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JULY 3, 2007

THE COURT: The Court calls up for consideration the case of the United States versus Fincher. This matter comes on for hearing pursuant to this Court's Order -- actually, Amended Order -- dated and filed June 28 of 2007 in which the Court set forth in that Order certain areas it desired to inquire into on its own motion, and it directed that the Defendant, Mr. Fincher, appear and bring with him certain documents, and also directed that subpoenas be issued for certain other individuals to appear.

Is the United States present and ready to proceed?

MS. JOHNSON: We are, Your Honor.

THE COURT: Ms. Johnson, good morning.

MS. JOHNSON: Good morning.

THE COURT: Is the Defense present and ready to proceed?

MS. BLATT: Yes, Your Honor.

THE COURT: Ms. Blatt, good morning.

MS. BLATT: Good morning.

THE COURT: I'll inquire, too, if we have present in the courtroom the individuals the Court directed to be subpoenaed, Mrs. Linda Fincher -- Mrs. Fincher, are you here?

MRS. FINCHER: Yes.

THE COURT: Good morning. Ms. Carol Ann Hale?

1 MS. HALE: (Raised her hand.)

2 THE COURT: Ms. Hale. David Hale?

3 MR. HALE: (Raised his hand.)

4 THE COURT: Connie Fields?

5 MS. FIELDS: (Raised her hand.)

6 THE COURT: And Kenneth Fields?

7 MR. FIELDS: (Raised his hand.)

8 THE COURT: All right. Let the record show that the
9 individuals whose names were just mentioned have, in fact,
10 appeared.

11 Mrs. Fincher and Mr. and Mrs. Hale and Mr. and Mrs.
12 Fields, would you please stand and raise your right hands to be
13 sworn for testimony that I'll ask you to give in just a moment?
14 (THE WITNESSES WERE DULY SWORN.)

15 THE COURT: All right, thank you. Ladies and gentle-
16 men, those of you who were just sworn, you will be called as
17 witnesses here in just a few moments. Hopefully, we'll get to
18 this fairly quickly, but until such time as you are called as
19 witnesses, I'm going to ask that you remain outside the court-
20 room. We have arranged for you to wait in the jury room. There
21 are restrooms in there and, hopefully, you can be reasonably
22 comfortable there. You are being sequestered. I am asking that
23 you remain outside of the courtroom so that you cannot hear what
24 is taking place here in the courtroom.

25 While you are outside the courtroom, you are not to

1 discuss the testimony that you may give when you come in, either
2 before or after you have been into the courtroom, and that will
3 remain in place until the Court tells you otherwise. I assume
4 that I can release that rule as soon as this hearing is
5 completed, but I don't know for sure yet. So I'm telling you
6 now that you're bound by that rule, having been sworn as
7 witnesses, that you're not to talk about, among yourselves, the
8 testimony that you may give when you're brought into the
9 courtroom or testimony that you have given after you have left
10 out of the courtroom.

11 And after you have completed your testimony, we'll ask
12 that you wait in another area until these proceedings are
13 completed. And I don't think it will take very long, but I'll
14 please ask you to honor that instruction. It's very important,
15 because I'm interested in knowing what you can recollect about
16 the things that you'll be asked about and not, maybe, what you
17 may conclude from discussing the matter among yourselves. I
18 want to know what you recall to the extent that you do. So if
19 you'll kindly step out now.

20 Marshal, would you kindly show these folks to where
21 they may wait so that they can be called to come in to testify
22 when needed? And let the record show that the persons named are
23 withdrawing from the courtroom.

24 All right, Ms. Johnson, you did receive, did you not,
25 a copy of the Court's Order that I mentioned of June 28?

1 MS. JOHNSON: Yes, Your Honor.

2 THE COURT: And, Ms. Blatt, you did as well?

3 MS. BLATT: Yes, Your Honor, and also the Amended
4 Order.

5 THE COURT: Yeah, the Amended Order. That's the one
6 I'm interested in. All right, then I'd like to get right to it
7 by calling Mr. Hollis Wayne Fincher. Mr. Fincher, would you
8 please stand and raise your right hand and be sworn?

9 (THE DEFENDANT WAS DULY SWORN.)

10 THE COURT: Mr. Fincher, please come around and have
11 a seat on the witness stand, sir, if you don't mind.

12 HOLLIS WAYNE FINCHER, being called upon to testify, and having
13 been first duly sworn, testified as follows:

14 EXAMINATION BY THE COURT

15 Q. Mr. Fincher, good morning, sir.

16 A. Good morning.

17 Q. How are you feeling today?

18 A. Better.

19 Q. Better? Are you taking any medicine today? I think I've
20 asked you that several times before.

21 A. I take a blood pressure pill.

22 Q. Do you?

23 A. And a water pill. I didn't take the water pill. I don't
24 even remember whether I took the blood pressure pill or not this
25 morning --

1 Q. Okay.

2 A. -- to tell you the truth.

3 Q. Does the medication affect your ability to understand where
4 you are or what you're doing?

5 A. I don't think so.

6 Q. Don't think so? Do you feel like you understand where you
7 are and what you're doing today?

8 A. I'm pretty sure where I'm at.

9 Q. Okay. We've had a trial and we've had some hearings, and
10 you are represented currently by Ms. Shannon Blatt. Are you
11 still satisfied with her advice and her service to you as your
12 lawyer?

13 A. Yes, sir.

14 Q. And have you had a chance to visit with her about this
15 matter before you came here today?

16 A. Yeah. We talked a few minutes.

17 Q. Okay. Mr. Fincher, did you see the copy -- the Order that
18 I've mentioned here a couple of times, my Amended Order of June
19 28? Did you see that?

20 A. I don't believe so.

21 Q. Okay. Well, let me just mention to you what's in the
22 Order. I recited that on November 9th of last year, you had
23 completed a financial affidavit --

24 Q. Uh-huh.

25 A. -- to support a request for an attorney to be represented

1 you -- to represent you without cost to you, and in it, you
2 indicated you earned -- owned -- certain properties that had an
3 unknown value. The Order went on to recite that this Order --
4 this Affidavit, rather -- is a part of the paperwork that's
5 necessary and required under the Court's criminal justice plan
6 to provide adequate representation for people who are finan-
7 cially unable to pay for it, and so the only purpose, as I
8 mentioned in the Order, for completing that Affidavit is to
9 obtain legal representation at government expense because of
10 persons unable to pay for it.

11 I went on to say in the Order that on the basis of
12 that Affidavit which you had filed, an attorney was appointed to
13 represent you. That attorney, I believe, was Mr. David
14 Dunnagan, and I think he continued in representing you until
15 about December 13 of 2006, and at that time, according to my
16 Order, which is reciting the history of the matter, Mr. Dunnagan
17 withdrew because you had retained an attorney to represent you;
18 Oscar Stilley, as I recall.

19 A. Yeah.

20 Q. And that Mr. Stilley then continued and participated in the
21 trial. This went on until March 8, and at that time, Mr.
22 Stilley was allowed to withdraw, and then again the Court, based
23 on that financial affidavit I mentioned, appointed Ms. Blatt to
24 represent you.

25 The Order goes on to mention that there was a Pre-

1 sentence Investigation Report prepared after the jury returned
2 its verdict, and in the section of that report concerning finan-
3 cial condition, ability to pay, we learned -- I learned -- that
4 you had recently transferred this hundred and twenty acres to
5 your two daughters jointly by a Quit Claim Deed executed January
6 29, 2007, but that your wife had continued to live on the
7 property.

8 A. Right.

9 Q. And then at sentencing, I say in this Order, acting on the
10 belief that you had no significant assets, imposed a fine much
11 lower than that computed or advised under the sentencing guide-
12 lines, and that you continue to be represented by appointed
13 counsel.

14 Then I recite that following the sentencing, you moved
15 to be released on bond prior to reporting, and we had a hearing
16 on that and determined that that should occur, and allowed you
17 to post a bond for a hundred thousand dollars, and at that time,
18 in connection with getting that set up, I had asked to see a
19 copy of the Quit Claim Deed to see just what happened there, and
20 learned that when you had quit-claimed the property to your
21 daughters, you retained a life estate, you and your wife both,
22 in that property, and that had not been shown to the Court
23 before. We didn't -- I didn't know that before.

24 So I recite that these events that I just now kind of
25 reviewed with you called into question whether, in fact, you

1 were eligible for services under the plan, and I recite what the
2 plan calls for, and so on. So I said in the Order that because
3 of these things here, I wanted a hearing, and I wanted to talk
4 to you, and I also wanted to talk to your wife who had the life
5 estate retained, and also to your two daughters and their
6 husbands, who obviously are involved with that. So that is --
7 that's a thumbnail sketch of what that Order is. There's a
8 little bit more to it than that, but that's the essential part
9 of it, so I want to ask you some questions about how this
10 occurred, Mr. Fincher. Did you bring the tax statements like I
11 asked you to?

12 A. I believe Ms. Blatt has them.

13 Q. Okay. Well, we'll come back to that in a minute. Now,
14 again, I know sometimes you have a hearing problem. If you
15 don't under- --

16 A. I'm doing all right.

17 Q. Are you okay?

18 A. Yeah.

19 Q. Now, if you don't understand what I'm asking you at any
20 time, just tell me and I'll try to restate it. First of all,
21 that Affidavit, I have a copy of it here, and I want to show it
22 to you.

23 THE COURT: And I'm going to make this, counsel -- it
24 will be Court's Exhibit 1. Gail, do you have a sticker there
25 that we can put on that?

1 MS. GARNER: Yes, sir.

2 THE COURT: And, Kitty, you don't have an extra copy
3 of this, do you, so that we can --

4 MS. GAY: I can make one.

5 THE COURT:

6 Q. I don't want to take a lot of time to do that, but I want
7 to ask you some questions, sir, about that affidavit. It's
8 dated November the 9th of 2006. Do you recall executing it, sir?

9 A. I believe I did in the federal court jail there when they
10 come in there and asked me the questions.

11 Q. Okay. Now, I'll show it to you in a moment here, but did
12 you fill it out?

13 A. I don't remember.

14 Q. It doesn't look to me like you did.

15 A. I doubt it.

16 Q. I want to ask you about that, but -- well, she'll get back
17 with it so we can both have something to look at, and I want to
18 ask you some questions about that. But how did you come to
19 execute the Affidavit? Can you tell me that?

20 A. They asked -- they wanted to talk about that I would like
21 to have an attorney present, and --

22 Q. She is going to hand you now a copy of what I've called
23 Court's Exhibit Number 1. Do you have your glasses there where
24 you can see that okay? Now, it's my understanding, Mr. Fincher,
25 that that's -- that's the copy of the Affidavit that you

1 executed back on November 9, 2006. Does that look familiar to
2 you, sir?

3 A. It looks -- I see no reason why it's not. I --

4 Q. Well, look down at the lower right-hand corner there. Did
5 you sign that?

6 A. I believe so.

7 Q. You think so? And right above that, somebody has written
8 in "I believe that the info is true", I think is what that is.

9 A. I think I wrote that on there.

10 Q. Did you write that?

11 A. Yeah.

12 Q. Okay. Well, when you look up above it, the other writing
13 doesn't look like that's your writing, so --

14 A. No, they -- the lady stood out -- I was in the little jail,
15 and she stood out there and asked me the questions.

16 Q. Okay.

17 A. Then handed it to me for me to sign it.

18 Q. Why did you understand that you were filling this Affidavit
19 out? What was the purpose of it?

20 A. She wanted to know my history, my --

21 Q. Well, you said, did you not, just a moment ago that if they
22 were going to ask you questions, you wanted an attorney?

23 A. Yeah.

24 Q. Did you tell them that?

25 A. Yeah, I believe. I believe I did.

1 Q. All right, and --

2 A. And that's pretty well customary, I understood.

3 Q. Okay. Well, I guess, why would you -- did you believe you
4 could pay for an attorney?

5 A. I didn't know whether I could -- no. I had no money. I
6 didn't make the decision whether I was an indigent or not. The
7 Court made that decision.

8 Q. Okay.

9 A. All I did was answer the questions.

10 Q. All right, sir, but did you understand by answering these
11 questions you were indicating to them that you couldn't pay your
12 own attorney?

13 A. No. I just answered the questions that they asked me.

14 Q. Okay. Well, let's look at this question further here.
15 When you have down there -- and this is about a little bit below
16 the center of the page. It says, "Property. Do you own any
17 real estate?" And that's checked yes. And is that what you
18 told the lady?

19 A. Yeah. I told them I owned a hundred and twenty acres.

20 Q. All right, and is that true?

21 A. Yeah.

22 Q. Did you own any other real estate?

23 A. You mean land?

24 Q. Yeah.

25 A. No, I don't think so. Not that I know of.

1 Q. Okay, and how about the value? Did she ask you its value?

2 A. I told her I didn't know, that land had sold from the low
3 to -- the lowest I had heard several years ago, two thousand,
4 around in the neighborhood to four thousand, and that's --
5 that's all I knew about it.

6 Q. Two thousand?

7 A. Some other land in the -- you know, within shooting
8 distance or -- you know, some sold for two thousand, and some,
9 I had heard, for four thousand.

10 Q. Are you saying on a per-acre basis?

11 A. Yeah, per acre.

12 Q. Okay. Two thousand to four thousand?

13 A. That was some of the neighborhood property. Out on the
14 road, it would maybe go a lot higher. I'm a mile off of the
15 road.

16 Q. Okay, and so you told her that?

17 A. Yeah.

18 Q. And she wrote in "unknown"?

19 A. I don't know what she wrote.

20 Q. Well, you --

21 A. I don't -- I didn't have my glasses at the time. They come
22 up, and I said, "I'd like to have an attorney present here,"
23 and so they went off, and come back and asked me the questions,
24 and I answered them to the best of my ability.

25 Q. Okay. Well, my question is, though, if she wrote in

1 "unknown", would that be what you had told her?

2 A. Well, it might have been. I told her, "How would I know
3 what the property --" If I was going to sell it, I'd try to get
4 the most I could out of it. I have no idea. It's not -- was
5 not for sale, so I didn't care what it was worth.

6 Q. Okay, but you knew that there were properties in the area
7 that were worth two thousand -- maybe two to four thousand
8 dollars an acre?

9 A. I told her that.

10 Q. Uh-huh. Okay. When, Mr. Fincher, did you acquire this
11 property?

12 A. Well, I've lived -- some of my earliest recollection is
13 living there on it. My father got it from my grandfather back
14 probably fifty years ago or more, and he -- I understand it come
15 up through their family, so it's been in the family way before
16 I ever come here.

17 Q. Okay. Did you then inherit it from your father?

18 A. I think he gave a Quit Claim Deed for a dollar in with it.

19 Q. You think he deeded it to you for a dollar?

20 A. I think.

21 Q. Okay, so you didn't pay any money for it?

22 A. (The witness shakes his head.) And I intended to turn it
23 over to my children.

24 Q. Okay.

25 A. We was talking about turning it -- I mean, hey, I'm sixty

1 years old. I don't need a lot of money. I don't need a lot of
2 land. I'd like to get this to them while they have a little
3 use.

4 Q. Sure.

5 A. I've got to have a place to live, so --

6 Q. When you -- when your father got it from his father, your
7 grandfather, how much did he pay for it, or do you know?

8 A. Probably nothing. Probably a Quit Claim.

9 Q. Okay. Can you tell me when you got the Quit Claim Deed
10 from your father?

11 A. It probably -- my mother died about eighty, and they may
12 have fixed it up before. It's been probably twenty-five or --
13 I've lived on it for forty years, me and my wife.

14 Q. Okay. Well, if -- if it were, say, 1980, for example, have
15 you mortgaged the property --

16 A. (The witness shakes his head from side to side.)

17 Q. -- in any way since that time? Never put a mortgage on it
18 prior to this deal the other day?

19 A. (The witness shakes his head from side to side.)

20 Q. Of course, that was done by your daughters. But you didn't
21 mortgage it during that time?

22 A. No.

23 Q. Did you pay taxes on it?

24 A. Well, sure.

25 THE COURT: Do you have the tax statement that he

1 brought, Ms. Blatt? Do you have that?

2 MS. BLATT: Your Honor, I believe they're with his
3 wife.

4 THE COURT: Okay. Well, I want to ask him about them.
5 So can we go ask about that? Do you want to do it or have the
6 marshal do it? I'd like to ask him about those tax statements.

7 Q. Okay, Mr. Fincher, have you got the tax statements now?

8 A. Yes.

9 Q. What's the most recent one you have, sir?

10 A. This one says 6/19/2007.

11 Q. All right. May I see that, sir?

12 THE COURT: All right, let the record show that Mr.
13 Fincher has handed to me three -- three pages, and they are
14 identified by -- as receipts, 2006 tax receipt. One is Receipt
15 Number 63620, and the second is Receipt Number 63622, and the
16 third is Receipt Number 63624, and the -- with respect to the
17 first receipt, 63620, that appears to be for personal property.

18 The second receipt, Number 63622, appears to be for
19 1.25 acres, and it shows a payment of twenty-five dollars and
20 eleven cents. And the next receipt appears to be for 98.61
21 acres, and it shows a payment of a hundred and seventy-one
22 dollars and fifty-eight cents after accounting for a three
23 hundred dollar credit on a total bill of four hundred sixty
24 dollars and eighteen cents. So it seems to me, counsel, that we
25 will receive these receipts into evidence as Court's Exhibits 2,

1 3, and 4, respectively. Any objection, Ms. Johnson?

2 MS. JOHNSON: No, Your Honor.

3 THE COURT: And Ms. Blatt?

4 MS. BLATT: No, Your Honor.

5 THE COURT:

6 Q. Now, Mr. Fincher, if I understood you right, you said that
7 the hundred and twenty acres was all the real estate that you
8 owned. Is that right, sir?

9 A. That's right.

10 Q. Well, I'm puzzled, sir, because in the Quit Claim Deed that
11 you signed, Tract 1 includes twenty acres, more or less, and
12 also one and a half acres, more or less, and Tract 2 is a
13 hundred acres. That's a hundred and twenty-one and a half
14 acres.

15 A. My brother and I split -- my daddy gave us -- when he died,
16 he gave us forty acres that was off to the side. We split it.
17 There's ten acres we've been paying taxes on that we don't own.
18 I don't know whether that's -- whether it's a misprint on it.
19 It's -- my cousin owned it, and she died and let it go delin-
20 quent, and we've been paying the taxes. I don't know whether
21 that's -- it's supposed to be 9.8. We don't own it, but we're
22 paying the taxes on it.

23 Q. All right. Was that property included within the hundred
24 and twenty acres?

25 A. But we don't own it either. We're just paying the taxes.

1 And I don't know whether that other piece is somehow -- I don't
2 know of any 1.2. The hundred and twenty, the main parts that
3 are listed is ninety-eight something, and the twenty is -- I
4 think it's nineteen, whatever. I just call it a hundred and
5 twenty acres, more or less. They always say more or less. I
6 don't know whether that shows the ten-acre part that we've been
7 paying taxes on, but we do not own it. It was a cousin of mine.

8 Q. But you do own that one and a half acres that's described
9 as: Beginning at the Southwest Corner of the said forty-acre
10 Tract --

11 A. I don't --

12 Q. -- run North a hundred --

13 A. I don't --

14 Q. Well, let me finish my question. Running North 165 feet,
15 thence East 330 feet, thence South 165 feet, thence West 330
16 feet to the point of beginning, containing one and a half acres
17 more or less." That's in the Deed that you gave to your
18 daughters, so I assume you thought that you owned it.

19 A. I -- I have -- I've always understood there's the ninety-
20 eight acres and the twenty acres. I don't know whether that's
21 included in the old Deed. I don't have any idea.

22 Q. All right. Now, Mr. Fincher, you mentioned in earlier
23 conversation with me that you'd had it in mind for some time to
24 pass this property on to your daughters. Is that right?

25 A. Yeah.

1 Q. Now, when did you decide to do that?

2 A. I was talking about it last summer, but it's one piece of
3 property, and I've got two daughters, and I really -- to this
4 day, I don't -- they'll have to worry about that. The house
5 sits kind of in the middle of it, and there's no way to divide
6 it to give it equal, I mean, without --

7 Q. Well, as I understand it, this transfer occurred when you
8 were in jail, right?

9 A. Right.

10 Q. Was it not after your trial?

11 A. Yeah. We sought advice on it, and I told them, "If you --
12 I'd like to get this out of my hands." I wanted to before.

13 Q. Did your intention to do it at that time have anything to
14 do with the fact that you had been convicted?

15 A. No.

16 Q. And that you might be subject to a fine that could go up
17 to, I believe --

18 A. I don't understand.

19 Q. Let me finish my question, Mr. Fincher.

20 A. You asked the question. I was --

21 Q. Well, I hadn't finished my question.

22 A. Okay.

23 Q. Did it have anything to do with the fact that you had been
24 convicted and that you might be subjected to a fine that could
25 be as much as two hundred and fifty thousand dollars?

1 A. No, that was not part of it, sir.

2 Q. Did it have anything to do with the need to continue to
3 have appointed counsel paid for --

4 A. No.

5 Q. -- by the government?

6 A. No.

7 Q. So it's just coincidental that it happened to be --

8 A. No. I intended to get rid of the land a long time ago.
9 Like I told you, it would have been done if I could have done it
10 equitable without hurting my daughters, and that's the truth,
11 because it was given to me, and I intended to give it to them,
12 and it would have -- I talked to them up here the day after the
13 trial. I talked to them -- not to them, but another fellow, and
14 I said, "I'd like --" I was trying to figure out how to get
15 this to my daughters without hurting one or the other.

16 I've got one piece of land and two daughters, and it
17 doesn't split very -- I don't know how you could split it with-
18 out one of them or the other feeling like they might have got
19 hurt, and I'm not -- the idea is to help, and it was -- I
20 intended to do this before. We talked about it last summer, my
21 wife and I before, and we could not -- it was something I still
22 don't know how to do it, but they said they would take it, and
23 I can assure you that I did not try to defraud anybody.

24 Q. Well, I haven't suggested that you did, Mr. Fincher.

25 A. Well, I -- maybe you did suggest I did.

1 Q. I don't believe I have.

2 A. Okay. Well, I take it as your word then.

3 Q. I'm just asking you questions, sir.

4 A. Thank you.

5 Q. If that property -- you say that you've known of some that
6 sold for two to four thousand dollars. If it were worth two
7 thousand dollars, the hundred and twenty acres would be worth
8 about two hundred and forty thousand dollars, wouldn't it?

9 A. Well, the math on it.

10 Q. And is there a house on the property?

11 A. Yeah.

12 Q. And is it a modern house?

13 A. No. It was built, I believe, in '49.

14 Q. All right. If that property is worth two hundred and forty
15 thousand dollars, Mr. Fincher, could you not have mortgaged it
16 and gotten money to pay for legal counsel?

17 A. Not morally, I couldn't. No, I couldn't.

18 Q. Morally?

19 A. Kind of like a turtle mortgaging his shell, sir.

20 Q. But there would be no legal impediment for you doing it?

21 A. I have no idea what the legal impediment would be.

22 Q. So you're saying that the reason you couldn't do it is
23 because of the moral concerns that you have?

24 A. It was never brought up to me what I could do or what I
25 couldn't do. I asked the questions -- answered the questions

1 the lady asked me, and she come back and said, "We're going to
2 provide you with an attorney." I -- I was in jail. I was sick
3 in my soul. I hadn't slept for days. I was traumatized. The
4 life as I knew had ended, and I was not competent to answer any-
5 thing except what I answered here, and I said I believe I've
6 told the truth to the best of my knowledge.

7 Q. Do you feel like you're competent to answer questions
8 today?

9 A. I'm answering them, sir.

10 Q. Well, my question is --

11 A. Yes. I'm answering, but --

12 Q. Okay.

13 A. -- I can't -- I didn't --

14 Q. All right. Let me ask you, sir, then when you conveyed
15 this property to your daughters, you didn't get anything in
16 return for it, did you?

17 A. I think there was a dollar quit-claim, if I understand.

18 Q. Okay, one dollar. Do you consider that to be fair
19 consideration for the property?

20 A. That's what I got it for.

21 Q. Well, that wasn't my question. My question was, do you
22 consider that to be fair compensation for property that could be
23 worth almost a quarter of a million dollars?

24 A. I would have given it to them without the dollar, sir.

25 Q. Mr. Fincher, please, it'll go quicker if you answer my

1 question. Do you want me to repeat it again?

2 A. I don't really understand the context of it.

3 Q. Well, there's not any context. Just listen carefully. Do
4 you consider that conveying property that could be worth as much
5 as a quarter of a million dollars for one dollar is fair compen-
6 sation?

7 A. For me, it was.

8 Q. Okay. Now, did you, in fact, reserve this life estate?

9 A. I -- I told my family if -- I'd like to get this out of my
10 hands, and if you all can get it done to your satisfaction and
11 without getting -- go get a lawyer, and if you come back and you
12 agree with it, I'll sign it. That's all I --

13 Q. Now, you had a lawyer at that time, didn't you? Mr.
14 Stilley?

15 A. I had Mr. Stilley.

16 Q. Well, I wonder why then another lawyer prepared the Quit
17 Claim Deed and the Power of Attorney.

18 A. The lawyer, I believe, was one that my daughter's family
19 had used quite a bit and had recommended him.

20 Q. All right, so that would be the reason that it wasn't Mr.
21 Stilley?

22 A. They were the ones -- the land thing and Mr. Stilley had
23 zero to do with each other.

24 Q. Okay. Well, that was my question. Was there, or is there,
25 any agreement or understanding between you and your daughters

1 that they will reconvey this property to you at any time --

2 A. No.

3 Q. -- in the future?

4 A. My intention was to get it to them where I could go ahead
5 and live the rest of my life with -- and I cannot work the
6 place. My back -- I cannot do it. And if they want to put some
7 cattle up there later, or whatever, to get it out of my hands
8 while they have some use left rather than to sit there till I'm
9 whatever age, and then they can't -- they're too old to do some-
10 thing with it.

11 Q. You do understand, of course, that your daughters mortgaged
12 or pledged the property up to the value of a hundred thousand
13 dollars to secure your bond?

14 A. Yeah. That was their doing. If it had probably been put
15 to me, I'd have probably said don't do it, but the family -- it
16 was cutting the heart out of them to be here, and life gives you
17 some hard decisions. I -- I don't -- that's -- it was out of my
18 control.

19 Q. Okay. All right, Mr. Fincher, so your position is that
20 that property really has no value to you for use of hiring an
21 attorney because you feel morally obliged not to convey it to
22 anyone, but to give it on to your children. Is that fair?

23 A. It had no market value to me because I wouldn't have sold
24 it for nothing. I mean, it was -- I could sit -- I can sit in
25 prison the next five years. I'd rather have them -- or six or

1 seven. I'd rather them have the property with -- I'd rather sit
2 up here with no attorney and them have that property. I've got
3 some values. I don't know whether you agree with my values, but
4 I have values, and I live by them and I die by them, and that
5 property -- my family can never buy that property again. We
6 can't. A working man can't.

7 Q. But you would agree with me, but for the feelings that you
8 just expressed, you could have either sold it or mortgaged it to
9 get money to hire an attorney; could you not?

10 A. That's a hypothetical question.

11 MS. BLATT: I'm going to object to that question.

12 A. It's outside of the --

13 THE COURT: Just a moment, sir. What?

14 MS. BLATT: Your Honor, I'm going to object to that
15 question. I think that calls for speculation as to what he
16 could or could not have done, and I think whether or not he
17 could mortgage the property would be up to a bank and whether or
18 not the bank deemed the property to have any value and what the
19 purpose of the money was for.

20 My understanding of the law, and I may be incorrect,
21 is that if the home is mortgaged, and it's not purchase money or
22 it's not improvements, then it's not executable for the lien
23 under the homestead laws; that unless the property -- that you
24 can't -- if you have a homestead exemption --

25 THE COURT: But you don't have a home- -- it's any

1 banker, or I think this Court, when you take a mortgage, you
2 specifically require the homestead exemption to be waived.
3 Obviously, if you don't, the mortgage isn't worth the paper it's
4 written on, so there wouldn't be any homestead exemption on a
5 properly executed mortgage. I'll overrule your objection. I
6 think it's a fair question.

7 Q. Can you answer it, please, Mr. Stilley? I mean Mr.
8 Fincher?

9 A. Would you repeat the question to me?

10 Q. I will if I can. I think my question was, do you -- am I
11 correct in understanding that but for your moral concerns that
12 you've just mentioned about not wanting to part with the
13 ancestral properties, there wouldn't be any reason why the
14 property couldn't have been either sold or mortgaged to get
15 money to pay an attorney to represent you as far as you know?

16 A. The fact of, sir, it was not -- I could not -- and my wife
17 and I had -- this was with her -- it was our -- I couldn't do
18 it. Now, what could have been and what is out of my hands.

19 Q. Okay, all right.

20 THE COURT: Do you have questions, Ms. Johnson, as a
21 result of my questions?

22 MS. JOHNSON: No, Your Honor.

23 THE COURT: Ms. Blatt, do you have questions?

24 MS. BLATT: Yes, Your Honor.

25 THE COURT: All right. Go ahead, please.

EXAMINATION BY MS. BLATT

- 1
- 2 Q. How old are you, Mr. Fincher?
- 3 A. Sixty-one.
- 4 Q. Okay. Prior to being detained, were you employed?
- 5 A. No.
- 6 Q. And were you, in fact, disabled?
- 7 A. Pretty well.
- 8 Q. Were you receiving a disability check?
- 9 A. No.
- 10 Q. So you're a sixty-one year old man, unemployed, and not
- 11 receiving a disability check?
- 12 A. Right. I had worked. I drove a truck some, but I couldn't
- 13 -- I just couldn't do it. I'd quit work in '85. I got laid
- 14 off, and I've had extensive back trouble, and it's hit and
- 15 missed ever since.
- 16 Q. And your wife makes approximately ten dollars an hour or --
- 17 A. Ten-fifty.
- 18 Q. -- ten-fifty an hour?
- 19 A. Something like that.
- 20 Q. Okay, and if you had mortgaged your property, would you
- 21 have had to hire an attorney and spent the money that was paid
- 22 for from the mortgage -- would you have had any way to pay that
- 23 mortgage back?
- 24 A. No.
- 25 Q. So did you feel that the asset of your real property was

1 actually a liquid asset, something that could be converted to
2 money --

3 A. No.

4 Q. -- and you pay it off?

5 A. No.

6 Q. And if you would have mortgaged that property to hire an
7 attorney, would you have, in effect, been setting yourself up
8 for a bankruptcy situation because you wouldn't have been able
9 to pay for the property?

10 A. We just barely kept the bills paid. I could not pay an
11 attorney and I could not tell an attorney I could pay him. It
12 would have been an untruth to tell an attorney, "Yeah, we'll
13 pay this." It would have been -- it would have not been true.

14 Q. Okay, so you didn't feel comfortable going out and seeking
15 counsel and telling an attorney that you could pay them when, in
16 fact, you could not?

17 A. It would have been untruthful for me to tell an attorney
18 that I could pay him.

19 Q. And you don't have city water on your property?

20 A. No.

21 Q. You use water from a spring?

22 A. Yes.

23 Q. You don't have heat in your house? Central heat and air?

24 A. Wood. Wood heat.

25 Q. Okay, so you have to actually go cut the wood or procure

1 the wood from somewhere?

2 A. On the place.

3 Q. Okay, and if you're in custody the next six and a half
4 years, is your wife going to be able to cut wood to keep warm,
5 or is she going to have to spend part of her ten-fifty an hour
6 to hire someone to cut the wood or buy the wood?

7 A. Right.

8 Q. And do you have some debts? Do you and your wife have some
9 joint debts?

10 A. Yes. We have a pickup which we've paid down, and I think
11 -- we have been trying and trying and trying to get out of
12 debt. We've been working at it, because the debt is killing us.
13 She had bought a new bed. Her back was really bad, and I'm
14 trying to think. I don't know what the cost was, but we've
15 worked diligently to stay out of debt because that's the only
16 way to live.

17 Q. So you had a debt to a company that you bought a bed from
18 to sleep on?

19 A. We do now. We didn't have it then, but we had -- I can't
20 recall, but we had another year to pay on the truck at three-
21 sixty a month at that time.

22 Q. Okay. Now, your truck is not a fancy farm truck, is it?

23 A. No. It's a Chevy four-wheel drive, wide bed truck.

24 Q. Okay. It doesn't have an extended cab?

25 A. Right.

- 1 Q. It just has the front seat?
- 2 A. Yeah.
- 3 Q. And is it a new truck or an older truck?
- 4 A. 2000 model.
- 5 Q. Okay, and you still owe money on that truck?
- 6 A. Yes.
- 7 Q. Do you know how much you still owe on that truck?
- 8 A. No. It'll be paid off in January. We're paying three-
- 9 sixty a month on it.
- 10 Q. Okay, and is it a struggle for you and your wife to keep
- 11 your bills met and pay off on the debt that you do have?
- 12 A. About all we can do.
- 13 Q. Okay, and have you also been informed that you have an out-
- 14 standing debt to your previous attorney?
- 15 A. Yes.
- 16 Q. And that was an attorney that you tried to retain?
- 17 A. Yeah.
- 18 Q. And that didn't turn out to be successful, and you now owe
- 19 him money?
- 20 A. Right.
- 21 Q. And you believe that -- do you believe that if your wife
- 22 had mortgaged your property, that at ten dollars and fifty cents
- 23 an hour, she would be able to afford to pay that loan back?
- 24 A. We could never pay it back. We -- the interest -- we could
- 25 never pay it back.

1 Q. You haven't even gotten a 2000 truck paid off.

2 A. No.

3 Q. Thank you.

4 THE COURT: Any questions?

5 MS. JOHNSON: No, Your Honor.

6 THE COURT: All right.

7 EXAMINATION BY THE COURT

8 Q. Mr. Fincher, what is the debt that you owe to Mr. Stilley?

9 A. He first sent it for seventy-two thousand, and he amended
10 it to seventy thousand.

11 Q. Now, you did hire him to represent you; did you not?

12 A. The first meeting I hired Mr. Stilley on, I told him, I
13 said, "I have a state-appointed attorney," and he -- I said,
14 "I have no money to pay you. I have no prospects of ever having
15 any money to pay you," and he talked on quite some time, and it
16 was my understanding that he would work with Mr. Dunnagan kind
17 of aside. He said he knew them and they got along well, and he
18 offered to take the case for one dollar, and I thought since I
19 was hiring -- I thought since he was willing, for whatever
20 reason, for whatever reason he had, we had a gentlemen's agree-
21 ment for one dollar that he took the case.

22 And he said, "I will get my money when --" Said, "I
23 wouldn't take it unless I thought I could win it. I'll get my
24 money from the court or from another source. There was a
25 defense fund that had maybe eight thousand. I've never fully --

1 he was going to draw off of that, and I said, "Well, you'll
2 just have to --" I said, "I don't have any money to pay you,
3 now or ever," and he said, "Well, you could do it for a
4 dollar." And I said, "Well, yeah, I believe I could do it for
5 a dollar."

6 And then he came back with a contract that -- two
7 contracts. One, he started out at a twenty-five thousand dollar
8 fee and so many hundred dollars, maybe two hundred dollars,
9 three hundred dollars an hour, and this and that and this and
10 that, and I wouldn't sign it. But he had a second, another
11 contract, that said if I'd pay him ten dollars a year, he would
12 never push us, oppress us for money, and I sent it to my family.
13 I said, "What do I do?"

14 You've got to remember, I was in a jail cell with no
15 outside access to anything, no legal books, no dictionaries, no
16 news, no anything, and I had to make whatever decision I made
17 from in that jail cell almost incommunicado, and I did the best
18 I could. And life doesn't quit when you get in jail. You have
19 to do some things the best you can do.

20 And they said, "Well, it looks like the ten dollar
21 per year contract is your contract. The other, he'll use for
22 billing whatever he can get out of it," and I said, "Well --"
23 and that's the way I understood it, that the second one was a
24 billing instrument, and then he -- after it was over, he sent me
25 the seventy thousand dollar attorney fee, and I wrote him that

1 we had an agreement, etcetera, etcetera, and I considered the
2 dollar the real contract. I didn't know what the ten dollars
3 was for, and I still don't, but I agreed that I would pay him
4 ten dollars a year to -- against the other bill. I would never
5 sign it otherwise because it --

6 Q. So you're telling me you did sign a contract to employ him?

7 A. Yes.

8 Q. All right. Do you have a copy of that?

9 A. No, not here.

10 Q. And you say it was for ten dollars a year?

11 A. There was two contracts. One was whatever he charged up
12 agin it. The one I considered binding -- the other was for
13 billing. Now, whether it was legal, whether it was right, I
14 don't know, but I -- I said, "Yeah, I can pay you ten dollars
15 a year," and he said, "I'll never press you other than that,
16 and I'll try to get my money or something from --" There was
17 people talking some of them might donate it. I don't know.

18 Q. So you have two contracts. You have copies of both of them
19 then?

20 A. I could probably produce them. I don't --

21 Q. Would you do that?

22 A. Yeah.

23 Q. Provide them to me?

24 A. I will do my best.

25 Q. All right.

1 THE COURT: Any other questions as a result of my
2 questions?

3 A. One final question, Mr. Fincher. In response to Ms. Blatt,
4 you talked about the difficulties that there might be of paying
5 off a mortgage, but my question, I think, also related to the
6 mortgage. I think I asked you that if it were not for your
7 strong moral beliefs that you don't want to part with the
8 property, but you want to pass it on to your daughters, I
9 believe I asked you other than that, there wouldn't have been
10 any legal reason you couldn't have mortgaged the property.

11 A. Well --

12 Q. Now -- well, I asked you that before. I'm not trying to
13 ask it again. My question now, in light of all that discussion
14 about mortgaging, is it not also true, sir, that but for your
15 feelings about the property and not wanting to part with it and
16 wanting to pass it on to your daughters, there would be no
17 reason why you could not sell a part of it to get money to pay
18 legal fees? Is that not right, sir?

19 A. No, that's not right.

20 Q. What would be the other reason why you couldn't do that?

21 A. If you sell a piece of land, you have got to guarantee, I
22 believe, a fifty-foot right-of-way to the road over five
23 properties. It would -- it would cost maybe twenty-five -- ten,
24 twenty, thirty, forty, fifty thousand dollars to get a right-of-
25 way up to the property to sell it. I'm landlocked except for

1 one road. I would have to give my brother four to five
2 properties to put a road into it, according to county law, so it
3 makes it -- in that sense, I can't even -- I couldn't sell any
4 part of it without incurring more debt than the land would
5 bring.

6 Q. Okay.

7 THE COURT: Any further questions as a result of my
8 questions?

9 MS. JOHNSON: No, Your Honor.

10 THE COURT: All right, thank you, sir. You may stand
11 down.

12 Ladies and gentlemen, let me -- we have several more
13 witnesses to talk to, and I think we probably ought to take a
14 break for lunch. I think it's unfair to keep Ms. Sawyer talking
15 through the lunch hour, so let's do that.

16 Ms. Blatt, I will ask you to notify, if you don't mind
17 -- I know that these aren't your clients, but they are Mr.
18 Fincher's wife and relatives. Would you kindly remind them that
19 -- the Court's ruling about their being not able to talk about
20 their testimony remains in place?

21 And, Mr. Fincher, you, sir, are bound by that as well.
22 You are not to discuss with your wife and the daughters during
23 the lunch hour the questions that were asked of you or the
24 answers that you've given. Do you understand that, sir?

25 THE DEFENDANT: Yeah.

1 THE COURT: All right. We'll be in recess. Let's
2 start promptly at 1:00 o'clock. We'll be in recess.

3 (A LUNCH RECESS WAS TAKEN, AFTER WHICH THE FOLLOWING PROCEEDINGS
4 WERE HELD:)

5 THE COURT: I would like to call Mrs. Fincher.
6 Marshal, would you bring in Mrs. Linda Fincher, please? Ms.
7 Fincher, hi. Come in, please, and have a seat in the witness
8 stand.

9 LINDA FINCHER, being called upon to testify, and having been
10 first duly sworn, testified as follows:

11 EXAMINATION BY THE COURT

12 Q. Madam, would you please state your name?

13 A. Linda Fincher.

14 Q. And, Ms. Fincher, you were sworn earlier; were you not?

15 A. Yeah.

16 Q. And I recall, I believe, you testified one other time
17 during the sentencing hearing in the case involving your
18 husband, Mr. Hollis Wayne Fincher; did you not?

19 A. Yes.

20 Q. All right. Ms. Fincher, I wanted to ask you some questions
21 as a result of an Order that I entered the other day, and so I
22 will ask that as I ask these questions, if you don't understand
23 what I'm asking you, just tell me and I will try to state it a
24 little more clearly. Is that fair?

25 A. Yes.

1 Q. All right. First of all, you are married to Mr. Hollis
2 Wayne Fincher; are you not?

3 A. Yes.

4 Q. And you have been for some time?

5 A. Forty-one years.

6 Q. And you have, I believe, two daughters?

7 A. Yes.

8 Q. And their names are?

9 A. Connie Fields and Carol Hale.

10 Q. All right. Ms. Fincher, I'm particularly interested in
11 asking questions about the property on which I understand that
12 you now live. Am I correct in understanding that you live on
13 the property that is owned by your husband?

14 A. Our daughters own it now.

15 Q. Well, that was owned by your husband --

16 A. Yes.

17 Q. -- before they were deeded; is that right?

18 A. Yes.

19 Q. Do you recall when Mr. Fincher, your husband, acquired that
20 property?

21 A. I guess when we got married.

22 Q. When did you get married?

23 A. Right -- in 1966.

24 Q. All right. Do you think he got title to the property then?

25 A. I don't remember.

- 1 Q. How did he get the title? From whom did he get it?
- 2 A. His dad, I guess, deeded it to him.
- 3 Q. Do you know, did his dad convey it to him? Deed it to him?
- 4 A. Yes.
- 5 Q. All right.
- 6 A. Well, let's see. I can't remember when it was.
- 7 Q. Okay. Were you mentioned as a grantee on the Deed from Mr.
- 8 Fincher's father for the property, or was it deeded only to Mr.
- 9 Fincher?
- 10 A. I don't remember.
- 11 Q. Did you understand at any point until the property was
- 12 conveyed to your daughters that you had an ownership interest in
- 13 the property?
- 14 A. Well, I guess. I -- I mean --
- 15 Q. You don't know if the property was ever conveyed to you as
- 16 a grantee?
- 17 A. No. I can't --
- 18 Q. Okay. During the time that your husband owned the
- 19 property, was it ever mortgaged?
- 20 A. No.
- 21 Q. Was it ever appraised?
- 22 A. I don't know.
- 23 Q. Don't know? Was any of it ever sold off?
- 24 A. Not on his part, no.
- 25 Q. I'm not sure I understand that.

1 A. On Wayne's side, it wasn't. On his brother's side, he had
2 sold some land, but Wayne didn't.

3 Q. This was some property that the brother had gotten from
4 Wayne's father?

5 A. Yes.

6 Q. Okay, so to whom was it sold? Do you know?

7 A. I don't know.

8 Q. You don't know what amount was -- it sold for?

9 A. No, I don't.

10 Q. But it was a part of the same property that the boys got
11 from their father; is that right?

12 A. Yes. It's --

13 Q. Is there a church called the Black Oak Baptist Church out
14 in that area?

15 A. Yes.

16 Q. Is that on property that once belonged to Wayne Fincher's
17 father?

18 A. His grandpa.

19 Q. Okay. How did the church get the property, if you know?

20 A. He deeded it to them, or gave it to them.

21 Q. This would be the grandfather did?

22 A. Gave it to them.

23 Q. And this was before your husband got the title from his
24 father?

25 A. Yes.

1 Q. Okay. Now, is there a road from the main road into the
2 property where you live?

3 A. Yes.

4 Q. Does it go by the church?

5 A. Yes.

6 Q. Is it shared by the folks that go to church there?

7 A. Yes.

8 Q. Okay. At what time and for what reason was it decided to
9 convey the property to your daughters, if you know?

10 A. It was when Wayne was in jail. I mean, we had started back
11 quite awhile back to get the girls together and, you know --

12 Q. Is there any particular reason why you would choose this
13 particular time? I think the Quit Claim Deed was dated in
14 either January or February of 2007. Is there any particular
15 reason you would have chosen or your husband would have chosen
16 that time to deed it to the daughters?

17 A. Well, we're getting older, and just like I said, we had
18 already talked about it and --

19 Q. Was the Deed made after Mr. Fincher had been convicted in
20 court?

21 A. Here?

22 Q. Yes.

23 A. No. It was before. I mean --

24 Q. Are you sure about that?

25 A. No.

1 Q. Well, you may not be, but let me see if I may refresh your
2 recollection, Ms. Fincher. You may not know this, but I have an
3 excellent staff, and we've reviewed the paperwork here. My
4 understanding is that on January 12th, Mr. Fincher was convicted.
5 His trial started on January 10th, and he was convicted January
6 12th, and then this Deed shows that it was executed January the
7 29th, which was after the trial. Does that sound right?

8 A. Well, I -- I don't know.

9 Q. You don't remember?

10 A. It's -- it's been so --

11 Q. Who decided to go to lawyers to prepare this Deed at that
12 particular time? Was that your decision, or Mr. Fincher's, or
13 who decided that?

14 A. I -- I really can't remember.

15 Q. You don't know. So if I understand you right, this is just
16 something that he had planned to do for some time, and he just
17 happened to decide to do it right then?

18 A. Yes. We'd already talked about it.

19 Q. Did it have anything to do with the fact that Mr. Fincher
20 had been convicted and might be facing the penalty of a fine?

21 A. No.

22 Q. Nothing to do with that?

23 A. (The witness shakes her head from side to side.)

24 Q. Do you know of any reason, Mrs. Fincher, why the property
25 could not have been mortgaged or part of it sold to get money to

1 pay an attorney to represent Mr. Fincher?

2 A. We just -- I don't know. I don't know how to -- no.

3 Q. Well, let me come at it a different way. In this Quit
4 Claim Deed, it reserved to Mr. Fincher and to you a life estate.
5 Did you understand that?

6 A. Yeah, that we could live on it until we --

7 Q. Okay, and so I take it that the daughters probably wouldn't
8 be able to sell it off without taking care of your life estate,
9 would they?

10 A. Right.

11 Q. Now, when Mr. Fincher's father deeded the property to him,
12 did he reserve a life estate, or do you know?

13 A. I don't remember.

14 Q. Okay.

15 A. I'm sure he did.

16 Q. You're sure he did?

17 A. I -- I don't know. I really --

18 Q. Okay. You indicated that Mr. Fincher's brother did sell
19 off a part of the property that he received from their father.
20 Is that right?

21 A. Well, he -- he traded it. If I remember right, he traded
22 part of it for another person's. I --

23 Q. He traded it for something of value?

24 A. No. Some other land.

25 Q. Some other land?

1 A. Closer to his place.

2 Q. I see. Okay. So would there be any reason why your
3 husband could not have traded or sold a part of his land like
4 his brother did?

5 A. Well, I don't know.

6 Q. Well, if you don't know, that's fine. I'm just asking if
7 you do know.

8 A. I don't know.

9 Q. All right. Ms. Fincher, as far as you know, is there, or
10 was there, any agreement with your daughters that if you or Mr.
11 Fincher ever needed to get the fee title to that property back,
12 that they would convey it back to you?

13 A. I don't -- I don't know.

14 Q. You don't know. Do you recall -- did you go to the
15 lawyer's office to have the General Power of Attorney prepared?

16 A. Yes.

17 Q. And did you go by yourself?

18 A. No.

19 Q. Who went with you?

20 A. Connie and Carol and Kenny.

21 Q. Okay, and who instructed the lawyer what to put in the
22 Deed?

23 A. I guess we did. I --

24 Q. You don't remember?

25 A. No.

1 Q. I was curious as to who told the lawyer to fix it so that
2 there would be a life estate retained.

3 A. Well, I guess we did. I don't know.

4 Q. Have you and Mr. Fincher ever discussed what the farm might
5 be worth over the years?

6 A. No.

7 Q. Are you aware of any sales of properties in that area, as
8 to what they might have brought per acre?

9 A. No.

10 Q. Don't know of any?

11 A. (The witness shakes her head from side to side.)

12 Q. Do you know whether any property has ever been sold out in
13 that area?

14 A. Well, yeah, but --

15 Q. But you don't know the details?

16 A. No.

17 Q. Okay. I guess I'm curious, Mrs. Fincher, that -- why the
18 need to convey the property on to the daughters? As your only
19 children, they would inherit it from you, would they not, at
20 your death? Or do you know?

21 A. I guess they would. I'm not -- I mean --

22 Q. Can you give me any further explanation as to why you and
23 Mr. Fincher chose to do it right at the time that you did; while
24 he was in jail and after he had been convicted?

25 A. Well, we had already been talking about it and --

1 Q. Okay. All right, Mrs. Fincher, in the Pre-sentence
2 Investigation Report, you are quoted as having told the proba-
3 tion officer that you had a bill from Mr. Stilley for legal
4 services. Is that right?

5 A. That's right.

6 Q. Can you tell me about that? Did Mr. Fincher at some point
7 hire Mr. Oscar Stilley to represent him in this case?

8 A. Mr. Stilley -- yes.

9 Q. What was the employment arrangement?

10 A. Well, at first he said he'd do it for a dollar, and then --
11 I don't know. He just -- all of a sudden, we owe all this
12 money, seventy, eighty thousand.

13 Q. How did you come in contact with Mr. Stilley?

14 A. He called us.

15 Q. So he called you?

16 A. Yes, and then he said, "Do you care if I go see Mr.
17 Fincher?" And I said, "No."

18 Q. Okay. Did Mr. Stilley and Mr. Fincher ever have a written
19 agreement concerning Mr. Fincher's employment of Mr. Stilley as
20 his lawyer?

21 A. Yes.

22 Q. Did he have just one or was there more than one?

23 A. Well, I've got one, so -- I don't know if there was --

24 Q. You have one?

25 A. (The witness nods her head up and down.)

1 Q. Do you happen to have it with you?

2 A. No.

3 Q. And does it provide for the one dollar, or what does it
4 call for?

5 A. Boy, I can't -- I can't remember what's on it.

6 Q. So if there were two agreements, you don't know about the
7 second one. Is that right?

8 A. No.

9 Q. Because you said something about he started out as charging
10 a dollar, but in the report -- and this is Paragraph 72 of the
11 report -- the probation officer says this: "According to Mrs.
12 Fincher, they have received a statement from Oscar Stilley
13 charging them seventy thousand dollars for his services through
14 the -- the signed agreement indicates the work was to be done at
15 a fee of ten dollars annually, or basically pro bono." Is that
16 the agreement you had?

17 A. I think so. He -- he said he'd charge ten dollars a year,
18 and then -- I don't know.

19 Q. Well, do you have any idea why he is now telling you that
20 you owe him seventy thousand dollars?

21 A. No, I don't.

22 Q. There's no agreement that calls for anything like that as
23 far as you know?

24 A. Not that I know. I really don't know.

25 Q. Now, during the time -- I believe you've told me this. I

1 may be repeating myself, but as far as you know, since the time
2 that Mr. Stilley owned this property, it's never been mortgaged
3 or anything like that?

4 MS. BLATT: Your Honor, I believe it's Mr. Fincher
5 that owns the property and not Mr. Stilley.

6 THE COURT: I'm sorry. What did I say? Mr. Stilley?

7 MS. BLATT: Yes, Your Honor.

8 THE COURT: I must have been looking at his name in
9 the report.

10 Q. Forgive me, ma'am. I mean Mr. Fincher. During the time
11 that you've been married to him -- well, since he has owned the
12 property, during your marriage, he's never mortgaged it as far
13 as you know?

14 A. No.

15 Q. Okay. I have been given -- Mr. Fincher was kind enough to
16 bring in tax statements. Do you handle the payment of those tax
17 statements, ma'am?

18 A. Yes.

19 Q. Do you know, Mrs. Fincher, the basis for this assessment
20 and the amount of money that you were to pay?

21 A. The basis?

22 Q. Yes, the tax -- the assessed valuation that you pay on.

23 A. I don't understand the question.

24 Q. Well, okay. Well, you get these bills and you pay them.
25 Is that right?

1 A. Right.

2 Q. Okay. You don't know the basis for them?

3 A. Huh-uh.

4 THE COURT: Any questions as a result of my questions,
5 counsel?

6 MS. JOHNSON: No, Your Honor.

7 MS. BLATT: Yes, Your Honor.

8 THE COURT: Yes, go ahead.

9 EXAMINATION BY MS. BLATT

10 Q. Mrs. Fincher, you work at Tyson?

11 A. Yes.

12 Q. And you earn approximately ten dollars and fifty cents per
13 hour?

14 A. Yes.

15 Q. And is that the total income that you and your husband have
16 at this time?

17 A. Yes.

18 Q. And if you were to take -- if you or your husband were to
19 take out a loan on a property where you live, if a bank would
20 loan you money, would you be in any position to repay that loan?

21 A. No.

22 Q. Are you having trouble at this time making ends meet on
23 your salary?

24 A. Yes.

25 Q. Thank you.

1 THE COURT: Anything further?

2 MS. JOHNSON: No, Your Honor.

3 THE COURT: All right, thank you, ma'am. You may
4 stand down.

5 Next, if we may, Marshal, I would like to call -- I
6 believe it's -- if I could call Carol Ann Hale, please.

7 MS. BLATT: Your Honor, my client has advised me that
8 over lunch, he realized that there is a second right-of-way on
9 the property that he did not inform the Court about, and he
10 wanted to make sure the Court knew about that second right-of-
11 way.

12 THE COURT: Well, okay. Well, Mr. Fincher, you can
13 address me just from there, sir. Can you hear me okay?

14 THE DEFENDANT: Yes.

15 EXAMINATION BY THE COURT

16 Q. With respect to the road that goes in by the church, where
17 is the second right-of-way?

18 A. Let me bring you up to speed. When my daddy passed away,
19 he gave the land to -- there were forty acres off down in the
20 holler he gave to me and my brother together. On the one side
21 of the property line, the government line runs -- there's
22 another road about half a mile.

23 Most of the time I had the property, we didn't have a
24 right-of-way until after my brother had traded some land to get
25 some other family land closer to his. But when my brother and

1 I split the forty acres, the two twenties -- no. When he sold
2 the forty acres in the back, he kept a right-of-way down to the
3 forty, and we split the forty, and there's a corner there right
4 as you come down, and it T's up to the twenty acres, or forty
5 acres we then quit-claimed, and so there is a second right-of-
6 way. There's not a road or anything, but there's a right-of-way
7 out that back way. The other right-of-way, they go like this
8 (indicating). One goes down to the church, and the other, one
9 goes east and one goes west, and they're at opposite ends of the
10 property.

11 We had only cleared that of recent and -- we always
12 had a road right-of-way, but when they swapped the property, he
13 kept a right-of-way into the forty. Then we split the forties
14 up. It didn't dawn on me at the time I was talking to you that
15 there is a second right-of-way out to the back of the property.

16 Q. I take it, Mr. Fincher, that your brother doesn't feel
17 bound by the same moral constraints that you do with respect to
18 conveying away or swapping away property he got from the father?

19 A. No, he feels about the same way I do.

20 Q. But he did trade it away; did he not?

21 A. Well, he got some property, land that adjoined his --

22 Q. Thank you.

23 A. There's some he had to go around, so, yes.

24 Q In light of what you tell me about the second right-of-way,
25 Mr. Fincher, do you want to change anything about what you told

1 me about it being impossible to sell it off because there's no
2 way to get in and out?

3 A. Well, I've told you, sir, there was another right-of-way
4 now.

5 Q. Okay.

6 A. But can I sell the land? I'm bound. I can't. The land is
7 not for sale.

8 Q. Okay, I understand. All right, thank you.

9 THE COURT: Let's have Mrs. Carol Ann Hale, please.
10 And, Ms. Blatt, thank you for bringing that to my attention.

11 MS. BLATT: Your welcome, Your Honor.

12 THE COURT: Ma'am, if you will, please come around and
13 have a seat on the witness stand.

14 CAROL ANN HALE, being called upon to testify, and having been
15 first duly sworn, testified as follows:

16 EXAMINATION BY THE COURT

17 Q. Would you please state your name, ma'am?

18 A. I'm Carol Hale.

19 Q. All right, and are you related to Hollis Wayne Fincher?

20 A. My father.

21 Q. He's your father, all right. Ms. Hale, I want to ask some
22 questions of you, and if you don't understand my question at any
23 time, just tell me and I'll try to restate it and get it
24 correct. So far, I've managed to swap names around and said
25 Stilley when I mean Fincher, and probably otherwise, so if I do

1 that and you don't understand what I'm asking you, just tell me,
2 okay?

3 A. (The witness nods her head up and down.)

4 Q. All right. Ms. Hale, I'm interested in the property that
5 was quit-claimed to you by your father and mother by a Deed back
6 in January or February. I think it was prepared in January and
7 maybe executed in -- (To the Defendant) Can you hear?

8 THE DEFENDANT: Yes.

9 THE COURT: Okay.

10 Q. I want to ask you about some of the things about that Deed
11 and about the property. Is that fair?

12 A. (The witness nods her head up and down.)

13 Q. Do you recall when that Deed was executed, ma'am?

14 A. Yes, sir.

15 Q. And where was it done?

16 A. At -- at Jack Butt's office.

17 Q. Okay, and did you go there with somebody?

18 A. (The witness nods her head up and down.)

19 Q. Who went?

20 A. My brother-in-law, my sister-in-law -- or my sister -- my
21 mother, and myself.

22 Q. That would be Mr. David Hale, Connie Fields, Kenneth
23 Fields, and Linda Fincher, your mother?

24 A. My husband wasn't there.

25 Q. He wasn't there?

1 A. He was at work.

2 Q. All right, okay. Now, whose idea was it to have a Deed
3 done at that particular time?

4 A. I don't know if it was just anybody's idea. It was just --
5 it was going to happen at some point, and that's the particular
6 time it happened.

7 Q. Now, the Deed, as I understand the situation, was executed
8 about maybe a week or two after Mr. Fincher had been convicted.
9 Is that right?

10 A. I'm not sure, but I was --

11 Q. Well, my information is that he was convicted, I think, on
12 January 12th, and the Deed was executed January 29. About two
13 weeks later.

14 A. I'm sure you're right.

15 Q. Was there any connection between his conviction and the
16 doing of the Deed at that particular time?

17 A. Well, my grandfather and my grandmother -- well, if they
18 could have set it up where it never left the bloodline whenever
19 they fixed the land to be handed down to my father, they would
20 have done it then and -- does that answer your question?

21 Q. Well, not really.

22 A. Okay.

23 Q. Let me phrase it again. Did the fact that Mr. Fincher had
24 just been convicted of a crime and that he could be punished for
25 it by having to pay a fine, among other things, did that have

1 anything to do with transferring the property at the time that
2 you transferred it?

3 A. No, not -- no.

4 Q. Not at all?

5 A. It was going to happen at some point. This was just when
6 we all got together.

7 Q. Okay, and your understanding of your grandfather's inten-
8 tion was that the property should never be sold or mortgaged or
9 anything like that?

10 A. Never.

11 Q. Never?

12 A. Well --

13 Q. For any reason?

14 A. Not that I'm aware of. It was just supposed to be a
15 handed-down piece of property.

16 Q. And did you feel bound by that?

17 A. By Grandpa's want?

18 Q. Yeah.

19 A. Yes, absolutely.

20 Q. But you and your sister did mortgage it, actually, to the
21 Court to secure your father's hundred thousand dollar bond,
22 didn't you?

23 A. With your say-so, we did.

24 Q. So -- I'm not sure I follow that.

25 A. You said it would be all right, so we did it.

1 Q. Okay. I'm not sure I follow that, but -- are you saying
2 that unless the Court tells you that you could mortgage the
3 property, that you couldn't?

4 A. I'm not understanding what -- I'm not understanding what
5 you're wanting from me.

6 Q. I'm just --

7 A. Can you say it again?

8 Q. If you can answer my questions. You said that the grand-
9 father's notion was the property should never be sold or
10 mortgaged. I think I heard that.

11 A. Yes.

12 Q. But, nevertheless, you did mortgage it --

13 A. Yes.

14 Q. -- to secure your father's bond.

15 A. Yes. We would like him home for the --

16 Q. I understand that.

17 A. Yes.

18 Q. And you said you did that only because the Court said it
19 was okay to do that.

20 A. Because you said it would be okay, yes.

21 Q. So my next question was, are you saying then that it would
22 be -- you couldn't mortgage it or sell it unless the Court told
23 you you could?

24 A. I'm not sure. I'm not --

25 Q. I'm not either.

1 A. I'm sorry.

2 Q. Was there any, or is there any agreement, Mrs. Hale, with
3 your mother and father that if they ever need the property back,
4 that you and your sister and your husbands would convey it back
5 to them if they need it?

6 A. No.

7 Q. No?

8 A. No, sir.

9 Q. Who suggested that there be a life estate retained by your
10 father and your mother? Was that your idea?

11 A. Maybe Jack's.

12 Q. That would be?

13 A. Jack Butt.

14 Q. The attorney?

15 A. Yes.

16 Q. So you don't know where that idea came from except maybe
17 from the lawyer?

18 A. Well, I have a lot on my plate, so I'm having a little bit
19 of a time to --

20 Q. I know you're not used to these kind of questions, Ms.
21 Hale, and I understand that, but as I said, if you don't under-
22 stand what I'm asking you, just tell me.

23 A. Okay.

24 Q. I'm trying to figure out if that idea came from your mother
25 or your father or your sister or somebody else, and I believe

1 you're telling me you think it came from the lawyer who helped
2 prepare the papers.

3 A. To the best of my recollection. I do not remember exactly
4 how it came to pass that -- I -- to be -- I -- I just don't
5 recall exactly at this point in time, sir.

6 Q. Other than what you understand were your grandfather's
7 wishes, is there any reason why you couldn't sell or mortgage
8 the property if you wanted to?

9 A. Dishonoring my grandpa.

10 Q. But, I mean, other than that. Aside from that.

11 A. I suppose one has freewill to do with -- whatever with the
12 property they would wish to do, but by my family's obligation to
13 myself and to my heritage --

14 Q. I understand that, but I say aside from that, there's no
15 reason that you know of that you couldn't sell or mortgage it if
16 you wanted to?

17 A. No, sir.

18 Q. Okay. Now, Ms. Hale, as I understand it, the property was
19 basically just gifted to you. Did you pay anything for it?

20 A. No.

21 Q. I know that the Quit Claim Deed says, as most of them do,
22 one dollar and other valuable consideration, but you probably
23 didn't pay a dollar, did you?

24 A. I don't believe I paid a dollar.

25 Q. Don't think so, okay. But there was no money that changed

1 hands? You didn't sign a note? You didn't offer -- you didn't
2 pay anything for it?

3 A. I did sign a piece of paper -- no. Yes. I'm not sure.
4 I'm not sure. I've got so much on my plate, sir. My retention
5 for memory is just --

6 Q. Okay.

7 A. -- out the window.

8 Q. Okay. What I'm trying to get at is whether you and your
9 sister paid your parents anything for this conveyance.

10 A. Not that I am aware.

11 Q. And didn't promise to pay anything?

12 A. Not that I am aware.

13 Q. Okay. Now, do you know, or have any idea about the value
14 of this property?

15 A. Well, I guess it really just depends on who you ask.

16 Q. Well, I'm asking you.

17 A. You know, it's -- it's -- it's too valuable of a piece of
18 property to put an actual price tag on. It's -- it's a heritage
19 thing, and I think it would do a dishonest -- a dishonest thing
20 to put a price tag on it because Grandpa would just hate that,
21 and I -- you know, I -- I'm sorry.

22 Q. Well, okay. So you would have no idea that it might be
23 worth X number of dollars per acre? You have no idea on that?

24 A. You know, I could throw a figure out there, but, you know,
25 I think it really just depends on who you ask and what it means

1 to you, and I think it would do it an injustice to put a price
2 tag on it.

3 Q. Where do you and your husband live?

4 A. Farmington.

5 Q. Okay, and do you own property there?

6 A. Yes, sir.

7 Q. How long have you owned it?

8 A. Well, a little over four years, maybe.

9 Q. And have you bought and sold any property before that where
10 you now live in Farmington?

11 A. Can you repeat the question, sir?

12 Q. Have you bought or sold any other property other than the
13 place that you own in Farmington?

14 A. Yes, sir.

15 Q. Where?

16 A. We bought a piece of property here many years ago in
17 Prairie Grove and sold it off this year.

18 Q. Okay. Any other times?

19 A. I'm trying to get it -- I'm not -- I don't think so. Not
20 -- I'm kind of on the spot here, so --

21 Q. You mentioned you think you signed a piece of paper. What
22 do you think that was?

23 A. It was -- I don't know that I have, quite honestly. I
24 think I was in the room with Jack and my sister, my mother. I
25 may not have. I mean, I have elderly -- a great aunt and uncle

1 I take care of, and they're invalid, and he's a VA member, and
2 it takes up just about all of my time to keep focused there, so
3 I'm not really sure, and I can't answer that. I'm not sure.

4 Q. Well, do you have any idea what -- what it might have been?

5 A. Probably just to say that I was okay if I -- it was okay to
6 do what we were doing by my half, if I did sign something. I'm
7 not sure. I'm just not sure.

8 Q. Okay. Would it have been something that Mr. Butt would
9 have prepared?

10 A. Probably. And I'm not sure that I did sign anything. I
11 may have; I may not have. Jack has it, though.

12 Q. I'm sorry?

13 A. I'm sure Jack has anything that my name is on.

14 Q. I have been provided by your parents with the tax receipt
15 for the property. Will you and your sister be paying these
16 taxes in the future or do you know?

17 A. Sure, if -- if -- whoever has got the money can pay it.
18 You know, one of the two of us.

19 Q. Okay. Have you ever -- were you raised on this property
20 yourself?

21 A. (The witness nods her head up and down.)

22 Q. How many ways, by road or otherwise, are there into the
23 property?

24 A. Depends on how agile you are. You can go by foot, by car.
25 If you have a plane, you can drop in. It just -- there's a road

1 in and --

2 Q. There's one road in?

3 A. Yes.

4 Q. Are there any other right-of-ways for roads, if you know?

5 A. You know, I'm not sure, but my father would know.

6 Q. Okay. Now, other than your understanding of your grand-
7 father's wishes, and I suppose your father's wishes as well, is
8 there anything in writing that forbids you from selling or
9 mortgaging the property or handing it down to your children or
10 requiring you to hand it down to your children?

11 A. My conscience.

12 Q. Well, but nothing in writing?

13 A. Whatever Jack did for us.

14 Q. Well, what -- did he do something else for you?

15 A. Well, he's done some work for my great aunt and uncle, yes.
16 That may be why I'm getting a little bit confused --

17 Q. Okay.

18 A. -- on the paper signing thing.

19 THE COURT: All right, counsel, do either of you have
20 questions as a result of my questions? Ms. Johnson?

21 MS. JOHNSON: No, Your Honor.

22 THE COURT: Ms. Blatt?

23 MS. BLATT: Yes, Your Honor. May I approach the
24 witness?

25 THE COURT: Sure.

EXAMINATION BY MS. BLATT

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Q. Connie --

A. Carol.

Q. Carol, sorry. Do you recognize this letter from Jack Butt's office?

A. Uh-huh.

Q. I need you to say yes or no for the court reporter's benefit.

A. Yes, ma'am.

Q. Okay, and what is that letter?

A. It just says that we were trying to be very up front with what was going on, and we didn't want to have any conflicts about any situation speaking to this land, to my knowledge.

MS. BLATT: Your Honor, I would like to move to introduce a letter prepared by Mr. Butt to the U. S. Attorney's Office showing that the property was going to be transferred. I think I previously provided a copy to the Court and to Ms. Johnson.

MS. JOHNSON: No objection, Your Honor.

THE COURT: All right. Make that Defense Exhibit 1, please, to this hearing.

BY MS. BLATT:

Q. Connie, are you married? I mean are you employed?

A. I -- I'm a care-giver on a volunteer basis for my great aunt and uncle. They're ninety and eighty-seven, a VA veteran

1 and a retired -- well, he's a retired veteran and a school
2 teacher, and she's a retired telephone operator.

3 Q. Okay, and do you get paid for taking care of them?

4 A. No, ma'am.

5 Q. So do you personally have any income?

6 A. No.

7 Q. And if you were to mortgage this property, would you have
8 any way to repay the loan?

9 A. No, ma'am.

10 Q. Do you believe if your mom and dad mortgaged their life
11 estate, that at ten dollars and fifty cents an hour, your mom
12 would be able to pay this money back?

13 A. It's ridiculous. No, they would not be able to pay it
14 back.

15 Q. And when you all transferred the property, you were very up
16 front with Mr. Butt --

17 A. Yes.

18 Q. -- about your intentions and why you wanted to do this?

19 A. Yes, ma'am.

20 Q. Have you known since you were a little girl that this
21 property was going to be yours?

22 A. Grandpa always told us that it would be.

23 Q. So you knew even back when your grandfather was alive?

24 A. Yes, ma'am.

25 Q. It was just a matter of when the paperwork was done?

1 A. Yes, ma'am.

2 Q. Thank you.

3 A. Thank you.

4 THE COURT: Anything further?

5 MS. JOHNSON: Just one in response to that, Your
6 Honor.

7 THE COURT: Sure.

8 EXAMINATION BY MS. JOHNSON

9 Q. Actually, ma'am, you're aware that the property would come
10 to you even without the Deed if your parents were to pass away.
11 You understand that?

12 A. Yes, ma'am.

13 Q. You understood that before you participated in this deeding
14 process?

15 A. Yes, ma'am.

16 Q. And so what necessitated the occurrence of the Deed at this
17 time when you knew the property, at the passing of your folks,
18 were coming to you and your sister anyway?

19 A. My mother's health, my father's health. Him being sick in
20 jail prompted us to get this -- and then coming together as
21 well. It became the meeting spot and just happened that way.
22 It would have happened years ago, but this just came to a peak
23 then.

24 Q. I understand that. In fact, your father wasn't there
25 because he was incarcerated, correct?

1 A. That's correct.

2 Q. So you weren't all together. Is that right?

3 A. Yes, ma'am.

4 Q. In fact, you had to use a Power of Attorney?

5 A. Yes, ma'am.

6 Q. So my question was, why the need for the paperwork when it
7 was coming to you anyway?

8 A. It was going to happen sooner or later.

9 Q. What was going to happen?

10 A. The transfer, whether it be in death or right now, and we
11 just came together and did it as a family.

12 Q. Did you feel it protected the property?

13 A. I feel it protected my father and my mother as well.

14 Q. How so?

15 A. Well, we got the Power of Attorney in case something were
16 to happen to them; death, stroke, mom fall off the porch,
17 couldn't help herself. You know, somebody had to be there if
18 Dad was gone, and, you know, it just fell into place. That's
19 the way it happened.

20 Q. So you felt it was like a protection mechanism that began
21 this process?

22 A. The -- well, not so much a protection, probably. It was
23 just a family thing that needed to happen to make sure every-
24 thing was okay. Maybe it was a protection thing. I'm not sure
25 exactly. It was just to make sure everything would be okay here

1 in Fayetteville if Dad was someplace else or Mom was sick in the
2 hospital, or couldn't be resuscitated, or whatever.

3 Q. Okay, so the attorney -- Mr. Butt; is that right? He
4 advised you about the transfer of land?

5 A. Yes.

6 Q. And he told you, "You're going to get this land anyway
7 because you're the only heirs," but he -- did he feel like it
8 was necessary to have a Deed done at this time?

9 A. I'm not sure.

10 Q. Okay. Did you all request that of him?

11 A. (No response.)

12 Q. Did you go to the lawyer's office and say, "We want this
13 Deed prepared"?

14 A. Yes, ma'am.

15 MS. JOHNSON: That's all. Thank you, Your Honor.

16 THE COURT: Anything further?

17 MS. BLATT: Just one question.

18 EXAMINATION BY MS. BLATT

19 Q. Is it your understanding that Mr. Butt is in Europe today
20 and unavailable to be here to --

21 A. Yes, ma'am.

22 Q. -- testify?

23 A. Unfortunately, yes, ma'am.

24 Q. And you all had to contact him to see if he were available
25 to come explain to the Court what he did and why he did it?

1 A. Yes, ma'am.

2 Q. And he already had airplane tickets purchased and was
3 leaving the country?

4 A. Yes, ma'am.

5 EXAMINATION BY THE COURT

6 Q. Ms. Hale, you told Ms. Blatt that you knew about this
7 letter, did you? This is the letter from Mr. Butt.

8 A. Yes. Yes, sir.

9 Q. You read it?

10 A. I believe I have.

11 Q. And did you know that Mr. Butt was going to send it?

12 A. Yes.

13 Q. Whose idea was it that the letter be sent?

14 A. Jack's.

15 Q. All right. What I'm puzzled about -- and you approved of
16 him doing that?

17 A. We thought we were doing best by the -- everything.

18 Q. Well, but you approved of Mr. Butt doing that?

19 A. Oh, absolutely.

20 Q. I guess my concern, Ms. Hale, is I believe you've told me
21 that the property was going to be transferred by your parents to
22 you and your sister sometime. It had been -- something had been
23 in the works or the idea had been there a long time, right?

24 A. Yes, sir.

25 Q. And I believe that you also told me that the fact that Mr.

1 Fincher had been convicted really didn't have anything to do
2 with that?

3 A. It -- it was just a -- it just came to that to -- at that
4 point, all the family came together and it --

5 Q. Okay.

6 A. -- transpired.

7 Q. Well, I guess if that's the case, why would Mr. Butt write
8 such a letter in which he says: "The family wishes to accom-
9 plish this conveyance. They are very much concerned they not
10 violate any laws in doing so." Wasn't that because you all were
11 concerned that it was too close to Mr. Fincher's conviction?

12 A. No, sir.

13 Q. Well, what laws are you thinking about?

14 A. I don't know you and you don't know me. We're trusting
15 that you'll do right by us, and I -- we just wanted to make sure
16 everybody knew what was going on so it didn't -- wasn't any-
17 thing -- I don't know. It was -- that's just the way it was.

18 MS. BLATT: Your Honor, in my discussions with Mr.
19 Butt, he advised me that he did this --

20 THE COURT: Well, Ms. Blatt, I can't let you testify.
21 Sorry. You can make argument if you want to, but I've let you
22 have her testify about Mr. Butt's intentions, which was a
23 stretch, but I can't let you testify because you're -- you're
24 the attorney representing a party. Anything else?

25 MS. BLATT: I'd like to ask this witness some

1 questions.

2 THE COURT: Go ahead.

3 EXAMINATION BY MS. BLATT

4 Q. Did you all discuss with Mr. Butt about whether or not the
5 Government intended to seize this property based on the arrest?

6 A. I think it might have come up and -- but I can't -- I --
7 I'm really not sure of everything. It was just -- I'm not
8 really sure.

9 Q. Did Mr. Butt talk to you about whether or not the property
10 was subject to being forfeited because of the arrest?

11 A. I think he went over a lot of stuff with us that day, and
12 all of it, I will not retain in my memory.

13 Q. Okay, thank you.

14 A. Thank you.

15 EXAMINATION BY THE COURT

16 Q. Ms. Hale, it seems like to me you would remember that. If
17 you all were there to transfer this ancestral property and want
18 to keep it in the family because of what the grandfather said,
19 it just seems to me you'd remember that if Mr. Butt talked about
20 the property maybe being forfeited and that this might avoid
21 that. Are you sure you can't remember anything about that?

22 A. I'm really cluttered in my head right now, sir, and I have
23 a lot on my plate. I have two elderly people at home, and one
24 needs to go to the VA right now, and Dad's stuff has been huge
25 for us, and I'm sorry, my retention is just awful. I -- I'm

1 sorry. I --

2 Q. You just can't remember that?

3 A. I'm afraid to say anything for saying the wrong thing, and
4 I don't know what the correct -- I don't know what I heard. I
5 know what I said, so --

6 Q. Well, if you don't know, that's fine, but I just want to be
7 real sure because it seems like to me you would remember that.

8 A. I would remember if I was living a normal life, and I'm
9 not.

10 Q. All right.

11 THE COURT: Any other questions?

12 MS. JOHNSON: No, Your Honor.

13 THE COURT: All right. Thank you, ma'am. You're
14 excused. You may stand down.

15 If I may, let's call Ms. Hale's sister, Ms. Connie
16 Fields, please.

17 Ms. Fields, if you will, please come around and have
18 a seat in the witness box.

19 MS. BLATT: Your Honor, my client has advised me that
20 he's having trouble hearing the witnesses. If the witnesses can
21 talk into the microphone so he can hear.

22 THE COURT: All right, we'll do that. Ma'am, if you
23 will, try to get that where that thing is in front of your
24 mouth. You don't have to get real close to it, but --

25 CONNIE FIELDS, being called upon to testify, and having been

1 first duly sworn, testified as follows:

2 EXAMINATION BY THE COURT

3 Q. Would you state your name, please?

4 A. Connie Fields.

5 Q. Okay, that's good. Thank you. Ms. Fields, as I recall,
6 you testified earlier in the case involving your father?

7 A. Yes.

8 Q. Do you recall that?

9 A. Yes.

10 Q. Ms. Fields, I wanted to ask you some questions pursuant to
11 an Order that I entered a few days back, and it relates to the
12 property that your mother -- your father, rather -- conveyed to
13 you by Quit Claim Deed, to you and your sister, Ms. Hale.
14 Anytime you don't understand my question, just let me know and
15 I'll try to state it again where I can -- where you can under-
16 stand it. Do you recall when that transfer was made by Quit
17 Claim Deed from Mr. Fincher and his wife to you and your sister
18 and your husbands? Actually, it's to you and your sister, I
19 believe. Do you remember when that was done?

20 A. I think January the 29th, maybe.

21 Q. I think that's right. Was it not after Mr. Fincher had
22 been convicted in the trial here?

23 A. Yes.

24 Q. Did that conviction have anything to do with the decision
25 to have the Deed made on the January the 29th --

1 A. No.

2 Q. No connection at all?

3 A. Huh-uh, no.

4 Q. Okay. Whose idea was it to go to the lawyer's office to do
5 that Deed at that time?

6 A. My dad's, I believe.

7 Q. So he advised you and others to do that?

8 A. Well, we'd been talking about it for quite some time.

9 Q. Okay. Now, who told the lawyer how to do the Deed?

10 A. What are you referring to? I mean --

11 Q. Well, there's a Quit Claim Deed from Mr. Fincher and your
12 mother to -- to the grantees, and the grantees are identified as
13 you and your sister.

14 A. Well, we just went in there to ask for -- you know, that if
15 anything should happen to the dad, or our dad, that we needed to
16 have it, you know, fixed so that -- because his name was the
17 only one on it. And then, you know, the lawyer just more or
18 less told us what options we had.

19 Q. Did you know that the Deed reserved life estates to Mr. and
20 Ms. Fincher --

21 A. Yes.

22 Q. -- in the property?

23 A. That they was to live on it the rest of their life, as long
24 as -- you know.

25 Q. I have been provided, Ms. Fields, with a letter that's now

1 Defense Exhibit Number 1, and it's letter to U. S. Attorney --
2 Assistant U. S. Attorney Chris Plumlee from Mr. Butt. Would you
3 take a look at that and tell me if you've ever seen that, ma'am?

4 A. If I've ever seen it?

5 Q. Yes.

6 A. Yes.

7 Q. And have you read it?

8 A. Yes.

9 Q. And did you know that Mr. Butt was going to send the
10 letter?

11 A. Yes.

12 Q. And did you have any idea why he was sending the letter?

13 A. Just to make sure that we wasn't doing anything wrong cause
14 we didn't want to -- we didn't want to do anything wrong, you
15 know. We was just making sure we did everything right.

16 Q. I'm puzzled why if, as you told me, that Mr. Fincher's
17 conviction had nothing whatever to do with the decision to
18 transfer the property, why would you want to send a letter to
19 Mr. Plumlee, who had everything to do with Mr. Fincher's
20 conviction --

21 A. Well, if he --

22 Q. -- when he wasn't involved, but the U. S. attorney was.

23 A. The way that I understood it was that if there was a fine,
24 you know, and at some point that they didn't pay it, or
25 whatever, you know, that the land could be brought up. So we --

1 you know, we understood that and --

2 Q. So was the purpose to avoid --

3 A. No, no, no.

4 Q. -- paying the fine?

5 A. Huh-uh, no. Cause we'd been -- we've been talking about it
6 for several, several months. We just never got around to doing
7 it. And we understood that if there was a fine, you know -- and
8 that's what Mr. Butt told us.

9 Q. That if there was a fine, what?

10 A. If it -- you know, if there was a fine, then, you know,
11 that they could come back and get it after a certain -- you
12 know, if it was signed after a certain date, so --

13 Q. You're saying Mr. Butt told you that if Mr. Fincher got a
14 fine and it wasn't paid, that the property could be taken to pay
15 the fine?

16 A. Yeah.

17 Q. And --

18 A. If we -- if they -- you know, if they went through it all
19 and they just never paid it, or whatever. Anything signed
20 before that date that we signed it.

21 Q. So that was the reason the Deed was made, to avoid that
22 possibility?

23 A. No.

24 Q. Well, why would you do it then?

25 A. Well, we wanted to get the land done before he went to

1 prison because his name was the only one on it, and it was going
2 to go to me and my sister, so we -- you know, we're new at this.
3 We don't know --

4 Q. Well, you still say, Ms. Fields, that the possibility of it
5 being subjected to payment of a fine had nothing whatever to do
6 with the conveyance?

7 A. Well, if I thought there was going to be a fine, I wouldn't
8 have done it. I mean, we -- we understood that there was --
9 there was going to be fines, and it wasn't to keep from having
10 fines, no.

11 Q. Okay. How much did you and your sister pay for the
12 property?

13 A. A dollar.

14 Q. Did you, in fact, pay the dollar?

15 A. Well, I told my mom I'd give her a dollar.

16 Q. Well, normally you don't, I don't think, but you didn't, in
17 fact, did you?

18 A. No.

19 Q. There wasn't any other --

20 A. I just told her that we'd give her a dollar.

21 Q. Did you sign a note or anything like that, or promise to
22 pay anything for it?

23 A. No.

24 Q. No value was given for it then?

25 A. No.

1 Q. Was there any arrangement or agreement that if your father
2 and mother ever needed that property, that you and your sister
3 would convey it back to them?

4 A. No.

5 Q. So as far as you're concerned, this property is yours and
6 your sister's to do with as you wish?

7 A. That's what I understood.

8 Q. Subject to their life estate?

9 A. Yeah.

10 Q. So you could sell it, mortgage it, do anything you wanted
11 to with it?

12 A. Not unless I have my sister's approval on it, I can't.

13 Q. Well, but -- yeah, but if she did --

14 A. Well --

15 Q. -- you could do that if you wanted to?

16 A. I guess. I --

17 Q. There wouldn't be any reason why you would be constrained
18 or prevented from doing that?

19 A. No. I mean --

20 Q. All you'd need would be your sister's approval. Is that
21 what I'm hearing?

22 A. The best I understood. I'm not too much on this legal
23 stuff, so I don't --

24 Q. Yeah. Sometimes I think I'm not either, Ms. Fields, but --
25 were you raised on the property, Ms. Fields?

- 1 A. Yes.
- 2 Q. How many ways, roadways, are there in and out of the
3 property?
- 4 A. One.
- 5 Q. Just one?
- 6 A. (The witness nods her head up and down.)
- 7 Q. Are there any other right-of-ways that you know about?
- 8 A. I believe there might be one, but I'm not sure.
- 9 Q. Okay. Ms. Hale -- pardon me. I knew I'd do that -- Ms.
10 Fields, forgive me. Where do you live?
- 11 A. Elkins, or I live at Durham.
- 12 Q. Okay. Do you and your husband own property there?
- 13 A. We live on his parents' land.
- 14 Q. Okay. Have you bought and sold any property yourself?
- 15 A. It's been several years.
- 16 Q. Well, where was that property that you bought?
- 17 A. Almost at Durham.
- 18 Q. I don't know where that is.
- 19 A. It's -- well, it's right past Elkins.
- 20 Q. Okay, okay. Do you have any idea, Ms. Fields, as to the
21 value of this property that your father and mother deeded to
22 you?
- 23 A. I have no clue.
- 24 Q. No idea at all?
- 25 A. No.

1 Q. Okay. Are you aware of the tax statements that have been
2 paid by your parents over the years? You may not, but do you --

3 A. No.

4 Q. -- know about that?

5 A. I don't.

6 Q. Do you know who is supposed to be paying the taxes now?

7 A. I would assume that some of us will. I don't --

8 Q. Okay.

9 A. We ain't got that far yet.

10 Q. Okay.

11 THE COURT: All right, any questions, Ms. Johnson?

12 MS. JOHNSON: No, Your Honor.

13 THE COURT: Ms. Blatt?

14 MS. BLATT: No, Your Honor, I don't.

15 THE COURT: All right, thank you, ma'am. You may
16 stand down.

17 And, counsel, I'm not convinced that I need to hear
18 testimony from the husbands of these two ladies who have testi-
19 fied. I think it would be somewhat cumulative. If either of
20 you desire to call them, nevertheless, and have me question
21 them, I'll do it, but I don't think they can add too much to
22 what I've heard. What say you, Ms. Johnson?

23 MS. JOHNSON: The Government agrees, Your Honor.

24 THE COURT: What say you, Ms. Blatt?

25 MS. BLATT: I agree, Your Honor.

1 THE COURT: All right. Counsel, I am scheduled to
2 come away with another hearing in just a few minutes, and so I
3 don't have a lot of time to accord you comments if you want to
4 make them, but I will tell you this, that in connection with the
5 entry of this Order and after I had caused it to be filed, I
6 determined that no matter what I heard here -- I suspected that
7 I might hear much of what I have heard about the ancestral
8 property. I, on my own motion, determined that I would order an
9 appraisal of the Fincher property, and I do that for two
10 reasons. One of the concerns that I've outlined in this Order,
11 that Mr. Fincher may not, in fact, have been qualified to
12 receive an appointed attorney on the initial appointment of Mr.
13 Dunnagan, and that he may not yet still be qualified, depending
14 upon certain things that I hope to get cleared up.

15 The second reason was that the property in question
16 has been mortgaged to this court as security for a one hundred
17 thousand dollar bond, and until I had this hearing, I had no
18 notion as to what that property might be worth. There was no
19 indication whether there were liens against it or whether it is
20 adequate security, so I think it's prudent to get a proper
21 appraisal.

22 Now, having heard what I've heard from Mr. Fincher and
23 his daughters and his wife, I'm even more convinced that I need
24 an appraisal because other than what Mr. Fincher said about he'd
25 heard of property that sold for maybe two thousand an acre or

1 maybe four thousand an acre, there's really nothing on which to
2 base any real opinion as to what that property might be worth,
3 and I think that's central to the inquiry. So we have -- I've
4 engaged Mr. Tom Reed to do an appraisal, and he will be doing
5 that in short order, I hope.

6 So I would advise you, Mr. Fincher, and the others
7 that are not in here to hear this, but I will direct that you
8 cooperate with Mr. Reed to come out to make this appraisal.
9 He's a nice man, and I'm sure he will be courteous to you, but
10 I want you to know that he's doing that pursuant to the Court's
11 authorization. So, Mr. Fincher, do you anticipate any problem
12 with that? I know you own only a life estate in the property,
13 but if you have any concerns, I'd like to hear them now.

14 THE DEFENDANT: Well, sir, I have no idea what the
15 life estate -- I couldn't give you any kind of description what
16 the life estate other than I get to live in that house the rest
17 of my days. I have no idea whatsoever.

18 THE COURT: Well, I'm just saying, since you do own a
19 life estate, I want you to know that the man will be coming out
20 so that you don't think he's some interloper. You know, he's
21 only doing what the Court has asked him to do, and so I'd appre-
22 ciate it if you would cooperate with him. He's a very nice man,
23 and he'll be unobtrusive, and I think he'll be courteous and
24 respectful to you, and I'd ask you to do the same. Will you do
25 that, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And I will ask you to ask that of your
3 daughters. I think your daughters -- they don't live there, you
4 live there, but please tell them -- they're not in here, and I
5 can call them back in, but I'll just ask you to do it. And, Ms.
6 Blatt, if you'll convey that, that that's what's going on, and
7 as soon as I get an appraisal from Mr. Reed, then I'll provide
8 copies of it to you, Ms. Blatt, and to you, Ms. Johnson, for the
9 United States. Pending that, I will take under advisement the
10 matters that are addressed in my Order and rule on it after I
11 have received this appraisal.

12 And, Ms. Blatt, you have filed affidavits with respect
13 to records that you want to acquire. I'm going to wait on that
14 until I get this appraisal in, until I'm able to make an
15 informed judgment on the matter that's before me.

16 So I thank you again for coming in, and I appreciate
17 your presentations. I guess you didn't present as much as I
18 did, but I thank you very much.

19 Anything further, Ms. Blatt?

20 MS. BLATT: Yes, Your Honor. A Notice of Appeal has
21 been filed in this matter, and I believe the court reporter's
22 deadline is at the end of the month to have the transcript
23 prepared, and I have talked with your court reporter and advised
24 her that I don't have the authority to commit her to being paid.
25 Since I'm court-appointed, the Court would have to approve a

1 transcript at this time, and I guess the court reporter and I
2 both need some guidance as to how to proceed in getting the
3 record prepared for appeal purposes when the Eighth Circuit has
4 already given us a scheduling deadline, and I believe the trans-
5 cript is due at the end of the month. The 17th of this month.
6 And today is the 3rd.

7 THE COURT: I think under the circumstances, we could
8 probably secure an extension for her. I'm not going to
9 guarantee that, but I think probably the Court has some
10 influence in that area, but I thank you for bringing that up,
11 and we'll certainly keep an eye on it. Anything else?

12 MS. BLATT: No, Your Honor.

13 THE COURT: Ms. Johnson?

14 MS. JOHNSON: No, Your Honor.

15 THE COURT: All right, then thank you very much. I
16 will remind you, Mr. Fincher, that you have promised me, sir,
17 that you would provide to me copies of the two employment agree-
18 ments that you had with Mr. Stilley. Did I hear that correctly,
19 sir, that you had two of them and you would provide copies of
20 them to me?

21 THE DEFENDANT: If I can find them, I will. I've got
22 one -- I know where one of them is, I believe, and --

23 THE COURT: Well, I would urge you to make a very
24 strong effort. I don't know -- you've been a guest in jail for
25 some time and --

1 THE DEFENDANT: Well, let me say one thing, sir. You
2 do not understand how discombobulating that is and -- I'm having
3 trouble keeping my thought pattern. You cannot ever imagine
4 what that's like, and I --

5 THE COURT: Well, Mr. Fincher, as a matter of fact, I
6 can because I had some experience in the military that I suspect
7 was very much more difficult and unpleasant than what you've
8 experienced. It wasn't as long, but to the extent you think I
9 don't know about that thing --

10 THE DEFENDANT: I withdraw that, sir.

11 THE COURT: All right. But I'd appreciate it very
12 much if you would try to locate those and get them to me
13 straightaway. Would you do that, sir?

14 THE DEFENDANT: Through the mail or -- or what? What
15 medium?

16 THE COURT: The mail, with all due respect -- we kind
17 of have a time frame here. I don't want to inconvenience you,
18 sir, but if you can just get them to us -- if you could bring
19 them down here, I'd appreciate it. If you can't, maybe you
20 could give us a call, and I can have one of the folks that work
21 with me, maybe one of the marshals or CSO's, come and get it.
22 I'd like to get those right away if I can. If you put it in the
23 mail -- and, again, I mean no disrespect, but it might -- Ms.
24 Brown, would you help us?

25 MS. BROWN: Yes, Your Honor.

1 THE COURT: Good. Ms. Donna Brown. Because I need to
2 get that in hand. I want to make this thing go as quickly as I
3 can because we have deadlines. I know you have an appeal and we
4 need to get the record, and we have a lot of things to get
5 straight, and if we just put something in the mail --

6 THE DEFENDANT: I'm asking you what -- how -- what
7 medium.

8 THE COURT: If you will notify Ms. Donna Brown. You
9 know her?

10 THE DEFENDANT: Yeah.

11 THE COURT: Ms. Donna Brown. If you'll just call her
12 and tell her you've got it.

13 Donna, you'll make arrangements to get it. Will you
14 do that?

15 MS. BROWN: Yes, Your Honor.

16 THE COURT: All right, thank you very much. This
17 concludes the matter. I'll take it under advisement pending the
18 matters I mentioned. We're adjourned.

19 (WHEREIN THE HEARING WAS CONCLUDED.)

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