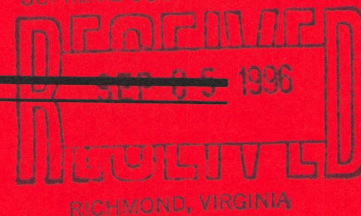


253 Va 78

CLERK  
SUPREME COURT OF VIRGINIA



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IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

---

RECORD NO. 960761

---

**JOHN W. DRAPER, et al.,**

*Appellants,*

v.

**PATRICIA PAULEY,**

*Appellee.*

---

**JOINT APPENDIX**

---

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE

JOHN W. DRAPER  
and  
CHARLES E. DRAPER,

Appellants,

v.

Case No. \_\_\_\_\_

PATRICIA PAULEY,  
695 Ridgemoor Road  
Earlysville, VA 22936

Defendant.

**APPLICATION FOR APPEAL OF CLERK'S ADMISSION TO PROBATE  
OF THE PURPORTED TRUE LAST WILL & TESTAMENT OF  
IRENE DRAPER, DECEASED**

TO THE HONORABLE PAUL M. PEATROSS, JR., JUDGE OF THE ABOVE COURT:

COME NOW, the Plaintiffs, John W. Draper and Charles E. Draper, by counsel, pursuant to Virginia Code Section 64.1-78 and says as follows:

1. That they are the children of Irene Draper, who departed this life on September 4, 1995;

2. That on October 12, 1995, the Clerk of the Circuit Court of Albemarle County entered an Order admitting a document purported to be the Last Will & Testament of Irene Draper to probate. Said Order and document are indexed and recorded in Book 82, pages 277-78 respectively. Copies of same are attached hereto, marked Appellant's Exhibits 1 and 2 respectively, and made part hereof as it fully set forth in haec verba;

3. That Your Appellants believe and allege that the said Irene Draper died intestate;

4. That they further allege and charge that the said

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CIRCUIT COURT CLERK'S OFFICE  
ALBEMARLE COUNTY, VA  
SHELDY J. MARSHALL, CLERK  
BY \_\_\_\_\_ D.C.

purported will of the deceased and which was admitted to probate is not the Last Will and Testament of the said Irene Draper;

5. That in accordance with Virginia Code Section 64.1-78, Appellants hereby appeal to the Circuit Court of Albemarle County, the admission by the Clerk of the said purported will to probate.

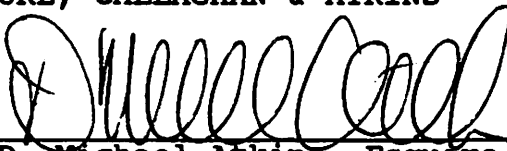
WHEREFORE, Appellants, pursuant to Virginia Code Section 64.1-78 direct that the Clerk of the Circuit Court of Albemarle County enter an Order allowing this appeal and docket same as a preferred cause for trial at the next term of Court.

JOHN W. DRAPER  
CHARLES E. DRAPER

By Counsel

McCLURE, CALLAGHAN & ATKINS

By:



D. Michael Atkins, Esquire  
Counsel for Appellants  
P. O. Box 1333  
415 Fourth Street, N.E.  
Charlottesville, VA 22902  
VSB #15736

DRAPER.APP

VIRGINIA: IN THE CLERK'S OFFICE OF THE PROBATE COURT OF THE COUNTY OF ALBEMARLE, OCTOBER 12, 1995:

A paper writing bearing date the 1st day of March, 1995, purporting to be the Last Will and Testament of Irene Draper, deceased, late resident of the County of Albemarle, Virginia, who departed this life on September 4, 1995, was on the 12th day of October, 1995, presented to me, Shelby J. Marshall, and offered for proof and probate.

The said paper writing was proved by the oaths of Darlene Butler and Tracy Collier, the attesting witnesses thereto, who testified that he was personally present when the said Irene Draper,, signed and declared said paper writing to be her Last Will and Testament, and at her request and in her presence and in the presence of each other, they subscribed their names as attesting witnesses thereto.

The said Darlene Butler and Tracy Collier, further testified that at the time of execution of said paper writing the said Irene Draper, was of sound and disposing mind, memory and understanding and capable of making a valid Last Will and Testament.

Whereupon, the said paper writing is admitted to probate by me and ordered to be recorded as and for the True Last Will and Testament of the said Irene Draper, deceased.

SHELBY J. MARSHALL, CLERK

By: J. M. Taylor Deputy Clerk

This is to verify that the signature below is the true  
Signature of Irene Draper.

Irene Draper

State of Virginia, City of Charlottesville

Given under my hand this 1<sup>st</sup> day of March, 1995

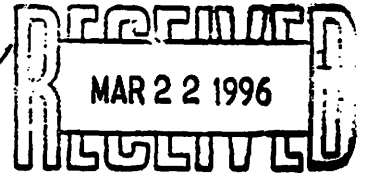
Nancy McCall  
Notary Public

Pauline Butler

My Comm. Expires 12/31, 1995

I Irene Draper being of sound and disposi-  
mind, memory, And understanding do hereby make publish  
And declare this instrument of writing to be my request  
I own a house on Belmont Avenue that I  
would like to give my niece Patricia Pauley if anything  
should happen to me.

The reason for this is that Pat has always  
been there for me. She takes care of all my business  
for me and even takes care of me. I live with  
her now.



1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE COUNTY OF ALBEMARLE, VIRGINIA

3 \*\*\*\*\*  
4 JOHN W. DRAPER  
and CHARLES E. DRAPER,

5 Plaintiffs,

6 -vs-

7 PATRICIA PAULEY,

8 Defendant.  
9 \*\*\*\*\*

10 TRANSCRIPT OF PROCEEDINGS AS HEARD BEFORE  
11 THE HONORABLE PAUL M. PEATROSS, JR., JUDGE

12 January 11, 1996

13 12:00 p.m. - 1:12 p.m.

14 Charlottesville, Virginia

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CIRCUIT COURT OF THE COUNTY OF ALBEMARLE, VIRGINIA  
SHELBY J. MARSHALL, CLERK  
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25 REPORTED BY: JANICE TENISI, COURT REPORTER

I, Shelby J. Marshall, Clerk, Circuit Court of  
Albemarle County do hereby certify this to be  
the original transcript in the matter of  
John W. Draper and Charles E. Draper vs  
Patricia Pauley.

5

*Shelby J. Marshall*  
Shelby J. Marshall, Clerk

1 APPEARANCES OF COUNSEL:

2 MCCLURE, CALLAGHAN & ATKINS  
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5 (804) 977-6222

6 BY: D. MICHAEL ATKINS, ESQ.  
7 Counsel for the Plaintiffs  
8

9 THE LAW OFFICES OF GREGORY S. DUNCAN  
10 414 E. Market Street  
11 Charlottesville, VA 22902  
12 (804) 979-8556

13 BY: GREGORY S. DUNCAN, ESQ.  
14 Counsel for the Defendant  
15

16 \* \* \* \* \*

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MARKED / RECEIVED:

1.....29

2.....29

3.....29

DFTS EX. NO.

MARKED / RECEIVED:

(NONE)

\* \* \* \* \*

1 (12:00 p.m., January 11, 1996)

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THE COURT: So this is Draper and others  
versus Patricia Pauley, and this is an appeal of the  
admission of a will to probate. And Mr. Atkins, this  
is your motion.

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MR. ATKINS: Yes, your Honor. 64.1-78 of  
the statute itself is not real clear as to how one  
proceeds in this setting. I'm perfectly prepared to  
commence my attack of the will at this point in time  
if the Court is inclined to conduct the proceedings  
that way.

15

16

17

I talked to Mr. Duncan, and he is prepared  
to attempt to admit the will to probate, which is, I  
think, procedurally what we're here to do today.

18

19

THE COURT: Do you have any opening  
comment?

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MR. DUNCAN: Just that I agree with  
Mr. Atkins. I think that the proponent of the will  
has the burden to proffer it to the Court for  
consideration.

24

25

THE COURT: But I take it that's been done,  
the clerk's accepted it, and you've appealed that?

1 MR. ATKINS: Yes, sir, I have.

2 THE COURT: Can we agree for the record  
3 that the will has been accepted by the clerk for  
4 probate and you're challenging the validity of the  
5 will?

6 MR. ATKINS: Pursuant to 64.1-78 of the  
7 Code. And that's specifically mentioned in the  
8 application for appeal which I filed.

9 THE COURT: All right. So why don't we  
10 just then deem the will as having been admitted to the  
11 probate and let you start your challenge to it. Do  
12 you have any further opening statement, or are you  
13 going to call a witness?

14 MR. ATKINS: I do have an opening  
15 statement. I ask the witnesses be excluded.

16 THE COURT: There's a motion about  
17 witnesses, so everybody who's going to be a witness is  
18 asked to wait outside of the courtroom. The purpose  
19 is so that you do not overhear one another testify;  
20 and that's not parties, but witnesses. So all  
21 witnesses at this time need to wait in the waiting  
22 room off the entrance hall, please, and we'll call you  
23 in individually.

24 (Witnesses leave the courtroom)

25 MR. ATKINS: May it please the Court.

1 Before you you have a will which purports to be the  
2 last will and testament of one Irene Draper. The will  
3 itself has no date, but there's a notorial signature  
4 above that day indicating it's the 1st day of March.  
5 Mrs. Draper died in September -- I'm sorry, died on  
6 September the 4th, 1995. And on October the 12th, if  
7 my notes are accurate, your Honor, the will, which you  
8 have in front of you, was admitted to probate.

9 As the Court can see on the face of the  
10 particular will, the pertinent language appears below  
11 the signature. In investigating this case, your  
12 Honor, I have spoken with two individuals, both of  
13 whom are employees of the Martha Jefferson Hospital.  
14 And the evidence will be, your Honor, I don't think  
15 this is in dispute, that the will was, or the  
16 purported will, was executed at the Martha Jefferson  
17 Hospital on or about March 1st, 1995.

18 Now, my first witness will be Clarissa  
19 Bell. She is head of the Health Information Services,  
20 formerly known as Medical Records. In Medical Records  
21 there are a number of employees who are notaries. And  
22 Ms. Bell supervises these notaries, and she will  
23 testify that there is a certain procedure that all of  
24 her employee notaries are directed to follow when they  
25 are requested to witness or notarize a will. The



1 Martha Jefferson has specific forms on file which  
2 notaries are instructed to use. And basically what  
3 you have, your Honor, is a self-proving will form so  
4 that the staff and employees at the Martha Jefferson  
5 don't have to come to the clerk's office.

6 She will further testify, your Honor, that  
7 her notaries are instructed not to notarize anything  
8 but language which is above the signature that they  
9 are notarizing.

10 My second witness, your Honor, will be  
11 Tracy Collier, who is the notary and witness to the  
12 purported will of Irene Draper. Ms. Collier, your  
13 Honor, recalls being asked to go to the room. She  
14 doesn't recall how the message came to her.

15 She will testify under oath, your Honor,  
16 that when she notarized the signature of Irene Draper,  
17 the language, which is the will itself and which  
18 appears below the signature, was not on the document.

19 In addition, your Honor, the notaries of  
20 the Martha Jefferson keep a log. And in that log they  
21 are asked, as close to the actual notarization process  
22 as possible, to note what they notarized and when they  
23 notarized it. Ms. Collier has her log, and I  
24 subpoenaed it pursuant to subpoena duces tecum. And  
25 that log indicates on the 1st day of March she

1 notarized a letter.

2 We therefore, your Honor, would contend  
3 that this document is not a will and does not comply  
4 with Virginia law. And, hence, since there is no  
5 other will, that Ms. Irene Draper died intestate. And  
6 I represent her two sons.

7 That's all I have, your Honor.

8 THE COURT: Any opening comments you'd like  
9 to make, Mr. Duncan?

10 MR. DUNCAN: Just briefly. I think there  
11 are apparently some things we can agree with that will  
12 expedite this hearing. The signature is obviously  
13 that of Irene Draper; Mr. Atkins admits that. The  
14 notary notarized Ms. Draper's signature.

15 The course of events at that point after  
16 Ms. Draper signed her name and it was notarized we  
17 believe is as follows: Ms. Draper at that point asked  
18 Patricia Pauley to draft her will. Patricia Pauley  
19 then set out to write what is in the body of this  
20 document.

21 Upon completing that -- and Ms. Draper  
22 directed what she'd write -- upon completing that  
23 task, the entire document was handed back to  
24 Ms. Draper who read it carefully and stated verbally  
25 that this indeed is "what I want done." The document

1 was then given to another witness, Ms. Darlene Butler,  
2 and her signature is affixed to this writing.

3 We submit that the document does indeed  
4 comport with the statute of wills. It was  
5 certainly -- the signature appears on the paper, and  
6 there's no requirement that the signature appear at  
7 any particular place. The document was witnessed in  
8 front of at least four people, three of whom's  
9 signature appears on this piece of paper. There is  
10 simply no question that it comports with the statute  
11 of wills and should be admitted to probate.

12 Thank you.

13 THE COURT: First witness, Mr. Atkins?

14 MR. ATKINS: I'll call Melissa Bell.

15 THE COURT: Ms. Bell. All right.

16 (Ms. Bell enters the courtroom)

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CLARISSA W. BELL,

was sworn and testified as follows:

D I R E C T

E X A M I N A T I O N

BY MR. ATKINS:

Q Would you state your name and occupation?

A My name is Clarissa W. Bell. I'm the  
clerical supervisor in the Health Information Services  
area of Martha Jefferson Hospital.

Q Is that formerly Medical Records?

A Yes, it is.

Q And in your capacity as supervisor, do you  
supervise notaries in that particular department?

A Yes.

Q And did you supervise notaries in that  
particular department in March of 1995?

A I did.

Q Now, with respect to notaries, is it  
unusual for requests from patients to be routed to  
your office to have a notary-witnessed signature on  
any type of document?

A Did you say is it unusual?

Q Yes. Is it unusual?

A No.

Q In fact, it happens with some frequency?

1           A           Yes.

2           Q           And as a result of the frequency with which  
3 your office or the notaries in your office must  
4 notarize documents, you have certain policies, do you  
5 not?

6           A           I would say we have certain guidelines that  
7 we use.

8           Q           Now, with respect to wills, do you have  
9 guidelines in effect which set forth the manner in  
10 which your notary is to proceed?

11          A           Yes.

12          Q           Would you tell the Court what that is?

13          A           What we generally do once we get the call,  
14 we figure out which notary will go, whoever is  
15 available. And we go to the floor asking the nurse --  
16 we'll call to the floor if we need to find out what  
17 kind of document is to be notarized, and we ask if we  
18 need witnesses. Sometimes the floor can provide us  
19 witnesses, or we can take a person from the office to  
20 be a witness.

21                       When we get there, we look at the document  
22 and make sure that the patient is the correct patient  
23 by their arm band or by their tag on the bed. Then we  
24 notarize at the very bottom of the document, trying to  
25 capture everything that's in that document at the very



1 bottom. That's where we put our notary seal and the  
2 expiration date and the signature.

3 Q Are your notaries expressly instructed only  
4 to notarize directly above the document?

5 A Below the bottom.

6 Q Above -- I mean, are they told to notarize  
7 below the language?

8 A Right. Our signature should be the last  
9 thing that appears on the document.

10 Q And that's the practice in your office?

11 A That's our practice.

12 Q Now, do you not have forms at Martha  
13 Jefferson for self-proving wills to obviate the  
14 necessity of individuals having to come down to the  
15 clerk's office?

16 A We do have a form we attach.

17 Q And is it common practice when your office  
18 is asked to notarize a will that that form would  
19 accompany the will and the notary will take that form  
20 with her?

21 A Yes. If it's not already a will -- if it's  
22 a handwritten will, that's a form that we must attach  
23 to it.

24 Q And that's your practice?

25 A That's our practice.

1 Q Thank you. Answer Mr. Duncan's questions.

2

3

C R O S S

4

E X A M I N A T I O N

5

BY MR. DUNCAN:

6

Q You were not present on March 1, 1995 in  
7 the room of Irene Draper, were you?

8

A No, I was not.

9

Q So you have no personal knowledge of  
10 anything that happened in that room that day?

11

A I would say I don't. I've heard the other  
12 clerk in the office talk about it, and I've seen the  
13 document.

14

Q And is it also fair to say that since you  
15 were not in the room on that occasion you don't know  
16 what procedures were followed in that room on that  
17 occasion?

18

A Yes, I would say that's fair to say.

19

THE COURT: Mr. Atkins, redirect?

20

MR. ATKINS: No, sir.

21

THE COURT: May this witness be excused?

22

MR. ATKINS: Yes, sir.

23

THE COURT: Any objection, Mr. Duncan?

24

MR. DUNCAN: No objection.

25

THE COURT: You're free to leave or free to

1 stay.

2 THE WITNESS: Thank you.

3 THE COURT: Next witness?

4 MR. ATKINS: Tracy Collier.

5 (Ms. Bell remains in the courtroom)

6 (Ms. Collier enters the courtroom)

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TRACY COLLIER,  
was sworn and testified as follows:  
D I R E C T  
E X A M I N A T I O N  
BY MR. ATKINS:  
Q Would you tell us your name and occupation?  
A Tracy Collier, and I'm a release of  
information clerk in Medical Records.  
Q And were you working in Medical Records on  
March the 1st, 1995?  
A Yes.  
Q Are you also a notary?  
A Yes.  
Q Now, before I start my questioning, do you  
know or are you related to any parties in the  
proceedings? That would be Mr. Draper, Ms. Draper,  
Ms. Pauley, or Darlene Butler?  
A No.  
Q So you have no relationship either by  
blood, marriage, or association?  
A No.  
Q On March the 1st of 1995, Ms. Collier, were  
you requested to go to the room of one Irene Draper?  
A Yes, sir.  
Q And do you remember how that request was

1 received by you?

2 A I don't remember specifically. The general  
3 practice is that the nursing station, someone at the  
4 nursing station would call and say they need a notary.

5 Q Do you recall why you were summoned to go  
6 to that room?

7 A Just to notarize something.

8 Q There was no -- to notarize something is  
9 the best of your recollection?

10 A (Indicating in the affirmative)

11 Q Did you notarize anything in that room?

12 A Yes.

13 Q And what did you notarize?

14 A I notarized -- according to my log, I  
15 notarized a letter verifying Ms. Draper's signature.

16 Q I'm going to hand you a document which is a  
17 photocopy of what purports to be a will -- maybe if  
18 you could come out of the witness box.

19 A (Complies)

20 Q I want you to hold up this document --

21 THE COURT: Come around, Mr. Duncan, so you  
22 can see.

23 BY MR. ATKINS:

24 Q Now, I want you to show the Court what  
25 actually was on this document when you first saw it.



1           A       This should have been the last thing,  
2 according to our general practice.

3           THE COURT: That's not the question. His  
4 question is, "What was on the document when you first  
5 saw it," not what your general practice is.

6           THE WITNESS: Before I notarized it?

7           THE COURT: Before you did anything, what  
8 was on the page?

9           THE WITNESS: I guess just that.  
10 (Indicating) (Returns to witness box)

11 BY MR. ATKINS:

12           Q       This would be the very first sentence which  
13 appears on there?

14           A       Uh-huh.

15           Q       And had Ms. Draper signed anything when you  
16 came to the room?

17           A       No. I watched her sign.

18           Q       When she signed on the signature line where  
19 it says "Irene Draper," was there any writing below  
20 her signature?

21           A       I don't feel that there was.

22           Q       You're here today under oath. To the best  
23 of your knowledge, was there anything below her  
24 signature?

25           A       No.

1 Q Now, after she signed it, you notarized her  
2 signature; correct?

3 A (Indicating in the affirmative)

4 Q And who was present at that time?

5 A Ms. Pauley and Ms. Butler.

6 Q Was there anyone else present that you  
7 recall?

8 A I believe there may have been a nurse in  
9 the room.

10 Q What did you do -- do you remember what  
11 document you were actually notarizing?

12 A I don't remember all the details because I  
13 notarize so many things. You know, I don't --

14 Q Did you remain in the room after you  
15 notarized the document?

16 A I probably did for, you know, a few minutes  
17 talking to them --

18 Q Do you remember any discussions about a  
19 will or anything like that?

20 A I don't remember anything like that, no,  
21 sir.

22 Q Now, you, at my request, have produced your  
23 notary's log; is that correct?

24 A Uh-huh.

25 Q And tell the Court what this is and how you

1 keep it.

2 A It's a record of everything that I  
3 notarize, who the person is that I'm notarizing for,  
4 their name, and what I have notarized.

5 Q And in preparing to talk with me about this  
6 case prior to coming to Court today, did you look at  
7 that document -- or, I'm sorry, your records?

8 A Before today?

9 Q Yeah.

10 A I had looked at it, yeah, you know.

11 Q And the entries in that record, are they  
12 made as soon after you notarize something as possible?

13 A Yes.

14 Q Now, turn to page, the page that would show  
15 anything on March the 1st.

16 A Okay.

17 Q And what does that say?

18 A It says it's a letter verifying the  
19 signature of Irene Draper.

20 Q So your records would indicate that what  
21 you were notarizing was a letter?

22 A Uh-huh.

23 Q If you had been asked to notarize a will,  
24 would you have followed a different procedure?

25 A Yes.

1 Q What would you have done?

2 A If it's a handwritten will, we have a  
3 document that we attach which has to be signed and  
4 witnessed by a couple witnesses also and then gets  
5 notarized, I guess to validate the will since it's  
6 handwritten.

7 Q And would you routinely use that procedure  
8 if it was made known to you that the party was signing  
9 a will?

10 A Yes, sir.

11 Q Now, I note that on the 2nd day of March  
12 you also notarized something for Irene Draper; is that  
13 correct?

14 A Yes.

15 Q And what was that?

16 A It was a power of attorney, one -- a  
17 typewritten form.

18 Q And so your records would indicate that you  
19 notarized two documents for her, one on the 1st of  
20 March and one on the 2nd?

21 A Yes, sir.

22 MR. ATKINS: Your Honor, I'd move this --  
23 I'd like to have a copy returned to Ms. Collier, if  
24 possible --

25 THE COURT: You mean to return the original

1 and introduce a copy?

2 MR. ATKINS: Yes, sir.

3 THE COURT: Do you have any objection,  
4 Mr. Duncan?

5 MR. ATKINS: I'd like to introduce this for  
6 the Court right now to see this.

7 THE COURT: The original to see? All  
8 right.

9 MR. DUNCAN: If it will make things faster,  
10 I have no objection.

11 MR. ATKINS: And to make a copy for the  
12 record itself.

13 THE COURT: What we'll do is receive the  
14 original, have a copy made, and then return the  
15 original to you.

16 Is that agreeable to you, Ms. Collier?

17 THE WITNESS: Yes.

18 MR. ATKINS: Just a few more questions.

19 Ms. Collier, you may sit down.

20 THE WITNESS: (Complies)

21 BY MR. ATKINS:

22 Q Are you instructed as to where to place  
23 your notary signature and seal?

24 A Yes. The signature of the person that I'm  
25 notarizing for should be at the bottom of the



1 document, and then I notarize directly under that.

2 Q Following that practice then, had you  
3 notarized the written language which appears --

4 MR. DUNCAN: Your Honor, I object. Earlier  
5 she testified that she did not recall -- I object to  
6 that.

7 MR. ATKINS: She can testify if she didn't.

8 THE COURT: She said to the best of her  
9 knowledge there was no writing under the notary.

10 MR. ATKINS: That's right.

11 THE COURT: That's what she said.

12 MR. ATKINS: That's exactly right. And I'm  
13 going to ask her now, your Honor, whether or not there  
14 had been writing, would she have notarized it at the  
15 bottom.

16 THE COURT: All right. I'll permit that  
17 question.

18 BY MR. ATKINS:

19 Q If this writing had appeared, and we're  
20 talking about the body of the will itself, would you  
21 have notarized it at the bottom?

22 A Yes.

23 MR. ATKINS: That's all the questions I  
24 have, your Honor.

25 THE COURT: Mr. Duncan, questions?

1 MR. DUNCAN: Just a few, your Honor.

2

3

C R O S S

4

E X A M I N A T I O N

5 BY MR. DUNCAN:

6

Q First to follow up what you just said. You  
7 indicated if there had been writing down here, you  
8 would have notarized it at the bottom?

9

A Yes.

10

Q Is that just based on your guidelines that  
11 you follow?

12

A Yes. That's what, you know, that's the  
13 general practice that I've always been trained to  
14 follow as a notary.

15

Q I believe you also testified that.  
16 Ms. Draper did indeed sign this document in your  
17 presence; is that correct?

18

A Yes. I did see her sign that.

19

Q And you notarized her signature?

20

A Yes.

21

Q And you certainly wouldn't have done that  
22 if she hadn't signed it in front of you; correct?

23

A No. I would have to see her sign.

24

MR. DUNCAN: If it would be okay, your

25

Honor, I'd like to have the log book back just for a

1 moment.

2 THE COURT: (Hands log book to Mr. Duncan)

3 BY MR. DUNCAN:

4 Q You have testified, did you not, that you  
5 keep this log book in accordance with your guidelines  
6 that you follow?

7 A Yes.

8 Q And pursuant to those guidelines and your  
9 keeping them in accordance with that, how many entries  
10 do you show for March 1?

11 A One.

12 Q If you had notarized more than one document  
13 for Ms. Draper on March 1, would that be in here?

14 A It should be.

15 Q Well, I'm going to show you a document and  
16 ask you if you can identify it.

17 A (Perusing document) It looks like it's the  
18 same copy as the top of the other one.

19 Q Does it have your notary seal on it?

20 A Yes.

21 Q Does it have your original signature?

22 A Yes.

23 MR. DUNCAN: Your Honor, could we by any  
24 chance have the original of the will?

25 THE COURT: Sure. (Hands will to

1 Mr. Duncan)

2 BY MR. DUNCAN:

3 Q I'd like to show you this original document  
4 and ask you if you can identify that.

5 A Yes.

6 Q Is that your notary seal on there?

7 A Uh-huh.

8 Q When is that dated?

9 A The same day. Probably I did two copies  
10 and didn't note in my book that it was two copies.

11 Q So is it fair to say that you don't always  
12 follow the guidelines?

13 A Well, I don't feel that -- as far as  
14 notarizing something, I do follow guidelines. That is  
15 a personal log of mine and, you know --

16 Q You notarize quite a number of items during  
17 the course of your business?

18 A Yes.

19 Q And is it fair to say you don't really read  
20 everything when you make a notary?

21 A As far as reading the entire content of a  
22 document, no.

23 Q You're just primarily concerned with the  
24 signature?

25 A And making sure that the person knows what

1 they're signing and, you know, that they are the ones  
2 that signed it.

3 MR. DUNCAN: I don't believe I have  
4 anything else, your Honor.

5 THE COURT: Any redirect, Mr. Atkins?

6 MR. ATKINS: Yes, your Honor.

7

8 R E D I R E C T

9 E X A M I N A T I O N

10 BY MR. ATKINS:

11 Q I want to show you the second document. I  
12 also want to show you the will. Had you -- assuming  
13 just for the sake of this question that there was no  
14 writing below your notary, if you had notarized two  
15 letters on one day, would you have made that notation  
16 in your log that there were two separate documents?

17 A I should have.

18 Q But what explanation can you offer the  
19 Court as to why each of these documents appear to  
20 be --

21 A Probably it was two copies of the same  
22 thing, and I just noted it in there once.

23 Q Were you present when Darlene Butler signed  
24 her name, or do you remember?

25 A I don't remember. I do know she was there

1 that day.

2 MR. ATKINS: If Mr. Duncan has no  
3 objection, I move the second letter into evidence,  
4 your Honor.

5 THE COURT: Any objection?

6 MR. DUNCAN: No objection.

7 THE COURT: Well, let's make sure for the  
8 record what we're doing here. Nobody's moved the will  
9 in.

10 MR. ATKINS: I would move the will into  
11 evidence as, I guess, Opponent's Exhibit 1.

12 I would move that page from the log book as  
13 Opponent's Exhibit 2.

14 And I would move the letter that Mr. Duncan  
15 cross-examined Ms. Collier as Opponent's 3.

16 THE COURT: Do you have any objection?

17 MR. DUNCAN: No objection.

18 THE COURT: So we'll mark --

19 BY MR. ATKINS:

20 Q Do you recall --

21 THE COURT: Let me just state for the  
22 record that the will is Draper Exhibit 1, the log book  
23 is Draper Exhibit 2, and the letter we'll call it --  
24 did you say you want to mark it as Draper 3 or you  
25 want it as Pauley 3 -- or Pauley 1?

1 MR. ATKINS: It doesn't make any  
2 difference.

3 THE COURT: Okay. So it's 1, 2, 3 Draper  
4 Exhibits. Thank you.

5  
6 (Exhibit Numbers 1 through 3  
7 were entered into evidence)

8  
9 BY MR. ATKINS:

10 Q Let me just clarify. You recall no  
11 discussion of the document you were notarizing in the  
12 will?

13 A No. I notarize too much to remember one  
14 particular document.

15 Q Had this document been discussed as being  
16 the will, would you have recalled that?

17 A Probably not.

18 MR. ATKINS: That's all. No further  
19 questions.

20 THE COURT: Ms. Collier, let me ask you a  
21 question. What do you remember seeing when you went  
22 in to notarize Ms. Draper's signature?

23 A I don't really remember any of the details.  
24 I notarize too many things throughout the course of a  
25 year's time or whatever. I would be afraid to give

1 you any details. They may be mixed up with another  
2 patient.

3 THE COURT: So do you have any independent  
4 recollection as to what the document looked like that  
5 you saw her sign?

6 THE WITNESS: No. I didn't remember at all  
7 until they brought it and showed it to me.

8 THE COURT: Do you remember independently  
9 whether the document was one page, two pages, three  
10 pages?

11 THE WITNESS: No.

12 THE COURT: Do you remember independently  
13 whether there was more than one document?

14 THE WITNESS: No.

15 THE COURT: All right. Any other questions  
16 as a result of my questions?

17 MR. DUNCAN: Yes, sir, I do have one.

18

19 R E C R O S S

20 E X A M I N A T I O N

21 BY MR. DUNCAN:

22 Q On October 12th of 1995, did you come to  
23 the clerk's office of this court?

24 A Yes.

25 Q And were you placed under oath at that



1 time?

2 A Yes.

3 Q And did the clerk of the court ask you some  
4 questions?

5 A She asked me if I saw Ms. Draper sign the  
6 document, and I said yes.

7 Q Didn't the clerk ask you if you saw Irene  
8 Draper declare that document to be her last will and  
9 testament?

10 A I understood her to say -- she asked me if  
11 I saw Ms. Draper sign the document.

12 Q And didn't you also tell the clerk that at  
13 the time of executing that paper you believed  
14 Ms. Draper to be of sound and disposing mind, memory,  
15 and understanding and capable of making a last will  
16 and testament?

17 A I really don't remember.

18 THE COURT: Any redirect, Mr. Atkins?

19 MR. ATKINS: Yes, sir.

20

21 R E D I R E C T

22 E X A M I N A T I O N

23 BY MR. ATKINS:

24 Q You have testified in light of the Judge's  
25 question that you didn't really have an independent

1 recollection of notarizing anything until you saw the  
2 document itself?

3 A Right.

4 Q And after seeing the document itself, it is  
5 your recollection that there was no writing below your  
6 signature at the time that you notarized it; correct?

7 A I believe I can be safe in saying that  
8 because I always notarize at the bottom of anything  
9 that's on there.

10 Q And you're comfortable with saying here  
11 today under oath that this writing at the bottom  
12 wasn't there?

13 A Yes.

14 Q Now, with respect to being asked by  
15 Ms. Taylor, the clerk, if this is the signature of  
16 Irene Draper, when she asked you what part of the  
17 document, could you see --

18 A She had the document laying on her desk and  
19 I was on the other side of the desk and saw my  
20 signature and notary on there.

21 Q Did you see any of the language below at  
22 the time?

23 A The only thing I noticed in particular was  
24 my notary and all on there and, you know, I didn't  
25 study the document or anything.

1 Q Do you remember seeing any language below  
2 it?

3 A No, I don't remember seeing it.

4 MR. ATKINS: That's all the questions I  
5 have, your Honor.

6 THE COURT: Any further questions,  
7 Mr. Duncan?

8

9 R E C R O S S

10 E X A M I N A T I O N

11 BY MR. DUNCAN:

12 Q When Mr. Atkins was asking you that  
13 question, he had the bottom covered up.

14 Do you have any recollection of the clerk  
15 of this court covering up the bottom of the document?

16 A No. I'm sure she wouldn't have done that.

17 MR. DUNCAN: No further questions.

18 THE COURT: May this witness be excused?

19 MR. ATKINS: I'd like to hold her, your  
20 Honor, if you don't mind.

21 THE COURT: If you'd wait outside and not  
22 discuss your testimony, as you may be recalled. Thank  
23 you.

24 (Ms. Collier exits the courtroom)

25 THE COURT: Next witness?

1 MR. ATKINS: We rest, your Honor.

2 THE COURT: Mr. Duncan, any evidence?

3 MR. DUNCAN: Yes, sir. I would call

4 Patricia Pauley.

5 THE COURT: Come forward Ms. Pauley. Have  
6 a seat in the witness box.

7 (Ms. Pauley enters the courtroom)

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PATRICIA PAULEY,  
was sworn and testified as follows:  
D I R E C T  
E X A M I N A T I O N  
BY MR. DUNCAN:  
Q Would you please state your name and  
address.  
A Patricia Pauley, 695 Ridgemont Road,  
Earlysville, Virginia.  
Q And did you know Irene Draper?  
A Yes, sir.  
Q How long did you know her?  
A All my life, 48 years.  
Q Where did Irene live in March of 1995?  
A She lived with me in Earlysville.  
Q How long did she live with you?  
A She lived with me for a little over a year.  
Q And where did she live before then?  
A She lived with my parents in Earlysville.  
MR. ATKINS: I'm going to object. We're  
talking about the will --  
THE COURT: I don't see where it's relevant  
where she lived before -- well, I think it's relevant  
as to her relationship, so I'm going to overrule your  
objection.

1 MR. ATKINS: If it shows relationship, I  
2 understand.

3 BY MR. DUNCAN:

4 Q Who else lived with you in Earlys ville?

5 A My son, his girlfriend, and my three  
6 grandchildren, and Bunky.

7 Q Who's Bunky?

8 A Bunky is my brother -- my daddy's and  
9 Irene's retarded brother. And when she come to live  
10 with me she brought Bunk because Bunky was her pride  
11 and joy.

12 Q I want to direct your attention to March 1  
13 of 1995. Where were you on that day?

14 A I was at home, and I come to town to get --  
15 and Irene was in the hospital, which I had come to see  
16 her. And I come back out of Adelphia Cable to get the  
17 box so we could get more channels on TV. Because it  
18 was in Irene's name, they said I needed a paper from  
19 her stating that I could get it.

20 So we left from there, went to the  
21 hospital, and Darlene, Alice Butler, and my two  
22 grandchildren went to the hospital, went in Irene's  
23 room. Irene was there in the bed, and we was talking  
24 about how she's doing. They said she was doing fine,  
25 she was ready to come home.

1           And I told her that we had come by the  
2 cable company to pick up the box, but I needed for her  
3 to sign the paper stating that I could get it, and she  
4 said that was fine. And while I was doing that she  
5 wanted me to write her will for her.

6           So Darlene went out to get the nurse and  
7 she brought the nurse back in. And Irene told the  
8 nurse what she wanted: The paper for Adelphia Cable  
9 and the paper for the will and for the power of  
10 attorney. And the nurse left and I reckon it was  
11 about five minutes or so when the notary come in.

12           Q       After Ms. Draper told you she wanted a will  
13 drawn, what did you do?

14           A       I talked to her and asked her is that what  
15 she wanted to do and she said yes. And she said that  
16 for me taking care of her all this time and helping  
17 her with Bunky and all, because she knew it was hard  
18 on me having three small kids over at my house and  
19 all, and she had taken care of Bunky after grandma had  
20 died all her life and she -- Bunky like I said, Bunky  
21 was her pride and joy.

22           And then the notary public come in and she,  
23 Tracy, took two papers out, and then she gave them to  
24 me, and I carried them over and got Irene to sign them  
25 and give them back to Tracy. Tracy stamped one of

1 them and wrote up whatever she had to write on it.

2 And while Tracy was doing the other one, I  
3 took the paper and sat beside Irene, and Irene told me  
4 what to write on that paper. "I, Irene Draper, being  
5 of sound disposing mind" on the first line, and then  
6 the second one, that she owned a house on 602 Belmont  
7 Avenue that she wanted me to have if anything should  
8 ever happen to her for taking care of her and her  
9 living with me and all.

10 Q Did you write what she told you to write?

11 A Yes, sir, I did.

12 MR. DUNCAN: Your Honor, can I have the  
13 original?

14 THE COURT: (Complies)

15 BY MR. DUNCAN:

16 Q I'm going to show you this which has  
17 previously been admitted into evidence as Exhibit 1.  
18 Do you recognize that?

19 A Yes, sir. That's what I wrote. She told  
20 me to write, and I wrote it.

21 Q You wrote all of this?

22 A Yes, sir, this down here. (Indicating)

23 Q What did you do after you wrote that?

24 A After I wrote it, I handed it to her, she  
25 read it and handed it back to me and looked at me and



1 said, "That's exactly what I want." I handed it to  
2 Darlene Butler, Darlene read it, signed it, and handed  
3 it to me. I folded it up and put it in my pocketbook,  
4 and then Tracy gave me the other paper that I needed  
5 for Adelpia Cable.

6 Q How long was Ms. Draper in the hospital?

7 A It might have been a week or less than a  
8 week. She had a blood clot in her right leg.

9 Q Where did she go when she wasn't in the  
10 hospital?

11 A She went to my home.

12 Q Where was the will at that time?

13 A The will was at home. When I left from the  
14 hospital that day, I went to Adelpia Cable and showed  
15 them that paper and got the box. And from there I  
16 went to Staples and got that power of attorney paper,  
17 and from there I went home. When I got home I went  
18 downstairs and told my father that I was back home so  
19 he could go, because he was watching Bunky for me.

20 And Irene's got a dresser drawer in her  
21 bedroom where her billfold was. I got her billfold  
22 and put it in that and put it back in there. And it  
23 stayed there until she came home from the hospital.

24 THE COURT: What did you put in the  
25 billfold?

1 THE WITNESS: The will. And then when she  
2 come home from the hospital, I had to go to the store.  
3 So I went and got her billfold for her and come back  
4 out and handed it to her, and she gave me the money to  
5 go to the store and get what she needed.

6 And she saw the will in there, so she asked  
7 me did I have a white envelope, and I told her yes..  
8 So I went upstairs and got one, I come downstairs and  
9 handed it to her. She wrote my name it and sealed it  
10 and asked me to put it in her chester drawer, it has  
11 about six drawers in it and she told me which drawer  
12 that her black pocketbook was in and it was the last  
13 drawer.

14 So I went and got it and give it to her and  
15 she put the will in the envelope in there and closed  
16 it up and asked me to carry it back and put it back in  
17 there.

18 BY MR. DUNCAN:

19 Q You -- obviously the will has surfaced.  
20 Were you present when somebody located the will?

21 A Yes, sir.

22 Q Who located it?

23 A My sister, Cindy Davis.

24 Q Where was it found?

25 A In the black pocketbook in the chester

1 drawer where I had put it in March.

2 Q You went and described a sequence of events  
3 that happened while you were at the hospital. Who was  
4 present when Irene signed her name to the document?

5 A When Irene signed her name Tracy was there,  
6 Darlene Butler was there, Alice Butler was there, the  
7 nurse was there, and my two granddaughters and Irene  
8 and myself.

9 Q Who was there when the notary notarized  
10 Irene's signature?

11 A All of the above that I just named.

12 Q Who was there when you wrote out the part  
13 of the will that you wrote?

14 A Everybody I just named.

15 Q Who was present when you handed it back to  
16 Ms. Draper and she said, "Yes, that's what I want"?

17 A Everybody that I named.

18 Q Who was present when Darlene signed her  
19 name?

20 A Everybody.

21 MR. DUNCAN: I believe that's all I have,  
22 your Honor.

23 THE COURT: Mr. Atkins?

24 MR. ATKINS: Yes, your Honor.

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C R O S S

E X A M I N A T I O N

BY MR. ATKINS:

Q Ms. Draper, if this will is not admitted into probate -- I'm sorry.

Ms. Pauley, if this will is not admitted into probate, you get absolutely nothing from the estate of Irene Draper; is that correct?

A Yes, sir.

Q And what is involved, this house in Belmont is worth \$30,000 or \$40,000, is it not?

A It's worth \$3.7. [phonetic]

Q And there's a tenant there?

A Yes, sir.

Q And this tenant pays rent?

A Yes, sir.

Q And you've been getting the rent; is that correct?

A I started getting it -- well, the month that Irene died, Bobby got it. But after that, I started receiving it in October.

Q How much?

A \$150.

Q You get \$150 a month?

1 A Yes.

2 Q There's no mortgage on it?

3 A No, sir, because her aunt died and left it  
4 to her.

5 Q Ms. Irene Draper had two sons; right?

6 A Yes, sir.

7 Q This individual seated to my right?

8 A Yes, sir.

9 Q And what is his name?

10 A John Draper. We call him Frog.

11 Q You call him Frog?

12 A Charles Draper; we call him Shorty.

13 Q So Frog and Shorty are the children; is  
14 that correct?

15 A Yeah, they're the children.

16 Q Now, you heard the notary testify that when  
17 she signed -- or when she witnessed the signature of  
18 Irene Draper, that there was no writing below it.  
19 That's true; correct?

20 A Yes, sir. I'm not denying it.

21 Q So what Ms. Collier has to say about the  
22 document she notarized is true in that there was no  
23 writing below the signature?

24 A Right.

25 MR. ATKINS: That's all the questions I

1 have, your Honor.

2 MR. DUNCAN: Just one.

3

4 R E D I R E C T

5 E X A M I N A T I O N

6 BY MR. DUNCAN:

7 Q Mr. Atkins asked you about Charles Draper.

8 You testified, I believe, that Ms. Draper lived with  
9 you --

10 A Yes, sir.

11 Q -- for quite a long time?

12 A Yes, sir. She's always lived with my  
13 parents.

14 Q And did you live there?

15 A Yes, sir. Up until I got married.

16 Q During all those years, how often would  
17 John and Charles Draper come by to visit?

18 A They never come by. We've been living  
19 together and they ain't been there five times to see  
20 her. They never called or nothing.

21 Q Did Ms. Draper ever mention anything about  
22 that to you?

23 A Yes, sir. And she was upset about it  
24 because she said she didn't understand why her  
25 children would do her like that.

1 MR. DUNCAN: That's all I have, your Honor.

2 THE COURT: Let me ask you a question,  
3 Ms. Pauley -- and somebody's got the original of the  
4 will.

5 MR. DUNCAN: I do, your Honor. I'm sorry.

6 THE COURT: Show that to her. I want her  
7 to look at the will.

8 MR. DUNCAN: Yes, sir.

9 THE WITNESS: (Perusing document)

10 THE COURT: The first thing on the paper  
11 indicates language that says that this is to verify  
12 the signature below is the true signature of Irene  
13 Draper.

14 THE WITNESS: Yes, sir.

15 THE COURT: Do you know who wrote that?

16 THE WITNESS: Tracy.

17 THE COURT: Tracy wrote that out?

18 THE WITNESS: Yes, sir.

19 THE COURT: Do you know who requested her  
20 to write that out?

21 THE WITNESS: No. She's just the one that  
22 wrote it.

23 THE COURT: How did she know what to write  
24 is my question.

25 THE WITNESS: I don't know.

1 THE COURT: So she came in the room and  
2 somebody handed her a blank sheet of paper and she  
3 just wrote that out?

4 THE WITNESS: She brought the paper with  
5 her.

6 THE COURT: So it was a blank sheet of  
7 paper?

8 THE WITNESS: Yes, sir.

9 THE COURT: So on her own without anybody  
10 saying anything to her she wrote out, "This is to  
11 verify that the signature below is the true signature  
12 of Irene Draper"?

13 THE WITNESS: Yes, sir.

14 THE COURT: Who wrote the line that appears  
15 to be a signature?

16 THE WITNESS: She did.

17 THE COURT: Who wrote, "State of Virginia,  
18 City of Charlottesville"?

19 THE WITNESS: Tracy did all that.

20 THE COURT: So she wrote that out and she  
21 filled in the date?

22 THE WITNESS: Yes, sir.

23 THE COURT: Did she put the stamp on it?

24 THE WITNESS: Yes, sir.

25 THE COURT: Who wrote the line where there



1 appears to be a signature of Darlene Butler?

2 THE WITNESS: Darlene.

3 THE COURT: So Darlene drew that line?

4 THE WITNESS: I'm sure she did.

5 THE COURT: So do I understand you to say  
6 that it was a blank sheet of paper and that Tracy  
7 Collier wrote out, "This is to verify that the  
8 signature below is the true signature of Irene  
9 Draper," and drew a line?

10 THE WITNESS: Yes, sir.

11 THE COURT: Did Irene Draper then sign on  
12 the line?

13 THE WITNESS: After Tracy wrote that and  
14 drew the line and before Tracy ever stamped it, I took  
15 it over and got Irene to sign it for her. And then I  
16 carried it back and gave it to Tracy to do the rest of  
17 the work on it.

18 THE COURT: So my question is -- well, who  
19 asked Tracy Collier to come to the room?

20 THE WITNESS: The nurse.

21 THE COURT: Who asked the nurse to ask --

22 THE WITNESS: Irene -- well Irene told  
23 Darlene to go get her.

24 THE COURT: Did you hear why Irene asked  
25 the nurse to tell someone to come notarize stuff?

1 THE WITNESS: Yes, sir. Because she wanted  
2 a will to be drawn up, and I needed a paper stating  
3 so I could go by the cable company and pick up the  
4 cable box.

5 THE COURT: So when Tracy came in the room,  
6 why didn't someone write out the will before Irene  
7 signed it?

8 THE WITNESS: Well, Tracy started writing  
9 this top part first.

10 THE COURT: Did anybody say to Tracy that  
11 Irene wants to do a will?

12 THE WITNESS: We figured the nurse had told  
13 her.

14 THE COURT: Pardon me?

15 THE WITNESS: We thought the nurse called.

16 THE COURT: You didn't hear anybody say  
17 that to Tracy? That's just what you assumed?

18 THE WITNESS: Yeah.

19 THE COURT: So no one said anything to  
20 Tracy when she came in the room what you wanted Tracy  
21 to do?

22 THE WITNESS: No, uh-uh.

23 THE COURT: So my question is: Why didn't  
24 you say or why didn't Ms. Draper say, "We want to do a  
25 will, and we want you to witness the signature of

1 Ms. Draper"?

2 THE WITNESS: Because Irene -- like I say,  
3 Irene told the nurse, and we thought the nurse had  
4 told her, you know, what all we wanted, that we needed  
5 the three papers drawn up.

6 THE COURT: So after Tracy wrote out this  
7 language and had Irene Draper sign it, did anyone say  
8 anything to Tracy?

9 THE WITNESS: No.

10 THE COURT: Did anyone ask Tracy to do  
11 anything else?

12 THE WITNESS: Well, no. Like I say, she  
13 got both papers signed and give them back to Tracy and  
14 Tracy filled the rest of it in and stamped it and all  
15 after she seen Irene sign her name.

16 THE COURT: Well, did anybody say anything  
17 to Tracy after this language at the bottom of the  
18 paper was written out?

19 THE WITNESS: No.

20 THE COURT: "Tracy this is the will of  
21 Ms. Draper and we want to confirm that to you"?

22 THE WITNESS: No, sir.

23 THE COURT: But you're saying that Tracy  
24 was in the room when Irene dictated what was to be in  
25 the will?

1 THE WITNESS: Yes, sir.

2 THE COURT: So Tracy heard that?

3 THE WITNESS: She should have. But she was  
4 over there writing and fixing the other paper up. And  
5 like I say, Darlene was there and Alice and the two  
6 girls and the nurse and all.

7 THE COURT: The other paper, which I've  
8 marked as Draper 3 which is the Adelphia Cable letter,  
9 did anyone tell Tracy what to write at the top?

10 THE WITNESS: No, sir.

11 THE COURT: So she just came in and had a  
12 second piece of paper that was blank and wrote that  
13 out?

14 THE WITNESS: She had two pieces of white  
15 paper, or might have been more than two, and she wrote  
16 that. And she said -- because we told her we needed  
17 that for the power of attorney. And that's when she  
18 told me to go by Staples because they have one form  
19 fixed for that, and we did that the next day.

20 THE COURT: So who wrote this about  
21 Adelphia?

22 THE WITNESS: I did.

23 THE COURT: So you wrote that out?

24 THE WITNESS: Yes, sir.

25 THE COURT: So why didn't you have

1 Ms. Draper sign it in the presence of the notary?

2 THE WITNESS: Like I said, when Tracy got  
3 there she started doing all the writing.

4 THE COURT: Did you tell her to do two  
5 separate sheets or one?

6 THE WITNESS: Yeah. We needed two.

7 THE COURT: What did you tell her  
8 specifically?

9 THE WITNESS: I just told her we needed two  
10 papers, one for the Adelpia Cable -- and the nurse, I  
11 reckon, had told her about the will and all.

12 THE COURT: So you didn't tell her, "I need  
13 two pieces of paper; one for the will and one for  
14 Adelpia Cable"?

15 THE WITNESS: No. I told her I just needed  
16 the paperwork.

17 THE COURT: You said, "Tracy, I need the  
18 paperwork"?

19 THE WITNESS: When she come in there, like  
20 I said, she didn't say nothing. She just started  
21 writing, and that's when she handed us the two papers,  
22 and that's when I said I needed three. And that's  
23 when she told me about the power of attorney thing and  
24 said it was best to go to Staples and get that.

25 THE COURT: Did you tell her you needed

1 something for Adelpia Cable?

2 THE WITNESS: Yes.

3 THE COURT: Did you write this up before  
4 Ms. Draper signed it?

5 THE WITNESS: No.

6 THE COURT: After?

7 THE WITNESS: I wrote it after she did all  
8 that work.

9 THE COURT: Did you ever show this to Tracy  
10 after you --

11 THE WITNESS: No.

12 THE COURT: You never showed that to Tracy?

13 THE WITNESS: (Indicating in the negative)

14 THE COURT: But was Tracy there when you  
15 wrote that about Adelpia Cable?

16 THE WITNESS: No. I wrote that after I got  
17 to Adelpia.

18 THE COURT: So when Tracy left, all that  
19 was on the paper was the first line and Irene Draper's  
20 signature?

21 THE WITNESS: It was plain, yeah.

22 THE COURT: You wrote that out about  
23 Adelpia?

24 THE WITNESS: Yeah. They said they needed  
25 Irene's permission to pick it up.

1 THE COURT: So did you take this paper and  
2 give it to Adelpia Cable?

3 THE WITNESS: Yes, sir. I showed it to  
4 them, and they gave me the box.

5 THE COURT: So you showed them the paper  
6 and they kept the paper?

7 THE WITNESS: Yeah. They took a copy of it  
8 and gave me that.

9 THE COURT: Any other questions as a result  
10 of my questions?

11 MR. ATKINS: No, sir.

12 MR. DUNCAN: No questions.

13 THE COURT: Thank you, Ms. Pauley. You may  
14 stand aside.

15 Next witness, Mr. Duncan?

16 MR. DUNCAN: Darlene Butler.

17 (Ms. Pauley exits the courtroom)

18 (Ms. Darlene Butler enters the courtroom)

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1 DARLENE BUTLER,  
2 was sworn and testified as follows:

3 D I R E C T  
4 E X A M I N A T I O N

5 BY MR. DUNCAN:

6 Q Would you please state your name and  
7 address.

8 A Darlene Gale Butler.

9 Q Did you know Irene Draper?

10 A Yes, I did.

11 Q How long did you know her?

12 A Eight years.

13 Q Did you have occasion to be in Ms. Draper's  
14 hospital room on March 1st, 1995?

15 A Yes.

16 Q Who else was present with you at that time?

17 A Patricia, my mother Alice, Tracy, Doris, my  
18 two children, Irene, and myself.

19 Q What happened while you were there on that  
20 day?

21 A Irene had asked Pat to write her will for  
22 her.

23 Q Would you walk us through what happened  
24 after Ms. Draper asked Pat to draw her will up for  
25 her?



1           A           Okay. I had went out and I got the nurse.  
2           And the nurse came in the room, and she, Irene,  
3           repeated the same thing again. And she went and she  
4           got the notary public, and the notary public came in  
5           and she wrote one paper and handed that to Pat and  
6           then while she was writing the other paper Pat was  
7           writing what Irene was saying.

8                     At that time I was at the foot of the bed  
9           with the notary public while she was doing the second  
10          paper, and that was to Irene's right, filling out what  
11          Irene was asking her to.

12          Q           All of the people you mentioned previously,  
13          were they all present in the room at the same time  
14          when this was happening?

15          A           Yes.

16          Q           Was there anything in that room that would  
17          have obstructed your view or your hearing?

18          A           No.

19          Q           I want to show you what's been marked as  
20          Exhibit Number 1 and ask you if you can recognize your  
21          signature on there.

22          A           Yes.

23          Q           Would you point it out, please?

24          A           (Complies)

25          Q           That is your signature?

1 A Uh-huh.

2 Q What happened after Pat wrote this part  
3 out?

4 A Pat then handed it to Irene. And at that  
5 time I was beside Pat; she handed it to Irene, Irene  
6 read it and said, "That's right. That's what I want,"  
7 and handed it back to Pat. And Pat handed it back to  
8 me, and I read it and signed it and handed it back to  
9 Pat.

10 Q Just so I understand you, all the people  
11 you mentioned were present in the room with you when  
12 you signed that?

13 A Yes.

14 Q Who was present in the room when this --

15 A All the same.

16 Q Who was present in the room when Tracy  
17 Collier signed her name?

18 A All the same.

19 Q How long did all this take, approximately?

20 A About 25 to 30 minutes.

21 Q And was it one continuous event?

22 A Uh-huh.

23 MR. DUNCAN: That's all I have at this  
24 time, your Honor.

25 THE COURT: Cross-examination?

C R O S S

E X A M I N A T I O N

BY MR. ATKINS:

Q You said your two children were there?

A Yes.

Q How old were they?

A At that time they were four and two.

Q So you have a four-year-old and a two-year-old, yourself, Doris, Alice, Patricia, and Irene?

A And Tracy.

Q There's a lot of talking going back and forth, especially with two children in the room; correct?

A Well, I was at the foot of the bed, and the two children were over on the other bed playing with the nurse.

Q So there was a nurse in there too?

A Doris.

Q When the notary witnessed or notarized this document, which is Plaintiff's Exhibit Number 1, none of the writing was on here; is that correct?

A No. It was nothing on it when the notary public had stamped it.

Q The notary --

1 A Was filling out another one.

2 Q While this was being done?

3 A While Irene was telling Pat what to say.

4 Q And it took the notary public 20 to 30  
5 minutes to fill that out?

6 A No. I'm saying the whole thing.

7 Q How long was the notary public in the room?

8 A The notary was in the room I would say the  
9 whole time.

10 Q The whole time?

11 A Yes. I mean, she was there.

12 Q But at the time she signed, witnessing the  
13 signature of Irene Draper, the language which  
14 constitutes the will was not on this paper; is that  
15 correct?

16 A No, it was not.

17 Q And you signed it after?

18 A After I had read that paper.

19 Q After you read that paper and then you  
20 handed it to --

21 A Pat.

22 Q And what did Pat do with it?

23 A Pat then folded it up and put it in her  
24 pocketbook and carried it home.

25 MR. ATKINS: Thank you. That's all I have.

1 THE COURT: Redirect?

2 MR. DUNCAN: No, sir.

3 THE COURT: My question is: Was everybody  
4 there when Tracy arrived, that you've mentioned?

5 THE WITNESS: Yes, sir.

6 THE COURT: Who said something to Tracy  
7 first?

8 THE WITNESS: Doris was the one that, you  
9 know, called Tracy in.

10 THE COURT: So when Tracy walked in the  
11 room, who was the first person that talked to Tracy?

12 THE WITNESS: To my knowledge, I believe it  
13 was Doris, and Doris told her what Irene wanted.

14 THE COURT: What did Doris say?

15 THE WITNESS: That Irene wanted her will  
16 drawn up.

17 THE COURT: And then what was said to  
18 Tracy?

19 THE WITNESS: I'm not quite sure, you know,  
20 what was said and who said it. But, you know --

21 THE COURT: What did Tracy do next after --

22 THE WITNESS: Tracy talked to Irene and  
23 then she started writing down the top part of that.

24 THE COURT: So who told Tracy what to  
25 write?

1 THE WITNESS: Tracy wrote it herself.

2 THE COURT: So nobody told Tracy to write  
3 anything?

4 THE WITNESS: Not that, you know, this is  
5 Irene's signature.

6 THE COURT: Nobody told her to write that?

7 THE WITNESS: No. She did that on her own.

8 THE COURT: Well, did anybody tell Tracy  
9 anything else?

10 THE WITNESS: (Indicating in the negative)  
11 I mean, she was there.

12 THE COURT: The only thing said to Tracy  
13 is, "Irene wants you to do a will," and Tracy pulled  
14 out a piece of paper and wrote what was at the top?

15 THE WITNESS: Yes, sir.

16 THE COURT: That's all that was said to  
17 Tracy?

18 THE WITNESS: To my knowledge, yes.

19 THE COURT: Was there more than one paper  
20 that Tracy did?

21 THE WITNESS: Yes, there was.

22 THE COURT: What was the other paper for?

23 THE WITNESS: One was for the cable  
24 company.

25 THE COURT: Who told her that? All you

1 told me is Tracy came in the room and Doris said,  
2 "Irene wants to do a will."

3 THE WITNESS: I believe the nurse told her  
4 that.

5 THE COURT: So the nurse told Tracy, "We  
6 want you to do a paper for Adelpia Cable"?

7 THE WITNESS: It was either the nurse or  
8 Ms. Pauley.

9 THE COURT: Any other questions?

10 MR. ATKINS: No, sir.

11 MR. DUNCAN: No, sir.

12 THE COURT: You want to hold this witness?

13 MR. DUNCAN: Yes, sir.

14 THE COURT: Wait outside and don't discuss  
15 your testimony.

16 Next witness?

17 MR. DUNCAN: Alice Butler.

18 (Ms. Darlene Butler exits the courtroom)

19 (Ms. Alice Butler enters the courtroom)

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1 ALICE LOUISE BUTLER,  
2 was sworn and testified as follows:

3 D I R E C T  
4 E X A M I N A T I O N

5 BY MR. DUNCAN:

6 Q Would you state your name and address.

7 THE COURT: You can have a seat.

8 THE WITNESS: It's Alice Louise Butler.

9 And I live -- and my address is Post Office Box 562,  
10 Earlysville, Virginia.

11 BY MR. DUNCAN:

12 Q How old are you, Ms. Butler?

13 A I'm 56 years old.

14 Q Did you know Irene Draper?

15 A Yes, I did.

16 Q How long did you know her?

17 A I knew her seven or eight years.

18 Q Were you in Ms. Draper's hospital room on  
19 March 1, 1995?

20 A Yes, I was.

21 Q Who else was present with you at that time?

22 A Pat Pauley and Darlene Butler was in there  
23 with me.

24 Q Anybody else?

25 A And all I know is just the lady that comes



1 in.

2 Q The notary?

3 A The notary public that come in.

4 Q In your own words would you tell the Court  
5 what you observed while you were present in the room  
6 on that day?

7 A It was to have a will written out, and she  
8 said she wanted to write a will.

9 Q Who said that?

10 A Pat -- I mean, Irene Draper said that.

11 Q Do you recall anything else?

12 A That's it. And Pat brought the will out or  
13 whatever and -- want me to say more?

14 Q If you recall more.

15 A Darlene Butler and me -- I mean, Darlene  
16 Butler signed it.

17 Q Did you see her sign it?

18 A Yeah, I seen her sign it.

19 Q Anything else that you recall?

20 A All I know is the notary public was in  
21 there.

22 MR. DUNCAN: That's all I have at this  
23 time, your Honor.

24 THE COURT: Cross?

25

C R O S S

E X A M I N A T I O N

BY MR. ATKINS:

Q Ms. Butler, you're related to Darlene who just testified?

A I'm Darlene's mom.

Q Is Darlene related to Ms. Pauley?

A She --

Q Does she live with Ms. Pauley?

A She lives with her.

Q How long has she lived with Ms. Pauley?

A She's been there seven years.

Q Were there kids in the room that day too?

A I can't remember if kids was there or not. I know Caitlyn was with us.

Q And who wrote the will out?

A Pat Pauley.

Q Patricia wrote it out?

A Uh-huh.

Q And did Irene Draper sign the will after she wrote it out?

A She signed the will and Darlene Butler signed the will and then --

Q Do you remember them signing the will after Pat wrote it down?

1 A Yeah. And Darlene handed it back to Pat.

2 Q So your recollection is that Irene said she  
3 wanted a will, the notary came in and the will was  
4 written, and then Irene signed the will and then  
5 Darlene signed the will and handed it to Pat; is that  
6 right?

7 A Irene read the will and asked Darlene to.  
8 sign it and then when Darlene signed it she gave it  
9 back to Pat.

10 Q Irene read the will?

11 A Darlene -- Irene read the will.

12 Q Is that when she signed the will, when she  
13 read it?

14 A Uh-huh.

15 Q And then after she signed the will she gave  
16 it to Pat?

17 A Darlene signed it and then she gave it to  
18 Pat.

19 Q And what did Pat do?

20 A Put it in her pocketbook.

21 Q Where was the notary?

22 A The notary public come in and signed it.

23 Q After the will was written?

24 A After the will was written, yeah.

25 Q So the will was written up when the notary

1 public came in?

2 A Yeah. It was written up when she come in.

3 THE COURT: Redirect?

4 MR. DUNCAN: No, sir.

5 THE COURT: Thank you. You want to hold  
6 this witness?

7 MR. DUNCAN: No, sir.

8 THE COURT: You're welcome to stay in the  
9 courtroom or free to leave.

10 (Ms. Alice Butler exits the courtroom)

11 MR. DUNCAN: No further witnesses, your  
12 Honor.

13 THE COURT: Further evidence, Mr. Atkins?

14 MR. ATKINS: No, sir.

15 THE COURT: You want to be heard,  
16 Mr. Atkins, since it's your motion to say this will  
17 shouldn't be declared valid?

18 MR. ATKINS: Yes, sir.

19 MR. ATKINS: When you look at the evidence,  
20 and even though we are -- by we I mean the Draper  
21 sons, the burden of proof to prove due execution of  
22 the will, as I understand it, rests upon the  
23 proponents of the will.

24 Now, this Court has seen these witnesses  
25 testify, and you can judge, among other things,

1 credibility. What isn't in dispute, your Honor, with  
2 the exception of the last witness' testimony, is that  
3 when Ms. Collier witnessed the signature of Irene  
4 Draper, there was no language at the bottom of the  
5 page; there was no will. In fact, it was -- no one  
6 seems to have heard any of the witnesses for that  
7 matter use the term will in the presence of Tracy  
8 Collier.

9           Tracy Collier is a witness, and Tracy  
10 Collier notarized the signature of Irene Draper before  
11 the will was written. There is not any evidence which  
12 has been offered by proponents to show that Tracy  
13 Collier was even aware that the will was being done or  
14 the sanctity of the execution.

15           Now, if you take the proponent's case and  
16 then look at the credibility of Tracy Collier as to  
17 what happened, I think, Judge, she is by far the most  
18 credible of all the witnesses. She remembers nothing  
19 about the will. Her recollection is that there was no  
20 writing that would constitute a will below the  
21 signature of Ms. Draper, and, in fact, two of the  
22 three witnesses for the proponents state that; the  
23 last witness says it the other way.

24           She kept a log, and her log indicates it's  
25 a letter. Now, she may have notarized two things and

1 candidly admitted she should have written down the two  
2 documents she notarized. And I think, Judge, that had  
3 Tracy Collier, and you've got her log in front of you,  
4 witnessed and notarized a will, you would have seen it  
5 in her log. That is something that rises a little  
6 higher in one's recollection vis-a-vis a letter to  
7 Adelphia Cable regarding a cable box.

8               What we've got is a notary who testified,  
9 as did her supervisors, that we have certain  
10 guidelines when there's a will, and it makes perfect  
11 sense. Had she known it was a will, she would have  
12 used the document to make it a self-proving will.  
13 Very simple.

14              Tracy Collier has nothing to win or lose as  
15 a result of her testimony here today, nor does  
16 Clarissa Bell. The other witnesses, such as  
17 Ms. Pauley, stands to lose a house. Darlene Butler  
18 lives with Ms. Pauley, and the other witness was Alice  
19 Butler.

20              Now, Judge, in terms of burden of proof and  
21 due execution of the will, what we've got is  
22 testimony -- the will was read, or it was acknowledged  
23 by Irene Draper that Tracy Collier was in the room.

24              Now, granted Tracy Collier may have been  
25 present, but it has to be sight and hearing, and she

1 doesn't remember it. I mean, it takes two witnesses  
2 to introduce a will to probate and one of the  
3 opponent's witnesses says, "I don't remember anything  
4 about a will. And if I remembered something about a  
5 will, it would have been written down and done in a  
6 different way." And therefore, Judge, it fails and I  
7 ask it not be admitted to probate.

8 THE COURT: Mr. Duncan, I'll let you argue.  
9 And I take it since you're the proponent of the will,  
10 I'll let you have the last say on it.

11 MR. DUNCAN: Thank you, your Honor.

12 If Irene Draper wanted to give the one  
13 asset she had in the world to the person who had taken  
14 care of her for thirty years, that person would be Pat  
15 Pauley. To this end Ms. Draper requested that a  
16 notary be present, she told the nurse to go get the  
17 notary, she signed her name on a line that the notary  
18 public wrote for that purpose, and she then tells Pat  
19 Pauley what to write.

20 Pat Pauley does that. Pat Pauley then  
21 hands the written document back to Ms. Draper,  
22 Ms. Draper reads it -- there's no dispute about  
23 this -- she reads it and says, "Yes, that's what I  
24 want."

25 Subsequent to that event, Darlene Butler

1 signs the document as a witness.

2           There are a lot of interesting arguments  
3 that the contesters have. One of them seems to be  
4 that a witness has to know everything. The witness  
5 has to know what they're witnessing and why they're  
6 witnessing it. The Supreme Court said many times that  
7 a witness does not need to know what they're  
8 witnessing. The fact that they recognize their  
9 signature on a piece of paper in and of itself is  
10 sufficient for them to be a witness under the statute  
11 of wills. Ms. Collier certainly recognized her  
12 signature and admitted to the Court she did.

13           The question of two witnesses. That  
14 certainly is the thrust of the contester's case. I  
15 would suggest that we have three witnesses, at least.  
16 We have Tracy Collier who signed the document, we have  
17 Darlene Butler who signed the document after it was  
18 written, and we also have Patricia Pauley. Let's not  
19 forget Patricia Pauley and let's not forget Robinson  
20 versus Board [phonetic] in which on very similar facts  
21 the testator was in a bed, she called Catherine Ward  
22 to her side and said, "I would like for you to make my  
23 will out, and this is what I want you to write." And  
24 in the body of that document it says, "To Catherine  
25 Ward, I leave everything for life."



1           The contesters in that case, just like the  
2 contesters in this case, say, "There's not enough  
3 witnesses; you have only have one." The Supreme Court  
4 says, "No. Catherine Ward signed her name in the body  
5 of the will that Catherine Ward had written out. It  
6 was her signature. It is sufficient for the statute  
7 of wills to be a witness."

8           The facts in that regard are identical to  
9 this case; not a hair worth of difference. So even  
10 without Tracy Collier, we have two witnesses. We have  
11 Patricia Pauley and we have Darlene Butler. Just to  
12 refresh the Court's recollection, Patricia Pauley  
13 wrote her own name out right in the body of this will.

14           Maybe it's exsomatic, but I think when  
15 Ms. Draper took that document back and acknowledged it  
16 by saying, "That's what I want," that just  
17 authenticated her expressions of her intent. She  
18 could do no more.

19           THE COURT: How come Tracy Collier can't  
20 confirm that? I mean, do you understand why, when  
21 Tracy Collier was asked to come in the room, somebody  
22 didn't say, "Ms. Draper wants to do her will. She's  
23 written it out and we want you to witness her  
24 signature to it"? I mean, that's the logical  
25 sequence. Do you have any explanation why that didn't

1 happen in this case?

2 MR. DUNCAN: No explanation. Perhaps  
3 Ms. Collier didn't remember. She didn't remember a  
4 lot of things. She didn't remember whether or not  
5 there was anything written below her signature. She  
6 said in the normal course of events if she had  
7 recollection of it being there --

8 THE COURT: But everybody agrees it wasn't  
9 written there except for the last witness.

10 MR. DUNCAN: No question.

11 THE COURT: It wasn't there.

12 MR. DUNCAN: Patricia Pauley may have said  
13 it best. When Irene asked the nurse to go get a  
14 notary, they all assumed that the nurse had told the  
15 notary what she was needed for. You know, these are  
16 lay people.

17 THE COURT: Even if that assumption is  
18 true, why don't you write the will out first and then  
19 get her to sign it and then have the notary witness  
20 the signature?

21 MR. DUNCAN: Your Honor, you or I or most  
22 attorneys or other experienced persons would do that.  
23 We're talking about country lay people, and they  
24 didn't know that that's the way that it needed to be  
25 done. They did the best they could do. They tried to

1 fully follow through with the wishes of Irene Draper,  
2 as evidenced by the fact that Ms. Draper got the  
3 document back when she returned home, and she kept it  
4 from March until September in her own pocketbook. If  
5 that hadn't been what she wanted, she certainly would  
6 have had ample opportunity to get rid of it.

7           What we're really talking about in this  
8 case, aside from all of the emotion, and there's  
9 plenty of that to go around, is whether or not this  
10 document was executed as required by the statute. The  
11 statute requires two things. It requires that it be  
12 signed by the testator; it doesn't have to be signed  
13 at any particular place. We certainly have ample  
14 Supreme Court authority for that. It can be signed  
15 anywhere as long as it's for signature. And in this  
16 case there's no question. Irene Draper signed this  
17 document.

18           THE COURT: But it should be signed after  
19 the will is written, shouldn't it?

20           MR. DUNCAN: It should be. But the statute  
21 also says, "Signed or acknowledged." And in this case  
22 by taking the will back saying, "Yes, that's what I  
23 want," and keeping it from March until September, she  
24 certainly acknowledges that writing to be her  
25 testamentary intent. I can't fathom how that could be

1 interpreted any other way.

2 And we certainly have two witnesses. Even  
3 without Tracy Collier, we have Darlene Butler and we  
4 have Patricia Pauley who, in the 213 Va, page 36, 1990  
5 opinion, certainly is a witness under the statute of  
6 wills. We don't need anything else. We've got  
7 everything the law requires for due execution of this  
8 document as a will.

9 I would also just point out that I think if  
10 we look at this case and we just say, "No, we're not  
11 going to probate this will," I think that's clearly  
12 form over substance, and I suggest we shouldn't even  
13 think to do that.

14 In sum, the statute has been fulfilled and  
15 the will is entitled probate.

16 THE COURT: Do you want to say anything  
17 else? Because I'll give him the last say if you do.

18 MR. ATKINS: Then I'm not going to say  
19 anything. I think we'll just get into a circuitous --

20 THE COURT: I'll read this authority and  
21 I'll let you know something soon.

22 MR. ATKINS: Thank you, your Honor.

23 MR. DUNCAN: Thank you, your Honor.

24 (Proceedings concluded at 1:12 p.m.)

25 \* \* \* \* \*

This is to verify that the signature below is the true  
Signature of Irene Draper.

Irene Draper

State of Virginia, City of Charlottesville

Given under my hand this 1<sup>st</sup> day of March, 1995

Nancy McCool  
Notary Public

Pauline Butler

My Comm. Expires 12/31, 1995

I, Irene Draper being of sound and disposing mind, memory, and understanding do hereby make, publish and declare this instrument of writing to be my request <sup>like</sup> I own a house on Belmont Avenue that I would give my niece Patricia Tuley if anything should happen to me.

The reason for this is that Pat has always been there for me. She takes care of all my business for me and even takes care of me. I live with her now.

VIRGINIA: IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE COUNTY OF ALBEMARLE, OCTOBER 12, 1995:

A paper writing bearing date the 1st day of March, 1995, purporting to be the Last Will and Testament of Irene Draper, deceased, late resident of the County of Albemarle, Virginia, who departed this life on September 4, 1995, was on the 12th day of October, 1995, presented to me, Shelby J. Marshall, and offered for proof and probate.

The said paper writing was proved by the oaths of Darlene Butler and Tracy Collier, the attesting witnesses thereto, who testified that he was personally present when the said Irene Draper,, signed and declared said paper writing to be her Last Will and Testament, and at her request and in her presence and in the presence of each other, they subscribed their names as attesting witnesses thereto.

The said Darlene Butler and Tracy Collier, further testified that at the time of execution of said paper writing the said Irene Draper, was of sound and disposing mind, memory and understanding and capable of making a valid Last Will and Testament.

Whereupon, the said paper writing is admitted to probate by me and ordered to be recorded as and for the True Last Will and Testament of the said Irene Draper, deceased.

SHELBY J. MARSHALL, CLERK

By: J. M. Taylor Deputy Clerk

STATE OF VIRGINIA

TO WIT

COUNTY OF ALBEMARLE

I, Shelby J. Marshall, Clerk of the Circuit Court of the County of Albemarle, Virginia, do hereby certify that the foregoing is a true and correct copy of the Last Will and Testament of IRENE DRAPER deceased, admitted to probate on the 12th day of October, 1995, together with the Order of Probate of said Court probating the name as taken from the original and which is recorded in Will Book 82 Page 277, of said Court.

Given under my hand and seal of said Court this 22nd day of January, 1996.

SHELBY J. MARSHALL, CLERK

By:

J. M. Taylor  
Deputy Clerk

	Identification provided by <u>MJH pt.</u>	
	Additional Notations:	
5	Date of Acknowledgement <u>2-27-95</u>	Type of Document <u>Paternity Papers</u>
	Action Performed _____	Name of Person Requesting Services <u>Kimberly Knight + Glenn Shifflett</u>
	Signature of Person _____	Address _____
	Identification provided by <u>VA Lic.</u>	
	Additional Notations:	
1	Date of Acknowledgement <u>2-28-95</u>	Type of Document <u>Certification Letter (2)</u>
	Action Performed _____	Name of Person Requesting Services <u>Cathy Brown</u>
	Signature of Person _____	Address _____
	Identification provided by <u>Known to me</u>	
	Additional Notations:	
2	Date of Acknowledgement <u>3-1-95</u>	Type of Document <u>Letter verifying Signature</u>
	Action Performed _____	Name of Person Requesting Services <u>Irene Draper</u>
	Signature of Person _____	Address _____
	Identification provided by <u>MJH pt.</u>	
	Additional Notations:	
3	Date of Acknowledgement <u>3-2-95</u>	Type of Document <u>Irene Draper Power of Attorney</u>
	Action Performed _____	Name of Person Requesting Services _____
	Signature of Person _____	Address _____
	Identification provided by <u>MJH pt.</u>	
	Additional Notations:	
4	Date of Acknowledgement <u>3-6-95</u>	Type of Document <u>Certification Letter</u>
	Action Performed _____	Name of Person Requesting Services <u>Tamara Gaudin</u>
	Signature of Person _____	Address _____
	Identification provided by <u>Known to me</u>	
	Additional Notations:	
5	Date of Acknowledgement <u>3-6-95</u>	Type of Document <u>Richard Robertson / Deed</u>
	Action Performed _____	Name of Person Requesting Services _____
	Signature of Person _____	Address _____
	Identification provided by <u>MJH pt.</u>	
	Additional Notations:	

PPAP 2 Gch #2  
1-11-96  
JP



This is to verify that the signature below is the true  
Signature of Irene Draper.

Irene Draper

State of Virginia, City of Charlottesville

"Given under my hand this 1<sup>st</sup> day of March, 1975"

Nancy McCall  
Notary Public

My Comm. Exp. 12/31, 1995

Adelphia Cable

Pat Chauby has my permission to  
pick up the cable box for my T.U.,

COMMONWEALTH OF VIRGINIA



F. Ward Harkrader, Jr.  
P.O. Box 799  
Louisa, Virginia 23093  
(540) 967-3428

Lloyd C. Sullenberger  
P.O. Box 230  
Orange, Virginia 22960  
(540) 672-2433

Paul M. Peatross, Jr.  
P.O. Box 1651  
Charlottesville, Virginia 22902  
(804) 972-4015

Sixteenth Judicial Circuit

Albemarle    Culpeper    Fluvanna    Goochland  
Greene    Louisa    Madison    Orange    Charlottesville

Jay T. Swett  
315 East High Street  
Charlottesville, Virginia 22902  
(804) 293-5859

John R. Cullen  
P.O. Box 876  
Louisa, Virginia 23093  
(540) 829-2085

22 January 1996

D. Michael Atkins, Esq.  
McClure, Callaghan & Atkins  
Post Office Box 1333  
Charlottesville, VA 22902

Gregory S. Duncan, Esq.  
414 East Market Street, Suite A  
Charlottesville, VA 22902

RE: John W. Draper, et al. v. Patricia Pauley  
95-182

Dear Counsel:

Pursuant to Virginia Code section 64.1-78, as amended, John W. Draper and Charles E. Draper ("contestants") have appealed the admission to probate of a document purporting to be the last will and testament ("the will") of Irene Draper, the contestants' mother. The only disposition of property specified in the will was the devise of a house located on Belmont Avenue to Ms. Draper's niece, Patricia Pauley. Testimony at a hearing held on 11 January 1996 revealed the following facts, which are not in dispute.

FACTS

On 1 March 1995, Ms. Draper was a patient at Martha Jefferson Hospital. Patricia Pauley as well as Darlene Butler, Alice Butler and two minor children (all family friends) visited Ms. Draper on that date. Immediately prior to the visit, Ms. Pauley had attempted to obtain a "cable box" from Adelphia Cable and was unable to do so because the cable service was issued under the name of Ms. Draper, who lived with Ms. Pauley. Ms. Draper wished to remedy this problem and, at the same time, wished to execute a will. Darlene Butler summoned a nurse and told her Ms. Draper's wishes. The nurse summoned hospital employee Tracy Collier, a

D. Michael Atkins, Esquire  
Gregory S. Duncan, Esquire  
January 22, 1996  
Page 2

notary public who worked in the medical records department.

It is not uncommon for patients at Martha Jefferson to request the services of notaries, and there are a number of employees in the medical records department who, like Tracy Collier, are notaries public. The supervisor of these employees has established certain procedures to be followed each time a document is notarized. For example, notaries have been instructed to notarize only language which appears above their signatures and to complete faithfully any applicable forms, such as self-proving will forms. Each notary also has a personal log in which she records the date and description of each document notarized.

Tracy Collier's log indicates that on 1 March 1995, Ms. Collier notarized a "letter verifying signature" for Irene Draper. Ms. Collier, however, has no independent recollection of the specific events of that day.

According to the testimony of Ms. Pauley and Darlene Butler, Ms. Collier entered Ms. Draper's room and, without discussing why she had been summoned, sat down and immediately began writing two documents, the top portions of which are identical and read as follows:

This is to verify that the signature below is the true signature of Irene Draper.

(signature of Irene Draper)

State of Virginia, City of Charlottesville

(seal and signature of Tracy Collier, dated 1 March 1995)

In addition to Ms. Draper and Ms. Collier, others present in the room when Ms. Draper signed her name were Ms. Pauley, Darlene Butler, Alice Butler, the two minor children and the nurse who had summoned Ms. Collier. After Ms. Collier notarized the first document, Ms. Pauley transcribed the following statements onto its lower portion as Ms. Draper dictated:

I Irene Draper being of sound and disposing mind, memory, and understanding do hereby make publish and declare this instrument of writing to be my request.

I own a house on Belmont Avenue that I would like to give my niece Patricia Pauley if anything should happen to me.

The reason for this is that Pat has always been there for me. She takes care of all my business for me and even takes care of me. I live with her now.

D. Michael Atkins, Esquire  
Gregory S. Duncan, Esquire  
January 22, 1996  
Page 3

When Ms. Pauley finished writing, she read the document back to Ms. Draper who said that the document was as she wanted it. At that time, Darlene Butler signed the will beside Ms. Collier's name, beneath Ms. Draper's signature and above the body of the will.

While Ms. Draper was dictating the will, Ms. Collier completed the top portion of the second document. Later, at the Adelphia Cable office, Ms. Pauley wrote the following statement on the bottom portion:

Adelphia Cable

Pat Pauley has my permission to pick up the cable box for my T.V.

Ms. Draper also expressed her wish to execute a power of attorney for Ms. Pauley, and Ms. Collier recommended that Ms. Pauley go to Staples to buy a standardized form. Ms. Pauley returned the next day, 2 March 1995, with a blank power of attorney form, which Ms. Draper executed and Ms. Collier notarized. Ms. Collier reported the event in her log.

Approximately twenty-five to thirty minutes elapsed during the creation of the above-described documents in Ms. Draper's hospital room on 1 March 1995. Each document executed on that day consists of only one page, and there has been no allegation that pages are missing from the will. There also has been no testimony that Ms. Collier saw or signed the will after Ms. Draper acknowledged it. Furthermore, the contestants have made no allegations of fraud or of incapacity by Ms. Draper.

ANALYSIS

The sole issue to be resolved is whether the document in question is the will of Irene Draper. Important to a determination of that issue is not whether Tracy Collier properly notarized the will but rather whether her signature serves as that of a subscribing witness. A will need not be notarized but is valid only if the testator signs the will or acknowledges the will to be his act in the presence of at least two competent witnesses, present at the same time, who subscribe the will in the testator's presence. Va. Code Ann. § 64.1-49 (Michie Repl. Vol. 1995).

When Ms. Collier attested Ms. Draper's signature, the will did not exist. Afterwards, when the text of the instrument had been written and Ms. Draper had acknowledged it as her will, Ms. Collier did not subsequently sign it. Therefore, Ms. Collier was not a subscribing witness to Ms. Draper's will.

D. Michael Atkins, Esquire  
Gregory S. Duncan, Esquire  
January 22, 1996  
Page 4

The evidence suggests, however, that Darlene Butler was a proper witness. She signed the document after hearing Ms. Draper acknowledge the instrument as her will. Moreover, according to the Virginia Supreme Court's decision in Robinson v. Ward, Patricia Pauley also qualifies as a subscribing witness. See 239 Va. 36 (1990).

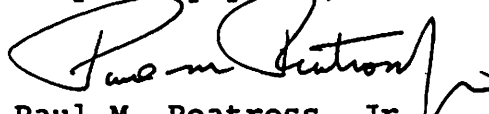
The testatrix in Robinson dictated her will to a friend, Ward, whom the testatrix named as the beneficiary. See id. The testatrix read and signed the will, and another friend, Knudson, signed the will as a witness later that day. Id. at 39-40. The Court held that although Ward did not intend to act as a witness when she wrote her name in the first line of the document, she nevertheless was a subscribing witness to the execution of the will. Id. at 44.

Applying Robinson to the instant case, Patricia Pauley served as a subscribing witness to the execution of Ms. Draper's will. She acted as witness to the preparation and execution of the document and was present with Darlene Butler when Ms. Draper acknowledged the document as her will. See id. Both women had previously seen Ms. Draper affix her signature to the document. Accordingly, her signature and the signature of Darlene Butler are sufficient to validate the will.

#### CONCLUSION

Because Irene Draper acknowledged her will before two witnesses present together who affixed their names to the document and because there are no allegations of fraud or incapacity, this Court holds that the Clerk properly admitted the document in question to probate as the will of Irene Draper. The Court will accordingly enter an Order consistent with this opinion, dispensing with signature by counsel.

Very truly yours,



Paul M. Peatross, Jr.

PMPjr:sf

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE

JOHN W. DRAPER, et al.

v.

CASE NO. 95-182

PATRICIA PAULEY

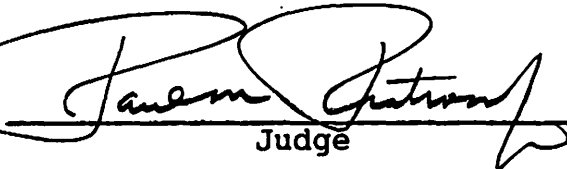
ORDER

This cause came on the 11th day of January, 1996 to be heard upon the appeal of John W. Draper and Charles E. Draper (contestants) upon an appeal from the Order of the Clerk admitting to probate a document reporting to be the Last Will and Testament of Irene Draper; upon evidence presented to the Court ore tenus; and upon argument of counsel.

For the reasons stated in the Court's letter opinion of 22 January 1996, which is incorporated by reference herein, it is ADJUDGED and ORDERED that the declaration of the Clerk admitting the document reporting to be the Last Will and Testament of Irene Draper is affirmed.

Endorsement of this Order by counsel is dispensed with for good cause.

ENTER:

  
Judge

DATE:

1-22-96

VIRGINIA;

IN THE CIRCUIT COURT FOR THE COUNTY OF ALBEMARLE

JOHN W. DRAPER  
and  
CHARLES E. DRAPER,  
  
Complainants,

v.

Case No. \_\_\_\_\_

PATRICIA PAULEY,  
  
Defendant.

**MOTION FOR RECONSIDERATION**

TO THE HONORABLE PAUL M. PEATROSS, JR., JUDGE OF THE ABOVE COURT:

COME NOW, the Complainants, John W. Draper and Charles E. Draper, by counsel, and move the Court to reconsider its Order of January 22, 1996, on the grounds hereinafter set forth:

1. That the purported will of Irene Draper did not comply with §64.1-49 of the Code of Virginia;

2. That the case of Robinson v. Ward, 239 Va. 36 (1990) relied upon by the Court in its opinion letter of January 22, 1996, is factually distinguishable from the case at bar in that the Testatrix in that case signed the will after it was written. When Mrs. Draper signed the document there was nothing on it indicating it was a will. Hence she signed nothing.

WHEREFORE, Your Complainants pray that the Court reconsider its decision and grant the their application to deny admission of the purported will of Irene Draper to probate.

JOHN W. DRAPER  
and  
CHARLES E. DRAPER

BY COUNSEL

96 JAN 29 PM 3: 27

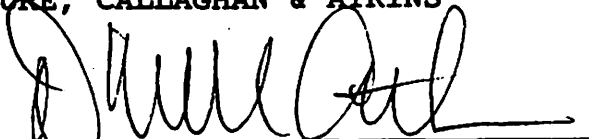
CLERK OF JUDICIAL OFFICE  
ALBEMARLE COUNTY, VA.  
SHELBY J. MARSHALL, CLERK

89

D.C.

McCLURE, CALLAGHAN & ATKINS

By:

  
D. Michael Atkins, Esquire  
Counsel for Complainants  
P. O. Box 1333  
415 Fourth Street, N.E.  
Charlottesville, VA 22902  
VSB #15736

**CERTIFICATE OF MAILING**

I hereby certify that I have this 29 day of January, 1996,  
mailed a true copy of the foregoing to Gregory S. Duncan, Esquire,  
414 E. Market Street, Suite A, Charlottesville, VA 22902.

  
D. Michael Atkins

DRAPER.NOT



### ASSIGNMENT OF ERROR

1. THE TRIAL COURT ERRED BY ALLOWING PROBATE OF A DOCUMENT WHICH HAS NOT BEEN SIGNED BY THE TESTATRIX AS REQUIRED BY VA. CODE § 64.1-49 BECAUSE THE SIGNATURE OF THE TESTATRIX, WHICH WAS MADE ON A BLANK SHEET OF PAPER BEFORE THE WRITING OF THE WILL, DOES NOT INDICATE THE FINALITY OF INTENTION TO AUTHENTICATE A CONCLUDED ACT OF DISPOSITION.

2. THE TRIAL COURT ERRED BY HOLDING THAT THE STATUTORY REQUIREMENT THAT TWO WITNESSES SUBSCRIBE TO A WILL WAS SATISFIED WHERE ONE OF THE TWO WITNESSES WROTE HER NAME ON THE WILL ONLY WHILE TRANSCRIBING THE BENEFICIARY CLAUSE OF THE WILL AT THE DIRECTION OF THE TESTATRIX.

**ASSIGNMENT OF CROSS-ERROR**

**THE TRIAL COURT ERRED IN HOLDING THAT  
TRACY COLLIER WAS NOT A SUBSCRIBING WITNESS  
TO THE LAST WILL AND TESTAMENT OF IRENE DRAPER**