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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 8109

GARFIELD A. McKENZIE AND WILLIAM B. McLEOD, ADMINISTRATORS OF THE ESTATE OF LAURA VIRGINIA FRANCIS, DECEASED, ELIZABETH FRANCIS McKENZIE, ANN McKENZIE ROGERS, AND ELIZABETH McKENZIE BAILEY,

Appellants,

v.

ISAAC HATHAWAY FRANCIS, IV, AND ANNE HATHAWAY FRANCIS,

Appellees.

APPENDIX TO BRIEF

AMMON G. DUNTON
C. JACKSON SIMMONS
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IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

RECORD NO. 8109

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 18th day of October, 1972.

Garfield A. McKenzie, Admr., etc., et al., Appellants,
against Record No. 8109

Isaac Hathaway Francis, IV, et al., Appellees,

From the Circuit Court of Lancaster County

Upon the petition of Garfield A. McKenzie and William B. McLeod, administrators of the estate of Laura Virginia Francis, deceased, Elizabeth Francis McKenzie, Ann McKenzie Rogers and Elizabeth McKenzie Bailey an appeal is awarded them from a decree entered by the Circuit Court of Lancaster County on the 2nd day of December, 1971, in a certain chancery cause then therein depending, entitled, In Re: Estate of Laura Virginia Francis; upon the petitioners, Elizabeth Francis McKenzie, Ann McKenzie Rogers and Elizabeth McKenzie Bailey, or some one for them, entering into bond with sufficient security before the Clerk of the said Court below in the penalty of $300, with condition as the law directs, no bond being required of Garfield A. McKenzie and William B. McLeod, administrators of the Estate of Laura Virginia Francis, deceased.

RECORD

ORDER CONVENING PARTIES

This day came Isaac Hathaway Francis, IV, and Anne Hathaway Francis, appellants in an appeal from the order dated the 11th day of May 1970 entered by the Clerk of this court rejecting for probate a certain paper writing dated the 8th day of February 1959, by counsel.

Upon motion of the said appellants the court pursuant to Section 64.1-80 of the Code of Virginia now proceeds to convene all persons interested in the probate.

It being represented to the court that the following are all the persons besides the appellants interested, namely, Elizabeth Francis McKenzie, Anne McKenzie Rogers, Elizabeth McKenzie Bailey, Helen David Simpson, Anne Treat Francis, Katherine Fortas Smith, Garfield A. McKenzie and William B. McLeod, and the court doth order that they be and they are now by this order summoned to appear before this court at its courtroom at Lancaster Courthouse in the County of Lancaster, Virginia, at 2:00 P.M. o'clock on the 16th day of November 1970, and show cause, each at his election, for or against the probate of the paper writing as the will of Laura Virginia Francis, deceased.

And the court doth pursuant to Section 64.1-83 require that all testamentary papers of Laura Virginia Francis be produced before this court on or before the 13th day of November, 1970.

It is further ordered that an attested copy of this order be served upon each of the parties convened by this order except those summoned by the order of publication which follows and that returns of service be made to the court.

The object of this proceeding is to ascertain whether a paper writing dated the 8th day of February 1959, is the will of Laura Virginia Francis, deceased, and to admit it to probate or reject it as the court may determine.

An affidavit having been filed that Elizabeth Francis McKenzie, Anne McKenzie Rogers, Helen David Simpson, Anne Treat Francis, Garfield A. McKenzie and Elizabeth McKenzie Bailey are not residents of this state, it is ordered that they do appear within ten (10) days after the due publication of this order and do what is necessary to protect their interest.

It is further ordered that the two preceding paragraphs of this order captioned with the style of this proceeding be published once a week for four (4) successive weeks in the Rappahannock Record, a newspaper published in the County of Lancaster, Virginia.

Enter: September 21, 1970

/s/ Dixon L. Foster
Dixon L. Foster, Judge

ORDER FRAMING ISSUE AND FIXING DATE FOR HEARING

This day came Isaac Hathaway Francis, IV, and Anne Hathaway Francis, beneficiaries named in the paper writing dated the 8th day of February, 1959, by counsel offering the said paper writing for probate and came also the following parties convened by the Order of September 21, 1970, namely: Elizabeth Francis McKenzie, Anne McKenzie Rogers, Elizabeth McKenzie Bailey and Garfield A. McKenzie and William B. McLeod, appointed administrators of the estate of Laura Virginia Francis, deceased, by order of Bertha G. Abbott, Clerk of the Circuit Court of Lancaster County, by counsel. Accordingly, the Court doth ADJUDGE that the foregoing parties who have appeared as aforesaid have been properly convened and are now before the Court as parties to this proceeding.

And it appearing from the return duly made and filed in this proceeding that the following party convened by the Order entered September 21, 1970, namely, Katherine Foote Smith, who was incorrectly listed in the aforesaid Order as Katherine Fortas Smith, has been regularly served with an attested copy of the Convening Order, the Court doth ADJUDGE that she has been properly convened and is now before the Court as a party to this proceeding.

And it appearing that the Order of Publication heretofore entered against the non resident parties, Helen David Simpson and Anne Treat Francis, has been duly executed, more than ten (10) days having elapsed since the completion thereof and they still failing to appear, the Court doth ADJUDGE that they have been properly convened and are now before the Court as parties to this proceeding.

And all persons interested being now before the Court, the Court announced that it was ready to proceed to hear the motion for probate.

Whereupon, Garfield A. McKenzie and William B. McLeod, Administrators, by counsel, ask for a trial by jury to determine the issue now to be framed; their request is granted and it is so ordered.

Thereupon, the following issue was framed at the bar of the Court:

> Whether the paper writing bearing date the 8th day of February, 1959, or any part thereof, is the Last Will and Testament of Laura Virginia Francis, deceased.

And upon the said issue the proponents, Isaac Hathaway Francis, IV, and Anne Hathaway Francis, beneficiaries named therein, will take the affirmative occupying the position of proponents and Elizabeth

Francis McKenzie, Anne McKenzie Rogers, Elizabeth McKenzie Bailey and Garfield A. McKenzie and William B. McLeod, Administrators, will take the negative occupying the position of contestants and other parties named herein may take such positions as they may elect.

And then the Court fixed the 29th day of March, 1971, at 10:00 A.M. as the time for the trial upon the issue joined before a jury and the Court will at the appropriate time summon a lawful jury.

Enter: Chancery January 11, 1971

/s/ Dixon L. Foster
Dixon L. Foster, Judge

ORDER

On November 18, 1971, came the parties in response to the order framing issue and fixing date for hearing as March 29, 1971, duly entered by this Court on the 11th day of January, 1971, and upon the continuance of the date fixed for hearing to November 18, 1971.

Whereupon, a panel of thirteen duly qualified jurors were empanelled and the proponents and opponents in that order each proceeded to strike three of said panel leaving a jury of seven to try the issue framed, namely, Robert R. Allison, Weymouth H. Bryant, Richard S. Hinton, G. Carrington Dawson, Harold E. Lawyer, Henry Mercer and Frank W. Mondell.

Thereupon, the said jury was duly sworn to try the issue and the proponents proceeded to introduce evidence by way of oral testimony and exhibits upon the conclusion of which the opponents moved the Court to strike the evidence of the proponents upon the grounds fully set forth in the record of these proceedings, which said motion was overruled on November 19, 1971, to which ruling the opponents duly noted their exceptions as fully set forth in the record.

Thereupon, the opponents introduced oral testimony, portions of which were allowed over the objection of the proponents with their exceptions duly noted in the record and portions of which were excluded over the objection of the opponents duly noted in the record. Opponents thereupon rested their case and renewed the motion to strike made at the conclusion of proponents evidence, which said motion was overruled by this Court and to which said motion opponents duly noted their exception as fully stated in the record.

Proponents thereupon moved the Court to discharge the jury and admit to probate the paper writing introduced in evidence as Proponents' Exhibit No. 1 as the last will and testament of Laura Virginia Francis upon the grounds fully stated in the record.

Thereupon, the Court, being of the opinion that the issues raised from the evidence were matters of law as relate to this proceeding rather than matters of fact, did discharge the jury and upon conclusion of all of which the Court doth ADJUDGE and ORDER:

1. That the paper writing bearing date on the 8th day of February, 1959, introduced in evidence in these proceedings as Proponents' Exhibit No. 1, be, and the same hereby is, admitted to probate as the last will and testament of Laura Virginia Francis, deceased; and

2. That William B. McLeod and Garfield A. MacKenzie heretofore appointed by the Clerk of this Court as Administrators of the Estate of Laura Virginia Francis, deceased, be enjoined from taking any further action in the administration of the estate of said Laura Virginia Francis, deceased, other than such action as may be required to preserve the assets of said estate and to assure the timely filing, and payment, of all required taxes and the timely filing of all reports in regard to said estate until further order of this Court.

Whereupon, counsel for opponents duly noted their exceptions to the ruling of the Court upon each and every ground noted in the record of these proceedings which said exceptions are hereby duly noted, and leave is hereby granted to the opponents to reduce their exceptions to writing, if they should so desire.

Enter: Chancery

Date: December 2, 1971

/s/ Dixon L. Foster
Dixon L. Foster, Judge

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

TO: Hon. Bertha G. Abbott, Clerk of the Circuit Court of Lancaster County Clerk's Office, Lancaster County, Virginia

Notice is hereby given that Garfield A. McKenzie, Administrator, William B. McLeod, Administrator, Elizabeth Francis McKenzie, Ann

McKenzie Rogers, and Elizabeth McKenzie Bailey, appeal from a final judgment rendered by this Court on December 2, 1971, and announce their intention of applying for a Writ of Error and Supersedeas to the Supreme Court of Virginia.

Assignment of Error

The undersigned assign the following errors:

(1) The trial court erred in admitting into evidence, over the objection of the opponents, the testimony of Ordway Hilton pertaining to the question of whether a certain envelope and Exhibit #1 were part of "a unit folded together" (Tr. 65-66) for the reasons set forth in the record.

(2) The trial court erred in admitting into evidence, over the objection of the opponents, the testimony of Ordway Hilton pertaining to whether "it would have been possible for a person to have obliterated or mutilated this will by dipping it in water and just setting it aside" (Tr. 73) for the reasons set forth in the record.

(3) The trial court erred in overruling the opponents' motion to strike the evidence of the proponents', said motion having been made at the conclusion of the proponents evidence, for the reasons set forth in the record.

(4) The trial court erred in refusing to admit into evidence the testimony of William B. McLeod pertaining to whether or not Laura Virginia Francis had ever consulted him in connection with the preparation of a will for the reasons set forth in the record.

(5) The trial court erred in admitting into evidence proponents' Exhibit #6 for the reasons set forth in the record.

(6) The trial court erred in overruling the opponents' objection to the proponents' cross examination of Elizabeth McKenzie (Tr. 251 ff.) with respect to a "complaint" that the paper writing was not the will of Laura Virginia Francis, deceased, for the reasons set forth in the record.

(7) The trial court erred in refusing the testimony of Jane Parker pertaining to what Jane Parker told Laura Virginia Francis about Laura Virginia Francis's plan to "tease her sister" with the paper writing (Tr. 261) for the reasons set forth in the record.

(8) The trial court erred in refusing to allow Dorothy Pheris to testify as to the meaning of a "Lulu Whittaker", for the reasons set forth in the record.

(9) The trial court erred in discharging the jury and admitting Exhibit #1 as the last will and testament of Laura Virginia Francis for the reasons set forth in the record and further set forth in the written objections, and exceptions to the trial court's ruling filed by the opponents.

(10) The trial court erred in sustaining the proponents' motion to remove the case from the jury and to strike opponents' evidence and in admitting the paper writing to probate as the last will of Laura Virginia Francis, for the reasons set forth in the record and in pleadings filed herein.

(11) The trial court erred in overruling the opponents' renewed motion to strike the proponents' evidence, made at the conclusion of the opponents' evidence, for the reasons set forth in the record.

Elizabeth Francis McKenzie
Ann McKenzie Rogers
Elizabeth McKenzie Bailey
Garfield A. McKenzie, Administrator
Wm. B. McLeod, Administrator

By: James C. Breeden
Of Counsel

* * *

Filed: January 28, 1972

Teste: Bertha G. Abbott, Clerk

ASSIGNMENT OF CROSS ERROR

The Proponents of the will of Laura Virginia Francis, deceased, assign as Cross Error in the above matter the following:

1. The trial court erred in allowing over the objections of the Proponents evidence in regard to any will of Laura Virginia Francis subsequent to the will offered for probate for the reasons set forth in the record.

2. The trial court erred in allowing over the objections of the Proponents of the will of Laura Virginia Francis any evidence of statements made by Laura Virginia Francis, which tend to prove any facts other than how the will in question was mutilated.

Respectfully submitted,

Isaac Hathaway Francis IV
Anne Hathaway Francis
By Counsel

* * *

Filed: February 16, 1972

Teste: Bertha G. Abbott, Clerk

EXCERPTS FROM REPORTER'S TRANSCRIPT OF PROCEEDINGS

[15] * * *

Mrs. Bertha G. Abbott,

a witness, called on behalf of the proponents, having first been duly sworn, testifies as follows:

Direct Examination

By Mr. King:

Q Mrs. Abbott, please state your name and position. A Bertha G. Abbott, Clerk, Circuit Court.

Q I show you five pages of writing in green ink. Have you seen these papers previously? A Yes, sir.

Q Would you please identify when and where you first saw these five pages? A It was on the 11th day of May, 1970 presented by Mr. William B. McLeod and Elizabeth Francis McKenzie and Mrs. McKenzie's husband.

Q These pages were presented to you by them? A Yes, sir.

Mr. King: Your Honor, I would like to introduce [16] these five pages as evidence.

The Court: How many pages?

By Mr. King: (Continued)

Q What was the occasion that these pages were presented to you by Mrs. McKenzie, Mr. McLeod and Mr. McKenzie? A It was offered for probate and refused.

Q These papers were offered for probate by these people? A Yes, sir.

The Court: Do you want to admit these together or separately?

Mr. King: I would like for them to be admitted altogether.

The Court: All right, these will all be admitted together. There are four separate envelopes containing five pages and they will be admitted as Proponents' Exhibit No. 1 without objection.

Note: The Last Will and Testament of Laura Virginia Francis, five pages, are marked and filed as [17] Proponents' Exhibit No. 1.

By Mr. King: (Continued)

Q Was or was not the Will admitted for probate at that point? A It was refused.

Q And why was it refused for probate? A The name wasn't plain.

Q The name was not legible as it was presented? A Yes, sir.

Q When the Will was refused what was done with it? A The proper Order was entered in the Clerk's Order Book, in the Will Book, and put with the court papers at that time.

Q It has been preserved in this court since that time?

A Yes, sir. Q Was "Hath" Francis present when the Will was presented for probate? A No, sir.

Q Was Anne Francis present when the Will was presented for probate? A No, sir.

Q At a later time, did you forward this Will to a [18] Mr. Ordway Hilton at the direction of the Circuit Court of Lancaster County? A Yes, sir.

Q Are you familiar with the signature of T. C. Treakle? A Yes, sir.

Q Is Mr. T. C. Treakle now living? A No, sir.

Q I show you a signature on the last page of the paper writing presented for probate. The name T. C. Treakle is signed. Is that his signature? A Yes, it is.

Q I ask you, are you familiar with the signature of Virginia Kay Lemon? A No, sir.

Q Have you seen Virginia Kay Lemon sign her name recently? A Yes, sir.

Q Can you recognize her signature from the signature that you recently saw her make? A Yes, sir.

Q Is Virginia Kay Lemon, to your knowledge, in the hospital at this time? A Yes.

Q Can you identify this signature on this paper [19] writing pur-

porting to be a Will as the signature of Virginia Kay Lemon? A Yes, sir.

Q It is the signature of Virginia Kay Lemon? A Yes.

The Court: I believe it was agreed at the beginning that Mrs. Lemon is not present and available as a witness because of being confined to the hospital. Is that right?

Mr. Dunton: That is right.

By Mr. King: (Continued)

Q Mrs. Abbott, do you have a copy of the probate order that you entered as Clerk refusing the admission of the Will? A Yes, sir. This is a copy; this is the original which was put in the Will Book. This is the original.

Mr. Simmons: Would you read that, please, so the jury will know what it says?

Mr. King: I am going to read this Order and [20] then I would ask that it be put into the record.

The Court: All right.

Mr. King: "Virginia: In the Clerk's Office of the Circuit Court of Lancaster County, Virginia, the 11th day of May, 1970, re: Laura Virginia Francis, deceased, refusal of Will. This day came Elizabeth Francis McKenzie in person, and by William B. McLeod, her counsel, and tendered a paper writing purporting to be the Last Will and Testament of Laura Virginia Francis, deceased, late a resident of Lancaster County, Virginia, before the Clerk of this court. It appearing that the said paper writing purports to be a holographic Will but the same has been mutilated and rendered partially illegible as to every line thereof including the purported signature to such an extent that it is impossible to ascertain any part of the said decedent's intent and to ascertain whether such papers were fully written or fully signed by the said decedent. The said paper writing is considered to be no part of the last Will and Testament of the said Laura Virginia Francis, deceased, and is hereby rejected and probate thereof is denied. The said paper writing is ordered to be filed in the court papers of this term."

And this is the Order entered as a result of the offer of probate by the persons named in this Order.

[21] Witness Abbott: Yes, sir.

Mr. King: Your Honor, I would like to offer this in evidence.

The Court: I think we will make a copy of it if there is no objection and put it in evidence.

Mr. Dunton: No, sir.

The Court: That will be Proponents' Exhibit 2 entered without objection.

Note: An Order of Refusal to probate the Last Will and Testament of Laura Virginia Francis is marked and filed as PROPONENTS' EXHIBIT NO. 2.

Mr. King: I don't believe we have any further questions.

The Court: All right, Mr. Simmons.

[22] Cross Examination

By Mr. Simmons:

Q Mrs. Abbott, on the occasion of May 11, 1970, did Mrs. McKenzie or anyone else qualify as administrator of the estate of Miss Francis? A I don't know whether—I can refer to my qualification that is on my desk. I don't know if it was the same day—(Witness Abbott leaves the witness stand to obtain a paper writing and thereafter returns to the witness stand and continues as follows) Yes, sir.

Q On that same day, who qualified? A Garfield McKenzie and William B. McLeod.

Q As the coadministrators? A Administrators.

Q Of the estate? A Yes, sir.

Q And they, I believe, the moving contestants to the action at hand? A Yes, sir.

Q Were they duly qualified at that time in your office? A This is only the list of heirs, Mr. Simmons. I have the Clerk's Order in the Clerk's Fiduciary Book.

Q They qualified in the usual way? A Executed bond. I also have the Bond Book here.

* * *

[24]

Mrs. Janet Van Winkle,

a witness, called on behalf of the proponents, having first been duly sworn, testifies as follows:

Direct Examination

By Mr. King:

Q Please state your name and where you live. A My name is Janet Van Winkle and I live in Prospect, Kentucky, which is just outside of Louisville.

Q Mrs. Van Winkle, are you familiar with the handwriting of Laura Virginia Francis? A I am quite familiar with it.

Q Did you correspond with Miss Francis a number of times during her lifetime? A Frequently.

Q Could you recognize her handwriting or her signature? A I am sure I could, yes.

Q I show you five pages of writing. I will ask you to look at each one of these pages very carefully. A (After witness looks at Proponents' Exhibit No. 1.) This is most definitely Cookie's writing, Cookie's writing and [25] phraseology.

Q So you can state from your examination of the Proponents' Exhibit No. 1 that the writing that is legible or observable is entirely in the handwriting of Miss Laura Virginia Francis? A Undoubtedly.

Q I ask you to look at the first page, the first line where it is written "I , Laura Virginia Francis . .", is this the usual way that Miss Francis wrote her name? A Yes, she always signed her full middle name as well as the first.

Mr. King: I have no further questions.

[27] * * *

Mrs. Sophie Louise Brocklebank,

a witness, called on behalf of the proponents, having first been duly sworn, testified as follows:

Direct Examination

By Mr. King:

Q Please state your name and where you live. A Sophie Louise Brocklebank. I live in Weems, Virginia.

Q Were you well acquainted with Miss Laura Francis before her death? A I was.

Q Can you state where Miss Francis lived at the time of her death? A Down at Crab Point.

Q What county? A Lancaster County.

Q Are you familiar with the handwriting of Miss Francis? A Very much so.

[28] I show you Proponents' Exhibit 1 which consists of five sheets of paper with green handwriting on them. Would you examine each one of those sheets very carefully. A Yes. (Witness looks at papers.)

Q Is the handwriting that is legible on these sheets the handwriting of Miss Laura Virginia Francis? A Definitely.

Q I ask you, are you familiar with how Miss Francis wrote her name? A Uh-huh.

Q I show you on the first line of the first page the name Laura Virginia Francis is written. Is that the way Miss Francis wrote her name? A That's right.

Q I will rephrase that question. Is that how Miss Francis signed her name also? A Yes.

Mr. King: That's all.

The Court: All right, Mr. Simmons.

[29] Cross Examination

By Mr. Simmons:

Q Mrs. Brocklebank, you stated that you knew Miss Francis well. She had a rather neat careful handwriting didn't she? A Right.

Q And was she a rather meticulous person in connection with writing? A Particular?

Q She was what? A Yes.

Q Very careful in her— A I used to do a lot of things with her so I know how particular she was.

Q A particular-type person? A Yes.

Q I call your attention to the rest of the documents that are completely illegible are they not? A Yes, you mean this is.

Q This part over here is completely illegible. All of the rest of it is very very neat indeed. A That's right.

[31] * * *

Ordway Hilton,

a witness, called on behalf of the proponents, having first been duly sworn, testified as follows:

Direct Examination

By Mr. King:

Q Please state your name. A Ordway Hilton.

Q Where do you live? A 8 North Star Drive, Morristown, New Jersey.

Q And where is your office? A I have an office in New York City at 15 Park Row.

Q And what is your occupation, Mr. Hilton? A I am an examiner of Questioned Documents or what probably is more commonly known as a handwriting identification expert.

Q Mr. Hilton, you probably realize that in order for you to testify in this case as an expert that you must explain to the Court and to the jury your qualifications so that the Court can be satisfied that you are qualified to testify. The following questions are for the purpose of showing that you are qualified to testify as I will ask you to [32] testify.

How long have you been engaged in your present occupation? A Well, somewhat over thirty years now. I started this work in 1938.

Q And since 1938, where have you been employed? A In 1938, I was appointed to the staff of the Chicago Police Crime Laboratory and it was there that I received my basic training in this work, and I continued there until the fall of 1941. At that time I was called

to active duty by the United States Navy under a Naval Reserve Commission and assigned to Naval Intelligence as a Handwriting Identification Specialist in Chicago, Illinois.

And I continued in these duties for about two years of World War II and then during the balance of the war years, I had other primary duties, handwriting identification problems became only secondary. I was released from active duty in 1946 and came to New York at that time and became associated with Elbridge W. Stein who was a handwriting identification expert in New York City and had been for some twenty-five years.

Mr. Stein and I worked together for five years. When he retired at the beginning of 1951, I took over the whole practice and I have maintained it at the same address and same location since 1951.

[33] Q What does your general education consist of? A I am a graduate of Northwestern University in Evanston, Illinois. I received a Bachelor of Science Degree from Northwestern in 1935 in the field of mathematics and physics. Those were my majors. I was out of school a year and then went back and took one year of graduate work and received a Master of Arts Degree in mathematical statistics and except for a few courses that I took before I came to New York City at universities in New York, that's the extent of my academic achievements.

Q Have you made a special study of the examination of questioned documents and especially the decipherment of writing impressions and the study of damaged and torn documents? A Yes.

Q Of what has this special study consisted? A Well, my entire studying in the field of questioned document examiners is based upon reading and studying of the various publications that have been written in the field, books, and technical articles that have appeared in the English language and to some small extent in French and German when I could get the translations of them.

Also, one of the men that I worked with in the Chicago Police Laboratory, Mr. O'Neil, was a specialist on altered, erased and damaged documents and I worked closely [34] with him in the years that I was at the Crime Laboratory in Chicago.

I have worked on a great number of cases over the period of years and each time you get a different type of problem involving damaged,

torn or altered documents. It is often necessary to do some type of research in that particular field with the materials that you have at hand and develop greater know-how.

I worked with Mr. Stein, of course, for five years and during that five-year period of time I was able to draw upon his past experience.

I have been a member of the American Society of Questioned Document Examiners since 1944. This is a group that meets every summer, and one of the things that we do in these meetings is that each of us presents papers dealing with some phase of our work, so that over the course of years I have had the opportunity of working through these meetings with men who have had other types of experiences with problems of damaged documents. And all of this in this particular phase of questioned document work has added to greater knowledge and greater technical experience with problem involving altered documents.

I have also had the opportunity at one point to know Dr. Casey, Dr. Robert Casey, of the Sheaffer Ink Company. He developed an additive to the Sheaffer ink that [35] has fluorescent quality. I talked to Dr. Casey on one or two occasions during the years that he was working on this idea and had the opportunity of seeing some of his ink before it was put on the market and asking him about the materials that went in it and something about how it worked. All of these things have been helpful over the course of the years.

Q When and where did you first testify in a court of record? A This was back in 1940 when I was in Chicago. I testified in downstate Illinois in the Circuit Court in 1940 and other times in the Chicago area.

Q You testified as an expert at that time? A Yes, in handwriting problems. Well, actually the first case that I think I testified in—

[36] * * *

By Mr. King: (Continuing)

Q Are you the author of any books dealing with the subject of questioned document examination? A Yes. I have published a book; Callaghan and Company of Chicago published a book of mine in 1956 entitled "The Scientific Examination of Questioned Documents".

Q How many technical articles have you published, do you know? A Approximately sixty, dealing with various phases of our work.

Q I believe you testified that you are a member of the Society of Questioned Document Examiners. A Yes, the American Society of Questioned Document Examiners.

Q Are you in any other societies? A Yes. I am a member of the American Academy of Forensic Sciences. In fact, I am a Fellow of that academy and a member of the Document Section which is merely a one unit of [37] the larger group.

Q Have you lectured at universities on this subject? A Yes.

Q In what capacity? A Well, I have lectured annually since 1948, I believe it was, at Northwestern University School of Law at the short course for prosecuting attorneys that they hold every August on the subject of questioned documents. I have also lectured from time to time at the Southern Police Institute in Louisville, Kentucky to law-enforcement people on my own work and at the Western Reserve University in Cleveland.

Q Have you had a part in any international or world-wide meetings in questioned document examination? A Yes. In 1963 I was one of the organizers of the First International Meeting in Questioned Document Examination that was held in London and was attended by people from Europe, South America, North America and, I think, some people from Asia as well. And then again I was one of the organizers at the second meeting that was held in '66 in Copenhagen. In 1969 I participated in the third international meeting that was held in Toronto, but I had no part in the organization of it.

Q How many times have you appeared in a court of [38] record as an expert witness? A Mr. King, I couldn't give you a very accurate figure. I would say several hundred times over the course of years.

Q I show you Exhibit 1 of the proponents which consists of five pages. Have you examined these pages, the writing and so forth? A Yes, sir.

Q Would you tell the Court and the jury the nature of the examinations which you have made and for what purpose these exami-

nations were made. A Well, I have made quite extensive examination, of these pages in my laboratory, actually my laboratory in my home in Morristown, New Jersey, where most of the work was done. And the purpose of these examinations was to determine if possible what had been written in the right-hand portion of each of these pages where it now appears to be a green background color; in other words, to determine whether I could decipher enough of the original writing to read the will.

And these examinations consisted basically of examination of the document under ultraviolet radiation which fortunately led to a bright fluorescent of the original writing, somewhat damaged but nevertheless reasonably legible, and photographing of the document as it appeared under ultraviolet radiation so that a detailed decipherment could be [39] made of the obliterated portions of this document.

Q Do you have with you a copy of the photographs which you made of the document, especially the photographs that were made under ultraviolet radiation? A I do, yes. Mr. King, I hand you a photograph of each page of the Will as it appears to the naked eye together with, hinged along the right side, photographs of the right-hand portion of this Will as it was photographed under ultraviolet radiation.

Mr. Simmons: (Looking at the photographs) Were these photographs made by Mr. Hilton?

Witness Hilton: They were.

Mr. Simmons: And nobody developed the negatives or anything of that kind, is that correct?

Witness Hilton: I did all of the processing myself. Any assistance that I had was only with my secretary or my associate working with me in the darkroom but I did all of the developing myself.

Mr. King: I would like to offer these photographs which are of the five pages as Proponents' Exhibit No. 3.

The Court: Are these five separate pages? All right, they will be admitted as a group and we will keep [40] them in an envelope together. They will be admitted as Proponents' Exhibit No. 3 without objection.

NOTE: Photographs of the five pages of Proponents' Exhibit No. 1 are marked and filed as PROPONENTS' EXHIBIT NO. 3.

By Mr. King: (Continuing)

Q Mr. Hilton, I show you these photographs and ask you to explain to the Court how they were made. A The method of preparation of these photographs of the five pages were as follows: The large left-hand panel which is an actual-size photograph of the—Well, actually it is just very slightly enlarged photograph of the Will as it now appears, Exhibit 1 I believe, page by page. Then having made these basic photographs of the Will, I then proceeded to photograph the right-hand side of the document where the obliteration has occurred under ultraviolet radiation, and I did this on each page except Page 5 which is short.

I did the ultraviolet photographing in two sections, the upper part and then the lower part. This worked out to the best advantage and gave me the best photographic results. I then prepared photographic prints from the negatives [41] and have hinged them on the side of Exhibit 1 so that the lines of writing run across the page and one can read with some difficulty, but can read the writing of the Will as it originally appeared before the water obliteration, assuming this is water.

Q Do you have other photographs? Do you have other photographs identical to the ones that have been presented? A Yes, I made duplicate prints of these, of this exhibit that is in evidence.

Mr. King: Your Honor, I would like to have the jury have this while he testifies so they can examine it. I have a copy for counsel also so that the exhibit will be available as he testifies from them.

The Court: All right, sir.

(Mr. King hands a copy of Proponents' Exhibit No. 3 to the jurors.)

Witness Hilton: Mr. King, I made sufficient copies so that I think you have a copy for each pair of jurors. You have got seven so that means we should have four copies for the jury and there is a copy for the Court, and I will give you these page by page. That is Page 1 and then if opposing counsel wants a copy, I have a copy.

[42] Mr. Simmons: We think the jury ought to look at what is going to be an exhibit in the case. I don't know that there is any difference at all.

Mr. Smith: I think what Mr. Hilton plans to do is go page by page.

Witness Hilton: I think that will be best and then when we get to the second page, I will get out the second set. Wouldn't that be well?

Mr. Simmons: Mr. King, you can offer them all. I am not trying to frustrate the chance of everybody getting it, but if you want to offer them all into evidence with the right to extract them, that might be the answer to the whole problem.

Witness Hilton: I see no objection to that.

Mr. King: Your Honor, if the Court has no objection we will offer each of these in evidence at this time as exhibits and then with your permission withdraw all but one since the testimony is that they are identical—Is that correct?

Witness Hilton: Yes.

Mr. Smith: These are reproductions of Page 1, as I understand it.

The Court: All right, sir. What we will do is, we will keep the original exhibit right here and if you want to take page by page at one time and pass [43] the pages around, we will know where the original exhibit is.

Mr. King: All right.

By Mr. King: (Continuing)

Q As a result of your examination and your photographs of the original document, do you have an opinion as to how the document—Well, let's first, please, testify as to the results of your examination of this document. A One of the results of my examinations of the document and the photographs of it was that I was able to read substantially all of the obliterated material. There are a few words that I have not been able to read but this reading process consisted of examining the original document under ultraviolet radiation as it was in a dark container to exclude outside light, and then also you see the photographs that I made of it simultaneously and I was able to read, and I think the easiest thing to do is for me to read the Will along line by line and as I read I will read the parts that are legible on the original, on Exhibit 1, and then just continue right to the obliterated part of the line.

Do you want me to designate when I start reading the obliterated part or not? I can do this.

[44] The Court: Yes, sir.

Witness Hilton: On Page 1 it reads, "I, Laura Virginia Francis of White Stone," and then the obliteration reads "Lancaster County, Virginia." The next line begins "being of sound and disposing mind," and the obliterated part "memory and understanding." Line 3, "do make, publish and declare this instrument" which is partly visible and partly obliterated "of writing as and for" and then the next line, "my last Will and Testament." This is all legible.

"Item 1: After the payment of all" and then the obliterated portion "just debts and funeral"—next line, "expenses, I give, devise and bequeath" and the obliteration reads, "as follows, that is to say," and then starting with the sixth line—I am sorry, the seventh line, "Item 2: I give, devise and bequeath," and that is partly obliterated and partly visible, "the iron chest" and then Line 8, "that came down through the," and the obliterated words, "family from Captain" and Line 9 "Ezekial Francis (?), captain on a," and the obliteration reads, "whaler to my nephew".

And the next line, "Isaac Hathaway Francis, IV." The obliteration reads, "I also give the antique," and starting on the next line "shaving stand that belonged," [45] and the obliteration reads "to his grandfather", and the next line, "Francis, to Isaac Hathaway." And Francis is partly obliterated. "IV. I also give," and starting on the next line, "any guns he may care to," and the obliteration starts, "have with the exception," and the next line reads "of the 20 gauge Hoffman shotgun." The word shot is partly visible and partly obliterated. There is apparently a period there because there is a capitalization, "That gun" still in the obliteration and then on the next line, "I give to my sister, Elizabeth", which is partly obliterated and partly visible, "Francis McKenzie."

And then the next line begins, "I give the diamond engagement" and then the obliterated portion, "ring to my nephew," and the next line "Isaac Hathaway Francis, IV," and the obliteration reads "his wife." I believe the word is wife but I can't be certain about this. "Or sister as he" and the next line reads "chooses. This ring was given" and the obliteration starts "to his grandmother Francis" and on the next

line "by his grandfather, Isaac Hathaway" and Hathaway is partly obliterated, "Francis, Jr."

Mr. Simmons: If the Court please, I don't want [46] to object except in the interest of saving time. We have a typed report from this witness as to what this Will contains and we are prepared to admit that the report filed here states what the Will contained.

The issue in this case is not the disposition purportedly made under this writing but whether or not it can be reconstructed and whether if it is reconstructed it is the Will of Laura Virginia Francis.

But I would submit that if we go on at this pace for over five pages when we concede that this expert has reconstructed this in accordance with his report, we will be here until very late hours.

Mr. King: Your Honor, we have no objection to having the report admitted as showing the writing.

Mr. Simmons: Do you want to read on? I mean, is there something to be gained by that?

Mr. King: I feel that the jury is perfectly satisfied that this man can read the Will from what he has demonstrated and we have one further—

The Court: If there is no objection, we will admit this.

Witness Hilton: May I make a statement? Since I filed the report in this case and on the several occasions that I have reviewed this material, I have been able to decipher a few more words that just might [47] be put into the report. Now I can give these to counsel or to Your Honor or I could give this piece of paper which I have here which is a smooth typewritten copy of the report that I have been reading from. It is a smooth typewritten copy and it does—I have marked in here at two or three points, just underscored in red and put a little "X" by it, those two or three words that I have added.

Mr. Simmons: There is a report here in the court. Has that been re-reported to the Court with a copy to ourselves?

Mr. King: No.

Mr. Simmons: When was that discovered?

Witness Hilton: The extra words?

Mr. Simmons: Yes.

Witness Hilton: They were made in the course of my review for this case to get ready for trial.

Mr. Simmons: Within the last few days?

Witness Hilton: If you will recall, there was to be a trial a month ago and I reviewed the matter then and picked up one or two words and then last week I found two or three other things that I finally could decipher.

[49] * * *

Direct Examination

By Mr. King (Continuing)

Q Mr. Hilton, I have in my hand a report that you made dated August 14, 1970 entitled "Report of an Examination of a Damaged Will, Laura Virginia Francis." This report was filed with the Circuit Court of Lancaster County in regard to this matter. A Yes, this is the report which I furnished.

Q Does this report accurately set forth your decipherment of the marred portions of the Will of Laura [50] Virginia Francis? A It accurately set it forth at the time I made the report. Since then, on re-examination of the material on two other occasions, I have been able to decipher one or two more words where there are blanks indicated in this report.

Q I would like for you to explain to the jury the method that you used in deciphering the Will. I believe before lunch you demonstrated the photographs and how they were used.

Would you also explain other methods that you used to the jury in making this decipherment? A Well, the only other method was the actual examination of the Will itself when I had it in my laboratory under ultraviolet radiation. I have various ultraviolet units. Ultraviolet is an invisible light ray. It is actually in the sunlight but the human eye doesn't see it. Its effect on certain materials is that it causes what is known as fluorescence. In other words, these invisible light rays that are beyond the blue end of the rainbow, as you see a rainbow that runs from blue to red, below the blue end is the ultaviolet spectrum and when this light strikes certain material it does something to the

chemicals in there and they reflect back in a light that is visible to the human eye.

In this case, with this particular ink it had an ultraviolet additive in it and this reflected back in a [51] bluish-white color that could be detected against the paper background.

Q Excuse me. Do you have an ultraviolet lamp with you? A I do.

Mr. King: Your Honor, is there an electric outlet we can use? Would it be possible to turn the lights off in the courtroom for just a minute so he can demonstrate the use of the light on the Will? Do you have any objection to it?

Mr. Simmons: No indeed.

The Court: All right. Sheriff, you can handle the lights but you had better wait until he says cut them off.

(Witness sets up the ultraviolet lamp in front of the jury and the Sheriff turns the lights off in the courtroom.)

Witness Hilton: What we are seeing now under this light is the fluorescence—

Mr. Simmons: Your Honor, is it all right if we enter the jury box for the purpose of seeing this?

The Court: Yes indeed.

Witness Hilton: We are now seeing the fluorescence [52] of the erased writing as it appears under the ultraviolet light. This is what was photographed in the exhibit I was talking about before the lunch hour. You can see that it is a bright bluish-white color that shows up and makes it possible to read the writing. You can also see that the fluorescent material is sort of blotchy in a few places where the actual fluorescent additive is washed to some extent.

For example, up near the top where the fluorescent material is sort of blotchy and there is a little bit of high water mark here where it is very intense. Paralleling the high water mark of the water but to the left of it about three-quarters of an inch where the fluorescent material did move around some. Evidently it is somewhat water soluble; it has to be but it adheres to the paper much better than some

others because of the nature of this paper and under the ultraviolet light has a yellow color.

As you sit and with patience you can read the whole thing. The other pages look exactly the same way, each page of course being somewhat individual in itself.

NOTE: The witness returns to the witness stand [53] and the lights are turned on in the courtroom as the matter continues as follows, viz:

Witness Hilton: Do we need any further explanation?

Mr. King: I don't think so.

Witness Hilton: This type of examination and the photographing was the method used to carry out the decipherment that I was talking about.

By Mr. King: (Continuing)

Q According to your testimony, this report accurately sets forth the contents of the Will with the exception of the blank spaces that are shown, a few of which you are able to offer new evidence in regard.
A That's correct. There are a few of these blanks. When I came back to the problem again in preparation for testimony here and reviewed all of the photographs that I had—I didn't have the Will with me at the time—I was able to work out a further decipherment of a few more words.

The Court: Have these additional words been [54] added or not?

Mr. King: No, sir.

Mr. Simmons: As we understand it, this report will be offered and then the witness will, if he can, fill in in ink in contrast to the other words and then that will be understood that those were the result of this later examination.

The Court: All right, sir.

Mr. King: I offer this.

The Court: You can let him go ahead and fill it in and then I will accept it after it has been filled in.

By Mr. King: (Continuing)

Q Mr. Hilton, would you please fill in the blanks with those

words that you determined from examination of the will. A I have indicated in this report the page number from which the wording comes and on Page 2 of the Will there is a blank. It now reads, "If not, I order the place to be sold (at the M blank appraised value) to my nieces." And in re-examining what follows the M, I determined that the best interpretation of this is market, m-a-r-k-e-t. I have written that in in ball point ink following the M on Page 4 of my [55] report.

On Page 3 of the Will there is a blank in the sentence that now reads, "Should my Nephew Isaac Hathway Francis, IV, wish to sell his blank oyster shore," and it goes on but in re-examination I have concluded that the writing there originally read 10 acres of.

Mr. Simmons: Figures or written out?

Witness Hilton: The words 10 acres was written out as near as I can ascertain.

Mr. Simmons: And how was acres, can you tell us?

Witness Hilton: Just a-c-r-e-s.

And then continuing down that page a little further is a sentence that reads, "Should my Niece Ann Hathaway Francis desire to sell her 10 acres of oyster shore my blank is that she offer the same," and it goes on but my decipherment of that word is that it was the word desire so that it reads, "my desire is that she offer the same oyster shore," and so on.

I believe those are the only decipherments that I can be absolutely sure of. There still remains two or three blank words.

[56] Mr. Simmons: May I see it? (Mr. Simmons looks at report) Was he not going to put that in here?

Witness Hilton: I did.

Mr. Simmons: Just those three?

Witness Hilton: Just those three, yes.

Mr. King: Your Honor, I offer this as the proponents' next exhibit.

The Court: It is Exhibit No. 4, I believe. It is admitted without objection.

NOTE: The report of Ordway Hilton, dated August 14, 1970, is marked and filed as PROPONENTS' EXHIBIT NO. 4.

By Mr. King: (Continuing)

Q I am going to ask Mr. Hilton—

Mr. Simmons: Let me clarify our position at this point. We are not objecting to the introduction of it in this way. We, of course, reserve all of our other objections to the Will itself but we are simply [57] saving the reading verbatim of the entire Will.

The Court: You are saving the reading of these copies of the entire Will, as I understand it.

Mr. Simmons: We concede that this is this witness' interpretation of what that writing says, nothing more nor less. We do not concede the accuracy of his work or the validity of the document at any time. We simply state that this is what his testimony is.

Mr. King: I think Mr. Hilton can read this rather rapidly.

The Court: All right.

Witness Hilton: Only the part that pertains to the Will, not the other data?

Mr. King: That's right.

Witness Hilton: All right. "Page 1. I, Laura Virginia Francis of White Stone, Lancaster County, Virginia, being of sound and disposing mind, memory and understanding do make, publish and declare this instrument of writing as and for my last Will and Testament. Item 1: After the payment of all just debts and funeral expenses, I give, devise and bequeath as follows, that is to say, Item 2: I give, devise and bequeath the iron chest that came down through the family from Captain Ezekial Francis, captain on a [58] whaler, to my nephew, Isaac Hathaway Francis, IV. I also give the antique shaving stand that belonged to his grandmother, Francis, to Isaac Hathaway Francis, IV. I also give any guns he may care to have with the exception of the 20 gauge Hoffman shotgun. That gun I give to my sister, Elizabeth Francis McKenzie. I give the diamond engagement ring to my nephew, Isaac Hathaway Francis, IV, for his wife or sister as he choose. This ring was given to his grandmother Francis by his grandfather, Isaac Hathaway Francis, Jr. Item 3: I give my gold bracelet that was given to her grandmother Francis by her grandfather Francis at the time of her mother's birth (Elizabeth Francis McKenzie) to my niece,

Elizabeth Francis McKenzie. To my niece, Dora Anne McKenzie, I give my diamond watch and chain that have been given to her aunt, Laura Francis Zouck as an engagement present from George Peter Zouck. To my niece, Ann Hathaway Francis, I give my diamond bracelet that was given to her grandmother Francis by her grandfather, Isaac Hathaway Francis, Jr., at the time of my birth. My two h..... pins, I give to my sister, Elizabeth Francis McKenzie. Item 4: All my other personal effects and household furniture, I give to my three nieces, Elizabeth Francis McKenzie, Dora Anne McKenzie and Ann Hathaway Francis. I suggest that [59] the personal effects and furniture be divided by each room. That my three nieces draw lots to find out who will have the first, second and third choice in each room until each article in that room has been chosen by any one of my three nieces. Item 4: Any article of my personal belongings and furniture that is not wanted by my other nieces, I will to my sister, Elizabeth Francis McKenzie. Should she not want this left-over articles I suggest they be sold and the proceeds be divided equally between my three nieces, Elizabeth Francis McKenzie, Dora Anne McKenzie, Ann Hathaway Francis and my nephew, Isaac Hathaway Francis, IV. Item 5: I give all the silver to my three nieces named in Article 4 and suggest they draw lots to see which of them shall have first, second and third choice for each piece. The flatware should be chosen in the same manner with place knives to one niece, forks another, spoons another, until all flatware is distributed by lot excepting that silver, such as a water pitcher and platter that has the name of Isaac Hathaway Francis on it should go to his grandson, Isaac Hathaway Francis, IV. Item 6: I give, device and bequeath to my nephew, Isaac Hathaway Francis, IV, my house and acreage from the garden to the point beyond the wharf, if he cares to have it, if not I order the place to be sold (at [60] the market appraised value) to my nieces. My niece, Ann Hathaway Francis, will have the first refusal. My niece, Elizabeth McKenzie, will have the second choice. My niece, Dora Anne McKenzie, the third or final choice. Item 7: I give, devise and bequeath to my niece, Ann Hathaway Francis, my real estate from the garden, the blank and blank from river to creek and including the barn and cinderblock chicken house east to the line owned by the estate of her brother, Isaac Hathaway Francis, IV. If she wants to sell the property, I will that her brother, Isaac Hathaway Francis, IV, have the first refusal after it was ap-

praised. If he does not want the land for her to offer it to my niece, Elizabeth Francis McKenzie, at the same price by—to my niece, Dora Anne McKenzie." There is a blur after the word price, I should say.

"Item 8: I give, devise and bequeath my 20.33 acres of oyster shore on Carter Creek from the end of Crab Point at the Red Buoy or beacon to the drain on the creek at the point separating the Francis property from the Wise Wescott property as follows: To my nephew, Isaac Hathaway Francis, IV, approximately 10 acres. This same 10 acres to extend from the wharf to the point at the mouth of the harbor of Carter's Creek. The acreage (10 acres) from the wharf east to [61] the inlet or drain I give, devise and bequeath to my niece, Ann Hathaway Francis. Should my nephew, Isaac Hathaway Francis, IV, wish to sell his 10 acres of oyster shore, I will that he sell it at the fair market appraisal to his sister, Ann Hathaway Francis, if she wishes to buy it. Should my niece, Anne Hathaway Francis, desire to sell her 10 acres of oyster shore my desire is that she offer the same oyster shore to my niece, Elizabeth Francis McKenzie, at the fair market price and if Elizabeth Francis McKenzie does not want the same that Ann Hathaway Francis offer this oyster shore at the fair market price to my niece, Dora Anne McKenzie. In the event that my nephew and nieces do not want to have this oyster shore and that my nephew, Isaac Hathaway Francis, IV, and/or Ann Hathaway Francis offer these shores (20.33) to my sister, Elizabeth Francis McKenzie. In the event that none of these five persons want the oyster shore I will that it be sold outside the family and the proceeds of the 20.33 acres be divided equally between my three nieces and my nephew. Item 9: I give, devise and bequeath to my cousin, J. Summer Francis, Jr., my 12 gauge shotgun. Item 10: I give, devise and bequeath to my cousin, Helen David Simpson, my cameo ring that was given to me by my grandmother David. [62] The ring was a gift to the one of the two of us, Helen David Simpson and myself, Laura Virginia Francis, who would play a selection on the piano by memory without a mistake. Item 11: I give, devise and bequeath to my niece, Elizabeth Francis McKenzie my violin that has come down through the Francis family. The history of the violin is in the envelope in brown jewelry box in my bedroom. Item 11: Any moneys I may and my stocks and bonds shall be sold and the money divided equally between my nieces, Elizabeth Francis McKenzie, Dora Anne McKenzie, Ann Hathaway Francis, and my nephew, Isaac Hathaway Francis, IV.

I hereby nominate, constitute and appoint my sister, Elizabeth Francis McKenzie, and my sister-in-law, Anne Treat Francis, executrixes of my estate together with the assistance of Randolph A. Smith and/or Katherine"—I believe the name is F-o-r-t-a-s but it might be Foster—"Smith as executors of this my last Will and Testament and the above-named persons to be excused from giving bond as such executors.

In testimony whereof I hereby subscribe and affix my seal this 8th day of February in the year 1959." It is signed Laura Virginia Francis.

I might mention, Mr. King, that my comment about [63] the name Fortas is not included in this report but it is in my opinion a possible alternative for that name. I am sure that the individual can be identified.

Mr. King: Thank you. Your Honor, before presenting this to Mr. Hilton, it is stipulated by counsel that the Will was found—

Mr. Simmons: The paper writing.

Mr. King: Excuse me. The paper writing Exhibit 1, was found in Miss Francis' bedroom in this envelope with this little pamphlet also in the envelope.

The Court: So that the envelope and the pamphlet which you have in that little folder there was found at the same time and at the same place as the other five sheets that have been introduced as Proponents' Exhibit No. 1.

Mr. King: That is right. In Miss Francis' bedroom.

The Court: In her bedroom, all right, sir.

Mr. Smith: And this is stipulated as evidence, of course.

The Court: Stipulated as evidence.

By Mr. King: (Continuing)

[64] Q Mr. Hilton, I show you an envelope with the name Laura Virginia Francis typed on it and in green ink a dash saying my Will, also a pamphlet which is put out by State-Planters Bank and Trust Company. Would you examine the letter and the pamphlet together with the Proponents' Exhibit 1? A I have examined it.

Q Would you please tell the Court and the jury the type of examination you made and the findings of your examination with regard to the marring of the paper writing, the envelope and the pamphlet. A Well, my examination of these three documents—I wonder if I could have Exhibit 1? (Counsel hands Proponents' Exhibit 1 to the witness.) These three documents that I now have before me were sent to me subsequent to the original submission of Exhibit 1 and I examined these as a group to determine whether—Well, to determine what I could find out about what relationship these documents had one to another and the damage to the Will or Exhibit 1.

This examination was made visually with various lighting equipment in my office and with magnifiers and magnifiers primarily to determine whether all three items that show the effect of water damage, and I say the three items which includes the yellow-colored pamphlet, the white envelope and the five pages of Exhibit 1, whether the water damage [65] occurred to all of them at the same time or could have occurred to all of them at the same time, and further if this would shed any light on how the damage occurred and whether it was deliberate or otherwise.

Some of these questions could be answered more readily than others, but I did determine from this examination that the various pages of Exhibits 1 which has folds in them could be folded as a unit folded together.

Mr. Simmons: Your Honor, now I object to speculation. Do we have evidence? If we have evidence to this extent then, of course, this is very appropriate. But is it in evidence that this paper was found in that envelope?

Mr. Smith: That was the stipulation.

Mr. Simmons: It wasn't stipulated how it was folded.

Mr. King: We want him to show that from his examination.

Mr. Simmons: Was it in the envelope when he got it?

Mr. King: No.

Mr. Simmons: Isn't that speculation?

Mr. Smith: No, because the creases on the paper—

[66] Mr. Simmons: We object to that on the grounds that it is obvious, Your Honor, there is no way that you can arrive at that except to say it could have been and it is speculation as to whether it was or not.

Mr. King: Your Honor, I feel we can satisfy the Court on this point if the Court wishes to hear the evidence.

The Court: I am going to overrule the objection. I think we have got an expert witness on the stand and I think it is proper for him to testify about it. I don't know what he is going to say.

Mr. Simmons: We respectfully object.

The Court: Yes, sir.

Witness Hilton: To continue with my examination of these papers and maybe I should start with this phase of it first because these things were done in a preliminary way, and that is that I examined the envelope and the nature of the green stain on there which is certainly of the same green color as the stains from the green ink that is involved in Exhibit 1, and further that the stains are of such a design and size that they coincide with the area that is stained on the various pages of Exhibit 1. I compared the various stains on Exhibit 1 and I found that there is a pattern through—I am holding up now Pages 1 and 2; [67] this is all I can do conveniently.

There is a similar outline with this high-water mark as I have described it, the dark green line below which everything is obliterated except for this white staining on both Page 1 and Page 2. And this would be true of Page 3 and Page 4 and Page 5 which is in the folder behind Page 4.

In examining this document which is made up of the five pages, I found that there was already in it heavy creases showing that it was folded into three parts in the manner in which I have folded Page 1 so that it would fit in the envelope that has just been shown to you with the name Laura Virginia Francis typed on it and the handwritten words my Will.

Furthermore, in examining the pattern of stains on the outside of the envelope, the stain runs along somewhat horizontally on the outside and then dips down to the right and this was substantiated by examination of the various right lighting conditions that this was the

area of the envelope that was stained, and the pattern of the stain is similar to the back side of Page 1 or if you turn it over and fold it, the top part of Page 1. We have the same pattern so that the stain actually shows the position of the paper. It only goes in there one way in order for the stains [68] on the outside of the envelope to agree with the pattern of marking of the folding of the paper, and these folds in the paper are consistent throughout the five pages.

Furthermore, the pamphlet has a similar pattern of stains that is more or less horizontal along the left three-quarters of it as I am holding up the front of it and then it gets down on the right side. Again, this pattern of stain is comparable to the pattern of stain that is found on the back of the Will or sheet of Page 1 and it fits in with the pattern of stain that comes through on the outside of the envelope in such a way that—I mean, the intensity of the stain is such that it would appear, as one studies the stain, that the front page of the pamphlet that has the title "Executor and Trustee under Will", that page must have been against the Will and the back page, which is the concluding of the pamphlet, and the name of the bank that puts it out doesn't have this intense stain was away from the Will. I think the stain on the document itself is perfectly consistent with this conclusion and it also tends to explain why the back side of the envelope has more green ink showing through the envelope than the front side, because that would position the pamphlet against the front side of the [69] envelope and the Will against the back side of the envelope.

In my opinion, this was the arrangement within the envelope. The envelope itself shows very definite deterioration from water along the lower portion of it as you look at the back so that the small flap that forms the lower right portion, as I hold the thing vertically, has come apart from the other. The glue has been badly washed away. And that type of glue on an envelope just tends to be on the light side. And you can see some accumulation of staining at the bottom that looks like an accumulation of glue and a great deal of that line looks as if it is some glue on it at the present time and so my conclusion was that these three documents, these three items, were—actually the pamphlet and the Will were in the envelope and that the damage to the whole assembly occurred while they were all assembled together, and the contents of the Will, as I have read this document, Exhibit No. 1, the damage to that occurred while it was confined in the envelope. The

damage on each page is such that they had to be part of the same package so to speak. They had to be folded together because the pattern of damage and the coloring and staining each could not have been separately water damaged but they had to have been to- [70] gether when they became wet and the ink ran on them.

And the evidence is quite strong that this occurred when all of the material was inside of the envelope itself as I have described it.

By Mr. King: (Continuing)

Q Mr. Hilton, did you do any further experiments in regard to what type of agent caused the damage to the envelope, the Will and pamphlet? A Well in examining these, this shows the appearance of having been water soaked. This type of soaking would damage the glue as I have described it. It would certainly damage it because this is the water soluble ink that is known commercially as a washable ink. All green inks are this way, the Sheaffer ink and this is Sheaffer ink because of the additive that is in it. It is the only company that ever put that additive in their ink. The Sheaffer ink is a washable ink.

In other words, what this really means is that if you spill water on it the ink will blur and smear very badly. I made a series of tests to see just how much wetting was necessary to bring about the condition that we have here in the Will. I found that it took a very great amount of water wetting and it was not something that you could bring about by [71] immersing a sheet of paper in water for a few minutes and pulling it out and get the same kind of thing we had in this Will. You still get the weak outlines of ink along with the smearing of ink. The ink ran all over everything and made a general mess but you could still see outlines of strokes which you can't see in this document.

I found only after a series of experiments that the only time I came close to duplicating what we have here is with a sheet of paper that was left in a pan of water over a weekend in my New York laboratory where the end of it—The pan was tilted so that the last third of the sheet of paper was wet after I left it and after it had been in there about an hour on a Friday afternoon, I looked at it and the ink was still visible. This was just in still water, no running water. You could still see some pattern of the ink and I went home and then on Monday when I came back all of the water had evaporated and it had left a line somewhat comparable to what we have here but not

identical by any means but similar to what we have here with a large blank area with all of the ink taken off.

I tried various experiments with several pages of paper with Sheaffer green ink, putting them in envelopes and immersing them in water, all of which I soaked for quite a while and it soaked for a matter of 12 to 18 hours and was then allowed to dry in the envelope and ultimately opened up. [72] It caused damage but didn't reproduce this because of writing still being visible.

In other words, what I am saying is that in order to get what we have here we must have had the envelope as a unit with these other things in it, the lower one-third of it, seriously wet with water so that everything was wet all the way through, all the sheets were wet and then this condition must have existed for a period of time; it couldn't just be a simple immersing in a bucket of water or anything like that. It had to have rested in some amount of water for a period of time and gradually dried out of its own accord.

And that is the only way that I can account from my experiments for the condition that we have here, a long period of undisturbed moisture. It certainly was not handled out in the open because there is no damage to the writing on any part of the other pages. The only evidence of any damage or any smearing of ink is on the face of the envelope itself and up in the upper right corner there seems to be a couple of places where there is a little smear of green ink but—around the words "my Will" but this on the surface and it's not inside on the pages of the Will. They are clean except for the part that is obliterated.

So, it is my conclusion that all of this damage occurred in the envelope and must have been completely dried out, no moisture around at all, before the envelope was ever [73] opened.

Q Would it have been possible for a person to have obliterated or mutilated this Will by dipping it in water and just setting it aside?

* * *

Witness Hilton: In my opinion, from my experiments by simply dipping the envelope in the water with the Will in it, in water, then taking it out and letting it dry out would not accomplish the damage we have here.

Mr. King: I have no further questions.

Mr. Smith: Oh yes you do.

(Mr. King is conferring with Mr. Smith)

By Mr. King: (Continuing)

[74] Q You examined both the legible portion and the marred portion of Exhibit A, did you not? A Yes.

The Court: Exhibit 1.

Mr. King: Exhibit 1, and under the ultraviolet light you could read the writing on the marred portions of the Will.

Witness Hilton: Yes.

Q Could you determine from your examination whether or not the writing on the marred portion of the Will was the same as the writing on the legible portion of the Will? A Yes.

Q And was it or was it not the same, written by the same person? A It is my opinion that the entire document is one continuous writing by one writer. I found no evidence whatsoever to indicate that a second writer had written in the marred portions and in fact had a second writer written there, I doubt that I could have deciphered as extensively as I have, because frankly I have depended very greatly on the writing habits in the unmarred portions to determine certain fragments that I found in the marred portion.

[75] Q Now I point out in the first line of the first page the portion where it is written "Laura Virginia Francis". A Yes.

Q I also ask you to look on the last page of the Will in the place where you can see the word written "Laura" in the unmarred portion and then in the portion that is marred, did you examine the remainder of this writing on that line? A I did.

Q And could you determine whether this was the signature of the person that wrote the name in the first line of the paper writing? A Yes.

Q And was it the same person? A It is in my opinion the same handwriting. There is a flourishing ending to the "L" of Laura but beyond that, and that is the kind of thing that is typical of some people's signatures, but beyond that the rest of the writing of Laura Virginia Francis, as it could be deciphered, is perfectly consistent with the Laura Virginia Francis on Line 1.

Mr. King: Your Honor, I offer the envelope and pamphlet as Proponents' Exhibit No. 5.

The Court: Proponents' Exhibit No. 5 admitted [76] without objection.

NOTE: An envelope and pamphlet are marked and filed as PROPONENTS' EXHIBIT NO. 5.

Mr. King: We have no further questions.

[77] Cross Examination

By Mr. Simmons:

Q Mr. Hilton, in examining the handwriting of Miss Francis and other people in your expert line, are you able to distinguish by looking at that handwriting and pondering over it any characteristics of the person's personality such as whether they were essentially a meticulous person in connection with their paper writing? A No, I make no attempt to do that.

Q In other words, you don't study the characteristics of handwriting in that way? A No, mine is purely identification.

Q Yours is purely mechanical but it doesn't go into the analysis of the personality of the writer? A No, sir.

Q Is that a more involved or less involved line than the one you are in? A Well, it is very different and I am not able to say whether it is more involved or less involved because I have never made any deep study of it. I know only the most general aspects of it.

Q Isn't it true that a thorough knowledge of that part of handwriting would be of a great assistance in deciphering documents of this kind? A I don't believe it would, no.

[78] Q Aren't you obliged to make educated guesses in connection with this work that you have just shown to us? A You mean in making the decipherments?

Q Yes. A Yes, sometimes these are, I guess, educated guesses. It might be a fair term certainly in a preliminary aspect of examination to make a series of educated guesses and then work back from these to verify your results.

Q And it is impossible to verify the results in the final scientific sense, isn't it? A Well yes, except that it is quite possible sometimes to show by further study that certain initial educated guesses or what appear to be extremely good hunches are inconsistent with all of the details that you see there.

Q And so that in the reconstruction of the damaged portion of this paper writing you have stated that you do indulge in hunches. A Certainly in the preliminary stages I do, yes.

Q And isn't that so because in your words, in your report, some of the words are so obscured that this writer could not make any judgment as to what they might have been? A Yes, that's true.

Q And subsequently between the first report and today, you have gone back and you have made a judgment on [79] three more words? A Yes.

Q What additional knowledge of the kind you have testified to did you have today that you didn't have in your August report or were you indulging in hunches or both? A Yes, I must say that in at least one instance I initially was engaging in a hunch brought about by reading and re-reading, going back to the thing afresh and seeing some of the part of the document, some of the writing but this hunch was then taken well beyond that state because then I went back to the obscured details that were there and found that they fit.

Q In other words, you did that with the word "market", did you not? A I did it more with the 10 acres interpretation than with the word "market".

Q Because Ann Hathaway got 10, is that the reason you assumed it must have been 10 for her brother? A No. I think there were several references before that in that paragraph where it says 10 acres and at first it says approximately 10 acres and then I think the term is 10 acres each time. The word "approximately" is never repeated and then, of course, as you went later on the next paragraph said that Ann Hathaway Francis would get 10 acres and she started out with a total of 20.

[80] Q So you were doing it by internal consistency or interpretation rather than being able visually to see what you translated as being

10 acres of— A Well, yes, in part this was the initial analysis and then going back and finding enough fragments that fit into this pattern, having examples of how this writer wrote, and seeing that the fragments that were there were perfectly consistent with this 10 acres is why I finally came to this interpretation.

Now this occurred at other places as well.

Q What fragments do you mean? A Well, fragments that make up words—the word acres for example, the "a", the "c", some fragments of these particular letters in the proper spacing and were consistently made in the manner that Miss Francis wrote. This word was—appeared in the same paragraph a number of times and was clear.

Q Did you find her a consistent person from the study of her handwriting? A Well, this gets into personality.

Q Are you able to say? A And I am not able to say from her handwriting. I would say her handwriting has some consistency to it; it has natural variation but it is not widely varied in writing. It is a reasonably consistent writing.

[81] Q Doesn't this method that you are now testifying to and that you used imply consistency in order that you may draw an analogy from one word to another word? A Consistency in writing, yes.

Q I asked you whether you found consistency in connection with the way Miss Francis formed capital "L" in Laura at the outset of this document and then the purported signature? A No. Well, it is the portion—the ornamentation is in the signature and not in the body writing.

Q In other words there is a flourish many times the size of all the rest of the "L's" in connection with that, is that what you were saying? A Yes.

Q And so that is one demonstrable inconsistency in the way that Miss Francis wrote.

[82] * * *

Witness Hilton: The variation in the signature, yes.

By Mr. Simmons: (Continuing)

[83] Q Now does the—When you speak of the fragments, is

there any other term in your line that you would use fragments? Have you used particles or what is the term we are talking about which mean the rudiments of what has been written in the way that we could read by the naked eye? What are the terms fragments? A Well, I generally refer to them as fragments because they are of some size and shape.

Q Now, do you, in connection with those fragments, do you tend to measure the length of the apparent word in order to ascertain the number of letters occurring in the word? Is that a significant method that you use? A It may be. In other words, in certain spaces, you know, you can tell from the way the writer writes that unless there was undue crowding of that word that it would consist of.

Q And you simply make an educated guess as to whether it is seven letters or nine letters? A Well this is done along in the course of the decipherment. It has to be done. In other words, if you, with the things you have, deciphered rather definitely in your wording on the fill-in blanks, so to speak, then you have to look at the spaces and if some of the word comes to mind because of a letter or two that you can see or parts of a letter that you can see and you think of a word—say a seven [84] letter word and you look at the space available and you realize it isn't physically possible for the writer to have placed this seven letters in the space allowed because of the size for instance or the two or three fragments that you can see and, therefore, you have to discard that. All of this is sort of intuitive and I think I do a great of it automatically without realizing what I have done.

Q What it your definition of intuitive? Does it derive from the noun intuition? A Yes.

Q And does intuition mean that you more or less sense it without the application of rational judgment? A Well, I guess you do initially, yes.

Q Is that the way that you arrived at the conclusion that you have stated in your report that Katherine Smith's middle name was either the six-letter word Fortas, F-o-r-t-a-s, or Foster, like the Judge? A Yes. Well, no, it was more than that.

Q Was it in your report? I believe you stated it was not in your report. A It's not in my report. I think I put down one name, the one that I thought was the best judgment and I realized when I was read-

ing the report that I had never made any comment of the alternative.

[85] Mr. Simmons: May I have the original report?

The Court: Yes.

(The Court hands the report to Mr. Simmons.)

By Mr. Simmons: (Continuing)

Q I hand you what purports to be your report dated August 14th as corrected today and which has been admitted as Exhibit 4, Proponents' Exhibit 4, and ask you to direct your attention to midway down Page 2 and read for us where it begins "Occasionally a word" and read down to the end of the paragraph. A "Occasionally a word could not be definitely made out but it appeared to be most likely the word indicated and in these instances a question mark has been placed after the word. This would be true for example of the middle name of the last named executor, which appears to be Fortas but might actually be Foster." Well, I hadn't re-read this part when I made my comment today. "The photographs show clearly how there had been a certain degree of washing and accumulating of the fluorescent material in a . ." Well, that doesn't pertain to this.

Q So actually you were mistaken today in saying that you were using that as an actual example that you had here. There were two alternatives you gave us, Fortas or Foster, is that right? A That's right, but it did not show this on the portion that I was reading from and that is where I inserted this because I knew, from my own examination and notes, I think even—Well, I just can't read the letters. I can see them quite clearly but I can't be sure.

Q All you can say in any case is that there are six letters in the word? A No, I can say very definitely that "Fo" are clear; the "t" is clear. The difficulty is whether the letter following the "o" is an "r" or an "s", and the last two letters, the ending could be either an "r" or an "s".

Q Could it be an "a"? A Which?

Q The last two, could they be an "a" rather than "er"? A Well, let me look at the picture again. (Witness looks at photograph.) No, you mean the very last letter?

Q After the "t", what would the rest be? A The two letters following that could be "er" or "as".

Q "er or "as"? A Yes.

Q What about the one before the "t"? Is there one [87] immediately before the "t"? A Yes.

Q "Fo blank" and then the "t". What are the alternatives that that could be in your judgment? A Well as I saw the thing at the time it impressed me as being an "r" or an "s".

Q An "r" or an "s" but nothing else? A Yes, those were the things that came to mind. Now I didn't consider any others.

Q Is that the same technique now in establishing that word that you have used in connection with establishing the other portions of this Will, it bears on your technique? A That is one of the techniques, yes, and with ordinary words, of course, you can make out what letter is intended. With proper names you always have great difficulty.

Q You do have improper names? A Yes, because if I don't know what the name is why sometimes the—Well, I just misread them sometimes in ordinary handwriting. I find in cases sometimes I have misinterpreted a name that is written out in perfectly clear handwriting that is unknown to me.

Q Could that word have been "Foote" in your judgment? A It looks like there is another letter at the end there. I wouldn't argue with you.

[88] Q In other words where you have an ordinary English word, you are able to use intuition, comparison and the other methods you have stated which you will not use or do not apply when you have a proper name? A When you have a proper name that is entirely unknown to you, you have to do the best you can based upon the handwriting that has come before and sometimes when it is partially obliterated you can go astray.

Q And sometimes you use the most unlikely word that comes to hand? A I guess so, yes.

Q Aren't you certain of that? A I think this is natural if it fits. It's got to fit with the outlines that you have there.

Q I believe you stated, did you not, in your report that—I call your attention now to Page 2 again and I am on this paragraph that says the words are so obscured and the next sentence says "When this is the case blanks have been indicated in the following decipherment of the Will. Occasionally a word could not be definitely made out but it appeared to be most likely the word indicated and in these instances a question mark has been placed after the word." Is that right? A Yes.

Q Have you consistently placed question marks [89] in your interpretation of the establishment of this Will? A I had one where I was still in doubt at the end.

Q You did do that? A Yes, I certainly tried to. I think I got question marks in most of the places. Now I may not have done that on proper names; I am quite sure I didn't.

Q No, you didn't do that on Fortas. A No.

Q But you did it in other cases? A Yes.

Q All right, sir, I direct your attention to the three words that you have added since the last report and ask you if you didn't testify that market and desire and 10 acres of, that you had reconstructed this but in the meantime there was a good deal of doubt that they were the words; they were the most likely that you could think of, but you would put those in that class. A I think they should be placed in that class because they are not 100% decipherment. I have already commented and gone on record very strongly that I couldn't decipher them. Now I have come up with what I would say is the most likely decipherment.

Q Would you put the question mark behind them? A Yes, I will be glad to do that.

[90] (Witness marks on the report.)

Q Now, Mr. Hilton, in connection with actual decipherment when you applied the ultraviolet ray to this document in your laboratory, did you see more than was shown the jury when they looked at it? Did you have any means of looking through that nebula, that cloudy area of some words and saw something that ordinary people wouldn't see? A No, where there were cloudy areas I saw clouds, too. However, I was examining it under some better conditions than we had here in the courtroom. We didn't have complete darkness and by working in com-

plete darkness, you get the best effect of the fluorescent, so I would say that my conditions were a little bit better.

Q In other words, laboratory conditions which you really need to do a thorough job? A That's right.

Q In other words, an ordinary person, for instance if you had such an ultraviolet light in your bathroom, would you see what we saw here today and held that document under it? A At night you probably would, yes. This, of course, would depend, too, on the ultraviolet light in your bathroom because there are different wave lengths of ultraviolet light and some react better than others on ink problems.

Q I just picked up at random one of the photo [91] graphs given me. It is the first page of what you were working on, and I ask you in looking at this rather clouded area, I am asking you to tell me do you see letters in there? A From this print you do not see as much as you see from the negative or the original. I am sorry about the prints but they seem to be the best that I could pull out of these negatives.

Q But these prints don't show then everything that you saw? A No, I just could not record them on paper.

Q Is it unusual for me to say that I can't do what you can do by looking at this? A I think that is quite true. I can't do from that as well as I could do it from the other material that I examined.

Q Now Mr. Hilton, what chemical test did you run on these papers to ascertain the liquid that had apparently defaced this Will, this paper writing? A No chemical test.

Q None whatever? A No. I placed no chemical on these documents.

Q You didn't put any alcohol on any of them? A No, I would not touch these documents with chemicals without a Court Order.

Q All right, you have testified to certain experi- [92] ments that you ran. Those experiments were run on paper that you selected? A Yes.

Q Do you have any of it here? A Yes.

Q Is it identical to this? A No.

Q. Was it done with green ink? A Yes.

Q Sheaffer? A Yes.

Q And is there any other green ink that has got the qualifications of this ink to which you testified and that you talked to Mr. Sheaffer about? A Mr. Casey.

Q Mr. Casey, I am sorry. Any other? A No other green ink has this additive to my knowledge.

Q If any other green ink other than Sheaffer's had been used in connection with your experiment, would you have gotten the result that you testified to as to clarity? Would you have gotten as good a result in your judgment? A If what?

Q If ordinary green ink without this quality with fluorescent additive had been used? [93] A Probably as far as the running is concerned they would be very similar. The compounding of the basic green ink is green dye in water and a few other chemicals and different companies put different things in their ink.

Q Would you have seen it as well as you did here without the fluorescent additive? A You wouldn't see any of the original writing.

Q You would see nothing? A Nothing at all.

Q It was only because of the additive that you could read this at all? A That is right, otherwise we would have been completely out early in this case.

Q It would have been just the way we looked at it when we see it? Now suppose she had used some other color of ink? Does that apply only to the green ink? A If she had used Sheaffer ink we would be all right.

Q But any other trade name you can't say? A The other companies did not add this. This particular compound was a patented additive of Sheaffer's. Now other companies could have done similar things.

Q So far as you know this is peculiar to this company's product? A I've never seen any other inks that reacted like [94] this.

Q So if you had known before you made any experiments on this writing, if you had looked at it and in your opinion, if you had been

told that this was Sheaffer ink that made this, would you then be pretty well certain that you would be able to have restored it in this way? Is that a steady characteristic of Sheaffer ink? A No. The date on this document, I would still have been in doubt. I would have run fast for my UV equipment but all the time I was running, I would have hoped that the ink had been bought about the date of this document.

Q 1959? A Yes, and say about five years before because the additive went in sometime in the 1950's.

Q In other words if this Will had been written and left in this state after whatever occurred to it, if it had been written as you testified, four or five years before, it probably would not have shown at all on any of your experiments? A That's right, yes.

Q And does that— Do they still use that additive? A No. You can still find some of this in the stores but the current product, and I think this has been true for two or three years, Sheaffer has quit using the RC-35 additive.

[95] Q So that they have an ordinary wash blue or are washable? A Yes, it has always been washable.

Q But during that time, that limited period of years, only Sheaffer had the fluorescent additive and it is that that made it possible, in your opinion, to reconstruct this Will? A Yes, unless some other company had put the additive in and didn't advertise it.

Q In other words it was a very narrow chance? A It certainly was, and when this problem was submitted to me and I saw it I thought—In fact, it was described to me over the telephone and I said I didn't know what could be done and when I saw the thing for the first time I still wasn't sure until I had gotten in my laboratory with it.

Q It wasn't a thing to rely on but it just happened to be that way? A We were just lucky that's all.

Q Now, Mr. Hilton, in connection with these experiments, I understand that you did not use anything in your experiments except water on the assumption that it was water that had done the damage? A Yes.

Q Can you certify here that there is no other [96] liquid that could have had this same effect as water under the circumstances of this case? A Well, some other chemicals would bleach the ink, yes. There are various bleaches that would but this left a residue, as well as we can see from the exhibit, a light green color over the obliterated areas and this is not consistent with a breaching agent.

Q My question was, take all the effluents and liquids that there are except water, and I ask you whether or not you can testify that none of those would have had the same effect on this paper writing as water? A There are undoubtedly other things that would dissolve the ink.

Q And leave it about the way this document is? A I am not sure it would leave it the way this document is. I would have to try a series of them but water is the handiest and most common thing for treating inks.

Q And by using water, you never did get the results we have seen on this document? A Yes, I did, too, a stain on one piece of paper at one time enough so that I realized the factors that had to go into it, but I did not attempt to duplicate this. I merely attempted to try various water-obliterating techniques and to see how they would affect ink writing. In other words, really how much water it took.

[97] Q If another effluent than water had been dropped on this paper, do I not therefore conclude that your experiments would be invalid for the testimony you are giving? A Yes, but these other liquids might well have left other traces that are not showing in this document.

Q And they might not, too, is that right? A It might not have, yes.

Q Isn't the scientific process one of arriving at generalizations after eliminating as many possibilities as you can in this respect to testing in this situation? A Yes, it might well be.

Q Turning again to your report which I will hand you, turn if you will to Page 3 which is Page 1 of the purported writing. A Yes.

Q Do I understand that beginning there with, "I, Laura Virginia Francis" and terminating over some of the pages, terminating at what seems to be the conclusion of that document at the signature or what purports to be the signature and the purported signatures of the wit-

nesses, that what you have placed in that document is your view of the reconstructed Will of Laura Virginia Francis? If you read that, that is what you constructed this Will to say verbatim. A As accurately as I could.

Q Did you proofread it after you did it? [98] A Proofread it after I did it?

Q Yes. A I read this report; I saw one typographical error in here this morning as I was reading it that I didn't catch before.

Q What was that, third? A Yes, fird for third. These things will escape me.

Q Are there any more? A I did not see any more.

Q We are talking about a Will now you know. A Yes, I think that third is in the legible part.

Q Can you tell us how much time you have spent on this project from the time that it was first submitted to you, I believe, by the proponents here until now? A Let me see if I can make even an educated guess on that.

The Court: What do you mean by time on that, actually looking at the papers and examining them?

By Mr. Simmons: (Continuing)

[99] Q How much time are you charging for? That is, how much time have you spent in examining and testifying to these matters excluding travel time? A Primarily laboratory examination and this thing?

Q Study time. A I imagine that there is probably a total time in this thing must be getting up to around 35 or 40 hours, something like that. I just really—maybe more than that. I don't have my record here and I am sorry that I don't or I could answer that much more accurately. Q 35 or 40 hours reviewing this document under ultraviolet light, photographing it and studying it for what it actually originally said. A No, the original decipherment did not run that much time but the original decipherment and the photographing of the document and getting the report ready ran into 20 hours.

Q And what was the other time spent on? A Well, since then there has been review of the problem, preparation for testimony and preparation of additional photographs and going back over it because I felt every time I'd get away from it for a few months I have to go back and it takes several hours to re-read the Will.

Q I hand you Page 3 of the Will and then I hand you—I am sorry, Page 1 of the Will and Page 3 of your report, and then I hand you a portion of Proponents' Exhibit [100] No. 1 that you studied and ask you to examine particularly Item 4, Arabic 4 beginning "All my other personal effects", start reading that— your interpretation of that sentence. A "All my other personal affects . . ."

Q Stop there. What was the last word you read? A Affects. It should be effects.

Q And in the report? A It was affects.

Q That is another typographical error? A Yes, it is.

Q Do you know whether that is repeated anywhere else in the Will? A I think it is at one other point.

[101] * * *

By Mr. Simmons: (Continuing)

Q Mr. Hilton, turning our attention to the envelope and the brochure, this I believe is the envelope you testified to? A It is.

Q Is it your judgment, based on your testimony, that the outside of this envelope received the effluent first before the writing that purports to be a Will or later? A Well, only from—I don't think that there is anything in examining each item separately to say which became moist first.

Q But if the writing was folded up and in this envelope it would be almost physically impossible for the water to get from the inside out; it would have to be from the outside in would it not? [102] A That is correct.

Q Does this envelope have the appearance, in your judgment, of having been wetted first or more intensely than the contents? A No. I think they have all been wetted to about the same intensity, and as far as being wetted first, as I said before, I don't think in examining this

alone this could be determined. I think that they all, the envelope, the pamphlet and the five pages of writing were all quite seriously wetted. I mean, they got—They were as wet as they could be.

Q And you said you thought that that persisted for some length of time? A I believe it did, yes.

Q Now in looking at this envelope, you have testified how it opened up and where the ink appeared. Is there more discoloration inside the envelope or outside the envelope or is it about the same? A Well it gives you the impression of being a little more intense particularly underneath the flap here. In that particular area there seems to be quite a bit of concentration of color there while on this side it isn't quite as intense.

Q In other words, the ink is more intense on the exterior than it is on the interior of that envelope? A It seems to be, yes.

[103] Q And yet that ink, in your judgment, soaked from the paper writing from the inside out? A Yes, it had to. There is no evidence of ink writing on the outside to bring that about except the words "my Will" of course.

Q Suppose the paper writing had been thoroughly soaked by any means, just something poured on it, a drink or anything else just poured on it and it had been put back in this envelope and been put away. A Yes.

Q Would that not have tended to do everything you have testified to in soaking from the inside out and perpetuating the wetness for a sufficient period of time to have done what you have testified was done? A I don't believe that the outside of the envelope would take on that condition. I tried this with one envelope in which I moistened the contents.

Q With water? A Yes, with water and put them inside and sealed the envelope up.

Q Isn't it true by osmosis that the drier would tend to dry the wetter? A Yes, this is true but in the attempts that I made to duplicate the condition we have here it didn't work out that way.

[104] Q I didn't work out either way with water did it? A What do you mean didn't work out either way?

Q Well, with the envelope or without to get the effect. A Well the effect on the writing itself that was enclosed in the envelope, no it didn't; but, by the same token, putting a group of thoroughly wet paper into the envelope—In other words, I did not blot them off or anythnig; I put them in, took them out of the water and stuck them in there with extra water around them and sealed them up. It didn't moisten the envelope like this is. This envelope has the appearance of water having been over the whole surface.

Q Now, turning to the pencil writing that appears on the back of that envelope. A Yes.

Q And looking at the stained green marks that you have testified to, would you kindly tell us whether that writing, in your judgment, was put on the envelope before the staining or after? A This I can't say.

Q You can't say? You can't tell us that? A No.

Q What effect did the water that you tried have on ordinary marks made by a lead pencil? [105] A It has no effect.

Q It doesn't blur it? A No, not an ordinary pencil.

Q And would not the greenish show more distinctly on top of the writing if the writing had already been on the envelope than that? A No, I don't think so. No. In my opinion, you can't tell the sequence of the ink and the pencil there especially where the ink is soaked into the paper fibers..

Q And you say if this envelope had been thoroughly immersed in water— A Yes

Q Up to approximately that point that I am indicating that the pencil writing that is on there would be no different than the pencil writing on the top when the things that you have stated took place did take place? A That's correct.

Q Now looking at that, would you tell me whether the flap would have to be open in order to write what is written on there in places? A Some places the flap was open, some places the flap was closed when the writing was done.

Q Would that indicate it was all written at one time or at several times or can you really testify to that? A The only thing that I can

really testify to is [106] that during part of the writing here the flap had to be open. Now whether this was a continuing process—by that I mean, whether the writing was put on the flap with the top open and then part way through this writing for some reason or other the flap had been closed and the other writing produced because you get down to the lower portions is where the writing comes on the flap. A little bit above the halfway point is where you have the change.

Q Now can you tell anything about the way the mucilage adhered to this envelope with respect to the writing on it when it was sealed or whether it was sealed or how long it stayed sealed or anything of that kind? A I am not quite sure I understand your question.

Q From the mucilage that is adhering to the envelope and its flap, can you tell what sequence the envelope was sealed or unsealed with respect to the writing and the stains on it? A Well, not with respect to the stain at all. This I can't say as to what order things occurred in except that—Well, the contents were in the envelope when the staining occurred but as far as the pencil is concerned, yes, there is some evidence here that some of this writing was done in the areas where we have some fragments of envelope, where there had been a sticking of the envelope glue and some fragments of the paper torn off and some writing seems to be on [107] these fragments of paper.

There is also some evidence here that or some suggestion in that same area that the glue is discolored so there might be a secondary gluing in that area.

Q Now as to the writing on the back of this envelope, Mr. Hilton, in your judgment is that the same writing that appears on the paper writing offered here that was inside of the envelope? A This was my—I didn't make a detailed study of it, but it was my impression as I worked with it that it was the same writing.

Q And from your studies were you able to decide approximately when the staining defacement by liquid would have occurred to this document, the purported Will? A No, I cannot say that. This question was certainly raised at the beginning of things.

Q You could not say whether it was in 1959 or in 1970 just prior to its being handed to you? A I could not.

Mr. Simmons: I believe that is all.

The Court: All right. Any further questions?

Mr. King: Yes, I have one further question.

[108] Redirect Examination

By Mr. King:

Q Mr. Hilton, you stated in cross examination that there was evidence of secondary gluing. Does that mean that the envelope had been opened and then resealed? A Yes, this could be.

Q Taking into consideration the condition of the paper that the writing of Exhibit 1 is on, taking into consideration the ink that is marred, taking into consideration the glue situation on the envelope and taking into consideration the condition of the pamphlet, do you know of any substance other than water which could have had the same effect on these different items. A No, I don't, not in the manner in which these have been affected. It would be my judgment and my opinion that this damage is typical of water damage.

Mr. King: I have no further questions.

[109] Recross Examination

By Mr. Simmons:

Q Speaking to that point, did you experiment with this type of green ink on this type of paper with any kind of alcoholic drink? A No.

The Court: I believe he has answered that.

Mr. Simmons: No, sir, Your Honor, I have not asked about alcohol.

Mr. Smith: He asked if he experimented with anything other than water and he said no.

The Court: I mean, I don't want to take up a lot of time but if you have got something else you want to bring up, ask your question. I will allow you to ask it.

By Mr. Simmons: (Continued)

Q Your answer is no? A It is no.

The Court: I was under the impression that he didn't try anything but water. Maybe I [110] misunderstood it.

By Mr. Simmons: (Continued)

Q Mr. Hilton, how could you testify that it couldn't have been another substance except water when you have previously testified that you never performed an experiment with any chemical test to ascertain that fact. A Well, as far as the ink is concerned, other things might smear the ink and damage it but you have the mucilage that held the two flaps, the manufactured flaps, together, not the one that is sealed when you seal the envelope but the ones that are held together when the envelope is made, and that glue has been completely dissolved.

Now, water is the substance that I know will do this and, to my knowledge, alcohol and things of that nature do not dissolve this glue readily.

Q Can you say, of your own knowledge, what is the constituent ingredients of this glue? A I could not give the chemicals that go into it, no.

Q Can you testify of your own knowledge that alcohol is not a solvent of this particular glue? A To my knowledge, it does not wash it off of the paper. It might cause it to stick together because it's moist and alcohol has water in it—all but absolute [111] alcohol; all others have water in them so it would cause the glue, the flap, to stick.

You could pour a drink on it, for example, and then seal it if you wanted to waste a drink that way.

Q But it would act as a solvent on that glue, would it not? A It would cause it to stick together but this is a solvent that has taken all of the glue off the paper and I don't, to my best judgment and from my knowledge of these glues, I don't believe they can be completely removed from the paper with alcohol.

Q Are you prepared with respect to your knowledge of these glues to tell the jury the formuli or components of glue that is generally found on envelopes? A Not at this moment without review of the literature. I know that it is water soluable glue.

Q Yes, but you do not know that it is not an alcohol soluable glue, do you? A Most of it is not entirely alcohol soluable, not like it is with water. I could be wrong on this, but this is my recollection.

Q Alcohol does contain some water? A Yes.

Q And of course alcohol can be mixed with water in addition to that and alcohol contains some water. [112] A Yes, that's right.

Q So you are not able to say really, are you, whether there was any alcohol in the affluent that caused this defacement? A I can't say that it was no alcohol in it, no.

Q When you made your test of the Proponent's Exhibit No. 1, did it look basically like that when you got through exposing it to water in any of the degrees you have testified to or could you actually look through that and see something in the way of the O characters? A This particular exhibit?

Q No, sir, your experiments. A Oh, in my experiments. Only in one instance did I get anything that was a more or less even discoloration and no outline of writing visible.

Q Did that one occasion look like this? A Well, to a degree, let's say. It did not look identical, of course.

[114] * * *

Helen Mills,

a witness called on behalf of the proponents, having first been duly sworn, testifies as follows:

Direct Examination

By Mr. King:

Q Please state your name and where you live. A Helen Mills, White Stone, Virginia.

Q Were you acquainted with Miss Laura Virginia Francis? A Yes, I was.

Q And how were you acquainted with her? A By working with her?

Q How long did you work for Miss Francis? A Twenty-five years.

Q For twenty-five years before she died? A Twenty-five and some.

Q Were you working for her at the time of her death? A Yes, I was.

Q Do you remember the day that Miss Francis died, what day it was. A I can tell you the day, but I don't know [115] the date.

Q What was the day? A It was on a Thursday.

Q She died on a Thursday? Did you attend her funeral? A Yes, I did.

Q Do you remember what day her funeral was on? A A Saturday.

Q The following Saturday? A Uh huh.

Q Do you remember when the opponents of the Will, Mr. and Mrs. McKenzie, arrived at Francis' Point after the death of Miss Francis? A Sometime the next day around 2:30 or 3:00, something like that in the morning; I am not sure.

Q They arrived very early in the morning after she died? A I think so.

Q Less than 24 hours after she died? A Yes.

Q Did Mr. and Mrs. McKenzie make a search for the Will after they arrived? A Well, far as I know they were looking for something. I don't know whether it was a Will or what.

[116] Q They were looking through Miss Francis' things? Do you know when they started looking? A No, I don't.

Q Do you remember what day it was? A I don't know that either.

Q Was it before the funeral? A Yes.

Q It was before the funeral? Do you know if it was on the Friday immediately after Miss Francis' death? A I don't know.

Q Do you remember when Hath Francis and his sister arrived? A The day that she was buried, I think.

Q How much before the funeral did they arrive? A Well, I don't know that. I just saw them at the funeral.

Q Do you remember when the writing that was later found? A The what?

Q What was referred to as Miss Francis' Will? A Do I know when it was found?

Q Yes. [117] A No, I don't.

Q You don't remember when it was found? Were you familiar with where Miss Francis kept her papers during her life time? A As far as I know, she kept them in her room, in her desk or somewhere.

Q In her bedroom? A Yes.

Q Did she keep any of her papers in her bedroom closet? A Yes, she had some there.

Q Do you remember any occasion when water pipes broke in the house? A Yes.

Q Please tell the Court and the jury about the occasion you remember when water pipes broke. A Well, I don't know exactly what the time and date was, but I know it was a water pipe was broken and she had it fixed later.

Q And where was it located, the pipe that broke? A On the second floor.

Q Above what room? A Well, I say above her room.

Q Above her room? Was it also above the [118] closet? A Yes.

* * *

By Mr. King: (Continuing)

Q Tell what you know about the water that came from this broken pipe? Who mopped up the water? A I did.

Q And where was it that you had to mop it up? A From the second floor, up on the second floor over there where her closet were.

Q Do you remember how deep the water was on the floor? A No.

* * *

[120] Cross Examination

By Mr. Dunton:

Q This was the upstairs bathroom where the water pipe broke? A No, it wasn't in the bathroom.

Q Where was it? A It was opposite her—it was in a bedroom.

Q It was in a bedroom? A Yes.

Q And what was immediately under that bedroom? A From the second floor?

Q Yes, what was under that room? A Well, that was where her room and bath were.

Q Now which room upstairs as you go upstairs, the first or second or third bedroom? A It was the first bedroom to the left.

Q Is that the room at the head of the stairs? Is that the one you are talking about? A Yes.

Q Now is that immediately over her bedroom? A Well, I say it was, yes, if you divide [121] it and break it right down in half.

Q If what? A Yes.

Q One room was immediately over the other? A No, they both join together.

Q I am talking about, was her bedroom immediately under this room? A Yes.

Q Where the water broke in? Now, did you mop up any water downstairs? A I did not mop up none downstairs.

Q All the water you mopped up was upstairs? A Yes.

Q Did you see any water downstairs? A I didn't see none.

Q You didn't see any water downstairs? Were you at the house when the pipe broke? A I wasn't there.

Q Did someone go to get you or how did you happen to come up? How did you find out about the pipe? A She told me about it the next day and I saw it.

Q But there wasn't any water downstairs at that time for you to mop up? You mopped it up upstairs? [122] A Yes.

Q And that's the only place you saw any water? A Yes.

Q Now you said you saw or at least she kept her papers largely in her bedroom? A Yes.

Q Did you know whether or not Miss Francis had a safety deposit box at the bank? A No, I didn't.

Q Did you ever hear her say anything about it? A No.

Q Never anything said about a safety deposit box? A No.

Q Do you know where she kept her papers in her bedroom? A Well, I say she kept them in her desk and different places.

Q In her desk and different places? Where was the desk located in relation to this pipe upstairs? A Right at her door as you go in.

Q Was that under the broken pipe? A No.

[123] Q That was not under the broken pipe? A No.

Q Did you see any damage to furniture in her room as the result of a broken pipe? A No, I didn't see it.

Q You saw no furniture that was spotted or damaged because of water? A (Witness did not answer).

[124] Redirect Examination

By Mr. King:

Q Could you state how long ago this occurred, if you know? Do you know about how long this broken pipe occurred before Miss Francis died? A I don't know. It were a couple of years.

[164] * * *

William B. McLeod,

a witness called on behalf of the opponents, having first been duly sworn, testifies as follows:

Direct Examination

By Mr. Simmons:

Q Would you state your name? A I am William B. McLeod.

Q And your residence. A I live in White Stone.

Q Mr. McLeod, are you one of the administrators of the estate of Laura Virginia Francis? A Yes, sir, I am.

Q You and who else? A Mr. Garfield A. McKenzie.

Q This gentleman right here? A Yes.

Q Now, Mr. McLeod, in connection with your duties have you and Mr. McKenzie had an occasion to have the estate of Miss Francis appraised for estate tax? A Yes, sir, we have.

Q Would you tell—

Mr. Smith: Your Honor, I don't know the [165] materiality of this, sir. This is a case, in which it seems to me, the sole issue for the jury to decide is is that Will of Laura Virginia Francis still the Will. In other words, has it been revoked by her. That is the only issue.

The value of the estate, as I see it, has no materiality in this case.

Mr. Simmons: Your Honor, we have quite cogent reasons why this is pertinent, as I think anyone who will remember my opening statement recalls.

Mr. Smith: Your opening statement was not law as the Court and jury knows.

Mr. Simmons: I propose now to support the statement with law and I think it would be inappropriate for me to develop this before present company. I have reasons and I can assure the Court that they are quite material to the issue at bar.

The Court: Objection has been made and I'm going to ask the jury to step outside while we hear argument.

[196] * * *

Direct Examination

By Mr. Simmons: (Continuing)

Q Mr. McLeod, I believe your last answer was to the effect that you had had occasion to have the estate of Miss Francis appraised? A Yes.

Q Will you kindly tell us what the appraised value of the property known as Francis Point was? A We obtained two appraisals from the different men familiar with real estate in this area. One appraised Miss Francis' property at Francis Point at $169,000.00; the other one appraised it at $162,400.00. We adopted that latter one and recorded it for State tax purposes.

Q You took the lower of the two? A Yes, sir.

Q Now, Mr. McLeod, did you have occasion to have an appraisal made of the assets, money, stocks and bonds? A Yes, sir. Basically that was done by Mr. McKenzie and myself and practically all of the stocks and bonds were listed and we were able to get the values out of the [197] Wall Street Journal, but we did obtain the assistance of Miss Francis' own broker who was with Laidlaw and Company in Washington to get the values of a few unlisted stock.

Q Tell us what those values were as of her death? A The stocks were worth $192,912.00. She had a bond of $3,900.00 making a total of $196,812.00, stocks and bonds, that does not include cash.

Q And what was cash? A Cash was not very large. There was a small checking account just under $400.00 and a savings account of just over $2,500.00, $2,556.00, and then she and her nephew had a checking account that was in Miss Francis' name that belonged to each of them and that was just a little over $100.00 in it.

Q What was the gross estate, Mr. McLeod? A The gross estate was just short of $400—$393,688.52.

Q Mr. McLeod, how long have you been familiar with the financial affairs of Miss Laura Virginia Francis, that is with specific reference to the approximate value of her assets? A I would say I became pretty familiar with Miss Francis' financial position about the end of the 1950s. I came to know her quite well socially in 1954 and I would [198] say it was in the next five years I gradually came to know more about her affairs and she gradually came to use me, I think, as her legal adviser.

Q Can you state of your own knowledge whether between 1959, the 8th of February, 1959, and April 30, 1970, there was any substantial change in her financial condition? A Yes, a very large change.

Q Tell the jury, if you will, what that change was? A Well, I can't give you the names of some of the people but there was an estate set up—back, I believe I was advised in the 1920's for the benefit of certain people for life, with the remainder on the death of those life estates, to go, among others, to the Francis family. Two such estates fell in, as the expression goes, in 19—in the 1960's and Ann Hathaway and "Hath", as children of "Cookie's" brother, Mrs. McKenzie and

Cookie each received very considerable inheritances. On that occasion, also "Cookie's" own aunt, her Aunt David, died and left "Cookie" a substantial bequest. I helped "Cookie" as an attorney for her as executor of Miss David's estate, and advised her in going over the making of the proper reecipts to discharge the trust—these are the times she received the other properties.

[199] And while I cannot give you an exact period or figures, her total inheritance in the 1960's, I believe I can say, was in excess of $200,000.00. And before that she had had her estate worth the property, and she had to work even to pay the taxes on it.

Q Mr. McLeod, are you able to state whether there has been any increase in the value of the property known as Francis Point during the period you are testifying to?

Mr. Smith: Your Honor, I assume the Court knows that I am objecting to this entire line of questioning.

The Court: Yes, sir.

Witness McLeod: Let me say that I can't answer that with any figures. All desirable waterfront property has increased since 1959 to the present and that's really the only answer I can give you.

Q Now, Mr. McLeod, when did you first become aware that the paper writing which has been offered in evidence had been found? A The morning of Friday, the first of May, 1970. Miss Francis died Thursday afternoon and this was the next morning about 9:30 in the morning that I became aware [200] of it.

Q Did you have occasion to institute any search for that? A No. It had been found. I arrived at the Francis home about 9:30 that Friday morning and was called into Miss Francis' bedroom by Mr. McKenzie who handed me that document in the envelope that has been seen and said, "We have found this. I want to show you something we found." That's the first I knew about that document at all.

Q Now will you tell us what you and Mr. McKenzie did following that in connection with your qualification and the offering of this writing to Mrs. Abbott? A Well, I don't want to go astray outside of the question. We made other efforts to find the Will. We both felt we had reason to believe there was another Will and in fact we spent

well over a week primarily in the effort to find a Will we believed in existence, and we never did.

Q Who assisted in that search during that week. A Well, during the first part of the search, Mr. Hathaway Francis and Mr. McKenzie made the principal search of the home. I, myself, instituted inquiries everywhere outside the home such as with banks for safety [201] deposit boxes and I even talked to her broker and several other people that I just thought conceivably she might have had some reason to let see her Will. We found many traces of it but we could not find the Will.

Q Then what did you do? A Then we felt that this document was obviously originally testament or in character the only thing to do was present it, which we did, and it was rejected.

[203] * * *

Cross Examination

By Mr. Smith:

Q Mr. McLeod, this is a difficult time for both of us, lawyers cross-examining lawyers. Were you at Miss Francis' home at the time she passed away? A No, sir. I was about two hours after.

Q Who was there when you arrived, sir? A There was a fairly good sized group. Now, let me see, Mrs. Churchman, Mrs. Earnest, and there is one, Mr. Smith, that I have never been able to clear up in my memory whether Mrs. Brocklebank was there then or the next morning.

Q A fair substantial group of people? A Mrs. Lemon and Mrs. Lemon's niece.

Q Was any discusison taking place that morning of a Will or any activity to look for a Will? A Nothing more than one or two of the ladies asked me did "Cookie" have a Will, and, I mean, it was just a passing; they were not asking me information as to what it contained or anything.

Q Now, Mr. McLeod, when you say when you got there the next morning that Mr. McKenzie handed you this envelope that had Will written across the front of it. Had the envelope been opened? [204] A Oh, yes, it had been opened.

Q It had been opened? A Oh yes, it was just like it is now, as far as the condition of the envelope is concerned. There was little or no stickum on it. It was not stuck.

Q But you have no knowledge as to whether it was opened by Mr. McKenzie or whether it was already open, any direct knowledge yourself? A No direct knowledge, no, sir.

Q All right, sir. From then until I believe it was the 11th of May which was some ten days after, you say efforts were made to find another Will? A Yes, sir.

Q Did Mrs. McKenzie, during that period, give you any information or make any remarks to you about the destruction of this Will? A No, Mr. Smith, I cannot remember her making any remark to me that would indicate she had ever even previously knew of this Will. In others words, she made no reference to this Will.

Q All right. You and Mrs. McKenzie, I take it, were both somewhat surprised at this Will, is that right? A I wasn't surprised. Do you mean by its contents or its existence?

[205] Q By its existence. A I was surprised in the sense that it was still in existence.

Q And yet, your counsel on opening statement, has advised the jury that you all knew that this Will had been revoked by Miss Laura Virginia Francis and yet knowing this, you appear before the Court with Mr. and Mrs. McKenzie and offer this Will for probate? A I have just been admonished by the Court that I am not to decide whether a Will is valid or not. I had a testamentary paper in my hand and so I presented it.

Q I understand that, Mr. McLeod. Let your counsel argue the case. A I presented it.

Q The order does not say that you just presented it for filing. The order says that you moved for its probate. A I don't remember making the motion but I don't think that is a fair statement. I presented it.

Q Well certainly when you move to probate a Will you are telling everybody that you know that it is a Will, aren't you? A If that is the case, then the Order is in error. I did not make a motion.

[206] Q The Clerk says you did. Are you saying the Clerk is wrong? A The Clerk is wrong if she said I made a motion to move for probate. I presented it.

Q Do you know who was present in the home of Miss Francis when Mr. McKenzie found this Will? A I wasn't present when he found the Will.

Q So you don't know. A So I cannot answer you without it being hearsay.

Q Has anyone given you any information as to where the Will was found? A Yes.

Q A specific location or just by room. A Just by room.

Q No one has ever given you any specific location within the room where it was found? A They have given me their belief as to one or two, that's all.

Q Have you personally handled business affairs for Miss Francis in her bedroom? Have you been in her bedroom? A Oh, yes.

Q On business matters? A Yes, in connection with working on taxes.

[207] Q You said, I believe, that you were her legal adviser. How long had you been her legal adviser? A I believe ever since the death of Randolph Smith, my predecessor as such.

Q When? A He died about 1959, I think it was. It was in that area right in there.

Q To your knowledge you did all of the legal work for Miss Francis after that time? A To my knowledge I did all. I was the only counsel she had retained as far as I know after that time.

Q Do you have in your files copies of any Wills that you may have written for her that were executed? A I never actually drafted a Will for her, no.

[208] * * *

Redirect Examination

By Mr. Simmons:

Q Did Mr. Francis ever consult you in connection with the preparation of any Will? A Yes.

Mr. Smith: If Your Honor please, my objection would be that the only material evidence there would be the execution of a Will and a discussion in regard to one is inadmissible and irrelevant to this issue. I object.

Mr. Breedon: Your Honor, I believe the information was elicited by counsel for the proponents.

The Court: The Court has been rather lenient with counsel in who was going to cross examine and who was going to object and I think maybe we are going to have to lay down some rules and not have three or four lawyers on the same side jumping up and down. The one that examines the witness can make the objection.

I didn't want to interrupt you before but it is hard for me to keep up with two or three of you all jumping up and down at the same time.

[209] The question asked was whether or not he ever prepared or had executed—whether he ever did for her. I don't believe it's proper to go into a whole lot of evidence about what Mr. McLeod might have talked to her about in the past. I don't think it is material here.

Mr. Simmons: I had proposed to stop at that point, Your Honor, in case you feared we may be going afield.

The Court: I think maybe you would be. We are going to rule that—he answered the question, I believe.

Mr. Simmons: Your ruling is that he should not answer it.

The Court: My ruling is that your question and the answer opened an avenue for things that I do not believe are admissible in this case so we are going to sustain the objection.

Mr. Simmons: We respectfully except. That's all.

[210] * * *

Mr. Garfield A. McKenzie,

a witness called on behalf of the opponents, having first been duly sworn, testifies as follows:

Direct Examination

By Mr. Simmons:

Q Would you state your name to the jury. A Garfield A. McKenzie.

Q And are you the husband of Elizabeth Francis McKenzie? A Yes, I am.

Q And the brother-in-law of Miss Francis, deceased? A Yes, I am.

Q Mr. McKenzie, were you present when the paper writing that is offered here as Miss Francis' Will was found? A Yes. I was in the room where I believe [211] the paper was found.

The Court: Mr. Simmons, I might interrupt you enough to say that I think it would be proper for the record if he would give his age so we have got it in the record.

By Mr. Simmons: (Continued)

Q Going back, would you state for the record your age?

[212] * * *

By Mr. Simmons: (Continuing)

Q I believe you had been asked to state your age. A 67.

Q And where do you live? A I live in Montros, Pennsylvania.

Q Now, at the time of Miss Francis' death on April 30, 1970, what did you do—I'm interested in when [213] you arrived at Crab Point? A Well, we received the call about 4:00 o'clock and they asked us to come right away because no one there knew about the burial arrangements or the funeral, and it was pretty much of a shock to us. We said we would go as soon as we could. We had some animals we had to make preparations for someone to take care of, which we did, and we left about 9:15 that night, and drove all night.

We got here about quarter to five the next morning and went to bed for some sleep.

Q All right, sir, and now turning to the paper which has been offered as the last Will of Miss Francis, were you present when that Will was discovered? A I believe I was. It was a very confused situation. We were in her bedroom; we were looking for something to tell us about her burial wishes or her funeral. We wanted to carry out what we felt she would have done and we did not have the slightest idea. She had never discussed burial or funeral arrangements with us.

Q Now who was present at that time? A Well, there were a number of people. I don't know except I remember Mrs. Earnest, Gen-

eral Earnest's wife at that time, and there were several other people around in her bedroom.

Q When did Mr. Hathaway Francis and Miss [214] Ann Francis come? A I believe they arrived Saturday afternoon. This was Friday morning and I believe they arrived Saturday afternoon.

Q Were the funeral arrangements made before or after they arrived? A Before. She was buried Saturday afternoon and the funeral arrangements were made before that.

Q Where did they have to come from, do you know? A They had to come from California.

Mr. Smith: I don't see the relevancy of this, Your Honor. We want to get on with the case and finish it today.

The Court: You can proceed, Mr. Simmons.

Mr. Simmons: Thank you, Your Honor, and I really don't mean to waste time, Your Honor.

By Mr. Simmons: (Continuing)

Q Now, turning to the paper, do you know what person found the paper? A I'm not sure whether I found it or Mrs. Earnest found it or someone else and gave it to me.

Q Where was it found? [215] A In her bedroom, to the best of my recollection.

Q Do you know whether it was found in any piece of furniture? A My recollection is that it was found either in or on her desk or in a file drawer in a file next to her desk.

Q Were any other important papers found in that location? A Well, she had dog records, various correspondence, her check book and bank statements and that type of thing, which her desk and this file and another file were apparently her office.

Q Can you comment on the state of those papers? By that, I mean were they all orderly, disorderly or what? A They were generally filed in the file or were in the drawers in the desk.

Q Was there any evidence that any piece of furniture or the container in which the writing was discovered was marred in any way by water or any other liquid? A No.

Q Did you see any of her other important papers that were in any way marred by water or any other liquid? A No, sir.

[216] Q Who had access to the paper writing between the time of Miss Francis' death, the discovery of the document and the offering of the paper for probate? Where did it stay after its discovery before Mrs. Abbott took it in custody? A I am not certain but I believe we put it in an iron chest which was in the hall and locked it up.

Q Do you know anybody who might have had access to the bedroom after Miss Francis' death and prior to the discovery of the document? A Well, I understand that a lot of people came when she died and the room was unlocked for several days after. Well you are talking between—yes.

I don't know because I wasn't there but after I got there—

Mr. King: Your Honor, I—okay, go ahead.

Witness McKenzie: After I got there, many of Miss Francis' friends were there manning the telephone or trying to keep things going, and they could be in and out.

By Mr. Simmons: (Continuing)

Q Did you have occasion after the funeral [217] later on to institute any further search for a Will? A Yes, I did.

Q Who did you search with? A I asked Mr. Isaac Hathaway Francis, IV. I felt that there must be something more than the document we had found. I asked him if he would come in and help me to go through her papers, which he did.

Q Did Mr. Francis help you in this search? A Yes, he did.

Q He participated in that search with you? A Yes, he did.

Q Will you tell us, you stated that you felt there was another document? A Yes, sir.

Q Will you tell us what reason you had to feel there was another document? A Because Miss Francis had told us that she had made a later Will.

Mr. King: Your Honor, I object.

The Court: Objection overruled. He has answered it and I think

it is admissible, what she told him. I think maybe you have got to pinpoint the time and place.

[218] By Mr. Simmons: (Continuing)

Q Would you tell us under what circumstances and approximately when Miss Francis made this statement to you and who was present, if anyone? A Well, about the middle of January of 1967 Miss Francis was preparing to go on a trip to Hawaii and Australia. She telephoned us in the evening—

The Court: I think Mr. McKenzie should be told that you can only tell what she told you, not what she told someone else and they told you. I mean direct conversation that you might have had with her.

By Mr. Simmons: (Continuing)

Q Let me ask you, were you on an extension line or a phone directly with Miss Francis? A I was—my wife answered in the kitchen and I answered in what we call our office. I don't know but she was in the kitchen on the phone and I was in what we call our office on an extension.

Q During the whole time this conversation took place? A Yes.

Q And Miss Francis was on the other end? [219] A Right.

Q All right. Now tell us what the conversation between you and Miss Francis at that time was.

Mr. Smith: Merely for the record, we would like to note our exception.

The Court: Yes, I understand.

Witness McKenzie: She said, "Well, I am just about ready for my trip finally. I have got things lined up." She said that or words to that effect.

She then recited that she had her itinerary; she had her ticket and her passport. She said, "I made my Will. I have sent off my payments for my Federal and State taxes." She gave me the impression that she was reading them from a check list checking what she had done and why she was ready.

By Mr. Simmons: (Continuing)

Q Did she say anything about packing her bags or anything like that? A No, sir.

Q Did she make any statement as to when she had made her Will? [220] A The impression that I got from the things she said then—

Mr. Smith: I would object to his impressions, Your Honor.

The Court: You have got to direct your testimony to exactly what you remember she said and I don't think it is proper evidence for you to testify about what you thought or the impression you got. I know it has been some time. You can testify to what she told you but the Court is ruling it is not proper for you to say what you thought or what you thought she meant or what your impressions were, but you can testify exactly what the conversation was as well as you can remember it.

Witness McKenzie: As well as I can recall, she said, "I have just made my Will. I have done these things."

By Mr. Simmons: (Continuing)

Q Was anyone else a party to that conversation except Mrs. McKenzie and other than Miss Francis? A At the time, Miss Francis was telling us and she also had us talk to Jane Parker.

[221] Q At the same conversation? A In this one telephone call.

Q Did you know Jane Parker at that time? A Yes.

Q How long have you known her? A I don't know the exact number of years, but it's probably ten years.

Q How well did you know her? A Well, we saw her a number of times when we came down to visit Miss Francis and had met her and had been with her and had dinner with her at Miss Francis' house a number of times and talked to her on occasions.

Mr. Simmons: Answer Mr. Smith, please.

[222]

Cross Examination

By Mr. Smith:

Q Mr. McKenzie, if I understand your testimony, sir, you arrived or you got word of Miss Francis' death on the afternoon of the 30th of April and after you made your arrangements you arrived in Lancaster County around quarter of five in the morning on May 1st. A Yes, sir.

Q Now if I understand Mr. McLeod's testimony correctly, you delivered this envelope to him at 9:30 that morning? A Probably early in the morning about that time.

Q So then when you state you went to bed to get some rest you didn't stay in bed very long, did you, sir? A We stayed in bed until about 8:00 o'clock.

Q Now, you say when you went into Miss Francis' bedroom it was very confused. What do you mean by that? A Well, there were people there—We were in a confused state of mind and people were going in and out because—

Q In and out of the bedroom? [223] A People came into the bedroom and out, yes. It was unlocked and we were trying to ask people if they knew anything about her funeral arrangements.

Q So people were looking throughout the entire room trying to find papers, were they not? A People—at least Mrs. Earnest and I were looking for papers.

Q Throughout the whole room? A Well, generally through her desk and her files.

Q But the point I am trying to make to you, sir, is that there were other people looking who may have taken papers from one spot and put them in another. You cannot tell me where they actually were before anyone went in the room, can you? A I don't believe that others—

Q I'm asking what you saw, sir. A My recollection is that other people were not taking papers and moving them. Mrs. Earnest and I—

Q Well, Mrs. Earnest was one, was she not? A Yes, but we were doing it together.

Q Do you recall answering a question in this regard in an Interrogatory filed in these proceedings? You answered that you are not sure whether you or Mrs. [224] Earnest or someone else actually found this paper or someone else. Who was the someone else? A I don't know.

Q So there were other people other than you and Mrs. Earnest looking? A Yes—well, they may have been.

Q Well you said, "or someone else". I didn't. So that actually you yourself don't know where this envelope was originally or can't tell us where it actually ended up before you got it, can you? A I can only give you my impression.

Q Your impression I don't want, sir. A My recollection is that it was near her file, near her desk or in the desk.

Q All right, sir, in other words, it was laying on something or in her desk or on the file? A Right.

Q And who may have put it on her desk or in the file you can't tell us. A No, sir.

Q What type of file was it, sir? A The file by her desk is a two-drawer metal file.

Q Were the drawers in a container? A The drawers pull out, yes.

Q When you saw them, were these drawers [225] pulled out or were the drawers actually in the container closed? A They were closed.

Q Mr. McKenzie, I am sure you will recall testifying to what Miss Francis told you when you and your wife were listening on different extensions to a telephone call in January, 1967, and I quote—I wasn't going as fast as you were talking but I got this far. "I am just about ready for my trip. I have made my Will. I have done my taxes." This is what you said she said and then later when I objected to certain testimony, Mr. Simmons asked you, rather than giving your opinion, did she say when she had made it and then for the first time you said she said, "I have just made my Will."

There was a difference in those two statements, wasn't it? A I can't say. I did not record in any way what she said.

Q There's a tremendous difference in those two statements, isn't it sir? A I don't know, there may be.

Q And you do agree that the first time you said it you quoted her as saying, "I have made my Will". A Yes.

Q And that could have well been what she [226] said, couldn't it? A Yes, it could have been.

Q You searched admittedly, I assume, from May 1st to May 11th for any other document other than the one that was delivered to the Clerk? A Yes, we did.

Q And during that period you are unable to find any other document, correct, sir? A That's correct.

Q So as a result you brought this document to the Clerk's office and you offered this document for probate to the Clerk. A Well, we felt we had to bring it to the Court and show it.

Q You have heard Mrs. Abbott testify that you moved for its probate. A I heard her testify that.

Q And this was you, your wife and Mr. McLeod, is that correct, sir? A That's correct.

Q And certainly had you had any direct knowledge that she had personally destroyed this Will, you certainly would not have moved for its probate, would you? A I wouldn't know whether I would move for its probate or not. We were bringing the only document we [227] had found to give it—to bring it to the Court.

Q Did you or—

Mr. Simmons: Let him finish his statement.

Mr. Smith: Go ahead.

Witness McKenzie: We had some stocks which we were going to lose money on if we did not get someone who was empowered to act.

By Mr. Smith: (Continued)

Q Proponent's Exhibit 1 which I will hand you, sir, this is the document which you presented to the Clerk, is it not? A Yes, sir.

Q And was that document in this envelope, and I'm handing you now Proponent's Exhibit No. 5. A Yes, sir.

Q At the time you presented this envelope and this document to the Clerk, did you, Mr. McLeod, or your wife, tell Mrs. Abbott that "Cookie" had destroyed this Will? A I don't recall such a statement being made.

[229] * * *

Mrs. Elizabeth Francis McKenzie,

The witness called on behalf of the opponents, having first been duly sworn, testifies as follows:

Direct Examination

By Mr. Dunton:

Q Mrs. McKenzie, would you state your name, age, and residence, please. A Elizabeth Francis McKenzie. I live in Montros, Pennsylvania. I am 64.

Q Mrs. McKenzie, what is your relationship to Miss Laura Virginia Francis? A I am her sister.

Q What was the relationship between you and your sister? Did you see each other frequently?

Mr. Smith: If Your Honor please, I think she has already said her sister and that is the only material part of this issue.

Mr. Dunton: If Your Honor please, I merely want to show whether or not it was a friendly relationship or an unfriendly relationship.

The Court: I will allow her to answer the question.

[230] Witness McKenzie: We were very close and saw each other a great deal.

By Mr. Dunton: (Continuing)

Q At what time did you receive notice of your sister's death? A It was late in the afternoon, I would say around 4:00 o'clock.

Q Of what day? A Of April 30th.

Q And what did you then do? A I attended to getting people to take care of my horses, took my dogs to the veterinarian, packed and got ready to leave.

Q What time would you say that you left your home? A About 9:00 at night.

Q And who accompanied you? A Mac, my husband.

Q Is that the gentleman who just testified? A Yes, sir.

Q About what time did you arrive at the home of Miss Laura Virginia Francis? A About quarter to five in the morning.

Q Referring to the Francis Point property, [231] has that been in the Francis family for several generations? A Yes, sir, about 75 years.

Q What did you and your husband do when you first arrived? A We went upstairs and tried to get a little sleep.

Q What time were you up again? A I would say 7:00 to 8:00 o'clock.

Q Were there many people at the home with your sister at that time? A Yes. In the morning people semed to keep coming.

Q Did you make any search for any papers or anything at your sister's home and if so, where? A That day?

Q That day or at a later day if you did it. A Later, after the funeral and everything I did, but I wasn't thinking about papers at that time. I was terribly upset and broken-hearted.

Q Referring to the paper that has been introduced here as Exhibit 1, Proponent's Exhibit 1, when did you first see this? A I did not look at it until—it was after the funeral but—that's about all I can say. I don't [232] know the exact time.

Q Where was it when you first saw it? A When I first saw it, it was an iron chest in the front hall of the house, and it was lying on top of a lot of other papers like dog books and pedigrees.

Q Do you know who had put it there? A No, sir.

Q But this was after the funeral that you found this, that you saw this first? A No, no. I just saw it in an envelope lying there. I don't know what day it was. It must have been Saturday morning. It could have been Friday. I wasn't paying any attention to dates.

Q Mrs. McKenzie, did you help to make any search after the funeral? A Yes, sir.

Q And what were you searching for? A I was looking for a Will that I was sure she had made.

Q What was the reason why you were looking for this Will? What prompted you to look for it?

Mr. Smith: Your Honor, I would object to this on the same grounds that have been previously stated.

[233] The Court: All right, at this stage we are going to overrule your objection.

Mr. Smith: I would like to note an exception.

Witness McKenzie: What was the question?

By Mr. Dunton: (Continuing)

Q What prompted you to look for this Will? Why did you think there was a Will? A Well, after a telephone conversation with "Cookie" before she went to Australia.

Q Do you remember when that conversation took place? A It was about the middle of January.

Q What year? A 1967, and she called me.

Q Who else engaged in that conversation? A Mac was on the other phone in the desk room, and of course, "Cookie" called. We spoke to Jane—

Mr. King: Was it Parker?

Witness McKenzie: Yes, Parker. She was with "Cookie".

By Mr. Dunton: (Continuing)

[234] Q Did you know Jane Parker well? A Yes, sir.

Q How long had you known her? A Quite a few years. I would say almost from the time "Cookie" did only I wasn't with her like "Cookie" was.

Q Did you see her frequently when you visited in this area? A Any time we were down I met her here, too. We always saw her.

Q Were you familiar with her voice? A Yes.

Q And do you know that she was on the line? A Yes, sir.

Q What was the nature of this conversation that took place in January of 1967?

Mr. Smith: I would object to the nature of it, Your Honor.

Mr. Dunton: Strike that.

By Mr. Dunton: (Continuing)

Q What did Miss Franis say to you on this occasion? [235] A She called and said she was all ready to go to Australia, had her

ticket, her passport, had just made her Will and then went on with other things to that nature of what she had done and taken care of.

Q Was that the last conversation you had with her before she left for Australia? A As far as I know, no, because she called me from California when she got to San Francisco.

Q But that was the last one before she left home? A Not necessarily. I did not keep an account.

Q In your examination of your sister's home, did you find any damage to her bedroom from water or to any furniture in her bedroom? A No, sir.

Q Have you been in that room frequently? A Yes, sir.

Q When were you last in that bedroom? A You mean before her death?

Well, before her death and since her death? A Oh, I've been in that room—I was in when I was down this time. I was in two days ago.

Q And you have still seen no evidence of [236] damage to any furniture or to the room? A No, sir.

Q Have you ever seen any water damage in the closet? A No, sir.

Q Are you in a position to verify the change of financial circumstances as Mr. McLeod referred to it in his testimony?

Mr. Smith: Your Honor, I hate to keep interrupting, and I know that the Court is ruling by prior rulings, but for the sake of the record I would object to the question.

The Court: All right, sir, objection overruled. I understand you want to get it into the record.

Mr. Smith: Yes.

Witness McKenzie: Yes.

The Court: Go ahead.

By Mr. Dunton: (Continuing)

Q Is this correct? A Yes, sir.

Q Can you remember at this time the number of bequests of trust that were liquidated which your sister [237] received money from during that period? A I remember when my father's sister died who was the last brother or sister of his. That is when his sister's trust was divided up amongst us all.

Q Now who participated in that division? A "Cookie", Ann Hathaway, Isaac Hathaway Francis and I besides the niece and nephew of Aunt Lollie in Baltimore, Maryland.

Q Was her general financial condition considerably improved as a result of these?

Mr. Smith: I would say that is somewhat of a leading question.

The Court: It is a little bit on the leading side, Mr. Dunton, but I think she has covered that. She has confirmed what Mr. McLeod said.

By Mr. Dunton: (Continuing)

Q What was the general financial condition of your sister in '59? A In '59 she had to work to keep that place. She had to keep paying guests and she had a hard time making ends meet.

[238] Mr. Dunton: All right.

[239] Cross Examination

By Mr. Smith:

Q I won't take many minutes, Mrs. McKenzie, but you were, I assume, the much younger sister to Miss Francis, is that correct? A She was younger than I.

Q She was younger than you? A Yes, sir.

Q And you have been close all of your life? A Yes, sir.

Q And you had seen each other all of your life? A Yes, sir.

Q So the circumstances in regard to the relationship that you had with your sister were the same all the way through your life, your joint lives? A Yes.

Q And there had been nothing that has changed since 1959 that made the situation any different since than that it was before? A No, it has always been the same.

Q The telephone conversation that you recalled in January of 1967, you have heard your husband [240] testify that your sister said, "I have made a Will," and he later testified that she said, "I have just made a Will", and still later he testified that she could have said, "I have made a Will". Would you agree with that? A That was in '59.

Q '67, January of 1967, the phone conversation? A '67.

Q When Jane Parker was with her. A Well, we remember her saying she had just made a Will. Now, I could not swear to the exact—

Q In other words, you could not swear that she said, "I have just made a Will", but you do know she said she had made a Will, isn't that correct? A And she could have said just too, and that's the way I took it.

Q But you can't—

Mr. Simmons: Let her answer.

Witness McKenzie: But I took it that way.

By Mr. Smith: (Continuing)

Q But you took it that way? A Because that's what she said, and I don't try to lie.

[241] Q I am sure you don't, and I'm sure you are just like all of us, that sometimes we can take things that aren't said— A Well, I tell you why, because she did not talk about her personal affairs, so I listened to that when she said that.

Q Now you have stated that you found no damage to the bedroom and no damage to the closet. This, of course, you are referring to after your sister's death, are you not? A Yes, sir.

Q And you cannot tell us whether there has been any damage to the bedroom or to the closet prior to her death, can you? When you were not here? A Only after her death.

Q If it had been water damage, it would still be there, would it not? A Well, if water damage—it could have been mopped up.

Q So all you can tell us is that after her death you have not

seen any damage but you really don't know whether there was any damage before her death or not, do you? A No.

Q Have you not seen since her death other [242] papers laying around that house that had indication of water damage? A I have not.

Q You haven't seen any at all? A I've seen lots of papers but no water damage.

Q Have you examined them to see if there has been any water damage? A I have. I've been through many a letter.

Q And you haven't seen any papers in the house that showed signs of water damage? A No, sir.

Q Now, reference has been made to your sister's increase in her finances or net worth increasing substantially since 1959, and I have gathered from these testimonies that this money has come through trusts that have been kept and created, is that right? A It was a trust of my father's sister, Mrs. George P. Sow (phonetic).

Q And do you recall when that trust was found or made? A No, I don't know that.

Q Can you tell me whether it was prior to 1959? Was the trust in existence before 1959? [243] A Not that I know of.

Q Well, when was the trust created, Mrs. McKenzie? A I would have to find out through the Baltimore people.

Q I don't mean when did you get the money. Don't misunderstand me. A Yeah, I know.

Q I mean apparently someone had a life interest in that trust and apparently at someone's death it came to you and your sister and others, isn't that correct? A Yes.

Q How long had that life interest been going on? A This trust of my aunt's?

Q Yes. A I did not know her business at all. I do not know when it was made and I did not know how.

Q But what I am leading up to is, your sister could have known in 1959 that she would in time inherit from this, isn't that true? A I don't think so.

Q I— A If we get the old Baltimore thing out it would tell.

[244] Q But you would have to have these papers to be able to answer specifically the question. A Yes.

Q So that you cannot say that she would or would not have known? You would have to get these papers out to examine them, isn't that correct? A As far as I know.

Q You did come with Mr. McLeod and your husband to the Clerk's office on May 11, 1970? A Yes.

Q Bringing with you what has been identified as Exhibit 1? A Yes.

Q In an envelope marked Will? A Yes.

Q Is this the paper that you delivered? A Yes, sir.

Q Now at that time did you make any mention to Mrs. Abbott that your sister had endeavored to revoke this Will? A I did not say anything.

Q And is it not a fact that it was submitted for probate by you and when the Clerk refused it for probate, then you made a motion that Mr. McLeod and your husband be appointed as administrators of the estate? [245] A That we were told, that we should bring it up to the Court which we did. We knew nothing about any of this other.

Q It was offered to the Clerk for probate, was it not? A I guess that is what you call it.

Q You certainly would not have offered an instrument which you knew had been revoked, would you?

Mr. Dunton: If Your Honor please—

Witness McKenzie: I did not know—

Mr. Dunton: This is calling for a legal opinion.

Mr. Smith: I am asking what she did, Your Honor.

Witness McKenzie: We found this and we thought we should bring it to the Court because we did not know anything about law.

The Court: She is on cross examination, Mr. Dunton. I think she has answered it.

Mr. Smith: She has answered my question.

By Mr. Smith: (Continued)

Q Mrs. McKenzie, on the 6th day of July, 1970, this Court entered an order directing that Exhibit 1, [246] the paper writing purporting to be your sister's Will, be sent off to Mr. Ordway Hilton for certain determination shown in the order. Did you as a party or Mr. McLeod or your counsel object to this paper being sent off, or at that time had you raised any question in regard to your sister having revoked that Will?

Mr. Dunton: Now, if Your Honor please. I would object to that because it is calling for her—

Mr. Smith: I am asking her—

Mr. Dunton: Calling upon her for a legal conclusion.

Mr. Smith: I am not.

Mr. Dunton: Your Honor was the one that ordered it done and she had no choice. And I think Mr. Smith ought to state also that it was done on his motion.

Mr. Smith: Done on my motion and endorsed by Mr. McLeod with no objection.

The Court: Is there any objection to that order coming in?

Mr. Smith: I would like for this order to be introduced in evidence as Proponent's Exhibit No. 6, Your Honor.

[247] Mr. Dunton: I think, if Your Honor please, the Court should explain to the jury under these circumstances exactly why this was done. There was no admission on the part of anybody that this was the last Will and testament.

Mr. Smith: Your Honor, since Mr. Dunton is giving you a little argument on this, I certainly will state that it was done on our motion The whole purpose of my question is that up through that time there had been no indication on the part of counsel or opponents that Miss Francis had ever endeavored herself to revoke this Will and all I want from her is an answer to that one question.

Mr. Dunton: If Your Honor please, the record shows that it had been rejected up to that point.

The Court: The record speaks for itself. I don't know whether this witness is the proper one to introduce this order by. I don't think she is.

Mr. Dunton: We object to it, Your Honor.

The Court: I think the order—I don't think she is. I think the order maybe should be [248] introduced by—Mr. McLeod signed it as attorney for the estate of Laura Virginia Francis but he was actually an administrator at that time and a party to the—I don't know when this proceeding was brought but the Court will state that this was an order of the Court entered by the Court directing that this paper be sent away for examination, and it was sent away with consent of counsel for both parties. I don't think there were, certainly as far as the Court there were no admissions concerning this document.

Mr. Dunton. Yes, if Your Honor please. We don't want this to be admitted leaving the impression upon the jury that we were admitting this to be the last Will and testament of Laura Virginia Francis. As a matter of fact, it was merely being done in order to ascertain what the proper language was so that proper proceedings could be held to determine what they were. We object to the introduction of it for this reason.

The Court: I don't believe this is proper, Mr. Smith, for this to be introduced through this witness. Her name is not on it; she did not endorse it. It is an order of the Court.

Mr. Smith: I would respectfully move [249] the Court to admit it on the Court's own motion since the Court entered it and is fully familiar with it as Proponent's Exhibit No. 6.

The Court: You don't want to put the Judge on the stand.

Mr. Smith: I don't think we have to, Judge. You know what it is.

Mr. Dunton: It would be extremely embarrassing to have to ask the Judge to submit to cross examination.

The Court: I can assure you that this Judge is not going to submit to that. That is not going to happen.

We are going to admit this as Proponent's Exhibit 6.

Mr. Dunton: If Your Honor please, we object to the introduction of it and ask the Court to make an adequate explanation why.

The Court: Well, I think the Court has made an adequate explanation. I don't know what else to say, Mr. Dunton. The order was entered by the Court directing that it be sent away and the order speaks for itself. It has got on here requested by Counsel William T. King and it's got seen by William B. McLeod, Attorney for the [250] estate of Laura Virginia Francis.

I hesitate to go into a lot of ifs, ands and buts about what happened during that time because I don't think it is proper.

Mr. Dunton: Yes, I merely want them to know that seeing does not mean agreeing to.

The Court: I don't think there was any objection to it being sent away for Mr. Hilton to look it. I don't recall any objection being made to it being sent away. If I am in error, I stand to be corrected, but it was not sent away with the idea that you were admitting that that was the Will of Laura Virginia Francis.

Mr. Dunton: That's the point, sir.

NOTE: An order of the Court is marked and filed as *Proponent's Exhibit No. 6.*

By Mr. Smith: (Continuing)

Q Mrs. McKenzie, as of July 6, of 1970 there had been no claim by you or any of the other opponents that this Will, Exhibit No. 1, had been mutilated by your sister, isn't that correct? A All I know is, when we brought that so-called paper to Court they said it was no good, that's all.

[251] Q You never made any statement at that time that it had been mutilated by your sister, did you? A No.

Q And that is as of July 6, you had never made such a statement, had you? A I didn't even talk about it.

Q And it was only after Mr. Hilton's report of August which is in the evidence as Proponent's Exhibit No. 4 where the Will was actually construed that any complaint was made by any of the opponents, isn't this true?

Mr. Simmons: I object to the word construed.

By Mr. Smith: (Continuing)

Q Read, Mrs. McKenzie, where the Will was read. I am sorry. Isn't that correct?

Mr. Dunton: We would object further, to the fact that she is being cross examined on matters which she herself has testified she took no part in.

The Court: Well, she can only testify as far as what she knows, but I think it is proper for counsel to ask her when she first made the [252] complaint that this was not the Will or that it had been marred by Miss Francis.

Mr. Dunton: I would suggest that is not a part of direct examination and not appropriate cross examination.

The Court: Maybe she has become his witness.

Mr. Smith: She is a party to this suit and if I understand the rules of evidence, sir—

The Court: I think that is correct.

Mr. Smith: With a party to the suit, you can explore any matter and not just limit it to just what you put on. I can even have her as my own witness as an adverse witness at this stage.

Mr. Dunton: I think she has become his witness and he is bound by what she says.

Mr. Smith: As an adverse witness you are not.

The Court: I don't believe I can say she is an adverse witness. She can certainly be cross examined by counsel when she first decided that her sister, that's her position, mutilated or destroyed this paper.

[253] Mr. Dunton: Your Honor, just for the record—

The Court: She is a party to it. We think the question is proper.

Mr. Dunton: We note an exception.

By Mr. Smith: (Continuing)

Q Do you remember the question? A Please repeat it.

Q I say it wasn't until after Mr. Hilton's report which is now Proponent's Exhibit No. 4 was returned to the Court that anyone raised any claim that Miss Laura Virginia Francis actually mutilated this Will herself, isn't that correct? A I don't know.

Q You certainly had not, had you? A I guess not.

Mr. Smith: I think that's all. Thank you.

The Court: Do you have any further questions?

Mr. Dunton: I have one other question.

[254] Redirect Examination

By Mr. Dunton:

Q Would you mind, if you can recall, give me the age of Ann Hathaway Francis and Hathaway Francis, IV, in 1959? A I may be a little wrong, but I think Ann Hathaway was about thirteen and "Hath" was about sixteen going on seventeen.

Q And what are their ages now?

The Court: Do you by any chance know the date of birth?

Mr. Smith: I will be happy to stipulate in the record their true age.

The Court: Let's have the dates of birth.

Mr. Smith: Mr. Francis was born on February 17, 1943 and Miss Francis was born on June 28, 1946, and we will stipulate into the record that this is their correct birth dates.

By Mr. Dunton: (Continuing)

Q Was their father living in 1959? A No.

[255] Mr. Smith: If Your Honor please, I don't think this is material. We are getting again off of the issues of the case.

Witness McKenzie: No, he was not.

[256] * * *

Mrs. Jane Pretlow Parker,

a witness called on behalf of the opponents, having first been duly sworn, testifies as follows:

Direct Examination:

By Mr. Dunton:

Q Would you state your name, please. A Jane Pretlow Parker.

Q And what is your age, Mrs. Parker? A 54.

Q And where do you reside? A Well, my residence at the time is Lynchburg, but we claim Lancaster as our voting residence.

Q Do you own a home here in Lancaster? A Yes, sir.

Q When did you first move to Lancaster County? A 1950.

Q Did you know Miss Laura Virginia Francis and if so, when did you first become acquainted with her? A When we moved in the county in April of 1950 and we knew the Francis family and she is a very important part of that family and became quite intimate friends through the years.

Q Did you have occasion to visit Miss [257] Francis when you moved away? A Frequently, and in the first year that we were away, and each year thereafter she asked us to come and stay at the Point when we had our vacations and not even open up our house. We stayed there on occasions but not the full vacation time.

Q Mrs. Parker, do you remember a conversation that took place between Miss Francis and her sister and brother-in-law and if so, could you tell us when this took place. A The telephone conversation? Well, I came down here to see Miss Francis before she went on her trip to Hawaii and in 1967. It was at that time that we were getting ready to go out to dinner and she went in her dining room and made the telephone call. I was sitting in the hall and she brought the phone to me and said, "Here, talk to some friends of yours." So I talked and it was Lib and Mac in Montros, Pennsylvania.

Q Now had you known Mr. and Mrs. McKenzie? You refer to her as Lib and Mac. Had you known them very long and very well? A Ever since we moved in the county, I said I knew "Cookie" as a very important part of the Francis family. I knew all of them.

Q What was the purport of that conversation? [258] What did Miss Francis say on that occasion?

Mr. Smith: If Your Honor please, I don't think that Mrs. Parker has indicated whether or not she was in the room and heard the conversation. As I understand it, she was in one room and Miss Francis in another.

By Mr. Dunton: (Continuing)

Q Mrs. Parker, would you explain? A I said that she brought the phone to me. I was in the hall and she brought the phone to me.

Mr. Smith: But she had talked to them in the next room, I believe you stated, did you not?

Witness Parker: Yes, adjoining room to the hall and then—

The Court: Did you hear the conversation?

Witness Parker: The conversation—I chatted with Lib and Mac for a while and then Miss Francis took the phone from me and she told them, she said, "Everything at the Point is fine." She says, "I have taken care of my taxes." And she says, "I have just made a Will and my [259] bags are packed and I'm ready to go." And that is the way she ended the conversation with Lib and Mac.

By Mr. Dunton: (Continuing)

Q How close was she to you at the time? A She was standing with her hand on my shoulder and the phone was beside me on the bench in the hall.

Q Now, may I ask you this since you referred to the fact that this conversation started in the dining room, can you move this phone back and forth? A Yes, sir. You can even take it upstairs in the hall from where it is located.

Q How can you do that? A Well, it's an extremely long cord on it.

Mr. Smith: Your Honor, I just don't like to tell you to do it, and I haven't done it here, but I assume the Court realizes that we do object to this type of testimony generally from every witness.

The Court: Yes, I understand.

By Mr. Dunton: (Continuing)

[260] Q Mrs. Parker, did you ever have any conversation with

Miss Francis in regard to any destruction or damage to a Will or an instrument that she had drawn? A Yes, sir, I did.

Q How many times did you discuss this with her or did she discuss it with you, I should say? A Three or more times.

Q Would you remember the first occasion when she mentioned this to you? A Yes, sir. We were here on our vacation.

Q What time was that? A That was in September of '57 after her trip.

Q Was it '57? A '67, excuse me. It was after her trip, her one big trip to Hawaii.

Q It was in September of '67? A Right.

Q What, if anything, did Miss Francis tell you at that time? A Well, she told me that she had spilled a drink on her Will and that it was no good; she had ruined it.

Q Did she say anything else about it to you at that time? [261] A No, sir, and she was laughing when she said it in a joking way, and she did finish the conversation by saying that she had spilled so much on it that you could not even read the signature.

Q When, if you recall, was the next time that she talked to you about this? A Well, I was down here the following spring, which would be '68.

Q Who brought up this question about the Will at that time? A Miss Francis also had me in her bedroom at this time as before and we were talking in confidence and this was the second time that she laughed and told me about this again, that she had spilled a drink on this will and that it was no good and she had ruined it. And she said laughingly that she was going to use it to tease her sister with, Lib, she used Lib's name.

Q Did you have any conversation with her in reference to that? A Well, at this point, I was thoroughly disgusted with her and I told her that I thought that for her to use something like this—

Mr. Smith: If Your Honor please, something she told Miss Francis is certainly not [262] admissible in this case.

Mr. Dunton: Part of the res gestae.

Mr. Smith: She—

The Court: I can't see that. I don't think that that is admissible. What Miss Francis did is what we are concerned with. I don't think it is proper testimony for this witness to testify what she told her.

Mr. Dunton: We note an exception to the Court's ruling on the grounds that we think it lays a background for other things that Miss Francis may have said.

By Mr. Dunton: (Continuing)

Q Would you then tell us what the conversation was in the spring of '68?

The Court: I think she has told that, Mr. Dunton. I don't know that we have got to repeat it over and over again. She said on two occasions.

By Mr. Dunton: (Continuing)

Q Mrs. Parker, when did you again talk to Miss Francis in reference to this or if you did. [263] A Yes, sir. I was down at the plant sale they were having at the Point just a short time before she died and the Woman's Club sponsored this plant sale. She was at the barn where the plant sale was taking place, and I was purchasing dogwood trees.

So she said, "Jane, when you get through, I want to talk to you." So I went on to the house and Mrs. Brocklebank was in the kitchen and "Cookie" was there and she said, "Come on, Jane, come in my bedroom with me while I make a change." And she was in a hurry to go somewhere.

So I went in there this third time and she said, "Jane, I spilled a drink on my Will. I ruined it and I am keeping it as a joke for Lib." And you are not interested in what I said.

Mr. Smith: We might be interested in it but you can tell us after the hearing.

The Court: I am following the rules of evidence as I interpret them. I am very much interested in what you said but I don't think it's proper for it to be said before the jury.

Mr. Dunton: Witness with you.

[264] Cross Examination

By Mr. Smith:

Q Mrs. Parker, I understand you to say that you called Lancaster County your home. A Yes.

Q Do you actually live here full time or do you just call it your home because you love the area so? A Well, in the spring of 1950 we purchased the White Stone Pharmacy. My husband is a registered pharmacist and we held the drug store here until 1964.

Q And moved back to Lynchburg? A No, we went to Richmond and we have moved around since but we do vote here and I have Lancaster's license on my car at this time.

Q Now when you had this conversation with regard to spilling the drink, the first one was in September of '67, the next was in the spring of '68 and the last was shortly before her death? A Right.

Q And the phone conversation that you heard all took place before this time, did it not? A Well, it took place before her trip to Hawaii and so that it would be in '67.

[265] Q In January of '67 she told you she had made a will. A She said, "I have just made a Will".

Q She said that in January of 1967? A Right.

Q And then in September of 1967 which would have been some nine months later, is that correct, she told you that she had spilled a drink on her Will? A Yes.

Q And then in the spring of '68 she repeated this? A Yes.

Q Which would have been better than a year after this trip? A That's right, and she recalled telling me this. Each time she recalled having told me this.

Q I understand that, and then shortly before her death, which would have been a little over three years since the trip, she told you again she had spilled a drink on her Will? A Right.

Q Did she tell you what the circumstances of spilling the drink were? A No, sir, she did not. She just said she spilled a drink on it, that it had ruined it and that you [266] couldn't even see the signature.

Q Right, so you don't know whether she threw the drink on it or whether she—her elbow hit it and the drink went on it or not, do you? In other words, all you know is she told you she spilled a drink on her Will? A That's right.

Q At no time did she tell you that she had deliberately spilled a drink on the Will, did she? A No, sir.

Q And at no time did she indicate she had deliberately spilled a drink on her Will, did she? A No, sir.

[267] * * *

Mrs. Dorothy Pheris,

a witness called on behalf of the opponents, having first been duly sworn, testifies as follows:

Direct Examination

By Mr. Dunton:

Q Would you state your name, your residence and your age, please. A Dorothy Deborah Pheris and I live in Weems. My age—

Q Over 21 would be adequate. A Yes.

Q Mrs. Pheris, did you know Miss Laura Virginia Francis who formerly lived in this county? A I knew her, I think, quite well. I have known her since—well, we moved here in 1954 and I knew her quite well from 1956. Her two nieces and my daughter made their debut together in an Assembly. I think that started the beginning of our friendship and it ripened and we served on several Boards. We both served on overlapping Boards of the Preservation of the Christchurch Foundation and several other charitable things and we often traveled together to these meetings and so forth. We traveled and we made at least one trip together with our friends from 1964 on, sometimes a couple of times a year. And we had at least [268] daily conversations on the telephone, if not two or three times depending.

I admired her way of doing things in her business and we often had business conversations back and forth.

Q Mrs. Pheris, did you ever have occasion to discuss with Miss Francis in recent years about whether or not she had made a Will and if so, can you tell us when?

Mr. Smith: Same objection, Your Honor.

The Court: All right, objection overruled.

Witness Pheris: Did he object?

Mr. Dunton: You can answer the question.

Witness Pheris: Well, yes, there were many times and of course she was very meticulous before she went on any of these trips to put all of her business affairs in order, but she never named anything in order, I mean, before these business trips but in those days the telephone was never very private either; we did not have private lines and she never named something when she was discussing it on the phone.

But there are two specific instances that I know of that she had either changed a Will [269] that she had or she had made a new Will. One time in November of 1969—

Q How do you remember that date? A That's the November before her death. We went to Bermuda. She wanted some moral support in helping and handling the dog. She was entering the dog in the International Dog Show and there were four of us going, including Miss "Cookie", and "Mimi" and I—

Q Who is "Mimi"? A Mimi Compton, excuse me, from Savannah. She stayed with me and we were to meet "Cookie" at Dulles Airport and we were supposed to be there an hour before the flight time to get the dog on, but she said, "No, I want to meet you two hours there before, because I want to exercise the dogs and calm them down before we put them on the flight. There might be a chance we can get them in the cabin." So we agreed to meet two hours before flight time and when Mimi and I got there there was no "Cookie" who was always prompt, and in fact, she did not appear until just before we had to get the dogs on the plane.

And I said, "What on earth held you up? Did you have car trouble or something?" And she said, "No, I pulled a Lulu Whittaker." And I said,—that said to me, Miss Whittaker and I had been going away with a group in January of that year on the Virginia Cruise and she held [270] us up late the next morning to go down to Norfolk to put her new Will that she had written—

Mr. Smith: If Your Honor please, I will object to this.

The Court: Mr. Dunton, the Court does not want to stop a witness but you have got—

By Mr. Dunton: (Continuing)

Q Mrs. Pheris, did Miss Francis tell you whether or not she herself had made a Will?

Mr. Smith: I object to leading questions, Your Honor.

Witness Pheris: Yes.

By Mr. Dunton: (Continuing)

Q Would you refer, please, to what Miss Francis said? A Well, she said—I will tell you what she said. She said she was delayed because she had to wait for the bank to open at 9:30 which meant that she had to delay to put this new change—

Mr. Smith: If Your Honor please—

[271] The Court: Mrs. Pheris, the Court will tell you that you will have to, as best you can, tell what Miss Francis said, and not what it meant to you.

Witness Pheris: Well, that's what she said.

By Mr. Dunton: (Continuing)

Q Did she mention anything about a Will?

Mr. Smith: If Your Honor please, I submit that is a leading question. This witness has said that she said she pulled a Lulu Whittaker and that this meant so and so to her, and I move to strike those answers of course.

Witness Pheris: It meant Will to me.

Mr. Smith: If Your Honor please, I object to this testimony.

Witness Pheris: It meant she was talking about a Will.

The Court: Mrs. Pheris, please listen to what the Court is telling you because it is very important. You can testify exactly what Miss Francis told you but it is improper for you [272] to say what it meant to you or compare it with something else. Anything that Miss Francis told you directly you can tell this Court and this jury.

Witness Pheris: Well, that's what she said.

The Court: You can't go on and say it meant so and so to me and I knew she meant this and that and the other. What we're interested in is the direct conversation she had with you as well as you can recollect, and I will ask counsel please try to keep the witness within the rules of evidence. The Court does not want to interrupt every time we turn around.

By Mr. Dunton: (Continuing)

Q Mrs. Pheris, did the reference "pull a Lulu Whittaker" mean anything to you? Had you all referred to that before so that it did have a meaning? A Yes, it did.

The Court: I don't think that is a proper question, Mr. Dunton. I have just ruled on the thing and she cannot testify about meanings to her. She does not know what it meant to Miss [273] Francis other than—what I mean, is how can she tell what something might mean to me.

Witness: May I? I don't know whether I can make an explanation or not.

Mr. Dunton: No, I am going to turn you over to these gentlemen.

Mr. Smith: We have no questions, Your Honor.

Witness Pheris: The other—may I continue?

The Court: No, ma'am.

Mr. Smith: That's all. The witness can step down, as I understand it.

The Court: All right, you can step down, Mrs. Pheris. You had better remain outside in case they need you further.

* * *

Witness stood aside.

The Court: Next witness, Mr. Dunton.

Mr. Smith: If Your Honor please, I would like to move the Court to strike the evidence of Mrs. Pheris as not being relevant to this issue and ask the Court to instruct the jury to [274] ignore her statements in regard to what Lulu Whittaker meant to her.

The Court: I see Miss Whittaker in the courtroom. Maybe she can tell us a little about it. The Court will tell the jury that statements that Mrs. Pheris made about the conversation she had with Miss Francis, what Miss Francis told her herself are admissible to this Court, but any statement she made about what things meant to her, Mrs. Pheris, of course, are not admissible evidence, and I am sure you can understand this.

Mr. Smith: And that any statement about what they did mean is stricken, I assume sir?

The Court: Yes, sir.

Mr. Dunton: If Your Honor please, we except to the ruling.

[275] * * *

Mrs. Mattie Mae Gwynn,

a witness called on behalf of the opponents, having been first duly sworn, testifies as follows:

Direct Examination

By Mr. Dunton:

Q Would you state your name, age, and residence, please? A I am Mattie Mae Gwynn. I am 67 years old and I live at Weems, Virginia.

Q Mrs. Gwynn, did you know Miss Laura Virginia Francis? A Yes, I did.

Q How long had you known Miss Francis? A Since 1966.

Q What was the general relationship between you and Miss Francis? A We were friends. I went with her on trips.

Q Did you ever have any conversation with Miss Francis in regards to her making a Will and if so, when and where did this take place?

Mr. Smith: For the record, sir, the same objection.

The Court: All right. The Court will [276] overrule your objection. You can answer that question.

Witness Gwynn: Answer the question? I talked with her before we went on a cruise in 1968. She asked me if I had a Will and I said yes, I did. And she said, "I mean a new one". And I said yes, I do, I had a new one. And I said, "How about you?" And she said "Yes, I have a new one, too".

By Mr. Dunton: (Continuing)

Q That was in 1968? A 1968 before we went on the cruise.

Q Did you ever talk to her about it again? A Yes. While we were on the cruise we were roommates and she would talk about it to me. She told me that a person should review their Will every few years and again on the Dog Shows, I went with her for about a eight-day trip on Dog Shows and at that time she said a few things about her Will. She wanted to make changes in it.

Q Was this subsequent to that time, subsequent to '68? A Yes, after '68.

Q And do you know about what date that was? [277] A It would have been in March of '69, I think—no, it might have been March of '70, March of 1970.

Mr. Dunton: That's all.

The Court: Mr. Smith?

[278] Cross Examination

By Mr. Smith:

Q Just one or two, Mrs. Gwynn, if I may ask you right from here. As I understand it, your first conversation was in 1968 when she told you that she had a new Will? A That's right.

Q And then on another occasion she told you that a person should review their Will? A That's right.

Q And then later she made some indication that she was not satisfied with her new Will? A Yes, that's right.

* * *

PROPONENTS' EXHIBIT #4

ORDWAY HILTON

Elbridge W. Stein - Ordway Hilton
EXAMINERS OF QUESTIONED DOCOMENTS
15 Park Row
New York, New York 10038
(212) BArclay 7-7095

American Academy of
Forensic Sciences

American Society of
Questioned Document
Examiners

August 14, 1970
Laboratory
8 North Star Drive
Morristown, New Jersey 07960
(201) 538-3028

REPORT OF AN EXAMINATION OF A DAMAGED WILL

Laura Virginia Francis

I have made a thorough examination of a five page holographic will of Laura Virginia Francis which document has been seriously damaged apparently by water soaking. The five pages were written in green ink, and as a result of the damage approximately one third of each page has been obliterated.

PROBLEM

The purpose of this examination was to determine if possible what had been written in the obliterated area.

METHOD OF EXAMINATION

In the problem at hand it is fortunate that the green fluid ink which was used to write this will apparently was ink manufactured by the

Sheaffer Pen Company during the period of time that they were putting a fluorescent additive, RC-34, in all of their washable inks. Thus, when this document was examined under ultraviolet radiation the fluorescent additive which for the most part ahered to the paper at all points where there was original writing could be made legible and read.

In order to facilitate the decipherment of the effaced material special ultraviolet photographs were made utilizing a moderately high contrast film in combination with an A1 filter to eliminate the ultraviolet light and to make possible photographing of the visible fluorescence.

Prints were made from these negatives and are enclosed with this report. These prints are of some assistance in verifying the interpretation and decipherment set forth. However, it must be recognized that this examiner utilized some visual examination with the original document under ultraviolet light and also utilized the photographic negatives which proved to be more satisfactory in deciphering some of the more obscure portions of the document.

OPINION and REASONS

As a result of the examinations described above this examiner has been able to read and to have transcribed most of the contents of the original will. It is his opinion that the signature has been made sufficiently legible that it can be verified from the photograph enclosed, and that the signature reads Laura Virginia Francis and that this writing corresponds with the writing of the name Laura Virginia Francis as it appears on the first line of the will.

There are several points within the will and particularly on the second page where the water damage was such that some of the words are so obscured that this writer could not make any judgment as to what they might have been. When this is the case blanks have been indicated in the following decipherment of the will. Occasionally a word could not be definitely made out but it appeared to be most likely the word indicated and in these instances a question mark has been placed after the word. This would be true for example of the middle name of the last name executor which appears to be Fortas but might actually be Foster. The photographs show clearly how there has been a certain degree of washing and accumulating of the fluorescent material in a band running somewhat parallel to the green band at the edge of the obliterated area.

One further question was raised as to whether this examiner could

determine any judgment of the length of time since the damage had occurred to the document. It is his opinion that no estimate could be made, and further that there is no technique to be suggested that might be performed by some other laboratory which would permit such a determination. It is the undersigned's opinion that the contents of the original will read as follows:

[Page 1] I, Laura Virginia Francis of White Stone, Lancaster County, Virginia being of sound and disposing mind, memory and understanding do make, publish and declare this instrument of writing as and for my Last Will and Testament.

Item one:—After the payment of all just debts and funeral expenses, I give, devise and bequeath as follows, that is to say

Item two:—I give, devise and bequeath the iron chest that came down through the family from Captain Ezekiel Francis (?), Captain on a Whaler to my nephew Isaac Hathaway Francis IV. I also give the antique shaving stand that belonged to his grandfather, Francis, to Isaac Hathaway Francis IV. I also give any guns he may care to have with the exception of the 20 gauge Hoffman shotgun. That gun I give to my sister, Elizabeth Francis McKenzie I give the diamond engagement ring to my nephew Isaac Hathaway Francis IV for his wife (?) or sister as he chooses—This ring was given to his Grandmother Francis by his Grandfather, Isaac Hathaway Francis, Jr.

Item III—I give my gold braclet that was given to her Grandmother Francis by her Grandfather Francis at the time of her Mother's birth (Elizabeth Francis McKenzie) to my neice Elizabeth Francis McKenzie. To my neice, Dora Anne McKenzie I give my diamond watch and chain that had been given to her Aunt Laura Francis Zouck as an engagement present from George Peter Zouck. To my neice Ann Hathaway Francis, I give my diamond braclet that was given to her Grandmother Francis by her Grandfather Isaac Hathaway Francis Jr. at the time of my birth. My two h..... pins I give to my sister, Elizabeth Francis McKenzie.

Item 4:—All my other personal affects and household furniture I give to my three neices Elizabeth Francis McKenzie, Dora Anne McKenzie and Ann Hathaway Francis. I suggest that the personal affects and furniture be divided by each room. That my three neices draw lots to find out who will have the first, second and third choice in each room

until each [Page 2] article in that room has been chosen by anyone of my three neices.

Item IV:—Any article of my personal belongings and furniture that is not wanted by my other neices, I will to my sister, Elizabeth Francis McKenzie. Should she not want this left over articles I suggest they be sold and the proceeds be divided equally between my 3 neices, Elizabeth Francis McKenzie, Dora Ann McKenzie Ann Hathaway Francis and my nephew Isaac Hathaway Francis IV.

Item V:—I give all the silver to my three neices named in article IV and suggest they draw lots to see which of them shall have first, second and third choice for each piece. The flatware should be chosen in the same manner with place knives to one neice, forks another, spoons another, until all flatware is distributed by lot—excepting that silver, such as the water pitcher and plater (?) that has the name of Isaac Hathaway Francis on it should go to his grandson, Isaac Hathaway Francis IV

Item VI:—I give devise and bequeath to my nephew, Isaac Hathaway Francis IV my house and acreage from the garden to the Point beyond (?) the wharf, if he cares to have it, if not I order the place to be sold (at the market (?) appraised value) to my neices. My neice Ann Hathaway Francis will have the first refusal—my neice Elizabeth McKenzie will have the second choice my neice Dora Anne McKenzie the fird or final choice.

Item VII:—I give, devise and bequeath to my neice, Ann Hathaway Francis my real Estate from the garden, the ..... and ..... from river to creek and including the barn and cinder block chicken house East to the line owned by the Estate of her brother Isaac Hathaway Francis IV. If she wants to sell the property, I will that her brother Isaac Hathaway Francis IV have the first refusal after it was appraised [Page 3] If he does not want the land for her to offer it to my neice Elizabeth Francis McKenzie at the same price (blurred) by—to my neice Dora Anne McKenzie

Item VIII.—I give, devise and bequeath my 20.33 acres of oyster shore on Carters Creek from the end of Crab Point at the Red (?) Buoy (?) or beacon to the drain on the creek at the point separating the Francis property from the Wise Wescott property as follows. To my

nephew Isaac Hathaway Francis IV approximately 10 acres. This same 10 acres to extend from the wharf to the point at the mouth of the harbor of Carters Creek The acreage (10 acres) from the wharf East to the inlet or drain I give devise and bequeath to my neice Ann Hathaway Francis. Should my nephew Isaac Hathaway Francis IV wish to sell his ten acres of (?) oyster shore, I will that he sell it at the fair market appraisal to his sister Ann Hathaway Francis if she wishes to buy it. Should my neice Ann Hathaway Francis desire to sell her ten acres of oyster shore my desire (?) is that she offer the same oyster shore to my neice Elizabeth Francis McKenzie at the fair market price and if Elizabeth Francis McKenzie does not want the same that Ann Hathaway Francis offer this oyster shore at the fair market price to my neice Dora Ann McKenzie. In the event that my nephew and neices do not want to have this oyster shore and that [Page 4] My nephew Isaac Hathaway Francis IV and or Ann Hathaway Francis offer the shores (20.33) to my sister Elizabeth Francis McKenzie. In the event that none of these five persons want the oyster shore I will that it be sold outside the family and the proceeds of the 20.33 acres be divided equally between my three neices and my nephew.

Item IX:—I give, devise and bequeath to my cousin J. Summer Francis Jr. my 12 gauge shotgun.

Item X:—I give devise and bequeath to my cousin Helen David Simpson my cameo ring that was given to me by my grandmother David. The ring was a gift to the one of the two of us, Helen David Simpson and myself, Laura Virginia Francis, who would play a selection on the piano by memory without a mistake.

Item X:—I give, devise and bequeath to my neice Elizabeth Francis McKenzie my violin that has come down through the Francis family. The history of the violin is in the envelope in brown jewelry case in my bedroom.

Item XI:—Any moneys I may and my stocks and bonds shall be sold and the monies divided equally between my neices Elizabeth Francis McKenzie, Dora Anne McKenzie, Ann Hathaway Francis and my nephew Isaac Hathaway Francis IV

I hereby nominate, constitute and appoint my sister Elizabeth Francis McKenzie and my sister in law Anne Treat Francis Executrixes.

[Page 5] of my Estate together with the assistance of Randolph A. Smith and/or Katherine Fortas Smith as Executors of this my last will and testament, and the above named persons to be excused from giving bond as such executors.

In testimony whereof I hereby subscribe and affix my seal this 8th day of February in the year one thousand nine hundred and fiftynine.

(signed) Laura Virginia Francis

With the enclosed ultraviolet photographs the first or first two lines of both pages 1 and 2 are not included in the photographs but could be clearly read under direct examination with ultraviolet radiation.

Respectfully submitted,

Ordway Hilton
OH:CR

Report to:

Miss Bertha G. Abbott, Clerk
Circuit Court of Lancaster County
Lancaster, Virginia 22503

MEMORANDUM re: EXHIBITS

Counsel for the Appellants and the Appellees have agreed that Proponents' Exhibits # 1, 3, 4 and 5 are "necessary for an understanding of case," (Rule 5:37) and Proponents' Exhibit # 4 has been incorporated in this Appendix. However, Proponents' Exhibits # 1, 3, and 5 are not able to "reasonably be reproduced" (Rule 5:37). Since it is felt that the exhibits omitted from this Appendix are important elements of the case, counsel for all parties respectfully urge the Court to consider the original copies of Exhibits # 1, 3, and 5. (Rule 5:39). The original copies are a part of the record filed with the Clerk of this Court pursuant to Rule 5:15.

JAMES C. BREEDEN