

1       Q.    Okay.  And the court reporter's manual, I think  
2 you have a copy of that.  Can you please scan, what is  
3 it, No. 15?

4       A.    Yes, sir.

5       Q.    Okay.  Can you read that real quick for the  
6 record, please?

7       A.    Sure.  I'm glad I brought my glasses.

8       **MR. KORNISH:**  Just for the record, I think that's  
9 Exhibit 2, maybe.

10      **THE COURT:**  That is Petitioner's 2.

11      **THE WITNESS:**  Certainly.

12       "Untranscribed notes:  Notes and/or tapes  
13       of proceedings, hearings and trials for which  
14       no transcript request has been made shall be  
15       retained in the courthouse where the action  
16       took place in an area designated by order of  
17       the circuit judge.

18       "The court reporter shall prepare an index  
19       of the proceedings for each case to be stored  
20       with the notes and/or tapes.  These  
21       requirements shall apply to substitute court  
22       reporters as well as to official court  
23       reporters.

24       "The notes taken by court reporters of

1 circuit court proceedings do not belong to the  
2 court reporter. These notes are the official  
3 court record and are the property of the West  
4 Virginia judiciary. Ultimately, it is the  
5 official court reporter's responsibility to  
6 make sure a substitute court reporter's notes  
7 are left at the courthouse. The official  
8 court reporter should maintain a logbook of  
9 untranscribed proceedings, including those of  
10 the substitute court reporter, in such a manner  
11 that anyone could look at it and be able to  
12 locate a past proceeding if a transcript is  
13 requested."

14 Q. Thank you.

15 A. You're welcome.

16 Q. How long did you have to train to become a  
17 court reporter, ma'am?

18 A. How long do you --

19 Q. Your education. How long was that?

20 A. I -- I can't speak for everyone else. For me,  
21 in 1985 I began as an electronic recording operator for  
22 Judge John Calvin Ashworth in Raleigh County. I believe  
23 that was the first year that an electronic recording  
24 operating system was used in the courtroom, which is

1 basically just a digital recording system.

2 I did not go back to court reporting until 2008 when  
3 I just did freelance court reporting work. To be a  
4 freelance court reporter, my understanding is you just  
5 have to be able to administer an oath. I did freelance  
6 court reporting until I passed a state certification test  
7 in April of 2009, one year later, and began my official  
8 employment here on October 1 of 2010.

9 Q. Okay.

10 A. I do not have a degree. I have taken classes  
11 through Huntington Junior College. One class -- I've  
12 taken college classes not related to court reporting.

13 Q. You took your test in 2009?

14 A. Yes, sir. April of -- they give it twice a  
15 year, the state certification test. They give it in  
16 April and they give it in October. I wanted to  
17 immediately take it so that I could become certified and  
18 hopefully obtain an official position.

19 Q. Okay. During that training is there a  
20 procedure that is taught to court reporters to take over  
21 when -- if you're the new court reporter, is there a  
22 procedure that's taught to you as to how to take over for  
23 the old court reporter, or do you just come in and go for  
24 it, so to speak?

1       A.    well, I can't say -- I can't say what's taught  
2 or what isn't. I can say, in my case, I just came and I  
3 didn't have any other -- I didn't have any direction from  
4 any official person at all. I showed up on October 1 to  
5 assume my full-time duties, 2010.

6       Q.    Okay. You became an official court reporter on  
7 October 1, 2010. Ms. Janet Murphy died, I think, about  
8 the 17<sup>th</sup> of May, 2011; is that correct?

9       Does that sound about right?

10      A.    It does sound about right.

11      Q.    About seven and a half months?

12      A.    I know that it was in the spring after I began  
13 my employment.

14      Q.    Okay. Did you ever, at any time, ask her if  
15 she had any tapes or recordings at her house?

16      A.    No, sir.

17      Q.    And you've said that the electronic media was  
18 in boxes and you are now sorting them out and getting  
19 them -- getting them organized?

20      A.    I've actually sorted them out and I built a  
21 very rudimentary form that is just something I can do a  
22 quick search so that I can look for a date to see, first  
23 of all, if I have tapes from that date; and then what I  
24 have to do is listen to the tape to see what's on it, if

1 I get a request.

2 Q. Okay. On December the 7<sup>th</sup>, 2011,

3 Judge Stephens appointed me an attorney.

4 A. Yes.

5 Q. And then Ron Hassan had a conflict because he

6 had represented Rusty Waldron at one time, and then

7 Judge Stephens appointed Mr. LaCaria.

8 A. Yes, sir.

9 Q. Okay. So we're almost a year to the day of my  
10 original request form for my transcripts. They were  
11 missing and Mr. LaCaria was running around, I guess, like  
12 a chicken with its head cut off, for a year.

13 Can I ask you why you didn't tell him that you  
14 knew they were missing?

15 A. Well, again, when I responded initially -- when  
16 I talked to Judge Stephens initially and he told me he  
17 was going to appoint an attorney, of course, he did. He  
18 appointed Mr. Hassan. And I believe it was several  
19 months after that that I saw Mr. Hassan in the hallway  
20 and asked him if he was going to make a request for  
21 transcripts on your case. And he advised me then that he  
22 had been conflicted out and that Mr. LaCaria had been  
23 appointed. And I honestly waited on Mr. LaCaria to  
24 approach me, and when he did, then I responded.

1       Q.    Okay.  When did that happen, ma'am, to the best  
2 of your knowledge or memory?

3       A.    It was, I think, in the fall.  I think in the  
4 fall of, I guess, 2012.  I may have spoken to Mr. LaCaria  
5 before that.  I just don't remember, Mr. Hicks.

6       Q.    Okay.  That's quite all right.

7       A.    I just know that, by the time I got that  
8 letter, I felt certain that I could not find the media or  
9 that it wasn't going to be available for the transcripts  
10 that you needed.  And I really, again, looked through all  
11 those tapes one more time just hoping that I could find  
12 something, and I couldn't.

13      Q.    I know you've advised me that Samuel Saunders  
14 and Fred Seagraves are missing transcripts also on part  
15 of their proceedings.  You wrote a letter to Joseph Horn  
16 stating that you don't know where his are at; you don't  
17 know what she kept at her home.

18      You've not been able to locate those, have you?

19      A.    Oh, no, sir.

20      Q.    Okay.  How many other cases have you so far  
21 discovered that are missing?

22      A.    Other than Mr. Horn, and there may have been --  
23 I think there was an inmate by the name of Jody Dobbs and  
24 I think -- and, again, I apologize, there may have

1 been -- to the best of my memory, maybe there were two or  
2 three that I couldn't locate.

3 Q. Okay.

4 A. And I don't remember -- I don't remember  
5 anything other than those two -- other than the  
6 additional two that I just said.

7 Q. Okay. Have you or the court informed these  
8 people of this problem: Jody Dobbs, Fred Seagraves?  
9 Have you personally -- since you know they are missing,  
10 have you located them and told them that there is part of  
11 the transcripts missing?

12 A. I think that -- and, again, I apologize,  
13 because I don't have the paperwork in front of me that I  
14 responded to Mr. Dobbs, but I believe when I prepared the  
15 transcript he requested, I think I may have sent a letter  
16 to him indicating that.

17 As far as Mr. Seagraves, if my memory serves me  
18 correctly -- and again, these are all people -- or at  
19 least Mr. Seagraves was before I started work here. I  
20 think he was appointed an attorney from somewhere in the  
21 eastern panhandle, and I don't remember the name, but  
22 Mr. Seagraves, I believe, is now deceased, for some  
23 reason.

24 Q. No, ma'am.

1           A. No?

2           Q. I seen him yesterday.

3           A. Okay. And I apologize. The names are just --

4           Q. I understand. without seeing their face,

5 sometimes, you know, I know how that works.

6           A. And, again, if it were a case that I had  
7 recorded, I believe I could remember it. But I just --

8           Q. Okay. Thank you.

9           A. So I guess, no, in response to that, I guess I  
10 haven't.

11           Q. Okay. Mr. LaCaria filed a transcript request  
12 form for jury -- grand jury orientation in my case. He  
13 did that just recently. You've sent him copies of the  
14 grand jury evidence, but not the orientation.

15           Isn't the orientation also supposed to be recorded  
16 for when the judge orientates the grand jury?

17           A. I'm sorry, I apologize. I didn't realize when  
18 I saw that request -- and maybe I overlooked it for the  
19 orientation. I don't think that I saw that. I don't  
20 think I saw that.

21           Q. Yeah, we requested that. It's been two, three  
22 weeks ago. And he told me over the phone that all he got  
23 was the transcripts themselves. And I told him I had a  
24 copy of those, but I was looking for the orientation.

1        Does the orientation exist, that you know of?

2        **MR. KORNISH:** Judge, we would object to Mr. Hicks  
3 testifying to facts not in evidence while he is asking a  
4 question. He will have a chance to testify himself  
5 later.

6        **THE WITNESS:** And, first of all, I'd have to look  
7 and see if those tapes are there. I do know that when I  
8 got that request in, I searched through the form that I  
9 had built, and I do believe I saw from one of the grand  
10 jury meetings that there was a tape there for that. The  
11 other two, I did not see, but that does not mean that  
12 Judge Murensky's reporter, Rose, may have reported those.

13       The way the grand jury is handled down here, I  
14 believe - and certainly any attorney here can correct  
15 me - is the judge does it maybe for one year and then the  
16 next year another judge does it. So it may have been  
17 that Janet Murphy reported one and Rose reported the  
18 others. I just -- I don't know.

19       **Q.** Okay. Thank you.

20       **A.** If that clarifies.

21       **Q.** Somewhat, yes, ma'am. In my case, all the  
22 electronic media -- even though I have transcripts of  
23 part of my trial, I'm missing large chunks. But all the  
24 electronic media in my case is missing, isn't it?

1       A. As far as your trial, I believe it is.

2       Q. Okay.

3       A. I can't speak to other hearings, because I  
4 don't think I've actually really looked for those. But  
5 as far your actual trial, I have no tapes from your  
6 trial, that I can locate.

7       Q. I just need to get that on the record, you  
8 know, for later on.

9       A. I wish I could.

10      Q. Well, I have several issues with voir dire and  
11 with jury instructions, with the jury pool -- or poll,  
12 I'm sorry, with the jury pool being brought in from  
13 outside.

14      There is no way that I can get that now, is there?

15      A. Not to my knowledge.

16      **PETITIONER HICKS:** Okay. I thank you very much.

17 I'm sorry I had to call you for this, but I do appreciate  
18 you.

19      **THE WITNESS:** You're welcome.

20      **THE COURT:** Mr. Kornish or Ms. Miller?

21      **MR. KORNISH:** No questions.

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

23      **MR. KORNISH:** We would so move.

24      **PETITIONER HICKS:** Yes, Your Honor.

1                   **THE COURT:** You're excused to leave. Thank you.

2 (witness excused.)

3 MR. KORNISH: Deputy Shelton asked to be called.

4            *THE COURT:* Yes, he did. Is he still up here?

5 | Shelton? Let's have him next.

6 **COURT BAILIFF:** Yes, he is.

7        *THE COURT:* Do we need a recess? Anybody need a  
8 recess?

9 | All right. Deputy Shelton.

10 (witness sworn.)

11        *THE COURT:* Have a seat in that green chair over  
12 there.

13 **PETITIONER HICKS:** Mr. Shelton, can I hand you this  
14 to refresh your memory, please.

15 | *THE COURT:* What exhibit number is that?

16 **PETITIONER HICKS:** It's the exhibit of the ATF  
17 report that should already be in my trial and a couple  
18 pages of --

19        *THE COURT:* I mean, you're not using that as an  
20 exhibit?

21        **PETITIONER HICKS:** No, I'm not. Just questioning  
22 him concerning it.

23           **THE COURT:** Have a seat. Do I need -- you got a  
24 copy for me?

1       **PETITIONER HICKS:** No, sir. It's three pages. I'm  
2 sorry.

3       **MR. KORNISH:** I'd like a copy, too.

4       **THE COURT:** Well, make two copies of that.

5       Just a have a seat there.

6       You got something you can give her to make two  
7 copies?

8       **PETITIONER HICKS:** Thank you.

9       **THE COURT:** Do we have some hand sanitizer? Get  
10 some. After Ms. Spencer testified, I want to treat this  
11 microphone to make sure nobody gets what she's got.

12       Don't get too close to that microphone.

13       **THE WITNESS:** okay.

14       **THE COURT:** I meant to do that before ...

15       **MR. KORNISH:** There is not any in here, Judge.

16       **THE COURT:** She went to get some.

17       Just rub that across the rubber part of that  
18 microphone.

19       **THE WITNESS:** Okay.

20       **THE COURT:** Who is going to question Deputy Shelton?

21       **MR. BULLMAN:** Mr. Hicks.

22       **THE COURT:** Did I swear you in?

23       **THE WITNESS:** Yes, sir.

24

## 1                   M A R K   S H E L T O N

2 was called as a witness by the Petitioner, and having  
3 been first duly sworn, testified as follows:

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

5    *BY PETITIONER HICKS:*

6    *Q.*    Can you state your name for the record, please.

7    *A.*    Yes. My name is Mark Shelton, a deputy sheriff  
8 with the McDowell County Sheriff's Office.

9    *Q.*    Do you also work for the Violent Crimes and  
10 Drug Task Force for the Southern Region?

11   *A.*    Used to.

12   *Q.*    Used to?

13   *A.*    Yes, used to.

14   *Q.*    What years were that, sir?

15   *A.*    I believe it was from, like, 2001 -- July 2001  
16 to around January 2006. I believe somewhere in that  
17 area.

18   *Q.*    You were with Special Agent Yoh with the ATF  
19 whenever you questioned Melissa Coleman --

20   *A.*    Yes, sir.

21   *Q.*    -- concerning the theft of drugs and a shooting  
22 that happened in McDowell County?

23   *A.*    Yes, sir, I was.

24   *Q.*    And that took place on October 30, 2002?

1       A. Yes, sir.

2       Q. Okay. That interview was about the  
3 investigation of these shootings where Doug shot Jeffrey  
4 Mullins, Don Ball and Chantel Webb; is that correct?

5       A. Yes, sir.

6       Q. Did Melissa Coleman provide a motive for the  
7 cause of the shootings whenever she gave that statement?

8       A. Yes. She advised that they had stolen some  
9 drugs off of -- off of you and that you was mad about  
10 that.

11      Q. No. It's off of Doug, sir.

12      A. Yeah, well, off of Doug, yes. Sorry about  
13 that. I was reading.

14      Q. That's quite all right. I understand that. I  
15 just wanted to correct you.

16      A. Yes. Yes. Off of Doug Mullins.

17      Q. So she admitted that she; Stevie Coleman, her  
18 husband; Jeffrey Mullins; and Chantel Webb stole 220  
19 OxyContin pills from Doug just prior to the shooting on  
20 Bradshaw Mountain?

21      A. Yes.

22      Q. And you worked for McDowell County during that  
23 time?

24      A. I was working for the sheriff's office, but I

1 was assigned to the Southern Regional Drug and violent  
2 Crime Task Force.

3 Q. Okay. The shootings happened in May of 2013.  
4 You were working for the Violent Crimes and Drug Task  
5 Force and McDowell County at that time and also on 30  
6 October 2002; correct?

7 A. You said '13.

8 Q. Oh, I'm sorry. Three -- thirteen May 2001 and  
9 30 October 2002, you were working for both the county and  
10 the Southern Regional Drugs and Violent Crime Task Force;  
11 correct?

12 A. I believe that I started July 1, 2001, for the  
13 Southern Regional Drug and violent Crime Task Force.

14 Q. Okay. And this case had not been solved at the  
15 time Melissa Coleman's statement was made, was it?

16 A. No.

17 Q. Okay. So it was big news. It showed motive as  
18 to why Doug Mullins had shot these individuals?

19 A. Yes.

20 Q. Did you inform the lead investigator of the  
21 state police, Trooper Jason Cooper, when you discovered  
22 this information?

23 A. I don't know if I did or if Agent Yoh did. I'm  
24 not for sure. I'm not sure. One of us did, yes, sir.

1       Q.    Okay.  What did he have to say?  Did he tell  
2 you that solved his case or did he tell you that was  
3 interesting or --

4       **MR. KORNISH:**  Object to hearsay.

5       **THE COURT:**  Sustained.  That would be hearsay.

6 **BY PETITIONER HICKS:**

7       Q.    Was this before the plea hearing at Doug  
8 Mullins' case that you informed Trooper Cooper of the  
9 report that Melissa Coleman had made?

10      A.    To be honest with you, sir, I don't know -- I  
11 don't know if it was or not.

12      Q.    Doug Mullins took a plea on December the 28th  
13 or 29th of 2002, about two, two and a half months after  
14 Melissa made this statement, so, you know, I just wanted  
15 to read it into the record.

16      The timeline is what I'm after.

17      A.    Okay.  Again, I don't know when we told  
18 Trooper Cooper.

19      Q.    Okay.  Whenever she made the statement to you,  
20 did you ever interview Jeffrey Mullins, Don Ball or  
21 Stevie Coleman in an attempt to verify the statements  
22 made by Melissa Coleman concerning the theft of those  
23 drugs?

24      A.    I didn't, sir.  I was there with just

1 Agent Yoh, who was the lead investigator.

2 Q. He was investigating the State's -- he was the  
3 investigator for the State's crime -- or for the crime of  
4 murder that Doug had committed?

5 A. He was working a drug investigation that this  
6 became a part of.

7 Q. Okay. But you never did interview Jeffrey, Don  
8 or Stevie yourself?

9 A. I don't remember doing so, no, sir.

10 Q. Did you attend Doug's plea hearing?

11 A. No, sir, not that I know of.

12 Q. Did you attend -- attend James Waldron's trial?

13 A. No, sir, not that I know of.

14 Q. Since this was such big news, did you inform  
15 Doug Mullins' attorney, Tim Lupardus, that you were  
16 informed by Melissa and her -- that she and her husband  
17 and Jeffrey and Chantel had stolen 220 OxyContin pills  
18 from Doug just prior to the shooting?

19 A. Myself?

20 Q. Yes.

21 A. No, sir. I don't recall doing that.

22 Q. Did Aaron Yoh ever tell you that he did?

23 A. I don't know.

24 MR. KORNISH: Again, object. Hearsay.

1           **THE COURT:** Sustained.

2 **BY PETITIONER HICKS:**

3           **Q.** At the plea hearing of Doug Mullins, Judge --  
4 the judge asked Doug if any of the three victims had done  
5 anything to provoke him. Doug Mullins had stated no.

6           My question is: Did Sidney Bell know about the  
7 statement made by Melissa Coleman at the time of Doug's  
8 plea? Had you informed him of that statement?

9           **A.** No, sir, not that I know of.

10          **Q.** You left that up to Aaron Yoh also?

11          **A.** Aaron Yoh or -- yes, sir, I guess. I mean, it  
12 wasn't me that said anything, if anything was said.

13          **Q.** Have you ever spoke to Sidney Bell concerning  
14 this?

15          **A.** To be honest with you, sir, I don't know if I  
16 have or not. I mean, it's been several years ago.

17          **Q.** Well, yeah, after all this time, memories, I  
18 know how that goes. I just need to, you know, ask you.

19          **A.** Yeah.

20          **Q.** Do you know that it is an assumption of law  
21 that the prosecutor knows what all his investigators know  
22 as a collective body? Is that correct?

23          **A.** Yes, sir.

24          **Q.** So it was your duty to disclose at that time.

1 Is that correct?

2 A. I wouldn't say it was my duty. I mean, I  
3 wasn't the lead investigator. If Mr. Yoh did, I -- I --  
4 I don't know.

5 Q. On February 14, 2003, you, Aaron Yoh, Agent  
6 Lambert and State Police Sergeant Pauley collectively  
7 interviewed Doug Mullins in the presence of his attorney,  
8 Tim Lupardus.

9 A. You were there; correct? It's after his plea  
10 bargain.

11 A. I guess so, yes, sir. If it says I was there,  
12 yes, sir.

13 Q. Okay. I have one of those at home, where you  
14 were -- where it still says Officer Shelton and all  
15 those.

16 A. Okay.

17 Q. The thing of it is about that interview is --  
18 where am I at? The interview of Doug was four months  
19 after Melissa's assertions. There is no questions of  
20 Doug about the theft of these drugs as to the motive.

21 A. Why was Doug not asked about this since you-all were  
22 there? Or did you ask him and just never recorded it?

23 A. I don't know, sir. Just like I said, I was --  
24 I was just present. It was Agent Yoh's investigation and

1 I was just present.

2 Q. You took no notes personally yourself, asked no  
3 questions yourself?

4 A. No, sir.

5 Q. Did you ever know -- become aware of Rusty  
6 Waldron's statement in an interview with Sergeant Pauley  
7 that he had seen a wooden-handled pistol sticking out of  
8 Doug's right hip pocket on Bradshaw Mountain just after  
9 the shooting?

10 A. No, sir, not until I just read it here.

11 Q. Okay. "Doug states many times that  
12 He bought a .38 pistol from his brother, Glenn.  
13 He also stated he got rid of it about the time  
14 of the shooting."

15 Did you ever ask whom he got rid of it to?

16 A. No, sir.

17 **THE COURT:** Let me just interrupt you on that. We  
18 aren't going to retry your criminal trial.

19 **PETITIONER HICKS:** No.

20 **THE COURT:** I just need to know the purpose of  
21 asking these questions.

22 **PETITIONER HICKS:** The purpose is the State's  
23 failure to properly investigate, Your Honor.

24 **THE COURT:** What?

1           **PETITIONER HICKS:** The State's failure to properly  
2 investigate.

3           **THE COURT:** That's not for here. That's not for a  
4 habeas corpus hearing. You know, that's for some other  
5 procedure, but that's not for here.

6           I'm not going to sit here and let you retry, you  
7 know, the whole case all over again.

8           **PETITIONER HICKS:** No, this comes down to the point  
9 that Doug Mullins has told repeatedly that he had a 9mm  
10 pistol. And out of that 9mm pistol he has told you, he  
11 has told Special Prosecutor Gigganbach, he has told I  
12 don't know how many people --

13           **THE COURT:** whatever he said, he is bound by it,  
14 unless he commits perjury.

15           **PETITIONER HICKS:** Well, that's what I'm trying to  
16 get toward is that he did perjury his self.

17           **THE COURT:** Well, then --

18           **MR. KORNISH:** Well, I don't think this witness has  
19 any knowledge of that.

20           **THE COURT:** Officer Shelton wouldn't know whether he  
21 has perjured himself or not. This is a waste of time. I  
22 want to give you some leeway because you're proceeding  
23 *pro se*. That's the reason I hadn't interrupted you. But  
24 we're not going to retry your complete trial here through

1 witnesses.

2 **BY PETITIONER HICKS:**

3 Q. Okay. Did my attorneys ever contact you about  
4 questions of your involvement in the interview of Melissa  
5 Coleman and Doug Mullins during my trial or before my  
6 trial?

7 A. To be honest with you, sir, I don't know if  
8 they did or not. That's several years ago.

9 Q. Did you personally ever question Doug's wife,  
10 Pam, about the theft of Doug's drugs the morning of the  
11 shooting?

12 A. No, sir, I don't think so.

13 Q. Did you ever question any of the neighbors?  
14 He lived in a small trailer park and they were all  
15 curious, and so I just curious had you went and asked any  
16 of the neighbors?

17 A. No, sir. It wasn't my investigation.

18 **PETITIONER HICKS:** Okay. Thank you. I appreciate  
19 your time.

20 **MR. KORNISH:** No questions.

21 **PETITIONER HICKS:** I have no further questions.

22 **MR. KORNISH:** I ask that he be excused.

23 **THE COURT:** May he be excused?

24 **PETITIONER HICKS:** Yes.

1 *THE COURT:* You're excused to leave, sir.

2 (witness excused.)

3 | *THE COURT:* All right. Call your next witness.

4 Didn't he give you that? Give it back to him.

5 Call your next witness, Mr. Hicks, Mr. LaCarria,

6 Mr. Bullman.

7        **MR. BULLMAN:** It's my understanding he is supposed  
8 to be here at one.

## 9 | *THE COURT: who is that?*

10        **MR. BULLMAN:** Judge, when I talked to Mr. Scott, it  
11 was my impression --

12 | *THE COURT:* They said 1:00 for him.

13 | *MR. BULLMAN:* Pardon me?

14      *THE COURT:* They said 1:00 he would be here.

15        **MR. BULLMAN:** Yeah. I didn't know who else you  
16 wanted to get into. I have a couple witnesses who are  
17 supposed to be available by phone, if we could get ahold  
18 of them.

19           **THE COURT:** How do we -- how do we do that? Was my  
20 law clerk supposed to help you with that?

21        **MR. BULLMAN:** I thought Mister -- do you have a  
22 phone you can use?

23 I thought you guys had a setup here with a  
24 speakerphone.

1 **THE COURT:** I have a speakerphone in my office.

2        *MR. BULLMAN:* That was my mistake. I thought you  
3 had one.

4            **THE COURT:** My secretary has a speakerphone.

5 MR. BULLMAN: All right.

6        **THE COURT:** Was that all the witnesses that you have  
7 for the time being?

8        **PETITIONER HICKS:** No. Your Honor, I have two more  
9 that I need to call just for a couple quick questions.

10 | *THE COURT:* Well, who are they?

11 **PETITIONER HICKS:** I need Chasity Davis and Athena  
12 Duty.

13 | **THE COURT:** Are they here?

14 **PETITIONER HICKS:** Yes.

15 *THE COURT:* Call Chasity -- what's the last name?

16 | PETITIONER HICKS: Chasity Davis.

17 | THE COURT: Davis.

18 Come over here and I'll swear you in.

19 (witness sworn.)

20        *THE COURT:* Have a seat in that green chair over  
21 there, ma'am.

## 22 | what's the purpose of this witness?

23        **PETITIONER HICKS:** This is for grounds 8, 10, 29  
24 and 34, Your Honor.

1 THE COURT: I'm sorry; I just don't have that here.

2        ***PETITIONER HICKS:*** Voir dire, Mike ordering the  
3 transcripts, ineffective assistance of counsel. I can't  
4 remember exactly what all.

5 | *THE COURT:* All right.

6 Mr. Gibson, go in this room right here, please.

7 All right. Go ahead.

CHASITY DAVIS

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

11 | BY PETITIONER HICKS:

12 Q. Please state your name for the record.

13 A. Chasity Davis.

14 Q. You're my daughter; correct?

15 A. Yes.

16 Q. Okay. You were present during my entire trial?

17 A. Yes.

18 Q. Do you remember Judge Stephens during -- I

19 don't know if you recall whenever they were seating the  
20 jury, do you remember him telling an elderly black lady  
21 of the jury not to cancel her vacation plans on Friday?

22 A. Yes.

23 q. Do you remember what he said to her?

24 A. I think he said it would only take a few days

1 and she should be out in time to go. I think she was  
2 seeing the president or something. He said she would  
3 have plenty of time to get there to see the president,  
4 not to cancel her plans.

5 Q. He told her the trial would be over by  
6 Thursday?

7 A. Yes.

8 Q. One way or the other?

9 A. Yes.

10 Q. Okay. After that comment, did it appear  
11 everybody was in a rush to get the trial over with?

12 A. Yes.

13 Q. Do you remember the court running out of jurors  
14 and the judge telling the bailiff to go somewhere and get  
15 some more jurors?

16 A. Yes, I think I do.

17 Q. Well, it's been years.

18 A. It was a long time.

19 Q. That's why we need the transcript. Yeah, well,  
20 that's why we need the transcript. I just need to know  
21 how people's memory is running.

22 Everyone knows that witnesses are sequestered in a  
23 witness room and not supposed to talk to each other about  
24 the case. I have been told that Stevie Coleman was

1 bragging about why he was a witness.

2 what was he bragging about?

3 A. I think he was --

4 MR. KORNISH: Object. Hearsay.

5 THE COURT: Sustained.

6 BY PETITIONER HICKS:

7 Q. At the end of the trial, Judge Stephens'  
8 instructions on how to come to a decision about the  
9 charges and what they can return, do you remember what  
10 Judge Stephens said to the jurors as they were about to  
11 leave the jury box to head to the jury room to  
12 deliberate?

13 A. He said when they were finished to knock on the  
14 door, but warned them to not knock on the door until they  
15 had reached a decision or the end of time, whichever came  
16 first.

17 Q. After my trial, you were my go-between between  
18 me and my attorneys while I was in regional jail;  
19 correct?

20 A. Yes.

21 Q. I had concerns about what Judge Stephens told  
22 the elderly black lady of the jury about her vacation  
23 plans and the comments to the jury as they were going  
24 into the jury room.

1 Do you remember me and you talking about that on the  
2 phone?

3 A. Yes.

4 Q. Didn't I ask you to call Tom Scott's office to  
5 relay that message?

6 A. Yes.

7 Q. You were -- you talked to Carla Falletti, his  
8 paralegal, at that time; correct?

9 A. Yes.

10 Q. And did she tell you she would tell Tom about  
11 that?

12 MR. KORNISH: Object. Hearsay.

13 THE COURT: Sustained.

14 BY PETITIONER HICKS:

15 Q. When preparing for my direct appeal, my  
16 attorneys told you that I had to have \$5,000 upfront to  
17 pay for the transcripts; is that correct?

18 A. Yes.

19 Q. The money for the appeal took a couple months  
20 to raise, didn't it?

21 A. Yes, it did.

22 Q. After Michael Gibson informed you he had the  
23 transcripts, I had -- I asked you for a copy of the  
24 transcripts from him, did I not?

1       A. Yes.

2       Q. To my knowledge -- or to your knowledge -- I'm  
3 sorry. To your knowledge, have these transcripts  
4 repeatedly been asked for?

5       A. Yes. I asked for them several times.

6       Q. Would you happen to have roughly a number as to  
7 how many times you asked him for them?

8       A. Oh, I don't know. Eight, ten times, maybe.

9       Q. What were some of his excuses for not making  
10 copies?

11       **MR. KORNISH:** Again, objection. Hearsay.

12       **THE COURT:** Sustained.

13       Mr. Gibson is going to be present. You can ask him  
14 what his excuses were.

15       **BY PETITIONER HICKS:**

16       Q. Did you offer to take them to Office Max and  
17 make copies and return the originals to him?

18       A. Yes.

19       Q. Did he tell you no?

20       **MR. KORNISH:** Again, objection to hearsay.

21       **THE COURT:** Sustained.

22       **BY PETITIONER HICKS:**

23       Q. Okay. Let's see. At that time, did Michael  
24 Gibson ever inform you that he had only ordered part of

1 the transcripts?

2 **MR. KORNISH:** Objection. Hearsay.

3 **THE COURT:** Sustained.

4 **BY PETITIONER HICKS:**

5 Q. Was I the first person to ever inform you that  
6 part of my transcripts were missing, large parts?

7 A. Yes.

8 Q. I need to ask you a couple quick questions. I  
9 know everybody has had a couple speeding tickets or  
10 whatever like that. One of my grounds is lawyers use a  
11 different language whenever they're talking to the court.

12 Q. Have you ever been in trouble?

13 A. No.

14 Q. Other than a speeding ticket, maybe?

15 A. No.

16 Q. Do you know what the word "pro vice hac" [sic]  
17 means?

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

19 **BY PETITIONER HICKS:**

20 Q. Do you know what the word "pro vice hac" [sic]  
21 means?

22 A. No.

23 Q. Do you know what "de novo" means?

24 A. No.

1 Q. Can you tell me what "voir dire" means?

2 A. No.

3 Q. Do you have the slightest idea of what a  
4 McGinnis hearing is?

5 A. No.

6 Q. So if you've never been in trouble before and  
7 your attorneys don't explain that to you in everyday  
8 layman terms, they may as well be speaking Greek;  
9 correct?

10 A. Yeah.

11 MR. KORNISH: Latin.

12 **PETITIONER HICKS:** It's actually Latin, yeah.

13 | **THE WITNESS:** okay.

14 | BY PETITIONER HICKS:

15 Q. Would you consider that a language barrier to  
16 any of the proceedings?

17 A. Yeah. Yes.

18 **PETITIONER HICKS:** I have no more questions.

19 | **MR. KORNISH:** No questions, Your Honor.

20 | **THE COURT:** Is she excused?

21 **PETITIONER HICKS:** Yes. you're excused. Thank you.

THE COURT: You're excused to leave.

23 | call your next witness.

24 (witness excused.)

1 | ***PETITIONER HICKS:*** Athena Duty.

5        **THE COURT:** Have a seat in that green chair back  
6 there, ma'am.

7 You may ask her questions.

## A T H E N A      D U T Y

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

## **DIRECT EXAMINATION**

12 | BY PETITIONER HICKS:

13 Q. For the record, can you state your name,  
14 please.

## 15 | A. Athena Duty.

16 Q. And, for the record, you're my sister?

17 | A. Yes.

18 Q. Were you present during my entire trial?

19 A. I was in the witness room.

20 Q. Okay. Before the -- before you were  
21 sequestered and we were all out in open court and picking  
22 the jury, do you remember the judge saying something to  
23 one of the jurors about her vacation plans that week?

24 A. Yes.

1       **Q.**    Can you please tell me what she said -- or what  
2 he said to the juror?

3       **MR. KORNISH:**   Object, Your Honor.   Hearsay.

4       **THE COURT:**   Sustained.   But if it's the same thing  
5 the other witness said, it's cumulative, and, you know,  
6 it's already in the record.

7       **PETITIONER HICKS:**   Okay.   Was --

8       **THE COURT:**   Was that what you were getting at --

9       **PETITIONER HICKS:**   Yes, just to show --

10      **THE COURT:**   -- the same as the other witness  
11 testified to?

12      **PETITIONER HICKS:**   Yes.

13      **THE COURT:**   That's in the record, so there is no  
14 need to ask her that over again.

15      **PETITIONER HICKS:**   Okay.

16      **BY PETITIONER HICKS:**

17      **Q.**    While in the witness room, all of you, you  
18 know, you're in there, you're not supposed to be talking.  
19 Did Stevie seem to be hyper?

20      **A.**    Yes.   He couldn't sit still.

21      **Q.**    Was he excited about what he was going to  
22 testify to?

23      **A.**    Yes.

24      **Q.**    Okay.

1       **THE COURT:** Let's identify -- Stevie what? What's  
2 his name?

3       **PETITIONER HICKS:** Stevie Coleman.

4       **THE COURT:** All right.

5       **MR. KORNISH:** I thought he was in court when the  
6 trial was going on?

7       **THE COURT:** Well, he asked -- he said he was in the  
8 witness room.

9       Was he in the witness room? Wasn't that your  
10 question?

11      **PETITIONER HICKS:** Part of the time. At the first  
12 of the trial, he was.

13      **THE COURT:** Huh?

14      **PETITIONER HICKS:** At the very beginning of the  
15 trial, he was in the witness room.

16      **THE COURT:** Well, that's what you asked her.

17      **PETITIONER HICKS:** He was sequestered.

18      **THE COURT:** You asked her about when he was in the  
19 witness room, didn't you?

20      **PETITIONER HICKS:** Yes.

21      **THE COURT:** Okay.

22      **PETITIONER HICKS:** Yes. Just while --

23      **MR. KORNISH:** I appreciate that.

24

1 **BY PETITIONER HICKS:**

2       **Q.** During the jury instructions, Judge Stephens  
3 was giving instructions to the jury and then he stopped  
4 and said something before he continued.

5       Do you remember that?

6       **A.** I do.

7       **MR. KORNISH:** Objection. Hearsay.

8 **BY PETITIONER HICKS:**

9       **Q.** Do you remember what he said?

10      **MR. BULLMAN:** It wouldn't be hearsay, Judge. It  
11 would be res gestae. It's not being offered for the  
12 truth of the matter asserted; it's offered to prove an  
13 event that occurred, a verbal event, what was said.

14      **THE COURT:** I'll let it in.

15 **BY PETITIONER HICKS:**

16      **Q.** Please tell us what he said.

17      **A.** I don't remember -- I remember him saying  
18 something and then he said, "Excuse me. I didn't mean to  
19 say that." And then he said something else. I don't  
20 remember what he said after that, but I do remember him  
21 saying, "Excuse me. I didn't mean that," before.

22      **Q.** And he didn't back up and start over?

23      **A.** No.

24      **Q.** Okay. Do you remember what instruction he was

1 saying at the time?

2 A. No.

3 Q. Okay. The reason I asked is we don't have  
4 transcripts of the jury instructions, so I'm trying to  
5 piece a little something together to show that we need  
6 them, but I appreciate that.

7 Also, I have the same thing with you about -- Your  
8 Honor, it's already been admitted by Chasity about the  
9 names: Pro vice hac [sic], de novo, voir dire.

10 So just state that without -- being a layman,  
11 without your attorney explaining it to you, it's an  
12 entirely different language. It's a language barrier.

13 **THE COURT:** Well, that's in the record.

14 **PETITIONER HICKS:** Yes, it is.

15 **THE COURT:** It's cumulative.

16 **PETITIONER HICKS:** And that will be it. I thank  
17 you. I have no further questions.

18 **THE COURT:** Well, let's see if they have questions.

19 **MR. KORNISH:** No questions.

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

21 **PETITIONER HICKS:** Yes, you're excused. Thank you.

22 **THE COURT:** You're excused to leave.

23 Call your next witness.

24 (Witness excused.)

1           **MR. KORNISH:** Are you-all going to call him?

2           **MR. BULLMAN:** I'm going to try to get  
3 Carla Falletti. That was the paralegal at trial. I'm  
4 getting her on the phone here to put her up on the  
5 speaker.

6           **THE COURT:** Do what?

7           Do you know what he's talking about?  
8           Who --

9           **MR. BULLMAN:** Carla Falletti.

10          **THE COURT:** Well, you just want to use -- put her on  
11 a microphone?

12          **MR. BULLMAN:** I guess that's the only way. I  
13 thought you guys had a --

14          **THE COURT:** Aren't there microphones on the counsel  
15 table? Are they working?

16          **COURT CLERK:** Yes --

17          **THE COURT:** You can just use your -- tap on it and  
18 see if it's working.

19          **MR. LaCARIA:** It's working, Your Honor.

20          **THE COURT:** We'll see if we can do it that way.

21          **MR. BULLMAN:** I'll try. I thought you had a  
22 conference call system in here. That was my mistake. I  
23 should have checked.

24          **THE COURT:** And what's the name of the witness?

1       **MR. BULLMAN:** Carla Falletti. She was the paralegal  
2 for the defense.

3       **THE COURT:** Spell the -- spell the last name.

4       **MR. LaCARIA:** F-a-l-l-e-t-t-i.

5       **THE COURT:** F-a-l ...

6       **MR. LaCARIA:** L-e-t-t-i, I believe is how she spells  
7 her name.

8       **THE WITNESS:** Yes.

9       **MR. BULLMAN:** She says, "Yes."

10      **THE COURT:** Carla. Is that C or K?

11      **MR. BULLMAN:** Is that a "C" or "K," Ms. Falletti?

12      **THE WITNESS:** Oh, it's a C.

13      **THE COURT:** Okay. It's a "C."

14      **MR. BULLMAN:** And I ask her to be sworn.

15      Can you raise your right hand?

16      **THE WITNESS:** Yes, sir.

17      **THE COURT:** Can you hear me? This is

18 Judge Stephens.

19      **MR. BULLMAN:** Ms. Falletti, can you hear  
20 Judge Stephens?

21      **THE WITNESS:** Yes. I couldn't hear you.

22      **THE COURT:** What's that commercial? Can you hear me  
23 now?

24      **THE WITNESS:** Yes.

1 **THE COURT:** Raise your right hand.

2 | THE WITNESS: Yes, sir.

3 (witness sworn.)

4 CARLA FALLETTI

5 was thereupon called as a witness by the Petitioner, and  
6 said witness, appearing telephonically, after having been  
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 | *BY MR. BULLMAN:*

10 Q. what's your name?

11 A. Carla J. Falletti.

12 Q. What do you do for a living, Ms. Falletti?

13 A. I am an attorney in Lebanon, Virginia.

14 Q. And prior to being an attorney admitted to the  
15 bar, you were a paralegal; is that right?

16       A.    Well, I was actually a legal intern while I was  
17 a law student and I was working at Street Law Firm.

18 Q. And Street Law Firm is where Mr. Scott works;  
19 is that right?

20 A. It is.

21 Q. And you worked with him on a trial up here in  
22 Welch, McDowell County, West Virginia: State v. Gabriel  
23 Hicks; is that correct?

24 A. I did.

1       Q. And you and I have spoke about this and there  
2 were a couple areas I wanted to ask you about. During  
3 the -- did you actually participate in the trial? I  
4 mean, not asking questions or presenting evidence, but  
5 did you assist in trial preparation and sat in during the  
6 trial; is that right?

7       A. That is true, yes. And I was at the trial  
8 every day.

9       Q. First question I want to ask you, Ms. Falletti:  
10 Do you remember anything regarding a particular member of  
11 the jury panel that needed to get out early?

12      A. Yes, I do.

13      Q. Can you tell us about that, please?

14      MR. KORNISH: Judge, again, we would object as  
15 hearsay.

16      THE WITNESS: Yes. There was a --

17      MR. BULLMAN: Hold on. Hold on just a second,  
18 Ms. Falletti. There's an objection I'm going to need to  
19 respond to.

20      And, again, Judge, it's not being offered for the  
21 truth of the matter asserted. We don't have a  
22 transcript, which we would normally have, to show what  
23 was said during the voir dire or during any portion of  
24 the trial. We don't have that. She is just testifying

1 to the verbal event of the res gestae.

2       **THE COURT:** All right. I will allow it.

3       Are you able to hear her all right?

4       **COURT REPORTER:** Yes, sir.

5       **BY MR. BULLMAN:**

6       **Q.** Go ahead and answer my question, please.

7       **A.** Okay. There was a woman who indicated -- when  
8 asked if she knew any of the parties or any of the people  
9 involved in the trial, she indicated that she went to the  
10 same church as the judge. And later that same lady, when  
11 the judge questioned the jury about the length of the  
12 trial, indicated that she had a vacation planned and she  
13 was going to fly out a certain time and she was concerned  
14 about getting out in time to make her -- her flight.

15       And this was scheduled, I believe, for four days,  
16 although I'm not sure. I think it was four days.

17       **Q.** And this was how early in the trial, ma'am?

18       **A.** This was during voir -- well, voir dire and  
19 then -- it was all during voir dire, to the best of my  
20 recollection.

21       **Q.** Ma'am, do you understand that we have a problem  
22 up here? The court reporter who covered this trial, and  
23 several others, has passed away and a lot of her records  
24 were destroyed. Is that right?

1       A. Yes, I am well aware of that. I attempted to  
2 obtain a copy of the voir dire transcript myself back at  
3 that time. I've also faced that problem with cases that  
4 I work on now as a lawyer in Buchanan County.

5       Q. So there are some cases floating around in  
6 northern Virginia where this same issue has come up; is  
7 that correct?

8       A. Huh?

9       Q. Is that "Yes"?

10      A. In northern Virginia? Not that I'm aware of,  
11 but in Buchanan County, here in southwest Virginia --

12      Q. Okay.

13      A. -- actually on a case I work on.

14      Q. Well, you'll forgive my lack of knowledge of  
15 the geography of Virginia, then.

16      A. Okay.

17      Q. Do you remember another concern regarding  
18 questions raised about the comments the judge made about  
19 the jury having to knock on the door?

20      And if it would refresh your memory, you wrote a  
21 letter July 28, 2009.

22      A. Okay.

23      Q. Regarding the judge said -- when you said, "And  
24 I paraphrase, if I don't hear a knock on the door, you'll

1 stay there forever."

2 **MR. KORNISH:** We'd like a copy of that letter.

3 **THE WITNESS:** You know what, I honestly don't recall  
4 that now. If I said it in a letter at the time, it  
5 probably was correct, but I don't remember that. I'm  
6 sorry.

7 **BY MR. BULLMAN:**

8 Q. If you don't remember, you don't remember.

9 A. Yeah.

10 Q. Do you remember any other concerns that  
11 occurred, either during instructions, voir dire, or any  
12 of the other portions of the trial that we cannot get  
13 transcribed?

14 A. That are not transcribed?

15 Q. Yes, ma'am.

16 A. No.

17 Q. Did you have -- do you remember anything about  
18 Stevie Coleman?

19 A. I do remember Stevie Coleman.

20 Q. Stevie Coleman was a witness the defense was  
21 going to call; is that right?

22 A. Well, he was a witness who I assumed the  
23 defense was going to call, yes. I did a lot of  
24 interviewing of him and a lot of work on him when it

1 came to what they were anticipating his testimony would  
2 be.

3 Q. He was not called as a witness. Do you know  
4 why?

5 A. I know that he was not called as a witness. I  
6 know that there was an issue. This was summer. It was  
7 hot. If you're familiar with the courthouse in Welch,  
8 it's a very old courthouse. It does not have modern  
9 facilities, by any stretch.

10 The witnesses were sequestered in a very small room  
11 at the back of the courtroom, and I know that there were  
12 issues with all of them being jammed in this room. I  
13 believe that Mr. Coleman, at some point in time, came out  
14 of the room and may have been sitting in the gallery  
15 during some portion of the trial.

16 I believe that once it was identified that he was  
17 back there he was then re-sequestered.

18 Q. All right. Ma'am, do you remember a member of  
19 the jury panel, Mr. Rippeth -- Larkin Rippeth?

20 A. No. Not by name, no.

21 Q. Do you remember him being taken for individual  
22 voir dire?

23 A. I believe there was some individual voir dire;  
24 however, I did not participate in that.

1 Q. So you don't know what went on back in  
2 chambers?

3 A. I have no idea. But I actually do recall some  
4 individual voir dire, now that you mention it, but I know  
5 nothing about what occurred.

6 Q. You can't testify today what the issue is and  
7 we don't have a transcript. Is that right?

8 | A. Correct.

9       Q.    Okay. Just a minute, ma'am. I think we're  
10 about done, then the State may have some questions.

11 Ma'am, I think that's all I have for you. The  
12 prosecutor -- the petitioner [sic] may have some  
13 questions.

14 | **MR. KORNISH:** No questions, Your Honor.

15 | *THE WITNESS:* okay.

16        **MR. BULLMAN:** There are no questions, and I want to  
17 thank you for your time. I understand you're driving a  
18 car now.

19            **THE WITNESS:** Well, I'm parked now. Thank you very  
20 much.

21 | **MR. BULLMAN:** All right. Thanks for your time.

22 Bye.

23 | **THE WITNESS:** Thank you.

24 (Telephonic testimony concluded.)

1 THE COURT: All right. Call your next witness.

2 MR. BULLMAN: Mike Gibson.

3 THE COURT: Mike Gibson. Mr. Scott is here and

4 Mr. Bell is here.

5        **MR. KORNISH:** I think Mr. Scott was the one that had  
6 a time constraint.

7           **MR. BULLMAN:** I think it was. Why don't you do  
8 him?

9 MR. KORNISH: I call Mr. Scott.

## 10 | THE COURT: who is calling him?

11 MR. KORNISH: Respondent, out of turn.

12 | **THE COURT:** We'll take an out-of-turn Mr. Scott.

### 13 Any objections?

14 MR. BULLMAN: No, Your Honor.

15        **THE COURT:** Before I swear you in, you just got  
16 here. Do you need to use the men's room or freshen up or  
17 anything?

18 **THE WITNESS:** That would be helpful.

19 *THE COURT:* It's the first door all the way back.

20 | *THE WITNESS:* Thank you, Judge.

21 (witness excused from the courtroom.)

22        *THE COURT:* who is going to ask him questions? oh,  
23 I'm sorry. Who is going to --

24 MR. KORNISH: Cross.

1        **THE COURT:** Who is going to cross? I think  
2 Mr. Kornish is the one who called him.

3 MR. BULLMAN: I'll be crossing, Judge.

4                   **THE COURT:** All right.

5 (witness returned to the courtroom.)

6        **THE COURT:** All right. Just come forward and raise  
7 your right hand.

8 (witness sworn.)

9        **THE COURT:** Have a seat in that green chair over  
10 there.

11 Mr. Kornish.

12 | THOMAS R. SCOTT, J. R.

13 was thereupon called as a witness by Respondent, and  
14 having been first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 *BY MR. KORNISH:*

17 Q. Mr. Scott, would you state your name for the  
18 record, please, sir.

19 A. My name is Thomas R. Scott, Jr.

20 Q. And you're an attorney licensed to practice  
21 law; is that correct?

22 A. I am, sir.

23 Q. Are you licensed in West Virginia and Virginia?

24 A. No, sir. Just Virginia and Tennessee.

1       Q.    Okay.  Did you assist in a trial in West  
2 Virginia back in 2009?

3       A.    Yes, sir, I did.

4       Q.    And was that the petitioner in this case, Amos  
5 Gabriel Hicks?

6       A.    It is, sir -- or was, sir.

7       Q.    Okay.  Were you licensed in West Virginia at  
8 that time or just Virginia?

9       A.    Just Virginia.

10      Q.    Okay.  How did you come to be one of Mr. Hicks'  
11 lawyers back then when this happened?

12      A.    Yes, sir.  Well, first, I was admitted pro hac  
13 vice by His Honor to participate, and local counsel was  
14 Michael Gibson from Princeton, West Virginia.

15      I was approached by the family members of Mr. Hicks  
16 and asked if I would represent him in the defense of this  
17 case.

18      Q.    So you were initially hired, and then  
19 Mr. Gibson was hired as well.  Is that how it worked?

20      A.    Yes, sir.

21      Q.    Okay.  Can you tell us when you were hired just  
22 a little about -- bit about your experience and training  
23 in defending criminal cases at that time?

24      A.    Yes, sir.  Well, I've been practicing law for

1 40 years. So if that was seven years ago, I would have  
2 been practicing law for 33 years. And about a third of  
3 my practice, in terms of time and volume, involves  
4 defense of criminal cases, both in state and federal  
5 court.

6 Q. Do you know how much of that -- how many  
7 serious felony cases, including murder cases, you would  
8 have been involved in defending prior to this one?

9 A. I'm sure I'd been involved in hundreds of them,  
10 but, as you probably know, not that many actually go to  
11 trial.

12 Q. Correct.

13 A. Yes, sir. I mean, I've been involved -- I'm  
14 capital-qualified. I've been involved in a number of  
15 capital murder cases, both in state court in Virginia and  
16 also in federal court in the Western District of  
17 Virginia.

18 *THE COURT:* May I ask you, is that Mr. Spradlin?

19 *MR. KORNISH:* It is.

20 *THE COURT:* Is he going to --

21 *MR. KORNISH:* He is not subpoenaed as a witness by  
22 our side.

23 *THE COURT:* All right.

24 Have a seat. I was just checking to see if you were

1 going to be a witness or anything.

2 You may continue.

3 **BY MR. KORNISH:**

4 Q. You were a lawyer in good standing when you  
5 represented Mr. Hicks?

6 A. I was.

7 Q. And you were an experienced criminal defense  
8 trial lawyer? Is that fair to say?

9 A. I would like to think that, yes, sir.

10 Q. Did you meet with Mr. Hicks a number of times  
11 up to -- before the trial?

12 A. We did, sir.

13 Q. Did you review the case with him, possible  
14 defenses?

15 A. We did, sir.

16 Q. Did you review the State's evidence with him?

17 A. Yes.

18 Q. Did you review possible defense witnesses with  
19 him?

20 A. We did.

21 Q. Okay. You filed -- you and Mr. Gibson together  
22 filed a number of motions and attended a number of  
23 pretrial hearings. Do you recall -- I'm not asking you  
24 how many, but do you recall having a number of pretrial

1 motions and a number of hearings before the trial?

2       A.    We did, sir.

3       Q.    And when you would do that, would you meet with  
4 Mr. Hicks and discuss those motions with him before they  
5 were heard?

6       A.    I don't remember specifically if I met with  
7 him about the motions or not, but I tried to keep him  
8 informed, either telephonically or in writing, and I'm  
9 fairly certain that I sent him copies of what I filed.

10      Q.    Okay. Did you have discussions with  
11 Mr. Hicks - you and Mr. Gibson or you alone with  
12 Mr. Hicks - concerning trial strategy, tactics,  
13 witnesses, evidence before the trial?

14      A.    We most certainly did.

15      Q.    Okay. And then when the case came to trial,  
16 you were -- you and Mr. Gibson represented him at the  
17 trial?

18      A.    Yes, sir.

19      Q.    Okay. You were an experienced criminal defense  
20 trial lawyer. Did you talk during the trial about  
21 tactics, strategy, witnesses, and that sort of thing with  
22 the defendant?

23      A.    Yes, sir.

24      Q.    Did you represent him to the best of your

1 ability?

2 A. I feel that I did, sir.

3 MR. KORNISH: That's all the questions I have.

4 Thank you.

5 THE WITNESS: Yes, sir.

6 THE COURT: Mr. Bullman.

7 CROSS-EXAMINATION

8 BY MR. BULLMAN:

9 Q. Good afternoon. I'm Ed Bullman. We spoke on  
10 the phone a couple times.

11 A. Yes, sir.

12 Q. I want to ask you about getting ready for  
13 trial. Do you remember employing a Mr. Buzzo as a  
14 private investigator?

15 A. Our defense team did. I didn't know Mr. Buzzo  
16 personally, Mr. Gibson did.

17 Q. Mr. Gibson retained a local investigator to  
18 interview witnesses, then?

19 A. Yes, sir.

20 Q. All right. Do you remember any witnesses --  
21 for example, your theory of the case was Mr. Hicks did  
22 not commit this crime; that it was Doug Mullins or Mose  
23 Mullins, whatever you want -- whatever he goes by, had  
24 his own reasons for committing these murders -- or this

1 murder and this shooting; is that correct?

2 A. That's correct.

3 Q. And I think the reason was Mullins was selling  
4 drugs and four people stole drugs from him; is that  
5 right?

6 A. Yes, sir.

7 Q. And those four individuals were Chantel, who  
8 was murdered in this case -- Chantel Webb, Stevie  
9 Coleman, Jeff Mullins, who was shot, and then another  
10 individual; is that right?

11 A. Yes, sir.

12 Q. Who was the fourth person?

13 A. I'm sorry; I don't remember. It's been seven  
14 years.

15 Q. Okay. Was it Melissa Coleman, Steve's wife?

16 A. That sounds familiar.

17 Q. There were several interviews by ATF of Melissa  
18 Coleman. Do you remember reviewing those in preparing  
19 for trial?

20 A. Yes, sir, I did.

21 Q. So you were aware of all these witnesses, about  
22 the theft of the drugs, and you did get some evidence,  
23 then, about the theft of drugs from Mullins; is that  
24 right?

1       A. Yes, sir, through an ATF agent.

2       Q. That was ATF Agent Yoh?

3       A. Yes, sir.

4       Q. All right. Can you tell us why you did not  
5 call Melissa and say, "Look, here's this statement you  
6 gave about stealing drugs"?

7       A. I don't remember.

8       Q. You don't? What about Steve Coleman? He was  
9 there at trial prepared to testify; is that right?

10      A. Yes, sir.

11      Q. Do you recall why you didn't put Steve Coleman  
12 up there to say, "Yeah, we stole drugs and -- "

13      A. I can give you the theme --

14      Q. All right.

15      A. -- of why I didn't. I can't give you specific  
16 facts. But after interviewing Mr. Coleman on more than  
17 one occasion, I was convinced that he was going to be a  
18 terrible witness and would do more harm than good and  
19 that his credibility would be lacking.

20      Q. And you had a document that can't be  
21 cross-examined in any way. It was written by Yoh.

22      A. Yes, sir.

23      Q. Do you recall, or maybe I need to ask this of  
24 Mr. Gibson, having an investigator go out and canvas the

1 area around where Mullins lived about the theft of the  
2 drugs to see if someone would corroborate that and show  
3 if Mullins knew that these were the individuals that  
4 stole his drugs?

5       A. That rings a bell, but beyond any more  
6 specifics than suggested by your question, I don't  
7 remember.

8       Q. Well, Mullins -- you knew that Mullins was  
9 selling drugs?

10      A. Yes, sir.

11      Q. And he had a stash that these four people went  
12 and stole; is that right?

13      A. That was my understanding, yes, sir.

14      Q. That was your theory of the case as to why  
15 Mullins killed these people, and he didn't need Gabe  
16 Hicks to tell him to kill anybody?

17      A. Right. That he had an independent motive to  
18 kill them.

19      Q. Did you get anyone to corroborate that, that  
20 somehow Mullins knew that these people stole his drugs or  
21 they'd in fact sold drugs?

22      A. Mr. Bullman, I don't remember if we did or not.

23      Q. All right.

24      A. Knowing -- knowing myself -- unfortunately,

1 it's been seven years, but knowing myself, those would  
2 have been the kinds of leads I would have developed, but  
3 I just don't have any independent recollection as I sit  
4 here today to tell you what, if anything, was disclosed.

5 Q. What about Doug Mullins' wife, Pam? Do you  
6 remember having her interviewed?

7 A. I thought I did, but I don't have any  
8 independent recollection.

9 Q. Did you conduct voir dire or did Mr. Gibson do  
10 that? I was thinking you told me he did that.

11 A. I'm pretty -- I thought I conducted the voir  
12 dire.

13 Q. Did you? Do you remember any issues with voir  
14 dire?

15 A. Actually, Mr. Gibson could have conducted the  
16 voir dire.

17 Q. Because he was local counsel?

18 A. He -- that sounds reasonable and logical,  
19 because I would have wanted the jury to have -- wanted  
20 him to introduce me to the local folks on the jury, but  
21 that's probably right.

22 Q. Do you remember a juror -- a potential juror  
23 named Larkin Rippeth?

24 A. That name rings a bell, sir.

1       Q.    Maybe if I give you some background. Again, we  
2 don't have a transcript, so we're trying to reconstruct  
3 the best we can.

4       Do you remember a juror that indicated fear of the  
5 victim's family during voir dire?

6       A.    I don't remember a juror who indicated -- you  
7 mean a fear of Mr. Hicks?

8       Q.    No. Of the victim's family. I'm sorry. That  
9 was my fault.

10      A.    I don't remember a juror indicating that he was  
11 afraid of the victim's family, but something along those  
12 lines rings a bell. Something along those lines.

13      Q.    Something came up during voir dire?

14      A.    Maybe.

15      Q.    You just don't know and you can't recall this  
16 late?

17      A.    No, sir, I can't recall.

18      Q.    Do you remember if anything like that came out  
19 in front of the jury or from the jury pool or was it back  
20 in chambers during individual voir dire?

21      A.    Mr. Bullman, I don't -- I don't remember, but  
22 if it -- if something like that had come out before the  
23 jury, my practice would have been to have asked  
24 Judge Stephens to declare a mistrial or give a cautionary

1 instruction, in the alternative. I mean, if that had  
2 come out before the jury, then I would have been  
3 concerned that that juror's comments before all the other  
4 jurors would have possibly poisoned the rest of the  
5 jury -- prospective jurors.

6 Q. I want to talk to you about the subject of plea  
7 bargaining.

8 A. Yes, sir.

9 Q. Would you agree with me that generally most --  
10 well, you have already said most cases don't go to trial.  
11 That's because they end up in a plea?

12 A. Yes, sir.

13 Q. And plea bargaining is a -- there have been all  
14 kinds of articles written on it and decisions on the  
15 good, the bad, the ugly of plea bargaining. And the  
16 general agreement is it's a necessary part of the whole  
17 process.

18 A. Yes, sir.

19 Q. Fair?

20 A. Yes, sir.

21 Q. And was there any plea discussions during this  
22 case?

23 A. I don't remember any plea discussions in this  
24 case.

1           Q.   Did you attempt any plea discussions?

2           A.   I don't have any independent recollection of  
3 that one way or the other.

4           Q.   Would it normally be your practice in any  
5 criminal case to at least seek out if there was a  
6 possibility of a plea agreement?

7           A.   Yes, sir. But I might have approached it in  
8 different ways in different cases.

9           Q.   So there was -- sitting here today, there is no  
10 discussion -- or no recollection of you inquiring as to a  
11 plea agreement?

12          A.   I don't have any independent recollection, and  
13 I had my law clerk assist me in reviewing my file, which  
14 is voluminous, to see if there were any references or  
15 Post-It notes or anything in there about plea discussions  
16 and I didn't see any.

17          Q.   Well, you were never told: Do not seek a plea.

18          A.   I don't remember Mr. Hicks telling me not to  
19 seek a plea. He certainly professed his innocence very  
20 strongly.

21          Q.   But even if you profess your innocence, we have  
22 a thing called an Alford plea, or I think in this state  
23 it's called a Kennedy or Frazier plea, where you can say:  
24 I can do math. If I can get a plea --

1       A. Oh, I'm familiar with the different kinds of  
2 pleas, but I don't remember having any plea discussions  
3 one way or the other with Mr. Hicks.

4       Q. So you didn't discuss, "Look, why don't we go  
5 see if there is something short of risking life without"?

6       A. If I -- if I did, I do not remember it.

7       **MR. BULLMAN:** All right. Mr. Scott, that's all I  
8 have for you. Thanks.

9       **THE WITNESS:** Yes, sir.

10      **MR. KORNISH:** No further questions. I'd ask  
11 Mr. Scott be excused.

12      **THE COURT:** May he be excused?

13      **MR. BULLMAN:** Yes. Yes, sir. I'm sorry.

14      **THE COURT:** You're excused, sir. Thank you.

15      **THE WITNESS:** Thank you, Judge. Your Honor, I left  
16 some materials in the witness room.

17      **THE COURT:** Yes, you can go get them.

18      Be careful going back.

19      **THE WITNESS:** Yes, sir.

20      Judge Stephens, it was nice to see you again.

21      **THE COURT:** Yes, sir.

22                   (witness excused.)

23      **THE COURT:** Call your next witness.

24      Did you want to call somebody else out of turn?

1 MR. KORNISH: Yes, sir. Mr. Gibson, out of turn.

2            *THE COURT:* Mr. Gibson. Mike Gibson.

3 And, again, this is the respondent calling him;  
4 right?

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

6            ***THE COURT:*** Any objection?

7            *MR. LaCARIA:* No, Judge.

8        **THE COURT:** Stop right there and raise your right  
9 hand.

10 (witness sworn.)

11        *THE COURT:* Have a seat over in that green chair  
12 over there.

13 | MICHAEL GIBSON

14 was thereupon called as a witness by the Respondent, and  
15 having been first duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 *BY MR. KORNISH:*

18 Q. Sir, could you tell us your name, please.

19 A. Michael Gibson.

20 Q. And were you co-counsel -- co-trial counsel for  
21 Amos Gabriel Hicks in his murder trial back in '09?

22 A. Yes.

23 Q. Were you hired by Mr. Hicks and his family?

24 A. Yes. I was initially approached by Mr. Scott.

1       Q. And did you agree after, I guess, talking to  
2 Mr. Scott to be local counsel, since he primarily  
3 practices in Virginia?

4       A. Yes, sir.

5       Q. After you were brought onboard, did you jointly  
6 participate in all the pretrial discussions, motions, and  
7 the trial?

8       A. I did.

9       Q. At that time back in -- when you were hired,  
10 2008 or 2009, how long had you been practicing law,  
11 approximately?

12      A. Forty years.

13      Q. Of those -- of your practice up to that point,  
14 how much of it was devoted to criminal defense work?

15      A. Oh, I'd say forty.

16      Q. You had tried, prior to that time, a number of  
17 criminal cases?

18      A. I had.

19      Q. And represented a number of individuals that  
20 had been charged with murder?

21      A. Yes, sir.

22      Q. Did you meet with the petitioner in this case,  
23 Amos Gabriel Hicks, a number of times prior to trial to  
24 discuss the evidence, to discuss potential witnesses, to