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Chadwick D. Banks v. State of Florida

BANKS VERSUS STATE AND BANKS VERSUS MOORE. COUNSEL, YOU MAY PROCEED.

MR. CHIEF JUSTICE, MAY IT PLEASE THE COURT, I AM GARY PRINTY ON BEHALF OF CHADWICK BANKS, WHO IS A DEATH-ROW INMATE INMATE. THIS CASE IS BEFORE THE COURT, TODAY, ON APPEAL OF AN ORDER DENYING MOTION FOR POST-CONVICTION RELIEF FROM THE CIRCUIT COURT IN GADSDEN COUNTY, WHERE THE CRIME OCCURRED, JUDGE GARY. THIS CASE ROSE OUT OF A MURDER, DOUBLE MURDER IN SEPTEMBER 1992.

THIS WAS A ONE ISSUE 3.850 CASE? YOU ONLY RAISED THE ISSUE OF --

INEFFECTIVE ASSISTANCE OF COUNSEL.

-- INEFFECTIVE ASSIST ANSES OF COUNSEL. -- INEFFECTIVE ASSISTANCE OF COUNSEL.

IT HAD SEVERAL COMPONENTS, BUT THAT IS WHAT IT WAS, INEFFECTIVE ASSISTANCE OF COUNSEL. THE TRIAL LAWYER, MR. SELIGER, I AM SURE YOU ARE FAMILIAR WITH MR MR. SELIGER. HE HAS APPEARED HERE, HIMSELF, WAS APPOINTED TO REPRESENT MR. BANKS IN OCTOBER 1992. AROUND MARCH OF '94, I THINK THEY FINALLY GOT AROUND TO HAVING A TRIAL, AND RIGHT AT THE END OF THE, RIGHT BEFORE THE TRIAL BEGAN, THEY ENTERED INTO A PLEA OF GUILTY AS TO THE MURDER COUNTS, AND THEN IMPANELED A JURY SOLELY FOR PURPOSES OF SENTENCING ON THE MURDER OF THE TEN-YEAR-OLD GIRL MELODY. THE JURY WAS SELECTED. MR. SELIGER, WHO HAD BEEN REPRESENTING MR. BANKS FROM, LIKE I SAID OCTOBER UNTIL MARCH, PERFORMED PART OF THE TRIAL, AND THEN MR. GARCIA --

DO WE KNOW WHEN MR. GARCIA GOT INVOLVED IN THIS CASE?

ABOUT A WEEK BEFORE THE TRIAL. THE CIRCUMSTANCE SURROUNDING THAT, HE TESTIFIED AT THE HEARING. I WANT TO EXPLAIN SOMETHING. MR. SELIGER AND MR. GARCIA NOW PRACTICE TOGETHER AND HAVE SINCE RIGHT AFTER THIS TRIAL, PRACTICED TOGETHER IN THE LAW FIRM OF GARCIA AND SELIGER, IN GADSDEN COUNTY. WHEN I ASSUMED REPRESENTATION OF THIS CASE IN 1998, I ASSUMED THAT THEY WERE TOGETHER THEN, AND THAT IS WHY MR. GARCIA PLAYED ANY ROLE IN THE CASE IS WHEN HE WAS APPOINTED, HE BROUGHT, MR. SELIGER BROUGHT IN HIS PARTNER, EVEN THOUGH STEVE WAS DOING THE WORK, HIS PARTNER WAS DOING THE WORK WITH HIM. WELL, IT WAS ONLY WHEN I ENTER VALUED MR. GARCIA, AND THIS WAS RIGHT ABOUT THE EVENING BEFORE THE EVIDENTIARY HEARING, ANYWAY, THAT I FOUND OUT THAT MR. GARCIA WAS NOT MR. SELIGER'S PARTNER AT THAT TIME, AND THE FACTS SURROUNDING HIS APPOINTMENT WERE THEY WERE LAW SCHOOL FRIENDS.

WHAT WAS THAT RELEVANT TO?

WELL, BECAUSE WE NOW HAVE STANDARDS FOR THE REPRESENTATION OF INMATES IN CAPITAL CASES, WHEN YOU KNOW, GENERALLY THEY ARE GOING TO REQUIRE TWO LAWYERS TO BE APPOINTED TO REPRESENT SOMEONE ON THE THEORY THAT ONE DOES THE GUILT PHASE AND ONE CAN DO THE PENALTY PHASE, A CERTAIN AMOUNT OF EXPERIENCE A LAWYER IS SUPPOSED TO HAVE, IN ORDER TO DO A CAPITAL CASE. MR. GARCIA CAME TO THIS CASE. HE WAS WORKING AT THE DEATH PENALTY RESOURCE CENTER AT THE TIME, AND DUE TO LACK OF FUNDING HE LOST HIS JOB. HE WAS UNEMPLOYED THAT SUMMER OR AT THAT TIME, IN MARCH. HE WAS A FRIEND OF

STEVE'S. HE IS NOT DOING ANYTHING. A WEEK BEFORE THE TRIAL, STEVE SAYS WHY DON'T YOU COME OVER AND HELP ME DO THIS CASE, SO WITHOUT ANY PRIOR REPRESENTATION, INVOLVEMENT IN THIS CASE AT ALL, HE IS, THEN, STEPS UP TO THE PLATE, AND DOES THE CLOSING ARGUMENT, HIS FIRST AND ONLY EVER CLOSING ARGUMENT IN THIS DEATH-PENALTY CASE. EVEN THOUGH THE COURT-APPOINTED LAWYER, THE PAID LAWYER, THE ONLY ATTORNEY, REALLY, OF RECORD IN THE CASE FROM THE BEGINNING UNTIL RIGHT BEFORE THE TRIAL, MR. MR. SELIGER DID NOT. MR. SELL ILL GETTER HAD PRIOR EXPERIENCE DOING CAPITAL CASES, AND HE TESTIFIED IT WAS A DECISION OF HIS --

THIS WAS EXPLORED AT THE EVIDENTIARY HEARING, AND THE ATTORNEYS TESTIFIED THAT BASED ON THEIR STRATEGY AND WHAT THEY WERE GOING TO PRESENT DURING THE PENALTY PHASE OF THIS CASE, THAT MR. SELIGER INDICATED HE THOUGHT MR. GARCIA WOULD HAVE BEEN A BETTER PERSON TO -- PERSON -- A BETTER PERSON TO SUBMIT THIS KIND OF MITIGATING EVIDENCE, TO SUM UP, WHICH IS WHAT THE CLOSING ARGUMENT IS, TO SUM UP THEIR CASE, AND WHY ISN'T THAT REASONABLE? ON WHAT BASIS WOULD WE SAY THAT WAS AN ERROR?

WELL, BASED ON THE BACKGROUND AND EXPERIENCE MR. GARCIA HAD, I THINK IN A CASE WHERE A MAN'S LIFE IS AT STAKE, NOW, EVERYBODY HAS TO HAVE THEIR FIRST CASE, GRANTED, WHERE THEY DO THEIR FIRST CLOSING ARGUMENT, IF THEY ARE GOING TO BE DOING A TRIAL LAWYER DOING DEATH PENALTY CASES THEY ARE GOING TO HAVE THEIR FIRST ONE, BUT TO BRING IN SOMEBODY A WEEK BEFORE WHEN YOU HAVE BEEN DOING ALL THE WORK, TO BRING IN SOMEBODY A WEEK BEFORE WHO HAS NEVER DONE ONE AND SAY WHO, WHO IS NOT FROM, HE WASN'T FROM QUINCY. EVEN I CAN SEE IF YOU BROUGHT IN A LOCAL LAWYER WHO IS KNOWN FOR HIS SAVVY WITH THE LOCAL JURY --

BUT AS TO HIS BACKGROUND, HE WAS, IN FACT, A CRIMINAL LAWYER.

YES, HE WAS.

HE WAS A LAWYER WHO HAD PRACTICED IN THE CRIMINAL AREA, CORRECT? HE HAD BEEN A PUBLIC DEFENDER, I BELIEVE.

HE HAD DONE --

-- AND HAD DONE PRIVATE PRACTICE WORK, ALSO?

YES, HE HAD. BUT A WEEK BEFORE THE CASE THEY BRING HIM ON AND HE DOES THE CLOSING ARGUMENT.

WHY CAN'T THAT BE LEGITIMATE STRATEGY? LET'S SAY THAT SOME PERIOD OF TIME BEFORE THE CLOSING ARGUMENTS IN A CASE LIKE THIS, THAT THE LAWYER SITS IN ON ANOTHER TRIAL, AND HE LISTENS TO THIS ARGUED, THE LAWYER MAKE A MAGNIFICENT ARGUMENT IN ANOTHER CRIMINAL CASE AND JUST SAYS THIS LAWYER JUST REALLY HAS A MAGNIFICENT SPEAKING STYLE AND I WAS JUST STRUCK BY THAT, AND HE SAYS I HAVE GOT A CASE, YOU KNOW THAT I HAVE BEEN HANDLING, AND I HAVE WORKED IT UP. I KNOW IT TO THE INNOCENT DEGREE AND I AM -- TO THE NTH DEGREE, AND I AM A REAL GOOD LAWYER, IN TERMS OF THE TECHNICALITIES AND RESEARCH AND ALL OF THAT, BUT I AM JUST NOT THE MOST COMFORTABLE PERSON ON MY FEET, AND HERE I HAVE JUST SEEN ONE OF THE FINEST PERFORMANCES, SO I AM GOING TO SEE IF THAT LAWYER, IF I CAN ASSOCIATE HIM IN MY CASE AND HAVE HIM MAKE, AND I WILL BE SURE HE KNOWS EVERYTHING AND, BUT HE IS SUCH A GOOD EFFECTIVE SPEAKER, WHAT, IS THERE ANY, THAT SOUNDS TO ME, AS OPPOSED TO BEING INEFFECTIVE, THAT THAT IS AN ATTEMPT TO BE VERY EFFECTIVE, IN THE WAY THAT YOU HAVE CHOSEN TO APPROACH SOMETHING. WHY WOULDN'T THAT APPLY HERE?

WELL, ON THOSE FACTS, LIKE I SAID, IF IT WAS, IF MR. GARCIA WAS A LOCAL GUY IN QUINCY,

WHO IS KNOWN AS THE GUY WHO, FOR SOME REASON CAN JUST TALK TO YOUR GADSDEN COUNTY JURIES, AND THERE ARE LAWYERS WHO MAKE VERY GOOD MONEY WHO AREN'T VERY GOOD LAWYERS AT ALL WHO HAVE THAT FACILITY, AND YOU SAY I WILL WORKUP THE CASE, AND THEN ALL YOU ARE GOING TO DO IS COME IN AND LAY IT OUT FOR THEM.

MR. PRINTY, WHAT WERE THE DEFICITS IN THE ARGUMENT?

WELL, I THINK IF YOU LOOK AT HIS CLOSING ARGUMENT, THERE IS NOT A SINGLE REFERENCE TO THE STATUTORY MITIGATING FACTORS THAT THEY CAN CONSIDER. AND I THINK IF YOU ARE GOING TO, OR THE JURY INSTRUCTIONS, AND WHAT THE JURY INSTRUCTIONS ARE GOING TO SAY, AND IF YOU ARE GOING TO ASK THE JURY TO CHANNEL THAT DISCRETION AND YOU CAN SAY TO THEM, HERE IS WHAT THE STATE OF FLORIDA, THIS ISN'T ME TALKING, THIS IS THE STATE OF FLORIDA. THE LEGISLATURE, WHO PASSED THIS STATUTE, SAID HERE IS A LIST OF THINGS YOU CAN CONSIDER.

THAT ISSUE WAS RAISED BEFORE THE TRIAL COURT.

YES, IT WAS, YOUR HONOR.

AND THE TRIAL COURT, I ASSUME EVIDENCE WAS PRESENTED AS TO WHY OR WHY NOT THAT ARGUMENT WAS MADE THE WAY IT WAS.

WHAT THE TRIAL JUDGE DID, ACTUALLY, WAS, TOLD ME THAT I HAD ONLY BROUGHT THIS AS AN INEFFECTIVE ASSISTANCE OF COUNSEL CASE FOR FAILURE TO RETAIN AND POSSIBLY USE MENTAL HEALTH EXPERTS AND SAID I AM NOT GOING TO LET YOU GO THERE ANY MORE, SO AFTER WE LAID OUT THESE FACTS, HE SAID, CUT ME OFF AND SAID WE ARE NOT GOING THERE, SO THAT IS THE END OF THAT.

DID THE TRIAL JUDGE RULE ON THAT ISSUE?

NO. HE, I THINK HE SAID THAT HE EXCLUDED THAT. HE RULED ON IT, SAYING THAT IT WASN'T PART OF THE CASE.

WAS IT PART OF THE CASE? DID YOU HAVE AN ALLEGATION SOMEPLACE THAT THAT IS PART OF MY INEFFECTIVENESS CLAIM, IS --

NO. IT CAME UP THE DAY BEFORE THE EVIDENTIARY HEARING ACHT.

THIS IS WHEN -- THE EVIDENTIARY HEARING.

THIS IS WHEN YOU DISCOVERED THE RELATIONSHIP WAS NOT A LONG-TERM?

RIGHT. AND ACTUALLY IN, AND MANN I CALLED ME AND SAID -- AND MANNY CALLED ME AND SAID WHY DON'T YOU ASK ME HOW I CAME TO BE IN THE CASE? I CALLED HIM AND HE CALLED ME BACK, SO HE WASN'T JUST CALLING ME OUT OF THE AIR, BUT HE SAID ARE YOU CALLING ME BECAUSE YOU WANT ME TO BE A WITNESS THE CASE? AND I SAID WE ARE BRINGING BOTH LAWYERS IN TO TESTIFY, SO THEN THAT IS WHETHER I LEARNED FOR THE FIRST TIME, THIS SERIES OF FACTS.

SO ARE YOU SAYING THE TRIAL COURT, REALLY, INTERPOSED, I GUESS WHAT WE WOULD CALL A PROCEDURAL BAR, AND THAT IS SINCE YOU DIDN'T SET OUT THIS CLAIM SPECIFICALLY, IN YOUR POSTCONVICTION MOTION THAT, HE DIDN'T FEEL IT WAS COVERED BY WHAT YOU HAD SET OUT, SO ARE WE REALLY, THEN, TALKING ABOUT SORT OF A NEARER ISSUE OF PLEADING -- A NARROWER ISSUE OF PLEADING?

YES, SIR. IT WOULD BE WHETHER YOU CAN AMEND AT THAT TIME. WE SHOULD HAVE BEEN ALLOWED TO AMEND IT AND RELATE IT BACK TO THE ORIGINAL FILING OF THE ORIGINAL MOTION.

DID YOU SAY TO THE TRIAL COURT JUDGE, WELL, JUDGE, IF YOU DON'T FIND IT, THAT I THINK I AM ENTITLED TO AMEND.

I DON'T RECALL IF I SATISFIED SAID THAT OR NOT. -- I DON'T RECALL IF I SAID THAT OR NOT.

OKAY. BUT THE JUDGE WOULDN'T LET YOU --

HE SAID YOU BROUGHT THIS ON THIS ISSUE AND THIS IS WHAT WE ARE GOING TO TALK ABOUT.

AND SO ARE YOU ARGUING THAT IS ERROR AS MATTER OF LAW?

BUT WE CAN LOOK, IF, WE CAN LOOK AT THE CLOSING ARGUMENT THAT WAS GIVEN, THE FACT THAT THERE IS A, THAT THERE WAS A A-TO-3 JURY VERDICT, WHICH -- A 9-TO-3 JURY VERDICT, WHICH I GUESS YOU COULD ARGUE IT BOTH WAYS THAT IF THE BETTER LAWYER HAD ARGUED, IT MIGHT HAVE BEEN 6-TO-6 BUT ON THE OTHER HAND WE CAN SAY IF MR. SELIGER, WHO IS AN EXPERIENCEED LAWYER, DECIDES THAT HE BETTER DISTANCE HIMSELF AND NEEDS ANOTHER PERSONALITY, MAYBE IT WOULD HAVE BEEN 12-0. SO IF THERE IS NOTHING OBVIOUSLY HORRIBLE ABOUT THE CLOSING ARGUMENT, AND IT SOUNDS LIKE YOU ARE SAYING, WELL, HE DIDN'T ARGUE THIS PART BUT HE DID ARGUE A WHOLE LOT OF WHY THE JURY SHOULD SPARE THIS MAN'S LIFE, AND THAT WAS CONSISTENT WITH MR. SELIGER'S TRIAL STRATEGY, I AM HAVING A HARD TIME, YOU KNOW, AS A MATTER OF LAW, SEEING WHY THAT WOULD BE, HOW YOU COULD EVER MEET THE PREJUDICE PRONG OF STRICKLAND ON. THAT.

THAT IS THE AREA WE NEVER KNOW, WHAT THOSE THREE, WHAT MOTIVATED THE THREE JURORS AND THE NINE JURORS.

YOU WILL NEVER KNOW THAT. MAYBE THE BETTER THING TO DO IS, ARE THERE ANY OTHER CLAIMS THAT YOU HAVE ON THE INEFFECTIVE ASSISTANCE BEFORE THE CLOSING BELL?

THE MENTAL HEALTH IN THIS CASE, YOU HAD DR. HARRY MCCLAIREN WAS APPOINTED BY THE STATE, ON THE DAY OF THE MURDER, TO COME DOWN. MR. BANKS GAVE A CONFESSION. HERE IS THE FACTS OF THIS CASE. IT HAPPENED ABOUT THREE IN THE MORNING.

LET ME, MAYBE I CAN, MAYBE YOU CAN HELP ME THIS WAY. READING THIS RECORD, IT SEEMS TO ME THAT MR. SELIGER DID ONE OF THE MOST, MORE DETAILED BACKGROUND INVESTIGATIONS AND CHECKED ALL THESE VARIOUS THINGS. I MEAN, FRANKLY, FAR BETTER THAN WHAT WE SEE IN MANY CASES, SO YOU ARE GOING TO HAVE TO LET ME KNOW WHAT IT IS THAT WAS SO BELOW THE SIXTH AMENDMENT STANDARD FOR CAPITAL COUNSEL THAT WASN'T, THAT WAS MISSED IN THIS CASE.

MR. SELIGER TESTIFIED THAT HE SPOKE WITH SOMEONE WHO IS A LAWYER OR PSYCHOLOGIST, WHOM HE DOESN'T REMEMBER NOW BECAUSE IS HE NOW DEAD, SO WE HAVE NOTHING TO VERIFY WHETHER ANY SUCH CONVERSATION TOOK PLACE, AND WE ALSO KNOW THAT NONE OF THE VOLUMINOUS MATERIALS, AND I AGREE THAT HE GATHERED ALL OF THE MATERIAL, AND THEN WHAT DID HE DO WITH THAT MATERIAL? DID HE SHOW IT TO A SINGLE PERSON, OTHER THAN HIMSELF? NO. HE DIDN'T TAKE IT TO A MENTALITY HEALTH -- TO A MENTAL HEALTH EXPERT AND SAY LOOK AT THIS STUFF AND TELL ME IF THERE IS ANYTHING YOU CAN TESTIFY. IF THERE IS NOT, THEN FORGET IT. I WON'T CALL YOU AND I WILL GO WITH THE STRATEGY WE HAVE, BECAUSE HE TESTIFIED AT TRIAL WHAT BOTHERED ME IN THIS CASE IS I DON'T KNOW WHY THIS GUY DID THIS. THIS IS A GUY WHO WAS WORKING. HE COMES HOME FROM WORK ONE DAY. THEY GO TO CHURCH. THEY GO TO CHURCH, AND THEY COME HOME AND HE GOES OUT AND SHOOTS

POOL AT THIS LITTLE JUKE JOINT THAT WAS LESS THAN 50 YARDS FROM HIS HOUSE. HE GOES OVER AND IS SHOOTING POOL AND DRINKING BEER AND HIS WIFE COMES OVER AND THEY HAVE ONLY BEEN MARRIED A COUPLE OF MONTHS AND SHE IS SAYING COME HOME, AND HE IS SAYING I AM OUT HAVING A GOOD TIME HERE. SHE IS 29 AND HE IS 21. THEY HAVE SOME LITTLE ARGUMENT ABOUT WHETHER HE IS GOING TO COME HOME OR NOT. HE GOES HOME AND THEN HE LEAVES, AND THEN HE COMES BACK AT THREE O'CLOCK AND HE WALKS IN AND PLUGS HER IN HER SLEEP APPARENTLY AND GOES BACK AND, YOU KNOW, IT IS A BRUTAL RAPE AND MURDER OF THIS TEN-YEAR-OLD, ABOUT THAT, THEN HE JUST LEAVES AND GOES HOME TO HIS GRANDMOTHER GRANDMOTHER'S HOUSE AND GOES TO BED AND GETS UP AND GOES TO WORK THE NEXT DAY. LIKE NOTHING HAPPENED. AND SO YOU SAY, YOU KNOW, I MEAN IF THIS WAS I AM KILLING HER FOR INSURANCE, HE COULD HAVE DISGUISED IT --

ISN'T THAT WHY SELIGER GAVE ALL OF THIS TO AN EXPERT AND ASKED FOR SOME HELP?

HE DIDN'T GIVE IT TO AN EXPERT. I THOUGHT YOU SAID --

HE GATHERED ALL THIS MATERIAL -- THERE WAS TWO EXPERTS.

HE DIDN'T GIVE ALL THAT MATERIAL?

NOBODY EVER SAW THAT. HARRY MCCLAIREN WAS THE STATE EXPERT, WHO HAD A ONE-HOUR INTERVIEW WITH BANKS ON THE DAY OF THE MURDER. THEY BROUGHT HIM IN BECAUSE THEY DIDN'T WANT A CHALLENGE TO HIS COMPETENCY TO GIVE A CONFESSION, SO THEY BROUGHT IN HARRY MCCLAIREN WITHOUT A LAWYER PRESENT OR ANYTHING, AND HARRY SAT DOWN AND TALKED TO THE GUY FOR AN HOUR AND SAID HE IS COMPETENT TO CONFESS.

SO AN EXPERT WASN'T CONSULTED.

NO. THEN DR. JAMES BROWN, THE PUBLIC DEFENDER SECOND JUDICIAL CIRCUIT WAS APPOINTED IMMEDIATELY TO REPRESENT, AND THEY HIRE A DOCTOR. JAMES BROWN FROM TALLAHASSEE, WHO INTERVIEWED BANKS. DIDN'T HAVE ANY OF THIS MATERIAL OR ANYTHING BUT HE INTERVIEWED BANKS. FOR THE PURPOSE OF CHALLENGING WHETHER THE COMPETENCY, THE THING THAT MCCLAIREN'S DETERMINATION WAS MADE COULD BE CHALLENGED, AND THEN THEY GOT OUT OF THE CASE AND SELIGER IS APPOINTED. FROM THAT POINT ON, THERE ARE NO DOCTORS THAT EVER SEE THIS MATERIAL OR TALK TO CHAD BANKS, UNTIL I WAS APPOINTED IN THE CASE.

SELIGER NEVER TALKED TO THAT MENTAL HEALTH EXPERT?

HE SAID HE DID. HE SAID HE DID AND I DON'T THINK HE IS LYING, SO HE DID. BUT THIS GUY DIDN'T SEE ANY OF THIS STUFF. STEVE IS --

WHAT DID SELIGER SAY HE WAS TOLD BY THAT EXPERT?

HE DOESN'T. HE SAID, WELL, HE JUST TESTIFIED THAT THERE WASN'T ANYTHING THERE TO --

I WANT YOU TO BE SURE THAT YOU KNOW ABOUT YOUR TIME, SO IF YOU WANT TO SAVE SOME FOR REBUTTAL, IT MIGHT BE A GOOD TIME TO DO IT.

THANK YOU, YOUR HONOR.

CHIEF JUSTICE: OKAY.

LET'S START RIGHT WHERE HIS COUNSEL SEEMS TO HAVE LEFT HIS, AND THAT IS WHAT DID MR. SELL I GORE, IN PREPARATION FOR ANY POSSIBLE MENTAL HEALTH MITIGATION IN THIS CASE?

IT WILL BE HELPFUL, IF YOU PUT YOUR NAME AND REPRESENTATION ON THE RECORD.

MAY IT PLEASE THE COURT. MY NAME IS CURTIS FRENCH, REPRESENTING THE STATE OF FLORIDA IN THIS CAUSE. BY THE TIME MR. SELL ILL GETTER GOT IN THE CASE, WHICH WAS -- MR MR. SELIGER GOT IN THIS CASE, WHICH I DON'T REMEMBER EXACTLY HOW MUCH TIME ELAPSED, BUT IT WAS A FEW WEEKS OR A FEW MONTHS, BUT INITIALLY BANKS HAD BEEN REPRESENTED BY ANOTHER COUNSEL, BUT BY THE TIME HE GOT INTO THE CASE, BANKS HAD BEEN EVALUATED BY DR. MCCLAIREN LATE ON THE MORNING OF, FOLLOWING THE MURDER.

WAS THERE A REPORT GENERATED FROM THIS?

MY RECOLLECTION IS THAT THERE WAS. BUT IN ADDITION, WELL, HE TALKED --

AND, WELL, IN ADDITION, NOT ONLY WAS THERE A REPORT, BUT DID MR. SELIGER HAVE IT?

MY RECOLLECTION IS THAT HE DID. I BELIEVE IT IS, A COPY OF THAT REPORT IS IN THE DEFENSE ATTORNEY FILES, WHICH IS PART OF THE RECORD ON APPEAL. WELL, ANYWAY, BY THE TIME MR. SELIGER GOT IN THERE, THERE WAS THE EVALUATION BY MR. MCCLAIREN, WHICH BASICALLY FOUND THERE WAS NOTHING WRONG WITH THIS DEFENDANT. THERE WAS ALSO AN EXAMINATION OF DR. BROWN. MR. SELL ILL GETTER READ DR. BROWN'S REPORT AND ALSO READ MR. MCCLAIREN'S REPORT. HE CHOSE NOT TO TALK TO DR. BROWN. HOWEVER, HE DID TALK TO DR. MCCLAIREN, WHICH HE HAD SOME EXPERIENCE WITH. DR. MCCLAIREN WAS FAMILIAR WITH BANKS'S MILITARY AND SCHOOL RECORDS. WHAT HE DIDN'T HAVE, MR. SELIGER FURNISHED TO HIM AND ALLOWED HIM TO LOOK AT IT, AND THEN HE DISCUSSED THE CASE WITH DR. MCCLAIREN, TRYING TO SEE IF SOMEHOW, BECAUSE APPARENTLY DR. MCCLAIREN HAD A VERY STRONG OPINION ABOUT BANK'S COMPETENCY AND THE FACT THAT HE HAS NO MENTAL PROBLEMS OF ANY KIND THAT WOULD SOMEHOW OR THE OTHER REDUCE HIS MORAL CULPABILITY IN THIS CASE, AND DR. MCCLAIREN IS OF THE OPINION THAT HE WAS FULLY RESPONSIBLE FOR HIS ACTS AND THERE WAS NOTHING IN MITIGATION. MR. SELIGER TESTIFIED THAT HE TRIED TO GET DR. MCCLAIREN TO COME OFF THIS TO SOME EXTENT AND WAS SIMPLY UNABLE TO DO SO.

WAS THERE ANY EVIDENCE IN THIS CASE OF MOTIVATION?

WELL, THERE WAS SOME EVIDENCE AND THERE IS TESTIMONY ABOUT THAT IN THE POSTCONVICTION HEARING BY MR. SELIGER. THAT MR. SELIGER MANAGED TO KEEP FROM THE JURY AT THE SENTENCING HEARING, BUT THERE WAS APPARENTLY SOME EVIDENCE THAT THE STATE HAD AVAILABLE, THAT CHADWICK BANKS HAD HAD SOME SORT OF ONGOING SEXUAL RELATIONSHIP WITH THAT TEN-YEAR-OLD GIRL, MELODY COOPER, WHO HE ULTIMATELY KILLED, AND I THINK POSSIBLY THAT IS CERTAINLY SOME KIND OF MOTIVE. PAST THAT, THAT WOULD BE MY ANSWER TO THAT, I SUPPOSE.

WHAT ABOUT THE OTHER EXPERT OR ANY FURTHER EXPLANATION OF THE MENTAL HEALTH --

HE DISCUSSED, OF COURSE, MR. SELIGER, NUMBER ONE, HAS BEEN INVOLVED IN A NUMBER OF DEATH PENALTY CASES. NOW, THIS HAPPENS TO BE HIS ONLY CAPITAL CASE THAT HE ACTUALLY TRIED BEFORE A JURY THAT WENT TO THE JURY ON THE PENALTY PHASE, BUT HE HAS REPRESENTED DEFENDANTS AT TRIAL AND OTHER CAPITAL CASES THAT DIDN'T GET TO THE PENALTY PHASE, EITHER BECAUSE, WELL, SOME OF THE CASES THE DEFENDANT WASN'T CONVICTED OF FIRST-DEGREE MURDER. HE HAS ALSO BEEN INVOLVED IN A NUMBER OF POSTCONVICTION CASES, DEATH PENALTY CASES.

WHAT WAS HIS TESTIMONY ABOUT THE OTHER MENTAL HEALTH EXPERT AND WHAT HE DID?

AFTER TALKING TO DR. MCCLAIREN, THERE WAS SOMEBODY OUT OF MARIANNE, A I BELIEVE,

WHO WAS -- MARIANNA, I BELIEVE, WHO WAS AN ATTORNEY AND PSYCHOLOGIST, AND HE DISCUSSED THE CASE WITH HIM. WHAT HE WAS TRYING TO DO, HE TESTIFIED THAT IN MR. SELIGER'S VIEW IT WASN'T SIMPLY ENOUGH TO SHOW THAT CAD WICK BANKS HAD BEEN ACCUSED AS A CHILD, PARTICULARLY IN THIS CASE WHERE THE ABUSE WAS A SEVERE FORM OF DISCIPLINE. NEVERTHELESS HE WASN'T SEXUALLY ABUSED.

THIS WAS AN INTACT FAMILY?

THIS WAS AN INTACT FAMILY. HIS PARENTS WERE RESPECTED MEMBERS OF THE COMMUNITY. BEEN MARRIED A LONG TIME. HIS FATHER WAS A CAREER CORRECTIONS OFFICER. HIS MOTHER WORKED FOR THE COURT, AND OTHER STATE AGENCIES IN THAT COUNTY. AND WHAT MR. SELIGER WANTED TO BE ABLE TO DO, IF HE WAS GOING TO PERCENT EW THIS, ANY DEFENSE -- TO PURSUE ANY DEFENSE OR MITIGATION BASED UPON CHILD ABUSE WAS TO SOMEHOW TIE IT TO HIS CRIME OR THIS CRIME IN THIS CASE, AND THE PERSONS HE TALKED TO, HE WAS UNABLE TO DID THAT. HE, ALSO, TESTIFIED THAT, EVEN IF HE SHOPPED AROUND AND FOUND ANOTHER EXPERT, THE PROBLEM WOULD BE THAT, A, DR. MCCLAIREN COULD BE CALLED BY THE STATE TO REBUT ANY TESTIMONY THAT HIS NEW EXPERT COULD PRESENT, AND OF COURSE HE WOULD, ALSO, LOSE THE COOPERATION OF THE FAMILY, BECAUSE THEY DIDN'T LIKE THE IDEA THAT, YOU KNOW, THAT, WHAT THEY REGARDED AS DISCIPLINE WAS, IN FACT, CHILD ABUSE. HE WOULD, ALSO, LOSE THEIR TESTIMONY, AND, FOR EXAMPLE THE TESTIMONY OF MR. BANKS AT THE SENTENCING HEARING IN THIS CASE, ABOUT WHAT A CLOSE RELATIONSHIP HE ENJOYED WITH HIS SON AND THEY DID EVERYTHING TOGETHER, AND HE WAS A WONDERFUL SON AND SO FORTH FORTH. SO HE WOULD LOSE THAT. IN OTHER WORDS IT WAS A QUESTION ON THE ONE HAND HE HAD THE THEORY THAT HE THOUGHT WOULD PLAY WELL WITH THE GADSDEN COUNTY WHICH WAS THAT BANKS WAS FROM A RESPECTED FAMILY IN GADSDEN COUNTY. HE WAS BASICALLY A GOOD KID. HE HAD DONE A LOT OF GOOD THINGS HAD IN HIS LIFE. HE WAS IN THE BAND. HE WAS SORT OF A LEADER IN THAT BAND. HE WAS IN THE MILITARY. SERVED HIS COUNTRY. HE WAS A MILITARY POLICEMAN. AFTER HE GOT OUT OF THE MILITARY HE HELD A RESPONSIBLE JOB AND, IN FACT, HAD BEEN PROMOTED AND HAD BEEN GIVEN A RAISE, NOT TOO LONG BEFORE THIS HAPPENED. HE WOULD HAVE TO FOREGO ALL OF THAT, IT TO PURSUE ANY KIND OF DEFENSE OR MITIGATION THEORY, BASED UPON CHILD ABUSE, BECAUSE ON THE ONE HAND, YOU CAN'T PUT THE FATHER ON TO SAY WHAT A WONDERFUL RELATIONSHIP WE HAD AND ON THE OTHER HAND PUT ON A MENTAL HEALTH EXPERT TO SAY, BY THE WAY, THIS FATHER WHO HAD THIS WONDERFUL RELATIONSHIP PHYSICALLY ABUSED HIM, AND THERE WAS, ALSO, THE PROBLEM, AS IT TURNED OUT, AND THE TWO EXPERTS THAT TESTIFIED AT THE POSTCONVICTION HEARING, DR. LARSON AND DR. PARTIKA, DR. LARSON ACKNOWLEDGED, ACTUALLY THERE WERE TWO PROBLEMS AND I GUESS I AM SEGUING INTO THE ISSUE OF PREJUDICE AT THIS POINT. THERE WERE TWO PROBLEMS WITH THE TESTIMONY THAT THEY PRESENTED. FIRST OF ALL, THE OPINIONS OF BOTH DR. LARSON AND DR. PARTIKA, THAT THERE WAS STATUTORY MITIGATION OR AT LEAST SOME MITIGATION BASED UPON CHILD ABUSE IN THIS CASE, WAS BASED UPON AN ASSUMPTION THAT CHADWICK BANKS WAS INTOXICATED AT THE TIME THAT HE COMMITTED THIS CLIMB -- THIS CRIME, AND THE PROBLEM IS THAT, ALTHOUGH THE DEFENDANT HAD THE, AT THE ORIGINAL SENTENCING PRESENTED EVIDENCE THAT CHADWICK BANKS HAD BEEN DRINKING, HE HAD BEEN DRINKING OVER SEVERAL HOURS. HE HAD BEEN WINNING POOL GAMES. THERE WERE WITNESSES AVAILABLE, NEITHER OF THEM, NEITHER OF THESE EXPERT WITNESSES WERE AWARE OF THAT WOULD AND COULD AND DID TESTIFY THAT CHADWICK BANKS WAS NOT NOBLY INTOXICATED WHEN HE LEFT -- WAS NOT NOTABLY INTOXICATED WHEN HE LEFT THE BAR AT THREE O'CLOCK IN THE MORNING. IT WAS PRESENTED AS A MITIGATOR THAT HE WAS NOT INTOXICATED, HE WAS NOT UNDER THE INFLUENCE OF ALCOHOL -- OF ALCOHOL AT THE TIME. THIS COURT PRESENTED THAT FINDING AND THERE WAS NO ADDITIONAL EVIDENCE OF INTOXICATION PRESENTED, SO WHAT WE HAVE NOW IS THE TESTIMONY THAT UNDERCUTS THE PRESENT TESTIMONY OF THE EXPERTS, THAT THERE IS MITIGATION, BASED UPON THE CHILD ABUSE AND THE FACT THAT HE WAS INTOXICATED AT THE TIME OF THE CRIME.

WHAT DID THE ORIGINAL LAWYER OFFER, AS FAR AS SOMETHING THAT APPEARS TO BE CLEARLY OUT OF CHARACTER WITH THIS PARTICULAR DEFENDANT? WHAT WAS THE JURY'S, WHAT DID THE JURY HEAR, AT THE ORIGINAL TRIAL, ABOUT SOMEBODY THAT HAS ESSENTIALLY BEEN AN ARMY GUY, GOOD PERSON, GOOD UPBRINGING, ONE DAY JUST GOES AND SHOOT HIS WIFE AND, YOU KNOW, SEXUALLY ASSAULTS AND KILLS --

IF YOU LOOK AT THE CLOSING ARGUMENT, AND OF COURSE THE DEFENSE PRESENTED TESTIMONY FROM THE BAND LEADER IN HIGH SCHOOL AND FROM THE FATHER AND FROM THE MOTHER AND FROM HIS EMPLOYER AND SO FORTH, AND MR. GARCIA BASICALLY ARGUED THAT THERE WAS GOOD IN CHADWICK BANKS THAT HIS LIFE WAS MORE THAN JUST A FEW MINUTES ON THIS PARTICULAR DAY OF THIS CRIME, AND HE REFERRED TO THE BUILDING BLOCKS OF HIS LIFE.

SO HE DIDN'T OFFER, I GUESS WHAT I AM TRYING TO UNDERSTAND IS ALWAYS TRYING TO FIGURE OUT, SOME OF THESE SEEMED TOTALLY INEXPLICABLE SO CAN'T EVER FIGURE IT OUT, SO I GUESS YOU SAY TO THE JURY, LISTEN, HE ADMITS THAT HE DID IT BUT JUST GIVE HIM MERCY, WAS THERE ANY ATTEMPT TO EXPLAIN WHAT WOULD HAVE, WHAT HAPPENED IN THIS SEVERAL-HOUR PERIOD OF TIME, TO CAUSE THIS GUY TO SNAP? DID THE JURY HEAR ANYTHING LIKE THAT?

HE ARGUED, OF COURSE, THAT HE WAS ONLY 21 YEARS OLD AT THE TIME OF THE CRIME AND HE, ALSO, ARGUED THAT HE WAS FULL OF ALCOHOL. I DON'T PASS THAT, I DON'T THINK THEY TRIED TO PRESENT AN EXPLANATION, BECAUSE I DON'T THINK THEY HAD ONE. I DON'T THINK THERE IS ONE.

WHAT I AM ASKING YOU IS DO WE HAVE ANYTHING THIS THIS RECORD THAT WE WOULD SAY, REALLY, WE HAVE GOT THE THING THAT THE JURY COULD HAVE LATCHED ON TO, TO SAY THAT HE WAS UNDER SUBSTANTIAL, EXTREME EMOTIONAL DISTRESS OR SUBSTANTIAL IMPAIRMENT? IS THERE ANYTHING LIKE THAT IN THIS RECORD NOW, BEFORE US, THAT THE JURY WOULD HAVE HAD, IF IT HAD BEEN PRESENTED?

WHAT WE HAVE NOW IS THE TESTIMONY OF DR. LARSON AND DR. PARTIKA, AND BASICALLY WHAT THEY SAY IS BECAUSE HE WAS ABUSED AS A CHILD, IT HAS SOME EFFECT ON YOU AS AN ADULT AND IT COMES OUT IN CHADWICK BANKS WHEN HE IS INTOXICATED, SO THAT DR. LARSON TESTIFIED THAT HE COULD HAVE HELPED THE JURY UNDERSTAND THE RELATIONSHIP BETWEEN THE ABUSE, CHILD ABUSE AND THE ADULT ANGER WHICH HE HAD WHICH COMES OUT WHEN CHADWICK BANKS HAS BEEN DRINKING. DR. PARTIKA BASICALLY FELT THAT ALCOHOL PLAYED A MAJOR ROLE, AND THAT WHAT HAPPENS WHEN HE GETS DRUNK THIS AGGRESSION THAT HE HAS COMES OUT, SO WHAT HE WOULD HAVE BEEN SAYING TO THE JURY, IF HE HAD TESTIFIED TO THE JURY, IS THAT HE IS VIOLENT, YES, BUT ONLY WHEN HE HAS BEEN DRINKING. OF COURSE THAT WOULD, COULD BE REBUTTED FIRST OF ALL, BY THE FACT THAT HE HADN'T BEEN DRINKING OR AT LEAST HE WASN'T UNDER THE INFLUENCE OF ALCOHOL WHEN HE COMMITTED THESE MURDERS, AND THE STATE COULD HAVE PRESENTED THAT IN REBUTTAL -- AND THE STATE COULD HAVE PRESENTED THAT IN REBUTTAL. THERE IS ALSO THE PROBLEM THAT BY PRESENTING THAT TESTIMONY, YOU OPEN UP, BESIDES GIVING UP THE GOOD KID AND GOOD FAMILY MITIGATION, YOU ALSO OPEN UP A LOT OF THINGS THAT MR. SELIGER MANAGED TO KEEP CLOSED, LIKE FOR EXAMPLE HIS VIOLENT BEHAVIOR THIS MILL MARRY -- IN THE MILL MILITARY, BECAUSE WHAT HAPPENED ON, -IN THE MILITARY, BECAUSE WHAT HAPPENED, THIS JURY NEVER -- WHAT HAPPENED, THIS JURY NEVER LEARNED THAT WHAT HAPPENED WAS HE WAS GIVEN A GENERAL DISCHARGE AFTER HE PULLED A GUN ON A KOREAN OFFICER THAT WAS STANDING WATCH WITH HIM, AND THAT WAS SOMETHING THAT OCCURRED AFTER A NUMBER OF OTHER EVENTS AND PROBLEMS WITH DRINKING AND HE HAD BEEN DISCIPLINED SEVERAL TIMES AND HAD WRITTEN BAD CHECKS AND SOME OTHER THINGS, PLUS BY HIS OWN ADMISSION BY DR. PARTIKA HE HAD GOTTEN INTO FIGHTS IN THE MILITARY. WHAT DR. PARTIKA ALSO RELIED ON WAS A HAIR CHECKLIST. THE HAIR PSYCHOPATH I CAN CHECKLIST AN OR -- PSYCHOPATH IC CHECKLIST OR SOMETHING LIKE THAT AND WHAT THIS IS SUPPOSED TO DO IS REGISTER OF WHAT A

PSYCHOLOGIST LOOKS AT AND DETERMINES WHETHER OR NOT IT APPLIES. DR. PARTIKA TESTIFIED THAT ONE OF THE FACTORS HE FOUND WAS A LOW LEVEL OF VIOLENCE AND BASED HIS CONCLUSIONS ON THIS DETERMINATION THAT CHADWICK BANKS HAD EXHIBIT ADD LOW LEVEL OF VIOLENCE IN HIS CAREER, AND I WOULD SUGGEST THAT, HAD HE SO TESTIFIED, THE STATE WOULD HAVE HAD A FIELD DAY GOING INTO ALL OF HIS PRIOR VIOLENT ACTIONS, INCLUDING PULLING A GUN ON THE KOREAN OFFICER. HE PULLED A GUN ON TWO DIFFERENT PERSONS A YEAR BEFORE THIS MURDER AND ULTIMATELY WAS CONVICTED OF TWO AGGRAVATED ASSAULTS BECAUSE OF THAT AND, OF COURSE, HE MURDERED HIS WIFE. HE ALSO RAPED AND SODMIZEMIZED AND KILLED HIS TEN-YEAR-OLD STEPDAUGHTER, AND EVEN SINCE HE HAS BEEN ON DEATH ROW AND TO A LARGE EXTENT ISOLATED FROM OTHER INMATES, HE HAS GOTTEN INTO A FIGHT THERE, AND I THINK THE JURY WOULD REJECT ANY NOTION THAT THAT IS A LOW LEVEL OF VIOLENT BEHAVIOR. WHAT OUR POSITION REALLY IS, AS FAR AS MR. SELIGER, BASICALLY, TOO, HIS PERFORMANCE HAS NOT BEEN SHOWN TO BE DEFICIENT. HE INVESTIGATED THE CASE. HE CHOSE A CHEERY. HE CHOSE A REASONABLE THEORY. HE CONDUCTED A REASONABLE INVESTIGATION, AND NOW --

REFRESH MY MEMORY ABOUT THE OTHER --

MR. GARCIA --

THE OTHER EXPERT THAT APPARENTLY THE PUBLIC DEFENDERS OFFICE OR SOMEBODY --

DR. GRAHAM?

RIGHT.

HE DIDN'T FEST TIE -- TESTIFY -- HE DIDN'T TESTIFY AT THE POSTCONVICTION HEARING.

HE DIDN'T WRITE A REPORT?

MR. SELIGER DESCRIBED THE REPORT AS NOT FAVORABLE, AND I DON'T RECALL IF THAT REPORT IS IN THE PUBLIC, IS IN MR. SELIGER'S FILE OR NOT, BUT HE DIDN'T TESTIFY AT THE HEARING, SO ALL WE KNOW AT MOST IS THE REPORT WAS NOT FAVORABLE AND WHATEVER WAS IN THE REPORT.

AND THAT SELIGER WAS FAMILIAR WITH THAT.

CORRECT. HE HAD READ THAT REPORT, AND IT WAS SO UNFAVORABLE THAT HE CHOSE NOT TO TALK TO DR. GRAHAM.

IF YOU WANT TO SUM UP ABOUT THAT, BUT AFTER YOU DO THAT, WOULD YOU ALSO ADDRESS THIS ISSUE ABOUT BRINGING IN THE OTHER LAWYER FOR THE CLOSING ARGUMENT.

OKAY. WELL, I WILL GO AHEAD INTO THAT. BECAUSE I THINK I HAVE ALREADY TOUCHED ON THE PREJUDICE ANYWAY. I AM NOT REALLY SURE EXACTLY WHAT POINT MR. PRINTY IS MAKING HERE. MR. GARCIA WAS AN EXPERIENCEED ATTORNEY.

OKAY. LET ME START OUT WITH IT SEEMS TO BE A SUGGESTION HERE THAT HE WASN'T ALLOWED TO ASSERT THE INEFFECTIVENESS, IN RELATIONSHIP TO BRINGING THAT LAWYER IN AND DOING WHAT HE DID, AS PART OF HIS CLAIM, THAT THE TRIAL COURT WOULDN'T LET HIM DO THAT.

CORRECT. AND I DON'T EVEN --.

TELL ME WHAT HAPPENED.

I DON'T ENRECALL THAT CLAIM BEING MADE IN HIS BRIEF, BUT I DON'T HAVE HIS BRIEF WITH ME. MAYBE IT IS SOMETHING I OVERLOOKED, BUT I LOOKED AT THE RECORD, AND APPARENTLY IN EXAMINATION OF MR. SELIGER, I AM REFERRING TO PAGE 22 OF THE HEARING TRANSCRIPT, AND HE WAS TALKING ABOUT THE CLOSING ARGUMENT AND WHY MR. SELIGER HAD DECIDED TO LET MR. GARCIA DO THE CLOSING ARGUMENT INSTEAD OF MR. SELIGER. THE STATE OBJECTED. MR. COMBS OBJECTED AT THAT POINT AND SAID WE ARE GETTING FAR AFIELD FROM THE PLEADINGS, AND THE STATE SAID I CAN'T FIND ANYTHING IN HERE WHERE THEY ARE TALKING ABOUT SOME OF THE QUESTIONS THEY ARE STARTING TO GET INTO, AND THE COURT SAID, RIGHT, YOU RAISED INEFFECTIVE ASSISTANCE OF COUNSEL IN NOT RETAIN AGO MENTALITY -- IN NOT RETAINING A MENTALITY HEALTH EXPERT. AND -- A MENTAL HEALTH EXPERT, AND THE STATE SAID I THINK WE ARE GETTING A LITTLE FAR AFIELD, AND THE COURT SAID WE ARE GETTING A LITTLE FAR AFIELD, BUT WE ARE GOING TO GO ON, AND THE STATE DIDN'T GET TO SAY WHY HE FELT IT WAS INAPPROPRIATE, IN THIS CASE THAT MR. GARCIA WAS MORE EMOTIONAL AND IN THIS PARTICULAR CASE DEALING WITH THE VERY HORRIFIC ACT, AND TRYING TO HUMANIZE MR. BANKS. THEY THOUGHT THAT MR. GARCIA HAD THE CAPACITY TO EXPRESS THAT EMOTION BETTER THAN MR. SELIGER.

I GUESS THE REAL QUESTION IS WHETHER OR NOT ON THE RECORD, COUNSEL FOR THE DEFENDANT SAYS TO THE JUDGE, SOMETHING TO THE EFFECT THAT, JUDGE, I WOULD LIKE TO AMEND THIS 3.850 TO INCLUDE --

I DON'T SEE HIM DOING THAT THOUGH.

-- THIS ALLEGATION ABOUT HAVING BROUGHT IN THIS ADDITIONAL COUNSEL, EITHER AT THE TIME THAT THE HEARING STARTED, AT THE TIME HE STARTED TO GET INTO THAT LINE OF QUESTIONING, OR AT SOME POINT ASKING AN AMENDMENT AND WOULD IT HAVE BEEN ABUSE OF DISCRETION FOR THE TRIAL JUDGE TO DENY THAT KIND OF AMENDMENT?

I SEE NOTHING IN THIS RECORD WHERE HE REQUESTED ANY OPPORTUNITY TO AMEND HIS 3.850 PROCEEDINGS AND, IN FACT, THE ONE QUESTION HE DID ASK THAT WAS OBJECTED TO, HE WAS ALLOWED TO ASK, AND THERE WAS AN ANSWER.

THAT IS WHAT YOU READ TO US.

CORRECT. AND HE DIDN'T, AND THEN THEY JUST GO ON.

YOU ARE SAYING THAT WAS ABOUT IT THEN?

THAT WAS ABOUT IT, AS FAR AS MR. SELIGER WAS CONCERNED, AND THEN, OF COURSE, HE ALSO QUESTIONED, CALLED DR. , I MEAN MR. GARCIA AS A WITNESS, AND THERE IS TEN PAGES OF EXAMINATION OF HIM, AND THERE WAS ONLY ONE OBJECTION DURING THAT EXAMINATION. HE DID TESTIFY ABOUT THE ARGUMENT AND BASICALLY SAID THAT HE WAS PREPARED TO DO THE ARGUMENT. MR. --

SO YOU ARE SAYING THAT THERE WAS NO REQUEST TO AMEND THE POSTCONVICTION AND THAT THEY GOT TO EXPLORE THIS ISSUE DURING THE EVIDENTIARY HEARING.

NOT ONLY WAS THERE NO REQUEST TO AMEND THE 3.850 MOTION TO ADD AN ADDITIONAL CLAIM, BUT I DON'T SEE ANY INDICATION THAT HE WASN'T ALLOWED TO ASK ALL OF THE QUESTIONS THAT HE WANTED TO ASK ON THIS ISSUE, AND I WOULD, ALSO SUGGEST THAT, IF YOU READ THE CLOSING, THAT IT, THAT IT TOUCHED ON ALL THE BASES OF THE DEFENSE MITIGATION THEORY AND PRESENTED THAT TO THE JURY, AND IT WAS A VERY GOOD ARGUMENT IN FAVOR OF LIFE SENTENCE, UNDER ALL OF THE CIRCUMSTANCES OF THIS CASE. IF THERE ARE NO OTHER FURTHER QUESTIONS, I WILL RELY ON MY BRIEF FOR THE REMAINDER.

CHIEF JUSTICE: THANK YOU. COUNSEL.

MY EXPERT, DR. PARTIKA, REVIEWED DR. MCCLAIREN'S NOTES, AND THERE WAS NO EVIDENCE IN DR. MCCLAIREN'S NOTES OF STEVE SELIGER EVER PROVIDING HIM ANY MATERIALS WHATSOEVER, TO REVIEW. MR. MCCLAIREN'S, LIKE I SAID, HIS EXAMINATION WAS DONE SOLELY --

WHAT PARTICULARS ARE YOU TALKING ABOUT?

I AM TALKING ABOUT THE ENTIRE FILE.

DR. MCCLAIREN'S ENTIRE FILE?

YES. DR. MCCLAIREN'S ENTIRE FILE WAS MADE AVAILABLE TO DR. PARTIKA. DR. MCCLAIREN WAS HIRED ONE THING. HE INTERVIEWED CHADWICK BANKS FOR AN HOUR AND SAID HE INTERVIEWED THIS MAN AND HE WAS NOT KME INN COMPETENT THIS MORNING -- INCOMPETENT THIS MORNING, WHEN HE GAVE A CONFESSION TO OFFICER GOODWIN.

BUT THE TRIAL JUDGE HEARD MR. SELIGER SAY THAT HE TALKED TO DR. MCCLAIREN, WHETHER DR. MCCLAIREN MADE A NOTE OF THAT OR NOT. THE TRIAL JUDGE WAS FREE TO BELIEVE MR. SELL I GETTER THAT HE -- MR. SELL ILL GETTER THAT HE, IN FACT, TALKED TO DR. -- HE -- THE JUDGE WAS FREE TO BELIEVE MR. SELIGER THAT HE BELIEVED, FREE TO BELIEVE MR. SELL ILL GETTER.

WOULD YOU HIGHLIGHT FOR US WHAT AREAS ARE CRITICAL AND SHOULD HAVE BEEN IN THE RECORDS? CERTAINLY EVERY RECORD IN THE SCHOOL RECORD. WHAT IS DEMONSTRATED BY THE RECORD AND WHERE WOULD WE FIND IT?

AT AGE 3, HE BEGINS AT AGE THREE. DR. PAT WOODWARD, WHO WAS THE LOCAL PEDIATRICIAN OVER THERE, IN QUINCY. HIS RECORDS REFLECT THAT A THREE-YEAR-OLD CHADWICK BANKS WAS A PATIENT, AND THAT HE HAD SEVERE BRUCING ON THE HIPS AND BUTTOCKS. CHILD STAYS HOME WITH FATHER EQUALS CHILD ABUSE. THAT IS WHAT IS WRITTEN IN THE MARGIN OF THE DOCTOR'S NOTES. SO BEGINNING AT AGE THREE UNTIL AGE 15, THIS YOUNG GUY WAS BEATEN WITH BROOMSTICK HANDLES, WITH ELECTRIC CORDS, AND DR. MCCLAIREN IN HIS INTERVIEW, SPECIFICALLY HAD MR. BANKS TAKE OFF HIS SHIRT AND SHOW HIM THE SCARS ON HIS BACK FROM THE ELECTRIC CORDS AND THE SCARS ON HIS LEG FROM THE ELECTRIC CORD, AND I HAVE SEEN THE SCARS. SO THAT WAS QUITE WELL DOCUMENTED. THERE HAS BEEN NO JUSTIFICATION AS TO WHY THIS DIDN'T COME IN AFTER THE JURY. MR. SELL ILL GETTER COULD HAVE BEEN FREE. JUDGE, OUTSIDE THE PRESENCE OF THE JURY, NOW THAT THE JURY HAS -- MR. SELIGER COULD HAVE BEEN FREE TO SAY, JUDGE, I WOULD LIKE TO PROPOSE THIS EVIDENCE AND LET YOU KNOW THIS.

YOU HAVE GOT A LIMITED TIME. ARE THERE OTHER THINGS ON THE RECORD? THAT IS THE TWO, THE INTOXICATION --

THE ALCOHOL CONSUMPTION. THE WOMEN, THE PERSON WHO SAID HE WAS PLAYING POOL AND WINNING AND ALL OF IT THAT, THAT IS THE VICTIM'S AUNT, WHO WORKED AT THE JUK JOINT, WHO, THEIR -- AT THE JUKE JOINT, WHO, THEIR FAMILY OWNED THIS. THEY LIVE IN A TRAILER PARK AND ARE ALL PART OF THE SAME FAMILY, AND DUTCH AT THE JUKE JOINT, WHO IN THIS CASE WAS HIS UNCLE, HIS KNEES AND SOME FAMILY RELATION, VERY CLOSE FAMILY RELATION, IS THE ONE WHO TESTIFIED AS TO HOW MUCH HE DRANK THAT NIGHT. YOU KNOW, SO YOU HAVE RAPED AND MURDERED MY TEN-YEAR-OLD NIECE, AND SO I AM GOING TO COME IN HERE AND MAKE SURE YOU GO TO THE ELECTRIC CHAIR IS WHAT IS HAPPENING.

CHIEF JUSTICE: ALL RIGHT. WE WILL TAKE THE REST OF IT ON THE BRIEFS. THANK YOU BOTH VERY MUCH. THE COURT WILL NOW STAND IN RECESS UNTIL TOMORROW MORNING.

MARSHAL: PLEASE RISE.