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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN MATEO

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In Re the Matter of)
)
TRUST A UNDER THE JAMES F. HO) No. 17 PRO 00973
AND GRACE C. HO DECLARATION)
OF TRUST DATED SEPTEMBER 11, 1992,)
as amended,)
)
)
)
PETER C. HO, TRUSTEE OF TRUST A OF)
THE JAMES F. HO AND GRACE C. HO)
DECLARATION OF TRUST DATED)
SEPTEMBER 11, 1992,)
)
)
Petitioner,)
vs.)
)
)
DEBBY CHANG and DOES 1 through 20,)
inclusive,)
)
)
Respondents.)
_____)

**CERTIFIED
TRANSCRIPT**

REPORTER'S TRANSCRIPT OF PROCEEDINGS
TRIAL - DAY 7

Date: September 26, 2023
Time: 10:08 a.m.
Location: JAMS
160 West Santa Clara Street
Suite 1600
San Jose, CA 95113
Reported by: Nina Pavone
CSR No. 7802

A P P E A R A N C E S:

Private Judge:

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Also present:

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Kysen Kuo
Erik Weiss (Via Zoom)
Jeanny Ho (Via Zoom)
Geoffrey T. MacBride (PM only)

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P R O C E E D I N G S

THE COURT: Mr. Martin, could you raise your right hand, please.

JOHN MARTIN,
being duly sworn by the Court to tell the truth, the whole truth, and nothing but the truth, testified as follows.

THE COURT: Could you start by stating your first and last name, and both names are common spelling.

THE WITNESS: John Martin, J-O-H-N,
M-A-R-T-I-N.

THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. BAER:

Q. Good morning, Mr. Martin. My name is David Baer, and I represent Debby Chang. I'm going to start out the examination this morning.

First let me ask you some questions about your credentials.

Are you an attorney?

A. Yes.

Q. And when did you become licensed to practice law?

1 A. December 2008.

2 Q. And that was in the State of California?

3 A. Yes.

4 Q. Have you been licensed ever since then?

5 A. I've been continually licensed since December
6 of 2008.

7 Q. Where did you go to law school?

8 A. Boston College Law School.

9 Q. When did you graduate?

10 A. 2008.

11 Q. Okay. Do you have any degrees besides your
12 JD from Boston College?

13 A. I have a Bachelor of Arts degree from UCLA.

14 Q. And do you have any other post-graduate
15 degrees?

16 A. I have a certificate from the -- I'll say it
17 in French, L'Institut d'Etudes Politiques de Paris in
18 France. So it's like L'Institut d'Etudes.

19 Q. What does that mean in English?

20 A. It's the Institute of Political Science.

21 Q. All right. And when did you get your
22 certificate from the Institute of Political Science?
23 Pardon me for not trying to do the French.

24 A. It's -- it was in my last year of college as
25 a study-abroad program. And so they gave us a piece

1 of paper which was also a certificate. So I'm
2 including that. It was same year that I graduated
3 from UCLA in 2005.

4 Q. Okay. Do you have any other degrees or
5 certifications besides that?

6 A. I'm certified as a specialist in estate
7 planing trusts and probate law.

8 Q. And when did you obtain that certification?

9 A. You know, I believe it was in 2015, if I
10 recall correctly.

11 Q. All right. What did you have to do to get
12 that certification?

13 A. There was an exam that was taken, which is a
14 specialist's exam. In addition, there were some
15 references that had to be provided by other members
16 of the bar, and there was a background check. There
17 was an experience requirement, education requirement,
18 and then after certification by the bar, I earned my
19 certification.

20 Q. What was the education requirement, if you
21 can recall?

22 A. I can't recall the specific hours, but I
23 believe it was five years of hands-on experience, in
24 addition to a certain number of matters, in different
25 areas. So for example, litigation, estate planning

1 and then, as you mentioned, the education
2 requirement, which was substantial.

3 Q. All right. And have you maintained your
4 certification since then?

5 A. Yes.

6 Q. And as of 2017, what was the nature of your
7 law practice?

8 A. Well, in 2017, we were a small firm. We
9 continue to be a small firm of two lawyers, an
10 associate and myself, with a small amount of support
11 staff. And at that time, we were located in Menlo
12 Park.

13 Q. Okay. And in what areas were you practicing
14 then?

15 A. Estate planning, trusts, probate law,
16 business succession planning.

17 Q. And how long before then -- well, how long
18 have you been practicing in the area of estate
19 planning?

20 A. Since 2008.

21 Q. And how long had you been practicing in the
22 area of trusts?

23 A. Since 2008.

24 Q. And how long had you been practicing in the
25 area of probate law?

1 A. Since 2008.

2 Q. Okay. And how about business -- did you say
3 business succession training?

4 A. Perhaps -- it's hard to recall exactly when.
5 I believe it was around 2011, 2012 when I started
6 doing succession planning.

7 Q. Okay. And as of February of 2017 can you
8 estimate how many estate plans you had prepared at
9 that point?

10 A. Oh, I can't recall that. It's over a
11 thousand by 2017, I'm sure.

12 Q. And were you practicing in any other
13 substantive areas at that point in time?

14 A. Can you clarify what you mean by
15 "substantive"?

16 Q. I'm sorry. Besides estate planning, trusts
17 or business succession.

18 A. So within there, there's different practices.
19 I'm not sure if that's what you're getting at.
20 There's court appearances, there can be litigation,
21 there can be planning, there can be tax advice as
22 part of that. I'm not sure if that's what you mean
23 by your question.

24 Q. Thanks. And have you published in any of
25 those fields?

1 A. Yes.

2 Q. On what topics?

3 A. Oh, I published an article with an ABA
4 journal. Gosh, I can't remember the subject now. I
5 believe it was something dealing with estate
6 planning, maybe for the elderly, needing to get your
7 estate plan updated and some common issues that can
8 happen.

9 Q. Was that an article?

10 A. I believe so. I think it was maybe 2014,
11 '15, something like that.

12 Q. It was published then?

13 A. Right.

14 Q. All right. Have you taught any courses in
15 any of these fields?

16 A. Yes.

17 Q. What courses have you taught?

18 A. Well, at College of San Mateo through
19 community education, for a number of years, I did an
20 introduction to estate planning class. I believe it
21 was 2009, 2010, 2011, if I recall correctly, and it
22 was a consumer/professionals can enroll, it was for
23 credit with College of San Mateo.

24 And then I've taught seminars. I can recall
25 doing a course for the National Institute of Pension

1 Administrators on retirement plans.

2 Q. And when was that?

3 A. Again, I can't recall. I think it might be
4 around 2014, 2015.

5 Q. Do you recall whether it was before you --
6 well, do you remember -- do you remember a gentleman
7 by the name of James Ho?

8 A. Yes.

9 Q. Do you remember when you met with him?

10 A. In 2017.

11 Q. Did you give the seminar before or after you
12 met with James Ho?

13 A. Before.

14 Q. And how about the courses that you gave at
15 College of San Mateo, were those before or after you
16 met with James Ho?

17 A. Before.

18 Q. Okay. Have you participated in any other
19 kinds of programs in any of your practice areas?

20 A. Yes.

21 Q. What other programs?

22 A. Well, I've given different seminars regarding
23 estate planning. I've given talks regarding other
24 aspects of estate planning. For example, for many
25 years, I appeared on Know Your Legal Rights, which is

1 a program for KALW/NPR, KALW radio station, broadcast
2 on NPR.

3 I believe I appeared with a former probate
4 judge from Santa Clara County and did a presentation
5 on elder abuse and preventing elder abuse, for
6 example.

7 I also did a presentation on risks that you
8 can face in not doing your estate plan, for example,
9 dying without a will, the costs of going through
10 probate, and some other programs as well through
11 KALW.

12 I've done different consumer presentations.
13 So for example, recently I did a presentation on
14 Proposition 19. I've also done presentations for
15 other professionals. So I've spoken to a number of
16 real estate agent groups, perhaps a dozen different
17 real estate agent groups, talking about Proposition
18 19 and risks that now parents have in passing on
19 their real estate to their children with respect to
20 reassessment.

21 I've given presentations to community
22 organizations like Kiwanis, which is a community
23 organization I'm part of on preventing elder abuse
24 and ways in which professionals can identify red
25 flags.

1 I've spoken to financial planners as well
2 about similar topics, including preventing elder
3 abuse by red flagging issues that can come up for
4 mandated reporters.

5 I've given joint presentations with financial
6 planners to pools of clients that we share.

7 Too many to mention.

8 Q. Were any of these -- did you give any
9 programs or seminars prior to meeting with James Ho?

10 A. Yes.

11 Q. Which ones?

12 A. Well, I just listed so many.

13 Q. You did.

14 A. Well, the real estate agent presentations on
15 Prop 19 were all after 2020.

16 Q. And you can answer it that way if you want,
17 to say which ones are after Prop 19, if that's
18 easier.

19 A. I think that's easier. You know, anything
20 dealing with Prop 19, obviously, that was passed by
21 the voters in 2020. And then, gosh, this was six
22 years ago, Mr. Ho, so it's very hard for me at this
23 point to think of the timeline of events. But
24 certainly all the radio appearances ceased because
25 after the gentleman who used to give that passed

1 away, I haven't done any KALW appearances, and all
2 that was pre-2017.

3 Q. Okay.

4 A. Oh, I'm sorry. I've done recently, but also
5 prior to 2017, I did some radio appearances on KGO as
6 well, KGO Radio with Michael Finney. I also appeared
7 on television with Michael Finney on Channel 7
8 regarding estate planning issues.

9 Q. Okay. You mentioned red flags for elder
10 abuse.

11 A. Yes.

12 Q. As of February 2017, what -- so it may be a
13 little hard to sort this out, but what did you
14 consider to be the primary red flags for financial
15 elder abuse?

16 A. Well, I'll just refer to perhaps the
17 presentation that I gave at Kiwanis, which was
18 presentation to lots of different members of our
19 community.

20 So among those people were CPAs, financial
21 planners, a lot of retired people. And I admonished
22 the group to be very careful if they're working with
23 clients of theirs and look for these red flags.

24 For example, maybe the parent suddenly starts
25 being isolated and they seem to not be talking with

1 their neighbors, they seem to not be talking with
2 certain children of theirs. Maybe suddenly a
3 caregiver starts driving the car around of an elder.
4 Maybe the phone is no longer working. You call your
5 friend or you call your loved-one or your client, but
6 they're no longer responding. Maybe there's always
7 somebody else on the phone who is playing
8 interference.

9 Perhaps there seem to be lavish transfers to
10 a person. Maybe this elder goes into the bank and
11 they ask for large transfers of money to a person.
12 Maybe they want to withdraw a lot of cash, right, go
13 to the ATM and take numerous withdrawals of cash.

14 Maybe there's signs of neglect that the
15 person is malnourished or they're physically
16 suffering from not having attention.

17 Maybe the elder starts to talk about how
18 certain family members don't really love them
19 anymore.

20 You know, they have this sense that they've
21 been abandoned by certain of their children and they
22 say the only one who loves me is this one person.

23 I think a really signature fact pattern that
24 can happen is an adult child will move into the home
25 with the parent and start to take advantage of the

1 decline in cognition that an elder might have and
2 then use that decline, perhaps it's being
3 rationalized by that child; they think they're
4 entitled to this. But to use this decline as an
5 occasion to convince their parent to change the
6 estate plan and give more to them, to convince them
7 that the other children really don't love them,
8 right, and then to take advantage of their parent.
9 Happens over and over again.

10 There's also caregiver elder abuse. Very
11 frequent, that a caregiver will go in and try to take
12 gifts, maybe take jewelry or take personal effects
13 that an elder person might own, that the caregiver
14 might even try to change the estate plan.

15 I've had people come to me in my office where
16 they brought an elderly person, maybe their parent,
17 and then said, oh, mom or dad wants to change the
18 estate plan, give everything to me. You know, the
19 other kids hate mom, don't trust them anymore. This
20 is -- happens over and over again. One would be
21 really surprised to see this, but unfortunately, it's
22 very frequent.

23 And now in probate court, there's many elder
24 abuse cases. I think the pandemic especially has
25 fostered this, with the isolation of elders.

1 I could go on.

2 Q. Okay. I think that was pretty thorough.

3 So as of February of 2017, had you heard the
4 term "certificate of independent review"?

5 A. Of course.

6 Q. What was your understanding of the purpose of
7 a certificate of independent review when you first
8 heard of James Ho?

9 A. Okay. Well, the most classic application is
10 where there is a transfer or intended transfer.
11 Typically, it's where another attorney is being asked
12 to do an estate plan or execute some sort of --
13 assist with some transaction, and that attorney has a
14 duty to identify if there's a care custodian that is
15 the recipient of this gift or an attorney or another
16 disqualified beneficiary, to refer that person to
17 another attorney who can provide, as a one-off, a
18 certificate of independent review.

19 There's a statute which is actually quite
20 limited in terms of what it provides, but it provides
21 that an attorney can engage a client as part of a
22 limited scope engagement and that that attorney
23 should counsel the client, out of the presence of any
24 other person, and that they should determine that the
25 transfer which is in question was not procured

1 through undue influence or through fraud.

2 There then is the requirement that this
3 attorney, if they are satisfied this is correct,
4 would sign a certificate of independent review saying
5 that they've counseled the person outside of anyone's
6 presence and that, in their opinion, the transfer was
7 not the result of fraud or undue influence.

8 Q. Okay. And were those things that you knew
9 essentially at the time you first heard James Ho's
10 name?

11 A. I'm sorry, what things are you referring to?

12 Q. Well, you gave a lot of testimony about the
13 nature of certificate of independent review. Are
14 those things you already knew when you learned
15 that -- when you first heard James Ho's name?

16 A. Yes.

17 MR. FRASER: Objection. Leading.

18 THE WITNESS: I think the things that you're
19 referring --

20 THE COURT: Excuse me. Sustained. Rephrase.

21 MR. BAER: Okay.

22 BY MR. BAER:

23 Q. Did you know any of that before you first
24 heard James Ho's name?

25 A. Yes.

1 Q. What of that did you know?

2 A. Everything that I just recounted.

3 Q. So in the conduct of your estate planning
4 practice, did you have any custom or practice with
5 regard to meeting with your clients, either
6 separately or together with family members or other
7 beneficiaries?

8 A. Yes.

9 Q. Can you explain what that was?

10 A. Well, I don't like talking about testamentary
11 planning with interested persons. So while I'm happy
12 to have introductory meetings or general
13 conversations with people, meet and greet, for
14 example, and while I'm happy to talk with other
15 parties regarding general questions they may have or
16 to understand where they might fit in, I'm happy to
17 have those conversations.

18 But when somebody, a client of mine, is doing
19 estate planning, I want to be very sensitive around
20 having privacy and confidentiality. So that means
21 having a private conversation, one-on-one, with the
22 client, so that we can really understand and know
23 their testamentary wishes. And also so I can ask
24 them about what this role of a third party might be
25 to ascertain whether or not there's some influence or

1 whether or not they're making truly an independent
2 decision.

3 And also sometimes to establish capacity.
4 For example, very often there will be a third party
5 who's completing someone's sentences; this is what
6 mom wants, this is what they said.

7 So by speaking with the client one-on-one, I
8 can ask follow-up questions, might be direct, and I
9 believe with better certainty to be able to determine
10 whether or not this person's making independent
11 decisions or if they're just being fed something by a
12 third party who is self-interested.

13 MR. FRASER: Move to strike as nonresponsive
14 everything after the example.

15 THE COURT: I forgot what the question was.

16 MR. BAER: The question really was what his
17 custom and practice was.

18 THE COURT: Fair enough. Stricken.

19 MR. BAER: Okay.

20 BY MR. BAER:

21 Q. So why was that your custom and practice?
22 You explained your custom and practice of wanting to
23 meet separately with testators, not together with
24 third persons --

25 A. To determine that there's not --

1 MR. BIORN: Was that answer stricken? Is
2 that what I heard?

3 THE COURT: Part of it now. He's now going
4 to go into the part that wasn't stricken.

5 BY MR. BAER:

6 Q. Okay. So why was that your custom and
7 practice?

8 A. To determine that there's not a third party
9 influencing the decision making, to determine that
10 the testamentary decisions are independent and not
11 influenced by a third party, to determine that the
12 person has some level of capacity to make decisions
13 based upon, at least my understanding of what they're
14 communicating and what their intent may be, to rule
15 out the possibility of undue influence.

16 Q. Okay. So as of February 2017, before you met
17 with Mr. Ho, what things did you typically do to try
18 to determine whether a client might be being
19 influenced by a third party? How would you go about
20 that?

21 A. Well, we follow a very typical process, which
22 is that clients schedule appointments and that we
23 will encourage people to come alone to the
24 appointment so that we can meet with them one-on-one.

25 And my assistant, who currently is Melody,

1 but at that time was Jackie Alioto, would ask some
2 background questions to see about whether or not we
3 can have a one-on-one meeting, to see whether or not
4 a person can come themselves to a meeting, or if we
5 do a house call, which I do occasionally, to see if
6 there will be a place where I can meet one-on-one
7 with the client, and then to compare documents,
8 disclosures, consents, confidentiality waivers that
9 are appropriate to the situation.

10 For example, sometimes it's necessary to do a
11 waiver of current representation when we represent
12 married couples so that we can identify some of the
13 potential conflicts of interest that exist.

14 Sometimes we're doing inter-family
15 transactions and we need to do written disclosures or
16 determine that it's inappropriate to proceed with the
17 representation. We have to do a conflicts check,
18 which involves running names through our system to
19 see if there are associated parties where we might
20 have some conflicts of interest and can't accept
21 representation because it's adverse. And then we
22 continue to monitor as we go.

23 So, for example, if we're in a meeting and I
24 determine that there is some level of communication
25 that's inappropriate or that I can't proceed because

1 a person doesn't seem to appreciate the implications
2 of their actions, I reserve judgment in terms of
3 determining whether or not I should, at that point,
4 disengage or refuse to engage or refer to a different
5 attorney.

6 There can be situations where I'm not
7 appropriate as a choice. Perhaps there's an area of
8 law that's not my specialty, and so I reserve
9 judgment for withdrawing, for terminating my
10 representation, of course, within the bounds of
11 ethical rules that we abide by.

12 Q. Okay. And you also mentioned having a custom
13 and practice of ruling out undue influence. So as of
14 February 2017, what exactly did you do when you were
15 meeting with a client to try to rule out that the
16 client's choice has been procured by undue influence?

17 MR. FRASER: Asked and answered.

18 MR. BAER: Well, I thought the last
19 question --

20 THE COURT: This is in connection with this
21 case you're asking?

22 MR. BAER: Yes. Well --

23 THE COURT: Overruled. Hold on.

24 MR. BAER: It was just his general custom and
25 practice. If you want, I can ask him whether he did

1 that in connection with meeting with Mr. Ho. But
2 anyway, I was just asking what his practices were at
3 the time.

4 THE COURT: I think he might have answered,
5 but I'll permit it. It's all preliminary.

6 MR. BAER: It was a little different. I
7 think the question was to see if a third party had
8 influenced the decision. Similar, but not exactly
9 the same.

10 THE COURT: Objection overruled.

11 BY MR. BAER:

12 Q. Do you have the question in mind?

13 A. Can you rephrase?

14 Q. Yes. Okay. So as of February 2017, what was
15 your custom and practice when meeting with clients to
16 rule out that their donative intent has been procured
17 by undue influence, that they weren't acting of their
18 own free will?

19 A. So that's a very broad question. We have --
20 I have training as an attorney to identify issues,
21 and those issues are based upon knowledge of the law,
22 knowledge of lots of facts and circumstances.

23 And so when I see facts that indicate the
24 potential of undue influence, that's when I have a
25 red flag. I think that's how we're trained as

1 attorneys, to identify how facts relate to law,
2 relate to these situations.

3 So I try to avoid -- I put up a hedge to
4 avoid these situations by having one-on-one meetings.
5 But then also, using my judgment as an attorney, to
6 determine when there may likely be undue influence
7 and then acting appropriately based upon the
8 circumstance.

9 Q. Okay. So how did you first hear of James Ho?

10 A. I can't recall specifically.

11 Q. Did you learn some way that -- did someone
12 communicate to you that he was in need of counsel?

13 A. Yes.

14 Q. Was that Mr. Ho himself?

15 A. I can't recall. I believe that I may have
16 received a form e-mail through our program through
17 our website, but again, I can't recall.

18 Q. Okay. Did you set up a meeting with Mr. Ho?

19 A. Myself personally?

20 Q. Well, was a meeting set up for you to meet
21 with Mr. Ho?

22 A. Yes.

23 Q. How was that done?

24 A. I can't recall. I do vaguely recall, again,
25 this is six years ago, that there were some

1 e-mails -- and, in fact, I reviewed them in advance
2 of today's testimony, but even so, I'm vague on the
3 details -- that my assistant set up a time where I
4 would be meeting with Mr. Ho, and I believe I
5 exchanged some e-mails with my assistant regarding
6 setting up a proposed engagement letter based upon
7 what our proposed scope was going to be.

8 And I believe also that there was a person
9 who was related to Debby Chang, who was James Ho's
10 longtime girlfriend who I think contacted our office,
11 inquiring whether we could be of assistance. I
12 forget his name now. I believe he was a dentist or
13 something like that, and he contacted our office
14 inquiring whether we could be of assistance in this
15 particular area.

16 Q. Okay. Did you communicate with that person?
17 Was the name Reinhard?

18 A. Yes.

19 Q. Okay. Did you communicate with Reinhard
20 about the possibility that you be hired as James Ho's
21 attorney?

22 A. If I recall correctly, he sent me an e-mail
23 regarding the appointment that we were going to be
24 setting up where he inquired whether I could do
25 certain things, and I responded indirectly by saying,

1 well, if I'm able to accept a representation, if I'm
2 able to meet one-on-one with Mr. Ho, then potentially
3 I could do a certificate of independent review, if I
4 determined that's appropriate.

5 So I believe my response was very shrouded in
6 hypotheticals. But, yes, and that was because, if
7 you would permit me to give an explanation, I was
8 concerned at the time that there could be some
9 potential influence by third parties.

10 Q. Why were you concerned about that?

11 A. Well, whenever somebody -- a third party is
12 communicating on someone's behalf, there's a question
13 that I have: Why is this person not communicating
14 with me directly?

15 Q. Okay. And did you get an answer to that
16 question?

17 A. Yes.

18 Q. What was the answer?

19 A. Well, James Ho was a very elderly man. I
20 doubt that he was using e-mail. At that time, while
21 I spoke with him on the phone, it's very often for
22 elderly men to -- or women -- not to be using e-mail
23 communication.

24 MR. FRASER: Move to strike as nonresponsive,
25 everything after it's very common [sic].

1 THE COURT: The question is: Why didn't you
2 speak to Mr. Ho?

3 MR. BAER: I frankly can't remember the
4 question.

5 THE WITNESS: I believe it was why are you
6 concerned about third parties.

7 BY MR. BAER:

8 Q. Yes, why are you concerned? Yes.

9 A. I'm concerned because --

10 THE COURT: Hold on. You have to wait.

11 MR. BAER: Yes.

12 THE COURT: Overruled. I'm going to allow
13 that answer to remain.

14 MR. BAER: Okay.

15 BY MR. BAER:

16 Q. Did you do anything to address that concern?

17 A. This particular concern?

18 MR. FRASER: Vague and ambiguous as to
19 concern.

20 MR. BAER: Okay.

21 THE COURT: Sustained.

22 BY MR. BAER:

23 Q. Did you do anything to address your concern
24 that you had been contacted by a third person rather
25 than Mr. Ho himself?

1 A. Yes. Exactly as I described, I responded
2 without any particular advice, without any particular
3 promise as to what I was going to do.

4 I spoke in potentials. So I told -- I'm
5 sorry, Mr. Reinhard, I believe it was -- that I can
6 potentially be engaged, that I might be able to do a
7 certificate of independent review if I were able to
8 establish that it were appropriate and if I could
9 meet one-on-one with Mr. Ho and if I could be engaged
10 by him. All these things I had no idea at that time
11 whether it would be appropriate.

12 Q. Okay. And up to that point, anyway, why did
13 you think that a certificate of independent review
14 might be the -- might be something you could do?

15 A. Well, on the one hand, the most classic
16 situation for a certificate of independent review is
17 where there's an attorney referring one to certify an
18 estate plan. It's not limited to that expressly by
19 statute.

20 And my thought at the time was if there was
21 some transfer that took place, maybe it would avoid
22 litigation, for there to be somebody who sat down
23 with Mr. Ho and determined whether or not he actually
24 intended to do this, and if it was the product of
25 undue influence, maybe I could help.

1 Maybe I could point him in the right
2 direction, ask him to do some estate planning, avoid
3 some sort of conflict between his family members.

4 So I think it was with just this desire to be
5 of assistance and not to overlook something where I
6 could potentially help this family.

7 Q. Okay. And was an appointment set up for you
8 to meet with Mr. Ho?

9 A. Yes.

10 Q. Why did you decide -- well, did you consider
11 not meeting with Mr. Ho unless he contacted you
12 himself?

13 A. I can't recall that specific thought entering
14 my mind.

15 Q. Let me put the question differently: In
16 light of the fact that Mr. Ho himself had not
17 contacted you, why did you go ahead and have a
18 meeting set up?

19 A. Well, I did speak with Mr. Ho over the phone
20 before the meeting.

21 Q. Okay. And then was -- when were you
22 supposed to -- when was the meeting with him
23 scheduled for?

24 A. I don't recall the date. I believe it was
25 the afternoon, but even that I can't recall

1 specifically.

2 Q. Okay. So did you prepare -- you met with
3 Mr. Ho, though, right?

4 A. Yes.

5 Q. And did you prepare some notes when you met
6 with him?

7 A. I think just some scattered stream of
8 consciousness notes on a yellow notepad.

9 And then afterwards, my associate Beth
10 Chagonjian, and I drew up a memo, which was a
11 reflection of my recollection.

12 MR. FRASER: Move to strike as nonresponsive,
13 everything after "and afterwards."

14 THE COURT: Appears to be.

15 Mr. Baer, do you have anything you wanted to
16 add?

17 MR. BAER: No.

18 THE COURT: It's stricken.

19 BY MR. BAER:

20 Q. We're going to show you what's been marked as
21 Exhibit 523.

22 MR. BIORN: Which binder?

23 MR. KUO: Volume 3.

24 MR. FRASER: Mr. Martin, can you slow down a
25 little bit? I know it's hard for the court reporter.

1 THE WITNESS: I'll try.

2 BY MR. BAER:

3 Q. Okay. Mr. Martin, can you explain what
4 Exhibit 523 is?

5 A. These appear to be my notes dated August
6 21st, 2017, which I took while I was interviewing
7 Mr. Ho.

8 Q. And on that day, did you also interview
9 Ms. Chang?

10 A. Yes.

11 Q. Do these notes cover that interview or not?

12 A. Oh, I don't know. I think yes, actually, at
13 the very end. I'm not sure.

14 Q. Okay.

15 A. Perhaps.

16 Q. Let me turn your attention to page JM 0023 of
17 this document. So you see about two-thirds of the
18 way down there the heading "Debby"?

19 A. Yes.

20 Q. Can you tell whether that indicates these are
21 notes of your interview with her or something Mr. Ho
22 said about her or something else?

23 A. These appear to be my notes based on what
24 Debby said from this point forwards.

25 Q. Okay. And in terms of this meeting on August

1 21, did it go forward as originally scheduled?

2 A. Can you clarify what you mean by that?

3 Q. Did you set up a time for the meeting? Was
4 there a time initially set up for the meeting?

5 A. I believe my staff set up a time for the
6 meeting. I believe it was a little bit late, if I
7 recall correctly, but I'm not sure.

8 Q. Why was it late, if you can recall?

9 A. Well, I recall reviewing my notes and that,
10 according to my notes, Peter Ho called our office to
11 cancel the meeting.

12 MR. FRASER: Move to strike as nonresponsive
13 everything after I reviewed my notes.

14 MR. BAER: I don't agree with that.

15 THE COURT: Why was it late?

16 MR. BAER: Yes.

17 THE COURT: Overruled.

18 MR. BAER: Okay.

19 BY MR. BAER:

20 Q. Did you speak to Peter Ho yourself?

21 A. No.

22 Q. Did your staff inform you as to what Mr. Ho
23 said?

24 A. I can't recall specifically.

25 Q. Did you go to the meeting as scheduled

1 despite the call from Peter Ho?

2 A. Clarify what you mean by "as scheduled,"
3 because I'm not sure if I showed up at the original
4 time or a little bit later. It could have been a
5 little bit later. I think that was the case.

6 Q. Okay. When you got that message, did you
7 decide not to meet with Mr. Ho?

8 A. Yes.

9 Q. Why?

10 A. The meeting was cancelled.

11 Q. Did you subsequently change your mind?

12 A. I can't recall changing my mind. I believe
13 that our office was called by Debby Chang who asked
14 where we were, if I recall correctly. I can't
15 recall, though, speaking to Debby Chang, but I do
16 recall that -- oh, now I remember.

17 I think Debby Chang called our office to
18 confirm the appointment or to wonder why it was
19 cancelled, either one. And then when it was
20 transferred to me, James Ho was on the line directly.

21 Q. What did Mr. Ho say, if anything?

22 A. He said, why is my meeting cancelled?

23 Q. What did you say?

24 A. I said, well, I understand your son called to
25 cancel it.

1 Q. What did he say in response to that?

2 A. I can't remember his specific words, but
3 the -- what I took away from that was that he was
4 upset and that he wanted to go through with the
5 meeting, it was very important for him and he
6 requested that I come.

7 MR. FRASER: Objection. Speculation. Move
8 to strike.

9 THE COURT: Upset is speculation because he
10 doesn't know this gentleman, but he wanted to go
11 through with the meeting will remain.

12 BY MR. BAER:

13 Q. Did you ask him if he wanted to go through
14 with the meeting?

15 A. I don't think I used those words, do you want
16 to go through with the meeting.

17 Q. As best you recall, what did you -- strike
18 that.

19 Did you say or do noticing to confirm that he
20 wanted to go through with the meeting?

21 A. Yes.

22 Q. What did you do?

23 A. I can't recall specifically, so I don't want
24 to speculate.

25 Q. Do you recall anything that Mr. Ho said to

1 confirm that he wanted to go through with the
2 meeting?

3 A. Yes.

4 Q. What?

5 A. He asked me to come to his house.

6 Q. And did you decide to do that then?

7 A. Yes.

8 Q. Did you tell him that you would come?

9 A. Yes.

10 Q. Did you tell Ms. Chang that you would come?

11 A. No.

12 Q. Did you go to Mr. Ho's house after that?

13 A. Yes.

14 Q. Do you remember when you got there?

15 A. I don't remember the time of day.

16 Q. Okay. Do you recall who you saw first when
17 you got there?

18 A. Okay. I remember that -- I think the garage
19 door was open and there was somebody in the garage,
20 maybe a service person.

21 Q. Go ahead.

22 A. And then I looked towards the garage. I
23 realized that probably wasn't James Ho or Debby
24 Chang. So I came around to the front door. I
25 believe I rang the doorbell.

1 Q. Who answered the doorbell?

2 A. Debby Chang.

3 Q. And what did she say to you, if you can
4 recall?

5 A. I can't recall.

6 MR. FRASER: Objection. Hearsay.

7 MR. BAER: He couldn't recall anyway.

8 THE WITNESS: I can't recall.

9 THE COURT: Okay.

10 BY MR. BAER:

11 Q. Did you have any substantive discussion --
12 this is just a yes-or-no question.

13 Did you have any substantive discussion with
14 Ms. Chang then concerning the purpose of your meeting
15 with Mr. Ho?

16 A. No.

17 Q. What happened next after she let you in?

18 A. Well, I looked around the house to see where
19 we were going to be meeting and, at some point, I saw
20 James Ho, introduced myself to him. And then we
21 looked around for a space to make sure that there
22 would be a secure place where I could meet with him
23 one-on-one.

24 And then, at a certain point, Debby Chang, I
25 asked her to leave and be out of earshot so I could

1 could be one-on-one with Mr. Ho.

2 Q. Okay. So did you find such a secure place?

3 A. Yes.

4 Q. And what made you think that that would be a
5 secure place?

6 A. I looked around the house and there was a
7 stairway that led upstairs and Debby said she was
8 going to go upstairs. And I believe we were going to
9 be in this dining room that adjoined to a kitchen and
10 there were these doors that could shut.

11 And so my thought was there were going to be
12 several rooms that separate us, James and myself,
13 from Debby, so it appeared to be very private.

14 MR. FRASER: Move to strike his testimony as
15 to what Debby said.

16 THE COURT: What is it that Debby said? I
17 heard Debby was going to go upstairs.

18 MR. FRASER: I believe she said -- he said
19 that she said that she was going to go upstairs.

20 MR. BAER: I think that's just -- I don't
21 think that's a fact. I think that's a state of mind.

22 THE COURT: It will be received only for that
23 purpose.

24 MR. BAER: That's fine. Okay.

25 BY MR. BAER:

1 Q. Did you do anything to confirm that your
2 meeting would, in fact, be in private?

3 A. Yes, I looked around the house.

4 Q. Did you do anything to confirm that, in
5 essence, Ms. Chang was not eavesdropping on you and
6 Mr. Ho?

7 A. Well, I kept my -- I used my ears, my sense
8 of hearing to determine if I heard any walking or any
9 movement.

10 Q. So during your meeting with Mr. Ho, did you
11 ever hear anything to indicate to you that Ms. Chang
12 was in the vicinity?

13 A. I didn't --

14 MR. FRASER: Calls for speculation.

15 THE WITNESS: I don't recall any --

16 MR. BAER: Wait. Let her rule.

17 THE WITNESS: Yes.

18 MR. BAER: Please.

19 THE COURT: Did he do anything?

20 MR. BAER: That was the question.

21 MR. FRASER: Okay. Withdrawn.

22 THE COURT: Okay. Thank you.

23 MR. BAER: Appreciate it.

24 BY MR. BAER:

25 Q. Okay. So, yes, did you do anything to

1 essentially -- I'm sorry. I forgot the question
2 myself at this point.

3 Let me ask it a little bit different way.
4 Okay. During the meeting with Mr. Ho, did you ever
5 hear Ms. Chang moving in the house, or that you
6 thought was Ms. Chang moving in the house?

7 A. Not that I recall.

8 Q. Did she -- did she interrupt your meeting
9 with Mr. Ho?

10 A. No.

11 Q. Did she knock on the door so that she could
12 talk to you and/or Mr. Ho while you were meeting with
13 him?

14 A. No.

15 Q. Before you met with Mr. Ho, did Ms. Chang ask
16 you any questions about what you would do in the
17 meeting with James?

18 MR. FRASER: Objection. Hearsay.

19 MR. BAER: It's just a yes/no question.

20 THE COURT: Overruled. It is a yes/no. No
21 explanation, please.

22 MR. BAER: Could you read the question back,
23 please?

24 (The record was read by the Reporter.)

25 THE WITNESS: I can't recall.

1 BY MR. BAER:

2 Q. Okay. Did she make any statement to the
3 effect of what she hoped would be achieved in the
4 meeting?

5 A. Well, I'm confused now because we did have
6 this e-mail message that came through and I had
7 e-mail correspondence with Mr. Reinhard regarding
8 correspondence. I don't think Debby was copied on
9 those, if I recall correctly, so I wouldn't count
10 those as statements to Debby.

11 So now I'm thinking of it, I don't think
12 prior to this point -- I can't recall specific
13 comments from her. Certainly after the meeting, I
14 spoke with Debby about what I could do, but I can't
15 recall specifically. I'm going to assume that I did
16 not, that she didn't ask me specifically.

17 Q. While you were in the house, before you
18 actually met with James separately, did Ms. Ho [sic]
19 say anything to the effect that she was hoping that
20 you would confirm that James had made a gift to her?

21 A. I can't recall that specifically. I don't
22 think so.

23 Q. Did she say anything to you before you met
24 with James separately to -- strike that.

25 Let me ask a little differently. Okay. Did

1 she make any suggestions to you about what you should
2 tell or ask James Ho in the meeting?

3 A. No.

4 Q. Before you met with James Ho, did you decide
5 that the best way to assist him -- well, first of
6 all, before you met with him, did you decide that you
7 would represent him?

8 A. No.

9 Q. When did you decide that you would represent
10 him?

11 A. During the meeting.

12 Q. And what made you decide that you were
13 willing to represent him?

14 A. He appeared to have capacity to contract.

15 MR. FRASER: Objection. Calls for
16 conclusion.

17 THE COURT: It does, but that's part of his
18 job, as he indicated, based on his experience. So
19 I'm going to permit it to remain.

20 MR. BAER: Okay.

21 BY MR. BAER:

22 Q. So what gave you the impression that he had
23 the capacity to contract?

24 A. Many things. Specifically, he understood the
25 transactions in his checkbook. He gestured to it.

1 He went over certain transactions. He referred very
2 specifically to a history of transfers that had taken
3 place and seemed oriented as to when he went to the
4 bank, when he took out funds.

5 He couldn't remember exact details, but he
6 ultimately seemed to understand the objects of his
7 affection, the assets that he owned, the relationship
8 between him and his finances.

9 There was a little bit of confusion regarding
10 the ownership of the house that he lived in, but I
11 reconciled that detail because a lot of people refer
12 to the house that they're in as their home.

13 And so I was satisfied talking to him that he
14 understood his finances, he understood who he was, he
15 had testamentary capacity, he had the ability to
16 contract.

17 He had some minor impairment with memory and
18 with situational awareness, but in terms of the
19 minimum necessary to manage his finances, it was my
20 opinion, not as a medical expert, but just
21 anecdotally, based upon his situation, other
22 situations I was familiar with, that he had the
23 ability to hire an attorney and to confirm what his
24 wishes would be.

25 MR. FRASER: Move to strike this testimony

1 that James understood the transactions as
2 speculation.

3 THE COURT: I'm going to allow
4 cross-examination on this area. Right now, it will
5 stand.

6 BY MR. BAER:

7 Q. What did Mr. Ho -- I think you've kind of
8 explained this in your answer, but I'll be more
9 specific. What did Mr. Ho say that caused you to
10 conclude that he understood the transactions at
11 issue?

12 A. It was specifically his checkbook, right, his
13 understanding of where money was going, where it was
14 coming from. He was very clear about it.

15 He was also clear about who his children were
16 and what kind of assets they'd be getting at his
17 death. He knew all about their financial situation.
18 He recounted their educations. He recounted where
19 they were, what their roles were as power of attorney
20 in the case of Peter Ho. He seemed to understand
21 what his estate planning did.

22 He understood that this gift to Debby Chang
23 was outside the terms of estate planning. He was
24 very specific that he didn't want to muddy the waters
25 with his estate planning to allow for this gift. He

1 wanted it to be casual. He wanted it to be outside
2 the terms of his estate plan.

3 I think he didn't want to involve his son in
4 this particular transaction. My sense was that he
5 just wanted to do something that a lot of people do,
6 a casual, outside of the four corners of the document
7 gift to his long-term girlfriend.

8 Him expressing all these things, being really
9 clear as to his intent, for me, that shows a person
10 who's not unclear about their wishes. They're not
11 unclear about the details of financial transactions
12 because they're so specific.

13 MR. FRASER: Move to strike his testimony
14 regarding what James understood and regarding James'
15 desires not to include his children.

16 THE COURT: Could you establish a foundation?

17 MR. BAER: I'll try to. I mean it's kind of
18 working backwards.

19 BY MR. BAER:

20 Q. But the things that you just testified to,
21 were those things that James said?

22 A. Yes. I have notes actually here that we were
23 looking at that went over the children's education
24 and we went over his career. We went over some of
25 the history of Foster City. We went over Debby, his

1 relationship with her.

2 We went over the bank. We went over all of
3 the -- his checkbook. He showed his checkbook. He
4 showed me the transactions. Everything that I
5 referred to was from him individually and my
6 response, just my conclusions, based upon what he was
7 saying.

8 Q. Okay. You mentioned that you observed minor
9 memory impairment. Can you be more specific as to
10 what you observed?

11 A. I can't recall right now. Maybe if I
12 reviewed my notes, I could recall. Right now, I'm
13 not remembering anything specifically that he
14 couldn't remember.

15 But I do remember coming to the conclusion
16 that he might have been a little bit situationally
17 unaware. But right now, I can't remember
18 specifically why I had that conclusion.

19 Q. Did you ask him his name?

20 A. Yes.

21 Q. Did he give it to you?

22 A. Yes.

23 Q. Did you ask him where he was?

24 A. Yes, yes.

25 Q. What did he say?

1 A. We were talking about him being in Foster
2 City.

3 Q. Do you remember whether it was --

4 A. I'm sorry. Can I clarify that -- I can't
5 recall right now. I believe this was Redwood City,
6 yes.

7 Q. Okay. Did he know -- did he say anything one
8 way or the other to express that he understood why
9 you were there?

10 MR. FRASER: Calls for speculation.

11 THE COURT: If he said anything, that's fine.

12 THE WITNESS: Yes, that was one of the first
13 things we talked about, do you know why I'm here,
14 Mr. Ho.

15 BY MR. BAER:

16 Q. What did he say?

17 A. He said, I think it has something to do with
18 the million dollars I gave to Debby.

19 Q. Okay. So backing up a little bit, because I
20 forgot to go over this, up to that point in time, had
21 you prepared a certificate of independent review
22 before?

23 A. Yes.

24 Q. Did you do anything essentially to plan for
25 your meeting with James?

1 A. Yes.

2 Q. What?

3 A. I reviewed the statute and some secondary
4 authority through California Education of the Bar.

5 Q. Do you remember what authority you reviewed?

6 A. The statute.

7 Q. In the secondary authority, the CEB, did you
8 review anything besides the statute itself?

9 A. Yes, I think I might have looked at one case
10 that dealt with the issue, but now I can't recall.

11 Q. Okay.

12 A. I think, actually, the case I reviewed had to
13 do with liability for failure to refer, but I think I
14 did glance at that case. And now, I'm not recalling
15 the specific case.

16 Q. Okay. In terms of -- well, let me just --
17 did you make any kind of plan on paper as to what you
18 were going to ask Mr. Ho?

19 A. Yes.

20 Q. Okay.

21 A. Not on paper.

22 Q. Not on paper, okay.

23 A. Yeah.

24 Q. In your own mind, did you make a plan as to
25 what issues you wanted to cover with him?

1 A. Yes.

2 Q. What were those issues?

3 A. I wanted to satisfy the requirements of the
4 statute, to counsel Mr. Ho outside the presence of
5 any other person and then to make a determination
6 that the transfer was not the product of fraud or
7 undue influence.

8 And also to counsel him regarding what would
9 happen to his other beneficiaries of his estate plan
10 if the gift were made and to see that he understood
11 that, to see that he understood that less would go to
12 his children if he were to make a particular gift to
13 a third party.

14 Q. Did you decide in advance whether you would
15 also interview Ms. Chang?

16 A. No.

17 Q. Okay. So what do you recall Mr. Ho saying
18 concerning the million dollars that he brought up?

19 A. Well, that was the subject of our
20 conversation for I believe an hour.

21 Q. Okay. So did he explain to you whether or
22 not he wanted to give that money to Ms. Chang?

23 A. Yes, he was emphatic that he wanted that
24 money to go to her.

25 Q. Did he say why?

1 A. He said his children had enough. He said
2 they would be well provided for. He said they will
3 not challenge what he does. They would respect it.

4 Q. Okay. And did he express any kind of
5 understanding as to, in saying that they had enough,
6 what assets or income they were -- they had?

7 A. Yes. He told me that his oldest child
8 Diana --

9 MR. FRASER: Objection. Mr. Baer is not
10 asking him to look at his notes.

11 THE WITNESS: Can I refer to my notes?

12 MR. BAER: You can if you can't recall
13 otherwise.

14 THE WITNESS: He said that his oldest child
15 Diana --

16 MR. BAER: Well, then, let's lay a
17 foundation.

18 THE COURT: If you need something to refresh
19 your recollection, please indicate that. Otherwise,
20 if you could just flip to another page, see if you
21 remember.

22 THE WITNESS: Okay.

23 THE COURT: And you can answer the question.

24 MR. BAER: Could you read it back, please?

25 (The record was read by the Reporter.)

1 THE WITNESS: We didn't talk about the
2 specific assets of his children. We talked about
3 their background and their abilities, more generally
4 their education, their prestige.

5 BY MR. BAER:

6 Q. Did he tell you whether any of them were
7 employed?

8 A. I believe so, but now, I can't recall
9 specifically.

10 Q. Okay. Well, do your notes refresh your
11 recollection on that topic?

12 A. Yes. It says here one of them worked at
13 Kaiser Redwood City. Then Peter Ho currently works
14 with a company with a few advanced graduates. He's
15 been managing his own funds, so he's serving as his
16 agent. So at least as to two of them, I have their
17 career information noted in my notes.

18 Q. Okay. Did he tell you anything about their
19 educational backgrounds?

20 A. Yes.

21 Q. What did he tell you?

22 MR. FRASER: He's not asking you to look at
23 your notes.

24 THE WITNESS: He told me about their degrees
25 and their education.

1 BY MR. BAER:

2 Q. Did he tell you whether or not they owned
3 their own homes?

4 A. I can't recall that.

5 Q. Can you explain why you prepared these notes?

6 A. These were stream of consciousness notes.

7 Q. Did you prepare these contemporaneously with
8 your meeting with James Ho or did you prepare them
9 after?

10 A. It was done at the time I was speaking with
11 him.

12 Q. And why did you make these notes?

13 A. To create for myself a reminder of what was
14 said during the meeting, so that I could go back and
15 later draft a memo that had my fuller remarks.

16 Q. And did you create such a memo?

17 A. Yes.

18 Q. In the course of meeting with James Martin
19 [sic], did you decide that you would sign a
20 certificate of independent review?

21 Let me ask the question differently. When
22 did you decide that you would sign a certificate of
23 independent review?

24 A. After the meeting.

25 Q. And what made you -- why did you decide to do

1 it after the meeting?

2 Well, let me put it differently: Why didn't
3 you decide to do it at the meeting?

4 A. I still wanted to think about it.

5 Q. So what did you do after the meeting in the
6 course of determining whether or not to prepare a
7 certificate of independent review?

8 A. I debriefed with my associate, Beth
9 Chagonjian, and I talked through the meeting, talked
10 through what James Ho said and asked for her opinion.

11 Q. In meeting with James Ho, did he express any
12 kind of reticence about going forward with you?

13 A. Yes.

14 Q. What did he say?

15 A. He didn't want to pay too much in legal fees.

16 Q. Did he express any kind of reticence about
17 just the idea of meeting with you?

18 MR. FRASER: Calls for speculation.

19 MR. BAER: I'm asking what he said.

20 THE WITNESS: No. He wanted to meet with me.
21 He said that over the phone.

22 BY MR. BAER:

23 Q. Did he reiterate that at the meeting or was
24 that mentioned again?

25 A. If I recall correctly, he was concerned about

1 Peter Ho.

2 Q. What did he --

3 A. And he was afraid, I think, of Peter Ho and
4 what might happen if Peter Ho knew that he was
5 meeting with me.

6 Q. Okay. What did he say about that, if you can
7 recall?

8 A. He said he was concerned about his son
9 finding out.

10 Q. Did he tell you whether he'd spoken to Peter
11 about the upcoming meeting?

12 A. I can't recall that specifically.

13 Q. Did he tell you whether he'd received any
14 instructions from Peter about meeting with an
15 attorney?

16 A. No.

17 Q. Did he tell you that Ms. Chang had given him
18 any instructions about what he should tell you or not
19 tell you?

20 A. No.

21 Q. During the meeting, was Mr. Ho lucid?

22 A. Yes.

23 Q. When you spoke to him -- strike that.

24 Did he have any difficulties expressing
25 himself to you clearly?

1 A. No. He was very specific, especially with
2 numbers.

3 Q. What do you remember about that?

4 A. I think he told me his specific healthcare
5 premium, how much it was per month.

6 Q. When you asked him questions, did he respond
7 to your questions?

8 A. Yes.

9 Q. Were his answers responsive? In other words,
10 did he stay on topic?

11 A. Yes.

12 Q. Did he say or do anything to give you the
13 impression that he was confused?

14 A. Well, can I revisit your prior question? He
15 did say, I think, and I think a lot of elderly do
16 this, but he went into a long conversation about
17 where he came from and his background and where he
18 lived and the history of his relationship and his
19 children.

20 It was a long conversation. Perhaps that is
21 wandering in conversation, so if I could clarify that
22 earlier response to add that.

23 Q. Okay.

24 MR. FRASER: Move to strike. There was no
25 question pending.

1 THE COURT: He's explaining the wandering.
2 He was asked that directly and he just wants to
3 clarify.

4 BY MR. BAER:

5 Q. What did you do specifically to confirm
6 whether or not Mr. Ho wanted to make this gift?

7 A. I asked him questions about his estate
8 planning, who was managing his finances, where his
9 assets were going and asked him point blank whether
10 he wanted to deviate from that by giving something to
11 Debby Chang.

12 I tried to establish what his relationship
13 was with her, to determine whether she was just a
14 short-term thing, a caregiver, somebody who had shown
15 up and is just taking advantage of him or whether she
16 was a very long-term companion.

17 And I became satisfied that she was a
18 long-term relationship of his and that he wanted very
19 specifically to give her this cash gift that he had
20 given and that he was totally comfortable in
21 deviating from his estate plan.

22 Q. Okay. What --

23 MR. FRASER: Move the strike everything after
24 what he concluded. The question was what he did, not
25 what his conclusion was.

1 THE COURT: I think that's true. Stricken.
2 You can re-ask the question.

3 MR. BAER: Okay.

4 BY MR. BAER:

5 Q. Did he explain what his estate plan was at
6 the time to you?

7 MR. FRASER: Leading.

8 THE COURT: Overruled. This is pretty
9 preliminary. It's just shifting gears.

10 Did he explain --

11 BY MR. BAER:

12 Q. Did he talk to you about his estate plan?

13 A. Yes.

14 Q. Did he explain his estate plan at that time?

15 MR. FRASER: Objection. Leading.

16 THE COURT: Overruled.

17 THE WITNESS: I think explained his estate
18 plan would be overbroad. He didn't give me technical
19 or legal details. But we talked about generally who
20 was managing things, how things were held and I -- he
21 said enough to communicate that he had a trust, he
22 had a power of attorney.

23 BY MR. BAER:

24 Q. Did he cover essentially -- did you discuss
25 with him the issue of who would get the money if

1 Ms. Chang did not?

2 A. Yes.

3 Q. Okay. What did he say about that?

4 A. He said he didn't want his children to get
5 that money that went to Debby Chang. They had
6 enough.

7 Q. Okay. And what did he tell you about his
8 relationship with Ms. Chang?

9 A. He said he met her from about 20 years prior
10 to our conversation, prior to his wife passing away
11 and that they had -- after his wife passed away had
12 been together and that there were -- it was a very
13 long-term relationship.

14 Q. Did he have any criticisms of Ms. Chang?

15 A. I think he did. I think he did have some
16 criticisms. I can't recall specifically what they
17 were right now.

18 Q. Do you remember what they were about, just
19 the general subject matter, as opposed to the
20 specific criticisms?

21 A. Gosh, it might have been something regarding
22 appointments or healthcare, something that now I
23 can't recall specifically.

24 Q. Conversely, do you remember whether he said
25 anything positive about her?

1 A. Yes.

2 Q. What did he say?

3 A. Well, he said that Debby could do anything
4 she wants with the money and that he wanted it to go
5 to her and that if she wanted to buy a house, she
6 could do that, including the house that he was living
7 in.

8 MR. FRASER: Move to strike as nonresponsive.

9 THE COURT: Can you read back the question?

10 (The record was read by the Reporter.)

11 THE COURT: Objection is overruled. His
12 statement about what Debby could do with the money
13 will remain.

14 BY MR. BAER:

15 Q. Did he say anything to you to suggest to you
16 that Ms. Chang had pressured him into making this
17 gift?

18 A. No.

19 MR. FRASER: Objection. Leading.

20 THE COURT: Overruled. The answer will
21 remain.

22 BY MR. BAER:

23 Q. Did you hear anything from Mr. Ho that caused
24 you to conclude that he may have been pressured into
25 making this gift?

1 A. No.

2 MR. BAER: Can we take a break, Your Honor?

3 THE COURT: Absolutely. We'll take five, ten
4 minutes.

5 (Whereupon, a break was taken.)

6 MR. BAER: So back on the record.

7 BY MR. BAER:

8 Q. What kind of mood was James in the day that
9 you met with him?

10 A. He was very calm.

11 Q. When you met with him, did he appear to be
12 either anxious or relaxed?

13 A. Relaxed.

14 Q. When you met with him, did he stop you and
15 ask you to explain what you were saying or indicate
16 that he didn't understand you?

17 A. Not that I recall.

18 Q. Was his speech fluent or halting or would you
19 describe it in some different way?

20 A. It was fluent. He went on at length with
21 responses at times and at other times he was very
22 specific and short. He was both.

23 Q. Did you consider his speech to be normal or
24 abnormal?

25 MR. FRASER: Calls for speculation.

1 THE COURT: Establish a foundation. I don't
2 think he knows.

3 MR. BAER: Okay.

4 BY MR. BAER:

5 Q. Did you think at all about his speech pattern
6 as he was talking to you?

7 A. I understood the words he was saying. There
8 was never a point where I couldn't understand. He
9 spoke in complete sentences. He spoke with proper
10 grammar. He seemed to be a reasonably well-educated,
11 intelligent man of advanced age who liked to talk
12 about his family, the past, his history, and those
13 things.

14 MR. FRASER: Move to strike everything except
15 for the first sentence.

16 MR. BIORN: Could you read the answer back,
17 please?

18 MR. BAER: Could you read the question too,
19 please?

20 (The record was read by the Reporter.)

21 MR. FRASER: From when "he seemed."

22 THE COURT: "He seemed," stricken.

23 BY MR. BAER:

24 Q. What did you think about his communication
25 skills?

1 A. I don't remember drawing a particular
2 conclusion because I had no specific issues that I
3 had in my mind regarding his communication.

4 Q. Did you -- had you prepared an engagement
5 letter before you met with Mr. Ho?

6 A. Yes.

7 Q. Okay. So let me turn your attention to
8 Exhibit 522 in the notebook. And this is a letter of
9 representation from the Law Offices of John C. Martin
10 dated August 18, 2017.

11 Did you prepare this document?

12 A. No.

13 Q. Who prepared it?

14 A. That was prepared by my assistant, Jackie
15 Alioto.

16 Q. Did you sign it?

17 A. This particular version, this copy, I'm not
18 sure.

19 Q. Actually, is this complete? I'm not sure.

20 Anyway, did you bring -- did you bring an
21 engagement letter to your meeting with Mr. Ho?

22 A. Yes.

23 Q. Did you discuss it with him?

24 A. Yes.

25 Q. Let me turn your attention to a better

1 document here. Why don't we look instead at
2 Exhibit 525.

3 A. (Witness complies.)

4 Q. Is that -- so did you go over this engagement
5 letter with Mr. Ho?

6 A. Yes.

7 Q. Did you ask him to sign it?

8 A. I can't recall specifically asking him to
9 sign.

10 Q. Did you ask him if he wanted to sign?

11 A. I can't recall specifically asking him if he
12 wanted to sign.

13 Q. Did you ask him just in general terms if he
14 wanted you to represent him?

15 A. Yes.

16 Q. What did he say?

17 A. Yes.

18 Q. Okay. So did -- do you remember whether
19 Mr. Ho signed the engagement letter at that meeting?

20 A. At this moment, I can't recall.

21 Q. Your file did have the signed engagement
22 letter in it?

23 A. Yes.

24 Q. It did, okay. Did you receive a check from
25 Mr. Ho for the cost of the engagement?

1 A. Yes.

2 Q. And do you remember whether you got that
3 check at the meeting or later?

4 A. I can't recall.

5 Q. Did you wait to receive the check or
6 engagement letter before doing anything else in
7 connection with the representation?

8 A. No.

9 MR. BAER: And let me just ask that 525 be
10 admitted.

11 MR. BIORN: No objection.

12 THE COURT: Received.

13 (Whereupon, Exhibit 525 was admitted into
14 evidence.)

15 BY MR. BAER:

16 Q. Okay. Let me turn your attention now --

17 MR. BIORN: David, we have no objection to
18 anything from Mr. Martin's file coming into evidence.

19 MR. BAER: Okay. That's fine.

20 MR. BIORN: Stipulated.

21 MR. BAER: Yes, that's fine. While we're at
22 it then, I guess I would move -- what are the
23 notes -- Exhibit 523 into evidence.

24 MR. FRASER: No objection.

25 THE COURT: Received.

1 (Whereupon, Exhibit 523 was admitted into
2 evidence.)

3 BY MR. BAER:

4 Q. Let me turn your attention to 524. Is this
5 Exhibit 524 the check that you -- or a copy of the
6 check that you received from Mr. Ho?

7 A. It appears to be so.

8 Q. Did you deposit it?

9 A. I can't recall if I deposited it personally
10 or my staff. Probably my staff.

11 Q. Okay. So you had it deposited, is that what
12 you're saying?

13 A. Yes.

14 MR. BAER: So I'd move 524 into evidence.

15 MR. FRASER: No objection.

16 THE COURT: Received.

17 (Whereupon, Exhibit 524 was admitted into
18 evidence.)

19 BY MR. BAER:

20 Q. Did Mr. Ho say anything to you to the effect
21 that the meeting could not go forward or it could go
22 forward? That's when you were actually meeting with
23 him.

24 A. To that effect, yes.

25 Q. What did he say?

1 A. Well, our meeting began with the purpose of
2 the meeting, whether he wanted to meet with me and if
3 he understood why we were meeting and I immediately
4 ascertained that the purpose in his mind was to
5 discuss the gift to Debby Chang.

6 MR. FRASER: Move to strike everything after
7 "I immediately ascertained."

8 THE COURT: I think, technically, you're
9 asking a yes-or-no question. I'm going to take this
10 as his explanation of the yes or no.

11 MR. BAER: Okay.

12 THE COURT: So it will remain.

13 BY MR. BAER:

14 Q. Did he ask you what you were going to do
15 after the meeting?

16 A. Indirectly.

17 Q. What did he say to you indirectly about that?

18 A. He asked about his estate planning in
19 response to my asking him about updating his will and
20 whether I could assist him with certain documents and
21 I declined.

22 Q. Why did you decline?

23 A. I felt that it was not within the scope of my
24 proposed representation to do his estate planning.

25 Q. Did he express any kind of dissatisfaction

1 with his current documents?

2 A. No. He -- if I recall correctly, he leaned
3 back in the chair and had this very peaceful look and
4 then just wanted to proceed with the conversation.

5 Q. Was there any discussion about the
6 possibility that there might be any dispute over the
7 gift that he was making or the gift he told you he
8 wanted to make, I should say, to Ms. Chang?

9 A. Yes.

10 Q. Who raised the issue first, you or him?

11 A. I did.

12 Q. And what did you say about it?

13 A. I said I was concerned that whenever there's
14 a gift to someone outside of the estate plan, there
15 could be some dispute.

16 Q. And what was his reaction to that?

17 A. He wasn't pleased and he said that that would
18 not be good.

19 (Reporter clarification.)

20 THE WITNESS: "That would not be good."

21 BY MR. BAER:

22 Q. Did Mr. Ho explain to you essentially the
23 mechanics of how this gift had been made?

24 A. Yes.

25 Q. What did he tell you?

1 A. He said that he gave one check, maybe two.
2 He said it could have been a certified check or a
3 personal check. He said he did it by going to the
4 bank.

5 Q. Did he tell you whether or not Ms. Chang had
6 asked him to make that gift to him?

7 MR. FRASER: Objection. Leading.

8 THE COURT: It's a yes or no.

9 THE WITNESS: No.

10 BY MR. BAER:

11 Q. Did you have any discussion with him about
12 what Ms. Chang's role was in his life?

13 A. Yes.

14 Q. What did he say about that?

15 A. He was vague. He said that they had been
16 together and he didn't go into details.

17 Q. Did you press him for details?

18 A. A little bit.

19 Q. What were you trying to find out?

20 A. I was trying to find out whether she was his
21 live-in girlfriend or if she was a friend or if she
22 was a caregiver or if she was some other status.

23 Q. Did he explain to you whether or not she had
24 been providing any caregiving services to him?

25 A. That's not how I would put it, caregiving

1 services. It sounded like Debby was facilitating his
2 transportation and being able to go to appointments
3 to some degree, although it sounded like Peter Ho was
4 also doing that from what he said.

5 Q. Did you make any observations about the
6 condition of the home when you went into it --

7 A. Yes.

8 Q. -- or while you were there? What were your
9 observations?

10 A. It was clean, well put together. There was a
11 service person in the garage, looked like things were
12 being attended to.

13 Q. Did you see what Mr. Ho's sleeping
14 arrangements were?

15 A. I think there was a cot, if I recall
16 correctly. I can't remember if it was in the kitchen
17 or in adjoining room.

18 Q. Did you ask him about that?

19 A. I can't recall.

20 Q. Did he tell you where he had been living
21 before he had lived -- before he lived at the place
22 where you met him?

23 A. Yes.

24 Q. What did he tell you about that?

25 A. Well, he went into this long description

1 about him buying -- himself buying a home in Foster
2 City and now I can't remember the details, but he
3 went into this description of where he worked and I
4 can't remember at this point what the timeline was,
5 but he gave me this description of everywhere he had
6 lived and how it related to his marriage and what his
7 job was.

8 Q. Did you have any discussion with him about
9 what might be done to prevent a dispute from arising
10 over this gift?

11 A. Yes.

12 Q. What did you tell him?

13 A. I suggested that I write a certificate of
14 independent review so that potentially it could
15 reduce the chances of litigation.

16 Q. And what was his response to that?

17 A. And I also recommended that he work with an
18 estate planning attorney and that I can make a
19 referral to him and he said yes, please proceed with
20 doing the certificate of independent review.

21 Q. Did he tell you why he wanted to do that?

22 A. It was in response to my direct admonition to
23 him that his estate planning could be challenged
24 because of this gift that he made to Debby Chang and
25 that he thought that would not be good and he wanted

1 to do something to prevent the chance of litigation.

2 Q. Did Mr. Ho say anything to you about the
3 possibility that any of his calls or conversations
4 might have been recorded?

5 A. No.

6 Q. Did you discuss with him whether he had made
7 other gifts to Ms. Chang in the past?

8 A. I can't recall specifically.

9 Q. Do you know if he remembered the date?

10 A. I can't recall. I do recall asking him that
11 question and right now, I can't remember what his
12 response was. That might have been, I was referring
13 to it earlier in my testimony when I had the
14 conclusion that he may have been not completely
15 oriented with time. It may have been that, that he
16 couldn't remember the specific date.

17 Q. Okay. So --

18 A. But now I can't recall.

19 Q. Let me turn your attention back to 523, the
20 second page. We'll leave it at that.

21 Did you have the impression that he
22 understood what he owned?

23 A. Overall, yes.

24 Q. Did he -- do you remember whether he told you
25 whether he owned the house that they were in, that

1 you were in meeting with him?

2 A. He did refer to that home, I guess it was on
3 Fulton in Redwood City, as being his own.

4 Q. Did you know whether or not that was true at
5 the time?

6 A. I knew -- I think I had checked the title
7 records at some point. I think it might have been
8 prior to the meeting. And so I already knew that it
9 was not owned by him and so I pushed back and --

10 Q. Just wait. I'll ask you.

11 A. Okay.

12 Q. So after he said something to indicate that
13 it was his home and you knew that otherwise, well at
14 least he didn't own it from the title records, did
15 you -- was there any further inquiry by you into that
16 issue?

17 A. Yes.

18 Q. Can you explain what that was?

19 A. I can't recall the specific words I used, but
20 I wanted to know if he was aware that Debby Chang was
21 on title to the house.

22 Q. Okay. And did he say anything about that?

23 A. He said that if she was, then that was fine
24 by him.

25 Q. Did he give you any reason why that was fine

1 by him?

2 A. Not specifically at that time. Later we
3 talked about the \$1.1 million gift and he said, well,
4 if she wanted to buy the house with that money, that
5 was fine by him.

6 Sorry, did I say buy the money with the
7 house? Buy the house with the money. Did I switch
8 those words?

9 MR. FRASER: Maybe.

10 BY MR. BAER:

11 Q. Did you have any discussion with him about
12 the management of his financial affairs?

13 A. Yes.

14 Q. What was that?

15 A. He said Peter was helping him with the
16 finances and he went over certain bills and expenses,
17 like his healthcare premium and he talked about how
18 he used his checkbook to pay bills.

19 Q. Okay. Based on your meeting with Mr. Ho, did
20 you determine -- in your mind, were there any
21 countervailing considerations against signing a
22 certificate of independent review?

23 A. Yes.

24 Q. Can you explain what those were?

25 A. I don't have all facts at my disposal and

1 it's almost unlimited what it might be.

2 Ultimately, being in the room with every
3 conversation between him and Debby would have been
4 required to absolutely eliminate the possibility of
5 undue influence. And so there is that possibility
6 that there were things I wasn't aware of, and I
7 thought about that.

8 Q. Did you decide whether or not you wanted to
9 meet with Mr. Ho again before signing a certificate
10 of independent review?

11 A. I felt that, based on the statute, my role
12 was to interview him, to counsel him and that based
13 on the meeting, I had done exactly what the statute
14 had required for writing the certificate of
15 independent review, that based on my meeting, based
16 on my counseling of him, that that was sufficient.
17 He was very clear. I didn't see any signs from that
18 meeting that there was undue influence.

19 So no.

20 Q. Okay. So you went back to your office at
21 some point after the meeting and what more did you do
22 at that point towards deciding whether to sign the
23 certificate of independent review?

24 A. I talked through it with my associate.

25 Q. All right. Let me show you another -- I

1 believe that you mentioned you prepared a memorandum.

2 A. Yes.

3 Q. And why don't we take a look at Exhibit 527.
4 And this is a document with your office's letterhead
5 dated August 24, 2017, re memorandum.

6 So is this the memorandum that you were
7 referring to?

8 A. Yes.

9 Q. Who prepared this memorandum?

10 A. This was a joint effort between myself and my
11 associate.

12 Q. Why was it prepared?

13 A. It was prepared to memorialize the meeting
14 and to memorialize my conclusions.

15 Q. And did you review the entire memo?

16 A. Yes.

17 Q. Do you recall thinking that there was
18 anything that was inaccurate in it?

19 A. Not specifically.

20 Q. When you -- did you review a prior draft of
21 this -- let me strike that.

22 Was there a prior draft of this memo?

23 A. When you say "draft," do you mean a document
24 that's labeled a draft as such and saved in the file?
25 Because no, if that's the question.

1 Q. No, not really. Let me just ask the question
2 a different way: So did you make any edits to this
3 document before it wound up in this current form?

4 A. That would be a misleading yes or no. If I
5 said yes because there was a collaboration between
6 myself and my associate, and so that process was
7 itself a series of edits as an iterative process to
8 come up with a completed memo.

9 Q. Is there any way that you can sort of
10 describe what your role was and what her role was in
11 doing this?

12 A. Well, I'm the supervising attorney, so I'm
13 responsible for the final product.

14 Q. Are some of the facts that are stated in
15 here -- are some of the facts stated in this memo
16 essentially written by her?

17 A. Well, you mean the actual writing of the
18 facts on the paper, yes.

19 Q. What were her sources for those facts, if you
20 know?

21 A. Well, I believe the same day after I had the
22 meeting with Mr. Ho, I came back to the office and
23 had a debrief with Beth Chagonjian, my associate, and
24 then we discussed drawing up this memorandum and she
25 got started with a draft. And then I filled in the

1 blanks and then we had a final product.

2 Q. Okay.

3 MR. BAER: I'd like to move 527 into
4 evidence.

5 MR. FRASER: No objection.

6 THE COURT: Received.

7 (Whereupon, Exhibit 527 was admitted into
8 evidence.)

9 BY MR. BAER:

10 Q. So you mentioned there was some discussion
11 about the fact that his son Peter -- strike that.

12 Did he give you the names of his children?

13 A. Yes.

14 Q. And I believe you said there was some
15 discussion about his power of attorney. Who raised
16 that issue, him or you?

17 A. I can't recall who brought it up first. I
18 definitely brought up the issue of power of attorney
19 specifically and he -- I believe it was him who
20 raised the issue of who was managing his finances
21 along with him and he said it was his son. I don't
22 think he used the words "power of attorney."

23 Q. Did Mr. Ho tell you whether he liked or
24 disliked living at the house in Redwood City?

25 A. Not that I can recall.

1 Q. Okay. So let's take a look at the next
2 exhibit and that will be -- okay, Exhibit 526 and
3 this is the certificate of independent review with
4 your law office's letterhead.

5 Is that your signature?

6 A. Yes.

7 Q. Did you sign this on August 24, 2017?

8 A. Yes.

9 Q. And this states "I am an independent attorney
10 as defined in California Probate Code Section 21370."

11 So just limiting the question to that, what
12 was the basis for your conclusion that you were an
13 independent attorney?

14 A. I didn't directly --

15 MR. BIORN: Your Honor, I object. This would
16 go to exact testimony that we were going to present
17 Mr. Gorini on, and he's been excluded. It was
18 certainly one of the things we were going to ask
19 Mr. Gorini, whether what he did would meet the
20 requirements of 21370.

21 MR. BAER: Fair enough.

22 THE COURT: And you're withdrawing the
23 question?

24 MR. BAER: I'll withdraw it, yes. Okay.

25 BY MR. BAER:

1 Q. So you state at the end that you conclude
2 that the transfers to Debby Chang made by James Ho in
3 March of 2017 are not the product of fraud or undue
4 influence?

5 A. Yes.

6 Q. So what was the basis for that conclusion?

7 A. My meeting with Mr. Ho.

8 Q. And can you be more specific about what about
9 that meeting convinced you that the gift was not the
10 product of fraud or undue influence?

11 A. I counseled him outside of the presence of
12 the recipient of the gift and I interviewed him about
13 the consequences of the gift, that it would reduce
14 the share of his children under his estate plan.

15 And I also talked about the details of how
16 the gift was made, and I established I didn't see
17 from that meeting that the gift was procured through
18 undue influence or through fraud.

19 Q. So after you met with -- after you met with
20 Mr. Ho, did you meet with Ms. Chang?

21 A. Yes.

22 Q. Was Mr. Ho there then, too?

23 A. He was.

24 Q. Did he participate in the meeting?

25 A. No.

1 Q. Why not?

2 A. He had fallen asleep.

3 Q. Why did you decide to meet with Ms. Chang?

4 A. I hadn't decided to meet with her.

5 Q. Why did you meet with her?

6 A. Well, she -- I believe we ended the meeting
7 and then she came in and I asked her some questions
8 and because she had not been part of the meeting with
9 James Ho, I wanted to corroborate what had been said
10 to see if it in any way conflicted with what James Ho
11 said.

12 Q. Did you find there were any conflicts between
13 what she told you and what Mr. Ho told you?

14 A. Not specifically.

15 Q. Did she ask you what you had told James?

16 A. No.

17 Q. Did she ask you whether you were going to
18 sign a certificate of independent review?

19 A. I can't remember that specifically. I may
20 have mentioned it because that was the issue for why
21 I was there. But at this point, I can't remember
22 whether I discussed that with her. I don't believe
23 so.

24 Q. Okay. Did she tell you that she had hoped
25 that James would confirm that the money she received

1 from him was a gift or anything to that effect?

2 A. No.

3 MR. FRASER: Objection. Hearsay.

4 THE COURT: And it wasn't said. It would be
5 hearsay.

6 MR. BAER: Is that sustaining or overruling
7 the objection?

8 THE COURT: He said no.

9 MR. BAER: Okay. So then there's no hearsay
10 in. Right, okay. Thanks, I understand.

11 BY MR. BAER:

12 Q. Did she make any statement -- this is just a
13 yes-or-no question -- about what she hoped would have
14 been achieved in your meeting with James, what her
15 objectives were for that meeting?

16 A. Not that I recall.

17 Q. What do you remember asking her?

18 A. I asked her about some of the financial
19 details. I asked her about the house sale, the prior
20 house sale and about some property tax matters that
21 were related to that. I asked her about Peter Ho and
22 his involvement with the finances.

23 Q. All right. What was the discussion about --
24 well, what did the discussion about property tax
25 matters concern?

1 A. Well, Debby was mentioning that Peter Ho is
2 very intelligent, very smart. And then she mentioned
3 that he had gotten somehow his father to transfer
4 this property to him, or his name was put on title or
5 something like that and that then, through that, he
6 was able to transfer his father's property tax basis
7 and she had expressed a desire not to rock the boat,
8 not to disturb Peter, not to, you know, in any way
9 have something that would upset him because she was
10 afraid of him.

11 MR. FRASER: Move to strike what Debby said
12 as hearsay.

13 MR. BAER: It's not really offered for the
14 truth of the matter of what happened. It's really
15 offered for the basis for his opinions.

16 THE COURT: The basis of Mr. Martin's
17 opinions?

18 MR. BAER: Right.

19 THE COURT: As to whether or not a
20 certificate of independent review --

21 MR. BAER: Let me ask a foundational question
22 first.

23 THE COURT: Thank you.

24 BY MR. BAER:

25 Q. Did anything that Ms. Chang told you about

1 essentially the transfer of the property tax basis,
2 did that have any bearing on your decision to issue a
3 certificate of independent review?

4 A. Indirectly. It was something that was in my
5 mind, but I didn't base my certificate of independent
6 review in any way upon that conversation.

7 MR. FRASER: And I would move to strike.

8 MR. BAER: Okay. I would just ask what role
9 did it play?

10 THE COURT: I'll take your motion under
11 submission.

12 BY MR. BAER:

13 Q. So what role, if any, did what she told you
14 about the transfer of the property tax basis play in
15 connection with your decision to issue a certificate
16 of independent review?

17 A. It's very hard to answer that question
18 because everything I was taking in at the time went,
19 to some extent, towards my decision on whether to
20 proceed, whether to -- remember, I hadn't yet decided
21 to execute the certificate of independent review.

22 Q. For how long did you meet with Ms. Chang?

23 A. I can't recall the breakdown between time
24 with Mr. Ho and Ms. Chang specifically right now.

25 MR. BIORN: We never got a ruling on the

1 motion to strike. I guess if it only goes to his
2 state of mind, to the extent it was considered in
3 making his decision, if not offered for the truth of
4 the matter, that would make sense.

5 THE COURT: It's definitely not for the truth
6 of the matter. In my mind, the testimony is a little
7 conflicted about whether or not it affected his
8 certificate of independent review.

9 But it will not be received for the truth of
10 the matter.

11 MR. BAER: Okay.

12 MR. BIORN: Your Honor, I don't want you to
13 think we're playing games with this. I probably will
14 ask the witness about that discussion.

15 THE COURT: You have more latitude on cross.

16 MR. BIORN: I didn't want you to think I was
17 playing games down the road.

18 THE COURT: I can't guarantee that, but not
19 in this area.

20 MR. FRASER: More so than normal.

21 MR. BIORN: The litigation game.

22 BY MR. BAER:

23 Q. Did you ever have any conversations with
24 Ms. Chang again after you left the Fulton house in
25 Redwood City on August 21, 2017?

1 A. Not that I recall.

2 Q. All right. And after signing the certificate
3 of independent review, what did you do with it?

4 A. Well, at one point, I sent it in the mail to
5 Mr. Ho.

6 Q. Okay. And what happened after you sent it?
7 First of all, where did you send it?

8 A. His address.

9 Q. And let me turn your attention to
10 Exhibit 530.

11 Let me turn your attention to a different
12 one, 533. Is this the envelope or a copy of the
13 envelope in which you sent the certificate of
14 independent review back to Mr. Ho?

15 A. I can't recall.

16 Q. Do you remember whether you mailed it or had
17 it mailed?

18 A. Well, I don't send -- oh, had it mailed?

19 Q. Yes.

20 A. I can't recall specifically having it mailed,
21 but I would assume so since this appears to be
22 envelopes and a dated letter.

23 Q. Okay. Did you send him an invoice for your
24 services?

25 A. Yes.

1 Q. Let's look at Exhibit 531. Exhibit 531,
2 again, has your office's letterhead and this is an
3 invoice dated August 24, 2017.

4 Did you transmit this or have this
5 transmitted to Mr. Ho?

6 A. I believe so.

7 Q. How was it transmitted to him, if you know?

8 A. Well, our ordinary process would be to mail
9 it.

10 Q. Do you know whether or not this was -- did
11 you instruct that this be mailed with the certificate
12 of independent review or that it be mailed
13 separately?

14 A. I can't recall that specifically.

15 Q. Okay.

16 MR. BAER: I'd like to move 531 into
17 evidence, please.

18 MR. FRASER: No objection.

19 THE COURT: Received.

20 (Whereupon, Exhibit 531 was admitted into
21 evidence.)

22 MR. BAER: Okay.

23 BY MR. BAER:

24 Q. Let me call your attention now to Exhibit 532
25 and this is notes, it starts Mr. Martin and then

1 Debby Chang's name is at the bottom.

2 Do you recognize the document?

3 A. This appears to be a note from Debby Chang to
4 our office.

5 Q. Did you review this?

6 A. I believe so.

7 Q. Do you know whether she returned any -- do
8 you know whether she returned the letter that
9 included the certificate of independent review back
10 to you? She refers to letters going back to you, but
11 do you know what was in them?

12 A. I can't recall what was accompanying this.
13 It refers to the document that we created, but I
14 can't recall what was in the envelope.

15 Q. Okay. Do you remember if the letters that
16 she returned were opened or unopened?

17 A. I can't recall.

18 Q. Did you ever tell Ms. Chang that you had
19 issued a certificate of independent review?

20 A. I don't remember ever advising her one way or
21 the other.

22 Q. Did you direct anybody in your office to tell
23 her that?

24 A. No.

25 Q. Did you consider the certificate of

1 independent review -- well, did you give any -- did
2 you think about whether the certificate of
3 independent review was a confidential communication
4 when you sent it to Mr. Ho?

5 A. Yes.

6 Q. What was your conclusion?

7 A. Well, there's an attorney-client duty of
8 confidentiality and so I have a duty not to disclose
9 to a third party attorney-client communications which
10 would include this, unless my client gives consent.

11 Q. Okay. And then Mr. Ho says on the second
12 page, "but I don't feel comfortable to give to him
13 even the son has the power of attorney from his
14 father. I'm not sure his power attorney has enough
15 power to do everything."

16 Did you ever receive any power of attorney
17 that Mr. Ho had given to his son Peter?

18 A. Not that I recall. I don't believe so.

19 Q. Did you ever ask for one?

20 A. Not that I recall.

21 Q. Was one ever offered to you?

22 A. I don't believe so.

23 Q. Did anything in your conversation with
24 Ms. Chang raise any red flags for you as to the
25 possibility that Mr. Ho had been unduly influenced by

1 her in making the gift to her?

2 A. Yes.

3 Q. What was that?

4 A. Well, she was describing this transfer
5 between James Ho and Peter Ho and if you can be
6 unduly influenced in one thing, you can be unduly
7 influenced in another.

8 MR. FRASER: Move to strike what Debby told
9 him.

10 MR. BAER: I thought we went through this.
11 He didn't even refer to exactly what she told him in
12 his answer either.

13 THE COURT: He didn't.

14 MR. BAER: Let me --

15 THE COURT: I believe that this is Mr. Martin
16 just saying if Mr. Ho could be unduly influenced in
17 one case, i.e., the property tax situation, he could
18 be unduly influenced in another situation.

19 Is that correct, Mr. Martin?

20 THE WITNESS: That's correct.

21 MR. FRASER: For his state of mind, but not
22 for the truth of the matter?

23 THE COURT: Well, for his state of mind,
24 right, about this certificate of independent review.
25 He said he had -- my words, not his -- he thought

1 about it because of this alleged other transaction.

2 MR. BAER: Okay.

3 BY MR. BAER:

4 Q. In light of that red flag, why did you decide
5 to sign the certificate of independent review?

6 A. On the basis of my counsel.

7 MR. BAER: I'd like to move 532 into
8 evidence.

9 MR. FRASER: No objection.

10 THE COURT: Received.

11 (Whereupon, Exhibit 532 was admitted into
12 evidence.)

13 BY MR. BAER:

14 Q. Did you ever learn anything from Ms. Chang
15 prior to James' death to cause you to conclude that
16 she knew that you had signed a certificate of
17 independent review?

18 A. I think these letters may indicate that
19 indirectly. They don't refer specifically to the
20 words "certificate of independent review," but I
21 think that would be a fair assumption that she had
22 knowledge of what our office had done at some point.

23 Q. Did you ever get any knowledge as to whether
24 or not she opened the letter with the certificate of
25 independent review that was mailed to James?

1 A. Not specifically.

2 Q. All right. Let me turn your attention to --
3 what's the exhibit, this memo? I didn't write it
4 down.

5 MR. KUO: 527.

6 BY MR. BAER:

7 Q. Let me turn your attention back to 527.

8 THE COURT: We're going to break for lunch in
9 about ten minutes. Is that okay?

10 MR. BAER: Yes. I'm just about done. I may
11 finish before then.

12 BY MR. BAER:

13 Q. So specifically let me turn your attention to
14 the third paragraph on page 2. And let me ask you,
15 does that -- well, I'll read it. So, I read part of
16 it anyway. "James told me that he didn't know why
17 his son that done that but that his son was aware he
18 would be meeting with an attorney that day and had
19 asked him not to go through with it. I asked him
20 what he meant by that, and he said that maybe Peter
21 thought there was a will that James would be signing.
22 He said that his son had asked him not to sign
23 anything."

24 Does that refresh your recollection as to any
25 request for instructions that James had received from

1 his son Peter prior to the meeting?

2 A. Yes.

3 Q. And what is your recollection on that topic
4 now?

5 A. That Mr. Ho had mentioned speaking to Peter
6 Ho and that Peter Ho didn't want him to meet with an
7 attorney and change his will.

8 Q. Did you consider the issue of whether there
9 was any instrument for you to review in connection
10 with the preparations of a certificate of independent
11 review?

12 A. Yes.

13 Q. What was your conclusion?

14 A. Well, there's no instrument other than the
15 check here and the check itself was not available to
16 me, but through the communications that I had with
17 Mr. Ho, he gave a description.

18 And so from the description of what he gave
19 me, I was able to make a determination that a check,
20 which was this instrument of transfer, was not
21 procured through undue influence or fraud, even
22 though I had not specifically looked at the actual
23 instrument.

24 Q. Do you remember Ms. Chang expressing anything
25 to you about what she thought about caring for James?

1 A. I can't recall.

2 Q. Let me turn your attention to the last page
3 of the document. And can you -- I'll read the last
4 sentence of the first paragraph "She expressed that
5 she had been worn out caring for James over the last
6 several months and that it had been very difficult."

7 Does that refresh your recollection?

8 A. No.

9 THE COURT: Can you help me out? Where are
10 you talking about?

11 MR. BAER: Sorry. Page 5, the last sentence
12 of the first paragraph.

13 THE WITNESS: I see that, but at this time, I
14 don't have any memory of her saying that.

15 MR. BAER: Okay.

16 THE COURT: I'm sorry, you had an objection?

17 MR. FRASER: Withdrawn.

18 BY MR. BAER:

19 Q. Did Ms. Chang describe to you the mechanics
20 of how the gift had been made to her?

21 A. Not that I recall.

22 Q. Okay. So I'll read the first and the next
23 paragraph down, the second paragraph on page 5, I'll
24 read part of that. "I asked her whether she talked
25 James into giving her the million dollars and she

1 said no, that she actually asked James not to give
2 the money to her. At first she said she'd been
3 insisting on drawing up a loan document of some kind
4 or to add James' name to the title on the Fulton
5 home. However, she said that James had insisted that
6 she keep the money, again, lining up with James'
7 version of the narrative."

8 Does that refresh your recollection as to
9 what Ms. Chang told you about how this gift had been
10 made?

11 A. Yes, I do recall going over that issue with
12 her, yes.

13 Q. And what is your recollection now?

14 A. I do remember asking her about pressure,
15 pressure she might have given him. And also asking
16 her about, you know, whether it made more sense that
17 he would own the house, maybe she would rent it or
18 maybe, you know, this would be something that he
19 would list under his estate plan.

20 I can't remember the specifics of every
21 single thing, but those were the subjects.

22 Q. Do you recall having any further
23 communications with Debby -- rather Ms. Chang --
24 written or oral, after receiving her note while James
25 was still alive?

1 A. Not that I recall.

2 Q. In connection with your preparation of the
3 certificate of independent review, did you consider
4 Debby to be a client?

5 A. No.

6 Q. Why not?

7 A. She wasn't in my engagement letter and I
8 didn't give her specific legal advice that I felt she
9 was entitled to rely on.

10 Q. Did anyone ever request your consent to have
11 your telephone conversation with James recorded?

12 A. No.

13 Q. Did anyone ever tell you that it had been
14 recorded?

15 A. No.

16 MR. BAER: I have no further questions at
17 this time.

18 THE COURT: Okay. Would this be an
19 appropriate time to take the lunch recess?

20 MR. BIORN: That would be fine.

21 THE COURT: We'll take about an hour.

22 MR. BIORN: Back at 1:30?

23 THE COURT: Yes.

24 (Lunch recess taken.)
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AFTERNOON SESSION:

THE COURT: Let's go back on the record.

CROSS-EXAMINATION

BY MR. BIORN:

Q. Okay. Mr. Martin, we're back after lunch for your further testimony in this trial.

In the last year, have you spoken with David Baer at all?

A. Yes.

Q. How many times?

A. I believe one time.

Q. What did you discuss with him?

A. Coming to this hearing, or this trial.

Q. Was it just scheduling?

A. Yes.

Q. Did you discuss the substance of the case at all?

A. No.

Q. Have you discussed the substance of this case with Mr. Baer or anyone at his office within the last year?

A. The substance?

Q. Yes.

A. No.

Q. Are you getting paid your hourly rate to be

1 here today?

2 A. No.

3 Q. Okay. Other than the normal witness fee,
4 you're not being compensated today?

5 A. Sadly, no.

6 Q. And you are a certified specialist in estate
7 planning; is that right?

8 A. Yes.

9 Q. And as a specialist you are subject to an
10 increased standard of care in your area of specialty;
11 is that right?

12 A. That's correct.

13 Q. With respect to your representation of
14 Mr. Ho, you were first contacted by Reinhard
15 Oesterle, not Mr. Ho; is that right?

16 A. Our office was, yes.

17 Q. And until the day of the meeting, your only
18 contacts were through Reinhard Oesterle, not Mr. Ho;
19 is that right?

20 A. No.

21 Q. Who else did you speak with?

22 A. I spoke with Mr. Ho.

23 Q. Other than the short call I think you
24 described just prior to your meeting, that was the
25 only call you had with Mr. Ho; is that right?

1 A. A call confirming our meeting at his home?

2 Q. Yes.

3 A. The short call, yes.

4 Q. And you told us this morning everything that
5 was discussed on that call, right?

6 A. I don't recall every word that was discussed.
7 I couldn't say that definitively.

8 Q. You didn't mention this morning if you asked
9 him why he wanted to meet with you on that phone
10 call; is that right?

11 A. I can't recall those specific words.

12 Q. Let me mark as next in order.

13 MR. BIORN: Scott, what is this? Sorry.

14 MR. FRASER: It's okay. 181.

15 MR. BIORN: Here you go, Your Honor.

16 THE COURT: Thank you.

17 MR. BIORN: And this is the witness's.

18 (Whereupon, Exhibit 181 was marked for
19 identification.)

20 BY MR. BIORN:

21 Q. Showing you what's been marked as
22 Exhibit 181, it was a series of e-mails pulled out of
23 the file that you produced in this litigation.

24 Do you recognize these as e-mails between
25 Mr. Oesterle and others and either Jackie in your

1 office or you?

2 A. Yes.

3 Q. And Oesterle is spelled O-E-S-T-E-R-L-E, but
4 I'll try to refer to him -- I'll try to remember to
5 refer to him as Reinhard since we've already been
6 doing that. Okay?

7 A. Okay.

8 Q. So the first e-mail in this set is from your
9 secretary, Jackie Alioto, to Reinhard on August 8th;
10 is that right?

11 A. That's the one I see in front of me.

12 Q. And she says here that she -- that you had
13 asked her to follow up and let Reinhard know that you
14 were happy to have a follow-up conversation with him
15 for about ten minutes.

16 Did you tell that to Jackie?

17 A. I can't recall specifically.

18 Q. The next e-mail is from Mr. Oesterle back to
19 Jackie and you, saying that Friday at 2:00 p.m. works
20 and that Debby's daughter Rita wanted to join on the
21 call.

22 Do you recall receiving that e-mail?

23 A. No.

24 Q. Do you recall Reinhard asking if Rita could
25 join on the call?

1 A. No.

2 Q. Do you recall Rita's relation to Reinhard?

3 A. No. It says in this e-mail that I'm looking
4 at Debby's daughter.

5 Q. Correct. I was asking her relation to
6 Reinhard Oesterle.

7 A. Well, based on this e-mail, Debby has a
8 daughter named Rita.

9 Q. Right. And the next e-mail between your
10 office and Reinhard is August 9th at 10:00 a.m., and
11 then the next e-mail, the next one, again August 9th,
12 with you confirming to your secretary just to use the
13 regular phone number for your call with Reinhard,
14 right?

15 A. Oh, I don't see that. Oh, here's my words,
16 yes, "regular phone number."

17 Q. And the top of the next page, your office
18 confirms to Reinhard the phone call on August 11th at
19 2:00 p.m.; is that right?

20 A. I see those words.

21 Q. And you don't have any reason to believe that
22 was not accurate, right?

23 A. That what's not accurate?

24 Q. That that meeting was set -- that your
25 secretary correctly stated that the meeting was set

1 for August 11th at 2:00 p.m.

2 A. I have no reason to believe that there was
3 not a meeting set by my secretary at Friday, August
4 11 at 2:00 p.m.

5 MR. BAER: It's a call, but anyway...

6 THE WITNESS: A call.

7 BY MR. BIORN:

8 Q. Then on August -- the next e-mail is August
9 11th at 2:45 p.m. from Reinhard back to you.

10 Do you see that?

11 A. Yes.

12 Q. This e-mail he sent to you after you had
13 spoken with Reinhard on the phone, right?

14 A. Yes.

15 Q. And he says in the first sentence "I talked
16 to Debby" -- hold on one second. I'll come back to
17 that.

18 Now, the fact that Reinhard was not a
19 relative of Mr. Ho, that was a red flag to you right
20 at the beginning, right?

21 A. No.

22 Q. Do you have your deposition in front of you?

23 A. I don't.

24 Q. Okay.

25 MR. BAER: I've got one here.

1 MR. BIORN: All right.

2 THE COURT: I'm opening a sealed copy of the
3 deposition.

4 BY MR. BIORN:

5 Q. Mr. Martin, would you prefer to look at a
6 minuscrit or a full regular page-by-page transcript?

7 A. As long as I can read it.

8 Q. Take a look at this minuscrit of your
9 deposition and let me know if you can read that.

10 A. I can read it.

11 Q. Great. So turn to page 65, lines 8 to 19.
12 If you can read that to yourself, where it says you
13 talked earlier about the elder abuse seminar.

14 A. Oh, I see that, um-hmm.

15 Q. Do you see where you said been contacted by
16 Dr. Oesterle, the son-in-law, the transferee, was a
17 red flag for you?

18 A. Yeah, the way he phrases that question, I
19 think he set it up in such a way that I answered yes.

20 Q. There is no question pending.

21 So my question is: Does that refresh your
22 recollection that it raised a red flag for you that
23 Reinhard was reaching out to you and not Mr. Ho?

24 A. Yes.

25 Q. And Reinhard said he was calling you on

1 behalf of his mother-in-law, right?

2 A. I don't recall.

3 Q. Let's take a look at your deposition, page
4 36, line 19 through page 37, line 6.

5 A. I'm reading about documents from Mr. Minton
6 that we produced?

7 Q. No, I said 36, 19.

8 A. Page 36, line 19.

9 Q. Do you know how he learned of you, referring
10 to Reinhard, before you had the meeting with him on
11 August 21st?

12 You say "I don't know how James Ho
13 specifically learned of me."

14 A. Yes, I see that.

15 Q. And then you say "our law firm first had a
16 contact from Dr. Oesterle"?

17 A. Yes.

18 Q. "I remember speaking with him," meaning
19 Reinhard, "about general details on an issue that
20 Reinhard said his mother-in-law had and wondered if I
21 would potentially be able to help."

22 Does that refresh your recollection that
23 Reinhard told you that he was calling on behalf of
24 his mother-in-law?

25 A. Yes.

1 Q. And you knew Debby was Mr. Ho's girlfriend?

2 A. At this point in time?

3 Q. Yes.

4 A. No.

5 Q. Did you think that Debby was Mr. Ho's wife at
6 this point in time?

7 A. I can't remember what specific conclusions I
8 had about her at this time. It was so preliminary.

9 Q. So you don't know whether Reinhard -- at this
10 point in time, you didn't know whether Reinhard was
11 even related to Mr. Ho?

12 A. I can't recall making specific conclusions
13 regarding the family relationships.

14 Q. And have you since learned that Reinhard was
15 not married to Debby's daughter at this time?

16 A. I didn't know that one way or the other.

17 Q. Okay. Would it have been of significance to
18 you if you knew that Reinhard lied to you about being
19 Debby's son-in-law?

20 A. Yes.

21 Q. During your phone call with Reinhard on
22 Friday the 11th, you told him that you wanted to
23 speak with Mr. Ho directly; isn't that right?

24 A. That sounds right.

25 Q. And you discouraged Reinhard from contacting

1 you further except for the logistics; is that right?

2 A. I don't recall the logistical points, but
3 certainly it sounds right that I would discourage him
4 from contacting me.

5 Q. And you told him you wanted to speak
6 one-on-one with Mr. Ho, right?

7 A. Yes.

8 Q. At that point in time, did you ask Reinhard
9 to set up a phone call with Mr. Ho?

10 A. I can't recall that.

11 Q. Did you ask him for Mr. Ho's phone number?

12 A. I can't recall.

13 Q. At this point in time, do you recall making
14 any effort to speak directly with Mr. Ho?

15 A. I can't recall at this point in time.

16 Q. So let's go back to --

17 A. Can I clarify that?

18 Q. Yes.

19 A. That was a specific effort to speak to
20 Mr. Ho, setting up a one-on-one meeting. So to the
21 extent that we were moving forward to a one-on-one
22 meeting, that was an effort to speak with him.

23 Q. Moving back to Exhibit 181 we just marked and
24 the page in the lower right-hand corner that says JM
25 10.

1 A. I'm sorry, I'm lost.

2 Q. I'm sorry, the exhibit that we marked, the
3 e-mails from your file.

4 A. Yes.

5 Q. We're back to the same page we were on. Do
6 you have that page? JM 10?

7 A. Yes.

8 Q. After your meeting on August 11 Reinhard sent
9 you an e-mail and it begins about 60 percent or so
10 down the page; is that right?

11 A. I'm sorry, there's multiple e-mails here.
12 There's one from him dated Friday, August 11 and one
13 dated Monday, August 14th.

14 Q. So the one that is dated August 11 at 2:45
15 p.m., do you see that e-mail?

16 A. Yes.

17 Q. And he says -- Reinhard says to you "I,"
18 meaning Reinhard, "talked to Debby and I think
19 there's a pretty good chance she," meaning Debby,
20 "can 'convince' Ho to do whatever it takes to put a
21 certificate of independent review in place."

22 Do you recall asking Reinhard what he meant
23 by convince and using the quotation marks around it?

24 A. I recall responding to this.

25 Q. Okay.

1 A. But I don't recall any other communication
2 regarding what he meant specifically by the word
3 "convince."

4 Q. Now, when you saw this e-mail, using the
5 words "convince Ho to do whatever it takes" and
6 convince is in quotes, did that also raise a red flag
7 for you?

8 A. I wouldn't call it a red flag specifically
9 where I sit right now, but definitely, this language
10 would have troubled me to see that, especially as
11 it's called out in quotes.

12 Q. When you spoke with Debby on August 21st
13 after your meeting with Mr. Ho, did you ask her if
14 she had told Reinhard that she could convince Ho to
15 do whatever it takes to put a certificate of
16 independent review in place?

17 A. Can you repeat that?

18 Q. When you spoke with Debby on August 21st
19 after your meeting with Mr. Ho --

20 A. Okay.

21 Q. -- did you ask Debby if she told Reinhard
22 that she could convince Ho to do whatever it takes to
23 put a certificate of independent review in place?

24 A. No.

25 Q. So you didn't do anything to follow up on

1 this -- that sentence in this e-mail from Reinhard;
2 is that right?

3 A. I did. I did follow up by responding to the
4 e-mail.

5 Q. And if you look at the next sentence, it says
6 "From what I understand from our conversation, this
7 would provide the strongest line of defense against
8 any challenge to the gift after his passing."

9 Do you recall telling Reinhard words to that
10 effect during a phone call on August 11?

11 A. I don't recall the specific conversation.
12 This has been six years. But what I believe I recall
13 saying is that I could meet one-on-one with James Ho
14 and that there was something referred to as a
15 certificate of independent review and that I would
16 need to meet with him one-on-one. I'd have to have
17 confidence that he was making independent decisions,
18 that nobody else was influencing him in those
19 decisions and that I could not agree to do a
20 certificate of independent review specifically.

21 So he would have to, Mr. Ho, agree to engage
22 me and whether or not I did a certificate of
23 independent review, that would be something I would
24 have to determine.

25 Q. But it's a true statement that you told

1 Reinhard that a certificate of independent review
2 would provide a defense against a challenge to the
3 gift?

4 A. I don't believe I used the word "defense."

5 Q. Okay.

6 A. I believe I said that there was a gift that
7 had already been made, it's in the past, and that one
8 thing I suggested was that we could do a certificate
9 of independent review to certify that Mr. Ho was not
10 unduly influenced or acting because of fraud.

11 Q. Now, you texted Reinhard back, the next
12 page --

13 MR. BAER: It's an e-mail.

14 MR. BIORN: Right.

15 BY MR. BIORN:

16 Q. You e-mail him back on the next page, on the
17 e-mail dated August 14 at 3:22 p.m.

18 Do you see that?

19 A. Yes.

20 Q. And you say in the second sentence "Is it
21 possible for Mr. Ho to request to engage me to review
22 his transaction?"

23 You were, again, asking Reinhard to have Mr.
24 Ho contact you directly, right?

25 A. This misstates what's in the e-mail. You

1 literally inverted the two words "it is." You said
2 is it possible.

3 Q. Okay.

4 A. And I said "It is possible for Mr. Ho to
5 request to engage me." So that's -- I'm saying
6 conditionally that it is hypothetically possible that
7 Mr. Ho might engage me in the future.

8 Q. And then at the end you say "If Mr. Ho
9 approves I can forward an engagement letter to him in
10 advance."

11 You were going to send that directly to him,
12 right?

13 A. To Mr. Ho?

14 Q. Yes.

15 A. My intent was to send a letter for his
16 advance review so if I was able to be engaged by him,
17 he would have reviewed the engagement letter in
18 advance.

19 Q. And you wanted to send that directly to him
20 because you considered that to be an attorney-client
21 privileged communication, right?

22 A. Hypothetically, were we to become attorney
23 and client, then yes, it would be covered by
24 privilege. At that time, we hadn't created an
25 attorney-client relationship yet.

1 Q. And here you ask for Mr. Ho's address, phone
2 number and e-mail and the best way to contact him.
3 So are you asking Reinhard if you can get some
4 information to contact him, Mr. Ho, directly?

5 A. I see that now, yes.

6 Q. Your next contact with Reinhard is the next
7 e-mail down, August 17, 2017 at 11:12 a.m.

8 A. Sorry, this appears to be an e-mail from him,
9 not from me.

10 Q. Right. Your next contact with Reinhard.

11 A. His next contact with me, okay.

12 Q. I meant that in general either way terms. It
13 is him e-mailing your office on August 17 at 11:12
14 a.m., right?

15 A. I see that.

16 Q. So as of that point in time, you had not
17 spoken with Mr. Ho, correct?

18 A. I believe so.

19 Q. And you had not conferred with him at all in
20 any other way?

21 A. If this was prior to our phone call, then
22 yes.

23 Q. So let's recall the appointment you had with
24 Mr. Ho was on August 21st.

25 A. Yes.

1 Q. I think you indicated that this morning?

2 A. Yes.

3 Q. That's a good point of reference for us.

4 Then you e-mail Reinhard also on August 17,
5 top of the next page at 1:50 p.m. that you'll bring
6 the engagement letter with you to the meeting; is
7 that right?

8 A. I see that.

9 Q. And did you do that, bring the engagement
10 letter with you?

11 A. I did.

12 Q. And did you also send him a copy by mail?

13 A. I believe I did, yes.

14 Q. Well, you had your secretary do that, right?

15 A. That would sound right.

16 Q. Now, the next e-mail is from Reinhard to you,
17 August 17 at 2:11 p.m.

18 Do you see that?

19 A. Yes.

20 Q. Then in the second full paragraph Reinhard
21 says "Just to set expectations, if Mr. Ho feels
22 really bad that day, there is a chance we might have
23 to reschedule."

24 In or around this time and prior to your
25 meeting with Mr. Ho, do you recall asking or

1 e-mailing Reinhard what he meant by Mr. Ho feeling
2 bad that day?

3 A. No.

4 Q. Prior to your meeting with Mr. Ho, did you
5 have any understanding of why Mr. Ho might feel so
6 bad that he couldn't keep a meeting with you?

7 A. I'm sorry, had I concluded at this time that
8 he could keep a meeting with me? That sounds like
9 it's leading.

10 Q. I can ask a leading question.

11 A. I'm just saying if I were to say yes to that,
12 then it is saying that I'm saying that I had
13 concluded that he couldn't do a meeting and, of
14 course, I hadn't made that conclusion at that time.

15 Q. No. My question was a little different.
16 After you received -- at the time you received this
17 e-mail -- never mind. Strike the question.

18 Let's move on. So this same e-mail is where
19 the first time Reinhard sends you Mr. Ho's address
20 and phone number, correct?

21 A. I'm sorry, where are you now?

22 Q. Same e-mail.

23 A. Okay.

24 Q. Do you see where he provides you Mr. Ho's
25 address and phone number?

1 A. I see that.

2 Q. Did you call him at this time? Did you call
3 Mr. Ho at this time?

4 A. I don't recall that I did.

5 Q. Did you have your secretary Jackie call
6 Mr. Ho at this time?

7 A. I don't recall.

8 Q. Since you had only spoken with Reinhard at
9 this point in time and that raised a red flag for
10 you, did you -- did it come into your mind at all
11 that it would be a good idea for you to reach out
12 directly to Mr. Ho at this time?

13 A. Well, first of all, it sounds like Debby
14 Chang was also --

15 Q. My question is: Did that occur to you?

16 A. I don't recall having that thought, no.

17 Q. And then at the bottom Reinhard, after giving
18 you the information, says well -- doesn't say well --
19 I'm sorry. "If you do need to reach Mr. Ho, please
20 let me know or you can call Debby Chang" and provides
21 you a different phone number.

22 Did you ever ask Reinhard why he directed you
23 to contact him or Debby instead of calling James Ho
24 directly?

25 A. No.

1 Q. The next e-mail is an internal e-mail between
2 you and your secretary, August 17, 2:42 p.m. where
3 Jackie asks you "Is this an hourly agreement? If so,
4 what will be the description you would like in the
5 first paragraph?"

6 Do you see that?

7 A. Yes.

8 Q. And it looks like you had told her that you
9 wanted her to type up an hourly fee agreement for
10 Mr. Ho, right?

11 A. That sounds right.

12 Q. At the top of the next page in the e-mail
13 same day, August 17 at 3:19 p.m. -- the top of the
14 next page is another internal e-mail, you back to
15 Jackie, saying -- I believe responding that the scope
16 of the -- the description in your fee agreement would
17 be limited scope to review a gift transaction and
18 potentially draft a certificate of independent
19 review.

20 Do you see that?

21 A. Yes.

22 Q. So you are defining the scope of your
23 representation with Mr. Ho before you have even
24 spoken with him; is that right?

25 A. Correct.

1 Q. If you look two e-mails down Reinhard still
2 on August 17 at 5:19 p.m. e-mails you asking you to
3 send us, and he has cc'd Rita, Debby's daughter Rita
4 on this e-mail, "Can you send us a copy of the
5 engagement letter prior to the meeting so Mr. Ho can
6 review?"

7 Do you see that?

8 A. Yes.

9 Q. And did you send a copy of the engagement
10 letter directly to Reinhard?

11 A. No.

12 Q. Did that also raise a red flag for you when
13 he's asking for the fee agreement to be sent to him?

14 A. I'm not sure what you mean by red flag, but I
15 didn't want to send it to him. I eliminated that, if
16 that's what you mean by red flag, yes.

17 Q. So just for purposes of today, when I use the
18 term "red flag," I'm intending to use it the exact
19 same way you did when we read it from your deposition
20 earlier today, okay?

21 A. What way was that?

22 Q. Well, let's go back and read your deposition
23 again. Page 65, page 8 --

24 THE COURT: Do you mean line 8?

25 MR. BIORN: Sorry, 65, line 8 to line 19.

1 BY MR. BIORN:

2 Q. And you can read all of it, but at the end it
3 says so that was a red flag for you?

4 A. Right.

5 Q. You answered yes. Whatever you had in mind
6 when you provided that yes answer to red flag --

7 A. Right.

8 Q. -- that's what I'm referring to today when I
9 use that term. Okay?

10 A. Since you're bringing that up, Counsel, what
11 the questioner said here specifically was "You talked
12 earlier about the elder abuse seminar you gave" and
13 you mentioned that you discussed with the audience
14 that there were some red flags or things to watch out
15 for with respect to elder abuse.

16 Q. Yes.

17 A. And then he framed this question about did it
18 strike you as odd, which is a very broad question,
19 did it strike you as odd at all that you were being
20 contacted by the son-in-law of the transferee, that
21 you were seeking to or that -- he was seeking a
22 certificate of independent review in connection and I
23 said yes. So that was a red flag for you, yes.

24 And I think that was immediately following up
25 on his question regarding being contacted in general

1 by the son-in-law, that that's odd and he said well,
2 so odd is equated to red flag. So basically red flag
3 could be anything that's odd.

4 Q. Okay. Well, let's go back and redefine it
5 then.

6 Do you see up above where you said you
7 discussed with an audience there were some red flags
8 or things to watch out for with respect to elder
9 abuse?

10 A. I see that.

11 Q. Let's define red flags today, whenever you
12 use it, I'm referring to how you considered it when
13 you described it for that audience that day.

14 A. Not things that are odd in general like the
15 questioner here?

16 Q. Things that you consider as red flags to
17 watch out for with respect to elder abuse.

18 A. Okay.

19 Q. All right?

20 Back to my question, again. Exhibit 181,
21 lower right-hand corner, JM 13, the third e-mail
22 August 17, 5:19, "Did you consider it a red flag
23 when Reinhard asked you to send a copy of Mr. Ho's
24 engagement letter with you to Reinhard?"

25 A. Yes.

1 Q. And then in the next e-mail, Friday August
2 18, 9:37 a.m., you respond that you will put it in
3 the mail to Mr. Ho and that you cannot send it via
4 e-mail because it's attorney-client privileged.

5 Do you see that?

6 A. Yes.

7 Q. And so as of Friday, before you meet with
8 Mr. Ho on Monday, you had numerous contacts with
9 Reinhard, correct?

10 A. Yes.

11 Q. Numerous by e-mail and one by phone, correct?

12 A. I'm not sure of the specific number of
13 e-mails.

14 Q. I just said numerous.

15 A. Numerous, yes.

16 Q. And you had Mr. Ho's phone number?

17 A. Yes.

18 Q. And you didn't call him before the meeting,
19 right?

20 A. Correct.

21 Q. Other than -- and actually, that is accurate,
22 you didn't call him before the meeting.

23 Do you remember when we talked about your
24 call with Reinhard about the benefits of a
25 certificate of independent review? I won't use the

1 word "defense," I'll call it the benefits of a
2 certificate of independent review. Right?

3 Do you recall --

4 A. Yes, I believe that there would be a benefit,
5 yes, potentially.

6 Q. And that certificate of independent review is
7 typically issued to confirm the validity of a gift to
8 what is called a transferee, right?

9 A. Yes.

10 Q. Why are you telling the son-in-law of the
11 transferee about the benefit of a certificate of
12 independent review prior to meeting with Mr. Ho?

13 A. Again, as lawyers, we identify issues, we
14 connect facts to law. And so I was citing that there
15 was a potential issue because this transfer had taken
16 place.

17 And so the thought in my mind was maybe it's
18 potentially something that I could look at. Whether
19 or not it would be appropriate to have a certificate
20 of independent review, there might be some benefit
21 because then perhaps it would lower the risk of a
22 challenge with a SCIF that had taken place to avoid
23 litigation.

24 Q. That didn't answer my question why you would
25 be advising the son-in-law of the transferee.

1 A. I consider it a general good that we avoid
2 litigation and that I understand what Mr. Ho's intent
3 was regarding this transaction. If I were
4 hypothetically to be engaged by him, that would be my
5 scope. I don't see any other thing that I would
6 accept to do for him in that context other than what
7 I was being asked to do specifically.

8 Q. Is it good to avoid litigation if the gift
9 was actually procured by undue influence?

10 A. No.

11 Q. Let's go to the meeting itself.

12 A. Can I clarify also --

13 Q. There's no question pending.

14 THE COURT: He can clarify his last answer.

15 BY MR. BIORN:

16 Q. Is it your last answer?

17 A. My last answer, that it can be a good to
18 avoid litigation by not doing a certificate of
19 independent review if I determined that a gift was
20 procured through undue influence which was still a
21 determination that I had reserved for the future.

22 Q. Fair enough. You arrive at the house in
23 Redwood City on August 21st and Debby meets you at
24 the front door, right?

25 A. I believe so.

1 Q. And when you first saw Mr. Ho that day, he
2 was using a walker?

3 A. Yes.

4 Q. And upon this initial meeting with Mr. Ho
5 while Debby is still there, you told everyone in the
6 room what the purpose of the meeting was, right?

7 A. Do you mean certificate of independent
8 review, yes or no?

9 Q. No.

10 A. I don't think I said those words.

11 Q. Let's go to your deposition, page 104. And I
12 guess the question starts at 103, 25, "What happened
13 next," question.

14 And then on page 104, you can read your
15 entire answer. I'll never stop you from doing that.

16 But the point -- the part I'm looking at is,
17 "At some point, I said to everybody present, both
18 Debby and James" and then go down, "Well, the purpose
19 of this meeting is for me meet one-on-one with James
20 Ho to see if I'd be able to assist him in some form,
21 but for to us do that, I'm going to have to ensure
22 there's complete privacy and independence. Is there
23 a place for us which we can meet which is private?"

24 Were you telling everyone what the purpose of
25 the meeting was at that point?

1 A. Not specifically.

2 Q. Let me show you a new exhibit, 182, which is
3 another document from your file, lower right-hand
4 corner Bates stamp JM 31.

5 MR. BAER: Thank you.

6 THE COURT: Thank you.

7 BY MR. BIORN:

8 Q. If you're done reviewing it, can you tell me
9 what this document is?

10 A. This is a form that my assistant fills out
11 typically when we have an initial client contact.

12 Q. Is that Jackie's handwriting?

13 A. Yes.

14 Q. Okay. And you're sure, when you met with
15 them, your engagement letter had not been signed,
16 right?

17 A. Met with who?

18 Q. When you met with Mr. Ho.

19 A. Yes. It had not been signed.

20 Q. And you showed him your engagement letter at
21 this initial meeting, correct?

22 A. Yes.

23 Q. And did he read it in front of you?

24 A. Not that I recall.

25 Q. Did you explain it to him?

1 A. I explained it generally, but not in
2 legalese.

3 Q. Did he tell you he didn't have his reading
4 glasses so he couldn't read it at the moment?

5 A. That sounds right. I can't recall
6 specifically with respect to the engagement letter,
7 but that sounds like something he said.

8 Q. Did he tell you he was going to go over this
9 document with Debby?

10 A. I can't recall.

11 Q. Let's go to your deposition, page 149, line 6
12 through 11.

13 He then said "I'd like to go over this with
14 Debby."

15 Answer: Right.

16 Did he tell you that?

17 Yes."

18 Do you see that?

19 A. I see it.

20 Q. Did that refresh your recollection that
21 Mr. Ho told you that he was going to go over it with
22 Debby?

23 A. I can't remember now, at this point.

24 Q. Did you caution Mr. Ho that reviewing that
25 document with Debby could void the attorney-client

1 privilege?

2 A. No.

3 Q. Why not?

4 A. Well, I felt at the time that it was normal
5 for somebody with their long-term girlfriend to -- if
6 they're in the same address, to go over things with
7 their companion and as long as it didn't specifically
8 interfere with my ability to advise him in
9 confidence, I didn't think that there was a need to
10 advise him not to do that.

11 Q. So did this raise a red flag for you that he
12 wanted to review your fee agreement with Debby who,
13 at the time you were evaluating whether she had
14 exerted undue influence over Mr. Ho to obtain a
15 million dollar gift?

16 A. In retrospect, I can think some of the issues
17 there. At the time, I didn't see it as a concern.

18 Q. And he didn't sign that agreement in front of
19 you that day?

20 A. Not that I recall.

21 Q. He signed it and mailed it back to you at a
22 later date, right?

23 A. I believe so.

24 Q. And he sent you a check at the same time,
25 right?

1 A. I think the check was in the envelope, but
2 I'm not sure.

3 Q. And as I recall, you were able to compare the
4 signatures on the check with the signature on the fee
5 agreement to see that Mr. Ho had signed both of them,
6 right?

7 A. Was that in my deposition?

8 Q. It was.

9 A. I think I do remember doing that.

10 Q. But you were not present when he signed; is
11 that right?

12 MR. BAER: Asked and answered.

13 THE WITNESS: I can't recall.

14 MR. BIORN: True.

15 BY MR. BIORN:

16 Q. And you didn't know what Mr. Ho's signature
17 looked like other than those two exemplars on the fee
18 agreement and check; is that right?

19 A. Well, no, I don't think I had done a
20 handwriting analysis at that time.

21 Q. You had never seen his signature anywhere
22 else other than those two documents; is that right?

23 A. Yes. I don't think I had any basis to verify
24 his signature one way or the other.

25 Q. I believe your notes indicate that Mr. Ho

1 could not recall the name of the street he lived on;
2 is that right?

3 A. Yes, I think that's correct.

4 Q. Did he tell you that?

5 A. That he couldn't recall the name of the
6 street?

7 Q. Yes.

8 A. So right now, I'm blanking on the content of
9 that conversation, but I think he did temporarily not
10 know and then I think later he came back and
11 recalled.

12 Q. Did you add that later recollection to your
13 memo?

14 A. Oh, I can't recall.

15 Q. If you stated in your memo that he couldn't
16 recall that he lived on Fulton Street, would it be
17 important to include on the memo that he later did
18 recall the name of the street he lived on?

19 A. I can't recall putting it in the memo one way
20 or the other.

21 Q. Okay. We'll go back over that then.

22 Let's take a look at your -- the memo which
23 has been marked already.

24 MR. FRASER: It's 527.

25 MR. BIORN: 527. I need to get that back for

1 the witness.

2 Kysen, did you put the binders back that we
3 looked at or are they still over there?

4 MR. KUO: I didn't put them back. It's still
5 over there.

6 BY MR. BIORN:

7 Q. You have it in front of you, Mr. Martin?

8 A. Yes.

9 Q. Thank you. It says in the first sentence
10 "James Ho made a gift to Debby Chang in March of
11 2017."

12 Do you see that?

13 A. Yes.

14 Q. He told you that?

15 A. We discussed the gift to her, yes.

16 Q. Did he give you the date of the gift?

17 A. I can't recall specifically.

18 Q. Did you ever learn subsequently that the
19 supposed gift was made the month prior, in March?

20 A. If I put it in the memo, I would assume so,
21 but I can't remember when I gained that information
22 specifically.

23 Q. You spoke with Mr. Baer this morning about
24 making sure that Debby was not in the room with you
25 during your meeting with Mr. Ho?

1 A. Yes.

2 Q. And making sure that you didn't hear her
3 walking around where she might be able to listen in,
4 right?

5 A. Right.

6 Q. Did you ask her to leave the house?

7 A. No.

8 Q. Why not?

9 A. I feel like my duty to represent the client
10 and to advise him in confidence doesn't require Debby
11 Chang to leave the building. As long as we had
12 confidentiality, that would be sufficient.

13 Q. Now, your memo on page 2, the fourth
14 paragraph down it says "I then."

15 A. Yes.

16 Q. "I then asked James if he knew why I was
17 there. James said, 'I think it may be about the gift
18 that I gave to Debby.'"

19 A. Right.

20 Q. Those words are in quotes. Is that because
21 that's exactly what he said to you?

22 A. As I recall them.

23 Q. Did it raise a red flag for you that he was a
24 little equivocal about why he was there?

25 A. What do you mean by that?

1 Q. He said I think, it may. Think and may are
2 equivocal words. Did he raise a red flag that he
3 used words that were equivocal?

4 A. Not at all.

5 Q. The next sentence he said he had given about
6 \$1 million last year to Debby.

7 Do you see that?

8 A. Yes.

9 Q. Did he ever tell you the exact amount he
10 gave?

11 A. I think he said \$1.1 million over the course
12 of the conversation, but it took some time for that
13 to come out. But I can't recall now specifically. I
14 remember asking him about whether it was one check,
15 whether it was two checks.

16 Q. And he didn't know if it was one or two
17 checks?

18 A. He said that he believed it was two, or that
19 it could be two.

20 Q. So this is a million dollars and it happened
21 six months earlier?

22 A. Yes.

23 Q. And he couldn't remember if he transferred it
24 by way of one check or two checks. Did that raise a
25 red flag for you?

1 A. Not specifically.

2 Q. Why not?

3 A. I think that's very normal for somebody to be
4 casual or to act casual because he -- I think that
5 might have been part of his personality, that he, you
6 know, felt that he didn't want to make a big deal
7 about it that he had given this gift to her and that
8 it was her money, she could do whatever she wanted
9 with it.

10 The whole attitude he had was very cavalier.
11 So I think his not being specific was related to his
12 attitude about the gift and he wanted to put it out
13 of his mind at that point and move forward.

14 MR. BIORN: I'll move to strike. A good
15 portion of that was very speculative what went on in
16 Mr. Ho's mind. I'll move to strike those portions.

17 MR. BAER: Your Honor, I think he explained
18 why. That's what he thought.

19 MR. BIORN: If it was in Mr. Martin's mind,
20 that would be responsive to my question, but when he
21 said it was in Mr. Ho's mind --

22 MR. BAER: I think he -- I think he was
23 explaining what he thought Mr. Martin thought. That
24 was why he did what he did.

25 THE COURT: It's a bit speculative. Both

1 sides can explore this area.

2 You were asking what to be stricken?

3 MR. BIORN: The portion where he said what he
4 thought was in Mr. Ho's mind.

5 THE COURT: Okay.

6 BY MR. BIORN:

7 Q. And then if you go down this paragraph, after
8 you ask Mr. Ho if he had a trust, you say "He said he
9 didn't know where those documents currently were and
10 stated that his son was currently managing his
11 affairs."

12 Did it raise a red flag for you that he
13 didn't know where his estate planning documents were?

14 A. No.

15 Q. Did you ask to see them -- sorry, after this
16 meeting, did you ask again to see them, the estate
17 planning documents?

18 A. I can't recall specifically. I don't believe
19 so.

20 Q. Did you ever see the estate planning
21 documents?

22 A. No.

23 Q. Then you don't know whether anything he said
24 to you about the terms of the trust was accurate,
25 correct?

1 A. I took his word for it.

2 Q. Now, if you look down to the next paragraph,
3 it says "I asked him what his current health
4 condition was and the answer was he said he was
5 currently suffering from headaches and that he was
6 receiving treatment for them."

7 Is that what Mr. Ho told you about his
8 health?

9 A. I believe so.

10 Q. Did he tell you anything else about his
11 health at this meeting?

12 A. I think he did.

13 Q. What?

14 A. I can't remember.

15 Q. Okay. Well, do you recall the e-mails with
16 Reinhard referring to Mr. Ho taking chemotherapy?

17 A. Did they refer to it as chemotherapy?

18 Q. Let's take a look back at those.
19 Exhibit 181, there is a reference to chemotherapy on
20 JM 10 and the last full e-mail, second to last
21 paragraph, see the word "chemotherapy"?

22 A. Yes.

23 Q. "I'm asking because Ho is currently on
24 chemotherapy."

25 Do you recall asking Mr. Ho if -- strike

1 that.

2 Did Mr. Ho tell you he was on chemotherapy?

3 A. I can't recall asking him about chemotherapy.

4 Q. Did you ask him if he was on chemotherapy?

5 A. I can't recall.

6 Q. If he didn't mention he was on chemotherapy
7 in responding to your question about his health,
8 would you have asked a follow-up question about that
9 subject?

10 A. I'm not understanding the question.

11 Q. And there's another reference to
12 chemotherapy, the bottom of the next page, second
13 from bottom line where Reinhard references the day of
14 his next chemotherapy appointment.

15 So prior to this meeting, you had been told
16 in two separate e-mails that Mr. Ho was undergoing
17 chemotherapy, right?

18 A. I believe so.

19 Q. Did you ask Mr. Ho -- I'm sorry.

20 At the meeting, did Mr. Ho tell you why he
21 was undergoing chemotherapy?

22 A. I can't recall, but I believe we must have
23 discussed his health situation and needing to go in
24 for treatments.

25 Q. So you did write here in your memo, which I

1 think you told us is a better recollection of what
2 Mr. Ho told you than your notes, right?

3 A. Well, the notes are an immediate reflection
4 of what my thoughts were and then I went back and put
5 a fuller version that filled in the blanks at the
6 time I went back to the office.

7 Q. And neither your notes nor your memo I'll
8 represent to you refer -- use the word
9 "chemotherapy."

10 A. Okay.

11 Q. If you had asked him about -- if he had
12 mentioned anything about chemotherapy, you would have
13 put that in your notes, right?

14 MR. BAER: Objection. Calls for speculation.

15 THE WITNESS: If he had mentioned
16 chemotherapy, I would not have put it in my notes?

17 BY MR. BIORN:

18 Q. No, you would have --

19 A. I would have?

20 Q. Yes.

21 A. Not necessarily.

22 Q. So it would be less important to put in your
23 notes that Mr. Ho said he was suffering from
24 headaches?

25 A. I don't think of it in those terms,

1 important, less important. This was a memo dealing
2 with my counseling session with him regarding this
3 transaction and actually, at the time looking at this
4 e-mail that mentions chemotherapy, that seems to
5 confirm that this is a gentleman who is trying to do
6 whatever he can to stay alive and cure this cancer.

7 Q. But it was important to you that he
8 understood his current health condition, correct?

9 A. It's generally important. I don't remember
10 having that specific thought regarding the
11 counseling.

12 Q. Okay.

13 A. So perhaps not. Perhaps that's not the most
14 relevant consideration.

15 Q. Did he tell you he had undergone -- that he
16 had undergone radiation the year before?

17 A. No.

18 Q. You didn't put that in your notes or memo,
19 right?

20 A. No, of course not.

21 Q. Did he tell you he had blood cancer?

22 A. Not that I can recall.

23 Q. Did he tell you that he had a brain tumor?

24 A. No.

25 Q. Did Debby tell you that he was undergoing

1 chemotherapy?

2 A. Perhaps. I can't recall specifically,
3 though.

4 Q. Did Debby tell you he had a brain tumor?

5 A. I can't recall.

6 Q. Did Debby tell you that he had blood cancer?

7 A. I can't recall.

8 Q. Did Debby tell you he'd been undergoing a
9 treatment of radiation the year before?

10 A. I can't recall.

11 Q. Did Debby tell you that he had been
12 undergoing medical care for cognitive decline?

13 MR. BAER: Objection. Lacks foundation.

14 MR. BIORN: It's in the medical records.

15 MR. BAER: I don't agree.

16 MR. BIORN: We can argue that on the expert
17 reports.

18 THE COURT: This is cross. I'm going to
19 allow some latitude. The answer will remain. The
20 answer is no.

21 BY MR. BIORN:

22 Q. So the answer is no.

23 In your memo, the only thing you summarized
24 about what Mr. Ho said about his health condition was
25 that he had headaches and that he was receiving

1 treatment for them; is that right?

2 MR. BAER: Objection. The document speaks
3 for itself.

4 THE COURT: Sustained.

5 BY MR. BIORN:

6 Q. Two sentences down says "However, he did not
7 know the current date."

8 You mentioned this morning that he may have
9 recalled the current date later in the meeting?

10 A. No. If I recall correctly, I was referring
11 to the name of the street.

12 Q. Okay.

13 A. Yeah.

14 Q. Let's talk about the name of the street.

15 After you left that meeting, you told your associate
16 Beth Chagonjian that James thought he owned the house
17 in Redwood City, right?

18 A. I believe I did discuss that he used those
19 words, yes.

20 Q. Did that raise a red flag for you?

21 A. No. After I spoke with him, I eliminated
22 that as being a red flag in some sense because I felt
23 he was referring to it as the place where he lived,
24 his abode.

25 Q. Where is that mentioned in your notes or your

1 memo?

2 A. I'm not sure.

3 Q. You did ask him a follow-up question. You
4 asked him -- I think you told him that title of the
5 house was in the name of Debby alone, right?

6 A. Oh, that sounds right.

7 Q. And at that time, he didn't confirm for you
8 that, oh, yeah, I knew that, she does own it, he
9 didn't say those words?

10 A. If I recall correctly, it was well, if it's
11 in her name, then that's fine, something along those
12 lines.

13 Q. But his words he indicated that at least
14 he -- he didn't already know it was in her name?

15 A. That, yes, I think it wasn't front in his
16 mind what the title read, but once I confirmed that
17 she was the owner, he didn't seem surprised or
18 shocked.

19 Q. Now, during the meeting, did Mr. Ho ever tell
20 you that he was actually on the contract as a
21 purchaser to buy the Redwood City house?

22 A. That sounds vaguely familiar.

23 Q. Okay.

24 A. I'm not sure if that's because we talked
25 about it one-on-one. Right now, I can't recall where

1 I received that information.

2 Q. Well, let's -- and in fact, you had never
3 seen the purchase contract for the Redwood City house
4 prior to your deposition, right?

5 A. Right. I think I learned about this after
6 the litigation was commenced, potentially.

7 Q. So then let's go back. Does that refresh
8 your recollection that James did not tell you that he
9 had been on the purchase contract for Redwood City as
10 a buyer?

11 A. That's a fair assumption.

12 Q. Let's go back to your memo, page 3 of 5, the
13 first full paragraph, starts with "I asked him what
14 his financial situation was like."

15 What did Mr. Ho tell you about his current
16 assets as of the day of that meeting?

17 A. Well, the document speaks for itself.

18 Q. Okay. Did he tell you he owned any real
19 property?

20 A. I can't recall specifically.

21 Q. Did he tell you he had bank accounts?

22 A. By pointing to his checkbook, yes, and going
23 over the transactions, we discussed his checking
24 account.

25 Q. Did he tell you how much money was in the

1 bank account?

2 A. I think he didn't give me a specific number,
3 but he indicated that he knew his running balance.

4 Q. Did he give you any estimation of how much
5 money was in his bank account?

6 A. Not that I recall.

7 Q. Other than the bank account and automobiles,
8 did he tell you he had any other assets as of the day
9 of this meeting with him?

10 A. Not that I recall where we stand today.

11 Q. And when you left this meeting, you had no
12 idea how much money was in his bank accounts,
13 correct?

14 A. I can't recall.

15 Q. Do your notes or your memo reference anywhere
16 how -- Mr. Ho told you how much money he had in the
17 bank accounts?

18 A. It must have been sufficient to cover his
19 Kaiser healthcare premiums and his expenses. So I
20 think it's a fair assumption that there was
21 sufficient funds through his sources of income and a
22 rental property that he referred to as well.

23 Now, that's coming back into my mind. He
24 referred to this rental property that generated
25 income, if I recall correctly. But it's so hazy, I'm

1 perhaps forgetting.

2 Q. So when you left this meeting, you had no
3 idea whether \$1.1 million represented five percent of
4 the cash he had in the bank or 75 percent of the cash
5 he had in the bank?

6 A. Correct.

7 Q. Would that determination be important to you
8 in evaluating whether a gift was a product of undue
9 influence?

10 A. Perhaps.

11 Q. And did you consider whether Mr. Ho had
12 enough money in the bank to cover his future
13 expenses?

14 A. Yes.

15 Q. How did you make that determination if you
16 didn't know how much money was in the bank?

17 A. Well, I asked him about his cash flow, his
18 expenses.

19 Q. What was his income?

20 A. I don't think I confirmed his total income
21 with him.

22 Q. How did you know his cash flow then?

23 A. Well, he mentioned some of his expenses.

24 Q. But you had no idea what the income was?

25 A. Well, it must have been sufficient to cover

1 the expenses because they were being paid regularly
2 by him.

3 Q. Okay. Did you know if he had any cash in the
4 bank to cover extraordinary expenses?

5 A. Most likely, given what he was describing.

6 Q. Did he tell you that?

7 A. Indirectly through a description of how he
8 was paying his bills.

9 Q. Did you ask him whether he had enough money
10 in the bank to cover emergency expenses?

11 A. No. That wasn't the scope of my
12 representation.

13 Q. If a gift left him with insufficient funds to
14 cover contingent emergency expenses, wouldn't that be
15 important in your determination on whether the gift
16 was a product of undue influence?

17 A. Those are your words.

18 Q. I'm asking you, correct.

19 A. It's relevant, but I would steer away from
20 the word "important" because I was looking at whether
21 or not this particular transaction was procured
22 through undue influence which is where there's
23 excessive persuasion by a person who is obtaining an
24 undue benefit which is not directly related to what
25 the size of somebody's bank account is.

1 Q. Continuing on in this paragraph, next
2 sentence "He said he had certain monthly expenditures
3 which were handled by his son."

4 Down below, there's a reference to a Kaiser
5 expense of \$250 a month in premiums?

6 A. Yes.

7 Q. Did Mr. Ho tell you about any of his other
8 monthly expenses?

9 A. Perhaps. I don't recall.

10 Q. Did you make any notation in your notes or
11 memo about Mr. Ho's other monthly expenses?

12 A. I can't recall.

13 Q. All you have in your notes is a single Kaiser
14 healthcare expense and no information on income, yet
15 you told us a minute ago that he had sufficient --
16 that his cash flow was sufficient to cover his
17 expenses. How did you make that determination?

18 A. That's not what I said.

19 MR. BAER: Objection. Argumentative.

20 MR. BIORN: I'll withdraw it.

21 MR. BAER: Lacks foundation.

22 MR. BIORN: Withdrawn.

23 BY MR. BIORN:

24 Q. The next sentence "He said that he used to
25 own a Corvette and a Mercedes and that he still had

1 the Mercedes."

2 Do you see that?

3 A. Yes.

4 Q. He told you that?

5 A. I believe so.

6 Q. Did you ever learn that he sold the Mercedes
7 over 15 years prior?

8 A. No.

9 Q. Did you ever learn that he actually still had
10 the Corvette?

11 A. No.

12 Q. In fact, he had sold that about a year or two
13 prior. Did you ever learn that?

14 A. No.

15 MR. BAER: Objection. Lacks foundation.

16 MR. BIORN: I'm just asking if he learned it.

17 BY MR. BIORN:

18 Q. If Mr. Ho actually didn't own the Mercedes
19 that he said he still had, would you consider that a
20 red flag?

21 A. Yes.

22 Q. Did he tell you he owned a Lexus at the time?

23 A. No.

24 Q. If he actually did own a Lexus at the time,
25 would you consider that a red flag?

1 A. Yes.

2 Q. The next sentence "I asked him if he still
3 paid for things on his own. He said yes and showed
4 me his check register where he appeared to have a
5 very orderly and detailed listing of his financial
6 transactions by date and check number."

7 Did Mr. Ho tell you that was his handwriting
8 in the check register?

9 A. No, I didn't go into his writing.

10 Q. Did you ask him whether it was his
11 handwriting?

12 A. No.

13 Q. Did you ask him whether he was maintaining
14 his check register himself?

15 A. No.

16 Q. If that was not his handwriting and someone
17 else was maintaining the register, would that have
18 caused a red flag for you?

19 A. Absolutely.

20 Q. And you've mentioned to us a couple times
21 that Mr. Ho went over the transactions in his check
22 register, right?

23 A. Yes.

24 Q. Other than the Kaiser premiums, I don't see a
25 reference in your notes or memo to any of the other

1 transactions you reviewed with him.

2 Can you recall any now?

3 A. No. He was just going through his
4 transaction ledger and showing debits and credits,
5 but I can't recall the specific categories.

6 Q. Okay. But he didn't tell you that he was the
7 one making those payments, right?

8 A. No, but he seemed very possessive of his
9 checkbook, so his conduct indicated to me that he was
10 in control.

11 Q. Next paragraph "I asked him about whether he
12 was comfortable at the home living with Debby."

13 What did he tell you in response to that?

14 A. I can't recall, but I can read what I wrote.

15 Q. No, that's all right.

16 You told us this morning that he was -- that
17 his sleeping quarters was on a cot in you believed
18 the kitchen?

19 A. Somewhere around the kitchen. Might have
20 been the adjoining room. I can't recall.

21 Q. Did you ask why he was sleeping on a cot in
22 the kitchen?

23 A. No.

24 Q. Did you look around to see whether there were
25 any bedrooms on the first floor?

1 A. No.

2 Q. Did you ask him whether he could go up the
3 stairs to the second floor?

4 A. No.

5 Q. If there was no bedroom on the first floor
6 and he couldn't get to the second floor, would you
7 consider that house inappropriate for him?

8 A. No.

9 MR. BAER: Objection. Irrelevant.

10 THE COURT: Overruled. The answer is no.

11 MR. BIORN: I think it goes to the elder
12 abuse by Debby.

13 MR. BAER: Well, it was overruled.

14 THE COURT: It's overruled. It's in.

15 BY MR. BIORN:

16 Q. You mentioned he told you that -- when
17 Mr. Baer was asking about the cognition, you
18 mentioned he said that his daughter, I think it was
19 Della, worked at Kaiser?

20 A. Yes.

21 Q. Did he ever learn that she actually worked at
22 Stanford?

23 A. No.

24 Q. And that she had left Kaiser about 15 years
25 or so prior?

1 A. I didn't learn that.

2 Q. If you had known that at the time, would that
3 have caused a red flag for you?

4 A. Yes.

5 Q. Okay. And I think you also told Mr. Baer
6 that Mr. Ho told you that all three of his children
7 owned their own homes; is that right?

8 A. I think so. I can't recall specifically.

9 Q. And did you ever learn that Shan-Yuan Ho did
10 not own a home?

11 A. No.

12 Q. If you had known that at the time of
13 interviewing Mr. Ho, would that raise a red flag for
14 you?

15 A. If he had said that all three of them owned a
16 home, which I can't recall, and then it wasn't true
17 then, yes, that would be a red flag.

18 Q. You never got a list of Mr. Ho's assets from
19 him?

20 A. No.

21 Q. You never reviewed his estate plan, correct?

22 A. Indirectly we asked him what his estate was
23 going to and I took his word for what his trust
24 provided.

25 Q. But you never reviewed Mr. Ho's estate

1 planning documents?

2 A. The documents themselves, no. I remember he
3 didn't have them.

4 Q. You never asked Mr. Ho for any bank account
5 statements?

6 A. No.

7 Q. You didn't ask Mr. Ho for any backup
8 documents regarding the assets he did describe to
9 you, did you?

10 A. Besides the check register that we reviewed,
11 no.

12 Q. Did Mr. Ho tell you he had gifted a half
13 interest in a Los Angeles property to Debby about 15
14 years prior?

15 A. No.

16 Q. Would that have been important to you if he
17 had told you that?

18 A. Yes.

19 Q. Did Debby tell you that Mr. Ho had gifted her
20 a half interest in a property, I guess it was about
21 11 years prior to your meeting?

22 A. Not that I recall.

23 Q. You asked Mr. Ho whether Debby had used the
24 million dollar gift to purchase the Redwood City
25 home, right?

1 A. I think that's correct.

2 Q. And he did not know for sure that she had
3 actually used that money to purchase the home,
4 correct?

5 A. I think that's a fair statement.

6 Q. In fact, he just said well, it was a gift and
7 if that's what she did, it's hers?

8 A. Yes.

9 Q. So Mr. Ho could not tell -- had made a
10 million dollar gift to Debby, his girlfriend, and
11 didn't know on the day of the meeting how she had
12 used the money; is that right?

13 A. No.

14 MR. BAER: It's argumentative. Asked and
15 answered.

16 THE WITNESS: No, that's not how I would
17 characterize it.

18 THE COURT: Hold on. I think there's a
19 slight change, so you can go on. It's not how you
20 would characterize it.

21 THE WITNESS: Yeah. That's right. I think
22 his providing that response, that chain of responses,
23 for me showed his attitude that my impression was
24 that he was fine with however she used the money and
25 if it was buying the house or not buying the house,

1 he was just happy that she had it and it was her
2 decision what she did with it.

3 So for me, that's not necessarily confusion,
4 but just this attitude that he had regarding the
5 gift.

6 BY MR. BIORN:

7 Q. When you discussed the gift of \$1.1 million
8 with him, he couldn't tell you whether it was done by
9 way of a personal check or some other form, correct?

10 A. Well, the word "couldn't" means he's not
11 capable. He didn't specify. Specifically, he said
12 he believed it was a certified check or it could have
13 been a personal check.

14 Q. What's a certified check?

15 A. It's a check that is a direct draft from the
16 account printed by the bank. It's like cash.

17 Q. Is that different from a cashier's check?

18 A. Gosh, I think a cashier's check can be
19 certified, so they're the same perhaps. Now you're
20 making me think. Is there a difference? I don't
21 think so.

22 Q. Did you tell Mr. Ho what a certified check
23 was?

24 A. Did I define it for him?

25 Q. Yes.

1 A. Indirectly, because when he was talking about
2 going to the bank and procuring the check, I
3 clarified for him do you believe it was a certified
4 check since you went to the bank to get it, or a
5 cashier's check. And I believe he said yes.

6 Q. In the next sentence, you say "He said that
7 if he had needed the same amount of money, he was
8 sure that Debby would have done the same for him."

9 Did he tell you that Debby had over a million
10 dollars cash to gift to him?

11 A. I can't recall.

12 Q. Did Debby tell you that?

13 A. I can't recall.

14 MR. BIORN: We've been going a little over an
15 hour. I couldn't do the math in my head. Let's take
16 a short break. I know the court reporter needs some
17 breaks, especially when I talk so fast.

18 THE COURT: I agree.

19 (Whereupon, a break was taken.)

20 MR. BIORN: Okay.

21 BY MR. BIORN:

22 Q. We were talking earlier about what Mr. Ho
23 told you about his assets. And it was important to
24 you that Mr. Ho knew, to some degree, what his assets
25 were?

1 A. Well, the reason why I was asking about his
2 assets?

3 Q. Is that right, it was important to you?

4 A. If I said that, it would be misleading.

5 Can I say in what context it would be
6 important?

7 Q. Please tell us.

8 A. I was trying to establish that he was in
9 control of his finances.

10 Q. Now, I believe you testified that it would
11 have been significant to you if Debby had represented
12 herself as his wife when, in fact, she wasn't?

13 A. Yes.

14 Q. And it would have been significant to you if
15 Debby had done that on a bank loan application,
16 right?

17 A. Potentially.

18 Q. And Mr. Ho told you that Debby never asked
19 for money, right?

20 A. I don't recall him saying those words.

21 Q. Let's look at your deposition page 128.
22 Actually, I think it's in your handwritten notes, but
23 page 128 of your deposition refers to it.

24 And I think you're reading your notes into
25 the record here, that you wrote -- let me re-ask the

1 question.

2 You wrote in your notes that "Mr. Ho said
3 that Debby never asked for money, feels that if have
4 had separate in the beginning of relationship for
5 James, money is whatever is left."

6 A. I can't recall that, but I see that answer in
7 the transcript.

8 Q. And would it have been significant for you if
9 you had learned that Mr. Ho had been writing numerous
10 checks to Debby for the amounts of 5,000 and \$10,000?

11 A. Yes.

12 Q. Did Mr. Ho tell you that he had been writing
13 checks in those amounts to Debby in the year or so
14 prior to your meeting?

15 A. I recall learning about some payments that
16 were being made by him.

17 Q. No, I'm just asking if Mr. Ho told you.

18 A. Well, I can't recall.

19 Q. Okay.

20 A. But I learned that information.

21 Q. Did Debby ever tell you that, in addition to
22 the \$1.1 million gift, that Mr. Ho had been writing
23 other checks to her for 5,000 and \$10,000?

24 A. Not the specific amounts, no.

25 Q. So for instance, neither Debby nor Mr. Ho

1 told you that he wrote her a check for \$5,000 in July
2 of 2016?

3 A. That's not what I said.

4 Q. I'm asking you: Did Debby or Mr. Ho tell you
5 that Mr. Ho wrote Debby a check for \$5,000 in July
6 2016?

7 A. Not specifically.

8 Q. Okay.

9 MR. BIORN: And I'm going to ask it as Mr. Ho
10 and Debby because I think that it will shorthand it
11 if that's okay with you, Mr. Baer.

12 MR. BAER: I don't understand what you mean,
13 so yes to you.

14 BY MR. BIORN:

15 Q. Did either Debby or Mr. Ho tell that you
16 Mr. Ho had written her a \$10,000 check in August of
17 2016?

18 A. Not specifically.

19 MR. BAER: I object to this as cumulative
20 under 452. There's a way to cover this without going
21 through every check.

22 THE COURT: I have to admit that I hope so,
23 so we doesn't have to go through every check.

24 BY MR. BIORN:

25 Q. Did either Debby or Mr. Ho ever tell you that

1 Mr. Ho wrote 11 checks to Debby in the year prior to
2 your meeting totaling almost \$100,000?

3 A. Never.

4 Q. Would that have raised a red flag for you?

5 A. Perhaps.

6 Q. And it would have been significant to you if
7 Debby had yelled at Mr. Ho in the few hours prior to
8 his meeting with you, right?

9 A. Yes.

10 Q. Would it have raised a red flag for you if
11 Debby had said to Mr. Ho in the hour or so prior to
12 the meeting -- in fact, this whole line of questions
13 is going to be the same day as your meeting with
14 Mr. Ho. Okay?

15 A. Okay.

16 Q. Then I don't have to be repetitive.

17 A. Sure.

18 Q. Would that have raised a red flag for you if
19 Debby said to Mr. Ho that she would leave him if he
20 didn't reinstate the appointment with you?

21 A. Yes.

22 Q. Would that have raised a red flag for you if
23 Debby -- if Mr. Ho told Debby he didn't want to meet
24 with you?

25 A. Yes.

1 Q. Would that have raised a red flag for you if
2 Debby told Mr. Ho that she would leave him if he
3 didn't reinstate the appointment with you?

4 MR. BAER: Objection. That's the exact same
5 question he was asked before.

6 THE COURT: Sustained.

7 BY MR. BIORN:

8 Q. Would it have raised a red flag for you if
9 Debby told Mr. Ho that Peter his son wanted to
10 brainwash him or words to that effect?

11 A. Potentially.

12 Q. Would it have raised a red flag for you if
13 Debby told Mr. Ho that she would leave and take the
14 \$1.1 million with her?

15 A. Yes.

16 Q. Would it have raised a red flag for you if
17 Debby told Mr. Ho that if he doesn't meet with you
18 that she would leave and not help him anymore?

19 A. Yes.

20 Q. Would it have raised a red flag for you if
21 they raised their voices during that conversation?

22 A. Yes.

23 Q. Would it have raised a red flag for you if
24 Debby said to Mr. Ho that he needed to tell
25 Mr. Martin that the \$1.1 million was a gift?

1 A. Yes.

2 MR. BAER: Objection. Lacks foundation.

3 MR. BIORN: I'm reading from the transcript,
4 the rough that we have.

5 MR. BAER: I don't care. I still think it
6 lacks foundation.

7 MR. BIORN: What's the foundation?

8 THE COURT: I'm going to take this subject to
9 you striking it if you can't establish a foundation.
10 It's still up in the air if these tapes are coming
11 in.

12 MR. BIORN: I'm not talking about the tapes,
13 talking about what Debby testified to. Has nothing
14 to do with the tapes.

15 "Question: Well, during this conversation,
16 did you tell Mr. Ho that he needed to tell Mr. Martin
17 that the \$1.1 million was a gift.

18 I may have."

19 And most of these other ones she said yes.
20 I'm just going what she already testified that she
21 said or may have said to him. I'm not --

22 MR. BAER: She may have said something, that
23 doesn't lay a foundation, I don't think.

24 BY MR. BIORN:

25 Q. Would it have raised a red flag for you if

1 Mr. Ho said ask Debby what she wanted him to say to
2 you at the meeting?

3 A. Yes.

4 Q. Just a few more. Would it have raised a red
5 flag for you if Debby told Mr. Ho to call Mr. Martin
6 right now and tell him to come over now?

7 A. In that exact phrasing, yes.

8 Q. Did you -- would it have raised a red flag
9 for you if Debby said to Mr. Ho, why won't you call,
10 you are ready now, your mind is clear, you are clear
11 or words to that effect?

12 A. Potentially.

13 Q. Did Mr. --

14 THE COURT: Just for my understanding, you're
15 looking at a list that you made during Ms. Chang's
16 testimony?

17 MR. BIORN: No, I'm reading the rough
18 transcript that the court reporter provided to me.

19 THE COURT: Oh, okay. Got it. Thank you.

20 BY MR. BIORN:

21 Q. Do you remember at your deposition we
22 looked -- or you looked at a gift letter?

23 A. I can't recall that.

24 MR. BIORN: What exhibit is that for us?

25 Sorry.

1 MR. FRASER: It's either 79 or 179.

2 MR. BIORN: 79.

3 BY MR. BIORN:

4 Q. If you could take a look at Exhibit 79. It's
5 in this big binder here.

6 So you're looking at a gift letter that's
7 Exhibit 79.

8 Do you recall discussing this at your
9 deposition?

10 A. No.

11 Q. Did you see this gift letter at or -- I'm
12 sorry -- before Mr. Ho died?

13 A. I can't recall.

14 Q. Did you discuss this gift letter with Mr. Ho?

15 A. Indirectly.

16 Q. Did you discuss this specific gift letter
17 with Mr. Ho?

18 A. No.

19 Q. Did you refer to the gift letter at all with
20 Mr. Ho?

21 A. Indirectly.

22 Q. Did you refer to this specific gift letter?

23 A. No.

24 Q. Okay. Did Mr. Ho refer to the specific gift
25 letter?

1 A. He may have, but I don't recall specific
2 words of the gift letter, this gift letter.

3 Q. And Debby didn't refer to it at all either?

4 A. Not that I recall.

5 Q. Okay. Would it -- do you see Mr. Ho's --
6 donor signature, do you see a signature above it
7 James F. or Z Ho, do you see that?

8 A. I see the signature.

9 Q. Okay. Would it have been -- do you see it
10 was signed on March 9, 2017, or there's a date of
11 that, do you see that?

12 A. Yes.

13 Q. And that's oh, about five months prior --
14 five and a half months prior to your meeting with
15 Mr. Ho?

16 A. Correct.

17 Q. Would it have raised a red flag for you if
18 you knew that Mr. Ho's signature on this gift letter
19 was a forgery?

20 A. Yes.

21 Q. Would it have raised a red flag for you if
22 you knew that Debby Chang signed this letter and
23 Mr. Ho's signature was forged?

24 A. Yes.

25 Q. Did Mr. Ho tell you that -- strike that.

1 Now --

2 MR. BIORN: Sorry. Scott, what number is the
3 receipt?

4 MR. FRASER: The receipt?

5 MR. BIORN: I can pull it up. My apologies,
6 Your Honor.

7 BY MR. BIORN:

8 Q. Let's have you turn to Exhibit 78. This
9 morning you said, when Mr. Baer asked you about the
10 donative instrument, you said you were not able to
11 review the actual check, right?

12 A. Right.

13 Q. This is a document that's been admitted in
14 trial. It's a cashier's check. It's a purchaser
15 copy of a cashier's check. The remitter is you can
16 see in the upper left was James F. Ho. The payee is
17 Debby Chang. And the amount is \$1.1 million.

18 This has been referred to in this trial as
19 the gift that Debby claims was given to her by
20 Mr. Ho.

21 MR. BAER: Well, I don't think that's quite
22 right. The money is the gift.

23 MR. BIORN: Okay. Fair enough.

24 BY MR. BIORN:

25 Q. This is a purchaser's copy of the cashier's

1 check by which Mr. Ho transferred \$1.1 million that
2 Debby claims was a gift. Okay? That's what we've
3 been referring to this as in the trial.

4 Do you understand that?

5 A. I understand that you're referring to this
6 check and that it reflects a gift.

7 Q. Did Debby provide you a copy of this prior to
8 your meeting with Mr. Ho?

9 A. No.

10 Q. Did Debby tell you this existed?

11 A. Indirectly, yes.

12 Q. Okay. What did she say about the receipt?
13 What I'm -- maybe I didn't ask the question well.

14 Did Debby tell you that she had a purchaser
15 copy of the actual cashier's check by which Mr. Ho
16 made the transfer?

17 A. She didn't refer to those words.

18 Q. Did she offer to show you something like
19 that?

20 A. I can't recall.

21 Q. Would you have wanted to review this
22 document, Exhibit 78, if you knew it existed when you
23 were meeting with Mr. Ho?

24 MR. BAER: Objection. Calls for speculation.

25 MR. BIORN: Well, Mr. Baer asked him about --

1 it would be a donative instrument.

2 THE COURT: Hold on. It is speculation.
3 Just ask him his ordinary course of business, or
4 something like that. Just get around it.

5 MR. BIORN: Okay.

6 THE COURT: Let's move on.

7 BY MR. BIORN:

8 Q. Would it be your custom and practice to
9 review the donative instrument?

10 A. In the case of a will or trust, yes. In the
11 case of a cash gift, no.

12 Q. Did Debby tell you -- strike that.

13 Did Debby tell you that she wrote on the
14 purchaser copy in Chinese that this was the money
15 loaned to her from Ho?

16 A. I'm sorry, I'm losing the context here. I
17 don't have any recollection of that specifically.

18 Q. Okay. At some point, you adjourned the
19 meeting with just Mr. Ho and invited Debby to join
20 you, right?

21 A. Mr. Ho was present and then I invited
22 Ms. Chang to join us, yes.

23 Q. Okay. And during that meeting, Ms. Chang
24 told you about a real property tax benefit that Peter
25 had -- sorry, that Mr. Ho had provided to his son

1 Peter, right?

2 A. Yes.

3 Q. And you never adjourned the meeting with
4 Debby to ask Mr. Ho about that just between the two
5 of you, did you?

6 A. No, the meeting was adjourned and then
7 afterwards, as I described, went back to debrief with
8 my associate.

9 Q. You couldn't talk to Mr. Ho after Debby
10 joined you because he fell asleep in the room?

11 A. He did.

12 Q. He fell asleep in his chair?

13 A. Yes.

14 Q. So you were never able to -- you never
15 actually asked Mr. Ho about the transfer of this tax
16 benefit to Peter?

17 A. I did actually bring it up to him in a letter
18 that I wrote to him.

19 Q. Did he respond?

20 A. No.

21 Q. So you have no idea what his response would
22 be with respect to this tax benefit?

23 A. I wanted to know what his response was by
24 asking him to contact me to discuss it.

25 Q. Why didn't you ask him on the 21st?

1 A. He had fallen asleep.

2 Q. You could have woken him up, right?

3 A. That would have been extremely rude. No, I
4 don't think that would be appropriate.

5 Q. You didn't call Peter to ask him about the
6 tax benefit transfer, did you?

7 A. No.

8 Q. And you never found out where Mr. Ho was
9 living at the time he transferred the tax benefit to
10 Peter?

11 A. Well, this is very vague in my mind. I
12 believe, if I recall, we talked about a prior home in
13 Foster City --

14 Q. Okay.

15 A. -- that was sold.

16 Q. So after he sold his long-time primary
17 residence, he was able to transfer his real property
18 tax base year to -- one time to Peter, correct?

19 A. Are you referring to the law itself and my
20 understanding of what he did specifically?

21 Q. Yes.

22 A. Or what I was told that he did?

23 Q. No, your understanding of the law.

24 A. My understanding of the law is that, at that
25 time, there was an ability for a parent to transfer

1 the base year value of a residence from parent to
2 child regardless of the value of the home.

3 Q. And he had a two-year period in which he had
4 to make that transfer, correct?

5 A. No. I believe the period was three years.

6 Q. Okay.

7 A. For filing -- for filing the form after the
8 time of repurchase. I think it might have been one
9 year, but maybe you count the year of the transfer --
10 of the sale. So maybe two years, yeah.

11 Q. Okay.

12 A. This is all prior law and -- Proposition 58.

13 Q. With respect to the transfer of the tax
14 benefit, you never talked -- you were never able to
15 talk to anyone to confirm what Debby told you, right?

16 MR. BAER: Objection. Vague and ambiguous as
17 to able.

18 THE COURT: I'm sorry, you modified it in
19 connection with the tax basis?

20 MR. BIORN: Yes.

21 THE COURT: Overruled.

22 THE WITNESS: My assumption was that I would
23 be able to talk to James Ho about that in response to
24 the letter which I sent to him.

25 BY MR. BIORN:

1 Q. Okay. But you sent that letter to him after
2 you had signed the CIR, certificate of independent
3 review, right?

4 A. I can't recall the order of events.

5 Q. In that meeting with Debby and Mr. Ho was
6 there as well, she told you about another gift around
7 the same time of the \$1.1 million of about another
8 \$67,000, right?

9 A. I can't recall that.

10 Q. Debby told you that she called Peter and she
11 said didn't feel comfortable about having this gift
12 made to her.

13 Do you recall that?

14 A. Vaguely.

15 Q. If that was not true, would that have raised
16 a red flag for you?

17 A. If she lied to me, yes.

18 Q. Debby said she wanted to, at one point in
19 time, wanted to prepare a promissory note to make it
20 a loan that she would pay back to Mr. Ho, right?

21 A. Correct.

22 Q. Would that have caused -- if that was not
23 true, would that have raised a red flag for you?

24 A. If she lied to me about that, yes.

25 Q. And Debby told you that Peter had said to

1 Debby not to put the new home in Mr. Ho's name,
2 right?

3 A. I recall that.

4 Q. Would that have been a red flag if that was
5 not true?

6 A. Had she lied to me about that, yes. In other
7 words, the fact that something happened is not the
8 red flag. The fact of lying to me about these things
9 is the red flag.

10 Q. Yes. And all these things that I'm asking
11 about, Debby only had these substantive conversations
12 with you at this meeting after you had met with
13 Mr. Ho, right?

14 A. Well, there were substantive things raised in
15 these Oesterle e-mails that appeared to be linked to
16 communications she had with Reinhard. Those weren't
17 directly from her.

18 Q. So I'm just asking what Debby actually told
19 you substantively about the subject you were talking
20 to Mr. Ho about.

21 A. Yes.

22 Q. Those conversations only occurred during this
23 meeting after you were done with Mr. Ho?

24 A. The only conversation I recall was this
25 meeting that I had one-on-one with her.

1 Q. Okay.

2 A. There were notes that -- you know, she sent a
3 note.

4 Q. Since you didn't wake Mr. Ho, it's fair to
5 assume that everything she told you in that meeting
6 you never confirmed with Mr. Ho; is that right?

7 A. Yes. Although I tried to confirm some of
8 those details with him subsequently.

9 Q. Did you tell your associate Beth that James,
10 Mr. Ho, may be easily influenced?

11 A. I raised that issue with her. I don't think
12 I used the words "may be easily influenced." I might
13 have, but I don't recall that specifically.

14 Q. Let's look at your deposition page 162, lines
15 15 to 17. "Did you tell Beth that James may be
16 easily influenced?

17 Answer: I probably did."

18 Does that refresh your recollection?

19 A. I can see what I said here in the deposition
20 and I vaguely remember having a conversation about
21 concerns that I had with an elderly person, et
22 cetera.

23 THE COURT: Geoffrey MacBride is entering the
24 waiting room.

25 MR. BAER: Who's that?

1 MR. FRASER: I think that might be an
2 associate of Erik Weiss's.

3 MR. BAER: Oh, yes, you're right.

4 THE COURT: Okay. No problem linking him on?

5 MR. BIORN: No.

6 THE COURT: Okay. Go ahead.

7 BY MR. BIORN:

8 Q. Now, at some point in time, as I recall,
9 Debby told you that Mr. Ho was no longer spending the
10 night at her house?

11 A. I can't recall that.

12 Q. Did she say words to the effect that she
13 thought Mr. Ho's children had abducted her --
14 abducted him?

15 A. I came to that conclusion on my own.

16 Q. What did Debby say to you to lead you to that
17 conclusion?

18 A. I'm sorry, I don't think Debby said anything
19 that led me to that conclusion.

20 Q. The abduction?

21 A. Well, where I stand right now, I recall some
22 different facts. I don't know if you're asking me
23 about those.

24 Q. And I believe you testified that your
25 understanding was that all three of the Ho children

1 had taken possession of their father and he was no
2 longer residing with Debby; is that right?

3 A. I can't recall that.

4 Q. Are those the circumstances that you recall?

5 A. Yes.

6 Q. Did you learn that from Debby?

7 A. Well, I think the first impression I remember
8 having was that the -- I was in a meeting at my
9 office in Menlo Park and then I think my assistant
10 told me that Peter Ho was there with his father and
11 his children and I wasn't available to meet with
12 them, but I was confused why he was there with his
13 children.

14 Q. Well, Mr. Ho's at your office and you really
15 wanted to get a hold of him you told us?

16 A. I sent him a letter.

17 Q. But here he is at your office. Did you take
18 the opportunity to meet with him?

19 A. No.

20 Q. Did you take the opportunity to have your
21 secretary set up a meeting with him?

22 A. I don't see that as an opportunity to meet
23 with him. I don't just get up and leave from
24 existing client appointments.

25 In fact, I didn't learn of all the specific

1 circumstances of what happened until later. My
2 assistant Jackie was actually the one who was really
3 concerned. She said to me, John, I think there's
4 something really going on here. That's not a good
5 situation for this man to be, you know, taken around
6 by his kids like this.

7 And so after talking to Jackie, this was
8 after my appointment, I thought, wow, that really is
9 very concerning.

10 Q. Did you ask Jackie to set up a meeting with
11 Mr. Ho?

12 A. Specifically?

13 Q. Yes.

14 A. I can't remember asking her to do that.

15 Q. Did you ask Jackie to call Mr. Ho?

16 A. That would be redundant since I just sent a
17 letter to him asking for that.

18 And I also, at that point, had concerns that
19 the children were controlling him, his movements.
20 And so I had suspicion that at any time they would be
21 the ones responding, not him.

22 Q. And what did you do, if anything, to confirm
23 whether those suspicions were accurate?

24 A. Well, there was very little I could do at
25 that point.

1 Q. Now, at some point, you testified this
2 morning, I think, that Debby sent you a letter
3 returning some of the mail that you had sent to her
4 house?

5 A. Yes.

6 Q. To the Redwood City house?

7 A. Yes.

8 Q. And one of those was the envelope containing
9 the certificate of independent review, right?

10 A. I believe so. I think I said earlier I
11 wasn't sure which envelope contained which document.
12 We have them in my file. Whether it was in one
13 packet, the note plus the documents, right, I'm not
14 sure how many envelopes came to me. I know that they
15 were in my file.

16 Q. But you know that the -- the original
17 certificate you sent to Mr. Ho got returned to you?

18 A. Where I stand right now, I can't recall
19 whether the original was returned to me.

20 Q. Would it have been your custom and practice
21 to review what had been returned to you?

22 A. Not necessarily.

23 Q. Would you want to know if -- would it be your
24 custom and practice to determine whether Mr. Ho
25 actually received the certificate of independent

1 review?

2 A. Not necessarily. I would prefer that.

3 MR. BIORN: So let's mark this next in order.
4 It's a statute Probate Code Section 21384.

5 THE COURT: You don't want me to just take
6 judicial notice of this?

7 MR. BIORN: I'm fine with that as long as I
8 can show the witness a copy.

9 THE COURT: Sure. I can also mark it if you
10 want.

11 MR. BIORN: That's okay. We don't need to.
12 It's a copy of Westlaw printout of Probate Code
13 Section 21384.

14 BY MR. BIORN:

15 Q. Now, the -- this section says at the
16 beginning "A donative transfer is not subject to
17 21380 if the instrument is reviewed by an independent
18 attorney."

19 And I think that you've told us that in this
20 particular instance, it was a gift and your practice
21 is not to review the actual instrument?

22 A. That's not exactly my testimony. I said my
23 practice would be to review the instrument in the
24 case of a will or trust. But in the case of a cash
25 transfer, the amount of the cash which is transferred

1 specifically.

2 Q. But in this particular instance, you did not
3 review the donative instrument, did you?

4 MR. BAER: Objection. Lacks foundation.

5 MR. BIORN: Okay.

6 BY MR. BIORN:

7 Q. Did you review the donative instrument?

8 MR. BAER: Same objection.

9 THE WITNESS: I reviewed the substance of the
10 transfer which was the cash transfer to Debby Chang,
11 not the cashier's check, if that's what you mean.

12 THE COURT: I'm going to overrule your
13 objection, Mr. Baer.

14 MR. BIORN: Okay.

15 BY MR. BIORN:

16 Q. Well, that's what they told you about, but
17 the instrument would be a document, right?

18 MR. BAER: Objection. Calls for speculation.

19 THE COURT: On those grounds, I'm going to
20 overrule it.

21 THE WITNESS: Well, is there a statutory
22 definition of instrument here?

23 BY MR. BIORN:

24 Q. I'm not aware of one. The statute says you
25 need to review the donative instrument.

1 What did you do to do that?

2 A. I asked questions to Mr. Ho about the cash
3 transfer that he made.

4 Q. At the end of this opening paragraph, and
5 before the form of certificate of independent review
6 it says that the independent attorney, and it says
7 "Signs and delivers to the transferor an original
8 certificate in substantially the following form" and
9 there's no objection to your form.

10 Did you -- did you deliver the original
11 certificate to Mr. Ho?

12 A. Yes.

13 Q. And if Debby -- Debby returned envelopes to
14 your office that you had sent to her house, right?

15 A. Presumably.

16 Q. And did you review those to see whether, as a
17 result of that, the certificate had never been
18 delivered to Mr. Ho?

19 A. I can't recall what was returned aside from
20 the note I just looked at.

21 Q. Did you review the statute to see if you
22 needed to deliver the statute -- the certificate to
23 Mr. Ho?

24 A. Yes.

25 Q. When the envelopes came back to you, did you

1 review them to see if you had actually been able to
2 comply with the statute?

3 A. I had complied with the statute by delivering
4 them to him.

5 Q. So it's your opinion that just putting them
6 in the mail is sufficient?

7 A. I don't think it's required to hand them to
8 him physically. I think mail is an acceptable form
9 of delivery.

10 Q. If you -- if you had become aware that the
11 certificate had not been delivered to Mr. Ho despite
12 mailing it, do you believe the statute required you
13 to then find a way to deliver it to Mr. Ho?

14 A. No.

15 Q. And, in fact, you didn't make any efforts to
16 send it to Mr. Ho again after it had already been
17 mailed once?

18 A. I sent him a follow-up letter expressing
19 concerns and wanting to get in touch with him.

20 Q. By the time --

21 MR. BAER: Hold on a second. I just noticed
22 this. I want to make an objection, but I think I'll
23 withdraw it later.

24 So this particular printout relates to a
25 statute that took effect on January 1, 2018 which

1 would have been after this certificate of independent
2 review. I don't think that the statute, this part of
3 the statute changed effective January 1, 2018, but
4 I'm going to check.

5 THE COURT: Okay. Thank you.

6 MR. BIORN: Please do. That would be news to
7 me.

8 MR. BAER: I don't think this part changed.

9 BY MR. BIORN:

10 Q. It's your understanding that Mr. Ho left
11 Debby's house within a couple days after your meeting
12 on the 21st; is that right?

13 A. I can't recall.

14 Q. Well, it was in August; is that right?

15 A. I don't even remember. Did you say the
16 meeting was September?

17 Q. August 21.

18 A. August 21.

19 Q. And Mr. Ho left residing at Debby's house
20 also in August, right?

21 A. I don't have these timeline facts memorized.

22 Q. We can go through the deposition and provide
23 you --

24 A. That's up to you as the questioner.

25 Q. Represent to you that this occurred in

1 August.

2 A. That what occurred?

3 Q. That Mr. Ho left living with Debby occurred
4 in August.

5 A. Okay.

6 Q. After Mr. Ho left living with Debby, did you
7 become aware that she told Peter that you can keep
8 him as much as you want?

9 A. I don't recall that.

10 Q. If she had said that just a few days after
11 the -- you met with Mr. Ho, would that have raised a
12 red flag for you?

13 A. Yes.

14 Q. A few days after, on August 23rd, two days
15 after you met with Mr. Ho Debby left a voicemail for
16 Peter's wife saying "Hi, Jeanny, this is Aunt Debby.
17 I just left a message for Peter saying that I can no
18 longer take care of Daddy Ho anymore because of my
19 age and health. I forgot you and Peter have to work
20 so if you need me to take care of him for a short
21 time, I can still do it. The decision to stop taking
22 care of him was very sudden. My back is not good.
23 If needed, I can still care for him a few days."

24 If you knew that Debby left that voicemail
25 two days after you met with Mr. Ho, would that have

1 raised a red flag?

2 A. As you've defined red flag, yes.

3 Q. And then on August 24, so three days after
4 you meet with Mr. Ho, Debby leaves a voicemail for
5 Peter, "I want to tell you primarily what I told you
6 in the text message that I can no longer take care of
7 your dad. If he wants to meet me, I can come see
8 him."

9 The fact that she, three days after you
10 confirmed the gift is not a product of undue
11 influence, she said that she can no longer take care
12 of Mr. Ho, would that have raised a red flag for you?

13 A. It's a red flag.

14 Q. And she said "If he wants to meet me, I can
15 come to see him."

16 If she actually never even went to see him
17 until he was comatose, would that have raised a red
18 flag for you?

19 A. Potentially, depending on the context.

20 Q. Now, you prepared a letter to Mr. Ho.

21 MR. BIORN: We will mark this next in
22 order -- Scott?

23 MR. FRASER: 183.

24 THE COURT: Thank you.

25 MR. BIORN: These appear to have not been

1 three-hole punched. That's my fault this time.

2 MR. BAER: Thank you.

3 (Whereupon, Exhibit 183 was marked for
4 identification.)

5 BY MR. BIORN:

6 Q. Let me show you what's been marked
7 Exhibit 183. It's from your file. The lower
8 right-hand corner it has Bates stamps JM 57 through
9 60.

10 Do you recall drafting this letter?

11 A. No.

12 Oh, you know what, I do recall some aspect of
13 this now as I read it over. But I'll wait for your
14 question.

15 Q. Why were you drafting this letter?

16 A. I believe there was going to be an
17 appointment with James Ho and so I drafted a letter.
18 It was completely a draft and I was reserving, you
19 know, any ability to change this, but it was after I
20 had spoken I believe it was with Ed Koplowitz who was
21 representing Peter Ho and he had some concerns about
22 the transaction about the certificate of independent
23 review.

24 And so I drew up this letter, but with the
25 thought that, you know, it might be changed or it

1 might not be necessary or it might be something I
2 would rule out based on my meeting with him
3 subsequently.

4 Q. And at this point in time, you wanted to meet
5 with Mr. Ho because you had some concerns, right?

6 A. Yes.

7 Q. And a meeting never got set up?

8 Well, I'm sorry. A further meeting with
9 Mr. Ho never happened; is that right?

10 A. I can't recall if we set up a meeting and
11 then he passed away before he could come or if there
12 was a cancellation. I can't recall specifically.

13 Q. Were you waiting for somebody else to make
14 the meeting or did your office reach out to Mr. Ho to
15 make the meeting?

16 A. I can't recall. But I will say this was
17 going to be by hand delivery. My assumption in
18 writing it was that I was going to be able to meet
19 with him one-on-one.

20 Q. At this time, you knew he was no longer
21 living at the Redwood City address?

22 A. I'm not sure if I did know that definitively.

23 Q. So looking back at Exhibit 183, in the
24 letter, you do articulate that "it appears that Peter
25 Ho recently took you against your will from your home

1 at 229 Fulton Street."

2 Do you see that?

3 A. I see those words.

4 Q. So you knew he was no longer at 229 Fulton
5 Street?

6 A. No. I knew that he was taken against his
7 will from 229 Fulton Street.

8 Q. Why did you address this letter to him at 229
9 Fulton Street?

10 A. Because I assumed he was still living there.

11 Q. Did you try to call him?

12 A. No.

13 Q. You had Peter Ho's contact information at
14 this point?

15 A. Let me clarify. I don't recall whether I
16 specifically called him.

17 Q. You had Peter Ho's contact information at
18 this point, right?

19 A. He was a represented party, but yes.

20 Q. Did you reach out to his attorney to ask him
21 if you could get in touch with Mr. Ho?

22 A. No. No, instead, I wanted to be engaged by
23 Mr. Ho so that I could engage with Ed Koplowitz
24 regarding these concerns and wishes and interact on
25 his behalf.

1 Q. But other than drafting and not sending this
2 letter, your office made no effort to contact Mr. Ho
3 to find out if you could provide that information to
4 Mr. Koplowitz?

5 A. I can't recall, but my assumption is there
6 are efforts surrounding this because obviously the
7 meeting was set. And I can't recall specifically how
8 it was set.

9 Q. You said obviously the meeting was set. How
10 do you know that?

11 A. Well, there was an expectation that there was
12 going to be a meeting, so I'm assuming --

13 Q. So you're assuming?

14 A. I'm assuming we must have set a meeting
15 because I wrote this letter in anticipation of a
16 personal meeting with him.

17 MR. BIORN: I'll move to strike the
18 assumption. He can certainly testify to what he
19 wrote the letter for, but the assumption is
20 speculative.

21 THE COURT: Where are we going with this?
22 This wasn't sent?

23 MR. BIORN: That was not sent.

24 THE COURT: This is a draft?

25 THE WITNESS: It's a draft.

1 THE COURT: Okay. It's going to -- I don't
2 know where we're going. It looks like we're going
3 somewhat far afield. At least at some point, he
4 thinks there's a meeting, he doesn't know it.

5 Is that accurate?

6 THE WITNESS: Yes.

7 BY MR. BIORN:

8 Q. Did Mr. Ho mention to you that he had written
9 a note that said "I borrowed \$1 million from James Ho
10 without interest, will return at appropriate time"
11 and the note was dated March 20, 2017?

12 A. I'm sorry, could you repeat that?

13 Q. Did Mr. Ho tell you that he had written a
14 note that said "I borrowed \$1 million from James Ho
15 without interest, will return at appropriate time,"
16 dated March 20, 2017?

17 A. I'm sorry, are you referring to a note where
18 he said he borrowed money from himself?

19 Q. No. A note for Debby to sign that she
20 borrowed \$1.1 million --

21 A. Oh.

22 Q. -- that she would repay without interest by
23 March 20, 2017.

24 Did Mr. Ho tell you he wrote that note?

25 A. Not specifically.

1 Q. Did you form the opinion in your interviews
2 with Mr. Ho and Debby that Mr. Ho trusted Debby?

3 A. I did.

4 Q. And that he had confidence in her?

5 A. By confidence, what do you mean?

6 Q. Well, let's read from your deposition, page
7 203, for context start at line 22. And then go to
8 the top of page 204, line 1.

9 A. Right. So nowhere here does it say the words
10 "trust and confidence."

11 Q. I didn't use the word "trust." I used the
12 word "confidence."

13 A. I think you said in your prior question did
14 he trust her and we didn't talk about --

15 Q. Hold on.

16 MR. BIORN: Let's get the question read back
17 then.

18 (The record was read by the Reporter.)

19 BY MR. BIORN:

20 Q. So again, there was no word "trust."

21 A. I'm sorry, I thought it was the prior
22 question before the one that she had just asked where
23 you asked whether or not he said that he trusted
24 Debby Chang.

25 Q. And you answered that yes?

1 A. Actually, I can't recall. Let me clarify.
2 I'm thinking that he did trust her based upon his
3 conduct and the relationship he had, but I can't
4 recall him specifically saying the words "I trust
5 Debby Chang."

6 Q. I'd like to read from the witness's
7 deposition, page 203, line 22 to page 204, line 1.

8 MR. BAER: I think he already answered your
9 question about trust. It's not a big deal. Go
10 ahead.

11 BY MR. BIORN:

12 Q. "Did you form the opinion in your interviews
13 with James and Debby that James trusted Debby?

14 Answer: Yes.

15 That he had confidence in her?

16 Answer: Yes."

17 A. Right, I formed the opinion --

18 Q. There's no question pending.

19 Back to that Mercedes, Mr. Ho told you that
20 Debby drove him around in the Mercedes; isn't that
21 right?

22 A. I can't recall that.

23 Q. Let's look at your deposition, page 204, same
24 page we were on, line 18 to 21.

25 A. Yes.

1 Q. Actually, 18 to 25.

2 Does that refresh your recollection that
3 Mr. Ho said that Debby drove him around in the
4 Mercedes?

5 A. No, but I see that in the transcript.

6 Q. And your memory of these events was better --

7 A. In 2019.

8 Q. -- in May 2019 than it is today, right?

9 A. It was better several years ago, yes.

10 Q. So back to an earlier question about what
11 Mr. Ho told you about the date of the gift, I'd like
12 to refer you to page 213, line 7 through line 17.

13 And after you read that, my question is:
14 Does this refresh your recollection that Mr. Ho told
15 you that the gift was in March of 2017?

16 A. No, not specifically.

17 Q. So he's directing your attention to page 36
18 of your file where you state in your notes "James Ho
19 made a gift to Debby in March 2017. Is that your
20 understanding?

21 Yes.

22 Who told you that?

23 James Ho.

24 And when did he tell you that?

25 During our meeting in March -- sorry, in

1 August of 2017."

2 A. Well, the immediate --

3 Q. There's no question pending.

4 A. Oh, there's none, okay.

5 Q. In thinking back on your meeting with Mr. Ho
6 on August 21, how would you describe his intelligence
7 level?

8 A. He seemed intelligent.

9 Q. And we've heard some of the things he's told
10 you today. Did he seem profoundly intelligent?

11 A. What do you mean by "profoundly"?

12 Q. When you talked to him, could you feel a lot
13 of intelligence?

14 MR. BAER: Objection. Vague and ambiguous.

15 THE COURT: Sustained.

16 THE WITNESS: I'm not sure what that means.

17 BY MR. BIORN:

18 Q. At some point, did you start to believe that
19 he was more intelligent than you were?

20 A. No.

21 Q. Let's read from the witness's deposition.

22 A. Or at least I don't recall specifically.

23 Q. Page 25, line 25, to 26, line 16.

24 "Question: So in determining whether undue
25 influence might be present, what other factors might

1 you look at?

2 Answer: If I was aware of any actual abuse
3 or threats or violence or maybe also his weakness of
4 mind. So if he had any medications, he was taking
5 alcohol. So I wanted to make sure he was healthy.
6 That's why I looked around the room, make sure
7 everything was clean. He appeared to be very alert.
8 I didn't smell any alcohol. I didn't think he seemed
9 despondent in any way. He wasn't drooling. He was
10 very alert. He was right with me in the conversation
11 the entire time. He followed completely what I
12 said."

13 And then he actually seemed very -- he
14 followed completely what I said. And here's the
15 portion I just asked you about.

16 "He was profoundly intelligent. I could feel
17 a lot of intelligence. When you are with somebody
18 like that, you realize that, you know, perhaps at a
19 certain point, he was even more intelligent than I."

20 A. Right.

21 THE COURT: Could you tell me, again, what
22 you just read from?

23 MR. BIORN: Yes.

24 MR. FRASER: It's 225.

25 MR. BIORN: 225, line 25.

1 THE COURT: That certainly helps.

2 MR. BIORN: 225, line 25 to 226, line 16.

3 THE WITNESS: Right, I recall that testimony.

4 BY MR. BIORN:

5 Q. And so did you feel, at some point in time,
6 that he was more intelligent than you?

7 A. By "some point in time" --

8 MR. BAER: Hold on. Objection. Lacks
9 foundation.

10 THE COURT: Sustained.

11 BY MR. BIORN:

12 Q. At this deposition did you feel that you were
13 advocating for the validity of your certificate of
14 independent review?

15 MR. BAER: Objection. Irrelevant.

16 MR. BIORN: Goes to his bias, Your Honor.

17 THE COURT: It would. Overruled.

18 THE WITNESS: The testimony that I gave then
19 and that I'm giving today is not based on advocating
20 specifically for the independent review. It's for
21 saying what happened and giving my best
22 recollections. I'm under oath and that's what I'm
23 obligated to do.

24 BY MR. BIORN:

25 Q. Going back to your meeting with Debby right

1 after you finish your meeting with Mr. Ho, so Debby
2 and Mr. Ho, but he's asleep, so your meeting with
3 Debby, you asked her whether she had talked James
4 into giving her the million dollars; is that right?

5 A. I remember talking about, yes, questions
6 dealing with whether she had wanted him to give her
7 the money.

8 Q. Well, that's different. Page 40.

9 A. Page 40 of the deposition?

10 Q. No. Page 40 of your memorandum. So page 40
11 of your file, which is page 5 of 5 of your
12 memorandum.

13 A. I may not have the memorandum in front of me
14 anymore.

15 Q. I think it's this one here.

16 A. Oh, okay.

17 MR. BAER: 527.

18 THE WITNESS: I'm sorry, page 4?

19 BY MR. BIORN:

20 Q. Yes. The first sentence of the second full
21 paragraph --

22 THE COURT: We're not on the same page.

23 MR. BIORN: Okay. Oh, I'm sorry, it is
24 Exhibit 527, page 5 of 5.

25 THE COURT: We're on the same page.

1 MR. BIORN: The second full paragraph.

2 BY MR. BIORN:

3 Q. First sentence "I asked her whether she had
4 talked James into giving her the million dollars."

5 Do you see that?

6 A. Yes.

7 Q. That was my question. Did you ask her that?

8 A. Yes.

9 Q. "And she replied no"; is that right?

10 A. That's what I've written here.

11 Q. Is it your experience that people who commit
12 undue influence admit to it?

13 A. Sometimes.

14 Q. Other than asking Debby if she had talked
15 James into giving her the million dollars, did you
16 seek confirmation of that from any other third party,
17 anyone other than Debby or Mr. Ho?

18 A. Indirectly, yes.

19 Q. Who?

20 A. I was taking all the e-mails, all the
21 communications that I had from Reinhard, the
22 communications we had setting up the meeting, the
23 information that came through the family members --
24 I'm sorry, not through the family members, but
25 comparing Debby's statements with Reinhard's with

1 Mr. Ho's to see if everything was consistent.

2 Q. Okay.

3 A. So yes, there were other parties besides the
4 two.

5 Q. So Reinhard was one?

6 A. Yes.

7 Q. Who set up the meeting and you already said
8 that was a red flag, the fact that he was setting up
9 the meeting.

10 A. Based on what you defined red flag to be,
11 yes.

12 Q. And where did Reinhard mention anything about
13 whether Debby had talked James into giving her the
14 million dollars?

15 A. That's not what I was saying.

16 Q. Well --

17 A. I'm --

18 MR. BAER: Hold on.

19 MR. BIORN: I'm sorry.

20 (Simultaneous conversation.)

21 THE COURT: You can finish your answer.

22 THE WITNESS: I was saying at the time when I
23 wrote this memo that I was considering all the
24 information I had at that time which included all the
25 communications I had received.

1 BY MR. BIORN:

2 Q. And at the time you wrote this memo, you
3 hadn't received any communications about setting up
4 that subsequent meeting for which you supposedly
5 wrote the August 31, 2017 letter?

6 A. I'm sorry, what do you mean by "supposedly"?

7 Q. Well, you wrote --

8 MR. BAER: I find the question
9 unintelligible.

10 MR. BIORN: Okay.

11 BY MR. BIORN:

12 Q. Let's back up and ask a different question.
13 I've gotten lost.

14 Other than asking Debby whether she had
15 talked James into giving her the million dollars, did
16 you speak with anyone else about that -- about
17 whether Debby had talked him into doing that, other
18 than with Debby or Reinhard or Mr. Ho?

19 A. I don't believe so.

20 Q. In Reinhard's e-mail to you he said that
21 Debby could, quote, unquote, convince Mr. Ho to get
22 him to say the right thing to get the certificate of
23 independent review, right?

24 A. Those were the words in his e-mail.

25 Q. And you never asked Debby about that?

1 A. About why he wrote that e-mail?

2 Q. About the word "convince."

3 A. I don't recall asking her about the word
4 "convince."

5 Q. You never asked her why Reinhard would say
6 that to you?

7 A. No, but I was taking it into account.

8 Q. Next sentence is "She said no, she had
9 actually asked James not to give the money to her."
10 If that was an inaccurate statement, would
11 that have raised a red flag for you?

12 A. Yes.

13 Q. We've talked about the first part, she said
14 she had been insisting on drawing up a loan document
15 of some kind, she told you that.

16 And then the next part, "to add James' name
17 to title on the Fulton home."

18 Did she say that she considered doing that at
19 the time she received the gift?

20 A. I can't recall the specifics.

21 Q. Now, we looked at a letter from Mr. Ho. It's
22 attached to your deposition.

23 A. There's no letters attached to this copy.

24 Q. We looked at the document where it says "Dear
25 Mr. Martin, please provide my son Peter a copy of my

1 will."

2 THE COURT: If you don't mind -- yes.

3 MR. BAER: Do you have the specific exhibit?

4 MR. BIORN: I thought you guys had referred
5 to that. No?

6 MR. BAER: Are you talking about Debby's
7 note? No, we didn't ask him any questions about that
8 one.

9 THE COURT: We have that --

10 MR. BAER: We have that as an exhibit. Hold
11 on just a second.

12 I think it's 520. Pretty sure.

13 MR. KUO: Yes.

14 THE COURT: Okay.

15 MR. FRASER: There's also our 121.

16 BY MR. BIORN:

17 Q. Let's look at Exhibit 520. This is the note
18 that James Ho signed to you, "Dear Mr. Martin, please
19 provide my son Peter Ho a copy of all my estate
20 planning" -- I can't quite read it all.

21 Did you provide James Ho a copy of all the
22 estate planning you had done for him --

23 MR. BAER: Objection. Lacks foundation.

24 BY MR. BIORN:

25 Q. -- in response to this letter?

1 MR. BAER: Same objection.

2 THE COURT: He might not have done other
3 estate planning.

4 BY MR. BIORN:

5 Q. Did you provide Mr. Ho a copy of the
6 certificate of independent review after you received
7 this letter from him?

8 A. I had already delivered the certificate of
9 independent review to Mr. Ho.

10 Q. Did you have any concern, after receiving
11 this letter, that Mr. Ho hadn't received that
12 certificate of independent review?

13 A. No.

14 Q. Did you have any concern, after receiving
15 this letter, that Mr. Ho didn't remember that he
16 already had a copy of the certificate of independent
17 review?

18 A. Yes.

19 Q. And as of the date you received this letter,
20 in the lower left-hand corner, you had all the
21 contact information for Peter Ho, right?

22 A. It's on this note.

23 Q. So you had it, right?

24 A. I believe so. If this was delivered to me at
25 this date, then it would have been in my possession.

1 MR. BIORN: Your Honor, we've been going for
2 another hour. Is now a good time to break?

3 THE COURT: Sure, we can take a break.
4 (Whereupon, a break was taken.)

5 BY MR. BIORN:

6 Q. Not too many more questions, Mr. Martin. A
7 few of these are just cleanup.

8 I think we were talking about a time in which
9 you had to transfer the real property tax base year
10 to your son after -- to a child, after you sell your
11 residence. And we were talking about one, two and
12 three years.

13 Is the law that you must find the replacement
14 within two years and file for the exemption within
15 three?

16 MR. BAER: Objection. Relevance.

17 THE WITNESS: This was changed --

18 THE COURT: This is --

19 MR. BIORN: This is his big concern. I'm
20 going ask some follow-up questions.

21 MR. BAER: Okay. But I don't think it's
22 relevant.

23 THE COURT: You're talking about Prop --

24 MR. BIORN: This is the transfer of the real
25 property tax basis from father to son that he

1 mentioned.

2 THE COURT: Or any child.

3 MR. BIORN: That he mentioned in his memo.

4 MR. BAER: I don't see the relevance and
5 there wasn't a father-son transfer in this case.

6 THE COURT: Okay. We know what area you're
7 asking about. You can ask your next question.

8 BY MR. BIORN:

9 Q. So it's a transfer of the base year value
10 from -- that Mr. Ho provided to Peter.

11 MR. BAER: Objection.

12 MR. BIORN: We'd be done with this --

13 MR. BAER: I want to make sure the questions
14 make sense in context.

15 BY MR. BIORN:

16 Q. Is the rule that you must find the
17 replacement within two years and then file for the
18 transfer of the real property tax year basis within
19 three?

20 A. Okay. So first of all, this law was changed,
21 right, because the prior law was 58, Proposition 58,
22 and the current law is 19.

23 The years in which you need to buy the
24 replacement home have changed.

25 Q. Okay.

1 A. So currently --

2 Q. I don't want to know currently.

3 A. I think it was the second year. But right
4 now, I can't recall. We're operating under this new
5 regime.

6 Q. Fair enough.

7 A. And then there's also when you file the form.

8 Q. Yes.

9 A. So that's within three years after the
10 transaction itself.

11 Q. Okay.

12 A. Not like a statute of limitations, but the
13 County can sometimes let that go even if you go
14 beyond the three years.

15 Q. So when you learned about Mr. Ho transferring
16 his real estate tax base year to Peter, did you
17 investigate the date that he had sold his long-time
18 primary residence?

19 A. I started taking steps towards that, but
20 since it was outside of the scope of what I was being
21 asked to do, no.

22 Q. Did you investigate whether he owned a new
23 home after that?

24 A. No.

25 Q. Did you investigate how long he had owned

1 that new home?

2 A. No.

3 Q. Whether he wanted to keep that home at all?

4 A. How would I know his desires or his wants?

5 Q. Did you ask him?

6 A. I think we already established I never talked
7 with Peter Ho.

8 Q. So you had no idea whether Mr. Ho didn't want
9 to keep his real property tax basis because he wasn't
10 going to be able to find a replacement home within
11 two years?

12 A. I did have some idea based upon these
13 conversations that I had with Debby Chang, or the
14 meeting that I had with her.

15 Q. But you had no idea whether Mr. Ho was going
16 to be able to find a replacement within the two-year
17 period?

18 A. Are you talking about Peter Ho or James Ho?

19 Q. James Ho.

20 A. I'm sorry, he was finding a replacement home?

21 Q. Yes.

22 A. That's not even the issue. The issue with
23 the parent-child transfer is the parent sells their
24 home and buys a replacement home, but the issue was
25 Peter was coming on and therefore getting a

1 parent-to-child transfer.

2 Are you referring to base year value transfer
3 for senior citizens?

4 Q. Yes.

5 A. I thought you were talking about something
6 else.

7 Q. I'll withdraw the question.

8 A. You're talking about senior citizen
9 transfers. That's completely different.

10 Q. I'll withdraw the question.

11 A. I totally was confused there. That's why I
12 referred to Prop 58. That was parent to child. You
13 were talking about something completely different.

14 Q. So when Mr. Ho came to your office with Peter
15 Ho and he was downstairs, you didn't go down to meet
16 with him because, as you said, we don't take drop-bys
17 in our practice, that's not my practice, we're an
18 appointment only firm.

19 A. I recall saying that. I believe I also was
20 in a meeting at the time.

21 Q. Debby Chang told you that she was charging
22 Mr. Ho rent to stay at Redwood City, right?

23 A. I recall that.

24 Q. At \$3,500 a month, right?

25 A. No, I don't recall the specific amount.

1 Q. Okay. And you never directly asked Mr. Ho if
2 he wanted Debby to pay him the \$1.1 million back?

3 A. I'm sorry, can you repeat that?

4 MR. BIORN: Can you read the question back?

5 (The record was read by the Reporter.)

6 THE WITNESS: May have asked that directly.
7 That sounds like something I would have asked. I
8 don't recall right now.

9 BY MR. BIORN:

10 Q. You didn't advise him that he could ask Debby
11 for the money to be repaid; is that right?

12 A. Well, that does go to the subject of the sort
13 of thing I would have discussed with him, but I can't
14 recall the specific remarks.

15 Q. You didn't specifically advise him of that
16 ability, correct?

17 A. What ability?

18 Q. To have Debby pay the money back.

19 A. The ability to have her pay the money back?

20 Q. You didn't advise him that he could ask --
21 you didn't directly advise him that he could ask
22 Debby to have the money repaid?

23 A. No, not that I recall. That wouldn't make
24 any sense anyway in context.

25 Q. All right.

1 MR. BIORN: No further questions.

2 MR. BAER: Okay. I just have a few.

3 REDIRECT EXAMINATION

4 BY MR. BAER:

5 Q. So was there any reason for you to ask James
6 if he wanted to ask Debby to pay him back?

7 A. No.

8 Q. Why not?

9 A. Because it was a gift that he made and he was
10 insistent that he didn't want her to pay it back.
11 That's what he was saying all along.

12 Q. I believe you testified that you thought
13 Mr. Ho's attitude in the conversation with you was
14 cavalier. Can you explain what you meant by that?

15 A. Well, he was very calm and he had this
16 attitude about everything that he said, about his
17 background, about his relationships, about his
18 assets, about his relationship with Debby.
19 Everything he said, it seemed to be a little bit
20 dismissive, sort of being casual about his
21 experience, his background, although he was very
22 prideful about his children. So there, he started to
23 really experience -- he showed a lot of pride.

24 But yes, that's what I was referring to by
25 the cavalier attitude, you know, saying something

1 casually, moving on to the next subject, acting like
2 things weren't any big deal, like 1.1 million, et
3 cetera.

4 Q. Was there any single factor that was the most
5 important to you in forming your opinion that the
6 gift had not been procured by fraud or undue
7 influence?

8 A. Any single factors, plural?

9 Q. Any single factors, small group of factors?

10 A. Yes.

11 Q. Could you explain?

12 A. Well, I wanted to make sure that there wasn't
13 evidence of excessive persuasion by Debby Chang. So
14 I wanted to make sure that there was no evidence that
15 she was trying to convince him to give him this
16 money, that she repeated herself over and over again,
17 that she persisted, that she threatened him, that
18 she, you know, followed up and insisted that he do
19 something because, for me, that would show facts
20 supporting undue influence.

21 In addition, I also wanted to make sure that
22 what James was describing was consistent with what
23 Debby was describing. It's very hard even for
24 wrongdoers to be consistent. Usually it's very
25 difficult for that to happen.

1 So the fact that she was aligned with what he
2 said, with the facts, in the moment showed me that
3 there was no concern with this transfer that had been
4 done because I felt that if she had been dishonest or
5 if she had unduly influenced him, I would have seen
6 it in what she was describing in that meeting.

7 Q. Did Mr. Ho ever tell you whether he had ever
8 lived with his son Peter?

9 A. Not that I recall.

10 Q. I believe that Mr. Biorn asked you a question
11 about whether or not have you learned that Mr. Ho had
12 gifted a half interest in property he owned in Los
13 Angeles to Debby, that would be important to you --
14 would that have been important to you?

15 A. Right. I think the word "important," it's a
16 question of degree. It's certainly relevant and to
17 the extent that he had no knowledge of it, for
18 example, or he was mistaken about it, it might go to
19 his understanding about his finances, about what he
20 owned.

21 Q. Okay. Would the fact that that transfer have
22 occurred been relevant to you or not --

23 A. It's relevant.

24 Q. -- 11 years earlier.

25 Okay. Why would you consider it relevant?

1 A. That the transaction had occurred or had not
2 occurred? Because it shows an intent to gift
3 something to Debby, to make her this beneficiary of
4 assets of his. It shows a prior pattern of wanting
5 to benefit somebody who he dearly loves.

6 Q. Okay. And then, I guess similarly, you were
7 asked, I think, whether the fact that Ms. Chang had
8 received 11 checks totaling -- or almost \$100,000
9 from Mr. Chang [sic] would be relevant to your
10 inquiry or whether it would be a red flag I think you
11 said perhaps.

12 Why might that not have been a red flag?

13 A. Okay. Well, I gathered from these meetings
14 that James was paying for the costs for his room and
15 board through these payments to Debby to cover things
16 like food and travel and other expenses.

17 And so to the extent that those were
18 connected to those expenses, you know, it would be
19 very consistent with what had just been said by them
20 during the meeting.

21 Also, it would show that he had intent that
22 perhaps it was not a rental payment or not a cost
23 reimbursement, there may have been some other gift,
24 which you could take either way. Maybe it's
25 supportive of this pattern of benefitting from her or

1 based on the context, it could be a concern -- I'm
2 sorry, I'm starting to go beyond the scope of your
3 question.

4 Q. Okay. Did Mr. Ho tell you that he'd ever
5 been ambivalent about the idea of making a gift of
6 \$1.1 million to Debby?

7 A. Did he say he was ambivalent?

8 Q. Did he say anything to you to express any
9 kind of ambivalence about having made the gift?

10 A. By ambivalence, vocabulary check, that means
11 he didn't care one way or the other?

12 Q. Yes.

13 A. No, he cared very deeply. He wanted to make
14 sure that she would keep the money. That's the
15 opposite of ambivalence the way I'm understanding it
16 right now.

17 MR. BAER: No further questions.

18 RECROSS-EXAMINATION

19 BY MR. BIORN:

20 Q. Did it raise a red flag for you at all that
21 Mr. Ho or -- Debby was charging Mr. Ho rent after she
22 had -- after he had just given her a \$1.1 million
23 gift?

24 A. Yes.

25 Q. And you said to her, well, why would you

1 require him to pay rent? That doesn't really make a
2 lot of sense.

3 A. Yes.

4 MR. BIORN: I don't have anything further.
5 Thank you.

6 FURTHER REDIRECT EXAMINATION

7 BY MR. BAER:

8 Q. All right. So what was Ms. Chang's response
9 to your statement that it didn't make a lot of sense?

10 MR. FRASER: Objection. Hearsay.

11 THE WITNESS: I can't recall --

12 MR. BIORN: There's an objection. Hearsay.

13 THE COURT: Well --

14 MR. BAER: Depends what the response was.

15 THE COURT: I'll take it subject to a motion
16 to strike, but I think the answer is I don't recall.

17 THE WITNESS: I recall what my thought
18 process was at the time.

19 BY MR. BAER:

20 Q. And did she tell you how many times he had
21 paid -- how many -- for how many months he had paid
22 rent?

23 A. No. Oh, actually, I can't recall
24 specifically. That may have come up, actually. But
25 right now, that's hazy.

1 Q. Let me turn your attention to page 143 of
2 your declaration [sic].

3 THE COURT: 123?

4 MR. BAER: 143.

5 THE WITNESS: Of my deposition?

6 MR. BAER: Yes. Actually, why don't we start
7 at 142.

8 BY MR. BAER:

9 Q. Could you read from line 20 through line 11
10 on 143?

11 A. Starting at what line?

12 Q. Sorry, page 142, line 20 through 143, line
13 11.

14 A. "Question: And you wrote it down" --

15 Q. You can just read it to yourself.

16 A. Okay. Okay.

17 Q. Does this refresh your recollection as to how
18 many times or for how many months Ms. Chang told you
19 that Mr. Ho had paid rent?

20 A. Not specifically.

21 Q. Okay.

22 MR. BAER: No further questions.

23 MR. BIORN: No further questions.

24 THE COURT: Okay. I have a few and then they
25 might have some follow-up questions.

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EXAMINATION BY THE COURT:

THE COURT: Do you know if Reinhard contacted any other attorneys in connection with this case?

THE WITNESS: Not to my knowledge.

THE COURT: Prior to doing the certificate of independent review, had you ever done another one?

THE WITNESS: I believe so.

THE COURT: And do you know how many times?

THE WITNESS: I think I've done it less than five times and I think at least three. Right now, I'm not sure if it's four or three. Three or four times.

THE COURT: And those were before August 2017?

THE WITNESS: If I'm recalling correctly, I've only done one since this. So I think if, I'm recalling correctly, there was two -- two before, but now it's very hazy. It's such a long timeline, so I could be mistaken.

THE COURT: And have you indicated to whoever asked you to do it on occasion that you will not do it?

THE WITNESS: Yes.

THE COURT: And how many times?

THE WITNESS: Have I declined?

1 THE COURT: Yes.

2 THE WITNESS: Maybe approximately five times.

3 THE COURT: You alluded to some taped
4 statements and you were asked if your conversations
5 were taped. Have you heard any tapes in connection
6 with this case?

7 THE WITNESS: No.

8 THE COURT: Okay. Fiduciary obligations is
9 the area I'm going to talk about.

10 There was discussion that these people --
11 that Mr. Ho and Ms. Chang were partners.

12 Did you see a reciprocal arrangement between
13 the two of them at all?

14 THE WITNESS: My assumption was that they
15 were girlfriend/boyfriend based upon the living
16 arrangement and based upon the length of time.

17 THE COURT: Were you under the impression
18 that one person was sort of on the receiving end of
19 largesse -- may be the wrong word -- but receiving
20 end of getting the benefit?

21 THE WITNESS: That's hard to say because
22 there's more than just financial benefits. There's
23 also relationship. So I think it goes in both
24 directions.

25 THE COURT: Okay. Thank you. That's all I

1 have.

2 Any more questions?

3 MR. BIORN: I do have -- actually, I'd just
4 like to read from the witness's deposition. It is
5 contrary to his -- contradicts his testimony.

6 Page 72, lines 7 to 12:

7 "Question: Okay. How often do you prepare
8 certificates of independent review?

9 Answer: Not often at all.

10 Question: Can you give me an estimate as to
11 how many times you've done it.

12 Answer: This is the only one."

13 THE WITNESS: Okay. I'm so sorry --

14 MR. BIORN: Sir, there's no question pending.

15 THE WITNESS: Okay.

16 MR. BIORN: I'll ask a question.

17 FURTHER RECROSS-EXAMINATION

18 BY MR. BIORN:

19 Q. The fact apparently that this was the first
20 time you prepared a certificate of independent
21 review, did that -- did that give rise to any
22 uncertainty on your part about how you should tackle
23 the assignment?

24 A. Yes.

25 Q. And what was that?

1 A. Well, I wanted to research doing it, so I
2 looked up the statute and I looked at the secondary
3 source that was in my file.

4 Q. And for lack of a better way of putting it,
5 after you looked at those sources, did you continue
6 to have any uncertainty or did you -- or did you feel
7 that you'd resolved your uncertainty?

8 A. I felt I had resolved my uncertainty.

9 MR. BAER: No further questions.

10 MR. BIORN: I have no further questions, Your
11 Honor.

12 THE COURT: Okay. Does the depo testimony
13 that was read to you refresh your recollection that
14 it was only one time?

15 THE WITNESS: At the time that this was done,
16 yes.

17 THE COURT: Okay. Thank you. Nothing
18 further.

19 MR. BIORN: Yes. Let's clarify.

20 At the time --

21 MR. BAER: If there's only one at the time
22 his deposition was taken, inherently, that means that
23 was the only one he'd done.

24 MR. BIORN: Right. I have no further
25 questions.

1 THE COURT: Okay. Can this witness be
2 excused?

3 MR. BIORN: Yes.

4 MR. BAER: I guess so.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you very much. You're free
7 to go.

8 THE WITNESS: Best of luck.

9 MR. BAER: Thank you very much.

10 MR. BIORN: Thank you.

11 MR. FRASER: I do think there's some cleanup
12 on the exhibits.

13 THE COURT: Not much. 181 is the e-mail
14 exchange between Reinhard and John Martin?

15 MR. FRASER: Yes.

16 THE COURT: Are you seeking admission?

17 MR. BIORN: Yes.

18 MR. FRASER: Yes.

19 MR. BAER: No objection.

20 THE COURT: Received.

21 (Whereupon, Exhibit 181 was admitted into
22 evidence.)

23 THE COURT: And 182 is the initial client
24 contact form, the one-page form. Do you really need
25 it in evidence?

1 MR. BIORN: I don't need that into evidence.

2 MR. FRASER: No.

3 THE COURT: Can I label it withdrawn and
4 we'll clean it up? Can I label it withdrawn and
5 we'll clean it up?

6 MR. BIORN: Yes.

7 THE COURT: And 183 is the draft letter from
8 Mr. Martin.

9 MR. BIORN: Yes, we'll offer that for
10 evidence, to admit it into evidence.

11 MR. BAER: No objection.

12 THE COURT: Received.

13 (Whereupon, Exhibit 183 was admitted into
14 evidence.)

15 MR. FRASER: And there was also Exhibit 520,
16 that was the handwritten letter.

17 MR. BAER: Oh, yes. No objection to that one
18 either, the handwritten letter by Mr. Ho.

19 THE COURT: Okay. Received.

20 (Whereupon, Exhibit 520 was admitted into
21 evidence.)

22 THE COURT: Very good. Anything else on the
23 record?

24 MR. BAER: I'll just mention that I'm not
25 going to make any motion to strike testimony

1 concerning the questions regarding Probate Code
2 Section 21384.

3 There was a minor change in the statute that
4 took effect on January 1, 2018, but it wouldn't have
5 been material to any of the questions that Mr. Biorn
6 asked.

7 THE COURT: Could we go off the record for
8 just one minute?

9 (Whereupon, there was a discussion off the
10 record.)

11 THE COURT: We'll go from 10:00 to 1:00
12 tomorrow.

13 MR. BIORN: Yes.

14 THE COURT: We're done.

15 (Whereupon, there was a discussion off the
16 record.)

17 (WHEREUPON, the proceedings were adjourned at
18 5:03 p.m.)

R E P O R T E R ' S C E R T I F I C A T E

I, NINA PAVONE, hereby certify that the foregoing proceedings were taken down in shorthand by me, a Certified Shorthand Reporter, and a disinterested person, at the time and place therein stated, and that the proceedings were thereafter reduced to typewriting under my direction and supervision;

I further certify that I am not of counsel or attorney for either/or any of the parties to the said proceedings, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

Date: June 3, 2024



NINA PAVONE,

CSR No. 7802