

1 A. Yes.

2 Q. Apparently, he didn't make sure the electronic
3 tapes were in my file, then, did he?

4 A. From looking in the file, no.

5 **THE COURT:** What was your answer?

6 **THE WITNESS:** From a review of the file, no, he
7 didn't.

8 **BY PETITIONER HICKS:**

9 Q. Did you check all the files when you became
10 circuit clerk, ma'am?

11 A. No, sir.

12 Q. Isn't there a requirement to do that?

13 A. No, sir.

14 Q. Has this happened on this scale before?

15 A. I'm not aware of it, if it has.

16 Q. Do you know how many tapes are missing?

17 A. I have no idea.

18 Q. Since this has happened, no one has informed
19 you to check and see if there are other records missing?

20 A. No one has informed me personally, no.

21 Q. Have you read and are you familiar with the
22 record retention schedule for circuit clerks?

23 A. Yes, sir.

24 Q. I know your voice is gone, but could you please

1 read the highlighted part on Page 5, Section CR. 4?

2 **A.** "Criminal case files: All documents in
3 criminal proceedings, including the information or
4 indictment, all pleadings, motions, orders, and decrees,
5 the original Presentence Investigation Report, and other
6 tests or evaluations performed on the defendant. Felony,
7 75 years; misdemeanor, 10 years."

8 **Q.** Now on Page 6, CR. 8, please.

9 **THE COURT:** I'm going to read that in, in case -- if
10 you don't mind, due to her voice. And if I -- if I read
11 more than what she did, you just stop me.

12 Were you at CR. 4 on Page 5?

13 **PETITIONER HICKS:** We've now went to Page 6.

14 **THE COURT:** No, I want to read what she just read.
15 Was that where you were?

16 **PETITIONER HICKS:** Yes.

17 **THE COURT:** "Page 5, CR. 4, Criminal Case Files:
18 All documents in criminal proceedings, including the
19 information or indictment, all pleadings, motions,
20 orders, or decrees, the original Presentence
21 Investigation Report, and other tests or evaluations
22 performed on the defendant. Felony, 75 years;
23 misdemeanor, 10 years."

24 Is that as far as you read?

1 **THE WITNESS:** Yes.

2 **THE COURT:** Okay. Go to -- did I read that
3 correctly?

4 **PETITIONER HICKS:** Yes.

5 **THE COURT:** What was the next page?

6 **PETITIONER HICKS:** Page 6, CR. 8.

7 **THE COURT:** Do you mind if I read these, due to her
8 voice?

9 **PETITIONER HICKS:** No. You're doing fine, sir.

10 **THE COURT:** Page 6, CR. 8. Is that where we are?

11 **PETITIONER HICKS:** Yes, sir. Just down to where it
12 says "misdemeanor."

13 **THE COURT:** "Court reporter reports in criminal
14 cases the record of the court proceedings recorded by the
15 court reporter or electronic recording device, including
16 notes, tapes, and transcripts. Note all temporary or
17 substitute reporters must leave notes or tapes with clerk
18 for storage until transcript is requested or notes may be
19 disposed in accordance with retention schedule 51-7-4.
20 Felony 75 years; misdemeanor 10 years."

21 **PETITIONER HICKS:** Thank you.

22 **BY PETITIONER HICKS:**

23 **Q.** Ms. Spencer, according to that, it states that
24 your job is to require -- is to store all the documents

1 in a felony case for at least 75 years. True?

2 A. Yes, that's what it's stating.

3 Q. Okay. Further, you are required to keep the
4 original court proceedings in your possession at the
5 courthouse recorded by the court reporter or the
6 electronic recording device; is that correct?

7 A. Yes, that's what it states.

8 Q. Does that include the court reporter's notes,
9 tapes, transcripts after they are prepared?

10 A. Yes.

11 Q. Can you tell me where the electronic recordings
12 of the ex-court reporter's notes are in McDowell County
13 case No. 08-F-154?

14 A. To my knowledge, they were not stored in the
15 circuit clerk's office.

16 **THE COURT:** And 08-F-154 is the case of State of
17 West Virginia v. Amos Gabriel Hicks, also known as Gabe
18 Hicks, which was the underlying trial court number for
19 which he stands convicted.

20 **BY PETITIONER HICKS:**

21 Q. Was it common practice to let Ms. Murphy keep
22 the electronic recordings and her notes during criminal
23 cases and not turn them in to the circuit clerk's office
24 daily?

1 A. I wasn't the clerk during Ms. Murphy's term, so
2 I don't know what her practice was.

3 Q. You retired when? I'm sorry, it slipped my
4 mind. I mean, you -- you took over being circuit clerk
5 on what date?

6 A. December, 2009. December the 9th, 2009.

7 Q. And Ms. Murphy retired on October the 1st of
8 2010?

9 A. I'm not sure of her retirement date.

10 Q. She was still working at the time that you had
11 taken over; correct?

12 A. No, sir, not that I'm aware of, she wasn't.

13 Q. So you don't know if Ms. Murphy was allowed to
14 keep the electronic recordings, until after she had
15 transcribed them, in her home office?

16 A. I don't know where she -- I know they wasn't
17 filed in the circuit clerk's office.

18 Q. Is that where they're normally supposed to be
19 filed?

20 A. Per her request. If she requests, we provide
21 space for the documents.

22 Q. Thank you. On November 28, 2011, I filed an
23 appellate transcript request form for the remainder of my
24 transcripts. On December the 7th, 2011, the judge ruled

1 that my case had merit and appointed counsel to me. I
2 was instructed to get the transcripts through my attorney
3 at that time, who ended up being Mr. LaCaria.

4 My question is: At the time that I filed my
5 transcript request form, do you know that my transcript
6 media was missing, or is that when you discovered it?

7 A. That's when I discovered is through the court
8 reporter. The current court reporter.

9 Q. She informed you that they were missing?

10 A. Yes.

11 Q. How many other people in your office now know
12 that the court reporter's notes are missing and for how
13 long?

14 A. All of my deputies are aware of that.

15 Q. How many other cases have you discovered are
16 missing transcripts, electronic recordings and/or court
17 reporter's notes that you know of yourself?

18 A. This is the only case that I'm aware of that's
19 been brought to my attention.

20 Q. Ms. DiLorenzo didn't bring to your attention
21 Mr. Joseph Horn?

22 A. Not that I'm aware of, no.

23 Q. Okay. My attorney, Mr. LaCaria, came to your
24 office for almost a year looking through the files of my

1 case, 08-F-154, and finally found that large portions of
2 my transcripts were missing. I assume that you and
3 Ms. DiLorenzo were aware of the problem at the time that
4 he was looking; is that true?

5 A. That is correct.

6 Q. Why did you not inform Mr. LaCaria that the
7 electronic tapes were missing and notes were missing and
8 could not be found for almost a year? He looked through
9 the files for almost a year and nobody informed him that
10 they were missing, did they?

11 A. I didn't inform him, because I wasn't -- I was
12 under the impression that the court reporter had informed
13 him of that information about the missing documents.

14 Q. Has the Court or anyone asked you to check
15 other files to see what has happened in other cases at
16 around this time frame?

17 A. (witness's response unintelligible to court
18 reporter.)

19 **COURT REPORTER:** I'm sorry?

20 **THE WITNESS:** It's the practice and the procedure of
21 the clerk's office, if we determine that something is
22 missing, we do check around in our files, filing
23 locations, to make sure that it hasn't been misfiled.

24 Q. And this is the only one you've found missing

1 so far?

2 A. So far, to my knowledge, yes.

3 Q. Okay. Has Judge Stephens issued an order
4 investigating other cases to see?

5 A. Not that I'm aware of.

6 Q. Okay. And as of reading the record retention
7 schedule and -- that you just read and the parts that
8 were read to you -- or for you, under oath today, you
9 realize that your office is in violation of the record
10 retention schedule of the State of West Virginia;
11 correct?

12 MR. KORNISH: We object, Your Honor. Calls for a
13 conclusion.

14 THE COURT: Sustained.

15 BY PETITIONER HICKS:

16 Q. Did you --

17 THE COURT: Objection is sustained.

18 PETITIONER HICKS: I'd like to --

19 THE COURT: You can rephrase it.

20 PETITIONER HICKS: Yes, rephrase, please.

21 BY PETITIONER HICKS:

22 Q. Do you personally know that the record
23 retention schedule now states that you were supposed to
24 hang onto those for 75 years?

1 **THE COURT:** She already answered that. She's
2 already answered that.

3 **PETITIONER HICKS:** Okay.

4 **BY PETITIONER HICKS:**

5 **Q.** You have not been able to fulfill the record
6 retention schedule, then, have you?

7 **MR. KORNISH:** Again, calls for a conclusion.

8 **THE COURT:** They're not there. She's answered it.

9 **PETITIONER HICKS:** That's it, Your Honor. That's
10 all I have.

11 **MR. KORNISH:** No questions.

12 **THE COURT:** That's all your questions?

13 **PETITIONER HICKS:** Yes.

14 **MR. KORNISH:** No questions.

15 **THE COURT:** Is she excused?

16 **MR. KORNISH:** We so move.

17 **THE COURT:** Is she excused?

18 **MR. BULLMAN:** Yes, sir.

19 **PETITIONER HICKS:** Yes. Thank you.

20 **THE COURT:** Thank you, Ms. Spencer.

21 (witness excused.)

22 **THE COURT:** And thank you for allowing us to take
23 her out of turn.

24 **PETITIONER HICKS:** That's quite all right. I just

1 wanted to ask a few questions just to get the record
2 straight that they are missing.

3 *THE COURT:* That's why we are here.

4 I want to take Carolyn DiLorenzo next. Is that all
5 right?

6 | **PETITIONER HICKS:** Fine with me, Your Honor.

7 *THE COURT:* Bring her in.

8 (Witness sworn.)

9 **THE COURT:** Have a seat in the green chair.

10 who will question her?

11 | *MR. BULLMAN:* Mr. Hicks.

12 *THE COURT:* All right. Mr. Hicks will question you,
13 ma'am.

14 You may proceed.

C A R O L Y N D I L O R E N Z O

16 was thereupon called as a witness by the Petitioner, and
17 having been first duly sworn, testified as follows:

DIRECT EXAMINATION

19 | BY PETITIONER HICKS:

20 Q. Could you state your name for the record,
21 please?

22 A. Certainly. My name is Carolyn Ruth
23 DiLorenzo.

24 Q. Ms. DiLorenzo, on November 28, 2011, I sent an

1 appellate transcript request for you and the court. Do
2 you remember receiving that form --

3 A. I -- I'm sorry --

4 Q. -- and if you will check the first page that I
5 just gave you to refresh your memory.

6 A. Yes, sir.

7 Q. Okay. On December the 7th --

8 **MR. BULLMAN:** Judge, just so we can get our
9 evidentiary foundations done, would you mind if I just
10 did that for these documents and then that way we can
11 move this a little smoothly as far as evidence referred
12 to, the exhibit number, and have her identify it that
13 way. I don't want to question her. I just want to
14 approach the witness --

15 **THE COURT:** I appreciate that.

16 **MR. BULLMAN:** Excuse me.

17 DIRECT EXAMINATION

18 **BY MR. BULLMAN:**

19 Q. Ma'am, I want to show you what's been marked as
20 Plaintiff's Exhibit No. 4. It's a letter dated
21 November 9, 2012, to Mr. LaCaria from you.

22 Do you recognize that? I'll just show you. Do you
23 recognize that?

24 A. Yes, sir, I do.

1 Q. Okay. Can you identify what that is for me,
2 please?

3 A. Actually, that is a letter that I wrote to
4 Mr. LaCaria, I guess in response to his letter to me
5 regarding preparation of portions of the transcript that
6 weren't previously prepared.

7 Q. And that's your signature on the back page?

8 A. It is, yes, sir.

9 MR. BULLMAN: Judge, I'd move for admission of
10 Exhibit No. 4.

11 THE COURT: Any objection to admission of
12 Petitioner's No. 4? Any objection?

13 MR. KORNISH: No objection.

14 THE COURT: All right. Petitioner's No. 4 will be
15 admitted as marked.

16 PETITIONER'S EXHIBIT 4 ADMITTED INTO EVIDENCE

17 BY MR. BULLMAN:

18 Q. I don't see a number on this one. Did I miss
19 that?

20 THE COURT: Look on the back.

21 MR. BULLMAN: You're right.

22 BY MR. BULLMAN:

23 Q. Ma'am, I want to show you what has been marked
24 as Plaintiff's Exhibit No. 5. Do you recognize that

1 document?

2 A. Yes, sir, I do.

3 Q. Can you tell us what it is, please?

4 A. It's an appellate transcript request form dated
5 November 24, 2009. It looks like it was prepared by
6 counsel Michael F. Gibson.

7 Q. Okay. Thank you. And that's a form the
8 Supreme Court requires lawyers to fill out requesting
9 transcripts so they can get prepared or make sure there
10 is arrangements for either the court reporter to be paid
11 or the Supreme Court to pay; is that right?

12 A. Yes, sir. And I believe that is the form -- if
13 I'm not mistaken, that was the form that was approved in
14 2009. It may be a little bit different now.

15 Q. I think it is. I think it is a little bit
16 different.

17 A. Okay.

18 Q. But that's what they were using back then?

19 A. That's what they were using before I got here.
20 Yes, sir.

21 MR. BULLMAN: Judge, I'd move for the admission of
22 Exhibit No. 5, please.

23 THE COURT: Any objection?

24 MR. KORNISH: No objection.

1 **THE COURT:** Petitioner's No. 5 will be admitted.

2 **PETITIONER'S EXHIBIT 5 ADMITTED INTO EVIDENCE**

3 **BY MR. BULLMAN:**

4 **Q.** Let me show you Exhibit No. 6, which is a
5 letter dated June 24, 2014. Do you recognize what that
6 is?

7 **A.** I do.

8 **Q.** Okay. Can you tell us what that is, please?

9 **A.** Yes. This is a letter that I received from
10 another inmate at Mount Olive, a Joseph Horn, and
11 Mr. Horn was requesting -- or actually, I'm sorry, he had
12 questions concerning transcripts that I had prepared and
13 sent to him on June 17th, 2014.

14 **Q.** And that's your signature at the bottom of the
15 page? Or excuse me --

16 **A.** No.

17 **Q.** That's his signature, as far as you know, but
18 that's sent to your address?

19 **A.** Yes.

20 **Q.** And that's your correct address?

21 **A.** Yes. It's the address, I believe, here at the
22 courthouse.

23 **MR. KORNISH:** We'd object to her verifying the
24 signature.

1 **MR. BULLMAN:** And he's exactly right. She can't
2 verify his signature.

3 **BY MR. BULLMAN:**

4 **Q.** But that is your address at the top?

5 **A.** That's the address, I believe, that
6 Judge Stephens uses here at the courthouse.

7 **Q.** Okay. Do you -- do you remember receiving that
8 letter?

9 **A.** I do remember receiving that letter.

10 **Q.** Okay. All right. Thank you. And that's an
11 authentic copy of the letter you received from this
12 gentleman?

13 **A.** I believe it would be.

14 **MR. BULLMAN:** Okay. I'd move for its admission,
15 Judge.

16 **MR. KORNISH:** No objection.

17 **THE COURT:** What number is that?

18 **MR. BULLMAN:** That is No. 6.

19 **THE COURT:** Petitioner's No. 6 is admitted.

20 **PETITIONER'S EXHIBIT 6 ADMITTED INTO EVIDENCE**

21 **BY MR. BULLMAN:**

22 **Q.** Ma'am, I show you No. 7, which is August 18th,
23 2014. I believe that is on your letterhead. That's to
24 Mister -- is that correct?

1 **A.** Yes.

2 **Q.** Okay. Can you identify that for us, please?

3 **A.** Yes. That is a letter that I prepared and
4 mailed to Mr. Horn at Mount Olive, and I believe that was
5 regarding -- yeah, request -- well, it was in response to
6 the questions from the prior letter.

7 **Q.** From the previous exhibit?

8 **A.** Yes, sir.

9 **Q.** And that's your signature at the bottom of the
10 page?

11 **A.** That is my signature on the bottom.

12 **Q.** Thank you.

13 **A.** You're welcome.

14 **MR. BULLMAN:** I'd move for the admission of this
15 document.

16 **MR. KORNISH:** No objection.

17 **THE COURT:** Is that No. 7?

18 **MR. BULLMAN:** Yes, sir.

19 **THE COURT:** Petitioner's No. 7 is admitted.

20 **PETITIONER'S EXHIBIT 7 ADMITTED INTO EVIDENCE**

21 **BY MR. BULLMAN:**

22 **Q.** And showing you No. 3, could you -- State's --
23 or, excuse me, Petitioner's No. 3, can you identify that
24 for me, please?

1 A. I can. Again, it looks like the form that was
2 used in 2009 dated October 30, 2009, prepared by
3 Michael F. Gibson. And it is the appellate transcript
4 request form in Mr. Hicks' appeal case.

5 Q. Thank you. And I'm going to keep going back
6 and forth. I think I just have one more thing.

7 Exhibit No. 2, can you tell me what that is?

8 A. Yes, I can.

9 Q. What is that?

10 A. This is the Manual For Court -- Official Court
11 Reporters of the West Virginia Judiciary.

12 Q. And that's a document that comes out from Rory
13 Perry's office to court reporters?

14 A. That's my understanding. I first received a
15 copy of this manual in October of 2011. And I believe I
16 received it at our official court reporter conference in
17 Shepherdstown that year.

18 Q. And they update it from time to time when new
19 regulations are passed, for example, how the margins at
20 the top and the side and how you get compensated, things
21 like that?

22 A. Yes, sir. And I think that every year at the
23 beginning of the year my supervisor in Charleston, Jacque
24 Beaver, I think she sends new pages that accurately

1 reflect who the chief justice will be for that year.

2 **MR. BULLMAN:** Thank you.

3 Judge, I move for admission of No. 3 and No. 2,
4 please.

5 **MR. KORNISH:** No objection to 3 and 2. I think the
6 one that he's offering was approved and published after
7 the trial. I'm assuming that there was a different
8 version in effect during the trial. We would just ask
9 that the version that was in effect during the trial be
10 used as an exhibit.

11 **THE COURT:** I would agree with that, if it's -- if
12 we can get it.

13 **MR. BULLMAN:** Your Honor, if you knew what a hard
14 time I had getting this. I've requested it from
15 Mr. Perry's office, and I finally went to the court
16 reporter in Kanawha County and he made me a copy.

17 I think -- I would argue we can use it to -- it's
18 like the Code of Regulations, there are parts that are
19 updated. It should indicate whether this is a new
20 version or whether these provisions were in play at the
21 time of the trial. I think that's an argument we can
22 make.

23 **MR. KORNISH:** I think somebody needs to say that.

24 **MR. BULLMAN:** Well, and I'll -- this goes back --

1 these were promulgated October 30, 1984, and they've been
2 amended, according to the front, by Administrative Order
3 of December 13, 2010, effective December 1, 2010.

4 I mean, it's not a wholesale --

5 **MR. KORNISH:** Judge, if he can make a representation
6 that the parts he wants to use -- ask about were in
7 effect in 2008, I have no objection.

8 **THE COURT:** All right. So I'll admit it. Is that
9 No. 2?

10 **MR. BULLMAN:** Yes, sir. I think those are all the
11 exhibits.

12 **PETITIONER'S EXHIBITS 2 AND 3 ADMITTED INTO EVIDENCE**

13 **MR. LaCARIA:** We have another exhibit to mark.

14 **THE COURT:** Well, there was a No. 1 here, this court
15 retention document here for the clerk. Did you want that
16 in?

17 **MR. BULLMAN:** I'll see if she can --

18 **MR. KORNISH:** We have no objection to that one going
19 in, Your Honor.

20 **THE COURT:** What's that?

21 **MR. KORNISH:** No. 1.

22 **THE COURT:** All right. Petitioner's No. 1 will be
23 admitted.

24 **PETITIONER'S EXHIBIT 1 ADMITTED INTO EVIDENCE**

1 **MR. LaCARIA:** We're marking another exhibit, Your
2 Honor. Mr. Hicks wants to put it in.

3 **THE COURT:** Have they seen it?

4 **MR. LaCARIA:** I don't believe so.

5 **THE COURT:** This will be No. 8?

6 **MR. LaCARIA:** Yes, Your Honor, No. 8.

7 **THE COURT:** What time do they have lunch at the
8 jail? Does anybody know that?

9 Can you check on that?

10 **COURT BAILIFF:** I can check.

11 **THE COURT:** Yeah, find that out, because that's
12 going to have -- that's going to have a bearing on when
13 we break for -- I want to make sure he can eat lunch, but
14 I don't want to break at 12:00, if we can avoid that,
15 too.

16 **MR. KORNISH:** Do you have a copy of that letter for
17 me?

18 Judge, I need to get a copy of that letter, too.

19 **THE COURT:** A copy of this?

20 **MR. KORNISH:** Yes, sir.

21 **THE COURT:** Lindsay.

22 **MR. KORNISH:** I don't know if they have any others.
23 Maybe we can copy them all at the same time.

24 **THE COURT:** Is that the last exhibit now?

1 **MR. LaCARIA:** As far as I know, Your Honor.

2 **PETITIONER HICKS:** I apologize, Your Honor. I was
3 putting all of this together the last month.

4 **THE COURT:** Well, she'll make us a copy.

5 Does the court reporter have a copy of it?

6 **PETITIONER HICKS:** Yes. I gave her a -- I gave her
7 a stapled together --

8 **THE COURT:** All right.

9 **MR. KORNISH:** Did you-all bring some food for him?

10 **UNIDENTIFIED CORRECTIONAL OFFICER:** Yes, we did.

11 **MR. KORNISH:** They brought food for him when they
12 came. The COs have it.

13 **THE COURT:** Who did?

14 **MR. KORNISH:** The COs who transported Mr. Hicks.

15 **THE COURT:** Good. We'll go till 5:00. We don't
16 have to break, if they've got food for him.

17 You don't have to check that. They said they
18 brought food for him.

19 I guess you brought food for yourselves, too, didn't
20 you?

21 **UNIDENTIFIED CORRECTIONAL OFFICER:** Well, he did.

22 **MR. KORNISH:** Judge, are we still on the record?
23 Can I place something on the record?

24 **THE COURT:** Just a minute. Now you can.

1 **MR. KORNISH:** I have some ongoing stomach issues
2 that I may, at various times, have to leave the
3 courtroom. But Ms. Miller will be here, and that should
4 not affect the proceedings.

5 **THE COURT:** I understand that.

6 **MR. KORNISH:** I also have a doctor's appointment
7 tomorrow, if we're still going, and she'll be here.

8 **THE COURT:** Okay. Just so people don't get
9 concerned, we'll break for lunch at 1:00. Okay? So I
10 want to make sure everybody gets something to eat.

11 I'm not trying to punish anybody. But if you stick
12 with me, you'll lose a little weight, if you hang around
13 here.

14 **MR. KORNISH:** Judge, I think we have one witness we
15 may need to take at 1:00: Mr. Scott. I think he's got
16 another --

17 **UNIDENTIFIED SPEAKER:** He's in trial or something.

18 **THE COURT:** Is he going to be here at 1:00?

19 **MR. KORNISH:** He's going to be here at 1:00.

20 **THE COURT:** All right. We'll go after his
21 testimony. We'll do our lunch after his testimony.

22 I think we're straight now.

23 Do you want to look at that and see if you've got
24 any objection to this Petitioner's No. 8, Mr. Kornish?

1 **MR. KORNISH:** We have no objection.

2 **MR. BULLMAN:** I just move for its admission.

3 **THE COURT:** All right. Petitioner's No. 8 will be
4 admitted.

5 **PETITIONER'S EXHIBIT 8 ADMITTED INTO EVIDENCE**

6 **THE COURT:** All right. Is that all you have,
7 Mr. Bullman?

8 **MR. BULLMAN:** Sir?

9 **THE COURT:** Is that all you have?

10 **MR. LaCARIA:** For now, Your Honor, yes.

11 **MR. BULLMAN:** That's all he has given me.

12 **THE COURT:** No, I mean is that all the questions you
13 wanted to --

14 **MR. BULLMAN:** I just strictly -- to get the
15 documents in, because I was afraid that wouldn't happen.

16 **THE COURT:** Sure. And that's good.

17 Now Mr. Hicks may question the witness.

18 **PETITIONER HICKS:** Are we ready?

19 **THE COURT:** Yes.

20 **DIRECT EXAMINATION RESUMES**

21 **BY PETITIONER HICKS:**

22 **Q.** Question 2 is: On December 7, 2011,
23 Judge Stephens appointed me an attorney by the name of
24 Ronald Hassan and stated that my case had merit.

1 That would be on the second page that I gave you.
2 Also, he informed me to approach the court through my
3 attorney if I wanted any transcripts or anything else
4 involved in my case.

5 **MR. KORNISH:** Excuse me, Mr. Hicks.

6 Could we get Mr. Hicks to refer to whatever exhibit
7 he is --

8 **THE COURT:** Yeah, what --

9 **PETITIONER HICKS:** I gave -- the judge now has all
10 my original copies.

11 (Several simultaneous speakers.)

12 **MR. BULLMAN:** What number are you questioning from?

13 **UNIDENTIFIED SPEAKER:** What number?

14 **THE COURT:** The question is the number.

15 **MR. KORNISH:** The one where you're talking about
16 Mr. Hassan being appointed, what document is that?

17 **PETITIONER HICKS:** That's just a document that the
18 Court ordered. It's in the court files where the judge
19 entered on December 7, 2011, that I had filed an
20 appellate transcript request form and that my case had
21 merit and for me not to approach the Court or the court
22 reporter anymore unless I was going through my attorney.

23 **THE COURT:** That's in a court order that I entered.

24 **MR. KORNISH:** Thank you.

1 **PETITIONER HICKS:** Yes.

2 **THE COURT:** All right.

3 **THE WITNESS:** I'm sorry; I believe I have two copies
4 of the same thing. I don't know if you need that.

5 **PETITIONER HICKS:** Yes, ma'am. Thank you. I've
6 give --

7 **MR. KORNISH:** Actually, one of them is mine, I
8 think.

9 **PETITIONER HICKS:** I've give all my originals here.
10 They've stapled them or put numbers on them and gave them
11 to Judge Stephens.

12 Thank you so much.

13 **THE COURT:** Are we straight now?

14 **PETITIONER HICKS:** Yes.

15 **THE COURT:** Okay. You can proceed with your
16 questions.

17 **BY PETITIONER HICKS:**

18 **Q.** Did you know at that time that my electronic
19 media was missing, including large portions of my
20 transcripts, including voir dire, jury instructions, jury
21 verdict, and polling of the jury, and other parts?

22 **A.** I'm sorry, Mr. Hicks. Did I know at the time
23 that --

24 **Q.** Yeah, whenever I filed the appellate transcript

1 request form.

2 A. I wasn't certain, no, sir. I hadn't -- there
3 were over -- my best estimate, almost 4,000 tapes that
4 were just in boxes and bins in Ms. Murphy's office when I
5 came. And I started building a tape catalog form of what
6 was there.

7 In some of the boxes, there might have been 2009,
8 2007 tapes. They just -- I guess they were just all
9 together is what I'm saying.

10 Q. A little disorganized?

11 A. They were very disorganized, I'm sorry to say.

12 Q. Okay.

13 A. And I couldn't -- I couldn't have said for
14 sure, but, honestly, I had a fear that they may be.

15 Q. Well, the reason I asked the question is on
16 November 28, 2011, I sent in the appellate transcript
17 request form. And then on December the 7th, which is
18 just a few days later --

19 A. Right.

20 Q. -- Judge Stephens, you know, sent me -- told me
21 I had merit and appointed me an attorney, I think Ron
22 Hassan, at the time.

23 A. Right.

24 Q. And that the curiosity was, you know, did you

1 know at that time they were missing. That's what I was
2 trying to establish.

3 A. I don't think I was certain they were. Like I
4 said, I probably had a fear at the time they were. I
5 believe the reason -- and again, when I -- this was the
6 first *pro se* defendant appellate transcript request form
7 that I had received, I believe, since I started work here
8 on October 1st, 2010.

9 And it was my understanding that I needed to let the
10 judge know that I had had a request for transcripts. And
11 the best I can remember, Judge Stephens said he was going
12 to appoint you an attorney so that everything that you
13 needed would be requested.

14 Q. Okay. I notice it was awful quick. I figured
15 you may have found out -- I was going to give you credit
16 for your due diligence and speed in that.

17 A. I wish that I could have gone through all those
18 tapes that quickly.

19 Q. Did you ask Ms. Spencer, the circuit clerk at
20 the time of the transcript request, if she had been aware
21 of any missing tapes or notes or electronic media in my
22 case? Or did she seem to already know that also? Or
23 were you the one that informed her?

24 A. I think that I probably asked her if -- in my

1 search for, I guess, my best attempt of maybe hitting a
2 jackpot and finding a box of tapes somewhere, I asked her
3 if there were other places that tapes may have been
4 stored, if she knew of any other places. Honestly, I
5 can't say. I do know that I have asked her. And the
6 clerk's office has been very helpful -- at the time they
7 were, in trying to help me find any tapes at all. And
8 there weren't any.

9 Q. In your letter to Mr. LaCaria dated November 9,
10 almost a year to the date of my request, you stated that
11 Ms. Murphy had died and her husband had destroyed
12 materials, files, media, notes that were located at her
13 home.

14 When did you discover that all this had been at her
15 home and this had happened?

16 A. When I discovered the first case of what I call
17 a missing tape, and I'll just call it that - it may have
18 been a CD, but I'm assuming it's a tape - I had gotten a
19 request from, I believe, it was the appellate division of
20 the public defender office, on a gentleman by the name of
21 Samuel Saunders, again, another case before I began my
22 employment here.

23 And the best I remember, that was in the fall of
24 2011. Early fall. And when I looked for those tapes,

1 again, looking through boxes and bins, I couldn't find
2 anything. And I called Mr. Murphy and inquired about
3 whether or not there were things at the home. And that's
4 when he advised me that there were things there and that
5 he had disposed of them.

6 So I have -- I guess what I'm saying is apparently
7 there was media there, tapes, CDs, but I just have no
8 idea what.

9 Q. And that eliminated that one. I was going to
10 ask you did you talk to Mr. Murphy personally.

11 A. I did. Mr. Hicks, I actually talked to
12 Mr. Murphy twice. I made a second follow-up call about
13 maybe three or four days later. I remember it was within
14 the week. And the reason I made that follow-up call was
15 because I just felt so extremely frustrated and I kept
16 wondering if there was maybe something, anything.

17 And, basically, what he told me was that he was in a
18 hurry after she died to get her office cleaned out and
19 that he threw out everything. I specifically -- the
20 second time when I called back, I specifically said, "Do
21 you remember seeing tapes?" And he said yes, that there
22 were tapes there. And I asked about a computer, hoping
23 that maybe -- maybe there was a computer file she had
24 recorded something on. And he said there was a computer;

1 he had it hauled out. He had the transcriber hauled out.
2 And he said he -- he said, "What you don't understand is
3 I have to act while I have people here to help me."

4 And I think he said there were two gentlemen who
5 helped him load all that stuff up, haul it out. I don't
6 know where it went to. I did not ask him that. He said
7 that he knew there were probably things in there he
8 shouldn't have thrown out, he was sorry for it, he
9 couldn't do anything about it now.

10 And he even said that he threw out some things that
11 were in there that belonged to his daughter. I think he
12 said her name was Tanya, Tara, something like that. And
13 she was quite upset with him for throwing those things
14 out. So he apparently just cleaned the office out - the
15 home office.

16 Q. Okay. Did you speak to Ms. Murphy before she
17 retired? I know you said you were a court reporter
18 part-time then?

19 A. I filled in as a substitute reporter.
20 Actually, the first -- I think the first time that I
21 filled in -- I know it was down here was on the McGinnis
22 hearing on your case, Mr. Hicks, in July of 2009. And
23 the only time that I actually spoke to Ms. Murphy was, I
24 believe, when your appeal -- when the original appellate

1 transcript request form was filled out, I was named as
2 the reporter on that hearing, and she called me to tell
3 me that she had received that form.

4 And so, of course, I prepared that transcript and
5 filed it. And I think maybe two other times after that
6 when she called me to ask if I could fill in as a
7 substitute for her when she was off.

8 I never met Ms. Murphy in person. No, I take that
9 back. There was one more time that I did talk to her,
10 and that was after I started and a request had come in
11 from another -- I believe this gentleman is also in
12 Mount Olive - Socrates Thomas - and he wanted transcripts
13 of his trial. And I did have those, but I called
14 Ms. Murphy to tell her that I had received that. And she
15 was going to come pick up the tapes to prepare the
16 transcript, which she never did, but I did talk to her
17 that time, too. So maybe I talked to her on the phone
18 four times total.

19 Q. Okay. And one of the other names -- instead of
20 Samuel Saunders, another one was Fred Seagraves?

21 A. Yes.

22 Q. I spoke to both of those gentlemen there at
23 Mount Olive. You sent me that letter. I appreciate
24 that.

1 A. Yes, sir.

2 Q. When you discovered that the media had been
3 destroyed, did Judge Stephens know about that or did you
4 have to inform him of that?

5 A. Oh, of course, I informed him of that. And I
6 also informed my supervisor in Charleston at the Supreme
7 Court.

8 Q. Okay.

9 A. And they made the clerk's office aware as well.

10 Q. Have they stipulated any kind of new rules now
11 about you have to leave the transcripts -- or the
12 electronic media at the circuit clerk's office?

13 A. Honestly, Mr. Hicks, I apologize, I don't know
14 what the manual said prior to the new one being issued in
15 2010. I've never seen a copy of that, so I don't know
16 what that prior manual designated, but I do know that
17 every update that I've received, the original media is to
18 be left here at the courthouse. And that's where all of
19 my files are, of course.

20 Q. Yeah. And if you take anything home, it's
21 supposed to be a copy?

22 A. It is a copy. It is. And that's the way I
23 work. I have an external hard drive that has a copy of
24 the files on it and I take that home to work with it.