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DIVISION II

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STATE OF WASHINGTON

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No. 45255-3-II

COURT OF APPEALS,
DIVISION II
OF THE STATE OF WASHINGTON

MICHAEL B. SMITH as Litigation Guardian Ad Litem for CLARENCE
G. MUNCE,

Appellant,

vs.

KRISTY L. RICKEY and KELLEY R. CAVAR, individually, and as Co-
Executrixes of the Estate of Gerald Lee Munce, Deceased,

Respondents.

APPELLANT'S REPLY BRIEF

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1. OVERVIEW

The January 22, 2010 Order levying the “most severe” discovery sanctions contains no - and found no - facts any lesser sanction was considered. It contains no – and found no – facts why no lesser sanction would suffice. The Order asserts those things conclusorily fashion but there are no facts articulating either. This appeal is that simple.

Given the lack of findings of fact, the sanction order is error per se and must be reversed as well as every subsequent order as they all rely on it. An appellate Court may not imply missing findings nor review the record after the fact to determine if it could support that sanction.

Respondents ignore the lack of facts and findings, focusing solely on the alleged merit of the sanction. However, the Order fails no less on merit. Respondents circuitously assert striking the answer and default were “the only” possible relief that could be given. But like the Order they prepared, they never explain why ruling on objections and compelling answers with material time left before trial was an impossibility. The reason is simple: there is no explanation.

Next, respondents move on to debate the alleged lack of merit to Mr. Munce’s objections. Even if some of Mr. Munce’s objections could not be sustained, respondents ignore the issue posed by Burnet is not punishment for perceived slights; it is whether there is a plausible

remedy to obtain the information and was it pursued. Burnet requires that process be pursued and only then may the most severe of sanctions be issued. The process hardly started, much less run its course.¹ This is not a matter of inadequate findings. When even the Order concedes no attempt was made to compel answers, on its face it cannot be affirmed. What must take place is a reversal, not merely a remand for more findings.

Mr. Munce moved for guidance and rulings on his written objections; the Court took that under advisement. Mr. Munce complied with the order compelling his deposition; he appeared and his defense attorney made objections as Ordered he could do. At deposition the parties agreed to adjourn to return to Court for guidance. Despite all that, the Court never ruled on a single objection; it skipped directly to the most severe sanctions. That stood the process on its head.

2. ARGUMENT

A. Respondents' Procedural Arguments Are Meritless

Respondents argue Mr. Munce did not assign error to specific findings of fact and conclusions of law therefore error is not preserved.

¹ Essentially little discovery had even been attempted from Mr. Munce. All discovery as to him had been stayed for 3 months. App. 57-61. A deadline may have been approaching but (1) it was not expired, (2) if only because of the extended stay it needed to be reset anyway, and (3) even if the stay did not exist there was no prejudice by extending the deadline given the multiple trial continuances thereafter.

That fails for four, independent reasons.

First, RAP 10.3(g) only requires the specificity argued by respondents for jury instructions and findings of fact. Pannell v. Food Services of Amer., 61 Wn.App. 418, 427 (1991). Mr. Munce assigned and argued error to matters much broader.

Second, the saying ‘unchallenged facts are verities’ still requires facts are found supporting the conclusions of law or judgment. Ridgeview Properties v. Starbuck, 96 Wn.2d 716, 719 (1982). Here, error was assigned to multiple orders not because any one “fact” asserted therein was error but because the Orders lacked facts/findings of fact supporting the conclusions of law/orders themselves.

As one example, argument was provided the orders lacked needed Burnet factual findings as there were no facts (findings of them) showing what lesser sanctions were considered and why only “the most severe” sanctions were required. Respondents confuse conclusory, circular statements simply parroting magic words with actual facts (found or otherwise). A statement of conclusion is not itself a statement of fact. Id. Conclusions are not themselves ‘facts’ to constitute a ‘verity of fact.’

Findings supporting the Burnet factor may not be implied, they must “be clearly stated on the record so that meaningful review can be had on appeal.” Rivers v. Wash. St. Conf of Mason Contractors, 145 Wn.2d

674, 685 (2002). Teter v. Deck, 174 Wn.2d 207, 217 (2102). That may be by colloquy but it must actually occur. Teter, 174 Wn.2d at 218.

Identical to here, Rivers held conclusory statements lesser sanctions were considered are insufficient; the lesser sanctions considered must be identified with a factual explanation why they would not suffice:

The trial court on the record did consider lesser sanctions, but only by stating in the order “The court has considered lesser sanctions of terms and exclusion of testimony, but has determined that dismissal of [Petitioner's] complaint with prejudice is the only appropriate remedy.

Whether she should be subject to the drastic sanction of dismissal cannot be determined under the limited language used by the trial court in its order of dismissal. Before resorting to the sanction of dismissal, the trial court must clearly indicate on the record that it has considered less harsh sanctions under CR 37. Its failure to do so constitutes an abuse of discretion.

There is no “the record speaks for itself below (that) obviates the need for the trial court to explain its reasons on the record.” Id. An appellate Court may not “consider... in the first instance as a substitute for the trial court findings... precedent requires.” Id. at 217-218. The “order need(s) to be supportable *at the time it was entered*, not in hindsight.” Blair v. Ta-Seattle East No. 176, 171 Wn.2d 342, 350 (2011) (italics in original).

Other failures of the Order were identified and briefed. The lack of facts/factual findings of lesser sanctions considered is only one.

Three, while Mr. Munce did not identify paragraph numbers,

respondents ignore that does not prohibit review if the argument identifies the subject of the error; rejecting the same argument made by respondents:

The intended purpose of these rules is to add order to and expedite appellate procedure by eliminating the laborious task of searching through the record for such matters as findings claimed to have been made in error. While appellant did not set forth verbatim findings and conclusions in his opening brief, he cured this defect in his reply brief, obviating any potential inconvenience to this court. Moreover, Stern offers no evidence suggesting that she has been prejudiced in any way by appellant's error.²

In re Marriage of Stern, 57 Wn.App. 707, 710 (1990) (citation omitted).

Respondents' argument is of strict compliance; that has been rejected. State v. Olson, 126 Wn.2d 315, 319-323 (1995) (discussing this in great detail over many pages). The rule is intended to prevent the Court and opposing party from guessing what the asserted error is. Id. Sherrell v. Selfors, 73 Wn.App. 596, 599 (1994) See also Viereck v. Fiberboard, 81 Wn.App. 579, 582 (1996). Respondents do not even feign an argument of prejudice; they know the subject of the assigned error and had no difficulty responding. Id. See also Rhinehart v. Seattle Times, 59 Wash. App. 332, 336 (1990).

Fourth, identifying the entire sanction and judgment orders is appropriate given the error assigned and argument made to the antecedent Orders: (1) refusing to rule on Mr. Munce's long standing motion for

² Mr. Munce suggests his opening brief is sufficient but consistent with Stern, the appendix provides the same type of reply brief identification. Nothing new is stated.

protective order regarding his written objections,³ (2) ordering an adjudged incompetent person to take an oath without first reevaluating competency at a hearing, and (3) entering any order of sanction without first compelling answers to discovery be given (both written and at deposition). Those are stated in assignment #1. If any is error, that requires reversing subsequent orders as they are fruit of the same error.

Respondents argue Mr. Munce did not properly cite the record. He provided ample citation; respondents' ignoring them requires no reply.⁴ For instance, at page 16 they claim he provided no transcript from August 14, 2009, certifying in their brief here that on August 14 the Court found discovery violations and set over the sanction for August 28. Respondents further certify that intervening time (between August 14 and 28) was the "opportunity show to the Court that he should order a re-deposition (and) there would not be repetition of the same sanctionable conduct" and not having done so the Court was justified entering

³ A Commissioner of this Court criticized Mr. Munce for not continually renoting that motion. It is suggested that is an unfair conclusion. The Trial Court did not continue the motion, telling Mr. Munce to note it again. It said it was reserving or taking it under advisement no differently than it did respondents' motion for default it later granted by letter without renoting it. That is what reserving something is: to further consider and advise of a ruling. Mr. Munce raised this issue at every opportunity in the meantime. The Court was on more than ample notice of the need to resolve that issue.

⁴ Given respondents' briefing, as one example their 13 line, single spaced footnote #1 with no citation, it is novel to assert Mr. Munce did not properly cite the record.

penultimate sanctions. Respondents' misstating the record in this manner is sanctionable. This Court is respectfully asked when will it take this type of briefing tactic to task.

Following the deposition, respondents noted their sanction motion for August 14. Mr. Munce responded with the arguments made here. CP 737-757. The only thing that happened on August 14 was to set the hearing over to August 28. CP 785. No violations were found on August 14. Id. Judge Larkin explicitly acknowledged that when he finally considered the motion on the merits which, due to another delay, was not until December 18. VRP 12/18/09, p. 5. There was no cause for Mr. Munce "to provide (further) assurance" or argue in the interim for a second deposition. He already responded to the motion. The Court's comment on August 14 was merely its way of saying it would consider all issues later. That respondents must mischaracterize Mr. Munce not citing the simple task of rescheduling, and to then misrepresent what actually happened on that day, is illustrative.

B. Law Of The Case Provides No Answer

Respondents assert based on this court's unpublished opinion and law of the case there may be no discussion of the propriety of the default Order. That ignore several issues.

First, law of the case was already briefed; respondents ignore it is

not applicable on the appellate Court as a Trial Court. RAP 2.5(c). An appellate court is not bound by its previous decision if it may not be reconciled or is otherwise unreasonable given the facts. Id.

Second, there is no law of the case applicable here. Respondents ignore the opinion was narrow. The merit of whether the sanction order was error was not before the Court; the default and Judgment had not even been ordered yet. The only issue on respondents' motion for discretionary review, decided by unpublished opinion, was if a subsequent judge (Stoltz) erred amending Judge Larkin's sanction Order because of Judge Stoltz's opinion there was a contradiction in the Order. This court found no contradiction. No issue decided there is raised here.

C. The Trial Court's Orders Levied The Most Severe Sanctions Merely For Making Objections

i. THE TRIAL COURT ERRED SKIPPING REQUIRED STEPS BEFORE ORDERING THE MOST SEVERE SANCTIONS

Respondents never address that even if Mr. Munce's objections could not be sustained, the Trial Court must order answers before imposing the "most severe" sanctions. See CR 37; Rivers, 145 Wn.2d at 680-681. (When appellant failed to answer, the court ordered answers before sanctioning); Associated Mtg. Invest. v. G.P. Kent. Const. Co., 15 Wash. App. 223, 227-29 (1976) (Sanctions imposed only after defendant

failed to comply with order compelling answers). The parties were not days before trial. Also, respondents later twice obtained continuances to accommodate their counsel resulting in an additional year of time. There was no emergent 'rush' that could only be cured by issue preclusion.

Dispositive sanctions such as dismissal or claim preclusion are appropriate only after a party willfully or deliberately refuses to obey a trial court's order to compel answers and violating that order substantially prejudices the other party. Johnson v. Horizon Fisheries, LLC, 148 Wash. App. 628, 638-39 (2009).

Mr. Munce violated no Order. Bootstrapping one, respondents point to the order for deposition. That order was not violated. Mr. Munce appeared. Objections were made as Judge Larkin ordered could be done. The next step was to rule on objections, overrule them if appropriate, and compel answers. If Mr. Munce violated that second order (never issued) perhaps a greater sanction could issue.

Mr. Munce is not deaf to the argument he appeared but did not answer much therefore he did not really appear. It is suggested that is a lay approach.

First, Mr. Munce attempted answers: three as to something as basic as his name, consistent with the incompetency already adjudged by the same Court, relied on by respondents while moving the Court to

appoint a guardian for Mr. Munce to control this litigation, (App. 62-70, 88, 96) and uncontested by the medical expert testimony.

Second, the Rules and due process contemplate steps. As inconvenient to respondents that may be, they must be followed when, as here, there is time.⁵ The Trial Court could not pre-rule on deposition objections. The Court ordered a deposition⁶ and specifically allowed Mr. Munce's criminal defense attorney to be present to make objections. The next step was to rule on objections and order answers. Respondents' ignore that fundamental, step by step procedure. It is error to sanction with issue preclusion for making objections when the Court ordered criminal defense counsel could be present to do so and said on the record he anticipated something like what happened, would happen.

Respondents argue "blanket objections" justified only the most severe sanctions. Even if they could be considered "blanket objections," Burnet and its progeny are clear that does not change the judicial response: strike them and compel answers. Respondents, the Trial Court, and the Commissioner erred, giving no weight to Burnet's focus: it is not

⁵ It may be conceded a different result might obtain if a party obstructs a deposition ordered for example during trial when it is impossible – if it is ever really impossible – to resume. That is not this case and that scenario need not be defended here.

⁶ This is without waiver of the error ordering the deposition in the first place.

so much what was done,⁷ but what the Trial Court can do to compel correction of it. There is nothing in this record demonstrating Mr. Munce would not have complied with such an order; that he filed his own motion to obtain rulings on his objections demonstrates he would.

In re Disciplinary Proceeding Against McGrath, 174 Wn.2d 813 (2012) demonstrates the required process. Finding egregious discovery violations consisting of boilerplate objections and lying by both the party and their attorney in response to discovery to avoid producing documents, id. at 815, the Trial Court first overruled the objections and ordered responses. Id. at 820. The attorney and party asserted the objections again. Id. at 821-22. Still, the Trial Court denied default and ordered a jury instruction on the spoliation of the evidence. Id. at 823.

It is agreed the fact McGrath did one thing does not mean every court is so bound. However, the point is made: CR 37, Burnet, etc., require a process when there is time. Here, there was time. Mr. Munce's conduct falls far short of McGrath. There was never an order compelling answers, violated by Mr. Munce. The only order compelling a deposition allowing him to assert his Fifth Amendment privilege was not violated. Further, there was never an Order ruling on Mr. Munce's

⁷ Mr. Munce does contend a party's conduct never matters. But, the point here is made: Burnet's overriding direction is to compel the information. Appellants place almost total emphasis on what was done versus what could to be done to address it.

objections to written discovery much less one compelling answers that was violated; the mere fact of those written objections was an equal basis of the sanction order. That does not support the conclusions of law only the most severe of sanctions would suffice.

Respondents only response is to cite inapposite law, Johnson v. Horizon Fisheries, LLC, 148 Wash. App. 628, 638-39 (2009) and Apostolis v. City of Seattle, 101 Wn.App. 300, 304 (2009), to argue Mr. Munce's conduct was a "willful" violation.

First, even if the conduct was "willful," that is only one prong of four Burnet requires exist and be found before the most severe sanctions may be issued; there must be facts and the Order must find with facts (1) a willful violation of an order to compel, that (2) caused prejudice, for which (3) the Court considered lesser sanctions to cure and what they were, and (4) why the lesser sanctions considered could not suffice. Essentially the entirety of respondents' argument focuses on willfulness; which itself ignores there was no order in the first place.

Second, the cases themselves do not hold as respondents assert. In Johnson, the court ordered a plaintiff to pay fees on a schedule. Id. After plaintiff failed to do so the court dismissed the action. Id. In Apostolis, an attorney failed to appear at an ordered pre-trial conference, mediation and other case scheduling order requirements. Apostolis, 101

Wn. App. at 302. He filed his response three weeks late, reply ten days late, failed to request extensions, and engaged in other direct misconduct the totality of which supported dismissal. Id. at 305.

If Mr. Munce refused to comply with discovery requests after being ordered to answer – a step that never occurred – only then does the court reach the balancing test which must still result in the least severe sanction to obtain the information. See Burnet v. Spokane Ambulance, 131 Wn.2d 484, 495–96 (1997); Diaz v. Washington State Migrant Council, 165 Wash. App. 59, 87 (2011).

Specifically on the Fifth Amendment, respondents’ rely entirely essentially on foreign authority, ignoring Washington law. Further, that law has little to nothing to do with the dispute at bar. They argue issue preclusion was the only possible sanction for asserting the 5th Amendment because the assertion may give rise to an adverse consequence in a civil proceeding; but that has never been disputed. Washington has long settled the remedy is a negative inference against the party making the objection, not a default. King v. Olympic Pipeline Co., 104 Wn.App. 338, 355-356 (2000). Respondents ignore King and instead rely on 1st and 3rd Circuit cases holding issue preclusion may be appropriate; those do not trump Washington authority.

The only authority they cite to argue it is inconsistent for Mr.

Munce to assert the 5th Amendment and a counter-claim has nothing to do with the 5th Amendment; that case, Lybert v. Grant County, 141 Wn.2d 129 (2009) discussed the “inconsistency” of asserting insufficient service of process while defending a lawsuit for over a year.

The only other case cited in any detail, Pawlyk v. Wood, 248 F.3d 815 (9th Cir. 2009), was, despite the caption, a criminal matter where the defendant asserted insanity as a defense. Here, respondents certify Pawlyk held any mental status defense waives the 5th in total. That is false. The Court held a waiver exist only on evidence of sanity, not all matters. Id. at 825 (“A defendant who asserts a mental status defense lacks a Fifth Amendment right to remain silent regarding the mental status that he has placed at issue.”) Respondents’ briefing tactics make this a much more difficult matter than it need be.

At best for respondents, asserting the 5th Amendment might give rise to a waiver of a counterclaim. Then, a balancing consideration (never undertaken by the Trial Court) might conclude the claim so centers on his testimony it is unfair to allow it to be made. However, respondents fail to cite a single case holding a defendant should be defaulted on defending liability for asserting the 5th Amendment. That is the scenario in King where the appropriate resolution was a negative inference, not a default, because defaulting liability is an unfair and too

high a price to pay to exercise the Constitutional Fifth Amendment right.

Second, they continue the incorrect assertion Mr. Munce made “blanket objections.” That is a term of art they ignore constitutes a refusal to participate in the process and preemptively refuse to even allow questions to be put. Mr. Munce lodged objections individually, inviting additional questions. Mr. Munce does not intend to minimize the number of objections but it was error to apply a body of law regarding blanket objecting that does not apply. The point is important: blanket objections are inappropriate because they deprive: (a) the party asking questions the ability to make a record of the questions asked, and (b) the court the ability to rule on objections made. That did not happen. Respondents asked all the questions they wanted until the parties agreed to adjourn for guidance from the court. That allowed the Court to individually rule on the questions and objections.

Finally, not to minimize the importance of the Fifth Amendment, however it is moot as Mr. Munce was incompetent to testify even if he wanted to. Respondents ignore Mr. Munce’s incompetency made him no less unavailable for his own defense and claims as he was to respondents. Having Alzheimer’s was not a choice. Defaulting him, striking his answer and counter-claims because of his incompetence, is a ruling people with mental health issues may not have access to the

judicial system: they may be sued and cannot defend. They may be wronged and have no redress as in every case the adverse party will complain their lack of access to that testimony prejudices them. If anything, that is a prejudice that inures to the benefit of the adverse party as the afflicted individual has no voice to deny or plead in their interest other than by use of evidence equally available to all involved.

On competency, respondents' errors are many. First, they reverse the burden arguing it was Mr. Munce's to prove he was incompetent. Respondents ignore he was already judged incompetent creating a presumption going forward;⁸ respondents accepted that, relying on it to compel their own, second guardian appointed. App. 62-70, 88, 96. From their petition: "Mr. Munce is demonstrably incompetent as demonstrated by forensic examination..." App. 66. Mr. Barcus certified: "...Mr. Munce has already been determined incompetent." App. 129 Respondents' burden was to demonstrate competency before seeking testimony under oath. State v. Smith, 97 Wn.2d 801, 803 (1982) and RCW 5.60.050(2). They made no record and initiated no process.

Second, based on out of date law they argue a deposition under

⁸ Mr. Munce acknowledges some cases distinguish between being incompetent to stand criminal trial and competency for a civil case. However, the civil case authority does not require incompetency be proven; it only requires it be 'at issue' before the burden to prove competency shifts to the party seeking the testimony. Avila, infra. The criminal and guardianship orders clearly put it at issue.

oath was not error because testimony can be taken and competency determined later. That (1) ignores incompetency was already found, and (2) that approach was rejected in State v. Avila, 78 Wn.App. 731, 737 (1995), cited with no response by respondents. Competency, when in question as here, must be determined first. Id. Respondents provide no explanation reconciling ordering a deposition under oath of an incompetent person with RCW 5.60.050 requiring a person to be competent, to even swear the oath. That dovetails into the next issue.

Third, respondents make a distinction not recognized by law arguing being competent to give testimony applies only at trial. According to them, an incompetent person may be compelled to give testimony under oath if at deposition. Their only support other than outdated law is to cite a Commissioner's ruling holding a trial standard of competency is contrary to the broader intention of discovery. But as respondents do, the Commissioner's authority is from 1941, 1958, and 1969 and does not account for Avila. Also, as respondents, the Commissioner never reconciled the prerequisite of taking the oath; she only focused on whether a deposition might be helpful to respondents.

The argument a lower competency standard applies to depositions ignores discovery is not a conversation over coffee; it is testimony under oath and the penalty of perjury. RCW 5.60.050 does

not require competency only for testimony before the trier of fact, it serves a due process protection to be competent to swear the oath. Thus, whether a person may be deposed is not determined by if the party wanting the deposition might learn something. It is determined by whether the deponent is competent to give testimony under oath. The oath taken at a deposition does not differ from the one taken at trial.

Finally fourth, below respondents never argued they wanted the deposition for discovery on competency; the order does not identify prejudice on that. To the Trial Court and in the order, the alleged need for deposition was evidence on liability. Respondents may not raise here a justification not offered to support the motion nor relied on in the Order. Even if offered below, the argument is rejected by Avila: that examination was to take place at a competency hearing, not deposition.

Respondents make argument (pages 39 – 44) regarding when a trial court may be justified issuing “the most severe sanctions.” That is nonresponsive to Mr. Munce’s brief. It was never denied sometimes that relief is justified. The question is whether it was justified here given (1) ample time to order answers compelled, and (2) no Order compelling answers was violated. That is true regardless of the objections but that here they were of a core Constitutional right and a Due Process protection of competency makes the lack of process that much worse.

ii. REpondents' ARGUMENT ON WRITTEN DISCOVERY IS MEANINGLESS

At pages 38 – 46 respondents justify the sanctions for written discovery answers (interrogatories and requests for admissions) by arguing their lack of merit. Again, that is nonresponsive where the argument of error was (1) Mr. Munce already moved for rulings on those objections and the Court never ruled and (2) even if some objections were without merit respondents' argument ignores Burnet, it (a) identifies no order violated by Mr. Munce compelling answers before ordering a penultimate discovery sanction and (b) there are no facts and no findings what lesser sanctions the Trial Court considered and why they were inadequate given the time left before trial.

The best respondents muster is at page 45 asserting the Trial Court “addressed all the Burnet factors.” That is not a sufficient fact nor finding of fact as addressed above. Merely uttering magic words concluding the factors were addressed is not sufficient. Rivers, inter alia.

To step back and address respondents' argument Mr. Munce's failure to identify paragraph numbers of findings of fact as error on this waives review, that is of no weight given the error assigned and the content of the brief. First, as addressed above, a party need not identify a paragraph number for a finding of fact that does not exist. The findings

of fact must support the conclusions of law and order and here the error is the lack of findings. Related second, even before the error of the sanction order was assigned, Mr. Munce's assignment of error number 1 assigned error to the Trial Court's antecedent error in refusing/failing to rule on his motion for a protective order to rule on his objections before entering any sanction order. Mr. Munce briefed that assignment demonstrating the subsequent orders were error if that first assignment of error is sustained by this court. Finally third, specific to the sanction order assignment of error, Mr. Munce provided briefing on findings of fact within the brief; even if not called out by paragraph in the assignments of error they need not have been as the brief sufficiently and specifically identified what the error was and why. Supra.

Finally, on the merits it cannot be said Mr. Munce's written discovery objections were as respondents argue frivolous, devoid of merit, and offered to obstruct discovery; albeit, even if they were, the appropriate response still was to strike the objections and order answers. Burnet.

For example, respondents' interrogatory #11, CP 45, asked Mr. Munce to describe the shooting. Respondents complain at page 37 that asserting the Fifth Amendment in response (CP 66) was "incomplete," "evasive" and violative of CR 26. It was not. Asking a person subject to criminal jeopardy for an alleged murder, to describe the facts of the

alleged murder, is squarely within the Fifth Amendment. Yet, the Trial Court found at respondents' urging the objection was evasive misconduct justifying default. CP 1380. That in a nutshell demonstrates the error of the orders (particularly regarding written discovery) and the mischaracterizations by respondents that allowed them to obtain them.

Respondents' complaints about the balance of the interrogatories and request for admission require no dissection; they have no greater merit. Contrary to their assertions, Mr. Munce provided substantial information otherwise obtainable and only objected to the limited extent a direct, testimonial response was required. Respondents' argument at pages 38-39 that requests for admission should be deemed admitted is not understood; this appears they cut and pasted from a motion. It does not appear responsive to any issue raised by Mr. Munce here.

D. The Judgment And Determination Of Damage Was Error

i. RESPONDENTS CANNOT DEFEND THE PROCESS BY CALLING IT SOMETHING IT WAS NOT

Respondents' only defense of the "hearing" utilized to determine damages is to persist calling it a "reasonableness hearing" when it was not. As cited with no reply, "reasonableness hearings" are creatures of RCW 4.22.060 and only provide a procedure to ensure settlements, that have

force beyond the settling parties (such as for joint and several liability, bad faith, etc.) are not collusive and reasonably reflect the damage settled. See Schmidt v. Cornerstone Investments, 115 Wn.2d 148, 160-161 (1990); see also RCW 4.22.060. This was not a settlement; calling this a reasonableness hearing does not make it one. Even if it was, respondents do not deny the opposing party has a right that Mr. Munce was denied to participate and defend. Asserting at page 46 as respondents do a defendant has no right to a jury does not mean a defendant may be precluded from being heard at all.⁹ The defendant is entitled to a full opportunity to present evidence and contest damages. Villas at Harbour Pt v. MOE, 137 Wn.App. 751, 761 (2007).

The schism of respondents' argument is illustrated by their argument out of the other side of their mouth this was a determination of damage after default. They cannot have it both ways. It was either a reasonableness hearing and a defendant may appear and defend damage. Or, it was proving up damage on default and Mr. Munce was entitled to the same rights as any other defaulted defendant.

Respondents ignore and the Trial Court erred not accounting for the default being entered because Mr. Munce's answer was stricken. CP

⁹ Respondents also argue Mr. Munce should not be heard to complain about the procedure because "defense counsel was allowed to have greater participation than plaintiff's counsel was advocating for." To even assert that says much.

2007. As cited by Mr. Munce with no reply, a default for no answer only results in default on liability. Smith v. Behr Process Corp., 113 Wn. App. 306, 333 (2002). A plaintiff must still prove, and the defaulted defendant may contest, damage because defaulting liability constitutes no admission of unliquidated damage; that was respondents' damage. Id. Based on the authority cited¹⁰ and ignored by respondents, Mr. Munce maintains that must be by jury. But if not, he still had a right to be heard and defend. Id.

ii. THE COURT ERRED ON THE EVIDENCE CONSIDERED

Related to this are errors of evidence made at the damage hearing. Mr. Munce raised error to striking the declaration of Dr. Clifford Nelson and the Court considering as the trier of fact other verdicts.

Striking Dr. Clifford's declaration is derivative of the error assigned to determining damages while depriving Mr. Munce an ability to respond. The Court did not strike the declaration for an evidentiary reason, it did because it denied Mr. Munce the ability to offer any evidence. Respondents are silent on this.

Case law does mention considering jury verdicts on reasonableness

¹⁰ James v. Robeck, 79 Wn.2d 865, 869 (1971); Worthington v. Caldwell, 65 Wn.2d 269, 273 (1964); Bingaman v. Grays Harbor Comm'ty Hosp., 103 Wn.2d 831, 835 (1985); Wash. Const. art. I, § 21; CR 38(a); Sofie v. Fibreboard Corp., 112 Wn.2d 636, 656 (1989).

hearings.¹¹ But, this was not a reasonableness hearing. Respondents provide no opposition that considering verdicts as the trier of fact assessing damages, whether by bench or jury, is error.

iii. THE QUANTUM OF DAMAGE WAS ERROR

Respondents provide no argument regarding the quantum of damage awarded other than to assert it was reasonable. They do not dispute the authority loss of consortium for adult children is disfavored, and when awarded should be slight. They ignore the issue the special damages were without support of evidence given the decedent being single with no statutory, minor beneficiaries. He is deemed to consume any income he may have earned during the remainder of his life. Mr. Munce sees no need to repeat authority and argument respondents ignored.

E. The Court Should Have Recused Itself

Respondents argue there is no conflict because Judge Johnson's partner "did not represent anybody in this case." That is objectively false. Judge Johnson's partner, Peter Kram, represented respondents while still Judge Johnson's law partner, to compel a guardianship of Mr. Munce to direct how this very case was being defended. *Id.* and App. 62-70, 107. Judge Johnson disclosed he remembers the case and spoke to Mr. Kram

¹¹ The only case cited by respondents, *Sharbono v. Universal Underwriters*, involved a reasonableness hearing.

about it while partners. VRP 8/15/13, p. 24-23. The fact of the representation is enough but as respondents deny even its existence it is reasonable to reply it was not a fleeting or meaningless representation.

In the conflict case, it appears the guardianship was filed as an end-run to obtain financial information about Mr. Munce respondents could not obtain directly, to undercut the ability to defend Mr. Munce, or both.¹² (App. 72-73, 66-67, 99-101, 262). The declaration of respondent/plaintiff Kristy Rickey, sworn on Judge Johnson's pleading paper, complained the actions taken to defend Mr. Munce in this case were unnecessary and "wasting" the assets she hoped to receive as a result of this case. App. 71-76. There is the appearance Judge Johnson's firm was being used as a go-between for respondents to back door control over the defense of this matter even if only indirectly.¹³ The following context colors that concern.

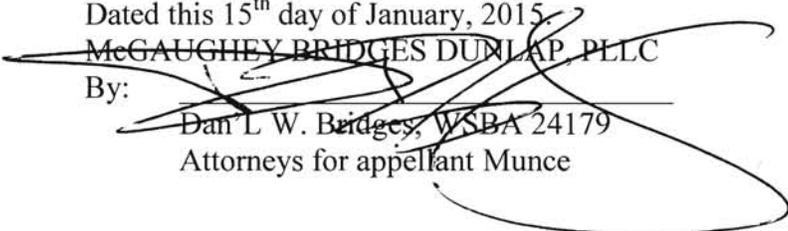
The record is unclear how this was able to happen, however it is evidence respondents through Judge Johnson's firm were able to obtain the specific appointment of Judson Grey as Guardian as opposed to the

¹² No doubt respondents and their counsel would deny this. That is of no weight. Their conflict is not at issue; it is the mere appearance of conflict of the Court.

¹³ To be clear, particularly as respondents will take this as such, there is no intention to imply a lack of ethics by Judge Johnson's firm or necessarily even respondents. Perhaps there was no ulterior motive at play by respondents. Certainly there was none by Judge Johnson's firm by simply accepting a case to seek a guardianship. But that begs the question. Even if there was no subjective mal intent it may be said it all looks very odd. In this context, it is that appearance that is at issue.

standard procedure of a random appointment. App. 105 and 269. That creates a notable appearance of unfairness given the intermingling of relationships including: the Guardian (Judson Grey) had already been approached by Mr. Barcus to gauge his interest in the matter, (app. 111) that Mr. Grey was already representing Mr. Barcus (attorney for respondents in this case) on a personal matter, (app. 105-106), and subsequently Mr. Grey and Mr. Barcus in an ex parte manner coordinated the guardianship and the litigation of this case with Mr. Grey transmitting to Mr. Barcus his filings before they were filed with the Court and that was done with any other party. (App 108, 120).

Those issues need not be untangled but demonstrate why the issue below is not, as respondents assert, to decide if the result may be considered fair; but to determine if there was even the appearance of conflict or unfairness. Even if not true, it appears these respondents hired Judge Johnson's law firm to collaterally attack the defense of Mr. Munce while Judge Johnson was still a partner. That is enough. But, given what happened as the fruit of that representation, the appearance of conflict is evident.

Dated this 15th day of January, 2015.
~~McGAUGHEY BRIDGES DUNLAP, PLLC~~
By: 
Dan L. W. Bridges, WSBA 24179
Attorneys for appellant Munce

No. 45255-3-II

COURT OF APPEALS,
DIVISION II
OF THE STATE OF WASHINGTON

MICHAEL B. SMITH as Litigation Guardian Ad Litem for CLARENCE
G. MUNCE,

Appellant,

vs.

KRISTY L. RICKEY and KELLEY R. CAVAR, individually, and as Co-
Executrixes of the Estate of Gerald Lee Munce, Deceased,

Respondents.

APPENDIX TO APPELLANT'S REPLY BRIEF

Dan'L W. Bridges, WSBA # 24179
Shellie McGaughey, WSBA #16809
McGaughey Bridges Dunlap, PLLC
3131 Western Avenue, Suite 401
Seattle, WA 98121
(425) 462 - 4000

APPENDIX OF ERROR OF FACT

The following factual errors were argued in the open brief as error from the January 22, 2010 sanction order:

CP 1380:

2 8. With respect to Plaintiffs' Requests for Admissions, despite the fact that Mr. Smith
3 had been appointed Litigation Guardian Ad Litem, and having the authority within his
4 representative capacity to make a determination as to what facts should be admitted or denied in
5 response to Plaintiffs' Requests for Admissions, the defense nevertheless objected to the vast
6 majority of Plaintiffs' Requests for Admissions and/or provided equivocal admissions and/or
7 denials based on the assertion of Mr. Munce's Fifth Amendment privilege against self-
8 incrimination and/or an inability to respond due to Mr. Munce's alleged mental incompetency. In
9 addition, with respect to Plaintiffs' Interrogatories and Requests for Production, Defendant
10 inappropriately interjected a boiler-plate objection to all Interrogatories and Requests for
11 Production asserting that Mr. Munce lacked the mental capacity to assist the defense, or to provide
12 information in response to Plaintiffs' Interrogatories and Requests for Production, and only that
13 responses would be made "where possible" given such alleged disadvantage.
14

2 In other words, it appears there has been a calculated effort on the part of the defense in
3 this matter to use as allegedly established fact matters within the police reports which tend to
4 support their defense, while at the same time denying or equivocally responding to those allegations
5 which tend to favor Plaintiffs' theory of the case, based on alleged Fifth Amendment privilege
6 and/or Mr. Munce's alleged mental incapacity. Such an inconsistent approach to Plaintiffs'
7 Requests for Admissions, and response to Plaintiffs' Interrogatories, is indicative of bad faith, the
8 failure to engage in reasonable inquiry as required by CR 26 (g), and a lack of fairness and
9 forthrightness, which a party is obligated to engage in when answering discovery under the Civil
10 Rules;
11

12 9. In addition, the Defendant has attempted to supplement its answers to
13 Interrogatories to include such things as their Supplemental Answer No. 4, which is descriptive of
14 the alleged testimony, which will be provided by defense expert Conte. Within such a
15 supplemental disclosure, it is also apparent that the defense has taken a bad faith approach to
16 discovery in that that which can be gleaned from the police report, which tends to favor the
17 Defendant's theory of the case, are being taken as established fact, while those facts which tend to
18 favor Plaintiffs' theory of the case and undercut the Defendant's Affirmative Defenses and counter-
19 claim are subject to denial based on Mr. Munce's alleged mental incompetency and/or assertion
20 of Fifth Amendment privilege;
21

CP 1382

8 11. On July 3, 2009, Mr. Munce presented himself for deposition at The Law Offices
9 of Ben F. Barcus, PLLC (by agreement). In attendance at the deposition was Mr. Barcus, his co-
10 counsel, Paul A. Lindenmuth, Mr. Munce, defense counsel Shellie McGaughey, and Mr. Munce's
11 criminal defense attorney, Erik Bauer. At the commencement of the deposition, Mr. Bauer
12 instructed Mr. Munce to refuse to take an oath. In addition, Mr. Bauer, save for one question,
13 instructed Mr. Munce not to answer any questions on the grounds of the Fifth Amendment privilege
14 against self-incrimination, even though not a single question propounded by Plaintiffs' counsel
15 during the course of this aborted effort at a deposition, could in any way incriminate, or lead to
16 incriminating evidence, against Mr. Munce. It is clear that Mr. Bauer's efforts were inappropriate
17 and prevented Plaintiffs from taking any meaningful discovery with respect to Defendant Munce's
18 Affirmative Defenses and/or Counter-claims in this action. Mr. Bauer's actions and objections also
19 prevented Plaintiffs' counsel from gathering any information from which they could develop
20 subsequent arguments to the Court (when and if the Court was called upon to make a competency
21 determination), from which to argue that Mr. Munce was competent to testify in this matter;
22
23

CP 1383

2 12. The Court specifically finds that the blanket assertion of Fifth Amendment
3 privilege as to all questions is inappropriate and improper in a civil case, where the Fifth
4 Amendment privilege can only be asserted on a question by question basis. Further, as observed
5 by the Court of Appeals Commissioner's decision in this matter, which is attached hereto and
6 incorporated by this reference as Exhibit "2," even if it was ultimately determined that Mr. Munce
7 was incompetent to testify at time of trial, his deposition testimony may nevertheless have led to
8 relevant and admissible evidence. As the defense in this case has failed to allow the Plaintiffs to
9 conduct a meaningful deposition, it is unknown as to what information Mr. Munce could or could
10 not have provided, had he been permitted to properly answer questions;
11

12 13. Based on the above, Plaintiffs' ability to prepare for trial, particularly as it relates
13 to the Affirmative Defenses asserted by the Defendant and his Counter-claims, have been
14 substantially prejudiced. This is particularly so in light of the fact that, at the time of the shooting
15 of Gerald Munce, Clarence Munce was the only eye-witness, and his defense of self-defense
16 ultimately could turn on the reasonableness of his subjective belief as to what was occurring at the
17 time. In addition, Mr. Clarence Munce would be the best source of information with respect to any
18 prior events between himself and his son, and if he suffered any personal injury and/or damages
19 as a result thereof;
20

4 15. Further, the Court finds that defense's response to Plaintiffs' Interrogatory Nos.
5 11 and 17 were made in violation of CR 26(g) due to the absence of reasonable inquiry, and were
6 so evasive as to be non-responsive. In addition, given the presence of the above-referenced
7 Affirmative Defenses and Counter-claims, Defendant's Answers to Requests for Admissions,
8 which asserted mental incapacity and Fifth Amendment privilege as a basis for non-responsiveness
9 are inadequately responded to, and shall be deemed admitted in their entirety. The Defendant
10 cannot in good faith admit only those facts which favors its position, while denying or equivocating
11 those facts which do not;
12

13 16. It is also the finding of this Court that the method and manner in which the
14 deposition of Clarence Munce was conducted was in willful violation of this Court's Order of July
15 2, 2009, which permitted the taking of the deposition of Clarence Munce for the purpose of
16 determining whether or not any admissible evidence could be gathered therein, or lead to the
17 discovery of other and further relevant and admissible evidence. The refusal to allow Mr. Munce
18 to take the oath was improper and the instruction to him to not answer but one question, due to the
19 assertion of Fifth Amendment privileges, was highly improper in a civil case, and was tantamount
20 to a willful refusal to participate in the deposition, despite this Court's Order, without reasonable
21 justification and/or excuse;
22

23 17. Each discovery violation outlined above, in and of themselves warranted of
24 sanctions, cumulatively and in combination with the willful violation of this Court's Order,

2 permitting the deposition of Clarence Munce, the imposition of severe sanctions is necessary to
3 curb such abuse and to ameliorate the prejudice suffered by the Plaintiffs' herein;

4 18. In addition, the Court finds that the ability of Plaintiffs to prepare for trial has been
5 substantially prejudiced by the Defendant's discovery abuses, and the Court is very mindful that
6 Clarence Munce is a party to this action, and the sole eye-witness to the events that transpired on
7 June 21, 2008, which resulted in the death of Gerald Munce;

8 19. The Court has considered whether or not a less severe sanction would suffice,
9 given the nature of the discovery violations at issue in this matter. Mindful of the purposes of
10 discovery sanctions, the Court finds that the only way to ameliorate the prejudice suffered by the
11 Plaintiffs in the preparation of their case for trial, is to impose some of the more severe sanctions
12 authorized by CR 37. The sanctions should include the following: 1) Defendant's Affirmative
13 Defenses and Answer shall be stricken; 2) Defendant's Counter-claims shall be forthwith
14 dismissed; 3) with respect to Plaintiffs' claims, Defendant should be deemed in default; 4) all
15 Requests for Admissions subject to denial or equivocal admissions should be deemed admitted;
16 5) Plaintiffs' counsel shall be awarded costs and terms related to this motion and the aborted
17 deposition of Clarence Munce in an amount to be determined at a subsequent hearing; and 6) a
18 Protective Order should enter precluding the Defendant from taking any additional discovery in this
19 matter.
20
21

22 | The Court having reviewed the files and records herein, and having heard the argument
23 | of counsel, has determined that under the facts and circumstances of this case, the Court in the
24 | exercise of its discretion shall impose some of the sanctions requested by the Plaintiffs herein, but

2 | not others. Specifically, the Court will impose sanctions as follows: (1) Defendant's Affirmative
3 | Defenses and Answers shall be stricken; (2) Defendant's Counter-claim shall be stricken and shall
4 | forthwith be dismissed; and (3) the Plaintiff shall be awarded the cost of the court reporter and
5 | videographer who attended the unsuccessful effort to take the deposition of Clarence Munce, which
6 | occurred on or about July 3, 2009.
7 |

The following factual errors were argued in the open brief as error from the August 8, 2013 findings of fact and conclusions of law on Judgment:

- 2.8 *JP* ~~The loss of a parent, (father), is an immense loss and one of the most difficult losses a person can experience in a lifetime.~~ In this case, the evidence reveals that the parent-child relationship was exceptionally strong and the loss is therefore immense. The evidence reveals that Kristy Rickey and Kelley Cavar were deeply and profoundly devastated as a result of the death of their father and they have not recovered, nor will they likely ever recover from the death of their father. The acts of the Defendant ^{loss of love, lack of companionship} have caused profound, emotional anguish and has tremendously ^{and 6 vicarious} added to the damages that Kristy Rickey and Kelley Cavar have suffered, and continue to suffer. ^{otherwise continued to} ^{of receipt from their deceased father} ^{accurately}
- 2.9 Gerald Munce's net economic loss has been ^{accurately} conservatively calculated by Economist, Richard W. Parks, Ph.D., which reflects a loss to the Estate of \$132,267.00 A copy of Dr. Parks' report is filed in this matter, detailing his economic loss calculations.
- 2.10 Gerald Munce, prior to his death, suffered severe and excruciating pain, and severe anxiety, humiliation and emotional distress, all as a direct result of Clarence Munce's negligent actions.



08-2-10227-6 30887555 ORSP 11-10-08

Honorable Thomas Larkin
Hearing Date and Time: November 7, 2008 9:00 a.m.



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

KRISTY L. RICKEY and KELLEY R.)
CAVAR, individually, and as Co-Executrixes)
of the Estate of Gerald Lee Munce, Deceased,)
Plaintiffs,)
vs.)
CLARENCE G. MUNCE,)
Defendant.)

NO. 08-2-10227-6
DEFENDANT CLARENCE MUNCE'S
PROPOSED ORDER FOR TEMPORARY
STAY

Defendant Clarence G. Munce, by and through his attorneys of record, hereby submits this Order for Temporary Stay for presentation. This order is based on all briefing submitted to the Court related to Defendant's Motion to Stay Civil Proceeding as identified in the Court's September 19, 2008, Order, whereby the Court reserved a ruling pending the outcome of Mr. Munce's competency hearing. This order is also based on arguments by the parties both at the September 19, 2008, hearing at the November 7, 2008, Notice of Presentation.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

Any discovery directed to defendant Clarence Munce that would require his personal input, feedback, or presence, including, but not limited to written discovery and depositions, is temporarily stayed for 120 days from the date of this order, following the outcome of the

(*)
[Handwritten initials]
Tea

TLK

competency proceeding in the criminal matter of *State v. Munce*, Pierce County Superior Court Cause No. 08-1-03011-5, which is scheduled for hearing on December 16, 2008.

All other permissible discovery directed toward non-parties or the plaintiffs, excluding discovery related to the parties' financial assets, may proceed subject to proper notice under the Court Rules and an opportunity for the parties to move for protective orders if necessary.

At the termination of 120 days, *From the date of this order, the stay shall be automatically lifted. Any continuation of the stay would require a subsequent motion.* ~~the judge will either (1) lift the stay or (2) continue the stay for a later defined period of time. However, no decision will be made in this regard without a duly scheduled hearing and an opportunity for the parties to submit briefing regarding their positions to either lift or continue the stay.~~

TLK

DONE IN OPEN COURT ON: *Nov 7th*, 2008.

Th L
The Honorable Thomas Larkin

Presented by:

MCGAUGHEY BRIDGES & DUNLAP, PLLC

Shellie Mc

Shellie McGaughey, WSBA #16809
Timothy Allen, WSBA #29415
Attorney for Defendant Clarence Munce

GORDON THOMAS HONEYWELL MALANCA

Steven Reich
Steven Reich, WSBA # 24649
Attorney for Defendant Clarence Munce



Approved for Entry: Notice of Presentation Waived:

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THE LAW OFFICES OF BEN F. BARCUS & ASSOCIATES, P.L.L.C.



Ben F. Barcus, WSBA #15576
Attorney for Plaintiff



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Honorable Thomas Larkin

**SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY**

KRISTEY L. RICKEY and KELLEY R.
CAVAR, individually, and as Co-Executrixes of
the Estate of Gerald Lee Munce, Deceased,

Plaintiffs,

v.

MICHAEL B. SMITH as Litigation Guardian Ad
Litem for CLARENCE G. MUNCE,

Defendant.

No. 08-2-10227-6

**ORDER LIFTING
STAY OF DISCOVERY**

THIS MATTER having come on duly and regularly for hearing upon Plaintiffs' Motion to Lift Stay of Discovery, the Plaintiffs represented by and through their attorney of record, Ben F. Barcus, of The Law Offices of Ben F. Barcus & Associates, PLLC; and the Defendant Clarence G. Munce represented by and through his attorneys of record, Timothy E. Allen of McGaughey Bridges; Steven Reich of Gordon, Thomas, Honeywell; and Michael B. Smith as Litigation Guardian Ad Litem for Defendant Clarence G. Munce; the Court having reviewed the files and records herein, and being fully advised in the premises, now, therefore, it is hereby

**ORDER LIFTING
STAY OF DISCOVERY- 1**

ORIGINAL

Law Offices Of Ben F. Barcus
4303 Ruston Way
Tacoma, Washington 98402
(206) 752-4444 • FAX 752-1035

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ORDERED, ADJUDGED AND DECREED that the Temporary Stay of Discovery in the above-captioned matter previously entered on November 7, 2008, shall be and is hereby **LIFTED** and the parties shall proceed with normal and customary discovery consistent with all applicable Civil Rules.

Dated this 6 day of ^{March} February, 2009.

Plaintiff's Request for Discovery (Request for admission & Interrogatories and Request for Production) shall be deemed denied on the date of this order.

The Honorable Thomas P. Larkin
Pierce County Superior Court, Dept. 3

Presented by:

Ben F. Barcus WSBA# 15817 for
Ben F. Barcus, WSBA# 15576
Attorney for Plaintiffs

Approved as to Form and Content;
Notice of Presentation Waived:

Timothy E. Allen
Timothy E. Allen, WSBA# 29415
Attorney for Defendant

Steven T. Reich
Steven T. Reich, WSBA# 24708
Attorney for Defendant

Michael B. Smith, WSBA# 13747
Litigation Guardian Ad Litem





10-4-00542-3 34086709 PTAPGD 04-08-10

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FILED
IN COUNTY CLERK'S OFFICE

A.M. 'APR - 7 2010 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

In re the Guardianship of:)
CLARENCE G. MUNCE)
An Alleged Incapacitated Person.)

Case No. 10 4 00542 3

PETITION FOR GUARDIANSHIP OF
PERSON AND ESTATE
RCW 11.88.030 (PTAPGD)

I. ALLEGED INCAPACITATED PERSON INFORMATION

The name, date of birth, address of present residence, length of time at residence, post office address, and social security number of the Alleged Incapacitated Person are:

- A. Name: Clarence G. Munce
- B. Date of Birth/Age: 25 February 1927, age 83
- C. Present Residence: 11519 24th Avenue East, Pioneer Place, Tacoma, WA 98445 Phone: (253) 539-3410
- D. Length of Time at Residence: six months (estimate)
- E. Post Office Address: same as Par. C
- F. Social Security No.: not known

II. NATURE AND DEGREE OF ALLEGED INCAPACITY

The nature and degree of the alleged incapacity are as follows:

A. Nature of Alleged Incapacity: Clarence Munce currently resides in Pioneer Place, a secure facility for Alzheimer's patients. In Pierce County Superior Court Cause 08-1-03011-5, Barbara Griebe declared that Mr. Munce suffers from Alzheimer's and it is getting progressively worse. Declaration filed 16 July 2008, page 2,

PETITION FOR GUARDIANSHIP OF PERSON AND/OR ESTATE

Page 1 of 9
C. Munce.4.5.10.Petition.Guardian

KRAM, JOHNSON, WOOSTER & McLAUGHLIN P.S.
1901 South I Street, Tacoma WA 98405
(253) 272-7929; Fax (253) 272-4616

1 lines 22-25, page 3 lines 1-7. In addition she stated that she has known Mr. Munce since
2 2003. (page 1, lines 18-20.) The Will filed in Pierce County Superior Court and attached
3 herewith was executed June 18, 2007, well after Ms. Griebe met Mr. Munce. In addition,
4 it appears Dennis Cline, a nephew of Clarence Munce, was granted a durable power of
5 attorney, recorded under Pierce County Auditor's Fee number 200710010781. This
6 durable power of attorney was executed after Barbara Griebe's acquaintance with Mr.
7 Munce. It takes effect only upon the disability of Mr. Munce but does NOT name a
8 guardian for either the person or estate of Mr. Munce. This durable power of attorney in
all probability postdates the onset of Alzheimer's and its increasing effect on Clarence

9 In Pierce County Superior Court Cause 08-1-0311-5 Clarence Munce admitted
10 that he shot his son, Gerald Munce. (Probable Cause Affidavit, Cause 08-1-0311-5).
11 The Petitioners believe and so allege that the Power of Attorney granted to Dennis Cline
12 may be invalid because of the possible incapacity of Clarence Munce at the time he
executed this document in 2007.

13 B. Degree of Alleged Incapacity: Mr. Munce has been found unfit to stand trial
14 in the criminal case as reported to the Court on September 18, 2009. See Report of
15 Barry Ward, Ph. D. filed in Cause 08-1-03011-5 and Order of Dismissal without
16 Prejudice dated December 30, 2009. Mr. Munce now resides in an Alzheimer's facility,
indicative of his ongoing physical and mental incapacity.

17 In a declaration filed in 08-1-03011-5, counsel for Clarence Munce attached a letter
18 from Dr. Kenneth Muscatel which stated: "His (Clarence Munce) dementia is permanent
19 and likely progressive, but in a managed environment with no access to weapons his risk
20 to others should be greatly reduced." In Cause 08-2-10227-6 Attorney Michael B. Smith
21 was appointed litigation guardian for Clarence Munce on January 9, 2009. This
22 appointment was the result a motion for a GAL in the civil litigation and was made
pursuant to RCW 4.08.060. This was not a full guardianship of the person or estate.

23 **III. DESCRIPTION/VALUES OF PROPERTY**

24 The approximate value and the description of the property owned by the Alleged

1 Incapacitated Person are believed and so alleged to be:

- 2 A. Real Property: \$ not known
- 3 B. Stock, Mutual Funds and Bonds: \$ not known
- 4 C. Mortgages and Notes: \$ not known
- 5 D. Bank Accounts \$ \$600,000.00 per declaration of

6 Dennis Cline, filed 18 August 2008, Cause 08-2-10227-6.

- 7 E. Furniture: \$ not known
- 8 F. Retirement Payments per month: \$ 4,500.00 per declaration of Dennis

9 Cline, filed 18 August 2008, Cause 08-2-10227-6.

- 10 G. Other Personal Property: \$
- 11 Total Approximate Value of Assets is: \$ \$600,000.00

12 There are periodic compensation, pension, insurance, and allowances as follows:

- 13 A. Social Security Benefits: \$ /month
- 14 B. Veterans Benefits \$ /month
- 15 C. Washington State Assistance \$ /month
- 16 D. Other: Retirement Benefits \$ 4,500.00/month
- 17 Approximate Total Monthly Income: \$ 4,500.00 (may include

18 social security payments)

19 **IV. EXISTING OR PENDING GUARDIANSHIPS**

20 There is not an existing or pending RCW 11.88 Guardianship action for the
 21 person or the estate of the Alleged Incapacitated Person. Dennis Cline does possess and
 22 utilize a Power of Attorney for Clarence Munce as reflected above. This Power of
 23 Attorney was temporarily approved by Judge Larkin on January 9, 2009. Michael B.
 24 Smith, an attorney at law in Tacoma, Washington, was appointed litigation guardian ad
 25 litem for Mr. Munce in Cause 08-2-10227-6 on January 9, 2009. This appointment was
 made pursuant to RCW 4.08.060. This is not a full guardianship and concerns only the
 civil action initiated against Clarence Munce by the heirs of decedent Gerald Munce.
 Thereafter this case was transferred to Judge Stolz. See order dated January 8, 2010.
 Trial is now set for October, 2010. Order Amending Trial schedule, 12 February 2010.

1 Plaintiffs in Cause 08-2-10227-6 recently filed a separate lawsuit against Dennis
2 Cline for negligent entrustment of the firearms used to kill Gerald Munce, Pierce County
3 Cause 10-2-07470-3, filed March 16, 2010. The claims asserted in that suit arise out of
4 facts common to the claims against Clarence Munce individually. Petitioners believe and
5 so allege that Mr. Cline now has a clear and inescapable conflict of interest between his
6 fiduciary duties under the Power of Attorney and his own self-interest in defending the
7 claims made against him personally. One risk is that Mr. Cline may use funds of
8 Clarence Munce to defend himself when his interest in obtaining a resolution of the case
9 against himself is adverse to the interests of his principal, Clarence Munce.

8 **V. NOMINEE**

9 The name, address, telephone number, date of birth, and age of the proposed
10 Guardian and the relationship of the Alleged Incapacitated Person are as follows:

- 11 A. Name of Nominee: Pacific Guardianship Services
- 12 B. Address: 5302 Pacific Avenue South, Tacoma, WA 98408
- 13 C. Telephone Number: (253) 475-8600
- 14 D. Date of Birth/Age: This is a corporation
- 15 D. Relationship to Alleged Incapacitated Person: None

15 **VI. RELATIVES**

16 The name and addresses, and the nature of the relationship of the persons most
17 closely related by blood or marriage to the Alleged Incapacitated Person are as follows:

- 18 A. Name: Kristy Rickey
19 Address: 15906 38th Ave East, Tacoma, WA 98446
20 Relationship: Granddaughter
- 21 B. Name: Kelley Cavar
22 Address: 6818 161st Street, Puyallup, WA 98375
23 Relationship: Granddaughter
- 24 C. Name: Dennis Cline
25 Address: c/o Robin Balsam, 609 Tacoma Ave South, Tacoma, WA 98402

Relationship: nephew, has power of attorney in the event of Clarence Munce disability

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D. Name: Michael B. Smith, Attorney at Law
Address: 1901 65th Avenue West Fircrest, WA 98466
Relationship: RCW 4.08.060 Litigation Guardian Ad Litem for Clarence Munce in Cause 08-2-10227-6

Kristy Rickey and Kelley Cavar are the granddaughters of Clarence Munce. Kristy Rickey is nominated as the Executor of Mr. Munce's Will, filed with Pierce County Clerk under fee number 07-4-00953-4. They are also the objects of his testamentary distribution. In addition, they are individual and representative Claimants in Pierce County Cause 08-2-10227-6, wherein the Estate of Gerald Munce and others are suing Clarence Munce for the wrongful death of Gerald Munce. Kristy Rickey and Kelley Cavar are the duly appointed personal representatives of the Estate of Gerald Munce in Pierce County Cause 08-4-01095-6. Dennis Cline is the nephew of Clarence Munce and holds a power of attorney dated 28 September 2007. Michael B. Smith is appointed the litigation Guardian Ad Litem for Clarence Munce in Pierce County Cause 08-2-10227-6 pursuant to RCW 4.08.060.

VII. CUSTODIAN OF PERSON TO BE ASSISTED

The name, address, and telephone number of the person or facility having the care and custody of the Alleged Incapacitated Person and the length of time of said care and custody is:

- A. Name: Believed to be Pioneer Place
- B. Address: 11519 24th Avenue East, Tacoma, WA 98444
- C. Telephone: (253) 539-3410
- D. Length of Time at Facility: approximately six months (estimated)

VIII. REASON FOR GUARDIANSHIP:

A. The reason for petitioning for Guardianship is as follows: Petitioners believes and so allege that the assets of Clarence Munce may be subject to dissipation and loss without full court supervision. Mr. Munce is demonstrably incompetent as demonstrated by forensic examination of Dr. Barry Ward, PH. D., and the statement of Dr. Muscatel submitted by counsel for Mr. Munce on 30 December 2008. The power of

1 attorney granted to Mr. Cline does not nominate a guardian of the person or estate of
2 Clarence Munce. Mr. Cline continues to manage assets of Mr. Munce and has been
3 providing sealed source documents to the court since February, 2009. He has collected
4 money for the use and benefit of Mr. Munce. Petitioners could petition under RCW
11.94.010(1) or RCW 11.94.070(1) for restrictions on this account.

5 **B.** The interest of the Petitioner in the appointment is as follows: Kristy
6 Rickey and Kelley Cavar are the granddaughters of Clarence Munce. Kristy Rickey is
7 nominated as the Executor of Mr. Munce's Will. They are also the objects of his
8 testamentary distribution. In addition, they are individual and representative Claimants in
9 Pierce County Cause 08-2-10227-6, wherein the Estate of Gerald Munce and others are
10 suing Clarence Munce for the wrongful death of Gerald Munce. They are the duly
11 appointed personal representatives and heirs of the Estate of Gerald Munce, Pierce
County Cause 08-4-01095-6.

12 **C.** The Petitioners seek a guardian of the person and the estate of Clarence
Munce pursuant to RCW 11.88.010 et seq.

13 **D.** Describe any alternative arrangements previously made by the Alleged
14 Incapacitated Person, such as trusts, powers of attorney including any Guardianship
15 nominations contained in a power of attorney, and why a Guardianship is nevertheless
16 necessary. Clarence Munce filed for record his Last Will and Testament in July, 2007,
17 Pierce County Cause 07-4-00953-4. In that Will he denominated Kristy Rickey as the
18 Executrix and left property to Kristy Rickey and Kelley Cavar. Clarence Munce recorded
19 a power of attorney in favor of Dennis Cline under Auditor's Fee Number
20 200710010781. That Power of Attorney only took effect on the disability or incapacity
21 of Clarence Munce but did NOT nominate a guardian of the person or estate of Clarence
22 Munce. On January 9, 2009, Michael B. Smith, Attorney at Law, was appointed
23 litigation guardian ad Litem for Clarence Munce in Pierce County Cause 08-2-10227-6
24 pursuant to RCW 4.08.060. That appointment is limited to that particular litigation. For
the reasons stated above, the Petitioners seek a full guardianship of the person and estate.

1 E. In addition to the reasons stated in this Petition, Petitioners believe and so
2 allege that the appointment of a guardian of the person and estate of Clarence Munce is
3 and will be in his best interests pursuant to RCW 11.94.090(1)(f)(ii).

4 **IX. AREAS OF ASSISTANCE**

5 A. The nature and degree of the alleged incapacity: Clarence Munce was
6 examined at Western State Hospital. Physicians there determined that he was not capable
7 of aiding his defense in a criminal case and not competent to stand trial. In addition, Mr.
8 Munce now resides in an Alzheimer's facility and requires assistance with all aspects of
9 daily living.

10 B. The following are specific areas of protection and assistance required: All
11 functions of daily living, management of financial affairs, provision of adequate
12 independent and safe care for the alleged incompetent person.

13 C. The duration of Guardianship should be as follows: Until Mr. Munce
14 recovers sufficiently to be self-sufficient and competent or, alternatively, permanent.

15 **X. GUARDIAN AD LITEM**

16 *Guardian ad Litem to be appointed from registry.*

17 [X] A Guardian *ad Litem* should NOT be appointed from the Court's Registry
18 because of the following extraordinary circumstances: This case involves
19 significant legal issues involving the interplay of competency statutes, criminal
20 and civil liability, potential conflicts between the interests of the person currently
21 holding a power of attorney and the interests of the ward and the multiple claims
22 affecting the alleged incompetent person. See Declaration of Peter Kram re: GAL
23 and Declaration of Peter Kram re: Litigation documents.

24 The name, address, and telephone number of the proposed Guardian *ad Litem*.

25 Name: Judson Gray, Attorney at Law, WSBA 15195

Address: 4142 Sixth Avenue, Tacoma, WA 98406

Telephone: (253) 759-1141

The knowledge of a relationship of the proposed Guardian *ad Litem* to parties is

1 as follows: Judson Gray is an independent attorney with no relationship to any of the
 2 parties. He is knowledgeable and experienced in the areas of guardianship, competency,
 3 litigation, powers of attorney and probate. He is on the 11.88 register in two counties and
 regularly serves as a GAL and attorney for person determined to be incompetent.

4 **XI. BONDS AND FEES**

5 A. A bond in the amount of \$ -0- should be established OR bond waived for
 6 the following reasons: The Alleged Incapacitated person already has a litigation guardian
 7 ad litem, reports are available to the court in the sealed source financial documents and
 8 the court has yet to appoint a guardian. If Pacific Guardianship Services is appointed
 9 they are sufficiently bonded and insured to provide protection to the alleged incapacitated
 person.

10 B. The payment of Guardian *ad Litem's* fees should be provided as follows:
 11 Payment should be from the assets of the alleged incompetent person. He is believed and
 12 so alleged to have sufficient assets to provide for these services and does not qualify for
 appointment of a GAL at public expense.

13 **XII. SUMMARY**

- 14 The Petitioner requests the following relief:
- 15 [X] An Order appointing a Guardian *ad Litem* for the Alleged Incapacitated
 16 Person and that the Guardian Ad Litem be an experienced attorney;
 - 17 [X] An Order directing that the Guardian *ad Litem's* fees in this matter be paid by
 18 the alleged incapacitated person after investigation and that the Petitioners
 initially advance the costs of the GAL.
 - 19 [X] An order allowing the Guardian Ad Litem appointed in this matter to exceed
 20 the limit on hours and authorize up to 20 hours in light of the substantial and
 21 complex proceedings in the pending civil and dismissed criminal matters. The
 civil matter alone now comprises 9 volumes and counting.
 - 22 [X] An Order approving payment by the alleged incapacitated person of
 23 reasonable attorney's fees and costs incurred in preparation and presentation of
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this Guardianship Petition together with the costs of the GAL advanced and incurred; and

[X] An Order appointing Pacific Guardianship Services as Full Guardian of the Person and Estate of Clarence G. Munce subject to review in six months with the bond either waived or set by the court after investigation by the GAL.

[X] Other relief requested: That the Power of Attorney granted to Dennis Cline be terminated or limited to solely the person and not the estate of Clarence Munce in light of the clear conflict of interest between the fiduciary and principal.

I declare under penalty of perjury under the laws of the State of Washington that to the best of my knowledge the statements above are true and correct.

DATE: 4/6/10 Kristy L. Rickey
Kristy Rickey, Petitioner
15906 38th Ave East
Tacoma, WA 98446

DATE: 4-6-10 Approved Telephonically
Kelley Cavar, Petitioner
6818 161st Street
Puyallup, WA 98375

Presented By:
Peter Kram
Peter Kram WSBA 7436
Attorney at Law

1 trial the criminal charges were dismissed without prejudice. See order of December 30,
2 2008. Eric Bauer represented Clarence Munce in the criminal case.

3 Dennis Cline is now a defendant in Pierce County Cause 10-2-07470-3 filed
4 March 16, 2010. In the separate lawsuit the complaint alleges that Dennis Cline
5 negligently entrusted weapons to Clarence Munce when he had actual knowledge or
6 should have known of the increasingly erratic behavior of Clarence Munce. Dennis Cline
7 was not present when Clarence Munce used the guns supplied by Dennis Cline to shoot
8 his son, Gerald Munce, in the back.

9 REQUEST TO STRIKE COMMENTS ABOUT MEDIATION: I request that the court
10 strike any and all comments about the content, communication and outcome of a
11 mediation conducted between the Estate of Gerald Munce, deceased, and Clarence
12 Munce, Defendant, in Pierce County Cause 08-2-10227-6. These comments re
13 contained at page 2-3, Lines 16-18;

14 1-7. The mediation refers to efforts to settle the case and this material is specifically
15 and
16 explicitly inadmissible under ER 408. This court may not consider these efforts or their
17 outcome. The mediation is neither relevant nor material on the issues of the clear and
18 admitted incapacity of Clarence Munce. RCW 11.88.010. Furthermore, the mediation
19 was conducted with the express agreement that the communications in the mediation
20 would remain confidential. To now allow Dennis Cline to discuss these matters violates
21 the very promise of confidentiality he adopted in his exercise of his power of attorney on
22 behalf of his principal.

23 While Mr. Cline claims to be serving altruistic purposes, he has hired and is paying
24 from the assets of Clarence Munce three separate attorneys. From the assets of Mr.

25 Munce he is paying Robin Balsam to apparently be his personal attorney rather than the

DECLARATION OF KRISTY RICKEY

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1 attorney for his principal. This appears to be unnecessary and a waste of assets because
2 he is also paying Michael B. Smith, the litigation attorney appointed under RCW
3 4.08.060. Mr. Smith is the litigation attorney appearing for Clarence Munce who now
4 claims that he is incompetent to stand trial in the criminal case. If Clarence Munce is
5 truly incompetent to stand trial then the only attorney Dennis Cline needs to represent the
6 principal is Michael Smith and having a second attorney to represent either Mr. Munce or
7 Dennis Cline individually is the very waste about which Mr. Cline complains.

8 This situation is bad enough but Mr. Cline also hired attorneys at Gordon,
9 Thomas, Honeywell to serve as the personal attorneys for himself in his fiduciary
10 capacity and for the principal. The counterclaims Gordon, Thomas filed on behalf of
11 Clarence Munce have now been dismissed so they appear to serve no useful purpose. In
12 addition, the claims in the above litigation are being defended by Allstate Insurance
13 company under a policy held by Clarence Munce. Commissioner Gelman appointed Eric
14 Bauer to serve as the attorney for Clarence Munce in this proceeding so it would appear
15 that Clarence Munce is more than adequately represented. Why Mr. Cline utilized the
16 services of Robin Balsam in this matter rather than the services of Mr. Bauer who
17 represented Clarence Munce in the criminal case or Mr. Smith, the court appointed
18 litigation guardian, remains unexplained. It further supports the notion that the interests
19 of Mr. Cline are in fact adverse or have the potential to be adverse to the interests of his
20 principal, Clarence Munce.

21 CONFLICT OF INTEREST: The deposition of Dennis Cline was twice taken in the
22 civil action filed against Clarence Munce. Mr. Cline admitted that he supplied the gun to
23 Clarence Munce used to kill Gerald Munce at a time when he was increasingly concerned
24 about the behavior of Clarence Munce. Dennis Cline must now claim that he knew

25 DECLARATION OF KRISTY RICKEY

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1 nothing about the danger Clarence Munce posed to those around him in order to shift the
 2 blame to Clarence Munce and avoid any risk to himself. In Cause 10-2-07470-3 Dennis
 3 Cline is being defended by yet another attorney, this one hired by ~~Attorney~~ ^{Farmer} Insurance ~~Company~~ ^{PK}
 4 Company. If the interests of Dennis Cline and Clarence Munce had no conflict, it would
 5 not be necessary to hire yet another attorney, instead the insurance attorneys defending
 6 Clarence Munce would be able to represent Dennis Cline without conflict. Evidently
 7 they do not believe this to be true and have hired yet another attorney to represent solely
 8 Dennis Cline. If Dennis Cline now says he knew nothing about the behavior of Clarence
 9 Munce then he must not have been telling the truth in his earlier declaration. If he now
 10 says he did know about the behavior, he has conceded that he acted in a manner that was
 11 at least negligent and perhaps even recklessly and with disregard for the safety of others.

12 Mr. Smith recently orally claimed that the Estate of Gerald Munce and myself
 13 have "created" this conflict. This also seems to be a claim made by Robin Balsam. This
 14 is a neat trick, similar to trying the rape victim. I respectfully remind the court that it was
 15 Clarence Munce who shot and killed my father. Neither I nor my sister did that. Dennis
 16 Cline delivered the guns to Clarence Munce when the previously had been removed from
 17 the home of Clarence. Neither I nor my sister nor Mr. Barcus did that. Our father is dead
 18 because of the combined actions of Clarence Munce and Dennis Cline. They created
 19 these facts, not us.

20 ALLEGED ESTATE CLAIMS: In his desperation to divert attention from himself and
 21 his obvious conflict of interest, Dennis Cline claims at page 2, Lines 9-13:

22 "They have made it clear they intend to collect Clarence's entire estate, no matter
 23 what happens in the wrongful death suit, with a will contest action after

24
 25 DECLARATION OF KRISTY RICKEY
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1 Clarence dies. I think this guardianship action is not brought for Clarence's
 2 benefit, but merely for the
 3 granddaughters' benefit, and therefore they are acting in bad faith."

4 Mr. Cline is grossly speculating on this subject and does not refer to any
 5 particular statement by either my sister or I in this claim. Mr. Cline also fails to mention
 6 that he stated to the process server who served him with the complaint that he had already
 7 spent \$250,000 of Clarence Munce's estate and would spend it all if required. This is
 8 clearly not in the interest of Clarence Munce or his continued maintenance in the
 9 Alzheimer's facility he currently occupies.

10 It is interesting that Mr. Cline refers to a will contest which is not part of any
 11 litigation nor could it be in light of the fact that Mr. Munce is still alive. Mr. Cline also
 12 fails to mention that he is a potential beneficiary of the Estate of Clarence Munce. The
 13 will under which Dennis Cline would take was executed in the very time that Dennis
 14 Cline claimed Clarence Munce was increasingly demonstrating the effects of Alzheimers.
 15 This is another aspect of the conflict Mr. Cline has.

16 A SCHOOL OF RED HERRINGS: Mr. Cline has attempted to drive a school of red
 17 herrings through this action. The precise question is the incapacity of Clarence Munce.
 18 This fundamental issue has been decided by two courts, the criminal court in dismissing
 19 the murder charge without prejudice, and the civil court in appointing Michael B. Smith
 20 litigation guardian for Clarence Munce, Cause 08-2-10227-6. All of the other claims of
 21 Dennis Cline fall by the wayside in the face of these facts conclusively demonstrated.

22 The notion that there is a less restrictive alternative for Clarence Munce presumes
 23 that Dennis Cline has no conflict of interest with his principal. Because he does have a
 24 clear and demonstrable conflict the less restrictive alternative means he must sacrifice his

DECLARATION OF KRISTY RICKEY

Page 5

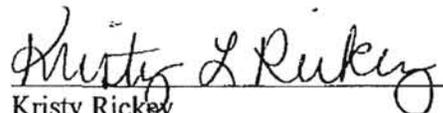
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1 principal to preserve his own interests. We are not seeking the appointment of ourselves
 2 as the guardian of Clarence Munce. We seek an independent guardian of Clarence
 3 Munce who does not have a conflict. Robin Balsam cannot serve in this capacity nor has
 4 she suggested that she do so. She has served as the attorney for Dennis Cline in this
 5 matter and thus cannot serve now for either Mr. Cline or Mr. Munce.

6 I make this declaration under penalty of perjury under the laws of Washington at
 7 Tacoma, Pierce County, Washington, this 3rd day of May, 2010.

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 Kristy Rickey

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DECLARATION OF KRISTY RICKEY
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10-4-00542-3 34513249 DCLR 06-18-10

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PIERCE COUNTY, WASHINGTON
BY KEVIN STOCK, County Clerk
DEPUTY

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IN THE SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

In Re Guardianship of:) NO. 10-4-00542-3
)
CLARENCE G. MUNCE) SUPPLEMENTAL DECLARATION OF
) PETER KRAM WITH DEPOSITION
10 An Alleged Incapacitated Person.) EXCERPTS

I am Peter Kram, attorney for the Petitioners. I am over the age of eighteen, am competent to make this Declaration and make it based on personal knowledge.

Attached herewith and incorporated herein are additional deposition excerpts from the deposition of Dennis Cline. These excerpts contradict or conflict with his recent declaration dated or received June 16 and 17, 2010. These contradictions are summarized as follows:

1. Declaration of Dennis Cline re: Guns Taken by Gerald Munce
 - a. Line 17-19: contradicts dep of 12-15-08, pg. 24 lines 21-25, page 25, LL 1-22.
 - b. Line 22-23: contradicts attached check, check payable to Clarence from Gerry, not from Clarence to Gerry.
2. Responsive Brief to Motion to Terminate Power of Attorney and Conduct Interview
 - a. Line 16: not factual, Clarence discovered guns missing when he was "going to sell them." Police woman did not intercede and encourage selling, Clarence already said he was going to sell guns and that is how he noticed missing. Pg 53 lines 10-18.

SUPPLEMENTAL DECLARATION OF
PETER KRAM WITH DEPOSITION
EXCERPTS

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- b. Line 20-24: again contradiction about hocking and check.
- c. Line 5-7: does not make sense, wasn't willing to cooperate with Dennis to sell guns, Clarence wanted guns back to sell guns.
- d. Line 11-12: contradicts, Pg 170, lines 1-8. Dennis made it clear he did NOT feel Clarence had incapacities at the time of shooting.

3. Declaration of Dennis Cline in Response to Motion to Terminate Power of Attorney

- a. Line 17-19: contradicts pg. 205, lines 1-2 and 24-25. Dennis received a copy of POA from Clarence well before Clarence was incarcerated for shooting Gerry.

I make this Declaration under penalty of perjury under the laws of Washington at

Tacoma, Pierce County Washington, this 17th day of June, 2010.



Peter Kram, WSBA 7436
Attorney for Petitioners

SUPPLEMENTAL DECLARATION OF
PETER KRAM WITH DEPOSITION
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DENNIS CLINE/Barcus - 12/15/08

<p style="text-align: right;">Page 22</p> <p>1 Dr. Mettensower, something like that.</p> <p>2 Q Matzenauer?</p> <p>3 A Matzenauer, yeah. And he had him since 1992 up until 2007</p> <p>4 at some point, maybe even 2008. I don't know.</p> <p>5 Q Who did he change to at --</p> <p>6 A A Dr. Louie, Douglas Louie.</p> <p>7 Q And where was Dr. Louie's office, if you know?</p> <p>8 A I believe it's in Spanaway.</p> <p>9 Q And I think you were beginning to tell us you had some</p> <p>10 understanding as to why Clarence would change doctors from</p> <p>11 Dr. Matzenauer to Dr. Louie?</p> <p>12 A I think his insurance did -- something with his insurance.</p> <p>13 That's what he said to me anyway.</p> <p>14 Q Did it have anything to do with his change of his</p> <p>15 condition, physical or mental, to your understanding?</p> <p>16 A Not that I know of.</p> <p>17 Q Were there any complications with diabetes that you were</p> <p>18 aware of that Clarence had?</p> <p>19 A No.</p> <p>20 Q The feet swelling, what did you attribute that to, if</p> <p>21 anything?</p> <p>22 A I thought a part of being old.</p> <p>23 Q All right. What about the depression? He was taking</p> <p>24 medication for depression also?</p> <p>25 A I believe so. I'm --</p>	<p style="text-align: right;">Page 24</p> <p>1 MR. ALLEN: Objection.</p> <p>2 A Well, I don't know the difference between dementia and</p> <p>3 Alzheimer's.</p> <p>4 Q (By Mr. Barcus) Let me ask you a better question. Were</p> <p>5 you aware that he was taking any different medication for</p> <p>6 dementia, or would you lump that together with Alzheimer's?</p> <p>7 A I would lump that together.</p> <p>8 Q Were you aware that Clarence had ever been diagnosed with</p> <p>9 Alzheimer's or dementia?</p> <p>10 A No. That he had been diagnosed with it?</p> <p>11 Q Yeah.</p> <p>12 A Not since the incident that -- when he went out to Western</p> <p>13 State. And of course --</p> <p>14 Q Meaning you weren't aware of it until the incident</p> <p>15 occurred, and then --</p> <p>16 A That he had been diagnosed with it, no.</p> <p>17 Q Since the incident occurred and he has had some evaluation,</p> <p>18 you became aware of it?</p> <p>19 A Yes.</p> <p>20 Q Have you ever at any time attended a doctor's visit with</p> <p>21 Clarence?</p> <p>22 A Yes.</p> <p>23 Q When would that have been?</p> <p>24 A Oh, boy. That would have been a couple of years ago.</p> <p>25 Q Which doctor would that have been?</p>
<p style="text-align: right;">Page 23</p> <p>1 Q Just do the best you can.</p> <p>2 A It's speculation.</p> <p>3 Q I understand. Just from your understanding. And "your</p> <p>4 understanding," I'm asking you these questions just to the</p> <p>5 best of your recollection.</p> <p>6 A Yeah.</p> <p>7 Q How long did he take medication for depression, as far as</p> <p>8 you know?</p> <p>9 A I don't know.</p> <p>10 Q Would it be the same amount, one to two years, or what</p> <p>11 would be the best estimate?</p> <p>12 A I would guess. I would guess.</p> <p>13 Q Were you aware of Clarence taking any medications for</p> <p>14 Alzheimer's?</p> <p>15 A I think he was, but I'm not sure.</p> <p>16 Q And the same question. How long were you aware that he was</p> <p>17 taking that medication?</p> <p>18 MR. ALLEN: Objection to speculation.</p> <p>19 A Boy, I have no idea on that one.</p> <p>20 Q (By Mr. Barcus) The best estimate would --</p> <p>21 A It would probably be about the same as the other drugs.</p> <p>22 Q One to two years?</p> <p>23 A Mm-hm. (Answers affirmatively.)</p> <p>24 Q How about dementia? Would that be the same, medication for</p> <p>25 dementia?</p>	<p style="text-align: right;">Page 25</p> <p>1 A Dr. Matzenauer.</p> <p>2 Q Why would you have accompanied Clarence to a doctor's</p> <p>3 visit?</p> <p>4 A Well, I was concerned that maybe he was goofing up with his</p> <p>5 medicine. You know, I had been out seeing him, and I saw</p> <p>6 all the pills he had to take, and he was making --</p> <p>7 complaining about this ailment and that ailment. And I</p> <p>8 says, "Well, maybe we ought to --" I said, "God. You got</p> <p>9 all these pills. Let's go down see the doctor, see whether</p> <p>10 these are all compatible," you know. You know how people,</p> <p>11 older people, can take the wrong medicines with something.</p> <p>12 So we got an appointment with Dr. Matzenauer. I put</p> <p>13 all his pills, even his pills that were nonprescription, in</p> <p>14 a bag and went down and had a conference with</p> <p>15 Dr. Matzenauer.</p> <p>16 Q Was that your suggestion?</p> <p>17 A Yes.</p> <p>18 Q So that would have been sometime in 2006?</p> <p>19 A Or early 2007, something in there.</p> <p>20 Q Is that the only time that you have attended a doctor's</p> <p>21 appointment with Clarence?</p> <p>22 A Yes.</p> <p>23 Q All right. And was there some behavior exhibited or some</p> <p>24 concern that you had with Clarence that caused you to want</p> <p>25 to take him to the doctor and get him checked out?</p>

7 (Pages 22 to 25)

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APP0079

DENNIS CLINE/Barcus - 12/15/08

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<p>1 this an exhibit?</p> <p>2 MR. BARCUS: Yes. It's No. 2.</p> <p>3 MR. ALLEN: Could we take a break?</p> <p>4 (Pause in the proceedings.)</p> <p>5 (Read back question: So there was three</p> <p>6 handguns and five rifles, shotguns or --)</p> <p>7 Q (By Mr. Barcus) Let's talk about that a little bit more.</p> <p>8 A Sure.</p> <p>9 Q In looking at Exhibit 2, do I understand correctly that</p> <p>10 that's a list of weapons that you took control of at some</p> <p>11 period of time?</p> <p>12 A Yes.</p> <p>13 Q When was it that you took control of those weapons?</p> <p>14 A I have no clue.</p> <p>15 Q How long before the incident of June 21, '08, would be your</p> <p>16 best estimate?</p> <p>17 A Oh, a year and a half or so.</p> <p>18 Q So that would take us back into 2007 or 2006?</p> <p>19 A Early '7 or late '6, I'm guessing.</p> <p>20 Q What led up to your taking control of these weapons that</p> <p>21 you have listed here?</p> <p>22 A I went over to -- I was heading out to friend of mine's</p> <p>23 that don't live too far from Clarence, and I was driving by</p> <p>24 his house, and a police car was there. I thought, "Oh,</p> <p>25 boy. So should I stop or not?" Now I wish I hadn't have.</p>	<p>1 MR. ALLEN: Objection; hearsay.</p> <p>2 A That he was just concerned about his dad having the weapons</p> <p>3 and thought his dad was getting a little out of control and</p> <p>4 he didn't trust his dad having the weapons.</p> <p>5 Q (By Mr. Barcus) Did Gerry describe to you any concern that</p> <p>6 he had had about Clarence threatening others with guns?</p> <p>7 MR. ALLEN: Objection; hearsay.</p> <p>8 A He did mention an incident that happened years prior that</p> <p>9 Clarence had threatened a friend of his with a gun at a</p> <p>10 family party or something.</p> <p>11 Q (By Mr. Barcus) Do you remember who that was?</p> <p>12 A I don't. I don't remember who the person was that he</p> <p>13 threatened. But that's what he told me. And I guess it</p> <p>14 had been quite a few years prior.</p> <p>15 Q So Gerry told you that he had in fact taken these guns that</p> <p>16 you have listed out --</p> <p>17 A Mm-hm. (Answers affirmatively.)</p> <p>18 Q -- for safekeeping from his father?</p> <p>19 A Yes.</p> <p>20 Q Because he had concerns that Clarence shouldn't have these</p> <p>21 guns?</p> <p>22 A That was his -- That was what he told me.</p> <p>23 Q Okay. And did you relay that then to the police officer?</p> <p>24 A Well, you know, I didn't know where this thing was going.</p> <p>25 I didn't want to see Gerry go to jail. You know, I was in</p>
<p>Page 51</p> <p>1 But anyway, I stopped and knocked on the door, went in, and</p> <p>2 there was a police officer there. And Clarence was</p> <p>3 claiming that his son had stole his guns.</p> <p>4 Q Was his son Gerry there at the time?</p> <p>5 A No.</p> <p>6 Q Just the police officer?</p> <p>7 A Just the police officer and Clarence.</p> <p>8 Q Was it a Pierce County Sheriff's deputy?</p> <p>9 A Yes. And I can't think of her name. It was a woman.</p> <p>10 Q Okay.</p> <p>11 A And Clarence wanted her to go arrest Gerry and get his</p> <p>12 guns.</p> <p>13 Q Did he appear to be rational at that time?</p> <p>14 A Yeah, and upset. He was upset, but he was -- he seemed to</p> <p>15 be rational.</p> <p>16 Q And go ahead and tell us what else occurred.</p> <p>17 A So she had asked me if I knew anything about it. And I</p> <p>18 said no. But I did.</p> <p>19 Q What did you know?</p> <p>20 A Because Gerry had called me when he took his father's guns.</p> <p>21 Q How long before that, the day that you stopped there when</p> <p>22 you saw the police car, did that call occur?</p> <p>23 A I would imagine it was just a few days.</p> <p>24 Q What did Gerry describe to you as to why he had taken the</p> <p>25 guns?</p>	<p>Page 53</p> <p>1 kind of a --</p> <p>2 Q Sure.</p> <p>3 A -- weird situation there. So I just -- I conveyed this to</p> <p>4 the police officer. I says, you know, "If my cousin did in</p> <p>5 fact take the gun," which I knew he had -- I says, "he just</p> <p>6 did it -- didn't do it out of personal gain. He did it</p> <p>7 because of concern for his father having the guns."</p> <p>8 So then she asked Clarence -- She says, "Clarence, how</p> <p>9 did you know the guns were missing?"</p> <p>10 And Clarence says, "Well, I backed my truck up to the</p> <p>11 garage, and I was going to load them all up and take them</p> <p>12 to Eatonville and sell them."</p> <p>13 So she -- I could see the wheels turning in her head.</p> <p>14 "So this is kind of a no-brainer. Your son doesn't want</p> <p>15 you to have the guns, if indeed he has them." She didn't</p> <p>16 know whether he had them or not. It was just hearsay so</p> <p>17 far. And she says, "And you want to get rid of them. So</p> <p>18 everybody can be happy here, you know."</p> <p>19 So she says, "Would you get involved in this?" to me.</p> <p>20 And I says, "Well, it looks like I already am</p> <p>21 involved."</p> <p>22 She says, "Would you go over to your cousin's house</p> <p>23 and see if in fact he does have the guns, tell him to call</p> <p>24 me?" She gave me her card.</p> <p>25 So I jumped in my car. I went over to Gerry's, and I</p>

<p style="text-align: right;">Page 170</p> <p>1 Q. Prior to him shooting Gerry -- or shooting Gerry, did it 2 seem that Clarence generally understood what he was doing on 3 a day-to-day basis? 4 A. Yes. 5 Q. At that time he was capable of lucid thought? 6 MS. MCGAUGHEY: Objection. Form. At what time? 7 MR. LINDENMUTH: Prior to shooting his son. 8 A. I believe so, yes. 9 Q. All right. Has Clarence ever indicated to you that the 10 reason he shot his son was because he felt he had to defend 11 himself? 12 MS. MCGAUGHEY: Objection. Form. 13 A. No. He really doesn't remember a whole lot about that. 14 Q. When was the first time you talked to Clarence about -- or 15 when was the first time you saw Clarence after he shot his 16 son? 17 A. He was in the county jail. About a week or so after the 18 incident. 19 Q. All right. And did you discuss with him why he was there at 20 that time? 21 A. Yes, I did. 22 Q. So I'm trying to understand. From the day before he shot 23 his son, he's capable of lucid thought, but as soon as he 24 shot his son, he was incapable of lucid thought? Is that -- 25 MS. MCGAUGHEY: Objection. Form.</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. All right. So he was taking care of his basic hygiene; 2 isn't that right? 3 A. Yes. 4 Q. Okay. And he was paying his bills; isn't that right? 5 A. His bills were paid automatically pretty much. 6 Q. All right. Well, he made -- well, was he -- was he capable 7 of driving? 8 A. His girlfriend did most of the driving. 9 Q. But he was capable of driving, wasn't he? 10 A. Yes. But he would get lost, so he didn't drive very often. 11 Q. Okay. And he was still competent enough to own guns? 12 MS. MCGAUGHEY: Objection. Form. 13 A. That's my opinion, yes. 14 Q. Okay. Now, Gerry had indicated to you that he didn't want 15 his father to have guns and had made some effort to get 16 those guns away from him; isn't that correct? 17 A. Yes. 18 Q. All right. And at the time he took them away, you agreed 19 with Gerry's decision, didn't you? 20 A. No. 21 Q. You did not? 22 A. No, I did not. 23 Q. Okay. You thought he was being unreasonable? 24 A. Yes. 25 Q. And why was he being unreasonable?</p>
<p style="text-align: right;">Page 171</p> <p>1 Q. Is that how it went? 2 A. Pretty much. But I wasn't there the day before he shot his 3 son. 4 Q. Well, okay. When was the last time you saw him before he 5 killed Gerry? 6 A. Father's Day. 7 Q. Okay. And that would have been a week before? 8 A. Probably about that. 9 MS. MCGAUGHEY: This was discussed extensively in 10 his last deposition. 11 Q. What I'm just trying to understand is that he went from 12 being -- well, strike that. 13 Was he capable of taking care of his -- or what are 14 known as the activities of daily living before he killed his 15 son? 16 A. Yes. He didn't do a good job of it, but he was getting 17 by -- 18 Q. Okay. 19 A. -- with help from Barbara. 20 Q. Okay. And he was capable of dressing himself; isn't that 21 right? 22 A. Yes. 23 Q. All right. He was capable of brushing his teeth in the 24 morning if he desired: correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 173</p> <p>1 A. Well, his father hadn't done anything. I mean, I didn't see 2 where he had the right to deny him his second amendment 3 rights. 4 Q. Okay. Well, he's not the government, is he? 5 A. Who? 6 Q. Gerry. 7 MS. MCGAUGHEY: Objection. Argumentative. 8 MR. LINDENMUTH: It is argumentative. I'll 9 rephrase. 10 Q. But you understood Gerry knew his father very well, isn't 11 that correct? 12 A. Yes. 13 Q. And you believe that he was trying to act in his father's 14 best interest; isn't that right? 15 A. At that time I did. Now that I see all this stuff, I have 16 my doubts. 17 Q. Okay. Well, isn't that the kind of things that families do? 18 You know, the father is getting a little bit older. The son 19 is going to try to help their dad out and make sure they're 20 safe and doing the right thing; isn't that right? 21 A. Yes. 22 Q. All right. And there had been an instance, for example, 23 where his dad had bought a brand new truck -- 24 A. Yes. 25 Q. -- and ended up turning it back in to the dealership and</p>

10 (Pages 170 to 173)

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Dennis P. Cline

Volume II

July 1, 2009

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<p>1 Q. Okay. So he would get these repeatedly; correct?</p> <p>2 A. Uh-huh.</p> <p>3 Q. That's a yes?</p> <p>4 A. I think he got two of them, the '05 one and this one. Those</p> <p>5 are the only two I've ever seen.</p> <p>6 Q. Okay. All right. Well, it looks like -- I'm just trying to</p> <p>7 understand the sequencing of events here. Let's see.</p> <p>8 Prior to giving you the power of attorney, did Clarence</p> <p>9 discuss with you that he was going to make you power of</p> <p>10 attorney?</p> <p>11 A. No.</p> <p>12 Q. And that would have been the power of attorney which is</p> <p>13 Exhibit No. 1 and appears to be dated September 28, 2007; is</p> <p>14 that correct?</p> <p>15 MS. MCGAUGHEY: Objection. Form. The one I'm</p> <p>16 looking at is dated December 11, 2008. Am I looking at the</p> <p>17 wrong one?</p> <p>18 A. I --</p> <p>19 MR. LINDENMUTH: That's a declaration.</p> <p>20 MS. MCGAUGHEY: Oh. Did you want me to hand him</p> <p>21 Exhibit 1 then?</p> <p>22 MR. LINDENMUTH: Yeah. Exhibit 1 has an attachment</p> <p>23 which is the power of attorney.</p> <p>24 MS. MCGAUGHEY: Okay. Thank you.</p> <p>25 I'm sorry. I lost the question.</p>	<p>1 who's out there in Eatonville; is that correct?</p> <p>2 A. Apparently.</p> <p>3 Q. All right. Have you ever -- did you ever take Clarence to</p> <p>4 any meetings with Attorney Abrahams?</p> <p>5 A. No.</p> <p>6 Q. Do you know Attorney Abrahams at all?</p> <p>7 A. No.</p> <p>8 Q. Do you know whether Barbara Griebe took him up to Attorney</p> <p>9 Abrahams' office to have this signed?</p> <p>10 A. I'm not sure.</p> <p>11 Q. Okay. All right. In any event -- have you ever spoken to</p> <p>12 Attorney Abrahams at any time?</p> <p>13 A. No.</p> <p>14 Q. Okay. All right. When did you first learn that you had the</p> <p>15 power of attorney? What's the time line on that?</p> <p>16 MS. MCGAUGHEY: Objection. Form. Do you mean when</p> <p>17 Gerald told him or --</p> <p>18 MR. LINDENMUTH: Right.</p> <p>19 MS. MCGAUGHEY: -- he knew for sure?</p> <p>20 Q. Let's take the first part and then the second part.</p> <p>21 A. Well, when Gerald told me.</p> <p>22 Q. Okay. And when was that?</p> <p>23 A. Boy, I would imagine it was shortly after he signed over</p> <p>24 power of attorney to me because Gerry seemed to keep a thumb</p> <p>25 on everything his dad did.</p>
<p>Page 203</p> <p>1 MR. LINDENMUTH: That's okay.</p> <p>2 Q. There's actually -- attached to what's called a</p> <p>3 certification under power of attorney statute, there is an</p> <p>4 actual durable power of attorney signed by Clarence Munce.</p> <p>5 Do you see that? It would be the next document in, I</p> <p>6 believe.</p> <p>7 A. Yes.</p> <p>8 Q. It's all part of Exhibit 1.</p> <p>9 A. Yes.</p> <p>10 Q. All right. Did Clarence discuss with you that he was going</p> <p>11 to give you a durable -- name you in a durable power of</p> <p>12 attorney as a person holding his power of attorney?</p> <p>13 A. No. Not at this time.</p> <p>14 Q. All right. At some point in time, did he tell you that?</p> <p>15 A. His son told me.</p> <p>16 Q. Okay. And I remember -- I think you testified previously in</p> <p>17 your deposition that apparently his son had found that out</p> <p>18 by looking through public record?</p> <p>19 A. Yes.</p> <p>20 Q. That this was filed at the -- wherever they file them to</p> <p>21 become part of the public record; is that right?</p> <p>22 A. Yeah. When he called me, I asked him, "Well, how do you</p> <p>23 know?"</p> <p>24 And he says, "It's a matter of public record."</p> <p>25 Q. Now, apparently this was done by a lawyer, Mark J. Abrahams,</p>	<p>Page 205</p> <p>1 Q. What does that mean?</p> <p>2 A. Well, he was always snooping into his dad's affairs --</p> <p>3 Q. Okay.</p> <p>4 A. -- according to Clarence.</p> <p>5 Q. Well, do you have any -- do you believe he was doing that?</p> <p>6 A. I do.</p> <p>7 Q. Based on what facts other than what --</p> <p>8 A. From what I've seen in the last year.</p> <p>9 Q. Okay. Now -- all right. When did you actually get a copy</p> <p>10 of the power of attorney?</p> <p>11 A. Well, I went over and asked Clarence what was going on, and</p> <p>12 he said, "Well I made you power of attorney. I didn't think</p> <p>13 you'd mind."</p> <p>14 And I says, "Well, I guess I don't. Somebody's got to</p> <p>15 do it."</p> <p>16 Q. I'm sorry.</p> <p>17 A. But I don't know when.</p> <p>18 Q. You don't know when. Was it before Christmastime '07?</p> <p>19 A. Probably.</p> <p>20 Q. Okay. Within probably a couple weeks after Gerry told you?</p> <p>21 A. Uh-huh.</p> <p>22 Q. Yes?</p> <p>23 A. Yes.</p> <p>24 Q. Did you actually ask Clarence to give you a copy of it?</p> <p>25 A. He gave me a copy of it, yeah.</p>

18 (Pages 202 to 205)

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10 4-00542-3 34987963 DCLR 09-09-10

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BY _____ DEPUTY

THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

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In re the Guardianship of:) No. 10-4-00542-3
CLARENCE G. MUNCE) DECLARATION OF JUDSON C. GRAY
An Alleged Incapacitated Person.)

I, JUDSON C. GRAY, hereby declares as follows:

I am the Court-appointed Guardian ad Litem in this matter and make this Declaration based upon my own personal knowledge and in response to the Motion of Robin Balsam and Dennis Cline.

Please note that I have asked the Court for instruction on whether I should withdraw from this case. If the Court is of the belief that I should withdraw, I would ask that the Court allow me withdraw rather than ordering the withdrawal.

First of all, Ms. Balsam is insinuating that I have somehow have not been forthright with the Court. I have been. The Statement of Qualifications initially filed by this office was on an old form done by legal assistant who was filling in for my regular legal assistant, who was out of the office at the time. I did not notice it was the old Statement of Qualifications form. I have filed a new one.

DECLARATION OF JUDSON GRAY- 1

THE GRAY LAW FIRM, P.S.
ATTORNEYS AT LAW
4142 6TH Avenue
Tacoma, Washington 98406
Telephone (253) 759-1141 Facsimile (253) 759-1447

ORIGINAL

1 Secondly, I do represent Mr. Ben Barcus, who is the Guardian of his stepfather. I do
2 not see where that is an issue. In fact, the amount of contact necessary to represent Mr. Barcus
3 in preparing the accounting, where most of the work is done by Mr. Barcus, is quite minimal,
4 as is evidenced by my billings in that case and the time spent on the accountings, which I bet
5 are not more than 1 -2 hours per year.

6 In regard to Ms. Balsam's statement that I was contacted several years ago based upon
7 Mr. Barcus' memorandum filed in the case Rickey v. Munce, PCSC 08-2-10227-6, all I can
8 say is I do not recall any contact from Mr. Barcus, either in person or over the phone, the
9 Court must understand that many attorneys call me and ask if I would be interested in serving
10 as a Guardian ad Litem. Generally speaking, I say yes and if I am appointed, then I do my
11 job. I actually believe I was probably in Court on the day the issue came up because I believe
12 it came up in front of Judge Larkin and I was in Court in another matter and I may well have
13 been asked if I wanted to serve as Guardian ad Litem at that point in time. All I know is that I
14 was not appointed and I have no other memory in that regard.

16 The bottom line as I see it is that Ms. Balsam and her client do not want me to be
17 Guardian ad Litem because I represent Ben Barcus as the guardian of his stepfather and
18 because I was once, perhaps, contacted to be a litigation Guardian ad Litem in the case of
19 Rickey v. Munce. I do not believe that these two contacts constitute a personal relationship
20 with Mr. Barcus, nor do I believe they constitute an appearance of impropriety. Please note,
21 however, I have been unable to do any investigation in this case except read pleadings.

23 Conclusion. Ms. Balsam indicates that I have a personal relationship with Mr. Barcus.
24 I want to remind all parties involved that last time I was in front of the Court, I let the Court
25 and everybody know that I had social relationships with Ben Barcus, Peter Kram, Robin

DECLARATION OF JUDSON GRAY- 2

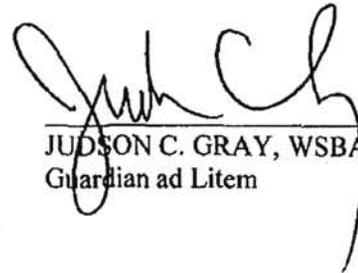
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1 Balsam, and to a lesser extent, Michael Smith. I let the Court know that I had eaten meals and
 2 engaged in other social activities on a regular basis with these individuals. At that time,
 3 nobody complained about the social interaction that I had with Ben Barcus and Peter Kram. I
 4 still stand ready, willing, and able. However, if the Court believes it would be in the best
 5 interest that I not serve, I would ask that I be allowed to resign and then Ms. Balsam's Motion
 6 be denied. I do not have a conflict of interest.

7
 8 I swear under the penalty of perjury and under the laws of the State of Washington
 9 that the foregoing is true and correct to the best of my knowledge.

10 Signed in Tacoma, Washington on this 7 day of September 2010.

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JUDSON C. GRAY, WSBA # 15195
 Guardian ad Litem

DECLARATION OF JUDSON GRAY- 3

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May 04 2011 8:30 AM

KEVIN STOCK
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**SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY**

GUARDIANSHIP OF
CLARENCE G. MUNCE

NO. 10-4-00542-3

**AFFIDAVIT OF PETITIONERS'
COUNSEL, BEN F. BARCUS, RE
DEFENDANT'S MOTION FOR
DUPLICATIVE DEPOSITIONS**

Hearing Date: May 6, 2011

STATE OF WASHINGTON)
)
County of Pierce, to-wit:)

BEN BARCUS, being first duly sworn on oath deposes and states as follows:

1. That your Affiant is over the age of eighteen years, competent to testify herein, and makes this Affidavit based upon information and belief.

2. As the Court is aware, your Affiant is the attorney of record for Petitioners, Kristy L. Rickey and Kelley R. Cavar, in the wrongful death case entitled *Rickey v. Munce*, Pierce County Superior Court Cause No.: 10-2-07470-3.

3. During the course of discovery in the wrongful death action, both Kristy Rickey and

1
2 Kelley Cavar, have been deposed. Kristy Rickey was first deposed on June 23, 2009, by defense counsel,
3 Shellie McGaughey and Steve Reich. This deposition commenced at 3:41 p.m., and concluded at 4:52
4 p.m.. Ms. Rickey's deposition was continued to December 22, 2009, and conducted by defense counsel,
5 Shellie McGaughey. This deposition commenced at 1:21 p.m, and concluded at 2:31 p.m.. A third
6 deposition date was scheduled of Ms. Rickey and taken by defense counsel, Gregory J. Wall, on March
7 16, 2011. This deposition commenced at 9:15 a.m., and concluded at 11:10 a.m..

8
9 In addition, the deposition of Kelley Cavar was also undertaken by defense counsel, Shellie
10 McGaughey, on June 23, 2009. This deposition commenced at 10:02 a.m., and concluded at 2:35 p.m..
11 A second deposition of Ms. Cavar was scheduled and taken by defense counsel, Gregory Wall, on March
12 16, 2011, and commenced at 11:21 a.m., and concluded at 12:30 p.m..

13 4. During the course of the depositions of Ms. Rickey and Ms. Cavar, the Court will note
14 that they are very thorough, and have now been undertaken on two separate occasions, the most recent
15 of which occurred in the *Rickey V. Cline*, Pierce County Superior Court Cause No.: 10-2-07470-3,
16 matter on March 16, 2011.

17 5. Your Affiant has reviewed the Declaration of Paralegal, Faith Potter, filed in Support
18 of Plaintiff's Motion to Compel Petitioner's (*sic*) Depositions, and there is nothing contained therein
19 supporting the need for yet a third a deposition of either Kristy Rickey or Kelley Cavar.

20
21 6. That the emotional distress on Kristy Rickey and Kelley Cavar during the course of the
22 two rounds of depositions that were already taken was extraordinarily difficult. The depositions were
23 taken of my clients in both their individual and representative capacities. The emotional distress on them
24 from these two depositions already undertaken was obvious and observable. They have both testified
25 twice in depositions which has covered every aspect of this case. The requested depositions by Erik

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Bauer are oppressive, burdensome, annoying, embarrassing, and duplicative. They ought not be taken unless Mr. Bauer can point to some specific facts which have not been elicited in the two prior rounds of depositions.

7. Mr. Bauer's client, Clarence Munce, has already been determined incompetent in both the criminal trial, as well as through an involuntary commitment action. Judson Gray, the Court appointed Guardian in this matter, has confirmed Clarence Munce's incompetence. Clarence Munce has not provided any information regarding his finances, nor has his counsel, Mr. Bauer. Also, the fact that Mr. Cline has an unescapable conflict of interest with his principal does not seem to bother Mr. Bauer at all. Mr. Cline has alleged that the injuries to Gerald Munce were either caused by Gerald himself, or Clarence Munce, or both. Why Mr. Bauer would not join in the request that Mr. Cline be replaced as Mr. Clarence Munce's guardian remains unexplained. There is absolutely no reason for him not to do so if he were acting genuinely in Clarence Munce's best interest. The Petitioners in this matter are not seeking appointment of themselves of Clarence Munce, but rather, are seeking an independent entity such as Pacific Guardianship Services and Christopher Neil to serve as an independent guardian of Clarence Munce. This would stop the unnecessary dissipation of assets of Clarence Munce, and allow some independent review of expenditures which benefit (or not) Mr. Clarence Munce. It would also reduce the number of attorneys in this matter that are clearly unnecessary.

On behalf of my clients, Ms. Rickey and Ms. Cavar, I request that a Protective Order be issued until and unless Mr. Bauer can show the Court exactly what he is fishing for. While fishing season opened last weekend, the waters have been completely trolled on two separate occasions by insurance defense counsel. In the alternative, if the Court declines to grant a Protective Order to limit the issues which can be explored, than it is specifically requested that only Mr. Bauer be present at the deposition

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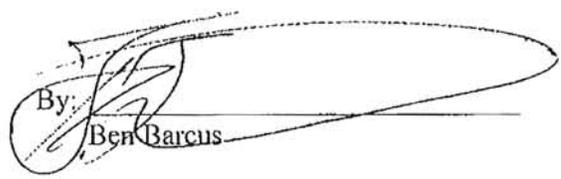
as counsel for Mr. Munce; if he is not capable of asking the questions, then he should not be representing Clarence Munce. In addition, there is no need to increase to increase any stress or induce any further emotional distress on Ms. Rickey or Ms. Cavar.

8. Your Affiant has caused true and complete copies of the depositions of Ms. Rickey and Ms. Cavar to be attached to this declaration including the following:

- Ex. A: Deposition of Kristy Rickey taken by defense counsel on June 23, 2009;
- Ex. B: Deposition of Kristy Rickey taken by defense counsel on December 22, 2009;
- Ex. C: Deposition of Kristy Rickey taken by defense counsel on March 16, 2011;
- Ex. D: Deposition of Kelley Cavar taken by defense counsel on June 23, 2009; and
- Ex. E: Deposition of Kelley Cavar taken by defense counsel on March 16, 2011.

9. There is no support whatsoever for a third deposition to be taken by defense counsel in the above-captioned matter of Ms. Rickey or Ms. Cavar when their depositions have already been taken by two different defense attorneys on two separate occasions. This can be viewed nothing other than harassment of Ms. Rickey and Ms. Cavar under Civil Rule 26 and 37, and it is respectfully suggested that the Court should deny any request for a third deposition of Ms. Cavar and Ms. Rickey, as well as impose sanctions upon defense counsel, and an appropriate protective order prohibiting such harassing discovery.

Further your AFFIANT sayeth naught.

By: 
Ben Barcus

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SIGNED before me this 3rd day of May, 2011, by Ben Barcus, in Pierce County, Tacoma,

Washington.



Heather M. Spencer

Notary Public

Printed Name: Heather M. Spencer

Resident of: Sumner, WA

Commission Expires: 4/8/13

Rickey/Cavar vs. Clarence G. Munce
Videographic Deposition of Kristy L. Rickey/6-23-09

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR PIERCE COUNTY

KRISTY L. RICKEY and KELLEY R. CAVAR,)
individually, and as Co-Executrixes of)
the Estate of Gerald Lee Munce,)
)
Plaintiffs,)
) No. 08-2-10227-6
vs.)
)
CLARENCE G. MUNCE,)
)
Defendant.)

VIDEOGRAPHIC DEPOSITION UPON ORAL EXAMINATION

of

KRISTY L. RICKEY

Taken at 4303 Ruston Way
Tacoma, Washington

DATE: June 23, 2009

REPORTED BY: Julia Williams, CCR WILLIJ*239KZ

Verb8m Reporting 206-467-0800

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APP0091

Rickey/Cavar vs. Clarence G. Munce
 Videographic Deposition of Kristy L. Rickey/6-23-09

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1 APPEARANCES
 2
 3 For the Plaintiffs
 Rickey and Cavar: BEN F. BARCUS
 4 PAUL A. LINDENMUTH
 Attorneys at Law
 5 The Law Office of Ben F. Barcus
 & Associates
 6 4303 Ruston Way
 Tacoma, Washington 98402
 7
 8 For the Defendant: SHELLIE MCGAUGHEY
 Attorney at Law
 9 McGaughy Bridges Dunlap
 325 118th Avenue Southeast
 10 Suite 209
 Bellevue, Washington 98005-3539
 11
 12 STEVE REICH
 Attorney at Law
 13 Gordon Thomas Honeywell Malanca
 600 University Street, Suite 2100
 14 Seattle, Washington 98101-4185
 15
 16 Guardian ad Litem
 for Defendant: MICHAEL B. SMITH
 Attorney at Law
 17 Comfort, Davies & Smith
 1901 65th Avenue West, Suite 200
 18 Fircrest, Washington 98466
 19
 20 Videotaped by: Peter Koslik
 Royal Video Productions
 425/391-6809
 21
 22 Also Present: Kelley R. Cavar
 23
 24
 25

1 TACOMA, WASHINGTON; TUESDAY, JUNE 23, 2009
 2 3:41 p.m.
 3 VIDEOGRAPHER: Today is June 23rd, 2009. The time
 4 on the monitor is now 3:41 p.m. This is Volume Number One,
 5 Tape Number One in the videotaped deposition of
 6 Kristy Rickey in the Superior Court of the State of
 7 Washington in and for Pierce County in the matter of
 8 Kristy L. Rickey and Kelley R. Cavar, individually and as
 9 coexecutrixes of the Estate of Gerald Lee Munce, Deceased,
 10 the Plaintiffs, versus Clarence G. Munce, Defendant. The
 11 cause number is 08-2-10227-6.
 12 We are at the offices of Ben F. Barcus & Associates.
 13 The address is 4303 Ruston Way, Tacoma, Washington 98402.
 14 Today's deposition was noticed by the attorney
 15 Shellie McGaughy.
 16 My name is Peter A. Koslik. I'm employed by Royal
 17 Video Productions, Incorporated, whose principal place of
 18 business is 950 Northwest Firwood Boulevard, Issaquah,
 19 Washington 98027. The phone number there is 425/391-6809.
 20 At this time I would ask counsel to identify
 21 themselves. Please state your name, the firm you're working
 22 for and whom you're representing in this matter starting on
 23 my right please.
 24 MR. SMITH: I'm Michael Smith. I'm the guardian
 25 ad litem for Clarence Munce.

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 3 EXAMINATION BY: PAGE
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 5 MS. MCGAUGHEY.....5
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Page 5

1 MS. MCGAUGHEY: Shellie McGaughy of McGaughy
 2 Bridges Dunlap representing Michael Smith as litigation
 3 guardian for Clarence Munce.
 4 MR. REICH: Steve Reich with Gordon Thomas
 5 Honeywell representing the defendant Clarence Munce.
 6 MR. BARCUS: Ben Barcus, Law Office of Ben Barcus
 7 & Associates representing plaintiffs.
 8 MR. LINDENMUTH: Paul Lindenmuth of the Barcus
 9 firm representing plaintiffs.
 10 VIDEOGRAPHER: Thank you. Today's court reporter
 11 is Julie Williams of Verb8m Reporting. Would you please
 12 swear in the witness at this time.
 13
 14 KRISTY L. RICKEY, deponent herein, being
 15 first duly sworn on oath,
 16 was examined and testified
 17 as follows:
 18
 19 EXAMINATION
 20 BY MS. MCGAUGHEY:
 21 Q. Good afternoon. Could you please state your name
 22 and spell your last name for the record.
 23 A. My name is Kristy L. Rickey, R-I-C-K-E-Y.
 24 Q. And you were previously last-named Munce?
 25 A. Munce.

Rickey/Cavar vs. Clarence G. Munce
Videographic Deposition of Kristy L. Rickey/6-23-09

Page 6	Page 8
<p>1 Q. Okay. And your address for the record please? 2 A. 15906 38th Avenue East, Tacoma, Washington 98446. 3 Q. And you've lived there for how many years? 4 A. About six. 5 Q. Okay. And you live there with your husband and 6 your three children? 7 A. Yes. 8 Q. Could you tell me the ages of your three children? 9 A. My oldest daughter Kaitlyn is ten, and I have 10 twins, Justin and Ryann. 11 Q. Okay. 12 A. And they are seven. 13 Q. You're not sure? 14 A. I am not sure. 15 Q. What's their date of birth? 16 A. 01 of November, yes. 17 Q. November -- 18 A. I guess it would be subtract -- 19 Q. Okay. 20 A. -- one. 21 Q. What was their actual date of birth? November 22 what? 23 A. November 9th. 24 Q. Oh, 9th? 25 A. Uh-huh.</p>	<p>1 Q. So the kids are dismissed, and you're actually on 2 summer vacation? 3 A. Right. 4 Q. What are you doing over the summer? Are you 5 working or going to school? 6 A. I'm staying home. 7 Q. Staying home. Great. What does your husband do? 8 A. He's a firefighter, paramedic. 9 Q. Who does he work for? 10 A. Graham Fire and Rescue. 11 Q. How long has he worked there? 12 A. Since -- oh, gosh -- 98. 13 Q. How long have you been married? 14 A. It will be 14 years this summer. 15 Q. Okay. Where did you go to school after high 16 school? 17 A. I went to Pierce College for two years, and then I 18 went to Central Washington University for two years. 19 Q. When did you get your teaching degree? Just four 20 years ago, or did you get it previously? 21 A. I got it in 96. 22 Q. Okay. 23 MR. BARCUS: Kristy -- excuse me -- it's important 24 for you to let Ms. McGaughey finish her question before you 25 answer.</p>
Page 7	Page 9
<p>1 Q. And your oldest daughter, what was her date of 2 birth? 3 A. June 11th. 4 Q. June 11th. 5 A. 99. 6 Q. Okay. And I see from your interrogatory answers 7 you're a third grade teacher? 8 A. Yes. 9 Q. How long have you been a third grade teacher? 10 A. This is my second year being a third grade 11 teacher. 12 Q. Okay. Have you been a teacher at a different 13 level before -- 14 A. Yes. 15 Q. -- the third grade? 16 A. Yes. I taught second grade for two years and 17 third grade for two years. 18 Q. So have you been a teacher a total of four years? 19 A. Yes, and some substitute teaching. 20 Q. Okay. How do you like teaching? 21 A. I like it. 22 Q. Okay. And I think I overheard when we were taking 23 a break or before we were taking a break that your school is 24 actually out for the year? 25 A. Yes.</p>	<p>1 MS. MCGAUGHEY: Thank you, Ben. 2 Q. Before we took our late lunch break, your sister 3 was being deposed, and she indicated that you have somewhat 4 of an estranged relationship right now. Would you agree 5 with that comment? 6 A. Yes. 7 MR. BARCUS: Object to the form of the question. 8 Q. And how would you describe your relationship 9 currently with your sister? 10 A. It's strained. 11 Q. Would you use the word strained? Is that the 12 word -- I'm sorry -- strained? 13 A. Yes, strained. 14 Q. How long has it been strained? 15 A. Since end of March. 16 Q. Okay. What happened at the end of March? 17 A. We were taking care of a garage sale for my 18 father, and that's when it started. 19 Q. What happened at that garage sale? 20 A. We were just going through things, and it got 21 tense, and words were said. 22 Q. Okay. And this was a garage sale that was 23 actually done at your father's property, or had -- 24 A. Yes. 25 Q. Okay. And had you prepared things to go for the</p>

Rickey/Cavar vs. Clarence G. Munce
Videographic Deposition of Kristy L. Rickey/6-23-09

Page 10

1 sale, or were you just in the preparation stage when you had
2 words?
3 A. It was kind of after we were finishing.
4 Q. Okay. So you'd gone through probably a lot of
5 work going through the effects at your family home and the
6 effects of your father to get it prepared to do a garage
7 sale?
8 A. Yes. There's a lot of stress involved.
9 Q. Okay. It was a stressful time, but was there
10 specific words that were said that caused you to be upset?
11 A. Yes.
12 Q. What were they?
13 A. It -- my sister said some things about my husband.
14 Q. Like what?
15 A. That he was taking away her choices.
16 Q. Do you know what she meant by that?
17 A. With the house and with making decisions.
18 Q. What did you say in response?
19 A. I said that I haven't been in a state of mind to
20 make sound decisions, so I've been giving him -- you know,
21 he's able to think things through a little clearer than I
22 am, so I have told him, I don't care about it, so you need
23 to help me.
24 Q. Okay. Did that start immediately following your
25 father's death, or was it later in time closer to the March

Page 11

1 time frame?
2 A. It's been all along.
3 Q. Okay. Had he been more actively involved around
4 the March time frame, or was he actively involved in
5 decisions that you were making for your father's estate
6 shortly after his death?
7 A. It's been the whole time.
8 Q. Okay. So when -- I know you're -- it's really
9 hard to say that word -- coexecutrixes?
10 A. Uh-huh.
11 Q. How did you decide between the two of you how you

Page 12

1 Q. Okay. Had you had a conversation with your sister
2 to make that clear to her?
3 A. Yes.
4 Q. And was it an ongoing level of tension between the
5 two of you, or was it just a breaking point in March that
6 you remember March as a specific time frame?
7 A. It's been ongoing, but nothing had been said about
8 it until that time, so it just kind of came out then.
9 Q. Okay. And taking away her choices, I'm not
10 exactly sure what you meant by that. You said something
11 about the house?
12 A. Uh-huh.
13 Q. Do you mean the house that your father was living
14 in at the time of his death?
15 A. Right.
16 Q. What is the issue related to the house?
17 A. Whether or not to sell it or rent it.
18 Q. Okay. Your husband, what does he want to do with
19 it?
20 A. We have discussed that it's not a good time to
21 sell it and that we decided that we would rent it, and we
22 didn't think that that was going to work out because we
23 weren't seeing eye to eye on making decisions, that that
24 would cause more tension between us. So we decided against
25 renting it, and now it's just undecided.

Page 13

1 Q. Okay. So let me make sure that's clear. It not
2 being a good time to sell is because of the market and the
3 economic climate?
4 A. Correct.
5 Q. So it's not that you don't want to sell it. It
6 just seems to be not the right time?
7 A. Correct.
8 Q. The idea of renting it, did that come as an
9 aftermath of coming to the conclusion it's probably not a
10 good time to sell it right now, or was that always in one of
11 your girls' mind that you'd like to keep it and rent it?

February 01 2012 8:30 AM

KEVIN STOCK
COUNTY CLERK
NO: 10-4-00542-3

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IN THE SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

In Re Guardianship of:) NO. 10-4-00542-3
)
CLARENCE G. MUNCE) DECLARATION OF PETER KRAM
) IN OPPOSITION OF CONTINUANCE
An Alleged Incapacitated Person.)

I am Peter Kram, attorney for Petitioners, Kelley Cavar and Kristy Rickey. I am over the age of eighteen, am competent to make this Declaration and make it based on personal knowledge.

I make this Declaration in opposition to the motion for continuance filed by Clarence Munce and his attorney, Erik Baucr. I have been the attorney for the Estate of Gerald Munce and the attorney for the Petitioners in this guardianship proceeding. I make this Declaration based on the knowledge of the companion cases and my participation at all guardianship hearings in this matter together with a review of various files. In 2008, Clarence Munce killed his son, Gerald Munce. He did so by shooting him in the back. Clarence Munce was charged with first degree murder in Pierce County Cause 08-1-03011-5. Following a forensic examination the court found that Clarence Munce was incapable of helping his defense or appreciating the peril he was in by reason of a mental disease or defect. On December 20, 2008, Judge Culpepper dismissed the

DECLARATION OF PETER KRAM
Page 1
Munce.1.31.12.Dec.PK

KRAM & WOOSTER, P.S.
1901 South I Street, Tacoma WA 98405
(253) 272-7929; Fax (253) 572-4167

1 murder charges without prejudice conditioned on his commitment to the care and control
2 of Department of Social and Health Services and his subsequent civil commitment
3 proceeding. Mr. Munce thus escaped the peril of a first degree murder charge and life in
4 prison.

5 The children of Gerald Munce, Kelley Cavar and Kristy Rickey petitioned the
6 court for a guardianship of the person and estate of Gerald Munce in April, 2010. This
7 case has been pending trial since July, 2010. Judson Gray was appointed the Guardian
8 Ad Litem of Clarence Munce to investigate this matter. Clarence Munce has been in a
9 locked down Alzheimer's facility since approximately the fall of 2010. There is no
10 genuine issue as to any material fact regarding the disability or lack of capacity of
11 Clarence Munce. If he is competent then he would stand trial for murder. This he cannot
12 or will not do. There is no particular reason to set this trial over. My client have opposed
13 continuances repeatedly. Mr. Munce remains incapacitated by virtue of Alzheimer's and
14 other health problems identified by healthcare providers as well as sealed documents
15 containing examinations of Mr. Munce by his physicians and the prior examinations of
16 Mr. Munce in conjunction with the criminal case. If Mr. Munce is competent then that
17 should immediately be reported to the prosecutor so that he can be tried for murder. If he
18 is not competent then there is no reason to continue this case and the issue of his
19 incapacity, already established and not denied, should be clearly established so that a
20 guardianship can be set up.
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DECLARATION OF PETER KRAM

Page 2

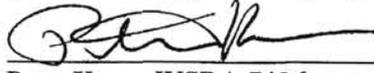
Munce.1.31.12.Dec.PK

KRAM & WOOSTER, P.S.
1901 South I Street, Tacoma WA 98405
(253) 272-7929; Fax (253) 572-4167

1 Mr. Munce and his attorneys continually claim that Dennis Cline, a nephew
2 should continue to operate under a power of attorney. This is contrary to law because
3 Mr. Cline has a vested interest in this case.

4 Dennis Cline is now a Defendant in the companion case and the cases have been
5 consolidated for trial. Cline's culpability lies in his provision of the gun used to kill
6 Gerald Munce to Clarence Munce. The only issue is whether there should be a
7 guardianship established for this obviously incontrovertibly disabled man. For these
8 reasons the Petitioners oppose a continuance.
9

10 I make this Declaration under penalty of perjury under the laws of Washington at
11 Tacoma, Pierce County, Washington, this 31~~st~~ day of January, 2012.

12 
13 _____
Peter Kram, WSBA 7436
Attorney for Petitioners

September 18 2012 3:48 PM

The Honorable Judge JOHN R. HICKMAN
Oral Argument: September 21, 2012 at 9:00am
KEVIN STOCK
COURT CLERK
NO. 10-4-00542-3

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

In Re Guardianship of:)	
)	
CLARENCE G. MUNCE	)	NO. 10-4-00542-3
)	
An Alleged Incapacitated Person,	)	DECLARATION IN REPLY AND
	)	SUPPORT OF MOTION TO
	)	CONTINUE TRIAL DATE
)	

Erik L. Bauer, being duly sworn upon oath deposes and says:

1. On two occasions Judge Stolz continued this guardianship trial so that it would be held after both of the wrongful death cases that the Petitioners have filed against Clarence Munce and his Power of Attorney, Dennis Cline. Both times the Petitioners then continued the wrongful death cases, past the Guardianship trial date.
2. On February 3, 2012 this Court also continued this guardianship trial so that it would be held after both of the wrongful death cases. (See Exhibit A: Order to Continue) Again, the Petitioners continued one wrongful death case past the Guardianship trial date. The other wrongful death case is still up on appeal. Mr. Munce is simply asking the Court to affirm its previous ruling and continue this guardianship trial again.
3. Essentially, Judge Stolz, and this Court have previously found that it would be a complete waste of the Court's time to have this Guardianship trial before the wrongful death cases for

1 the very good reason that this Guardianship trial would be rendered unnecessary if it were
2 held after the other trials.

3 4. The Petitioners claim that Dennis Cline is an inappropriate Power of Attorney for Clarence
4 Munce and needs to be replaced, not because Dennis Cline has done anything wrong, but
5 rather, because they say Dennis Cline has a "conflict of interest" due to the fact that the
6 Petitioners have sued him for the wrongful death of Gerald Munce on an attenuated theory
7 of vicarious liability alleging that Dennis Cline returned some guns to Clarence Munce
8 approximately a year before the homicide of Gerald Munce. This "conflict of interest"
9 which Petitioners created themselves is the sole complaint they have against Dennis Cline
10 acting on his uncle's behalf. The Cline trial is set for January 28, 2013. Once that case is
11 resolved, any "conflict of interest" will disappear, no need for a guardian will exist.

12 5. In a similar vein, there will be no need for a Guardianship trial after the lawsuit filed against
13 Clarence Munce is concluded. In reality, the only reason the Petitioners filed this
14 guardianship action was to gain a strategic advantage over Clarence Munce in the wrongful
15 death case. They have no other concern.

16 6. The Petitioners have no interest in Clarence Munce's health or well being. They have never
17 visited him, nor have they sent him so much as a Christmas card. They have never
18 displayed any interest in most of the subject areas which typically concern people seeking a
19 guardianship.

20 7. The Petitioners have demonstrated no concern regarding the cleanliness of Clarence
21 Munce's accommodations. The Petitioners have not inquired about the adequacy of his
22 medical care.
23
24
25

- 1 8. In short, the Petitioners have only demonstrated concern over Clarence Munce's financial
2 situation and their concern is not directed in a manner which could possibly help Clarence
3 Munce. All the Petitioners want is to control Clarence Munce's money so they can acquire
4 it for themselves. Completely selfish – self – centered motives. And completely against the
5 best interests of Clarence Munce.
- 6 9. Dennis Cline is the nephew of Clarence Munce. Dennis is very close to Clarence and in fact
7 Clarence Munce took Dennis in and raised Dennis during Dennis's teenage years. Dennis
8 Cline has been a loyal and devoted supporter of Clarence over the course of the last few
9 very difficult years of Clarence's life.
- 10 10. When Clarence was accused of homicide, Dennis Cline stood by Clarence, arranged for
11 counsel, and otherwise supported his uncle. Dennis Cline secured his uncle's home and
12 rental house and other belongings at his uncle's request.
- 13 11. When Clarence was declared incompetent by the Court due to dementia, it was Dennis Cline
14 who interviewed countless nursing homes and dementia facilities before settling on the very
15 excellent Alzheimer's care facility where Clarence Munce currently resides.
- 16 12. Likewise, when the civil suit was filed against Clarence by the Petitioners, it was Dennis
17 Cline who spent a great deal of time to find lawyers, deal with the homeowners insurance,
18 and otherwise take care of his uncles' interest.
- 19 13. What's more, Dennis Cline has gone about this in an intelligent and careful manner. He
20 consulted with, and obtained his own Attorney, Robin Balsam. Mr. Cline has worked
21 closely with the litigation guardian, Mr. Michael Smith, and he has submitted quite
22 voluntarily to regular reports and accountings to the Court. Judge Larkin monitored Mr.
23 Cline's handling of Clarence's monies, as did guardian Michael Smith and Attorney Robin
24
25

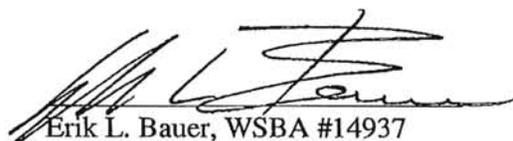
1 Balsam. Attorney Judson Gray has conducted a thorough investigation into the job
2 performed by Dennis Cline and has concluded that Mr. Cline has done a satisfactory job as
3 Power of Attorney for Clarence Munce, and has found no problems whatsoever. No
4 irregularities were ever discovered. Dennis Cline has been doing an excellent and honest
5 job. There is no harm in leaving the situation as it currently exists.

6 14. Unfortunately for Dennis Cline, he was perhaps protecting his uncle too effectively. In a fit
7 of frustration, the Petitioners filed the lawsuit against Dennis Cline alleging that he provided
8 the guns to his uncle, some 12 months prior to the homicide. Afterwards, on April 7th, 2010,
9 the Petitioners filed this action for guardianship.

10 15. The Respondent respectfully requests this court to continue this trial date past the trial date
11 in the wrongful death case against Dennis Cline which is set for January 28, 2013. After
12 that trial concludes, the Court could entertain motions regarding either dismissal of this
13 guardianship petition, or the propriety of continuing this trial past the trial date in wrongful
14 death suit against Clarence Munce, which has no current trial date as it is up on
15 interlocutory appeal.
16

17
18 I declare under the penalty of perjury under the laws of the State of Washington that the
19 foregoing statements are true and correct.

20 Dated this 18th day of September, 2012.

21 
22 Erik L. Bauer, WSBA #14937
23 Attorney for Clarence Munce
24
25

THE LAW OFFICE OF
ERIK L. BAUER
215 Tacoma Avenue South
Tacoma, Washington 98402
(253) 383-2000 or (360) 895-1500
FAX (253) 383-0154

EXHIBIT A: ORDER TO CONTINUE

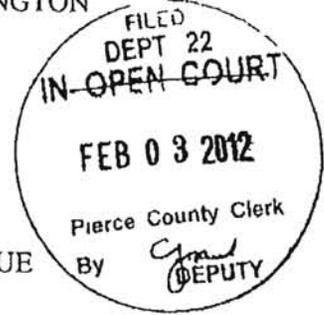


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The Honorable Judge John R Hickman

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE



In Re Guardianship of)
CLARENCE G MUNCE)
An Alleged Incapacitated Person)
Defendant(s))

NO 10 4 00542 3

ORDER TO CONTINUE
TRIAL DATE

THIS MATTER having come before the court upon the request of Attorney Erik L Bauer Attorney for Clarence G Munce and the Court having considered the records and files herein it is now therefore

ORDERED ADJUDGED AND DECREED that the Jury Trial currently set for February 15th 2012 is continued until Oct 22 2012
This matter shall be continued until after
Dated this ___ day of February 2012

[Signature] JOHN R HICKMAN
JUDGE OF THE PIERCE COUNTY SUPERIOR COURT

both wrongful death cases are completed

Presented by

[Signature]
Erik L Bauer WSBA #14937
Attorney for Clarence Munce

[Signature] 14007

THE LAW OFFICE OF
ERIK L BAUER
215 T m A nu S th
Ta om Wash gto 98402
(253) 383 2000 or (360) 895 1500
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10-4-00542-3 34804066 MTSC 08-09-10

FILED
IN COUNTY CLERK'S OFFICE

A.M. AUG - 6 2010 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

In re the Guardianship of:

CLARENCE G. MUNCE,

An Alleged Incapacitated Person.

NO. 10-4-00542-3

MOTION AND DECLARATION FOR
ORDER TO SHOW CAUSE WHY
GUARDIAN AD LITEM SHOULD NOT
BE REMOVED OR REPLACED FOR
CONFLICT OF INTEREST

1. Relief Sought. DENNIS CLINE, attorney in fact for Clarence G. Munce, by and through ROBIN H. BALSAM, Attorney at Law, and moves the Court for an order directing JUDSON C. GRAY, Guardian ad Litem, to appear and show cause why he should not be removed/replaced as Guardian ad Litem pursuant to RCW 11.88.090(3)(b).

2. Grounds. Dennis Cline believes that the Guardian ad Litem has a conflict of interest in this matter, as Mr. Gray was contacted by the Petitioners' wrongful death attorney, Ben Barcus, and the case was discussed with him several years ago when Mr Barcus's office tried to have Mr Gray appointed as a litigation guardian ad litem (see Exhibit "A"). Further, Peter Kram, attorney for the

MOTION AND DECLARATION FOR ORDER TO
SHOW CAUSE WHY GUARDIAN AD LITEM
SHOULD NOT BE REMOVED OR REPLACED FOR
CONFLICT OF INTEREST - 1

ORIGINAL

ROBIN H BALSAM P S
Attorneys at Law
609 Tacoma Avenue S
Tacoma Washington 98402
(253) 627-7605 / Fax (253) 572-0912

1 Petitioners in the guardianship, named Mr. Gray in the petition and order appointing
2 him, which is not allowed by court rule or statute.

3 Recently it came to counsel's attention that Mr. Gray has been personally
4 representing Mr. Barcus in a guardianship action concerning Mr. Barcus's
5 stepfather. Attached as Exhibit "B" are the two letters sent to Mr. Gray
6 regarding this issue. Attached as Exhibit "C" is Mr. Gray's response, and attached
7 as Exhibit "D" is counsel's response asking Mr. Gray to recuse himself.

8 3. Basis. RCW 11.88.090, the records and files herein, and the appended
9 Declaration of Robin H. Balsam.

10 4. Argument. Per RCW 11.88.090(3)(a), a guardian ad litem is to be free
11 of influence from anyone interested in the result of the proceeding. Within five
12 days of his appointment, the guardian ad litem must serve a notice of his
13 appointment.

14 Counsel received the first two pages of Mr. Gray's Statement of
15 Qualifications by fax on April 8, 2010 (Exhibit "E"). The document does not
16 indicate rate of compensation, whether or not the guardian ad litem had contact
17 with any party to the proceeding prior to his appointment, or whether he has a
18 conflict of interest.

19 RCW 11.88.090(4)(a) requires the court to appoint the person whose name
20 next appears on the registry in a system of consistent rotation except under
21 extraordinary circumstances such as the need for particular expertise. If the
22 court does not select the next person on the list, it shall include in the order of
23 appointment a written reason for its decision.

24
25 MOTION AND DECLARATION FOR ORDER TO
SHOW CAUSE WHY GUARDIAN AD LITEM
SHOULD NOT BE REMOVED OR REPLACED FOR
CONFLICT OF INTEREST - 2

ROBIN H BALSAM P S
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Tacoma Washington 98402
(253) 627-7605 / Fax (253) 572-0912

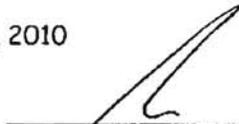
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In the Order Appointing Guardian ad Litem, there are findings that set out why the petitioners request an experienced attorney, and name a specific guardian ad litem, Judson Gray, rather than a list of names or choices for the court. It is the custom in Pierce County to provide three names, and the court chooses someone.

The statute requires that any objection to the appointment of the guardian ad litem be filed within three days. On July 29, 2010, counsel discovered that Mr. Gray had a conflict of interest and/or appearance of impropriety. Since Mr. Gray has filed a defective document failing to disclose his conflict, counsel should be able to object pursuant to the statute at this time. The court stated that no motions should be filed in the month of August. Counsel is leaving on vacation on August 6, and is therefore filing this motion and putting it on the calendar for September 17, 2010 to allow everyone to have enough time to prepare for the motion in the month of September.

DATED this 3 day of August, 2010


ROBIN H. BALSAM, WSBA #14001
Attorney for Dennis Cline, attorney in fact for Clarence Munce

DECLARATION OF ROBIN H. BALSAM

My name is Robin H. Balsam. I represent Dennis Cline, who is the attorney in fact for Clarence G. Munce.

On July 29, 2010, it came to my attention that Judson Gray represented Ben Barcus in the Guardianship of Harry W. Johnson II, Mr. Barcus' stepfather, in

MOTION AND DECLARATION FOR ORDER TO SHOW CAUSE WHY GUARDIAN AD LITEM SHOULD NOT BE REMOVED OR REPLACED FOR CONFLICT OF INTEREST - 3

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Attorneys at Law
609 Tacoma Avenue S
Tacoma Washington 98402
(253) 627-7605 / Fax (253) 572-0912

1 Pierce County cause no. 07-4-01612-3. On May 7, 2010, Mr. Gray presented an
2 order in the Johnson case reissuing letters of guardianship of the person and
3 estate of Mr. Johnson to Ben Barcus, which indicates that his representation of
4 Mr. Barcus is ongoing.

5 In reviewing the Statement of Qualifications filed by Mr. Gray in the Munce
6 guardianship, the statement required under RCW 11.88.090(3)(a) that the Guardian
7 ad Litem is free of influence from anyone interested in the outcome of the
8 proceedings is missing. Mr. Barcus is not a party to the guardianship, but he has
9 shown up at every single hearing, and is representing the individuals who filed the
10 guardianship against Mr. Munce in the related wrongful death case. It seems to me
11 that notification should have come to all involved parties that Mr. Gray has a
12 personal relationship with Mr Barcus. At a minimum, it is an appearance of
13 impropriety.

14 This guardianship action is an abuse of process and is a back-door attempt
15 to get information the Petitioners are not entitled to under Pierce County cause no.
16 08-2-10227-6. Copies of pleadings from the civil case have been filed separately
17 which deal with the issue of the fact that Mr. Munce does not need a guardian, and
18 the attorney in fact is being monitored by the court at this time.

19 This case has been hotly contested. A mediation was held on February 25,
20 2010, and within three weeks of the mediation, which was unsuccessful, Dennis Cline
21 was sued under Pierce County cause no. 10-2-07470-3 for having returned weapons
22 to Mr. Munce a year before the incident with his son. On April 7, 2010, a
23 guardianship action was filed. The Petitioners fail to point out to the court that
24 there is a second attorney in fact named in the power of attorney. Additionally,
25

MOTION AND DECLARATION FOR ORDER TO
SHOW CAUSE WHY GUARDIAN AD LITEM
SHOULD NOT BE REMOVED OR REPLACED FOR
CONFLICT OF INTEREST - 4

ROBIN H. BALSAM P.S.
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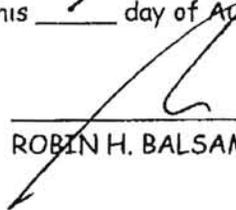
the Petitioners allege that they are beneficiaries under Mr. Munce's will, which they are not.

At the outset of the guardianship case, Mr. Gray brought a motion for protective order without consulting with counsel, the attorney for Mr. Munce, or the attorney for Mr. Cline. However, Mr. Gray had clearly had already spoken to Mr. Barcus about the case in that the materials that were faxed to counsel did not show they had been sent to Petitioners' attorney Mr. Kram, but had been sent to Mr. Barcus, who is not even an attorney in the guardianship case.

A neutral guardian ad litem is needed to investigate this matter—one that has no relationship to the parties or their attorneys and who does not know about the case from either party's perspective.

I certify under penalty of perjury according to the laws of the State of Washington that the foregoing is true and correct

DATED at Tacoma, Washington, this 3 day of August, 2010.



ROBIN H. BALSAM

MOTION AND DECLARATION FOR ORDER TO
SHOW CAUSE WHY GUARDIAN AD LITEM
SHOULD NOT BE REMOVED OR REPLACED FOR
CONFLICT OF INTEREST - 5

ROBIN H. BALSAM P S
Attorneys at Law
609 Tacoma Avenue S
Tacoma Washington 98402
(253) 627-7605 / Fax (253) 572-0912

EXHIBIT "A"

EXCERPT FROM MEMORANDUM PREPARED BY BEN BARCUS
IN CIVIL CASE 08-2-10227-6 REQUESTING APPOINTMENT OF JUDSON GRAY
AS GUARDIAN AD LITEM FOR CLARENCE MUNCE

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MOTION AND DECLARATION FOR ORDER TO
SHOW CAUSE WHY GUARDIAN AD LITEM
SHOULD NOT BE REMOVED OR REPLACED FOR
CONFLICT OF INTEREST - 6

ROBIN H. BALSAM P S
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08-2-10227-6 3041855u

FILED
IN COUNTY CLERK'S OFFICE
A.M. AUG 27 2008 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY

KRISTY L. RICKEY and KELLEY R
CAVAR, individually, and as Co-Personal
Representatives of the Estate of Gerald Lee
Munce, Deceased,

Plaintiffs,

v.

CLARENCE G. MUNCE,
Defendant.

NO. 08-2-10227-6

MEMORANDUM IN SUPPORT OF
APPOINTMENT OF GUARDIAN AD
LITEM ON BEHALF OF DEFENDANT
CLARENCE G. MUNCE, AN
ALLEGED INCAPACITATED
PERSON

COMES NOW the Plaintiffs herein, by and through their attorney of record, Ben F. Barcus of The Law Offices of Ben F. Barcus & Associates, P.L.L.C., and hereby submits the following Memorandum in Support of Plaintiffs' Motion for Appointment of a Guardian ad Litem to investigate the alleged incapacity of Defendant Clarence G. Munce, herein.

I. RELIEF REQUESTED

The Court is respectfully requested to enter an Order, pursuant to RCW 4.08.060, requiring the appointment of an independent Guardian ad Litem on behalf of Defendant Clarence G. Munce, as it appears that he is incapacitated to act in his own behalf in this matter, due to mental and/or physical infirmity.

MEMORANDUM IN SUPPORT OF APPOINTMENT
OF GUARDIAN AD LITEM ON BEHALF OF
DEFENDANT CLARENCE G. MUNCE, AN
ALLEGED INCAPACITATED PERSON - 1

The Law Offices Of Ben F. Barcus
& Associates, P.L.L.C.
4303 Ruston Way
Tacoma, Washington 98402
(253) 752-4444 • FAX 752-1035

ORIGINAL

1
2 Attorney nominating his nephew, Dennis Cline, or his "girlfriend" Barbara Griebe, as his
3 Attorneys-in-Fact. It is also questionable as to whether Defendant Munce was of sound mind when
4 he executed a modified Will three and one-half months after the previous Will, also nominating
5 his nephew Dennis Cline and "girlfriend" Barbara Griebe, as his primary beneficiaries. As both
6 Dennis Cline and Barbara Griebe have obvious conflicts with not only the Plaintiffs, but with their
7 personal interests that could be placed over and above that of Defendant Clarence G. Munce, they
8 should be found to be unsuitable to act as Guardian ad Litem. A truly independent guardian ad
9 litem should properly be appointed.
10

11 In that regard, the Plaintiffs suggest the appointment of Judson C Gray, Esq., who is well
12 known to the Court as a guardian ad litem, and who can investigate and report to the Court
13 concerning the necessity of a guardianship of the person and/or the estate of Defendant Clarence
14 G. Munce. The nature and scope of the guardianship can be determined upon proper investigation
15 and the filing of a report to the Court by the GAL.
16

17 VI. CONCLUSION

18 It is quite obvious, based upon the volatile, violent and unstable acts undertaken by
19 Defendant Clarence G. Munce, that he is of unsound mind, and otherwise incapacitated. The
20 Court, on its own motion, or motion of a party, can request the appointment of a guardian ad litem
21 to investigate the nature and scope of the needed guardianship consistent with RCW 4.08.060.
22 Here, it is respectfully suggested that Judson C. Gray, Esq. would be an appropriate person to be
23 named to investigate the need for a guardianship and report to the Court accordingly. In the
24 interim, the Court should maintain all restraints upon the transferring of any properties or

MEMORANDUM IN SUPPORT OF APPOINTMENT
OF GUARDIAN AD LITEM ON BEHALF OF
DEFENDANT CLARENCE G. MUNCE, AN
ALLEGED INCAPACITATED PERSON - 12

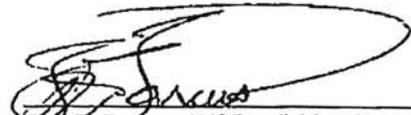
The Law Offices Of Ben F. Barcus
& Associates, P.L.L.C.
4303 Ruston Way
Tacoma, Washington 98402
(253) 752-4444 • FAX 752-1035

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encumbering such properties of the Defendant herein, in order to prevent irreparable harm as argued in Plaintiffs' Motion for Temporary Restraining Orders and Order to Show Cause, as well as their request for issuance of a preliminary injunction, and Motion for Revision.

The Court is respectfully requested to enter the Order Appointing Guardian ad Litem Judson C. Gray, Esq., in order to investigate the nature and scope of the guardianship necessary for Defendant Clarence G. Munce herein, and report to the Court accordingly

DATED this th26 day of August, 2008.


Ben F. Barcus, WSBA # 15576
Attorney for Plaintiffs

MEMORANDUM IN SUPPORT OF APPOINTMENT OF GUARDIAN AD LITEM ON BEHALF OF DEFENDANT CLARENCE G. MUNCE, AN ALLEGED INCAPACITATED PERSON - 13

The Law Offices Of Ben F. Barcus & Associates, P.L.L.C.
4303 Ruston Way
Tacoma, Washington 98402
(253) 752-4444 • FAX 752-1035

EXHIBIT "B"

LETTERS TO JUDSON GRAY DATED JULY 29 AND JULY 30, 2010

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MOTION AND DECLARATION FOR ORDER TO
SHOW CAUSE WHY GUARDIAN AD LITEM
SHOULD NOT BE REMOVED OR REPLACED FOR
CONFLICT OF INTEREST - 7

ROBIN H BALSAM P S
Attorneys at Law
609 Tacoma Avenue S
Tacoma Washington 98402
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ROBIN H. BALSAM P.S.

ATTORNEYS AT LAW
A PROFESSIONAL SERVICES CORPORATION

Robin H. Balsam
Steven E. Lust
Heather L. Crawford

July 29, 2010

✓ Judson Gray - e-mail + ABC
The Gray Law Firm
4142 - 6th Avenue
Tacoma, WA 98406

Re: Guardianship of Clarence Munce

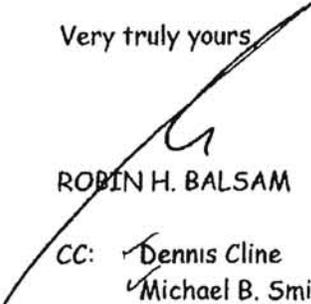
Dear Mr. Gray:

It has come to my attention that you represented Ben Barcus in the Guardianship of Harry W. Johnson II, Mr. Barcus' stepfather, in Pierce County cause no. 07-4-01612-3, in his petition for guardianship. On May 7, 2010, you presented an order in this case reissuing letters of guardianship of the person and estate of Mr. Johnson to Ben Barcus.

In reviewing your Statement of Qualifications filed in the Munce guardianship, the statement that you are free of influence from anyone interested in the outcome of the proceedings, which is required under RCW 11.88.090(3)(a), is missing.

I would appreciate it if you would give me a call.

Very truly yours


ROBIN H. BALSAM

CC: ✓ Dennis Cline
✓ Michael B. Smith
✓ Erik Bauer

RHB/cb

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609 TACOMA AVE SOUTH TACOMA, WASHINGTON 98402
TELEPHONE (253) 627-7800 FACSIMILE (253) 572-0912
Email cmb@balsamlaw.com

'10 JUL 29 AM 10:24
COPY

APP0114

ROBIN H. BALSAM P.S.

ATTORNEYS AT LAW
A PROFESSIONAL SERVICES CORPORATION

Robin H. Balsam
Steven E. Lust
Heather L. Crawford

July 30, 2010

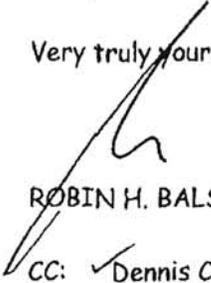
✓ Judson Gray
The Gray Law Firm
4142 - 6th Avenue
Tacoma, WA 98406

Re: Guardianship of Clarence Munce

Dear Mr. Gray:

This is a follow up to my letter of yesterday. In trying to get a hold of you, I have learned that you are on vacation until Monday. Therefore, I wanted to send this letter to you letting you know that I think we should talk on August 2 when we have our meeting scheduled, but I do not intend to discuss substantive matters in the case with you. I think the conflict issue needs to be resolved first. Please call me when you get back to the office. I would be glad to chat with you on the phone or in person during our prescheduled meeting time.

Very truly yours,


ROBIN H. BALSAM

CC: ✓ Dennis Cline
✓ Michael B. Smith
✓ Erik Bauer

RHB/cb

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609 TACOMA AVE SOUTH TACOMA, WASHINGTON 98402
TELEPHONE (253) 627-7800 FACSIMILE (253) 572-0912
Email cmb@balsamlaw.com



APP0115

EXHIBIT "C"

LETTER FROM JUDSON GRAY DATED AUGUST 2, 2010

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MOTION AND DECLARATION FOR ORDER TO
SHOW CAUSE WHY GUARDIAN AD LITEM
SHOULD NOT BE REMOVED OR REPLACED FOR
CONFLICT OF INTEREST - 8

ROBIN H BALSAMP S
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Tacoma Washington 98402
(253) 627-7605 / Fax (253) 572-0912

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THE GRAY LAW FIRM, P.S.

Judson C. Gray, Attorney

4142 - 6th Avenue

Tacoma, Washington 98406

Telephone: (253) 759-1141 Facsimile: (253) 759-1447

jgrayattorney@harbornet.com

Gayle Bennett, CP
Certified Paralegal

Megan Nelson
Legal Secretary

August 2, 2010

Robin Balsam
609 Tacoma Avenue South
Tacoma, WA 98402

Re: Guardianship of Clarence Munce

Dear Ms. Balsam

I am writing to you in regard to the above-referenced matter and in response to your letter dated July 28, 2010 and July 29, 2010. I am sending copies of this letter to the known interested attorneys in this case.

First of all, I do not know why my Statement of Qualifications does not contain the language from RCW 11.88.090(3)(a), perhaps it is because my staff used an old form as noted by the Gray Alvord, P.S., at the bottom of my Statement of Qualifications filed in April. I shall file a new Amended Statement of Qualifications that has the correct language. I am familiar with the language and believe that it is true.

Secondly, in regard to the fact that I represent Attorney Ben Barcus, who is the Guardian of his step father, Harry W. Johnson, in PCSC 07-4-01612-3, I have reviewed RPC 1.7 and 1.8 and based upon a review of those code provisions and the comments that come after them, I do not see a conflict. I don't actually even see an appearance of a conflict.

Mr. Barcus is not a party in any of the cases that involve Mr. Munce as far as I know. Mr. Barcus is not a party in this case and while he is an attorney representing someone in another case that involves Mr. Munce, that case I do not believe has anything to do with this case and my duties.

The Order, which was entered specifically, limits my investigation. I have not looked at any pleadings of any of the other cases, including the case in which Mr. Barcus is an attorney. Unless those pleadings have been filed in this case, I may have glanced at them but I do not recall them presently.

My duty in this case is to the Clarence Munce. My duty is to investigate the allegations of the

August 2, 2010
Page 2 of 2

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ORIGINAL

THE GRAY LAW FIRM P.S.

proposed Petition, inform Mr. Muncie of his rights, look at reasonable alternatives, and point out issues to the Court. Of course, I have all my other duties as required by statute.

In any event, if you or any of the attorneys feel that I cannot act impartially in this matter, and then I would ask you bring it to the attention of the Court and if the Court determines I should withdraw, I will. Remember, at this point in time about the only work I have actually done is read through a variety of legal pleadings filed in this case. I have also attempted to protect Mr. Muncie by ensuring that his assets were not dissipated, but I have assured by Michael Smith that that has not been happening.

I therefore, based upon your letter of July 30, 2010, in which you state that you do not intend to discuss substantive matters in this case, I am not inclined to meet with you at your office. I thought the intent of meeting with you at your office was to review accountings and meet with your client. I have numerous ex-parte hearings on Monday morning. I will be happy to talk with you on the phone upon my return.

Sincerely,
THE GRAY LAW FIRM, P.S.
Sent without signature to expedite

Judson C. Gray

JCG/gsb

EXHIBIT "D"

LETTER TO JUDSON GRAY DATED AUGUST 3, 2010

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MOTION AND DECLARATION FOR ORDER TO
SHOW CAUSE WHY GUARDIAN AD LITEM
SHOULD NOT BE REMOVED OR REPLACED FOR
CONFLICT OF INTEREST - 9

ROBIN H BALSAMP S
Attorneys at Law
609 Tacoma Avenue S
Tacoma Washington 98402
(253) 627-7605 / Fax (253) 572-0912

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ROBIN H. BALSAM P.S.

ATTORNEYS AT LAW
A PROFESSIONAL SERVICES CORPORATION

Robin H. Balsam
Steven E. Lust
Heather L. Crawford

August 3, 2010

✓ Judson Gray
The Gray Law Firm
4142 - 6th Avenue
Tacoma, WA 98406

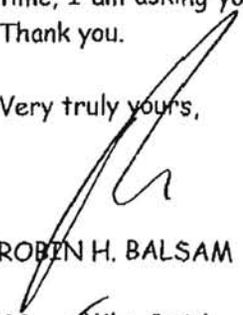
Re: Guardianship of Clarence Munce

Dear Jud:

Thank you for your letter of August 2. I reviewed your letter with interest. Your Statement of Qualifications fails to reflect your relationship with an individual who is involved in the case. Mr. Barcus is not a party to the guardianship, but he has shown up at every single hearing, and is representing the individuals who filed the guardianship against Mr. Munce. It seems to me that notification should have been filed that you have an attorney/client relationship with Mr. Barcus. At a minimum, it is an appearance of impropriety.

The other interesting thing is that you were appointed out of rotation. I know that you have nothing to do with that, but obviously Mr. Barcus is closely aligned with Mr. Kram. At this time, I am asking you to step aside. If you do not step aside, I will have to file a motion. Thank you.

Very truly yours,


ROBIN H. BALSAM

CC: ✓ Mike Smith
✓ Erik Bauer
✓ Dennis Cline

RHB/cb

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609 TACOMA AVE SOUTH TACOMA, WASHINGTON 98402
TELEPHONE (253) 627-7800 FACSIMILE (253) 572-0912
Email: cmb@balsamlaw.com



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E-MAILED

CB

EXHIBIT "E"

STATEMENT OF QUALIFICATIONS FILED BY JUDSON GRAY

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MOTION AND DECLARATION FOR ORDER TO
SHOW CAUSE WHY GUARDIAN AD LITEM
SHOULD NOT BE REMOVED OR REPLACED FOR
CONFLICT OF INTEREST - 10

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ROBIN H BALSAM P S
Attorneys at Law
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Tacoma Washington 98402
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FILED
COUNTY CLERK'S OFFICE

A.M. APR - 9 2010 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE**

In re the Guardianship of)
CLARENCE G MUNCE) No. 10-4-00542-3
An Alleged Incapacitated Person.) STATEMENT OF QUALIFICATIONS

GUARDIAN AD LITEM STATEMENT OF QUALIFICATIONS

THIS STATEMENT is presented as required by RCW 11 88.090.

REQUISITE AREAS OF KNOWLEDGE, TRAINING, AND EXPERIENCE are detailed below:

I have been a court-appointed Guardian ad Litem and court-appointed attorney for the alleged incapacitated persons in guardianship matters since 1994. During the past 13 years, my appointment as a Guardian ad Litem and court-appointed attorney has resulted in my being involved in over 125 cases, including a contested jury trial and contested bench trials. I have been appointed as a Guardian ad Litem in Pierce, Kitsap, and King counties and have represented petitioners in Pierce and King County guardianships.

I. THE NEEDS OF THE ELDERLY

I have attended the following Guardian ad Litem training and other miscellaneous CLE training which specifically address the needs of the elderly:

1. Pierce County Bar Association Guardian ad Litem Training, 1/28/94, 7.0 CLE credits
2. WSBA Elder Law CLE, 8/23/96, 6.75 CLE credits
3. Inter-County GAL Training, 5/28-5/29/98, 14.75 CLE credits
4. Inter-County GAL Training, 5/14/99, 7.0 CLE credits
5. Inter-County GAL Training 2000
6. 2000 Professional Guardianship 2-day Training Seminar

STATEMENT OF QUALIFICATIONS - 1

GRAY ALVORD, P.S.
4142 6TH AVENUE
TACOMA, WA 98406
Telephone (253) 759-1141 Fax (253) 759-1447

ORIGINAL

- 1 7. Inter-County Guardian ad Litem Training, 5/11/01 6.75 CLE Credits
- 2 8. 2001 Inter-County Guardian ad Litem Training, 6.75 CLE Credits
- 3 9. 2002 Inter-County Guardian ad Litem Training, 6.75 Credits
- 4 10. 2003 Inter-County Guardian ad Litem Training, 7.25 Credits
- 5 11. 2004 Inter-County Guardian ad Litem Training, 13.25 Credits
- 6 12. 2005 Inter-County Guardian ad Litem Training, 6.75 Credits
- 7 13. 2006 Inter-County Guardian ad Litem Training, 5.75 Credits
- 8 14. 2006 Elder Law CLE, 5.00 Credits
- 9 15. 2nd, 4th & 5th Annual Tacoma-Pierce County Guardianship CLE

6 In addition, I have received and have purchased the Guardian ad Litem training materials produced by DSHS and adopted by Pierce County Superior Court as part of its guardian ad litem certification process for both 1996 and 1997. I also have the 2002 - 2006 Inter-County Guardian ad Litem Handbook. I have also taken various real estate, real estate tax, estate planning, ethics, probate, and Elder Law continuing legal education courses for the last 12 years amounting to well over 100 hours of continuing legal education which has exposed me in a direct manner to the financial, tax, real estate, and estate planning needs of the elderly.

10 I have been involved in numerous guardianships involving impaired elderly people, as an attorney for the Petitioner, a Guardian ad Litem, and a court-appointed attorney. My involvement has given me keen insight into the personal care needs of a variety of differently impaired elderly individuals who need and desire help yet also need, desire, and have the right to have their dignity and personal autonomy preserved. I also represent certified professional Guardians and lay people needing help in Elder Law matters.

13 I have personally visited numerous adult family homes and care facilities in King, Kitsap, Pierce, and Thurston Counties. My association with these guardianships and visiting these facilities have exposed me to the needs virtually all of the elderly.

15 II. THE NEEDS OF PERSONS WITH PHYSICAL DISABILITIES

16 Again, in addition to the above-referenced Guardian ad Litem and CLE training which addressed this issue, I have been appointed as a Guardian ad Litem and court-appointed attorney in guardianships involving persons with physical disabilities over the last 13 years. As the acting GAL, I have been exposed to the needs of persons with physical disabilities and persons with hearing disabilities, speech disabilities, sight disabilities, ambulatory disabilities, and general communication problems, including the inability to speak or communicate through the common use of language. I have handled cases involving Quadriplegia, sightlessness and all manners of physical disabilities.

20 III. THE NEEDS OF PERSONS WITH MENTAL ILLNESS

21 In addition to the training and CLEs referenced above, as a court-appointed Guardian ad Litem and court-appointed attorney representing wards, I have been involved with and have represented persons with mental illnesses, including schizophrenia, anxiety disorder, and persons with manic depressive-type problems commonly referred to as bipolar disorders.

24 IV. THE NEEDS OF PERSONS WITH DEVELOPMENTAL DISABILITIES

25 In addition to the training and CLEs referenced above and paragraph III referenced above, I have been involved in guardianships as a GAL and as a court-appointed attorney for persons with developmental disabilities. As a court-appointed GAL, I have observed, watched, and interacted with many people as their mental and physical condition slowly deteriorated. It aided me in my STATEMENT OF QUALIFICATIONS - 2

GRAY ALVORD, P S

4142 6TH AVENUE

TACOMA, WA 98406

Telephone (253) 759-1141 Fax (253) 759-1447

1 understanding of the needs of persons with developmental disabilities. I have gained experience
2 through being appointed guardian ad litem for people with mild Down's syndrome, general mental
3 retardation, and other persons with neurological disorders, Asperger's Syndrome, Bipolar Disorder,
4 ADHD, and the like

3 **V. OTHER AREAS RELEVANT TO THE NEEDS OF INCAPACITATED PERSONS**

4 I believe my experience as a sole practitioner and focusing my practice in the areas of real
5 estate law, wills, probate, and elder law, along with my prior experience in family law, exposes me
6 to a wide variety of situations in which certain individual's needs need to be addressed, met, and
7 satisfied. I have in the past been a basketball coach at the high school level and have been involved
8 with the Alumni Board at the Charles Wright Academy which has also exposed me to the needs of
9 the less fortunate. I was on the Mary Bridge Children's Foundation Board for the years 2003-
10 2005

8 **VI. LEGAL PROCEDURE**

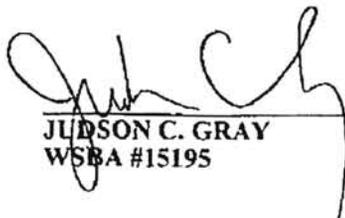
9 I have participated in guardianship cases since 1994, including a jury trial, bench trials, and
10 numerous guardianship hearings. Furthermore, I have personally witnessed well over 250 show
11 cause hearings involving guardianships, reports, testimony, and decisions of court commissioners.
12 I have reviewed on numerous occasions the entire RCWs, including Chapter 11.88 and Chapter
13 11.92, which are directly responsible for the parameters of the current guardianship laws and
14 thinking. I have also been involved as a Guardian ad Litem in a minor settlement on a few
15 occasions. I have also in the past been involved in an adoption.

13 **VII. THE REQUIREMENTS OF CHAPTER 11.88 AND 11.92**

14 I qualify under RCW 11.88.020 as I am over the age of 18, of sound mind, and have never
15 been convicted of a felony or misdemeanor involving moral turpitude. I am a resident of this state
16 and am otherwise a person whom the court should find suitable. I am an active, licensed practicing
17 attorney and I also qualify under RCW 11.92.010 as a Guardian ad Litem.

16 I have successfully completed the Guardian ad Litem training as approved by King, Kitsap,
17 Pierce, Snohomish, and Thurston County Superior Courts; and my practical experience and my
18 practice continue to involve guardianship matters. My fees are at a rate of \$200.00 per hour.

18 DATED this 8 day of April 2010.

19
20 
21 JUDSON C. GRAY
22 WSBA #15195

FILED
IN COUNTY CLERK'S OFFICE

A.M. AUG - 6 2010 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

In re the Guardianship of:

CLARENCE G. MUNCE,

An Alleged Incapacitated Person.

NO. 10-4-00542-3

ORDER TO SHOW CAUSE
(ORTSC)

Clerk's Action Required

The Court does find: Dennis Cline presents facts and authority properly supporting the issuance of the requested Order to Show Cause.

Therefore, it is Ordered:

That Judson C. Gray shall appear in person before this Court at the place and time below and show cause why the relief requested in the motion of Dennis Cline entitled Motion for Order to Show Cause should not be granted.

Date: Friday, September 17, 2010 Time: 9:00 a.m.
Place: Pierce County Superior Court, 930 Tacoma Ave. South, Tacoma, WA 98402
Before Judge Katherine M. Stolz

If you disagree with any part of the motion, you must respond to the motion in writing before the hearing and by the deadline for your county. At the hearing, the court will consider *Written* sworn affidavits or declarations. Oral testimony may *Not* be allowed. To respond, you must: (1) file your documents with the court; 2) provide a copy of those documents to the judge or commissioner's staff; (3) serve the other party's attorney with copies of your documents (or have the other party served if that party does not have an attorney); and (4) complete your filing and service of documents within the time

ORDER TO SHOW CAUSE - 1

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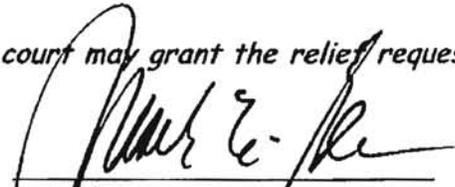
ROBIN H. BALSAMP S
Attorneys at Law
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period required by the local court rules in effect in your county. If you need more information, you are advised to consult an attorney or a courthouse facilitator.

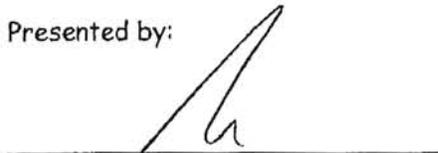
If you fail to appear in person, the court may grant the relief requested in the motion.

Dated: AUG 06 2010



JUDGE/COMMISSIONER
For JUDGE STOLZ

Presented by:



ROBIN H. BALSAM, WSBA #14001

Attorney for Dennis Cline, attorney in fact
for Clarence G. Munce

FILED
IN COUNTY CLERK'S OFFICE
A.M. AUG - 6 2010 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

ORDER TO SHOW CAUSE - 2

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ROBIN H BALSAM P S
Attorneys at Law
609 Tacoma Avenue S
Tacoma Washington 98402
(253) 627-7605 / Fax (253) 572-0912

May 04 2011 8:30 AM

KEVIN STOCK
COUNTY CLERK
NO: 10-4-00542-3

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**SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY**

GUARDIANSHIP OF
CLARENCE G. MUNCE

NO. 10-4-00542-3

**AFFIDAVIT OF PETITIONERS'
COUNSEL, BEN F. BARCUS, RE
DEFENDANT'S MOTION FOR
DUPLICATIVE DEPOSITIONS**

Hearing Date: May 6, 2011

STATE OF WASHINGTON)
)
County of Pierce, to-wit:)

BEN BARCUS, being first duly sworn on oath deposes and states as follows:

1. That your Affiant is over the age of eighteen years, competent to testify herein, and makes this Affidavit based upon information and belief.

2. As the Court is aware, your Affiant is the attorney of record for Petitioners, Kristy L. Rickey and Kelley R. Cavar, in the wrongful death case entitled *Rickey v. Munce*, Pierce County Superior Court Cause No.: 10-2-07470-3.

3. During the course of discovery in the wrongful death action, both Kristy Rickey and

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Kelley Cavar, have been deposed. Kristy Rickey was first deposed on June 23, 2009, by defense counsel, Shellie McGaughey and Steve Reich. This deposition commenced at 3:41 p.m., and concluded at 4:52 p.m.. Ms. Rickey's deposition was continued to December 22, 2009, and conducted by defense counsel, Shellie McGaughey. This deposition commenced at 1:21 p.m, and concluded at 2:31 p.m.. A third deposition date was scheduled of Ms. Rickey and taken by defense counsel, Gregory J. Wall, on March 16, 2011. This deposition commenced at 9:15 a.m., and concluded at 11:10 a.m..

In addition, the deposition of Kelley Cavar was also undertaken by defense counsel, Shellie McGaughey, on June 23, 2009. This deposition commenced at 10:02 a.m., and concluded at 2:35 p.m.. A second deposition of Ms. Cavar was scheduled and taken by defense counsel, Gregory Wall, on March 16, 2011, and commenced at 11:21 a.m., and concluded at 12:30 p.m..

4. During the course of the depositions of Ms. Rickey and Ms. Cavar, the Court will note that they are very thorough, and have now been undertaken on two separate occasions, the most recent of which occurred in the *Rickey V. Cline*, Pierce County Superior Court Cause No.: 10-2-07470-3, matter on March 16, 2011.

5. Your Affiant has reviewed the Declaration of Paralegal, Faith Potter, filed in Support of Plaintiff's Motion to Compel Petitioner's (*sic*) Depositions, and there is nothing contained therein supporting the need for yet a third a deposition of either Kristy Rickey or Kelley Cavar.

6. That the emotional distress on Kristy Rickey and Kelley Cavar during the course of the two rounds of depositions that were already taken was extraordinarily difficult. The depositions were taken of my clients in both their individual and representative capacities. The emotional distress on them from these two depositions already undertaken was obvious and observable. They have both testified twice in depositions which has covered every aspect of this case. The requested depositions by Erik

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Bauer are oppressive, burdensome, annoying, embarrassing, and duplicative. They ought not be taken unless Mr. Bauer can point to some specific facts which have not been elicited in the two prior rounds of depositions.

7. Mr. Bauer's client, Clarence Munce, has already been determined incompetent in both the criminal trial, as well as through an involuntary commitment action. Judson Gray, the Court appointed Guardian in this matter, has confirmed Clarence Munce's incompetence. Clarence Munce has not provided any information regarding his finances, nor has his counsel, Mr. Bauer. Also, the fact that Mr. Cline has an unescapable conflict of interest with his principal does not seem to bother Mr. Bauer at all. Mr. Cline has alleged that the injuries to Gerald Munce were either caused by Gerald himself, or Clarence Munce, or both. Why Mr. Bauer would not join in the request that Mr. Cline be replaced as Mr. Clarence Munce's guardian remains unexplained. There is absolutely no reason for him not to do so if he were acting genuinely in Clarence Munce's best interest. The Petitioners in this matter are not seeking appointment of themselves of Clarence Munce, but rather, are seeking an independent entity such as Pacific Guardianship Services and Christopher Neil to serve as an independent guardian of Clarence Munce. This would stop the unnecessary dissipation of assets of Clarence Munce, and allow some independent review of expenditures which benefit (or not) Mr. Clarence Munce. It would also reduce the number of attorneys in this matter that are clearly unnecessary.

On behalf of my clients, Ms. Rickey and Ms. Cavar, I request that a Protective Order be issued until and unless Mr. Bauer can show the Court exactly what he is fishing for. While fishing season opened last weekend, the waters have been completely trolled on two separate occasions by insurance defense counsel. In the alternative, if the Court declines to grant a Protective Order to limit the issues which can be explored, than it is specifically requested that only Mr. Bauer be present at the deposition

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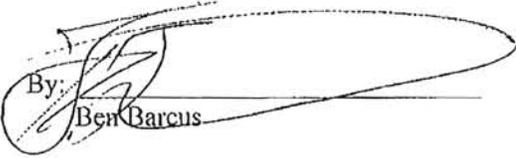
as counsel for Mr. Munce; if he is not capable of asking the questions, then he should not be representing Clarence Munce. In addition, there is no need to increase to increase any stress or induce any further emotional distress on Ms. Rickey or Ms. Cavar.

8. Your Affiant has caused true and complete copies of the depositions of Ms. Rickey and Ms. Cavar to be attached to this declaration including the following:

- Ex. A: Deposition of Kristy Rickey taken by defense counsel on June 23, 2009;
- Ex. B: Deposition of Kristy Rickey taken by defense counsel on December 22, 2009;
- Ex. C: Deposition of Kristy Rickey taken by defense counsel on March 16, 2011;
- Ex. D: Deposition of Kelley Cavar taken by defense counsel on June 23, 2009; and
- Ex. E: Deposition of Kelley Cavar taken by defense counsel on March 16, 2011.

9. There is no support whatsoever for a third deposition to be taken by defense counsel in the above-captioned matter of Ms. Rickey or Ms. Cavar when their depositions have already been taken by two different defense attorneys on two separate occasions. This can be viewed nothing other than harassment of Ms. Rickey and Ms. Cavar under Civil Rule 26 and 37, and it is respectfully suggested that the Court should deny any request for a third deposition of Ms. Cavar and Ms. Rickey, as well as impose sanctions upon defense counsel, and an appropriate protective order prohibiting such harassing discovery.

Further your AFFIANT sayeth naught.

By: 
Ben Barcus

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SIGNED before me this 3rd day of May, 2011, by Ben Barcus, in Pierce County, Tacoma,

Washington.



Heather M. Spencer

Notary Public
Printed Name: Heather M. Spencer
Resident of: Sumner, WA
Commission Expires: 4/8/13

EXHIBIT A

Rickey/Cavar vs. Clarence G. Munce
Videographic Deposition of Kristy L. Rickey/6-23-09

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

KRISTY L. RICKEY and KELLEY R. CAVAR,)
individually, and as Co-Executrixes of)
the Estate of Gerald Lee Munce,)
)
Plaintiffs,)
) No. 08-2-10227-6
vs.)
)
CLARENCE G. MUNCE,)
)
Defendant.)

VIDEOGRAPHIC DEPOSITION UPON ORAL EXAMINATION
of
KRISTY L. RICKEY

Taken at 4303 Ruston Way
Tacoma, Washington

DATE: June 23, 2009

REPORTED BY: Julia Williams, CCR WILLIJ*239KZ

Verb8m Reporting 206-467-0800

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APP0133

Rickey/Cavar vs. Clarence G. Munce
 Videographic Deposition of Kristy L. Rickey/6-23-09

Page 6	Page 8
<p>1 Q. Okay. And your address for the record please? 2 A. 15906 38th Avenue East, Tacoma, Washington 98446. 3 Q. And you've lived there for how many years? 4 A. About six. 5 Q. Okay. And you live there with your husband and 6 your three children? 7 A. Yes. 8 Q. Could you tell me the ages of your three children? 9 A. My oldest daughter Kaitlyn is ten, and I have 10 twins, Justin and Ryann. 11 Q. Okay. 12 A. And they are seven. 13 Q. You're not sure? 14 A. I am not sure. 15 Q. What's their date of birth? 16 A. 01 of November, yes. 17 Q. November -- 18 A. I guess it would be subtract -- 19 Q. Okay. 20 A. -- one. 21 Q. What was their actual date of birth? November 22 what? 23 A. November 9th. 24 Q. Oh, 9th? 25 A. Uh-huh.</p>	<p>1 Q. So the kids are dismissed, and you're actually on 2 summer vacation? 3 A. Right. 4 Q. What are you doing over the summer? Are you 5 working or going to school? 6 A. I'm staying home. 7 Q. Staying home. Great. What does your husband do? 8 A. He's a firefighter, paramedic. 9 Q. Who does he work for? 10 A. Graham Fire and Rescue. 11 Q. How long has he worked there? 12 A. Since -- oh, gosh -- 98. 13 Q. How long have you been married? 14 A. It will be 14 years this summer. 15 Q. Okay. Where did you go to school after high 16 school? 17 A. I went to Pierce College for two years, and then I 18 went to Central Washington University for two years. 19 Q. When did you get your teaching degree? Just four 20 years ago, or did you get it previously? 21 A. I got it in 96. 22 Q. Okay. 23 MR. BARCUS: Kristy -- excuse me -- it's important 24 for you to let Ms. McGaughey finish her question before you 25 answer.</p>
Page 7	Page 9
<p>1 Q. And your oldest daughter, what was her date of 2 birth? 3 A. June 11th. 4 Q. June 11th. 5 A. 99. 6 Q. Okay. And I see from your interrogatory answers 7 you're a third grade teacher? 8 A. Yes. 9 Q. How long have you been a third grade teacher? 10 A. This is my second year being a third grade 11 teacher. 12 Q. Okay. Have you been a teacher at a different 13 level before -- 14 A. Yes. 15 Q. -- the third grade? 16 A. Yes. I taught second grade for two years and 17 third grade for two years. 18 Q. So have you been a teacher a total of four years? 19 A. Yes, and some substitute teaching. 20 Q. Okay. How do you like teaching? 21 A. I like it. 22 Q. Okay. And I think I overheard when we were taking 23 a break or before we were taking a break that your school is 24 actually out for the year? 25 A. Yes.</p>	<p>1 MS. MCGAUGHEY: Thank you, Ben. 2 Q. Before we took our late lunch break, your sister 3 was being deposed, and she indicated that you have somewhat 4 of an estranged relationship right now. Would you agree 5 with that comment? 6 A. Yes. 7 MR. BARCUS: Object to the form of the question. 8 Q. And how would you describe your relationship 9 currently with your sister? 10 A. It's strained. 11 Q. Would you use the word strained? Is that the 12 word -- I'm sorry -- strained? 13 A. Yes, strained. 14 Q. How long has it been strained? 15 A. Since end of March. 16 Q. Okay. What happened at the end of March? 17 A. We were taking care of a garage sale for my 18 father, and that's when it started. 19 Q. What happened at that garage sale? 20 A. We were just going through things, and it got 21 tense, and words were said. 22 Q. Okay. And this was a garage sale that was 23 actually done at your father's property, or had -- 24 A. Yes. 25 Q. Okay. And had you prepared things to go for the</p>

3 (Pages 6 to 9)

Verb8m Reporting 206-467-0800

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APP0135

Rickey/Cavar vs. Clarence G. Munce
Videographic Deposition of Kristy L. Rickey/6-23-09

Page 10	Page 12
<p>1 sale, or were you just in the preparation stage when you had 2 words? 3 A. It was kind of after we were finishing. 4 Q. Okay. So you'd gone through probably a lot of 5 work going through the effects at your family home and the 6 effects of your father to get it prepared to do a garage 7 sale? 8 A. Yes. There's a lot of stress involved. 9 Q. Okay. It was a stressful time, but was there 10 specific words that were said that caused you to be upset? 11 A. Yes. 12 Q. What were they? 13 A. It -- my sister said some things about my husband. 14 Q. Like what? 15 A. That he was taking away her choices. 16 Q. Do you know what she meant by that? 17 A. With the house and with making decisions. 18 Q. What did you say in response? 19 A. I said that I haven't been in a state of mind to 20 make sound decisions, so I've been giving him -- you know, 21 he's able to think things through a little clearer than I 22 am, so I have told him, I don't care about it, so you need 23 to help me. 24 Q. Okay. Did that start immediately following your 25 father's death, or was it later in time closer to the March</p>	<p>1 Q. Okay. Had you had a conversation with your sister 2 to make that clear to her? 3 A. Yes. 4 Q. And was it an ongoing level of tension between the 5 two of you, or was it just a breaking point in March that 6 you remember March as a specific time frame? 7 A. It's been ongoing, but nothing had been said about 8 it until that time, so it just kind of came out then. 9 Q. Okay. And taking away her choices, I'm not 10 exactly sure what you meant by that. You said something 11 about the house? 12 A. Uh-huh. 13 Q. Do you mean the house that your father was living 14 in at the time of his death? 15 A. Right. 16 Q. What is the issue related to the house? 17 A. Whether or not to sell it or rent it. 18 Q. Okay. Your husband, what does he want to do with 19 it? 20 A. We have discussed that it's not a good time to 21 sell it and that we decided that we would rent it, and we 22 didn't think that that was going to work out because we 23 weren't seeing eye to eye on making decisions, that that 24 would cause more tension between us. So we decided against 25 renting it, and now it's just undecided.</p>
Page 11	Page 13
<p>1 time frame? 2 A. It's been all along. 3 Q. Okay. Had he been more actively involved around 4 the March time frame, or was he actively involved in 5 decisions that you were making for your father's estate 6 shortly after his death? 7 A. It's been the whole time. 8 Q. Okay. So when -- I know you're -- it's really 9 hard to say that word -- coexecutrixes? 10 A. Uh-huh. 11 Q. How did you decide between the two of you how you 12 would settle your father's estate or affairs when you were 13 designated as coindividuals? 14 A. We sat down as a family and our husbands, and we 15 talked about -- we kind of made a list of things that we 16 needed to take care of and what was priorities, and we went 17 from there. 18 Q. How soon after your father's death did that 19 conversation take place? 20 A. We were talking in August. 21 Q. Okay. And by that time frame then, had you kind 22 of let it be known that you were in no state of mind, and 23 you were kind of delegating to your husband to help make the 24 decisions for you? 25 A. I felt so.</p>	<p>1 Q. Okay. So let me make sure that's clear. It not 2 being a good time to sell is because of the market and the 3 economic climate? 4 A. Correct. 5 Q. So it's not that you don't want to sell it. It 6 just seems to be not the right time? 7 A. Correct. 8 Q. The idea of renting it, did that come as an 9 aftermath of coming to the conclusion it's probably not a 10 good time to sell it right now, or was that always in one of 11 your girls' mind that you'd like to keep it and rent it? 12 A. We weren't really sure what we wanted to do. We 13 were just -- you know, options -- 14 Q. Okay. 15 A. -- what we could do. 16 Q. How have you gone about resolving this issue? 17 You've described it as undecided at the present time. 18 A. It still is. 19 Q. Okay. Have you taken any steps to decide how or 20 when you're going to handle this? 21 A. I have mentioned that I needed to get out of 22 school before I could be available to do anything. I've 23 been doing everything on my days off, vacations, so there's 24 been no time to do it because I work full-time. 25 Q. Sure. And obviously you have to be available for</p>

4 (Pages 10 to 13)

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1 the kids at school, right?
2 A. Uh-huh.
3 Q. Yes?
4 A. Yes.
5 Q. So as far as coming to some resolution with your
6 sister, you think that the summer months might prove the
7 opportunity to do that as it relates to the house?
8 A. Yes.
9 Q. Have there been other items of tangible property
10 that have caused some concern between the two of you?
11 A. The property in Morton, what to do with that as
12 well.
13 Q. Okay. And what? Has your sister expressed a
14 desire to keep that more herself or --
15 A. We haven't decided.
16 Q. Well, why is there an issue then?
17 A. Whether or not to sell it or keep it. We don't
18 know.
19 Q. Okay. Well, what -- I don't understand why that
20 would be a source of tension. If you don't know, you just
21 don't know. Why would that create friction between the two
22 of you?
23 A. The issue is that we don't particularly want to
24 own anything with somebody else if it's not working out.
25 Q. So it's the co-ownership idea?

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1 A. Yes.
2 Q. Okay. How do you feel personally about the
3 property in Morton? Would you like to keep that for
4 yourself?
5 A. I really don't care.
6 Q. Okay.
7 A. That's why I have someone helping me with
8 decisions, because I don't care.
9 Q. Okay. So as it relates to materialistic things or
10 assets that's in your dad or was in your dad's possession,
11 do you not really care about what happens to it? You don't
12 have a strong opinion for the items one way or another?
13 A. I care about what happens to it, but, you know, in
14 the whole scheme of things, it doesn't mean anything to me.
15 Q. Okay. So let's transition into a second to
16 talking about, how did you first learn about your father's
17 death?
18 A. My sister called.
19 Q. Okay. And do you remember -- I'm sure you
20 remember the phone call vividly. What do you remember her
21 saying?
22 A. Well, I was at my in-laws' for the weekend, and --
23 Q. Do they live out of town?
24 A. Yes. They live on Mason Lake, so we --
25 Q. Okay. Is that in Washington?

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1 A. Yes. It's by Shelton.
2 Q. Okay.
3 A. We were there, and we were asleep, and my
4 mother-in-law came down with the phone, and she said,
5 Kristy, you know, there's a phone call, and I knew it wasn't
6 good because it was the middle of the night, and my sister
7 was screaming on the other end.
8 Q. Was she even able to articulate --
9 A. No.
10 Q. -- what had happened?
11 A. No. She could tell me, but I had to ask her over
12 and over, and I had to talk to her husband for a moment.
13 Q. And what was the natural progression of the events
14 following that phone call? Did you stay at your in-laws'
15 house and then travel back the next day? How did that work
16 out?
17 A. We left immediately.
18 Q. Okay. Did you interface with your sister early
19 that morning?
20 A. Yes. We went right to her house.
21 Q. Okay. And you had your three kids with you. Did
22 they stay --
23 A. No.
24 Q. -- at the in-laws'?
25 A. They stayed.

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1 Q. Okay. How did you process the loss?
2 A. How do I process the loss?
3 Q. Yes.
4 A. Not well.
5 Q. Could you tell me -- and we'll maybe talk about
6 time frames, but in the first very early phase of learning
7 about your father's death -- that seems to be one of the
8 most traumatic times -- and then even the first few weeks,
9 how were you able to function?
10 A. Very minimally.
11 Q. Okay. And school had been out for you, correct?
12 A. Yes.
13 Q. So you were on summer vacation. Had you ever
14 experienced -- strike that. This is kind of an unfair
15 question because this is never fair to ask, but how would
16 you describe the loss that you felt following the loss of
17 your mother compared to the loss following the loss of your
18 father?
19 A. How did I feel?
20 Q. Yes.
21 A. It was devastating.
22 Q. And in comparing the two, is there any way to
23 describe in words the difference? the similarities?
24 A. It was worse with my dad.
25 Q. And what do you attribute that to?

5 (Pages 14 to 17)

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1 A. The way he was killed.
 2 Q. So the nature of it?
 3 A. And who killed him.
 4 Q. Okay. Because it was his father?
 5 A. My grandfather.
 6 Q. Okay. How would you describe your relationship
 7 with your grandfather before last June?
 8 A. I didn't talk to him anymore.
 9 Q. How long had it been since you had not talked to
 10 him?
 11 A. I talked to him -- one of the last times I talked
 12 to him was on April 29th, 2006.
 13 Q. Why do you remember that date so well?
 14 A. Because there was an incident at my father's
 15 house.
 16 Q. And was that an incident where Sunny was present?
 17 A. Yes.
 18 Q. Okay. Could you tell me about that incident?
 19 A. I was in the back bedroom, and we -- and my aunt
 20 was back there, and I was in the process of helping my dad
 21 with his finances, and I was on the computer checking his
 22 statement for him to make sure everything was going okay,
 23 and I heard yelling in the living room, and it was my
 24 grandfather. He came in through the back door. You know,
 25 uninvited he came in through the back door, and he was

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1 yelling at my dad, and I stood there for a few minutes
 2 trying to figure out what was going on, and he was yelling
 3 about the Ocean Shores property saying, I'm not dead yet,
 4 over and over.
 5 Q. Repeating the same words over and over?
 6 A. Uh-huh. I'm not dead yet, pointing his finger in
 7 my dad's face.
 8 Q. Did it get physical?
 9 A. It did.
 10 Q. What did you observe?
 11 A. I observed Clarence shoving my dad, and my dad was
 12 holding his arms down trying to restrain himself.
 13 Q. Was that in the kitchen?
 14 A. It was in the living room.
 15 Q. Do you remember the time of day?
 16 A. It was afternoon.
 17 Q. Was it a weekend?
 18 A. I don't remember.
 19 Q. Do you know why Sunny was there?
 20 A. Her and her husband were over visiting, and it was
 21 my mom and dad's anniversary, so we were concerned about my
 22 dad being alone that day, so we went over to spend time with
 23 him. And we were just -- I think that my uncle went up to
 24 get some food or something, and so when he left is when
 25 Clarence came, and my uncle came back right at the tail end

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1 when Clarence was leaving.
 2 Q. So your uncle also had an opportunity to see what
 3 was going on?
 4 A. He saw the very end of it.
 5 Q. Okay. Did it get more physical than pushing?
 6 A. I was yelling at him.
 7 Q. Okay. Did he ever say anything other than, I'm
 8 not dead yet, I'm not dead yet?
 9 A. He called my sister a fucking troublemaker.
 10 Q. And did he use her name, or did he call your
 11 sister -- was he talking to you, or just describe for me --
 12 A. He was talking about Kelley. He said her name.
 13 Q. Okay. And did you respond?
 14 A. I told him he's not allowed to talk about her that
 15 way, and I won't take it.
 16 Q. Okay. Did he get physical at all with you?
 17 A. He started yelling at me, and I told him this is
 18 all about his money, and, I'm so F-ing tired of hearing
 19 about you worry about your money. We do not want any of
 20 your money.
 21 Q. So you told him that?
 22 A. Yes. And I told him on the way out if he didn't
 23 stop acting this way, he's going to die old and alone.
 24 Q. Had you had any kind of altercations or
 25 conversations with him about his money before?

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1 A. No.
 2 Q. So this would have been the first time?
 3 A. Me directly with him, yes.
 4 Q. Okay. Had you ever seen him be physical or had
 5 you ever observed any physical confrontations between your
 6 father and your dad before this date?
 7 A. No.
 8 Q. And you remember the date so well because that's
 9 your mom and dad's anniversary?
 10 A. Yes.
 11 Q. And I understand your sister wasn't there?
 12 A. No.
 13 Q. Had she been there earlier that day? Do you know?
 14 A. I don't think so. I really don't remember.
 15 Q. Did you disclose or somehow notify her of what you
 16 had observed and heard?
 17 A. Yes, I told her about it afterwards.
 18 Q. Was it in close time proximity, or was it just in
 19 due course the next time you saw her?
 20 A. I probably called her later on and told her, you
 21 know, what was said and what happened.
 22 Q. Okay. You said that your dad kept his arms down
 23 trying to restrain himself as your grandfather was pushing
 24 at him. Did he say anything?
 25 A. I don't remember what he said, but I was really

6 (Pages 18 to 21)

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<p>1 surprised at how well he was able to hold back with someone 2 in his face like that. 3 Q. Uh-huh. 4 A. I was really surprised. 5 Q. Did you ever know your dad to have any kind of 6 anger issues? 7 A. No. 8 Q. Did you ever see him have words with somebody or 9 physical altercations with anybody? 10 A. No. 11 Q. Did you ever observe him have -- I think you 12 already answered this. Other than this event, you never saw 13 any physical interactions between your grandfather and him? 14 A. No, never. 15 Q. Was that the last time you ever observed the two 16 of them together? 17 A. I saw them at my -- it would be my grandfather's 18 brother's wife's -- it was Avis Munce, her funeral. I saw 19 them together that day. 20 Q. Is that A-V-I-S? 21 A. A-V-I-S I think. 22 Q. Avis. And I'm sorry. That's your grandfather's 23 sister? 24 A. Sister-in-law. 25 Q. Sister-in-law. And you probably saw him it sounds</p>	<p>1 Q. Was there ever a point in time when you were close 2 to him as a grandchild? 3 A. Yeah. I loved him when I was a child. 4 Q. Okay. And when you remember going over to -- did 5 you call him Papa? 6 A. Yes. 7 Q. And did you call his wife Nana? 8 A. Yes. 9 Q. And as he got older, did you have any terms of 10 endearment for him, or did you call him Clarence? What did 11 you call him, if anything? 12 A. I called him Papa. 13 Q. Papa? 14 A. Up until my father's death. 15 Q. I heard from your sister there was -- she 16 remembers -- I was just going to see if you remember the 17 same thing -- that holidays were most often spent with your 18 full family, going over to your Nana and Papa's house? 19 MR. BARCUS: Object to the form of the question. 20 A. I remember going over there every weekend, and if 21 anything happened special in school like an award, you know, 22 we always called them up right away or -- they were the 23 first people we called. They were the closest people to us. 24 Q. When did that start changing? 25 A. As we were growing up and we got jobs and</p>
Page 23	Page 25
<p>1 like from afar? You didn't interact with him, did you? 2 A. I did say something to him. 3 Q. Okay. Do you remember what -- 4 A. I told him that I didn't hate him. 5 Q. Did you get the impression that he knew what you 6 were talking about? 7 A. Yeah, because he would call my sister and not me. 8 He acted like he was afraid of me because I yelled at him. 9 I stood up for myself. 10 Q. When you say he would call your sister, you mean 11 on the telephone? 12 A. Yes. 13 Q. Okay. After that, did he ever call you, after 14 April 29th? 15 A. I think he might have called and left a message 16 one time. 17 Q. Okay. Would he have called you before April 29th? 18 Would that have been something he would have done? 19 A. Yeah, yes. 20 Q. Would it be just, Hi, checking in? What would be 21 the nature or extent of the your phone interactions with him 22 before April 29th? 23 A. What have you been doing? That's about it. 24 Q. Okay. 25 A. How have you been? How are the kids?</p>	<p>1 boyfriends and other interests, and we still would see them, 2 but it was -- you know, over time it became -- you know, it 3 decreased. 4 Q. With them living closer to you than a lot of 5 people have the opportunity to have their grandparents, 6 would you describe it as a fairly warm relationship over the 7 years until April 29th? 8 MR. BARCUS: Object to the form of the question. 9 A. Not always. 10 Q. Tell me about events or time frames that changed 11 how the relationship was as far as your interactions with 12 your grandfather. 13 A. They would get upset if we didn't spend enough 14 time over there, or if we came by and we didn't stay for 15 three hours, if we stayed for just 30 minutes, they'd get 16 upset. 17 Q. Okay. What about when your grandfather lost his 18 wife? Did you notice any change in your grandfather then? 19 A. I noticed a difference. 20 Q. What kind of things did you observe as far as a 21 difference? 22 A. I don't think he was restrained as much as he used 23 to be when my grandmother was alive. 24 Q. Do you mean wasn't restrained in his like how he 25 would interact with people? Is that what you're talking</p>

7 (Pages 22 to 25)

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<p>1 about? 2 A. Correct. 3 Q. So when your grandmother was alive, he seemed to 4 have better interpersonal relationships? 5 A. I think so. I think that she, you know, tried to 6 straighten him out when he was, you know, having issues with 7 people. 8 Q. Did you know him to be a drinker? 9 A. I did. 10 Q. And what observations did you make, and was it 11 progressive? How would you describe your observations of 12 his -- 13 A. He'd always have a drink in his hand or -- 14 Q. Do you know what he drank? 15 A. Hard alcohol. 16 Q. So like? 17 A. Probably whiskey. 18 Q. Could you also smell it? 19 A. Sometimes when I'd give him a kiss good-bye or 20 something. 21 Q. Okay. When you say he always had a drink in his 22 hands, would that be at all times of the day, or how did you 23 notice -- 24 A. No, not all times of the day. He would have a 25 drink, and you knew what was in that drink. It wasn't</p>	<p>1 time that I confronted him about, you know, money and things 2 like that. 3 Q. As a granddaughter of his at that time in 4 April 29th of 06, you weren't involved at all with his 5 finances, were you? 6 A. I came over -- oh, I can't even remember the year, 7 but I was writing checks out for him. 8 Q. For the grandpa? 9 A. Yeah, for paying his bills. 10 Q. Okay. So would you come over on like a monthly 11 basis to help him with his bills? 12 A. It was just like one or two times. 13 Q. One or two times a month or -- 14 A. Total. 15 Q. Oh, okay. So do you know who would pay his bills 16 when you weren't doing it? 17 A. I think he did. 18 Q. Okay. 19 A. He had a desk all set up. It looked like all of 20 his things. 21 Q. I guess what I'm wondering is, as it relates to 22 his finances and this conversation or altercation in April 23 of 06, other than paying his bills on a couple occasions, 24 what did you have to do with his finances at all? 25 A. I didn't.</p>
Page 27	Page 29
<p>1 water. 2 Q. Was it something that you as a family or as being 3 part of your family with your father had discussed his 4 drinking as an issue before 06? 5 A. I don't think we ever really talked about it. We 6 talked about it not in his presence. We all knew what was 7 going on and maybe why he'd become more aggressive and 8 hostile and say mean things was -- we figured it was because 9 he was drinking. 10 Q. Did you ever stage -- I think the word is -- an 11 intervention or try to address his drinking issue with him 12 as a family? 13 A. No. Any time we confronted him about anything 14 like that, he just became more hostile, and it wasn't worth 15 it to us. 16 Q. Was he ever confronted about anything? You said 17 every time he was confronted about something, he became more 18 hostile. What issues did you confront him about? 19 A. It was mostly other people. It wasn't me. 20 Q. Okay. Would it be fair to say you didn't have any 21 confrontations with him then as far as addressing either 22 drinking or other issues which caused him to be more 23 hostile? 24 MR. BARCUS: Object to the form of the question. 25 A. Just on the April 29th is pretty much the only</p>	<p>1 Q. Okay. So you weren't taking money from him, 2 right? 3 A. No. 4 Q. He didn't pay for your college education, did he? 5 A. Nope. 6 Q. He wasn't giving you expensive gifts, was he? 7 A. Nope. 8 Q. So the issues regarding finances, you didn't 9 understand what he was talking about, did you? 10 A. It was property. 11 Q. Property? 12 A. And cars. 13 Q. So what's the issue with cars? The property, we 14 talked about the -- I think the ocean property where he said 15 on that day, I'm not dead yet, in relationship to that 16 property. Was that the period of time when he was wanting 17 to sell it? 18 A. He did that after that day. 19 Q. Okay. And did your dad tell you anything about 20 conversations that he had had with them in relationship to 21 this property, the ocean property? 22 A. Very minimally. 23 Q. How did you even know that he had sold the 24 property? 25 A. I think that my aunt looked it up.</p>

8 (Pages 26 to 29)

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1 Q. Okay. And what aunt is that?
2 A. Sunny.
3 Q. So sometime after April 29th, 2006, your aunt told
4 you that he had sold the property?
5 A. Yes.
6 Q. Did your dad ever mention to you that he had sold
7 the property?
8 A. He was concerned about it. We didn't want it to
9 go. It was a very good memory of our family and my
10 grandmother. We spent a lot of good times there.
11 Q. Well, did anybody ever offer to buy it from him?
12 Do you know?
13 A. No. He said he was going to give it to us.
14 Q. When did he tell you that?
15 A. Probably a couple years -- all of our -- the five
16 grandchildren were all born. So he got their social
17 security numbers, their birthdays, because he said he was
18 going to set it up to give to my sister and I and our kids.
19 Q. And I'm sorry. The time frame for that was when?
20 A. It would be after Luke was born.
21 Q. Okay. And Luke was born? He's seven now, right?
22 Oh, okay.
23 A. I think.
24 Q. I think he's seven.
25 A. I think so.

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1 Q. So sometime after Luke was born, he confronted you
2 and your sister and said, I'd like to give you the ocean
3 property?
4 A. It was sometime after that because I remember
5 giving him birth dates, and I had to look it up a couple of
6 times. He asked me more than once.
7 Q. Okay. So there was nothing in writing though
8 giving you the property, was there?
9 A. No. It was just his word.
10 Q. Okay. Were you upset when you found out that he
11 had sold the property?
12 A. Yeah, I was upset. I felt more betrayed than --
13 you know, the actual physical property, it's like one person
14 tells you they're going to do something, and they do
15 something different. That's why I felt upset.
16 Q. Okay. It sounds as if it wasn't the property per
17 se, but it was -- What? -- family? You had enjoyed it, or
18 it had been good family memories for you?
19 A. Right, right.
20 Q. So it was your kind of connection. I'm
21 assuming -- strike that. I'm assuming because you felt a
22 connection to that property, that was a place that you grew
23 up going to?
24 A. Yes.
25 Q. So it had been in your grandfather's possession

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1 for a long time?
2 A. Yes.
3 Q. And you'd probably go there -- What? -- on
4 weekends and maybe vacations?
5 A. Right. We'd go camping there.
6 Q. Okay. Had you had an opportunity or had you been
7 using the property with your family?
8 A. The last time I went was the spring break after my
9 mom passed away and my dad just got his motor home.
10 Q. Is that what your dad would use the motor home
11 primarily would be going to that ocean property?
12 A. He didn't get very many opportunities to use it,
13 maybe couple one time or two to ocean and couple times to
14 Morton.
15 Q. So the R -- I guess the motor home, RV, that he
16 got after your mom died, you only recall him using it, it
17 sounds like, on three occasions?
18 A. Oh, more than three, but when I was with him.
19 Q. Okay. So three times that you were actually with
20 him in the motor home?
21 A. It was around that.
22 Q. Okay. Is that big enough to accommodate your
23 family and your father?
24 A. No.
25 Q. No. So would you camp, and he'd be in the motor

Page 33

1 home or?
2 A. We have our own motor home.
3 Q. I see. And you said cars. There was a lot of
4 fighting about cars. What does that mean?
5 A. He went and bought big flashy things to make him
6 feel important, and we didn't think that he needed to.
7 Q. Well, why would you care? It's not your money.
8 A. That's true, but his spending habits changed
9 dramatically after my grandmother died. He would never have
10 had something like that before. It was very excessive.
11 Q. So you noticed a dramatic difference after he died
12 as far as his spending habits?
13 A. After my grandmother died.
14 Q. I mean -- I'm sorry -- after your grandmother
15 died?
16 A. Yes.
17 Q. And it was a cause of concern for your father
18 also?
19 A. Yes.
20 Q. Was it just the acquisition of cars and the
21 selling of the property that was of concern?
22 A. They were alarming to us. We didn't think he was
23 making sound decisions.
24 Q. Okay. And anything else then other than selling
25 the property and acquisition of cars that he wouldn't have

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<p>1 bought before your grandmother died? 2 A. For financial? 3 Q. Yes. 4 A. Not that I can think of right now. 5 Q. Okay. And you have not been financially dependent 6 on your father for several years? 7 A. No, since I started going to college. 8 Q. And what year did you start college? Was it right 9 out of high school? 10 A. Yes. 11 Q. And you graduated from high school what year? 12 A. 91. 13 Q. So did your parents help you with college? 14 A. In a roundabout way they did, yeah. 15 Q. So in a -- tell me about the roundabout way. 16 Would they help you with expenses? What kind of arrangement 17 did you work out? 18 A. What they were doing is, I purchased my car from 19 them. It was a car they owned, and what they were doing is, 20 they were taking the money that I paid them for the car, and 21 they put it in an account for me for college, and I didn't 22 know that. So they gave me that money for college. 23 Q. Was that when you were going for -- so you must 24 have got your car when you were 16? 25 A. Yes.</p>	<p>1 A. Her name is Deanne Caron. 2 Q. Deanne Caron? 3 A. Uh-huh, with a "C," C-A-R-O-N. 4 Q. C-A-R-O-N. I think I gave your attorney an 5 authorization to get your records. Did you sign that 6 already? 7 A. Yes. 8 Q. Okay. How long have you been treating with her? 9 A. I started seeing her in August. 10 Q. Okay. And how frequently do you see her? 11 A. It really depends on what's going on at the time. 12 I've been up to several times a month, and at the least it 13 would be once a month. 14 Q. Okay. 15 A. It really depends on what's going on at the time. 16 Q. When you say what's going on at the time, either 17 what's going on in your life as far as whether or not you 18 can get away or how you're feeling emotionally? 19 A. The grief process. 20 Q. This is probably also a very difficult question, 21 but as it relates to the grieving process, if you use the 22 year mark following your mother's death, would you say that 23 the year mark following your father's death is like no 24 comparison? 25 A. There really is no comparison. I started feeling</p>
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<p>1 Q. And so the two years before you went to college, 2 they were actually saving up for you and gave you that 3 amount of money when you started college? 4 A. Yes. 5 Q. So did you primarily pay for your own college 6 then? 7 A. I primarily did. I had financial aid. 8 Q. Okay. And probably student loans as part of that? 9 A. Student loans. They helped as much as they could. 10 Q. Okay. And I can't remember what year your degree 11 was, but you actually ended up graduating from college in 12 what year? 13 A. 96. 14 Q. So since 1996, would that be a fair time frame to 15 determine that you were no longer dependent financially at 16 all on your father? 17 A. Yes. 18 Q. Have you had -- strike that. Tell me how the loss 19 of your father has impacted your life. 20 A. It's impacted every portion of my life, as a 21 parent, as a wife, as a sister, as a friend, as a worker, 22 every way. 23 Q. Have you received any counseling? 24 A. Yes. 25 Q. And who have you been counseling with?</p>	<p>1 a lot better after year -- I mean it's only been a year with 2 my dad, but it's nowhere near the way it was with my mom. 3 Q. And is Ms. Caron -- or is it a Dr. Caron? I can't 4 remember. I think she's just a counselor, right? 5 A. She's a therapist. 6 Q. A therapist. She's not providing you with any 7 medication, is she? 8 A. No. 9 Q. Okay. And have you ever suffered from depression 10 or any other mental illnesses or ailments before your father 11 died? 12 A. I had postpartum depression after I had my twins. 13 Q. Okay. Did you get treatment for that? 14 A. I did. 15 Q. And that resolved? 16 A. It did help. 17 Q. Okay. 18 A. It was not resolved. 19 Q. Because -- 20 MR. LINDENMUTH: Excuse me. 21 MS. MCGAUGHEY: Sorry if I'm keeping you up. 22 MR. LINDENMUTH: Okay. 23 Q. So they're seven now. When did you stop getting 24 treatment for postpartum depression? 25 A. I started tapering off and trying to get off</p>

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<p>1 medication. I was actually afraid to get on medication 2 because I was breastfeeding, and I didn't think that I 3 could, so I didn't get help right away. So I waited several 4 months because I didn't think I could be on medication while 5 I was breastfeeding, so. And then of course it got worse 6 before it got better, and then I got medication, and I was 7 on that for a while, and then I started trying to taper off. 8 Q. And do you remember what kind of medication you 9 were on? 10 A. I was on a couple different ones just because they 11 were giving me side effects and trying to figure out which 12 one would work. 13 Q. Who prescribed it to you? Your family doctor? 14 A. My family doctor. 15 Q. Who is your family doctor? 16 A. It's Dr. Cecil Snodgrass. 17 Q. Was he also -- he wasn't your OB doctor, was he? 18 A. No. 19 Q. Okay. So is that also something though that you 20 discussed with your OB doctor, or since it was after 21 delivery, did you take that up initially with your family 22 doctor? 23 A. I did, and I think that we talked about, you know, 24 going through my family doctor. 25 Q. Okay. So would it be fair to say that all of the</p>	<p>1 A. I probably got medication worked out within a year 2 after my son and daughter were born. 3 Q. When you say medication worked out, you mean 4 worked off of the medication or got it at the right levels? 5 A. Right level. 6 Q. Okay. How long did you stay on medication for 7 postpartum depression leading up to the time of your 8 father's death? 9 A. How long was I on it? 10 Q. Well, if you use June 08 as the time frame for 11 your father's death, how far back did you stop taking 12 antidepressants? 13 A. I can't really remember. 14 Q. Had it been at least a year? 15 A. I think I tried to go off, and it just wasn't 16 working out for me, so I had to go back on. And then 17 everything that happened with my mom's illness and her 18 cancer, then it just wasn't a good time to go off. 19 Q. Okay. So after late 05, early 06 after your mom 20 had died, were you still taking then the antidepressants? 21 A. Yes. 22 Q. Do you know whether or not you were taking 23 antidepressants at the time of your father's death? 24 A. I was. 25 Q. Oh, you were. Okay. So it was -- you were I</p>
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<p>1 treatment that you had for postpartum depression would have 2 been through Dr. Snodgrass? 3 A. Yes. I did mention it at my OB's office. 4 Q. Okay. We've heard a lot in the press about 5 postpartum depression over the last few years. When did you 6 start realizing that, I'm actually depressed, following 7 having your twins? Does it start off as just being overly 8 tired? 9 A. I couldn't sleep, and I was having anxiety 10 attacks. There was just a stress level that I wasn't 11 familiar with because I had two babies. 12 Q. Two babies and your -- 13 A. Twins. 14 Q. -- child, and you knew what it was like with one 15 baby. Did you think for a while it was just the stress of 16 having twins? 17 A. I wasn't really sure. 18 Q. But you identified it, and you got help? 19 A. Uh-huh. 20 Q. And do you feel as if any of the symptoms that you 21 were suffering from postpartum depression had fully resolved 22 by the time you lost your father? 23 A. Yes. 24 Q. How long do you think you were symptomfree from 25 postpartum depression? Could you put a time frame on that?</p>	<p>1 guess plateaued or dealing with your postpartum depression 2 and the loss of your mother and some of the other things you 3 may have been dealing with, but you weren't under any I 4 guess increased problems. You were just using the 5 medication to keep yourself stabilized? 6 A. At what point? 7 Q. At the time of your father's death, you said you 8 were still on antidepressants? 9 A. I was planning on going off of them that summer, 10 and it just wasn't going to happen because of the traumatic 11 experience that happened. 12 Q. So for at least six continuous years, you have 13 been on antidepressants? 14 A. It would probably be somewhere around there. You 15 know, I couldn't nail down the exact time. I mean I wanted 16 to get off of them of course, but ... 17 Q. Sure. And did your -- you're not on them now? 18 A. Yes, I am. 19 Q. Oh, I'm sorry. Has your medication increased? 20 A. It's been about the same, but I've added something 21 to help. I have two medications that I'm taking. I'm 22 taking Xanax when I need to, and I take Ambien to sleep at 23 night. 24 Q. Okay. I guess I misunderstood. I incorrectly 25 understood that Caron, your therapist, was unable to</p>

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1 prescribe medication, but you're still following with
 2 Dr. Snodgrass?
 3 A. Correct.
 4 Q. So to get a clear picture of your care providers
 5 or treaters, Dr. Caron or Ms. Caron would be providing
 6 weekly or monthly, on occasion, therapy, and Dr. Snodgrass
 7 is monitoring all medications?
 8 A. That's right.
 9 Q. Okay. And he must have been the person that added
 10 the Xanax?
 11 A. Yes, I talked to him about that.
 12 Q. Was that after your father's passing?
 13 A. Yes.
 14 Q. And I'm sorry. The third thing you said that was
 15 added?
 16 A. Ambien to sleep.
 17 Q. Okay. Had you ever taken Ambien or any other
 18 sleeping pills before your father's death?
 19 A. No.
 20 Q. Not even after your mother's loss or the loss of
 21 your mother?
 22 A. I don't recall taking any then.
 23 Q. How is your sleep now? Has it improved at all?
 24 A. I wouldn't say so.
 25 Q. Is it trouble getting to sleep, or is it waking up

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1 in the middle of the night? How would you describe it?
 2 A. It just depends on the day.
 3 Q. So it just varies day to day?
 4 A. If I wake up, I can't go back to sleep.
 5 Q. How did you spend Father's Day this year?
 6 A. My -- we had my daughter's birthday party the day
 7 before, so my in-laws were in town. My husband had to work,
 8 so my in-laws stayed. They were staying in their motor home
 9 at our house, and they stayed, and we just kind of hung out
 10 at the house.
 11 Q. Do you spend time since your father's death with
 12 your sister and her family?
 13 A. We have at times.
 14 Q. What do you do? Dinners together?
 15 A. The kids usually play. This last year has been
 16 going through stuff at my dad's house. The kids play
 17 outside while we're busy. That's what it's been.
 18 Q. When you're doing work at the house, your father's
 19 house, you mean?
 20 A. Taking care of his things.
 21 Q. Okay. So any other words spoken at the garage
 22 sale that hurt your feelings or left this bad kind of
 23 tenseness between you and your sister?
 24 A. I went over there. I had conferences the next day
 25 at school, so I waited for those to be done, and then I went

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1 over to her house to try to talk to her, and more things
 2 were said, so.
 3 Q. Such as?
 4 A. She said I was going to counseling for marriage
 5 counseling, and she felt sorry for me.
 6 Q. Is there any truth to the marriage counseling as
 7 being a source of your counseling needs?
 8 A. My husband and I have had problems with him
 9 dealing with me and my grief because I've pretty much shut
 10 down.
 11 Q. So that started after your dad's passing, right?
 12 A. Yes.
 13 Q. And you didn't have any problems of that nature --
 14 well, obviously not of that nature, but problems with your
 15 husband before your father died?
 16 A. No.
 17 Q. Had you ever had any counseling, marriage
 18 counseling, before?
 19 A. No.
 20 Q. And other than the counseling that you just
 21 described to us with Caron and Snodgrass and I think the one
 22 time -- I can't remember the one other person. I thought
 23 there was one other person -- you never had any counseling
 24 before?
 25 A. No.

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1 Q. Is this the biggest stress that you've ever had to
 2 deal with?
 3 A. Yes.
 4 Q. The loss of your father?
 5 A. Yes.
 6 Q. And other than -- are there some other ways that
 7 it has impacted your activities of daily living? Sleeping,
 8 interacting with your husband.
 9 A. I am not the same person I was before.
 10 Q. How were you before? Were you very joyful?
 11 A. I was friendly and easy to get along with, and now
 12 I can't be around people socially, and it's just I am not up
 13 to the capacity I was before.
 14 Q. And did you have an active social life before? It
 15 sounds like you were kind of bubbly and outgoing?
 16 A. My social life was my family. I would prefer to
 17 spend time with my mom and dad other than going out with
 18 friends and doing things. It's always been that way.
 19 Q. And after your mom died, would that still be the
 20 case? Instead of going out with your friends, you'd rather
 21 spend time with your father?
 22 A. Yeah. It was strained because we were all
 23 grieving.
 24 Q. How did you help your dad through that?
 25 A. I'd go over to his house a lot afterwards. I'd

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<p>1 make sure he had food. I'd take him dinner. 2 Q. And how involved was he with you and the 3 grandkids? 4 A. He would -- when he felt up to it, he would stop 5 by our house on the weekend. He would usually come over and 6 bring the kids -- his famous thing was doughnuts and 7 chocolate milk. We'd hear him come in on one of his cars or 8 his motorcycle, and the kids would say, Papa's here, Papa's 9 here, and we could hear him coming. 10 Q. So did he also have a motorcycle? 11 A. Yes. 12 Q. Did he have a motorcycle at the time of his death? 13 A. Yes. 14 Q. What's happened to that? 15 A. We have it. 16 Q. Oh, is that the Vespa scooter? 17 A. No. 18 Q. Oh, okay. I don't remember talking about a 19 motorcycle earlier today. 20 A. Yeah, there's a motorcycle. 21 Q. What kind is it? 22 A. It's a Valkyrie. 23 Q. Okay. 24 A. It's a Honda. 25 Q. A Honda. And do you know what year he acquired</p>	<p>1 Q. Okay. And what did you -- do you know what you 2 placed value on? 3 A. On the motorcycle? 4 Q. Yes. 5 A. I don't remember. 6 Q. Okay. 7 A. I'm not real good with what cars are worth and -- 8 Q. Okay. 9 A. I don't know. 10 Q. Now, are you passionate about cars the way your 11 sister described her and other members of your family being 12 passionate? 13 A. Not to the extent of racing, but always an 14 interest in -- I'm not really into the workings of the cars, 15 but how they look on the outside and how they sound, you 16 know, that kind of thing. 17 Q. Uh-huh. 18 A. You know, it gets in your blood. We always went 19 to car shows growing up, and when I sold my first car, I was 20 really sad because you kind of miss something when you don't 21 have -- you had that in your life before. 22 Q. Uh-huh. So as far as the -- it sounds like you're 23 describing more of like changing the oil and working on the 24 engine. You didn't necessarily do that or enjoy that, but 25 you liked having nice cars and taking care of them, and</p>
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<p>1 that? 2 A. He got it after my mom died. 3 Q. Okay. 4 A. I don't know the exact -- it would probably be 5 like in 2006, 2007. 6 Q. Was that insured through State Farm? 7 A. I don't believe it was insured. It's hard to 8 insure a motorcycle. 9 Q. So as part of the payments he was making for 10 insurance on a monthly basis to State Farm, you don't think 11 that was one of the vehicles? 12 A. No. 13 Q. Was it licensed? 14 A. Yeah, it was licensed. 15 Q. Okay. My guess, if he was driving it over to the 16 house, it was licensed? 17 A. Oh, yeah. 18 Q. And have you placed a value on that? 19 A. I can't recall what we put on it. 20 Q. Do you know if it was -- do you remember doing the 21 inventory for purposes of your father's estate? 22 A. Yes. 23 Q. Was it part of the automobiles that were 24 calculated to be part of his estate? 25 A. I'm sure it was.</p>	<p>1 that's part of what your family value was? 2 A. Right, and I was instructed on how to do certain 3 things like change a tire and oil, you know, real basic 4 stuff. 5 Q. You're not a racer though? 6 A. No. I went one time with my sister, and I always 7 wanted to. I just never had the time to do it. 8 Q. Are your kids into racing the way her son is? 9 A. No. 10 Q. Okay. It sounds like she shared that kind of 11 interest with your father. Did you share any kind of 12 special interest with your father? 13 A. Cars and family. 14 Q. Okay. Is there anything special that you did or 15 any routines that you followed that you, you know, went into 16 your adult life with him? 17 A. Camping, going up to property on Morton, spending 18 time. 19 Q. Okay. So how often would you go camping with him? 20 A. We used to go a lot when we were younger, and 21 before we started working, my sister and I, you know, we'd 22 go a lot. And, you know, we weren't able to go all the time 23 when we were working, so. And when we got our own families, 24 we'd go up there as much as we could with them and spend 25 time.</p>

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1 Q. So what about since -- you know, let's say after
 2 the twins were born, how frequently would you go camping
 3 with your dad up to the Morton property? Or I guess it was
 4 greatly curtailed when your mom was sick, wasn't it?
 5 A. Yes. We -- I remember a couple times we went up
 6 there with my mom and my dad, and, you know, I had my three
 7 kids. Like over Memorial Day or Labor Day, we'd go. We'd
 8 try to make a point to get everybody together to go, and it
 9 was a great place to go.
 10 Q. So would that be camping with just your dad and
 11 your family, or would you try to get your sister and her
 12 family to go up the same weekend?
 13 A. They'd go too.
 14 Q. Okay. So since your mom died, do you remember
 15 doing any camping trips to Morton with your dad?
 16 A. There is one time.
 17 Q. So on one occasion. Do you remember what year?
 18 A. I don't remember the exact year.
 19 Q. Do you remember if it was just your family, or was
 20 it combined with your sister's family?
 21 A. I know my aunt and uncle were there, and --
 22 Q. Is that Aunt Sunny?
 23 A. Yes.
 24 Q. And I'm sorry. What is Sunny's husband's name?
 25 A. Bill.

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1 Q. Okay.
 2 A. And their grandson was there.
 3 Q. Okay. And everybody camps out?
 4 A. Uh-huh. Bring our --
 5 Q. Was that before the mobile home?
 6 A. We bring our rigs.
 7 Q. Okay. Does everybody have motor homes or
 8 something to stay in?
 9 A. Generally they do.
 10 Q. Okay. Would your dad -- on this one occasion when
 11 you went to Morton, would he bring his RV?
 12 A. He did have it that time.
 13 Q. Okay. Did you do any other vacations together
 14 since your mom died?
 15 A. No.
 16 Q. Did you ever go to the ocean property of your
 17 grandfather's with your dad since your mom died?
 18 A. We went -- yeah, we went over spring break.
 19 Q. Okay. So I guess a week-long spring vacation?
 20 A. Oh, no. It was like a weekend.
 21 Q. A weekend. And would that have been on one
 22 occasion?
 23 A. Yes.
 24 Q. And you would have taken your RV?
 25 A. Yes.

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1 Q. Did he take his?
 2 A. Yeah. We just got ours, and he just got his.
 3 Q. Okay. So I know that you must have got yours
 4 after your mother died?
 5 A. Yes.
 6 Q. And did you inherit anything when your mother
 7 died?
 8 A. No.
 9 Q. Were you a beneficiary of any life insurance
 10 policy?
 11 A. No.
 12 Q. Was your dad a beneficiary of a life insurance
 13 policy?
 14 A. For my mom?
 15 Q. Yes.
 16 A. Yes.
 17 Q. Do you know how much it was?
 18 A. I think it was around 50,000, something like that.
 19 Q. Okay. And how do you know he was a beneficiary or
 20 what the amount was? Was that just something he told you,
 21 or was that common knowledge in the family?
 22 A. I think we saw paperwork, and I think he told us.
 23 Q. Okay. What did you have occasion to observe about
 24 your father's health in, let's say, the time frame starting
 25 in 06 leading up to his death, so about the time that your

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1 mother died?
 2 A. He was having back pain and shoulder pain, and
 3 when my mom was getting sick, he kind of just pushed that
 4 all aside and put her first.
 5 Q. Okay. And you remember he was off of work?
 6 A. Yes.
 7 Q. And did he describe himself to you as being
 8 totally disabled or retired?
 9 A. He wasn't able to work. He would try to go back
 10 to work, and it would hurt too much, and he'd have to come
 11 home sometimes in the middle of the day.
 12 Q. So was there a point in time where you understood
 13 he was not going to be going back to work at all?
 14 A. You know, we kind of felt like he wasn't going to
 15 be able to with his condition.
 16 Q. Did he ever tell you he wasn't ever going to go
 17 back to work?
 18 A. No. He kept trying, and it -- he just wasn't
 19 getting better.
 20 Q. So when he was released from the school district,
 21 did he ever make any attempts to go back to work after that?
 22 A. It was sometime in there that he was trying to
 23 work with his doctor, you know, to go back to work. He was
 24 on light duty.
 25 Q. Okay. But after light duty, he was eventually

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1 terminated from the Bethel School District. Did he ever go
 2 back to work anywhere after that termination?
 3 MR. BARCUS: Object to the form of the question.
 4 A. No. I don't even know if he was terminated.
 5 Q. Have you reviewed any of his records from the
 6 Bethel School District?
 7 A. No, I've never seen them.
 8 Q. Okay. Did you contact the Bethel School District
 9 after your dad died?
 10 A. No.
 11 Q. Did your sister advise that she had?
 12 A. There was some life insurance or something.
 13 Q. What was your understanding or what was reported
 14 to you regarding the life insurance?
 15 A. That it was -- it had ended. It was like a month
 16 lapse in between when he actually died.
 17 Q. And did you understand that that life insurance
 18 was being provided through some kind of benefit through the
 19 school district?
 20 A. Right.
 21 Q. You work for the same school district, right?
 22 A. Yes.
 23 Q. Do they provide you with life insurance?
 24 A. I think there's something.
 25 Q. Okay. And that eventually terminates I guess, or

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1 do you even know? Does that terminate when you quit or when
 2 you're terminated?
 3 A. You know, I don't know the details of it.
 4 Q. Okay. So how -- are you -- it sounds like --
 5 correct me if I'm wrong -- that your sister is probably the
 6 one that's primarily involved with the day-to-day financial
 7 affairs of your father since he died?
 8 A. Yeah. She had more time where she wasn't working,
 9 and that's her line of work. She does bookkeeping and
 10 office work.
 11 Q. Okay. Did your father keep his finances on any
 12 kind of a computerized system, or was everything done
 13 manually?
 14 A. He did a lot of banking online.
 15 Q. Okay. So online. You know how sometimes people
 16 do Quicken or QuickBooks or other kind of bookkeeping
 17 systems on the computer? Do you know if your dad did that?
 18 A. I never saw anything like that.
 19 Q. So what do you mean by online? Bill pay online?
 20 A. Yeah. I helped him for ease of paying his bills
 21 set up things automated so it was easier for him and told
 22 him to keep an eye on, you know, things coming out.
 23 Q. What was his source of income at the time that he
 24 died?
 25 A. He was getting -- I don't know if it was

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1 disability or -- it was something like that.
 2 Q. Do you know how much he was receiving?
 3 A. I think it was probably under \$3,000.
 4 Q. And is that based on something you've seen since
 5 he died or information you had before he died?
 6 A. He kept a record of, you know, what days his money
 7 came in and what his bills were so he could see, you know,
 8 expenses and his means.
 9 Q. And was that actually in some kind of a tangible
 10 form like a piece of paper that you have seen or observed?
 11 A. Yeah, he had like a note sitting next to his
 12 computer.
 13 Q. Okay. Have you seen that since he died?
 14 A. Yes.
 15 Q. And it would just basically show what money was
 16 coming in and what his monthly expenses were?
 17 A. Right, like utilities.
 18 Q. Okay.
 19 A. Payments on things and --
 20 Q. Do you still have access to that, or do you know
 21 where it is?
 22 A. Yeah, I have a piece of paper that says that.
 23 Q. Okay. So you can make a copy of it?
 24 A. Uh-huh.
 25 Q. Okay. We're going to make a request for that.

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1 And based on the information that your father provided to
 2 you prior to his death or the paper that you saw after his
 3 death, was his income exceeding his monthly expenses?
 4 A. No.
 5 MR. BARCUS: Object to the form of the question.
 6 A. No.
 7 Q. So his income was less than what his monthly
 8 expenses were?
 9 A. Oh, no. His income was more.
 10 Q. Than his monthly expenses?
 11 A. Right.
 12 Q. Okay. And was he also taking money out of his
 13 IRA?
 14 A. I have no idea.
 15 Q. Was he taking money out of a pension?
 16 A. I don't know.
 17 Q. Did you believe and understand that the full
 18 source of his income at the time of his death was this
 19 \$3,000 that he was getting in some kind of a disability
 20 income?
 21 MR. BARCUS: Object to the form of the question.
 22 A. It was -- I don't know what was what amount of
 23 money. I just thought that that's what he approximately had
 24 as an income.
 25 Q. Would he receive payments twice a month?

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<p>1 A. I'm not even sure. 2 Q. Well, you referred to the paper as having -- it 3 would show when he would have money coming in and then a 4 list of his expenses. Would that be money coming in only 5 one time a month? Do you remember? 6 A. I don't know. 7 Q. Have you liquidated any of his cash since his 8 death? 9 A. What do you mean by cash? 10 Q. Well, you referenced in your inventory that he had 11 cash and cash equivalents in the amount of \$167,389. Has 12 any of that been liquidated? Have you taken any of it? 13 A. Are you referring to his Primevest? 14 Q. I don't know. I haven't seen anything yet. We 15 received a stack of information today right in front of you 16 that's a couple inches, 2 or 3 inches, thick. I don't know. 17 You tell me. Have you distributed to either yourself or 18 your sister any cash or cash equivalent? 19 A. Have we taken any money from his accounts? Is 20 that what you mean? 21 Q. Well, let me just hand you what was marked as 22 Exhibit 1 in your sister's deposition. 23 MS. MCGAUGHEY: I don't think there's really a 24 need to mark another exhibit in this one, is there, Ben? 25 MR. BARCUS: That's fine.</p>	<p>1 Q. And for purposes -- you probably had to use some 2 of that for purposes of paying his expenses, correct? 3 A. Yeah, we have. We've had to pay his bills. We've 4 had to keep up his bills. 5 Q. Okay. And we heard about some of the vehicles 6 that you have taken either possession of or custody of since 7 his death. What do you remember as far as what you've taken 8 as far as automobiles since his passing? 9 A. Which ones did I get? 10 Q. Yes. 11 A. I got a 72 pickup, a 33 Ford, a 66 Impala and a 12 scooter, and we got the motorcycle, Valkyrie, Honda. 13 Q. And the scooter, is that the Vespa scooter? 14 A. Uh-huh. 15 Q. Yes? 16 A. Yes. 17 Q. Now, did you express some interest in those 18 vehicles, or was that your husband? 19 A. It was both of us. It was me. 20 Q. Okay. So at least as it relates to your being 21 able to articulate with your sister as far as the vehicles, 22 you didn't have any problem letting her know that you were 23 interested in those vehicles, did you? 24 A. No. I was just more concerned about it being 25 divided equally.</p>
Page 59	Page 61
<p>1 MS. MCGAUGHEY: Okay. 2 Q. There's a reference there, just going by memory, 3 for the inventory of cash and cash equivalent. 4 A. 167,000. That was his Primevest account through 5 the school district. 6 Q. And what's a Primevest account? Is that like a 7 saving vehicle? 8 A. I think it's like a retirement. 9 Q. Oh, okay. And it's Primevest at a bank, but it 10 came from his working at the school district? 11 A. I think it came through the school district, and 12 it may have been rolled over to his account at 13 Rainier Pacific. 14 Q. Okay. You'd have to look at documents though to 15 be able to testify in any more detail, wouldn't you? 16 A. Probably. 17 Q. Okay. Well, did you help prepare that exhibit? 18 A. Yes. 19 Q. Where were you getting the information as far as 20 his cash and cash equivalent? 21 A. He had a Primevest account. That's all that I 22 know. 23 Q. So you just took a figure off of a statement 24 probably? 25 A. Yeah.</p>	<p>1 Q. So the value that was placed on them you mean? 2 A. Right, right. 3 Q. What did you guys do? Get together as a foursome 4 and go over those values, or how did you reach those values 5 as far as dividing it equally? 6 A. We talked about it, and we looked at how much they 7 were insured for. And, you know, that was basically what my 8 dad figured what was the values on the cars, the vehicles, 9 that he insured them for, so we figured he was a pretty 10 good, you know, source for that. 11 Q. Now, your dad died with a will, correct? 12 A. Yes. 13 Q. Did he tell you or did he leave any directions on 14 how he wanted his personal effects handled upon his death? 15 A. Just 50/50 between me and my sister. 16 Q. Okay. So that's why you were concerned about what 17 value would be placed on items as compared to cash, which is 18 much easier to value, right? 19 A. I just -- I was more concerned about things being 20 fair. 21 Q. Okay. So why is it then or why do you think it is 22 that your sister has made an issue of saying that she feels 23 sorry for you and that she thinks you're going to counseling 24 for marriage counseling? 25 A. I really don't know. Just it's been a difficult</p>

16 (Pages 58 to 61)

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1 year. It's been a very difficult year. You question
2 everything in your life.
3 Q. Well, as sisters, you've been close over the
4 years, haven't you?
5 A. Yeah, we've been close.
6 Q. You know, I'm sure that there's -- all different
7 people would describe their relationship with their siblings
8 all different. Have you -- because you live in the same
9 town, would you describe yourself as being close friends in
10 addition to being close sisters?
11 A. Yeah. I moved where I moved because it's close to
12 where she lives.
13 Q. Okay. So the actual location of your house was in
14 some part based on wanting to be close to your sister?
15 A. Sure.
16 Q. So did you ever discuss with her what she meant
17 when she said, you know, I feel sorry for you, and I think
18 the reason why you're getting counseling is because of
19 marriage issues and not grieving?
20 A. I don't think it was marriage issues necessarily.
21 It's just that when anything bothered me, I would tell her,
22 so she got to hear bad stuff, lots of bad stuff.
23 Q. You mean bad stuff about you and your husband or
24 about your husband?
25 A. Everything.

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1 Q. Okay.
2 A. I vented to her and used her as a sounding board.
3 Q. And have there been issues that she -- that you
4 brought up with her that relate to your husband that you
5 think are valid?
6 A. He's someone who likes to take control of a
7 situation, and I've been more than happy to use him because
8 to me I'd rather not deal with this situation.
9 Q. But you feel like he has your best interest in
10 mind, don't you?
11 A. Definitely. We talk. We talk.
12 Q. And he wouldn't do something that you were
13 diametrically or just unopposed to as it relates to the
14 finances, would he?
15 A. No. If I don't have the strength to have a voice,
16 you know, we confer, and then he relays it and takes care of
17 it for me to protect me.
18 Q. Okay. So finishing up because we only have a few
19 minutes left, going back to -- and want to kind of finish
20 and wrap up for the day. For the companionship and the type
21 of things that you did with your father, we were finishing
22 up and going over some of the trips, and we were talking
23 about the ocean trip?
24 A. Uh-huh.
25 Q. Have there been -- like did you have special

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1 one-or-one dinners with your dad or family dinners that you
2 would do? What can you tell me about that?
3 A. We'd go out for birthdays. We went to his
4 favorite restaurant, the seafood buffet place.
5 Q. Where's that?
6 A. King's Buffet on Meridian.
7 Q. Okay.
8 A. And, you know, we still go there even now. We
9 went for my sister's husband's birthday just for old times'
10 sake. And that was a big thing. I mean we all talked about
11 it. He picked us up in the Chevette and would take us out
12 there, and we'd laugh about the -- you know.
13 Q. Well, we're laughing about the Chevette only
14 because we heard about it earlier today.
15 A. Right, and we could hear the wind rushing in, and
16 we're like, Oh, this is how you take your daughters out to
17 dinner when you have a Corvette sitting in your driveway?
18 We would joke about it.
19 Q. So the dinner, kind of the seafood buffet,
20 King's Table or whatnot, would that just be kind of
21 sometimes him and just the girls? just you and your sister?
22 just you and him?
23 A. I remember going then -- I think it was after
24 school got out one year. He said, Let's go. He said, Let's
25 make a date to go, and we went, and it was a blast.

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1 Q. But would that be you and him?
2 A. I think I went there once alone with him.
3 Q. Okay. And were there other types of events that
4 you just kind of like -- you know, routines? I did Saturday
5 coffee with him, or other things that were just kind of
6 ingrained into you that were special and treasured by you?
7 A. He'd come rolling up. We'd hear him coming in on
8 one of his cars, you know, bring the doughnuts and the
9 chocolate milk, and he'd come and make -- check in with
10 everybody, give everybody a hug, make sure we're doing okay.
11 And he didn't want to stay very long, you know, and he -- we
12 looked forward to that every week. And I would get up, and
13 I'd be doing the dishes. I'd look out the window because I
14 was half expecting him to. I still look out the window on
15 the weekend expecting him to come up.
16 Q. Uh-huh. And your husband, because he's a
17 firefighter, does he work odd hours, so sometimes he's home
18 during the week?
19 A. Yeah.
20 Q. So you can kind of split up some of your
21 responsibilities, but the visits with your dad were probably
22 more on the weekends because you work during the week,
23 right?
24 A. Right.
25 Q. So -- how did you spend the anniversary of your

17 (Pages 62 to 65)

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APP0149

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1 father's passing this year?
 2 A. It was the same day as Father's Day.
 3 Q. This year?
 4 A. (Witness indicates in the affirmative.)
 5 Q. So that was just last Sunday, right?
 6 A. Yes.
 7 Q. So the way that you described -- did you talk to
 8 your sister at all?
 9 A. I don't think that we talked that day. I talked
 10 to her the day before at my daughter's birthday, and I
 11 talked to her the day after about this deposition.
 12 Q. Okay. So the day before she actually came to your
 13 house for your daughter's birthday?
 14 A. Yes.
 15 Q. And you saw her then. Did you guys plan or try or
 16 want to spend that day together?
 17 A. No. I think we knew we needed to give each other
 18 space.
 19 Q. Okay. Do you feel as if kind of the tension
 20 between the two of you has improved since March after you
 21 got that -- kind of cleared the air, or is there still that
 22 tension brewing?
 23 A. It's still there.
 24 Q. If the financial issues were set aside, do you
 25 think you'd still have that tension as it relates to your

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1 grieving process with your sister?
 2 MR. BARCUS: Object to the form of the question.
 3 A. Hard to say.
 4 Q. Okay. Does it seem to be that the focus is
 5 resolving the estate and materialistic matters, or is there
 6 more brewing to it?
 7 A. It's the stress of just dealing with things, the
 8 estate.
 9 Q. So everything combined?
 10 A. Yeah. It's the whole process of dealing with
 11 this. That is what this is all about.
 12 Q. When you say dealing with it, part of it would be
 13 the litigation?
 14 MR. BARCUS: Object to the form of the question.
 15 A. Not that -- I don't think so much the litigation.
 16 It's going through my parents' belongings, and what are we
 17 going to keep? What are we going to get rid of? Just
 18 taking care of things. I would prefer not to have to do
 19 this.
 20 Q. Sure. Isn't part of that just the bereavement
 21 process, your grieving process, as compared to what you're
 22 specifically losing as far as the loss of love of your
 23 father? Are you able to distinguish that at all?
 24 A. It's hard to sometimes.
 25 Q. Okay. Is the counselor helping at all?

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1 A. She does help.
 2 Q. So has there -- would it be fair to say you've had
 3 some improvement?
 4 A. You know, as much as can be expected I think,
 5 yeah.
 6 Q. And have you read things about the grieving
 7 process or --
 8 A. Yes.
 9 Q. -- some of the things she selected or suggested,
 10 some books or whatnot?
 11 A. I have been reading tons of books.
 12 Q. Okay. And do you have a best friend?
 13 A. People at work, my family.
 14 Q. So people at work and people -- but if you didn't
 15 go to your sister -- and I know your father was a confidant,
 16 and would talk to I'm sure your husband at times. Who would
 17 be like your best girlfriend that you would go and want to
 18 talk to?
 19 A. I probably don't have one right now.
 20 Q. Did you have one before your dad died?
 21 A. I've had a long-term friend growing up.
 22 Q. Who is that?
 23 A. Tammy.
 24 Q. Tammy who?
 25 A. Tammy -- it's Gauthier now.

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1 Q. How do you spell that?
 2 A. G-A-U-T-H-I-E-R.
 3 Q. And when was the last time before your dad died
 4 that you talked to her?
 5 A. I can't even remember.
 6 Q. So had it been years before you talked to her?
 7 A. Oh, no, no, not years.
 8 Q. Okay. Within a year of, let's say, 07, 08, had
 9 you spoken with her?
 10 A. Oh, yeah, yes.
 11 Q. Okay. But it sounds as if you were close to her
 12 at one time and not as close to her as of late?
 13 A. She has her own problems she's dealing with right
 14 now, so.
 15 Q. Okay. So if you need a support system to deal
 16 with the many things you're going through, do you rely
 17 primarily on your counselor right now for that?
 18 A. My husband and my aunt.
 19 Q. Is that Aunt Sunny?
 20 A. No.
 21 Q. What's the --
 22 A. Jill.
 23 Q. Aunt Jill. Okay. Do you have a close
 24 relationship with her?
 25 A. Very.

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1 Q. Okay. Was she your mother's sister?
 2 A. Yes.
 3 Q. Okay. Does your current therapist or counselor
 4 have a recommendation for how long she thinks that you
 5 should be treating with her?
 6 A. She said as long as I want.
 7 Q. Okay. So just on an as-needed basis?
 8 A. Yes.
 9 Q. Okay. I don't have anything further right now.
 10 MR. REICH: We've got to pick it up again.
 11 MS. MCGAUGHEY: Yeah. I'm going to adjourn. I
 12 don't think it would take more than an hour to finish her
 13 up, so I think we could squeeze her in sometime.
 14 MR. LINDENMUTH: Mutually convenient time and
 15 place.
 16 VIDEOGRAPHER: The time is 4:52 p.m. This
 17 concludes today's deposition of Kristy Rickey.
 18 (Signature was reserved.)
 19 (Deposition was adjourned at 4:52 p.m.)
 20
 21
 22
 23
 24
 25

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1 CERTIFICATE
 2
 3 STATE OF WASHINGTON -- COUNTY OF KING
 4 I, the undersigned officer of the Court, under my
 5 commission as a Notary Public in and for the State of
 6 Washington, hereby certify that the foregoing deposition
 7 upon oral examination of the witness named herein was taken
 8 stenographically before me and thereafter transcribed under
 9 my direction; that the witness before examination was first
 10 duly sworn by me to testify truthfully; that the transcript
 11 of the deposition is a full, true and correct transcript of
 12 the testimony, including questions and answers and all
 13 objections, motions, and exceptions of counsel made and
 14 taken at the time of the foregoing examination; that I am
 15 neither attorney for, nor a relative or employee of any of
 16 the parties to the action; further, that I am not a relative
 17 or employee of any attorney or counsel employed by the
 18 parties hereto, nor financially interested in its outcome.
 19 IN WITNESS WHEREOF, I have hereunto set my hand and
 20 seal this 8th day of July 2009.
 21
 22
 23 _____
 24 NOTARY PUBLIC in and for the State
 25 of Washington, residing at Seattle.
 My commission expires 06/22/2010.

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1 AFFIDAVIT
 2
 3 STATE OF _____)
) Ss.
 4 COUNTY OF _____)
 5
 6 I have read my within deposition taken on
 7 June 23, 2009, and the same is true and correct, save and
 8 except for changes and/or corrections, if any, as indicated
 9 by me on the "CORRECTIONS" flyleaf page hereof.
 10
 11
 12
 13
 14 _____
 15 SIGNATURE OF DEPONENT
 16
 17
 18 SUBSCRIBED AND SWORN to before me this
 19 _____ day of _____,
 20
 21
 22 NOTARY PUBLIC in and for the
 23 State of _____,
 24 residing at _____,
 25 My commission expires _____.

EXHIBIT B

Rickey/Cavar vs. Clarence Munce
Deposition of Kristy L. Rickey, Volume II/12-22-09

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR PIERCE COUNTY

KRISTY L. RICKEY and KELLEY R. CAVAR,)
individually, and as Co-Executrixes of)
the Estate of Gerald Lee Munce,)
)
) Plaintiffs,)
)) No. 08-2-10227-6
vs.)
)
)
CLARENCE G. MUNCE,)
)
)
) Defendant.)

DEPOSITION UPON ORAL EXAMINATION

of

KRISTY L. RICKEY

(VOLUME II, PAGES 73-133)

Taken at 4303 Ruston Way
Tacoma, Washington

DATE: December 22, 2009

REPORTED BY: Julia Williams, CCR WILLIJ*239KZ

Verb8m Reporting 206/467-0800

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APP0153

Rickey/Cavar vs. Clarence Munce
 Deposition of Kristy L. Rickey, Volume II/12-22-09

<p style="text-align: center;">1 APPEARANCES</p> <p>2</p> <p>3 For the Plaintiffs</p> <p>4 Rickey and Cavar: PAUL A. LINDENMUTH</p> <p style="padding-left: 40px;">5 Attorney at Law</p> <p style="padding-left: 40px;">6 The Law Office of Ben F. Barcus</p> <p style="padding-left: 40px;">7 & Associates</p> <p style="padding-left: 40px;">8 4303 Ruston Way</p> <p style="padding-left: 40px;">9 Tacoma, Washington 98402</p> <p>10</p> <p>11 For the Defendant: SHELLIE MCGAUGHEY</p> <p style="padding-left: 40px;">12 Attorney at Law</p> <p style="padding-left: 40px;">13 McGaughy Bridges Dunlap</p> <p style="padding-left: 40px;">14 325 118th Avenue Southeast</p> <p style="padding-left: 40px;">15 Suite 209</p> <p style="padding-left: 40px;">16 Bellevue, Washington 98005-3539</p> <p>17</p> <p>18 Also Present: Kelley R. Cavar</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 76</p> <p>1 TACOMA, WASHINGTON; TUESDAY, DECEMBER 22, 2009</p> <p>2 1:21 p.m.</p> <p>3 (Exhibit No. 1 marked for identification.)</p> <p>4 KRISTY L. RICKEY, deponent herein, being</p> <p>5 first duly sworn on oath,</p> <p>6 was examined and testified</p> <p>7 as follows:</p> <p>8</p> <p>9 EXAMINATION CONTINUED</p> <p>10 BY MS. MCGAUGHEY:</p> <p>11 Q. Hi, Kristy.</p> <p>12 A. Hi.</p> <p>13 Q. We're going to complete your deposition that I</p> <p>14 started -- gosh, I can't remember when it was, but it's been</p> <p>15 a while ago, and since then you've been able to answer some</p> <p>16 supplemental or second supplemental interrogatories. I've</p> <p>17 marked those as Exhibit 1. Could you just take a look at</p> <p>18 those and see if those are your answers to the second</p> <p>19 supplemental set of requests for production?</p> <p>20 A. Okay. These are some pictures that Kelley put in.</p> <p>21 Q. Let me just doublecheck. Is that Kristy's? Yeah.</p> <p>22 A. These are Kelley's pictures.</p> <p>23 Q. Are you looking at Request for Production</p> <p>24 Number 5?</p> <p>25 A. They're mixed together.</p>
<p style="text-align: right;">Page 75</p> <p style="text-align: center;">1 INDEX</p> <p>2</p> <p>3 EXAMINATION CONTINUED BY: PAGE</p> <p>4</p> <p>5 MS. MCGAUGHEY.....76</p> <p>6</p> <p>7</p> <p>8 MARKED FOR IDENTIFICATION:</p> <p>9</p> <p>10 Exhibit 1: Responses to Defendant's Second Set of</p> <p style="padding-left: 40px;">11 Requests for Production to Plaintiff</p> <p style="padding-left: 40px;">12 Kristy L. Rickey, Individually.....76</p> <p>13 Exhibit 2: Request for Production Nos. 5-8.....87</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 77</p> <p>1 Q. Okay.</p> <p>2 A. Okay.</p> <p>3 Q. So --</p> <p>4 A. These are not all of mine. These are -- they're</p> <p>5 mixed together.</p> <p>6 Q. Okay. So -- and before we went on the record,</p> <p>7 that's one of the questions I had asked, and to try to kind</p> <p>8 of speed up the deposition today, is, it looked like there</p> <p>9 were maybe -- I received supplemental responses from Kelley</p> <p>10 and supplemental responses from you, and it looked like</p> <p>11 maybe there were some of your things mixed in with some of</p> <p>12 her things. So maybe we could just walk through the</p> <p>13 supplemental set and you could identify for me as far as the</p> <p>14 attachments go the ones that focus on you or that you</p> <p>15 provided.</p> <p>16 I think Request for Production -- let me start off</p> <p>17 the process. I think the first attachment, the</p> <p>18 Certification of Healthcare Provider, obviously relates to</p> <p>19 you, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And then there's a Request for Production Number</p> <p>22 5, and there's a variety of photographs. Are any of those</p> <p>23 photographs supplied by you?</p> <p>24 A. We have some of the same pictures, so it's hard to</p> <p>25 say exactly which ones, but these ones here are from Kelley.</p>

2 (Pages 74 to 77)

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APP0154

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1 Q. Okay.
2 A. In the beginning.
3 Q. So would you look through the photographs until it
4 goes to the page Request for Production Number 6 and tell me
5 if those are all primarily then Kelley's photographs in that
6 first set?
7 MR. LINDENMUTH: You've gone past the point where
8 she was talking about.
9 THE WITNESS: This is where she --
10 MR. LINDENMUTH: Yeah, just the photographs.
11 Q. So just the photo --
12 A. This is all Kelley's.
13 Q. Oh, they're all Kelley's?
14 A. Yes.
15 Q. Okay.
16 MR. LINDENMUTH: Were there other ones from you?
17 THE WITNESS: Yes.
18 MR. LINDENMUTH: We'll get you those if you
19 haven't got them. I don't know what the story is.
20 MS. MCGAUGHEY: Okay.
21 Q. Then if we go to Request for Production Number
22 6 -- which it looks like it might be a variety of cards and
23 whatnot -- are those cards that came from you, or are they
24 also -- it looks like a lot of them are from Kelley?
25 A. They're Kelley's.

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1 Q. If you're in Request for Production Number 6 and
2 you start with the first page and go to the -- I'm sorry
3 they're not numbered, three, four, five -- you go to the
4 sixth page, there is a blank piece of paper that says, Gave
5 \$75 to Kristy for printing. Look at that page and see if
6 you know what that is.
7 A. That would probably be for one of the services
8 programs.
9 Q. Okay. That's not your handwriting, is it?
10 A. No. It's Kelley's.
11 Q. Okay. So the rest of the documents past that
12 handwritten note there, are those cards to you or from you,
13 or are those Kelley's cards?
14 A. They're Kelley's from what I can see.
15 Q. Okay. So then it goes to Kelley's writeup for
16 dad's services as part of that attachment, and it's
17 obviously signed by Kelley, so I'm assuming that's Kelley's?
18 A. Uh-huh.
19 Q. Yes?
20 A. Yes.
21 Q. Was that for the funeral service?
22 A. I believe so, yes.
23 Q. And then the next page, there's thoughts or words
24 about dad from you. That's obviously yours?
25 A. That is mine.

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1 Q. Okay. But then the next two, it looks like
2 Zach's. I'm assuming comments he might have given at the
3 funeral service?
4 A. Yes.
5 Q. And then Sunny would be the next one?
6 A. Yep, that's hers.
7 Q. So of those supplemental responses to your
8 requests for production directed to you, the only document
9 that's specifically provided or related to you is your
10 writeup for the funeral service?
11 A. That's what it looks like. Some of the pictures
12 are duplicate, but that is specifically.
13 Q. Okay. So when you say some of the pictures are
14 duplicative, we're talking about Request for Production
15 Number 5 that obviously had some pictures of I think your
16 mom, but of course your dad?
17 A. Well, sometimes when you get copies of pictures,
18 you get two, and one was given to her, and one was given to
19 me, so I may have given the same exact picture.
20 Q. Okay. I guess what I'm wondering at this point in
21 time --
22 MS. MCGAUGHEY: And, Paul, feel free to jump in,
23 but --
24 Q. -- your supplemental answers, it looks like it's
25 primarily Kelley's responses and not yours. Did you have or

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1 did you pull together some information?
2 MR. LINDENMUTH: I would object to the
3 characterization. I think the answers are her answers, but
4 as far as the requests for production --
5 MS. MCGAUGHEY: Well, there's no answers because
6 it's just responses to requests for production.
7 MR. LINDENMUTH: As far as that, there may be
8 other documents that were more specific to her.
9 Q. As you sit here today, did you produce or provide
10 in response to these requests for production of documents
11 either any cards that you were able to locate and find or
12 photographs that were particularly responsive?
13 A. I submitted cards, letters, e-mails, photographs,
14 some items.
15 MR. LINDENMUTH: Do you happen to have the other
16 responses here to maybe --
17 MS. MCGAUGHEY: I do, so let's go --
18 MR. LINDENMUTH: Are they swapped?
19 MS. MCGAUGHEY: I don't think so. So let's go off
20 the record and just let Kristy look at these and see if
21 maybe --
22 MR. LINDENMUTH: Yeah, let's see if they were
23 flipped.
24 (Off the record briefly.)
25 Q. (By Ms. McGaughey) Going back on the record,

3 (Pages 78 to 81)

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APP0155

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<p>1 while we were off the record, we were able to discern that 2 the attachments by way of requests for production to your 3 second supplemental interrogatories were actually flipped, 4 and Kelley's were attached to yours, and yours were attached 5 to Kelley's. So we're now in the process of making a quick 6 photocopy for Paul and I of the attachments to your 7 interrogatories, and we'll mark that as Exhibit 2, so then 8 we'll all be clear what your attachments were intended to 9 be, and I'll come back to those questions when they get 10 done. 11 MR. LINDENMUTH: For the record, sorry about that. 12 MS. MCGAUGHEY: Oh, that's okay. Thank you. 13 MR. LINDENMUTH: They just got flipped by staff 14 when we were correlating the documents. 15 Q. So I did want to ask you though about your current 16 employment status, and I know that attached to both of the 17 interrogatories was the Certification of Healthcare 18 Provider, and I understand that this year you're currently 19 not working for the school district. Correct? 20 A. That is correct. 21 Q. And was I right you're a third grade teacher? 22 A. Yes. 23 Q. And before your dad died, you were a third grade 24 teacher, and the position that you would have taken this 25 year would have been still been in the third grade?</p>	<p>1 mixed all up in different schools. 2 Q. So when you ended the school year before this 3 fall, did you not have a contract going into the ongoing 4 year? 5 A. I did have a contract continuing. 6 Q. Okay. So you weren't one of the 200 and some 7 people who had been let go? 8 A. I was displaced to a different school. 9 Q. Okay. 10 A. So I still had a contract. 11 Q. I see. And obviously Jason said that that 12 location too would take you out of your kids' current 13 school, correct? 14 A. Correct. 15 Q. So in addition to the location being in close 16 proximity to Clarence's house and Barbara's house, the 17 disruption with the kids would have been one of the factors? 18 A. It was one of the factors, yes. 19 Q. And was there some kind of a situation or some 20 kind of a problem involving the difference between taking a 21 leave of absence and either them terminating you or some 22 screwup with the paperwork? 23 A. There was. I actually went in to resign from my 24 position, and they told me they wanted to keep me as a 25 teacher in the school district. So I went to my doctor and</p>
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<p>1 A. I've taught both second and third grade. 2 Q. All right. And your husband, I just got done 3 deposing him, and he was able to talk to me a little bit 4 about the background or part of the background for the not 5 teaching this year. Was one of the reasons why you didn't 6 take the position that was offered to you was that it was in 7 close proximity to Barbara Griebe's house? 8 A. It was close -- it was across the street from 9 Barbara's house, but it was just down the street from my 10 grandfather's house and where the incident took place, the 11 same block. 12 Q. Okay. Did you know going into the school year 13 that they were going to be changing your location? 14 A. No. 15 Q. When did you find out about that? 16 A. At the very end of the school year. 17 Q. So the end of -- oh, so in June of -- 18 A. I found out probably in May. 19 Q. Okay. And was that due to a reorganization of the 20 school district? Was it a promotion? 21 A. It was lack of funding. 22 Q. Okay. So were they closing some schools or just 23 moving teachers around? 24 A. They -- what they did is, they cut 220 teaching 25 positions, and then they brought people back, and they were</p>	<p>1 had this paperwork filled out saying that they would give me 2 a leave of absence of up to a year, and I agreed to that, 3 and when I returned back to the school district, they said 4 they never received it, and I -- and they sent my 5 resignation letter to the school board, so I lost my job 6 without even knowing. 7 Q. Did they reinstate that? 8 A. No. 9 Q. So when all this came up -- and were you able to 10 show them a copy of the paperwork and whatnot? 11 A. We talked about it, and she said there was nothing 12 they could do after it was approved by the school board. 13 Q. So is there a policy on how you go about resigning 14 with the school district? 15 A. You usually write a letter. 16 Q. Write a letter. And did you write a letter? 17 A. I wrote a letter, but she held it aside and said 18 let's not continue forward with this. We don't want to lose 19 you as a teacher, so let's go this route, and you'll still 20 have your contract, and I said that would be perfect. 21 Q. Is that the principal or the school board? 22 director? Who were you interfacing with? 23 A. The human resources person. 24 Q. Human resources? 25 A. Yeah.</p>

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1 Q. So it sounds as if your original intention was to
2 go ahead and resign, and when you presented your letter of
3 resignation, they didn't want to lose you, and they were
4 trying to come up with a mechanism to give you a year off
5 but allow you to come back -- What? -- with full benefits
6 and whatnot?
7 A. Yes.
8 Q. And that has all dissipated for you?
9 A. It's all gone.
10 Q. Is there any way to get that back?
11 A. They say no.
12 Q. Hmm. So at the current time you're unemployed,
13 and you don't have a job?
14 A. Right.
15 Q. And you don't have any pending offers for the
16 school year next year?
17 A. No.
18 Q. Are you substituting at all?
19 A. I may do that soon.
20 Q. Okay. How are you feeling as it relates to
21 teaching? I certainly think that teaching would be
22 emotionally draining, but as far as where you're at now, as
23 far as your emotional well-being, do you feel like you could
24 teach at least on a part-time basis or substituting basis?
25 A. I probably could.

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1 Q. Is that something you would like to do, or are you
2 ready?
3 A. I would like to do, but I'm really trying to be
4 more available for my family, just be more tuned in, so this
5 has helped.
6 Q. Okay. So actually not being pulled so many
7 different ways with the schedule is helping?
8 A. Right.
9 Q. Okay.
10 MS. MCGAUGHEY: This one's my copy. Why don't we
11 mark one of the black and white copies for the deposition
12 copy.
13 (Exhibit No. 2 marked for identification.)
14 Q. So, Kristy, do you think that as far as the not
15 teaching this year, that it's in part due to your emotional
16 reaction to the loss of your father and part due to a couple
17 other factors, the location of the school within which they
18 were reassigning you along with the kids' schedule?
19 A. It's all of that.
20 Q. Okay. And do you have plans for next year? Did I
21 ask you that already?
22 A. I'm looking for a job.
23 Q. Okay. Have they approached you about getting you
24 back into that school district, or are you looking outside
25 of the school district?

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1 A. I will probably look in the school district to be
2 on the same schedule as my children. They go to Bethel
3 School District.
4 Q. Let me ask you this: If they would have accepted
5 your leave of absence, would you have still received
6 benefits from your employer?
7 A. I would only get them until -- it's like the end
8 of the school year where they sign you up. I don't know.
9 There's a period where it would end. It would end.
10 Q. With the leave of absence or the resignation?
11 A. It would go -- well, that's a Family Medical Leave
12 Act, so I would have benefits, medical benefits, during that
13 time.
14 Q. Oh, I see. The Certification of Healthcare
15 Provider that you took to your doctor to fill out, that
16 would have been taking a leave of absence under the medical
17 healthcare act?
18 A. Right.
19 Q. Okay.
20 A. And I would have had my benefits during that time,
21 but if I took beyond the ten weeks, then I wouldn't have
22 them.
23 Q. Okay. So this was just not intended as a full
24 year off; it was just a ten-week leave of absence?
25 A. The Family Medical Leave Act, only ten weeks.

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1 Q. Okay. If this had gone through, would you have
2 taken additional time off beyond the ten weeks?
3 A. Probably.
4 Q. Okay. So would that have required you to resign
5 at the end of ten weeks?
6 A. No. I would just fill out more paperwork for the
7 school district, and she told me verbally that she would
8 approve me for the whole year.
9 Q. So, in other words, you can take obviously the
10 federal medical leave, but they would have at least -- this
11 person indicated to you that they would have honored up to
12 one year leave of absence?
13 A. Right.
14 Q. I guess what I was wondering is, if you take a
15 leave of absence, when you come back, are you -- I think
16 they call the word bridged. You don't lose like your
17 seniority? I mean is there some benefits with the leave of
18 absence as compared to being, you know, terminated or
19 resigning and then hired back?
20 A. I would have a position.
21 Q. So a position. What about benefits though?
22 A. I would come back to everything the same, maybe a
23 different school.
24 Q. Okay.
25 A. But similar position, similar -- same benefits,

5 (Pages 86 to 89)

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APP0157

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1 similar position.
2 Q. They can't guarantee you a school, but they do
3 tell you that there will be a position?
4 A. Exactly.
5 Q. And then you don't have to worry about looking for
6 a new position and what that change might entail?
7 A. Yes.
8 Q. And you were happy teaching elementary school,
9 right?
10 A. It was wonderful because I was very close with the
11 staff there, and my children went there, and my
12 mother-in-law worked at that school. My husband went to
13 that school.
14 Q. Is that Jason's mom works at that school?
15 A. Yeah, she used to.
16 Q. Oh, uh-huh. So you're very comfortable in that
17 school and would like to have continued at that school
18 obviously?
19 A. I was hoping to.
20 Q. Now, is teaching still something that you want to
21 pursue, or are you -- I wasn't clear if Jason said you were
22 maybe giving some thought to leaving teaching altogether?
23 A. I'm not planning on leaving teaching. I'm
24 actually taking classes right now to keep my certification.
25 Q. Okay. And I can't remember. Did you say you have

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1 your -- you have your master's, right?
2 A. No.
3 Q. Oh, okay. So the certification, is this just
4 continuing education you're talking about to keep your
5 certification in place?
6 A. You have to have so many credits and clock hours
7 to keep your certification every five years.
8 Q. Okay. So the Certification of Healthcare Provider
9 that's attached to your supplemental interrogatories on
10 Exhibit I, which I think for the record is attached to both
11 Kristy and Kelley's supplemental answers -- so look at this
12 one -- when you say you took this to your doctor, is this
13 your counselor, or is this your medical doctor that filled
14 this out?
15 A. That's my medical doctor.
16 Q. Is that Dr. Snodgrass?
17 A. Yes.
18 Q. Okay. This indicates that he was going to or your
19 work would be re-evaluated in December. Is that this month
20 of December?
21 A. Yes.
22 Q. Okay. Have you been back to Dr. Snodgrass
23 recently?
24 A. No.
25 Q. Okay. Are you going to wait until the end of the

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1 school year, or I guess there's no reason for this now if
2 they considered you to have resigned?
3 A. I intend to only go see him when I need to consult
4 with him medically.
5 Q. Okay. So then could I direct your attention to
6 Request for Production Number 5? Could you just --
7 MS. MCGAUGHEY: Am I screwed up?
8 MR. LINDENMUTH: I don't know. Do you want these
9 or?
10 MS. MCGAUGHEY: No. She has a copy, and I have a
11 copy, and you have a copy.
12 MR. LINDENMUTH: I think we're good.
13 MS. MCGAUGHEY: Yeah.
14 Q. So Request for Production Number 5, Kristy, I was
15 hoping that you could just lead me through Request for
16 Production Number 5. Is this set -- it looks like a lot of
17 them are Kelley's, but did you provide these photographs for
18 this part?
19 A. I provided some pictures that I had. I was unsure
20 if Kelley had them in her possession, so I included them.
21 Q. So the first one, is that your handwriting on the
22 yellow sticky? Or it's not a yellow sticky on yours, but is
23 that your handwriting on that first page?
24 A. Yes.
25 Q. Is this at one of Kelley's drag races?

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1 A. Yes.
2 Q. Do you have any idea what time frame this was
3 taken?
4 A. Well, my mom was in that picture.
5 Q. Which one is your mom? Is she in the blue?
6 A. This one is not clear.
7 Q. Oh, I'm sorry.
8 MR. LINDENMUTH: We've got black and whites here.
9 Q. I'm so sorry.
10 A. She's wearing the visor. She's -- my sister's --
11 looking at the picture, she's on the right, and there's my
12 dad.
13 Q. So she's standing next to your dad and looking at
14 the picture directly to the right of Kelley?
15 A. Right.
16 Q. And the three children, are two of those yours?
17 A. The two are hers, and one is a close friend of
18 their family.
19 Q. Okay. So this was before you had children?
20 A. No, I had children. I just wasn't there that day.
21 Q. Oh, okay. I see. So this was a picture that you
22 had of Kelley and the family?
23 A. Exactly.
24 Q. Okay. And then the next one is obviously Kelley
25 and your dad, and this was a picture that you had in your

6 (Pages 90 to 93)

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APP0158

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1 personal affects, correct?
 2 A. That's in our back yard.
 3 Q. In your back yard?
 4 A. In their back yard when we lived there at the
 5 time.
 6 Q. Okay. So it's at your family home back yard?
 7 A. Right.
 8 Q. Do you know about what year this was taken or
 9 maybe how old Kelley is? Maybe Kelley will know better.
 10 A. She looks like she might be --
 11 Q. High school?
 12 A. -- 15.
 13 Q. Okay. And then obviously it looks like Kelley's
 14 wedding picture on the next page?
 15 A. Right.
 16 Q. And is that your dad?
 17 A. Yes.
 18 Q. Okay. And the little car below that, what car is
 19 that?
 20 A. That is a Bronco, and the significance of that
 21 picture is the hood ornament is on that Bronco.
 22 Q. The hood ornament that your dad was returning at
 23 the time that he was killed?
 24 A. Correct.
 25 Q. Is it up on the front there?

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1 A. It's on the front of that.
 2 Q. So did your dad have this car at the time that he
 3 died?
 4 A. No. It was a long time ago.
 5 Q. Okay. So the significance of that is that your
 6 dad had had that hood ornament for a long time?
 7 A. Right.
 8 Q. Do you know where the hood ornament went when this
 9 car was sold or this Bronco?
 10 A. He took it off.
 11 Q. Did it go on another one of his cars?
 12 A. I don't believe so. I think he just had it in his
 13 garage. Or no. Actually, I think it might have been on his
 14 Suzuki.
 15 Q. The Suzuki Samurai?
 16 A. It might have been on there. I'm not a hundred
 17 percent, but that's possible.
 18 Q. Okay. And the next picture is Kelley and your
 19 dad?
 20 A. Yes.
 21 Q. All right. And then the next picture, could you
 22 tell me, or do you -- I recognize Kelley, and I think that's
 23 your dad. Who are the other three people in that picture?
 24 We'll use --
 25 A. That is on his birthday. We were having a seafood

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1 dinner.
 2 Q. At your house?
 3 A. That's at his house.
 4 Q. Uh-huh.
 5 A. And that is Lane and Kaitlyn, my nephew and my
 6 daughter.
 7 Q. And the woman?
 8 A. That's Kelley and myself.
 9 Q. Oh, that's you?
 10 A. That's both of us.
 11 Q. Oh, okay. So you're in the -- you're to the left
 12 of your dad?
 13 A. That's me and that's Kelley.
 14 Q. Okay. And then down below, is that also you and
 15 Kelley and your dad at the church?
 16 A. Yes. That's at Kelley's rehearsal for her
 17 wedding.
 18 Q. Okay. The photograph that depicts the two girls
 19 and your -- I think you said your daughter and your nephew
 20 Lane, that would be typical of gatherings and dinners you
 21 would have frequently with your dad?
 22 A. Yes.
 23 Q. And then I recognize you, and then this is
 24 obviously you in the next picture. Is that your mom?
 25 A. Yes.

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1 Q. Okay. So I think your husband -- I can't
 2 remember. Did your husband say you were married in August,
 3 August 15th?
 4 A. August 19th.
 5 Q. August 19th? Did he say the 15th?
 6 A. He did.
 7 Q. Oh, but it's --
 8 A. That's typical.
 9 MR. LINDENMUTH: Ah-oh.
 10 Q. Ah-oh. Then it looks like the below picture -- is
 11 that you dancing the first dance with your dad at your
 12 wedding?
 13 A. Right. And Jason and his mom and my mom and my
 14 father-in-law.
 15 Q. So this is -- your mom is in the -- is to the
 16 right of you?
 17 A. Right.
 18 Q. And then this would be Jason's mom?
 19 A. And his mother, yeah, and Jason.
 20 Q. Okay. And then the next picture, now that I've
 21 met your husband, I'm thinking that that's your husband and
 22 your dad at the birth of --
 23 A. Yes.
 24 Q. Is that the birth of your first son?
 25 A. Daughter, yeah.

7 (Pages 94 to 97)

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1 Q. Your daughter. I'm sorry. And then down below it
2 looks like -- I'm thinking that's your mother?
3 A. Yes. That's their 25th wedding anniversary
4 celebration.
5 Q. Was that in Hawaii?
6 A. No. They were getting ready to go to Hawaii,
7 so --
8 Q. So for their anniversary they went to Hawaii?
9 A. Right.
10 Q. And you guys had a family -- it looks like maybe
11 at a restaurant before you sent them off?
12 A. Yes.
13 Q. And that's Jason I think and you?
14 A. Yes.
15 Q. So you were obviously married at the time, or
16 maybe not because you knew him since you were in high school
17 or junior high?
18 A. We were married.
19 Q. Okay. Do you agree with your husband that you had
20 a particularly close relationship to your mom or you had
21 more in common?
22 A. We had crafts in common.
23 Q. Crafts?
24 A. Uh-huh.
25 Q. But you were -- I got the impression from your

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1 husband that you were equally close to your parents. It's
2 just that you shared maybe more hobbies or interests with
3 your mom?
4 A. We had more the same interests, hobbies.
5 Q. And I'm looking at a few of the cards. It looks
6 like your mom and dad had a very close relationship?
7 A. Yes.
8 Q. Did you kind of feel like that they were a role
9 model for how a happy couple looked like in a long-term
10 marriage?
11 A. Definitely. You see lots of people getting
12 divorced, so yes.
13 Q. Yeah. And the next picture is one -- I'm assuming
14 that's your mom and your dad and your husband?
15 A. Yes.
16 Q. Is that your daughter too?
17 A. Yes, Kaitlyn.
18 Q. Kaitlyn. Was your dad -- was he able to always be
19 at the hospital when your children were born?
20 A. When I had my twins, it was just Jason and me.
21 They were in the waiting room, but they could not be in
22 there because it was a high risk. It was not a cesarean,
23 but it was high risk, so it was in the operating room.
24 Q. But they were --
25 A. They were there in the waiting room.

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1 Q. Okay. Now, going on to Request for Production
2 Number 6, these are it looks like kind of going through
3 either your personal effects or your dad's personal effects,
4 some cards and special memories you have of your dad?
5 A. Yes.
6 Q. So the first thing, is that a birthday card that
7 you received from your dad?
8 A. It is a birthday, and that was right after my mom
9 passed away.
10 Q. Okay. Was I right that your mom died in December
11 of 05?
12 A. Yes.
13 Q. Is your birthday in January then?
14 A. Yes.
15 Q. Okay. So this would have been the first birthday
16 card you got from your dad after you lost your mother?
17 A. Yes. That's why he wrote what he wrote on there.
18 Q. Love lasts forever?
19 A. Yes.
20 Q. Is the back -- oh, we don't have the back sides.
21 MS. MCGAUGHEY: Okay. We're going to have to --
22 MR. LINDENMUTH: Yeah, I didn't think about that.
23 MS. MCGAUGHEY: We'll have to do back sides for
24 the exhibit. We'll clean it up later. How about we just
25 share my copy?

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1 MR. LINDENMUTH: That's fine.
2 Q. Is the back side of your first birthday card
3 following the death of your mother -- is this a different
4 kind of card or memento, or is it part of the same?
5 A. It's the same one. It's the inside. The outside
6 is the first one. The inside is the second one.
7 Q. Okay. So it looks like your birthday is
8 January 14th?
9 A. Uh-huh.
10 Q. Okay. And then the next card, is this a birthday
11 card when you turned 31?
12 A. Yes. He liked to alter cards, so yes.
13 Q. And did you call him Papa?
14 A. I did not call him -- I mean we referred to him
15 when we were talking with the children. He -- he was known
16 as Papa.
17 Q. So this would be the -- I guess what I'm trying to
18 figure out, this would be the inside of your 31st birthday
19 card, Love, Papa?
20 A. It looks like it.
21 Q. Okay. And then the next thing, I'm not sure what
22 this is. Elderly mail to Kristy, is that your dad's
23 handwriting?
24 A. That is an envelope to a card.
25 Q. Okay. Call the fire department. I guess maybe a

8 (Pages 98 to 101)

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APP0160

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1 reference to your husband?
 2 A. It was how many candles were on my cake.
 3 Q. Oh, okay. So are you able to tell --
 4 A. That's a cake and candles and a fire extinguisher.
 5 Q. Okay. Kristy, are you able to tell on this
 6 envelope what year or approximately what year birthday you
 7 were celebrating? Was that the 31st?
 8 A. It may be the envelope to --
 9 Q. The prior card?
 10 A. Yes.
 11 Q. Okay. What about the next card? It's also a
 12 birthday card. Is that a birthday card that your dad sent
 13 to you?
 14 A. I would have to say yes. I don't have the inside.
 15 Q. All right. And then the next thing actually looks
 16 like maybe a birthday card that -- or a card that you gave
 17 to your mom and dad?
 18 A. Yes.
 19 Q. Okay. And I don't know. I'm just assuming this
 20 probably would have been when your mom was still alive, this
 21 card?
 22 A. Yes.
 23 Q. And the next card, was that something you made as
 24 a little girl?
 25 A. Yes.

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1 Q. Did you find that in your dad's personal effects?
 2 A. Yes. We were -- went through a box, and that was
 3 in there.
 4 Q. Okay. So he had some of the little things that
 5 you made when you were younger?
 6 A. All of them were saved.
 7 Q. Okay. And then the next one is a 25th anniversary
 8 card. That's the year your parents went to Hawaii?
 9 A. I can't see it.
 10 Q. Oh. (Indicating.) I think it's up here.
 11 A. So that must be one we gave to them, yes.
 12 Q. Because on the inside it looks like, We love you,
 13 Jason, Kristy and Gunner?
 14 A. Yeah, our dog.
 15 Q. Oh, okay. I was going to say I don't remember a
 16 Gunner. Okay.
 17 A. That's the yellow lab in the picture.
 18 Q. Oh, okay. I saw a yellow lab, I think your dad
 19 with a yellow lab that looked like a puppy.
 20 A. Yes, that's our dog.
 21 Q. Okay. Is Gunner still alive?
 22 A. No.
 23 Q. So you have Pepper?
 24 A. Yes.
 25 Q. Is it true that Pepper is comforting for you?

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1 A. Very much so.
 2 Q. And then it looks like another card from you. I'm
 3 assuming it's to your -- oh, it looks like it's maybe to
 4 your mom and your dad, Kelley, Bug and --
 5 A. Oh, Bud.
 6 Q. Tigger?
 7 A. Bud and Tigger.
 8 Q. Are those animals you had growing up?
 9 A. Yes. That's a letter I wrote to them when I was
 10 in college.
 11 Q. When you were away at college?
 12 A. Yeah.
 13 Q. Okay. Was this again something in the personal
 14 effects, or did you pick this one out of many, or did you
 15 just pull all of them out?
 16 A. That was just one of many.
 17 Q. Okay. The next thing, it looks like maybe it was
 18 a postcard to your mom and dad, and it's dated -- I'm
 19 thinking maybe you're on a vacation somewhere?
 20 A. We were on our honeymoon.
 21 Q. Oh, okay. Oh, August 24th. I'm not sure what the
 22 flip -- do you have a flip side of that?
 23 A. No.
 24 Q. Do you remember what that was? Kind of hard to
 25 identify.

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1 A. Oh, that's probably the front of the postcard I'm
 2 assuming.
 3 Q. Oh, okay. Where did you go on your honeymoon?
 4 Someplace with a beach.
 5 A. Hawaii.
 6 Q. Okay. So the next thing, it looks like another
 7 greeting card to your mom and dad and Kelley, but there is a
 8 little note up in my upper -- I guess it would be right-hand
 9 corner. Your page looks different.
 10 A. My mom wrote that on there.
 11 Q. So would she like keep little reminders of -- it
 12 says, First card from Kris after moving out to Ellensburg,
 13 November 93, so obviously it's kind of self-evident. It
 14 appears to be when you went away to college. This is the
 15 first card you sent them?
 16 A. Yes.
 17 (Brief interruption at the door.)
 18 Q. So the next one is -- it looks like maybe a
 19 special card to your father for his birthday, For a special
 20 dad?
 21 A. Yes.
 22 Q. Okay. And happy birthday?
 23 A. That was from me, yeah.
 24 Q. Okay. Is this a card that you had sent to him a
 25 long time ago and he had kept it all these years, or was

9 (Pages 102 to 105)

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<p>1 this a recent birthday card? 2 A. I don't remember exactly when it was. 3 Q. Okay. But it looks like you would send him 4 birthday cards and just special notes and even just 5 reminders of things? Would that be in your nature? 6 A. Yes. 7 Q. The next one looks like maybe it's one of the 8 kids' cards to their grandpa? 9 A. Yes. 10 Q. Father's Day. Okay. There's another one. I love 11 you, Old Bear, and I'm thinking the inside is, I'm so glad 12 you're my dad. We love you, Jason, Kristy and Gunner. So 13 I'm assuming that's before you had kids? 14 A. Yes. 15 Q. Would this just be kind of a gesture out of the 16 blue to I guess acknowledge your dad, or do you think this 17 was a special occasion? 18 A. I think that was Father's Day, and his nickname 19 was Ger Bear, so it was appropriate. 20 Q. Ger Bear. I can't -- the next one looks like your 21 copy is horrible, but some kind of a fishy -- 22 A. I made that card, yeah. 23 Q. You made that card. When you were in high school 24 or -- I can't tell what's on the back of it. 25 A. It's one of those cards where you're supposed to</p>	<p>1 Q. Okay. So this would have been a card to her 2 grandfather from Katy? 3 A. Yes. 4 Q. Now, the next one looks like a handmade card. Is 5 that from you? 6 A. That one is from a long time ago. 7 Q. Oh. Like when you were little? 8 A. Yes. 9 Q. Have a super day. Happy birthday. Love, Kristy? 10 A. Yes. 11 Q. The next one is another Father's Day card from 12 you? 13 A. Yes. 14 Q. I'm thinking that's the inside of that card? 15 A. Yes. 16 Q. Again, that was a card -- you said Ger Bear was 17 something you called him. He obviously loved cars, and you 18 shared that in your family. Was that kind of the token of 19 this card? 20 A. Yes. 21 Q. And then more it looks like cards, a Father's Day 22 card from your family. I think the very last one is a 23 birthday card, and it looks like maybe you made that and put 24 the kids' pictures? 25 A. Yes. That's my daughter and my nephew.</p>
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<p>1 blur your eyes to see the picture. 2 Q. And see what you see? 3 A. Uh-huh. 4 Q. Your copy's very illegible, but it looks like it's 5 a birthday card. I love you, Dad? 6 A. Yes. 7 MR. LINDENMUTH: Do you still have to blur your 8 eyes to see what you can see? 9 MS. MCGAUGHEY: On the other side? 10 THE WITNESS: Yeah, you do still have to. 11 Q. Then the next one I'm assuming is a birthday card 12 for your dad's 50th birthday? 13 A. Yes. 14 Q. Do you remember what you guys did for your dad's 15 50th birthday? 16 A. We just had a get-together at the house. He did 17 not want a big celebration. 18 Q. Uh-huh. And your mom was still alive then, wasn't 19 she? 20 A. Yes. 21 Q. Okay. And Kaitlyn was born, so would it have 22 included Kristy's family -- or Kelley's family? Excuse me. 23 A. Yes. 24 Q. Okay. Is Kaitlyn's nickname Katy? 25 A. Yes.</p>	<p>1 Q. Okay. And when you say your nephew, is that Lane 2 or? 3 A. Lane. 4 Q. Lane, okay. So then going on to Request for 5 Production Number 7, I think these are maybe some cards that 6 you found that had come from your mom and/or your dad. I'm 7 not sure. 8 A. Oh. 9 Q. Take a look at the back. I don't know if you -- 10 if you go to the next page, do you have -- okay, no. I 11 think this is the back of the card that you have in your 12 hand. 13 A. This was a card that my dad sent to my mom. 14 Q. Okay. So it was between your mom and dad? 15 A. Yes. 16 Q. Okay. And then here are some handwritten notes. 17 I think that's your dad's handwriting? 18 A. Yes. 19 Q. And it is -- was that part of a card? 20 A. That's the envelope I think. 21 Q. So these are all of the things that -- I'm not 22 sure the significance -- things that your dad thought of 23 your mom, or do you know? 24 A. Yeah. He was teasing her being a gardener and -- 25 Q. Dirt devil. What's Miss Hume, H-U-M-E? Is that a</p>

10 (Pages 106 to 109)

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APP0162

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1 garden terminology?
2 A. Ed Hume.
3 Q. Oh, okay. I think, if I remember these cards,
4 these were some touching cards that you found in and among
5 your dad's personal effects or I guess maybe your mom's
6 personal effects as well?
7 A. They were in their files, yeah.
8 Q. And I think all of them -- well, maybe from your
9 dad -- they're all to your mom, aren't they?
10 A. It looks like it, yeah.
11 Q. But then we came to -- do you come then to a
12 picture of a 56 Chevy?
13 A. Yes.
14 Q. And is that a photograph of your first car?
15 A. No. That is the car that he gave to me as a gift.
16 Q. And is that in 09 he gave -- well, that says
17 May 1st, 09. That can't be right.
18 A. It was right before -- it was somewhere within the
19 year my mom passed away.
20 Q. Here. That's not very -- is that the date the
21 photograph was printed or something?
22 A. It might have been. I know that it was before 09.
23 Q. Okay. And did you say it was the year your mom
24 passed away?
25 A. Oh, that picture was taken probably in 09 because

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1 the Impala is there, but he gave it to me in 0 -- somewhere.
2 It was in the year before my mom passed away.
3 Q. All right. Was the first car that we talked about
4 before in your deposition -- I saw a picture of a red
5 Camaro. Is that the car that you had when you were in high
6 school that you ended up buying or paying the payments to
7 your parents?
8 A. Right, yeah.
9 Q. Okay. So the next picture -- and let me use my
10 copies because they're better -- the one in the -- it looks
11 like a riding lawnmower. Is that you and your dad?
12 A. Yes. He would give us rides on the lawnmower for
13 fun.
14 Q. Did you guys have a big yard, or is that at your
15 house, in other words?
16 A. That's where we group up, and the yard was not
17 that big.
18 Q. Okay. And then is that your dad and you to the
19 right?
20 A. Yes.
21 Q. And then your dad and your sister and you at -- it
22 looks like maybe a -- yeah, it looks like maybe a Christmas
23 picture?
24 A. Yes, yes.
25 Q. Okay. The bottom picture, is that a picture of

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1 your family camping when you were younger?
2 A. Yes. We were at Ocean Shores.
3 Q. Is that some kind of RV or trailer? Would you
4 guys go as a family and go do those kinds of things
5 together?
6 A. Yes.
7 Q. Is that something that you continued to do with
8 your dad after your mom died, camping?
9 A. Yes.
10 Q. The next photograph, is that your mom and dad and
11 one of their grandchildren?
12 A. Yeah, that's them, and that is my son.
13 Q. Okay. And that is one of the twins then?
14 A. Yeah, Justin.
15 Q. Is that also Justin, your dad holding Justin?
16 A. That's Kaitlyn.
17 Q. Kaitlyn. Are both of these pictures -- it looks
18 like maybe this upper picture was taken on Christmas because
19 I see some Christmas cards in the background?
20 A. It looks like it.
21 Q. Would that have been at the house that you grew up
22 in, or is that your home?
23 A. That's at their house.
24 Q. The bottom picture, do you recognize the setting
25 of where that picture's taken?

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1 A. That's at their house.
2 Q. Okay. The next picture is -- I'm thinking this --
3 is this the replica of a picture of when you and your sister
4 were younger with your kids?
5 A. Yes.
6 Q. Or is that actually you two girls?
7 A. That is Lane and Kaitlyn, and it was supposed to
8 be a Christmas present I believe to give him that.
9 Q. And was that a Christmas present that you'd
10 previously given to him, or was this one that was going to
11 be given to him?
12 A. We framed the old picture of Kelley and I on the
13 hood of the 55, and we framed that one, both of them, with
14 the kids, young kids, on the same car.
15 Q. So that was a Christmas gift you'd given to him
16 before he died?
17 A. It was when they were young, yeah.
18 Q. Oh, okay. And I'm thinking that that's your dad
19 and one of your -- either your son or daughter on the bottom
20 of that picture?
21 A. That must be Kaitlyn.
22 Q. Kaitlyn. And do you recognize that to be your
23 family home, or is that at your house?
24 A. That's at our house.
25 Q. Okay. It looks like the next photograph is your

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1 dad and the grandkids?
 2 A. Yes, that's Lane and Kaitlyn again.
 3 Q. Okay. Is your dad holding Kaitlyn in the bottom
 4 picture?
 5 A. Yes.
 6 Q. Okay. We have some more photographs of I think
 7 your dad, and I'm not sure which two children are in the
 8 upper photograph.
 9 A. That is Lane and Luke.
 10 Q. Okay.
 11 A. My nephews.
 12 Q. Right. It looks like it might be at your family
 13 home that you grew up in?
 14 A. Yes.
 15 Q. And the bottom picture, is that -- which girl is
 16 that?
 17 A. That's my daughter Kaitlyn on their patio.
 18 Q. Okay. The next picture looks like the Vespa that
 19 we've heard about before. Who's on the Vespa with your dad?
 20 A. That's Kaitlyn, and he would give rides just like
 21 on the riding lawnmower, same thing, same place even.
 22 Q. At the house?
 23 A. Yes.
 24 Q. Scooting around. If you go to the next page,
 25 the -- is that the grandkids again on both pictures?

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1 A. Yes, those are all my kids.
 2 Q. Okay. Okay. Now, here's the picture I was
 3 thinking of. Is the upper picture Gunner and your dad?
 4 A. Yes, yes. And he loved that dog.
 5 Q. Did you grow up with animals?
 6 A. Yes.
 7 Q. So animals were -- you had dogs when you grew up?
 8 A. Yes. He cried when I called and told him we had
 9 to put Gunner down.
 10 Q. And then when did your dad get Pepper? Was that
 11 before your mom died or after?
 12 A. It was before.
 13 Q. Okay. And obviously he would -- well, obviously
 14 Pepper was still alive because you have Pepper now, right?
 15 A. Yes, we -- our dog, we had to put our dog to
 16 sleep, and it was not very long before we'd got Pepper.
 17 Q. Oh, okay. So Gunner had died not very -- this is
 18 not to be insensitive, but did you get Pepper before your
 19 dad died or after your dad died?
 20 A. After.
 21 Q. Okay.
 22 A. And there was no question who was going to get
 23 Pepper.
 24 Q. Uh-huh. And then it looks like the bottom picture
 25 is your dad and one of the kids at -- I don't know. Was

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1 that a special church service, or was that the rehearsal
 2 dinner for one of the girls?
 3 A. That's probably my sister's rehearsal.
 4 Q. Okay. The next two pictures, looks like that's
 5 your dad and -- I don't know -- one of the grandkids resting
 6 at his house. It looks like it might be on Christmas again.
 7 I'm not sure.
 8 A. That's Lane.
 9 Q. Is that Lane?
 10 A. Yeah.
 11 Q. What about in the bottom picture? Is that Lane
 12 again too?
 13 A. That's Lane again and Pepper.
 14 Q. Okay. More grandkids and your dad?
 15 A. That's at a birthday party.
 16 Q. A birthday party for your dad or for one of the
 17 kids?
 18 A. One of the kids, and this is Lane.
 19 Q. Go on. Again the Vespa, your dad giving rides to
 20 the kids like you described that he would do?
 21 A. Right. That's at the ocean.
 22 Q. Okay.
 23 A. That's at their house.
 24 Q. Is this your dad and one of your children?
 25 A. Yes, that's Ryann.

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1 Q. Okay. And the next one, is that a card that one
 2 of the kids drew for your father?
 3 A. My daughter drew that, yeah.
 4 Q. Okay. So if you go onto Request for Production
 5 Number 8, it looks like these are some photographs of
 6 get-togethers and other memorable events. The first one it
 7 looks like -- is that your handwriting?
 8 A. Yes.
 9 Q. And this is the Morton property as is described in
 10 here. What's going on here? Is this construction or
 11 deconstruction?
 12 A. That's deconstruction.
 13 Q. Is it when that snow fell on the roof and
 14 collapsed it and you guys were cleaning up or?
 15 A. It was before that.
 16 Q. Is there an actual -- a building there? I thought
 17 there was like a trailer that had --
 18 A. That is it, and it's flattened now.
 19 Q. Okay. If you go to the next page, the photograph
 20 with the -- I'm thinking that's your dad. Who are the other
 21 people in this bottom photograph?
 22 A. This is Clarence, this is Retha, my grandmother,
 23 and this is Sunny, his sister.
 24 Q. And your dad?
 25 A. And my dad.

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1 Q. Okay.
 2 A. And that's at Sunny and Bill's house over by
 3 Fox Island. It was my grandmother's 70th birthday.
 4 Q. 70th?
 5 A. Yes.
 6 Q. And then the next photograph looks like a family
 7 get-together of some kind. Do you recall when this was
 8 taken?
 9 A. That was graduation from college.
 10 Q. Okay. Was that at somebody's -- obviously
 11 somebody's house. Do you remember where it was taken?
 12 A. It was at Mark and Cindy. That's my
 13 brother-in-law and sister-in-law's place. They also lived
 14 in Ellensburg at the time.
 15 Q. I'm thinking that -- is that you right here, the
 16 blond with the long hair?
 17 A. That's my sister-in-law Cindy.
 18 Q. Okay. And it looks like maybe your dad and mom?
 19 A. Yes, and my long-time friend.
 20 Q. Your long-time friend?
 21 A. Tammy, yeah.
 22 Q. Okay. Is this a celebration of your graduation
 23 from college in the bottom photograph?
 24 A. No. That's a birthday party in our garage.
 25 Q. Okay. Was your dad in attendance at that birthday

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1 party?
 2 A. He's right there.
 3 Q. Okay. So it looks like from looking at your
 4 photographs that birthdays and special events you'd use at
 5 an opportunity to get together with your dad whenever
 6 possible?
 7 A. Yes.
 8 Q. There is a photograph -- in fact, let me show you
 9 the copy. If we go on, I recognize your -- I think this is
 10 your dad in this bottom photograph. Does this photograph --
 11 is the person depicted in that any significance to you?
 12 A. That's my father-in-law.
 13 Q. Oh, okay. So that's your husband's dad?
 14 A. Yes, and that's at our house.
 15 Q. Okay. In the upper photograph, is that at a
 16 recreational property?
 17 A. That's at our house, and that's how -- at the
 18 birthday parties they'd go to his car and look at it.
 19 Q. The kids would?
 20 A. All guys.
 21 Q. Oh, okay. So that car is one of your father's
 22 cars?
 23 A. Yes.
 24 Q. Let me ask you this: Is the next photograph your
 25 mother when she was sick?

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1 A. Yes.
 2 Q. And do you remember when this was taken? It looks
 3 like it must be at your family house?
 4 A. It's on Christmas.
 5 Q. Okay. So was it the Christmas before your -- did
 6 your mom die just a few days later?
 7 A. Yes, yes.
 8 Q. Is the bottom picture the same day or the same
 9 celebration?
 10 A. No, because she doesn't look the same.
 11 Q. Oh, that's your mom there?
 12 A. Yeah. No, that's not the same.
 13 Q. It looks like maybe it was also a Christmas
 14 though?
 15 A. It's just actually the same direction in the
 16 house.
 17 Q. Okay. Because that would be where you would
 18 gather? I mean you grew up there, and that would be where
 19 the holidays would -- as a gathering place?
 20 A. It would probably be on Christmas Eve.
 21 Q. Christmas Eve. Is that when you would
 22 typically -- after you had your own family and you would get
 23 together with your own family for the holidays, is it kind
 24 of Christmas Eve at your house and then Christmas at your
 25 in-laws' house?

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1 A. We usually spent Christmas Day at our house, our
 2 own house.
 3 Q. Oh, okay. But you'd always get together with your
 4 dad at some point in time, right?
 5 A. Right.
 6 Q. Or have him over?
 7 A. Yes.
 8 Q. It looks like more family pictures, like maybe the
 9 kids' birthdays. Then there was I think you said Gerry,
 10 your dad, at a family function of some kind?
 11 A. Yes, that's one of -- that's actually Luke's first
 12 birthday.
 13 Q. Okay. Who is in the next photograph? Are you
 14 able to tell?
 15 A. That's my dad. That's me. That's Justin, Luke,
 16 Ryann, birthday party at our house.
 17 Q. Okay. And then you've attached some articles.
 18 This is I think maybe where I saw the reference to you with
 19 the Camaro. Are these photographs just -- is this part of
 20 your yearbook or?
 21 A. I had a -- like a scrapbook my senior year, and
 22 this top one was in my high school paper, and this one was
 23 in the Bethel paper, Bethel School District Publication, and
 24 it's referring back to me being in like the Hotrod Spotlight
 25 with my car, and my dad was also when he was in high school.

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1 Q. Okay. And then the next one, that's your Camaro?
 2 A. Yes, and that's me. That's way before I owned it.
 3 I'm sitting in -- that's when my parents owned it.
 4 Q. Oh, the upper one. I just see that now. That's
 5 you as a little girl?
 6 A. Yes.
 7 Q. And then you when you were -- I don't know -- 16
 8 or 17? Or maybe 18 if it was your senior year?
 9 A. Oh, I think -- oh, it had just been repainted.
 10 I'm showing our neighbor -- I drove it up to her house --
 11 the new paint job. So that's not right when I'm 16. That's
 12 probably, yeah, when I'm 18, when I'm a senior.
 13 Q. Now, the next picture looks like one of your
 14 dad's -- is that one of his hotrods with your daughter?
 15 A. Yeah, it's the 33, and that's Kaitlyn.
 16 Q. Okay.
 17 A. He would take them to the garage and just let them
 18 sit in it and pretend like they're driving.
 19 Q. Now I'm thinking the next one -- is that actually
 20 you and Kelley then? This is the one of you originally that
 21 was replicated?
 22 A. Yes.
 23 Q. That was framed, and then the next picture is
 24 meant to go with it with the grandkids?
 25 A. That's right.

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1 Q. Okay. And then you've attached as Request for
 2 Production Number 8 some e-mails, and I think these are
 3 e-mails that you got from your dad that you still had copies
 4 of?
 5 A. Yes.
 6 Q. And I think -- is that first one the Suzuki
 7 Samurai that your husband talked about?
 8 A. Yes.
 9 Q. Okay. And then the next one was I guess -- a
 10 raccoon's getting into Pepper's food?
 11 A. Yes.
 12 Q. It would be common for your dad to e-mail you with
 13 little pictures or little --
 14 A. Yes.
 15 Q. -- comments or to stay connected with you?
 16 A. Yes.
 17 Q. And it looks like one of the next pictures is the
 18 trailer that collapsed from snow that your dad had sent you
 19 via e-mail?
 20 A. Yes. He just happened to drive up there, and he
 21 didn't know, so he said, Look what happened.
 22 Q. Okay. What is this next photograph, the last
 23 photograph? It looks like a jimmy-rigged motorcycle for one
 24 of the kids?
 25 A. Yes. He made that when -- that was one of his

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1 tinkering projects that he made after my mom passed away.
 2 Q. Is that your son?
 3 A. That's Lane, my nephew.
 4 Q. That's Lane, okay. So these would just be -- I'm
 5 sure you have lots of other memorabilia that you have that
 6 reflect your memories of your father. This is just a
 7 sampling?
 8 A. It's kind of a summary.
 9 Q. Okay. Is it painful to go through this with me,
 10 or does it -- is it --
 11 A. It makes me happy to look at them.
 12 Q. Uh-huh. So you're at that place now where
 13 reflecting on cards and photographs, at least the memories
 14 are good memories at least as reflected in the cards and
 15 photographs of your upbringing and family childhood?
 16 A. Looking at this stuff, this is the only stuff we
 17 have left, so that's what we have to look at and our
 18 memories.
 19 Q. Now, you recently saw your counselor. I think --
 20 is her last name Cameron?
 21 A. Caron.
 22 Q. Caron. And I know that she's on maternity leave,
 23 and she indicated when I talked to her recently that you
 24 would just be seeing somebody on an as-needed basis if
 25 anything came up?

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1 A. Right.
 2 Q. Do you have any plans on seeing anybody for your
 3 emotional issues at the present time?
 4 A. She will be returning in March I think she said,
 5 and she gave me her phone number and e-mail address and told
 6 me I could contact her, and she has a private practice as
 7 well, so.
 8 Q. Outside of the clinic?
 9 A. Yes, yes.
 10 Q. Okay. So you're currently on antidepressants
 11 still?
 12 A. Yes.
 13 Q. And that's prescribed by Dr. Snodgrass I think?
 14 A. Yes.
 15 Q. And then are you taking any of that anxiety
 16 medication still, or are you done with that?
 17 A. I'm not taking that anymore.
 18 Q. Okay. Any other medications that you're on that
 19 are different than when we talked the last time?
 20 A. I take Ambien. I have trouble sleeping.
 21 Q. Okay. And about your sleeping, has it changed
 22 since I've talked to you last? Are you sleeping better, or
 23 is it still problematic for you?
 24 A. It's not improved.
 25 Q. No. So do you feel well-rested, or do you

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1 struggle with just being exhausted during the day because
2 you're not getting the sleep you need?
3 A. If I do not take my medication for sleep, I would
4 be a mess.
5 Q. Do you think you take it daily?
6 A. I take it daily.
7 Q. Do you? So are you having trouble getting to
8 sleep and that helps, or once you're asleep, are you able to
9 get a sound sleep?
10 A. It depends. It could be falling asleep and waking
11 up at 3:00, and it's to the point now where the medication
12 doesn't even help.
13 Q. When you say the medication, you mean the sleep
14 medication or the antidepressants?
15 A. Ambien.
16 Q. Ambien. Is the Ambien prescribed, or is that
17 over-the-counter?
18 A. It's prescribed.
19 Q. Prescribed. So in the last six months, have you
20 had to increase the dosage of Ambien?
21 A. No. I've taken the same the whole time.
22 Q. Okay. But you're finding that it's not really
23 providing the relief that it initially provided?
24 A. No, and I wish it wasn't that way.
25 Q. Uh-huh. Has your relationship with your sister

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1 improved since we last talked?
2 A. It has.
3 Q. Okay. And other than the one time that Jason went
4 with you to the counselor, have you and your husband had any
5 counseling together?
6 A. No.
7 Q. Okay. Because it looked like when he came to the
8 counseling session, it was really to be supportive to you to
9 figure out ways that he could best assist you in this time
10 of loss?
11 A. Right, just support.
12 Q. Uh-huh. Will the holidays be particularly bad for
13 you this year?
14 A. I'm not really thinking about myself. I'm
15 focusing on the kids. Just I'm kind of checked out for
16 myself, so I try to do it for the kids. I'm doing it for
17 the kids and everybody else in the family.
18 Q. Uh-huh. Well, what are your plans for the
19 holidays? Will you get together with your in-laws? Will
20 you get together with your sister and her family? What's
21 coming up?
22 A. We got together last night with my Aunt Jill at
23 her house with my sister and her sons and my family and my
24 aunt's family, and tonight we will be going to Sunny and
25 Bill's, my aunt and uncle, and Kelley and Mark and her kids

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1 will be there with us. And then we will be spending
2 Christmas at our house just my family, and then we will be
3 going Christmas night to my in-laws and spending it with my
4 brother-in-law and sister-in-law and their kids.
5 Q. Okay. Now, your husband had indicated that one of
6 the things that he observed since this loss was some
7 strained family relationships outside of your relationship
8 with your sister. I wasn't quite sure what he meant by
9 that. Do you know what he was referring to?
10 A. It's -- people don't know how to act the same as
11 they used to, and sometimes there's just not words, and my
12 aunt is -- Sunny is still very upset about all of this, and
13 she may be some days back a few steps from where I am, so
14 after I talk to her, it's very upsetting to me.
15 Q. So the back a few steps, is that kind of part and
16 parcel of what your husband was describing? Some days
17 you'll be one step forward, but other days you'll feel like
18 you've maybe taken two steps backward as far as your
19 emotional status?
20 A. Well, it changes with me, but, as I'm finding out,
21 everybody else is at a different spot in how they're coming
22 along with this, and sometimes when I'm at a certain spot
23 and I'm around someone else in the family, they're at a
24 different spot, and it can be hard for me if they're maybe
25 not doing as good.

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1 Q. Uh-huh. So do you find that you don't participate
2 in family events on occasion because you don't want to maybe
3 be subjected to the emotional backlash afterwards if that
4 occurs?
5 A. I still do it no matter what.
6 Q. You still do it?
7 A. Yeah.
8 Q. It's just what you experience maybe sometimes
9 after if it's been a hard time?
10 A. Yes.
11 Q. Now, have you come across, you or your sister come
12 across, any updated financial information from your father's
13 estate since we last spoke?
14 A. Did we find anything else?
15 Q. Yes.
16 A. No.
17 Q. Did you find any savings or investment accounts?
18 A. No.
19 Q. Did you happen to locate -- there was an account
20 that we thought that we had identified where money had been
21 deposited that may have been from the life insurance policy
22 for your mom. Did you ever uncover any accounts related to
23 that?
24 A. No. I don't -- that just went into his regular
25 funds. It wasn't put away saved I don't believe.

EXHIBIT C

SUPERIOR COURT OF WASHINGTON STATE FOR PIERCE COUNTY

KRISTY L. RICKEY and KELLEY)	
R. CAVAR, individually, and as)	
Co-Personal Representatives of)	
the Estate of Gerald Lee Munce,)	
Deceased,)	
)	
Plaintiffs,)	
)	
vs.	)	NO. 10-2-07470-3
)	
DENNIS CLINE and "JANE DOE" CLINE,)	
individually, and the marital)	
community comprised thereof,)	
)	
Defendants.)	

DEPOSITION UPON ORAL EXAMINATION OF KRISTY L. RICKEY

APPEARANCES:

For the Plaintiffs: BEN F. BARCUS
 PAUL A. LINDENMUTH
 THE LAW OFFICES OF BEN F. BARCUS
 & ASSOCIATES
 4303 Ruston Way
 Tacoma, Washington 98402

For the Defendants: GREGORY J. WALL
 WALL, LIEBERT & LUND
 1521 S.E. Piperberry Way, #102
 Port Orchard, Washington 98366

Also present: Kyle Burns
 Kelley Cavar
 Dennis Cline

Reported by Valerie Gerjets, CCR
 CCR #299-06 0002356

March 16, 2011
 Tacoma, Washington

VALERIE GERJETS, CCR
 253-473-7764

DEPOSITION OF KRISTY RICKEY (3-16-11)

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16	(No exhibits were marked for identification.)			
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Page 3

1 4303 Ruston Way, Tacoma, Washington

2

3 9:15 a.m.

4 * * * * *

5 KRISTY L. RICKEY, having been called as a witness

6 on behalf of the defendants,

7 being first duly sworn by the

8 Notary, testified as follows:

9 EXAMINATION

10 BY MR. WALL:

11 Q Could you state your name for the record, please?

12 A My name is Kristy Rickey.

13 Q And, Ms. Rickey, could you tell me your residence

14 address?

15 A It's 15906 38th Avenue East, Tacoma, Washington, 98446.

16 Q And I understand you're married?

17 A Yes.

18 Q What's your husband's name?

19 A Jason Rickey.

20 Q How long have you been married?

21 A We have been married for 15 years.

22 Q Do you have children?

23 A We have three children.

24 Q How old are they?

25 A My oldest daughter, she is 11, and I have twins, a boy

Page 4

1 and girl twins, who are nine.

2 Q And it's my understanding you are a school teacher by

3 grade?

4 A I am currently not teaching, but yes, I am.

5 Q Do you still have your certificate?

6 A Oh, yes.

7 Q And where did you go to school?

8 A Are you talking high school?

9 Q College.

10 A Central Washington University.

11 Q And do you have your Master's or Bachelor's?

12 A I have my Bachelor's.

13 Q Are you an elementary ed teacher?

14 A Yes.

15 Q What is your certificate? Is it K-12 or --

16 A Yeah. It's K-12. It's -- reading is K-12 and K-8

17 elementary ed.

18 Q When was the last time you worked as a teacher?

19 A Last time I worked was -- it ended in the 2008/2009

20 school year. We went through the reduction in force.

21 My job was cut based on my years.

22 And then I was rehired at Elk Plain Elementary, and

23 I actually chose to resign because I did not want to be

24 in that close proximity to where my dad was killed. And

25 it was right across the street from Barbara's house.

Page 5

1 Q Elk Plain is that school that's right there kind of

2 right by her house, isn't it?

3 A Yes.

4 Q And was that one of those deals when they lay you off,

5 you can bump people by seniority?

6 A Yeah. They just displace you. They give you a place

7 where they have room.

8 Q Are you looking for work now?

9 A I am not right now.

10 Q Are you still the personal representative of your dad's

11 estate with your sister?

12 A Yes, I am.

13 Q Is that probate still open?

14 A Yes.

15 Q One of the assets of the estate -- I was looking at the

16 inventory -- was some real property, his house basically,

17 at 17404 South Yakima in Spanaway. Has that house been

18 sold?

19 MR. BARCUS: Objection: irrelevant.

20 A It has been sold.

21 Q (By Mr. Wall) And did you get your estimated value of

22 \$225,000?

23 MR. BARCUS: Objection: irrelevant.

24 A It sold for less with the economy.

25 Q (By Mr. Wall) Do you remember how much it sold for?

2 (Pages 2 to 5)

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APP0171

Page 6	<p>1 MR. BARCUS: Objection: irrelevant.</p> <p>2 A I would have to look at paperwork. It was a bit lower.</p> <p>3 Q (By Mr. Wall) And can you describe that house for me?</p> <p>4 A It was a three-bedroom house, rambler, one story. I</p> <p>5 think it was built in the '50's. It was just a real</p> <p>6 basic house.</p> <p>7 Q Was it a manufactured home?</p> <p>8 A No.</p> <p>9 Q Just a regular stick-built house?</p> <p>10 A It was a regular home.</p> <p>11 Q Did your dad live there with anybody?</p> <p>12 A He lived there with my mom.</p> <p>13 Q And then after your mom passed away, anybody else?</p> <p>14 A He did have a girlfriend, and she may have come over,</p> <p>15 you know. It wasn't -- I didn't know.</p> <p>16 Q She didn't actually live there, though?</p> <p>17 A No. No. She didn't claim it as her residence.</p> <p>18 Q What was the girlfriend's name?</p> <p>19 A Kathy.</p> <p>20 Q Do you remember her last name?</p> <p>21 A No. I never knew what her last name was.</p> <p>22 Q It's my understanding your mom passed away about -- was</p> <p>23 it 2005?</p> <p>24 A 2005, the end of December.</p> <p>25 Q And what did she die of?</p>	Page 8	<p>1 about it.</p> <p>2 Q Did he have a shop at the house?</p> <p>3 A He did.</p> <p>4 Q My understanding was he had an on-the-job injury that</p> <p>5 resulted in him getting an L and I -- I don't know. Was</p> <p>6 it a pension or an award?</p> <p>7 A L and I something. I don't know the ins-and-outs</p> <p>8 details. It wasn't something we talked about on a</p> <p>9 regular basis, and I had seen L and I on one of his</p> <p>10 notes. So I assumed that he was getting income from</p> <p>11 that.</p> <p>12 Q What kind of injury did he have?</p> <p>13 A He had a back injury, and he also had a shoulder injury.</p> <p>14 I believe he had surgery on his back with like pins in</p> <p>15 it, fused.</p> <p>16 Q Do you remember whom he was working for when that</p> <p>17 happened?</p> <p>18 A It was Bethel School District.</p> <p>19 Q And then it was also my understanding that he was</p> <p>20 getting Social Security disability?</p> <p>21 A I think he was. The disability part is Social Security</p> <p>22 disability. I'm not sure if they're the same.</p> <p>23 Q But he got something from the Social Security</p> <p>24 Administration?</p> <p>25 A I think so.</p>
Page 7	<p>1 A Kidney cancer.</p> <p>2 Q Tell me a little bit about your dad. When you were</p> <p>3 growing up, what kind of work did he do?</p> <p>4 A Let's see. He worked at a welding supply company --</p> <p>5 that was the very first that I can ever remember -- for</p> <p>6 quite a long time.</p> <p>7 And I remember something like they went on strike,</p> <p>8 and he lost his job, that type of thing, and he worked</p> <p>9 at -- from there, I believe he went to a place on Pacific</p> <p>10 Avenue where he sold trailers, like in sales, Pacific</p> <p>11 Travel Center.</p> <p>12 He was there for quite some time, couple years</p> <p>13 maybe, and he moved on to Bethel School District. He</p> <p>14 kind of changed jobs within the district. He started as</p> <p>15 a groundskeeper, and then he worked in the warehouse.</p> <p>16 And then he started working in the technology</p> <p>17 department, and like for approximate years, I'd have to</p> <p>18 look at paper to find --</p> <p>19 Q Always as a classified employee?</p> <p>20 A Yes.</p> <p>21 Q And did your dad have any source of income other than</p> <p>22 his wages?</p> <p>23 (Mr. Lindenmuth enters.)</p> <p>24 A Not a regular income. He occasionally would fix up a</p> <p>25 car and sell it or sell one for a friend, and that was</p>	Page 9	<p>1 Q And he wasn't 65 yet, was he?</p> <p>2 A No, he wasn't.</p> <p>3 Q Did he have a pension, like a defined-benefit-type</p> <p>4 pension from the school district?</p> <p>5 A Like a retirement pension?</p> <p>6 Q Yes. You know, so much a month, that kind of thing?</p> <p>7 A He did have something.</p> <p>8 Q And my understanding was he had some kind of a 401-K</p> <p>9 account or something similar to that?</p> <p>10 A I'm not really sure how they referred to it as. It was</p> <p>11 a little confusing at first to figure out. We just know</p> <p>12 that it was rolled over.</p> <p>13 I think it went to -- his bank at the current time</p> <p>14 was Rainier Pacific. It got moved there, and it was</p> <p>15 called a prime vest account, is where it was.</p> <p>16 Q So kind of like an IRA?</p> <p>17 A Right.</p> <p>18 Q I think that's listed on your inventory.</p> <p>19 A Right. I would have to look at that for the exact</p> <p>20 amount.</p> <p>21 Q Okay. On the inventory, there's also some real</p> <p>22 property -- I guess it's just a lot -- in Morton,</p> <p>23 Washington?</p> <p>24 A Right.</p> <p>25 Q And is that still part of the estate, or did you sell</p>

3 (Pages 6 to 9)

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Page 10

1 it?

2 A My sister has it now. It's hers. It was our agreement.

3 That's what we wanted to do.

4 Q And did your dad have any unofficial or off-the-books

5 kind of income that you know of?

6 A Just the selling of a car here or there. At one time,

7 he would fix -- it was quite a while ago. He would fix

8 VCR's. It was just for a friend, and they'd -- you

9 know, it was more for a friend, doing it for them.

10 Q Back when VCR's still existed?

11 A Yeah, VCR's. He was the VCR guy. It's funny now.

12 Q Would he buy and sell guns?

13 A Not that I know of.

14 Q When you did the inventory on his house, did he have a

15 substantial number of guns?

16 MR. BARCUS: Objection to the form of the

17 question.

18 A There were a few.

19 Q (By Mr. Wall) How many did he have that you recall?

20 A I wouldn't know the exact amount.

21 Q Your dad, was he a hunter?

22 A He used to be, yeah. He liked air pistols, you know,

23 that shoot pellets. He liked just shooting those at

24 targets.

25 Q As far as you know, did he belong to any kind of gun

Page 11

1 clubs or shooting ranges?

2 A No, not that I know of.

3 Q Did he belong to any kind of clubs or lodges or that

4 kind of thing?

5 A He was part of like a car club, sometimes going to car

6 shows.

7 Q But not a Mason, a Moose, an Elk, or a Lion or --

8 A Not that I know of.

9 Q -- any other animals?

10 A No. No, not that I know of.

11 Q After your dad died, did you and your sister do the

12 inventory of his house, or did somebody else?

13 A No. We did.

14 Q Was anybody else there with you?

15 A If anybody else was there, it was our husbands.

16 Q And when did you do that?

17 A Looking back at some of my notes, we didn't really start

18 doing that until August. Just with the time frame of

19 how things progressed, there wasn't really time to focus

20 on that yet, so we initially sat down in August and

21 started figuring out what to do.

22 Q I heard a rumor that your dad had kind of a false wall

23 or a hidden room in his house. Is there anything to

24 that?

25 A I never saw a false wall in the house, and I painted

Page 12

1 walls. I cleaned. We went through everything. I never

2 saw a false wall in the house.

3 Q I was also told that you and your sister had removed a

4 lot of things from the house the day after the shooting.

5 Is that true or not?

6 A I don't remember doing that. If we did anything, we

7 brought things that might have been outside into the

8 garage just so they were secured. That would have been

9 the only thing.

10 Q Do you know, did your grandfather, Clarence, ever give

11 money to Gerald?

12 A He may have. I don't know any details of that.

13 Q Did he buy him any cars?

14 A Not that I know of.

15 Q Looking at your deposition in the other case, I noticed

16 you said the only thing that really he had a mortgage on

17 was his -- I think his Morton property, and I think he

18 was financing his Corvette?

19 A For my dad?

20 Q Yes. Is that correct?

21 A The Corvette and the motor home. And there was just a

22 real small amount at Morton. It was very easy to pay it

23 off. It was very low.

24 Q And do you recall what kind of motor home it was?

25 A I want to say Southland, but I'm not 100 percent on it.

Page 13

1 Q Do you remember how big it was? Was it the kind you

2 drive or the kind you tow?

3 A Oh, you drive it, yeah.

4 Q Did your dad buy it new, or was it a used thing?

5 A It was used.

6 Q Did your father have a drinking problem that you knew

7 of?

8 MR. BARCUS: Object to the form of the

9 question.

10 A I wouldn't consider it a drinking problem. He drank

11 socially.

12 Q (By Mr. Wall) Did he have a particular tavern he hung

13 out at?

14 A After my mom passed away, his good buddy, John Rohr,

15 went to the Exchange, and if he wanted to hang out with

16 John, he'd go up there. And he met friends. He was

17 lonely.

18 Q This was the Exchange Tavern?

19 A Right, on Park Avenue in Spanaway.

20 Q Did he ever have a problem with the law because of

21 drinking, getting stopped for driving drunk or getting

22 in fights or anything of that nature?

23 A I never heard anything about that.

24 Q Did you ever see your dad drunk?

25 A I saw him drink, but I never really saw him drunk where

Page 14

1 I was concerned.
 2 Q Do you know, was he ever a member of AA or ever treated
 3 for alcohol abuse?
 4 A No, not that I know of.
 5 Q To your knowledge, did he ever use any other kind of
 6 drugs or illegal substance?
 7 A No. No.
 8 Q Was he taking medications on a regular basis as far as
 9 you know?
 10 A He was taking medication after he was injured for quite
 11 some time.
 12 Q Was it pain medications?
 13 A Yes.
 14 Q In 2007 and 2008, do you know if he was?
 15 A I don't think he was so much then. He was -- he was
 16 trying not to depend on those things to feel better.
 17 Q When you went through his belongings after he died, did
 18 you find a lot of medications?
 19 MR. BARCUS: Object to the form of the
 20 question.
 21 A There were some.
 22 Q (By Mr. Wall) And were some of them narcotic-type
 23 medications, like Vicodin, that kind of thing?
 24 A That doesn't stand out to me, but, you know, it could be
 25 possible. I don't even think that we even made an

Page 15

1 inventory of the medications.
 2 Q I'm going to ask you some questions about your
 3 grandfather. Some of it's based on allegations that
 4 have been made in this case.
 5 And I'm going to ask you in terms of your firsthand
 6 knowledge, and I want to explain that term to you. By
 7 "firsthand knowledge," what I mean is stuff that you saw
 8 directly.
 9 A Right.
 10 Q Not something that you heard about or, you know, read
 11 about but something that you were actually there and saw
 12 it happen.
 13 And if you don't know of any, that's fine, too, but
 14 I want to make sure you understand that when I'm asking
 15 that, I'm not asking what you heard or what you've been
 16 told.
 17 A Okay.
 18 Q So with regard to your grandfather, Clarence, had you
 19 ever seen him do anything of a violent nature before say
 20 2007?
 21 MR. BARCUS: Object to the form of the
 22 question.
 23 A A few times.
 24 Q (By Mr. Wall) Tell me about that.
 25 A The very first time that I had concerns was he came to

Page 16

1 my house. He came in the house, you know. I invited
 2 him in, and he came in, and we sat at the table.
 3 And he started -- he was getting shaky and pretty
 4 irate talking about my dad, and he was actually pounding
 5 on the table and -- (indicating) -- pointing and calling
 6 him "the fucker."
 7 Q Was your dad present?
 8 A No. It was just -- it was actually me. My husband was
 9 at work, I think. I was concerned because I was there
 10 with my kids alone and didn't know what was going to
 11 happen. And I wasn't really sure how I was going to get
 12 him out of the house.
 13 Q Did he finally leave?
 14 A He was doing some yelling and trying to stir some rumors
 15 around about -- he was saying that my dad was giving my
 16 grandmother's jewelry away to all of his new
 17 girlfriends.
 18 And he was trying to break the news to us that my
 19 dad was seeing a girl, like we didn't know, and he was
 20 trying to upset us. But we did already know because he
 21 talked to us about it.
 22 Q When was this occasion?
 23 A This would have had to have been -- had to have been in
 24 early 2007. He did leave, and I in my mind said, "I'm
 25 not going to let him in the house again with my kids.

Page 17

1 It doesn't seem safe."
 2 Q Did he do anything violent to anybody or just seem
 3 angry?
 4 A He was flipping out, yelling, and hitting my table and
 5 using foul language. I would consider that to be
 6 something that could escalate. I had not seen that
 7 personally myself before.
 8 Q Was there any incident that sparked him to come to your
 9 house and talk about this?
 10 A It was the girlfriend/jewelry situation. He thought he
 11 was going to come and try to get my dad in trouble or
 12 something and make me mad.
 13 Q Your grandma passed away in what, about 2000? Am I
 14 correct on that?
 15 A I'm thinking it's closer to 2003. It's possible it was
 16 2002.
 17 Q After that was there a distribution of her jewelry
 18 between you and your sister?
 19 A What happened was Clarence gave the jewelry he wanted to
 20 give away -- he gave it to my dad, and he divided it up.
 21 And he gave -- I mean, it was in a baggy with our name
 22 on it, and we got a few things.
 23 It was maybe like three things, and I think
 24 Clarence kept like things -- rings, important wedding
 25 rings, because he didn't put those in there.

Page 18

1 Q Those were sentimental to him, and then some he gave to
 2 your dad, and then your dad gave some to you --
 3 A Right. Right.
 4 Q -- and your sister?
 5 A Right.
 6 Q What other incidents were there with Clarence when he
 7 became upset or violent in any way that you saw?
 8 A It was in 2006. We were over at my dad's house, and I
 9 would go over and help my dad after my mom died with
 10 just making sure he was paying his bills and making sure
 11 everything looked okay.
 12 And it was -- the particular date was April 29th,
 13 2006, and that was the first wedding anniversary for my
 14 mom and dad after my mom died. So we were concerned
 15 about him on that day, just trying to be there for him.
 16 I went over there and just happened to be in the
 17 back room looking on his computer just to make sure
 18 everything was okay. Sunny came over with her husband,
 19 and she was back there with me. And I kind of told her
 20 how I'd been handling things, and Bill -- her husband,
 21 Bill, went --
 22 Q Sunny is your aunt?
 23 A Sunny is my aunt, my dad's sister.
 24 Q Is that spelled S-o-n or S-u-n?
 25 A S-u-n. So she was there, and her husband went up to the

Page 19

1 store or something to get some pizzas. We were going to
 2 have pizzas and just hang out, and while Bill was gone,
 3 we were still in the back room.
 4 Dad must have been out watching TV or something,
 5 and we heard Clarence come in. He came in through the
 6 back door, and he started yelling at my dad. And all I
 7 could hear was him yelling: "I'm not dead yet. I'm not
 8 dead yet" over and over and just shaking and irate.
 9 And I did not even know what he was talking about,
 10 so I stood there for a minute just trying to get my
 11 bearings on what could possibly be happening. And then
 12 I went out -- my aunt -- we both went out to the room,
 13 and he was upset because Sunny was there. He doesn't
 14 really care for her that much.
 15 And so she kind of just backed off because she knew
 16 that that was, you know, that situation, and he started
 17 yelling at my dad about the Ocean Shores property and
 18 saying that it was his and he could do whatever he wants
 19 with it.
 20 And we were very confused because he had told us at
 21 times that we could go there as a family and use it, and
 22 he actually told us at one time that -- he got my
 23 sister's information and my information. He went as far
 24 as getting our Social Security numbers, our date of
 25 birth, all of the grandkids.

Page 20

1 And he told us he was going to give the property to
 2 us, and I'm like, "Are you sure that's what you want to
 3 do?" And he said, "yes." And he called back to me
 4 multiple times because he needed the information again,
 5 like he lost it. I do not know if he ever followed
 6 through on doing that. We were told that.
 7 Q Any other incidents other than that?
 8 A Well, I'm not really done with that story.
 9 Q Okay. Go ahead. So what happened then? Keep going.
 10 A And then we kind of told him why we were there, that it
 11 was for my dad's anniversary, to console him. And then
 12 he got upset because he felt like someone didn't console
 13 him on his anniversary and we don't go out and see my
 14 grandmother at the cemetery.
 15 And just it started going kind of off the track,
 16 just talking about that, and it became into a -- all
 17 about that. And I told him: "You wouldn't really know
 18 if we went there or not, you know. There's no way to
 19 really know if we do."
 20 And he started -- then he started talking about the
 21 Ocean Shores property and money, and he referred to my
 22 sister as a fucking troublemaker because I think Kelley
 23 mentioned to my dad about Clarence coming to her house
 24 and doing the thing about the girlfriend and the jewelry
 25 and told my dad.

Page 21

1 So she became a troublemaker, and I said, "We don't
 2 like it that you're speaking that way. You can't talk
 3 about her that way." And I just wasn't going to have
 4 it, and he was talking about money and we want his
 5 money.
 6 And I said, "I am so sick of hearing about this
 7 money. We do not want your money. We just want a
 8 relationship with you." And he just could never see
 9 past that. It was a barrier that we could not get past.
 10 Q And then how did it end?
 11 A It ended with him standing up, and he was still yelling
 12 at my dad, and my dad said that he wanted him to leave.
 13 And he was like, "What are you going to do?"
 14 And he kind of was -- (indicating) -- shaking him
 15 like he was going to push him, and I think he kind of
 16 did the finger poke at my dad. And so Sunny, at that
 17 point she went and called 911 and --
 18 Q Was there actual contact, or was he just acting like he
 19 was going to push him?
 20 A I think he actually did put his hands on him.
 21 Q So Sunny called 911, and what happened then?
 22 A Then he just kind of hightailed it out of there. He
 23 went out the back door, and I followed him. And I said,
 24 "The reason why we are not coming out to your house is
 25 because of this behavior. I have little children that I

Page 22

1 cannot have around this."
 2 And I said, "Unless this changes, you're really
 3 going to be dying old and alone, and it's very sad.
 4 This needs to stop." And he left. Bill came right at
 5 the tail end and saw it, and he came with his mouth open,
 6 and he just was like, "What happened?"
 7 And that was it. He left before the police
 8 officers got there. The police officer said he should
 9 get -- my dad should get a protective order.
 10 Q And then my recollection is that your dad did get a
 11 pro -- or at least a temporary protection order or
 12 restraining order in May of '06 but actually never
 13 followed through on it, did he?
 14 A Right. We had a meeting about that, actually, on how to
 15 best handle this, and we met at Sunny and Bill's with my
 16 dad.
 17 And he just -- he really wanted our input on how to
 18 handle this because we felt there was going to be
 19 retaliation; it would make him upset. And we didn't
 20 want to make it worse, so that's why it was dropped.
 21 That was kind of a decision that we all made.
 22 Q Okay.
 23 MR. BARCUS: Off the record for a second.
 24 (Discussion off the record.)
 25 Q (By Mr. Wall) The first visit that you talked about

Page 23

1 when he came and was yelling about your dad and the
 2 jewelry and the girlfriend, was that at your house or
 3 your sister's house?
 4 A It was at my house.
 5 Q Later on did he go to your sister's house and do the
 6 same thing?
 7 A I think so. It might have been a different day.
 8 Q At this meeting in 2006 at your house, did Clarence
 9 actually threaten your father in any way, say, "I'm
 10 going to shoot you" or "I'll kill you" or anything like
 11 that?
 12 A I cannot say 100 percent, but he very well could have
 13 with how the words were going.
 14 Q Do you remember it or not?
 15 A I don't 100 percent remember if he said that for sure.
 16 Q And was your dad arguing back with him?
 17 A He was actually trying to diffuse by just -- he was kind
 18 of standing back, and I think he was very uncomfortable
 19 that was going on in front of my aunt and myself. I
 20 think he didn't know how to take that.
 21 Q How many times did you actually see your grandfather
 22 after that 2006 incident?
 23 A I only saw him one or two other times, and it was on
 24 purpose.
 25 Q One time you said he came to your house, and that was in

Page 24

1 '07?
 2 A Yes.
 3 Q So that would have been one other time, and then when
 4 was the other time after that?
 5 A Let's see. We went to the hospital. We went to the
 6 hospital because my dad told me he was really bad, and
 7 we thought he was going to die. And, you know, of
 8 course, we wanted to -- we felt very concerned, so we
 9 went.
 10 Q What time was this?
 11 A This was in '07.
 12 Q Was this when he was in St. Clare's?
 13 A Yes.
 14 Q So he was in St. Clare's in May of '07, is my
 15 understanding.
 16 A It could have been around there, yeah.
 17 Q Do you know why he was in the hospital?
 18 A I think his feet were really swollen up, and I think he
 19 had fallen or something.
 20 Q Did your father have anything to do with him falling?
 21 A My dad told me he fell and got really hurt. He was very
 22 concerned.
 23 Q Did he fall on your dad's property?
 24 A He said that he fell like on the steps of their -- like
 25 he lost his balance on the front step and fell, and he

Page 25

1 said he hit pretty hard.
 2 Q He fell on the step on your dad's property?
 3 A Yeah. There's like one step up.
 4 Q So he was at your dad's house and fell?
 5 A I believe so.
 6 Q And you went and saw him at the hospital?
 7 A Yes.
 8 Q Was that just kind of a go-to-his-room-and-visit-him
 9 sort of thing?
 10 A Yes. We thought he was dying. That's the report we got
 11 from Barbara. We thought he was going to die.
 12 Q And then when you went to see him in the hospital, you
 13 say, "we." Who went?
 14 A My sister and I.
 15 Q Did your spouses go or not?
 16 A No. They were at home with the kids.
 17 Q And how long had he been in the hospital when you were
 18 there? I think he was there four days or something.
 19 A We actually got there before he was even there, and we
 20 were waiting around: "Where is he? Where is he?" And
 21 they finally wheeled him back, and it was getting close
 22 to evening.
 23 I remember I had to work the next day, and that's
 24 the only way I remembered that, and it looked like he
 25 was going to probably have to stay the night.

7 (Pages 22 to 25)

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<p>1 Q And, of course, we know he didn't die, but did you get a 2 chance to talk to him? 3 A We did talk to him. We just wanted to make sure he was 4 okay and -- 5 Q How did he seem? 6 A He seemed okay. I didn't see how -- you know, it didn't 7 seem as bad as we were told. 8 Q Did he recognize you, and was he able to hold a 9 conversation, that kind of thing? 10 A Yeah. It was just chitchatting. He seemed to recognize 11 us. 12 Q Were you involved in Clarence's medical care at all? 13 A No. 14 Q And other than your dad, was anybody involved in it at 15 all in your family? 16 A From my family? There may have been some help during 17 the time when my grandmother was dying, cancer, like 18 Sunny, I think, came over. My dad and my mom came over. 19 I think they were just trying to generally help the 20 situation. It was a bit overwhelming with medication 21 and tubes and all kinds of stuff. 22 Q Did your grandma die of cancer, too? 23 A She did. 24 Q This is a lawsuit against Dennis Cline, and he's your -- 25 what does it make him? He's not your uncle. He's like</p>	<p>1 was -- I thought that was kind of a neat story, and I 2 went over, I think, afterwards. And I said, "Wow, I 3 didn't know that, and I'm glad you shared that story." 4 Q But did you ever call him on the phone or talk to him on 5 a regular basis? 6 A No. 7 Q Did you ever communicate to him any problems that 8 Clarence was having or causing you? 9 A No. I didn't even know how to get ahold of him. 10 Q As far as you know, did he have any way of knowing about 11 the temporary restraining order that was obtained in May 12 of '07? 13 MR. BARCUS: Object to the form of the 14 question -- 15 Q (By Mr. Wall) Excuse me. May of '06? 16 MR. BARCUS: -- lack of foundation, calls for 17 speculation. 18 A From my dad? 19 Q (By Mr. Wall) Yes. 20 A Did he know? 21 Q Yes. 22 A I do not know if he knew or not. 23 Q I gather there was kind of bad blood between Clarence 24 and Sunny? 25 A It was distant, yeah.</p>
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<p>1 your second cousin or something, isn't he? 2 A I think that's what you would call it. 3 Q I'm never quite sure on those things, but at any rate, 4 he was your dad's cousin basically? 5 A Right. 6 Q How often did you see Dennis? 7 A I didn't really know Dennis. There was a few times that 8 I -- maybe once or twice I saw him on like a Christmas 9 Eve or something. I think maybe he brought his daughters 10 over. 11 Q Was that like at your grandpa's house, or where would 12 you see him? 13 A Right. It was their -- the first place on the property 14 they lived in, and it would be maybe once or twice. I 15 didn't really know who he was, but I know my grandparents 16 were excited to see him. 17 Q This was when your grandma was still alive? 18 A Right. And I didn't really hear my dad talk about him 19 or my grandparents really. I didn't even know he was a 20 relative, to be honest with you, and when I really 21 connected who he was was at my grandmother's funeral 22 when he got up and spoke and said that he lived there 23 for a time when he was a teenager. 24 And I just -- my mouth went open, and I did not 25 know that story, and I -- I just didn't know. So I</p>	<p>1 Q They didn't get along? 2 A They didn't really get along, no. 3 Q How about Clarence and Bill? 4 A I think that that was kind of the problem is that they 5 didn't really like Bill, and Sunny didn't like how 6 things were going. 7 She didn't think that -- I don't think that she 8 thought that she was very welcomed over there, and so 9 she just didn't come over. 10 Q Was Clarence ever violent towards you? 11 A Just the one day doing this in my house -- 12 (indicating) -- and really being aggressive. 13 Q But did he threaten to hurt you or anybody? 14 A No. 15 Q Did you ever hear Clarence threatening to shoot or hurt 16 anybody? 17 MR. BARCUS: Object to the form of the 18 question. 19 A I had heard him say it to a couple different people. I 20 don't -- I know I've heard that before. 21 Q (By Mr. Wall) Heard what? 22 A About the shooting people. 23 Q Did you actually hear this or someone told you? 24 A I cannot say exactly a specific time or who it was, but 25 I'm pretty sure that I had heard it with my own ears.</p>

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1 Q Whom was he threatening to shoot?
 2 A It was probably my dad.
 3 Q And when was this?
 4 A I don't remember exactly a time.
 5 Q Before your dad was killed, were you aware of any of the
 6 medication that your grandpa was taking?
 7 A I knew he was taking a lot.
 8 Q Did you know any details, what type of medication or
 9 what he was being treated for?
 10 A I had heard that he was taking an antidepressant. I
 11 know that he had a problem with gout with his legs. I
 12 don't know if there's a medication for that. I didn't
 13 really know too many details other than that.
 14 Q Had anybody told you that he had dementia or that he was
 15 taking medicine for Alzheimer's?
 16 A I had read that and I had heard that.
 17 Q Where did you read it?
 18 A I had read that -- I have just read papers through all
 19 of this.
 20 Q How about before the shooting?
 21 A It was concerning to me that he had a note made up
 22 saying that he was competent.
 23 Q Did you ever see that note?
 24 A Oh, yes. What he did is he took a black Sharpie marker
 25 and put, "Kris, Kelley, Gerry," anybody else he could

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1 think of. And he would come and put them -- pile them
 2 in your mailbox or at your door, and it was very
 3 confusing on what that meant.
 4 Q These were notes from his doctor saying he was
 5 competent?
 6 A Yes.
 7 MR. BARCUS: Object to the form of that
 8 question: lack of foundation, also.
 9 Q (By Mr. Wall) But you never actually talked to his
 10 doctors?
 11 A No.
 12 Q And as far as you know, he had never been diagnosed with
 13 Alzheimer's disease? At least you didn't know it before
 14 this?
 15 MR. BARCUS: Object to the form of the
 16 question: lack of --
 17 A I thought he had early stages --
 18 MR. BARCUS: When I object, you need to stop
 19 talking.
 20 THE WITNESS: Okay.
 21 MR. BARCUS: Object to the form of the
 22 question: lack of foundation.
 23 THE WITNESS: Okay.
 24 Q (By Mr. Wall) Go ahead. Say your answer again. You
 25 thought he had --

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1 A I thought he had early stages of Alzheimer's.
 2 Q And when did you think that?
 3 A From talking to my dad, just seeing behavior.
 4 Q Was that before the shooting?
 5 A Yes.
 6 Q And before 2007?
 7 A There were some signs before 2007, I would say.
 8 Q How would you describe your dad's relationship with your
 9 grandfather say in 2006, 2007?
 10 A It was interesting because they both lost their wives,
 11 and it seems like my dad would try to help, and it would
 12 always turn into something else.
 13 And then he would back off, and then he would kind
 14 of -- then maybe Clarence would come to his house, and
 15 then it was like, "Okay. Things might be okay again."
 16 And it was just a roller coaster.
 17 Q Sometimes they would get along and sometimes they
 18 wouldn't?
 19 A Right.
 20 Q Did they do things together? Did they go anywhere
 21 together, hunt, fish, whatever?
 22 A I think years ago they used to do hunting and fishing
 23 and even camping. I remember when we were growing up
 24 that we went camping to Ocean Shores, and I think
 25 sometimes they went out and had breakfast.

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1 I think maybe they went for a drive in the car just
 2 to go, you know, look around at places, reminisce about,
 3 you know, where they used to live and that type of
 4 thing.
 5 Q So would it be fair to say that the two of them,
 6 sometimes they got along and sometimes they didn't?
 7 A Right.
 8 Q Were you aware of your father ever physically abusing
 9 Clarence?
 10 A Absolutely not.
 11 Q In this case, there have been declarations put in that
 12 I'm sure you've seen, one by a neighbor named Keys --
 13 Alan Keys, I think his name is -- and one by Barbara
 14 Griebel that talk about two or three instances where your
 15 dad actually physically abused Clarence. Were you aware
 16 of that before this case started?
 17 A No.
 18 Q Did Clarence ever mention anything like that to you?
 19 A No.
 20 Q Do you have any reason to doubt that that occurred?
 21 MR. BARCUS: Object to the form of the
 22 question.
 23 A I do not think that occurred. I mean, I just -- that is
 24 beyond me to see how that could happen.
 25 Q (By Mr. Wall) Did your dad have a temper?

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1 A No. He was a pretty even-keeled type of a person.
 2 Q We all have tempers. Did you ever see him lose his
 3 temper or talk about your grandfather in an angry way?
 4 A I would see him getting upset about things. He didn't
 5 understand. It was frustration generally, but it wasn't
 6 like throwing things around and hitting people or
 7 anything like that.
 8 Q In 2006 and 2007, Clarence Munce was changing his will a
 9 few times. Were you aware of that?
 10 A I knew only one time when my dad told me that I was an
 11 alternate on there -- I had no clue -- or something.
 12 Q Did your dad ever show you a copy of Clarence's will?
 13 A I think we looked at the public records on-line.
 14 Q And Clarence, I think he was recording these or
 15 something so you could find them on-line?
 16 A Right.
 17 Q Did you think he was doing that kind of to needle your
 18 dad?
 19 MR. BARCUS: Object to the form of the
 20 question.
 21 A It could be.
 22 Q (By Mr. Wall) And at some point, Clarence changed his
 23 will to disinherit your dad, didn't he?
 24 A I think so.
 25 Q And he made you and your sister the beneficiaries of his

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1 will?
 2 A Right. Around that time, I didn't even know that.
 3 Q You only saw the one change?
 4 A I'd only seen the one where I was an alternate. I don't
 5 know if it was power of attorney or something.
 6 Q And why do you think your dad was looking for your
 7 grandfather's will on-line?
 8 A I think that he kept saying he was going to change it,
 9 and he wanted to know what he was doing.
 10 Q Was your dad obsessed or was he concerned about not
 11 inheriting something?
 12 MR. BARCUS: Object to the form of the
 13 question.
 14 A He was concerned about decisions, finances, things out
 15 of the ordinary, especially after my grandmother died.
 16 Q (By Mr. Wall) Did Clarence ever tell you or your sister
 17 that you know of that he disinherited your dad and put
 18 you on the will?
 19 A He could have told us that. I just -- it didn't really
 20 mean a lot at that time just because he was changing
 21 things so much, like with the Ocean Shores property. It
 22 was really hard to know if it was going to be true, so
 23 you just said, "okay."
 24 Q And at another point, then he changed the will to
 25 disinherit you and your sister. Did you know about that

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1 before your dad was killed?
 2 A I don't think I did.
 3 Q As far as you know, had your father ever been -- as an
 4 adult, had he been in a fight, a physical fight?
 5 A I never heard any story of that.
 6 Q Has he ever struck you or your sister?
 7 MR. BARCUS: Well, hold on. You didn't finish
 8 your answer, I don't think. "I never heard any story
 9 about" is what you said.
 10 A Oh, About that.
 11 Q (By Mr. Wall) So you never heard of him being in a
 12 fight --
 13 A No.
 14 Q -- a physical fight?
 15 A No.
 16 Q How about had he ever struck you or your sister or your
 17 mother as far as you recall?
 18 A No.
 19 Q Was your dad angry when his father changed the wills?
 20 MR. BARCUS: Object to the form of the
 21 question.
 22 A I think he just wanted to know what his responsibilities
 23 were and how he was looking to get help. And if he had
 24 a power of attorney, he knew that would give him -- he
 25 had been told by doctors and attorneys that he had

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1 spoken to that basically if he doesn't hurt himself or
 2 someone else, there's nothing you can do.
 3 Q (By Mr. Wall) Okay. He could not run Clarence's
 4 affairs?
 5 MR. BARCUS: Object to the form of the
 6 question.
 7 Q (By Mr. Wall) Is that the impression you got?
 8 MR. BARCUS: Same objection.
 9 A I'm not sure what you what mean.
 10 Q (By Mr. Wall) Well, he couldn't manage your
 11 grandfather's account or write checks on his account or
 12 anything of that kind of stuff?
 13 MR. BARCUS: Object to the form of the
 14 question: lack of foundation.
 15 Q (By Mr. Wall) As far as you know?
 16 MR. BARCUS: Same objection.
 17 A At one time, he included my dad on accounts and had him
 18 so that he could sign checks, and he would write "Gerry"
 19 on the statement and send it over, "save."
 20 And it was -- I would have to look at the paper,
 21 but it was a couple of bank things, like he wanted my
 22 dad to know that he was on there.
 23 Q (By Mr. Wall) Did your dad ever say that he was
 24 entitled to an inheritance?
 25 MR. BARCUS: Object to the form of the

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1 question.
 2 A No.
 3 Q (By Mr. Wall) Did he ever complain about Clarence
 4 spending his mother's money?
 5 MR. BARCUS: Same objection.
 6 A He mostly complained about him spending on frivolous
 7 things and was concerned.
 8 Q (By Mr. Wall) Let's talk about that a minute. Your
 9 grandfather was a car guy. He had like a Hummer, and he
 10 had several different cars, didn't he, and a truck and
 11 some other things?
 12 A Right.
 13 Q And your dad also was a car guy. I think in his
 14 inventory, he had something like eight cars and trucks,
 15 didn't he?
 16 A My dad was into hot rods, and Clarence -- there was
 17 really no rhyme or reason. It was just if he thought he
 18 liked it, that was it.
 19 Q But he liked cars, too?
 20 A He really showed no interest until just recently. I
 21 mean, more recent.
 22 Q Do you think that was because your grandmother would not
 23 let him buy cars?
 24 A I'm not sure.
 25 MR. BARCUS: Object to the form of the

Page 39

1 question.
 2 A I do know that the dentist across the street got a
 3 Hummer, and that spurred him on to get a Hummer. He
 4 wanted to have a nice Hummer like that, and so he got
 5 one.
 6 Q (By Mr. Wall) Did your uncle have a Hummer, too?
 7 A We were at my uncle's house, and he showed me -- it was
 8 a smaller H3 or -- I'm not sure. Yellow. It was
 9 yellow.
 10 Q They're terrible cars.
 11 A Gas guzzlers. Um --
 12 Q Go ahead.
 13 A And there was a time he bought a red truck brand new and
 14 decided to take it back and lost a lot of money. And
 15 that was -- I think that was probably the thing that
 16 first started the concerns about spending because he
 17 lost a lot of money on that. And my dad thought that
 18 the car dealership may have taken advantage of an old
 19 man.
 20 Q But it was your grandfather's money and not your dad's
 21 money?
 22 A It was. But he was looking out for my grandfather.
 23 Q Let's talk a little bit about the Ocean Shores property.
 24 Just before he came over to your house, had there been
 25 an incident in Ocean Shores where a buyer had come to

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1 look at the property?
 2 A I had heard that, but I don't think I was there.
 3 Q And what did you hear? Did you hear that the buyer got
 4 run off?
 5 MR. BARCUS: Object to the form of the
 6 question.
 7 A I read that somebody said that it was a family property,
 8 and that's kind of what we were all led to believe that
 9 it was.
 10 Q (By Mr. Wall) And that's what prompted this meeting
 11 when Clarence came over and was mad because he said,
 12 "It's my property and I can sell it if I want"?
 13 MR. BARCUS: Object to the form of the
 14 question.
 15 A It could have been sometime after that. I'm not sure on
 16 the dates.
 17 Q (By Mr. Wall) Would it be fair to say with your dad and
 18 your grandfather that their relationship kind of ran hot
 19 and cold? Sometimes they were getting along and
 20 sometimes they weren't?
 21 MR. BARCUS: Object to the form of the
 22 question: asked and answered.
 23 A I think I already answered that. Yeah.
 24 Q (By Mr. Wall) Was there a trend? I mean, was the
 25 relationship getting worse as time went by, or was that

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1 just the way they were off and on?
 2 MR. BARCUS: Object to the form of the
 3 question.
 4 A It seemed to me that my dad felt he had an obligation to
 5 care for his dad because everybody was calling him and
 6 making complaints, and "You need to do something about
 7 this."
 8 And there was really nobody else to turn to to do
 9 anything, so he was really trying to do the best he
 10 could to get a handle on Clarence's behavior, how it was
 11 changing.
 12 Q (By Mr. Wall) Who was calling him?
 13 A I know that there was calls from the neighbor.
 14 Q Which neighbor?
 15 A It was Laurie Tolstad. There was calls from the renter.
 16 Q Mr. Boldosser?
 17 A I believe so. There was calls from Barbara, and I know
 18 that he had talked to Dennis about it, too. And one
 19 thing that I had read is that Barbara said that she
 20 wanted the family to do something about the guns because
 21 she was getting scared.
 22 Q Did you ever meet Mr. Boldosser?
 23 A No.
 24 Q Are you aware that he's a drug addict and a criminal?
 25 MR. BARCUS: Object to the form of the

Page 42

1 question.
 2 A No, I didn't.
 3 Q (By Mr. Wall) Are you aware that he was arrested out
 4 there for possession of cocaine and displaying weapons?
 5 MR. BARCUS: Object to the form of the
 6 question: lack of foundation.
 7 A No.
 8 Q (By Mr. Wall) Did Barbara ever tell you she was
 9 concerned about the guns?
 10 A No. I just -- my dad had said that she mentioned it,
 11 and I saw it written down. My dad had some handwritten
 12 notes about things that were going on.
 13 Q You know, I saw some handwritten notes. Did he keep a
 14 journal or a diary or something?
 15 A He did not keep a journal. He had tried to call Adult
 16 Protective Services about concerns even when my
 17 grandmother was alive. He had contacted his attorney,
 18 Stanley Rumbaugh, and was told to call Robin Balsam
 19 because she was a guardianship person.
 20 And he actually went to the offices of a
 21 guardianship attorney, Neil, on Pacific Avenue, and what
 22 I understood he was told is you need to write down
 23 things. And that's what he was trying to do.
 24 Q Was he trying to get control of your grandfather's
 25 assets?

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1 MR. BARCUS: Object to the form of the
 2 question.
 3 A I think he was trying to get a handle on the situation
 4 as far as getting my grandfather under control. We were
 5 worried that he was going to hurt somebody.
 6 Q (By Mr. Wall) He wasn't upset that your grandfather was
 7 spending what he considered to be his inheritance?
 8 MR. BARCUS: Object to the form of the
 9 question.
 10 A I don't know.
 11 Q (By Mr. Wall) Did you ever see a copy of your
 12 grandfather's will that your father had taken out of his
 13 house?
 14 A No.
 15 Q Do you know if your father had taken any documents out
 16 of your grandfather's house?
 17 A I think that maybe there was a will that was given to
 18 him a long time ago that had my grandmother's signature
 19 on it. It was a pretty long time ago.
 20 Q Were you angry at Clarence when he sold the Ocean Shores
 21 property?
 22 MR. BARCUS: Object to the form of the
 23 question.
 24 A It was more I had hurt feelings. It felt like a
 25 spiteful move to me.

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1 Q (By Mr. Wall) And let's talk about in June of 2007
 2 after your grandfather came home from the hospital. He
 3 found that his guns were missing. You were present when
 4 we deposed Deputy Kimbriel here yesterday?
 5 A Yes.
 6 Q When that was going on, were you aware of it?
 7 A When we were at the hospital, I think that my dad said
 8 he wanted to go out and get the guns out of the house.
 9 He was getting very concerned.
 10 Q Were you aware that your grandfather had agreed with
 11 Mr. Keys to sell Mr. Keys all those guns for \$1,000
 12 about that time?
 13 A I did not know at that time. I had heard something in
 14 Alan Keys' deposition.
 15 Q So you heard about that later?
 16 A Yes.
 17 Q So your dad talked about going to get the guns. Did he
 18 say, "I'm going to go get them," or did he just say,
 19 "I'm concerned about them"?
 20 A He said he was concerned and thought that was his time
 21 to do something.
 22 Q Were you aware of this thing where Dennis Cline went and
 23 picked up the guns at the time?
 24 A At the time?
 25 Q At the time.

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1 A No. I was told after.
 2 Q How long after?
 3 A I couldn't really even say how long. I was told in
 4 maybe the next phone conversation with my dad that that
 5 happened.
 6 Q Did you ever talk to Dennis about this?
 7 A No.
 8 Q Did your dad ever say that he wanted to keep the guns?
 9 A I never heard him say that.
 10 Q Did your father routinely carry a weapon, a gun?
 11 A I think sometimes he did.
 12 Q And did he have a permit to carry that; do you know?
 13 A I thought he did. I couldn't say for sure.
 14 Q And you guys, did you ever talk about it with him, you
 15 or your sister or your husband maybe?
 16 A About a gun permit or guns?
 17 Q About carrying a gun.
 18 A We had only told him that if he was going to have guns
 19 in the house when our kids came over, we wanted them to
 20 be in a safe, and he went out and got one.
 21 Q He got a gun safe?
 22 A Yes.
 23 Q Did you tell him not to bring it to your house, too,
 24 with kids around?
 25 A No. I didn't specifically say that. I think he kind of

12 (Pages 42 to 45)

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1 got the gist from us telling him.
 2 Q You didn't feel comfortable with having guns around with
 3 the kids around --
 4 A No.
 5 Q -- that were not secured?
 6 A Right.
 7 Q Is your husband a hunter or anything?
 8 A Yeah, duck hunting. He has several guns. We have a
 9 safe.
 10 Q Were you aware that your dad did have a pistol in his
 11 car when he was killed?
 12 MR. BARCUS: Object to the form of the
 13 question: lack of foundation.
 14 A I had heard that. I did not know that for myself.
 15 Q (By Mr. Wall) Did he routinely keep one there as far as
 16 you know?
 17 MR. BARCUS: Same objection.
 18 A I had never seen it. I heard about it.
 19 Q (By Mr. Wall) Your dad had several cars. What did he
 20 usually drive? Was it the Corvette, or did he drive
 21 other things?
 22 A He drove a Chevette.
 23 Q That was his favorite car?
 24 A No. It was the most economical.
 25 Q Oh, okay. And reading the depositions, it looked like

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1 he had a Vespa motor scooter. Did he have a regular
 2 motorcycle, too?
 3 A Yes.
 4 Q What was his other motorcycle?
 5 A Honda Valkyrie.
 6 Q After this all happened and Clarence was confined, there
 7 was a restraining order issued, and there was some talk
 8 in there about not having him taken out of the home by
 9 your Uncle Alex. Do you recall that in there?
 10 A My restraining order?
 11 Q Yes.
 12 A We were concerned -- we were concerned that some of
 13 Clarence's closest people would help him retaliate on
 14 us, and we saw Alex have an outburst at the courthouse.
 15 And that was scary in itself.
 16 Q What happened at the courthouse?
 17 A When they talked about the bail, the bail hearing, he --
 18 we were all -- we kind of cheered a little bit, and we
 19 were relieved because we were scared. We thought he was
 20 coming after us next.
 21 Q Why did you think that?
 22 A Because he had a manner of intimidation and retaliation.
 23 Q He had never threatened you before that, though?
 24 MR. BARCUS: Object to the form of the
 25 question.

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1 A He had driven by houses in a stalking way. He had
 2 followed us. He would follow us around. He would
 3 follow my dad around. Barbara mentioned that she got
 4 tired of driving Clarence around to look to see where
 5 Gerry was.
 6 Q (By Mr. Wall) You say he stalked you?
 7 A Oh, yeah.
 8 Q When did he do that?
 9 A He would drive by our house, and it would be a slow
 10 drive to see -- he just wanted to know where our
 11 whereabouts were, maybe not so much as to visit.
 12 We were at his brother, Alex's, house one time, and
 13 it was my dad, his girlfriend, my sister, and her kids
 14 and my kids. Alex has a swimming pool, and he invited
 15 us over.
 16 We had never been there. We went, and we were
 17 just, you know, trying to be friendly and have a good
 18 day. And here comes the Hummer around the corner real
 19 slow and looking at us and I think drove by a couple
 20 times. And my dad and Alex even said, "Oh, man, we
 21 don't want trouble."
 22 Q Did he ever threaten you, or he just drove by your
 23 house?
 24 MR. BARCUS: Object to the form of the
 25 question.

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1 A He drove by. We felt it was a way to intimidate us.
 2 Q (By Mr. Wall) So you guys were kind of happy that he
 3 wasn't getting bailed. What did Alex get mad about?
 4 What was the demonstration about with Alex?
 5 A Oh. Okay. He said, "You're a bunch of fucking
 6 bloodsuckers." And I just couldn't believe he said that,
 7 and I walked over and I said, "No. This is not about
 8 that. We are scared for our safety. We have families
 9 and children. That is not it whatsoever."
 10 Q Did Alex have a history of doing something violent or
 11 aberrant in any way?
 12 A He was just kind of known as being kind of a big guy
 13 like my grandfather and loud and kind of intimidating.
 14 Q You weren't aware that he had been confined once for
 15 threatening to kill his girlfriend?
 16 A No.
 17 Q And that your dad had taken away his guns?
 18 A Alex?
 19 Q Yes.
 20 A I did hear that he had a girlfriend, and there was some
 21 trouble, like she wouldn't leave, but not a lot of
 22 detail about that.
 23 Q You didn't know your dad had given him back his guns?
 24 A No.
 25 Q In the last say incidents in 2006 to 2008, it doesn't

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<p>1 sound like you really had much of a relationship with 2 your grandfather? 3 A After -- 4 Q After the blowup at your house. 5 A It was at -- 6 Q Or your dad's house. 7 A It was at my dad's house, and I did see him at Avis's 8 funeral, and he basically stopped calling me before then 9 because I yelled at him that one time. And he -- so he 10 would focus on talking to my sister instead. 11 Q Who's Avis? 12 A Avis is Alex's wife. 13 Q So kind of your great-aunt? 14 A Yes. And that was the last time, I think, I had seen 15 him. He was -- yeah. It was there. 16 Q When was that? 17 A That was in 2007, I believe, in the springtime. 18 Q And this incident where he came to the house and was 19 complaining and -- your house -- at that point, was that 20 after that 2006 thing or before it? 21 A I think it was before, and I may have said that 22 differently. 23 Q I think you said, "2007." Was it 2005? 24 A No. It was definitely after my mom had passed away. 25 Q So it was probably between 2005 and 2006?</p>	<p>1 grandfather's doctor for visits, that sort of thing. 2 Were you aware that was going on? 3 A I think he had went to talk about: "What can you do 4 about -- we're worried about his driving. What can we 5 do? You know, what's the process to, hey, if we're 6 worried about him driving and hurting somebody, what do 7 you do?" 8 I think there was maybe some concern about not 9 having his medications straightened out. I think he was 10 worried that he had the Alzheimer's, and I think he was 11 wanting to talk to the doctor about that. 12 Q Did you ever hear your dad threaten to shoot or injure 13 your grandfather? 14 MR. BARCUS: Object to the form of the 15 question: lack of foundation. 16 A No. 17 Q (By Mr. Wall) How about when he was drinking? Did he 18 ever say anything bad to your grandfather? 19 MR. BARCUS: Same objection. 20 A Did my grandfather say that? 21 Q (By Mr. Wall) No. Did your father say that about your 22 grandfather? 23 A No. 24 Q Did he ever call him names, like, you know, "that old 25 bastard" or something like that?</p>
Page 51	Page 53
<p>1 A That sounds more correct. 2 Q When did your mom pass away? 3 A It was December 29th of 2005. 4 Q When you were younger, your grandfather had a tendency 5 to drink a lot, it sounded like? 6 A Yes. 7 Q Did he stop drinking? 8 A I think it decreased. 9 Q After your grandmother died? 10 A I didn't see him as much then, but I think it did 11 decrease. 12 Q The impression I got from reading some of these 13 depositions in this case is that your grandmother was 14 sort of the peacekeeper in the family. She would kind 15 of keep people together? 16 A She did try, and I don't think that we realized how much 17 until after she died because when she was gone, you 18 know, everything changed. And I figured it was her who 19 was doing that. 20 Q Did the relations between your dad and his father get 21 worse after she passed away? 22 A It seemed to be more up and down. There was no wives in 23 the picture to say, "Hey, don't do that." 24 Q And in looking at the records, it looked like your dad 25 occasionally went with your grandfather to your</p>	<p>1 MR. BARCUS: Object to the form of the 2 question. 3 A Sometimes. 4 Q (By Mr. Wall) And were you ever present, other than 5 that time in 2006, when they had an argument? 6 A No. 7 Q Do you feel that your father had any responsibility for 8 what happened in June 2008? 9 MR. BARCUS: Objection to the form of the 10 question: lack of foundation. 11 A No. I felt like from my view, I think that my dad felt 12 he had a responsibility to try to intervene and take 13 care of Clarence and look out for his well-being. 14 Q (By Mr. Wall) Do you think that's what he was doing 15 that night? 16 A He was asked to return a hood ornament, and he was 17 hounding my dad about it, and he finally just gave in 18 and took it out there. 19 Q You're aware he was very intoxicated when he went out 20 there? 21 MR. BARCUS: Object to the form of the 22 question: lack of foundation. 23 A I don't know. 24 Q (By Mr. Wall) Have you seen Dr. Reay's deposition where 25 he talks about your dad having a .187?</p>

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1 A I might have seen that --
 2 MR. BARCUS: Excuse me. Object --
 3 Q (By Mr. Wall) Blood alcohol?
 4 MR. WALL: Excuse me. Go ahead. You can
 5 object.
 6 MR. BARCUS: Object to the form of the
 7 question: lack of foundation.
 8 Q (By Mr. Wall) Go ahead and answer.
 9 A I may have heard about that. I don't know if I actually
 10 saw it. We've been protected, you know, of seeing
 11 images and all that stuff.
 12 Q But do you think it was unwise of him to go out there
 13 after he had been drinking?
 14 MR. BARCUS: Object to the form of the
 15 question.
 16 A I couldn't say. He was using his own judgment.
 17 Q (By Mr. Wall) And this was fairly late at night, is my
 18 recollection.
 19 A It was the longest day of the year. It was light out
 20 still.
 21 Q You don't feel your dad brought this on himself in any
 22 way?
 23 A He was asked on a telephone message, and my grandfather
 24 had come to where he was earlier in the day looking for
 25 him. It's like he wouldn't let go of this topic. It

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1 was -- he wasn't going to let it go, so my dad -- I
 2 think he came home and heard the message.
 3 And I think it bothered him that he was still
 4 asking about it, so he just: "I'm going out there now
 5 to get this over with and give it to him."
 6 Q From what you know, do you think this was an intentional
 7 shooting of your father or an accidental shooting of
 8 your father?
 9 MR. BARCUS: Objection to the form of the
 10 question: lack of foundation.
 11 A I do not think it was an accident.
 12 Q (By Mr. Wall) Why do you think that?
 13 MR. BARCUS: Objection to the form of the
 14 question: lack of foundation, calls for speculation.
 15 A I know that Clarence has experience with guns.
 16 Q (By Mr. Wall) Had you noticed that Clarence had
 17 developed a tremor as he had gotten older?
 18 A Sometimes, yes. When he'd get mad especially.
 19 Q Have you spoken to Clarence since this happened?
 20 A No.
 21 Q You didn't see him in jail or anyplace? You didn't go
 22 visit him, anyway?
 23 A No. I did see him at hearings, but I did not speak to
 24 him.
 25 Q Were you involved in helping your dad with his finances?

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1 A I was in the beginning after my mom died.
 2 Q And about what was his monthly income?
 3 A It was --
 4 MR. BARCUS: Object to the form of the
 5 question: lack of foundation, irrelevant.
 6 A I'd have to look to be 100 percent, but I think it was
 7 around \$3,000.
 8 Q (By Mr. Wall) How did your dad manage to acquire all
 9 this property, the cars, the home, the motor home, on
 10 \$3,000 a month?
 11 MR. BARCUS: Object to the form of the
 12 question: irrelevant, lack of foundation.
 13 A Him and my mom had always worked, and that was their
 14 priority, to spend their money in that way. They didn't
 15 go on fancy trips. They did not buy fancy other things.
 16 It was -- my dad looked at the cars as investments. He
 17 enjoyed them, and that's about it.
 18 MR. WALL: I think those are all the questions
 19 I have. I want to take a quick break here and talk to
 20 my clients for a minute.
 21 (Pause in the proceedings.)
 22 MR. WALL: I don't have any more questions.
 23 MR. BARCUS: I have a couple questions in
 24 follow up, if I may.
 25 ///

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1 EXAMINATION
 2 BY MR. BARCUS:
 3 Q Kristy, you were asked questions about your knowledge of
 4 unusual behaviors of Clarence. I don't know that you
 5 had an opportunity to fully answer those questions.
 6 Were you aware of any other unusual behaviors of
 7 Clarence?
 8 A There were several different situations where I would
 9 consider it unusual behavior. I know one time that he
 10 bought a piece of property down in California and loaded
 11 up all of the furniture. I'm not sure if my grandmother
 12 really wanted to go and --
 13 Q Your grandmother was still alive at the time?
 14 A Yes. He bought a house down there, I believe, and moved
 15 furniture -- had someone move it down there, and I think
 16 my grandmother finally said she didn't want to go and
 17 had them bring the furniture back.
 18 So it was just a really unusual: "We're going to
 19 move and bring it back." And it was -- to me that kind
 20 of stood out. It was unusual and --
 21 Q And was -- go ahead. Sorry.
 22 A There was a time when my grandmother was in the hospital,
 23 and there was a problem with my cousin, Kevin Rhone. He
 24 wanted to go see my grandmother, and my grandfather
 25 stopped him.

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1 And there was -- I did not see this for myself, but
 2 I had heard from Kevin and from my aunt that Clarence
 3 had pushed him and told him he couldn't go. And he
 4 slapped his glasses off of his face.
 5 And after that, since there was a little argument
 6 about "You can't stop me from seeing my grandmother. I
 7 want to see my grandmother. She's really sick" -- so
 8 then there was a problem between Kevin and Clarence.
 9 And so Clarence saw my cousin, Kevin, who's a fire
 10 fighter, doing the Fill the Boot for -- I think it's for
 11 burn victims. And he was screaming at him when he was
 12 standing out on a corner collecting money.
 13 Q What, driving by?
 14 A Yeah. He was driving by, and he was like screaming at
 15 him and called him names and things like that. And I
 16 also heard that he went -- that Clarence went to Kevin's
 17 work and tried to say bad things about him in hopes to
 18 get him fired.
 19 And I think it all stemmed from the hospital visit,
 20 and I think Kevin might have been involved in trying to
 21 get them help to get a ramp put in their house. And
 22 that angered Clarence. That's what I thought.
 23 Q Were you aware of any incidents where Clarence was
 24 intimidating to others?
 25 A Yes. I had heard a couple of things with the neighbors

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1 and --
 2 Q What did those involve just generally?
 3 A One of the neighbors was complaining about he had like a
 4 run along the side of his property that was kind of like
 5 two chain links, a long, narrow area kind of like a dog
 6 run. And he had geese in there.
 7 And the neighbor was complaining about the geese,
 8 and so he got tired of hearing the lady complain, so he
 9 just went out there and whacked their heads off and
 10 stuck the heads in the fence for the lady to see.
 11 And that was something disturbing to hear, and I
 12 heard that he had -- there was barking dogs or dogs next
 13 door that he thought were bothering him or -- I couldn't
 14 say why really. He sprayed their faces with spray paint,
 15 and I've heard that those were white pit bulls. And
 16 then I heard there was another incident of starter fluid
 17 being sprayed in a dog's face.
 18 And then I did hear -- I think my dad told me
 19 this -- that he had a goat that we'd always go out and
 20 visit and pet -- that he shot the goat and cut its head
 21 off.
 22 Q Clarence did?
 23 A Clarence had done that to the goat, Rainbow, and I did
 24 not understand why.
 25 Q These behaviors, these unusual behaviors displayed by

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1 Clarence, did they seem to be any more frequent
 2 following the death of your grandmother?
 3 A I think that he had done things like that over the years,
 4 but I had heard more recently.
 5 Q Even in the distant past, are you aware of your
 6 grandfather intimidating anybody with a weapon, a gun
 7 perhaps at a card party?
 8 A Oh, yes. I had heard a lot of people talk about that,
 9 that a gun was pulled and shoved into Bill Feddersen's
 10 stomach. And Bill Feddersen was the grandfather of my
 11 best friend, so I definitely heard about it.
 12 Q What era are we talking about as far as time?
 13 A I think it was probably in the late '80's, early 90's,
 14 somewhere in there, and I think they had to -- he
 15 mistook somebody making advances on his wife.
 16 And he -- that upset him, so I think that's what I
 17 heard is what initiated it. And some people had to
 18 wrestle the gun from him.
 19 Q Before the shooting that occurred on June 21st, 2008, of
 20 your father, were you aware from any source that your
 21 grandfather was taking medication for Alzheimer's or
 22 dementia?
 23 A I had heard that he was taking something to help with
 24 that.
 25 Q Based upon your knowledge of your grandfather, how would

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1 you have characterized his general behavior or demeanor
 2 up until the time of the shooting?
 3 A I hadn't really seen him as often as I had in the past,
 4 but I had heard, you know, from talking to other people
 5 how he had been.
 6 Q You had an incident at your home where he came to your
 7 home that you previously described. Did you have any
 8 ongoing fear of Clarence before the shooting of your
 9 father?
 10 A Yes. He would leave things at the house, and it just
 11 scared me, the fact I knew that he was there when we
 12 were gone. And he was going into like our fenced area
 13 and leaving some things.
 14 And, you know, I think that -- I can't even
 15 remember what the things were, but it was odd things
 16 just left for us and kind of to let us know that he was
 17 there. I was just afraid of him coming around, and I
 18 didn't want him to come into my house anymore,
 19 especially on days when my husband was working and with
 20 the little kids in the house.
 21 Q Describe your grandfather as far as his physical
 22 characteristics.
 23 A He was a burly, tall guy. He was kind of heavy. He was
 24 intimidating and --
 25 Q Approximately how tall? I'm sorry.

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1 A Six four.
 2 Q Six foot four?
 3 A Yeah.
 4 Q Something like that?
 5 A Somewhere around in there, yeah. He was pretty tall.
 6 Q The date of the shooting, June 21st, 2008, you were not
 7 present at the time?
 8 A No.
 9 Q Anything that you know you had either read or someone
 10 else had told you; is that correct?
 11 A Right.
 12 Q As far as what occurred there at the time?
 13 A I'd only read reports.
 14 Q And as far as what was in Clarence's mind at the time
 15 that he shot and killed your father, you don't have any
 16 personal knowledge of that?
 17 A I was not there.
 18 Q You have, however, read the information, and what is
 19 your understanding as to what Clarence did, particularly
 20 as it related to the shooting of the rifle?
 21 A He claimed that he was trying to scare my dad, that he
 22 shot it at the ground or past him.
 23 Q Are you aware of Clarence making any comments,
 24 particularly to the police, as to whether or not he
 25 intended to shoot your father or if it was an attempt to

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1 scare him?
 2 A I did see "scare" in quotation marks. He was attempting
 3 to scare him.
 4 MR. BARCUS: All right. Thank you. Those are
 5 all the questions I have.
 6 FURTHER EXAMINATION
 7 BY MR. WALL:
 8 Q Going through these incidents, when did this move to
 9 California go on?
 10 A Well, I can tell you that my grandmother was still alive,
 11 and my mom was still alive.
 12 Q How old were you?
 13 A I was probably in college because -- I don't know a lot
 14 of details because I was probably away at the time. I
 15 had heard about that.
 16 Q And were you aware this was to buy a condominium next to
 17 your grandmother's brother?
 18 A I thought that he knew someone down there. That's all I
 19 knew.
 20 Q And this was something between them about whether they
 21 wanted to move or buy property down there?
 22 A I wasn't really sure of all the details.
 23 Q Did you ever have a fight with your husband?
 24 MR. BARCUS: Object to the form of the
 25 question.

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1 A Disagreements, yes.
 2 Q (By Mr. Wall) Everybody does, don't they?
 3 A Yes.
 4 Q As far as you know, this was just a disagreement between
 5 your grandfather and your grandmother?
 6 MR. BARCUS: Object to the form of the
 7 question.
 8 A I didn't really know the complete details. I didn't
 9 think that she was totally on board, and I think he
 10 thought it was a last chance to do something like that.
 11 Q (By Mr. Wall) Did you think: "Oh, my God. Grandpa's
 12 crazy" when you heard this?
 13 A I think she might have felt that way a little bit.
 14 Q "She" being your grandmother?
 15 A Right.
 16 Q But apparently they worked it out because they stayed
 17 together?
 18 A Yes, they did.
 19 Q With regard to this business of the cutting the heads
 20 off the geese, do you have any personal knowledge of
 21 that? Did you hear about it, or did you actually see
 22 it?
 23 A I had heard about it.
 24 Q Whom did you hear it from?
 25 A I think I had heard it from my dad. I think that

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1 Clarence may have even mentioned it like to shut the
 2 lady next door up.
 3 Q Who was the lady next door?
 4 A I believe it was Laurie.
 5 Q Wasn't she the same person that owned the pit bulls?
 6 A I'm not sure about that.
 7 Q With regard to the dogs next door who allegedly got
 8 spray painted, were you ever there when these dogs were
 9 around?
 10 A No. I think I had heard the dogs maybe, you know, over
 11 there.
 12 Q They were very aggressive from what I heard. Is that
 13 what you heard?
 14 MR. BARCUS: Object to the form of the
 15 question.
 16 A I didn't hear specifically, no.
 17 Q (By Mr. Wall) You have no personal knowledge that this
 18 actually even occurred, do you?
 19 A I did not see it happen.
 20 Q Do you know when it happened?
 21 A No.
 22 Q Same thing with the goat. Do you know when that
 23 happened?
 24 A Well, we were going over there. At one time we had our
 25 camper over there. I have to think back. It was

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1 probably in '99 or 2000 because I remember the goat
 2 being over there when we would go to our camper, and
 3 then he wasn't there anymore.
 4 Q So it was years before that this happened; it was when
 5 your grandmother was still alive?
 6 A I'm a little fuzzy on the exact time but --
 7 Q And this supposed incident where they got into an
 8 argument at a birthday party in the '80's or '90's, were
 9 you there?
 10 A No. I would have been a child then.
 11 Q What was the source of this? Did you hear that from
 12 your dad, or was it just kind of family lore or what?
 13 A I had heard it from my best friend's grandparents, her
 14 mother, and my dad, my aunt.
 15 Q Had your grandfather ever been charged with a crime as
 16 far as you know before this?
 17 A I know he had a few problems. I don't know if there
 18 were any charges.
 19 Q You were aware kind of from talking to your dad that he
 20 had take away your grandfather's guns in 2007 in June
 21 and that Dennis Cline had picked them up?
 22 A I had heard there was an agreement. An officer was
 23 involved and -- yes.
 24 Q And then later on, didn't your dad tell you that "Oh,
 25 yeah. Dennis gave him back the guns"?

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1 MR. BARCUS: Object to the form of the
 2 question.
 3 A It was probably sometime later, and it was just in
 4 passing.
 5 Q (By Mr. Wall) So your dad knew that the guns had been
 6 given back to your grandfather?
 7 MR. BARCUS: Object to the form of the
 8 question.
 9 A I don't specifically remember time frame or when.
 10 Q (By Mr. Wall) Well, before this shooting incident, did
 11 he ever tell you that "Well, yeah. Your grandpa got his
 12 guns back"?"
 13 MR. BARCUS: Object to the form of the
 14 question.
 15 A I think that he had.
 16 Q (By Mr. Wall) And as far as you know, he never took any
 17 action to do anything about that after they were
 18 returned to him, did he?
 19 MR. BARCUS: Object to the form of the
 20 question.
 21 A No.
 22 Q (By Mr. Wall) In some of the things that have been
 23 submitted, there are some handwritten notes kind of like
 24 on a prescription pad or something here.
 25 A My mother worked in a dermatologist office, and that

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1 was -- they would get those from the drug reps. So she
 2 had tons of those.
 3 Q Sort of like scrap paper basically?
 4 A Yes.
 5 Q And your dad wrote these notes. Did he have them like
 6 in a notebook or something, or where were they kept, in
 7 a desk drawer or where?
 8 A It was like in a file. I think it said, "dad."
 9 Q Have you maintained all of those files?
 10 A Have we kept those?
 11 Q Yes.
 12 A I have a copy of them. I think my sister has a copy of
 13 them. I know they were submitted.
 14 Q Did your dad ever talk about getting a guardian or
 15 something appointed for your father so he could gain
 16 control of your father's assets?
 17 MR. BARCUS: Object to the form of the
 18 question.
 19 A He was talking about a guardian to get help for my
 20 grandfather.
 21 Q (By Mr. Wall) Was he concerned that your grandfather
 22 was spending all of his money?
 23 MR. BARCUS: Object to the form of the
 24 question.
 25 A He was concerned that he wasn't making good decisions

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1 and financial decisions, just unable to handle day-to-
 2 day things. He needed assistance.
 3 Q (By Mr. Wall) You mentioned that you heard about your
 4 grandfather being in the hospital in May of 2007. You
 5 heard that from Barbara Gricbe? She called you?
 6 A She did not call me. She called my dad, and my dad
 7 says, "Apparently Clarence -- Papa's really bad, and you
 8 girls want to get out there to see him."
 9 Q So she called your dad, and your dad called you?
 10 A Right. She was the one who raised concern.
 11 Q Did you ever talk to Barbara?
 12 A During that time or just in general?
 13 Q During that time.
 14 A No.
 15 Q How about like from '07 to '08? Did you talk to her
 16 much ever?
 17 A The only time that I could say that I talked to her is I
 18 ran into her. She was shopping with my grandfather, and
 19 I was glad to finally meet her, and she was -- it was
 20 our first meeting. It was a little awkward.
 21 Q Was this at the grocery store or something?
 22 A It was at the grocery store, yeah. So we were
 23 introduced, and she seemed like a nice lady.
 24 Q But it sounds like you didn't have much interaction with
 25 her?

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1 A No. I remember going over to the house. Maybe she was
 2 there one time, and I remember I was over at my Aunt
 3 Jill's house, and she was driving the purple Charger.
 4 She drove up, and I had heard that she was doing more of
 5 the driving.
 6 And she yelled out the window: "You girls need to
 7 go see your grandfather." And I said, "Well, he's
 8 sitting right there." And he wasn't saying anything,
 9 and I said, "Well, you could tell him that he should
 10 start being nicer to everybody. Then maybe that will
 11 happen."
 12 Q Do you remember when that was?
 13 A We were outside. It must have been -- I mean, it must
 14 have been summer.
 15 Q And do you remember, was it like after this incident
 16 about the Ocean Shores property?
 17 A I think it was because I wasn't making any attempt to go
 18 see him. I was staying away.
 19 Q The business about your cousin, Kevin, that would have
 20 been when your grandmother was in the hospital? Do you
 21 remember about when that would be, like early 2000's?
 22 A It was somewhere in 2000. Maybe a little bit later.
 23 Q And Kevin is -- is he your cousin or who is he?
 24 A He's my cousin.
 25 Q So he's Sunny's son?

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1 A Son, yes.
 2 Q Someone here had a gender change at some point in your
 3 family, didn't they?
 4 A There was no gender change. It was --
 5 Q Kevin is now calling himself Stephanie or something?
 6 A Greg. My cousin, Greg, a male, said, "I want to be a
 7 female," started taking hormones and dressing a little
 8 bit --
 9 Q That was not this guy, though?
 10 A No.
 11 Q That was my question.
 12 A No.
 13 Q And this was an altercation about who could go visit
 14 your grandmother in the hospital?
 15 A Right. He was preventing people from going in to see
 16 her.
 17 Q Not just Kevin, but he didn't want anybody to go see
 18 her?
 19 A I remember going in. It must have been okay for me to
 20 go in. It was a select -- I think it was the Rhones,
 21 like Sunny and Bill and Kevin.
 22 Q He didn't like the Rhones? They didn't get along?
 23 A I really don't even know why.
 24 MR. WALL: Okay. Thanks. Those are all my
 25 questions.

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1 MR. BARCUS: I have one follow-up question.
 2 FURTHER EXAMINATION
 3 BY MR. BARCUS:
 4 Q From your observations of your grandfather, particularly
 5 before the shooting of June 21st, 2008, did he ever act
 6 in a manner that in any way would lead you to believe
 7 that he thought he was above the law?
 8 A Yes.
 9 MR. BARCUS: Okay. Thank you. That's all I
 10 have.
 11 FURTHER EXAMINATION
 12 BY MR. WALL:
 13 Q Why don't you expand on that.
 14 A He would swerve his car towards kids and yell at kids.
 15 He would just think he would deal with it his way. He
 16 didn't care.
 17 And it seemed like he would kind of act innocent as
 18 the old guy, play that role, and Barb would often step
 19 in and say, "He has a mental illness."
 20 And then it just -- everything -- like when he had
 21 the incident with the kids up at Fred Meyer, she was
 22 always there saying, "He has a mental illness." And
 23 then everything was just swept away, and it was like
 24 that was the card to play.
 25 Q How do you know that?

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1 A I know that because I read it in my dad's notes,
 2 handwritten notes. He wrote that.
 3 Q You have no personal knowledge of any of that?
 4 A No. I had talked to -- I had talked to Sunny. Her
 5 friends were the ones who were the witnesses.
 6 Q Sunny who didn't get along with your grandfather?
 7 A Her friends lived in town there, and they were the
 8 actual witnesses that called 911.
 9 Q What are their names?
 10 A It's Ken and Sherry Capron. I think it's listed in
 11 there to double-check.
 12 THE REPORTER: I didn't get the last name.
 13 THE WITNESS: Capron, C-a-p-r-o-n.
 14 Q (By Mr. Wall) C-a-p-r-o-n?
 15 A R-o-n, right.
 16 Q And when did that happen?
 17 A That had to have happened within the year, year and a
 18 half before the shooting. Sometime within there.
 19 Q And when did you learn about it?
 20 A I had learned about it afterwards.
 21 Q After the shooting?
 22 A No. No. I had heard -- I had heard about that just
 23 from speaking with people that that had happened.
 24 Q When we took Deputy Kimbriel's deposition yesterday, she
 25 said when she met with Clarence, he seemed rational. He

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1 seemed like he could hold a conversation and kind of
 2 knew what was going on. When you dealt with your
 3 grandfather, did that seem like how he was?
 4 MR. BARCUS: Object to the form of the
 5 question: mischaracterizes the testimony.
 6 A He could sometimes be that way, but there were a lot of
 7 times where he was volatile, and he would say
 8 inappropriate things. He would --
 9 Q (By Mr. Wall) Like what?
 10 A Sexual remarks, calling people fat. It was like when he
 11 ran out of things to say, it would be poking fun, rude
 12 humor, things like that. It was just -- I did not
 13 consider that to be appropriate talk from a grandfather
 14 to a granddaughter.
 15 Q If you were a stranger who met Clarence, do you think he
 16 would appear to be a fairly normal old guy?
 17 MR. BARCUS: I object to the form of the
 18 question: lack of foundation, calls for speculation.
 19 A I remember the very first time I had an impression of my
 20 grandfather other than when I was a girl. I worked in a
 21 grocery store, Stock Market Foods.
 22 He would come there, and he would pester my
 23 coworkers, and sometimes it was in a joking way.
 24 Sometimes it was about a price of something or just
 25 random things.

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1 And I remember thinking to myself: "I don't know
 2 how I would feel about this man if he wasn't related to
 3 me." And that was one of my first feelings, and it made
 4 me feel bad.
 5 Q (By Mr. Wall) There's a difference between someone
 6 being obnoxious or having a rotten personality and
 7 someone who has Alzheimer's disease.
 8 What you're describing to me sounds like someone
 9 who just doesn't have a very good personality, someone
 10 who's kind of obnoxious.
 11 A That's what --
 12 MR. BARCUS: Excuse me. Object to the form of
 13 the question.
 14 Q (By Mr. Wall) So you were saying?
 15 A Yes. That's what it appeared at first as just
 16 cantankerous, is the word that my mom would use.
 17 Q And in your dealing with your grandfather, was there
 18 ever an occasion where, for instance, he didn't
 19 recognize people that he should recognize?
 20 A I never noticed that, other than -- no. Just repeating
 21 himself.
 22 Q And did he always seem to be dressed in kind of an
 23 appropriate fashion?
 24 MR. BARCUS: Object to the form of the
 25 question.

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1 Q (By Mr. Wall) He didn't have his pants on backwards or
 2 something like that?
 3 MR. BARCUS: Same objection.
 4 A Not that I noticed.
 5 Q (By Mr. Wall) How about did he manage to -- he lived
 6 alone. He did his own shopping and took care of himself
 7 that way?
 8 MR. BARCUS: Object to the form of the
 9 question.
 10 A I just did not observe that for myself the last two
 11 years before. I knew that Barbara was involved, and she
 12 was doing her best to take care of him.
 13 Q (By Mr. Wall) Okay. So you really hadn't seen him
 14 except at your aunt's funeral since the end of April of
 15 2006, it sounds like?
 16 A It was in 2007.
 17 Q The funeral was, but the last time he came to the house
 18 and had that big blowup, that was in 2006?
 19 A Right.
 20 Q And then in 2007, you saw him at your aunt's funeral?
 21 A Yeah. I had very limited -- maybe one conversation on
 22 the phone in between. The last time I saw him was at
 23 that funeral.
 24 Q You mentioned he was dropping stuff off at the house.
 25 Was that during this period of time, or was it before?

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1 A It was before.
 2 Q So really your contact with him after this blowup at
 3 your house was very minimal, it sounds like?
 4 A He conveyed to my dad and my sister that he was --
 5 because I yelled at him, and I don't know if it was
 6 someone standing up to him that just -- he didn't know
 7 how to take it.
 8 Q But he basically said, "I don't want to talk to you
 9 anymore"?
 10 MR. BARCUS: Object to the form of the
 11 question.
 12 A It just wasn't convenient anymore, and I said I didn't
 13 want my kids to be around him that last time that -- I
 14 didn't feel safe.
 15 MR. WALL: All right. That's my last
 16 question.
 17 FURTHER EXAMINATION
 18 BY MR. BARCUS:
 19 Q How often when you would see your father would he use
 20 inappropriate language?
 21 A My father or --
 22 Q Grandfather. I'm sorry. Thank you.
 23 A It usually was resorted to every time. It was
 24 somebody's looking fat or sure have gained a lot of
 25 weight, or when I was pregnant with my twins, he made a

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1 sexual comment to me about me not getting any sex
 2 because I was big and pregnant and did not --
 3 Q Those types of -- I'm sorry. Were you finished?
 4 A I did not know what to think about that.
 5 Q Those types of inappropriate comments, can you tell us
 6 whether or not they increased following the death of
 7 your grandmother?
 8 A I think that they did, and I think he thought being
 9 funny was a way to interact with people. I mean, that
 10 was like a last resort for him. It was the rude humor.
 11 It was when "I don't know what else to talk about," we
 12 go to that.
 13 Q And you indicated that you were aware that Barbara
 14 Griebbe was assisting your grandfather before the
 15 shooting occurred?
 16 A Yes.
 17 Q And were you aware that neighbors were actually -- at
 18 least one neighbor was actually enlisted to assist with
 19 straightening out the medications being consumed by your
 20 grandfather before the shooting?
 21 A One of the neighbors?
 22 Q Yes.
 23 A I didn't know about that.
 24 MR. BARCUS: Okay. That's all I have. Thank
 25 you.

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1 THE WITNESS: Is there something that I could
 2 say?
 3 MR. BARCUS: No.
 4 FURTHER EXAMINATION
 5 BY MR. WALL:
 6 Q I could ask you, but generally we respond to questions
 7 here.
 8 A Right. Right, right, right.
 9 Q Is there something that you wanted to clarify?
 10 A There was an incident that is standing out to me. When
 11 my mom was sick, Clarence had purchased some cemetery
 12 plots where my dad's little brother was at and my
 13 grandmother.
 14 And I think his intention was to buy a whole bunch
 15 so the family could be together, and he came over when
 16 my mom was sick and started saying, "Where does she want
 17 to be buried? I have a plot."
 18 And I'm like, "This lady is still alive. Why are
 19 we having this conversation?" And he kept pushing it
 20 and pushing it, and I finally had to tell him: "I think
 21 that my mom deserves enough respect to say where she
 22 would like to be buried."
 23 And he said to me, "But when you're dead, you're
 24 dead." And he just wouldn't drop it, and it was
 25 disturbing to me. It was one of the most disturbing

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1 things that he said to me.
 2 Q Did it make you think he was dangerous?
 3 A It felt like he was harassing us to do what he wanted.
 4 Q Or that he was trying to help out by buying a cemetery
 5 plot, it sounds like.
 6 A He was being inappropriate.
 7 Q And again, we get into this inappropriate -- you know,
 8 the allegation in this case is that he was noticeably or
 9 visibly mentally ill, that he had dementia. Did you
 10 construe this as a sign of dementia or just that he was
 11 kind of obnoxious?
 12 MR. BARCUS: Object to the form of the
 13 question: lack of foundation.
 14 A I knew he was having problems. I did not know he was
 15 diagnosed and --
 16 Q (By Mr. Wall) And that would have been like 2005?
 17 A It would have been in -- it was around the summer, fall
 18 of 2005 when that was -- every time he would come over,
 19 it would be a topic.
 20 Q Was he the only person that made a remark when your
 21 mother was dying that you felt was inappropriate?
 22 People would say things that they thought would be
 23 helpful but actually were hurtful?
 24 A It was only him.
 25 MR. WALL: Those are the only questions I

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1 have. Thanks.
 2 MR. BARCUS: I have nothing further. Thank
 3 you.
 4 * * * * *
 5 (Witness excused at 11:10 a.m.)
 6 (Signature was reserved.)
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DEPOSITION OF KRISTY RICKEY (3-16-11)

Page 82

1 SIGNATURE PAGE TO THE DEPOSITION OF KRISTY L. RICKEY
2 Wednesday, March 16, 2011

3
4 I have read my within deposition, and the same is
5 true and accurate save and except for corrections, if
6 any, as indicated by me on the lower portion of this
7 page.

8
9
10 KRISTY L. RICKEY

11
12 PAGE LINE NO. SHOULD BE REASON

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1 CERTIFICATE
2 STATE OF WASHINGTON)
3) ss.

3 County of Pierce)

4 I, Valerie Gerjets, Notary Public in and for the
5 State of Washington, County of Pierce, do certify that
6 KRISTY L. RICKEY was first by me duly sworn on oath to tell
7 the truth, the whole truth, and nothing but the truth in said
8 cause; that the words of said witness were taken by me on my
9 stenotype machine and thereafter reduced to typewriting under
10 my supervision; and that the above and foregoing is a true
11 and correct transcript of the same. Further, the signature
12 of the witness was reserved.

13 I do further certify that the said Deposition Upon
14 Oral Examination was taken before me pursuant to notice on
15 Wednesday, March 16, 2011, at 4303 Ruston Way, Tacoma,
16 Washington; and further, I do certify that I am not an
17 attorney for, relative of, or employee of any of the parties
18 or otherwise interested in the outcome of this litigation.

19 IN WITNESS WHEREOF, I have hereunto set my hand and
20 affixed my official seal this 24th day of March 2011.

21

22 Notary Public in and for the
23 State of Washington, residing in
24 Tacoma.

24 My commission expires 12-12-11.

25

22 (Pages 82 to 83)

VALERIE GERJETS, CCR
253-473-7764

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APP0191

EXHIBIT D

Rickey/Cavar vs. Clarence G. Munce
Videographic Deposition of Kelley R. Cavar/6-23-09

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR PIERCE COUNTY

KRISTY L. RICKEY and KELLEY R. CAVAR,)
individually, and as Co-Executrixes of)
the Estate of Gerald Lee Munce,)
)
) Plaintiffs,)
)) No. 08-2-10227-6
vs.)
))
CLARENCE G. MUNCE,)
))
) Defendant.)

VIDEOGRAPHIC DEPOSITION UPON ORAL EXAMINATION

of

KELLEY R. CAVAR

Taken at 4303 Ruston Way
Tacoma, Washington

DATE: June 23, 2009

REPORTED BY: Julia Williams, CCR WILLIJ*239KZ

Verb8m Reporting 206-467-0800

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APP0193

Rickey/Cavar vs. Clarence G. Munce
 Videographic Deposition of Kelley R. Cavar/6-23-09

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1 A. Eleven.
 2 Q. Do you live there with your husband and your two
 3 sons?
 4 A. I do.
 5 Q. How old is Lane?
 6 A. Ten.
 7 Q. Okay. What's his date of birth?
 8 A. 1/21/99.
 9 Q. And Luke?
 10 A. 9/18/03.
 11 Q. And did you get married when you were 19?
 12 A. I don't believe so.
 13 Q. Well, are you 29 now?
 14 A. I am 33.
 15 Q. 33. Okay. Is your birthday August 29th, 1975?
 16 A. Yes.
 17 Q. Okay. And how old were you when you got married?
 18 A. 23.
 19 Q. 23. And --
 20 A. 24.
 21 Q. And your sister Kristy, she's older than you,
 22 correct?
 23 A. Yes.
 24 Q. And how have you separated responsibilities for
 25 your father's affairs, or have you done all of the things

Page 7

1 that you've needed to do after his death together?
 2 A. We've tried to separate them 50/50.
 3 Q. So what responsibilities have you been in charge
 4 with or tasked with?
 5 A. Mainly I check on his home once a week. I pay his
 6 bills, every responsibility that goes with that, calling his
 7 bill payers.
 8 Q. Is that it then?
 9 A. I guess that I can think of for now. There's --
 10 yes.
 11 Q. And what primarily does Kelley handle, or what --
 12 or Kristy? What is she charged with?
 13 A. When I need help -- she works. When I need help,
 14 I make -- I ask her to make phone calls for me because it
 15 seems like the phone calls to notifying all of his bills --
 16 you know, they needed to be notified of his death. That got
 17 pretty lengthy. Getting all of his insurances squared away.
 18 I mean I was on the phone with people notifying them about
 19 that and transferring everything over to my address so all
 20 of his bills are received at my address.
 21 Q. Okay. So it sounds as if your sister kind of
 22 assists you as you instruct her; she doesn't have a
 23 designated responsibility in handling the affairs?
 24 A. Right.
 25 Q. Okay. So let's talk about that for just a minute.

Page 8

1 You said that you pay all of your father's current bills?
 2 A. Uh-huh.
 3 Q. What bills did he have on a regular basis at the
 4 time he died?
 5 A. He had obviously car insurance.
 6 Q. Okay. Who was he insured with?
 7 A. State Farm.
 8 Q. Okay.
 9 A. Homeowners, State Farm; utilities, Puget Sound
 10 Energy.
 11 Q. Okay.
 12 A. His cable, which we canceled and took back all of
 13 the cable boxes. Let's see. Oh, his Morton loan. He has
 14 property in Morton, Washington.
 15 Q. Okay.
 16 A. I take care of that loan.
 17 Q. Who is that loan with?
 18 A. Evergreen I believe.
 19 Q. Evergreen Bank?
 20 A. No. Evergreen is all I can remember right now.
 21 Q. Okay. So that's a monthly payment or obligation
 22 that you --
 23 A. Yes.
 24 Q. -- make for him currently?
 25 A. Yes.

Page 9

1 Q. And a monthly obligation that he had at the time
 2 that he died?
 3 A. Yes.
 4 Q. And that is a recreational property of some kind?
 5 A. Yes.
 6 Q. Does that have a trailer on it? a house? What's
 7 on that property?
 8 A. It had a mobile home on it. It collapsed I
 9 believe two winters ago.
 10 Q. So is it pretty much just raw land at the present
 11 time?
 12 A. The trailer is still on it collapsed. My dad was
 13 in the process of dealing that, dealing with --
 14 Q. Process of what?
 15 A. Of dealing with that when he died.
 16 Q. What were his plans for that property? Do you
 17 know?
 18 A. To get in a backhoe and clear it.
 19 Q. Clear the land, get rid of the trailer?
 20 A. Clear the land, yeah, and now that is my
 21 responsibility now too.
 22 Q. Okay. What was -- or what is the amount of the
 23 loan remaining for the Morton property?
 24 A. It was low. Do you want now or at a year ago?
 25 Q. Do you know when your father died what the monthly

Rickey/Cavar vs. Clarence G. Munce
 Videographic Deposition of Kelley R. Cavar/6-23-09

Page 10	Page 12
<p>1 payment was or what the balance due was? 2 A. 183 change is the monthly amount due, and it 3 was -- I believe then there was about 2500 remaining. 4 Q. Okay. 5 A. Approximately. 6 Q. So is it close to being paid off now? 7 A. Yes. 8 Q. Is that a property that you have any interest in? 9 A. Yes. 10 Q. Okay. Is it something that would be like a 11 recreational property for you and your family? 12 A. Yes. We grew up -- 13 Q. Because it's near the water, isn't it? 14 A. River. 15 Q. River? 16 A. Uh-huh. 17 Q. What river is it on? 18 A. Tilton. 19 Q. So was that a direct withdrawal out of your 20 father's checking account? 21 A. All of his payments were pretty much a direct 22 withdrawal. We had to deal with that because at the very 23 beginning because my dad's income stopped, so had to deal 24 with overpayments because that kept on becoming a with -- 25 direct -- excuse me -- withdrawal. So getting all of that</p>	<p>1 A. Yes. 2 Q. And the majority of his monthly bills were paid 3 that way through either a direct withdrawal or online 4 banking of some kind? 5 A. Yes. 6 Q. And the expenses would primarily include the 7 Morton loan, cable, utilities, homeowners insurance and car 8 insurance? 9 A. There may be more, but that is what I can remember 10 as of now, yes. 11 Q. Well, there was a cell phone? 12 A. Right. 13 Q. And he was with Verizon? 14 A. Yes. 15 Q. And they apparently were charging you -- What? -- 16 an overdue payment of some kind? 17 A. For what? 18 Q. Well, Verizon cell phone. They were trying to 19 collect? 20 A. After he died, yes. 21 Q. Okay. And you contacted Get Jessie? 22 A. Yes. 23 Q. And you did a video piece? 24 A. They were very snotty with me about it, so yes, I 25 did contact Jessie.</p>
Page 11	Page 13
<p>1 in order, yeah. 2 Q. So where did he bank at the time that he died? 3 A. Rainier Pacific. 4 Q. Rainier Pacific. What branch? 5 A. Spanaway. 6 Q. And have you done or taken some steps to 7 assimilate as much of his financial information as you could 8 put together? 9 A. Definitely, yeah. 10 Q. In fact, I think you might have brought some stuff 11 with you today? 12 A. Yes. 13 Q. And we'll be -- I think that Mr. Barcus is making 14 some copies of that, and I don't want to go over those 15 things now. We'll wait until they come into the conference 16 room, but would any of that information include his banking 17 information from Rainier Pacific in Spanaway? 18 A. Yes. 19 Q. Okay. 20 A. I got it at a different branch, but yes. 21 Q. Okay. So in addition to -- or let me just 22 backtrack for a second. Would it be fair to say that at the 23 time that your father died, he had monthly payments and 24 obligations that were coming directly out of his checking 25 account?</p>	<p>1 Q. What time frame was that that you contacted 2 Jessie? And for the record, would you just describe, who's 3 Jessie? 4 A. Jessie Jones. He's a consumer -- he handles 5 consumer -- I'm trying to find the word here. 6 Q. Is it advocate, somebody that, if -- 7 A. Yeah. 8 Q. -- you have a complaint and you're not getting 9 anywhere, maybe you can contact? 10 A. Yes. After I got off the phone one night with 11 Verizon and just felt so mistreated, I e-mailed him. 12 Q. Okay. And that's when he picked up and you did 13 the video piece with him? 14 A. I believe he called me the next day or the day 15 after. 16 Q. Was the amount at issue 25 or 30 dollars? 17 A. The whole bill I believe was around \$80. 18 Q. Okay. And it sounds as if that quickly got 19 resolved after you got Jessie? 20 A. I wouldn't say quickly, but it did get resolved 21 okay. 22 Q. Okay. I thought I saw in the press that after 23 that came out, they quickly reversed the charges? 24 A. No. I did keep on receiving bills from them. 25 Q. Were they withdrawing them from your father's</p>

4 (Pages 10 to 13)

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APP0196

Rickey/Cavar vs. Clarence G. Munce
 Videographic Deposition of Kelley R. Cavar/6-23-09

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1 accounts as they had previously done?
 2 A. No, because that direct pay was stopped.
 3 Q. Okay. So what was your dad's cell phone number at
 4 the time of his death? Do you know?
 5 A. I don't think I can remember right now.
 6 Q. Do you have any of his phone bills?
 7 A. Yes.
 8 Q. Okay. Did you bring those with you today?
 9 A. No.
 10 Q. Okay. Would you have access to them, or do you
 11 have access to them?
 12 A. Yes.
 13 Q. How far do the phone bills go back that you have
 14 records for?
 15 A. Probably the ones I was just receiving after his
 16 death.
 17 Q. Did you have any phone bills that were the month
 18 of his death or the month before his death?
 19 A. I am not sure.
 20 Q. Did you review any of his phone bills to see who
 21 he may have called on the day of his death or in the week
 22 before?
 23 A. Well, the phone bills do not have calls on it.
 24 They just have the charges.
 25 Q. The phone bills that your dad received doesn't

Page 15

1 indicate the phone numbers he called?
 2 A. No. Verizon does not do that. I have Verizon.
 3 Does not have that.
 4 Q. Did he have a land line?
 5 A. Yes. That's another bill, a land line, yes. And
 6 he has an alarm bill.
 7 Q. Okay. And who was his alarm bill with?
 8 A. Brinks.
 9 Q. And his land line?
 10 A. Qwest.
 11 Q. Do you know what his monthly expenses were at the
 12 time of his death?
 13 A. I don't.
 14 Q. Do you know what his monthly income was?
 15 A. I don't.
 16 Q. Do you know what the source of his income was at
 17 the time of his death?
 18 A. Yes.
 19 Q. What was it?
 20 A. I believe social security, L&I pension and
 21 retirement.
 22 Q. And the retirement was from the school district?
 23 A. Yes.
 24 Q. Okay. In reviewing his records or affairs, do you
 25 know how much he was receiving from any of those three

Page 16

1 sources at the time of his death?
 2 A. I believe you just asked me that, and I'm not for
 3 certain. I could give a guess, but I'm not comfortable
 4 doing that.
 5 Q. Okay.
 6 MR. BARCUS: Those award letters and such for
 7 social security and pension and retirement are all on the
 8 documents that were copied.
 9 MS. MCGAUGHEY: Okay.
 10 MR. BARCUS: And they have notice -- they do have
 11 amounts there.
 12 Q. How long had your dad been on L&I? Do you know?
 13 A. I cannot give a specific date because he has --
 14 before his death trying to -- battling back and forth not
 15 working, and I don't know the specific dates.
 16 Q. Do you know what year, the last year that you
 17 remember him working at the school district?
 18 A. Oh, working at the school district?
 19 Q. Yes.
 20 A. Let's see. Approximately 01.
 21 Q. And you worked at the school district for a period
 22 of time, right?
 23 A. Very long time, yeah.
 24 Q. Did you ever work in the same location as he did?
 25 A. Yes.

Page 17

1 Q. Okay. And the -- strike that. After your dad was
 2 let go from the school district when he couldn't come back
 3 to work because of his injuries, did he ever work anywhere
 4 else?
 5 A. No.
 6 Q. Part-time jobs of any kind?
 7 A. No.
 8 Q. Do you know -- at the time of his death, did he
 9 own his house free and clear?
 10 A. I believe so.
 11 Q. And was that a house that you lived in or grew up
 12 in at all?
 13 A. I grew up there.
 14 Q. Okay. So did your mother die in 2005?
 15 A. Uh-huh, yes.
 16 Q. Okay. And do you know when or approximately when
 17 your dad paid off your family home or the home that he lived
 18 in at the time of his death?
 19 A. I'm not positive if it was when she was alive, but
 20 it was soon after, in that period of time.
 21 Q. Soon after she died?
 22 A. I believe so.
 23 Q. Okay. Is there a memory that you're thinking of
 24 or some reason that you would know that it was sometime
 25 after your mom died?

5 (Pages 14 to 17)

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APP0197

Rickey/Cavar vs. Clarence G. Munce
Videographic Deposition of Kelley R. Cavar/6-23-09

Page 18

1 A. It was either right around when she died or soon
2 after.
3 Q. Okay.
4 A. I just remember them saying their house was paid
5 off.
6 Q. And do you --
7 A. I'm not sure if them or him. I --
8 Q. Okay. Fair enough. How long had your dad lived
9 there? It sounds like quite a while.
10 A. All of my life and before.
11 Q. Okay. So was it -- do you know -- and if you
12 don't know, maybe we'll get these records, but did you have
13 an understanding that the mortgage for his home was paid off
14 after a 30-year time frame, or did he pay it off with a
15 lump-sum payment? Do you know anything about that?
16 A. I would assume the 30 years.
17 Q. Okay.
18 A. But I'm not certain.
19 Q. Would it be fair to say as far as your father's
20 financial affairs that you didn't have personal knowledge or
21 information about the details of it until after he died?
22 A. Yes. They never really shared their personal
23 finances with us.
24 Q. Okay. And at the time that -- well, in the few
25 years before your father died, it sounds as if you've

Page 19

1 already discussed this with your attorney, but you were not
2 financially dependent on your father?
3 A. No.
4 Q. Okay. And do you remember the last year that you
5 received any kind of financial assistance before your
6 father's death?
7 A. From my dad?
8 Q. Yes, the last time that you would have been
9 dependent on him financially in any way. Was it --
10 A. I think I lived with my parents until the age of
11 22.
12 Q. Okay. And you've been married for? Refresh my
13 recollection.
14 A. Nine years.
15 Q. Nine years. So would it be fair to say for at
16 least the ten years before his death, you weren't
17 financially dependent on him?
18 A. Yes. I'm --
19 Q. Okay.
20 A. I had a job, but yes, I did live with them.
21 Q. Well, you didn't live with them after you got
22 married, did you?
23 A. No.
24 Q. So you were married nine years ago. I think you
25 said you were 23 when you were married?

Page 20

1 A. Uh-huh.
2 Q. And you're now 33?
3 A. Yes.
4 Q. So for at least the last ten years, you have had
5 no financial dependence on your father?
6 A. No.
7 Q. That's not true or?
8 A. I guess I do not understand what you're asking me.
9 Q. Okay. Let me reask it --
10 A. Please.
11 Q. -- because that will not come across well in the
12 record. Yes or no? Have you been financially dependent on
13 your father in any way for the last ten years?
14 A. No.
15 Q. Okay. And do you know whether or not your sister
16 has been?
17 A. I believe not.
18 Q. Okay. Then let me follow up with the land line
19 phone number for your dad.
20 A. Uh-huh.
21 Q. Do you know what the number was?
22 A. 536-9554.
23 Q. 9554. And that's area code 253?
24 A. Yes.
25 Q. Were there any other -- or strike that. As far as

Page 21

1 your father's monthly expenses that you've become very
2 familiar with since the time of his death, was he
3 contributing anything to a savings plan or investment at the
4 time of his death?
5 A. He did have a savings, and he did have
6 investments.
7 Q. Okay. And what kind of investments or what kind
8 of savings was he making, if you know?
9 (Ms. Rickey entered the deposition at this time.)
10 A. You're asking contributions?
11 Q. Yes, not -- I know we have some of the tax
12 returns, so right now I'm not asking you about money that he
13 was taking out, but are you aware or have you become aware
14 of anything he was contributing either to an investment
15 account of any kind or savings account?
16 A. After his death?
17 Q. No, at the time he died, so --
18 A. He never really made me aware of what he would
19 deposit in his savings or in his investments.
20 Q. Okay, sure, but you've reviewed his financial
21 information since he died. What I was wondering was, in
22 reviewing those records, could you see that he was making
23 any contributions to either an investment or a savings
24 account in the year or two before he died?
25 A. Deposits?

6 (Pages 18 to 21)

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APP0198

Rickey/Cavar vs. Clarence G. Munce
Videographic Deposition of Kelley R. Cavar/6-23-09

Page 22

1 Q. Yes, deposits.
2 A. I believe his investments was just kind of sitting
3 there being invested how they do. I don't know of any
4 deposits.
5 MR. BARCUS: Maybe I can interject here.
6 MS. MCGAUGHEY: Sure.
7 MR. BARCUS: The records that were provided from
8 the bank were checkings and savings accounts.
9 THE WITNESS: Yes.
10 MR. BARCUS: But they did not provide you?
11 THE WITNESS: Investments.
12 MR. BARCUS: Investment accounts. So you've still
13 got that requested?
14 THE WITNESS: I do.
15 MR. BARCUS: They didn't give that to you for
16 some reason?
17 THE WITNESS: No.
18 MR. BARCUS: Okay. So we're still waiting for
19 those records.
20 MR. REICH: So, in other words, but the bank has
21 his investment records?
22 MR. BARCUS: Yeah, they do, and they didn't give
23 it to her. Apparently there's miscommunication there. They
24 gave her the checking and savings account, but not the
25 investment records. She's requested it, and we're still

Page 23

1 waiting for that.
2 MS. MCGAUGHEY: Okay. Well, with that
3 qualification, let me just follow up with that.
4 Q. It sounds as if from what Mr. Barcus said that as
5 far as you know, as far as investments accounts, it's also
6 at the same bank that he did his checking and savings
7 account with?
8 A. Yes.
9 Q. Are you aware of any other investment accounts
10 that he had or maintained at the time of his death other
11 than with the bank?
12 A. All I know is the bank.
13 Q. Okay. And my question was one that if you know I
14 think may be answered without the benefit of those records.
15 Was anything being deducted out of his checking account or
16 any income that he was receiving at the time of his death or
17 in the year or two before his death that was going to add to
18 any investment or savings account? Do you understand that
19 question?
20 A. I do, yeah. I haven't come across that.
21 Q. Okay. Well, one way of doing that is sometimes
22 direct deposit, and I know that you said that your father's
23 checking account, there were a lot of things that were being
24 automatically withdrawn that you obviously had to bring to
25 an end. Were there any such automatic withdrawals that

Page 24

1 triggered your knowledge or understanding that he was doing
2 any contributions to investments?
3 A. No.
4 Q. Okay. Any kind of college funds for the kids he
5 was contributing to at that time?
6 A. No.
7 Q. Okay.
8 A. Not that I'm aware of.
9 Q. Pardon?
10 A. Not that I'm aware of.
11 Q. Okay. You have actually -- I guess maybe you and
12 your sister filed probate on behalf of your father?
13 A. Yes.
14 Q. And you prepared an inventory of some kind?
15 A. Yes.
16 Q. How did you come up with the information to
17 prepare an inventory for purposes of the probate?
18 A. We did what we were instructed to do by our
19 probate attorney.
20 Q. I guess what I mean is, what information or how
21 did you go about gathering the information for filling out
22 an inventory to deal with your father's probate?
23 A. We pretty much -- I mean we received the bank
24 statements from the bank after we got our letter of
25 testamentary, so it showed us his savings. I'm not sure if

Page 25

1 it showed his our -- his investments. So we put that into a
2 format along with all of his assets.
3 Q. Okay.
4 A. Cars.
5 Q. All right.
6 (Exhibit No. 1 marked for identification.)
7 Q. Kelley, are you familiar with Exhibit 1?
8 A. Yeah. I was just looking this over last night.
9 Q. What else did you review in preparation for your
10 deposition other than the inventory?
11 A. The interrogatory questions.
12 Q. Okay.
13 A. Police reports, letters from our criminal defense
14 attorney.
15 Q. Who's that?
16 A. Jerry Costello. Well, not our, but my father's.
17 Q. Your father's -- you reviewed letters in
18 preparation for your deposition from your father's criminal
19 defense attorney? Is that what you said?
20 MR. REICH: I think she misstated. The
21 prosecutor's statement.
22 A. Prosecutor, yeah.
23 Q. Oh, prosecutor. Okay.
24 MR. BARCUS: He was the Pierce County Chief Deputy
25 Prosecutor at that time, criminal.

7 (Pages 22 to 25)

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APP0199

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<p>1 MS. MCGAUGHEY: Okay. Thank you. 2 Q. And the police report I think you said? 3 A. Well, it was in those prosecutor letters. 4 Q. Okay. 5 A. That's how we got basically all of our 6 information. 7 Q. Anything else that you can think of? 8 A. All of my notes that I have taken throughout this 9 time. 10 Q. What form are they in? 11 A. Handwritten. 12 Q. Are they in a notebook? Are they just loose? How 13 are they assimilated? 14 A. I tried to go through everything and get it 15 conveniently organized. 16 Q. Did you bring that with you today? 17 A. No. 18 MS. MCGAUGHEY: We're going to make a request for 19 that information, Ben? 20 MR. BARCUS: To the extent that it doesn't invade 21 attorney/client privilege. I think most of what she's 22 talking about could be notes to her attorneys, either 23 probate or us here. So to the extent that it doesn't invade 24 attorney/client privilege, that's not a problem. 25 MS. MCGAUGHEY: Okay.</p>	<p>1 value of \$232,900? 2 A. It's hard to remember. I believe we 3 individualized every car out and put a price on it, and it 4 either was his price he had it insured for or a price that 5 we all came up with. 6 Q. Who's we all? You and your sister? 7 A. Me and my sister and our husbands. 8 Q. Okay. Do you have a list of these automobiles, or 9 do you have that information in your head? 10 A. I have it in my head. 11 Q. Okay. Could you tell me what they consist of? 12 A. You want to know just the automobiles? 13 Q. Well, right now I'm just asking you about 2 -- 14 Exhibit 1, 2a, the automobiles -- 15 A. Automobiles. 16 Q. -- that went into your estimated fair market value 17 of \$232,900. 18 MR. BARCUS: Excuse me just a moment. Kelley, 19 it's important that you wait for the question to be answered 20 fully before you respond because it's hard to write two 21 people at once, so if you'd just pause a little bit until 22 after the question's asked, it will be a much better record, 23 okay? 24 THE WITNESS: Okay. 25 MR. BARCUS: All right.</p>
Page 27	Page 29
<p>1 Q. So if you could provide that to your attorney, and 2 we'll take it -- Ben and I will take it from there. 3 A. Okay. 4 Q. Anything else that you reviewed? I think the last 5 thing you mentioned were all of your notes that you've taken 6 since I guess the death of your father. Did some of those 7 notes include anything that happened before your father 8 died? 9 A. No. 10 Q. Okay. Anything else you can think of? 11 A. No. Just I went through my files from this 12 incident. 13 Q. Okay. And you've identified what those consist of 14 already in your recitation? 15 A. Mostly, yeah. 16 Q. Okay. If you think of anything else that you 17 reviewed in preparation for your deposition today, would you 18 just let me know-- 19 A. Yes. 20 Q. -- before we finish? And I'll try to remember to 21 ask you one more time before we leave. 22 So following back up with the Exhibit 1, could you 23 tell me a little bit -- and you made reference to this -- a 24 little bit about the automobiles that your father owned at 25 the time and how you came up with an estimated fair market</p>	<p>1 COURT REPORTER: Thank you. 2 A. Okay. 1955 Chevrolet Bel Air, a 2006 Corvette, 3 1966 Chevrolet Impala. 4 Q. 1976? 5 A. 66. A 1933 roadster, a 1972 Chevrolet truck, a 6 1981 Chevrolet Chevette, a Vespa scooter. 7 Q. What year? Do you know? 8 A. No. 1956 Chevy car. 9 Q. Do you know what kind? 10 A. Four-door Chevy. 11 Q. Like a sedan of some kind? 12 A. Yes. A 1967 Nova, a 1968 Chevrolet Chevelle. 13 Let's see. Oh, a Suzuki Samurai, an 88 Chevrolet truck. 14 There was one more that I just had -- oh, an 89 S-10 15 Chevrolet pickup. And I believe that might be it. 16 Q. Did he have a bus? 17 A. A bus? 18 Q. Uh-huh. 19 A. No. Oh, a trailer, a-- 20 Q. Like a trailer you put cars in? 21 A. No, a flat trailer. 22 Q. Okay. 23 MR. BARCUS: Figure all the cars around, huh? 24 MS. MCGAUGHEY: Yeah. 25 Q. Is it the kind that you put cars on, a flat</p>

8 (Pages 26 to 29)

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APP0200

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<p>1 trailer that you can put the cars on or -- 2 A. Yes. 3 Q. He obviously -- What? -- had a passion for cars? 4 A. Yes. 5 Q. Did you also share some kind of passion -- 6 A. Yes. 7 Q. -- in that way? You used to be a race car driver, 8 didn't you? 9 A. I did. 10 Q. Do you still do that? 11 A. On occasion. 12 Q. When was the last time you raced? 13 A. Last summer. 14 Q. And what did you race? 15 A. The 67 Nova. 16 Q. The 67 Nova? 17 A. Uh-huh. 18 Q. So this is not just a 67 Nova. This must be a 19 fast 67 Nova? 20 A. It's a race car. 21 Q. A race car. Are all of these cars race cars 22 besides the Corvette and the trucks? 23 A. No. 24 Q. Which ones of the ones that you've just described 25 for us are actually race cars?</p>	<p>1 pickup. And he did have a motor home too. 2 Q. A motor home? 3 A. (Witness indicates in the affirmative.) 4 Q. Do you know what year the motor home was or the 5 make, model? 6 A. Tra -- gosh, I want to say Tradewinds, but on 7 second thought that doesn't sound a hundred percent 8 accurate. 9 Q. You must have all the titles for all of these 10 vehicles at your house or somewhere in your possession? 11 A. Yes. 12 Q. Okay. 13 A. They have been dispersed through family throughout 14 this whole process. 15 Q. Okay. So since your father died, the vehicles 16 have to some extent either been sold or given away or taken 17 by you or your sister? 18 A. Yes. None of them were given away. 19 Q. Okay. So to re-create the information that went 20 into make up the automobile value for Exhibit 1, you 21 couldn't look at the current titles you have in your 22 possession because some of those have been retitled in 23 someone else's name? 24 A. Well, they were all in my dad's name when we did 25 this.</p>
Page 31	Page 33
<p>1 A. Just the 67 Nova. 2 Q. Is that the one when you have participated in 3 racing that you've always raced? 4 A. Not always, but on occasion. 5 Q. So when you've raced other cars previously, did 6 you -- were they separate from the cars that your father 7 owned? You had, for example, maybe your own race car? 8 A. Yes. 9 Q. Okay. So of the cars that your dad owned, would 10 the 67 Nova be the only one that you raced of his? 11 A. Yes. 12 Q. Okay. How frequently do you race, or how do you 13 decide when you're going to race? 14 A. I used to race a lot more before I had my second 15 child, but that has kind of tapered off since. 16 Q. Okay. How did you get into racing? 17 A. My husband races, and I grew up around cars. 18 Q. Okay. So the cars that you've described for us 19 that went into the inventory referenced in Exhibit 1, are 20 all of those insured? 21 A. They -- 22 Q. Or were they? 23 A. -- all were, yes, I believe except for two. 24 Q. Which two? 25 A. I think the 89 S-10 and the 88 Chevrolet one-ton</p>	<p>1 Q. Okay. Thank you for clarifying that. I guess 2 what I'm asking is, you said you have some titles, but that 3 some have either been I assume given away, sold or 4 transferred to you or your sister? 5 A. Yes. 6 Q. So if you looked at the current titles in your 7 father's name, that wouldn't give you a full comprehensive 8 list of all of the vehicles that made up 2a in Exhibit 1? 9 A. Yes. 10 Q. Okay. So how would we go about then or what would 11 be the best paper trail or paperwork to look at the various 12 vehicles that he owned at the time to determine the fair 13 market value? 14 A. Research or his insurance values of the car. 15 Q. So all except for the 89 S-10 and the 88 Chevy ton 16 pickup were insured with State Farm? 17 A. I believe so. 18 Q. And was a monthly payment that was coming out of 19 your father's checking out at the time of his death? 20 A. Yes, and I'm not sure if that one was a direct 21 deposit or -- he would go to the branch and pay his bill. 22 He had a good rapport with his insurance agent. 23 Q. Do you know what his monthly insurance payment 24 was? 25 A. It varied.</p>

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1 Q. Varied month to month?
 2 A. Yeah, because not all cars were fully insured.
 3 Some were suspended. It varied.
 4 Q. So he could add cars on, which would affect his
 5 premium. Is that what you're suggesting?
 6 A. Yes.
 7 Q. Vehicles on. Okay. So insurance would be a way.
 8 Did you also come up with some kind of a list or provide the
 9 data or information to your probate lawyer that would make
 10 it easier to gather this information into one place as far
 11 as the automobile detail?
 12 A. I believe we made a spreadsheet for him.
 13 Q. Spreadsheet. Okay. But I'm assuming that all of
 14 those vehicles were owned free and clear by your father and
 15 titled only in his name?
 16 A. Not all of them.
 17 Q. So was there some of them that he had a debt
 18 owing?
 19 A. Yes.
 20 Q. Do you know which ones?
 21 A. The 06 Corvette and the motor home.
 22 Q. And were those paid off?
 23 A. He -- when he bought those, he had a death
 24 insurance on those.
 25 Q. Okay. Which pays off the entire amount due and

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1 owing?
 2 A. Yes.
 3 Q. And then did the title go to your father or to one
 4 of the girls, you or your sister?
 5 A. I believe the title just came in my father's name.
 6 Q. Okay. And you probably maintain all this
 7 information in a safe deposit box or someplace safe and
 8 secure?
 9 A. My home residence.
 10 Q. Okay. And the insurance that paid off both the
 11 Corvette and the motor home, was that the same insurance, or
 12 was that two different companies?
 13 A. It was the same.
 14 Q. And do you know what the name of it was?
 15 A. Tapco is who we dealt with.
 16 Q. T-A-P-C-O?
 17 A. Yes.
 18 Q. Okay.
 19 A. Tapco Credit Union.
 20 Q. So were there any monthly payments for your father
 21 that -- other than like utilities and the phone bill that
 22 we've discussed that you've taken care of or are taking care
 23 of that were a monthly obligation that you've had to make
 24 for him since his passing?
 25 A. Yes.

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1 Q. Could you give me an idea or a list of what that
 2 consists of?
 3 A. His utilities, Puget Sound Energy; his Brinks Home
 4 Monitoring; his Morton loan; the phone for a period of time,
 5 the Qwest phone.
 6 Q. That was the cell phone, right?
 7 A. No, the land line phone, Qwest.
 8 Q. Oh, the land line. Okay. That's been
 9 disconnected I'm sure?
 10 A. Yes. Oh, and his homeowners insurance, auto
 11 insurance.
 12 Q. Okay.
 13 A. Water bill. There was electricity at Morton, that
 14 bill.
 15 Q. Okay.
 16 A. I'm not saying that's it --
 17 Q. That's fine.
 18 A. -- but that is what I can remember off the top of
 19 my head.
 20 Q. Okay. As far as the -- since you mentioned the
 21 Morton property, how did you come up with the estimated fair
 22 market value of the Morton property at \$57,500?
 23 A. I have no idea --
 24 Q. What about the --
 25 A. -- where that came from. We do get tax, you know,

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1 the tax statements. Maybe we pulled it off that.
 2 Q. Okay.
 3 A. But I just looked at that the other day, and it's
 4 different than what that is.
 5 Q. And, you know, it dawned on me that taxes were
 6 probably due at the end of April on both these properties.
 7 A. Yeah.
 8 Q. You probably had to pay those taxes as well,
 9 correct?
 10 A. Uh-huh, yeah.
 11 Q. And the --
 12 A. We've had to pay them I think twice now.
 13 Q. I think they're due maybe at the end of October
 14 and the end --
 15 A. Right.
 16 Q. -- of April, if I remember correctly? So would
 17 the estimated fair market value for his home in Spanaway
 18 that you grew up in -- do you know where that fair market
 19 value came from? Is that potentially tax-assessed value as
 20 well?
 21 A. The 225?
 22 Q. Yes.
 23 A. It might have been estimate that we all came up
 24 with or tax-assessed value.
 25 Q. Could you tell me, the cash and cash equivalents,

10 (Pages 34 to 37)

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1 where you came up with the figure 167,389?
2 A. I believe his savings and investments.
3 Q. And when we're talking about investments, we're
4 talking again about the investments that exist at the bank?
5 A. Yes. It's called Primevest.
6 Q. Primevest?
7 A. (Witness indicates in the affirmative.)
8 Q. V-E-S-T?
9 A. Uh-huh.
10 Q. Yes?
11 A. Yes.
12 Q. Okay. And you haven't learned of any other
13 investments that he had outside of Primevest then?
14 A. No.
15 Q. Did he have life insurance?
16 A. He did, but I believe it expired approximately one
17 month to his death.
18 Q. So in May of 08 it had expired and not been
19 renewed?
20 A. There was a letter. I believe he was working on
21 it.
22 Q. You found a letter in his belongings?
23 A. Yes.
24 Q. And was the letter from the life insurance
25 company?

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1 A. Yes.
2 Q. And was it a letter indicating that he had been
3 terminated for failure to pay his premiums?
4 A. Not that.
5 Q. What was it?
6 A. I want to say expired.
7 Q. Okay. Do you remember the life insurance company?
8 A. I should because I've called them several times
9 before. It's either Monumental Life or Brad --
10 Q. Do you still have the letter?
11 A. I do. I do.
12 Q. Okay. And did you contact -- you said that you've
13 called them a couple of times. Did you contact them to
14 verify whether or not he was insured at the time of his
15 death?
16 A. Yes.
17 Q. And did they indicate that he was not insured?
18 A. Yes.
19 Q. Did they indicate whether it had expired for lack
20 of payment during a policy period, or was it the end of a
21 policy period and he'd failed to renew it?
22 A. I want to say it was because of his early
23 retirement.
24 Q. So do you think the life insurance was a benefit
25 that was provided from his work at the school district?

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1 A. I believe it was something like that.
2 Q. Okay. And you haven't been made aware of or come
3 across through his personal effects any other information
4 related to any other life insurance policy?
5 A. No, but I do remember Hartford. Sorry.
6 Q. Oh, instead of perhaps Monumental Life?
7 A. One of the two. I believe it's Hartford though.
8 Q. Okay. Do you know what the face policy of the
9 life insurance policy was that expired the month before his
10 death?
11 A. The amount?
12 Q. Yes. Did they tell you that he had a policy with
13 a \$50,000 death benefit?
14 A. I want to say I could remember it was 50,000.
15 Q. Okay. So did you see anything that indicated that
16 he'd been making payments for that in any of his financial
17 affairs before his death?
18 A. No. I believe it was through his work.
19 Q. Okay. All right. Did you take any further steps
20 after you contacted Hartford to present or make any kind of
21 claim to Hartford or any other life insurance company?
22 A. Present what?
23 Q. A claim. Were you making a claim, or did you just
24 take it for the final word that he had no policy?
25 A. I called a few times because it was really

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1 borderlined knowing if he still had it or not.
2 Q. Why do you say that?
3 A. Because of the time line when he died. We got
4 this letter in May, and he died in June. We were unsure if
5 he still had the coverage.
6 Q. Did they provide you anything in writing that
7 indicated he was uncovered or what the expiration date was?
8 A. I believe the letter said the expiration date, but
9 it was still unclear. We made -- or I made a few phone
10 calls to them.
11 Q. So at the present time you've not made any kind of
12 formal claim with them; you've only had telephone contact?
13 A. Yes.
14 Q. And are you intending to make any such claim?
15 A. I'm not sure.
16 Q. Did you contact the school district to find out
17 any information they might have regarding that?
18 A. I did.
19 Q. What information did they provide to you?
20 A. It's hard to remember what they actually told me,
21 but I do remember talking to somebody in payroll about it.
22 Q. Did that leave you with the impression that there
23 was maybe more of an issue or less of an issue as far as the
24 expiration date?
25 A. It left me with the impression there was less of

11 (Pages 38 to 41)

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APP0203

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<p>1 an issue. I tried everything I could to pursue it. 2 Q. Did you do anything in writing? 3 A. No. 4 Q. Based on your conversations with the school 5 district, is that what led you to believe that the policy 6 itself was not being paid by your father, but being paid by 7 them or offered as a benefit through them? 8 A. I believe as a benefit through them. 9 Q. Okay. Have you gotten any records outside of -- 10 there was a -- I had requested the Bethel School employee 11 records. Have you been provided with any personnel records 12 or records from the school district outside of our record 13 production during the course of this litigation? 14 A. No. 15 Q. So they didn't send you any letters regarding the 16 life insurance policy or anything else regarding your 17 father's benefits, other benefits he may have been receiving 18 from them? 19 A. No. 20 Q. Okay. So directing your attention for a moment 21 because I know we're going to be getting some financial 22 records probably at a break, and we can come back to the 23 financial information. Would you describe for me your 24 relationship with your father at the time of his death? 25 A. I've always had a close relationship with my</p>	<p>1 in high school? 2 A. Let's see. I think I stopped doing sports in 3 junior high, so I worked when I became 16. 4 Q. Was that at Dairy Queen? 5 A. No. 6 Q. Okay. 7 A. Stock Market. 8 Q. The Stock Market? 9 A. Stock Market. 10 Q. Is that a grocery store? 11 A. Grocery store. 12 Q. Okay. 13 A. I was a courtesy clerk. 14 Q. What kind of sports were you involved in through 15 junior high? 16 A. Oh, junior high. I did play softball. 17 Q. Okay. 18 A. And soccer and gymnastics. 19 Q. And you didn't pursue that when you went into high 20 school? 21 A. No. 22 Q. Tell me about your -- what you remember about your 23 dad participating in your sporting events before you started 24 high school. 25 A. I don't think I was huge into sports when I was in</p>
Page 43	Page 45
<p>1 father. 2 Q. Okay. What was it like when you were younger? I 3 mean kind of lead me through -- your sister and you are two 4 years apart, and I think you're the youngest, right? 5 A. Yes. 6 Q. And then let's talk about before your -- well, 7 maybe just while you were in high school. How would you 8 describe your relationship with your dad? 9 A. Good. He always protected me. He always was 10 there for me when I needed him. 11 Q. Okay. And he was predominantly -- he was working 12 full-time at pretty much all times when you were in high 13 school, right? 14 A. Yes. 15 Q. And did your mom work out of the home? 16 A. Yes. 17 Q. And where did she work? 18 A. At that point in time, I believe she worked for a 19 dermatologist. 20 Q. Okay. Was she some kind of office assistant? 21 A. A bookkeeper. 22 Q. A bookkeeper. And refresh my recollection on 23 where you went to high school. 24 A. Spanaway Lake High School. 25 Q. And what kind of activities were you involved in</p>	<p>1 junior high like I was in elementary. They would come and 2 watch my baseball games, volleyball games. And then I was 3 in a gymnastics group, and I remember them coming to watch 4 my performances. 5 Q. Okay. The high school that you went to, did it 6 start in ninth grade, or did it start in tenth grade? 7 A. Tenth grade. 8 Q. Okay. And was your primary after-school activity 9 then in high school working? 10 A. Yes. 11 Q. Okay. So were you raised to be independent, a 12 work ethic? Not all 16-year-olds get out there and start 13 working right away. What encouraged you? 14 A. I wanted to. I got my car when I was 16, and I 15 had to pay for car payments and insurance. That was the 16 main reason why I worked. 17 Q. Okay. What was your first car? 18 A. A 68 Chevelle. 19 Q. Chevette? 20 A. Chevelle. 21 Q. Chevelle. And had you yet -- I know you had been 22 around cars, and I think you said your dad raced? 23 A. He would race on occasion. He was more of a 24 hot-rodder than a racer. 25 Q. Okay. And what --</p>

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1 A. Car show.
2 Q. Car show. Were any of his cars --
3 A. Cruising.
4 Q. What's cruising?
5 A. Cruising. Just driving his car down the streets,
6 you know, driving his cars.
7 Q. Okay. And then car shows, would that be like
8 where you actually just go to car shows or you take your
9 cars and display them at car shows?
10 A. You either go and walk through the car show, or
11 you participate and show your car.
12 Q. And were some of the cars that you've described
13 for us today that are reflected in the inventory -- were
14 they ever kind of show cars, ones that he would have showed?
15 A. Yes.
16 Q. Okay. Is that something that you participated in
17 with him?
18 A. I did. I did it on my own and with him.
19 Q. Okay. So do you also understand the mechanics of
20 cars?
21 A. I do somewhat, to a certain extent.
22 Q. So would you be working on your cars when you got
23 into racing, or did you have mechanics that did all that?
24 A. Well, when I was 16, my dad taught me how to
25 change my own oil. I always did that in my first car. And

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1 he was a car-washing enthusiast. We would wash our cars and
2 wax them. I remember when I first got my car just -- I
3 waxed it one time. No, you've got to do it one more time.
4 So I would do it one more time. Oh, you've got to do it
5 another time. So perfectionist on cars, keeping them clean
6 and nice.
7 Q. So waxing it three times to get it perfect?
8 A. Shiny.
9 Q. So the cars that your dad owned at the time of his
10 death, were they warehoused or left out in the weather? How
11 did he store them?
12 A. Garaged.
13 Q. He had them garaged?
14 A. (Witness indicates in the affirmative.)
15 Q. Are there some of them that were just left out on
16 the property?
17 A. The -- not the special cars to him.
18 Q. And which ones were the special cars?
19 A. All of his hot rods.
20 Q. Okay. So those are the older ones?
21 A. Yes.
22 Q. And did he have garage space, storage space, on
23 his property?
24 A. Yes.
25 Q. I think you said when we started talking this

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1 morning that you actually go over to his property once a
2 week, and I'm assuming you check on it. Maybe you do other
3 things. What do you do when you go over there?
4 A. I check on it to see if it's okay, check
5 everything inside the house and in the garage to see just
6 for protection of the property. We go over and mow the
7 lawn. I occasionally go over and get some of my mom's
8 plants because she was an avid gardener, and I am too, and I
9 don't want them to go with the property if we decide to
10 sell.
11 Q. Okay. Is the property on the market?
12 A. No.
13 Q. Okay. Do you have plans for the property?
14 A. It's uncertain.
15 Q. Okay. What creates the uncertainty? You might
16 want to keep it or?
17 A. I don't want to keep it. We need to work it out,
18 me and my sister.
19 Q. Okay. So let me go back then and ask you -- we
20 were talking about your relationship in high school. Going
21 then into high school and, you know, dances and dating, kind
22 of tell me what your dynamic was like with your dad.
23 A. He would drive me to the school every morning
24 because he -- I would leave for school about the same time
25 he went to work, so he would drive me to school and drop me

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1 off.
2 If I was -- stayed after school to do a sport or
3 any activity, he would come to pick me up.
4 I did attend school dances. There was the
5 gathering at my house before of my parents taking pictures
6 of us before we would go out to dinner with my dates.
7 Q. Uh-huh.
8 A. He was actively involved like meeting with my
9 teachers discussing about my education.
10 Q. So like parent/teacher conferences?
11 A. Yeah, yeah. I wouldn't -- say I was, you know
12 maybe missing assignments, and he was concerned about that,
13 and he worked at the school, and he had contacts of who to
14 talk to about that.
15 Q. Was he more active with that than your mom was, or
16 were they equally active in that way?
17 A. I would say they were equally. I want to say he
18 was in a way a little bit more because of his contacts with
19 working with the --
20 Q. Because he worked for the school district?
21 A. The same, yeah, the school district, yes.
22 Q. So, in other words, he kind of knew the inside
23 track of who to get a hold of if you weren't attending class
24 or hadn't turned in an assignment?
25 A. Yes.

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1 Q. Okay. And I am assuming, and I don't know, but is
2 your high school actually in the Bethel School District
3 then?
4 A. Yes.
5 Q. Okay.
6 A. Yes.
7 Q. And then how -- in high school how did your
8 relationship with your father and your mother differ?
9 A. Differ? How do you mean differ?
10 Q. Just, you know, we all have different
11 relationships with our parents, and, you know, sometimes
12 they change over time. What was your relationship like with
13 your mom as compared to with your dad?
14 A. It was the same. I feel like I could -- we always
15 were close. I could always -- they were the ones I went to
16 to talk to for advice, either one of them, open door, always
17 going to them. If I ever had a problem with anything, they
18 were the ones I turned to.
19 Q. Did they have a close relationship?
20 A. My mom and my dad?
21 Q. Yes.
22 A. Yes.
23 Q. And did your mom have health issues that
24 precipitated her death?
25 A. She had cancer.

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1 Q. She had cancer. Had she been living with that for
2 a long time?
3 A. A few years before she died, maybe --
4 Q. I'm sorry. I cut you off.
5 A. Maybe more than a few years before she died.
6 Q. Okay. And not to pry, but what kind of cancer was
7 it?
8 A. Well, she had her kidney removed. It was kidney
9 cancer, and then no less than six months later it spread and
10 rapidly took over after that.
11 Q. So was her illness and the progression of it -- it
12 sounds as if it was identified, and, even though steps were
13 taken, it quickly progressed to ultimately when she died?
14 A. Yes.
15 Q. Or were there a period of time when she went into
16 remission and things were a lot better for her?
17 A. They told us after the surgery that it looked good
18 and they got it all, but I remember the day they came over
19 to our house telling us the news that it had spread.
20 Q. And that was around that six-month time frame?
21 A. (Witness indicates in the affirmative.)
22 Q. Yes?
23 A. Yes.
24 Q. So if she died in 2005, how long was she battling
25 kidney cancer?

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1 A. You know, she was sick for quite a while before
2 that. I want to say a good three or so years, struggling
3 with energy issues, struggling with work, tiredness. And we
4 knew it wasn't right. Something was not right with her.
5 Q. So it sounds as if, although she wasn't diagnosed
6 until maybe the year before her death, you had noticed that
7 she really was not feeling well for at least three to -- or
8 approximately three years?
9 A. Yes.
10 Q. And what were you doing -- I'm sure you were doing
11 as much as you could during that time frame, but did you
12 have some responsibilities in helping and assisting her
13 during that or through that?
14 A. Yes.
15 Q. Okay. That must have been very difficult on you?
16 A. Very.
17 Q. What did you observe though as far as -- I think
18 you indicated or maybe it was in your sister's
19 interrogatories that you noticed a change in how you would
20 describe your relationship with your father after your
21 mother's passing.
22 A. He was mourning, and he would try to hide it from
23 us.
24 Q. When your mom died?
25 A. Yes.

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1 Q. Okay. And how did the relationship change? Were
2 you seeing him more frequently? Tell me what you can
3 remember.
4 A. Yeah. To checking on him more frequently, but
5 also giving him his space to grieve as well, worried about
6 him because his proper -- getting him -- I would go to the
7 grocery store for him, make sure that he's eating well,
8 calling him to check on him, inviting him over to dinners
9 just to make him feel loved, inviting him to events, racing
10 events, with us to make him involved in our life to help him
11 heal his pain.
12 Q. Did that change? I mean were you doing that
13 before your mother died, or did it just -- the frequency
14 increased?
15 A. Nothing changed as his involvement in our life.
16 We were always a close-knit family and always involved,
17 always keeping in contact, talking on the phone and dropping
18 by for visits. That never changed. That was always. But
19 definitely wanting him to know that we still loved him and
20 cared for him.
21 Q. So would he come over to your house more
22 frequently after your mother died?
23 A. He would, yes. He would. He would drop by and
24 bring my kids bubble gum, doughnuts, chocolate milk, candy
25 bars --

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Page 54

1 Q. All the good things for them?
2 A. -- airplanes to fly. Yes, great things for my
3 kids, yes. He would drop by my house. That was very
4 comforting when he came.
5 Q. Do you remember the month that your mother died in
6 2005?
7 A. December.
8 Q. December. So it was very close to the end of the
9 year. Let's talk about the late 2005, 06 time frame then.
10 Your dad actually never -- if I remember correctly, never
11 went back to work at the Bethel School District after he was
12 terminated in late 05. Was it about the same time frame
13 that your mother died?
14 MR. BARCUS: Object to the form of the question.
15 A. I don't know the specifics on that, the dates.
16 Q. Well, was there anything about his termination and
17 his employment that you recall that was associated in the
18 time frame within which your mother died?
19 MR. BARCUS: Same objection.
20 A. We were so busy dealing with my mother that that
21 was not important to us at that time.
22 Q. Was your dad having health issues at the same time
23 your mom was?
24 A. Yes. He has -- he had back problems and shoulder
25 problems, which --

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1 Q. How -- I'm sorry. Go ahead.
2 A. He had back surgery and shoulder surgeries.
3 Q. Do you know when they were?
4 A. I would take him to a doctor's appointment here
5 and there, but I could not tell you the date of his surgery.
6 Q. Without being able to tell us the date of the
7 surgeries, did you see following the surgeries the effects
8 of his physical injuries?
9 A. Yes.
10 Q. How did his physical injuries affect him from your
11 observations?
12 A. His shoulder, he was -- his arm was in a sling
13 from his shoulder surgery. He had a very hard time using
14 his shoulder, his arms. His -- he would complain of his
15 shoulders hurting him.
16 Q. Both shoulders?
17 A. I believe so. It got to be both of them. And
18 then his back surgery, it was a very, very long recovery.
19 Q. Do you know if it was before or after your mom
20 died?
21 A. Before.
22 Q. And were you charged with primarily helping him as
23 your mother was sick, or how did that work out?
24 A. My mom wasn't too sick then. She helped him.
25 Q. Okay.

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1 A. She was still working I believe.
2 Q. Okay. Did she have a life insurance policy when
3 she died?
4 A. Yes.
5 Q. And how did that pay out?
6 A. I believe 50,000.
7 Q. And was that paid out to your father or to you and
8 your sister?
9 A. To my father.
10 Q. Okay. Do you know what your father did with the
11 money?
12 A. I'm not a hundred percent if this is the money he
13 took it from, but I think he made a down payment of a sum
14 for the Corvette, and then had the rest either in an
15 account.
16 Q. That would be at that one bank that we identified
17 earlier today?
18 A. Rainier Pacific.
19 Q. Okay. How far is your home from your home you
20 grew up in where your dad was living at the time of his
21 death?
22 A. Approximately 5 miles.
23 Q. Okay. So you're very close as far as proximity.
24 Is your sister also close?
25 A. Yes.

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1 Q. And what about your grandfather? How close were
2 you in relationship to him and relationship to your father?
3 I'm talking about not how close you were, but in proximity
4 the house, physical locations.
5 A. 7 miles, 8 miles.
6 Q. So everybody's within like a 10-mile radius?
7 A. Yes.
8 Q. Was your dad active with your two children?
9 A. He was a very good grandpa.
10 Q. But did they do anything in particular together?
11 A. Yes. My oldest would go out in the garage with my
12 dad. They would fly remote-control airplanes together. My
13 dad would come and watch my son race.
14 Q. He's also a racer?
15 A. Yes.
16 Q. What was he racing? Little go-karts?
17 A. Junior dragster.
18 Q. What age is a junior dragster?
19 A. Eight.
20 Q. Eight. And do they look like real dragsters? I
21 mean --
22 A. Just little.
23 Q. They're just little ones. Kind of like I guess
24 baby karts are in relationship to go-karts?
25 A. I'm not familiar with go-karts.

15 (Pages 54 to 57)

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APP0207

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1 Q. Have you seen baby carts?
2 A. I'm not familiar with go-kart racing.
3 Q. So is that the kind of racing you did, was
4 dragsters?
5 A. Yes.
6 Q. In addition to I guess -- didn't you race the
7 Nova?
8 A. Yes.
9 Q. Tell me the different classes of racing you've
10 done.
11 A. Super Comp and Super Pro.
12 Q. Super Comp and Super Pro?
13 A. Uh-huh.
14 Q. Yes?
15 A. Yes.
16 Q. I'm not familiar with that. What is that?
17 A. Super Comp's the 8:90 index. It's mainly
18 dragsters. You have to run 8:90 to run that class. And
19 Super Pro is just basically 11:99 and quicker e.t.
20 Q. And when you say 11:99, what is that?
21 A. Your time in the quarter mile.
22 Q. Okay. So do you own a dragster?
23 A. I used to.
24 Q. How long has it been since you've owned your own
25 dragster?

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1 A. Let's see. I sold it probably two to three years
2 ago.
3 Q. Okay. And was that part of what you said when
4 your youngest son was born, you kind of got more away from
5 the racing? Is that when you sold it or after that?
6 A. It got to be very hard running -- it is my
7 husband's passion, racing. I loved it, but it just got to
8 be hard and expensive running three cars.
9 Q. Okay.
10 A. And my son starting to race.
11 Q. Because I didn't even asking you, but I'm assuming
12 that because you said your husband's passionate about it,
13 he's also a racer that has continued on with that?
14 A. He does race, yes. It's tapered off a little bit
15 as well just because of work, life.
16 Q. Sure.
17 A. Kids.
18 Q. And is your -- either of your sons still racing?
19 A. Yes, we put him first. He races more than we do.
20 Q. Is that just Lane then?
21 A. Yes.
22 Q. And he started racing at age eight it sounds like?
23 A. Yes.
24 Q. And he's now ten, so he's been involved with it
25 for two years?

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1 A. This is his third year.
2 Q. His third year. What is the -- I think I know,
3 but what is his season? Is that like a spring/summer
4 season?
5 A. Yes.
6 Q. Okay. And tell me, in the year that he was eight,
7 what involvement or how involved was your father with that?
8 A. Let's see. He came out to I believe a race that
9 year, but as to other, he was always asking my son about it.
10 Q. Uh-huh.
11 A. It's very important to my son, and always there
12 were conversations with him and my dad about it.
13 Q. So he was a spectator on at least one occasion?
14 A. Yes.
15 Q. When he was eight or that year that he was eight?
16 A. What year was that? So it's --
17 Q. Well, he's ten now, so I guess this is his third
18 year?
19 A. Yeah. I'm just trying to correlate it in with,
20 was that right after my mom died? She died in 05.
21 Q. It would have been 05, 06 I guess because we're in
22 09.
23 A. So I believe he would have came one time after my
24 mom died, yeah, that year.
25 Q. Thank you. Are they all local races?

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1 A. Yes, pretty much. There's a race like in Oregon,
2 but mainly local.
3 Q. And are they frequent like once a weekend, or how
4 often was your son racing?
5 A. There's about -- it averages about every other
6 weekend.
7 Q. Okay. Do you have to practice in between? Is
8 that something, you go out to the track, and you guys take
9 your son?
10 A. There's really no practicing in between unless you
11 want to do time runs on an occasional Friday night, but no,
12 there's no practicing unless you want to practice at home on
13 a simulated racing game.
14 Q. Okay. So this isn't the kind of activity then
15 that would require you to be always out at the track? It
16 would just be on race day or qualifying days?
17 A. Yes, but there's a lot of preparation at home to
18 get ready for that.
19 Q. Could you give us a sense of when your son was
20 racing his first year, how many races do you think he
21 participated in that year?
22 A. I would say -- he runs the Point Series. I would
23 say all of them. It's very important to him to make the
24 Point Series.
25 Q. Well, what is that? Is that six races? 20 races?

16 (Pages 58 to 61)

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APP0208

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1 Do you have any idea?
2 A. I don't know. Ten a year.
3 Q. Okay.
4 A. Maybe more.
5 Q. So ten, maybe a little more. Out of ten, maybe
6 more races, local races, your dad would have come and been a
7 spectator one time?
8 A. That year that my mom died, yeah.
9 Q. Okay. What about the following year when he was
10 nine? Did his involvement with your family and racing of
11 your son increase?
12 A. My dad died in June, so the race season was just
13 about starting. He didn't make it.
14 Q. Okay. So did he only ever see your son race on
15 one occasion then?
16 A. I believe so.
17 Q. How many times did he -- and maybe it's too many
18 to count, but give me kind of an indication or impression.
19 How often or frequently has your dad seen you race?
20 A. I would say quite a bit actually, quite a bit.
21 Q. Have there been years that you haven't raced at
22 all? I know in the last -- let's not talk about the last
23 two or three years because obviously that's reduced
24 dramatically, but in the years that you were racing before
25 and that there's stats for, how many years would you say you

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1 consistently raced?
2 A. Three to four.
3 Q. Three to four. Would those also kind of give me a
4 sense or impression -- are those also local races?
5 A. Not all of them.
6 Q. So you would actually travel across the
7 United States?
8 A. Yes.
9 Q. Would your father ever go with you when you
10 traveled out of Washington?
11 A. No.
12 Q. So of the three to four years that you were in
13 Washington, how frequently do you think he would have
14 observed you on a yearly basis?
15 A. On a yearly basis, I would say seven.
16 Q. Okay. So seven times a year for maybe three or
17 four years?
18 A. (Witness indicates in the affirmative.) He liked
19 to see me race.
20 Q. Okay.
21 A. He was worried, but he liked it.
22 Q. Did you meet your husband racing?
23 A. No, high school.
24 Q. So you just both had this common passion, or did
25 you give him his passion for racing?

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1 A. No.
2 Q. You just had a common interest?
3 A. I was -- I grew up around cars. I didn't race
4 until I met my husband.
5 Q. Okay. So do you remember --
6 A. Well, yeah.
7 Q. Strike that. Do you remember last Father's Day,
8 not this Father's Day that just happened this last weekend,
9 but a year ago Father's Day?
10 A. Yes.
11 Q. What were you doing that Father's Day?
12 A. I invited my dad over for a barbecue.
13 Q. And did he come?
14 A. Yes.
15 Q. And who else was present?
16 A. My dad, me, my husband, my two kids, my
17 father-in-law, mother-in-law, my sister-in-law and her son.
18 Q. Your sister-in-law and her son?
19 A. Nephew.
20 Q. So is that your husband's sister?
21 A. Yes.
22 Q. Okay. Did your sister come?
23 A. I believe she was out of town.
24 Q. Okay. And was it an -- were we having good
25 weather? Was it an outdoor barbecue?

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1 A. Yes, it was an outdoor barbecue.
2 Q. Do you remember anything about that day, anything,
3 special memories that you might have?
4 A. All day was special. He -- I had to run up to the
5 store, and he offered, Kelley, take my Corvette, which he
6 always would do. He always offered it to me. The
7 generosity of him. And I did. I ended up driving the
8 Corvette up to Albertson's to pick a couple last-minute
9 stuff up, and that was very special to me, I mean. And get
10 home, and we spent the day pretty much outside as a family
11 enjoying each other's company, watching the kids play in the
12 yard, having a barbecue, sitting around the outside table
13 talking.
14 Q. Okay. And the driving the Corvette, you said that
15 he often offered that to you. Why was that special to you?
16 A. I mean driving an 06 Corvette is pretty special.
17 Cars are important to me. I felt pretty great driving it,
18 but ...
19 Q. Now, did he usually have a loaded weapon in that
20 car when you drove it?
21 A. He did keep one in his glove box. He had a
22 concealed weapon's permit.
23 Q. Okay. So did he forewarn you that it would be in
24 there, or how did you come to understand that he carried a
25 loaded weapon in his glove box?

17 (Pages 62 to 65)

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APP0209

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1 A. If I was riding with -- he did tell me. Yes, he
2 did tell me there was one in the glove box.
3 Q. And do you know why he carried a concealed weapon?
4 A. I guess for his protection.
5 Q. Well, did he ever tell you any reason or talk to
6 you about why he was carrying a weapon in his car?
7 A. No.
8 Q. Do you know how long he'd been carrying a weapon
9 in his car?
10 A. No.
11 Q. Did your dad buy the 06 Corvette brand new?
12 A. Yes.
13 Q. So in maybe late 05, early 06?
14 A. Early 06.
15 Q. Okay. What is your first recollection of your dad
16 ever carrying a concealed weapon in a vehicle?
17 A. I think just riding with him and him telling me,
18 If you ever need anything, there's something in the glove
19 box.
20 Q. Well, what I mean, what is your first
21 recollection? Is that from a small child? Was it since he
22 had his Corvette? When do you remember him carrying a
23 concealed weapon?
24 A. He never talked to me about -- I really think
25 since it was the Corvette, he told me there was one in the

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1 Corvette.
2 Q. Okay.
3 A. When I would take it.
4 Q. So that would be sometime after 2006 --
5 A. Yeah.
6 Q. -- leading up to the time of his death?
7 A. Yeah. I --
8 Q. Would he typically drive the Corvette? Would that
9 be the car he drove on a regular basis?
10 A. None was on a regular basis. It was a variety all
11 the time.
12 Q. Would there be any rhyme nor reason to what he was
13 driving and when he was driving it that you observed?
14 A. Sunny day, the Corvette or a hot rod. Depended on
15 the weather.
16 Q. Do you know -- did you ever observe or were you
17 aware that he had been carrying a gun in any other vehicle
18 other than the Corvette?
19 A. I don't think I have been aware of that. I knew
20 my -- I know my dad has had guns, but ...
21 Q. Since 2006, had you ever driven another of his
22 vehicle other than the Corvette on Father's Day?
23 A. To his memorial service.
24 Q. Before his death?
25 A. After his death.

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1 Q. But --
2 A. His memorial service.
3 Q. Sure, was after his death. I understand that.
4 Did you ever drive one of his vehicles after 2006 before his
5 death other than the Corvette on Father's Day?
6 A. I mean he always was welcomed for me to drive any
7 of his cars.
8 Q. On any of the occasions you would have driven any
9 of his vehicles since 2006, did any of the vehicles other
10 than the Corvette have a gun in it?
11 A. Not that I'm aware of.
12 Q. Okay. Did your dad educate you or teach you when
13 you were growing up on how to handle weapons?
14 A. Yes. I do remember a time he took me out
15 shooting.
16 Q. Was that only on one occasion?
17 A. One occasion.
18 Q. On one occasion?
19 A. One occasion.
20 Q. So are guns something that you're familiar or
21 comfortable with, or is it just related to that one time
22 your dad took you out shooting?
23 A. Just that one time.
24 Q. When you were growing up in your household, were
25 guns in your household?

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1 A. They were, but I never seen them. They were in
2 safe places.
3 Q. What would be a safe place?
4 A. I guess hidden where --
5 Q. If they were hidden, how did you know they were
6 there?
7 A. My dad has told me. I seen them maybe when he was
8 cleaning them. Never ever came across one.
9 Q. Do you remember having a gun case or some kind of
10 a gun safe when you were growing up?
11 A. No.
12 Q. Did your parents teach you or instruct you if you
13 came across a weapon in the home, what you should do with it
14 or how you should handle it?
15 A. Yes.
16 Q. Okay.
17 A. Yes.
18 Q. Do you remember that from a young age, or was that
19 something more in your high school years?
20 A. Young age.
21 Q. A young age. So elementary school? What do you
22 mean by young age?
23 A. I just remember them telling me about gun safety.
24 Q. And would that be primarily your father or your
25 mother also?

18 (Pages 66 to 69)

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APP0210

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Page 70

1 A. Father.
 2 Q. Was your mother interested in guns?
 3 A. No.
 4 Q. Do you know whether or not she ever went out
 5 shooting with your dad?
 6 A. I don't know.
 7 Q. Okay.
 8 A. I'm thinking maybe on one occasion, but no.
 9 Q. Well, some people like to go shoot targets or go
 10 skeet shooting. Was that something that your family
 11 participated in as far as any kind of activities?
 12 A. No.
 13 Q. Did your dad have an interest in a certain kind of
 14 guns, or was it just you just remember guns being cleaned
 15 when you were young and?
 16 A. I have no idea. I didn't involve myself in that.
 17 Q. Did it shock you the first time that you saw a gun
 18 in his car?
 19 A. A little bit. I'm not -- I'm not educated as I'd
 20 like to be on guns.
 21 Q. Did you have any kind of conversation with him
 22 when you just saw it or saw it on the first occasion?
 23 A. Just of him saying there was -- if I ever needed
 24 anything, I think telling me just out of protection for me.
 25 Q. And the glove box, is that the glove box that

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1 separates the two seats that you remember --
 2 A. Yes.
 3 Q. -- remember seeing it in the Corvette? Or
 4 sometimes there's a glove box up towards the dash. What are
 5 you talking about?
 6 A. I -- in the glove box, yeah, in the glove box.
 7 Q. I guess I'm asking where was the glove box?
 8 A. Between the two seats.
 9 Q. Was that a locking glove box?
 10 A. I don't think so.
 11 Q. Okay. And when did you learn that he had a
 12 concealed weapon's permit?
 13 A. Over the years he has said that to us.
 14 Q. Did you find any evidence of that in his personal
 15 effects, maybe his wallet?
 16 A. No.
 17 Q. Okay.
 18 A. I -- no.
 19 Q. Okay. So going back or directing your attention
 20 then to the -- you were talking about Father's Day.
 21 MR. BARCUS: Would it be a good time to take a
 22 little break?
 23 MS. MCGAUGHEY: Yeah. Actually, this would be a
 24 good time for a quick little break.
 25 MR. BARCUS: Okay.

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1 MS. MCGAUGHEY: And we could check on the records.
 2 MR. BARCUS: Sure.
 3 VIDEOGRAPHER: One moment please. The time is
 4 11:24 a.m. This concludes Tape Number One in today's
 5 deposition of Kelley Cavar.
 6 (Recess was taken.)
 7 VIDEOGRAPHER: The time is 11:59 a.m. This begins
 8 Tape Number Two in today's deposition of Kelley Cavar. Go
 9 right ahead.
 10 Q. (By Ms. McGaughey) Going back to Exhibit 1
 11 briefly, if you would, Exhibit 1, the inventory, that is
 12 your signature on Page 2?
 13 A. Yes.
 14 Q. And you signed that on July 10th, 2008?
 15 A. Yes.
 16 Q. What were the total liabilities estimate? What
 17 did that consist of?
 18 A. On the paper here?
 19 Q. Yes.
 20 A. 15,000.
 21 Q. What did that consist of? What was that based on?
 22 A. His -- I believe his credit card. There might
 23 have been -- oh, I think that also includes his Morton
 24 property as well because he owed on that.
 25 Q. Okay. The \$158-a-month payment with approximately

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1 \$2500 due and owing at the time of his death?
 2 A. I thought it was a \$183 payment.
 3 Q. It was 100 and something?
 4 A. Yes.
 5 Q. Okay. So that \$15,000 would consist of the debt
 6 due and owing on the Morton property and a credit card?
 7 A. Yes.
 8 Q. What credit card was that?
 9 A. A Visa.
 10 Q. What bank?
 11 A. Rainier Pacific.
 12 Q. So was that information contained with the records
 13 that were in any of the records you provided today?
 14 A. I looked through there. I believe at the top
 15 where it was the Visa transactions.
 16 Q. And for the record, your counsel has produced
 17 approximately 5 inches thick of documents when we were on
 18 break. We haven't seen these before they were produced
 19 today. The information that you're referring to contains --
 20 and I'm just looking -- refers to a Rainier Pacific Bank
 21 documentation, and this has a credit card that goes back at
 22 least showing what was due and owing at the time of his
 23 death. Is that what you're representing?
 24 A. Part of that, yeah, for the total liabilities,
 25 yes.

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<p>1 Q. What do you mean part of that? 2 A. I told you the Visa and the Morton property are 3 the total liabilities. 4 Q. Okay. But for purposes of information that you 5 provided today during the break, the credit card -- because 6 I haven't had a chance to look through it -- the credit card 7 information would go through and show the total of what he 8 owed on the credit card at the time of his death? 9 A. I haven't had a chance to look through those 10 either. 11 Q. Was that something though that you reviewed and 12 relied on in preparing Exhibit 1, which you swore under 13 oath? 14 A. No. I just got those the other day. 15 Q. Okay. So what did you review and rely on when you 16 signed the inventory referenced as Exhibit 1 in front of 17 you? 18 A. We went to the bank with the letter of 19 testamentary, and they told us -- they made us aware of his 20 directly payment to Morton. I called Evergreen to get the 21 balance on that. And we had his statement of his Visa 22 owing. 23 Q. So they just gave you a total due and owing in 24 person it sounds like? 25 A. They did gave me maybe like ten papers, not</p>	<p>1 was it acquired financially? 2 A. We traded in a trailer we had, a -- to the owner 3 of that property, and then they paid the rest in a loan. 4 Q. Okay. So when you say a trailer, is that a 5 flatbed trailer or a trailer that you attach to a vehicle 6 and drive around? 7 A. A camp trailer. 8 Q. A camp trailer. And then there was a mobile home 9 I think you said eventually purchased, or maybe it was 10 already on the property? 11 A. Already on the property. 12 Q. Okay. So I'm going to hand you what is marked as 13 Exhibit 2. 14 (Exhibit No. 2 marked for identification.) 15 Q. And I'll represent to you that I believe this is 16 the property that your father owned taken off of -- I think 17 it's Zillow web site off of Microsoft Virtual Earth. Does 18 that look to you to be your dad's property, or do you 19 recognize it? 20 A. Yeah. 21 Q. Okay. And there's a variety of vehicles parked in 22 and around the property? 23 A. Yes. 24 Q. Are some of those vehicles vehicles you've 25 described for us today?</p>
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<p>1 amounting to that of course, of a few things, like what he 2 had direct deposits of. 3 Q. Did he have a safety deposit box? 4 A. I don't believe so. 5 Q. Okay. Nothing that the bank identified or that 6 you've located in his personal effects? 7 A. No. 8 Q. The Morton property, when did he acquire that? 9 A. We were young. I want to say I was early junior 10 high. 11 Q. So in seventh or eighth grade? 12 A. I believe so, around that time. 13 Q. And was that a property that he just owned with 14 him and your mom? 15 A. Yes. 16 Q. Your grandfather never had an interest in it, did 17 he? 18 A. No. 19 Q. Did your grandfather ever go up to that property, 20 or you went as a collective family up to that property? 21 A. We mainly just went as our family and friends. I 22 believe he, Clarence, went up there once to look at the 23 property. 24 Q. Do you know how the property was purchased? You 25 may not if you were only in seventh or eighth grade, but how</p>	<p>1 A. Yes. 2 Q. Okay. Are you able to identify any of the 3 vehicles in this exhibit? 4 A. Is there a year for this? 5 Q. I just -- I just printed it. 6 A. It's hard to say because it's a blurry picture, 7 but I see his motor home definitely. 8 Q. Is the motor home the big thing to the right of -- 9 it looks like -- 10 A. Of the home. 11 Q. -- the house? 12 A. Yes. 13 Q. When was that motor home acquired? 14 A. After my mom passed away. I would say 15 approximately six months after. 16 Q. And it looks pretty large. Do you know how big it 17 is? 18 A. We have a motor home too. I would say it's about 19 32-foot. 20 Q. Okay. Was it acquired brand new? 21 A. No. 22 Q. It was used? 23 A. Yes. 24 Q. Do you know what year it is? 25 A. I don't. It would have to be a guess.</p>

20 (Pages 74 to 77)

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APP0212

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1 Q. You probably have the title for it in your
2 possession?
3 A. It was sold.
4 Q. Okay. When was it sold?
5 A. Within the sixth month after my dad died.
6 Q. What did you sell it for?
7 A. The amount?
8 Q. Yes.
9 A. Around 20,000. I believe we were asking anywhere
10 from 18 to 22, so around that range.
11 Q. Okay. And I think, if I remember correctly, this
12 was one of the vehicles that your father had an insurance
13 for that it was paid off in full, and you didn't have to pay
14 off what was due and owing on it?
15 A. Correct.
16 Q. And what was due and owing on it at the time of
17 your father's death? Do you know, or would you have any
18 records to support that?
19 A. There might be a record at home. I don't know
20 personally off the top of my head.
21 Q. What kind of records do you think there would be
22 to show either what was due and owing or what was paid off
23 by this -- I think you described it as a company --
24 A. Tapco.
25 Q. -- Monumental Life or Hart -- no -- Primevest?

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1 Excuse me.
2 A. No. It was Tapco.
3 Q. What was it called?
4 A. Tapco.
5 Q. Tapco. Thank you. T-A-P-C-O. Here it is. What
6 kind of information would there be?
7 A. I believe discussing with them. The payments were
8 through them. We worked with them. They gave us I guess
9 his monthly payments, what was due. There is some sort of
10 printout I believe we have, I have, at home.
11 Q. Okay. And you probably had to get paid off before
12 the title transferred, did it not?
13 A. It did.
14 Q. And then did it transfer to you or your sister
15 before it went to the new owners? How did that work?
16 A. Either -- I believe it just transfers into his
17 estate.
18 Q. Okay.
19 A. I believe that's how it works.
20 Q. And then you were able to already do a title
21 transfer to the new owner?
22 A. Yes.
23 Q. Okay. So from -- what happened to the proceeds
24 from the sale? Did you have to use that to pay expenses for
25 the estate?

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1 A. Yes. We divided it 50/50 between my sister and I,
2 but we also used that money to deposit into our estates
3 account to handle finances.
4 Q. Okay. Do you know what funds were used to
5 purchase this motor home above and beyond the financing that
6 your father had?
7 A. I don't.
8 Q. Okay.
9 A. It was a loan.
10 Q. Okay. Thank you. Would you generally be able to
11 identify the parameters of your family property or the house
12 you grew up on? Where approximately are the property lines
13 from Exhibit 2? And not with any kind of -- you're not a
14 surveyor. I understand that. I'm just trying to orientate
15 myself to what buildings are actually on your father's
16 property.
17 A. Well, I believe there's a fence, as you can see,
18 on the left-hand side. There's a fence, as you can see, on
19 the right-hand side of the property. And --
20 Q. Let me ask you that. Where is the fence on the
21 right-hand side of the property?
22 A. To the right of the flat trailer.
23 Q. The right -- so is this area right here a fence?
24 (Indicating.) Is that what you mean?
25 A. I believe so. It's blurry on mine too.

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1 Q. Okay, but you're familiar with the property. You
2 grew up there, right?
3 A. Yes.
4 Q. So whether it's blurry or not, do you know whether
5 that's a fence?
6 A. That fence was added recently, but yes, that looks
7 like a fence to me.
8 Q. Okay. And when was the fence added?
9 A. Maybe a year after my mom died.
10 Q. Okay. So the flatbed trailer, is that the flatbed
11 trailer that you already mentioned earlier today?
12 A. Yes, it is.
13 Q. Okay. And it looks like there's a bigger flatbed
14 trailer near the fence, and it looks like maybe there's a
15 smaller trailer of some kind. Do you see that?
16 A. No.
17 MR. REICH: (Indicating.)
18 Q. It's right (indicating). I just gestured for you.
19 Is that some kind of a trailer that you're familiar?
20 A. I knew he had a -- it's a bed of a pickup that's
21 kind of a trailer. I -- if that's it. It could be.
22 Q. Okay. So you're not sure what that is, but there
23 might be a bed of a pickup?
24 A. That was made into a trailer that he had gotten
25 for free.

21 (Pages 78 to 81)

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APP0213

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1 Q. You're what? I didn't hear you.
2 A. There was a bed of a pickup that was made into a
3 trailer that he had gotten for free.
4 Q. Okay.
5 A. Over the years.
6 Q. And the flatbed trailer that you were talking
7 about, what was the function of that or the purpose of it?
8 A. The flat trailer?
9 Q. Yes.
10 A. To haul cars.
11 Q. Was your dad in the business either vocationally
12 or avocationally to fixing up cars and selling them at any
13 point in time?
14 A. No. He would maybe help a friend, but -- he did
15 sell cars for friends.
16 Q. But not for himself personally? Like these cars
17 he wouldn't buy and then fix them up and sell them? They
18 were merely for pleasure?
19 A. He had a hard time -- I mean he sold cars, but no.
20 Q. Okay. So the flatbed trailer, do you know how
21 long your dad had owned it?
22 A. The flat trailer, ten, 15 years.
23 Q. Okay. So for quite a long time. Is that the kind
24 of trailer that's licensed? Is that one of the things that
25 you talked about having a title for that went into the

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1 preparation of your inventory?
2 A. Yes.
3 Q. Okay. And can you identify any of the other
4 vehicles that are on the property just by based on
5 recollection or what you see in Exhibit 2?
6 A. It looks like there's the one-ton Chevy pickup in
7 the driveway to the right.
8 Q. Okay. Could you show me -- when you say the
9 driveway to the right, would you mind showing me what you
10 mean?
11 A. Right there. (Indicating.)
12 Q. Okay. So is that white?
13 A. I believe it's gray.
14 Q. Gray?
15 A. The truck was gray and red.
16 Q. So that's in front of the motor home, right?
17 A. Yes.
18 Q. And you described that as what? The 89 S-10 Chevy
19 pickup?
20 A. No, the 89 one-ton.
21 Q. Okay. Is that something that you still have?
22 A. Oh, I think it's an 88. No, it was sold.
23 Q. You described having an 88 Chevrolet truck. Would
24 that be it?
25 A. The one we're currently talking about?

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1 Q. Correct.
2 A. Yes, I believe that's it.
3 Q. Okay. And that's the one that's kind of gray and
4 red?
5 A. Yes.
6 Q. Did your dad buy that in 1988?
7 A. No.
8 Q. Do you know when he purchased it?
9 A. He actually purchased it from Clarence maybe
10 within the five years.
11 Q. Within the five years of his death?
12 A. Yeah, approximately.
13 Q. Okay. And you remember that Clarence had had that
14 before your dad, or had you ever been in it? How did you
15 know it was Clarence's? Is that common knowledge?
16 A. Yes.
17 Q. Okay. So did your dad actually purchase it, or
18 did Clarence give it to him?
19 A. Purchased.
20 Q. Do you know what he paid for it then?
21 A. I want to say around \$7,000.
22 Q. What do you base that on?
23 A. I base that on my dad telling me he paid full
24 price for it from his dad.
25 Q. Okay. And do you know why he was getting that

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1 truck? Was there a purpose? a desire? Did he ever express
2 why he wanted to --
3 A. Probably.
4 Q. -- acquire it?
5 A. Probably.
6 Q. I'm sorry.
7 A. Probably to pull the trailer.
8 Q. The flatbed trailer?
9 A. Yeah.
10 Q. Because was he transporting vehicles at that time,
11 within the last five years?
12 A. On occasion, maybe, you know, to go to the races
13 or on occasion.
14 Q. So within the last five years, you knew him to
15 take some of these vehicles and go to some hot rod shows and
16 transport the vehicles? Is that what you're talking about?
17 A. No.
18 Q. What --
19 A. He would drive his cars to the car shows.
20 Q. So what do you mean in the last five years, he may
21 have purchased this pickup to connect the flatbed trailer to
22 go to races?
23 A. Well, he had a 67 Nova that was a race car, and he
24 would tow that with the flatbed.
25 Q. And who would race that?

22 (Pages 82 to 85)

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APP0214

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<p>1 A. Him and I, him. 2 Q. Okay. So did he continue to race clear up to the 3 time of his death? 4 A. No. 5 Q. When did he stop racing? 6 A. He only raced on occasion. I would say 7 approximately he raced at Good Guys about four years before 8 he died. 9 Q. So would it be fair to say that the truck and 10 flatbed trailer within the four years of his death wasn't 11 used to transport a vehicle he was racing? 12 A. Yeah, he would tow it to the Good Guys. 13 Q. Well, I thought you said he hadn't raced within 14 the last four years of his death? 15 A. Before that, he towed it to the Good Guys. 16 Q. And my question is -- and I'll repeat it again -- 17 would it be fair to say that within the last four years of 18 his life, he did not use the truck or the flatbed trailer to 19 transport any vehicle that he was racing? 20 A. I guess true, yeah. 21 Q. Okay. So it would be just primarily for you it 22 sounds like within the last five years? 23 A. I didn't ever use his trailer. We have our own 24 trailer. 25 Q. Well, I thought you said that you raced the 67</p>	<p>1 Q. I assume so. 2 A. Yes. 3 Q. Were some of these titles also still in your mom's 4 name? 5 A. I don't think so. 6 Q. Okay. And you've sold that within the last six 7 months, the truck? 8 A. No, within six months of him passing. 9 Q. Okay. And what did you sell the truck for, I mean 10 amount? 11 A. I want to say \$4800, and I'm not positive on that, 12 but that's a very close estimate. 13 Q. Okay. Did you think that was fair market value 14 for the truck? 15 A. We all four, me and my sister and husbands, were 16 involved in the decision. We all thought, yes, it was. 17 Q. Okay. And it would probably be fair to say then 18 within six months of your father's passing, this truck, this 19 88 Chevy truck, was no longer -- if we were relying on 20 insurance information, you terminated insurance immediately 21 when you sold it, right? 22 A. My dad didn't have insurance on it to begin with. 23 Q. Okay. Did he -- 24 A. That was one of the cars he didn't insure, as I 25 stated before.</p>
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<p>1 Nova, and he would transport it on the flatbed trailer, and 2 that's why he may have purchased the 88 Chevy truck from 3 your grandfather? 4 A. My dad gave me the 67 Nova approximately two years 5 before he died. 6 Q. Okay. So I guess I'm just trying to understand -- 7 the question kind of stemmed from when your dad bought this 8 truck from Clarence, and I think you indicated that you -- 9 he was going to use it maybe to connect to the flatbed 10 trailer to transport a race car. 11 A. He had the trailer before he bought the truck. 12 Q. So why would he have bought the truck if he wasn't 13 transporting anything? 14 A. It's always convenient to have a trailer. I can't 15 tell you exactly why he wanted to have a trailer, but yes, 16 he had a trailer. 17 Q. Well, actually, I think you said he had the 18 trailer for ten or 15 years. The question was the truck. 19 Why did he -- if you know, why did he acquire the truck? 20 A. He wanted that truck. 21 Q. Okay. Fair enough. And you said that you've sold 22 it since his death? 23 A. Uh-huh, yes. 24 Q. And was it titled in exclusively his name? 25 A. Yes.</p>	<p>1 Q. Okay. So he did not insure that one. Did he have 2 liability insurance on it, or -- 3 A. He didn't drive that one in recent time. I'm sure 4 it was insured before when he drove it, but in recent time 5 he did not drive that truck. 6 Q. And what did you do with the proceeds from the 7 sale of that truck? 8 A. Split that 50/50 with me and my sister. 9 Q. Okay. So do you recognize any other vehicles? 10 A. I think that green one right there is my dad's 66 11 Impala. 12 Q. The green one. Could you show me what you're 13 talking about? 14 A. (Indicating.) 15 Q. Okay. So that is pretty distinctly green, isn't 16 it? 17 A. Yeah, because that car is green. 18 Q. Okay. And that's parked next to something kind of 19 red in color? 20 A. I have no idea what that is. 21 Q. Okay. 22 A. My dad does have a red car, but ... 23 Q. Which -- I'm sorry. 24 A. It's hard to really figure out what that is. 25 Q. Okay. The green one, did you say that was a Chevy</p>

23 (Pages 86 to 89)

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APP0215

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1 Impala?
 2 A. Yes, 66.
 3 Q. You're good with years. Do you just know that
 4 because you can identify the different years, or do you just
 5 know that one to be the 66 Chevy Impala?
 6 A. I just know what my dad has, and I was raised
 7 knowing about cars.
 8 Q. So the 1966 Chevy Impala is green, and was that
 9 kind of a pleasure vehicle? How would you describe that
 10 vehicle? Hot rod?
 11 A. He -- I mean I guess it could have been. He
 12 bought that actually from my husband's uncle, and just I
 13 guess because he liked it as a hot rod. He actually did
 14 drive it for his daily driver when he first got it.
 15 Q. When did he get it?
 16 A. Years are --
 17 Q. Just generally, if you can recall.
 18 A. I would say four years before he died
 19 approximately.
 20 Q. And was that one that was insured at the time of
 21 his death or not?
 22 A. Yes.
 23 Q. Okay.
 24 A. I believe so.
 25 Q. And do you still have that?

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1 A. Yes. My sister has that one.
 2 Q. Okay. And do you know what the purchase price
 3 was?
 4 A. We did put prices on the car. Around 4,000.
 5 Q. Okay. And is that one that he bought in kind of
 6 drive-ready shape, or would that be a vehicle that he worked
 7 on to bring up to his daily driver?
 8 A. The way we look at it is basically how he bought
 9 it, but he did clean it up, put I think new wheels and tires
 10 on it and cleaned it up.
 11 Q. Okay. You said that your dad also had a red car.
 12 Would that be one of the cars that you told us about earlier
 13 today?
 14 A. He had two red ones.
 15 Q. Which ones were red?
 16 A. The 33 and the Chevette.
 17 Q. Okay. So the 33 roadster was red?
 18 A. Yeah, yeah.
 19 Q. Had he had that car for a long time?
 20 A. Yes.
 21 Q. Was that a race car or a --
 22 A. No.
 23 Q. Kind of -- would you call that kind of a hot rod
 24 since it's so old?
 25 A. A hot rod, street car.

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1 Q. And it was drivable, wasn't it?
 2 A. Yes.
 3 Q. And I'm sorry. Did I ask you how long he had
 4 owned that one?
 5 A. He -- when he was still working, he bought that
 6 one.
 7 Q. Okay.
 8 A. Quite a while before he stopped working.
 9 Q. So it was before your mom died then?
 10 A. Yes.
 11 Q. Okay. Do you guys still own that one?
 12 A. Yes.
 13 Q. Is that one that you decided that you'd like to
 14 keep?
 15 A. My sister has it.
 16 Q. Okay. Did you put a value on it?
 17 A. Yes.
 18 Q. What was the value?
 19 A. Around 30,000.
 20 Q. Okay. And do you know what the purchase price
 21 was?
 22 A. Around 20.
 23 Q. And you must be basing that on something. Was
 24 that something your dad had told you when he was alive? some
 25 information that you found since his death?

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1 A. Both.
 2 Q. Okay. What information did you find since his
 3 death as far as what he paid for it?
 4 A. A receipt from the person he bought it from.
 5 Q. Okay. Did he pay cash?
 6 A. I believe so.
 7 Q. Okay.
 8 A. I'm not certain, but I believe so.
 9 Q. Was that one that was insured at the time of your
 10 dad's passing?
 11 A. Yes.
 12 Q. Okay. And you said that he had -- did you say it
 13 was the Chevette that was also -- the 81 Chevrolet Chevette
 14 that was also red?
 15 A. Yeah, yes.
 16 Q. Okay. What kind of car? Is that a race car? just
 17 a driver? What is that?
 18 A. It's just an older Chevette. I don't know what it
 19 is. It's a car. He didn't race it or street --
 20 Q. Did you ever know him to drive it in the last
 21 several years of his life?
 22 A. Yes.
 23 Q. It wasn't a car that you girls had when you were
 24 growing up, was it?
 25 A. No. It wasn't a hot rod either.

Rickey/Cavar vs. Clarence G. Munce
 Videographic Deposition of Kelley R. Cavar/6-23-09

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<p>1 Q. Okay. So just an 81 Chevrolet Chevette? 2 A. Yes. 3 Q. So that was worth appreciably less than the red 4 roadster, wasn't it? 5 A. Yes. 6 Q. What value did you put on that? 7 A. Around \$1,000. 8 Q. Okay. And do you still have it? 9 A. Yes. 10 Q. Okay. Do you have plans for that vehicle? 11 A. I will let my kids play in it. 12 Q. Okay. 13 A. It's actually a very good memory. I can't part 14 with it right now. 15 Q. Is it a good memory because it reminds you of your 16 father? 17 A. Yes. 18 Q. Was he fond of that one and/or why? What about 19 that vehicle? 20 A. Yes. He was very proud of that little car that he 21 bought, yeah. It was just kind of a -- I wouldn't call it a 22 junker. It was in excellent condition, but he was very 23 proud of that little car. 24 Q. Do you remember ever going in it? 25 A. Yes. He would come over to my house and pick me</p>	<p>1 Q. And is there a vehicle typically parked under 2 that, or do you recall one? 3 A. At this time it doesn't look like it, but yes, 4 there usually is. 5 Q. Okay. And are there two other outbuildings? Are 6 those garages on the property? 7 A. There's one detached garage behind the house, and 8 then the green thing you see behind the house is the patio 9 cover. 10 Q. Oh, okay. So there's a patio under the green 11 awning? 12 A. Yeah. That's the patio cover is the green. 13 Q. And is the building then to the left of that green 14 awning a garage of some kind? 15 A. Yes. It's a detached garage. 16 Q. And it looks like there's a building behind that. 17 Is that not on your property or your dad's property? 18 A. That's not the property. 19 Q. Okay. So those two vehicles back there, the red 20 and the black, that isn't your dad's property at all, is it? 21 A. No. 22 Q. Okay. So then the Chevrolet Bel Air, is that a 23 vehicle your family still owns? 24 A. Yes. 25 Q. Okay. And is there a value that you've placed on</p>
Page 95	Page 97
<p>1 up for dinner in his Chevette, which he has hundreds of 2 thousands -- well, not hundreds -- I'm sorry -- thousands of 3 dollars sitting at home, but he chose to come over and pick 4 me up in his Chevette more than one occasion. 5 Q. And it sounds like it was probably waxed and 6 buffed and totally clean? 7 A. It was. It had some problems inside, but it was 8 nice. 9 Q. So did he own that for a long time, or was that -- 10 I'm sorry. Was that after your mom died that he got that? 11 A. I believe so. 12 Q. Okay. Then it looks like there's a pickup truck 13 next to the Chevy Impala. Would that be one of the pickup 14 trucks -- maybe the 72 Chevy truck? 15 A. Well, it depends on what year this picture was 16 taken. He did have a 72 pickup, but it was black. 17 Q. Okay. 18 A. He painted it black, and that was a few years ago. 19 Q. Did he also have a red pickup truck? 20 A. Well, just the gray and red one that -- 21 Q. Are the other buildings -- maybe you could 22 describe the buildings. It looks like -- to the left of the 23 house, is there kind of a tarped area where vehicles are 24 parked under that? 25 A. There's a carport, shed type of thing.</p>	<p>1 that? 2 A. Around 20,000. 3 Q. Okay. And do you know how long your dad had owned 4 that? 5 A. I think he's had it ever since I've been alive. 6 Q. Okay. Was that one that was insured? 7 A. Yes. 8 Q. Did you ever see him to drive it in the last few 9 years of his life? 10 A. On occasion. Not a lot, but on occasion. 11 Q. Okay. And I think we already talked about the 12 Corvette. That was something he bought brand new in 2006, 13 and there was a loan on that. Do you still have the 14 Corvette? 15 A. I do. 16 Q. Okay. And is that something that you've decided 17 to keep or your sister has kept, or you've just not decided 18 as of yet? 19 A. I have it. 20 Q. Okay. Did you place a value on it like you did 21 for the other vehicles that your sister took? 22 A. Yes. 23 Q. What value did you place on it? 24 A. Around 30,000. 25 Q. Okay. And then that 72 -- I know you said that he</p>

25 (Pages 94 to 97)

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APP0217

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1 had a 72 Chevy truck. That was different than the 88 Chevy
2 truck that he bought from your grandfather. What do you
3 know about that vehicle?
4 A. The 72 pickup?
5 Q. Yes.
6 A. It was a 72 black pickup, very nice.
7 Q. How long had he owned it?
8 A. Quite a while. He bought it I believe from
9 somebody he worked with at Bethel, and it was green and
10 white when he bought it, and then he painted it black.
11 Q. Okay. And do you have a value that you placed on
12 that, or do you still own it?
13 A. My sister owns it and around 20,000.
14 Q. Okay. And that was owned free and clear, was it
15 not, when he died?
16 A. Yes.
17 Q. We talked about the 81 Chevy Chevette. There was
18 also -- I think I wrote down a one-ton pickup?
19 A. That's the -- yeah.
20 Q. Is that one we've already talked about, the 88
21 one?
22 A. From Clarence.
23 Q. Okay. And an 89 S-10?
24 A. Uh-huh.
25 Q. Which one was that? Did we talk about that

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1 already in detail?
2 A. I don't believe so.
3 Q. That's another pickup of some kind, isn't it?
4 A. Yes.
5 Q. What can you tell me about that vehicle?
6 A. My dad bought that truck, and he put a 350 engine
7 in it and kind of had planned to race it. He did race it
8 once. He let his son-in-law race it once.
9 Q. Is that your husband?
10 A. No, my sister's husband.
11 Q. Okay.
12 A. And he -- it was kind of a project car. He put an
13 engine in it.
14 Q. Do you guys still have that?
15 A. I do.
16 Q. Okay. When you say you do, do you mean that you
17 decided to keep that?
18 A. Yes.
19 Q. Okay. And what value did you put on that?
20 A. 2500 to 3,000.
21 Q. Okay. That covers almost all of the vehicle --
22 well, I guess there's a couple more. The 67 Nova I think
23 you said your dad gave you a couple years before his
24 passing?
25 A. Yes.

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1 Q. Okay. And the -- that sounds as if that was a
2 race car used exclusively for racing, right?
3 A. He did drive it on the street on occasion. It was
4 street-legal.
5 Q. Okay. And how long had he owned it? It sounds
6 like you raced it several times over the years before his
7 death.
8 A. I believe I was in junior high. I went to buy it
9 with him actually. He took me when he was purchasing it,
10 and I instantly loved the car, and he did, and he bought it.
11 Yeah, he's had it for quite a few years.
12 Q. Okay. Did it become a race car, or was it a car
13 that you drove like when you were in high school?
14 A. No. He bought it as a race car.
15 Q. Okay. And would that also be true for the
16 Chevelle? Was this something that ever became a race car,
17 or was that just a driver?
18 A. I drove the Chevelle, yeah. Actually, it used to
19 be my car.
20 Q. Okay.
21 A. And I was going to sell it after my dad gave me
22 the 67 Nova --
23 Q. Uh-huh.
24 A. -- because space obviously is limited for cars,
25 and there was no way he wanted me to sell it, so he was in

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1 the process of buying it from me.
2 Q. At the time that he died?
3 A. Yes.
4 Q. Okay. So that actually hadn't been put in his
5 name at the time of his death?
6 A. It was in his name.
7 Q. It was in his. Was it because he had bought it
8 for you when you were a young girl?
9 A. He bought it, but I paid him back.
10 Q. Okay.
11 A. I made payments to my parents. They bought it for
12 me.
13 Q. Okay. Did you decide to keep that since that was
14 your first --
15 A. I did.
16 Q. Or I'm assuming it was your first car?
17 A. It was my first car, yeah. That -- yes.
18 Q. Okay. What about the Suzuki Samurai? That's kind
19 of an SUV of some kind, isn't it?
20 A. Not really. It's just a small four-wheel-drive.
21 It's not a pickup, but it's a four-wheel-drive vehicle.
22 Q. Do you still have that?
23 A. I do.
24 Q. Okay. How long had your dad owned that?
25 A. Approximately ten years.

26 (Pages 98 to 101)

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1 Q. Okay. So for quite a while?
2 A. Yes.
3 Q. Do you know what he paid for that?
4 A. Approximately around \$3,000. I'm a little unsure
5 because it was quite a while back. I wasn't --
6 Q. Yeah. It would just be right before you got
7 married I guess or around when you got married. You didn't
8 mention what year that was. Do you know?
9 A. The Suzuki?
10 Q. Yes.
11 A. I guess I don't know for sure.
12 Q. Okay. Are you going to keep that for -- I mean as
13 far as you and your sister going through things, is that
14 something that you are going to keep?
15 A. Yes.
16 Q. Okay. Then there's the Vespa. What have you done
17 with the Vespa?
18 A. The scooter? My sister has it.
19 Q. Okay. Was that something that you ever saw your
20 dad scoot around on?
21 A. Yes.
22 Q. Okay. Off the property too?
23 A. Yes. Around his neighborhood and when we were
24 camping.
25 Q. Okay. Was the camping that you do -- would that

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1 be primarily on the Morton property, or would you guys go
2 camping other places?
3 A. Yes, we would primarily go to the Morton property
4 and Clarence's ocean property.
5 Q. Okay. So the Vespa scooter, did you have a value
6 that it was either purchased for or that you've placed on
7 it?
8 A. I was with my dad also when he bought that as
9 well. I took him to Costco to buy it, and I believe it was
10 around \$889.
11 Q. So it was brand new when you bought it?
12 A. Yes.
13 Q. Okay. And the 1956 Chevy sedan, is that something
14 that you still -- you and your sister still have control of?
15 A. That was given to my sister when my car was given
16 to me, at the same time.
17 Q. The 67 Nova?
18 A. Mine was the 67 Nova, and hers was the 56 sedan.
19 Q. Okay. I think you said that the 67 Nova, your dad
20 gave it to you a couple years before he died?
21 A. I believe so.
22 Q. So that's the same time frame that the Chevy sedan
23 was given to your sister?
24 A. Yes.
25 Q. Or approximately?

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1 A. Yes.
2 Q. But it was still in his name, so technically it
3 was licensed to him at the time of his death?
4 A. He gave it to us, but kept the titles.
5 Q. Okay. I think that covers all of the vehicles
6 because you mentioned the 89 S-10 Chevy pickup. Didn't we
7 discuss that one?
8 A. Yes.
9 Q. Is that the -- I think we talked about that.
10 What are your first recollections of your
11 grandfather?
12 A. We would spend Christmas Eve with them when we
13 were younger. I would -- we would all as a family -- would
14 go out to their house, my grandma and Clarence, every
15 weekend.
16 Q. When you -- every weekend, you mean their house
17 here, or did you mean the ocean property?
18 A. Their home here.
19 Q. Okay. So when you were growing up as a little
20 girl, you remember being very close to your grandfather and
21 your grandmother?
22 A. We would visit them once a week.
23 Q. Okay. And did you say it was primarily on the
24 weekends?
25 A. Yes.

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1 Q. I'm sure your family was busy working during the
2 week and with the kids, and your family you remember making
3 a -- kind of a special routine out of visiting your
4 grandparents?
5 A. Yes.
6 Q. How did you feel about your grandfather when you
7 were a small child?
8 MR. BARCUS: Object to the form of the question.
9 Answer the best you can.
10 A. He would always say comments to me that were
11 hurtful, but my morals is, I always believed family. He was
12 family, and I just accepted that.
13 Q. So would all of your memories of your grandfather
14 dating back to when you were, you know, very young or when
15 you can remember -- was he always mean to you?
16 A. Not always, but there was usually an instance on
17 every visit that was hurtful.
18 Q. Do you mean by something cruel he would say?
19 A. Yeah. He wouldn't talk appropriately in front of
20 children.
21 Q. You mean like a bad foul mouth?
22 A. Yes.
23 Q. Okay. So dirty language?
24 A. Yes.
25 Q. And is this when you were -- do you remember this

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1 more like starting when you were in elementary school?
2 A. Yes.
3 Q. Okay. What about his wife? I'm sorry. I can't
4 remember her first name.
5 A. Retha. We called her Nana.
6 Q. Nana?
7 A. Uh-huh.
8 Q. And what did you call him?
9 A. Papa.
10 Q. Papa. And what would she say, or did she ever
11 observe? I mean would she try to intervene, or how would
12 the dynamics work out when you were all visiting?
13 A. It was, you know, a visit among family. She was a
14 good grandma. She was very loving.
15 Q. Uh-huh. And so it would just be -- what you
16 remember as far as the comments that were hurtful were
17 exclusively from your Papa?
18 A. Yes.
19 Q. And did there -- as you grew older, was there a
20 period of time when you just told your mom and dad you
21 didn't want to go over there anymore?
22 A. When we got older, it was very hard to go over
23 there. We had to make ourselves go over there.
24 Q. So what -- when did you stop going over there once
25 a week on the weekend as kind of a family event?

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1 A. When I got into junior high, I think we still did
2 it. I mean it was a regular routine with our family, but
3 once you get older, you kind of have your own friends, your
4 own things you do on the weekends, and it started fading out
5 as I got older.
6 Q. So by the time when you were in junior high, for
7 example, seventh, eighth and ninth grade, how frequently
8 were you going over to your grandfather's house?
9 A. Maybe the occasional once-a-month, maybe not the
10 once-every-weekend.
11 Q. And would that be the same type of thing, on a
12 weekend with your entire family going together?
13 A. Yes, we would all go together.
14 Q. When you said that he would make comments that
15 were hurtful, were they directed to you or other members of
16 your family?
17 A. I think in the beginning they were directed -- I
18 mean just his comments in general about everything were
19 verbally not right for a child to hear, but in one
20 comment -- or in one comment in particular, I guess he would
21 call me fat.
22 Q. And was that in junior high?
23 A. Yeah.
24 Q. Would he just come out and say, You're fat, or?
25 A. He would make snide comments about your weight.

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1 Q. Okay. And do you remember that continuing past
2 junior high?
3 A. Always.
4 Q. When was the last time you saw him?
5 A. Probably around a month before he shot my dad.
6 Q. And do you remember the occasion?
7 A. On that particular occasion I stopped at his
8 house, and that was a very chance stopping because that's
9 not something I normally do, but my son had a baseball game
10 at Bethel High School, which is very close to his house, and
11 we had about half an hour before the game, went in there and
12 visited with him for around 20 minutes.
13 Q. So would that have been Lane's baseball game?
14 A. It would have been, yes.
15 Q. Was it you and Lane and Luke together or just you
16 and your older son?
17 A. All three of us, yes, me, Lane and Luke.
18 Q. Okay. So I'm assuming it was during the week, not
19 a weekend, or do you know?
20 A. During the week I believe.
21 Q. And you spent about 20 minutes with him.
22 Obviously he was at home. Was he typically at home during
23 the day?
24 A. It was hard for me to know his routine because I
25 didn't keep in touch with him much, but he was home when I

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1 stopped by.
2 Q. Okay. And had you -- is this the only time you
3 remember kind of in the last -- let's say the last five
4 years stopping by his house unannounced?
5 A. There might have been a few times, but he mainly
6 would come over to my house unannounced.
7 Q. So he would just stop by your house without, you
8 know, coming over for dinner or a specific invitation?
9 A. I never invited my -- Clarence over for dinner,
10 but yes, he would stop by, yes.
11 Q. Okay. So going back to this event about a month
12 before your dad died, what do you remember about that
13 interaction with Clarence that day?
14 A. When he stopped at my house?
15 Q. No. I thought -- we're on the event when you're
16 on the way to the baseball game. You have about half an
17 hour of time before the game starts, and you stop by his
18 house unannounced with the two boys.
19 A. The usual, him offering a pop. That was the
20 definitely usual, you know, example of what he would do,
21 basically talking about what we were doing. We were on our
22 way to the baseball game. And maybe me asking him what he
23 did that day or prior days.
24 Q. Do you remember what he would have told you as far
25 as what he had been doing that day or in prior days?

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1 A. No.
2 Q. Do you remember what the status of his health was,
3 what you observed?
4 A. I don't remember noticing anything out of the
5 ordinary. He did repeat himself a few times.
6 Q. Okay. So in the course of the conversation, he
7 would repeat the same things that he'd previously been
8 saying?
9 A. Yes.
10 Q. Was he particularly cruel or hurtful on that
11 occasion? Did he say anything negative or anything that
12 stands out in your mind?
13 A. No.
14 Q. Was there any reason for you to think on that
15 occasion about a month before your dad's death that his
16 health had deteriorated since the last time you'd seen him?
17 MR. BARCUS: Object to the form of the question.
18 Lack of foundation.
19 A. Just, like I said, I noticed him repeating
20 questions that he had already asked.
21 Q. But was that different than what you'd observed
22 the prior time that you had visited with him?
23 A. He would call me on the phone, and I did notice it
24 then too. Like, for example, he would say, So how are you
25 doing, and I would answer. Then a couple minutes later, So

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1 how have you guys been doing, for example.
2 Q. Okay. And how did he -- what were your
3 observations of how he interacted with the boys? Was it
4 primarily a conversation with you? kind of a group dynamic?
5 A. It was always awkward to know what to talk about
6 with him, so basically, you know, he is talking to my boys,
7 particularly my oldest one. He had -- he liked my oldest
8 one. I think he could remember him better than my youngest
9 one.
10 Q. So would he concentrate more on him as far as his
11 baseball game and what he'd been doing?
12 A. Yeah. He would always call my son Lane My little
13 buddy or something like that, and I don't know really where
14 he ever got that, but yeah, he really liked my oldest son
15 Lane.
16 Q. Why would you stop by his house? I'm getting the
17 sense or impression that you obviously didn't feel very
18 close to him. Why would you have stopped by in just the
19 month before your dad's death?
20 A. Probably more out of obligation, knowing it was
21 the right thing to do.
22 Q. Were you wanting him to have a relationship with
23 your two children?
24 A. That wasn't very important to me.
25 Q. So what do you mean out of a -- it's the right

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1 thing to do out of a sense of obligation? I don't know what
2 you mean.
3 A. I hadn't seen him in a while. I mean he would
4 stop by my house, but we were in the area, and it was always
5 a struggle to make yourself go, but since we were in the
6 area, I did stop.
7 Q. You said you hadn't seen him in a while. Do you
8 remember the last occasion you'd seen him before then?
9 A. One of the times he had stopped by my house.
10 Q. Okay. And you said sometimes he would stop by
11 your house unannounced. Would that just -- would he say he
12 was in the neighborhood thinking about you? What kind of a
13 circumstance would he describe when he would arrive?
14 A. He was driving around. It was always a challenge
15 for him to try to find my house, and he would find it every
16 time. He might have had a gift for my kids from the Dollar
17 Store, and at one point in time, he did bring over a coat
18 for my sons.
19 Q. Okay. Did he ever give you any expensive gifts?
20 A. I wouldn't say expensive.
21 Q. Okay.
22 A. I recall a watch.
23 Q. For like graduation or something?
24 A. No. That was -- I don't know what it was for. I
25 don't think it was for a purpose.

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1 Q. Did you -- over the years as you matured as a
2 young woman and adult and eventually a parent, how would you
3 describe your relationship with your grandfather? It sounds
4 as if you've already told us that you remember at a very
5 young age kind of always feeling uncomfortable, and he said
6 cruel things to you, and then you continued to see him out
7 of a sense of obligation. How would you describe the
8 relationship?
9 A. He was my father's dad. He was my grandpa. You
10 know, they would come over. We would see them often. We
11 spent Christmas Eve with them. I believe we would go out on
12 their birthdays and just spend some family time together.
13 Q. Do you ever remember spending one-on-one time with
14 him?
15 A. No.
16 Q. What about with your Nana? Would you spend
17 one-on-one time with her?
18 A. Yeah, I believe I would. I would paint her
19 fingernails.
20 Q. But would there be -- you know, everybody has
21 different relationships, you know, even with parents and
22 grandparents. You live particularly close. Was it
23 something that your grandmother would take special occasions
24 with you just you and her one on one?
25 A. No.

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1 Q. No. And definitely not your grandfather?
2 A. No.
3 Q. And you had occasion to observe your father and
4 your grandfather together over the years?
5 A. Yes.
6 Q. And when was the last time that you spent
7 Christmas Eve at your grandfather's house?
8 A. It's hard to nail down a date, but I would say one
9 of the last years when my grandma was alive.
10 Q. Okay. And then no holidays or special events with
11 your grandfather after that?
12 A. Not that I could remember. I remember asking my
13 dad to invite him to a Father's Day or a birthday, and my
14 dad advised me he didn't think that was the best thing to
15 do.
16 Q. Did he say why?
17 A. Because of his hostile behavior.
18 Q. Did he describe it for you, or did you know what
19 he was talking about?
20 A. I know exactly what he was talking about.
21 Q. What was he talking about?
22 A. He didn't want there to be an outburst of anger at
23 a family party.
24 Q. Okay. So other than him stopping by at your house
25 unannounced and before this month before your dad's death,

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1 you don't really remember spending any special events or
2 holidays with him after your grandmother died?
3 A. No.
4 Q. Okay.
5 A. No.
6 Q. And then tell me about the last time you had a
7 personal observation of your dad and your grandfather
8 together.
9 A. It's been a long time. I -- I don't know of a
10 real incident. Maybe he would stop by while I was there. I
11 can't too much really explain the specifics. Maybe we would
12 all be outside talking, and then he would leave.
13 Q. Okay. I wasn't quite following that. Do you mean
14 Clarence would stop over at your dad's house when you were
15 there?
16 A. Yes.
17 Q. Do you have a specific recollection of the last
18 time you might have seen any interaction that they
19 exchanged?
20 A. No.
21 Q. What is your last memory that you can actually
22 recall that you ever even saw them together?
23 A. Him coming over probably when my mom was sick.
24 Q. So that would have been --
25 A. Before.

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1 Q. -- before 2005?
2 A. Yes.
3 Q. And did he come over with your -- your dad was
4 there, and he came over to visit, and you happened to be
5 there at the same time?
6 A. Yes, with my mom while she was sick.
7 Q. Okay. And do you remember anything about that
8 particular event that stands out or that occasion?
9 A. No.
10 Q. Before your mom's passing, do you have any
11 recollection of observing your dad and your grandfather
12 together that does stand out in your mind either in a good
13 way or a bad way?
14 A. No.
15 Q. Okay. Did your dad other than -- and I know I --
16 you used the terminology I think hostile outbursts or
17 hostile behavior. Did you see -- other than what you've
18 already told us, did you personally observe hostile behavior
19 towards any other members of your family by your
20 grandfather?
21 A. Me.
22 Q. Okay. So what in addition to calling you fat and
23 saying cruel things and using bad language was a hostile
24 behavior you observed?
25 A. He would come over to my house and rant on about

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1 my dad after my mom passing saying he was cheating on my
2 mom, just calling him an F-ing this, and I told him, Don't
3 talk to my dad about that way, and he's yelling angrily at
4 my kitchen table, which made me feel very uncomfortable
5 talking about my dad.
6 Q. Would this -- it sounds like you're recalling a
7 specific event, or did this happen on more than one
8 occasion?
9 A. Yes, it happened more than on one occasion where
10 he would talk bad about my dad to me.
11 Q. But you're recalling a specific event it sounds
12 like where he actually came to your house?
13 A. Yes.
14 Q. And you were in the kitchen, and you can recall it
15 with detail it sounds like?
16 A. Yes, this one specific event where -- yes.
17 Q. And we know that was after your mom died, right?
18 A. Yes.
19 Q. And was anybody else present?
20 A. No.
21 Q. Were the boys at school or at least away from the
22 house?
23 A. Yes, they were. I don't believe they were there.
24 Q. And your husband wasn't home?
25 A. No. I'm sure he was working.

30 (Pages 114 to 117)

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<p>1 Q. You work full-time, don't you? 2 A. No. I only work ten hours a week. 3 Q. Okay. And at the time this happened, were you 4 still working only ten hours a week or not full-time? 5 A. Not full-time. 6 Q. Okay. So it could have easily been a weekday or 7 most likely was a weekday? 8 A. Yes. 9 Q. Okay. And what -- did he articulate, or when he 10 said that your dad was cheating on your mom, what did you 11 mean that to mean? 12 A. What did he mean that to mean? 13 Q. No. What did you understand? Was there anything 14 said? Did he just -- did your dad have a girlfriend, and he 15 was upset because he, you know, loved your mother so much? 16 What -- 17 A. He was trying to tell me that my dad had a 18 girlfriend all along and was cheating on my mom and that my 19 dad was an F-ing this and an F-ing this of a son trying to 20 get involved in his financial matters, and I assured him 21 that he was only looking out for his best interest and to 22 not talk about my dad that way. 23 Q. Did you ask him to leave? 24 A. I don't think I did in words, but I think he got 25 that impression from me from what I was saying.</p>	<p>1 A. I knew he was capable of acting that way just from 2 his surrounding of people knowing him, but not towards me. 3 Q. Okay. And that's what I'm trying to clarify. 4 This time frame after your mom died, sitting around the 5 kitchen sink would have been the first time you actually 6 personally observed Clarence acting kind of -- How would -- 7 What were your words? -- overtly hostile and very angry? 8 A. Yes. 9 MR. BARCUS: Object to the form of the question. 10 A. Yes. 11 Q. Okay. And did you observe that kind of situation 12 at any time since then? And I'm talking about you, not what 13 somebody has told you. 14 A. No. 15 Q. You did eventually get a restraining order against 16 your grandfather, right? 17 A. Yes. 18 Q. And was that after he shot your dad? 19 A. Yes. 20 Q. Had you ever attempted to get a restraining order 21 before? 22 A. No. 23 Q. Did you have any reason or cause to feel like you 24 had been threatened or he was a threat to you before? 25 A. No.</p>
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<p>1 Q. And you said something about, he told you that he 2 thought that your dad was trying to get involved in his 3 financial matters? 4 A. Yes. 5 Q. Okay. Did he provide any specifics, or did you 6 have any idea at all what he was talking about? 7 A. Just from conversations with my dad. My dad was 8 trying to look out for him. Yes, I knew that. 9 Q. Okay. But you didn't have any personal knowledge 10 about that, did you? I mean you weren't involved with it, 11 or your dad didn't share any details with you? 12 A. No. Conversations with me, but not to the extent 13 of details. 14 Q. Okay. At that point in time, this time frame that 15 you remember around the kitchen table, did your grandfather 16 appear to be, you know, drinking? different than you recall? 17 Anything about his appearance that you would have observed 18 that made you think something was off with him? 19 A. That his anger was escalated. He's pounding his 20 fist and fingers pointing down on my kitchen table yelling 21 at me about my dad. 22 Q. Had you seen him act that way before? 23 A. Not really, no. 24 Q. Okay. So that was the first time you observed 25 actually with your own eyes any kind of --</p>	<p>1 (Exhibit No. 3 marked for identification.) 2 Q. Kelley, the Exhibit 3 that's been placed in front 3 of you, this is an order for protection that was filed in 4 the Pierce County Superior Court on July 8th, 2008. You're 5 familiar with this, aren't you? 6 A. Yes. It's my protection order? 7 Q. Okay. 8 A. It -- 9 Q. I'm sorry? 10 A. Is it my protection order? 11 Q. Well, it has your name on it. 12 A. At the top there. Okay. 13 Q. So I assume it's yours. 14 A. Okay. 15 Q. And was this precipitated by the fact of the death 16 of your father? 17 A. Yes. 18 Q. Okay. So before that event, there was never an 19 event that caused you concern that yourself was physically 20 in danger or in harm's way from your grandfather? 21 MR. BARCUS: Object to the form of the question. 22 A. No. 23 Q. Okay. 24 (Exhibit No. 4 marked for identification.) 25 Q. And Exhibit 4 actually is also referenced as</p>

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1 Exhibit 4. I think that's a different exhibit number. I
2 think this was attached to request for admissions if I'm not
3 mistaken. Kelley, this is the petition for order of
4 protection. Are you familiar with this document?
5 A. Yes. Yes.
6 Q. Okay. Let me ask you a couple questions then
7 about this. This was filed on June 24th, 2008, so it came
8 before Exhibit 3. Were you -- I see that your sons are
9 listed on this particular document. Were you concerned, or
10 did your husband seek a separate order of protection?
11 A. I thought everyone in my family is included.
12 Q. Okay. Do you know -- in this particular exhibit,
13 Exhibit 4 on Page 3, where it says Grant me possession of
14 essential personal belongings and it says Full, did you have
15 some personal possessions or belongings that were at your
16 grandfather's house that you were trying to secure?
17 A. No.
18 Q. No. On Page 4 of this exhibit under Describe the
19 past incidents where you experienced violence, where you
20 were afraid of injury or where the respondent threatened to
21 harm or kill you, you made reference to the respondent,
22 Clarence Munce, as coming to your house, and is violent with
23 my father and most people he comes in contact with. Is the
24 circumstance of coming to your house the event that you
25 described for me today that occurred after your mother died

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1 when he was sitting around the kitchen table?
2 A. Yes, and I'm also aware of other instances where
3 he would come to families' houses as well.
4 Q. Okay. So this particular order of protection was
5 based on that one personal incident, and then you were
6 personally familiar with some incidences involving your
7 grandfather and other -- would it be family members?
8 A. Yes.
9 Q. What specific family members were you personally
10 aware of that made you feel as if there was an issue of
11 violence? I'm not talking about your dad of course.
12 A. My sister.
13 Q. Okay.
14 A. And my aunt and uncle, Sunny Rhone and Bill Rhone.
15 Q. Okay. So Sunny and Bill Rhone. And this may be a
16 dumb question, but Sunny Rhone, is she a stepdaughter of
17 Clarence's?
18 A. He didn't ever adopt her.
19 Q. Okay. So had his wife been married before?
20 A. Yes, and then her husband died and --
21 Q. Okay.
22 A. Sunny's dad died.
23 Q. Okay.
24 A. And she married Clarence, and he raised Sunny.
25 Q. Okay. So he raised Sunny, but he never adopted

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1 her. Okay. So there was at least a circumstance that you'd
2 become aware of with Sunny and her husband?
3 A. I don't believe her husband was there.
4 Q. Okay. So an event with Sunny, event with your
5 sister. What else?
6 A. And my dad.
7 Q. Okay. And your dad. Sure. So what just was in
8 your knowledge that you were concerned about with Sunny at
9 the time that you filled out your petition for protection?
10 A. Well, that was just one of the events, but
11 pertaining to me he was calling me an F-ing trouble-maker to
12 my sister and getting very aggressive at my dad's house.
13 Q. Okay. So the event with Sunny, what you're
14 talking about, is that Clarence had confronted Sunny and was
15 being rude and disrespectful related to you?
16 A. I think more my sister. My sister was there too.
17 Q. Okay. So Sunny --
18 A. But Sunny was there as well.
19 Q. Okay. And I can ask your sister about that. It
20 sounds like your sister was present when this happened?
21 A. She was.
22 Q. Okay. But it was just reported back to you that
23 he was using disparaging comments about you?
24 A. Yes, and violent behavior toward my dad and sister
25 and Sunny.

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1 Q. Okay. When you say violent behavior, did you have
2 an understanding of what -- or what was your understanding
3 of this violent behavior?
4 A. I believe he got in my dad's face and tried to
5 push him.
6 Q. Was he there also?
7 A. My dad?
8 Q. At the time that you're describing with Sunny and
9 your sister, was your dad also present?
10 A. Yes.
11 Q. Okay. So it would have been Sunny, your dad and
12 your sister and then your grandfather?
13 A. Yes.
14 Q. And they may have some personal knowledge about an
15 altercation that occurred between your dad and your
16 grandfather?
17 A. Probably more than I because I wasn't there.
18 Q. Okay. Fair enough. So any other circumstances
19 that involved Sunny that formed the basis for your concerns
20 about violence?
21 A. There was always hard relationships with Clarence
22 and Sunny.
23 Q. Do you know why?
24 A. I was pretty much sheltered because I was so young
25 growing up from it, so I believe when she was growing up,

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1 but they never did have a good relationship.
2 Q. Okay. And it sounds as if you've at least seen
3 them interact on occasion, and based on what you know of
4 your family and those interactions, they did not get along
5 well?
6 A. No.
7 Q. Okay. So when was this event that -- and I'll
8 pass and ask more questions about that with your sister, but
9 do you know when that event was?
10 A. I believe it was in April on my mom and dad's
11 anniversary, the first anniversary after my mom died.
12 Q. So it would have been in 06?
13 A. Yes, April of 06 I believe.
14 Q. Okay. And does April stand out in your mind for a
15 reason? Was there an event that triggered a memory, or you
16 just remember it being April?
17 A. My mom and dad's anniversary is in April.
18 Q. Okay. And then I think you -- and I will ask your
19 sister about this, but what was the event regarding your
20 sister that formed the basis for your comments in Exhibit 4?
21 A. On that same question?
22 Q. Yes. You told me that there was an event with,
23 you know, you around the kitchen table, which you've
24 described, and then Sunny, her husband and your sister.
25 A. Sunny, my dad and -- Sunny's husband wasn't there

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1 I don't believe.
2 Q. Was there a separate event with Sunny's husband
3 that you were meaning to include on this basis?
4 A. Just all holidays. I don't remember Bill and
5 Sunny getting along with Clarence.
6 Q. Okay. When you would have Christmas Eves
7 together, is that what you're talking about as far as
8 holidays?
9 A. Yes.
10 Q. And I know there was a point in time when you
11 stopped doing that, but would part of the family unit be
12 also Sunny and Bill?
13 A. Sometimes. Maybe not all the time, but sometimes,
14 yes.
15 Q. And do they have children?
16 A. Yes.
17 Q. So the children would be there as well?
18 A. Yes.
19 Q. And you have a recollection that they, Sunny and
20 Bill, never got along with your grandfather?
21 A. Yes.
22 Q. Okay. How did they get along with your dad?
23 A. Well.
24 Q. Okay. So then moving along, was there an event
25 that you became aware of that caused you concern related to

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1 your sister other than the event you've just briefly
2 described?
3 A. My dad has told me other events.
4 Q. That involved your sister?
5 A. No, my -- Clarence.
6 Q. Okay. So were there some other incidents that you
7 became aware of where you had experienced violence that was
8 part of this temporary restraining order, or are you just
9 talking about additional concerns you have that your dad
10 might have told you about?
11 A. Additional concerns my dad told me about.
12 Q. Okay. And what additional concerns related to
13 violence did your dad disclose to you before he died?
14 A. He told me that Clarence chased after him with a
15 sword one day.
16 Q. When did he tell you this?
17 A. Clarence -- right after it happened, Clarence had
18 some sort of surgery, and my dad was going out to check on
19 him and lifted his juice bottle and smelled alcohol in it,
20 and I believe he tossed it, his way of saying, you know, You
21 shouldn't be drinking. And then Clarence proceeded to chase
22 after my dad with a sword and chased him out of the house.
23 Q. Okay. So it sounds as if it was after a surgical
24 event timewise. There had been some kind of -- something
25 that had -- was he bedridden?

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1 A. No. He was up in his recliner.
2 Q. Okay.
3 A. I believe it was in the living room.
4 Q. But you remember that your dad was checking on him
5 for some kind of -- could have been an outpatient. I don't
6 know -- but some kind of medical procedure of some kind?
7 A. Yes.
8 Q. And had your dad or did you know your grandfather
9 to have a drinking problem?
10 A. Yes.
11 Q. And did he ever receive treatment for it that
12 you're aware of?
13 A. No.
14 Q. And what were your observations of the use of
15 alcohol by your grandfather?
16 A. On every visit when we were younger, he was
17 drinking alcohol.
18 Q. Would that be hidden in a juice box, or would he
19 be outwardly drinking something that you would observe or
20 something that you smelled?
21 A. It was usually in a cup.
22 Q. So do you know what he was drinking or what you
23 remember him drinking?
24 A. No.
25 Q. But you just have a vivid recollection of him

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<p>1 being -- being young and having your grandfather be drinking 2 at different times you'd visit? 3 A. Yes. 4 Q. Okay. Did your dad ever have a drinking problem? 5 A. No. 6 Q. Did you ever know him to drink casually? 7 A. Yes. 8 Q. Okay. Never any treatment for alcoholism that 9 you're aware of? 10 A. No. 11 Q. Did anybody ever accuse him of having a drinking 12 problem? 13 A. No. 14 Q. And you never observed him to have a drinking 15 problem? 16 A. No. 17 Q. Did he tell you and your sister together when this 18 happened, or were you alone with your dad when he described 19 this circumstance where Clarence had chased him with a 20 sword? 21 A. I believe it was probably a phone conversation. 22 Q. What did you direct or instruct your dad at that 23 point in time? 24 A. Stay away from him. 25 Q. And did he do so?</p>	<p>1 personal observation she had of your grandfather before she 2 died? 3 A. She would also tell my dad to stay away from him. 4 Q. Okay. Did you actually hear her say that? 5 A. Yes. 6 Q. Did your dad ever tell you why he would go back 7 around him if he was either physical or not nice to him? 8 A. No. Months would pass before he would go back 9 again. 10 Q. Okay. Do you know if he ever had control of his 11 finances? 12 A. I don't know that. 13 Q. Did you find any of Clarence Munce's financial 14 effects or documents in any of your dad's personal 15 possessions? 16 A. Yes. 17 Q. What kind of financial records of your grandfather 18 did you find in your dad's possession? 19 A. Account information. I believe my dad was on some 20 of my -- Clarence's accounts and my grandma's. 21 Q. At the time that he died or prior thereto? 22 A. Prior. 23 Q. Okay. So these were statements several years 24 prior to your father's death? 25 A. Yes.</p>
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<p>1 A. He would for a period of time, but it seems like 2 he would always go back out to check on him. 3 Q. And did you ever see your dad be physical or 4 violent with your grandfather? 5 A. No. 6 Q. Has it ever been reported to you by anybody that 7 he had been physical with your grandfather? 8 MR. BARCUS: Object to the form of question. 9 A. In recent depositions. 10 Q. So just through the course of this litigation? 11 A. Yes. 12 Q. So you have never been personally present when 13 there have been any kind of acts of aggressiveness or 14 physicality between your dad and your grandfather? And I'm 15 talking about your dad towards your grandfather, not your 16 grandfather towards your dad. 17 A. No. 18 Q. Okay. So do you remember time framewise when 19 Clarence chased him with a sword? Do you know what year 20 we're talking about? I know you said it was after your -- 21 strike that. I assumed it was after your mother died. I 22 might have -- 23 A. I'm assuming as well. I just can't imagine my mom 24 accepting that knowing that information. 25 Q. Did your mom ever share with you how -- any</p>	<p>1 Q. And your dad still had them in his possession? 2 A. Yes. 3 Q. And do you remember what financial institutions 4 these were with? 5 A. I believe Columbia Bank. 6 Q. Okay. And it sounds as if you're recalling that 7 there was more than one account. You made reference to an 8 account with your grandfather's name on it, and then I 9 thought you said something about your grandmother? 10 A. I found a piece of paper that stated accounts of 11 Clarence's -- I believe it was in his writing -- that my dad 12 had in his files. 13 Q. When you say his writing, do you mean Clarence's 14 handwriting or your dad's handwriting? 15 A. Clarence's. 16 Q. Okay. 17 A. Like he gave it to my dad at one point. 18 Q. And why did you think that one of those accounts 19 had something to do with your grandmother? 20 A. Well, because Clarence and Retha were married. 21 I'm assuming that their name are on the accounts together. 22 Q. Okay. So this would have been before she died? 23 Is that what you're talking about? 24 A. Yes. 25 Q. Okay. Do you remember what year she died?</p>

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1 A. 03 or 02.
2 Q. Okay. So do you personally observe -- and maybe
3 you didn't really have an opportunity to, but how frequently
4 would you see your grandfather after your grandmother died
5 just generally speaking?
6 A. Not very often.
7 Q. Okay. So not very frequent. So you wouldn't
8 really be in a position to say whether or not you noticed
9 any changes or observations in him after your grandmother
10 died?
11 MR. BARCUS: Object to the form of the question.
12 A. Just when he would call me or come over to my
13 house or on the rare occasion I stopped by.
14 Q. But was there any difference between how he
15 interacted with you before his wife died as compared to
16 after his wife died?
17 A. No.
18 Q. Okay. Any other acts of violence that your dad
19 described for you other than that one instance when his
20 father chased him with a sword?
21 A. Arguments.
22 Q. Anything physical or just verbal?
23 A. Verbal.
24 Q. Any other physical kind of circumstances or
25 situations that your dad ever described or provided to you

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1 other than the sword incident?
2 A. No.
3 Q. Okay. What about verbal? What did he tell you
4 about verbal?
5 A. That they would have verbal arguments about
6 finances, Clarence's ocean property, maybe cars Clarence
7 purchased.
8 Q. Did this just come up in the course of a
9 conversation that you were having with your dad when you
10 were visiting him, or was this a specific discussion
11 regarding financial affairs?
12 A. I would always ask how things are going with my
13 dad and Clarence.
14 Q. Okay. So you would see him, and you'd check in
15 and say, you know, How's it going with grandpa, or something
16 to that effect?
17 A. Always.
18 Q. Okay. And when he volunteered that there were
19 trouble with finances, did that strike you unusual? What
20 would your dad have to do with his finances?
21 A. Well, my dad was just trying to look out for
22 Clarence and his finances.
23 Q. Do you know how he was trying to do that?
24 A. I guess I don't know the exacts of how he was
25 trying to look out. I was just made aware of that.

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1 Q. And what about the ocean property? Why would they
2 even have any discussions about your grandfather's ocean
3 property? Do you know?
4 A. We would use his ocean property quite often, and
5 he was saying he was going to sell it.
6 Q. Okay. So we, does that mean you and your family,
7 your close family, your husband and your two sons or?
8 A. Yes. Our entire family, my aunt and uncle, my
9 sister, his family.
10 Q. Okay. So this ocean property, was that also a
11 place that you grew up going to?
12 A. Yes.
13 Q. And you enjoyed going there?
14 A. Yes.
15 Q. And did your dad also frequent it?
16 A. Yes.
17 Q. And where on the ocean is it located?
18 A. So it's by the jetty -- and I don't think it's the
19 north jetty -- at the end of Ocean Shores looking towards
20 Westport.
21 Q. Okay. So it's actually in Ocean Shores. And when
22 you would use it, would you call your grandfather and ask if
23 you could use it, or would you just show up there?
24 A. I believe at the beginning I did, and then he said
25 we were welcome to use it anytime.

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1 Q. So to get a key or to make yourself available to
2 the property, would there just be a hidden key, or how would
3 you determine if you could use the property or if it was
4 being used by somebody else?
5 A. It was just bare land. There was a rope over the
6 property's entrance.
7 Q. Oh, okay. So it's just raw land?
8 A. Yes.
9 Q. And you'd just go there and access the beach?
10 A. We would park our RVs on the property and camp and
11 access the beach.
12 Q. Okay. So at some point in time, it sounds as if
13 your grandfather was interested in selling the property, and
14 it sounds as if you didn't want him to, and maybe your
15 father didn't want him to?
16 A. Yes.
17 Q. Okay. And did you have any conversations with
18 your grandfather about that?
19 A. I expressed to him how much we enjoyed going
20 there.
21 Q. And would his sentiment be to respond in any way?
22 A. No.
23 Q. Somehow did he ever promise that he was going to
24 give you that property, or why would you feel so entitled to
25 it?

35 (Pages 134 to 137)

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APP0227

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1 A. He did tell me I believe in a phone conversation
2 that he was going to deed the property to me and my sister I
3 believe.
4 Q. And when did he tell you this?
5 A. I do not know.
6 Q. Was it before you started using the property?
7 A. No.
8 Q. So it was sometime after you started using it?
9 A. Yes.
10 Q. Okay. So why would your dad -- or did your dad
11 ever describe to you how they would fight about your
12 grandfather's ocean property? Was it just merely the
13 selling of it?
14 A. Well, I -- he said he was going to give it to us,
15 and I vaguely remember him getting our information to deed
16 it to us, and the next thing that we know, he sold it.
17 Q. Okay. And when did he sell it in relationship to
18 your father's passing, if you know?
19 A. Approximately two to three years before that,
20 approximately.
21 Q. So did that make you mad?
22 A. I was upset, hurt.
23 Q. And did that -- how did your father react?
24 A. He was upset and hurt as well.
25 Q. And did your father ever tell you whether or not

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1 he had any discussions with his father about why he would
2 have gotten rid of his ocean property?
3 A. We all pretty much figured he did it out of spite
4 to hurt us.
5 Q. Why did you figure that?
6 A. He got enjoyment out of hurting us.
7 Q. What do you base that on?
8 A. The way he would talk to us.
9 Q. Did he ever say something spiteful about the
10 property, the ocean property, that made you feel that
11 selling it instead of giving it to you was out of spite?
12 A. I think he was hurt. He was getting older. He
13 couldn't quite go down there any longer, and he hated the
14 fact knowing that other people were getting enjoyment, not
15 him.
16 Q. So at one point in time, he used the property, and
17 he enjoyed it?
18 A. Yes.
19 Q. And he got older and became more physically
20 restricted?
21 A. Yes.
22 Q. And wasn't using the property and eventually
23 decided to sell it?
24 A. Yes.
25 Q. What about the verbal arguments that your father

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1 described regarding cars? Why would they have any
2 discussions regarding cars owned by your grandfather?
3 A. For example, after my grandma died, Clarence
4 bought I believe three very expensive cars, and my dad was
5 concerned about him getting ripped off at dealers seeing
6 this old man come in.
7 For one example, he bought an SSR Chevrolet truck
8 new, decided he didn't like it and returned it to the dealer
9 months later and took a huge hit moneywise for returning it.
10 I want to say from my dad telling me, it was around \$20,000,
11 and my dad thought the dealership was taking advantage of
12 Clarence.
13 Q. So was that a trade-in, or did he just return it?
14 A. Return.
15 Q. So he sold it back to the dealer?
16 A. I believe so.
17 Q. So was there another circumstance that your father
18 described to you other than that? I guess there would be
19 two other expensive cars, and that was a concern to your
20 father?
21 A. I mean everybody's capable of buying cars, but
22 just -- he bought a Hummer and then I believe the SSR, and
23 then not too much longer afterwards, he bought a Dodge
24 expensive car, Charger or -- I'm not too familiar with
25 Dodges.

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1 Q. Okay. In Exhibit 4 that is in front of you, you
2 indicated that there were various acts at your
3 father's residence -- violent -- excuse me -- various
4 violent acts at your father's residence. Is there anything
5 other than what you've already described today?
6 A. The stuff that I have described today and the
7 verbal arguments that happened at my dad's house.
8 Q. So the -- I didn't recall any physical violence
9 that you described at his house. The violence that you
10 described for me that your father told you about on one
11 occasion was actually at his house. What violent event are
12 you describing that occurred at your father's house?
13 A. Well, there was physical violence on the day I was
14 not there, him pushing my dad.
15 Q. Oh, was that when Sunny -- are we talking about
16 the event with Sunny and your sister and your dad?
17 A. Yes.
18 Q. So that one event, and that was actually at his
19 house?
20 A. Yes.
21 Q. Okay.
22 A. And my best friend lives nextdoor to my dad, and
23 they witnessed Clarence and my dad arguing in the front
24 yard. They would peek out their garage to make sure my
25 dad's okay.

36 (Pages 138 to 141)

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APP0228

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1 Q. And your best friend's name?
 2 A. Aubrey Hull.
 3 Q. And is she a high school friend?
 4 A. I've known her since I was three.
 5 Q. And did you say her and her husband observed this
 6 altercation that you just described?
 7 A. Yes.
 8 Q. And were you actually describing the event that
 9 you were talking to me about that you heard secondhand from
 10 either Sunny and your sister, or were there other events
 11 that you were alluding to? Do you understand the question?
 12 A. Besides the arguments, the event that happened
 13 with Sunny and my sister.
 14 Q. That's the one physical event at your dad's house
 15 that you're aware of?
 16 A. Yes.
 17 Q. And Aubrey and her husband observed that?
 18 A. They did not observe that one. They observed
 19 arguments outside of my dad's house.
 20 Q. Okay. So Aubrey and her husband observed
 21 arguments, but nothing violent or physical?
 22 A. I don't believe so.
 23 Q. What is Aubrey's husband's name?
 24 A. Dan.
 25 Q. Dan Paul?

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1 A. Hull, H-U-L-L.
 2 Q. Dan -- H -- Hull. Thank you. Did you ever allow
 3 your -- strike that. I might have asked you this in a
 4 roundabout way, but did your grandfather ever have
 5 one-on-one time with your children?
 6 A. Clarence?
 7 Q. Yes.
 8 A. No.
 9 Q. Okay. And you wouldn't have allowed that, right?
 10 A. No.
 11 Q. What were you aware of as far as your
 12 grandfather's health condition in the months before your
 13 dad's death? Did you have any knowledge about his health
 14 condition?
 15 A. I was aware that he had Alzheimer's and dementia.
 16 He came over to my house years prior and gave me this
 17 prescription notepad from his doctor, Mansonour I believe,
 18 saying he was of sane mind and wanted -- it was very
 19 important to him to give me that to know that his doctor
 20 said that about him.
 21 Q. You said that was years, years ago?
 22 A. Yes.
 23 Q. Okay. What time frame are you talking about? Was
 24 it before your mom died?
 25 A. Yes.

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1 Q. And your grandfather just came over out of the
 2 blue and gave you something written by his doctor?
 3 A. Yes.
 4 Q. And it said something along the lines he's of
 5 sound mind?
 6 A. Yes.
 7 Q. Did he tell you why it was so important that you
 8 get that?
 9 A. Something along the lines that my dad was trying
 10 to prove that he's not, but he is.
 11 Q. Okay. When you say Alzheimer's and dementia --
 12 and I know that can mean a lot of things to a lot of
 13 different people, and it's affected many families -- what
 14 did you observe that would support this basis for
 15 Alzheimer's and dementia? I know you said repetitive
 16 language, but would he not remember who he is or not
 17 remember you?
 18 A. Basically I've witnessed memory. He had told me
 19 several times when he would stop at my house he couldn't
 20 remember where Kristy lived. She had told him, but he
 21 couldn't remember.
 22 Q. Okay. And he would actually be driving to your
 23 house?
 24 A. Yeah, memory, and he would tell me he would have a
 25 hard time finding my house because of memory.

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1 Q. Okay. But I think you said earlier that he always
 2 ended up finding your house?
 3 A. He did.
 4 Q. And was he ever a kind of individual that you knew
 5 of him being -- wandering off and not knowing where he was,
 6 and people would find him?
 7 A. No.
 8 Q. Was there anything like that?
 9 A. No.
 10 Q. So would he be the one that would actually tell
 11 you that he had trouble with his memory? Did other people
 12 tell you, or is this based on observation?
 13 A. He would tell me.
 14 Q. So would it be long-term memory that he said, or
 15 it would be just like, I don't know where I'm going? I don't
 16 remember where you live? I don't remember your kids' names?
 17 Could you be more specific?
 18 A. He had trouble remembering my youngest son's name
 19 and the younger kids. It seemed like the oldest, Lane, my
 20 son, and my sister's daughter, oldest, Kaitlyn; he could
 21 remember those two, but not the others. He had a hard time
 22 remembering their names.
 23 Q. Okay. And that time when he came over to your
 24 house and you described him being much more involved in your
 25 older son, did you attribute that to the fact that he didn't

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1 really remember your younger son, or did you think that was
2 just ill will towards your younger son?
3 A. I took that as he couldn't quite remember.
4 Q. Okay. I want to go over a few of your
5 interrogatory answers. Have you had any -- obviously the
6 loss of a father is a significant loss, and I apologize for
7 your loss. Have you had to get any kind of counseling or to
8 address your loss somehow, meet with anybody, any healthcare
9 providers?
10 A. I have been to the doctor. I probably could use
11 counseling, but I do not have the support baby-sitterwise to
12 do that. It's hard for me to make a medical appointment. I
13 only usually have family watch my kids, and I'm very limited
14 now.
15 Q. Why is that?
16 A. That's who I choose.
17 Q. Okay. So you personally have chosen -- and it
18 sounds like not just as of late, but it's been a lifestyle
19 choice that you've made that you only allow family members
20 to baby-sit your two sons?
21 A. Yes.
22 Q. And do you have a good support system of family
23 members to do that?
24 A. I was always close to my parents. They did it,
25 and my in-laws, yes.

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1 Q. Okay. So I'm assuming that maybe your husband's
2 mom and dad live in the area?
3 A. They do.
4 Q. Okay. So you'll allow your -- the grandparents of
5 your -- well, I guess it would be the grandparents of your
6 children, but the parents of your father to watch your kids?
7 A. Right.
8 Q. And then you were close to your mom and dad?
9 A. Yes.
10 Q. Would your dad -- would you have him come over and
11 babysit the kids a lot?
12 A. Sometimes I did actually. After my mom passed
13 away, there's been a few times I had -- he got my son off
14 the bus. He watched them while I went to the grocery store,
15 yes.
16 Q. Okay. Do you have -- in going through your
17 father's personal affects -- and maybe I should just ask
18 you. Have you had the strength to go through your father's
19 personal effects excluding the financial information that
20 you've already been able to cull through?
21 A. Yes.
22 Q. Did you come across photographs of your family and
23 other mementoes?
24 A. Everything in their house.
25 Q. Okay. Could you give me a sampling of the kind of

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1 things that would show the closeness of either you and your
2 father or your family as a whole?
3 A. There's a grandkids photo album in my parents'
4 house just of the grandkids.
5 Q. Okay.
6 A. Down the hallway there's a collage picture frame
7 my mom did of -- one set was my sister. One set was me, in
8 the hallway.
9 Q. So that was -- was that your school pictures over
10 the years?
11 A. Yes. Mainly our senior pictures, but yes.
12 Q. Okay. So a photo album of all the grandkids and
13 then your kind of collage pictures, one for each of the
14 girls it sounds like?
15 A. Yes. And then there was a picture of my mom and
16 my dad together as you walk into the kitchen. My dad didn't
17 take that down after my mom died.
18 Q. Okay. When was the last time you had a family
19 picture with your dad in it?
20 A. It probably wouldn't be formally. It would have
21 been at a house, an event, holiday.
22 Q. Okay. The Father's Day before your dad's passing,
23 do you have any photographs of that event?
24 A. I'm not positive if I got the camera out that day.
25 Actually, looking through photo albums recently for my

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1 husband's grandma's funeral, there were plenty of my dad at
2 birthday parties in there.
3 Q. And would that be birthday parties of the boys?
4 A. Yes.
5 Q. And are they in your possession, or were they in
6 your dad's possession or both?
7 A. Well, mine. I mean my dad had a whole collage on
8 his entertainment center of him holding the grandkids.
9 Q. Okay. So all the -- all four of the grandkids?
10 A. Yes.
11 Q. Okay. So the -- did you ever have like a formal
12 family photo done?
13 A. Young.
14 Q. That included your dad?
15 A. Yes.
16 Q. And when would have been the last time that you
17 would have had a formal photo?
18 A. Me and my sister got some done of just me and her
19 to give my parents of recent years. It was just her and I.
20 Q. Would that have been before your mom passed?
21 A. No.
22 Q. So after --
23 A. Yes, before my mom passed, yes.
24 Q. Okay. And tell me a little bit about the
25 photographs that you might have or we might be able to look

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<p>1 at that show you and your dad together. Just either set up 2 what you were doing, what you remember about the events. I 3 want to get a sense of what kind of photographs you have. 4 A. I have plenty of photographs, but what strikes me 5 most photographwise is, we did picture boards for his 6 memorial service. I think there was three full picture 7 boards of pictures over the years of all of us. 8 Q. I'm sorry. Three full boards? 9 A. Three full picture boards. 10 Q. Okay. Probably bigger than the posters, photos on 11 the -- (indicating.) 12 A. Bigger than those pictures. 13 Q. Okay. Would that have been all of the family or 14 just you and your sister? 15 A. My and my sister growing up, my mom and dad 16 holding the grandkids, my dad holding the grandkids, 17 everything throughout the years. 18 Q. And did you keep those picture boards? 19 A. We took pictures of them at the memorial service. 20 We recently -- not recently, but took them apart to put back 21 in our photos. 22 Q. Okay. So if they were your sister's, they went 23 back to her, and if they were yours, they went back to you? 24 A. Yes. 25 Q. Did the photo compilation come either from</p>	<p>1 while working at Bethel School District and throughout his 2 life. 3 Q. All right. (indicating.) We'll get you some more 4 water. As a daughter, that was somewhat comforting, wasn't 5 it? 6 A. I have no regrets with my family growing up, life. 7 It was, yes, very comforting. 8 Q. Okay. And were you a family that also did kind of 9 home movies or videos over the years? Did you have some of 10 those that you had an opportunity to look at? 11 A. I did do home -- my parents never did home movies. 12 I have done home movies of my children. 13 Q. Okay. Do your home movies include your father? 14 A. At holiday or birthday events, yes, or actually, 15 my kids are out back riding their quads, and my dad's over 16 watching my kids riding their quads. 17 Q. Okay. And those are the kind of motorcycle with 18 four wheels? 19 A. Yeah. 20 Q. Okay. So holiday, birthdays and observing and 21 interacting with your sons? 22 A. Yes. 23 Q. And have you looked at those at all since your 24 dad's passing? 25 A. Yes.</p>
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<p>1 photographs from you or your sister, or was there another 2 source as well? 3 A. Pretty much me and my sister and my mom and dad's 4 photographs. 5 Q. Okay. So what have become of your mom and dad's 6 photos? Are they still at the house? 7 A. No. They're either at my sister's house or mine. 8 Q. Okay. And the picture boards, you still have 9 photographs of those three picture boards from the memorial 10 service? 11 A. I believe so. I believe we took pictures of that. 12 Q. Okay. 13 A. We tried to take pictures of everything because it 14 was an extraordinary service. 15 Q. Do you mean extraordinary in a supportive way 16 towards your dad? 17 A. The amount of people that were there was amazing. 18 Q. Where was it held? 19 A. The Tacoma Sportsmen's Club. 20 Q. Was it -- 21 A. We had to have it in a bigger facility because we 22 knew there would be huge turnout. 23 Q. Was that because of all of the friends that your 24 dad had? 25 A. Yes, and all of the relations he has established</p>	<p>1 Q. Okay. And are they -- what form are they in? Are 2 they all grouped together or just kind of a collection that 3 you maintain at your personal residence? 4 A. The videos? 5 Q. Yes. 6 A. The older videos of when the kids are babies are 7 in a firesafe box, so I guess in a firesafe box at my house, 8 at my residence. 9 Q. But is it like a VHS camera? Are they -- what 10 form are they in? 11 A. It's ten years old. It takes the smaller tapes. 12 It's not quite VHS, but 4 millimeter I believe. 13 Q. I'm sorry? 14 A. 4 millimeter I believe. 15 Q. When was the last time you have any video 16 depictions with your father? Would that have been ten years 17 ago or more currently? 18 A. Currently when he was over watching the boys ride 19 their quads. 20 Q. Okay. So would it have been after your mom died 21 do you think? 22 A. Yes. 23 Q. Anything other than -- as far as involving video 24 clips of your dad, other than that, watching your sons on 25 their quads? Were there any holiday events that depict him</p>

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1 with your family?
2 A. Yes, birthdays.
3 Q. Okay. So you mentioned that you would like to go
4 see a counselor, but you haven't because you've made a
5 personal choice to only have family members take care of
6 your children. Did I misunderstand that?
7 A. That's correct. I need to, but I have a hard time
8 letting other people watch my kids.
9 Q. Okay. So have you made an effort to do that, or
10 is it just a personal desire right now that you feel like
11 you could benefit or you would like to?
12 A. Recently I was diagnosed with pretty severe
13 headaches and tension in my upper back and neck, and she
14 referred me to massage therapy. And I knew it would be hard
15 getting to appointments, but I have made very -- I have made
16 myself get there.
17 Q. And how frequently do you go to massage therapy?
18 A. She recommended once to two weeks at first, and I
19 did do that, and now I'm on a once-a-week basis, and once a
20 week I -- it's hard even doing that, yeah, but once a week.
21 Q. Okay. And before you went once a week, you were
22 going two times a week?
23 A. One to two.
24 Q. Okay.
25

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1 VIDEOGRAPHER: Excuse me. I don't mean to
2 interrupt. We have five minutes on this tape.
3 MS. MCGAUGHEY: Okay. Thank you.
4 Q. Who diagnosed you with the headaches that led to
5 the referral to massage therapy?
6 A. Dr. Hegde.
7 Q. Could you spell the last name?
8 A. H-E-G-D-E.
9 Q. H-E-G-D-E?
10 A. Yes.
11 Q. Hegde?
12 A. Hegde.
13 Q. Is that your personal doctor?
14 A. Yes.
15 Q. Have you been on any medication since your father
16 died?
17 A. In addition to my fluoxetine --
18 Q. Your what?
19 A. Fluoxetine, fluoxetine.
20 Q. What's that?
21 A. It's for depression.
22 Q. So you were on an antidepressant before your dad
23 died?
24 A. Yeah. I needed help when my mom passed away.
25 Q. So did you start taking an antidepressant after

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1 you lost your mother?
2 A. I think I was on it before.
3 Q. Why?
4 A. I've battled with it. Why?
5 Q. I was just wondering -- you were on it before. I
6 was wondering why, yes.
7 A. To help me. I realized that I needed some help.
8 Q. So you felt like you had depressive symptoms
9 before your mother died?
10 A. Yes.
11 Q. Was it in conjunction though with her diagnosis of
12 her illness, or was it even before that?
13 A. I've been on and off it after -- definitely after
14 high school.
15 Q. And when you say on and off it, what would trigger
16 you to go off it and then go back on?
17 A. Well, I would like to not be taking medication, so
18 I believe I chose to go off it when I did and then felt like
19 I couldn't quite handle life and knew I needed some help, so
20 I would get back on it, or I would make a doctor's
21 appointment, and she would advise me to do that.
22 Q. Would that be Dr. Hegde?
23 A. I switched -- Dr. Dawson, but now I go to
24 Dr. Hegde.
25 Q. So previously the doctor that provided

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1 antidepressant medication to you after high school was
2 Dr. Dawson?
3 A. I believe so.
4 Q. And is that a family clinic that you can identify
5 by name?
6 A. Multicare Family Clinic.
7 Q. In Puyallup.
8 A. Lakewood. Dawson?
9 Q. Pardon?
10 A. Dawson you're referring to?
11 Q. Yes.
12 A. Yeah, Lakewood.
13 Q. Multicare in Lakewood. Was there a period of time
14 that you remember from high school that you went for a
15 significant period of time without being on antidepressants?
16 A. Yes.
17 Q. What period of time would that be?
18 A. I would say around the time after -- maybe before
19 I got married, and I know there was a good period of five to
20 seven years I was not on anything.
21 Q. Okay. What about in conjunction with your
22 children? Are you an individual that ever had postpartum
23 depression?
24 A. No.
25 Q. Okay. So the depression, how would it manifest

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1 itself for you? Would you have sleep problems? appetite
2 problems?
3 A. Trouble focusing, concentrating, lack of
4 motivation, anxiety, blood rushing through my veins I felt.
5 Q. Who would be the one that would be -- medical
6 provider that would be most familiar with your depression in
7 the course of the depression over the years?
8 A. I've seen Dr. Hegde since 06. I mean right after
9 my mom died, I chose not to go back to the same doctor that
10 treated her.
11 Q. Was Dr. Dawson the doctor that had treated your
12 mother?
13 A. Yes.
14 Q. Okay. So a family doctor to all of your family or
15 at least you and your mother? Dr. Dawson was at least a
16 doctor that provided treatment to you and your mother?
17 A. Yes. I went there because my mom went there.
18 Q. Okay. So Dr. Dawson, would he be the only other
19 doctor that prescribed antidepressants to you?
20 A. There was a time when my husband and I were dating
21 and we broke up, and I took it really, really hard, and I
22 did go to a medical in Spanaway by my house. I believe they
23 did.
24 Q. So it sounds as if it was just an isolated course
25 of treatment before you were married over ten years ago?

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1 A. That was the only?
2 Q. No. I mean it sounds like you didn't have a long
3 course of treatment with this unidentified facility.
4 A. Oh.
5 Q. You maybe went only one or two times, and it was
6 over ten years ago?
7 A. I did, yes.
8 Q. Okay.
9 A. Yes.
10 VIDEOGRAPHER: Excuse me. I'm sorry to interrupt.
11 MS. MCGAUGHEY: No, that's fine.
12 VIDEOGRAPHER: We need to break. The time is
13 1:40 p.m. This concludes Tape Number Two in today's
14 deposition of Kelley Cavar.
15 (Brief recess was taken.)
16 (Mr. Smith entered the deposition at this time.)
17 VIDEOGRAPHER: The time is 1:57 p.m. This begins
18 Tape Number Three in today's deposition of Kelley Cavar. Go
19 ahead.
20 MS. MCGAUGHEY: Thank you.
21 Q. (By Ms. McGaughey) Kelley, can you recall the
22 name of the counselor that you treated with and/or provided
23 antidepressants in Spanaway or the name of the facility?
24 A. No. I know the location, but I cannot remember.
25 This may be a -- Cynthia Desmond comes to mind. She's a

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1 nurse practitioner.
2 Q. Have you ever received counseling for your
3 depression?
4 A. No.
5 Q. So in the years that you've suffered with it since
6 high school, you've never sought out any counseling?
7 A. No.
8 Q. And I guess perhaps when you've treated with your
9 medical care providers and they've provided you with
10 antidepressants, was part of their course of treatment
11 providing you with any counseling?
12 A. It might have been recommended to me. I possibly
13 vaguely remember something like that, but I'm not sure if I
14 felt it was that necessary.
15 Q. Who was it that would have recommended or do you
16 believe may have recommended to you that you seek the help
17 or assistance of a counselor to deal with your depression?
18 A. Probably the first one, Cynthia Desmond. I was
19 really, really in love with my husband, and we broke up.
20 Q. Okay.
21 A. I just took it very hard.
22 Q. All right. So neither Dr. Dawson or Dr. Hedge do
23 you remember recommending counseling?
24 A. I don't believe so.
25 Q. You have indicated that you actually have treated

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1 with Dr. Hedge since 2006. Have you been on antidepressants
2 after 2006? So if we look at the time frame from 2006 to
3 2008, could you tell me whether or not you were on
4 antidepressants during that time?
5 A. Yes.
6 Q. Okay. And how would -- I asked you a little bit
7 about generally describing how your symptoms would manifest
8 themselves. If you look in just like 2006, 2007, what kind
9 of symptoms were you having that caused you to be taking the
10 antidepressant?
11 A. I believe I was on them. I went to the doctor --
12 after my mom passed away was late 2005, and she did double
13 my dose, and did take that for maybe a good six months, and
14 I found it was -- I was having a side effect from it, I
15 think mild headaches, and I said I didn't get that with the
16 less dose. So then I went back down to the lesser.
17 Q. Same medicine?
18 A. Yes.
19 Q. And was that the one that you just described for
20 me earlier?
21 A. Fluoxetine. It's a generic for Prozac.
22 Q. Okay. Is that what you're on today?
23 A. Yes.
24 Q. Is your dosage the lower dosage that you reduced
25 it back down to?

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1 A. Yes, I feel that's what works well for me.
 2 Q. What is the dosage? Do you know?
 3 A. I want to say 10 milligrams.
 4 Q. Per day?
 5 A. Yes.
 6 Q. Do you take it once a day?
 7 A. Once a day.
 8 Q. Is it at night or in the morning?
 9 A. I take it in the morning.
 10 Q. So after your mother died, the increase of your
 11 antidepressant that you were on was increased, and then it
 12 was reduced about six months later. Were you taking it
 13 consistently at that lower dosage until what point in time?
 14 A. Present.
 15 Q. Until present. So it's never changed even after
 16 your dad died?
 17 A. No. I had to add an antianxiety to it, especially
 18 after he died.
 19 Q. Okay. What is that medicine called?
 20 A. I want to say Xanax.
 21 Q. How long have you been taking that?
 22 A. My aunt called and got me the prescription the day
 23 after my dad died because I was hysterical, and she thought
 24 I needed some sleep, and it's been on and off since then,
 25 and just recently I got another refill.

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1 Q. So is that Aunt Sunny?
 2 A. No, Aunt Jill.
 3 Q. Aunt Jill?
 4 A. (Witness indicates in the affirmative.) Yes.
 5 Q. So was the first prescription not in your name,
 6 and then you went to your doctor and got a prescription?
 7 A. No, she called it -- she called my doctor and
 8 explained the situation and got it for me.
 9 Q. I understand now. And that would be Dr. Hedge?
 10 A. Hegde.
 11 Q. Hegde?
 12 A. Yeah.
 13 Q. So you're on -- this would be the second -- well,
 14 have you had any refills, or is this just the second refill?
 15 A. I had one refill after the first one, and then
 16 recently I just got another one.
 17 Q. Prior to your dad's death, how was your depression
 18 symptoms? Was it -- how was it manifesting itself, if at
 19 all?
 20 A. I didn't notice any depression symptoms. I was on
 21 medication. I was treating myself. I didn't notice
 22 depression.
 23 Q. Okay. So when you went through the grieving
 24 process with your mother, was there a period of time where
 25 after your mother died that you felt that the pain wasn't so

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1 horrible that you could get through the day better?
 2 A. Yes. My pain was bad after my mother died.
 3 Q. And then when did you start feeling a little bit
 4 on the mend, so to speak?
 5 A. After a year.
 6 Q. So did you feel like the -- kind of the intense
 7 grieving process for you took about a year after your mother
 8 died?
 9 A. Yes.
 10 Q. And are your mother and dad buried together?
 11 A. Yes.
 12 Q. And as far as your depressive symptoms, prior to
 13 your dad's death, was loss of sleep something that
 14 manifested itself for you?
 15 A. No.
 16 Q. So that would be kind of something new that you've
 17 experienced since he died, right?
 18 A. Yes.
 19 Q. What would be some of the symptoms like if I would
 20 just ask you to describe -- because you've candidly admitted
 21 that you've suffered from depression since -- on and off
 22 since high school. You've gone through obviously the loss
 23 of your mother and now the loss of your father.
 24 How are your symptoms different compared to the
 25 loss of your father versus the loss of your mother? And

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1 when I talk about symptoms, I'm talking about, Oh, I can't
 2 sleep. I can't eat. You know, like you said, anxiety.
 3 Could you be as descriptive as possible?
 4 A. It's very different with my dad. I'm still
 5 suffering every day. Every night when I go to sleep I
 6 relive the event in my head.
 7 Q. Do you think it's the violent nature of his
 8 passing?
 9 A. The violent tragic nature, yes.
 10 Q. Okay. And sleep is obviously something that has
 11 plagued you or the ability to sleep?
 12 A. When I first lie down. I've had to rearrange my
 13 bedroom, take the phone out of my room, to get a different
 14 atmosphere.
 15 Q. And the phone, does that -- is that because -- did
 16 you first learn about your dad's death by phone?
 17 A. Yes.
 18 Q. And it was late at night?
 19 A. Around 2:00 in the morning.
 20 Q. So it probably woke you from a sound sleep?
 21 A. Yes. I was the one who answered the phone. It
 22 was right next to my bed.
 23 Q. And who called you?
 24 A. Deputy Ben Benson.
 25 Q. Okay. And what did he tell you?

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1 A. He had asked if there was bad blood between
2 Clarence and my dad, and I said yes, and he said that my --
3 there's been a shooting and that my dad did not make it.
4 Q. What was your immediate reaction?
5 A. I couldn't breathe.
6 Q. And your husband was with you, right?
7 A. Yeah. My husband went and picked up the other
8 phone wanting to know what was going on, and he was on the
9 line too when Ben was giving me a little bit more detail.
10 Q. And what kind of detail did he provide? Was he
11 being sensitive to you in providing you lack of detail or
12 was he just giving you generalities when you said he was
13 providing you detail?
14 A. He was being sensitive. He told me there was an
15 argument at Clarence's property and that my dad was shot to
16 death.
17 Q. Did he tell you whether or not he died instantly?
18 A. He didn't tell me that. He just told me my dad
19 did not make it.
20 Q. Okay. And let me know during this part if you
21 need to take a break at any time, okay?
22 A. I'm okay.
23 Q. When was the last time you had talked to your dad
24 before you received that phone call at two o'clock in the
25 morning?

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1 A. I know he left a message on my cell phone that
2 Friday before, and the weekend before he was at my house for
3 Father's Day, and I'm unsure if we talked during the week.
4 I don't think we did other than the message he left on my
5 cell phone.
6 Q. So Father's Day was on June 15th that year, so you
7 remember -- and you've already described for me Father's Day
8 that year, but you do remember the Friday before his death
9 he left a message of some kind on your cell phone?
10 A. Yes.
11 Q. And what was the nature of that?
12 A. He asked if he was -- we were going to the races
13 because he wanted to come watch Lane race.
14 Q. And when was Lane's race scheduled for?
15 A. Friday night.
16 Q. The Friday night he left the message?
17 A. Yeah. I was at the track. I didn't get the
18 message. I was at the track.
19 Q. So he didn't make it to the race?
20 A. No. I didn't get to talk to him because I
21 received that message later that night.
22 Q. And did you have any conversations with him after
23 that voice mail message?
24 A. No.
25 Q. So would -- the last time then you actually saw

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1 him would have been Father's Day?
2 A. Yes.
3 Q. So you had no personal knowledge then of why he
4 was going to your grandfather's house at that time of night,
5 do you?
6 A. No. That was out of the ordinary.
7 Q. And he had never indicated to you that because --
8 well, I think it answers itself. He didn't call or advise
9 you, nor did you see any reason why he would have been going
10 over to your grandfather's house?
11 A. No.
12 Q. Did you see in any of his -- and I think you've
13 indicated that in the phone records you've observed, you
14 didn't see any evidence of phone calls that he made that day
15 or in the time frame leading up to going to your
16 grandfather's house. Is that correct?
17 A. When we went over to my dad's house shortly after
18 we listened to his phone messages, and there was a message
19 from Clarence earlier that day stating he wanted his hood
20 ornament back.
21 Q. Okay. So this was after you had been called, and
22 you went to your dad's house, and he has a voice mail
23 answering machine that you can access?
24 A. Yes.
25 Q. And there was a message, and you could identify

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1 that it was actually the day of your dad's death?
2 A. Yes.
3 Q. And what do you remember about that message? Was
4 it -- time of day? Anything other than he'd like -- What
5 did you say? -- his hood ornament back?
6 A. Yes. I think it was around 2:00 p.m. he had
7 called.
8 Q. Okay. Any other phone mail messages from your
9 grandfather on your dad's voice messaging system at home
10 when you got to his house?
11 A. No.
12 Q. I'm assuming that that's on his land line. Is
13 that correct?
14 A. Well, he -- it wasn't voice mail. It was an
15 answering machine.
16 Q. So physical answering machine?
17 A. Yes.
18 Q. That you can actually see and press the button as
19 compared to getting your voice mails off of a phone?
20 A. Right.
21 Q. Okay. And that phone number that it was connected
22 up to was his home phone number it sounds like?
23 A. Yes.
24 Q. Okay. Did you see anything else when you went to
25 your dad's house that first day that suggested that he'd

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1 been in close communication with your grandfather?
2 A. No.
3 Q. Did you see any other evidence of communications
4 between your father and your grandfather when you've gone
5 through his person possessions at later points in time?
6 A. Any what?
7 Q. Any other tangible pieces of evidence or documents
8 that would suggest that they had any communication in any
9 close time proximity to the shooting?
10 A. No.
11 Q. Okay. Going back then to the -- some of the
12 symptoms that you've experienced, the anxiety, did you get
13 on -- or I know your aunt got your antianxiety medicine
14 right away. Has that been consistently needed to be used by
15 you since your dad's death?
16 A. I take it as needed.
17 Q. Okay. And what kind of things -- is there any
18 kind of triggering thing that causes you to have more
19 increased anxiety? Do you understand that question?
20 A. Yeah.
21 Q. Kind of like either events, or, you know, maybe
22 Father's Day this year was particularly hard?
23 A. Yeah, family events are very difficult because his
24 presence is not there, and it's hard to celebrate a family
25 function knowing that he's not there.

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1 Q. And obviously you were -- I can't even articulate
2 the words, but your reaction to the passing of your father,
3 you obviously were upset, and you were crying. Have your
4 ability to get through the day without crying gone down at
5 all?
6 A. I think about it every day.
7 Q. Do you think about it frequently through the day?
8 A. Throughout the day, mainly at night.
9 Q. Okay. And at night, is that why the sleep -- you
10 know, sleep disruption is something that you suffer from?
11 A. Yes.
12 Q. Okay. And I think to be pretty -- let's be pretty
13 clear. As it relates to sleep disorder, is it true that
14 you've never had any sleep disturbances before your dad's
15 death?
16 A. No, I haven't.
17 Q. Okay. What would be additional symptoms? For
18 example, the headaches that you were recently diagnosed
19 with, what does your doctor attribute the headaches to? Do
20 you know?
21 A. Tension.
22 Q. Tension?
23 A. She said I hold all of my tension in my neck.
24 Q. Okay. Are you able to get any exercise to help
25 release that or relieve that?

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1 A. Yes, I do exercise.
2 Q. What do you do for exercise?
3 A. I have a gym membership that I go to.
4 Q. And how frequently do you go?
5 A. Lately it hasn't been a lot, but before it was my
6 one sense of I do for myself, and it does -- it's a great
7 stress reliever.
8 Q. Uh-huh. So what as it relates to the treatment
9 recently with -- Dr. Hegde I think is her name --
10 A. Uh-huh.
11 Q. Other than the massage therapy, which apparently
12 you've been getting once a week, has she recommended any
13 other medication?
14 A. Muscle relaxers.
15 Q. Okay. So is that now in your prescription list?
16 A. Yes.
17 Q. And what is the muscle relaxant that you're
18 taking? Do you know?
19 A. Starts with a "C."
20 Q. Celexapro? I don't know if that's --
21 A. I do not know the name of it. It's a long name
22 that starts with a "C."
23 Q. Okay. How long have you been taking a muscle
24 relaxant?
25 A. At first when she prescribed it for me -- I

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1 believe I went to the doctor in April or May -- I was taking
2 it every night, and then it definitely started helping, and
3 now I'm on it as-needed basis.
4 Q. Okay. So same with the antianxiety medication, on
5 an as-needed basis?
6 A. Yes.
7 Q. When was the last time you took the Xanax, or it
8 may be a generic of Xanax, the antianxiety medication?
9 A. This morning.
10 Q. Because of the deposition?
11 A. Yes.
12 Q. Okay. When was the last time before this?
13 A. I believe it was when we had to see Clarence at
14 Western State.
15 Q. Okay. And when was that?
16 A. May.
17 Q. In May?
18 A. Yes.
19 Q. And what was that situation? Was that for a
20 hearing?
21 A. A hearing.
22 Q. Was that when he was being released out of Western
23 States?
24 A. Yes.
25 Q. Did you actually see him in the -- I guess the

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1 room where the hearing was being held?
 2 A. Yes.
 3 Q. And what observations did you make of him at that
 4 hearing?
 5 A. Very ornery as who I've witnessed growing up in my
 6 life.
 7 Q. Pardon?
 8 A. Very ornery as who I've witnessed growing up in my
 9 life, in better health than I have seen him particularly on
 10 that visit I stopped before the baseball game mentally and
 11 physically.
 12 Q. So your observations, your physical observations,
 13 of him in May at Western State seemed to be in your mind
 14 improved from when you stopped by his house before the
 15 baseball game?
 16 A. Yes.
 17 Q. Okay. And by physically, do you mean stature, how
 18 he looks or appears? What do you mean?
 19 A. Yeah, stature, how he walked. On our way out, we
 20 witnessed him walking down stairs very capably, putting on
 21 his own shirt, very capable.
 22 Q. What do you mean putting on his own shirt? He was
 23 getting dressed in front of you?
 24 A. When we were driving out, he was slipping
 25 something on clotheswise.

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1 Q. Was that actually some kind of a hearing, right?
 2 A. Yes.
 3 Q. And were you there to testify?
 4 A. Yes.
 5 Q. And you testified outside of his presence or in
 6 his presence?
 7 A. Outside.
 8 Q. Okay. Was it just one person at a time?
 9 A. Yes.
 10 Q. And you and your sister both testified separately?
 11 A. Yes.
 12 Q. And the testimony you provided, what was the
 13 nature of that?
 14 A. To tell the judge of our fear of letting him back
 15 into society.
 16 Q. Okay. So fear of letting him back in society.
 17 You mean from discharging him from Western State or out of
 18 state custody? Is that what you were referring to?
 19 A. Not in a supervised lock-down facility.
 20 Q. Okay. And did you have that fear before when he
 21 was incarcerated?
 22 A. No.
 23 Q. Fear of your safety?
 24 A. No.
 25 Q. So why would you have gotten a protective order if

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1 he was incarcerated?
 2 A. Because there was a possibility he could get out
 3 on bail.
 4 Q. So at the time that you obtained the order of
 5 protection, was that because you were fearful he was going
 6 to get out on bail?
 7 A. Yes.
 8 Q. Okay. And the ultimate -- were you given the
 9 decision of what the judge made when you were at Western
 10 States for purposes of the hearing?
 11 A. No.
 12 Q. Were you just providing a statement, or were
 13 people asking questions of you?
 14 A. Providing a statement.
 15 Q. Okay. And the nature -- without going into too
 16 much detail, was the nature of the statement that you
 17 provided then exclusively related to fear that you would
 18 have of him being unsupervised or in not a lock-down-type
 19 facility?
 20 MR. BARCUS: Object to the form of the question.
 21 A. Fear for me and other people as well.
 22 Q. Okay. How long did you testify for?
 23 A. Approximately five to seven minutes.
 24 Q. Okay. And he wasn't in the room, right?
 25 A. No.

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1 Q. So your observations of him were, he was in an
 2 adjoining room? I'm -- could you articulate that?
 3 A. He was in the hallway when we were in an adjacent
 4 room.
 5 Q. Did you ever walk by him or in close proximity of
 6 him?
 7 A. No.
 8 Q. So you never heard him say anything?
 9 A. Yes, we heard him talk.
 10 Q. How could you hear him talk if you weren't in the
 11 same room?
 12 A. Because the door was opened, and he was in the
 13 hallway right next to our room.
 14 Q. So you didn't have any interaction with him, but
 15 you heard him talking to somebody else?
 16 A. Yes.
 17 Q. And what was he saying?
 18 A. What I witnessed was, he said, You were making me
 19 horny, to I'm assuming his girlfriend, and, Everything would
 20 be okay if they would just give me a drink.
 21 Q. So you heard those two comments?
 22 A. Yes.
 23 Q. So did you have an opportunity to observe who he
 24 was speaking to?
 25 A. I knew by going to the bathroom that Dennis Cline

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1 and Barbara Griebe were sitting in the hallway on the
2 hallway bench.
3 Q. Did you have any words or communication with them?
4 A. No.
5 Q. So you didn't actually see who he was talking to,
6 but because you had seen her in the hallway, you assume he
7 was talking to her?
8 A. Yes.
9 Q. Okay. Have you had -- was that the -- was that
10 the closest that you've been to him since your dad died?
11 A. We have been in courtrooms where he has been there
12 and we have been present.
13 Q. Okay. So you described kind of the physical
14 stature. What did you mean by -- I think you said that he
15 seemed improved both physically -- I can't remember your
16 exact words, but was it mentally?
17 A. I think I said that.
18 Q. So what did you mean by that?
19 A. Mentally?
20 Q. Yes.
21 A. Oh, he was completing sentences, enjoying
22 conversation with the people in the hallway.
23 Q. So he seemed coherent and aware of his
24 environment?
25 A. Yes.

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1 Q. Okay. And it left you with the impression that he
2 had improved since the last time you had seen him?
3 A. Yes.
4 Q. Okay. Let me just finish. There were a few areas
5 I wanted to finish up with. Did you know or understand that
6 your grandfather had been in World War II?
7 A. Yes.
8 Q. Was that something he ever talked to you about?
9 A. No.
10 Q. Was that just awareness because your dad had told
11 you or because of personal family knowledge? How did you
12 gain that knowledge?
13 A. I believe he had talked about it. Plus, he had
14 World War II hats.
15 Q. Okay. So do you know what kind of role or
16 position he was in the war?
17 A. No.
18 Q. Did your dad ever talk to you about any
19 observations he had of his father before the war versus
20 after the war?
21 A. No.
22 Q. Since that fateful phone call at 2:00 a.m., tell
23 me how the loss of your father has impacted you.
24 A. The main thing is, I do not have a parent's
25 unconditional love, which I was used to in a close-knit

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1 family. I would always stop by to visit my parents. I was
2 never -- had -- obviously I have friends, but I chose to
3 spend my time with family rather than friends. I would pick
4 up the phone, or in visiting with my dad, if I had any
5 problem in my life, he would offer me the advice I needed to
6 get through it.
7 Q. Would you call your dad before you'd call your
8 sister if you were making a decision?
9 A. It depended on the situation.
10 Q. How did your relationship change -- did you grow
11 closer to your dad after your mother died?
12 A. Yes.
13 Q. So it took on kind of a new type of relationship
14 because he was your only remaining parent?
15 A. Yes.
16 Q. So instead of calling sometimes your mom for
17 advice or your dad for advice, you would obviously
18 exclusively call dad?
19 A. I would, yeah, talk to my dad about things, and he
20 would give me very good advice.
21 Q. Okay. So you respected obviously the advice that
22 he would give you?
23 A. Yes, I would, yes.
24 Q. And would it be fair to say you talked to him much
25 more frequently on the phone than you would see him?

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1 A. Yeah. I was worried about him at first, so I
2 would definitely call him to check on him to see how he was
3 doing or what he'd been up to, and he would stop by my house
4 just the same.
5 Q. So the loss of your dad, you said that you
6 obviously don't have a parent, somebody to talk to to get
7 the sound advice that you had received before his passing.
8 What would be some of the other things that you could
9 articulate?
10 A. I have a new life now that I have to get used to.
11 I rely a lot on my husband's parents. I feel like I have
12 not been the best mother to my kids because I've lost a lot,
13 and it just takes a lot out of me to even be a parent to my
14 children; but, on the other hand, I suppressed a lot of the
15 things because I feel like they should not have to see me
16 like this because they've been through so much themselves.
17 Q. Because of the loss of their grandfather?
18 A. Yes, and their grandma.
19 Q. And their grandma. So I'm getting the impression
20 around your kids you try to be stoic, but you're
21 experiencing a lot of pain inside at least when you're
22 around your kids?
23 A. Definitely. And I feel for my kids. My kids --
24 especially my oldest has a hard time. I have to comfort him
25 when he cries, when he misses his grandpa. And just life is

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1 challenged now because I don't have the support of my
2 family.
3 Q. Don't have the support of your dad, and you had
4 previously lost your mom?
5 A. Yes. I relied on my dad's support.
6 Q. Is your husband your biggest confidant and support
7 now?
8 A. Yes.
9 Q. Okay. Would he be the person that would be in the
10 best position to describe how the loss of your father has
11 affected you?
12 A. Yes.
13 Q. And perhaps maybe your sister as well?
14 A. To somewhat, yes.
15 Q. Okay. And I know I asked you this before, but
16 it's been, you know, just one short year just by a few days.
17 Is there any improvement now, or is it as intense as it was
18 a year ago?
19 A. I'm still suffering with the loss. I would hope
20 this one-year anniversary would make it easier, but we're
21 still dealing with a lot, and it's very hard to heal.
22 Q. What did you do on the anniversary of your
23 father's passing?
24 A. I stayed at home and did some yardwork, a little
25 bit, and then we were invited to a barbecue at my sister --

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1 at my sister-in-law's. Sorry.
2 Q. It's okay.
3 A. But I didn't go.
4 Q. Okay. Did the rest of your family stay home with
5 you, or did they go along without you?
6 A. I told them to go without me because I wanted to
7 be alone, and I went to my father's grave.
8 Q. Did you share any time with your sister?
9 A. No. My sister and I's relationship is strained
10 right now.
11 Q. I'm sorry to hear that. Has it only been strained
12 since the passing of your father?
13 A. Yes.
14 Q. Is that causing you some obvious distress as well?
15 A. Yes.
16 Q. What is the origin of the distress between you and
17 your sister? Do you know?
18 A. The decisions are not being made by just us. I
19 don't think that's right.
20 Q. The financial decisions?
21 A. Yeah, any decision.
22 Q. Oh, you mean like her husband's more involved than
23 you would want?
24 A. Yeah.
25 Q. And that's created strain obviously on your

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1 relationship, right?
2 A. Yes.
3 Q. Okay. And is it as of late that you felt like you
4 needed to get counseling?
5 A. I've felt like it all along because it was such a
6 horrific situation, especially seeing my dad's remains on
7 Clarence's driveway.
8 Q. So did you actually go to the house that night?
9 A. The next morning, because we just wanted to make
10 sure if this was real or not.
11 Q. Okay. So --
12 A. And it was real once we seen my dad's car there
13 and seen the driveway.
14 Q. So the car was still there, his body had been
15 removed, but you saw blood?
16 A. We seen flesh, blood clots, blood, water washing
17 it off.
18 Q. Okay. Do you have any plans to schedule any
19 counseling appointments in the near future?
20 A. I don't have plans.
21 Q. Did you know any -- notify any of your dad's
22 closest friends when you had been notified?
23 A. Yes.
24 Q. That he had died?
25 A. Yes.

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1 Q. Who were the five closest friends that you
2 contacted?
3 A. John Rohr.
4 Q. John Rohr?
5 A. (Witness indicates in the affirmative.)
6 Q. Do you know how to spell the last name?
7 A. R-O-H-R.
8 Q. Okay. Is he local?
9 A. Yes.
10 Q. Did your dad know him from work?
11 A. He did work with my dad, but they were friends
12 before he started working at Bethel.
13 Q. Okay. And did you call or reach out to John
14 that -- in the middle of the night, or did you wait until
15 the next morning?
16 A. John was a pretty important friend, so I believe I
17 did call him early in the morning.
18 Q. Okay.
19 A. I kind of designated for my aunt to do the
20 calling, but I did call my sister, my Aunt Sunny and my
21 Aunt Jill, and then the rest of the family did the calling
22 for us.
23 Q. So would -- the only friend that you actually
24 called for your dad would have been Mr. Rohr, or was that
25 done by somebody else?

47 (Pages 182 to 185)

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APP0239

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1 A. That was -- I did that, but I did call a few more
 2 friends maybe the next day or later that day.
 3 Q. Was Mr. Rohr your dad's best friend?
 4 A. Yes.
 5 Q. Who were the other closest friends you contacted
 6 the very next day?
 7 A. I just can't remember if I made the calls or my
 8 aunt did. I think my aunt said she was going to take care
 9 of it, but I know there was a couple out-of-town people that
 10 I did contact because they obviously could not hear the news
 11 being out of state.
 12 Q. So in addition to Mr. Rohr, who would be two or
 13 three of your dad's closest friends or confidants?
 14 A. Paul Rolstad, Gary Rolstad, which is my aunt's
 15 husband.
 16 Q. How do you spell Mr. Rolstad's last name?
 17 A. R-O-L-S-T-A-D.
 18 Q. And is Paul related to him? Did you say
 19 Paul Rolstad and Gary Rolstad?
 20 A. Yeah, they're brothers.
 21 Q. Oh, they're brothers. Okay.
 22 A. And then John really took it upon himself to let
 23 everybody else know. The next day Lee Betchart was at my
 24 dad's house, and John was the one who contacted him.
 25 Q. I'm sorry. What was Lee's last name?

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1 A. Betchart, B-E-T-C-H-A-R-T.
 2 Q. Okay. A-R-D-T?
 3 A. A-R-T.
 4 Q. T.
 5 MS. MCGAUGHEY: I'm going to adjourn the
 6 deposition for now. It's a good time to break. I'm
 7 adjourning it only in the sense that or to the extent that
 8 we were given the records -- I haven't even gone through
 9 them, but I think that they're primarily all financial
 10 records, aren't they, Ben?
 11 MR. BARCUS: Appear to be. You've got some I
 12 guess tax returns. You've got one record, which is a letter
 13 written by a grandson. You've got the award. Social
 14 security and L&I records is another section there and a
 15 large section of banking records.
 16 MS. MCGAUGHEY: Okay. So my intent would be to
 17 reconvene the deposition as it related to financial
 18 questions after I've had an opportunity to review the
 19 records if that's necessary. I wouldn't intend to go back
 20 over ground I've already covered.
 21 MR. BARCUS: Right.
 22 MR. REICH: Okay.
 23 MS. MCGAUGHEY: Thank you.
 24 VIDEOGRAPHER: The time is 2:35 p.m. This
 25 concludes today's deposition of Kelley Cavar.

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1 (Signature was reserved.)
 2 (Deposition was adjourned at 2:35 p.m.)
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1 AFFIDAVIT
 2
 3 STATE OF _____)
 4) Ss.
 5 COUNTY OF _____)
 6
 7 I have read my within deposition taken on
 8 June 23, 2009, and the same is true and correct, save and
 9 except for changes and/or corrections, if any, as indicated
 10 by me on the "CORRECTIONS" flyleaf page hereof.
 11
 12
 13
 14 SIGNATURE OF DEPONENT
 15
 16
 17
 18 SUBSCRIBED AND SWORN to before me this
 19 _____ day of _____
 20
 21
 22 NOTARY PUBLIC in and for the
 23 State of _____,
 24 residing at _____
 25 My commission expires _____.

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1 CERTIFICATE
2
3 STATE OF WASHINGTON -- COUNTY OF KING
4 I, the undersigned officer of the Court, under my
5 commission as a Notary Public in and for the State of
6 Washington, hereby certify that the foregoing deposition
7 upon oral examination of the witness named herein was taken
8 stenographically before me and thereafter transcribed under
9 my direction; that the witness before examination was first
10 duly sworn by me to testify truthfully; that the transcript
11 of the deposition is a full, true and correct transcript of
12 the testimony, including questions and answers and all
13 objections, motions, and exceptions of counsel made and
14 taken at the time of the foregoing examination; that I am
15 neither attorney for, nor a relative or employee of any of
16 the parties to the action; further, that I am not a relative
17 or employee of any attorney or counsel employed by the
18 parties hereto, nor financially interested in its outcome.
19 IN WITNESS WHEREOF, I have hereunto set my hand and
20 seal this 8th day of July 2009.
21
22
23 _____
24 NOTARY PUBLIC in and for the State
25 of Washington, residing at Seattle.
My commission expires 06/22/2010.

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APP0241

EXHIBIT E

SUPERIOR COURT OF WASHINGTON STATE FOR PIERCE COUNTY

KRISTY L. RICKEY and KELLEY)	
R. CAVAR, individually, and as)	
Co-Personal Representatives of)	
the Estate of Gerald Lee Munce,)	
Deceased,)	
)	
Plaintiffs,)	
)	
vs.	)	NO. 10-2-07470-3
)	
DENNIS CLINE and "JANE DOE" CLINE,)	
individually, and the marital)	
community comprised thereof,)	
)	
Defendants.)	

DEPOSITION UPON ORAL EXAMINATION OF KELLEY R. CAVAR

APPEARANCES:

For the Plaintiffs: BEN F. BARCUS
 PAUL A. LINDENMUTH
 THE LAW OFFICES OF BEN F. BARCUS
 & ASSOCIATES
 4303 Ruston Way
 Tacoma, Washington 98402

For the Defendants: GREGORY J. WALL
 WALL, LIEBERT & LUND
 1521 S.E. Piperberry Way, #102
 Port Orchard, Washington 98366

Also present: Kyle Burns
 Kristy Rickey
 Dennis Cline

Reported by Valerie Gerjets, CCR
 CCR #299-06 0002356

March 16, 2011
 Tacoma, Washington

VALERIE GERJETS, CCR
 253-473-7764

DEPOSITION OF KELLEY CAVAR (3-16-11)

Page 2	Page 4
<p>1 INDEX</p> <p>2 PAGE</p> <p>3 Witness:</p> <p>4 Kelley R. Cavar</p> <p>5 Examination (By Mr. Wall) 3</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 (No exhibits were marked for identification.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Q What's your home address?</p> <p>2 A 6818 164th Street East, Puyallup, Washington, 98375.</p> <p>3 (Mr. Lindenmuth enters.)</p> <p>4 Q What does your husband do for a living?</p> <p>5 A He's a truck driver.</p> <p>6 Q Since 2007, have you been employed outside the home?</p> <p>7 A Yes.</p> <p>8 Q What did you do?</p> <p>9 A I was a bookkeeper for a company called Data Security</p> <p>10 Corporation.</p> <p>11 Q When did you stop working for them?</p> <p>12 A Approximately one year ago. Maybe 11 months ago.</p> <p>13 Q So in 2010?</p> <p>14 A Yes.</p> <p>15 Q Since then you have been a stay-at-home mom?</p> <p>16 A Yes.</p> <p>17 Q And I think I already asked your sister that your dad's</p> <p>18 estate is still open. Do you remember how much you sold</p> <p>19 the house for?</p> <p>20 MR. BARCUS: Object to the form of the</p> <p>21 question: irrelevant.</p> <p>22 A I want to say \$189,500.</p> <p>23 Q (By Mr. Wall) And did you do that through a realtor?</p> <p>24 A Yes.</p> <p>25 Q When was the last time you saw your grandfather before</p>
Page 3	Page 5
<p>1 4303 Ruston Way, Tacoma, Washington</p> <p>2</p> <p>3 11:21 a.m.</p> <p>4 * * * * *</p> <p>5 KELLEY R. CAVAR, having been called as a witness</p> <p>6 on behalf of the defendants,</p> <p>7 being first duly sworn by the</p> <p>8 Notary, testified as follows:</p> <p>9 EXAMINATION</p> <p>10 BY MR. WALL:</p> <p>11 Q Pronounce your last name for me.</p> <p>12 A Cavar.</p> <p>13 Q Cavar. Not, Cavar. It's Cavar, like an "S." Could you</p> <p>14 state your full name, please?</p> <p>15 A Kelley Robin Cavar.</p> <p>16 Q And you're married?</p> <p>17 A Yes.</p> <p>18 Q What's your husband's name?</p> <p>19 A Mark.</p> <p>20 Q How many kids do you have?</p> <p>21 A Two boys.</p> <p>22 Q How old are they?</p> <p>23 A Seven and 12.</p> <p>24 Q Are you employed?</p> <p>25 A No.</p>	<p>1 this shooting occurred in 2008?</p> <p>2 A About one month prior to the shooting.</p> <p>3 Q And what was that occasion?</p> <p>4 A My oldest son had a baseball game at Bethel High School.</p> <p>5 We were early. We stopped by his house to kill time.</p> <p>6 Q And did anything happen of any significance while you</p> <p>7 were there?</p> <p>8 A Just a visit.</p> <p>9 Q Was it just you and your son?</p> <p>10 A My two sons.</p> <p>11 Q And was anybody else there? Was Barbara there or --</p> <p>12 A No.</p> <p>13 Q -- your dad or anybody?</p> <p>14 A No.</p> <p>15 Q So you just stopped by to see Grandpa basically?</p> <p>16 A Basically out of obligation. It was the right thing to</p> <p>17 do.</p> <p>18 Q How did he seem when you went to see him then?</p> <p>19 A He was repeating his questions to us, could not remember</p> <p>20 my youngest son's name.</p> <p>21 Q And before that, when was the last time you had seen</p> <p>22 him?</p> <p>23 A I believe he had stopped by my house maybe to drop by</p> <p>24 some gifts from the Dollar Store for my kids. I believe</p> <p>25 they were eagles.</p>

2 (Pages 2 to 5)

VALERIE GERJETS, CCR
253-473-7764

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Page 6

1 Q Do you remember when that was?
 2 A Six months to a year before. Maybe not quite a year.
 3 Six months to a couple months after that before the
 4 month prior to the shooting.
 5 Q So probably around the end of 2007 maybe? Christmas
 6 time, something like that?
 7 A I don't believe it was Christmas time, but I honestly
 8 can't remember.
 9 Q Did you regularly ever talk to him, like on the phone?
 10 A He would call me.
 11 Q And how often would he call you?
 12 A Once a month.
 13 Q And would it just be to chat?
 14 A To see how we were doing.
 15 Q And it sounds like you had more contact with him than
 16 your sister did.
 17 A I think so.
 18 Q In the year 2007 to about 2008 before this happened, had
 19 you noticed a change in his condition?
 20 A Yes.
 21 Q What had you noticed?
 22 A Repeating things, getting lost while trying to find my
 23 house, his skin bleeding, like paper-thin skin on his
 24 arms. I remember him -- I gave -- I think I applied a
 25 bandage to his arm at one point in time when he was at

Page 7

1 my house. Yeah.
 2 Q And as far as you mentioned that he was repeating
 3 himself, he would tell you something, and then a couple
 4 minutes later, he would tell you the same thing all over
 5 again, that kind of thing?
 6 A For example, in a conversation: "So how are you doing?"
 7 I would answer the question. Maybe three minutes later:
 8 "So how are you doing?"
 9 Q So kind of like on a repeating loop?
 10 A Yes.
 11 Q Had you noticed, was he having depression problems in
 12 that year, 2007 to 2008?
 13 A So I've heard. Lack of getting out of bed.
 14 Q Anything that you noticed?
 15 A That I noticed? I guess not out of the ordinary. Maybe
 16 he missed his wife.
 17 Q And did it seem like the problems remembering people and
 18 finding your house, was that something that was, you
 19 know, getting worse as time went by?
 20 A I believe he could find Kristy's house at one point in
 21 time, but it sounded like he verbalized to me: "I'd
 22 drive by there, and I can't seem to find it."
 23 Q So he was sort of wandering at that point?
 24 A I believe so.
 25 Q Did you form any opinions about whether his mental

Page 8

1 condition was deteriorating?
 2 A I thought so.
 3 Q How about before that in say 2006, 2007? Was he better
 4 then than he was say in 2008?
 5 A Sure.
 6 Q So this was kind of a progressive thing that you had
 7 noticed?
 8 A I would say it was progressive.
 9 Q You heard my whole spiel about firsthand knowledge as
 10 opposed to what someone told you. So do you have any
 11 firsthand knowledge of ever seeing Clarence being
 12 violent with anybody?
 13 A Other than the time at my house, that's the --
 14 Q Was that the time in April '06, or was that a different
 15 time?
 16 A I was not at the house on the anniversary when he came
 17 to my father's house.
 18 Q So the time your sister spoke to him when he came in and
 19 he was upset and was kind of yelling and screaming and
 20 pounding on the table, was that at your house? Was that
 21 the same incident we're talking about, or is it
 22 different?
 23 A There was an incident at my house.
 24 Q When was that?
 25 A Okay. I would say it was after the incident at my dad's

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1 house, the anniversary incident. Shall we call it that?
 2 Q That was April '06?
 3 A Yes. I would say it was after.
 4 Q And was it before he was in the hospital?
 5 A Yes.
 6 Q So we can kind of narrow it down to from April '06 to
 7 say May '07, in between there?
 8 A Okay.
 9 Q And tell me what happened.
 10 A He came over to my house. I was the only one home. He
 11 came in. He was welcomed in. We sat around my kitchen
 12 table, kind of was just "hello" at first.
 13 Then he started getting very angry about my dad and
 14 "He's a little fucking bastard," calling my dad names
 15 constantly. I did not appreciate it.
 16 And I said, "Do not talk about my dad that way. My
 17 dad has always only looked out for your best interest."
 18 He didn't really like to hear my answer, but that was my
 19 answer.
 20 Q Was he mad about anything in particular?
 21 A He was trying to stir up the girlfriend situation. "Your
 22 dad's seeing all these girls," like we didn't know,
 23 trying to piss us off. And I already knew about it.
 24 Q Your dad, was he dating more than one person?
 25 A He dated a few women.

DEPOSITION OF KELLEY CAVAR (3-16-11)

Page 10

1 Q Did your grandfather not like the women, or he just
 2 didn't like him dating women or what?
 3 A I have no idea.
 4 Q How often did you talk to your dad about your
 5 grandfather? First of all, did you see your dad every
 6 day?
 7 A I did not see my dad every day.
 8 Q How often do you think you saw him?
 9 A Once a week.
 10 Q Was it usually in person, or did you talk on the phone?
 11 A We would talk on the phone more than once a week, and he
 12 would either stop by my house or I would stop by his
 13 house.
 14 Q And did he ever complain about your grandfather?
 15 A Maybe his erratic behavior he was concerned with.
 16 Q Going back to what you had actually witnessed, other
 17 than that one time when he came to your house and he was
 18 complaining and was mad about your dad, any other
 19 violent incidents that you had ever seen personally?
 20 A No. That one time, I don't believe I said he was
 21 pounding his fist on his -- on my kitchen table, waving
 22 his arms toward me, didn't like my comments about "Don't
 23 talk about my dad that way" where I thought maybe he
 24 could come at me because I'm defending my dad.
 25 Obviously he didn't like to hear that.

Page 11

1 Q So he was kind of ranting and raving, it sounds like to
 2 me?
 3 A Yes.
 4 Q Did he calm down after a while?
 5 A No.
 6 Q He just left. And other than that, did he ever do
 7 anything that led you to believe that you were in any
 8 danger from him?
 9 A No. I didn't appreciate the fact when we went over to
 10 see him one month prior to the shooting, my kids were in
 11 the house with a gun behind the door.
 12 Q He had a gun standing up next to the door?
 13 A I'm not sure. I believe so. After all of this occurred,
 14 I didn't appreciate the fact that we were there one
 15 month prior with my two kids knowing there was a loaded
 16 gun very accessible to them.
 17 Q Clarence had guns, and I know in some of the pictures,
 18 it shows his recliner had like a little pocket in it
 19 where he also kept a gun. Were you aware of that?
 20 A No.
 21 Q Did he ever just like wave a gun around when you were
 22 around or threaten to shoot anybody, anything like that?
 23 A No.
 24 Q How well did you know Dennis Cline before all this
 25 started?

Page 12

1 A Not at all.
 2 Q Had you ever met him before?
 3 A I remember one Christmas Eve he came with him and his
 4 daughters, and we were there. I was young.
 5 Q So probably when you were still a teenager or younger?
 6 A Yes.
 7 Q How often did you or your sister have Clarence over to
 8 your house say for Thanksgiving or Christmas or a family
 9 gathering? Ever?
 10 A Not to my knowledge. My dad would kind of discourage
 11 that.
 12 Q And how about when your grandma was alive? Did you tend
 13 to go to their place for Christmas, at least for a
 14 visit?
 15 A Yes.
 16 Q How about like Thanksgiving or somebody's birthday or
 17 something like that?
 18 A Yes.
 19 Q Did that change after your grandmother died?
 20 A Yes.
 21 Q And how did it change?
 22 A We didn't really have gatherings over there.
 23 Q I think I asked your sister this: Was your grandmother
 24 kind of the peacekeeper between your dad and your
 25 grandfather?

Page 13

1 A I would say so.
 2 Q Then after she died, did they fight more?
 3 A Their relationship was on and off.
 4 Q So it sounds like sometimes your dad and your
 5 grandfather got along okay, maybe did things together or
 6 went out for breakfast, I think somebody said, but then
 7 other times they weren't getting along at all?
 8 A Correct.
 9 Q Was there any particular thing that tended to cause them
 10 to have a problem with each other?
 11 A I do remember one incident. My dad would take Clarence
 12 to doctors' appointments. He had some sort of cancer in
 13 his head, and so they were driving back home --
 14 MR. BARCUS: "He" meaning Clarence with cancer
 15 in the head? Is that who you're talking about?
 16 THE WITNESS: Yes.
 17 Q (By Mr. Wall) It was a skin cancer, wasn't it?
 18 A I believe so.
 19 Q Not in his head but on his head, I think would be more
 20 appropriate.
 21 A Skin. So on their -- they were at this appointment. It
 22 must have been some kind of skin doctor. I believe
 23 there were -- would you like me to go -- I was not
 24 there. Would you like me to go into this?
 25 Q Well, I think I asked you: When they argued, what did

4 (Pages 10 to 13)

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APP0246

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1 they argue about?

2 A Okay. For one example, on the way home from an

3 appointment, my dad had told me about this argument. He

4 had got some skin grafted to put on his head.

5 I believe the argument was: "They should have

6 grafted it from my dick so they could call me a dick

7 head. Tell your daughters they grafted skin from my

8 dick and I'm a dick head."

9 Q Did that lead to an argument?

10 A My dad did not appreciate him referring to his

11 granddaughters -- "Don't you ever tell my

12 granddaughters -- talk to my" -- I'm sorry -- "daughters

13 that way."

14 Q But then your dad told you about it anyway?

15 A He said that Clarence was going to.

16 Q Did Clarence do this sometimes, tell inappropriate jokes?

17 A Well, my dad didn't tell me about it anyway. He told me

18 about the argument they had.

19 Q Was he someone who did tell inappropriate jokes that he

20 thought were funny that weren't really funny?

21 A Yes.

22 MR. BARCUS: "He" being Clarence?

23 MR. WALL: Clarence, yes.

24 Q (By Mr. Wall) Did your dad and Clarence ever fight

25 about money? And I'm using the term "fight" in the term

Page 15

1 of argue, not physically fight.

2 A It would just be out of my dad's concern for Clarence's

3 well-being.

4 Q Did your dad have a habit of keeping track of Clarence's

5 finances or his will?

6 A At one point in time before Nana had passed away, he was

7 on accounts. I don't know about the will.

8 Q Were you aware that he had looked up a will on-line and

9 had found out that he had been disinherited?

10 A I believe Dennis made him aware that now Dennis was

11 power of attorney, and so he looked at records and found

12 it on the public record.

13 Q And at one point, he had written your dad out of the

14 will and put you and your sister in. Were you aware of

15 that?

16 A I maybe was. I maybe was.

17 Q Well, did your dad get mad when he found out about these

18 things, that he was changing wills and changing powers

19 of attorney and that sort of thing?

20 MR. BARCUS: Object to the form of the

21 question.

22 A I think my dad was just disturbed at the changing and

23 changes and why.

24 Q (By Mr. Wall) Did your dad ever talk about things of

25 your grandfather's that he wanted, cars, guns, money,

Page 16

1 anything like that?

2 A No.

3 Q Did he ever talk about how he felt he was entitled to an

4 inheritance from your grandfather?

5 MR. BARCUS: Object to the form of the

6 question.

7 A No. He did want this truck, a one-ton truck, but he

8 paid Clarence for it.

9 Q (By Mr. Wall) Are you aware of your dad borrowing money

10 from his father and then giving him guns to hold as

11 collateral?

12 A I'm not aware.

13 Q Did he ever talk to you about that?

14 A No.

15 Q How about in terms of do you know, did your grandfather

16 ever buy anything for him in terms of, for instance, a

17 car?

18 A Not that I'm aware.

19 Q How about did they ever go in together to buy cars?

20 A Not that I'm aware.

21 Q Your dad owned a lot of cars. Did he buy them and sell

22 them frequently, or is it like he would buy it and hang

23 on to it forever?

24 A Both. He might have done that previously when he was

25 younger. I don't really know of him doing that as of

Page 17

1 recent.

2 Q And your sister mentioned he liked to rod out these cars

3 and make them into hot rods. Did he do that after he

4 retired from the Bethel School District, work on cars or

5 that sort of thing?

6 A He's done that all his life.

7 Q So would he buy an old car and then rebuild it into

8 something new, or was he mostly kind of an engine guy?

9 A Both. For instance, the '72 truck he had repainted, put

10 a different engine in.

11 Q And was that a shared interest between him and your

12 grandfather?

13 A I wouldn't say so.

14 Q So it was your dad's thing?

15 A Yes.

16 Q Do you remember the name of your father's girlfriend,

17 Kathy something?

18 A Kathy.

19 Q That's it? No one knows her last name?

20 A I guess.

21 Q Were you ever aware of your father physically assaulting

22 your grandfather?

23 A No.

24 Q Did your grandfather ever complain about that?

25 A No.

5 (Pages 14 to 17)

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APP0247

Page 18

1 Q And did your father ever complain about your grandfather,
 2 you know, call him names or --
 3 A Did my father ever complain about my grandfather calling
 4 him names? "Spoiled" comes to mind.
 5 Q "An old" whatever, that kind of thing?
 6 A I'm not sure -- can you repeat that question?
 7 Q Well, you know, your grandfather would complain about
 8 your dad sometimes. Did your dad ever complain the
 9 other way around, saying, "that old guy" or "that old
 10 bastard" or whatever?
 11 A My answer was wrong then, what I said previously. Yeah.
 12 I would say he would call him an ornery bastard.
 13 MR. BARCUS: Who would call him, for our
 14 record?
 15 Q (By Mr. Wall) Your dad would call your grandfather
 16 that?
 17 A Correct.
 18 Q And he was ornery, wasn't he?
 19 A Yes.
 20 Q I won't say the other part. Let me ask you this, too:
 21 Your dad, did he have a drinking problem?
 22 A My dad?
 23 Q Yes.
 24 A Not that I'm aware of.
 25 Q Had you ever seen your dad intoxicated?

Page 19

1 A I have seen my dad drink.
 2 Q That's different, though. Had you ever seen him
 3 intoxicated?
 4 A Drunk?
 5 Q Yes.
 6 A No.
 7 Q Ever at a party or anything where someone had to take
 8 away his keys, anything like that?
 9 A No.
 10 Q Did he hang out in taverns?
 11 A My answer would be no until as of my mom passing, and I
 12 would say it would only be really one tavern.
 13 Q Was that the Exchange?
 14 A Yes.
 15 Q Was your dad in the habit of carrying a pistol?
 16 A I knew my dad carried a pistol in the glove box.
 17 Q He kept it in the car?
 18 A Yes.
 19 Q And do you know, did he have a permit for a concealed
 20 weapon?
 21 A I believe he did have one at one time. Whether if it
 22 expired or if they do, I'm not really aware of those
 23 but --
 24 Q Did it bother you that he carried a weapon around with
 25 him?

Page 20

1 MR. BARCUS: Object to the form of the
 2 question.
 3 A No.
 4 Q (By Mr. Wall) Did your grandfather ever carry a gun
 5 around with him as far as you know?
 6 A As far as -- I have not seen that.
 7 Q And you mentioned that the month before the shooting,
 8 you had gone out and seen that he had a gun kind of
 9 behind the door. Did you say anything to him about
 10 that?
 11 A I did not see it.
 12 Q Oh, you didn't see it?
 13 A No.
 14 Q How did you know it was there?
 15 A Well, after the shooting, I read documents saying he
 16 kept a rifle behind his door.
 17 Q So you actually didn't see it on the date you were
 18 there?
 19 A Correct.
 20 Q Did you ever see your grandfather holding a gun?
 21 A I would have to say no.
 22 Q Do you recall your grandfather being in a hospital in
 23 2007, and you your sister went to visit him, she
 24 testified about?
 25 A Yes.

Page 21

1 Q How did you hear about that?
 2 A I was on a walk, and my sister -- I'm walking down my
 3 road, and my sister pulls up. I want to say she said,
 4 "Pop's dying."
 5 And so she encouraged me to get in her car and go
 6 to the hospital with her. I went home, told my husband
 7 we were going to the hospital, and we went.
 8 Q "Pop" is what you called your grandfather?
 9 A I don't now.
 10 Q But you did then?
 11 A Yes.
 12 Q So you went home and told your husband: "We're going to
 13 the hospital." And then did the two of you go together?
 14 A Yes.
 15 Q And tell me what happened when you got to the hospital.
 16 Who was there?
 17 A I'm not 100 percent certain. I believe it was me and my
 18 sister, and my dad arrived later. Clarence was in the
 19 ER in a bed.
 20 Q What kind of injuries did he have or condition? Why was
 21 he there?
 22 A Well, that was baffling to us when we got there. We
 23 expected a dying man. He looked fine.
 24 Q Why did your sister think he was dying?
 25 A From a phone call she got, and I don't know from who. I

Page 22

1 vaguely remember her saying Barbara called and --
 2 Q When you got there, were you able to talk to him?
 3 A Yes.
 4 Q How did he seem?
 5 A Fine.
 6 Q Was it a cordial kind of visit? Did he say, "I'm okay"
 7 or whatever? It was not an argument? That's what I'm
 8 trying to get at here.
 9 A No.
 10 Q And then your dad was there. Were they getting along
 11 okay then?
 12 A Yes.
 13 Q Did you know that about that same time, your father was
 14 going to take guns away from your grandfather?
 15 A I didn't know that.
 16 Q When did you first find out?
 17 A Maybe in a conversation afterwards, half a week to a
 18 week after with my father.
 19 Q And tell me about that conversation.
 20 A That's memory. I'm not sure. I was made aware that
 21 that night he went out and gathered up all of Clarence's
 22 guns.
 23 Q And were you aware that the sheriff got called at some
 24 point?
 25 A Yes.

Page 23

1 Q And did your dad tell you that?
 2 A I think he said, "The sheriff's trying to get ahold of
 3 me for the guns."
 4 Q And then at some point, the guns were picked up by
 5 Mr. Cline. When did you hear about that?
 6 A I wasn't too involved in that situation, but I did hear
 7 about it from my dad. My dad handed all of the guns
 8 over to Dennis.
 9 Q And he told you that?
 10 A Yes. I believe so.
 11 Q Okay. And did you ever become aware that the guns were
 12 given back to your grandfather at some point in 2007?
 13 A Yes.
 14 Q So when you went to see him about a month before the
 15 shooting, you were aware that he had guns in the house
 16 someplace?
 17 MR. BARCUS: Object to the form of the
 18 question.
 19 Q (By Mr. Wall) Would that be a fair statement?
 20 MR. BARCUS: Same objection.
 21 A It wasn't the first thing on my mind.
 22 Q (By Mr. Wall) But you kind of knew it?
 23 MR. BARCUS: Object to the form of the
 24 question.
 25 A I did not think about that when I stopped to visit.

Page 24

1 Q (By Mr. Wall) Okay. You took your kids there. I'm
 2 assuming you didn't really think your grandfather was
 3 dangerous when you went to visit in May of 2008?
 4 MR. BARCUS: Object to the form of the
 5 question.
 6 A I did take my kids there. It wasn't my first thing that
 7 I would do in life or would want to approach in life,
 8 but I felt it was the right thing to do to stop in and
 9 see him.
 10 Q (By Mr. Wall) Okay. So they could see their grandpa
 11 and you could see him?
 12 A Yes.
 13 Q You would not have gone there, would you, if you had
 14 thought he was a dangerous person or was liable to shoot
 15 you?
 16 MR. BARCUS: Object to the form of the
 17 question.
 18 A It was uncomfortable to go there. I felt I had to go
 19 out of obligation.
 20 Q (By Mr. Wall) Did your dad ever say anything about your
 21 grandfather selling the guns to somebody else?
 22 A I believe they were supposed to be sold to a gun shop in
 23 Eatonville.
 24 Q When did you learn that?
 25 A Within that whole time frame of the guns.

Page 25

1 Q Before the shooting?
 2 A Before my dad's death?
 3 Q Yes.
 4 A Yes.
 5 Q Did you ever talk to Dennis Cline about this?
 6 A No.
 7 Q Was your dad a gun collector?
 8 A He had guns. I don't know if he was a gun collector.
 9 Q When you guys did the inventory of his property after
 10 his death, how many guns were there?
 11 A This is approximate. Maybe ten.
 12 Q Were they handguns or rifles or shotguns?
 13 A Both.
 14 Q Mostly handguns?
 15 A No.
 16 Q And your dad, as far as you know, did he ever trade any
 17 guns? Did he ever buy and sell them?
 18 A I have no idea.
 19 Q And did you find any kind of hidden storage space in
 20 your dad's place when you were there?
 21 A No.
 22 Q When your grandmother passed away, did you inherit
 23 anything?
 24 A I guess you could say I got a few pieces of her jewelry.
 25 Q Of jewelry?

Page 26

1 A Jewelry. And a couple of the pieces were costume
 2 jewelry.
 3 Q Your sister talked about how your grandpa gave some to
 4 your dad, and then your dad kind of gave it to you?
 5 A Yeah. We got a baggy with our name on it.
 6 Q Any other property?
 7 A That I inherited from --
 8 Q Your grandparents. Your grandmother.
 9 A No.
 10 Q Were you ever promised anything by your grandfather in
 11 terms of inheritance?
 12 A I don't know if "promise" is the right word, but the
 13 Ocean Shores property.
 14 Q My understanding of the Ocean Shores property was that
 15 it was basically a lot that you could take your motor
 16 home to.
 17 A Yes.
 18 Q Did you have a motor home?
 19 A Yes.
 20 Q How often did you go there?
 21 A I would say two to three times a year.
 22 Q And was it just your family, or would your sister go
 23 with you or other people go with you?
 24 A On occasion my sister. Mainly my dad, my aunt and
 25 uncle.

Page 27

1 Q Did you ever go there with your grandfather?
 2 A Very young. Elementary school.
 3 Q And is this just a lot someplace, or is it like in a
 4 mobile home park?
 5 A A lot.
 6 Q And does it have power or water or anything like that?
 7 A Yes.
 8 Q And how long had your grandfather owned it?
 9 A Since I was young. He owned a few properties down
 10 there.
 11 Q Was that something he did was trade in properties?
 12 A I believe so, yes.
 13 Q Was there an incident where a person who was thinking to
 14 buy the property showed up when you were there?
 15 A Possibly.
 16 Q Do you recall it?
 17 A I recall thinking: "Who is that guy who just came up
 18 and talked to you?" And I'm not even sure who I said
 19 that to. It was kind of like, "What was that all
 20 about?" And I wouldn't say it was yelling or -- more of
 21 an inquiry.
 22 Q Was the guy told: "The place isn't for sale"?
 23 A Possibly. I wasn't part of that conversation.
 24 Q Who was?
 25 A I'm unsure.

Page 28

1 Q Maybe your husband?
 2 A No.
 3 Q Your uncle?
 4 A I have no idea.
 5 Q Was it just your family there on that occasion?
 6 A On that occasion where the --
 7 Q The guy came around, yes.
 8 A I think it was my family, my dad, my Aunt Jill and Uncle
 9 Gary. That's what I'm thinking.
 10 Q Okay. And were you surprised when Clarence decided to
 11 sell the property?
 12 A Very.
 13 Q Were you upset about it?
 14 A I was upset. I was hurt.
 15 Q Did you ever talk to him about it?
 16 A I did.
 17 Q And what did you say?
 18 A I told him I was hurt that we couldn't go there anymore.
 19 Q And what was his response?
 20 A I couldn't remember.
 21 Q And you were not at the meeting at your dad's house in
 22 April of 2006 when there was kind of a confrontation.
 23 Was the confrontation, as far as you know, about the
 24 Ocean Shores property?
 25 MR. BARCUS: Object to the form of the

Page 29

1 question.
 2 A Various things.
 3 Q (By Mr. Wall) Do you know of your father ever taking
 4 things out of your grandfather's house?
 5 MR. BARCUS: Object to the form of the
 6 question.
 7 Q (By Mr. Wall) And I mean without his permission.
 8 MR. BARCUS: Same objection.
 9 A No.
 10 Q (By Mr. Wall) Did he ever take a will or any papers
 11 out?
 12 MR. BARCUS: Object to the form of the
 13 question: lack of foundation.
 14 A I have no idea.
 15 Q (By Mr. Wall) Was your father angry at his father, your
 16 grandfather, because he was spending money on things?
 17 MR. BARCUS: Object to the form of the
 18 question.
 19 A I wouldn't say angry. Concerned.
 20 Q (By Mr. Wall) Did you ever help your grandfather pay
 21 his bills or write checks or arrange his medications,
 22 anything like that?
 23 A No. I helped him create an address book one time.
 24 Q On a computer?
 25 A No. (Indicating.)

8 (Pages 26 to 29)

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Page 30

1 Q Just a regular address book?
 2 A An address book with phone numbers.
 3 (Mr. Burns leaves.)
 4 Q Were you aware that Clarence had changed his will a
 5 couple of times before the shooting incident?
 6 A I guess I was aware. It wasn't really firsthand
 7 knowledge to me.
 8 Q Was it upsetting to you?
 9 A I didn't think much about it.
 10 Q Did your dad routinely use a computer to check on
 11 whether his dad had filed a new will or new power of
 12 attorney?
 13 MR. BARCUS: Object to the form of the
 14 question: lack of foundation.
 15 A The only time I know is when Dennis was made power of
 16 attorney.
 17 Q (By Mr. Wall) Did your grandfather ever do anything to
 18 needle your dad or to kind of provoke him about money?
 19 A Yes.
 20 Q What kind of things did he do?
 21 A Made it known he took a big loss on the SSR.
 22 Q That's a truck?
 23 A Yes.
 24 Q And your grandpa told your dad that?
 25 A Yes.

Page 31

1 Q Do you think it was just to needle him or to make him
 2 mad?
 3 A Probably.
 4 Q The impression I get from your dad and your grandpa was
 5 that you said they kind of ran hot and cold, that they
 6 would be fine sometimes and sometimes they would argue.
 7 Did they occasionally kind of do things to provoke each
 8 other?
 9 MR. BARCUS: Object to the form of the
 10 question.
 11 A I can only answer I think Clarence would do things to
 12 provoke my dad.
 13 Q (By Mr. Wall) Do you think Clarence loved your dad?
 14 A No. That's -- that's a hard question. I'm unsure.
 15 Q The impression I got was that it was kind of a love/hate
 16 kind of relationship, that they would be fine sometimes
 17 and not be fine sometimes. But overall, do you think he
 18 cared about your dad?
 19 A I know my dad had mentioned he did not get much love and
 20 support growing up. That's a very interesting question.
 21 Q How about the other way around? How did your dad feel
 22 about his father?
 23 A I think he wanted his dad to love him.
 24 Q Do you know how often that your dad and your grandfather
 25 would see each other say from 2007 to 2008?

Page 32

1 A Weekly.
 2 Q And they lived fairly close together, didn't they, a few
 3 miles?
 4 A It's about five to ten miles, five to eight.
 5 Q And your dad, was he in the habit of going by and
 6 stopping for coffee in the morning or that kind of
 7 thing, or was it just they would occasionally see each
 8 other? Was it any kind of regular schedule?
 9 A Not regular.
 10 Q When you saw your grandfather about a month before the
 11 shooting, did it appear to you that his condition say in
 12 the year before that had gotten markedly worse, his
 13 mental condition?
 14 A I think he was in denial about it, but forgetfulness.
 15 Q And repeating things?
 16 A Yes.
 17 Q You mentioned he couldn't remember one of your kid's
 18 names. How about other things? You know, people who
 19 have dementia sometimes can't recognize their wife or
 20 their children, or they think they're somebody else or
 21 something. Did you ever notice that in your
 22 grandfather?
 23 A Just my youngest, Kristy's youngest kids, him saying he
 24 couldn't find his car in a parking lot at the grocery
 25 store.

Page 33

1 Q Did that happen in 2008 or more often as time went by?
 2 A Progressive after Retha died.
 3 Q Retha was your grandma?
 4 A Yeah.
 5 Q Were you ever involved in your grandfather's medical
 6 care in any way?
 7 A No.
 8 Q Did your grandfather ever claim to you that his son,
 9 your dad, had ever assaulted him?
 10 A No.
 11 Q Before your dad decided to remove your grandfather's
 12 guns from his house, had there been a discussion between
 13 you and your father about that?
 14 A No.
 15 Q Did you know ahead of time he was going to do it? I
 16 think I may have asked you that. Did he tell you at the
 17 hospital?
 18 A No.
 19 Q The first you knew about it was when he called and said
 20 the sheriff had called him?
 21 A Something about that.
 22 Q So that was between them, and you were not involved.
 23 Would that be fair to say?
 24 A Yeah.
 25 Q Okay. I may have asked you this, too, but after that

Page 34

1 occurred in 2007, did you ever talk to Dennis Cline
 2 about that?
 3 A No.
 4 Q I asked your sister this, too. Do you feel that your
 5 father had any responsibility for what happened on the
 6 night he was shot?
 7 MR. BARCUS: Object to the form of the
 8 question.
 9 A No.
 10 Q (By Mr. Wall) Were you aware that he was intoxicated
 11 when he went there?
 12 MR. BARCUS: Object to the form of the
 13 question: lack of foundation.
 14 A I don't know. I was not there.
 15 Q (By Mr. Wall) You've seen the police reports, though,
 16 haven't you?
 17 A I have seen police reports. I cannot tell you the exact
 18 blood level of alcohol.
 19 Q Okay. Do you think he made a mistake to go there in the
 20 evening and confront your grandfather about this hood-
 21 ornament thing?
 22 MR. BARCUS: Object to the form of the
 23 question.
 24 A Well, he was not home earlier that day to take care of
 25 it.

Page 35

1 Q (By Mr. Wall) "He" being who?
 2 A My dad.
 3 Q Your dad wasn't home. Okay.
 4 A He went up to his Morton property. I believe when he
 5 got home, they were having a little festival at the
 6 Exchange. He went to that, got home, and heard a
 7 message and acted on it.
 8 Q Were you aware that Clarence had actually, I think,
 9 driven to the tavern and yelled something about "I want
 10 my hood ornament back"?
 11 A I believe John Rohr had witnessed something like that.
 12 Q So the hood ornament, was this something they were
 13 fighting about, because your dad had had the hood
 14 ornament for a long time, hadn't he?
 15 A I remember the hood ornament when I was very young.
 16 Q So why do you think they were fighting about that?
 17 A I have no idea. Something for Clarence to bring up, to
 18 stir up another issue.
 19 Q Something to argue about?
 20 A Yeah.
 21 Q And the other question I asked was: Do you think that
 22 Clarence, your grandfather, meant to shoot your father?
 23 A I really don't know what he was thinking at that time.
 24 Q Before this happened in June of 2008, had you ever seen
 25 your grandfather and your father in any kind of physical

Page 36

1 altercation where somebody hit somebody or somebody
 2 grabbed somebody or hit somebody with anything, anything
 3 like that?
 4 A No.
 5 Q And before that happened, were you aware of your
 6 grandfather assaulting anybody else?
 7 A Yes.
 8 Q What did you hear about before that? To clarify my
 9 question, not what you've heard since then, but before
 10 this happened, did you know about him assaulting
 11 anybody?
 12 A Before the shooting, what have I heard of?
 13 Q Yes.
 14 A In talk, him shoving a gun into a gut, stomach, of a
 15 friend, and probably the only reason, like my sister
 16 said, is it was her best friend's grandfather. So, you
 17 know, we were connected to these people.
 18 I did hear about him trying to run kids over with
 19 his Hummer. My dad had told me that. I did hear about
 20 the spray painting of the dogs. My dad told me that. I
 21 did know, you know, problems with the neighbors,
 22 problems with the renters.
 23 I believe my dad was trying to help Clarence get
 24 these renters out of his mobile home because he called
 25 them, my dad, tweakers.

Page 37

1 Q This is that Boldosser guy?
 2 A Yes.
 3 Q Your dad was right.
 4 MR. BARCUS: Object to the form of the
 5 question.
 6 Q (By Mr. Wall) Was there ever any violence between
 7 Clarence and this guy?
 8 A Which guy?
 9 Q The renter.
 10 A I--
 11 MR. BARCUS: Objection to the form of the
 12 question: lack of foundation.
 13 Q (By Mr. Wall) If you know.
 14 A I had never seen it personally, but I've read and heard
 15 about it.
 16 Q Okay. So what you heard basically you heard from your
 17 dad about these other instances?
 18 A Yes, because, you know, me and my dad would talk, or
 19 people would call my dad: "You need to take care of
 20 this. You need to get control of that situation."
 21 My dad would say, "Such and such called." I mean,
 22 I remember listening to a tape of even Dennis concerned
 23 about Clarence.
 24 Q What tape did you listen to?
 25 A Voice mail.

Page 38

1 Q And when was that?

2 A Well, after my dad died, we obviously heard the message

3 from Clarence on there requesting -- demanding his

4 bulldog back, but my dad --

5 THE REPORTER: I'm sorry. Did you say,

6 "bulldog"?

7 Q (By Mr. Wall) The hood ornament was the bulldog?

8 A Yes, I'm sorry. Where was I?

9 Q Clarence left a message saying, "Give me back my hood

10 ornament" or whatever.

11 A Yeah. And with listening to his messages, a neighbor

12 had called concerned: "Gerry, there's something going

13 on at Clarence's house."

14 She called twice not knowing it was my dad there

15 laying under the sheet. There was a message from

16 Dennis -- and I'm not sure if I could give you a date --

17 of his concern.

18 Q What did he say basically?

19 A "Hey, I just left Clarence's house. He's not doing

20 good. Give me a call." I'm not sure why I'm talking

21 like that but --

22 Q Well, that's kind of what you heard on there.

23 A Yes.

24 Q That was pretty soon before the shooting, though, wasn't

25 it?

Page 39

1 A I'm sorry. What?

2 Q That would probably have been pretty soon before the

3 shooting, wouldn't it?

4 MR. BARCUS: Object to the form of the

5 question.

6 Q (By Mr. Wall) I mean, it would have been within a few

7 days of the shooting?

8 MR. BARCUS: Same objection.

9 A I am not sure of the date of that message. I really

10 wish I was sure about the date.

11 Q (By Mr. Wall) So you had noticed kind of before the

12 shooting, too, that your grandpa was going downhill

13 mentally?

14 A Sure.

15 Q Let's go back to 2007. You're suing Dennis Cline here

16 alleging that in 2007, he should have known that

17 Clarence was an unsafe person, and he shouldn't have

18 given the guns back to him. What are you basing that

19 on?

20 MR. BARCUS: Object to the form of the

21 question: calls for a legal conclusion. Answer the

22 best you can.

23 A My feeling is that Dennis was very negligent for giving

24 the guns back to Clarence.

25 Q (By Mr. Wall) And why do you say that?

Page 40

1 A There was an arrangement, and even before I came

2 yesterday to the deposition of Deputy Kimbriel, I was

3 aware of an arrangement that the guns were supposed to

4 be sold and not go back to Clarence.

5 Q But they were Clarence's guns, weren't they?

6 MR. BARCUS: Object to the form of the

7 question.

8 A Yeah.

9 Q (By Mr. Wall) And Dennis had no power to take his guns

10 away from him, did he?

11 MR. BARCUS: Object to the form of the

12 question: calls for a legal conclusion.

13 Q (By Mr. Wall) Go ahead and answer the question.

14 A Dennis didn't. My dad did.

15 Q And your dad took the guns away, but my question is:

16 Dennis had no way to keep him from getting his property

17 back, did he?

18 MR. BARCUS: Same objection.

19 A Yeah. He had advisement from an officer.

20 Q (By Mr. Wall) What do you mean by that?

21 A There was an agreement that he was going to sell them

22 and not give them back to Clarence.

23 Q How was Clarence supposed to know that -- how was Dennis

24 supposed to know that Clarence was dangerous?

25 MR. BARCUS: Object to the form of the

Page 41

1 question.

2 Q (By Mr. Wall) That's what you've alleged.

3 MR. BARCUS: Object to the form of the

4 question.

5 A Dennis has said that Clarence had been not doing well

6 after Retha had passed away.

7 Q (By Mr. Wall) I'm trying to get something specific here.

8 Are there any specific facts that you know of that would

9 have alerted Dennis to the fact that your grandfather

10 was going to shoot your father a year after he gave him

11 the guns back?

12 MR. BARCUS: Object to the form of the

13 question.

14 A That was kind of a long question, but my -- Clarence has

15 threatened to hurt my dad in the past.

16 Q (By Mr. Wall) And do you have any knowledge that Dennis

17 was aware of those threats?

18 A Yes. He was around. He would stop by. He would talk

19 to my dad. He was around.

20 MR. CLINE: You're wrong.

21 Q (By Mr. Wall) Do you want to take a break?

22 A I need some water.

23 MR. LINDENMUTH: That's not going to happen

24 again, is it?

25 MR. WALL: No. He's not going to say

Page 42

1 anything.
 2 MR. LINDENMUTH: All right.
 3 MR. CLINE: It's hard to sit here and listen
 4 to this bullshit.
 5 MR. BARCUS: Excuse me. If you're going to
 6 make comments, we're going to end this deposition right
 7 now.
 8 MR. WALL: You have to be quiet, sit here like
 9 a lump, and you can tell me later.
 10 MR. BARCUS: Write notes all you want, but
 11 don't harass my clients.
 12 MR. WALL: Let's keep it civil here.
 13 Q (By Mr. Wall) I guess the lawsuit here is distinct and
 14 different from the one against your grandfather. This
 15 is a lawsuit essentially saying that Dennis should not
 16 have given the guns back to Clarence in 2007, that he
 17 was negligent in doing so. Do you understand that?
 18 A I do.
 19 Q What I'm trying to get at here is: What facts do you
 20 think Dennis should have known about your grandfather
 21 where he would not have let him have back his guns?
 22 MR. BARCUS: You're asking in addition to all
 23 of her prior testimony that she's given today?
 24 MR. WALL: Yes.
 25 MR. BARCUS: Answer the question, if you can.

Page 43

1 I object to the form of the question, but answer the
 2 best you can.
 3 A I'm going to have to ask what the question was again.
 4 Q (By Mr. Wall) Well, the allegation here is that Dennis
 5 should have known that Clarence was too dangerous to
 6 have guns and that he shouldn't have given them back to
 7 him. Is that essentially what you're alleging in this
 8 case?
 9 A Yes. He has stopped by Clarence's house, he says, on a
 10 monthly basis. He has talked to my dad prior to my
 11 dad's shooting. He has talked to Sunny Rhone about his
 12 decreasing mental capabilities.
 13 Q And those are the facts that you're basing this on?
 14 A Yes.
 15 MR. BARCUS: Object to the form of the
 16 question.
 17 A Yes.
 18 Q (By Mr. Wall) And you were aware and your dad was aware
 19 that the guns had been given back to Clarence shortly
 20 after they were taken, weren't you?
 21 MR. BARCUS: Object to the form of the
 22 question.
 23 A I was --
 24 Q (By Mr. Wall) That's actually a compound question, so
 25 let me ask it correctly. Your dad knew that they had

Page 44

1 been given back to him?
 2 MR. BARCUS: Object to the form of the
 3 question: lack of foundation.
 4 Q (By Mr. Wall) Wouldn't you agree?
 5 MR. BARCUS: Same objection.
 6 A I believe so.
 7 Q (By Mr. Wall) I think he had told you that?
 8 MR. BARCUS: Same objection.
 9 A I believe so, yeah.
 10 Q (By Mr. Wall) Did you know that they had been given
 11 back to him?
 12 A Probably from my dad's upset.
 13 Q And your dad did not take any action to have the guns
 14 removed between 2007 and 2008, did he?
 15 MR. BARCUS: Object to the form of the
 16 question.
 17 A My answer to that is he did take action. He took the
 18 guns. What did he get for it? A police officer calling
 19 him up. I can see why him not going back out there and
 20 trying again.
 21 Q (By Mr. Wall) My question was: He did not try to get
 22 them back again or try to do anything about them, did
 23 he?
 24 MR. BARCUS: Object to the form of the
 25 question.

Page 45

1 A I can't answer that.
 2 MR. WALL: I think those are all the questions
 3 I have.
 4 MR. BARCUS: Let's take just a couple minutes.
 5 (Pause in the proceedings.)
 6 MR. BARCUS: I don't have any questions.
 7 EXAMINATION (continued)
 8 BY MR. WALL:
 9 Q I have one other question about the voice mail. Do you
 10 still have that? Was it a tape, or was it the kind
 11 where there's a chip in the machine, or was it like, you
 12 know, at the phone company?
 13 A My dad kind of -- he had voice mail at one time. I'm
 14 not sure if he was double covered. He had an answering
 15 machine.
 16 I am going to check on that. Even before I came
 17 here today, I have his answering machine at my house,
 18 but from my memory, I remember dialing up his code and
 19 listening to it on the phone.
 20 Q So like at the phone company, kind of one line sort of
 21 thing. Do you know, was another recording ever made of
 22 that? You know, you can record them onto a tape or
 23 something. Any recollection?
 24 A (No response.)
 25 Q Well, do me a favor. If you wouldn't mind, when you go

Page 46

1 home, look and listen, and if you do have something,
 2 would you give it to your counsel?
 3 A I will.
 4 MR. WALL: Okay. That's it.
 5 MR. BARCUS: I have no questions.
 6 * * * * *
 7 (Witness excused at 12:30 p.m.)
 8 (Signature was reserved.)
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Page 48

1 CERTIFICATE
 2 STATE OF WASHINGTON)
) ss.
 3 County of Pierce)
 4 I, Valerie Gerjets, Notary Public in and for the
 5 State of Washington, County of Pierce, do certify that
 6 KELLEY R. CAVAR was first by me duly sworn on oath to tell
 7 the truth, the whole truth, and nothing but the truth in said
 8 cause; that the words of said witness were taken by me on my
 9 stenotype machine and thereafter reduced to typewriting under
 10 my supervision; and that the above and foregoing is a true
 11 and correct transcript of the same. Further, the signature
 12 of the witness was reserved.
 13 I do further certify that the said Deposition Upon
 14 Oral Examination was taken before me pursuant to notice on
 15 Wednesday, March 16, 2011, at 4303 Ruston Way, Tacoma,
 16 Washington; and further, I do certify that I am not an
 17 attorney for, relative of, or employee of any of the parties
 18 or otherwise interested in the outcome of this litigation.
 19 IN WITNESS WHEREOF, I have hereunto set my hand and
 20 affixed my official seal this 25th day of March 2011.
 21
 22 _____
 23 Notary Public in and for the
 24 State of Washington, residing in
 25 Tacoma.
 My commission expires 12-12-11.

Page 47

1 SIGNATURE PAGE TO THE DEPOSITION OF KELLEY R. CAVAR
 2 Wednesday, March 16, 2011
 3
 4 I have read my within deposition, and the same is
 5 true and accurate save and except for corrections, if
 6 any, as indicated by me on the lower portion of this
 7 page.
 8
 9 _____
 10 KELLEY R. CAVAR
 11
 12 PAGE LINE NO. SHOULD BE REASON
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VALERIE GERJETS, CCR
253-473-7764

September 18 2012 3:48 PM

The Honorable Judge JOHN R. HICKMAN
Oral Argument: September 21, 2012 at 9:00am

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NO. 10-4-00542-3

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

In Re Guardianship of:)	
)	
CLARENCE G. MUNCE	)	NO. 10-4-00542-3
)	
An Alleged Incapacitated Person,	)	DECLARATION IN REPLY AND
	)	SUPPORT OF MOTION TO
	)	CONTINUE TRIAL DATE
)	

Erik L. Bauer, being duly sworn upon oath deposes and says:

1. On two occasions Judge Stolz continued this guardianship trial so that it would be held after both of the wrongful death cases that the Petitioners have filed against Clarence Munce and his Power of Attorney, Dennis Cline. Both times the Petitioners then continued the wrongful death cases, past the Guardianship trial date.
2. On February 3, 2012 this Court also continued this guardianship trial so that it would be held after both of the wrongful death cases. (See Exhibit A: Order to Continue) Again, the Petitioners continued one wrongful death case past the Guardianship trial date. The other wrongful death case is still up on appeal. Mr. Munce is simply asking the Court to affirm its previous ruling and continue this guardianship trial again.
3. Essentially, Judge Stolz, and this Court have previously found that it would be a complete waste of the Court's time to have this Guardianship trial before the wrongful death cases for

1 the very good reason that this Guardianship trial would be rendered unnecessary if it were
2 held after the other trials.

- 3 4. The Petitioners claim that Dennis Cline is an inappropriate Power of Attorney for Clarence
4 Munce and needs to be replaced, not because Dennis Cline has done anything wrong, but
5 rather, because they say Dennis Cline has a "conflict of interest" due to the fact that the
6 Petitioners have sued him for the wrongful death of Gerald Munce on an attenuated theory
7 of vicarious liability alleging that Dennis Cline returned some guns to Clarence Munce
8 approximately a year before the homicide of Gerald Munce. This "conflict of interest"
9 which Petitioners created themselves is the sole complaint they have against Dennis Cline
10 acting on his uncle's behalf. The Cline trial is set for January 28, 2013. Once that case is
11 resolved, any "conflict of interest" will disappear, no need for a guardian will exist.
- 12 5. In a similar vein, there will be no need for a Guardianship trial after the lawsuit filed against
13 Clarence Munce is concluded. In reality, the only reason the Petitioners filed this
14 guardianship action was to gain a strategic advantage over Clarence Munce in the wrongful
15 death case. They have no other concern.
- 16 6. The Petitioners have no interest in Clarence Munce's health or well being. They have never
17 visited him, nor have they sent him so much as a Christmas card. They have never
18 displayed any interest in most of the subject areas which typically concern people seeking a
19 guardianship.
- 20 7. The Petitioners have demonstrated no concern regarding the cleanliness of Clarence
21 Munce's accommodations. The Petitioners have not inquired about the adequacy of his
22 medical care.
23
24
25

1 8. In short, the Petitioners have only demonstrated concern over Clarence Munce's financial
2 situation and their concern is not directed in a manner which could possibly help Clarence
3 Munce. All the Petitioners want is to control Clarence Munce's money so they can acquire
4 it for themselves. Completely selfish – self – centered motives. And completely against the
5 best interests of Clarence Munce.

6 9. Dennis Cline is the nephew of Clarence Munce. Dennis is very close to Clarence and in fact
7 Clarence Munce took Dennis in and raised Dennis during Dennis's teenage years. Dennis
8 Cline has been a loyal and devoted supporter of Clarence over the course of the last few
9 very difficult years of Clarence's life.

10 10. When Clarence was accused of homicide, Dennis Cline stood by Clarence, arranged for
11 counsel, and otherwise supported his uncle. Dennis Cline secured his uncle's home and
12 rental house and other belongings at his uncle's request.

13 11. When Clarence was declared incompetent by the Court due to dementia, it was Dennis Cline
14 who interviewed countless nursing homes and dementia facilities before settling on the very
15 excellent Alzheimer's care facility where Clarence Munce currently resides.

16 12. Likewise, when the civil suit was filed against Clarence by the Petitioners, it was Dennis
17 Cline who spent a great deal of time to find lawyers, deal with the homeowners insurance,
18 and otherwise take care of his uncles' interest.

19 20 13. What's more, Dennis Cline has gone about this in an intelligent and careful manner. He
21 consulted with, and obtained his own Attorney, Robin Balsam. Mr. Cline has worked
22 closely with the litigation guardian, Mr. Michael Smith, and he has submitted quite
23 voluntarily to regular reports and accountings to the Court. Judge Larkin monitored Mr.
24 Cline's handling of Clarence's monies, as did guardian Michael Smith and Attorney Robin
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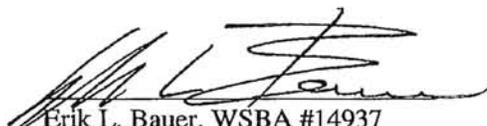
Balsam. Attorney Judson Gray has conducted a thorough investigation into the job performed by Dennis Cline and has concluded that Mr. Cline has done a satisfactory job as Power of Attorney for Clarence Munce, and has found no problems whatsoever. No irregularities were ever discovered. Dennis Cline has been doing an excellent and honest job. There is no harm in leaving the situation as it currently exists.

14. Unfortunately for Dennis Cline, he was perhaps protecting his uncle too effectively. In a fit of frustration, the Petitioners filed the lawsuit against Dennis Cline alleging that he provided the guns to his uncle, some 12 months prior to the homicide. Afterwards, on April 7th, 2010, the Petitioners filed this action for guardianship.

15. The Respondent respectfully requests this court to continue this trial date past the trial date in the wrongful death case against Dennis Cline which is set for January 28, 2013. After that trial concludes, the Court could entertain motions regarding either dismissal of this guardianship petition, or the propriety of continuing this trial past the trial date in wrongful death suit against Clarence Munce, which has no current trial date as it is up on interlocutory appeal.

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

Dated this 18th day of September, 2012.


Erik L. Bauer, WSBA #14937
Attorney for Clarence Munce

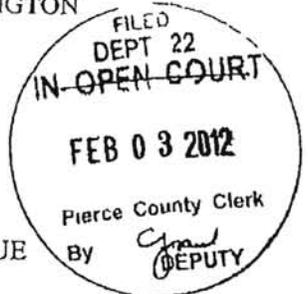
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The Honorable Judge John R Hickman

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE



In Re Guardianship of)
CLARENCE G MUNCE)
An Alleged Incapacitated Person)
Defendant(s))

NO 10 4 00542 3
ORDER TO CONTINUE
TRIAL DATE

THIS MATTER having come before the court upon the request of Attorney Erik L Bauer Attorney for Clarence G Munce and the Court having considered the records and files herein it is now therefore

ORDERED ADJUDGED AND DECREED that the Jury Trial currently set for February 15th 2012 is continued until Oct 22 2012
This matter shall be continued until after
Dated this ___ day of February 2012

[Signature] JOHN R HICKMAN
JUDGE OF THE PIERCE COUNTY SUPERIOR COURT

both wrongful death cases are completed

Presented by
[Signature]
Erik L Bauer WSBA #14937
Attorney for Clarence Munce

[Signature] 14007

THE LAW OFFICE OF
ERIK L BAUER
215 T m A n n S t h
T a o m W a s h g t o 98402
(253) 383 2000 or (360) 895 1500
FAX (253) 383 0154

February 13 2013 11:29 AM

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

In re the Guardianship of:

CLARENCE G. MUNCE,

An Alleged Incapacitated Person.

NO. 10-4-00542-3

DECLARATION OF ROBIN H. BALSAM
IN RESPONSE TO DECLARATION OF
PETER KRAM

My name is Robin Balsam. I am the attorney for Dennis Cline in his capacity as attorney in fact for Clarence Munce. Mr. Cline is a nephew of Clarence Munce. I make this declaration of my own personal knowledge.

This case has a tortured and long-winded history. Rather than completely recount it here, I am going to summarize it and refer the court to a number of working copies that I have submitted with my declaration for the court's review.

Mr. Munce was unfortunately involved in a violent incident with his son, which ended with him shooting his son. As a result, criminal action was filed, but it was ultimately withdrawn because Mr. Munce was declared incompetent to stand trial.

DECLARATION OF ROBIN H. BALSAM IN
RESPONSE TO DECLARATION OF PETER
KRAM - 1

ROBIN H. BALSAM P.S.
Attorneys at Law
609 Tacoma Avenue S
Tacoma Washington 98402
(253) 627-7605 / Fax (253) 572-0912

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1 A wrongful death action was filed by the daughters of Gerald Munce, who are the
2 grandchildren of Clarence Munce. As a result of that action, the Plaintiffs'
3 attorney, Ben Barcus, has attempted to gather financial information on Mr. Munce's
4 estate. There was a protective order entered in the underlying wrongful death
5 litigation. This guardianship action was filed by the granddaughters in another
6 attempt to get the financial data that they were denied as plaintiffs in the
7 wrongful death litigation.¹ Protective orders have been entered in the guardianship
8 as well.²

9 This case has been through three judges. Unfortunately it has been passed
10 around the courthouse a little bit, and as a result, we end up re-arguing the same
11 issues to different judges. As a result of an order entered by Judge Larkin the
12 wrongful death case, Mr. Cline has been submitting accountings every 90 days to
13 Judge Stolz for more than four years. A total of seventeen quarterly accountings
14 have been submitted to the court under the wrongful death cause number; the next
15 accounting will be submitted at the end of February 2013. These accountings have
16 been provided to Michael B. Smith, who is the litigation guardian ad litem for Mr.
17 Munce in the wrongful death case. Jud Gray, the guardianship guardian ad litem,
18 has also reviewed these accountings.

19 _____
20 ¹ See the Verbatim Report of Proceedings of April 9, 2010; Motion for Protective Order Re: Contact
21 with Clarence Munce and Financial Records and the Declaration of Dennis Cline in Support filed May
22 17, 2010; Responsive Brief to Motion to Terminate Power of Attorney and Conduct Interview, filed
23 June 16, 2010 (submitted as working copies).

24 ² See the Order on Motions for Protective Order entered in this matter on July 23, 2010; Order
Sealing Protected Guardian ad Litem Report and Stipulation and Agreed Order for Release of Sealed
Guardian ad Litem Report, entered on February 18, 2011 (submitted as working copies).

DECLARATION OF ROBIN H. BALSAM IN
RESPONSE TO DECLARATION OF PETER
KRAM - 2

ROBIN H. BALSAM P.S.
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1 There are currently two wrongful death lawsuits filed by Kelley Cavar and
2 Kristy Rickey. The first case, against Clarence Munce, has an issue on appeal. As
3 far as this counsel knows, there has been no decision on the outstanding issue, and
4 until that is resolved, the case cannot go to trial. The second claim, against Dennis
5 Cline, also cannot go to trial until a decision is received from the Court of Appeals.
6 As a result, the trial in this guardianship matter was continued indefinitely by the
7 court. Attached as Exhibit "A" are copies of orders entered in this matter on
8 February 3 and September 10, 2012, indicating that this matter shall be continued
9 until after both wrongful death cases are completed.

10 For some reason—probably for case management or administrative issues—a
11 trial date was set for the guardianship in March 2013. As a result, we are spending
12 time and effort in having to educate another judge about the facts of this
13 particular case. Again, the granddaughters are making an attempt to argue
14 something they have lost multiple times³ before Judges Stolz and Hickman, and are
15 now rearguing before Your Honor.

16 The law of the case has been set for a year. I would ask that the court
17 merely follow the previous rulings, as the issues that were raised previously are
18 final at this time. We await the result from the Court of Appeals before the other
19 two trials can go forward. There is absolutely no reason for appointment of a
20 guardian for Mr. Munce, as he has an attorney in fact who is handling his affairs
21

22

23 ³ See the Verbatim Transcript of Proceedings of July 23, 2010 (submitted as a working copy).

24 DECLARATION OF ROBIN H. BALSAM IN
 RESPONSE TO DECLARATION OF PETER
 KRAM - 3

ROBIN H. BALSAM P.S.
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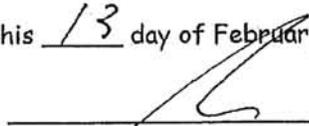
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appropriately, as reviewed by Judge Stolz, Mike Smith, Jud Gray, and myself on a regular basis.

I certify under penalty of perjury according to the laws of the State of Washington that the foregoing is true and correct.

DATED at Tacoma, Washington, this 13 day of February, 2013.



ROBIN H. BALSAM, WSBA #14001
Attorney for Dennis Cline, attorney in fact
for Clarence G. Munce

DECLARATION OF ROBIN H. BALSAM IN
RESPONSE TO DECLARATION OF PETER
KRAM - 4

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(253) 627-7605 / Fax (253) 572-0912

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EXHIBIT "A"

ORDERS TO CONTINUE TRIAL DATE
FEBRUARY 3, 2012
SEPTEMBER 10, 2012

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DECLARATION OF ROBIN H. BALSAM IN
RESPONSE TO DECLARATION OF PETER
KRAM - 5

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ROBIN H. BALSAM P.S.
Attorneys at Law
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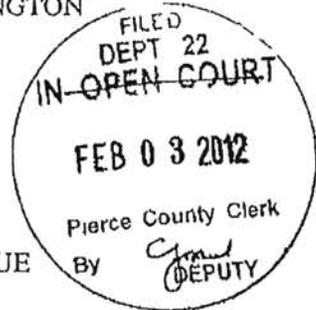


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The Honorable Judge John R. Hickman

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE



In Re Guardianship of)
CLARENCE G MUNCE)
An Alleged Incapacitated Person)
Defendant(s))

NO 10 4 00542 3
ORDER TO CONTINUE
TRIAL DATE

THIS MATTER having come before the court upon the request of Attorney Erik L Bauer Attorney for Clarence G Munce and the Court having considered the records and files herein it is now therefore

ORDERED ADJUDGED AND DECREED that the Jury Trial currently set for February 15th 2012 is continued until Oct 22 2012
This matter shall be continued until after
Dated this ___ day of February 2012

[Signature] JOHN R HICKMAN
JUDGE OF THE PIERCE COUNTY SUPERIOR COURT

both wrongful death cases are completed

Presented by

[Signature]
Erik L Bauer WSBA #14937
Attorney for Clarence Munce

[Signature] 14007

THE LAW OFFICE OF
ERIK L BAUER
215T m A nu S th
Ta om Wash gto 98402
(253) 383 2000 or (360) 895 1500
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10-4-00542-3 39236363 ORCNT 09-24-12

RECEIVED
SEP 10 2012
COMFORT, L.L.
L. SMITH, P.S. LAWYER

The Honorable Judge JOHN R. HICKMAN

Received
SEP 11 2012
Robin H. Balsam P.S.

RECEIVED
SEP 10 2012
Kram & Webster, P.S.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

In Re Guardianship of:)
CLARENCE G. MUNCE)
An Alleged Incapacitated Person,)
Defendant(s).)

DELIVERED
Tudson Gray

NO. 10-4-00542-3
~~Proposed~~ SEP 11 2012 @ Ar
ORDER TO CONTINUE
TRIAL DATE ABC LEGAL SERVICES

THIS MATTER having come before the court upon the request of Attorney Erik L. Bauer, Attorney for Clarence G. Munce, and the Court having considered the records and files herein, it is now therefore,
ORDERED, ADJUDGED AND DECREED that the Jury Trial, currently set for October 22, 2012, is continued until NA 2013, until after both wrongful death cases are completed.
Dated this ___ day of September, 2012

JUDGE OF THE PIERCE COUNTY SUPERIOR COURT

Presented by:

Erik L. Bauer, WSBA #14937
Attorney for Clarence Munce

FILED
DEPT. 22
IN OPEN COURT
SEP 21 2012
Pierce County Clerk
By DEPUTY

COPY

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FAX (253) 383-0154



10-4-00542-3 34086721 ORAPGL 04-08-10

FILED
IN COUNTY CLERK'S OFFICE
A.M. APR - 7 2010 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY [Signature] DEPUTY

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IN THE SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

In Re Guardianship of:)	NO. 10 4 00542 3
	)	ORDER APPOINTING GUARDIAN AD
CLARENCE G. MUNCE	)	LITEM AND NOTICE OF HEARING,
	)	RCW 11.88.090 (ORAPGL)
<u>An Alleged Incapacitated Person.</u>	)	(CLERK'S ACTION REQUIRED)

FINDINGS

- The facts set forth in the Petition include those necessary to give the Court jurisdiction over this matter.
- Pursuant to RCW 11.88.090, a Guardian *ad Litem* should be appointed.
- The Guardian *ad Litem* should not be the person whose name next appears on the registry because the Court finds extraordinary circumstances exist as follows:

This case involves at least three lawsuits. The heirs of Gerald Munce seek the appointment of a guardian of the alleged incompetent and judicially determined incompetent person to protect his assets and ensure that the assets are managed under court supervision. Given the complexity and interrelationship of these cases, the Petitioners believe that the appointment of an attorney experienced in these matters is

ORDER APPOINTING GUARDIAN AD LITEM
AND NOTICE OF HEARING, RCW 11.88.090
(ORAPGL)

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1 warranted, appropriate and necessary. Petitioners request that Judson Gray be appointed
2 as Guardian Ad Litem to investigate this petition.

3 **ORDER**

4 The Court orders:

5 [X] The Guardian *ad Litem*, Judson Gray shall be appointed at private expense. The
6 Guardian *ad Litem* shall be paid at a rate of \$ _____ per hour up to a maximum of \$
7 _____ without further, prior Court approval. *Up to 20 hours pre*
8 *approved,*
PK

9 The hearing on the Guardianship petition shall occur:

10 [X] Date: April 28, 2010 Hour: 1:30 p.m.

11 Department: Probate Department

12 Address: County City Building
13 930 Tacoma Ave South
14 Tacoma, WA 98402

15 Judson Gray is found or known by the Court to be a suitable disinterested person
16 with the requisite knowledge, training or expertise, who is hereby appointed as Guardian
17 *ad Litem* for the above-named person. The address and/or phone/fax of the Guardian *ad*
18 *Litem* are: Judson Gray

19 Attorney at Law
20 4142 6th Avenue
21 Tacoma, WA 98406
22 (253) 759-1141
23 Fax: (253) 759-1447

24 The Guardian *ad Litem* shall have the following duties as mandated by statute:

25 ORDER APPOINTING GUARDIAN AD LITEM
AND NOTICE OF HEARING, RCW 11.88.090
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1 (a) To file within five days of receipt of Notice of Appointment, and serve all parties
 2 personally or by certified mail with return receipt requested, his or her written statement
 3 required by RCW 11.88.090(2)(b), which shall include: his or her history as defined in
 4 RCW 9.94A.030 for the period covering ten years prior to the appointment; his or her
 5 hourly rate, if compensated; whether the Guardian *ad Litem* has had any contact with a
 6 party to the proceeding prior to his or her appointment; and whether he or she has an
 7 apparent conflict of interest.

8 (b) To meet and consult with the Alleged Incapacitated Person as soon as practicable
 9 following appointment and explain, in language which such person can reasonably be
 10 expected to understand, the substance of the petition, the nature of the resultant
 11 proceedings, the person's right to contest the petition, the identification of the proposed
 12 Guardian or Limited Guardian, the right to a jury trial on the issue of his or her alleged
 13 incapacity, the right to independent legal counsel as provided by RCW 11.88.045, and the
 14 right to be present in court at the hearing on the petition;

15 (c) To obtain a written report according to RCW 11.88.045; and such other written or
 16 oral reports from other qualified professionals as are necessary to permit the Guardian *ad*
 17 *Litem* to complete the report required by RCW 11.88.090 and to advise Alleged
 18 Incapacitated Person of the identity of the health care professional selected by the
 19 Guardian *ad Litem* to prepare the medical report. If Alleged Incapacitated Person
 20 opposes said health care professional selected by the Guardian *ad Litem*, the Guardian *ad*
 21 *Litem* shall use the health care professional selected by Alleged Incapacitated Person, but
 22 may obtain a supplemental examination by a different physician or psychologist;

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 25 ORDER APPOINTING GUARDIAN AD LITEM
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1 (d) To meet with the person whose appointment is sought as Guardian *ad Litem* or
2 Limited Guardian and ascertain:

3 (i) The proposed Guardian's knowledge of the duties, requirements, and
4 limitations of a Guardian; and

5 (ii) The steps the proposed Guardian intends to take or has taken to identify
6 and meet the needs of Alleged Incapacitated Person;

7 (e) To consult as necessary to complete the investigation and report required by this
8 section with those known relatives, friends, or other persons the Guardian *ad Litem*
9 determines to have had a significant, continuing interest in the welfare of Alleged
10 Incapacitated Person;

11 (f) To investigate alternate arrangements made or which might be created, by or on
12 behalf of the Alleged Incapacitated Person, such as revocable or irrevocable trusts,
13 durable powers of attorney or blocked account; whether good cause exists for any such
14 arrangements to be discontinued, and why such arrangements should not be continued or
15 created in lieu of a Guardianship;

16 (g) To provide the Court with a written report which shall include the following:

17 (i) A description of the nature, cause and degree of incapacity, and the basis
18 upon which this judgment was made;

19 (ii) A description of the needs of the Alleged Incapacitated Person for care
20 and treatment, the probable residential requirements of the Alleged Incapacitated
21 Person and the basis upon which these findings were made;

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25 ORDER APPOINTING GUARDIAN AD LITEM
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(iii) An evaluation of the appropriateness of the Guardian or Limited Guardian whose appointment is sought and a description of the steps the proposed Guardian has taken or intends to take to identify and meet current and emerging needs of the Alleged Incapacitated Person;

(iv) A description of any alternative arrangements previously made by the Alleged Incapacitated Person or which could be made, and whether and to what extent such alternatives should be used in lieu of a Guardianship, and if the Guardian *ad Litem* is recommending discontinuation of any such arrangements, specific findings as to why such arrangements are contrary to the best interest of the Alleged Incapacitated Person;

(v) A description of the abilities of the Alleged Incapacitated Person and a recommendation as to whether a Guardian or Limited Guardian should be appointed. If appointment of a Limited Guardian is recommended, the Guardian *ad Litem* shall recommend the specific areas of authority the Limited Guardian should have and the limitations and disabilities to be placed on the Alleged Incapacitated Person;

(vi) An evaluation of the person's mental ability to rationally exercise the right to vote and the basis upon which the evaluation is made;

(vii) Any expression of approval or disapproval made by the Alleged Incapacitated Person concerning the proposed Guardian or Limited Guardian or Guardianship or Limited Guardianship;

1 (viii) Identification of persons with significant interest in the welfare of the
 2 Alleged Incapacitated Person who should be advised of their right to request
 3 special notice of proceedings pursuant to RCW 11.92.150; and

4 (ix) Unless independent counsel has appeared for the Alleged Incapacitated
 5 Person, an explanation of how the Alleged Incapacitated Person responded to the
 6 advice of the right to jury trial, to independent counsel, and to be present at the
 7 hearing on the petition.

8 (h) Within forty-five days after notice of commencement of the Guardianship
 9 proceeding has been served upon the Guardian *ad Litem*, and at least fifteen days before
 10 the hearing on the petition, unless an extension or reduction of time has been granted by
 11 the Court for good cause, the Guardian *ad Litem* shall file a report and send a copy to the
 12 Alleged Incapacitated Person and his or her counsel, spouse, all children not residing
 13 with a notified person, those persons described in (g)(viii) of this subsection, and persons
 14 who have filed a request for special notice pursuant to RCW 11.92.150. If the Guardian
 15 *ad Litem* needs additional time to finalize his or her report, then the Guardian *ad Litem*
 16 shall petition the Court for a postponement of the hearing or, with the consent of all other
 17 parties, an extension or reduction of time for filing the report. If the hearing does not
 18 occur within sixty days of filing the petition, then upon the two-month anniversary of
 19 filing the petition and on or before the same day of each following month until the
 20 hearing, the Guardian *ad Litem* shall file interim reports summarizing his or her activities
 21 on the proceeding during that time period as well as fees and costs incurred.
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24 ORDER APPOINTING GUARDIAN AD LITEM
 25 AND NOTICE OF HEARING, RCW 11.88.090
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1 (i) To advise the Court of the need for appointment of counsel for the Alleged
 2 Incapacitated Person within five court days after the meeting described in (a) of this
 3 subsection unless (i) counsel has appeared, (ii) the Alleged Incapacitated Person
 4 affirmatively communicated a wish not to be represented by counsel after being advised
 5 of the right to representation and of the conditions under which court-provided counsel
 6 may be available, or (iii) the Alleged Incapacitated Person was unable to communicate at
 7 all on the subject, and the Guardian *ad Litem* is satisfied that the Alleged Incapacitated
 8 Person does not affirmatively desire to be represented by counsel.

9
 10 (j) The Guardian *ad Litem* shall provide the Court with a working copy of the
 11 Guardian *ad Litem* report pursuant to local rule or custom.

12 (k) The Guardian *ad Litem* shall have the power and authority to obtain
 13 medical records of the alleged incapacitated person (A) without written authorization of
 14 the alleged incapacitated person otherwise required under Uniform Health Care
 15 Information Act (RCW 70.02, et sequitur), and (B) with respect to any information
 16 governed by the AIP Health Insurance Portability and Accountability Act of 1996 (aka
 17 HIPAA), 42 USC 1320d and 45 CFR 160 - 164, to the same extent as the alleged
 18 incapacitated person.

19 Organ/Tissue Donor RCW 68.50.540 The Guardian *ad Litem* shall have the power
 20 to donate by organs and tissues, upon the alleged incapacitated person's death in
 21 accordance with the previously expressed direction of said person, and if none, then in
 22 accordance with the best interests of said person and society in general.

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 25 ORDER APPOINTING GUARDIAN AD LITEM
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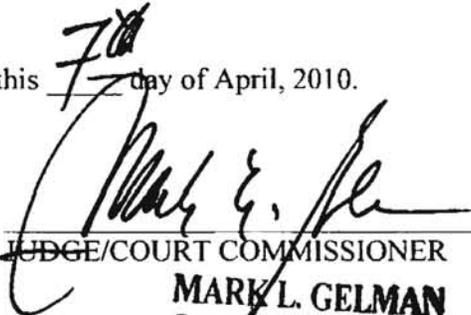
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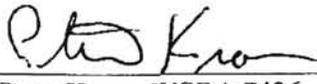
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The Court also ORDERS:

DATED AND SIGNED IN OPEN COURT this 7th day of April, 2010.


JUDGE/COURT COMMISSIONER
MARK L. GELMAN
COURT COMMISSIONER

Presented by:



Peter Kram, WSBA 7436
Attorney for Petitioners

FILED
IN COUNTY CLERK'S OFFICE

A.M. APR - 7 2010 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

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