

STATE OF WISCONSIN

CIRCUIT COURT

WALWORTH COUNTY

BRANCH 1

In the Estate of:
Ernest Gary Gygax, Sr.

Case No. 20PR58

COURT TRIAL

April 20, 2023

Honorable Judge
Phillip A. Koss

APPEARANCES:

Jennifer Gorn, Attorney at Law, appeared on behalf of
Lucion Gygax.

Ted Johnson, Attorney at Law, appeared on behalf of Gail
Gygax.

Steven A. Koch, Attorney at Law, appeared as personal
representative.

Marilyn S. Annen, Official Reporter
Registered Professional Reporter

1 P R O C E E D I N G S

2 THE COURT: We'll go on the record. We'll
3 continue our court trial from yesterday. This is 20PR
4 58. This is day 2. Appearances, starting with the
5 Petitioner?

6 MS. GORN: Good morning, Your Honor. Attorney
7 Jennifer Gorn appears in person and with the Petitioner,
8 Lucion Gygax, who also appears in person.

9 THE COURT: All right.

10 MR. JOHNSON: Good morning, Your Honor. The
11 surviving spouse, Gail Gygax and Respondent in this
12 matter, appears in person and with her attorneys,
13 Godfrey Law Office by Ted Johnson.

14 MR. KOCH: And good morning, Your Honor. The
15 personal representative appears by Attorney Steven A.
16 Koch.

17 THE COURT: All right. As I said, we're on
18 day two of trial. I know the attorneys took some time
19 to talk this morning, but we'll just proceed right now,
20 see where we get. And do you have your next witness?

21 MS. GORN: Yes, can we please call Officer
22 Lucas Hansen?

23 THE COURT: You may.

24 THE CLERK: Please state and spell your name
25 for the record.

1 THE WITNESS: Lucas Hansen, L-U-C-A-S,
2 H-A-N-S-E-N.

3 LUCAS HANSEN, having been first duly sworn to
4 testify the truth and nothing but the truth, was
5 examined and testified as follows:

6 THE CLERK: Thank you. Be seated.

7 EXAMINATION

8 BY MS. GORN:

9 Q. Officer Hansen, thank you for coming. Can you
10 please tell us how long you've been a police officer and
11 where you work?

12 A. I've been a police officer in the City of Lake
13 Geneva for 15 years.

14 Q. Did you work as a police officer anywhere
15 before that?

16 A. No, I did not.

17 Q. And prior to court today, did you look at any
18 records, documents or other things to prepare you for
19 today's testimony?

20 A. I did. I looked at my report.

21 Q. And can you tell me -- Were you on duty on
22 March 14, 2014?

23 A. I was.

24 Q. And on that date, did you respond to a call at
25 316 Madison Street in Lake Geneva?

1 A. Yes, I did.

2 Q. And what was the reason for that call?

3 A. It was a theft complaint called into our
4 dispatch.

5 Q. And who was the complainant on that call?

6 A. A Gail Gygax.

7 Q. When you arrived at 316 Madison Street, did
8 you make any observations about the -- the home; either
9 of the exterior or the interior as you entered?

10 A. I went to the front porch area and noticed
11 there was a lot of clutter in the front porch area.

12 Q. Did you enter the home?

13 A. I don't recall entering the home.

14 Q. Did you have any conversations with the
15 complainant?

16 A. Can you repeat?

17 Q. I'm sorry. Did you have any conversations
18 with -- with Gail Gygax when you arrived?

19 A. I did.

20 Q. And what did she report to you?

21 A. She reported a theft of a painting from her
22 husband.

23 Q. Did she tell you who her husband was?

24 A. Yes.

25 Q. And who was her husband?

1 A. Gary Gygax. Um, and I'm familiar with that,
2 with Dungeons & Dragons. I've heard of that, the gaming
3 industry.

4 Q. And did she tell you, um, what the painting
5 was worth?

6 A. Approximately \$50,000.

7 Q. And did she tell you where she got that number
8 or why she thought it was worth \$50,000?

9 A. She said she was, um, contacted by somebody
10 that offered her \$50,000 for that painting.

11 Q. And now I'm testing your memory here, but do
12 you happen to recall if she told you a name for what
13 that painting was referred to as or what it was called?

14 A. I'd have to refer back to my report. I -- I
15 can't recall.

16 MS. GORN: May I approach, Your Honor?

17 THE COURT: Yes.

18 BY MS. GORN:

19 Q. Is there anything that would refresh your
20 recollection?

21 A. My report.

22 Q. I'm handing you what we're going to mark or
23 what we have marked as Exhibit 9. Does this appear to
24 be a true and accurate copy of your report?

25 A. Yes.

1 Q. I'll give you a moment to look through it.

2 Has your recollection been refreshed?

3 A. Yes.

4 Q. And what was the name of that painting?

5 A. Gateway To Adventure.

6 MS. GORN: Thank you. Um, I have no further
7 questions, Your Honor.

8 THE COURT: Mr. Koch?

9 MR. KOCH: Thank you, Your Honor.

10 EXAMINATION

11 BY MR. KOCH:

12 Q. Good morning, Officer Hansen.

13 A. Good morning.

14 Q. So can you briefly explain your training and
15 experience to the court?

16 A. Training, experience from just being a police
17 officer?

18 Q. As a police officer, sir.

19 A. I've had 15 years of being status of -- on the
20 police department. Um, I'm head of the firearms, um,
21 firearms instructor for us, um, hunter safety through
22 the police department too. I'm on the county SWAT team,
23 numerous past. I'm a field training officer as well.

24 Q. And can you tell us your educational
25 background, sir?

1 A. Yep. I have a 2-year degree in, um, criminal
2 justice at Gateway here in Elkhorn.

3 Q. And when did you graduate from Gateway here in
4 Elkhorn with a criminal justice degree?

5 A. 2008.

6 Q. And do you have any continuing education
7 requirements, sir?

8 A. Yes. I have to keep up on my training for FTO
9 and being an instructor as well.

10 Q. Okay. I'm sorry. You have to keep your
11 training on your what other --

12 A. Being an instructor for the police department
13 and various tasks like firearms and stuff like that.

14 THE COURT: I think he said FTO, field
15 training officer.

16 THE WITNESS: Field training.

17 MR. KOCH: Thank you, Your Honor.

18 BY MR. KOCH:

19 Q. And are you current in that education as of
20 today?

21 A. Yes.

22 Q. Okay. And you were a police officer back on
23 March 14, 2014; is that correct?

24 A. That's correct.

25 Q. And you were called to the Gygax residence at

1 approximately 3:50 p.m. on that day; is that correct?

2 A. Correct.

3 Q. And you were in full uniform with the City of
4 Lake Geneva, correct?

5 A. Yes.

6 Q. And you went to the property at 623 Main
7 Street in Lake Geneva?

8 A. 623 Main Street?

9 Q. Okay. What was the address of the property
10 you went to, sir? Do you recall?

11 A. 316 Madison Street.

12 Q. 316 Madison Street. And you arrived there at
13 about 3:50 p.m.

14 A. Yes.

15 Q. And what did you see when you arrived?

16 A. I went up to the front door, and I noticed
17 that there was a lot of clutter and items in the
18 front -- front porch area of the residence.

19 Q. Okay. So what did you do when you arrived?

20 A. I knocked on the front door.

21 Q. And what happened then?

22 A. Just waited for Gail.

23 Q. And are you familiar with Ms. Gygax?

24 A. I am.

25 Q. Okay. Do you see her here in the courtroom

1 today?

2 A. I do.

3 Q. Can you point out where she's sitting and
4 advise the judge what she's wearing?

5 A. She's sitting to the -- it'd be to my -- my
6 right, to her attorney. She's in yellow and brown.

7 THE COURT: All right. She's -- He's
8 identified her.

9 MR. KOCH: Thank you, Your Honor.

10 BY MR. KOCH:

11 Q. And you went up to the door. You saw the
12 clutter. You rang the doorbell?

13 A. I do not recall.

14 Q. Okay. Ms. Gygax came to the door?

15 A. Yes.

16 Q. Okay. What happened?

17 A. She explained to me the -- about the theft of
18 the painting. And I -- I took the complaint.

19 Q. Okay. Did she tell you whether or not there
20 had been any forced entry?

21 A. Said no forced entry.

22 MR. KOCH: I have nothing further.

23 EXAMINATION

24 BY THE COURT:

25 Q. Was it ever recovered? Do you know? Or ever

1 found?

2 A. I -- No, I do not.

3 Q. Did detectives ever follow up on it or --

4 A. I referred my report to the detectives, and
5 that's as far as I went.

6 THE COURT: Okay. Mr. Johnson?

7 EXAMINATION

8 BY MR. JOHNSON:

9 Q. Officer Hansen, in your report, you
10 indicated -- There's a statement indicating that Ms.
11 Gygax indicated she last saw the painting which was
12 named on the bottom of the first page now in your
13 narrative --

14 A. Okay.

15 Q. Gygax stated that she saw -- last saw the
16 painting which was named Gateway To Adventure in her
17 locked cabinet at home that she has the keys for. Gygax
18 stated that she was offered \$50,000 for the painting so
19 it was worth approximately that much.

20 Did I read that right?

21 A. True.

22 Q. Did I read that correctly?

23 A. Yes.

24 Q. Did you -- Did Ms. Gygax indicate that the
25 painting that was stolen was hers -- her painting?

1 A. I do not recall.

2 Q. From the language in your report, can you
3 assume that it was stolen from her cabinet and that she
4 was offered this much money for it, that she was the
5 owner of the painting?

6 A. I do not recall.

7 Q. You didn't do any investigation as to who --
8 who created the painting, who -- where it came from or
9 anything else like that?

10 A. Can you ask that question one more time?

11 Q. Sure. You didn't do any further investigation
12 that would tell you who the owner of the painting was or
13 anything else, any other investigation like that?

14 A. I did not do that, no.

15 Q. Did you make -- did you make any conclusions
16 about who the owner was of the painting when -- when she
17 told you it was stolen from her house?

18 A. No.

19 Q. Who would you think would be the owner of the
20 painting if she said it was stolen from her house?

21 A. Being that it was a Dungeons & Dragons, I
22 would have thought that Gary was the owner of that.

23 Q. Okay. And were you aware that Mr. Gygax died
24 in 2008?

25 A. (No response.)

1 Q. Are you aware of that?

2 A. Yes, I was.

3 Q. Okay. So you don't -- you don't know that.

4 You just said it was one of the paintings from -- Do you
5 know whether Mr. Gygax painted the painting?

6 A. I don't know that.

7 MR. JOHNSON: Okay. I have nothing further.

8 EXAMINATION

9 BY THE COURT:

10 Q. Do you know -- Did she say anything about
11 insurance, that she had a report for insurance or
12 anything like that that you know of?

13 A. I do not recall, Your Honor.

14 Q. And that's not in your report?

15 A. No.

16 THE COURT: Okay. Any more questions?

17 MS. GORN: Um, just -- just one.

18 EXAMINATION

19 BY MS. GORN:

20 Q. So I just want to get the context of your
21 conversation with Gail.

22 So she called you to report a painting that
23 was stolen, and then in your report, it says that she --
24 she stated a \$50,000 painting was missing from her
25 residence. Gygax began to tell Officer Hansen that her

1 late husband Gary was the owner of Dungeons & Dragons
2 board games and has a lot of paintings and relics from
3 the gaming city around the house. She said they are all
4 worth a substantial amount of money.

5 Did I read that accurately?

6 A. Correct.

7 Q. And was it -- Was there anything about the
8 proximity of those two statements that led you to
9 believe that Gary was the owner of the painting?

10 A. Yes. As she had mentioned Gary, he had a lot
11 of relics and other board games in the house.

12 Q. Was -- if -- Was there any reason, aside from
13 relating it to the painting she would have been talking
14 to you about her husband that you're aware of? Anything
15 with respect to this report?

16 A. Say that again. I'm sorry.

17 Q. All right. You were there for a call of -- of
18 theft of a painting.

19 A. Yes.

20 Q. And she began to proceed to tell you about her
21 husband and his work that he had done, correct?

22 A. Yes.

23 Q. You didn't strike up a conversation with her
24 about her husband and his works, did you?

25 A. I don't recall.

1 Q. You didn't initiate a conversation -- Did you
2 initiate a conversation?

3 A. I initiated a conversation investigating that,
4 yes.

5 MS. GORN: Okay. I have no further questions.

6 THE COURT: Any follow-up?

7 MR. KOCH: No, Your Honor.

8 THE COURT: Mr. Johnson?

9 MR. JOHNSON: Nothing, Your Honor. Thank you.

10 THE COURT: You may step down.

11 THE WITNESS: Thank you.

12 THE COURT: Are you calling another witness
13 now or --

14 MS. GORN: Um, yes. We are gonna call Alex
15 Gygax. I will grab him.

16 THE COURT: Okay. Go up to this blue chair,
17 sir.

18 MS. GORN: Next to the judge there in the hot
19 seat.

20 THE WITNESS: Okay.

21 THE CLERK: Sir, raise your right hand for me.
22 Please state and spell your name for the record.

23 THE WITNESS: Alexander Hamilton Gygax.

24 A-L-E-X-A-N-D-E-R, H-A-M-I-L-T-O-N, G-Y-G-A-X.

25 ALEXANDER GYGAX, having been first duly sworn

1 to testify the truth and nothing but the truth, was
2 examined and testified as follows:

3 THE CLERK: Thank you. Be seated.

4 MS. GORN: Your Honor --

5 THE COURT: Do we need to go off the record
6 for a minute?

7 MS. GORN: No, Your Honor. At this point
8 prior to starting testimony, can we offer Exhibit 9 into
9 evidence?

10 THE COURT: Any objection?

11 MR. JOHNSON: No objection.

12 MR. KOCH: No.

13 THE COURT: Okay. All right. It's received.

14 EXAMINATION

15 BY MS. GORN:

16 Q. Mr. Gygax, um, we'll start off with a little
17 bit of background information about you.

18 Who are your parents?

19 A. Gail Gygax and Gary Gygax.

20 Q. And who is Luke to you?

21 A. My brother.

22 Q. And do you have any other siblings?

23 A. Yes. I have four other siblings.

24 Q. And who are your siblings?

25 A. Ernest, Lisa, Cindy and Emmy.

1 Q. Okay. And are those siblings also the
2 children of Gail and Gary Gygax?

3 A. Yes. Oh, Gail and Gary? No.

4 Q. Gail and Gary. Sorry.

5 A. No. Mary and Gary.

6 Q. Okay. Mary and Gary. I'm sorry.

7 A. Okay.

8 Q. And can you tell me where you currently live?

9 A. 1137 Wheeler Street, Lake Geneva, Wisconsin.

10 Q. And when did you move there?

11 A. Um, a little over 2 years ago.

12 Q. At any point did you live at 316 Madison
13 Street?

14 A. That is the house I grew up in.

15 Q. And what years did you live there if you can
16 recall?

17 A. I lived there from when we bought the house I
18 think in '92, until 2005 or 6. And then I moved in and
19 out a few times after that.

20 Q. And can you tell me -- What is your date of
21 birth?

22 A. 10/2/86.

23 Q. And just so we're all clear, what date did you
24 turn 18?

25 A. What date did I turn 18?

1 Q. Yeah. Do you remember the year you turned 18?

2 A. Oh, jeez. That would have been 2005?

3 Q. All right. So 10/2/2005 you turned --

4 MR. JOHNSON: 2004.

5 THE WITNESS: 4.

6 THE COURT: It's 2004.

7 MS. GORN: I'm glad I'm not the only one.

8 BY MS. GORN:

9 Q. 10/2/2004 you turned 18; is that correct?

10 A. Yeah.

11 Q. Okay. And can you tell me a little bit about
12 your background in terms of your education?

13 A. I graduated Badger High School and then went
14 to Gateway Technical College and have an associates in
15 automotive applied science.

16 Q. All right. And are you currently employed?

17 A. Yes.

18 Q. And where do you work?

19 A. Lake Geneva Games.

20 Q. Lake Geneva -- I'm sorry?

21 A. Games.

22 Q. And what do you do there?

23 A. Sell games.

24 Q. And how long have you been doing that?

25 A. I'm on a month and a half now.

1 Q. What did you do before that?

2 A. Automotive. Body work.

3 Q. And how long had you been doing that work?

4 A. I did that for about 3 years.

5 Q. All right. And what is your understanding of
6 why we are all here today?

7 A. From what I understand, when my father passed,
8 the will was not carried out correctly.

9 Q. And how -- how did you form that opinion?
10 What is it that brought you to that understanding?

11 A. Um, the -- the fact that we're going through a
12 trial and, you know, all -- this entire situation.

13 Q. All right. I am going to show you what has
14 been previously marked by this court as Exhibit 1. I'm
15 gonna give you a moment to look over that.

16 And can you tell me if you recognize that
17 document?

18 A. Yes. I believe I do.

19 Q. And can you tell me -- is that your signature
20 on page 4?

21 A. That appears to be an old signature of mine.

22 Q. All right. But your signature, yes?

23 A. Correct.

24 Q. And what is the date that you put on -- on
25 after that signature?

1 A. 7/11/06.

2 Q. Okay. And was that the -- the date on the
3 date you signed it?

4 A. To the -- my best recollection.

5 Q. You wouldn't have put down some other date
6 when you were signing it, would you?

7 A. No.

8 Q. Can you tell me how your signature came to
9 appear on this document?

10 A. I was upstairs in my room, doing collegiate
11 homework. And I was called downstairs to sign this
12 document, and yeah, that is how.

13 Q. Who called you downstairs?

14 A. That -- One of my two parents.

15 Q. Were both of your parents there?

16 A. Yes.

17 Q. Were they together?

18 A. Yes.

19 Q. Where were they?

20 A. I believe in my father's office which would
21 have been by the front door at that time.

22 Q. And did they say what -- what they were doing?

23 A. Yes. They said, this is the will for your
24 father.

25 Q. And did they give you any -- Did they say

1 anything about why the will -- why they were doing the
2 will for your dad?

3 A. Well, it was apparent he was pretty sick. So
4 he was sick, and they wanted to make a will.

5 Q. And so the conversation was, we are doing a
6 will for dad. We want you to sign this. Do I have that
7 right?

8 A. Basically, yeah.

9 Q. And then based on that conversation, you did
10 sign the will. Is that accurate?

11 A. Yes. I signed it, and then I returned to my
12 studies.

13 Q. Did you review the document before you signed
14 it?

15 A. I believe I did.

16 Q. Do you recall seeing any text that was in red
17 and black?

18 A. That I wouldn't remember.

19 Q. And are you familiar with your father's
20 signature?

21 A. Yes.

22 Q. How many times have you seen your father's
23 signature?

24 A. Thousands.

25 Q. And is that your father's signature that

1 appears on page 4?

2 A. It appears to be.

3 Q. And are you familiar with your mother's
4 signature?

5 A. Yes.

6 Q. And how many times have you seen your mother's
7 signature?

8 A. Thousands as well I'm sure.

9 Q. And is that your mother's signature that
10 appears on page 4?

11 A. It does appear to be her signature.

12 Q. And on the date that your dad or mom, mom and
13 dad or mom or dad called you down to sign the will, um,
14 was your dad mentally --

15 A. He was sharp until the day he passed.

16 Q. I'm sorry. What was that?

17 A. He was sharp until the day he passed --

18 Q. So he --

19 A. -- mentally sharp.

20 Q. -- could have a conversation with you and know
21 what was going on?

22 A. I had a conversation the night that he passed
23 away.

24 Q. Do you recall if -- when you came down to
25 sign, all three of you signed? Or was it just -- just

1 you that signed?

2 A. That I don't recall.

3 Q. Did they say why they needed you to sign?

4 A. I believe it was because they needed a witness
5 for the document.

6 Q. In the will, it refers to -- Let's see.

7 On page 2 of the will, paragraph 3, it refers
8 to your dad's personal library.

9 Do you have an opinion on what that term
10 means?

11 A. His personal library in my opinion would have
12 been the books under the staircase, encyclopedias, books
13 in the basement, and possibly some books in his office.
14 Mainly the basement library. That's where we kept all
15 of his fantasy books and everything.

16 Q. And he goes on to say in -- in the bottom of
17 that paragraph there that this does not apply to
18 duplicate books or duplicate game materials, those being
19 part of my disposable estate.

20 So would his library also have consisted then
21 of books and game materials?

22 MR. JOHNSON: I'm gonna object. It calls for
23 speculation. The witness -- He told us what he thought
24 the library consisted of.

25 THE COURT: She's being more direct. He can

1 disagree if it doesn't. Do you know?

2 THE WITNESS: It was --

3 THE COURT: Kind of the family history?

4 THE WITNESS: I would refer to those as two
5 different libraries; the game library and a book
6 library.

7 BY MS. GORN:

8 Q. And it's accurate it references both, correct?

9 A. Are you referring to A or B on 3?

10 Q. On the very last line, A.

11 A. I believe he's referring to books as game
12 materials such as Dungeons & Dragons, a book.

13 Q. Perfect. Thank you. I just want to go back
14 to the question I had asked you about the sequence of
15 the signing.

16 Do you recall giving a deposition in this
17 case?

18 A. With you earlier?

19 Q. Correct.

20 A. I -- At your office, yes.

21 Q. And that deposition was on -- let's see --
22 March 3, 2021. Does that sound accurate?

23 A. Sure.

24 Q. And on that date, do you remember the
25 question: Do you specifically remember either seeing

1 her sign it or seeing her signature on the will? I know
2 she was in the room, but do you remember seeing it?

3 And your answer was: It's a little fuzzy. I
4 believe everyone signed it at one time, 1, 2, 3 or
5 however it went.

6 Does that sound -- sound correct?

7 A. Yes. It was very long ago. And as a detail,
8 it wouldn't have stuck with me as much, but yeah.

9 Q. Okay. Do you know what items of -- of
10 property your dad owned in terms of, you know, what
11 things in the house were your dad's?

12 A. Um, sure. There were lots of things. You
13 mean like a specific list of naming right down a list of
14 specific items that were his?

15 Q. I want you to give me as much detail as you're
16 able.

17 A. Oh, okay. Um, well, his clothing, all of his
18 clothing. Um, his dice. And it's -- it's hard to say
19 because I was told at a young age that in order to
20 protect assets from his previous divorce that he had
21 signed over those items to my mom.

22 That I was told that at a young age. So for
23 me to tell you what is and isn't his is kind of
24 difficult for me.

25 Q. So if I was your friend and we walked into

1 your house, and you were showing me things, and I said,
2 what stuff is your mom's, and what stuff is your dad's,
3 what would you tell me?

4 A. Um, I -- I don't -- I never had anyone ask a
5 question like that. If someone came in and said, what
6 is your mom's and what is your dad's, isn't it -- all of
7 it -- Isn't it both of theirs?

8 Q. I guess that's the question. Um, did you take
9 people upstairs in the attic and show them your dad's
10 guns?

11 A. I did take friends in the attic and show them
12 guns, yes.

13 Q. And you said, these are my dad's guns?

14 A. Yes. I believe that he had -- he had bought
15 those in the 80's.

16 Q. So they were your dad's because he bought
17 them, and he bought them in the 80's. Is that --

18 A. I wasn't alive when they were purchased. But
19 if he bought them or not I wouldn't know. But he -- he
20 never -- he never touched any of them except perhaps one
21 that he kept by his bed stand. The rest sat there in
22 the attic for my entire childhood.

23 Q. Have you been publishing or writing or looking
24 to sort of develop things in the -- what's called the
25 world of imaginary fiction?

1 A. Yes.

2 Q. Can you tell me about those?

3 A. I'm currently part owner of a gaming company
4 called New Generation Games. And we are designing our
5 own global game system.

6 Q. Is anyone else -- Does anyone else in your
7 family, meaning your siblings, produce works or writings
8 or anything in the world of imaginary fiction?

9 A. Yes.

10 Q. And who -- who -- Let's start with who's the
11 first person?

12 A. Ernie.

13 Q. And what kind of works to your knowledge, does
14 Ernie do?

15 A. Role playing games.

16 Q. Anything else?

17 A. I believe he's written a book.

18 Q. Who else in your family?

19 A. Heidi.

20 Q. And what has -- what has Heidi done?

21 A. She just released an adventure wrote by David
22 Measure.

23 Q. And anyone else?

24 A. Luke.

25 Q. And what has Luke done to your knowledge?

1 A. Role playing game adventures.

2 Q. Anything else Luke does?

3 A. In game design?

4 Q. In -- just in kind of the -- of the type of
5 imaginary fiction role playing game?

6 A. Role playing game adventures. So there's --
7 four of the six children are involved in that.

8 Q. What can you tell me about your dad and his
9 significance in the world of imaginary fiction?

10 A. He's seen as the founder of role playing games
11 in kind of the modern gaming society.

12 Q. So is it fair to say he's a pretty important
13 person?

14 A. Yes.

15 Q. Um, all right. I want to go back to the date
16 of your deposition, and I want to go back to my question
17 of what items of personal property did your dad have.

18 So here today, now roughly 2 years after your
19 deposition, you told me about this agreement that you
20 were made aware of at a young age.

21 Did you make me aware of that in your
22 deposition?

23 A. I don't recall.

24 Q. On that date I also asked you about what
25 personal property your dad owned when he died, didn't I?

1 A. You may have.

2 Q. And at that time did you tell me about the
3 agreement that has been entered into --

4 A. I -- I may have. I don't recall.

5 Q. So do you recall being asked the question, um,
6 do you know what items of personal property your dad had
7 at the time of his death? Generally?

8 Answer, way too much in that house to even --
9 question, can you tell me the kind of things? Answer,
10 antiques, collectibles, trinkets. I mean, I don't know
11 how you want to describe them, but furniture, things
12 that you gather over a lifetime. You know? Question,
13 anything you would consider like special or notable?
14 Answer, everything was kind of special.

15 Do you recall now that exchange?

16 A. Yeah. That sounds correct.

17 Q. And was that your honest -- an honest answer
18 at that time?

19 A. That -- that seems to be the answer for what
20 was in the household. Um, those were all things in the
21 household. It's -- I can't really say whose was what,
22 you know? There was -- I'm sure there's -- The
23 bunkbed, you know? The bunkbed was my dad's. He grew
24 up with that. That -- I'm sure the -- What -- so what
25 are you asking?

1 Q. That was all. All right. Can you tell me --
2 What is your relationship like with your mother?

3 A. Hot and cold.

4 Q. And why is that?

5 A. Personalities.

6 Q. What is your relationship like with your
7 siblings?

8 A. Pretty normal.

9 Q. Do you guys all get along?

10 A. Yeah, I'd say we do.

11 Q. With respect to your relationship with your
12 mom, you said that it is hot and cold. What would you
13 rate it right now?

14 A. Cold.

15 Q. And why is that?

16 A. Um, well, I had asked to come over. I was
17 going to help her repair the door to her attic so that
18 she would be able to get up and get some items for my
19 2-year-old -- almost 2-year-old son. Henry was about a
20 year and a half at the time of this.

21 I mentioned a week prior to that I was going
22 to come over. I let her know that day, I'm on my way
23 with a friend to help repair this. And when I got
24 there, she told me, not today. And I said, okay. Then
25 I just gave her some space and said, I'll leave you

1 alone for a while.

2 Q. Has your mom said anything to you about -- or
3 have you had any conversations with your mom about your
4 testifying in this -- in this matter?

5 A. I have not spoken to her in a few months.

6 Q. This action's been ongoing for 3 years. Have
7 you spoken during --

8 A. About testifying at all? No.

9 Q. How about your deposition?

10 A. No, I don't think so.

11 Q. Have you spoken with your brother, Luke, at
12 all about -- about this?

13 A. About what?

14 Q. Sorry. About the probate?

15 A. Um, I'm sure we have. Not -- not to much
16 extent.

17 Q. Did you have a conversation with Luke where
18 you expressed that you were pissed off because you'd
19 really appreciate if your mom would stop selling off
20 family heirlooms for antiques and alcohol?

21 A. I believe I was upset at the time I said that.

22 Q. Was your mom selling off family heirlooms?

23 A. I believe the D & D cartoon color sales were
24 being sold at the time, and I was upset about that.

25 Q. And did you tell Luke that, um, she was

1 probably gonna say it was all Luke's fault?

2 A. Um, it was most likely that she would say that
3 they were being sold to pay for attorney bills. Now,
4 that's speculation because she didn't specifically ever
5 say that.

6 Q. Alex, I'm gonna hand you Exhibit 11. You
7 don't have this one up there, but can you identify if
8 that's your name on the top.

9 And can you -- tell me if those look like
10 messages between you and your brother, Luke.

11 A. This appears to be a conversation we had.

12 Q. And does that appear to be a true copy to the
13 best of your recollection? There's nothing that seems
14 changed or altered about those -- those messages?

15 A. Let me look. This appears to be unaltered --
16 the -- at first glance here.

17 MS. GORN: Your Honor, I'd ask that Exhibit 11
18 be moved into evidence.

19 THE COURT: Objection?

20 MR. JOHNSON: As to how he identified this,
21 whose text messages are these? We don't know who
22 they're with. We don't know anything.

23 THE WITNESS: I can show you my phone.

24 MS. GORN: Well, he stated --

25 MR. JOHNSON: Well, that's nice you want to

1 show me your phone but --

2 THE COURT: Mr. Gygax, right. Don't --

3 MS. GORN: He stated that this was a
4 conversation between him and Luke.

5 THE COURT: Is that true?

6 THE WITNESS: Yes.

7 THE COURT: Then I think he's laid the
8 foundation.

9 MR. JOHNSON: Pardon me?

10 THE COURT: He's laid the foundation. So this
11 is a conversation between he and his brother. Any
12 objection?

13 MR. KOCH: No, Your Honor.

14 THE COURT: All right. It's received.

15 BY MS. GORN:

16 Q. So on page 1, looks like you're having a
17 conversation with Luke, about the probate action. Is
18 that accurate?

19 A. Yes.

20 Q. And the dark boxes -- Are those messages your
21 brother sent to you?

22 A. They appear to be.

23 Q. And the light boxes -- That would be the
24 things that you were saying. Correct?

25 A. Correct.

1 Q. And so I want to draw your attention to about
2 halfway down the page, you're asking about the purpose
3 of the probate; is that correct?

4 A. Yes.

5 Q. And you say, is it so everyone gets what they
6 were supposed to according to the will? Did I read that
7 correctly?

8 A. Yes.

9 Q. And then I want you to flip to page -- or
10 actually look at the bottom of the page there. There's
11 a text that started. It says, I read dad's will. That
12 text?

13 A. Um-hum.

14 Q. Um, on page 3, is that the remaining part of
15 that same message where it says, I read dad's will?

16 A. It looks like it.

17 Q. All right. And so you said, I read dad's
18 will. It hasn't been carried out. Is that accurate?

19 A. Yep. When we're saying will, are we referring
20 to the one that I signed?

21 Q. They're -- they're your words. So it's
22 whatever you and Luke were referring to.

23 Um, you go on to say, the books, stamps,
24 rings, etcetera, what you are asking for is for it to be
25 carried out now. And if -- And if not a new

1 representative to be appointed to ensure the items are
2 given out properly. Question mark.

3 So I mean, you tell me. Is that referring
4 to -- to the will you signed?

5 A. I believe this was, yes. This was referring
6 to the will that I signed.

7 Q. And then if you flip forward, on page 4, in
8 your conversation with Luke, Luke says to you -- about
9 halfway down the page -- you witnessed the will. I'm
10 curious why you never mentioned it existed to any of
11 your siblings.

12 Your answer, I haven't seen that since dad
13 called me downstairs one day and said sign this will so
14 that all the kids had something because he was sick and
15 didn't have one. I'm in the dark all the time and it's
16 frustrating.

17 Did I read that accurately?

18 A. Correct.

19 Q. And if you want to flip forward, looks like
20 page 7 where you got the D & D sketches there you
21 reference.

22 A. Okay.

23 Q. And this is a text you sent. You said, I'd
24 really appreciate it if my mom would stop selling off
25 family heirlooms and antiques for alcohol. Correct?

1 A. Correct.

2 Q. And then you said, Oh, she will claim it's all
3 your fault for the lawsuits and that's why she needs the
4 money. I'm sure she could sell off a few dusty lamps to
5 support her unhealthy life-style. I'm so pissed right
6 now. Did I read that right?

7 A. You did.

8 Q. On the next page, there's a text. And again,
9 we have dark and light. I assume Luke is still the dark
10 text; is that correct? That one's cut off?

11 A. Yes.

12 Q. And I'm sorry if I'm getting you in trouble
13 here, but I'm gonna read your text in the light here.

14 Must be nice to sit on your fat ass and drink
15 wine all day and just sell off our dad's shit. She
16 hasn't done a God damn thing in 12 years. The
17 definition of lazy.

18 Did I read that right?

19 A. Yes.

20 Q. And then she blames her health condition for
21 her lack of energy. We all know she drank herself this
22 way and is still. Did I read that right?

23 A. Yes.

24 MS. GORN: All right. Um, I have no further
25 questions.

1 THE COURT: Mr. Koch?

2 MR. KOCH: Yes, Your Honor.

3 EXAMINATION

4 BY MR. KOCH:

5 Q. Good morning, Mr. Gygax.

6 A. Hello.

7 Q. I'm the appointed personal representative.

8 I'm Steve Koch. How are you today?

9 A. I'm doing well, very well. How are you?

10 Q. I'm well. Thank you.

11 A. I'm like to turn your attention to trial

12 Exhibit Number 1, the last will and testament.

13 Do you have that in front of you, sir?

14 A. I do.

15 Q. I'm looking at the first page, and there are

16 what we call specific bequests in legal terminology.

17 Page 1, paragraph -- section 2 (1) it says, to each of

18 my children a chess set of -- each of my male children a

19 chess set of their choice.

20 Have you received a chess set of your choice?

21 A. No.

22 Q. Do you know if Luke received a chess set of

23 his choice?

24 A. No, I don't know.

25 Q. Okay. Do you know if Ernie or Addie received

1 a chess set of their choice?

2 A. I -- I don't know if anyone received a chess
3 set.

4 Q. Section 2 (2) states, to each of my male
5 children, a watch of their choice.

6 Have you received a watch of your choice?

7 A. No.

8 Q. Okay. Do you know if any of your male
9 siblings has received a watch of their choice?

10 A. I do not.

11 Q. Okay. Section 2 (3) says, to each of my male
12 children, a ring of their choice. Either the
13 Chrysoberyl, C-H-R-Y-S-O-B-E-R-Y-L, the enamel armorial
14 bearing and the garnet ring -- and the garnet ring
15 previously given to Luke. Or the signet ring, plus
16 engraved cufflinks that were my father's.

17 Have you received a ring of your choice?

18 A. I have not.

19 Q. Section 2 (4) says, to each of my male
20 children, firearm of their choice.

21 Have you received a firearm of your choice?

22 A. I have.

23 Q. Which firearm did you choose to receive?

24 A. I have I believe -- I am -- I have never
25 fired any of them, and I am in no way a firearms expert.

1 I believe I have the -- received the 9 millimeter, a
2 rifle and a shotgun.

3 Q. And how did you come to be in possession of
4 those items, sir?

5 A. I might have -- I may have others. I believe
6 she -- my mother wanted them out of the house.

7 Q. Do you recall when that was, sir?

8 A. Probably a decade or longer ago.

9 Q. Do you know if any of your male siblings have
10 received a ring of their choice?

11 A. I don't know.

12 Q. Okay. Do you know if any of your male
13 siblings have received any of the firearms?

14 A. I don't know if they have.

15 Q. Are any of your -- Strike that. Are you or
16 any of your siblings dedicated to stamp collecting?

17 A. I don't believe any of us are.

18 Q. Do you know what happened to the stamp
19 collection?

20 A. I do not.

21 Q. Have you received any part of your father's
22 personal library, sir?

23 A. I believe I have, though it might have been my
24 personal items. I was given a box of various few dingy
25 books and a few adventure modules that I had play

1 tested. It was one filing box of items from Paul
2 Stornberg. I'm sure he could give you an exact list of
3 what those were.

4 Q. And you used the word adventure module.

5 A. Um-hum.

6 Q. Can you explain for us what you mean when you
7 say that, sir?

8 A. Yeah. It's like a prewritten story that when
9 you played on Zoom dragons, you tell this story to a
10 group of people.

11 Q. And you say play tested. Can you tell us what
12 you mean when you say that, sir?

13 A. Yes. When my dad would write these adventure
14 models, I would play in them, and he would alter and
15 make notes and -- and put the finishing touches on so to
16 speak before these were published.

17 Q. Kind of like a test run?

18 A. Exactly, yeah. We're the guinea pigs for the
19 game before they were published.

20 Q. Sure. And let me go back to the personal
21 library. You said you received one locks?

22 A. Yes, I received items, but they were not items
23 that I would have categorized under his personal
24 library. I received it -- a box of books, gaming
25 related, but none of which were his personal library,

1 items that would have been from the basement or under
2 the steps there or encyclopedias, no fantasy novels,
3 anything like that.

4 Q. It sounds like he had a -- a large collection.

5 A. Thousands of books.

6 Q. They would not fit into --

7 A. One box, no.

8 Q. Do you know if any of your siblings who have
9 also been involved in writing about imaginative fiction
10 or writing imaginative fiction -- if they have received
11 any part of your father's personal items?

12 A. I don't know if they have, no.

13 Q. Can you tell me, sir, when was the last time
14 you were in 316 Madison Street?

15 A. I'd say within the last 6 months. Um, I
16 was -- I was in the house, but briefly and not very
17 far.

18 Q. When was the last time, sir, you were actually
19 into the -- the main part of the house?

20 A. That's hard to say. Any time I've been in the
21 house, it's pretty brief. It's pretty cluttered, um,
22 so --

23 Q. Have you seen any part of your father's
24 personal library in the last year?

25 A. In the last year? No.

1 Q. Okay. Does it look like things have been
2 removed?

3 A. No.

4 Q. You said his office at the time you signed the
5 will was right near the bottom door?

6 A. Correct.

7 Q. Okay. Did you look into the office the last
8 time you were in the marital residence -- or in the
9 residence? Excuse me.

10 A. The last time I was there, no.

11 Q. And prior to this action in court being
12 started, was the last time you saw the will marked as
13 Exhibit 1 the day you signed it?

14 A. No, I -- I may have seen it after his passing
15 15 years ago. It was either then or when I signed it.

16 Q. And then can you tell me what you recall about
17 seeing the will after your father's passing?

18 A. All of these things were -- have been pretty
19 held tightly. Um, any time I would have gotten to see
20 any of these, it would have been brief. Um, take it,
21 look it over, sign it.

22 When he passed, I did have a chance to see it.
23 It would have been, you know, not -- I may have been
24 given a copy. This was a long time ago, so it's hard
25 for me to recall. I may have been given a copy. I

1 don't recall.

2 Q. Okay. If you had been given a copy, would you
3 have shared that with any or all of your siblings?

4 A. If -- if I had been given a copy, I would have
5 been glad to have shared it. Did I reach out to them
6 and share it to them?

7 I believe I did not because it would have been
8 under my belief that everyone would have received these.
9 So I wouldn't have needed to. Um, that was just a
10 presumption.

11 MR. KOCH: Thank you, Your Honor. I have
12 nothing further.

13 MR. JOHNSON: No questions.

14 EXAMINATION

15 BY THE COURT:

16 Q. So after you signed it, your dad lived for a
17 couple more years, right?

18 A. Correct.

19 Q. All right. And then after he died, did you
20 ever have a conversation with your mom about this will?

21 A. Yes. Um, yeah. This -- this will and the
22 other will had come up in conversations since he passed.

23 Q. And do you know why -- Well, what did she say
24 about it?

25 A. What did she say about this will?

1 Q. Was it a secret or something or confidential?
2 Or what was the situation?

3 A. It -- I don't feel it as though it was like a
4 secret or confidential. But everything -- it --
5 everything kind of has a veil of secrecy over it. So --

6 Q. By her, by you? By --

7 A. By her. This every -- everything. Um, it's
8 very -- It's very hard to get solid information on
9 anything.

10 THE COURT: Now any questions, Mr. Johnson?

11 MR. JOHNSON: Yeah, a couple.

12 EXAMINATION

13 BY MR. JOHNSON:

14 Q. Now, just based on those, do you recall, Mr.
15 Gygax, in your testimony that you may have seen the will
16 after your dad passed away? This one that we're looking
17 at, Exhibit 1?

18 Would that have been at a time when you -- you
19 were receiving these items that you discussed, the guns
20 and other things?

21 A. It would have -- most likely have been after
22 his passing. And then short -- and then some time --
23 yeah, some time after his passing.

24 Q. Are you aware that your mother delivered a lot
25 of personal property items to Ernie Gygax? Are you

1 aware of that?

2 A. I -- I am aware. What exactly those items
3 were I'm not certain of. I don't -- I -- I was aware
4 that he received some package I believe.

5 Q. Were you aware of whether or not there was a
6 list of those items that were given to him?

7 A. I believe I was stated a list at one point in
8 time.

9 Q. I'm sorry. You were what?

10 A. I was stated a list. I don't know if I was
11 personally given a list of what was given to him.

12 Q. Would you have seen that list potentially?

13 A. I may have at one point.

14 Q. Mr. Gygax, I'm gonna show you what we've
15 marked as Exhibit 105 and ask you if you've ever seen
16 that document.

17 A. Okay. I've -- I possibly have seen this in
18 the past.

19 Q. Can you tell me -- On the top of Exhibit 105
20 on the page 1, there's three columns. It's items
21 delivered to.

22 Do you see where I'm reading there on the top
23 of page 1?

24 A. Yeah.

25 Q. And then in the middle column, it says deliver

1 to with a colon and E. Gary Gygax, Junior. Do you see
2 that?

3 A. I do.

4 Q. And that would be your brother, Ernie?

5 A. Correct.

6 Q. And then the date on that document is what?

7 A. June 19, 2008.

8 Q. Does this help you with any recollection?

9 That would have been -- June 19, '08 would have been
10 after your father passed away.

11 A. Yes.

12 Q. And on the second page, have -- Would you
13 recognize the signature of your brother, Ernie?

14 A. Ernie's signature I'm not as familiar with.

15 Q. Do you have any reason to believe that's not
16 his signature?

17 A. No.

18 Q. And -- and in -- back to the first page of
19 that under the -- the first set of items, there has some
20 chess boards and chess sets.

21 Do you see where I'm looking at in that first
22 set of documents on the --

23 A. I do.

24 Q. And so this document at least purports that
25 those -- that Mr. Koch asked you -- would have been

1 delivered to Ernie. Do you see where I'm --

2 A. I do.

3 Q. And then there's on the -- under the second
4 set of documents or items has a bunch of weapons there
5 listed under that second set on the first page?

6 A. Yes.

7 Q. And then the third thing that has some things
8 that were missing, um, but -- and then on the last page,
9 some additional items.

10 Um, do you recall receiving any of these items
11 from your brother, Ernie?

12 A. Did I receive any of these from Ernie?

13 Q. Yes.

14 A. I -- I don't believe so.

15 Q. So this is like three months after your dad
16 passed away?

17 A. Yeah, I -- I recall Ernie receiving a box of
18 items or being told that he was getting a box of items
19 to divvy up for everyone. This appears to be that list.
20 I don't recall going over to his home to -- to divvy
21 these up.

22 Q. Does Ernie live in Walworth County?

23 A. I may have even been the one to drop this box
24 off.

25 Q. Does Ernie live in Walworth County?

1 A. I believe at the time Ernie was living right
2 off Highway 50 over by the Wal-Mart in Lake Geneva.

3 Q. And so the -- You said you may have delivered
4 a box to him?

5 A. Yeah. I may have been the one that dropped
6 these off.

7 MR. JOHNSON: I have nothing else. Thank you.

8 THE COURT: Follow up on that?

9 MS. GORN: Yes.

10 EXAMINATION

11 BY MS. GORN:

12 Q. You don't know that Ernie specifically
13 received the items on this list, do you?

14 A. It's been so long. I'm just having a hard
15 time recalling exactly.

16 I -- I'm -- I can't say that for certain he
17 received every item on this list.

18 Q. And you don't know what he did with the items
19 he received; is that correct?

20 A. I do not.

21 Q. Okay.

22 A. I believe -- I believe he divvied them up
23 because there's -- The six train long dragon plates I
24 believe my sister does have now at her home which I had
25 recently seen there. So -- although I'd have to talk to

1 her. She may have gone out and purchased the second set
2 of those.

3 Q. Um, your testimony -- You've been asked a lot
4 things. And I understand you've said it's a long time
5 ago and you can't exactly recall.

6 But I just want to be clear that there is one
7 part of your testimony that you are clear about which is
8 the signing of the will.

9 Is that -- an accurate statement?

10 A. I do recall signing the will, yes.

11 Q. And you recall -- Do you recall what you were
12 doing before you --

13 THE COURT: This has been asked and answered.
14 You don't need to go through it just to enhance it.

15 MS. GORN: Okay. I have -- then I have no
16 other questions.

17 THE COURT: Thank you. Mr. Koch?

18 MR. KOCH: Nothing further.

19 THE COURT: Mr. Johnson?

20 MR. JOHNSON: No, Your Honor. Thank you.

21 THE COURT: Thank you. You may step down.

22 Why don't we take a recess and see where we
23 are next. We'll come back at 10 to.

24 (Recess taken.)

25 THE COURT: All right. Are you ready with

1 your next witness?

2 MS. GORN: Yes, Your Honor.

3 THE COURT: Okay. All right. We'll have him
4 join us.

5 And it's pronounced Chenault?

6 MS. GORN: Yes.

7 THE COURT: All right. Are you Mr. Chenault?

8 THE WITNESS: (No response.)

9 THE COURT: All right. We cannot hear you.

10 THE WITNESS: Okay. Can you hear me now?

11 THE COURT: Yes, we can.

12 THE WITNESS: Yeah.

13 THE COURT: All right. I'm Judge Koss. We're
14 in the midst of the probate matter of Mr. Gygax. And
15 it's still the Petitioner's case, and go ahead. You may
16 call him as your witness. And then we'll -- Hold on.

17 MR. JOHNSON: I have one housekeeping matter,
18 Your Honor. I introduced Exhibit 105, and I would offer
19 that into evidence.

20 THE COURT: From the prior --

21 MR. JOHNSON: I forgot to do that during his
22 testimony. I apologize.

23 THE COURT: Any objection?

24 MS. GORN: I'm a little concerned about the
25 relevance of the document. He didn't create the

1 document. He couldn't testify that he -- or the
2 foundation. He couldn't testify that he actually did
3 recall seeing it. He didn't know if those items were
4 actually given. He wasn't the one that received them.
5 So to that extent.

6 THE COURT: Mr. Koch?

7 MR. KOCH: I have to object to lack of
8 foundation. He couldn't identify his signature either,
9 Your Honor.

10 THE COURT: I agree. It's not received.

11 All right. Mr. Chenault, if you could raise
12 your right hand, my clerk will administer an oath to
13 you.

14 THE CLERK: Please state and spell your name
15 for the record.

16 THE WITNESS: Stephen K. Chenault.
17 S-T-E-P-H-E-N, K, C-H-E-N-A-U-L-T.

18 STEPHEN K. CHENAULT, having been first duly
19 sworn to testify the truth and nothing but the truth,
20 was examined and testified as follows:

21 THE CLERK: Thank you.

22 THE COURT: All right. Go ahead, Ms. Gorn.

23 MS. GORN: Thank you, Your Honor.

24 EXAMINATION

25 BY MS. GORN:

1 Q. Thank you, Mr. Chenault, for rearranging your
2 schedule to accommodate our timeline here.

3 Can you please state your full name for the
4 record?

5 A. Stephen K. Chenault.

6 Q. And where do you currently reside?

7 A. Little Rock, Arkansas.

8 Q. And have you always lived in that general
9 area?

10 A. No. My father was in the military, so we
11 moved around a lot. I settled here in 1985 in Arkansas.
12 But I've lived in Little Rock for the past 24 years, I
13 guess.

14 Q. And can you tell me a little bit about your
15 educational background?

16 A. I received my undergraduate degree from
17 Arkansas State University. I joined the Army after
18 that. I finished my master's degree at the University
19 of Fayetteville in Arkansas.

20 And I was working on my Ph.D. when I shifted
21 over to working full-time for Troll Lord Games.

22 Q. And -- I'm sorry. Perhaps I missed it. But
23 what was your course of study for your Ph.D.?

24 A. History.

25 Q. And your course of study for your master's?

1 A. History as well, with a specialty in Austrian,
2 Hungarian history. 19th Century Austrian Hungarian
3 history, essentially Europe.

4 Q. And you said you shifted into working
5 full-time. Can you tell me what you do?

6 A. I work for a company called -- The company's
7 called Chenault & Gray Publishing. We do business as
8 Troll Lord Games. We publish games and fiction and
9 other materials, dictionaries, stuff like that.

10 Q. And how did you get into that line of work?

11 A. A friend of mine and my brother and I all sat
12 down. We had -- I had tried to get published through
13 TSR, an old company, a number of times. And fast
14 forward after a while, during my Ph.D., Matt Golden
15 (phonetic) had brought the idea of bringing up these old
16 adventures and trying to publish them, to self publish
17 because he knew that the rendition of Dungeons & Dragons
18 was coming out.

19 So we wanted to create a company that we could
20 sell and market it, see if we could go at it. And I had
21 these adventures already done in a small world setting.
22 So we put all that together and launched that at Net and
23 Gen Con in the year 2000.

24 Q. And how did you know Gary Gygax?

25 A. So when we launched at Gen Con in the year

1 2000, the Mac and Ted game -- We did three adventures
2 in a world setting map. He took all the material to
3 Gary's booth and Chapter 4 which is another company that
4 he was working with; the primary company he was working
5 with in those days.

6 And Mac dropped these books off with Gary as,
7 you know, kind of a thank you for bring this Dungeons &
8 Dragons type thing. These are our releases. Gary was
9 very nice, took them.

10 And I think about two or three weeks after
11 that convention, Mack hollered at me, said, Hey, you
12 need to reach out to Gary and see if we can't work with
13 him. So I e-mailed Gary, and then I had a conversation
14 with Gary. And first Clark moved forward (phonetic) and
15 we're negotiating deals for publishing a lot of his
16 material. And that's how we met; phone, e-mail at
17 first.

18 Q. All right. So I'm gonna ask you talk a little
19 bit slower. I want to make sure that I got that right.
20 So --

21 A. Okay.

22 Q. -- you started this company. You went to Gen
23 Con. You went to Gary's booth and dropped off some
24 things that you had written?

25 A. Correct, yeah. He dropped off some of our

1 publications at his booth, and he took them home. And I
2 e-mailed him about two weeks after that, I think, give
3 or take.

4 And we started a conversation about the books
5 that we had written. He really liked them. He liked
6 the production quality of them. And after that, the
7 conversation moved into, you know, we'd love to be your
8 publisher, Gary, if you got anything you'd like to send
9 our way, and it just went from there.

10 Q. And so from that point forward, did Gary begin
11 publishing his works with you?

12 A. Yes. We -- So after that, we signed --
13 After a month or two of negotiations, we signed a
14 contract for the Gygaxian fantasy worlds which was going
15 to be an open-ended series of books and that he wanted
16 to put out called basically, how to manage or how to
17 create role playing games and whatnot.

18 So we sat -- Like I said, it was an
19 open-ended contract. There was no end to it. We had
20 three books, I think, laid out, ready to go or written,
21 and ready to go. And after that, it was gonna be
22 however many he could put into the line.

23 The first book that he sent to us was Canting
24 Crew. The first full book of Gary Gygax's was The
25 Canting Crew, and that's the first one that we

1 published.

2 Now, we were not -- We did not have an
3 exclusive with Gary. He was still working a little bit
4 with Pecha Forge (phonetic).

5 THE COURT: I'm sorry. With who?

6 MS. GORN: Pecha Forge.

7 THE COURT: Okay.

8 THE WITNESS: Pecha Forge is a company owned
9 by Chris, Christopher Clark. And he and Gary had been
10 working together in the 90's, though I don't think --
11 After the Canting Crew release, I don't believe he
12 released -- Gary released any more material through
13 Pecha Forge. I don't think that he did.

14 BY MS. GORN:

15 Q. So you were saying Canting Crew was the first
16 book that you published for Gary. What year -- what
17 year was that?

18 A. I want to say it was 2001 that it came out.
19 It might have been early, early 2002 that that came out.

20 The second in the series was Gary Gygax's
21 world builder. The third was Gary Gygax's fantasy, and
22 after that was Gary Gygax's extraordinary book of names.
23 And then Gary Gygax's city aid, Gary Gygax's nation
24 builder and Gary Gygax's cosmos builder was the seven
25 that we published in that series.

1 By the time that seventh book came out, we
2 were -- that was 2007, 2006, 7 -- we were working on
3 many other projects with Gary including Legendary
4 Adventures, Castle Gadding (phonetic), Lord of the Road.
5 It was just -- King of England, King of France. It was
6 -- and it was a great deal of material that we were
7 working on.

8 And I can walk you through that publication
9 schedule if you would like. It was impacted by currents
10 in the industry and things Gary was doing, things Gary
11 wanted, things we were doing.

12 Q. So I think for our purposes, those seven
13 things, those seven books that were produced -- That
14 all came out between the years of 2001 and 2006, 2007?

15 A. Yes.

16 Q. So were you working on anything with Gary in
17 2007, 2008?

18 A. Yes. So we began -- So that series of books
19 is called the Gygaxian fantasy world series.

20 We began working in 2003 and 4 on his Castle
21 Xagyg material. It's a lot of material --

22 THE COURT: I'm sorry. Stop.

23 MS. GORN: Castle Xagyg.

24 THE COURT: Just -- What is the word?

25 Somebody.

1 MS. GORN: Z-A-G-Y-G [SIC], Zagyg.

2 THE WITNESS: Yeah. So we began working on
3 that in roughly '03, '04. And that gets weird too
4 because the first book that we put out on that was
5 Ginsberg (phonetic). That was a large hardcover book,
6 \$45 MSRP. Then there was a series of smaller books that
7 expanded on that book that came out.

8 And all of that we were working on while he
9 was working with Jeff Clement (phonetic) and some other
10 people on the Castle Xagyg adventure series which was
11 going to be 4 to 5 or more boxed sets eventually that he
12 intended to put out. And that was what we were working
13 on in '07 and '08.

14 BY MS. GORN:

15 Q. And when you say working on, can you tell me
16 sort of the process? What were you doing? What were
17 other people doing? And I guess, we don't really know
18 how things get from these ideas into sellable documents.

19 A. So Gary would write the material, or he would
20 hire someone to write ideas that he had. For instance,
21 the Ginsberg (phonetic) book, part of the Castle Xagyg
22 material Gary wrote. Fantastic book, very large. 300
23 pages.

24 But the city books, the expansion books were
25 -- hired other people to do. Anything that Gary wrote

1 sold much better than stuff that he hired other writers
2 to do.

3 So when he finished with the manuscript, he
4 would send that to me. I would give it a once go over,
5 and it would go into editing. And it would get edited
6 and would go into play testing to make sure that it
7 conformed to the rules of the game that we were
8 publishing it under because there was three -- There
9 was his own game, there was our game and Dungeons &
10 Dragons as well.

11 So once it goes through the editing process,
12 um, and it goes up, we have art, artists to do pictures.
13 We like to do one picture for every 4 to 6 pages. We
14 have to hire cartographers to do the maps. In Gary's
15 stuff, maps were usually relatively involved. So that
16 was a pretty stout expense.

17 And then once you've got an edited manuscript,
18 it's properly play tested, and you've got art in place
19 and you've got maps in place and a cover in place, it
20 all goes to layout. The layout guy -- Gradually he lays
21 the whole thing out. Once we had it in a publishable
22 format -- We own our own print shop, so we print it in
23 our own shop, or we outsource it to a company in
24 Missouri called Waltonberg, and then they print the hard
25 covers for us.

1 Q. And then am I accurate that because Gary is
2 the one who is sort of coming up with these ideas that
3 the published product then is Gary's creation?

4 A. Yeah. The only thing Gary wouldn't have any
5 say in -- and even a say -- would be what the cover art
6 would look like. That was usually up to me and Peter
7 Bradley, but we never did anything like that without
8 talking to Gary. You know, we didn't put a cover on it
9 without getting it approved.

10 But yeah, the books were all his. Even though
11 he hired people to write, that was his content, his
12 ideas, and he didn't -- He didn't just hire a writer to
13 write something. He administered and I mean, he read
14 their manuscripts, corrected it, changed it.

15 But yeah, any of the books that we published
16 with Gary's name on it were Gary's idea. He owned it.
17 Yes, ma'am.

18 Q. Um, what --

19 A. And just a second. And the maps that go into
20 these books -- Gary would draw those maps, or at the
21 very minimum, instruct us how to draw them. So even
22 that content is Gary's creation.

23 Q. And what was the marketability for -- let's
24 start with the 2001 to 2007 books? Did those sell?

25 A. So the Gygaxian fantasy world -- That's what

1 that 7-volume set is titled. Any of those books that
2 were written by Gary which is gonna be the first three;
3 Canting Crew, the forward builder and living fantasy --
4 Any of those books sold very well.

5 I remember distinctly Canting Crew. That was
6 our first book that we did. It sold in its first month
7 1,791 copies -- I remember that very distinctly -- which
8 for a small publisher was very good. Now, after the
9 third book, sales began to taper because his name was
10 not on -- his name -- It was a Gygaxian fantasy world
11 book. But it wasn't written by Gary, so people were
12 less interested.

13 Extraordinary book. That was volume 4 in a
14 series, a little bit different. It sold very well. But
15 the others -- That kind of tapered off. That's the --
16 Anything Gary's name was on sold better than anything
17 that didn't have Gary's name on it.

18 Q. And -- And how much if you know, did those
19 books make in sales? What was the price of these books?
20 How many sold? I guess what information can you give us
21 on --

22 A. So those averaged about -- We did hardcover
23 on all of Gary's -- on that Gygax Fantasy World. We had
24 hard covers on those, and they ranged from 29.99 to
25 34.99 for MSRP. And I remember that gross sales were

1 32,000 for Canting Crew in one quarter which was very
2 good.

3 And generally speaking, those books with
4 Gary's name on it -- They -- they sold well.

5 Q. The agreement that you had to publish Gary's
6 work -- Was that a licensing agreement?

7 A. Yes.

8 Q. And did that licensing agreement -- Did you
9 obtain any ownership rights in Gary's creations?

10 A. No. Gary was always very particular on -- on
11 ownership of his material, his likeness and name.

12 Q. When you were using Gary's name or likeness,
13 did you need his specific approval?

14 A. Absolutely. We always had to contact -- I
15 couldn't use Gary's name, even in a press release,
16 without contacting Gary. He either had to do it via
17 e-mail or phone.

18 The one time that I actually did put a press
19 release out, and I didn't contact him, he sent me a
20 strongly worded e-mail. But yeah, I absolutely had to
21 contact him.

22 Q. And in 2008, did you and Gary discuss, I guess
23 the -- What exactly were you and Gary planning to do as
24 of 2008?

25 A. The market had changed quite a bit in the

1 little, big picture, than just what happened in '08.

2 In 2005 it -- the role playing market had
3 crashed and become somewhat depressed. We weathered
4 through that -- through no small extent -- through the
5 sale of Gary Gygax's books. And by 2000 -- That's when
6 Trol Lord Games invested in its own print shop. And
7 once we had gotten through that, we were able to kind of
8 gear things up.

9 By '07 we were on recovery. So Gary and I
10 were working on multiple projects simultaneously. And
11 the more that we were able to do, the more he's sending
12 our way. The last physical conversation I had with Gary
13 was in January of 2008. We both sat down at the
14 registration desk of the lower convention that was
15 running up there -- was running two up there -- and I
16 sat down and discussed a litany of projects which
17 included a three -- He wanted three hardcover books;
18 the legendary adventure role playing game, the Castle
19 Xagyg and box set adventure series as well.

20 What he originally planned was 17 different
21 small books, each, you know, put into a box. He had
22 said he wanted that open-ended. So he was gonna do as
23 many of those as he can that he could. There's the King
24 of England and France. There was a board game that he
25 was working on. Lord of the Rogue. He had released

1 that series of novels that he wrote. That was a
2 character in a series of novels he had written. We had
3 released the first in that series, Lord of the Rogue,
4 and he wanted to do more and wanted to rerelease all of
5 them. I think there was four in that series.

6 And then on top of that, he was gonna work
7 with some Castles Crusades material. We had more stuff
8 that he was working on; a crusader journal. It was --
9 it was a litany of material. I remember very distinctly
10 talking to him and thinking that he's not been this
11 energetic since the early 80's. I mean, it was a
12 mountain of material he was sending our way.

13 Q. And that was in January of 2008?

14 A. Yes, about 6 weeks before he passed away.

15 Q. Do you know if he was sick or ill at that
16 time?

17 A. No. He didn't indicate anything like that to
18 me. Um, he was really focussed on publishing all these
19 projects that he was working on, especially the Castle
20 Xagyg material which was already being -- We hadn't
21 released the first of the box sets. We had released the
22 Ginsberg book, a number of city books and one adventure,
23 and it was extraordinarily well received; I think
24 galvanized him. There wasn't any conversation about it.

25 Q. And you have -- You said that as of January

1 2008, you guys were working on all of these different
2 projects.

3 Did you have money -- your own money or your
4 company's money -- invested in these products at the
5 time that Gary died?

6 A. So what we -- We had a mountain of time
7 invested in these projects for certain. Peter Bradley,
8 our art director, had already begun mapping out a second
9 box set of Castle Xagyg material. He had also been
10 mapping out, um, some of that Ginsberg book. Ginsberg
11 is a large city. Gary wanted each neighborhood
12 detailed. Peter had started mapping that out.

13 We had already added a layout, the player's
14 guide to adventures, and we were in the process of
15 adding and laying out the second fall in the legendary
16 adventure series.

17 We had put an absolute mountain of time into
18 the board game King of England, King of France. We had
19 the map laid out. We had the cards laid out. In fact
20 that's one of the last things we discussed -- Gary and
21 I -- what goes on those cards. He had made some
22 notations and corrections on them.

23 So absolutely we had a mountain of time and
24 money tied into this material.

25 Q. Did you and Gary discuss, I guess, revenue in

1 any way? Did you guys discuss what you expected these
2 projects to make? Were they expected to be wildly
3 successful? I guess was there any conversations about
4 pricing?

5 A. No. Gary didn't talk about it very much. I
6 think he understood the nature of publishing, and he
7 knew that in this case particularly, since Troll Lord
8 Games is not a guy -- a west coast company that its
9 volume which he wanted to get as many titles down as you
10 can so over time it builds. And that's what he was
11 working on.

12 He didn't -- We didn't go over prices often.
13 Occasionally I would run something by him but not very
14 often.

15 Q. And what happened to all of these projects
16 when Gary died?

17 A. When Gary passed away, we were at the funeral.
18 Gail and I had a meeting afterwards, and she said it's,
19 you know, this is all good. But I could -- We could
20 continue publishing, but I could tell that there was a
21 little bit of a reluctance to continue with these
22 agreements.

23 And a few weeks after that, I got a call from
24 a gentleman named Spencer Wright who was, I guess,
25 working for an agent or something like that. And he

1 wanted to change all the contracts, wanted to raise the
2 royalty rate from -- We had a staggered royalty rate
3 with Gary. I think 4.5 and then 8, depending on volume
4 of sales. He wanted to change that to a 25 percent
5 royalty rating.

6 And at that point, I knew that Gail was gonna
7 pull the contracts at some point and so we could back up
8 on everything. Castle Xagyg -- That was the one thing
9 that we knew we had in the hopper that we were so far
10 into that one that wanted to get that one out.

11 Q. Does Castle Xagyg -- Does that go by other
12 names?

13 A. So Castle Xagyg is also known as Gray Hawk in
14 the wider community, and it's extraordinarily famous.
15 Gary started playing it back in the 70's at some point,
16 keeping notes. The game that he ran in his multi-level
17 adventure.

18 And so everyone knows Gray Hawk, that Castle
19 Xagyg -- that this was his version of Castle Gray Hawk,
20 that it is extraordinarily famous. So much so that when
21 we released the Upper Worlds box set -- I think was --
22 only printed a certain number. I think I printed 750 of
23 those. We sold over 700 in about a week and a half, two
24 weeks or something like that.

25 Q. Um, does Castle Xagyg also go by -- Have you

1 ever heard it referred to as Gary's Castle or Gary's
2 play test castle?

3 A. Um, I know that he used that -- I don't think
4 I ever heard it called that.

5 Q. Is it also referred to as the original
6 dungeon?

7 A. I heard it -- I heard it called that, yes.
8 It's got -- I mean, it's kind of legendary in the
9 community. A few people have actually seen what it is.

10 Q. Is it published or unpublished as of this
11 date?

12 A. So the only part that was published was the
13 first five. So Castle Xagyg is the -- originally had
14 notes -- if I recall -- 17 levels of Castle Xagyg.

15 We published the first five of those levels in
16 a box setup called Other Worlds. We had plans to do
17 more box sets. Every five levels was gonna go into a
18 box set. So we had three to four box sets planned, but
19 again that was open-ended.

20 Um, so we had this -- You know, the most those
21 would end up with -- The only -- the only thing that's
22 ever been published that he wrote was Castle Gray Hawk,
23 would be Troll Lord Games.

24 Q. So this original dungeon Castle Xagyg -- That
25 is what's kind of wildly famous -- was that was your

1 term -- among sort of your community?

2 A. Yeah, yes.

3 Q. And you were working on publishing that with
4 Gary at the time he died. Am I -- Is that accurate?

5 A. Absolutely. Yeah. We had just -- or we
6 were -- When he died, we were working on the first five
7 levels. He had already submitted them to us. They were
8 in editing, and the cartography and mapping was being
9 done at that point.

10 Q. And that is what you expected to be the most
11 profitable or valuable piece of property?

12 A. Absolutely. Yeah. Castle Xagyg and the stuff
13 that comes with it; the Ginsberg and city books and all
14 of that material I expected to do extraordinarily well.

15 Q. When you say extraordinarily well, do you have
16 any sort of idea of how profitable those books would
17 have been?

18 A. I think that we could have easily sold out the
19 gate -- And by out the gate, I mean in the first 90
20 days. In publishing the most important days are the
21 first 90 days.

22 I think out the gate, we could have sold 2,000
23 without much effort. I mean, we sold 700 without much
24 effort. Um, easily, if not more than that. And as soon
25 as we started putting more material out, it would have

1 compounded so that it would have been selling
2 extraordinarily well. I -- 5,000 I think is a safe bet.

3 Q. And that's of copies?

4 A. Yes, 2 to 5,000 copies of each of those box
5 sets I think is a safe bet. Over time.

6 Q. And what is the price point on those boxes?

7 A. Um, the one we released was 44.95.

8 Q. And how many box sets were there?

9 A. Um, of that one that they published?

10 Q. Or what you were planning to do. I'm trying
11 to find out the value of the Castle Xagyg when it comes
12 to fruition.

13 THE COURT: 2 to 5,000, am I right? 2 to
14 5,000 you said?

15 MS. GORN: 2 to 5,000 --

16 THE WITNESS: 2 to 5,000 copies of each box
17 set.

18 THE COURT: All right.

19 THE WITNESS: And Gary had planned on a
20 minimum of three box sets. But there was gonna have to
21 be a fourth because if we did -- there was -- If I
22 recall, there's 17 levels to the dungeon. We were gonna
23 do five per box set.

24 And I remember very distinctly when I put a
25 press release out and I mentioned there were 17 levels

1 to this thing, and Gary shot me a rather humorous e-mail
2 that said, when you become the creator of Castle Xagyg,
3 there will be as many as levels as I want there to be.

4 And that started another conversation that he
5 was going to continue creating levels, even beyond the
6 17. So easily there were going to be four of these box
7 sets, that I think will sell 2 to 5,000 copies with
8 possibly more box sets after that just because there's
9 no end to this, right? You can put as many levels on
10 this creation. You can do whatever you want.

11 Q. So -- And I apologize. I'm getting lost. I'm
12 learning so much.

13 When you -- You said that you knew Gail was
14 gonna pull the license, so things started coming -- you
15 started pulling back. They wanted a new royalty rate,
16 and you did not agree to that -- the increased royalty
17 rate. Is that accurate?

18 A. That is accurate. It was a very long
19 conversation, and it went from we asked 25 percent which
20 is absurd after distributor fees. I would be losing on
21 everything.

22 So we wanted 25. Then he came down to 20 and
23 then 15, then 12. And I -- The conversation ended when
24 I said, we're just gonna stick with what Gary and I
25 signed. The contract Gary and I signed was a percentage

1 that we agreed on.

2 Q. Did you and Gary talk about royalty rates?

3 A. We had. We had a couple of conversations
4 about it. When we first signed with Gary back in 2000,
5 2001, around there, we had offered him a 10 percent
6 royalty on all sales.

7 And he wrote me back and said absolutely not.
8 That's entirely too high. You're gonna put yourself out
9 of business. Why don't you start with something much
10 lower? So we put him at 3.5 if I recall, and then by
11 2005 or 6, the sales had increased. So -- And he
12 wasn't -- I talked to him again, and we bumped his
13 royalty. That's when we bumped it up to a staggered
14 royalty. I believe it was 4.5 for the first thousand,
15 and then 6 for the next thousand, and anything above
16 2,000 was 8 percent.

17 I believe that's what those contracts said.
18 If not it's very close to that. Um, and that was the
19 last time we really talked about royalties.

20 And he was very -- Um, Gary was an
21 extraordinarily astute businessman, and he understood
22 the economics of publishing and the economics of royalty
23 rates. I think that's one reason that he was shooting
24 for and the volume of titles to increase the amount of
25 money he was making from Troll Lord Gaming.

1 Q. So you said that you had a conversation --
2 your last in-person meeting with Gary was in January of
3 2008. When was the last time you talked to Gary?

4 A. So we e-mailed -- So I returned from Lake
5 Geneva in January with a mountain of work to do that
6 included Castle Xagyg and King of England and King of
7 France, plus our own, you know, the material with Troll
8 Lord Games doing, aside from that.

9 We e-mailed back. I noticed probably in
10 February maybe that the e-mails weren't as common. We
11 e-mailed mostly every day for that, you know 7, 8 years.
12 But I noticed the e-mail had tapered off quite a bit.
13 But I didn't have the -- the presence of mind to -- to
14 ask him, you know, if something was wrong. I figured he
15 was busy too.

16 Q. Did you ever have any indication that his mind
17 wasn't as sharp as it had previously been? Did he have
18 any deficiencies in his thinking that you were aware of?

19 A. Oh, absolutely not, no. No. I would say that
20 that meeting -- that meeting I had with him in January I
21 was -- I was really floored. I remember getting in the
22 truck, talking with my brother David who's up there with
23 me.

24 The amount of material that he was working on
25 simultaneously is nothing short of astounding. I

1 remember thinking it was the 19 -- early 80's all over
2 again. Gary was creating so very much.

3 Q. And so Gary didn't say anything to you about,
4 you know, that he was kind of planning for his -- what
5 should happen to his things after -- after death?

6 He didn't appear to be winding down in any
7 way? Is that accurate?

8 A. No, there was no conversation about anything
9 like that. There was no winding down. There was a
10 mountain of material that he wanted to work on that he
11 wanted to see released sooner rather than later.

12 He was just extraordinarily excited about all
13 of these projects. I think that he could see on the
14 internet that his -- And at Gen Con 2000 -- It's hard
15 to -- it's hard to describe this.

16 So in the late 90's, Gary's, um, name had kind
17 of fallen by the wayside. He was not considered a
18 serious publisher, a serious writer, a serious game
19 designer. I remember this very distinctly at a
20 convention in Columbus, Ohio when we first released
21 Canting Crew, a distributor came up to me, and said, oh,
22 so you guys -- you are the guys publishing Gary Gygax.
23 You know you're gonna be out of business in 6 months.

24 And I was floored by that. This was -- this
25 was, um, you know, against everything that I thought

1 about Gary. But in the industry, the sales department
2 he was not doing well.

3 By '05, I think really by '07 -- it was around
4 '07 -- at Gen Con, when we met him at Gen Con, we walked
5 up to his booth and started talking to Gary. At Gen Con
6 in 2007, we had two signs. And the Gen Con folks were
7 very, um, forgiving to us and gave us -- allowed him to
8 do signs at our booth which they didn't normally do.

9 There were several people at those
10 autographing sessions, even without our booth. We had a
11 big two-block booth. Went out and around the side and
12 into other peoples' areas. We had to have people
13 steering these lines so, you know, so they wouldn't
14 interfere with other peoples' sales at Gen Con.

15 So I think Gary saw, especially with the
16 Castle Xagyg material, you know, Newberg coming out,
17 Ginsberg was already out, other works coming out and
18 success of the GFW series that he was back into it. He
19 was selling well. There was something on the horizon.
20 He was extremely excited and, I think, invigorated after
21 that Gen Con. Just started moving forward and that's
22 what we were doing.

23 There was no -- There was no heart-to-heart
24 conversations via e-mail, nor did I think Gary was in
25 any way checking out or looking to -- at some kind of

1 legacy. We never talked collector's stuff. There was
2 no mention of we need to do collector's versions or any
3 of that stuff. He steered away from all of that. He
4 wanted to do traditional publishing.

5 Q. Um, would you be interested in publishing
6 Gary's material in the future?

7 A. Absolutely. I made a promise to him in
8 January of '08 that I would. Put all these books out no
9 matter what. So absolutely.

10 Q. Has anybody made you any promises in exchange
11 for your testimony today with respect to your rights to
12 publishing things?

13 A. No.

14 Q. And are you being paid for your testimony here
15 today?

16 A. No.

17 Q. And how do you know Luke Gygax?

18 A. We met -- Luke and I met shortly after Gary
19 and I signed contracts. We had first met Gary in person
20 in 2001 at Gen Con. And that was in Milwaukee,
21 Wisconsin. And Luke came out, and that's where we met.
22 I met Luke before I met Paul Gygax. I met Gail for the
23 first time there and --

24 Q. Do you know if any of the Gygax children are
25 involved in kind of following Gary's footsteps with

1 writing, imaginary works or just kind of being a part of
2 developing things in the gaming community?

3 A. Um, Luke certainly is. He runs Gary Con, and
4 he's got his own publishing business that he publishes
5 adventure and other world settings that he's working on.

6 Ernie has -- Ernie has hired some co-authors
7 to write stuff. I don't think Ernie actively writes
8 anything. I think he just hires people to do it. And I
9 believe Heidi Gygax has started a company, but I'm not a
10 hundred percent what she's doing. I think she's just
11 got a writer module that she's published.

12 MS. GORN: That -- that is all I have.

13 THE COURT: Mr. Koch?

14 MR. KOCH: Your Honor, I'm gonna change seats
15 so --

16 THE COURT: Okay.

17 MR. KOCH: -- you can see me.

18 THE COURT: All right. This is the personal
19 representative. He's an attorney. He's gonna ask you
20 questions. Mr. Koch, go ahead.

21 THE WITNESS: Okay.

22 MR. KOCH: Thank you, Your Honor.

23 EXAMINATION

24 BY MR. KOCH:

25 Q. Good morning, Mr. Chenault.

1 A. Good morning.

2 Q. I don't have very many questions for you. Did
3 you have an exclusive license to publish the Gygaxian
4 Fantasy Worlds and the other materials you testified
5 about?

6 A. So any -- any material that we licensed we had
7 exclusive license to. So yes. The Gygaxian Fantasy
8 World we had exclusive license to, Upper World, Castle
9 Xagyg we had exclusive license to. He had other
10 materials that -- that he hadn't sent to us. But
11 anything that we licensed we had exclusive license to.

12 Q. And what were the terms and conditions of
13 those licenses that you had?

14 A. Um, the quarterly payments. Gary owned his
15 material. If we were to use his name or likeness in any
16 kind of advertising, we had to get his permission first.
17 I mean, he owned it.

18 Q. Okay. And have you been to Gary Con since Mr.
19 Gygax passed away?

20 A. Yeah. I believe the first year, I had gone to
21 his funeral. And I was there. I spoke at the funeral.
22 And I've been to every Gary Con but one since, yes.

23 Q. And have you had any discussions with Gail
24 Gygax about continuing the publishing other than what
25 you've already testified to?

1 A. I believe there was one very brief
2 conversation when Alex Gygax created a company. And
3 there was something about a video game but that was --
4 it didn't go further.

5 Q. Have you attempted --

6 A. No.

7 Q. You haven't attempted to?

8 A. No.

9 MR. KOCH: Okay. That's all I have, Your
10 Honor.

11 THE COURT: All right. Now Gail's attorney,
12 Mr. Johnson, will ask you some questions.

13 MR. JOHNSON: Good morning, Mr. Chenault. My
14 name is Ted Johnson.

15 EXAMINATION

16 BY MR. JOHNSON:

17 Q. And as you see, I'm sitting next to Gail. You
18 know Gail, correct?

19 A. I do.

20 Q. And you recognize her sitting next to me?

21 A. I do.

22 Q. Mr. Chenault, you indicated that your -- you
23 had a licensing agreement for your first box set through
24 the Gygaxian Fantasy World series. Correct?

25 A. No, the Gygaxian Fantasy World series was a

1 series of hardcover books that were not in boxes at all.

2 The Castle Xagyg material was -- The Castle
3 Xagyg material came up in a box set, but even then it's
4 not in the contract that says it has to come out in a
5 box set. That's what we decided to do it as because it
6 has so many component parts.

7 But the Gygaxian Fantasy World series is
8 actually a series of hardcover 8 and a half by 11 books.

9 Q. So you -- But you had a contract, you
10 indicated. You had a written agreement.

11 A. Yes.

12 Q. And can you tell me -- I -- Am I assuming
13 correctly that the party to the contract on your side
14 would have been either Chenault and company, or Chenault
15 and company doing business as Troll Lord Games; is that
16 correct?

17 A. So the early Troll Lord Games was founded as
18 Troll Lord Games, LLC. I reorganized the company in
19 '05, I think or '04, and it became Chenault & Gray, LLC,
20 although the publishing LLC.

21 So depending on when we signed the contracts
22 is gonna have either Troll Lord Games or Chenault & Gray
23 Publishing.

24 Q. And any agreement that you would have had with
25 Mr. Gygax would have been during the time period of '01,

1 to the date of his death some time in there, '01 to '08
2 some time.

3 A. Correct.

4 Q. And -- and on the other side of the contract,
5 beside your entity, whose -- what was the name on the
6 other side of the contract? Who did you contract with?

7 A. Tri G Enterprise or Tri G.

8 Q. And do you -- Are you aware of who is -- who
9 was signing those agreements on behalf of Tri G?

10 A. I believe Gail was the president of Tri G
11 Enterprises.

12 Q. Those contracts would also contain these
13 royalty arrangements that you indicated; the 4 and a
14 half percent on a thousand books and 6 percent on the
15 next thousand; is that right?

16 A. Correct.

17 Q. So any payments that you would have made on
18 these books series that you say contained Mr. Gygax's
19 work -- They would have been made to Tri G Enterprises.
20 Is that accurate?

21 A. That's probably the case. I would have to
22 look into my books, but I believe that's the case.

23 Q. And you knew Tri G Enterprises as an active
24 entity that at least Gary and Gail were involved with,
25 up to right to the time of his death?

1 A. Yes.

2 MR. JOHNSON: Thank you. I have nothing
3 further.

4 THE COURT: Follow up on that?

5 MS. GORN: Yes.

6 EXAMINATION

7 BY MS. GORN:

8 Q. Um, in the process of working with -- with
9 Gary, who did all of the negotiating, planning,
10 creating?

11 A. Of the content or --

12 Q. Of the content.

13 A. Yeah, that was Gary. Gary had -- It was all
14 Gary. Gary and myself -- I mean, Gary would come to me
15 with a project, I want to do this project. I mean, I
16 didn't turn any of his projects down. That was all
17 Gary.

18 Q. And what did you think the role of Tri G was?

19 A. I just assumed Tri G was much like the -- it's
20 a legal protection for, you know, IP. That's what I
21 have. I have a permit. I have copyrights or IP here,
22 intellectual property here. It just gives me -- It
23 gives me a shield against that, and that's what I just
24 assumed that Tri G was that for Gary and that he owned
25 the material and whatnot.

1 Q. So who did you think owned Tri G?

2 A. I thought Gary did.

3 Q. What role did Gail play? What -- what
4 functions did she assume?

5 A. So Gail's who I talked to mostly about the
6 business side, making quarterly payments, getting that
7 stuff submitted. Gail managed -- What I gathered was
8 Gail managed Tri G and Gary created all the content.

9 Q. It was your understanding that Gary owned the
10 content; is that correct?

11 A. I assumed so, yes.

12 Q. And you said that Troll Lord Games is your LLC
13 that owns your intellectual property?

14 A. Yes.

15 Q. And you are the owner --

16 A. Since 2003, I'm a sole proprietor in all the
17 publishing. So I own all of the material.

18 Q. And do you work with other authors, other
19 creators?

20 A. Yes, I do.

21 Q. And is it typical for the creator to house
22 their ownership of their intellectual property in some
23 kind of business entity?

24 A. That's very common, absolutely.

25 Q. And usually that is the business entity that

1 they own; is that correct?

2 A. Yes.

3 MS. GORN: I do not have any further
4 questions.

5 MR. KOCH: I have nothing, Your Honor.

6 MR. JOHNSON: Just a couple.

7 EXAMINATION

8 BY MR. JOHNSON:

9 Q. Mr. Chenault, you -- In the redirect there,
10 you indicated that these entities are formed for the
11 protection -- generally for protection of the IP. Is
12 that an accurate statement?

13 A. It is not necessarily protection of the IP.
14 It gives the IP an extra level of protection. They're
15 really formed to protect the individual who owns the
16 company from lawsuits.

17 In a lot of games that we make, we have dice
18 and small pieces, miniatures, things like that. They
19 could get you sued, and it protects your, you know, your
20 personal property from --

21 Q. Were these contracts -- I'm sorry. Were you
22 finished with your answer? I'm sorry.

23 A. Yeah.

24 Q. Were the contracts that you had with ID or --
25 I'm sorry -- with Tri G -- Would that contain

1 information as to the -- who the owner of the IP is?

2 A. Yeah. I mean, I would -- I would assume so.

3 Q. And so if the contract you had was with Tri G,
4 would it be fair to say that what you thought was Gary's
5 IP would be essentially, Tri G's IP because that's who
6 the contract is with? Is that a fair statement?

7 A. Um, you know, maybe. I didn't want to give it
8 much thought to be honest with you. I just assumed Gary
9 Gygax owned Gary Gygax's material.

10 That's what I assumed. I didn't really give
11 it much thought beyond what is in this specific contract
12 is what it is.

13 Q. But the contracts you had, sir, you indicated
14 were with Tri G Enterprises; is that correct?

15 A. Correct.

16 Q. And they were signed by Gail Gygax as the
17 president.

18 A. Correct.

19 MR. JOHNSON: Thank you. Nothing further.

20 THE COURT: Any more?

21 MS. GORN: No.

22 THE COURT: Okay. All right. You can break
23 the connection. Thank you.

24 MR. JOHNSON: Thank you, Mr. Chenault.

25 THE WITNESS: Thank you.

1 THE COURT: All right. Are we breaking for
2 lunch then? And when do you want to come back? Today
3 at all? Tomorrow? We'll go off the record.

4 (Scheduling discussion off the record.)

5 MR. JOHNSON: I guess 1:30 if that's all
6 right.

7 MS. GORN: We will do Luke's testimony after
8 that, and we will be done.

9 THE COURT: All right. Are you expecting a
10 decision today? Or you don't want me to make a decision
11 so that you can talk tonight? Or what is --

12 MS. GORN: You had requested closing briefs.
13 My understanding is closing briefs would be the way to
14 go.

15 THE COURT: I know we did discuss that but --

16 MS. GORN: I think that would be my
17 preference.

18 MR. JOHNSON: I guess it's not necessary if
19 the court has its decision. I mean, I don't want to bog
20 you down. We didn't know. I mean, we didn't know if
21 your intention was to give your ruling from the bench or
22 what, if you wanted time to read our briefs or what.

23 THE COURT: Well, obviously I haven't heard
24 all the testimony yet, but depending on how this goes, I
25 think there are stages of rulings.

1 If I find that this should have been probated,
2 then I'm not going to enter an order distributing assets
3 or anything. I think that that needs to then have a
4 stage of perhaps appointing a personal representative to
5 find out, get access to many things. So it's just -- I
6 see it as a step.

7 MS. GORN: Yeah, I agree with that. And it
8 doesn't seem like everything can be resolved in this
9 thing, assuming you say step 1 passes muster, then
10 there's going to have to be other steps.

11 So I guess I don't know what decisions the
12 court is intending to make, but if it's limited to
13 basically is the will valid and is there at least 50,000
14 in assets and then move forward at a later stage, you
15 know, what are those assets, I think those things would
16 be -- I don't think we need to brief those two issues.

17 THE COURT: Right.

18 MS. GORN: That's how I feel.

19 MR. JOHNSON: Yeah, I guess I -- If that's
20 the limited decision because you're not making or you're
21 not intending on making a decision on what assets are in
22 probate then at this -- at this point.

23 THE COURT: True. Just whether it meets the
24 threshold or not.

25 MR. JOHNSON: Threshold of what?

1 THE COURT: The 50,000.

2 MR. JOHNSON: The 50,000? Okay.

3 MS. GORN: Do you -- How does that get done
4 if there isn't a determination on what --

5 THE COURT: I think generally I can make a
6 determination.

7 MR. JOHNSON: Okay.

8 THE COURT: But there are obviously some very
9 specific things as well.

10 MS. GORN: Right. Okay. Yeah, I think we
11 can -- I'm okay with a bench decision on that today.

12 MR. JOHNSON: So we should be prepared for Mr.
13 Gygax and if I'm gonna recall Gail to do that this
14 afternoon.

15 MS. GORN: That's my position.

16 THE COURT: Yes. So why don't we start at
17 1:15 rather than 1:30 to give us some more time.

18 MR. JOHNSON: We can do that.

19 MS. GORN: Thank you.

20 (Recess taken.)

21 THE COURT: We'll go on the record now on the
22 probate matter, 20PR58. Appearances remain the same.
23 We have come back after lunch. Still in the
24 Petitioner's case. Ms. Gorn, your next witness.

25 MS. GORN: Thank you, Your Honor. Um, we will

1 call Lucion Gygax.

2 THE CLERK: Raise your right hand. Please
3 state and spell your names for the record.

4 THE WITNESS: Lucion Gygax, L-U-C-I-O-N,
5 G-Y-G-A-X.

6 LUCION GYGAX, having been first duly sworn to
7 testify the truth and nothing but the truth, was
8 examined and testified as follows:

9 THE CLERK: Thank you. Be seated.

10 THE COURT: All right. Go ahead.

11 MS. GORN: Thank you, Your Honor.

12 EXAMINATION

13 BY MS. GORN:

14 Q. Luke, you are the Petitioner in this matter;
15 is that correct?

16 A. Yes. That is correct.

17 Q. And how are you related to the decedent?

18 A. He was my father.

19 Q. And you filed a probate action seeking a
20 probate in his 2006 will. Is that accurate?

21 A. That's true.

22 Q. Okay. And who is -- Do you understand that
23 somebody has objected to -- to the will?

24 A. Yes.

25 Q. And who is that?

1 A. Gail Gygax.

2 Q. And who is Gail to you?

3 A. She was my -- my dad's wife and my step-mom.

4 Q. And Luke, where do you currently reside?

5 A. I reside at 1931 Erbes Road, E-R-B-E-S, in
6 Thousand Oaks, California, 91362.

7 Q. And how long have you been living out in
8 California?

9 A. I've lived in California since 2005.

10 Q. And why don't you tell us a little about your
11 educational background.

12 A. Um, I graduated from Northwestern Military
13 Naval Academy in Fontana right here locally, um, in
14 1988. And then I went to a year of college, UW-Madison,
15 um, but my mother wasn't able to send me to college.
16 She was having a disagreement or legal battle with my
17 dad on maintenance and things. So she ended school.

18 So I enlisted in the Army and -- GI Bill, sent
19 myself to college in Beloit, got out and graduated in
20 1996 with a bachelor of arts in history and psychology.
21 Then I've done a little bit of work on a master's
22 degree, but I haven't completed that.

23 Q. And what was the discipline for your master's
24 degree?

25 A. Logistics.

1 Q. And you said you -- Well, scratch that.

2 Why don't you tell me a little bit about your
3 work history.

4 A. So I've been in the military since I was 18
5 years of age or active duty or reserves and just retired
6 on September 1st of 2022, um, from active service.

7 And I run a publishing company now, um, or
8 publish I guess imaginative fiction is the words that
9 we're using here. But gaming materials, novels, things
10 of that nature. And I also organize a convention called
11 Gary Con.

12 Q. What was your rank in the military?

13 A. I retired as a lieutenant colonel.

14 Q. And how many years of service was that?

15 A. 33 years of total service and 24 active years.

16 Q. So basically, if I'm understanding you right
17 military was your essentially career?

18 A. Correct. It's been since -- Since I was 18, I
19 was in uniform until I retired last year, September 1 of
20 2022.

21 Q. And so when you were working in the military,
22 were you still engaging in sort of a side career of work
23 in imaginative fiction?

24 A. Yes, from time to time I would do that.
25 Probably the, um, first time I did that, I was just in

1 the reserves. I finished up school, and I was working.
2 Um, I was working as a representative for Trans America
3 Insurance Company for a couple years.

4 And I was playing Dungeons & Dragons with my
5 dad every week, and I was also running a D & D game for
6 my brother at a local hobby shop in Lake Geneva. And he
7 was a manager there. My brother, Ernie, was a manager
8 there and decided to take that game and create an
9 adventure scenario called The Lost City of Gasimore
10 (phonetic), which I just met Steve Chenault not too --
11 not too -- Around that time, I met Steve Chenault, and
12 he agreed to publish it through his company, Troll Lord
13 Games.

14 So my brother and I wrote it. It was
15 really -- It was pretty cool because my dad would play
16 with us, help play test it. So he ran a character
17 called Temperus (phonetic) Ranger that he played in
18 there. It was nice for me to be able to run the game or
19 design that game for him because he had done that for me
20 as a youth growing up my whole life.

21 So it was kind of -- I enjoyed that. And then
22 he gave us tips and pointers on how to do things, um,
23 with the scenario, that he made it a little bigger or
24 hey, have you thought of, you know, doing this? And it
25 was very nice.

1 Q. And so roughly what year would that have been?

2 A. Probably about 2000.

3 Q. How old would you have been in 2000?

4 A. 29. Or -- My birthday's November 7. So in
5 the early part of the year, 29, on the cusp of 30.

6 Q. What is your date of birth?

7 A. November 7, 1970.

8 Q. So that was the first sort of work that you
9 created.

10 A. Well -- Sorry to interrupt, but if you're
11 asking -- Are you asking what my first publication was?

12 Q. Yes.

13 A. So my first publication was Legion Gold in
14 1981 which I got a credit for with my father. Um, I got
15 it from watching some Saturday morning cartoons. And I
16 talked it over with him. He's like, okay. That sounds
17 cool. And drew up an adventure for it and then
18 published it as the Legion of Gold for Game World GW1.

19 I also would help -- My dad was my best
20 friend. I loved spending time with him, and I'd get
21 home from school, and I would sit in his office. And
22 he'd be typing at an old typewriter. Didn't have
23 computers back then. And I would leaf through the
24 Dungeons & Dragons books and look at, you know, very
25 strong or read up on things. I would ask him questions.

1 I remember he'd be typing, and he wouldn't
2 answer me because he was kind of in his own creative.
3 And then he'd answer my question like 10 minutes later.
4 He'd be like, what'd you ask? But any way that was a
5 lot of fun. But we played games, and then sometimes
6 through that gameplay, we've develop things that we
7 would put in the game like the monster, the blue bug. I
8 created that with my dad. Um, we -- I had a character
9 that I played in the game. It's still used in the -- in
10 the D & D edition of today. Melf, M-E-L-F.

11 And I created -- He was a wizard. So I
12 created some spells. They're still in play. It was
13 just through situations again, well, why can't you do
14 this? Well, there's not a spell like that. So we'd
15 have to go out and figure out how to research it in the
16 game and create the spell. And then we'd write it
17 together, and he would publish it in the next supplement
18 or whatever.

19 So there was a couple spells in there. So I
20 cooperated with doing that with him. And then he was
21 writing with my brother, Ernie too -- C Guard (phonetic)
22 books out in California -- and by 1983, 1984, somewhere
23 in that. And I would, you know, see what they'd
24 written, get some ideas and help them kind of test run
25 it or skip ball it.

1 And also -- Oh, gosh. When we lived in -- I'm
2 jumping around the timeline a little ways. I apologize.

3 But in high school, I would come home, and I
4 believe my dad was writing Bored the Road (phonetic)
5 novels then. He was still on a typewriter, so he'd have
6 pages piled up next to his typewriter. I'd come in and
7 read them. And I don't -- I read them, would talk
8 about what was gonna happen next which is pretty cool.
9 So I felt like I was participating there.

10 And I know he developed Dangerous Journeys,
11 and he started off -- I helped him from scratch
12 basically. Said, pick up a blank piece of paper and
13 dice and he rolled up characters, and then he kind of
14 started walking me through it and figuring out how the
15 rules worked. I did that with a game that never saw
16 publication of hundreds of roles. That was when I was
17 in college.

18 So we just collaborated on a lot of things but
19 more because he was my dad and a game master. And
20 that's what we would do. But it's been something
21 that -- Some of my earliest memories are playing
22 Dungeons & Dragons. I played it since I was 4 years
23 old.

24 Q. Can you, I guess, give us a little bit of an
25 education here on how these games work?

1 Like I guess -- There's been a lot of talk
2 about adventure modules and manuals and dice. And I
3 mean, when I think of a game, I think about like a
4 Monopoly game. It's got a board, some money and some
5 dice.

6 What -- How is that different than what you're
7 talking about?

8 A. So role playing games are an entire new genre
9 or type of game. So prior to my father creating
10 Dungeons & Dragons in 1974 or publishing in 1974 -- he
11 wrote it in 1972, '73 -- there were 5 types of games;
12 you know, title games, card games, dice games, board
13 games.

14 There's -- Role playing games is a new type.
15 It's revolutionary. And some of the things that set it
16 apart from other types of games is there's no set
17 beginning or end. So the game can be continuous, or you
18 can carry on the game, um, over an extended period of
19 time. Sort of episodic like maybe a TV series. There
20 would be episodes that would be -- have a continuous
21 story arc.

22 So there's no set beginning and end, whereas I
23 have for example, Monopoly, you open up the board.
24 There's a starting setup. You play the game to a
25 certain victory, and then you stop. When you put the

1 game away, and you open it up again, you don't start --
2 There's no continuation of the game. You start fresh.

3 The character is going through a storyline.
4 And the characters gain -- They get better over time,
5 so you gain experience, and they level up. The terms
6 are somewhat common now, but they weren't when Dungeons
7 & Dragons was invented. In Monopoly if you're playing
8 the game, you play the shoe and roll the die and you
9 move the shoe, right? So that's another difference.

10 There is no winner in Dungeons & Dragons.
11 It's not adversarial. It's a cooperative game.

12 So there's one person who takes on the role of
13 a referee or if you want to think of it as like a TV
14 series or something, that would be your director.
15 That's the person who knows what's going on, set the
16 storyline of what's generally going to happen, and
17 that's what's contained in the adventure scenario is an
18 outline for a story, with various, um, this is how it
19 begins, here's the main beats of the story, and here's
20 how it concludes.

21 The players all represent one character in the
22 story, and it might be like a knight in shining armor.
23 It might be a wizard, might be a ministerial. Might be
24 a fire talker or something like that. Just hey, here's
25 an idea of, um, characters. Obviously you can make your

1 own character. And that's what's in the rule book is
2 instructions on how to do that.

3 Then you're given the introduction. This
4 is -- hey, this is what's going on. Perhaps you're
5 walking through town and you hear a disturbance. And
6 you look and there's some orcs who grabbed a person,
7 threw them over their shoulder. They're running off out
8 of town, into the woods. What do you want to do? And
9 then each of the players describes to the referee what
10 they want to do.

11 And there's a kind of cooperative story
12 telling back and forth. And depending on the referee,
13 when you're trying to use a skill or an attack, you use
14 dice to kind of see if you're successful or not. A
15 higher dice will generally be better than another one.
16 So if you're a lower experienced character, it's harder
17 to do things. If you're a high experienced, it's a lot
18 easier. And then the referee adjudicates what happens
19 and then continuing, describes the scenario.

20 Maybe you chase down that creature, but you're
21 loose in the brush, and you're able to track it because
22 somebody has tracking skills or maybe a successful
23 track. And they're in front of a -- it leads up to a
24 dark elf in a cave, and you're not sure what's in
25 there. What would you like to do?

1 And then people will say, well, I'd like to do
2 this or that, and this kind of goes on in that nature.

3 Q. So these storylines and these characters and
4 these decisions and scenarios -- That is all outlined
5 in books; is that correct?

6 A. Yes.

7 Q. So when -- There's been a lot of people
8 talking about, you know, Gary wrote this book or this
9 book or this book. That's actually -- Is that actually
10 games?

11 A. Yes. The games are oftentimes contained in
12 books that will do -- there's rules sets that come in
13 books. There's adventure scenarios which will sometimes
14 be a hard-bound paperwork a soft cover book.

15 And some of those are thinner. Some of them
16 are thicker as well. And there will be maps sometimes
17 if it's a box set. Maps are kind of folded up. That
18 would, um, you know, be like the map of middle earth if
19 it was "Lord of the Rings" or something like that. That
20 just gives you just a visual orientation to help you
21 imagine the world.

22 Q. So they're not books like if I pick up
23 Huckleberry Finn, I'm gonna read a story. Are they --
24 are any of them just like stories? Or are they all
25 games?

1 A. No, that would be -- That -- Sorry. That
2 specifically would be like a novel, versus a game book.
3 So, you know, if it's a novel, then yes, it would be a
4 story. But those are usually pretty clearly marked as a
5 novel and smaller and look like a paperback.

6 Q. So I guess with that context or kind of what
7 the -- your books are, um, does -- You have heard the
8 testimony about, you know, the paragraph in the will and
9 the term personal library.

10 What does that mean to you?

11 A. Um, to me I understand his personal library to
12 be his reference materials and his gaming materials
13 because that's what his library was about.

14 He did some novel writing, but that wasn't his
15 mainstay. He was a game designer. So his library would
16 include all the tools, including other games that he
17 could reference in his design of games.

18 Q. And so a game created by your dad would be a
19 book and dice. Is that accurate?

20 A. At -- Yes, pretty much. There are a few
21 games -- I don't believe my dad ever created a game
22 that -- a role playing game that didn't use dice,
23 although there are other people who created dice as role
24 playing, but it's not very popular.

25 Q. Was there something unique about your dad and

1 the dice as well? Did he create something?

2 A. Well, so my dad was an insurance underwriter
3 before he lost that job (inaudible), and so he was
4 pretty good with probabilities. And so when you roll a
5 6-sided dice, 6-sided die, it creates a certain number
6 of probabilities, right?

7 But if you -- So he didn't design them, but
8 he knew there were dice with different shapes that would
9 get you different probability outcomes. And so that
10 gave him a wider range of results on, you know, a skill
11 or attack or something like that. Two 6-sided dice
12 could give you different probability curve than a single
13 die that has 20 sides or something like that.

14 Q. So did he create some weird sided die or dice?

15 A. He didn't create them, but he knew they were
16 there. And he wrote rules that -- He used them and so
17 therefore, they became much more in demand.

18 Q. Okay. You've talked a little bit about those
19 works that you have personally created. Were you --
20 Can you tell me all the work that you personally
21 created?

22 A. No, um --

23 Q. Without going into too much detail, can you
24 tell us?

25 A. Sure, absolutely. So I started writing again,

1 more earnest in 2012 I believe it was, and every year I
2 produced at least one adventure scenario, if not more.

3 I'm working on a series of fiction novels now,
4 as well as my fantasy world setting program, and I
5 probably have about 8 modules on that right now. I have
6 a kick starter going on right now. The latest one is a
7 trilogy of adventures so --

8 Q. Steve Chenault gave some testimony that you
9 about heard about the 80's being your dad's heyday and
10 then kind of a slump and heading back up.

11 What was life like for you with your dad in
12 the 80's?

13 A. In the 80's, things started getting pretty
14 good. So I was just about turning 10 years old. And we
15 were desperately poor when I was younger, and through
16 Dungeons & Dragons and the company TSR, my dad, um,
17 became more well known and also, made a lot more money.

18 So we moved from renting a small home on
19 Center Street in Lake Geneva to buying a first home on
20 Chapin Road which is -- I think it's on -- down the
21 street from a place called Foley's I think is what that
22 is, off Highway 50.

23 And then shortly thereafter, we moved again to
24 a home in Clinton which was a really nice, 5-bedroom
25 colonial home, um, on 22 acres. That was great as a

1 kid. There's a creek and forest and things like that.
2 So we had dogs and bought horses and goats. It was --
3 it was nice. My dad got into raising horses with my
4 mom, and they bought a 30-acre horse farm and Arabian
5 horses.

6 So we had a couple pieces of property, you
7 know, lived in a large house. My mom was able to
8 purchase a car -- a nice car. So it was good.

9 Q. Um, at some point, your mom and dad separated
10 and your dad started --

11 A. Yes.

12 Q. -- dating Gail. Is that --

13 A. Yeah, I believe they split up in -- my
14 parents -- I was 12 or 13. In 1983 maybe I think it was
15 when they got separated.

16 Now, their divorce took many years to -- to
17 finalize. And, you know, yeah. At some point, um, my
18 dad begin dating Gail. I'm not sure exactly the year,
19 if it was '83 or '84, somewhere in there.

20 Q. So sort of -- How did your family life
21 evolve? What can you tell me about -- Can you just
22 describe for us like life was poor? What happened next?

23 A. Sure. My parents split up. It was, of
24 course, very hard for my family to -- to go through
25 that. Um, but I was very close to my father.

1 So, um, I -- Probably after a year or so, I
2 talked to my dad, and my mom agreed that, um, I'd go
3 live with my dad out in California. He had -- He was
4 the head of Dungeons & Dragons Entertainment
5 Corporation. There was a cartoon on the air at that
6 time. He was working on trying to get a movie and some
7 other things of that nature.

8 But it was a beautiful place. It was, um, the
9 old King Vidor ranch. It was a director from the 20's I
10 believe it was. But it was a 6-acre lot on top of a
11 hill in Beverly Hills overlooking Culver City. There
12 was a Olympic size swimming pool, a hot tub. There was
13 a -- like a farm or a barn that was now like a design
14 studio. There was like a gaming table in there and like
15 little office if you would go to the right. And then
16 there was a -- like a guest house or a gate house with a
17 maid and a groundskeeper who lived in there.

18 Q. And how did things sort of evolve basically,
19 from where it sounds like, life was pretty good in 1983,
20 1984?

21 A. Yeah, in -- Sorry.

22 Q. No. Walk me through it.

23 A. Well, in -- That was -- Those were very good
24 years. As a young person, you know, you're not aware of
25 all the business happenings.

1 But in reading his written stories about it
2 now, in 1985 my dad lost his company through a --
3 essentially like a hostile stock takeover more or less.

4 And a lady he had brought in to help manage
5 the company ended up buying out his partners. He was
6 unable to beat her bid for the stocks. And her first
7 action was to fire him as chairman of the board and CEO
8 of the company. And so he was -- thought he was going
9 to a board meeting, and walked out being outside of his
10 own company.

11 And he had started the company with his best
12 friend, Don Kay, in 1973 I believe it was. Technical
13 studies. Don Kay died of a heart attack, I believe in
14 1975. He was 36 years old. Um, so Don Kay is somebody
15 my dad knew since childhood. They were very close.
16 They had to bring in outside partners because Don Kay's
17 widow demanded to be -- to pull her equity her husband
18 had in the company.

19 So he had to bring in additional folks to even
20 out the ratio within the company without the majority of
21 the stock interest in the company. So those same
22 partners sold to this woman, and that's how my dad ended
23 up being outside his company.

24 And none of his, um, intellectual property was
25 in his name. It was -- all belonged to the company. So

1 he lost interest in the company. He lost control of the
2 company. He lost control of all of his IP.

3 Q. All of the IP associated with Dungeons &
4 Dragons?

5 A. With Dungeons & Dragons, correct.

6 Q. Was there additional IP that he had created
7 that was not a part of --

8 A. I believe so because he started publishing the
9 Gray Hawk. Honestly, I'm not exactly sure of that time.

10 Q. This Castle Xagyg you've heard about -- That
11 was outside of his intellectual property with Dungeons &
12 Dragons. Is that correct?

13 A. Yes. So his original home game -- That was
14 Castle Gray Hawk. That's -- that's what it was called.
15 But he used The World of Gray Hawk as the name of his
16 published setting which he put out in the early 80's.

17 And so I think to, um, differentiate the
18 published work and a copyright or trademark or Gray Hawk
19 or TSR, he changed it to Castle Xagyg. But his
20 stand-alone home, home-brewed campaign is Castle Xagyg.

21 Q. Okay.

22 A. And City of Gray Hawk is changed to Ginsberg
23 which Steven Chenault referenced earlier today.

24 Q. Okay. So this Castle Gray Hawk is the
25 published portions of Castle Xagyg? Is that --

1 A. So it's a little confusing. He called it
2 Castle Gray Hawk. Is -- I would go on Adventure of
3 Castle Gray Hawk as a kid. That's a Gray Hawk, um, when
4 he lost control of the company. But that's -- and that
5 stuff was not published.

6 That was his binder of home material. It was
7 old, hand-drawn stuff. And that's where he would play
8 test ideas. And then he'd probably craft them all,
9 publish them as adventure scenarios in a different name.

10 So -- But that binder he's had since the
11 early 70's. And then he took that manuscript that he
12 was working on, Castle Xagyg, through Troll Lord Games
13 prior to his passing.

14 Q. But much of that castle, those drawings --
15 Those are unpublished works. Is that accurate?

16 A. That my understanding, yes.

17 Q. And Castle Xagyg as you call it has been
18 called other things in this case, right? But we're
19 talking about the same thing? So the play test castle,
20 the original dungeon?

21 A. I never heard it called the play test dungeon.
22 I heard other people say the original dungeon, but it is
23 Castle Xagyg or Castle Gray Hawk. Play test dungeon --
24 I never heard that term.

25 Q. Until it came out --

1 A. Until this, until yesterday.

2 Q. Okay. But it's referring to the same thing.
3 Is that accurate?

4 A. That is my understanding.

5 Q. So after your dad had this big falling
6 out with TSR and was ousted from his company and lost
7 control of -- sounds like would have been a significant
8 portion of his intellectual property, what happened
9 then? What did he do?

10 A. We moved back to Wisconsin, and we lived in
11 Stone Manor there, um, in the third floor of Stone
12 Manor, a part of that. And I went back to school
13 locally at the military academy. So we lived there for
14 a couple years.

15 Obviously he was married to Gail at that point
16 in time. My brother, Alex, was born -- I think -- there
17 as well. And then I -- It was -- It was hard times
18 when my dad started up a new company and got to work.
19 Obviously he was emotionally -- Losing something that
20 you invested so much of yourself into, so revolutionary,
21 I'm sure it was heartbreaking. But he was determined to
22 pick himself up and continue and carry on.

23 So he started another company and started
24 designing, um, another game which he did. It was a very
25 good game. It was called Dangerous Journeys. And he

1 went to the second-largest game publishing company at
2 that time, Game Designers Workshop, to publish the game.

3 And unfortunately, the person who owned TSR --
4 her name was Lorraine Williams -- was in charge -- She
5 brought a lawsuit against my father or injunction
6 saying, you thought of those ideas while you worked at
7 TSR; therefore, we own those ideas.

8 And so it really put him in a terrible spot.
9 He worked years to develop this game, and then, you
10 know, they had printed a whole bunch of them, getting
11 ready to ship. And then they put this injunction on
12 this. So this company had all their capital tied up or
13 tied into these books, but he couldn't distribute them.
14 And they had to recapture that money, so they were
15 suddenly in a cash crisis, right?

16 So they were forced to go into court, and so
17 they had to sign away the rights on this as well. So
18 the best of my recollection, that was about 1990.
19 Somewhere in that range.

20 I think my father suffered a lot at that
21 point. I felt like -- Um, I joined the Army in 1989, so
22 I wasn't there. But I know that was a financial blow as
23 well to go through the legal battle and things of that
24 nature.

25 Q. So what company -- You talked about your dad

1 forming a company.

2 What company did your dad form?

3 A. I believe it was New Infinities.

4 Q. And what do you know if anything, about Tri G?

5 A. Tri G -- I -- I remember hearing about it,
6 um, but I wasn't read into it closely. Um, but my
7 understanding is it stood for 3 G's, Gary and Gail
8 Gygax.

9 So my assumption was it was a company they
10 formed to produce and publish things and get as a
11 shield, you know, as a corporate shield because of
12 lawsuits.

13 Q. And what was your relationship like with Gail
14 between say 1983, '84, and your dad's death in 2008?

15 A. It wasn't always great, but, um, you know, she
16 is my stepmom. When I was in sophomore, junior and
17 senior years of -- well, part of my senior year of high
18 school, I lived there. She did drive me to the military
19 academy. There was no bus there for day students. I
20 didn't live there. So she did that.

21 I think any time you have young people in the
22 house, there's opportunities for conflict or for some
23 friction.

24 I didn't like the fact that my dad and mom
25 were divorced. As a young person, I didn't like that.

1 I would prefer they stay together, but that doesn't
2 always happen.

3 So sometimes we would have disagreements. But
4 other times it was great. So --

5 Q. Would you describe your relationship as good
6 now?

7 A. No, it's not because we're here and couldn't
8 come to an agreement. So there's definitely -- you
9 know, there's definitely some friction over the last
10 several years. Um, we --

11 Q. I'll --

12 A. Okay.

13 Q. I'll get back to that. Let's talk through
14 some other things. Um, can you tell me -- When your
15 dad died -- Sorry. Let me rephrase that.

16 You heard Gail's testimony where she said that
17 children never wanted to work with me. The children
18 didn't ever, you know, want to work together on things.

19 Can you tell me what happened with the
20 memorial fund that -- that you had started after your
21 dad died?

22 A. Right. So as people had -- had talked about
23 before, we had a gathering for the people who came to
24 Lake Geneva.

25 When my father died, there was an outpouring

1 of posts on social media and e-mail, and people who
2 didn't even know us we were saying how, um, impactful or
3 how much they felt the loss of my father.

4 Even though they didn't know him personally,
5 they felt like he was somebody who was important in the
6 development of who they were through his work on
7 Dungeons & Dragons. And some of them said they were
8 gonna get in their car and make a pilgrimage to Lake
9 Geneva to pay their respects.

10 So we had a very small, private funeral, and
11 we didn't think that it was appropriate to have
12 strangers there.

13 So my brothers and sisters had thought that
14 it'd be nice to have a gathering that would be open to
15 the public and that we would do that in a way that would
16 best celebrate our dad who we loved in life so much was
17 gathering together with people and playing games around,
18 you know, round tables, swapping stories and sharing
19 good food and drinks.

20 So we rented the American Legion hall in Lake
21 Geneva which was a place which held small conventions,
22 you know, in the mid 70's and thought that would be a
23 great location. So we rented that. We brought in food
24 and drinks, invited people up to the podium so they
25 could share stories about my dad. And we played the

1 future (phonetic) episode that he was on, as well as the
2 Dungeons & Dragons cartoon.

3 And people came, and they played games, all
4 sorts of games. It was board games. There was Dungeons
5 & Dragons. They had some food, they talked. We shared
6 a few stories, and it was just a great way to remember
7 my dad and celebrate, you know, who he was.

8 Q. So that was the initial memorial --

9 A. Yes.

10 Q. -- that you held?

11 A. Yes.

12 Q. Did that evolve into -- something more?

13 A. Yeah. So, um, I believe it was a guy there
14 named Harold Johnson who said, this was a lot of fun.
15 You should do it again next year. What a great way to
16 remember your dad.

17 And another person was there named Jolly
18 Blackburn, and he said, you can call it Gary Con. Jolly
19 Blackburn's a comic writer, and he writes a comic based
20 on gaming and gaming sites. They have a convention in
21 their gaming world called Gary Con, and is that why he
22 suggested that because he has a character called Gary
23 Jackson which is a mix of my dad's name and design.

24 I said okay, and I rented the hall again in
25 2009 and didn't charge any admission. Was gonna be a

1 game day.

2 One of the things we wanted to do is we
3 thought it would be nice to have a way to remember my
4 dad, like a physical way to remember my dad. So I came
5 up with the idea of making a monument, a headstone --
6 like a large headstone that'd be a place people could
7 visit.

8 So my sister, Lisa, had, um, her
9 brother-in-law whose name escapes me design a pedestal
10 with a sleeping dragon on it. And we had a picture of
11 that made, and at some point thereafter -- I don't know
12 exactly when -- weeks or months afterwards, Gail let us
13 know that she had this -- she said she discussed with my
14 dad that he wanted a public monument in Lake Geneva and
15 that she was going to start a 501 (b) 3 to -- to, you
16 know, bring that to effect, to form that.

17 So she wanted to be in charge of that. And
18 her -- My sister, Lisa, was helping with the monument,
19 with our idea. Like I said, she -- she kind of came up
20 with the design. They don't get along very well, and so
21 just out of respect for Gail as my father's widow and
22 not only, you know, cause any further bad blood, I just
23 asked her to step aside and let Gail go ahead and lead
24 that, and she said ok.

25 Q. And the monument you were going to build --

1 You basically gave that a rest so that Gail could do
2 her --

3 A. Right. So what we did -- I think we -- I
4 think what we did instead is we said, well, you know
5 what? There's those tiles down by the Riviera.

6 So we took that design, and we etched that
7 into a tile and put it down in the Riviera area. And
8 that's -- so far that's the only physical monument that
9 I have to my dad in Lake Geneva.

10 Q. And Gary Con -- You -- It started -- You
11 said you were at your dad's funeral memorial, and you've
12 continued that essentially every year since; is that
13 correct?

14 A. Yes.

15 Q. And how has that grown just in terms of kind
16 of scale and number?

17 A. Sure. So in 2009 which would have been Gary
18 Con one, we had about 175 people. In the second year, I
19 had moved to a bigger location because it was -- the
20 American Legion hall wasn't big enough.

21 So I went to the Ridge, Geneva Ridge. From
22 there through Gary Con 7, 240 people the second year, up
23 to like 400, 500, 650. It grew up to 900, and we
24 just -- it had gotten too big for that location.

25 So I went to the Grand Geneva hotel and, um,

1 we had the rest of the Gary Cons there. Um, it was --
2 started out at 1,200 people at Gary Con 8.

3 And we were going up to about 2,500 before the
4 pandemic, right by 2019. And then 2020, 2021 we
5 couldn't have any conventions because of the -- the
6 COVID-19.

7 So we did them virtually to keep the spirit
8 alive. And they came back -- Last year it was a little
9 smaller. I think there was 2,400 people. Then this
10 year, we're close to 6,000.

11 Q. Would you consider that to be sort of a -- not
12 from an economic standpoint, but just from a -- kind of
13 a fellowship standpoint, would you consider Gary Con be
14 a success?

15 A. I think it's amazing. Lake Geneva has about
16 7,000 people. And you bring, you know, 3,000 people
17 coming to the Grand Geneva to celebrate, um, celebrate,
18 my father's memory by playing games.

19 And it's become sort of a family reunion for
20 my family. And now it's become sort of a family reunion
21 but not for like maybe your blood relatives but your
22 gaming family. People tell me, I'm here with my gamer
23 family so family I choose. And it has a very positive
24 atmosphere around it. And people come from, you know,
25 all over the world and certainly all over the country to

1 be there.

2 Q. You had started at some point a publication
3 called Gygax magazine; is that correct?

4 A. Yes. Um, so John and Jason Elliott got the
5 trademark to TSR, um, since it was purchased. And so he
6 said, hey, I got this TSR trademark. Um, wouldn't it be
7 cool to do something with that?

8 And I was like, okay. You know, he approached
9 me at Gary Con, and I started thinking, you know, I
10 published magazines in the past. I really loved Dragon
11 magazine which is a magazine my father started when he
12 ran TSR. So he said it'd be like an homage to that
13 style, artwork, the page feel, the way the articles are
14 arranged. So he approached my brother and I. I was
15 like sure. I mean, I can help contribute to that.

16 And so -- so we did and put together Gygax
17 magazine, and we put out a total of 6 issues I think,
18 quarterly. So it was about a year and a half worth
19 of -- of magazines before we stopped.

20 Q. Why did you stop?

21 A. Um, during the course of -- I'm exactly not
22 exactly sure when.

23 During the course of publication, we were
24 notified that Gail had filed for a registered trademark
25 application with, um, the trademark registry office to

1 trademark the name Gygax and use of games and
2 publications.

3 Q. And what year was this going on?

4 A. It was 2014, 2013.

5 Q. And you heard Gail's testimony that you sued
6 her. This was roughly around those years. Did you sue
7 Gail?

8 A. No. We responded to her file for a registered
9 trademark just to say, we're already using that name in
10 trade.

11 And so we had to initiate the act and inform
12 the trademark office that we had applied for that name
13 in trade.

14 Q. And so when you say you had that name in
15 trade, is it -- can you -- Could you basically acquire
16 a trademark on something without having it formally
17 registered?

18 A. Yes. My understanding of a trademark is when
19 you're using a name, specifically a title, you know,
20 Gygax magazine, that would be if you trademark then if
21 you want to register that trademark to make it, you
22 know, iron clad throughout the United States through the
23 registry office, you pay some fees.

24 They examine, they look and see if someone
25 else had that trademark already or if it's too close to

1 someone else's trademark.

2 And then it if comes back and says nope,
3 that's all clear, then you get a registered trademark
4 and put like a circle R on things. Otherwise just put
5 the TN which is just trademark, but this is not a
6 registered trademark.

7 Q. So she filed -- Then after you started Gygax
8 magazine, she filed for the trademark?

9 A. Yes.

10 Q. And your objection was that you had already
11 established this?

12 A. Yes.

13 Q. And that was the basis of the opposition?

14 A. Yes.

15 Q. And at some point, that opposition -- The
16 opposition was actually filed by who?

17 A. I believe that was Jason Elliott who did the
18 filing for that.

19 Q. And --

20 A. Or his attorney whose name escapes me.

21 Q. Um, is it Jason Elliott personally? Or was it
22 TSR?

23 A. I think it was TSR, Incorporated and the
24 lawyer representing on the other case.

25 Q. And what was your role in TSR?

1 A. I was the editor for the magazine. I think
2 Jason had discussed some sort of ownership planning. I
3 never got any paperwork to sign or like a stock
4 certificate or anything like that.

5 Q. And you were not an owner of TSR. Is that
6 accurate?

7 A. No. I wasn't an owner of TSR.

8 Q. When -- At some point the opposition was
9 withdrawn by TSR.

10 A. Yes.

11 Q. And was it your understanding that a
12 settlement was reached?

13 A. Yes.

14 Q. And what was your role if any in that
15 settlement?

16 A. I didn't have a role in the settlement. Jason
17 Elliott was who the -- in charge -- it was his baby --
18 He had a lawyer who was working on it and costs. It
19 didn't make a lot of money because as you know, print
20 publications are very much old school. It's not like --
21 This wasn't a money maker.

22 So he was investing a lot of money in lawyers,
23 so he wanted to settle. And I believe if memory serves
24 me, he really just wanted to keep publishing Gygax
25 magazine and not have to deal with the trademark

1 otherwise. I think -- believe that wasn't the case.

2 There was an agreement. I don't remember
3 exactly what it says. There was like a draft
4 circulated. My attorney looked at it and Alex and I
5 discussed it with him. And we met with Jason Elliott
6 and said, hey, we cannot be part -- party to this. I
7 can only speak for myself. My understanding is he felt
8 the same way.

9 So we both withdrew from the company so that,
10 um, we'd be away from the company, not working for TSR
11 magazine. We weren't involved in any way. We weren't
12 editors, nothing before he signed that because we
13 couldn't agree to those terms.

14 Q. So you were not a part of the settlement?

15 A. No.

16 Q. And you forfeited your position in TSR. Is
17 that accurate?

18 A. Correct. Yes. It was -- it was unpaid as
19 well. There was no money.

20 Q. So -- All right. Let's move to why we are
21 here.

22 You filed this probate action in 2020. Your
23 dad died in 2008.

24 A. That is correct.

25 Q. Why in 2020 did you seek to file this probate

1 matter?

2 A. Because I was made aware that there was a will
3 drafted in 2006, um, that wasn't -- that wasn't filed
4 with the court.

5 And it -- and it left property to my siblings.
6 And my dad -- That was his last will and testament.
7 And so I was made aware that this wasn't made public.
8 It had been hidden. And I didn't think that was right.
9 So I wanted the court to recognize this will.

10 Q. How were you made aware?

11 A. Um, Tom DeSantos brought it to my attention.
12 He said, hey, there's another will. He's been -- I
13 believe he filed his lawsuit against Gail. At that
14 point in time, they were no longer working together.

15 And so he said, hey, go to like -- to the Los
16 Angeles County court online or something and you should
17 be able to find it there. And so if I recall, I went to
18 a website and submitted an application, and I was able
19 to get a copy of that will.

20 Q. And what did you do after you got a copy of
21 the will?

22 A. I read it, and I called my brothers and sister
23 and said, Hey, what should we do? It looks like there
24 was a will. And, you know, Gail had told us there was
25 no -- There was a 1990 will that left everything to

1 her. And furthermore, the estate was worth nothing.
2 There was nothing in the estate. It was, you know, less
3 than 50,000 or negative.

4 When my dad died -- Of course when your
5 parent dies, you don't -- at least I wasn't thinking
6 about stuff or money or that sort of thing. So, um,
7 when she said there wasn't anything, I -- I believed
8 that.

9 But when I was showed a document that looked
10 otherwise and that he had some -- he had some wishes to
11 be carried out, I felt like it was the right thing to do
12 to make sure that was brought to light.

13 Q. And so I just want to unpack a couple of these
14 things.

15 So between 2008 and when Tom DeSantos gave
16 you -- or told you about this will, you were -- you had
17 been told that there was only the 1990 will. Is that
18 accurate?

19 A. To the best of my recollection, it was
20 after -- around the time of my dad's funeral. And it's
21 very difficult to remember a lot of details. It's --
22 Losing my father was pretty -- It's devastating after
23 losing any parent or spouse. It's very devastating.

24 But I do remember the discussion. It was in
25 the living room -- correction -- the dining room area,

1 and I believe some of my brothers and sisters were
2 there, a long with Gail.

3 And essentially, there's -- you know, there
4 isn't anything to hide. There's no estate. The will --
5 There's a will that was done in 1990, and it leaves
6 everything to me any way.

7 So that was kind of -- kind of how that went.
8 I believe my sister, Lisa, may have said, wasn't there a
9 newer will? I know she said that at some point, but
10 there was still no will. That's it.

11 Q. You -- There are some specific provisions in
12 the 2006 will in Exhibit 1. Do you have that before
13 you?

14 A. Yes, I do.

15 Q. And if you want to take a minute to look it
16 over. I'm sure that you have looked it over.

17 Have the things in this will been carried out?

18 A. No.

19 Q. Have you received your choice of a chess set
20 at any point?

21 A. No.

22 Q. Did you receive any of the jewelry items
23 listed under Number 2?

24 A. If this is the one that says the garnet ring,
25 my dad gave me a garnet ring before he passed away, so I

1 had that. But that's about the only -- jewelry I got.

2 Q. What about the watch? Did you got your choice
3 of a watch?

4 A. I did not. I mean, my dad had a gold Rolex
5 watch. Plus, he had a matching ring I thought was
6 always cool as a kid. If I had my choice, that I was
7 given that, I would have picked.

8 Q. Did you get your choice of a firearm?

9 A. I did not.

10 Q. Did any of the female children -- To the
11 extent do you know if your sisters get to choose any of
12 the items listed under 5, 6, 7?

13 A. I can't say with -- I can't say that they
14 didn't or didn't. I was -- I lived in California. They
15 were local. One of my sisters lived in Hawaii.

16 So I do believe that if things, some items
17 were dropped off with Ernie at some point, months after
18 my father passed away, and I was there. My brother
19 Ernie at that time was a pretty -- had a serial alcohol
20 problem. So I don't know what happened with some of
21 those items.

22 Q. Do you know exactly what items were given to
23 Ernie?

24 A. I do not know exactly.

25 Q. What -- Other than yourself since you've got

1 different things you've done in terms of working in the
2 world of imaginative fiction, are there any other
3 siblings that you would consider also to participate in
4 that role?

5 A. Yes, absolutely. So my brother Ernie and I
6 had worked on The Lost City of Gygax together. He did a
7 kick starter. That was several years overdue, but it
8 was fulfilled. The -- the memorial tomb. So that's
9 been done. I don't think he has any other writing done.
10 He's done just a couple things.

11 My brother Alex said that he was working on a
12 game. He had mentioned that to me in conversation as
13 well. That's been in the works for a couple years on
14 developing a role playing game. He told me a little bit
15 about it. So I'm excited for him.

16 My sister Heidi recently married a gentleman
17 who's a gamer. That met at Gary Con, and they decided
18 to start writing adventures scenarios too. So the best
19 of my knowledge, that's it.

20 Q. To the best of your knowledge did any -- did
21 you or any of your siblings engage in stamp collecting?

22 A. Not that I know of.

23 Q. Since we're looking at the document here, on
24 Exhibit Number 1, is that your dad's -- Are you
25 familiar with your dad's signature?

1 A. Yes.

2 Q. And is that your dad's signature on page 4?

3 A. That looks like his signature. A lot of times
4 he would sign Gary Gygax or E. Gary Gygax. So he would
5 spell out his first name. It's less typical, but yeah,
6 that looks like his handwriting.

7 Q. So I asked you some questions about if you'd
8 received items on here.

9 But can you tell me just categorically or
10 specifically what items have you received --

11 A. Yes.

12 Q. -- in total that are your father's?

13 A. Sure. I got a -- a board game, a word game
14 called Operation Overlord that I used to play with my
15 dad a lot, so Gail gave that to me. I'm thankful for
16 that.

17 I got a garnet ring that my father had given
18 me for him. And if memory serves, I believe I got a
19 little children's tea set that they had stored, Gail had
20 stored at their house for my oldest daughter when she
21 was little because I never had a place to store it. I
22 believe that got shipped to me. And I think that's it.

23 Q. With respect to your dad's personal property,
24 what would you consider to be your -- you know, what did
25 you think was your dad's personal property at the time

1 he died in 2008?

2 A. Yeah. These are all just assumptions, so I
3 can't really state definitively. But I would think all
4 of his like personal -- personal items and clothing. I
5 would think that his reference books, his office
6 materials, um, would be his -- the things that he -- you
7 know, his, you know, his dungeons, his games, creations,
8 his old characters. Certainly, text collections and
9 things of that nature would be his.

10 He had a lot of antique furniture. Um, he
11 always loved antique -- antique furniture. So, you
12 know, he had -- had those around. There's pretty cool
13 antique paintings that he had, some originals. He did
14 some artwork himself. So there was a beautiful, um,
15 painting of Stone Manor that he did, I think in the late
16 60's, I assume. He painted that, and that would be his.

17 And I know in the house in Clinton, in 1980 or
18 so probably, he had like a Rembrandt sketch. It was
19 like a profile, you know, a hand sketch. It was pretty
20 small, but I'm sure that was valuable. He had dozens of
21 paintings and, you know, Chinese, you know, large
22 ornamental Chinese plates. You know, the big set in
23 front of a fireplace.

24 Um, you know, an antique lamp from his mom
25 that was a Tiffany lampshade and it was bronze and had

1 like elephants on it. Um, some other expensive, you
2 know, antiques, beautiful antique stuff too, stuff like
3 that. So I would imagine those would be his or at least
4 jointly marital property, you know, is what my normal
5 assumption would be.

6 Q. At any point did he tell you that those things
7 were Gail's?

8 A. No.

9 Q. Did he ever refer to those things as Gail's
10 property when he was talking to you when you were in the
11 home or anything like that?

12 A. No. I mean, I didn't visit super often in the
13 late 2000's. I was gone. I was in the military, and I
14 was in -- you know, in California or other places around
15 the world.

16 But like when I was in college, I was in the
17 area, if I'd like go down in the basement and get --
18 find something to read out of his book collection -- He
19 had hundreds or thousands of novels. And I'd ask, Hey,
20 dad, can I take these? He'd be like, yep. Just make
21 sure you bring them back.

22 Q. Okay. Is it your understanding that Gail has
23 been selling items associated with your father through
24 Paul Stornberg?

25 A. Yes.

1 Q. And how did you come to learn about that?

2 A. Someone told me Paul Stornberg is -- Well,
3 couple different ways. So, um, I know this is a longer
4 time ago. Gail auctioned around -- not too distant
5 after my father died -- We're going back a lot of years.
6 So I apologize if my memory's not great.

7 I don't remember exactly when she started
8 auctioning off things. And I think it was like on
9 social media, you can see that. And certainly people --
10 whenever something like that happens, people reach out
11 and contact me, message me, whatever and say, hey, this
12 is being sold or -- So I don't recall exactly how I
13 found that out.

14 But Paul Stornberg -- I've known him since
15 Gary Con started, probably since 2009 maybe. He's come,
16 and I knew that he auctioned things, peoples'
17 collections a lot of times when someone either passes
18 away or they have a need for emergency funds, then he,
19 you know, will help them auction things off for a
20 percentage and 20 percent or whatever it is.

21 Q. So was it your understanding that the things
22 that were being auctioned off were Gail's?

23 Or did you believe they were your father's? I
24 guess what -- What were you thinking when you heard
25 about these auctions?

1 A. Sure. At that time, my understanding was -- I
2 was unaware of the 2006 will. So I would have thought
3 there wasn't any -- I took it at face value that he
4 willed everything to Gail, giving everything to Gail.

5 I thought okay, you know, why wouldn't she
6 give to some of the kids, you know, a t-shirt or some,
7 you know, stuff with a sentimental value? But I figured
8 it wasn't my place to say anything. It was her
9 decision. You know, I already asked for some things and
10 was told no, um, so I just left it alone.

11 Q. So I know that there's been some discussion
12 about things that, you know, have been posted online,
13 back and forth, and, you know, it being a public feud
14 between the family.

15 Did at some point you speak up about things
16 that were being auctioned? And if so when and what did
17 you do?

18 A. Yeah. So I won't remember the exact date.
19 But the best of my recollection, it was after I was made
20 aware that there was a 2006 will and that some of the
21 property may, um, it was not unquestionably Gail's or
22 what I thought.

23 There was some items being sold from my
24 father's Dungeon & Dragons cartoon sales from the, um,
25 from the cartoon they were being auctioned by Paul. So

1 I just made a post and said hey, there's a probate
2 action going on right now. So some of these items may
3 not be yours to sell. They are now, but there's an
4 action to, you know, discover things.

5 I just informed people of that because I
6 didn't think it was right to sell things off because
7 there was a will that needed to be resolved.

8 Q. Um, have you posted things about Gail online
9 or -- that are I guess for lack of a better word, mean
10 or hateful? Have you disparaged her in any way?

11 A. I don't believe that I have, no. I don't
12 think that's useful. She is my father's widow. I know
13 he loved her, and I'd like to be respectful of my dad's
14 wishes.

15 And, you know, he said, watch out for Gail.
16 Help out how you can with getting my products out. She
17 doesn't know gaming, you do. You know, Steve's got a
18 handle on it, if could put a handle on it. But, you
19 know, where you can help out, help out.

20 But, you know, my dad -- I respected him. I
21 loved my father very much. And so I don't think there's
22 a lot of good in publicly denigrating, um, his memory
23 or -- or Gail. Um, I think it's just not -- it's not a
24 good practice.

25 Q. Do you feel that your dad to a certain extent

1 sort of tasked you with helping to make sure that Gail
2 was okay after his death?

3 A. I think that was his wish. He wanted his
4 family to be supportive. And, you know, he did say
5 that. He said that -- You know, he knew he only had so
6 long to live. He had to -- You know, he had this, you
7 know, abdominal aortic aneurysm.

8 And so he only had so long to live. So he was
9 trying to get -- You know, there was a lot he wanted to
10 do. He was doing -- working hard to get that out there
11 and discussing, setting up all these co-authors, right?
12 Feeding them all the information so that even if he
13 weren't there, he could carry it on.

14 And one of the things that, you know, he
15 wanted to see, you know, wanted to see that work done.
16 Of course, he wanted to see Gail taken care of. I'm
17 sure of that. You know, he said he loved her. I have
18 no reason to doubt that at all.

19 Alex was probably in his early 20's. I'm sure
20 he wanted him to have the best opportunities in his
21 life.

22 Q. Was your dad to the best of your knowledge --
23 You know, you just testified about being close to them.

24 Was he equally as close to you and your
25 siblings in your opinion?

1 A. Yeah, he loved all of his children, loved his
2 grandchildren. I went and visited him in late 2007 I
3 believe it was, maybe around the holidays. And my
4 daughter Miriam was, you know, 6 months old or
5 something. And he sat her on his lap and told her
6 stories. And I have a recording of that. It's one of
7 those children's stories that he told me. It was really
8 neat.

9 I just wish he was still here for my other
10 children to hear those stories.

11 Q. Regarding Paul Stornberg, was Paul Stornberg
12 like a close friend of your father?

13 A. No, not that I know of.

14 Q. We talked about whether you have disparaged
15 Gail online. Has Gail disparaged you online?

16 A. Yes. I guess it's fair to say, yes.

17 Q. Um, when Gail had the falling-out with Tom
18 DeSantos, what did she -- Are you aware of what she
19 considered your role in that to be?

20 A. I think she blocked me on social media, so
21 it's hard for me to look at some of those posts. But
22 other people screen shot it and sent it to me and so I
23 did -- Pardon me.

24 I think she thought -- or my understanding is
25 she was putting forth the idea that some how I was

1 trying to cut her out or cheat her or work around her in
2 some way to take, you know, steal my father's IP and
3 kind of cut her out of the equation.

4 I think that's the long and short of it was
5 somehow because she was a, you know, a widow or, you
6 know, and not able to fight, you know, didn't have the
7 resources to fight or something like that. So basically
8 I was trying to steal from her.

9 Q. Is any of that true?

10 A. No.

11 Q. Um, what happened between -- I guess how has
12 your and Gail's relationship changed since this probate
13 action was filed if at all?

14 A. Um, well, over the years, there have been
15 times where it's gotten a bit contentious where she'll
16 e-mail or text or call me and threaten legal actions.
17 Um, more during that time period, I guess 2017, 2018,
18 and later.

19 Um, she'd oftentimes send like links to music
20 videos on YouTube and in them, say things like, we
21 should really get together and figure out a scenario. I
22 was your stepmom. I love you. That sort of stuff.

23 And then a couple messages later, it would
24 become more aggressive and insulting and that sort of
25 thing.

1 So I got to a point where I would just either
2 block or don't respond to those messages.

3 Q. Would you consider Gail's communications with
4 you -- as you referred to Gail's communications with you
5 as harassing at any point?

6 A. Could you please repeat the question? I'm
7 sorry.

8 Q. Have you ever considered Gail's communications
9 with you to be harassing?

10 A. Yes.

11 Q. I'm showing you has been marked as Exhibit 10
12 for identification.

13 Can you look through those and tell me if
14 those are text messages between you and Gail Gygax?

15 A. Yes. These appear to be text and e-mail
16 communications that Gail sent to me and between Gail and
17 I and sometimes other people.

18 Q. And is this -- this -- Is this all of the
19 communications between you and Gail?

20 A. No, it is not.

21 Q. Is this fairly representative of the type of
22 exchanges that occurred?

23 A. Yes, it is.

24 Q. And are these the type of exchanges that have
25 occurred since your father's death or just since the

1 filing of the probate?

2 A. It's occasionally prior to that, but with the
3 trademark issue over Gygax magazine, sometimes she would
4 take exception about Gary Con, um, and she'd, you know,
5 text or e-mail or communicate some threats about suing
6 me.

7 Um, those -- Like I said, I just started to
8 ignore them or blocking because it -- it was not -- I
9 felt like the communications that were happening weren't
10 productive or rational going forward, so I would stop.

11 Um, but sometimes I -- I think I started
12 talking to her back again maybe 2016. On my father's
13 birthday, I gave her a call because I knew that was a
14 tough day for her. And I just wanted to say, hey, I
15 hope you're doing well. That's how I found out at that
16 time she was talking to Tom DeSantos. I wasn't aware of
17 it. I don't remember.

18 And that kind of reopened communications
19 because she seemed very excited about, um, healing
20 wounds and coming together as a family to advance my
21 father's legacy and, you know, Gygax in the world. Tom
22 called me like the next day after that, and we started
23 working to try to heal, heal the family, get everybody
24 together. And he said, maybe what you've got to do is
25 to bring the family together and to help kind of

1 communicate with Gail.

2 And you got to communicate with your siblings
3 and get everybody on the team so that we can all be
4 successful. And when --

5 Q. I'm sorry. In hindsight do you see any reason
6 why that was?

7 A. I'm not sure I understand the question.

8 Q. The sudden push by Tom DeSantos and Gail for
9 you all to become a family and be on the same page --
10 Was there a reason for that?

11 A. Oh, yeah. In retrospect it makes a lot of
12 sense. I just thought maybe it was better to come
13 together and there wouldn't be -- No one needs to be --
14 You know, if there's like a public row on Twitter or
15 social media or something, that doesn't help your chance
16 of getting a project done.

17 In retrospect knowing there was a will that
18 was not filed that gave the rights, you know, to Gail
19 and perpetual rights to his -- my brothers, 6 children
20 fully and makes a lot of sense they want to sign an
21 agreement and just basically hide, you know, they would
22 have to know because in order to move the project
23 forward, it was necessary for Tom to have that.

24 Q. These messages that we see here -- Um,
25 when -- when roughly, you know, we see lots of

1 references to -- to trial.

2 Um, were these messages after the probate was
3 filed?

4 A. Yes. I believe my understanding is -- without
5 doing research and looking at, you know, e-mails and
6 getting exact dates, my understanding or estimate is
7 that's around the time of filing of probate, in the
8 early months of filing the probate.

9 Q. And so on page 1 here of Exhibit 10, towards
10 the end of the page, is this a message from Gail to you?

11 A. Yes.

12 Q. And towards the end of the page, it says, um,
13 so we can go to trial and so many things will be hurtful
14 for you, me, and your siblings. Or we can work together
15 in honor of your father and make money.

16 Preceding that, um, there's some talk about a
17 bill that was paid for your mother. What do you think
18 the -- Do you know why she's talking about a bill that
19 was paid to your mother?

20 A. Honestly, I don't have any idea what that is.
21 I -- To the best of my understanding, the relationship
22 between Gail and my mother was not amiable.

23 Q. On page 4, there's a message, conversation
24 from Gail to you and Heidi?

25 A. Yes.

1 Q. And what is --

2 MR. JOHNSON: Your Honor, at this point I
3 guess I'm gonna -- What's the purpose -- There's no
4 relevance to these messages. The issue -- Again, we're
5 in a probate action. I get it.

6 You know, if -- if this is meant to be trying
7 to assassinate my client's character, um, you know,
8 these just aren't relevant to any issue that we have in
9 this trial. There aren't any -- There's no relevance
10 to these at all. So why are we going through these, and
11 you know, wasting the court's time I guess?

12 THE COURT: Your response?

13 MS. GORN: It's relevant to the extent that
14 under the statute, there are certain penalties that can
15 be associated with secreting a will, and this goes to
16 sort of Gail's motivation that she didn't want to
17 comply.

18 She was harassing and threatening to make this
19 go away because she -- she didn't want to be here, and
20 there's a reason why she didn't want to be here, and
21 this, I think, solidifies that.

22 MR. JOHNSON: And if that's the case, please
23 point me to that message.

24 THE COURT: I've read these messages. I don't
25 think she talks about secreting the will at all.

1 MS. GORN: No, Your Honor, she doesn't. But
2 she talks about all the things that are going to happen.
3 She's gonna seek damages and make them pay her
4 attorney's fees. Those are in my opinion, ways of her
5 trying to make this go away.

6 THE COURT: Well, I've read them. I don't
7 think you need to publish every single one of them.

8 Mr. Koch, do you have an opinion on this?

9 MR. KOCH: The relevance that I see is that if
10 the court's gonna find the will valid, would be the
11 argument. And I think if we can -- That's the only
12 thing I see.

13 THE COURT: Right. We don't need to get into
14 that right now. I'll receive the exhibit, but the
15 publishing and discussion -- I will sustain your
16 objection.

17 MS. GORN: Thank you. Okay.

18 BY MS. GORN:

19 Q. So I guess that leads us to -- With respect
20 to if someone is going to be appointed personal
21 representative, do you think that person should be Gail?

22 A. No, I do not.

23 Q. And why?

24 A. Um, for a couple reasons. 1, um, I feel like
25 she hasn't been trustworthy to this point in my opinion

1 if this will was not filed. The appropriate -- the
2 estate wasn't evaluated properly. Processes weren't
3 followed. Um, so I think that that's problematic.

4 Secondly, she doesn't have a good knowledge of
5 gaming and information. So probably be better to find
6 someone who's a little more winded towards that, and
7 just honestly having a neutral third party would
8 probably be the best so there's no question the
9 processes are being followed, um, fairly in that way.

10 Q. And when this paperwork was initially filed,
11 we had suggested you or you had not indicated yourself
12 to be personal representative.

13 Do you -- I guess the first part of the
14 question is do you feel that you are capable of being
15 personal representative?

16 A. I think I'm capable.

17 Q. And so why did you then change positions and
18 request a neutral third party?

19 A. Well, I am in California, and there appears to
20 be a lot of work here in Wisconsin that needs to be
21 done. This is going back a number of years. So maybe
22 somebody with experience in this area would be better
23 suited than -- with this sort of work would be better
24 suited.

25 Q. Have you been satisfied with having Attorney

1 Koch as personal representative?

2 A. Yeah, I have no complaints about Attorney
3 Koch.

4 Q. Would you have any objection to Attorney Koch
5 continuing to appear in that capacity?

6 A. No, I would not.

7 Q. You have been tasked with paying of the fees
8 for my -- both myself and Attorney Koch. Is that
9 accurate?

10 A. That is accurate.

11 Q. And can you tell us about what kind of
12 financial constraints if any that's placed on you?

13 A. Oh, yeah. Obviously I'm a retired, you know,
14 retired soldier with, um, 3 young children at home, my
15 wife takes care of. So my wife's been very supportive
16 because she thinks that -- She loved my father as well
17 and respected him and thinks that it's important to see
18 this, see his will, his wishes carried out.

19 And so she's been supportive there, but it's
20 been hard. It's roughly \$100,000, you know, maybe a
21 little bit more than that. That is a significant amount
22 of money to me.

23 Q. You're not independently wealthy or anything
24 like that?

25 A. I am -- I am not. I sent myself to college.

1 I've been working on my own or been in the military
2 since.

3 Q. The intellectual property that you have
4 developed -- You haven't had any huge million dollar
5 successes on those, have you?

6 A. No. My last kick starter was 31,000. I think
7 I maybe got \$4,000 of our work for developing something.

8 Q. Is it your request that these fees be
9 reimbursed to you from either Gail or the estate if this
10 probate moves forward?

11 A. Yes.

12 MS. GORN: And -- I have no further questions
13 at this point, Your Honor.

14 THE COURT: Mr. Koch?

15 MR. KOCH: Just briefly, Your Honor.

16 EXAMINATION

17 BY MR. KOCH:

18 Q. Sir, do you have Exhibit 1 in front of you
19 still?

20 A. Yes, I do.

21 Q. And turning to page 4, do you see the
22 signature of Gail Gygax?

23 A. Yes, sir, I do.

24 Q. And have you seen that signature before
25 today's date?

1 A. Yes, on the document.

2 Q. Have you seen her signature on other
3 documents?

4 A. Yes.

5 Q. Okay. And do you recognize her signature?

6 A. That appears to be her signature.

7 Q. Okay. And you're the son of Gary E. Gygax --
8 Gary Gygax, Senior, correct?

9 A. That is correct.

10 Q. Have you received anything from paragraph 4,
11 section 4 of this will, the intellectual property and
12 use of your father's name?

13 A. No, I have not received any intellectual
14 property.

15 MR. KOCH: I have nothing further.

16 THE COURT: Mr. Johnson?

17 MR. JOHNSON: Thank you, Your Honor.

18 EXAMINATION

19 BY MR. JOHNSON:

20 Q. Um, Mr. Gygax, you indicated that after your
21 father passed away, there was a meeting at Gail's and
22 your dad's house. Who was present then?

23 A. I don't recall exactly. I believe it was all
24 or most of the children.

25 Q. Was Alex there?

1 A. I don't recollect -- I don't recollect for
2 sure, but he lived in the house. So my assumption is he
3 would be there.

4 Q. And this would have been shortly after your
5 father's death; I mean, weeks, months?

6 A. Yes.

7 Q. Not holding you to it.

8 A. Days.

9 Q. And you would not have been shown a copy at
10 that time -- it's your testimony you weren't shown a
11 copy of this 2006 Exhibit 1 we have been talking about.

12 A. Correct.

13 Q. Your -- And your testimony is that the first
14 time you saw it was a result of Tom DeSantos pointing
15 you to a place in the -- on the internet where you could
16 find it.

17 A. Yes.

18 Q. And your testimony is that you had not seen it
19 before then?

20 A. Yes.

21 Q. You were present in the courtroom for the
22 testimony of your brother; is that correct?

23 A. Alex, yes.

24 Q. And did you hear Alex testify that he was told
25 from a very early age that property was signed over to

1 Gail to protect them from lawsuits?

2 A. I did hear him say that, yes, sir.

3 Q. Okay. Had you ever been told that by your
4 father?

5 A. No.

6 Q. Let me ask you -- Do you have all the exhibits
7 up there, sir?

8 A. I'm not certain, but I will look if you give
9 me a moment.

10 Q. If you could look at Exhibit Number 2?

11 A. Yes, sir.

12 Q. Have you ever seen that document before?

13 A. Outside of this?

14 Q. Outside of this lawsuit?

15 A. Not to the best of my recollection, no sir.

16 Q. Did you see the signature on the bottom there
17 of Ernest Gary Gygax? Do you see that?

18 A. I do see that.

19 Q. Do you recognize that to be the signature of
20 your father?

21 A. It does appear to be his signature and
22 handwriting.

23 Q. And in the second, um, or the -- I'm
24 sorry -- the first line of that -- that document reads,
25 I, Ernest Gary Gygax do hereby make this transfer of

1 ownership of my personal property as of 16, June 1986 to
2 Gail Carpenter. Do you see that?

3 A. I do see that.

4 Q. And attached to Exhibit Number 2 that you're
5 looking at is, um, an appraisal, a personal property
6 appraisal it appears. Do you see that?

7 A. Several pages. Yes.

8 Q. And if you could turn to the -- there's a --
9 like 4 pages, 5 pages back in the exhibit, there's like
10 an index of the appraisal. Do you see that?

11 A. It's very faint, but I do see that there's an
12 index here.

13 Q. And in that, the -- it basically goes through
14 a set of different types of items in different rooms in
15 the house, and then it has a value associated with that?

16 A. Okay. I do see it.

17 Q. And at the very bottom, second line from the
18 bottom, at least it appears to me that the word is
19 jewelry. Do you see that?

20 A. At the very end.

21 Q. And it appears to show an amount of 70 some
22 thousand dollars. And I'm not concerned about the
23 amount.

24 A. I do see some writing. It does appear that
25 the first one is a 7, some number and then a comma. So

1 I'm assuming that's 70 something thousand dollars.

2 Q. Sure. And then going back two more pages --
3 Um, the -- at the top of the page, it that says games
4 and books. Do you see that?

5 A. I do see that.

6 Q. And it lists 100 games and a value. Do you
7 see that?

8 A. 100 games.

9 Q. 200 books, item Number 3?

10 A. Yes.

11 Q. Mr. Gygax, you also talked a little bit about
12 in your testimony, a lawsuit and or a trademark action
13 with a company, TSR, Inc.

14 A. Yes, sir.

15 Q. And I believe your testimony -- You said that
16 you were -- You said that you were an editor for that
17 company.

18 A. I think I'm listed as an editor if you look at
19 the mask inside the credits.

20 Q. Okay. I apologize, Mr. Koch. I thought I
21 brought four copies, but I only have three.

22 Mr. Gygax, I've put before you what we've
23 marked or I've marked as Exhibits 103 and 104.

24 I would ask -- Have you ever seen either of
25 these documents?

1 A. I do not believe I've seen 103. 104 I'm
2 looking through. It looks like I have seen parts of
3 this or a draft of this. I can't be certain that I've
4 seen this exact document.

5 Q. So if we look at item -- Exhibit Number 103
6 first, on the first page in bold there in the middle it
7 says, notice of opposition. Do you see that?

8 A. Yes.

9 Q. And under the first category of poster
10 information is TSR, Inc. Do you see that?

11 A. Yes.

12 Q. And that the -- up in the upper right-hand
13 corner, there's a filing date. Do you see that?

14 A. It does. It says June 25, 2014.

15 Q. Right. And it indicates that the filing is in
16 the United States patent and trademark office for the
17 trademark trial and appeal board.

18 A. It does say that.

19 Q. So would this -- Again, you can look through
20 it. But you were aware that TSR filed a trademark
21 opposition action in 2014.

22 Would this be that lawsuit? Or this filing I
23 should say.

24 A. It appears to be. I don't have direct
25 knowledge of that.

1 Q. You also indicated that eventually -- and the
2 date on the file was June of 2014. And then Exhibit
3 Number 4, you indicated you had seen before.

4 A. I -- I've seen something similar to this. I
5 don't know if it was the exact document in this form.
6 But it does look like -- familiar. We're going back a
7 few years.

8 Q. Sure. And in the -- In your testimony, you
9 indicated that you were aware that the -- TSR's matter
10 was eventually withdrawn or -- or resolved. You said
11 that?

12 A. My understanding is that the parties came to
13 an agreement. In discussion of that, um, with the --
14 with Jason Elliott, I -- I didn't want to be involved
15 with that settlement, with that, um, agreement.

16 And it was my understanding my brother Ernie
17 also felt the same way, perhaps some other people like
18 Tim Haskins (phonetic) Jerry Bruss -- They all formally
19 said they were not associated with this endeavor anymore
20 if they owned part of the company and then aren't part
21 of the company. And then at that point, Jason made an
22 agreement.

23 Q. During the pendency of this action between
24 2014 and 2015, did you have any involvement with TSR
25 with respect to any of the litigation or discovery or

1 anything like that?

2 A. I think Jason would make some phone calls and
3 talk to us about it. I think there was one briefing
4 with a -- towards the end with a lawyer. There was kind
5 of going over the document that I think was a final
6 agreement or some portion of it.

7 Q. So looking at Exhibit Number 104, on page 5 of
8 10, it says on the bottom, 5 of 10 --

9 A. Okay.

10 Q. The paragraph right above the five of ten
11 states, in witness whereof the undersigned TSR
12 shareholders, directors -- and directors constituting
13 all of the shareholders and directors of TSR, other than
14 Ernest, Ernie, Gary Gygax, Junior, secretary and share-
15 holder of TSR, Lucion, "Luke" Paul Gygax, vice president
16 and shareholder of TSR, R. Scott Taylor, shareholder of
17 TSR, and or Timothy Cask, shareholder of TSR as
18 indicated in this agreement.

19 A. Yes, I think that exempts us from this
20 agreement. I do take exception with this person named a
21 shareholder --

22 Q. First of all, I asked did you see it, that I
23 read that correctly.

24 A. Yes, sir. It appears that you read it
25 correctly.

1 Q. So when you indicated you weren't an owner,
2 this document is saying that you were in fact a
3 shareholder and a vice president of that company.

4 A. That -- This document does say that.

5 Q. Do you know whether in the pendency of this
6 lawsuit that TSR was provided a copy of this 2006
7 document, Exhibit Number 1?

8 A. Not to the best of my knowledge.

9 Q. Your attorney asked you some questions, and
10 you had indicated that one of your -- whether you
11 considered yourself the person tasked to carry on your
12 dad's legacy.

13 A. Yes, sir.

14 Q. Correct? And in carrying on his wishes; is
15 that correct?

16 A. Yes. I believe she said something to that
17 effect.

18 Q. And so if -- if the court accepts Exhibit
19 Number 1 as your dad's last known will and testament,
20 his wishes would be these set forth in these documents,
21 right?

22 A. That's his last will and testament, sir.

23 Q. And so on page number 3, under article 6, it
24 reads: I hereby appoint Gail Carpenter Gygax personal
25 representative of the estate in this. In the event she

1 can't so act, I appoint Alex H.H. Gygax as the personal
2 representative.

3 So your dad's wishes were that Gail carry on
4 as personal representative. This is the document that
5 he anticipated. That your dad's statement.

6 A. That is.

7 Q. And in fact, Gail -- Is it true that Gail was
8 married to your dad longer than he was married to your
9 mother?

10 A. I believe that's correct.

11 Q. And fair to say -- and I don't want to open
12 old wounds -- but your dad and mom's -- your biological
13 mother's divorce was very much unfriendly.

14 A. It was contentious, yes, sir.

15 Q. And they both spent lots of money on lawyers;
16 isn't that true?

17 A. Unfortunately, yes, sir.

18 Q. And your knowledge of all the TSR and all of
19 those things, fallout, and your dad being hot -- as you
20 said a hostile takeover?

21 A. Yes.

22 Q. He spent a lot of time with lawyers and had a
23 lot of lawyer bills over his lifetime.

24 A. I -- that's my understanding.

25 Q. And you even acknowledged that during your

1 childhood that you had some lean times with your dad. I
2 mean, there -- There was a period where it went real
3 good when you were in California, living on the hill
4 with the pool?

5 A. Yes.

6 Q. And -- but a lot of times weren't so great
7 financially.

8 A. I think more so I had grown and left the home
9 by that point. But I think it was more in the 90's when
10 I was in my 20's and he no longer owned that home. And
11 I don't have personal knowledge of the financial -- of
12 the finances exactly, but my impression or my
13 understanding is it appeared to me that he was -- times
14 were lean, yes.

15 Q. And so when your mom and dad divorced, in 1983
16 I believe you said it was, would that have been one of
17 the lean times and or one of the good times?

18 A. I believe my mom told me their holdings were
19 somewhere around the 5 or 6 million dollars point when
20 they got divorced.

21 Q. And the whole TSR fallout, all of that -- Are
22 you familiar with your parents' divorce settlement?

23 A. I'm not very well read into it, no, sir.

24 Q. Your mom received a lot of what your dad
25 garnered through TSR, didn't she?

1 MS. GORN: I'm gonna object on the basis of
2 relevance.

3 THE COURT: Mr. Johnson?

4 MR. JOHNSON: I'm trying to get the financial
5 situation when some of these events were happening, if
6 he knew. He mentioned things were good, things were not
7 so good. You know, we have a situation where it's been
8 alleged there weren't sufficient assets at the time, um,
9 that Mr. Gygax died to probate the estate.

10 That's one of the issues here. So I'm trying
11 to determine if he knew any of those things at that
12 time.

13 THE COURT: I'm not sure how much 1983
14 references it, but do you know?

15 THE WITNESS: I couldn't give -- It would be
16 complete -- It would be speculation on my part, sir.
17 I'm sorry.

18 BY MR. JOHNSON:

19 Q. And in 1983, would that have been before or
20 after the fallout with TSR?

21 A. Um, best of my recollection that happened in
22 1985, so it'd be prior to.

23 Q. And so in 1985, your dad had not yet remarried
24 to Gail?

25 A. That's accurate. I think that's true. Maybe

1 they got in 1987 if I remember correctly.

2 Q. And if I told you they were married in 1987,
3 you wouldn't have any --

4 A. No, sir. I think that seemed accurate.

5 Q. And were you living with him and Gail at the
6 time?

7 A. In 1987, yes, sir.

8 Q. And so your dad's coming out of a divorce, and
9 things obviously either were split or he'd spent some
10 money. So were things still fairly good financially at
11 that time?

12 A. I believe so. We lived in a nice house, and
13 we were able to do things so yes.

14 Q. And he was going through significant
15 litigation with TSR at the same time?

16 A. I can't -- I'm not sure about that timeline.
17 It seems reasonable that it was within a year of that
18 time I would imagine.

19 Q. What about -- what about -- Well, you said
20 you lived in California in 2005, started living there?

21 A. Yes, sir.

22 Q. Your dad died in 2008. Do you have any
23 knowledge about your dad and Gail's financial situation
24 in --

25 A. No. I think that's what my brother alluded

1 to. There was kind of a veil of secrecy around things
2 in general. So there wasn't a lot of discussion around
3 that.

4 I spoke to my dad mostly about creative stuff
5 or what he's doing and history and things like that. I
6 didn't often speak to him about, um, about his --
7 details of his finances.

8 Q. Did you ever -- when you would talk about --
9 Would you talk about publications and things that he was
10 doing?

11 A. Yes, sometimes.

12 Q. Would any of those discussions ever center
13 around whether he was making any money off of any of
14 these publications?

15 A. I don't think would have been hey, I made X
16 number of dollars.

17 It would -- More likely he would say
18 something like, this was really popular. It's selling
19 really well. I'm happy about that.

20 Q. And at the time, um, your dad passed away,
21 were they living on Madison Street --

22 A. Yes.

23 Q. -- property? Which is the same home Gail
24 still lives in now.

25 A. It is.

1 Q. You also were present for the testimony of Mr.
2 Chenault --

3 A. Yes, sir, I was.

4 Q. -- this morning by Zoom. And Mr. Chenault
5 spoke of a company that he was aware of called Tri G
6 Enterprises?

7 A. Yes, sir.

8 Q. Are you also aware of that company?

9 A. Yes. I'm aware it existed.

10 Q. Okay. And other than the -- the -- Did you
11 ever discuss the details of publication with your father
12 about how things were getting published and where the
13 funds flow were going?

14 A. I don't recall having a discussion like that.
15 He just said it's Tri G for Gail and Gary Gygax and just
16 how, you know, just kind of basic about the company and
17 that's it.

18 Q. And so Mr. Chenault indicated all of the
19 contracts were with Tri G Enterprises.

20 A. I wouldn't know that.

21 Q. Okay. Do you have any reason to doubt Mr.
22 Chenault's testimony?

23 A. No. I think Steve is a very honest person. I
24 would trust what he says.

25 Q. And do you have any knowledge of whether or

1 not your father was an owner of Tri G Enterprises at the
2 time he died?

3 A. My assumption is that he was. But again,
4 that's an assumption. I don't have any ability to point
5 to a document or anything.

6 Q. Had you been -- There's a document marked
7 Exhibit Number 4. Do you have that in front of you?

8 A. I do. Yes, sir.

9 Q. Have you seen that document prior to this
10 probate action being filed?

11 A. No, sir.

12 Q. It's not something your father ever shared
13 with you?

14 A. No, sir.

15 Q. And that indicates that it's an agreement from
16 1994. Correct?

17 A. 1994 agreement. Yes, sir.

18 Q. And so from that period of time, 1994,
19 obviously, Gail and your father were married. Correct?

20 A. Yes.

21 Q. And you were also present in the household
22 during some of those years?

23 A. In '94, no, sir.

24 Q. No, you weren't?

25 A. No, sir. I enlisted in the Army in 1989.

1 Q. All right.

2 A. I moved out of the house in 1988.

3 Q. All right. Then I just -- That was my
4 mistake. I apologize. Thank you.

5 Um, I guess this -- You were also asked some
6 questions about -- as we've talked about earlier about
7 that you were -- because you're involved in the industry
8 and that you were tasked with moving forward, were you
9 aware that Gail and your dad were working together on
10 various publications?

11 A. Can you please -- I don't think I understand
12 the question on working together.

13 Q. Well, you were aware of a company called Tri
14 G?

15 A. Yes, sir.

16 Q. And your dad was publishing things prior to
17 his death?

18 A. So --

19 Q. I mean, from Mr. Chenault's testimony --

20 A. I think I understand your question. Did I
21 know they were doing business together? Yes.

22 Um, if the question was were they doing
23 creative work together, my answer would be no.

24 Q. Okay. And so your comments about Gail perhaps
25 not being in your opinion, the best person to move

1 forward is because of her lack of creative ability? Or
2 in -- That -- that's a terrible question because that
3 sounds terrible for Gail.

4 A. It does. I don't --

5 Q. Yeah. No. I guess your comment comes to the
6 creativity element of the gaming industry. Is that --
7 is that --

8 A. My understanding is she's not a gamer, and she
9 came to this a little bit later. A lot of -- So I think
10 some of the collectible items might be more associated
11 with earlier days. I have -- I think my main objection
12 is -- is more my personal belief that there's -- that
13 she's been misleading or hiding information in this
14 whole process.

15 So that is really my objection, sir, more than
16 anything else.

17 Q. You also were present in the courtroom during
18 the testimony of Paul Stornberg, correct?

19 A. Yes.

20 Q. And you heard Mr. Stornberg testify to his
21 conversation that he had with the -- your father prior
22 to his death on your dad's porch at one of these porch
23 parties. You heard that testimony?

24 A. I did.

25 Q. And Mr. Stornberg, you know, testified that it

1 was your dad's wishes that these things; the collection,
2 be there for Gail. Did you hear that?

3 A. I did hear him say that, yes.

4 Q. Do you have any, any doubt that that was --
5 testimony was accurate?

6 A. I -- I do. Um, if you'd like me to explain
7 it, I will.

8 Q. Yeah. Please do.

9 A. So I would -- My question would be if my dad
10 was concerned about cash flow, why would he wait until
11 after he dies to sell things to take care of her needs?

12 Q. Is it possible that there -- he -- I believe
13 the testimony was that it was the only thing he had to
14 leave to Gail.

15 And so obviously it wouldn't be done until
16 after he died, based on that conversation.

17 A. I mean, I suppose that's one way to look at
18 it, sir. I don't look at it that way. And I would
19 further --

20 Q. Okay.

21 A. If I may elaborate, I would say the items, the
22 products he had in development were going to be bringing
23 in income.

24 So that would probably be the area of focus,
25 where you keep a stream of fresh money coming in and if

1 you needed to sell something, if you need additional
2 income, but he didn't have to die to sell that stuff.

3 Q. Would you agree with the premise of the
4 testimony that he had -- that your dad wanted to take
5 care of Gail?

6 A. Absolutely. As I said, I have no reason to
7 doubt that he loved her very much and wanted her to have
8 a good life.

9 Q. And presumably then again, back to Exhibit
10 Number 1, if the court were to accept this document as
11 your dad's last will and testament, that would be
12 consistent with article 4 on page 2 where he left
13 everything; all of the residue and remainder of the
14 property to Gail at his death.

15 That's a consistent statement with wanting to
16 take care of Gail?

17 A. That's what's -- that's what the will -- That
18 seems like a reasonable way to interpret that, yes, sir.

19 Q. Would that also tell you that -- Would that
20 also be consistent with the statement that Mr. Stornberg
21 gave about the collection that he wanted left to Gail?

22 A. If he said leave everything to her in the will
23 and I believe that it does say that, other than these
24 specified items in the IP, then yes. I mean, I'm just
25 reading the will.

1 Q. Sure. And the -- We -- We've had lots and
2 lots of discussion about the castle.

3 A. Um-hum.

4 Q. The dungeon. I'm just gonna call it castle.

5 A. Okay.

6 Q. We all know what we're referring to, right?

7 A. Yes, sir.

8 Q. And so have you actually seen this?

9 A. In like 3-level in detail, no because he was
10 the game expert. And so it would take away the fun to
11 look at everything if you can play through a whole bunch
12 of it.

13 Q. And so the works, some of which are published,
14 correct?

15 A. Yes, sir.

16 Q. Some -- And the published works -- Is it true
17 that those belong to Hasbro?

18 A. (No response.)

19 Q. The IP for those published works?

20 A. No, sir. Um, I believe the published works
21 were published through Troll Lord Games in 2000 -- early
22 2000's or Castle Xagyg.

23 Q. And that's what Mr. Chenault talked about?

24 A. Yes, sir.

25 Q. And the castle itself though -- I believe Mr.

1 Stornberg talked about it as a bunch of papers. That's
2 what it is. It's papers.

3 A. So yes, sir. And I would say as well as a
4 Stephen King book when he writes it. Just a bunch of
5 papers.

6 Q. Okay. Until it's published?

7 A. I would disagree with you, sir. I think that
8 as soon as you write that, it becomes your work.

9 MR. JOHNSON: Okay. That's all I have, Your
10 Honor. Thanks.

11 THE COURT: Any more?

12 MS. GORN: Yes.

13 EXAMINATION

14 BY MS. GORN:

15 Q. I'm gonna jump around a little bit here and
16 touch on different things.

17 So let's start with the TSR topic. Attorney
18 Johnson referenced a trademark application that was
19 filed by Gail for the Gygax name.

20 MR. JOHNSON: Trademark opposition action, not
21 trademark.

22 MS. GORN: No. She filed -- she filed the
23 application. So -- She applied to trademark the name.
24 TSR filed an opposition.

25 BY MS. GORN:

1 Q. When she filed for the trademark, did -- do
2 you know -- When you file for trademark, do you have to
3 provide chain of ownership to file the application and
4 have it granted?

5 A. No. Um, my understanding of it -- I've filed
6 for a couple trademarks -- is you just fill out the
7 application, send it in.

8 And then part of the process is for the
9 trademark registered office to do the research and post
10 out there to the world: Hey, this is -- You know,
11 here's the status of this. It's -- it's in review or
12 it's been granted. And then it's finalized.

13 Q. As long as no one objects.

14 A. Yes, right. So if you were to say, no, no.
15 I'm using that name, you have to file an opposition.

16 Q. So the fact alone that someone files for
17 something and it's granted doesn't necessarily mean that
18 they actually have the proper channel of ownership; is
19 that fair?

20 A. Yes.

21 Q. So with respect to withdraw of the objection,
22 that was done by TSR, not with your approval; is that
23 correct?

24 A. Not with approval -- Yeah, correct. I was
25 not -- I didn't approve of that. I distanced myself

1 from the -- from it because of that.

2 Q. And Attorney Johnson asked you about whether
3 or not you knew that TSR had seen the 1986 document.
4 And you didn't know. Correct?

5 A. I --

6 MR. JOHNSON: No, that's not what I said.

7 THE COURT: 2006 document.

8 MS. GORN: Sorry, the 2006.

9 MR. JOHNSON: 2006.

10 MS. GORN: Okay.

11 BY MS. GORN:

12 Q. Would TSR have seen the 2006 document to your
13 knowledge?

14 A. No, not to my knowledge.

15 Q. At that point were you aware of the 2006
16 document?

17 A. No. No, I was not.

18 Q. So is it -- To the best of your knowledge,
19 did they -- was the withdrawal done without notice that
20 there may be rights invested in other people there
21 within?

22 A. That'd be my understanding. The -- I assume
23 they'd have exclusive control-- perpetual exclusive
24 control of his IP and use of the things.

25 Q. There were some questions -- There were some

1 timelines that were talked about with respect to your
2 parents' divorce.

3 Is it your understanding that your dad and
4 Gail started living together in 1983?

5 A. That sounds correct.

6 Q. And you said your parents' divorce was a long
7 process.

8 A. It was.

9 Q. If I said their divorce ended in May of '86,
10 would that sound accurate?

11 A. I think so.

12 Q. And then Gail and your dad were married in
13 '87?

14 A. Yes. Yeah, I think that's correct because you
15 have to wait a certain number of months before you can
16 remarry.

17 Q. And there were some talk about whether or not
18 after the lawsuits with TSR and your dad had -- what his
19 assets were.

20 Was it your understanding based on -- Was it
21 your understanding that there was still money in --

22 A. Yes, we still were doing okay. Um, my
23 understanding at the time -- and we're going back a lot
24 of years -- is that he spent somewhere in the
25 neighborhood of half of a million dollars fighting the

1 TSR case. And that came out of his pocket, so that was
2 a substantial amount of money.

3 Q. Um, you said that -- You were asked about
4 your opinion of Paul's -- the validity or credibility of
5 Paul's statement regarding the transfer of assets.

6 And you mentioned that, you know, because your
7 dad sold the items.

8 Is there anything else about Paul's testimony
9 that you maybe find suspect?

10 A. Simply Paul claimed to have known my dad
11 through, you know, correspondence and had met him in
12 person, three or -- three times, you know, where they
13 would have actual conversations in person, that my dad
14 would have this, a -- a very personal discussion about
15 health and future with somebody that he wasn't extremely
16 close to doesn't seem as likely to me.

17 He was very close to Steve Chenault. They
18 were actual close friends, and he wasn't having those
19 conversations with Steve. And I would think that he
20 would be more likely to have those conversations with
21 Steve before he was certainly gonna have that discussion
22 with Paul. He might also share that before directly
23 discussion about his health. He didn't like to talk
24 about that very much.

25 MS. GORN: I have no further questions.

1 THE COURT: Mr. Koch?

2 MR. KOCH: No, Your Honor. Nothing.

3 THE COURT: Mr. Johnson?

4 MR. JOHNSON: Just a couple more.

5 EXAMINATION

6 BY MR. JOHNSON:

7 Q. Sir, on Exhibit 104?

8 A. Yes, sir.

9 Q. If you have that in front of you, page 4 of
10 10?

11 A. Yes, sir.

12 Q. Up above paragraph 5, there's a statement that
13 reads: The Gail C. Gygax revocable trust, owner of the
14 intellectual property of the late E. Gary Gygax and TSR,
15 Inc., a corporation formed by Jason Elliott, Tim Kask,
16 Ernie Gygax, Luke Gygax and Shane Carpio have reached a
17 mutually agreeable resolution of their trademark dispute
18 at the United States patent and trademark office.

19 Pursuant to their agreement, the trust will license the
20 Gygax magazine trademark to TSR on a nonexclusive basis.
21 Did I read that correctly?

22 A. Yes, sir.

23 Q. Again, there's another reference to you as a
24 shareholder of that company?

25 A. That is true.

1 Q. And -- and above that where -- the portion I
2 just read, indicating that this is part of an agreement
3 to resolve the dispute and this would -- would have
4 been -- The statement would have turned into a press
5 release; is that right?

6 A. It may have been. I honestly don't know. I
7 wasn't consulted on the verbiage.

8 Q. You're aware that Paul Stornberg is an
9 auctioneer?

10 A. Yes, sir.

11 Q. Your dad would have been aware of that too in
12 his meetings with him?

13 A. I think that's sort of reasonable to assume.

14 Q. So if somebody was gonna care for the
15 collection and help Gail sell it, would he -- would that
16 be not a likely person to do that?

17 A. It's within the realm of possibility.

18 Q. And opposed to a friend, Steve Chenault, who's
19 not an auctioneer but a publisher.

20 A. Yes, I see your point. That is entirely
21 possible.

22 MR. JOHNSON: Thank you. Nothing else. Thank
23 you.

24 THE WITNESS: Thank you, sir.

25 THE COURT: All right. You can step down.

1 THE WITNESS: Thank you, Your Honor.

2 MR. JOHNSON: Your Honor, I would offer 104
3 and 103.

4 THE COURT: Any objection?

5 MS. GORN: I would just object to the extent
6 that Luke wasn't a party to these things. These were
7 filed by TSR. He stated he withdrew from the company
8 because the settlement stuff was ongoing. He couldn't
9 positively identify it so --

10 THE COURT: I'll receive it for what they say.
11 I'm not -- For instance, where it says she's the owner
12 of the IP, I'm not accepting it for that purpose.
13 That's something I decide. So -- But otherwise, I will
14 consider it for the record.

15 Any other witnesses for the Petitioner?

16 MS. GORN: No.

17 THE COURT: Mr. Johnson, do you know if --

18 MR. JOHNSON: I -- I would intend to recall
19 my client. I don't know if you want to do that today
20 or --

21 THE COURT: Let me take a break. It seems to
22 me that the computer people are here, and I will see
23 what they need to do. And we need to change clerks out
24 too.

25 MR. JOHNSON: Would you prefer to wait until

1 morning?

2 THE COURT: Let me find out what the computer
3 people say.

4 (Recess taken.)

5 THE COURT: All right. We're ready to go back
6 on the record. Back on the record on the estate of E.
7 Gary Gygax. Appearances remain the same. The
8 Petitioner has rested. We'll turn to the Respondent.

9 And I know your client has testified already.
10 Do you have any other evidence?

11 MR. JOHNSON: I will not, Your Honor.

12 THE COURT: So you -- You're not recalling
13 her?

14 MR. JOHNSON: Oh, no. No. I thought you
15 meant after her.

16 THE COURT: No. No, I'm sorry.

17 MR. JOHNSON: That would be the only --

18 THE COURT: Do you want to call her?

19 MR. JOHNSON: Yes.

20 THE COURT: Come on up, ma'am. We'll put you
21 under oath again.

22 THE CLERK: Please raise your right hand, and
23 state and spell your name for the record.

24 THE WITNESS: Gail Gygax, G-A-I-L, G-Y-G-A-X.

25 GAIL GYGAX, having been first duly sworn to

1 testify the truth and nothing but the truth, was
2 examined and testified as follows:

3 THE CLERK: Thank you. Please be seated.

4 THE COURT: All right. Go ahead, Mr. Johnson.

5 MR. JOHNSON: Thank you, Your Honor.

6 EXAMINATION

7 BY MR. JOHNSON:

8 Q. Ms. Gygax, there's an Exhibit 105 in front of
9 you. I believe it will have a yellow sticker.

10 A. Glasses.

11 Q. Oh. I withdraw. A white sticker. Have
12 you -- You have Exhibit 105 in front of you?

13 A. Yes.

14 Q. Is that a document you created?

15 A. Yes.

16 Q. And can you tell us what it is?

17 A. Um, it's a list of items given to Luke. Ernie
18 picked them up, and it was for the children, and I think
19 I'd given them -- Yeah. It says on there who it goes
20 to. Yeah.

21 Q. And those are items that you delivered to
22 whom?

23 A. Ernie picked them up and signed for them.

24 Q. Ernie Gygax, Junior?

25 A. Yes, Ernie Gygax, Junior.

1 Q. Okay. Were there other items of personal
2 property that you delivered to the children after your
3 husband passed away?

4 A. Other than this, yes. There was a whole
5 pickup. I did not itemize it. And then the second time
6 around, I said, you'd better itemize this stuff because
7 it was the jewelry and all this stuff.

8 So I wanted to make sure that someone signed
9 for it that they received it.

10 Q. And on the second page of that document, there
11 appears to be a signature from Ernest Gary Gygax,
12 Junior.

13 A. Yeah.

14 Q. Have you seen Mr. Gygax, Junior's signature
15 before?

16 A. Yes.

17 Q. Do you recognize that to be his signature?

18 A. It appears to be, although it's a little bit,
19 I think wobbly than usual, but yes.

20 Q. Your son, Alex, testified that morning that he
21 may have been the one to deliver all these items to
22 Ernie. Do you recall that testimony?

23 A. I do.

24 Q. Do you recall whether that's how that
25 happened?

1 A. I -- I don't because like I said, there were
2 two turnovers, and I do think that Ernie came to the
3 house and got this -- what is on this list here.

4 So maybe he delivered the first round of goods
5 to them, but I -- I really don't remember.

6 Q. You also heard the testimony of Alex this
7 morning regarding -- There was a question regarding
8 whether he had received a watch --

9 A. Yes.

10 Q. -- from his father.

11 A. Yes.

12 Q. Do you recall that testimony?

13 A. Yes.

14 Q. And I believe he said he had not.

15 A. That's correct.

16 Q. Do you in fact have possession of that watch?

17 A. Yes. He has me holding it for him in a safe
18 deposit box, with his father's crest ring.

19 Q. And so --

20 A. And he's worn it. He's had it out.

21 Q. What kind of watch is that?

22 A. It's the Rolex.

23 Q. And that would be Alex's.

24 A. Yes.

25 Q. You're just holding it for him?

1 A. I'm just holding it for him.

2 Q. Okay. You were also present for the testimony
3 of Luke that we heard just this afternoon?

4 A. Yes.

5 Q. Ms. Gygax, do you know when -- Again, I know
6 we've put forth a position that we don't believe this
7 Exhibit 1 is -- is Gary's last will and testament.

8 A. Right.

9 Q. Do you -- Have you or did you share that
10 document with the children after your husband passed
11 away?

12 A. Yes.

13 Q. And can you tell us first on how many
14 occasions do you believe you shared that document with
15 them?

16 A. Um, the first time I shared it with Luke, um,
17 it would have been on or before the turnover date of
18 this property.

19 Q. Okay. And then so -- My question was how
20 many times do you think?

21 A. Oh, two.

22 Q. Okay. And so you went on and answered the
23 next question which is when, and that would have been
24 some time before June 8.

25 A. That's correct.

1 Q. I'm sorry. June 19 of 2008. Which is the
2 date on Exhibit 105?

3 A. Yes.

4 Q. And when would the second time have been?

5 A. Um, I knew that it came up in the TSR action,
6 so I wrote to my attorney at Michael, Best & Friedrich
7 in Chicago. I said, can you give me the dates that we
8 turned over, that they asked for the 2006 will? And the
9 1990 will? And I sent both of them.

10 And his secretary confirmed that and gave me a
11 whole list that was sent to TSR. And those two pieces,
12 those two documents were in that list.

13 And I believe I had conversations with him --

14 Q. You've answered the question.

15 A. Okay.

16 Q. I'm not trying to cut you off, but we're just
17 trying to be efficient and answer the questions that are
18 before you.

19 Then -- Again, the -- there's been substantial
20 discussion about the value of the estate and what was
21 your late husband's and what was yours and what was part
22 of his estate or shouldn't be part of his estate.

23 The collection that we've discussed and that
24 Mr. Stornberg put in inventory in -- those tangible
25 personal property items -- Whose do you believe those

1 are?

2 A. Those are mine.

3 Q. Okay.

4 A. Those have been mine for years.

5 Q. And are those again, in your opinion, all of
6 the things that your late husband transferred to you
7 pursuant to Exhibit Number 2 I think was?

8 THE COURT: Is that the -- Is that the gift?

9 MR. JOHNSON: That's -- I lost my exhibit
10 list.

11 THE COURT: Is that the gift, Mr. Johnson?

12 MR. JOHNSON: The what?

13 THE COURT: The gift document?

14 MR. JOHNSON: Yes.

15 THE COURT: Okay. Do you understand which one
16 he means?

17 THE WITNESS: Yes, I do.

18 BY MR. JOHNSON:

19 Q. Pursuant to the transfer of personal property
20 that occurred in --

21 A. Yes.

22 Q. -- 1986?

23 A. That's correct.

24 Q. Those are all part of those items?

25 A. Yes.

1 Q. And again, in your opinion, that includes the
2 castle that we've had so much discussion of?

3 A. Oh, definitely. Gary and I discussed it and
4 when -- he was trying to say, when I die, I want you to
5 know this location of the dungeon so that you know
6 exactly where to put it.

7 So we did talk about it. And I -- You know,
8 it's mine.

9 Q. And the intellectual property components
10 of -- that we've also had two days worth of discussions
11 about -- Those again, in your opinion, are all covered
12 under the Tri G agreement; is that right?

13 A. That's correct.

14 Q. And the -- You heard Mr. Chenault testify
15 this afternoon as well that his agreements with what he
16 said were Gary were all actually with Tri G Enterprises;
17 is that right?

18 A. That is correct.

19 Q. And you signed them as president of Tri G.

20 A. That is correct.

21 Q. And so the agreements that Tri G has with Mr.
22 Chenault's company are -- They include the creative
23 works that Gary had that he was publishing and doing
24 things with Mr. Chenault.

25 A. Correct. And the copyright was in Tri G

1 Enterprises' name and published in his book.

2 Q. And you are the sole owner of Tri G
3 Enterprises?

4 A. That is correct.

5 Q. And that has been consistent since it was
6 formed in the late 80's?

7 A. That's correct.

8 Q. Mr. Chenault couldn't recall, um -- and
9 perhaps you could -- that when there was a payment made
10 to Gary, you know, as he said it to Gary, were those
11 payments made -- Were the checks written to Tri G?

12 A. They were written to Tri G.

13 Q. Okay. And then Tri G's agreement had --
14 whether or not or it had an arrangement with your late
15 husband, whether and how much he got paid from those
16 proceeds.

17 A. That is correct. So when the checks came in
18 from Troll Lord, Gary had co-writers. We had co-writers
19 to pay. So I'd have to give them their portion, and
20 that would be 50 to 60 percent.

21 And then Gary and I went by whatever was
22 stipulated under the Tri G agreement. And he got his
23 money, and I got my money, and we put it into our bank
24 account.

25 Q. And so as an example -- And I know this is a

1 very poor example, but if there was a thousand dollars
2 paid to Tri G --

3 A. Correct.

4 Q. -- give me an example of how that would have
5 been split up.

6 You said -- you just mentioned some other
7 people that may have had to have been paid by Tri G.

8 A. Right. So if there was a co-author, I would
9 have to see whether that's 50 or 60 percent of that
10 money.

11 And then the remainder I would split between
12 Gary and I, except we had some expenses, stuff I had to
13 take out. Then I would take out the expenses for us and
14 then, you know, we would split it then.

15 Q. So in my example, if there was a thousand
16 dollars that came in, the expenses would have been paid?

17 A. Yes.

18 Q. The co-author or other author would have been
19 paid a percentage?

20 A. That's correct.

21 Q. And then the remainder would have been split
22 between -- or remain with Tri G or paid to Gary.

23 A. Well, paid to Gary and then paid to me. So
24 out of Tri G, one of us would get a check, and so then
25 we would deposit those checks into our joint bank

1 account.

2 Q. Okay. And at the time of Gary's death, did
3 you -- were you the 100 percent owner of Tri G?

4 A. Yes.

5 Q. And Tri G was formed prior to your marriage --

6 A. That is correct.

7 Q. -- to -- Let me finish my questions, please.

8 A. Oh.

9 Q. And -- and so the premarital agreement that
10 was Exhibit Number 3 -- That would have been one of the
11 items of property -- Tri G, the entity, would have been
12 one of the items of property that you brought to the
13 marriage.

14 A. That is correct.

15 Q. And that remained your individual property
16 during the course of your marriage and then until Gary
17 passed away.

18 A. That is correct.

19 MR. JOHNSON: That's all I have, Your Honor.
20 Thank you.

21 THE COURT: Mr. Koch?

22 MR. KOCH: I have nothing.

23 THE COURT: Okay. Ms. Gorn?

24 MS. GORN: Um, just like two small things.

25 EXAMINATION

1 BY MS. GORN:

2 Q. Um, you just testified that you had always
3 been the sole owner of Tri G. Correct?

4 A. Well, when it was incorporated, it was 10
5 percent went to Gary, and then later that 10 percent was
6 given to Alex. But I always had maintained control of
7 it.

8 Q. But you haven't been able to provide us any
9 evidence or any solid dates on when Gary stopped owning
10 that 10 percent, correct?

11 A. No. He gifted it to Alex. I don't even know
12 if I'll get the paperwork on it any more.

13 Q. So that would have been after the date of your
14 marriage though, correct?

15 A. It would have been after we had Alex.

16 Q. So at the time of your marriage, Gary was
17 still owner of Tri G.

18 A. At the time of our marriage -- I'd have to
19 look back at the incorporation papers and everything. I
20 really -- I can't answer that off the top of my head.

21 Q. And Tri G actually as an enterprise ended in
22 1998, correct?

23 A. I -- That is the date that I've been given.
24 I really would need verification of that or
25 documentation. I just can't remember that off the top

1 of my head.

2 Q. You testified that the will was confidential,
3 and you knew it was confidential.

4 If that's true, why would you have given it to
5 TSR in 20 -- roughly 2015?

6 A. They had asked for it in document discovery.
7 Both of them.

8 Q. And -- And you thought it was invalid.
9 Correct?

10 A. That is correct.

11 Q. So did you signify in your discovery request
12 that it was invalid?

13 A. I -- I don't know what Jeff Brown did.

14 MS. GORN: I have no further questions.

15 THE COURT: Redirect?

16 MR. JOHNSON: No, Your Honor.

17 THE COURT: Anything?

18 MR. KOCH: No, Your Honor.

19 THE COURT: All right. You may step down.

20 Thank you. Any more evidence?

21 MR. JOHNSON: No, Your Honor.

22 THE COURT: Mr. Koch, I -- You're not an
23 advocate, so I'm summing you have no burden. I'm not
24 asking you, but I just want to make sure the record is
25 clear, you're not calling any witnesses.

1 MR. KOCH: Your Honor, I'm not calling any
2 witnesses.

3 MR. JOHNSON: For the record, I guess one
4 housekeeping, Your Honor.

5 THE COURT: Sure.

6 MR. JOHNSON: Now I would offer Exhibit 105
7 into evidence. I don't believe that it was received
8 before for lack of foundation, and now we've established
9 that Ms. Gygax created that.

10 THE COURT: The list Ernie signed for?

11 MR. JOHNSON: Pardon me?

12 THE COURT: The list Ernie signed for?

13 MR. JOHNSON: That's correct.

14 THE COURT: All right. Any objection?

15 MS. GORN: I won't object to the fact that
16 it's a list that she says she made. But as to what
17 things were actually turned over and the validation with
18 Ernie's signature, I object to those things.

19 THE COURT: Mr. Koch?

20 MR. KOCH: I have no objection.

21 THE COURT: All right. It's received. The
22 weight again is for me. Do you have rebuttal evidence?

23 MS. GORN: No.

24 THE COURT: All right. So the record is
25 closed. I've read obviously, the briefs. Do you have

1 any specific argument you wish to make?

2 MS. GORN: I have lots of arguments I wish to
3 make. Do you want me to keep it brief though? Because
4 we're not doing closings so --

5 THE COURT: Yes.

6 MS. GORN: All right. So I will say this
7 succinctly as possible.

8 First, we talked about the first thing that
9 needed to be proved which is that the will is valid.

10 The testimony from Alex Gygax is very
11 credible. He says he recalled in detail, my dad called
12 me down there. They were sitting together. He said,
13 this is my last will and testament, and he said he
14 needed another witness. And we signed it.

15 And so that meets the statutory requirements,
16 and it is not required by statute that it be signed on
17 every page. Is not required that every mere formality
18 be complied with.

19 So Mr. Gygax routinely signed his name on some
20 documents that have been put into evidence, with the
21 date being first the day and then the month and then the
22 year.

23 So while it says, 11, and the next part is
24 left blank, and then it has the year, it's a fair
25 determination for the court to make that he meant to say

1 the 11th of July. And the fact that the month is not on
2 there does not fail. The witness signature also bears
3 the date of the 11th, the same year or July, and they
4 are consistent.

5 So to the extent that, you know, it may not be
6 what us lawyers would like to see; a flawless document,
7 it certainly legally is sufficient. The effect of the
8 fact that the two signatures were witnessed by
9 beneficiaries under the will does not invalidate the
10 will. It invalidates their gift, beyond what they would
11 have received in the statute. So essentially they can't
12 benefit more from witnessing a will than they would
13 have, had he died intestate. So the will is -- is
14 valid.

15 The subjective testimony of Mrs. Gygax is just
16 that. It's -- You know, it's awfully convenient to say
17 now that well, I didn't sign it then, and I didn't see
18 them. Alex certainly provided credible testimony to the
19 opposite.

20 I'm not sure what impact, you know, the
21 testimony about when the children have -- would have
22 received it. I'm not really sure of the effect of that.
23 But what I would say is that Luke denies that he ever
24 saw it. He denies this agreement with the TSR
25 litigation. He admits that he received it after being

1 notified by Tom DeSantos.

2 And what the facts show is that as soon as he
3 did receive it from Tom DeSantos, he immediately
4 contacted an attorney, filed this action. So if he
5 would have seen it sooner, obviously he stands to
6 benefit under the will. It makes no sense why he
7 wouldn't have filed it when he first discovered it.

8 So I do not -- I believe that the court
9 should find that Luke's testimony as to when he received
10 notice of the will be credible.

11 In terms of whether or not the estate is over
12 \$50,000, while the court is likely unable to get an
13 exact dollar figure on the value of the estate, the
14 testimony has been that the intellectual property is in
15 the many, many millions, um, and that the personal
16 property is worth, you know, upwards of 1 million
17 dollars. There -- Ms. Gygax testified that there's
18 already been \$280,000 of personal property sold by Paul
19 Stornberg and another \$100,000 painting that she sold
20 outside of that.

21 So the most valuable items in that personal
22 property is the actual tangible images in terms of
23 tangible physical property. I think that there is a
24 dispute about -- assuming the will is valid -- who --
25 what is considered to be part of the collection that was

1 to go to one of the children, um, participating in
2 imaginative fiction.

3 Luke's testimony and his explanation of what
4 books are, in terms of games makes -- makes that
5 paragraph make sense. I was struggling to understand
6 why he said library and gaming material, but the library
7 is books, and the books are the games. So the gaming
8 material -- That all goes as one package. And Gary's
9 last wish was for that package of gaming materials and
10 books and those things to go to one of his children
11 that's been pursuing this line of work.

12 So the argument that the manuscript is some
13 how Gail's property is in direct conflict with the
14 evidence and the provision in Gary's will asking that
15 that go to his children.

16 The argument about the other tangible property
17 and whether or not that was transferred to Gail via the
18 1986 agreement -- The law explains that when you have a
19 document that's clear on its face, you need not look at
20 other -- at other outside agreements. So the 1988
21 agreement says multiple times that this is the sole
22 agreement for this subject matter; the subject matter
23 being the couple's personal property.

24 THE COURT: Can I correct you? Do you mean
25 the 1986?

1 MS. GORN: The 1988 agreement says that the --
2 that it's the sole document that should be considered
3 when construing their property. The premarital, the
4 1988 premarital agreement.

5 THE COURT: Okay. Not the transfer.

6 MS. GORN: No, no. The transfer -- The
7 premarital agreement says when you are dealing with our
8 property, this is all we want you to look at and
9 everything else we've done before is hereby superceded,
10 waived, merged. Those words have meaning. And we would
11 have a much clearer picture of what that meaning was if
12 we had Exhibits A and B.

13 THE COURT: Let me stop you for a second. Mr.
14 Koch, could you do me a favor and bring me the exhibits
15 that are -- that are at the desk? Thank you.

16 All right. Returning to that and I'll let you
17 finish -- I believe that's Exhibit 3.

18 MS. GORN: So -- So at multiple points in
19 Exhibit 3, the premarital agreement, it references that
20 this agreement is intended to be the sole agreement. It
21 talks about the purpose of this agreement being that
22 Gary could provide for Gail and for his prior children.
23 It expresses that that is the intent.

24 And then it says in here that, you know, the
25 things 1983 and before go to the kids, the things 1983

1 and after go to Gail.

2 And then it says in the -- the merger clause,
3 at the very end, that this is the entire agreement and
4 that all other agreements, representations, and
5 warranty, express written, oral, everything that they
6 have discussed with respect to their property is
7 incorporated -- and the exact words -- all prior and
8 contemporaneous conversations, negotiations, agreements,
9 representations, and warranties, with respect to the
10 subject matter hereof are waived, merged herein and
11 superceded hereby. Those words have meaning, and they
12 have significance under the law.

13 And this is a fully incorporated document
14 concerning all property of the parties. And the only
15 way that it can be read to be nonambiguous is for it to
16 have incorporated and merged the 1986 agreement.

17 They have the same purpose. They involve the
18 same property. And every other agreement that Gary
19 executed after 1988 would be in conflict with the 1986
20 agreement because he gave away things in his 2006 will
21 that supposedly would have been Gail's under the 1986
22 agreement. He gave away things in the 1988 agreement
23 that supposedly would have been Gail's under the 1986
24 agreement.

25 Now, Gary isn't here to tell us whether or not

1 the 1986 agreement was incorporated or merged or
2 superceded by this agreement. What would have done that
3 are the -- the Exhibits A and B that are conveniently
4 missing that would have itemized what Gary's property
5 was.

6 And it's Gail's testimony that they were never
7 done, and it's Gail's testimony that her and Gary agreed
8 that this had nothing to do with that prior agreement.
9 But that goes to -- I understand the dead man's statute
10 has been abolished which is why the legislature created
11 the separate instruction on bias because that needs to
12 be waived when construing, you know, statements that
13 supposedly the decedent said.

14 So Gail has been shown at multiple times
15 throughout this, this testimony that always was a
16 secret. It's always not quite what it appears. You
17 know the -- the statements of the will is confidential.
18 I mean, there's literally a statutory provision that you
19 have to file a will. So how can it be confidential?
20 I'm not sure other than that if it's not convenient if
21 it's not brought to light, then this needs to be
22 confidential.

23 So I mean, I would urge this court to find the
24 self-serving testimony regarding the validity or I guess
25 the impact of the 1986 agreement, I would be -- I would

1 urge the court to be suspect of Gail's intention.

2 I think that the greater weight of the
3 credible evidence shows that it was superceded and
4 merged into this 1988 agreement because everything Gary
5 did thereafter shows that it would have gotten
6 incorporated here.

7 Um, so for those reasons, I believe that the
8 tangible physical personal property is a part of the
9 estate.

10 The intellectual property -- It's important
11 that the court understand that the -- once an item is
12 created, by law, there is an automatic copyright that
13 goes into place. If Luke draws a picture right now,
14 there is a copyright. That copy -- There's nothing
15 that needs to be done for that to exist. There is no
16 affirmative action that needs to be had.

17 The registration of a copyright is a
18 formality. It's a protection, an extra layer of
19 something that you can do to be sure that nobody
20 infringes upon your right. But it's not required. So
21 when you have something like the manuscript, you have
22 the tangible competent which is the actual item, and you
23 have the automatic copyright which is the intangible
24 personal property. That copyright can only be
25 transferred by law, by a specific provision in writing

1 that transfers that copyright.

2 So it has to be specific to that item. So
3 without that, there's no transfer. So by virtue of, you
4 know, just like when Paul Stornberg sells something, as
5 I said it doesn't automatically come with the copyright.
6 That is retained by the author.

7 In this case even if Gail -- even if you are
8 persuaded that Gail owns the physical copy of the
9 manuscript, those copyrights did not transfer, absent
10 specific writing that that component of the property
11 transfers.

12 So it's important that we understand what's
13 required to transfer a copyright and the fact that these
14 are inherent property qualities.

15 So the Tri G agreement -- That is what Gail
16 relies on. She relies on that 1986 agreement again,
17 which because it does not in writing say that copyrights
18 will be transferred is an ineffective transfer.

19 The next transfer that Gail relies on is the
20 1990 -- excuse me -- the 1994 Tri G agreement. The 1994
21 Tri G agreement as Gail testified to, was nonexclusive.
22 This agreement was a -- or excuse me -- was inclusive.
23 Her testimony was that was exclusive. She looks -- she
24 purports that it is a transfer of ownership. The
25 document itself has a term on it from 1994 to 1999. If

1 I sell you a house, you do not have to renew that
2 ownership. This was not a transfer of ownership. It
3 does not list anywhere the exact properties that were
4 being transferred.

5 Again, for a transfer of ownership and
6 copyright, you have to identify what exactly is being
7 transferred.

8 So the agreement -- I'm sorry. I just want
9 to go to it. The agreement would have expired in 1999,
10 at the latest, um, because it is a licensing agreement,
11 not a transfer of ownership and because an exclusive
12 licensing agreement cannot be renewed orally. Her
13 testimony is that well, he just kept doing it. Again, a
14 non or -- excuse me -- an exclusive licensing agreement
15 needs to be transferred in writing. Therefore, anything
16 that would have been done after 1999 would not have been
17 subject to the terms of this agreement.

18 So also based on Gail's testimony that -- or I
19 don't believe there was testimony -- credible testimony
20 from Gail that she complied with the payment terms in
21 this agreement.

22 She testified she didn't make any payments to
23 the estate. Steve Chenault testified that he made
24 payments to Tri G and that works were produced after
25 Gary's death. One was received by the estate after

1 that.

2 The other thing with the Tri G agreement is
3 that it specifically states in paragraph F that use of
4 the name is not transferred to Tri G. So it doesn't
5 transfer ownership of the IP, and it doesn't transfer
6 use of the name.

7 It also clearly states that upon termination
8 of this agreement that all works that were not published
9 or developed then revert back to Gygax; again signifying
10 that's not a transfer of ownership.

11 So what exactly Tri G owns under this, um,
12 Gail hasn't established that. I had asked what did --
13 what exactly did TSR -- or excuse me -- what exactly did
14 Tri G, you know, produce or develop during those times
15 and we have yet to have those specific works identified?
16 So what exactly they own I'm not sure, but what I do
17 know is that this is an exclusive licensing agreement
18 that expired and or was breached prior to expiration.
19 So that is not a valid transfer of the specific
20 copyrights.

21 So back to the value question, I think it's
22 important to keep in mind what things likely belong in
23 the estate to know the value.

24 So are those reasons I think that the
25 manuscript which the testimony was that it was anywhere

1 from 500,000 to a million is part of the personal
2 library which is to go to the children as part of the
3 estate.

4 The other thing that's part of the estate is
5 the ownership of at least the bulk of intellectual
6 property. Everyone testified that kind of this holy
7 grail IP of the manuscript. Parts of it have been
8 published but not the whole thing. Per the Tri G
9 agreement but whatever that -- that component is that,
10 you know, Tom DeSantos testified he wants to sue to
11 create this universe that he's looking at being in the,
12 you know, the hundreds of millions of dollars, that is
13 part of the estate.

14 So for those reasons, I think that the value
15 question -- While we don't have an exact number, it
16 certainly far exceeds the \$50,000 threshold.

17 I have thought about who should be appointed
18 personal representative. Gail should not be appointed.
19 I think that Gail's actions in this that have been
20 proven in this according to the testimony are that
21 she didn't file the will. She told Tom DeSantos to
22 pretend he hadn't found the will, and she was certainly
23 angry that he did. So I think that based on her
24 obligation to fulfill her duties statutorily, and as
25 personal representative, makes her disqualified for

1 acting in that capacity going forward.

2 There's been testimony about being a veil of
3 secrecy. We've been trying to get to this point for
4 over 3 years now with a constant game of hide the ball.
5 So I don't think that that would be a good position for
6 her to be in, and the testimony proves that.

7 Luke testified that he's not necessarily
8 interested just because he lives out-of-state, and while
9 he's capable, that may not be the best role for him
10 either.

11 I think Attorney Koch has done a fine job, and
12 he's already knowledgeable about this case. I think
13 it's Petitioner's position that he would be a good
14 person to continue in that capacity, should you find the
15 will valid and that the statutory minimum hasn't been
16 met. And with that I will rest.

17 THE COURT: All right. Mr. Johnson?

18 MR. JOHNSON: Thank you, Your Honor. So the
19 entire two days we've spent boils down to, according to
20 her -- Attorney Gorn and her client, that Gail's actions
21 should disqualify her as a personal representative. And
22 let's look at the actions of Gail.

23 In 1986, her husband -- her soon-to-be husband
24 transferred personal property, all of his personal
25 property, comprehensive transfer per Exhibit 2. 1986.

1 In order for -- Now, they argue that the -- this is an
2 agreement, and therefore, is voided out somehow by
3 virtue of the 1988 premarital agreement. The premarital
4 agreement, Exhibit Number 3, is just that. It's a
5 classification agreement. The whereas clause tell us
6 what the subject matter of the agreement is. On page 2,
7 it says it's to define each party's rights in the assets
8 and income of the other. It does nothing to void out a
9 unilateral transfer made by the decedent, signed by the
10 decedent, not signed by Gail Gygax. This was a gift.

11 There's no testimony to the contrary. The
12 only mechanism that Attorney Gorn and her client and
13 quite honestly the court would have to bring any
14 personal property into the estate would be to void out
15 that agreement.

16 This was a classification agreement. It
17 basically said to each of them, what I bring to the
18 marriage is mine, and what I bring to the marriage is
19 mine. What's mine is mine, and what's yours is yours.
20 And if we get divorced, then what's mine is mine, and
21 what's yours is yours. Very -- It's a standard
22 provision. There's nothing that would allow again, the
23 court to void out a prior transfer that is a completed
24 transfer signed by the decedent, almost 2 years earlier.

25 Therefore, again, the -- as we indicated, what

1 were Gail's actions? She signed the premarital
2 agreement with her second husband. You heard testimony
3 that this gentleman had just gone through a significant
4 divorce action. Acrimonious divorce. He has children
5 from a prior marriage.

6 They -- He -- His soon-to-be second wife is
7 pregnant with their child. Is it unusual or is it out
8 of the realm of possibility that in a second marriage,
9 parties are going to want to classify their properties?
10 Absolutely not.

11 It's exactly what they should have done. They
12 had lawyers doing it for them on each side, and there's
13 nothing that says what they're bringing to the marriage
14 is anything other than their own individual property.

15 And on June 16, 1986, Gary Gygax transferred
16 all of his personal property, including the -- this
17 dungeon and all of these various things, books and
18 everything. It says everything in there. We went
19 through those things. And again, nothing was done to
20 the contrary from that day forward, to the date of his
21 death.

22 We have corroboration that that was Gary's
23 intention from the testimony of Paul Stornberg. He had
24 a conversation with the decedent that, you know, on his
25 front porch, that he left this collection to Gail to

1 take care of her.

2 He testified that prior to his death, these
3 things have been transferred to Gail. That's all he
4 had. He didn't have any life insurance any more, he
5 didn't have real estate. He didn't have a bank account,
6 other than a joint account with his spouse. He didn't
7 have an IRA. He didn't have a pension or something like
8 that. Nothing. This is what he had, and he transferred
9 it to her to take care of her, and their soon-to-be-born
10 son in 1986.

11 Nothing was -- was testified to to the
12 contrary. And the classification agreement or marital
13 agreement did nothing to unwind it. It can't unwind it.
14 That's like saying I deeded my house to the court, and 2
15 years later I signed an agreement with the court, and
16 some how that voided a deed. That was a completed
17 transfer in 1986.

18 Now we move to the other corroboration. You
19 heard the decedent's son testify this morning which
20 Attorney Gorn just said, he was very credible. Well, he
21 was very credible, and he also said, at a very early age
22 I was told, I was told that the property was signed over
23 to Gail to protect them from lawsuits. This is at a
24 time when not only Mr. Gygax in 1986 -- He'd been
25 through an -- or was going through an acrimonious

1 divorce. He's coming off a lawsuit where his company
2 was taken from him, according to his son, Luke and spent
3 hundreds of thousands of dollars on attorneys, and they
4 were concerned about being sued.

5 And there are things going on, and so he did
6 it. It was done, and it's over. And so -- And as Alex
7 testify, the property was signed over. And he knew that
8 from a very early age. And there's nothing we've heard
9 to the contrary, um, for the past 2 days.

10 So the personal property to me, again, it's
11 simply not part of the estate. In order for, you know,
12 Attorney Gorn and her client to again, bring that in,
13 they have to first say well, the '86 thing is void
14 because we merged the agreements back in '88. Well,
15 that -- there's no legal sense to that type of argument.

16 Next, we have the Tri G agreement with respect
17 to this intellectual property. And in that document,
18 it's pretty clear again, the document's signed by the
19 decedent here that he's assigning all of his
20 intellectual property rights over to this company called
21 Tri G. We heard -- You know, they tried to argue that
22 Tri G doesn't exist any more as a corporation. It
23 got -- it got dissolved in 1998.

24 But then again, we heard Mr. Chenault testify
25 today that he was dealing with Tri G right up until the

1 day he died, and he thought he was making payments to
2 Gary. But when push comes to shove, the actual contract
3 that he had was a contract with Tri G. It was not a
4 contract with Gary Gygax, the decedent. And that's
5 because Gary Gygax had assigned all his rights in the
6 intellectual property and all of those things in Tri G,
7 since 1994 when that document was created.

8 And again, the only thing to the contrary is
9 again, the -- the parties here saying that this document
10 has to be somehow invalidated or terminated, or it
11 wasn't, you know, continued by mutual consent.

12 Well, obviously it was continued. We have an
13 unbiased witness that was publishing with the decedent,
14 saying he was paying Tri G. So again, there's nothing
15 to void that agreement out.

16 And so all of that leads up to at the time
17 Gary passed away. Yes, we have put forth a position
18 where my client believes and still believes to this day
19 that that 2006 document was invalid.

20 We've had testimony that it was a draft,
21 according to her. Yes, it was signed by the decedent.
22 Yes, it was signed by her. Yes, it was, um, witnessed
23 by her son, Alex, as well.

24 But again, her belief that it was invalid, you
25 know, because it was a draft, according to conversations

1 she had had with her late husband.

2 She put forth the 1990 will, but again, all of
3 that -- none of it was necessary to probate because
4 again, at the time of Gary Gygax's death, all of the
5 personal property had been assigned to him. They had a
6 joint bank account that would have automatically
7 transferred to Gail, without the necessity of probate,
8 without the necessity of looking at any will.

9 And then we have -- Those things happen by
10 operation of law. And something, in terms of the
11 intellectual property, right up until the day he died,
12 he was dealing with and had assigned that to the Tri G
13 entity.

14 And again, there's no dispute, not one
15 scintilla of evidence, that the entity Tri G owned 100
16 percent by Gail Gygax.

17 And again, an entity that was formed and
18 continued prior to the time they got married, part of
19 the marital agreement that classified Tri G as her
20 individual property. So it stayed her individual
21 property.

22 So there again, there would have been no need
23 to probate anything because all of those assets would
24 have been under the Tri G arrangement.

25 Personal property had already transferred.

1 There was nothing else. Mr. Gygax didn't have a home
2 titled in his name. He didn't have any other assets.
3 The -- He didn't have any life insurance, any of those
4 things. So the necessity, you know, they like to allege
5 and say that it was secreted or, you know, that she
6 intentionally hid it, yet she testified she provided
7 that will to the kids on at least two different
8 occasions.

9 Now, we have Mr. Gygax who's the Petitioner
10 here, indicating that he wasn't aware of it until Tom
11 DeSantos, you know, presented it to him in some -- like
12 2019 or '18 or '19, whenever that would have been. We
13 believe it happened two times before, but the
14 necessarily of providing it isn't really crucial to
15 this. But the point is on -- on when it was provided,
16 and more importantly, is in the Exhibits 103 and 104,
17 you know, somehow we want there to be a belief that Gail
18 Gygax didn't own the intellectual property, yet we have
19 an entity, TSR, that Mr. Lucion Gygax and his brother,
20 Ernie, are a shareholder an officer of those -- that
21 company who got into a trademark dispute with my client,
22 Gail Gygax.

23 And that testimony and the withdrawal of that
24 action -- There is statements made in that agreement
25 that acknowledge TSR, a company that he's an owner of,

1 acknowledges that Gail Gygax and her trust are the
2 owners of all intellectual property. That's what the
3 agreement says.

4 It's not something that, you know, now he
5 wants to say that well, I didn't participate in that
6 because I didn't agree with it. Well, you know what?
7 You owned the company, and you settled the dispute.
8 They have entities all along. You heard Mr. Chenault
9 testify we have entities created to protect against
10 personal liability.

11 Well, you know, did -- The testimony in all
12 due respect to Mr. Lucion Gygax, the fact that he can
13 sit here and testify that he wasn't an owner of that
14 company -- I'm sorry. It -- it just doesn't fly right.
15 And he had knowledge of this. He acknowledged he saw
16 the settlement agreement, and quite honestly, they have
17 done nothing since to dispute the trademark or anything
18 else.

19 So those statements -- You know, Ms. Gorn,
20 you know, argued very well that, you know, words have
21 meanings. Well, these all have meanings. The documents
22 that I've said and that we retained the personal
23 property is signed by the decedent. The marital
24 agreement is signed by both parties. There's an
25 agreement. The 1986 document is a unilateral transfer,

1 a completed gift.

2 There's nothing in the language of that
3 document or that we've heard for 2 days that would give
4 the court any reason to find differently.

5 Thus and again, talking about this 2006 will,
6 there's again, no testimony, not any testimony that sets
7 a value on the personal property items that would have
8 or should have transferred, um, if that document is
9 found to see whether or not those are -- are valued at
10 more than \$50,000. But we also have testimony that she
11 did carry out those transfers by giving the children
12 those items, as soon as 3 months after and that some
13 she's still hanging on to and has for her son, Alex.

14 There's no secreting. There was no assets to
15 transfer that exceeded \$50,000; therefore, there was no
16 will probated at the time. And with respect to the
17 intellectual property, again, we don't really have --
18 We have a lot of numbers being thrown around that, you
19 know, something's worth \$80 million dollars or could
20 create a game worth \$80 million dollars.

21 But that, you know, as we boil down what that
22 actually is worth inside the estate, first of all,
23 there's been no specific identification of any
24 intellectual property that -- that is owned by Gary
25 Gygax, Number 1. Not one specific piece of property

1 that could be and should be probated.

2 Secondly, we don't have any valuation that
3 tells us what that is and whether it exceeds \$50,000,
4 such that it would be necessary to go through probate.

5 And these things are again, from our position,
6 from Gail's position, what her actions showed is he
7 didn't have any personal property because it all had
8 been given to me. In 2008 when he died, all of the
9 intellectual property that he'd been working with
10 through Tri G was all -- in that entity was all mine.
11 There was nothing to probate.

12 There's nothing that does anything or says
13 anything that secrets this agreement. She did what the
14 law required, and there was no probate necessary.

15 And again, whether the court finds this will
16 valid; again, our position is that it's a draft and
17 shouldn't have been -- Yes, she signed it. She says she
18 signed it after he passed away. There's conflicting
19 testimony on that. And whether -- You know, there's
20 indications that it's not signed on every page. So
21 there's lots of reasons. It's red and pink and black
22 ink to show it's a draft. You know, the court has to
23 make a legal determination on that.

24 But regardless of that, what will they find if
25 they find that will to be valid? There still aren't any

1 assets to probate.

2 THE COURT: All right. Hold on. One second,
3 Mr. Johnson. Mr. Koch?

4 MR. KOCH: Yes. I can stay past 5.

5 THE COURT: Can you also make an argument?

6 MR. KOCH: I will. Of course, Your Honor.

7 MR. JOHNSON: I don't that request was for
8 you.

9 MR. KOCH: I've sat here for two days, and
10 I've been involved with this case for a substantial
11 period of time. This is my position on this case. The
12 last will and testament, Exhibit Number 1, is valid.
13 It's the last will and testament of Ernest Gary Gygax,
14 Senior. It's signed by Mr. Gygax, and everybody who
15 testified said that was his signature. It's signed by
16 Alexander Gygax as a witness, dated 7/11/06. Everybody
17 admits that's Alex's -- he's been called Alex --
18 signature. It's signed by Gail Gygax. Everybody says
19 that's her signature.

20 She says -- And this is important. She says
21 that even though she dated it 7/11/06, she didn't sign
22 it until after Gary -- I'm gonna call him Gary -- Gary's
23 death. But yet she claims she gave this to the children
24 at a meeting right after the funeral. I don't know how
25 that's possible.

1 So I think this is a valid will. I think this
2 sets forth the intentions and the desires of the
3 decedent that we're supposed to carry out. That's our
4 job.

5 I don't think there's much argument to be made
6 with regards to that. I don't care if part of it's in
7 pink or green or blue. It's signed, and it's witnessed,
8 and it sets forth the intentions of the decedent, and
9 that's what we're supposed to do.

10 Now, we've got a lot of documents provided in
11 this case dating back to even before I was an attorney.
12 This goes back a long time. This is my thoughts on
13 these documents and their impact on the will and the
14 value which is the 1986 agreement was signed by Mr.
15 Gygax. I -- And it says that he intends to transfer
16 his personal property as of June 16, 1986 to the then-
17 Gail Carpenter. There's another divorce, this very
18 contentious divorce, that sounds like it went on 3
19 years.

20 I then read the marital property agreement.
21 And I -- It conflicts with Exhibit 2. Sorry. Exhibit
22 3 conflicts with Exhibit 2. Exhibit 3 says on page 13,
23 section 9 that Gary upon his death, he's leaving to
24 Gary's children from his previous marriage all of his
25 household possessions acquired prior to November 1,

1 1983.

2 Well, he didn't have anything if the 1986
3 document is valid.

4 So what I think happened is he drafted this
5 document, Exhibit Number 2, in the middle of the
6 divorce, thinking he was gonna protect assets. And they
7 moved in together, and they co-mingled all their assets,
8 all their personal property under the roof of their
9 house. And then Exhibit 3 was drafted, where he's
10 leaving as part of his testamentary provision, all of
11 his household possessions acquired prior to November 1,
12 1983.

13 I don't know why that would be in there if he
14 had none. Or if they intended to him to have zero.
15 That makes no sense to me.

16 And then there is on page 17, paragraph 19,
17 where it says all prior and contemporaneous
18 conversations, negotiations, agreements,
19 representations, and warranties with respect to the
20 subject matter hereof are waived, merged herein and
21 superseded hereby.

22 And I looked up in Black's Law Dictionary what
23 superseded means, and one of the words they use are
24 obliterated. And I think that's the word that we need
25 to use; that all prior agreements, representations are

1 obliterated.

2 I think the will's valid. The Tri G agreement
3 has -- was in effect for 5 years. After 4 years Tri G
4 Enterprises no longer existed.

5 Now, whether they just continue to represent
6 themselves as Tri G Enterprises, it was dissolved. It
7 had no legal, legal identity, no legal entity. But even
8 after 5 years, it's renewable annually by mutual
9 consent. Well, I believe that Exhibit 1, specifically
10 paragraph 4, revokes that mutual consent because he --
11 the will's valid. He signed the will, and it's
12 witnessed. He says he's giving -- I don't know what to
13 call her -- giving Ms. Gygax a life of estate for lack
14 of a better term in his name and in the end,
15 intellectual property. And that is supposed to go to
16 his children. He is essentially revoking his consent
17 for her to have the entire ownership of that
18 intellectual property after his death. That's how I'm
19 interpreting that provision.

20 The issue then becomes well, what's it worth?
21 We don't have to put a dollar figure on it today. The
22 whole inventory has been filed. What we need to do is
23 say, is it worth more than \$50,000? And we heard
24 testimony. We have Officer Hansen -- who looked like
25 he'd rather be anywhere else but on this witness stand

1 today -- testifying that Ms. Gygax said there was a
2 painting in the house worth \$50,000. We have Paul
3 Stornberg who testified he sold assets worth more than
4 \$258,000, that there this Castle Gray Hawk, kind of like
5 the Xagyg Castle, that's worth between half a million
6 and a million dollars. We had Tom DeSantos testify that
7 the World of Gygax is worth over a hundred million
8 dollars. All of those numbers are bigger than 50,000.

9 So I think the will is valid. I think the
10 will needs to be probated. I think the other issues are
11 gonna be fought out over what's in the inventory. We're
12 not here to decide that today. Or maybe if the court --
13 maybe the parties will come together and reach an
14 agreement to try to make some money instead of spending
15 it all on attorneys. Thank you.

16 THE COURT: Thank you. All right. I'm ready
17 to decide some of these matters today. Some cannot be
18 decided or I choose not to decide.

19 First, I've obviously listened to all the
20 testimony, reviewed all the documents, read all the
21 briefs, read all the documents. And while on some
22 level, this is incredibly complex, but it frankly, comes
23 down to a pretty simple, I think, analysis, in many ways
24 though too.

25 Clearly Mr. Gygax, Senior is an icon in this

1 area. Because of that and because of the value of the
2 things that he has created, it is clear from business
3 dealings he had with TSR, with the partners, with
4 spouses that people wished to be part of that and
5 accumulate, you know, some wealth.

6 I think associated with him or because of him,
7 and he has that ability to create wealth from his own
8 writings and design. Whether it's game design or map
9 design or writings, he has that ability.

10 And over the years, there's been testimony
11 that at some point, 5 million, something like that. And
12 I realize that was a long time ago, but it illustrates
13 his ability to create wealth. He gets this -- Going
14 through a divorce. And there is -- And I don't want to
15 call it an agreement. Mr. Johnson's right. It's not an
16 agreement. It is a gift that Mr. Gygax, Senior makes to
17 his then-friend, person he has a personal relationship
18 with, Ms. Carpenter, at the time.

19 And Mr. Koch's right. That is in the midst of
20 a divorce, and logically made, at least on his point of
21 view, puts it beyond the reach of -- I believe it's Mary
22 is the first wife. And so that's fine.

23 We then come to the next relevant document,
24 and that is the prenuptial agreement or -- Well, let
25 me -- Before I turn away from the transfer, it's

1 somewhat vague. It is -- lists with an attachment, a
2 number of items. I don't see for instance, that castle
3 listed in there or intellectual property. There's a
4 reference to many games perhaps and miscellaneous books.
5 But I'm looking at the value there. They're not very
6 high. So I'm assuming it has nothing to do with
7 intellectual property.

8 Then we turn to, as we said, the premarital
9 agreement. It's Exhibit 3. So 2 was the transfer, and
10 then the issue is what is the effect of Exhibit 3 on
11 Exhibit 2? And remember, that much of this by the way,
12 is in the context of trying to protect assets from
13 either a prior spouse or perhaps more importantly,
14 litigation that seemed to be looming at different times
15 with those associated with TSR and others. And so
16 they're trying to protect each other's assets.

17 This isn't needed if he doesn't have anything.
18 Mr. Johnson argues well, it divides what they do have.
19 But he doesn't according to Exhibit 2, the transfer,
20 except I guess maybe a few things that he would have had
21 accumulated between the time of the transfer and the
22 time of this agreement which was 2 years, I think, '86
23 to '88. Wouldn't have been very much.

24 And this is something they both agree to. It
25 is unfortunately, convenient that it doesn't include any

1 attachments. But Mr. Koch is absolutely right. We turn
2 to page 13. The testamentary provisions provides Mr.
3 Gygax's children from his previous marriage all
4 household possessions acquired prior to November 1 of
5 1983.

6 Why would she sign that if she knew she owned
7 those? Why wouldn't she be saying, well, wait. Gary,
8 don't -- You can't give those things to your kids.
9 They're mine now. Yet she signs, you know,
10 understanding that those will go to her stepchildren.

11 Moreover, at page 17, the entire agreement
12 provision doesn't just supercede agreements because Mr.
13 Johnson is right, that's not an agreement. It was a
14 unilateral gift. But that's why it's much broader than
15 agreements. To use Mr. Koch's definition, it
16 obliterates or eliminates all conversations,
17 negotiations, agreements, representations which is what
18 Exhibit 2 is a representation of. This is what I'm
19 giving you. And she signs it. She agrees to that.

20 Then we jump ahead to exhibit -- I've got 15.
21 But I think that's from the deposition -- the last will
22 and testament where everything goes to Gail. And
23 obviously, any other will that is valid would supersede
24 that. And that's clear from Exhibit 1. So I guess I'm
25 preceding it. I'm going to precede Exhibit 1, and I'll

1 get to that, but it will supersede then any other prior
2 will.

3 So before, perhaps I turn to the 1994
4 agreement then, I do find the will to be valid. It
5 complies with Section 853.03 of the Wisconsin Statutes.
6 It's signed by the beneficiaries. I understand that,
7 but Ms. Gorn is absolutely right on how that affects it
8 and does not invalidate the will.

9 I find it incredible that Gail says, well,
10 I -- yeah, I dated it that day, but I really didn't sign
11 it that day. I'm not sure under what -- in what world
12 that that's logical, especially, given that she claims
13 that she did show it to them -- Mr. Koch pointed that
14 out as well -- shortly after his death. If it had been
15 done shortly after death, I don't know why one child,
16 let alone multiple children, would just sit on their
17 hands and not say, well, can at least we have some of
18 these things?

19 Now, there's been some testimony that there's
20 an exhibit, I believe it's 105, the box of items that
21 were given to Ernie and he signed for apparently. He's
22 not here for either side, so it's hard to judge that.

23 And I can't hold it against Gail that he's not
24 here any more that I can hold it against the Petitioner.
25 It seems that either one could straighten that out. So

1 I don't want to speculate why he's not here.

2 But assuming it's true, it doesn't quite match
3 up to everything in Exhibit 1 which is the will. It's
4 hard to match that up. Some of it seems to, some of it
5 doesn't. So I don't know that everything was turned
6 over to Ernie that was specified in Exhibit 1 to go to
7 the kids. There's been testimony from both Alex and
8 Luke that they didn't get those things that were listed
9 specifically for them.

10 So I do find the will to be valid, and I do
11 find that it should have been probated. Even if we
12 assume in her mind that there were things that were
13 given to her to take care of, after Gary was gone, and
14 that's why there is -- in that will that there is some
15 -- a lot of residual things that go to her and assume
16 that what he is referring to, first of all, we need to
17 honor the wishes of the decedent, the person who -- who
18 had these things and is providing for them. We need to
19 honor his wishes.

20 Second, and ironically, she signed it. So we
21 should assume that she's read this, knew the
22 consequences of it and didn't go, I'm not signing this.
23 I own all these things. You can't give these to your
24 children.

25 So she clearly understood at the time, and

1 that's the best -- that's one of the best ways to judge
2 what she believed is that she didn't own the IP and all
3 of these other personal things, but only the residual
4 because she signed.

5 And then to corroborate that, I can only use
6 the word she hid it. She secreted it. She clearly
7 testified that when Tom looked at that, he was stealing
8 it. She called it theft. He had no right to look at
9 that. He had no right to take it. It was a theft.

10 She had turned it over to them, apparently to
11 look at whether title could be established for this IP.
12 It couldn't as Tom clearly testified to. And that's the
13 best evidence that she knew these things should all go
14 to the children is she didn't want them to find out.

15 I have to determine this on credibility. Her
16 credibility is awful. Her testimony was all
17 self-serving. Every time she wanted to conflict with
18 what was in the written word, she would say, well, I
19 know that what it said, but that's not what we meant.
20 That wasn't really our intent.

21 And I'm not here to say -- It's not like TV
22 where everybody's bad or good. I have no doubt that she
23 was a good wife to him and that they had a close
24 relationship and that he provided for them. Frankly,
25 this IP property or this intellectual property that is

1 now owned by the children, had she worked with them, she
2 had a life estate in it. She could have been making
3 income on it.

4 So it's not as though they are grabbing this
5 from her and saying, we want it all to ourselves. This
6 was -- could have been a joint issue, where for the last
7 is 15 years, this could have been developed to the
8 benefit of everybody, and to paraphrase Mr. Koch, to
9 make some money for the family, rather than to pay
10 lawyers in hindsight or greedily keep it so that it
11 didn't have to be shared with the children.

12 So, having found that, let me turn to why
13 doesn't this 1984 agreement or '94 agreement, the
14 contract, Exhibit 3, make this IP hers? Well, I look
15 for where IP is referenced. It's in the definitions at
16 the beginning. But otherwise to me I read this as
17 licensing, allowing Ms. -- Mrs. Gygax, through her
18 business of which Gary still owns 10 percent of at the
19 time of their wedding to market it, to license it, to
20 get it published.

21 But we see specifically -- this is on page 3
22 at paragraph 4F -- that it's not turning over likeness,
23 use of name, those things consistent with IP.

24 So to me, looking at page 4 where it lists Tri
25 G's responsibilities and rights, it's exactly what it

1 is; to market, develop these things, work with others to
2 get them published, advertising, whatever it may be, to
3 further Gary Gygax's world, but did not transfer the IP.

4 Moreover, even if it did, it expired after 5
5 years, was dissolved even a year before that. There's
6 no written agreement, and under parol evidence, all
7 contracts need to be in writing. There's nothing that
8 does extend this.

9 I agree that -- I'm just -- The gentleman in
10 Little Rock, Arkansas.

11 MS. GORN: Steve Chenault.

12 THE COURT: Chenault. Paid for or paid Tri G,
13 but he doesn't know. He doesn't have a copy of this
14 document. He doesn't know that it dissolved or that it
15 was never written extended. And maybe based on his acts
16 with Gary Gygax, it seemed like it was extended. Gary
17 never told him otherwise.

18 But again, the will trumps this. He is
19 revoking and withdrawing from this contract which he has
20 the right to do after the 5 years.

21 So for those multiple reasons, the 1994
22 agreement does not transfer IP, and if it did, she
23 acknowledged that that IP wasn't hers when she saw that
24 will as well.

25 The value clearly exceeds \$50,000. Even if we

1 assume all the residual is the things that, um, were
2 being sold on auction, we'll assume legitimately for
3 this argument, there's -- the subset of what's sold,
4 compared to what hasn't been sold is small. So clearly
5 there's more than \$50,000 worth of items there.

6 But assuming that's all hers -- I don't need
7 to decide that today because we're not doing the
8 inventory today. We know that IP of that castle is
9 worth half a million to a million and exceeded \$50,000
10 even back at the time of Gary's death, according to
11 their -- to the witness who frankly, I would
12 characterize kind of as a groupie of Gary and very fond
13 of Gail as well.

14 So I don't think that he was biased, in favor
15 of the Petitioner here. I think he cares deeply to a
16 great extent, as a true fan I guess, for Gary and Gail.
17 So while I question some of his testimony, I think that
18 the values for instance, he is sincere about and very
19 knowledgeable about. And therefore, because through the
20 testimony of the friend of hers that that castle
21 document that I find to be intellectual property, not
22 just personal property, exceeds that \$50,000 back then
23 this should have been probated.

24 Moreover there's testimony from DeSantos that
25 this could be worth much, much more. I don't know if I

1 can value it as hundreds of millions, but it's
2 potential. Potential doesn't mean everything. But sure
3 all of this could be sold -- all this intellectual
4 property could be sold. Somebody would be happy to pay
5 over \$50,000 for it.

6 So given that it's to be probated and that the
7 will should be carried out, the only issue is left for
8 me, I think to decide if Gary wanted Gail to be the
9 personal representative. And should I honor that wish
10 if I'm going to honor his other wishes?

11 And the simple answer to that is no. She has
12 abused any fiduciary care, concern for others. She's
13 tried to hide this will. She's tried to avoid it
14 being -- going through probate.

15 And I'll just say for any Court of Appeals
16 that reviews this, this isn't even close. Looking at
17 the credibility of the witnesses, she came across
18 completely incredible as to why this will was hidden,
19 why she signed it, why all these agreements don't matter
20 and how she owns the intellectual property. Is
21 completely aggravated by that will and her understanding
22 that is exhibited by her signing it and hiding it. That
23 is the best interest of what she means or what she
24 believed.

25 Having said that, if Mr. Koch's still willing,

1 I will continue to appoint him personal representative
2 for the purpose of determining inventory and where we go
3 next.

4 MR. KOCH: I am willing, except the problem's
5 gonna be, Judge, is paying the fees when we file the
6 inventory. I'm not prepared to write a check for a
7 million dollars or 1.5 million dollars to -- I'm not
8 sure what it's gonna be. I'm just not -- Or \$30,000.

9 THE COURT: Do you have a solution to that?

10 MR. KOCH: Well, I think some of the materials
11 need be sold and placed in estate. So I mean, 5 grand.
12 I have no problem writing a check for that. But --

13 THE COURT: I don't want and I'm ordering that
14 Gail not sell anything right now.

15 Nothing on the Exhibit 12 that weren't already
16 sold and 13 I'm prohibiting anybody from transferring.

17 MR. KOCH: I understand. I'm happy to do the
18 work. I just need a solution to that. That's the
19 problem that I have.

20 And I don't know if the court can order that
21 it be paid out of proceeds of the estate. That becomes
22 a cost of administration. I'm not sure if your register
23 in probate will accept that.

24 MS. GORN: I don't disagree with the idea of
25 perhaps liquidating some of the estate to get this to

1 the finish line.

2 My understanding from the statute is that the
3 personal representative has a lot of powers in terms of
4 kind of creating an LLC to manage, you know, like the
5 property interests, that there's the ability to sell
6 property with approval, as needed.

7 Um, I believe that there's a big issue on
8 attorney's fees here, outside of just the cost of the
9 probate. But it has been a lot of money on the
10 Petitioner to move this all forward, and I believe he's
11 entitled to some relief there, whether it come from Mrs.
12 Gygax and her share of things or however that comes.

13 But I mean, we're certainly in favor of
14 whatever needs to happen to get the rest of this moved
15 forward.

16 THE COURT: All right. Well, I think -- it's
17 5:30 -- we've made enough decisions for today.

18 The parties can talk, and I will just say this
19 to Mr. Johnson and Mrs. Gygax -- As I said I -- this
20 isn't cutting her out. There's potential money to be
21 made for everybody. If some sort of LLC or company was
22 created that could generate this IP income, she would be
23 entitled to some of that as part of the life estate.

24 And I think that was Gary's -- Another way to
25 take care of her is not just the things that could be

1 sold as the insurance is kind of a gift in Exhibit 3 I
2 think it was or 2. But he wanted her to have potential
3 income from this as well.

4 So I'm not interfering with that. I'm not
5 saying that she doesn't have that life estate. But she
6 didn't come to this with clean hands. So there could be
7 some, yes, allocation of attorney's fees, personal
8 representative fees. So -- but all those remedies, I
9 think we need to save for another day.

10 So I propose a new court date, with enough
11 time to give you guys some time to propose remedies.
12 And if it can't be agreed upon, then I do think we're
13 gonna need to brief that and argue that.

14 MR. KOCH: I'm willing to stay on as personal
15 representative.

16 THE COURT: Mr. Johnson, I know you don't
17 agree with my ruling, but does that sound like an
18 appropriate plan, given my ruling?

19 MR. JOHNSON: I understand, Your Honor, but
20 I -- I think also, just as a matter of procedure that
21 the probate statutes certainly allow the court to award
22 and allow attorney's fees as an expense of the
23 administration. So from the assets that eventually will
24 be in the estate. It's the -- You know, again, no --
25 There would be no expectation, you know, whether you

1 appointed my client or Mr. Gygax or continuing with Mr.
2 Koch, that that would be a personal expense that they
3 pay the fee. I think it -- his thing was more of a
4 practical one that there's no cash --

5 THE COURT: Right.

6 MR. JOHNSON: -- you know? And so -- But if
7 he's appointed as the personal representative, I believe
8 that he -- and which you've just done under the statute,
9 it gives him authority to sell estate assets which then
10 theoretically could be used to remedy the -- what we
11 just talked about and what we perhaps need to brief or
12 not brief. So --

13 MS. GORN: Your Honor, I would concede that at
14 this point, we would ask that any assets of issue should
15 remain in the estate for attorney's fees or anything.
16 But I think there is truly a logistical problem right
17 now, an actual problem, with getting the attorneys paid.

18 And I'm willing to continue work on this, but
19 my client is at his max. He can't continue infinitely,
20 nor should he have to. This should have been probated a
21 long time ago. He shouldn't have had to go through this
22 to this extent. If you can grant Attorney Koch the
23 power to liquidate some things to at least pay the
24 attorneys, in the meantime my client and his attorney
25 have concerns now I do have to pay.

1 THE COURT: Sounds like there's no objection
2 to that.

3 MR. KOCH: Thank you, Your Honor. And is
4 there any objection to me hiring someone? Because what
5 I'm gonna do is put it on facebook marketplace.

6 MS. GORN: I think we would agree that Paul
7 Stornberg is actually the best person to sell these
8 items.

9 MR. KOCH: I agree. I think that's what I'm
10 gonna do.

11 THE COURT: Yes. I think it's fair to Gail.
12 I think that's fair to everybody. However, before we
13 adjourn, I just wanted to do one round because I don't
14 know where we are appeal wise, but I don't like it when
15 people make arguments on appeal that were not raised at
16 the trial level.

17 So is there any other record you need me to
18 make?

19 MS. GORN: No.

20 THE COURT: Mr. Johnson?

21 MR. JOHNSON: No, Your Honor.

22 THE COURT: Mr. Koch?

23 MR. KOCH: No, Your Honor.

24 THE COURT: All right. If there's an order to
25 be prepared out this, Ms. Gorn, I ask this be prepared.

1 MS. GORN: Yes, Your Honor.

2 THE COURT: Do we want to set a date? Or
3 we'll just wait for the personal representative to -- or
4 any of the parties to contact this court, set a review
5 date?

6 MS. GORN: If Attorney Koch knows how long he
7 needs --

8 MR. KOCH: I don't have my calendar is one
9 problem today.

10 THE COURT: All right. Why don't we
11 internally review this 60 days, 90 days?

12 MR. KOCH: Yeah. Could -- I need an order
13 then. We're gonna need a revised order appointing me as
14 personal representative. I'm gonna need the domiciliary
15 letter so I can move forward with selling things;
16 otherwise I have no authority to be doing that. So 60
17 to 90 days would be fine.

18 I can get a report into the court before that
19 if the court wants. And I -- both counsel and I
20 communicate with them regularly, probably more than they
21 want. And I'm on various cases when I am PR's. So --
22 I don't know what's going on. I won't do anything
23 without notifying everybody.

24 THE COURT: All right. We'll internally
25 review without a court date for 90 days, with another

1 court date some time within that. I'm not holding you
2 to a specific date.

3 Send a letter, giving me a report. I trust
4 you with a company, a receivership or something. And if
5 the parties need to know something that they disagree
6 with, they can write me as well.

7 MR. KOCH: Absolutely, Your Honor. As I said
8 they'll probably know before then.

9 MR. JOHNSON: Thank you, Your Honor.

10 MR. KOCH: Thank you, Your Honor.

11 THE COURT: Thank you. Just want to make sure
12 we have all exhibits before we leave, but otherwise
13 we're off the record.

14 (The proceedings concluded.)

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STATE OF WISCONSIN)
) SS:
WALWORTH COUNTY)

I, Marilyn S. Annen, hereby certify that I am the
official court reporter for the Circuit Court, Branch 1,
Walworth County, Wisconsin, do hereby certify that the
foregoing is a true and correct transcript of all the
proceedings had and testimony taken in the above
entitled matter as the same are contained in my original
machine shorthand notes on the said trial or proceeding.

Dated at Elkhorn, Wisconsin, March 8, 2024.

electronically signed by
Marilyn S. Annen

Marilyn S. Annen
Registered Professional Reporter
Official Reporter