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**In re: NEW YORK STATE JOINT COMMISSION
ON PUBLIC ETHICS INTERVIEW PURSUANT TO
ARTICLE 94 OF THE EXECUTIVE LAW**

NO. 14-089

Proceedings held before Lindsay N. Robel,
Notary Public, at W.J. Mahoney State Office
Building, 65 Court Street, Buffalo, New York,
on November 5th, 2015 starting at 1:56 p.m.
and ending at 4:04 p.m., pursuant to notice.

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

NEW YORK STATE JOINT COMMISSION ON PUBLIC ETHICS

BY: KEVIN T. GAGAN, Chief of Staff
EMILY A. LOGUE, Investigative Counsel
PETER SMITH, Investigator

540 Broadway
Albany, New York 12207
(518) 408-3976

MARK G. FARRELL, ESQ.

BY: MARK G. FARRELL, ESQ.

84 Carriage Circle
Williamsville, New York 14221
(716) 688-2002

Also Present: TRACEY KINN, Witness

LINDSAY N. ROBEL,
Court Reporter

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W I T N E S S E S

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| | MR. GAGAN | 83 |

E X H I B I T S

| EXHIBIT | DESCRIPTION | PAGE |
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| Exhibit 1 | DVA VETCOP | 47 |
| Exhibit 2 | copy of Matie's will 7/26/2005 | 69 |
| Exhibit 3 | Navy Federal Credit Union banking | 74 |
| Exhibit 4 | DVA VET COP-web address 16520 | 108 |

(*Exhibits retained by JCOPE)

1 MS. LOGUE: So, Ms. Kinn, my name is
2 Emily Logue. I'm investigative counsel with
3 JCOPE. I'm here with Peter Smith, who is an
4 investigator with JCOPE, and Kevin Gagan, who
5 is the Chief of Staff for JCOPE, the Joint
6 Commission on Public Ethics.

7 Before we begin the questioning, I want to
8 let you know, we're recording this, and also
9 as you can see, there's a stenographer here.
10 So there's a record of this interview. And
11 before we begin the interview, Peter Smith is
12 going to read over a preamble that we go
13 through with every witness before we begin the
14 interviews.

15 MR. SMITH: Good afternoon, Ms. Kinn.
16 Thank you for coming in today. You are being
17 asked to provide information as part of an
18 investigation and will be asked questions
19 preliminary relating to your employment with
20 the State of New York.

21 The New York State Joint Commission on
22 Public Ethics is conducting this investigation
23 pursuant to its authority under Article 94 of
24 the Executive Law.

25 There are certain instructions and

1 warnings we will give to all witnesses in this
2 proceeding, so I will do it now. You received
3 a subpoena to appear here today. If at any
4 time you do not understand the question, you
5 should so indicate, and we will attempt to
6 clarify the question for you. If you wish to
7 refer to any documents or answer a question to
8 refresh your recollection, you may do so. You
9 are not compelled to answer all questions. If
10 a question calls for an answer that would tend
11 to incriminate you, you have the right to
12 assert your Fifth Amendment privilege.

13 In a moment you will be sworn in and
14 required to take an oath to testify
15 truthfully. After taking the oath to tell the
16 truth, should you intentionally make a
17 material, false, or a misleading statement,
18 you may be prosecuted for perjury.

19 Do you understand what I've just stated?

20 THE WITNESS: Yes.

21 MR. SMITH: Do you have any questions?

22 THE WITNESS: I do not.

23 MR. FARRELL: Tracey, you have to speak
24 up. This is a very high ceiling.

25

1 (Discussion held off the record)

2

3 MR. SMITH: Can you raise your right
4 hand. Do you swear or affirm that the
5 testimony you are about to give will be the
6 truth, the whole truth, and nothing but the
7 truth?

8 THE WITNESS: I will.

9 MR. SMITH: Thank you.

10

11 EXAMINATION BY MS. LOGUE:

12 Q. Ms. Kinn, so you grew up here in the Buffalo
13 area; is that right?

14 A. I'm sorry?

15 Q. You grew up here in Buffalo?

16 A. I did not.

17 Q. Okay. Where did you grow up?

18 A. In Florida.

19 Q. Oh, in Florida. So when did you come to the
20 Buffalo area?

21 A. I came in 1995.

22 Q. And what was your reason for coming here?

23 A. I was out of the Marine Corp, and I followed a
24 recruiter up here, recruiting orders.

25 Q. That he?

1 A. He got recruiting orders for the Marine Corp.

2 Q. And what -- explain that to me. I don't
3 understand what that means about him and he
4 got recruiting orders.

5 A. I was dating him.

6 Q. Oh, okay.

7 A. And he got recruiting orders.

8 Q. Oh, okay.

9 A. So I came up here with him.

10 Q. Okay. And that was 1995?

11 A. Yes.

12 Q. And then, were you working yourself up here
13 around that time when you moved up here? Did
14 you get a job here?

15 A. I did.

16 Q. What did you do?

17 A. I worked at Buffalo Fuel/Singer Transport.

18 Q. And how long did you work there for?

19 A. Until I went to school in 1997.

20 Q. And where did you go to school?

21 A. I went to ECC South Campus, and then I went to
22 Fredonia.

23 Q. And what did you go to school for?

24 A. Elementary education.

25 Q. And did you finish?

1 A. I did.

2 Q. What year did you finish?

3 A. 2000.

4 Q. In the spring of 2000?

5 A. Spring of 2000.

6 Q. And I'm sorry. What -- which institution did
7 you get your degree from?

8 A. Fredonia State.

9 Q. Fredonia State. Now, prior to moving up here
10 in '95, you had been in the Marines?

11 A. Mm-hmm.

12 Q. And can you explain to me a little bit of your
13 military background?

14 A. What I did?

15 Q. When did you enter the service?

16 A. I went in in December of '87.

17 Q. Okay. And?

18 A. In June of '90 I broke my back and neck, and I
19 was discharged in March of '91.

20 Q. Okay. Where did you serve, like, where were
21 you stationed throughout that period of time?

22 A. I served my first year in Okinawa, Japan.

23 Q. Okay.

24 A. And then second round division in Camp
25 Lejeune, North Carolina.

1 Q. Okay. And is that where you hurt yourself?

2 A. Yes.

3 Q. In Camp Lejeune?

4 A. Yes.

5 Q. And when you were discharged, in 1990 or '91??

6 MR. FARRELL: '91.

7 Q. March of '91. When were you discharged in
8 '91, where did you go after you were
9 discharged?

10 A. I stayed there locally.

11 Q. You stayed near Camp Lejeune?

12 A. Yes.

13 Q. And were you working? Were you able to work?

14 A. No.

15 Q. And so were you -- how were you physically,
16 like, were you able to get around or did you
17 take some time to rehabilitate?

18 A. I was rehabilitating.

19 Q. Okay.

20 A. And I had met the gentleman that I was staying
21 -- I was living there with him.

22 Q. Okay.

23 A. And I was getting unemployment, I think, is
24 how I survived.

25 Q. Okay. And then, so together you moved up

1 here?

2 A. Correct.

3 Q. And then you entered school. And were you
4 working at all during the time period that you
5 were in school?

6 A. I was a work study.

7 Q. Okay. So you had jobs around campus kind of
8 thing, or what -- how did that work?

9 A. I would work in the Veteran's Office
10 processing their paperwork for other
11 professions that are going to school, both at
12 ECC and Fredonia.

13 Q. Okay. And while you -- during that time
14 period, while you were going to school, were
15 you involved in any, like, social activities
16 involving veterans?

17 A. No. Oh, I mean I belonged to the American
18 Legion in Hamburg. That's what I can remember
19 right now.

20 Q. The V.F.W.?

21 A. The V.F.W. 1419.

22 Q. That's like the number of it?

23 A. Yes.

24 Q. Where is that?

25 A. Lakeview. Lakeview.

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1 MR. FARRELL: Lakeview.

2 A. New York.

3 Q. And what -- I don't understand how -- I don't
4 know much about how they work. So what do you
5 do when you belong to one of these
6 organizations?

7 A. Just hang out. You go in and you talk to
8 other veterans. It's a club.

9 Q. Okay. And did you always go to those
10 locations or did you ever go to other
11 locations? Like, I know you can be a member
12 of one location but that gives you rights I
13 understand to go to another one?

14 A. Mm-hmm.

15 Q. Would you always go to --

16 A. I didn't go often.

17 Q. Okay.

18 A. But there -- I have been to the West Seneca
19 one, like I said, I've been to Lakeview, I've
20 been to Eden, I've been to many.

21 Q. Okay. And then when you were in school, how
22 -- did you -- did that get paid for through
23 the military entirely or at all? Were you --

24 A. Completely paid.

25 Q. It was completely paid?

DEPAOLO-CROSBY REPORTING SERVICES, INC.

1 A. Yes.

2 Q. Through the military?

3 A. Through DVA.

4 Q. Through DVA?

5 A. It was called voc rehab.

6 Q. Okay. And so you did not have any sort of
7 school debt or anything like that?

8 A. I took out student loans.

9 Q. You did?

10 A. To survive.

11 Q. Okay. And so when you graduated from school,
12 how -- what did you have outstanding in loans?

13 A. I think I just had ten thousand. I don't
14 remember. I don't know.

15 Q. Okay. And did you set-up some sort of plan
16 right away for paying it back?

17 A. Yes.

18 Q. What was that plan?

19 A. What was it? Whatever the common one is.

20 Q. So it wasn't deferred or anything?

21 A. No, no.

22 Q. And what are they --

23 Is that paid off --

24 A. Yes.

25 Q. -- at this point?

1 When was it paid off?

2 A. Probably 2000. I paid it with my state, you
3 know, like once I started working for the
4 state. That's why I had been deferred. I
5 don't remember.

6 Q. Did it take you -- so once you started working
7 for DVA in 2001?

8 A. Uh-uh.

9 Q. And so how long were you working for DVA
10 before it was paid off?

11 A. It didn't take me long to pay it off.

12 Q. It's hard to know what people's concept of
13 long is.

14 A. Oh, maybe four or five years.

15 Q. Okay. So then tell me a little bit about
16 meeting your husband. What year did you meet
17 him?

18 A. We met in September of '97.

19 Q. And how did you meet?

20 A. We were out at Sunset Bay and I met him there.
21 It's a beach bar.

22 Q. And did you start dating right away?

23 A. Yes.

24 Q. And how frequently would you see him in the
25 first year of dating him?

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1 A. In December, we moved in together.

2 Q. And so you met in September of '97?

3 A. Yes.

4 Q. And you moved in in December?

5 A. Yes.

6 Q. Okay. And you moved into your apartment in
7 West Seneca?

8 A. Yes.

9 Q. And then you moved at some point to a house
10 that that you were renting in Derby on --

11 A. Sturgeon Point Road.

12 Q. -- Sturgeon Point Road?

13 And do you remember when you moved to
14 Sturgeon Point Road, like, what year it was?
15 Was it before you were married?

16 A. Yes. Yeah, we were living in Sturgeon Point
17 when we were married.

18 Q. And then did you move right from there into
19 the house that you presently live in?

20 A. Yes.

21 Q. And how was the house on Wisconsin Road
22 purchased? Was it a joint purchase between
23 the two of you? Was it considered something
24 you were doing together?

25 A. It was joint, and I used my VA loan.

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1 Q. Okay. And when did you meet Charles Matie,
2 M-A-T-I-E?

3 A. I tried to come up with this, and I don't know
4 when I did. '96, end of '95, '96.

5 Q. And what makes you say that? Like, what makes
6 you, you know, focus on those years?

7 A. I'm thinking I was remembering where I was
8 living.

9 Q. Okay. And how does that help pinpoint your
10 mind as to having met him then? Is there
11 something that triggers it, triggers your
12 memory?

13 A. No. Just the location of where I lived.

14 Q. How did you meet him?

15 A. I met him at Peg's Place. It's in Hamburg.
16 It's a breakfast restaurant.

17 Q. And explain like how you actually met him.
18 How did you begin to interact with him to a
19 point you became acquaintances?

20 A. A friend of mine, we would always go there,
21 and he introduced me to Slim.

22 Q. How did he introduce you?

23 A. This is my friend Slim; this is Tracey.

24 Q. Okay. How did -- did he just -- did Slim just
25 happen to be there or was it an arranged thing

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1 that you were -- your friend was going there
2 to meet him?

3 A. No, they both frequent it.

4 Q. Okay. And was it -- you said it was a
5 breakfast place. Were you there for
6 breakfast? Were you there for lunch? Were
7 you there for something else?

8 A. I went for all -- all. I went for breakfast,
9 lunch, dinners.

10 Q. Okay.

11 A. It was a place that was a comfortable place.

12 Q. Okay. And --

13 A. And they all lived -- the older people all
14 knew each other.

15 Q. Okay. And so the friend that you went there
16 with, what did you say that person's name was?

17 A. It was Bill Buchanan.

18 Q. And how did you know Bill Buchanan?

19 A. He lived in an apartment complex that I lived
20 in.

21 Q. And were you actually going there, like,
22 together with him? Like, did you and Bill
23 Buchanan go together or did you just go in
24 there and Bill was there and he introduced
25 you?

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1 A. From what I remember the first time I met him,
2 Bill actually took me with him, because I
3 think my Jeep was being worked on. I didn't
4 have the Jeep.

5 Q. Okay. And how had you met Bill Buchanan?
6 From the apartment complex. But how did you
7 begin to strike up a friendship with Bill
8 Buchanan?

9 A. We would wash clothes in the laundromat.

10 Q. And so at Peg's Place, what did you -- how did
11 it go from meeting him through -- meeting
12 Charles through Bill Buchanan in Peg's Place
13 to developing something, you know, to having
14 an ongoing interaction with Matie?

15 A. Just seems we had a lot of things in common.
16 It just -- it grew. It just grew to more and
17 more and more.

18 Q. How did it go from, like, after meeting him at
19 Peg's Place through Bill Buchanan, do you
20 recall how you next encountered Matie?

21 A. I would, when I was going to school, I needed
22 a place to do my homework, so I would go over
23 there and he would help me, you know, give me
24 advice, whatever, read over my papers.

25 Q. Okay. At Peg's Place?

1 A. No. At his home.

2 Q. Oh, at his home. But how did it go from
3 meeting him with Bill Brennan [sic] at Peg's
4 Place to going to his home to go over homework
5 and stuff?

6 A. Oh, we would just -- we would just start,
7 like, I would start with walking at the
8 cemetery with him. I would just start doing
9 different things with him. Mr. Bill passed
10 away, and then we just seemed to do more and
11 more.

12 Q. When did Bill pass away?

13 A. I believe he passed in 2000, I think maybe
14 December of 2000.

15 Q. And, like, do you remember how you decided to
16 have another, a second meeting with Matie?

17 A. It just happened. I mean, I don't know.

18 Q. Okay. And when you say you would go on walks
19 in the cemetery, how did that come up to do
20 that, to involve yourself in that?

21 A. Because he would go there. He lost his mother
22 and I lost my grandmother. He -- I liked how
23 he respected his mother. And I had a dog, so
24 he said, you know, why don't you bring Kendall
25 down and, you know, walk in the cemetery with

1 me. He liked to walk, so I would do that even
2 more frequently.

3 Q. Okay. And so when did you -- when -- do you
4 know when you first introduced him to your
5 husband?

6 MR. FARRELL: Do you mean when they were
7 actually husband and wife or before?

8 BY MS. LOGUE:

9 Q. Well, no. The person who is your husband,
10 when did you first introduce him? When did
11 you first introduce Matie to John Kinn?

12 A. I think I -- I think Slim came over to help me
13 garden from what I remember.

14 MR. FARRELL: Do you have a time frame?

15 BY MS. LOGUE:

16 Q. Do you recall where you were living?

17 A. We were living in Wisconsin Road is where we
18 were living.

19 Q. You were living on Wisconsin Road.

20 A. Mm-hmm.

21 Q. You believe you were living on Wisconsin Road
22 when your husband first met him?

23 A. Yes.

24 Q. And so that would be after your wedding?

25 A. Yes.

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1 Q. Okay. And then, have you -- when you met
2 Matie, what did you learn about his family
3 other than his mother?

4 A. He had family members. I didn't know a lot
5 about them at all.

6 Q. Did you meet any of his nephews who would come
7 and spend time with him and take him out?

8 A. I don't know of them picking him up; they may
9 have. I don't have -- I have no knowledge of
10 that happening, nor had he told me.

11 Q. Did you ever hear, did he talk about going out
12 to meet them for lunch or anything, any family
13 members?

14 A. He may have.

15 MR. FARRELL: If you know.

16 A. I don't recall.

17 Q. Did you ever meet any of his female, you know,
18 friends that he kept in touch with?

19 A. I met his worker. There was a woman that
20 worked for him when he was -- when he ran his
21 business; her name was Mary. I met her.

22 Q. Mary?

23 A. Mm-hmm.

24 Q. Do you know her last name?

25 A. I don't. It starts with a D. I'm not know if

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1 it's --

2 Q. When did you meet her?

3 A. It's going to be 2008, 2009.

4 Q. So, okay. Closer now. What about when
5 earlier in -- when you first knew him, did you
6 meet any of his friends or family members
7 then?

8 A. I met some of his Mason friends.

9 Q. Some of his Mason friends?

10 A. I didn't meet any of his family at first.

11 Q. What about Linda, did you meet his friend
12 Linda at some point?

13 A. I don't know that I ever met Linda. Besides
14 the funeral, they're all there. I don't know
15 who each was, but...

16 Q. What about her children? Did you ever meet
17 any of them, Linda's children?

18 A. What are their names? I don't know.

19 Q. Did you ever meet a person named Dan that
20 spent time at Matie's house at all?

21 A. No, not that I'm aware of.

22 Q. Or Diana?

23 A. No.

24 Q. Did you ever -- did Matie ever talk about
25 giving money to Dan or Diana?

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1 A. No.

2 Q. For expenses they had?

3 A. No. He did speak about Linda. Slim gave
4 Linda money. I don't know the Diana and
5 whatever the other person is.

6 Q. What did he say about Linda?

7 A. Just that he'd lend her money.

8 Q. Do you know when you had that conversation
9 with him?

10 A. I don't remember.

11 Q. Was it closer to his death or was it earlier
12 in the relationship?

13 A. Yeah, earlier.

14 Q. What about -- what about some of his friends
15 like Sal Maratta; did he ever talk about
16 meeting him out?

17 A. I -- yes, I've heard of his name, yes.

18 Q. And was he somebody that Matie would go out
19 and meet frequently?

20 A. I would assume.

21 Q. And did he around his house have any pictures
22 of family, friends?

23 A. His mother.

24 Q. His mother. Any nieces, nephews, or
25 grandkids, nephews, anything like that around

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1 his house?

2 A. Not that I remember.

3 Q. When you first met him, when you were still in
4 school and would go do homework, where would
5 he go -- what family members would he go and
6 spend holidays with?

7 A. None that I'm aware of.

8 Q. And what about friends, would he go and spend
9 holidays with friends?

10 A. Not that I'm aware of.

11 Q. And when you first met him, it wasn't like
12 instantaneously he started spending holidays
13 with you, I assume. So when -- at what point
14 did he start spending holidays with you?

15 A. It was pretty early on in the relationship.

16 Q. It was pretty early on. So explain that to
17 me. Like, how did it arise that it went from,
18 you know, meeting him at Peg's Place to him
19 spending a holiday with you?

20 A. He was alone. He had no one.

21 Q. Okay.

22 A. And I cook.

23 Q. You earlier said to me that the first time
24 your husband met him was he came to your house
25 on Derby Road, which would have been about

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1 over five years after you first met him. So
2 then I assume you spent holidays with your
3 husband?

4 A. Mm-hmm.

5 Q. So the first holiday that you spent with him
6 must have been after 2001?

7 MR. FARRELL: Do you know?

8 THE WITNESS: I don't know what she's
9 asking.

10 MR. FARRELL: She's asking -- she's
11 asking you to pinpoint when it was you first
12 met Slim, if it was specifically after 2001.
13 If you know, fine.

14 THE WITNESS: Okay. I don't know. I
15 don't know.

16

17 BY MS. LOGUE:

18 Q. Okay. And so when you first met him, what
19 sort of interests did he have other than the
20 Masons?

21 How -- or rather, I'll withdraw that
22 question and ask, what's -- how frequently did
23 he attend Mason events and what sort of things
24 did he do?

25 A. All the time.

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1 Q. And he would drive himself there?

2 A. Yes.

3 Q. And did Matie spend time at any -- at any
4 American Legion halls?

5 A. Yes.

6 Q. Which one?

7 A. 527 in Hamburg.

8 Q. And would you go there with him?

9 A. Yes.

10 Q. Was he always a member there or is that
11 something that he -- he did later on? Did you
12 know, was he a member there before you knew
13 him?

14 A. I don't know.

15 Q. When did you get your job? So you got your
16 job at DVA in August of 2001?

17 A. Correct.

18 Q. And what precipitated going from, you know, an
19 education focused -- well, you know, college,
20 what you were doing in college was focused on
21 an education degree, and what -- how did you
22 then go into working for the DVA; how did that
23 transition?

24 A. Governor Patacki had a Hire a Vet Program.

25 You had to meet the criteria of a bachelor's

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1 degree, a disability, and experience with
2 counselling. It was a now-job. There wasn't
3 education jobs out there.

4 Q. Okay. So how did you know to get to apply at
5 the DVA?

6 A. George Basher would visit us at the -- the big
7 house, and --

8 MR. FARRELL: Just tell him. She
9 doesn't know what the big house means.

10 Q. On Sturgeon Road?

11 A. I'm sorry.

12 Q. You mean on Sturgeon Road?

13 A. On Sturgeon Point Road, correct. I'm sorry.

14 Q. That's okay.

15 A. And he told me to apply. I filled out all my
16 paperwork, and I worked with the office in
17 Collins with the paperwork, and then that
18 counselor watched it until it came through,
19 made phone calls for me, and then it came
20 through and I was hired, appointed, however.

21 Q. What do you mean when you were at the office
22 in Collins; what is that?

23 A. We have a field offices, and that was the
24 closest field office to where I was living.

25 Q. Oh. So you mean when you worked with them,

—DEPAOLO-CROSBY REPORTING SERVICES, INC.—

1 you mean you work with them in the application
2 process?

3 A. Yes.

4 Q. So you weren't working there?

5 A. No.

6 Q. So you were going through the application
7 process through the field office in Collins?

8 A. Correct.

9 Q. And then it came through, and you started
10 working in August of 2001. Is that -- and
11 then where did you report to work initially?

12 A. The VA Medical Center on Bailey Avenue.

13 Q. And can you describe for me the, like, the
14 facility arrangement there? So the VA Medical
15 Center is different from New York State DVA,
16 right?

17 A. It's a hospital.

18 Q. Okay.

19 A. It's a veterans hospital.

20 Q. So does New York State DVA have an office
21 within --

22 A. They did.

23 Q. -- the Federal VA hospital?

24 A. Yes.

25 Q. And so you're -- the first physical space that

NYS JCOPE INTERVIEW 14-089 -- 11/05/2015

1 you worked out of was inside of that hospital?

2 A. Yes.

3 Q. And what were your -- what was your title
4 initially?

5 A. I was a state veteran counselor.

6 Q. And is that when you still -- still your
7 title?

8 A. No.

9 Q. What is your title now?

10 A. Veterans benefit advisor one.

11 Q. What's -- how does -- how do those two titles
12 differ?

13 A. They don't. OGS changed. I don't know.

14 Q. Oh, okay. So it's the same kind of duties and
15 responsibilities?

16 A. Yes, same.

17 Q. Just a different label?

18 A. Yes.

19 Q. Okay. And so what -- what are the duties and
20 responsibilities of a state veterans counselor
21 or what do you do?

22 A. To advocate for veterans and families with
23 benefits, for benefits.

24 Q. And how do you do that? What do you do?

25 What's the training and experience you have

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1 that enables you to do that?

2 MR. FARRELL: Tell them what you do,
3 Tracey.

4 A. Like, I don't know how --

5 MR. FARRELL: When a veteran comes to
6 you -- or how does a veteran come to you and
7 what do you do for the veteran after that?

8 A. Okay. The veteran comes, I evaluate their
9 military discharge. I'm a state rep, so what
10 I'm doing is I'm preparing the paperwork for
11 the Federal VA to make a decision. I make
12 sure that they meet the criteria. I fill out
13 the forms, and then they're sent to the VA
14 regional office, the federal.

15 The federal will send letters, and I
16 advise the veteran to let me answer the
17 letters, and then the federal makes a decision
18 on the claim that was submitted.

19 Q. Okay. And so in part of that, you have to
20 evaluate the -- the military discharge and
21 make sure that it meets the criteria. So is
22 there some sort of like screening process that
23 you're doing there? Is that --

24 A. There's a little bit of it, because the VA has
25 specific rules or regulations in order to

1 file, just I'll do real generic, a claim for
2 compensation. They have to have an earned
3 diagnosis, they need to have -- they need to
4 have treatment of service, and then a length
5 between the two. And then they had to serve
6 during the war time period, you know, 90 days.
7 So I do a lot of that part of it.

8 Q. Okay. And so could you potentially, you know,
9 determine that a claim is not appropriate or a
10 claim shouldn't -- isn't, you know, would not
11 meet criteria sufficient to warrant a benefit?

12 A. No. That's not my -- my job. It's the
13 Federal VA's job to do. I'm just there to
14 submit the paperwork.

15 Q. Okay. But if a person -- if a veteran came in
16 and, you know, wanted you to apply for some
17 certain benefit and you knew the paperwork
18 wasn't there to support it, what do you do?

19 A. It all depends. The veteran can insist that I
20 do it, and I have to do it on behalf of the
21 veteran. I try to tell him what he needs to
22 do.

23 Q. Okay.

24 A. And prolong, you know, go get this other
25 paperwork and it's going to be a better claim.

1 Q. Okay. And you, by virtue -- so is there some
2 sort of awareness or knowledge that you have
3 that is more than the ordinary or training,
4 you know, awareness, knowledge, or training
5 that you have that is more than just the
6 ordinary person that enables you to, you know,
7 better process a claim?

8 MR. FARRELL: Hold on. Are you asking
9 if she's been trained in her job? Because
10 that's sort of a roundabout way of saying, I
11 assume if they do it for themselves, they do
12 it for themselves, but if they need something
13 prepared, then you're probably asking how she
14 prepared for her work?

15 MS. LOGUE: That's not what I'm asking.

16 MR. FARRELL: Then ask it.

17 BY MS. LOGUE:

18 Q. I'm asking if you have experienced training or
19 some other knowledge that enables you to
20 better process the claim than an ordinary
21 person?

22 A. In order to be a VBA-1, you have to go to
23 TRIPS training, TRIPS training, you have to be
24 accredited by the VA. So in order to be a
25 counselor, in order for me to process

1 paperwork, I have to be accredited.

2 Q. Okay.

3 A. So I've gone through the federal.

4 Q. Okay, okay. And so are there -- are there
5 some aspects of the claim that certain lay
6 people could miss, and therefore miss out on a
7 benefit that, you know, you would be less
8 likely to miss?

9 A. I'm good at my job.

10 Q. Okay. And I guess what I'm trying to
11 understand, is there -- is -- is it possible
12 that some benefits can, you know, be different
13 for certain similarly-situated veterans based
14 on who they go to as a person, as a rep --

15 MR. FARRELL: Hold on.

16 MS. LOGUE: -- to file their claims?

17 MR. FARRELL: Are you asking whether or
18 not, because of her position, she could
19 determine who's better positioned than her?

20 MS. LOGUE: No, I'm asking --

21 MR. FARRELL: Then clarify the question.

22 BY MS. LOGUE:

23 Q. -- could two veterans who are similarly
24 situated, have the same background, history,
25 have a different benefit result depending upon

1 who they go to as a service rep?

2 A. I would assume so, yes.

3 Q. And how is that? How would that happen?

4 A. Well, it's like with if I go to the Tim
5 Hortons; if Debbie is doing it, I'm going to
6 get really good service and I'm going to get a
7 smile. If the other one is doing it, she's
8 going to push it -- push it at me. It all
9 depends. You know, with Debbie I know I'm
10 going to get a tea, with the other one I'm
11 going to get a coffee. So, I mean, it all
12 depends.

13 Q. On the level of advocacy?

14 A. Advocacy, of passion, of advocacy, of wanting
15 to do the right thing, of enjoying the job
16 versus it just being a paycheck. And then,
17 you have the second level of you don't know
18 who's getting it at the Federal VA. You know,
19 you may have a go-getter or you might have --
20 I don't know what's going on up there. We
21 don't know that part of it.

22 Q. Okay. And so sometimes can you resubmit it
23 if, you know, maybe you got stuck with -- you
24 get a response that maybe you as the FVA think
25 is incorrect, can you resubmit it and try with

1 another person?

2 A. No. There -- they're set-up; they're set-up
3 by they do the last two digits of a Social
4 Security Number. So, no, it would go back to
5 the same.

6 Q. Oh, the same person. But can you resubmit?
7 Can you appeal a claim?

8 A. Yes.

9 Q. How many -- are you limited to a number of
10 appeals?

11 A. You only appeal the issue to Washington.

12 Q. Okay.

13 A. And so they answer claims.

14 Q. Okay.

15 A. You can only do it once.

16 MR. GAGAN: Do you handle the appeal --
17 I'm sorry. Do you handle the appeal as well
18 as the initial?

19 THE WITNESS: Yes.

20 MR. GAGAN: Okay.

21

22 BY MS. LOGUE:

23 Q. So getting back to your -- around the time you
24 were initially hired, you were working at the
25 hospital at that time?

1 A. Mm-hmm.

2 Q. At what point did you leave the office at the
3 hospital?

4 A. From there I went to Williamsville, I believe
5 in '03, the same time I was in Batavia twice a
6 week.

7 Q. Now, how do you get clients? Like, do you
8 just hope they walk through the door or do you
9 go out and look for them in any way?

10 MR. FARRELL: Go out and like
11 recruiting?

12 Q. Mm-hmm.

13 A. No, we're not allowed to recruit.

14 Q. Or do some sort of service announcement so,
15 you know, showing the availability of, you
16 know, how do you get --

17 A. Word of mouth.

18 Q. Okay.

19 A. In Williamsville, I was in the town hall there
20 in the Amherst Town Hall, and the assessor's
21 office would send veterans up.

22 Q. Okay. And what sort of caseload have you
23 handled over the years? How does that work?
24 Is there -- how are the cases distributed and
25 assigned?

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1 A. They're not. They're not distributed.
2 They're not assigned. My caseload was about
3 400 my entire career up until now.

4 Q. Okay. So let's go back to when you were
5 working in the hospital office. How many
6 other SVAs -- is that the proper acronym for
7 it?

8 A. VBA-1.

9 Q. What is it?

10 A. VBA-1.

11 Q. VBA, that's where you are. Now, back in 2001,
12 what did you call it?

13 A. SVC.

14 Q. SVC, okay. SVC and now it's VBA. So back in
15 2001, you were an SVC?

16 A. State veterans counsel.

17 Q. SVC. And so how many other SVCs were there at
18 the -- at the New York State DVA location at
19 the Buffalo VA Hospital?

20 A. One other.

21 Q. It was just you and one other. And how is it
22 decided? Was there a supervisor?

23 A. No.

24 Q. So it was just two of you?

25 A. It was a secretary.

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1 Q. Okay. And how was it decided who would get
2 what, depending upon who came in?

3 A. The secretary would do our schedules.

4 Q. Okay. Was there like intake days or
5 something? How did it --

6 A. She would just fit the veteran to whichever
7 schedule.

8 Q. Okay. And I just -- since, you know, I've
9 never been there, never seen it, how does it
10 actually work? Like, how does it get
11 scheduled? How does it get determined who
12 that veteran is going to get serviced by?

13 A. There's no criteria. It's just the next
14 available appointment. If he came in and he
15 wanted an appointment on a Thursday at ten
16 o'clock and Pauline looked at our calendar and
17 Tracey is already booked, you're going to see
18 Kevin.

19 Q. Okay. Okay. And what if, you know, for some
20 reason Kevin had, you know, a hundred cases
21 and Tracey had four hundred, but you know, the
22 open spot on the schedule was Tracey, it'd
23 still stay with you?

24 A. Yes.

25 Q. Okay. And was there ever any redistribution

1 of caseload?

2 A. No.

3 Q. Was it generally even? Is it kept even?

4 A. No.

5 Q. How does that happen?

6 A. Some people work and enjoy it and some get a
7 paycheck.

8 Q. How does that affect the number of cases they
9 have?

10 A. Doesn't. Oh, how does it affect it?

11 Q. Yeah.

12 A. I mean, you can -- you can have a veteran go
13 out on a wild goose chase filing. I don't
14 know.

15 MR. FARRELL: Clarify what you mean so
16 she understands it. What do you mean by a
17 veteran going on a wild goose chase?

18 THE WITNESS: Oh. Like, when say the
19 veteran isn't -- the veteran comes in, he
20 wants to file for his knee he hurt in World
21 War II, that's not a claim that should be
22 filed. You need to get a current diagnosis,
23 you need to get a doctor to say that it's been
24 linked together, that it's linked to his
25 military service and not anything other than

1 post or pre-service.

2 MR. FARRELL: Pre- service.

3 THE WITNESS: Thank you. So say that
4 the counselor would do that, where I would
5 send for his military records, get the
6 records, and then it's listed there and now I
7 have to file.

8

9 BY MS. LOGUE:

10 Q. Okay. So you as the rep have to go out and
11 hunt down the supporting documentation for the
12 claims you submit?

13 A. Or I tell the veteran how to -- where to go
14 and how to get it, what they need from the
15 doctor.

16 Q. Okay. And how do you differentiate between
17 when you're going to tell a veteran to get it
18 and when you're going to get it?

19 A. When I believe the veteran, and I will do it
20 when I know that I can win the claim. If I
21 don't think I can win the claim, if he said I
22 just had one yesterday, syphilis, you know,
23 you need to get the records.

24 Q. Okay. So you want them -- when you have an
25 initial doubt that this is -- this is for

1 real?

2 A. Yes.

3 Q. You -- before you essentially waste any more
4 time on it, you want to say to them, well, all
5 right, show me first and then maybe we'll talk
6 kind of thing?

7 A. Right.

8 Q. But if you have someone who you think this is
9 -- this looks legitimate, then you'll say
10 okay, then you'll --

11 A. We'll do it.

12 Q. What do they sign, a HIPAA release forms so
13 you can get the doctor's information?

14 A. No. I tell them to get the medical
15 information, they sign a power of attorney
16 that I make at the review, the records in the
17 federal system.

18 Q. Okay. So that -- and is that the one general
19 power of attorney that -- for filing claims
20 that also enables you to get the records?

21 A. Just -- no, just filing the claims.

22 Q. Filing claims?

23 A. Filing claims.

24 Q. Is there a separate thing that is signed for
25 getting the medical records?

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1 A. The veteran has to get the records. I don't
2 talk to doctors.

3 Q. Oh, okay.

4 A. I don't elicit. I tell them what -- I gave
5 them a sheet of paper of what they can get
6 from the doctor, but I do not.

7 Q. Okay. What if it's a Federal VA Hospital or
8 the -- so what are the records -- earlier I
9 thought you said that you would go out and you
10 would get things versus a claim that you might
11 not necessarily think is legitimate, so you
12 have them do things?

13 A. And the mix-up there was there's a form that I
14 will do and the veteran signs that's going to
15 that doctor for records. So I initiate the
16 form.

17 Q. Okay. Okay. I see. Is it different if it's
18 a VA Hospital?

19 A. It is.

20 Q. How is that different?

21 A. You don't need any records, because the
22 Federal VA are able to look at it
23 electronically.

24 Q. Okay.

25 A. So no records are needed.

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1 Q. But would you want to look at them before you
2 submit the claims so that you know if it's,
3 you know, what you should be asking for?

4 A. No. You can get a good read on the veterans.
5 And then once I moved out of the medical
6 center, I was even better at it, at knowing.
7 A lot of times they even come with it.

8 Q. Okay. What about military history, do you ask
9 for that documentation or does the veteran
10 have to bring it?

11 A. The veteran needs to bring it. If he doesn't
12 have it, then there is a form that I do, I
13 complete, and I send it to St. Louis.

14 Q. Okay. If it's a claim that you're skeptical
15 about, will you send that form?

16 A. Yes.

17 Q. Or will you wait for the veteran?

18 A. I'd send that form.

19 Q. What sort of -- you mentioned one of the
20 e-trainings that you go through through
21 Federal VA to get certified, the certification
22 process. What other kind of training did you
23 receive from the New York State DVA, if any?

24 A. I mean, we're always doing our online
25 trainings that's mandated by the state, and

1 then we have, like, we just had a training in
2 Syracuse. So whenever they set -- whenever
3 the set the training sessions up.

4 Q. Okay. And are these training sessions, are
5 you -- do you mean the online things that can
6 relate from anything from like sexual
7 harassment in the work place to, you know,
8 cyber security, or do you mean things specific
9 for DVA responsibilities?

10 A. They do those.

11 Q. They do what?

12 A. They do the specific.

13 Q. Specific DVA things?

14 A. Correct.

15 Q. Things that relate to serving veterans?

16 A. Correct.

17 Q. Okay. And what kind of more general trainings
18 do you have? Do you go through through things
19 that, you know, things I just mentioned? What
20 are some of the more general trainings that
21 you go through for state workers?

22 A. All the ones that are mandated for us to take.

23 Q. And does that include ethics training?

24 A. Yes.

25 Q. And so, what sort of ethics training have you

1 taken?

2 A. What was online.

3 Q. And what about back in 2001 when you started?

4 A. I don't remember.

5 Q. When -- when did you first become aware of
6 whether or not Matie was receiving any sort of
7 veterans benefits?

8 A. I think we probably talked about it at Peg's
9 Place or at the cemetery. He was -- he was
10 very private. I know that he had -- he had
11 told me a story about being with Pat and
12 getting cold feet, so he was receiving money
13 from the VA. I wasn't sure at the time what
14 it was, and it was for his feet, I think, and
15 that's what I know.

16 Q. So, and what time frame is this, that you --

17 A. Oh, how soon did I know?

18 Q. Yeah.

19 A. Pretty soon.

20 Q. Again, people have different ideas of what
21 soon is.

22 A. Probably within a year of knowing him.

23 Q. Okay. And did you know how much it was, how
24 much the benefit was?

25 A. No.

1 Q. And so, how over the -- the next -- how did
2 you then learn any more? Did you -- did there
3 come a point in time that you then learned
4 anything else about his benefits or had any
5 further discussions about them?

6 A. Well, when I started doing the job and I
7 started understanding the compensation part of
8 it, I saw that you can put in for increases.
9 So that's when I delved into, you know, what
10 are you service-connected for, let's see if we
11 can get you -- because you're much more severe
12 than you were back in the 40s, let's see, you
13 know, tell me, show me what you're
14 service-connected for.

15 Q. Okay. And so how did you -- do you remember
16 how that -- when that came up?

17 A. He said his feet, and I filed the claim for an
18 increase in his -- in his feet.

19 Q. And how -- take me through the process that
20 you went through with him to do that.

21 A. He came into the office and I filed. I took
22 the power of attorney, I filed the claim for
23 an increase in his feet. He followed up
24 obviously, telling me when he gets his
25 letters, and then he got the decision granting

1 him, I think it was 60 percent. And then once
2 he got that, he was -- he was then eligible
3 for individual unemployability, which pays the
4 veteran at the hundred percent rate if he is
5 rated 60 percent for a condition that prevents
6 him from working.

7 Q. So what does that mean, you know, in monetary
8 terms, the difference between, like, what is
9 the difference between what he had before he
10 came in to meet with, you know, to do this
11 with you and what he resulted with?

12 MR. FARRELL: Are you asking -- because
13 it's 40 percent, but are you asking monetary
14 amount?

15 MS. LOGUE: Yes. I'm asking what
16 amount.

17 MR. FARRELL: If you know.

18 THE WITNESS: Well, I don't know what he
19 was -- I think I got him to 60 percent, which
20 in monetary is maybe 6, 700 dollars, but I
21 don't know what he --

22 MR. FARRELL: Is that per month?

23 THE WITNESS: Per month. But I don't
24 remember where he was before I got him to the
25 60 percent. I don't have that amount.

1 MS. LOGUE: Okay. So I will ask that
2 this be marked as Exhibit 1.

3
4 (Discussion held off the record)

5
6 The following was marked for identification:

7 Exhibit 1 DVA VETCOP

8

9 MS. LOGUE: Okay. And so I'm marking as
10 Exhibit 1 what is a printout from DVA VETCOP,
11 V-E-T-C-O-P, and I'm going to show it to Ms.
12 Kinn.

13 MR. FARRELL: Let me.

14 MS. LOGUE: I'm sorry.

15 MR. FARRELL: Okay.

16 BY MS. LOGUE:

17 Q. And now, starting actually from the bottom,
18 because it seems to go -- have the earliest
19 date at the bottom, on the bottom of the
20 chart, can you -- can you walk us through the
21 steps that are reflected on that exhibit?

22 A. So the veteran came into their scheduled
23 appointment, Pauline sent him to see me to
24 apply for an increase in his ten percent
25 service-connected frostbite for right hand and

1 feet. I then turned around and filed a claim
2 for the increase to the feet and the back, and
3 I told them that he had a Purple Heart, just
4 threw that in, and then the VA received it.

5 Q. Okay. And then what's the date that the VA
6 received it?

7 A. 4/23/2002.

8 Q. And then what's the next date that any
9 activity is indicated?

10 A. May 13th, 2002.

11 Q. And what happened on that day?

12 A. Responded to a development letter and forward
13 the 221 -- I'm sorry. I'm trying to read it
14 myself. SVC Kinn responded to Varo dev letter
15 and forwarded 21 - 4142 sent by Varo to NYS
16 DVA by mistake.

17 Q. What does that mean?

18 A. I have no idea.

19 Q. Okay.

20 A. I have no idea. I responded to the
21 development letter, which I would, and in the
22 development letter they would have asked for
23 the 4142.

24 Q. What's the 4142?

25 A. That's -- it's for doctors.

1 Q. It's a what?

2 A. To get doctors' information from the outside.

3 Q. Okay. So they were requesting a 4142, there
4 was --

5 A. In the development letter, the 4142 is always
6 with the development letter --

7 Q. Okay.

8 A. -- whether they want it or not.

9 Q. Okay. And so, was that necessary to file?

10 A. No.

11 Q. The 4142 was not?

12 A. No.

13 Q. Okay.

14 A. Because he was receiving all of his treatment
15 at the VA.

16 Q. Okay.

17 A. And he documented it.

18 Q. Okay. So there was no need for outside doctor
19 letters?

20 A. No.

21 Q. Okay. And so, then what was the next step?

22 A. 5/23/2002, received transmittal date stamped
23 5/14/02.

24 Q. Okay. And then what is the next one?

25 A. The vet is 60 percent service-connected. SVC

1 tried to get IU Varo decision 2704, denied IU.
2 Vet notified of the appeal process.

3 Q. So why was the individual unemployability, is
4 what I understand IU to be, why was that
5 denied?

6 A. I don't know. I'd have to see the decision.

7 Q. Okay. You don't recall offhand from Matie
8 what they, you know, the reason -- someone
9 that you knew, you don't recall what the
10 reasoning was?

11 A. I don't.

12 Q. And so what happens? What is the process when
13 that happens?

14 A. I told him about the appeal process that
15 notified of the appeal process, and then a
16 year later --

17 MR. FARRELL: Read the date.

18 A. On 2/11/05 I resubmitted the 8940, which is
19 the claim for individual unemployability.

20 Q. And now, you can put the exhibit down. I just
21 have some questions about the individual
22 unemployability claim. How does that effect
23 someone's final benefit amount?

24 A. It takes it up to a hundred percent.

25 Q. It takes it up to a hundred percent?

1 A. They're at 60 percent for the
2 service-connected disability and it takes the
3 patient at the hundred percent rate if they're
4 not able to be employed because of the
5 service-connected disability.

6 Q. And what are some of the reasons for denials
7 of that?

8 A. You don't show for an exam, you -- they have a
9 lot of them.

10 Q. Okay.

11 A. I'm sorry. I don't know.

12 Q. And so what would be a basis for appealing it?

13 A. In the decision it tells you why they denied
14 it. So you get the information that why they
15 denied it, and then you can -- you can re--
16 you can resubmit it. You wouldn't appeal it.

17 Q. Okay.

18 A. Because it would be new to evidence.

19 Q. Okay. Okay. So can you tell from that --
20 what can you tell from that as far as what was
21 done?

22 A. I can only guesstimate as to what -- he didn't
23 have a statement stating that he's not able to
24 work because of his 60 percent
25 service-connected disabilities in the

1 decision. And then when I reapply, he's able
2 to get a doctor to write a statement saying
3 that he's permanently not able to be gainfully
4 employed because of his COLA injury residuals.

5 Q. And do you know where he, you know, what --
6 where he went for that statement? How did he
7 obtain that statement?

8 A. I would assume he probably got it from the VA
9 from his VA doctor.

10 Q. Okay. Were you at all -- did you provide any
11 assistance in doing that?

12 A. No. He knew what he -- he was good with that.
13 You know, not so good in the later years, but
14 2002, he was on fire; he would do what I asked
15 him to do.

16 Q. Okay. And so you let him know that he needed
17 -- that you -- that he needed another letter?

18 A. Correct.

19 Q. Okay.

20 A. I assume that's what I did from what I can see
21 here.

22 Q. Okay. And so you -- you resubmitted it, and
23 what happened with the resubmission?

24 A. On 7/19/2005 it was granted, and it went back
25 to February 11th, 2005.

1 Q. Okay. And what is the difference -- what is
2 the monetary difference in what he would've
3 gotten without the IU and what he ended up
4 getting with the IU?

5 A. With the IU he got three grand, roughly three
6 grand. It goes by COLA, so I don't know what
7 he -- I don't know what his specific dollar
8 amount. It's around three grand.

9 Q. And what would he have had without the IU?

10 A. He was 70, so he would have had about \$1,200.

11 Q. So the IU provides a fairly significant,
12 almost double, benefit?

13 A. They're not able to work.

14 Q. Okay.

15 A. Yes.

16 Q. Okay. And when it was first -- why is there
17 such a long period of time between, you know,
18 the application in 2002 and then there's an
19 entry not until February 17th, 2004 that
20 states he's 60 percent service-connected?

21 MR. FARRELL: Did you prepare the form?

22 THE WITNESS: That one, no.

23 MR. FARRELL: Do you know or would you
24 be guessing?

25 THE WITNESS: No, I -- I hear your

1 question. I know what you --

2

3 BY MS. LOGUE:

4 Q. Can I make -- can I just say, you did not
5 prepare, by printing out Exhibit 1 here, but
6 you did make entries noted on Exhibit 1,
7 correct?

8 A. Correct.

9 Q. Why is -- in your experience, how long does it
10 take to process one of these claims?

11 A. Well, I think you're mixing it up.

12 Q. Okay.

13 A. I think when we -- when we got the 60 percent
14 service-connected, I think that's where you're
15 going with that, 60 percent service-connected
16 -- I don't know what you're asking. What is
17 the difference?

18 Q. What's happening between 2002 and the next
19 entry in 2004?

20 A. He just doesn't want to mess with it. He's
21 happy where he is.

22 Q. Okay. And so what happens in 2004?

23 A. In 2004?

24 Q. Why is -- IU individual, like, why is it an
25 issue then in 2004?

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1 MR. FARRELL: Do you understand the
2 question?

3 THE WITNESS: Yeah, but I can't answer
4 that. It's him, I mean.

5 BY MS. LOGUE:

6 Q. So he was fine and then he decides in 2004
7 that he wants to go for this other thing?

8 A. I talked to other veterans, probably found
9 about all the other benefits, the dental.
10 They talk.

11 Q. Okay. So in 2000 -- in April of 2002, a claim
12 was submitted. And what resulted from the
13 claim in 2002 that was submitted?

14 A. 60 percent service connection.

15 Q. Okay. So he has -- so that's what results,
16 and that's what you said you couldn't really
17 say specifically, but somewhere around 1,300?

18 A. Right.

19 Q. Okay. And then 2004 he decides to submit a
20 claim, there's a decision made that he's going
21 to submit a claim for individual
22 unemployability as well?

23 A. A year later.

24 Q. And was that previously requested in the
25 earlier submission? Was individual

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1 unemployability asked for in 2002?

2 A. I don't think it was. If I asked for the
3 decision, the VA probably denied IU because
4 the veteran says that he can work.

5 Q. Okay.

6 A. So I never applied for the IU initially. I
7 didn't do it until 2005. I asked for an
8 increase in his COLA injury residuals, a new
9 claim to his foot and back.

10 Q. And then when is the claim -- when is the
11 claim for individual -- well, in 2004 it says
12 denied IU. The decision dated 2/7/04 denied
13 IU. So, to me, that means it was requested.

14 A. It doesn't have to be requested to be denied.

15 Q. Okay. Do you know sitting here if it was
16 requested or not?

17 A. I do not.

18 Q. Okay. But then in -- on 2/11/2005, that's
19 when there's a new claim including a 4138 and
20 an 8940?

21 A. Yeah.

22 Q. One of those is the IU?

23 A. Yes.

24 Q. That's the 4138 is the IU?

25 A. No. 8940.

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1 Q. 8940 is the IU. So that is what you did in
2 2005. February 11, 2005 you were asking,
3 submitting --

4 A. For IU.

5 Q. -- for IU, okay.

6 And that is what ends up netting him
7 almost a double amount benefit?

8 A. Yes.

9 Q. Okay. Now, when this is happening around this
10 time, you are also named as power of attorney
11 for him?

12 A. Yes.

13 Q. In 2004?

14 A. It was requested; however, I did not do it.

15 Q. It was requested, but you did not do it?

16 A. I received something in the mail saying that I
17 was going to be his power of attorney. I
18 called up Albany and said, is this legal?
19 They said no. I said I can't do that. Which
20 is when --

21 Q. What did you receive in the mail?

22 A. I don't remember. The notification of being
23 named power of attorney.

24 Q. Sorry. I'm just missing one of my -- so you
25 received the notification of being power of

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1 attorney in the mail. And did you know what
2 it meant? Did you know -- what did you do?
3 What was your reaction to receiving it other
4 than calling up Albany? Did you talk to Matie
5 about it?

6 A. No.

7 Q. So you received something in the mail saying
8 that you were his power of attorney and you
9 don't call him and ask him what it's all
10 about?

11 A. Well, no. I mean, I know what it's about.

12 MR. FARRELL: Is that a question or a
13 conclusion?

14 Q. It's a question. Do you -- you don't call him
15 to ask him? You don't have a conversation
16 with him about it?

17 A. The first thing I do is I call Albany. I call
18 my supervisor to see is this legal before I
19 tell before I tell -- before I start telling
20 Slim that I can't do it or I can do it or
21 whatever. I don't want to get him upset.

22 Q. Okay. So then what happens after you call --
23 you call Albany? What do they say to you?

24 A. They say I cannot be named.

25 Q. Who did you speak to in Albany?

1 A. I don't know. I believe Bill Brennan; he's
2 the attorney up there.

3 MR. GAGAN: Wait, if I may interject
4 just one thing. You had never had a
5 conversation with Mr. Matie about becoming his
6 personal power of attorney?

7 THE WITNESS: No.

8 MR. GAGAN: So it came as a surprise to
9 you?

10 THE WITNESS: Yes.

11 MS. LOGUE: I'm sorry.

12 THE WITNESS: Which had me -- had me --
13 I would know it's probably not something that
14 I can do from some of the papers that I signed
15 when I started the job.

16

17 BY MS. LOGUE:

18 Q. When you started the job, you had to affirm
19 that you were not the power of attorney for
20 anyone?

21 A. Okay.

22 Q. And so you're saying that you recognized that
23 you could not do that?

24 A. Yes, yes.

25 Q. And in fact, your supervisors had a

1 conversation with you about that, right?

2 A. Yes.

3 Q. Jerry Grace and one other supervisor met with
4 you about that?

5 A. Yes.

6 Q. And what -- is it your opinion that when they
7 met with you, you knew at that time already
8 that it wasn't okay for you to be the power of
9 attorney?

10 A. Yes.

11 Q. And you indicated to them that you had known
12 him for a long time?

13 A. Yes.

14 Q. And that it wasn't any of their business how,
15 you know, it was not any of the Division's
16 business about knowing Matie?

17 MR. FARRELL: Well, hold on. You want
18 to rephrase that? Just hold on. Don't answer
19 that.

20 Are you quoting her?

21 THE WITNESS: Yes.

22 MR. FARRELL: If you're not quoting her,
23 you testifying it wasn't their business. So
24 why don't you rephrase the question.

25 BY MS. LOGUE:

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1 Q. You said to your supervisor that it was none
2 of the Division's business, that he was a
3 personal friend of you and your husband?

4 A. Yes.

5 Q. But you're telling us --

6 A. I didn't say it. I wrote it --

7 Q. Okay.

8 A. -- on a counselling memo.

9 Q. And -- but you're saying that your own
10 initiative you had previously spoken to Bill
11 Brennan and proactively withdrawn your being
12 power of attorney?

13 A. I don't understand the question.

14 Q. So prior to meeting with -- you're saying that
15 -- so prior to meeting with Jerry Grace and
16 Harry Rudy, you had proactively called Bill
17 Brennan?

18 A. Correct.

19 Q. And proactively withdrawn your power of
20 attorney?

21 A. Correct.

22 Q. So you knew it was something that you should
23 consult with the DVA on because you
24 proactively called Bill Brennan?

25 A. Correct.

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1 Q. But then you met with Harry Rudy?

2 A. That was as a result of talking to Brennan.

3 Q. And you told Harry Rudy and Jerry Grace that
4 it was none of the Division's business?

5 A. Right.

6 MR. GAGAN: She wrote it down to be more
7 accurate. You never had a conversation with
8 them, but you wrote it on some document?

9 THE WITNESS: Yes.

10 MS. LOGUE: I'm sorry, I didn't hear.

11 MR. GAGAN: She never had a verbal
12 conversation to this. She wrote it in some
13 document.

14 MR. FARRELL: In a counselling memo.

15 BY MS. LOGUE:

16 Q. And that happened, you were -- this all
17 happened in around September of 2004. Is that
18 when you were -- you were named power of
19 attorney in September of 2004?

20 A. I don't remember the year.

21 Q. Well, the counselling session happened in
22 2005, in the spring of 2005.

23 A. Okay.

24 Q. In May. And so you were named power of
25 attorney, and then the counselling session is

1 May of 2005, and that was during the time that
2 you were working on the claim to get him the
3 individual unemployability in February of
4 2005. So you are in agreement that that's the
5 time frame that these things were happening,
6 around the same time?

7 A. You've got the paperwork. I don't have that.
8 Those have been requested to be taken out of
9 my personnel files. I don't even have a copy
10 of them.

11 MR. GAGAN: I need to step out for a
12 minute.

13 MS. LOGUE: Kevin Gagan is stepping out
14 of the room for the moment, and I just need a
15 short break to get one of my documents that I
16 seem to have misplaced here.

17 MR. FARRELL: Okay.

18
19 (Recess taken at 3:04 p.m.)

20
21 MR. FARRELL: Before we -- I said to
22 Emily, before we go around and around on this,
23 with a lot of questions that are just going to
24 have to be clarified, she needs to tell you
25 the difference of power of attorneys. And I

1 don't know as you understand - not your fault,
2 because I wouldn't either - she needs to tell
3 you very briefly what powers of attorney, now
4 because I know where you're going with this,
5 but I think you've been asking questions,
6 which you're entitled to ask, but you should
7 understand what it is. So I'd like her to
8 tell her what it is.

9 MS. LOGUE: I understand that there's a
10 difference. Is the recording going?

11 MR. SMITH: Yes, it is.

12
13 BY MS. LOGUE:

14 Q. I understand that there's a difference between
15 the power of attorney that DVA gets and the
16 power of attorney that you had received
17 directly from Matie. Is that what you're
18 referring to?

19 A. Yes.

20 Q. Okay. So the DVA power of attorney is for
21 filing claims?

22 A. VA.

23 Q. Okay. There's also the form that you signed
24 when you started at the DVA was your
25 acknowledgement that you did not hold power of

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1 attorney of the type that you later received
2 from Matie?

3 A. Correct.

4 Q. Or were the executor of any will or anything
5 like that?

6 A. Correct.

7 Q. Is there anything more to the explanation that
8 you wanted to share?

9 A. No.

10 Q. Okay. Now, so while all this is happening,
11 you -- you additionally in -- in August of
12 2004 you were given a German Luger pistol by
13 Mr. Matie. And what were the circumstances of
14 him giving you that gift?

15 A. He didn't have -- I had a pistol permit and he
16 just wanted to make sure that it was always
17 going to be a souvenir that's kept.

18 Q. Okay.

19 A. And he asked me would I do it and I said yeah.
20 He did it because I had a permit.

21 Q. Okay. Have you ever had it valued?

22 A. No.

23 Q. Is it like an antique World War II-type pistol
24 or is that --

25 MR. FARRELL: Well, that's compound. It

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1 is World War II, but whether it's considered
2 antique or not is separate.

3 Q. Well, I'm asking whether you know.

4 A. It's never been fired. I don't know.

5 Q. Okay. And then you -- sorry.

6 And then it was in 2006 Mr. Matie gets
7 into a car accident? Do you --

8 A. I believe it was 2008.

9 Q. You believe his car accident was 2008?

10 A. I think so.

11 Q. Well, tell me what you remember about that.

12 A. He was with one of his friends in Letchworth
13 and a bus had him hit, hit the car.

14 Q. And what happened? What was the result? What
15 happened with Mr. Matie? He went to the
16 hospital for a while?

17 A. He went to Strong Memorial and then he came
18 here to Gates Circle and then he was put into
19 Autumn View for rehab and then home.

20 Q. And when he was home, one of his sisters came
21 out and stayed with him?

22 A. Yes.

23 Q. And did you meet her then?

24 A. I did.

25 Q. And how long did she stay with him?

1 A. I would guess a month.

2 Q. And why is it that you believe it was 2008
3 that he got into that accident? Were you his
4 health care proxy?

5 A. No.

6 Q. You know, helping him with the stuff going on
7 at the hospital?

8 A. No.

9 Q. So what is it that makes you think it was
10 2008?

11 A. I don't know. I just remembered it as 2008.

12 Q. Okay. And is that when you found out about
13 the settlement regarding the accident?

14 A. No, no. He was in litigation with I don't
15 know what lawyers, and then -- and then he did
16 tell me that the settlement came through.

17 Q. Okay. And in 2008, at the beginning of 2008,
18 you and Mr. Matie opened up a joint checking
19 account together, correct?

20 A. Yes.

21 Q. And so at that point in time, he had already
22 had the money from the litigation, right?

23 A. I don't know.

24 Q. And the joint checking account was funded with
25 two certificates of deposit that he had had?

1 A. Mm-hmm.

2 Q. First \$15,000 and a second infusion of another
3 \$15,000. And you didn't put any money into
4 the joint checking account, right?

5 A. Did not.

6 Q. And the -- at that point in time, Matie was
7 still doing other bills on his own, correct?
8 He had other accounts that he was able to
9 handle and manage himself, right?

10 MR. FARRELL: If you know, or you can
11 clarify what the arrangement was, fine. But
12 based on that question, I want to make sure
13 that you understand.

14 A. I believe he only had the one account, because
15 he had combined all his accounts into one.

16 MS. LOGUE: Okay.

17 MR. GAGAN: We're talking about checking
18 accounts, right?

19

20 BY MS. LOGUE:

21 Q. So you believe he only had the joint checking
22 account?

23 A. Correct.

24 Q. The one that you were using?

25 A. The one that we were using, that I was using

1 under his direction.

2 Q. Okay. I'll get back to that in a minute. I
3 just wanted to ask you: This is where my mind
4 had paused a moment ago, because I knew there
5 was something I wasn't getting to, and that
6 was just going back to 2005. Also in 2005,
7 just shortly after his rating had gone up, or
8 rather -- maybe I'm using the wrong term, but
9 his IU had been approved, he issues a will
10 that leaves you not only his car, but also his
11 home in 2005.

12 I'm going to mark this as Exhibit 2.

13
14 The following was marked for identification:
15 Exhibit 2 copy of Matie's will 7/26/2005

16
17 MS. LOGUE: It's -- yeah, I just handed
18 counsel a copy of Exhibit 2, which is a copy
19 of the will dated -- I'm going to get the
20 month and date wrong, but it's 2005.

21 MR. FARRELL: It's a copy.

22 MS. LOGUE: I believe it's July 26th?

23 MR. FARRELL: Yeah, it looks like 26th
24 of July. I can't tell if it's 2006 or 2008,
25 but it's a bad copy.

1 MS. LOGUE: Oh, I thought -- 2005.

2 MR. FARRELL: Five, okay.

3 BY MS. LOGUE:

4 Q. Ms. Kinn, will you take a look at the exhibit,
5 and read us what you see as the date?

6 A. July 26th, 2005.

7 Q. And if you go to the first page of that
8 exhibit.

9 MR. FARRELL: Well, hold on, hold on.
10 You have to establish that she knew about it
11 because you're cross-examining her based on
12 the document.

13 MS. LOGUE: I just asked her to read the
14 date.

15 MR. FARRELL: Let me finish, let me
16 finish.

17 MR. GAGAN: Let him finish.

18 MR. FARRELL: Now, you're
19 cross-examining in essence on a document that
20 you have to establish knowledge of whether
21 whether or not it lists her name.

22 MS. LOGUE: Can I just say, we're not
23 before a jury. We're not entering anything
24 into evidence.

25 MR. FARRELL: You're going to ask her

1 fair questions.

2 MS. LOGUE: This is not a trial.

3 MR. FARRELL: Then I'll direct her not
4 to answer until you get proper form of the
5 question, all right?

6 BY MS. LOGUE:

7 Q. Ms. Kinn, were you aware of a will that named
8 you as the beneficiary of his house and his
9 car that he wrote in 2005?

10 MR. FARRELL: At what point?

11 A. No.

12 Q. And -- but you would agree that that will was,
13 as dated 2005, occurred shortly after --
14 shortly after you had obtained a significant
15 financial benefit for him?

16 MR. FARRELL: Hold on. Stop. She's not
17 going to answer that question. It's quite
18 premature really. You know, you're making a
19 connection between, as you have from the
20 start, the fact that there's an increased
21 beneficiary amount for Mr. Matie and the
22 creation of the will. If you want to
23 establish it was some substance, fine, but
24 otherwise getting her to acknowledge what it
25 says it here --

1 MS. LOGUE: Well, then I'll just ask
2 this question.

3 MR. FARRELL: Let the document speak for
4 itself. Don't answer the question.

5 MR. GAGAN: I mean, if I may, we can
6 establish all those facts. Those facts we
7 know. We know all those things. We don't
8 need your client as a witness to establish
9 them.

10 MR. FARRELL: I know.

11 MR. GAGAN: So Ms. Logue's question is
12 whether your client knew and to what degree
13 she knew. So I think we can go from there.

14 MR. FARRELL: If we ask it that way,
15 that's fine.

16 MR. GAGAN: Go ahead.

17 BY MS. LOGUE:

18 Q. Well, I think we can move on. You're saying
19 you did not know that he created this will?

20 A. Not until his death.

21 Q. And after, in July of 2005, did he have any
22 conversations with you regarding what he hoped
23 for and intended in terms of providing for
24 you?

25 A. Not for providing for me, but through the

1 years all he's talked about was taking care of
2 the Shriners.

3 Q. So when did you first become aware that he
4 intended you to be a beneficiary of any of his
5 wealth?

6 A. After he died.

7 Q. Now, moving ahead to 2008, that was when you
8 opened up the joint checking account using
9 \$30,000 of his wealth, right?

10 A. The account was opened. He opened the
11 account.

12 Q. Okay. And a number of your own personal
13 expenses were paid using that joint checking
14 account?

15 A. Yes.

16 Q. You paid off your Navy Federal Credit Union
17 credit card using that joint checking account?

18 A. I don't know that I paid it off, because I
19 always owned it, but there was probably a
20 payment on it.

21 Q. A payment? How many payments do you think you
22 made on the Navy Federal Credit Union account
23 using his checking account?

24 A. Directed by him?

25 Q. Using the joint checking account?

1 A. Directed by him, I don't know; I don't know
2 how many times.

3 Q. Do you have any estimate as to how much money
4 went from the joint checking account to pay
5 off the Navy Federal Credit Union account?

6 MR. FARRELL: If you know, otherwise
7 they have it themselves.

8 A. I don't know.

9 Q. It was a card that you regularly used
10 yourself, correct?

11 A. Yes.

12

13 The following was marked for identification:
14 Exhibit 3 Navy Federal Credit Union banking

15

16 MS. LOGUE: And if I could show you what
17 I'm going to mark as Exhibit 3. This is a
18 document at the top, it says payment source.
19 It's a date, it has four columns, the first
20 being date, the second column column saying
21 joint/Matie, the second -- the third column
22 saying Kinn checking, and the fourth saying
23 Navy Federal Credit Union banking. And I'm
24 going to show that to Ms. Kinn and her
25 counsel.

1 MR. FARRELL: Okay. Fine.

2

3 BY MS. LOGUE:

4 Q. I'm going to have you take a look at that, and
5 in a moment I'll ask you a couple questions.
6 Now, Ms. Kinn, is it fair to say that the
7 first column listed there, that the payments
8 -- or the dollar amounts listed in that -- I'm
9 sorry -- the second column under joint/Matie,
10 that the amounts listed there, to the best of
11 your recollection, correspond with payments
12 you made using the joint checking account to
13 pay off the Navy Federal Credit Union card?

14 A. I'm not understanding. The way I'm reading it
15 is the second column has amounts. And then
16 when you go to the Kinn checking, there's four
17 amounts, and then when you go to the Navy
18 Federal there's \$5,000.

19 Q. Mm-hmm.

20 A. Okay.

21 Q. And my first question is the first -- the
22 second column.

23 A. Right.

24 Q. And those amounts.

25 A. The second amount, okay.

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1 Q. No. The amounts under the first column,
2 joint/Matie?

3 A. Right.

4 Q. Which at the bottom showed totals over
5 \$11,000.

6 A. Right.

7 Q. So is it fair to say that that is about that
8 -- to the best of your recollection, that
9 \$11,000 was used from the joint checking
10 account that you had with Matie, that \$11,000
11 from that was used to pay off the Navy Federal
12 Credit Union account?

13 A. No, ma'am. I'm not reading it that way.

14 Q. I'm just asking you --

15 A. No, ma'am.

16 MR. FARRELL: She answered your
17 question.

18 Q. So you don't believe --

19 MR. FARRELL: She answered your
20 question.

21 MR. GAGAN: Ask another question.

22 Q. So did you make payments to the Navy Federal
23 Credit Union account using the joint checking
24 account that you shared with Matie?

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

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1 Q. And how many payments do you think you made
2 over the years, or rather between 2009 and
3 2000 -- the year from March 2009 through April
4 2010, how many payments do you think you made
5 to Navy Federal Credit Union using your -- the
6 joint checking account that you shared with
7 Matie?

8 A. It looks like I had spent \$4,466.58.

9 Q. I prepared this exhibit, and what I'll tell
10 you, what I saw is that you spent --

11 MR. FARRELL: We're not interested in.

12 MS. LOGUE: We're not at trial, sir.

13 MR. FARRELL: I don't care. I'm not
14 going to let her answer that way.

15 MS. LOGUE: I'm going to explain to her
16 what I did.

17 MR. FARRELL: And you explained it, and
18 if she agrees with it.

19 MS. LOGUE: We're not at trial. We're
20 not in front of a trial, sir.

21 MR. FARRELL: I don't care if we're in
22 front of a jury. You're still going to pose
23 the questions correctly.

24

25 BY MS. LOGUE:

1 Q. I looked at your Navy Federal Credit Union
2 account, I looked at the joint checking
3 account, I looked at what you used to pay Navy
4 Federal Credit Union, using your own checking
5 account and using accounts that you had at
6 Navy Federal Credit Union. \$11,000 went from
7 Matie's account to pay off to -- the joint
8 checking account you had with Matie, to pay
9 off the Navy Federal Credit Union account.

10 \$3,000 went from your own checking account
11 and four thousand 44 -- \$4,466 went from your
12 Navy Federal Credit Union account. So more
13 than half over that year period to pay -- more
14 than half of the payments made to your Navy
15 Federal Credit Union account were made using
16 the joint checking account. Is that a fair
17 recollection of that time period to you?

18 A. From the paper that you're showing, yes.

19 Q. I'm not asking from the paper that I'm
20 showing. I'm asking from your recollection?

21 A. He asked me to pay all the time. How many
22 times he asked me to pay a bill, I can't tell
23 you.

24 MR. GAGAN: Did he ask you to pay for
25 your bills?

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1 THE WITNESS: Yes.

2 MR. GAGAN: Out of his account?

3 THE WITNESS: Yes.

4 BY MS. LOGUE:

5 Q. And so in 2008, you knew that he was being
6 generous enough to give you over \$10,000?

7 A. Not give me. He was directing me to pay the
8 bills that he wanted paid. He was a very,
9 very strong person. He knew what he wanted.
10 He told me pay that.

11 Q. He wanted to give you a gift --

12 A. It's not a gift.

13 Q. -- of \$10,000 and you took it?

14 MR. FARRELL: Emily, no. We're not
15 doing that. You can do that in another form,
16 if you want to do it, not like that.

17 Q. He was giving you a gift, this is a gift of
18 over \$10,000 that he wanted to give you?

19 A. I just don't see it as a gift.

20 Q. Well --

21 A. It was direction. It was verbal direction
22 telling me what to do with the account.

23 Q. Okay.

24 A. And with the bills.

25 Q. So did he verbally direct you to pay utility

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1 bills for your house?

2 A. Yes.

3 Q. Did he verbally direct you to pay for Verizon
4 bills of yours?

5 A. I didn't have Verizon; he had Verizon.

6 Q. Did he verbally direct you to pay for your
7 dental work?

8 A. He specifically told me to -- directed me to
9 pay for the dental work. I don't believe it
10 was my dental work; I believe it was my
11 husband's dental work.

12 Q. Okay. And so you knew that in his lifetime he
13 was being generous to give you this money?

14 A. What you're not -- you're not understanding
15 the tit-for-tat, okay? We would go to dinner
16 probably three four times. Do I need to shut
17 up?

18 MR. FARRELL: No. Go right ahead.

19 A. Three or four times and I would pay. We would
20 go to Shea's, and I would pay. I -- I never
21 allow someone to be over me, and he was the
22 same way.

23 Q. Okay.

24 A. It was easier to take the direction of what he
25 wanted then to take any cash in any way,

1 shape, or form.

2 Q. Okay. In 2009 you asked your financial
3 advisor to swing -- to come over and speak to
4 Matie about getting -- helping out with his --
5 his finances?

6 A. Correct.

7 Q. You wanted to see more of interest -- you
8 wanted to see his money put into something
9 that had more interest?

10 A. He wanted more interest.

11 Q. Okay. So you enlisted Julie Murphy to come
12 sit down with him?

13 A. Yes.

14 Q. And Julie Murphy came to the house, and you
15 were there when she came to the house?

16 A. Yes.

17 Q. And Julie Murphy recommended an annuity -- an
18 annuity to put his money -- an annuity product
19 is what she recommended?

20 A. Yeah.

21 Q. And you were there and Matie agreed to put his
22 money into the annuity and to name you as the
23 beneficiary of it?

24 A. I don't remember the beneficiary, but I'm not
25 surprised that he did.

1 Q. But you were there --

2 MR. GAGAN: Let me just, if I might.
3 Were you there during the meeting between
4 Mr. Matie and Ms. Murphy about this annuity?
5 Were you present at the meeting when they were
6 discussing it?

7 THE WITNESS: Yes, yes.

8 BY MS. LOGUE:

9 Q. And part of that discussion included who the
10 beneficiary would be?

11 A. I guess, yes.

12 Q. And so you were aware that you were being
13 named the beneficiary?

14 A. I don't remember it specifically, but if
15 you're saying that's what happened, that's
16 what happened.

17 Q. I'm not saying that's what happened. I'm
18 asking you, number one, were you present when
19 that discussion occurred?

20 A. Yes, yes.

21 Q. So there was -- and number two, there was a
22 discussion about who the beneficiary would be?
23 Or number one, there was a discussion about
24 who the beneficiary would be?

25 MR. FARRELL: Hold on. She answered

1 yes, she was there. And I know you've spoken
2 with Ms. Murphy, who indicated she wasn't
3 entirely sure, she couldn't say one way or the
4 other she heard the specific discussion of the
5 annuity. So we're not going to go into that
6 territory.

7 Q. You were present there when the beneficiary
8 discussion occurred?

9 A. I was there when the product was brought in,
10 yes. I was cooking.

11 MS. LOGUE: And --

12
13 BY MR. GAGAN:

14 Q. So hold on. You were cooking. So you weren't
15 part of the conversation?

16 A. No, I was in the kitchen.

17 Q. So you weren't listening to the conversation
18 between Mr. Matie and Ms. Murphy?

19 A. It really had nothing to do with me.

20 Q. Yeah. But the question is: Were you
21 listening to the conversation?

22 A. Some of it. Some of it, yes.

23 Q. And how much of it?

24 A. Whatever I could hear. I wasn't up --

25 Q. How much could you hear?

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1 A. I wasn't part of the conversation, so
2 therefore, I was just there.

3 Q. What did you hear?

4 A. I don't remember.

5 Q. Did you hear -- do you remember hearing that
6 you were named as the beneficiary?

7 A. No.

8 Q. Did you ever talk to Mr. Matie about being
9 named beneficiary?

10 A. Absolutely not.

11 Q. So you were surprised to learn that you were
12 -- or you didn't know when he passed away that
13 you also were the beneficiary of this fund, of
14 this annuity?

15 A. I wasn't surprised.

16 MR. FARRELL: Hold on. You have the
17 packet submitted where the attorney for the
18 estate confirms the fact that she didn't know
19 it until he called her about the probate. So
20 you have the facts, as you've indicated
21 before, Mr. Kennickey, who was the attorney
22 for the estate. Now, whether we're talking
23 the annuity or now onto the estate in general,
24 it starts handling with the estate and her
25 position as a beneficiary and executor, she

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1 didn't know until after he had died.

2 Q. But I'm talking about the annuity. So you
3 didn't know at the time of the meeting between
4 Mr. Murphy -- I'm sorry, Ms. Murphy and Mr.
5 Matie that you were being named beneficiary?

6 A. I didn't know.

7 Q. Mr. Matie didn't tell you?

8 A. No.

9 Q. Ms. Murphy didn't tell you?

10 A. No.

11 Q. And you weren't --

12 A. Not that I remember.

13 Q. And you weren't present when they discussed
14 naming you as beneficiary?

15 A. No. I was there when they were discussing the
16 product.

17 Q. Mr. Matie didn't tell you after --

18 A. He did not.

19 Q. -- this meeting that you were named
20 beneficiary to this annuity? I'm just talking
21 about this annuity.

22 A. He did not.

23 Q. And this is true, even though you were in the
24 house when the meeting occurred?

25 A. Correct.

1 Q. And you brought Ms. Murphy over?

2 A. I did not bring her over.

3 Q. She just --

4 A. She met us there.

5 Q. Did you arrange for Ms. Murphy to be there
6 when you were there?

7 A. No. I believe Slim made the phone call to
8 Julie Murphy to set-up the appointment.

9 MR. GAGAN: Sorry. Go ahead.

10

11 BY MS. LOGUE:

12 Q. Well, so you didn't know. Matie died on May
13 18th, correct?

14 A. Yes.

15 Q. Of 2010?

16 A. Yes.

17 Q. And within two days you had already called
18 Valic to inquire about the annuity?

19 A. Yes.

20 Q. And so within two days of his death, you knew
21 that you were the recipient of the beneficiary
22 of the annuity?

23 A. Yes.

24 Q. And so how did you know to call Valic?

25 A. I called Julie to let her know that Slim had

1 passed way.

2 Q. Because you knew you were the beneficiary?

3 MR. FARRELL: No. That's not a
4 question. It's a statement. Rephrase.

5 Q. Why did you call Julie Murphy?

6 A. To let her know that Slim had passed away.

7 Q. And you knew that the only product that Julie
8 Murphy had or only involvement with Matie was
9 the annuity?

10 MR. FARRELL: Did you know for sure that
11 was the only product?

12 THE WITNESS: No, no.

13 MR. FARRELL: Okay.

14 BY MS. LOGUE:

15 Q. You ended up -- obviously you knew at the time
16 Matie died, you knew that you would have what
17 remained in the joint checking account?

18 A. Correct.

19 Q. And he also had additional checking accounts
20 or other banking accounts at First Niagara
21 Bank that remained at the time of his death?

22 MR. FARRELL: Did you know?

23 Q. Do you know about this?

24 A. I didn't realize it, no.

25 Q. And you know now though?

1 A. Yes.

2 Q. And you know now that they all went to you.
3 So in total, what did you get? Could you tell
4 us what was the total amount that you received
5 from Matie following his death?

6 A. I think it was under five hundred, just under
7 five hundred.

8 Q. Just under 500,000. Can you break it down for
9 me what it was, all the things were?

10 MR. FARRELL: What's the difference?
11 What's the difference if she said she didn't
12 know until after it was done, after if she
13 tells you about the other bank account? Where
14 are you going with this?

15 MS. LOGUE: It's relevant to what she
16 received.

17 MR. FARRELL: I'll decide if it's
18 relevant. Repose your question. Go ahead.

19 THE WITNESS: Well, I think it was in
20 that packet you sent.

21 MR. FARRELL: What's that?

22 THE WITNESS: I think the breakdown is
23 in the packet that you sent.

24 MR. FARRELL: Okay.

25 THE WITNESS: But the 170,000 from the

1 annuity, the house sale -- sorry. The house
2 -- the sale of the house was, I think 150,
3 then the rest of it must have been the other
4 accounts that you're talking about.

5 BY MS. LOGUE:

6 Q. And what was -- to your recollection, what was
7 the rest of it? What was the amount?

8 MR. FARRELL: Once again, what's the
9 difference? She said slightly under 500,000.

10 MS. LOGUE: It's relevant to the case
11 that we're investigating in how she benefitted
12 from a client that she served at the DVA.
13 What was the --

14 MR. GAGAGN: If I just might, one of the
15 things about the Joint Commission on Public
16 Ethics is we're not allowed -- we're not at
17 liberty to discuss other aspects in the
18 investigation, we're not at liberty to discuss
19 anything about our commissioners knowing it.
20 So there's a lot of questions you're asking
21 that are good questions.

22 But Emily, Mr. Smith and I, we're not --
23 we're not at liberty to answer a lot of those
24 questions. So it's --

25 MR. FARRELL: I'm not asking for you to

1 tell me. I'm just saying on relevance of the
2 question she's asking.

3 MR. GAGAN: Right. Well, sometimes when
4 you're asking the relevance, we have relevance
5 that we can't share with you.

6 MR. FARRELL: Well, okay. Fine. But,
7 you know, the surrogate's court has the
8 records and has inventory of the estate before
9 it was closed, and Mr. Kennickey's office
10 would have that, also, so...

11 MR. GAGAN: I'm not discussing a
12 particular question or a particular issue.
13 I'm just talking in general, sometimes we
14 can't answer what the relevance is.

15 MR. FARRELL: And I appreciate you
16 telling me that. I'm just saying as far as
17 the specifics, she doesn't have the
18 surrogate's court papers, nor the judicial
19 settlement papers. She can't say
20 specifically. She's told you slightly under
21 500,000. We're not going to have her guess
22 and speculate.

23 BY MS. LOGUE:

24 Q. How did Denise Roddler come to be Matie's
25 housekeeper?

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1 A. She cleans for me, and Slim liked the idea of
2 having a clean house, and then she went and
3 she worked for Slim.

4 Q. And approximately when did she go work for
5 him?

6 A. Maybe 2004, 2005.

7 Q. And what was it that -- what were her
8 responsibilities for him?

9 A. Cleaning.

10 Q. And what would she do, like, what type of --
11 you know, housekeeper sometimes do different
12 things. What were -- what were the things she
13 did for him?

14 A. Dust and vacuum and clean the toilet and clean
15 the tub.

16 Q. Did she ever run errands or do, you know, run
17 errands for him, cook for him, anything else?

18 A. As the relationship went on, as his health
19 after the accident, she did a lot more.

20 Q. And how was it determined how much she was
21 going to get paid for what she did?

22 A. He paid -- he paid all his people 25 dollars
23 an hour.

24 Q. Okay. And how -- how many hours would she
25 spend with him?

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1 A. It would all depend.

2 Q. What --

3 A. Earlier on, it probably wasn't as many and,
4 then as --

5 MR. FARRELL: His health?

6 THE WITNESS: Yeah.

7 BY MS. LOGUE:

8 Q. What is the range? I don't have any sense of
9 whether you mean to tell me it might have
10 been, you know, one hour a day one day a week,
11 or if, you know, at the beginning it was one
12 hour a day every day of the week, or if it was
13 once a month one day. So what -- could you
14 give me some sort of range?

15 A. Sure. I believe she cleaned every other week,
16 and she was probably there three to four hours
17 a day.

18 Q. And is that at the beginning?

19 A. Yes.

20 Q. So every other week three to four hours a day?

21 A. Yes.

22 Q. So every other week about \$100 or 125?

23 A. Yes.

24 MR. FARRELL: Do you know that?

25 THE WITNESS: If that's -- if that's

1 that's the amount of hours she put in, yes.

2 BY MS. LOGUE:

3 Q. And how did it progress?

4 A. It progressed when, after his accident, he
5 couldn't drive anymore. So she would take him
6 to his therapy appointments and then she'd
7 take him to lunch, and it was all at a 25
8 dollar an hour pay.

9 Q. And what was it that had her -- why was she
10 spending three to four hours a day there? Was
11 there a lot to do at the beginning?

12 A. He was a talker; he wanted company. They
13 would go to dinner -- not dinner, but lunch,
14 whatever he wanted to do.

15 Q. Okay. Moving on to a different topic. At
16 some point Matie gave you his BMW?

17 A. Mm-hmm.

18 Q. And that was in 2008 he gave it to you?

19 A. Yes.

20 Q. And eventually you used the BMW and turned it
21 in for your husband's truck?

22 A. Yes.

23 Q. And when did you become aware that he was even
24 purchasing a BMW?

25 A. I knew that he was looking for a BMW. It must

1 have been once he got his settlement, so I
2 would imagine that was around that time, and I
3 was happy for him.

4 Q. And what did he say, was, you know, why was he
5 looking for a BMW, how did it --

6 A. He just always wanted one.

7 Q. Okay. And so then what happened? How did it
8 transpire that he eventually gave it to you?

9 A. He -- after his accident, he was never allowed
10 to drive again. The driving school came in,
11 and because he was old, he drove with the same
12 foot, with both feet, and they wouldn't pass
13 him to drive.

14 Q. And so how did -- that still doesn't explain
15 how it eventually turned to him giving it to
16 you.

17 A. So he asked me to drive it. I couldn't drive
18 it, so it sat in the driveway. I didn't want
19 it sitting in his driveway. John would drive
20 it. I had a car; I didn't need a BMW. And
21 then I sold my car, I got my Jeep, and we --
22 after Slim passed, we traded the BMW for
23 John's truck.

24 Q. And when Slim passed, you took care of the
25 funeral arrangements?

1 A. I did.

2 Q. And so how did it come -- how did you -- at
3 what point was a determination made who was
4 going to deal with everything that has to
5 happen once someone dies?

6 A. I got to the -- actually, Denise and I got to
7 the funeral home, and the funeral director was
8 told that I was paying the bill.

9 Q. How was the funeral home chosen?

10 A. Slim chose it.

11 Q. How do you know? How did that --

12 A. He made -- he made all of his own
13 arrangements.

14 Q. And how did you know what the arrangements
15 were?

16 A. I didn't know the dollars amounts, but I know
17 he said I wouldn't have to worry with making
18 all of the arrangements. He had his plot
19 because I know he was being buried next to his
20 mother.

21 MR. GAGAN: How did you know what
22 funeral home to go to?

23 THE WITNESS: I'm sorry?

24 MR. GAGAN: I'm sorry. I didn't speak
25 very loud. That was my fault. How did you

1 know which funeral home to go to?

2 THE WITNESS: He always talked about
3 Lakeside. He always talked about it.

4 MR. GAGAN: So he had told you where he
5 wanted to be waked?

6 THE WITNESS: Yes.

7

8 BY MS. LOGUE:

9 Q. So he told you where the wake was going to be,
10 he told you the arrangements that he had made,
11 that you weren't going to have to worry about
12 it?

13 A. Mm-hmm.

14 Q. So you had a conversation with him while he
15 was still living in which there was a
16 recognition that this was part of what you
17 would be involved in?

18 A. Yes.

19 Q. And so in that same kind of conversation, how
20 -- how did it come up that, like, that was
21 your responsibility at all?

22 A. Well, another part of the conversation was he
23 -- he was fearful of going into a nursing
24 home, and I told him I promise you I'll always
25 keep you out of a nursing home. I'll do

1 everything I possibly can.

2 He didn't -- he trusted me completely. I
3 loved him to death. I trusted him. I mean,
4 there was this -- there isn't --

5 I know it's hard to sit in from the
6 outside and understand this relationship that
7 we had. I was everything in his world, and I
8 liked that. And it felt good to be nice, to
9 sit so he didn't have to go and eat alone. It
10 felt good to be a part of it. He was fun. He
11 was -- he taught me gardening. I lost my
12 grandmother in 2000, he lost his mother, we
13 had a common thing because we adored these
14 people, and we were put together and we were
15 able to adore each other.

16 Q. Did he have some sort of misgivings or ideas
17 that it was more than just a platonic thing
18 between the two of you?

19 MR. FARRELL: Hold on. If you know
20 something concrete, fine, but if you can
21 answer the question, answer it.

22 A. Just disgusting. I don't even know how to
23 answer.

24 Q. Whether or not it's disgusting, he expressed
25 to some people that, or referred to you as his

1 girlfriend. Did you --

2 A. I was a friend, I was a girl. If you think
3 about what the World War II people think of
4 that word, it's -- I was a girlfriend of his.

5 Q. Okay.

6 A. As Denise was a girlfriend of his.

7 Q. But he didn't refer to other people -- he, in
8 talking to other people, he didn't refer to
9 Denise as his girlfriend?

10 MR. FARRELL: What part of this do you
11 folks not understand?

12 MS. LOGUE: I'm asking you why you think
13 Matie felt that way.

14 MR. FARRELL: Well, hold on. Hold on.
15 Ask your question once and let's move on,
16 because we're saying one thing and you don't
17 want to believe it, there could be a
18 relationship like this.

19 MS. LOGUE: I did not say that. When
20 did I say that?

21 MR. FARRELL: Well, you questioned it.

22

23 BY MS. LOGUE:

24 Q. I'm asking you why you think Matie, you know,
25 Matie had that in his mind that you were his

1 girlfriend?

2 A. I never heard it from him and I don't know.

3 Q. But -- so he had this idea that you were the
4 one that would be there at the end for him?

5 A. Yes.

6 Q. And so in part and parcel with that, did he
7 ever have a conversation with you about what
8 -- what would happen with his possessions?

9 A. I never wanted to talk about it. I enjoyed
10 him when he was alive. We didn't discuss --

11 MR. FARRELL: No. Listen to her
12 question. Did you ever have a conversation
13 where you discussed you receiving his
14 possessions?

15 THE WITNESS: No.

16 BY MS. LOGUE:

17 Q. No, I didn't ask that question. I asked: Did
18 you ever have a conversation with him about
19 what would happen to his possessions?

20 A. No.

21 Q. So, but you did have a conversation. As much
22 as you didn't like to discuss it, you did have
23 a conversation with him about the funeral
24 arrangements?

25 A. Correct.

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1 MR. FARRELL: What's the connection
2 between the two?

3 Q. And so how -- and within that conversation,
4 did it come up about how the funeral would be
5 paid for?

6 A. No.

7 Q. Okay. And you knew where the funeral -- where
8 he had made the arrangements, so you went to
9 the funeral home?

10 A. Mm-hmm.

11 Q. And you did that before his family members?

12 A. No. The family members were there already.

13 Q. How did the family members know what funeral
14 home it was going to be at?

15 A. I don't know.

16 Q. Is there one funeral home that like everybody
17 in Orchard Park goes to? I mean, what -- how
18 did they know? How did anyone know that you
19 knew from him --

20 MR. FARRELL: Hold on. You're not going
21 to ask a question how somebody else knew
22 something. I assume you would never ask that
23 kind of question.

24 Q. If you know, is there any discussion where
25 they'd call and say what's happening, what are

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1 we doing?

2 A. No.

3 Q. Did you call anybody?

4 A. No.

5 Q. And you knew -- how does it happen that you
6 get to the funeral home and someone tells you
7 you're responsible?

8 MR. FARRELL: Well, hold on. What kind
9 of question is that?

10 MS. LOGUE: That's how she explained it
11 when I first asked the question.

12 MR. FARRELL: She's answered the
13 question.

14 BY MS. LOGUE:

15 Q. But, so what is the conversation? How do you
16 -- do you walk right in there and the -- and
17 the wake is happening and they tell you? I'm
18 asking you: What's the process, how do they
19 let you know?

20 A. The funeral director came up to me, and
21 actually, I went up and said hi, I'm Tracey
22 Kinn, and they said the family said you were
23 taking care of the -- the bill, and I said
24 okay, and I gave him my credit card.

25 Q. Was that after everything had happened at the

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1 wake, like --

2 A. No.

3 Q. Like after -- was it --

4 A. I got upset and left.

5 Q. Had the body been brought to the funeral home
6 yet?

7 A. Yes.

8 Q. And how did -- how was that arranged, because
9 how did the hospital know where to transport
10 him?

11 MR. FARRELL: Well, hold on. If you
12 know, you can answer. I don't want you to
13 speculate.

14 A. I don't know because I wasn't the health
15 proxy. I wasn't involved with that part of
16 it.

17 Q. Okay. So what has -- what sort of
18 arrangements had gone on at the point in time
19 that you had that conversation with the
20 funeral home director?

21 MR. FARRELL: Well, hold on.

22 Q. At what stage of the, you know, of the
23 ceremony did that occur?

24 MR. FARRELL: Well, first of all, we
25 haven't established the ceremony. She said

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1 she walked in and introduced herself. The
2 funeral director introduced himself.

3 MS. LOGUE: Was it the day of the wake?

4 MR. FARRELL: Just a minute. I'm not
5 done, all right? Talked to the funeral
6 director, and the funeral director says hi,
7 I'm Tracey Kinn, the family said --

8 MS. LOGUE: If you would just let her
9 answer the question then maybe --

10 MR. FARRELL: If you asked a proper
11 question, I wouldn't have to do this. Go
12 ahead and ask it.

13 BY MS. LOGUE:

14 Q. What is the event going on that precipitates
15 you going into the funeral home at the moment
16 that conversation with the funeral home
17 director happened?

18 A. I believe I wanted to -- I had to get the --
19 his outfit that he was going to wear.

20 Q. Okay.

21 A. And I think the health proxy called me and
22 said hey, you need to talk to the funeral
23 director because they need -- they need his
24 suit and his Shriners stuff from the house.

25 Q. Okay. Who was the health proxy?

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1 A. Mary -- not Mary. The other person that
2 worked for him. I could get the name for you.
3 I don't know.

4 Q. Okay.

5 A. Sam Maratta was the back-up.

6 MR. GAGAN: L? The letter L, does that
7 help? I'm not sure. I'm just trying to help
8 out.

9 THE WITNESS: Well, it's, I mean, I can
10 see her. I just can't -- I can't give you the
11 name.

12 BY MS. LOGUE:

13 Q. Okay.

14 A. Sam and -- because they were both in charge
15 when I said I wouldn't do it.

16 Q. When you said you wouldn't do what?

17 A. When I wouldn't do the health proxy and the
18 power of attorney.

19 Q. Okay.

20 A. So it was Sam, Luann. Luann, Louanna.

21 Q. Okay. And so you were bringing the funeral
22 director the clothes when you learned he says
23 you're responsible, the family said you're
24 responsible?

25 A. I believe so.

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1 Q. Okay. And what was your reaction? How did
2 you respond to that?

3 A. I just lost my -- well, whatever, here's
4 money.

5 Q. Okay. Was there any question about talking to
6 the family, like --

7 A. They didn't talk to me. They didn't talk to
8 me the whole time.

9 Q. Why were they not talking to you at that
10 point?

11 A. I don't know.

12 Q. At that point in time, from what you've said
13 to us, you had no understanding that you were
14 receiving any of his estate?

15 A. Yes.

16 Q. And so you didn't know if you were receiving
17 it or the family was receiving it at that
18 point or someone else?

19 A. Correct.

20 Q. And did you -- you didn't have any thought to
21 try and figure that out before you agreed to
22 who -- that you would pay the funeral costs?

23 A. Well, no, because I had the joint account. So
24 I would just -- I would pay with the credit
25 card, and then I'll just --

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1 Q. Did you know how much money was left in the
2 joint account? Was it enough to cover the
3 funeral costs?

4 A. I believe it was.

5 Q. So you knew you had enough money in the
6 account to cover the costs?

7 A. Correct.

8 Q. Okay. And then as part of having covered the
9 funeral costs, you also submitted a claim to
10 the VA to get reimbursed for that, right?

11 A. Mm-hmm.

12 Q. And you submitted that claim yourself?

13 A. Yes.

14 Q. It's -- it's something -- a form that you were
15 already familiar with?

16 A. Yes.

17 Q. And something that your computer system has
18 access to generate a process claim, a claim
19 for?

20 A. Correct.

21 Q. And so you -- you went ahead and did that, you
22 filled out the form yourself with yourself as
23 the recipient of the benefit?

24 A. Correct.

25 Q. And you submitted it through your system at

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1 work?

2 A. No. Directly. We didn't have power of
3 attorney, so it just went directly to the
4 Federal VA.

5 Q. And how -- when you say directly, does it go
6 through the computer to do that?

7 A. No. Mail.

8 Q. You mailed it off?

9 A. Yes.

10 Q. Okay.

11 MR. FARRELL: Is that the infamous 329
12 dollar burial allowance that the federal
13 government generously gives you?

14 THE WITNESS: Yes, on top of the 750 for
15 service-connected.

16
17 BY MS. LOGUE:

18 Q. But ultimately you didn't have to pay any of
19 your own money for the funeral because you
20 used the money in the joint checking to pay?

21 A. Yes, ma'am.

22 Q. Now, let's see. I'm going to show you what I
23 will mark as Exhibit 3.

24 MR. FARRELL: Four, I think.

25 MS. LOGUE: Oh, you're right. Four was

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1 my chart. I mean three was my chart.

2

3 The following was marked for identification:

4 Exhibit 4 DVA VET COP-web address 16520

5

6 MS. LOGUE: And this also at the top
7 says DVA VETCOP. And to differentiate it from
8 number 1, the exhibit at the bottom of the
9 hash of the web address, the last number, the
10 last thing indicated web address is number
11 16520. So I'll show this to Ms. Kinn and
12 counsel.

13 MR. FARRELL: There.

14

15 BY MS. LOGUE:

16 Q. Now, having taken a look at that, what's on
17 Exhibit 4 is a -- it depicts a transaction in
18 the New York DVA system that's used to process
19 claims with the VA, right?

20 A. No. It depicts -- it depicts a form action, a
21 form that was used within his -- his -- his
22 file.

23 Q. A form that was used, so explain what you mean
24 by that.

25 A. The form is used out of the form action. I

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1 can't explain it further.

2 Q. Well, in there it says that there is a
3 completed by Tracey Kinn?

4 A. Correct.

5 Q. So what did you -- what sort of entry -- did
6 you make that entry?

7 A. Yes.

8 Q. And what is the action that was taken that is
9 recorded in that entry?

10 A. The form was completed and it was mailed to
11 the Federal VA.

12 Q. Okay. So in the DVA system, there has to be
13 -- there's a record of that made, that that's
14 done?

15 A. No, because I didn't submit it through the
16 DVA.

17 Q. So why is it in DVA's computer system?

18 A. The form is, not the process of submitting it.

19 Q. Okay. So you uploaded the form?

20 A. The form.

21 Q. Okay. So -- and so that's what it's recording
22 is that you uploaded that form?

23 A. And completed it.

24 Q. And completed it.

25 Q. Okay.

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1 A. But did not send it through the DVA process.

2 Q. Okay.

3 A. I mailed it to the Federal VA.

4 Q. Is that how all burial claims are done, by
5 mailing?

6 A. No, we didn't have power of attorney.

7 Q. Okay.

8 A. No, we didn't have power of attorney, so I
9 wasn't able to put it through our intake
10 center.

11 Q. Okay. Now, when you spoke with the Inspector
12 General's Office, they asked you about when
13 you had first met Slim or Matie; do you
14 remember that? Do you remember them asking
15 about when you had first met Matie?

16 A. I remember them coming in. It was a situation
17 where I had a vet in my office. They came in
18 the office. I had to get rid of the vet and
19 there was another vet coming. It was very
20 stressful. It wasn't relaxed so that I can
21 sit and think. So yes, they asked me a lot.
22 Am I going to remember a lot of what they
23 said, no.

24 Q. Okay. Do you remember the part where they
25 asked you whether -- when and where you had

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1 first met Matie?

2 A. No.

3 Q. You told them that --

4 MR. FARRELL: Well, if she didn't
5 remember.

6 MS. LOGUE: We're not at trial.

7 MR. FARRELL: I don't care.

8 MS. LOGUE: I'm going to ask.

9 MR. FARRELL: I don't care. I'm not
10 going to let her answer it, because if she
11 doesn't remember and you have a composite
12 report that does, you better show her the
13 document that refreshes her recollection.

14

15 BY MS. LOGUE:

16 Q. Are you certain now sitting here that you met
17 him closer to '96, after you moved up here, as
18 opposed to 1998? Was it 1998 or 1996? Was it
19 before you met your husband or after?

20 A. It was way before my husband.

21 Q. So why did you tell the Inspector General's
22 that it was 1998 that you --

23 MR. FARRELL: She doesn't remember that.

24 MS. LOGUE: I'm asking her a question.

25 MR. FARRELL: Don't answer the question.

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1 BY MS. LOGUE:

2 Q. And when they asked you, they -- they asked
3 you about other gifts that Matie had given you
4 other than, you know, the things that were
5 left to you in the will. When they asked you
6 how much that you had gotten from Matie, you
7 told them about 2 -- around 200,000?

8 MR. FARRELL: Do you remember being
9 asked?

10 A. I remember being asked.

11 Q. And you told them that you had gotten around
12 200,000?

13 MR. FARRELL: Do you remember giving
14 that answer?

15 A. Because I didn't include the house, the sale
16 of the house.

17 Q. Okay. And actually, when you spoke to them,
18 you included the house and some bank stuff and
19 didn't include the annuity?

20 MR. FARRELL: That's your statement.
21 Show her something that refreshes her
22 recollection.

23 Q. When you first -- when you spoke with them, do
24 you remember telling them about the annuity?

25 A. I don't remember.

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1 Q. Do you remember them asking you whether the --
2 how much the estate was worth?

3 MR. FARRELL: I think you just answered
4 that. You asked it and she told you what she
5 responded.

6 Q. Do you remember them asking you if he had life
7 insurance?

8 A. I don't remember them asking, but I don't
9 think he did.

10 Q. And I mean, you -- you knew when you were
11 sitting there that you had --

12 MR. FARRELL: No. Stop, stop, stop.
13 You're not going to say you knew. That's your
14 opinion.

15 Q. You ultimately got around --

16 MR. GAGAN: Say did you know. Emily,
17 just say did you know.

18 Q. Did you know? Did you know that you -- when
19 you were sitting there you got about half a
20 million dollars, all adding up total about
21 half a million dollars?

22 A. Yes, yes.

23 Q. And when they asked you if you had gotten
24 anything in addition to the 2 -- to the house
25 and the banking records, you didn't

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1 acknowledge having gotten the annuity or any
2 of the amount -- amounts of money that you got
3 from him in life?

4 MR. FARRELL: All right. You've made
5 your statement. She's not going to --

6 Q. Why didn't you?

7 MR. FARRELL: You don't answer the
8 question unless you know.

9 A. Well, because Paul Renniey said because it
10 was a direct beneficiary, it wasn't part of
11 the estate.

12 Q. So you didn't think it was necessary to tell
13 the Inspector General about the additional
14 money?

15 A. Well, no, because if I was asked what the
16 estate was, the blind -- the blind? Or the
17 annuity was not part of the estate, because it
18 was a direct beneficiary, so...

19 Q. What about when they asked you about
20 additional gifts that you had gotten?

21 MR. FARRELL: Do you recall being asked
22 about additional gifts specifically?

23 A. I was asked a lot about gifts.

24 Q. And -- and did you tell them about the
25 annuity?

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1 A. I don't see the annuity as a gift, so no, I
2 did not.

3 MR. FARRELL: We've been over this
4 before. You're not asking her any more on
5 that.

6 MS. LOGUE: Okay. I don't have any
7 other questions.

8 MR. GAGAN: No. I'm good.

9 MR. FARRELL: Okay. Thank you, folks.

10

11 (Interview concluded at 4:04 p.m.)

12 * * * * *

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170 Franklin Street, Suite 601, Buffalo, New York 14202
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1 STATE OF NEW YORK)

2) ss.

3 COUNTY OF ERIE)

4 I, Lindsay Nicole Robel, Notary Public, in
5 and for the County of Erie, State of New York,
6 do hereby certify:

7 That the witness whose testimony appears
8 hereinbefore was, before the commencement of
9 their testimony, duly sworn to testify the
10 truth, the whole truth and nothing but the
11 truth; that said testimony was taken pursuant
12 to notice at the time and place as herein set
13 forth; that said testimony was taken down by
14 me and thereafter transcribed into
15 typewriting, and I hereby certify the
16 foregoing testimony is a full, true and
17 correct transcription of my shorthand notes so
18 taken.

19 I further certify that I am neither counsel
20 for nor related to any party to said action,
21 nor in any way interested in the outcome
22 thereof.

23 IN WITNESS WHEREOF, I have hereunto
24 subscribed my name and affixed my seal this
25 19th day of November, 2015.

Lindsay Nicole Robel ---

Lindsay Nicole Robel
Notary Public
No. 01TR6249119

State of New York, County of Erie
My Commission Expires 09/29/2020

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Veteran Name : **Charles Matie**

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| Veteran's Comments | | | | | |
|--|-----------------|--|------------------|------------------|----------------------|
| Add New Comment Print All Comments | | | | | |
| Comment Date | Date Of Contact | Comment | Employee | Comment Type | |
| 03/26/2008 | 03/26/2008 | Buffalo IC rcvd- VARO memo dtd 03/20/08 showing POA has been revoked. | Peggy Urbanski | Claim Processing | View |
| 07/19/2005 | | Rating decision dtd 7/9/05 granted inc to combined 70% and IU effective 2/11/05 | | | View |
| 04/06/2005 | | 4/6/05 - Rcvd VA Fm 21-4138 dtd 4/5/05 in response to VARO DTA ltr dtd 3/29/05. GRG | Gerald Grace | | View |
| 04/05/2005 | | SVC responded to VARO dev ltr dtd 3/29/05 | | | View |
| 02/11/2005 | | Recvd: new claim for comp, includes 4138 and 8940 | | | View |
| 02/17/2004 | | Vet is 60% service connected. SVC tried to get IU. VARO decision dtd 2/7/04 denied IU. Vet notified of appeal process. | | | View |
| 05/23/2002 | | Rec'd transmittal date stamped 5/14/02./ps | Pauline Seiferth | | View |
| 05/13/2002 | | SVC Kinn responded to VARO dev ltr and forwarded 21-4142 sent by VARO to NYS DVA by mistake | Tracy Kinn | | View |
| 04/23/2002 | | Rec'd transmittal date stamped 4/18/02./ps | Pauline Seiferth | | View |
| 04/16/2002 | | SVC Kinn filed for increase in cold injury residuals, new claim for wound to foot and back condition (Purple Heart). | Tracy Kinn | | View |
| 04/15/2002 | | Vet in to see SVC Kinn @ Bflo VAMC to apply for increase in current 10% s/c for frostbite for right hand and feet./ps | Pauline Seiferth | | View |
| | | I.U. granted eff 2/11/05 | | | View |



LAST WILL AND TESTAMENT

I, CHARLES W. MATIE, a resident of Orchard Park, New York, do make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils previously made by me.

ARTICLE ONE: I direct that all of my just debts and funeral expenses be paid as soon as practicable after my death.

ARTICLE TWO: I direct that my Executor pay out of my residuary estate without apportionment, all estate, inheritance and like taxes imposed by the government of the United States or any State or territory thereof, or by any foreign government, or political subdivision thereof, in respect to all property required to be included in my gross estate for estate or like tax purposes by any of such governments, whether the property passes under this Will or otherwise without contribution by any recipient of any such property.

ARTICLE THREE: I hereby declare that I am not married. I do not have any children.

ARTICLE FOUR: I hereby give and bequeath any motor vehicle owned by me at the time of my death to TRACY KINN, [REDACTED]

ARTICLE FIVE: In the event that I own the property commonly known as [REDACTED] at the time of my death, I give, devise and bequeath said premises together with all household furniture and furnishings therein to TRACY KINN, [REDACTED]

ARTICLE SIX: I hereby give, devise and bequeath all

the rest, residue and remainder of my estate and property of which I may be seized or possessed or to which I may be entitled at the time of my death, wherever situated or of whatever nature, be it real, personal or mixed, including lapsed legacies and any property over which I may have a power of appointment, to SHRINERS HOSPITALS FOR CHILDREN. I further direct that the distribution of said funds to a Shriners Hospital or Hospitals for Children shall be determined by the Divan of the ISMAILIA SHRINE CENTER, 1600 Southwestern Boulevard, West Seneca, New York 14224.

ARTICLE SIX: Except as otherwise provided in this Last Will and Testament, I have intentionally omitted to provide herein for any other relative or for any other person, whether claiming to be an heir of mine or not.

ARTICLE SEVEN: I hereby appoint SALVATORE G. MAROTTA, residing at [REDACTED], as Executor, of my Last Will and Testament, and I request that he be permitted to serve without bond or other surety thereon and without the intervention of any Court or Courts, except as required by law. I authorize my Executor, in his discretion, with respect to all property, real and personal, at the time forming part of my estate, without limitation by reason of enumeration and in addition to powers conferred by statute, to:

A. Retain any and all property owned by me at my death, acquired by purchase or otherwise, and retain, temporarily or permanently, any kind of realty and personalty, including stocks and unsecured obligations, undivided interests, interests in investment funds, mutual funds, discretionary common trust funds, leases and property which is outside of my domicile, all without diversification as to kind or amount and without being limited to investments authorized by law for trust funds including the discretion to retain as

an investment any obligation or obligations owing to me by any corporation in which I have a stock interest at the time of my death; and hold funds uninvested or deposit any money in any bank or other banks in any form of account whether or not interest bearing;

B. Render liquid my estate or any trust estate in whole or in part at any time or from time to time, and hold cash or readily marketable securities of little or no yield for such period as my Executor may deem advisable;

C. Buy, sell, exchange or otherwise dispose of realty and personalty, publicly or privately, wholly or partly on credit or for any consideration including stocks, bonds or other corporate obligations and grant options for the purchase, exchange or other disposition of any such property;

D. Make distribution in cash or in kind or partly in each, including undivided interests, even though shares be composed differently;

E. Delegate discretionary powers to my Executors, and pay their expenses; employ and pay the compensation of accountants, custodians, legal and investment counsel;

F. Borrow money and mortgage any property for any purpose;

G. Manage, insure against fire or other risk, retain, lease, sell, convey, dedicate to public use or otherwise dispose of (with or without the privilege of purchase) real property, or grant easements with respect thereto for periods to begin presently or in the future without regard to statutory restrictions on leasing.

In the event that SALVATORE G. MAROTTA, shall predecease me or shall, for any reason, refuse or be unable to serve or to continue serving as Executor, I hereby appoint LUANA LIPKA, residing at [REDACTED], as Executrix, in his stead, to serve without bond and with the same powers and authority.

IN WITNESS WHEREOF, I sign, publish and declare this as my
Last Will and Testament this 26th day of July, 2005, at West
Seneca, New York.

CWM s/CHARLES M. MATIE

This instrument, consisting of this and three
preceding typewritten pages, was signed, published and declared by
Charles M. Matie, the testator, to be his Last Will and Testament in
the presence, and we, at his request, and in his presence and in the
presence of each other, have hereunto subscribed our names as witnesses
this 26th day of July, 2005, at West Seneca, New York.

s/PAUL E. RUDNICKI

residing at

PAUL E. RUDNICKI

s/CHARMIN L. GERWEL

residing at

CHARMIN L. GERWEL



| DATE | PAYMENT SOURCE | | |
|------------|------------------------|---------------|---------------|
| | JOINT/MATIE | KINN CHECKING | NFCU -BANKING |
| 3/24/2009 | | | \$100.00 |
| 4/1/2009 | | | \$650.00 |
| 4/10/2009 | | \$233.04 | |
| 4/13/2009 | \$324.43 | | |
| 4/13/2009 | | | \$46.66 |
| 4/17/2009 | \$249.18 | | |
| 4/24/2009 | \$63.76 | | |
| 4/28/2009 | \$356.00 | | |
| 4/29/2009 | \$242.76 | | |
| 5/6/2009 | \$184.05 | | |
| 5/12/2009 | \$698.89 | | |
| 5/18/2009 | \$184.67 | | |
| 5/21/2009 | | | \$76.50 |
| 5/26/2009 | | | \$88.36 |
| 5/26/2009 | | | \$49.61 |
| 6/11/2009 | \$289.56 | | |
| 6/22/2009 | | | \$276.77 |
| 6/24/2009 | | | \$131.38 |
| 6/26/2009 | \$589.77 | | |
| 7/17/2009 | \$724.78 | | |
| 7/21/2009 | \$418.56 | | |
| 7/23/2009 | | | \$156.42 |
| 8/24/2009 | | | \$166.44 |
| 8/31/2009 | \$698.00 | | |
| 9/21/2009 | | \$400.00 | |
| 9/23/2009 | \$1,435.40 | | |
| 10/26/2009 | | | \$166.44 |
| 11/17/2009 | \$698.00 | | |
| 11/27/2009 | | | \$140.00 |
| 12/15/2009 | \$698.00 | | |
| 12/18/2009 | | | \$172.00 |
| 12/24/2009 | | \$350.00 | |
| 1/20/2010 | \$1,437.40 | | |
| 1/25/2010 | | | \$162.33 |
| 2/4/2009 | | | \$400.00 |
| 2/8/2010 | \$1,332.41 | | |
| 2/25/2010 | | | \$200.02 |
| 2/25/2010 | | | \$200.00 |
| 3/15/2010 | \$476.41 | | |
| 3/18/2010 | | | \$545.85 |
| 4/5/2010 | | \$2,050.00 | |
| 4/7/2010 | | | \$300.00 |
| 4/9/2010 | \$343.68 | | |
| 4/19/2010 | | | \$437.80 |
| | *missing May statement | | |
| | \$11,445.71 | \$3,033.04 | \$4,466.58 |



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Veteran Name : Charles Matie

Demographics Info Address Info Next Of Kin Info Service Dependent/Claimant Comment Claims Form Action E-Doc

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