

Hearing

VOL 5

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

STATE OF CONNECTICUT
COURT OF PROBATE
DISTRICT OF GREENWICH
District No. 057

COPY

* * * * *

ESTATE OF/IN THE MATTER OF *

GEORGE ALLEN SMITH IV, deceased * Case No. 05-0496

* * * * *

Greenwich, CT

March 28, 2008

9:32 a.m.

PROBATE HEARING VOL. V

Confidential and Closed to Public Per Court Order of
May 18, 2007, and Subject to FBI Non-Disclosure Agreement
Closed to Public

BEFORE: HONORABLE DAVID W. HOPPER

Reported by:
Lynne Stein-Eisenberg, LSR
Campano & Associates
Court Reporting Services

1 APPEARANCES:

2
3 FOR THE PETITIONER JENNIFER HAGEL-SMITH:4 BRODY WILKINSON, P.C.
5 BY: DOUGLAS R. BROWN, ESQ.
6 MELINDA TODGHAM, ESQ.
2507 Post Road
Southport, CT 06890

7 -and-

8 FARRELL, GUARINO & BOCCALATTE, P.C.
9 BY: ELIZABETH N. BYRNE, ESQ.
10 141 Broad Street
Middletown, CT 0645711 FOR THE RESPONDENTS GEORGE SMITH III and
12 MAUREEN SMITH:13 IVEY, BARNUM & O'MARA
14 BY: MICHAEL J. JONES, ESQ.
DONAT C. MARCHAND, ESQ.
170 Mason Street
15 Greenwich, CT 06836

16 -and-

17 LAW OFFICES OF JOHN R. GULASH, JR.
18 BY: EUGENE J. RICCIO, ESQ.
350 Fairfield Avenue
19 Bridgeport, CT 0660120 Also Present: JENNIFER HAGEL-SMITH
21 MAUREEN SMITH
22 GEORGE SMITH III
23
24
25

TESTIMONY OF JOHN HAGEL

		<u>Page</u>	<u>Line</u>
1			
2			
3	Direct by Mr. Brown	838	19
4	Cross by Mr. Riccio	853	7
5	Redirect by Mr. Brown	875	7
6	Recross by Mr. Riccio	877	18
7			
8			
9			

TESTIMONY OF MAUREEN SMITH

		<u>Page</u>	<u>Line</u>
10			
11			
12	Direct by Mr. Jones	880	6
13	Cross by Ms. Byrne	916	7
14	Redirect by Mr. Jones	997	20
15			
16			
17			

TESTIMONY OF GARY CRAKES

		<u>Page</u>	<u>Line</u>
18			
19			
20	Direct by Mr. Riccio	1002	24
21	Cross by Mr. Brown	1015	24
22			
23			
24			
25			

INDEX OF PETITIONER'S EXHIBITS

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

INDEX OF OPPONENT'S EXHIBITS

	<u>Page</u>	<u>Line</u>
AAA. Gary Crakes' report	1007	19
BBB. Document	1014	11

1 THE COURT: Attorney Jones, if I recall.

2 MR. JONES: We had finished with our
3 cross-examination of Jennifer, your Honor.

4 THE COURT: Are there any other
5 witnesses, Attorney Brown?

6 MR. BROWN: I don't have any questions
7 for Jennifer, so we're ready to go with Mr. Hagel.
8 I don't think it's going to be too long.

9 THE COURT: Why don't we get started with
10 that and we can talk later as things progress.

11 Thereupon:

12 JOHN H. HAGEL, being first duly sworn by the Judge, was
13 examined and testified as follows:

14 THE COURT: Would you please state your
15 full name and address.

16 THE WITNESS: John H. Hagel. I reside at
17 12 Satchem Drive in Cromwell.

18 THE COURT: When you're ready.

19 DIRECT EXAMINATION BY MR. BROWN:

20 Q Mr. Hagel, could you describe for everybody --
21 I think everyone knows -- but what's your relationship to
22 the parties?

23 A I'm Jennifer's father.

24 Q Could you please describe for the Court what
25 your professional background is.

1 A I'm a retired police officer, having spent 25
2 years on the Cromwell Police Department, 20 of which, my
3 last 20, in a supervisory capacity. I -- being a small
4 community, we had to wear many hats as a supervisor. So
5 I would supervise pretty much everything and anything
6 from criminal investigations to accident investigations.
7 But my field of expertise was basically that of an
8 accident reconstructionist for the department, and I
9 wrote the policy manual for the accident investigation
10 portion.

11 While on the department, though, I had the
12 opportunity, on my days off, to start a building
13 business, and since that time, which I retired six years
14 ago, I have developed the building business into more of
15 a development business, and presently operate out of
16 three different locations, different subdivisions that
17 I'm operating.

18 Q Thank you.

19 In your role as Jennifer's father, could you
20 just -- have you been involved in the FBI investigation
21 of what took place to George, with George?

22 A Within days of Jennifer's return, the FBI was
23 at our home and meeting with Jennifer for hours and days.
24 Both my wife and I were present for all those meetings.
25 We sat and listened to Jennifer recount every detail of

1 the trip day by day, painstakingly going through all the
2 photographs they had taken in an effort to identify
3 people they had come across or just passengers or
4 employees of the cruise line, anybody -- so, yes, I was
5 quite involved as far as listening and being on the side
6 lines, to support her.

7 And I would often -- I would maintain a
8 certain level of contact with Sean O'Malley, and at times
9 when he wanted to ask how Jennifer's doing or just
10 basically see how we're doing, you know, he would call my
11 cell phone and basically -- or bounce an idea off me
12 about something that came across his office. So, yes, I
13 was

14 Q Were you present for any of the meetings with
15 the FBI when the FBI talked to the families about the
16 results of their investigation?

17 A I assume you're talking about the most recent
18 meetings this fall. Yes. And it kind of corroborated
19 much of the information that we've already known, you
20 know, from our dealings with them in the last two years.

21 Q Could you -- I mean, would you say that the
22 FBI said that it was a murder or accident?

23 MR. RICCIO: I object. Maybe we ought to
24 try to address this issue up front.

25 I think it's hearsay for Mr. Hagel to

1 talk about what federal law enforcement said about
2 this particular situation. It's hearsay because
3 he's going to give their version of what their
4 interpretation is. I think it's hearsay. I don't
5 think he should be allowed to testify about that.
6 We can always get the FBI in here to testify about
7 where they stand.

8 Further, your Honor, there's been three
9 meetings with the FBI. Mr. Hagel was involved
10 with, obviously, one of them. There have been two
11 further meetings with the FBI where just counsel
12 participated.

13 We met with Peter Youngblood. We're all
14 pretty conversant with what their position is in
15 this particular investigation. Those statements
16 about what they said in the fall -- we've had
17 subsequent meetings, so -- I really think -- if
18 counsel is concerned about what the position of the
19 federal government is in terms of this particular
20 case, we ought to get those people in here, let
21 them testify about it. He can direct them, I can
22 cross, however we want to do it, rather than have
23 this individual talk about a meeting that occurred
24 six months ago when there's been two subsequent
25 meetings.

1 As your Honor is aware, this is an open
2 investigation. I can't cross-examine Mr. Hagel
3 about what other people have said or believe.

4 MR. BROWN: In response, your Honor, this
5 whole matter has been on hold for a year, and this
6 side of the table has been the one saying that, I
7 mean, that we needed to wait for the FBI to come
8 out with whatever they're going to come out with.

9 I agree with Mr. Riccio with respect --
10 I'm not going into great detail with Mr. Hagel.
11 Just corroborate what Ms. Hagel-Smith has already
12 said with respect to -- I mean, that it's unknown,
13 it's active and open.

14 The only thing I want to definitely tell
15 the Court, that I feel is misleading from what
16 Mr. Riccio said, from our last meeting the FBI and
17 the U.S. Attorney's Office made it perfectly clear
18 they will never set foot in this courtroom and they
19 will fight me tooth and nail if I request that they
20 do so.

21 The only way I can really -- we've
22 already -- without any doubt, we already have a lot
23 of what we thought were the significant things in
24 briefs. Ms. Hagel-Smith has already testified, I
25 believe, to all of them.

1 But to whatever extent -- it certainly is
2 important, just from a state of mind, and I think
3 it's important to the Court with respect to what
4 the results were. It's open and active, but they
5 certainly have given a full report to all the
6 families. I think it's significant for the Court
7 to just be aware of it. I'm not going into great
8 detail with him.

9 MS. BYRNE: The forensic findings are not
10 in dispute. What everybody took from it are in
11 dispute. But the forensic findings that the FBI
12 reported to us that day are not in dispute.
13 They're very clear.

14 MR. RICCIO: First of all, I have an
15 evidentiary objection, Mr. Hagel talking about what
16 the FBI said to him in a meeting that is now six,
17 seven months ago. I understand what everybody is
18 saying. But it's an evidentiary objection as to
19 what he's saying.

20 I was present with counsel at these
21 meetings. Maybe we can agree or advise the Court,
22 I don't have a problem with that, as to what they
23 said. From our standpoint, it's interesting, you
24 might be interested in hearing. But to now have
25 this individual testify about what was said at the

1 meeting, I can't cross-examine that. I don't know
2 that that's necessarily -- I think -- I know it's
3 informal, but I think I should have the right to
4 question that.

5 I would agree with Mr. Brown, it is an
6 open and pending investigation. I agree with that.

7 I do not agree with -- and I'm not
8 looking to prolong this thing.

9 I do not agree with your interpretation
10 that they'd fight tooth and nail to have somebody
11 come in here. I don't think that's at all
12 accurate. If you brought them in and asked them
13 questions about what are you doing in their
14 investigation, they would. But if they came and
15 you asked is this an open and pending
16 investigation, I'm sure they would testify to that.

17 MR. BROWN: I specifically asked Agent
18 O'Malley -- he said two or three significant things
19 at the last meeting that counsel were only at, and
20 I asked, if I just asked him to come down to talk
21 about those two or three things, would he say that.
22 And I was told by the attorneys and by his
23 supervisor that absolutely no, and that I will have
24 to go into some Superior Court or federal court to
25 fight them now as to getting them to come over here

1 and say that. That has to be corrected. That was
2 said at the last meeting.

3 I'm fine with moving on. Ms. Hagel-Smith
4 already testified.

5 THE COURT: I'll sustain the objection.

6 Why don't you move on. If you all, maybe
7 during the next break, want to stipulate to
8 something, that will be fine. If not, we can
9 revisit it after a break. But for the time being,
10 why don't we move on.

11 MR. BROWN: Certainly my request, your
12 Honor, would be -- if we're going to do that,
13 that's fine. Then when Mrs. Smith testifies, I
14 don't expect her to be talking about the FBI
15 investigation and the results.

16 MR. JONES: She wasn't going to.

17 MR. RICCIO: We weren't planning on it.

18 MR. JONES: The problem that's created if
19 you go there, then I have to go there, and we have
20 two different versions.

21 MS. BYRNE: Maybe that's what the judge
22 should hear. I think there are two different
23 versions.

24 MR. JONES: The objection was sustained.

25 THE COURT: Why don't we move on.

1 MR. BROWN: That's fine.

2 BY MR. BROWN:

3 Q Moving away from any conclusions or findings
4 that the FBI had, were you -- did you have any
5 conversations or were you in conversations where you
6 talked to FBI agents about disclosing your involvement
7 with the FBI or your family's involvement with the FBI to
8 anybody else?

9 A There was an understanding by -- I'm going to
10 say it was Sean O'Malley, and I think her name was Erin
11 Moriarity, those were the two agents that were present in
12 our home -- that basically allowed myself and my wife to
13 sit in on these meetings, that there was an understanding
14 that the information that was being given to them by
15 Jennifer and the fact that we were allowed to view the
16 photographs, to basically sit in on this whole thing, is
17 that there would not be any discussion with anybody, the
18 media -- and this would remain confidential. And it was
19 told us in that sense, because they were very clear about
20 the fact that they did not want to compromise the
21 investigation. And as such, we kind of signed on to the
22 fact that that would be our path. We were going to put
23 our faith in the FBI, and it's not --

24 And we understood, also, from the very
25 beginning, that any information that was given to them or

1 they found out from other sources, they would not be
2 reporting back to us. It was going to -- it was very
3 clear it was going to be a one-way street. So there was
4 no expectations of them coming back and saying, well,
5 this is what we found now. That didn't happen. At no
6 time -- at no time during the investigation did they
7 report back to us and say, oh, we have an explanation for
8 this. It was just information gathering, and we assisted
9 them in any way possible.

10 Q We're done with the FBI.

11 Let's go to the period of time when the
12 families were just starting to talk about whether to
13 bring a claim against Royal Caribbean.

14 There's been testimony that you were involved
15 in some fashion. Could you please discuss or describe
16 for the Court your involvement with picking maritime
17 lawyers.

18 A We actually interviewed four different firms
19 along the way. And we -- well, the Smiths, we knew, had
20 interviewed Chuck Lipcon and Jim Walker prior to us
21 getting involved in retaining an attorney for Jennifer.

22 We were actually a little reluctant to start
23 this whole process to begin with, because we just felt
24 like we needed to just give the FBI time to just do their
25 thing. But at the same time, we were caught between a

1 rock and a hard place, because the FBI wasn't going to be
2 giving us information, and there was information that was
3 going to be available to us; we needed to secure the
4 services of an attorney to get this information from the
5 cruise line, i.e., LockLink reports and whatever
6 information that we could obtain.

7 Obviously we wanted to find out what happened.
8 Because at that point, which was, you know, within the
9 first couple of months of the incident, there really
10 wasn't any evidence to point anybody in any direction.
11 There was no evidence of foul play at all, nor do I
12 believe there is presently. So it was pure speculation,
13 so we needed to secure the services of an attorney.

14 Having said that, in October of '05 I spoke
15 with Bree on the phone, and -- she was basically the
16 contact person from their side, so to speak, with me, for
17 our side. We were the ones that almost daily had
18 conversations, and then weekly, you know, as we kind of
19 wound down. In October of '05, we spoke on the phone,
20 and she at that point -- at one point in the conversation
21 she told me that they had scheduled an interview with
22 Ackerman and Senterfitt, which kind of surprised me, took
23 me off guard, because she knew that the following week
24 that we had scheduled an appointment with Jim Walker, who
25 Jennifer, ironically, met at the Smiths' residence.

1 Bree explained to me that Ackerman and
2 Senterfitt were better suited to handle a case of this
3 magnitude. They were a rather large firm from Florida.
4 She described them as a 300 to 500 person firm. And I
5 remember telling her that I didn't always believe that
6 bigger was better, and I -- that Jennifer had a comfort
7 level with Jim Walker, and she felt that it would be wise
8 for us to meet him.

9 Bree then said that she had already dismissed
10 Jim Walker, as he was nothing more than an ambulance
11 chaser. At that point -- obviously I took exception to
12 that inasmuch as we were scheduled to meet with him the
13 following week. And I guess that was the first time that
14 I became a little bit agitated with her to the point
15 where I informed her this wasn't about her, this was
16 about Jennifer having a comfort level with an attorney,
17 and she wasn't driving the bus, that we needed to just do
18 this, and we were going to continue to schedule that
19 meeting with Jim Walker.

20 Q So are you saying that -- then what --

21 A Well, the conversation --

22 Q -- happened with respect to the attorneys --

23 A Let me elaborate on the attorneys.

24 We started to -- and we had, prior to that,
25 talk about the pros and cons of each attorney's firm, and

1 I alluded to the fact that when we had interviewed Jack
2 Hickey in Florida, having basically explained the whole
3 case to him, at the end of the explanation and the story
4 that Jennifer laid out for him, he quite frankly asked,
5 "Okay, so where is your claim?" He was of the opinion
6 that the claims were stronger by Jennifer, that -- so I
7 pointed all these things, you know -- that there was
8 different opinions from different attorneys.

9 I had a very difficult time -- I think we all
10 have a very difficult time at times understanding
11 maritime law and how it applies, how the Florida courts
12 view things. And that was very important to me, that we
13 had somebody that we were going to take on board that we
14 could trust, because this maritime law, as far as I was
15 concerned, was nothing that I was familiar with. And I
16 have -- having a law enforcement background, my father
17 had been an attorney for 47 years -- some of the things
18 that I was reading and kind of understanding was nothing
19 like I've understood before. So it was a specialty that
20 we ultimately retained the services of Jim Walker.

21 Q Was that the start of what I would call a rift
22 between your family and the Smith family?

23 A Absolutely. In that, the phone
24 conversation -- the phone conversation further -- we
25 further talked about the fact that, having understood the

1 process, that ultimately Jennifer would be required to
2 testify in court or give a deposition, whatever the case
3 may be, and I was very concerned about the fact that she
4 would have to do that because it was very alarming to me
5 that she was going to have to testify about the
6 prescription drugs and his abuse of alcohol. And I said
7 to her, when the public --

8 Q To who?

9 A To Bree, on the phone.

10 Once the public weighs in on that, hearing a
11 kid from Greenwich abusing alcohol, taking prescription
12 drugs, and just the drugs on the -- generic terms for the
13 drugs themselves, you know, tranquilizers and
14 antidepressants, in itself is, to me, is such a red flag,
15 that I just think it would have destroyed George's
16 character, and I was very concerned about that.

17 She believed that Jennifer did not want to
18 testify for other reasons, which was ridiculous. She did
19 not think that the drugs were such a big deal. In fact,
20 made the comment to me that half the country or half the
21 world is on prescription drugs, quote/unquote, what's the
22 big deal.

23 And I guess I sit here today wondering the
24 same question, if it's not a big deal, why doesn't the
25 public know about it?

1 Q Out of those conversations with Bree, did
2 another rift develop with respect to whether Jennifer
3 would want to be deposed?

4 A She was not satisfied with the fact -- I
5 think, all along through our conversations, from the time
6 that Jennifer arrived home, she believed that Jennifer
7 was not telling the truth. She believed Jennifer had
8 something else that she needed to tell, which was never
9 the case. And understanding that I sat through all those
10 meetings with the FBI, that I knew about the prescription
11 drugs, which was very upsetting to me, the abuse of the
12 alcohol, which was very upsetting, and, you know, the
13 fact that I formulated an opinion based on the facts that
14 were presented at the time that it was most likely an
15 accidental death, was never accepted by her, and she --
16 and that's fine.

17 And I always was open to the possibility there
18 could have been criminal activity or suspicious death of
19 some sort. But maybe it's my background as a police
20 officer, having investigated untimely deaths throughout
21 my career many, many times, that I've always been
22 trained, you know, the evidence will take you to a
23 certain direction. You can't form -- you know, but she
24 formulated an end result, which was the murder and the
25 cover-up theory, with nothing to support it. And I had a

1 problem with that.

2 MR. BROWN: That's all I have, your
3 Honor.

4 THE COURT: Okay.

5 Attorney Jones, your party wish to
6 cross-examine?

7 CROSS-EXAMINATION BY MR. RICCIO:

8 Q Good morning, Mr. Hagel.

9 A Good morning.

10 Q I want to ask you a few questions, if I could.

11 You were very concerned about several aspects
12 of this case being exposed and -- that would disparage
13 George's image or memory. Is that my understanding?

14 A Absolutely.

15 Q And you thought that was a -- that would be a
16 big problem if that information was publicly
17 disseminated?

18 A It wasn't only my opinion. It was an opinion
19 that was shared by attorneys that we had interviewed as
20 well. Ackerman and Senterfitt, for example, when they
21 sat in our home -- by the way, they were the only ones we
22 actually shared that information with. And they said it
23 would be very devastating to the case against Royal
24 Caribbean.

25 Q I'm trying to separate --

1 A It was -- there was two different things to be
2 concerned about.

3 Q Right. And you had indicated in your
4 testimony here that you were very concerned about the
5 information being publicly disseminated --

6 A Yes.

7 Q -- about George's abuse of alcohol --

8 A Yeah.

9 Q -- that evening, I assume?

10 A Yup.

11 Q As well as his abuse of prescription drugs?

12 A Yup -- possible abuse.

13 Q What evidence do you have that George Smith
14 abused prescription drugs?

15 A Okay. Let me take that back --

16 Q I don't want -- I want to get through --

17 A I don't have --

18 Q The reality is you don't --

19 A I don't --

20 Q You don't have anything --

21 THE COURT: Let him answer the question.

22 A I think -- okay. If I said abuse of
23 prescription drugs, that was the wrong word. Okay? I
24 think it's pretty well documented that he did abuse
25 alcohol.

1 Q Let's just focus on the drugs.

2 A Okay. He was in possession of prescription
3 drugs, which were not to be used with alcohol. That was
4 my problem.

5 Q My question to you is: You would have no
6 evidence that he abused those drugs in the sense he took
7 too many of them or was taking them outside the
8 prescription.

9 A Taking them with alcohol is abuse.

10 Q What evidence, sir, do you have that he took
11 drugs -- he took the prescription drugs on the night
12 we've been sitting here talking about?

13 A I don't have proof. But it's assumption that
14 the public would make, and that was my concern.

15 Q Forgetting for a moment about the assumption
16 the public would make, the question to you, sir, is: You
17 have no evidence --

18 A No, I don't.

19 Q -- that he took any prescription drugs on the
20 evening in question --

21 A I don't.

22 Q -- right?

23 So your concern about it being publicly
24 exposed that he abused prescription drugs by taking
25 alcohol that evening is without any foundation, correct?

1 A It's a logical conclusion that one would come
2 to.

3 Q You have no evidence to support that
4 conclusion. Is that a fair statement?

5 A That's a fair statement.

6 Q And in terms of this information being
7 publicly disseminated, could you explain to me how, if a
8 lawsuit was begun in this case, all right, and
9 depositions were taken, how would it be that that
10 information would be publicly disseminated?

11 A The proceedings in a Florida court, from what
12 I understood, would have been public.

13 Q A trial.

14 A No, depositions, even.

15 Q Depositions in a Florida court --

16 A I believe --

17 Q -- would have been taken in a courtroom?

18 A I don't know how -- it was basically -- it was
19 basically told to us through attorneys that this would
20 become public information.

21 Q Suffice it to say, you don't, of your own
22 knowledge, don't know that depositions in civil cases in
23 Florida are taken in open courtrooms where the public can
24 just watch what's going on. You don't know that.

25 A I believe I was told they were open.

1 Q To anybody -- you were told by one of the
2 attorneys that any member of the public or the media
3 could walk in to a deposition being taken in a civil case
4 and watch what transpired?

5 A I don't know how actually it was posed to me.
6 But I was led to believe it was public. It would become
7 public information.

8 Q But in terms of a deposition, for example, if
9 your daughter was deposed in this case, as you sit here
10 today you don't know of your own knowledge that the media
11 would be able to come in or the general public would be
12 able to walk in and watch that deposition, do you?

13 A No.

14 Q In your -- you mentioned your concern for the
15 public dissemination about George's use of drugs and use
16 of alcohol as it relates to this particular circumstance.

17 Let me ask you this: Did it factor at all
18 into your decision-making process -- did you have any
19 concern about the public dissemination about your
20 daughter's conduct that particular evening?

21 A At this point?

22 Q I'm asking you about when you were analyzing
23 this situation, what you testified to when you answered
24 Mr. Brown's questions.

25 A I was very comfortable -- first of all, I knew

1 her story. It was consistent. It was said many times to
2 the FBI. They were satisfied with it, they were very
3 happy with her level of cooperation. They knew where she
4 was.

5 Q Maybe I didn't --

6 A So, no, she was an open book, and everybody
7 knew her story.

8 Q You wouldn't have had any difficulty with the
9 public dissemination of information regarding your
10 daughter's activity that night, such as --

11 A It was already out.

12 Q -- being the details of her being found
13 unconscious in the hallway?

14 A No. It was already out in the public, so that
15 wasn't a concern at all.

16 Q How about some indication she may have
17 assaulted George, the last thing the two of them may have
18 done together?

19 A There's no evidence --

20 Q An assault --

21 A I don't think --

22 THE COURT: One at a time.

23 Q There may have been an assault. Evidence --
24 I'm not saying just sort of your daughter's evidence, but
25 evidence coming out, witnesses testifying that what they

1 saw between the two of them at their last interaction,
2 that was of no --

3 A No.

4 Q -- concern --

5 A None at all. I don't think that that --

6 Q -- to you?

7 A I don't think that that was -- I'm not even
8 sure that was from a credible witness. I have no idea.

9 Q So that didn't --

10 A No.

11 Q Concerns about that particular information
12 being further disseminated or additional details of that
13 being disseminated --

14 A No.

15 Q -- that didn't factor in your position or your
16 view of this particular case?

17 A Not at all.

18 Q You started off testifying about the FBI
19 investigation. I understand --

20 A Um-hum.

21 Q -- based on your -- I also attended the
22 meetings with you.

23 Your general feelings -- I assume, as we sit
24 here today in March of 2008, you are still interested in
25 finding what happened to George Smith on that particular

1 evening?

2 A Sure, I am, absolutely.

3 Q He was your son-in-law.

4 A He was my son-in-law.

5 Q It was a concern, right?

6 A Absolutely.

7 Q It was a concern in those days; it's a concern
8 today?

9 A Absolutely.

10 Q You, in terms -- I understand your direct
11 testimony, you and your daughter have cooperated to the
12 best of your ability with regard to the FBI?

13 A Right.

14 Q You haven't held back information from the
15 FBI?

16 A Me, no.

17 Q How about your daughter?

18 A No.

19 Q So far as you know, you've done everything you
20 can -- I'm not quarreling with you on this.

21 A Yes.

22 Q As we sit here today, Mr. Hagel --

23 A Yeah.

24 Q -- we don't know what happened to George
25 Smith --

1 A No, we don't.

2 Q -- isn't that a fact?

3 A (Nodding head up and down.)

4 MR. JONES: You have to answer.

5 Q You have to say yes.

6 MR. BROWN: You have to answer out loud.

7 A We don't know.

8 Q You're a trained investigator, right?

9 A Yes.

10 Q You're an experienced policeman. You put in
11 25 years --

12 A Yes.

13 Q -- in the Cromwell Police Department, right?

14 During the course of your police work, you
15 know the value -- if you're trying to find out what
16 happened in a situation, you know the value of
17 information, right?

18 A Yes.

19 Q When you were a policeman, you wanted to know
20 as much as you could about a situation, as much
21 information as you could before you made a determination
22 as to what happened or what didn't happen.

23 A Yes.

24 Q Fair to say?

25 A Yes.

1 Q Okay. My understanding, in your conversations
2 with the FBI, it's been a one-way street; they haven't
3 kicked back information to you, right, about what they
4 found out?

5 A In certain instances they've, let's say,
6 hinted in certain directions --

7 Q Okay.

8 A -- is all. You are correct.

9 Q You really don't have full recounting back to
10 them about what --

11 A Nobody will.

12 Q And nobody will, right? What they found or
13 what they haven't found, correct?

14 A (Nodding head up and down.)

15 Q We do know that Royal Caribbean did what
16 sounds like a pretty extensive investigation in this
17 particular case, right?

18 A I would agree that they did -- I don't know
19 how extensive, but they did their investigation.

20 Q I don't know if you were present at your
21 daughter's investigation or if you know of your own
22 independent knowledge, but they took a large number of
23 witness statements regarding what happened that night,
24 between sixty and a hundred statements, right?

25 A That's correct.

1 Q As we all sit here today, we don't have any of
2 those statements, right?

3 A Right.

4 Q We haven't seen any of those, right?

5 A Right.

6 Q So what they include, what they say about what
7 may have happened that night, what they may say about
8 Royal Caribbean's activities that night, we don't have
9 any of that information --

10 A Right.

11 Q -- right?

12 So you're reaching conclusions here, would you
13 agree with me, on what did or didn't happen here that
14 night based on really incomplete information. Is that
15 fair to say?

16 A I never concluded anything. I'm not the one
17 who concluded anything.

18 Q You just made some --

19 A I just felt, based on the lack of evidence,
20 that it probably, in my opinion -- in my opinion -- was
21 not foul play.

22 Q And that, sir, is based upon --

23 A The evidence that we have present.

24 Q Right.

25 A Which is nothing..

1 Q Which is nothing?

2 A Right.

3 Q It's not after reviewing the sixty to a
4 hundred statements --

5 A Right.

6 Q -- that Royal Caribbean took?

7 It's not after getting information from the
8 FBI about what their investigation revealed, right?

9 A Right.

10 Q You mentioned in your direct testimony you
11 wanted to get --I think you specifically mentioned
12 LockLink reports --

13 A Yes.

14 Q -- that you thought -- again, as a trained
15 experienced policeman, you thought that was something
16 that might be useful?

17 A Could be.

18 Q Would you explain to the Court why that would
19 be useful.

20 A Because it would explain the entry and exits,
21 possibly, of the people in and out of the rooms.

22 Q When you say "rooms," that's plural, right?

23 A Plural.

24 Q Besides your daughter and your son-in-law's
25 room, what other rooms are we talking about?

1 A It would be the rooms of the boys who brought
2 George back and put him to bed.

3 Q Correct. And they were the last people
4 purportedly to see him alive, right?

5 A That's correct.

6 Q And as a trained experienced policeman, you
7 would want to see the LockLink records relating to their
8 activity, correct?

9 A Yes.

10 Q And as we sit here today, none of us have
11 seen -- none of us -- though certainly efforts have been
12 made to get them, none of us have seen that information.
13 Fair to say?

14 A I have not.

15 Q And as far as you know, your daughter hasn't,
16 right?

17 A That's probably true.

18 Q In terms of these four individuals, as a
19 trained experienced policeman, you would agree with me
20 that if a witness gives a statement that includes a
21 certain version of events that is inconsistent with other
22 evidence of the case, that's kind of important, isn't it?

23 A I'm not going to sit here and -- because I
24 don't know where you're going with this -- to evaluate --

25 Q You're the one qualified -- Mr. Brown

1 qualified you --

2 A Yes.

3 Q -- as a trained experienced policeman.

4 A Right.

5 Q I'm just asking you a hypothetical question,
6 not as it relates to this particular situation, but
7 hypothetically --

8 A But you would agree that that's very typical
9 of any investigation.

10 Q I would agree that material inconsistencies
11 are not typical. They occur, obviously.

12 A They occur.

13 Q In fact, I make money on some of those
14 material inconsistencies, right?

15 A Um-hum.

16 Q My question to you is: If a witness gives a
17 statement that's inconsistent with other evidence in the
18 case regarding that person's activities, that's kind of
19 important, isn't it?

20 A It's important to clear up some misstatements
21 or --

22 Q So if --

23 A -- misinterpretations possibly.

24 Q Right. So if in this case, hypothetically, a
25 witness gives a statement that he took George Smith back

1 to their room, all right, put him to bed, and left, and
2 you had other information that in fact that individual,
3 along with others, took Mr. Smith, supposedly, out of the
4 room a second time, that inconsistency would be something
5 that you'd be interested in, wouldn't you?

6 A Yes.

7 Q Okay.

8 A But it doesn't mean that the person wasn't
9 being truthful. They just weren't being complete,
10 possibly. There's other ways for me to perceive it.

11 Q But it's something that warrants further
12 examination --

13 A Possibly.

14 Q -- correct?

15 A Yes.

16 Q And it's something that, when you're talking
17 about a person who was one of the last people to see
18 George Smith alive --

19 A Yes.

20 Q -- that's important, right?

21 A Could be.

22 Q Did you ever have a discussion with Mr. Walker
23 about his feelings about whether or not George Smith was
24 murdered?

25 A Actually, many times.

1 Q And Mr. Walker, I assume, expressed the
2 opinion to you that in fact George was murdered?

3 A He believed that a crime had occurred.

4 Q Strongly, right?

5 A I don't know how strongly. But he was of the
6 opinion that -- that was his right, that's his opinion.

7 Q With regard to -- and that was the man that
8 your family reposed trust in in terms of handling this
9 particular matter, right?

10 A Yes.

11 Q I assume your daughter interviewed him and
12 decided to hire him based on a favorable impression of
13 him?

14 A Yes.

15 Q The discussion with regard to which law firm
16 to hire, Bree -- you indicated there was some
17 disagreement between you and Bree --

18 A Yes.

19 Q -- regarding the firm.

20 Bree advocated for a larger firm?

21 A Yes.

22 Q And did she articulate that a larger firm may
23 have some advantages in terms of manpower, ability to do
24 certain things, more than a smaller firm?

25 A She did.

1 Q And obviously you're aware she's a member of
2 the bar, she's a lawyer?

3 A She's a lawyer.

4 Q And you reached a different conclusion? You
5 felt that Mr. Walker was capable of handling the
6 situation?

7 A I find it ironic that the reasons she gave
8 that Mr. Walker wasn't suitable for the job, in her
9 opinion, stating that Ackerman and Senterfitt, or a large
10 firm, because of the magnitude of the case, would be
11 necessary to hire a large firm, and then hired somebody
12 with far less experience than Jim Walker.

13 Q And that person would be?

14 A Brett Rivkind.

15 Q We can argue about the merits of Mr. Rivkind
16 and Mr. Walker.

17 Let's get back to the concept that it was
18 Bree's opinion, given the magnitude of the case -- a
19 bigger firm was better, basically?

20 A That's her opinion.

21 Q You didn't share that view?

22 A I told her that bigger wasn't always better.

23 Q Right. And in reaching that determination,
24 did you consider in fact, given the size of his company,
25 that you might find yourself in litigation with a large

1 firm?

2 A Possibly.

3 Q And indeed that happened, right? The firm
4 that came in here was considerably bigger than
5 Mr. Walker's firm?

6 A Yes. But I think there was some merit in what
7 I said to Bree with regards to Ackerman and Senterfitt,
8 which, by the way, again, scheduled the -- we did
9 interview them in our home, and they came in and -- this
10 was supposed to be a maritime firm, rather large, and
11 when my wife -- and I warned my wife not to ask the
12 question, because I thought it would be insulting, but my
13 wife asked one of the attorneys, "Do you know the Athens
14 Convention," and he responded back, "You mean the Warsaw
15 Convention?" So I guess I was right, bigger wasn't
16 always better.

17 Q Okay. I don't want --

18 A These attorneys didn't even know what the
19 Athens Convention was.

20 Q At some point -- you indicated that Bree
21 believed that Jennifer was not being truthful about what
22 happened with regards to the case.

23 A She described it -- well, I think she believed
24 that Jennifer was not remembering or simply just not
25 telling, but I just sensed there was some doubt in Bree's

1 mind, right from the beginning. And then ultimately she
2 went public with this notion of hers that Jennifer was
3 hiding something.

4 Q Are you aware of whether or not there was a
5 flow of information between your daughter and the Smiths
6 regarding this case?

7 A There was a limited -- there was limited
8 information between the Smiths and Jennifer, and that was
9 because the FBI was very clear to us as a family and
10 particularly to Jennifer that they did not want her
11 discussing details of the case with anybody, and in
12 particular with the Smiths, because they became -- I
13 don't want to be disrespectful to the Smiths, but they
14 didn't trust whether the information would remain
15 confidential.

16 Q And so you're telling me it was the FBI, from
17 the start --

18 A Not from the start.

19 Q Correct. Not from the inception of this
20 investigation, right?

21 A Right.

22 Q It was not the position of the FBI at the
23 inception of this investigation that your daughter should
24 not tell her in-laws -- provide them with information
25 about what happened on that evening?

1 A No. But she didn't -- what was happening from
2 the outset was Bree was beginning to tell Jennifer -- or
3 ask Jennifer about certain scenarios, whether she was
4 sexually assaulted, things of that nature, and that
5 became pretty upsetting to the FBI. The FBI wanted her
6 to recall the incidents as she remembered, not to be
7 tainted by Bree.

8 Q This was her sister-in-law trying to ask her
9 about what had happened that particular evening --

10 A Yes.

11 Q -- right? That particular evening, correct?

12 A Yes.

13 Q And it sounds like Jennifer was not
14 forthcoming in providing them with information about what
15 happened that particular evening early on in the case.

16 A She was forthcoming. She was not hiding
17 things from them. The bottom line was Bree had some
18 rather bizarre theories, such as kidnapping, a robbery --
19 there was all kinds of things. And it was -- it had
20 become rather confusing to all of us.

21 Q Bree was attempting to find out what happened
22 to her brother, right?

23 A And I don't think she was pursuing it in the
24 right way. That was my opinion.

25 Q Your daughter was found in an unconscious

1 state in a hallway, right?

2 A Yes.

3 Q Who had absolutely no recollection of the
4 events of that evening after a certain point, correct?

5 A Right.

6 MR. RICCIO: Can we just take a brief
7 recess, your Honor, so I can consult? I'll be
8 finished shortly.

9 THE COURT: Sure. We can take a few
10 minutes.

11 (Whereupon, a recess was taken.)

12 THE COURT: Mr. Hagel, you're still under
13 oath.

14 BY MR. RICCIO:

15 Q Mr. Hagel, I just want to finish up a couple
16 of questions.

17 You indicated that you felt that some of
18 Bree's theories about what may have happened in this
19 situation, such as a sexual assault or kidnapping, were
20 bizarre, correct?

21 A Yes.

22 Q Isn't it a fact, sir, that after your daughter
23 returned to the United States that, at the direction of
24 the FBI, she was visually inspected? There was a
25 physical examination of her body, correct?

1 A Here?

2 Q In the United States.

3 A And in Turkey as well.

4 Q Correct. But the FBI was interested in
5 whether or not she had been assaulted in any way. They
6 wanted to --

7 A Absolutely.

8 Q -- look at the condition of her body, right?

9 A Yes.

10 Q In addition, the FBI also suggested that she
11 see a gynecologist, correct?

12 A I guess. I assume that's true, but

13 Q At their recommendation?

14 A Yeah. I don't remember that part of it.

15 There were certain things that happened with regards to
16 that, you know

17 Q You weren't --

18 A I wasn't directly involved with.

19 Q You didn't get directly involved in.

20 But you assume that's true?

21 A I would assume that's true.

22 MR. RICCIO: Thank you, sir.

23 No further questions.

24 THE COURT: Redirect?

25 MR. BROWN: I just have very few.

1 If you could pull out -- I need the
2 exhibits that were Dr. Cooper's records.

3 MS. STROILI: Do you remember which
4 number they were?

5 MR. BROWN: It's FF, I guess. It's their
6 Exhibit FF. And then 20.

7 REDIRECT EXAMINATION BY MR. BROWN:

8 Q Mr. Hagel, I'm just showing you what's called,
9 I guess, Opponent's Exhibit FF. It's progress notes that
10 were introduced during Jennifer's cross-exam.

11 MR. BROWN: And if it's okay with
12 opposing counsel, it's on April 19, 2005, April 27,
13 2005, and May 11, 2005.

14 Q I don't have my own, but --

15 MR. BROWN: If it's okay with your Honor
16 to kind of walk over to the witness?

17 THE COURT: Sure.

18 Q This is Dr. Cooper's notes from April 19,
19 2005, that were introduced -- all of these were
20 introduced by the opponents.

21 A (Perusing document.)

22 Q If you could look at Past Psychiatric History,
23 the paragraph with that sentence, if you could read that.

24 A "There is no history of noncompliance with
25 medication or treatment."

1 Q Thanks a lot. That's all.

2 MR. RICCIO: Where are you reading from?

3 MR. BROWN: Past Psychiatric History.

4 This was his first visit to Dr. Cooper.

5 MR. RICCIO: Okay.

6 Q This is now -- it's still FF, but it's
7 April 27, 2005, Dr. Cooper's notes. I'm now in the
8 History, which is the first paragraph. There's a
9 sentence that starts "Medication." Could you just read
10 that sentence.

11 A "Medication compliance is good, rules are
12 respected, and activities attended."

13 Q Okay. This is Dr. Cooper's notes on May 11,
14 2005, in the History section of the notes. Could you
15 just read what this -- starting with the word
16 "Medication," just that sentence.

17 A "Medication has been regularly taken, rules
18 are followed, and he is socially appropriate."

19 Q And this is the last notes from Dr. Cooper,
20 that are June 1, 2005. In the History section, same --
21 there's a sentence that starts with "Medication."

22 MR. RICCIO: Could I just inquire? These
23 reports are full exhibits. I'm not sure what the
24 purpose of reading these documents is.

25 MR. BROWN: Well, I'll cut to the chase,

1 if I may. There's good evidence that he was
2 compliant with his meds on a routine basis. Every
3 time he went to Dr. Cooper, he was telling
4 Dr. Cooper he was taking them regularly and
5 consistently. On June 15 he took out a
6 prescription for these drugs. That's it. That's
7 evidence.

8 MR. RICCIO: The document is in evidence.

9 MR. BROWN: Okay.

10 MR. RICCIO: I don't know what that
11 indicates -- this witness talked about abuse of
12 drugs and alcohol. I don't know whether that
13 demonstrates that point.

14 MR. BROWN: I don't have anything
15 further, your Honor.

16 THE COURT: That's fine.

17 Anything else for the witness?

18 RECROSS-EXAMINATION BY MR. RICCIO:

19 Q While we're showing reports of Dr. Cooper, on
20 June 1, 2005 -- do you have the document in front of you?

21 A No, I don't.

22 Q In terms of the History section, sounds like
23 he's doing a heck of a lot better, doesn't it? Fair to
24 say?

25 A (Perusing document.)

1 MR. BROWN: I mean, I can give the same
2 objection that he just gave.

3 THE COURT: Understood. I'm going to
4 give a little leeway. And I got the point from
5 both sides.

6 A Am I supposed to read that?

7 Q I'm just asking you. I don't want you to read
8 it.

9 It sounds like he's doing considerably better,
10 doesn't it?

11 MR. BROWN: He wants you to read the
12 History --

13 Q You can read it to yourself --

14 MR. RICCIO: I'll withdraw it.

15 THE COURT: I understand.

16 Anything else for Mr. Hagel?

17 Mr. Hagel, thank you very much.

18 Appreciate it.

19 (Whereupon, at this time, Mr. Hagel left the
20 hearing room.)

21 MR. BROWN: Your Honor -- I guess we're
22 the petitioner --- we rest.

23 THE COURT: Okay.

24 You have some witnesses that you're going
25 to be putting on?

1 MR. JONES: Yes, your Honor.

2 THE COURT: My recollection, you were
3 going to call one of the Smiths.

4 MR. JONES: We're going to call Maureen
5 Smith, your Honor, and hopefully get to the
6 economist today. We do have him on call.

7 MR. BROWN: Your Honor, I suggest that,
8 as far as I'm concerned, with Dr. Crakes, is maybe
9 call him now or say be here at this time. We can
10 start with Maureen and when he gets here we just
11 start with Dr. Crakes.

12 THE COURT: How much time do you think
13 Mrs. Smith will be testifying?

14 MR. JONES: I would hope the direct
15 doesn't take more than 45 minutes, your Honor.

16 THE COURT: We're at 10:30.

17 MR. RICCIO: I think it's a good
18 suggestion. If it's okay with the Court, we can go
19 for a while and then I'll call him. He expects my
20 call in about half an hour.

21 THE COURT: You want to get started?

22 MR. JONES: We can start.

23 THE COURT: Okay.

24 Thereupon:

25 MAUREEN SMITH, being first duly sworn by the Judge, was

1 examined and testified as follows:

2 THE COURT: Would you please state your
3 full name and address.

4 THE WITNESS: My full name is Maureen
5 Smith; 70 Glen Ridge Road, Greenwich, Connecticut.

6 DIRECT EXAMINATION BY MR. JONES:

7 Q Maureen, where were you born?

8 A I was born in Hartfordshird, England.

9 Q How old are you?

10 A Sixty-one.

11 Q Are you married?

12 A Yes.

13 Q Who are you married to?

14 A George.

15 Q George Smith the Third?

16 A Yes.

17 Q How long have you been married?

18 A I've been married 34 years.

19 Q In addition to George the Fourth, you have a
20 daughter?

21 A Yes, I have a daughter.

22 Q What is her name?

23 A Bree.

24 Q Is Bree a mom?

25 A Yes, she is.

1 Q She has one child?

2 A Yes.

3 Q What's his name?

4 A Grayson.

5 Q How old is Grayson?

6 A Grayson is almost three.

7 Q Do you help take care of Grayson?

8 A Yes, I do.

9 Q Do you work at all?

10 A No, not now.

11 Q Did you used to work?

12 A I used to work at the store.

13 Q At the?

14 A Liquor store.

15 Q Did you used to work full time?

16 A It varied. I just pitched in whenever they

17 needed me. Sometimes part time, sometimes full time.

18 Q How long did you work at the store?

19 A Well, I would say a good 20 years, about 20

20 years.

21 Q What is the nature of the family business?

22 A It's a wine liquor store.

23 Q Where is that store located?

24 A In Cos Cob, Connecticut.

25 Q Where exactly in Cos Cob?

1 A On the Post Road.

2 Q Is it in a shopping center?

3 A Yes, shopping center.

4 Q Where is that?

5 A What do you mean?

6 Q Is it in the center of Cos Cob?

7 A Yeah, it's in the center of Cos Cob.

8 Q Who technically owns the liquor store?

9 A George and I jointly own it.

10 Q Do you own it in a limited liability company?

11 A Yes, we do.

12 Q Are you the members of the LLC?

13 A Yes, we are.

14 Q Just the two of you?

15 A Yes.

16 Q How long has the store been in business in
17 terms of you and George or the LLC owning it?

18 A Oh, a good 76 years.

19 Q Listen to the question. How long have you and
20 George owned the store?

21 A We've owned it about 26 years.

22 Q You bought the store from the prior owners?

23 A Yes, we did.

24 Q Do you know how long the store had been in
25 that location prior to you purchasing it?

1 A I think total, since pre -- what is it, pre
2 Prohibition.

3 Q A good number of years?

4 A Yeah, it's a lot of years.

5 Q Did your son George the Fourth ever work in
6 the store?

7 A Yes, he did.

8 Q When was that?

9 A When he was in high school he helped us out if
10 we needed him. He worked on college breaks. And he came
11 to work for us full time in, I believe, 2003, about May
12 2003.

13 Q What would George do in the store? Let's
14 start when he first started.

15 A When he first started he was like -- you know,
16 he would do deliveries, he would do stock. We all pitch
17 in. We all do a bit of everything there.

18 Q How about in 2003 when he came --

19 A 2003, he was co-manager, so he used to plan
20 the parties when people came in. He would do ordering of
21 the wine. He did a lot -- he started doing computer
22 work. He basically did everything.

23 Q From 2003 on, were there other employees in
24 the store?

25 A Yes, there were.

1 Q Can you tell us who they were?

2 A There was Tom Praka (phonetic), the manager.
3 There was Diego, I would say he's a stock clerk. And
4 we've had various stock clerks come and go. Now we have
5 Randy, who is like an assistant manager now.

6 Q Did you say that George came back -- did he
7 come back and start working in the store full time in
8 2003?

9 A Yes.

10 Q He had already graduated from college?

11 A Yes.

12 Q Where did he go to college?

13 A Babson.

14 Q What was his major there?

15 A Business major.

16 Q Did he also specialize in computers?

17 A Yes. I forget what his degree is, actually.

18 It's terrible. He had a business major, I know that.

19 Q But he was good in computers?

20 A Yes. He was excellent.

21 Q Did he bring that knowledge to the store --

22 A Yes, did.

23 Q -- in some fashion?

24 How did he do that?

25 A He created a Web site, putting inventory on

1 the computer, doing ads. It brought in a lot of business
2 from overseas.

3 Q He was basically starting to update the way --

4 A Yeah.

5 Q -- that Mr. Smith did business?

6 A Right.

7 Q How did George the Third feel about that?

8 A He doesn't like computers, so -- but in time
9 it would have worked out because, you know, he's getting
10 used to them now, gradually.

11 Q Okay. How about the customers, did they like
12 George?

13 A They loved him.

14 Q Did you feel that having him in the store
15 helped the business?

16 A Yes, certainly.

17 Q Did there come a time when there was a
18 discussion with young George about possibly purchasing
19 the business?

20 A When he came back in 2003 to work, it was sort
21 of -- it started then, even before he came back a little
22 bit. But then 2003, once he started working at the
23 store, there were various conversations on and off about
24 the store. We were about to sort of retire, start a
25 little bit of semi-retirement.

1 Q Had he met Jennifer at that point?

2 A Yes.

3 Q When you had had -- do you remember when the
4 first discussion about the purchase of the business was?

5 A It was probably when he started full time,
6 around about May 2003, and then it was gradual over up
7 until he disappeared in 2005. But 2005, it was getting
8 more and more to the point where we wanted to retire, so
9 it probably would have been in the next year or the next.
10 You know, definitely by 2007, we would be gone.

11 Q Let's back up a little bit.

12 You said you started to have discussions with
13 him about some sort of purchase of the business. Was
14 Jennifer involved in those discussions?

15 A Yes. Well, we discussed it at the house.
16 Jennifer was always there with us.

17 Q Again, we're talking -- at this point we're
18 talking about 2003-2004?

19 A Right, right.

20 Q Did Jennifer live with you at the time or --

21 A They lived for a year with us, I believe,
22 2004, yeah. Well, Jennifer sort of came and went, but
23 George lived full time with us, 2003 into 2004.

24 Q Did Jennifer come down on the weekends?

25 A Yes.

1 Q When you had the discussions about the
2 purchase of the business, did they get -- were the
3 discussions pretty involved? Did you discuss numbers?

4 A Yes.

5 Q Do you recall, at some point did you get your
6 accountant involved?

7 A Yes.

8 Q Do you recall when that was?

9 A I think it had to be tax time in 2005. She
10 usually comes to the house around about January-February,
11 and I believe that George came over to the house and sat
12 down with the accountant and George.

13 Q Was Jennifer present?

14 A No.

15 Q Was there a specific proposal discussed with
16 respect to the buyout?

17 A Yes.

18 Q What was that?

19 A It was a ten-year buyout. The total figure
20 would have been 500,000, and it was 50,000 a year. But
21 we had said that maybe if it went to 12 years, if they
22 got in a little bit of trouble, we'd go to 12 years and
23 work it accordingly.

24 Q Did you agree to those terms with George?

25 A Yes, we did.

1 Q When was that? That was in January, February?

2 A It was about February of 2005.

3 Q Then when would the buyout have taken effect?

4 A Probably it would have taken effect in the
5 next year, the next year definitely.

6 Q 2006?

7 A Yeah.

8 Q Maybe the end of 2006?

9 A No. We were in 2005. It would be 2006 into
10 2007.

11 Q Okay.

12 A We were gradually weaning ourselves out. It
13 was flexible, but it was definitely going to happen.

14 Q Do you know to what extent Jennifer was aware
15 of the proposed buyout?

16 A Yeah. Oh, Jennifer was in on it. We never
17 kept anything from her.

18 Q Did she even have some idea about what they
19 were going to do with the store?

20 A They were excited. They were talking about
21 doing wine tastings. They used to go to wine tastings
22 together. And I remember I said I wasn't going to do the
23 baskets anymore one day because it was getting to be a
24 pain. Jennifer and George said, "We were going to keep
25 them on." You know, they were -- they were getting

1 excited.

2 Q What did you and George the Third intend to do
3 once George the Fourth bought the business?

4 A Enjoy ourselves a little bit, travel, and --
5 retire.

6 Q What is the present situation with your lease
7 with the landlord?

8 A We renewed it 2006 for ten years.

9 Q Was it December 2006 or --

10 A Yeah, it was December 2006, I believe.

11 Q It expired?

12 A Yes.

13 Q And you renewed the lease for ten more years?

14 A Yes.

15 Q In the same location?

16 A Yes.

17 Q Is it true that there's going to be a new
18 anchor tenant in that location?

19 A Yes.

20 Q Who is that?

21 A That's going to be CVS.

22 Q Where will the CVS be in relation --

23 A Right across the atrium from where we are,
24 where the Food Mart used to be.

25 Q You anticipate that the walk-in traffic will

1 be significant?

2 A They say there -- you have a lot of walk-in
3 traffic when you're next to CVS.

4 Q Do you think there will be even more than when
5 there was a Food Mart?

6 A Possibly.

7 Q When was the first time that you met Jim
8 Walker?.

9 A I think the end of August 2003. Bree had
10 been --

11 Q Two thousand --

12 A And 3.

13 Q 2005?

14 A I mean 2005, I'm sorry. 2005.

15 He came to the home. Bree had been making
16 calls, and she set it all up for us. He came to the
17 house.

18 Q Bree had been making calls. Investigating
19 potential lawyers?

20 A Yes.

21 Q Those lawyers were to represent both your
22 family and Jennifer --

23 A Yes.

24 Q -- correct?

25 A Yes.

1 Q That was the understanding --

2 A Yes.

3 Q -- at the time?

4 A Yes.

5 Q Let me finish the question.

6 A I'm sorry.

7 Q Bree set up the meeting with Mr. Walker?

8 A Yes.

9 Q When did that meeting take place?

10 A When?

11 Q When.

12 A I believe it was towards the end of August in

13 2005.

14 Q Where was that meeting?

15 A It was in our house on Glen Ridge Road.

16 Q Who was present at that meeting?

17 A George, myself, my daughter Bree, James

18 Walker, and Jennifer.

19 Q Where in the house did the meeting take place?

20 A In the dining room.

21 Q Jennifer was present at the meeting?

22 A Yes, she was.

23 Q During the course of the meeting, did

24 Mr. Walker put a value on the case against the cruise

25 line?

1 A Yes.

2 Q What was the value he put on the case?

3 A 3 to 6 million.

4 Q Jennifer was in the room when he said that?

5 A Yes.

6 Q Do you know if she heard whether or not he
7 said that?

8 A Well, she was sitting right next to me. I was
9 sitting, Jennifer was to my left, and James was to my
10 right. I remember when it was said I touched her knee
11 and she smiled.

12 Q Did Mr. Walker say anything else about his
13 track record with respect to settling cases?

14 A Mr. Walker said at the time that his main
15 thing was sexual assaults. And he said he had never had
16 a case over \$2 million. I remember him saying that. We
17 all remembered him saying that. We put notes down. But
18 his main thing is sexual assaults.

19 Q So this would have been, then, the biggest
20 case --

21 A Yes.

22 Q -- he had ever handled?

23 A Yes.

24 Q We've heard -- over the past four or five days
25 of testimony we heard a great deal about George's alleged

1 taking of prescription drugs. Were you aware he went to
2 see Dr. Cooper --

3 A No.

4 Q Let me finish.

5 -- in April of 2005?

6 A No.

7 Q How often did you see George in the weeks
8 leading up to the wedding in July of 2005?

9 A Possibly about once a week, or if I ran into
10 the store I would see him. It varied. Maybe once or
11 twice I'd run into the store and see him.

12 Q How often did you talk to him?

13 A All the time. He loved to talk on the phone.
14 Sometimes four or five time a day I'd speak with him on
15 the phone.

16 Q But you definitely talked to him every day?

17 A Yes.

18 Q Were you and George close?

19 A We were extremely close.

20 Q Was George close with his dad?

21 A He was extremely close with his father.

22 Q Was he close with Bree?

23 A He was extremely close with Bree.

24 Q To you, did he ever seem agitated or out of
25 sorts?

1 A No.

2 Q Did he ever seem depressed?

3 A No.

4 Q Did you notice anything different about him in
5 April, May, or June of 2005?

6 A No. Just a few little wedding pre jitters,
7 nothing -- everybody goes through a little pre-wedding
8 jitters, you know; trying to get the band, trying to get
9 this, trying to get that.

10 Q How about George's drinking? We've also heard
11 a great deal about that. Do you believe your son George
12 had a drinking problem?

13 A No, I don't.

14 Q Did you ever have occasion to talk to him
15 about excessive drinking?

16 A No.

17 Q Yet you talked to him pretty much on a daily
18 basis?

19 A I talked to him every day.

20 Q How many times from April of '05 through the
21 wedding did you see George?

22 A On a weekly basis. As I say -- or it varied.
23 Sometimes he popped up to the house. He was living in
24 Byram, it was very close. Sometimes if we weren't there,
25 we'd ask him to let the dog out or something. But we

1 never let time slip by without really seeing each other.
2 As I say, we spoke all the time on the phone.

3 Q From the period of April '05 to the wedding,
4 did you see George drinking at all?

5 A Well, yeah. I'd have him -- he was into the
6 wine because of the store, and he loved trying different
7 wines. And he'd have a beer or two.

8 Q Did you see him drunk at all during that
9 period?

10 A No, I didn't.

11 Q How about maybe the rehearsal dinner for the
12 wedding?

13 A He might have, you know, had a few at the
14 rehearsal dinner. I didn't -- we didn't stay all night
15 at the rehearsal dinner. And, you know, everybody was
16 there having a bit of a good time.

17 Q Leading up to the point where you sort of got
18 into the wedding week, had you seen George --

19 A No.

20 Q -- drunk?

21 A No.

22 Q When you would see George in the store, did he
23 ever appear hung over?

24 A Never.

25 Q Did he ever appear sick?

1 A Never.

2 Q Did he ever call in late to work?

3 A Never.

4 Q Did he ever appear disheveled?

5 A Never.

6 Q Was he ever late to work?

7 A Never.

8 Q When did you first meet Jennifer?

9 A I tried to work this out the other day. I
10 think it was probably round about towards the end of
11 2002 -- 2003, maybe. Because there was a baseball game
12 and George had brought Jennifer to the house. They were
13 going to a baseball game.

14 Q A Yankee game?

15 A Yes.

16 Q After you first met her, did you see her
17 often?

18 A Yeah. They seemed to really get along well,
19 and George was -- George, in May of that same year, had
20 come back to live at the house, so we did see quite a lot
21 of her.

22 Q Where was Jennifer living at the time?

23 A I believe she was living in Newport. I can't
24 remember, Cromwell, Newport.

25 Q That's when she started to come visit on the

1 weekends?

2 A Yes, or in the week, whatever her schedule
3 allowed.

4 Q Would you and big George interact with George
5 and Jennifer?

6 A Yes.

7 Q Was it pretty regular?

8 A Yes.

9 Q Going out to dinner?

10 A Going out, staying in, having dinner together.

11 Q How would you describe your relationship with
12 Jennifer at that time?

13 A Never a problem.

14 Q How did you feel about Jennifer?

15 A I loved her. My son loved her.

16 Q So at least in the outset you never had any
17 issues --

18 A Never.

19 Q -- with Jennifer?

20 When did you first become aware that George
21 had disappeared?

22 A The morning of July 5, '05. John Hagel called
23 on the telephone and said, "Something terrible has
24 happened to George. He's disappeared."

25 Q Had you heard from George after they left for

1 the cruise?

2 A Just an e-mail. After -- yeah. He sent an
3 e-mail saying, "I'm having such a fantastic time. Don't
4 contact me unless somebody dies or it's the end of the
5 world." It's a sick sense of humor, but look what
6 happened. That's all we heard, was an e-mail.

7 Q You said you heard from Mr. Hagel. He called
8 the house?

9 A Yes.

10 Q Who spoke to him?

11 A I believe George answered. It's a bit fuzzy.
12 But then I took over the phone. And I think we were
13 giving it back and forth.

14 Q This was at your house in Greenwich?

15 A Yes.

16 Q When did you first hear from Jennifer?

17 A I think we didn't hear from Jennifer at all
18 when she was in Turkey. We didn't hear when she landed
19 at the airport in New York. And I think it was the day
20 after she got back to Cromwell we heard from her.

21 Q It was within the first week?

22 A Yes, within the first week.

23 Q Did you try to contact her?

24 A My daughter Bree called John Hagel every day
25 to see how Jennifer was doing.

1 Q But each time she would speak to Mr. Hagel?

2 A Every day, yeah.

3 Q Again, relations at that time were good?

4 A Very good.

5 Q How did the rest of your family get along with
6 Jennifer prior to the wedding and at that time?

7 A No problems.

8 Q What did you folks do after you found out
9 about what happened to George?

10 A I had a lot of family staying at the house
11 from England. And they had to leave to go back to
12 England. We just -- my daughter took over, and she just
13 called, I think -- I believe she called Christopher
14 Shays. She called -- I think she got in touch with the
15 American Embassy. She just took over because we were
16 just, you know

17 Q What was the purpose of calling Christopher
18 Shays?

19 A I think it was George's suggestion. He's a
20 Congressman, maybe he can help us out. As it turned out,
21 he did.

22 Q Bree explained to him what happened --

23 A Yes.

24 Q -- and asked for help?

25 A Yes.

1 Q Did you at some point go to Greece?

2 A Yes.

3 Q When was that?

4 A It was after the first week, George and I left
5 for Greece.

6 Q What did you do when you got there?

7 A We went to Athens and we met with the American
8 Embassy in Athens, and then we met with the American
9 consulate, Nick Geranios, I think his name was, and he
10 flew with us to Samos. He accompanied us to -- flew with
11 us to the island of Samos, where they believe that off
12 that shore George had gone overboard.

13 Q Did they take you out there?

14 A Yes. The Greek naval did, yes.

15 Q Were you able to obtain any information that
16 was helpful at that time?

17 A No. We were advised by the American Embassy
18 not to go into Turkey because it was bedlam. We were
19 advised just to stay in Greece, in Samos.

20 Q At some point Bree was able to obtain some
21 information; is that correct?

22 A Yes.

23 Q Do you know what information she obtained?

24 A She obtained statements from the American
25 Embassy. There was a girl called Laura, it was her first

1 day on the job. I don't know whether she was supposed to
2 do it, but she had sent statements over the Internet to
3 Bree.

4 Q What type of statements were they?

5 A I think it was Rusty Kaufman's statement, Josh
6 Askin's statement, Jennifer's statement, and the
7 captain's statement.

8 Q Those were statements ultimately turned over
9 by Royal Caribbean?

10 A I don't know whether or not they were in the
11 package from Royal Caribbean. But we already had these.
12 I don't know.

13 Q How long did you spend in Greece?

14 A I believe we were going to spend longer, but I
15 think we just spent about six days there.

16 Q You got back to the States. At some point
17 after your return did you ultimately visit with Jennifer?

18 A We may have gone there or they came to the
19 house. I remember Jennifer and her mother and father
20 came to our house. But we went up there as well sometime
21 in that period.

22 Q So the families were still close?

23 A Oh, yeah, yeah.

24 Q Did Jennifer start to come visit you --

25 A Yes.

1 Q -- on a regular basis?

2 A Yes.

3 Q Can you just explain briefly how that would
4 work.

5 A Jennifer would come mainly midweek. I think
6 it was a Tuesday, and she'd stay overnight and leave on
7 maybe Wednesday in the day or -- you know, it was
8 flexible.

9 Q Did that become a regular thing?

10 A Yes.

11 Q During the course of her visits, did you have
12 occasion to talk with her about what happened with
13 George?

14 A Well, I tried to.

15 Q What would happen?

16 A It was always, "I don't remember, I don't
17 remember." And it was so much talk of the prescription
18 drugs.

19 And -- I don't know whether I can go back to
20 when I first spoke with Jennifer the first day. The only
21 conversation I had with Jennifer was it was prescription
22 drugs and how she remembered when she flew over on the
23 plane from Turkey that George was on prescription drugs.
24 The first call from Jennifer was prescription drugs,
25 prescription drugs.

1 And then I think two days later there was
2 another call from Jennifer, and it was all about how bad
3 George was in Florence, when they met Josh Askin, how
4 George was falling over all the time. And that was just
5 the two conversations.

6 Q These were the first conversations you had
7 with Jennifer --

8 A Yes.

9 Q -- about George's disappearance?

10 A Yes.

11 Q Getting back to asking Jennifer, when she
12 would start to come to the house, and asking her about
13 what happened to George, did she say anything to you
14 about why she couldn't discuss what happened?

15 A Yes.

16 Q What was that?

17 A It was someone from the FBI had said -- the
18 FBI, because of the FBI she had to -- because of the
19 integrity of the case, that she wasn't allowed to speak.

20 Q Did you find out something different --

21 A Yes.

22 Q -- from the FBI?

23 What did you find out?

24 A I found out Lisa Ball did not have a gag order
25 on Jennifer.

1 Q Who is Lisa Ball?

2 A She was an FBI agent who was very prominent in
3 our case at the time.

4 Q Did you ever discuss with Jennifer the fact
5 that Lisa Ball had said the FBI had not told her she
6 couldn't speak with you?

7 A No, I didn't.

8 Q At this point in time your family was not in
9 the media; is that correct?

10 A We were not in the media.

11 Q There had been no dissemination of any
12 information or evidence or anything like that --

13 A No.

14 Q -- from your family about information to the
15 media?

16 A No.

17 Q How did you feel about the fact that Jennifer
18 was not discussing what happened with you?

19 A Well, she didn't remember, and I believed her.
20 I believed her, that she didn't remember. "I don't
21 remember, I don't remember." My heart went out to her,
22 the fact that she didn't remember. And then I started
23 seeing a lot of things on the media.

24 Q We're going to get to that.

25 A Okay.

1 Q How long did Jennifer stay with your family?

2 A Three and a half months.

3 Q This was pretty much on a weekly basis?

4 A Yes, yeah.

5 Q The details about what happened from that
6 evening, were they forthcoming at any time, as time
7 progressed?

8 A Never.

9 Q When did you first become aware of allegations
10 about how Jennifer behaved that evening that George
11 disappeared?

12 A Well, from the media. There was a lot of
13 stuff out there in the media, how Jennifer had kicked
14 George, and those two witnesses who had come forward.
15 And that she was -- you know, Josh Askin had said on
16 television that Jennifer was with another man that night.
17 They're all allegations.

18 Q What was your reaction when you heard those
19 things?

20 A Well, for the longest time I didn't believe
21 anything. I didn't believe a thing. I couldn't believe
22 a thing.

23 Q Did you ever try to talk about the things that
24 you were hearing in the media about her conduct with her?

25 A No.

1 Q Mr. Brown has talked a couple times about a
2 rift that started to develop between your family and
3 Jennifer. Did you feel that at some point there was a
4 separation --

5 A Right.

6 Q -- that began to occur?

7 A Yeah.

8 Q About when was that?

9 A It was about -- I would say it was about three
10 months.

11 Q After George disappeared?

12 A Yeah, when she'd been in the house, three
13 months.

14 Q How did the separation begin?

15 A It was mainly when the lawyers -- we were
16 looking for lawyers, and we had heard that Jennifer had
17 gone down to Florida and met with Jack Hickey, and the
18 main thing she was talking about was pretrial settlement.

19 Q Who is Jack Hickey?

20 A He's a maritime lawyer in Florida.

21 Q Okay.

22 A And then Ackerman is the other lawyer that
23 John Hagel spoke of, and she did the same with him.

24 Q "The same" meaning what?

25 A Pretrial settlement was discussed. They had

1 actually called our home to tell us this. And they said
2 that Jennifer said she did not want to be a witness and
3 could the Smith family progress without her. It was --
4 started to -- a lot of different things started to
5 happen. We thought that Jennifer didn't have the same
6 objectives that we did.

7 Q What were your objectives, your family's
8 objectives?

9 A We wanted to go and file a lawsuit against
10 Royal Caribbean to find out what happened to my son on
11 that ship.

12 Q And you didn't feel that Jennifer felt the
13 same way?

14 A No.

15 Q What did you think that Jennifer -- how did
16 you feel that Jennifer wanted --

17 A I felt like Jennifer wanted the whole thing to
18 go away. She called us at three, three and a half
19 months. She said, "The FBI are never going to solve this
20 case." She called us and told us that. She said she did
21 not want to be deposed and she did not want to file a
22 lawsuit.

23 Q This was still during the time period when you
24 were looking for lawyers?

25 A Yes.

1 Q Was this also during the time period when your
2 family did start to do some of the media shows?

3 A The only media we started was on my son's
4 birthday, October 3. We had written a letter to *The*
5 *Greenwich Time* and *The New York Times*.

6 Q When did you -- at some point you appeared
7 before Congress, correct?

8 A Yes.

9 Q Did you testify before Congress?

10 A No.

11 Q Did you submit written --

12 A No.

13 Q -- testimony?

14 A I think Jennifer did.

15 Q Did Bree as well?

16 A No.

17 Q But you did travel down to Washington?

18 A Yes, we did.

19 Q How did the congressional hearings come about?

20 A It was through Christopher Shays. Once we had
21 started the ball rolling with what is happening on cruise
22 ships, he started investigating them and realized there
23 are a lot of people out there who were having a lot of
24 trouble on cruise ships and he realized he had to start
25 investigating and do something about it.

1 Q Who had made the contact with Mr. Shays?

2 A George -- George had told Bree to call him.

3 Q Did you have discussions with Jennifer at that
4 time about the fact that you were getting Mr. Shays
5 involved?

6 A I don't remember. Maybe, possibly. I don't
7 remember.

8 Q Did you have any discussions with her about
9 the fact that there were going to be these congressional
10 hearings?

11 A We all knew they were happening. James Walker
12 knew. Everybody knew they were going to happen.

13 MR. JONES: Your Honor, could we take a
14 short break so they could call?

15 THE COURT: Sure. A few minutes.

16 (Whereupon, a recess was taken.)

17 THE COURT: Mrs. Smith, you're still
18 under oath.

19 THE WITNESS: Yes.

20 BY MR. JONES:

21 Q Maureen, at some point in November of 2005
22 Jennifer was appointed as the administratrix of George's
23 estate, correct?

24 A Yes.

25 Q Do you know how it came about that Jennifer

1 would serve in that capacity?

2 A I believe we got a letter from Elizabeth
3 Byrne, Jennifer's probate lawyer in Cromwell, advising us
4 that Jennifer was the administratrix of the estate.

5 Q Because she was George's wife?

6 A Because she was George's wife.

7 Q Now, at that time did you object to her
8 appointment?

9 A No.

10 Q Did you have any reason at that point to
11 believe that she would not represent your family's
12 interests?

13 A No.

14 Q Did you have any reason to believe at that
15 point that she wouldn't try to find out what happened to
16 George?

17 A No.

18 Q So at that time this so-called rift was
19 starting to develop, but you still felt confident that
20 Jennifer could do the job?

21 A I believed that she wouldn't betray George,
22 yes.

23 Q When did you find out that Jennifer had
24 settled with Royal Caribbean?

25 A I believe we got -- it was right after --

1 towards the end of June, maybe, just after it happened.
2 We got a phone call from Brett Rivkind saying that there
3 was a press release out, and that's how we found out.

4 Q That would have been the end of June, two
5 thousand- --

6 A Yeah.

7 Q 2006?

8 A 2006.

9 Q Okay. Did you talk to Jennifer at all at that
10 time?

11 A No.

12 Q You didn't receive a phone call from her?

13 A No.

14 Q Now, at that point did you talk to Mr. Rivkind
15 about bringing a lawsuit in Florida?

16 A Yeah, yes.

17 Q Did your family bring a lawsuit --

18 A Yes.

19 Q -- in Florida?

20 Who were the plaintiffs in that lawsuit, if
21 you recall?

22 A It was -- I don't know whether Bree was
23 involved. It was George and myself.

24 Q That, as we've heard on several occasions,
25 that lawsuit right now is on appeal --

1 A It's on appeal.

2 Q -- is that correct?

3 Was the intention prior to filing that lawsuit
4 that your family and Jennifer were going to file a
5 lawsuit together?

6 A We were, yes. We waited a whole year for that
7 to happen.

8 Q That was your understanding from who,
9 Mr. Rivkind?

10 A It was from Mr. Rivkind, Mr. Walker, and from
11 Jennifer.

12 Q When that lawsuit in Florida was filed, was
13 that on the eve of the statute of limitations?

14 A Yes, it was.

15 Q With respect to the settlement that's before
16 the Court, you're asking for that settlement to be
17 rejected; is that correct?

18 A Yes.

19 Q You're also asking for Jennifer to be removed
20 as administratrix; is that correct?

21 A Yes, we are.

22 Q Do you believe this was a fair settlement?

23 A No.

24 Q Why not?

25 A In order for it to be a fair settlement, I

1 think Royal Caribbean has to give us information. We
2 don't know what happened on that ship. It could be crew,
3 it could be Lloyd Botha, it could be the Russians, it
4 could be Josh Askin. It could be anybody.

5 Q It could also be Royal Caribbean?

6 A It could be Royal Caribbean. If we settle
7 this lawsuit, there could be no recourse afterwards.

8 Q Are there any other reasons --

9 A I believe the value of my son is very
10 underestimated. And I think the publicity of this case
11 is just through the roof. I mean, you just have to --
12 you just have to go home and make a phone call and every
13 national show would want us on there.

14 Q Have you heard from media outlets regarding --

15 A We constantly hear from the media, and we get
16 e-mail.

17 Q I mean today --

18 A Not today.

19 Q When I say today, I mean in the present --

20 A Yes.

21 Q -- in the last several weeks.

22 A Yes.

23 Q These are national --

24 A Yes.

25 Q -- national media outlets?

1 A Yes.

2 Q Okay. Why do you believe that Jennifer needs
3 to be removed as the administratrix?

4 A I think Jennifer has some embarrassing
5 moments, and I think she's compromising the settlement.
6 She wants to run away, cover it up, protect her

7 Q Do you feel that she was compromised by her
8 actions of that evening?

9 A Yes, I do.

10 Q Do you also feel that this settlement has not
11 been handled properly?

12 A Yes.

13 Q Had you or your counsel ever been notified
14 about the settlement discussions?

15 A Never.

16 Q In the papers that we filed on your behalf
17 with the Court, you asked for a new administratrix; is
18 that correct?

19 A Yes.

20 Q You did ask for Bree; is that correct?

21 A Yes, we did.

22 Q Are you wedded to Bree as the person who would
23 have to be the administratrix?

24 A Am I what? Sorry.

25 Q Would you be open to --

1 A Yes, I would.

2 Q -- someone other than Bree?

3 A Yes.

4 Q You have to let me finish the question.

5 A new administratrix?

6 A Yes.

7 Q Would you be willing to enter into further
8 negotiations with Royal Caribbean?

9 A Yes. Main thing is information. I want to
10 know what happened to my son on that ship. They won't
11 give us the information.

12 Q What about in terms of the value --

13 A The value of my son, I'm leaving that up to
14 the economist and you lawyers. I can't put a value on my
15 son's head. I couldn't do that. That's professionals
16 that do that.

17 MR. JONES: No further questions, your
18 Honor.

19 THE COURT: Thank you.
20 Attorney Brown?

21 MR. BROWN: Your Honor, can we take a
22 very short recess?

23 THE COURT: Sure.

24 MR. BROWN: Actually, Ms. Byrne is going
25 to do the questioning..

1 THE COURT: Okay.

2 (Whereupon, there was a pause in the
3 proceedings.)

4 THE COURT: Mrs. Smith, you're still
5 under oath.

6 THE WITNESS: Yes.

7 CROSS-EXAMINATION BY MS. BYRNE:

8 Q Mrs. Smith, in the approximately three years
9 that it's been since George passed away on board that
10 ship, would you consider that your family has launched a
11 crusade, perhaps a mission, to find justice for George?

12 A Yes.

13 Q You've mentioned those terms, "justice for
14 George," a number of times. What do you mean when you
15 say "justice for George"? What are you looking for?

16 A I'm looking to find out who murdered my son on
17 that cruise ship.

18 Q So you're convinced that he was murdered?

19 A I'm a hundred percent convinced.

20 Q Your family's Web site is actually called
21 *Justice for George Smith*.

22 A That is actually an illegal Web site. And I
23 don't know how -- that is not up for the public. James
24 Walker produced it, and I don't know how he got it.
25 *Justice for George* was a site that we were going to put

1 up and our lawyers advised us not to do that, and we
2 didn't put it up.

3 Q It is fully accessible, though, on the
4 Internet.

5 A It's accessible, but I don't know how because
6 it's not open to the public.

7 Q Have you actually contacted some type of Web
8 site or some type of Internet provider to have it taken
9 down?

10 A It's not accessible to the general public, is
11 my knowledge.

12 Q Actually, if you type in
13 *www.justiceforgeorgesmith*, boom, up it pops.

14 A Well, it's not supposed to be.

15 Q Your effort to find justice for George over
16 the last almost three years has included, I guess, a
17 number of different methods. One way is to attend the
18 congressional hearing, correct?

19 A Right. Just the first one.

20 Q And speaking out on behalf of the
21 International Cruise Victims?

22 A Right.

23 Q You've been part of an organization -- or a
24 part of a startup of that organization?

25 A We started it up with Kendall Carver.

1 Q You've spoken out on a number of TV shows as
2 well?

3 A Yes, we have.

4 Q Any idea how many TV shows?

5 A Royal Caribbean did tell us we were actually
6 on 36, I believe they said.

7 Q Thirty-six?

8 A Close to it.

9 Q Most of the time all three of you would go.
10 Bree and Mr. Smith and yourself --

11 A Yes.

12 Q -- would attend these different TV shows?

13 A Yes.

14 Q Sometimes it seems that Bree went --

15 A Separately.

16 Q -- and represented you?

17 A It depended.

18 Q Did she represent you when she appeared on TV
19 a number of times on her own?

20 A Depended what the topic was, the subject was,
21 for that night. But, yes, yes.

22 Q Attorney Rivkind also attended a number of
23 shows --

24 A Yes, he did.

25 Q -- and discussed this matter.

1 A Yes.

2 Q Does your effort to find justice for George
3 include writing a book?

4 A In time, I think maybe I'd like to write a
5 book, and I'd like to say what's happening out there on
6 the high seas.

7 Q Have you been involved with Joan Lounds in the
8 writing of the book?

9 A No. She's written her own book.

10 Q Have you assisted her?

11 A On our own personal side. But I have also --
12 she has interviewed every single member of ICV for the
13 book.

14 Q Do you have any type of fee-sharing
15 arrangement with Joan Lounds?

16 A None whatsoever.

17 Q Earlier today in your direct testimony you
18 criticized your daughter-in-law for being, I'll use the
19 phrase "tight-lipped." You didn't use that word, but
20 I'll use the phrase.

21 A Right.

22 Q That's an interjection you've made both here
23 in this courtroom and also on TV.

24 A Right.

25 Q I'd like to talk to you about that for a few

1 minutes.

2 First of all, isn't it true that the FBI
3 actually discouraged Jennifer and you and your family
4 from making comments about what happened?

5 A Not with the families.

6 Q Not with the families?

7 A Not with the families. There was no gag order
8 on the families.

9 Q None whatsoever?

10 A None whatsoever.

11 Q Do you remember appearing on the Scarborough
12 show back in December of 2005?

13 A Yeah. I think that was one of the first shows
14 we went on.

15 MS. BYRNE: Can I have this marked as --
16 this is the Scarborough show, December 8, 2005.

17 MS. STROILI: II.

18 (Whereupon, the transcript from the 12/8/05
19 Joe Scarborough show was marked as Petitioner's Exhibit
20 II.)

21 Q I'd like for to you take a look at page 3 --
22 excuse me, page 4 of this transcript. This is a
23 transcript from Joe Scarborough, and for this show we
24 had, according to the transcript, Mr. Smith, you,
25 Mrs. Smith, and also Bree Smith.

1 THE COURT: This is Exhibit II.

2 MS. BYRNE: Already in evidence?

3 THE COURT: Is there any objection?

4 MR. JONES: No, your Honor.

5 THE COURT: Okay.

6 MS. BYRNE: I just need to find my place.

7 THE COURT: Take your time.

8 MR. JONES: Your Honor, this isn't
9 already in evidence, correct? I thought someone
10 said it was already in evidence.

11 THE COURT: I think she was asking
12 whether we would admit it as evidence. I assume
13 you don't have an objection?

14 MR. JONES: No, none at all.

15 Q I'm looking at the second full paragraph on
16 page 4, Mrs. Smith, in this exhibit from the Scarborough
17 show. It says: "For the first three months we were just
18 out of our minds and we wouldn't have been able to do
19 interviews anyway, but the FBI asked us to keep quiet and
20 we did."

21 Do you remember those comments --

22 A Probably.

23 Q -- from the Scarborough --

24 A Probably, in the media, yeah. We were asked
25 to keep quiet in the media, but not with family.

1 Q Two sentences later, also -- this is a comment
2 from Bree. "But we think now is a good time to come
3 out."

4 Do you see that statement there? This would
5 be come out to the media?

6 A Oh, right.

7 Q I'm also going to ask you, do you remember
8 appearing on the *Nancy Grace Show* December 19 of 2005?

9 A Probably.

10 Q Did you appear on the *Nancy Grace Show* more
11 than once?

12 A Many times.

13 Q You did. How many times, do you think?

14 A I really don't know. She's a -- I think she's
15 a great woman.

16 MS. BYRNE: This would be December 19,
17 2005, the *CNN Nancy Grace Show*.

18 MS. STROILI: This is Exhibit JJ.

19 (Whereupon, the transcript from the 12/19/05
20 *Nancy Grace Show* was marked as Petitioner's Exhibit JJ.)

21 Q I'm going to ask you to draw your attention to
22 page 8 of this transcript, and just about halfway down
23 the page there's a comment from Bree. And it says that,
24 "Well, the FBI had requested our silence for their
25 investigation."

1 Do you remember that comment?

2 A I don't remember it, but it's here.

3 Q Okay. So she made a comment that the FBI had
4 requested yours -- "our silence for the investigation."

5 MR. JONES: There's no question.

6 Q I said, do you remember that comment.

7 A I don't remember it. It was my daughter Bree
8 that made it. No.

9 Q Do you remember appearing on the Rita Cosby
10 show December 22, 2005?

11 A Probably we did, yes.

12 Q And you appeared on that show a number of
13 times, didn't you?

14 A Rita Cosby, yes.

15 Q You may have appeared December 22 and
16 December 23, 2005.

17 A Possibly.

18 MS. STROILI: This is Exhibit KK.

19 (Whereupon, the transcript from the Rita Cosby
20 show was marked as Petitioner's Exhibit KK.)

21 Q I'm going to ask you to take a look at page 7.
22 This is also a comment from Bree. This is Bree
23 acknowledging that "I think" -- "But I think she possibly
24 could have stated that the FBI had requested that she
25 keep certain things from that evening quiet."

1 Do you remember that statement from Bree?

2 A Possibly, yes.

3 Q I'm going to ask you to look, as well, at page
4 18 of that same transcript. That's a statement by
5 Attorney Rivkind, who was on that show with you that
6 night. And Attorney Rivkind, who is the attorney that
7 you hired because of his expertise, says, down at the
8 bottom, "All I can say is, you know, there's an ongoing
9 FBI investigation, and when that happens the FBI likes
10 the witnesses and anybody with information really not to
11 share their information during the investigative stage."

12 Do you see that statement?

13 A Yes, I do. We're talking about the media,
14 now, speaking out in the media.

15 Q Correct.

16 A Okay.

17 Q By the way, Lisa Ball, who you had mentioned,
18 was she the actual FBI agent conducting --

19 A Not the actual person -- she was doing a lot
20 of the publicity for our case.

21 Q She was doing the publicity.

22 You didn't actually speak with Sean O'Malley,
23 for example, with regard to this issue of the gag order?

24 A No.

25 Q Now, we know, as well, Mrs. Smith, that there

1 were a number of private e-mails exchanged --

2 A Um-hum.

3 Q -- between you and Jennifer.

4 A Many.

5 Q Again, talking about the rift that came to be,
6 I guess.

7 A Right.

8 Q In the months after your son passed away, do
9 you remember sending the e-mail December 2 -- excuse me,
10 December 5, in response to Jennifer's e-mail of December
11 2 -- these e-mails are already in evidence -- indicating
12 that your family intended to go to Washington separately,
13 that you would sit separately?

14 MR. JONES: Your Honor, if I may, I think
15 it would be helpful to show the witness, even
16 though they're in evidence, talking about what they
17 say.

18 MS. BYRNE: I'm asking if she remembers.

19 MR. JONES: It still might be helpful to
20 show her the e-mail you're referring to. That's
21 all.

22 MS. BYRNE: Sure.

23 Q Is *loppysmith@aol.com* your e-mail --

24 A Yes.

25 Q This is an e-mail dated December 2 from that

1 e-mail address to Jennifer.

2 A Um-hum.

3 Q And do you remember these words, "We will in
4 public, Jen, stand together" --

5 A Yes.

6 Q -- "with our lawyers for our lawsuit, but
7 morally you know that we are not together with you."

8 A Exactly right.

9 Q Do you remember who sent it? Was it you or
10 was it Bree?

11 A Probably myself if it came from *loppysmith*. I
12 think this e-mail was sent right after I had asked
13 Jennifer to sit down and answer a series of questions,
14 because we had a lot of questions for her, and her --
15 through Brett Rivkind. Brett Rivkind went to James
16 Walker. And they both refused, saying they needed the
17 questions in written form, that they would not allow
18 Brett Rivkind to meet with Jennifer.

19 Q I think you actually have a lot of questions
20 in these e-mails and she did respond that she did not
21 have a recollection. If I recall, that's one of the
22 complaints you voiced this morning.

23 Let me ask you about the e-mail, also from
24 *loppysmith@aol.com* to Jennifer. Towards the bottom of
25 the page, the sentence there, that is from you, "The

1 hearings in Washington are open to the public, so you
2 know" --

3 A Yes.

4 Q -- "you can yourself go" --

5 A I wrote that.

6 Q -- "but we would prefer to sit alone."

7 A Yes. I did prefer to sit alone at that point.

8 Q How, Mrs. Smith, did it happen that you went
9 from having the close loving relationship that you had
10 with your daughter-in-law to now wanting to sit alone?

11 A Because we were under the impression that
12 Jennifer did not want to file a lawsuit. To come to us
13 at three months and say that the FBI would never solve
14 this lawsuit, it just -- I could not believe that she
15 would come out with something like that. Why at three
16 months would she say that the FBI is never going to solve
17 this lawsuit?

18 Q This information came largely from Bree; isn't
19 that correct?

20 A No. Every time a phone call came in to our
21 home Bree would answer the phone and we would be on the
22 phone together.

23 Q I do have a few questions with regard -- about
24 the construction of the Web site, the *Justice For George*
25 site.

1 How was it that it got constructed if it
2 wasn't --

3 A We did it and our lawyers advised us at this
4 point in time, do not put it out in the public.

5 Q Because it had destructive information?

6 A No. Nothing like that. It was the media we
7 didn't want -- and we haven't done media now for almost a
8 year and a half. And we listen to our lawyers,
9 everything they tell us.

10 Q So you were active in the construction of it
11 initially; isn't that correct?

12 A Yes. We constructed it.

13 Q I want you to take a look at a portion of that
14 Web site. It's the *Justice for George* Web site.

15 MS. STROILI: Exhibit LL.

16 (Whereupon, the printout from the *Justice For*
17 *George* Web site was marked as Petitioner's Exhibit LL.)

18 Q And it's under *www.justiceforgeorgesmith.com*.

19 What I'm looking at specifically is this
20 lovely page of photos --

21 A Um-hum.

22 Q -- that are of George's wedding and
23 honeymoon --

24 A Um-hum.

25 Q -- June, July 2005.

- 1 A Um-hum.
- 2 Q Handsome guy, your son.
- 3 There's a picture of him dancing with you --
- 4 A Yes.
- 5 Q -- at the wedding reception.
- 6 A Right.
- 7 Q There's a picture of him with his sister Bree.
- 8 A Right.
- 9 Q George on his wedding day.
- 10 A Um-hum.
- 11 Q George holding Grayson, his nephew.
- 12 And a couple of photographs of George on the
- 13 honeymoon.
- 14 A I don't have that.
- 15 THE COURT: It's the next page.
- 16 Q Page 2, correct.
- 17 A Okay.
- 18 Q Somebody's missing from all these photographs.
- 19 A Jennifer.
- 20 Q Jennifer.
- 21 A Um-hum.
- 22 Q Did the family or did you make a decision to
- 23 cut her out, to excise, to redact her right from these
- 24 photographs?
- 25 A I think the rift was well in place by the time

1 we constructed this Web site, on both sides of the
2 family, Jennifer's side and our side.

3 Q That's an interesting statement, because just
4 two weeks ago when Jennifer was here testifying in court
5 she actually reached out verbally to you and said she had
6 hoped that this rift would be resolved.

7 A When was that?

8 Q When she was here testifying. She said that
9 she has dreams about some day you welcoming her into the
10 house --

11 A Oh, we had heard so much by then we just
12 didn't believe a word she said. I'm sorry.

13 Q I want you to take a look at another section
14 of the *Justice for George* Web site.

15 MS. STROILI: This is Exhibit MM.

16 (Whereupon, the printout from the *Justice For*
17 *George* Web site was marked as Petitioner's Exhibit MM.)

18 Q If you go to the section that's marked
19 Memorial Service, you find some terrific pictures of what
20 must have been a wonderful day.

21 A It was a beautiful day.

22 Q You didn't have a chance, as we know, to bury
23 your son.

24 A No, we didn't.

25 Q This memorial service, July 3, 2006 --

1 A Right.

2 Q -- must have had great import for your family.

3 A Right.

4 Q There was also, as well, a memorial service
5 for George at the Sacred Heart Church in Greenwich,
6 Connecticut, correct?

7 A Um-hum.

8 Q Did you issue invitations? Did people just
9 know that these memorials were occurring?

10 A Please, can you note the date, July 3, 2006.
11 That was after Jennifer had settled.

12 Q Okay. I'm asking you the question: Did you
13 issue invitations to these --

14 A A lot of it was not --

15 Q -- memorial services?

16 THE COURT: One at a time.

17 If you can maybe repeat the question.

18 Q Did you issue invitations to these memorial
19 services?

20 A Some of them was last minute and some of them
21 were invitations.

22 Q Was Jennifer invited?

23 A No. And I don't know whether Jennifer had a
24 memorial service for my son that we weren't invited to,
25 either.

1 Q Now, we know from the comments that were made
2 by your family and also Attorney Rivkind in the media
3 that the FBI had actually discouraged communication about
4 this case in the public.

5 A In the public.

6 Q And we also can see there was a rift that had
7 developed, and you did not invite her to these memorials,
8 you did not include her on this Web site.

9 A No.

10 Q Was there anything else you think that could
11 have caused her concern about communicating the events of
12 the cruise and what had occurred on the cruise?

13 MR. JONES: Your Honor, I have to object.

14 I know we're not supposed to object to form, but I
15 honestly don't understand the question.

16 Q I'm asking if there was any other reason why
17 Jennifer might have hesitated about sharing information
18 with you, if she could in fact remember anything that
19 happened that night. Was there any other reason?

20 MR. JONES: That's going to call for
21 speculation about what Jennifer --

22 MS. BYRNE: I'm asking if she knows of
23 any other reason.

24 MR. JONES: I guess I still don't
25 understand the question.

1 THE COURT: See if you can rephrase the
2 question. I'm not sure I follow it.

3 Q I'm asking if you know any other reason,
4 Mrs. Smith, why someone would be hesitant to share
5 information with you.

6 A Jennifer didn't share information with us from
7 the morning of July 5, '05.

8 Q That doesn't actually answer my question.

9 I want to direct your attention to the Royal
10 Caribbean letter of December 19, 2005.

11 MS. BYRNE: I believe that's an exhibit,
12 but I couldn't find the letter, the marking.

13 MS. STROILI: Whose exhibit?

14 MR. JONES: It's actually one of theirs,
15 I think, one of the first ones.

16 MS. STROILI: What letter? November 30?

17 MS. BYRNE: It was December 19.

18 If it isn't marked into evidence, I do
19 have -- I didn't realize I have some extra copies.

20 Will this have a new marking?

21 MS. STROILI: NN.

22 (Whereupon, the letter from Royal Caribbean
23 dated December 19, 2005, addressed to Attorney Walker and
24 Attorney Rivkind, was marked as Petitioner's Exhibit NN.)

25 Q I would like to show to you, Mrs. Smith, NN,

1 which is a letter from Royal Caribbean dated December 19,
2 2005, addressed to Attorney Walker, representing Jennifer
3 and the estate, and addressed to Attorney Rivkind,
4 representing your family.

5 Do you remember seeing this letter at all?
6 Did Attorney Rivkind ever actually show you this letter?

7 A It may have been in his file, but I don't
8 recall seeing it.

9 Q This is the letter that Royal Caribbean sent
10 that enclosed a number of the items that both Attorney
11 Walker and Attorney Rivkind said they had requested from
12 Royal Caribbean.

13 A Right.

14 Q So it was a letter that accompanied a number
15 of items. Do you recall that?

16 A No. My daughter deals with mainly most of
17 these thing in the file.

18 Q According to this letter -- I'm not going to
19 read this whole letter. According to this letter,
20 onboard purchases, the records of the onboard purchases,
21 was enclosed.

22 MR. JONES: Where are you reading from?

23 MS. BYRNE: Number 1.

24 Q LockLink records for the Smith cabin was
25 enclosed. Copies of photographs taken by the ship

1 | photographer -- this is number 4 -- during the cruise,
2 | those were enclosed. Also we have copies of photographs
3 | depicting the blood on the canopy. That's number 10 on
4 | that list.

5 | A Um-hum.

6 | Q That's page 3.

7 | A Um-hum.

8 | Q Royal Caribbean also provided, at number 11,
9 | 13 photographs taken by the safety officer, the Royal
10 | Caribbean safety officer, the morning of July 5, 2005.

11 | A Um-hum.

12 | Q Also number 12, 73 photographs which were
13 | taken of the cabin, and these actually were taken after
14 | the Turkish officials came in.

15 | Do you remember ever seeing this letter or the
16 | enclosures that came with it, either close to that
17 | December 19 date or later on when you received Attorney
18 | Rivkind's file?

19 | A My daughter has it in her file. She has
20 | everything in her file.

21 | Q So one of the enclosures, by the way, were the
22 | 13 photographs taken by the safety officer on July 5.
23 | That's one that I just mentioned.

24 | A Which one?

25 | Q Number 11, the 13 photographs taken by the

1 safety officer.

2 A Okay, right.

3 Q And also the 73 photographs taken of the
4 Smiths' cabin, that's number 12.

5 A Okay.

6 Q There's an interesting paragraph, an important
7 paragraph, on page 1 of this letter, right here
8 (indicating). And I'm not going to read the entire
9 paragraph or ask you to read the entire paragraph, but
10 paragraph 2 reads in part --

11 MR. JONES: I'm sorry, page 1?

12 MS. BYRNE: Page 1.

13 Q "In order to avoid compromising their
14 investigation, the FBI has also requested that certain
15 matters not be made public or disclosed. It is our
16 primary intent, just as I am sure it is your clients'
17 desire, to assist the FBI in every manner possible and to
18 avoid taking any actions which would compromise their
19 investigation. We therefore trust that any information
20 provided herein will also be maintained confidential so
21 that nothing is done to compromise the FBI's
22 investigation."

23 A Um-hum, yes.

24 Q Isn't it true, Mrs. Smith, that less than one
25 month later you and your family appeared on the Rita

1 Cosby show and released these photographs --

2 A I didn't..

3 Q -- not only to Rita Cosby but to MSNBC?

4 A I was not actually on that show.

5 Q Who was it who represented you on that show?

6 Your husband was there.

7 A It was George.

8 Q Just your husband alone? Bree wasn't with
9 him?

10 A I don't believe -- I think she might have
11 been. I don't know. We did 36 shows. I can't go back
12 and tell you for sure.

13 Q 36 shows, and MSNBC, associated with NBC, and
14 we have a release of photographs to that show. And as a
15 matter of fact, did you know --

16 MR. JONES: Objection, your Honor. She
17 asked the witness. The witness said she didn't
18 know, and now she's stating it as an affirmative.

19 A I was not part of that.

20 Q All right. I'm going to have to ask you to
21 take a look at the transcript --

22 THE COURT: The objection is sustained.

23 MR. JONES: Thank you.

24 Q You mentioned you were on a number of shows.
25 You sent your husband on some shows, Attorney Rivkind on

1 others, you went to others.

2 A I would baby-sit sometimes.

3 Q You baby-sat sometimes.

4 I'm going to have you take a look at that
5 transcript from Rita Cosby of January 16.

6 MS. STROILI: This is Exhibit OO.

7 (Whereupon, the transcript from the 1/16/06
8 Rita Cosby was marked as Petitioner's Exhibit OO.)

9 Q January 16, 2006, according to this --

10 A What page are you on?

11 Q Excuse me?

12 A Page?

13 Q Page 1.

14 According to the transcript of this show, your
15 husband, George Smith, and your daughter, Bree Smith,
16 made comments on the show.

17 A Okay.

18 Q So do you remember the two of them appearing
19 on the show?

20 A I can't remember it exactly, but I know they
21 probably were there, yes.

22 Q You know, actually, on page 2 you're also
23 quoted.

24 A Okay.

25 Q Ms. Maureen Smith, mother of George Smith.

1 A Yes.

2 Q You would think so --

3 A I probably was there then, yeah.

4 Q On page 3 of that transcript, we have Rita
5 Cosby commenting on the photos that were being shown at
6 that time while you and your husband and Bree were
7 talking.

8 A Okay. Then I was there.

9 Q Towards the top of that page it says "It's
10 interesting because the photos that we have, we also
11 showed photos of the room, we have some before and after
12 pictures of the room." She's making comments about
13 photographs that are being shown on the TV show while you
14 and your husband and Bree are appearing.

15 Any recollection of that?

16 A What page was that? Sorry.

17 Q That was page 3.

18 A Okay.

19 Q And this is Rita Cosby acknowledging what's
20 being shown on the screen as you're speaking.

21 Rita Cosby actually went so far as to invite
22 her viewers to call in and comment on the pictures that
23 they were seeing. Do you recall that?

24 A Probably it happened, yes.

25 Q So we have an admonishment by Royal Caribbean

1 that these photographs are not to be shared --

2 A Right.

3 Q -- because of the concern that it would hinder
4 the FBI investigation, and yet here they are on the Rita
5 Cosby show. Correct?

6 A It wasn't my idea to do this.

7 Q Okay.

8 A It was bad advice. The only bad advice we
9 were given and the only thing we did do.

10 Q Isn't it true that there were also some
11 impromptu late night telephone calls made to certain of
12 the shows from your household? Do you remember any of
13 those?

14 A No.

15 Q No one from your household calling in to any
16 of the TV shows to offer a comment?

17 A If you can give me an instant, I might jolt my
18 memory.

19 Q To the Nancy Grace or the Rita Cosby show?

20 A Possibly. If you can tell me when, I can
21 verify it.

22 Q Do you have any recollection of any of those
23 telephone calls having been made?

24 A We possibly did it. But you're talking about
25 two years ago, because we've been out of the media now

1 for over a year and a half, so you have to jolt my
2 memory.

3 Q After you released this information or your
4 family released or your attorney released this
5 information to the Rita Cosby show, to MSNBC, to the
6 MSNBC Web site, did you seriously believe that your
7 daughter-in-law would not hesitate to share information
8 with you if she had information available?

9 A Jennifer shared no information with us from
10 day one. We were way beyond this now. From day one when
11 she first came home, she shared nothing with us. Now
12 you're talking a long --

13 Q This is December --

14 A Yes.

15 Q -- when these letters --

16 A Yes.

17 Q -- were made available --

18 A Yes.

19 Q -- to you by Royal Caribbean -- when the
20 photographs were made available by Royal Caribbean.

21 You mentioned you were concerned about the FBI
22 investigation and not hindering the FBI investigation,
23 and yet you went ahead and shared these photographs,
24 correct?

25 MR. JONES: Your Honor, it's getting a

1 little bit argumentative now. You're also
2 characterizing what's been said. Let's ask
3 questions without a speech.

4 MS. BYRNE: I asked if that was correct.

5 THE COURT: Do you need her to repeat the
6 question?

7 Q Let's talk a little bit about Jim Walker
8 coming to your house.

9 A Fine.

10 Q How many attorneys do you think you
11 interviewed, or Bree or your family interviewed, for this
12 maritime purpose?

13 A We had James Walker at the house. We had
14 Chuck Lipcon. We had Ackerman -- I believe Ackerman. I
15 don't know if any more came after that -- oh, Brett
16 Rivkind, obviously.

17 Q Did each of the attorneys who came to your
18 house and you interviewed offer some idea of what they
19 thought the final financial result would be here?

20 A No. Only James Walker.

21 Q Only James Walker?

22 A Um-hum.

23 Q Do you remember what else he talked about
24 besides the 3 to 6 million dollars?

25 A He talked mainly about crime on the cruise

1 | ships and sexual assaults. He delved into that all the
2 | time.

3 | Q Do you remember him talking about the Athens
4 | Convention?

5 | A Probably he did speak of the Athens
6 | Convention, yes.

7 | Q Do you remember him talking about DOHSA and
8 | DOHSA's limitations?

9 | A Probably he spoke about that.

10 | Q Pecuniary losses?

11 | A Right.

12 | Q He talked about a number of things that day,
13 | right?

14 | A Probably, yeah.

15 | Q Do you remember him saying if George earned
16 | let's say \$200,000 per year, then you might expect a
17 | settlement of between 3 to 6 million dollars?

18 | A No.

19 | Q That part, you don't remember this?

20 | A I don't remember.

21 | Q In fact, you didn't correct him, did you? You
22 | didn't tell him what George earned at that point.

23 | A I don't remember actually hearing that.

24 | Q Did you ever tell him what George earned in
25 | 2005, or 2004 --

1 A I don't remember ever discussing --

2 Q -- or 2003?

3 A -- George's salary --

4 Q Did you advise him that in 2003 George earned
5 \$47,000?

6 A I don't remember having that discussion with
7 James Walker.

8 Q Did you by any chance mention that in 2004 he
9 earned \$54,000?

10 A I don't remember salaries being discussed at
11 that table.

12 Q And anything at all about 2005, what he was
13 earning in those weeks, those months before he passed
14 away?

15 A No. I don't recall having that conversation
16 with James Walker.

17 Q Don't you think it would have been important
18 to tell him what George was actually earning?

19 A Well, actually, we were just at that time
20 skimming lawyers. They were just coming in. We weren't
21 getting into details. We were just looking at certain
22 lawyers to see, you know, who we wanted to hire.

23 Q Did you mention at all to Attorney Walker --
24 we know you didn't mention anything about George's
25 income. Did you talk at all about his anxiety issues and

1 his prescription drug use?

2 A No.

3 Q Did you mention anything at all about his
4 smuggling of the absinthe on board?

5 A No.

6 Q Or his drinking of the absinthe that night,
7 the night of his death?

8 A No.

9 Q Did you have any discussion with Attorney
10 Walker about comparative negligence?

11 A No.

12 Q Did you mention or did any of the attorneys
13 mention to you about how important comparative negligence
14 actually is?

15 A That actually came up -- I learned about
16 comparative negligence from Jennifer when she was -- she
17 actually asked that question of some lawyer at some point
18 in time, and I didn't know -- I didn't understand what it
19 was, I knew nothing of that law term. And it was in the
20 early stages, and I was very surprised that she knew
21 about that term, but that was announced in the very
22 beginning. And I can't remember what context it was used
23 in.

24 Q You sat here for all of the testimony,
25 including the testimony of three maritime attorneys, and

1 to all of these three maritime attorneys comparative
2 negligence seems to be very important. Isn't that
3 correct?

4 A No, not really.

5 Q Not at all? Not really?

6 Did you decide not to inform Attorney Walker
7 of George's prescription drug use and George's anxiety
8 issues because of his, George's, desire for privacy? He
9 was a private person, wasn't he?

10 A I -- it made no difference to me whatsoever if
11 the world knew about my son's prescription drugs. No
12 difference to me.

13 Q But it would have made a difference to George,
14 wouldn't it have?

15 A No.

16 Q Sure it would.

17 A Well, maybe. I don't know. But it didn't
18 make a difference to me. And George is gone and we're
19 his voice now.

20 Q I'm going to ask you to take a look again at
21 the Web site, the Web site that was created by your
22 family. It's part of the letter of thanks to
23 different --

24 MS. STROILI: This is Exhibit PP.

25 (Whereupon, the printout from the *Justice For*

1 George Web site was marked as Petitioner's Exhibit PP.)

2 Q -- supporters, and there's an interesting
3 statement at the top of page 2. Here you say, and you
4 know your son well or you knew your son well, "George was
5 a very private person and we know that George would be
6 embarrassed by the attention surrounding the
7 disappearance."

8 A Yeah. He would be embarrassed by how much
9 attention he's getting.

10 Q Not about --

11 A No.

12 Q -- his anxiety disorders, his prescription
13 drug use?

14 A No. We're his voice now. George is gone.
15 And from the moment Jennifer got off that ship I was told
16 about prescription drugs, I was told about booze.

17 Q Excuse me. You mentioned that on the direct
18 testimony. That wasn't actually asked of you.

19 MR. JONES: Your Honor, we're starting to
20 get a little bit of an argument here. The witness
21 is trying to answer questions, gets interrupted. I
22 know it's cross-examination, but let the witness
23 finish her answer.

24 MS. BYRNE: I'm looking for a specific
25 answer, though.

1 MR. JONES: You're looking for a specific
2 answer that you're not getting --

3 MS. BYRNE: Right.

4 MR. JONES: -- so you're asking in
5 different ways. Let her finish answering to the
6 question.

7 THE COURT: Do try to let her answer.

8 MR. JONES: I will object. It seems like
9 counsel is stating what George would have wanted
10 and then asking the witness whether or not she
11 agrees, as if counsel knows what George wanted or
12 didn't want.

13 MS. BYRNE: Your Honor, I don't know that
14 George was a private person.

15 THE COURT: I understand.

16 MS. BYRNE: I'm learning that he was a
17 private person through the Smiths' Web site. So
18 I'm asking the family who knew him best to tell me
19 about whether or not he would have wished to keep
20 his anxiety disorder and his prescription drug
21 use --

22 MR. JONES: She's answered that.

23 MS. BYRNE: -- private.

24 THE COURT: I do understand when the
25 question is asked in a certain way, that -- let's

1 put it this way. Why don't you ask your next
2 question.

3 MS. BYRNE: Okay.

4 THE COURTS: And try not to be
5 argumentative about it --

6 MS. BYRNE: I'm very sorry.

7 THE COURT: -- on both sides.

8 Q Mrs. Smith, you testified that you were very
9 close to your son. Your husband, very close to your son.
10 Bree, very close to your son. But yet you didn't know
11 that he was seeing Dr. Cooper, you didn't know that he
12 was taking prescription drugs, medication, did you?

13 A No.

14 Q Did you know that he had become so inebriated
15 the night of his rehearsal party that two people had to
16 carry him and put him to bed?

17 MR. JONES: I'm going to object to the
18 question.

19 MS. BYRNE: You brought it up on direct.

20 MR. RICCIO: It's presuming a fact not in
21 evidence.

22 MS. BYRNE: I'm just asking the question.

23 MR. JONES: You're making a statement.

24 MR. BROWN: Your Honor, Mr. Hagel is
25 outside. I can bring him in. If you want to talk

1 about --

2 MR. JONES: There's a different way of
3 asking the question.

4 Q Why don't we talk for a few minutes, then,
5 about the liquor business.

6 A Sure.

7 Q The name of the liquor business is?

8 A Cos Cob Liquor.

9 Q You've been in business, your husband -- by
10 the way, when was it that you became a 50 percent owner
11 of that business?

12 A I think we changed to an LLC -- oh, I don't
13 know. I can't tell you when. But I think I've always
14 been an owner, but then we changed to an LLC, and I can't
15 give you the dates. I'm sorry. I just don't know.

16 Q Do you have a law firm that represents you in
17 the creation of the LLC --

18 A Yeah.

19 Q -- and the management of the LLC?

20 A Ivey, Barnum.

21 Q Do you see them regularly with regard to the
22 LLC outside of all of this probate and estate business?

23 A No. I didn't know we had to.

24 Q So how long ago, to the best of your
25 recollection, was it that you became a 50 percent owner?

1 A Maybe 15 years, something like that.

2 Q You testified earlier today that you had a
3 discussion and your husband had a discussion with George
4 prior to his leaving on the honeymoon trip about perhaps
5 his taking over --

6 A It wasn't "perhaps."

7 Q -- the business interests.

8 It wasn't "perhaps."

9 Earlier in the year, this would be early in
10 2005, an accountant came to your home?

11 A Yes.

12 Q Isn't it the case that George was interested
13 in the revenue, what was the revenue side of this
14 business?

15 A Probably.

16 Q Isn't that why the accountant came to the
17 house?

18 A No. The accountant came to the house because
19 that's what she does at tax time. And we told our son,
20 "If you would like to come up to the house and speak to
21 Peggy, our accountant, and discuss what we have to
22 discuss, and just go over generally" -- and that's what
23 happened. My husband, George, and the accountant sat out
24 on the porch and they discussed the business.

25 Q At that time -- you testified earlier that

1 there was a discussion about a buyout over a period of
2 time?

3 A Yes.

4 Q It would have been a buyout, though, correct?

5 A Yeah.

6 Q In other words, you weren't giving him an
7 interest --

8 A No.

9 Q -- in the business. He was going to purchase?

10 A Yes.

11 Q Would there have been a note?

12 A Yes.

13 Q He would have signed a note --

14 A Yes.

15 Q -- saying he agreed to pay --

16 A Yes. It was like these are our savings. It's
17 like our 401(k), and my son understood that completely.

18 Q It would have been, in a sense, your
19 retirement money --

20 A Yes.

21 Q -- what he would have paid?

22 A Yes.

23 Q And all this would have been based upon
24 paperwork. You certainly wouldn't have turned over part
25 of a business --

1 A In time, yeah.

2 Q -- not having anything on paper. Isn't that
3 correct?

4 A Because we hadn't finalized it. We were about
5 to finalize it.

6 Q There was nothing in writing, though, correct?

7 A There was nothing in writing.

8 Q You mentioned that there's a new occupant of
9 that shopping center.

10 A Yes.

11 Q Actually, they're not even in yet --

12 A Not yet.

13 Q -- isn't that correct?

14 A They're waiting for building permits.

15 Q Food Mart was there --

16 A Yes.

17 Q -- previously; is that the case?

18 How long was Food Mart there?

19 A Oh, God. I would say 50 -- long time, 50, 60
20 years, long time.

21 Q About the same length of time perhaps that the
22 liquor store was there? You mentioned decades for the
23 liquor store; isn't that correct?

24 A I think the liquor store was there longer.

25 Q So you had a close relationship, I would

1 guess, with that business. People came and bought their
2 groceries --

3 A Yes.

4 Q -- and then came and bought a bottle of wine?

5 A Yes.

6 Q How long is it now that Food Mart is gone?

7 A I would say three months.

8 Q And gone is gone, right?

9 A Gone's gone.

10 Q They're empty?

11 A Empty.

12 Q The store is empty?

13 A The store is empty.

14 Q The customers are gone --

15 A Their customers are gone, yes.

16 Q -- from Food Mart, correct?

17 A Yes.

18 Q And Food Mart was actually planning to bus
19 some of their customers to their new location?

20 A Right.

21 Q Did that actually happen? Did they actually
22 run a bus?

23 A I don't know.

24 Q When is it that CVS is due in?

25 A We heard from our landlord that it's possibly

1 the beginning of June. But, you know, might be sooner,
2 might be later, depending on the work permits.

3 Q But in the meantime, it's empty.

4 A It's empty.

5 MS. BYRNE: I have a long section of
6 questions that I would start with next. I don't
7 know whether you would prefer to take a break now,
8 Judge, or not.

9 THE COURT: Well, in light of the fact
10 that your next witness is coming at 2:00, I was
11 thinking we would go 'til 1:00 and hopefully maybe
12 be done with Mrs. Smith.

13 If anyone needs a five-minute break we
14 can take it, but otherwise we can keep going.

15 MR. JONES: Maureen, are you okay?

16 THE WITNESS: I'm fine.

17 THE COURT: Okay. We can keep moving.

18 Q Mrs. Smith, as we sit here today you're
19 convinced, and I think your family is convinced, that
20 George was murdered --

21 A Yes.

22 Q -- isn't that correct?

23 A Yes.

24 Q That he died as a result of foul play --

25 A Yes.

1 Q -- is that correct?

2 A Yes.

3 Q When do you think you came to that conclusion?

4 At what point did you reach that conclusion?

5 A I think it was the FBI, when they started the
6 investigation, and there was -- they haven't given up on
7 the investigation. People -- we're hearing different
8 stories from the FBI, but the FBI have a very open and
9 active investigation. And I have tremendous, tremendous
10 pride that I can go up to the FBI any time I want and
11 they can -- they can say it's open and active, the case
12 is open and active.

13 Q That's encouraging to you.

14 A It's very encouraging.

15 Q Do you think that you made up your mind that
16 your son died as a result of foul play days after he
17 passed away? Do you think that would be correct?

18 A I would say yes.

19 Q So early on.

20 A Yes.

21 Q And at that point what information did you
22 actually have available to you to draw that conclusion?

23 A You had a fight going on in the next cabin.
24 There was a -- different statements coming out from
25 different people. You had a captain who came out

1 immediately and said it was an accident, and filed three
2 days later with the Bahamian authorities, and then he had
3 to retract that. Mr. Fain of Royal Caribbean said he
4 made a mistake. There was a lot of discrepancies there.
5 And a lot of people covering up, a lot of people going
6 quiet. And to this day, Royal Caribbean hiding a lot of
7 things.

8 Q I think you appeared on a lot of TV shows in
9 December of 2005 --

10 A Probably, yeah.

11 Q -- and you talked about some of the reasons,
12 some of the rationale --

13 A Right.

14 Q -- for your decision, your conclusion --

15 A Right.

16 Q -- that it was foul play.

17 A Right.

18 Q These are shows that you appeared on, correct,
19 that your husband may have appeared on --

20 A Right.

21 Q -- that Bree appeared on --

22 A Right.

23 Q -- is that correct?

24 A Yes.

25 Q Okay. One rationale was the amount of blood

1 on the canopy itself where George fell.

2 A Right.

3 Q That's correct, right?

4 A Right.

5 Q One rationale was that there was a lot of
6 blood in the room; isn't that correct?

7 A Right.

8 Q Another rationale was that there was a
9 fight --

10 A Right.

11 Q -- in the room --

12 A Right.

13 Q -- in the cabin --

14 A Right.

15 Q -- and then he died --

16 A Right.

17 Q -- correct?

18 Then you had concern, I think, voiced on a
19 number of shows, about a clean-up by Royal Caribbean.

20 A Right. We don't know, do we? You don't know
21 and we don't know.

22 Q So we had comments from Bree, for example,
23 that we heard about the blood and about the way he
24 fell -- I'm actually quoting from the *Dateline*,
25 December 18, '05, and I will only do it once, rather than

1 go through a whole long list of these examples. But the
2 way, for example, the way George fell --

3 A Um-hum.

4 Q -- was one of the issues.

5 A Um-hum.

6 Q What is your understanding about the Turks
7 coming on board the ship the morning that George was
8 found to be missing?

9 A They came on, I think -- well, supposedly my
10 son went overboard, I think, close to 4, 5 o'clock. I
11 know there was an hour's time difference. I don't think
12 they boarded the ship 'til 10 a.m. or something like
13 that, when the ship docked in Kusadasi. It was a crime
14 scene and it should have been roped off as a crime scene,
15 but everybody was let off and on at that point.

16 Q Do you recall there was actually a crime scene
17 report prepared by the Turks --

18 A Right. I remember.

19 Q -- provided to Royal Caribbean, and then Royal
20 Caribbean provided it to you as part of that December 19
21 letter?

22 A Probably.

23 Q Do you remember that?

24 A Probably it's in the file.

25 MS. BYRNE: I don't know that this has

1 been marked in evidence yet.

2 MS. STROILI: Exhibit QQ.

3 MR. JONES: Your Honor, if it makes it
4 easier, we have what was given by Royal Caribbean.
5 We can put the whole thing as an exhibit.

6 MS. BYRNE: It's almost overload,
7 though -- well, all right, yes, that would be fine.
8 Including the photographs?

9 MR. JONES: Everything. You want to look
10 at it first?

11 MS. BYRNE: Sure.

12 MS. STROILI: It's one exhibit?

13 MS. BYRNE: One exhibit.

14 THE COURT: Is that going to be the same?

15 MS. BYRNE: This is part of that exhibit.

16 THE COURT: Do you want to make it QQ for
17 the whole thing?

18 MS. BYRNE: That will be fine.

19 (Whereupon, the documents were marked as
20 Petitioner's Exhibit QQ.)

21 Q I'm going to ask you to look at page 2 of this
22 Turkish report.

23 By the way, did you actually review all of
24 this paperwork that was submitted to Attorney Rivkind?
25 Did Attorney Rivkind sit down and share all of this with

1 you?

2 A Probably with my daughter more.

3 Q Okay.

4 A Because a lot of it is very painful to me.

5 Q But you think your daughter would have seen
6 this?

7 A I definitely think she might have seen it,
8 yes. I can't speak for her.

9 Q [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 Q [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 A [REDACTED]

23 Q [REDACTED]

24 [REDACTED]

25 [REDACTED]

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

[REDACTED]

A [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A [REDACTED]

Q [REDACTED]

[REDACTED]

[REDACTED]

A [REDACTED]

Q [REDACTED]

[REDACTED]

A Um-hum.

Q Now, what this report states is that all of these things were collected by the security officers, the Turkish security officers --

A Um-hum.

Q -- and marked as evidence.

A Right.

Q When we attended that meeting of the family in October with the FBI, they actually mentioned -- do you

1 recall them mentioning that they had received evidence --

2 A Yes.

3 Q -- from the Turks?

4 A Yes.

5 MS. BYRNE: Mike, these are those Royal
6 Caribbean photographs, 12 of the 13.

7 MR. RICCIO: Part of that package.

8 MS. BYRNE: Part of that package, okay.

9 These probably need to be marked
10 individually.

11 MS. STROILI: Each one?

12 MS. BYRNE: Yes. I think there are 12.

13 MR. RICCIO: Why don't we do them as a
14 group?

15 MR. BROWN: Do them as a group.

16 MS. BYRNE: Then it would be one, two,
17 three, four, five, six, seven, and eight. Eight
18 photographs.

19 (Whereupon, the eight photographs were marked
20 as Petitioner's Exhibit RR.)

21 Q I wish to show you, Mrs. Smith, these
22 photographs.

23 There was a mention in that Turkish report of
24 a partially bloodied stain on a sheet or towel --

25 A Um-hum.

1 Q -- on the bed.

2 A A towel, yes.

3 Q Do you see that, see that small mark there?

4 A Sure.

5 Q And looking at number 2, this is -- there are
6 three versions of the same photograph, which is the
7 bathroom -- a marked towel in the bathroom. This one is
8 a little bit darker version of it.

9 A Um-hum.

10 Q But there's a soiling on that towel in the
11 bathroom.

12 A Um-hum.

13 Q And this is a lighter version of the same
14 photograph. It was an interior bathroom, and I think
15 they had trouble with lighting. But this is the same
16 towel with the soiling --

17 A Um-hum.

18 Q -- thought to be blood.

19 And this is actually another one of that
20 same -- same perspective, with the soiling on the towel.
21 All right?

22 This one is hard to see, but a tissue that was
23 supposedly soiled with something.

24 A Okay.

25 Q And this one is an overall view of the bed,

1 and on it is the towel, if you look very closely --

2 A Um-hum.

3 Q -- towel where supposedly there's some soiling
4 right there.

5 A Right. There's also some soiling on the
6 pillow when the bed sheets were lifted off. There was
7 actually blood there.

8 Q And here is a shoe, George's shoe. And
9 there's clearly soiling there, and the Turks collected
10 that as well --

11 A Um-hum.

12 Q -- correct?

13 Now, this one is looking out at the water --

14 A Um-hum.

15 Q -- from the room.

16 A Um-hum.

17 Q It actually shows a corner that Dr. Lee had --

18 A Um-hum.

19 Q -- had examined. So for that reason I show
20 you that here.

21 A Okay.

22 Q Do you remember being at the FBI meeting in
23 October of 2007, when we talked about their forensic
24 findings?

25 A Right.

1 Q Do you recall what the FBI said about the
2 forensic findings in that room?

3 A I don't recall too well, no.

4 Q Do you recall --

5 A Oh, I recall that they said the towel was not
6 blood, it was makeup. I can't recall about -- yeah, they
7 said that, that the towel was makeup and it wasn't blood.

8 Q Do you recall them saying that after they
9 conducted all their forensic review of the items
10 collected by the Turks --

11 A Um-hum.

12 Q -- handed over through that chain of
13 custody --

14 A Right.

15 Q -- to the FBI --

16 A Right.

17 Q -- the only blood in the room was this blood,
18 this small spot, small splotch of blood on the sheet --

19 A Yeah.

20 Q -- on the bed?

21 A Maybe. By the time they got there, that was
22 all that was there. By the time they got there.

23 Q Do you remember them saying that what Dr. Lee
24 had identified as something forensic turned out to be
25 nothing?

1 A Dr. Lee got on that ship six months after.
2 There were 24 families in that cabin. So how on earth
3 could he find anything?

4 Q Do you remember them saying that there was
5 soiling on George's shoes --

6 A Yeah.

7 Q -- but the soiling was not blood?

8 A Yeah.

9 Q And with regard to the tissue, the Kleenex
10 tissue in the bathroom, that too wasn't blood, was it?

11 A No.

12 Q So the only blood in the room where that
13 violent struggle occurred --

14 A At that time.

15 Q -- were those two small --

16 A At that time.

17 Q -- splotches.

18 A We had a big time gap there from 5 o'clock to
19 when the Turks boarded the ship.

20 Q I'm curious, though, Mrs. Smith. What would
21 the rationale be for Royal Caribbean to leave some
22 evidence behind? Why would they do that? I know that
23 you have indicated over and over and over again --

24 A Because we're dealing with some crafty
25 individuals.

1 Q Why wouldn't they have removed it all? Why
2 would they have left some of it behind?

3 A Maybe they didn't get time. They're very
4 crafty individuals.

5 Q Do you remember the FBI telling us that they
6 actually had looked at a couple of other things that are
7 not photographed here? One is the carpeting.

8 A Right.

9 Q And one was George's cigar cutter.

10 A Right.

11 Q And neither one of those had any blood,
12 either.

13 A Right.

14 Q So going back to the rationale for the murder,
15 for the --

16 A Can I just say something?

17 Q I'm finishing my question.

18 Going back to the rationale for the murder,
19 the foul play, one of them being the amount of blood in
20 the room, all that was left were those two drops that
21 were on the sheet; isn't that correct?

22 A Right.

23 Can I say something?

24 THE COURT: The question has been asked,
25 and you will have the opportunity through your

1 counsel to say something. Okay?

2 THE WITNESS: Okay.

3 THE COURT: That was Exhibit RR.

4 Q I have here a *48 Hours Mystery* transcript.

5 MS. STROILI: This is SS.

6 (Whereupon, the *48 Hours Mystery* transcript
7 was marked as Petitioner's Exhibit SS.)

8 Q You and your family are convinced that there
9 was a violent struggle in that room; isn't that correct?

10 A Many people have said it.

11 Q Who would have been the best resource, the
12 best information about that? Who would have offered the
13 best information about that violent struggle?

14 A I would say Clete Hyman, C-l-e-t-e H-y-m-a-n,
15 and the Lawyers, that's their name, L-a-w-y-e-r-s, from
16 the cabin the other side.

17 MR. JONES: Your Honor, the people in the
18 cabin on the other side were actually named the
19 Lawyers.

20 MR. BROWN: Their surname was Lawyer.

21 Q I am going to ask you to take a look at page
22 10 of this transcript. And the interesting thing about
23 this particular transcript is these contain words of
24 Clete Hyman. They're not representations about what
25 Clete Hyman said. And what Clete Hyman said on this

1 particular show, towards the bottom of the page, page 10
2 of 22, is -- he lays out what he heard.

3 MR. JONES: I'm sorry. What page are we
4 on?

5 MS. BYRNE: Page 10.

6 Q He says, "My wife and I were awakened by
7 yelling coming from the Smith cabin. This yelling
8 sounded, what I would likely to [sic] a drinking game
9 where individuals are encouraging somebody to take shots
10 or chug beer, something of this nature."

11 I'm just going to, for a moment, move to the
12 *Vanity Fair* article.

13 MR. JONES: Is there a question regarding
14 what she just read?

15 MS. BYRNE: I'm asking a question in
16 totality. I'm reading this information and then
17 asking a question of Mrs. Smith.

18 MR. JONES: There's no question. You
19 started to move on to something else.

20 THE COURT: Why don't you give us an idea
21 of where you're going on that question, and that
22 will be fine.

23 Q With regard to this, do you see this statement
24 from Mr. Hyman here --

25 A Um-hum.

1 Q -- down here, "My wife and I were awakened"?

2 A Um-hum.

3 Q Is this what you understand to be the case,
4 that he understood that there was noise, possibly a
5 drinking game? Do you understand that that is what he
6 reported?

7 A If that's what he reported, that's what he
8 reported.

9 Q Okay. All right.

10 The *Vanity Fair* article --

11 MR. JONES: I'm going to have to object
12 at this point.

13 MS. BYRNE: That was a question.

14 MR. JONES: I understand. That's not my
15 objection. I have a different objection.

16 We have to be a little bit careful here.
17 If counsel is going to pick and choose particular
18 statements that were made by Mr. Hyman, it could
19 get a little bit confusing. Mr. Hyman is quoted in
20 various different articles, giving lengthy
21 statements. Some of these representations, some of
22 these transcripts may have all of it, may have some
23 of it. I don't want there to be a misimpression
24 with the Court that that's all that Mr. Hyman said.
25 There are other articles and other transcripts

1 where he does get into the fact that he said it
2 sounded like there was a fight in the room.

3 MS. BYRNE: He adds in the next part that
4 there was an argument on the balcony. The *Vanity*
5 *Fair* article, which I was just going to mention,
6 includes another section where he indicates someone
7 left the room prior to the three --

8 MR. JONES: I have no problem with
9 Mrs. Smith being questioned on what these witnesses
10 allegedly said. But I think if we're going to do
11 that we have to make sure that the entire
12 statements are put before the Court.

13 MS. BYRNE: And as a matter of fact,
14 that's why I'm providing to the Court the entire
15 transcript. I'm not picking out a page or two.
16 The Court is welcome to read the entire thing in
17 its totality.

18 The *Vanity Fair* article includes another
19 sentence --

20 MR. JONES: That's correct.

21 MS. BYRNE: -- where he's quoted some.
22 And that is the indication of the *Vanity Fair*
23 article. This is actually his statement.

24 MR. JONES: It's going to get a little
25 bit cumbersome if we have to now start going

1 through every single place that these witnesses are
2 quoted. There's no argument the Smiths were out in
3 the media on these talk shows. Clete Hyman
4 appeared on numerous talk shows, as did the
5 Lawyers, as did the four Russians. It's going to
6 start to get cumbersome if we're going to pick and
7 choose the transcripts from certain shows where
8 they may have said one thing and not something
9 else. At that point we may have to go back and
10 pull apart all the media transcript where they said
11 additional information that would affect how the
12 answers come out.

13 MS. BYRNE: I think this is actually my
14 last reference to someone else speaking. And I'm
15 almost done with this. I can move this right
16 along, Judge.

17 THE COURT: Okay. Why don't you proceed.
18 Obviously if you feel that you need to
19 add anything, you can do so.

20 MR. JONES: Okay.

21 Q So as we were saying, this is a statement by
22 Mr. Hyman to -- this particular one is to the *48 Hours*
23 *Mystery* show. And he indicates here, as we read along,
24 that he heard a drinking game. And I'm going to move
25 along in the interest of time, that there may have been

1 an argument on the Smith balcony. He thought the
2 argument appeared to be between three, maybe four male
3 individuals. And then after two minutes of argument we
4 heard one lone male voice repeatedly saying good night,
5 good night, ushering someone out of the room, and then he
6 looked out in the hallway and saw certain individuals.

7 Have you heard that story before?

8 MR. JONES: Excuse me one second.

9 I don't know if you just paraphrased
10 what's in here.

11 MS. BYRNE: I am paraphrasing. And I'm
12 asking her if she understands --

13 MR. BROWN: If you're saying she's taking
14 too long --

15 THE COURT: One at a time.

16 MR. JONES: I have no problem. She can
17 take as much time as she wants. No one has ever
18 been constrained on time. I have no problem with
19 that.

20 My objection before was I don't mind the
21 actual quotes being read. But to pick and choose
22 between this transcript and some other transcript,
23 it's going to get cumbersome. And also I just
24 don't want misrepresentations as to what was
25 actually said. If you're cross-examining on this

1 document, fine, read the actual quotes. I don't
2 have a problem with that.

3 MS. BYRNE: I'll be happy to do that.

4 It's actually pretty brief.

5 Q Starting again, page 10, Mr. Hyman saying, "My
6 wife and I were awakened by yelling coming from the Smith
7 cabin. This yelling sounded what I would liken to a
8 drinking game where individuals are encouraging somebody
9 to take shots or chug beer or something of this nature."

10 Have you heard --

11 A Yes.

12 Q -- this statement before --

13 A Yes, I have.

14 Q -- where he thought there might have been a
15 drinking game or loud noise?

16 A Well, from where he was, he didn't know, but
17 that's what he assumed.

18 Q Okay. And then the next time his quote is
19 referenced, Mr. Hyman, saying, "Suddenly, though, there
20 was an argument out on the Smith balcony. This argument
21 appeared to be between three, maybe four male
22 individuals."

23 Had you heard that statement before?

24 A Yes.

25 Q "After about two minutes of this argument," he

1 says, this is the next time he's quoted, "we heard one
2 lone male voice repeatedly say, good night, good night,
3 like they were ushering someone out of the room."

4 A Um-hum.

5 Q And down here, where Mr. Hyman speaks next, "I
6 looked out and saw three male individuals walking away
7 from the room."

8 You see that statement?

9 A Um-hum.

10 Q You had heard that he had seen someone leaving
11 the room; isn't that correct?

12 A From this, yeah.

13 Q Reading down, midway down the page, he's
14 quoted again, "At this point we heard just a lone male
15 voice in the room. We heard what sounded like the
16 cupboard doors being closed loudly, and also sounded like
17 furniture being moved."

18 A Um-hum.

19 And finally, this next spot, "After about
20 eight minutes of this, it was totally quiet. After about
21 two minutes of total silence, however, there was a large,
22 what I would call a horrific thud."

23 Were you clear on the timing of what happened
24 and what Mr. Hyman reported?

25 A Yeah, I was.

1 Q So what he's saying is almost ten minutes
2 elapsed after the men, three men, were observed to have
3 left the room before that horrific thud was heard.

4 A Do they know how many actually went into the
5 cabin?

6 Q Well, if we were to reference the *Vanity Fair*
7 article, which is already an exhibit, Mr. Hyman -- he's
8 quoted there as saying that he believes he may have heard
9 someone else leave the room earlier. That's a quote.

10 MR. JONES: Your Honor, I don't remember
11 that. So if we're going to talk about what's in
12 the article, let's see the article.

13 MS. BYRNE: That is Petitioner's 16.

14 MR. RICCIO: Can I get global for a
15 minute? I'm sitting here, as Mr. Brown is.

16 She thinks her son was murdered,
17 Mr. Walker thinks he was murdered. Ms. Smith
18 thinks it's 50/50. No offense, do what you have to
19 do. We're not going to solve whether or not this
20 was a murder. And before the Court is whether or
21 not this settlement --

22 MR. BROWN: I guess my question, your
23 Honor, for Mrs. Smith, after seeing these different
24 things: Can you say that there's a hundred percent
25 certainty that there was a fight in his room?

1 THE WITNESS: I know there was a fight in
2 his room, yes.

3 MR. BROWN: You said earlier you thought
4 he was a hundred percent murdered.

5 THE WITNESS: I still say a hundred
6 percent.

7 MR. BROWN: Okay.

8 THE WITNESS: I'm right behind the FBI on
9 that.

10 MR. JONES: You heard Mr. Walker testify.

11 THE WITNESS: Yes.

12 MR. JONES: Did you hear Mr. Walker
13 testify that he believed that there was foul play?

14 THE WITNESS: Hundred percent.

15 MR. JONES: Did you hear Mr. Walker
16 testify that he believed that George was murdered?

17 THE WITNESS: Yes.

18 MR. BROWN: He didn't say, "I think that
19 he was murdered."

20 THE COURT: I remember what he said.

21 MS. BYRNE: Quite honestly, the other
22 thing that he also said was he did not attend the
23 FBI meeting where it was discovered there was some
24 little blood in the room.

25 MR. RICCIO: The Court already has that

1 evidence. Do we need to --

2 THE WITNESS: Can I just say something?

3 MR. JONES: No.

4 THE COURT: No.

5 She is allowed to do her thing. I want
6 to give her her opportunity to ask the questions.

7 MR. JONES: The only thing we ask, your
8 Honor --

9 Liz, if you're going to talk about
10 quotes, at least pull it out and see what the quote
11 is.

12 MS. BYRNE: I'm all done with that.

13 MR. JONES: That's all I'm asking.

14 Q We've had at least four rationales for why you
15 think, why your family thinks, that George was murdered.

16 One was the amount of blood in the room, which
17 we discovered is quite small.

18 One was because of the violent fight, correct?
19 And in listening or in reading Clete Hyman's statement,
20 actually the loud noise -- the argument had ended almost
21 ten minutes before he passed away, before that thud was
22 heard; isn't that correct?

23 MR. JONES: Objection to the form of the
24 question.

25 Q Isn't it correct you had at least four

1 rationales for why you thought that George had died as a
2 result of foul play?

3 One being the amount of blood in the room;
4 isn't that correct?

5 A Yes.

6 Q One also being the violent struggle that
7 occurred in the room --

8 A Yes.

9 Q -- isn't that correct?

10 One other rational is the manner in which he
11 fell overboard. I believe that someone brought to your
12 attention that he fell with an impression on the canopy,
13 and that caused you concern. Do you remember saying that
14 on television --

15 A Yes.

16 Q -- that he fell as a dead weight?

17 A Yes.

18 Q Did you have a feeling then that he had
19 actually been murdered in the room and then fallen? Is
20 that what you were thinking?

21 A That's what we were told by the American
22 Embassy consulate.

23 Q Have you learned --

24 MR. BROWN: By whom?

25 THE WITNESS: Nick Geranios.

1 MR. BROWN: And by -- what would his
2 reference have been for telling you that?

3 THE WITNESS: He went on to the ship the
4 morning of my son's disappearance, went into the
5 cabin, Clete Hyman's cabin next door, overlooked,
6 and seen a large indentation in the canopy, and he
7 said, as Clete Hyman had said to him, that was a
8 dead weight going over.

9 MR. BROWN: Ma'am, if I may, isn't there
10 a possibility that there was no fight in the room?

11 THE WITNESS: Well, there's a lot of
12 people saying there is.

13 MR. BROWN: I'm asking you, isn't there a
14 possibility that there wasn't a fight in the room?

15 THE WITNESS: I'm going on what I'm
16 hearing from other people.

17 MR. BROWN: I'm asking you, isn't there a
18 possibility that there wasn't a fight in the room?

19 THE WITNESS: No.

20 MR. BROWN: Isn't there a possibility
21 that there was no blood in the room other than two
22 specs on the bed?

23 THE WITNESS: I believe that we're
24 dealing with very, very --

25 MR. BROWN: I'm asking you, isn't there a

1 possibility --

2 THE WITNESS: At that time, when the
3 Turks came on, yes.

4 MR. BROWN: So any blood that there would
5 have been in your story, in your feeling about
6 this, is that Royal Caribbean must have gone in
7 there before the Turks got on board --

8 THE WITNESS: Maybe.

9 MR. BROWN: -- and cleared the whole room
10 of any blood.

11 THE WITNESS: Maybe.

12 MR. BROWN: I'm saying --

13 THE WITNESS: Maybe.

14 MR. BROWN: I asked you, isn't there a
15 possibility. You're saying "maybe." It's your
16 belief that they must have gone in there and
17 cleaned the whole room?

18 THE WITNESS: I do know that the FBI
19 removed the carpet from the cabin. Why would they
20 remove the carpet from the cabin if they didn't
21 think there was something on it?

22 MR. BROWN: But the FBI didn't do that
23 until well after --

24 THE WITNESS: But they did remove it.

25 MR. BROWN: --- all of this, right?

1 THE WITNESS: They did remove it. And
2 tell me something, why is the FBI still
3 investigating?

4 Q Actually, we're going to get into that --

5 A Okay.

6 Q -- that discussion.

7 Going back to the question of the dead weight,
8 though, don't we have information now in photographs
9 showing that George actually was reaching out on that
10 canvass, on that awning; we know that he was alive?

11 MR. JONES: Objection, your Honor. We
12 don't know that -- I don't understand this whole
13 line of questioning.

14 THE COURT: I don't know where that came
15 from. So the objection is sustained unless you can
16 show otherwise.

17 MR. BROWN: Can we have a brief recess,
18 your Honor?

19 THE COURT: Yes, you can. Take a few
20 minutes.

21 (Whereupon, a recess was taken.)

22 THE COURT: Do you want to finish up with
23 15 minutes of questions before we break?

24 MS. BYRNE: Sure.

25 MR. JONES: I'll only have like two

1 redirect questions.

2 BY MS. BYRNE:

3 Q You indicated that the FBI investigation is
4 still active and ongoing, correct?

5 A Um-hum.

6 Q Is that your understanding?

7 A That's my understanding.

8 Q That was after the FBI began its investigation
9 back in July of 2005, correct?

10 A Yes.

11 Q Do you remember when we went to the family
12 meeting in October of 2007?

13 A Yes.

14 Q And the FBI gave us some idea of the amount of
15 resource that they have put into this investigation to
16 date?

17 A Yes.

18 Q Do you remember that? Do you remember
19 anything that they said --

20 A Yes.

21 Q -- specifically?

22 A Yes, I remember.

23 Q Can you tell the Court something about that?

24 A They put a tremendous amount of resource into
25 this. Sean O'Malley has worked tirelessly on this case.

1 And they're not about to shut it down.

2 Q They're not about to shut it down?

3 A No.

4 Q And they worked -- I think, as I recall, and I
5 ask you whether you recall, whether they said they worked
6 for hours, they worked on many continents, they've had
7 many, many man hours --

8 A Right.

9 Q -- of investigation, right?

10 A Right. But they also said this is still a
11 young case. I was told by one of the member of the FBI
12 this is still a young case. FBI can crack a case
13 overnight.

14 Q Do you remember they said they conducted 50
15 crew interviews and 90 passenger interviews?

16 A Yes.

17 Q And that they sent out letters to 2500
18 passengers?

19 A Yes.

20 Q Do you remember them saying that they have
21 conducted a number of polygraph tests?

22 A Yes.

23 Q And conducted a number of forensic --

24 A Yes.

25 Q -- experiments?

1 A Yes.

2 Q But they haven't come to a conclusion at this
3 point, have they?

4 A Not yet.

5 Q Even as we sit here 33 months or so after your
6 son passed away, we still don't know --

7 A Not yet.

8 Q The investigators still do not know what
9 happened to your son.

10 A Not yet.

11 Q But you are convinced that it was murder?

12 A Yes.

13 Q By the way, Sean O'Malley, the lead
14 investigator from the FBI, has been reassigned --

15 A Yes, I realize.

16 Q -- is that correct?

17 Now, Mrs. Smith, is it your feeling and your
18 family's feeling that you're not about the money here,
19 that you're more interested in obtaining information?

20 A I just want to know what happened to my son.

21 Q Do you remember Bree saying on different shows
22 that you wouldn't -- let me -- "We will never settle with
23 Royal Caribbean, or accept a dime, accept a penny, to
24 settle with Royal Caribbean"?

25 A Well, we have new lawyers now. We find them

1 very able and we've decided maybe -- if things work
2 differently, maybe we can do something differently.

3 MS. BYRNE: May I have a minute, your
4 Honor?

5 THE COURT: Sure.

6 (Whereupon, there was a pause in the
7 proceedings.)

8 MS. BYRNE: Your Honor, I'd like to show
9 a letter to Mrs. Smith that I think will cause some
10 consternation with her attorneys, so I wonder if I
11 could show it to them first, and you may want to
12 review it, and you may want to have a discussion
13 outside of Mrs. Smith's presence.

14 THE COURT: Okay.

15 MR. JONES: Can we see it before you show
16 it to the judge.

17 MS. BYRNE: Absolutely. We want to bring
18 to your attention first (handing).

19 MR. JONES: There's no way this comes in.

20 MR. BROWN: Your Honor, maybe we should
21 excuse everybody but the attorneys and have a
22 discussion.

23 MR. JONES: Even the discussion has to be
24 limited.

25 I don't care if the parties are here.

1 MR. BROWN: Fine.

2 Your Honor, this letter is a settlement
3 letter.

4 MR. JONES: If I can, your Honor, I would
5 appreciate it, and I think Mr. Brown will honor it,
6 that he's not going to get into the specifics.

7 MR. BROWN: Yeah, I'm not.

8 It's a settlement offer letter for the
9 purposes of the motion to approve the settlement
10 agreement.

11 This is also a hearing on a motion to
12 remove Ms. Hagel-Smith as the fiduciary, which was
13 filed approximately two business days before the
14 hearings begin. The Court has ruled that this
15 hearing is on the motion to approve the settlement
16 agreement and on the motion to remove
17 Ms. Hagel-Smith.

18 I've got a memo for the Court to take a
19 look at, which doesn't talk about the letter, that
20 for purposes of the motion to remove
21 Ms. Hagel-Smith, this is entirely relevant and has
22 nothing to do with the settlement. I mean, it has
23 nothing to do with -- the purposes for which it's
24 being introduced are for purposes of the motion to
25 remove Ms. Hagel-Smith, not for motion to approve

1 the settlement agreement.

2 This hearing -- it was agreed by both
3 parties before your Court on a phone conference on
4 the Friday before this hearing was to start on
5 Tuesday that this hearing was going to be for both
6 of those motions. . Opposing counsel agreed to it.

7 I've got a memo for the Court to read.
8 I've got a memo for the other side to read.

9 They filed a motion to remove
10 Ms. Hagel-Smith two days before this hearing was
11 supposed to start. I will say to the Court, there
12 is nothing in that motion to remove Ms. Hagel-Smith
13 that couldn't have been filed in January of '07
14 when I brought the motion to approve the settlement
15 agreement. They chose to wait until two days
16 before the hearing was to begin.

17 This memo, your Honor --

18 MR. JONES: I think even before the memo
19 goes to the judge, we at least need to be heard.

20 THE COURT: Yes.

21 MR. JONES: Mr. Brown raised a couple of
22 times -- and I don't want to get into the closing
23 arguments now. But the fact of the matter is,
24 sure, we could have brought this a year ago. The
25 fact of the matter is my clients wanted to try to

1 work with Jennifer and hoped all along that she was
2 going to do what they felt was the right thing. So
3 that sort of answers that issue, as far as why it
4 was late.

5 Your Honor, this letter is -- involves
6 settlement discussions, it involves proposals.
7 Okay? As you know, I have a real problem with what
8 went on between Royal Caribbean and Mr. Brown when
9 there were discussions -- in fact, their side asked
10 if we could have a meeting. We had a meeting.
11 Certain things were discussed. They were
12 commissioned to go talk to Royal Caribbean. The
13 response from Royal Caribbean ends up in a letter
14 on your desk. As far as I'm concerned, those were
15 settlement discussions, they were settlement
16 negotiations. What went on in those settlement
17 discussions and negotiations should have never --
18 it's unethical for that to show up on your desk.
19 Okay?

20 This letter involves, to a certain
21 extent, a response from our side, which we have
22 been very careful to keep, your Honor, because we
23 were respecting the ethics of the settlement
24 negotiation.

25 I don't see how this is either relevant

1 to what's happening here, or how, because it's
2 basically still sitting out there -- it involves
3 settlement negotiations. I don't see how it comes
4 in to this hearing or goes before your Honor as the
5 trier of fact.

6 MR. BROWN: Your Honor, with respect to
7 the first letter, we can have a whole discussion
8 about it. I haven't brought it up. I have a memo,
9 I chose, you know what, I'm going to let that go.

10 But this letter -- this is a memo about
11 why this letter should come in, and I'm happy --
12 the Court has this. It doesn't talk about what's
13 in it.

14 MR. JONES: Wait for the Court -- your
15 Honor --

16 MR. BROWN: No, I don't have to. I don't
17 have to wait. Here, here's the memo. It doesn't
18 talk about what's in there. It talks about why
19 this should be allowed. Because with respect to --
20 it's directly on point, your Honor. It's a
21 statement against interests. It is with respect to
22 state of mind of the Smiths with respect to whether
23 or not my client should be removed as fiduciary.
24 It's not being introduced as an exhibit for the
25 purposes of a motion to approve the settlement

1 agreement.

2 Now, I'll be blunt. It's going to have
3 that purpose. How are you going to be able to look
4 at it without looking at it in both respects?

5 But I will tell opposing counsel, if you
6 don't want to have it here, if we're going to have
7 an appeal, I guarantee you I'm on firm ground with
8 everything in this motion, we're going to go to the
9 Superior Court. It's coming in.

10 I think, your Honor, that it should come
11 in. It's not being introduced for the purposes of
12 the motion to approve the settlement agreement.
13 It's being introduced to refute the motion to
14 remove the fiduciary. The Smiths chose -- they
15 made their bed, they chose to remove
16 Ms. Hagel-Smith, now they can sleep in it, with
17 respect to this letter.

18 MR. JONES: I don't even understand the
19 argument.

20 This is a letter --

21 MR. BROWN: If your Honor wants to take
22 ten minutes and the other side wants to take a
23 ten-minute recess and review the memo --

24 THE COURT: We'll probably take lunch and
25 complete the testimony afterwards and then I can --

1 Go ahead.

2 MR. JONES: Your Honor, this, as I said,
3 it's pretty simple. This letter was sent to Royal
4 Caribbean. It contains -- it was part of
5 settlement negotiations, which are not supposed to
6 be divulged to your Honor. Their side decided to
7 divulge their first offer, if you want to call it
8 that, because they felt it made them look good.
9 They tried on several occasions to get, through
10 Jennifer, what was contained in that offer into the
11 record.

12 This letter includes our response. I
13 don't believe -- tell you the truth, some of what's
14 in here is actually, I think, beneficial to us.
15 But the fact of the matter is, if you're going to
16 honor the sanctity of the settlement negotiations,
17 that should be kept from the ultimate trier of
18 fact, which is your Honor.

19 MR. RICCIO: I see great irony with the
20 wall that was put up here on the Florida statute.
21 We couldn't even get an answer to if the settlement
22 negotiations took place in the state of Florida.
23 Now they want to put what is clearly a detailed
24 communication with counsel -- I see an irony.

25 MR. JONES: It's a slippery slope.

1 There's a letter from Mr. Peltz responding to this
2 letter, which is -- it's their ridiculous letter.
3 But we're not offering that into evidence because
4 that would help our side.

5 MR. BROWN: Your Honor, there's a real
6 distinction here. We're having a hearing on a
7 motion to remove the fiduciary and we're having a
8 motion to approve the settlement agreement.
9 There's a huge distinction here. I'm introducing
10 this on the hearing on the motion to remove the
11 fiduciary, and the reasoning in the memorandum is
12 sound, has an exception to the rule on settlement
13 discussions coming in.

14 I welcome at lunch the Court reviewing
15 the memorandum and making a decision after lunch.
16 And opposing counsel seems to think the letter
17 would be beneficial to his clients. I'm not
18 sure -- I'm not even sure -- am I getting an
19 opposition to the exhibit?

20 MR. JONES: You're getting an opposition.

21 THE COURT: Anything further on the
22 letter?

23 MR. RICCIO: The point I would make is
24 that the concept of removing the fiduciary and
25 approval of this settlement are intertwined

1 substantially. You cannot bifurcate those two
2 concepts. One of the grounds for removal is the
3 inadequacy of the settlement. It's not as if
4 they're totally divisible concepts. It's a totally
5 creative argument, I'll certainly give Mr. Brown
6 credit for that. But it's not -- it's mythical.

7 THE COURT: How much time would you like
8 for lunch? Do you want to make it quick because
9 of -- normally you get an hour, but if you want to
10 make it 50 minutes, we can do that. We can do it
11 sooner if you want.

12 MR. BROWN: Half hour?

13 MR. JONES: I would like to have the time
14 to read through this. Because obviously we're
15 going to have to respond to it. I'm glad that the
16 idea that briefs weren't going to be submitted --
17 that agreement wasn't necessarily honored.

18 Anyway, we'll take a look at it during
19 the lunch break. Maybe we need to have a hearing
20 on this. Because -- I'll tell you the truth, your
21 Honor, and I hate to keep harping back on this, but
22 we had a conference call, the very one he's talking
23 about, and we discussed whether or not briefs are
24 going to be filed. I've been hit with three briefs
25 since.

1 Now to have us basically spend our lunch
2 period reviewing a brief on an issue that's pretty
3 important, and I'm now supposed to come back and
4 argue against it. I've got cases cited in here --
5 I don't have access to the cases.

6 If you want to have a hearing on this
7 issue, we can have a hearing. Maybe we should
8 continue with this hearing, have our arguments, and
9 then the judge can consider this issue.

10 MR. BROWN: That's okay, actually. Your
11 Honor, I don't have an objection to that.

12 What I find ironic is they file on Friday
13 morning the motion to remove the fiduciary and then
14 they get upset that I file an opposition brief and
15 a brief in support of the motion to approve the
16 settlement agreement one and a half business days
17 before this hearing began.

18 There was never an agreement briefs
19 wouldn't be filed. This is a short brief on an
20 evidentiary question. I'm happy to let Mr. Jones
21 have as much time as he wants to review it.
22 Despite the fact that I would like it to come into
23 the record, I do not think it's going to change the
24 Court's opinion on determination of these matters.
25 I'm happy to have -- I certainly want the testimony

1 to go forward today. I don't want it to be held up
2 by this argument.

3 THE COURT: Under these circumstances,
4 for the time being, we'll hold it off to allow
5 counsel to address it, and so if we need to come
6 back another day to deal with it, we'll deal with
7 it. In the meantime, I do want to give you the
8 opportunity to do whatever research you'd like to.
9 It's tough for me to make a decision since I can't
10 know what it's all about.

11 What we'll do is -- since we're not going
12 to make a decision on this now, do you want to
13 finish up with Mrs. Smith?

14 MS. BYRNE: We're done.

15 THE COURT: You're done, okay.

16 MR. JONES: I just have two quick
17 questions.

18 THE COURT: Then we'll take a break for
19 lunch and go right into your -- okay.

20 REDIRECT EXAMINATION BY MR. JONES:

21 Q Mrs. Smith, I think you testified that you
22 appeared in the media 36 times.

23 A Right.

24 Q How did you get that number?

25 A Royal Caribbean had their watchdogs out there.

1 Q So a representative of Royal Caribbean told
2 you --

3 A Yes.

4 Q -- that --

5 A Yes.

6 Q -- they had counted up --

7 A Yes.

8 Q -- how many times --

9 A Yes.

10 Q -- the Smiths had appeared on TV?

11 A Yes.

12 Q Is it your opinion as you sit here today that
13 your appearances on TV, in the media, in the print media,
14 and in front of Congress, ratcheted up the publicity
15 value of this case?

16 A Yes.

17 Q Ms. Byrne talked about the second meeting, the
18 meeting with the FBI, I think it was in October of last
19 year --

20 A Right.

21 Q -- where the families were present.

22 A Right.

23 Q Do you recall the FBI telling us that at this
24 point in the investigation there was not enough evidence
25 to indict someone?

1 A Yes.

2 Q That's different from saying --

3 A Right.

4 Q -- that they would never find enough evidence
5 to convict somebody.

6 A Right, right.

7 Q The standard for an indictment and for a
8 conviction --

9 A Yes.

10 Q -- is known to be high, correct?

11 A Yes.

12 MR. JONES: I have no further questions,
13 your Honor.

14 THE COURT: Anything from anyone?

15 MR. BROWN: I don't for Mrs. Smith, your
16 Honor.

17 But I do -- what happened here, both
18 sides are again, despite all the discussions on
19 both sides of the table, trying to get in what
20 happened at the FBI meetings. Now we're done with
21 the parties as far as what they heard at the
22 meeting they were at. And now I wish the parties
23 had been at all the meetings, but the FBI wanted
24 just counsel there on the last two meetings.

25 And it's significant to hear what

1 happened at the last two meetings. And I'm more
2 than happy to talk to Mr. Jones about -- I think
3 it's important for the Court, certainly, what I
4 heard at the last meeting with respect to the
5 investigation, and I don't know if we can agree
6 on -- I don't know why, but hopefully we could
7 agree. But I think it's important that you learn
8 what was said.

9 MR. JONES: In response, because I know
10 this is in their brief, I don't even agree with
11 their footnote that they put in their brief about
12 what the FBI said. I have a feeling that we do not
13 agree. We talked about this several times. It's
14 almost as if we weren't in the same room. If you
15 want to find out what the FBI has to say, let's
16 subpoena Sean O'Malley and get him down here.

17 THE COURT: I'll let you all -- if you
18 want to discuss whether you can stipulate to
19 something.

20 MR. BROWN: If there can't be stipulation
21 to what we had in the brief -- this was a good
22 faith fact in the brief.

23 MR. JONES: Your Honor, I will point out
24 from an evidentiary standpoint, we have not tried
25 to bring out -- the inquiry into the meetings has

1 been brought up by the other side each time. We've
2 been objecting to that. I only asked that question
3 just now in response to Ms. Byrne quizzing my
4 client about what happened at that meeting. If you
5 notice, if you go through the transcripts, we have
6 not been the ones bringing up what the FBI has said
7 or not said. Each time it's been in response to
8 something that's been brought up by one of their
9 witnesses.

10 MR. BROWN: My only response, your Honor,
11 closing response to that, is there's a good reason
12 why we're trying to --

13 MR. JONES: I object, your Honor.

14 MR. BROWN: -- bring things --
15 I'm allowed to finish.

16 MR. JONES: Finish.

17 MR. BROWN: -- the reasons why we would
18 want the FBI meetings to come into the evidence and
19 the reasons why the other side doesn't.

20 MR. JONES: I object to the
21 characterization of what the FBI said. I'd be
22 happy to bring Assistant U.S. Attorney Youngblood
23 down here to testify as well.

24 THE COURT: If you all can't agree, then
25 obviously nothing further will be stated about it.

1 If at some point any side wishes to bring
2 additional evidence and want a day for that, we'll
3 take it under consideration.

4 In the meantime, why don't we take it
5 'til 2 o'clock.

6 Thank you, Mrs. Smith.

7 (Whereupon, a recess was taken from 1:15 p.m.
8 until 2:05 p.m.)

9 THE COURT: As far as that one exhibit, I
10 suppose you all want to take some time to -- no
11 agreement or anything was made with regards to
12 that?

13 MR. RICCIO: We didn't really get a
14 chance to discuss it. Maybe we can get Mr. Crakes
15 done and then we can chat with counsel.

16 THE COURT: Fine.

17 Thereupon:

18 GARY CRAKES, being first duly sworn by the Judge, was
19 examined and testified as follows:

20 THE COURT: Would you please state your
21 full name and address.

22 THE WITNESS: Gary Crakes, C-r-a-k-e-s;
23 860 Ward Lane, Cheshire, Connecticut 06410.

24 DIRECT EXAMINATION BY MR. RICCIO:

25 Q Good afternoon, Mr. Crakes.

1 A Good afternoon.

2 Q What is your current position?

3 A I'm a professor of economics at Southern
4 Connecticut State University in New Haven.

5 Q How long have you been in that position?

6 A I've been on the faculty at Southern since
7 1980, at the rank of full professor since 1989.

8 Q What are your duties at Southern?

9 A My duties include classroom instruction,
10 student advisement, membership on various university
11 committees, research and scholarship activity, and some
12 periodic administrative assignments as well.

13 Q Could you give us your educational background,
14 please.

15 A Yes. I received a bachelor's degree in
16 economics from Central Connecticut State College in 1975;
17 a master's degree in economics from the University of
18 Connecticut in 1976; and a Ph.D. in economics also from
19 the University of Connecticut, which I completed in 1984.

20 Q Have you received any fellowships for your
21 studies or research during the course of your educational
22 career?

23 A Yes.

24 Q Can you identify those for us.

25 A Yes. I received a University of Connecticut

1 predoctoral fellowship to provide financial support for
2 my first year of graduate studies; a University of
3 Connecticut dissertation fellowship to provide support
4 for my doctoral dissertation research; and in a national
5 competition, a Richard D. Irwin Fellowship to provide
6 support for my research.

7 Q During the course of your professional career,
8 Doctor, have you received any awards with regard to your
9 teaching?

10 A Yes, I have. I received the university's
11 Teacher of the Year Award in 1987 and the School of
12 Business Teaching Award in 1998.

13 Q Have you been honored at all for your services
14 as an economic expert?

15 A Yes.

16 Q What are those?

17 A I was honored for my pro bono or volunteer
18 services provided on behalf of the families of the
19 victims of the terrorist attack on the World Trade
20 Center, estimating the economic losses associated with
21 those deaths.

22 Q How many of those deaths did you do?

23 A I performed analyses in, I think, 70 to 80
24 cases.

25 Q On a pro bono basis?

1 A For the most part, yes.

2 Q Could you give us some information about your
3 employment history as an economist?

4 A After completing my master's degree I began
5 working as a research assistant on a variety of health
6 economics research projects at the UConn Health Center.
7 I maintained that employment until 1979, when I began
8 working, teaching on a part-time basis at both Southern
9 Connecticut and the Hartford branch of UConn, and then
10 began my current position in 1980.

11 Q Are you a member of any professional
12 organizations?

13 A Yes.

14 Q Can you list a few of those?

15 A I'm a member of the American Economic
16 Association, The Eastern Economic Association, National
17 Association of Business Economics, National Association
18 of Forensic Economics, the American Academy of Economic
19 and Financial Experts, and an international honor society
20 in economics, Omicron Delta Epsilon.

21 Q Have you published any articles in the area of
22 economics?

23 A Yes.

24 Q Approximately how many?

25 A Around 22.

1 Q In professional journals, I assume?

2 A Yes. In refereed journals, yes.

3 Q What kind of appraisals of losses have you
4 done in your professional career, Doctor?

5 A I performed appraisals of economic loss on a
6 variety of different matters; wrongful death, personal
7 injury, employment, and some divorce cases, for a variety
8 of different types of occupations, different educational
9 levels, in those matters.

10 Q Now, have you been qualified as an expert to
11 testify previously in any court in this state?

12 A Yes.

13 Q Has that been in state court?

14 A State and federal.

15 Q In approximately how many cases?

16 A Overall, in the various stages in which I
17 provided testimony, I would say 350 to 400 times over the
18 last 27 years.

19 Q You're being compensated, obviously, for your
20 efforts with regard to this particular matter?

21 A For my time associated with my analysis and in
22 appearing here today, yes.

23 Q And in terms of prior dealings with me or my
24 law firm, have you had any prior dealings with us?

25 A I believe on one other occasion a number of

1 years ago, yes.

2 Q Have you and I ever actually met face to face?

3 A I don't recall doing so. Until today, I
4 should say.

5 Q With regard to Ivey, Barnum & O'Mara, a
6 Greenwich law firm, Mr. Jones and Mr. Marchand, you've
7 never done any work for Ivey, Barnum & O'Mara?

8 A Not that I recall.

9 Q Did I ask you to perform an appraisal of
10 economic loss in this matter of George Smith?

11 A Yes.

12 Q Did you in fact prepare a report regarding
13 that?

14 A Yes, I did.

15 MR. RICCIO: Can that be marked as an
16 exhibit.

17 (Discussion held off the record.)

18 MS. STROILI: This will be AAA.

19 (Whereupon, Gary Crakes' report was marked as
20 Opponent's Exhibit AAA.)

21 MR. BROWN: If I may, your Honor, before
22 Mr. Riccio goes on, I know he vehemently objected
23 to any of our economic reports. I'm not objecting.

24 THE COURT: Okay.

25 Q Dr. Crakes, did you, prior to establishing

1 your -- coming to an opinion with regards to the economic
2 loss in this matter, did you review any documents?

3 A Yes. I reviewed the information I was
4 provided with.

5 Q And that consisted of?

6 A The date of birth and date of death of George
7 Smith, the income tax returns and W-2s, as well as income
8 tax returns for Mr. and Mrs. Smith, and the business
9 information, partnership returns.

10 Q Do you have an opinion with a reasonable
11 degree of probability for the economic loss that was
12 sustained here?

13 A Yes.

14 Q That opinion is what, sir?

15 A That the net discounted economic loss for
16 George Smith the Fourth is \$2,411,581.

17 Q That's found on page 4 of your report?

18 A It is on page 4 and also on the summary page
19 for my appraisal, page 1, Exhibit Roman numeral I.

20 Q Can you provide the Court with an explanation
21 as to how you derived that particular number?

22 A Yes. The value for the net discounted
23 economic loss of Mr. Smith is based first upon the gross
24 earnings discounted to present value, the gross earnings
25 capacity for him.

1 The calculation for the first period of time,
2 to age 30, is based upon the actual W-2 earnings of
3 George Smith for 2004 of \$54,370. That value was applied
4 from the date of death to the age of 30, when it was then
5 assumed that he would take over the operation of the
6 family business and would have compensation equivalent to
7 what his father had experienced in that regard. I
8 calculated that value, based upon the mean annual
9 earnings of Mr. Smith for 2005 and 2006, of \$108,472
10 after expenses.

11 That value is then applied from age 30 to age
12 65, for a calculation of the gross earning capacity of
13 Mr. Smith, which I then reduced to present value by
14 assuming that any increase in earnings that would have
15 been experienced would be equal to any discount rate used
16 for the reduction to present value.

17 So the total gross earnings, based upon the
18 earning capacity of George Smith the Fourth, is
19 \$3,973,223. I then subtracted for federal and state
20 income tax liability, and that is a deduction that
21 results in an after-tax loss of \$2,971,392, as --

22 Q Excuse me. What was the tax -- what did you
23 subtract -- what was the amount of the tax you
24 subtracted?

25 A The effective tax rate was 25.22 percent.

1 That would be tax liability as a percentage of gross
2 earnings, and the value that was deducted was \$1,001,831.
3 That resulted in a net after-tax loss of earning capacity
4 of 2,971,392.

5 The next deduction is for the personal
6 maintenance expenses of George Smith, which I deducted at
7 20 percent of gross earnings, based on data from the
8 Bureau of Labor Statistics and the U.S. Department of
9 Labor published in what is referred to as the *Consumer*
10 *Expenditure Survey*. With that deduction, the net
11 discounted loss becomes \$2,176,747.

12 I then have included a value for household
13 services, the value of George Smith's capacity to perform
14 services in and about the home based on a study titled
15 *The Dollar Value of Household Work* published by the
16 College of Human Ecology at Cornell University. With the
17 addition of that value of \$335,834, the net discounted
18 economic loss becomes \$2,512,581.

19 I've made one additional deduction to allow
20 for the effect of a quarterly compounding of interest on
21 an annual basis, and arrived at a net discounted economic
22 loss of 2,411,581.

23 Q So the loss that you are rendering an
24 opinion on is slightly in addition -- slightly more than
25 \$2.4 million --

1 A Yes.

2 Q -- based on your analysis.

3 A That's correct.

4 Q If hypothetically -- and that is based on
5 the -- a presumption that Mr. Smith would have taken over
6 his parents' business at age 30, correct?

7 A Yes.

8 Q If, hypothetically, okay, Mr. Smith did not in
9 fact take over his parents' business, hypothetically,
10 that would result in some change in these numbers,
11 correct?

12 A Yes, it would.

13 Q Now, you're familiar with Exhibit --

14 MR. RICCIO: Can I have Exhibit 19,
15 please.

16 Q I show you what's been previously marked
17 Exhibit 19.

18 A Yes.

19 Q I provided you with a copy of that document,
20 correct?

21 A Yes, you did.

22 Q Which is apparently a computation of the
23 economic loss for Mr. Smith, correct?

24 A That was my understanding, yes.

25 Q Has been previously admitted into evidence in

1 this particular case.

2 Is it not true that that particular
3 approximation comes to the conclusion of a loss of
4 approximately \$1.5 million, correct?

5 A That's my understanding, yes.

6 Q And that loss is based upon an annual wage of
7 \$50,000?

8 A Approximately, yes. The value that I used was
9 the 2004 earnings level, which was \$54,370. I don't know
10 specifically what the value was in this analysis, but it
11 appears to be approximately \$50,000 a year.

12 Q So if we use, as Exhibit 19, the analysis in
13 Exhibit 19, approximately \$50,000 a year annual salary,
14 you come out, according to this estimate, of a loss of
15 about approximately 1.5 million, right?

16 A Yes.

17 Q Now, again, your opinion with a reasonable
18 degree of probability, is it fair to utilize, given the
19 fact that Mr. Smith was a Babson College graduate with a
20 degree of business, is it fair to utilize an annual
21 salary of approximately \$50,000 in projecting his loss of
22 income?

23 A My clarification would be to assume that the
24 earning capacity that one is exhibiting at age 25 or 26
25 would be reflective of their full capacity over their

1 lifetime would not really be reasonable.

2 Q Why is that?

3 A Because college graduates, individuals with
4 bachelor degrees, men have, on average, from age 25 to
5 age 65, average annual earnings, mean annual earnings, in
6 excess of that. It would be somewhere in the
7 neighborhood of 75- to \$80,000 in 2004 dollars, closer to
8 85- and \$90,000 updated to today. So relying on that
9 value to project the individual's earning capacity for
10 their whole lifetime based on what they had exhibited in
11 their mid twenties would not, in my opinion, be
12 reasonable.

13 Q I want to show you this document. Tell me if
14 you can identify it for us.

15 A Yes.

16 Q What is that?

17 A It is a table from -- data provided by the
18 Bureau of the Census of the U.S. Department of Commerce.
19 It provides information on earnings in 2004 by the
20 educational level of the population and by gender. And
21 the table that we are looking at, to illustrate, if we
22 consider males 25 years of age and over who are working
23 year round full time, the mean annual earnings with a
24 bachelor's degree in 2004 dollars is \$74,829. Updating
25 that to today -- I'm sorry, \$76,094. Updating that for

1 four years to 2008 would provide a value between 85- and
2 \$90,000 per year.

3 MR. RICCIO: Could I mark this.

4 MS. STROILI: BBB.

5 MR. BROWN: Can I have a copy?

6 MR. RICCIO: (Handing.)

7 THE COURT: Is there any objection --

8 MR. BROWN: No.

9 THE COURT: -- to the exhibit?

10 Okay.

11 (Whereupon, the document was marked as
12 Opponent's Exhibit BBB.)

13 Q Could you just indicate --

14 MR. RICCIO: With the permission of the
15 Court and counsel, I'd like him just to underline
16 the numbers he's referring to, since it's a whole
17 page of numbers.

18 Q It would be useful perhaps to underline what
19 you just testified about.

20 A (Complying.)

21 Q Again, so it's clear, so using a projection of
22 approximately \$50,000 a year for lost income analysis as
23 it relates to George Smith, in your judgment, would not
24 be appropriate?

25 A Not given his age at the time of his death,

1 that's correct.

2 Q And it would, in fact, it would understate his
3 lost income, correct?

4 A His lost earning capacity, yes, I believe it
5 would.

6 Q If you again -- I know you didn't prepare a
7 specific analysis on this question; I didn't ask you to
8 do that. But if you were -- I'd ask you to do a rough
9 analysis in terms of where would that take you,
10 approximately, in terms of your number for the net
11 discounted economic loss, if you remove the liquor store
12 situation from the equation? Where would that leave you
13 approximately with a net discounted economic loss?

14 A I believe it will be around \$2 million.

15 MR. RICCIO: Thank you.

16 MR. BROWN: Can I take a one-minute
17 recess?

18 THE COURT: Sure.

19 (Whereupon, there was a pause in the
20 proceedings.)

21 THE COURT: Mr. Crakes, you're still
22 under oath.

23 THE WITNESS: Yes, your Honor.

24 CROSS-EXAMINATION BY MR. BROWN:

25 Q Dr. Crakes, you're aware -- I just want to

1 make sure you're aware that this whole matter is under
2 the confidentiality of the court and there is an order of
3 nondisclosure by the parties agreed to with the FBI, even
4 though I don't think it's going to affect you. Are you
5 aware --

6 A Yes.

7 Q -- of the confidentiality order?

8 A Yes.

9 Q Of the 350 matters -- excuse me, 350 to 400 --
10 I believe you said you testified in -- have you testified
11 in 350 or 400 matters?

12 A Over the last 27 years, 350 to 400 matters at
13 trial or hearings of this sort, yes.

14 Q Of those 350 to 400 matters, would they all
15 have had an opposing economist?

16 A Would they all have had -- I don't know, quite
17 often, whether or not an economist has been retained. In
18 many instances, not.

19 Q I actually -- I was able to go on this Web
20 site, I guess, and find out -- I can put your name into
21 this Web site and it pulled up for me 62 cases with your
22 name on it as an economist for a party, and they were all
23 out of Connecticut, all 62 cases. Have you ever
24 testified -- have you ever been engaged for a case that
25 originated out of Florida?

1 A There may have been one or two cases where I
2 believe a deposition was taken here in Connecticut but
3 where the litigation was under Florida law.

4 Q So of the 350 to 400, two out of Florida?

5 A That are coming to mind as I sit here, yes.

6 Q Have you ever -- there's been testimony in the
7 trial that all these actions against cruise lines
8 originate out of the Miami-Dade County as a venue. Have
9 you ever testified -- have you ever been engaged to work
10 on any Death on the High Seas Act cases?

11 A Yes, I have.

12 Q How many?

13 A I don't recall offhand. It's been more than
14 one or two, but I don't recall the exact number.

15 Q You were able to tell me 350 to 400 -- you
16 said it was more than one or two. Would it be 5, 25, a
17 hundred?

18 A I've been retained in matters that have
19 been -- in aviation cases where the Death On The High
20 Seas Act has applied, and also some maritime cases. I
21 don't recall the exact number, but it would be more
22 than -- probably more than 10 over the last 27 years.

23 Q What would you feel comfortable in saying that
24 it was under?

25 A I don't know.

1 Q Have you ever done an analysis on a Death On
2 The High Seas Act case involving what would be allocated
3 to loss of services or loss of support -- where you had
4 to allocate between loss of services, loss of support,
5 and loss of inheritance?

6 A Not that I recall, no.

7 Q Of all the matters that you've handled, how
8 many of them do you think -- how many of them have gone
9 to trial, of the 350 to 400?

10 A Those are the ones that have gone to trial.

11 Q 350 to 400 have all gone to trial?

12 A Those are the cases in which I've been
13 involved that have resulted in trial testimony.

14 Q So of those that involved trial testimony,
15 would it be fair to say that almost all of them had
16 opposing economists?

17 A Again, I don't know. I know in some instances
18 where I'm provided with the report; sometimes when I am
19 retained by defense, I don't know if I'm disclosed. So I
20 don't know the number of those cases where an opposing
21 economist would have been involved.

22 Q You're not able to see what the opposing --
23 you're not ever privy to what the opposing side's
24 economist has deemed to be the person's -- the value of a
25 person's life?

1 A If they've provided a report and that report
2 has been disclosed and it's been provided to me, yes. I
3 don't know about those circumstances where other
4 situations would apply.

5 Q Of all of those matters, how many -- how many
6 do you think you've been involved in where you were able
7 to see the other side's report?

8 A Where there has been a report, I would assume
9 almost all. But in cases where I've been retained and
10 there has not been an opposing economist, I would say
11 that's a number I don't know.

12 Q I mean, I'm saying -- you said you testified
13 in 350 to 400.

14 A Yes.

15 Q If you're going to give me a ballpark for how
16 many have had opposing economists with reports that you
17 were able to review, how many would you tell the Court
18 that is?

19 A Out of that 350 to 400?

20 Q Yes.

21 A If I had to approximate, I would say perhaps
22 20 percent.

23 Q 20 percent?

24 A That would be an approximation.

25 Q Okay. In any of those cases has the opposing

1 economist agreed with your analysis?

2 A There may have been some differences in those
3 cases. I don't know if there's been total agreement.

4 Q I'm asking, have any of them -- have they
5 agreed with your analysis?

6 A Again, in those reports that I have seen, the
7 numbers have been somewhat different. But there may be
8 other cases where I'm not familiar with what the report
9 demonstrated, or the opposing economist's opinion, what
10 they provided. But in those that I have seen, yes, there
11 have been some differences.

12 Q So would it be fair to say in the ones you
13 have seen, an opposing economist report, not one has
14 agreed with your analysis?

15 A Again, I said there could be some differences.
16 Have they come up with exactly the same number, perhaps
17 not.

18 Q I'm not asking "perhaps." I'm just simply
19 asking, in all the cases you've been in and the 20
20 percent you've seen the economist's report on the other
21 side, have any of them agreed with the figure you placed
22 on a case?

23 MR. RICCIO: And I would just object.

24 When you say agreement, do I understand the
25 question to be to the penny or are we talking about

1 approximation? I object to "agree" as being vague
2 and ambiguous in the context of that question.

3 MR. BROWN: Okay. I understand.

4 Q Agreed within \$5,000.

5 A I don't recall that being the specific area of
6 agreement. Again, there will be some range of
7 differences. I don't recall it being dramatic.

8 Q If you were to attack your own analysis in
9 this report, how would you do it?

10 A As we've indicated, my analysis is based on
11 some assumptions. The assumption that Mr. Smith would in
12 fact take over the family business and have the level of
13 income associated with what his father has experienced.
14 But as I've indicated, what the average earnings would be
15 of a male with a bachelor's degree would be significantly
16 in excess of that \$54,000 a year figure.

17 Q Okay. You didn't answer my question.

18 MR. RICCIO: I object to that. That's
19 argumentative. I think he did answer the question.

20 MR. BROWN: Your Honor, I mean, nobody
21 ever -- these economists never agree. I don't have
22 an economist to sit here and -- I'm simply making a
23 point.

24 THE COURT: I think he answered the
25 question in stating he made some assumptions and

1 those assumptions obviously could be attacked.

2 MR. BROWN: I'll ask some follow-ups.

3 THE COURT: That will be great.

4 Q Did you take into account that the person
5 would have a family, in your consumption numbers?

6 A No, I did not.

7 Q Did you take into account that the business in
8 question was in Greenwich, Connecticut?

9 A Based upon the earnings figures that were
10 associated with that business, it would be based on its
11 locale. Otherwise I did not take the specific factors of
12 Greenwich into consideration.

13 Q So in Exhibit BBB, which talks about what the
14 average male in the United States makes, 75,000, you
15 didn't take into consideration the assumption of somebody
16 who would be living in the locale approximately close to
17 Greenwich, Connecticut, in your analysis?

18 A Well, the values for average earnings of males
19 by level of educational attainment are national in scope.
20 The earnings of males in Connecticut would typically be
21 greater than those for the average of the country as a
22 whole. The increase in those earnings levels would be
23 commensurate with the increase in expenditures.

24 Q Did you take into account the cost of living,
25 of living in the southwestern lower Fairfield County,

1 Connecticut, in your numbers?

2 A Again, the figures are national in that
3 regard.

4 Q So the answer would be no?

5 A If I could clarify. The values are national
6 in both contexts. If one takes into consideration that
7 earnings are higher in Connecticut, that is comparable to
8 the increase in expenditures that would be necessary for
9 one's support.

10 Q Did you take into account the cost of living
11 of living in lower Fairfield County, Connecticut, in your
12 numbers?

13 A I believe I have in the context in which I
14 just indicated.

15 Q Did you take into account, in your numbers,
16 the proposed payout that Mr. Smith was going to have to
17 pay his father and mother over a ten or twelve year
18 period in calculating the consumption?

19 A I was aware of that, yes.

20 Q That was a factor here? Because you didn't
21 state that on direct.

22 A No, I did not, because it was a decision that
23 Mr. Smith would be making about the purchase of the
24 business. At the end of the time period where that
25 purchase would be made, he would also own that asset and

1 it would be part of his own personal net worth. So I
2 felt those two were offsetting to one another.

3 Q So the answer is a payout of the proposed
4 buyout was not factored into the numbers?

5 A No. I just think I indicated that it was, in
6 the sense that it would result in an equal value asset
7 that Mr. Smith would then own, which would be part of his
8 own personal financial situation.

9 Q I don't understand your answer. Are you
10 saying because you factored in that he would be making
11 what his father made, 108,000?

12 A No. I was aware that there would be the
13 purchase of the business. But purchase of the business
14 would not be for nothing. It would be for a business
15 that he would then own at the end of the period of time
16 when those payments would cease.

17 Q So you're not factoring in what the value of
18 owning that business would be?

19 A The two are offsetting. What he would decide
20 on his own personal basis to purchase the business for
21 would then have a value equal to that amount at the end
22 of his purchase of it.

23 Q Were you not made aware of the fact that there
24 was a proposed buyout whereby he would pay his parents
25 50,000 a year for 10 or 12 years?

1 A I was aware of that, yes.

2 Q But that doesn't factor into the analysis of
3 what he would actually make?

4 A Not for his earning capacity. And, again,
5 that 50,000 a year that he would be paying would result
6 in him owning that asset at the end of that period of
7 time. It would not just be money thrown away for no
8 purpose. It would have a value at the end of that time
9 for the asset that he would have purchased, namely the
10 business.

11 Q In doing your economic analysis, does that
12 take into account factors like the likelihood that a
13 foreign treaty would apply?

14 A I'm sorry. I'm not understanding.

15 Q In doing your economic analysis, would that
16 take into consideration the fact that a foreign treaty,
17 which might limit damages, would apply?

18 A My calculation is based upon the guidelines
19 necessary for determining the loss of earning capacity in
20 this case, and that's what I've applied, as they
21 currently exist.

22 Q I know that's an answer. But I just simply
23 asked: Did you take the Athens Convention into account
24 when you did these numbers?

25 A I took into consideration, again, the

1 guidelines necessary, as I know them, for making the
2 calculation. I'm not familiar with the specific
3 convention that you're referring to.

4 Q Okay. So the percentage likelihood that this
5 convention may or may not apply is not in the guidelines
6 for doing the analysis?

7 A Again, I'm not familiar with what you're
8 referring to.

9 Q Okay. In doing your analysis, is there any
10 determination or calculation of what likelihood there
11 would be that the decedent was comparatively negligent?

12 A That's not for my determination. I'm
13 estimating the value of the destruction of his earning
14 capacity.

15 Q In doing your analysis, would it be affected
16 at all by the fact that the decedent was ambivalent
17 towards taking over the liquor store?

18 A I don't know. I'm measuring his earning
19 capacity based on the information provided to me. I've
20 also indicated what that earning capacity would be based
21 on the educational level and age of Mr. Smith.

22 Q In doing your economic analysis, did you
23 factor in at all the fact that the anchor tenant in the
24 building in which the liquor store is located,
25 Foracelli's Food Mart, is no longer there?

1 A No, I did not.

2 Q Did you factor into your economic analysis the
3 likelihood --

4 MR. BROWN: Strike that.

5 Q Did you factor into your economic analysis the
6 likelihood that a public rift between the decedent's
7 parents and his wife would have any impact on the case as
8 a whole?

9 MR. RICCIO: I would just object to that
10 question on the basis it again presumes a fact in
11 evidence that I'm not aware of. I didn't hear
12 anybody testify about that. So it presumes a fact
13 that's not in evidence.

14 MR. BROWN: Your Honor, *The Greenwich*
15 *Times* article that came out on the first day of
16 this hearing says "Smith v. Smith" on the front
17 page. I'm just asking a question. I know the
18 answer is no.

19 MR. RICCIO: I'm a little old fashioned.
20 I think in the courtroom we kind of decide based on
21 the evidence that we hear in court. There's a lot
22 of reliance about articles and television shows.
23 There's no evidence before this Court --

24 MR. BROWN: That there's a rift?

25 MR. RICCIO: We're talking about a

1 situation hypothetically as if this young man had
2 lived. We're not talking about -- one would argue
3 that the rift you're talking about is attributable
4 to the fact that he died. This man's projections
5 are based upon had he lived and if things had
6 played out a certain way. We're not talking about
7 -- I think the rift that existed between these
8 people was because of the death. I think it was
9 pretty harmonious until he died. So, again, I'm
10 not aware of a pre-death rift. No one's testified
11 about that, and that's why I'm objecting to the
12 question.

13 Q I'm only asking if the rift after he died was
14 a factor in the economic analysis.

15 A No.

16 THE COURT: I don't have any problem with
17 the question.

18 MR. BROWN: That's it.

19 THE COURT: I understand what you're
20 arguing, though.

21 MR. BROWN: One second.

22 THE COURT: Take your time.

23 (Whereupon, there was a pause in the
24 proceedings.)

25 MR. BROWN: I don't have any further

1 testimony, your Honor.

2 THE COURT: Any redirect?

3 MR. RICCIO: No, your Honor.

4 THE COURT: Thank you very much, Doctor.

5 I appreciate it.

6 THE WITNESS: Thank you, your Honor.

7 (Whereupon, Gary Crakes left the hearing
8 room.)

9 THE COURT: Do you have any other
10 witnesses?

11 MR. JONES: We don't, your Honor.

12 MR. RICCIO: Could I suggest that we take
13 a break? Maybe we can discuss that whole FBI
14 situation and then review this other legal issue
15 before the Court.

16 THE COURT: Sure.

17 You all want to stay in here and discuss
18 it, and I'll leave? Makes it a little easier.

19 (Whereupon, a recess was taken from 2:47 p.m.
20 until 3:26 p.m.)

21 THE COURT: What are we doing first? You
22 had talked about some things that you can stipulate
23 to, okay.

24 MR. RICCIO: On page 12 of the
25 memorandum.

1 MR. BROWN: The memorandum of law is for
2 the motion to approve the settlement agreement,
3 which is ours. There's a dispute as to the
4 footnote on page 12. Our position is that the
5 whole thing should come in, and Mr. Riccio and
6 Mr. Jones is about to say why some of it should
7 not.

8 MR. RICCIO: Those sentences -- that
9 portion of the footnote from the start down to the
10 sentence which starts "However," your Honor, which
11 is about two-thirds of the way down, with the
12 preceding section, with the exception of ascribing
13 full cooperation to RCL, which we vehemently
14 disagree with, we would agree with what Mr. Brown
15 has set forth here. So with the exception of
16 including RCL as being fully cooperative, which we
17 vehemently disagree.

18 MR. BROWN: Where is the full
19 cooperation?

20 MR. RICCIO: Says they had received full
21 cooperation from RCL, Jennifer Hagel-Smith and the
22 Smith family.

23 MR. BROWN: Okay.

24 MR. RICCIO: Two-thirds of the way down,
25 just before the sentence that starts "However."

1 We're agreeing with everything that's
2 north of that with the exception of the reference
3 to RCL.

4 As to the last sentence in the brief --
5 in the footnote, I'm sorry, starts off "Further, it
6 was learned that Sean O'Malley has been
7 reassigned," we of course agree with that.

8 The portion in between that, we do not
9 agree with. We certainly disagree that the FBI
10 have reached a conclusion that there was not foul
11 play in this particular matter. In fact,
12 Mr. Youngblood indicated if it was an accidental
13 situation they would have already closed their
14 file. So based on that we strongly disagree with
15 that particular representation.

16 And we also strongly disagree with the
17 concept that whatever further information they get
18 will not change the result. We of course disagree
19 with that.

20 Finally, we disagree -- again, this may
21 be wording, because Mr. Brown is not a criminal
22 lawyer. There may be perhaps some misunderstanding
23 here. But we do not -- it's our understanding that
24 the grand jury investigation in this case is still
25 open, as is the investigation, that the time period

1 for grand jury proceedings has not come anywhere
2 near elapsing and that the matter is still -- is
3 still open, and we would -- I don't know if he
4 intended to convey, maybe perhaps he did -- we
5 don't have any information that in fact they
6 attempted -- that this case was submitted to a
7 grand jury to make a determination should they
8 indict someone and they chose not to do so. That
9 is completely not -- we have received no
10 information along those things. I don't know if
11 Mr. Brown is trying to convey that or if it's a
12 misunderstanding of the criminal procedure, but we
13 have absolutely no information about that. If
14 that's what he's implying or trying to convey, we
15 just completely disagree.

16 There would be no reason -- I can't
17 testify, but based on my experience, these facts
18 don't -- that would not have been what would have
19 occurred in this case, based on my experience in
20 these matters.

21 But we do have substantial agreement on
22 the footnote in those areas.

23 THE COURT: What do you want me to do
24 with this footnote?

25 MR. JONES: Based on what's been said,

1 that's fine, you can put whatever weight you want.

2 THE COURT: We don't need to mark it up,
3 we can just take note.

4 MR. JONES: Because the footnote was
5 there, we felt we need to explain what our position
6 was with respect to the footnote without having to
7 try to get it out through additional witnesses.

8 THE COURT: That's fine.

9 MR. BROWN: We agree to that.

10 THE COURT: Okay.

11 MR. RICCIO: The second item of
12 housekeeping that needs to be addressed is this
13 issue of the settlement, that I think now is
14 infamously referred to as "the Jones letter." We
15 are objecting to consideration by the Court -- or
16 the introduction as evidence of this particular
17 letter. Even though there's certainly aspects as
18 far as we're concerned would be helpful to us in
19 terms of this case, we do not think it's
20 appropriate as a matter of law for the Court to
21 consider documents that were exchanged in the
22 course of settlement discussions.

23 The evidence code clearly ascribes the
24 use of any evidence that relates to settlement
25 except for some limited circumstance. I think Tate

1 and LaPlant is kind of interesting at 4-25.2, which
2 indicates that the reason, one of the reasons,
3 strong reasons, they're not admissible is because
4 of their low probative value and the public policy
5 favoring the settlement of disputes. I think that
6 that general rule certainly would apply in this
7 particular situation.

8 There are a couple of cases that were
9 cited by Mr. Brown in his brief. I do not feel
10 that they're supportive of the introduction of the
11 settlement in this particular situation.

12 In the federal case, there was a claim
13 for attorneys fees, 1983 action, a claim for
14 attorneys fees based on the fact it was a frivolous
15 lawsuit, and the federal statutes require the
16 Court -- Courts are required to make that
17 determination in terms of awarding legal fees.
18 There was a legal requirement. And accordingly,
19 the Court, the District Court, allowed that, some
20 back and forth in between counsel. I think
21 basically that back and forth was letters from the
22 defense lawyers saying this suit's nonsense. It
23 turned out to be nonsense and the question was,
24 should legal fees be awarded. So there was clearly
25 a need for that. There was clearly a legal

1 requirement as to whether or not it was frivolous
2 and evidence that defense counsel had shown the
3 plaintiff this thing's frivolous and here's why,
4 okay, I think would be relevant. There's a clear
5 legal requirement. In this case there is no such
6 legal requirement that I'm aware of, statutory
7 legal requirement, as there was in the federal
8 case.

9 In the state case, the fact here, the
10 only thing the evidence -- there was some
11 settlement discussions in a civil matter involving
12 putting up of a sign. The only thing that was
13 admitted was the fact that it had occurred. There
14 was no discussion about what was said, there was no
15 substance to the evidence that was admitted, just
16 the mere fact that they had, you know, they had
17 occurred and there had been discussions between the
18 parties.

19 I don't think those cases are applicable
20 or controlling in this situation, and I certainly
21 don't blame Mr. Brown or whoever did the research
22 in this case. Simply put, there's strong law in
23 this state, is to not admit this evidence.

24 If one examines 4.8, which is the
25 exceptions under which you can get settlement

1 discussions in, it talks about bias or prejudice of
2 a witness, refuting a contention of undue delay, or
3 proving an effort to obstruct a criminal
4 investigation or prosecution, a statement of fact,
5 or admissions of liability. Those are the
6 enumerated exceptions in the rule, and I don't
7 think any of those would apply in this particular
8 circumstance whatsoever.

9 So I don't feel that it fits under any of
10 the exceptions, and it certainly isn't strong
11 enough to overcome the general rule that the
12 negotiation statements should not be admissible as
13 against the public policy of the state.

14 Secondly, just two final things. One is
15 that if you start going down this road it's going
16 to require the introduction of additional
17 documents. Once you start putting in evidence
18 about settlement negotiations, it's going to
19 require the introduction of additional documents
20 regarding the back and forth between people, which
21 is going to prolong this situation, which I'm sure
22 is something none of us are interested in doing. I
23 don't think there's anything that's probative for
24 the purposes of what we're trying to do here. I
25 haven't heard any. Certainly in reading this, I'm

1 not understanding anything here that hasn't already
2 been or at least attempted to be demonstrated by
3 counsel here in regards to this particular hearing.

4 Finally, there are statements in this
5 memorandum -- I don't think the Court's taken a
6 look at it, I don't think he should, quite
7 frankly -- but there are statements here that
8 border on fantasy and are completely erroneous and
9 unfairly pejorative of our clients with regard to
10 this particular matter. And the characterization
11 of that letter is grossly inaccurate.

12 Those are our arguments against its
13 admission. Thank you.

14 THE COURT: Attorney Brown?

15 MR. BROWN: Your Honor, the first thing
16 is, I'm not giving it to you, I'm giving it to
17 Ms. Stroili. This is that radioactive letter.

18 THE COURT: Do you want to mark it for
19 identification purposes?

20 MR. BROWN: Mark it for identification,
21 whatever our last number is.

22 I'm going to be really brief. I've
23 written a three-page memo on why this letter should
24 come in, on what I argued before we had the break
25 and lunch. It is unusual. If they weren't trying

1 to remove Ms. Hagel-Smith, I would not be
2 submitting this letter. They are trying to remove
3 Ms. Hagel-Smith. There's evidence in the letter
4 that would be a statement against interest for
5 them. I think that this falls under the exceptions
6 to evidentiary rule 4-8. The first case that's
7 cited in the brief is on point with the situation
8 we have before you.

9 THE COURT: Okay.

10 MR. RICCIO: I just want to state that,
11 as a brief retort, the brief refers to motive as
12 being the basis under which it would be admissible,
13 not that its an admission. I think, with due
14 respect, that's a late-coming assertion. If your
15 brief talks about motive, that's why it should be
16 admissible, which happens to fit none of these
17 exceptions. Now they decided it constitutes an
18 admission.

19 MR. JONES: In addition, your Honor, we
20 completely disagree with the characterization of
21 anything in that letter as being an admission
22 against interest.

23 THE COURT: If we were here just on a
24 removal, would you think that that piece of
25 evidence would be admissible?

1 MR. RICCIO: No, I don't think so. It's
2 a settlement discussion, and it doesn't fall into
3 one of the enumerated categories of what the
4 exceptions are as set forth in the rules of
5 evidence. I don't -- it's not clear. If you're
6 saying -- if they're saying now, contrary to the
7 brief, that there's an admission in it, well, we
8 disagree with that. You're kind of hamstrung
9 because you can't look at the document. They can
10 say hypothetically there's a statement in there
11 that we think Ms. Smith was a spectacular
12 fiduciary. They've got free wheel here to
13 determine whether or not -- to set forth what it
14 says. It's not -- you know, there's nothing in
15 there -- there's nothing in there -- it's certainly
16 a settlement discussion, as frequently occurs
17 between counsel, there's no question about that.
18 That's an apt characterization by Mr. Brown. But
19 there's nothing there that can be remotely
20 construed as an admission regarding the merits of
21 Ms. Smith's performance as a fiduciary. In point
22 of fact, if you looked at the detail of the letter,
23 you would find that there are critical aspects of
24 what's gone on prior.

25 MR. BROWN: I think the Court's going to

1 have to look at it. There is a statement in the
2 brief that it's motive and statement against
3 interest, and it falls under 4-8. And if it
4 weren't -- only for the motion to remove -- if --
5 I'm not expecting it to take place. If the motion
6 to remove were not here, this letter would not come
7 in.

8 THE COURT: The reason I asked that
9 previous question is simply because my plan was to
10 make a decision on the settlement first, before I
11 even get into the -- whether somebody should be
12 removed or not. And therefore what I would propose
13 is to not make it admissible for purposes of the
14 settlement, make my decision on the settlement, and
15 then if there were no objection, I would admit it
16 for the removal, if that -- when I come to review
17 that portion of it, if it's -- you know, depends on
18 what the settlement decision is and whether the
19 removal will take much consideration.

20 But I was going to separate the two, make
21 the decision. I can even give the decision out to
22 the parties and either this exhibit can either sit
23 in a confidential file or be presented at that
24 time, if anyone feels that they just don't want it
25 in our possession at this time.

1 But that was my feeling about it because
2 I don't think it's admissible for purposes of the
3 settlement, but it may be relevant for the purposes
4 of the removal.

5 MR. BROWN: That's fine with me, your
6 Honor. I'm definitely not submitting it for
7 purposes of the motion for the settlement
8 agreement. It shouldn't. It shouldn't come in.

9 And for that matter, the addendum, I just
10 withdraw that. That thing that was called the
11 addendum is just being withdrawn.

12 THE COURT: I don't remember what the
13 addendum is.

14 MR. BROWN: I think it's in a separate
15 file.

16 THE COURT: I see.

17 MR. JONES: I think the memorandum should
18 be withdrawn as well. The memorandum is
19 misleading, and I don't think that the judge -- if
20 you haven't read it, I don't think you should read
21 it until -- if we're going to hold off on that,
22 let's hold off on both.

23 MR. BROWN: I have no objection, your
24 Honor, to the memorandum of law waiting until after
25 you have decided the motion to approve or

1 disapprove the settlement agreement.

2 But I definitely am submitting the
3 motion -- I mean the memorandum of law with any
4 determination on that letter coming in.

5 MR. RICCIO: We would probably want to do
6 something.

7 THE COURT: You'd be allowed to write
8 your own two or three page thing.

9 MR. RICCIO: Because I'm concerned about
10 this concept of an admission. The statute -- the
11 Practice Book says admissions of liability. Not
12 just admissions; admissions of liability.

13 MR. BROWN: It's not about liability.

14 MR. RICCIO: It's not about liability.
15 That's one of the exceptions. The only admission I
16 see here that's an exception is an admission of
17 liability. I don't think there's any admissions of
18 liability. We're not dealing with a typical civil
19 injury case.

20 MR. BROWN: I respect Mr. Riccio very
21 much, but I don't agree with his characterization
22 and his oral argument. I don't agree with any of
23 it. He's allowed to write a brief after you
24 decide.

25 THE COURT: Why don't we set it aside and

1 give opportunity if you wish to submit something in
2 writing, and set this aside with it. It's going to
3 take some time obviously to get through all the
4 evidence in order to render a decision on the
5 settlement, and in the meantime if you still want
6 to argue whether that exhibit should be admissible
7 on the removal aspect, we can take a look at
8 whatever submission you have. And obviously you
9 have the right to reply.

10 MR. RICCIO: Thank you.

11 THE COURT: I can make a decision on that
12 at that time.

13 MS. STROILI: That was TT for
14 identification.

15 (Whereupon, the letter was marked as
16 Petitioner's Exhibit TT for identification.)

17 THE COURT: What would you like us to do
18 with those things? Stick them in a confidential
19 file or you all want to submit them later?

20 MR. JONES: Why don't we submit later,
21 your Honor.

22 MR. BROWN: No. I don't want it back. I
23 think it should be kept in a separate file.

24 THE COURT: Why don't you put it in a
25 sealed file and put not for my eyes, just in case,

1 so I don't mistakenly think it's something not for
2 the public's eyes.

3 Now, as far as anything else other than
4 closing?

5 MR. BROWN: Ten-minute break, your Honor,
6 and then ten-minute closings, each side.

7 MR. RICCIO: That's fine with us.

8 THE COURT: Okay. Thank you.

9 (Whereupon, a recess was taken from 3:44 p.m.
10 until 4:04 p.m.)

11 THE COURT: That's our envelope, which
12 shall remain sealed.

13 Attorney Brown?

14 MR. BROWN: Your Honor, I'm going to talk
15 entirely -- we're here for the motion to approve
16 the settlement agreement and also the motion to
17 remove the fiduciary. They are, to some extent,
18 tied together. I'm talking entirely about why this
19 settlement agreement should be approved.

20 Ms. Stroili tells me we've broken the
21 all-time Greenwich Probate Court record for trial
22 hours.

23 There's some -- you've heard a lot of
24 testimony. There's been a lot of polite arguments
25 and disagreements between the two sides. There are

1 some significant differences.

2 The Smiths are good people who suffered a
3 tragic loss. So has Jennifer. They have come to
4 look at this in different ways. The Smiths want to
5 know what happened to George. But they believe
6 that there's a hundred percent chance that he was
7 murdered. That's unfathomable given all the
8 testimony that's come before the Court, that
9 there's a hundred percent chance.

10 Jennifer also wants to know what happened
11 to George. But she did close one door, and the one
12 door she closed was the chance to get more money
13 from Royal Caribbean by agreeing to this roughly
14 \$1 million settlement. But she did so to get the
15 benefits from other doors, to get as much
16 information out of Royal Caribbean that she could,
17 which has been discussed at length at paragraph 4
18 in the settlement agreement. To get a financial
19 recovery that's a known entity of \$950,000 -- of
20 950,000-and-change dollars. And when the motion
21 was brought before the Court, that financial
22 recovery was to have some benefit for the Smiths
23 through the allocation under the Connecticut
24 intestacy laws.

25 The Smiths do believe, I think sincerely,

1 that Jennifer has betrayed them. It seems that
2 they believe that all of the assets through a
3 litigation with Royal Caribbean should be exhausted
4 to investigate 'til the end of time what happened
5 to George. I think that they think that she has
6 betrayed them because she has, in some respects,
7 moved to closure in her grieving process, and the
8 Smiths have not done so.

9 There's some key differences that I think
10 highlight the disagreement that we've had over the
11 last month. Number one, the Smiths believe one
12 hundred percent that George was murdered. Jen
13 believes that he may have been murdered, but that
14 there's a strong chance that it was an unfortunate
15 tragic accident due to excessive intoxication.

16 Number two, the Smiths want all the
17 resources used to investigate and hopefully prove
18 their theory that George was murdered, but with the
19 knowledge that they have almost no financial stake
20 in a financial recovery. Their own expert
21 testified that it was highly speculative that they
22 would receive anything from a financial recovery.
23 So the assets that would be used by any personal
24 injury maritime lawyer, to a vast degree, are
25 coming out of Jennifer's pocket, any financial

1 recovery.

2 Jen wants to know what happened. She
3 definitely negotiated the reception of a lot of
4 information from Royal Caribbean with the hope that
5 they would find out what happened to George, to the
6 best of everyone's ability. But she certainly has
7 something tangible to lose if this agreement is
8 disapproved and somebody else is appointed and
9 somebody else sues Royal Caribbean and litigates
10 for five or six years with a scorch-the-earth
11 defendant.

12 Number three, I think it's very natural,
13 but the Smiths resent that Jennifer controls the
14 process, that she's the administrator, and that
15 their family, the two of them or Bree, is not the
16 administrator. And I'm sure that that's caused
17 consternation on their side, that Jennifer controls
18 the estate. And I think that they probably resent,
19 naturally, that she receives, just by the quirks of
20 the law, financial recovery because she was the
21 spouse.

22 Number four, Jennifer has, I think, moved
23 far more significantly than the Smiths to closure
24 in the grieving process. Be it through her
25 involvement as the administrator, her dealing and

1 being very involved with Mr. Walker and his
2 investigation and his dealing and communicating
3 with her attorneys on a very constant basis; with
4 her dealings with the FBI and being able to see
5 what the FBI was doing by questioning her, by being
6 involved in the grand jury investigation, by
7 looking at photographs, by supplying her makeup to
8 the FBI, by having numerous meetings, by being
9 polygraphed, gave her the ability, through working
10 hard on that front, to move towards closure.

11 I do not -- and I feel -- I don't think
12 the Smiths have moved towards closure in the same
13 way. I think that there's been, even today, a
14 stark demonstration of denial in any circumstances
15 or facts that might not fit into one particular
16 story of what happened to George. And I think that
17 they're openly grieving in a way that Jennifer is
18 probably not at this point.

19 The Smiths have been willing, and I'm
20 sure are willing, to make many, many sacrifices,
21 enormous amounts of time, wasted opportunities with
22 respect to what they do with their lives, possibly
23 allocation of their own financial resources, and
24 they've sacrificed their relationship with their
25 daughter-in-law to this dispute. In make making

1 her decision to settle, as administrator, Jennifer
2 did not agree to those sacrifices in the same way.

3 In this one case, Jennifer has made the
4 right psychological decisions. She closed one
5 door, getting more money from Royal Caribbean, to
6 gain the benefit of several other doors, the most
7 information available regarding what happened from
8 Royal Caribbean, who, whether we like it or not,
9 has almost all the information with respect to what
10 happened to George, if there's anything to find
11 out.

12 She gained the benefit of a known
13 financial recovery. People can dispute until the
14 cows come home how much money should have been
15 received. But the settlement makes certain that
16 there is a financial recovery. She made the
17 decision that this was the best use of her time,
18 and it was the best use of life opportunities to
19 heal and move on.

20 In conclusion, Jennifer's decision in
21 this case, to receive information and a known
22 financial recovery, was sound and reasonable and it
23 was free from fraud and undue influence. The
24 results of the FBI investigation, or the current
25 status of the FBI investigation, however you want

1 to put it, ratified her judgment in coming to the
2 settlement with Royal Caribbean.

3 Unfortunately, it appears that the Smith
4 family is driving a car and they want Jennifer to
5 get in the car with them so they can drive the car
6 off a cliff. It's not the right choice, and the
7 Court should not allow it. Jennifer's decision was
8 sound. It was good for the benefit of the estate.

9 THE COURT: Thank you.

10 Attorney Jones?

11 MR. JONES: Your Honor, we're asking you
12 to do two things here. We're asking you to take a
13 look at this settlement agreement and basically
14 reject it. And once you reject it, you do that on
15 the basis that it's not in the best interest of the
16 estate. After you reject it, we're asking that
17 Jennifer be removed because we don't feel she's
18 properly performed her fiduciary duties to the
19 estate.

20 There are several reasons why we
21 believe -- first of all, I'm actually going to
22 argue both against the settlement and also then the
23 removal, because we feel they pretty much are
24 intertwined.

25 With respect to the approval of the

1 settlement, your Honor, you've heard me arguing for
2 well over a year. There are reasons it's taken
3 this long. They've been pointed out in previous
4 status conferences and meetings that we've had with
5 your Honor.

6 The main reason -- the main reason -- why
7 this settlement has to be overturned has never
8 changed. It's the same reason that we've had all
9 along, which is the fact that it is inconceivable
10 to us on this side of the table, both the lawyers
11 and clients, that you can settle a case with a
12 primary potential defendant, and then after you
13 settle the case receive information from that
14 defendant that could potentially hold that
15 defendant liable. We have no idea at this point --
16 we have some ideas what's in the information,
17 because of some of the information that we've
18 gotten.

19 The fact of the matter is -- I'm going to
20 be blunt about this -- I think from a legal
21 standpoint, it's almost borderline malpractice to
22 settle a case where you say to your client, "Let's
23 settle, and then after we settle we'll find out how
24 involved Royal Caribbean was, even though -- but at
25 that point you can't go after them."

1 The second part to it is -- we just find
2 that's just inconceivable. From Jennifer's
3 standpoint as the fiduciary, we don't understand
4 how she can take a look at that and actually
5 believe that she's acting in the best interests of
6 the estate when she does that.

7 With respect to the information itself,
8 your Honor, paragraph 4, we've heard witnesses --
9 we've heard Mr. Walker, we've heard Mr. Rivkind,
10 we've even heard Mr. Mase, the expert from
11 Jennifer's side. They've all come in and
12 basically, whether it was on direct or cross, they
13 made it pretty clear that most of the information
14 in paragraph 4 could be gotten one way or the
15 other.

16 It's interesting because Royal Caribbean
17 turned over a certain amount of information right
18 from the get-go. They turned over some
19 photographs. It's interesting, too, because some
20 of the photographs were actually taken before the
21 Turkish authorities were even able to get into the
22 room.

23 So today when Mrs. Smith was being
24 cross-examined, she was trying to make the point
25 that Royal Caribbean had every opportunity to

1 change the situation that existed in the cabin. So
2 even the fact that they gave us some of these
3 photographs leads one to believe that there might
4 be something else there.

5 With respect to the interviews that we
6 received from the Turkish authorities that were
7 taken the day after the incident, there are
8 material inconsistencies in those statements, yet
9 you would think that that would sound some sort of
10 alarm that these other statements that are out
11 there might have things in them that are important
12 to determining whether or not Royal Caribbean would
13 be liable in a situation like this.

14 What's more interesting is the
15 information that we didn't get. We didn't get the
16 seventy to a hundred witness statements. We didn't
17 get the LockLink records for the cabins other than
18 Jennifer and George's cabin. We also find out from
19 the FBI that there are privileged documents -- or
20 documents that Royal Caribbean has which they claim
21 are privileged or work product. So from our
22 standpoint, it seems that would raise some sort of
23 red flag, that why would -- we don't understand why
24 Royal Caribbean would hold these things back. The
25 conceivable answer for us is Royal Caribbean is

1 hiding something. If they're hiding something, how
2 can we so quickly settle with them?

3 As far as we're concerned, this kind of
4 takes us to the second reason, which is the value
5 of the settlement. Mr. Brown went on in his
6 closing and talked about a lot of things and moving
7 on.

8 The fact of the matter, this settlement
9 has to be evaluated on its merits. It has to be
10 looked at based upon the language in the settlement
11 agreement which deals with the information.

12 But also a key component is the value of
13 this settlement. Our clients -- it's correct, our
14 clients are interested in information. The fact of
15 the matter is George's life had a value. We had --
16 Royal Caribbean did their own, they had an
17 economist report. They had a pretty detailed
18 economist report. They were happy to hand it over
19 to Mr. Walker. Mr. Walker basically had a
20 one-pager which was some sort of response or they
21 analyzed what Royal Caribbean gave them. That
22 number came in at 1-5. Royal Caribbean came in at
23 500.

24 Mr. Crakes today was very clear, very
25 competent. He came in, he said 2.4 million.

1 Obviously, even if you take a look at the numbers
2 that they had at the time that they settled, the
3 way we look at it is they basically split the baby.
4 950 grand is somewhere between the 500 and 1.5.
5 Mr. Crakes has that number much higher.

6 We submit that the Court has to take a
7 look, based on the expert testimony we heard today,
8 the number is significantly lower than it should be
9 in terms of trying to settle a case like this.

10 That sort of leads us to the third point
11 in terms of not approving the settlement, which is
12 that the -- from -- the publicity value of this
13 case was through the roof at the time this case was
14 settled. We heard testimony that the publicity
15 value of this case is still very high. It is quite
16 clear if you go on the presumption that basically
17 they split the baby on the number, there's no value
18 that was placed on the publicity. Mr. Walker
19 testified to that. Jennifer felt the same way. It
20 is quite clear from the number they arrived at they
21 didn't get to a point where they said the publicity
22 actually was factored into the dollar amount.

23 The truth of the matter is, every witness
24 that we heard, at least from the lawyers --
25 Mr. Mase himself, their own witness, said you have

1 to factor in publicity value.

2 You had a situation where Mr. Fain, the
3 CEO of the company, and Mr. Goldstein were
4 personally involved in these negotiations. I mean,
5 I can't believe that that happens in every case
6 that Royal Caribbean has.

7 Jennifer and I talked about this when she
8 was on cross. They're the two top guns in the
9 company. You had Mr. Fain fly into a hangar in
10 Miami to negotiate a settlement of this case. We
11 have Royal Caribbean telling Mrs. Smith that they
12 know she was on TV 36 times. They were fully aware
13 of the amount of publicity that this case was
14 generating.

15 Mr. Rivkind talked about it as being a
16 landmark case. He wasn't talking about it in terms
17 of legal precedent. He was talking about it -- I
18 think he even testified that there was only one
19 other time in the past 20 or 30 years that this
20 much attention had been brought to the cruise
21 lines.

22 How did that attention get brought? It
23 was brought to them by the fact that our clients,
24 the Smiths, were out in the media, they had gotten
25 in touch with Congressman Shays, they had gone down

1 to Washington, D.C., and been before Congress. All
2 these things put basically a white hot light right
3 on the cruise line, and the cruise line would have
4 paid dearly, we submit. And they still would
5 because the last thing they want is this case
6 resurfacing.

7 Your Honor, the fourth reason that we
8 believe that the settlement has to be overturned
9 actually segues into the first reason why we
10 believe that Jennifer needs to be removed.

11 It really came out on Jennifer's
12 cross-examination. When she was being
13 cross-examined she started talking about the fact
14 that on the Oprah show Mr. Goldstein came out --
15 and I think actually the way they do those shows,
16 they basically sandbagged Jennifer and she didn't
17 know he was there, and he came out and all of a
18 sudden -- and Oprah loves to get the reaction. The
19 fact of the matter is that started a dialogue
20 between Jennifer and Mr. Goldstein.

21 And, your Honor, we submit at the point
22 that that dialogue started is the point where all
23 hope for a reasonable and rational settlement went
24 out the window. And the reason, your Honor, is
25 because at that point when those back channel

1 communications -- it started with Adam Goldstein,
2 the CEO, okay, of one of the biggest -- of a
3 corporate felon, to use Jennifer's words, a
4 corporate felon that can't be trusted, all of a
5 sudden this CEO who had been with the company since
6 1988, he's been with the company back when they
7 were convicted -- it's a company that Mr. Walker's
8 own Complaint alleges that you've got people
9 getting raped, you've got people getting thrown
10 overboard. With all due respect, you have a
11 26-year-old schoolteacher dealing one on one with
12 the CEO of this company.

13 Sure, Mr. Walker was surprised.
14 Jennifer, I submit, naively said that Mr. Walker
15 never had a client do that before. That's right.
16 Because at that point Mr. Walker realized the case
17 was starting to go down the tubes. At that point,
18 when that happened, when the back channeling
19 started, Royal Caribbean knew that -- here we had,
20 two months after submitting congressional
21 testimony, when the heat was really on, all of a
22 sudden they're getting direct communication from
23 the administratrix first asking -- innocently
24 asking for Dr. Lee to get more time, next thing you
25 know we're setting up a settlement agreement.

1 What does that signal to Royal Caribbean?
2 It signals to Royal Caribbean, hey, guys, we're
3 anxious to get this over with, put this behind us.
4 We have a situation here where we really have no
5 interest in going forward. We really don't want to
6 file this Complaint we've got that makes you guys
7 like bad. We want to get this over with.

8 At that point, your Honor -- and, again,
9 that's our first reason for removal. We believe at
10 that point, Jennifer, she's young, inexperienced,
11 she was compromised.

12 We believe she's still compromised, which
13 leads to the second reason for removal, which is
14 that no matter how you slice it and how you explain
15 it away, it's human nature that you would not want
16 the acts from that evening to be brought back up
17 into the public, to have to go through this whole
18 thing again. It's also human nature at the time to
19 really not want to expose your life to this kind of
20 critical scrutiny and possible embarrassment.

21 And the fact of the matter is that would
22 have happened then -- and, sure, was it out in the
23 public already? Yes, it was. But if it went to
24 trial, it would have continued.

25 And we would submit, and again it's

1 understandable, but it's not something Jennifer
2 would have wanted to have happen then, and she's
3 not going to want it to happen now. So from the
4 standpoint of removal, we feel that she's
5 compromised from her actions that night and there's
6 nothing that can change that. Again, it's
7 understandable, but it's just a fact.

8 Your Honor, just quickly, third reason
9 for removal. Again, I don't have to reiterate, but
10 we don't believe that this settlement is adequate,
11 we don't believe it's reasonable. She's one of the
12 architects of the settlement. We believe that if
13 the settlement is overturned, that as a result she
14 also has to be removed.

15 We feel that -- for days we heard about
16 prescription drugs and we heard about the alcohol
17 and we heard about the Athens Convention. Your
18 Honor, as Mr. Mase talked about the Athens
19 Convention, and he agreed with Mr. Riccio, this
20 case was settled for 20 times more than the limit
21 of what the Athens Convention -- the upper limit of
22 the Athens Convention. It's quite clear nobody
23 cared. It wasn't a consideration. If it was, the
24 cruise line wouldn't have allowed a settlement as
25 high as they did, particularly in light of where

1 the economists came in.

2 With respect to the prescription drugs,
3 there's no evidence George took them. In fact, the
4 evidence shows that he was moving toward getting
5 healthy, not the reverse. We have no idea whether
6 or not he took them. And let's face it, your
7 Honor, the fact is a good number of Americans are
8 on these type of prescription drugs, and we don't
9 feel -- it was almost surreal to hear that refrain
10 about the prescription drugs, it was hammering,
11 hammering, and hammering. Really, it's a red
12 herring. It's not that big of a deal. And I
13 submit that at this point I think that's something
14 that's been brought up to try to make the
15 settlement look good after the fact. I don't think
16 that it was -- although it was on Jennifer's
17 find -- from a legal standpoint, I don't think the
18 lawyers were really truly concerned about it.

19 Your Honor, there's two more reasons that
20 we think she needs to be removed.

21 One of them is very important, and it
22 deals with the way you're going to rule, and that's
23 the appeal issue. In the settlement agreement it
24 talks about the fact that she -- we all know
25 this -- the fact that she has to appeal this case

1 to the Superior Court. That creates two critical
2 issues.

3 The first issue is that the passage of
4 time waiting for that appeal to go forward will
5 take us past any statute of limitations to go after
6 third parties. That would have been the case
7 whether it was a year ago or whether it's today.
8 The fact of the matter is the settlement agreement
9 on that issue is very poorly drafted and poorly
10 conceived, because if she remains as the fiduciary
11 she is contractually obligated to follow through
12 with that appeal.

13 And that leads basically to the second
14 point, which is if your Honor finds that the
15 settlement needs to be thrown out, she's, again,
16 contractually obligated to bring this appeal. If
17 you find it has to be thrown out, you're going to
18 find that, because it's not in the best interest of
19 the estate, she automatically gets into a position
20 where she's in a conflict. Because she as the
21 fiduciary has basically contractually contracted
22 away her discretion. She has to function as the
23 fiduciary, but she's duty-bound by this contract,
24 by this settlement, to move forward. We don't see
25 how the fiduciary can be in a conflict with what's

1 in the best interests of the estate.

2 Your Honor, the fifth point, and it's
3 something that we really haven't understood, your
4 Honor --

5 Am I running out of my ten minutes here?

6 THE COURT: It's towards 15, but

7 MR. JONES: I'll just make it quick.

8 Your Honor, we do feel to a certain
9 extent there's been a lack of candor with the
10 Court, and it primarily has to do with the
11 discussions about the settlement, the Florida
12 mediation. We think that when we made the legal
13 argument, that we were correct. We don't
14 understand why your Honor is being asked to look at
15 a settlement and trying to decide whether or not
16 the settlement is reasonable without hearing about
17 the facts, whether demands were made, what was
18 accepted, what was rejected, what weight was given
19 to the points that were mentioned in that.

20 And, finally, your Honor, the last point,
21 with respect to where do you go with this thing, I
22 think it's important to take a look at what
23 happened in that chair. The fact is Royal
24 Caribbean sent up the biggest and baddest hired gun
25 that they had to help sell this settlement.

1 And Mr. Brown has referred to his
2 experience a few times. I've been around the block
3 a few times litigation-wise myself. Any time I've
4 had a settlement, my clients are unhappy and the
5 other side is unhappy. But I submit to you, your
6 Honor, Royal Caribbean is very happy. We agree
7 that they should be; we see that based on the
8 extent to which they tried to support this
9 settlement. And that gives us pause.

10 THE COURT: Okay. Thank you very much.
11 Appreciate that.

12 MR. MARCHAND: Thank you, your Honor.

13 MR. RICCIO: Thank you, Judge.

14 THE COURT: As far as briefs, you
15 submitted a brief.

16 MR. BROWN: I don't have any other
17 briefs.

18 THE COURT: Except maybe on that one
19 issue.

20 MR. BROWN: Your Honor, if I may -- it's
21 totally obviously up to you as the Court. I
22 understand at the very beginning of the hearing and
23 when the public was here, you said that you were
24 probably going to have a one word or one sentence
25 decree with respect to the motion to approve or

1 disapprove of the settlement agreement.

2 With respect to the motion to remove the
3 fiduciary, I'm at least requesting that you have a
4 short -- a short memorandum of decision, even
5 though I know that that whole matter is
6 confidential. I've never been involved in a matter
7 where a fiduciary were removed or not removed where
8 there wasn't something in writing as a
9 justification.

10 It's obviously up to you, and it's up to
11 your discretion, but I'm at least asking for at
12 least a short memorandum that just goes into why or
13 why not on the removal.

14 MR. JONES: Your Honor, I would object to
15 that. I think that's within your Honor's
16 discretion. I think at the outset, you hit the
17 nail on the head. The reason that can be dangerous
18 is this is supposed to be a confidential
19 proceeding.

20 MR. BROWN: It's going to stay
21 confidential as to the motion to remove. I mean,
22 your motion to remove is filed under a
23 confidentiality. I expect the memorandum to be
24 confidential.

25 THE COURT: Just to answer that question,

1 I have been obviously listening to everything
2 that's gone on this past month or so. I've
3 considered and will continue to consider maybe
4 putting a decision together that just talks a
5 little bit about the law that has been brought
6 forth. There's nothing confidential about any of
7 that.

8 Obviously I'm not going to talk about any
9 of the facts. What I might do is put something
10 together that kind of lays out the law one way or
11 the other, and just say either it's in the best
12 interests of the estate that it be approved or not
13 approved and not get into the facts. Usually we
14 would put them together. But I may still do that,
15 and -- on both aspects. We'll take a look at it.

16 I do want to say that I think that the
17 attorneys here have conducted themselves extremely
18 well. I think you've represented your clients very
19 well and should be very proud. I certainly
20 appreciate -- while I know you've had differences
21 and maybe behind the scenes there may have been a
22 lot more bickering, but I really appreciate the
23 respect that you've shown to one another and to the
24 parties. And I appreciate the parties, while here,
25 respecting one another. It doesn't always occur,

1 as you can imagine. But I really appreciate that.

2 And I think all the parties, all the
3 lawyers, can hold their heads up high no matter
4 what the ultimate decision is.

5 I will say this is going to be probably
6 my most difficult decision, not necessarily because
7 of having to consider all the documentation and all
8 the law and so forth. I'm talking more on an
9 emotional standpoint. We've had two parties who
10 have suffered greatly. A widow who's lost her
11 husband on their honeymoon, and parents who have
12 lost their son. And I cannot even imagine being in
13 either of your shoes. And I know that whatever
14 decision I make will inflict more pain on one of
15 these parties and their families, and that doesn't
16 sit well with me. But it's the job that I
17 accepted, and I'll have to lose sleep on it and
18 deal with that, because those emotions don't have
19 any impact on what the decision will be. It has to
20 be separated out, and I hope all of you understand
21 that.

22 My decision will be based on the law, the
23 evidence, and what's in the best interests of the
24 estate, and how the fiduciary acted in coming to
25 this decision.

1 Again, I'll probably put something
2 together, at least to give you something that, if
3 nothing else, shows that I paid attention, but
4 again, at the same time, will not reflect what the
5 facts are. And what I may even do is fax a copy of
6 the -- or have you come in, whatever the case may
7 be -- a copy of the decision to both parties first,
8 and if there's any information in there that you
9 feel -- I mean, the decision won't change, but if
10 there's any information in the decision that you
11 feel should not go into the final version, I'll
12 certainly take that into consideration, because the
13 last thing I want to do is hurt the case one way or
14 another. Again, if it's denied, obviously there's
15 issues -- if it's appealed, there's issues if I
16 approve it.

17 Which comes to appeal. I know it's
18 possible that you'll appeal it. But I'm just going
19 to assume that you're not. It doesn't hurt my
20 feelings when people appeal my decisions at all.
21 It's certainly one's right. But when I make a
22 decision, not only do I take the emotion out, but I
23 also take out any consideration that it might be
24 appealed. I would consider this the final and
25 ultimate decision so that the absolute best

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

decision and the right decision will be made.

I thank all of you for your time and,
again, your courtesy to the Court and to one
another. We'll see you soon. Thank you.

(Whereupon, the proceedings were concluded at
4:35 p.m.)

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

STATE OF CONNECTICUT
COURT OF PROBATE
DISTRICT OF GREENWICH
District No. 057

* * * * *

ESTATE OF/IN THE MATTER OF *
GEORGE ALLEN SMITH IV, deceased * Case No. 05-0496

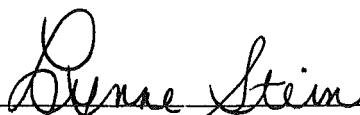
* * * * *

Greenwich, CT
March 28, 2008
9:32 a.m.

PROBATE HEARING VOL. V

CERTIFICATION

I, Lynne Stein, Court Reporter and Notary Public for the
State of Connecticut, do hereby certify that the
foregoing 236 pages is a true and accurate transcription
of the stenographic notes taken by me, to the best of my
ability, in this case.



LYNNE STEIN, LSR
License No. 00110