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SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 770869

Alan L. Jacobs, Sr. *Appellant*

v.

Marjorie W. Jacobs *Appellee*

JOINT APPENDIX

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BILL OF COMPLAINT

TO THE HONORABLE JUDGE OF THE AFORESAID COURT:

Your plaintiff respectfully represents as follows:

1. Plaintiff was lawfully married to the defendant on December 28, 1949 in the City of Norfolk, State of Virginia.

2. Plaintiff is now, and has been an actual bona fide resident and domiciliary of the County of Henrico of the State of Virginia for more than one year next preceding the commencement of this suit, and that the plaintiff and defendant last cohabited together as husband and wife in the County of Henrico of the State of Virginia on November 20, 1972.

3. Plaintiff and the defendant are both members of the white race, over the age of twenty-one years and that neither party is now a member of the Armed Forces of the United States of America.

4. There were two children born of the aforesaid marriage, namely, Alan Leonard Jacobs, Jr. and William N. Jacobs, and that said children are both now over the age of eighteen.

5. For several years prior to the separation of the parties, the defendant mistreated plaintiff and acted toward her in a cruel and unhusbandly manner; defendant failed to fulfill his husbandly duties; removed himself from the marital home for illegitimate purposes; defendant committed adultery on several occasions known to plaintiff, specifically on the nights of October 8 and 9, 1972 in the City of New York, New York with one Vivian Payne Hoehing and defendant finally deserted plaintiff on November 20, 1972.

6. On June 25, 1973 the Circuit Court of the City of Richmond, Division I granted to William W. Hoehing a divorce from Vivian Payne

Hoehing from the bonds of matrimony on the grounds of adultery occurring on the nights of October 8 and 9, 1972 in the City of New York, New York with the defendant.

7. Plaintiff avers that she has been a faithful and devoted wife at all times during the marriage and has done nothing to cause the defendant to commit adultery nor has she condoned such acts of adultery.

8. Since the parties have ceased living together as man and wife, defendant has arbitrarily and unreasonably failed and refused to provide adequate support and maintenance for plaintiff all of which has caused plaintiff to suffer severe financial hardship and commensurate emotional and psychological harm.

Wherefore, plaintiff prays that she be awarded a divorce from the bonds of matrimony on the grounds of adultery; that the defendant be required to pay the plaintiff reasonable alimony for her support and maintenance and to pay to her, through her counsel of record for his use, a reasonable fee for services and costs of this suit; and that plaintiff may have such other and more complete relief as the nature of her case may merit or equity deem meet.

Respectfully,

By Sally James Andrews
Of Counsel

William H. King, Jr.
Sally James Andrews
McGuire, Woods & Battle
1400 Ross Building
Richmond, Virginia 23219

Counsel for the Plaintiff

COMMONWEALTH OF VIRGINIA

EDMUND WALLER HENING, JR.
JUDGE

JOHN WINGO KNOWLES
JUDGE

E. BALLARD BAKER
JUDGE

THE CIRCUIT COURT OF
THE COUNTY OF HENRICO
P. O. BOX 27032
RICHMOND 23273

FOURTEENTH JUDICIAL CIRCUIT

January 7, 1977

Charles A. Blanton, II, Esquire
Brookfield
6620 West Broad Street
Richmond, Virginia 23230

W. Griffith Purcell, Esquire
1012 Mutual Building
Richmond, Virginia 23219

Re: Case N-909 - Jacobs v. Jacobs

Gentlemen:

In this divorce case it is clear that Marjorie Weisel Jacobs is entitled to a divorce from Alan Leonard Jacobs, Sr., on the grounds alleged in the Bill of Complaint and, is entitled to support and maintenance. What is not so clear is the question of amount.

These parties were married on December 28, 1949. The marriage produced two sons, both of whom are over 18 years of age. The parties separated on November 20, 1972. The Bill of Complaint was filed on September 27, 1974. After an ore tenus hearing on November 10, 1975, temporary alimony of $750 per month was awarded to Mrs. Jacobs and a $400 award was given for attorney fees.

Section 20-107 sets forth various factors to be considered in determining support and maintenance. There are over 650 pages of depositions and 37 exhibits--over half of which touch on factors relevant to support and maintenance.

Briefly, Marjorie Jacobs is 48 years of age. During the marriage she did not work outside the home. At the present time she had a number of physical ailments and--while Mr. Jacobs contends she is able to work--Dr. James Black, who examined her as an independent doctor, expressed the opinion that she is "...unable to engage in any significant gainful employment at this time." (Last page, report of Dr. Black, received November 22, 1976) Her lack of skills and work experience were a part of Dr. Black's opinion, along with her education and her health. In his deposition at page 38, Dr. Black does state that motivation on the part of Mrs. Jacobs to keep

herself in good condition might make her "...quite a different person from what she is now." She does do volunteer work for the Hemophiliac Foundation and is able to drive a car.

Alan Jacobs is owner of 45% of the stock of Jacobs and Levy, a well-known retail clothing store maintaining two locations in Henrico County. His brother, Gaston, owns 45% and his father, Gaston, Sr., owns 10% of the stock. The income Alan Jacobs received from his work in this business supported the family through the marriage. A disputed issue is the income Alan Jacobs receives and has received from the business.

An examination of the federal tax returns of Alan Jacobs (Pet. Ex. 9, with depositions of April 4, 1976) indicates the following for the years 1970 through 1975:

Average gross income	$39,046
Average income from Jacobs and Levy	$37,306
Average taxable income	$32,034

Copies of Partnership tax returns of Jacob & Levy stores show that Alan's capital account as of January 31, 1971, had a value of $179,590. The business became a corporation on February 1, 1973, at which time his capital account showed a value of $189,515. After incorporation, Alan owned 45% of the stock. The Jacob & Levy balance sheet indicates a stockholders' equity of $449,008, as of January 31, 1976 (Pet. Ex. 9) and $337,950 as of July 31, 1976 (Def. Ex. 14). (The July equity figures are lower than the preceding January figures for 1976, 1975 and 1974. The July, 1976, is off the January 1976 figures considerably more than in prior years. This follows the opening of a new store in Regency Square in April, 1976.)

Def. Ex. 6, with April 30, 1976 depositions, shows Alan with average "Net Spendable Funds"--apparently the money left over after deducting taxes from "Total Amounts Received"--of $19,243, for the six year period of 1970-75. The "Total Amounts Received" on Ex. 6, do not correspond with amounts shown on his returns as having been received from Jacob & Levy prior to 1974, nor does it include interest and dividends. As Alan reports on a calendar year basis and Jacob & Levy ends its fiscal year on January 31st, the figures would not be identical. However, Def. Ex. 6 shows figures consistently lower than do the tax returns for years before 1974.

Marjorie also contends that Alan's interest in a trust created under the Will of his mother, Ethel L. Jacobs, should be considered. Ethel Jacobs died on April 2, 1975, and by her Will of November 8, 1973, a substantial part of her estate is held in trust for Alan. (Pet. Ex. 1, depos of April 29, 1976) The Trustees, Gaston Jacobs, Sr., and Gaston Jacobs, Jr., have "...absolute and uncontrolled discretion..."to pay income or principal to Alan as they "deem appropriate..." The same trustees can terminate the trust at any

time during Alan's lifetime and pay the entire amount over to him. Alan's brother, Gaston, Jr., has an equal share in his mother's estate, but his goes to him "...in fee simple, free and clear of trust." Gaston testified that his share, would be around $200,000 (Depos. of April 29, 1976, p. 100, 118. The value of the total estate as of December 31, 1975, was $705,000. Evidence indicates that Ethel Jacobs did not want Marjorie to get any of the money in her estate. (Depos. of November 16, 1976, p. 71, 72, 74.)

Both parties have filed statements of monthly expenses. Marjorie lists her expenses as $1,733.75 as of May, 1976; (Pet. Ex. 16) Alan shows his expenses, not counting what he pays Marjorie, to be $1,791.74, as of November, 1976, this including "tuition, etc." of $655 for one son, over 18 years of age. (Dep. Ex. 20)

In Butler v. Butler, decided September 2, 1976, the Supreme Court stated the following rule:

> "...The rule applicable here requires a husband, within the limits of his financial ability, to maintain his former wife in a manner to which she was accustomed during the marriage. A fair allotment to a wife is determined by balancing her needs against the ability of the husband to pay, considering both his actual earnings and his capacity to earn, whether from his personal exertions or his property..." citing Robertson v. Robertson, 215 Va. 421.

The following comment in Brauer v. Brauer, 215 Va. 62, at 65, is also appropriate:

> "While it is improper to construe the will of Lillie Keck Brauer in this proceeding, it is proper, in determining Mr. Brauer's ability to pay, to consider his earning capacity and his financial resources. This includes any property from which he derives or could possibly derive some income."

The standard of living, prior to separation, was modest. The home was in a sub-division and had a value of around $30,000. Marjorie says she was given around $650 per month apparently for food, clothing--other than what was charged at Jacob & Levy--and running the house, which at that time included two growing boys. There were two cars in the family. It does not appear that the living was fancy--but it seems that all reasonable needs were met.

Each party received about $9,000 from the sale of the house.

Examination of Marjorie's statement of monthly expenses (Plt. Ex. 16, with depos of 5/12/76) shows some rather high items. Clothing as shown is at $375 per month, food at $270 and telephone at $60 per month as of May, 1976. These same items were $100, $180

and $50, as per statement of April 21, 1975. Amounts shown for other items of expense may be desirable, but do not seem essential.

Some of the expenses shown by Alan on Def. Ex. 20 are not properly available to him. Medical for the children and tuition for Billy are questionable in amount and do not come ahead of his obligation to his wife. Amounts shown for other items of expense may be desirable, but do not seem essential.

For the 6 year period of 1970-1975, Alan had an average gross income of $39,146. 1972 and 1973 were above that average while 1974 and 1975 averaged $30,533. He has a substantial interest in a successful retail clothing store and may also, at any time in the future, receive money from the trust created by his mother.

Considering all the circumstances an award of $800 per month, effective January 1, 1977, appears proper as support and maintenance based on Alan's recent income. In addition, but for the divorce which is the fault of Alan, Marjorie would benefit from any funds Alan received later from any source. He, by his fault, should not be allowed to deprive her of some benefit from this if it should occur. Consequently, in addition to $800 per month for support and maintenance, Alan will also be ordered to pay to Marjorie 25% of all income he receives in any calendar year, beginning with 1977, in excess of $32,000. This will include his income from earnings, interest, dividends and as beneficiary of any trust.

Marjorie also asks for costs and attorney fees. During this litigation Marjorie changed lawyers. He first counsel submitted a bill of $4,178 for legal services and costs of $351.67, this covering December 4, 1972 through August 14, 1975. (Plt. Ex. 14, with depos. of May 12, 1976.) Her present counsel submitted a bill of $4,913 through April 30, 1976 (Pet. Ex. 14). In addition, when the case was argued on December 3, 1976, present counsel filed a statement of $8,227.50 for services, this including the prior amount of $4,913, and costs of $1,264.91. Thus the totel bill which Alan is asked to pay is $12,405.50 for counsel for $1,616.58 for costs.

The case was hard fought and Mrs. Jacobs has been granted a divorce. Alan's counsel did concede the grounds for divorce at the April, 1976 deposition, but, of course, corroboration is still required. However, a substantial portion of that testimony was not necessary and that is taken into account in assessing costs. In addition, Alan Jacobs was deposed on April 15, 1975, by the plaintiff, on April 29, 1976, by the plaintiff and on November 16, 1976, by his own attorney--almost 300 pages of testimony. The majority of this was on examination by the plaintiff.

On costs, it appears to me that the defendant should be required to pay all the costs of the April 15, 1975 depositions, and one-half of the costs of the depositions of April 29-30 and May 12, 1976. This is $773.55. In addition, the defendant should pay other charges of $67.22 incurred by the plaintiff's first counsel, and charges of $280.41, incurred by present counsel, making a total of costs $1,121.18.

As to counsel fees, the defendant has to pay reasonable fees incurred by his wife. He does not have to pay for duplication of work done by successive counsel. Nor, in this case, should he have to pay for legal work done by counsel relating to the sale of the home, from which Mrs. Jacobs received a substantial amount. Whether all telephone calls from the client should be charged at the going rate is also questionable. The total hours involved by each of the lawyers is not indicated. Obviously, it was substantial. In my judgment, Alan Jacobs should pay $7,500.00 on behalf of Marjorie Jacobs towards fees of her attorneys in this case. This includes the $400 previously awarded. To the extent that the trustees under the Will of Ethel Jacobs authorize the payment from the trust to Alan of money to pay the counsel fees and costs, such payments shall not be considered as money received by Alan as to which the 25% provision for support and maintenance is applicable.

Counsel are requested to submit a decree in accord, with appropriate objections noted.

With best wishes,

Yours very truly,

Ballard Baker

E. Ballard Baker
Judge

FINAL DECREE

This cause, which has been regularly docketed, matured and set for hearing, came on this day to be heard upon the Bill of Complaint; upon proof of proper and legal service of process upon the defendant; upon the Answer and Counterclaim of the defendant; upon the plaintiff's Answer to Defendant's Cross-Bill; upon the Answer and Amended Counterclaim; and upon the Answer to Defendant's Amended Cross-Bill; upon the depositions and exhibits of witnesses previously filed herein, on behalf of the plaintiff and the defendant, regularly taken after proper and legal notice and filed in accordance with law, and was argued by counsel.

Upon consideration whereof, the Court finds from the evidence, independently of any admissions of the parties in the pleadings or otherwise, the following facts: that the parties are members of the White race and over the age of eighteen; that they were lawfully married in the City of Norfolk, Virginia on December 28, 1949; that there are no infant children born of this marriage; that the plaintiff is domiciled in and is and has been an actual bona fide resident of the Commonwealth of Virginia for a period of more than 6 months immediately preceding the commencement of this suit; that the plaintiff and defendant last cohabited as husband and wife in the County of Henrico, Virginia; that the defendant was guilty of adultery occurring on October 8 and 9, 1972 in the City of New York, New York with Vivian Payne Hoehing; that the said adultery did not occur more than five years prior to the institution of this suit; was not committed by the procurement or connivance of the plaintiff, and that the plaintiff did not cohabit with the defendant after knowledge of said adultery, as alleged in the Bill of Complaint, has been fully proven by the evidence, and that the plaintiff is entitled to the relief prayed for, the Court doth dismiss the Amended Counterclaim of the defendant.

Accordingly, it is ADJUDGED, ORDERED and DECREED that the plaintiff, Marjorie Weisel Jacobs, is now absolutely divorced from the defendant, Alan Leonard Jacobs, Sr., from the bond of matrimony on the ground of adultery and that the bond of matrimony created by the marriage between these parties on December 28, 1949, is dissolved.

It is ADJUDGED and ORDERED that the defendant pay to the plaintiff the sum of $800.00 per month as support, beginning January 1, 1977 and payable each and every month thereafter until further order of the Court. Further as support, it is ADJUDGED and ORDERED that the defendant pay 25% of all income received by him in any calendar year beginning with 1977 in excess of $32,000.00; income to include but not be limited to earnings from interest, dividends, as well as beneficiary of any trust.

It is further ADJUDGED and ORDERED that the defendant pay plaintiff for all of her legal representation in this case the total sum of $7,500.00; said sum to include the Court's previously ordered $400.00 attorneys fee.

It is further ADJUDGED and DECREED, as costs incurred on behalf of the plaintiff, the defendant pay for the depositions of April 15, 1975 and one-half of the depositions of April 29-30 and May 12, 1976 or a total of $773.55. Additionally, the defendant is ordered to pay for costs advanced for plaintiff, the sum of $347.63.

To the extent attorneys fees and court costs are paid for by the trust under the will of Ethel Jacobs, such sums shall not be considered as monies received by the defendant as to which the 25% provision for support is applicable.

It is further ADJUDGED, ORDERED and DIRECTED, that pursuant to Rule 5:9(a), of the Rules of the Supreme Court of Virginia that the transcript of the evidence (depositions and exhibits) of the hearings

already filed in this proceeding, dated April 15, 1975 (designated Vol. I); April 29-30, and May 12, 1976 (Vol. II); November 16, 1976 (Vol. III); and December 3, 1976 (Vol. IV); be and herewith are made a part of the record herein.

And nothing further remaining to be done herein, it is ORDERED that this cause is stricken from the docket and the papers placed among the ended causes.

ENTER: 3 / 1 / 77

E Barrett Baker
Judge

I ask for this:

Charles A. Blanton p.q.
Charles A. Blanton II

A Copy Teste:
MARGARET B. BAKER, Clerk

By Louise Tallapessa
Deputy Clerk

Seen and objected and excepted to:

W. Griffith Purcell p.d.
W. Griffith Purcell

NOTICE OF APPEAL

The defendant herewith gives "Notice of Appeal" to the Supreme Court of Virginia (Rule 5:6) from the Final Decree of the Circuit Court of Henrico County (Virginia), entered in the above captioned suit, by the Honorable E. Ballard Baker, Judge, on the 1st day of March, 1977.

The transcript of the evidence (depositions and exhibits) of the hearings in this suit, have previously been filed herein and have been made a part of the record in this suit by the aforesaid "Final Decree" entered on the 1st day of March, 1977, pursuant to Rule 5:9(a) of the Supreme Court of Virginia.

ALAN LEONARD JACOBS, SR., Defendant

By: W. G. P. p.d.
W. Griffith Purcell
Counsel

W. Griffith Purcell, p.d.
1012 Mutual Building
Richmond, Virginia 23219

CERTIFICATE

I hereby certify that on March 9, 1977 a true and exact copy of the foregoing "Notice of Appeal" was mailed to Charles A. Blanton, II, Esq., Blanton & Muse, Attorneys, Brookfield, 6620 West Broad Street, Richmond, Virginia 23230.

W. G. P. p.d.
W. Griffith Purcell

ASSIGNMENT OF ERROR, NO. III

In prospectively and speculatively awarding Mrs. Jacobs, in addition to said $800.00 per month support, an escalation of support to the extent of 25% of all income that might be speculatively recieved by Mr. Jacobs in any calendar year beginning with 1977, in excess of $32,000.00; income to include but not be limited to earnings from interest, dividends, as well as the beneficiary of any trust.

PLAINTIFF'S EXHIBIT NUMBER I

I, ETHEL R. JACOBS, of Henrico County, Virginia, being of sound and disposing mind, do hereby make, publish and declare this to be my last will and testament, hereby revoking all wills and codicils by me at any time heretofore made.

ARTICLE ONE

I direct that all my funeral and burial expenses, legally enforceable debts, and expenses of administering my estate be paid as soon as practicable. Except to the extent payment thereof is made pursuant to the provisions of the will of my husband, Gaston M. Jacobs, or any trust created by him, in the event he shall have predeceased me, I direct my Executors to pay out of my Residuary Estate, other than the Marital Trust as hereafter constituted, all estate, inheritance and other similar taxes, including penalties and interest, upon or with respect to any property, real and personal, tangible and intangible, which is required to be included in my gross estate for such tax purposes, whether or not such property passes through the hands of my Executors, or upon or with respect to the interest of any beneficiary in such property. I also direct that my Executors shall not require that any part of such taxes be recovered from, paid by, or apportioned among the recipients of, or those interested in, such property. I specifically direct that none of the foregoing taxes shall be charged against the Marital Trust portion of my Residuary Estate as hereinafter constituted.

ARTICLE TWO

(a) All of my tangible personal property, including, but not limited to, personal effects, household and kitchen furniture and furnishings, books, china, silverware, pictures and automobiles, together with all fire and casualty insurance policies thereon, I give and bequeath to my husband, Gaston M. Jacobs,

if he survives me, but if he predeceases me, I give and bequeath same to my two sons, Gaston M. Jacobs, Jr. and Alan L. Jacobs, equally if they both survive me or all to the survivor of them if such survivor survives me; provided, however, that if one of said sons predeceases me but has a chid or children who survive me, my surviving son, prior to the receipt of said tangible personal property, must pay to the children of said deceased son living at my death, in equal shares, an amount equal to one-half of the value of said tangible personal property as finally determined for federal estate tax purposes. If neither my husband nor either of my said two sons survive me, I give and bequeath said tangible personal property in equal shares to such of my grandchildren as survive me.

(b) I give, devise and bequeath to my husband, Gaston M. Jacobs, if he survives me, all my right, title and interest in and to any home and the real property adjacent thereto which may be used by us as a residence at the time of my death, together with all fire and casualty insurance policies upon or respecting such home and real property.

ARTICLE THREE

All the rest, residue, and remainder of my estate of every kind and description, whatsoever and wheresoever situate, real, personal and mixed, of which I may die seized and possessed, including any lapsed or failed legacies or devises, herein referred to as my Residuary Estate, shall be disposed of as follows:

(a) I desire to avail my estate of the maximum marital deduction allowed by the Federal estate tax law applicable at my death. Therefore, if my husband, Gaston M. Jacobs, survives me, my Executors shall divide my Residuary Estate into two separate shares, herein referred to as my Marital Trust and my Residuary Share. My Marital Trust shall be that fractional share of my Residuary Estate which shall equal (i) one-half of my adjusted gross estate as

finally determined for Federal estate tax purposes, less (ii) the value for Federal estate tax purposes of all other items of my gross estate for Federal estate tax purposes which qualify for such marital deduction and which pass or have passed to my husband upon or prior to my death other than under this Article. My Residuary Share shall be the remaining fractional share of my Residuary Estate or all of my Residuary Estate should my husband not survive me. In making the computations necessary to determine the fractions for such fractional share, the final determinations in the Federal estate tax proceedings shall control. In funding my Marital Trust and my Residuary Share, my Executors may do so in cash or in kind, or partly in both, as they, in their sole discretion, may deed advisable within the fractional limits of the respective shares as hereinabove prescribed; provided, however, that only assets that qualify for such marital deduction shall be distributed to my Marital Trust, that any asset distributed to either the Marital Trust or Residuary Share shall be distributed at its value at the time it is so distributed to the end that the assets distributed to the Marital Trust and Residuary Share shall be fairly representative of appreciation or depreciation in the value of all assets available to fund the Marital Trust and Residuary Share, and that if there is other property or cash available to fund the Marital Trust, there shall not be distributed to the Marital Trust any property with respect to which a credit or deduction is allowed against the Federal estate tax upon my estate for any other estate, transfer, succession, inheritance or other similar taxes inposed with respect to such property by any taxing authority, or any other property with respect to which a credit or deduction is allowed for Federal income tax purposes because it shall be subject to both Federal estate tax upon my estate and Federal income tax.

(b) My Marital Trust and my Residuary Share shall be disposed of as hereinafter provided in ARTICLE FOUR and ARTICLE FIVE, respectively, of this will.

ARTICLE FOUR

I give, devise and bequeath my Marital Trust to my Trustees, hereinafter named, to be held, administered and disposed of as follows:

(a) So long as my husband, Gaston M. Jacobs, shall live, the Trustees shall pay to him or expend for his benefit, in convenient installments not less frequently than quarter-annually, all the net income arising from the Marital Trust. In addition to and without in any way limiting the foregoing payments, the Trustees are authorized, from time to time during the lifetime of my husband, to pay to him or expend for his benefit so much of the principal of the Marital Trust as the Trustees in their sole discretion shall deem necessary or proper for his support, maintenance, comfort and welfare, or in case of sickness, it being my express intention that none of the foregoing purposes are to be limited to those of an emergency nature, and that my husband shall receive sufficient funds to maintain the standard of living enjoyed by him at the time of my death, taking into consideration his income and assets from other sources. During the lifetime of my husband, my Trustees shall pay over and deliver to him all or so much of the principal of my Marital Trust as he may, from time to time, request my Trustees in writing to pay over and deliver to him, it being my intent hereby to give my husband the right to terminate the Marital Trust in whole or in part and to have the property with respect to which the trust is so terminated paid over and delivered to him free of any trusts.

(b) I hereby expressly confer upon my husband a general power of appointment by his last will and testament, provided he therein makes specific reference to this power of appointment, to direct the disposition at his death of the then principal of the Marital Trust, or of the residue thereof, or of so much thereof as he desires so to dispose of, to whomsoever (including the right to direct the payment transfer and distribution thereof to his own estate) and in whatsoever manner and in whatever proportions he shall so designate and appoint.

(c) Should my husband survive me and fail to exercise the power of appointment of the Marital Trust, or of any portion thereof, then, upon the death of my husband, the Marital Trust or so much thereof as remains and is not disposed of by virtue of said power of appointment, as the case may be, shall be disposed of as follows:

(1) Unless otherwise directed in the last will and testament of my husband, the Trustees shall pay to the personal representatives of my husband or to the proper governmental authorities out of the Marital Trust or out of so much thereof as remains and is not disposed of by virtue of said power of appointment, as the case may be, the amount by which the aggregate estate and inheritance taxes in respect of his estate exceed the amount that would have been payable in respect of his estate had none of the Marital Trust constituted a part of his estate for such tax purposes.

(2) The rest of the Marital Trust or so much thereof as remains and is not disposed of by virtue of said power of appointment, as the case may be, shall be divided into two separate equal parts:

(i) One part shall go to my son, Gaston M. Jacobs, Jr., if he is then living, absolutely and in fee simple, free and clear of trust. If my said son is not then living, said part shall be divided into as many separate equal shares as are necessary to provide one separate equal share for each child of my said son who is then living plus one additional separate equal share for my daughter-in-law, Virginia W. Jacobs, if she is then living; and the separate equal share provided for each child shall go to such child, absolutely and in fee simple, free and clear of trust, and the separate equal share provided for my said daughter-in-law (which, as stated above in this sentence, will be provided only if my said daughter-in-law is then living) shall go to said daughter-in-law, absolutely and in fee simple, free and clear of trust. If neither my said son, any of his children, nor my said daughter-in-law is then living, said

part shall be added to the part of my Marital Trust described below in section (ii) of this subparagraph (2) to be disposed of as a portion thereof.

(ii) The remaining part shall be held as a separate trust and disposed of by my Trustees as follows:

(A) (1) If my son, Alan L. Jacobs, survives my said husband, then so long as the said Alan L. Jacobs shall live the Trustees other than the said Alan L. Jacobs are authorized to pay to the said Alan L. Jacobs or expend for his benefit at any time and from time to time so much of the net income or principal of such part as my Trustees other than the said Alan L. Jacobs in their absolute and uncontrolled discretion shall deem appropriate, without any duty upon such Trustees to take into consideration any income or assets that may be available to the said Alan L. Jacobs from any other source. Any of such net income from such part which is not so paid to or expended for the benefit of the said Alan L. Jacobs within the trust's fiscal year in which received shall be accumulated by the Trustees and shall be added to and become part and parcel of the principal of such part.

(2) Upon the death of the said Alan L. Jacobs, whatever then remains of such part shall be paid and turned over to any one or more of the said Alan L. Jacobs' spouse, his children or their issue, and the spouses of his children or their issue, and in such proportions as the said Alan L. Jacobs may designate in his will provided the same shall specifically refer to the special power of appointment given and bequeathed by this paragraph (c)(2)(ii)(A)(2) of this ARTICLE FOUR, and to the extent not so disposed of by the said Alan L. Jacobs shall be paid and turned over to his then living children in fee simple and absolutely, free and clear of trusts, but if there be no child of the said Alan L. Jacobs living at his death, then whatever remains of such part shall be added to the part of my Marital Trust described above in paragraph (c)(2)(i) of this ARTICLE FOUR, to be disposed of as a portion thereof.

(3) I authorize and empower my said Trustees other than the said Alan L. Jacobs in their absolute and uncontrolled discretion at any time during the lifetime of the said Alan L. Jacobs to terminate the trust with respect to such part, and upon such termination whatever then remains of such part shall be paid and turned over to the said Alan L. Jacobs in fee simple and absolutely, free and clear of trusts.

(B) If the said Alan L. Jacobs does not survive my said husband, then upon my husband's death said remaining part shall be divided into as many separate equal shares as are necessary to provide one separate equal share for each child of the said Alan L. Jacobs who is then living, and the separate equal share provided for each such child shall go to such child in fee simple and absolutely, free and clear of trusts, but if there be no child of the said Alan L. Jacobs then living, then said remaining part shall be added to the part of my Marital Trust described above in paragraph (c)(2)(i) of this ARTICLE FOUR, to be disposed of as a portion thereof.

(d) If my husband and I die under circumstances where there is not sufficient evidence that we have died otherwise than simultaneously, it shall be presumed for the purposes of this will that my husband survived me to the end that the rights which he has in the Marital Trust shall become vested in him.

ARTICLE FIVE

My Executors shall divide my Residuary Share into two separate equal parts, and I give, devise and bequeath said two separate equal parts as follows:

(a) One part shall go to my son, Gaston M. Jacobs, Jr., if he is living at my death, absolutely and in fee simple, free and clear of trust. If my said son is not living at my death, said part shall be divided into as many separate equal shares as are necessary to provide one separate equal share for each child of my said son who is then living plus one additional separate equal

share for my daughter-in-law, Virginia W. Jacobs, if she is then living; and the separate equal share provided for each child shall go to such child, absolutely and in fee simple, free and clear of trust, and the separate equal share provided for my said daughter-in-law (which, as stated above in this sentence, will be provided only if my said daughter-in-law is then living) shall go to said daughter-in-law, absolutely and in fee simple, free and clear of trust. If neither my said son, any of his children, nor my said daughter-in-law is living at my death, said part shall be added to the part of my Residuary Share described below in paragraph (b) of this ARTICLE FIVE to be disposed of as a portion thereof.

(b) The remaining part I give, devise and bequeath to my Trustees hereinafter named, to be held, administered and disposed of as follows:

(1) (i) If my son, Alan L. Jacobs, survives me, then so long as he shall live the Trustees other than the said Alan L. Jacobs are authorized to pay to the said Alan L. Jacobs or expend for his benefit at any time and from time to time so much of the net income or principal of such part as my Trustees other than the said Alan L. Jacobs in their absolute and uncontrolled discretion shall deem appropriate, without any duty upon such Trustees to take into consideration any income or assets that may be available to the said Alan L. Jacobs from any other source. Any of such net income from such part which is not so paid to or expended for the benefit of the said Alan L. Jacobs within the trust's fiscal year in which received shall be accumulated by the Trustees and shall be added to and become part and parcel of the principal of such part.

(ii) Upon the death of the said Alan L. Jacobs, whatever then remains of such part shall be paid and turned over to any one or more of the said Alan L. Jacobs' spouse, his children or their issue, and the spouses of his children or their issue, and in such proportions as the said Alan L. Jacobs may designate in his will provided the same shall specifically refer to the special power of appointment given and bequeathed by this paragraph (b)(1)(ii) of this

ARTICLE FIVE, and to the extent not so disposed of by the said Alan L. Jacobs shall be paid and turned over to his children then living in fee simple and absolutely, free and clear of trusts, but if there be no child of the said Alan L. Jacobs living at his death, then whatever remains of such part shall be added to the part of my Residuary Share described above in paragraph (a) of this ARTICLE FIVE, to be disposed of as a portion thereof.

(iii) I authorize and empower my said Trustees other than the said Alan L. Jacobs in their absolute and uncontrolled discretion at any time during the lifetime of the said Alan L. Jacobs to terminate the trust with respect to such part, and upon such termination whatever then remains of such part shall be paid and turned over to the said Alan L. Jacobs in fee simple and absolutely, free and clear of trusts.

(2) If the said Alan L. Jacobs does not survive me, then said remaining part shall be divided by my Trustees into as many separate equal shares as are necessary to provide one separate equal share for each child of the said Alan L. Jacobs who is then living, and the separate equal share provided for each such child shall go to such child in fee simple and absolutely, free and clear of trusts, but if there be no child of the said Alan L. Jacobs then living, then said remaining part shall be added to the part of my Residuary Share described above in paragraph (a) of this ARTICLE FIVE to be disposed of as a portion thereof.

ARTICLE SIX

In the event that under the foregoing provisions of this will there is, at any time, no taker for my estate or trust estate or any share or part thereof, then my estate or trust estate, or the share or part thereof for which there is no taker, as the case may be, shall be paid over and delivered to such persons as would have been entitled to receive same, and in the same proportions as they would have taken, had I died immediately following such time as of which there is

no taker, intestate, unmarried, domiciled in the State of Virginia and the absolute owner of the property then constituting my estate or trust estate, or the share or part thereof for which there is no taker, as the case may be, with all of such property being treated as personal property.

ARTICLE SEVEN

In any case in which my Trustees are authorized under the provisions of this will to pay income or principal to or expend same for the benefit of a minor beneficiary or to a beneficiary who, in the sole discretion of my Trustees, has for any reason become incapable of managing his or her own affairs, my Trustees are authorized, at any time and from time to time, to apply the income or principal for the benefit of such beneficiary with or without the intervention of a guardian or committee.

ARTICLE EIGHT

Any decision made by my Executors in the exercise of any election given to them under the provisions of the United States Internal Revenue Code shall be conclusive and binding upon all persons interested in my estate, and no adjustment shall be made either as between income and principal or otherwise by reason of the fact that any deduction may have been taken and allowed for income tax purposes instead of for Federal estate or Virginia inheritance tax purposes, or by reason of any election made by my Executors as to the date of valuation of my estate for Federal estate or Virginia inheritance tax purposes or the date or dates for payment of any such taxes.

ARTICLE NINE

(a) No person dealing in any manner with my Executors or Trustees shall be under any obligation to see to the application of any money or to the disposition of assets paid or delivered to them or to inquire into the validity, expediency or propriety of any of their acts, or into any of the provisions of this will.

(b) The Trustees shall keep true and accurate accounts concerning the trusts herein created and shall, upon request, furnish at least once each year to the current beneficiary or beneficiaries, or their guardians, a statement showing the condition of the trust and the receipts and disbursements during the respective periods covered thereby.

(c) Upon the death of any beneficiary hereunder, other than my husband, any accrued, accumulated or undistributed income which would have been payable to such beneficiary, if living at the time of the distribution thereof, shall be treated as if said income had accrued immediately after such beneficiary's death and shall be paid to the person or persons who, in accordance with the provisions of this will, next succeed to the interest of such beneficiary.

(d) If any beneficiary under this will shall be a minor when he or she is entitled to any distribution hereunder, such distribution may be made without requiring bond, to said minor, his or her guardian or to any adult with whom said minor beneficiary is living and the receipt by such party shall discharge my Executors or Trustees from any further liability with respect to such property.

ARTICLE TEN

I hereby nominate and appoint my husband, Gaston M. Jacobs, and my two sons, Gaston M. Jacobs, Jr. and Alan L. Jacobs, as Executors of this will and as Trustees of all trusts herein created, and I direct that no security shall be required of any of them as such Executors or as such Trustees. I give and grant to the said Gaston M. Jacobs, Gaston M. Jacobs, Jr. and Alan L. Jacobs, or the survivor or survivors of them, the right and power to nominate and appoint by writing during the lifetime of any of them, or by the last will and testament of the survivor of them, an additional Executor or Trustee, or additional Executors or Trustees, to serve with them or as their successor or successors, and it is my wish and request that all such nominees and appointees may be confirmed as such and permitted to qualify, if qualification be necessary or permissible, and that no se-

curity be required of any of them as such unless otherwise provided in such nomination and appointment. In the event the survivor of the said Gaston M. Jacobs, Gaston M. Jacobs, Jr. and Alan L. Jacobs shall die, resign or become incapable of acting as Executor or as Trustee without having so nominated or appointed any Co-Executor or Co-Trustee nor any successor Executor or Trustee, then and in such event I nominate and appoint my grandson, Gaston M. Jacobs, III, as such successor Executor and Trustee, and if he shall die, resign or become incapable of acting as such successor Executor and Trustee, then I nominate and appoint as such successor Executor and Trustee such partner of the law firm of Hirschler and Fleischer, Richmond, Virginia, as such firm shall designate. I direct that no security be required of the said Gaston M. Jacobs, III nor of such partner of Hirschler and Fleischer as such successor Executor and Trustee.

ARTICLE ELEVEN

(a) The legal title to all property in my estate or in the trust or trusts herein created shall be and become vested in the Executor, Executors, Trustee or Trustees, whether original or successor, who at the time shall be acting as such, without any act of conveyance or transfer to, by or from any succeeding or retiring Executor, Executors, Trustee or Trustees and the Executor, Executors, Trustee or Trustees, who at the time shall be acting as such, shall have all the rights, title, powers, authority and discretions herein granted to the original Executors and Trustees. The words "Executor", "Executors", "Trustee" and "Trustees" and any pronouns referring to the Executor, Executors, Trustee and Trustees, whenever used in this will, shall be construed to refer to the successor Executors and Trustees, as well as the original Executors and Trustees and shall likewise be construed to be of such gender and number as the context may require, depending upon who at the time shall be acting as such. No successor Executors and Trustees shall be obligated to inquire into, or be in any way accountable for, the previous administration of my estate or of the trust.

(b) In addition to and not in limitation of all powers, authorities and discretions granted under applicable law, but subject to the provisions of paragraph (a) of ARTICLE THREE and paragraph (c) of this ARTICLE ELEVEN relating to the Marital Trust, my Executors and Trustees shall have the following powers, authorities and discretions, to:

(1) Keep and retain any and all investments and properties, either real, personal or mixed, received by them, including the stock of any closely held corporation or interests in any partnership, so long as, in their discretion it is advisable to do so.

(2) Purchase, take title to, hold, keep and invest, and reinvest in such bonds, stocks (both common and preferred), mortgages, notes, insurance policies, savings accounts, certificates of deposit, interests in partnerships, joint ventures, investments in property, both real and personal, as they may deem advisable, without being restricted to such investments as are now or hereafter recognized as lawful investments for fiduciary funds in the State of Virginia or elsewhere.

(3) Sell, assign, exchange, transfer and convey any or all of the notes, bonds, stocks, securities, and property, either real, personal or mixed, which they hold, at either public or private sale, at any time or times prior to the distribution thereof (even though the trust shall have previously terminated), for either cash or notes or other consideration, and upon such terms and conditions as they may deem advisable; and, for the purpose of selling, conveying or transferring the same, to make, execute, acknowledge and deliver any and all instruments of conveyance or assignment, in such form and with such warranties and covenants, as they deem expedient and proper.

(4) Lease any part or all of the real estate which they hold for such period of time (which may extend beyond the term of the trusts herein created) and upon such terms and conditions as they may deem advisable, and for the purpose of leasing said real estate, to make, execute, acknowledge and deliver such instruments, in such form and with such warranties and covenants, as they may

deem expedient and proper.

(5) Repair, alter, improve, renovate, reconstruct and demolish any of the buildings on the real estate held by them and to construct such buildings and improvements thereon as they may deem advisable.

(6) Make any distribution hereunder in kind or in money or partly both, according to such valuations and in such manner as they may deem fair and reasonable, and their determination of the fairness and equality of such distribution shall be binding and conclusive as to all parties interested therein; provided, however, that any asset allocated to the Marital Trust or Residuary Share shall be distributed at its value at the time it is so allocated.

(7) Pay, compromise, compound or submit to arbitration any claims, debts or taxes owing, or alleged to be owing, by or in favor of me or them upon such terms and conditions as they may deem advisable.

(8) Employ counsel and take such actions as they may deem advisable in connection with the administration of my estate or of the trusts created herein, and to pay such reasonable expenses as are incident thereto from income or principal as they may deem proper.

(9) Obtain and renew, from time to time, loans in such amounts as may be required to pay all debts, funeral expenses, administration expenses, and the taxes, both State and Federal, assessed against my estate or any part thereof on such terms and conditions as they may deem proper and to secure the payment thereof by the pledge, hypothecation, mortgage or other encumbrance of such part or all of the assets which they hold as they may deem advisable, they being authorized and empowered to make, execute, acknowledge and deliver such notes, assignments, deeds of trust, mortgages and other instruments, containing such terms or provisions and covenants as they may deem necessary or advisable for such purposes.

(10) Organize one or more corporations, or other types of business enterprises, of such form and with such capital, as they may deem advisable and

to transfer to such corporation, corporations, or business all or part of the real estate, securities or other property which they hold in exchange for such part or all of the capital stock or other securities, or both, of such corporation or corporations, as they may determine, and enter into any agreements in connection with the purchase or sale of said stock or securities as they may deem necessary or desirable.

(11) Possess and exercise, in respect of the bonds, stock and other securities which they hold all the rights, powers and privileges that are lawfully exercisable by natural persons owning similar securities including (though without limiting the foregoing) voting, giving proxies, paying calls, assessments and other sums deemed by them advisable in order to protect or promote the interests of my estate, exchanging securities, selling or exercising stock subscription or conversion rights, participating in, furthering and effectuating foreclosures, reorganizations, exchanges, consolidation, mergers, liquidations, dissolutions, pooling agreements, voting trusts, and assenting to corporate sales, leases and encumbrances.

(12) Cause any property or securities held by them to be issued or registered in the name of the Executors or Trustees or of their nominee (without disclosure of the trust), but no registration or holding in the name of such nominee shall relieve or release the Executors or Trustees from their responsibility for the safe custody of such property and securities or for the disposition thereof in accordance with the terms and provisions of this will.

(13) Carry on during such period as they may see fit, any trade or business which may be carried on by me at the time of my death and for that purpose to retain and employ therein the capital which shall at my death be employed therein together with such additional capital as they shall think fit to advance from time to time out of my Residuary Estate, with power to employ at such salary as they may see fit any manager of the said business, and generally to act in all matters relating to the said business as if they were beneficially entitled thereto; and they shall be free from all responsibility for losses arising

in the prosecution of the said business.

(14) To acquire any property, real or personal, by purchase, exchange or otherwise from and to make secured or unsecured loans to, my husband's executors or administrators, the trustees under his will or the trustees under any trust created by him during his lifetime, and to acquire mortgages upon real estate in which my husband may have an interest, all in such manner and upon such terms and conditions as to my Executors and Trustees may seem best, without regard to the fact that they may be the executors, administrators or trustees under my husband's will, or the trustees of a trust created by him during his lifetime, or one of them may so be, and my Executors and Trustees shall not be liable for any loss to or dimunition of my estate or trust estate resulting from their exercise of this authority.

(15) Do all other acts and things which they deem necessary or desirable for the proper management of my estate as an individual might or could do with regard to his own property.

(16) All discretion conferred in this will upon my Executors and Trustees shall be absolute and uncontrolled, and the exercise thereof shall be conclusive and binding as to all parties interested hereunder.

(17) Except as herein otherwise expressly provided, all powers, duties and discretion conferred or imposed in this will upon my Executors and Trustees shall belong to them or their successors, who qualify or act as such.

(c) Notwithstanding anything in this will to the contrary my Executors and Trustees shall not exercise any of the power, authority and discretion conferred upon them in such manner as to disqualify the Marital Trust for the marital deduction allowed under the Federal estate tax law, and my husband, during his lifetime, shall have the power in writing to direct the Trustees to convert all or any part of the principal of the Marital Trust which may at any time be uninvested, or if invested, be unproductive of income, into income producing property selected by the Trustees in accordance herewith.

ARTICLE TWELVE

(a) I expressly authorize my Executors to join in or consent to income and gift tax returns filed with or by my husband, and to pay any part or all of the income or gift taxes due upon such returns.

(b) For all purposes under this will, whether for the determination of relationships or otherwise, adopted children, whether mine or any other person's, shall be considered to have and shall be given exactly the same status as natural born children.

IN WITNESS WHEREOF, I have set my hand and seal to this my last will and testament, consisting of sixteen (16) typewritten pages, on the bottom of each of which, other than the page bearing my signature and seal, I have written my name of the 8th day of Nov, 1973.

Ethel R. Jacobs (SEAL)
Ethel R. Jacobs

SIGNED, sealed and acknowledged and declared by the said Ethel R. Jacobs as and for her last will and testament in the presence of us, three competent witnesses, present at the same time, who at her request, in her presence, and in the presence of each other have hereunto subscribed our names as witnesses this 8th day of November, 1973.

Margaret A. Treed

STATE OF VIRGINIA,

CITY OF RICHMOND,

Before me, the undersigned authority, on this day personally appeared Ethel R. Jacobs, Carlton T. Kelly, Magalen H. Freed and Cheryl C. Rothschild, known to me to be the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all of these persons being by me first duly sworn, Ethel R. Jacobs, the testator, declared to me and to the witnesses in my presence that said instrument is her last will and testament and that she had willingly signed the same, and executed it in the presence of said witnesses as her free and voluntary act for the purposes therein expressed; that said witnesses stated before me that the foregoing will was executed and acknowledged by the testator as her last will and testament in the presence of said witnesses, who, in her presence and at her request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the day of the date of said will, and that the testator, at the time of the execution of said will, was over the age of 18 years and of sound and disposing mind and memory.

Ethel R. Jacobs

Carlton T. Kelly

Magalen H. Freed

Cheryl C. Rothschild

Subscribed, sworn and acknowledged before me by Ethel R. Jacobs, the testator, subscribed and sworn before me by Carlton T. Kelly, Magalen H. Freed and Cheryl C. Rothschild, witnesses this 8th day of November, 1973.

Barbara A. Merrett
Notary Public

My commission expires: March 13, 1974.

PLAINTIFF'S EXHIBIT NUMBER II

VIRGINIA:

In The Clerk's Office Of The Circuit Court Of The County Of Henrico

INVENTORY OF THE ESTATE OF

Ethel Rosenfield Jacobs

CERTIFICATE OF FIDUCIARY

I/We, Gaston M Jacobs, Sr., Gaston M. Jacobs, Jr. & Alan L. Jacobs, solemnly swear (or affirm) that to the best of my/our knowledge and belief, this inventory embraces all of the property, both real and personal, of the estate of Ethel Rosenfield Jacobs under my/our authority, supervision and control as Executors thereof, aggregating $ 754,323.13.

Date of Qualification
April 23, 1975

(Gaston M. Jacobs, Sr.) (Gaston M. Jacobs, Jr.)

(Alan L. Jacobs)

(Address) c/o Hirschler, Fleischer, Weinberg, Cox & Allen
2nd Floor, Massey Building
4th & Main Streets
Richmond, Va. 23219

State of Virginia:
County/City of _____: To-wit:
Subscribed and sworn to before me this _____ day of _____ ,197__.
My commission expires: _____

_____
Notary Public

CERTIFICATE OF COMMISSIONER

Inspected, found to be in proper form, and approved this _____ day of _____, 197__.

_____
Commissioner of Accounts

VIRGINIA:

In The Clerk's Office Of The Circuit Court Of The County Of Henrico

The foregoing inventory received and admitted to record on _____.

_____
Clerk

INSTRUCTIONS TO FIDUCIARIES

1. File this Inventory in duplicate within four months after qualification with David C. Dorset, Commissioner of Accounts, 701 Heritage Building, 1001 East Main Street, Richmond, Virginia 23219, with a check in the amount of $3.00 to cover his fee of $2.00 and fee of the Clerk of $1.00 for recording.

2. Assets of decedent's estate should be clearly identified and listed in reasonable detail as of date of death, and if not, as of date of qualification. It is not necessary to list each article of personal effects and household property separately; however, if an article is specifically mentioned in the will or is of unusual value, it should be listed separately. Make, model, and year of motor vehicle should be given. State name of bank or banks and sums on deposit therein and whether a savings or checking account. A promissory note should be described by maker's name and balance due thereon and bonds and shares of stock by usual description. Give issue or maturity date of United States Bonds. If an unincorporated business, or interest therein, is included among the assets, the name and location of the business should be given.
3. The value of the items listed under "Estate Property" should total the aggegate amount stated in the Certificate of Fiduciary and should include all of the assets, real and personal, over which the fiduciary has supervision and control.
4. The fiduciary shall determine the value of each item listed on the inventory. The fiduciary may retain expert assistance in determining values reported herein and reasonable expenses incurred for such assistance may be allowed as a cost of administration.

INVENTORY OF THE ESTATE OF

Ethel Rosenfield Jacobs

(Read carefully the instructions on the reverse side before filling in this form.)

Property under the authority, supervision and control of the fiduciary:

ESTATE PROPERTY	VALUE
Savings Account - The Central National Bank	9,657.22
Checking Account - The Central National Bank	10,436.86
Savings Certificate - The Virginia Federal Savings & Loan Association	1,549.54
Savings Account - The United Virginia Bank	1,049.18
Savings Account - The Franklin Federal Savings and Loan Association	13,354.19
1972 Lincoln Continental Automobile - Co-tenant - 1/2 value	1,550.00
Securities:	
630 Shares Air Control Products	4,528.13
288 Shares Allied Stores	8,280.00
334 Shares American Broadcasting	6,304.25
200 Shares American Brands	7,737.50
284 Shares American Manufacturing	10,153.00
600 Shares American Tel. & Tel.	29,400.00
30 Shares American Tel. & Tel. $4 pfd.	1,590.00
34 American Tel. & Tel. Warrants	27.63
120 Shares Atlantic Richfield	9,750.00
200 Shares Atlantic Richfield 2.80 pfd.	11,125.00
200 Shares Burlington Industries	4,475.00
212 Shares Carolina Power & Light	3,153.50
309 Shares Consolidated Edison N.Y.	3,437.63
6 Shares Consolidated Edison N.Y. 6% pfd.	316.88
400 Shares Chessie Systems	12,775.00

102 Shares Exxon Corp.	7,528.88
179 Shares Fidelity Corp.	358.00
176 Shares First & Merchants	3,630.00
300 Shares Ford Motor Co.	11,043.75
21 Shares Gulf & Western 5.75	1,349.25
325 Shares Gulf & Western	9,831.25
600 Shares Greyhound	7,200.00
500 Shares General Motors	20,375.00
400 Shares John Hancock Income Secs.	8,250.00
882 Shares Keller Industries	6,339.38
5 Shares Madison Square Gardens	25.32
200 Shares Medical Mortgage Investors	262.50
434 Shares Mobil Oil	16,953.13
294 Shares National Bankshares Corp. of Texas	9,702.00
199 Shares Philadelphia Electric	2,499.94
624 Shares Phillip Morris	29,757.00
406 Shares Pennsylvania Power & Light	7,282.63
375 Shares RCA Corp.	5,953.13
125 Shares Realty Mortgage Investors of Pacific	1,140.63
150 Shares Security Mortgage Investors	196.88
100 Warrants Security Mortgage Investors	37.50
720 Shares Southern Pacific	20,835.00
200 Shares South States Oil & Gas	800.00
150 Shares Tenneco	3,412.50
Subtotal	325,414.18
Subtotal from additional page	429,908.95
Total	755,323.13

(Use additional sheets if necessary)

ESTATE PROPERTY	VALUE
542 Shares Texaco	13,177.38
12,225 Shares Texas Commerce Bankshares	408,009.38
90 Shares United Virginia Bankshares	1,327.50
100 Shares Virginia Electric & Power	1,062.50
$1,100 Allies Stores 4 1/2 - 81	1,089.00
$1,700 American Tel. & Tel. 8 3/4 - 2000	1,681.94
$900 National Distillers 4 1/2 - 92	612.00
$2,500 Realty Mortgage Investors of Pacific 6 3/4 - 91	1,425.00
$900 RCA 4 1/2 - 92	524.25
Miscellaneous Personal Property	
Jewelry, etc.	1,000.00
Subtotal	429,908.95

PLAINTIFF'S EXHIBIT NUMBER 16

MONTHLY EXPENSES

Marjorie W. Jacobs

Food (includes dietetic)	$270.00
Telephone	60.00
Rent	235.00
Electricity	25.00
Mr. Jacobs' life insurance	10.30
Health insurance ?	
Tenant's insurance policy	5.00
Hair appointments including hair straightened 2 times yearly	65.00
Car insurance (1970 model)	12.50
Clothing	375.00
Entertainment	75.00
Gasoline	60.00
Car maintenance and repairs	35.00
Auto tags	2.50
Newspapers	8.00
Taxes - Federal and State ?	
Personal property tax (1970 car)	2.25
Contributions (temple and charities)	20.00
Beth Ahabah Temple dues, Beth Ahabah Sisterhood dues, and Beth Ahabah Donna	17.50
Virginia Museum dues, Virginia Chapter Needlework Guild dues and Hemophilia Foundation dues	3.60
Doctors	20.00
Drugs and cosmetics	45.00
Dentists (must have teeth restored and this monthly expense would increase)	20.00
Gifts including birthdays, anniversaries, Christmas,etc.	75.00
Vacation	30.00
Household needs and replacing old furniture 26 yrs. old	150.00
Miscellaneous	60.00
Cleaning (clothes)	50.00
Safety deposit box rental	2.10
TOTAL	$1,733.75

1

2 ALAN LEONARD JACOBS, SR., upon being
3 called by counsel for the plaintiff, having been first duly
4 sworn, deposes and states as follows:
5 DIRECT EXAMINATION
6 BY MR. KING:
7 Q Would you state your name, please, for
8 the record.
9 A Alan L. Jacobs, Sr.
10 Q Where do you live, Mr. Jacobs?
11 A 67 Gateway East in Henrico County.
12 Q Is that an apartment complex?
13 A That's right.
14 Q What is the name of the apartment?
15 A Gateway.
16 Q Where is that located?
17 A Just off of Parham Road.
18 Q Whereabouts on Parham?
19 A Just north of where the Giant, just north
20 of Quioccasin Road, a block or so past the Giant Food, on the
21 same side of the street, between Quioccasin and Three Chopt
22 on Parham Road.
23 Q Is that near the Cabin Creek Apartments?
24 A I don't know exactly where they are.
25 They are further out, I think, I believe, aren't they off of

1 Gaskins Road, I believe, aren't they?
2 Q You are not that far out then?
3 A No. I'm not that far out.
4 Q Are you near the high school? Byrd High
5 School?
6 A Yes. Near there. I am within two or
7 three blocks or so of it. East of that.
8 Q How long have you lived there, Mr.
9 Jacobs?
10 A Since January.
11 Q What was the date in January that you
12 moved?
13 A The third.
14 Q That is 1975?
15 A 1975.
16 Q Prior to that time, where did you live,
17 Mr. Jacobs?
18 A I lived with my father, 206, and mother,
19 206 Overlook Road.
20 Q Where is that located?
21 A In Henrico County.
22 Q Whereabouts in the county, sir?
23 A Well, it's just off of Ridge Road, south
24 of River Road. Overlook Road is a dead end road to the
25 left.

Q Where did you stay down there?

A At a hotel.

Q How long would those trips be, three or four days?

A I would say four or five days. Four days.

Q Now, Mr. Jacobs, do you own an interest in Jacobs & Levy Limited?

A I do.

Q Is that the proper corporate name?

A That is correct.

Q What is your ownership interest in Jacobs & Levy?

A Forty-five percent.

Q Do you own forty-five percent of the outstanding stock of Jacobs & Levy?

A I would say so, yes.

Q How many shares of stock do you own in the corporation?

A I tell you the truth, I don't even know. I own forty-five percent of the company.

Q Well --

A I mean --

Q -- let's see if I can refresh your memory. Your lawyer has indicated to me that you own 18,000 shares.

1 A No, it's paid as soon as we get to
2 January. The 2nd of January I think I got paid. Part of it,
3 but part of it is due in January, but I did get part right
4 at the 2nd of January.
5 Q That compensation is not supplemented at
6 any other time during the year, is that correct?
7 A No. That is correct.
8 Q What do you do with that thirty thousand
9 dollars, Mr. Jacobs?
10 A Try to spread it as far as it will go.
11 Q Do you put it in a savings account?
12 A I do.
13 Q Where do you have that savings account?
14 A Franklin Federal.
15 Q How much do you have in your savings
16 account at Franklin Federal right now?
17 A About seven thousand, one hundred dollars,
18 I would make a big guess at.
19 Q Do you have any other savings account?
20 A No.
21 Q If my arithmetic is right, that means that
22 in four months you have spent twenty-three thousand dollars,
23 is that correct?
24 A I would say that at the beginning with
25 it's about nine or ten thousand Uncle Sam took right off the

of this material.

MR. KING: While you are looking for it, do you want me to go ahead?

MR. HACKNEY: Sure.

Q Mr. Jacobs, I understand that your mother just passed away, is that correct?

A That is correct.

Q I would like to ask you a few questions about her estate. I don't mean to tread on your personal affairs, but it has some bearing on this. How long ago did your mother die?

A April 2nd.

Q Did she leave a Will?

A She did.

Q Have you seen that Will?

A I have looked at it.

Q Are you a beneficiary under that Will?

MR. HACKNEY: Maybe you had better explain what a beneficiary is.

Q Do you receive anything under your mother's Will?

A Do I receive it?

Q Yes.

A I don't know exactly if you say I receive it or not. May I ask counsel? Do I receive -- How does that--

1 does that --

2 MR. HACKNEY: I have not seen the Will

3 so --

4 Q Either directly or indirectly was any

5 outright gift of money made to you under your mother's Will?

6 MR. HACKNEY: Did you receive any

7 monies, strings unattached, is that what you are

8 talking about?

9 A No.

10 Q You received no outright gift of money.

11 A Nothing with no strings unattached.

12 Q Would you describe any monies that

13 you received from your mother, with strings attached under her

14 Will.

15 A Well, I received a part of it that is

16 put in trust for me.

17 Q May I ask what the value of that is?

18 A I don't know.

19 Q Can you give me an approximate value?

20 A I don't have any idea, because it hasn't

21 been -- right now I haven't heard any appraisal made of it.

22 Q Who would we get such an appraisal from,

23 Mr. Jacobs?

24 A I don't know.

25 Q Who is the executor under your mother's

1 Will?

2 A I'm one of the executors, and my brother

3 and my father.

4 Q Are you getting someone to make an

5 evaluation of her estate?

6 A I would think it's being done, yes.

7 Q Who is making the evaluation of her

8 estate?

9 A Mr. Hirschler.

10 Q What strings are attached to any monies

11 that you might get from your mother's estate?

12 A Well, it has been put, as I understand,

13 in trust to me or for me.

14 Q What are the terms and the size of that

15 trust?

16 A Now --

17 Q As best you understand.

18 A The best I understand my brother and

19 father are the trustees of it.

20 Q Of any monies for you?

21 A Monies or, I don't know whether it is

22 monies or stocks, is what mostly, I think, would be stocks.

23 Q Are you to receive the income from those

24 stocks?

25 A It's up to them to decide what to do with

1 them.

2 Q Is it in your trustee's decision as to

3 whether to give you the interest or the principal under that

4 trust?

5 A It's up to them. I mean it's for them

6 to decide.

7 Q You do not know the amount of trust?

8 A No, I do not know that.

9 Q You do know that it is comprised largely

10 of stock.

11 A I would say mostly stocks.

12 Q Do you know what stocks they comprise?

13 A Not offhand.

14 MR. KING: Mr. Hackney, I am going to

15 have to ask you for that.

16 MR. HACKNEY: Ask what now?

17 MR. KING: Ask for the terms of the trust

18 and what the approximate evaluation of the trust

19 is. If we can't get it before Monday, we will have

20 to ask for a continuance.

21 MR. HACKNEY: I am going to oppose that.

22 We might as well let me get my book.

23 MR. KING: Wait a minute now.

24

25 NOTE: An off-the-record discussion is

had, following which the taking of the deposition continues, viz:

MR. KING: Let the record reflect that counsel for both parties have been discussing the topic of the estate of Mrs. Jacobs, Sr., and the trust that has heretofore been discussed which has been established under the terms of her Will with the defendant Mr. Jacobs as beneficiary, and counsel have agreed that tomorrow, April 16th, counsel for the defendant will get in touch with counsel for plaintiff concerning whether an approximate evaluation of the trust can be provided to counsel for plaintiff and what the terms of the trust are under the Will of Mrs. Jacobs, Sr.

MR. HACKNEY: All right.

MR. KING: The supplying of such information from counsel for defendant to counsel for plaintiff shall in no way prejudice the rights of either the plaintiff or the defendant to utilize such information or to make such argument before the Court as they may feel proper at such time the information is either given or not given.

Q Mr. Jacobs, to summarize our discussion about the trust, it is your understanding that you are a

1 beneficiary of a trust established pursuant to your mother's
2 Will?
3 A That's right.
4 Q That you do not know the value of that
5 trust estate, nor do you know the terms under which it will
6 be given to you or made available to you except that you
7 understand that your father and your brother are the trustees
8 and they have the discretion as to whether they give anything
9 to you or not.
10 A That would be correct.
11 MR. HACKNEY: Mr. King, we both realize
12 Mr. Jacobs is not a lawyer; this is just his
13 interpretation.
14 MR. KING: Certainly. That goes without
15 saying.
16 Q Mr. Jacobs, other than the trust which
17 you have just described for us to the best of your knowledge,
18 are you the beneficiary either directly or indirectly of
19 any other assets that your mother might have had?
20 A No.
21 Q Did you receive any personal property from
22 your mother under her Will?
23 A No.
24 Q Is any money, funds, trusts, or any other
25 arrangement existing under her Will under which you are a

1 residual beneficiary? By that I mean was any money left your
2 father and upon his death was it to be distributed to you
3 and your brother or any other people?
4 A I don't know. I mean it's a complicated
5 Will. I wouldn't want to venture how it works, that part of
6 it.
7 Q Would it be appropriate then for counsel
8 to give me an answer to that question, also, as to whether
9 he is a residual beneficiary of any other trust or disposition
10 of any other funds under the Will other than the direct
11 trust for his benefit.
12 MR. HACKNEY: All right.
13 Q Mr. Jacobs, since November 1972, other
14 than the providing to you of living expenses for your room
15 and board that you have described for us earlier while you
16 were at your parents' home, has either your father or your
17 mother made any gifts of money to you?
18 A No gifts of anything other than some
19 small like birthday present of some nature.
20 Q No substantial sum of money then?
21 A No.
22 Q Are you the beneficiary of any other
23 trust that may have been established for your benefit?
24 A No, not that I know of, anyway.
25 Q Are you aware of whether your father has

1 established a trust for your benefit?
2 A I'm not aware of offhand. I wouldn't
3 want to venture a guess of what his Will is.
4 Q Outside of his Will, I'm speaking of now.
5 A No, I don't know anything about his
6 Will.
7 Q Do you know the terms of your father's
8 Will?
9 A No, I don't.
10 Q So you do not know then whether you are
11 a beneficiary under his Will.
12 A He might live for the next 96 years.
13 Q I hope he does.
14 A Well, we are looking ahead here --
15 Q Upon his death do you know whether you
16 are the beneficiary of any of his estate under the Will?
17 A I would imagine. I don't know who else
18 he would leave it to. I don't know who he is leaving what to
19 or anything about the terms of his Will.
20 MR. HACKNEY: Don't guess, Mr. Jacobs.
21 THE WITNESS: I say I don't know anything
22 about it.
23 Q All right. Now, Mr. Jacobs, do you own
24 any stocks?
25 A A few.

Q Would you describe those for me, please.

A I own 250 shares of General Cable, a few shares more, about 103 or 4 shares of National Distillers, and I believe 26 shares of Lehigh Coal and Navigation.

Q Is that all of your stocks other than the stock in Jacobs & Levy?

A That would be correct.

Q Do you know the approximate value of General Cable, your 200 shares?

A 250 shares.

Q I'm sorry. 250 shares.

A I would say it's approximately a little over $10.00 a share.

Q So that is approximately $2,500.00.

A Right.

Q Do you receive any dividends from that?

A I do.

Q What do those dividends amount to?

A Well, they have changed from time to time, but I believe right now they are working on seventy-two cents a share a year, but it changes. It changes, goes up and down. That wouldn't be a guaranty for the future.

Q What is the value of the 103 shares of National Distillers?

A That's at, I think, around fifteen, I

1 believe. A share.

2 Q Does that pay a dividend?

3 A I get dividends and shares. That's where

4 I got the three shares now, three or four shares. I don't

5 know what it is.

6 Q How many shares per year are paid in

7 dividends?

8 A Well, I think they have been doing that

9 for the last, I mean I have been getting the dividends and

10 shares I believe the last two or three -- last three times,

11 probably three quarters, and I have got, I don't know, three

12 or four shares I got is over the 100. So it's approximately

13 one share per quarter. It's something in par some way or

14 other. It might be almost two. But it's not over four or

15 five shares. Something three to five shares overall.

16 They accumulate, you know, you get something and something, they

17 accumulate, I don't get, of course, I could get them if I

18 asked for them. They show you a statement of how many you

19 got at the end of each quarter.

20 Q What was the value of Lehigh Coal and

21 Navigation?

22 A That's worthless.

23 Q I'm sorry.

24 A It is but it isn't -- I have had it.

25 A dollar would buy the whole thing.

Q How much interest did you receive last year, that is during the calendar year 1974 from your savings account?

A I think it was $277.00.

Q Was this the money you had deposited from your salary as of January 1974?

A That is correct.

Q How much money do you have now in your checking account?

A Around $400.00.

Q Where is your checking account?

A At the United Virginia Bank.

Q What branch?

A At Willow Lawn.

Q Your savings account is where, sir?

A Franklin Federal.

Q Where is that?

A Out at the Village.

Q Are you a partner in any venture, business venture with anyone else?

A No.

Q Do you have an interest in any corporation other than Jacobs & Levy?

A No.

Q Do you own any real estate other than

1

2 JOHN F. KELLY, introduced on behalf of
3 the plaintiff, having been first duly sworn, deposes and
4 states as follows:
5 DIRECT EXAMINATION
6 BY MR. BLANTON:
7 Q Will you state your name, your age and
8 your address.
9 A John F. Kelly. I am 47 years old. I
10 live at 8517 Halstead Road in Bon Air.
11 Q What is your occupation, Mr. Kelly?
12 A I'm a lawyer.
13 Q Where are you practicing?
14 A With the law firm of Hirschler, Fleischer,
15 Weinberg, Cox and Allen, 4th and Main Street in Richmond.
16 Q How long have you been there?
17 MR. PURCELL: We will stipulate Mr. Kelly
18 is not only a lawyer but a very competent lawyer.
19 Q What type of work do you do, Mr. Kelly?
20 A General practice.
21 Q In the course of your work, have you had
22 the occasion to do work for Jacobs & Levy?
23 A I have.
24 Q Can you say whether this is "your client"
25 or is this a so called firm client?

1 they have?

2 A So far as I know that's true.

3 Q Has your work as lawyer for the

4 Hirschler-Fleischer Firm caused you to do continuing work

5 for this clothing store?

6 A As far as I can remember that's about all

7 I have done for them.

8 Q Do you do, for instance, any tax work for

9 them?

10 A Only in connection with the work that,

11 that we have already mentioned, the setting up of the corpora-

12 tion. I do not do their tax returns.

13 Q An accountant does that?

14 A I don't know who does it.

15 Q Do you do individual work for the

16 shareholders?

17 A I don't recall any.

18 Q You have never done any tax returns for

19 the defendant, Mr. Alan Jacobs?

20 A No.

21 Q And you don't think you have done any

22 legal work for them?

23 A I personally have not, no.

24 Q Have you done any legal work for other

25 members of his family?

A His family? I participated in the drafting of wills, of a will for his mother, Mrs. Jacobs, and probably for his father, as well. I'm not certain of this last.

Q Did you do the tax works for Jacobs & Levy when it was a partnership?

A Only in connection with the incorporation.

Q You, of course, then were in on the discussions as to why the entity was changed from a partnership to a corporation.

A Yes, I was.

Q Can you state why this was done and why at this time?

A It was done at the, as I recall, at the recommendation of the accountants. The earnings of the partnership were such that the accountant felt that incorporation was appropriate.

Q The corporation was what?

A Incorporation was appropriate.

Q Does this mean that they had sufficiently high enough earnings that they would get greater tax benefits by having a different type entity?

A That is my recollection.

Q Do you yourself know anything about what the earnings were at this time?

1 Q So perhaps you did know of it as early as
2 February 1, 1973?
3 A It's possible, yes.
4 Q When did you do your work in terms of
5 the will for Mrs. Ethel Jacobs, the defendant's mother?
6 A I would say I don't recall the exact
7 dates, but it was within a couple of months prior to the date
8 of execution of the will. I don't recall when the will was
9 executed.
10 Q Do you know how long you had been with
11 the firm at this time?
12 A When was the will executed? I came with
13 the firm in August of 1972.
14 Q It appears to have been executed on
15 November 8, 1973.
16 A I had been with the firm about 17 months
17 at that time.
18 Q Do you remember now how long prior to
19 its execution you had been in discussion about this will?
20 A No, sir. I don't remember how long.
21 Q Do you remember with whom you discussed
22 the testamentary dispositions?
23 A Ed Hirschler, my partner.
24 Q Did you ever talk to Mrs. Ethel R. Jacobs
25 in person?

1 A The only recollection I have of any
2 discussion with her concerning the will was the date that it
3 was signed. Ed Hirschler was not there, and he asked me to
4 attend to its execution, and that I did.
5 Q So you were, I believe, a witness, were
6 you not?
7 A That is correct.
8 Q Now, I believe you also actually drafted
9 it, did you not?
10 A That is correct.
11 Q You and Mr. Hirschler had one or more
12 meetings as to what should be the contents?
13 A He gave me instructions as to what the
14 will was to provide, yes.
15 Q Did you have any discussions at all with
16 Mr. Alan Jacobs about this?
17 A I have no recollection of any.
18 Q Did you have any discussions with either
19 Mr. Gaston Jacobs, Jr. or Sr.?
20 A I have no recollection of any discussion.
21 I believe Mr. Gaston Jacobs, Sr. was also present at the
22 execution of the will. But, except for whatever conversation
23 might have taken place at that time, I don't recall any
24 conversation with him at all about the will.
25 Q Mrs. Jacobs was ill, I believe, at the

1 time, was she not? Hadn't she undergone surgery?
2 A I was not aware of it.
3 Q Didn't she die fairly soon after the
4 execution of this?
5 A I don't know the exact date of her death.
6 Q Within a year or so?
7 A I really don't know when she died.
8 Q Now, in your discussions with her -- You,
9 of course, remember the will.
10 A That document has my name on it as
11 attesting witness. I am assuming that that is the will that
12 I drew and attested on the date indicated.
13 Q You see, of course, that that has been
14 probated.
15 A Yes. It appears to have been.
16 Q It has the Clerk of the Henrico Courts
17 name on it.
18 A That's right.
19 Q Do you remember what your discussions
20 with Mr. Hirschler were as to the objectives of this will?
21 MR. PURCELL: I object to this line of
22 questioning on the grounds that you are again
23 violating not only of the attorney-client relation-
24 ship of the defendant, but also of his deceased
25 mother. Furthermore, that if he wished to question

1 Mr. Hirschler, he would be the proper party to
2 direct these questions to, although they would
3 also be inadmissible. On the further ground that
4 the will speaks for itself. And if counsel is
5 attempting to invalidate the will or contradict it,
6 I think he should so state, or whether he is going
7 to put the will into evidence. He should be forced
8 to make election at this time. We call upon him
9 to make the election whether he is going to stand
10 on the will or try to invalidate it.
11 MR. BLANTON: I have no intentions of
12 trying to invalidate it. I am perfectly willing to
13 make the election. I will enter it into evidence
14 right now as the plaintiff's next exhibit. It is
15 a matter of record. I am asking Mr. Kelly to
16 testify as to his conversation with Mr. Hirschler.
17 I think he can tell me what the objective was, as
18 he drafted this document.
19 MR. PURCELL: I renew the objection,
20 regardless of what any objective may or may not
21 have been. The party making the will has a right
22 to make the will as she saw fit and your line of
23 questioning is attempting to contradict the will.
24
25 NOTE: The above identified will of

1 Ethel R. Jacobs is marked and filed as Plaintiff's
2 Exhibit Number 1.
3
4 Q Mr. Kelly, basically this is a so called
5 marital deduction will?
6 A It is a marital deduction will.
7 Q And I believe as such all the income goes
8 to the surviving husband -- well, the personal property, I
9 believe, goes to him and the rest is in Residuary Trust?
10 Which is divided into Marital Trust and what you term a
11 Residuary Share?
12 A Under Article Two, Tangible Personal
13 Property is bequeathed to Mr. Jacobs, Sr., and then there
14 is a division of the residuary estate into two shares. One
15 is called Marital Trust and the other is called the Residuary
16 Share. Mr. Jacobs, Sr. gets the net income from the Marital
17 Trust. Mr. Jacobs, Sr. does not get the income from the
18 Residuary Share.
19 Q Right. But going back to the Marital
20 Trust, if he is not living, one part goes outright, does it
21 not, to Mr. Jacobs, Jr.? Under Article Four. Is it at the
22 bottom of Page 4, Mr. Kelly?
23 A I'm sorry. What?
24 Q Mr. Jacobs, Sr. was given a power of
25 appointment, was he not? If he failed to exercise that power

1 of appointment, the rest would be divided into two parts,
2 would it not?
3 A He does have a power of appointment.
4 That's right. And under (c) (2), to the extent that Marital
5 Trust is not used to pay taxes and is not exercised by the
6 power of appointment, it is divided into two separate equal
7 parts. That is correct.
8 Q One part would go outright to Gaston
9 Jacobs, Jr., would it not, free and clear of any trust?
10 A That's right.
11 Q Now, the other part --
12 A If he is living.
13 Q -- the other part would go in trust for
14 the defendant Alan L. Jacobs. Is that not correct?
15 A That's right.
16 Q I think the Residuary Share is set up
17 the same way, is it not?
18 A The Residuary Share?
19 Q The top of Page 7, I believe, sir.
20 A What is the question now?
21 Q The Residuary Share is divided in the
22 same way, is it not?
23 A The Residuary Share is divided into two
24 separate equal parts, and one part goes to Gaston, Jr., if
25 he is living.

1 Q Is the defendant the testator?
2 A Correct.
3 Q Free and clear?
4 A Correct.
5 Q And the other part?
6 A It is given to trustees.
7 Q For the defendant Alan.
8 A For Alan's benefit. Right.
9 Q Now, will you tell the Court why it was
10 that a distinction was made between these two sons in the
11 receipt of their inheritance?
12 MR. PURCELL: I object for the same
13 grounds previously mentioned. You are trying to
14 contradict and vary the terms of the will. The
15 will speaks for itself. We are dealing with what
16 the testatrix stated in her will. Not any second-
17 hand intention by parties now living to construe
18 the intentions of the testatrix. Furthermore, a
19 person has a right to dispose of his or her pro-
20 perty as she sees fit. No court or lawyer has a
21 right to rewrite the will. We object to it.
22 MR. BLANTON: I am not attempting to do
23 any of those, Mr. Purcell. I am attempting to have
24 the draftsman tell the Court why this distinction
25 was made.

1 A Well, as I said, I never --
2 MR. PURCELL: Wait just a minute. You
3 are asking the draftsman why. The why was only
4 in the mind of the testatrix. Not the draftsman.
5 Q Why, Mr. Kelly, did you draft it this
6 way?
7 A I drafted it this way because Ed Hirschler
8 told me to draft it this way.
9 Q Why did Mr. Hirschler tell you to draft
10 it this way?
11 MR. PURCELL: I object on the further
12 grounds it is double hearsay, double supposition
13 of fact.
14 Q Answer the best you can. The Court can
15 rule on that.
16 A I have no recollection that Ed Hirschler
17 explained to me at that time the precise reason for doing
18 this. He was just giving me instructions, and I would carry
19 them out. And I really can't say that I recall any conver-
20 sation in which he explained to me why it was being done this
21 way.
22 Q Mr. Kelly, you and I having practiced
23 law once together, you having done some wills for me,
24 generally we had discussions and discussed the eventual pur-
25 pose and aims of what was to be done. Certainly you must

1 remember why it was that this Anomaly was put in this will?
2 MR. PURCELL: I make one more objection.
3 This time for the reasons previously given. I will
4 refrain objecting further. I do not want the Court
5 to construe that I would not otherwise have an
6 objection. I object to this line of questions for
7 the reasons previously given.
8 MR. BLANTON: Mr. Purcell, your objection
9 runs throughout the strain of these questions.
10 A I believe that I was under the impression
11 at this time that it was being done this way because
12 Mrs. Jacobs, the testatrix, simply didn't want Alan Jacobs'
13 wife to have an interest in this estate.
14 Q Isn't that borne out by the fact that in
15 Paragraph A at the top of Page 7, you actually put in the
16 name of the other daughter-in-law, Virginia W. Jacobs, and
17 yet you make no mention of Marjorie Jacobs in the comparable
18 paragraph below.
19 A Well, the will certainly does mention
20 Virginia W. Jacobs in Article Five (a). And I don't see
21 Mrs. Alan Jacobs' name in Article Five (b).
22 Q Doesn't that bring to your recollection
23 better exactly what was to be accomplished in this will?
24 A That was my impression was that that was
25 the testatrix' desire.

1 Q Now, I believe this will says, Mr. Kelly,
2 that Mr. Gaston Jacobs, Sr. and Mr. Gaston Jacobs, Jr. and
3 Mr. Alan Jacobs are to be the Trustees of the will. Is that
4 correct?
5 A That is correct.
6 Q It gives the Trustees the sole discretion
7 in their "absolute and uncontrolled discretion" to go into
8 the income or principal for the benefit of Alan Jacobs,
9 except the Trustee Alan Jacobs. In other words, his father
10 and his brother are given the right to say how much, if any,
11 of the income or the principal of this will he may have. You
12 recall that, don't you?
13 A I'm reading it now. I really have no
14 recollection of what is in this will. But I am reading it
15 right now. It says, in Article Four -- which are you talking
16 about now? The Marital Residuary?
17 Q I am talking specifically about the
18 Residual. I believe that is the effect now.
19 A In Article Five (b) (1) (i), the Trustees
20 other than Alan L. Jacobs are authorized to pay to the said
21 Alan L. Jacobs or expend for his benefit at any time and from
22 time to time so much of the net income or principal of such
23 part as my Trustees other than the said Alan L. Jacobs in
24 their absolute and uncontrolled discretion shall deem
25 appropriate.

1 Q I believe your firm, Mr. Kelly, is
2 administering this estate, are they not?
3 A My firm represents the executors. That
4 is correct.
5 Q Are you yourself involved in the adminis-
6 tration at all?
7 A I am not.
8 Q Do you, of your own knowledge, know
9 whether or not there has been any distribution under this
10 will?
11 A I do not know.
12 Q Do you know whether or not some $90,000.00
13 has been paid as an estate tax as of now?
14 A I don't know of my own knowledge.
15 Q You have not been told this?
16 A I may have been told that. I don't recall.
17 The number doesn't mean anything to me at all, the 90,000.
18 Q Does the number 700,000 upwards mean
19 anything to you as the value of the estate?
20 A I don't know what the value of the estate
21 is.
22 Q You never heard?
23 A I may have heard, but I don't recall.
24 Q It is a large estate?
25 A Oh, it is a large estate.

1 Q Do you know whether or not Gaston Jacobs
2 is entitled to any monies now under the Residuary Share?
3 A I don't know. I haven't been representing
4 the executors. I don't know what has been distributed and
5 what has not been distributed.
6 Q But, as drafted, this will, isn't it
7 true, Mr. Kelly, that under this Residuary Share Mr. Gaston
8 Jacobs at this time is entitled to one-fourth of the estate?
9 Gaston Jacobs, Jr.
10 A I don't know whether that is true or not.
11 The Marital and the Residuary parts are not necessarily
12 equal.
13 Q Generally they are pretty close, aren't
14 they?
15 A I think it varies from estate to estate.
16 Q Aren't they fairly close? You try to --
17 A Some estates they are close. Others
18 they are not. It depends, I think, on how much is passing
19 outside the will.
20 Q Do you know anything that passed outside
21 of this will except the home?
22 A I don't know.
23 Q But in any event, Mr. Gaston M. Jacobs is
24 due his part now under the terms of the will you drafted,
25 is he not.

A He was given a part of the Residuary Share if he survived the testatrix, which he did. Now, what he is entitled to now, I don't know.

Q You would tell the Court, I think then, that you don't know whether or not Alan L. Jacobs has received anything under the Residuary Share?

A I don't know.

Q Was anything discussed with you as to how the absolute and uncontrolled discretion of the Trustees other than Alan L. Jacobs would be used?

A How it would be used?

Q How it would be used. How would you equalize the benefits to the two sons?

A I don't recall any such conversation.

MR. BLANTON: Answer any questions now that Mr. Purcell may have of you.

CROSS-EXAMINATION

BY MR. PURCELL:

Q Mr. Kelly, as draftsman of the will and being familiar with the contents under the will of Ethel R. Jacobs, mother of the defendant, Alan L. Jacobs, does Alan L. Jacobs have a vested right to demand, require and receive any income or principal under the will of his mother? Or is

it a Discretionary Trust, the discretion being in Trustees other than himself?

A It is discretionary, and the discretion is in Trustees other than Alan.

Q Mr. Kelly, Mr. Blanton asked you regarding the reconciliation of Capital Accounts from Schedule L of the partnership return for the fiscal year ending January 31, 1973. I have shown this to Mr. Blanton and I believe it can be stipulated he was referring to Schedule M. Is that correct?

MR. BLANTON: That is correct.

Q Mr. Kelly, I believe you have just looked at Schedule M.

A L.

Q M. I believe I think we stipulated.

A This is what you want me to look at?

Q M. See, he corrected that.

A Fine. Okay.

Q Mr. Kelly, I believe you just examined Schedule M on the aforementioned partnership return.

A That's right.

Q Which showed, and Mr. Blanton had asked you, whether there were partners had received withdrawals and distributions from the partnership as follows -- I guess that would be Mr. Gaston, Sr., would it not?

MR. BLANTON: I think he said he was not

1
2 JOSEPH L. LEWIS, introduced on behalf of
3 the plaintiff, having been first duly sworn, deposes and
4 states as follows:
5 DIRECT EXAMINATION
6 BY MR. BLANTON:
7 Q Will you state your name, your age, and
8 your address?
9 A My name is Joseph L. Lewis. My age is 37.
10 My business address is Second Floor, Massey Building, Richmond,
11 Virginia, 23219. My home address is 3421 Cedar Grove Road,
12 Richmond, Virginia, 23235.
13 Q You are an attorney?
14 A That is correct.
15 Q Practicing with the firm of Hirschler and
16 Fleischer?
17 A Hirschler, Fleischer, Weinberg, Cox and
18 Allen.
19 Q How long have you been there, sir?
20 A Since November 1 of 1968.
21 Q What type of work do you do, Mr. Lewis?
22 A Estate planning and administration. And
23 some general practice.
24 Q Do you do any tax work?
25 A Some tax work?

1 mean?

2 A That is correct.

3 Q In this capacity did you assist in the

4 will for a Mrs. Ethel Jacobs?

5 A Are you speaking of the last will and

6 testament of Mrs. Jacobs that was probated?

7 Q Yes. Ethel R. Jacobs.

8 A My recollection that Mr. Kelly prepared

9 that will, and I might have reviewed it, but that would have

10 been the full extent of my participation.

11 Q Reviewed, you mean proofread it, or did

12 you get involved with some of the testamentary dispositions?

13 A No. I had no contact with Mrs. Jacobs.

14 When I said that I may have read it, I intended to imply that

15 I would have read it to check for typographical errors and to

16 make sure that there was nothing ambiguous or any legal

17 problem in the way the will was drafted.

18 Q Can you state whether this is such?

19 A To the best of my knowledge this is a

20 copy of the last will and testament of Mrs. Jacobs that was

21 probated after her death. (Referring to Plaintiff's Exhibit

22 Number 1)

23 Q I direct your attention to the part of

24 that, that deals with the Residuary Share, and ask you if

25 you were involved with any work with Mr. Kelly in this area

1 of the will?
2 A My recollection is that I reviewed the
3 whole will and that no particular emphasis was put on any
4 particular provision of the will. I read this part in connec-
5 tion with reading the whole will.
6 Q I believe you said you were administering
7 the estate, did you not?
8 A No. I am working on some aspects of it.
9 Mr. Edward Hirschler is the main attorney in the firm working
10 on the administration of the estate. But I have assisted him
11 in various areas, such as preparation of the Death Tax Returns.
12 Q Did you, in fact, prepare the inventory?
13 A I believe I did prepare the inventory.
14 That is correct.
15 Q Is that that I hand you a copy of that?
16 I think it shows, does it not, a value of $775,000 plus?
17 A $755,323.13. I believe I did prepare
18 this inventory.
19 MR. BLANTON: I would like to enter that
20 into evidence as Plaintiff's Exhibit Number 2.
21
22 NOTE: At this point document entitled
23 inventory of the estate of Ethel Rosenfield Jacobs
24 is marked and filed as Plaintiff's Exhibit Number 2.
25

1 Q Are you familiar enough, having been a
2 part of the drafting and now involved with the administration
3 of the will, of the division of the proceeds?
4 A I am familiar with what the will provides
5 in regards to how the estate should go to the various
6 beneficiaries. Is that what you mean by the question?
7 Q Yes, sir. Is it not true that Mrs. Ethel
8 Jacobs' first son, Mr. Gaston Jacobs, Jr., receives a por-
9 tion of the estate outright free and clear of any trusts on
10 her death?
11 A That is correct.
12 MR. PURCELL: Mr. Blanton, at this time
13 let me interpose an objection to this line of
14 testimony. I suppose we can stipulate my objection
15 will go through this type of questioning.
16 MR. BLANTON: Right, sir.
17 MR. PURCELL: Of trying to contradict the
18 will.
19 MR. BLANTON: I won't say that I am trying
20 to contradict the will. I understand your objection
21 goes to anything dealing with the will, yes, sir.
22 What was my last question?
23
24 NOTE: The foregoing question is read
25 by the reporter.

1 Q Mr. Alan Jacobs, the second son, receives
2 nothing but in trusts, is that correct?
3 A That is correct.
4 Q The Trustees over this portion, Mr. Alan
5 Jacobs, who have the power to act are Gaston Jacobs, Jr. and
6 Sr.
7 A That is correct.
8 Q Have the estate taxes on this estate been
9 paid?
10 A Yes, they have.
11 Q In excess of $90,000.00?
12 A That is correct. It was 91 something.
13 Q When were they paid?
14 A December 23, 1975, when the check for
15 the taxes were mailed to the Internal Revenue Service.
16 Q Has there been an accounting?
17 A The accountant for the estate is preparing
18 an accounting, but has not yet been received by my office.
19 Q Then your testimony is that you all have
20 an accountant doing the accounting?
21 A An accountant is working on the accounting
22 for the estate.
23 Q Who is that?
24 A David Deitz with Dalton, Pennell.
25 Q Deitz?

A D-E-I-T-Z.

Q Do you know when that when that will be available?

A Should be available some time this week.

Q Do you have a target date that you are trying to shoot for to get that filed?

A We intend to file it by the end of this month. That's the reason I say he indicated we would receive it by the end of this week, so it would be filed -- he wants to file it four months after the end of the accounting period.

Q Do you know whether in actuality other monies have been paid from the estate? All the bills, I take it, have been paid?

A The bills have been paid. That is correct.

Q Has Mr. Gaston Jacobs received anything under his share of the Residuary Share?

A Distribution from the estate have been made to Mr. Gaston Jacobs, Sr.

Q Senior.

A Senior.

Q And he, I believe, gets the income from the Marital Trust.

A That is correct.

Q Do you know roughly what that has amounted to?

A It appears he received $7,500.00 in 1975 and in 1976 he has received 5,000.

Q I take it you are saying Gaston M. Jacobs, Jr. has received nothing so far?

A To the best of my knowledge he has received no funds whatsoever from the estate.

Q What is your plan as to that, if it has been formulated at this time?

A I don't think any definite plans has been made in regard to distribution from the estate.

Q You have had some discussion with Mr. Gaston Jacobs about his interest in his estate, have you not?

A Mr. Gaston Jacobs, Sr. or Jr.?

Q Junior.

A I have personally had no discussion with him.

Q You have projected, have you not, what his share will be under this Residuary Estate? Just in the roughest form.

A The accountant is working on that now. I have not seen the report. That is one of the things the accountant is working on.

Q You have projected in its roughest form, have you not? What is he going to get, $150,000.00?

1 A I wouldn't like to say, because we didn't
2 really make a projection. Our intent, we felt something could
3 be done while the accountant was working on the accounting,
4 and other matters concerning the estate. We are sort of
5 leaning on it.
6 Q I am not asking you to give an exact
7 figure. You won't be held for anything. Just as you have
8 administered this will so far, this estate so far, what could
9 you conceive will be in Gaston Jacobs' share under that first
10 part of the Residuary Share?
11 MR. PURCELL: Are you talking about Senior
12 or Junior?
13 MR. BLANTON: Junior.
14 Q You do, I believe, have all your working
15 papers with you, don't you, Mr. Lewis?
16 A I have the papers with me. I was looking
17 at the tax return. State Tax Return.
18 All right. On the second page of the
19 estate tax return we show a share of Gaston M. Jacobs, Jr. as
20 being $207,113.50. But this, the Federal Estate Taxes,
21 inheritance taxes, would have to be paid out of that to the
22 extent of one half. In other words, the Residuary Share bears
23 the death taxes and if you take off those taxes, which are to
24 be at least, I would say, in the neighborhood of $100,000.00,
25 that would leave you about $150,000.00, as you said.

1 Q And the same share would be in trust for
2 Mr. Alan Jacobs.
3 A That is correct. The amount is the same
4 except the fact that Alan Jacobs' share is in trust.
5 Q What is your recollection as to why that
6 is so?
7 A I have never talked with Mrs. Ethel Jacobs.
8 I have no personal knowledge.
9 Q I understood you to say that, I am asking
10 you what your discussion with Mr. Kelly and Mr. Fleischer has
11 been.
12 A It is my understanding that that share
13 was put in trust to protect Mr. Jacobs, any claim that might
14 be asserted against his interest in the estate.
15 Q By his estranged wife, Marjorie.
16 A I think that was one of the possible
17 claimants.
18 Q I believe Mr. Alan Jacobs, himself, has
19 no control over that except that he might prevail upon his
20 father or brother from time to time to release some income or
21 principal. Is that correct?
22 A I think it is entirely up to the father
23 and brother as Trustees whether they would deem it advisable
24 to make a distribution to him out of that trust.
25 Q Have you discussed this aspect of it at

1 all with any of the Jacobs as to how distribution would be
2 made, if any, from that trust?
3 A No, I have not discussed it with any of
4 the Jacobs.
5 Q Have you discussed it with Mr. Kelly as
6 to how these monies may be gotten out free of any claims?
7 A No, I haven't.
8 MR. BLANTON: I have no further questions.
9
10
11 CROSS-EXAMINATION
12 BY MR. PURCELL:
13 Q What was the date of the probate,
14 Mr. Lewis?
15 A April 23, 1975.
16 Q I believe this is April the 29th, 1976.
17 Right?
18 A That is correct.
19 Q Has there been any contests filed against
20 this will?
21 A To the best of my knowledge there has been
22 none.
23 Q And a year has elapsed since probate?
24 A That is correct.
25 Q In all of your dealings with this matter,

1 has there been any indication whatsoever that Mrs. Ethel Jacobs
2 was not of sound mind when she made this will?
3 A I have never heard anyone indicate that
4 she was not of sound mind.
5 Q That being so, she had full possession of
6 her faculties, knew what she was doing and knew what she
7 wanted to do, is that correct?
8 A I have no information to the contrary.
9 Q In this will did she provide that any
10 interest that her son Alan Jacobs might have in her estate
11 would be under a discretionary trust?
12 A That's what the will provides.
13 Q Was that discretion in someone other than
14 Alan Jacobs?
15 A Alan Jacobs is not given the right to
16 participate in any decisions involving the payment of income
17 or principal from that trust.
18 Q That is income and principal to him,
19 also, is that right?
20 A Right.
21 Q He has no control over it, does he.
22 A That's right. Let me qualify the answer
23 to this extent. Upon, it says the will, upon the death of
24 Alan Jacobs, whatever remains of his part shall be paid and
25 turned over to any one or more of the said Alan L. Jacobs'

1 spouse, his children or their issue and so forth. So he does
2 have some power to pass property at the time of his death.
3 My answer was based on what could happen during his life time.
4 Q I believe you were reading from Article
5 Five, Page 7, the last, beginning at the last paragraph on
6 Page 7 and continuing on to the top of Page 8 of the will. Is
7 that correct?
8 A That's right.
9 Q Mr. Lewis, would you read that paragraph
10 beginning at Page 7 just referred to? And continuing on
11 Page 8?
12 A Upon the death of the said Alan L. Jacobs,
13 whatever then remains of such part shall be paid and turned
14 over to any one or more of the said Alan L. Jacobs' spouse,
15 his children or their issue, and the spouses of his children
16 or their issue, and in such proportions as the said Alan L.
17 Jacobs may designate in his will provided the same shall
18 specifically refer to the special power of appointment given
19 and bequeathed by this paragraph (b) (1) (ii) of this Article
20 Five, and to the extent not so desposed of by the said Alan L.
21 Jacobs shall be paid and turned over to his children then
22 living in fee simple and absolutely, free and clear of trusts,
23 but if there be no child of the said Alan L. Jacobs living at
24 his death, then whatever remains of such part shall be added
25 to the part of my Residuary Share described above in

1 Paragraph (a) of this Article Five, to be disposed of as a
2 portion thereof.
3 Q Other than that provision, Mr. Alan L.
4 Jacobs, the defendant, has no, absolutely no control whatsoever
5 over that portion of his mother's estate. Is that correct?
6 A That is my understanding.
7 MR. PURCELL: I believe that is all,
8 Mr. Lewis.
9
10
11 REDIRECT EXAMINATION
12 BY MR. BLANTON:
13 Q Mr. Lewis, that portion of the will that
14 you read wherein any spouse of Alan's and/or any issue comes
15 in to being on his death, it mentions no spouse by name,
16 does it.
17 A It does not.
18 Q Earlier in the will, when we deal with
19 Gaston, Jr., his wife is mentioned specifically as Virginia,
20 is she not.
21 A Right. Virginia W. Jacobs.
22 Q You say you never had any contact directly
23 with Mrs. Ethel Jacobs. Do you know whether or not at this
24 time she was afflicted with cancer?
25 A I have no knowledge about that.

1 Q Did you in any way get involved with the
2 execution of this will?
3 A No. I was not present at the execution.
4 Q Have you ever drawn a power of attorney
5 for her?
6 A I don't recollect doing so.
7 Q Do you know whether or not there was one
8 in existance running in favor of her husband?
9 A I don't know of any specifically, but it
10 is often done in cases where people are of advanced age. I
11 wouldn't be surprised if there was one.
12 Q Did you of your own knowledge or from
13 having talked with Mr. Kelly and/or Mr. Hirschler, whether or
14 not Mr. Gaston Jacobs, Sr., Jr., and Alan were involved in
15 the testamentary bequeathes? Did they discuss this with their
16 mother?
17 A I really have no knowledge as to how the
18 decision was made to put these particular provisions in the
19 will. I did not participate in the discussions.
20 Q Now, the great predominance of assets in
21 the estate amount to shares of stock, bonds, et cetera. Is
22 that correct?
23 A That is correct.
24 MR. BLANTON: I have no further questions.
25

NOTE: Mr. Joseph L. Lewis, the previous witness, remains in the room as personal counsel for Gaston M. Jacobs, Sr. and Gaston M. Jacobs, Jr.

GASTON M. JACOBS, SR., introduced on behalf of the plaintiff, having been first duly sworn, deposes and states as follows:

DIRECT EXAMINATION

BY MR. BLANTON:

Q State your name, please, your age, and your address.

A Gaston M. Jacobs, Sr. 79 years old. 206 Overlook Road, Richmond.

Q Your occupation?

A Well, at the store.

Q You are a merchant?

A Yes.

Q How long have you been connected with the store?

A Before first World War I.

Q Had you found it?

A No. My father.

Q I believe it is entitled Jacobs & Levy?

A That's right.

Q At that time you only had the one store, did you not?

A Yes.

Q That was located where, sir?

A At 705 East Broad, when I was there. But before I was there, it was a store next door to it, 703 East Broad. But, when I went there, it was 705 East Broad.

Q You remained a one-store operation for how long, sir?

A Up to the time we moved to Willow Lawn, about 18 years ago.

Q Did you at that time give up the Grace Street location?

A You mean Broad Street location?

Q Broad Street.

A Yes. After about three or four years.

Q And then you had the store in Willow Lawn only for how long, sir?

A I think it's 18 or 19 years.

Q You have now, I believe, leased at Regency?

A Yes.

1 A Never talked to Ethel about it and never,
2 never, and never, Ethel never talked to me about it.
3 Q I'm assuming then that you got along very
4 well with your daughter-in-law?
5 A We didn't have any disagreements that I
6 know of. That I know, Ethel didn't, and I knowed I didn't.
7 Q Actually Ethel had remembered Marjorie in
8 one of her earlier wills, had she not?
9 A Yes.
10 Q To the extent of perhaps $5,000.00?
11 A That's right.
12 Q And that is not so in the will that was
13 probated, is it.
14 A That's right.
15 Q To what extent, Mr. Jacobs, were you in-
16 volved in the drafting of your wife Ethel's will? Did you
17 advise her?
18 A I didn't advise, no. We were advised by
19 our lawyers. We were advised by our lawyers and, and the
20 reason why this $5,000.00 was cut out was because for at least
21 a year Ethel never heard and she was in the hospital most of
22 the time, had nurses around the clock, and maybe once a month
23 or so she would get a call from Jane. Consequently it rub her
24 the wrong way, not visiting. But calls. And she got mad.
25 Q She got mad at Marjorie because she thought

1 Marjorie was not attending to her in her illness?
2 A Well, just to be -- in other words, she
3 got more outside calls from friends than she did from Marjorie.
4 Q But this was evidently the time, was it
5 not, of the disagreement leading up to the separation?
6 A Oh, no. This was, this was after the
7 separation.
8 Q After the separation. And your wife, I
9 believe, had been ill with cancer?
10 A Yes.
11 Q Were you granted the power of attorney?
12 A Yes.
13 Q When was this, sir?
14 A Well, right after she was declared, she
15 was sick before that at St. Mary's Hospital, and Dr. Greenberg
16 and Dr. -- well, we have three doctors. And then they declared,
17 they had a consultation and found out that what she had. And
18 they immediately advised her for me to transfer her to
19 Dr. Mellette. She's a cancer specialist Medical College, and
20 they, of course, washed their hands of the case and it was
21 turned over to her.
22 Q How long did she live after this?
23 A Three years.
24 Q So you had this power of attorney and in
25 effect had the power to manage her affairs for this last three

1 years?

2 A That's right.

3 Q I presume in effect you did assist her

4 with her business affairs during this course of suffering and

5 whatnot?

6 A At certain times she couldn't do anything

7 herself. It was strickly up to me.

8 Q Now, she drafted her will at this time or

9 a little later?

10 A No. The will was drafted before then.

11 Q Before then?

12 A Before she was -- it was done when she was

13 at St. Mary's. Before she had the cancer.

14 Q I see. Around 1973?

15 A Around that, yes.

16 Q Did not you talk with her about the

17 disposition of her assets?

18 A Say that again?

19 Q Didn't you talk with her about how she

20 would dispose of her property?

21 A Well, it was done mostly by our lawyers

22 advised us to do it to a certain degree, because as I said

23 before at the first will we had, I don't know if you know a

24 fellow by the name Cohen? Leroy --

25 Q That's right.

1 A He drew our first will when we were first
2 married. And this was practically the same thing. Just a
3 few phrases in it.
4 Q Your wife owned the home that you live in?
5 A We owned it together.
6 Q You owned it together?
7 A Yes.
8 Q You did not receive that under the will.
9 A I tell you the truth, I don't know. The
10 will has not been fully decided yet.
11 Q It has not been administered, you mean?
12 A Administered. Well, it has been adminis-
13 tered. I don't know if it -- I don't know if the government
14 has accepted it or not. I don't know.
15 Q I see. You have gotten some proceeds,
16 have you not?
17 A Oh, yes.
18 Q Do you know whether your son Gaston has
19 gotten anything yet?
20 A No.
21 Q You don't know or he hasn't?
22 A I know he hasn't.
23 Q You know he hasn't. Has Alan?
24 A Not -- I don't know of.
25 Q Not that you know of?

1 A If he has, if he has he's got it out of
2 the business. Not out of the estate. I know he hasn't gotten
3 it out of the estate.
4 Q How do you know that, sir?
5 A Because I sign, I sign checks of anything
6 goes out of the estate.
7 Q As Trustee?
8 A As Trustee.
9 Q I believe as Trustee, you have sole power,
10 along with Gaston, to say what, if anything, Alan gets, do
11 you not?
12 A I think that's the size of the will.
13 Q Is that the same situation with Gaston?
14 A Gaston? No. It's a little different with
15 Gaston. We took that into consideration. Gaston being older,
16 and we took that into consideration that he should, that as
17 long as he lives he and myself. When I pass away, then it
18 will go to both of them.
19 Q So you are saying that your son Alan --
20 what is he, 48 or 50?
21 A I guess Alan is around 50.
22 Q So at 47 he would not have been able to
23 exercise the right judgment over his monies?
24 A I didn't mean it that way. All I meant
25 three would be too many. We thought two would be better.

1 And I didn't have long to stay. So they figured that it would
2 be better for two instead of three.
3 Q But it is true then, as you say, if you
4 don't have long to stay, when you go on it is just Gaston
5 saying when Alan gets any monies. Is that right?
6 A I beg your pardon?
7 Q It will just be Gaston saying when Alan
8 gets any money?
9 A No. When I pass on, then I think the will
10 says that it goes to both of them.
11 Q I believe the will says that, not to
12 contradict you, it has been testified --
13 A You are not contradicting me. You might
14 correct me, because this is all news to me, you know.
15 Q You did not have any part of it. Just
16 the attorneys did it?
17 A I beg your pardon?
18 Q You are saying just the attorneys did it?
19 A Yes. We had confidence in them, and we
20 thought that they would do what was right.
21 Q How could it be right to withhold something
22 from one son that you give to another?
23 A Well, it wasn't the idea of holding. We
24 didn't think we would have any trouble.
25 Q What kind of trouble are you speaking of?

1 A Trouble back in the business end of it.
2 That was the main thing of it is if they needed money in the
3 business they could get it out of their estate.
4 Q You mean Alan's share would be used for
5 that?
6 A It could be used for that, sure, because
7 he got interest in the estate, in the business.
8 Q And Gaston could go on and spend his.
9 Alan's would be held aside for the business?
10 A That's right.
11 Q Weren't there actual discussions in your
12 presence, Mr. Jacobs, that it would be necessary to protect
13 Alan to the extent that some of these monies be put out of his
14 control?
15 A This was done, if my memory serves me
16 correctly, was done before, when this will was changed I think
17 the only change in the will that was done was the, was the
18 $5,000.00. The will itself was the same.
19 Q You mean it has always been contemplated
20 that Alan's money would be protected from Marjorie?
21 A Not from Marjorie. It was protected so
22 he doesn't -- we had two directors. I mean two, what you call
23 it?
24 Q Trustees?
25 A Trustees.

1 Q You and Gaston.
2 A It could have been changed now after, what
3 I am talking now before the separation now, after the separa-
4 tion it could have been changed. But, the date will tell you
5 that.
6 Q Well, what I am trying to find out,
7 Mr. Jacobs, is why Gaston gets money outright and Alan does
8 not?
9 A Well, I can't answer that. I don't know.
10 Q You don't know?
11 A No.
12 Q That is a little odd or different, is it
13 not? One son would be treated differently?
14 A It's different, and it must have been, it
15 must have been a reason for it.
16 Q But you are saying you were not privy to
17 it?
18 A I beg your pardon?
19 Q You were not a party to it? They did not
20 take you into their consideration?
21 A It possibly did. But, I agreed with the
22 lawyers and who did it.
23 Q What did they say was the reason for doing
24 this?
25 A Well, after all, I imagine if a man is

separated from his wife, I imagine that's it. I think that question could be answered by a lawyer better than it could be by me.

Q I am just asking you what you knew about it yourself.

A I knew, the only thing I knew that was what was done.

Q Your daughter-in-law, Virginia, is mentioned specifically as being a part of this --

A She is going to be, she is going to be, if something happens to Gaston she is going to be executor.

Q She is going to be executor?

A I think either she or Gaston. Are you familiar with it?

MR. LEWIS: I am not really prepared to --

Q Why is it that Marjorie isn't doing that?

A Because at that time maybe Marjorie wasn't considered in the family. She had separated.

Q I see. Thank you.

A Though you were asking me questions now it's hard for me to answer correctly so -- somebody else, a lawyer, could tell you that better than I could.

Q You are saying, I think in effect, that as the head of this family you went along with cutting Marjorie out because your son left her. Is that right?

A I imagine that had something to do with it.

Q You said you didn't know when the marital trouble really began. Do you know anything about the real cause behind the separation?

A No.

Q Do you know that Alan had become involved with some other woman?

A I know he's -- I know he goes, he visits people. I know that.

Q Do you know a Vivian Payne?

A Yes.

Q Do you know whether or not he is living with her?

A I don't know whether he is living with her or not. I know they have been over to the house for Sunday for drinks and we have been out to eat with Gaston and his wife.

Q How long has this relationship been going on, sir?

A I couldn't tell you that.

Q Two years?

A No, I don't think so.

Q When was the first time you met Vivian?

A Well, I -- Listen, I knew her when she

1 question like that is that is up to the man and the wife.
2 Now what happens or what did happen or what has happened I
3 don't know anything about it. But, I, to my knowledge that
4 I didn't know anything particular happened.
5 Q Is it true, Mr. Jacobs, in your faith,
6 the Jewish faith, that the wife and the mother occupies a
7 unique role, more of a, sort of a focal point in the home?
8 Great respect is shown toward her?
9 A It should be if everything being equal.
10 Now, you are asking me a question that it's not, I don't say
11 it is, and I don't say it isn't. I don't think it's material,
12 it's a direct to this particular case we are talking about.
13 I know certain marriages have broken up that I knew about, and
14 I thought they were 100 percent right. And certain ones are
15 different. So, I can't judge, say this is right or wrong,
16 because I don't know anything about it.
17 MR. BLANTON: All right. I have no further
18 questions. Answer anything Mr. Purcell may have of
19 you.
20
21
22 CROSS-EXAMINATION
23 BY MR. PURCELL:
24 Q Mr. Jacobs, isn't the Jewish faith mothers
25 are quite close to their sons, too, aren't they?

1 A Quite natural.
2 Q When they decide to make a will, they
3 make it according to their own wishes. Is that correct?
4 A That's right.
5 Q And in this case your wife, Mrs. Ethel
6 Jacobs, made her will the way she so desired.
7 A Absolutely.
8 MR. PURCELL: Could you read back the
9 question three or four ago where Mr. Blanton asked
10 something about the effect in the Jewish faith the
11 mother occupies a great position, something to that
12 effect?
13
14 NOTE: The foregoing is read by the
15 reporter.
16
17 A Well, I can correct that, too. Also,
18 that the money that we are talking about now, the estate was,
19 well, 90 percent, her money. So, I had, she would ask me
20 questions and things like that. She did a lot of things that
21 she wanted to do with it. And I had nothing to say about it.
22 Q Would it be correct to say your wife was
23 a pretty good business woman herself?
24 A Very much so.
25 Q Would it be correct to say that she was

1 sort of a woman of her own mind?
2 A Very much so.
3 Q When your wife executed this will that is
4 being spoke of now, was she in full possession of her faculties?
5 A Definitely.
6 Q She knew what she wanted to do?
7 A Definitely.
8 Q She carried it out in her will.
9 A Definitely.
10 Q And the will speaks for itself.
11 A Right. That was varified by the lawyer
12 who gave us, gave me the power of attorney on this. When he
13 found out that she was, she had this particular trouble and
14 she couldn't take care of herself anymore, then he turned it
15 over to me.
16 Q When you say she couldn't take care of
17 herself anymore, was that because of her physical condition
18 from the cancer?
19 A That's right. She was just sick.
20 Q Not mental incapacity.
21 A No. She was in the hospital five or six
22 times, went home, go back again, and then finally she went
23 back to the, went to Medical College and spent most of the
24 time there.
25 MR. PURCELL: That is all, Mr. Jacobs.

1

2 GASTON M. JACOBS, JR., introduced on behalf
3 of the plaintiff, having been first duly sworn, deposes and
4 states as follows:
5 DIRECT EXAMINATION
6 BY MR. BLANTON:
7 Q State your name and your age and your
8 address.
9 A Gaston M. Jacobs, Jr. 55. 4905 Wythe
10 Avenue. Richmond, Virginia.
11 Q You, I believe, are a shareholder in
12 Jacobs & Levy?
13 A Right. Yes.
14 Q A 45 percent owner?
15 A That is correct.
16 Q You have been connected with it how long,
17 sir?
18 A About three years. That I was 45 percent
19 owner.
20 Q Previously you had 45 percent ownership in
21 the partnership?
22 A That is correct.
23 Q For how long did you have that ownership?
24 A '63, I believe. I'm not sure about that,
25 but I think it was 1963.

1 Q You derived most of your ownership from
2 your Uncle Norman?
3 A Well, no. Some of it was from my father,
4 too.
5 Q He gave up some interest at this time that
6 your Uncle Norman left the business?
7 A That's right. That's right.
8 Q Did you buy this interest or were you
9 given it?
10 A I think we worked for it.
11 Q In other words, the time you put in at
12 the store.
13 A That's right.
14 Q Your uncle said as he got out he will give
15 it to you.
16 A That's right.
17 Q I believe your brother Alan, the defendant,
18 has the same interest, does he not?
19 A That's right. That is correct.
20 Q What was the basic reason behind the
21 incorporation?
22 A Well, as far as I remember right now we
23 had two sons coming along, and Alan had a son, and I had a
24 son, and in the 107 years of operation of Jacobs & Levy it has
25 only been fathers and brothers and now we are getting cousins

1 A That's the first I knew of it.
2 Q You did not know they were having any
3 trouble at all?
4 A I didn't know.
5 Q Did you know at the time he was involved
6 with Vivian Payne or Vivian Hoehing?
7 A No, I didn't know that until almost a year
8 ago, probably.
9 Q You just figured that it was none of your
10 business.
11 A That's right. I didn't, I wasn't --
12 Q You had trouble enough of your own. Right?
13 A Right.
14 Q So you are saying here under oath today
15 that the fact that your brother was separated from his wife
16 was of no consideration as to whether or not to remain a
17 partnership?
18 A No. No. No, this was an organizational
19 and continuation of the firm without the partnership with a
20 continual continuation of the business instead of stopping and
21 starting. It should have been done many years ago, but we
22 didn't do it.
23 Q Business was flourishing at this point?
24 A At this time, yes. Flourishing -- you have
25 the records there.

1 Q It has done well, has it not?
2 A Right.
3 Q You still do over three quarters of a
4 million dollars, don't you?
5 A Yes, sir.
6 Q You have two stores now operating, haven't
7 you?
8 A Right.
9 Q You just entered into a lease for $69,000.00
10 plus at Regency Square, haven't you?
11 A Right.
12 Q You operate one store and Alan operates
13 the other?
14 A No, we don't. Alan is not operating one,
15 I am not operating one. We are doing the buying. The sons
16 are managing each store separately.
17 Q How old are they?
18 A Twenty-four and twenty-four and a half.
19 Something like that.
20 Q You all turned over the active management
21 to these boys?
22 A Personnel and active management of the
23 stores themselves, right.
24 Q You all still guide, of course, do the
25 buying and financial end of it.

A We do the buying and we are tending to the finances, yes.

Q You are training them.

A They, well, Alan, Jr. has been associated with the firm about eight or nine years part-time and full-time about four, and Gaston, III, full-time three years, and we think they are qualified now.

Q What do you pay them?

A I think it is around $10,000.00.

Q They don't have any stock ownership?

A No, they have no stock.

Q They are responsible for managing these stores. You are paying them 10,000.

A That's right.

Q What do you figure your interest in the store is worth?

A Well, roughly from the last report, something like maybe two, about maybe two hundred thousand.

Q It has been above that as it has been fixed by your accountants through the years, has it not?

A Not too much above that.

Q You wouldn't sell your interest for that, would you?

A No, not at this time. Well, I don't know at this time with the obligations, it might be a very attractive

1 That's right. On the advice of --
2 Q Further on on this page there is a Schedule M
3 Reconciliation of Partners Capital Account. It would appear
4 your income that year was $48,149.00 as a salary.
5 A Well, it was earned but not as salary, no.
6 I don't know what the definition of salary is. That is not --
7 Q Let's say income.
8 A We need an accountant. I know what that
9 is. That is how much I was suppose to have made, but that
10 isn't, that is not my --
11 Q You did not take that home in cash.
12 A No. No.
13 Q There were certain taxes paid for you and
14 this kind of thing from the corporation.
15 A That's right. That's right. That is
16 correct.
17 Q Over here it would appear that year you
18 withdrew $74,300.00.
19 A That was my salary. That was the -- that
20 was the take-home pay.
21 Q All right. That was the take-home pay.
22 Your mama was ill how long prior to her death, sir?
23 A I would say three-three and a half years.
24 Q She died a year ago?
25 A April 2nd, yes.

1 Q So she was ill at the time your brother's
2 domestic difficulties culminated.
3 A I think it was, she was -- I don't think
4 they planned on terminal illness at that time. Rather, that's
5 not what I was advised. She was under medical care and she
6 was in, in an aged condition that I would say as a layman, I
7 mean in other words she was infirm but not incapacitated, and
8 I don't believe that it was, we knew the nature of her illness,
9 but we didn't really think of it as a, I personally did not
10 think of it as a terminal type of thing. That was nothing,
11 I mean, that she couldn't live with.
12 Q You were fairly close to her?
13 A Yes.
14 Q Were you any closer to her than your brother
15 Alan?
16 A I don't think so, no.
17 Q Why would she leave monies outright to you
18 and put money in trust for him?
19 A Well now, that I don't think I was
20 questioned on that exactly. I mean, I wasn't, I wasn't really
21 aware of that until I did sign as witness -- I didn't sign as
22 witness.
23 Q You were in on some of discussions surround-
24 ing that, were you not?
25 A Yes. But specifically --

1 Q Wasn't it mentioned that at the time,
2 though, that Alan was separated from his wife and something
3 should be done to --
4 A That's very true. That's right. That was
5 after that --
6 Q To protect him from Marjorie.
7 A That's right. That's right. That is
8 correct.
9 Q Your wife, I believe, is spelled out in
10 the will, isn't she, by name?
11 A I don't remember. Is she?
12 Q You don't know that?
13 A Yes. Yes, I don't know in what capacity --
14 I don't know how, but I think her name is in the will.
15 Q I believe you have the sole discretion
16 along with your father, and when he dies the sole discretion
17 of saying when the monies held in trust for Alan are paid out,
18 do you?
19 A I think Gaston, III gets mixed up in that,
20 too, at that time.
21 Q You mean if you die?
22 A No. There will be two of us.
23 Q What is the reason for his money being in
24 trust? How can you, a brother, a couple years older, get
25 yours outright, some $150,000.00 --

1 A Maybe because I was a couple years older.
2 No, I don't -- I think it did have something to do with the
3 marital status.
4 Q Have you discussed at all with Alan how
5 you will make it up to him?
6 A Make up what?
7 Q The cash you are going to get, $150,000.00
8 pretty quickly, aren't you?
9 A There has been no plans to distribute.
10 Q There have been no plans to distribute?
11 A No.
12 Q You don't know how much you are going to
13 get from your mother's estate?
14 A I'm suppose to get a fourth of it.
15 Q Do you know how much that is?
16 A Well, it varies. I think it's a little
17 bit more today than it was on the 2nd of April. I would say
18 about 200,000, $160,000.00-200,000, somewhere in that neighbor-
19 hood.
20 Q Are you independantly wealthy?
21 A No.
22 Q You don't know when you are going to get
23 this 200,000?
24 A No.
25 Q You are eager to get it?

1 A Not particularly. I seem to be getting
2 along pretty good as I am.
3 Q So you feel that Alan doesn't need his,
4 either?
5 A I wouldn't say that. I don't know what
6 his financial situation is except that it's bad.
7 Q Has he talked to you about that?
8 A No, not about that, you know, that he is
9 in financial difficulty.
10 Q How did you feel then about the authority
11 in you to withhold income as well as principal from him?
12 A Well now, this has, this is not, I am not
13 the sole -- I am not the sole executor of the estate and it's
14 with other, with other parties that are involved.
15 Q Just your dad, is it not?
16 A Well, yes.
17 Q So together you all can say Alan, you don't
18 get anything.
19 A Well, it's something else involved, too.
20 The reason for this is the fact, is the tax structure here
21 that we have been advised by counsel and also by accountants
22 that we are not in a position to accept this, any of this
23 money, and that's the reason we are waiting.
24 Q You don't have any control over it, do
25 you? Vested in the terms of this will?

A We don't have any -- the only control we have is when it is to be divided up. Or terminated.

Q You mean your lawyer has told you to hold off for a year or so to get into a little better taxable situation?

A Our lawyer advised us to hold off if we could do it. It's not to our advantage to do it at this time.

Q Do you think your attorney would go for paying the monies if there could be some settlement with Alan and his wife, then he can go ahead and get his monies, could he not?

A It all depends, it would have to be on the advice of counsel and the accountants, too.

Q You all have discussed this as a family, haven't you?

A The only thing we have discussed is that we were not in position to make any termination or any settlement of the will because of this fact, yes.

Q Didn't you talk with Mr. Kelly at the time of it's drafting?

A No, I didn't. No, we didn't talk to Mr. Kelly, no.

Q Did you talk with Mr. Hirschler?

A We did discuss something with Mr. Hirschler, but that was, of course we weren't at that time, the tax angle

1 Q What is that, sir?
2 A Not 74,000. It's 7 -- withdrawals --
3 that's 74,000?
4 Q You thought it was one tenth of this,
5 did you not. Mr. Jacobs, I see you are very much perplexed
6 over this. Did you, for the year ending January 31, 1973,
7 withdraw $74,320.00 from the partnership?
8 A I'm sure I didn't.
9 Q Did your brother Alan withdraw $72,008.00?
10 A I'm sure he didn't.
11 Q These figures in Schedule M, were they
12 a doubling up of gross returns from the partnership when it
13 was transformed into a corporation and included two years
14 instead of one year?
15 A That's possible. That's right. That's
16 right.
17 Q These figures do not reflect accurately
18 what you and your brother had withdrawn from the partnership.
19 A No. No. No. No.
20 Q So it is a bookkeeping matter where there
21 was a transformation from the partnership to the corporation
22 showing a gross returns profits over a two-year period.
23 A That's true. That's true. That's true.
24 Q Now, Mr. Jacobs, Mr. Blanton questioned
25 you quite a bit about your mother's will. Mr. Jacobs, are you

1 familiar with your mother's last will which was executed
2 November 8, 1973?
3 A Yes, sir.
4 Q Are you one of the Trustees in that will?
5 A Yes, sir.
6 Q When your mother executed that will on
7 November 8, 1973, was she in full possession of her mental
8 faculty?
9 A Yes, sir.
10 Q She did have an illness, however, physical
11 illness, did she not?
12 A Yes, sir.
13 Q Was she in such a condition when she
14 executed this will to know exactly what she wanted to do?
15 A Yes, sir.
16 Q And how to do it?
17 A Yes, sir.
18 Q Did she do that in her will?
19 A Yes, sir.
20 Q In that will did she put a restriction on
21 the share that your brother Alan was to receive from her
22 estate?
23 A She did.
24 Q When she did that, did she know of any
25 domestic difficulties at that time between your brother and

his wife?

A I think she did.

Q She made the will as she saw fit to do?

A Yes, sir.

Q In her will, there are properties that she left under her will, were most of those properties her own, in her own and outright name?

A Yes, sir.

Q In fact, I believe about 90 percent of the properties under her will were her own right out.

A That is correct.

Q Mr. Jacobs, your mother was quite a business woman herself, was she not?

A Yes, sir.

Q She was cognizant of her properties and cognizant of what she wanted to do with them.

A Very definitely.

Q In her last will she did with her property exactly what she wanted to do.

A Yes, sir.

Q Were you familiar with any previous will of your mother's?

A Yes, I think so.

Q Did she have a similar will previous to her last will?

A It was similar except the trust for Alan.

Q In her last will, I believe she cut out the $5,000.00 legacy to her daughter-in-law, Mrs. Alan Jacobs?

A That was in the other will.

Q Sir?

A That was in the old will, true.

Q You were asked, too, about whether you would like to get your $200,000.00 share at this time. You said you were not anxious at this time. I believe you are in pretty good shape?

A That's true.

Q I think you also testified that your brother, Alan, was not in as good financial shape as you are.

A That's true.

Q Do you know why he is not as well off as you are financially?

A Well, he is maintaining two households, is the only thing I can say.

Q Has it been necessary for him to borrow from the firm to meet his financial obligations, including the alimony payment?

A He has.

Q Has he been going in debt because of this heavy alimony payment?

A As far as I know, yes.

1 Q You are saying the bank required your
2 personal shares?
3 A Personal shares of what?
4 Q I assume you put up your Jacobs & Levy --
5 A Oh, no. We haven't put that up. That's
6 not up.
7 Q The statement indicates that this Central
8 National loan is collateralized by personal assets.
9 A That's right. Yes.
10 Q What would they be?
11 A They were, it is the portion of the estate
12 that we are using.
13 Q What percent were you putting up?
14 A I am personally?
15 Q Yes.
16 A I guess it would be a fourth of my, of
17 whatever security that we have up.
18 Q What is Alan putting up?
19 A He would be putting the same, the same
20 fourth.
21 Q How can he, if his is in trust?
22 A I have approved of it.
23 Q It is under your sole control. You can
24 let it go or not.
25 A Well, with advice, yes, I mean.

Q You can use it to collateralize the loan but you cannot pay Marjorie, is that right?

A That seems to be it.

Q Is that the purpose of it?

A No, that wasn't the purpose of this.

Q All right, sir. Isn't it true that your brother's financial troubles actually started when he began living two lives?

A Now that I don't know.

Q You don't know that? Was he borrowing from the corporation four years ago?

A No.

Q He began borrowing after that, did he not.

A (Nodding head indicating yes)

Q At the time he started going with Vivian to New York and other places, did he not?

A That I don't know.

MR. PURCELL: I don't believe he can testify to that.

Q Isn't that a fact, though?

A I don't know. I never knew she went to New York with him.

Q Did he ever give you any reason for needing to come to the corporation for monies?

A The only reason was that the extra payments

1 that he had to pay, plus his own living conditions. I could
2 understand that.
3 Q Can't he now borrow, can you give him
4 monies from the trust?
5 A No, because the trust, we can't, we have
6 not been able to do that yet. Because that would be --
7 Q You and your dad have sole authority to
8 do it, don't you?
9 A Right.
10 Q If he is in financial trouble, you could
11 give him ten or twenty thousand dollars, could you not?
12 A No. This disillusionment, on advice of
13 counsel we cannot do that because of the tax costs, as far as
14 I can understand.
15 Q It would cost you too much money to do it?
16 A It would cost too much money to do that.
17 Q Those monies are there for him, are they
18 not?
19 A At the time of disillusionment of the
20 estate, yes.
21 Q You are not going to let him suffer, are
22 you?
23 A I don't -- well, he is suffering.
24 Q You will keep on letting him suffer?
25 A Well, I guess it is his own doings. I

1 guess. I don't know.
2 Q As soon as he gets his domestic matters
3 straightened up, you will ease on up, will you?
4 A Well, if it, if everything else runs right,
5 yes.
6 Q Do you know that he and Vivian are living
7 together now?
8 A No.
9 Q You don't know that?
10 A No.
11 Q If I told you they were, would it surprise
12 you?
13 A It would.
14 MR. PURCELL: If you are going to tell him,
15 Charlie, why don't you be sworn to testify. I don't
16 think you can ask this man that question. He just
17 said he didn't know.
18 Q Do you know whether or not Mr. Jacobs is
19 buying any clothes for Vivian?
20 A No, I don't check his account. I usually
21 see all the tickets and I don't see any ladies clothes on his.
22 I check tickets daily. I have not seen any clothes.
23 Q I thought you just said you checked them
24 once a year.
25 A I'm talking about sales tickets. I check

1 them, I don't keep those in my head. I would see that every
2 day. I go through all the tickets personally.
3 Q What is it that you just check once a year?
4 A I don't check the account. I just flip
5 through there. I know there has been no ladies clothes on his
6 account.
7 Q So his account has dipped since he has been
8 separated? He has not charged as much?
9 A Well now that I can't say because I have
10 not really --
11 Q You run the business, don't you, Mr. Jacobs?
12 A I don't look at his account. I have plenty
13 of others I have to look at besides his.
14 Q You let him go his way and you go your way.
15 A That's right. Exactly.
16 Q If you don't step on my toes I won't step
17 on yours.
18 A He can check them. The file is open.
19 Anyone can look at them. He has as much authority to look at
20 the ledgers as I do. But I --
21 Q You never tell him he spends too much on
22 clothing?
23 A I have never told him he spends too much,
24 no.
25 Q You said your mama was in real good shape

1 at the time she signed this will, mentally.
2 A Yes.
3 Q How do you know that?
4 A Well, she has been under, she was under a
5 doctor's care. I think there was nothing that was -- there
6 was no mental question brought up. And as far as I know her
7 rationalism was --
8 Q Do you remember when the will was executed?
9 A Oh, yes, I remember.
10 Q Had there been discussions about the change?
11 A That's right. That's right.
12 Q As you say, it cut Marjorie out of five
13 and put this trust in there to keep Alan from having any monies
14 that could be attached.
15 A Very true, yes.
16 Q Were you part of that?
17 A I know I didn't have anything to do with
18 it. I just agreed because this was not any concern of mine.
19 Q You agreed. You thought it was a good
20 idea.
21 A No. I just agreed to it. I didn't think
22 it was a good idea. I say --
23 Q Why didn't you want your sister-in-law --
24 A It wasn't up to me. That was between the
25 person that had the money that was going to delete her. I

1 wasn't making the will.
2 Q You did not advise on any of that. You
3 certainly didn't object to it, did you?
4 A I didn't object. There was no point to
5 object.
6 Q But you talked with your mother, confided
7 in her and talked to her about things, didn't you?
8 A Oh, yes. But someone, well, someone wants
9 to do something, that's their privilege.
10 Q Now, Mr. Purcell referred to your Regency
11 venture being no gold mine in the sky. If you and your father
12 and brother didn't think it was a good deal, you certainly
13 wouldn't have gone, would you?
14 A No.
15 Q You certainly expect good things out there,
16 don't you?
17 A We would not have gone into it had we not
18 expected good things. Right.
19 Q You have only been there less than a month,
20 haven't you?
21 A True.
22 Q So it certainly isn't the slightest criteria
23 how you will do, is it, the lack of sales so far.
24 A No. No.
25 Q ~~One further question if I may.~~ You indicated

1 Q That is the construction cost and not the
2 replenishing of stock cost?
3 A That's true.
4 Q That would be additional.
5 A That's right.
6 Q Unless you can make adequate sales, you
7 can run into the risk of tremendous loss, is that correct?
8 A That is correct.
9 Q Your mother made you a Trustee of her will,
10 is that correct?
11 A That's true.
12 Q As Trustee, you were to carry out her
13 desires and intentions as set out in her will?
14 A That is correct.
15 Q Under her will I believe you testified
16 that the domestic difficulties had something to do with the
17 way she made her will?
18 A That's true.
19 Q In her will she, in effect, excluded her
20 daughter-in-law, Mrs. Alan Jacobs.
21 A That's true.
22 Q Now, if you go contrary to your mother's
23 wishes, you will then be breaching your trust, would you not.
24 A That's true.
25 Q Mr. Blanton also said about not letting

1 your brother suffer. Was your mother more interested in your
2 brother not suffering or maybe your brother's wife not getting
3 into your mother's estate?
4 A I think that the latter is more true.
5 Q She was more interested in her son, was
6 she not.
7 A Right.
8 Q That is why she drafted her will as she
9 did.
10 A That is correct.
11 Q You said you had nothing to do with the
12 execution of the will. That was all your mother's idea. Is
13 that correct?
14 A This was, yes.
15 Q As Trustee, is it your intentions to carry
16 out your duties as Trustee under your mother's will as your
17 mother so provided in the will?
18 A Yes, sir.
19 Q In that will does your brother Alan have
20 any vested right by which he can compel a distribution of
21 any income or principal from your mother's estate?
22 A No. Absolutely not.
23 MR. PURCELL: That is all.
24 BY MR. BLANTON: (Continuing)
25 Q Mr. Jacobs, you seem to commiserate with

1 back into the bedroom?
2 A I looked at the football game once. But
3 I didn't see any, I mean, I didn't look for any clothes.
4 Q What is the length of this lease at
5 Regency Square, sir?
6 A Fifteen years.
7 Q And this $200,000.00, these are lease hold
8 improvements?
9 A That's right.
10 Q So you here again, you are betting on
11 some success, are you not.
12 A We are hoping.
13 Q You have pretty good assurances, haven't
14 you?
15 A I'm sure we do or we would not have made
16 the move.
17 Q Now, in carrying out your mother's trust
18 as Mr. Purcell has drawn from you, your sacred duties and your
19 diligence as you testified to do exactly what she wanted,
20 which was to make sure Marjorie didn't get hold of any monies.
21 This says, in effect, you are not going to turn anything loose
22 at this time, is it not?
23 A That's true, yes.
24 Q You are stating to the Court here now you
25 are not going to release any monies to Alan.

1 A Under the will, no.
2 Q When will you?
3 A Well now, that has to do with counsel and
4 when the tax situation is more favorable.
5 Q Have you talked to Alan about when he might
6 get some?
7 A No. He should know that we are not about
8 to dissolve the estate.
9 Q Has there been any talk about him borrowing
10 money with this used as collateral?
11 A No. He can't do that.
12 Q He cannot do that?
13 A No.
14 Q You borrowed against it for the corporation,
15 did you not?
16 A For the corporation, yes. For the benefit
17 of myself and my father and his benefit, but not for his
18 personal benefit.
19 Q These are his monies, are they not?
20 A That's true.
21 Q You don't have any right to his $200,000.00.
22 You have your own $200,000.00.
23 A I am not the sole owner of the business.
24 If I was the sole owner -- well, yes. No. I am not the sole
25 owner of the business and he has as much stock in the business

1 as I do. It's for his benefit this way.
2 Q We are talking about borrowing on his
3 Residuary Share, his interest there.
4 A He doesn't have anything to say about it.
5 I'm a Trustee.
6 Q You could let him borrow if you wanted to,
7 couldn't you?
8 A Well, no, because we have been advised
9 that anything borrowed from that personally you get mixed up
10 in the tax situation.
11 Q You don't understand the tax situation?
12 You just waved your hand.
13 A That's right.
14 MR. BLANTON: I have no further questions.
15 BY MR. PURCELL:
16 Q Mr. Blanton said that you have a lease at
17 Regency for fifteen years. I think it runs about $70,000.00
18 a year, does it not, the rent?
19 A Yes. That's true.
20 Q You have a fifteen year lease. He said
21 you all were betting on the success out there.
22 A We are betting on the success.
23 Q When you bet, you are taking a gamble,
24 don't you?
25 A That's right.

1
2 MR. BLANTON: I would like to call
3 Mr. Jacobs as an adverse witness at this time.
4 MR. PURCELL: For the record, this is a
5 divorce case. In a divorce case neither party can
6 obtain a divorce on the uncorroborated testimony
7 of either party. Therefore, a defendant in a
8 divorce suit cannot be called as an adverse witness.
9 That is the objection at this time.
10 MR. BLANTON: Mr. Purcell, that is news
11 to me. I have been calling defendants as adverse
12 witnesses in domestic cases for 25 years. I think
13 I am entitled to do that. If not, of course, the
14 Court will have to rule on it.
15
16
17
18
19 ALAN LEONARD JACOBS, SR., upon being called
20 as an adverse witness by counsel for the plaintiff, having first
21 been duly sworn, deposes and states as follows:
22 DIRECT EXAMINATION
23 BY MR. BLANTON:
24 Q Mr. Jacobs, state, if you will, your name,
25 your age, and your address.

A Alan L. Jacobs, 49 years old. 67 Gateway East, Richmond, Virginia.

Q You are the defendant, I believe, in the suit styled Marjorie Weisel Jacobs verses Alan Leonard Jacobs, Sr.?

A That's right.

Q Where were you all married, and when were you married?

A Married in Norfolk, Virginia on December 28, 1949.

Q Mrs. Jacobs, I believe, is now and has been an actual bona fide resident and domiciliary of the county of Henrico, state of Virginia, for more than one year next preceeding the commencement of this suit?

A That's right.

Q You all last lived together, I believe, in the county of Henrico, state of Virginia, on November 20, 1972?

A That's right.

Q I believe you left on this occasion?

A That is correct.

Q You all are both members of the white race and over the age of 21?

A That's right.

Q Neither one of you are members of the Armed Forces of the United States?

1 Q Was there any mention whatsoever of putting
2 assets of yours further from your estranged wife?
3 A No.
4 Q You did not ask whether any of this could
5 be done at this time?
6 A No.
7 Q This was about the time of the drafting
8 of your mother's will, was it not?
9 A It might have been. I don't even know
10 what date the will was drafted. But this had nothing to do
11 with anything but what I mentioned.
12 Q So you say here again under oath that it
13 had nothing whatsoever to do with the fact you and Marjorie
14 Jacobs were separated.
15 A That is correct.
16 Q But you had been separated for what, for
17 three or four months, at this time?
18 A Well, we incorporated the first of February,
19 and we separated in November the 20th. I don't know exactly
20 when this thing started, but it took a long time to -- in fact,
21 I wouldn't be so sure that we hadn't even talked about doing
22 this before we separated. It took time to plan it. Then I
23 know when Christmas came we couldn't even, you know, it just
24 waylaid it.
25 Q But you and your wife did not just decide

A It merely shows, like I have stated before, that I did draw approximately half of that during 1972, and it goes on record of Jacobs & Levy as being 1973. And then I did draw at the beginning of 1973 another approximately $35,000.00 to live on for that forthcoming year.

Q What are the incomes shown for the years involved that you withdrew?

A $17,570.11 for '68; $20,541.99 for '69; $30,809.48 for '70; $28,382.05 for '72; $21,451.80 for '72; $72,008.15 for '73.

Q And your 1974 income was in accordance with the tax returns?

A That's right. I had a gross of $30,000.00 salary in '74.

Q And the same for 1975?

A That is correct.

Q What will it be in 1976?

A $30,000.00.

Q In 1977?

A Well, I can't say that. I mean who knows? It may be nothing.

Q Why have you had these years over and above 30,000 and then you come down to an estrangement with your wife, all of a sudden your salary drops to $30,000.00?

1 A For the monies I have received over the
2 years, you can go back to 1960 or where ever you want to
3 begin, I am realizing more money now since we have incorporated
4 than I have realized before we incorporated of actual spending
5 money.
6 Q I am looking at your tax return, Mr. Jacobs.
7 It shows in 1972 you paid taxes on $54,000.00.
8 A That is correct. But I did not receive
9 $54,000.00 to spend.
10 Q You received the benefits for that, did
11 you not?
12 A No, sir.
13 Q What is the --
14 A What do you mean by benefits?
15 Q Tax was paid for you on it?
16 A Tax was paid for me. I did not receive
17 $54,000.00.
18 Q They didn't pay tax over and above the
19 monies they gave you, did they?
20 A The Company made the money in partnership.
21 You have to pay taxes on it whether you physically have the
22 money to spend or not.
23 Q Well, everybody has to pay taxes,
24 Mr. Jacobs.
25 A That's right. We pay our share of taxes.

1 Q You made $52,000.00.
2 A The store made the money and I paid the
3 tax, but I did not draw the money.
4 Q But, Mr. Jacobs, you earned a gross of
5 $54,134.00 in 1972, didn't you?
6 A Right.
7 Q In 1973 it was $50,293.00.
8 A That is correct.
9 Q I am asking you why in those years, just
10 prior to and at the estrangement of your wife, you earned
11 almost double what you now earn when your Company is going
12 ahead --
13 A I'm telling you I received less money
14 then than I am receiving now to spend.
15 Q I am not talking about what you put in
16 your pocket or what you do with it.
17 A Answer's the same thing. I can do with
18 it when I have it in my hands to spend.
19 Q Why, I ask you, why did you take almost
20 a double cut?
21 A I don't feel that I took a cut.
22 Q What is 52 to 30?
23 A 30 is more than about 17 or 18,000 that
24 I received in those years.
25 Q You received 17,000 in 1968.

right at this time, but I have to figure that with the confined business that I am in, that sometimes during that period is when I do take, go out at night once in a while. I mean if I spend 25 or 50 or $75.00 a trip above that, I mean that would be probably all.

Q Basically though you get your travel, your hotel, your meals.

A They give me an amount that I have to do. If I pay more than that, I have to pay it out of my pocket. I don't have a blanket expense account with them.

Q Do you have any stocks and bonds?

A Yes.

Q What do you have?

A I have some 250 shares of General Cable, and I think about 100 shares of National Distillers, and 26 shares of Lehigh Coal and Navigation, and 26 shares of LNC.

Q What is the value of those, sir? Today.

A I would say that the 100 shares of National Distillers is worth about $25.00 a share. I would say that the General Cable 250 shares of General Cable is worth about a little less than $11.00 a share. I would say that the Lehigh Coal and LNC, which is really worth nothing.

Q So your dividends from this come to what per year?

A Well, I would figure that the dividends

of that probably come to about $26.00 a month averaged out, I would say.

Q But totally you get three or four hundred dollars dividends from your stock?

A Whatever comes -- I figured out it was about $26.00 a month. Twelve times that would be about what the dividends are.

Q Are they the only ones you get the dividends from?

A No. I get from two. The General Cable. Let's see now. General Cable pays about seventy-two cents a share a year and the National Distillers pays a dollar forty a year a share.

Q Is this in your name alone or yours and your wife?

A In my name alone.

Q Do have in your own name any Central National Bank?

A No, sir.

Q Jacobs & Levy, I believe, owns some 3500 shares, do they not?

A That is correct.

Q With a value of something like $65,000.00?

A That could be. I don't know the exact value of it.

1 $40.00. I want to know how he states that's true.
2 MR. PURCELL: That is why it is objection-
3 able. He answered your question as to the
4 finances.
5 MR. BLANTON: He is my witness on adverse,
6 as an adverse witness, and I think I have a right
7 to attack his statement that he only spends $40.00
8 when he takes a guest to New York.
9 MR. PURCELL: Same objection.
10 MR. BLANTON: Well, I will move on.
11 Q You heard your brother's testimony and
12 your father's testimony in connection with the will and the
13 purpose of the trust. Do you agree with that?
14 A Well, I can't say I agree, because it
15 was very, I mean it might have been so. I don't know exactly
16 what you mean to agree to. There were, if you want my
17 opinion of it, I mean I can give you my opinion, but I don't
18 know what you want me to agree to there.
19 Q I want you to state whether or not it
20 was your aim to put whatever monies you inherited from your
21 mother beyond the reach of Marjorie.
22 A No, it wasn't my aim at all. I had
23 nothing to do with it, the idea of it.
24 Q You did not talk to your mother?
25 A No. She talked to me and told me what

she wanted to do. It wasn't my idea in the first place. I never would have thought about it, if you want to know it.

Q At that time you were not trying to hold the monies you pay to your wife down?

A No. No, that wasn't that. I wasn't trying to hold it down. I thought I started out doing the right thing by trying. It looks like over the years for what I have tried to do the right thing it always works in reverse, really. But because no judge told me, no court of law told me to pay her anything until November. So I wasn't holding down or doing anything, really, and it wasn't my idea to --

Q But you cut her back three times, didn't you? From 600 to 350 to 250?

A There were reasons along the way. That's true.

Q She wasn't doing what you wanted her to do?

A That's true. She was spending more money than -- I mean that's it. But that isn't, it started out over to begin with she had, the son was living there going to school, and which made a difference. And I was living with my mother and father. I didn't have the expenses that I have now. That's why. And then it came down because of all these bills that I had to pay that I knew nothing of, and,

1 and not a loan. When I would go out of town she would come
2 in and charge on my account on top of it and keep charging
3 things to me.
4 Q She was just buying clothes from the
5 store, like the wife of an owner had the right to do, was
6 she not?
7 A She didn't have that right then because
8 I was giving her money to take care of herself with.
9 So in addition to it, and not only that
10 but charging on everywhere else and sending me the bills
11 and overdrawing my checking account, that I did fail to
12 close out, but it was a joint account, she didn't have the
13 right to do that, and her counsel at the time didn't have
14 the right to call the Central National Bank and tell them
15 don't worry about it, either, the $400.00 overdrawn account
16 would be taken care of by me. It seems like all the way
17 along the line where I try to do the right thing it seems
18 like, I mean the people have been staying up at nights
19 figuring out someway to get around it.
20 Q When you say try to do the right thing,
21 you are talking financially, aren't you?
22 A That's right. Trying to send her the
23 money to take care, do the things that was right. I paid
24 off the bills one time in January. I still didn't close
25 the account out. I just didn't think she would do it again.

1 A Yes, sir.
2 Q I believe you stated that it was a
3 question of amount as to what you can afford. Was that correct?
4 A That is correct.
5 Q Mr. Jacobs, you were asked by Mr. Blanton
6 as to whether you had an interest of $250,000.00 from your
7 mother's estate. You are familiar with your mother's will,
8 I believe?
9 A I think so.
10 Q You are familiar with the trust that was
11 set up in it?
12 A Yes, sir.
13 Q Under your mother's will, can you require
14 the estate to release any monies to you under that trust?
15 A No, sir.
16 Q Mr. Blanton also asked you about the value
17 of the stock that you have in Jacobs & Levy. I think he said
18 it was worth approximately $200,000.00. Is that stock interest
19 that you have in Jacobs & Levy that produces your $30,000.00
20 a year gross salary?
21 A No, sir.
22 Q In other words, it is the business that
23 that stock is the stock in Jacobs & Levy Corporation. Right?
24 A That's right.
25 Q Is the Jacobs & Levy Corporation the

1 cutting grass or fixing up shrubbery, do you?
2 A I don't have a whole lot of time to do
3 all that.
4 Q You have time to court Mrs. Payne --
5 MR. PURCELL: Objection.
6 Q Is it true you wanted to force her to
7 stay in the home she previously said was run-down and leaking
8 and what have you?
9 A I never heard that the house leaked. It
10 never leaked when I was there. And I think under the limited
11 amounts of money available I would say that the $92.00 a month
12 would be at this time is not the time to raise any standards
13 of living.
14 Q I believe you testified in answer to
15 Mr. Purcell's question that you were going to have some eight
16 or $9,000.00 in cash almost momentarily, isn't that right?
17 A We both are suppose to get about a like
18 amount.
19 Q I think you said you thought your wife
20 was entitled to some support, that you wanted to provide
21 some but you couldn't afford as much as you were giving now.
22 Is that correct?
23 A That is correct. That is very much
24 correct.
25 Q Doesn't this estate money enable you,

1 better enable you to afford it?
2 A I don't have anything to do with estate
3 money. I haven't seen a nickel of it, and I don't have
4 any way of getting it.
5 Q You do not?
6 A No, sir.
7 Q Suppose you went to your father and said
8 hey, dad, I need a little money. Hey, Gaston, let me have
9 a little money. Could you get it?
10 MR. PURCELL: I am going to object to
11 that question on a number of grounds. Number 1,
12 the evidence in this case already has shown without
13 contridiction by three or four witnesses called
14 by the plaintiff that none of that money is available
15 to him. Secondly, you are now asking him for an
16 opinion as to what someone else might decide to
17 do. Thirdly, based on supposition of fact.
18 MR. BLANTON: Well, Mr. Purcell, the
19 record will speak for itself. I disagree with you
20 what the evidence says. The evidence is uncontra-
21 dicted that it is available at Gaston, his brother,
22 and his dad's whim, and it has been stated uncon-
23 tradicted unequivocally that either one of them
24 can give the okay and the money is there.
25 MR. PURCELL: That does not put the

1 control in Mr. Alan Jacobs' hand. That is exactly
2 the purpose and the reason for the objection.
3 Q Mr. Jacobs, could you not live off of the
4 estate monies and have monies provided for Mrs. Jacobs from
5 your income?
6 A I couldn't live off of the estate money,
7 no. I don't even know if I can get the estate monies.
8 Q You think it is going to compound in
9 there forever?
10 A I don't know what is going to happen with
11 it. They haven't even settled the estate. I don't know
12 what they are going to do.
13 Q They haven't settled the estate so
14 Marjorie could not get any of the monies, have they.
15 MR. PURCELL: I want to interpose another
16 objection. The estate that you are speaking of,
17 Mr. Blanton, is his mother's estate wherein a
18 trust was set up in her will. She died subsequent
19 to the separation of the parties. The law in
20 Virginia is quite clear that the wife insofar as
21 alimony is concerned is entitled to no more than
22 to live at that standard of living that the parties
23 were living at during the time of the marriage.
24 Now the separation had taken place quite some time
25 before the mother's death. So this fund was not in

existence at that time insofar as any estate is concerned.

On the further ground I object that under Virginia law the wife insofar as Alan is concerned, has no entitlement whatsoever to the per se property of the husband. But, only to the income. I object to this line of questioning.

Q Mr. Jacobs, you have followed the practise of living beyond your means, borrowing from Jacobs & Levy and paying back for some years now, have you not.

A No, sir.

Q You have not?

A No, sir.

Q When did you start that practise?

A I borrowed from Jacobs & Levy last year for the first time.

Q These records reflect that?

A These records should reflect that. That is correct. If they don't have it, Jacobs & Levy's other records, I have never borrowed from Jacobs & Levy until last year.

Q When you borrowed --

A Totaled up to $12,000.00 in 1975. And I expect at the rate it is going, it is going to be 22,000 this year. I will get nothing in 1977 when January comes around

1
2 MARJORIE WEISEL JACOBS, the plaintiff
3 herein, having been first duly sworn, deposes and states
4 as follows:
5 DIRECT EXAMINATION
6 BY MR. BLANTON:
7 Q State your name, your age and your
8 address.
9 A Marjorie Weisel Jacobs. I am 48 years
10 old. I live at 1909C Derbyshire Road in Henrico County.
11 Q You, of course, are the plaintiff in
12 the action styled Marjorie Weisel Jacobs verses Alan Leonard
13 Jacobs, Sr.?
14 A Yes.
15 Q Where were you married to the defendant,
16 and when?
17 A On December 28th, 1949 in Norfolk,
18 Virginia.
19 Q Are you now and have you been an actual
20 bona fide resident and domiciliary of the county of Henrico,
21 state of Virginia, for more than one year next preceeding
22 the commencement of this suit?
23 A Yes.
24 Q Where did you and Mr. Jacobs last
25 cohabit?

1 Q You have alleged that he has mistreated
2 you. How has he done that?
3 A He has done it in many, many ways. I
4 don't think -- I think he was more married to his mother
5 than he was to me. I don't think that he provided me with
6 what we should have had to live with. He is a very spoiled
7 person, a person who has his own ideas, that does not want
8 to compromise and look over into some of the things that you
9 might want to do.
10 Q You alleged that he treated you cruely
11 and unhusbandly. How has he done that?
12 A I think unhusbandly is definitely when
13 he started having sexual relations outside the home.
14 Q Cruely, has he ever struck you?
15 A That was about the only thing he did
16 not do to me, was to strike me with his fist.
17 Q At the time you were living with him,
18 did you know that he had sexual relations outside the
19 marriage?
20 A I think the wife is the first person
21 that knows.
22 Q How did you know?
23 A We were married approximately thirteen
24 years when he began having unusual sex acts that we had
25 never performed before.

1 Q You heard the previous testimony as to
2 Ethel Jacobs, her illness and her will. State for the Court
3 what your relationship was to your mother-in-law during the
4 time that Mr. Jacobs was in the home as your husband.
5 A I think it was great. It couldn't have
6 been any better. I was told by Mrs. Jacobs and Mr. Jacobs
7 that, and they told my mother, that they loved me as their
8 own daughter, their own blood, that they did not consider
9 me an in-law. I did everything I could for them. Took
10 Mrs. Jacobs and all the times that Mr. Jacobs, Sr., Grampa
11 Jacobs, shall we call him, was in the hospital many, many
12 trips I took her back and forth to Medical College, took her
13 shopping, spent time with them. I did everything imaginable
14 that anybody would do for someone.
15 Q Was there anything at any time in the
16 way of ill will between you and Mrs. Ethel Jacobs?
17 A Not to my knowledge. I even visited
18 Mrs. Jacobs when she was ill, and took her out.
19 Q Do you have occasion now to visit Jacobs &
20 Levy?
21 A I could go in there if I wanted to, I
22 guess.
23 Q When were you last in?
24 A At Willow Lawn, maybe two weeks ago.
25 And at Regency Square, during this week.

1 still see each other.
2 Q Mrs. Jacobs, do you ask that this Court
3 grant you a divorce from the bond of matrimony?
4 A Yes, I do.
5 Q Do you ask that this Court require
6 Mr. Jacobs to pay you sums of money in accordance with your
7 expense exhibit?
8 A Yes.
9 Q Do you ask this Court to hold him
10 responsible for the fixed indebtedness that you have, including
11 your attorney's fees?
12 A Yes, sir. Definitely so.
13 Q And the Court costs of this suit?
14 A Yes.
15 MR. BLANTON: Answer any questions that
16 Mr. Purcell may have of you.
17
18
19 CROSS-EXAMINATION
20 BY MR. PURCELL:
21 Q Mrs. Jacobs, I believe you said that you
22 and Mrs. Ethel Jacobs, your mother-in-law, got along very
23 well together?
24 A To my knowledge.
25 Q She was quite close to her son Alan, was

she not?

A That was her baby.

Q I believe you said she was even more married to him than to you?

A Mr. Jacobs did everything that his mother said for him to do. He, he at times went over and spoke with them and told them of things that he wanted done. And it was a great thickness there between the two of them, three of them, with his father.

Q I think you said he made more than $50,000.00 a year?

A The last tax return under partnership I believe Mr. Jacobs made either 52,000 or $54,000.00 per year.

Q What do you say he makes now?

A He is claiming he is making 30,000, and I would say that after this divorce is over he would probably raise his income.

Q As far as you know his income now is the $30,000.00?

A That is what I am told.

Q From that 8,000 some odd dollars is withheld for taxes, is it not?

A That is what I am told.

Q Do you have any evidence to show otherwise?

A I don't have evidence, but I can, I know

took care of donations coming in for this fund in memory of people and in condolences and ordered the flowers each week and had them placed on the altar for Friday night and Saturday mornings, plus the High Holidays.

Q You said you gave it up at one time because your duties at home took up so much time. You have less duties at home now, I take it?

A Yes.

Q You have more time to do these things?

A Yes. What I said, I took, I gave up the board job of going to the board meetings. But I still participated, taking care of my altar flower fund position. I just did not go to the board meetings. And, of course, when you are very unhappy and your home life is crumbling in front of you, it's not always so pleasant to be around people and have to try and smile. But, I did not give up my duties to charity and to do for other people.

Q You also had a photo, I believe, of the family room. That is where the Gay '90's Bar was, I believe?

A That is correct, yes.

Q I believe you said there was a corner antique cabinet that belonged to you, that you received from your aunt?

A It was willed to me, yes.

Q That was your property alone.

A Yes. That is the only thing I would consider my own, yes.

Q You sold that for, I think, $1,500.00?

A That is a wholesale price. Not a retail price.

Q I believe there was sort of a little object in the middle of the bar. What was that?

A That is the cash register.

Q Do you know where that is?

A At my house.

Q Where did that come from?

A That came from the bar.

Q Was that an old family heirloom, is that correct?

A I wouldn't use the word heirloom, no, sir, because the things for the bar were purchased down on Main Street approximately 35 years ago at the very most.

Q Do you know where this little cash register originated? How did it come into your house and where from?

A When we moved into this house, we decided we would like to have this room look a little different. And we remembered that Mr. and Mrs. Jacobs, Sr. had had a Gay '90's Bar Room. We asked them could we have the furniture. They told us that they had given it to Gaston and Virginia.

1 because at my age where am I going to find a job, when I am
2 not prepared for the outside world? Unless I went and slung
3 hash somewhere in a Bar-B-Que Stand.
4 Q I believe one time you did sales work?
5 A Oh, gosh. I was 16-17 years old,
6 Mr. Purcell.
7 Q Have you ever done any office work?
8 A I might have been 18 years old. And it
9 was no typing. I do not type. I do not take shorthand. I
10 do not know how to work the modern computers of today. And
11 as you know yourself that after 35 years old it's hard to
12 find a job. That is a known fact.
13 Q You said you had visited Willow Lawn and
14 Regency Square recently. I believe you observed the two
15 Jacobs & Levy Stores?
16 A Yes.
17 Q You said that Regency had quite an
18 elaborate store, I believe?
19 A I consider it very elaborate. Most
20 definitely so. And as Gaston, Jr. put it to a very fine
21 customer, we have this number in twelve delicious flavors.
22 And that is exactly how I would describe it, in twelve
23 delicious flavors.
24 Q I believe you heard the testimony about
25 their obligation running up, I believe, to approximately

1 $300,000.00 to open that store, which they are obligated
2 for.
3 A I think they wanted to be obligated to
4 it. I think they wanted to be obligated to it to tie their
5 monies up to keep it from me.
6 Q I believe the house you all formerly
7 lived in has been sold recently?
8 A Yes.
9 MR. PURCELL: I would like to introduce
10 that with you.
11 A Please ask me some questions.
12 Q All right.
13 A At no time was that house ever sold
14 without Mr. Jacobs' approval. Mr. Jacobs always knew it was,
15 informed, was asked was he willing to sell the house. It
16 happened up here in Mr. Blanton's office. We were discussing
17 what are we going to do? He called Ed Klein of Morton G.
18 Thalhimers, who had appraised the house originally for
19 Mr. Hirschler -- no. Excuse me. For Mr. Fleischer. I
20 always say Mr. Hirschler for Mr. Fleischer. And Mr. King
21 to get an appraisal. At no time did Mr. Jacobs have this
22 house appraised on his own. He could have. But way back,
23 we needed an appraisal and Ed Klein was kind enough to
24 appraise this house for me so the attorneys at that time
25 could get the value of the home. And the house went backwards

1 participated in sports and could not save his monies as the
2 other grandchildren did to buy their cars or some of the
3 monies given to them. Billy's money went to college. He had
4 to take his savings and what he had in most of it was from
5 his grand parents for birthdays and Christmas. He had to use
6 his money for living expenses and spending at school because
7 his father was not giving him any money. So by Mr. Jacobs
8 buying this small car, this inexpensive broken down car for
9 him, I think a headache came along.
10 Q If you had to choose between reducing
11 some of your wants or your boy having to discontinue college,
12 what would you elect to do?
13 A May I put it in another way? I will say
14 that when this divorce is over, that the Jacobs are going to
15 go and use the money from the estate of Mrs. Ethel Jacobs,
16 and I think that Jacobs & Levy will be giving larger bonuses,
17 not bonuses, salaries, and, we will see Alan Jacobs move into
18 a very lovely home. We will see Gaston, Jr. find a very
19 expensive apartment and maybe Daddy Gaston go on and sell his
20 home. So I don't think that is a very fair question to me
21 because I think they are holding everything up waiting for
22 this divorce to be over.
23 Q Are your wants predicated on Mrs. Ethel
24 Jacobs' estate?
25 A Absolutely not. You mean predicated,

1 meaning my wants, wanting things, thinking of her value? No,
2 I'm not thinking of her value.
3 Q You understand that in a case involving
4 alimony, the Court determines the question of alimony in the
5 amount on the needs and the ability to pay. Are you disregard-
6 ing Mrs. Ethel Jacobs' estate insofar as the ability of
7 Mr. Jacobs to pay is concerned?
8 A Have you finished your question?
9 MR. PURCELL: Read the question back.
10
11 NOTE: The foregoing question is read by
12 the reporter.
13 THE WITNESS: I didn't understand. I'm
14 sorry.
15 MR. BLANTON: Let me interpose an objection,
16 Mr. Purcell. It seems to me you are almost arguing
17 with the witness, as you are asking her her opinion
18 of certain things and she has stated to the best of
19 her knowledge these were her monthly expenses, that
20 she needed these amounts, and I think thereby she
21 is not predicating it on anything that he may have.
22 She is saying these are her needs. I think your
23 question goes more toward arguing and expressing
24 your views as to the case to the Judge in final
25 argument. So I would say you are lengthening the

MR. PURCELL: The record shows that the defendant, Alan Leonard Jacobs, Sr., has been called as an adverse witness. The defendant now is being called in rebuttal.

ALAN LEONARD JACOBS, SR., the defendant herein, having been first duly sworn, deposes and states as follows:

DIRECT EXAMINATION

BY MR. PURCELL:

Q Mr. Jacobs, the record shows that your wife, the plaintiff, on September 22, 1975, without your knowledge and contrary to your wishes signed a contract to sell your former home which was in both names located at 1311 Asbury Road, Henrico County. Is this correct?

A That is correct.

Q Before that matter was consummated, did you attempt to purchase her interest?

A Yes. I made the same offer that the contract provided for with her realizing the same amount of money, but was turned down on this proposal.

I ask you to look at Defendant's Exhibit 13 just filed and state if that, any of those withdrawals include monies for the payoff by you of her debts.

A In this 40,000 figure from January the 1st 1973 to January 31st 1973 there is a withdrawal of $7,000.00 specifically made to take care of these debts. And this withdrawal was agreed upon by my brother and my father and subsequently my brother had to do likewise to keep his account, capital account to be in line with mine.

Q In addition to the $7,000.00, did you make payment of any other debts that your wife had accumulated?

A Well, it was a little bit more than that, because later in the year I paid off the debts again, but I didn't take any specific withdrawal for that.

Q Mr. Jacobs, the evidence in this case, the previous evidence in this case shows that during the year 1975 Jacobs & Levy, Ltd., suffered a loss. Let me now ask you what is the financial condition as of now of Jacobs & Levy, Ltd.?

A We have just received our first six months financial statement from our auditors that ends on July 31, 1976, and it shows $111,000.00 loss for the first six months of this year.

Q Mr. Jacobs, I hand you a financial statement of Dalton, Pennell & Co., CPA's, and ask you to look at that and state whether that is the financial statement that you just

1 referred to?
2 A Yes, it is.
3 Q When did Jacobs & Levy receive it?
4 A They received this yesterday afternoon at
5 approximately 4:00 o'clock.
6 Q You mentioned a loss for the first six
7 months of your 1976 fiscal year ending July 31, 1976. Would
8 you mind looking at that statement and stating on what page
9 that loss is and specifically how much is that loss?
10 A It's on page 4, and the exact loss of
11 $111,287.00.
12 Q Are there any other portions that show
13 the adverse financial situation?
14 A Well, on page 2 down at the bottom where
15 it says total stockholders' equity you can see where the
16 equity was in 1975 at this point was 426,659; it is now, at
17 the end of the first six months of 1976, it is 337,950, which
18 is a drop in stockholders' equity of about $90,000.00. And,
19 of course, there is a couple other notes of interest here that
20 long-term liability there is 193,000--on the same page, page 2,
21 there is, I would like to make mention of a long-term liability
22 of a note for capital, for capital improvements of $193,418.00
23 and up above that on the same page where it has short-term
24 liability of 117,000, this is as of July 31, 1976. I would
25 like to say that that figure now is $182,000.00.

On page 3, whereas we had a loss of the first six months of $111,287.00, that offset the $36,457.00 above that we had gained in equity since we incorporated, and at this point we have, since incorporation, a total loss of $74,830.00. I think that's about the main points I would say.

Q Did I understand you to mention that since this statement ending July 31, 1976, the corporation of Jacobs & Levy has incurred an additional $182,000.00 in liability?

A Not an additional, but the 117,000 is now 182,000.

Q What brought about that increase since July 31, 1976?

A Additional capital for merchandise. I might add that this statement for the first six months incorporates the Jacobs & Levy store at Regency Square, which was opened in the middle of April, so it has their first three and a half months of operation in the picture.

Q This large loss occurred while the Regency store has been in operation only three and a half months?

A That is correct.

NOTE: Jacobs & Levy, Ltd. an audited financial statements ended July 31, 1976 is marked and filed as Defendant's Exhibit No. 14.

1 A I showed the front of the house.
2 Q The difference between that and the previous
3 exhibits.
4 A That's the pictures that I took. I mean
5 I don't know anything, I didn't take any previous pictures.
6 Q Why do you enter them into evidence now?
7 A To show with some repairs the house
8 structure and house and all was very good.
9 Q Repairs had been made.
10 A I don't know of any repairs that had been
11 made. I don't know who made any repairs while the house was
12 sitting there abandoned.
13 Q Are you saying these pictures look better
14 than the other pictures, make the house look better?
15 A These are the pictures that I took. I
16 didn't order anybody to clean it up. I don't know who did if
17 it was done. This is the first I have heard of anybody that
18 has done anything to it.
19 Q You had been in there yourself, had you
20 not?
21 A I went in there, that is correct. The
22 inside of it was quite a mess when I went into it. Right after
23 November the 10th, when I found out they had left ten or
24 twelve days prior to that.
25 Q You testified, also, I believe that you

1 borrowed 12,000 in 1975 and you paid it back in January of
2 1976. Why didn't you use some of the funds available to you
3 from the trust fund?
4 A There is no funds available to me from the
5 trust fund, then or now.
6 Q Why aren't they?
7 A The estate hasn't been settled for one
8 thing.
9 Q But your brother Gaston has access to his
10 funds, does he not?
11 A My brother Gaston has not received a nickel
12 out of the estate.
13 Q Is that because you haven't?
14 A No. It has nothing to do with me. He's
15 under a different stipulation, but he still hasn't received
16 anything out of it.
17 Q He can get his monies whenever he wants,
18 can he not?
19 A Not right now he can't get it.
20 Q Why can't he?
21 A Because the estate has not been settled.
22 Q All the bills have been paid, haven't they?
23 A They paid the bills, but the estate has
24 still not been settled.
25 Q Any time a beneficiary wants some money,

1 they can get it, can't they?
2 MR. PURCELL: I object to this line of
3 questioning on the following grounds: One, the
4 witness was called in rebuttal only. We asked no
5 questions about the trust fund. The plaintiff has
6 gone thoroughly into the trust fund on previous
7 testimony in this case. The Will in which the trust
8 is set up has been put in evidence by the plaintiff
9 and speaks for itself.
10 MR. BLANTON: Mr. Purcell, in answer to
11 your objection, you brought up the fact that by your
12 questioning that this man did not have any monies,
13 therefore he had to get an advancement on his salaries.
14 I think I have a right to show that he did have money.
15 MR. PURCELL: I add the further objection
16 in view of counsel for the plaintiff's statement or
17 objection to this effect: Alimony or support money
18 can be granted only out of income and not of property
19 per se. There is no evidence that the trust is,
20 even the first, there is no evidence or the evidence
21 is that the trust is a discretionary trust in the
22 nature of a spend thrift trust. The evidence
23 elicited by three witnesses called by the plaintiff
24 have shown specifically and without contradiction
25 in these proceedings that Mrs. Ethel Jacobs, the

1 testatrix in the Will, specifically did not want the
2 plaintiff to participate in any way in her estate.
3 This is an attempt to rewrite her Will by the plain-
4 tiff, which is contrary to law.
5 Q Mr. Jacobs, you had followed the practice
6 of using your monies ahead of time and taking advancements on
7 your salary for many years, had you not?
8 A The only advancements that I have taken in
9 salary since the incorporation, and that was due to the fact
10 that, to keep from having a double tax on the income. Other
11 than that I have never gotten any advancements.
12 Q That was the first year you began that?
13 A First year of incorporation we had to take
14 our money. We had to get our monies in January to live on
15 for the following, for the following eleven months.
16 Q But you have gotten advancements every
17 year since then, haven't you?
18 A Every year I get my salary. It's just my
19 salary for the coming year. That is correct.
20 Q Wasn't this the year you began dating
21 Virginia Hoehing?
22 A I don't know what year. It could have been
23 very likely.
24 Q That is, of course, the same person as
25 Virginia Payne?

1
2 EDWARD S. HIRSCHLER, introduced on behalf
3 of the defendant, having been first duly sworn, deposes and
4 states as follows:
5 DIRECT EXAMINATION
6 BY MR. PURCELL:
7 Q Please state your name, age, residence
8 and occupation.
9 A Edward S. Hirschler. I reside at 5227
10 Cary Street Road, Richmond, Virginia. My occupation is that
11 of an attorney.
12 Q Are you acquainted with Mr. Gaston M.
13 Jacobs, Sr.?
14 A Yes, I know him.
15 Q Were you also acquainted with his late
16 wife, Ethel Jacobs, and also their two sons, Gaston Jacobs, Jr.
17 and Alan Jacobs?
18 A I was and am.
19 Q To what extent have you been acquainted
20 with them, and what was the relationship, personal and/or
21 professional with them?
22 A Well, when I first started coming to
23 Richmond when I was still in law school, I went to, I worked
24 summers and subsequently full-time for Mr. Alvin B. Hutzler.
25 Mr. Hutzler had, among his clients, Jacob & Levy. And I came

1 back from the service, from World War II, I was fortunate
2 enough to pick up the representation of Jacobs & Levy at that
3 time in minor matters initially and later on in major matters.
4 Q Then during this long period of time you
5 have known the family personally and professionally. You have
6 handled various personal legal matters, business matters for
7 them?
8 A Yes, I have. Mr. and Mrs. Jacobs, Sr.
9 were very good friends of my wife's parents. I not only knew
10 them professionally but socially. Gaston and Alan, of course,
11 I also knew.
12 Q Is Jacobs & Levy a corporation, or just
13 what is the nature of the legal entity?
14 A Now?
15 Q Yes.
16 A Corporation.
17 Q Was it formally a partnership?
18 A Yes, it was.
19 Q And then was it changed from a partnership
20 to a corporation?
21 A Yes, sir.
22 Q When did that occur?
23 A I believe in 1973. Early in '73.
24 Q Would that be February 1st, 1973?
25 A Thereabouts, yes, sir.

1 Q Prior to February 1, 1973 when it was
2 transferred from a partnership to a corporation, had this
3 change to desolve the partnership and form a corporation been
4 under consideration prior to this time and, if so, over what
5 period of time?
6 A Yes, sir, it had. I had been urging it
7 on Mr. Gaston Jacobs, Sr., who was then running the firm in
8 every sense of the word, for quite some time for a number of
9 reasons, primarily the partnership form was, in my opinion,
10 not suited for their type of business in the modern day world.
11 If you want me to put it in broad general form, it just wasn't
12 working. And in addition, they were losing substantial, in
13 my opinion, tax benefits and one thing and another that they
14 could get through the corporate form. Also, the sons were
15 coming along and grandsons were coming on the horizon, and I
16 could just see all kinds of problems with partnerships, and I
17 was talking to them about it, not really fussing with them,
18 but talking to them about it while they were still down on
19 Broad Street before they even moved to Willow Lawn.
20 Q So then this had been under discussion and
21 contemplation for a number of years prior to 1973.
22 A I had been urging it. If you know Mr.
23 Gaston Jacobs, Sr., you know it takes him a little while to
24 make decisions of things of this nature. He moves slowly.
25 Q The plaintiff in this case, Mrs. Alan Jacobs,

1 has testified that the partnership was changed to a corporation
2 to thwart her claim for alimony in her divorce case against
3 Mr. Alan Jacobs. From your knowledge of this matter, did that
4 have any bearing or any influence whatsoever in this matter?
5 A No, sir. The answer to that was no.
6 Q I hand you what is a copy of the Will of
7 Ethel R. Jacobs, which has been entered in these proceedings
8 by the plaintiff as Plaintiff's Exhibit No. 1. It is quite
9 lengthy, but I believe we can stipulate that is the Will.
10 MR. PURCELL: Mr. Blanton?
11 MR. BLANTON: If that is the same one that
12 is in evidence, that's fine.
13 MR. PURCELL: Yes. Exhibit 1.
14 Q I believe that Will is dated on what date?
15 A November 8, 1973.
16 Q Did Mrs. Jacobs, Mrs. Ethel Jacobs, seek
17 and attain your legal advice in the preparation of this Will?
18 A Yes, sir.
19 Q Was this Will of Mrs. Ethel Jacobs prepared
20 in accordance with her instructions, and does it carry out her
21 intentions and directions as she discussed and related same to
22 you?
23 A To the best of my ability. Yes.
24 Q In her Will, Mrs. Jacobs provided for her
25 husband, Gaston Jacobs, Sr., and her two sons, Gaston Jacobs, Jr.

1 and Alan Jacobs, but she provided in her son Alan's share that
2 it be put in trust and beyond his control. Do you know why
3 Alan's share was left in such manner?
4 A Yes, sir.
5 Q Why was it left in such manner?
6 A Mr. and Mrs. Jacobs, Mr. Jacobs called me,
7 as a matter of fact, and said that he and Mrs. Jacobs wanted
8 to go over their Will. I did not draw the Will which they
9 had at that time. It had been drawn by Mr. LeRoy Cohen some
10 years back, and Mr. Cohen was deceased at this stage of the
11 game. And they sent me a copy of the old Will and told me
12 that they wanted me to do two things. They wanted me to bring
13 it up-to-date because it had been some years since it had been
14 done, and they wanted certain changes made. I gave them ad-
15 vice on modernizing it, where I felt that it was indicated.
16 We discussed various and sundry changes which had occurred in
17 the tax law, primarily, since the original Will had been
18 drawn. They stated that the major change that they wanted to
19 make in their Wills was to make sure that Mr. Alan Jacobs'
20 present wife couldn't get her hands on any of Mrs. Jacobs'
21 money or Mr. Jacobs' money, that I should draw both their Wills
22 accordingly.
23 Q Did Mr. Gaston Jacobs, Sr., Gaston Jacobs,
24 Jr. or Alan Jacobs discuss with you as to how Mrs. Ethel Jacobs
25 should write her Will?

1 A Mrs. Jacobs told me how she wanted her
2 Will drawn, and Mr. Jacobs told me how he wanted his Will
3 drawn, and they are in effect mirror wills. I met with both
4 of them at their home on more than one occasion.
5 Q You stated that Mrs. Ethel Jacobs gave you
6 her instructions and you carried them out. What type of
7 woman was she?
8 A Mrs. Jacobs knew what she wanted and knew
9 exactly how to put it. She had a mind of her own.
10 MR. PURCELL: I believe that is all, sir.
11
12
13 CROSS-EXAMINATION
14 BY MR. BLANTON:
15 Q Mr. Hirschler, Mr. John Kelly, your present
16 partner, actually was the draftsman of this Will, was he not?
17 A No, sir.
18 Q He was not?
19 A No, sir.
20 Q You did that.
21 A I drafted -- the Will was really a three-
22 way effort. I wanted Mr. Kelly in on it primarily because
23 Mr. Kelly was working with me on the various corporate matters,
24 business matters involving Jacobs & Levy. I kept him apprised.
25 But the basic drafting work was done in the rough by me, but

1 the real gut work in my opinion was done by Mr. Lewis, and then
2 reviewed by me, and I went over it with Mr. Kelly just because
3 basically Mr. Kelly and I were representing the Jacobs family
4 and Jacobs & Levy. I wanted him to know about it. But the
5 basic work was done, I think, by Mr. Lewis. If my memory serves
6 me right now. I stand to be corrected. If my file indicates
7 otherwise, or if they testified otherwise, that's just my
8 recollection. Mr. Kelly worked on it and made some suggestions,
9 as did -- but I think Mr. Lewis did the foundation work. That's
10 my recollection. I stand to be corrected.
11 Q Are you aware at this time that Alan, Sr.
12 was involved with one Vivian Hoehing?
13 MR. PURCELL: What was that?
14
15 NOTE: The foregoing question is read by
16 the reporter.
17
18 A I wasn't aware of that then or now.
19 Q Were you or are you aware that he was
20 involved with anyone at this time?
21 MR. PURCELL: I object to that question.
22 He has answered your question, Mr. Blanton. You are
23 now just trying to fish, but go ahead.
24 A I don't know who or what Alan Jacobs is or
25 is not involved with. I am not that close with Mr. Alan Jacobs.

1 Although I consider him a friend, I know nothing about his
2 personal life other than rumor.
3 Q Why was it then that Mrs. Ethel Jacobs
4 was so anxious not to have Mrs. Marjorie Jacobs involved with
5 Alan's money?
6 A She stated flat out she didn't like her
7 and didn't want her to get her hands on a nickel of it. I
8 didn't inquire further.
9 Q Do you know how long she had not liked her?
10 A No, sir.
11 Q Did you then not realize that they were
12 having troubles, Alan and Marjorie?
13 A Mrs. Jacobs advised me that they were
14 having difficulties, and also advised me that she didn't like
15 her and didn't want her to get her hands on a nickel of it.
16 That was the first I knew personally that Alan was having
17 difficulties, is when I was out there in their home talking to
18 Mr. and Mrs. Jacobs about their estate plan.
19 Q So, as you have testified, it was her
20 intent and your carrying through that intent to fix the Will
21 so that Mrs. Jacobs could not get ahold of any monies as best
22 you all could work it.
23 A As best we could work it. We wanted to
24 carry out Mrs. Gaston Jacobs, Sr. intent that Mrs. Alan Jacobs
25 not get her hands on any of Mrs. Jacobs, Gaston Jacobs, Sr.'s

1 money. Yes, sir, that is correct.
2 Q It is true, is it not, that as you drafted
3 this Will, that Gaston Jacobs, Jr. has available to him at this
4 time one half of the Residuary Trust, is that right?
5 A That's what it says. I haven't read it
6 recently. I mean the instrument is there, whatever it says it
7 says.
8 Q You remember part of it. You remember her
9 intent very well, don't you?
10 A My recollection is that, but I can refresh
11 it by looking at the Will.
12 Q All right.
13 MR. BLANTON: Turn the Will back over to
14 Mr. Hirschler, if you will, please.
15 A I am not trying to avoid your question. I
16 just -- Yes. The Will states in ARTICLE TWO (i): One part
17 shall go to my son, Gaston H. Jacobs, Jr., if he is then living,
18 absolutely and in fee simple, free and clear of trust. Then
19 ARTICLE THREE has to do with disposition of the Marital Trust
20 at the end of it. Then there is also provisions as to what to
21 do with the Residual Trust. So your answer is correct. I
22 mean my answer was correct that the part that goes to Gaston
23 is subject to the terms of the Marital Trust. The part that
24 is in the Residual Trust goes to Gaston Jacobs in fee simple,
25 free and clear of trust. As soon as the estate is closed,

1 currently it has not been closed yet, the estate is still
2 open.
3 Q That is not true with Alan, though. His
4 father and his brother say when and if he can have any monies.
5 Isn't that right?
6 A Well, let's see. Looking again--skip the
7 Marital Trust, I will jump over to the Residual Trust. I
8 believe that is what you are referring to. Yes. If my son,
9 Alan Jacobs, survives me, then so long as he shall live the
10 trustees other than the said Alan Jacobs are authorized to
11 pay to the said Alan Jacobs or expend for his benefit at any
12 time and from time to time so much of the net income or
13 principal of such part as my trustees other than the said Alan
14 Jacobs in their absolute and uncontrolled discretion shall
15 deem appropriate, without any duty upon such trustees to take
16 into consideration any income or assets that may be available
17 to the said Alan Jacobs from any other source. Any of such
18 net income from such part which is not so paid to or expended
19 for the benefit of the said Alan L. Jacobs within the trust's
20 fiscal year in which received shall be accumulated by the
21 trustees and shall be added to and become part of the principal
22 of such part. That is referring now to the Residual Trust,
23 which is ARTICLE FIVE (b) (1) (i).
24 Q There is nothing that says in the Will,
25 or there is nothing administratively that requires the estate

1 to be closed before Mr. Gaston Jacobs, Jr. may have the monies
2 he is entitled to, is it?
3 A I believe that as long as the estate is
4 open and remains open there is no requirement on the part of
5 the executors to set up trusts and function as trustees. The
6 lady has not been dead but so long, and the intent is to close
7 the estate rather shortly and set up these trusts, but it has
8 not as yet been done. Or executors. Gaston Jacobs, Mr. Gaston
9 Jacobs, Jr. and Mr. Alan Jacobs.
10 Q But my question did not ask you whether
11 there was any requirement for them to do it. I said it is
12 their right to do it, is it not?
13 A I don't follow the question.
14 Q They have a right to pay out to the
15 beneficiaries at any time they want, do they not?
16 A At their risk.
17 Q Right. All right. Now, I hand you this,
18 Mr. Hirschler, and ask you to identify this?
19 MR. PURCELL: Just a minute. Other than
20 this, have you finished your questioning on Mr.
21 Hirschler?
22 MR. BLANTON: I haven't decided yet.
23 MR. PURCELL: Let the record show then if
24 you put this in it will be your exhibit, not the
25 defendant's.

1 MR. BLANTON: That is fine.
2 A This is a copy taken from the Jacobs'
3 estate file, the First Accounting of Gaston Jacobs, Sr.,
4 Gaston Jacobs, Jr. and Alan Jacobs co-executors of the Estate
5 of Ethel Jacobs for the period April 3, 1975 to December 31,
6 1975 as approved by David Dorsett, Commissioner of Accounts
7 in the Circuit Court of Henrico County on July 13, 1976.
8 Q Has there been a subsequent Accounting
9 filed?
10 A Not yet, no, sir.
11 Q And Mrs. Jacobs died when?
12 A April 3, 1975, if my memory serves me
13 right.
14 Q It has been some eighteen months perhaps
15 since she is dead?
16 A Since April 3, 1975.
17 Q Does that show most all debts to have been
18 paid?
19 A It shows the, let's see what it shows. I
20 will have to look.
21 Q You know yourself that the estate tax
22 has been paid, has it not?
23 A The estate inheritance taxes have been
24 paid.
25 Q Something upward of $100,000.00, or just

1 below that?
2 A I would have to look, but it was substan-
3 tial. But the estate inheritance taxes have been paid, yes,
4 sir.
5 Q In line with that, do you know of any
6 other bills that have not been paid?
7 A No, sir.
8 Q So isn't the estate in a posture to
9 close out?
10 A As soon as we are satisfied that the
11 Federal and State Governments are not coming back at us. We
12 paid the estate tax return, inheritance tax return as required
13 by law, and filed the returns and believe them to be proper.
14 But sometimes the taxing authorities take different views than
15 the preparers of the return.
16 Q This was done some ten months or so ago,
17 was it not?
18 A We paid the Virginia Department of Taxation
19 the Virginia Inheritance Tax on December 19th. I just happen
20 to see that. I don't see at the moment where we paid the
21 Federal Estate Tax, but it was in that general period sometime
22 in there.
23 Q You have received no word --
24 A Here we are. Same date. We paid the
25 Internal Revenue Service Federal Estate Taxes.

1 Q You have received no word from the Federal
2 Government but they have taken exception to the return?
3 A I do not state -- that would have gone
4 directly to Mr. Lewis. I did not ask him.
5 Q Generally at this day and time don't you
6 get that within ten months, generally?
7 A I couldn't state that as a matter of fact,
8 Mr. Blanton.
9 Q You do a lot of this kind of work, don't
10 you, Mr. Hirschler?
11 A I have gotten them from six months to
12 eighteen months.
13 Q That six months, would you say a six-month
14 date --
15 A I have gotten them as early as six and as
16 late as eighteen. I cannot make a generalization.
17 Q But they have improved, have they not?
18 A Yes, sir. It use to be two to three years.
19 Q Have you gotten any word from the State?
20 A Yes. If I recall correctly we are engaged
21 in some argument with the State. What the end, what the exact
22 arguments are and what the end result is, I do not know, as
23 Mr. Lewis was handling it. But, the State of Virginia disagreed
24 with us on our handling of certain matters, if my memory serves
25 me right. I would have to ask Mr. Lewis. He handles the

1 estate administration. And unless he has a real rough one,
2 I don't get involved in it.
3 Q As you testified, this thing is just about
4 ready to close, is it not?
5 A Yes, sir. I believe we will close it
6 before the end of the year. If I might add, if Mr. Lewis tells
7 me that he got the State of Virginia quieted down and the
8 Federal okay, I believe there is no, I would again have to
9 check my files and stand to be corrected, but I think we are
10 all right on the Federal. I believe we are all right on the
11 State because I know I have this thing programed to close
12 out in December.
13 Q I believe the estate inventory showed
14 something like three-quarters of a million dollars, did it
15 not?
16 A We can see. In round figures you are
17 correct. I can take a look at the situation.
18 Q I think that is a matter of record, Mr.
19 Hirschler.
20 A It is of record. Total assets held as at
21 December 31, 1975, $705,475.66.
22 MR. BLANTON: I would like to introduce
23 that as Plaintiff Exhibit No. 17.
24
25 NOTE: First Accounting of co-executors of