

IN THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

DENNIS SOLOMON, ) Court of Appeal No. B281416  
Petitioner and Appellant, Pro Per )  
)  
v. ) (Super Ct. No. 153887)  
)  
HOOVER LOUIE. }  
Objector and Respondent )  
\_\_\_\_\_ )

**APPELLANT SOLOMON'S MOTION UNDER SPECIAL CIRCUMSTANCES TO FILE AN APPENDIX OF  
EXHIBITS LODGED AT THE REQUEST OF THE SUPERIOR COURT AND LOST**

This Plaintiff Dennis Solomon respectfully requests this Court to allow the filing of this Appendix of Exhibits which were lodged at the request of and subsequently have been lost or misplaced by the Superior Court.

I, Dennis J Solomon, declare under penalties of perjury in the State of California, that the Appendix exhibits are believed to be a true and accurate copy of the Exhibit Folders lodged with the Superior Court in June of 2016, or the related timely Motion For Reconsideration.

Respectfully submitted on February 28, 2018 by

*Dennis J. Solomon*

Dennis J Solomon, pro per  
75 North Main Street #552. Randolph, MA 02368  
Phone 508-394-9221: Fax: 617-890-1947:

**DECLARATION OF SERVICE**

I certify under penalties of perjury under the Laws of California have caused the aforementioned documents to be electronically served upon opposing counsel Joseph Mirkovich on February 28, 2018.

By: *Dennis J. Solomon*  
DENNIS SOLOMON, Petitioner, pro per

Joseph Mirkovich/Russell, Mirkovich & Morrow  
One World Center, Suite 1660 Long Beach, CA 90831

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v.	)	(Super Ct. No. 153887)
	)	
HOOVER LOUIE.	}	
Objector and Respondent	)	
_____	)	

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**APPELLANT'S FIRST APPENDIX SUPPLEMENTING CLERK'S TRANSCRIPT**  
**VOLUME 1 OF 1, PP. 001 to 286**

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Dennis J Solomon, pro per  
75 North Main Street #552.  
Randolph, MA 02368  
Phone 508-394-9221: Fax: 617-  
890-1947:

**EXHIBITS LODGED WITH SUPERIOR COURT**

1st Horwitz Family Exhibit	
1st Petition to Invalidate Conformed Amended 141205r	
Dorothy Horwitz Family Trust Formal 2012	
Art 5.3 Disposition of Trust Estate	
Purported Adumdum 5 pages Faxed	
Affidavit Form Page - No Signed Acknowledgement Page 2	
Jurat Unsigned by Notary 3-18-2014	
'Adumdum' Page - No 'Witness' Identified	
'# II Adendum' Page Rose Aparicio	
'# 1 Adendum' Page - Charities - No Jewish or US Navy	
Last Will of Dorothy Horwitz - Formal 2012	
1st S Orit Shapiro Declaration Not a Witness_160414	
1st Six complete pages Purported Addendum Received 151001	
DEP Doris Tucker Dep Exhibit 2 Addendum Ling 5pages	
DEP Doris Tucker-Deposition 150603LE Complete annotated 150822	
DEP Rose Aparicio 6-5-2015 - Complete Annotated	
DEP Rose Aparicio 6-5-2015 Pg 40 Boots	
DH Medical - Mayo Clinic on Hydromorphone and Lorazepam	
DH Medical Records Drugs 160614	
Garden Crest 00067 Morphine increased to 45 mg 131014	
Kaiser SCPMG 02476 Leave Ibuprofen with Patient 131025	
Garden Crest Residential 55-68 DH Dr. Bernstein Order Morphine 131107 IMP	
Kaiser SCPMG 02506 DrSinger Cant Walk 131107 IMP	
Kaiser SCPMG 02535-36 Bucher Orders Lorazepam High Dose 131109	
Garden Crest Residential p51 Anxiety 131110 Dr Pouya orc IMP	
Garden Crest Residential 56-68 DH Romo Order 131115 IMP	
Kaiser SCPMG 02549-50 Dr Pouya Order Morphine 131119	
Kaiser SCPMG 02554 Dorothy Want to Talk About New Meds 131121	
Kaiser SCPMG 02560 Dorothy Want to Talk About New Meds 131122	
Kaiser SCPMG 02566 Dorothy Want to Talk About New Meds 131124	
DS Dennis Solomon USDOD	
DS Teledyne to Pay \$112 Million in 2 Whistle-Blower Suits - latimes	
DS x Brausen v Holonyne BC389984 1page HT	
FAM D and W Horwitz Heirlooms Blue Jacket Manual In Trust 2015	
FAM Dorothy and Walter Picture Taken by DJS 1994 Diamond Ring Necklace	
FAM Horwitz-Horowitz-Hurwitz Family WWII IMP	
FAM Nancy Spielberg on Above&Beyond	
FAM Pinchik Milken Foundation One Page 2016	
FAM Warbird on Above and Beyond	
FORG Adumdum Computer Date 130711 f Morrow Exh2	

	FORG Adumdum Jurat Not Signed by Doris Tucker - No Orit Shapiro 140318 Exh5	
	FORG Adumdum Jurat Signed by Tucker	
	FORG FBI Forensic Science Communications	
	FORG FBI Handwriting Examination Paper 2009	
	FORG Forensic Expert James Green on Adumdum Alteration	
	FORG Horwitz Checkbook Page 131031 Last DH Entry From Louie Ex4 H-0201 to H-0253 annotated	
	FORG Horwitz Computer Screen Morrow No Access Date IMP	
	FORG Horwitz Computer Summary	
	FORG Konrad Kujau forger of Hilter Diaries 1982	
	FORG MetaData Change Program 160122	
	FORG True DH Family Trust Formal Letter H-0189 4-4-12	
	FORG True DH Family Trust H-0136	
	FORG True DH Family Trust H-0204	
	FORG True DH Family Trust H-0216	
	FORG True DH Family Trust H-Letter 0038	
	FORG True DH FamilyTrust 6-20-13 Typed Summary H-0174 IMP	
	JUDNOT Alperin v Vatican Bank USDC ND Cal 2003	
	LING Dec on Letter - from Ling Exh 1 WillTrust Delivery	

## DECLARATION OF SERVICE

I certify under penalties of perjury under the Laws of California have caused the aforementioned documents to be electronically served upon opposing counsel Joseph Mirkovich on February 28, 2018.

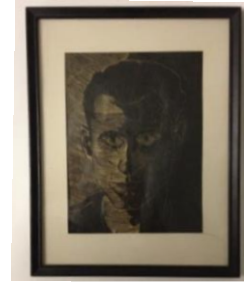
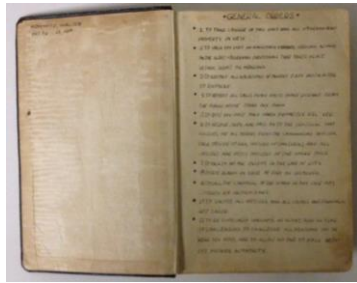
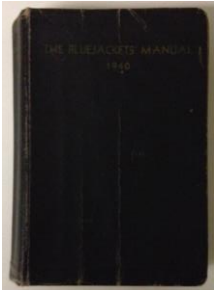
By: *Dennis J. Solomon*  
DENNIS SOLOMON, Petitioner, pro per

Joseph Mirkovich/Russell, Mirkovich & Morrow  
One World Center, Suite 1660 Long Beach, CA 90831

# WALTER & DOROTHY HORWITZ



WALTER, DOROTHY, MY MOTHER & DAUGHTER – PHOTOGRAPH BY DENNIS SOLOMON



US NAVY BLUE JACKET MANUAL 1940      JEWISH      SELF-PORTRAIT  
EARLIER GIFTS FROM THE WALTER & DOROTHY HORWITZ TO DENNIS SOLOMON



ORIGINAL ART OF WALTER HORWITZ



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**Pierre Pinchik**  
1900-1971

A famous cantor and folksinger in Russia in the early 20th century, Pierre Pinchik was one of the cantorial giants of America's Golden Age of Hazzanut.



James Jacob Horovitz  
Home of record: Brighton Massachusetts

AWARDS AND CITATIONS



Navy Cross  
See more recipients of this award

FIRST COUSINS CANTOR PINCHIK & JAMES HOROVITZ - A JEWISH & US NAVY FAMILY  
WALTER & DOROTHY LOVED

CONFIRMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

DEC 05 2014

John A. Clarke, Executive Officer/Clerk  
By: Betzalda Mendez, Deputy

1 Joel R. Bryant, State Bar No. 149370  
Jason J. Julius, State Bar No. 249036  
2 GREEN BRYANT & FRENCH, LLP  
1230 Columbia Street, Suite 1120  
3 San Diego, CA 92101  
T: (619) 239-7900  
4 F: (619) 239-7800

5 Attorneys for Petitioner Dennis Solomon

6  
7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES-CENTRAL PROBATE DIVISION

10 In Re

CASE NO.: BP153887

11 THE DOROTHY HORWITZ FAMILY  
TRUST, DATED March 6, 2012, as  
12 Amended.

[AMENDED] PETITION FOR ORDER  
INVALIDATING THE PURPORTED  
NOVEMBER 18, 2013, ADDENDUM TO  
THE DOROTHY HORWITZ FAMILY  
TRUST DATED MARCH 6, 2012

DATE OF HEARING:

JAN 29 2015

Times: 8:30 AM Dept.: 5

FILED BY FAX

18 Petitioner Dennis Solomon ("Petitioner" or "Mr. Solomon") is informed and believes, and  
19 thereon alleges, as follows:

20 A. JURISDICTION AND VENUE

21 1. The principal place of administration of the Dorothy Horwitz Family Trust dated March  
22 6, 2012, as purportedly Amended, is in Los Angeles County, California. Further, the Trust was created  
23 in Los Angeles County and the property which is the subject of this Petition is in Los Angeles County.  
24 Thus, this Court has jurisdiction over the Dorothy Horwitz Family Trust, and Los Angeles County is the  
25 appropriate venue in which this Petition should be filed.

26 B. THE PETITIONER HAS STANDING TO BRING THIS PETITION

27 2. Probate Code §17200 permits interested persons to file a petition seeking relief with  
28 respect to a broad array of issues concerning the administration and distribution of trusts. Similarly, the

1 *Probate Code* permits interested persons to file a petition contesting a provision(s) in a will. *Probate*  
2 *Code* §48 includes a relative of the decedent and trust beneficiaries in its definition of “interested  
3 person.”

4 3. Petitioner Mr. Solomon has standing to bring this Petition because he claims an interest  
5 in the assets of the Dorothy Horwitz Family Trust as a lawful beneficiary of the March 6, 2012 Dorothy  
6 Horwitz Family Trust (the “March 6, 2012, Horwitz Trust) and the purported Addendum dated  
7 November 18, 2013 (the “Addendum”), and he is a nephew of the Trustor Dorothy Horwitz.

8 4. *Probate Code* §17200 permits a trustee or a beneficiary of a trust to petition this Court  
9 for an order determining the existence or nonexistence of any power, duty or right, determining the  
10 validity of a trust provision, ascertaining beneficiaries and determining to whom property shall pass, and  
11 instructing the trustee. *See, Probate Code* §17200(b)(2), (3), (4) and (6). As set forth in detail below  
12 and in the prayer for relief, Petitioner asserts that the purported Addendum to the March 6, 2012,  
13 Horwitz Trust, is invalid, and seeks an order determining to whom property shall pass, and seeks an  
14 order instructing that the assets in the trust estate of Ms. Horwitz be distributed in accordance with the  
15 March 6, 2012, Horwitz Trust.

16 5. A true and correct copy of the March 6, 2012, Horwitz Trust is attached hereto as  
17 **Exhibit “1”** and incorporated herein by reference. According to the attorney who drafted the March 6,  
18 2012, Horwitz Trust, Exhibit B to the Trust was blank at the time he drafted the Trust and he contends  
19 that the blank Schedule B is the only one he has ever seen. A true and correct copy of the purported  
20 Addendum, dated November 18, 2013 is attached hereto as **Exhibit “2”** and incorporated herein by  
21 reference.

22 6. Since Petitioner is a beneficiary under the March 6, 2012 Horwitz Trust and the  
23 Addendum, and since Petitioner seeks the type of relief which this Court is authorized to provide under  
24 *Probate Code* §17200 et seq., Petitioner has standing to bring this action.

25 **C. GENERAL ALLEGATIONS**

26 7. Petitioner Mr. Solomon is a nephew of Dorothy Horwitz. Dorothy Horwitz was married  
27 to Walter Horwitz. Walter Horwitz passed away on July 25, 2007. Walter and Dorothy did not have  
28 any children together. Dorothy never had any children at all. Dorothy Horwitz died on November 26,



1 2013, only eight days after she purportedly executed the Addendum.

2 8. On March 6, 2012, Dorothy Horwitz created the Dorothy Horwitz Family Trust. The  
3 March 6, 2012, Horwitz Trust provides at paragraph 5.3(a), among other things, that upon Ms. Horwitz's  
4 death, the Trust assets were to be distributed to Petitioner Dennis J. Solomon, Murray Solomon  
5 (Petitioner's brother and a nephew of Ms. Horwitz) and Nicholas Adrian Sanchez. Paragraph 5.3(b) of  
6 the March 6, 2012, Horwitz Trust further provides that any portion of the trust estate not completely  
7 disposed of by the preceding provision were to be distributed to the Settlor's heirs, which include  
8 Petitioner Mr. Solomon. The March 6, 2012 Horwitz Trust names Ms. Horwitz as trustee and Hoover  
9 J. Louie as successor trustee. The March 6, 2012 Trust was prepared by the Law Office of Hung Ban  
10 Tran.

11 9. Additionally, on March 6, 2012, Dorothy Horwitz executed the Last Will of Dorothy  
12 Horwitz (the "Horwitz Will"). A true and correct copy of the Will is attached hereto as **Exhibit "3"**.  
13 Pursuant to the Horwitz Will, all of her property in her probate estate was to be distributed to the trustee  
14 of the March 6, 2012 Horwitz Trust, and distributed in accordance with the terms of said Trust. Hoover  
15 J. Louie is named as executor of the Horwitz Will. Said Will was prepared by the Law Office of Hung  
16 Ban Tran.

17 10. On or about November 18, 2013, Dorothy Horwitz purportedly executed the Affidavit  
18 of Dorothy Horwitz, as well as another document entitled "Addendum to Living Trust. Distribution of  
19 Assets." (Those documents shall be collectively referred to as the "Addendum") According to the  
20 Addendum, Dorothy Horwitz's assets were to be distributed as follows: (a) \$25,000.00 to Rose Aparicio  
21 in trust for Nicholas Sanchez; (b) \$5.00 to Dennis Solomon; (c) \$5,000 to Murray Solomon; (d)  
22 \$10,000.00 to Andrea Ebert; (e) all patio plants plus floor to ceiling garage in garage to Edward Liu; (f)  
23 \$300,000.00 to St. Jude; (g) \$300,000.00 to Los Angeles Children's Hospital; (h) \$100,000.00 to  
24 American Lung Association; (I) \$100,00.00 to American Heart Association; (j) \$50,000.00 to  
25 Alzheimer's Association; (k) \$50,000.00 to Kidney Foundation; (l) \$5,000.00 to Braille Institute on  
26 Vermont Avenue in Hollywood; (m) \$10,000.00 to Muscular Dystrophy; (n) \$10,000.00 to Multiple  
27 Sclerosis (Montel Williams); (o) \$15,000.00 to Los Angeles Mission; (p) \$5,000.00 to American  
28 Diabetes Association;(q) 1999 Buick Century and 1999 Chevy Blazer to be donated to Cars for Causes,

1 and proceeds, if any, to be given to Union Mission in Los Angeles; (r) the contents of her condominium,  
2 except for household goods, the wood and tile sculptures, to Rose Aparicio; (s) her wood and tile  
3 sculptures to Murray Solomon; and (t) her household goods to Salvation Army or Goodwill.

4 11. Petitioner has no personal knowledge as to what assets are currently held in the Horwitz  
5 Trust or the current values of those assets. However, according to supplemental discovery responses  
6 which Petitioner recently received, the assets in the Horwitz Trust and value of same are as follows:

7 **Bank Accounts**

8 Wells Fargo	\$224,042.57
9 Bank of America	\$190,516.61
10 Bank of America (IRA)	\$102,035.75
11 Union Bank	\$119,951.96
12 East West Bank	\$156,215.58
13 Citi Personal Wealth Management (IRA)	\$ 5,622.60
14 Citi Gold	\$ 6,086.41
15 Citi Gold	\$ 81,999.29
16 Dreyfus	\$ 66,733.23
17 Chase	\$ 423.48

18 **Safe Deposit Boxes** - assets in safe deposit boxes located at three banks in Rosemead and  
19 Temple City, California. Petitioner has no personal knowledge as to what assets were in the safe deposit  
20 boxes and the Trustee of the Trust has failed to provide this information to Petitioner.

21 **Securities**

22 International Business Machines	160 shares	\$31,080.00
23 Verizon Communications, Inc.	211 shares	\$10,444.50
24 Honeywell International	508 shares	\$39,456.36
25 Rockwell Automation	800 shares	\$67,144.00
26 Rockwell Collins	800 shares	\$49,888.00
27 Edison International	200 shares	\$9,164.00
28 Viacom	217 shares	\$14,224.35

1            Condominium - located at 8429 E. Village Lane, Rosemead CA, worth approximately  
2            \$429,000.00;

3            Two Automobiles - Buick, Chevrolet, valued at approximately \$10,000;

4            Personal Property - including clothing, furniture, kitchenware, gardening tools, etc., of  
5            unknown value but not believed to be worth more than \$5,000.00. Petitioner also believes there  
6            is art which is an asset of the Trust, but the value is unknown at this time.

7            12.        Petitioner does not believe that the Trustee received a written statement from the personal  
8            representative of the Settlor's estate requesting that the Trustee pay death taxes, debts and expenses. In  
9            fact, Petitioner does not believe that anyone has been appointed as a personal representative of Ms.  
10           Horwitz's estate and, according to supplemental discovery responses recently received from the Trustee,  
11           all of Mrs. Horwitz's assets were in her trust and there is no probate estate. According to the Will of  
12           Dorothy Horwitz dated March 6, 2012, the executor of her will is Hoover J. Louie. As set forth above,  
13           Mr. Louie is also the Successor Trustee of her Trust.

14           13.        Ms. Horwitz had a pre-deceased spouse, Walter Horwitz, who died on July 25, 2007. Ms.  
15           Horwitz and Walter Horwitz had no children together. Ms. Horwitz had no children and Petitioner is  
16           also informed and believes that Walter Horwitz had no children. Petitioner is unaware of any other  
17           heirs of Walter Horwitz. To the extent that Walter Horwitz had other heirs and said heirs are identified  
18           as a beneficiary or trustee in either the March 6, 2012 Horwitz Trust or the Addendum, they will receive  
19           notice of these proceedings.

20           14.        Petitioner is informed and believes that, at a minimum, by October, 2013, Ms. Horwitz  
21           was experiencing serious health problems, both physically and mentally. In fact, as of October, 2013,  
22           Ms. Horwitz had been diagnosed with terminal lung cancer and advised by her physicians that she had  
23           less than six months to live. At that time, Ms. Horwitz was 84 years old. On or about October 19, 2013,  
24           as a result of Ms. Horwitz's declining health and inability to care for herself, which may have included  
25           the onset of dementia, Ms. Horwitz became a resident of the Garden Crest Nursing Home in Los  
26           Angeles, California.

27           15.        The names of those persons whose right, title or interest would be affected by this  
28           Petition, as far as is known to Petitioner, including (1) all person's mentioned in Ms. Horwitz's will,

1 whether living or deceased; (2) decedent's heirs; and (3) all beneficiaries of the Dorothy Horwitz Trust,  
2 dated March 6, 2012, or the Addendum dated November 18, 2013, are set forth as follows:

3	<u>NAME/RELATIONSHIP</u>	<u>AGE</u>	<u>ADDRESS</u>
4	State of California Dept. of Justice		State of California Department of
5	ATTORNEY GENERAL		Justice
6			Attorney General
7			Att: Tonya M. Ibanec
			300 S. Spring Street
			Los Angeles, CA 90013
8	Dennis J. Solomon	Adult	58 Miriah Dr.
9	Nephew of Decedent and Beneficiary to the		Yarmouth Port, MA 02675
10	March 6, 2012 Horwitz Trust and the		
11	purported Addendum		
12	Murray Solomon	Adult	57 Fairgrounds Rd.
13	Beneficiary to the March 6, 2012 Horwitz		Cummington, MA 01026-9701
14	Trust and the purported Addendum		
15	Nicholas Adrian Sanchez	Adult	5135 Muscatel Ave.
16	Beneficiary to the March 6, 2012 Horwitz		San Gabriel, CA 91776
17	Trust and the purported Addendum		
18	Rose Aparicio	Adult	5135 Muscatel Ave.
19	Beneficiary of the March 6, 2012 Horwitz		San Gabriel, CA 91776
20	Trust, as amended by the purported		
21	Addendum		
22	Hoover J. Louie	Adult	847 Yale Street, #306
23	Successor Trustee of the March 6, 2012,		Los Angeles, CA 90012
24	Horwitz Trust and the November 18, 2013		
25	Addendum, and executor of the Horwitz		Margaret Morrow
26	Will dated March 6, 2012		Russell Mirkovich & Morrow
27			One World Trade Center, Ste. 1660
28			Long Beach, CA 90831
			Attorney for Respondent, Hoover J.
			Louie, Trustee
22	Andrea Ebert	Adult	65 Lela Ct.
23	Beneficiary of the March 6, 2012 Horwitz		Sutter Creek, CA 95685
24	Trust, as amended by the purported		
25	Addendum		
26	Edward Liu	Adult	8425 E. Village Lane
27	Beneficiary of the March 6, 2012 Horwitz		Rosemead, CA 91770
28	Trust, as amended by the purported		
	Addendum		

1	St. Jude Children's Research Hospital	N/A	501 St. Jude Place
2	Beneficiary of the March 6, 2012 Horwitz		Memphis, TN 38105-1942
3	Trust, as amended by the purported		
4	Addendum		Jonathan H. Park, Esq. Holland & Knight, LLP 400 S. Hope St., 8 <sup>th</sup> Fl. Los Angeles, CA 90071 Attorney St. Jude Children's Research Hospital
5			
6	Children's Hospital Los Angeles	N/A	Robert E. Weiner, MPA CFRE
7	Beneficiary of the March 6, 2012 Horwitz		4650 Sunset Blvd., Mailstop 29
8	Trust, as amended by the purported		Los Angeles, CA 90027
9	Addendum		
10	American Lung Association	N/A	Anita Lee, CEO
11	Beneficiary of the March 6, 2012 Horwitz		424 Pendleton Way
12	Trust, as amended by the purported		Oakland, CA 94621
13	Addendum		Tara L. Cooper Law Offices of Tara L. Cooper 7037 La Tijera Blvd., Suite B201 Los Angeles, CA 90045 Attorney for American Lung Association
14			
15			
16	American Heart Association	N/A	Director of Trust & Estate
17	Beneficiary of the March 6, 2012 Horwitz		Katy Cheng
18	Trust, as amended by the purported		1710 Gilbreth Rd.
19	Addendum		Burlingame, CA 94010
20			Jonathan H. Park, Esq. Holland & Knight, LLP 400 S. Hope St., 8 <sup>th</sup> Fl. Los Angeles, CA 90071 Attorney for American Heart Association
21			
22			
23	Alzheimer's Association	N/A	Carol Steinberg, President
24	Beneficiary of the March 6, 2012 Horwitz		322 Eight Ave., 7 <sup>th</sup> Floor
25	Trust, as amended by the purported		New York, NY 1001
26	Addendum		Jonathan H. Park, Esq. Holland & Knight, LLP 400 S. Hope St., 8 <sup>th</sup> Fl. Los Angeles, CA 90071 Atty for American Heart Association
27			
28			

1	Kidney foundation	N/A	Bruce Skyer, CEO
2	Beneficiary of the March 6, 2012 Horwitz		70 W 36 <sup>th</sup> St.
3	Trust, as amended by the purported		New York, NY 10018
4	Addendum		Jonathan H. Park, Esq.
5			Holland & Knight, LLP
6			400 S. Hope St., 8 <sup>th</sup> Fl.
7			Los Angeles, CA 90071
8			Attorney for Kidney Foundation
9	Braille Institute	N/A	Anthony J. Taketa
10	Beneficiary of the March 6, 2012 Horwitz		Corporate Secretary
11	Trust, as amended by the purported		741 N. Vermont Ave.
12	Addendum		Los Angeles, CA 90029
13	Muscular Dystrophy	N/A	Legal Department
14	Beneficiary of the March 6, 2012 Horwitz		Deborah Parsons
15	Trust, as amended by the purported		VP Bequests Administration
16	Addendum		3300 E. Sunrise Drive
17			Tucson, AZ 85718
18	Multiple Sclerosis (Montel Williams)	N/A	6250 W. Andrews Avenue
19	Beneficiary of the March 6, 2012 Horwitz		Ft. Lauderdale, FL 33309
20	Trust, as amended by the purported		
21	Addendum		
22	Los Angeles Mission	N/A	Vice Pres. Of finance, Steve Kennedy
23	Beneficiary of the March 6, 2012 Horwitz		303 E. 5 <sup>th</sup> Street
24	Trust, as amended by the purported		Los Angeles, CA 90013
25	Addendum		
26	American Diabetes Association	N/A	c/o Corporation Services Company
27	Beneficiary of the March 6, 2012 Horwitz		which will do business in California as
28	Trust, as amended by the purported		CSC-Lawyers Incorporating Service,
	Addendum		Agent of Service
			2710 Gateway Oaks Dr., Ste. 150N
			Sacramento, CA 95833
			Jonathan H. Park, Esq.
			Holland & Knight, LLP
			400 S. Hope St., 8 <sup>th</sup> Fl.
			Los Angeles, CA 90071
			Attorney for American Diabetes
			Association
	Union Mission in Los Angeles	N/A	545 S. San Pedro Street
	Beneficiary of the March 6, 2012 Horwitz		Los Angeles, CA 90013
	Trust, as amended by the purported		
	Addendum		

1 **FIRST CLAIM FOR RELIEF**

2 **(LACK OF TESTAMENTARY AND CONTRACTUAL CAPACITY)**

3 16. Petitioner incorporates by this reference paragraphs 1 through 15 of this Petition as  
4 though set forth fully herein.

5 17. At the time of the claimed execution of the purported Addendum, Settlor Dorothy  
6 Horwitz was not of sound and disposing mind and thus lacked the testamentary and contractual capacity  
7 to make a decision including, but not limited to, a decision on whether to execute the Addendum and  
8 a decision on whether to dispose of her property as described in said document.

9 18. As set forth above, as of October, 2013, Settlor Ms. Horwitz was in severe decline both  
10 physically and mentally, and continuing thereafter until her death on November 26, 2013.

11 19. At the time the Addendum was purportedly executed, Ms. Horwitz continued to suffer  
12 these debilitating conditions and continued to lack mental competency.

13 20. As a result of Ms. Horwitz's diminished mental and physical condition on the  
14 aforementioned date of the purported execution of the Addendum, she lacked testamentary and  
15 contractual capacity to understand and appreciate the nature, effect and ramifications of having her  
16 signature placed on the purported Addendum.

17 **SECOND CLAIM FOR RELIEF**

18 **(UNDUE INFLUENCE)**

19 21. Petitioner incorporates by this reference paragraphs 1 through 20 of this Petition as  
20 though set forth fully herein.

21 22. Petitioner is informed and believes, and on that basis alleges, that the purported  
22 Addendum is not and was never Settlor Ms. Horwitz's voluntary decision and was made, if at all, at the  
23 time of its alleged execution as a result of the undue influence of Rose Aparicio and others. The effect  
24 of the purported Addendum was to make Ms. Aparicio a major beneficiary of the Trust Assets of Ms.  
25 Horwitz's Trust Estate upon her death. Petitioner is informed and believes, and on that basis alleges,  
26 that the purported Addendum reflects Ms. Aparicio's wishes concerning the disposition of Settlor's  
27 property and not Settlor's wishes.

28 23. Petitioner is informed and believes, and on that basis alleges, that at the time of the

1 purported execution of the Addendum, and in the months leading up to said purported execution, Ms.  
2 Aparicio occupied a position of trust and confidence with Settlor, and thus, the opportunity to exert  
3 influence and control over Settlor with respect to her testamentary acts. During this time, Ms. Horwitz's  
4 mental and physical health progressively worsened and she increasingly placed her trust and confidence  
5 in Ms. Aparicio.

6 24. Petitioner is informed and believes that Ms. Aparicio was able to exert influence over  
7 decedent to such a point that decedent was no longer capable of exercising her own conviction or desire  
8 with regard to her actions and thoughts, but rather because of the influence brought on her by Ms.  
9 Aparicio, by both argument and entreaty, decedent's convictions and desires became the convictions or  
10 desires imposed on her by Ms. Aparicio.

11 25. Petitioner is informed and believes, and on that basis alleges, that as a result of Ms.  
12 Horwitz's worsening health and mental functioning, that at the time of the purported execution of the  
13 Addendum, she lacked the capacity to make a voluntary decision and was substantially unable to manage  
14 her personal and financial affairs or to resist fraud or undue influence.

15 26. Petitioner is informed and believes, and on that basis alleges, that at the time Settlor  
16 purportedly executed the Addendum, Ms. Horwitz was under the undue influence of Ms. Aparicio and  
17 others such that the purported Addendum does not represent the free and voluntary decisions or acts of  
18 Settlor Ms. Horwitz and, instead, it is the product of Ms. Aparicio and others' undue influence.  
19 Pursuant to *Welf. & Inst. Code* §15610.30(a)(3), the foregoing undue influence by Ms. Aparicio  
20 constitutes financial abuse of an elder. Pursuant to *Welf. & Inst. Code* §15657.5, Petitioner is entitled  
21 to recover his attorneys' fees incurred in this proceeding.

22 **THIRD CLAIM FOR RELIEF**

23 **(CONSTRUCTIVE FRAUD/BREACH OF FIDUCIARY DUTY)**

24 27. Petitioner incorporates by this reference paragraphs 1 through 26 of this Petition as  
25 though set forth fully herein.

26 28. A confidential relationship existed between Ms. Horwitz and Respondent when she began  
27 seeking to increase a greater proportionate share of Ms. Horwitz's Trust Assets and purportedly became  
28 the primary beneficiary of her personal property, which was substantial in value, per the Addendum.



1 Said conduct gave rise to a fiduciary relationship between Respondent and Settlor Ms. Horwitz.

2 29. Petitioner is informed and believes, and on that basis alleges, that the purported  
3 Addendum was not and never was Settlor's voluntary decision, act or intent and was made as a result  
4 of deceitful conduct by Respondent and others.

5 30. Settlor Ms. Horwitz intended that her trust estate be divided in equal shares to Dennis J.  
6 Solomon, Murray Solomon and Nicholas Adrian Sanchez, with any portion of the trust estate not  
7 completely disposed of to be distributed to the Settlor's heirs, which include Mr. Solomon. Petitioner  
8 is informed and believes, and thereon alleges, that Respondent willfully misled Ms. Horwitz with the  
9 intent to induce her to alter her testamentary desires. This was accomplished by suggesting and  
10 asserting, in effect, matters which were either untrue or without reasonable grounds to believe them to  
11 be true, or with knowledge that they were untrue. These matters were, in fact, untrue.

12 31. Petitioner is informed and believes, and on that basis alleges, that Respondent used her  
13 confidential, fiduciary relationship with Settlor Ms. Horwitz to orchestrate the execution of the  
14 Addendum to benefit herself to the detriment of Settlor and Petitioner. The Addendum was executed  
15 while Settlor relied upon and trusted Respondent. In fact, the transaction was contrary to Settlor's  
16 expressed intent that, upon Settlor's Death, Petitioner was to receive an equal portion of Settlor's Trust  
17 Estate. Respondent thereby breached her fiduciary duty to avoid engaging in a transaction in which his  
18 interests conflicted with Settlor's interests.

19 **PRAYER**

20 WHEREFORE, Petitioner Mr. Solomon prays for an Order:

- 21 1. Finding and determining that the Addendum is void and invalid due to the mental  
22 incapacity of Settlor Ms. Horwitz;
- 23 2. Finding and determining that the Addendum is void and invalid due to the undue  
24 influence by Respondent Rose Aparicio and others;
- 25 3. Finding and determining that the assets of the estate of Settlor Ms. Horwitz are to be  
26 distributed pursuant to the March 6, 2012 Horwitz Trust;
- 27 4. Instructing Successor Trustee Hoover Louie to immediately distribute the trust assets in  
28 his possession in accordance with the March 6, 2012 Horwitz Trust;

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5. Instructing Successor Trustee Hoover Louie to immediately prepare and file an accounting and report of his acts as successor trustee;
6. For attorneys' fees and costs pursuant to *Welfare & Institutions Code* §15657.5 and *Probate Code* §859 as against those persons who are found to have unduly influenced Ms. Horwitz to execute the Addendum;
7. For costs of suit herein; and
8. For such other and further relief as the Court may deem just and proper.

Dated: December 5, 2014

**GREEN BRYANT & FRENCH, LLP**

By: \_\_\_\_\_

Joel R. Bryant, Esq.  
Jason J. Julius, Esq.  
Attorneys for Petitioner

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VERIFICATION

I, Dennis J. Solomon, declare:

I am the Petitioner in the above-entitled action. I have read the foregoing **Amended Petition for Order Invalidating the Purported November 18, 2013 Addendum to the Dorothy Horwitz Family Trust Dated March 6, 2012** and know its contents. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 04 day of December, 2014, at Yarmouth, Massachusetts.

*Dennis J. Solomon*

\_\_\_\_\_  
Dennis J. Solomon

# EXHIBIT 1

**DOROTHY HORWITZ**

**FAMILY TRUST**

Prepared By:

Law Office of Hung Ban Tran  
228 West Valley Boulevard, Suite 201  
Alhambra, CA 91801

(626) 308-9308 (Office)  
(714) 348-6188 (Cell)

DOROTHY HORWITZ FAMILY TRUST

ARTICLE ONE

CREATION OF TRUST

1.1. Declaration. Dorothy Horwitz of Los Angeles County, California, who is herein referred to as "the settlor" or "the trustee," depending on the context, hereby declares that she holds certain property (the "trust estate") in trust, to be held, administered, and distributed according to the terms of this instrument.

1.2. Name of Trust. The name of the trust created by this instrument shall be the Dorothy Horwitz Family Trust.

1.3. Effective Date. This declaration shall be effective immediately on execution by all the parties.

1.4. Marital Status. The settlor is not currently married.

1.5. No Living or Deceased Children. The settlor has no living or deceased children.

ARTICLE TWO

TRUST ESTATE

2.1. Definition of Trust Estate. All property subject to this instrument from time to time is referred to as the "trust estate" and shall be held, administered, and distributed as provided in this instrument. The trustee shall hold, administer, and distribute the property described in any schedules of property (which are attached hereto and made a part of this trust instrument), any

other property that may be hereafter subject to this trust, and the income and proceeds attributable to all such property, in accordance with the provisions of this instrument.

2.2. Additions to Trust. From time to time, the trustee may accept additions to this trust from any source. All such additions shall become part of the trust estate and shall be held, administered, and distributed in accordance with the terms of this instrument. That additional property shall become part of the trust estate on written acceptance of it by the trustee. Any additions to the trust shall be made by designating in writing the property to be added. However, the titling of any account, deed, or similar asset in the name of the trustee, as trustee of this trust, or any alternate or successor trustee acting under this instrument, shall be deemed to be a transfer to this trust. Any designation by a third party, whether by will, deed, account title designation, or similar transfer, shall also be a transfer to the trust estate.

### ARTICLE THREE

#### RIGHTS AND POWERS OF SETTLOR

3.1. Power of Revocation and Amendment. This trust may be amended, revoked, or terminated by the settlor, in whole or in part, at any time during her lifetime. After the settlor's death, this trust shall be irrevocable and not subject to amendment.

3.2. Method of Revocation or Amendment. Any amendment, revocation, or termination of this trust shall be made by written instrument signed by the settlor and delivered to the trustee. An exercise of the power of amendment substantially affecting the duties, rights, and liabilities of the trustee shall be effective only if agreed to by the trustee in writing. The written instrument for revocation or termination must specify that a revocation or termination of trust is intended

and specify the property that is affected; a change in title or possession is not sufficient for revocation or termination.

3.3. Delivery of Property After Revocation. After any revocation or termination, the trustee shall promptly deliver the designated property to the settlor.

3.4. Trustee's Retention of Assets on Revocation. In the event of any revocation of all or part of the trust, the trustee shall be entitled to retain sufficient assets to reasonably secure the payment of liabilities the trustee has lawfully incurred in administering the trust and any fees that have been earned by the trustee, until such time as those liabilities have been discharged and fees paid, unless the settlor indemnifies the trustee against loss or expense.

3.5. Exercise of Rights and Powers of Settlor By Others. Any right or power that the settlor could exercise personally under the terms of this instrument, except the power to amend, revoke, or terminate this trust, may be exercised for and in behalf of the settlor by any attorney in fact who, at the time of the exercise, is duly appointed and acting for the settlor under a valid and enforceable durable power of attorney executed by the settlor under the Uniform Durable Power of Attorney Act, or any successor statute, or, if there is no such attorney in fact, by a duly appointed and acting conservator of the settlor, after petition to the court in accordance with California Probate Code Section 2580, or any successor statute. The power to amend, revoke, or terminate this trust is personal to the settlor and may not be exercised by any other person or entity.



## ARTICLE FOUR

## DISTRIBUTIONS DURING SETTLOR'S LIFE

4.1. Payment of Income During Settlor's Life. So long as the settlor is living, the trustee shall pay to or apply for the benefit of the settlor all of the net income of the trust, in monthly or other convenient installments (but not less often than annually) as the settlor and the trustee may agree on from time to time.

4.2. Distributions of Principal During Settlor's Lifetime. From time to time during the settlor's lifetime, the trustee shall distribute to or apply for the benefit of the settlor as much of the principal of the trust as the trustee, in the trustee's discretion, deems proper for the settlor's comfort, welfare, and happiness. In exercising discretion, the trustee shall give the consideration that the trustee deems proper to all other income and resources then readily available to the settlor for use for these purposes and that are then known to the trustee. All decisions of the trustee regarding payments under this section, if any, are within the trustee's discretion and shall be final and incontestable by anyone.

4.3. Distributions of Principal at Request of Settlor. During the settlor's lifetime, the trustee shall distribute to the settlor such amounts from the principal of the trust, up to the whole thereof, as the settlor may from time to time request of the trustee in writing.

4.4. Requests in Behalf of the Settlor Unable to Do So Personally. If, at any time, the settlor is unable personally to make a request of the trustee to withdraw principal of the trust, the settlor's right to make the request may be exercised for or in her behalf by an attorney in fact who, at the time of the exercise, is duly appointed and acting for the settlor under a valid and enforceable durable power of attorney executed by the settlor under the Uniform Durable Power

of Attorney Act, or any successor statute. If there is no such attorney in fact, then the trustee shall have the discretion to make any principal distribution to or for the benefit of the settlor that the settlor could have requested personally if she were able to do so. In making any principal distribution under this section (whether pursuant to a request by an attorney in fact or not), the trustee shall pay as much of the principal as the trustee, in the trustee's discretion, deems necessary for the settlor's health, education, support, and maintenance. The trustee shall have discretion to determine when the settlor is unable personally to request principal payments from the trustee for purposes of this section.

4.5. Trustee's Power to Make Gifts at Direction of Settlor. During the settlor's lifetime, the trustee shall distribute such sums of trust principal to such person or persons who are the natural objects of the settlor's bounty, as the settlor may direct in writing. In the event that the settlor is unable to direct the trustee in writing under this section due to incapacity, such direction may be made on the settlor's behalf by a duly authorized attorney in fact acting under a valid durable power of attorney executed by the settlor under the Uniform Durable Power of Attorney Act (or successor statute); provided, however, that the amount of such gifts pursuant to the direction of an attorney in fact to any one person in any one year shall not exceed the amounts excluded from gift tax under Sections 2503(b) and (e) of the Internal Revenue Code (or successor statute).

## ARTICLE FIVE

## DISTRIBUTIONS AFTER SETTLOR'S DEATH

5.1. Payment of Death Taxes, Debts, and Expenses on Statement From Personal

Representative. After the settlor's death, on receipt by the trustee of a written statement from the personal representative of the settlor's estate requesting that the trustee pay death taxes, debts, and expenses (as defined in Article Seven), with respect to any property in the settlor's estate, the trustee shall pay, either directly or to the personal representative, any amounts requested by the personal representative for those purposes, in the manner specified below. The trustee may rely on the personal representative's statement and shall not be liable for any act or omission by the personal representative in protesting or failing to protest the legality, propriety, or amount of the death taxes, debts, or expenses. If there is no personal representative, the trustee shall make the payments directly. Payments of debts and expenses shall be made by the trustee from the trust estate. All death taxes payable by reason of the settlor's death shall also be paid by the trustee from the trust estate. The trustee shall not pay death taxes, debts, and expenses or other obligations of the settlor or the settlor's estate from proceeds of insurance policies on the settlor's life if making those payments would be the sole cause of the proceeds being includable in the settlor's gross estate for federal estate tax purposes.

5.2. Trustee's Power to Defer Division or Distribution. Whenever the trustee is directed to divide any part of the trust estate or distribute trust assets on the death of the settlor, the trustee may, in the trustee's discretion, defer actual division or distribution for such reasonable period of time as is needed to effectively identify, take possession of, value, divide, and distribute the assets of the trust. During this time of deferral, the trustee may manage the trust assets through a

single administrative trust. The ability of the trustee to delay division or distribution shall not affect the vesting of interests, which shall be as of the date of death.

5.3. Disposition of Remaining Trust Estate. On the settlor's death, the remaining trust estate shall be disposed of as follows:

(a) The trustee shall distribute the remaining trust property (including all income then accrued but uncollected and all income then remaining in the hands of the trustee) to Dennis J. Solomon, Murray Solomon, the settlor's nephews, Nicolas Adrian Sanchez, the settlor's friend, and charitable organizations as shown in Schedule B.

(b) If the remaining trust estate is not completely disposed of by the preceding provision, the undisposed-of portion shall be distributed outright to the settlor's heirs.

## ARTICLE SIX

### TRUSTEE

6.1. Settlor's Power to Designate Successor Trustees. At any time, the settlor may designate any suitable person or entity to act as a successor trustee or cotrustee if the trustee or any cotrustee dies, becomes incapacitated, or is otherwise unable or unwilling to continue to act as trustee or cotrustee. Any designation under this section shall be made by a signed writing delivered to the person or entity designated as successor trustee or cotrustee. If more than one designation is made under this section, only the most recent designation shall be valid.

6.2. Successor Trustees. If the office of trustee becomes vacant, by reason of death, incapacity, or any other reason, and no successor trustee or cotrustees have been designated under any other provision of this trust instrument, then Hoover J. Louie, the settlor's accountant, shall be successor trustee. If Hoover J. Louie is unwilling or unable to serve as successor trustee, a

new trustee or cotrustees shall be appointed by majority vote of the adult beneficiaries of the trust who are then entitled to receive income under the trust, or who would be entitled to receive a distribution of principal from the trust if the trust were then terminating, and who then have the legal capacity to give such a vote. If a majority of the beneficiaries are unable to agree on a new trustee or cotrustees, a new trustee or cotrustee may be appointed by the court.

6.3. Definition of Trustee. Reference in this instrument to "the trustee" shall be deemed a reference to whoever is serving as trustee or cotrustees, and shall include alternate or successor trustees or cotrustees, unless the context requires otherwise.

6.4. Removal and Replacement of Trustee by Settlor. The settlor shall have the power, at any time and for any reason, with or without cause, to remove any trustee acting under this instrument, and notwithstanding any other provision of this instrument, designate another trustee to replace the removed trustee. Removal shall be effected by giving a written notice of removal to the trustee to be removed and to the designated successor. The removal shall become effective on the delivery to the settlor of a written acceptance of the trust by the successor trustee, and the settlor shall promptly notify the trustee being removed of the receipt of that acceptance.

6.5. Waiver of Bond. No bond or undertaking shall be required of any individual who serves as a trustee under this instrument.

6.6. Compensation of Individual Trustees. Each individual who is a trustee under this instrument shall be entitled to reasonable compensation for services rendered, payable without court order.

6.7. Procedure for Resignation. Any trustee may resign at any time, without giving a reason for the resignation, by giving written notice, at least thirty (30) days before the time the

resignation is to take effect, to the settlor, if living, to any other trustee then acting, to any persons authorized to designate a successor trustee, to all trust beneficiaries known to the trustee (or, in the case of a minor beneficiary, to the parent or guardian of that beneficiary) and to the successor trustee. A resignation shall be effective on written acceptance of the trust by the successor trustee.

6.8. General Powers of Trustee. To carry out the purposes of the trust created under this instrument, and subject to any limitations stated elsewhere in this instrument, the trustee shall have all of the following powers, in addition to all of the powers now or hereafter conferred on trustees by law:

- (a) With or without court authorization, sell (for cash or on deferred payments, and with or without security), convey, exchange, partition, and divide trust property; grant options for the sale or exchange of trust property for any purpose, whether the contract is to be performed or the option is to be exercised within or beyond the term of the trust; and lease trust property for any purpose, for terms within or extending beyond the expiration of the trust, regardless of whether the leased property is commercial or residential and regardless of the number of units leased.
- (b) Engage in any transactions with the personal representative of the estate of the settlor that are in the best interest of any trusts created in this instrument.
- (c) Manage, control, improve, and maintain all real and personal trust property.
- (d) Subdivide or develop land; make or obtain the vacation of plats and adjust boundaries, or adjust differences in valuation on exchange or partition by giving or receiving consideration; and dedicate land or easements to public use with or without consideration.
- (e) Make ordinary or extraordinary repairs or alterations in buildings or other trust property, demolish any improvements, raze existing party walls or buildings, and erect new party walls or buildings, as the trustee deems advisable.
- (f) Employ and discharge agents and employees, including but not limited to attorneys, accountants, investment and other advisers, custodians of assets,

property managers, real estate agents and brokers, and appraisers, to advise and assist the trustee in the management of any trusts created under this trust instrument, and compensate them from the trust property.

(g) With respect to securities held in trust, exercise all the rights, powers, and privileges of an owner, including, but not limited to, the power to vote, give proxies, and pay assessments and other sums deemed by the trustee necessary for the protection of the trust property; participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers, and liquidations, and, in connection therewith, deposit securities with and transfer title to any protective or other committee under such terms as the trustee deems advisable; exercise or sell stock subscription or conversion rights; and accept and retain as investments of the trust any securities or other property received through the exercise of any of the foregoing powers.

(h) Hold securities or other trust property in the trustee's own name or in the name of a nominee, with or without disclosure of the trust, or in unregistered form, so that title may pass by delivery.

(i) Deposit securities in a securities depository that is either licensed or exempt from licensing.

(j) Borrow money for any trust purpose from any person or entity, including one acting as trustee hereunder, on such terms and conditions as the trustee deems advisable, and obligate the trust for repayment; encumber any trust property by mortgage, deed of trust, pledge, or otherwise, whether for terms within or extending beyond the term of the trust, as the trustee deems advisable, to secure repayment of any such loan; replace, renew, and extend any such loan or encumbrance; and pay loans or other obligations of the trust deemed advisable by the trustee.

(k) Procure and carry, at the expense of the trust, insurance in such forms and in such amounts as the trustee deems advisable to protect the trust property against damage or loss, and to protect the trustee against liability with respect to third persons.

(l) Enforce any obligation owing to the trust, including any obligation secured by a deed of trust, mortgage, or pledge held as trust property, and purchase any property subject to a security instrument held as trust property at any sale under the instrument.

(m) Extend the time for payment of any note or other obligation held as an asset of, and owing to, the trust, including accrued or future interest, and extend the time for repayment beyond the term of the trust.

(n) Pay or contest any claim against the trust; release or prosecute any claim in favor of the trust; or, in lieu of payment, contest, release, or prosecution, adjust, compromise, or settle any such claim, in whole or in part, and with or without consideration.

(o) At trust expense, prosecute or defend actions, claims, or proceedings of whatever kind for the protection of the trust property and of the trustee in the performance of the trustee's duties, and employ and compensate attorneys, advisers, and other agents as the trustee deems advisable.

6.9. Power to Retain Trust Property. The trustee shall have the power to retain property received into the trust at its inception or later added to the trust, without regard to whether the trust investments are diversified, until, in the judgment of the trustee, disposition of the property should be made.

6.10. Trustee's Power to Invest Trust Property. The trustee shall have the power to invest in and acquire every kind of property, real, personal, or mixed, including but not limited to improved and unimproved real property, corporate and government obligations of every kind, stocks (both preferred and common), shares of mutual funds of any character, shares of investment companies, interest-bearing accounts, and foreign assets. The trustee is under no duty to diversify investments. This section of the trust instrument shall be construed as allowing the trustee a broader latitude with respect to trust investments than would be permitted by the California Uniform Prudent Investor Act, as amended from time to time.

6.11. Power Over Unproductive Property. The trustee shall have the power to retain or acquire unproductive or underproductive property.



6.12. Power to Operate Business. The trustee shall have the power to hold and operate any business or enterprise that is or becomes trust property, on such terms and for such a time as the trustee, in the trustee's discretion, deems advisable; to purchase, acquire, invest in, or otherwise participate in, any business or other enterprise on behalf of the trust; or to sell, dissolve, liquidate, or terminate any such business. The trustee shall also have the power to incorporate, reorganize, or otherwise change the form of a business or enterprise that is part of the trust, through merger or consolidation of two or more enterprises or otherwise, and to participate in that business or enterprise as a sole proprietor, as a general or limited partner, as a shareholder, or in any other capacity. Any operation, sale, purchase, acquisition, investment in, or dissolution or liquidation of a business interest, in good faith, shall be at the risk of the trust, and without liability on the part of the trustee for any resulting losses. The trustee shall also have the power to contribute capital or loan money to the business or enterprise on such terms and conditions as the trustee deems advisable.

6.13. Power to Self-Deal. The trustee, acting as an individual or as a trustee of another trust not created by this trust instrument, shall have the power to perform the following acts with respect to the property of any trust under this trust instrument: purchase property from or sell property to the trust at fair market value; exchange property for trust property of equal value; lease property from or to the trust at fair rental value; lend or advance funds to the trust, with interest at then-prevailing rates, and receive security for the loans in any commercially reasonable form; and receive from any business in which the trust has an interest a reasonable salary and reimbursement of expenses while performing duties as a trustee. The trustee, acting as trustee of another trust established by the settlors or another trust established for the benefit of any one or

more of the beneficiaries of the trust, shall have the power to borrow funds from the trust with interest at then-prevailing rates, and give security for the loans in any commercially reasonable form.

6.14. Powers Regarding Subchapter S Stock. If at any time the trust estate includes shares of stock in any corporations that have elected to be governed by the provisions of Subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code (IRC Section 1361 et seq., or any successor sections), then notwithstanding any other provision of this instrument, the trustee shall at all times manage those shares, and administer the trust estate, in a manner that will maintain the S corporation status. To satisfy this obligation, but without limiting the discretion of the trustee to take any action to protect the S corporation status, the trustee shall act as follows:

(a) Allocation or Distribution to Permitted Shareholders. The trustee shall allocate or distribute shares of S corporation stock only to those trusts or those beneficiaries that are permitted to be shareholders of an S corporation.

(b) Qualified Subchapter S Trust Provisions. If shares of S corporation stock are allocated to any trust created under this instrument and that trust does not otherwise qualify as a permitted shareholder under Internal Revenue Code Section 1361, or any successor section, then notwithstanding any other provision of this instrument, that trust (or any portion of that trust containing S corporation stock) shall be administered so as to ensure that it is a Qualified Subchapter S Trust (QSST), an Electing Small Business Trust (ESBT), or some other form of trust that qualifies as a permitted shareholder under Internal Revenue Code Section 1361, or any successor section. The S corporation stock in each such trust shall be held in separate share trusts (within the meaning of Internal Revenue Code Section 663(c), or any successor section) for each beneficiary; and all other property in each trust shall be held in a separate trust, which shall continue to be administered in accordance with the terms of this instrument. With respect to the separate share trusts holding S corporation stock, the trustee shall make distributions of income and principal, and otherwise administer the trusts, to ensure that those trusts do not become ineligible shareholders of an S corporation. To the extent that the terms of this instrument are inconsistent with those separate

share trusts qualifying as permitted shareholders of an S corporation, those terms shall be disregarded.

(c) Other Trustee Administrative Powers. The trustee shall have the power (1) to enter into agreements with other shareholders or with the corporation relating to transfers of S corporation stock or the management of the S corporation; and (2) to allocate amounts received, and the tax on undistributed income, between income and principal. During the administration of a trust holding S corporation stock, the trustee may allocate tax deductions and credits arising from ownership of S corporation stock between income and principal. In making those allocations, the trustee shall consider that the beneficiary is to have the enjoyment of the property at least equal to that ordinarily associated with an income interest.

(d) Beneficiary Agreement. The trustee shall not distribute any S corporation stock to any beneficiary unless, prior to that distribution, the beneficiary enters into a written agreement with the S corporation stating the following: (1) that the beneficiary will consent to any election to qualify the corporation as an S corporation; (2) that the beneficiary will not interfere with the S corporation maintaining its S corporation status; (3) that the beneficiary will not transfer the S corporation stock to any transferee who does not agree to execute a similar consent; (4) that the beneficiary will not transfer the stock in a manner that will cause a termination of S corporation status under the then applicable federal and state tax law and regulations; and (5) that the beneficiary will join in any attempt to obtain a waiver from the Internal Revenue Service of a terminating event on the grounds of inadvertence if S corporation status is inadvertently terminated and the S corporation or any shareholder desires that S corporation status should continue.

(e) Certificate to Bear Legend. If the trustee receives any shares of S corporation stock whose stock certificates bear a legend stating that the transfer, pledge, assignment, hypothecation, or other disposition of the stock is subject to the terms set forth in the preceding subsection, then the stock certificates shall also bear that legend when the trustee distributes those shares of S corporation stock to a beneficiary.

6.15. Power to Combine Trust Assets. Each trust created under this instrument shall constitute a separate trust and be administered accordingly; however, the assets of all of the trusts may be combined for bookkeeping purposes and held for the trust beneficiaries without physical division into separate trusts until time of distribution.

6.16. Early Termination of Trusts. The trustee shall have the power, in the trustee's discretion, to terminate any trust created under this trust instrument whenever the fair market value of the trust falls below forty thousand dollars (\$40,000), or becomes so small in relation to the costs of administration as to make continuing administration uneconomical. On termination, the trustee shall distribute the principal and any accrued or undistributed net income to the income beneficiaries in proportion to their shares of the income. If no fixed amount of income is payable to specific beneficiaries, the trustee shall distribute the principal and any accrued or undistributed net income in equal shares to those beneficiaries who would then be entitled to income payments from the trust.

6.17. Division or Distribution in Cash or Kind. In order to satisfy a pecuniary gift or to distribute or divide trust assets into shares or partial shares, the trustee may distribute or divide those assets in kind, or divide undivided interests in those assets, or sell all or any part of those assets and distribute or divide the property in cash, in kind, or partly in cash and partly in kind. Property distributed to satisfy a pecuniary gift under this instrument shall be valued at its fair market value at the time of distribution.

6.18. Payments to Legally Incapacitated Persons. If at any time any trust beneficiary is a minor, or it appears to the trustee that any trust beneficiary is incapacitated, incompetent, or for any other reason not able to receive payments or make intelligent or responsible use of the payments, then the trustee, in lieu of making direct payments to the trust beneficiary, may make payments to the beneficiary's conservator or guardian; to the beneficiary's custodian under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any state; to the beneficiary's custodian under the California Uniform Transfers to Minors Act until the

beneficiary reaches the age of twenty-five (25); to one or more suitable persons as the trustee deems proper, such as a relative of or a person residing with the beneficiary, to be used for the beneficiary's benefit; to any other person, firm, or agency for services rendered or to be rendered for the beneficiary's assistance or benefit; or to accounts in the beneficiary's name with financial institutions. If there is no custodian then-serving or nominated to serve by the settlor for a beneficiary, the personal representative or trustee, as the case may be, shall designate the custodian. The receipt of payments by any of the foregoing shall constitute a sufficient acquittance of the trustee for all purposes.

6.19. Trustee's Liability. No trustee shall be liable to any interested party for acts or omissions of that trustee, except those resulting from that trustee's willful misconduct or gross negligence. This standard shall also apply regarding a trustee's liability for the acts or omissions of any cotrustee, predecessor trustee, or agent employed by the trustee.

6.20. Written Notice to Trustee. Until the trustee receives written notice of any death or other event on which the right to payments from any trust may depend, the trustee shall incur no liability for disbursements made in good faith to persons whose interests may have been affected by that event.

6.21. Duty to Account. The trustee shall not be required to render periodic accounts to any person, but shall render accounts at the termination of a trust and on a change of trustees, to the persons and in the manner required by law. When a predecessor trustee has failed to render accounts as required under this provision, the successor trustee may, but need not, render accounts for such period with reasonable efforts without incurring any additional liability for acts of a predecessor trustee, other than as already provided under California law. This provision is

intended to permit the successor trustee to render accounts for the predecessor without creating any additional duty to investigate or to account. Nonetheless, if in the course of rendering accounts left undone by the predecessor trustee, the successor trustee obtains knowledge of a situation that may constitute a breach of trust committed by the predecessor trustee, the successor trustee shall deal with such knowledge in accordance with the successor trustee's fiduciary duties and powers.

## ARTICLE SEVEN

### CONCLUDING PROVISIONS

7.1. Simultaneous Death. If any beneficiary under this instrument and the settlor die under circumstances in which the order of their deaths cannot be established by clear and convincing evidence, the settlor shall be deemed to have survived the beneficiary, and the provisions of this instrument shall be construed accordingly.

7.2. Survivorship Requirement. For the purposes of this instrument, a beneficiary shall be deemed not to have survived the settlor if that beneficiary dies within thirty (30) days after the settlor's death.

7.3. No-Contest Clause. If any beneficiary under this instrument, singularly or in combination with any other person or persons, directly or indirectly does any of the following acts, then the right of that person to take any interest given to him or her by this instrument shall be void, and any gift or other interest in the trust property to which the beneficiary would otherwise have been entitled shall pass as if he or she had predeceased the settlor.

Without probable cause challenges the validity of this instrument on any of the following grounds:

- (a) Forgery;
- (b) Lack of due execution;
- (c) Lack of capacity;
- (d) Menace, duress, fraud, or undue influence;
- (e) Revocation pursuant to the terms of this instrument or applicable law;
- (f) Disqualification of a beneficiary who is a "disqualified person" as described in California Probate Code Section 21350 or applicable successor statute.

7.4. Definitions of Death Taxes, Debts, and Expenses. As used in this instrument, the following definitions apply:

(a) The term "death taxes" shall mean all inheritance, estate, succession, and other similar taxes that are payable by any person on account of that person's interest in the estate of the settlor or by reason of the settlor's death, including penalties and interest, but excluding the following: (i) any additional tax that may be assessed under Internal Revenue Code Section 2032A; and (ii) any federal or state tax imposed on any generation-skipping transfer, as that term is defined in the federal tax laws, unless that generation-skipping transfer tax is payable directly out of the assets of a trust created by this instrument.

(b) The term "debts and expenses" shall include the following: (i) all costs, expenses of litigation, counsel fees, or other charges that the trustee incurs in connection with the determination of the amount of the death taxes, interest, or penalties referred to in subsection (a) of this section; and (ii) legally enforceable debts, funeral expenses, expenses of last illness, and administration and property expenses.

7.5. Definition of Incapacity.

(a) For purposes of this instrument, a person is deemed "incapacitated" or deemed to suffer from "incapacity" if any of the following circumstances apply:

(1) The person is unable to provide properly for that person's own needs for physical health, food, clothing, or shelter; to manage substantially that person's own financial resources; or to resist fraud or undue influence.

(b) In case of temporary incapacity of a sole trustee, the successor trustee designated under this instrument shall serve during the period of temporary

incapacity as though he or she were the only trustee. In case of temporary incapacity of a cotrustee, the other cotrustee shall make any and all decisions during the period of temporary incapacity as though that cotrustee were the only trustee.

(c) Any trustee deemed to be temporarily incapacitated shall be deemed to be permanently incapacitated 90 days after the determination of temporary incapacity unless a determination of capacity is made within that 90-day period. If a determination of capacity is made, the trustee may resume serving as trustee. If there is a subsequent determination of incapacity, the trustee has another 90-day period to obtain a determination of capacity.

(d) Any successor trustee or cotrustee serving in place of a temporarily incapacitated trustee shall not be relieved of liability until that trustee's account has been settled or an account has been waived by a majority of all current beneficiaries of the trust.

(e) If any trustee or any beneficiary whose capacity is in question disputes the determination of incapacity under any of the standards listed above, such person may petition the court for a finding regarding that person's capacity. The court's finding shall be conclusive. If the court determines that the trustee or other person whose capacity is in question has capacity, the trust property shall bear all expenses associated with the examination or court proceeding. If the court sustains the determination of incapacity, the individual challenging the determination of incapacity shall bear all expenses of the examination or court proceeding.

(f) Each individual trustee agrees to cooperate in any examination reasonably necessary for the purpose of determining capacity, agrees to waive the doctor-patient privilege in respect to the results of such examination, and agrees to provide written authorization in compliance with the privacy regulations under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d) and the provisions of California Civil Code Section 56.10 for the disclosure and use of that trustee's health information and medical records to the extent that such disclosure and use are necessary to make a determination of the trustee's capacity. Refusal to submit to the examination or to provide the waiver shall be deemed a resignation by that trustee.

7.6. Definition of Education. As used in this instrument, the term "education" refers to the following:



- (a) Education at public or private elementary, junior high, middle, or high schools, including boarding schools;
- (b) Undergraduate, graduate, and postgraduate study in any field, whether or not of a professional character, in colleges, universities, or other institutions of higher learning;
- (c) Specialized formal or informal training in music, the stage, the handicrafts, or the arts, whether by private instruction or otherwise; and
- (d) Formal or informal vocational or technical training, whether through programs or institutions devoted solely to vocational or technical training, or otherwise.

7.7. Number and Gender. As used in this instrument, references in the masculine gender shall be deemed to include the feminine and neuter genders, and vice versa, and references to the singular shall be deemed to include the plural, and vice versa, wherever the context so permits.

7.8. Captions. The captions appearing in this instrument are for convenience of reference only, and shall be disregarded in determining the meaning and effect of the provisions of this instrument.

7.9. Severability Clause. If any provision of this instrument is invalid, that provision shall be disregarded, and the remainder of this instrument shall be construed as if the invalid provision had not been included.

7.10. California Law to Apply. All questions concerning the validity, interpretation, and administration of this instrument, including any trusts created under this instrument, shall be governed by the laws of the State of California, regardless of the domicile of any trustee or beneficiary.

7.11. Gifts to Heirs. For any gift to "heirs" of the settlor that is made in this instrument, those heirs shall be determined as if the settlor had died intestate at the time for distribution

prescribed in this instrument, and the identity and shares of those heirs shall be determined according to the California laws of succession that concern separate property not acquired from a previously deceased spouse and that are in effect at the time the settlor is deemed to have died.

ARTICLE EIGHT

SIGNATURE AND EXECUTION

8.1. Execution. I certify that I have read the foregoing declaration of trust and that it correctly states the terms and conditions under which the trust estate is to be held, administered, and distributed. As trustee of the trust created by this declaration of trust, I approve this declaration of trust in all particulars, and agree to be bound by its terms and conditions. As settlor of the trust created by this declaration of trust, I approve this declaration of trust in all particulars, and agree to be bound by its terms and conditions.

Executed on March 6, 2012 at Alhambra, California.

SETTLOR-TRUSTEE

Dorothy Horwitz  
Dorothy Horwitz

ACKNOWLEDGMENT

State of California )  
County of Los Angeles ) ss

On March 6, 2012 before me, Trinh Ly

a notary public, personally appeared Dorothy Horwitz, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Trinh Ly

[SEAL]



Dorothy Horwitz Family Trust

Schedule A

The following is a list of the trust assets, received by the Dorothy Horwitz Family Trust on March 6, 2012.

Description of Property

1. Ten dollars cash.

2. All bank accounts at any bank, certificates of deposit, bonds, mutual funds, securities, stocks, stock accounts at any brokerage company, all real estate properties wherever located; and all jewelry, clothing, household furniture and furnishings, personal automobiles, country club memberships, and other tangible articles of a personal nature belonging to the settlor of the trust, or the settlor's interest in any such property which now or at any time after the date of this instrument is normally kept at the settlor's place of residence and safe deposit box(es).

3. Settlor's interest in real property located at 8429 East Village Lane, Rosemead, California 91770.

End of trust assets received on March 6, 2012.

Dorothy Horwitz Family Trust

Schedule B

# EXHIBIT 2

When recorded, mail to:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

\_\_\_\_\_

Space above this line for Recorder's use

THE AFFIDAVIT OF

DOROTHY HORWITZ

STATE OF CALIFORNIA )  
COUNTY OF Los Angeles ) ss. 555-40-9854

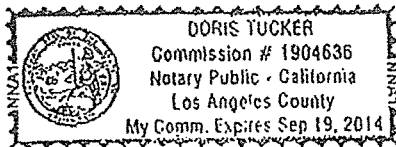
I (we), DOROTHY HORWITZ

the undersigned affiant(s), being first duly sworn on oath, deposes and says: That Addendum TO LIVING TRUST. DISTRIBUTION OF ASSETS. See ATTACHED PAGES (3)

Further affiant(s) sayeth not.

Dorothy Horwitz  
Signature of Affiant

\_\_\_\_\_  
Signature of Co-Affiant



**CALIFORNIA JURAT WITH AFFIANT STATEMENT**

State of California

County of Los Angeles } ss.

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

*Dorothy Horowitz*

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

Subscribed and sworn to (or affirmed) before me on this

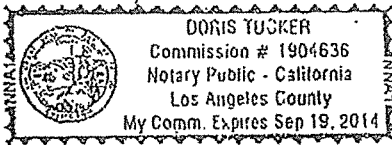
18 day of NOVEMBER, 2013 by

(1) DOROTHY HOROWITZ  
Name of Signer

- Personally known to me
- Proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (.)  
(and

(2) \_\_\_\_\_  
Name of Signer

- Personally known to me
- Proved to me on the basis of satisfactory evidence to be the person who appeared before me.)



Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

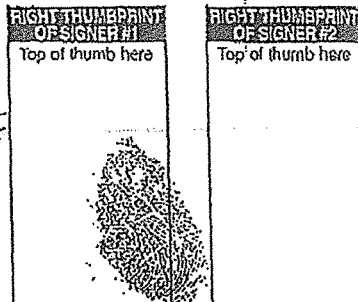
*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

Further Description of Any Attached Document

Title or Type of Document: Addendum to Distribution of Assets

Document Date: 11-18-13 Number of Pages: 5

Signer(s) Other Than Named Above: \_\_\_\_\_





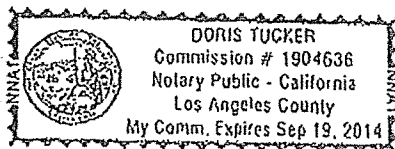
*DOROTHY  
#1 EDVMDUM*

Upon my death the only ones to enter my condo and absolutely no one else are; The Aparicio's and Hoover Louie. Rose can take what she wants except for the wood and tile sculptures, which are to be shipped prepaid to Murray Solomon. All household goods to be given to the Salvation Army or Goodwill. Condo is to be sold as is, by Rose Aparicio's Realtor; Steven Tran, the proceeds are to be used to pay my executor Hoover Louie. The balance is to be distributed amongst charities. All monies used by me before my death, are to be deducted from charities. I have three safe deposit boxes, one is at Bank of America at Valley and Ivar in the city of Rosemead, and listed under Walter & Dorothy Horwitz. The 2nd is at Wells Fargo on Las Tunas drive in Temple City and is listed under Dorothy Horwitz. The 3rd is at Chase Bank on Las Tunas Drive in Temple City CA, and is listed under Dorothy Horwitz. The safe deposit keys are at my home in the bedroom nightstand under a poster of Boston. Sell all jewelry and add to charities.

jewelry to be sold and proceeds to go to St Jude Childrens charity

SIGNED *Dorothy Horwitz* DATE *11-18-13*

WITNESS *[Signature]* DATE *11-18-13*



Addendum to : Dorothy Horwitz  
Living Trust  
~~ESTATE~~ ADDENDUM  
# 12

Distribution of Assels

Rose Aparicio S.S.# 555-40-9854 \$ 25,000.00  
D.O.B 5-20-34

Tel: 626-614-8298  
5135 Muscatel Ave.  
San Gabriel, Ca 91776  
In Trust for

Nicolas Sanchez S.S.# 625-80-6361  
DOB 11-2-92

Tel: 626-230-1389  
5139 Muscatel Ave.  
San Gabriel, Ca 91776

Monies are to be given to Nicolas Sanchez on 11-2-2020.  
If Rose Aparicio dies prior to 11-2-2020, monies are to be  
Paid to Nicolas Sanchez when Rose Aparicio's death certificate is  
Produced. If both Rose Aparicio and Nicolas Sanchez have  
expired on 11-2-2020, monies are to be given to St. Jude.

Dennis J. Solomon S.S # 018-38-9-8345 \$ 5.00

D.O.B. 5-8-50  
Tel: 508-878-8094  
58 Miriah Dr.  
Yarmouth Port, Ma 02675  
Mail address;  
P.O. Box 289  
Yarmouth Port, Ma 02675

Murray Solomon S.S.# 016-38-4344 \$ 5,000.00  
DOB 3-18-52

Tel: 413-634-5616  
57 Fairgrounds Rd.  
Cummington, Ma 01026-9701

Andrea Ebert S.S # 571-64-9027 \$ 10,000.00  
DOB 4-5-48

Tel: 209-267-9180  
65 Lela Ct.  
Sutter Creek. Ca 95685

Edward Liu  
8525 E. Village Ln  
Rosemead, Ca.  
Tel 626-573-9046  
Tel Cel 626-548-1715  
All Patio Plants plus floor to ceiling ladder in garage,

Addendum To: *DOROTHY HORWITZ*  
 Dorothy Horwitz  
 Family Trust  
*#1 ADDENDUM*

St. Jude	\$ 300,000.00
Los Angeles Children's Hospital	\$ 300,000.00
American Lung Assoc.	\$ 100,000.00
American Heart Assoc.	\$ 100,000.00
Alzheimer's Foundation	\$ 50,000.00
Kidney Foundation	\$ 50,000.00
Braille Insitute (Vermont Ave. Hollywood)	\$ 5,000.00
Muscular Dystrophy	\$ 10,000.00
Multiple Scherosis (Montel Williams)	\$ 10,000.00
Los Angeles Mission	\$ 15,000.00
American Diabetes Assoc.	\$ 5,000.00

Cars: 1999 Buick Century  
 1999 Chev. Blazer  
 To be donated to Cars for Causes  
 Proceeds to be given to Union Mission  
 In Los Angeles.

# EXHIBIT 3

WILL  
OF  
DOROTHY HORWITZ

Prepared By:

Law Office of Hung Ban Tran  
228 West Valley Boulevard, Suite 201  
Alhambra, CA 91801

(626) 308-9308 (Office)  
(714) 348-6188 (Cell)

LAST WILL OF  
DOROTHY HORWITZ

I, Dorothy Horwitz, a resident of Los Angeles County, California, declare that this is my will. I hereby revoke all my previous wills and codicils.

ARTICLE ONE

INTRODUCTORY PROVISIONS

- 1.1. Marital Status. I am not currently married.
- 1.2. No Children. I have never had any children.
- 1.3. No Contract Affecting Will. I have not entered into any contract to make a will or a testamentary gift, not to revoke a will or a testamentary gift, or to die intestate.
- 1.4. No Exercise of Power of Appointment. I intentionally refrain from exercising any power of appointment that I now possess or that hereafter may be conferred on me.

ARTICLE TWO

GIFT OF ENTIRE ESTATE

- 2.1. Gift of Entire Estate. I give all of my property to the trustee of the Dorothy Horwitz Family Trust, created under the declaration of trust executed on the same date as, but immediately before, the execution of this will, by Dorothy Horwitz as settlor and trustee. The trustee of that trust shall add the property disposed of under this will to the trust principal and

hold, administer, and distribute the property in accordance with the provisions of that declaration of trust, including any amendments of that declaration of trust that have been made before or after execution of this will.

### ARTICLE THREE

#### RESIDUARY PROVISIONS

3.1. Disposition of Residue. If the Dorothy Horwitz Family Trust has been revoked, terminated, or declared invalid for any reason, I give the residue of my estate to the executor of this will, as trustee, who shall hold, administer, and distribute the property under a testamentary trust, the terms of which shall be identical to the terms of the Dorothy Horwitz Family Trust that are in effect on the date of execution of this will or such later date on which this will is republished.

### ARTICLE FOUR

#### EXECUTOR

4.1. Nomination of Executor. I nominate Hoover J. Louie, my accountant, as executor of this will.

4.2. Successor Executors. If Hoover J. Louie is unable (by reason of death, incapacity, or any other reason) or unwilling to serve as executor, or if at any time the office of executor becomes vacant, by reason of death, incapacity, or any other reason, and no successor executor or coexecutors have been designated under any other provision of this will, a new executor or coexecutors shall be appointed by the court.

4.3. Waiver of Bond. No bond or undertaking shall be required of any executor nominated in this will.

4.4. General Powers of Executor. The executor shall have full authority to administer my estate under the California Independent Administration of Estates Act. The executor shall have all powers now or hereafter conferred on executors by law, except as otherwise specifically provided in this will, including any powers enumerated in this will.

4.5. Power to Invest. The executor shall have the power to invest estate funds in any kind of real or personal property, as the executor deems advisable.

4.6. Division or Distribution in Cash or in Kind. In order to satisfy a pecuniary gift or to distribute or divide estate assets into shares or partial shares, the executor may distribute or divide those assets in kind, or divide undivided interests in those assets, or sell all or any part of those assets and distribute or divide the property in cash, in kind, or partly in cash and partly in kind. Property distributed to satisfy a pecuniary gift under this will shall be valued at its fair market value at the time of distribution. This section shall apply only to the extent that it does not conflict with the provisions of the Dorothy Horwitz Family Trust.

4.7. Power to Sell, Lease, and Grant Options to Purchase Property. The executor shall have the power to sell, at either public or private sale and with or without notice, lease, and grant options to purchase any real or personal property belonging to my estate, on such terms and conditions as the executor determines to be in the best interest of my estate.

4.8. Payments to Legally Incapacitated Persons. If at any time any beneficiary under this will is a minor or it appears to the executor that any beneficiary is incapacitated, incompetent, or for any other reason not able to receive payments or make intelligent or responsible use of the



payments, then the executor, in lieu of making direct payments to the beneficiary, may make payments to the beneficiary's conservator or guardian; to the beneficiary's custodian under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any state; to the beneficiary's custodian under the California Uniform Transfers to Minors Act until the beneficiary reaches the age of twenty-five (25); to one or more suitable persons, as the executor deems proper, such as a relative or a person residing with the beneficiary, to be used for the benefit of the beneficiary; to any other person, firm, or agency for services rendered or to be rendered for the beneficiary's assistance or benefit; or to accounts in the beneficiary's name with financial institutions. If there is no custodian then-serving or nominated to serve by me for a beneficiary, the personal representative or executor, as the case may be, shall designate the custodian. The receipt of payments by any of the foregoing shall constitute a sufficient acquittance of the executor for all purposes.

## ARTICLE FIVE

### CONCLUDING PROVISIONS

5.1. Definition of Death Taxes. The term "death taxes," as used in this will, shall mean all inheritance, estate, succession, and other similar taxes that are payable by any person on account of that person's interest in my estate or by reason of my death, including penalties and interest, but excluding the following:

(a) Any additional tax that may be assessed under Internal Revenue Code Section 2032A.

(b) Any federal or state tax imposed on a "generation-skipping transfer," as that term is defined in the federal tax laws, unless the applicable tax statutes provide

that the generation-skipping transfer tax on that transfer is payable directly out of the assets of my gross estate.

5.2. Payment of Death Taxes. Pursuant to the declaration of trust executed on the same date as, but immediately before, the execution of this will by Dorothy Horwitz as settlor and trustee, all death taxes, whether or not attributable to property inventoried in my probate estate, shall be paid by the trustee from that trust. If that trust does not exist at the time of my death, or if the assets of that trust are insufficient to pay the death taxes in full, I direct the executor to pay any death taxes, whether or not attributable to property inventoried in my probate estate, that cannot be paid by the trustee, by prorating and apportioning those taxes among the persons interested in my estate, as provided in the California Probate Code.

5.3. Simultaneous Death. If any beneficiary under this will and I die simultaneously, or if it cannot be established by clear and convincing evidence whether that beneficiary or I died first, I shall be deemed to have survived that beneficiary, and this will shall be construed accordingly.

5.4. Period of Survivorship. For the purposes of this will, a beneficiary shall not be deemed to have survived me if that beneficiary dies within thirty (30) days after my death.

5.5. Intentional Omission of Children Born or Adopted After Execution of Will. Except as otherwise provided in this will, I have intentionally failed to provide in this will for any children born to or adopted by me after the execution of this will.

5.6. No-Contest Clause. If any beneficiary under this will, singularly or in combination with any other person or persons, directly or indirectly does any of the following acts, then the right of that person to take any interest given to him or her by this will shall be void, and any gift

or other interest in my estate to which the beneficiary would otherwise have been entitled shall pass as if he or she had predeceased me.

Without probable cause challenges the validity of this will on any of the following grounds:

- (a) Forgery;
- (b) Lack of due execution;
- (c) Lack of capacity;
- (d) Menace, duress, fraud, or undue influence;
- (e) Revocation pursuant to the terms of applicable law;
- (f) Disqualification of a beneficiary under California Probate Code Sections 6122 or 21350 or applicable successor statutes.

5.7. Definition of Incapacity.

(a) For purposes of this will, a person is deemed "incapacitated" or deemed to suffer from "incapacity" if any of the following circumstances apply:

(1) The person is unable, in the executor's judgment, to provide properly for that person's own needs for physical health, food, clothing, or shelter; to manage substantially that person's own financial resources; or to resist fraud or undue influence.

(b) In case of temporary incapacity of a sole executor, the successor executor designated under this will shall serve during the period of temporary incapacity as though he or she were the only executor. In case of temporary incapacity of a coexecutor, the other coexecutor shall make any and all decisions during the period of temporary incapacity as though that coexecutor were the only executor.

(c) Any executor deemed to be temporarily incapacitated shall be deemed to be permanently incapacitated 90 days after the determination of temporary incapacity unless a determination of capacity is made within that 90-day period. If a determination of capacity is made, the executor may resume serving as executor. If there is a subsequent determination of incapacity, the executor has another 90-day period to obtain a determination of capacity.

(d) Any successor executor or coexecutor serving in place of a temporarily incapacitated executor shall not be relieved of liability until that executor's account has been settled or an account has been waived by a majority of all current beneficiaries of the estate.

(e) If any executor or any beneficiary whose capacity is in question disputes the determination of incapacity under any of the standards listed above, such person may petition the court for a finding regarding that person's capacity. The court's finding shall be conclusive. If the court determines that the executor or other person whose capacity is in question has capacity, the estate property shall bear all expenses associated with the examination or court proceeding. If the court sustains the determination of incapacity, the individual challenging the determination of incapacity shall bear all expenses of the examination or court proceeding.

(f) Each individual executor agrees to cooperate in any examination reasonably necessary for the purpose of determining capacity, agrees to waive the doctor-patient privilege in respect to the results of such examination, and agrees to provide written authorization in compliance with the privacy regulations under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d) and the provisions of California Civil Code Section 56.10 for the disclosure and use of that executor's health information and medical records to the extent that such disclosure and use are necessary to make a determination of the executor's capacity. Refusal to submit to the examination, to provide the waiver, or to provide the written authorization when requested by the current beneficiaries of the estate shall be deemed a resignation by that executor.

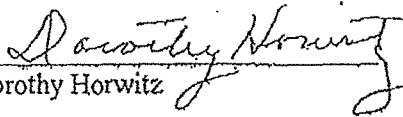
5.8. Number and Gender. As used in this will, references in the masculine gender shall be deemed to include the feminine and neuter gender, and vice versa, and references to the singular shall be deemed to include the plural, and vice versa, wherever the context so permits.

5.9. Captions. The captions appearing in this will are for convenience of reference only, and shall be disregarded in determining the meaning and effect of the provisions of this will.

5.10. Severability Clause. If any provision of this will is invalid, that provision shall be disregarded, and the remainder of this will shall be construed as if the invalid provision had not been included.

5.11. California Law to Apply. All questions concerning the validity and interpretation of this will, including any trusts created by this will, shall be governed by the laws of the State of California in effect at the time this will is executed.

Executed on March 6, 2012, at Alhambra, California.

  
Dorothy Horwitz

On the date written above, we, the undersigned, each being present at the same time, witnessed the signing of this instrument by Dorothy Horwitz, who declared to us that this instrument was the will of Dorothy Horwitz. At that time, Dorothy Horwitz appeared to us to be of sound mind and memory and, to the best of our knowledge, was not acting under fraud, duress, menace, or undue influence. Understanding this instrument, which consists of Nine (9) pages, including the pages on which the signature of Dorothy Horwitz and our signatures appear, to be the will of Dorothy Horwitz, we subscribe our names as witnesses thereto.

We declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 6, 2012, at Alhambra, California.

Kevin Chiu residing at 228 West Valley Blvd #201  
 Witness Street Address  
 Kevin Chiu Alhambra, California  
 City

Trinh Ly residing at 228 West Valley Blvd #201  
 Witness Street Address  
 Trinh Ly Alhambra, California  
 City

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): (562) 436-9911 Margaret E. Morrow RUSSELL, MIRKOVICH & MORROW One World Trade Center Suite 1660 Long Beach, CA 90831 ATTORNEY FOR (Name): Hoover J. Louie	TELEPHONE AND FAX NOS.: (562) 436-1897	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles, CA 90012-3014 BRANCH NAME: Central Probate Division		
ESTATE OF (Name): In Re THE DOROTHY HORWITZ FAMILY TRUST, DATED MARCH 6, 2012, AS AMENDED DECEDENT		
<b>PROOF OF SUBSCRIBING WITNESS</b>		CASE NUMBER: BP153887

1. I am one of the attesting witnesses to the instrument of which Attachment 1 is a photographic copy. I have examined Attachment 1 and my signature is on it.
- (0.5) NO a.  The name of the decedent was signed in the presence of the attesting witnesses present at the same time by (0.5)  
 (1)  the decedent personally.  
 (2)  another person in the decedent's presence and by the decedent's direction.
- (0.5) NO b.  The decedent acknowledged in the presence of the attesting witnesses present at the same time that the decedent's name was signed by (0.5)  
 (1)  the decedent personally.  
 (2)  another person in the decedent's presence and by the decedent's direction.
- (0.5) NO c.  The decedent acknowledged in the presence of the attesting witnesses present at the same time that the instrument signed was decedent's (0.5)  
 (1)  will.  
 (2)  codicil- Addendum to Trust (0.5)  
*did not understand (0.5)*
2. When I signed the instrument, I understood that it was decedent's  will  codicil. Addendum to Trust  
*or was not, (0.5)*
3. I have no knowledge of any facts indicating that the instrument, or any part of it, was procured by duress, menace, fraud, or undue influence.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 6/13/16

Orit Shapiro (TYPE OR PRINT NAME) \_\_\_\_\_ (SIGNATURE OF WITNESS)

Garden Crest Convalescent Hospital Inc,  
 909 N. Lucile Ave., Los Angeles CA 90026  
 (ADDRESS)

**ATTORNEY'S CERTIFICATION**  
 (Check local court rules for requirements for certifying copies of wills and codicils)

I am an active member of The State Bar of California. I declare under penalty of perjury under the laws of the State of California that Attachment 1 is a photographic copy of every page of the  will  codicil presented for probate.  
 Addendum to Trust

Date: 4/14/2016

Margaret E. Morrow (TYPE OR PRINT NAME) \_\_\_\_\_ (SIGNATURE OF ATTORNEY)

When recorded, mail to:

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_  
\_\_\_\_\_

Space above this line for Recorder's use

**THE AFFIDAVIT OF**

DOROTHY HORWITZ

STATE OF CALIFORNIA )

COUNTY OF Los Angeles )

ss. 555-40-9854

I (We), DOROTHY HORWITZ

the undersigned affiant(s), being first duly sworn on oath, deposes and says: That Addendum  
TO living TRUST. DISTRIBUTION OF ASSETS  
See ATTACHED PAGES (3)

Further affiant(s) sayeth not.

Dorothy Horwitz  
Signature of Affiant

\_\_\_\_\_  
Signature of Co-Affiant







10/31/13  
DOROTHY HORWITZ  
#1 ADVUMUM

Upon my death the only ones to enter my condo and absolutely no one else are; The Aparicio's and Hoover Louie. Rose can take what she wants except for the wood and tile sculptures, which are to be shipped prepaid to Murray Solomon. All household goods to be given to the Salvation Army or Goodwill. Condo is to be sold as is, by Rose Aparicio's Realtor; Steven Tran, the proceeds are to be used to pay my executor Hoover Louie. The balance is to be distributed amongst charities. All monies used by me before my death, are to be deducted from charities. I have three safe deposit boxes, one is at Bank of America at Valley and Ivar in the city of Rosemead, and listed under Walter & Dorothy Horwitz. The 2nd is at Wells Fargo on Las Tunas drive in Temple City and is listed under Dorothy Horwitz. The 3rd is at Chase Bank on Las Tunas Drive in Temple City CA, and is listed under Dorothy Horwitz. The safe deposit keys are at my home in the bedroom nightstand under a poster of Boston. Sell all jewelry and add to charities.

jewelry to be sold and proceeds to go to St Jude Childrens charity

SIGNED Dorothy Horwitz DATE 11-18-13

WITNESS [Signature] DATE 11-18-13



10/31/13

DOROTHY HORWITZ

Addendum To:

DOROTHY HORWITZ  
Dorothy Horwitz  
Family Trust  
#1 ADDENDUM

St. Jude	\$ 300,000.00
Los Angeles Children's Hospital	\$ 300,000.00
American Lung Assoc.	\$ 100,000.00
American Heart Assoc.	\$ 100,000.00
Alzheimer's Foundation	\$ 50,000.00
Kidney Foundation	\$ 50,000.00
Braille Institute (Vermont Ave. Hollywood)	\$ 5,000.00
Muscular Dystrophy	\$ 10,000.00
Multiple Sclerosis (Montel Williams)	\$ 10,000.00
Los Angeles Mission	\$ 15,000.00
American Diabetes Assoc.	\$ 5,000.00

Cars: 1999 Buick Century  
1999 Chev. Blazer  
To be donated to Cars for Causes  
Proceeds to be given to Union Mission  
In Los Angeles.

10/31/13 DOROTHY HORWITZ

Addendum to : Dorothy Horwitz  
Living Trust  
~~ADDENDUM~~ ADDENDUM #1

Distribution of Assets

Rose Aparicio S.S.# 555-40-9854 \$ 25,000.00  
D.O.B 5-20-34

Tel: 626-614-8298  
5135 Muscatel Ave.  
San Gabriel, Ca 91776

In Trust for  
Nicolas Sanchez S.S.# 625-80-6361  
DOB 11-2-92

Tel: 626-230-1389  
5139 Muscatel Ave.  
San Gabriel, Ca 91776

Monies are to be given to Nicolas Sanchez on 11-2-2020.  
If Rose Aparicio dies prior to 11-2-2020, monies are to be  
Paid to Nicolas Sanchez when Rose Aparicio's death certificate is  
Produced. If both Rose Aparicio and Nicolas Sanchez have  
expired on 11-2-2020, monies are to be given to St. Jude.

Dennis J. Solomon S.S # 018-38-9-8345 \$ 5.00

D.O.B. 5-8-50  
Tel: 508-878-8094  
58 Miriah Dr.  
Yarmouth Port, Ma 02675  
Mail address:  
P.O. Box 289  
Yarmouth Port, Ma 02675

Murray Solomon S.S.# 016-38-4344 \$ 5,000.00  
DOB 3-18-52

Tel: 413-634-5616  
57 Fairgrounds Rd.  
Cummington, Ma 01026—9701

Andrea Ebert S.S # 571-64-9027 \$ 10,000.00  
DOB 4-5-48

Tel: 209-267-9180  
65 Lela Ct.  
Sutter Creek. Ca 95685

Edward Liu  
8525 E. Village Ln  
Rosemead, Ca.  
Tel 626-573-9046  
Tel Cel 626-548-1715  
All Patio Plants plus floor to ceiling ladder in garage.

**CALIFORNIA JURAT WITH AFFIANT STATEMENT**

State of California

County of Los Angeles } ss.

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

*Dorothy Horwitz*

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

Subscribed and sworn to (or affirmed) before me on this

18 day of NOVEMBER, 2013 by

(1) DOROTHY HORWITZ  
Name of Signer



- Personally known to me
- Proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (.)  
(and

(2) \_\_\_\_\_  
Name of Signer

- Personally known to me
- Proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

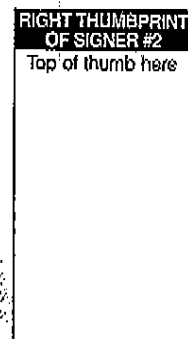
*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Further Description of Any Attached Document**

Title or Type of Document: Addendum to DISTRIBUTION SHEET

Document Date: 11-18-13 Number of Pages: 5

Signer(s) Other Than Named Above: \_\_\_\_\_



**CALIFORNIA JURAT WITH AFFIANT STATEMENT**

State of California

County of Los Angeles } ss.

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

*Dorothy Horwitz*  
Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

Subscribed and sworn to (or affirmed) before me on this

18 day of November, 2013 by  
Date Month Year

(1) DOROTHY HORWITZ  
Name of Signer



- Personally known to me
- Proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (,)

(2) \_\_\_\_\_  
Name of Signer

- Personally known to me
- Proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

*Doris Tucker*  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Further Description of Any Attached Document**

Title or Type of Document: Addendum to DISTRIBUTION of ASSETS

Document Date: 11-18-13 Number of Pages: 5

Signer(s) Other Than Named Above: \_\_\_\_\_



When recorded, mail to:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Space above this line for Recorder's use

THE AFFIDAVIT OF

DOROTHY HORWITZ

STATE OF CALIFORNIA  
COUNTY OF Los Angeles

ss. 555-40-9854

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TO AILING TRUST. DISTRIBUTION OF ASSETS.  
See ATTACHED PAGES (3)

Further affiant(s) sayeth not.



Dorothy Horwitz  
Signature of Affiant

\_\_\_\_\_  
Signature of Co-Affiant

EXHIBIT 2  
WIT: Tucker  
DATE: 6/3/15  
Rose M. Heffernan, CSR 9820

**CALIFORNIA JURAT WITH AFFIANT STATEMENT**

State of California

County of Los Angeles } ss.

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

*Dorothy Horowitz*

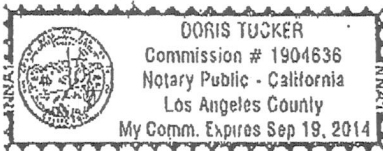
Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

Subscribed and sworn to (or affirmed) before me on this

18 day of NOVEMBER, 2013 by

(1) DOROTHY HORWITZ  
Name of Signer



- Personally known to me
- Proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (.)  
(and)

(2) \_\_\_\_\_  
Name of Signer

- Personally known to me
- Proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

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Title or Type of Document: Addendum to DISTRIBUTION AGREEMENT

Document Date: 11-18-13 Number of Pages: 5

Signer(s) Other Than Named Above: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER #1  
Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2  
Top of thumb here



1/2



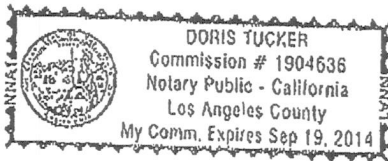
DOROTHY  
#1 ADUARDUM

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jewelry to be sold and proceeds to go to St Jude Childrens charity

SIGNED Dorothy Horwitz DATE 11-18-13

WITNESS [Signature] DATE 11-18-13



Addendum to : Dorothy Horwitz  
Living Trust  
~~ADDENDUM~~ #1  
#2

Distribution of Assets

Rose Aparicio S.S.# 555-40-9854 \$ 25,000.00  
D.O.B 5-20-34

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San Gabriel, Ca 91776  
In Trust for

Nicolas Sanchez S.S.# 625-80-6361  
DOB 11-2-92

Tel: 626-230-1389  
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Monies are to be given to Nicolas Sanchez on 11-2-2020.  
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DOB 3-18-52

Tel: 413-634-5616  
57 Fairgrounds Rd.  
Cummington, Ma 01026-9701

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DOB 4-5-48

Tel: 209-267-9180  
65 Lela Ct.  
Sutter Creek. Ca 95685

Edward Liu  
8525 E. Village Ln  
Rosemead, Ca.  
Tel 626-573-9046  
Tel Cel 626-548-1715

All Patio Plants plus floor to ceiling ladder in garage.

Addendum To:

*DOROTHY HORWITZ*  
Dorothy Horwitz  
Family Trust  
*#1 ADDENDUM*

St. Jude	\$ 300,000.00
Los Angeles Children's Hospital	\$ 300,000.00
American Lung Assoc.	\$ 100,000.00
American Heart Assoc.	\$ 100,000.00
Alzheimer's Foundation	\$ 50,000.00
Kidney Foundation	\$ 50,000.00
Braille Institute (Vermont Ave. Hollywood)	\$ 5,000.00
Muscular Dystrophy	\$ 10,000.00
Multiple Scherosis (Montel Williams)	\$ 10,000.00
Los Angeles Mission	\$ 15,000.00
American Diabetes Assoc.	\$ 5,000.00

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 1999 Chev. Blazer  
 To be donated to Cars for Causes  
 Proceeds to be given to Union Mission  
 In Los Angeles.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES - CENTRAL PROBATE DIVISION

IN RE )  
 )  
THE DOROTHY HORWITZ )  
 )  
FAMILY TRUST, DATED MARCH 6, 2012, ) NO. BP153887  
 )  
AS AMENDED. )  
\_\_\_\_\_ )

DEPOSITION OF DORIS TUCKER  
WEDNESDAY, JUNE 3, 2015

HEF COURT REPORTING  
6043 Tampa Avenue, Suite 207  
Tarzana, California 91356  
Phone: (800) 509-7770  
Fax: (818) 758-1823  
www.hefcourtreporting.com  
Reported by: Rose M. Heffernan, RPR, CLR, CSR No. 9820

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES - CENTRAL PROBATE DIVISION

IN RE )  
 )  
THE DOROTHY HORWITZ )  
 )  
FAMILY TRUST, DATED MARCH 6, 2012, ) NO. BP153887  
 )  
AS AMENDED. )  
\_\_\_\_\_ )

DEPOSITION OF DORIS TUCKER, taken on behalf of the  
Objector, Respondent and Trustee, at 21550 Oxnard  
Street, Third Floor, Woodland Hills, California,  
commencing at 10:26 a.m., Wednesday, June 3, 2015,  
pursuant to Subpoena, before Rose M. Heffernan, RPR,  
CSR No. 9820.

1 APPEARANCES :

2

3 FOR THE OBJECTOR/RESPONDENT AND TRUSTEE,  
4 HOOVER J. LOUIE:

5

6 RUSSELL, MIRKOVICH & MORROW  
7 BY: MARGARET E. MORROW, ESQUIRE  
8 One World Trade Center  
9 Suite 1660  
10 Long Beach, California 90831  
11 (562) 436-9911

12

13 FOR THE DEFENDANTS:

14

15 Appearing telephonically:  
16 DENNIS SOLOMON  
17 In Propria Persona  
18 Post Office Box 289  
19 Yarmouth Port, Massachusetts 02675  
20 (508) 394-9221

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INDEX

WITNESS: PAGE

DORIS TUCKER

EXAMINATION BY MS. MORROW 5

EXAMINATION BY MR. SOLOMON 26

PLAINTIFFS'

EXHIBIT DESCRIPTION MARKED

1 Notary journal entry dated 11/18 14

2 Addendum 22

3 Jurat 23

1 WOODLAND HILLS, CALIFORNIA; WEDNESDAY, JUNE 3, 2015

2 10:26 a.m.

3 --oOo--

4  
5 DORIS TUCKER,  
6 having been first duly sworn, was  
7 examined and testified as follows:

8  
9 EXAMINATION

10 BY MS. MORROW:

11 Q. Could you please state and spell your name for  
12 the record.

13 A. My name is Doris Tucker. D-o-r-i-s  
14 T-u-c-k-e-r.

15 Q. And, Ms. Tucker, have you ever had your  
16 deposition taken before?

17 A. Yes.

18 Q. On how many occasions?

19 A. Maybe once.

20 Q. Okay. I'm just going to go over a few ground  
21 rules --

22 A. Sure.

23 Q. -- just so we get a complete record.

24 The court reporter to your right is taking down  
25 everything that we say today in this room. It's therefore



1 important that I remember to let you finish your answer  
2 before I speak, and that you remember to let me finish my  
3 question before you speak.

4 It's also very important that you understand the  
5 question. You're the only person that really matters in  
6 this room. So if for some reason you don't understand a  
7 question that I ask, let me know, I'm happy to reword it,  
8 break it down into two questions, whatever it takes to  
9 ensure that you understand the question.

10 Do you understand that?

11 A. Yes.

12 Q. If for any reason you want to take a break at any  
13 time, just let me know. If you want to stretch your legs,  
14 get a glass of water, just let me know. I'm happy to take  
15 a break at any time.

16 Is there any reason why you cannot give your best  
17 testimony today?

18 A. No.

19 Q. Okay. Because the court reporter is taking down  
20 everything that is said today, it's important that you  
21 give your best testimony. And I do need to advise you  
22 that if you change any of your answers substantially, like  
23 a "yes" to a "no," and if this matter were to go to trial,  
24 that's something that somebody could comment upon  
25 negatively.

1 Do you understand that?

2 A. Yes, I do.

3 Q. But when you receive the transcript that the  
4 court reporter will be preparing, it is important that you  
5 make any corrections that you deem necessary.

6 Do you understand that?

7 A. Yes, I do.

8 Q. Okay. Now, I understand that you are currently a  
9 notary, licensed by the State of California. Is that  
10 correct?

11 A. Yes.

12 Q. And approximately how long have you held that  
13 notary license from the State of California?

14 A. Let me explain. The notary license I have held  
15 almost 20 years, but every four years it has to be  
16 renewed.

17 Q. Okay. So you have been a licensed notary for  
18 approximately 20 years, but that time includes your  
19 extensions every four years?

20 A. Yes, it does.

21 Q. Not an extension. A renewal.

22 A. A renewal.

23 Q. Okay. And did you take classes to become a  
24 notary?

25 A. Yes, I did.

1 Q. Okay. And do you take classes when you renew  
2 your license or do you study for the test?

3 A. Yes, I do.

4 Q. And every four years you take a notary test?

5 A. Yes, I do.

6 Q. And do those classes include information  
7 regarding witnesses' identification documents?

8 A. Yes, it does.

9 Q. And are you employed by somebody or are you  
10 self-employed?

11 A. Both.

12 Q. Okay. Who are you employed by?

13 A. I work as a notary for a company called Express  
14 Pack & Ship.

15 Q. Express Pack & Ship?

16 A. Um-hmm.

17 Q. And in addition to being an employee for Express  
18 Pack & Ship, you also are self-employed; is that  
19 correct?

20 A. Yes, I am.

21 Q. And is that as a notary?

22 A. That is both as a notary.

23 Q. Okay. Just to give me some idea -- I don't even  
24 know how to quantify this -- as to how many documents  
25 you've notarized. Can you -- can you give me any idea,

1 perhaps by month or --

2 A. That would require me -- to be accurate, okay --

3 Q. Okay.

4 A. -- that would require me going through every  
5 notary book that I have filled since the time I have  
6 become a notary. So we would have to say hundreds and  
7 hundreds, even thousands of signatures or notarizations in  
8 different areas.

9 Q. Would it be safe to say you've notarized over 100  
10 documents?

11 A. Definitely.

12 Q. Okay.

13 A. I mean, you know, I might do a hundred a month.

14 Q. Okay.

15 A. So it just depends.

16 Q. Okay. And do you -- as a self-employed notary,  
17 do you advertise or is it word of mouth?

18 A. Both.

19 Q. Okay. And I take it you've been to the Garden  
20 Crest Rehabilitation facility before?

21 A. Yes.

22 Q. Do you recall when you first went to Garden  
23 Crest?

24 A. I've gone several -- on several different  
25 occasions.

1 Q. Okay. Is that in your work through Express Pack  
2 & Ship, or is that in your work as a self-employed  
3 notary?

4 A. That's in my work as a self-employed notary.  
5 Garden Crest is a client of mine. So is Orit Shapiro.

6 Q. And when you have been called to Garden Crest as  
7 a notary, does one person, the same person, call you each  
8 time, or has different persons called you?

9 A. The same person calls me each time, which is Orit  
10 Shapiro.

11 Q. Okay. All right. And do you know Orit in a  
12 social way or in just a business relationship?

13 A. Business relationship.

14 Q. And what type of facility do you understand  
15 Garden Crest to be?

16 A. A rehabilitation center and nursing facility for  
17 patients with different requirements.

18 Q. Now, in your focusing on your work as a  
19 self-employed notary, do you have a regular practice when  
20 you are called to notarize a document?

21 Let's say I'm a customer and I call you and I  
22 say, "Will you come to my house to notarize a document?"  
23 Do you have a practice that you would ordinarily follow if  
24 you came to my house to notarize a document?

25 A. Sure.

1 Q. Okay. Can you walk me through that.

2 A. Sure.

3 I would introduce myself, "I am the notary  
4 requested, as per requested. I need to look at the  
5 documents that you need notarized. We need to go over  
6 them. And there may be a few questions I need to ask you  
7 regarding the notary."

8 Q. Okay. So you get the document and you look it  
9 through. Let's say there aren't any -- well, if you had a  
10 question about the document, you would ask the witness,  
11 correct?

12 A. I would ask you, if you are the person requesting  
13 the notary.

14 Q. Okay.

15 A. All right. Now, I would also need your  
16 identification. You must present your identification to  
17 me because I am here to verify that you are who you say  
18 you are.

19 Q. And you would verify that identification?

20 A. Correct.

21 Q. Okay. And then if you were satisfied with the  
22 document and the identification, would you notarize the  
23 document?

24 A. Yes.

25 Q. And generally do you evaluate the person, their

1 demeanor, their answers to your questions to ensure that  
2 they are competent to sign the document?

3 A. Yes, I do.

4 Q. And would you do that if the witness, the person  
5 signing the document, was an elderly person?

6 A. Definitely.

7 Q. If you had concerns about a witness's awareness  
8 or competency, would you ask questions to inquire  
9 further?

10 A. Yes, I would.

11 Q. Okay. Do you have a specific question that you  
12 usually ask, or do you just feel out the situation?

13 A. I usually feel out the situation and then adjust  
14 the questions according to the situation.

15 Q. Have you ever declined to notarize a document  
16 because you did not feel comfortable with the situation?

17 A. No.

18 Q. You've always been presented with a witness that  
19 you felt was competent, and you felt comfortable with the  
20 documents?

21 A. Yes.

22 Q. And in regard to Garden Crest, do you know if  
23 they have a sign there or some type of literature  
24 regarding your services, or is that a word-of-mouth  
25 customer?

1 A. That is a word-of-mouth customer situation.

2 Q. And sitting here today, do you recall that you  
3 were called out there on November 18th, 2013 to notarize a  
4 document?

5 A. Yes.

6 Q. Okay. And do you recall, was it Orit Shapiro who  
7 called you to notarize a document?

8 A. Yes, on behalf of the client.

9 Q. Okay. And how long, if you recall, before you  
10 go -- let's say as a general practice, how long in advance  
11 would Orit call you to come out and notarize a document?  
12 The day before? Two days before?

13 A. It would just depend, because usually I have to  
14 set an appointment. I have to schedule a client in  
15 between other clients, mostly because I am a busy  
16 notary.

17 Q. In regards to the notary of November 18th, do you  
18 recall when you were called by Orit to conduct that notary  
19 service?

20 A. Yes. It was an advance notice.

21 Q. Okay. It wasn't that day?

22 A. No.

23 Q. I'm going to show you a document that I'll mark  
24 as Exhibit 1. It's your journal entry I believe that you  
25 provided to me from November 18th. It's two pages.



1 A. Yes, it is.

2 (Exhibit 1 was marked for identification.)

3 BY MS. MORROW:

4 Q. Okay. When you arrived on November 18th, can you  
5 walk me through what you recall occurred.

6 A. I arrived at the facility. I went to the office,  
7 manager's office first.

8 Q. Is that Orit?

9 A. Yes. Which I always do. And then we proceeded  
10 to the area where the client was.

11 Q. Going back to when you arrived at the office,  
12 manager's office, was Orit there?

13 A. Yes.

14 Q. Okay. And did she tell you what your notary  
15 services were requested for?

16 A. No.

17 Q. Did she tell you for whom the services were  
18 requested for?

19 A. Definitely. We had a preset appointment --

20 Q. Okay.

21 A. -- so I knew the client's name.

22 Q. So Orit had given you the client's name when she  
23 called you prior to November 18th?

24 A. Correct.

25 Q. And did she tell you that the client was Dorothy

1 Horwitz?

2 A. Yes, she did.

3 Q. In what area was Dorothy located when you and  
4 Orit went to see her?

5 A. She was in one of the other buildings. I think  
6 it was the area where she has, you know, dining privileges  
7 also. It was a separate -- where her room is located,  
8 there is a desk. Okay. So --

9 Q. Was it a common area or was it her room?

10 A. Her room is where the -- well, you know what, I'm  
11 not sure if it was exactly her room, but we were in a  
12 room.

13 Q. Okay.

14 A. She and I and the witness, which was Orit. Okay.

15 Q. And just the three of you were present in the  
16 room?

17 A. Correct.

18 Q. And were you sitting -- all three sitting at a  
19 table or at a desk?

20 A. Desk.

21 Q. At a desk.

22 And I take it you introduced yourself to Dorothy.

23 A. Yes, I did.

24 Q. Okay. And you asked her for her document?

25 A. I asked her for identification first.

1 Q. Okay. And what identification do you recall that  
2 she gave you?

3 A. California driver's license.

4 Q. Okay. And I take it you found that ID to be  
5 sufficient.

6 A. Yes, because it's valid. It was valid.

7 Q. Okay. And then did you ask for the document to  
8 be notarized?

9 A. I asked her had she previously received her  
10 addendum to her wishes, once I find out it was an addendum  
11 from her.

12 Q. When did you first find out that the addendum was  
13 the document you were asked to notarize?

14 A. She told me.

15 Q. When you -- Dorothy did?

16 A. Dorothy did all of this, yes.

17 Q. Okay. So after you arrived and you and Orit went  
18 to meet with her, she told you that she had an addendum to  
19 her trust that she was asking you to notarize?

20 A. Correct.

21 Q. Okay. And you asked her if she had previously  
22 received the addendum?

23 A. Yes. And she told me she had it. I needed to  
24 know if she had it in her physical hands or presence,  
25 because if she didn't have it, I could not notarize it.

1 Q. Okay. So if she didn't receive that addendum  
2 previously or have it previously in her possession, you  
3 would not have notarized the document?

4 A. No, I would not.

5 Q. Okay. And did she hand you the addendum at that  
6 time?

7 A. Yes, she did. But prior to the addendum, I asked  
8 several questions. I asked Dorothy how was she doing that  
9 day. I asked her to tell me a little bit about her life.

10 Q. And why did you ask those questions?

11 A. Because the response to the questions could  
12 determine whether or not she was of sound mind.

13 Q. And when you asked her how she was doing that  
14 day, do you recall what she said?

15 A. She told me that she was fine; you know, that she  
16 had -- she had been taking medication because she didn't  
17 feel that she was going to be on this earth long; and she  
18 wanted these changes in effect before her transition or  
19 something happened with her health.

20 Q. Okay. And did she tell you about her life?

21 A. A little bit.

22 Q. Okay. Were her responses to you sufficient so  
23 that you believed she was of sound mind?

24 A. Her responses were quick and accurate. And I  
25 have to do a judgment call. Okay? So because of a

1 judgment call, I have -- you know, with the questions,  
2 it's determined on the response time. Hers were  
3 immediate. So, yes.

4 Q. She appeared clear-minded?

5 A. Clear-minded.

6 Q. I'm going to show you a document that has numbers  
7 on the bottom. They're HORW0041 through to HORW0045. And  
8 I will represent that these were produced by Mr. Solomon's  
9 counsel in this case, and they are entitled -- the first  
10 document is the "Affidavit of Dorothy Horwitz."

11 If you can take a look at those five pages.

12 A. Yes.

13 Q. And have you seen that document before?

14 A. Yes, I have.

15 Q. And do you recognize this as being the  
16 addendum -- do you recognize pages 0043 through 0045 as  
17 being the addendum that Dorothy Horwitz gave to you?

18 A. That is correct.

19 Q. The first page is entitled "The Affidavit of  
20 Dorothy Horwitz." Is any writing on that page yours?

21 A. Yes, the writing on this page is mine, because it  
22 states here that, "The undersigned affiant, being first  
23 duly sworn on oath, deposes and says that the Addendum to  
24 the Living Trust and the Distribution of Assets, see  
25 attached pages."

1 Q. So that printing there is yours, correct?

2 A. Yes, that is correct.

3 Q. And do you recognize that stamp, notary stamp, as  
4 being your stamp?

5 A. Yes, it is.

6 Q. And on the -- about midway on the right-hand side  
7 is what looks to be a Social Security number. Do you  
8 recognize -- is that your writing there? It says  
9 "555-40-9854."

10 A. That's her Social Security number, yes.

11 Q. And did she give you that Social Security number  
12 at that time?

13 A. Yes, she did.

14 Q. And you wrote that Social Security number down?

15 A. Yes, I did. For the addendum, yes, ma'am.

16 Q. Do you remember, did Dorothy know that Social  
17 Security number off the top of her head? Do you recall?

18 A. I don't exactly recall whether she had the card  
19 with her or she knew it off the top of her head. I don't  
20 remember exactly how that went.

21 Q. But she gave you the number?

22 A. Yes, she did.

23 Q. Okay. And did you see her sign this affidavit in  
24 your presence?

25 A. Yes.

1 Q. And is that her signature in the bottom  
2 right-hand side?

3 A. This is her signature.

4 Q. The next page is entitled "California Jurat with  
5 Affiant Statement."

6 A. Yes.

7 Q. HORW0042.

8 A. Um-hmm.

9 Q. And do you recognize that document?

10 A. Yes. That is what we call a "jurat," which is  
11 administering an oath to the client that the client swears  
12 that all the documents are complete, true and correct to  
13 the best of her knowledge.

14 Q. And did you administer an oath to Dorothy at that  
15 time?

16 A. Yes, I did.

17 Q. And is the handwriting on this document, the  
18 California jurat, your handwriting with the exception of  
19 the signature?

20 A. Everything, with the exception of the signature,  
21 is my writing.

22 Q. And did Dorothy Horwitz sign this in your  
23 presence?

24 A. Yes, she did.

25 Q. And did you take a thumbprint of Dorothy at that

1 time?

2 A. Yes, I did.

3 Q. Is that her thumbprint on the bottom part?

4 A. Yes, it is.

5 Q. Is that your stamp?

6 A. Yes, it is.

7 Q. The next page says "Dorothy Horwitz, Number 1" --  
8 I believe it says "Addendum."

9 There is a witness's signature on this addendum.  
10 Do you recognize that signature?

11 A. I think it's Orit's signature.

12 Q. Okay. Because you've notarized documents for  
13 Orit before, correct?

14 A. Correct.

15 Q. And Orit was present when you notarized this  
16 document?

17 A. She was present and listening to the entire  
18 conversation, as a witness for the client, as well as a  
19 witness for me doing the notarization.

20 Q. Did you stamp the two documents that you looked  
21 at, HORW0041 and 0042, and HORW0043 on November 18th,  
22 2013?

23 A. Yes, I did.

24 Q. Okay. Sometime after November 18th, were you  
25 called by Orit Shapiro in regards to a missing signature



1 on this document here which is marked HORW0042?

2 A. This is optional.

3 Q. Okay.

4 A. Because here's the thing. This is a State of  
5 California form. Okay?

6 Q. Yes.

7 A. Standard form. All right. The only signature  
8 required is the signature of Dorothy Horwitz.

9 Q. Okay.

10 A. My stamp stands for my signature, my  
11 identification. It's my number.

12 Q. Okay. But at some time did you later go back and  
13 sign the document upon Orit's request?

14 A. I did.

15 MS. MORROW: Okay. I'll mark the five-page  
16 addendum as Exhibit 2.

17 (Exhibit 2 was marked for identification.)

18 THE WITNESS: And I did. She asked me for a  
19 signature, and I told her I would provide the signature.

20 BY MS. MORROW:

21 Q. Okay. You had no doubt that when you signed the  
22 document later, that was the same document that you had  
23 signed on November 18th?

24 A. It was the same document. And the thing of the  
25 matter is, okay, here is -- she proved to me on the basis

1 of satisfactory evidence to be the person that was in  
2 front of me, which is what I require from every client as  
3 far as their identification. The identification has to be  
4 current. If it's expired, it still has to be within the  
5 five years of issuance, which is the State of California  
6 law.

7 MS. MORROW: Okay. I'll mark this California  
8 jurat with Mrs. Tucker -- Ms. Tucker's signature as  
9 Exhibit 3.

10 (Exhibit 3 was marked for identification.)

11 THE WITNESS: Yes.

12 BY MS. MORROW:

13 Q. Looking at this document again, HORW00- --

14 A. -41?

15 Q. -- -41, is that a form that you brought with you  
16 when you came, or is that a document -- a form Dorothy had  
17 with her?

18 A. This is my form.

19 Q. Okay. And looking at the next form --

20 A. This is also my form.

21 Q. Okay. That's HORW0042. And those are common  
22 forms that a notary has --

23 A. Has.

24 Q. -- such as yourself?

25 A. Correct.

1 Q. Okay.

2 A. I am the type of notary who carries forms with  
3 me, because you never know what form you are going to need  
4 to do the notarization.

5 Q. You are a very professional, amazing notary.

6 At any time while you were present with Dorothy  
7 and Orit on November 18th, do you recall that -- do you  
8 recall a person named Rose being present also in the  
9 room?

10 A. No.

11 Q. Okay.

12 A. Rose was not there.

13 Q. Okay. What would be the total time, if you  
14 recall, that you spent at Garden Crest on that day?

15 A. Probably a couple hours.

16 Q. The room in which you were sitting when the  
17 document was -- the addendum was signed, was that a  
18 well-lit room?

19 A. Yes, it was.

20 Q. Okay. And then after notarizing the addendum,  
21 did you have -- did you and Dorothy complete a journal  
22 entry in your notary journal?

23 A. Yes, we did, which is what this portion is.

24 Q. And you're pointing to Exhibit 2?

25 A. Yes, I am. And her fingerprint. And the

1 reason -- you know, her hands -- she apologized because  
2 her hands were a little shaky. Okay? But her print, that  
3 is her print.

4 Q. Okay.

5 A. So --

6 Q. And she signed your book?

7 A. Yes, she did.

8 Q. Okay. Did you see any signs, when you were  
9 questioning Dorothy, that she had dementia?

10 A. No. I'm not a doctor. I would not be able to  
11 attest to that.

12 Q. But you yourself, just common knowledge, there's  
13 nothing that indicated that she had dementia such that she  
14 didn't know what she was doing?

15 A. No. There was no question in my mind or, you  
16 know, in my presence or Orit's that she did not know what  
17 she was doing, because we discussed this addendum of hers  
18 at length.

19 MS. MORROW: I have no further questions at this  
20 time.

21 Do you have questions, Mr. Solomon?

22 MR. SOLOMON: Yes. First I'd like to object to  
23 the deposition. I did not receive copies of the signed  
24 addendum, and nor did I receive copies of the journal  
25 entries.

1 THE WITNESS: Yes, he did.

2 MR. SOLOMON: So I would just like to mark my  
3 objection, and will ask that the deposition be continued,  
4 but I will ask a number of questions at this time.

5 MS. MORROW: Mr. Solomon, I do want to point out  
6 that I actually used your copy of the addendum as an  
7 exhibit specifically so that I knew that you had a copy of  
8 it. And I myself, Margaret Morrow, sent you copies of the  
9 journal entry on at least two occasions.

10 So we will go ahead and note your objection, but  
11 also my response.

12 MR. SOLOMON: Very good.

13

14 EXAMINATION

15 BY MR. SOLOMON:

16 Q. Ms. Tucker, when you said that you went over the  
17 addendum at length with Dorothy Horwitz, what did she tell  
18 you about the addendum?

19 A. She told me that these were her wishes, and she  
20 wanted this in place.

21 Q. Which -- what were her wishes?

22 A. The distribution of her assets.

23 Q. I see.

24 And do you recall any specifics about the  
25 distribution of her assets that she told you?

1           A.     Just the ones that are listed, the general  
2 listings of the assets. I know that you are Dennis J.  
3 Solomon, and I know that she only left you \$5.

4           Q.     Did anyone coach you prior to this deposition?

5           A.     No.

6           Q.     Did you talk to Mr. -- Attorney Ling?

7           A.     I have spoken with him on several occasions, but  
8 no one is in a position to coach me.

9           Q.     I see.

10                   Is it common for you to go over the content of  
11 the documents at length with your -- with your clients?

12           A.     Sure, if my client wants to discuss it.

13           Q.     And in this case Mrs. Horwitz wanted to discuss  
14 it?

15           A.     That's correct.

16           Q.     How much time did you spend in her room?

17           A.     A couple of hours.

18           Q.     And what did you do for that couple of hours?

19           A.     She was talking.

20           Q.     And what did she talk about?

21           A.     Her addendum to her living trust.

22           Q.     I see.

23                   Did you see -- was there any evidence of her  
24 religion?

25           A.     She already had explained to me that she was

1 Jewish.

2 Q. I see.

3 And that was something she was proud of; is that  
4 correct?

5 MS. MORROW: I'm going to object. Calls for  
6 speculation. Outside the personal knowledge of the  
7 witness.

8 Just what you can perceive.

9 MR. SOLOMON: I'll rephrase the question.

10 BY MR. SOLOMON:

11 Q. Was it your perception that she was proud of  
12 being Jewish?

13 A. When someone mentions their religious  
14 affiliation, they are usually proud of what denomination  
15 of religion that they practice.

16 Q. And that would be your assumption in this  
17 particular case; is that correct?

18 A. Correct.

19 Q. Was Ms. Orit Shapiro there at all times?

20 A. Yes, she was.

21 Q. And I recall that you weren't sure if it was her  
22 initials as the witness on what I call page 3 of the  
23 addendum.

24 Did you actually -- in your signature, my  
25 observation is that your signature is not on this page.

1 Did you actually witness Orit Shapiro sign that  
2 document?

3 MS. MORROW: I'm going to object as to the  
4 characterization that it's initials. It appears to me to  
5 be a signature. But did you see the witness sign that?

6 THE WITNESS: Yes.

7 BY MR. SOLOMON:

8 Q. You specifically saw the witness sign that?

9 A. I had to, yes.

10 Q. And was that before or after Dorothy Horwitz  
11 signed that?

12 A. After.

13 Q. After. Okay.

14 At the top of the page there is some handwriting  
15 that says "Dorothy Horwitz." Is that visible in your  
16 copy?

17 A. That is Dorothy's handwriting.

18 Q. And did you witness her sign -- do that  
19 handwriting?

20 A. Yes.

21 Q. And we're talking about on page 3, which begins  
22 with, "Upon my death"; is that correct?

23 A. That is correct.

24 Q. And on page 4, there seems to be some handwriting  
25 there. Did you -- the beginning of addendum 2, is that



1 Dorothy Horwitz's handwriting?

2 A. Yes, it is.

3 Q. And did you witness -- did you witness her sign  
4 that?

5 A. Yes, she did.

6 Q. And on page 5, there's some additional  
7 handwriting on the top of the page beginning with addendum  
8 2. Did you witness Dorothy Horwitz sign that?

9 A. Yes, I did.

10 Q. And I notice that on page 5 it says "Number 1  
11 Addendum." On page 4 of -- page 3 it also says "Number 1  
12 Addendum." Is that correct?

13 A. Yes, it is. But that is her writing, no one  
14 else's.

15 Q. She did that while you were there?

16 A. Yes, she did.

17 Q. Is that correct?

18 A. Yes, she did.

19 Q. Thank you.

20 On page -- at the time when this was taking  
21 place, you did not sign, personally sign, or attest to  
22 with your full signature, your full notary signature, on  
23 any document; is that correct?

24 MS. MORROW: I'm going to object to the addition  
25 of the term "attest to." She already testified that she

1 attested to the document with her stamp.

2 If your question is in regard to her signature,  
3 I'll let the question go forward.

4 MR. SOLOMON: Thank you.

5 BY MR. SOLOMON:

6 Q. Yes, with regard to your signature.

7 A. First of all, Mr. Solomon, California law is my  
8 stamp carries more weight than any signature or printed  
9 matter of my name.

10 Q. I see. But would you answer the question,  
11 please.

12 MS. MORROW: Why don't you ask the question again  
13 so we're sure we're on the same question.

14 BY MR. SOLOMON:

15 Q. Did you sign any of the documents at the time  
16 that you placed your stamp on the documents?

17 A. I filled out the paperwork, me.

18 Q. I understand that, Ms. Tucker, and I'm just  
19 asking if you actually signed any of the documents at that  
20 time.

21 A. Yes, I'm sure I did.

22 Q. You're sure, you're absolutely sure you did sign  
23 some of the documents?

24 A. Yes.

25 Q. Correct? That's your testimony?

1 A. That's my testimony, Mr. Solomon.

2 Q. And yet Orit Shapiro at some point called you to  
3 ask that you sign an additional document; is that correct?

4 MS. MORROW: I'm going to object it

5 mischaracterizes her testimony. She specifically

6 testified that she went back and signed the same document

7 she had seen -- she had filled out previously.

8 BY MR. SOLOMON:

9 Q. Yes. So you went back and you signed the same  
10 document that you had seen previously; is that correct?

11 A. That is correct.

12 Q. Thank you very much.

13 Was there -- what did you do after you left the  
14 Garden Crest, do you recall?

15 MS. MORROW: I'm going to object. Irrelevant.

16 If you recall.

17 BY MR. SOLOMON:

18 Q. Do you recall what you did before?

19 A. I feel that your --

20 Q. Immediately before?

21 A. I feel that your question is irrelevant to my  
22 business or to the fact of what I did before or after I  
23 saw Ms. Horwitz.

24 Q. Well, do you have any other paperwork related to  
25 this particular event or transaction?

1           For example, do you have a receipt of funds? Do  
2 you have -- just, for example, let's start there. Did you  
3 receive funds for your services?

4           MR. SOLOMON: That you recall.

5           THE WITNESS: Yes.

6 BY MR. SOLOMON:

7           Q. And do you have evidence of that receipt?

8           A. No.

9           Q. And why is it that you have no evidence of that  
10 receipt?

11          A. Well, first of all, sir, I do not have to account  
12 to you for any type of notary service that I do in the  
13 State of California. You are not a judge. You are not  
14 part of California state law, and it's not required for me  
15 to reveal that information.

16          Q. Did you receive an e-mail request from me for a  
17 copy of your journal related to Dorothy Horwitz?

18          A. Yes, I did, but you had already received that.

19          Q. And you did not -- you did not directly send me a  
20 copy of your journal entry; is that correct?

21          A. Why should I?

22          Q. At the address?

23          A. First of all, Mr. Solomon, why should I? The  
24 only people that can request that is an attorney or an  
25 official of the State of California, not you.

1 Q. But when you received that, you passed that  
2 information on to Ms. Morrow; is that correct?

3 A. That is correct.

4 Q. And she advised you as to how to respond; is that  
5 correct?

6 MS. MORROW: I object. That mischaracterizes.  
7 And, in fact, I addressed it specifically to you, and not  
8 to Ms. Tucker, because, Mr. Solomon, I had already  
9 produced the journal entry.

10 I had put in a request for the journal entry, or  
11 Mr. Ling had, we had received it, and we had provided your  
12 counsel a copy of that. So if you recall, I actually  
13 responded to you, not to Ms. Tucker. I let you know that  
14 it had been previously provided to your counsel.

15 MR. SOLOMON: Ms. Morrow, did you receive an  
16 e-mail from me recently that notified you that I had not  
17 received the copy of the journal entry?

18 MS. MORROW: Yes. So we mailed, and I suggested  
19 that you contact your prior counsel to get all your  
20 documents and your file. At the same time, nevertheless,  
21 even though I wasn't required to, I did provide you with a  
22 copy of the journal entry.

23 MR. SOLOMON: And you provided this by mail  
24 through your assistants; is that correct?

25 MS. MORROW: Yes. We were given an address from

1 your counsel, and that's the address that we must use.

2 MR. SOLOMON: And you did not -- you were not  
3 willing to fax a copy to me; is that correct?

4 MS. MORROW: I don't recall that I ever have  
5 received a fax number for you, and nor would I, because we  
6 must serve you in the manner that your prior counsel  
7 directed us to do so.

8 MR. SOLOMON: Ms. Morrow, you are with the firm  
9 of Russell, Mirkovich & Morrow; is that correct?

10 MS. MORROW: Well, the nice thing is I'm not the  
11 witness here, so I don't have to answer your questions.

12 MR. SOLOMON: Oh, you don't.

13 I have not received -- since I have not received  
14 the copy of the journal entry and can't respond to that,  
15 I'm going to ask that the deposition be continued until a  
16 future time.

17 MS. MORROW: And I object to that request, but  
18 you can go ahead and make it.

19 MR. SOLOMON: Then I have no further questions.

20 MS. MORROW: Shall we stipulate that the court  
21 reporter be relieved of her duties;

22 That she will prepare the transcript and send it  
23 to Ms. Tucker for her review;

24 That Ms. Tucker will advise me of any changes  
25 within 30 days of her receipt of the transcript;

1           And that I will advise you, Mr. Solomon,  
2           within -- within two business days of receipt of any  
3           changes from Ms. Tucker. I will advise you of her  
4           changes.

5           So stipulated?

6           MR. SOLOMON: I reserve all my objections to the  
7           deposition and to continuing it, but we may relieve her to  
8           go -- the -- I will agree to relieve her to go forward  
9           with the deposition -- with transcribing the deposition  
10          today, yes.

11          MS. MORROW: Okay. Thank you, Mr. Solomon.  
12          Should we go ahead and disconnect?

13          MR. SOLOMON: Thank you, Ms. Morrow. Yes.  
14          (Whereupon, proceedings  
15          concluded at 11:10 a.m.)

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1 STATE OF CALIFORNIA )  
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I, DORIS TUCKER, certify:

That I have read the foregoing deposition pages  
 \_\_\_\_\_ through \_\_\_\_\_, inclusive. I hereby state  
 there are:

(check one)

\_\_\_\_\_ no corrections.

\_\_\_\_\_ corrections per attached.

I declare, under penalty of perjury, that the  
 foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2015,  
 at \_\_\_\_\_, California.

\_\_\_\_\_

DORIS TUCKER





1 STATE OF CALIFORNIA )  
 ) SS  
 2 COUNTY OF LOS ANGELES )

3

4 I, ROSE M. HEFFERNAN, C.S.R. 9820, a Certified  
 5 Shorthand Reporter in and for the County of Los Angeles,  
 6 State of California, do hereby certify:

7 That prior to being examined, the witness named in  
 8 the foregoing deposition, DORIS TUCKER, was by me duly  
 9 sworn to testify the truth, the whole truth, and nothing  
 10 but the truth.

11 That said deposition was taken before me at the  
 12 time and place set forth and was taken down by me in  
 13 shorthand and thereafter reduced to computerized  
 14 transcription under my direction and supervision, and I  
 15 hereby certify the foregoing deposition is a full, true,  
 16 and correct transcript of my shorthand notes so taken. I  
 17 further certify that I am neither counsel for nor related  
 18 to any party to said action nor in any way interested in  
 19 the outcome thereof.

20 IN WITNESS WHEREOF, I have hereunto subscribed my  
 21 name this 15th day of June, 2015.

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\_\_\_\_\_  
 ROSE M. HEFFERNAN  
 Certified Shorthand Reporter No. 9820

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES - CENTRAL PROBATE DIVISION

In Re )  
 )  
 ) Case No. BP153887  
THE DOROTHY HORWITZ FAMILY )  
TRUST, DATED MARCH 6, 2012, )  
AS AMENDED. )  
\_\_\_\_\_ )

DEPOSITION OF ROSE APARICIO

TAKEN AT: One World Trade Center, Suite 1660  
Long Beach, CA 90831  
DATE/TIME: Friday, June 5, 2015  
12:12 p.m. - 1:15 p.m.  
REPORTER: Sharon A. Golding  
CSR No. 5934  
JOB NO.: 3762

1 APPEARANCES:

2 In Propria Persona:

3 DENNIS SOLOMON  
4 P.O. Box 289  
5 Yarmouth Port, MA 02675  
6 (508) 394-9221  
7 (Via telephone)

8 For Objector/Respondent and Trustee HOOVER J. LOUIE:

9 RUSSELL, MIRKOVICH & MORROW  
10 BY: MARGARET E. MORROW, ESQ.  
11 One World Trade Center, Suite 1660  
12 Long Beach, CA 90831-1660  
13 (562) 436-9911

14 For Respondent AMERICAN LUNG ASSOCIATION IN  
15 CALIFORNIA:

16 LAW OFFICE OF TARA L. COOPER  
17 7037 La Tijera Boulevard, Suite B201  
18 Los Angeles, CA 90045  
19 (310) 295-1625  
20 (Not Present)

21 SALISIAN LEE LLP  
22 BY: RICHARD H. LEE, ESQ.  
23 BY: NATALIE RASTEGARI, ESQ.  
24 550 South Hope Street, Suite 750  
25 Los Angeles, CA 90071-2627  
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(Not Present)

For St. Jude Children's Research Hospital,  
Alzheimer's Association, American Diabetes  
Association, American Heart Association and National  
Kidney Foundation:

HOLLAND & KNIGHT LLP  
BY: JONATHAN H. PARK, ESQ.  
400 South Hope Street  
Los Angeles, CA 90071  
(213) 896-2400  
(Not Present)

Also Present:  
Lisa Aparicio

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I N D E X

Witness

Examination

Rose Aparicio

By Ms. Morrow  
By Mr. Solomon

4  
22

E X H I B I T S

Identification

Page

1 - Addendums to Dorothy Horwitz Living Trust 18

I N F O R M A T I O N R E Q U E S T E D

(None)

Q U E S T I O N S W I T N E S S R E F U S E D T O A N S W E R

Page	Line
29	13
36	21
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44	10
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1 Long Beach, California; Friday, June 5, 2015

2 12:12 p.m.

3 \* \* \*

4

5 ROSE APARICIO,

6 having been first duly sworn, was examined and testified

7 as follows:

8

9 EXAMINATION

12:12 10 BY MS. MORROW:

11 Q Would you please state and spell your name for  
12 the record.

13 A Rose, R-O-S-E, Aparicio, A-P-A-R-I-C-I-O.

14 Q Have you ever had your deposition taken before?

12:12 15 A No.

16 Q There are a few ground rules that I want to go  
17 over to ensure that we get an accurate record.

18 The court reporter sitting to your left is  
19 taking down everything that's said in the room today.

12:12 20 For that reason, it's important that I remember to let  
21 you finish your answer, and you remember to let me  
22 finish my question so that we're not talking over each  
23 other.

24 Do you understand that?

12:12 25 A Yes.

12:12 1 Q I'm very guilty of using my hands a lot and  
2 making motions, but those are not things that can be  
3 taken down accurately by the court reporter. Nor can  
4 she take down accurately things like "uh-huhs,"  
12:12 5 "huh-uhs" or shrugs of the shoulders, nods of the head,  
6 things like that. So if you could please remember to  
7 answer in an audible tone.

8 Do you agree?

9 A Yes.

12:13 10 Q Let's see. If for any reason you don't  
11 understand a question that I ask, just let me know.  
12 You're the only one that matters in this room. If we  
13 all understand the question but you don't, we're going  
14 to reask it, ask it in a different manner, break it down  
12:13 15 into two questions. We want to ensure that you  
16 understand the question.

17 Do you understand that?

18 A Yes.

19 Q If you answer a question, I'll assume that you  
12:13 20 understand it.

21 Fair enough?

22 A Yes.

23 Q Do you have any questions about the deposition  
24 process?

12:13 25 A No.

12:13 1 Q Is there any reason why you couldn't give your  
2 best testimony today?

3 A No.

4 Q I understand that you are a resident of  
12:13 5 San Gabriel; correct?

6 A Yes.

7 Q How long have you lived in San Gabriel?

8 A Fifty, sixty -- sixty years.

9 MS. LISA APARICIO: Fifty --

12:14 10 THE WITNESS: We moved -- in 1973 I moved to  
11 San Gabriel.

12 Q BY MS. MORROW: And where did you move from?

13 A Rosemead.

14 Q I understand that you have been a friend of  
12:14 15 Dorothy Horwitz's for a number of years.

16 A Since 1952.

17 Q Where did you live in 1952?

18 A I lived in Los Angeles.

19 Q And what were the circumstances of how you met  
12:14 20 Dorothy?

21 A When I first came out of high school, I got a  
22 job at La Jolla Sportswear, and that's where I met  
23 Dorothy.

24 Q She was working there also.

12:14 25 A Yes.



12:15 1 Q In Los Angeles.

2 A Yes.

3 Q How old were you both at that time?

4 A I was 18.

12:15 5 Q Was Dorothy about the same?

6 A Dorothy is four years older than I am.

7 Q Okay. And was she married at the time?

8 A No. We were both single.

9 (Discussion held off the record.)

12:15 10 Q BY MS. MORROW: What was your position at  
11 La Jolla Sports?

12 A Mostly accounts.

13 Q And how about Dorothy?

14 A Dorothy was a bookkeeper.

12:15 15 Q And did your friendship start as soon as you  
16 met or did it develop over the years?

17 A No, it started as soon as we met.

18 Q And did Dorothy live in Los Angeles at that  
19 time?

12:16 20 A Yes.

21 Q And at some point she got married and you got  
22 married; correct?

23 A Yes.

24 Q And you knew her husband Walter.

12:16 25 A Yes.

12:16 1 Q In the last ten years, it's my understanding  
2 that Dorothy lived in Rosemead.

3 A Yes.

4 Q And approximately how far was her home in  
12:16 5 Rosemead from your home in San Gabriel?

6 A About 15 minutes.

7 Q Fifteen-minute drive?

8 A Yes.

9 Q Okay. And is it your understanding that until  
12:17 10 her retirement, Dorothy continued her career as a  
11 bookkeeper?

12 A Yes.

13 Q And in your experience in working with Dorothy,  
14 did you find her to be a good bookkeeper?

12:17 15 A Excellent.

16 Q Accurate?

17 A Most accurate.

18 Q Attentive to details?

19 A Absolutely.

12:17 20 Q How long did you work together at La Jolla?

21 A I think it was four years.

22 Q After that, did you work together again?

23 A No.

24 Q But you remained friends.

12:17 25 A Yes.

12:17 1 Q It was about 60 years of friendship.

2 A Yes.

3 Q In the 60 years of your friendship, what was  
4 the longest period that you went without speaking to  
12:18 5 Dorothy?

6 A We spoke every day.

7 Q Did you ever go one year without speaking with  
8 her?

9 A No.

12:18 10 Q Did you ever go one month without speaking to  
11 her?

12 A No.

13 Q And eventually you had children.

14 A Yes.

12:18 15 Q Your daughter Lisa.

16 A Lisa.

17 Q And do you have other children?

18 A I have Paul, my son, uh-huh.

19 Q And did Dorothy meet Lisa and Paul?

12:18 20 A Oh, yeah. She practically helped me raise  
21 them.

22 Q I understand you have a grandson Nicolas?

23 A Nicolas, yes.

24 Q Nicolas Sanchez?

12:18 25 A Uh-huh.

12:18 1 Q And Dorothy met Nicolas?

2 A She also helped me bring him up too. Lisa  
3 worked.

4 Q And you provided care for Nicolas while Lisa  
12:19 5 worked.

6 A Yes.

7 Q And Dorothy spent quite a bit of time with  
8 Nicolas.

9 A Yes, uh-huh.

12:19 10 Q And how old is Nicolas today?

11 A Twenty-two.

12 Q And where does Nicolas live?

13 A 5139 North Muscatel Avenue, San Gabriel.

14 Q So at some point during your friendship,  
12:19 15 Dorothy married Walter; correct?

16 A Yes.

17 Q And you and your husband spent time with  
18 Dorothy and Walter; correct?

19 A Oh, yes.

12:19 20 Q Did you ever during your 60 years of friendship  
21 meet any relatives of Dorothy's? Not of Walter's; just  
22 of Dorothy's.

23 A Oh, yes. Her mother came to visit back in the  
24 day. I don't remember the year. And we also -- Dorothy  
12:20 25 and I went out to Florida to visit her mother. And who

12:20 1 else? Her brother. I knew her brother. And that's  
2 about it. I didn't meet any of the cousins.

3 Q How about any of Dorothy's nieces or nephews?

4 A No. Her brother's, no.

12:20 5 Q So you met her brother and her mother.

6 A Yes.

7 Q And you stayed with her mother in Florida.

8 A Yes.

9 Q How about Walter's relatives?

12:20 10 A No, I never had occasion to -- well, his --

11 Walter's sister and brother-in-law used to come to stay

12 with Dorothy when the brother-in-law was a pilot, and he

13 used to come. I didn't meet him or the sister.

14 Q So you have never met any relatives of

12:21 15 Walter's.

16 A No.

17 Q And you did not travel with Dorothy to see any

18 relatives of Walter's.

19 A No.

12:21 20 Q In her last year, Dorothy spent some time at

21 Kaiser hospital.

22 A Yes.

23 Q And I was looking through the records, and many

24 of the medical records refer to someone being present by

12:21 25 the name of "Rose."

12:21 1 Can I assume that that's you, Rose Aparicio?

2 A Yes.

3 Q You went to visit Dorothy frequently at Kaiser

4 hospital.

12:21 5 A Yes. Practically every day.

6 Q Ultimately she was moved to Garden Crest.

7 Is that your understanding?

8 A Yes.

9 Q And you visited her there frequently.

12:22 10 A Yes.

11 Q And at some point in 2013, did Dorothy call and

12 ask you to get a document from her computer?

13 A Yes.

14 Q Okay. And do you know approximately when that

12:22 15 was?

16 A No, I don't remember.

17 Q Okay. In relation to when she died -- she died

18 on November 25th, 2013.

19 A Uh-huh.

12:22 20 Q -- do you recall if it was a month before or

21 two months before?

22 A Actually, I don't recall.

23 Q Sure.

24 A There was so much going on.

12:22 25 Q I'm sure.

12:22 1           And plus, that's almost three years ago -- or  
2 two years ago now.

3           A     Yeah.

4           Q     When she asked you to get a document from her  
12:22 5 computer, was she at Kaiser at that time or at  
6 Garden Crest?

7           A     She was at Garden Crest, I believe. Maybe --  
8 it might have been Kaiser. I don't recall.

9           Q     Okay. And what did she tell you the document  
12:23 10 was, or did she?

11          A     Oh, yeah, she did. She told me it was an  
12 addendum and that she had changed it because Mr. Solomon  
13 refused to come and collect Walter's stuff.

14          Q     And when you say she changed it, do you mean  
12:23 15 the trust?

16          A     Yes.

17          Q     There are, to my understanding, two Solomons,  
18 Murray Solomon and Dennis Solomon.

19                 When Dorothy mentioned she was changing her  
12:23 20 trust because Mr. Solomon refused to come get Walter's  
21 things, do you know if she was referring to both of them  
22 or to a specific one?

23          A     No. Definitely to Dennis.

24          Q     Okay. So walk me through.

12:23 25                 Did you get this request by telephone from

12:24 1 Dorothy?

2 A No. It was in person.

3 Q You were visiting at the time, and she asked  
4 you to get the document.

12:24 5 A Yes.

6 Q So what did you do next? Did you go to her  
7 house?

8 A Yes, I did. And it was in the computer, and I

9 didn't know how to pull it out of the computer. I

12:24 10 didn't even know how to find it in the computer. I had

11 to ask my daughter to come and help me print it out. So

12 that's how we did it.

13 Q Did you have a key to her home?

14 A Yes, I did.

12:24 15 Q And did she give it to you for purposes of

16 getting this document?

17 A Well, she gave it to me because she had stuff

18 in the house that -- in the condo that she wanted to

19 have at the hospital and at Garden Crest. So I kept

12:24 20 going back and forth and back and forth.

21 Q So while Dorothy was in Kaiser and  
22 Garden Crest, she requested you get various things from  
23 her condo.

24 A Yes.

12:24 25 Q So you would go to her condo, retrieve them and



12:24 1 then bring them to her.

2 A Right.

3 Q So in regard to the addendum, did she tell you  
4 specifically it was in the computer?

12:25 5 A Yes.

6 Q Okay. So did you go first to look at it alone  
7 or did you go with your daughter Lisa from the  
8 beginning?

9 A No, I went first alone. And I couldn't handle  
10 the machine, so I called my daughter to help me.

11 Q Okay. And then when you went back the second  
12 time, did you go with your daughter?

13 A Yes.

14 Q Okay. And did you see your daughter turn on  
12:25 15 the computer?

16 A Yes.

17 Q And did you see her access a document?

18 A Yes.

19 Q And did you observe your daughter making any  
12:25 20 changes to that document?

21 A No.

22 Q So your daughter printed up the document as it  
23 had already been prepared.

24 A Yes.

12:25 25 Q And is it your understanding that Dorothy

12:25 1 prepared that document?

2 A Yes.

3 Q Dorothy was computer literate.

4 A Yes. Somewhat. Somewhat.

12:26 5 Q Not like the really young ones these days;

6 right?

7 A No, no. Right.

8 Q After your daughter printed the document, did  
9 she give it to you?

12:26 10 A Yes.

11 Q Okay. Did you read it over?

12 A Yes.

13 Q Okay. And did you bring it to Dorothy?

14 A Yes.

12:26 15 Q Okay. Did you make any handwritten remarks on  
16 the document?

17 A No.

18 Q Okay. How long after your daughter printed it  
19 up did you take it to Dorothy, approximately?

12:26 20 A The next day.

21 Q Okay. And you delivered it specifically to  
22 Dorothy.

23 A Put it in her hands.

24 Q Okay. Sorry. I'm just looking for a document  
12:27 25 here.

12:27 1 I'm going to show you a three-page document  
2 that was produced by Mr. Solomon, and the numbers on the  
3 document are HORW 0043, HORW 0044 and HORW 0045.

4 At the top of the document is a fax  
12:28 5 confirmation number.

6 With the exception of that fax confirmation  
7 number and the numbers that I read off to you, is this  
8 the document that you recognize as having been printed  
9 from the computer?

12:28 10 And I understand that there is some handwriting  
11 on it, but if you can look at the typed portion and tell  
12 me whether this is the document you recognize as having  
13 been printed in your presence from the computer.

14 A That's about it.

12:28 15 Q Okay. Do you recognize any handwriting on that  
16 first document?

17 A Dorothy's.

18 Q Okay. That's Dorothy's at the top there where  
19 it says "Addendum no. 1"?

12:28 20 A This is Dorothy's (indicating).

21 Q In her handwriting.

22 A Yes.

23 Q Do you recognize that printing also?

24 A That's Dorothy's.

12:28 25 Q Okay. The next document says -- it's HORW

12:29 1 0044, and it says "Addendum to Dorothy Horwitz's Living  
2 Trust," and there's some printing.

3 Do you recognize that?

4 A That's Dorothy's, uh-huh.

12:29 5 Q And same thing with the next document.

6 A Yes, uh-huh.

7 Q That's Dorothy's handwriting?

8 A Uh-huh.

9 MS. MORROW: I'll mark that as Exhibit 1.

12:29 10 (Whereupon, the document referred to  
11 was marked for identification as Exhibit 1,  
12 a copy of which is attached hereto.)

13 Q BY MS. MORROW: Prior to seeing these documents  
14 that we just marked as Exhibit 1, did you ever see any  
12:29 15 trust documents of Dorothy's?

16 A Yes.

17 Q Okay. And was that the original trust  
18 agreement?

19 A Yes.

12:29 20 Q Okay. And when did Dorothy show that to you?

21 A She didn't show it to me. We discussed it  
22 after she -- I took her to the lawyer to have the trust  
23 done. She asked me to do that. And after she finished,  
24 she told me what she had done with the trust. So I knew  
12:30 25 what was in the trust already.

12:30 1 Q Okay. You didn't see a written copy of it, but  
2 you discussed with Dorothy what was in it.

3 A Correct. I didn't see the written copy until I  
4 was cleaning out the condo.

12:30 5 Q Okay.

6 A But I knew what was in it already.

7 Q Okay. When you discussed the trust document  
8 and the original -- the original trust document and the  
9 addendum to the trust with Dorothy, did you ever ask her  
10 to give Nicolas Sanchez money?

11 A No. As a matter of fact, I thought it was a  
12 very bad thing for a 20-year-old boy.

13 Q It was Dorothy's decision to leave him money.

14 A She did it. She didn't discuss it with me.  
12:30 15 She did it without my knowledge.

16 Q And is it your understanding that that was her  
17 decision based on the time that she had spent with  
18 Nicolas?

19 A Oh, yeah. She loved him.

12:31 20 Q Did you yourself ever ask Dorothy to give money  
21 in her trust or in her addendum to anybody?

22 A Not at all.

23 Q The third page of the Exhibit 1 is a list of  
24 charities.

12:31 25 Are you the one who suggested that Dorothy

12:31 1 leave her money to those charities?

2 A No. Sorry.

3 Q Those were Dorothy's decisions.

4 A Yes.

12:31 5 Q Before Dorothy died, did you have an

6 understanding as to who Hoover Louie was?

7 A Oh, I've heard of Hoover for years from

8 Holly Bra, yes. I had never met him personally until

9 after Dorothy died.

12:32 10 Q To your understanding, was he an accountant  
11 that worked with Holly Bra?

12 A Yes. Yes.

13 Q And then ultimately became an accountant for  
14 Walter and Dorothy?

12:32 15 A Yes.

16 Q You never worked for Hoover?

17 A No.

18 Q You never worked with Hoover?

19 A No.

12:32 20 Q You only met him after Dorothy died.

21 A Yes.

22 Q Now, you saw Dorothy on a daily basis up till

23 when? She died on November 25th.

24 A I was there the day before she died.

12:32 25 Q That would be November 24th.

12:32 1 A I believe that -- I'm not sure of the date.  
2 I've forgotten. Yes, I was there with Ed Liu. He was  
3 there too.

4 Q I understand he was somebody who helped her at  
12:33 5 home.

6 A Yes.

7 Q Okay. And so you and Ed were visiting her on  
8 the day before she died.

9 A Yes.

12:33 10 Q Was she awake?

11 A Oh, yeah. We were chatting and laughing. It  
12 was -- you know, she was sick, but she was, you know,  
13 glad to see us, and we were talking, and she was as well  
14 as she could be at that point.

12:33 15 Q Was she clear-minded?

16 A Oh, yes.

17 Q Is it your belief that the addendum reflects  
18 Dorothy's wishes?

19 A That's what Dorothy wanted after everything.

12:33 20 MS. MORROW: I have no further questions at this  
21 time.

22 Mr. Solomon?

23 MR. SOLOMON: Yes, I'd like to.

24 ///

12:33 25 ///

12:33

1

EXAMINATION

2

BY MR. SOLOMON:

3

Q This is Dennis Solomon. We've never met to my knowledge; is that correct?

4

12:33

5

A Yes.

6

Q You had said that I had refused to come out and get Walter's things.

7

8

A Yes.

9

Q Do you recall when Dorothy asked me to do that?

12:34

10

A Yes. I remember her telling me shortly after she was diagnosed early in 2012. Dorothy mentioned -- she had been talking about sending you the sculptures and the -- the wood sculptures, and I remember her telling me that she had called you.

11

12

13

14

12:34

15

First of all, she was very annoyed with you, Mr. Solomon, because you gave her the run-around with your Social Security when she wanted to put you in her will. I'm sure you're not aware of that, but she was very annoyed with you. And she said she called you as soon as she was diagnosed. She wanted to start taking care of things.

16

17

18

19

12:34

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21

22

Q And did she say that she wanted me to come out and take everything of Walter's back?

23

24

A Well, his artwork. That was all that was left in there.

12:35

25



12:35 1 Q All of his artwork.

2 A Yes.

3 Q I see.

4 And had he or she given away any of the artwork  
12:35 5 prior to that time that you know of?

6 MS. MORROW: Objection. Calls for speculation; not  
7 within the personal knowledge of the witness.

8 MR. SOLOMON: That she knows of.

9 Q Did Dorothy tell you that she had given away  
12:35 10 any of the artwork?

11 A No.

12 Q Mrs. Aparicio, Ms. Morrow has not objected to  
13 that question. Can you please answer that.

14 MS. MORROW: She answered it.

12:35 15 MR. SOLOMON: Oh, okay.

16 Q You say that the handwriting on the addendum  
17 pages is Dorothy's.

18 Did her handwriting change as she got sicker?

19 A Yes.

12:36 20 Q So that really wasn't her normal handwriting;  
21 is that correct?

22 MS. MORROW: Objection. I object to the use of the  
23 word "normal." I don't even know what that means. It  
24 was probably normal on the day that she wrote it.

12:36 25 Q BY MR. SOLOMON: Was that her handwriting prior

12:36 1 to going into Garden Crest?

2 A No. The handwriting was, not the printing.

3 Q Not the printing.

4 I see.

12:36 5 You said she had discussed the original trust  
6 documents with you just after she -- at some point close  
7 to when she went to the lawyer; is that correct?

8 A Yes.

9 Q And in the original trust document, that  
12:37 10 retained the same adaptation of her funds as reflected  
11 in the addendum; is that correct?

12 MS. MORROW: I'm sorry. Can you repeat that  
13 question.

14 MR. SOLOMON: Yes.

12:37 15 The original -- the distribution of funds in  
16 the original trust document, to the best of what Dorothy  
17 had told her -- told Ms. Aparicio, was that reflected in  
18 the distribution of funds in the addendum documents?

19 THE WITNESS: No.

12:37 20 Q BY MR. SOLOMON: Hello?

21 MS. MORROW: She answered "no."

22 Q BY MR. SOLOMON: What were the differences?

23 MS. MORROW: I'm going to object just to the extent  
24 she said she didn't read the original one.

12:38 25 But do you understand the question?

12:38 1 THE WITNESS: Yes, I do.

2 I know that she -- in the original she gave my  
3 grandson more money, and in the addendum she gave him  
4 less, which was fine with me.

12:38 5 Q BY MR. SOLOMON: How much more money did she  
6 give him in the original one than in the addendum?

7 A I'm not -- you know, I'm not sure, but I know  
8 that there were three of you in the original trust. We  
9 didn't go into the nitty-gritty, and she didn't read the  
10 whole trust to me. So there's a lot I don't know.

11 Q I see.

12 And what was the reason that you thought that  
13 she would reduce the amount that she would give to your  
14 grandson in the addendum?

12:39 15 MS. MORROW: Objection. Calls for speculation.

16 THE WITNESS: I don't know.

17 MR. SOLOMON: I want to know what Ms. Aparicio  
18 thinks is the reason.

19 THE WITNESS: I think the reason she changed the  
12:39 20 original trust was her annoyance with you, and I think  
21 that she decided the charities would be much better off  
22 than anyone else with the funds.

23 That's only speculation, though. I don't know  
24 what was in her mind.

12:39 25 Q BY MR. SOLOMON: I see.

12:39 1 And on a day-to-day basis from the time she was  
2 sick, did you go over to her house every day?

3 A Just about every day or she came to my house  
4 because she was still driving up until -- almost to the  
12:39 5 end.

6 Q When did she stop driving?

7 A Oh, well, about October.

8 Q About October of 2013?

9 A Yes.

12:40 10 Q And this was just before she went into  
11 Garden Crest; is that correct?

12 A Yes.

13 Q Okay. How did Dorothy feel about Walter?

14 A Oh, she adored him.

12:40 15 Q And this was throughout their entire marriage?

16 A Yes.

17 Q And what sort of things did they do together?

18 A Well, Walter loved the races, so every Saturday  
19 he would go either to Hollywood Park or Santa Anita,  
12:40 20 drop Dorothy off at my house, and we'd go off and play  
21 and he'd go off and play.

22 Q I see.

23 And what other things did Dorothy and Walter do  
24 together?

12:41 25 A Oh, they went on cruises, trips. They were

12:41 1 with us quite a bit.

2 Q Did you go on any cruises with them?

3 A No, I never went on any cruises. But Dorothy  
4 and I did travel quite a bit.

12:41 5 Q And where did you travel to?

6 A Oh, we went to Hong Kong and China. We went to  
7 Florida. We went to Puerto Rico. We went to Canada.

8 Q And would you provide the approximate dates and  
9 the reasons that you went to those --

12:41 10 MS. MORROW: I'm going to object on grounds of  
11 relevancy.

12 I don't see any relevancy to why they went or  
13 even the dates.

14 THE WITNESS: It was vacation.

12:42 15 Q BY MR. SOLOMON: It was all vacation.

16 And was this -- well, I think the date is  
17 relevant to try and put it in some perspective.

18 MS. MORROW: I don't think it is relevant. Maybe  
19 you could ask the last time she went.

12:42 20 Q BY MR. SOLOMON: I'd like to know the  
21 approximate dates of each of the times. If you can  
22 answer that. Approximate dates.

23 A I'd have to look at my papers. I'm not -- I  
24 couldn't tell you. I've 81. How can I remember all  
12:42 25 this stuff?

12:42 1 Q I see.

2 Did you go anywhere the last decade with her?

3 A I can't even remember the last decade.

4 Where did I go?

12:42 5 MS. LISA APARICIO: Georgia.

6 THE WITNESS: Oh, yes. We went to Georgia to attend

7 my grandson's graduation from boot camp.

8 Q BY MR. SOLOMON: From boot camp?

9 A Yes.

12:42 10 Q And this was in the military?

11 A Yes, it is.

12 Q And which service was this?

13 A National Guard.

14 MS. LISA APARICIO: Army.

12:43 15 THE WITNESS: Army.

16 Q BY MR. SOLOMON: If you had control of all of

17 the household assets and personal items in the home and

18 the safe deposit boxes --

19 A I had no entry to the boxes whatsoever. That

12:43 20 was not in my name. I had no keys. The keys went to

21 some -- went to Mr. -- to Hoover, and what was in the

22 house under Dorothy's instructions, I sent to Goodwill,

23 Salvation Army and Vietnam Vets.

24 Q And how about their personal papers and albums?

12:44 25 A Personal papers? I put all that in a bag for

12:44 1 Hoover.

2 Q I see.

3 And what about the photo albums?

4 A Photo albums, I asked her about that. She told  
12:44 5 me, "Throw them away. Nobody's interested in them."

6 But I couldn't --

7 Q And you did throw them away?

8 A I couldn't do that. I sent photos to her best  
9 friend in New York. I sent photos to her cousins. I  
10 sent photos to Murray. And that's what I did.

11 Q And who was her best friend in New York?

12 A Adele.

13 Q Would you provide the full name and address of  
14 her best friend in New York.

12:44 15 A No.

16 Q What?

17 A I said "no."

18 Q I'm going to ask you to provide the first  
19 name -- the full name and address -- and the mailing  
12:45 20 addresses of all persons to whom you distributed any of  
21 the assets or any of the property or any of the  
22 furnishings or any other items that were part of  
23 Dorothy Horwitz's --

24 MS. MORROW: Mr. Solomon, she just named who she  
12:45 25 sent the photos to, and now is your chance to question

12:45 1 her, but she's not required to do anything further but  
2 to answer your questions.

3 MR. SOLOMON: I would like the full names and  
4 addresses of each of those persons.

12:45 5 MS. MORROW: You can ask her, and if she has it, she  
6 can say it now off the top of her head. If not, there's  
7 nothing that requires her to get that for you.

8 MR. SOLOMON: I believe that you're incorrect.

9 MS. MORROW: You can provide me --

12:46 10 MR. SOLOMON: Are you her lawyer, Ms. Morrow?

11 MS. MORROW: No, but she is --

12 MR. SOLOMON: If you're not her lawyer -- let me  
13 just be clear -- and she should be clear -- you're not  
14 her lawyer; is that correct?

12:46 15 MS. MORROW: That's correct. But she's an  
16 unrepresented --

17 MR. SOLOMON: You're giving her legal advice at this  
18 time not to answer; is that correct?

19 MS. MORROW: She's an unrepresented party, so I'm  
12:46 20 going to give her legal advice if I believe that  
21 boundaries are being exceeded in this deposition.

22 MR. SOLOMON: And you think the address, the  
23 identities -- the full identities of the persons to whom  
24 she's mailed the property of the estate is out of  
12:46 25 bounds; is that correct?



12:46 1 MS. MORROW: No. I'm happy to let the questioning  
2 of her on the issue go forward. It's putting some duty  
3 on her to provide you outside of this deposition with  
4 any names or addresses.

12:47 5 MR. SOLOMON: She's already named the parties here.  
6 We have -- to whom she has sent the items of the estate.

7 THE WITNESS: This is irrelevant. I can't remember  
8 the addresses anyway. I don't have them in my head.

9 Q BY MR. SOLOMON: I would like you to provide to  
12:47 10 the reporter those identities and addresses and any  
11 precise addresses of all of the charities to which the  
12 items from the estate were donated or disposed of. You  
13 can decide whether you want to do that, but I'm making  
14 this demand at this time.

12:47 15 I'll move on.

16 Do you know Orit Shapiro?

17 MS. MORROW: O-R-I-T, Shapiro.

18 THE WITNESS: No. I'm sorry. I didn't hear -- that  
19 was confusing. Okay.

12:48 20 MS. MORROW: Do you know Orit Shapiro?

21 THE WITNESS: Oh. Oh, yeah. He's the guy in charge  
22 of Garden Crest.

23 Q BY MR. SOLOMON: She is; yes?

24 A He is.

12:48 25 Q He is.

12:48 1 A The man that was in charge, I met him at  
2 Garden Crest. The man that was in charge of  
3 Garden Crest. I don't know what his name was.

4 Q Would that be Bob Bryant? Is that possible?

12:48 5 A I don't remember.

6 Q Was there a woman by the name of Orit with whom  
7 Dorothy conversed quite a bit?

8 A I don't remember.

9 Q Pardon me?

12:48 10 A I don't remember.

11 Q Did she ever mention conversing with any of the  
12 particular staff at Garden Crest?

13 A Yes, she did.

14 Q And do you recall whom she conversed with?

12:49 15 A I know she conversed with the manager.

16 Q And that was Bob Bryant? That was the man?

17 MS. MORROW: I'm going to object. You asked, and  
18 she told you she did not recognize any of these names.

19 MR. SOLOMON: I see.

12:49 20 Q And could you describe the person physically:  
21 How high, color hair, age?

22 MS. MORROW: I'm confused as to who you're talking  
23 about.

24 MR. SOLOMON: This is the person that apparently  
12:49 25 Rose met and who Dorothy conversed with frequently at

12:49 1 Garden Crest.

2 MS. MORROW: I think you're combining two different  
3 things, and it's coming out a misstatement of the  
4 testimony.

12:50 5 She said that -- Ms. Aparicio mentioned that  
6 she met somebody there or saw somebody there, and she  
7 mentioned that Dorothy conversed with some of the staff  
8 at Garden Crest. But I don't think that they are  
9 necessarily the same person.

12:50 10 So can you reask your question.

11 MR. SOLOMON: Yes, I'd be happy to.

12 Q Could you identify physically by height or age  
13 or color of hair the individuals with whom Dorothy  
14 conversed with most or frequently at Garden Crest or  
12:50 15 mentioned at Garden Crest?

16 It's a compound statement, but if you can parse  
17 it, I'd appreciate it.

18 A Okay. The manager I was introduced to -- and I  
19 didn't pay much attention because I was focused on  
12:51 20 Dorothy. I was there for Dorothy and her health, not  
21 wondering who she was talking to; okay? But he was a  
22 rather -- he was -- dark hair, Jewish fellow, slim.  
23 That's about all I remember about him. I don't remember  
24 his name.

12:51 25 Q And approximately how tall was he?

12:51 1 A Oh, I don't remember.

2 Q Was Dorothy Jewish?

3 A Was who?

4 Q Dorothy.

12:51 5 A Of course, Dorothy was Jewish.

6 Q Thank you.

7 Do you remember a conversation that we had  
8 after Dorothy had entered Garden Crest?

9 A I don't remember.

12:52 10 Q And --

11 A What conversation? As I believe, we spoke  
12 two times.

13 Q Yes.

14 And when was that?

12:52 15 A I don't remember when that was.

16 Q Was one of them before she died and one after?

17 A I don't recall. It wasn't important to me.

18 Q I see.

19 And if I were to try and help your recollection

12:52 20 by saying that I did call you after Dorothy had entered

21 Garden Crest and that we had discussed some of Walter's

22 items, would that help you recall the conversation?

23 A Yes. Somewhat of the conversation.

24 Q And one of those items that we discussed

12:53 25 were --

12:53 1 A A navy suit.

2 Q -- his sculptures.

3 A Oh, his sculptures, yes.

4 Q And a series of record albums, one being of

12:53 5 Cantor Pinchik?

6 A Which I sent to Murray.

7 Q You sent the album of Cantor Pinchik to Murray?

8 A Yes, I did, and the sculptures.

9 Q And do you recall what other items that you

12:53 10 sent?

11 A I sent him photographs. I sent him a picture

12 of Dorothy and Walter. I knew he would like that.

13 He's a very nice man, your brother.

14 Q Yes, he's a very nice man.

12:54 15 In their home, did they have any sort of Jewish

16 items in the home? A Star of David or menorah or

17 anything of that sort?

18 A No, neither Walter nor Dorothy was religious.

19 Dorothy was spiritual, though. She believed in God.

12:54 20 Q She believed in God.

21 I see.

22 So you don't recall any items of that sort?

23 A There are still some plates up on the wall of

24 the condo that are Jewish-related.

12:54 25 Q I see.

12:54 1 And how can you tell that they're

2 Jewish-related?

3 A Because Dorothy showed them to me, and she  
4 explained them to me at the time.

12:54 5 Q Were they important to her?

6 MS. MORROW: Objection. Calls for speculation.

7 I mean, in relation to what?

8 Q BY MR. SOLOMON: Is it your impression that  
9 they were important to her when she was explaining them  
10 to you?

11 A I don't recall.

12 Q Have you taken any of her -- Ms. Aparicio, I  
13 understand you're Catholic; is that correct?

14 MS. MORROW: Objection. Violation of privacy,  
12:55 15 irrelevant, and I'm going to advise the witness not to  
16 answer. That's way out of bounds.

17 Q BY MR. SOLOMON: You may answer if you feel  
18 that it's appropriate, Ms. Aparicio.

19 A I don't mind.

12:55 20 I am Catholic.

21 Q Do you donate to St. Jude's?

22 A You're not --

23 MS. MORROW: Same objections. Violation of privacy;  
24 way out of bounds.

12:56 25 Q BY MR. SOLOMON: And you may answer,

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Ms. Aparicio.  
MS. MORROW: But I'm going to advise the witness not to, but of course, she can choose herself.  
I don't believe the witness is going to answer.  
Q BY MR. SOLOMON: Why do you believe -- this is what you feel. Why do you believe that when Dorothy wrote up the addendum that she put into the wording the specific phrase that should Nicolas and yourself predecease her, that the proceeds were to go to St. Jude's charities?  
A How would I know that?  
MS. MORROW: Objection. Calls for speculation.  
MR. SOLOMON: I asked what her impression was.  
MS. MORROW: She said she doesn't know.  
Q BY MR. SOLOMON: Did you call members of the family when Dorothy died?  
A She gave me a list to call, and I called everyone on the list. If I reached them, I reached them; and if I didn't, I didn't.  
Q I see.  
And you didn't reach me, and so you didn't call again; is that correct?  
A Your name was not on the list.  
Q My name was not on the list of people to call; is that correct?

12:57 1 A Yes.

2 Q Dorothy was cremated; is that correct?

3 A Yes.

4 Q And her ashes were scattered on the beach and

12:58 5 the ocean?

6 A Yes.

7 Q Is that correct?

8 A Yes.

9 Q Did you invite anyone to that ceremony?

12:58 10 A No. She didn't want a party.

11 Q She didn't want a party, so you did this with  
12 yourself and, I imagine, your daughter; is that correct?

13 A No. I arranged it with -- she had all of this  
14 set up already. All I had to do was call the mortuary,  
12:58 15 and they took care of everything.

16 Q And the mortuary took care of scattering her  
17 ashes?

18 A Yes. It goes out on a boat.

19 Q I see.

12:58 20 And Walter was buried at sea; is that correct?

21 A Yes.

22 Q And Dorothy must have been in some ways  
23 relieved to also be in the same ocean; is that correct?

24 MS. MORROW: Objection. Calls for speculation;  
12:59 25 irrelevant.



12:59 1 Q BY MR. SOLOMON: They were a very close couple.  
2 Wasn't your impression that they were a very  
3 close couple?

4 A They loved each other very much.

12:59 5 Q And certainly, Dorothy would very definitely  
6 follow Walter's wishes in most things; is that correct?

7 MS. MORROW: Objection. Calls for speculation;  
8 incomplete hypothetical as to what you're referring to.  
9 It could be a whole gamut of things. Irrelevant.

12:59 10 Q BY MR. SOLOMON: You may answer the question if  
11 you so choose.

12 MS. MORROW: I don't think she's going to.

13 Q BY MR. SOLOMON: Dorothy respected Walter's --  
14 was it your impression that Dorothy respected Walter's  
15 wishes?

16 MS. MORROW: Same objection. We could be talking  
17 about picking out a dress to picking out a new condo.

18 Same objection. Calls for speculation;  
19 incomplete hypothetical; irrelevant. We don't even have  
13:00 20 any wishes here as to Walter, so I don't even know what  
21 the relevancy is. There's no evidence in this case as  
22 to any wishes by Walter.

23 Q BY MR. SOLOMON: Ms. Aparicio, I just want to  
24 clear up a couple of things that we may have gone over  
13:00 25 before.

13:00 1           Did you remove the personal items and personal  
2 papers from the home, and you gave -- you threw away  
3 most of them but you gave some to Hoover Louie; is that  
4 correct?

13:01 5           MS. MORROW: Objection. Misstates the testimony.  
6 She already testified that there are things still  
7 remaining in the condo, even hanging on the wall, and  
8 that she sent many of the things to the persons whom --  
9 to relatives.

13:01 10           Can you rephrase the question.

11           MR. SOLOMON: Yes.

12           Q     What did you do specifically with Walter's  
13 personal writings?

14           A     I sent what was relevant to Murray, and there  
13:01 15 weren't -- there wasn't much there. I think Dorothy  
16 cleaned out Walter's stuff years ago myself.

17           Q     And did Dorothy keep anything of Walter's?

18           A     Oh, there were a couple of pantsuits and a  
19 couple of jackets, and that's about it. She kept his  
13:02 20 boots.

21           Q     And where did she keep his boots?

22           A     By his side of the bed.

23           Q     Thank you.

24                   I'm going to -- let's see here.

13:02 25                   Did you ever see the addendum while Dorothy was

13:02 1 alive?

2 MS. MORROW: She testified that she brought it to  
3 her.

4 MR. SOLOMON: Excuse me.

13:02 5 Q Were you present when it was signed by Dorothy?

6 A No.

7 Q After it was signed by Dorothy, did you see the  
8 addendum?

9 A I don't recall. Well, yes. Yes, I did see it.

13:03 10 Q And this was before she died.

11 A Yes.

12 Q And when she died, did you receive them in your  
13 hands?

14 A Yes.

13:03 15 Q And what did you do with the addendum at that  
16 point?

17 A Gave it to Hoover Louie.

18 Q And when did you do that?

19 A Well, I didn't -- I didn't go back to Dorothy's  
13:03 20 condo until about a month after she died. I couldn't  
21 face going in there. And I guess it must have been  
22 about that time. I'm not -- I'm not too sure on the  
23 dates of that. Everything is kind of fuzzy then.

24 Q And during that month that she died, who was  
13:04 25 taking care of the condo?

13:04 1 A Nobody. The neighbors were keeping an eye on  
2 it, and nobody was inside of the condo or taking care of  
3 it or anything.

4 Q And this was Edward Louie?

13:04 5 A Yes.

6 Q And after that month went by, did you go to the  
7 condo?

8 A I did what Dorothy asked me to do. I went in  
9 there and cleaned it out. I cleaned out all her old  
10 dishes, all her old linens, all her old clothes.  
11 Everything. Pots and pans.

12 Q And you gave all those to either charities or  
13 you sent some of them to other people, as you said  
14 before; correct?

13:04 15 A Yes. Goodwill, Salvation Army.

16 Q And after you did that, what happened to the --  
17 what was happening with the condominium?

18 A I don't know.

19 Q So when was the last time you were in the  
13:05 20 condominium?

21 A It's been months.

22 Q Could you be more accurate?

23 A I can't remember. I can't remember. It's been  
24 months since I've been in there. I've been busy.

13:05 25 Q And are there any other individuals that you

13:05 1 know of that have access to the condominium?

2 A No.

3 Q Who has keys to the condominium at this time?

4 A I do and Hoover Louie does and the realtor

13:05 5 does.

6 Q And what is the name of the realtor?

7 A Steven Tran.

8 Q And do you know what Steven Tran is doing with  
9 the condominium at this time?

13:06 10 A Everything has been put on hold since you  
11 started this proceeding.

12 Q I see.

13 And as far as -- you said it's been months. So  
14 am I to understand you periodically go to the  
13:06 15 condominium --

16 A I do not go to the condominium at all.

17 Q I see.

18 Does anyone that you know of -- any of your  
19 family -- go to the condominium?

13:06 20 A Nobody else has the keys.

21 Q If Steven Tran were to allow other realtors to  
22 access the condominium --

23 A It is my understanding that the condo is no  
24 longer up for sale until after this is over.

13:06 25 Q And did you advise Steve Tran of that?

13:07 1 A Of what? No, I didn't. I don't have anything  
2 to do with that. That's between the executor and the  
3 realtor.

4 Q I see.

13:07 5 So at this point you have nothing to do with  
6 any of the items of Dorothy's or the condominium or the  
7 safe deposit boxes or any of the property; is that  
8 correct?

9 A Yes. Nothing to do with any of it.

13:07 10 Q Did Dorothy give you any presents after she was  
11 diagnosed?

12 MS. MORROW: Objection. Violation of privacy;  
13 irrelevant. Dorothy could give a present to whoever she  
14 wanted to.

13:07 15 MR. SOLOMON: I'm just asking. I believe that it's  
16 relevant.

17 MS. MORROW: On what grounds? To what issue?

18 MR. SOLOMON: To the grounds of undue influence.

19 MS. MORROW: I don't see the relevance whether or  
13:08 20 not she gave her a present.

21 MR. SOLOMON: I'm just asking. I believe that I'm  
22 entitled to an accounting for three years, actually.

23 MS. MORROW: Not to an accounting of Mrs. Aparicio.  
24 You may be entitled to an accounting of Dorothy Horwitz,  
13:08 25 and I did already provide that. So I don't see the

13:08 1 relevance.

2 MR. SOLOMON: I'm asking the question. And  
3 Ms. Aparicio may answer or she may not. I'm going to  
4 insist that she does, and we'll move to compel.

13:08 5 MS. MORROW: She's not going to answer.

6 Q BY MR. SOLOMON: What happened to Dorothy's  
7 jewelry?

8 A I have no idea. Dorothy put her jewelry in her  
9 box.

13:09 10 Q In her safe deposit box?

11 A Yes.

12 Q And that's all of her jewelry; yes?

13 MS. MORROW: Calls for speculation.

14 THE WITNESS: How do I know?

13:09 15 MS. MORROW: It's only as to what you know.

16 Q BY MR. SOLOMON: Did you ever see Dorothy  
17 wearing a Star of David?

18 A No, she wouldn't do that.

19 Q Or a hand -- it looked like a hand?

13:09 20 A No. That doesn't sound familiar to me.

21 Q Ms. Aparicio, what are your favorite charities?

22 MS. MORROW: I'm going to object. Violation of  
23 privacy; no relevancy whatsoever.

24 I'm going to instruct the witness not to  
13:10 25 answer.

13:10 1 Q BY MR. SOLOMON: Walter, when he went to the  
2 racetrack, was fond of drawing horses; is that correct,  
3 Mrs. Aparicio?

4 MS. MORROW: Same objection, and I'm going to add  
13:10 5 calls for speculation. No relevance.

6 Where is the relevancy?

7 MR. SOLOMON: I believe that Mrs. Aparicio is  
8 familiar with Walter's artwork. I'd just like to  
9 understand the scope of her familiarity.

13:10 10 THE WITNESS: What was the question?

11 MS. MORROW: What's the question?

12 MR. SOLOMON: The question is, was she familiar with  
13 Walter's drawings of horses?

14 THE WITNESS: Well, yes. They were in his condo.  
13:11 15 They were on the walls. I saw them every time I went  
16 there and visited.

17 Q BY MR. SOLOMON: And how many pictures did you  
18 see or works did you see?

19 A Oh, I did not count them.

13:11 20 Q Approximately one, ten, five?

21 A Ask your brother. He has them all.

22 Q Did Walter have any sketch books that you sent?

23 A Yes. I sent some sketch books.

24 Q Did he have a sheaf or pile of prints between  
13:11 25 two flat pieces of wood bound that you sent?



13:11 1 A I didn't understand that.

2 Q Did he have a number of artworks or paintings

3 of other paintings in a stack approximately two inches

4 thick between two flat pieces of wood?

13:12 5 A Whatever was there, Mr. Solomon, was sent to

6 your brother except for two pieces on the wall still.

7 Q There are two pieces on the wall.

8 A Yes. However, I'm not sending them. I'm done.

9 Q I beg your pardon?

13:12 10 A I am not sending them. I am done doing my

11 duty.

12 Q So you're resigning all your capacity in this

13 affair; is that correct?

14 MS. MORROW: I'm going to object.

13:12 15 MR. SOLOMON: Isn't that what she just said, she's

16 done doing her duty?

17 MS. MORROW: I think she's probably done with this

18 whole matter because she feels like she's being

19 harassed. So you can move on to the next question.

13:13 20 MR. SOLOMON: Very good.

21 Q Why do you think that Dorothy didn't leave

22 anything to your son or daughter, Lisa or Paul?

23 MS. MORROW: Objection. Calls for speculation;

24 violation of privacy; irrelevant.

13:13 25 MR. SOLOMON: I'm asking for her --

13:13 1 MS. MORROW: Wild speculation.

2 MR. SOLOMON: Hold on for just a second.

3 Would like to ask some specific questions  
4 regarding the addendum. I don't have a copy -- an  
13:14 5 actual copy of the original signed addendum. I also  
6 don't have a full accounting of the estate, so I would  
7 be unable to address those particular issues.  
8 Therefore, I'm going to request that the deposition be  
9 continued until such time as those are provided.

13:14 10 Other than that, I have no further questions.

11 MS. MORROW: For the record, I want to note that the  
12 addendum that was used today and is marked with  
13 Exhibit 1 was produced by Mr. Solomon's counsel and that  
14 an accounting was provided in responses to discovery in  
13:14 15 November 2014.

16 MR. SOLOMON: Duly noted.

17 I am complete.

18 MS. MORROW: Shall we stipulate that the court  
19 reporter be relieved of her duties in that she will  
13:15 20 prepare the transcript and send it to Mrs. Aparicio to  
21 make any changes that she deems necessary -- any  
22 corrections that you deem necessary;

23 And that you will advise me within 30 days of  
24 any changes;

13:15 25 And that I will so advise you within two

13:15 1 business days, Mr. Solomon.

2 So stipulated?

3 MR. SOLOMON: We will stipulate that this partial --  
4 the partial transcript may be prepared and that the  
13:15 5 deposition is continuing.

6 MS. MORROW: You'll have to bring a motion to get it  
7 reset, but so stipulated.

8 (Whereupon, the deposition was  
9 adjourned at 1:15 p.m.)

13:15 10

11

12 I declare under penalty of perjury under the  
13 laws of the State of California that the foregoing is  
14 true and correct. Executed this \_\_\_\_ day of \_\_\_\_\_,  
13:15 15 2\_\_\_\_, at \_\_\_\_\_, California.

16

17

\_\_\_\_\_  
Witness Signature

18

19

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21

22

23

24

25

1 STATE OF CALIFORNIA )  
 )  
2 COUNTY OF LOS ANGELES )

3

4

Reporter's Certificate

5

6

I, Sharon Amy Golding, Certified Shorthand

7

Reporter No. 5934, do hereby certify:

8

That prior to being examined, the witness named

9

in the foregoing deposition, to wit, Rose Aparicio, was

10

by me duly sworn to testify to the truth, the whole

11

truth and nothing but the truth;

12

That said deposition was taken down by me in

13

shorthand at the time and place therein named and

14

thereafter reduced to print by means of computer-aided

15

transcription under my direction, and the same is a

16

true, correct and complete transcript of said

17

proceedings;

18

I further certify that I am not interested in

19

the event of the action.

20

Witness my hand this 23rd day of June, 2015.

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Sharon Amy Golding, CSR No. 5934

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1 STATE OF CALIFORNIA )  
 )  
2 COUNTY OF LOS ANGELES )

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4 I, Sharon Amy Golding, Certified Shorthand  
5 Reporter No. 5934, hereby certify that the attached  
6 deposition is a correct copy of the original transcript  
7 of the deposition of Rose Aparicio, taken before me on  
8 June 5, 2015, as thereon stated.

9 I declare under penalty of perjury that the  
10 foregoing is true and correct.

11 Executed at Cerritos, California, this 23rd day of  
12 June, 2015.

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Sharon Amy Golding, CSR No. 5934

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<b>T</b>									
		<b>U</b>							
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<b>vacation (2)</b> 27:14,15 <b>various (1)</b> 14:22 <b>Vets (1)</b> 28:23 <b>Vietnam (1)</b> 28:23 <b>Violation (5)</b> 36:14, 23;44:12;45:22; 47:24 <b>visit (3)</b> 10:23,25; 12:3 <b>visited (2)</b> 12:9;46:16 <b>visiting (2)</b> 14:3;21:7		<b>60 (3)</b> 9:1,3;10:20		
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	<b>0043 (1)</b> 17:3 <b>0044 (2)</b> 17:3;18:1 <b>0045 (1)</b> 17:3			
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	<b>1 (6)</b> 17:19;18:9,11, 14;19:23;48:13 <b>12:12 (1)</b> 4:2 <b>15 (1)</b> 8:6 <b>18 (1)</b> 7:4 <b>1952 (2)</b> 6:16,17 <b>1973 (1)</b> 6:10			
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	<b>2012 (1)</b> 22:11 <b>2013 (3)</b> 12:11,18; 26:8 <b>2014 (1)</b> 48:15 <b>2015 (1)</b> 4:1 <b>20-year-old (1)</b> 19:12 <b>24th (1)</b> 20:25 <b>25th (2)</b> 12:18;20:23			
	<b>3</b>			
	<b>30 (1)</b> 48:23			
	<b>5</b>			
	<b>5 (1)</b> 4:1 <b>5139 (1)</b> 10:13			

13:00 1           Did you remove the personal items and personal  
2 papers from the home, and you gave -- you threw away  
3 most of them but you gave some to Hoover Louie; is that  
4 correct?

13:01 5           MS. MORROW: Objection. Misstates the testimony.  
6 She already testified that there are things still  
7 remaining in the condo, even hanging on the wall, and  
8 that she sent many of the things to the persons whom --  
9 to relatives.

13:01 10           Can you rephrase the question.

11           MR. SOLOMON: Yes.

12           Q     What did you do specifically with Walter's  
13 personal writings?

14           A     I sent what was relevant to Murray, and there  
13:01 15 weren't -- there wasn't much there. I think Dorothy  
16 cleaned out Walter's stuff years ago myself.

17           Q     And did Dorothy keep anything of Walter's?

18           A     Oh, there were a couple of pantsuits and a  
19 couple of jackets, and that's about it. She kept his  
13:02 20 boots.

21           Q     And where did she keep his boots?

22           A     By his side of the bed.

23           Q     Thank you.

24                   I'm going to -- let's see here.

13:02 25                   Did you ever see the addendum while Dorothy was



[www.mayoclinic.org/drugs.../hydromorphone-oral-route/.../drg-2007417](http://www.mayoclinic.org/drugs.../hydromorphone-oral-route/.../drg-2007417)

### **Hydromorphone (Oral Route)**

Drug information provided by: Micromedex

#### **US Brand Name**

Dilaudid, Dilaudid-5, Exalgo, Palladone

#### **Descriptions**

Hydromorphone oral liquid and tablets are used to relieve pain. The hydromorphone extended-release capsules and extended-release tablets are used to relieve moderate to severe pain in opioid-tolerant patients who require around-the-clock pain relief for a long period of time.

.....

Hydromorphone belongs to the group of medicines called narcotic analgesics (pain medicines). It acts on the central nervous system (CNS) to relieve pain.

.....

In deciding to use a medicine, the risks of taking the medicine must be weighed against the good it will do. This is a decision you and your doctor will make. For this medicine, the following should be considered:

.....

#### **Geriatric**

Appropriate studies performed to date have not demonstrated geriatric-specific problems that would limit the usefulness of hydromorphone in the elderly. However, elderly patients may be more sensitive to the effects of hydromorphone than younger adults, and are more likely to have age-related lung, liver, kidney, or heart problems, which may require caution and an adjustment in the dose for patients receiving hydromorphone.

.....

#### **Drug Interactions**

Although certain medicines should not be used together at all, in other cases two different medicines may be used together even if an interaction might occur. In these cases, your doctor may want to change the dose, or other precautions may be necessary.

.....

Using this medicine with any of the following medicines is **usually not recommended**, but may be required in some cases. If both medicines are prescribed together, your doctor may change the dose or how often you use one or both of the medicines.

.....

#### **Lorazepam**

.....



[www.mayoclinic.org/drugs-supplements/lorazepam-oral.../drg-20072296](http://www.mayoclinic.org/drugs-supplements/lorazepam-oral.../drg-20072296)

### **Lorazepam (Oral Route)**

Drug information provided by: Micromedex

US Brand Name

Ativan

Lorazepam Intensol

### **Descriptions**

**Lorazepam is used to treat anxiety.** This medicine is a benzodiazepine. Benzodiazepines belong to the group of medicines called central nervous system (CNS) depressants, which are medicines that slow down the nervous system.

### **Geriatric**

Appropriate studies performed to date have not demonstrated geriatric-specific problems that would limit the usefulness of lorazepam in the elderly. However, severe drowsiness or unsteadiness are more likely to occur in the elderly, who are usually more sensitive than younger adults to the effects of lorazepam. Elderly patients may require a lower dose to help reduce unwanted effects.

**Lung diseases (e.g., COPD, sleep apnea syndrome)** or

Seizures—Use with caution. May make these conditions worse.

### **Dosing**

... The following information includes only the average doses of this medicine. If your dose is different, do not change it unless your doctor tells you to do so ...

For oral dosage forms (tablets or solution):

For anxiety:

Adults or teenagers—2 to 6 milligrams (mg) in divided doses per day. Your doctor may adjust your dose as needed.

**Older adults—At first, 1 to 2 mg in divided doses per day.** Your doctor may adjust your dose as needed.

### **Precautions**

This medicine may cause drowsiness, **trouble with thinking, trouble with controlling movements, or trouble with seeing clearly.** Make sure you know how you react to this medicine before you drive, use machines, or do anything else that could be dangerous if you are not alert or able to think or see well.

Horwitz, Dorothy (MR # 000011714452)

Page 1 of 4

**Visit and Patient Information****Contact Information**

Date	Provider	Location	Encounter #
10/14/2013	PETER S KHANG MD	XKP LTC LA NON-KP FACILITIES-LAX	301005943

**Patient Information**

Patient Name	Sex	DOB
Horwitz, Dorothy (000011714452)	Female	1/25/1930

**Progress Note****Progress Notes**

Khang, Peter S (M.D.) at 10/14/2013 1:37 PM

Status: Sign at close  
encounter**History:**

Skilled Nursing Facility Follow Up Visit

Garden Crest Convalescent  
909 Lucille Ave.  
Los Angeles, CA 90026-1511  
323-663-8281  
Admit Date: 10/10/2013

Patient presents with:  
SNF ROUTINE FOLLOW UP  
URINARY RETENTION

**SUBJECTIVE:**

Pain much better with increasing morphine 15er from q12 to q8. No prns needed. hemorrhoid pain better with hydrocortisone cream bid.

**FROM DC SUMMARY**

Dorothy Horwitz is a 83 year old female with h/o of endometrial Stage IC endometrial CA s/p TAHBSO/XRT and Stage IV TTF1+carcinoma of the lung widely metastatic liver and bone (rib, T-spine, L-spine, right ilium, sacrum, Rt tib) found to encroach on S2 dorsal root in 7/2013 undergoing chemo and XRT presents with progressive weakness and recent onset of bowel and bladder incontinence. Pt received 2 units PRBC at admission followed by 1 unit HD#2 with appropriate Hb response. MRI on 10/5 shows extensive bony metastasis throughout the cervical, thoracic, lumbar, and sacral spine as well as the iliac bones with pathologic compression fractures at L3 and L4 but distal cord, conus medullaris, and cauda equina nerve roots normal in appearance. Neurology has evaluated the patient and does not believe stool and urinary dysfunction is due from cauda equina syndrome. DRE and Abd XR did not reveal obvious fecal impaction, but dilation of right colon consistent with ileus 2/2 opiate use. Norca was d/c'ed and pt was put on bowel regimen of colace/senna/miralax to resolve constipation and potential fecal impaction. The patient was evaluated by OT to have OT requirements and was discharged to SNF with OT. Pt d/c'ed with diaper and foley to be discontinued when symptoms resolve.

Progress Notes (continued)

Legaspi, Elizabeth (L.V.N.) at 10/25/2013 2:35 PM

---

Patient requesting to keep medication in her room.

**Situation:**

Caretaker at Garden Crest would like to know if it's ok to leave ibuprofen 600mg in patient's room. They usually place residents medication in medication cart, but patient insist keeping medication with her.

**Background:**

Chart review indicated patient was seen by Dr.Berstein-Singer on 10/25/13.

**Action:**

Message forwarded to provider.

Granados, Sally at 10/25/2013 1:54 PM

---

Author Type: (none) Status: Signed

**Message Medical Problem**

Reason for call: per Justin caregiver would like to know if it is ok for patient to keep Rx in patient's room please advice.  
Patient's age: 83 years.

Caller's relationship to patient? Caregiver from Garden Crest Res  
Caller's first and last name (if not patient): Justin Quimpo

Best time available for callback: asap  
Callback number:  
Assisted Living 323-663-8281

Do you authorize a Kaiser employee to leave a message? yes.  
If active on KP.ORG, do you authorize a response to this message via secured email? no.

Message sent to office of: PAUL VICTORIANO MAGTOTO MD

---

**Encounter Messages**

No messages in this encounter

**Orders**

**All Orders and Results**

No orders and results found

**Final Spectacle Rx**

Click to see and print Final Spectacle Rx



# DOCTOR'S ORDER SHEET

Date

P.F. #

Name

LAST

FIRST

Code

Age

Horowitz, Dorothy

ORDERED		Checked R.N.	
Date	Hour		
	11-7-13		MS Contin 30mg one tab p.o q BID
			Dilaudid 2mg t po q4 prn pain
			<p><i>M. Bernstein</i>            Majorie Bernstein            Singer MD            323 669-0133            (pager)</p>



**Nursing Notes (continued)**

## PROACTIVE CARE ACTIONS

Proactive Office Encounter Actions: There are no care gaps at this time

**Progress Notes****Bernstein-Singer, Marjorie Lynn (M.D.) at 11/7/2013 3:26 PM**

Author Type: Physician

Status: Signed

**History:****History:**

Dorothy Horwitz is a 83 year old female with metastatic lung ca

Reason for visit: follow up

Staying in an assisted living facility. Feels very weak, pain in her right leg Not able to Walk due to pain

on exam

BP 116/73 | Pulse 85 | Temp(Src) 97.7 °F (36.5 °C) (Oral) | Ht 1.6 m (5' 3") | Wt 44.453 kg (98 lb) | BMI 17.36 kg/m2

Ill appearing, pallor

**Impression**

Dorothy Horwitz is a 83 year old female with

(198.5) CANCER METASTATIC TO BONE

(V10.42) HX OF CA UTERINE BODY

(162.9) LUNG NONSMALL CELL CANCER, STAGE 4

She has progressive disease, increasing pain and weakness.

We discussed hospice care and she would like to have it.

This was a 30 minute visit, of which greater than 50% was spent counseling the patient and coordinating her care.

**Orders Placed This Encounter**

REFERRAL HOSPICE

morphine (MS CONTIN/ORAMORPH SR) 30 mg Oral SR Tab

HYDROMORPHONE (DILAUDID) 2 mg Oral Tab

**Orders (continued)**

Audit Trail for Eye Care Forms

**MEDICATIONS**

Medications the Patient Reported Taking

**HYDROMORPHONE (DILAUDID) 2 mg Oral Tab (Taking/Discontinued)**

Most Recent Medication Comments

Bactrim 800-160mg 1 tablet orally twice daily x 7 days from 10/17/2013-10/24/2013  
 Senna 8.6 mg 2 tablet orally twice daily as needed for constipation  
 Multivitamin - Minerals 1 tablet orally daily

Prescriptions Ordered This Encounter

	Disp	Refills	Start	End
<b>HYDROMORPHONE (DILAUDID) 2 mg Oral Tab (Discontinued)</b>	60	0/0	11/7/2013	11/25/2013
Sig: TAKE 1 TABLET ORALLY EVERY 4 HOURS AS NEEDED FOR PAIN				
Class: Fill Now				
Route: Oral				
Patient Label Sig: TAKE 1 TABLET ORALLY EVERY 4 HOURS AS NEEDED FOR PAIN				
Reason for Discontinue: Continue Therapy				

**Patient Instructions**

Thank you for visiting the Los Angeles Medical Center Hematology / Oncology Department. We hope that you had a pleasant visit. If there is anything else that we can assist you with, please call us at 1(800) 954-8000

We also appreciate your participation on any survey mailed to you regarding your visit so we can continue improving the quality of care and service that we provide to you.

**THANK YOU FOR CHOOSING KAISER PERMANENTE AS YOUR HEALTH CARE PROVIDER.**

**Visit Summary**

All Flowsheet Data (all recorded)

Encounter Vitals

	11/07/13 1418
<b>Enc Vitals</b>	
BP	116/73 mmHg -JU
Pulse	85 -JU
Temp	97.7 °F (36.5 °C) -JU
Temp src	Oral -JU
Wt (qms)	98 lb (44.453 kg) -JU
Height	5' 3" (1.6 m) -JU

Exercise Vitals

	11/07/13 1420
<b>Exercise Level of Effort</b>	
Days per week of moderate to strenuous exercise (like a brisk walk)	0 -JU
On average, minutes	0 -JU

Miscellaneous

Encounter-Level Documents:

There are no encounter-level documents.

Order-Level Documents:

There are no order-level documents.

Patient-Level Documents:

There are no patient-level documents.

**Scanned Document Error Report**

**Request for scans completed successfully; no scanning errors identified in this encounter.**

Progress Notes

Bernstein-Singer, Marjorie Lynn (M.D.) at 11/7/2013 3:26 PM

Version 1 of 1

Author Type: Physician

Status: Signed

History:

History:

Dorothy Horwitz is a 83 year old female with metastatic lung ca

Reason for visit: follow up



Staying in an assisted living facility. Feels very weak, pain in her right leg Not able to Walk due to pain

on exam

BP 116/73 | Pulse 85 | Temp(Src) 97.7 °F (36.5 °C) (Oral) | Ht 1.6 m (5' 3") | Wt 44.453 kg (98 lb) |

BMI 17.36 kg/m2

Ill appearing, pallor

Impression

Dorothy Horwitz is a 83 year old female with

(198.5) CANCER METASTATIC TO BONE

(V10.42) HX OF CA UTERINE BODY

(162.9) LUNG NONSMALL CELL CANCER, STAGE 4

She has progressive disease, increasing pain and weakness.

We discussed hospice care and she would like to have it.

This was a 30 minute visit, of which greater than 50% was spent counseling the patient and coordinating her care.

Orders Placed This Encounter

REFERRAL HOSPICE

morphine (MS CONTIN/ORAMORPH SR) 30 mg Oral SR Tab

HYDROMorphone (DILAUDID) 2 mg Oral Tab

**Ancillary Orders**

11/9/2013 Ancillary Orders

Dorothy Horwitz

MRN: 000011714452

**Visit and Patient Information**

**Patient Information**

Patient Name	Sex	DOB
Horwitz, Dorothy (000011714452)	Female	1/25/1930

**Patient Demographics**

Address	Phone
889 N Lucile ave LOS ANGELES CA 90026	323-315-5168 (Home) 626-571-0653 (Work)

**Contact Information**

11/9/2013	Provider	Location	Encounter #
	WON KIM BUCHER MD	WEST LA MEDICAL CENTER U-WLAU	416062864

**Visit Information**

11/9/2013 3:48 PM	Provider	Department	Dept Phone	Encounter #
	WON KIM BUCHER MD	Intw/lwla Ger2	323-857-3344	416062864

**Call Documentation**

No notes of this type exist for this encounter.

**Social History**

Category	History
Smoking Tobacco Use	Former Smoker; Quit date: 2/27/1972; 1.5 packs/day for 17 years (25.5 pk yrs)
Smokeless Tobacco Use	Never Used
Tobacco Comment	

**Menstrual Status**

Reason
Hysterectomy [3]

**TJA Printable PreOp Pain Scales Encounter Information**

No data filed

**TJA Printable Status Pain and Surgery Satisfaction Scales Encounter Information**

No data filed

**Progress Notes**

**Progress Notes**

No notes of this type exist for this encounter.

**Encounter Messages**

No messages in this encounter

**Orders**

**All Orders and Results**

No orders and results found

**Final Spectacle Rx**

Click to see and print Final Spectacle Rx

**Final CL Rx**

Click to see and print Final Contact Lens Rx

Orders (continued)

Final CL Rx

Audit Trail for Eye Care Forms

MEDICATIONS

Most Recent Medication Comments

Bactrim 800-160mg 1 tablet orally twice daily x 7 days from 10/17/2013-10/24/2013  
Senna 8.6 mg 2 tablet orally twice daily as needed for constipation  
Multivitamin - Minerals 1 tablet orally daily

Prescriptions Ordered This Encounter

	Disp	Refills	Start	End
<b>LORazepam (ATIVAN) 0.5 mg Oral Tab</b>	100	2/2	11/9/2013	5/8/2014
Sig: TAKE 1 TABLET ORALLY EVERY 4 HOURS AS NEEDED FOR ANXIETY OR SHORTNESS OF BREATH				
Patient Label Sig: TAKE 1 TABLET ORALLY EVERY 4 HOURS AS NEEDED FOR ANXIETY OR SHORTNESS OF BREATH				
<b>Atropine (ISOPTO ATROPINE) 1 % Ophth Drop</b>	5	0/0	11/9/2013	11/9/2015
Sig: PLACE 4 DROPS ORALLY EVERY 4 HOURS AS NEEDED FOR CONGESTION				
Patient Label Sig: PLACE 4 DROPS ORALLY EVERY 4 HOURS AS NEEDED FOR CONGESTION				

Patient Instructions



No instructions given.

# PHYSICIAN ORDERS (Monthly Recap)

Garden Crest Residential

Page 1

Residents Name: HORWITZ, DOROTHY

Room:

Birthdate: 01/25/1930

Age: 83 Yrs

Code Status/Advance Directives:

Allergies NKA

Physician:

**Diet** 10/18/2013 DIET: REGULAR with High protein nourishment 4 oz. t.i.d. with meals and ice cream Lunch & Dinner 7:00 a.m. 12:00 p.m. 5:00 p.m. first date: 10/19/2013

Medications	PRN Medications	Treatments
<p>Docusate Sodium 250MG Capsule by mouth Dose Ordered: (1 capsule / 250mg) b.i.d. 8:00 a.m.* 4:00 p.m.* Hold for loose stools. first date: 10/19/2013 FOR: PROPHYL OR TX MEAS NOS (Constipation Prophylaxis)</p> <p>Senna 8.6MG Tablet by mouth Dose Ordered: (2 tablet / 17.2mg) at bedtime 9:00 p.m. Hold for loose stools. first date: 10/19/2013 FOR: PROPHYL OR TX MEAS NEC (Constipation Prophylaxis)</p> <p>Morphine Sulfate ER 30MG Tablet Extended Release by mouth Dose Ordered: (1 tablet / 30mg) q. 12 h. 8:00 a.m.* 8:00 p.m.* first date: 11/12/2013 FOR: (Severe Pain)</p>	<p>[Ativan]LORazepam 0.5MG Tablet by mouth q. 4 h. p.r.n. first date: 11/10/2013 FOR: Anxiety/ SOB Order received from: Dr. Pouya, Parmis</p> <p>Atropine Sulfate 1% Solution by mouth Dose Ordered: (4 drop) by mouth q. 4 h. p.r.n. first date: 11/10/2013 FOR: Congestion</p> <p>[Compazine]Prochlorperazine Maleate 10MG Tablet by mouth Dose Ordered: (1 tablet / 10mg) q. 6 h. p.r.n. FOR: NAUSEA WITH VOMITING (Nausea and Vomiting) first date: 11/12/2013</p> <p>[Dilaudid]HYDROmorphone HCl 2MG Tablet by mouth Dose Ordered: (1 tablet / 2mg) q.h. p.r.n. first date: 11/12/2013 FOR: PAIN</p>	<p>ANCILLARY ORDER : Admit to Garden Crest Residential May use generic equivalents unless otherwise specified Podiatry consult q 2 months as needed May attend and participate in group activities of choice if not in conflict with tx plan. first date: 10/19/2013</p>

10/2013	Physician Signature	Date:
	Nurse Signature <i>Quimpo, Justin S</i>	Date:

### NURSES NOTES

Garden Crest

01/01/1800 - 03/10/2015

Resident Name: HORWITZ, DOROTHY		Room No: 87	Birthdate: 01/25/1930	Medical Record No: 008201
11/15/2013	09:09pm	EB	Comments: Susan (RN) from Kaiser Hospice came to visit with order noted and carried out. (Bongolan, Elizabeth G)	
11/25/2013	10:22pm	CA	DISCHARGE NOTE: DISCHARGED TO: Deceased. DISCHARGED DATE: 11/25/2013 TIME OF DEATH: 09:40PM (Aquino, Christine S C.N.A)	
11/26/2013	01:03am	CCD	DISCHARGE NOTE: DISCHARGED TO: Deceased. DISCHARGED DATE: 11/25/2013 TIME OF DEATH: 09:40PM ACTIONS: call placed to physician, call placed to family, ROSE APARICIO ( DURABLE POA-HC ) funeral home notified, body released to funeral home. @ 01:00 AM.BELONGING GIVEN TO GARDEN CREST.BY ROSE APARICIO( DURABLE POA-HC ) (Ditchon, Darlene C RN)	

**Ancillary Orders**

11/19/2013 Ancillary Orders

**Dorothy Horwitz**

MRN: 000011714452

**Visit and Patient Information**

**Patient Information**

Patient Name	Sex	DOB
Horwitz, Dorothy (000011714452)	Female	1/25/1930

**Patient Demographics**

Address	Phone
889 N Lucile ave LOS ANGELES CA 90026	323-315-5168 (Home) 626-571-0653 (Work)

**Contact Information**

11/19/2013	Provider	Location	Encounter #
	PARMIS POUYA MD	WILSHIRE BUILDING U-WBU	417980551

**Visit Information**

11/19/2013 8:14 PM	Provider	Department	Dept Phone	Encounter #
	PARMIS POUYA MD	Hhelawb Hha	323-783-4375	417980551

**Call Documentation**

No notes of this type exist for this encounter.

**Social History**

Category	History
<b>Smoking Tobacco Use</b>	<b>Former Smoker; Quit date: 2/27/1972; 1.5 packs/day for 17 years (25.5 pk yrs)</b>
<b>Smokeless Tobacco Use</b>	<b>Never Used</b>
<b>Tobacco Comment</b>	

**Menstrual Status**

Reason
Hysterectomy [3]

**TJA Printable PreOp Pain Scales Encounter Information**

No data filed

**TJA Printable Status Pain and Surgery Satisfaction Scales Encounter Information**

No data filed

**Progress Notes**

**Progress Notes**

No notes of this type exist for this encounter.

**Encounter Messages**

No messages in this encounter

**Orders**

**All Orders and Results**

No orders and results found

**Final Spectacle Rx**

Click to see and print Final Spectacle Rx

**Final CL Rx**

Click to see and print Final Contact Lens Rx



Orders (continued)

Final CL Rx

Audit Trail for Eye Care Forms

MEDICATIONS

Most Recent Medication Comments

Bactrim 800-160mg 1 tablet orally twice daily x 7 days from 10/17/2013-10/24/2013  
Senna 8.6 mg 2 tablet orally twice daily as needed for constipation  
Multivitamin - Minerals 1 tablet orally daily

Prescriptions Ordered This Encounter



	Disp	Refills	Start	End
<b>morphine (MS CONTIN/ORAMORPH SR) 30 mg Oral SR Tab</b> Sig: TAKE 1 TABLET ORALLY EVERY 12 HOURS Patient Label Sig: TAKE 1 TABLET ORALLY EVERY 12 HOURS	60	0/0	11/19/2013	5/18/2014
<b>Prochlorperazine Maleate (COMPAZINE) 10 mg Oral Tab</b> Sig: TAKE 1 TABLET ORALLY EVERY 6 HOURS AS NEEDED FOR NAUSEA & VOMITING Patient Label Sig: TAKE 1 TABLET ORALLY EVERY 6 HOURS AS NEEDED FOR NAUSEA & VOMITING	30	0/0	11/19/2013	11/19/2015
<b>Bisacodyl (DULCOLAX) 10 mg Rect Supp</b> Sig: UNWRAP AND INSERT 1 SUPPOSITORY RECTALLY EVERY OTHER DAY IF NO BOWEL MOVEMENT Patient Label Sig: UNWRAP AND INSERT 1 SUPPOSITORY RECTALLY EVERY OTHER DAY IF NO BOWEL MOVEMENT Non-formulary Exception Code: Non-Formulary, Patient Request, Patient Pays	24	0/0	11/19/2013	11/19/2015
<b>Sennosides (SENNA) 8.6 mg Oral Tab</b> Sig: TAKE 2 TABLETS ORALLY DAILY Patient Label Sig: TAKE 2 TABLETS ORALLY DAILY Non-formulary Exception Code: Non-Formulary, Patient Request, Patient Pays	100	0/0	11/19/2013	11/19/2015
<b>Sodium Phosphates (ENEMA DISPOSABLE) 19-7 gram/118 mL Rect Enema</b> Sig: USE 1 ENEMA RECTALLY AS DIRECTED EVERY 4 DAYS IF NO BOWEL MOVEMENT Patient Label Sig: USE 1 ENEMA RECTALLY AS DIRECTED EVERY 4 DAYS IF NO BOWEL MOVEMENT Non-formulary Exception Code: Non-Formulary, Patient Request, Patient Pays	266	0/0	11/19/2013	11/19/2015

Patient Instructions

No instructions given.

**Telephone**

11/21/2013 Telephone

**Dorothy Horwitz**

MRN: 000011714452

**Visit and Patient Information**

**Patient Information**

Patient Name	Sex	DOB
Horwitz, Dorothy (000011714452)	Female	1/25/1930

**Patient Demographics**

Address	Phone
889 N Lucile ave LOS ANGELES CA 90026	323-315-5168 (Home) 626-571-0653 (Work)

**Contact Information**

11/21/2013	Provider	Location	Encounter #
	CECILIA EILEEN V SANCHEZ RN	INDEPENDENCE PK/LA U-LAA	418441278

**Visit Information**

11/21/2013 7:49 PM	Provider	Department	Dept Phone	Encounter #
	CECILIA EILEEN V SANCHEZ RN	Hhelala Hctc Call	000-000-0000	418441278

**Reason for Call/Visit**

- HOSPICE NOTE
- MEDICATION QUESTIONS

**Call Documentation**

Sanchez, Cecilia Eileen V (R.N.) at 11/21/2013 7:57 PM

Status: Signed

SITUATION: Pt asking about her medications.

BACKGROUND: 83 y/o female hospice pt with Lung CA 3 with mets to bone.

ASSESSMENT: Pt states that Susan Romo RN had given new medications yesterday and she is requesting Susan to give her a call in the morning to clarify her medications.

RECOMMENDATION: Susan Romo RN to please call pt in AM.

**Social History**

Category	History
Smoking Tobacco Use	Former Smoker; Quit date: 2/27/1972; 1.5 packs/day for 17 years (25.5 pk yrs)
Smokeless Tobacco Use	Never Used
Tobacco Comment	

**Menstrual Status**

Reason
Hysterectomy [3]

**KAISER PERMANENTE**

SUNSET - VERMONT MED OFFICES  
 U  
 1515 N VERMONT AVE  
 LOS ANGELES CA 90027-5337  
 AMB ENC ROI Legal Record

HORWITZ, DOROTHY  
 MRN: 000011714452  
 DOB: 1/25/1930, Sex: F  
 Enc. Date: 11/22/13

**Telephone**

11/22/2013 Telephone

Dorothy Horwitz

MRN: 000011714452

## Visit and Patient Information

**Patient Information**

Patient Name	Sex	DOB
Horwitz, Dorothy (000011714452)	Female	1/25/1930

**Patient Demographics**

Address	Phone
889 N Lucile ave LOS ANGELES CA 90026	323-315-5168 (Home) 626-571-0653 (Work)

**Contact Information**

	Provider	Location	Encounter #
11/22/2013	IMELDA A TADEO RN	SUNSET - VERMONT MED OFFICES U-L18U	418490175

**Visit Information**

	Provider	Department	Dept Phone	Encounter #
11/22/2013 6:12 AM	IMELDA A TADEO RN	Hhelal18 Hha Z	800-954-8000	418490175

**Reason for Call/Visit**

<b>TRIAGE</b>	message to nurse
<b>HOSPICE NOTE</b>	

## Call Documentation

## Tadeo, Imelda A (R.N.) at 11/22/2013 6:06 AM

Status: Signed

Patient requesting for **Susan Romo**, case manager to **call her today**. She said that the suppository which she had yesterday did not work. It has been 1 day of no BM for her.

She also has questions on all her medications and she would want for Susan to call.

Endorse to Hospice office for follow-up

**Social History**

Category	History
Smoking Tobacco Use	Former Smoker; Quit date: 2/27/1972; 1.5 packs/day for 17 years (25.5 pk yrs)
Smokeless Tobacco Use	Never Used
Tobacco Comment	

**Menstrual Status**

Reason
Hysterectomy [3]

## TJA Printable PreOp Pain Scales Encounter Information

No data filed

## TJA Printable Status Pain and Surgery Satisfaction Scales Encounter Information

No data filed

**Telephone**

11/24/2013 Telephone

Dorothy Horwitz

MRN: 000011714452

Visit and Patient Information

**Patient Information**

Patient Name	Sex	DOB
Horwitz, Dorothy (000011714452)	Female	1/25/1930

**Patient Demographics**

Address	Phone
889 N Lucile ave LOS ANGELES CA 90026	323-315-5168 (Home) 626-571-0653 (Work)

**Contact Information**

	Provider	Location	Encounter #
11/24/2013	SUZETTE JEAN PROKOPIN RN	INDEPENDENCE PK/LA U-LAA	418764702

**Visit Information**

	Provider	Department	Dept Phone	Encounter #
11/24/2013 3:09 PM	SUZETTE JEAN PROKOPIN RN	Hhelala Hctc Call	000-000-0000	418764702

**Reason for Call/Visit**

**HOSPICE NOTE  
MSG**

Call Documentation

Prokopin, Suzette Jean (R.N.) at 11/24/2013 2:47 PM

Status: Signed

S: call back to the pt

B: 83 yr old female on Hospice, DX Lung CA. Called to talk to Susan Romo- would like to talk to her tomorrow. Talked to me quite a while- doesn't like how the morphine makes her feel at times- wants to talk to Susan about this. Has a friend visiting now, pt very talkative and pleasant. Has a new bed and not sure she likes it- said she is supposed to call to ask for assistance when she gets up and likes to be independent

A: pt wants to talk to her RNCM tomorrow

R: told her I would pass on this message. Pt would like to speak with Susan, RNCM tomorrow

**Social History**

Category	History
Smoking Tobacco Use	Former Smoker; Quit date: 2/27/1972; 1.5 packs/day for 17 years (25.5 pk yrs)
Smokeless Tobacco Use	Never Used
Tobacco Comment	

**Menstrual Status**

Reason
Hysterectomy [3]

TJA Printable PreOp Pain Scales Encounter Information

No data filed



DEPARTMENT OF THE NAVY  
OFFICE OF THE CHIEF OF NAVAL OPERATIONS  
WASHINGTON, DC 20350-2000

IN REPLY REFER TO

5216  
Ser 982D12/9U553256  
22 May 1989

Dennis J. Solomon  
P.O. Box 289  
Yarmouthport, MA 02675

**CONFIDENTIAL**

Dear Mr. Solomon,

The Secretary of the Navy has passed your letter to me for direct response to you. Your proposal concerning development of a 3-dimensional airspace display is potentially useful in airspace control or presentation environments.

Because of the potential of your proposal, we have taken the liberty of discussing it with two other government agencies. They have encouraged us to have you correspond directly with them. Those agencies and points of contact are as follows:

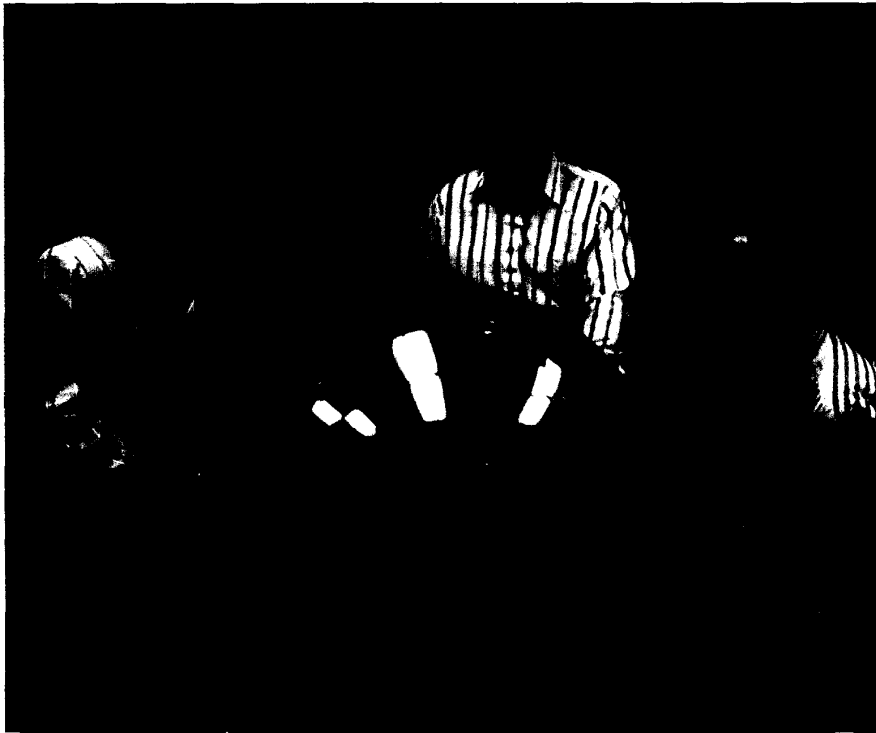
Federal Aviation Administration  
Research Management Control Division  
AMC-200: Attn: John C. Heurtley  
Washington, D.C. 20591  
Tel. (202)-267-8747

Defense Advanced Research Projects Agency  
Attn: ISTO - Major Sowa  
1400 Wilson Blvd.  
Arlington, VA 22209-2308

We appreciate your good ideas.

*[Signature]*  
DIRECTOR, TACTICAL AIR, SURFACE AND  
ELECTRONIC WARFARE DEVELOPMENT  
DIVISION

# Direct Volume Display Devices



T.E. Clifton III  
United States Air Force

Fred L. Wefer  
Mitre

---

***DVDDs generate images directly in a volume, supporting both physiological and psychological depth cues. To be commercially viable, DVDDs need more colors and more voxels.***

**T**he human visual system perceives and comprehends the world in three dimensions, using both physiological and psychological depth cues. Physiological depth cues include accommodation (change in focal length of the eye lens), convergence (inward rotation of the eyes), binocular disparity (differences between left and right eye images), and motion parallax (image changes due to motion of the observer). Psychological depth cues include linear perspective (distant objects appear smaller), shading and shadowing (they indicate positions relative to light sources), aerial perspective (distant objects appear less distinct or cloudy), occlusion (nearer objects hide more distant objects), texture gradient (distant objects have less detail), and color (distant objects look darker).<sup>1</sup> A display device must provide some or all of these depth cues in order to present a semblance of three dimensions (see Table 1).

Practitioners in the field of computer graphics (and, more recently, volume visualization) have created illusory 3D images and scenes on 2D display screens by computing and displaying psychological depth cues. These images lack the physiological depth cues supplied by an actual 3D object, provide only a single angle of view, and require significant computation to render the depth cues (calculate perspective; remove hidden lines and surfaces; add shading, lighting, and shadows; and so forth).

Stereoscopic CRT approaches (in which the left-eye image is presented to the left eye only, while the right-eye image is presented to the right eye only) add limited stereopsis, but still lack motion parallax and large angles of view, and require rendering twice, once for each eye.

Head-tracking technologies added to stereoscopic approaches (head-mounted displays) provide motion parallax and angles of view, with the added benefit of unlimited volume. However, they still suffer from the need to render in silicon for each eye. An additional drawback is the current physical intrusiveness of the technology (for example, bulky headgear). Computer-generated holography provides horizontal parallax and a moderate horizontal angle of view, but without vertical parallax, in only very small display volumes, and with a huge computational burden. The holographic approach requires rendering and calculating the holographic interference patterns for each individual angle of view.<sup>2,3</sup>

According to Kaufman,<sup>4</sup> "...the ultimate highly inspirational goal in equipment development [for volume visualization] is a novel 3D display technology or media for fast presentation of 3D volumes, as well as surfaces, from any arbitrary direction." Direct volume display devices approach this goal by displaying 3D volumes and surfaces in a volume, providing depth rather

**Table 2. Comparison of performance parameters of five existing rotating screen DVDDs. The number of voxels in the z-dimension assumes that the voxels are approximately spherical. Note that the number of voxels in a dimension cannot exceed the addressability in that dimension, even though the voxel size would allow it.**

Rotating Screen Display Device	OmniView™ (3rd generation)	TI OmniView™ (4th generation)	3D Volumetric Display	Lamda	Matrix Imager
Organization	Texas Instruments	Texas Instruments	Naval Ocean Systems Center	Lamda Systems	Volumetric Imaging
Reference	6	—	16	17	18
Display surface	Non-axially symmetric double helix	Flat vertical plane	Axially symmetric double helix	Flat vertical plane	Flat vertical plane
Rotational axis	Vertical	Vertical	Horizontal	Vertical	Vertical
Rotation rate	600 rpm	1,200 rpm	600 rpm	900 rpm	1,200 rpm
Display volume	293,00 cm <sup>3</sup>	51,100 cm <sup>3</sup>	12,700 cm <sup>3</sup>	25,400 cm <sup>3</sup>	39,600 cm <sup>3</sup>
Volume dimensions					
Cylinder diameter	91 cm	51 cm	33 cm	30 cm	41 cm
Height	46 cm	25 cm	15 cm	36 cm	30 cm
Dead-zone diameter	~13 cm	0 cm	~3 cm	0 cm	0 cm
Illumination method	Passive screen with scanned laser beams projected from below	Passive screen with a scanned laser beam projected from below	Passive screen with scanned laser beams projected from the side	Passive screen with a scanned laser beam projected from below and an on-screen phosphor for static grids	Active rotating LED screen
Scanning method	Acousto-optic	Acousto-optic	Acousto-optic	Closed-loop galvanometers	Not applicable
Voxel size	2.5 mm diameter	1.0 mm diameter	1.0 mm diameter	1.0 mm diameter	2-3 mm diameter
Voxel refreshes per rotation	2	2	2	2	1
World update rate	10-20 Hz	40 Hz	20 Hz	30 Hz	20 Hz
Number voxels in x-y-z dimensions	370×370×185	512×512×256	256×256×116	256×256×256	64×64×48
Voxel addressability in x-y-z	4,096×4,096×4,000	512×512×256	256×256×4,000	256×256×256	64×64×48
Number of colors	3 (RGB) with limited mixing	1 (G)	2 (RG) with no mixing	1 (R)	1 (R)
Max voxels per world update	11,600	1,400	4,200	600	790,000
Maximum voxel throughput rate	232 KVox/s	56 KVox/s	84 KVox/s	18 KVox/s	16 MVox/s



**Figure 4.** 2D photograph of a true 3D DVDD showing the Molniya four-satellite constellation orbiting the earth. The inset is a 2D Mercator projection of the same orbit.

The combination of direct spatial representation in the DVDD with high-resolution text on a CRT has proven even more effective. Recently, researchers at NOSC fed live San Diego air traffic control data to just such a combination. Spatial information was displayed in their DVDD as icons at different 3D locations corresponding to the reported positions of the aircraft. Highlighting an icon caused the associated flight information to be displayed on a CRT. With this combination, observers could instantly grasp the 3D air situation over San Diego, as well as determine specific flight parameters for selected aircraft.

### **Satellite orbital mechanics**

Understanding 3D motion as well as position is critical to satellite orbital analysis. Two-dimensional displays of even the simplest ground traces are nonintuitive and can be difficult to understand. CRT-based approaches provide the same benefits, and suffer the same drawbacks, in this domain as in the previous. Directly displaying the motion in a volume viewable from all sides, however, significantly improves the ability to understand even the most complex situation.

Figure 4 shows the OmniView device displaying a four-satellite Molniya constellation. The Molniya orbit produces a ground trace (inset, Figure 4) very different from the usual sinusoidal

curve. The satellite moves from west to east during part of its orbit, reverses direction, then reverses again and continues moving to the east. How this motion results is difficult to understand in 2D but becomes obvious when viewed in the DVDD.

TI used orbital element set data from the US Space Command to create a number of satellite orbit displays, including geosynchronous, low earth orbit, elliptical, transfer orbits, and the Molniya constellation. Analysts reacted very favorably to the display.

### **Time-critical target prosecution**

Perhaps one of the most important advantages of DVDDs is their nonintrusive support of collaborative analysis. Groups of analysts can gather around a DVDD and share the view of complex 3D scenes from all angles, without the need to don bulky gear or manipulate the scene.

This advantage was demonstrated most recently at the Defense Advanced Research Projects Agency WarBreaker simulation exercise. The WarBreaker effort used Simnet distributed network simulation technology to reflight the Scud hunt of February 1991.

For his thesis project,<sup>19</sup> Captain Bruce Hobbs of the Air Force Institute of Technology connected a TI third-generation DVDD



to the simulation. This allowed him to display the ongoing simulated battle situation in real time and show in 3D the locations and actions of objects such as enemy surface-to-air-missile sites, SCUD transporter-erector-launchers, air assets (F-15s, A-10s, B-52s, AWACS, and JSTARS), and so forth over a simple terrain model. The simulation exercise included many actual cockpit simulators, head-mounted displays, virtual cockpits, and a "stealth flying carpet." Each of these provided a unique and valuable view into the battlefield. The DVDD, however, proved most appropriate for situations in which groups of viewers needed a clear understanding of the overall battle situation.

### Future volume displays

DVDDs have proven themselves in laboratory or prototype form for certain critical analysis domains. The goal for manufacturers is the development of commercially viable display devices. Currently, the greatest technical challenges to this goal involve image density, update rate, and data throughput. Based on our experience with the various displays, and knowledge of potential applications and markets, a commercially viable display must provide some or all of the following:

- office environment operation (safety, brightness, quietness, power, cooling, and so forth);
- a commercially recognized application program interface (such as OpenGL or PHIGS) with volumetric extensions;
- a much larger number of voxels (on the order of  $10^5$  or higher);
- flicker-free display;
- application-level addressability of at least  $512 \times 512 \times 256$ ;
- a world update rate exceeding 10 Hz; and
- multiple colors (at an absolute minimum, three).

Table 2 indicates that most of these targets have been reached, but not by any single device or component technology.

Achieving the required number of voxels, color, and throughput appears to be the most difficult goal. Acousto-optic scanned lasers are limited by the frequency bandwidths of the AO devices and the difficulty of registering three independently scanned laser beams. Light-emitting diode devices have so far not achieved the number of colors and voxel addressability values required.

Once manufacturers have achieved the number of colors and number of voxels required, we expect voxel throughput to pose the major limitation. Current applications use simple geometric models, mainly because of the severely limited voxel budgets. As the number of displayable voxels increases, ever more sophisticated models will be used. The voxelization (3D scan-conversion) algorithms for converting continuous geometric models into discrete voxels will then need to be more efficient.<sup>20,21</sup> Considerable research remains before we see a commercially available generic DVDD. In the meantime, the DVDDs described in Table 2 have already proved useful in specialized applications such as those described. □

### Acknowledgments

We thank the following people for sharing unpublished information with us during the preparation of this article: Robert G. Batchko, Lawrence D. Sher, Dennis J. Solomon, Parviz Soltan, Chris Spiegl, and R. Don Williams. We also thank Arie E. Kaufman, Gregory M. Nielson, and Lawrence Rosenblum for valuable comments on the manuscript. All photographs in this article are courtesy of Texas Instruments.

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**LASER-BASED 3-D VOLUMETRIC DISPLAY SYSTEM  
(THE IMPROVED SECOND GENERATION)**

Parviz Soltan, John Trias, Weldon Dahlke,  
Mark Lasher, Malvyn McDonald

Simulation and Human Systems Technology Division

Dr. D.J. Solomon

23 May, 1995

Dear Dennis,

Thanks for your recent letter on my friend  
Mr. Waldo Robinson. He has never been  
to Europe. We (The Navy team) got involved  
in developing the 3-D Volumetric System in  
early 1990, thanks to Dr. Don Williams of TI who  
made it popular. Please see the background,  
etc... of the attached technical paper. We are  
anxious to present it to you. Come visit us. <sup>color of paint</sup> Regards, P

Point of Contact:

Parviz Soltan  
NRaD, Code 44215  
Phone 619-553-3584

January 5, 1995

Approved for public release; distribution is unlimited.

NEW ENGLAND REGIONAL OFFICE  
Anti-Defamation League of B'nai B'rith

One Lincoln Plaza, Suite 301  
Boston, Massachusetts 02111  
(617) 330-9696

July 29, 1992

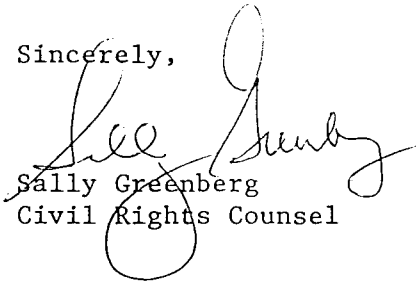
Mr. Dennis Solomon  
P.O. Box 289  
Yarmouth Port, MA 02675

Dear Dennis:

This is a pathetic attempt to explain away the  
comments about Israel. What do you think?

Let me know.

Sincerely,



Sally Greenberg  
Civil Rights Counsel

SG/dh



DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE  
BOSTON, MASSACHUSETTS

DATE: June 29, 1992

FILE: BAG-2:IC WMM

The Honorable Edward M. Kennedy  
United States Senator  
2400A John F. Kennedy Federal Building  
Government Center  
Boston, Massachusetts 02203

Dear Senator Kennedy:

This is in response to your memorandum of June 11, 1992 on behalf of your constituent, Mr. Dennis J. Solomon, regarding his Customs processing upon his arrival from Belgium at Logan Airport on December 9, 1991.

I have conducted a thorough investigation into the matter, and, pursuant to your request, I have forwarded my response directly to Mr. Solomon. Also, I have enclosed a copy of this letter for your information.

I hope that this information is useful, and please feel free to contact me if I can be of any further assistance.

Sincerely,

John V. Linde  
District Director

Enclosure



DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE  
BOSTON, MASSACHUSETTS

DATE: June 29, 1992

FILE: BAG-2:IC-WMM

Mr. Dennis Solomon  
P.O. Box 289  
Yarmouth Port, Massachusetts 02675

Dear Mr. Solomon:

This is in response to your letter of April 20, 1992 to Senator Edward Kennedy concerning your Customs processing upon your return from Belgium at Logan Airport on December 9, 1991. Specifically, you indicated that you perceived an attitude of anti-Semitism on the part of the Customs Inspectors.

As you may know, all travelers arriving in the United States from a foreign country (except accredited diplomats) are subject to Customs inspection. In an effort to ensure efficient and proper treatment of all international travelers, our inspectors receive extensive training and are regularly reminded of the importance of conducting these examinations in a thorough, but courteous and tactful manner. Our inspections involve members of the traveling public from all ethnic, religious, and socio-economic backgrounds, and I assure you that the U.S. Customs Service does not tolerate any discrimination against any of these groups.

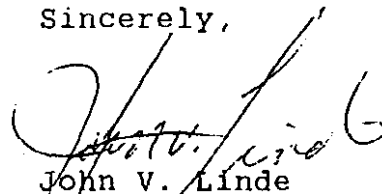
After conducting a detailed investigation of this incident, I have found that there is some disagreement concerning the actual events which occurred during your inspection. Specifically, our inspectors stated that you were in fact asked where you traveled during your trip, and that they would have no reason to ask where the flight was coming from because they are fully aware of that information well before each aircraft arrives. Since you indicated that you visited only Belgium, the inspectors requested information about the rental car receipt from Israel which they discovered in your suitcase. You responded, "None of your business." In addition, questions were raised by the fact that you listed your business address as your residence.

With regard to your toy model 3D imager, the inspectors were simply attempting to determine its country of origin and whether it was in compliance with U.S. export laws. The inspectors, who were naturally unfamiliar with this object, stated that you initially indicated that the device was "high-tech", but later stated that it was not. They said that they had experienced considerable difficulty in obtaining from you the information necessary to complete the inspection. Nevertheless, once the inspectors' concerns were satisfied, you were permitted to proceed.

I would like to reiterate that one of the primary duties of our inspectors is to rapidly identify possible violations of U.S. laws and regulations, and to either confirm or dispel any suspicions through effective and tactful interviews of passengers and/or examination of imported merchandise. We insist that this process be conducted without regard to racial, ethnic or religious background.

I hope that you find this information useful, and I trust that your future experiences with U.S. Customs will be more pleasant.

Sincerely,



John V. Linde  
District Director

**BURR & FORMAN LLP**

P.O. BOX 830719  
BIRMINGHAM, ALABAMA 35283-0719  
TELEPHONE (205) 251-3000  
FACSIMILE (205) 458-5100

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On March 30, 1999, a federal district court in Montgomery, Alabama, awarded the AGES Group, L.P. consent judgments totaling \$8 million dollars against Raytheon Aerospace Company, Inc. and **The Wackenhut Corporation**. In addition, Raytheon Aerospace agreed to repurchase \$13 million worth of aircraft parts inventory from AGES at a \$2 million profit to AGES. The Honorable W. Harold Albritton, III, Chief Judge for the United States District Court for the Middle District of Alabama, entered the judgments in favor of AGES following negotiations between both parties. The judgments marked the end of a lengthy 2 ½ year lawsuit that involved allegations of corporate espionage, illegal wire tapping, and theft of secret business documents all connected with the competitive bid for a government contract worth approximately \$450 million.

Both Raytheon Aerospace and AGES are in the aircraft servicing business. In 1996 both companies were competing for the right to service U.S. military C-12 aircraft under a lucrative government contract valued at over \$450 million, known as the Life Cycle Contractor Support ("LCCS") contract. Under the terms of the government contract bid process, all government bids were to be kept strictly confidential. AGES had hired a company in Slocomb, Alabama, that specialized in preparing government contract bids, The Libertatia Associates, to help prepare its bid on the LCCS contract.

AGES' lawsuit alleged that during the summer of 1996 Raytheon Aerospace hired **Wackenhut** to send private investigators to spy and eavesdrop on Libertatia while it was preparing AGES' bid proposal. AGES claimed that the investigators illegally monitored and intercepted communications from Libertatia's office using sophisticated electronic eavesdropping equipment in order to acquire AGES' confidential bid pricing information only days before the LCCS contract bids were due to be submitted to the government. The lawsuit also alleged that the **Wackenhut** investigators entered Libertatia's office and stole AGES' confidential bid pricing information and turned it over to Raytheon Aerospace.

Over half a dozen eye-witnesses in Slocomb, Alabama saw **Wackenhut's** investigators stakeout and monitor Libertatia's office in Slocomb for three days in July, 1996, from at least two different vehicles parked in front of the office. Five of these local residents observed the investigators wearing headphones and taking notes, and one saw a reel to reel tape recorder being used inside their car. Other eye-witnesses observed a "parabolic microphone" and a "shot gun microphone" in the investigator's vehicles at different times during the surveillance. According to experts, both types of these devices can be used to pick up, isolate, and record conversations at a distance. The **Wackenhut** investigators denied ever wearing headphones during the surveillance or having or using any other electronic eavesdropping equipment such as a reel to reel recorder or a shot gun or parabolic microphone.

One eye-witness also saw what he thought was a flat, oval-shaped, antenna hidden behind a sunscreen in one of the investigator's cars. According to several experts, this type of antenna is used in conjunction with short range electronic transmitting devices, commonly known as "bugs." Experts state that such "bugging devices" commonly have very short ranges and in order to be received the antenna must be located close to the building being bugged. In this case, eye-witnesses observed the investigators parked directly in front of Libertatia's office.

Additionally, two local residents observed an unknown woman walk out of Libertatia's office with papers in her hand, confer with one of the **Wackenhut** investigators parked in front of the office, and

then leave in a separate car with the investigator following behind. The **Wackenhut** investigators claimed to have never seen such a woman. An officer of Libertatia later identified the unknown woman as being associated with **Wackenhut**. Shortly after Wackenhut's surveillance, Libertatia discovered documents missing from its office.

AGES' lawsuit is not the first time that **Wackenhut** and Raytheon have been embroiled in allegations of misconduct. In 1991, a committee of the United States House of Representatives investigated **Wackenhut** for electronic surveillance conducted on behalf of the Alyeska Pipeline Service Company. After several days of hearings, this Committee concluded that **Wackenhut** may have violated federal and state laws concerning surveillance and eavesdropping. Additionally, Raytheon Aerospace's parent company pled guilty in 1990 to illegally conveying a "secret" document from the Department of Defense to an employee of another defense contractor.

AGES' lawsuit was set for a four week trial to begin on March 29, 1999. However, Raytheon Aerospace and **Wackenhut** agreed for judgments totaling \$8 million to be entered on AGES' claims prior to trial. AGES was represented by the Birmingham office of Burr & Forman LLP. Raytheon Aerospace and **Wackenhut** were represented by the law firms of Bradley, Arant Rose & White, LLP and Maynard, Cooper & Gale, P.C., respectively, both also located in Birmingham, Alabama.



← Back to Original Article

## Teledyne to Pay \$112 Million in 2 Whistle-Blower Suits

April 22, 1994 | RALPH VARTABEDIAN | TIMES STAFF WRITER

WASHINGTON — Teledyne settled two major civil fraud suits brought by the Justice Department and four whistle-blowers for \$112.5 million, the second-highest such settlement in defense industry history, the government announced Thursday.

Under a deal negotiated over recent months, Teledyne will pay \$85 million to settle charges that its relays subsidiary in Hawthorne sold the Pentagon millions of improperly tested electronic relays, and \$27.5 million to settle charges that its systems unit in Northridge padded contracts on aircraft electronics equipment.

Since the late 1980s, Teledyne has pleaded guilty three times to a broad range of federal felony charges and has faced half a dozen civil fraud suits—a startling series of legal problems that surpassed those of much larger defense firms.

With the two settlements Thursday, Teledyne will have made substantial progress in pulling itself out of the legal quagmire that has damaged its reputation at the Pentagon, forced it to lay off employees and reduced its profits.

"There is some sense of satisfaction and relief to have these cases resolved," said Teledyne President Donald Rice. "It is an important milestone getting these major cases resolved, having the financial uncertainty resolved and allowing us to focus more of our time on the business."

The \$112.5-million settlement is just the latest fortune extracted from the defense industry through the federal False Claims Act, which allows whistle-blowers to sue contractors on behalf of the government and share in the recovery.

The stunning series of recent awards, including the \$150 million paid by United Technologies earlier this month, are likely to continue, experts say. As with many other cases, the Teledyne suits were filed in the late 1980s, shortly after amendments to the federal law in 1986 strengthened the hand of whistle-blowers.

The early cases are nearing a conclusion and the resulting damages are dwarfing the civil settlements historically won by the federal government. The industry, clearly stunned, is exerting pressure on Congress to limit whistle-blowers by amending the law.

"It is a serious problem," said LeRoy Haugh, a vice president at the Aerospace Industries Assn., a trade group. "It hasn't bankrupted anybody so far, but at some point it could be the difference of staying in business and not staying in business."

But whistle-blowers and their attorneys argue that the large awards are the very reason not to weaken the law.

"The awards are so big only because they are based on the amount of money that was stolen in the first place," said Phillip Benson, a Newport Beach attorney who represented one of the whistle-blowers in the systems unit case.

The large rewards also reflect the substantial resources that private law firms representing whistle-blowers commit to the cases, often surpassing the money and time that the Justice Department can commit.

John Phillips, who represented whistle-blowers in both of Teledyne's cases, said his firm had spent 20,000 hours in supporting the Justice Department in the cases.

Under terms of the settlement, Teledyne will pay half of the \$112.5 million damages before the end of this year and the balance in two equal installments next year. The whistle-blowers in the cases will receive between 15% and 25% of the awards, subject a federal judge's ruling on the award.

In addition to the \$85 million civil settlement, Teledyne has previously paid a \$17.5-million criminal fine for the illegal testing of relays and an additional \$3.1 million in an administrative settlement with the Pentagon. Teledyne also must pay \$4.6 million to the whistle-blowers' attorneys.

The \$112.5-million settlement will be charged against the company's first-quarter earnings, resulting in an after-tax loss of \$55.1 million.

The allegations in the relays case were made by Emil Stache and Almon Muehlhausen, two employees at Teledyne's plant in Hawthorne. They alleged that Teledyne improperly tested 8 million to 10 million relays, which are tiny switches used in a variety of jets, missiles, spacecraft and other systems.

Rice said that there is no allegation or evidence that any relay failure has caused any damage in military operations.

The allegations in the systems case were made by Klaus Kirchhoff and Max Killingsworth, who alleged that executives at the Northridge plant routinely padded contracts by adding illegal "negotiation yields" that would provide a cushion in cutting prices during contract negotiations.

Although the settlement closes the book on the two cases for Teledyne, it is expected that the private attorneys and whistle-blowers in the case will be fighting in court for some time over the division of attorneys fees and the award.



## ONLINE SERVICES

## Case Summary

### CASE SUMMARY

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Case Number: BC389984

MICHAEL BRAUSEN ET AL VS HOLONYNE INC ET AL

Filing Date: 04/30/2008

Case Type: Contractual Fraud (General Jurisdiction)

Status: **Dismissed - Other 09/18/2008**

### Future Hearings

None

[Documents Filed](#) | [Proceeding Information](#)

### Parties

BRAUSEN MICHAEL - Plaintiff/Petitioner

DOES 1 THROUGH 50 - Defendant/Respondent

HOLONYNE INC. - Defendant/Respondent

JON 9 - Defendant/Respondent's AKA

PALUMBO FRANK - Plaintiff/Petitioner

ROTHMAN BARRY K. ESQ. - Attorney for Plaintiff/Petitioner

SOLOMON DENNIS - Defendant/Respondent

STAMFORD INC. - Plaintiff/Petitioner

STOLZBERG JON - Defendant/Respondent

WALTON KENNETH V. - Attorney for Defendant/Respondent

[Case Information](#) | [Party Information](#) | [Proceeding Information](#)

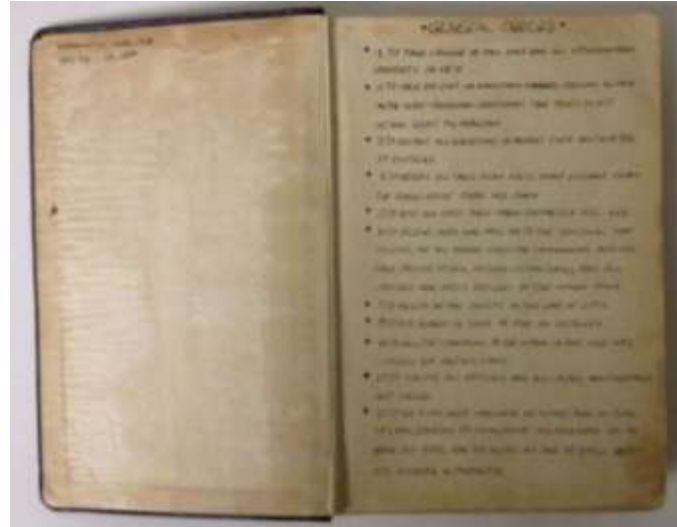
### Documents Filed (Filing dates listed in descending order)

**09/18/2008** Request and Entry of Dismissal (COMPLAINT WITH PREJUDICE )  
Filed by Attorney for Plaintiff/Petitioner

**08/11/2008** Order (QUASHING SERVICE OF SUMMONS & COMP AGAINST HOLONYNE & STOLZBERG )  
Filed by Attorney for Deft/Respt

**08/08/2008** Objection Document

WALTER HORWITZ HEIRLOOM ITEMS  
IN TRUST WITH DENNIS SOLOMON



UNITED STATE NAVY BLUE JACKET MANUAL 1940



WH WOOD SCULPTURE  
JEWISH MACCABEE PEACOCK



WH SELF-PORTRAIT – WOOD CUT

PICTURE OF DOROTHY & WALTER HORWITZ SHOWING DIAMOND RING AND NECKLACE  
TAKEN BY DENNIS SOLOMON IN FLORIDA (CIRCA ~1994)





## Pierre Pinchik

1900–1971

A famous cantor and folksinger in Russia in the early 20th century, Pierre Pinchik was one of the cantorial giants of America's Golden Age of *Hazzanut*.

Pierre Pinchik was one of the cantorial giants of the American Golden Age of *Hazzanut* and also one of the most musically educated among that group. He was born in Zhivotov, near Podolia, in the Ukraine, a region with a legendary cantorial past through its tragic connection with the infamous Chemelnitzki pogroms of 1638–50. According to a legend recorded by one Nathan Hanover, while the Cossacks and the local mob were slaughtering the Jewish population, the town cantor's chanting of *el male rahamim* (the memorial prayer) over the murdered bodies in the streets so moved the attackers that they ceased the slaughter and spared the remaining 3,000 Jews. Whether true or not, this locally guarded legend tells something of the esteem for *hazzanut* in the environment in which Pinchik spent his childhood.

As a youth, Pinchik lived and studied at the Hassidic Skverer yeshiva. The Skverer *rebbe*—the head of the yeshiva and the community—had a particular affinity for music, so when important cantors were in town, they were often invited to stay at the *rebbe's* home. As a yeshiva student, Pinchik thus became acquainted with them and with their art. While he was still quite young and already a competent pianist, he made a radical transition from the yeshiva to the conservatory in Kiev. Ironically, he began turning his attention to *hazzanut* and Yiddish song only during the early days of the Bolshevik Revolution. He was drafted into an artist's brigade of the new Red Army, where he was asked to write revolutionary communist songs in Yiddish. He later recalled that these songs were based essentially on the traditional synagogue prayer modes and tunes he remembered from his yeshiva days, so that what emerged were antireligious and atheistic songs to fundamentally liturgical motifs. In the early 1920s he became known as a popular folksinger, touring parts of Russia and the new Soviet Union, and he took the name Pinchik. He also began officiating as a cantor in a Kiev synagogue. While in Leningrad on one of his tours, he was offered the post of chief cantor at the Leningrad Choral Synagogue.

As chief cantor, he was asked specifically to include much of the classical repertoire of the 19th-century Berlin composer Lewandowski, and of the German synagogue music tradition. He found such music incompatible with his vocal style and tastes, and he began by reworking many of those pieces with his own interpolations. Eventually he composed new settings altogether, mostly recitatives that would exploit the particular attributes of his voice.

In 1925 Pinchik left Russia, assisted in obtaining the necessary papers by Yiddish poet Itzik Fefer, his friend who was later murdered in Stalin's massacre of Jewish poets. Pinchik appeared in concerts and synagogue services in various European cities, and he arrived in the United States in 1926 on a tour arranged by the illustrious Chicago based cantorial manager and promoter Joseph Hyman, who was reported to have heard about Pinchik from the famous Russian bass Fyodor Chaliapin. Pinchik remained in America, where his fame and popularity came almost immediately. While many virtuoso cantors included some Yiddish songs in their concert repertoires, Pinchik excelled in that medium, and one of his most popular recordings was titled *The Two Sides of Pinchik*. In 1928 RCA Victor offered him an exclusive recording contract.

Nowhere was Pinchik quite as cherished as in Chicago, where he became the favorite of the orthodox/traditional community. It was there, in that virtual mecca for *hazzanut*, that he probably had his largest popular following. The synagogue K'nesset Israel Nusah S'fard, on Chicago's old West Side, where Pinchik officiated for many services, kept a sign in front all during the year proclaiming "The World Famous Cantor Pinchik Prays Here."

Jewish audiences and congregations were dazzled by what they perceived as a "Hassidic fervor" permeating Pinchik's music. People were also captivated by his rare poetic device of interpolating an indefinitely pitched speaking voice, almost a cantorial type of *Sprechstimme*, at climactic or highly emotional moments in the text—one of the hallmarks of his style. No discussion of Pinchik is possible without reference to his most famous signature recitative composition, *Rozo d'shabbos*, on a mystical Aramaic text from the Sephardi Sabbath liturgy (*nusah s'fard*), which has become a virtual "warhorse," inviting countless cantors to try imitating his rendition almost as a sign of "arrival."

# **Jewish National Fund Concert Great Success**

One of the most successful and outstanding concerts ever sponsored by the Greater Boston Jewish National Fund Council both financially and musically was held last Sunday evening, April 5, at the Jeremiah E. Burke High School auditorium, Dorchester. The auditorium was thronged to its capacity, and scores of men and women who had not purchased their tickets in advance were unable to gain admittance.

Thanks and appreciation were expressed by Max Nigrosh, president of the Greater Boston J. N. F. Council and concert chairman, to the large assembly, to the advertisers in the souvenir program book, and the workers for making possible so great a financial and social success. Dr. Morton J. Robbins, vice-president of the New England Zionist Region, was master of ceremonies.

The audience received Cantor Pierre Pinchik, highlight of the evening, with tremendous acclaim. The gathering was equally enthusiastic over the Palestinian dances presented by Naomi Alef-Leaf, and the violin selections rendered by Harry Ellis Dickson. The proceeds of the concert will go towards the fulfillment of the Greater Boston Jewish National Fund quota, and the wartime land acquisition program in Palestine. Frances Hillson, Mrs. Oscar Copans and Helen Berlin were in charge of the souvenir program book, and E. W. Dickson, chairman of tickets.



*Oh, God, Almighty Lord, forgive, condone,  
And in Thy <sup>out</sup> glory, make our glory rise!*

## Mr. and Mrs. Horowitz Celebrate Fiftieth Anniversary

Their golden wedding was celebrated by Mr. and Mrs. Frank Horowitz of the West End, at 29 Elm Hill Park, Roxbury, on Sunday evening, July 29. Surrounded by their children and grandchildren and a large number of relatives and friends, a joyous wedding was staged, officiated by the celebrated cantor, P. Z. Pintchuek, who is a noted tenor and cousin of the honored guests.

The bride and groom were escorted to the canopy by their oldest son, Hershel, of St. Paul, Minn., a leader in communal affairs in that city, and his daughter, Mrs. Rachel Rabinovitch of Malden. Three little grandchildren were bearing flowers. Several appropriate speeches were made while dinner was being served. The toastmaster was Mr. Max Yanes.

Mr. Hershel Horowitz has been fortunate enough to rescue his parents, brothers and sisters from the clutches of pogromists at a great personal risk after the World War. He related interesting incidents touching upon the fact that he has witnessed the monument erected in the city of Rome to the memory of Titus the Jew-baiter, with the inscriptions thereon that

the Jew has been eradicated from the map of the world, of the paradox on visiting Palestine, what he has witnessed and what activities and sacrifices were made for the upbuilding of our land.

Speeches were made by Mr. Morris Feinburg of Roxbury, Dr. H. B. Myers of Chelsea, Henry C. Levick of Brookline and Max Seigle of Dorchester.

The following were present: Mr. and Mrs. Frank Horowitz, Mr. and Mrs. Hershel Horowitz and children of St. Paul, Minn., Mr. and Mrs. J. Rabinovitch of Malden, Mr. and Mrs. Morris Horowitz of Malden, Mr. and Mrs. Max Seigle of Dorchester, Mr. and Mrs. Max Yanes of Brookline, Mr. and Mrs. Morris Feinburg of Roxbury, Mr. and Mrs. Samuel Feinburg of Brookline, Mr. Morris B. Silverman of Roxbury, Mr. and Mrs. Frank E. Silverman of Stoughton, Dr. and Mrs. H. B. Myers of Chelsea, Mr. and Mrs. Henry C. Levick of Brookline, Mr. Jacob Yanes of Chelsea, Mr. and Mrs. Isidor Cohen of Chelsea, Mrs. Leah Shapiro of Dorchester, Mr. and Mrs. Frank A. Yanes of Brookline, Mr. and Mrs. Myer Striker of Allston, Mr. and Mrs. Henry Gorshel of Roxbury, Mr. and Mrs. Louis Yanes of Chelsea and Mrs. H. Goodman of Chelsea.

The guests of the evening presented Mr. and Mrs. Frank Horowitz with a chest of gold.

## The Day the Rebbe Marched

by Rafael Medoff

Hasidic rebbes are not typically found among protesters marching to the White House. So it came as a surprise when I recently received a message from a follower of the Bostoner Rebbe, Levi Horowitz, informing me that the rebbe was one of the four hundred-plus rabbis who traveled to Washington just before Yom Kippur in 1943, to plead with President Roosevelt to rescue Jews from Hitler. The information was all the more surprising because the rebbe's name does not appear on the one extant list of participants in the march.

Last October, on the 62nd anniversary of the march, the newspaper Hamodia published an article about the event, and mentioned that my organization, The David S. Wyman Institute for Holocaust Studies has been researching the march and seeking to contact the families of the rabbis who took part. Dozens of families subsequently contacted us after spotting their fathers' or grandfathers' names on the list.

The problem, however, is that the list is incomplete. It had been prepared by the Emergency Committee to Save the Jewish People of Europe, better known as the Bergson group, a maverick lobbying organization that sought to bring about U.S. intervention on behalf of Jews trapped in Hitler Europe. The Bergson group initiated the march, and the Agudas Harabbonim and its rescue division, the Vaad ha-Hatzala, mobilized the participants.

The list was drawn up some days prior to the march, and included only those whose names were known at that point--about 250 rabbis. In the final days before the event, many more rabbis learned of the march and decided to take part; in addition, there were rabbis who joined the march but did not formally notify the Emergency Committee of their involvement. We know from a variety of documents that at least 400, and possibly as many as 500, rabbis participated.

Now we know that the Levi Horowitz, later to become the Bostoner Rebbe, was one of those unidentified additional marchers. In a series of telephone interviews with the Rebbe earlier this year, I had the opportunity to hear his vivid recollection of the event, learn previously unknown information about it, and identify him in one of the few existing photographs of the marchers.

Today he is an internationally recognized rabbinic sage and the spiritual leader of Jewish communities in the suburbs of Boston and Jerusalem, but in the autumn of 1943, Levi Horowitz was a recently-married rabbinical student at Mesivta Torah VoDaas, in Brooklyn, just getting ready to step out into the world. Certainly he knew full well that it was a world of crisis and tragedy for the Jewish people. News of the mass slaughter of European Jewry filled the New York Yiddish press that he read daily. The Vaad ha-Hatzala was active in the community, and in fact had recently conducted a campaign to which Rabbi Horowitz contributed \$300 --nearly one third of the dowry his mother-in-law had given the young couple-- which was the amount the Vaad estimated was required to save one Jew from Hitler.

When news of the planned march in Washington reached him, Rabbi Horowitz immediately decided to attend, although he never formally registered with the rally's



organizers; hence his name does not appear on the aforementioned list. But he is clearly visible in one of the photographs of the march (see elsewhere on this page).

The rabbis who traveled to Washington that day included some of the most prominent rabbinical sages in the American Jewish community, such as Eliezer Silver and Israel Rosenberg, co-presidents of the Union of Orthodox Rabbis; Solomon Friedman, president of the Union of Grand Rabbis; and Bernard Dov Leventhal, known both as the chief rabbi of Philadelphia and one of the leaders of the Orthodox rabbinate nationwide. There were also some younger rabbis who would soon become quite prominent, such as Moshe Feinstein, who would later come to be regarded as the leading authority in America on matters of Jewish religious law.

The fact that so many rabbis made the long trip to the nation's capitol just a few days before Yom Kippur made the event all the more unusual, the Bostoner Rebbe noted in our conversations. "Going to Washington that week certainly made it more difficult for everyone, but we all understood how important it was to do something in that situation, so nobody was deterred by the fact that it was just a few days before Yom Kippur," he recalled.

The rabbis marched solemnly from Union Station to the cluster of buildings known as the Capitol. They were met on the steps of the Capitol by Vice President Henry Wallace, who, Time magazine reported, "squirmed through a diplomatically minimum answer" to their plea. Wallace's vague statement expressed "grief" at the plight of the Jews but made no reference to the possibility of rescuing any of them.

Two of the leaders of the march read aloud the group's petition to the president, in Hebrew and English: "Children, infants, and elderly men and women, are crying to us, 'Help!'," they read. "Millions have already fallen dead, sentenced to fire and sword, and tens of thousands have died of starvation ... And we, how can we stand up to pray on the holy day of Yom Kippur, knowing that we haven't fulfilled our responsibility? So we have come, brokenhearted, on the eve of our holiest day, to ask you, our honorable President Franklin Roosevelt ... to form a special agency to rescue the remainder of the Jewish nation in Europe."

The protesters proceeded to the Lincoln Memorial, where they offered prayers for the welfare of the president, America's soldiers abroad, and the Jews in Hitler Europe, and then sang the national anthem. Then they marched to the gates of the White House, where they had expected a small delegation would be granted a meeting with President Roosevelt. Instead, to their surprise and disappointment, they were met by presidential secretary Marvin McIntyre, who told them the president was unavailable "because of the pressure of other business." In fact, the president's schedule was remarkably open that afternoon. His daily calendar listed nothing in between a 1:00 lunch with the Secretary of State and a 4:00 departure for a ceremony at an airfield outside Washington.

The real reason FDR declined to meet the rabbis was that he had been urged to avoid them by two of his closest Jewish advisers--his speechwriter Samuel Rosenman (a prominent member of the American Jewish Committee) and Dr. Stephen Wise (president of the American Jewish Congress). Rosenman and Wise feared the march might provoke antisemitism, and made it clear to the president that they were embarrassed by the protesters. Roosevelt decided to leave the White House through a rear exit.

"Today, for ordinary citizens to meet with the president is not as extraordinary as it was in those days," the rebbe noted in his conversations with me. "Still, given the situation, we thought President Roosevelt would meet with us, even if just for a few minutes. I was very surprised and disappointed that he was not willing to meet with us. Years later, when we began to realize the extent of the Holocaust, I felt even more disappointed at the president's response--or I should say lack of response--to us."

I asked the Rebbe how he viewed the significance of the march, in retrospect. He replied by citing a passage from the Sefer HaChinuch about the purpose behind performing mitzvahs. "He explains that the mitzvahs are required, and are fulfilled, in order --as he puts it-- 'to have an effect on the person who does them.' To have an effect requires action, it requires us to physically do things--to be active, not to be passive." An action like participating in the 1943 march "is important especially if it is done for a special purpose and a special reason, not just for getting your name in print or having your organization mentioned. If it's done l'ishma, then the idea of the mitzvah affecting you is fulfilled. That's how it affected us as individuals. It affected the Jewish community as a whole in a different way--it made people realize that there is an obligation to take action to save the life of a fellow-Jew."

The impact of the march was felt not only by its participants and the American Jewish community at large, but in the political struggle over America's refugee policy.

The march --and FDR's snub-- brought important new public attention to the plight of Europe's Jews, and speeded up the introduction of a Congressional resolution that the Bergson group had initiated, calling for the creation of a federal government agency to rescue refugees. The Roosevelt administration opposed the resolution, fearing the rescue campaign would increase pressure to let refugees come to the U.S. But its effort to block the resolution foundered when the State Department's top immigration authority, Breckinridge Long, gave wildly misleading testimony at the hearings on the rescue resolution. The embarrassing publicity from the hearings, combined with behind-the-scenes pressure from Treasury Secretary Henry Morgenthau, Jr. and his aides, convinced President Roosevelt to establish the agency the resolution had demanded--the War Refugee Board.

During the final eighteen months of World War II, the Board played a crucial role in saving the lives of more than 200,000 Jews in Europe. Among other things, the Board helped finance the work of rescue hero Raoul Wallenberg.

Of course the marchers had no way of foreseeing any of this. "We had no idea what the march might accomplish, and we certainly did not yet appreciate the full extent of what was happening in Europe, but we simply felt it was very important that we protest," Rabbi Horowitz noted.

Sadly, however, the march was also the occasion for yet another airing of intra-Jewish conflicts. Dr. Wise not only urged the president to stay away from the rally, but also publicly criticized it. In an editorial in his journal, *Opinion*, Wise denounced the rally as "a painful and even lamentable exhibition," organized by "stuntists" who had no regard for the "dignity" of American Jewry.

Perhaps Wise's anger helps illustrate another of the Bostoner Rebbe's remarks:

On the train ride down to Washington, Rabbi Horowitz found himself sitting next to

another marcher, Dr. Hirsh Leib Gordon, a psychiatrist and columnist for the Yiddish press. A d'var Torah which Gordon told him still remained fresh in the Rebbe's memory, more than six decades later. How is it possible, he asked, that the Gemara could go so far as to compare an angry person to an idol worshipper?

A man who stumbles over a chair in a darkened room might well become so upset that he angrily hurls the chair across the room, Dr. Gordon said. Logically, such a response makes no sense, since the chair is not at fault. But the man's emotions are so consuming that he treats the chair as if it had the power to cause him to stumble. And to ascribe such power to a chair, even unconsciously, is like idol worship.

Dr. Gordon was not connecting his d'var Torah to the march or other events of those days, but in retrospect perhaps it is possible to see such a connection. Wise and other mainstream Jewish leaders often accused Bergson of "unhealthy emotionalism." They charged that his newspaper advertisements and rallies were so vociferous as to be irresponsible and even dangerous. These Jewish leaders saw themselves as representing a cautious, calm style that would make the proper impression on America's leaders and public.

Yet the events of 1943-44 demonstrated otherwise. The Bergson activists' unorthodox tactics were precisely what was needed to bring the rescue issue wide public attention. Mobilizing broad public support for rescue was the critical prerequisite to changing U.S. government policy. The Roosevelt administration initially insisted that nothing could be done to help the refugees--but ultimately changed its position when pressure from the public, media, and Congress reached the boiling point in early 1944. Thus while the Bergson group, and its rabbinical allies, were not as experienced in the realm of diplomacy as the established Jewish leadership, their instinctive response was in fact the more effective political strategy for that situation, while the mainstream Jewish leaders' calm approach had proven wholly ineffective.

The irony, then, is that it was the Jewish leaders themselves who soon came to resemble that angry man in Gordon's parable. In the spring of 1944, they repeatedly tried to convince U.S. officials to deport or draft Bergson. So consumed were they with anger and resentment over Bergson usurping the Jewish establishment's position that World Jewish Congress co-chair Nahum Goldmann went so far as to tell State Department officials that his co-chair, Dr. Wise, "regarded Bergson as equally as great an enemy of the Jews as Hitler, for the reason that his activities could only lead to increased anti-Semitism."

\* \* \*

After completing his studies at Torah VoDaas, Rabbi Horowitz moved to Boston, and later succeeded his father as the leader of the Bostoner hasidim. Like the other participants in the 1943 march, he never wrote or spoke about the event, except on rare occasion in private conversation. But its impact lingered. When the 1967 Arab-Israeli war broke out, his response was to begin organizing buses to bring Jews from Boston to Washington for a rally to urge U.S. support for Israel. "Thinking back now, I am sure that my experience in 1943 played a major role in the way I reacted in 1967," he noted. "That was the lesson I took from 1943." As the buses began the long journey to Washington, "the mood was desperate--almost hopeless--we thought Israel could be losing the war." When they reached the nation's capitol, the protesters marched through the streets of Washington to the rally site, at the Lincoln Memorial. "But when we arrived, the crowd that had already gathered there told us the news that the Arabs

had surrendered, and Israel had won the war. Spontaneously, a huge dance erupted. We all joined hands, hundreds and hundreds of people, Jews of every kind, celebrating. It was a beautiful Kiddush HaShem."

(Published in Hamodia - March 1, 2006)

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April 16, 1992

# Henry Hurwitz, 73; Research Physicist Developed Reactors

By BRUCE LAMBERT

Henry Hurwitz Jr., a research physicist who worked on plans for the hydrogen bomb and later helped develop nuclear power plants, died on Tuesday at his home in Schenectady, N.Y. He was 73 years old.

He died of cancer, his family said.

Dr. Hurwitz worked on the bomb at the Los Alamos National Laboratory in New Mexico from 1943 to 1946, then helped design power plants and set safety standards that were adopted worldwide. Fortune magazine in 1954 called him "probably the most brilliant student of nuclear reactor theory in industry."

In 1946 he joined the Knolls Atomic Power Laboratory run by the General Electric Company for the Federal Government. He helped design an early large reactor in West Milton, N.Y., and the Seawolf, the nuclear submarine. Held 15 Patents

At G.E. he was director of high-temperature plasma physics, manager of nucleonics and radiation and manager of theory and systems. He also researched laser fusion at the University of Rochester and worked on microprocessors for automation and indoor radon pollution.

He held 15 patents and was honored by the Atomic Energy Commission and the American Nuclear Society. After leaving G.E. in 1984, he became a consultant as president of Hurbits Associates.

Dr. Hurwitz, who was born in Manhattan, graduated from Cornell University in 1938, earned a master's degree in physics at Harvard in 1939 and a doctorate there in 1941.

His first marriage ended in divorce.

He is survived by his wife of 41 years, the former Alma Rosenbaum; two daughters, Robin Inwald of Queens and Julia Coleclough of Memphis; two sons, Barry Dayton of Park Ridge, Ill., and Wayne Hurwitz of Los Angeles; a brother, David, of Manhattan, and 10 grandchildren.

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# ABOVE AND BEYOND: PRODUCER'S STATEMENT

By Nancy Spielberg

**In 2011, after I finished executive producing the documentary *Elusive Justice: The Search for Nazi War Criminals*, I came across the obituary of a man named Al Schwimmer. “Father of the Israeli Air Force Dies at 94,” it read.**

The obituary detailed how an American, a flight engineer for TWA, had smuggled the first planes to Israel, recruited volunteer pilots to fly them in the '48 War and, in doing so, helped create the Israeli Air Force.

The story immediately struck me. Smuggling operations? An American responsible for the Israeli Air Force? A David and Goliath story of a fight against five Arab armies? How could this story not be known? As soon as I read that piece, I said to my husband, “This has my name written all over it.”

I knew that time was of the essence. The pilots had to be entering their 90s. I needed to hire a team and film interviews before we lost any more of these “Top Guns” to the Grim Reaper. I wanted the film not to be about machines, but rather about the human spirit, about those “they don’t make ‘em like they used to” guys who felt a responsibility to help a brother in need.

## **My first task was to find a director.**

Roberta Grossman’s name came to me from four sources. The joke she often tells is that whenever her phone rings in the office, she says, “If it’s Spielberg, tell him I’ll call him back.” Next thing she knew, there was a voice message from the “other” Spielberg. She thought someone was pulling her leg and actually called a friend to check me out.

We started filming interviews immediately. Our writer Sophie Sartain churned out questions at the same time she was writing a preliminary script. Interviewing 90+ year-olds is, at times, a

bit complicated, but these guys were really game. Even though they sat for hours in cold airplane hangars while we fiddled with their mics, they never wavered, never complained. The stories flowed, the details perfect.

## **In fact, they blew us away.**

I had expected to hear wild adventure tales—evading the FBI, chasing after girls, racing through the skies in aerial dogfights—but what surprised me was the heart and emotion each pilot brought to his interview. Most of them did not grow up with a lot of Jewish pride in an era of widespread anti-Semitism. Some of them volunteered purely for the adventure of it. But in their interviews, they shared how their experiences in Israel awakened their Jewish identities and transformed their lives.

I identified with these flyboys, having grown up in Phoenix, Arizona, where we were the only Jewish family on the block. And, I saw my father in them. My dad used to fly B-25s. He was Army but flew with the Burma Bridge Busters Squadron doing radio communications. I marveled at the camaraderie he had maintained with his “band of brothers” and saw similar bonds among our pilots.

## **Creative partners with big hearts.**

Once we had our core interviews and realized what a powerful story we had to tell, I searched for creative partners with big hearts. I found several. We needed flying sequences but they would prove costly. It was tough to find these ol’ war birds around the world in airworthy condition; their price tag made it even tougher.

# ABOVE AND BEYOND: PRODUCER'S STATEMENT

By Nancy Spielberg

There was one company I wanted to handle the CGI work to help me get 12 Spitfires “flying” when I really only had one, and that was Industrial Light & Magic. I contacted them, and to my delight and overwhelming gratitude, ILM agreed to do our CGI.

My next phone call was to Hans Zimmer’s partner, Steve Kofsky. Steve enlisted Lorne Balfe, a star composer, to write the original score. Surprisingly, Steve was well aware of our story because his own father and uncle had volunteered to help Israel in 1948.

## **Filming on-location in England and Israel.**

We flew to England to film aerial sequences at the Imperial War Museum in Duxford, and to Israel to interview President Shimon Peres and some of the pilots. The commander of the IAF opened up his base and assigned staff to help us maneuver. Harris Done, our DP, captured incredible footage on both trips.

We began post-production in the fall of 2013 with our editor Chris Callister, who helped us weave together a complicated story involving history, flying sequences and multiple personal stories. It’s no wonder Chris pulled a few all-nighters in the editing room!

**Now that we are finished, I am grateful that we were able to capture the pilots’ stories and share them with the world.** Sadly, since interviewing them, we have lost three of our pilots, George Lichter, Coleman Goldstein and, most recently, Lou Lenart. But we take comfort in knowing that their legacies—and the legacies of our other pilots—will stay with us and be taught for generations to come. Their families are very proud, as are the families of all the men and women who volunteered for Israel in 1948—some 3500 individuals from every corners of the globe.

We are honored to tell one part of this extraordinary story in ABOVE AND BEYOND.



## Pierre Pinchik

1900–1971

A famous cantor and folksinger in Russia in the early 20th century, Pierre Pinchik was one of the cantorial giants of America's Golden Age of *Hazzanut*.

Pierre Pinchik was one of the cantorial giants of the American Golden Age of *Hazzanut* and also one of the most musically educated among that group. He was born in Zhivotov, near Podolia, in the Ukraine, a region with a legendary cantorial past through its tragic connection with the infamous Chemelnitzki pogroms of 1638–50. According to a legend recorded by one Nathan Hanover, while the Cossacks and the local mob were slaughtering the Jewish population, the town cantor's chanting of *el male rahamim* (the memorial prayer) over the murdered bodies in the streets so moved the attackers that they ceased the slaughter and spared the remaining 3,000 Jews. Whether true or not, this locally guarded legend tells something of the esteem for *hazzanut* in the environment in which Pinchik spent his childhood.

As a youth, Pinchik lived and studied at the Hassidic Skverer yeshiva. The Skverer *rebbe*—the head of the yeshiva and the community—had a particular affinity for music, so when important cantors were in town, they were often invited to stay at the *rebbe's* home. As a yeshiva student, Pinchik thus became acquainted with them and with their art. While he was still quite young and already a competent pianist, he made a radical transition from the yeshiva to the conservatory in Kiev. Ironically, he began turning his attention to *hazzanut* and Yiddish song only during the early days of the Bolshevik Revolution. He was drafted into an artist's brigade of the new Red Army, where he was asked to write revolutionary communist songs in Yiddish. He later recalled that these songs were based essentially on the traditional synagogue prayer modes and tunes he remembered from his yeshiva days, so that what emerged were antireligious and atheistic songs to fundamentally liturgical motifs. In the early 1920s he became known as a popular folksinger, touring parts of Russia and the new Soviet Union, and he took the name Pinchik. He also began officiating as a cantor in a Kiev synagogue. While in Leningrad on one of his tours, he was offered the post of chief cantor at the Leningrad Choral Synagogue.

As chief cantor, he was asked specifically to include much of the classical repertoire of the 19th-century Berlin composer Lewandowski, and of the German synagogue music tradition. He found such music incompatible with his vocal style and tastes, and he began by reworking many of those pieces with his own interpolations. Eventually he composed new settings altogether, mostly recitatives that would exploit the particular attributes of his voice.

In 1925 Pinchik left Russia, assisted in obtaining the necessary papers by Yiddish poet Itzik Fefer, his friend who was later murdered in Stalin's massacre of Jewish poets. Pinchik appeared in concerts and synagogue services in various European cities, and he arrived in the United States in 1926 on a tour arranged by the illustrious Chicago based cantorial manager and promoter Joseph Hyman, who was reported to have heard about Pinchik from the famous Russian bass Fyodor Chaliapin. Pinchik remained in America, where his fame and popularity came almost immediately. While many virtuoso cantors included some Yiddish songs in their concert repertoires, Pinchik excelled in that medium, and one of his most popular recordings was titled *The Two Sides of Pinchik*. In 1928 RCA Victor offered him an exclusive recording contract.

Nowhere was Pinchik quite as cherished as in Chicago, where he became the favorite of the orthodox/traditional community. It was there, in that virtual mecca for *hazzanut*, that he probably had his largest popular following. The synagogue K'nesset Israel Nusah S'fard, on Chicago's old West Side, where Pinchik officiated for many services, kept a sign in front all during the year proclaiming "The World Famous Cantor Pinchik Prays Here."

Jewish audiences and congregations were dazzled by what they perceived as a "Hassidic fervor" permeating Pinchik's music. People were also captivated by his rare poetic device of interpolating an indefinitely pitched speaking voice, almost a cantorial type of *Sprechstimme*, at climactic or highly emotional moments in the text—one of the hallmarks of his style. No discussion of Pinchik is possible without reference to his most famous signature recitative composition, *Rozo d'shabbos*, on a mystical Aramaic text from the Sephardi Sabbath liturgy (*nusah s'fard*), which has become a virtual "warhorse," inviting countless cantors to try imitating his rendition almost as a sign of "arrival."





New York native Al Schwimmer was an experienced flight engineer for TWA that assisted Air Transport Command during World War II. In 1947 Palestinian Jews asked him to help obtain planes for the expected Arab conflict instigated by the pending establishment of Israel. Despite its surplus of World War II aircraft, the U.S. government decreed it a federal offense to sell or provide aircraft to Israel.

**Using his veteran network and incredible ingenuity, Schwimmer cobbled together some 30 surplus aircraft, mostly transports. By establishing fictitious companies, his pilots and mechanics were but one or two steps ahead of the FBI. Schwimmer eventually paid a personal price, being convicted in 1949 of violating the U.S. Neutrality Act. He would later move to Israel and establish what would become its largest company, Israel Aerospace Industries, valued at \$1 billion when Schwimmer retired in 1988.**

Schwimmer died in Tel Aviv on his 94th birthday, June 11, 2011. Obituaries ran worldwide, and among those reading the New York Times' account of his passing was Nancy Spielberg. The youngest sister of filmmaker Steven Spielberg, Nancy possesses her own storytelling experience as the producer of film documentaries about subjects near and dear to her heart.

She recalled that her big brother had once toyed with producing a feature film about the American volunteer pilots that fought for Israel in what became its 1948 War of Independence. They were but a part of a critically needed corps of international volunteers known as the "Machal," which translates to "volunteers from abroad." Covertly recruited like Schwimmer, Machalniks were a vital and most unique band of brothers, comprising 90% of Israel's fledgling air service.

Eventually some of Schwimmer's sorely needed transports circuitously made it to Israel, where they augmented a handful of well-worn, mostly light aircraft. Obtaining fighters was harder still. As Arab enemies prepared to squash the nascent nation-state of Israel, in one of many twists of irony, the only single engine combat-worthy fighters the Israel Defense Force could obtain were Czechoslovakian S-199s — a license-built and underpowered variant of the German Me-109G. It was arguably as dangerous to its pilots as was its chief nemesis, the British Spitfires flown by the Egyptian air force.

Nancy realized Schwimmer's loss underscored the urgency of authentically documenting the incredible truth of the American Machalniks' "more amazing than fiction" story. Not wanting to step on her brother's toes, a quick call gained not only his encouragement but a modest contribution to the budget. And thus, in the summer of 2011, Nancy's work on Above and Beyond: The Birth of the Israeli Air Force, a feature length documentary, took wing.

Be they Jew or Gentile, each foreigner had his own personal reasons for volunteering; deeply rooted religious beliefs, a thirst to relive World War II flying glory, and the lure of international adventure were but a few. Such is reflected by the half dozen surviving Machal participants that Nancy and project director Roberta Grossman have called upon to share their intensely personal perspectives, including former US Navy torpedo bomber pilot Leon Frankel, Marine Corps fighter pilot Lou Lenart, and Army Air Force pilots Gideon Lichtman, George Lichter, Harold Livingston, and Coleman Goldstein.

Not content to leave the visuals to rare archival film and images, Above and Beyond, with a budget of \$1.3 million, boasts both re-creations using actual aircraft as well as judiciously utilized computer generated imagery (CGI). The filmmakers' aim is to vividly illustrate the harrowing yet victorious story of a rag-tag air force that, by the war's end in January of 1949, had repelled five Arab armies. In so doing, American Machalniks helped create the extraordinary legacy from which Israel's now vaunted air force evolved.

On the heels of Above and Beyond's projected mid-2014 release, Nancy is also establishing a follow-on preservation and education program similar to the non-profit Shoah Foundation that was born out of her brother's feature film, Schindler's List. Once it makes the rounds of the international film festival circuit, Above and Beyond will most certainly make a theatrical tour before broadcast airing. For updates and to make a tax-deductible contribution, visit [www.playmountproductions.com](http://www.playmountproductions.com).

Ron Kaplan is director of Reel Stuff Aviation Resources LLC, consultant to non-profit museums and the entertainment industry. Contact him at [www.ReelStuffFilmFest.com](http://www.ReelStuffFilmFest.com).

2013 "REEL STUFF" Photo: David Whitworth Photo: Playmount Productions

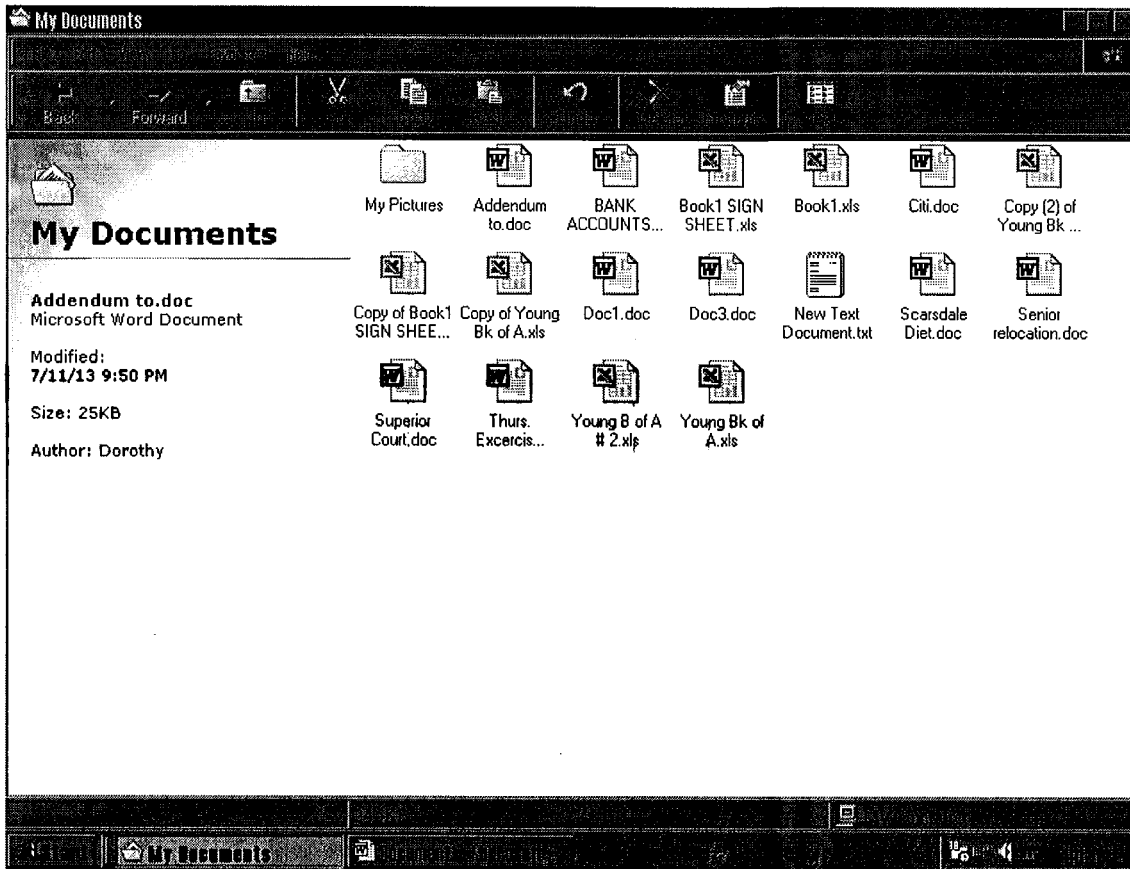


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*Dorothy Horwitz*

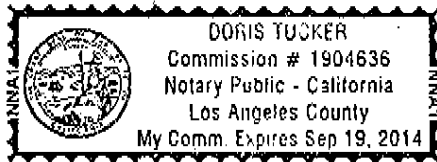
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Name of Signer



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(and

(2) \_\_\_\_\_  
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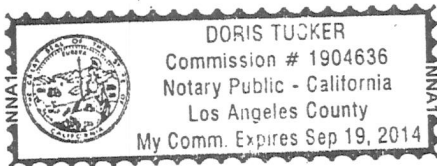
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Signature of Document Signer No. 2 (if any)

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18 day of NOVEMBER, 2013, by  
Date Month Year

(1) DOROTHY HORWITZ  
Name of Signer



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- Proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (,)

(2) \_\_\_\_\_  
Name of Signer

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- Proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Doris Tucker Notary Public  
Signature of Notary Public

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## FORENSIC SCIENCE COMMUNICATIONS

July 2005 - Volume 7 - Number 3

### Research and Technology

#### *Forensic Analysis of Blue Ballpoint Pen Inks Using Capillary Electrophoresis*

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[Abstract](#) | [Introduction](#) | [Experimental Samples](#) | [Capillary Electrophoresis](#) | [Electrospray Ionization Mass Spectrometry](#) | [Results and Discussion](#) | [Conclusion](#) | [References](#)

#### Abstract

Ink analysis involving the determination of specific chemicals can be a useful forensic tool in pen formula differentiation. Thin-layer chromatography is the most widely used forensic technique for ballpoint pen ink examinations; however, limited information is obtained. To address this issue, capillary electrophoresis using an ultraviolet-visible photodiode array detector was employed as an alternative analytical tool. Results were compared with thin-layer chromatography experiments to evaluate the sensitivity and usefulness of capillary electrophoresis. Dye components are rapidly separated, and identification is based on comparison of electrophoretic mobility values and ultraviolet-visible spectra with individually run dye standards. A database of ballpoint pen ink analyses and common-dye reference standards has been initiated for future forensic use. Capillary electrophoresis sample-preparation protocols were designed to closely mimic common procedures for handling ink evidence. Because of the small volume necessary for sample injection, the remaining solution could be further processed using current law enforcement procedures to obtain complementary data. Capillary electrophoresis method development, electropherograms, electrophoretic mobility values, ultraviolet-visible spectra, and electrospray ionization mass spectrometry data are reported.

#### Introduction

Chemical analysis of questioned documents is an important tool available to forensic examiners. Ink-source comparisons are commonly conducted in casework involving such crimes as tax evasion, insurance fraud, and currency counterfeiting. For example, the recent Martha Stewart conviction partially relied on ink-source-comparison evidence regarding a suspected stock worksheet alteration (Associated Press 2004). A questioned entry on the document was compared to the bulk writing. Differences in the ink samplings suggested that the questioned entry was made on a separate occasion, possibly to cover up insider trading violations. The majority of ink comparison analyses focus on colorant determination because ink formulations tend to have unique, organic dye formulations (Fanali and Schudel 1991; Rhode et al. 1997; Tebbett 1991; Xu et al. 1997; Zlotnick and Smith 1998). In addition, the dyes have ultraviolet-visible absorbances that can be measured and used for identification. Separating ink into its components prior to detection is desirable to simplify identification.

Thin-layer chromatography of ink extracts is the most common technique used by law enforcement agencies for ink-source comparisons (Tebbett 1991; Xu et al. 1997). The U.S. Secret Service maintains an ink library that consists of approximately 8,500 ink-standard thin-layer chromatography slides. Thin-layer chromatography is relatively easy to perform; however, it has disadvantages. First, thin-layer

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Thin-layer chromatography is relatively easy to perform, however, it has disadvantages. First, thin-layer chromatography is not typically automated; thus the spotting of a slide and the measuring of retardation factor ( $R_f$ ) values are difficult to reproduce. In addition, spectroscopic data is not obtained, although densitometry can be used to analyze spots for quantitative data when compared to a standard, assuming that the chemical identity is known (Aginsky 1994). Oftentimes the spots are faint, rendering them hard to see. In this case, the spots can readily disappear in a matter of minutes. If an ink sample is composed of two or more similar dyes, then thin-layer chromatography can result in two or more unresolved spots with nearly identical colors. This scenario requires multiple runs with different solvent systems, which is time-consuming. Thin-layer chromatography reference slides should be stored in a special environment to prevent spot fading, which requires control of such factors as humidity and ultraviolet radiation exposure. In some cases, photographs of slides may alleviate the need to store reference slides.

Capillary electrophoresis addresses many of these concerns. Capillary electrophoresis is a powerful separation technique that produces theoretical plate counts on the order of 10 to 100 times greater than high-performance liquid chromatography (Skoog et al. 1998). The process is completely automated, and method development is rapid. A photodiode array detector can be used to obtain ultraviolet-visible spectra of each component. Capillary electrophoresis methods can be readily developed to baseline separate analytes with nearly identical structures (Lurie et al. 2004). Data is stored electronically, allowing the development of an automated, searchable library of electropherograms and ultraviolet-visible spectra, while eliminating the need for an environmentally controlled storage space. Other detectors are available and often can be swapped in and out with simple modules. Capillary electrophoresis requires an injection volume of only approximately 5–50 nL, which leaves enough sample for analysis by complementary methods because a typical casework ink extract is on the order of 15–50  $\mu$ L. This is an important feature for real casework samples because multiple confirmatory exams often are necessary. In this study, excess sample was analyzed by direct infusion into an electrospray ionization mass spectrometer.

Electrospray ionization is a soft ionization technique that results in multiply charged species and minimal fragmentation. This can be useful when analyzing mixtures because the mass spectra are simplified. Also, larger masses can be detected with a normal scan range because of the multiple charging. Ng, Lafontaine, and Brazeau published a study on ballpoint pen ink characterization by direct infusion to an electrospray ionization mass spectrometer (Ng et al. 2002). Seventy-seven inks were analyzed and used to create a searchable library. Conneely, McClean, Smyth, and McMullan reported on Phthalocyanine and Azo dyes using electrospray ionization mass spectrometry and matrix-assisted laser desorption/ionization mass spectrometry (Conneely et al. 2001). In particular, the behavior of sulphonate groups in Copper Phthalocyanine pigments was of interest because of the presence of these pigments in blue ballpoint pen inks. According to their results, the sulphonate groups are labile, producing some fragmentation in the electrospray ionization mass spectrometry experiment. Huang, Yinon, and Sigman used liquid chromatography with ultraviolet-visible detection coupled to an electrospray ionization mass spectrometer to study extracted textile fiber dyes in forensic size samples (Huang et al. 2004). Six extracted dyes were characterized with comparison to reference standards. As with most mass spectrometer-coupled instruments, extract solvent compatibility remains a concern.

### Experimental Samples

Approximately 50 dye compounds encompassing a variety of colors were obtained from Sigma-Aldrich (St. Louis, Missouri) and the U.S. Secret Service. Figure 1 shows the chemical structures of some dyes and additives that were important in this study. Dyes were used as received to prepare 1 mg/mL stock solutions in methanol. Injection solutions for capillary electrophoresis and electrospray ionization mass spectrometry were prepared from stock solutions as described below. Known-dye-compound analyses were conducted to construct a database incorporating general dye information, electropherograms, electrophoretic mobilities ( $\mu_{ep}$ ), ultraviolet-visible spectra, and electrospray ionization mass spectrometry data. In addition, ultraviolet-visible spectral libraries have been compiled using the software provided with the capillary electrophoresis instruments. The database and spectral libraries were then used for the component determination in ballpoint pen ink samples. Dyes, as well as other ink components, are continuously being added to the database and libraries, particularly when an unknown dye is identified in an ink sample.

### Figure 1: Structures of Dyes and Additives Important to Differentiate Among Ink Formulations

Ink samples were prepared by two methods. To generate the first sample set, lines were handwritten on Whatman (Ann Arbor, Michigan) filter paper with blue pens that were obtained from the FBI's collection. A second approach involved using the pen cartridges to saturate the filter paper to create more concentrated samples. An additional series of ink samples was obtained from the U.S. Secret Service ink library. These samples consisted of some handwritten lines on paper and some ink-saturated filter paper. Samples obtained from the U.S. Secret Service were accompanied with formula information, which was used to determine the accuracy of the capillary electrophoresis methods.

### Capillary Electrophoresis

The existence of cationic (basic) and anionic (acidic) dyes in ink and their opposite Coulombic interactions with the capillary wall necessitated the development of two separate capillary electrophoresis methods (Egan et al. 2005).

#### Cationic Dye Capillary Electrophoresis Method

A Beckman Coulter (Fullerton, California) P/ACE MDQ capillary electrophoresis system fitted with a photodiode array module ( $\lambda = 200\text{--}600$  nm) was used for cationic dye separations. A 75  $\mu$ m inner diameter fused-silica capillary with a length to detector ( $L_d$ ) of 30 cm and a total capillary length ( $L_t$ ) of 40 cm was used. Separations were performed at 30°C in reverse-polarity mode at  $-25$  kV after completion of the rinse sequence (Egan et al. 2005). These conditions resulted in electrical currents of  $\sim -42$   $\mu$ A. The separation buffer consisted of a 70/30 (volume/volume) mixture of sodium acetate buffer/methanol titrated to pH = 4.40 with concentrated glacial acetic acid [Fisher Scientific, Fairlawn, New Jersey; TraceMetal grade (99.5 percent)]. The sodium acetate buffer portion was composed of 25 mM sodium acetate [Fisher, HPLC grade (99.2 percent)], 25 mM glacial acetic acid, and 10 mM CTAB [hexadecyltrimethylammonium bromide,

Sigma-Aldrich (99 percent)] Barnstead (Dubuque, Iowa) NANOpure Infinity ultrapure water ( $\sigma \geq 18$

Sigma-Aldrich (St. Louis, Missouri) and Alfa Aesar (Alpharetta, Georgia) reagents were used to prepare all aqueous solutions. A syringe equipped with a 0.2  $\mu\text{m}$  filter was used to remove particles when transferring the separation buffer to the capillary electrophoresis vial.

Dye stock solutions were diluted with an appropriate amount of methanol followed by two parts by volume of separation buffer for stacking purposes (Shihabi 2000) to form 100  $\mu\text{g}/\text{mL}$  dye injection solutions. In order to prepare ink injection solutions, the ink was first extracted from the paper substrate. An Electron Microscopy Sciences (Fort Washington, Pennsylvania) 1.0 mm diameter core sampler was used to remove punches from the filter paper. The punches were then placed in 200  $\mu\text{L}$  vials with 10  $\mu\text{L}$  of methanol. One punch was sufficient for ink-saturated filter-paper samples, whereas handwritten line samples required up to five punches. The vial was placed in an ultrasonic bath for five minutes to assist in ink extraction. Twenty  $\mu\text{L}$  of separation buffer was then added to the extract solution and mixed thoroughly. The paper punches were removed by transferring the extraction solution to a new vial. Hydrodynamic sample injection was performed at 0.3 psi for five seconds.

#### Anionic Dye Capillary Electrophoresis Method

A Hewlett Packard/Agilent 3D (Palo Alto, California) capillary electrophoresis instrument equipped with a photodiode array detector ( $\lambda = 190\text{--}600\text{ nm}$ ) and a 75  $\mu\text{m}$  inner diameter fused-silica capillary of  $L_d = 50\text{ cm}$  and  $L_t = 58\text{ cm}$  was used for anionic dye separations at 30°C. Separations took place in normal polarity mode at 25 kV, which produced electrical currents of  $\sim 19\text{ }\mu\text{A}$ . The buffer consisted of 25 mM CHES [2-(N-Cyclohexylamino)ethanesulfonic acid, Sigma-Aldrich] and 5 mM  $\beta$ -cyclodextrin (Sigma-Aldrich) titrated to pH = 8.80 with 1 M NaOH.

The concentration of anionic dye injection solutions was 100  $\mu\text{g}/\text{mL}$  in methanol. Ink solutions were prepared by placing 1.0 mm punches (one to five) in 30  $\mu\text{L}$  of methanol followed by five minutes of ultrasonic agitation. Paper dots were removed by transferring the extract to a new vial. Hydrodynamic sample injection was conducted at 25 mbar for ten seconds for dyes and inks.

#### Electrospray Ionization Mass Spectrometry

A Finnigan (San Jose, California) MAT LQC quadrupole ion trap mass spectrometer operated in direct infusion electrospray ionization mode was used for all mass spectrometry analyses. The instrument was calibrated and tuned using the established methods with the manufacturer-supplied tuning solution, which is a mixture of caffeine, MRFA (L-methionyl-arginyl-phenylalanyl-alanine acetate $\cdot\text{H}_2\text{O}$ ), and Ultramark 1621 (Finnigan, San Jose, California). A 5  $\mu\text{g}/\text{mL}$  Crystal Violet in methanol solution was used with the auto-tune feature to optimize the instrument in the positive-ion mode. This optimization resulted in a spray voltage of +4.52 kV, a spray current of 0.19  $\mu\text{A}$ , and a capillary voltage of +10.39 V. A 10  $\mu\text{g}/\text{mL}$  Metanil Yellow solution in methanol was used to auto-tune the negative-ion mode, which resulted in a spray voltage of +5.83 kV, a spray current of 5.17  $\mu\text{A}$ , and a capillary voltage of -28.55 V. The sheath gas flow was set at 20 (arbitrary units), whereas no auxiliary gas flow was used. The quadrupole ion trap mass analyzer was set to full scan mode to monitor a mass/charge ( $m/z$ ) range of 150 to 2000 in both positive- and negative-ion modes. Samples were infused into the ionization source using a syringe pump at 20  $\mu\text{L}/\text{minute}$  with the capillary temperature set at 200°C. Dye solutions, which were prepared by dilution of stock dye solutions, were composed of 10  $\mu\text{g}/\mu\text{L}$  in methanol. Ink samples were prepared by placing five 1.0 mm punches in 400  $\mu\text{L}$  of methanol followed by five minutes of ultrasonic agitation.

## Results and Discussion

### Electrospray Ionization Mass Spectrometry as a Complementary Technique

Capillary electrophoresis separations of prepared cationic and anionic dye mixtures were reported in a previous publication (Egan et al. 2005). Figure 2 shows a typical result for a six-cationic-dye mixture using the cationic dye capillary electrophoresis method. The first three peaks (3.14, 3.35, and 3.60 minutes) are assigned to Rhodamine Base B, Rhodamine 6G, and Hexamethylpararosaniline (more commonly referred to as Crystal Violet), respectively. These assignments were made based on  $\mu_{ep}$ 's and ultraviolet-visible spectra. The last three peaks (3.74, 4.41, and 4.59 minutes) are attributed to Victoria Blue R, Victoria Blue B, and Victoria Pure Blue BO, respectively. Peak assignment using ultraviolet-visible spectra is difficult because these Victoria Blue dyes have similar structures (Figure 1c) and, hence, similar ultraviolet-visible absorbance profiles (Figure 3). Therefore, assignments were made based on  $\mu_{ep}$  comparisons of the peaks to the  $\mu_{ep}$ 's of the individually measured Victoria Blue reference dyes. In this case it was possible to successfully identify the Victoria Blue dyes in the mixture because it was known that all three were present and all that had to be done was to differentiate them. However, the  $\mu_{ep}$ 's of Victoria Blue B and Victoria Pure Blue BO are similar enough that if an unknown ink sample resulted in a cationic dye peak with an ultraviolet-visible spectrum that is a close match for a Victoria Blue dye, it would only be possible to differentiate Victoria Blue R based on  $\mu_{ep}$ . Therefore, electrospray ionization mass spectrometry was employed as a complementary technique to elucidate among closely related structures, as well as to support all peak assignments. Each Victoria Blue dye gives a distinct peak in positive-ion mode electrospray ionization mass spectrometry: Victoria Blue R  $[\text{M}-\text{Cl}]^+ = 422.5\text{ }m/z$ , Victoria Blue B  $[\text{M}-\text{Cl}]^+ = 470.6\text{ }m/z$ , and Victoria Pure Blue BO  $[\text{M}-\text{Cl}]^+ = 478.6\text{ }m/z$ , which allows the assignment of a specific Victoria Blue dye structure.

**Figure 2: Cationic Dye Capillary Electrophoresis Method Electropherogram of a Six-Basic-Dye Mixture ( $\lambda_{\text{observed}} = 214\text{ nm}$ )**

**Figure 3: Independently Measured Ultraviolet-Visible Spectra of Victoria Blue B (Red), Victoria Blue R (Green), and Victoria Pure Blue BO (Blue)**

### Capillary Electrophoresis of Blue Ballpoint Pen Inks

As discussed in the introduction, the goal of ink differentiation is not necessarily to determine the exact formulation of questioned ink(s), but rather to show that the inks under scrutiny are different or similar. To this end, a series of ten blue ballpoint pen inks obtained from the FBI's collection was examined using the cationic and anionic capillary electrophoresis methods that were developed. The inks have been

cationic and anionic capillary electrophoresis methods that were developed. The inks have been designated a letter (A-J) in order to protect proprietary information.

Figure 4 shows the electropherograms measured for each pen using the cationic dye capillary electrophoresis method. The pens were also analyzed with the anionic dye capillary electrophoresis method; however, the electropherograms were similar for most of the pens and revealed that few, if any, anionic dyes were present. As will be discussed below, the anionic capillary electrophoresis method did provide supportive data for the presence of a specific pigment. It is worth mentioning that in a previous study on black ballpoint pen inks (Egan et al. 2005), it was discovered that very few cationic dyes were present in black inks; thus the anionic dye capillary electrophoresis method proved the most informative. Differences in the pen formulations are evident upon comparing the electropherograms, with the exception of pens D and E. However, when each peak was assigned using ultraviolet-visible absorbance,  $\mu_{ep}$ , and electrospray ionization mass spectrometry data, each pen was determined to be unique. The complete analysis of pen A will be discussed to provide an example of the data obtained and the determination of the components present.

**Figure 4: Cationic Dye Capillary Electrophoresis Method Electropherograms of Pens A-J Presented on the Same Axes for Comparison Purposes ( $\lambda_{observed} = 214 \text{ nm}$ )**

#### Pen A Results

Figure 5 shows the cationic dye method electropherogram obtained for pen A. Three peaks are observed with migration times of 2.93, 3.10, and 3.60 minutes. Based on the neutral marker (labeled "EOF" for electroosmotic flow), the  $\mu_{ep}$ 's of the species were calculated to be  $-1.41$ ,  $-1.56$ , and  $-1.92 \times 10^{-42} \cdot V^{-1} \cdot s^{-1}$ , respectively, where the negative sign indicates a mobility vector opposing the electroosmotic flow direction. In addition to  $\mu_{ep}$  values, the ultraviolet-visible spectrum of each peak was recorded and is shown in Figure 6. An ultraviolet-visible spectral library search provided the best-match data reported in the figure caption. The first peak (2.93 minutes) is assigned to Crystal Violet based on the ultraviolet-visible spectrum match of 0.9988, as well as the  $\mu_{ep}$  value, which is a close match to the independently measured  $\mu_{ep}$  of Crystal Violet =  $(-1.45 \pm .03) \times 10^{-4} \text{ cm}^2 \cdot V^{-1} \cdot s^{-1}$ . Additional evidence is provided by the positive-ion mode electrospray ionization mass spectrometry spectrum (Figure 7), which resulted in a peak at  $372.7 \text{ m/z}$ ; Crystal Violet  $[M-Cl]^+ = 372.5 \text{ m/z}$ . In addition, there is a peak present at  $358.7 \text{ m/z}$ , which is indicative of Pentamethylpararosaniline (also known as Methyl Violet)  $[M-Cl]^+ = 358.5 \text{ m/z}$ . Methyl Violet is a common degradation product of Crystal Violet formed by demethylation, which is initiated by ultraviolet radiation absorption (Grim et al. 2002). Ink manufacturers do not purchase dyes in pure form, and it is common to observe such impurities as Methyl Violet in inks. In fact, multiple Methyl Violet structures (Penta- and Tetra-methylpararosaniline) were observed with capillary electrophoresis and electrospray ionization mass spectrometry in the Crystal Violet dye standard (Sigma-Aldrich,  $\geq 90$  percent pure) used in this study. cm

**Figure 5: Cationic Dye Capillary Electrophoresis Method Electropherogram of Pen A ( $\lambda_{observed} = 214 \text{ nm}$ )**

**Figure 6a: Ultraviolet-Visible Spectra of the Peaks from the Electropherogram of Pen A (Blue Line) Overlaid with the Ultraviolet-Visible Spectra of the Best Match from the Spectral Library Searches (Red Line): 2.93 minutes; Best Match, Crystal Violet, Similarity = 0.9988**

**Figure 6b: Ultraviolet-Visible Spectra of the Peaks from the Electropherogram of Pen A (Blue Line) Overlaid with the Ultraviolet-Visible Spectra of the Best Match from the Spectral Library Searches (Red Line): 3.10 minutes; Best Match, Diarylguanidine, Similarity = 0.9693**

**Figure 6c: Ultraviolet-visible spectra of the peaks from the electropherogram of pen A (blue line) overlaid with the ultraviolet-visible spectra of the best match from the spectral library searches (red line): 3.60 minutes; best match, Victoria Pure Blue BO, similarity = 0.9779. Nearly identical matches were obtained with Victoria Blue B and Victoria Blue R.**

**Figure 7: Positive-Ion Mode Electrospray Ionization Mass Spectrum of Pen A**

The second peak (3.10 minutes) is not a dye, as indicated by the absence of visible absorption (Figure 6b). The  $\mu_{ep}$  value ( $-1.56 \times 10^{-4} \text{ cm}^2 \cdot V^{-1} \cdot s^{-1}$ ) is a match with a diarylguanidine component [ $\mu_{ep} = (-1.56 \pm .02) \times 10^{-4} \text{ cm}^2 \cdot V^{-1} \cdot s^{-1}$ ] in the database that was observed in several dye standards. Diarylguanidines are used in the dye industry to form salts with acidic dyes or pigments that otherwise would be insoluble. The positive-ion mode electrospray ionization mass spectrometry peak at  $240.5 \text{ m/z}$  (Figure 7) suggests that the diarylguanidine in pen A is ditolylguanidine (Figure 1d), which would result in a  $[M+H]^+$  peak =  $240.3 \text{ m/z}$ . It is suspected that 1,3-di-*o*-tolylguanidine is used by a particular manufacturer to form salts with sulfonated Copper Phthalocyanine pigments (Figure 1e) (Green 1990). Evidence of Copper Phthalocyanine is provided by the negative-ion mode electrospray ionization mass spectrum shown in Figure 8. The spectrum is noisy because optimal ionization parameters were not explored and Copper Phthalocyanine is insoluble, which resulted in an order of magnitude ion count decrease of the base peak when compared to the positive-ion mode. The base peak ( $1185.2 \text{ m/z}$ ) has not been assigned; however, the presence of multiple sulfonated Copper Phthalocyanines is indicated by the  $m/z^-$  (Conneely et al. 2001), and  $734.3$ , Disulfonated Copper Phthalocyanine  $[M-2Na+H]^-$  (Ng et al. 2002). In fact, each pen that has been observed to contain diarylguanidine(s) was also shown to possess Copper Phthalocyanine pigments as reflected by the  $734$  and  $814 \text{ m/z}$  peaks in the negative-ion mode mass spectra. Sulfonation of Copper Phthalocyanine is reported to lead to multiple sulfonate groups at various ring locations, which explains the observation of multiple peaks (Green 1990). In addition, a weak ultraviolet-visible spectrum believed to be due to Copper Phthalocyanine has been observed with the anionic capillary electrophoresis method in many of the pens containing diarylguanidines. Figure 9 shows an example of the ultraviolet-visible spectrum that is assigned to Copper Phthalocyanine; however, the peak in the

electropherogram is often broad and weak owing to the insoluble nature of Copper Phthalocyanine in the



electrophoresis methods and weak owing to the insoluble nature of copper phthalocyanine in the buffers used, as well as the multiply sulfonated species present. It was determined that capillary electrophoresis methods alone are not reliable for detecting this pigment. This is another good example of the usefulness of electrospray ionization mass spectrometry as a complementary method. peaks of 814.3, Trisulfonated Copper Phthalocyanine  $[M-3Na+2H]$

#### Figure 8: Negative-Ion Mode Electrospray Ionization Mass Spectrum of Pen A

#### Figure 9: Ultraviolet-Visible Spectrum of a Peak Obtained from the Anionic Capillary Electrophoresis Method of Pen A Believed to Be Due to Sulfonated Copper Phthalocyanine

The ultraviolet-visible spectrum (Figure 6c) and  $\mu_{ep}$  ( $-1.92 \times 10^{-4} \text{ cm}^2 \cdot \text{V}^{-1} \cdot \text{s}^{-1}$ ) of the 3.60-minute peak exhibited the characteristics of a Victoria Blue dye, but this data was not sufficient to distinguish between Victoria Blue B and Victoria Pure Blue BO. However, the 478.7 *m/z* peak in the positive-ion mode mass spectrum (Figure 7) allowed the assignment of the peak to Victoria Pure Blue BO,  $[M-CI]^+ = 478.7 \text{ m/z}$ .

Based on the data presented, pen A was determined to consist of Crystal Violet and Victoria Pure Blue BO dyes. In addition, pen A was found to also contain ditolylguanidine and sulfonated Copper Phthalocyanine. The same analyses were conducted on the remaining pens in the group. Table 1 is an analysis summary of the pens, presented as a checklist of the dyes and additives that were detected in the pens. As can be seen in the table, the identification of five components (the CuPh column is not necessary) was sufficient to distinguish among the ten pens. Several of the pens contained more than one diarylguanidine compound, which aided in formula differentiation. For example, pen F was observed to possess five diarylguanidines. Capillary electrophoresis of pen F resulted in a cluster of five peaks (Figure 4) with similar  $\mu_{ep}$ 's ( $-1.44, -1.49, -1.58, -1.61, \text{ and } -1.66 \times 10^{-4} \text{ cm}^2 \cdot \text{V}^{-1} \cdot \text{s}^{-1}$ ) and similar ultraviolet-visible spectra (ultraviolet absorption only). In addition, positive-ion mode electrospray ionization mass spectrometry of pen F resulted in peaks at *m/z* of 212.4, 226.3, 240.5, 254.5, and 268.5, which were assigned to 1,3-diphenylguanidine, 1-tolyl-3-phenylguanidine, 1,3-ditolylguanidine, 1-dimethylphenyl-3-tolylguanidine, and 1,3-bis(dimethylphenyl)guanidine, respectively. A study by Ng, Lafontaine, and Brazeau indicated similar findings (Ng et al. 2002). The number of different diarylguanidines used in a dye formulation appears to be manufacturer-specific. As an example, capillary electrophoresis of several dye standards from a particular manufacturer has resulted in the same characteristic cluster of diarylguanidines as seen in pen F, whereas another manufacturer's dyes contained only ditolylguanidine analogous to pen A. The type and quantity of diarylguanidines in an ink sample provide another degree of formula differentiation, which could be particularly useful if comparing pens that possess the same dyes but from different dye manufacturers.

Table 1: Checklist of Components Identified in Pens A-J

PEN	CV	VBB	VBBO	VBR	Guan	CuPh
A	Y		Y		Y(1)	Y
B	Y	Y			Y(2)	Y
C	Y				Y(1)	Y
D	Y		Y			
E	Y	Y				
F	Y				Y(5)	Y
G		Y			Y(2)	Y
H			Y			
I			Y	Y		
J		Y				

**CV = Crystal Violet; VBB = Victoria Blue B; VBBO = Victoria Pure Blue BO; VBR = Victoria Blue R; Guan = Ditolylguanidine and related diarylguanidine structures (number of peaks detected in parenthesis); CuPh = sulfonated Copper Phthalocyanine pigment**

The capillary electrophoresis methods used in this study are not limited to ballpoint pen inks. Experiments have shown that food dyes, textile dyes, and ink-jet dyes can be separated and identified using the anionic and/or cationic dye capillary electrophoresis methods. Acid Yellow 23 (also known as Yellow Food Dye No. 5 or Tartrazine) was identified in a boiled-down sample of Mountain Dew soda (PepsiCo, Chicago, Illinois) using the anionic capillary electrophoresis method (Egan et al. 2005). The  $\mu_{ep}$ 's of the assigned capillary electrophoresis peak and a separately measured Acid Yellow 23 dye standard were nearly identical, and a good spectral match was obtained between the ultraviolet-visible spectra. Two textile dyes, Basic Red 18 and Basic Red 29, which have similar  $\mu_{ep}$ 's, were baseline-resolved using the cationic dye capillary electrophoresis method. Dye identification was achieved by comparison of  $\lambda_{max}$  and the overall ultraviolet-visible absorption spectra. Studies have been initiated recently on ink-jet dyes. Anionic capillary electrophoresis analysis has shown promise on extractions from colored ink-jet samples. Initial findings suggest that ink-jet dyes are different from ballpoint pen ink dyes in that they are multiply charged and have larger absolute  $\mu_{ep}$  values.

#### Conclusion

A capillary electrophoresis buffer system was developed to separate basic, cationic organic dyes for forensic ink analysis applications. The cationic dye capillary electrophoresis method was used to successfully differentiate ten blue ballpoint pen inks that were extracted from mock forensic samples. Identification of five components (dyes and additives) was sufficient to distinguish the inks. Differentiation of ink with the same observed dye formulations was aided by manufacturer-specific additive identification. Direct infusion electrospray ionization mass spectrometry was used to confirm the assignment of capillary electrophoresis peaks. Initial experiments suggest that the combination of the cationic dye capillary electrophoresis method reported here and a separately reported anionic dye capillary electrophoresis

method (Egan et al. 2005) can be applied to food dyes, textile dyes, and ink-jet dyes.

method (Egan et al. 2005) can be applied to blue dyes, red dyes, and ink jet dyes.

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Close

Signatures

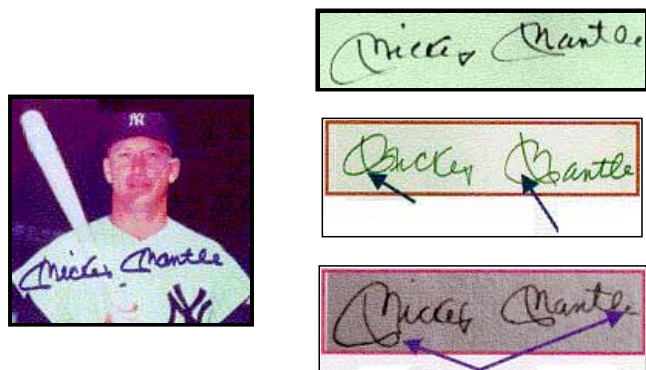


Figure 5. Mickey Mantle’s genuine signature is shown top right. The next signature, middle right, is an attempt to imitate Mickey Mantle’s signature by means of simulation, which is created by copying an actual model or a mental image of a genuine signature. The third signature, below right, is a traced signature executed by actually following the outline of a genuine signature or overlaying a genuine signature and using transmitted light to follow the line of writing.

**Peter Weinberger Kidnapping**

On July 4, 1956, one-month-old Peter Weinberger was kidnapped from his home in Westbury, Long Island, New York (Dorman 1998). A ransom note scrawled in green ink on a sheet torn from a student notebook was left in his baby carriage. The note said, “Attention, I’m sorry this had to happen, but I am in bad need of money, & couldn’t get it any other way. Don’t tell anyone or go to the police about this, because I am watching you closely. I am scared stiff, & will kill the baby at your first wrong move . . . Your baby sitter.” See Figure 6.

Handwriting experts from the FBI Laboratory went to New York to participate in the investigation. The examiners found the ransom note contained distinguishing characteristics in 16 letters of the alphabet. Most unusual was the kidnaper’s lower-case script “m,” which resembled a sideways “z.” Investigators searched through nearly two million handwriting specimens from public records trying to find similar writing.

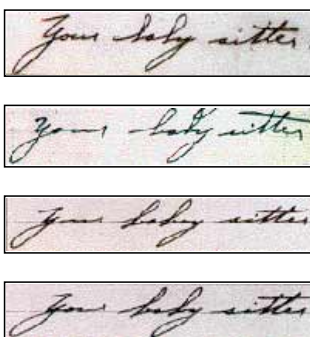


Figure 6. Signatures from the Weinberger kidnapping case. From top to bottom, the photographs show signatures from the first and second ransom notes, and the third and fourth signatures are the known handwriting of Angelo LaMarca.

On July 10, the Weinbergers were instructed by telephone to put the ransom money in a blue bag. The bag would be left by a parkway exit sign. A second note was in the bag, repeating the \$2,000 demand. The handwriting seemed to match the first note.

Meanwhile, a federal probation office in Brooklyn discovered in his files a document written by a criminal defendant who formed the letter “m” in the same way as the author of the ransom notes. The writer was Angelo LaMarca, a 31-year-old auto mechanic. Questioned document examiners compared the document and the notes. LaMarca was identified as the author of the ransom notes.

LaMarca admitted kidnapping and abandoning the Weinberger child and took investigators to the place where he had left the child. Little Peter Weinberger had died of exposure.

LaMarca was indicted on charges of kidnapping and first-degree murder. He was found guilty on both counts and executed at Sing Sing Prison in Ossining, New York, on August 7, 1958.

**Typewriter, Typewritten Text, and Typewriter Ribbon Comparisons**

Typewriters, of which there are two basic types, are machines that put an image on paper using hard type. The kind of typewriter (and ribbon) used to prepare a questioned document suggests the examinations possible and may limit the conclusions possible as a result of the examinations. See Figure 7.

A typebar typewriter is one in which the typeface elements are permanently fastened into the machine. Because each



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Forensic Science Communications    October 2009—Volume 11—Number 4  
Review Article

### **Handwriting Examination: Meeting the Challenges of Science and the Law**

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| [Standards](#) | [Conclusion](#) | [Acknowledgment](#) | [References](#)

#### **Introduction**

Handwriting is a complex motor skill that is the combination of sensory, neurological, and physiological impulses. Factors such as visual perception and acuity, comprehension of form, central nervous system pathways, and the anatomy and physiology of the bones and muscles of the hand and arm all combine to produce the desired output (Hilton 1982; Huber 1999).

Most people learn to write by copying letter formations from a copybook at a young age. The ability to reproduce the letter formations varies from one person to the next and is based on each writers perception of the image and his or her ability (motor skills) to reproduce that visual perception. The act of handwriting is mastered through practice and repetition. Once this occurs, writers focus on the subject matter rather than the physical act of writing and deviate from the copybook forms, interjecting their own individual characteristics. The writing becomes a pattern of subconscious, habitual formations that are repeated from one writing to the next (Hilton 1982; Huber 1999).

The comparison and evaluation of these individual features or habits enable forensic document examiners to identify or exclude, if possible, a known writer as the source for any questioned writing. Lay people may recognize the handwriting of an individual and differentiate between individuals to some degree; however, they observe only the gross features of the handwriting, such as letter formation, size, or slope of the handwriting. Lay people typically do not consider the subtleties in the writing that may differentiate it from other very similar writing. In contrast, document examiners analyze and can differentiate both the gross features and the less conspicuous elements in the writing.


Handwriting features that examiners evaluate include the size and slope of the writing, pen pressure, pen lifts, the spacing between words and letters, the position of the writing on the baseline (the position of the character in relation to the ruled or imaginary line), height relationships, beginning and ending strokes, and line quality. A writers identity cannot be established through a single individual feature in the writing. Rather, identity is established through a combination of the significant features between the writings, with no significant differences.

Figure 1 demonstrates the visual similarity of size, slope, and general formation of such letters as the uppercase S and lowercase a, d, e, f, n, and r. However, a more detailed examination reveals inconsistencies between the two writings (see Figure 2), such as the number of strokes used to form the uppercase R (two versus one), the ending stroke on the lowercase y (straight versus curved), the

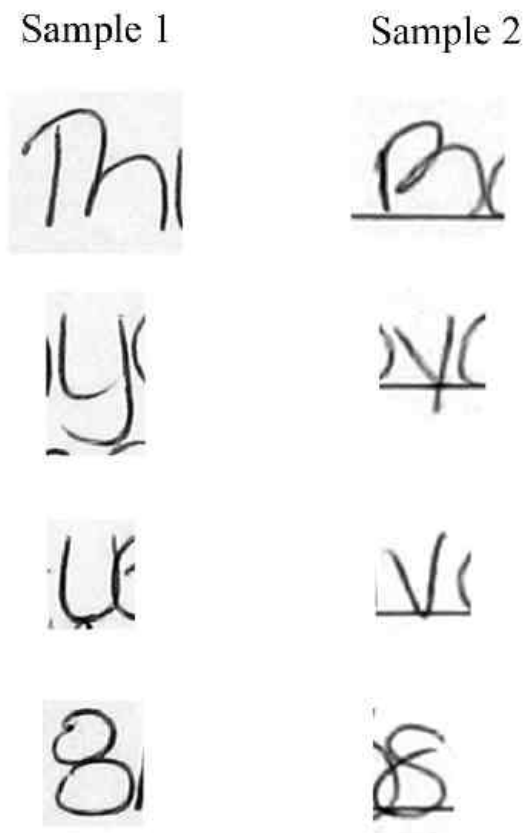
formation of the lowercase v (straight versus curved) and the structure of the

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 Two handwriting samples that illustrate similarities between them

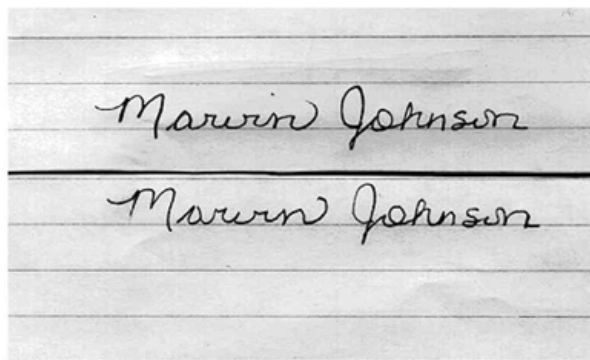
**Figure 1: Two handwriting samples that illustrate similarities between them**



**Figure 2: A closer look at the samples from Figure 1 reveals differences between the writing in each sample.**

Not all handwriting is identifiable. For example, when a person traces another individual's signature, that person imitates the writing habits of the original signer, and therefore, the imitator's own handwriting characteristics are not manifested in the tracing. The forensic document examiner would be able to identify the writing as a tracing and associate the writing back to the model signature, if available, but would not be able to identify the writing with the person who traced the signature. Figure 3 illustrates this concept.

In Figure 3, the bottom signature is a tracing of the genuine signature on top, and although they may appear identical, they actually were prepared by two different writers. In fact, the absence of sufficient variation between these two signatures would immediately alert the experienced document examiner to examine the signatures for signs of manipulation, tracing, or simulation.



**Figure 3: Two signatures prepared by different writers**

The Scientific Foundation for Handwriting Analysis

**Individuality**

The principle of individuality, also known as the principle of uniqueness, forms

the principle of individuality, also known as the principle of uniqueness, forms the basis for handwriting analysis. That is, no two writers share the same combination of handwriting characteristics given sufficient quantity and quality of writing to compare. Albert S. Osborn (1929) detailed in great length the principle of individuality in the second edition of *Questioned Documents*, stating, "The amount of writing must necessarily always be considered, but total coincidence of all characters is so remote that even identity of a small amount of writing is very improbable." Throughout the 20th century, Livingston (1963), Muehlberger et al. (1977), Huber (1990), Horton (1996), and others conducted small studies that evaluated the frequency of occurrence of handwriting characteristics in order to demonstrate the principle of uniqueness.

Beacom (1960), Gamble (1980), and Boot (1998) compared the handwriting of twins and other individuals of multiple births. Twins typically share the same environmental influences, study in the same school systems at the same time, and, in the case of identical twins, share the same DNA. Therefore, one would expect the handwriting of twins to be more similar than the writings of any other individuals. In fact, identical twins have been found to share a high degree of similarity in their handwriting. However, these studies, which involved more than 200 sets of twins, all found that trained examiners were able to distinguish between all of the twins' writings.

Finally, anecdotal reports and field screenings by Harvey and Mitchell (1973), Baxendale and Renshaw (1979), Shiver (1996), and others have been useful in demonstrating the principle of uniqueness. These scenarios all involved comparing questioned writing with known writing from between 1000 and 2 million individuals. In each case, examiners identified the writer of the questioned document.

The most famous of these cases was the kidnapping of Peter Weinberger, a one-month-old baby from Long Island, New York. Examiners compared two ransom notes left by the kidnapper with handwriting specimens maintained by the New York State Motor Vehicle Bureau and various federal, state, and local offices. After examining and eliminating more than 2 million samples, examiners identified the writer (Federal Bureau of Investigation n.d.).

In 2002, Dr. Sargur Srihari and colleagues conducted a study to test the principle of individuality. A sample of 1500 individuals from the general U.S. population was collected and entered into a database. The sample population comprised men and women of different ages and ethnicities. Each individual provided three handwritten samples that captured the various attributes of the written English language such as document structure (e.g., word and line spacing, line skew, margins); positional variations of the letters (i.e., each letter in the initial, middle, and terminal positions of a word); and letter and number combinations (e.g., *ff*, *tt*, *oo*, *00*). A computer software program (CEDAR-FOX) was developed to extract macro-features (slant; word proportion; and measures of pen pressure, writing movement, and stroke formation) from the entire document, from a paragraph in the document, and from a word in the document. It was also used to extract micro-features (gradient, structural, and concavity features) at the character level of the document. Based on only a few macro- and micro-features, Srihari et al. established that the writer of a particular sample can be identified with 98 percent confidence. Inferring these statistics over the entire U.S. population, writer identification can be established with 96 percent confidence. Srihari suggested that "by considering finer features, we should be able to make this conclusion with a near 100 percent confidence [that the writer can be identified]" (2002).

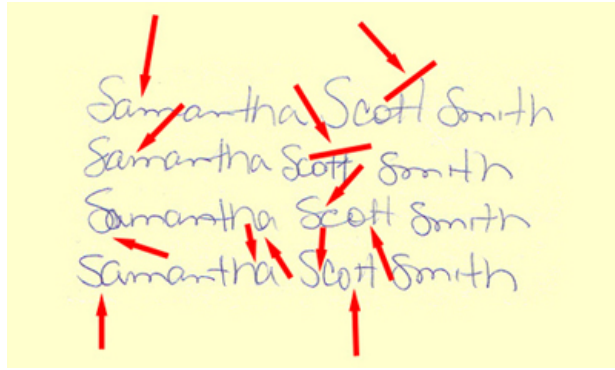
An additional study by Srihari and colleagues in 2008 further supported the principle of individuality. This study also involved the evaluation and comparison of handwriting by twins. Writing samples were obtained from 206 pairs of twins from 150 different cities and seven different countries, as well as 412 individuals ("nontwins") from the general U.S. population. The study evaluated four areas: (1) comparison of twins handwriting with those of nontwins, (2) comparison of writings in which the textual content of the writing was different, (3) comparison of fraternal and identical twins handwriting, and (4) comparison of system versus human performance. The CEDAR-FOX system was again used to evaluate the handwriting for the same style and macro- and micro-features as in the previous study, as well as for additional features not previously evaluated. The system verification error rate for twins was higher than that of nontwins, and the system verification error rate for nontwins was consistent with Srihari et al.'s previous study. The study also found that the system performed better than the layperson but was unable to reach the performance level of the qualified expert.

### Variation

No one person writes exactly the same way, even within several repetitions of writings. This is known as natural variation, or intra-writer variation, and represents the second principle of handwriting analysis.

Human beings are not capable of machine-like precision and repetition. As a result of the neuromuscular process, some variation in style (formation) is expected. Variation is an integral part of an individual's writing. It describes the changes and deviations, often minute, that are found in repeated samples of one person's writing. More specifically, variation refers to the different way(s) that a

person's writing, more specifically, variation (due to the different ways) that a writer makes each letter or character. This variation is normal and serves as an added factor to personalize and individualize writing. As Figure 4 demonstrates, natural variation in an individual's writing prevents superimposed samples by the same individual from aligning perfectly.



**Figure 4: Four signatures written by the same individual, demonstrating variation**

In the first two signatures, the initial stroke of the *m* is wider in the first and higher in the second "Samantha." In the word "Scott," the arrows point to the height differences between the two *f*'s. The third and fourth signatures show the spacing differences between the *S* and the *a* and the *h* and the *a* in "Samantha," as well as the differences in connecting strokes between the *S* and the *c* and the *o* and the *t* in the word "Scott."

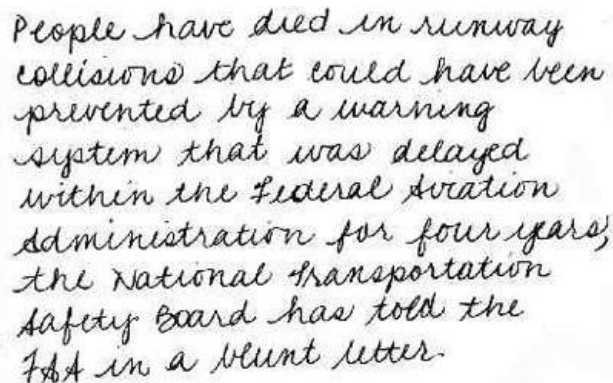
The duration, extent, and speed involved in the coordination of an activity such as handwriting are so complex and may be combined in so many ways that it is virtually impossible to duplicate all parameters exactly. In this way, a variation in performance can and will occur between repetitions of an action by the same person (Rhodes 1978).

#### Writing Skill

Every writer has a writing skill that cannot be dramatically improved in a short time frame while maintaining all appearances of natural writing. For this reason, the third principle of handwriting analysis is skill level, or the writer's ability to physically reproduce the letter formations they visualize. Skill level is not necessarily related to legibility or an individual's education level. Individuals can write *at or below* their skill level but not *above* their skill level. Figures 5 and 6 show two writing samples prepared by two sisters with a five-year age difference who attended the same schools and grew up in the same environment.

This is a handwriting sample for Lorie. She said my hand writing looks like chicken scratch. I don't think that my hand writing is bad at all. In fact I can always read it. She also knows that I have to wear a brace ON my wrist for a while.





People have died in runway collisions that could have been prevented by a warning system that was delayed within the Federal Aviation Administration for four years; the National Transportation Safety Board has told the FAA in a blunt letter.

Figure 5 on the top: Low-skilled writer

Figure 6 on the bottom: High-skilled writer

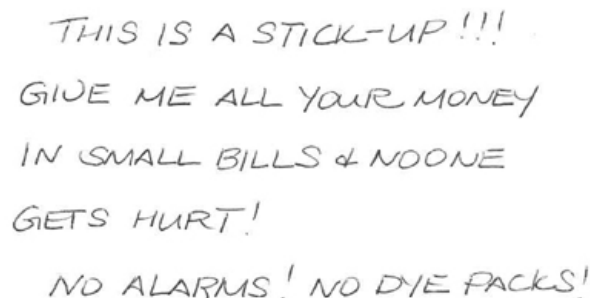
An individual's known writing, including past writings or writings completed during the regular course of business, enable document examiners to assess the individual's skill level and evaluate the skill level as higher or lower than an evidentiary sample. The author of the writing in Figure 6 would have the skill to produce the writing in Figure 5. In contrast, the author of the writing in Figure 5 would not have the skill to produce the writing in Figure 6.

#### The Methodology of Handwriting Examination

When conducting handwriting examinations (cursive writing, hand printing, signatures, or extended writing) FBI Laboratory personnel use a four-step process (ASTM International 2007; Federal Bureau of Investigation 2007). The following sections describe the steps in the process.

Each analysis begins with an independent examination of the questioned and then the known writing using proper lighting and magnification to determine if the writing is original writing (e.g., ink on paper) and whether it exhibits the characteristics of freely and naturally prepared writing. Some of the characteristics of naturally prepared writing include consistent slant and size, thickening and thinning of the lines as the writing instrument changes direction, and tapered beginning and ending strokes that occur once the writing instrument comes into contact with or leaves the paper. Additionally, each body of writing is examined to assess internal consistency, comparability, and variation and to determine the presence or absence of individualizing characteristics. The most suitable writing for comparison is text void of any attempt to disguise and/or distort the writing; however, any writing can be of value for comparison.

Figure 7 demonstrates the appearance of naturally prepared writing represented by smooth line quality, tapered beginning and ending strokes, variation in line width, and consistent slant.



THIS IS A STICK-UP!!!  
GIVE ME ALL YOUR MONEY  
IN SMALL BILLS & NO ONE  
GETS HURT!  
NO ALARMS! NO DIE PACKS!

Figure 7: A bank-robbery note illustrating naturally prepared writing

THIS IS A HOLDUP !!  
 EVERYBODY BE CALM -  
 I HAVE A GUN !!!  
 BE QUIET & NO ONE  
 GETS HURT!

**Figure 8: A bank-robbery note illustrating distorted writing**

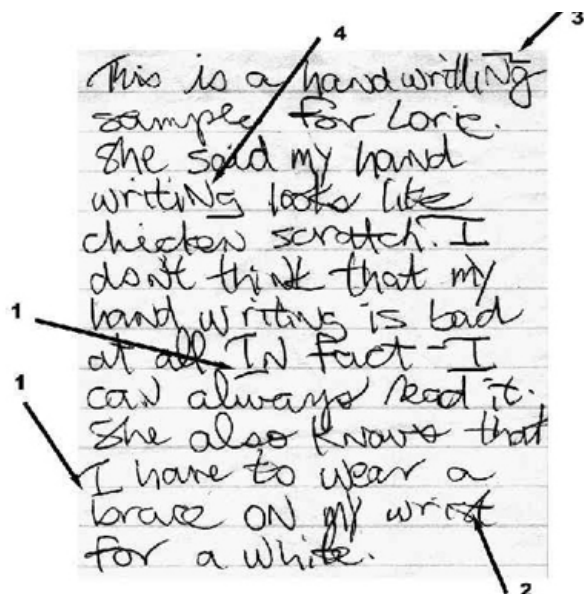
Once a document examiner completes the analysis and determines that the questioned and known writings are suitable for comparison, the examination process progresses to a side-by-side comparison. The examiner observes the numerous features exhibited in the bodies of writing to determine if significant similarities or differences exist. Every document examiner at the FBI Laboratory completes a two-year training program that includes classroom lectures, practical problems, oral boards, testing, and moot courts. This training provides the fundamental knowledge for examiners to understand the significance of the observed characteristics. Examiners also rely on their ability to discern minute form differences. This ability can be established through form-perception testing. Form-perception tests, also referred to as form-blindness tests, consist of geometric shapes and handwritten words and are used to establish the examiners ability to distinguish minute differences in forms, angles, and sizes (Osborn 1975).

The characteristics examiners consider when conducting comparisons are the subtle, subconscious habits of the writer, such as writing in relation to the baseline, the overall formation of the letters, the heights of letters in relation to one another, the manner of connecting letters, the size and spacing of letters, the beginning and ending strokes, pen pressure, and other handwriting characteristics. The document examiner does not consider misspellings as individualizing characteristics of the handwriting.

The following excerpt from ASTM Guide E 2290 (2007) illustrates the extensive list of features document examiners consider during the examination process.

"Among the features to be considered by the examiner are elements of the writing such as abbreviation; alignment; arrangement, formatting, and positioning; capitalization; connectedness and disconnectedness; cross strokes and dots, diacritics and punctuation; direction of strokes; disguise; embellishments; formation; freedom of execution; handedness; legibility; line quality; method of production; pen hold and pen position; overall pressure and patterns of pressure; emphasis; proportion; simplification; size; skill; slant or slope; spacing; speed; initial, connecting, and terminal strokes; system; tremor; type of writing; and range of variation. Other features such as lifts, stops and hesitations of the writing instrument; patching and retouching; slow, drawn quality of the line; unnatural tremor; and guide lines of various forms should be looked for and considered when present. Potential limiting factors such as age; illness or injury; medication, drugs or alcohol (intoxication or withdrawal); awkward writing position; cold or heat; fatigue; haste or carelessness; nervousness; nature of the document; use of the unaccustomed hand; [and] deliberate attempt at disguise or auto-forgery should be considered" (ASTM 2007) because they may not represent the natural handwriting of the individual.

Figure 9 demonstrates some of the characteristics evaluated during an examination. Number 1 demonstrates how the uppercase *I* sits below the ruled line. Number 2 shows the connecting stroke between the *s* and *t*. Number 3 demonstrates how the *N* is higher than the *g*. Number 4 shows the larger size of the *N* when compared to the adjacent letters.



**Figure 9: The handwriting sample from Figure 5, illustrating 1, baseline; 2, connecting stroke; 3, height relationships; 4, size**

The next step in the methodology involves evaluating the significance of the nature and combination of the characteristics observed during the comparison process. This evaluation is based on the examiners training, knowledge, and experience. To identify a body of writing with a particular writer, the examiner must find significant characteristics in common between the questioned and known writing, while observing no significant differences. Each characteristic may not be unique when considered individually, but when coupled with other observed characteristics, the writing is then considered unique to a particular writer. To eliminate a writer as having prepared a questioned writing, an examiner must observe significant differences between the questioned and known writing.

It is not always possible to render an opinion of identification or elimination based on the nature of the questioned and known writing provided for examination. These limitations include evaluation of photocopied specimens, which yield poor detail and clarity and prevent the examiner from properly assessing line quality, connecting strokes, letter formations, and beginning and ending strokes; distorted or disguised writing, which does not exhibit the normal handwriting characteristics of the writer; limited questioned and/or known writing, which may not allow proper assessment of skill level and identifying characteristics; lack of comparable known writing, which does not allow for a thorough comparison of the characteristics observed in the questioned writing; and prior chemical testing on the document, which may hamper subsequent examinations.

Although examiners may not be able to associate a handwriting sample with a specific individual, they can sometimes determine the origin or authenticity of the writing. However, handwriting examinations cannot determine such traits as age, sex, personality, or intent (ASTM 2007).

The final step in the examination process is verification. In this step, another qualified examiner evaluates the writing submitted for comparison using the methodology previously described. In the FBI Laboratory Questioned Documents Unit (QDU), 100 percent of the cases are peer-reviewed by another qualified examiner. QDU examiners also conduct blind reviews in cases meeting previously established criteria.

#### **Conclusions Reached During Handwriting Examinations**

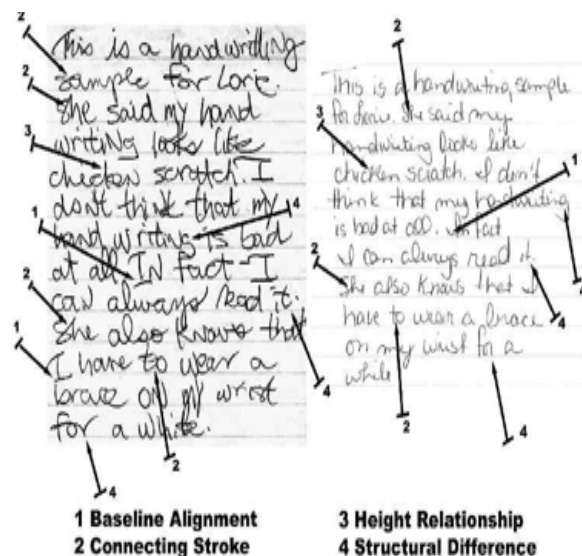
The FBI Laboratory has not established a specific number of "points" or characteristics needed to identify a questioned writing as having been prepared by a particular individual. In order for a forensic document examiner to identify an individual as having prepared a questioned writing, agreement must exist between significant characteristics in the questioned and known writing with no significant differences. The examiner must explain any exceptions.

The FBI Laboratory's Questioned Documents Unit uses the following conclusions in handwriting comparisons:

- **Identification**—A determination that the questioned and known writings were prepared by the same writer because of agreement in individualizing characteristics. No differences are present, except for normal variation. Unexplained variations or characteristics are far outweighed by the combined effect of agreement in all other details. No significant limitations are present. Typical wording for this conclusion in

- significance limitations are present. Typical wording for this conclusion in an FBI Laboratory report would be: "It was determined that the questioned writing on specimen Q1 was prepared by John Doe, the writer of K1."
- **May Have (Qualified Opinion)**—Indications that specimens being compared were prepared by the same writer. The conclusion is based on the prevalence of characteristics in common between the specimens being compared. However, some doubt or lack of agreement in detail is observed, usually because of some limitation or the presence of characteristics observed in the questioned writing that could not be explained on the basis of the available known writing. Typical wording for this conclusion in an FBI Laboratory report would be: "A definite determination could not be reached as to whether the questioned writing on specimen Q1 was prepared by John Doe, the writer of K1, due to [list limiting factors]. However, handwriting characteristics in common were observed that indicate that John Doe, K1, may have prepared the questioned writing on specimen Q1."
  - **No Conclusion**—Cannot determine whether the specimens being compared were prepared by the same writer, usually because of such factors as lack of comparability or lack of clarity and detail in the submitted specimens, which may significantly limit meaningful examinations. In instances when meaningful examinations can be conducted, the weight of the combination of characteristics observed in common is counterbalanced by the weight of the combination of inconsistencies or unexplained characteristics observed. Typical wording for this conclusion in an FBI Laboratory report would be: "It could not be determined whether the questioned writing on specimen Q1 was prepared by John Doe, the writer of K1, due to [list limiting factors]."
  - **May Not Have (Qualified Opinion)**—Indications that the specimens being compared were not prepared by the same writer. This conclusion is based on the prevalence of dissimilarities between the specimens being compared. However, some uncertainty remains, usually because of some limitation, the presence of some significant characteristics in common, or the presence of inconsistencies or characteristics observed in the questioned writing that could not be explained as differences based on the available known writing. Typical wording for this conclusion in an FBI Laboratory report would be: "A definite determination could not be reached as to whether the questioned writing on specimen Q1 was prepared by John Doe, the writer of K1, due to [list limiting factors]. However, handwriting inconsistencies were observed that indicate that John Doe, K1, may not have prepared the questioned writing on specimen Q1."
  - **Elimination**—A determination that the questioned and known writing were not prepared by the same writer because of sufficient disagreement in individual characteristics. Differences are observed. Any limited similarities are far outweighed by the combined effect of sufficient disagreement in all other details. No significant limitations are present. Typical wording for this conclusion in an FBI Laboratory report would be: "It was determined that the questioned writing on specimen Q1 was not prepared by John Doe, the writer of K1."

In the samples of writing in Figure 10, the baseline of the uppercase *I*, the connecting stroke between the *S* and the *h*, the height of the *k* in relation to adjacent letters in the word, and the structural differences in the *g*, *r*, and *t* are consistently different between the writings, thus illustrating an elimination conclusion.



**Figure 10: The handwriting sample from Figure 5, along with a comparison sample from a different writer, illustrating an elimination conclusion. The number 1s point to baseline alignment; number 2s, the connecting strokes; number 3s, height relationships; and number 4s, structural differences.**

#### Standards

The Technical Working Group for Documents, now the Scientific Working Group for Questioned Documents (SWGDOC), was formed in 1997 to address the need for standards in the forensic document community. SWGDOC's technical experts produce standards and submit them to ASTM International for ballot and eventual publication. ASTM is a voluntary standards development organization for technical standards for materials, products, systems, and services. The ASTM Committee E30 on Forensic Science was established in 1970 and consists of 10 technical subcommittees, one of which is the E30.02 Committee on Questioned Documents. Each standard submitted to ASTM is subjected to a rigorous review process by forensic document examiners and other forensic practitioners, as well as individuals with a general interest in the discipline. This review process ensures clear, concise, and high-quality standards.

To date, the forensic document discipline has published the following 18 standards through ASTM (see <http://www.ASTM.org>). The two-digit number following the hyphen indicates the date of the standard and, as of this writing, is the most current standard available.

- E444-09 Standard Guide for Scope of Work of Forensic Document Examiners.
- E1422-05 Standard Guide for Test Methods for Forensic Writing Ink Comparison.
- E1658-08 Standard Terminology for Expressing Conclusions of Forensic Document Examiners.
- E1789-04 Standard Guide for Writing Ink Identification.
- E2195-02 Standard Terminology Relating to the Examination of Questioned Documents.
- E2285-08 Standard Guide for Examination of Mechanical Checkwriter Impressions.
- E2286-08a Standard Guide for Examination of Dry Seal Impressions.
- E2287-09 Standard Guide for Examination of Fracture Patterns and Paper Fiber Impressions on Single-Strike Film Ribbons and Typed Text.
- E2288-09a Standard Guide for Physical Match of Paper Cuts, Tears, and Perforations in Forensic Document Examinations.
- E2289-08 Standard Guide for Examination of Rubber Stamp Impressions.
- E2290-07a Standard Guide for Examination of Handwritten Items.
- E2291-03 Standard Guide for Indentation Examinations.
- E2325-05 Standard Guide for Non-destructive Examination of Paper.
- E2331-04 Standard Guide for Examination of Altered Documents.
- E2388-05 Standard Guide for Minimum Training Requirements for Forensic Document Examiners.
- E2389-05 Standard Guide for Examination of Documents Produced with Liquid Ink Jet Technology.
- E2390-06 Standard Guide for Examination of Documents Produced with Toner Technology.
- E2404-08 Standard Guide for Examination of Typewritten Items

- E2290-07 Standard Guide for Examination of Handwritten Items.

Additionally, standards that have been submitted to ASTM for ballot and publication include:

- Standard Guide for the Preservation of Charred Documents.
- Standard Guide for the Preservation of Liquid-Soaked Documents.
- Standard Guide for Examination of Handwritten Items for Simulation and Tracing.
- Standard Guide for Classification of Facsimile Devices using Transmitting Terminal Identifier/Receiving Terminal Identifier (TTI/RTI).
- Financial and Identification Documents.
- Case Review.

### Conclusion

As a discipline routinely accepted under *Frye* (*Frye v. United States*, 54 App. D.C. 46, 293 F. 1013, 1014 [1923]), forensic document examination has been consistently accepted in the courts in spite of the challenges generated by the *Daubert* decision in 1993 (*Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 [1993]). Published research demonstrates the validity of the expertise and supports the principle of handwriting individuality. Published standards ensure consistency in methodology. Document examiners in both public (local, state, federal, and international) and private laboratories use these standards. Ongoing academic research continues to support the forensic document examination community in strengthening the scientific basis for handwriting comparison.

### Acknowledgment

This is publication number 09-17 of the Laboratory Division of the Federal Bureau of Investigation. Names of commercial manufacturers are provided for identification only, and inclusion does not imply endorsement by the FBI.

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of *Forensic Science*. CRC Press-Taylor & Francis, Boca Raton, Florida, 2001, pp. 123125.

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Close



**JAMES A. GREEN**  
*Forensic Document Examiner*

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Phone/fax: (541) 485-0832  
E-mail: qdman777@aol.com

January 22, 2016

Mr. Dennis Solomon  
PO Box 289  
Yarmouth Port, MA 02675

Re: Addendum to the Dorothy Horwitz Family Trust

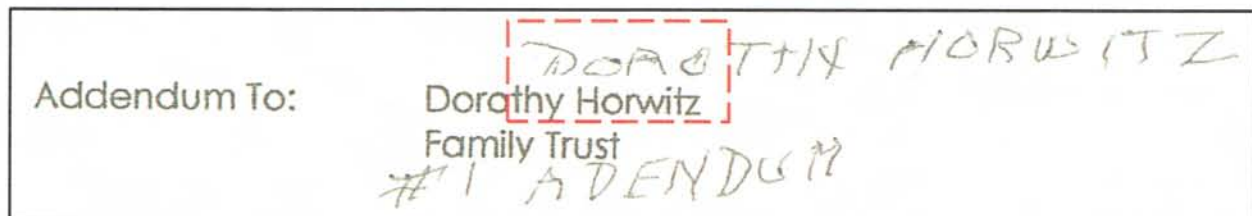
On January 18, 2016 I received the following document for examination from you, via an email attachment:

Questioned:

Q-1: Addendum to the Dorothy Horwitz Family Trust. A handwritten date of 10/31/13 was at the top of the document.

You directed me to examine the upper, printed portion of the document. Specifically, spacing around the printed name of "Dorothy Horwitz" intruded into her hand printed name, above it.

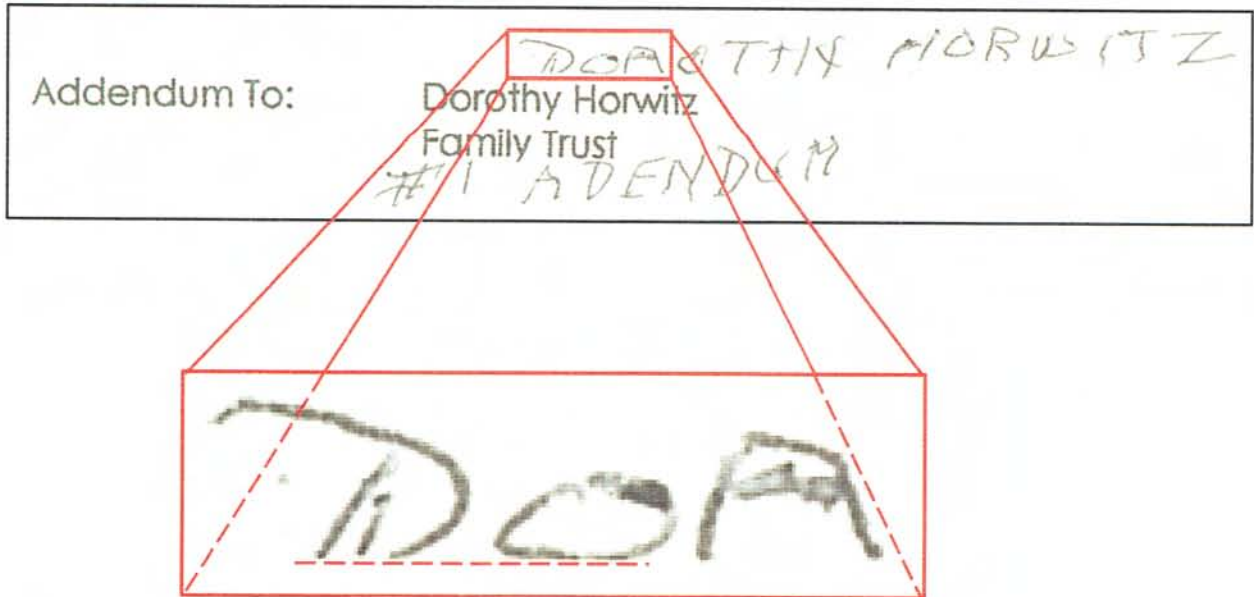
An image of the area of concern is shown below:



The lower portion of the capital "D", in the hand printed name, appeared to be 'cut off'. The bottom of the "D" seemed to be constructed with three strokes, with the lowest portion of the strokes missing.



An image of the focus area is provided below, with an expanded view:



The copy of the Addendum provided did not show an indication of pen failure in the strokes of the capital “D” or other letters within the name. There was no evidence of smudging, indicative of an erasure process of the lower portion of the “D”. Additionally, there was no indication of an obliterating fluid used, such as “Liquid Paper”.

The partial obliteration of the “D”, and perhaps the bottom of the following “o”, may be the result of a text insertion process. The following image is a fabrication created to show how the insertion of a “text box” encroached into the hand printed name of “Dorothy”. The text box is an option in Microsoft Word, used to insert text onto images or elsewhere in a document that normal formatting does not allow for.



The image, on page three, shows the outline of the “text box” extending into the hand printed area of the same example. The absence of other voided areas on the page, and the linear direction of the void blank area at the bottom of the “D” on the Addendum, supports the theory of a text box insertion.

Addendum To:

*Dorothy Horwitz*  
James A. Green  
Sample image

*#1 ADDENDUM*

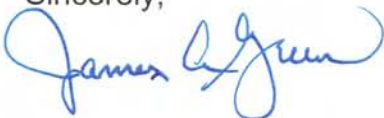
An inspection of the original document is necessary to conclusively identify why there was an absence of the pen strokes in the formation of the "D". There may be an obvious, reasonable explanation for the void.

An examination of the original would also confirm the handwriting was original (made with a writing instrument), or a machine copy (printed with laser or ink jet technology). If the text and hand writing on the entire document was the result of a mechanical printing process, the possibility of a 'cut and paste' fabrication cannot be excluded.

The image provided will be retained in the case file pending any follow-up examination or testimony, if requested.

Attached, as pages four and five, is a current copy of my curriculum vitae.

Sincerely,



James A. Green



Diplomate: American Board of  
Forensic Document Examiners

# James A. Green

## Forensic Document Examiner

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Eugene OR 97405  
(888) 485-0832  
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www.documentexaminer.info



Member, and past President,  
of the American Society of  
Questioned Document Examiners

---

### *Curriculum Vitae*

#### **Education:**

University of Oregon – Bachelor of Science degree (1992), Sociology

#### **Work experience:**

2000 – Present: Forensic Document Examiner – private practice  
1988 – 2000: Forensic Document Examiner – Eugene OR Police Department  
1976 – 1988: Sworn officer / detective positions – Eugene OR Police Dept.

#### **Professional memberships:**

American Society of Questioned Document Examiners (ASQDE)  
Member since 1997  
Past President – 2012 to 2014  
Other Executive Committee positions – 2004 to 2012

American Academy of Forensic Sciences (AAFS)  
Member since 1995  
Fellow of the Questioned Document Section

Southwest Association of Forensic Document Examiners (SWAFDE)  
Member since 1994

#### **Certification:**

American Board of Forensic Document Examiners – 2004  
Re-certified in 2009 and 2014  
Currently serving as the Treasurer for the ABFDE

#### **Training:**

Regular attendance at training conferences and workshops of the American Society of Questioned Document Examiners, American Academy of Forensic Sciences – Questioned Document Section and the Southwest Association of Forensic Document Examiners.

1991: Two week mentorship at the US Postal Inspection Laboratory, San Bruno, CA.

1989: Attended the two-week USSS Questioned Document Course at the Federal Law Enforcement Training Center, Glynco, GA.

1988 – 1990: Two and one-half year apprenticeship under the supervision of Mr. Donald Norenberg, Forensic Document Examiner at the Eugene OR Police Department.

**Annual Proficiency Testing:**

Collaborative Testing Service, Sterling, VA. 2006 - 2015

**Court testimony:**

<u>Federal Courts:</u>	California	<u>State Courts:</u>	Alaska	Oregon
	Montana		Idaho	Texas
	Oregon		Minnesota	Washington
	Washington		Montana	Wyoming

Foreign Courts: British Columbia, Canada

Testimony given in over 110 cases.

**Publications and Papers presented:**

“Paper Examinations; Consideration of Mineral Fillers”, presented at the annual conference of the American Society of Questioned Document Examiners, Toronto, CN, August, 2015.

“Reliability of Paper Brightness in Authenticating Documents”, published in the Journal of Forensic Sciences, 2011, J1.

“Rubber Stamp Inks”, published in the book, Forensic Examination of Rubber Stamps, by Jan Seaman Kelly © 2002. Charles C. Thomas, publisher.

“Forensic Document Examination”, published in the *Trial Lawyer* (Oregon Trial Lawyers Association), Fall 2001.

Additional papers presented will be provided upon request.

**Training provided:**

Full day seminars to private and government security personnel, sponsored by the Caribbean Institute of Forensic Accounting:

Port of Spain, Trinidad  
Castries, St. Lucia

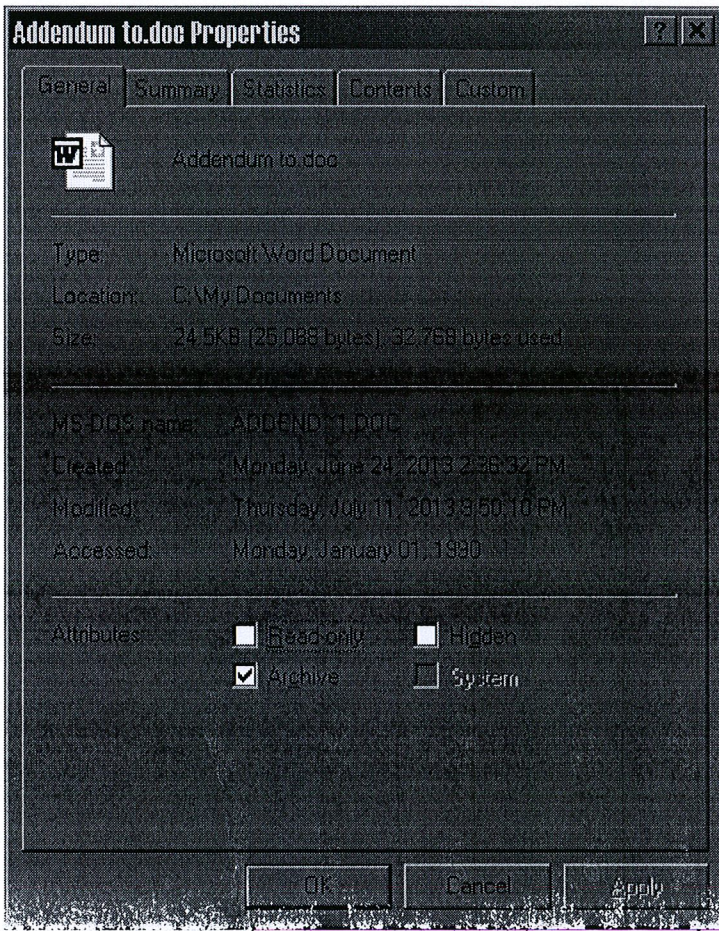
Workshops were presented several times to the Oregon Association of Licensed Investigators at their annual conferences.

Last Entry of Dorothy Horwitz - 10/2/13  
 2064 - Verizon Wireless  
 Attempted to PRINT 'Garden Crest' on  
 10/31/13 but was unsuccessful

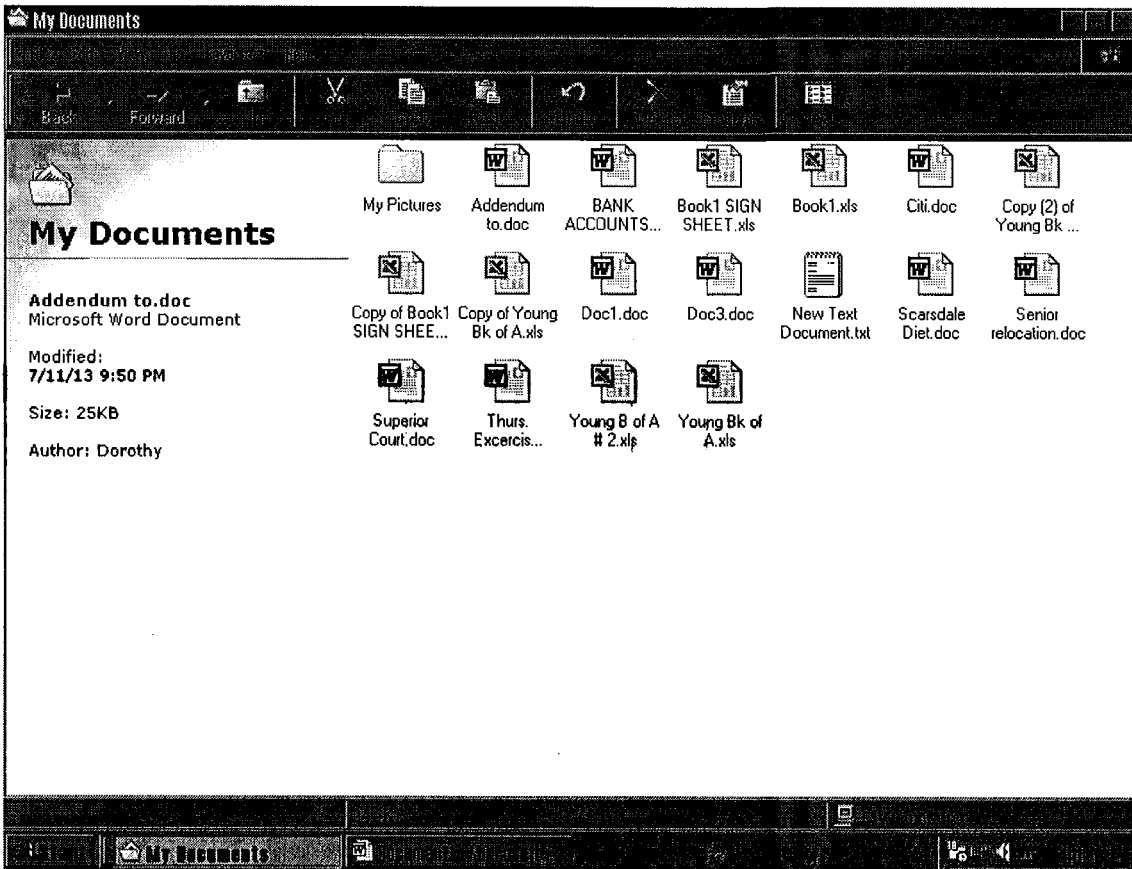
<input type="checkbox"/> AD-Automatic Deposit <input type="checkbox"/> AP-Automatic Payment <input type="checkbox"/> ATM-Teller Machine <input type="checkbox"/> DC-Debit Card <input type="checkbox"/> T-Tax Deductible <input type="checkbox"/> TT-Telephone Transfer									
NUMBER OR CODE	DATE	TRANSACTION DESCRIPTION	PAYMENT AMOUNT	✓	FEE	DEPOSIT AMOUNT	\$ BALANCE		
2661	10/2	The Home Co	\$ 875				16491	17	975
2662	10/2	L. Kelly Johnson	3551				16136	86	3551
2663	10/2	ATM	4789				11647	97	4789
2664	10/2	Verizon Wireless	1711				10236	86	1711
2665	10/14	Bank Home	153 64				10083	22	153 64
2666	10/18	Jas Junes Smog	10 10				10183	12	10 10
2664	10/14	Bank Home	98 00				10085	12	98 00
<del>2667</del>	<del>10/18</del>	<del>GARDEN CREST</del>	<del>23400</del>						
2670	10/31	GARDEN CREST	3366				13675	22	3366 00
2671	10/13	Garden Crest	3700			20260	20	2600	3700 00
2671	10/11	GARDEN CREST	3720				15161	22	
2672	10/28	ROSE APARICIO	200 00						
	11/03	SS				20260			

PROTECT YOUR ACCOUNT - KEEP CHECKS IN A SAFE PLACE. IF THEY ARE LOST OR STOLEN, NOTIFY YOUR FINANCIAL INSTITUTION IMMEDIATELY.

# **Exhibit “C”**



addendum to.doc

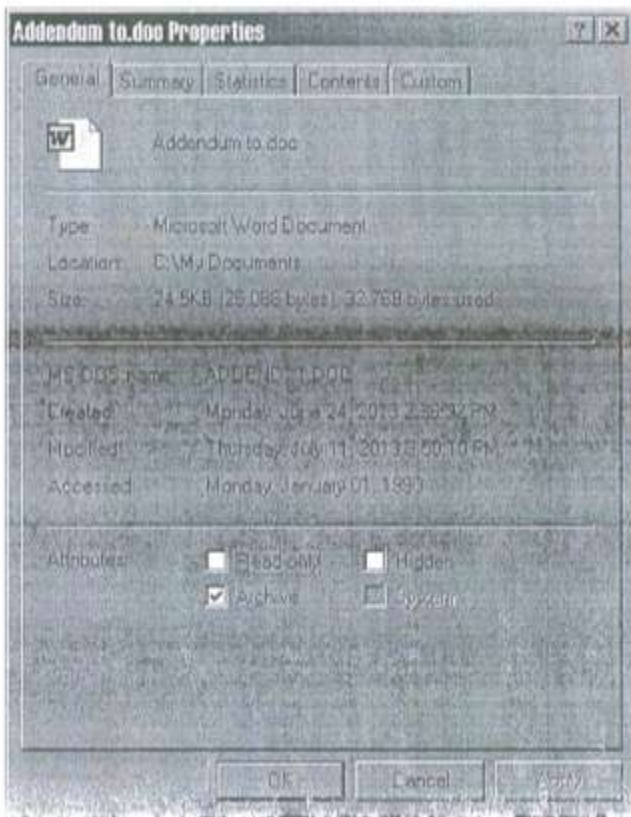




Trustee Louie's Exhibit C & Declaration – Motion for Summary Judgment, August 3, 2015

Allegedly Dorothy's Computer Information Page for the "Addendum to.doc" Document which includes all three purported 'addendum' pages – "Adumdum", "Living Trust", and "Charities."

- Alleges to show it was first created on June 24, 2013
- Last modified on July 11, 2013
- Last Accessed on January 1, 1990 (Computer had been manipulated)



SWORN DECLARATION OF MARGARET MORROW – July 20, 2015

5. In or about June 2014, I took possession of Mrs. Horwitz's computer. I received her computer from Mr. Hoover, whom I understood removed it from Mrs. Horwitz's condominium for safe-keeping. From that computer, I was able to locate the Addendum. I was also able to determine from the "My Documents" and from the "Properties" windows, copies of which are attached hereto as Exhibit "C," that the Addendum was created on June 24, 2013, and that the last modification to the document was made on July 11, 2013, at 9:50 p.m.

## ***Konrad Kujau: Achtung! The Secret Diaries of the Führer***



It was supposed to be one of the greatest finds in modern history, but instead it ended up as one of the most notorious forgery and publishing scandals of the 20th century.

In 1983, the German newsweekly *Stern* reported on the existence of 62 handwritten diaries kept by Adolf Hitler. A staff reporter for *Stern*, Gerd Heidemann, obtained the diaries for a cool \$3.8 million.

As the story goes, an enigmatic Doctor Fischer hid the documents away for years in East Germany, after recovering from an aircraft crash at the end of the war in 1945 in Dresden. After their purchase, the diaries passed three handwriting tests. The *Times of London* and *Newsweek* magazine hired two historians, Hugh Trevor-Roper and Gerhard Weinberg, to examine the texts. Trevor-Roper deemed the diaries authentic.

However, within two weeks after the diaries were published, the West German Bundesarchiv (The German Federal Archives) revealed that they were "grotesquely superficial fakes" after discovering that they had many historical inaccuracies and were made on modern paper. It was later discovered that the diaries were the work of a master forger from Stuttgart, Konrad Kujau. Both Kujau and Heidemann were put on trial and given a 42-month sentence each for forgery and embezzlement.

It is unclear when Kujau produced his first Hitler diary. Stiefel says Kujau gave him a diary on loan in 1975. Schulze puts the date in 1976, while Kujau says he began in 1978. He used one of a pile of notebooks he had bought cheaply in East Berlin, and put the letters AH in gold on the front, although these letters were purchased in a department store, made of plastic in Hong Kong, and he used FH, rather than AH. To add a further look of authentication, he took the

black ribbon from a real SS document, and attached it to the cover using a German army wax seal. For the ink he purchased two bottles of [Pelikan](#) ink, one black and one blue, and mixed the two together with water so it flowed more easily from the cheap modern pen he used. Kujau had spent a month practicing to write in the old German gothic script in which Hitler used to write. Kujau showed it to Stiefel who was impressed by the work, and wanted to buy it, but when the forger refused to sell it, he asked to borrow it instead, which was agreed upon.<sup>[19][20]</sup>

In 1978 Kujau sold his first "Hitler Diary" to a collector. In 1980 he was contacted by the journalist [Gerd Heidemann](#) who had learned of the diary. Kujau told Heidemann that the diaries were in the possession of his brother, who was a general in the East German Army. Heidemann made a deal with Kujau for "the rest" of the diaries.<sup>[21]</sup> Over the next two years Kujau faked a further 61 volumes and sold them to Heidemann for DM 2.5 million. Heidemann in turn received DM 9 million from his employers at [Stern](#).<sup>[21]</sup>

**Laboratory tests can't always catch modern forgeries - as Harvard Theological Review has (inadvertently) proved** Andrew Bernhard

We now know that laboratory tests used to assess the age of papyrus fragments don't always catch modern forgeries.

In the April 2014 issue of *Harvard Theological Review*, the results of numerous laboratory tests run on a papyrus fragment were published (some in the periodical, some online). The tests were performed by top scientists from Harvard University, Columbia University, Massachusetts Institute of Technology (MIT), and the University of Arizona.

The papyrus fragment was studied by Micro-Raman Spectroscopy, which revealed the ink consistently had a chemical composition "very similar to carbon-based inks studied for a wide variety of manuscripts including several dated from the early centuries of the Christian era."

The papyrus fragment was studied by Fourier Transform Infrared Microspectroscopy, which revealed that it was "composed of oxidized cellulosic material, which is consistent with old papyrus."

Radiocarbon measurements of the papyrus fragment were carried out by accelerated mass spectrometry twice, first showing the fragment dated between 681 and 877 CE, then showing it dated between 648 and 800 CE (median 718 CE).

**This papyrus was a fragment of the Gospel of John: nothing in the laboratory tests suggested it was a modern forgery . . . but it is.**

Since seeing images of the papyrus fragment on Harvard Divinity School's website last Thursday, Christian Askeland has demonstrated that this Gospel of John fragment simply cannot be a genuine ancient manuscript. It shares all 17 of its line breaks with another manuscript of John (Codex Qau). Given that scribes had different size handwriting, page widths varied, etc., authentically ancient manuscripts just don't have this kind of similarity with each other.

And they certainly NEVER have the same kind of relationship [Askeland has noted here](#). The recently examined Gospel of John fragment copies every *other* line break from Codex Qau . . . with one exception. The last two line breaks copied from Codex Qau are consecutive – it's a page break in an edition of the codex published in 1924 that separates them instead.

While science has given us many exciting and powerful tools that can be used in laboratory analysis, these tools unfortunately can't always answer the questions we would like. In the future study of manuscripts, we would all be better served if we gave other types of analysis (textual, paleographic, etc.) the consideration they genuinely deserve.

If one modern forgery could escape detection in laboratory tests, is there any reason to suspect that another couldn't as well?

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Dorothy Horwitz  
8429 E. Village Lane  
Rosemead, Ca 91770-4329

Tel 626 571 0653

April 3, 2012

Wells Fargo Bank, NA.  
161 N. Concord Exchange  
St. Paul MN 55075-1139

Gentlemen:

Enclosed please find the following documents:

Acct# 3401478572	Edison International Certificate	Completed stock power form with a Medallion Stamp 200 shares
Acct #3401478572	Rockwell Collins Certificate	Completed stock power form with a Medallion Stamp 800 shares
Acct#3402553065	Viacom Inc. Book Entry	Completed stock power form with a Medallion Stamp 217 shares

Please issue new certificates for the above three companies in the name of  
DOROTHY HORWITZ FAMILY TRUST

Please mail new certificates to: Dorothy Horwitz  
8429 E. Village Lane  
Rosemead, Ca 91770-4359

Thank you.

Dorothy Horwitz  
encl

H-0189



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## FORENSIC SCIENCE COMMUNICATIONS

July 2005 - Volume 7 - Number 3

### Research and Technology

#### *Forensic Analysis of Blue Ballpoint Pen Inks Using Capillary Electrophoresis*

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 Chemist  
 Federal Bureau of Investigation  
 Laboratory  
 Chemistry Unit  
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Kristin A. Hagan  
 Oak Ridge Institute for Science and Education Visiting Scientist  
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[Abstract](#) | [Introduction](#) | [Experimental Samples](#) | [Capillary Electrophoresis](#) | [Electrospray Ionization Mass Spectrometry](#) | [Results and Discussion](#) | [Conclusion](#) | [References](#)

### Abstract

Ink analysis involving the determination of specific chemicals can be a useful forensic tool in pen formula differentiation. Thin-layer chromatography is the most widely used forensic technique for ballpoint pen ink examinations; however, limited information is obtained. To address this issue, capillary electrophoresis using an ultraviolet-visible photodiode array detector was employed as an alternative analytical tool. Results were compared with thin-layer chromatography experiments to evaluate the sensitivity and usefulness of capillary electrophoresis. Dye components are rapidly separated, and identification is based on comparison of electrophoretic mobility values and ultraviolet-visible spectra with individually run dye standards. A database of ballpoint pen ink analyses and common-dye reference standards has been initiated for future forensic use. Capillary electrophoresis sample-preparation protocols were designed to closely mimic common procedures for handling ink evidence. Because of the small volume necessary for sample injection, the remaining solution could be further processed using current law enforcement procedures to obtain complementary data. Capillary electrophoresis method development, electropherograms, electrophoretic mobility values, ultraviolet-visible spectra, and electrospray ionization mass spectrometry data are reported.

### Introduction

Chemical analysis of questioned documents is an important tool available to forensic examiners. Ink-source comparisons are commonly conducted in casework involving such crimes as tax evasion, insurance fraud, and currency counterfeiting. For example, the recent Martha Stewart conviction partially relied on ink-source-comparison evidence regarding a suspected stock worksheet alteration (Associated Press 2004). A questioned entry on the document was compared to the bulk writing. Differences in the ink samplings suggested that the questioned entry was made on a separate occasion, possibly to cover up insider trading violations. The majority of ink comparison analyses focus on colorant determination because ink formulations tend to have unique, organic dye formulations (Fanali and Schudel 1991; Rhode et al. 1997; Tebbett 1991; Xu et al. 1997; Zlotnick and Smith 1998). In addition, the dyes have ultraviolet-visible absorbances that can be measured and used for identification. Separating ink into its components prior to detection is desirable to simplify identification.

Thin-layer chromatography of ink extracts is the most common technique used by law enforcement agencies for ink-source comparisons (Tebbett 1991; Xu et al. 1997). The U.S. Secret Service maintains an ink library that consists of approximately 8,500 ink-standard thin-layer chromatography slides. Thin-layer chromatography is relatively easy to perform; however, it has disadvantages. First, thin-layer

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Thin-layer chromatography is relatively easy to perform, however, it has disadvantages. First, thin-layer chromatography is not typically automated; thus the spotting of a slide and the measuring of retardation factor ( $R_f$ ) values are difficult to reproduce. In addition, spectroscopic data is not obtained, although densitometry can be used to analyze spots for quantitative data when compared to a standard, assuming that the chemical identity is known (Aginsky 1994). Oftentimes the spots are faint, rendering them hard to see. In this case, the spots can readily disappear in a matter of minutes. If an ink sample is composed of two or more similar dyes, then thin-layer chromatography can result in two or more unresolved spots with nearly identical colors. This scenario requires multiple runs with different solvent systems, which is time-consuming. Thin-layer chromatography reference slides should be stored in a special environment to prevent spot fading, which requires control of such factors as humidity and ultraviolet radiation exposure. In some cases, photographs of slides may alleviate the need to store reference slides.

Capillary electrophoresis addresses many of these concerns. Capillary electrophoresis is a powerful separation technique that produces theoretical plate counts on the order of 10 to 100 times greater than high-performance liquid chromatography (Skoog et al. 1998). The process is completely automated, and method development is rapid. A photodiode array detector can be used to obtain ultraviolet-visible spectra of each component. Capillary electrophoresis methods can be readily developed to baseline separate analytes with nearly identical structures (Lurie et al. 2004). Data is stored electronically, allowing the development of an automated, searchable library of electropherograms and ultraviolet-visible spectra, while eliminating the need for an environmentally controlled storage space. Other detectors are available and often can be swapped in and out with simple modules. Capillary electrophoresis requires an injection volume of only approximately 5–50 nL, which leaves enough sample for analysis by complementary methods because a typical casework ink extract is on the order of 15–50  $\mu$ L. This is an important feature for real casework samples because multiple confirmatory exams often are necessary. In this study, excess sample was analyzed by direct infusion into an electrospray ionization mass spectrometer.

Electrospray ionization is a soft ionization technique that results in multiply charged species and minimal fragmentation. This can be useful when analyzing mixtures because the mass spectra are simplified. Also, larger masses can be detected with a normal scan range because of the multiple charging. Ng, Lafontaine, and Brazeau published a study on ballpoint pen ink characterization by direct infusion to an electrospray ionization mass spectrometer (Ng et al. 2002). Seventy-seven inks were analyzed and used to create a searchable library. Conneely, McClean, Smyth, and McMullan reported on Phthalocyanine and Azo dyes using electrospray ionization mass spectrometry and matrix-assisted laser desorption/ionization mass spectrometry (Conneely et al. 2001). In particular, the behavior of sulphonate groups in Copper Phthalocyanine pigments was of interest because of the presence of these pigments in blue ballpoint pen inks. According to their results, the sulphonate groups are labile, producing some fragmentation in the electrospray ionization mass spectrometry experiment. Huang, Yinon, and Sigman used liquid chromatography with ultraviolet-visible detection coupled to an electrospray ionization mass spectrometer to study extracted textile fiber dyes in forensic size samples (Huang et al. 2004). Six extracted dyes were characterized with comparison to reference standards. As with most mass spectrometer-coupled instruments, extract solvent compatibility remains a concern.

### Experimental Samples

Approximately 50 dye compounds encompassing a variety of colors were obtained from Sigma-Aldrich (St. Louis, Missouri) and the U.S. Secret Service. Figure 1 shows the chemical structures of some dyes and additives that were important in this study. Dyes were used as received to prepare 1 mg/mL stock solutions in methanol. Injection solutions for capillary electrophoresis and electrospray ionization mass spectrometry were prepared from stock solutions as described below. Known-dye-compound analyses were conducted to construct a database incorporating general dye information, electropherograms, electrophoretic mobilities ( $\mu_{ep}$ ), ultraviolet-visible spectra, and electrospray ionization mass spectrometry data. In addition, ultraviolet-visible spectral libraries have been compiled using the software provided with the capillary electrophoresis instruments. The database and spectral libraries were then used for the component determination in ballpoint pen ink samples. Dyes, as well as other ink components, are continuously being added to the database and libraries, particularly when an unknown dye is identified in an ink sample.

### Figure 1: Structures of Dyes and Additives Important to Differentiate Among Ink Formulations

Ink samples were prepared by two methods. To generate the first sample set, lines were handwritten on Whatman (Ann Arbor, Michigan) filter paper with blue pens that were obtained from the FBI's collection. A second approach involved using the pen cartridges to saturate the filter paper to create more concentrated samples. An additional series of ink samples was obtained from the U.S. Secret Service ink library. These samples consisted of some handwritten lines on paper and some ink-saturated filter paper. Samples obtained from the U.S. Secret Service were accompanied with formula information, which was used to determine the accuracy of the capillary electrophoresis methods.

### Capillary Electrophoresis

The existence of cationic (basic) and anionic (acidic) dyes in ink and their opposite Coulombic interactions with the capillary wall necessitated the development of two separate capillary electrophoresis methods (Egan et al. 2005).

#### Cationic Dye Capillary Electrophoresis Method

A Beckman Coulter (Fullerton, California) P/ACE MDQ capillary electrophoresis system fitted with a photodiode array module ( $\lambda = 200\text{--}600$  nm) was used for cationic dye separations. A 75  $\mu$ m inner diameter fused-silica capillary with a length to detector ( $L_d$ ) of 30 cm and a total capillary length ( $L_t$ ) of 40 cm was used. Separations were performed at 30°C in reverse-polarity mode at  $-25$  kV after completion of the rinse sequence (Egan et al. 2005). These conditions resulted in electrical currents of  $\sim -42$   $\mu$ A. The separation buffer consisted of a 70/30 (volume/volume) mixture of sodium acetate buffer/methanol titrated to pH = 4.40 with concentrated glacial acetic acid [Fisher Scientific, Fairlawn, New Jersey; TraceMetal grade (99.5 percent)]. The sodium acetate buffer portion was composed of 25 mM sodium acetate [Fisher, HPLC grade (99.2 percent)], 25 mM glacial acetic acid, and 10 mM CTAB [hexadecyltrimethylammonium bromide,

Sigma-Aldrich (99 percent)] Barnstead (Dubuque, Iowa) NANOpure Infinity ultrapure water ( $\rho \geq 18$



Sigma-Aldrich (St. Louis, Missouri) and Alfa Aesar (Alpharetta, Georgia) reagents were used to prepare all aqueous solutions. A syringe equipped with a 0.2  $\mu\text{m}$  filter was used to remove particles when transferring the separation buffer to the capillary electrophoresis vial.

Dye stock solutions were diluted with an appropriate amount of methanol followed by two parts by volume of separation buffer for stacking purposes (Shihabi 2000) to form 100  $\mu\text{g}/\text{mL}$  dye injection solutions. In order to prepare ink injection solutions, the ink was first extracted from the paper substrate. An Electron Microscopy Sciences (Fort Washington, Pennsylvania) 1.0 mm diameter core sampler was used to remove punches from the filter paper. The punches were then placed in 200  $\mu\text{L}$  vials with 10  $\mu\text{L}$  of methanol. One punch was sufficient for ink-saturated filter-paper samples, whereas handwritten line samples required up to five punches. The vial was placed in an ultrasonic bath for five minutes to assist in ink extraction. Twenty  $\mu\text{L}$  of separation buffer was then added to the extract solution and mixed thoroughly. The paper punches were removed by transferring the extraction solution to a new vial. Hydrodynamic sample injection was performed at 0.3 psi for five seconds.

#### Anionic Dye Capillary Electrophoresis Method

A Hewlett Packard/Agilent 3D (Palo Alto, California) capillary electrophoresis instrument equipped with a photodiode array detector ( $\lambda = 190\text{--}600\text{ nm}$ ) and a 75  $\mu\text{m}$  inner diameter fused-silica capillary of  $L_d = 50\text{ cm}$  and  $L_t = 58\text{ cm}$  was used for anionic dye separations at 30°C. Separations took place in normal polarity mode at 25 kV, which produced electrical currents of  $\sim 19\text{ }\mu\text{A}$ . The buffer consisted of 25 mM CHES [2-(N-Cyclohexylamino)ethanesulfonic acid, Sigma-Aldrich] and 5 mM  $\beta$ -cyclodextrin (Sigma-Aldrich) titrated to pH = 8.80 with 1 M NaOH.

The concentration of anionic dye injection solutions was 100  $\mu\text{g}/\text{mL}$  in methanol. Ink solutions were prepared by placing 1.0 mm punches (one to five) in 30  $\mu\text{L}$  of methanol followed by five minutes of ultrasonic agitation. Paper dots were removed by transferring the extract to a new vial. Hydrodynamic sample injection was conducted at 25 mbar for ten seconds for dyes and inks.

#### Electrospray Ionization Mass Spectrometry

A Finnigan (San Jose, California) MAT LQC quadrupole ion trap mass spectrometer operated in direct infusion electrospray ionization mode was used for all mass spectrometry analyses. The instrument was calibrated and tuned using the established methods with the manufacturer-supplied tuning solution, which is a mixture of caffeine, MRFA (L-methionyl-arginyl-phenylalanyl-alanine acetate $\cdot\text{H}_2\text{O}$ ), and Ultramark 1621 (Finnigan, San Jose, California). A 5  $\mu\text{g}/\text{mL}$  Crystal Violet in methanol solution was used with the auto-tune feature to optimize the instrument in the positive-ion mode. This optimization resulted in a spray voltage of +4.52 kV, a spray current of 0.19  $\mu\text{A}$ , and a capillary voltage of +10.39 V. A 10  $\mu\text{g}/\text{mL}$  Metanil Yellow solution in methanol was used to auto-tune the negative-ion mode, which resulted in a spray voltage of +5.83 kV, a spray current of 5.17  $\mu\text{A}$ , and a capillary voltage of -28.55 V. The sheath gas flow was set at 20 (arbitrary units), whereas no auxiliary gas flow was used. The quadrupole ion trap mass analyzer was set to full scan mode to monitor a mass/charge ( $m/z$ ) range of 150 to 2000 in both positive- and negative-ion modes. Samples were infused into the ionization source using a syringe pump at 20  $\mu\text{L}/\text{minute}$  with the capillary temperature set at 200°C. Dye solutions, which were prepared by dilution of stock dye solutions, were composed of 10  $\mu\text{g}/\mu\text{L}$  in methanol. Ink samples were prepared by placing five 1.0 mm punches in 400  $\mu\text{L}$  of methanol followed by five minutes of ultrasonic agitation.

## Results and Discussion

### Electrospray Ionization Mass Spectrometry as a Complementary Technique

Capillary electrophoresis separations of prepared cationic and anionic dye mixtures were reported in a previous publication (Egan et al. 2005). Figure 2 shows a typical result for a six-cationic-dye mixture using the cationic dye capillary electrophoresis method. The first three peaks (3.14, 3.35, and 3.60 minutes) are assigned to Rhodamine Base B, Rhodamine 6G, and Hexamethylpararosaniline (more commonly referred to as Crystal Violet), respectively. These assignments were made based on  $\mu_{ep}$ 's and ultraviolet-visible spectra. The last three peaks (3.74, 4.41, and 4.59 minutes) are attributed to Victoria Blue R, Victoria Blue B, and Victoria Pure Blue BO, respectively. Peak assignment using ultraviolet-visible spectra is difficult because these Victoria Blue dyes have similar structures (Figure 1c) and, hence, similar ultraviolet-visible absorbance profiles (Figure 3). Therefore, assignments were made based on  $\mu_{ep}$  comparisons of the peaks to the  $\mu_{ep}$ 's of the individually measured Victoria Blue reference dyes. In this case it was possible to successfully identify the Victoria Blue dyes in the mixture because it was known that all three were present and all that had to be done was to differentiate them. However, the  $\mu_{ep}$ 's of Victoria Blue B and Victoria Pure Blue BO are similar enough that if an unknown ink sample resulted in a cationic dye peak with an ultraviolet-visible spectrum that is a close match for a Victoria Blue dye, it would only be possible to differentiate Victoria Blue R based on  $\mu_{ep}$ . Therefore, electrospray ionization mass spectrometry was employed as a complementary technique to elucidate among closely related structures, as well as to support all peak assignments. Each Victoria Blue dye gives a distinct peak in positive-ion mode electrospray ionization mass spectrometry: Victoria Blue R  $[\text{M}-\text{Cl}]^+ = 422.5\text{ }m/z$ , Victoria Blue B  $[\text{M}-\text{Cl}]^+ = 470.6\text{ }m/z$ , and Victoria Pure Blue BO  $[\text{M}-\text{Cl}]^+ = 478.6\text{ }m/z$ , which allows the assignment of a specific Victoria Blue dye structure.

**Figure 2: Cationic Dye Capillary Electrophoresis Method Electropherogram of a Six-Basic-Dye Mixture ( $\lambda_{\text{observed}} = 214\text{ nm}$ )**

**Figure 3: Independently Measured Ultraviolet-Visible Spectra of Victoria Blue B (Red), Victoria Blue R (Green), and Victoria Pure Blue BO (Blue)**

### Capillary Electrophoresis of Blue Ballpoint Pen Inks

As discussed in the introduction, the goal of ink differentiation is not necessarily to determine the exact formulation of questioned ink(s), but rather to show that the inks under scrutiny are different or similar. To this end, a series of ten blue ballpoint pen inks obtained from the FBI's collection was examined using the cationic and anionic capillary electrophoresis methods that were developed. The inks have been

cationic and anionic capillary electrophoresis methods that were developed. The inks have been designated a letter (A-J) in order to protect proprietary information.

Figure 4 shows the electropherograms measured for each pen using the cationic dye capillary electrophoresis method. The pens were also analyzed with the anionic dye capillary electrophoresis method; however, the electropherograms were similar for most of the pens and revealed that few, if any, anionic dyes were present. As will be discussed below, the anionic capillary electrophoresis method did provide supportive data for the presence of a specific pigment. It is worth mentioning that in a previous study on black ballpoint pen inks (Egan et al. 2005), it was discovered that very few cationic dyes were present in black inks; thus the anionic dye capillary electrophoresis method proved the most informative. Differences in the pen formulations are evident upon comparing the electropherograms, with the exception of pens D and E. However, when each peak was assigned using ultraviolet-visible absorbance,  $\mu_{ep}$ , and electrospray ionization mass spectrometry data, each pen was determined to be unique. The complete analysis of pen A will be discussed to provide an example of the data obtained and the determination of the components present.

**Figure 4: Cationic Dye Capillary Electrophoresis Method Electropherograms of Pens A-J Presented on the Same Axes for Comparison Purposes ( $\lambda_{observed} = 214 \text{ nm}$ )**

#### Pen A Results

Figure 5 shows the cationic dye method electropherogram obtained for pen A. Three peaks are observed with migration times of 2.93, 3.10, and 3.60 minutes. Based on the neutral marker (labeled "EOF" for electroosmotic flow), the  $\mu_{ep}$ 's of the species were calculated to be  $-1.41$ ,  $-1.56$ , and  $-1.92 \times 10^{-42} \cdot V^{-1} \cdot s^{-1}$ , respectively, where the negative sign indicates a mobility vector opposing the electroosmotic flow direction. In addition to  $\mu_{ep}$  values, the ultraviolet-visible spectrum of each peak was recorded and is shown in Figure 6. An ultraviolet-visible spectral library search provided the best-match data reported in the figure caption. The first peak (2.93 minutes) is assigned to Crystal Violet based on the ultraviolet-visible spectrum match of 0.9988, as well as the  $\mu_{ep}$  value, which is a close match to the independently measured  $\mu_{ep}$  of Crystal Violet =  $(-1.45 \pm .03) \times 10^{-4} \text{ cm}^2 \cdot V^{-1} \cdot s^{-1}$ . Additional evidence is provided by the positive-ion mode electrospray ionization mass spectrometry spectrum (Figure 7), which resulted in a peak at  $372.7 \text{ m/z}$ ; Crystal Violet  $[M-Cl]^+ = 372.5 \text{ m/z}$ . In addition, there is a peak present at  $358.7 \text{ m/z}$ , which is indicative of Pentamethylpararosaniline (also known as Methyl Violet)  $[M-Cl]^+ = 358.5 \text{ m/z}$ . Methyl Violet is a common degradation product of Crystal Violet formed by demethylation, which is initiated by ultraviolet radiation absorption (Grim et al. 2002). Ink manufacturers do not purchase dyes in pure form, and it is common to observe such impurities as Methyl Violet in inks. In fact, multiple Methyl Violet structures (Penta- and Tetra-methylpararosaniline) were observed with capillary electrophoresis and electrospray ionization mass spectrometry in the Crystal Violet dye standard (Sigma-Aldrich,  $\geq 90$  percent pure) used in this study. cm

**Figure 5: Cationic Dye Capillary Electrophoresis Method Electropherogram of Pen A ( $\lambda_{observed} = 214 \text{ nm}$ )**

**Figure 6a: Ultraviolet-Visible Spectra of the Peaks from the Electropherogram of Pen A (Blue Line) Overlaid with the Ultraviolet-Visible Spectra of the Best Match from the Spectral Library Searches (Red Line): 2.93 minutes; Best Match, Crystal Violet, Similarity = 0.9988**

**Figure 6b: Ultraviolet-Visible Spectra of the Peaks from the Electropherogram of Pen A (Blue Line) Overlaid with the Ultraviolet-Visible Spectra of the Best Match from the Spectral Library Searches (Red Line): 3.10 minutes; Best Match, Diarylguanidine, Similarity = 0.9693**

**Figure 6c: Ultraviolet-visible spectra of the peaks from the electropherogram of pen A (blue line) overlaid with the ultraviolet-visible spectra of the best match from the spectral library searches (red line): 3.60 minutes; best match, Victoria Pure Blue BO, similarity = 0.9779. Nearly identical matches were obtained with Victoria Blue B and Victoria Blue R.**

**Figure 7: Positive-Ion Mode Electrospray Ionization Mass Spectrum of Pen A**

The second peak (3.10 minutes) is not a dye, as indicated by the absence of visible absorption (Figure 6b). The  $\mu_{ep}$  value ( $-1.56 \times 10^{-4} \text{ cm}^2 \cdot V^{-1} \cdot s^{-1}$ ) is a match with a diarylguanidine component [ $\mu_{ep} = (-1.56 \pm .02) \times 10^{-4} \text{ cm}^2 \cdot V^{-1} \cdot s^{-1}$ ] in the database that was observed in several dye standards. Diarylguanidines are used in the dye industry to form salts with acidic dyes or pigments that otherwise would be insoluble. The positive-ion mode electrospray ionization mass spectrometry peak at  $240.5 \text{ m/z}$  (Figure 7) suggests that the diarylguanidine in pen A is ditolylguanidine (Figure 1d), which would result in a  $[M+H]^+$  peak =  $240.3 \text{ m/z}$ . It is suspected that 1,3-di-*o*-tolylguanidine is used by a particular manufacturer to form salts with sulfonated Copper Phthalocyanine pigments (Figure 1e) (Green 1990). Evidence of Copper Phthalocyanine is provided by the negative-ion mode electrospray ionization mass spectrum shown in Figure 8. The spectrum is noisy because optimal ionization parameters were not explored and Copper Phthalocyanine is insoluble, which resulted in an order of magnitude ion count decrease of the base peak when compared to the positive-ion mode. The base peak ( $1185.2 \text{ m/z}$ ) has not been assigned; however, the presence of multiple sulfonated Copper Phthalocyanines is indicated by the  $m/z^-$  (Conneely et al. 2001), and  $734.3$ , Disulfonated Copper Phthalocyanine  $[M-2Na+H]^-$  (Ng et al. 2002). In fact, each pen that has been observed to contain diarylguanidine(s) was also shown to possess Copper Phthalocyanine pigments as reflected by the  $734$  and  $814 \text{ m/z}$  peaks in the negative-ion mode mass spectra. Sulfonation of Copper Phthalocyanine is reported to lead to multiple sulfonate groups at various ring locations, which explains the observation of multiple peaks (Green 1990). In addition, a weak ultraviolet-visible spectrum believed to be due to Copper Phthalocyanine has been observed with the anionic capillary electrophoresis method in many of the pens containing diarylguanidines. Figure 9 shows an example of the ultraviolet-visible spectrum that is assigned to Copper Phthalocyanine; however, the peak in the

electropherogram is often broad and weak owing to the insoluble nature of Copper Phthalocyanine in the

electrophoresis methods and weak owing to the insoluble nature of copper phthalocyanine in the buffers used, as well as the multiply sulfonated species present. It was determined that capillary electrophoresis methods alone are not reliable for detecting this pigment. This is another good example of the usefulness of electrospray ionization mass spectrometry as a complementary method. peaks of 814.3, Trisulfonated Copper Phthalocyanine [M-3Na+2H]

**Figure 8: Negative-Ion Mode Electrospray Ionization Mass Spectrum of Pen A**

**Figure 9: Ultraviolet-Visible Spectrum of a Peak Obtained from the Anionic Capillary Electrophoresis Method of Pen A Believed to Be Due to Sulfonated Copper Phthalocyanine**

The ultraviolet-visible spectrum (Figure 6c) and  $\mu_{ep}$  ( $-1.92 \times 10^{-4} \text{ cm}^2 \cdot \text{V}^{-1} \cdot \text{s}^{-1}$ ) of the 3.60-minute peak exhibited the characteristics of a Victoria Blue dye, but this data was not sufficient to distinguish between Victoria Blue B and Victoria Pure Blue BO. However, the 478.7 *m/z* peak in the positive-ion mode mass spectrum (Figure 7) allowed the assignment of the peak to Victoria Pure Blue BO, [M-CI]<sup>+</sup> = 478.7 *m/z*.

Based on the data presented, pen A was determined to consist of Crystal Violet and Victoria Pure Blue BO dyes. In addition, pen A was found to also contain ditolylguanidine and sulfonated Copper Phthalocyanine. The same analyses were conducted on the remaining pens in the group. Table 1 is an analysis summary of the pens, presented as a checklist of the dyes and additives that were detected in the pens. As can be seen in the table, the identification of five components (the CuPh column is not necessary) was sufficient to distinguish among the ten pens. Several of the pens contained more than one diarylguanidine compound, which aided in formula differentiation. For example, pen F was observed to possess five diarylguanidines. Capillary electrophoresis of pen F resulted in a cluster of five peaks (Figure 4) with similar  $\mu_{ep}$ 's ( $-1.44, -1.49, -1.58, -1.61, \text{ and } -1.66 \times 10^{-4} \text{ cm}^2 \cdot \text{V}^{-1} \cdot \text{s}^{-1}$ ) and similar ultraviolet-visible spectra (ultraviolet absorption only). In addition, positive-ion mode electrospray ionization mass spectrometry of pen F resulted in peaks at *m/z* of 212.4, 226.3, 240.5, 254.5, and 268.5, which were assigned to 1,3-diphenylguanidine, 1-tolyl-3-phenylguanidine, 1,3-ditolylguanidine, 1-dimethylphenyl-3-tolylguanidine, and 1,3-bis(dimethylphenyl)guanidine, respectively. A study by Ng, Lafontaine, and Brazeau indicated similar findings (Ng et al. 2002). The number of different diarylguanidines used in a dye formulation appears to be manufacturer-specific. As an example, capillary electrophoresis of several dye standards from a particular manufacturer has resulted in the same characteristic cluster of diarylguanidines as seen in pen F, whereas another manufacturer's dyes contained only ditolylguanidine analogous to pen A. The type and quantity of diarylguanidines in an ink sample provide another degree of formula differentiation, which could be particularly useful if comparing pens that possess the same dyes but from different dye manufacturers.

**Table 1: Checklist of Components Identified in Pens A-J**

PEN	CV	VBB	VBBO	VBR	Guan	CuPh
A	Y		Y		Y(1)	Y
B	Y	Y			Y(2)	Y
C	Y				Y(1)	Y
D	Y		Y			
E	Y	Y				
F	Y				Y(5)	Y
G		Y			Y(2)	Y
H			Y			
I			Y	Y		
J		Y				

**CV = Crystal Violet; VBB = Victoria Blue B; VBBO = Victoria Pure Blue BO; VBR = Victoria Blue R; Guan = Ditolylguanidine and related diarylguanidine structures (number of peaks detected in parenthesis); CuPh = sulfonated Copper Phthalocyanine pigment**

The capillary electrophoresis methods used in this study are not limited to ballpoint pen inks. Experiments have shown that food dyes, textile dyes, and ink-jet dyes can be separated and identified using the anionic and/or cationic dye capillary electrophoresis methods. Acid Yellow 23 (also known as Yellow Food Dye No. 5 or Tartrazine) was identified in a boiled-down sample of Mountain Dew soda (PepsiCo, Chicago, Illinois) using the anionic capillary electrophoresis method (Egan et al. 2005). The  $\mu_{ep}$ 's of the assigned capillary electrophoresis peak and a separately measured Acid Yellow 23 dye standard were nearly identical, and a good spectral match was obtained between the ultraviolet-visible spectra. Two textile dyes, Basic Red 18 and Basic Red 29, which have similar  $\mu_{ep}$ 's, were baseline-resolved using the cationic dye capillary electrophoresis method. Dye identification was achieved by comparison of  $\lambda_{max}$  and the overall ultraviolet-visible absorption spectra. Studies have been initiated recently on ink-jet dyes. Anionic capillary electrophoresis analysis has shown promise on extractions from colored ink-jet samples. Initial findings suggest that ink-jet dyes are different from ballpoint pen ink dyes in that they are multiply charged and have larger absolute  $\mu_{ep}$  values.

**Conclusion**

A capillary electrophoresis buffer system was developed to separate basic, cationic organic dyes for forensic ink analysis applications. The cationic dye capillary electrophoresis method was used to successfully differentiate ten blue ballpoint pen inks that were extracted from mock forensic samples. Identification of five components (dyes and additives) was sufficient to distinguish the inks. Differentiation of ink with the same observed dye formulations was aided by manufacturer-specific additive identification. Direct infusion electrospray ionization mass spectrometry was used to confirm the assignment of capillary electrophoresis peaks. Initial experiments suggest that the combination of the cationic dye capillary electrophoresis method reported here and a separately reported anionic dye capillary electrophoresis

method (Egan et al. 2005) can be applied to food dyes, textile dyes, and ink-jet dyes.

method (Egan et al. 2005) can be applied to blue dyes, red dyes, and ink jet dyes.

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Signatures

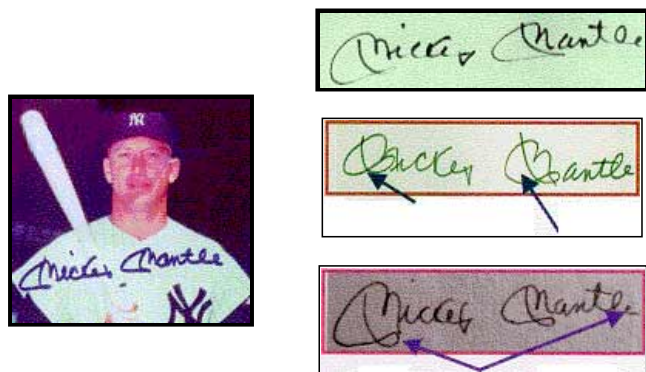


Figure 5. Mickey Mantle's genuine signature is shown top right. The next signature, middle right, is an attempt to imitate Mickey Mantle's signature by means of simulation, which is created by copying an actual model or a mental image of a genuine signature. The third signature, below right, is a traced signature executed by actually following the outline of a genuine signature or overlaying a genuine signature and using transmitted light to follow the line of writing.

**Peter Weinberger Kidnapping**

On July 4, 1956, one-month-old Peter Weinberger was kidnapped from his home in Westbury, Long Island, New York (Dorman 1998). A ransom note scrawled in green ink on a sheet torn from a student notebook was left in his baby carriage. The note said, "Attention, I'm sorry this had to happen, but I am in bad need of money, & couldn't get it any other way. Don't tell anyone or go to the police about this, because I am watching you closely. I am scared stiff, & will kill the baby at your first wrong move . . . Your baby sitter." See Figure 6.

Handwriting experts from the FBI Laboratory went to New York to participate in the investigation. The examiners found the ransom note contained distinguishing characteristics in 16 letters of the alphabet. Most unusual was the kidnaper's lower-case script "m," which resembled a sideways "z." Investigators searched through nearly two million handwriting specimens from public records trying to find similar writing.

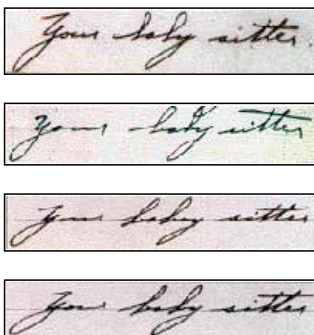


Figure 6. Signatures from the Weinberger kidnapping case. From top to bottom, the photographs show signatures from the first and second ransom notes, and the third and fourth signatures are the known handwriting of Angelo LaMarca.

On July 10, the Weinbergers were instructed by telephone to put the ransom money in a blue bag. The bag would be left by a parkway exit sign. A second note was in the bag, repeating the \$2,000 demand. The handwriting seemed to match the first note.

Meanwhile, a federal probation office in Brooklyn discovered in his files a document written by a criminal defendant who formed the letter "m" in the same way as the author of the ransom notes. The writer was Angelo LaMarca, a 31-year-old auto mechanic. Questioned document examiners compared the document and the notes. LaMarca was identified as the author of the ransom notes.

LaMarca admitted kidnapping and abandoning the Weinberger child and took investigators to the place where he had left the child. Little Peter Weinberger had died of exposure.

LaMarca was indicted on charges of kidnapping and first-degree murder. He was found guilty on both counts and executed at Sing Sing Prison in Ossining, New York, on August 7, 1958.

**Typewriter, Typewritten Text, and Typewriter Ribbon Comparisons**

Typewriters, of which there are two basic types, are machines that put an image on paper using hard type. The kind of typewriter (and ribbon) used to prepare a questioned document suggests the examinations possible and may limit the conclusions possible as a result of the examinations. See Figure 7.

A typebar typewriter is one in which the typeface elements are permanently fastened into the machine. Because each machine has permanent nonremovable typeface



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**JAMES A. GREEN**  
*Forensic Document Examiner*

P.O. Box 5379  
Eugene, OR 97405

Phone/fax: (541) 485-0832  
E-mail: qdman777@aol.com

January 22, 2016

Mr. Dennis Solomon  
PO Box 289  
Yarmouth Port, MA 02675

Re: Addendum to the Dorothy Horwitz Family Trust

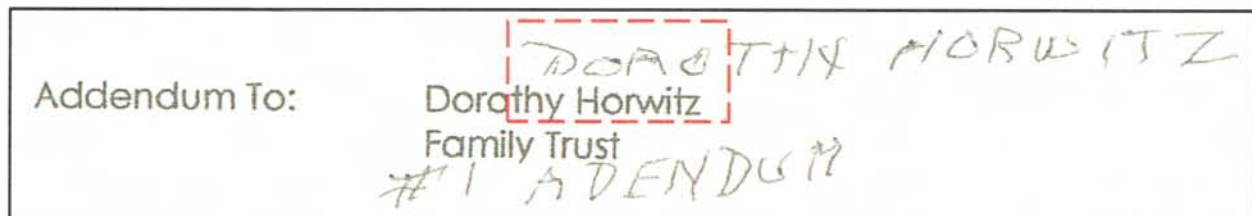
On January 18, 2016 I received the following document for examination from you, via an email attachment:

Questioned:

Q-1: Addendum to the Dorothy Horwitz Family Trust. A handwritten date of 10/31/13 was at the top of the document.

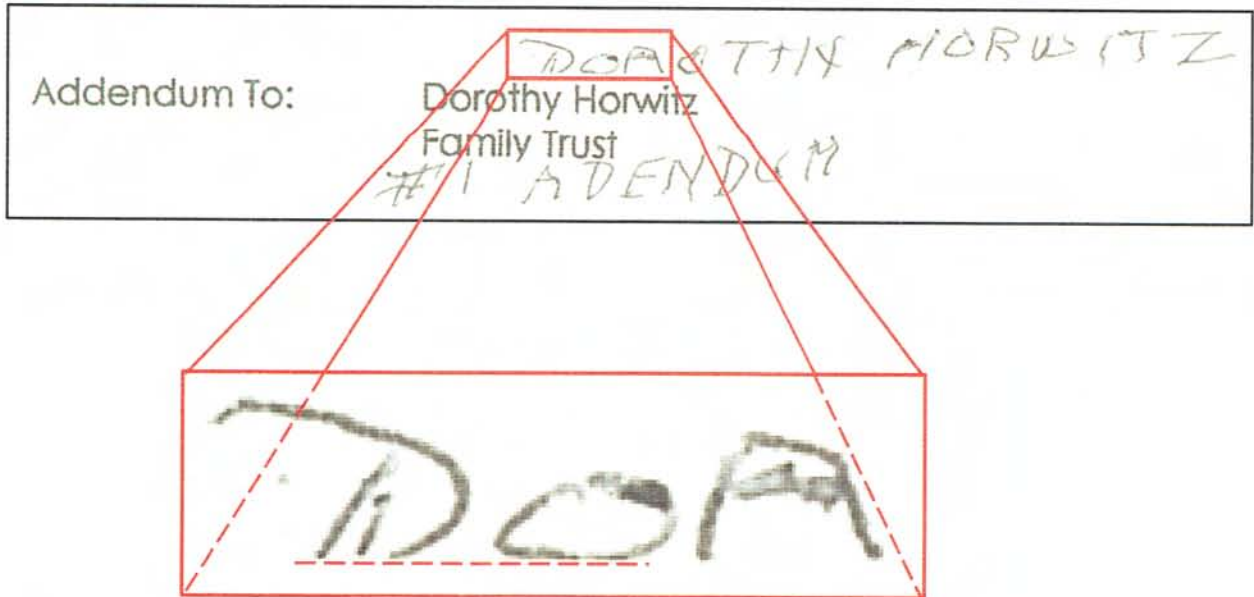
You directed me to examine the upper, printed portion of the document. Specifically, spacing around the printed name of "Dorothy Horwitz" intruded into her hand printed name, above it.

An image of the area of concern is shown below:



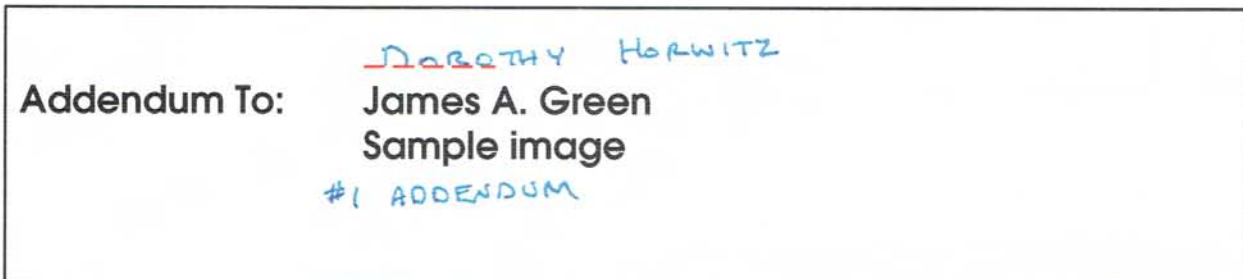
The lower portion of the capital "D", in the hand printed name, appeared to be 'cut off'. The bottom of the "D" seemed to be constructed with three strokes, with the lowest portion of the strokes missing.

An image of the focus area is provided below, with an expanded view:



The copy of the Addendum provided did not show an indication of pen failure in the strokes of the capital "D" or other letters within the name. There was no evidence of smudging, indicative of an erasure process of the lower portion of the "D". Additionally, there was no indication of an obliterating fluid used, such as "Liquid Paper".

The partial obliteration of the "D", and perhaps the bottom of the following "o", may be the result of a text insertion process. The following image is a fabrication created to show how the insertion of a "text box" encroached into the hand printed name of "Dorothy". The text box is an option in Microsoft Word, used to insert text onto images or elsewhere in a document that normal formatting does not allow for.



The image, on page three, shows the outline of the "text box" extending into the hand printed area of the same example. The absence of other voided areas on the page, and the linear direction of the void blank area at the bottom of the "D" on the Addendum, supports the theory of a text box insertion.



Addendum To:

*Dorothy Horwitz*  
James A. Green  
Sample image

*#1 ADDENDUM*

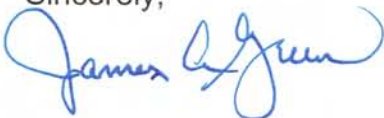
An inspection of the original document is necessary to conclusively identify why there was an absence of the pen strokes in the formation of the "D". There may be an obvious, reasonable explanation for the void.

An examination of the original would also confirm the handwriting was original (made with a writing instrument), or a machine copy (printed with laser or ink jet technology). If the text and hand writing on the entire document was the result of a mechanical printing process, the possibility of a 'cut and paste' fabrication cannot be excluded.

The image provided will be retained in the case file pending any follow-up examination or testimony, if requested.

Attached, as pages four and five, is a current copy of my curriculum vitae.

Sincerely,



James A. Green



Diplomate: American Board of  
Forensic Document Examiners

# James A. Green

## Forensic Document Examiner

PO Box 5379  
Eugene OR 97405  
(888) 485-0832  
jgreen@documentexaminer.info  
www.documentexaminer.info



Member, and past President,  
of the American Society of  
Questioned Document Examiners

---

### *Curriculum Vitae*

#### **Education:**

University of Oregon – Bachelor of Science degree (1992), Sociology

#### **Work experience:**

2000 – Present: Forensic Document Examiner – private practice  
1988 – 2000: Forensic Document Examiner – Eugene OR Police Department  
1976 – 1988: Sworn officer / detective positions – Eugene OR Police Dept.

#### **Professional memberships:**

American Society of Questioned Document Examiners (ASQDE)  
Member since 1997  
Past President – 2012 to 2014  
Other Executive Committee positions – 2004 to 2012

American Academy of Forensic Sciences (AAFS)  
Member since 1995  
Fellow of the Questioned Document Section

Southwest Association of Forensic Document Examiners (SWAFDE)  
Member since 1994

#### **Certification:**

American Board of Forensic Document Examiners – 2004  
Re-certified in 2009 and 2014  
Currently serving as the Treasurer for the ABFDE

#### **Training:**

Regular attendance at training conferences and workshops of the American Society of Questioned Document Examiners, American Academy of Forensic Sciences – Questioned Document Section and the Southwest Association of Forensic Document Examiners.

1991: Two week mentorship at the US Postal Inspection Laboratory, San Bruno, CA.

1989: Attended the two-week USSS Questioned Document Course at the Federal Law Enforcement Training Center, Glynco, GA.

1988 – 1990: Two and one-half year apprenticeship under the supervision of Mr. Donald Norenberg, Forensic Document Examiner at the Eugene OR Police Department.

**Annual Proficiency Testing:**

Collaborative Testing Service, Sterling, VA. 2006 - 2015

**Court testimony:**

<u>Federal Courts:</u>	California	<u>State Courts:</u>	Alaska	Oregon
	Montana		Idaho	Texas
	Oregon		Minnesota	Washington
	Washington		Montana	Wyoming

Foreign Courts: British Columbia, Canada

Testimony given in over 110 cases.

**Publications and Papers presented:**

“Paper Examinations; Consideration of Mineral Fillers”, presented at the annual conference of the American Society of Questioned Document Examiners, Toronto, CN, August, 2015.

“Reliability of Paper Brightness in Authenticating Documents”, published in the Journal of Forensic Sciences, 2011, J1.

“Rubber Stamp Inks”, published in the book, Forensic Examination of Rubber Stamps, by Jan Seaman Kelly © 2002. Charles C. Thomas, publisher.

“Forensic Document Examination”, published in the *Trial Lawyer* (Oregon Trial Lawyers Association), Fall 2001.

Additional papers presented will be provided upon request.

**Training provided:**

Full day seminars to private and government security personnel, sponsored by the Caribbean Institute of Forensic Accounting:

Port of Spain, Trinidad  
Castries, St. Lucia

Workshops were presented several times to the Oregon Association of Licensed Investigators at their annual conferences.



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Forensic Science Communications    October 2009—Volume 11—Number 4  
 Review Article

### **Handwriting Examination: Meeting the Challenges of Science and the Law**

#### **Diana Harrison**

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 Questioned Documents Unit  
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 Quantico, Virginia

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 | [Standards](#) | [Conclusion](#) | [Acknowledgment](#) | [References](#)**

#### **Introduction**

Handwriting is a complex motor skill that is the combination of sensory, neurological, and physiological impulses. Factors such as visual perception and acuity, comprehension of form, central nervous system pathways, and the anatomy and physiology of the bones and muscles of the hand and arm all combine to produce the desired output (Hilton 1982; Huber 1999).

Most people learn to write by copying letter formations from a copybook at a young age. The ability to reproduce the letter formations varies from one person to the next and is based on each writers perception of the image and his or her ability (motor skills) to reproduce that visual perception. The act of handwriting is mastered through practice and repetition. Once this occurs, writers focus on the subject matter rather than the physical act of writing and deviate from the copybook forms, interjecting their own individual characteristics. The writing becomes a pattern of subconscious, habitual formations that are repeated from one writing to the next (Hilton 1982; Huber 1999).

The comparison and evaluation of these individual features or habits enable forensic document examiners to identify or exclude, if possible, a known writer as the source for any questioned writing. Lay people may recognize the handwriting of an individual and differentiate between individuals to some degree; however, they observe only the gross features of the handwriting, such as letter formation, size, or slope of the handwriting. Lay people typically do not consider the subtleties in the writing that may differentiate it from other very similar writing. In contrast, document examiners analyze and can differentiate both the gross features and the less conspicuous elements in the writing.


Handwriting features that examiners evaluate include the size and slope of the writing, pen pressure, pen lifts, the spacing between words and letters, the position of the writing on the baseline (the position of the character in relation to the ruled or imaginary line), height relationships, beginning and ending strokes, and line quality. A writers identity cannot be established through a single individual feature in the writing. Rather, identity is established through a combination of the significant features between the writings, with no significant differences.

Figure 1 demonstrates the visual similarity of size, slope, and general formation of such letters as the uppercase S and lowercase a, d, e, f, n, and r. However, a more detailed examination reveals inconsistencies between the two writings (see Figure 2), such as the number of strokes used to form the uppercase R (two versus one), the ending stroke on the lowercase y (straight versus curved), the

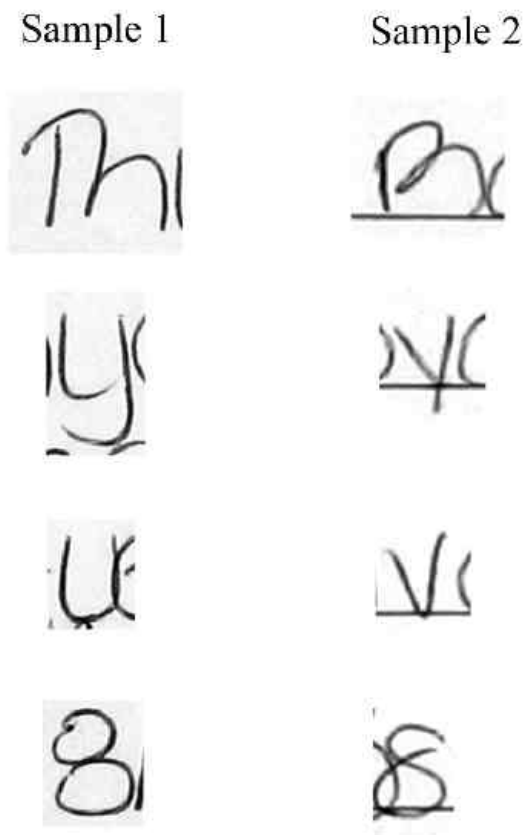
formation of the lowercase v (straight versus curved) and the structure of the

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 Two handwriting samples that illustrate similarities between them

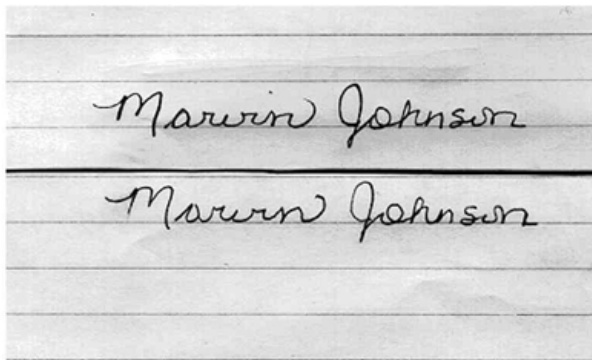
**Figure 1: Two handwriting samples that illustrate similarities between them**



**Figure 2: A closer look at the samples from Figure 1 reveals differences between the writing in each sample.**

Not all handwriting is identifiable. For example, when a person traces another individual's signature, that person imitates the writing habits of the original signer, and therefore, the imitator's own handwriting characteristics are not manifested in the tracing. The forensic document examiner would be able to identify the writing as a tracing and associate the writing back to the model signature, if available, but would not be able to identify the writing with the person who traced the signature. Figure 3 illustrates this concept.

In Figure 3, the bottom signature is a tracing of the genuine signature on top, and although they may appear identical, they actually were prepared by two different writers. In fact, the absence of sufficient variation between these two signatures would immediately alert the experienced document examiner to examine the signatures for signs of manipulation, tracing, or simulation.



**Figure 3: Two signatures prepared by different writers**

The Scientific Foundation for Handwriting Analysis

**Individuality**

The principle of individuality, also known as the principle of uniqueness, forms

the principle of individuality, also known as the principle of uniqueness, forms the basis for handwriting analysis. That is, no two writers share the same combination of handwriting characteristics given sufficient quantity and quality of writing to compare. Albert S. Osborn (1929) detailed in great length the principle of individuality in the second edition of *Questioned Documents*, stating, "The amount of writing must necessarily always be considered, but total coincidence of all characters is so remote that even identity of a small amount of writing is very improbable." Throughout the 20th century, Livingston (1963), Muehlberger et al. (1977), Huber (1990), Horton (1996), and others conducted small studies that evaluated the frequency of occurrence of handwriting characteristics in order to demonstrate the principle of uniqueness.

Beacom (1960), Gamble (1980), and Boot (1998) compared the handwriting of twins and other individuals of multiple births. Twins typically share the same environmental influences, study in the same school systems at the same time, and, in the case of identical twins, share the same DNA. Therefore, one would expect the handwriting of twins to be more similar than the writings of any other individuals. In fact, identical twins have been found to share a high degree of similarity in their handwriting. However, these studies, which involved more than 200 sets of twins, all found that trained examiners were able to distinguish between all of the twins' writings.

Finally, anecdotal reports and field screenings by Harvey and Mitchell (1973), Baxendale and Renshaw (1979), Shiver (1996), and others have been useful in demonstrating the principle of uniqueness. These scenarios all involved comparing questioned writing with known writing from between 1000 and 2 million individuals. In each case, examiners identified the writer of the questioned document.

The most famous of these cases was the kidnapping of Peter Weinberger, a one-month-old baby from Long Island, New York. Examiners compared two ransom notes left by the kidnapper with handwriting specimens maintained by the New York State Motor Vehicle Bureau and various federal, state, and local offices. After examining and eliminating more than 2 million samples, examiners identified the writer (Federal Bureau of Investigation n.d.).

In 2002, Dr. Sargur Srihari and colleagues conducted a study to test the principle of individuality. A sample of 1500 individuals from the general U.S. population was collected and entered into a database. The sample population comprised men and women of different ages and ethnicities. Each individual provided three handwritten samples that captured the various attributes of the written English language such as document structure (e.g., word and line spacing, line skew, margins); positional variations of the letters (i.e., each letter in the initial, middle, and terminal positions of a word); and letter and number combinations (e.g., *ff*, *tt*, *oo*, *00*). A computer software program (CEDAR-FOX) was developed to extract macro-features (slant; word proportion; and measures of pen pressure, writing movement, and stroke formation) from the entire document, from a paragraph in the document, and from a word in the document. It was also used to extract micro-features (gradient, structural, and concavity features) at the character level of the document. Based on only a few macro- and micro-features, Srihari et al. established that the writer of a particular sample can be identified with 98 percent confidence. Inferring these statistics over the entire U.S. population, writer identification can be established with 96 percent confidence. Srihari suggested that "by considering finer features, we should be able to make this conclusion with a near 100 percent confidence [that the writer can be identified]" (2002).

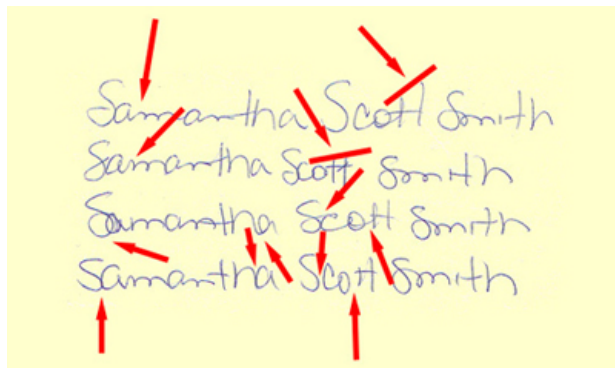
An additional study by Srihari and colleagues in 2008 further supported the principle of individuality. This study also involved the evaluation and comparison of handwriting by twins. Writing samples were obtained from 206 pairs of twins from 150 different cities and seven different countries, as well as 412 individuals ("nontwins") from the general U.S. population. The study evaluated four areas: (1) comparison of twins handwriting with those of nontwins, (2) comparison of writings in which the textual content of the writing was different, (3) comparison of fraternal and identical twins handwriting, and (4) comparison of system versus human performance. The CEDAR-FOX system was again used to evaluate the handwriting for the same style and macro- and micro-features as in the previous study, as well as for additional features not previously evaluated. The system verification error rate for twins was higher than that of nontwins, and the system verification error rate for nontwins was consistent with Srihari et al.'s previous study. The study also found that the system performed better than the layperson but was unable to reach the performance level of the qualified expert.

### Variation

No one person writes exactly the same way, even within several repetitions of writings. This is known as natural variation, or intra-writer variation, and represents the second principle of handwriting analysis.

Human beings are not capable of machine-like precision and repetition. As a result of the neuromuscular process, some variation in style (formation) is expected. Variation is an integral part of an individual's writing. It describes the changes and deviations, often minute, that are found in repeated samples of one person's writing. More specifically, variation refers to the different way(s) that a

person's writing, more specifically, variation (due to the different ways) that a writer makes each letter or character. This variation is normal and serves as an added factor to personalize and individualize writing. As Figure 4 demonstrates, natural variation in an individual's writing prevents superimposed samples by the same individual from aligning perfectly.



**Figure 4: Four signatures written by the same individual, demonstrating variation**

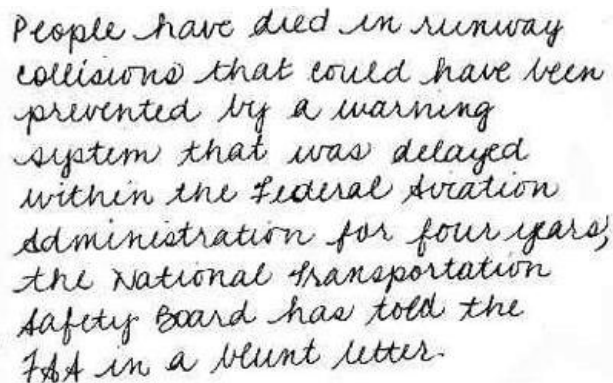
In the first two signatures, the initial stroke of the *m* is wider in the first and higher in the second "Samantha." In the word "Scott," the arrows point to the height differences between the two *f*'s. The third and fourth signatures show the spacing differences between the *S* and the *a* and the *h* and the *a* in "Samantha," as well as the differences in connecting strokes between the *S* and the *c* and the *o* and the *t* in the word "Scott."

The duration, extent, and speed involved in the coordination of an activity such as handwriting are so complex and may be combined in so many ways that it is virtually impossible to duplicate all parameters exactly. In this way, a variation in performance can and will occur between repetitions of an action by the same person (Rhodes 1978).

#### Writing Skill

Every writer has a writing skill that cannot be dramatically improved in a short time frame while maintaining all appearances of natural writing. For this reason, the third principle of handwriting analysis is skill level, or the writer's ability to physically reproduce the letter formations they visualize. Skill level is not necessarily related to legibility or an individual's education level. Individuals can write *at or below* their skill level but not *above* their skill level. Figures 5 and 6 show two writing samples prepared by two sisters with a five-year age difference who attended the same schools and grew up in the same environment.

This is a handwriting sample for Lorie. She said my hand writing looks like chicken scratch. I don't think that my hand writing is bad at all. In fact I can always read it. She also knows that I have to wear a brace ON my wrist for a while.



People have died in runway collisions that could have been prevented by a warning system that was delayed within the Federal Aviation Administration for four years; the National Transportation Safety Board has told the FAA in a blunt letter.

**Figure 5 on the top: Low-skilled writer**

**Figure 6 on the bottom: High-skilled writer**

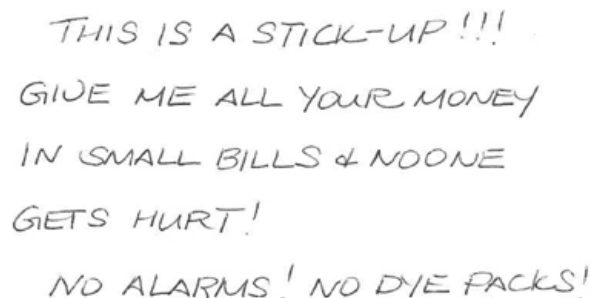
An individual's known writing, including past writings or writings completed during the regular course of business, enable document examiners to assess the individual's skill level and evaluate the skill level as higher or lower than an evidentiary sample. The author of the writing in Figure 6 would have the skill to produce the writing in Figure 5. In contrast, the author of the writing in Figure 5 would not have the skill to produce the writing in Figure 6.

#### **The Methodology of Handwriting Examination**

When conducting handwriting examinations (cursive writing, hand printing, signatures, or extended writing) FBI Laboratory personnel use a four-step process (ASTM International 2007; Federal Bureau of Investigation 2007). The following sections describe the steps in the process.

Each analysis begins with an independent examination of the questioned and then the known writing using proper lighting and magnification to determine if the writing is original writing (e.g., ink on paper) and whether it exhibits the characteristics of freely and naturally prepared writing. Some of the characteristics of naturally prepared writing include consistent slant and size, thickening and thinning of the lines as the writing instrument changes direction, and tapered beginning and ending strokes that occur once the writing instrument comes into contact with or leaves the paper. Additionally, each body of writing is examined to assess internal consistency, comparability, and variation and to determine the presence or absence of individualizing characteristics. The most suitable writing for comparison is text void of any attempt to disguise and/or distort the writing; however, any writing can be of value for comparison.

Figure 7 demonstrates the appearance of naturally prepared writing represented by smooth line quality, tapered beginning and ending strokes, variation in line width, and consistent slant.



THIS IS A STICK-UP!!!  
GIVE ME ALL YOUR MONEY  
IN SMALL BILLS & NO ONE  
GETS HURT!  
NO ALARMS! NO DIE PACKS!

**Figure 7: A bank-robbery note illustrating naturally prepared writing**



THIS IS A HOLDUP !!  
 EVERYBODY BE CALM -  
 I HAVE A GUN !!!  
 BE QUIET & NO ONE  
 GETS HURT!

**Figure 8: A bank-robbery note illustrating distorted writing**

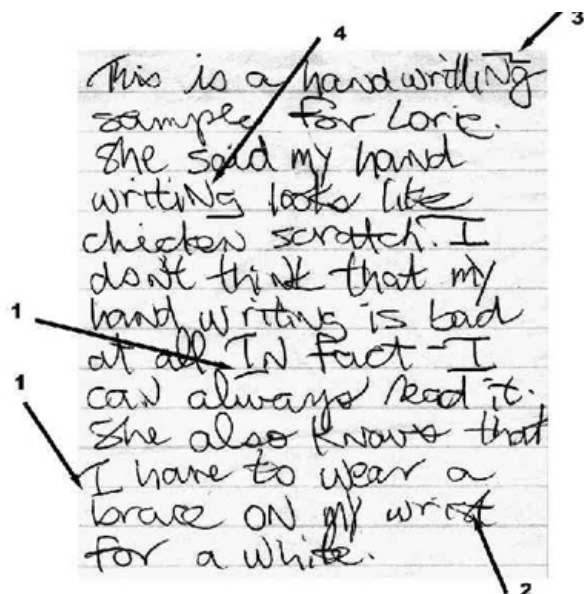
Once a document examiner completes the analysis and determines that the questioned and known writings are suitable for comparison, the examination process progresses to a side-by-side comparison. The examiner observes the numerous features exhibited in the bodies of writing to determine if significant similarities or differences exist. Every document examiner at the FBI Laboratory completes a two-year training program that includes classroom lectures, practical problems, oral boards, testing, and moot courts. This training provides the fundamental knowledge for examiners to understand the significance of the observed characteristics. Examiners also rely on their ability to discern minute form differences. This ability can be established through form-perception testing. Form-perception tests, also referred to as form-blindness tests, consist of geometric shapes and handwritten words and are used to establish the examiners ability to distinguish minute differences in forms, angles, and sizes (Osborn 1975).

The characteristics examiners consider when conducting comparisons are the subtle, subconscious habits of the writer, such as writing in relation to the baseline, the overall formation of the letters, the heights of letters in relation to one another, the manner of connecting letters, the size and spacing of letters, the beginning and ending strokes, pen pressure, and other handwriting characteristics. The document examiner does not consider misspellings as individualizing characteristics of the handwriting.

The following excerpt from ASTM Guide E 2290 (2007) illustrates the extensive list of features document examiners consider during the examination process.

"Among the features to be considered by the examiner are elements of the writing such as abbreviation; alignment; arrangement, formatting, and positioning; capitalization; connectedness and disconnectedness; cross strokes and dots, diacritics and punctuation; direction of strokes; disguise; embellishments; formation; freedom of execution; handedness; legibility; line quality; method of production; pen hold and pen position; overall pressure and patterns of pressure; emphasis; proportion; simplification; size; skill; slant or slope; spacing; speed; initial, connecting, and terminal strokes; system; tremor; type of writing; and range of variation. Other features such as lifts, stops and hesitations of the writing instrument; patching and retouching; slow, drawn quality of the line; unnatural tremor; and guide lines of various forms should be looked for and considered when present. Potential limiting factors such as age; illness or injury; medication, drugs or alcohol (intoxication or withdrawal); awkward writing position; cold or heat; fatigue; haste or carelessness; nervousness; nature of the document; use of the unaccustomed hand; [and] deliberate attempt at disguise or auto-forgery should be considered" (ASTM 2007) because they may not represent the natural handwriting of the individual.

Figure 9 demonstrates some of the characteristics evaluated during an examination. Number 1 demonstrates how the uppercase *I* sits below the ruled line. Number 2 shows the connecting stroke between the *s* and *t*. Number 3 demonstrates how the *N* is higher than the *g*. Number 4 shows the larger size of the *N* when compared to the adjacent letters.



**Figure 9: The handwriting sample from Figure 5, illustrating 1, baseline; 2, connecting stroke; 3, height relationships; 4, size**

The next step in the methodology involves evaluating the significance of the nature and combination of the characteristics observed during the comparison process. This evaluation is based on the examiners training, knowledge, and experience. To identify a body of writing with a particular writer, the examiner must find significant characteristics in common between the questioned and known writing, while observing no significant differences. Each characteristic may not be unique when considered individually, but when coupled with other observed characteristics, the writing is then considered unique to a particular writer. To eliminate a writer as having prepared a questioned writing, an examiner must observe significant differences between the questioned and known writing.

It is not always possible to render an opinion of identification or elimination based on the nature of the questioned and known writing provided for examination. These limitations include evaluation of photocopied specimens, which yield poor detail and clarity and prevent the examiner from properly assessing line quality, connecting strokes, letter formations, and beginning and ending strokes; distorted or disguised writing, which does not exhibit the normal handwriting characteristics of the writer; limited questioned and/or known writing, which may not allow proper assessment of skill level and identifying characteristics; lack of comparable known writing, which does not allow for a thorough comparison of the characteristics observed in the questioned writing; and prior chemical testing on the document, which may hamper subsequent examinations.

Although examiners may not be able to associate a handwriting sample with a specific individual, they can sometimes determine the origin or authenticity of the writing. However, handwriting examinations cannot determine such traits as age, sex, personality, or intent (ASTM 2007).

The final step in the examination process is verification. In this step, another qualified examiner evaluates the writing submitted for comparison using the methodology previously described. In the FBI Laboratory Questioned Documents Unit (QDU), 100 percent of the cases are peer-reviewed by another qualified examiner. QDU examiners also conduct blind reviews in cases meeting previously established criteria.

#### **Conclusions Reached During Handwriting Examinations**

The FBI Laboratory has not established a specific number of "points" or characteristics needed to identify a questioned writing as having been prepared by a particular individual. In order for a forensic document examiner to identify an individual as having prepared a questioned writing, agreement must exist between significant characteristics in the questioned and known writing with no significant differences. The examiner must explain any exceptions.

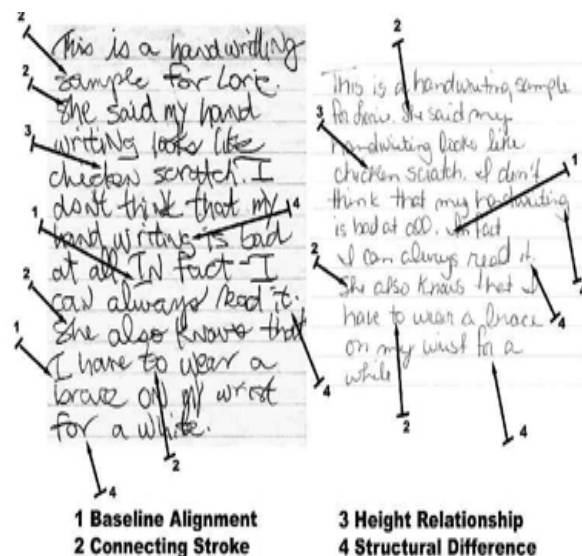
The FBI Laboratory's Questioned Documents Unit uses the following conclusions in handwriting comparisons:

- **Identification**—A determination that the questioned and known writings were prepared by the same writer because of agreement in individualizing characteristics. No differences are present, except for normal variation. Unexplained variations or characteristics are far outweighed by the combined effect of agreement in all other details. No significant limitations are present. Typical wording for this conclusion in

significant limitations are present. Typical wording for this conclusion in an FBI Laboratory report would be: "It was determined that the questioned writing on specimen Q1 was prepared by John Doe, the writer of K1."

- **May Have (Qualified Opinion)**—Indications that specimens being compared were prepared by the same writer. The conclusion is based on the prevalence of characteristics in common between the specimens being compared. However, some doubt or lack of agreement in detail is observed, usually because of some limitation or the presence of characteristics observed in the questioned writing that could not be explained on the basis of the available known writing. Typical wording for this conclusion in an FBI Laboratory report would be: "A definite determination could not be reached as to whether the questioned writing on specimen Q1 was prepared by John Doe, the writer of K1, due to [list limiting factors]. However, handwriting characteristics in common were observed that indicate that John Doe, K1, may have prepared the questioned writing on specimen Q1."
- **No Conclusion**—Cannot determine whether the specimens being compared were prepared by the same writer, usually because of such factors as lack of comparability or lack of clarity and detail in the submitted specimens, which may significantly limit meaningful examinations. In instances when meaningful examinations can be conducted, the weight of the combination of characteristics observed in common is counterbalanced by the weight of the combination of inconsistencies or unexplained characteristics observed. Typical wording for this conclusion in an FBI Laboratory report would be: "It could not be determined whether the questioned writing on specimen Q1 was prepared by John Doe, the writer of K1, due to [list limiting factors]."
- **May Not Have (Qualified Opinion)**—Indications that the specimens being compared were not prepared by the same writer. This conclusion is based on the prevalence of dissimilarities between the specimens being compared. However, some uncertainty remains, usually because of some limitation, the presence of some significant characteristics in common, or the presence of inconsistencies or characteristics observed in the questioned writing that could not be explained as differences based on the available known writing. Typical wording for this conclusion in an FBI Laboratory report would be: "A definite determination could not be reached as to whether the questioned writing on specimen Q1 was prepared by John Doe, the writer of K1, due to [list limiting factors]. However, handwriting inconsistencies were observed that indicate that John Doe, K1, may not have prepared the questioned writing on specimen Q1."
- **Elimination**—A determination that the questioned and known writing were not prepared by the same writer because of sufficient disagreement in individual characteristics. Differences are observed. Any limited similarities are far outweighed by the combined effect of sufficient disagreement in all other details. No significant limitations are present. Typical wording for this conclusion in an FBI Laboratory report would be: "It was determined that the questioned writing on specimen Q1 was not prepared by John Doe, the writer of K1."

In the samples of writing in Figure 10, the baseline of the uppercase *I*, the connecting stroke between the *S* and the *h*, the height of the *k* in relation to adjacent letters in the word, and the structural differences in the *g*, *r*, and *t* are consistently different between the writings, thus illustrating an elimination conclusion.



**Figure 10: The handwriting sample from Figure 5, along with a comparison sample from a different writer, illustrating an elimination conclusion. The number 1s point to baseline alignment; number 2s, the connecting strokes; number 3s, height relationships; and number 4s, structural differences.**

#### Standards

The Technical Working Group for Documents, now the Scientific Working Group for Questioned Documents (SWGDOC), was formed in 1997 to address the need for standards in the forensic document community. SWGDOC's technical experts produce standards and submit them to ASTM International for ballot and eventual publication. ASTM is a voluntary standards development organization for technical standards for materials, products, systems, and services. The ASTM Committee E30 on Forensic Science was established in 1970 and consists of 10 technical subcommittees, one of which is the E30.02 Committee on Questioned Documents. Each standard submitted to ASTM is subjected to a rigorous review process by forensic document examiners and other forensic practitioners, as well as individuals with a general interest in the discipline. This review process ensures clear, concise, and high-quality standards.

To date, the forensic document discipline has published the following 18 standards through ASTM (see <http://www.ASTM.org>). The two-digit number following the hyphen indicates the date of the standard and, as of this writing, is the most current standard available.

- E444-09 Standard Guide for Scope of Work of Forensic Document Examiners.
- E1422-05 Standard Guide for Test Methods for Forensic Writing Ink Comparison.
- E1658-08 Standard Terminology for Expressing Conclusions of Forensic Document Examiners.
- E1789-04 Standard Guide for Writing Ink Identification.
- E2195-02 Standard Terminology Relating to the Examination of Questioned Documents.
- E2285-08 Standard Guide for Examination of Mechanical Checkwriter Impressions.
- E2286-08a Standard Guide for Examination of Dry Seal Impressions.
- E2287-09 Standard Guide for Examination of Fracture Patterns and Paper Fiber Impressions on Single-Strike Film Ribbons and Typed Text.
- E2288-09a Standard Guide for Physical Match of Paper Cuts, Tears, and Perforations in Forensic Document Examinations.
- E2289-08 Standard Guide for Examination of Rubber Stamp Impressions.
- E2290-07a Standard Guide for Examination of Handwritten Items.
- E2291-03 Standard Guide for Indentation Examinations.
- E2325-05 Standard Guide for Non-destructive Examination of Paper.
- E2331-04 Standard Guide for Examination of Altered Documents.
- E2388-05 Standard Guide for Minimum Training Requirements for Forensic Document Examiners.
- E2389-05 Standard Guide for Examination of Documents Produced with Liquid Ink Jet Technology.
- E2390-06 Standard Guide for Examination of Documents Produced with Toner Technology.
- E2404-08 Standard Guide for Examination of Typewritten Items

- E2290-07 Standard Guide for Examination of Handwritten Items.

Additionally, standards that have been submitted to ASTM for ballot and publication include:

- Standard Guide for the Preservation of Charred Documents.
- Standard Guide for the Preservation of Liquid-Soaked Documents.
- Standard Guide for Examination of Handwritten Items for Simulation and Tracing.
- Standard Guide for Classification of Facsimile Devices using Transmitting Terminal Identifier/Receiving Terminal Identifier (TTI/RTI).
- Financial and Identification Documents.
- Case Review.

### Conclusion

As a discipline routinely accepted under *Frye* (*Frye v. United States*, 54 App. D.C. 46, 293 F. 1013, 1014 [1923]), forensic document examination has been consistently accepted in the courts in spite of the challenges generated by the *Daubert* decision in 1993 (*Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 [1993]). Published research demonstrates the validity of the expertise and supports the principle of handwriting individuality. Published standards ensure consistency in methodology. Document examiners in both public (local, state, federal, and international) and private laboratories use these standards. Ongoing academic research continues to support the forensic document examination community in strengthening the scientific basis for handwriting comparison.

### Acknowledgment

This is publication number 09-17 of the Laboratory Division of the Federal Bureau of Investigation. Names of commercial manufacturers are provided for identification only, and inclusion does not imply endorsement by the FBI.

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Close

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Rosemead, Ca 91770-4359

Investor I.D. # 125253951451

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Securities Services  
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August 9, 2012

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Cusip Number 43851610	Honeywell International Inc.	Completed Transfer of Ownership Form with A Medallion stamp. Stock Certificate 508 shares

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Please issue new certificates for the above two (2) companies in the name of:  
DOROTHY HORWITZ FAMILY TRUST

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Thank you.

Dorothy Horwitz

H-0136

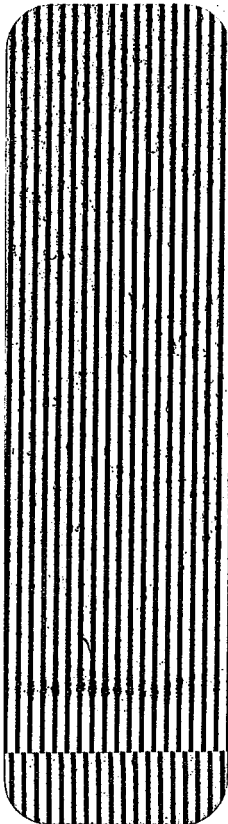
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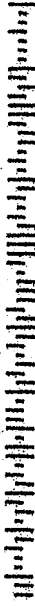
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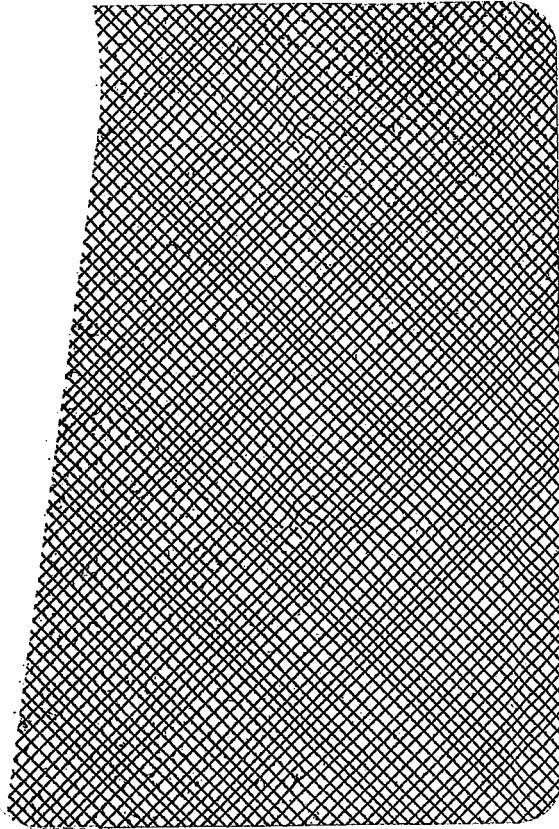
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Tel 626 571-0653

August 21, 2012

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Stock Power form completed with Medallion Stamp  
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Copy of Family Trust indicating date of execution of Trust

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Thank you.

Dorothy Horwitz

**H-0038**

Dorothy Horwitz Family Trust 6-20-13  
Stocks held in Family Trust

Name	# Shares	Price per share 6-20-13	Total
Rockwell Automation	800	83.93	67,144.00
Honeywell International	508	77.67	39,456.36
Edison International	200	45.82	9,164.00
Rockwell Collins	800	62.36	49,888.00
Viacon (Direct Registration)	217	65.55	14,224.35
IBM	160	194.25	31,080.00
Verizon Communication	211	49.50	10,444.50
			221,401.21



## ALPERIN v. VATICAN BANK

No. C99-1941 MMC.

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242 F.Supp.2d 686 (2003)

*Emil ALPERIN, et al., Plaintiffs, v. VATICAN BANK, et al., Defendants.*

United States District Court, N.D. California.

January 3, 2003.

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*Thomas Dewey Easton, Law Offices of Thomas Dewey Easton, Bend, OR, K. Lee Boyd, Malibu, CA, for Plaintiffs.*

*Jeffrey S. Lena, Berkely, CA, John Niblock, for Defendant IOR.*

*Ronald Mallen and Joanna Opperman, Hinshaw & Culbertson, San Francisco, CA, for Defendant OFM.*

### ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS

CHESNEY, District Judge.

Before the Court are two separate motions to dismiss plaintiffs' Third Amended Complaint ("TAC"), filed, respectively, by defendant Order of Friars Minor ("OFM") and defendant Istituto per le Opere di Religione ("IOR"). The matters came on regularly for hearing on May 25, 2001. Ronald Mallen and Joanna Opperman of Hinshaw & Culbertson appeared on behalf of defendant OFM. Jeffrey Lena and John Niblock appeared on behalf of IOR. Tom Easton of the Law Offices of Thomas Dewey Easton and K. Lee Boyd of Pepperdine University Law School appeared on the behalf of plaintiffs. Having considered the papers filed in support of and in opposition to the motions and the arguments of counsel at the hearing, the Court rules as follows.

### BACKGROUND

This case arises out of the atrocities committed during World War IA at the behest of the Ustasha Regime ("Ustasha"), a Nazi puppet government that controlled the Independent State of Croatia ("Croatia") from 1941 through 1945 and occupied portions of the former Soviet Union along with German military forces. (See TAC ¶¶ 1, 43) The plaintiffs in this action are twenty-four individuals and four organizations. (See TAC ¶¶ 0-26.) The individual plaintiffs include victims of crimes against persons and property and their

organizations. (See TAC ¶¶ 9-30.) The individual plaintiffs include victims of crimes against persons and property, and their descendants, currently residing in Europe and the United States.<sup>1</sup> The four organizational plaintiffs are (1) the Ukraine Organization of Ukrainian Antifascist Resistance Fighters, representing "8,500 former partisans and resisters of the Nazi occupation of Ukraine and concentration camp victims," (2) the Ukrainian Union of Nazi Victims and Prisoners, representing "over 300,000 former slave and forced laborers, prisoners, concentration camp, and ghetto survivors," (3) the Jasenovac Research Institute, a non-profit human rights organization and research institute "committed to establishing the truth about the Holocaust in Yugoslavia," and (4) the International Union of Former Juvenile Prisoners of Fascism, representing "Nazi victims in the former Soviet Union including Ukraine, Russia and Belarus." (TAC ¶¶ 33-36.)

Plaintiffs seek to represent "a class of all Serbs, Jews, former Soviet Union citizens (and their heirs and beneficiaries)," who suffered physical, monetary, and/or property losses or [were] forced into slave labor due to the systematic and brutal extermination of Jews, Serbs, and Romani by the Nazi puppet Ustasha Regime, and "as a result of the occupation of the Soviet Union by Croatian military forces in concert

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with their German occupation forces." (TAC ¶ 62.)

Defendant OFM is a religious brotherhood founded by St. Francis of Assisi. (OFM Mem. at 1 n. 1.) Defendant IOR is a "special institute established and located within the Vatican City State for managing economic assets committed to it, and for administering those that serve to sustain works of religion and charity."<sup>2</sup> (Declaration of Father Daniel C. Conlin ("Conlin Decl") ¶¶ 31-34.) The IOR was first constituted by Pope Leo XIII in the late 19th Century as the Commission for Charitable Causes ("Commission"), for the purpose of safeguarding and administering the capital of charitable institutions. (Piccolo Decl. Ex. E.) In 1941 and 1942, the "Commission" was transformed into what is currently known as the IOR, a "public juridical person"<sup>3</sup> created by chirographic<sup>4</sup> act of Pope Pius XII.<sup>5</sup> (Conlin Decl. ¶ 26; Piccolo Decl. Ex. C at 9, Exs. E, K.)

Plaintiffs allege that the IOR and OFM profited from the genocidal system instituted by the Ustasha by obtaining, accepting, concealing, and converting assets from the Ustasha treasury, which contained assets looted by the Ustasha during World War IA. (TAC ¶ 2, 5.) Specifically, plaintiffs allege that, following the demise of the Ustasha Regime in 1945, members of the Roman Catholic clergy and the OFM assisted in the transfer of over 200 million Swiss francs from the Ustasha treasury to the IOR. (TAC ¶¶ 56, 60.) Plaintiffs further allege that the IOR thereafter helped transfer portions of the Ustasha treasury to Ustasha war criminals living abroad. (TAC ¶ 59.)

Plaintiffs also allege that the IOR and OFM "committed, conspired to commit, and aided and abetted others who committed crimes against humanity". (TAC ¶ 3.) Specifically, plaintiffs allege that during World War IA, members of the Roman Catholic clergy and the OFM were "high officials" of the Ustasha government and that relations between the Vatican and Ustasha were "cordial." (TAC ¶¶ 54, 55.) Plaintiffs further allege that following the war, the IOR assisted Ustasha war criminals in evading justice through the transfer of funds and financial transactions involving banks in "various European and South American countries." (TAC ¶¶ 59, 60.) Plaintiffs allege that the OFM also assisted Ustasha war criminals evade justice, by providing them with money, hiding them on its properties, and operating a Nazi smuggling operation known as the "ratline." (TAC ¶¶ 38, 55.) Plaintiffs allege

[242 F.Supp.2d 689]

that both the IOR and OFM profited from these transactions. (TAC ¶ 60.)

On November 15, 1999, plaintiffs filed the complaint in this action. Following a series of motions to amend, stipulations of the parties, and orders of the Court, plaintiffs filed their Third Amended Complaint ("TAC") on August 30, 2000. Plaintiffs allege causes of action for conversion, unjust enrichment, human rights violations and violations of international law. They seek an accounting, restitution, disgorgement of profits, and compensatory and punitive damages. (TAC ¶¶ 80-97.)

Both the IOR and OFM move to dismiss on the grounds that (1) the case presents nonjusticiable political questions, (2) plaintiffs lack standing, (3) the statute of limitations has expired and (4) the court lacks personal jurisdiction. Additionally, the IOR has moved to dismiss under the "comity of nations" doctrine and on the ground that the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. § 1602, *et seq.*, bars plaintiffs' suit, and OFM has moved to dismiss on the ground that the Court lacks subject matter jurisdiction over plaintiffs' claims.

## DISCUSSION

As noted, defendants' motions are based on a number of legal theories, each independently supporting dismissal of plaintiffs' claims. Upon agreement of the parties, the Court limits its discussion to the issue of whether plaintiffs' claims should be dismissed under the political question doctrine.

### A. Overview of the Political Question Doctrine

"The political question doctrine holds that a federal court having jurisdiction over a dispute should decline to adjudicate it on the ground that the case raises questions which should be addressed by the political branches of government." *Iwanowa v. Ford Motor Co.*, 67 F.Supp.2d 424, 483-84 (D.N.J.1999) (citing *Baker v. Carr*, 369 U.S. 186, 210, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962); *Atlee v. Laird*, 347 F.Supp. 689, 701 (E.D.Pa.1972), *affd sub. nam. Atlee v. Richardson*, 411 U.S. 911, 93 S.Ct. 1545, 36 L.Ed.2d 304 (1973)). "The

nonjusticiability of a political question is primarily a function of the separation of powers." *Baker v. Carr*, 369 U.S. at 210, 82 S.Ct. 691; see *Atlee v. Laird*, 347 F.Supp. at 692-700 (tracing evolution of political question doctrine). In essence, the doctrine limits the exercise of federal jurisdiction and forecloses judicial inquiry into matters whose resolution is committed to a coordinate branch of government. See *Baker*, 369 U.S. at 211, 82 S.Ct. 691.

The Supreme Court has identified the features that characterize a case raising a nonjusticiable political question:

*[1] A textually demonstrable constitutional commitment of the issue to a coordinate political department; [2] or a lack of judicially discoverable and manageable standards for resolving it; [3] or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; [4] or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; [5] or an unusual need for unquestioning adherence to a political decision already made; [6] or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.*

*Baker*, 369 U.S. at 217, 82 S.Ct. 691. If any one of these factors is "inextricable from the case," the court should dismiss the case as nonjusticiable on the ground that it involves a political question. See *Baker*, 369 U.S. at 217, 82 S.Ct. 691.

It is well-established that "[t]he conduct of the foreign relations of our government

[242 F.Supp.2d 690]

is committed by the Constitution to the executive and the legislative—'the political'—departments of the government; and the propriety of what may be done in the exercise of this political power is not subject to any judicial inquiry or decision." See *Oetjen v. Central Leather Co.*, 246 U.S. 297, 302, 38 S.Ct. 309, 62 L.Ed. 726 (1918).

"The political question doctrine distinguishes between cases encompassing foreign relations and those addressing purely domestic issues." *Iwanowa*, 67 F.Supp.2d at 484; (citing *United States v. Curtiss-Wright Corp.*, 299 U.S. 304, 320, 57 S.Ct. 216, 81 L.Ed. 255 (1936); *Oetjen*, 246 U.S. at 302, 38 S.Ct. 309); see *Atlee*, 347 F.Supp. at 696, 701-03 (recognizing "critical distinction between political questions as they relate to purely domestic affairs and those relating to foreign affairs"). "Very different considerations" are involved in cases encompassing foreign relations. *Atlee*, 347 F.Supp. at 701. As one court has noted:

*First, the potentially relevant information in a foreign policy case comes from a multitude of sources—both domestic and foreign—and might, by sheer bulk alone, be unmanageable for a court. In addition, there is the very real possibility that the parties might not assemble all the data, in which case any attempt by the court to justify a decision on the merits of an issue having so profound an affect on the nation would be both difficult and unwise.... A second major element concerns the inherent inability of a court to predict the international consequences flowing from a decision on the merits.*

*Id.* at 702. Thus, when the foreign relations of the United States are at stake, courts properly are more hesitant to intervene than when the internal operations of this country are involved. See *id.* at 701 (recognizing "the need for federal courts to move with extreme caution in the sensitive area of foreign policy").

Nevertheless, "it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance." *Baker*, 369 U.S. at 211, 82 S.Ct. 691. Rather, courts should undertake a "discriminating analysis of the particular question posed, in terms of the history of its management by the political branches, its susceptibility to judicial handling in the light of its nature and posture in the specific case, and the possible consequences of judicial action." *Id.* at 211-12, 82 S.Ct. 691.

## B. Application of the Political Question Doctrine

Here, consideration of the factors identified in *Baker* suggests that plaintiffs' case must be dismissed.

### 1. Commitment of the issue to a Coordinate Political Department

First, the history of the management by the political branches of claims arising out of World War IA and the Holocaust reveals a long-standing foreign policy commitment to resolving such claims at the governmental level. See, e.g., *In re Nazi Era Cases Against German Defendants Litigation*, 129 F.Supp.2d 370, 382 (D.N.J.2001) (holding "long-standing foreign policy commitment to resolving claims arising out of World War IA and the Holocaust at a governmental level" provides basis for dismissal under the political question doctrine). Consequently, courts generally have recognized that adjudication through private litigation of claims such as those presented here would both intrude upon matters committed to the political branches and reflect a lack of respect for the coordinate branches of government. See *Burger-Fischer v. Degauss BAG*, 65 F.Supp.2d 248, 282, 284-85 (D.N.J.1999) (holding class actions against German corporations nonjusticiable under political

[242 F.Supp.2d 691]

question doctrine where plaintiffs alleged defendants participated in Nazi regime's looting of gold and personal property and in using and profiting from forced labor); *Iwanowa*, 67 F.Supp.2d at 485-86 (holding class action against German manufacturer and its American parent nonjusticiable under political question doctrine where plaintiffs sought compensation and damages for forced labor in manufacturer's factory during World War IA).

Starting with the Potsdam Conference in 1945, the United States has been a party to numerous treaties and agreements addressing reparations to be paid as a result of actions taken during World War IA. <sup>6</sup> See *Burger-Fischer v. Degauss BAG*, 65 F.Supp.2d 248, 266-272 (D.N.J.1999). These efforts by the executive branch have continued up to recent times. See *id.* (citing to 1995 "Princz Agreement" and "1996 Second Supplemental Social Security Agreement"). Such action at the governmental level reflects a firmly-established policy that claims arising out of World War IA "be resolved through government-to-government negotiations." See *Iwanowa*, 67 F.Supp.2d at 486. <sup>7</sup> Indeed, in 1953, that policy was expressly declared by the State Department: "[Reparations and other governmental claims relating to World War I and IA should more appropriately be dealt with in the context of a peace treaty or similar arrangement." See Memorandum 5882, John Foster Dulles, Secretary of State, to the President, April 4, 1953, enclosure 7(a) at 4; Memorandums for the President—April 1953; Entry 1260; General Records of the Executive Secretariat, 1948-1956 (Lot File 56D459); General Records of the Department of State, Record Group 59; National Archives at College Park, College Park, MD.

While acknowledging the extensive involvement of the executive branch in the resolution of claims arising from World War IA, plaintiffs argue that various treaties and reparation agreements have no bearing on the issue presented here because the IOR is located in the Holy See, which was not a party to any treaty or reparations agreement. (See PL's Opp. to IOR's Mot. to Dismiss at 23; Pi's Opp. to OFM's Mot. to Dismiss at 8.) The existence of a treaty with these specific defendants, however, is not dispositive. The question, rather, is whether plaintiffs' claims are the type of claims that have been committed to the political branches for resolution. See *In re Nazi Era Cases Against German Defendants Litigation*, 129 F.Supp.2d at 378 ("The question is not

[242 F.Supp.2d 692]

whether Plaintiff's claims are barred by treaty, but whether his claims are such that they have been committed to the political branches for resolution. To find that they have not been would be to conclude that his claims are somehow distinct from every other type of claim arising out of World War IA and that they have somehow been left open for judicial resolution.")

Here, in addition to the treaties and agreements referenced above, the executive branch has manifested its continuing commitment to resolving individual claims arising out of World War IA by actively encouraging other nations, including the Vatican State, to open their archives for the purpose of addressing the recovery and restoration of stolen gold and other assets and, in particular, any such gold and assets contained in the Ustasha Treasury. (See Declaration of Jeffrey S. Lena Ex. C ["U.S. and Allied Wartime Postwar Relations and Negotiations with Argentina, Portugal, Spain, Sweden, and Turkey on Looted Gold and German External Assets and U.S. Concerns About the Fate of the Wartime Ustasha Treasury," June 1998 ("Eizenstat Report") ]). One such effort, the 1997 London Conference on Nazi Gold, is described in detail by the State Department in the Eizenstat Report. As noted therein:

*In December [1997] the British government brought together 41 countries and the Vatican at the London Conference on Nazi Gold. The London Conference was a landmark in the international community's effort to illuminate longobscured facts from that dark chapter in history. Significant progress was made in coordinating research, addressing methodological issues and encouraging governments to open their archives and to make their records fully accessible. The London Conference highlighted as never before the international dimensions of the issue of looted gold, and catalyzed the work of the national commissions and others working to complete the historical record on this complex subject.*

(*Id.* at xix.) In December of the following year, "[i]n order to sustain [the] positive momentum of the London Conference," (see *id.* at xx), the State Department cohosted in Washington, D.C., the Washington Conference on Holocaust Era Assets. The State Department's commitment to resolving this "complex subject" (see *id.* at xix) reflects a preference for a cooperative approach at the governmental level and further suggests that courts should not intervene. <sup>8</sup>

Ultimately, a court must consider the totality of the circumstances in determining whether a claim is one committed to the political branches for resolution. For all of the reasons discussed above, the Court finds plaintiffs' claims are such that they have been committed to the political branches and, as such, are not justiciable.

## 2. Lack of Judicially Discoverable and Manageable Standards for Resolving the Issues

The second of the *Baker* factors likewise requires dismissal, on the ground that there exist no "judicially discoverable and manageable standards" for resolving plaintiffs' claims. <sup>9</sup> See *Baker*, 369 U.S. at 217,

[242 F.Supp.2d 693]

82 S.Ct. 691. Courts have repeatedly recognized that they are ill-equipped to adjudicate class actions based on the kinds of claims presented here, and that such claims are the province of the political branches. In *Kelberine v. Societe Internationale, Etc.*, [363 F.2d 989](#) (D.C.Cir.1965), a class action against a Swiss holding company, based on a conspiracy by its German subsidiary and others to seize property and enforce slave labor during World War IA, the Court of Appeals affirmed the district court's dismissal of the complaint on the ground that the plaintiffs' claims "posed] an insoluble problem if undertaken by courts without legislative or executive guidance, authorization or support." *Id.* at 995. In so ruling, the court observed:

*The span between the doing of the damage and the application of the claimed assuagement is too vague. The time is too long. The identity of the alleged tortfeasors is too indefinite. The procedure sought—adjudication of some two hundred thousand claims for multifarious damages inflicted twenty to thirty years ago in a European area by a government then in power—is too complicated, too costly, to justify undertaking by a court without legislative provision of the means wherewith to proceed.*

*Id.*

Thirty-three years later, in *Iwanowa*, the court held the claims raised therein were non-justiciable on the same grounds. See *Iwanowa*, 67 F.Sup.2d at 489. Among the impediments to meaningful adjudication noted by the court were "the task of identifying and notifying thousands of potential plaintiffs around the world," the "multitude of sources" from which the relevant materials would come, and the likelihood that the parties would be unable to gather all of the "pertinent data." See *id.* at 489. All of these concerns are equally applicable to the instant action. As expressed by the court in *Iwanowa*: "The specter of adjudicating thousands of claims arising out of a war that took place more than fifty years ago amounts to a more daunting task for this Court to tackle than the *Kelberine* Court could have ever contemplated." *Id.*

Similarly, in *Burger-Fischer*, the district court noted the lack of judicial standards to adjudicate plaintiffs' claims:

*Wrongs were suffered not only by the classes of persons represented in these proceedings, however, but by many other classes of persons in many lands. They, too, had claims against German assets. By what conceivable standard could a single court arrive at a fair allocation of resources among all the deserving groups? By what practical means could a single court acquire the information needed to fashion such a standard?*

*Burger-Fischer*, 65 F.Sup.2d at 284.

Plaintiffs point to two recent district court decisions in an effort to demonstrate that discoverable and manageable standards for resolving their claims exist: In *In re Holocaust Victim Assets Litigation*, 105 F.Sup.2d 139 (E.D.N.Y.2000), a class action against Swiss banks for concealing assets of Holocaust victims, accepting and laundering illegally obtained Nazi loot, and transacting in the profits of slave labor, and *In re Austrian and German Bank Holocaust Litigation*, 80 F.Sup.2d 164 (S.D.N.Y.2000), a class action against Austrian and German banks for conversion of Holocaust victims' assets, profiting from forced and slave labor, and other violations of international law arising out of Nazi activities.

[242 F.Supp.2d 694]

Plaintiffs' reliance on these cases is misplaced. In each instance, the district court exercised jurisdiction over the action for the sole purpose of approving a proposed class settlement. See *id.* at 167; *In re Holocaust Victim Assets Litigation*, 105 F.Sup.2d at 14W2. Moreover, in determining the propriety of those settlements, both courts recognized the significant practical and legal obstacles to litigation of the plaintiffs' claims. See *In re Holocaust Victim Assets Litigation*, 105 F.Sup.2d at 148 (citing *Iwanowa* and *Burger-Fischer* "as a reality check for those objectors who believe that strong moral claims are easily converted into successful legal causes of action"); *In re Austrian and German Bank Holocaust Litigation*, 80 F.Sup.2d at 177 ("The Court is impressed by the factual difficulties and legal defenses that plaintiffs face in further litigation of their claim. Each of the defenses outlined by the defendants appear to have merit.").<sup>10</sup> Neither court reached the issue of the justiciability of the plaintiffs' claims, nor were they faced with the task of actually adjudicating them.<sup>11</sup>

Plaintiffs also cite *Bodner v. Banque Paribas*, 114 F.Sup.2d 117 (E.D.N.Y. 2000), in support of their contention that plaintiffs' claims are justiciable. *Bodner* involved a class action by descendants of Jewish customers of French banking institutions, asserting a conspiracy on the part of the defendant banks to expropriate money and other property deposited therein during the Nazi occupation. See *Bodner*, 114 F.Sup.2d at 121-23. *Bodner* is distinguishable from the instant action on both its facts and the legal issues presented. The plaintiffs' claims in *Bodner* were based on the expropriation of distinct sums of money and deposited assets that remained in the hands of the defendant banks. See *id.* Moreover, the political question doctrine was never raised by defendants in their motion to dismiss, and thus was not before the court. See *Bodner*, 114 F.Sup.2d at 129 n. 9.<sup>12</sup>

Here, by contrast, plaintiffs do not seek recovery of money and assets withheld from specific accounts but, rather, the undetermined value of property stolen in untold ways in a multiplicity of regions by both military personnel and civilians.<sup>13</sup>

[242 F.Supp.2d 695]

Moreover, plaintiffs seek such recovery out of an undivided portion of the Ustasha Treasury transferred to the IOR. Such claims require a review of materials from a multitude of foreign sources that, "by sheer bulk alone," are likely to be unmanageable. See *Atlee*, 347 F.Sup. at 702. Compounding the problem, "there is a distinct possibility that the parties might not be able to compile all of the relevant information, thus making any attempt to justify a ruling on the merits of an issue that will affect the nation difficult and imprudent." See *Iwanowa*, 67 F.Sup.2d at 484; see also *Atlee*, 347 F.Sup. at 702 (noting "the inherent inability of a court to predict the international consequences flowing from a decision on the merits.") Further, plaintiffs' claims require this Court to resolve the competing rights to the Ustasha Treasury of potentially hundreds of thousands of citizens of various nations, funds as to which any number of persons harmed by the Ustasha regime, both represented and not represented in these proceedings, might equally assert a claim.

In sum, the instant action presents the same intractable problems as were recognized in *Kelberine*, *Iwanowa*, and *Burger-Fischer*. In this instance, there exist essentially insurmountable barriers to identifying and dividing that portion of the Ustasha Treasury transferred to the OFM and IOR. In other words, plaintiffs claims present issues for which this Court lacks "judicially discoverable and manageable standards." See *Baker*, 369 U.S. at 217, 82 S.Ct. 691.

## CONCLUSION

For the reasons expressed, the Court finds that plaintiffs claims present political questions that are not justiciable and, consequently,



For the reasons expressed, the Court finds that plaintiffs' claims present political questions that are not justiciable and, consequently, must be dismissed. This is not to suggest that plaintiffs are undeserving of relief. Indeed it is the very magnitude of the horrors giving rise to plaintiffs' claims and of the war in which they arose that places those claims beyond the purview of this Court. As one court has recognized:

*It goes without saying that the events which form the backdrop of this case make up one of the darkest periods of man's modern history.... At the same time, however, it must be understood that the law is a tool of limited capacity. Not every wrong, even the worst, is cognizable as a legal claim.*

*In re Holocaust Victim Assets Litigation*, 105 F.Supp.2d at 149.

Accordingly, the motions are hereby GRANTED and the above-entitled action is hereby DISMISSED as to the moving defendants.

This order closes Docket Nos. 85, 90, 166.

IT IS SO ORDERED.

## FootNotes

1. The Court will not endeavor to set forth herein a detailed description of the events giving rise to each of the plaintiffs' claims, which events include murder under the most horrific of circumstances, imprisonment, forced labor, and looting.

2. The IOR's By-Laws provide the following:

*The purpose of the Institute is to provide for the custody and administration of personal and real property transferred or entrusted to the Institute by natural or legal persons for religious works or charity.*

*The Institute therefore accepts assets whose destination, at least partial or future, is indicated by the preceding paragraph. The Institute can accept deposits from entities or persons of the Holy See and of the State of Vatican City.*

(Declaration of Josephine Piccolo (Piccolo Decl.) Ex. K at 4.)

3. "Juridical persons," under Canon Law, are legal subjects capable of acquiring, retaining, administering, and alienating temporal goods according to the norms of ecclesiastical law. (Conlin Decl. ¶ 23.) "Public juridical persons" are those legal subjects which act pursuant to a mission received from hierarchical authority and who are closely governed by ecclesiastical authority. (Conlin Decl. ¶ 25.)

4. A Chirograph, in the Law of the Vatican City State, is a legal instrument by which the Pope expresses his sovereign will. (Conlin Decl. Ml 8-9, 14.)

5. By a 1990 Chirograph, Pope John Paul IA approved changes to the IOR's by-laws, retaining its name and purpose while "render[ing] the structures and the activities of the institute more adequate to the needs of the times." (Piccolo Decl. Ex. I.)

6. Treaties and agreements between the United States and former Axis powers immediately following the end of World War IA include the Potsdam Agreement (1945), Paris Agreement (1946), Treaty of Peace with Italy (1947), Transition Agreement (1952-54), London Debt Agreement (1955). *See Burger-Fischer*, 65 F.Supp.2d at 265-269; *see also* Declaration of Joanna D. Opperman Ex.B.

7. Plaintiffs attempt to distinguish the instant case from *Iwanowa* and *Burger-Fischer* on the ground that it is a "bank restitution case, not a reparations case." (*See* Pi's Opp. to OFM's Motion to Dismiss at 6.) This is a distinction without a difference. "Beginning with the Versailles Treaty concluding World War I, the term 'reparations' has been deemed to refer to 'all loss and damage to which ... Governments and their nationals have been subjected as a consequence of the war imposed on them.'" *Burger-Fischer*, 65 F.Supp.2d at 275 (citing Treaty of Peace Between the Allied and Associated Powers and Germany, June 28, 1919, Art. 231, I Beans 43, 137038). Moreover, to the extent such a distinction may be recognized, it is of no assistance to plaintiffs here. As the IOR points out, plaintiffs' claims are more properly characterized as claims for reparations. (*See* IOR Reply at 9 n. 19.) Plaintiffs do not identify as having been converted by the IOR or OFM any personal property, such as a bank deposit or insurance policy, and the relief sought is almost identical to that sought by the plaintiffs in *Burger-Fischer*. *See Burger-Fischer*, 65 F.Supp.2d at 253-54.

8. Plaintiffs question the efficacy of the abovereferenced and other diplomatic negotiations with the Vatican. As was noted in *Iwanowa*, however, "[c]ourts may not pass judgment upon the political negotiations of the executive branch and the international community." *Iwanowa*, 67 F.Supp.2d at 487.

9. Plaintiffs' reliance on *Koohi v. U.S.*, [976 F.2d 1328](#) (9th Cir. 1992) to support an argument to the contrary is misplaced. In *Koohi*, a civilian Iranian airplane was mistakenly shot down by the U.S. Navy. The claims were for wrongful death, negligence and product liability. *Id.* In contrast to the instant case, all of the claims arose from a single event, the event occurred within a recent time frame, and the plaintiffs and their heirs were easily identifiable and limited in number. *See Koohi*, 976 F.2d at 1330.

10. In both cases the defendants had moved to dismiss the plaintiffs' claims on numerous legal grounds, including the political question doctrine. Adjudication of those issues was precluded by the settlements.

11. Plaintiffs argue that the Court should decline to dismiss their claims because other class actions have provided the "catalyst" for international

agreements and "leverage" for resolution by settlement. (See Pi's Opp. to IOR's Mot. To Dismiss at 21.) Whether a settlement is reached in any individual case, however, has no bearing on the legal issues presented in the absence of such settlement. See, e.g., *id.* (considering apparent merit of available defenses in assessing fairness of class settlement).

12. For similar reasons, the Court of Appeals' recent decision in *Altmann v. Republic of Austria*, [317 F.3d 954](#) (9th Cir.2002), is inapplicable. *Altmann* concerned a claim for recovery of six paintings seized by the Nazis from the plaintiff's uncle and ultimately housed in the Austrian Gallery. There, in contrast to the instant action, the plaintiff sought the return of specific, identifiable property, and the political question doctrine was not at issue.

13. It also bears noting that the perpetrators of the crimes alleged are not uniformly identified. In some instances the Ustasha is expressly implicated (See, e.g., TAC ¶ 24 (alleging plaintiff Mila Conger "was taken by Ustasha to Karlovac as a forced laborer.")) In others, the perpetrators are less clearly identified. (See, e.g., TAC ¶ 1 (alleging plaintiff Emil Alperin resided in Odessa, Ukraine, where "Germans and allied Fascists, believed to be Croatians, looted and destroyed all [his] household belongings and personal property"; ¶ 21 (alleging plaintiff Milorad Skoric's family was taken away and their village of Loncarica, Yugoslavia, was burned down, "apparently by the Ustasha.")) In still other instances, the perpetrators are not identified at all, the allegations having been made in the passive voice. (See, e.g., ¶ 27 (alleging plaintiff David Levy's "family property was taken and plaintiff was made a forced laborer."))

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March 24, 2014

Via Certified Mail - Return Receipt Requested

Dennis J. Solomon  
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Yarmouth Port, Ma 02675

Dennis J. Solomon  
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Re: Death of Dorothy Horwitz

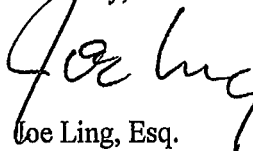
To whom it may concern:

This letter is to notify you of the death of Dorothy Horwitz and to advise that you have been named as a potential beneficiary of the Dorothy Horwitz Family Trust dated 03-06-12 ("the Trust"), and/or the Addendum to Distribution of Assets date 11-18-13. I, along with Margaret Morrow of Russell, Mirkovich & Morrow whose office information is the same as mine, represent the successor trustee, Hoover J. Louie, C.P.A., whose address and contact information is 847 Yale Street, Suite 306, Los Angeles, CA 90012, (213)625-2828.

**You may not bring an action to contest the trust more than 120 days from the date this notification by the trustee is served upon you or 60 days from the date on which a copy of the term of the trust is mailed or personally delivered to you during the 120-day period, whichever is later.**

I have enclosed herein copies of the Trust and the Addendum. Please refer this matter to your own legal counsel.

Sincerely,

  
Joe Ling, Esq.

CC: Hoover J. Louie, C.P.A.