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**00-247**

NEXT CASE ON THE COURT'S DOCKET THIS MORNING IS WEAVER VERSUS STATE. HAPPENS  
IN COUNSELL READY YOU MAY PROCEED.GOOD MORNING.

GOOD MORNING YOUR HONORS.MAY IT PLEASE THE COURT. MY NAME IS RICHARD ROSENBAUM  
ON BEHALF OF JEFFREY WEAVER AND I HAVE RESPECTFULLY RESERVED SIX MINUTES OF MY  
TIME THYME FOR REBUTTAL.

CHIEF JUSTICE: OF MY TIME FOR REBUTTAL.

CHIEF JUSTICE: ALL RIGHT. COULD YOU TELL US THE ISSUES YOU WILL BE ADDRESSING THIS  
MORNING?

MR . WEAVER'S GOING TO TRIAL WITHOUT COUNSEL AND THE ISSUES REGARDING THE FERETTA  
HEARING , AND THE QUESTION O F THE STUN BELT WHICH ACTUALLY WENT OFF AND THE  
SENTENCES CONCERNING THE DISPROPORTIONAL SENTENCE WHERE JEFFREY WEAVER IS NOT THE  
WORST OF THE WORST .

ARE YOU GOING TO ADDRESS THE OVERRIDE ISSUE?

YES . THAT IS THE SENTENCING ISSUE.

WHAT ABOUT THE EXTENT THAT TETTER IS IMPLICATED?

WE BELIEVE THAT THAT IS IMPLICATED, ALSO.I WOULD LIKE TO START WITH SOME OF THE TRIAL  
ISSUES BECAUSE JEFFREY WEAVER'S REQUEST IS REALLY FOR A NEWTRIAL.

CHIEF JUSTICE: WE HAVE A LIMITED AMOUNT OF TIME , ANDSO IF YOU HAVE DECIDED WHICH  
ISSUES YOU ARE GOING TO ADDRESS, IF YOU WOULD GO RIGHT TO THE ISSUES THAT YOU HAVE  
SET OUT I N YOUR BRIEF AND TELL US WHICH ISSUE YOU ARE GOING TO BE ADDRESSING.

ISSUES NUMBER ONE AND TWO CONCERNING JEFFREY WEAVER BEING FORCED TO GO TO TRIAL  
WITHOUT HAVING A COUNSEL. JEFFREY WEAVER WAS INITIALLY APPOINTED COUNSEL AND  
SHORT LY AFTER THAT THE PUBLIC DEFENDER ASKED TO WITHDRAW BASED UPON A CONFLICT  
AND SHORTLY AFTER THAT MR . MULDAUR WORKED ON THE CASE FOR TWO YEARS. MICHAEL  
STATS, OUR STATE ATTORNEY WAS TRYING THIS CASE HIMSELF , PERSONALLY . THERE WERE  
OVER 250 WITNESSES THAT WERE LISTED PRETRIAL.

BY THE TIME THAT HE HAD BEEN REMOVED BECAUSE OF THEPROBLEMS THAT OCCURRED I N THE  
, WITH THE CASE OF MEL JERRY HAVE MEL VERY , HOW MANY MELVER , HOW MANY DEPOSITIONS  
HAD BEEN TAKEN?

MORE THAN HALF OF THEM. SOME O F THE KRERBL OFFICERS HAD NOT BEEN TAKEN BUT THE  
MAJORITY OF THE OFFICERS HAD. THERE WERE OVER 99 OFFICERS THERE WHEN JEFFREY WAS  
APPREHENDED OR THERE IN THE SEARCH AFTER JEFFREY RAN AWAY.

WHAT D O YOU DO NOW IN A SITUATION WHERE NOW , UNFORESEEN TO EVERYBODY , YOU HAVE

GOT THIS PENALVER TRIAL THAT REALLY BECAME , LOOMED LARGE , IT HAD BEEN A N EIGHT-MONTH TRIAL , EVERY OTHER CASE HAD BEEN PUT ON THE BACK BURNER AND NOW YOUHAVE GOT THE STATE SAYING WITNESSES ' MEMORIES AREGOING TO DIM AND HE IS NOT ABLE TO TELL THE JUDGE, ATTHE TIME O F THE LAST REQUEST FOR CONTINUANCE , I WILL B E READY TO GO TO TRIAL IN "X" NUMBER OF MONTHS. HE SAYS I NEED THIS INDEFINITE CONTINUANCE. IT IS , YOU KNOW, SO , IS IT GOING TO BE ANOTHER YEAR, TWO YEARS , THREE YEARS , FOUR YEARS? IS THERE SOME PLACE THAT A JUDGE HAS, I MEAN, WOULD YOU CON SEETHE SEED THAT THERE IS WOULD YOU CONCEDE THAT THERE IS SOME TIME THAT THE JUDGE WOULD SAY WE KNOW THISHAS BEEN GOING ON TOO LONG.YOU ARE DILIGENT , JUST OVER LOADED BECAUSE OF UNFORESEEN CIRCUMSTANCES?

IT DOES TALK ABOUT THEFACT THAT THE JUDGE HAS DISCRETION. IN THE ORIGINAL CASE

WE KNOW THERE IS NO CONFLICT, THE ORIGINAL CASE SAYS THERE ISN'T , BUT WE ARETALKING ABOUT A LAWYER WHO IS BEING DILIGENT , BUTBECAUSE OF HIS VERY SIGNIFICANT OTHER OBLIGATIONS , CAN'T GIVE THE JUDGE A TIME THAT HE IS GOING TO BE AVAILABLE TO TRY THIS CASE , WHICH SAID ATTHAT POINT , HALF THE WITNESSES HAD BEEN DEPOSED, SO IT I S PRESUMABLY ANOTHER HALF THAT STILL HAS TO BE DEPOSED , AND HOW DO YOU , HOW , THE JUDGE IS IN THAT SITUATION.WHY ISN'T THAT , REALLY , WITHIN HIS DISCRETION AT THAT TIME? NOT BECAUSE THERE IS A CONFLICT BUT BECAUSE THE ADMINISTRATION OF JUSTICE REQUIRES THAT THE CASE BE TRIED. I AM TROUBLED BY T I UNDERSTAND THE DEFENDANT'S POINT, BUT I AM LOOKING AT IT , ALSO , FROM THE POINT OF THE SYSTEM AND THE ADMINISTRATION OF JUSTICE AND WONDER WHERE IS THAT POINT WHERE SOMEONE, HE DIDN'T GIVE HIM A DATE. HE DIDN'T SAY, WELL , I COULD BE READY ONE YEAR FROM TODAY.

HE TALKED ABOUT I COULD BE READY IN SIX MONTHS. I CAN BE READY AS SOON A S PENALVER IS DONE.

BUT PENALVER , THAT IS THE PROBLEM, IS PENALVER WAS GOING TO BE ANOTHER 8-MONTHTRIAL , AND SO W E ARE STAYINGTHIS WILL BE THE NEXT CASE AFTER PENALVER IS OVER, AND PENALVER MAY BE OVER SOMETIME IN THE NEXT FEWYEARS.

AND, ALSO, IF , IF HALF THE WITNESSES HAD NOT BEEN DEPOSED AND SOME OF THOSE WITNESSES WERE CRUCIAL WITNESSES , HOW WOULD MULDOFF HAVE BEEN AVAILABLE RIGHT AFTER PENALVER WAS OVER?

THE WAY THAT PENALVER WASGOING , THEY WERE GOING HALF DAYS, SO MR . MULIFF WAS USING SOME OF THOSE HALF DAYS TO GET READY ON THE WEAVER CASE H THERE IS NOTHING ETCHED IN STONE THAT SAID WEAVER 'S CASE HAD TO GO AFTER PENALVER . IN FACT , SLIPPING I N IT BETWEEN THE FIRST AND SECOND PENALVER CASE. AND IT IS COMMON FOR DEATH PENALTY CASES TO TAKE A NUMBER OF YEARS , AS THIS COURT SEES ALL OF THE TIME. PENALVER WASN'T GOING ANYPLACE ANYWAY .

WAS THIS THE SECOND SCHEDULING OF PENALVER ?

IT WAS SCHEDULED. BUT IF HE COULD HAVE GOTTEN THIS CASE TO TRIAL , IT WOULD HAVE BEEN THE SAME TIME THAT HE WAS FORCED TO GO TO TRIAL ALONE.

WE DIDN'T KNOW THAT. THE JUDGE DIDN'T KNOW THAT WHEN HE SAID YOU ARE TOO BUSY AND WE ARE GOING TO APPOINT SOMEBODY ELSE.THERE IS NO WAY THE JUDGE COULD HAVE KNOWN WHAT WAS GOING TO HAPPEN IN THE FUTURE, BUT HE HAD T O GO ON SOMETHING. ARE WE THEN GOING TO GO BACKWARD AND WITH 20/20 HINDSIGHT SAY THIS IS WHAT COULD HAVE HAPPENED AND THEREFORE HE ABUSED HIS DISCRETION?

THAT MAKES IT VERY DIFFICULT AND SPINS BACK INTO JUSTICE PAR GENT'S ARGUMENT OR

QUESTION JUSTICE PARIENTE'S ARGUMENT OR QUESTION. I AM SORRY . THERE IS NO WAY TO TELL WHEN A LAWYER IS GOING TO BE READY , BUT MR . MULDOFF'S SUGGESTION WAS GET ANOTHER LAWYER TO HELP ME OUT AND WE CAN GET BACK INTO TRIAL AND THE JUDGE SAID, NO , ONLY ONE COUNSEL IS ALLOWED AND THEN THE DEATH PENALTY COUNSEL

IN A FANTASTIC A FANTASTIC ATTORNEY IN A COMMUNITY , EVERYONE WOULD LOVE TO HAVE HIM REPRESENT THEM, AND THE JUDGE SAYS YOU CAN DO AS MANY AS YOU CAN BUT WE CAN'T LET YOU REPRESENT HIM . HOW DOES THAT STEP OVER THE PREDICT ABILITY. I HAVE HEARD ALL YOUR ARGUMENTS, AND I HAVEN'T HEARD YOU SAY WHAT IS THE CRITERIA BY WHICH WE MUST MEASURE THAT?

I THINK WHEN A CASE CAN PROCEED TO TRIAL, BECAUSE THIS IS SO IMPORTANT TO A DEFENDANT , YOU HAVE TO, ALSO , LOOK AT WHAT IS THE RELATIONSHIP BETWEEN THE DEFENDANT AND HIS ATTORNEY. THIS IS NOT THE TYPE OF CASE WHERE MR . WEAVER WENT OUT AND HIRED THE LAWYER OF HIS CHOICE. HE WAS APPOINTED A LAWYER , ONCE THE COURT GAVE HIM THAT LAWYER WHEN THERE IS NO CONFLICT AND IT APPEARS THAT THE LAWYER CAN GET THE CASE TRIED , AND I AM NOT SAYING IT NEEDS TO BE THREE MONTHS OR SIX MONTHS OR A YEAR FROM NOW.

IT DOESN'T APPEAR IN IN CASE THAT HE COULD GET THE CASE TRIED.

HE CAN.

IT DOESN'T APPEAR FROM THE TRANSCRIPT, BECAUSE ALL OF THE QUESTIONS THAT YOU HAVE HEARD THIS MORNING , IS THAT THERE WAS NO PROMISE OR EVEN SUGGESTED DATE TO TRY THIS CASE. IT WAS , I HAVE GOT A LOT OF WORK, JUDGE , AND GET ME SOMEONE ELSE. THAT CHANGES THE ENTIRE SYSTEM , DOES IT NOT?

BUT WHAT THE TRIAL JUDGE SHOULD DO IS SAY THIS IS GOING TO BE OUR DATE AND LET'S SEE HOW YOU ARE COMING. THIS TRIAL JUDGE DIDN'T DO. THAT HE SAID LET'S NOT SET A FIRM DATE EVEN THOUGH MR . SACKS KEPT SAYING LET'S SET ONE. HE SAID LET'S SEE IT IN THREE MONTHS AND SIX MONTHS

HOW CAN HE DO THIS?

I THINK HE SHOULD SAY WE ARE GOING TO DO IT IN MARCH 2006 AND LET'S GOVERNMENT.

WHAT DOES THE TRIAL JUDGE DO?

HE ASKED HIM TO BE READY.

ARE YOU ASKING US TO SAY THAT, IF A DEFENDANT DOES NOT WANT TO DISCHARGE HIS ATTORNEY THAT , THE TRIAL JUDGE HAS TO LET THE DEFENDANT HAVE THAT ATTORNEY? I MEAN, IN ESSENCE THAT IS WHAT YOU ARE ASKING US TO SAY.

THAT IS. AS LONG AS IT IS REASONABLE , AND WE BELIEVE IT IN THIS CASE, IT WAS REASONABLE.

I GUESS THE WHOLE QUESTION, THEN, BECOMES WHEN DO WE , WHEN DOES IT BECOME REASONABLE OR UNREASONABLE , TO CONTINUE WITH AN ATTORNEY, WHO FOR TWO YEARS , HAS HAD THE CASE , HAS ONLY DONE HALF OF THE WORK ON THE CASE , AND IS NOW TELLING THE COURT THAT I STILL HAVE A MORE IMPORTANT CASE TO DEAL WITH , AND I JUST CAN'T GIVE YOU A FIRM DATE ON THIS ONE.

I DON'T THINK THEY WERE SAYING MORE IMPORTANT CASE. EVERY LAWYER HAS TO LINE THEM UP AND TRY THEM AS THEY COME.

BUT ANOTHER CASE THAT HE HAS TO DO FIRST.

MY ONLY WAY TO ANSWER THAT IS THAT I THINK THAT DEFENDANTS ARE ENTITLED TO STAY WITH THEIR COUNSEL , AND THAT IS WHAT THE CASE LAW FROM THE UNITED STATES SUPREME COURT SEEMS TO SAY. IT DOESN'T SAY IT IS ABSOLUTE AND I WOULD BE THE FIRST TO CONCEDE THAT, BUT ONCE THE BOND STARTS , ONCE YOU START BONDING WITH YOUR CLIENT, THE CLIENT HAS THE EXPECTATION THAT YOU CANNOT TAKE THAT ALL THE WAY THROUGH IF WE JUMP INTO THE NEXT ARGUMENT , WHAT HAPPENED HERE IS THEN HE GETS ED CILANTRI IS APPOINTED TO THE CASE AND HE DOESN'T LIKE THE DEFENSE THAT MR . CILANTRI IS PROPOSING , SO LO AND BEHOLD HE HAS TO GO TO TRIAL BY HIMSELF.

THE TEST IS UNDER NELSON , CORRECT?

CORRECT.

I MEAN , WE HAVE GOT TO USE THE PRECEDENT OF THE COURTS , IN DETERMINING THE BOUNDARIES UNDER WHICH WE ARE GOING TO SAY, FROM AN APPELLATE LEVEL, THAT THE TRIAL JUDGE COMMITTED ERROR. AND OUR BOUNDARIES, IN SO FAR AS MR . CILANTRI IS CONCERNED, NELSON, ISN'T IT?

YES. WE HAVE ALLEGED A NELSON VIOLATION. WE HAVE ALLEGED A FERETTA VIOLATION.

AND SO I DON'T SEE HOW THIS WHOLE THING ENDS UP WITH A PREJUDICE , AS FAR AS THE DEFENDANT WEAVER IS CONCERNED. AND , UNLESS THERE COULD BE SOME DEMONSTRATION OF A NELSON VIOLATION.

WE BELIEVE THERE WAS A FERRETTA VIOLATION , BECAUSE IT WASN'T SHOWN ON THE RECORD THAT MR. WEAVER WAS COMPETENT TO TRY THE CASE HIMSELF. HE DIDN'T HAVE A COLLEGE EDUCATION. HE HAD ONLY RECEIVED A GED WHILE HE SAID HE TRIED

THAT WAS HIS CHOICE , WAS IT NOT?

WELL , IT WAS ONLY HIS CHOICE, WHEN FACED WITH EITHER I TRY THE CASE MYSELF AS A LAY PERSON OR I GO WITH SOMEONE WHO IS BASICALLY GOING TO PLEAD MY ME GUILTY TO A PLEAD ME GUILTY TO A LESSER OFFENSE THAT I DON'T WANT. IT IS BASICALLY THE SAME TYPE OF DEFENSE THAT WAS QUESTIONED IN THE LAST HEARING. NOW, WHEN DOES A LAWYER HAVE AN OBLIGATION TO GO FORWARD? MR . CILANTRI THOUGHT THAT THE DEFENSE WAS THE BEST THING FOR MR . WEAVER, AND MR . WEAVER FELT THAT THE BEST DEFENSE WAS IF HE COULD FIND TWO WITNESSES , AND IF THERE WAS THE CONSPIRACY THEORY COULD BE BELIEVED BY THE JURY.

IS THAT THE DEFENSE THAT HE USED AT TRIAL ?

HE DIDN'T USE THAT DEFENSE ULTIMATELY, BECAUSE ONCE HE SPOKE WITH THE PHYSICIST, THE FACTS JUST WOULDN'T FIT.

IS THAT A DETERMINATION THAT HIS LAWYER HAD MADE BEFORE , THAT IT JUST DIDN'T FIT?

ETHICALLY , YES , HIS DEFENSE MADE A DETERMINATION THAT IT WOULDN'T PLY . PRETRIAL WEAVER PREDICTED THAT HE HAD A 65 PERCENT CHANCE OF WINNING ON HIS CONSPIRACY THEORY .

WHICH HE DIDN'T USE.

WHICH HE NEVER USED. AND HAVING MOVED MR . CILANTRI OFF THE CASE

THIS ISSUE ABOUT THE TIMING, APPARENTLY MR . CILANTRI HAD TOLD , ACCORDING TO WHAT WE AT LEAST KNOW IN THE RECORD, HAD REALIZED AT THE VERY BEGINNING THAT THIS DEFENSE WOULDN'T FLY , AND YET MR . WEAVER WAITS UNTIL FIVE DAYS, ONE WEEK BEFORE TRIAL , TO BRING THIS MOTION TO WITHDRAW TO THE ATTENTION OF THE TRIAL JUDGE , AND SO ISN'T THERE SOME YOU KNOW, FOR THE JUDGE LOOKING AT THIS , WHAT IS GOING ON HERE , IF THERE WAS A PROBLEM , THE PROBLEM SHOULD HAVE BEEN APPARENT WAY BEFORE THE TRIAL DATE , AND HOW DO YOU RESPOND TO THAT? THAT IT IS SORT OF LIKE THIS LAST-MINUTE THING , OKAY , NOW I DON'T WANT MY LAWYER. I WANT ANOTHER LAWYER , AND WHAT YOU WILL GET OUT OF THAT IS ANOTHER YEAR OR SO UNTIL THIS CASE GOES TO TRIAL .

EVERYONE LOOKS AT THIS LIKE JEFFREY WEAVER IS TRYING TO MAN I AM LATE THE SYSTEM AND MANIPULATE THE SYSTEM AND JUST USING THIS TO DRAG IT OUT.

MR . MULDOFF IS SUGGESTING THAT ANYTHING MR . WEAVER DID WAS IMPROPER . IT WAS A CIRCUMSTANCES , EITHER HE OR MR . WEAVER, BUT ON THIS ISSUE OF WHAT HAPPENS FIVE OR SEVEN DAYS BEFORE TRIAL, I AM NOT SAYING MANIPULATION, BUT THE EFFECT IS THAT HE IS NOW SAYING THIS LAWYER WON'TES SPOUSE MY DEFENSE, WHICH IS A DEFENSE THAT THIS LAWYER MUST HAVE EXPLAINED WASN'T CONSISTENT WITH ANY OF THE EVIDENCE, AND AT THAT POINT , HE IS, YOU KNOW , IF HE IS , IF HIS LAWYER IS COMPETENT , THE JUDGE DOESN'T HAVE AN OBLIGATION TO APPOINT ANOTHER LAWYER FOR HIM . DO YOU AGREE WITH THAT?

I AGREE WITH THAT , OTHER THAN I THINK THE MOTION WAS ACTUALLY FILED THREE WEEKS BEFORE, NOT THAT THAT MAKES A HUGE AMOUNT OF A DIFFERENCE , BUT I THINK AT SOME POINT MR . WEAVER BRINGS IT TO THE COURT'S ATTENTION AND THE COURT HAS A HEARING AND UNFORTUNATELY THE COURT DETERMINED THAT JEFF CAN TRY THE CASE HIMSELF.

NOW , WHEN MR . MUDL MULDOFF HAD DECIDED THEY DIDN'T HAVE THE AMOUNT OF TIME AND SAID APPOINT ANOTHER LAWYER TO HELP ME WITH THE DISCOVERY , IS THERE A PRACTICE , WAS THERE ANOTHER LAWYER ON AT THE TIME , RAG SINGAL?

I DON'T BELIEVE HE HAD BEEN APPOINTED AT THE PENALTY - - I DON'T BELIEVE, I THINK HE HAD BEEN APPOINTED AT THE PENALTY PHASE POINT IN TIME.

AT THE PENALTY PHASE.

I BELIEVE THAT'S CORRECT .

IN BROWARD COUNTY , COULD THERE NOT HAVE BEEN ANOTHER LAWYER TO ASSIST WITH THE LAWYER IN THIS CASE?

THE CONTRACTS DON'T ALLOW FOR ASSIGN ABILITY, SO WHEN HE ACCEPTS THE CASEK NOT GO TO ANOTHER LAWYER TO DO ANOTHER PART OF THE CASE , AND THEY ONLY ALLOW ONE LAWYER FOR THE GUILT PHASE AND ONE LAWYER FOR THE PENALTY PHASE.

DIDN'T HE ALLOW ONE LAWYER FOR THE PENALTY PHASE?

MR . MULDOFF SAID IF I AM GOING TO BE PUSHED BACK TO PENALTY PHASE COUNSEL, THEN I QUIT.

THAT KNOWLEDGE THAT HE HAD , EVEN THOUGH HE IS PENALTY PHASE , HE CERTAINLY CAN ASSIST SOMEBODY IN THE GUILT PHASE , SO THAT CAN CERTAINLY LOOK LIKE AN ABSOLUTE IES POSITION THAT HE IS TAKING . IT IS NOT MR . WEAVER'S FAULT , BUT FROM ALL OF THE RECORD , IT IS COMPETENT AND CONTINUES TO TAKE DISCOVERY AND DISCOVER IS AND DISCOVERY IS COMPLETED AND GETS EXPERTS AND IS PREPARED TO TRY THE CASE AND THEN MR . WEAVER DOESN'T WANT HIM TO TRY THE CASE.

I DON'T KNOW THAT MR . MULDOFF WAS QUALIFIED TO BE PENALTY PHASE COUNSEL . CLEARLY IF HE FELT THAT , THE COURT COULD SAY YOU ARE ON THIS CASE.WE ARE MOVING YOU TO PENALTY PHASE.

HE DID NOT SAY I AM NOT QUALIFIED?

HE DIDN'T. IT MIGHT HAVE BEEN THREE OR FOUR YEARS AGO , WHEN THOSE QUALIFICATIONS CAME IN , SO IT MIGHT HAVE BEEN THE SAME TIME.

IN VIEW OF THE TIME GOING BY, WOULD YOU ADDRESS THE TETTER ISSUE?

YES.

LET ME JUST FOCUS YOU , THE STANDARD UNDER TETTER IS WHETHER THERE IS A REASONABLE BASIS IN THE RECORD FOR THE JURY'S LIFE RECOMMENDATION, CORRECT?

YES.

AND CAN YOU THEN EXPLAINWHAT THE REASONABLE EXPLAINWHAT THE THE REASONABLE BASIS IN THE RECORD FOR THE LIFE RECOMMENDATION?

THERE ARE SEVERAL. WE CAN LOOK AT THE STATUTORY OR NONSTATUTORY MITIGATORS . JUDGE PFIZER FOUND THAT THERE WERE TWO STATUTORY AND TWO NONSTATUTORY. THERE WERE SEVERAL THAT I DETAILED IN M Y BREEFSSES , SOME IN MY BRIEFS , SOME NOT QUITE PREVALENT THIS. IS A 8-TO-4 FOR LIFE RECOMMENDATION. THIS IS NOT A CASE WHERE THERE HAS BEEN A DEATH RECOMMENDATION BY THE JURY , AND WE THINK THAT , AS LONG AS THE LIFE RECOMMENDATION IS SUPPORTED HERE BY THEFACTS OF THE CASE. JEFF DIDN'T HAVE A BAD PRIOR RECORD. HE HAD THEFTS AND LOITERINGAND A POSSESSION OF MARIJUANA AND DUI FROM 1984 AND HE HAD LIVED HIS LIFE CRIME FREE SINCE 1984, FOR THOSE TWELVE YEARS , ALTHOUGH HE WAS CARRYING A GUN AND HE HAD SOME OTHER GUNS AND AMMUNITION IN HIS VEHICLE, THERE IS NOTHING TO SHOW THAT THIS IS A DANGEROUS INDIVIDUAL. I THINK THE JURY SAW THAT. I THINK THE JURY SO YOU SAW THAT, FROM THE FACTS OF THE CASE THIS WAS NOT AN INTENTIONAL SHOOTING AND THAT IS WHY THERE WAS SUCH A FIGHT OVER WHETHER THE FELONY MURDER COULD B E BROUGHT UP AND THE ENCOUNTER THAT

LET ME STOP YOU A SECOND. WHEN YOU SAY THE JURY FOUND THAT THIS WAS NOT A N INTENTIONAL SHOOT SOMETHING.

WE BELIEVE

DIDN'T THE JURY FIND HIM GUILTY OF FIRST-DEGREE MURDER?

THEY DID AND WE BELIEVE IT WAS BASED ON FELONY MURDER. MR . SACKS'S THEORY WAS THAT HE HAD PULLED THE GUN ON THE FELLOW IN THE CAR, MR . ORTIZ , AND THAT HE WAS TRYING TOGET AWAY FROM THAT.

I T WAS DIRECTED ON APPEAL.

CORRECT .

LET'S LOOK AT THE CRIME. THE STATUTORY MIGHT GATOR WAS MITIGATOR WAS FOUNDAND THE THE STRONG STATUTORY MITIGATOR WAS ARGUED ON THE PENALTY PHASE.

CORRECT.

WHAT OTHER , YOU SAID THERE WAS ANOTHER STATUTORY MITIGATOR FOUND OR THAT WAS ARGUED TO THE JURY? WHAT WAS THE OTHER STATUTORY MITIGATE OR?

I BELIEVE IT WAS NOT THE WORST OF THE WORST. THE WHOLE CATEGORIES OF , HAD GOOD LOVING PARENTS , RELIGIOUS. ALL THE NONSTATUTE OTHERS.

THAT IS A NONSTATUTORY. EYE WILL FIND THE OTHER ONE BECAUSE IT ESCAPES ME FOR A SECOND.

HE TALKED ABOUT HIS EMPLOYMENT. THE JUDGE FOUND THAT HE HAD HAD A GOOD EMPLOYMENT HISTORY, SO THE PORTRAYAL TO THE JURY WAS THAT THIS ESSENTIALLY WAS A GOOD GUY BUT HAD GOTTEN MIXED UP IN THIS TERRIBLE CRIME.

AND WAS BASICALLY TRYING TO RUN AWAY , AND SOMETHING , IT WASN'T SOMETHING THAT HE INTENDED TO DO BUT BASICALLY INTENDED TO DO BUT BASICALLY WHEN HE WAS ENCOUNTERED BY THE TWO OFFICERS , RAN AWAY AND HE TURNED TO SORT OF SCARE THE POLICE OFFICERS AWAY , I THINK A COMMENT

WAS THAT ARGUED AT THE PENALTY PENALTY PHASE?

YES, IT WAS. AND I THINK THE COMMENT THAT WAS ALLEGED TO HAVE BEEN MADE BY MR . WEAVER , WAS IF I CAN STOP ONE OF THEM , THEY WILL STOP CHASING ME AND THAT IS WHEN HE RAN AWAY . NOW , IT SORT OF TIES BACK IN WITH WHAT I HAD HOPED TO ARGUE ABOUT , WHICH WAS THE INTERVENING MEDICAL CAUSE, BECAUSE HERE BUT FOR THE MEDICAL NEGLIGENCE OF THE SURGEON S OVER AT BROWARD GENERAL , DR . RONALD WRIGHT THE MEDICAL EXAMINER , TESTIFIED THAT THIS OFFICER WOULDN'T HAVE DIED. IT WAS DUE TO THEIR NEGLIGENCE.

ARE YOU GOING BACK TO A GUILT PHASE?

I AM AND I DON'T MEAN TO DIGRESS.

BUT THE COURT IS ASKING QUESTIONS, BECAUSE YOU HAVE GOT A SIGNIFICANT ISSUE ON THE JURY OVERRIDE. IF WE AGREE WITH YOU, THERE WOULD BE A LIFE SENTENCE ENTERED. NOW, I JUST WANT TO MAKE SURE , HAVE YOU COVERED THE ARGUMENTS AS TO WHY THE , THERE WAS A REASONABLE BASIS IN THE RECORD FOR A LIFE RECOMMENDATION, BEFORE YOU GO BACK TO THE

NO , I REALLY HAVEN'T , ALTHOUGH I FELT THAT SOME OF THESE FACTS ALL WENT INTO WHY THIS IS A LIFE CASE AS OPPOSED TO A DEATH CASE. IT IS VERY DIFFERENT THAN THE GANGLAND KILLING OR THE TYING UP FOUR PEOPLE, AS I N ALEX BEGON AND SHOOTING THEM LIKE THAT . THIS WRALS PORTRAYED TO THE JURY AND THE FACTS SHOWED THIS TO BE MORE AFTER ACCIDENTAL TYPE SITUATION.

BUT THE PART THAT YOU ARE ARGUING NOW , ABOUT HIM , INTERVENING CAUSE, THE JURY NEVER HEARD THAT, SO THAT CERTAINLY COULD NOT AND BASIS FOR THE JURY RECOMMENDATION OF LIFE.

CORRECT. WE FELT THAT IT SHOULD HAVE BEEN SOMETHING THAT THE JURY HEARD BUT THEY DIDN'T.

THE STATE SEEMS TO BE SAYING , BECAUSE THERE IS NO BRAIN DAMAGE OR MENTAL ILLNESS OR OR ABUSIVE CHILDHOOD , THAT THERE COULDN'T AND REASONABLE BASIS IN THE RECORD FOR THE JURY TO HAVE RECOMMENDED LIFE. HOW DO YOU RESPOND TO THAT?

FACTUALLY , THERE WERE REASONABLE HYPOTHESIS HERE, REASONABLE GROUNDS FOR THE

JURY TO COME BACK WITH LIFE IMPRISONMENT.

SIMPLY THE FACT THAT HE GOT CAUGHT UP IN THIS THING AND IT ESCALATED BEYOND WHAT HIS ORIGINAL INTENTION WAS , IS ENOUGH, IS A REASONABLE BASIS T O RECOMMEND A LIFE SENTENCE.

CORRECT. ESPECIALLY WHEN YOU LOOK AT THE TOTALITY OF THE CIRCUMSTANCES.

DISTINGUISH THAT FROM A SECOND-DEGREE MURDER AND A FIRST-DEGREE MURDER , BECAUSE THE JURY FOUND HIM GUILTY O F FIRST-DEGREE PREMEDITATED MURDER, NOT SECOND-DEGREE.

WELL , THEY DID FIND HIM GUILTY OF INTENTIONALLY MURDERING , IT WAS A PREMEDITATED MURDER.

SO IT WASN'T THEY DIDN'T ACCEPT THE ARGUMENT THAT HE IS RUNNING AWAY AND SHOOTING OVER HIS SHOULDER.

WELL , THERE WASN'T A SPECIAL INTERROGATORY VERDICT FORM SO WE DON'T KNOW FOR SURE T LOOKED TO ME LIKE THAT WAS WHAT THE STATE'S THEORY WAS , WAS THAT THIS WAS ALL ONE CONTINUING CRIMINAL ESCAPADE AND THAT HE WAS TRYING TO GET AWAY AFTER THE INITIAL ENCOUNTERAND THAT THAT ALL TIED TOGETHER.

OF COURSE HE HAD NO LAWYER ARGUING FOR HIM IN THE GUILT PHASE, SO YOU ARE SAYING THAT , IN THE PENALTYPHASE , THE CIRCUMSTANCES OF THE CRIME, WHY THE AGGRAVATING FACTORS , ALTHOUGH THEY MIGHT EXIST , WERE NOT AS SIGNIFICANT IN , AS THEY MIGHT HAVE IN AN ANOTHER CASE .

EXACTLY YOUR HONOR.

YOU DO AGREE THAT , IN THIS CASE THE JURY MUST HAVE FOUND , B Y VIRTUE OF ITS VERDICT, AT LEAST TWO AGGRAVATING CIRCUMSTANCES, THE FACT THAT THERE WAS ANOTHER FELL NOIN , VIOLENT FELONY FELONY , VIOLENT FELONY INVOLVED, THE AGGRAVATED ASSAULT , AND THEFACT THAT HE WAS A POLICE OFFICER , FINDING HIM GUILTY OF PREMEDITATED MURDER , THAT PARTICULAR PERSON HAPPENED TO BE A POLICE OFFICER , AND THE JURY KNEW THOSE CIRCUMSTANCES , SO THEY HADTO HAVE FOUND THAT FACT THAT HE KILLED A POLICE OFFICERIN THE LINE OF DUTY. ISN'T THAT RIGHT?

YES, IT I S AND THOSE WERE THE AGGRAVATORS THAT WERE ACTUALLY FOUR BUT THEY MERGED INTO TWO, BUT WE BELIEVE THAT, WHEN YOU ARE LOOKING AT THE WORST OF THE WORST AND THE TOTALITY OF THE CIRCUMSTANCES AS THIS COURT DOES, THAT THIS IS NOT THE CASE THAT JEFFREY WEAVER DESERVES TO DIE FOR. WE URGE THE COURT TO GRANT A NEW TRIAL FOR ALL OF THE ISSUES THAT WE RAISED, AND I KNOW THAT THERE IS A LOT OF ISSUES RAISED IN THE BRIEFS. SOME OF WHICH I DIDN'T GET TO, SUCH AS THE STUN BELT , WHICH WE BELIEVE THAT THECASE LAW HAS DEVELOPED TO THE EXTENT THAT THE JUDGE JUST REALLY DIDN'T THINK THIS ONE THREW BEFORE THROUGH , BEFORE STRAPPING JEFFREY WEAVER WITH A STUN BELT.

COULD YOU TELL US ALLOVER THE COUNTRY , BECAUSE THERE ARE PLENTY OF DEFENDANTS WHO REPRESENT THEMSELVES, NOT PLENTY BUT CERTAINLY SOME HIGH PROFILECASES WHERE A DEFENDANT REPRESENTS HIMSELF. WHAT IS A JUDGE , WHEN YOU HAVE GOT SOMEONE WHO IS CHARGED WITH FIRST-DEGREE DEATH PENALTY POSSIBLE IMPOSITION , TO DO WHEN A DEFENDANT IS WALKING AROUND THE COURTROOM. WHAT, WOULD YOUR ARGUMENT BE THAT IT I S NEVER APPROPRIATE TO USE THE STUN GUN , WHICH ISN'T VISIBLE TO THE JURY , STUN BELT , WHICH IS NOT VISIBLE TO THE JURY, THAT THAT IS ALWAYS INAPPROPRIATE , AND WHAT, YOU SAID THE JUDGE DIDN'T THINK I T THROUGH. WHAT WOULD HAVE BEEN THE OTHER

ALTERNATIVE?

WELL , THE PRIMARY ALTERNATIVE THAT WE USE IN FEDERAL COURTS IS WE GET A LOT OF EXTRA MARSHALLS IN AND WE GET IT SET UP IN THE COURTROOM SO THAT THE DEFENDANT HAS NO ACCESS TO INDIVIDUALS. WE KEEP THE GUNS SEPARATED FROM THE AMMUNITION SO THAT THERE CANNOT BE THAT TYPE OF HARM. WE CAN USE THE SHACK ELSE. THEY HAD THE SHACKLES. THEY HAD THAT THING ON JEFF WEAVER WHEN THEY DID THE JURY VIEW. HERE WE HAVE THE STUN BELT AND WE HAVE IT GOING OFF.

FROM IS NO EVIDENCE THAT THERE IS NO EVIDENCE THAT ITS GOING OFF I S INTENTIONAL ?

NO. I DON'T THINK THAT IS THE STANDARD.

IF IT HAD GONE OFF INTENTIONALLY , THEN THAT MAKES HIM LESS AFTER ADVOCATE?

IT IS A FEAR ESPECIALLY FOR A DEFENDANT THAT I S TRYING HIS CASE PRO SE .

HE IS REPRESENTING HIMSELF , BUT , AGAIN, HE NEVER THEN SAYS, JUDGE , I AM NOT ABLE TO REALLY HANDLE THIS CASE NOW, BECAUSE I AM SO , I MEAN , IN OTHER WORDS, THERE IS NO EVIDENCE ON THE RECORD THAT THAT , IT IMPEDED HIS ABILITY TO REPRESENT HIMSELF OVER A MONTH PERIOD OF A TRIAL.

NO RECORD EVIDENCE FROM JEFF WEAVER. HIS PENALTY PHASE COUNSEL SAID I AM SHAKEN UP OVER THIS, AND I DON'T THINK THAT A PRO SE DEFENDANT KNOWS ENOUGH TO KNOW WHAT THAT IS DOING TO HIM, WHETHER THAT MAKES HIM LESS AGGRESSIVE I N HIS EXAMINATIONS . WE BELIEVE THAT , BASED UPON ALL THESE REASONS THAT, THIS IS NOT A TYPICAL DEATH CASE THAT, BECAUSE OF THESE TRIAL ERRORS , JUDGE SPICER SHOULD BE OVERTURNED AND THIS CASE SHOULD BE REMANDED FOR A NEW TRIAL.

CHIEF JUSTICE: THANK YOU .

THANK YOU.

CHIEF JUSTICE: GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. LESLIE CAMPBELL WITH THE ATTORNEY GENERAL'S OFFICE ON BEHALF OF THE STATE OF FLORIDA.

CAN I FOCUS YOU FOR A SECOND ON THE JURY OVERRIDE ISSUE. WHEN IS THE LAST TIME THAT THIS COURT HAS AFFIRMED A JUDGE'S OVERRIDE OF A JURY RECOMMENDATION OF LIFE ?

I BELIEVE THE LAST OVERRIDE ISSUE THAT WAS BEFORE THE COURT , HAPPENED TO BE MARSHAL, WHICH WAS A POST CONVICTION. HOWEVER, THE COURT HAD NO DIFFICULTY WITH THE OVERRIDE THERE.

MY QUESTION WAS WHEN I S THE LAST TIME THAT WE AFFIRMED A TRIAL JUDGE'S OVERRIDE OF A JURY RECOMMENDATION OF LIFE?

I DON'T HAVE A DATE YOUR HONOR , BUT THEY ARE NOT

AFTER TETTER HAVE WE DONE IT?

I BELIEVE SO, YES, YOUR HONOR.

AND WHEN WAS THE LAST TIME, YOU DON'T KNOW?

I DON'T REMEMBER THE DATES. I COULD GO THROUGH THE OVERRIDE ISSUES , THE OVERRIDE CASES.

THE TRIAL JUDGE'S SENTENCING ORDER , I DIDN'T FIND ANY CASE IN WHICH THE TRIAL JUDGE CITED A CASE AFFIRMING A JURY OVERRIDE. WHAT HE APPARENTLY DID IN 16 PAGES , WAS DISTINGUISH EVERY CASE IN WHICH WE REVERSED A JURY OVERRIDE, AND SAID, WELL, THE CIRCUMSTANCES HERE ARE DIFFERENT BECAUSE THERE WERE DIFFERENT AGGRAVATORS , DIFFERENT MITIGATORS , ET CETERA, BUT I DIDN'T SEE HIM CITE ANY CASE IN WHICH WE AFFIRMED A JURY OVERRIDE .

THAT'S CORRECT, YOUR HONOR. HE DIDN'T CITE ANY OF THOSE CASES. HOWEVER

GETTING BACK TO THE SENTENCING ORDER , DO YOU AGREE OR NOT, THAT THE JUDGE SEEMED TO APPLY THE WRONG STANDARD, BECAUSE HE DID NOT STATE THAT THE STANDARD WAS WHETHER THE JURY'S WELL , I THINK HE STATED BUT HE DIDN'T GO THROUGH AN ANALYSIS OF WHETHER THE JURY'S RECOMMENDATION HAD A REASONABLE BASIS IN THE RECORD. HE SEEMED TO , NUMBER ONE , REWEIGH THE AGGRAVATING AND MITIGATING CIRCUMSTANCES AND THEN, NUMBER TWO , DISTINGUISH ALL OF OUR CASES , REVERSING JURY OVERRIDES.

I THINK, TAKING IN TOTAL , HE WAS FOLLOWING THE BETTER STANDARD. HE WAS ANALYZING ALL OF THE MITIGATION AND DETERMINING THAT THERE WAS NO REASONABLE BASIS TO , FOR THE JURY TO HAVE RECOMMENDED LIFE , GIVEN THE MITIGATION THAT WE HAVE IN THIS CASE , AND THE MITIGATION IN THIS CASE IS MINUSCULE , IN COMPARISON TO THE CRIME .

THAT IS A ARGUMENT TO THE JURY, BUT YOU HAVE GOT , YOU KNOW, YOU HAD FOUR AGGRAVATORS BUT, AGAIN , THEY ARE MERGED INTO TWO. ALTHOUGH THIS IS A TRAGIC CRIME, YOU KNOW , NOW , THE JURY DOESN'T HAVE THE EXPERIENCE WE HAVE IN TERMS OF SOME OF THE TERRIBLY HEINOUS CRIMES THAT WE SEE UP HERE. ALL MURDER CASES ARE TERRIBLE, BUT YOU DO HAVE THE STATUTE , THEY WERE INSTRUCTED ON THE STATUTORY MITIGATOR OF NO SIGNIFICANT HISTORY, NO CRIMINAL HISTORY, CORRECT?

YES, THEY WERE .

ALL RIGHT. SO THEY COULD EVALUATE THAT AND DECIDE THAT THIS , ALTHOUGH THIS WAS A TERRIBLE SITUATION , WHERE HE DID INTEND TO SHOOT , MAYBE HE DIDN'T INTEND TO KILL , EVEN THOUGH THEY FOUND HIM GUILTY OF FIRST-DEGREE MURDER , BUT THAT, GIVEN HIS HISTORY AND GIVEN THE FACT THAT HE HAD BEEN A GOOD EMPLOYEE , DIDN'T DO DRUGS, ALL THE THINGS THAT YOU NORMALLY WOULD SAY WOULD BE OTHER KINDS OF MITIGATOR , THAT HE WAS ENTITLED , HE GOT HIS G.E.D. IN PRISON , THAT , WHY ISN'T THAT, AND YOU LOOK AT KEAN, A MOST RECENT CASE , WHY AREN'T THOSE THE MOST REASONABLE BASIS FOR THE JURY TO FIND THAT A LIFE RECOMMENDATION WOULD BE APPROPRIATE? WE MIGHT NOT AGREE, BUT WHY IS IT SO , IT IS IRRATIONAL THAT NO REASONABLE JURY COULD EVER FIND THAT , EVEN THOUGH EIGHT OF THESE TWELVE JURORS DID?

IT IS NOT REASONABLE FOR THEM TO HAVE LOOKED AT THE MITIGATION THAT WAS IN THIS CASE AND GIVEN A LIFE RECOMMENDATION .

WHEN WAS THE LAST TIME THAT HE HAD COMMITTED , THAT WAS INVOLVED WITH THE CRIMINAL JUSTICE SYSTEM?

IN THE 80s. HOWEVER , THIS DEFENDANT? FT. LAUDERDALE. HE HAS BEEN HERE FOR A YEAR. HE HAS HAD SOME EMPLOYMENT. HE WORKED ON BOATS. HE WAS A COURIER. HOWEVER , AT THE TIME OF THIS CRIME , HE HAS AN ARSENAL IN HIS CAR , AND ONE OF THE CROSS APPEAL ISSUES IS THAT ONLY HALF OF THAT ARSENAL CAME IN. HE HAD 330 , .357 MAGNUM BULLETS WHICH HE LOADED.

AND THE JURY HEARD ABOUT THAT.

AND THE JURY HEARD ABOUT THAT.

THE JURY HEARD ABOUT IT IN THE PENALTY PHASE.

THEY HEARD ABOUT IT IN THE PENALTY PHASE .

WHAT WAS MR . SENGAL'S , INOTHER WORDS THAT HE HAD THAT AGGRAVATOR OF ALL THOSE BULLETS. WHAT DID THAT GET TO?

YOU ASKED ME ABOUT , GIVENHIS GOOD EMPLOYMENT AND GIVEN HIS LACK OF CRIMINAL HISTORY

BLUE SHOULD A BUT SHOULD A REASONABLE JURY HAVE DECIDED THAT

NO. NOT IN THIS CASE. YOU HAVE A TIME BOMB READY TO GO OFF. MR . WEAVER HAS MULTIPLE WEAPONS , MULTIPLE AMMUNITION IN HIS CAR .

WAS THERE ANY EVIDENCE WHY HE HAD IT I N HIS CAR?

HE HAS EVERYTHING IN HIS CAR.HE IS LIVING OUT OF HIS CAR. AND HE IS WALKING AROUND THE STREETS O F FT. LAUDERDALE THAT SAME NIGHT WITH VERY LITTLE MONEY HIS POCKET , HE SAID HE WENT DOWN TO MIAMI WITH \$4.25 IN HIS POCKET ANALYSTS A WHOLE NUMBER OF THINGS THAT HE HAS PURCHASED , AND HE COMES BACK UP TO FT. LAUDERDALE AND HE ATTEMPTS TO BURGLARIZE MS. ORTIZ JUST TWO OFFICERS BEFORE THE OFFICERS SEE HIM , SO HE IS NOW START AGO CRIMINAL PATTERN OF ACTIVITY WITH, NOW, AN ARSENAL IN HIS CAR , CARRYING A .357 MAGNUM WHICH IS FULLY LOADED, AND HE HAS AN EXTRA CLIP.

HOW ARE THESE AGGRAVATING CIRCUMSTANCES? THE JUDGE FOUND AS AGGRAVATORS , REALLY , TWO , KILL AGO POLICE OFFICER ANDTHE AGGRAVATED ASSAULT, SO ALL OF THIS BACKGROUND THAT YOU ARE GIVING US , HOW IS THAT AN AGGRAVATING FACTOR?

BECAUSE IT SHOWS THAT THE MITIGATOR OF LACK OF CRIMINAL HISTORY IS REALLY NOT SUFFICIENT TO RECOMMENDA LIFE, TO GIVE A LIFE RECOMMENDATION.

REALLY ISN'T THAT HOW WEIGHTY THIS IS. WE ALWAYS SAY WHEN A JUDGE , IF THIS WAS A JUDGE, NO JURY OVERRIDE, AND THE JUDGE HAD FOUND WHAT HE FOUND ABOUT LITTLE WEIGHT , WE WEIGH THE AGGRAVATORS , SO YOU AREMAKING , SOMEBODY MIGHT BE SAYING THAT SHOULD HAVE BEEN GIVEN MORE WEIGHT. WE GO , NEW YORK CITY WE DON'T WEIGH IT. WE DON'T ASCRIBE THE WEIGHT, SO THE CREDIBILITY O F HOW GOOD A GUY HE WAS , WE HAVEN'T SEEN MR . WEAVER IN PERSON. THE JURY EVALUATED HIM AND SAW HIM FOR A MONTH DURING HIS OWN REPRESENTATION AND THEN HAD THE ABILITY TO LOOK AT HIM AND DECIDE IS THIS SOME KIND OF A HOMICIDAL MANIAC THA T WAS A TIME BOMB WAITING TO EXPLODE , OR WASTHIS A TRAGEDY O F A , ONEMOMENT IN HIS LIFE THAT H E REGRETS HAVING OCCURRED?

HE CERTAINLY DIDN'T REGRET IT , YOUR HONOR. HE SHOWED ABSOLUTELY NO REMORSE.

NOT WHETHER YOU AND I MIGHT FIND THAT ON A JURY BUT WHETHER THE TETTER STANDARD SAYS THAT , WHEN A JUDGE IS LOOKING AT , WHETHERTHEY ARE GOING TO FOLLOW THE JURY'S RECOMMENDATION OF LIFE , THEY HAVE, NOT ONLY DO THEY HAVE T O GIVE IT A GREAT WEIGHT BUT UNLESS , IF THEREIS NO REASONABLE BASIS IN THE RECORD, THEY HAVE GOT TO FOLLOW THE JURY'S RECOMMENDATION OF LIFE!

AND I WOULD SUBMIT IN THIS, ON THIS PARTICULAR RECORD, THERE IS NO REASONABLE BASIS

TO GIVE A LIFE RECOMMENDATION.

ISN'T WHAT THE TETTER STANDARD DOES , ISN'T IT , LIKE , VIEWING IT AFTER A JURY TRIAL, WHERE YOU HAVE TO TAKE THE FACTS I N THE LIGHT MOST FAVORABLE TO THE JURY VERDICT ? UNDER TETTER, DON'T WE HAVE TO TAKE THE AGGRAVATORS AND MITIGATORS IN THE LIGHT MOST FAVORABLE TO THE JURY'S RECOMMENDATION OF LIFE ? SO THAT TO THE EXTENT THAT WE WEIGH MIDGATION , WE HAVE TO WEIGH IT AS THE JURY DID , IN GIVING LIFE, SO THAT I S GIVING IT GRE AT WEIGHT NOT LITTLE WEIGHT.

BUT THEIR WEIGHING IT IN THIS RESPECT IS IMPROPER. WHEN YOU TAKE EVERYTHING INTO CONSIDERATION, NO REASON ABLE JUROR OR JURY WOULD HAVE DETERMINED WHAT THIS JURY DID. THE MITIGATION THAT HAS BOON OFFERED BY THAT HAS BEE N OFFERED BY MR . WEAVER , SUCH AS THE GOOD EMPLOYMENT HISTORY AS A VALID BASIS , ISN'T SUPPORTED. THE REMORSE IS NOT SUPPORTED.

THE JUDGE FOUND, THE JUDGE EVEN FOUND IT. HE DIDN'T GIVE IT MUCH WEIGHT BUT HE FOUND IT.

BUT IT IS NOT SUFFICIENT. IT IS NOT , THAT IS NOT - -

ONCE IT I S SUPPORTED IN THE RECORD, THEN , WHETHER IT IS SUFFICIENT I N ITSELF OR NOT , THAT BECOMES A WEIGHING ISSUE. THE QUESTION IS WHETHER , IF IT IS IN THE RECORD OR NOT , ONCE IT IS IN THE RECORD, IMEAN, THAT IS THE JURY'S ISSUE , ISN'T IT?

AND IF YOU GET TO THAT WEIGHING ISSUE , THE WEIGHT IS NOT SUFFICIENT TO SUPPORT A LIFE RECOMMENDATION.

BUT AREN'T WE , THIS IS AS IF WE ARE TALKING ABOUT WAS THERE SUFFICIENT EVIDENCE OF GUILT IN A CASE. WE CAN , IN A CASE WHERE A JURY HAS FOUND A DEFENDANT GUILTY , WE LOOK AT WHETHER THERE WAS SUFFICIENT EVIDENCE TO CONVICT , NOT WHETHER WE WOULD HAVE CONVICTED UNDER THE SAME SET OF CIRCUMSTANCES . NOW , I THINK THAT JUSTICE CANTERO 'S WAY OF LOOKING AT IT, WHAT I S ERRONEOUS ABOUT WHAT HE SAID , WHICH I S THAT UNDER TETTER , WHAT YOU AREREALLY DOING IS SAYING THAT YOU HAVE GOT TO LOOK AT THE FACTS IN THE LIGHT MOST FAVORABLE TO THE DEFENDANT , NOT REWEIGH THE AGGRAVATORS AND THE MITIGATORS , BECAUSE THAT IS WHAT THE JURY DID, AND IF THERE IS A BASIS FOR THEM TO HAVE COME UP WITH IT, TO SAY THAT THEY DECIDED THAT THE PRIOR HISTORY , NO PRIOR CRIMINAL HISTORY GOT MUCH GREATER WEIGHT. YOU SAY THEY ARE WRONG. THEY COULDN'T HAVE DONE THAT , BUT, WELL , THE FACT IS HE HADN'T COMMITTED A CRIME FOR OVER , WHAT , TWELVE YEARS. YOU SAY THE EMPLOYMENT HISTORY. WHEL WELL , HE WASN'T WORKING IN THE LAST YEAR. WELL , THEY LOOKED AT THE WHOLE HISTORY OF HOW HE WORKED AND THEY DECIDED THAT THAT WAS GIVEN GREAT WEIGHT. WHY ISN'T THAT A REASONABLE BASIS THAT IS COMPETENT , SUBSTANTIAL EVIDENCE TO SUPPORT A JURY'S RECOMMENDATION OF LIFE? WHICH IS , REALLY, WHAT TETTER IS DOING .

ON THOSE TWO ISSUES , THERE WAS EVIDENCE OF HIS EMPLOYMENT AND THERE WAS EVIDENCE WITH REGARD TO HIS CRIMINAL HISTORY. HOWEVER , THE EVIDENCE IN AND OF ITSELF , WOULD NOT SUPPORT A LIFE RECOMMENDATION . THAT EVIDENCE IS NOT NECESSARILY FOR THE WEIGHT BUT THE VALUE , THE SUFFICIENCY O F THOSE MITIGATING FACTORS WOULD NOT SUPPORT A LIFE RECOMMENDATION . MERELY BECAUSE THERE IS MITIGATION FOUND FOR DIFFERENT OVERRIDE CASES , YOU KNOW, THERE HAS BEEN MITIGATION FOUND IN DIFFERENT OVERRIDE CASES, AND THOSE OVERRIDES STILL WERE AFFIRMED.

BUT YOU ARE NOW , AND WE HAVEN'T TALKED ABOUT THE AGGRAVATORS , TRAGICALLY , AGAIN, A POLICE OFFICER INVOLVED IN THIS CRIME , AND TRAGICALLY, HE , ALSO , HAD HIS CONTEMPORANEOUS FELONY , WHICH IS NOT , IS CLAIMED TO BE OR DEEMED TONIGHT PRIOR

VIOLENT FELONY, OCCURRED CONTEMPORANEOUS WITH THIS, SO WHEN WE HAVE CASES WHERE THE CCP AGGRAVATOR WAS NOT FOUND, THE HAC AGGRAVATOR WAS NOT FOUND, THOSE , WHICH WE HAVE SAID ARE AMONG THE WEIGHT YES, SIR AGGRAVATORS . THERE THE WEIGHTY ES AGGRAVATORS , THERE IS NO PECUNIARY GAIN , ALL OF THOSE ASSAULT THINGS , NOT TO DEMEAN THE TERRIBLE NATURE OF THIS CRIME , WHAT ELEVATES THIS IN THE STATE'S MIND FROM A LIFE , THE REST OF HIS LIFE IN JAIL JAIL FOR A FIRST-DEGREE, TO A DEATH CASE, THAT A POLICE OFFICER WAS INVOLVED , CORRECT?

TWO POLICE OFFICERS WERE INVOLVED, YOUR HONOR.

THAT IS WHAT , AND WEIGHTED AGAINST THAT , ARE THE FACTS OF HIS PRIOR HISTORY THAT THE JURY HEARD ABOUT , SO IN TERMS OF I AM NOT SAYING THIS IS , ON A PROPORTIONALITY , BECAUSE WE ARE NOT TALKING ABOUT PROPORTIONALITY, WE ARE TALKING ABOUT TETTER .

LET'S LOOK AT THE FACTORS OF THIS CASE. WE HAVE MR . WEAVER , WHO IS CONFRONTED BY THE OFFICERS . THE OFFICER STOPPED HIM BECAUSE HE IS LOOKING SUSPICIOUS. REMEMBERING IN MR . WEAVER'S MIND, HE HAS JUST COMMITTED AN ATTEMPTED BURGLARY , NOT TWO HOURS BEFORE, NOT A MILE AND-A-HALF FROM THERE. HE IS CONFRONTED BY THESE OFFICERS AND HE IMMEDIATELY SAYS DON'T HARASS ME. HE DOESN'T WANT TO BE STOPPED , BUT HE DOES SUBMIT AND COME BACK TO THE CAR. HE HAS A CONVERSATION WITH THESE OFFICERS AND HE CANNOT TELL THEM WHERE HE LIVES AND HE DOES NOT HAVE ANY ID ON HIM. BEFORE THE OFFICERS CAN TAKE ANY FURTHER ACTION , HE BOLTS . THE OFFICERS GIVE CHASE. THE , MR . WEAVER IS LOOKING BACK TO SEE WHERE THESE OFFICERS ARE. HE, THEN , SPINS , TAKES A SHOOTING STANCE , AND , WHEN OFFICER PENNY IS WITHIN 25 FEET OF HIM , MR . WEAVER FIRES , KNOWING HE WANTS OFFICER PENNY TO SEE THE FLASH OF HIS GUN .

AND YOU HAVE A PREMEDITATED MURDER.

WE HAVE A PREMEDITATED MURDER.

AND THE JURY FOUND HIM , AND HE WILL SERVE THE REST OF HIS LIFE IN PRISON BECAUSE OF T.

AFTER HE HAS THAT PREMEDITATED MURDER , HE, THEN , TURNS THAT SAME GUN ON OFFICER MYERS , AND MERELY OFFICER MYERS'S ABILITY TO FIRE FIRST, HAS SAVED OFFICER MYERS THE EXPERIENCE OF BEING SHOT AT BY MR . WEAVER. MR . WEAVER, THEN , RUNS AWAY, SO THAT IS WHAT , THOSE ARE THE FACTS OF THIS CASE. AND THERE WAS NO FELONY MURDER ARGUED AND THERE WAS NO FELONY MURDER INSTRUCTED . AGAINST THAT, YOU HAVE MR . WEAVER ASKING THAT , THERE WAS REMORSE. THERE WAS NO REMORSE SHOWN. THE ONLY THING THAT MR . WEAVER SAID WAS THAT I AM SORRY THAT THE FAMILY HAD TO GO THROUGH THIS TRIAL. YOU HAVE MR . WEAVER SAYING, WELL, LOOK AT MY EMPLOYMENT RECORD, AND HIS EMPLOYMENT RECORD, THOUGH IT BE FOUND BY THE TRIAL COURT, IS REALLY NOT SOMETHING THAT IS OF ANY VALUE HERE. YOU ALSO HAVE MR . WEAVER SAYING LOOK AT ALL OF THESE GOOD WORKS THAT I HAVE DONE. THAT IS THE REASON FOR THIS JURY TO HAVE RECOMMENDED LIFE. WELL, NO, THOSE GOOD WORKS THAT HE DID IN HIS LIFE , EITHER HIS FAMILY DID THEM FOR THESE OTHER INDIVIDUALS , OR MR . WEAVER DID SOMETHING THAT WAS VERY REMOTE IN TIME, BACK WHEN HE WAS IN HIGH SCHOOL. THE SAME FOR THE RELIGION THAT WAS OFFERED IN MITIGATION. YOU HAVE MR . WEAVER SAYING , I AM A RELIGIOUS PERSON , BUT HE SHOWS NO , NOTHING OF RECENT TIME. IT WAS , AGAIN , BACK IN HIGH SCHOOL. SO THAT IS NOT A FACTOR TO BE CONSIDERED .

THE COURT DID FIND STATUTORY AND NONSTATUTORY MITIGATORS, RIGHT?

YES. THE COURT DID THE COURT FOUND

OBVIOUSLY HE THOUGHT THAT THOSE WERE IN THE RECORD AND THERE WAS SUFFICIENT

EVIDENCE OF THOSE.

YES. THE COURT D.

I WANT TO GIVE YOU AN OPPORTUNITY TO ARGUE IF YOU WANT, ANY OF YOUR CROSS APPEAL ISSUES. IN THE TIME YOU HAVE .

WELL , IF THE COURT DECIDES TO SEND THIS CASE BACK DOWN FOR A NEW TRIAL , THEN , THE STATE WOULD ASK THAT IT BE ALLOWED TO ARGUE THE FELONY MURDER .

YOUR ARGUMENTS WOULD ALL BE MOOT, IF WE DECIDED NOT TO SEND IT BACK FOR A NEW TRIAL BUT EITHER FOR A LIFE SENTENCE OR FOR ANOTHER , FOR A JUDGE'S NEW SENTENCING ORDER .

OUR ISSUES WOULD BE MOOT , IF THE , IF IT DOESN'T GO DOWN FOR ANOTHER GUILT PHASE , ACCEPT WITH RESPECT TO THE FELONY MURDER . IT WAS INEXTRICABLY INTERTWINED , AND WE SHOULD BE ALLOWED TO ARGUE THAT FELONY MURDER FOR AN AGGRAVATORS .

I WOULD LIKE TO DISCUSS A LITTLE BIT ABOUT THE FIRST ISSUE , ABOUT THE CIRCUMSTANCES WHERE JUDGE SPIESER HAD , YOU KNOW , HAD MULDOFF REMOVED OVER THE OBJECTION OF WEAVER. THERE IS A STATEMENT MADE THAT THERE WERE TEN CONTINUEANCES THAT WERE REQUESTED , AND , BUT , YOU WOULD AGREE OVER THE FIRST YEAR , ALL OF THOSE CONTINUEANCES WOULD, THIS WAS A CASE WHERE THE STATE HAD OVER 200 WITNESSES .

THERE WERE MORE WITNESSES ADDED. HOWEVER , YOUR HONOR, THIS - -

BUT I GUESS WHAT I AM CONCERNED ABOUT IS THAT IT SEEMED THAT, IN THIS CASE , OF COURSE , YOU HAVE GOT THE STATE ATTORNEY HIMSELF , AS PROSECUTING THIS CASE. YOU HAVE GOT JUDGE SPIESER COMES IN FOR JUDGE TAYLOR, WHO HAD BEEN ELEVATED TO THE FOURTH DISTRICT. YOU HAVE GOT A VERY EXPERIENCE !!ED DEFENSE ATTORNEY WHO HAS TAKEN ALMOST OVER HALF OF THE WITNESSES BUT STILL HAS MORE TO GO. HE IS IN A TRIAL WHERE , I GUESS , I DIDN'T REALIZE THAT HE WAS STILL ABLE TO DO CERTAIN THINGS FOR HALF OF THE DAY. AND YOU HAVE GOT EVEN , YOU HAVE GOT A SITUATION WHERE IS IT ABSOLUTELY NEVER HAPPENS IN COURT-APPOINTED OR IN AN ACTUAL APPOINTED CASE THAT A CASE MAKE TAKE MORE THAN TWO YEARS TO GET TO TRIAL AFTER THE CASE HAS BEEN FILED. I MEAN, THAT HAPPENS. WHAT WAS SO PRESSING ABOUT THE , THIS CASE , THAT THE IDEA OF SAYING, LOOK , WE WILL GIVE A WE DATE CERTAIN WE WILL GIVE IT WE WILL GIVE YOU A DATE CERTAIN WE WILL GIVE IT FOR ONE YEAR TO COMPLETE THE DISCOVERY. YOU MUST COME BACK TO ME IN FOUR MONTHS. IF YOU CAN'T DO IT , THEN I WILL REMOVE YOU , BUT WITHOUT HAVING, WHERE DOES, I AM JUST CONCERNED THAT THIS WAS SORT OF YOU KNOW , JUDGE SPIESER WAS JUST SORT OF A PREEMPTORY REMOVAL , BECAUSE OF CIRCUMSTANCES BEYOND MR . WEAVER'S CONTROL AND BEYOND THE DEFENSE ATTORNEY'S CONTROL, AND THEN ALL OF SAWE EN ALL THESE HOURS THAT MR . MULL DORF SPENT ON THIS CASE, THE COUNTY IS PAYING THIS MONEY TWICE , ESSENTIALLY, TO HAVE TWO LAWYERS PREPARE THE SAME EXACT CASE . WHAT , IS IT JUST TOTALLY DISCRETION THAT IS THAT, YOU KNOW, THAT THE ADMINISTRATION OF THE JUSTICE, IF THE JUDGE DECIDES IT HAS BEEN TWO YEARS AND THAT IS TOO LONG, THE JUDGE CAN JUST REMOVE A LAWYER FROM A CASE , EVEN THOUGH THE LAWYER HAS BEEN DOING EVERYTHING, AND, AGAIN , IT WASN'T MR . WEAVER'S CHOICE OF COUNSEL, YOU KNOW , IN OTHER WORDS, IF YOU PICK SOMEONE WHO IS A BUSY LAWYER , BUT THIS IS WHO WAS ASSIGNED TO HIM AND THERE IS NO CASES OUT THERE THAT SEEM TO BE RIGHT ON POINT, WHERE THIS KIND OF THING HAS OCCURRED. SO COULD YOU COMMENT ON THAT PLEASE .

I CAN I THINK IT NEEDS TO BE PUT IN CONTEXT I THINK IT NEEDS TO BE PUT IN CONTEXT AGAIN. MR . MULDORF WAS ON THIS CASE SINCE FEBRUARY '96, JUST A MONTH AFTER THIS CRIME. HE TOOK SEVEN CONTINUEANCES BEFORE A YEAR.

IN OTHER WORDS HE COULDN'T GO TO TRIAL IN THE FIRST YEAR, BECAUSE THIS WAS A CASE WHERE THE DEATH PENALTY WAS BEING SOUGHT , AND THERE WERE OVER 200 WITNESSES LISTED BY THE STATE ATTORNEY FOR BROWARD COUNTY, AND THERE WAS THE DEATH OF A POLICE OFFICER, WHICH WOULD MAKE IT A VERY HIGH PROFILE CASE.

AND THOSE 200 WITNESSES , ONE WERE NOT LISTED ON THE FIRST DAY , BUT TWO , AND I THINK MORE IMPORTANT , IS THAT THERE WAS A CHANGE IN THE DISCOVERY RULES , AND IT IS CLEAR THAT , CLEAR FROM THE RECORD THAT M R . SACKS WOULD HAVE LISTED, MAYBE , ONLY TEN OF THE A-LIST WITNESSES , HAD THIS BEEN A POST RULE CHANGE DISCOVERY, BECAUSE IT WAS BEFORE THE RULE CHANGE, HE HAD TO LIST EVERYONE THAT HAD ANY KNOWLEDGE ABOUT THE CASE , AND OVER 100 FT. LAUDERDALE POLICE OFFICERS HAD RESPONDED TO THE SCENE TO SET UP THE PERIMETER , AND YOU KNOW , GUARD CERTAIN AREAS , AND THOSE WERE THE WITNESSES THAT MR . MULL DORF CHOICE TO OPPOSE , STANDING ON A STREET CORNER, WAITING TO SEE IF SOMEBODY STOPPED BY, AND THAT WAS MORE IMPORTANT TO MR . MULL DORF THAN TALKING TO THE LEAD DETECTIVE.

WHEN WAS THE DNA EVIDENCE AVAILABLE?

THE DNA EVIDENCE WAS AVAILABLE RELATIVELY EARLY AND MR. MULDORF , IF I REMEMBER CORRECTLY, WAS WITHIN THE FIRST YEAR , TALKING ABOUT GETTING A DNA EXPERT AND TALKING ABOUT

SO THE STATE HAD PROVIDED THEIR DNA EVIDENCE WITHIN THE FIRST YEAR?

THEY HAD THE BLOOD EVIDENCE AND I BELIEVE THERE WAS A DNA AT THAT TIME.

WITH THE LISTING OF THESE WITNESSES , WAS THERE ANY DESCRIPTION AS TO ANYWHERE KNOWLEDGE ? AS TO THEIR KNOWLEDGE? YOU SEEM TO BE POINTING FINGERS THAT HE WAS JUST TAKING A BUNCH OF IRRELEVANT DISCOVERY IN THE LISTING. WAS THERE ANY WAY THAT COUNSEL WOULD BE AWARE THAT THESE ARE IRRELEVANT OR JUST SUPERFICIAL LISTED WITNESSES?

I BELIEVE THERE WAS DISCUSSION ABOUT THAT ON THE RECORD , YOUR HONOR. AS FAR AS ACTUALLY NAMING THEM , I DON'T BELIEVE SO , BUT CERTAINLY THERE WOULD HAVE BEEN THE REPORTS FROM THE LEAD DETECTIVES AND THOSE WOULD HAVE BEEN

I CERTAINLY UNDERSTAND THAT, BUT YOU ARE SAYING THERE IS SOME KIND OF RULE CHANGE AND THAT THE STATE ATTORNEY WAS IN SOME TYPE OF TERRIBLE POSITION AND HE HAD TO LIST THESE BECAUSE SOMEBODY FORCED HIM TO. I AM TRYING TO UNDERSTAND THE CENTER OF YOUR ARGUMENT.

I AM NOT STATE AGO TERRIBLE POSITION. I AM SIMPLY STATING THE FACT THAT THOSE ARE THE FACTS OF THIS CASE, THAT HE HAD TO LIST ALL OF THOSE WITNESSES AND UNDER TODAY'S RULES THERE WOULDN'T HAVE BEEN THAT MANY BUT MR . MULDORF STARTED FROM THE OUTSIDE AND WORKED IN.

HAS THE STATE ATTORNEY NEVER INFORMED MR . MULDORF , EITHER BY LETTER OR IN A TELEPHONE CONVERSATION OR IN PERSON AND SAY, LOOK, I KNOW I HAD TO LIST 100 WITNESSES BECAUSE THE RULES REQUIRE ME TO BUT THESE ARE REALLY THE KEY WITNESSES THAT WE WILL PRESENT AT TRIAL AND THE OTHERS ARE PART OF THE PERIMETER.

I DON'T KNOW THAT THERE WAS ANY STATEMENT OF TO EFFECT IN THE RECORD.

YOU ARE SAYING WHEN WE LOOK AT THE RECORD , NOTHING SIGNIFICANT OCCURRED, IN TERMS

OF THE DISCOVERY IN THIS CASE , FOR THE FIRST YEAR OF ITS EXISTENCE.

RIGHT. AND IN FACT , MR . MULDORF SAID, IN NOVEMBER OF '97, NOW ALMOST TWO YEARS INTO IT , THAT HE HAS BEEN AT A DEAD STOP. MR . PENALVER 'S CASE STARTED IN MAY O F '97. AND AS I SAY, MR. MOLDORF HAS TAKEN SEVERAL CONTINUEANCES , SEVEN CONTINUEANCES BY THAT TIME . EVEN BEFORE MR . PENALVER 'S CASE STARTED AND THEN AFTER THAT HE HAD BEEN AT A DEAD STOP. HE SAID THAT HIMSELF.

I N LOOKING AT THE RECORDS, DO WE KNOW HOW MUCH TIME MR . MULDORF HAD IN THE CASE , IN OTHER WORDS HOW MANY HOURSHAD HE INVESTED IN REPRESENTATION?

I BELIEVE HE DID SUBMIT ABILL BUT I DON'T RECALL IT , YOUR HONOR.

I MEAN , I GUESS IT SEEMS THAT YOU HAVE GOT COURT APPOINTED LAWYER WHO HAS GOTTEN VERY INVOLVED IN THE CASE. THERE IS A GOOD ATTORNEY/CLIENT RELATIONSHIP GOING ON, AND FROM MR . WEAVER'S POINT OF VIEW , HE ENDS UP 14 MONTHS LATER REPRESENTING HIMSELF AND HAVING A STUN BELT ON , AND DOING IT, AND THE REASON IS BECAUSE BROWARD COUNTY 'S CONTRACT DOESN'T ALLOW FOR THERE TO BE ANOTHER ATTORNEY TO HELP WITH THE DISCOVERY. IT HAS GOT TO BE PENALTY PHASE VERSUS THAT , AND IT JUST, YOU KNOW, IT SEEMSTHAT WE ARE , ALTHOUGH I THINK PROBABLY THIS IS WITHIN THE JUDGE'S DISCRETION I T DOES CONCERNME THAT THIS OUTCOME OCCURRED IN THIS CASE. WHETHER THAT REALLY SERVES THE ADMINISTRATION OF JUSTICE OR WHETHER THERE WOULD HAVE BEEN OTHER ALTERNATIVES.

I THINK IT SERVES THE ADMINISTRATION OF JUSTICE TO HAVE THE CASE BROUGHT T O TRIAL IN A TIMELY FASHION. THE STATE, ALSO , MENTIONED

WOULDN'T , IF YOU GET A NEW LAWYER IN , HOW MANY MORE CONTINUEANCES , IN OTHER WORDS THIS DIDN'T GET TRIED FOR 14 MORE MONTHS. NOW I N HINDSIGHT W E DON'T LOOK THAT IT TOOK 14 MORE MONTHS TO TRY THE CASE, BUT IT IS GOING TO TAKE A NEW LAURA PERIOD OF TIME TO GETCAUGHT UP , AND I A M ASSUMING THAT THE NEW LAWYER , CILANTRI, MUST HAVE ASKEDFOR CONTINUEANCES IN THE YEAR THAT HE WAS APPOINT ED, OR DID HE NOT?

YES. THERE WAS , INITIALLY THECASE WAS SET FOR JANUARY OF , AFTER MR . CILANTRI WAS APPOINTED , FOR JANUARY, ANDIT ENDED UP GOING IN APRIL OF '99. HOWEVER , TWO THINGS, YOUR HONOR - -

EVEN THOUGH HE REMOVED HAD MULDORF I N '98, HE DIDN'T SET A TRIAL DATE FOR A YEAR AFTER?

HE SET THE TRIAL DATE , EVENTUALLY HE SET THE TRIALDATE. IT WAS SUPPOSED TO BE SEPTEMBER, THEN MOVED TO JANUARY AND THEN CAME TO APRIL.

WHY WAS IT MOVED?

BECAUSE MR. CILANTRI HAD SOME OTHER THINGS TO DO. THIS WAS NOT THE TRIAL

WOULDN'T THAT BE FORESEEABLE THAT, AT THE TIME YOU REMOVE SOMEBODY THAT HAS BEEN, I KNOW FROM TAKING OVER A CASE LIKE,THIS YOU ARE NOT GOING TO BE ABLE TO GET THIS PERSON, THIS LAWYER WHO IS GOING TO WANT TO DO A COMPETENT JOB, IS GOING TO HAVE TO BASICALLY READ ALL O F THE DISCOVERY THAT HAS BEEN DONE , CONSULT WITH MR . MULDORF AND THEN START FROM THERE , SO YOU ARE ALREADY GOING TO HAVE A SIGNIFICANT DELLA I, WHICH I S EXACTLY WHAT DELAY, WHICH IS EXACTLY WHAT OCCURRED IN THIS CASE , 14 MONTHS , CAN WHICH MR . MULDORF, HIMSELF

NINE MONTHS , YOUR HONOR.

I THOUGHT IT WAS HE WAS REMOVED IN FEBRUARY OF '98 AND IT WENT TO TRIAL IN APRIL OF '99. FOURTEEN MONTHS.

BUT IN THE PENALVER TRIAL , DID MR . MULDORF TAKE DEPOSITIONS IN THE WEAVER CASE IN THE AFTERNOONS OR WHENEVER THERE WAS BREAKS?

HE CLAIMS HE DID , BUT AS I SAY, IT WAS THE OFFICERS ON THE PRIVRY , THE TWOPOINTS OF PORT - - PERIPHERY . THERE ARE TWO POINTS OF IMPORTANCE HERE , AND - -

YOU SAID POINTS OF IMPORTANCE HERE. WHAT DO YOU MEAN THAT THEY WERE LOSING THEM?

NOT THE POLICE OFFICERS. THERE WERE OTHER CASES THAT WOULD HAVE GIVEN BACKGROUND TO MR . WEAVER.

WHERE WERE THEY GOING?

M R . SACKS EITHER COULDN'T FIND THEM OR THEIR MEMORIES WERE LOST .

THESE ARE AMONG THE TEN THAT MR . SACKS SAID

I DON'T BELIEVE THOSE WOULD HAVE BEEN AMONG THE "A" WITNESSES . NONE OF THEM WERE POLICE OFFICERS.

BUT THESE WERE IMPORTANT WITNESSES .

THEY PUT THE CONTEXT TOGETHER.

YOU STARTED OUT BY SAYING THAT THE INITIAL RESPONSE TO THE DISCOVERY REQUEST BY THE DEFENDANT , WHICH LISTED ,, WHAT 200?

LESS THAN THAT T STARTED OUT 140, BUT BY THE END IT WAS 200-SOMETHING.

THE STATE ATTORNEY SAID REALLY THAT H E ONLY HAD TEN WITNESSES THAT HE WOULD HAVE LISTED UNDER THE NEW DISCOVERY RULES.

UNDER THE A-LIST.

UNDER THE NEW DISCOVERY RULES. ALL RIGHT. SO WHAT ARE YOU SAYING NOW, IN TERMS OF THE STATE LOSING WITNESSES? YOU ARE SAYING THAT ANY OF THOSE TEN WITNESSES WOULD BE LOST?

I DON'T BELIEVE THOSE WOULD HAVE FALLEN UNDER THAT , BUT THEY WERE WITNESSES THAT HAD STATEMENTS. THEY HAD WITNESSES THAT THE DEFENDANT HAD BEGIN A STATEMENT TO. HAD MADE A COMMENT ABOUT KILL AGO POLICE OFFICER , THAT IF HE WAS EVER CONFRONTED, HE WOULD HAVE KILLED THE POLICE OFFICER. NOW , EVENTUALLY , THEY WERE FOUND , BUT AT THE TIME THAT THE

THIS IS A JAILHOUSE PERSON?

NO, NO , THEY WERE NOT. THEY WERE PEOPLE OUTSIDE.

SO THEY , IT WASN'T THAT THEY , THEY LOST , THEY HADN'T FOUND THEM AND THEN THEY FOUND THEM.

THEY HAD LOST THEM AND THEN THEY RELOCATED THEM.

ALL RIGHT. I AM STILL HAVING TROUBLE UNDERSTANDING HOW, THEN, YOU KNOW, THE RUSH TO TRIAL, AND IT IS SUCH A THING AS PRESERVING SOMEBODY'S TESTIMONY THROUGH DEPOSITION, IF YOU, YOU KNOW, FIND THEM, AND UNFORTUNATELY IN THESE DEATH CASES AS WE KNOW, MANY OF THEM END UP GOING TO TRIAL SEVERAL, YOU KNOW, WITHIN THREE OR FOUR YEARS AFTER, AS OPPOSED TO ONE OR TWO YEARS, AND YOU KNOW, AGAIN, WHEN 200 WITNESSES ARE LISTED AND YOU ARE TALKING ABOUT THE KILLING OF A POLICE OFFICER, WHERE THE STATE ATTORNEY IS SEEKING THE DEATH PENALTY, YOU KNOW, YOU DON'T WANT AS A DEFENSE ATTORNEY, YOU WANT TO BE, MAKE SURE THAT EVERY DOT IS EVERY DOT, EVERY I IS DOTTED AND THE IT IS CROSSED, BECAUSE IT IS AND THE IT IS CROSSED, BECAUSE IT IS AND THE "T" IS CROSSED, BECAUSE THIS, THE PERSON'S LIFE IS AT STAKE, SO HE HAS TO KNOW THAT WHEN HE IS APPOINTED A NEW LAWYER AND THAT LAWYER IS GOING TO DO A GOOD JOB, HE HAS TO KNOW THAT IT IS GOING TO AT LEAST TAKE A YEAR TO GET THE TRIAL PREPARED. AND AND THIS IS WHAT MR. MULDRUF WAS SAYING AT THE TIME. NUMBER ONE, MR. MULDRUF SAID IT IS GOING TO TAKE ME TWO YEARS TO BE PREPARED WITH MR. WEAVER'S TRIAL. IT IS GOING TO TAKE ME A YEAR TO GET DONE WITH MR. PENALVER AND A YEAR TO GET READY FOR MR. WEAVER. WE ARE TALKING ABOUT AT A DEAD STOP.

HE IS TALKING NOT ABOUT TWO BUT ABOUT THREE.

MR. PENALVER'S THIRD MR. PENALVER'S TRIAL DID NOT START UNTIL A WEEK AFTER MR. WEAVER'S TRIAL. ON TOP OF THAT, THE SENTENCING PHASE, MR. PENALVER'S TRIAL ENDED, THE SENTENCING PHASE, ENDED NOVEMBER '99 AND THE SENTENCING PHASE WAS JULY OF 2000, SO ADD A YEAR TO THAT.

CHIEF JUSTICE: JUSTICE BELL HAS A QUESTION.

I JUST HAVE ONE QUESTION. WAS MR. WEAVER EVER CONVICED OF THE ARMED BURGLARY?

NO, YOUR HONOR.

IT WAS SEVERED OUT?

IT WAS SEVERED OUT AND THE STATE WOULD LIKE TO HAVE THAT CHARGE REINSTATED.

MY POINT WAS SOMETIME AT THE SPENCER HEARING, THE JUDGE HAS BEFORE HIM OR HER MORE INFORMATION THAN THE JURY HAS. IN THIS CASE, WAS THERE ANY EVIDENCE OTHER THAN THE AMMUNITION THAT WAS ARGUED OR POSSIBLY THIS OTHER OFFENSE THAT WAS PRESENTED TO THE JUDGE?

NO. MR. WEAVER DIDN'T PUT ANYTHING FURTHER ON AND THE STATE DIDN'T GO FORWARD ON THAT CHARGE.

IT WAS SEVERED OUT AND THEY DIDN'T GO FORWARD. WAS IT NOLLE PROSED?

IT ENDED UP BEING NOLLE PROSED, SO IT IS DISMISSED AT THIS POINT. HOWEVER, IF IT GOES BACK, IT SHOULD GO BACK AND BE REINCLUDED IN THE INDICTMENT.

CHIEF JUSTICE: THANK YOU VERY MUCH.

THANK YOU.

CHIEF JUSTICE: FIVE MINUTES.

THANK YOU. MAY IT PLEASE THE COURT .

I REALIZE THAT THIS WAS A CASE ABOUT A POLICE OFFICER BEING SHOT AND ALL OF THAT , AND I HAVE HEARD HERE , TODAY , A LOT ABOUT HOW COMPLEX THIS CASE WAS , BUT WHAT WAS THE COMPLEXITY OF IT? I AM HAVING A HARD TIME. WE HAVE A PERSON WHO IS WAS RUNNING , ESSENTIALLY , FROM THE POLICE, WHO TURNS AROUND AND SHOOTS A POLICE OFFICERS OFFICER , AND SO OTHER THAN THE OTHER POLICE OFFICER WHO WAS THERE AND WHATEVER DNA EVIDENCE YOU ARE TALKING ABOUT , MAYBE THE GUN. ANOTHER BULLET.

THE BULLET FROM THE GUN. OTHER THAN THAT , WHAT WAS THE REAL COMPLEXITY OF THIS CASE? I AM HAVING A HARD TIME FIGURING OUT WHY WE HAD EVEN 120 , I THINK, WAS THE INITIAL WITNESS LIST , I MEAN , ALL CASES HAVE THEIR DIFFERENCES , BUT THIS SEEMS TO ME , TO BE , REALLY , PRETTY STRAIGHTFORWARD, WHEN IT COMES TO WHAT OCCURRED HERE , SO WHERE IS THE COMPLEXITY ?

I THINK THE COMPLEXITY CAME IN , IN THE VOLUME OF WITNESSES.FOR EXAMPLE THEY HAD 2 0 K-9 'S THAT WERE A PART OF THE SEARCH TIME , OVER 100 OFFICERS.

TO DO WHAT? WHAT COULD THEY SAY?

THEY COULD ALL SAY IT WAS THE NIGHT OF FIFTH AND WE WERE LOOKING FOR JEFF WEAVER AND WE COULDN'T FIND HIM UNTIL WE FOUND HIM THE NEXT DAY.

HOW MANY WITNESSES TESTIFIED AT THE TRIAL ?

ROUGHLY 40.

STILL WITH THE 200 , STILL THAT IS A SIGNIFICANT NUMBER OF WITNESSES.

YES, IT IS A SIGNIFICANTNUMBER OF WITNESSES .

IS IT TRUE THAT MR . MULDORF DIDN'T DO ANYTHING? DO WE HAVE EVIDENCE OF THAT, THAT HE HAD NOT MOVED THIS CASE ALONG IN THE TWO YEARS THAT HE HAD

N O , HE DID MOVE THE CASE ALONG.THERE WERE A TON OF DEPOSITIONS THAT WERE TAKEN. EACH DEPOT HAS NOT BEEN FILED, BECAUSE , AND SO IT IS HARD TO TELL HOW MANY WERE TAKEN .

HOW MANY HEARS? HEARINGS?

THEY KEPT COMING IN FOR STATUSES , TO BRING IT TO TRIAL.

FORTY WITNESSES IN THE GUILT AND PENALTY PHASE?

IN THE GUILT PHASE.

HOW LONG DID THE GUILT PHASE LAST?

THE GUILT PHASE LASTED CLOSE TO A MONTH , BUT THAT WAS BECAUSE THERE WERE SOME DAYS THAT WERE TAKEN OFF, BECAUSE MR. WEAVER ONLY GOT, THE BOXES OF SDOFERX TEN BOXES , AND THERE WAS A PICTURE IN THE RECORD

HOW MANY ACTUAL TRIAL DAYS WERE THERE OUTSIDE THE VOIR DIRE?

I WOULD SAY ROUGHLY 15-TO-20 IS A GUESSTIMATE. I WOULD LIKE THE COURT TO LOOK AT ONE THING IN THE RECORD THAT IS THE STATE EVENTUALLY IGNORES FROM THE NOVEMBER 2, '98

HEARING , AT VOLUME 3 PAGE 123 , AND IT IS THE 1,000 DAY LIST INTRODUCED AS AN EXHIBIT , AND IT WAS A LIST OF OVER A HALF A DOZEN BROWARD COUNTY JAIL INMATES WHO HAD BEEN SITTING IN THE BROWARD COUNTY JAIL FOR OVER 1,000 DAYS, WAITING FOR THEIR TRIAL , AND I ASK ONE QUESTION, WHY DOES JEFFREY WEAVER GET PUSHED TO TRIAL WITH A LAWYER THAT IS NOT HIS LAWYER OF CHOICE AND THESE OTHER PEOPLE GET TO WAIT OVER 1,000 DAYS , BECAUSE WE WERE ONLY 600 DAYS INTO THIS WHEN MR . MULDORF WAS REMOVED .

LET ME ASK YOU A QUESTION. YOU PRESENTED COMPELLING ARGUMENTS WITH REGARD TO THE RIGHT AFTER INDIVIDUAL TO HAVE COUNSEL SUCH AS MR . MULDORF IN THIS PARTICULAR CASE. THE THING THAT I AM NOT REALLY COMFORTABLE WITH THAT YOU HAVEN'T PROVIDED, IS A COMPELLING STANDARD THAT WOULD BE APPLIED , OTHER THAN AN ABUSE OF DISCRETION SO COULD YOU GIVE SOME GUIDANCE ON THAT, AS TO WHERE YOU THINK, IF WE ACCEPT THE PROPOSITION THAT YOU HAVE COMPELLING REASONS , WHAT WOULD BE THE COMPELLING LEGAL CRITERIA THAT WOULD BE APPLIED IN A CASE SUCH AS THIS?

WELL , I COULDN'T FIND ANY PRECEDENT WITH REGARDS TO SETTING DATES. IT IS NOT LIKE A SPEEDY TRIAL RULE , WHERE THERE IS, IF THE CASE IS GOING TO TAKE A NUMBER OF YEARS TO GO THEN "X" NUMBER OF YEARS TO GO , THEN THAT IS TOO LONG, SO I THINK IF THE COURT HAS INHERENT POWER TO RUN ITS DOCKET , THE COURT HAS TO BE MINDFUL THAT YOU DON'T WANT TO HEAR THESE THINGS , TEN OR 15 YEARS LATER. THE COURT-APPOINTED LAWYERS ARE DOING THEIR BEST TO GET THE CASES TO TRIAL. LET'S WRAP THIS UP THE BEST WE CAN. THERE IS A SERIES OF ARTICLES IN THE MIAMI HERALD COMING OUT THAT MANY CASES ARE TAKING SIX YEARS BEFORE THEY GET TO TRIAL , THE DEATH PENALTY CASES.

AS YOU PERCEIVE IT, IF YOU WERE WRITING THE LEGAL STANDARD, WHAT WOULD BE THE LEGAL STANDARD?

I WOULDN'T GIVE A LEGAL STANDARD.

HOW CAN WE OPERATE ON A STANDARDLESS SYSTEM?

YOU LOOK AT REASONABLENESS. IS IT REASONABLE FOR MR . MULDORF TO BE READY IN FOUR YEARS , FIVE YEARS?

YOU SEEM TO BE SAYING IT IS ABUSE OF DISCRETION LIKE IT IS ON CASE MANAGEMENT. YOU ARE SAYING THAT THE COURT ABUSED ITS DISCRETION - - DISCRETION.

YES. BECAUSE OF TAKING AWAY CHOSEN COUNSEL , COURT APPOINTED COUNSEL. IT IS NOT LIKE MR . WEAVER CAN GO OUT AND HIRE THE NEXT LAWYER DOWN THE BLOCK. HE DIDN'T HAVE THAT ABILITY EVENT HAS GOT TO TRUST THE COURT TO GIVE HIM A COMPETENT LAWYER. IT DID AND THEN THAT COMPETENT LAWYER WAS SNATCHED OUT FROM UNDER HIM.

YOU ARE SAYING EVERY 1,000 DAYS. YOU ARE SAYING IF A JUDGE IS GETTING BACK LOADED ON HIS DOCKET AND THERE ARE OTHER CASES GOING TO TRIAL AND HE SAYS THERE ARE OTHER DEFENDANTS THAT HAVE BEEN HERE FOR 1,000 DAYS. THIS ONE HAS ONLY BEEN HERE FOR 900 I CAN'T DO ANYTHING.

NO , LOOK AT HOW THE CASE IS GOING ON , HOW MANY POLICE REPORTS AND EXPERTS THERE ARE. THEY WERE GETTING BALLISTICS EXPERTS AT THE VERY END OF THIS CASE. HOW COMPLEX THE DNA EVIDENCE IS , WHAT THE DEFENSE IS. THE JUDGE CAN FIND THIS AND BY LOOKING AT THE TRIAL IN THE EXPERIENCE OF JUDGES QUALIFIED TO TRY DEATH CASES , THEY CAN SEE WHAT IS GOING ON AND HOW LONG IT IS GOING TO TAKE.

BUT YOU ARE SAYING THE LIST IS NOT RELEVANT.

IT IS RELEVANT ONLY THAT THERE ARE OTHERS IN JAIL LONGER THAN JEFF WEAVER WHO GET TO KEEP THEIR LAWYER. WHY DOESN'T JEFF WEAVER GET TO KEEP HIS?

CHIEF JUSTICE: WITH OUR HELP YOU HAVE EXHAUSTED YOUR TIME. WE APPRECIATE YOUR BEING ATTENTIVE TO THE COURT AND ADDRESSING ITS CONCERNS. THE COURT IS GOING TO TAKE ITS MORNING RECESS AND WILL STAND IN RECESS FOR 15 MINUTES , WHEN WE WILL HEAR THE NEXT CASE.

MARSHAL: PLEASE RISE.