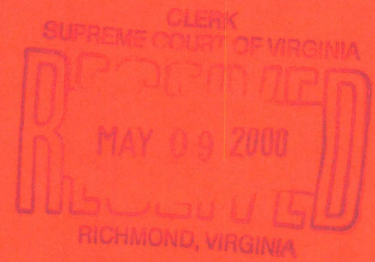


260 VA 243

IN THE SUPREME COURT OF VIRGINIA

SUPREME COURT RECORD NO.

000392



VICTOR A. MOTLEY

Petitioner

v.

VIRGINIA STATE BAR

Respondents

APPENDIX

VOLUME 2

VICTOR A. MOTLEY

2817 North Avenue

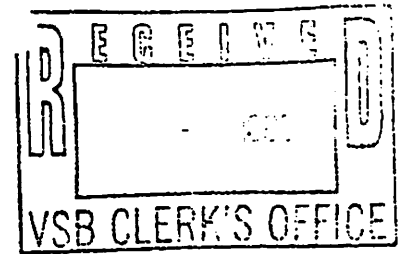
Richmond, Virginia

(804) 329-6972

Petitioner

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VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
VICTOR ALAN MOTLEY

VSB DOCKET NO. 96-032-2545

ORDER

THIS MATTER came to be heard on August 27, 1999, before a duly convened panel of the Virginia State Bar Disciplinary Board, consisting of Henry P. Custis, Jr., Vice Chair, Bruce T. Clark, Robert C. Elliott, II, Michael A. Glasser and Werner H. Quasebarth, Lay Member.

The respondent, Victor Alan Motley, appeared *pro se*. Harry M. Hirsch, Deputy Bar Counsel, appeared on behalf of the Virginia State Bar.

This matter was before the Board on a Show Cause arising from an Order previously entered by the Board on March 24, 1998, in which it affirmed a Private Reprimand with terms imposed upon the respondent by the Third District Committee, Section Two.

Under the terms of the Private Reprimand, the Board required the respondent to undertake the following corrective actions:

1. Respondent shall immediately begin to timely mail a copy of each court order to his clients with appropriate cover letters.
2. Respondent shall promptly develop a written office policy which requires that each court order be timely mailed to his clients with an appropriate cover letter. Said written policy shall be signed by each employee of respondent's office.

3. Respondent shall promptly certify that he has read the pamphlet from the American Bar Association concerning docket control which he was given after the hearing in this matter and respondent shall promptly return the pamphlet to Deputy Bar Counsel, Harry M. Hirsch.

4. In addition to his mandatory continuing legal education requirements, respondent shall take and complete at least six hours of continuing legal education on the topic of criminal procedure. In the event a suitable continuing legal education program is not available prior to March 14, 1998, Deputy Bar Counsel, Harry M. Hirsch, is authorized to extend the March 14, 1998 deadline for a reasonable time to allow satisfactory completion of the term.

That repeated correspondence addressed to the respondent from the Bar (such correspondence being dated March 31, 1998, May 28, 1998 and August 24, 1998) were sent by Bar Counsel to facilitate completion of the above terms by the respondent. In particular, in light of the timing of the entry of the Order and the deadline set forth therein for completion of the additional CLE, Bar Counsel extended the date for compliance with this term of the Order as was allowed within such Order.

That by letter of February 4, 1999, April 15, 1999 was established as a deadline for completion of the terms of the Private Reprimand, but, notwithstanding such deadline, the respondent failed to comply with such terms. The respondent advised the Panel at its hearing on August 27, 1999 that he disagreed with the previous findings of the Panel and did not intend to comply with them.

That under the terms of the Board's Order of March 24, 1998, if respondent failed to comply

with the terms of the private reprimand, a public reprimand would be imposed.

The Board now finds that the respondent has willingly failed and refused to comply with the terms of his Private Reprimand.

NOW, THEREFORE, the following public reprimand is imposed effective upon entry of this Order:

I. FINDINGS OF FACT:

1. At all times relevant hereto, the respondent, Victor Alan Motley (Motley), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Motley was retained by Brian Rowe (Rowe), an adult, to represent him with respect to the following charges pending against him as a result of a robbery and murders which occurred at the Happy Mart convenience store in 1995 in Richmond: two counts of first degree murder, one count of robbery, and three counts of use of a firearm. The retainer fee was One Thousand Dollars (\$1,000.00). Motley was retained for the purpose of pleading Rowe guilty to the lowest possible charges.

3. As a result of contact by Motley with the prosecutor, Rowe was able to, and did, plead guilty of two counts of second degree murder, one count of robbery, and three counts of use of a firearm.

4. There was no clear convincing evidence that prior to the entry of any pleas, Motley had failed to inform Rowe and Rowe's parents that Rowe might not be sentenced according to the sentencing guidelines and to a term of about thirteen years which apparently was the sentence expected by Rowe and his parents. Motley argued unsuccessfully the application of the sentencing guidelines to Rowe's charges. Rowe was sentenced to ninety three (93) years in the penitentiary.

5. After sentencing, Rowe's parents asked Motley what could be done and Motley agreed to appeal the case for an additional fee of Two Thousand Dollars (\$2,000.00). Rowe's parents, who had paid Motley's fee and met with him about the case, were apparently not aware that a guilty plea negated the right to appeal. Rowe claimed to have thought that Motley's post sentencing efforts were for the purpose of obtaining a new trial.

6. Motley timely filed a motion to withdraw the guilty pleas or, in the alternative, for reconsideration of the sentence. Upon denial, he timely appealed the denial to the Court of Appeals.

7. The Court of Appeals denied the petition for appeal noting, *inter alia*, that the sentencing guidelines calling for a maximum of thirteen years, two months, could not be applied to Rowe because of the mandatory sentences for the firearms charges alone, totaling thirteen years.

8. Motley failed to timely inform either Rowe or his parents of the denial of the petition of appeal by the Court of Appeals in time to allow them to decide whether to appeal further to the Virginia Supreme Court.

II. NATURE OF MISCONDUCT:

Based on the above findings of fact, the Disciplinary Board affirms the findings of the Third District Committee, Section Two, which found that the respondent engaged in misconduct in violation of DR-6-101C of the Virginia Code of Professional Responsibility (competence and promptness), which provides that "(a) lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered".

III. PUBLIC REPRIMAND:

Accordingly, it is the decision of the Board to impose a Public Reprimand and the respondent is so reprimanded.

Pursuant to Part Six, Section IV, Paragraph 13 (K) (10) of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

The court reporter reporting this matter was Donna T. Chandler, Chandler and Halasz, P. O. Box 9349, Richmond, Virginia 23227 (804) 730-1222.

It is further ORDERED that an attested copy of the Order be mailed, by certified mail, return receipt requested, to respondent, Victor Alan Motley, P. O. Box 25786, Richmond, Virginia 23260-5786, and hand delivered to Harry M. Hirsch, Deputy Bar Counsel.

ENTERED this Order this 27th day of September, 1999.

VIRGINIA STATE BAR DISCIPLINARY BOARD

BY

Henry P. Custis, Jr.
Henry P. Custis, Jr., Vice Chairman

1 additional exhibits, I guess, see what later
2 testimony does.

3 THE CHAIRMAN: Mr. Hirsch, at the break
4 you'll get us copies of this?

5 MR. HIRSCH: Yes. Uh-huh.

6 THE CHAIRMAN: Are you ready?

7 MR. HIRSCH: Yes.

8

9

10 CLARITHA ROWE,
11 was sworn and testified as follows:

12

13 DIRECT EXAMINATION

14 BY MR. HIRSCH:

15 Q Okay. Ma'am, would you state your name,
16 please?

17 A My name is Claritha Rowe.

18 Q Ms. Rowe, you're the mother of Brian
19 Rowe; is that correct?

20 A Yes, I am.

21 Q And you were involved in the hiring of
22 Mr. Motley, sitting across the table from me, to
23 represent your son; is that correct?

24 A Yes, sir.

25 Q Why did you-all hire Mr. Motley?

1 A Mr. Motley was, name was given to my son
2 by inmates at Richmond City Jail. At the time Brian
3 was -- had a court-appointed attorney, who was Mary
4 Langer, and he was preparing to go to trial with Mary
5 Langer. She was in the process of getting witnesses
6 when I hired Mr. Motley.

7 Q All right. Did you go see Mr. Motley to
8 hire him?

9 A Yes, sir.

10 Q Okay.

11 A You mean, did I visit him in his office?

12 Q Yes.

13 A Yes, sir.

14 Q What did you ask Mr. Motley?

15 A When I went to, I asked Mr. Motley to
16 take Brian's case, would he take Brian's case with,
17 with the -- I just assume that he was taking Brian's
18 case, would take Brian to trial.

19 Q Had Mr. Motley to your knowledge already
20 been to see your son?

21 A At that particular time? To my
22 knowledge, he had talked to him on the phone.

23 Q Okay. And what did Mr. Motley agree to
24 do?

25 A He agreed -- well, in the, in the initial

1 meeting with Mr. Motley, the, the basic thing that
2 was discussed with us the fee. And that's -- he said
3 his fee was a thousand dollars.

4 Q Now, what did you understand the charges
5 were against your son at that time?

6 A The charge against my son at that time
7 were two counts of first-degree murder, two counts of
8 armed robbery and two counts of firearms charges, I
9 think was what I understood.

10 Q The, the fee was what?

11 A For the lawyer?

12 Q Uh-huh.

13 A A thousand dollars.

14 Q Mr. Motley. Pay Mr. Motley thousand
15 dollars for the whole thing?

16 A That's for the whole thing.

17 Q Now, what did you understand Mr. Motley
18 was going to do?

19 A Take Brian to trial.

20 Q On all the charges?

21 A Yes, sir.

22 Q Was there any discussion between you and
23 Mr. Motley about what services he would provide for
24 the thousand dollars?

25 A No, sir, not, not at the beginning.

1 Q Was there any mention at that initial
2 meeting about your -- about his pleading your son
3 guilty to any charges?

4 A No, sir.

5 Q Now, who paid the thousand dollars to Mr.
6 Motley?

7 A Well, I have a son that lives in Atlanta,
8 Georgia, because I'm poor, I don't have any money, so
9 I, I called him and he borrowed the money from a bank
10 down there.

11 Q But you paid the money to Mr. Motley?

12 A In a cashier's check.

13 Q All right. Now, after that initial
14 meeting, did you have any other meetings with Mr.
15 Motley prior to your going to court with your son?

16 A Well, I think I met with him on at least
17 once or twice. Well, the first meeting I didn't have
18 the money, so I had to borrow the money. So I did
19 meet with him again after that to give him the
20 cashier's check.

21 Q You actually met with him gave him the
22 check?

23 A Yes, sir.

24 Q Now, either of these meetings did Mr.
25 Motley discuss with you the specifics of the charges

1 that were pending against your son?

2 A No, sir. The second meeting I had with
3 him, I asked him, I said, would you like to know
4 about Brian. The reason I asked him that was because
5 I thought he was going to take Brian to trial. I
6 figured he would need to know something about Brian
7 in order to take him to trial. And he said he didn't
8 need to know anything about Brian.

9 I asked him, you know, had he heard about
10 Brian or -- because it was all over the TV and in the
11 newspapers. He said no, he hadn't heard, he hadn't
12 heard anything. He didn't know anything about it
13 because it was a criminal case was that publicized on
14 television.

15 Q So did Mr. Motley discuss with you the
16 specifics of the charges against your son?

17 A Not initially.

18 Q Did he discuss with you expected
19 sentences?

20 A No. He said he would -- at this
21 particular time I was telling him that Brian, the
22 second meeting I was telling him Brian had extensive
23 psychiatric history, and he said he would send for
24 Brian's records. So I gave him list of all the
25 places that Brian had gone for psychiatric counseling

1 and he, he wrote them all down. Again I stated,
2 well, he must have -- you know, this is for him to
3 take him to trial so he would have to have something
4 to show at the trial.

5 Q Now, did you meet with Mr. Motley again
6 prior to going to court with your son?

7 A Yes, sir.

8 Q What, what happened in that meeting?

9 A He had said he had talked to the
10 prosecuting attorneys and that they would -- they had
11 agreed to drop Brian's charges from two counts of
12 first-degree murder to two counts of second-degree
13 murder.

14 Q All right. Any --

15 A There was no mention of the firearms
16 charges. That was it.

17 Q No mention by Mr. Motley of the firearms
18 charges?

19 A No.

20 Q What about the robbery?

21 A And one count of robbery.

22 Q That was mentioned?

23 A Yes.

24 Q As remaining?

25 A The two counts of second-degree murder

1 and the one count of robbery, armed robbery.

2 Q All right. And did Mr. Motley discuss
3 with you what, if anything, he agreed to do in order
4 for the Commonwealth to reduce the charges? Was
5 there anything that, that your son had to do in order
6 to get the charges reduced? Was there something in
7 return?

8 A That my son had to do?

9 Q Uh-huh.

10 A In order to get the charges reduced?

11 Q Right.

12 A You mean plead guilty?

13 Q Whatever.

14 A In order to get the charges reduced. He
15 got the charges reduced through the prosecuting
16 attorney is all I understood.

17 Q Okay. Now, you mentioned Brian had an
18 extensive psychiatric record. What did you mean by
19 that?

20 A Brian had, Brian had a history of alcohol
21 abuse that started when he was 12 years old. At that
22 time he had started experimenting with marijuana, he
23 had overdosed on marijuana and alcohol, and --

24 Q Had he been hospitalized anywhere?

25 A Yes, sir. He was hospitalized in Central

1 State Hospital. He, he spent about a month in
2 Charter Westbrook Hospital.

3 Q In this third meeting with Mr. Motley,
4 was there any discussion of about going to trial or
5 pleading guilty to any of the charges?

6 A Okay, sir.

7 Q Take your time.

8 MR. GIBNEY: Would you like to take just
9 a short break.

10 THE WITNESS: Yes, sir. I'm sorry. I'll
11 be all right. I don't know.

12 (Recess)

13 THE CHAIRMAN: Mr. Hirsch, you ready?

14 BY MR. HIRSCH:

15 Q Yeah. I think the question I asked was
16 whether there had been a discussion with Mr. Motley
17 about whether to go to trial or whether to plead
18 guilty to the charges?

19 A At first, at first there was no
20 discussion at all about, about pleading guilty. He
21 just, when he said he charged a thousand dollars, we
22 thought it was such a small amount of money. My son
23 in Georgia said, that's kind of cheap for a lawyer,
24 isn't it. I said, it is, but when, when you poor,
25 you -- a thousand dollars is a lot of money when you

1 poor and ain't got nothing. So I said, yes, I said
2 it's pretty cheap but that's all he charged.

3 So when I told Brian -- Brian called,
4 because Brian had told me Mr. Motley was charging the
5 other inmates \$2,000 and up. I said, Brian, he's
6 only charging us a thousand. Brian said, that's a
7 little bit of money. I said, yeah, you know. And, I
8 guess, Mr. Motley, it must have meant a little, a
9 bunch of money because when I gave him the check or
10 check, he just threw it in the corner, didn't even
11 give me a receipt. So I left the office and my
12 husband was in the car.

13 I came back, and I asked his secretary, I
14 stated Mr. Motley didn't give me a receipt. She
15 said, yes, he had already left. So she wrote me a
16 receipt for the thousand dollars. And I'm still
17 paying on that loan right now because it had about a
18 6- or \$700 interest rate on it.

19 Q So was there -- did Mr. Motley raise the
20 possibility of taking the case to trial as opposed to
21 pleading your son guilty or not?

22 A He never talked, he never talked about a
23 trial. I just assumed that's what we were going to
24 do.

25 Q Did you ask him, though?

1 A Because Brian had, Brian had asked Ms.
2 Langer to take him to trial. We, we never considered
3 pleading guilty to anything.

4 Q Did you ask Mr. Motley whether he was
5 going to take your son to trial?

6 A I don't know if it came up. Initially it
7 didn't come up in the initial conversation because
8 when he said his fee was a thousand dollars, he said
9 nothing about it was just for, to plead Brian, for
10 Brian to plead guilty. Because later on after a few
11 meetings we talked about it and his fee, and he said,
12 he said other lawyers charge \$7,000 to plead somebody
13 guilty. He said, I only charged you a thousand. I
14 had no idea that's why he took Brian's case was for
15 Brian to plead guilty.

16 Q Now, did --

17 A None whatsoever.

18 Q Now, did you have this discussion with
19 Mr. Motley before or after your son actually pled
20 guilty?

21 A About the \$7,000?

22 Q Yeah.

23 A I'm trying to remember. I think it was
24 afterwards. I'm not sure. I'm not real sure about
25 the sequence of things.

1 Q Okay. Before your son pled guilty, did
2 Mr. Motley discuss with you the effect of the, the
3 consequence of pleading guilty with respect to
4 appeals?

5 A No, sir. I had a son-in-law who had been
6 incarcerated. I only found out about it there was no
7 appeal when he came out and he told me. He said, you
8 know there's no, no appeal on a guilty plea, don't
9 you. I said, no, I didn't know that. Because Brian
10 was only doing what I told him to do. He said there
11 was no plea -- no appeal on a guilty plea.

12 Q Now, you went to court when, when your
13 son pled guilty. After that proceeding, did you have
14 any discussions with Mr. Motley?

15 A Yeah. Right after we ran out in the
16 hallway, and he said he was going to file a motion
17 to -- he said he didn't understand why that they
18 didn't stick by the guidelines, something. I don't
19 know. I'm trying to think what happened.

20 Q All right. I think you're, you're after
21 the sentencing.

22 A Okay.

23 Q Do you remember what happened at
24 sentencing? Your son got 93 years; right?

25 And after the sentencing, were you

1 shocked?

2 A I was shocked.

3 Q Did you ask Mr. Motley about the
4 sentence?

5 A Yeah.

6 Q What did you ask him?

7 A I asked him why. Because he had told us
8 that Brian was going to get no more than about 12 or
9 13 years. That the judge, that the, according to the
10 sentencing guidelines, that's all he could get was 12
11 or 13 years.

12 Q And did you ask Mr. Motley what could be
13 done at that point?

14 A Yeah.

15 Q What did he tell you?

16 A He said he was going to file a motion to
17 withdraw the guilty plea. I think that's what
18 happened.

19 Q Was there any discussion with Mr. Motley
20 about appealing the case?

21 A That was the appeal, wasn't it. I
22 thought that's just, that's way you do things.

23 Q Did Mr. Motley charge you any additional
24 monies other than a thousand dollars?

25 A He said he was going to charge me extra

1 \$2,000.

2 Q And what was that for?

3 A This was to appeal Brian's case.

4 Q All right. And did you begin paying the
5 \$2,000?

6 A Yes, sir. I was working part-time. I'm
7 a nurse and I work part-time. So I was -- I started
8 paying. I got the receipts that I have. I started
9 paying on the \$2,000. He said, like I said, I paid
10 in installments but he didn't give me any kind of
11 specific date or time or time of month to pay it. I
12 just paid what I could pay when I could pay it.

13 Q Right. Did Mr. Motley explain to you
14 what the possible results of the appeal could be?

15 A That Brian would get a new trial. He
16 would get a trial.

17 Q Okay. Did you receive a copy of the, of
18 the motion that you mentioned a minute ago, the
19 motion to withdraw guilty plea?

20 A I went to his office got a copy of that.

21 Q Was that --

22 A The motion appeal.

23 Q When did you receive a copy of that?

24 A The motion?

25 Q Uh-huh.

CLARITHA ROWE: DIRECT TESTIMONY

1 A For him to file the appeal?

2 Q You mentioned a motion to withdraw the
3 guilty plea.

4 A Okay.

5 Q You say you got a copy of that, or did
6 you?

7 A Yes, sir. A motion to withdraw the
8 guilty plea?

9 Q Right.

10 A Yes.

11 Q Okay. Was this something that you picked
12 up from Mr. Motley's office?

13 A Yes, sir.

14 Q Or something he mailed to you?

15 A No. Mr. Motley never mailed me anything.
16 The only time I got a correspondence from him was in
17 June when I found out about the denial of the appeal.
18 I went to his office and I asked him about it because
19 Brian had called me, told me he had found out about
20 it. This was in end of May when Brian found out
21 about it. And I went to Mr. Motley's office and
22 asked him about it. And I asked him, because we had
23 talked on the phone, and he said -- about the appeal.
24 He kept saying he couldn't do anything about it.
25 Even though he was charging me money, he said he

1 couldn't do anything about it.

2 So I went to his office and I confronted
3 him and I asked him why he waited too late to appeal
4 because the appeal could go to another step, because
5 I didn't know it could go to another step. And he
6 said it wouldn't do any good. And I asked him, I
7 said, about being -- I said, well -- he was something
8 about he, he didn't think it would do any good. So I
9 said, well, what about --

10 Q Take your time.

11 A His secretary was sitting right there and
12 she heard the whole conversation. Because we had
13 talked on the phone. And she said, I don't know why
14 Mr. Motley don't keep in touch with, with his
15 clients. She was talking about the inmates because
16 she said he never wrote them or anything. And she
17 said it was sad.

18 But most of the telephone conversation
19 that he got recorded, logged in, is where Brian would
20 talk to the secretary. So I asked him, he said, he
21 said in his office, he said -- he was standing beside
22 his secretary. He said, I wasn't retained as Brian's
23 lawyer. Well, I'm asking you now, are you going
24 to -- can you take Brian's case to another step? And
25 he said it wouldn't do any good. I said, well, can

1 you send me a letter saying you're refusing to act as
2 his lawyer further. But when he sent the letter, the
3 letter didn't say that. It said that I didn't retain
4 him as an attorney. That letter was mailed to me a
5 couple of days after I confronted him in his office.

6 In his office he said when I started
7 asking for copies of different things, he said -- I
8 asked him, how long do you keep inmates' files? He
9 said, I keep it through the appeals process. And I
10 was asking him about it, and he said your son was
11 main person anyway. He just hollered at me. Your
12 son was the main person anyway. I got the tape right
13 here. You want to hear it. I said no, I don't need
14 to hear the tape now. What good would it do to hear
15 the tape now.

16 Q Let me show you what's marked Exhibit 9.
17 Is this the letter you're referring to Mr. Motley
18 sent to you?

19 A Yes, sir. That's only correspondence I
20 ever got from him. Everything else I picked up in
21 the office. If I got anything, I went to the office
22 and got it. I got the envelope where he sent me -- I
23 asked him for a copy of the, the denial of the motion
24 and a copy of the appeals. Everything I picked up in
25 the office.

1 Q Now, you said Mr. Motley told you that he
2 hadn't been hired to represent your son. Was that
3 what you just said?

4 A What, the last conversation I had with
5 him in his office.

6 Q Yes.

7 A Uh-huh. He said he hadn't been asked to,
8 to keep the, to stay as Brian's attorney through the
9 appeals process, but I thought that's what I was
10 paying the money for. I had paid him on the second
11 2,000, I had paid almost 1500. So if I, if I wasn't
12 going to keep him as an attorney, why was I paying
13 the money. I didn't understand that. I didn't
14 understand that at all.

15 Q Was there a written agreement between you
16 and Mr. Motley about what he would do and how much
17 you would pay?

18 A There was nothing.

19 Q Nothing.

20 A Something that I signed?

21 Q Uh-huh.

22 A No.

23 Q How did you find out -- I'm sorry. Go
24 ahead.

25 A I might have signed something about

1 saying the money, about the second 2,000.

2 Q You talking a statement of fees?

3 A Yes.

4 Okay. The second 2,000, all I told him I
5 didn't have any more money. So I think he got me to
6 sign something saying I was going to pay \$2,000 on
7 the appeals, but I was going to pay him in
8 installments.

9 Q Did you get a copy of that?

10 A Huh-uh.

11 Q The, the appeal from the Court of Appeals
12 at the Court of Appeals was denied, wasn't it?

13 A Yes, sir.

14 Q Okay. How did you learn about that?

15 A When Brian called me, Brian called me in
16 late May because he said he had been calling Mr.
17 Motley. Motley wouldn't accept his charges. He kept
18 calling, calling and calling. When Mr. Motley did
19 accept it, the calls from him, that's when Brian
20 learned about the appeal was denied, and then he
21 called me and told me.

22 Q And that's when you went to see Mr.
23 Motley?

24 A He hadn't got -- told me about it.

25 Q Did Mr. --

CLARITHA ROWE: DIRECT TESTIMONY

1 A I asked him why he didn't send Brian
2 something in jail. He said all his correspondence
3 was through me and that I was supposed to relate it
4 to Brian, because he never mailed Brian anything.

5 Q Did Mr. Motley at any point tell you it
6 was too late to appeal to the next level?

7 A After it was too late he told me. This
8 was in May he told me. He said, he said he couldn't
9 do anything about it. It was nothing he could do.
10 It wouldn't do any good. The date had already passed
11 by.

12 Q Did this conversation take place the
13 first time you went to see him after you learned of
14 the denial of the appeal?

15 A The first time I went to see him after I
16 learned, after I learned about the denial.

17 Q Right.

18 A I called him on the phone.

19 Q Uh-huh.

20 A Asked him about it. At that particular
21 time I talked to him, I didn't know it was another
22 step that could be taken. I had no idea then.

23 Q Had you received the copy of the decision
24 of the Court of Appeals at that point?

25 A No, sir.

1 Q How did you receive a copy?

2 A I went to his office and I asked for a
3 copy and he gave it to me in my hand.

4 Q Did he explain it to you?

5 A No.

6 Q Now, you were going by the office making
7 payments?

8 A Yes, sir.

9 Q Were you not?

10 A Yes, sir.

11 Q On the appeal?

12 A On the appeal.

13 Q Right.

14 A I had already made the first thousand
15 dollars.

16 Q Right.

17 When you would make these payments, what
18 typically would happen when you would, when you went
19 to the office? Who would you see?

20 A The first person I would see would be his
21 secretary. And I would ask if he were there. If he
22 wasn't there, then she accepted the money. If he was
23 there, then he accepted the money.

24 Q And on these occasions when he was there
25 and he accepted the money, would the two of you

CLARITHA ROWE: DIRECT TESTIMONY

1 discuss the case in any way?

2 A Huh-uh. I just went to pay the money on
3 the appeal.

4 Q So was there, was there any instance
5 where you learned of the nature of what was going on
6 with the appeal when you were paying a payment on the
7 debt?

8 A I didn't know anything about the appeal
9 until May when he said it was denied, when Brian
10 called me, told me it was denied.

11 Q Now, when Mr. Motley told you that the
12 appeal was denied, did he tell you that there was
13 something else that could be done or did he tell you
14 there was nothing else that could be done?

15 A He told me there was nothing else he
16 could do.

17 Q Did you discuss with Mr. Motley your
18 expectation that, the thought the appeal was for the
19 purpose of getting a new trial?

20 A Uh-huh, that's what I thought appeal was.
21 I didn't have any knowledge of anything like that.

22 Q When did you discuss that with Mr. Motley
23 before or after you found out of the denial decision?

24 A I didn't find out about the denial until
25 May. That's when communication between me and him

CLARITHA ROWE: DIRECT TESTIMONY

1 had broken down. At that particular time I stopped
2 talking to him so it had to have been before. I
3 stopped -- when he told me in that office what he
4 told me, it was just like I, even though he only
5 charged me a thousand dollars, I trusted him, and
6 Brian trusted me because I trusted him.

7 He, he made he feel like somebody that
8 was stripped right in his office. I felt like the
9 stupidest person in the whole world getting my son to
10 plead guilty to all that stuff. And he turned around
11 and he had the attitude he had, Don't you know your
12 son was the main person. It was right in the
13 pre-sentence report. That's what he said. You can
14 look at the tape yourself or the confession. And
15 this was the last, this was the last time I talked to
16 him.

17 Q Now, let me take you back just a second
18 to --

19 A I just want to ask him why he did what he
20 did. I just want, I just want to see his face and
21 ask him why did he do what he did. I'm a nurse and I
22 know that people supposed to have integrity, but to
23 sit down and said he did take Brian's case and he
24 know from the start what he was going to do, I just
25 want to ask him why he did it. That's why I want to

1 ask him face-to-face why did you do it.

2 You sit here and you're in a hearing, you
3 had an option but you didn't give my son the option.
4 I just want to ask you face to face why, why, why did
5 you take Brian's case? Why do you just charge me a
6 thousand dollars?

7 THE CHAIRMAN: Ms. Rowe, Ms. Rowe.

8 THE WITNESS: Yes, sir.

9 THE CHAIRMAN: Mr. Motley will -- I
10 assume will testify.

11 THE WITNESS: I'm sorry. I'm sorry.

12 THE CHAIRMAN: Mr. Hirsch.

13 BY MR. HIRSCH:

14 Q Let me ask you one more question.
15 Earlier you said when I asked you about the sentence
16 that your son received and you said Mr. Motley had
17 told you that your son would get about 12 years I
18 think you said?

19 A He said 12 according to the sentencing
20 guidelines. He said Brian could get no more than 12
21 years.

22 Q Do you recall when Mr. Motley told you
23 that?

24 A I was in his office when he told me.

25 Q How did he explain that to you? Tell us

1 what he related to you.

2 A He, he was saying that, saying that
3 because of the sentencing report that the judge had
4 to stick by the sentencing guidelines and that the
5 sentencing guidelines, according to it, Brian would
6 get no more than 12 years.

7 Q Do you recall whether Mr. Motley told you
8 that the sentencing guidelines were discretionary
9 with the judge?

10 A He didn't tell me that.

11 Q When you found out that the Court of
12 Appeals decision had been denied, is it your
13 testimony that Mr. Motley when you confronted him
14 with that told you it was too late to appeal further
15 or it was not too late?

16 A Somewhere, somewhere in the conversation
17 he said, Anyway, it's too late.

18 Q Okay. Would you answer the questions of
19 Mr. Motley, please.

20 MR. MOTLEY: Yes.

21

22 CROSS-EXAMINATION

23 BY MR. MOTLEY:

24 Q When you-all hired me to take this case,
25 about how far was the trial scheduled for?

CLARITHA ROWE: CROSS EXAMINATION

1 A Which trial?

2 Q Brian's trial.

3 A Before you -- when we admitted Mary
4 Langer as an attorney?

5 Q Right. And you-all hired me, about how
6 long -- how much later was it before the trial was
7 supposed to be?

8 A We hired you right around -- I don't
9 remember the time frame, exact time.

10 Q Two to three weeks be about right, half a
11 month?

12 A Brian was supposed to go to trial
13 sometime in that June.

14 Q Uh-huh.

15 A Represented by Mary Langer.

16 Q Okay.

17 A Now, I can look at the receipts on my
18 papers and tell you about when that was.

19 Q Uh-huh. Now, why did you-all want to
20 leave the Public Defender?

21 A Brian had -- initially Ms. Langer wanted
22 Brian to plead guilty, and Brian refused to plead
23 guilty. So we asked her to take it to trial. At
24 that particular time she was getting ready to take it
25 to trial. It's, it's under the assumption, I guess,

1 among common people that if you pay an attorney, a
2 paid attorney will work better for you than, than a
3 Commonwealth's Attorney.

4 Q Uh-huh.

5 A So, so by paying you, I thought you were
6 working in Brian's best interest.

7 Q Uh-huh.

8 A I had no idea that you didn't care.

9 Q Uh-huh. Now, about how long had she been
10 working with Brian, say, before you-all decided to
11 switch lawyers?

12 A How long had she been working with Brian?

13 Q Right. I mean, she represented him in
14 preliminary hearing; right?

15 A (Deponent nodding head.)

16 Q Then there was a time period between
17 there and the time you-all decided to leave her?

18 A I'm not sure of the time. What do you
19 want, an exact date?

20 Q No, no. Just about what length of period
21 of time, one month, two months, three months?

22 A Brian was -- Brian came up in January.
23 He had just turned 18. And he came up for his
24 convictions in January.

25 Q Uh-huh.

1 A At that time I guess between January,
2 sometime between January after that because of the
3 events I guess somewhere along that he was appointed
4 Mary Langer as Commonwealth's.

5 Q So she was his attorney between, say,
6 January and the end of May when you-all --

7 A I can't say between January. I don't
8 know how long he was incarcerated before he was
9 appointed a Public Defender.

10 Q Okay.

11 A I'm not sure.

12 Q You said she wanted to plead him guilty
13 to first-degree murder?

14 A She wanted to plead him, wanted him to
15 plead guilty.

16 Q First degree?

17 A Not to plead him guilty.

18 Q Uh-huh. Okay.

19 A It's a difference, you know.

20 Q Yeah.

21 A When you want somebody to plead guilty,
22 then you plead them guilty because you want them to
23 plead guilty.

24 Q Right. Do you know why she wanted him to
25 plead guilty?

1 A To first-degree murder?

2 Q Yeah.

3 A Do you?

4 Q I hadn't talked to her.

5 A Did you know at the time that I hired you
6 why she wanted him to plead guilty to two counts of
7 first-degree murder?

8 Q No. Because I had never talked to her so
9 I don't know.

10 A Okay.

11 Q Would you think it would be based on what
12 she knew about the case?

13 A I don't know. I would have to ask her
14 that.

15 Q Okay.

16 A I don't know.

17 Q Have you ever listened to the videotape
18 confession that he gave about this?

19 A Man, that's interesting, Mr. Motley,
20 because when you first, when you first approached the
21 Prosecutors Attorney's Office, they gave you that
22 video. And I asked you in your office, I said, Do
23 you want us to listen. You said you didn't have to
24 listen to it because they had already told you what
25 was on the video.

1 Q No.

2 A I said, well, did you know Brian was on
3 drugs and alcohol at that time? You said that the
4 prosecutor say that Brian didn't seem to be under the
5 influence. So at that particular time you didn't see
6 any need for me to at least look at the video.

7 Q This was the first time we had talked?

8 A I'm not saying it was the first time.
9 I'm saying when you approached, you told me you
10 approached the prosecutors and they gave you the
11 video. And I sat in your office and I asked you
12 could we look at the video of Brian's confession.
13 You said, you just said there was no need because
14 they had already told you what was on it. And I
15 said, did you know that Brian was under the influence
16 of alcohol and drugs at the time.

17 Q Uh-huh.

18 A You said that they told you that he
19 didn't seem to be under the influence. The only
20 other time you mentioned the video when it was in our
21 last confrontation and you said you want to see the
22 video now. I said there's no need to see it now.

23 Q Uh-huh.

24 A I, I mean, the time to look at it would
25 have been when it would have done us some good.

1 Q Well, just for clarity, the video came
2 from the Public Defender's Office?

3 A Wherever it came from.

4 THE CHAIRMAN: Mr. Motley, excuse me.

5 MR. MOTLEY: Yes.

6 THE CHAIRMAN: While we have not heard an
7 objection, the rules of evidence here are very
8 loosely enforced.

9 THE WITNESS: Okay.

10 THE CHAIRMAN: And, and usually we don't
11 have too many objections in here, but I want to read
12 the charges of misconduct again. It's a lawyer shall
13 keep a client reasonably informed about matters in
14 which the lawyer's services are being rendered.

15 That's the determination this Committee
16 has to make. And if you could limit your questions
17 to that issue, the Committee would be very
18 appreciative.

19 MR. MOTLEY: Yes, sir, but I was just
20 really responding to, I guess, the questions that
21 the -- Mr. Hirsch had asked the witness as far as,
22 you know, what she knew or really her expectations,
23 because I think that could shed some light on just,
24 just what she knew or what she thought was going to
25 be taking place. But it won't be long, sir.

1 THE CHAIRMAN: Again, there's no
2 objection. I'm just advising you of the Committee's
3 role.

4 MR. MOTLEY: Uh-huh.

5 BY MR. MOTLEY:

6 Q Now, in your opinion if I knew he was
7 going to plead guilty, I mean, would I really have to
8 listen to a tape?

9 A Then why did you ask him to ask if I
10 listened to it. I didn't understand your question.
11 You asked did I listen to his taped confession. I
12 had no reason to listen to if you had given it to me
13 to listen to.

14 Q If you had listened to the tape, you
15 would know what part he played in the crime, wouldn't
16 you?

17 MR. HIRSCH: I don't think the tape has
18 anything to do with, with, with the direct testimony.

19 THE CHAIRMAN: Are you objecting then,
20 Mr. Hirsch?

21 MR. HIRSCH: I am.

22 THE CHAIRMAN: Mr. Motley.

23 MR. MOTLEY: Again, she testified to what
24 her expectations was, why he was pleading guilty. It
25 goes to the record why he was pleading guilty. If

1 she listened to the tape and looked at these photos
2 which are going to be introduced in trial, it's
3 directly related to why you will plead the man guilty
4 as opposed to having a full trial on something.

5 THE CHAIRMAN: If I remember the
6 testimony correctly, Mr. Motley, didn't you-all watch
7 the tapes after the hearing or was this conversation
8 before or after the hearing?

9 MR. MOTLEY: I never watched them with
10 her. When I got the case from Public Defender's
11 Office, she sent me her file which included that
12 tape. Yes, I watched the videotape.

13 THE CHAIRMAN: Before or after the
14 hearing?

15 MR. MOTLEY: Before.

16 THE CHAIRMAN: I'm going to sustain Mr.
17 Hirsch's objection. Again, the issue is whether or
18 not you informed the -- your client, reasonably
19 informed the client about matters that for which your
20 services were being rendered. And I'm having a hard
21 time seeing why this tape is relevant to the
22 particular issue before this Committee.

23 MR. MOTLEY: Yes, sir, I agree, but like
24 I say, I was just responding to Mr. Hirsch's real
25 questions to Ms. Rowe.

1 THE CHAIRMAN: Again, well, first of all,
2 let's see if the Committee agrees with me.

3 MR. GIBNEY: I'm with you.

4 MS. WEBSTER: Yes.

5 THE CHAIRMAN: The objection is
6 sustained.

7 MR. MOTLEY: Yes, sir. For the record,
8 can we just put the tape and these picture in here,
9 give them the idea as far as, you know, she saying
10 she don't know why I wanted to plead him guilty now
11 at trial, why we didn't have a trial. And if you saw
12 this, I think it pretty much speaks for itself. So I
13 would like to just for the record introduce this, you
14 know.

15 MR. HIRSCH: I would object. I think
16 they're irrelevant.

17 THE CHAIRMAN: Again, I think we're going
18 to sustain Mr. Hirsch's objection.

19 MR. MOTLEY: Yes, sir. And, yes, again
20 that doesn't have anything to do with notice, but you
21 asked her questions about what I did with regard to
22 preparing for the case, and that's what, what would
23 show about when I was retained and what I did as far
24 as preparing as far as his mental conditions, which
25 she spoke of. I would like to just proffer some

1 testimony.

2 To just show I wrote the Commonwealth
3 Attorney on May 31st.

4 THE CHAIRMAN: Mr. Motley, I think we're,
5 we're crossing Ms. Rowe and you'll have your
6 opportunity.

7 MR. MOTLEY: Uh-huh.

8 BY MR. MOTLEY:

9 Q And, Ms. Rowe, this is the initial
10 complaint you wrote to the Bar; correct? Could you
11 look at that, Harry.

12 I agree with you.

13 MS. WEBSTER: Mr. Motley, would you refer
14 to an exhibit number?

15 MR. MOTLEY: It's exhibit number -- well,
16 it says VSB Motley No. 2.

17 MS. WEBSTER: Okay. Thank you.

18 BY MR. MOTLEY:

19 Q Does it say anything in there about you
20 didn't know he was going to plead guilty?

21 MR. HIRSCH: Mr. Chairman, I think the,
22 for the purpose of that question, I think the exhibit
23 speaks for itself.

24 THE CHAIRMAN: Mr. Hirsch, I'm going to
25 allow him to ask that question.

1 MR. MOTLEY: Uh-huh.

2 THE WITNESS: What is your question?

3 BY MR. MOTLEY:

4 Q Does it say anything in there that you
5 didn't know he was going to plead guilty?

6 A That -- what do you mean does it say
7 anything. I didn't know. I don't understand your
8 question.

9 Q That's your complaint about, I guess,
10 your dissatisfaction with my services. And you
11 filled out a complaint to the Bar.

12 A Uh-huh.

13 Q And does that say anywhere in there that
14 you did not know he was going to plead guilty?

15 A Mr. Motley, I did not hire you for my son
16 to plead guilty to six convictions.

17 THE CHAIRMAN: Ms. Rowe, I hate to
18 interrupt you, but we need for you to answer Mr.
19 Motley's questions.

20 A Does it say anything to the complaint?

21 BY MR. MOTLEY:

22 Q That complaint.

23 A It said not directly, but it's there if
24 you read it and you understand what I was trying to
25 say. You want me to read it?

CLARITHA ROWE: CROSS EXAMINATION

1 Q Just show where it says you did not know
2 he was going to plead guilty?

3 A It says -- I'm going to have to read the
4 first couple of sentences on the first page. It
5 says, I feel helpless and totally betrayed. Right
6 there I was telling you, telling the Bar that you
7 betrayed me. One of my initial complaints was your
8 lack of concern for Brian, now incarcerated. I hired
9 Mr. Motley it was because Brian -- when I hired Mr.
10 Motley, it was because Brian was given your name by a
11 fellow inmate which at the time Brian was beginning
12 to go to trial with a court-appointed attorney.

13 That's what I expected you to do, Mr.
14 Motley, when I hired you. If I thought Brian was
15 going to plead guilty when I hired you, then what was
16 the need of him leaving Ms. Mary Langer. Mary Langer
17 was getting ready to take him to trial. I had asked
18 her to take him to trial. It does specifically say
19 that, that in that complaint, but it's there if you
20 read it.

21 Q Okay.

22 A You understand what my complaint was.

23 Q Okay. Then I wrote an answer to that
24 complaint. Did you see an answer that I wrote to
25 that complaint?

1 A Mr. Hirsch and the State Bar sent me that
2 answer.

3 Q And you wrote a rebuttal to my answer;
4 correct? And it was only in that letter you said you
5 didn't know he was going to plead guilty; correct?

6 A If it specifically said in that letter.

7 Q Uh-huh.

8 A You told me that you were going to send
9 for Brian's papers from the psychiatrist.

10 Q Uh-huh.

11 A Now, if, if you hired, hired -- we hired
12 you to plead Brian guilty, so what you were saying?

13 Q Uh-huh.

14 A Why would your office ask you, Mr.
15 Motley, would you need to know something about Brian.
16 You said no. I said Brian had been to several
17 psychiatrists.

18 MR. MOTLEY: I think I showed you.

19 MR. HIRSCH: You did.

20 A You said you were going to send for his
21 paperwork.

22 BY MR. MOTLEY:

23 Q Okay. Looking at those, who are the
24 names of the people listed down there?

25 THE CHAIRMAN: Mr. Motley, could you tell

1 the Committee what it is that she's looking at.

2 MR. MOTLEY: It's a request, request to
3 clerk for us to subpoena information, psychiatric
4 information.

5 MS. WEBSTER: What's the date on the
6 request?

7 MR. MOTLEY: May 31st, the day I was
8 retained.

9 A Now, what are you asking me?

10 BY MR. MOTLEY:

11 Q Are they all the doctors and mental
12 institutions he had been to?

13 A Uh-huh.

14 Q And I got that from you?

15 A I gave you a list.

16 Q So I did bring up other information about
17 his past that would -- might help him in the trial;
18 correct?

19 A In a trial. Yes, sir.

20 Q Well, hearing -- okay.

21 Now, you were present at both, when he
22 pled guilty and at the sentencing; correct?

23 A I was present for everything.

24 Q Okay. Then at the sentencing, when they
25 were saying they were going to follow the sentencing

1 guidelines, you were in the back waiving your hand;
2 correct?

3 A Uh-huh.

4 Q And then I went back and talked to you,
5 then you came and testified; correct?

6 A No, sir, that's not how it happened.
7 That's not true.

8 Q You weren't waiving your hand in the
9 back?

10 A I was waiving my hand for Judge Wilkerson
11 because you had your back to me.

12 Q Right. Uh-huh.

13 A Because I asked you before we went there,
14 I said would you like a list of witnesses to appeal
15 at sentence. You said you didn't need any witnesses.
16 That's what you said.

17 Q Uh-huh.

18 A We didn't need any witnesses.

19 Q But you --

20 A So, so wait a minute. Let me finish.

21 When I waived my hands, you had your back
22 to me.

23 Q Right.

24 A Judge Wilkinson acknowledged my hand.

25 Q Right.

1 A Okay. He said, Mr. Motley, you have
2 somebody back there behind you, something to that
3 effect. They want to say something.

4 Q Uh-huh.

5 A And that's when you turned around and
6 that's when they called me to the stand. But, but
7 they called me right there, we never went to the back
8 to talk about anything.

9 Q Okay.

10 A They called me right up to the stand and
11 I walked up.

12 Q Uh-huh.

13 A To comment on what the prosecutor had
14 said.

15 Q Uh-huh.

16 A In the courtroom.

17 Q Okay. And you were waiving your hand
18 basically as an objection?

19 A No.

20 Q To get somebody's attention?

21 A No. I was waiving my hand to testify in
22 my son's behalf.

23 Q Okay. To testify in your son's behalf
24 and you testified in his behalf?

25 A After I waive my hand and I was

1 acknowledged by Judge Wilkinson.

2 Q Now, you didn't waive your hand when your
3 son pleaded guilty to these charges that you claim
4 you didn't know he was going to plead guilty to, did
5 you?

6 A When Brian pled guilty, we went to court.
7 Before we went to court, you told me in your office
8 that Brian was going to plead guilty to two counts of
9 second-degree murder and one count of armed robbery.
10 There was no mention of firearms charges --

11 Q Uh-huh.

12 A -- in your office.

13 Q Uh-huh.

14 A There was no mention. You never said
15 anything about if he pleads guilty, he couldn't
16 appeal. None of that was ever discussed.

17 Q Uh-huh.

18 A Okay. So when he set up in that
19 courtroom, I had my other son with me, he pled guilty
20 to all those charges, and you stood, you stood beside
21 him and Judge Wilkerson read off each offense, and
22 you told Brian right there he had -- Brian was
23 motioning to you. You said -- I was stunned.

24 Q Uh-huh. Well, did you --

25 A We set there and my son and I were

1 absolutely stunned.

2 Q Okay. Did you ever show any
3 dissatisfaction with me before the judge gave him 93
4 years?

5 A What do you mean "show dissatisfaction"?

6 Q Expressed to me in any kind of way you
7 didn't like what I was doing up until the point that
8 the judge gave him 93 years?

9 A Mr. Motley, you never told me what you
10 was doing. You just did what you wanted to do.

11 Q No. There was the hearings?

12 A There was a sentence.

13 Q You could have had another lawyer at
14 sentencing hearing; correct?

15 A Could I have? I don't know.

16 Q Uh-huh.

17 A I have no idea.

18 Q But did you ever say anything about what
19 I did until after the judge gave him 93 years?

20 A You mean to your face?

21 Q Yes.

22 A I expressed dissatisfaction during the
23 whole thing. I expressed dissatisfaction with you
24 when you wanted me -- when I asked you about the
25 tape, you didn't want me to look at it. When you

1 didn't keep me informed, you didn't. You know, most
2 of the time when I called your office, I talked to
3 your secretary and not to you. You never was
4 available.

5 Q Well, why, why did you-all hire me to do
6 the appeal or even to try to set aside the guilty
7 plea if you weren't satisfied?

8 A The appeal was -- we thought the
9 appeal -- somewhere along the line Brian had got the
10 idea that you, the lawyer that represented you during
11 a hearing or whatever, that was -- we had -- was the
12 same one that had to take you through the appeals
13 process. This was our understanding that somebody
14 had told us. So it had to be.

15 Q That's what Brian had told you?

16 A That's what somebody had told me and
17 Brian. You had to have the same attorney.

18 Q Did you ever ask me or any other lawyer
19 that question? I mean, how did you get me as opposed
20 to Mary Langer if that was the case, how could
21 you-all get rid of Mary Langer again and come to me?

22 A We didn't get rid of Mary Langer.

23 Q Well, she didn't do the trial?

24 A We hired you in place of Mary Langer.

25 Q Right. You could have hired someone else

CLARITHA ROWE: CROSS EXAMINATION

1 in place of me; correct?

2 A When? At what point?

3 Q At any point.

4 A I don't understand.

5 MR. HIRSCH: Raise an objection, because
6 the facts are that Mr. Motley was, in fact, hired.
7 So to the extent to which someone else could have
8 been hired, I think is irrelevant.

9 THE WITNESS: I don't think it's
10 relevant.

11 MR. MOTLEY: I think it was irrelevant.
12 If they were dissatisfied, you can fire a lawyer just
13 like you fire anyone else if they show
14 dissatisfaction.

15 THE CHAIRMAN: Mr. Motley, I'm going to
16 sustain your objection, Mr. Hirsch.

17 BY MR. MOTLEY:

18 Q And do you recall calling my office on
19 April 5th and left a message on April 15th you would
20 pay 350 to 400, the balance the following month?

21 A Left a message with who?

22 Q With my secretary.

23 A All I know is I paid all of it except
24 about -- I got the receipts.

25 Q Uh-huh. But do you recall calling the

CLARITHA ROWE: CROSS EXAMINATION

1 office on April the 5th saying that on April 15th you
2 will pay 350 to 400, the balance the following month?

3 A At some point between my last payment to
4 you and my refusing to pay any other monies, I had
5 become dissatisfied with your services so I didn't
6 feel a need to pay any more money.

7 Q But, in fact, you never came in. You
8 never paid the 350 to 400, did you? In fact, you
9 came in on May the 10th and paid \$100; correct? You
10 have a receipt for that?

11 A I have a receipt. My last receipt I
12 have.

13 Q Is that May 10?

14 A No. It was March of '96.

15 Q Uh-huh.

16 A That's my last receipt that I have.

17 Q Okay. And the Court of Appeals denied --

18 A I remind you that you had told me to
19 break -- if you did take Brian's case to the other
20 step, because the deadline was past due, you wanted
21 another \$2,000.

22 Q Uh-huh.

23 A I hadn't even paid off the other 2,000.

24 Q Now, the Court of Appeals denied his
25 appeal on April 15th; correct?

CLARITHA ROWE: CROSS EXAMINATION

1 A I'm not sure of the date.

2 Q That's the same day you left a message
3 saying you were going to come in and pay 350 to \$400;
4 right?

5 A Mr. Motley, I can't say that I left a
6 message with anybody.

7 Q Uh-huh.

8 A The last, the last payment I have to your
9 office was March 6th. I have that on -- in my
10 records.

11 Q Uh-huh. And then this letter that you
12 were showed dated June 12th from me, this was after
13 you had found out that the appeal had been denied;
14 correct?

15 A This was after. Now, which letter are
16 you talking about?

17 Q This letter right here.

18 A This is after I visited your office --

19 Q Right.

20 A -- and confronted you. That's when you
21 mailed me that.

22 Q Right. You found out the appeal had been
23 denied. This is VSB Exhibit 9?

24 A I found out the appeal had been denied
25 for Brian.

1 Q Even though you told me you were going to
2 come in the next day and pick the letter up, didn't
3 you?

4 A Which letter?

5 Q This letter.

6 A No, sir, I didn't tell you that. I told
7 you to mail me a copy and that's what you did.

8 Q Was that after you didn't come in to pick
9 it up the next day as you said you were?

10 A No, sir. No, sir.

11 MS. WEBSTER: Mr. Motley, would you
12 please refer to that by number.

13 MR. MOTLEY: Yes, Motley No. 9.

14 A I went to your office because I had the
15 idea -- this is what I had the idea of. That you
16 were going to say you didn't have my address. So I
17 went to your office to get you to mail me, like I
18 told you to mail me something saying that you were
19 not going to retain Brian as an attorney.

20 BY MR. MOTLEY:

21 Q Uh-huh.

22 A And I told you mail it to my address.

23 Q Okay.

24 A And that's what you did.

25 Q Now, you --

1 A I did not tell you I was going to pick up
2 a copy.

3 Q You found out that the appeal had been
4 denied through your son Brian; correct?

5 A That's right.

6 Q And how did he find out?

7 A He said that he kept making numerous
8 calls to your office.

9 Q Uh-huh.

10 A On several occasions he talked to your
11 secretary.

12 Q Uh-huh.

13 A And then finally when you did finally
14 agree to accept his calls --

15 Q I mean, do you think I would accept a
16 call if I wasn't in?

17 MR. HIRSCH: Mr. Chairman, again --

18 THE CHAIRMAN: I'm going to sustain your
19 objection.

20 MR. MOTLEY: I think judicial notice
21 could be taken of that one then, no one accepts a
22 collect call if no one's in or I'm not in.

23 MR. HIRSCH: Depends on whether it's
24 person to person or not.

25 THE WITNESS: Several occasions he talked

1 to your secretary.

2 BY MR. MOTLEY:

3 Q Now, did there ever come a time -- well,
4 are you and your husband together?

5 THE CHAIRMAN: Objection. It's
6 irrelevant.

7 MR. MOTLEY: It would have to do with
8 mail coming to the house.

9 THE CHAIRMAN: I'm going to, I'm going to
10 allow the question, Mr. Hirsch.

11 BY MR. MOTLEY:

12 Q What was the marital status with your
13 husband around April of '96?

14 MR. HIRSCH: '96.

15 MR. MOTLEY: Yes, last April.

16 A Which marital status are you referring
17 to?

18 BY MR. MOTLEY:

19 Q Were you-all living together, separated,
20 back and forth?

21 A Around April of '96 my husband and I were
22 separated, if I can get the months right.

23 Q In fact, you had talked to me about doing
24 the divorce for you, didn't you?

25 A Yes, sir.

1 I had not on, not on that particular time
2 frame.

3 Q Right after you got your money straight?

4 A No.

5 Q Uh-huh. Well, why would you tell me to
6 do a divorce if you were never satisfied with
7 anything else I had done?

8 A Mr. Motley, that's not the sequence of
9 events. I'm sorry.

10 Q Now, did there come a time when you and
11 your husband were not living together, you weren't
12 getting certain mail? He was coming to the mailbox,
13 taking mail out?

14 A No, sir. I don't even know where did you
15 get that from?

16 Q Well, I was just asking you. He wasn't
17 living there?

18 A Why would you assume he was coming to my
19 house to my mailbox getting mail out.

20 Q Well, you can deny it if it wasn't true.

21 A I don't even see --

22 THE CHAIRMAN: Ms. Rowe, just please
23 answer the question.

24 A Okay.

25 THE CHAIRMAN: Don't argue with him.

1 A What is the question?

2 BY MR. MOTLEY:

3 Q Are you aware of any time your husband
4 was coming getting mail out of the mailbox when you
5 were separated?

6 A No, sir. My husband didn't come around
7 when we were separated.

8 Q He never got any mail?

9 A Excuse me?

10 Q Your husband never got any mail?

11 A Mail for himself?

12 Q Yeah.

13 A Or mail for me?

14 Q For himself.

15 A If he got my mail, it came to the house.

16 My husband is not, were not legally separated.

17 Q I know.

18 A Okay.

19 MR. GIBNEY: Is there a letter that's not
20 in this file that you sent to her; is that what this
21 is?

22 MR. MOTLEY: Copy of the denial of the
23 appeal. That's what that would be. After she didn't
24 come in, she said she was going to come, it sat on
25 the desk a few days.

1 MS. WEBSTER: Is it a denial of the
2 appeal?

3 MR. MOTLEY: I mailed that to her is what
4 I'm getting at.

5 THE CHAIRMAN: Do you have a cover letter
6 or something that you're talking about?

7 MR. MOTLEY: No, there is no cover
8 letter.

9 MS. WEBSTER: Even a denial of appeal.

10 THE CHAIRMAN: Why don't we let Mr.
11 Motley continue. Mr. Hirsch can redirect, then we
12 can answer questions. I think everybody wants to
13 move along, but --

14 MR. MOTLEY: No further questions at this
15 time.

16 MR. HIRSCH: Just one -- couple.

17

18 REDIRECT EXAMINATION

19 BY MR. HIRSCH:

20 Q Ms. Rowe, you were asked whether you,
21 your complaint recites anything about pleading
22 guilty. Would you please look at page 3 of your
23 complaint right there in front of you. Keep going.

24 Let's see. No, the next page. Eighth
25 line from the top. There's a sentence that begins --

1 well, see that right there. Would you read that
2 sentence, please?

3 A "Today on the phone he told me that the
4 only reason he charged me the first thousand dollars
5 was because he knew Brian was going to plead guilty."

6 Q Keep going with the next sentence.

7 A "Sir, nothing was ever said to Brian or
8 myself at this time about pleading guilty."

9 Q Okay. Did your address change at all
10 during the time that Mr. Motley represented your son?

11 A No.

12 Q Okay. Would you answer the questions of
13 the Committee, please.

14 MR. MOTLEY: Could I have one rebuttal?

15 THE CHAIRMAN: Yeah.

16

17 RECROSS-EXAMINATION

18 BY MR. MOTLEY:

19 Q Yes. You said you didn't know he was
20 going to plead guilty; correct? Did you ever voice
21 any opinion with me after he pled guilty up until the
22 time that the judge said 93 years?

23 A See, Mr. Motley, you had told me Brian
24 wouldn't get more than 12 years.

25 MR. MOTLEY: No further questions.

1 THE CHAIRMAN: Mr. Hirsch. Committee
2 members. Ms. Woodward.

3
4 EXAMINATION BY MS. WOODWARD:

5 Q Ms. Rowe, did you receive any
6 correspondence from Mr. Motley's office, any
7 documents, any letters, between April 15th and May
8 15th of 1996?

9 A By mail?

10 Q Correct.

11 A Only thing I got in the mail was when I
12 confronted him in the office asked me to send --
13 asked him to send me something stating that he was
14 not going to represent Brian further. I have that
15 letter. And I have with me the brown envelope that
16 he gave me in his office, the copy of the appeal
17 denial. He did not mail me anything. And my address
18 never changed.

19 MS. WOODWARD: Something of a point of
20 order, Mr. Hirsch, is Mr. Brian Rowe going to be a
21 witness?

22 MR. HIRSCH: (Nodding head.)

23 BY MS. WOODWARD:

24 Q Do you have a telephone, Ms. Rowe?

25 A Yes, I do.

1 Q And Mr. Motley had that telephone number
2 in his office?

3 A Yes. Well, the secretary called me from
4 time to time. On several occasions when he would not
5 try to contact him, I would talk to her. And me and
6 her got to the minute where we were talking from time
7 to time on the phone and --

8 Q Ms. Rowe, I'm looking at Motley Exhibit
9 3, State Bar's Exhibit No. 3. If you can look at
10 that, please.

11 MR. MOTLEY: My car's going to be towed.
12 Mr. Motley's got a parking problem he needs, Mrs.

13 THE WITNESS: I parked at a meter. I
14 don't know if I had --

15 MR. HIRSCH: We're going to have to take
16 15 minutes.

17 THE CHAIRMAN: We can come back.

18 MS. WEBSTER: Is there some staff of the
19 Bar?

20 MR. HIRSCH: It's at a meter some place.

21 THE CHAIRMAN: Why don't we just take ten
22 minutes. They would probably be just ten minutes.
23 Do you have an umbrella?

24 (Recess)

25 THE CHAIRMAN: Back on the record.

1 Before we get back to Ms. Woodward's
2 question, we are -- I'm required as chairman at the
3 beginning of this to ask everyone if any member of
4 this Committee or any member of the Board present
5 have any personal or financial interest that might
6 affect or reasonably be perceived to effect his or
7 her ability to be impartial. For the record I'll
8 state that I don't.

9 MR. PALMORE: I don't.

10 MR. GIBNEY: I don't.

11 MR. MARTIN: I don't.

12 MS. WEBSTER: Nor I.

13 MS. WOODWARD: I don't.

14 THE CHAIRMAN: All six Committee members
15 have said no.

16 One more thing, before we start, again,
17 Mr. Hirsch and Mr. Motley, I will ask you to look at
18 the notice of hearing. And it seems as if the sole
19 issue that we're trying to decide here is whether or
20 not DR 6-101 has been violated in that Mr. Motley has
21 in some way failed to reasonably inform his client
22 about the matters in which his services were, were
23 rendered. And I would ask both of you, if you could,
24 to stick to that issue.

25 And I will tell you that the Committee is

CLARITHA ROWE: EXAMINATION BY COMMITTEEPERSON WOODWARD

1 concerned about two particular points in time. One
2 is what happened before Mr. Rowe, Brian Rowe, pleaded
3 guilty and what was he told at that point, and the
4 other point in time that we find crucial is what
5 happened after the Circuit Court of Appeals denied
6 the appeal. And if you would focus on those two
7 points for the Committee's benefit, we would be most
8 appreciative. Ms. Woodward.

9 BY MS. WOODWARD:

10 Q Thank you very much.

11 Ms. Rowe, if you would look at the Bar's
12 Exhibit No. 3. It has Mr. Motley's letterhead on the
13 front of it. And if you will go to the last page of
14 that exhibit. And there -- the very last page. Mr.
15 Hirsch, could you help her. The very last page.

16 MR. HIRSCH: You mean the receipts?

17 MS. WOODWARD: Yes.

18 BY MS. WOODWARD:

19 Q And there are four receipts on that page.
20 The third one dated, is dated 5-10, and it's received
21 of Claritha Rowe.

22 A Okay. I see that.

23 Q Do you see that?

24 Do you recall being at Mr. Motley's
25 office on May 10th?

CLARITHA ROWE: EXAMINATION BY COMMITTEEPERSONS WOODWARD & MARTIN

1 A I have -- see, I have a habit of keeping
2 everything. I have receipts going back ten years,
3 15, 20 years. And I have envelope there with all my
4 receipts in it. And my last receipt I have, Mr.
5 Hirsch, it's that.

6 Q The question I asked, do you recall being
7 at his office that day in that financial transaction?
8 Do you recall your visit to his office that day?

9 A I don't.

10 MR. MARTIN: What was the answer to that?

11 A The last receipt I had the balance was
12 \$750. That was on March 6th of '96.

13 MS. WOODWARD: I have no further
14 questions, Mr. Chairman.

15 THE CHAIRMAN: Mr. Martin.

16
17 EXAMINATION BY MR. MARTIN:

18 Q I know this receipt on May 10, '96 is --
19 this is not familiar to you in any way?

20 A No, sir.

21 Q No. Well, who was making the payments?
22 Were you making them; was someone else?

23 A I made all the payments.

24 Q You made them. When you made them, you
25 would go to the office and make them in person

1 THE CHAIRMAN: Mr. Hirsch, before you and
2 Mr. Motley begin questioning this witness, I would
3 like to again remind both of you that what we're
4 interested in is the information that passed from Mr.
5 Motley, Mr. Rowe, before the hearing and after the
6 appeal was denied.

7 If you-all could, the Committee would
8 appreciate it, if you would help us out on those two
9 points.

10 MR. MOTLEY: Yes, sir.

11
12
13 BRIAN ROWE,
14 was sworn and testified as follows:

15
16 DIRECT EXAMINATION

17 BY MR. HIRSCH:

18 Q State your name, please.

19 A Brian Rowe.

20 Q Can you-all hear him?

21 A Brian Rowe.

22 Q All right. Mr. Rowe, you were
23 represented by Mr. Motley seated across from me?

24 A Yes, sir.

25 Q For some charges in the City of

1 Richmond --

2 A Yes, sir.

3 Q -- from Happy Mart incident.

4 Before you hired Mr. Motley, had you
5 determined that you wanted to go to trial on the
6 matter or that you were going to plead guilty to some
7 charges?

8 A From my understanding I was going to
9 plead guilty.

10 Q All right. When you hired Mr. Motley,
11 why did you hire him?

12 A Because the lawyer that I had prior to
13 him was -- I felt that she wasn't going to represent
14 me, you know, to the fullest so I hired Mr. Motley.

15 Q All right. Now, you, you went to court
16 on a given day and you pled guilty to some charges.
17 Do you remember that?

18 A Yes.

19 Q All right. Let's back up from that day.

20 Prior to your going to court, did Mr.
21 Motley indicate to you the nature of each of the
22 charges which you were charged with? Did you go
23 over -- did he go over with you the charges?

24 A That I be pleading guilty to?

25 Q The charges that you were charged with.

1 MR. MOTLEY: I'm going to object if -- I
2 think, I think that's already in the transcript, all
3 of the, all that came up before the guilty pleas.

4 THE CHAIRMAN: This is a new witness, Mr.
5 Motley. I'm going to overrule your objection.

6 MR. MOTLEY: Yes.

7 BY MR. HIRSCH:

8 Q Did Mr. Motley go over with you the
9 nature of the charges that you had against him?

10 A No.

11 Q Did you discuss with Mr. Motley the
12 difference between first and second-degree murder?

13 A He discussed it with me?

14 Q Yes.

15 A No.

16 Q Did he discuss with you the consequences
17 of pleading guilty to first-degree murder?

18 A No.

19 Q How about pleading guilty to
20 second-degree murder?

21 A I only found out what, what the sentence
22 carries when I went to court when the judge
23 questioned me. He said was I aware, you know, with
24 this sentence of each, of each charge that carried,
25 and I said yeah.

1 Q But had, in fact, Mr. Motley discussed
2 that with you prior to the hearing?

3 A I can't remember.

4 Q Okay.

5 A I don't know for sure.

6 Q Now, before you went to court and you
7 pled guilty to some charges.

8 A Uh-huh.

9 Q The day before that date.

10 A Uh-huh.

11 Q What was it that you anticipated
12 happening on the hearing date, the following day?

13 What was it you thought would happen?

14 A I don't understand.

15 Q All right. On, on a given date you pled
16 guilty to six charges, did you not?

17 A Uh-huh.

18 Q You pled guilty to robbery, two counts of
19 second-degree murder and three firearms charges;
20 correct?

21 A Uh-huh.

22 Q Now, did you plan on pleading guilty to
23 the two second-degree murder charges when you went to
24 court that morning?

25 A Well, couple of days before I had, before

1 the date I went to plead guilty, he came to me said
2 that only charge I would be pleading guilty to was
3 two second-degree murders and a robbery. But when I
4 got down to the court, he came, he came back to where
5 I was being held at. He said being that two people
6 was killed, they put in extra firearm charges, just
7 two firearm charges.

8 Well, when I had went in, when I had went
9 in for the plea of guilty, I ended up pleading guilty
10 to three. So it went from just two second-degree
11 murders and a robbery to two second-degree murders,
12 two firearms charges, a robbery, and another firearms
13 charge.

14 Q So that's --

15 A It went from three charges to six
16 charges.

17 (Complainant left conference room.)

18 Q Prior to the date you went in and pled
19 guilty, you expected to plead guilty to three charges
20 only; is that what you're saying?

21 A Yes.

22 Q Let me call my secretary.

23 (Mr. Hirsch exited conference room.)

24 MR. HIRSCH: Would you read back my last
25 question, please.

1 (Record read.)

2 BY MR. HIRSCH:

3 Q Did Mr. Motley discuss with you prior to
4 the hearing the fact that three firearms charges had
5 to be also taken care of one way or the other?

6 A No. Firearms charges were never brought
7 up.

8 Q Never brought up.

9 Okay. Now prior to that date that you
10 plead guilty to the six charges, did Mr. Motley
11 discuss with you at any point what the possible
12 sentences would be with reference to those charges?

13 A Before I got sentenced?

14 Q Before you pled guilty.

15 A No.

16 Q Did not?

17 A Huh-uh.

18 Q All right.

19 Now, let's go past the date that you pled
20 guilty to the charges. All right.

21 A Uh-huh.

22 Q Well, let's talk about the day, itself.

23 When did you find out that you were also
24 going to have to plead guilty to the three firearms
25 charges?

1 A After I had -- after I had got to court,
2 he came back and said that the Commonwealth said that
3 being the two people was killed, they will add on two
4 firearms charges. So I go into the courtroom
5 thinking I'm pleading guilty to two, but then somehow
6 I end up pleading guilty to three.

7 Q All right. Did Mr. Motley explain
8 anything to you at that point how that might affect
9 your sentence?

10 A By pleading to the extra firearm charge?

11 Q Yes.

12 A No.

13 Q Did Mr. Motley prior to your pleading
14 guilty discuss with you whether or not he gave the
15 Commonwealth, the prosecution, anything in return for
16 getting the murder charges reduced to second-degree?

17 A Huh-uh. You say gave them anything in
18 return?

19 Q Did Mr. Motley ever tell you he got
20 anything for you for your agreement to plead guilty
21 to second-degree murder?

22 A Huh-uh.

23 Q Okay. Now, let's go past the date on
24 which you pled guilty to the six charges.

25 A Uh-huh.

1 Q After you plead guilty to the six
2 charges, did you see Mr. Motley shortly thereafter?

3 A Yes.

4 Q Did you ask him about why you had pled
5 guilty to six charges instead of five or the --

6 A I never asked him. I asked him when he
7 came back to me, I said how come they was putting on
8 the extra two firearms charges, and he said because
9 something about the Commonwealth. I can't remember
10 exactly what he said.

11 Q All right. Now, there came a point in
12 time you went back to court when you were sentenced?

13 A Yes.

14 Q Right?

15 A Uh-huh.

16 Q Now, between the time that you pled
17 guilty --

18 A Uh-huh.

19 Q -- in court and the time that you were
20 sentenced in court --

21 A Uh-huh.

22 Q -- other than the instance you just
23 talked about, did Mr. Motley come to see you?

24 A Between pleading guilty.

25 Q And sentencing.

1 A I can't remember. He may have. I
2 can't --

3 Q Okay. All right. Did Mr. Motley discuss
4 with you prior to your sentencing what the possible
5 sentence could be?

6 A Yeah. After the pre-sentence report was
7 done, he said he was going over with me what the
8 pre-sentence report, on the last page I think it was,
9 like the pre-sentence guidelines. And he said, you
10 know, this is what I could be charged with. I can't
11 recall exactly what the years was, but I know it was,
12 couldn't be no more than 13 years I think it was like
13 nine months, five months.

14 Being on another date, they came to see
15 me. He mentioned something to me about, about boot
16 camp. He said it's a possibility that the judge can
17 give me boot camp and I do 90 days in boot camp, and
18 so --

19 Q Did Mr. Motley ever indicate to you prior
20 to your sentencing that you could be sentenced to 40
21 years on any -- on one of the charges?

22 A No. The sentencing ranges were never
23 discussed.

24 Q He never told you what the possible
25 sentence range was for each of the charges that you

1 had pled guilty to?

2 A Huh-uh.

3 Q Now, you mentioned 13, I believe?

4 A No. That was the sentencing guidelines.

5 Q Right.

6 A We talking about the, the charges
7 carrying like five years to 40 for second-degree
8 murder. That was never discussed. But --

9 Q Right.

10 A But after the pre-sentence report was
11 done, he said the judge can sentence me within these
12 guidelines. Which I can't remember, I think it was
13 13 years and some months. I can't remember.

14 Q Well, let's talk about that conversation.

15 A Uh-huh.

16 Q How did that come up? What did he
17 specifically tell you about the sentencing
18 guidelines?

19 A Well, he came to see me. We was going
20 over, over the pre-sentence report. He was telling
21 me, you know, you know, just what was in the
22 pre-sentence report. Then we got on the last page.
23 He said, you know, this is all that I could receive
24 between such and such years.

25 Q Do you remember what such and such years

1 was? What was it that he was telling you?

2 Let me ask it another way: Was the
3 number any, anything near 93 years?

4 A No. Huh-uh. I think -- I can't
5 remember -- I think it was like between seven years
6 and 13 months, but later on I learned when I went to
7 the law library that the judge was -- he wasn't
8 obligated to sentence me, sentence me within them
9 guidelines.

10 Q All right. Go on to that.

11 A So when I had got to sentencing, I was
12 looking, I was looking to get sentenced between, you
13 know, the guidelines that was set by the pre-sentence
14 report.

15 Q Did Mr. Motley ever tell you that the
16 judge didn't have to stick to the sentencing
17 guidelines?

18 A No, never told me.

19 Q So you were sentenced to 93 years?

20 A Uh-huh.

21 Q Did that surprise you?

22 A Yes, it surprised me.

23 Q Did you have any communication with Mr.
24 Motley about that, after being sentenced?

25 A If I can, if I can remember, I think he

1 came to see me a couple of hours, a couple hours
2 after I had got sentenced.

3 Q All right. And what did you-all discuss
4 when you-all met?

5 A I can't -- the conversation we had was
6 always short. Only thing I can remember was talking
7 about was, was he was going to put in a motion for,
8 to see if he can take back the guilty pleas.

9 Q Right.

10 A Because he felt the judge, you know, went
11 outside the guidelines that was set by the
12 pre-sentence report.

13 Q Mr. Motley told you he was going to file
14 that motion because the judge went outside the
15 guidelines?

16 A Yeah. In transcript, I think that what
17 he based the motion on that he had went outside the
18 guidelines.

19 Q Did he tell you this or this something
20 you read in the transcript later?

21 A I can't, I can't remember the
22 conversation.

23 Q All right. Did you ask Mr. Motley to
24 appeal your case?

25 A Yes.

1 Q What did you say to Mr. Motley when you
2 asked him to do that?

3 A Well, when I called him -- I called him.
4 We discussed the appeal but really, really a lot of
5 talking was between him and my momma. I didn't
6 hardly talk to him. So a lot of things I learned
7 was, you know, from the conversation that he had with
8 my mom.

9 Q All right. But did you, yourself, ask
10 Mr. Motley to appeal your case?

11 A I discussed the appeal with him, but I
12 can't, I can't really remember, you know, me asking
13 him to appeal the case.

14 Q Do you recall learning of the results of
15 the motion that you mentioned a minute ago?

16 A Yeah, I remember.

17 Q How did you learn that?

18 A When I had went back -- they came, they
19 came and got me for court and I went back down to
20 City Jail but they never, they never, they never
21 called me back into the courtroom, you know, to, to
22 see the results of the appeal, I mean, for the
23 motion. So I, later on I learned, I learned that in
24 the transcripts that he denied the motion because,
25 you know, the defense was that the judge wasn't bound

1 to take back the guilty pleas because, you know,
2 because Mr. Motley had felt that he had went outside
3 the guidelines.

4 Q When an appeal was done on your behalf,
5 did Mr. Motley explain to you what the results of the
6 appeal could be for you? Why he was going to proceed
7 with the appeal; what its purpose was?

8 A What its purpose in filing the appeal?

9 Q Yeah.

10 A No. He didn't never told me. He just
11 said he was going to file the appeal. He never told
12 me what grounds, what grounds he was going to base it
13 on or nothing.

14 Q Well, what was the result that you wanted
15 as a result of the appeal? What did you want to
16 happen as a result of Mr. Motley's filing an appeal
17 for you?

18 A Take back the sentences that, that, you
19 know, that the judge gave me.

20 Q Did you learn the results of the appeal?

21 A Did I learn the results of the appeal?

22 Q Uh-huh. The decision of the Court.

23 A Yeah. Yes.

24 Q That was the Court of Appeals; right?

25 A Uh-huh.

1 Q All right. What was the decision of the
2 Court of Appeals?

3 A They denied it.

4 Q All right. Now, how did you learn about
5 that?

6 A I had -- I called Mr. Motley I think it
7 was. I called Mr. Motley in May and asked Mr. Motley
8 had he heard; had he heard, you know, how the appeal
9 was going. He said, no, we hadn't heard anything.

10 I called him back in June. I asked Mr.
11 Motley had he heard anything from appeal. He said
12 yes, they denied it. No. His exact words were we
13 didn't win it. I was like, hum, well, what happened.
14 He said they denied, they denied it a couple of weeks
15 ago. But a couple of weeks ago when I had called
16 him, he told me that he hadn't heard anything.

17 So, so that time when I called him, he
18 said he hadn't heard anything about the appeal. The
19 appeal was already denied. So he lied to me, told me
20 that, you know, he hadn't heard anything about the
21 appeal when the appeal was already denied.

22 Q Did you talk to anybody else about that?

23 A About the appeal?

24 Q Yeah.

25 A Talking about as far as a lawyer?

1 Q Did you talk to your mother about it?

2 A Yeah, I called her I think like five
3 minutes after I talked to Mr. Motley, and I told her
4 what Mr. Motley had said and she said she was going
5 to give him a call.

6 Q Did you write any letters to Mr. Motley?

7 A I wrote him -- I think I wrote him a,
8 like a couple of days, like I talked to him. He told
9 me the appeal was denied. I asked him why. How come
10 he didn't send me any results in the mail. So I
11 wrote him. I said, Could you please send me my
12 transcript, you know, the results from the petition,
13 you know, the brief in opposition that the
14 Commonwealth was arguing, you know, being like things
15 was like on a Monday that I received, you know, a
16 package containing all my transcripts and stuff.

17 Q Let me show you what's marked Exhibit 10.
18 Is that the letter that you wrote to Mr. Motley?

19 A Yeah, that's it.

20 Q Now, this is dated June 18, 1996.

21 A Uh-huh.

22 Q Okay. It's your testimony that was a
23 couple of days after the phone call?

24 A Yeah.

25 Q Did Mr. Motley send you a copy of the

1 decision of the Court of Appeals?

2 A Yeah.

3 Q After this, after this letter?

4 A Yes. I received it on a Monday following
5 this week because I received it, the decision of the
6 court.

7 Q Did Mr. Motley explain to you that at any
8 time that there was another step that you could
9 appeal this case to?

10 A Well, on a conversation on the phone I
11 asked him, I asked him what else could be done. And
12 I can't remember what his answer was, but I know my
13 momma called him. My momma called him and asked him.
14 Evidently she called him, was there anything else
15 could be done. And he said, yes, that he would
16 charge her extra thousand dollars to appeal to next
17 step. But, but the time period between, you know,
18 the decision of the court right there and, and to
19 appeal it to the Supreme Court had already expired.

20 Q Did he tell you that?

21 A No, he never told me.

22 Q Didn't tell you that?

23 A Huh-uh.

24 Q Would you answer the questions please of
25 Mr. Motley.

1 A Uh-huh.

2

3 CROSS-EXAMINATION

4 BY MR. MOTLEY:

5 Q Okay. As far as this trial, you were an
6 accomplice with a Gerald Banks?

7 A Yes.

8 Q Do you know what kind of sentence he
9 received for these charges?

10 MR. HIRSCH: Objection. I think it's
11 irrelevant.

12 THE CHAIRMAN: I'm going to sustain your
13 objection, Mr. Hirsch.

14 MR. MOTLEY: Okay.

15 THE CHAIRMAN: Excuse me, Mr. Motley. If
16 anybody on the Committee disagrees.

17 Go ahead, Mr. Motley.

18 MR. MOTLEY: I think it goes to his
19 expectation, but that's fine.

20 THE CHAIRMAN: If you would move on with
21 the next question.

22 BY MR. MOTLEY:

23 Q Before you hired me, you had Mary Langley
24 as your attorney; right?

25 A Yes.

1 Q How long was she your attorney?

2 A From my arraignment, of my arraignment up
3 'til I hired you.

4 Q Did she discuss with you-all the time
5 limits and things such as that? What kind of
6 conversation did you-all have about your trial or
7 pleading guilty or anything like that?

8 MR. HIRSCH: Mr. Chairman, I object to
9 this line of questioning because the representation
10 that's on the table is not Ms. Langer's, it's Mr.
11 Motley's.

12 THE CHAIRMAN: I don't know if that --
13 I'm having a difficult time, Mr. Motley, because I
14 can't hear your questions. I can't rule on Mr.
15 Hirsch's objection.

16 MR. MOTLEY: No. I asked him as far as
17 his communication with Ms. Langer, what did she tell
18 him about the times or his expectations, things such
19 as that.

20 THE CHAIRMAN: Mr. Hirsch, I am going to
21 overrule that objection.

22 BY MR. MOTLEY:

23 Q Again, what did Ms. Langer tell you about
24 your expectation as far as how much time you might
25 get and so forth and so on or whether or not you

1 should plead guilty or not guilty and all that?

2 A When I had Ms. Langley, we never, we
3 never got that far as far as, you know, discussing
4 the times and stuff like that. We was working on,
5 you know, basically, you know, the evidence they had
6 against us. We never got as far as the charges and
7 stuff. See, when I hired you, I still, I still, if I
8 can remember, I think I still had first-degree murder
9 charge.

10 Q Right. Uh-huh.

11 THE CHAIRMAN: Mr. Motley, would you
12 please speak up so we can hear you down here.

13 MR. MOTLEY: Yes.

14 BY MR. MOTLEY:

15 Q Okay. After the -- you knew you were
16 charged with six charges; correct? You knew you had
17 six charges against you?

18 A If I can remember. From my, from my --

19 Q You don't recall how many charges you had
20 against you.

21 A Huh-uh.

22 Q You seem to recall these phone
23 conversations between myself and you in, I guess,
24 April, May and June pretty well; correct?

25 A Yeah.

1 Q But there's a lot of other things you
2 don't remember; isn't it true?

3 A Yeah. I mean, I remember the
4 conversations that we had. I can't remember, you
5 know, exactly, you know, the charges, you know. I
6 mean, other stuff that we talking about, you know, a
7 little bit back further, you know.

8 Q Okay. And at the time that all this was
9 going on, are you on any kind of mental medication
10 now or depression medication?

11 A Huh-uh.

12 Q But at the time that the pre-sentence
13 report was going on, do you remember probation
14 officer coming talk to you for pre-sentence report?

15 A Mary Dunlap.

16 Q Yeah.

17 Do you know after she talked to you, you
18 called me, wanted me to see if she got all the right
19 answers because you were on depression medicine,
20 didn't really know what you said or thought you might
21 have said some of the wrong things?

22 A Now, she came to see me, she asked me
23 what was wrong. I said I had -- because the
24 medication I was taking was like sleeping medicine.

25 Q Uh-huh.

BRIAN ROWE: CROSS EXAMINATION

1 A So that day when she came to see me, she
2 just happened to caught me the day I had took the
3 medication.

4 Q So how long had you been taking that
5 medication?

6 A When I first got locked up down at the
7 jail in January, I think. I got off of it, you know,
8 little time after that, you know.

9 Q Uh-huh. But you were on it when she did
10 the pre-sentence report?

11 A Yeah.

12 Q So that means that you were on it
13 basically a lot of time that you and I talked; right?

14 A The conversation that we had in April,
15 May or June I won't on it.

16 Q Uh-huh. But I'm talking about during
17 the -- whether or not to plead guilty, what the
18 sentence might be, whether or not the sentence
19 guidelines were discretionary or not, you were on
20 those medications then; right?

21 A I can't remember. I don't see what the
22 medication got to do with the conversation that we
23 had.

24 Q Well, it has to do with your memory.
25 That's what I'm talking about.

BRIAN ROWE: CROSS EXAMINATION

1 Why did you have me question Mary Dunlap
2 about the answers you gave when she questioned you
3 about the pre-sentence report? Why did you ask me to
4 check with her to see if she had the right answers?

5 A Uh-huh.

6 Q Do you remember asking me to check with
7 her to see if she had the right answers?

8 A I can't remember. I may have, but I
9 can't remember doing so.

10 Q Uh-huh. And when we were in trial when
11 you were pleading guilty, the judge asked you a lot
12 of questions, didn't he?

13 A Yeah.

14 Q You answered yes to all of them, didn't
15 you?

16 A Told me when I was pleading guilty.

17 Q Right.

18 A I mean, being that I didn't know nothing
19 about the law, you know, when Judge Wilkerson was
20 reading the charges out to me, you were whispering in
21 my ear telling me which, you know, you know, plead
22 guilty to like if he read out a charge second-degree
23 murder, your whisper in my ear say plead, plead
24 guilty, plead guilty.

25 Q Uh-huh. And before we even went in

1 there, I had a questionnaire and I came back to your
2 holding area and we went through and filled it out?

3 A Yeah.

4 Q Didn't we?

5 A Uh-huh.

6 Q And did you state any objections then
7 about what was going on?

8 A Only thing I asked her, I said, how come
9 two firearms charges was being brought up. You said
10 because the Commonwealth wouldn't accept it because
11 two people was killed, so they put in two firearms
12 charges.

13 Q Well, you were getting -- pleading guilty
14 to second-degree murder as opposed to first-degree
15 murder; right?

16 A Yeah.

17 Q Uh-huh. And when we did this motion
18 to -- for the judge to withdraw, motion to withdraw
19 the guilty plea, if you -- if they had followed the
20 sentencing guidelines, we wouldn't have filled that
21 motion out, would we?

22 A If they had to --

23 Q If they had followed the guidelines,
24 would we have done that motion?

25 A I don't understand what you're saying.

1 Q Well, would we have put in a motion for
2 you to withdraw your guilty plea if the judge had
3 followed the sentencing guidelines?

4 MR. HIRSCH: Mr. Chairman, I think that
5 was a question that was a matter of strategy on the
6 part of the lawyer and not the, not the client. I'm
7 not sure the client can answer the question.

8 MR. MOTLEY: But, but Mr. Hirsch asked a
9 lot of questions along that line because --

10 MR. GIBNEY: I for one understand if he
11 had only gotten 13 years we probably wouldn't be
12 here.

13 MS. WEBSTER: That's the way he asked the
14 question.

15 THE CHAIRMAN: Go ahead. Why don't you
16 ask that question. We're going to overrule your
17 objection, Mr. Hirsch.

18 MR. GIBNEY: Question is difficult to
19 understand. Why don't you ask him if he had gotten
20 13 years, would he have appealed?

21 BY MR. MOTLEY:

22 Q Right. If you got 13 years as the
23 sentencing guidelines, would you have appealed?

24 A I mean from, from what I was down in
25 jail, I wasn't real knowledgeable about a lot of the

1 laws or a lot of things that was taking place in
2 court. So I was just following his guidance.
3 Whether he put in the motion was no -- was upon
4 himself. I didn't even know what a motion was to
5 withdraw a guilty plea.

6 Q Uh-huh. Okay. And around April 22nd,
7 were you ever at Baskerville Correctional Center?

8 THE CHAIRMAN: Mr. Motley, you have to
9 help us with the year.

10 BY MR. MOTLEY:

11 Q April 22nd of '96, were you at
12 Baskerville Correctional Center?

13 A Baskerville?

14 Q Uh-huh.

15 A No.

16 Q Uh-huh. Are you saying you were at
17 Brunswick Correctional Center the whole time?

18 A I went from the City Jail to Southampton
19 Receiving -- Reception Center.

20 Q You were never at Brunswick Correctional
21 Center?

22 A That's where I'm at now.

23 Q Were you there on April 30th?

24 A Of what year, '96?

25 Q '96, uh-huh.

1 A Yes.

2 Q Okay. They never put you in sort of a
3 place where you could do work detail or something at
4 Baskerville Correctional Center?

5 A No.

6 Q So if the -- if I called down there and
7 the lady checked the records and said you were there,
8 she would be in error; is that correct?

9 A Baskerville Correctional Center?

10 Q Right.

11 A No, I won't never at no Baskerville
12 Correctional Center.

13 Q Okay. So the lady's records down there
14 are incorrect then; that's what you're saying?

15 A They must have because when I left in the
16 City Jail, I went straight to Southampton Receiving
17 Center, which is in Capron, Virginia. From there I
18 went to Brunswick Correctional Center, which is in
19 Lawrenceville, Virginia.

20 Q Okay. Tell me about what time was this;
21 about when was this?

22 A What time was what?

23 Q What dates was this when you went to this
24 receiving center?

25 A I went from the receiving center --

1 Q About what dates was this?

2 A -- September 7th, 1995 and I got to the
3 receiving center. I left the receiving center in
4 March, March '96.

5 Q Uh-huh. What, around April?

6 A No.

7 Q Every time you called me, you called
8 collect, didn't you?

9 A Yeah. No, couldn't.

10 Q But you're saying that those phone
11 conversations weren't from you or, or --

12 MR. HIRSCH: Mr. Chairman, Mr. Motley's
13 given the witness a couple of his own phone bills.
14 I'm not sure for what purpose the witness is going to
15 be looking at them.

16 THE CHAIRMAN: I was getting ready --
17 what had been handed to him.

18 MR. MOTLEY: It was the phone bill I had
19 submitted.

20 THE CHAIRMAN: Respondent's No. 1?

21 MR. MOTLEY: Yes.

22 MR. HIRSCH: But I don't think the
23 witness has ever seen Mr. Motley's phone bills.

24 A It could not have been me. You can, if
25 you-all like, you can check the Department of

BRIAN ROWE: CROSS EXAMINATION

1 Corrections. I wasn't at Southampton Receiving on
2 April 22nd. Must have been one of, one of your other
3 clients.

4 BY MR. MOTLEY:

5 Q I don't have any down there.

6 Did you ever call me from the Receiving
7 Center?

8 A Yes, I think I have.

9 Q Uh-huh. And you called me from Brunswick
10 as well?

11 A Yes.

12 Q Do you recall what the conversations
13 were?

14 A I called you a number of times.

15 THE CHAIRMAN: Mr. Motley, excuse me. Is
16 this, I would take it, for the period after April 15,
17 1996?

18 MR. MOTLEY: Oh, yes, sir.

19 THE CHAIRMAN: Is it between April 15,
20 1996 and May 15, 1996?

21 MR. MOTLEY: Yes, sir. It is between
22 these April 30th and April 22nd.

23 THE CHAIRMAN: All right.

24 BY MR. MOTLEY:

25 Q Do you recall conversation that we had

1 when you called from Baskerville Correctional or the
2 Receiving Center in Brunswick Correctional Center?

3 A He keeps saying Baskerville. I was never
4 there.

5 Q Well, the Receiving Center, the Receiving
6 Center?

7 MR. HIRSCH: The Receiving Center is in
8 Capron, which is Southampton Reception -- Receiving
9 Center, which is not the same thing as Baskerville.
10 That's what the witness has already testified to.
11 We're talking about two different animals here.

12 MR. GIBNEY: Is not in South Hill.

13 THE CHAIRMAN: This is South Hill right
14 here on the bill. I understand that's what your bill
15 says. Is that where the Receiving Center is?

16 THE WITNESS: No, it's called
17 Southampton.

18 THE CHAIRMAN: Capron. I understand it's
19 in Capron.

20 MR. GIBNEY: A hundred miles east of
21 South Hill.

22 MS. WEBSTER: South Hill.

23 THE CHAIRMAN: I don't want to
24 oversimplify this, Mr. Motley, but does it really
25 make any difference where he called you from? Can we

1 get to the issue of whether or not he called you?

2 MR. MOTLEY: All I can say, I talked to
3 him in this period, and I have called down there.
4 This is the phone numbers that he was there at both
5 of these places on these dates, and I have no other
6 people there.

7 MS. WEBSTER: Well, that's a matter of
8 evidence.

9 THE CHAIRMAN: I think you're going to
10 have to testify to that when you testify. At this
11 point I understand that he said he hasn't called you
12 from these places on these two different dates; is
13 that, is that correct?

14 MR. MOTLEY: Well, he said he called me
15 from the Receiving Center.

16 THE WITNESS: I couldn't have called him
17 from the Receiving Center because I left there in
18 March. If I did call him in April, it was at
19 Brunswick County. So evidently somebody else that
20 was at Southampton called him and that's, that's what
21 he's showing me because it wasn't me. I left from
22 down at City Jail September 7th and I went to
23 Southampton Receiving Center and I left the Reception
24 Center in March of '96 and I went to Brunswick
25 Correctional Center and I been there, I been at

1 Brunswick since March of '96.

2 THE CHAIRMAN: Move on, Mr. Motley.

3 BY MR. MOTLEY:

4 Q So you could have made this call on April
5 30th, '96 if that was a phone call on April 30, '96;
6 is that correct? April 30th of '96?

7 A At Brunswick?

8 Q Uh-huh. Uh-huh.

9 A Yeah.

10 MR. MOTLEY: No further questions at this
11 time.

12 MR. HIRSCH: No questions.

13 THE CHAIRMAN: Ms. Woodward.

14

15 EXAMINATION BY MS. WOODWARD:

16 Q Mr. Rowe, when you attempt to call your
17 lawyer, do you write it down? Do you keep any kind
18 of record of your attempted contacts with Mr. Motley?
19 I realize he's not your lawyer now, but when he was,
20 did you keep any notebook or anything about when you
21 tried to call him and when you talked to him?

22 A Huh-uh. A lot of time when I tried to
23 call him, his secretary answered the phone said he
24 wasn't there. It was a lot of time that I called,
25 that they didn't accept the phone calls.

BRIAN ROWE: EXAMINATION BT WOODWARD & WEBSTER

1 Q But you didn't keep your own notations
2 about when you tried to call?

3 A Huh-uh.

4 Q And on those occasions when you did call
5 and talk with Mr. Motley, did you make any notes in a
6 notebook or anything about those conversations?

7 A No.

8 Q And did you receive anything by mail from
9 Mr. Motley between April 15, 1996 and May 15, 1996?

10 A No. In fact, the only thing I received
11 from Mr. Motley from, from him the whole time being
12 my attorney was in June when I wrote that letter
13 right there, he responded sending me the decision on
14 appeal.

15 Q Okay.

16 MS. WOODWARD: I have no further
17 questions.

18 THE CHAIRMAN: Ms. Webster.

19

20 EXAMINATION BY MS. WEBSTER:

21 Q When you talked to Mr. Motley, I think
22 you said it was either May or June of '96?

23 A Uh-huh.

24 Q And he told you that at that time the
25 appeal had been denied. Was there such a

1 conversation?

2 A In June.

3 Q Okay. He told you that, then that the
4 appeal had been denied?

5 A He said it had been denied. He said it
6 had been denied a couple of weeks ago. Those were
7 his exact words.

8 Q Did you say anything, say anything to him
9 then like, well, Why didn't you tell me sooner or
10 anything? Did you say anything of that nature at
11 all?

12 A I asked him how come he didn't send me
13 anything in the mail. He said that he had tried to
14 get in contact with my mother, but she was never at
15 home.

16 Q I see. Did he say anything else by way
17 of explanation, anything in addition to what, to
18 that?

19 A I can't remember.

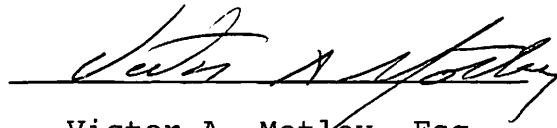
20 Q Okay. Did he say anything to you about
21 whether or not an additional appeal would have been
22 successful?

23 A No, he never said that.

24 Q I would like to go back ask you a little
25 bit about yourself at the time that you hired, you

CERTIFICATE

I, Victor A. Motley, Esq. hereby certify that three (3) copies of the foregoing APPENDIX, VOLUME 2 was mailed postage prepaid to the Office of the Attorney General at 900 E. Main Street, Richmond, VA 23219 this 9th day of May 2000.

A handwritten signature in cursive script, appearing to read "Victor A. Motley", written over a horizontal line.

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