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REPORTER'S RECORD

TRIAL COURT CAUSE NO. 13-002356-CV-85

BILLY G. HINES, JR.)	IN THE DISTRICT BRAZOS
)	
VS.)	BRAZOS COUNTY, TEXAS
)	
BUETTA SCOTT, RAJENA)	
SCOTT AND CURTIS CAPPS)	85TH JUDICIAL DISTRICT

EXCERPT FROM MOTION TO RECUSE

On the 29th day of August, 2018, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable P.K. Reiter, Judge presiding, held in Bryan, Brazos County, Texas;

Proceedings reported by machine shorthand.

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AUGUST 29, 2018

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1 (Requested excerpt begins.)

2 THE COURT: It is now time to go
3 forward, I believe. Returning now to the record.
4 You may call your next witness, sir.

5 MR. CLEVINGER: Your Honor, I'd like to
6 call Mr. Goss as a witness.

7 THE COURT: Yes, sir, if you'd be kind
8 enough to come up and take the witness stand,
9 Mr. Goss.

10 MR. GOSS: I will.

11 THE COURT: As you notice again, unless
12 someone objects, I did not see it necessary to swear
13 Mr. Goss in as an officer of the court. He took his
14 oath of office back when he became a member of the
15 Bar. And that, like with your co-conspirator, that
16 was appropriate for him now and all times.

17 You may proceed, sir.

18 MR. CLEVINGER: Thank you, your Honor.

19 DIRECT EXAMINATION

20 BY MR. CLEVINGER:

21 Q. Mr. Goss, would you state your name for the
22 record, please.

23 A. Jay Goss.

24 Q. And are you representing some of the parties
25 in this case?

1 A. I'm representing Billy Hines.

2 Q. How long have you been an attorney?

3 A. Since 1981.

4 Q. How long were you partners with Judge
5 Hawthorne?

6 A. Since -- from 1986 or 1987 through 2000-
7 -- December 31, 2014.

8 Q. I want to ask a few questions about the
9 email account. Why didn't you just set up a
10 bounceback for that address and tell people to
11 contact him at his new address?

12 A. The firm owned the email account. There
13 could have been business -- criminal business that
14 they were contacting him on -- I mean, which was
15 contacting the attorney fee. We didn't have to do
16 that. There was no reason to do that.

17 Q. So what happens to emails that go to that
18 address now?

19 A. They just go to that address. They're
20 monitored by Laquita Dudley, who is our bookkeeper.
21 That's where they go.

22 Q. So when I sent four emails to that address
23 on court matters, she would have been the one to open
24 those?

25 A. She would have been.

1 Q. And what happens when she opens the emails?

2 A. She tells me that we got an email -- a
3 substantive email. We still get some junk email, but
4 she doesn't contact me. She tells me that we've got
5 a substantive email. I looked at the email, I think,
6 it -- the -- I can't remember -- the emails, I think
7 that you sent, went to Kristie, as well. So I didn't
8 do anything with them.

9 Q. So normally you're the one that makes
10 decisions on what does or does not get forwarded to
11 Judge Hawthorne?

12 A. Nothing gets forwarded to Judge Hawthorne.
13 In fact, we hadn't even looked at the account in a
14 while. But I guess if -- if -- it wouldn't
15 necessarily be me. But if there was something that
16 was a personal nature, it would -- it could be -- he
17 would be contacted. If it was of a business nature,
18 he wouldn't be contacted.

19 Q. Okay. So has things been forwarded from
20 that account to him?

21 A. They have.

22 Q. When was the last time that happened?

23 A. I think it was in 2016, when he got a notice
24 from the Boys and Girls Club that there was going to
25 be a -- a board meeting. He was on the Board of

1 Directors of the Boys and Girls Club. He was -- I
2 forwarded that to him and said, you know, you've
3 gotten this from -- on the -- on the Kyle Hawthorne
4 at Bruchez.com account, probably need to tell them
5 and update the records.

6 Q. But you don't think just closing the account
7 and having to send a bounceback notice would have
8 been sufficient for those purposes?

9 A. Yeah, that would have been sufficient, but
10 that wasn't what we -- we didn't have to do that.
11 There were other people that -- that contacted that
12 account that wanted a criminal lawyer and -- and/or a
13 family lawyer, and so we contacted those people back
14 ourselves, said Kyle was no longer at the firm but we
15 would be happy to help them.

16 Q. And you said -- I mean, isn't it common in a
17 bounceback message to say so-and-so is no longer at
18 the firm, you can contact so-and-so?

19 A. I don't know if it's common or not, but we
20 would not have been able to capture that business.
21 We still wanted the business, so we wanted to capture
22 that business.

23 Q. So if I sent an email to his email address
24 saying I would like Kyle Hawthorne to represent me
25 and I get a bounceback saying he has left the firm

1 and is no longer a judge, you can contact the other
2 attorneys at this number, that wouldn't have been
3 sufficient?

4 A. Well, once again, Mr. Clevenger, that might
5 have been sufficient in that particular case, but
6 that wasn't what we did and that wasn't what we had
7 to do. In that particular case, I would have sent an
8 email to you that said Mr. Hawthorne is no longer
9 practicing law, he's a judge. Would you like for us
10 to refer you, or would you like for the firm to
11 handle that particular matter.

12 Q. But all this could have been done
13 automatically, couldn't it?

14 A. I've answered that several times. Yes, it
15 could have been --

16 Q. Okay.

17 A. -- but it wasn't. We didn't have to do that
18 and we didn't do that.

19 Q. And you don't think it looks problematic
20 that after a judge leaves his firm, for years
21 thereafter, the firm is still hosting an account in
22 his name?

23 A. No, I don't. It's not a -- it's not -- he's
24 not -- that's not his email account as a judge.
25 That's his email account as a member of our law firm,

1 and we own the account.

2 Q. I understand that, but you're the one that
3 decides what gets forwarded to him and what doesn't,
4 aren't you?

5 A. I suppose.

6 Q. And you don't think that looks like a
7 conflict?

8 A. For who?

9 Q. Well, to anybody that's against you, knowing
10 that your firm is still hosting the email account,
11 you decide what gets forwarded to him and what
12 doesn't get forwarded to him. You don't think that
13 looks like a potential problem?

14 A. No.

15 Q. Did you consult with the State Bar or any
16 ethics experts on this?

17 A. No.

18 Q. So if you're in a case and you find out your
19 opposing counsel is former partners with the judge,
20 and the judge -- or the firm still has an email
21 account in the judge's name, that's not going to
22 raise your eyebrows?

23 A. No.

24 Q. Don't you think it would for most attorneys?

25 A. No.

1 Q. Okay. I want to ask you some questions
2 about the Falcone case. Or actually, before I do, is
3 there any record of what you have and haven't
4 forwarded to Judge Hawthorne?

5 A. I'm sure that there's -- I'm sure that there
6 would be some email trail.

7 Q. On the Falcone --

8 A. I don't know that, but I would assume it
9 would be.

10 Q. As you know, or you've heard testimony,
11 there are some deeds that are titled as quitclaim
12 deeds in the Falcone case that may be -- are in
13 dispute. Isn't it true that your firm prepared those
14 deeds?

15 A. I prepared the quitclaim deeds. I did not
16 prepare the deed from Susan Hargrave to Southside
17 Ranch.

18 Q. So Susan Hargrave was your client at one
19 time?

20 A. Correct.

21 Q. And Judge Hawthorne was a partner in the
22 firm while she was a client, correct?

23 A. Correct.

24 Q. And wouldn't you agree under Texas Rules of
25 Civil Procedure 18(a), that when a judge was a member

1 of a firm during the representation of a client, he
2 has to recuse himself from any matters pertaining to
3 that?

4 A. Well --

5 Q. Sir, let me correct that. Disqualify, not
6 recuse, but disqualify himself?

7 A. I would agree that whatever the
8 disqualification is on 18 -- on 18(a) would be
9 whatever the law is in Texas. I would say that
10 the -- I didn't represent Susan Hargrave in that case
11 until the last two weeks. And so -- or whenever I
12 filed the answer, which would have been within --
13 certainly within three weeks ago. And there has
14 never been anything that has come up as to the fact
15 that quitclaim deeds are in dispute or that they need
16 to be interpreted, because --

17 Q. Well --

18 A. -- a quitclaim --

19 Q. -- didn't Mr. Youngkin testify this morning
20 that they were?

21 A. He did testify this morning that they were,
22 but he testified that they were in dispute about
23 somebody else. It wasn't related to Curtis Capps.
24 Nobody's contacted me when I was representing
25 Southside Ranch, nor anything that said any of those

1 deeds are in dispute. They're simply saying that if
2 you had any interest in this -- in this real estate,
3 I give that interest to Susan Hargrave. They either
4 have an interest or they don't have an interest. The
5 deed is not going to be in dispute. The title may be
6 in dispute. Whether they had an interest or not may
7 be in dispute, but that would be --

8 Q. I understand that you disagree with
9 Mr. Youngkin; but he did testify, didn't he, that
10 those deeds are going to have to be construed by the
11 court?

12 A. Yes, and I think he's incorrect.

13 Q. Okay. But you --

14 A. But regardless of that, that hadn't come up
15 in that case at all. That came up when Mr. Youngkin
16 testified in this chair about an hour ago. But
17 before that, there's been nothing -- there's been no
18 pleading, there's been no motion, there has been
19 nothing that indicates that those quitclaim deeds,
20 which are just quitclaim deeds, are in dispute at
21 all.

22 Q. Well -- and this relates to something that
23 came up earlier. You suggested that Judge Hawthorne
24 would have no way -- as I recall -- no way to know
25 about these issues that were raised about his

1 conflict with Ms. Hargrave and the deeds; is that
2 correct?

3 A. I asked Mr. Youngkin if he would have known
4 that, in any way related to the case, by motion, by
5 anybody contacting him, and he answered no, that he
6 wouldn't.

7 Q. Right. But isn't it true that I filed
8 pleadings in this case, raising that issue, and that
9 Judge Hawthorne referred it to Judge Underwood, and
10 it was referred back to Judge Reiter?

11 A. That's right. And that's what he did. As
12 soon as -- as soon as you filed it, he --

13 Q. So he knew about it, didn't he?

14 A. He knew about it then.

15 Q. But instead of recusing himself, what did he
16 do?

17 A. He referred it, as he was supposed to do, I
18 assume. You didn't even file a motion in this -- in
19 that case. Your motion was filed in this case.
20 There's --

21 Q. I understand.

22 A. -- nothing that's been filed in the Gregg
23 Falcone case.

24 Q. Right. But my point is, Mr. Goss, he knew
25 about the conflict, did he not?

1 A. Well, he knew that you had said one must
2 wonder if he's not protecting Mr. Goss, in your blog
3 and in your State Judicial Commission, but he doesn't
4 know whether or not there is a real conflict, nor do
5 I think there is, with those quitclaim deeds.

6 Q. How do you know what he does and doesn't
7 know?

8 A. I said, nor do I think.

9 Q. Okay. Well, let's back up.

10 A. But he doesn't know because nobody has --
11 nobody has come in and said -- other than you --
12 saying one must wonder.

13 Q. Where did I say one must wonder in that
14 pleading; where?

15 A. Well, in the Judicial Commission complaint.

16 Q. Okay. We're not talking about that. We're
17 talking --

18 A. Well, that was attached to -- everything
19 that you've filed, you've attached that to.

20 Q. Well, let me -- so backing up just a moment.
21 Is it your contention that he knows -- from -- just
22 from the pleadings in that case, does somebody have
23 to tell him that his firm's stamp is on the deeds?
24 He can't read that and understand it?

25 A. I'm sure he can.

1 Q. And could he not know that he was a partner
2 in the firm when those deeds were prepared?

3 A. I'm sure he does.

4 Q. And then would he not know that you had
5 represented Ms. Hargrave when he was in -- a partner
6 in the firm?

7 A. I don't know about that, but it's likely
8 that he does -- or did.

9 Q. So why are you making an issue out of
10 whether Bill Youngkin knows when or whether he
11 learned about this stuff? He can learn that from the
12 pleadings, can't he?

13 A. He can, but he doesn't have to disqualify
14 himself if there's no issue related to it. The only
15 thing our firm did was prepare a deed, and that deed
16 is not in dispute, which are quitclaim deeds. Once
17 again, they are -- they are simply a transfer of
18 whatever interests that that other person has.
19 Those, to this day, other than in your pleading in
20 this case, those are not in dispute. And so there is
21 no reason that he should have to get out of that case
22 if nobody is going to -- if he doesn't have to rule
23 on -- certainly, if he doesn't have to rule on
24 whether or not those deeds are valid or invalid,
25 because nobody's raised that issue. Those are --

1 Q. Isn't it true, Mr. Goss, in
2 disqualification, nobody has to raise it, he has a
3 duty, independently of his own initiative, to
4 disqualify himself, does he not?

5 A. No.

6 Q. You don't --

7 A. I don't --

8 Q. Did you not read the case law on that?

9 A. I don't think that he has -- I think if --
10 if -- he does not have to disqualify himself if
11 nobody is complaining about it. He can -- if
12 everybody has knowledge -- if he gives knowledge to
13 everybody, he doesn't have to -- to -- he wouldn't
14 have to disqualify himself.

15 But whether he does or not, he's not
16 trying to protect me, because I'm not in the case. I
17 mean, it has nothing do with me.

18 Q. Well, as of early August, you are in the
19 case, aren't you?

20 A. As of -- I filed an answer so that
21 Ms. Hargraves would not -- there could not be a
22 default judgment taken. However, we have -- she has
23 no interest in -- I mean, she has alleged that she
24 has no interest in that case.

25 Q. But she was a client of the firm when you

1 were an a partner and when he was a partner, correct?

2 A. Yes.

3 Q. And now you're claiming to represent her in
4 that case, correct?

5 A. Well --

6 Q. Yes or no?

7 A. Yes, I'm representing her.

8 Q. That's enough. Thank you.

9 Now, you're admitting she was a firm's
10 client when he was a partner in the firm, now you're
11 representing her in that case?

12 A. Yes.

13 Q. Okay. So are you saying that Rule 18(a)
14 doesn't apply there?

15 A. I'm saying that if he -- that if there is no
16 issue related, which she is saying that she doesn't
17 have any interest in that property, so we're not
18 asking -- we're not asking --

19 Q. How is she saying that?

20 THE COURT: Let him finish.

21 MR. CLEVINGER: Sure.

22 THE COURT: I know you want to pluck
23 all the feathers you can, but let him answer the
24 question and let him ask his next question.

25 MR. CLEVINGER: Okay.

1 A. She is saying that she has transferred all
2 of her interests to Southside Ranch and has pled
3 that. She has no interest in that trespass to try
4 title case. The -- the deeds are quitclaim deeds,
5 meaning that she may or may not have had any
6 interests in that case, but it doesn't have anything
7 to do with those deeds. Those deeds do not have to
8 be interpreted. Those deeds are -- Judge Hawthorne
9 can determine whether or not the person that gave
10 Susan Hargrave one of those deeds had any interest to
11 give her, because they weren't a -- a party.

12 Susan Hargrave has passed her interest
13 on through to Southside Ranch, so he's not going to
14 make any determination about whether a client that
15 was one of his -- one of my clients when he was
16 there, is going to have any interest in that because
17 she is saying, she -- judicially -- that she doesn't
18 have any interest in that case. So he's not going to
19 make any interpretation. That's what I think.

20 Now, if somebody else comes in -- and
21 nobody's raised any of those issues to this day,
22 so -- other than you.

23 Q. Well, you talk about what Ms. Hargrave said
24 and what she has pleaded. Have you ever been part of
25 a seance?

1 A. Of a what?

2 Q. A seance, where someone is conjured up from
3 the dead to communicate with them?

4 A. I don't think.

5 Q. Well, then, how is it you know what
6 Ms. Hargrave is saying and what she's pleading, if
7 she's dead?

8 A. Because I pled it for her.

9 Q. So you're speaking on behalf of the dead?

10 A. Well, I'm speaking on behalf of her and Jim,
11 her husband. And all I'm saying is that that deed
12 that was prepared by Mike Gentry, prior to my being
13 in the case at all, was a deed that transferred all
14 of Ms. Hargrave's interest in that particular
15 property, that 50 acres, from Susan Hargrave to
16 Southside Ranch. I can't do anything about that.
17 That was done prior to -- to me being in there.

18 She was trying to see if -- if there
19 were other members of her family that had interests
20 that would give that to her so she -- it would help
21 her out. That was the whole thing. I'm not -- I'm
22 not in the case at all, I'm not claiming that I --
23 that Susan Hargrave or Jim Hargrave or Susan
24 Hargrave's estate has any interest in that case.

25 And what I am saying is that the

1 quitclaim deeds that were prepared simply say, if
2 Person A has any interest, then he quitclaims it to
3 Susan Hargrave, and she's passed that through to
4 Southside Ranch.

5 Q. I understand that. And I -- the deeds are
6 in dispute, okay, whether or not they're quitclaim or
7 not, fine. I'm not arguing about that.

8 My question is -- very
9 straightforward -- how is it you have an
10 attorney-client relationship with a dead person?

11 A. I mean, maybe that's a rhetorical question.
12 But I was --

13 Q. No, it's a very serious question. You filed
14 pleadings on behalf of a dead person. I want to know
15 how you have an attorney-client privilege with a dead
16 person.

17 A. Well, all I did was file on the basis that
18 Mr. Youngkin sued Susan Hargrave --

19 MR. CLEVINGER: Objection;
20 nonresponsive.

21 THE COURT: Did you answer that
22 question, sir?

23 THE WITNESS: I didn't -- no, I didn't.

24 THE COURT: Maybe I didn't -- would you
25 ask it again.

1 Q. (BY MR. CLEVINGER) My question's very
2 simple. We don't need to go off on any rabbit
3 trails. All I want to know is: How do you have an
4 attorney-client relationship with a dead person?

5 A. Because I had the attorney-client relation
6 with her when she was alive. I spoke with
7 Mr. Hargraves. Susan had been sued. She had been --
8 citation had been issued on her. In order to protect
9 Susan and/or her estate, I filed an answer for Susan,
10 who had been served in the case; and I filed a
11 suggestion of death at the exact same time. So I
12 notified the court that Ms. Hargrave was dead and
13 that -- and that this case could not continue against
14 her, and that's it. That's how I have a
15 relationship.

16 Q. Well, if she was served in January, as
17 Mr. Youngkin testified, why did you wait until six
18 weeks after her -- or five weeks after she was dead
19 to file an answer?

20 A. Look, I'm not sure that --

21 THE WITNESS: Your Honor, I think I'll
22 just simply object to it. This has no relevance in
23 whether I'm a good lawyer or a bad lawyer or knows --
24 know whether or not I ought to file a particular
25 pleading as to whether or not Judge Hawthorne ought

1 to be recused in another case.

2 MR. CLEVINGER: Your Honor, I'm
3 building a predicate here, to show that he would
4 never do something like this in any other case, but
5 he knows he can get away with it in front of Judge
6 Hawthorne.

7 THE COURT: I'm sorry, was that a
8 question?

9 MR. CLEVINGER: No, I was just
10 responding to his objection. He objected as a
11 witness. I don't know if he can do that.

12 THE COURT: Maybe I missed something
13 here. Would you please ask the question again?

14 MR. CLEVINGER: Sure.

15 Q. (BY MR. CLEVINGER) Yes. I'm just wanting
16 to -- I'm still trying to figure out how it is you
17 had an attorney-client relationship with a dead
18 person.

19 A. I've answered that question. I had --

20 THE COURT: One more time.

21 A. She was my client when she was alive.

22 Q. (BY MR. CLEVINGER) And so -- then my
23 question after that was: If she was served in
24 January, why did you wait until five or six weeks
25 after she was dead to purport to file an answer on

1 her behalf?

2 A. I didn't know she was served.

3 Q. So then when did you learn that she had been
4 served?

5 A. When you brought this up on the motion to
6 recuse and I went back and looked at the -- at the --
7 at that Gregg Falcone file, which I wasn't even
8 involved in, but I went back and looked at it. So I
9 called -- when I saw that Susan had been served and
10 that she had been -- she was now deceased, I called
11 Mr. West and said -- since he was representing
12 Southside Ranch -- I'm not sure what to do here. I
13 think that something needs to be filed, and I'm going
14 to file an answer for Susan and a suggestion of death
15 so that we alert the court that she has answered, but
16 that she is deceased and so the case needs to be
17 continued. If it's going to be continued against
18 her, against her estate, which is what a suggestion
19 of death does. He agreed with me on that plan. I
20 filed it. That's what happened.

21 Q. Isn't it true, Mr. Goss, you have a history
22 of filing pleadings on behalf of people who are not
23 your clients?

24 A. That's not true.

25 Q. Isn't it true that you filed pleadings on

1 behalf of Nettie Clay without her knowledge or
2 permission to file pleadings on her behalf?

3 A. We have a -- we have a -- a signed statement
4 by her that we are to represent her.

5 Q. That's true. When was that signed, sir,
6 before or after you filed the pleadings?

7 A. When you raised the question, it was after
8 we filed the pleadings, but when -- when -- I'm not
9 sure you did, but Mr. Youngkin did. We went to
10 Nettie Clay and said, they've said that we don't
11 represent you. Do we represent you? And she said
12 yes, you do represent me. And we said, would you
13 sign this for us so that we can show the court.

14 Q. So --

15 A. We did. That was in another case in Judge
16 Smith's court, and Judge Smith heard all of that
17 evidence and on a -- y'all filed --

18 MR. CLEVENGER: Objection. Goes far
19 beyond the scope of the question.

20 THE COURT: That's all right. I'm
21 going to let him finish.

22 A. Y'all filed a motion to show authority on
23 all 66 of the people that we represented. We had a
24 multi-hour hearing where I testified under
25 cross-examination from you, because you called me to

1 the stand. I testified about all of the people that
2 we had. We had a chart -- a spreadsheet showing
3 exactly how we were representing all of those people
4 that the -- Nettie Clay was one that -- that y'all
5 had specifically pointed out, and so we went to her
6 and made sure that we had a -- a permission to
7 represent her. Because she had told us we could
8 represent her before. We did not have a signed
9 contract with her, so we went and got her permission
10 to do that.

11 Q. (BY MR. CLEVINGER) She testified, did she
12 not, she testified that she had not spoken with you
13 and she did not know you were filing pleadings until
14 after the fact; is that correct?

15 A. I don't remember exactly what she testified
16 to, but -- but her daughter had told us that we were
17 to represent her. And so if we weren't to represent
18 her, that's why we went to her and said, do you not
19 want us to represent you? And she said, no, I do
20 want you to represent me, and she signed a document
21 that said we could represent her.

22 Q. So you solicited her after you -- after you
23 got caught, you went out and solicited her as a
24 client, didn't you?

25 A. No, we didn't solicit her after we got

1 caught. We had been asked to represent her; we did
2 represent her. You filed a motion in Judge Smith's
3 court for us to show authority. We did show
4 authority. Judge Smith denied your motion to show
5 authority and --

6 Q. I understand that. Judge Smith protects
7 you --

8 THE COURT: I'm sorry. In all
9 fairness, I want -- I'm trying to give everybody a
10 chance to have their say.

11 MR. CLEVINGER: Sure.

12 THE COURT: And I did that with your
13 co-conspirator and --

14 MR. CLEVINGER: I apologize.

15 THE COURT: -- wrap it on up, sir.

16 A. In every one of the 66 cases that y'all
17 asked us to show authority on, Judge Smith said that
18 we had the proper authority to represent them.

19 Q. (BY MR. CLEVINGER) And Judge Smith tends to
20 protect you, too, doesn't he?

21 A. I guess that you and Mr. Youngkin think that
22 everybody -- every judge around here tries to protect
23 me, but no.

24 Q. On what basis are you saying that?

25 A. Because -- because you said that Judge Smith

1 was protecting me because he was afraid of Judge
2 Hawthorne, because he want -- because Judge Hawthorne
3 wanted to protect me.

4 Q. Who said that?

5 A. You said that.

6 Q. When?

7 A. Today.

8 Q. Okay. The record says what it says. Go
9 ahead.

10 A. And so Judge Bryan will not hear any of the
11 cases on -- on this matter that are filed by
12 Mr. Youngkin because they had a dispute, and so I'm
13 not sure -- if you think that Judge Bryan is
14 protecting me --

15 MR. CLEVINGER: Objection. That goes
16 far beyond the scope of the question.

17 THE COURT: All right. Let's move
18 ahead.

19 MR. CLEVINGER: Thank you, your Honor.

20 Q. (BY MR. CLEVINGER) Isn't it true, Mr. Goss,
21 you were forced to admit there were multiple
22 people -- you admitted on the stand -- your Honor, I
23 will point out -- this is in the record, the
24 transcript. You had to admit that you didn't know
25 whether you were -- had actual authority for multiple

1 people on that case?

2 A. There were two people that I didn't know
3 that we had authority for, because the case had
4 originally been filed by Steve Rodgers. Mr. Hoppess
5 and I took over that particular case from Mr. Rodgers
6 two years after he filed it, and Mr. Hoppess's office
7 had dealt with the people. So out of the 66 people
8 that you questioned me about and that we had a
9 spreadsheet on, I did not know how our authority was
10 on two people, and told Judge Smith that.

11 I have since learned that we did have
12 authority to do that. So we had authority on all
13 66 --

14 Q. How did you learn that?

15 A. Because I asked Mr. Hoppess how we had
16 authority, because he wasn't at that hearing. He had
17 either -- either he had a -- a personal emergency or
18 he had another case that he had to deal with. But we
19 wanted to go ahead and get that hearing done, so we
20 didn't ask for a continuance. We went ahead with the
21 hearing. I testified, out of the 66 people, there
22 were two people that I did not know specifically how
23 we had gotten authority to represent them.

24 Q. Isn't it true, Mr. Goss, that you claim to
25 have authority on most of those people based on

1 representation by some third parties, somebody's
2 cousin, somebody's nephew, so-and-so -- said you can
3 represent so-and-so, and you never spoke with the
4 people you claim to represent. Isn't that true for
5 at least some of them? Is that not your testimony?

6 A. I'm sure for some of them that family
7 members had asked us, because that family member had
8 emailed the family member and said we want
9 Mr. Hoppess to represent us. And so the family
10 member said here's the email. So we didn't speak to
11 them, but we had emails that said they wanted us to
12 represent them.

13 Q. Isn't it true, Mr. Goss, that some of those
14 emails were not written by the person you claim to
15 represent, it was written by a cousin or a kid or
16 something, claiming that you had authority to
17 represent that person; but you had no direct
18 communication from a lot of these people authorizing
19 you to represent them?

20 A. No.

21 MR. CLEVINGER: Your Honor, I'm going
22 to have to direct you to the transcript because he's
23 conflicting his earlier testimony.

24 THE COURT: I didn't understand the no,
25 whether no, he didn't or no, that's not correct.

1 THE WITNESS: No, that's not correct.

2 The --

3 MR. CLEVINGER: I'll just refer you to
4 the earlier testimony.

5 THE COURT: I mean, I'm not trying to
6 assert evidence myself, but no sometimes --

7 MR. CLEVINGER: Right, sure.

8 THE WITNESS: This is in the 361st
9 case. I mean, it's not even in -- Judge Hawthorne's
10 case has nothing to do with it.

11 Q. (BY MR. CLEVINGER) Well, Mr. Goss, you
12 raise an interesting point. In what other cases have
13 you ever entered an appearance on behalf of a dead
14 person?

15 A. Don't know. I probably have done that; if
16 the person died, then I'm -- and I've filed many
17 suggestions of death, so I was representing --

18 Q. But have you filed an answer on behalf of a
19 dead person before?

20 A. I -- I haven't. And if I -- if I made a
21 mistake in doing that, I don't know how that's so
22 important, that if -- instead of filing --

23 MR. CLEVINGER: Objection;
24 argumentative.

25 A. Instead of filing for the estate --

1 THE COURT: Let's proceed in
2 question-and-answer format. And if there needs to be
3 an explanation, I suspect on cross of your --
4 Mr. Hoppess will fathom that.

5 You may proceed, sir.

6 MR. CLEVINGER: Thank you, your Honor.

7 Q. (BY MR. CLEVINGER) So you've testified that
8 you've never filed an answer before on behalf of a
9 dead person; is that correct?

10 A. I don't remember. I may have.

11 Q. And the reason that's -- isn't it relevant
12 that the only time you ever pulled a stunt like that
13 is when you knew Judge Hawthorne was presiding over
14 the case and he would let you get away with it?

15 A. It's not a stunt. I had -- I didn't even
16 think that it was -- whether -- whose court it was in
17 or not. I just wanted to make sure that a judgment
18 was not entered against Susan Hargrave. I
19 immediately filed a suggestion of death. I don't
20 know how you can call it a stunt. A suggestion of
21 death says that this person is not alive, he is --
22 she is dead.

23 Q. Well, wouldn't you agree with me that
24 there's a difference between filing a suggestion of
25 death and filing actual pleadings like an answer?

1 A. I would agree with that.

2 Q. And you've never done it before, to your
3 recollection?

4 A. I don't remember.

5 Q. But on this occasion, you decided you could
6 do it?

7 A. I -- yeah, but not because it was Judge
8 Hawthorne, because that's the way I -- I talked to --
9 to Gaines West and made sure that it was okay with
10 him. That's who I was concerned about, because he
11 was representing Southside. I didn't want to do
12 anything to interfere with his case.

13 Q. If Mr. Youngkin's nephew sends you an email
14 saying I want you to file a case in Houston on behalf
15 of my Uncle Bill, and here's what I want you to
16 claim, can you just go file a suit in Houston without
17 ever bothering to talk to your purported client?

18 A. I'm not sure that I understand the question.
19 But the answer is -- with Mr. Youngkin -- I would
20 never do that. I know he does not like me very much
21 and so I would not file an answer for him because his
22 nephew said so.

23 Q. Well, I believe -- you know where I'm going
24 with this, don't you?

25 A. Where?

1 Q. Well, let's -- not Mr. Youngkin, pick
2 anybody in this courtroom -- Ms. Evans. You don't
3 have any dispute with Ms. Evans, do you?

4 A. I don't.

5 Q. So if Ms. Evans' niece sends you an email,
6 saying I want you to go down to Houston and file a
7 fraud lawsuit on her behalf, would you just go do it
8 without talking to Ms. Evans?

9 A. I probably would not do it because I --

10 Q. And in fact --

11 A. -- know Ms. Evans.

12 Q. -- you wouldn't do that to anybody under
13 normal circumstances, would you?

14 A. That's not true.

15 Q. Well, what normal circumstances would you do
16 it?

17 A. If Ms. Evans was in the lawsuit and her
18 cousin was in the same position that Ms. Evans was,
19 and Ms. Evans came to me and said I need you to file
20 an answer for my cousin in this Houston lawsuit
21 based, on Ms. Evans' instruction to me, I would do
22 that.

23 Q. Without ever talking to your purported
24 client?

25 A. I would believe that Ms. Evans had gotten

1 permission from -- from them and done that. But this
2 was all litigated in Judge Smith's court.

3 Q. I understand that.

4 Earlier, when Mr. Youngkin was on the
5 stand, you presented some arguments about -- or asked
6 some questions about a motion for new trial; and you
7 emphasized the fact, did you not, that Judge
8 Hawthorne ruled against you on that motion, correct?

9 A. Correct.

10 Q. And so you used that as evidence that
11 sometimes he rules against you, correct?

12 A. That's one of the times that he's ruled
13 against me.

14 Q. Okay. And you did that as a distraction,
15 didn't you?

16 A. No.

17 Q. Well, when have you ever filed a motion for
18 new trial eight years after the termination of the
19 case?

20 A. This would be the first time; however,
21 circumstances in this case are that we believe that
22 the judgment is -- is not a final judgment because
23 there were still things that needed to be done, and
24 so we filed the motion for new trial because we
25 thought that there was no final judgment. And, in

1 fact, we thought it was a legitimate and good final
2 judgment -- I mean, motion for new trial. And it had
3 to be filed in the 2010 case, which was in the 85th
4 District Court. We filed it there. Judge Smith
5 heard it and said that he didn't think that he had
6 authority -- I mean --

7 Q. Judge Smith or Judge Hawthorne?

8 A. Judge Hawthorne. Judge Hawthorne said that
9 he didn't believe he had jurisdiction because he
10 thought that the judgment was final. And so that was
11 different than what we thought and different from
12 what we pled and different than what we asked him to
13 do.

14 Q. So you just testified that you didn't think
15 the judgment was final, right?

16 A. I still don't think it's final.

17 Q. Well, then why didn't you just -- instead of
18 filing a motion for new trial, wouldn't the proper
19 procedure be to file an motion for entry of judgment?
20 If it's not final, why don't you just file a motion
21 for entry of judgment?

22 A. Because you can file a motion for new trial
23 without -- prior to the time that the judgment's
24 entered.

25 Q. Well --

1 A. Perhaps you're saying that I'm a bad lawyer
2 again and didn't file the correct procedure, and that
3 may be. But that doesn't have anything to do with
4 Judge Hawthorne protecting me.

5 Q. So you filed -- isn't it true, though, you
6 filed a motion for new trial so you can come in here
7 to this hearing and hearings like it and say, oh,
8 Judge Hawthorne ruled against me on something?

9 A. No, we filed a motion for new trial hoping
10 that he would rule for us so that we could then get a
11 new trial, so that we could have all of the people
12 that were served by publication by Mr. Youngkin in
13 the original 2010 case, to be able to come in here
14 and have their day in court. That's why we filed the
15 motion for new trial.

16 Q. And isn't it true you have filed pleadings,
17 for example, claiming that Billy Hines was a party to
18 a -- or a -- I can't think of the term -- petition
19 for --

20 MR. YOUNGKIN: Bill of Review.

21 Q. (BY MR. GOSS) -- Bill of Review. Sorry.
22 My mind went blank.

23 You filed him as a party, or claiming
24 that he was a party in the underlying proceeding when
25 it wasn't true, didn't you?

1 A. We filed a Bill of Review that included
2 Billy Hines, because the judgment in the 2010 case
3 purported to, on its face, affect his interest in the
4 285 acres. And so, therefore, he would have a reason
5 to want to get that judgment undone so that he could
6 come in and assert his claims on his interest in the
7 285 acres. So that's why we filed the Bill of Review
8 in his name.

9 Q. And isn't it true that Mr. Hoppess named 23
10 parties in the Bill of Review proceeding who were not
11 party to the underlying judgment at all?

12 A. Because it -- I don't know whether --

13 Q. Yes or no?

14 A. I don't know whether that's true. But if --
15 we only put people in the Bill of Review that the
16 2010 judgment would have affected their interest in
17 the 285 acres.

18 Q. Would you agree with me that in order to
19 file a Bill of Review, you have to have been a party
20 in the underlying proceeding?

21 A. I -- I -- I don't -- I don't know whether I
22 agree with that or not. Somebody may attack the
23 judgment if it affects them. But I think that all of
24 those people were -- were -- I believe all those
25 people were at least by publication -- and any of

1 those 23 people, Mr. Capps was taking the position
2 that he -- he owned their interests. And so we were
3 simply trying to undo that 2010 judgment so that we
4 could then come in and -- and --

5 Q. Well, you heard Mr. Youngkin's testimony
6 that -- and you were there, were you not, when
7 Mr. Hoppess admitted to Judge Hawthorne that 23 of
8 these people were not even parties to the underlying
9 proceeding, and you brought them in as if they were?

10 A. I don't know the answer to that question.

11 Q. You weren't at the hearing?

12 A. I was at the hearing, but I don't remember
13 that testimony. I don't remember that testimony
14 being -- being that; that those people were not
15 parties. But if they were, the judgment affected
16 their interest.

17 Q. Have you ever tried to file claims on behalf
18 of dead people or nonparties outside of Brazos
19 County?

20 A. You know, I don't think that -- I haven't
21 filed any claims knowingly for dead people, other
22 than Susan Hargrave who I was trying to protect --
23 Did you say something?

24 Q. No.

25 A. -- who I was trying to protect because she'd

1 been served. I haven't ever filed any petitions or
2 answers or claims for people that did not ask me to
3 represent them in some way or another.

4 Q. Outside of Brazos County?

5 A. Or inside Brazos County.

6 Q. Well, you just admitted, did you not, that
7 you did file some claims on behalf of people that
8 didn't even know you were claiming to represent them?

9 A. I didn't know -- I didn't admit that.

10 Q. What about Nettie Clay, did you not
11 acknowledge back last year?

12 A. No.

13 Q. Are you contradicting her testimony now,
14 saying she was wrong?

15 A. What she said was that she didn't know that
16 the lawsuit had been filed. I think that's what she
17 said. Her relatives asked us to represent them and
18 represent Nettie Clay. When you presented that to
19 Judge Smith in this same format, accusing me --

20 MR. CLEVINGER: Objection. I mean,
21 this goes far beyond the scope of the question.

22 THE COURT: Ask your next question.

23 MR. CLEVINGER: Thank you, your Honor.

24 Q. (BY MR. CLEVINGER) Mr. Goss, however you
25 want to paint this, have you ever, outside of Brazos

1 County, filed on behalf of multiple parties on the
2 basis that somebody's second cousin or so-and-so said
3 you can file claims on behalf of somebody else? Have
4 you ever done that outside of Brazos County?

5 A. I haven't done that inside Brazos County or
6 outside Brazos County.

7 MR. CLEVINGER: Objection.

8 Q. (BY MR. GOSS) The court can decide whether
9 you've done it inside Brazos County. Have you ever
10 done it outside of Brazos County?

11 A. Haven't either.

12 Q. And isn't it true, you wouldn't do that
13 stuff outside of Brazos County because you know you
14 couldn't get away with it outside of Brazos County?

15 A. I wouldn't do that inside Brazos County.

16 MR. CLEVINGER: Objection.

17 Q. (BY MR. CLEVINGER) Isn't it true that the
18 reason you don't do that outside of Brazos County is
19 because you know you wouldn't be protected and you
20 couldn't get away with filing on behalf of dead
21 people or people who weren't your clients?

22 A. I don't know how to answer that question,
23 other than to say I wouldn't do that inside Brazos
24 County, I wouldn't do that outside of Brazos County.

25 Q. But yet you have done it, have you not? Did

1 you not just admit that you filed an answer on behalf
2 of a dead person?

3 A. With -- I filed an answer for the sole
4 purpose --

5 MR. CLEVINGER: Objection, your Honor.
6 This is a yes or no.

7 THE COURT: All right. Let -- ask --

8 MR. HOPPESS: Your Honor, I'm going to
9 object. I don't know how many times we've gone
10 through this, but I object on the basis it's simply
11 been asked and answered at least four times.

12 THE COURT: We'll get it one more time
13 and then move on, please.

14 MR. CLEVINGER: Your Honor, I think
15 Mr. Goss has made my point better than I could make
16 it myself.

17 THE COURT: All right, sir. You have
18 no further questions of this witness?

19 MR. CLEVINGER: No, I don't.

20 THE COURT: Mr. Hoppess.

21 CROSS-EXAMINATION

22 BY MR. HOPPESS:

23 Q. Mr. Goss, since we're going through this,
24 there was a lawsuit filed by Mr. Capps against the
25 Foster, Hill, Butter, and Scott heirs in 2012. Do

1 you remember the lawyer that filed --

2 MR. CLEVINGER: Objection, your Honor.
3 Counsel is testifying to facts that are not --

4 THE COURT: I'm sorry. What, sir?

5 MR. CLEVINGER: Counsel is testifying
6 to facts that are not in evidence, and he's going on
7 cross when it's his client.

8 THE COURT: Well, you're -- probably be
9 better if you didn't lead your own witness.

10 MR. HOPPESS: All right.

11 Q. (BY MR. HOPPESS) Do you remember a case
12 that was filed by Mr. Capps against the heirs that's
13 titled the Foster heirs?

14 A. I do.

15 Q. Do you remember who filed that particular
16 case?

17 A. Stephen Rodgers.

18 Q. Do you remember in what condition that case
19 was when it was turned over to myself and yourself to
20 represent the heirs of -- of Priscilla Foster?

21 A. It was -- it had been --

22 THE COURT: Is that a "yes" or "no"?

23 A. I remember, yes.

24 Q. (BY MR. HOPPESS) Okay. And in regards to
25 the conditions of the case when we took it over, what

1 was the condition?

2 A. It had been tried in Brazos County in the
3 272nd District Court. The heirs of Priscilla Foster
4 had prevailed on a -- a -- a statute of limitations
5 adverse possession-type claim. It had been appealed
6 by Mr. Capps. This was 86 acres out of the
7 285 acres. It had been appealed by Mr. Capps to the
8 Court of Appeals in the Tenth Court, and the Court of
9 Appeals had affirmed the judgment in the 272nd with
10 Judge Bryan. And it had been appealed to the Supreme
11 Court, and the Supreme Court had denied writ, and so
12 that's how we took it over.

13 MR. CLEVENGER: Your Honor, I'm going
14 to have to object. This case is not one of the ones
15 that we've talked about in any way in support of our
16 motion. It's not clear what this has to do with
17 anything to do here today.

18 THE COURT: His objection is relevancy
19 of this area.

20 MR. HOPPESS: Your Honor, the situation
21 is -- is that the motion to recuse Judge Hawthorne is
22 based -- and the motion -- is based upon the
23 following situations: Is that Judge Smith is
24 protecting Judge Hawthorne's former partners --
25 partner in regards to it; that the cases that are

1 going forward are because of animosity and on behalf
2 of Mr. Goss to Mr. Capps or Mr. Youngkin in regards
3 to the overall proceedings; and in that situation is
4 that he is moving forward with these cases,
5 prosecuting them, and that Judge Hawthorne is a part
6 of that bias or conspiracy to do so.

7 And all I'm trying to do is just go
8 through the situation of how it doesn't hold water
9 because of the fact that all of these cases we took
10 over in the middle of their operation of them and
11 that we've continued to prosecute them. We did not
12 file any of these cases.

13 MR. CLEVINGER: Your Honor --

14 THE COURT: Yes, sir.

15 MR. CLEVINGER: -- let me respond. I'm
16 not even sure I understand the rationalization
17 offered here. This is a case, it's not been
18 mentioned in any way as it relates to the
19 disqualification of Judge Hawthorne. It doesn't
20 pertain to Judge Smith. It doesn't pertain to Judge
21 Hawthorne. It has no relevance.

22 And I'm not -- it's a sideshow to say,
23 well, you know, we won this case, so that must -- I
24 guess they're trying to say we have some merit every
25 now and then or some things. But that's a case that

1 has nothing to do with the issues pertaining to Judge
2 Hawthorne or Judge Smith.

3 THE COURT: Closing argument?

4 MR. HOPPESS: I feel that the Court
5 cannot get a grasp of the overall conditions as to
6 what we were brought in on this 285 acres unless you
7 know how the -- since they're raising -- if they had
8 stuck just with the Billy Hines case, I would agree
9 with you, but they didn't. They've gone into these
10 other cases, as if this is all a con- -- some kind of
11 action and conspiracy to -- to get -- and Hawthorne
12 somehow is a part of that overall situation.

13 THE COURT: It has been my approach in
14 this proceeding to prevent -- no, not prevent -- to
15 allow both sides to put on whatever evidence they
16 believe is relevant. I did that for the Movant, and
17 I intend to do it for the Respondent.

18 So I most respectfully, Mr. Clevenger,
19 will overrule your objection and permit you to
20 proceed, sir.

21 Q. (BY MR. HOPPESS) In regards to the Bill of
22 Review case that you've just been questioned about,
23 the circumstances are -- can you tell the judge -- as
24 to which office and which of the two of us
25 principally handle the relationships with the

1 clients?

2 A. Your office, you and Dan handled almost all
3 of the relationships, you know, in terms of getting
4 the clients, talking to them. And I think that --
5 that, unfortunately, at that hearing, when I didn't
6 know those two people, had you been there, you could
7 have answered those questions for me that I didn't
8 know. But your office has been.

9 Q. Okay. And in that situation, is it uncommon
10 for you to rely on co-counsel to handle part of case
11 as opposed to you being aware of everything that goes
12 on in the case?

13 A. It is.

14 Q. In the situation -- that particular case was
15 filed in 2013. Do you remember who filed that case?

16 A. Stephen Rodgers. Well, I think Mr. Youngkin
17 filed the partition case, and Mr. Rodgers answered
18 the case.

19 Q. Okay. In regards to the Bill of Review, who
20 filed that one?

21 A. Mr. Rodgers -- Steven Rodgers filed the Bill
22 of Review case.

23 Q. All right. And -- and in that situation, we
24 were asked, and we took over the representation in
25 that, correct?

1 A. Correct.

2 Q. All right. In the partition case, you've
3 just testified Mr. Rodgers also had not been a part
4 of -- or that issue had not come up in the situation
5 until Mr. Capps had filed the partition on the Scott
6 tract, correct?

7 A. I believe that's right.

8 Q. All right. In regards to the -- in regards
9 to the Billy Hines case, again, who had filed that
10 original contract and revocation of deed and so
11 forth?

12 A. Stephen Rodgers filed the claim.

13 Q. And the circumstances are -- so that in
14 that, are there any other cases that we -- that you
15 know of -- that we're prosecuting in regards to -- or
16 have prosecuted in regards to this 285 acres or we
17 have defended in this 285 acres?

18 A. Not that I know of.

19 Q. So the situation is -- is that you were not
20 a part of any of these cases until Mr. Rodgers and
21 myself asked you to come in, correct?

22 A. That's correct.

23 Q. All right. And in that situation, have you
24 acted -- well, you indicated to the Court -- would
25 you have handled them any differently than you

1 handled any other cases?

2 A. I have not.

3 Q. Now, in relationship to the 60- -- I hate to
4 correct my own witness. In -- in relationship to the
5 total of the 65 petitioners in the Bill of Review,
6 circumstances were, were there only two that you
7 didn't know?

8 MR. CLEVINGER: Objection, leading.

9 Q. (BY MR. HOPPESS) How many were there --

10 THE COURT: I'm sorry.

11 MR. HOPPESS: I'm sorry.

12 Q. (BY MR. HOPPESS) Of the 65, how many didn't
13 you know how we had authority?

14 A. I knew of -- the way we had authority on 63
15 of them. There were two of them that I did not know
16 how we had authority.

17 Q. All right. In this situation, the
18 circumstances are that --

19 MR. HOPPESS: No, I pass the witness.

20 THE COURT: Your witness here.

21 MR. CLEVINGER: Thank you, your Honor.

22 REDIRECT-EXAMINATION

23 BY MR. CLEVINGER:

24 Q. Isn't it true, Mr. Goss, that you never
25 represented the Foster heirs?

1 A. I did not ever represent the Foster heirs
2 until -- we represent some of them by virtue of the
3 Bill of Review, because they're the same Foster heirs
4 and the Scott heirs --

5 Q. Okay.

6 A. -- are all --

7 Q. But all this testimony earlier about what
8 was going on through the Tenth Court and what have
9 you, you weren't involved in any of that, were you?

10 A. I was not a party, nor an attorney.

11 Q. Thank you.

12 MR. CLEVINGER: Nothing further, your
13 Honor.

14 THE COURT: Any further cross?

15 MR. HOPPESS: No.

16 THE COURT: You may retake your place
17 at counsel table.

18 THE WITNESS: Thank you.

19 THE COURT: Call your next witness,
20 Mr. Clevenger.

21 MR. CLEVINGER: Your Honor, I'll call
22 Mr. Hoppess.

23 THE COURT: Mr. Hoppess, the situation
24 is the same for you, sir. You're welcome to come up.
25 You may take your place at the witness stand.

1 MR. YOUNGKIN: Okay if I do the
2 examination, Judge?

3 THE COURT: Are you ready to go
4 forward?

5 MR. YOUNGKIN: Yes, sir.

6 THE COURT: All right.

7 DIRECT EXAMINATION

8 BY MR. YOUNGKIN:

9 Q. State your name for the record, please.

10 A. Karl Coulter Hoppess.

11 Q. And, Mr. Hoppess, you came in and took over
12 the Bill of Review case for Mr. Steve Rodgers; is
13 that correct?

14 A. I did.

15 Q. Now, in that original Bill of Review that he
16 filed in 2013, there were ten parties named in that
17 original Bill of Review, correct?

18 A. I recall 12, but you may be right; it may
19 have been ten.

20 Q. And when did you enter the case?

21 A. I entered the case in December 30th, 2014.

22 Q. Okay. Is that more than four years after
23 the date of the judgment?

24 A. It is.

25 Q. But in spite of that fact, you filed an

1 amended pleading to include 60-some-odd people, most
2 of whom are additional to the original ten, correct?

3 A. Obviously, 55 of them are additional to
4 our -- if there were 12, there's 53 -- there are 55
5 in addition to the original ten.

6 Q. And --

7 A. And also everybody similarly situated,
8 pursuant to the representation.

9 Q. Now, this is a Bill of Review to set aside a
10 proceeding that people were parties to. That's a
11 Bill of Review, correct?

12 A. I didn't understand the question. I'm
13 sorry.

14 Q. Only people in a Bill of Review should be
15 those that were part of the original judgment,
16 correct?

17 A. No.

18 Q. Why not?

19 A. Because anybody who was not afforded due
20 process can file a Bill of Review.

21 Q. If they were not made a party because they
22 were not an interest owner, what has that got to do
23 with due process?

24 A. I don't understand the question.

25 Q. In a case for title, who needs to be in that

1 lawsuit?

2 A. In the case for what?

3 Q. Title. Title to real property, Mr. Hoppess.

4 A. The people that need to be in -- if it's a
5 title issue and a title question, the people that
6 need to be in to it are all of the people that own
7 any interest of title in that property.

8 Q. Okay. Now, you heard Mr. Goss's testimony.
9 The original proceeding happened in 2010; judgment
10 was entered against title holders by inheritance at
11 that time, correct?

12 A. I would say to you that that was our
13 problem. I don't think so.

14 Q. Yes, that answer?

15 MR. YOUNGKIN: Nonresponsive.

16 A. No, I don't think so, okay.

17 Q. (BY MR. YOUNGKIN) You do not think so?

18 A. No.

19 Q. Why not?

20 A. Because one, it was -- the judgment states
21 they were -- the Court was unable to determine the
22 property and the description of the property, and was
23 unable to determine who the title holders were
24 specifically set forth in that judgment.

25 Q. Are you alleging that it set forth in that

1 judgment, that it did not identify the people? There
2 were about 200-and-some-odd people identified. The
3 Court signed an order saying what their interest was,
4 what their percentage of ownership was as to every
5 bit of it, and it totaled .999967, I think.

6 A. He -- the question was -- you asked me, and
7 I said the judgment left out -- the ones that you put
8 in there were correct. But the circumstances are, in
9 the judgment it also states those that are unnamed.

10 Q. And it had a percentage by the unknown heirs
11 of whoever it was at that point at that time,
12 correct?

13 A. Whoever you searched down, yes.

14 Q. Now, Mr. Goss testified about the case in
15 the 272nd, wherein the Foster heirs were sued to
16 remove a cloud on title. And they claimed title by
17 limitation/adverse possession, correct?

18 A. Correct.

19 Q. Do you get adverse possession title from
20 someone if you're the title holder by record deed?

21 A. I'm -- you'll have to ask the question
22 again. I'm not understanding.

23 Q. Do you gain title for adverse possession if
24 you're a record title holder?

25 A. You can, yes.

1 Q. Why would you be claiming adverse against
2 your own title, then, Mr. Hoppess?

3 A. You wouldn't, you'd be claiming title
4 against others.

5 Q. None of those folks claimed title, did
6 they -- claimed title by adverse possession? And
7 they were awarded that title, correct?

8 A. No, they claimed in the petition -- as I
9 read it, they claimed title through two methods. One
10 was through -- part of them claimed title through
11 ownership and the others through adverse possession.

12 Q. They were awarded judgment title by
13 limitation, were they not, Mr. Hoppess?

14 A. Yes, sir.

15 Q. Now, to get title by limitation/adverse
16 possession, you've got to be out of title -- record
17 title?

18 A. No.

19 Q. Okay.

20 A. Just absolutely no.

21 Q. Okay. All right.

22 A. I mean, I don't know --

23 Q. And then --

24 A. -- how you get into --

25 Q. Let me go on to the next question. You're

1 demonstrating your knowledge, so let me go ahead --

2 A. All right.

3 Q. -- with the next question.

4 And then you, in the Bill of Review,
5 brought in the Foster heirs who had never been part
6 of the original proceeding, but you claim because
7 they got adverse possession title, they now should be
8 coming in on the Bill of Review case. Isn't that
9 your pleadings?

10 A. No.

11 Q. Mr. Hoppess, you're the one that amended
12 this and brought in all those Foster folks who had
13 not one bit of title -- record title prior to the
14 judgment in the 272nd. Isn't that true?

15 A. No.

16 Q. Who -- where did they get their title?

17 A. They got their title through Butler, Hill,
18 Foster, and Scott.

19 Q. Okay. There was never a Butler in that
20 lawsuit?

21 A. There were four Butlers in that lawsuit.

22 Q. Okay. All right. Mr. Hoppess, let's see if
23 you'll follow along here. There's some folks --
24 Foster heirs who get some title by adverse possession
25 in a lawsuit in the 272nd. You agree with that?

1 A. I do. And also --

2 Q. Okay.

3 A. -- the Scott and Hill.

4 Q. And were any of those folks in the original
5 judgment that's now a Bill of Review, that you're
6 representing folks on?

7 A. Absolutely.

8 Q. They were in the original judgment?

9 A. They were in the -- as heirships, as the
10 unknown heirs, they were in the judgment, yes.

11 MR. YOUNGKIN: Judge, I'll present to
12 the Court that you cannot claim adverse possession if
13 you're a record title holder. They were never
14 notified of their -- never judged that their interest
15 came about until the adverse possession claim was
16 done. Then Mr. Hoppess has brought them in, after
17 four years, claiming them to be heirs when it's
18 proven that they're not.

19 THE COURT: Let's proceed in
20 question-and-answer format, if we may. I need all
21 the instruction on the law I can get. Let's wait
22 until the end of the proceeding.

23 You may proceed, sir.

24 MR. YOUNGKIN: Okay.

25 Q. (BY MR. YOUNGKIN) And, Mr. Hoppess, in that

1 proceeding, have you not included Billy Hines?

2 A. I absolutely have.

3 Q. And in that proceeding, in the second or
4 third amended proceeding, you brought him and claimed
5 in your pleadings that he was one of the original
6 petitioners, in the Bill of Review, did you not?

7 A. Yes, I'm sure I did.

8 Q. That's absolute falsehood, isn't it?

9 A. No, sir.

10 Q. You want to compare apples with oranges, or
11 do you want to compare apples with apples?

12 A. I don't understand.

13 Q. Are you stating under oath here today that
14 Billy Hines was one of the original petitioners in
15 the Bill of Review?

16 A. No, he was one that was brought in
17 subsequent.

18 Q. And -- but you have named him as one of the
19 original petitioners in your pleadings, have you not?

20 A. I don't -- I'm not understanding the
21 question. I named him as a petitioner, yes.

22 Q. Did you name him as one of the original
23 petitioners?

24 A. I don't -- I don't have any idea whether he
25 was one of the original petitioners. I don't know if

1 Mr. Rodgers included him or not.

2 Q. He did not.

3 A. Okay. Then I --

4 Q. I'll tell you he did not.

5 A. Then he wasn't.

6 Q. Well, if he didn't include him as an
7 original petitioner, and you're now stating that he
8 is, then that is a fraudulent pleading filed by you;
9 isn't that correct?

10 A. No.

11 MR. YOUNGKIN: Okay. It's before the
12 Court in the pleadings, and I think it's also in part
13 of the evidence.

14 Q. (BY MR. YOUNGKIN) Mr. Hoppess, you have
15 filed not only the Bill of Review and brought in
16 60-some-odd people -- 50-some-odd people, more than
17 four years after the judgment was rendered. Do you
18 agree with that?

19 A. Yes.

20 Q. All right. And we've had pending before the
21 Court a motion for partial summary judgment to
22 exclude those folks for years now, have we not?

23 A. Yes.

24 Q. And it has been delayed because y'all claim
25 y'all need to do discovery on this Bill of Review

1 proceeding, correct?

2 A. Correct.

3 Q. And as a result of that, you've taken
4 depositions and gone behind the judgment and done all
5 this stuff for all this time period, correct?

6 A. No.

7 Q. Huh?

8 A. No.

9 Q. Well, we still haven't heard that partial
10 summary judgment, have we?

11 A. We have not.

12 Q. Okay. And you understand the -- do you
13 agree with me that the law on partial -- on a summary
14 judgment -- on a Bill of Review is you've got to file
15 it within four years of the date of the judgment?

16 A. No.

17 Q. What are the exceptions to that, then,
18 Mr. Hoppess?

19 A. If a Bill of Review is pending regarding the
20 lawsuit and judgment that was involved, and you are
21 subsequently pled into it, you can -- there are two
22 things: One, you can become a party to the Bill of
23 Review and the -- because of the fact the Bill of
24 Review is pending, you can become a party. Because
25 if any of the parties named, that are properly before

1 the Court, prove up that the Bill of Review should be
2 granted, it will be granted for everyone that is
3 listed or could be determined to have been a party in
4 it.

5 And secondly, you are permitted, in a
6 Bill of Review of multiple parties, to include, which
7 we did in September of 2015, I specifically pled that
8 we were representing all -- all family members of
9 similar conditions and circumstances, and I cited you
10 the case that permits me to do that.

11 Q. Okay. Do you know what the definition
12 "stranger to title" means?

13 A. Yes.

14 Q. What does it mean, please, sir?

15 A. In regards to the stranger of title, it
16 would be anyone who has no previous connection
17 through any source.

18 Q. Okay. Now, did Mr. -- does Mr. Capps have
19 title in his own right through persons who had
20 ownership interest, irregardless of the lawsuit?

21 A. Absolutely.

22 Q. So he is not a stranger to title?

23 A. No.

24 Q. Do you understand the law to be that if
25 you're in the Bill of Review, and if you do this in

1 the four-year time period and you bring it properly,
2 that all you're entitled to set aside is the judgment
3 as to your title?

4 A. No.

5 Q. Okay.

6 A. Supreme Court specifically states you --

7 Q. Well, I'll tell -

8 A. -- set it aside as to all parties.

9 Q. I will tell you, we're going to have a lot
10 of different law --

11 THE COURT: Would you ask your next
12 question, please, sir.

13 I mean, if you want to testify some
14 more, you're welcome to. But let's go
15 question-and-answer format, if you don't mind, sir.

16 MR. YOUNGKIN: Okay.

17 Q. (BY MR. YOUNGKIN) It is these type of
18 pleadings that have kept this thing alive and going
19 forward for eight years now, right?

20 A. No.

21 Q. You haven't been involved in all these
22 pleadings, you and Mr. Goss?

23 A. I've been involved in every bit of the
24 pleadings.

25 Q. Now, here recently, you've finally come to

1 the conclusion or the realization that this property
2 is all landlocked, right?

3 A. No.

4 Q. Well, have you filed a motion to enforce
5 judgment in the 272nd over the Foster suit, to grant
6 you access across property that Mr. Capps doesn't
7 own? Have you not done that?

8 A. Say the question again.

9 Q. Have you filed a motion to enforce judgment
10 in the Foster suit, out of 272nd, for access?

11 A. Yes.

12 Q. Is that a new and separate cause of action
13 that was never part of the original Foster suit?

14 A. No.

15 Q. Where is that -- is there anywhere in the
16 pleadings you could direct us to, Mr. Hoppess?

17 A. Yes, and we directed you to every bit of it
18 in the motion.

19 Q. Okay. In the pleadings, there's a definite
20 request for access?

21 A. There's a definite request for access
22 existing.

23 Q. And how long has that case been decided --
24 the 272nd case?

25 A. The -- let's see, we took it to the Court of

1 -- I took it to Court of Appeals in '15, and I think
2 the final ruling by the Supreme Court denying
3 petition was '16 -- sometime in '16.

4 Q. Okay. In that suit, did not Judge Bryan
5 grant title to 60-some-odd acres to about 300 people
6 under the theory of adverse possession?

7 A. I can't tell you how many. He granted to
8 the four families.

9 Q. He granted to the named defendants, correct?

10 A. Correct, on behalf of the four families.

11 Q. No, it didn't say on behalf of the four
12 families. You're saying that, right?

13 A. Right. He granted -- you're saying 300.
14 All I'm saying is he granted judgment.

15 Q. Okay. 200-plus, we'll go with that, all
16 right?

17 A. Yeah.

18 Q. All right. And they're all named, are they
19 not?

20 A. No.

21 Q. They're not?

22 A. Not in the judgment, no.

23 Q. Does it not say to John Brown and/or if
24 deceased, his heirs at law?

25 A. Yes. But I mean, this is what I'm saying,

1 it doesn't name them, it just says all of those known
2 and unknown.

3 Q. Well, isn't that the proper procedure when
4 you cannot trace it any further?

5 A. I would say that -- yes, you have to grant
6 it. When you -- when you come up with that many
7 people in a family, you have to grant it to the
8 family.

9 Q. Okay. And did that grant 60-some-odd acres,
10 specifically described portion of the 285 acres?

11 A. I think it granted -- okay, the judgment
12 granted 65 acres.

13 Q. Okay. To designated and described property,
14 correct?

15 A. Correct.

16 Q. All right. Any pleading about access, any
17 part of the judgment about access, anything brought
18 up at all about that, other than they have title to
19 this described property? Isn't that what the
20 judgment says?

21 A. The judgment says that they have title and
22 access to that property.

23 Q. But now then you've discovered, for the
24 first time, that this is a landlocked property?

25 A. No. I know your client has locked all the

1 gates, and that's what I'm filing the motion to
2 enforce is. But I don't believe your client has the
3 right to do that.

4 Q. Does my client not own the property based on
5 judgment and by deed?

6 A. On what?

7 Q. On property.

8 A. He owns property. I don't understand what
9 the question is.

10 Q. Okay. So if he owns property, can he put up
11 a gate to his boundary?

12 A. He can put up a gate as long as it's not
13 locked.

14 Q. All right. Now -- now then you're asking
15 for access, asking the Court to enforce a judgment --

16 A. Correct.

17 Q. -- that absolutely never had anything to do
18 with access, aren't you?

19 A. No, it's specifically stated that for
20 85 years they had used that as access.

21 Q. Okay. You understand that that's not in the
22 judgment, do you not?

23 A. I understand that it was not specifically --
24 it did not have a surveyed -- you did not survey the
25 access, that's correct.

1 Q. Okay. Now then, how long do you think you
2 can keep that part going?

3 A. What?

4 Q. Well, your claim about -- about this
5 judgment from the 272nd, how long do you think you
6 can keep that going?

7 A. I don't understand the question.

8 Q. Oh, I think you do. I think you
9 understand that this is a delay tactic --

10 THE COURT: Excuse me. Ask a question,
11 if you don't mind.

12 Q. (BY MR. YOUNGKIN) Is this, everything
13 you're doing, a delay tactic?

14 A. No.

15 Q. Isn't it true that your clients, at best, in
16 Bill of Review, are ten people that could claim
17 anything at all?

18 A. My clients in the Bill of Review are
19 essentially 200 people, according to you.

20 Q. All right. Of those ten people, isn't it
21 true that if you collectively put their interest
22 together in the whole 285-acre tract, it'd be less
23 than eight-tenths of an acre?

24 A. No.

25 MR. YOUNGKIN: I pass the witness.

1 THE COURT: Your witness, sir.

2 MR. GOSS: No questions.

3 THE COURT: Here's your chance.

4 MR. GOSS: No questions.

5 THE COURT: All right.

6 You may retake your place at counsel

7 table.

8 (Requested excerpt ends.)

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REPORTER'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF BRAZOS)

I, Donna J. Whiteside, Deputy Official Court Reporter in and for the 85th District Court of Brazos County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is \$420.00 and was paid by Mr. Bill Youngkin.

WITNESS MY OFFICIAL HAND this the _____ day of _____, 2018.

/s/Donna J. Whiteside
DONNA J. WHITESIDE, Texas CSR 6426
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