
9 Mrs. Willow D. Knight?

10 A I did.

11 Q And what hospital was she admitted to?

12 A Maryview.

13 Q And on what date?

14 A On March 15th, 1973.

15 Q And when was she discharged from
16 the hospital in March?

17 A 31st of March, '73.

18 Q Now, was she readmitted to the hospital
19 in April?

20 A She was.

21 Q And what date was that?

22 A That was April 9th, 1973.

23 Q When did she die?

24 A The next day, April 10th.

25 Q That was in the hospital; is that right?

1 A In the hospital.

2 Q Now, Doctor, I show you the complete
3 hospital records of Maryview Hospital which has been
4 introduced into evidence as Exhibit Number 2, and ask you
5 on the first page they have initials looks like J. L. G.
6 Is that you?

7 A Yes, that's me.

8 Q And it shows the discharge date as
9 April 10th, '73. Would you read to the jury what you
10 wrote down as to what the diagnosis was? What was
11 wrong with her at that time?

12 A The final diagnosis was cerebral
13 thrombosis, senility, arthritis, rheumatoid arthritis,
14 right knee and bilateral blindness.

15 Q Now, what is cerebral thrombosis?

16 A That is a result of hardening of
17 the arteries, a clot forming in certain portions of the
18 brain in arteries of the brain.

19 Q What happens when a person has
20 arteriosclerosis insofar as the blood supply to the brain?

21 A When the blood supply to the brain
22 is diminished in varying degrees when they have
23 arteriosclerosis.

24 Q Now, your next diagnosis was
25 senility.

1 A Senility, yes.

2 Q What is senility?

3 A That is general aging of the body as
4 a whole.

5 Q And according to the record, how old
6 was Mrs. Knight?

7 A Eighty-five.

8 Q Now, is senility something that occurs
9 right away or did it occur over a period of time?

10 A Over a period of time.

11 Q Period of time. All right. Now, when
12 you admitted her on March 15th, 1973, what was wrong with
13 her that you observed from your examination of her?

14 A She had arteriosclerosis.. She was
15 blind and had arthritis of the right knee with
16 distortion of the knee as the knee distorted and
17 disfigured.

18 Q All right. And what did you do for
19 her while she was in the hospital?

20 A What did I do for her?

21 Q Uh-huh. Just very briefly. We don't
22 have to go into a lot of details.

23 A She had a x-ray of the right knee,
24 chest x-ray, EKG, placed on a soft diet. She had mild
25 sedation.

1 Q Let me ask you this question: As part
2 of the hospital records you for each visit each time
3 she was in the hospital had a discharge summary; is
4 that right?

5 A Yes, sir.

6 Q Which you summarized everything.

7 A Yes.

8 Q All right. Now, I ask you if this
9 is the discharge summary when she died on April 10th
10 and if you will read it to the jury? That's signed
11 by you.

12 A That's me.

13 Q Will you read that to the jury for
14 April 10th, '73?

15 A This eighty-five year old lady who was
16 previously at this hospital was readmitted from the nursing
17 home following a collapse. She was cold and clammy.
18 Blood pressure was 70 over 40 and pulse was 120. There
19 was paralysis and some stiffness of the neck. A
20 temperature was subnormal on admission, however, it rebound
21 and became elevated. But the blood pressure still stayed
22 low and the respirations increased to 126 over 30.
23 She appeared moribund. She had no other physical sign
24 except some stiffening of the neck.

25 Her laboratory work showed that the urine

1 revealed a large amount of blood with a 2+ albumin,
2 negative sugar, red blood cells of 100-150, white blood
3 cells 3-40. Epithelium was moderate. Her blood sugar
4 was 256 and BUN was 98. She had received a glucose
5 infusion at the time. A previous blood sugar was 147 with
6 a BUN was 80. Her hemogram was essentially normal. Sickle
7 cell was negative. VDRL was still non-reactive. Her
8 sodium was elevated, CO₂ was 65 over 229.5. She was typed
9 and cross-matched for whole blood, two units. The
10 patient went progressively downhill and was pronounced
11 dead at 9:45 a.m. on April 10. FINAL DIAGNOSIS:
12 CEREBRAL VASCULAR ACCIDENT, SENILITY, ARTHRITIS, RIGHT
13 KNEE, BILATERAL BLINDNESS.

14 Q All right. Now, did you also have
15 a discharge summary for the March 15th, March 31st
16 stay in the hospital and ask you if this is it and
17 signed by you?

18 A Yes, sir.

19 Q Would you read that to His Honor and
20 the jury?

21 A This 85 year old female was admitted
22 to the hospital quite dehydrated and malnourished
23 complaining of a burn on the left shin that is healing,
24 arthritis of the right knee that is swelling and
25 limitation of motion. She was blind having been so for

1 several years as result of a combination of glaucoma
2 and cataracts. Blood pressure on admission was 160 over
3 100. Pulse was 80. Respirations was 18. The chest
4 was natural for her age. Ear, nose and throat was
5 within normal limits. Abdomen was soft and there was no
6 masses. The extremities except for the healing burn on
7 the right shin was within normal limits.

8 Her urinalysis revealed 2+ albumin,
9 white blood cells were too numerous to count, red blood
10 cells were 5-10. There were many epithelium, and many
11 bacteria. Sickle cell was negative. Hemogram was within
12 normal limits, the hemoglobin being 10.3. The stools
13 were negative for blood. The BUN was 15, the glucose was
14 104. X-ray of the chest was normal. X-ray of the right
15 knee showed arthritic changes of the right knee. Barium
16 enema was essentially normal although a fibroid uterus
17 was noted. The gall bladder series showed none
18 visualized. As much as this had not incurred any
19 symptoms, it was decided not to subject her to surgery
20 because of her age and due to her precarious physical
21 condition. Electrocardiogram revealed sinus
22 bradycardis, with non-specific T wave abnormalities. The
23 patient was hydrated, placed on a low salt diet and
24 salt-free Pabalate, plus sodium Butisol at bedtime.
25 She had an eye consultation with Dr. Powell and surgical

1 consultation with Dr. Aidoo. She was discharged and
2 transferred to a nursing home. FINAL DIAGNOSIS: SENILITY,
3 ARTHRITIS OF RIGHT KNEE, BILATERAL BLINDNESS.

4 Q All right. Doctor, when you said in
5 your report that she was dehydrated, what does that
6 mean?

7 A Dehydration means there is a decreased
8 amount of normal fluids in the body.

9 Q I see. Now, in this first summary that
10 you read to us, that is the summary in March, you also
11 said she was malnourished; is that right?

12 A Yes.

13 Q What does that mean?

14 A It mean she hadn't had proper food.

15 Q Had not had the proper food?

16 A Yes.

17 Q And were you able to tell from your
18 examination of her of March 15th, '73, how long that
19 condition of malnourishment had been?

20 A I couldn't tell.

21 Q No way you could tell.

22 A Couldn't tell that.

23 Q All right. Now, what was the name of
24 the eye specialist that you consulted?

25 A Dr. Powell, Roy Powell.

1 Q All right. I show you as a part of
2 the hospital records a report of March 20th, '73,
3 showing you were the attending physician and he was
4 consulted, and signed by him and ask you if you would
5 read Dr. Powell's report.

6 MR. SACKS: Your Honor, I think
7 Dr. Powell -- I believe other entries in the
8 hospital record by other doctors would not
9 be admissible, Your Honor.

10 I'll tell you, I'll withdraw that to
11 move it along. I withdraw that.

12 THE COURT: All right, sir.

13
14 BY MR. LEGUM:

15 Q Go ahead. Read his report.

16 MR. SACKS: No objection.

17 THE WITNESS: I have followed the eye
18 condition in the case of Mrs. Knight since
19 March, 1962. A diagnosis of glaucoma, open
20 angle, was made and she was placed on treatment.
21 Her intraocular pressure was fairly well
22 controlled on Phospholine Iodide and
23 Ethamide tablets b.i.d.

24 I last saw her September 11, 1967. At
25 that time she could count her fingers with the

1 left eye and could see 20/80 with treated
2 left eye. Since that time she had discontinued
3 all glaucoma treatment and is now blind in each
4 eye. She also has cataracts each eye but due to
5 damage from the glaucoma surgery is not
6 indicated. Patient has no ocular pain --
7 no treatment is indicated. Diagnosis: Glaucoma,
8 chronic open angle bilateral with blindness.
9 Rx: None.

10
11 BY MR. LEGUM:

12 Q What is glaucoma, Doctor?

13 A Well, glaucoma is a -- it's a condition
14 that occurred when there is blockage of the normal secretion
15 that lubricates the eye.

16 Q And what are cataracts?

17 A Cataracts is hardening of the cornea.
18 That is the part of the eye that you see through, the
19 little disk like thing hardens and it gets opaque.
20 That is you can't see through it.

21 MR. LEGUM: All right. You may examine
22 him.

CROSS-EXAMINATION

1
2
3 BY MR. SACKS:

4 Q Dr. Green, I think the first hospital
5 admission you described to us was March 15th of 1973;
6 is that correct?

7 A That's correct.

8 Q Now, as a matter of fact you had known
9 this lady and some other members of her family for a
10 number of years, hadn't you?

11 A Practically all my life.

12 Q And have you treated Willow Knight
13 professionally over recent years before this hospitalization?

14 A Yes.

15 Q And, Doctor, am I correct that the
16 hospital record that you have there -- well, first of
17 all that record is a record such as that is kept on every
18 patient during their hospital stay; is that correct?

19 A Yes.

20 Q And you as the treating physician
21 made certain entries from time to time; did you not?

22 A That's right.

23 Q And, of course, you finished up each
24 admission with a diagnosis when you discharged her of
25 what then your final diagnosis was.

1 A Yes.

2 Q All right, sir. Now, Doctor, am I
3 correct in looking over the record that there is no
4 entry in that hospital record at any time that
5 Mrs. Willow Knight even when she was hospitalized was
6 not mentally competent in any way; is there?

7 A No, I don't think so.

8 Q Well, as a matter of fact, Doctor,
9 could you point -- could you turn to the history or rather
10 the physical examination notes in the hospital record
11 for March 15th admissions -- well, now Doctor, first of
12 all I show you -- is that not the front sheet or the
13 face sheet for the admission of March 15th?

14 A That's correct.

15 Q All right, sir. If you turn the page
16 is not the first thing you have in there essentially a
17 history, what the patient told you?

18 A The first thing you have here is she
19 came from the nursing home. Now, the next is what the
20 patient told the resident.

21 Q All right, sir. Well, does the hospital
22 form have a place for history or what the patient told
23 the admitting people, the resident physician?

24 A Yes, uh-huh.

25 Q Now, Doctor, from looking at the record

1 and drawing on your own recollection was Mrs. Willow Knight
2 when she was admitted to the hospital on March 15th
3 able to tell the doctor what her problem was, what her
4 trouble was?

5 A Apparently.

6 Q What do the notes say that were made
7 at that time?

8 A Admitted an eighty-five year old female
9 Negro widow, a homemaker, chief complaint of pain and
10 swelling to the right knee. Patient claimed that four
11 weeks ago she accidentally slipped down the stairs
12 hurting her right knee. Patient states she has arthritis
13 from a long period of time, no history of diabetes and
14 such and such. And that's essentially it.

15 Q That's essentially it?

16 A Uh-huh.

17 Q Doctor, am I correct in my assumption
18 that Mrs. Knight herself told those things, what
19 happened to her four weeks before that, she had fell
20 and she had arthritis a long time and what her real
21 complaint was at that time. She told them at that time.

22 A Apparently she told them that.

23 Q Is there anything in the history to
24 indicate at all to you as a physician that she was
25 confused or disoriented or that she wasn't mentally able to

1 converse?

2 A No.

3 Q Now, looking at the physical examination,
4 is there a notation made in there as to whether she was
5 coherent or not at the very top of it, I believe?

6 A Coherent.

7 Q All right. Look, is that in the portion
8 of the record that requires a physical examination?

9 A Yes.

10 Q To be noted in the record?

11 A Uh-huh.

12 Q Who is that doctor?

13 A That's the resident.

14 Q Is that in his handwriting she was
15 coherent?

16 A Yes.

17 Q Now, drawing on your own recollection
18 and the hospital records themselves, was Mrs. Willow
19 Knight ever confused mentally during that March 15th
20 hospital stay?

21 A No, not that I know.

22 Q Now, Doctor, of course, at the last
23 admission was on April the 9th, I believe, and the
24 lady died on April 10th; am I correct?

25 A That's right.

1 Q And on April 9th when she was
2 admitted, do not the records show that I think she
3 was unconscious at that time?

4 A Came in unconscious.

5 Q She couldn't have answered questions
6 or -- all right, sir. And where you have given us that
7 in your medical judgment the diagnoses at the time of
8 her death, the last entry in the hospital record of
9 April 9th, admission, you gave us cerebral vascular
10 accident; did you not?

11 A Yes.

12 Q Now, I don't know, it may be a
13 different word, but is that the same thing as a
14 stroke? Is that what is commonly called a stroke?

15 A Yes.

16 Q Is that of sudden onset?

17 A As a rule.

18 Q And was it in your case?

19 A As far as I know.

20 Q Yes, in other words a person could
21 be moving around and talking and if she was -- what's
22 the mechanics of a stroke?

23 A It's cutting off the blood supply
24 to certain portions of the brain.

25 Q Does that occur when a blood vessel bursts?

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A A blood vessel burst or a clot.

Q So that it can be a very sudden thing.

A Yes.

Q And when this lady was admitted on April 9th to die on April 10th, she had apparently suffered that stroke.

A Apparently.

Q All right, sir. Now, Doctor, when you used the term senility in the diagnoses, you have explained it to us today. I think you said a general aging of the body as a whole.

A That's correct.

Q Did you use the word senility in any way to denote that the lady was mentally incompetent?

A No.

Q Would you know now recently to the March 15th hospital admission, which, of course, is documented because it was an admission -- how recently before that would you estimate you had had a occasion to see this lady at all recently?

A You mean prior to the hospital stay?

Q Prior to the March 15th of '73.

A No, I hadn't seen her for several years, for four or five years possibly.

Q All right. Well, let's take this -- and

1 of course, even when you had seen her several years
2 before she was a lady of advanced age, was she not?

3 A Yes.

4 Q Did you, Doctor, at any time in your
5 observation of her as a person or as a physician, did
6 you ever observe any mental incompetence?

7 A No.

8 Q Did you believe her as of the time
9 before the March 15th hospital admission, did you believe
10 her to be mentally competent?

11 A Legally so, yes.

12 Q And then was she generally recognizing
13 people and tending to her affairs and things of that
14 sort?

15 A Apparently.

16 Q To your observation?

17 A Yes. She hadn't seen me in five years.

18 Q Did she recognize you right away?

19 A Yes.

20 Q Did you ever see -- well now, that
21 was in March at the time of the admission.

22 A Yes.

23 Q So that over the March 15th to March 31st,
24 a couple of weeks more or less you saw her frequently;
25 did you not?

1 A Yes.

2 Q You conversed with her, didn't you?

3 A Yes.

4 Q Was she able to converse with you?

5 A Yes.

6 Q Did you ever see her not recognize
7 somebody that she should have recognized?

8 A I didn't.

9 Q Did you ever observe anything as a
10 physician, doctor, during that hospital stay in that
11 treatment to indicate to you as a physician that she
12 was disoriented or mentally confused or not know what
13 she was doing?

14 A I didn't observe it, no.

15 Q And to the contrary then would you
16 have an opinion with reasonable medical certainty as
17 to whether or not the lady was mentally alert and
18 mentally competent as of all times you saw her during the
19 March 15th admission?

20 A I would have made her diagnosis to
21 that effect.

22 Q If she had not been mentally competent,
23 you have made a diagnosis.

24 A This I hadn't thought.

25 Q Not having made a diagnosis that she was

1 mentally incompetent, did you believe she was mentally
2 competent?

3 A Yes.

4 MR. SACKS: Doctor, I thank you. And
5 that's all I have.

6

7

REDIRECT EXAMINATION

8

9 BY MR. LEGUM:

10 Q Doctor, was she mentally competent
11 on April 9th and 10th, '73?

12 A She was unconscious.

13 Q So you couldn't say, could you?

14 A No.

15 Q Now, I believe you stopped making
16 house calls some years ago when you had a heart attack;
17 is that right?

18 A That's correct.

19 Q How many years has it been?

20 A That was in '67 or '68.

21 Q All right. And you at least as far
22 back as '67 and '68, you never saw Mrs. Knight at her
23 home?

24 A No.

25 Q Do you have any records to show when prior

1 to your having your heart attack that you saw her either
2 at her home or at your office?

3 A I had seen her at home several times.

4 Q Do you know what years?

5 A Well, over a period of years.

6 Q And what were you treating her for?

7 A For her hypertension, which she didn't
8 have this time and arthritis. And as a matter of fact
9 we sent her to Dr. Powell for the first time. She went
10 there several years ago.

11 Q Well now, hypertension is high blood
12 pressure.

13 A High blood pressure, yes, sir.

14 Q And you were treating her for
15 hypertension for how many years before you had your
16 heart attack?

17 A I don't know.

18 Q For a number of years?

19 A A number of years, uh-huh.

20 Q Now, you diagnosed her condition
21 in March of 1973 as having hardening of arteries or
22 arteriosclerosis. Does that occur suddenly or does
23 that occur over a long period of time?

24 A As a rule that's over a period of time.

25 Q And when you say a period of time, you

1 usually find that in people who are up in age; is that
2 right?

3 A Well, except very unusual cases.

4 Q Now, insofar as what Mr. Sacks asked
5 you about what the patient said, you, of course, were
6 not present when the intern saw her and when she was
7 admitted and made these records?

8 A No.

9 Q And, of course, I notice you used the
10 word apparently. You are basing upon what the hospital
11 records say.

12 A Right.

13 Q You just read the hospital report.

14 A Uh-huh.

15 MR. LEGUM: All right. I believe that's
16 all.

17 MR. SACKS: Just one or two.

18

19 RE CROSS EXAMINATION

20

21 BY MR. SACKS:

22 Q Doctor, when you gave us your opinion,
23 as I understand it that she was mentally competent,
24 do you take into consideration that the lady had
25 arteriosclerosis?

1 A Yes.

2 Q In other words, isn't it perfectly
3 possible that a person can have arteriosclerosis but not
4 to a degree that it disturbs their mental competency?

5 MR. LEGUM: Object to what's possible.
6 It would be what is probable. Anything in
7 life is possible.
8

9 BY MR. SACKS:

10 Q In this lady's case you had diagnosed
11 arteriosclerosis as consistent with the aging process.

12 A Yes.

13 Q And in your judgment, Doctor, that
14 did not mean she was not mentally competent, did it?

15 A No.

16 Q And all these other diseases and
17 conditions that she had physically, do you take those
18 into consideration when you give your opinion as that she
19 was mentally competent?

20 A All these are part of the aging
21 process.

22 Q All right, sir. And was it -- could
23 she have those physical deficiencies and physical
24 diseases and still be mentally competent in your
25 judgment?

1 A A lot of us do.

2 Q Did she in your judgment?

3 A Yes.

4 MR. SACKS: Thank you, sir.

5

6 REDIRECT EXAMINATION

7

8 BY MR. LEGUM:

9 Q Now, I believe you were asked by
10 Mrs. Strong to see Mrs. Knight; is that right -- at the
11 hospital?

12 A I think. I don't know.

13 Q You don't know who engaged you to go
14 to the hospital?

15 A No.

16 Q Mrs. Knight did not engage you, did she?

17 A I don't know. I was called from the
18 emergency room.

19 Q I see. Somebody in the emergency room
20 called you to come?

21 A Yes.

22 MR. LEGUM: All right. Thank you.

23 THE COURT: Thank you, Dr. Green. You
24 are excused now. Thank you so much.

25 MR. LEGUM: I call Mrs. Carrie Forbes.

1 A Three blocks.

2 Q And do you know Mrs. Jessie Dunn?

3 A Yes, sir.

4 Q And do you know Mrs. Dunn's brother,

5 Mr. Arthur Radcliff?

6 A Well, I didn't know too much about
7 him, but I seen him at a distance.

8 Q Now, how often did you visit Mrs. Willow
9 D. Knight?

10 A Well, I go to Mrs. Willow D. Knight's
11 quite often about once a week or some time every two
12 weeks because I was waiting on her sister during the
13 times because her eyesight was bad. I didn't go there
14 as often I been going, but I didn't stay away too long.

15 Q And do you remember when Mrs. Knight's
16 husband, James Knight, died?

17 A Yes, I remember when he died.

18 Q Do you remember what month it was?

19 A I think it was in January.

20 Q Of '73?

21 A Uh-huh.

22 Q All right. Did you attend the funeral?

23 A Yes, I did.

24 Q How about Mrs. Knight? Did she attend
25 his funeral?

1 A No.

2 Q Now, did you visit Mrs. Knight after
3 her husband died?

4 A Yes, I did.

5 Q And how often did you visit her after
6 his death?

7 A Well, I think I went there about twice.
8 I think that's the time after he died.

9 Q All right. And approximately how
10 many weeks or days after his death did you visit her?

11 A Well, I went in right after his death.
12 I went in there to visit her.

13 Q And how about after that?

14 A Well, I went in there two or three
15 times because I went in there to visit her after he
16 passed because I would come back and give Mrs. Dunn -- tell
17 Mrs. Dunn how she was doing because they were both
18 worried about each other.

19 Q Now, did you also visit Mrs. Knight
20 in the hospital?

21 A Yes, I did.

22 Q And what month was that?

23 A That was -- that must have been in
24 February.

25 Q Well, the evidence shows that she was

1 admitted in March.

2 A I went to the hospital and she wasn't
3 there. I went to the hospital to see her. Before I
4 went back to see her, they had taken her to the hospital
5 and they said well, she wouldn't be there too very long
6 because they had taken her there for observation.

7 Q Did you go visit her in the hospital?

8 A Yes, I did.

9 Q Did you talk to her?

10 A Yes, I did.

11 Q And what, if anything, unusual occurred
12 when you talked to her at the hospital in March?

13 A Well, she was in the -- when I went
14 there in March, they had her out there in the hall in
15 a wheelchair and, of course, I always have to speak to
16 her. And I says, I said, this is Carrie. She said, "Carrie."
17 I said, "Yes." Then she said, "Well, how is Shug?"
18 And I said, "Shug is all right."

19 Q Now, Shug is --

20 A Mrs. Dunn. Then she stopped me
21 completely, says look out, don't move back because if
22 you move back you will step in a pond of water.

23 Q Was there any puddle of water there?

24 A No, there wasn't.

25 Q And you say this was in the hallway of

1 the hospital?

2 A Yes, sir.

3 Q She was in a chair?

4 A Yes.

5 Q All right. Now, Mrs. Forbes, after
6 Mr. Knight's death and when you visited her, what if
7 anything did you notice about Mrs. Knight's condition?

8 A Well, she seemed to be getting so
9 feeble, had lost so much weight, and I looked at her and
10 says, "What's wrong?" She says, "I have just lost all."
11 She put her hand on the stick and if you didn't say
12 anything to her, she didn't say anything to you.

13 Q You say she put her hand --

14 A She had a cane that she walked around
15 there. She had that cane, and she sit there. (Indicating.)

16 Q And she would not talk to you at all?

17 A No, she didn't say nothing.

18 If you didn't say anything to her, she wouldn't say
19 anything to you -- to me, I know that.

20 Q Now, what did you observe about the
21 relationship between Mrs. Dunn and Mrs. Knight?

22 A They were very close because when
23 Mrs. Dunn was sick in the hospital, I waited on her
24 every day. Dr. Powell was her doctor and before that time
25 Mrs. Dunn and Mrs. Knight had at Merchants and Farmers

1 Q Are you related either to Mrs. Knight
2 or Mrs. Dunn?

3 A No. I just live in the neighborhood
4 and am a friend and waited on her husband with her when
5 he died just before he died before Mr. Dunn.

6 Q How did Mrs. Knight take the death of
7 her husband?

8 A She seemed like she just went all to
9 pieces. She didn't look like she cared whether she lived
10 or not after that. She just had nothing to live for.

11 MR. LEGUM: You may examine.

12

13

CROSS-EXAMINATION

14

15 BY MR. SACKS:

16 Q Mrs. Forbes, as I understand it, you
17 remember visiting Mrs. Willow Knight right after the
18 death of her husband; is that correct?

19 A I visited her, yes, I did.

20 Q All right. And was that the time that
21 she put her hand on the cane and said -- well, you said,
22 "What's the matter?" Did you call her Sissy?

23 A Yes, call her Sissy.

24 Q You said something like, "What's the
25 matter, Sissy?" And she said, "Well, I just lost everything

1 THE COURT: Mr. Legum.

2 MR. LEGUM: Call Milton Scott.

3
4 -----oOo-----

5
6 MILTON SCOTT, called as a witness on behalf
7 of the complainants, having been first duly sworn, was
8 examined and testified as follows:

9
10 DIRECT EXAMINATION

11
12 BY MR. LEGUM:

13 Q Would you tell us your name, please?

14 A Milton Scott.

15 Q Where do you live?

16 A County Street.

17 Q That's in Portsmouth?

18 A Yes, sir.

19 Q How long have you lived at
20 1208 County Street?

21 A Around twenty years.

22 Q And was that the home of Mrs. Willow D.
23 Knight?

24 A Yes, sir.

25 Q And what did you do, occupy a room there?

1 A A room, yes, sir.

2 THE COURT: How long did you say you
3 had been there?

4 THE WITNESS: About twenty years --
5 sometime in the '50's I moved there.
6

7 BY MR. LEGUM:

8 Q Are you retired?

9 A Yes, sir.

10 Q How long you been retired?

11 A The last of '70, 1970.

12 Q And what is the nature of your
13 retirement? Are you retired on disability?

14 A Well, I retired as a merchant marine
15 on straight time, but a year or so later I got social
16 security on disability.

17 Q And your disability is what part of
18 your body?

19 A Slipped disk.

20 Q All right. Now, did you know
21 Mrs. Knight's husband, James Knight?

22 A Yes, sir.

23 Q Were you living there before she
24 married Mr. Knight?

25 A Right after she married him.

1 go in the home.

2 Q How soon after you signed it for him
3 to go to the home did Mr. Knight die?

4 A Around five days later.

5 Q Five days later?

6 A Yes.

7 Q All right. Now, before Mr. Knight
8 died did you have any conversation with Mrs. Knight
9 about her seeing children or angels?

10 A Yes.

11 Q Tell us, please, what Mrs. Knight
12 told you.

13 A She would tell me -- she said, "It's
14 cloudy out there." I said, "No, the sun is shining."
15 And a lot of days she said it's rainy, it looks foggy.
16 I said, "No, Mrs. Knight, it's fair out there."
17 Sometimes she would see little indians, little children.

18 Q Did she say where she saw the little
19 children and angels?

20 A Around the chair she was sitting in.
21 And I told her maybe that's her eyesight coming back.

22 Q Were there any little children around
23 her chair at that time?

24 A Nobody but me and her.

25 Q And how often did she mention to you that

1 she saw little children around her?

2 A Well, she had been saying that before
3 he passed and after he passed.

4 Q After he died, she said that?

5 A Yes.

6 Q Now, you mentioned that you were handling
7 her business for her.

8 A Yes, well after he got so severely
9 bad health, I was buying the groceries and in fact before
10 he passed she was giving me her money and take it
11 upstairs to her room and count it and see how much it is.
12 Sometimes rent money and retirement money would
13 accumulate up to five, six hundred, seven, eight
14 hundred, sometimes about nine hundred dollars. She would
15 tell me to take it up to my room and count it and see
16 what it is. And I come back down and tell her how much
17 it is -- seven or eight hundred, nine hundred. I tell
18 her and she says well take it and deposit it for me.
19 That was before he passed and after he passed too. I
20 was handling the business, buy the groceries and what
21 not for her.

22 Q And what banks did you deposit her money
23 in that you recall?

24 A I deposited money in the American
25 National Bank and the Bank of Virginia.

1 they asked him, said what happened.

2 MR. SACKS: If Your Honor please,
3 again.

4 THE COURT: Just a minute, Mr. Scott,
5 please -- for a minute.

6 MR. SACKS: I don't think whether it's
7 long ago or how recent and it pertains to
8 Mr. Knight, and I would object to it.

9 THE COURT: I sustain the objection.

10 MR. LEGUM: All right, Your Honor.

11
12 BY MR. LEGUM:

13 Q Mr. Scott, did you attend Mr. Knight's
14 funeral in January of '73?

15 A Yes, sir.

16 Q Did Mrs. Knight attend her husband's
17 funeral?

18 A No..

19 Q How long had it been since Mrs. Knight
20 left the home to go outside?

21 A How many years -- Mrs. Knight?

22 Q Mrs. Knight, yes.

23 A I don't think she had her foot on the
24 ground the whole time since I was staying there.

25 Q During the twenty years that you were

1 there?

2 A No, sir, not as I can recall.

3 Q What did you notice about her health
4 say within six months before she died or say within a
5 month before Mr. Knight died? What did you notice about
6 her health?

7 A Well, she was sick, and I tell her
8 often. I said, "Well, you should have a doctor to come
9 here to visit you. I know you are not able to go see
10 one." I said, "Doctors make calls." I said, "You should
11 at least call a doctor once in a while just to come
12 here and check you." I said, "Like you can get around
13 and not feeling good and all and always sick and what not,
14 you should at least have a doctor to come to the house."

15 Q Did a doctor come to the house before
16 Mr. Knight died?

17 A No, sir. When she collapsed after he
18 passed, that's when a doctor come to the house. She
19 just went all to pieces after he passed.

20 Q After Mr. Knight died you say she fell
21 to pieces. What did you observe about her that whereby
22 you say she fell to pieces?

23 A Well, she just looked like she collapsed
24 and couldn't -- just couldn't hardly move or get around
25 then. She seemed like she just wasn't right, couldn't get

1 her mind right and what not. And a friend of mine went
2 there to see her and so she started crying. He said,
3 "Well, I am Raymond Price." "If it wasn't for Mr. Knight
4 I don't know what in the world I would have done."
5 Said, "He was a father to me and a mother to me."

6 Q Well, how long would she cry after
7 Mr. Knight died?

8 A Well, she cried practically all the
9 time.

10 Q All the time?

11 A Said she didn't know what she was
12 going to do after she lost him. So I told her well
13 I am here. I would do everything I could and so when
14 he passed that Friday, I think, I had to go out of town
15 and bring some groceries for her. I think it was on
16 Friday when he passed. So I told her I said I would go
17 tend to this business. I would be back as soon as
18 possible. I said, "I know it isn't nobody here but you
19 so when I come back" -- and she was sitting there crying.
20 And I said, "What's the matter?" She said, "I just had
21 a phone call that Knight passed." I said, "Oh, he did."
22 She said, "Yes." Then she said, "Mr. Scott, you know
23 what to do. So go on out to Maggie Corprew's and
24 make arrangements for the funeral. So you know what
25 to do. You can tend to the business." I said, "Well,

1 Mrs. Knight, I was tending to your business all the time.
2 It's true, but I believe I would be sticking my neck out
3 if I would do that." She said, "Well, do what you think
4 is best." I said, "Well, I am going to try and round
5 up some of the family." So I called her sister.

6 Q That's Mrs. Dunn?

7 A Mrs. Dunn, and I told her that Knight
8 had just passed and I was trying to round up the family.
9 And Mrs. Dunn called her daughter, but her daughter
10 was at work and her granddaughter answered the phone.
11 And I understand that --

12 Q Did you talk to the granddaughter?

13 A I didn't talk to the granddaughter.
14 Mrs. Dunn talked to the granddaughter.

15 Q Just tell us what you know of your own
16 knowledge.

17 A It was the granddaughter of one called
18 Mrs. Strong.

19 Q All right. Now, before Mr. Knight
20 died, did you see Mrs. Strong come over to visit
21 Mrs. Knight?

22 A No.

23 Q Never did in the twenty years you were
24 there, while you were there? Did you ever see Mrs. Strong
25 come to visit Mrs. Knight?

1 A (Witness nodding head negatively.)

2 Q You have to say for the record. You
3 are shaking your head that you never did see her; is
4 that right?

5 A No, I never did see her.

6 Q Do you know her brother, Joseph,
7 that lives in Detroit, Michigan, Arlester Radcliff, Jr.
8 Do you know him?

9 A I have seen him.

10 Q Did you ever see him visit Mrs. Knight
11 before Mr. Knight died?

12 A Well, when he came down from Detroit,
13 he had stopped by there to see her.

14 Q And how often would he visit her --
15 be often or once in a while?

16 A I think he come down about every two
17 or three years or something like that.

18 Q All right. How about Arlester Radcliff, Jr.
19 who lives in Portsmouth, Mrs. Strong's brother? Did
20 he ever visit Mrs. Knight before Mr. Knight died?

21 A Well, when his father come down from
22 Detroit to visit his sister, I have seen him.

23 Q You saw him there?

24 A Him there, yes.

25 Q Do you know of anything that either

1 Arlester Radcliff, Jr. or Joseph Radcliff ever did for
2 their aunt before Mr. Knight died?

3 A Well, there is one thing that I know
4 they did. Mrs. Knight was trying to get upstairs. This
5 particular night, I believe the nurse was there at that
6 time.

7 Q Was this before or after Mr. Knight died?

8 A That was after Mr. Knight died.

9 Q My question is before Mr. Knight
10 died did you ever see Arlester Radcliff, Jr. or Joseph
11 Radcliff, Mrs. Strong's brothers, ever do anything for
12 Mrs. Knight?

13 A No.

14 Q Now, you mentioned after Mr. Knight
15 died that there was a nurse there taking care of
16 Mrs. Knight. Is that what you just said?

17 A She was there for about a week I imagine,
18 something like that.

19 Q Now, what period of time would that
20 be after Mr. Knight died that the nurse was there?

21 A I imagine it was -- I believe it was
22 about a month later.

23 Q A month later?

24 A Something like that and what happened
25 on that --

1 Mr. Legum. I don't understand.

2 MR. LEGUM: Judge, I would like to
3 address myself in absence of the jury on that
4 point if I may.

5 THE COURT: All right, because the only
6 thing is not trying to cut you off, but I just
7 feel like this has no probative value whatsoever.

8 MR. LEGUM: Judge, may I?

9 THE COURT: If you want to slip in there,
10 of course I'll be glad to hear you.

11 Excuse us, gentlemen.

12 (The Court, counsel for both sides and
13 the court reporter retired into chambers,
14 which segment is deleted.)

15 (The Court, counsel for both sides and
16 the court reporter returned to the courtroom
17 where the following occurred:)

18 THE COURT: All right, sir.

19
20 BY MR. LEGUM:

21 Q Mr. Scott, after Mr. Knight died, did
22 Mrs. Knight ever tell you that she had made a new will?

23 A No, sir.

24 Q Did she ever tell you before Mr. Knight
25 died that she was going to make a new will?

1 A No, sir.

2 Q Did she tell you after Mr. Knight died
3 that she was going to make a new will?

4 A No, sir.

5 Q Mr. Scott, what did you observe about
6 the relationship between Mrs. Knight and her sister,
7 Mrs. Dunn?

8 A They were real close.

9 Q All right.

10 MR. LEGUM: You may examine.

11
12 CROSS-EXAMINATION

13
14 BY MR. SACKS:

15 Q Mr. Scott, you have lived in the home
16 for about twenty years, did you?

17 A Yes, sir.

18 Q And how much of that time were you active
19 in the merchant marines?

20 A Merchant marines for twenty years. I
21 mostly was gone at the time for from three to four
22 months.

23 Q Well, I say there were periods of
24 time by reason of your being in the merchant marines
25 when you actually were away from the home for three or four

1 cause hard feelings with the family.

2 Q So you got in touch with the family,
3 and I think you told us eventually it was the granddaughter,
4 Mrs. Dunn's granddaughter, got in touch with Dr. Strong.

5 A That's right.

6 Q Now, didn't Dr. Strong then come right
7 on over, start making the funeral arrangements?

8 A She did.

9 Q She came over to the house.

10 A (Witness nodding head affirmatively.)

11 Q Did you and -- did you go to the funeral
12 parlor, the funeral home, with Dr. Strong?

13 A I did.

14 Q Did the two of you make the funeral
15 arrangements?

16 A (Witness nodding head affirmatively.)

17 Q Am I correct.

18 A Yes.

19 Q All right. Did Dr. Strong start
20 helping how that the husband had died? Did Dr. Strong
21 start helping Mrs. Willow Knight at that time?

22 A Well, she say, Mrs. Knight told me
23 when Dr. Strong -- she said, "Well, Mr. Scott know
24 where everything is."

25 Q So that Mrs. Knight said, "Mr. Scott

1 know where everything is and he will give you the strong
2 box with the little cash such as it was left. He will
3 give it to you. He knows where everything is." And
4 you gave it to Mrs. Strong. Now, Mrs. Willow Knight,
5 once her husband died and once it started with the
6 funeral arrangements, that Dr. Strong was helping with,
7 Mrs. Knight told you that she wanted Mrs. Strong to
8 now take care of her affairs. Her husband was gone.
9 She couldn't do it, and she wanted Dr. Strong to do it.
10 Didn't she tell you that?

11 A Mrs. Knight told me, she said, "Well,
12 Mr. Scott, he was depositing the money all the time
13 and I know you cannot withdraw no money so you could
14 deposit. But you can't withdraw it" and she said to me
15 that she was going to make Mrs. Strong the power of
16 attorney.

17 Q All right. Did she tell you that
18 Mrs. Strong was going to take care of her affairs for
19 her?

20 A She didn't tell me that.

21 Q Well, you say they used power of
22 attorney.

23 A Mrs. Strong was her power of attorney
24 because she often tell me, said you can't draw no money
25 out of the bank and all the cash that she had on hand it

1 actually was deposited.

2 Q But Mr. Scott, whatever words she used,
3 isn't -- my question that Mrs. Willow Knight is the one
4 that brought that up. Mrs. Strong didn't ask for the
5 bank books, did she?

6 A Mrs. Knight told her to go get them
7 because I couldn't draw no money out of the bank.

8 Q To pay the bills and buy groceries.

9 A I couldn't even cash her check.

10 Q Mr. Scott, listen to me a minute.
11 Mrs. Knight got up and told you she wanted Mrs. Strong
12 to handle it, didn't she?

13 A She told me to give her the books.

14 Q So Mrs. Strong didn't ask for them.
15 She is not the one that suggested that, was she?

16 A No.

17 Q All right. Now, who was there when
18 Mrs. Knight asked you to get her strong box and bring
19 it down to Mrs. Strong?

20 A It was only me and Mrs. Strong.

21 Q And did you go get the strong box?

22 A Yes.

23 Q And did you bring it back to Mrs. Knight?

24 A Mrs. Strong was sitting in the room
25 with Mrs. Knight when I brought it downstairs, and I gave it

1 to Mrs. Strong. And we took it back in the dining room.

2 Q Who's we? Who took it back?

3 A Mrs. Strong did.

4 Q And you.

5 A I mean I give it to her. She took
6 it back in the dining room, put it on the table and she
7 called out what cash was there.

8 Q Didn't you go back there with her?

9 A I went there with her.

10 Q Didn't you both count it out together?

11 You counted it out together, didn't you, Mr. Scott?

12 A She counted the money, and I was
13 sitting right there at the table. And I believe she
14 made a note of it when she counted it.

15
16
17
18
19
20
21
22
23
24
25

1 Q You may have and don't remember.

2 A I can't remember telling that to nobody.

3 Q Now, whether you told it to somebody

4 or not, looking back at that time isn't that what

5 Mrs. Knight told Mrs. Strong to do with that money?

6 A I didn't hear that.

7 Q You didn't hear that?

8 A No.

9 Q You mean it could have been said and

10 you didn't hear it.

11 A I didn't hear it.

12 Q All right. Now, did you have at that

13 time the three bank books that belonged to Mrs. Knight?

14 A That was before the Strong's come there.

15 I had the bank books.

16 Q And the strong box. All right, and

17 did you have three bank books?

18 A Three bank books.

19 Q Now, at the same time that Mrs. Knight

20 told you to get the strong box, did she tell you to get

21 the bank books or was that another time?

22 A I think that was another time that

23 she told me to get the bank books.

24 Q Now then, that was even after the

25 strong box, wasn't that? We have just been talking about

1 didn't it? It had to be at least in February because
2 it was after the time of the strong box; isn't that true?

3 A Okay.

4 Q All right. Now, when Mrs. Knight
5 brought it up to you, what did Mrs. Knight tell you
6 about the bank books?

7 A Well, she told me, she said, "Well,
8 Mr. Scott, I know that at the bank they are not going
9 to let you have no money. You can deposit, but they
10 are not going to let you make any withdrawal." I said,
11 "Well, that's right, because I done deposited all the
12 cash that you had on hand." And so she said, "Well,
13 I am going to make Ethelyn my power of attorney so like
14 when a bill comes due somebody could withdraw because
15 Knight is gone. My husband is gone." And she said, "I
16 ain't going to go withdraw it although they would
17 accept it from you, a deposit, but they are not going
18 to let you withdraw it."

19 Q The question is what did she tell you
20 to do with these three bank books she knew you had?

21 A To give them to Mrs. Strong.

22 Q Tell us what she said. What were
23 the words she told you about those books?

24 A She said, "Well, Scott, you know where
25 the bank books is. You get them and give them to her."

1 Q To who, Mrs. Strong?

2 A That's right.

3 Q Who was in the room when that took
4 place?

5 A It was the three of us at that particular
6 time.

7 Q Now, isn't it true that Mrs. Willow Knight
8 is the one that brought that up just like the strong
9 box? Mrs. Strong didn't say give me the bank book.
10 Mrs. Knight brought that up, didn't she on her own?

11 A Well, they were sitting in there talking
12 at the time. If just didn't happen the minute she walked
13 in the house. She was sitting in there and talking
14 when I came in. She said, "Well, Mr. Scott know where --

15 Q All right.

16 A Where they were at and get them and
17 give them to her.

18 Q Well, as far as you heard, as far as
19 you know Mrs. Knight is the one that brought that up
20 as far as you know; isn't that true? Well, all right,
21 Mr. Scott.

22 MR. LEGUM: Let him answer. He's
23 thinking about it.

24 THE COURT: Are you going to answer
25 the question?

1 THE WITNESS: As I said they was sitting
2 there talking and when I came in the room
3 she said, "Mr. Scott, would you get the bank
4 books and give them to Mrs. Strong."
5

6 BY MR. SACKS:

7 Q All right.

8 A I wasn't in the room with them during
9 the whole conversation while Mrs. Strong and her were
10 sitting there talking. And I went in the room, she said,
11 "Would you get those books and give them to Mrs. Strong."
12

13 Q So you don't know what Mrs. Knight told
14 Mrs. Strong in the room before you got there?

15 A I don't.

16 Q But you are a witness to the fact that
17 Mrs. Knight told you go get the bank books and give them
18 to Mrs. Strong.

19 A That's right.

20 Q Now, Mrs. Knight had known you for
21 twenty years, hadn't she?

22 A That's right.

23 Q She didn't suggest to you that let's
24 go down and put you on here with me so you can draw
25 the checks, did she? She didn't suggest that you could
withdraw if she put your name on it, did she, Mr. Scott?

1 my convenience that it wouldn't take long. It would only
2 take a few minutes for this to be done.

3 Q Go ahead.

4 A And I told him I didn't even know
5 where to come to. He said don't worry that Mrs. Strong
6 will come get you and bring you down there and carry you
7 back. And that's what she did.

8 Q All right. Upon coming to the clerk's
9 office, what took place?

10 A Well, when I got to the clerk's office
11 we had to wait a while for the lawyer to show and then
12 when he came I went in this room and this lady asked
13 me when Mrs. Knight made that will and I witnessed it
14 and I told her yes and she asked me to raise my right
15 hand and then she asked me was Mrs. Knight twenty-one
16 years old and I told her yes. She asked was Mrs. Knight
17 in her sound mind and I said as far as I know.

18 Q All right. Now, I ask you, Mrs. Petersen,
19 whether Mrs. Knight after her husband died said
20 anything to you about Mr. Knight, what she was going to
21 do?

22 A Yes, she did.

23 Q Tell us what she said. First of all,
24 how soon after his death did she say what you are going
25 to say she told you?

1 A Well, at first she said to me the very
2 night that he died.

3 Q Tell us what she told you.

4 A Let's see, the night he died Milton Scott
5 told me Mr. Knight had passed. So I ran right down the
6 house while Mrs. Knight was sitting there in the chair
7 crying. And she said, "It's my fault." And I said,
8 "Why do you say that?" She said, "Knight didn't want
9 to go to the nursing home. I should not have insisted
10 for him to go because the police had to come to take him
11 out of the house because he wouldn't come out, wouldn't
12 leave his room. Maybe if I had let him stay at home,
13 he would have lived longer. He would have died in his
14 own bed." And she said, "He's going to come back for
15 me." That's what she told me.

16 Q Now, after that date what was the date
17 he died, did she say anything on the same subject to
18 you again?

19 A Yes, some time during that next week.

20 Q What did she say?

21 A She told me that same thing about
22 Mr. Knight going to come back after her.

23 Q Now, Mrs. Petersen, basing your opinion
24 upon what you saw and knew of Mrs. Knight before
25 February 14th, '73 and further basing your opinion upon

1 talk to Mrs. Lucas because I could hear them in the
2 kitchen. But what they were saying -- when I would look
3 in the room, Mrs. Knight be sitting there like with a
4 stick and Mrs. Lucas be sitting there talking.

5 Q Listen to my question. I want you to
6 answer it now. Basing your opinion upon what you saw
7 and knew of Mrs. Knight before February 14th, '73, and
8 further basing your opinion upon what you knew and
9 observed of her and the condition of her memory and mind
10 up to the time of her death on April 10th, '73, in
11 your judgment did Mrs. Knight have a sound mind and
12 disposing memory on the 14th day of February, '73, when
13 she placed her mark on the paper purporting to be her
14 will?

15 A Well, the only thing --

16 Q Just answer it yes or no. In your
17 judgment did she have a sound mind and disposing memory
18 on the 14th day of February, 1973?

19 A Well, I would say no.

20 MR. LEGUM: All right. Your witness.

21 MR. SACKS: Your Honor, for the record
22 it would be the same objection.

23 THE COURT: Yes, sir.
24
25

1 Didn't she tell you that Mrs. Susie A. Petersen and Nancy
2 Reed Robertson of lawful age, being duly sworn on
3 their respective corporal oaths, do depose and say that
4 the writing hereto annexed bears the true signature of
5 Willow D. Knight; that the said Willow D. Knight signed,
6 sealed, and published the said writing as her Last Will
7 and Testament and in the presence of Dennis F. McMurrin,
8 they being present at the same time, and that thereupon,
9 at her request and in her presence, and in the presence of
10 each other, they subscribed the said annexed writing as
11 subscribing witnesses; that at the time when she
12 so signed the said annexed writing, these deponents
13 verily believe she, the said Willow D. Knight, was of
14 sound and disposing mind and memory and over the age of
15 twenty-one years. Did you swear to that in the clerk's
16 office?

17 A I told that lady in that office, she
18 asked me was Mrs. Knight of her sound mind. I said
19 as far as I know. I never give her a direct yes or no.

20 Q I understand that, but do you think what
21 you are telling us today is the same thing you swore to
22 in that clerk's office as far as you know?

23 A That Mrs. Knight wasn't of her sound
24 mind.

25 Q Why didn't you tell her in the clerk's

1 In the Circuit Court of the City of
 2 Portsmouth, Portsmouth, Virginia, at 10:00
 3 o'clock a.m., February 12, 1974, before the
 4 Honorable R. Winston Bain, Judge of said
 5 court and jury, pursuant to adjournment.

6 Appearances same as heretofore noted.

7
 8 -----oOo-----

9
 10 THE COURT: Good morning, gentlemen.
 11 Well, let's see now -- all right, Mr. Legum.

12 MR. LEGUM: Mrs. Arthur Radcliff.

13
 14 -----oOo-----

15
 16 BLANCHE RADCLIFF, called as a witness on behalf
 17 of the complainants, having been first duly sworn, was
 18 examined and testified as follows:

19
 20 DIRECT EXAMINATION

21
 22 BY MR. LEGUM:

23 Q Will you state your name, please?

24 A Blanche Radcliff.

25 Q Where do you live?

1 A 3293 Columbus, Detroit, Michigan.

2 Q What was your husband's name?

3 A Well, Arthur Arlester Radcliff.

4 Q And was he the brother of

5 Mrs. Willow D. Knight?

6 A Yes, he was.

7 Q And also the brother of Mrs. Jesse Dunn?

8 A Yes.

9 Q Mrs. Radcliff, how long were you married
10 to Mr. Radcliff?

11 A Twenty years.

12 Q And is he now deceased?

13 A Yes.

14 Q And what month and year did he die?

15 A September 23rd in '73.

16 Q He survived his sister by about five
17 months, then.

18 A That's right.

19 Q When was the last time that you and your
20 husband came from Detroit, Michigan to Portsmouth to
21 visit Mrs. Knight?

22 A About three and a half years.

23 Q And where did you and your husband stay?

24 A We spent it with Mrs. Knight.

25 Q And at what address?

1 A 1208 County.

2 Q Now, during your last stay did
3 Mrs. Knight talk to you and your husband about any of
4 her bank books?

5 A That last stay that we were in town, yes.

6 Q What did she say?

7 A She said that she had all her business
8 straight and that she had three bank accounts, one for
9 her brother, her sister and her husband. And she had
10 the most for her brother because he was unable to take
11 care of himself.

12 Q And by her brother you mean your husband.

13 A Yes.

14 Q What was wrong with your husband at that
15 time?

16 A He was blind and he had retired for about
17 ten years. He hadn't worked.

18 Q All right. Now, what was the relationship
19 between your husband and Mrs. Knight?

20 A Very, very close. That was a close
21 family.

22 Q Since three and a half years ago when
23 her brother and you last visited Mrs. Knight, did you
24 talk to her on the telephone, you and your husband?

25 A We talked to her pretty near every week.

1 Q And when was the last time that you and
2 your husband talked to Mrs. Knight?

3 A Christmas day.

4 Q '72?

5 A Of '72.

6 Q And do you recall the substance of the
7 conversation that you had with Mrs. Knight on that occasion?

8 A Yes, I was supposed to bring my husband
9 here. I had a long vacation and so she didn't want me
10 to come because she said it was very cold here and by him
11 being sick and I wasn't too well by I worked and she said
12 why don't you wait until the spring of the year when it
13 gets warmer. She said are you still working those long
14 hours. I said oh yes and she said why don't you stop
15 working such long hours and just take on forty hours.
16 If there's anything you need, I will send the difference
17 that it takes to take care of my brother. I told her no,
18 it wasn't anything I needed because I worked every day
19 and I didn't need anything.

20 Q All right. When Mr. Knight died on
21 January 19th, 1973, did Mrs. Strong phone you or your
22 husband that he was deceased?

23 A When Mr. Knight died, no, we didn't
24 know that he had passed.

25 Q When Mrs. Knight died on April 10th, 1973,

1 A Yes, it was.

2 Q Did she tell you where Mrs. Knight was?

3 MR. SACKS: I object to any conversation
4 between this witness and a third party who's not
5 a party to the suit.

6 THE COURT: Sustain the objection.

7 MR. LEGUM: All right, your Honor.

8
9 BY MR. LEGUM:

10 Q Well, when you called Mrs. Knight's,
11 did you call Mrs. Knight's home in January?

12 A I have called a number of times since
13 then.

14 Q And how about February?

15 A Yes.

16 Q Did you ever talk to Mrs. Strong?

17 A No.

18 Q Did either you or your husband know that
19 after Mr. Knight's death that Mrs. Strong was taking care
20 of business affairs of Mrs. Knight?

21 A No, we didn't know that.

22 Q Now, I show you an exhibit, Complainant's
23 6, and ask you if you can identify the signatures on this
24 savings card of the Merchants and Farmers Bank at the
25 bottom?

1 A Yes, that's my husband's, Mr. Radcliff's,
2 writing.

3 Q How did he write his name?

4 A Arlester Radcliff. Sometimes he had
5 used Arthur, A. S. Radcliff.

6 Q And how about the other signature?
7 Do you recognize that?

8 A Well, I'm not too familiar with
9 Mrs. Knight because it had been quite a while that I had
10 seen her handwriting because we usually talked on the
11 telephone because she had arthritis and she didn't do
12 too much writing.

13 Q Now, it has on the reverse side of this
14 card typed in unable to come in, shut in, and lists
15 Arlester Radcliff, 3293 Columbus, Detroit, Michigan. Do
16 you know where your husband was when he signed his name
17 to this card?

18 A We were in Detroit at home.

19 Q It was mailed to you?

20 A Yes.

21 Q And do you know who mailed it to your
22 husband, the signature card?

23 A She had a little note in there.

24 Q Who's she?

25 A Mrs. Knight.

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Q All right.

A And she told me to get her brother,
Mr. Radcliff, to sign this and send it back immediately.

Q Did you send it back to her?

A I sent it right back.

Q To Mrs. Knight?

A That address.

Q Did Mrs. Knight ever notify you or your
husband that she had changed that account?

A No.

MR. LEGUM: You may examine.

CROSS-EXAMINATION

BY MR. SACKS:

Q Mrs. Radcliff, of course, your husband
was Mrs. Strong's father?

A That's right.

Q All right. And he had lived in Detroit
many years, hadn't he?

A That's right.

Q Maybe thirty years?

A Well, I don't know. It's before my time.

Q You were married to him twenty years.

A I was married to him twenty years.

1 in November of 1972, did you used to visit your sister
2 often?

3 A I did.

4 Q How often would you visit your sister?

5 A Just as often every day until I got
6 so I couldn't do it.

7 Q All right. Now, after your sister became
8 blind and when you went over to her home and while her
9 husband was alive, what did you do for her?

10 A Well, I'd go there and I did wait on
11 her, get her meals ready, fed her, straightened her
12 clothes and things, whatever had to be done I did it.

13 Q And how many years did you do that?

14 A I guess about, oh about three years.

15 Q All right. Where did you cook her
16 meals?

17 A Cooked them at her house and at my house.
18 I cooked some at mine, cooked some at hers.

19 Q You say you washed her clothes?

20 A Yes, sir.

21 Q Where did you wash her clothes?

22 A At her house.

23 Q She had a washing machine?

24 A Yes, sir.

25 Q All right. Now, what business did you do

J. Dunn - Direct

1 for her?

2 A Well, I would get things for her to eat,
3 groceries, and go to the bank and put in the -- do her
4 banking.

5 Q What banks did you go to for her?

6 A The Bank of Virginia and the Merchants
7 Farmers Bank.

8 Q And who had charge of Mrs. Knight's
9 bank books when you did the banking for her?

10 A I did.

11 Q Where were they kept?

12 A In my strong box at the bank.

13 Q Which bank?

14 A Merchants and Farmers.

15 Q Did Mrs. Knight before you were operated
16 on in November of '72 ever tell you that she had drawn
17 a will in 1963?

18 A Yes.

19 Q Where was her will kept?

20 A In my strong box.

21 Q In your strong box?

22 A Yes.

23 Q And after your sister died where was
24 that will that she made out in 1963? After your sister
25 died in April of '73 where was the will she drew in '63?

1 Was it still in your strong box?

2 A Yes.

3 Q All right. Now, who could go in the
4 strong box besides you?

5 A No one but me.

6 Q But you. Did you know her husband,
7 James Knight?

8 A Yes.

9 Q Now, after you were operated on, who
10 cooked Mrs. Knight's Christmas Day meal?

11 A I did.

12 Q Where did you cook it?

13 A At my house.

14 Q And how did you bring it over to her
15 home?

16 A Well, I carried it over in the car
17 because I was able to use my own car and drive it myself
18 then. My car was in good shape and I was driving myself.

19 THE COURT: Was that Christmas of '72?

20 MR. LEGUM: The Judge asked you was that
21 Christmas of '72?

22 THE WITNESS: Oh, yes.

23
24 BY MR. LEGUM:

25 Q All right. Now, Mr. Knight died on

1 January 19th, 1973. Did you go over to see your sister
2 when he died?

3 A Yes.

4 Q And tell us what you observed about
5 your sister at that time.

6 A My sister was all to pieces. She just
7 was all to pieces.

8 Q Well, now, how did she show that she
9 was all to pieces?

10 A She showed it because she would cry all
11 the time and couldn't talk to her. I couldn't talk.
12 She sat there and cried and said I wish I could go,
13 Knight's coming after me and I got to go. Said he's
14 going after me, I got to go. She cried and I just had a
15 time trying to calm her down all the time.

16 Q Now, after Mr. Knight died you went over
17 there and visited her. Did you visit her shortly thereafter?

18 A Yes, sir.

19 Q Approximately when after Mr. Knight
20 died did you visit her the second time?

21 A Well, the next day.

22 Q All right. And did you talk to her then?

23 A Yes.

24 Q And what took place on that occasion?

25 A Well, same thing. She was all out of

1 shape.

2 Q All right. And did you visit her
3 thereafter?

4 A Yes, I did.

5 Q And --

6 A As long as I could go there after.

7 Q How long after the last visit that
8 you just talked about did you visit her?

9 A Oh, I would say two or three days.
10 It wouldn't be long.

11 Q All right. Now, at this two or three
12 days after, did she say anything unusual to you?

13 A Yes.

14 Q What did she say?

15 A She told me she saw little angels
16 leading her way upstairs to her room. She said these
17 little angels going to lead me right up to my room.
18 I said, "Sister, they ain't no angels." She said,
19 "Yes, there is. You come on and I'll show you. They lead
20 me right on up to my room every night." She kept talking
21 about those little angels leading her up to her room.
22 I couldn't convince her that they weren't angels leading
23 her up to the room, but she said there were angels leading
24 her up to her room every night.

25 Q Did she ever talk about the angels on

1 any other visit after that?

2 A Yes, she did.

3 Q Now, how often did you visit your sister
4 before she went in the hospital on March 15th after her
5 husband died? How often did you visit her?

6 A I couldn't visit her because I was sick
7 myself then.

8 Q In March you were sick?

9 A Yes.

10 Q All right. In the month, when did you
11 take sick? Do you recall?

12 A No, I don't. I had so much trouble
13 I don't recall.

14 Q Okay. Did your sister ever tell you that
15 she was going to make a new will? Did your sister ever
16 tell you after her husband died that she was going to
17 make a new will?

18 A Yes, she did.

19 Q What did she say?

20 A She said she was going to fix everything.
21 She said everything fixed up.

22 Q Everything fixed up?

23 A Uh huh.

24 Q Did she ever tell you that she had made
25 a will in favor of Mrs. Strong?

1 A No, sir.

2 Q Did she ever tell you that she had
3 changed her books in favor of Mrs. Strong?

4 A No, sir, she never did.

5 Q How long was your sister blind before
6 she died approximately?

7 A Well, she was blind about four years
8 or more. I couldn't tell --

9 Q Did your sister attend the funeral of
10 her husband?

11 A No, sir.

12 Q Did you attend his funeral?

13 A Yes, sir.

14 Q Did you ever see Mrs. Strong over at
15 your sister's home before Mr. Knight died?

16 A No, sir.

17 Q Mrs. Strong ever tell you that she was
18 taking over the business affairs of your sister after
19 Mr. Knight died?

20 A No.

21 Q Were you present when Mrs. Strong took
22 possession of the bank books of your sister?

23 A No, sir.

24 Q Were you present when she took possession
25 of the strong box?

1 A No, sir.

2 Q When you visited your sister after
3 Mr. Knight died did you see Mrs. Strong there at any
4 time you visited after Mr. Knight died?

5 A Yes, I saw her there.

6 Q You did. And who else would be there on
7 the occasion after Mr. Knight died when you visited your
8 sister?

9 A Her mother, Mrs. Strong's mother.

10 Q That's Mrs. Lucas.

11 A Yes, Mrs. Lucas.

12 Q Did you visit your sister while she was
13 in the hospital in March?

14 A No.

15 Q You were sick then?

16 A Yes.

17 Q What sort of a relation did you have with
18 your sister, Mrs. Knight?

19 A Well, we was just two sisters close as
20 we could be together. My brother -- the three of us that's
21 all we had left and we were all the same as one.

22 Q Did your sister ever get angry with you
23 or mad with you before she died?

24 A No, no.

25 MR. LEGUM: All right. You may examine,

1 as far as having to be supported?

2 A No, I don't.

3 Q But you didn't need to be supported?

4 A No, I didn't need it.

5 Q All right. Now, Mrs. Dunn, was there
6 a time that Mrs. Knight took one of her bank accounts and
7 made it to herself or you? Did she give you half of a
8 bank account, one?

9 A Yes.

10 Q All right. Why did she do that, did
11 she say?

12 A No.

13 Q Complainant's Exhibit 13.

14 THE COURT: Thirteen, Knight and Dunn
15 signature card.

16
17 BY MR. SACKS:

18 Q Now, Mrs. Dunn, I have a card. I don't
19 know whether you can see that or I don't know whether
20 it's necessary really to show it to you, but do you
21 remember the time that you and Mrs. Knight changed one
22 of her bank accounts so that it was to Willow Knight
23 or Jessie Dunn; do you remember that?

24 A What bank was it?

25 Q The Bank of Virginia in 1969, November the

1 7th, 1969. Do you seem to remember that?

2 A Yes.

3 Q Well now, did you say that you don't
4 remember or did Mrs. Knight tell you why she was doing
5 that?

6 A No, she didn't.

7 Q Well, tell me what happened, I mean how
8 did it come about that she changed her bank accounts
9 putting your name on it too? How did that happen?

10 A Put in my name, she wanted it to go to
11 me or my brother.

12 Q Well, I know it's been a long time ago,
13 but do you remember doing that with her? I don't think
14 you can see it, Mrs. Dunn, are you able to see? Is that
15 your signature? Can you see that? I don't know whether
16 you can or not. If you can't, that's all right.

17 A That's my writing. That's my print.

18 Q Does that refresh your memory?

19 A Uh huh. That's my writing, Jessie H. Dunn.

20 Q Well, Mrs. Dunn, that didn't change
21 your account to you and your brother. It made it
22 Mrs. Knight or you.

23 A Uh huh.

24 Q Do you remember that?

25 A Yes.

1 Q And you don't know why she did that.
2 She didn't say, did she?

3 A No.

4 Q Now, there came a time when she changed
5 that. She took your name off of that, didn't she?

6 A I don't know nothing about that.

7 Q I can't hear you, I'm sorry.

8 A I don't know anything about her taking
9 my name.

10 Q Well, at her death was there any account
11 in your name at the Bank of Virginia or your name at
12 her death?

13 A It was at her death.

14 Q At her death?

15 A Yes.

16 Q Your name too? All right. Well now,
17 Mrs. Dunn, now excuse me. Now, you did -- you testified,
18 you said a few minutes ago, Mr. Legum asked you if
19 Mrs. Knight ever told you after her husband's death
20 that she was going to make a new will.

21 A I think he said after her husband's
22 death.

23 Q You said that Mrs. Knight told you she
24 was going to make a new will; did you say that?

25 A No, she didn't tell me she was going to

1 make a new will.

2 Q Well, didn't you tell us a few minutes
3 ago, Mrs. Dunn, that she told me she was going to make
4 a new will, that she had everything fixed up. Didn't
5 you say that?

6 A I don't remember saying it.

7 Q All right. Well, do you remember that
8 Mrs. Willow Knight after her husband's death did tell
9 you she was going to make a new will?

10 A No.

11 Q You don't remember that now?

12 A No.

13 MR. SACKS: All right. I think that's
14 all I have. Thank you.

15
16 REDIRECT EXAMINATION

17
18 BY MR. LEGUM:

19 Q I'd just like to ask you a few more
20 questions. Mrs. Dunn, where did your sister attend
21 public school?

22 A Well, I really don't know. She was
23 in school in Kingston, North Carolina.

24 Q Kingston, North Carolina?

25 A Yes.

1 Q Do you know how far she got in school
2 before she quit?

3 A About -- she probably went up to
4 high school but at that time schools aren't like now.
5 She probably got finished the high school.

6 Q You went to high school?

7 A Uh huh.

8 Q Then she quit.

9 A No, she went to work.

10 Q Okay. Now, do you know what was the
11 source of her income after she quit work? Was she
12 getting a pension -- Mrs. Knight?

13 A Yes.

14 Q Do you know where she was getting the
15 pension from?

16 A Yes.

17 Q Where?

18 A From the Seaboard.

19 Q Seaboard what?

20 A Seaboard Railroad.

21 Q She used to work for the Seaboard
22 Railroad?

23 A Yes.

24 Q What kind of work did she do for the
25 railroad?

1 A Domestic work. She worked in the
2 office part.

3 Q When you say domestic work, you mean
4 she was a maid?

5 A Yes, cleaning up floors and everything.

6 Q And did she have any real estate man
7 to take care of her property?

8 A Yes.

9 Q And who was the real estate man?

10 A Bain.

11 Q Mr. Bain?

12 A Uh huh.

13 MR. LEGUM: All right. That's all
14 I wish to ask.

15 THE COURT: All right. You may step
16 down.

17
18 -----oOo-----
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25

1 Pfenetha Harden, called as a witness on behalf
2 of the complainants, having been first duly sworn, was
3 examined and testified as follows:
4

5 DIRECT EXAMINATION
6

7 BY MR. LEGUM:

8 Q Will you state your name, please?

9 A Pfenetha Harden.

10 THE COURT: Pfenetha Hardy? How do you
11 spell --

12 THE WITNESS: Pfenetha.

13 THE COURT: Harden?

14 THE WITNESS: Yes, sir.

15 THE COURT: Pull up a little closer to
16 that mike, will you please? Let me ask you
17 this: Are you the administratrix -- how do you
18 fit into this picture?

19 THE WITNESS: I am the administrator of
20 the estate of Arthur Radoliff.

21 MR. LEGUM: Yes, your Honor.

22 THE COURT: He lived in Detroit.

23 MR. LEGUM: On the grounds that he has
24 an interest.

25 THE COURT: Is there a person from Detroit

1 qualified to --

2 MR. LEGUM: No, sir, just her for the
3 purpose of continuing the suit because the suit
4 was in his name originally.

5 THE COURT: That's the administratrix
6 and qualified --

7 MR. LEGUM: That's right and qualified
8 in this court pursuant to court order.

9
10 BY MR. LEGUM:

11 Q Now, what relation are you to Mrs. Dunn?

12 A She's my mother. I'm her daughter.

13 Q And are you her daughter by adoption?

14 A Yes, sir.

15 Q All right. And where do you live?

16 A 520 Virginia Avenue, Portsmouth.

17 Q All right. And for the purpose of the
18 record what is your age?

19 A Fifty-three.

20 Q Did you know Mrs. Willow Knight?

21 A Yes, sir.

22 Q And how long did you know her?

23 A All of my life.

24 Q All right. And did you used to visit
25 Mrs. Knight?

1 A Yes, sir.

2 Q How often?

3 A All the time when I wasn't working,
4 two and three times a week.

5 Q All right. Now, I ask you, Mrs. Harden,
6 did you visit Mrs. Knight when her husband died?

7 A Yes, sir.

8 Q And do you recall was it the same day
9 or the day after that you went to her home?

10 A Before and after.

11 Q All right. Now, when your husband died
12 and you visited her, what did you notice about Mrs. Knight's
13 condition?

14 A She's very ill and forgetful and sick,
15 grieving.

16 Q Now, you mentioned she was forgetful.
17 Well, give us an incident where she was forgetful?

18 A Because when she would talk with you at
19 the time she would -- she wouldn't remember what she
20 said if you asked her again.

21 Q And was that before Mr. Knight or after
22 or both?

23 A Well, at this time it was after.

24 Q After?

25 A Yes, sir.

1 Q All right. Now, concerning your
2 mother's relationship to Mrs. Knight, did you observe it?

3 A Observe what?

4 Q Did you observe your mother's relationship
5 to Mrs. Knight whether it was close or not?

6 A They were very close.

7 Q All right. And you heard the testimony
8 as to what your mother did for her. Do you know of your
9 own knowledge whether she did do the things that she said
10 that she did?

11 A Yes, she did.

12 Q Did Mrs. Knight ever tell you after her
13 husband's death that she had made a new will or was
14 going to make a new will?

15 A No, sir, she never did.

16 Q Did she ever tell you that she had
17 changed the bank books over to Mrs. Strong?

18 A No.

19 Q Did Mrs. Strong ever tell you that
20 Mrs. Knight had made a new will?

21 A No.

22 Q But you did see her after Mr. Knight's
23 death at Mrs. Knight's home?

24 A Yes, sir.

25 Q Did you visit Mrs. Knight in the hospital?

1 ETHELYN RADCLIFF STRONG, called as an adverse
2 witness on behalf of the complainants, having been first
3 duly sworn, was examined and testified as follows:

4
5 DIRECT EXAMINATION

6
7 BY MR. LEGUM:

8 Q Will you tell us your name, please?

9 A Ethelyn Radcliff Strong.

10 Q Where do you live?

11 A 816 Duke Street, Portsmouth, Virginia.

12 Q And what is your age?

13 A Fifty-four. I beg your pardon, fifty-six.

14 Q All right. Your father was Arthur Radcliff;
15 is that right?

16 A My father was Arlester Samuel Radcliff, Sr.
17 who later changed his name to Arthur Radcliff.

18 Q All right. And you have two brothers;
19 is that correct?

20 A Yes.

21 Q What are their names?

22 A Arthur Samuel Radcliff, Jr., and
23 Joseph Warren Cornelius Radcliff.

24 Q All right. Now, I believe you are a
25 doctor; is that right?

1 A Yes.

2 Q That is you have a Ph.D.

3 A Yes.

4 Q What degrees do you hold?

5 A I hold a Bachelor's Degree in Sociology.

6 Where did you get that from?

7 A Virginia Union. A Master's Degree in
8 Sociology from Mississippi University. A Master's Degree
9 in Social Work from Columbia University and then I
10 received a Doctorate after my husband died in Social Work
11 from Catholic University.

12 Q All right. And I believe you are a
13 professor; is that correct?

14 A Yes.

15 Q Where are you a professor?

16 A At Norfolk State College.

17 Q How long you been teaching there?

18 A Fourteen years.

19 Q And you are a professor in what field?

20 A Social Work.

21 Q And do you teach on the undergraduate
22 or graduate or both?

23 A I'll have to answer that this way: At
24 Norfolk State College, I'm head of the undergraduate
25 department of Social Work. On the graduate level, I lecture

1 at Catholic University for the Doctoral Candidates there
2 once a semester.

3 Q You lecture at Catholic University how
4 often?

5 A Once a semester in the graduate program.

6 Q You mean one day?

7 A One day.

8 Q A semester. So you have had considerable
9 experience in education; is that correct -- in the sense
10 that you have been to college a number of years as well
11 as teaching in college level?

12 A Oh, yes.

13 Q All right. Now, Mrs. Strong, do you
14 recall signing answers to interrogatories that I propounded
15 on the date of December 14th, '73?

16 A Oh, yes.

17 Q And do you recall answering interrogatory
18 3, which was directed to you and your brothers -- how
19 many times during the last five years of the decedent's
20 life, referring to Mrs. Knight did the defendants visit
21 the deceased. And your answer was Mrs. Strong visited the
22 decedent three times before January '73 and after that time
23 she visited her daily. Do you remember answering that way?

24 A Yes.

25 Q So that meant from January 19th, 1968 until

1 BY MR. LEGUM:

2 Q Did you live in the city of Portsmouth
3 during those five years?

4 A Yes.

5 Q Did you have an automobile?

6 A Yes.

7 Q How far would you have to go to drive
8 from your home to Mrs. Knight's?

9 A In my automobile about seven minutes.

10 Q Seven minutes. And you didn't have the
11 time during those five years except three times to visit
12 her. Is that what you are telling us, ma'am?

13 A I told you that I did not visit her
14 in the home. But Mr. Legum, if you remember, I told
15 you also in your office that there were times that I
16 was leaving the doctor's office or coming home from the
17 store and Mr. and Mrs. Knight would be sitting on the
18 porch and that I would drive my car up there and talk to
19 them from my car while they were on the porch. I told
20 you that in the office.

21 Q And you did not get out of your car?

22 A No, it wasn't necessary because I could
23 talk to them from the porch.

24 Q Did Mrs. Knight visit you in your home
25 during those five years?

1 A Mrs. Knight did not visit out of her
2 home, and I think you have been told in this courtroom
3 that she did not leave her home. So she did not visit
4 me.

5 Q All right. Let me explain this to you.
6 You are on cross-examination because you are an adverse
7 witness, and I'm just asking the questions. If you will
8 just answer them, it will be all right.

9 A All right.

10 Q Had you done anything for Mrs. Knight
11 during the five years before Mr. Knight died, anything
12 for her? If it is, tell us.

13 A No.

14 MR. SACKS: You say for Mr. Knight.

15 THE COURT: No, you said had she done
16 anything for Mrs. Knight during those five
17 years and you answered no.

18
19 BY MR. LEGUM:

20 Q Did you ever visit Mrs. Knight on
21 Christmas Day during those five years and give her a
22 present?

23 A No.

24 Q Did Mrs Knight give you any presents
25 during those five years?

1 A No.

2 Q You knew that she was blind during
3 those five years; didn't you?

4 A No, she was not completely blind during
5 those five years.

6 Q When did she become completely blind
7 as far as it came to your knowledge?

8 A I really don't know, but you know
9 she was not completely blind then.

10 Q Would it be fair to say that she was
11 completely blind a couple of years before she died?

12 A Yes.

13 Q When you visited her these three times,
14 did anyone accompany you?

15 A I know on one occasion I took my daughter
16 with me, one of my daughters. I think that's true.

17 Q How about your brothers? Did they
18 accompany you on any visits to Mrs. Knight's home?

19 A I know Joe would come in from Detroit
20 we would all meet there. So I can't answer your question
21 directly.

22 Q Now, you had a telephone during these
23 five years; didn't you?

24 A Yes.

25 Q And Mrs. Knight had a telephone.

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A Yes.

Q Did you ever pick up the phone and call her?

A Yes, I did.

Q How often?

A I can't tell you how often, but I picked up a telephone.

Q Give us the best estimate.

A It would be several times during the year.

Q Several times during the year?

A (Witness nodding head affirmatively.)

Q What would you talk about, if you can recall?

A Her health, how was she doing, and my children, she always asked about my children because she knew that my husband was deceased.

Q Did she ever pick up the telephone, Mrs. Knight and phone you and ask you how you were in these five years when she was not blind and could see?

A As far as I can recall, no.

Q Then it's fair to say that your relationship during these five years before Mr. Knight died was a very casual relationship with your aunt.

A No, it's not fair to say that relationship

1 Q You didn't inquire of them?

2 A No.

3 Q All right. Now, I'm going to reweiw
4 interrogatory six and ask you if you didn't answer under
5 oath as follows: Did the decedent ever request the advice
6 of any defendant in connection with any of her business
7 or financial matters? Your answer is yes. If so,
8 (a) list each defendant to whom such request was directed.
9 Your answer was Ethelyn Strong. Is that correct?

10 A Yes.

11 Q (b) state the advice requested by
12 decedent. (b) Effective January 21st, 1973, to assume
13 responsibilities for all of her business affairs including
14 funeral arrangements for decedent's husband, to receive
15 from Mrs. Dunn and Mr. Scott her three savings accounts
16 books and keep in Mrs. Strong's possession. Is that correct?

17 A Yes, sir.

18 Q (c) State the advice given. Answer:
19 Complied with her request. So you are telling us that two
20 days after Mr. Knight died and two days before he was
21 buried that Mrs. Knight told you to take care of all her
22 business affairs.

23 A Yes, sir.

24 Q All right. Now, I ask you question
25 number forty-eight, which is: State whether decedent or

1 Ethelyn R. Strong in decedent's lifetime retained
2 possession of each of the aforesaid savings books in
3 the three Portsmouth banks. Answer: Prior to January 27th,
4 '73, the decedent. After that date, Mrs. Strong. Is
5 that correct?

6 A That's right.

7 Q So you got possession of the three
8 bank books on January 28th?

9 A Around that time, yes.

10 Q Well, you said prior to January 27th, '73,
11 the decedent. That is Mrs. Knight, and then after that
12 date, which would be January 27th, you said you did.

13 A Yes.

14 Q So when Mr. Scott testified that he
15 thought it was in February, '73 when he turned the
16 savings books over to you, then he was mistaken; is that
17 right?

18 A Well, according to my recollection it
19 was around January 28th, as I said.

20 Q All right. Now, I read you interrogatory
21 fifteen: Prior to the time of decedent's death, again
22 referring to Mrs. Knight, did any of the defendants
23 know of the provisions of the will executed on February
24 14th, '73? If so, (a) list each defendant knowing the
25 identification of the beneficiaries under the will,

1 (b) state the date on which each defendant learned of
2 such beneficiaries, (c) state the name, address, telephone
3 number and relationship to defendants of each person
4 providing such information to the defendants. And your
5 answer was Mrs. Strong was advised of the identity of
6 the beneficiaries January 21st, '73, by decedent. Is
7 that correct?

8 A That's right.

9 Q Well, the will was not executed until
10 February 14th, '73.

11 A (Witness nodding head affirmatively.)

12 Q What do you mean that you were advised
13 of the identity of the beneficiary on January 21st, '73?

14 A January 21st was a Sunday. And when
15 I went into the home on Sunday, she took me into the
16 kitchen.

17 Q You mean Mrs. Knight?

18 A Mrs. Knight. She would not let me help
19 her into the room. She was very independent. She said,
20 "Ethelyn, I want to talk to you." This was two days after
21 Mr. Knight died. "And I don't want anybody in here but you
22 and me." We went into -- I followed her. We went into
23 the kitchen. She shut the kitchen door.

24 Q Was anybody there visiting her?

25 A Yes, there were visitors in the house.

1 I don't know who they were, because this was two days
2 before Mr. Knight was buried.

3 Q Was Mrs. Knight upset at that time?

4 A Well, she had been. When she took me
5 in the kitchen, she was not upset.

6 Q She was not.

7 A She was composed.

8 Q Not grief-stricken?

9 A She had been grief-stricken all along.
10 But you asked me -- your question, Mr. Legum, you asked
11 me was she upset when she went into the kitchen on that
12 day, that January 21st she told her who was going to be
13 the beneficiary under her new will which had not been
14 proposed. My answer was she was not upset when she
15 took me into the kitchen.

16 Q And she took you into the kitchen?

17 A Yes, sir.

18 Q She was able to walk all right?

19 A Yes.

20 Q And you were in what room at that time?

21 A She always sat in the back room in front
22 of the gas heater in this rocking chair. When you come
23 in the front door you always went into that second room
24 because you always knew that Aunt Sissie would be there.
25 And when I walked in and I spoke to the people whom I did

1 not know because they had come to pay their respects.
2 After a few minutes, that when she said Ethelyn, I want
3 to talk to you. And she knew how to maneuver herself
4 around the house because she had been doing it for all
5 those many years. And when I said that she took me in
6 the kitchen. I asked if she would let me help her and
7 she said no, I can walk. If you try to steer me, I'll
8 lose my balance. And so she was walking around feeling
9 and I followed behind her.

10 Q What was she feeling?

11 A Furniture.

12 Q And there were other people in the room
13 at that time?

14 A Yes.

15 Q And they heard Mrs. Knight ask you to
16 come into the kitchen?

17 A Yes.

18 Q And then she closed the door.

19 A She asked me to close the kitchen door.

20 Q And this was daytime or nighttime?

21 A It was daytime.

22 Q It was daytime. It was a Sunday.

23 A Yes.

24 Q All right. I take it you do not recall
25 the last previous time you had been in her home before

1 Mr. Knight's death?

2 A No, I can't tell you that.

3 Q And you had to identify yourself by
4 saying who you were because she was blind at that time.

5 A What time?

6 Q On January 21st, '73.

7 A She knew my voice.

8 Q You saw that she couldn't see you because
9 she was blind.

10 A That's right.

11 Q All right. Now, when you took charge
12 of these three savings account books which was around
13 the 28th of January, '73, what was the purpose? Did
14 Mrs. Knight tell you why she wanted you to take charge
15 of those books?

16 A She did not say then.

17 Q When did she say? Did it come a later
18 time when she did tell you why she wanted you to take
19 charge?

20 A It came a later time after I came back.

21 Q When was that?

22 A It was in early February.

23 Q Is that before the accounts were changed?

24 A Yes.

25 Q And what did she tell you then?

1 A What did she tell me when?

2 Q I want to know the dates before you
3 had those books changed as to what did she want you to
4 do with those books.

5 MR. SACKS: What conversation are you
6 talking about? That's what the witness wants.

7 MR. LEGUM: Let me rephrase it.

8
9 BY MR. LEGUM:

10 Q Did Mrs. Knight tell on January 28th when
11 you took possession why she wanted you to take the books?

12 A She did not tell me then on January 28th.

13 Q When did she tell you?

14 A She told me in early February.

15 Q And what did she tell you then?

16 A In early February when I came back from
17 Washington she said to me, "I want you to take those
18 books and I want to have them changed." And I said,
19 "Changed how, Aunt Sissie?" "I want them to read
20 Willow D. Knight or Ethelyn R. Strong." And I asked her
21 why and this is what she said. She said that I have a lot
22 of faith in you because you are the only person in my
23 family who has not ever asked me for a cent. You went
24 off after your husband died, took your five small children,
25 tried to educate yourself and your children, and you didn't

1 ask me for a penny. And then she began to tell me all
2 the people in the family who had asked her for money.
3 And after she got through because she was talking about
4 this and I said, "Aunt Sissie, are you sure this is what
5 you want to do?" And she said, "Yes." She said, "Because
6 I want you to have this money as a gift because I have enough
7 confidence in you to feel that during my lifetime you
8 will take care of me and pay my bills." And that's what
9 she said.

10 Q Now, isn't your story just now different
11 from what you answered under oath on paragraph forty-nine?
12 Let me read it to you.

13 A I don't know what I answered in
14 paragraph forty-nine.

15 Q Let me read it to you ma'am. You
16 mentioned that she said for you to have it as a gift; is
17 that right?

18 A Yes.

19 Q All right. You also said she mentioned
20 about you were the only one in the family never asked her
21 for anything.

22 A That's right.

23 Q And you didn't mention that at all in
24 your answer. And let me read it to you.

25 MR. SACKS: Well, read the question first.

1 MR. LEGUM: Well, I was, Mr. Sacks.

2
3 BY MR. LEGUM:

4 Q State the circumstances under which
5 the decedent changed her bank accounts from her name
6 alone to that of hers and/or Ethelyn R. Strong. And
7 this is your answer in quotes. "Decedent said she
8 wanted Ethelyn Strong to have possession of the accounts."
9 All right. Now, let me stop right there. You had
10 already had possession of the accounts, didn't you, when
11 she --

12 A If you will remember on January 28th,
13 when she told Mr. Scott to hand me the books, I had
14 them then. She told me to put them in my safety deposit
15 box.

16 Q As I understand from you there was no
17 conversation by Mrs. Knight as to why she wanted you to
18 have the books when you got it on the 28th of January?

19 A Not in front of Mr. Scott or anybody.

20 Q But did she say it to you separately
21 on January 28th?

22 A She told me to take the books and to
23 put them in my safety deposit box. And she told me
24 later on what to do with them.

25 Q All right. But she didn't tell you why

1 she wanted you to have the books when you got possession
2 on January 28th? That was early February you said.

3 A As I recall it was just a short span
4 of time. Now whether it was the 28th or early February,
5 but I said early February because that's what I can recall.

6 Q Are you telling us you are not sure
7 when this conversation took place?

8 A Yes, Mr. Legum, sometime between the
9 28th and early February.

10 Q But it was sometime between the 28th
11 and early February?

12 A Yes.

13 Q All right. Now, this is what you
14 answered. "Decedent said she wanted Ethelyn Strong to
15 have possession of the accounts. She felt that she
16 would not live to see her brother, A. S. Radcliff, alive
17 again. She wanted what she had to stay in the Radcliff
18 family and wanted to leave her property to her neice
19 and nephews. Also her sister, Mrs. Dunn, was feeble and
20 almost blind and had money and property of her own."

21 A That's right.

22 Q "She told Ethelyn that Mrs. Dunn had a
23 will leaving everything to Flossie Smith with lifetime
24 rights only."

25 A Right.

1 Q "After Mrs. Smith's death the property
2 was to go to Ethelyn."

3 A That's right.

4 Q "Mrs. Knight, that is, said that
5 Mrs. Dunn's business was handled by a friend who had a
6 key to Mrs. Dunn's safe deposit box at Merchant and
7 Farmers Bank."

8 A That's right.

9 Q "The friend knew too much about
10 Mrs. Dunn's business and Mrs. Knight's."

11 A That's right.

12 Q "Also this was why she had Mrs. Dunn
13 to get the savings books out of her safety deposit box
14 and bring them to Mrs. Knight."

15 A That's right.

16 Q "These books were kept by Mrs. Knight
17 in a hatbox in her home. Mrs. Dunn and Mr. Scott
18 retrieved them from the hatbox and gave them to Ethelyn
19 on January 27th on direction of Mrs. Knight."

20 A Right.

21 Q "Mrs. Knight had no safety deposit box.
22 On January 29th Mrs. Knight told Ethelyn she had decided
23 to change the book accounts. She made Ethelyn promise
24 not to divulge her business to anyone." Is that right?

25 A That's right.

1 Q There is no mention in there about a
2 gift, is it?

3 A What you read there isn't.

4 Q And no mention in there about you were
5 the only one in the family not asked for anything.

6 A No, I didn't put all that on there.
7 I put what I could remember.

8 Q You remember more things now?

9 A Well, because this come to my attention.
10 I had put this in the back of my mind and talking about
11 things, things will come to my attention. I can recall
12 it now.

13 Q Now, who was present and heard this
14 conversation between you and Mrs. Knight?

15 A Nobody.

16 Q Nobody. And how did she make you
17 promise not to divulge her business to anyone?

18 A Mrs. Knight said that she wanted to
19 take me in her confidence, and I am a trained social worker
20 and when a person says they want me to take what they are
21 telling me in confidence and not divulge it, I don't
22 divulge it to anybody not unless it's under oath. That's
23 my training and background.

24 Q Now, Mrs. Strong, were you the one that
25 went to the three banks and got the withdrawal slips to

1 close out the accounts?

2 A Yes, I did.

3 Q And were you the one that took the
4 withdrawal slips back to the home of Mrs. Knight and got
5 a notary public to witness her mark?

6 A To come in, yes.

7 Q And was it done on one sitting putting
8 the mark on the withdrawal slips or was that different
9 times?

10 A No, it was done on one sitting because
11 I knew I would have to go away the next week.

12 Q And the notary was the undertaker who
13 had buried Mr. Knight?

14 A Yes.

15 Q And you had engaged the undertaker; is
16 that right?

17 A Mrs. Knight asked me to call the undertaker.

18 Q Well, I'm not criticizing, but you are
19 the one that had made arrangements for this particular one
20 to bury Mr. Knight; is that right?

21 A No. When Mr. Knight died the undertaker
22 already had his body.

23 Q Already had his body?

24 A Yes, sir.

25 Q And then it was not necessary for you to

1 Q All right. Was anyone present when
2 Mrs. Knight made her mark on the three withdrawal
3 slips other than you and the notary?

4 A Not in the room there wasn't.

5 Q Well, did anyone -- did you inform
6 Mrs. Dunn or Milton Scott who lived in the home or
7 anyone else that Mrs. Knight was going to withdraw
8 the balance of the accounts, open up new accounts?

9 A That was not for me to do because
10 Mrs. Knight was living.

11 Q In other words, you didn't do it.

12 A I asked her if she wanted -- she said
13 she didn't want them to know and it was not for me to
14 tell them anything while she was alive. It was all
15 secretive as far as the members of the family were
16 concerned. Mrs. Knight didn't want them to know. If
17 she didn't tell them, it wasn't for me to tell them.

18 Q It was done between you and her and
19 nobody else -- said she wanted you to keep it a secret.

20 A She didn't use the word secret.

21 Q She made you promise that you wouldn't
22 divulge her business.

23 A Yes, sir, that's right.

24 Q Then after -- now, when she put her mark
25 on the withdrawal slips, who showed her where to put her

1 Q And you kept possession of these
2 three books thereafter.

3 A Until August when you took them away.

4 Q Well, you say I took them away. By
5 court order, didn't the Judge enter an order requiring
6 you to post an additional bond of twenty thousand dollars
7 with an insurance company?

8 A Yes, because the original bond was
9 one thousand dollars.

10 MR. SACKS: Now, Mr. Legum, these are
11 legal procedures that don't have anything to do
12 with these issues.

13 MR. LEGUM: I've finished asking the
14 question. She has answered.

15 THE COURT: All right.

16
17 BY MR. LEGUM:

18 Q Now, Mrs. Strong, did you consider that
19 you were the owner of those three books from the time
20 the accounts were changed to your name or Mrs. Knight's
21 name?

22 A Yes, sir.

23 Q You were the sole owner of them?

24 A Yes, sir.

25 Q Well, if you were the sole owner of those

1 three books, what was the reason for retaining
2 Mrs. Knight's name on the books?

3 A I don't understand what you mean.

4 Q You don't understand my question.

5 My question to you was did you consider yourself the
6 owner of these three accounts after the accounts were
7 changed in the name of you or Mrs. Knight?

8 A Oh, I misunderstood you, Mr. Legum.
9 I'm sorry. No, I was the joint owner of the accounts
10 because the accounts were read Mrs. W. D. Knight or
11 Ethelyn R. Strong.

12 Q All right. And you consider by joint
13 owner you were half owner. Is that what you consider
14 yourself?

15 A My understanding of joint owner is that
16 a person has money in collaboration with another person
17 and has the right to withdraw funds, yes.

18 Q All right. You could have withdrawn
19 the entire balance immediately after the accounts were
20 opened in your name.

21 A I sure could have. The bank told me that.

22 Q Now, in order for Mrs. Knight to have
23 withdrawn any money somebody would have had to hand her
24 a withdrawal slip and she would have had to make her
25 mark in front of a notary, wouldn't she?

1 A That's right.

2 Q And the only person who could have
3 done that would have been you.

4 A That's right.

5 Q Because no one else knew about it.

6 A That's right.

7 Q Now, it was not necessary for in
8 your handling Mrs. Knight's business to have the account
9 changed, was it -- the three bank books?

10 A I don't know what you mean.

11 Q Well, you said that Mrs. Knight told
12 you on January 21st, '73, she wanted you to handle all
13 of her business affairs.

14 A Yes.

15 Q All right. It was not necessary in
16 order to handle Mrs. Knight's business affairs for you
17 to have the bank books put in your name as well as
18 Mrs. Knight's, was it?

19 A It wasn't necessary, no.

20 Q All right. You could have gotten a
21 withdrawal slip and had her sign her mark before a
22 notary and left the account as it was if you needed to
23 withdraw money for her support; isn't that right?

24 A Yes.

25 Q Now, other than making funeral

1 Q You were there that whole week?

2 A Yes, it was a conference.

3 Q And did you delegate your financial
4 responsibility to Mrs. Knight to anyone while you were
5 gone?

6 A It wasn't necessary.

7 Q Now, Mrs. Strong, was Mrs. Knight physically
8 able to transact her business affairs on January 21st, '73,
9 when she requested you to take care of her affairs?

10 A When you say physically?

11 Q Physically other than mental.
12 I'm talking about her physical condition, blindness,
13 being feeble, her arthritic conditions, difficulty in
14 walking.

15 A She had difficulty in walking and moving
16 around.

17 Q My question is from your observation
18 of her, was she physically able to transact her business
19 affairs on January 21st, '73?

20 A No.

21 Q She was not?

22 A No.

23 Q And was she physically able to transact
24 her business affairs at any time, January 21st, '73, up
25 until the time she died?

1 he came there.

2 Q Did she talk on the telephone at all
3 from the time Mr. Knight died until she signed this will?

4 A No, she didn't as far as I know. I
5 wasn't there every minute in the daytime.

6 Q I understand.

7 A So when I was there she didn't do any
8 talking. She could have because she always sat in the
9 chair, and we could bring the phone in to her. But she
10 always said she didn't feel like talking. Now, what
11 she did when I wasn't there, I don't know.

12 Q Of course, you wouldn't know that.
13 Now, one last question, Mrs. Strong. I previously read
14 to you about whether you had visited her within five
15 years before Mr. Knight's death. Had you, and also
16 asked you whether you had done anything for her in that
17 period of time. Had you at anytime in your lifetime before
18 Mr. Knight's death ever transacted any business affairs
19 for Mrs. Knight?

20 A It wasn't necessary because she could
21 do for herself.

22 MR. LEGUM: All right. That's all I wish
23 to ask, your Honor.

24 THE COURT: All right, sir. You don't
25 have any questions at this time, do you?

1 reporter retired into chambers, which segment
2 is deleted from the transcript.)

3 (The court, counsel for both sides and
4 the reporter returned into the courtroom where
5 the following occurred at 2:15 p.m.)

6 THE COURT: All right, Mr. Sacks.

7 MR. SACKS: Your Honor, I would like to
8 call Mr. John Hall, please.

9
10 -----oOo-----

11
12 JOHN B. HALL, called as a witness in rebuttal
13 on behalf of the defendant, having been first duly sworn,
14 was examined and testified as follows:

15
16 DIRECT EXAMINATION

17
18 BY MR. SACKS:

19 Q Would you tell us your name, please, sir?

20 A John B. Hall.

21 Q Mr. Hall, what is your occupation?

22 A Construction work, rugged construction
23 work.

24 Q And are you employed or do you operate
25 a company?

1 A At this time I worked at City Roofing
2 Construction Company.

3 Q Now, then in March of 1973, were you
4 working at City Roofing Company?

5 A Yes, sir.

6 Q Where was that located?

7 A 206 25th Street, Norfolk.

8 Q And what actually was the kind of work
9 you did for City Roofing?

10 A I wrote contracts to repair houses,
11 additions to houses.

12 Q How long have you been in that kind of
13 work?

14 A Sixteen years, seventeen years.

15 Q And did you have occasion, Mr. Hall, to
16 know a lady, Mrs. Willow D. Knight?

17 A Yes, sir.

18 Q How did you come to know her?

19 A We did some work for Mrs. Strong on her
20 house, built a garage and so and so and so forth. That
21 work had been finished up. This is before, and she called
22 me to talk to her aunt.

23 Q All right.

24 A On County Street. And I talked to her.

25 Q Talked to who?

1 A To Mrs. Knight.
2 Q Where did you talk to her?
3 A On County Street at her home.
4 Q Here in Portsmouth?
5 A Yes, sir.
6 Q You came over here for that purpose?
7 A Yes, sir.
8 Q Was that the first time you had ever seen
9 Mrs. Knight?
10 A Well, I had seen her before, but I didn't
11 know her particularly.
12 Q That is the first time you had ever
13 conversed with her.
14 A Yes.
15 Q Can you give us any idea of the time we
16 are talking about that you are talking about came over
17 here and first talked to her?
18 A Well, it was on three separate occasions.
19 Q All right, sir.
20 A One was the 5th or 6th of February, 1973.
21 Q All right.
22 A One was about the middle of the month
23 or maybe the 16th of February.
24 Q All right.
25 A And the other one was around the 5th of

1 March, I believe it was.

2 Q Of 1973?

3 A 1973.

4 Q All right, sir. Now, without going into
5 every detail, what was the nature of the subject matter
6 of the conversation between you and Mrs. Knight?

7 A She wanted to fix up some of her houses,
8 some of her property.

9 Q Now, what property was she talking about?

10 A Primarily 1114 County Street. That's
11 in Portsmouth.

12 Q Did she talk of any other property that
13 she owned?

14 A Yes, she did. She talked of a brick
15 house. I'm not sure of the location of it, maybe on
16 Nelson or near Nelson Street.

17 Q All right, sir.

18 A And another, the house that she lived in.

19 Q Sir?

20 A And one other one but I can't place it
21 at this time.

22 Q All right, sir. Now, were you talking
23 with her or were you getting your information from
24 somebody else for her?

25 A I was talking with Mrs. Knight.

1 Q All right. Now, was she able to discuss
2 her property and know where it was and what it was?

3 A Yes, sir.

4 Q And did she and you discuss repairs
5 and whether any were necessary and things of that sort?

6 A Yes, sir.

7 Q Did you all discuss price?

8 A Yes, sir.

9 Q All right, sir. Now, I've shown
10 Mr. Legum this paper. I show you a paper and ask you
11 can you identify that for me, please?

12 A Yes, sir. This is the contract we wrote
13 on the house. This is the one at 1114 County Street.

14 Q All right, sir. Is that the City
15 Roofing Company contract printed form you have?

16 A Right, and I signed the contract.

17 Q Whose writing is filling it out?

18 A That's mine.

19 Q All through the contract?

20 A All through the contract.

21 Q What's the date of the contract?

22 A 5th of March, '73.

23 Q And is that or not the third time you
24 indicated you had met with her?

25 A This is the third time, the last time.

J. B. Hall - Direct (Reb.)

1 Q All right. Based on your experience
2 and what you had done with contracts, had or not the
3 first two times and the third time you met with her
4 sort of been negotiations, that is culminated in that
5 contract?

6 A Yes, sir.

7 MR. SACKS: Your Honor, I would like to
8 introduce this if I may.

9 THE COURT: All right, sir.

10 The contract of March 5th, 1973, is
11 received and admitted in evidence an identified
12 as Defendant's Exhibit Number 6.

13 (So marked by the court.)

14
15 BY MR. SACKS:

16 Q Mr. Hall, was Doctor Strong, the lady
17 here, was she ever with you during the times you were
18 talking with Mrs. Knight?

19 A Not until the last time.

20 Q The March '73 time?

21 A March 5th, right.

22 Q Then the two previous times, did you
23 and Mrs. Knight discuss it between yourselves alone?

24 A Generally, and this house too.

25 Q All right. But what I mean was it just

J. B. Hall - Direct (Reb.)

1 you and Mrs. Knight?

2 A Well, primarily. Now there's a Mr. Scott
3 that answered the door.

4 Q Was he there?

5 A But I don't believe he was in the room
6 or at least most of the time he wasn't.

7 Q But was he in the house?

8 A Yes.

9 Q But did Mrs. Strong have anything to do?
10 Was she even present on the first two occasions?

11 A Well, I looked for her. I thought
12 she was, but she wasn't there up until -- she was a little
13 late the time we signed the contracts. She had some other
14 business that held her up some.

15 Q Now, Mr. Hall, did the time come when
16 Mrs. Knight indicated that she wanted you to do the work?

17 A Yes. In fact, the second time pretty
18 much. The second time I saw her.

19 Q All right. But the time eventually came
20 at any rate that she signed the contract.

21 A Yes, on this date, March 5th.

22 Q All right, sir. How did she sign it?
23 How did she affix her signature to it?

24 A She said that Mrs. Knight was kind of
25 taking care of her business for her, and I had to touch the

J. B. Hall - Direct (Reb.)

1 pen and all.

2 Q Well, you said Mrs. Knight was taking
3 care of her business. Mrs. Knight said that what?

4 A Mrs. Strong was taking care of her
5 business.

6 Q And so what happened?

7 A So she bargained a little and took a
8 little off the price.

9 Q Who bargained?

10 A Mrs. Knight.

11 Q All right. And did you reduce the
12 price a little bit?

13 A Yes, but I had to reduce it a little
14 more when Mrs. Strong went over it. It was changed
15 a little bit, you know.

16 Q All right.

17 A But that's how it got to be twenty-three.
18 It was originally was I quoted about twenty-five something,
19 I think.

20 Q Twenty-five hundred?

21 A Yes, sir.

22 Q All right. Now, did Mrs. Knight sign
23 the contract?

24 A She put her hand on the pen. She said
25 that Mrs. Strong would sign it for her. It was the same

J. B. Hall - Direct (Reb.)

1 as her signing it, you see, and I said, "Well, it's your
 2 property," which I generally ask people when I take their
 3 signature. She said, "Yes, it was." And she seemed to
 4 want to talk about some other work, but Mrs. Strong said
 5 one thing at a time or we will take care of this or get
 6 it out of the way first since the city had written a
 7 letter with certain requirements on there bringing it
 8 up to code.

9 Q As to the property that you did repair?

10 A Right.

11 Q Did Mrs. Knight seem to be aware of the
 12 fact that the city had requested repairs?

13 A Well, you see, this is her second letter.
 14 She and her husband had gotten a letter on that.

15 Q Did she understand that?

16 A Oh, yes.

17 Q Did she discuss that with you?

18 A She knew what was on there to be done
 19 or what was to be done.

20 Q Did you all discuss repairs in detail?

21 A Yes, sir.

22 Q Who else signed the contract besides
 23 Mrs. Knight's "X"? Who signed the written paper?

24 A Mrs. Strong, Mrs. Ethelyn R. Strong
 25 and Mrs. Willow D. Knight.

J. B. Hall - Direct (Reb.)

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Q And who else signed it?

A I signed it on the other side.

Q For the City Roofing Construction?

A City Roofing and Construction Company.

Q Now, Mr. Hall, during the times that you met with this lady, Mrs. Knight --

A Yes, sir.

Q We are interested in knowing what you saw yourself, what you observed first hand of the lady's mental capacity or ability to understand and comprehend and converse. What can you tell us?

A She wasn't hampered in any way as far as conversing or talking to the business, but she was blind.

Q All right. Now, how about mentally? Was she clear or was she confused or what?

A Well, no, she was pretty sharp.

Q And did she seem to understand you and everything you and she discussed?

A Oh, yes, yes, sir.

Q Did you actually go ahead and make the repairs?

A Yes, sir.

Q They were complete on her property?

A Yes, sir.

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MAGGIE H. CORPREW, called as a witness in rebuttal on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION (Reb.)

BY MR. SACKS:

Q Would you state your name, please?

A Maggie -- Mrs. Maggie H. Corprew.

Q And what's your occupation?

A Funeral directress.

Q What's the name of the funeral home?

A Corprew Funeral Home.

Q How long have you been in business?

A Oh, approximately thirty years.

Q Are you licensed and have you been over that period of time for that occupation?

A Yes, by the State of Virginia, yes, I am.

Q Mrs. Corprew, did you know Willow D. Knight personally?

A Yes, I think I did.

Q Now, did you happen to know her before you were called upon to arrange a funeral for her husband?

A Well, I knew she was the sister of Mrs. Dunn.

1 Q And do you know Mrs. Dunn?

2 A Yes, I do, very personally.

3 Q How long have you known Mrs. Dunn?

4 A Ah, let me see.

5 Q Just roughly.

6 A I know it's been over ten years.

7 Q All right. And did you know then who
8 Mrs. Willow Knight was even living in Portsmouth even
9 before you were called upon for funeral services?

10 A Yes, because in getting around I know
11 most people and a lot of people.

12 Q Now, did you -- were you called on for
13 funeral services for Mr. Knight when he died?

14 A Yes, I was.

15 Q Do you remember -- now, I know you do
16 a lot of them, but do you remember approximately when
17 that was?

18 A Let me see when he died.

19 Q If you know. I don't know that it's
20 important.

21 A Let me see. I think it was 1973 if
22 I've not made a mistake.

23 Q Well, now, whenever it is did you go
24 personally to the home or did you transact it by telephone
25 or what?

1 A No, I was called to the house.

2 Q And where did you go?

3 A I went to Mrs. Willow D. Knight's home.

4 Q All right. Now, did you talk with

5 Mrs. Knight?

6 A Yes, I did.

7 Q And was your only purpose in being there
8 to see about the funeral for Mr. Knight who just passed
9 away?

10 A That was my only purpose.

11 Q And with whom did you talk first about it?

12 A Well, when I went in Mrs. Knight knew
13 me and then she told me -- She said, "Now, Maggie,"
14 She called me Maggie -- "Now, you know what I want. I
15 want a nice funeral, and you go ahead and arrange it."
16 I said, "No, Mrs. Knight, you have a family and you let
17 your family come in and make the arrangements and I'll
18 work with them."

19 Q All right. Now, were you carrying on
20 that conversation with Mrs. Knight?

21 A Yes.

22 Q Was anybody else there that you remember?

23 A I think Mr. Scott was there, and I don't
24 know her last name, but we called her Christian.

25 Q As a woman who has been in business all

1 these years and still is, what did you observe about
2 Mrs. Knight's ability to talk to you and understand
3 what you were saying?

4 A Well, to me she was all right because
5 she told me what I told and I wouldn't accept what she
6 told me. She told me to go ahead and take charge.

7 Q All right. Did what she say make sense?

8 A Oh, yes.

9 Q Did she seem to be having any difficulty
10 understanding you?

11 A No.

12 Q Was she confused in her mind? Was
13 she talking about things that had nothing to do with this?

14 A No. She didn't talk about anything like
15 that.

16 Q Was there any question in your mind
17 that this lady knew what she was doing?

18 A I felt that she knew what she was doing.

19 Q Now, after that did you actually provide
20 the funeral for Mr. Knight?

21 A Yes, I did.

22 Q Who made the arrangements with you?

23 A Doctor Strong, Doctor Strong's brother
24 and Mr. Scott came in my office.

25 Q And was Mr. Scott -- is that the man who

1 was rooming at the house?

2 A Yes.

3 Q Did he come in with Doctor Strong when
4 the arrangements were being made?

5 A Yes.

6 Q All right. Now, did you have occasion
7 to see Mrs. Willow Knight at any time after her husband's
8 funeral?

9 A Yes.

10 Q And what was that occasion?

11 A I was called -- Doctor Strong called
12 me and said her aunt wanted to transact some business
13 with me.

14 Q All right. Now, can you place that in
15 time roughly how long after the funeral, if you know?

16 A Well, now, I can't say the date, but
17 I think it must have been sometime in February. I'm not
18 sure now. I wouldn't say for sure.

19 Q But it seems to you around that time?

20 A Yes.

21 Q What did you do when you got the call?
22 Where did you go?

23 A I went to Mrs. Knight's home.

24 Q Who was there when you got there?

25 A Doctor Strong.

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Q And Mrs. Knight?

A Yes.

Q And now what were you told and what happened? Tell me, please.

A When I got there Mrs. Knight told me that she wanted me to witness her signature.

Q All right.

A And so I said all right.

Q So --

A So when they had the cards --

Q All right.

A So I said you will have to make your mark and then I will witness your signature.

Q All right. And did she make her mark?

A Doctor Strong showed her where the line was, and she made the mark and I witnesses the signature. And then I left.

Q Now, were you doing that in your capacity as a funeral directress or what?

A I was doing it in my capacity as a funeral directress.

Q Are you a notary?

A Yes, I am.

Q How long have you been a notary public?

A For about twenty-five years.

1 Q You have had a commission for about
2 twenty-five years?

3 A That's right.

4 Q As a notary public do you observe when
5 you notarize their signature whether or not they are doing
6 it willingly?

7 A Oh, yes.

8 Q Now, was there anything unusual about
9 Mrs. Knight's signing at that time? Did she appear to
10 be unwilling to do it?

11 A No, because I said what you are signing.
12 You are signing your bank cards, and she said, "I know
13 what I'm signing." And this was it.

14 Q And did she sign more than one, as you
15 remember?

16 A What do you mean, on one card?

17 Q Was it just one card, if you remember?

18 A I'm going to tell you the truth. I
19 don't remember, but I know she signed for more than one
20 bank.

21 Q For more than one bank?

22 A Yes.

23 Q Now, I show you Complainant's Exhibit
24 16, which is a photostat. Does your signature appear
25 on there?

1 A Yes, Maggie H. Corprew.

2 Q And did you put on there as a notary,
3 my commission expires -- is that on there?

4 A May not be. No, I don't think it's
5 on here.

6 Q Excuse me, it's hard to read.
7 All right. Is your signature there as a notary?

8 A Yes, Maggie H. Corprew.

9 Q And you recognize that writing?

10 A I recognize my signature.

11 Q Is that one of the cards that
12 Mrs. Willow Knight signed with an "X" that day?

13 A Yes.

14 Q Well, I show you Complainant's Exhibit
15 Number 3. Does your name appear on that as a notary?

16 A Yes, yes, uh huh.

17 Q And did you put on there my commission
18 expires?

19 A 10-19-75.

20 Q Is that when your commission expires?
21 October 19, 1975?

22 A That's right.

23 Q You wrote it down there?

24 A Yes.

25 Q Well the, Mrs. Corprew, in essence what

1 I'm asking you, based on your experience in the business
2 world and as a notary, did you observe -- did you observe
3 anything unusual about Mrs. Knight's ability to understand
4 and transact the affairs or the business that she wanted
5 to transact?

6 A It was nothing unusual.

7 Q Did she seem in all respects to you to
8 know what she was doing and to be doing what she wanted
9 to do?

10 A She seemed to be doing just what she
11 wanted to to.

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1 A Yes, on the 20th of February.

2 Q Now, are you referring, Doctor --
3 you have put your glasses on. I see that for the record
4 you are referring to records of yours.

5 A This is a copy of a record, yes.

6 Q Taken from your records kept in your
7 office?

8 A Yes.

9 Q And in the ordinary course of your
10 profession.

11 A Yes, sir. House call, not in the office
12 visit.

13 Q All right, sir, but you saw her on
14 February what?

15 A 20th.

16 Q Now, when you saw her on February 20th,
17 before we talk about that visit, had you known that lady
18 before that time?

19 A No, I had not.

20 Q All right. Now, did you go to her home?

21 A I did.

22 Q What did you see and what was her complaint?

23 A She was complaining of swelling ankles
24 and pain in the muscles of the thigh.

25 Q All right, sir. And did you -- were you

1 able to give her any treatment?

2 A Yes, I did.

3 Q Now, was it necessary in your medical
4 judgment at that time to hospitalize her?

5 A No.

6 Q All right, sir. Now, did you have occasion
7 to see her professionally anytime after that?

8 A Yes, I did.

9 Q What was the next time?

10 A March 5th, 1973.

11 Q And what -- where did you see her?

12 A At home.

13 Q And what was her complaint at that
14 time?

15 A At that time she had pain in her knees.
16 I was told that before I went there that I thought she
17 said she fell on the step, but she did not fall. She
18 caught herself on the steps. The step goes down, L-shaped
19 steps and she came down the steps. I understood she
20 caught herself on the facing coming down the first set
21 of steps.

22 Q All right, sir. You understand that.

23 A I do.

24 Q Had it apparently affected her knee?

25 A Apparently. She either hurt her knee then

1 or before then.

2 Q All right, sir. At that time --
3 and what was the date of that, please, sir?

4 A It was the 5th of March, '73.

5 Q Then on March 5th of 1973, did you
6 physically, medically say she needed to be hospitalized?

7 A No, I don't think she needed to be
8 hospitalized.

9 Q Did you have occasion to professionally
10 see this lady on a third time?

11 A I did on the 9th of March.

12 Q And what was her condition when you saw
13 her on the 9th of March?

14 A On the 9th of March, I advised that
15 I thought it would be better for her to go to the
16 hospital. She had been bleeding from one of her
17 arteries.

18 Q So it was a change then, was it not,
19 in her condition physically between the 5th of March
20 and the 9th?

21 A That's right.

22 Q When you saw her on the 9th was that
23 also in her home?

24 A Yes. All visits were at home.

25 Q Was she then do you know hospitalized

1 after that?

2 A She was hospitalized later. I don't
3 know exactly when because I didn't --

4 Q You didn't treat her for the causes
5 for which she was hospitalized.

6 A No.

7 Q Now, Doctor, I'm going back for the
8 moment as a physician treating your patient on March 20th --
9 February 20th, 1973, and on March 5th and March 9th,
10 do you feel that you had an opportunity to, Doctor,
11 to observe Willow Knight as far as her mental capacity
12 is and mental condition was concerned?

13 A She seemed to be alert. She was as
14 far as her mental condition was concerned.

15 Q Did you as a practicing physician see
16 anything to indicate to you or on any one of those
17 three occasions that the lady was confused mentally or
18 didn't know what she was doing?

19 A No, I didn't.

20 Q Doctor, you had never seen her before,
21 had you?

22 A That was the only time that I saw her,
23 those three visits.

24 MR. SACKS: I thank you, if you will
25 answer Mr. Legum, please.

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CROSS-EXAMINATION (Reb.)

BY MR. LEGUM:

Q Did you give her a complete physical examination on any of these visits?

A Well, a complete physical examination is something that can't be done in a home.

Q Well, let me ask you this: Did you examine the lady on February 20th in any region of her body other than her ankle or thigh?

A No, except I checked her heart, blood pressure, temperature.

Q How about March 5th, '73? Did you examine her other than in her knees?

A Yes, I examined her any way because I thought at first -- what I understood at first was that she had fallen on the step and that she might have broken her hip but I examined it and couldn't find any evidence of a fracture.

Q Could you from your examination determine whether she was or, was not suffering from hardening of the arteries?

A Well, to be -- I think it would be safe to say the woman, eighty-four years old, would have hardening

1 of the arteries. But hardening of the arteries is not
2 necessarily hardening of the arteries of the brain.
3 You may have arteriosclerosis in the brain.

4 Q I understand, but did you make an
5 examination of her? Did you determine she did have
6 arteriosclerosis and where it was?

7 A No.

8 Q You didn't do that, did you?

9 A No.

10 Q Because the only thing that was given
11 you that it was in her ankle and thigh except to the
12 last visit, isn't that right?

13 A That's right.

14 Q And from your examination of her and
15 observation of her, would you say she had a condition
16 of senility?

17 A Well, she's eighty-four years old.
18 She's bound to be senile.

19 Q Bound to be senile. All right, sir.

20 MR. LEGUM: I believe that's all I
21 wish to ask.

22 MR. SACKS: That's all I have of the
23 Doctor.

24 THE COURT: Thank you, Doctor. You
25 excused now.

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MR. SACKS: Call Mary Deans.

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MARY B. DEANS, called as a witness in rebuttal on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION (Reb.)

BY MR. SACKS:

Q Would you tell us your name, please?

A My name is Mary B. Deans.

Q What is your occupation?

A I'm a LPN nurse.

Q And do you have anything to do with a nursing home?

A Yes, I do, the nursing home on 2607 Chestnut Street.

Q What do you do at that nursing home?

A Well, I do most everything, nursing care and everything.

Q And, all right, did you have Mrs. Willow Knight in your nursing home in the year 1973?

A Yes, I did.

1 Q Did you know her before that time?

2 A No, not personally.

3 Q When did she come into your home and
4 how long was she there?

5 A She stayed in my home the 1st of March
6 approximately until the 10th of April.

7 Q And did you see her everyday that she was
8 there?

9 A Yes, I did, around the clock.

10 Q Did you have occasion to talk with her
11 and converse with her?

12 A Yes, I did.

13 Q Mrs. Deans, based on what you saw and your
14 conversations with her, what can you tell us about
15 Mrs. Willow Knight's mental capacity and whether or not
16 she had a sound mind at that time?

17 A Mrs. Knight had a very sound mind.
18 She wasn't mentally at all. She was of herself.

19 Q She was of herself?

20 A She was of herself. She really -- she
21 talked about different things, like when we carried her
22 food she said I don't want that, I want soul food. She
23 would never -- she was of herself.

1 A Yes.

2 Q Did Mrs. Knight ever express herself
3 to you in one way or the other about the attainment you
4 had made?

5 A Yes, she did.

6 Q What did Mrs. Willow Knight ever tell you?

7 A Mrs. Willow Knight said she was
8 very proud of me for trying to further my education and
9 to take care of five children without the benefit of
10 help from anybody, including herself.

11 Q Now, Mrs. Strong, Doctor Strong, to try
12 and not repeat any more than we have to, you heard your
13 brother, Joseph's, description -- the gentleman from
14 Detroit, as to his youth and your youth and your
15 relationship with Willow Knight. Did you hear him
16 testify?

17 A Yes, I did.

18 Q Would your testimony be the same as
19 to your childhood relationship with your aunt?

20 A It would be the same.

21 Q Was there in those days when you had
22 the time, did you visit with your aunt and see her
23 frequently?

24 A Regularly.

25 Q Was there affection between you and your

1 aunt?

2 A Yes, there was.

3 Q Did anything occur over the years even
4 though the time came when you couldn't see her that
5 much to destroy that affection?

6 A No indeed.

7 Q Had you and your aunt ever fallen out
8 over anything in any way?

9 A No indeed.

10 Q Now, the will of February 14th, 1973,
11 which is Defendant's Exhibit Number 1 -- and incidently
12 when Mr. McMurrin and his secretary were there, did
13 you stay in the room when that will was being read and
14 explained to her and witnessed?

15 A No. Mr. McMurrin told me I couldn't
16 stay in there.

17 Q All right. The will speaks for itself,
18 of course, but it names several beneficiaries. Now,
19 who are the two people in the will that are named to
20 receive I think a thousand a piece?

21 A You want me to read it?

22 Q Yes, don't read all the language.
23 Just look in it.

24 A Mrs. Flossie Smith of New York.

25 Q Now, did your aunt leave her in her

1 February 14th will a thousand dollars? Who is Mrs. Smith,
2 a relative?

3 A No, she's not.

4 Q Well, who is Mrs. Smith that your aunt
5 should have singled her out to leave her some money?

6 A Mrs. Smith is a close friend of the
7 family. I don't know about any background, but I have
8 known her most of my life.

9 Q What was the relationship of closeness
10 or not between Flossie Smith and your aunt, Willow Knight?

11 A My aunt felt she knew her. She liked
12 her and she felt like she wanted her to have some money.

13 Q Over the years as you look back was there
14 a relationship or justification to support Willow Knight's
15 wanting to leave that lady some money?

16 A Yes. Flossie, when she would come home,
17 would visit regularly my Aunt Sissie and my Aunt Jessie Dunn.

18 Q Now, who is the other person that your
19 Aunt singled out for a thousand dollars?

20 A My great nephew, Billy Radcliff.

21 Q Where does he live?

22 A He lives in Portsmouth.

23 Q Can you think of anything in the family
24 relationship with Mrs. Willow Knight that would support
25 her wanting to leave some money to him?

1 A Yes.

2 Q What was the situation?

3 A Billy is the son of the oldest nephew

4 who's now dead, Odel Radcliff, a former postman here.

5 And he's the only child that's left from Odel's marriage,

6 and she loved Odel dearly.

7 Q Willow Knight?

8 A Yes.

9 Q Did the family know that?

10 A Yes, they know it.

11 Q And does that then -- there was that

12 relationship during her life between Willow Knight and

13 Odel and his family.

14 A Yes.

15 Q And the other beneficiaries then in

16 the will of February 14th are you and your two brothers.

17 A Right.

18 Q All right. Now, Mrs. Strong, I have

19 in my notes that Mr. Legum asked you about your aunt

20 and the occasions she wanted you to go into the kitchen.

21 And he asked you whether she closed the door, whether

22 you closed it. Do you remember -- but when he got

23 in the kitchen he didn't ask you what she told you.

24 Would you tell us what that was and what did your aunt

25 tell you when she asked you to go in the kitchen.

1 A Sunday, January 21st, when I walked
2 into the home as I told Mr. Legum and these people were
3 there. Mrs. Knight, my aunt, said she had something
4 she wanted to talk to me about. And she asked me to
5 go into the kitchen. When I got into the kitchen with
6 her and shut the door, she sat down and she said, "I
7 want to make a will." She didn't say change. She
8 said, "I want to make a will leaving everything to you,
9 Fat Man" -- that's Arlester's nickname -- "Joseph Radcliff.
10 I want my real estate, you know, to go to the three of
11 you because I want everything that I have to be given
12 to the Radcliff's." That is what she said and she
13 mentioned she wanted a thousand dollars to Flossie Smith
14 and a thousand to Billy Radcliff. I asked her why.
15 Do you want me to --

16 Q Yes, just tell us the conversation.

17 A I said, "Aunt Sissie, why are you doing
18 this?" And she said again, "I want everything that I have
19 to go to the Radcliff family." And well that was on
20 that day. Later on as we began to talk about it because
21 I kept saying to her on that day are you going to tell
22 Aunt Jessie -- and Aunt Jessie's nickname is Sug -- and
23 she said, she said, "I don't want Sug to know a thing."
24 And I said, "Well, you know Aunt Jessie ought to know it.
25 You know how she is and I feel you should tell her." And

1 that's when she told me, "I'm taking you in my confidence.
2 I don't want her or anybody to know."

3 Q All right. Now, did this come from
4 your aunt herself?

5 A It came from Mrs. Knight.

6 Q Is she the one that initiated that?

7 A She's the one that initiated it.

8 Q Did you ever try to persuade her to
9 do that?

10 A I didn't know what she had, no.

11 Q Did you ever make any effort to try
12 to get her to do anything?

13 A I did not.

14 Q While I'm on that, I'll ask you --
15 you have known her all your life.

16 A I spent part of the time with her when
17 I was a child.

18 Q Did at anytime and up until the recent
19 time before her death, what did you observe about her
20 mental capacity and her soundness of mind?

21 A I felt that she had more sense than all
22 of us and I said that to her because she would go back
23 and talk about things in the past. She told me alot of
24 things about the family that I knew nothing about. She
25 was --

1 Q All right.

2 A She would go into it. Seems that she
3 wanted to go back because she kept saying that I don't
4 feel that I'm going to be here long because I miss
5 Knight and Knight told me that I wasn't going to last
6 long. Knight told Scott that he wasn't going to be
7 here long, and I feel that I'm not going to last long
8 and I want to get some things changed before it's too
9 late. And I would talk to her and then she would go
10 and talk about how Mr. Knight got to raving and different
11 things that have already been said which made me know
12 she knew what she was talking about.

13 Q You are a party to this suit, but you
14 are here under oath and I'm asking you, did you ever
15 see your aunt do anything or say anything such as this
16 of these folks, say that she saw angels or anything of
17 that sort?

18 A I didn't, Mr. Sacks.

19 Q Did you ever see her say anything or
20 do anything to indicate that she wasn't perfectly sound
21 in her mind?

22 A No, I didn't.

23 Q Did any of these people who are so
24 close to her, who have testified in this case, they
25 heard some things. Did she ever call a doctor and say

1 she's talking out of her head?

2 A Not while I was there.

3 Q Was any complaint ever made in your
4 lifetime by anybody in your lifetime to a doctor that
5 she wasn't mentally capable?

6 A As far as I know, no.

7 Q The first time you ever heard this --

8 A After the contest of the will.

9 Q All right. Now, I'm going to ask you
10 this because in this suit they charged that you, not
11 your brothers, but that you were guilty of acts of
12 unlawful undue influence, meaning that you took that
13 woman's will away by coercion. Now, did you do that?

14 A No, sir.

15 Q The will that apparently Mr. McMurrin
16 prepared, did you have anything to do with what she told
17 him or what she wanted?

18 A No.

19 Q Did you relay the message to him?

20 A Yes.

21 Q Did that come from her?

22 A It came from Mrs. Knight.

23 Q Was that her mind and her will?

24 A It was her mind because I don't know
25 what she had.

1 Q Did you fully tell Mr. McMurrin what
2 she had told you she wanted?

3 A I told Mr. McMurrin what she told me to
4 write down on the piece of paper and carry to him.

5 Q If there was anything in the world
6 that you hadn't told him right was there anything to stop
7 her from telling him when the will was read to her that's
8 not what she wanted?

9 A There was nothing as far as I know.

10 Q Now, about the bank books. Whose
11 mind thought of that as between you and Mrs. Willow Knight
12 about your possession of the bank books?

13 A It was Mrs. Knight.

14 Q All right. And who was present when
15 she brought that subject up?

16 A When she told somebody to go get the
17 bank books, Mrs. Dunn was there, Mrs. Lucas was there and
18 Mr. Scott was there. I didn't know she had any money.

19 Q Now, who went upstairs looking for the
20 bank books?

21 A Mrs. Dunn and I went upstairs because
22 she had keys to everything. I got my pocketbook. She
23 told Sug to take Ethelyn upstairs, unlock the door.

24 Q Just tell me this. Did Mrs. Dunn go
25 upstairs with you?

1 A Mrs. Dunn went upstairs with me.
2 Q Looking for the bank books?
3 A Looking for bank books.
4 Q Was she right in there when Mrs. Knight
5 said go get the bank books?
6 A She was in there.
7 Q Did you hear -- was Mr. Scott present?
8 A Mr. Scott was there.
9 Q Did you hear Mrs. Dunn testify that she
10 never heard anything about you getting the bank books?
11 A I heard Mrs. Dunn say that.
12 Q Who found the bank books?
13 A Mr. Scott found the bank books because
14 Mrs. Dunn couldn't find them.
15 Q Who did Mr. Scott turn them over to?
16 A Mr. Scott came downstairs. He found
17 them in a hat box and said that Mrs. Knight here are your
18 bank books, what do you want me to do with them.
19 Mrs. Knight was sitting in that same chair and she said,
20 "Give them to Ethelyn." And Mrs. Dunn was standing right
21 there.
22 Q And, all right. Now, did you do with
23 the bank books what you understood your aunt wanted done
24 with them?
25 A She told me -- I asked her what did she

1 want me to do with them. She said you take them home
2 and keep them and I'll tell you later on what to do
3 with them.

4 Q Did the time come later she did tell
5 you exactly what to do with them?

6 A Yes. After I came back from a wedding --

7 Q When she told you that did you go out
8 and do what she told you?

9 A I didn't do it right that minute.

10 Q Did you eventually do it?

11 A I eventually did it.

12 Q Did you faithfully properly do what
13 she told you?

14 A I did.

15 Q Did you go get Mrs. Corprew, the notary?

16 A I called Mrs. Corprew.

17 Q You called her to come there?

18 A Yes, at Mrs. Knight's direction.

19 Q Well, did you intend to do anything
20 wrong or against your aunt's wishes?

21 A I was doing what my aunt told me to do.

22 Q And did your aunt have an occasion,
23 an opportunity when she was explained what was being
24 done by the notary? Did your aunt say that's not right
25 or that's not what I want?

1 A No, she didn't.

2 Q Was it completed by Mrs. Corprew?

3 A Yes, it was.

4 Q Was there any reluctance or unwillingness
5 on the part of your aunt?

6 A None whatsoever.

7 Q Well, then, finally I would simply ask
8 you, you are charged with unduly influencing your aunt
9 to make that will and do you admit that or do you deny
10 that?

11 A I deny that.

12 MR. SACKS: All right. I think that's
13 all I have. You answer Mr. Legum, please.

14 THE COURT: Counsel approach the bench
15 a moment, please.

16 (A side-bar conference was held by the
17 court with counsel for both sides outside the
18 hearing of the jury and the reporter.)

19 THE COURT: Mrs. Strong, you can step
20 down.

21 THE WITNESS: Thank you.

22 THE COURT: Gentlemen, it's almost
23 five o'clock now so we are going to adjourn
24 for the day. Now, once again let me admonish
25 you not to discuss this case with anyone or

1 MP. SACKS: Well, your Honor, I object
2 to that. That's not a proper question.

3 THE COURT: I agree. I don't see
4 any sense in that type of question.

5 MR.. LEGUM: Note my exception for the
6 record, if your Honor please.
7

8 BY MR. LEGUM:

9 Q Mrs. Strong, did you take the new will
10 and put it in your safety deposit box after Mrs. Knight
11 put her mark on it?

12 A Yes.

13 Q Did you take it in your possession that
14 day when she signed it or did you later go to Mr. McMurrans
15 office and pick it up?

16 A I later went to Mr. McMurrans office
17 and picked it up.

18 Q And you put it where? Where did you
19 put it?

20 A I took it directly to my safety deposit
21 box in the Citizens Trust Bank Building.

22 Q And you kept it there until she died,
23 and then you took it to the clerk's office and probated;
24 is that right?

25 A Yes.

1 A I was never actually alone with
2 Mrs. Knight. There were times -- to get back to our
3 first question -- when Mr. Scott would go to the store,
4 and I would be there fifteen or twenty minutes or
5 Mrs. Petersen would run ahead a period of fifteen or
6 twenty minutes.

7 Q Did you ever make any effort to come
8 see her when others were not there or try to get the
9 others not to be there?

10 A No.

11
12 REXCROSS EXAMINATION (Reb.)
13

14 BY MR. LEGUM:

15 Q Well now, on January 12th, 1973, when
16 you had this conversation, you said you were alone in
17 the room with Mrs. Knight, weren't you?

18 A I told you that we went into the
19 kitchen. There were people in the room otherwise we
20 could have stayed in the room where she was. She did
21 not want her business discussed in front of strangers,
22 and she took me into the kitchen.

23 Q You were alone with her when this conversation
24 took place.

25 A In the kitchen. I was alone in the

1 kitchen.

2 Q No one else heard.

3 A That's right.

4 Q All right.

5 THE COURT: All right. You may step
6 down.

7 MR. SACKS: Your Honor, the defendants
8 rest. That's our case.

9 THE COURT: Very well. Any rebuttal?

10 MR. LEGUM: No, your Honor.

11 THE COURT: Members of the jury, at
12 this time I'm going to take up instructions
13 with counsel. That will probably take some
14 time. Now, let me caution you during this
15 period to stay pretty much to yourself, at
16 least away from the litigants or counsel or
17 any of the witnesses in this case. My suggestion
18 is not that you are going to do anything wrong,
19 but sometimes it's conceivable. But I have had
20 it happen inasmuch as you overhear remarks that
21 because of a particular reason that cause a
22 mistrial. So I just caution you as I do all
23 jurors about that.

24 Now, gentlemen, we will go in the
25 conference room.

INSTRUCTION B

The Court instructs the jury that if you believe from a preponderance of all the evidence in this case that Willow D. Knight did not intend that the paper writing bearing date February 14, 1973, be a last will and testament and did not herself regard it as such, but on the contrary regarded it as a power of attorney in favor of Mrs. Strong to handle the testatrix's business while the testatrix was alive, then your verdict must be that the paper writing bearing date of February 14, 1973, is not the last will and testament of Willow D. Knight.

INSTRUCTION C

The Court instructs the jury that "undue influence" is any means employed upon and with the testatrix by which, under the circumstances and conditions by which the testatrix was surrounded, she could not well resist, and which controlled her volition and induced her to do what otherwise would not have been done.

INSTRUCTION D

The Court instructs the jury that if they believe from the evidence that at the time the will in question was made the testatrix, Willow D. Knight, was an old woman and that Ethelyn R. Strong stood in relation of confidence or dependence towards the testatrix, and that the will left the bulk of the testatrix's property to Ethelyn R. Strong and Mrs. Strong's two brothers, and differs from the previously expressed intention of the testatrix, it raises a presumption of fraud and undue influence, which should be overcome by satisfactory evidence before the will should be allowed to stand.

INSTRUCTION G

The Court instructs the jury that the test of testamentary capacity is that the testatrix must have had sufficient mind and intelligence at the time the paper writings were executed to understand--

- (a) The nature of the business in which she was engaged.
- (b) To recall the property of which she was attempting to dispose; to know and understand her relations to her blood kin or to others who might have claims upon her and to determine the objects of her bounty and the manner in which she wished to dispose of her estate with sense and judgment.

And if the jury believe that Mrs. Knight did not at the time the papers were executed possess mental capacity to know and understand these things, then they must find against the paper or papers as to which such infirmity existed.

INSTRUCTION I

The Court instructs the jury that if you believe from the evidence the testatrix was an old woman over eighty years old, blind and of greatly impaired health and enfeebled mind, dependent upon Mrs. Strong, a niece, to handle her business affairs, was induced to make a will giving to Mrs. Strong and the two brothers of Mrs. Strong the bulk of her entire estate, the law requires that such persons must clearly prove that the said will was the free and voluntary act of the testatrix and an intelligent expression of her wishes respecting the disposition of her property.

I, WILLOW DAWSON KNIGHT, being of sound and disposing mind, do hereby make, publish and declare the following for and as my last will and testament, hereby expressly revoking any and all wills which I may heretofore have made.

FIRST: I hereby appoint Martin Abraham, Attorney, 214 New Kirn Building, Portsmouth, Virginia as Executor of this, my will, and direct he be permitted to qualify and serve without giving security.

SECOND: I direct that my just debts be paid and that any death, inheritance or other taxes be paid out of my estate.

THIRD: I give and bequeath unto my beloved husband, James Edward Knight, all of my personal estate, cash, jewelry, furniture and furnishings of any and every kind and wheresoever situate, in fee simple as his complete and absolute property forever.

FOURTH: I give, devise and bequeath unto my beloved husband, James Edward Knight, for and during his natural life, all of my real property of whatsoever kind and wheresoever situate. All rents and revenue derived from the said realty, during his natural life, shall be and belong to my said husband in fee simple as his absolute property. He shall pay from the said rents and revenue for taxes, insurance and upkeep of said properties. He shall maintain and keep said properties in good repair, and keep the same insured against loss by fire.

FIFTH: Upon the death of my said husband, James Edward Knight, I give, devise and bequeath all of my said realty to my beloved brother, Arthur Ratcliff of 3293 Columbus Street, Detroit, Michigan, and my beloved sister, Jessie H. Dunn of 1445 King Street, Portsmouth, Virginia, share and share alike, in fee simple as their absolute property forever.

/S/ Willow Dawson Knight (SEAL)

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SIXTH: All the rest and residue of my property of whatsoever kind and wheresoever situate I give, devise and bequeath unto by beloved husband, James Edward Knight, in fee simple, as his absolute property forever.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal to this my last will and testament, written on two sheets of paper, numbered -1- and -2- at the bottom thereof, with my signature and seal affixed to each sheet, in the presence of three (3) competent witnesses, who in my presence, at my request, and in the presence of one another, have hereunto subscribed their names as witnesses this 6th day of October, 1963.

/S/ Willow Dawson Knight (SEAL)

We, the undersigned, three competent witnesses, who in the presence of one another and the Testatrix, and at her request, have hereunto subscribed our names as witnesses to this, the last will and testament of Willow Dawson Knight, this 6th day of October, 1963 at Portsmouth, Virginia.

/S/ Charles Walker

/S/ Jessie L. Highsmith

/S/ Glen Archie

/S/ _____ (SEAL)

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