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Inquiry Concerning a Judge: James E. Henson

N E X T CASE ON TODAY 'S CALENDAR I S I N Q U I R Y CONCERNING A JUDGE , R A Y JAMES HENSON. I N R E JAMES HENSON.

GOOD MORNING. MAY I T PLEA SE THE COURT , COUNSEL, JUDGE HEN SON , SPECTATORS. I REPRESENT JUDGE JAMES HENSON, A CIRCUIT JUDGE IN ORANGE COUNTY. JQC HAS FI LED A COMPLAINT IN 2003, REGA RDING SE VERAL ALLEGATIONS OF MISC ONDUCT , MOSTLY WHILE JUDGE HENSON WAS A PRIVATE LAWYER BUT ONE WHILE HE WAS A COUNTY JUDGE. THE FI RST COUNT INVOLVED PRACTICING LAW BE FORE HE FORMALLY GOT OFF THE BE NC H AS A COUNTY JUDGE.

THERE IS NO DOUBT THAT THAT OCCURRED.

NO, SIR. THAT IS ADMITTED FROM THE VERY BEG INNING , IN A 6-B HEARING, IN THE STIPULATION AND AT THE HEARING. THERE IS NO DOUB T THAT THAT OCCURRED. I WILL HAVE SOMETHING TO SAYABOUT THAT A LITTLE LATER.

CHIEF JUSTICE: I DO HAVE A QUESTION. IT WAS NOT SPECIFICALLY DIS CUSSED, BUT HOW JUDGE HENSON ACT UALLY RECEIVED THE JIMENEZ CASE. THERE IS ME NTION THAT HE, THE CLIE NT WAS IMPRESSED A BOUT HIS STATUS AS A JUDGE , AND THAT THE CONT ACT MAY H AVE COME THR OUGH A BAIL BONDSMAN. WAS THAT DEVELOPED IN THERECORD? YOU DO AGREE THAT IT , P A RTOF THE REASON THAT THE CLIENT CAME , WAS BECAUSE HE WAS A JUDGE.

BECAUSE HE WAS A PRIORJUDGE.YOUR HO NOR , I DON'T BELIEVE IT WAS DEVELOPED THAT CLOSELY.I THINK THAT THE RECO RD WILL SHOW THAT IT WAS REFERRED TO HIM BY A BONDSMAN, THAT THE CLIENT DID SAY HE WAS IMPRESSED BY THE FACT THAT HE HAD BEEN A JUDGE .

CHIEF JUSTIC E: S O IT WAS REFERRED BY A BON DSMAN WHILEHE WAS STILL THE JUDGE SETTING IN THE STATE .

WELL , JUDGE HENSON HAD LOST THE ELECTION. IT WAS DECEMBER. HE HAD CL EARED OUT HISOFFICE. HE HAD C EASED HIS JUDICIAL D UTIES AND HE WAS ON VACATION AT THE TIME. THAT IS WHAT THE RECORD

WHERE DI D THE ME ETING TAKE PLACE? ANOTHER MEETING WITH THECLIENT?

RIGHT .

I BELIEVE THE ORIGINAL MEETING WITH THE CLIENT TOOK P LACE TOOK PLACE , WITH THEBONDSMAN, I THINK, IN THE OSCEOLA COUNTY JAIL.

HAD JUDGE HENSON ALREADY SET UP A LAW O F FICE OR WHAT WAS THE STATUS OF THAT ?

HIS STATUS WAS THAT HE HAD , HIS BELIEF WAS THAT HIS STATUS WAS THAT HE HAD C EASED HIS JUDICIAL DU TIES AND WAS ON VACATION.

HE WAS PAID A RETAINER?

EXCUSE ME?

HE WAS PAID A RETAINER?

YES, YOUR HONOR.

HAD HE SET UP A TRUSTFUND?

YOUR HONOR, IT WAS NOT DEPOSITED UNTIL AFTER THE FIRST OF THE YEAR.

SO HE WAS GIVEN A CHECK AND IT WAS HELD.

YES, YOUR HONOR. THAT IS WHAT THE RECORD WOULD SHOW. HE HAD NOT RESIGNED

HE HAD NOT RESIGNED, IS THAT CORRECT?

THAT IS CORRECT.

WHAT WAS HIS TERM LEGALLY ENDED?

I BELIEVE THE DATE THE RECORD WILL REFLECT IS JANUARY 5, AND HE RECEIVED THE CHECK IN DECEMBER.

LET ME ASK YOU ABOUT WHAT I THINK IS A MUCH MORE SERIOUS ALLEGATION, AND THAT IS THE ALLEGATION THAT HE ADVISED HIS CLIENT TO ABSCOND. THE JQC HEARD CONFLICTING TESTIMONY ON THIS ISSUE AND FOUND THAT YOUR CLIENT, IN FACT, DID ADVISE HIS CLIENT TO ABSCOND TO COLOMBIA. HOW DO WE REVIEW THAT AND DETERMINE OTHERWISE, IF THE JQC WAS THERE AND SAW THE WITNESSES AND BASICALLY MADE A CREDIBILITY DETERMINATION? HOW CAN WE REVERSE THAT?

OKAY. YOUR HONOR, THIS COURT HAS THE RESPONSIBILITY, UNDER OUR ARTICLE V SECTION 12, TO GIVE A COMPLETE REVIEW, AND UNLESS THIS COURT CAN FIND THAT IT WAS CLEAR AND CONVINCING EVIDENCE, THE JQC'S FINDINGS AND RECOMMENDATIONS ARE NOT ENTITLED TO GREAT WEIGHT.

THAT IS TRUE, BUT IN ORDER TO DETERMINE WHAT IS CLEAR AND CONVINCING, WE NOW HAVE TO VIEW THE FACTS IN THE LIGHT MOST FAVORABLE TO THE JQC'S FINDINGS, DO WE NOT?

THAT IS CORRECT, YOUR HONOR, BUT THERE IS MORE THAN JUST Demeanor OF THE WITNESSES HERE. THIS REQUIRES BOTH QUANTITATIVE AND QUALITATIVE REVIEW OF THE JQC'S FINDINGS. WE, ALSO, HAVE AN ISSUE WHICH, SINCE YOU HAVE REQUESTED, HAS TO DO SINCE YOU HAVE ASKED, HAS TO DO WITH THE UNCHARGED MISCONDUCT WHICH WAS BROUGHT INTO THIS, AND IT IS CLEAR THAT THE UNCHARGED CONDUCT WAS CONSIDERED BY THE COMMISSIONER. THAT IS IMPROPER. CONCLUSIONS WERE MADE ON CHARGES THAT WERE NOT PENDING AGAINST JUDGE

BEFORE WE GET TO THAT ON THE ISSUE OF ACTUALLY WHETHER OR NOT THERE IS A CLEAR AND CONVINCING EVIDENCE THAT HE ADVISED HIS CLIENT TO LEAVE THE JURISDICTION, WE HAVE, HERE, THREE PEOPLE WHO TESTIFIED TO THE FACT THAT THE STATEMENT WAS MADE, WELL, ONE PERSON SAID THAT THAT WAS THE IMPLICATION. THE OTHER TWO SAID HE, IN FACT, TOLD THE PERSON THAT HE RELEASED JURISDICTION AND DID NOT HAVE TO FACE PROSECUTION. IS THAT CORRECT?

TO FACE PROSECUTION. IS THAT CORRECT?

HIS CLIENT SAID , WHICH IS THE CHARGE AGA INST HI M, BY THE WAY, THAT HE ADVISED MS. JIMENEZ TO LEAVE THE JURISDICTION. THE DAD , DR . JIMENEZ, SAID THAT IN A TELEPHONE CONVERSATION IN DISCUSSING O PTIONS, THAT HE DID NOT L IKE THE PLEA OFFER OF 16 YEARS , SO AC CORDING T O D R . JIMINEZ , WHICH JUDGE HENSON DENIED, DR . JIMINEZ SAYS THAT JUDGE HENSON SAID WE CAN PU T HER ON A PLANE TO PUERTO RICO AND COLOMBIA.

AND THEN WE , A LSO , HAVEAN ATTOR NEY WHO SAYS THAT JUDGE HENSON , ALSO , T OLD HIMTHAT HE HAD ADVISED THE CLIENT TO GO TO COLOMBIA.IS THAT CORRECT?

THAT IS CORRECT , YOUR HONOR, BU T YOU NE ED TO CONSIDER NOT ONLY THE WORDS BUT WHO SAYS THEM AND WHAT B IAS , PREJUDICE OR

WASN'T THE INFORMATION ABOUT JUDGE HENSON 'S DISCUSSION , THE ATTORNEY RELATIONSHIP, ALL OF THOSE FACTORS WERE CONSIDERED BEFORE THE DETERMINATION DIDOCUR SO ME.

THOSE WERE BROUGHT OUT , YOUR HONOR, BUT THERE IS ALSO UNCH ARGED MISC ONDUCT HERE , AND THE CLEAR AND CONVINCING STANDARD HAS SIMPLY NOT BEEN MET BY THE EVIDENCE, EVEN IF YOU BELIEVE , EVE N IF YOU BELIEVETHE EVIDENCE. THE EVIDENCE IS CONFLICTING . ACCORDING TO THE D A VY CASE , THE EVIDENCE MUST BE CREDIBLE, THE MEMORY OF T HE WITNESS MUST BE CLEAR ANDWIT HOUT CONF USION AND LE T ME GIVE YOU AN EX AMPLE WITH MR . NEESMITH , WHO COULD NOT REMEMBER AND CONTRADICTED HIMSELF ON WHEN THIS STATEMENT WAS MADE.MR. NEESMITH SAID AT ONE POINT, WITH REGARD TO A LATER STATEMENT , HE THOUGHTTHE JUDGE WAS JOKING .

BUT HE WAS VERY CLEARTHAT THE STATEMENT WAS, IN FACT, MADE.

THAT WAS HIS TESTIMONY , YES, YOUR HONOR .

CHIEF JUSTICE: WHAT WE HAVE HERE IS A DISPUTE. JUDGE HENSON DENIED THIS, BUT HE DID ADM IT OR WHAT HE SAID IS THAT THE SUBJECT OF THE CLIENT FLEEING TO COLOMBIA WAS DISCUSSED , SO WE HAVE THAT AS NOT THAT IT NEVER WAS DISCUS SED, BUT HIS VIEW, HIS TESTIMONY UNDER OATH , WAS THAT IT WAS THE CLIENT S THAT WERE SAY ING THAT THEY WANTED T O F LEE, CORRECT ? SO WE HAVE GOT A REAL , GOT THE ISSUE , YES, IT CAME UP, AND THEN WE HAVE GO T THREE WITNESSES THAT SAY THAT IT CAME UP BECAUSE OF HIS SAYING THAT IS WHAT S HOULD OCCUR , INCLUDING A LAWYER WHO , AL THOUGH YOU ARE SAYING IS , HAS BIAS OR PREJUDICE , CERTAINLY JUDGE HENSON IS LIKEWISE , A , SOMEBODY THAT HAS AN INTEREST IN THE OUTCOME , SO WE H AVE GOT CONFLICTING TESTIMONY, WHICH IS WHAT O CCURS IN JUST ABOUT EVERY CRIMINAL CASE THAT WE HEAR ON REVIEW , AND , NO W , GOING BACK TO THIS ISSUE OF WHAT DO WE DO WITH THE FACT THAT W E HAVE GOT CLEAR FINDINGS FROM THE JUDICIAL QUALIFICATIONS COMMISSION THAT DETERM INED CREDIBILITY ISSUES ?

YOUR HONOR, WITH REGARD TO THE DISCUSSIONS , HE I S NOT CHARGED WITH DISCUSSING THE MA TTER OF FLEE ING TO COLOMBIA. INDEED, A CRIMINAL DEFENSE LAWYER HAS A DUTY , AND THEREIS A RULE IN THE RECORD , I DON'T HAVE THE CITATION TO IT , WHERE A CRIM INAL DEFENSE LAW YER, YOU SI MPLY CANNOT SHUT YOUR EARS WHEN A CLIENT TALKS ABOUT THIS. THIS COMES UP ALL THE TIME IN CRIMINAL CASES , WHEN CLIENTS ARE WORRIED. THEY DON'T KNOW WHAT TO DO. THEY ARE S CARED OF GOING TO PRISON. YOU CAN'T JUST SAY I AM NOTGOING TO LISTEN TO THAT.

SO WHAT DID YOUR CLIENT TESTIFY TO , WHEN THESE MATTERS WERE BROUGHT UP? WHAT DO ES HE SAY HIS RESPONSE WAS ?

HE TESTIFIED THAT, AS TO MS. JIMINEZ , THE CLIENT, H E NEVER TOLD HER TO FLEE.

I AM NOT ASKING YOU WHAT HE NEVER TOLD . I AM ASKING WHAT HIS RESPONSE WAS. YOU SAY

THAT SHE BROUGHT IT UP. OKAY. OR THAT YOUR CLIENT TESTIFIED THAT SHE BROUGHT THAT UP , ALL RIGHT , NOW , WHAT DID YOUR CLIENT TESTIFY TO, BEFORE THE JQC , AS TO HIS RESPONSE, WHEN SHE BROUGHT IT UP ?

YOUR HONOR , WITH ALL DUE RESPECT , I DON'T BELIEVE THAT MS. JIMINEZ BROUGHT UP ANYTHING. HE SAID DR . JIMINEZ , THE DAD, BROUGHT IT UP.

OKAY. LET'S GO WITH THAT ONE THEN. WHEN DR . JIMINEZ BROUGHT IT UP , ACCORDING TO THE TESTIMONY OF YOUR CLIENT, THEN, WHAT DID YOUR CLIENT SAY , BEFORE THE JQC, AS TO HIS RESPONSE TO THAT, WHEN IT WAS BROUGHT UP BY DR . JIMINEZ?

THEN THERE ENSUED A DISCUSSION ABOUT WHETHER THERE WAS AN EXTRADITION TREATY BETWEEN THE UNITED STATES AND COLUMBIA. AND COLOMBIA . THAT WAS WHAT HAPPENED NEXT.

YOUR CLIENT SAID WHAT? I AM NOT SURE

THIS CAME UP IN THE CONTEXT OF A DISCUSSION OF WHETHER THERE WAS AN EXTRADITION TREATY BETWEEN THE U.S . AND COLOMBIA AND A DISCUSSION ABOUT THAT ENSUED.

I AM VERY DISAPPOINTED THAT IT SEEMS TO ME THAT YOU ARE GETTING VAGUER AND VAGUER , IN TERMS OF , IF YOUR CLIENT SAID , YES , THE SUBJECT MATTER WAS BROUGHT UP , I DIDN'T INITIATE IT , DR . JIMINEZ INITIATED IT AND ASKED ABOUT THAT , SO I AM ASKING, LOGICALLY , HOPEFULLY , A LAWYER , FOR INSTANCE, WOULD HAVE SOME RESPONSE TO THAT AND WOULD SAY, NO , THAT WOULD BE WRONG. THAT WOULD BE A CRIMINAL ACT , ITSELF, TO DO THAT. OR MAYBE HE WOULD SAY SOMETHING ELSE, SO I AM TRYING TO FIND OUT WHAT YOUR CLIENT SAID OR DID HE SAY WHAT HE SAID?

I DON'T BELIEVE THERE WAS DIRECT TESTIMONY IN THE RECORD ON THAT , OTHER THAN THAT THE FACT THAT THE DISCUSSION THEN TURNED TO WHETHER THERE IS EXTRADITION .

HE CERTAINLY DID NOT TESTIFY, THEN THAT, HE TOLD DR. JIMINEZ THAT THAT WOULD BE WRONG AND THAT THAT SHOULD NOT OCCUR.

I DON'T BELIEVE THAT TESTIMONY IS IN THE RECORD, YOUR HONOR.

CHIEF JUSTICE: SO , AGAIN , THE FACT IS THAT HE ADMITS THERE WAS A CONVERSATION , AND WE WOULD HAVE TO BELIEVE THAT AT LEAST THREE PEOPLE , INCLUDING ONE MEMBER OF THE BAR OF THE STATE , PERJURED THEMSELVES UNDER OATH, IN SAYING THAT THIS IDEA, INSTEAD OF COMING FROM THEM , CAME FROM JUDGE HENSON.

YOUR HONOR , I DON'T BELIEVE YOU HAVE TO BELIEVE THAT ANYBODY PERJURED THEMSELVES. MEMORIES FADE. MISTAKES ARE MADE. I THINK PERJURY IS A VERY STRONG WORD. I WOULD NOT ACCUSE ANY OF THESE PEOPLE OF PERJURY, BUT THEIR TESTIMONY IS AT BEST CONFUSING AND THEIR MEMORY IS , AT BEST , CLOUDED.

YOU SAID EARLIER THAT THIS MISCONDUCT THAT WE ARE TALKING ABOUT WAS NOT CHARGED?

THERE IS SEVERAL ITEMS OF MISCONDUCT WHICH WAS NOT CHARGED, YOUR HONOR.

WAS THIS PARTICULAR MISCONDUCT WE ARE TALKING ABOUT, A REPRESENTATION OF MISS JIMINEZ , WAS THAT CHARGED?

YES , YOUR HONOR.

YOU WOULD AGREE THAT, IF WE FIND THAT THE JQC'S CONCLUSIONS ARE SUPPORTED BY , THAT THEY ARE CLEAR AND CONVINCING EVIDENCE TO SUPPORT THOSE FINDINGS, THAT THIS CHARGE IN COUNT TWO WOULD BE GROUNDS FOR REMOVAL OF A JUDGE.

YOUR HONOR , IT IS A VERY SERIOUS CHARGE, BUT I DON'T THINK WE SHOULD HAVE A SLIDING SCALE OF PROOF BASED ON THE SERIOUSNESS OF THE CHARGE. I THINK THAT IS WHAT THE JQC IS URGING THE COURT TO DO HERE. WE DO NOT DENY THAT THIS IS A SERIOUS CHARGE. WE DO NOT DENY THAT IT IS WRONG AND UNETHICAL TO DO WHAT HE IS CHARGED WITH. WE DENY THAT HE DID IT , AND WE DENY THAT IT HAS BEEN PROVEN THAT HE DID IT.

BUT THE QUESTION, REALLY, IS, IF WE , IN FACT , ACCEPT THE JQC'S DETERMINATION , THAT THERE WAS CLEAR AND CONVINCING EVIDENCE THAT JUDGE HENSON DID ADVISE HER TO FLEE THE JURISDICTION , IS THAT GROUNDS FOR REMOVAL OF THE JUDGE?

YOUR HONOR , THE CASES, AS YOU KNOW, I AM SURE, ARE ALL OVER THE BOARD ON THIS , BUT I THINK THAT THAT CERTAINLY COULD BE GROUNDS FOR REMOVAL . I THINK THAT WOULD BE DISINGENUOUS TO SAY THAT IT IS NOT. I THINK IT COULD BE GROUNDS FOR REMOVAL.

WHAT WOULD BE YOUR ANSWER , IF, IN FACT , WE ONLY FIND THAT JUDGE HENSON PRACTICED LAW WHILE HE WAS STILL A COUNTY JUDGE. IS THAT , ALONE , GROUNDS FOR REMOVAL?

I DO NOT THINK SO, YOUR HONOR. I THINK THAT IT IS UNDER THE 1997 AMENDMENT, THAT THE COURT HAS OTHER OPTIONS . I JUST SAT THROUGH A PUBLIC REPRIMAND A MOMENT AGO, WITH ANOTHER JUDGE FROM MIAMI , WHO RECEIVED A FINE AND SOME OTHER SANCTIONS . THAT, A PUBLIC REPRIMAND WOULD BE APPROPRIATE FOR THAT. PERHAPS A FINE. THERE ARE OTHER LESS DRACONIAN SANCTIONS , IF YOU FIND, AND , AGAIN , THERE IS REALLY NO REASON FOR THE COURT TO SPEND A LOT OF TIME WORRYING ABOUT WHETHER HE DID OR DID NOT DO THE PRACTICE OF LAW. THAT IS ADMITTED. AND WITH AN EXPLANATION. BUT EVEN IF YOU BELIEVE THAT , I WOULD SUBMIT TO THE COURT THAT, UNDER THE CASES AND UNDER THE WEIGHING OF THE SERIOUSNESS OF THE OFFENSE, HOW IT HAPPENED, WHEN IT HAPPENED, WHY IT HAPPENED, THAT THAT , IN ITSELF , ESPECIALLY IN LIGHT OF THE TESTIMONY OF HIS ADMINISTRATIVE JUDGE, THE FACT THAT HE HAS BEEN BOTH A COUNTY JUDGE AND A CIRCUIT JUDGE, WITHOUT ANY OTHER COMPLAINTS, THE FACT THAT , ACCORDING TO TWO PRACTICING LAWYERS THAT, HE IS AN HONEST AND AN IMPARTIAL JUDGE , WOULD NOT BE

ON THE OTHER HAND , WE HAVE A SITTING JUDGE WHO GOES OUT AND BEGINS TO PRACTICE LAW, WHILE HE IS STILL A SITTING JUDGE, AND BASICALLY USING THE PRESTIGE OF HIS OFFICE TO GET HIS CLIENT, SO ARE WE TO JUST SORT OF OVERLOOK THAT AND SAY, OKAY, HE THOUGHT HE WAS ON VACATION. HE DIDN'T THINK HE HAD ANYMORE JUDICIAL DUTIES , ALTHOUGH HE WAS STILL ON THE PAYROLL AT THAT POINT .

YOUR HONOR , I DON'T THINK THAT YOU SHOULD OR WILL OVERLOOK THAT. I THINK THAT IS , AS HE HAS ADMITTED, A MISTAKE , A WRONG THING TO DO, AND I THINK JUDGE HENSON IS PERFECTLY WILLING AND BELIEVES THAT HE SHOULD RECEIVE DISCIPLINE FOR THAT, BUT REMOVAL OF A JUDGE IS THE DEATH PENALTY FOR A JUDGE SHIP . AND TO REMOVE HIM FOR THAT WHEN OTHER JUDGES HAVE NOT BEEN REMOVED FOR EQUAL OR MORE SERIOUS MATTERS , WOULD SIMPLY NOT BE APPROPRIATE FOR THAT ALONE.

ISN'T THE PROBLEM THAT WE CONFRONT, IN THIS TYPE OF SITUATION , IS THAT WE HAVE TO ANALYZE THIS IN , AT THE BOTTOM LINE OF PUBLIC CONFIDENCE IN WHO IS SITTING UP TO BE THE JUDGE , AND SO WE HAVE TO LOOK AT THE CUMULATIVE RECORD HERE , OF WHAT THIS JUDGE DID, AND IT COULD BE A CLOSE QUESTION AS YOU ARGUE ON THE CLEAR AND CONVINCING ON ONE POINT , WE HAVE TO TAKE THE WHOLE RECORD INTO CONSIDERATION, DON'T YOU AGREE WITH THAT?

I AGREE WITH THAT , YOUR HONOR , BUT YOU , ALSO , HAVE TO CONSIDER , IN TERMS OF WHAT DISCIPLINE YOU IMPOSE ON JUDGE HENSON , WHAT HE WAS CONVICTED OF, NOT THING THAT IS HE WAS ACQUITTED OF , NOT THINGS THAT HE WAS NOT CHARGED, WITH NOT THINGS THAT WERE BROUGHT , AND A PRIME EXAMPLE OF THIS IS THE DAVEY CASE, WHICH I AM SURE THIS COURT IS VERY FAMILIAR WITH THE JQC FOUND ALL SORTS OF MISCONDUCT ON THE PART OF JUDGE DAVEY, BUT THE COURT THEN, AND IT WAS THE SAME THING , IT WAS A CLEAR AND CONVINCING ARGUMENT , THE JUDGE, THE COURT DISCIPLINED JUDGE DAVEY DIFFERENTLY THAN WHAT THE COMMISSION HAD RECOMMENDED.

CHIEF JUSTICE: I JUST WANT TO REMIND YOU THAT YOU ARE IN YOUR REBUTTAL TIME .

THANK YOU. I WILL LET MR . RUSSELL SPEAK WITH YOU.

GOOD MORNING. MAY IT PLEASE THE COURT. I AM LANNY RUSSELL AND WITH ME TODAY IS MY SENIOR PARTNER MARK HULSEY . WE ARE HERE TO REPRESENT PARDON ME?

WHY DON'T YOU PICK UP , MR. RUSSELL, ON THAT POINT. MR . KIRKCONNELL WAS JUST MAKING. HOW DID , HOW DO YOU DISTINGUISH THE DAVEY DECISION OUT OF THIS COURT?

THE MISCONDUCT THAT THE COMMISSION FOUND THE JUDGE GUILTY OF WAS THE ADVICE TO DIANA JIMINEZ TO FLEE THE JURISDICTION. THEY FOUND THAT BY CLEAR AND CONVINCING EVIDENCE. THERE WAS DISCUSSION OF OTHER MISCONDUCT , BUT ONLY IN THE CONTEXT OF THE COMMISSION DISCUSSING THAT FOR THE PURPOSE OF WHETHER IT MET THE CLEAR AND CONVINCING STANDARD N KELLY , THE SAME ARGUMENT STANDARD. IN KELLY , THE SAME ARGUMENT WAS MADE TO THIS COURT, THAT THE COMMISSION SOMEHOW ALTERED MISCONDUCT , WHICH THEY ULTIMATELY DIDN'T FIND THE JUDGE GUILTY OF. SOMEHOW THERE WAS UNCHARGED MISCONDUCT , AND THAT IS NOT MISCONDUCT, AND THAT IS NOT WHAT HAPPENED HERE. THE TWO MATTERS THAT I WOULD CALL THE COURT'S ATTENTION TO WAS THE STATEMENT BY THE JUDICIAL QUALIFICATIONS COMMISSION THAT THEY WERE TROUBLED BY THE APPEARANCE OF THE BAIL BONDSMAN IN THIS CASE, MR . CANNED LAYER YEAH, IN ALL MR . CANDILARIA, IN ALL THREE CASES , AND THAT DOES NOT SHOW THE CHARGE FOR UNCHARGED MISCONDUCT. THE BAIL BONDSMAN WAS FOUND PRESENT IN THIS CASE, IN EVALUATING AS TO WHETHER THE OTHER TWO CHARGES , FLEEING AND THE ADVICE TO HECTOR RODRIGUEZ AND JERRY LEE THOMPSON, WAS REPORTED BY CREDIBLE EVIDENCE. AND WHAT WAS SAID WAS THEY WERE TROUBLED BY THAT , BUT DESPITE BEING TROUBLED BY THE APPEARANCE OF THE BAIL BONDSMAN IN ALL THREE CASES IN WHICH THE ADVICE WAS A CHARGE TO FLEE , THE JUDICIAL QUALIFICATIONS COMMISSION NONETHELESS FOUND THAT, WITH CLEAR AND CONVINCING EVIDENCE, AS TO THOSE TWO MATTERS , THERE WAS NOT CLEAR AND CONVINCING EVIDENCE.

WHAT I WOULD LIKE FOR YOU TO ADDRESS IS , COMING OUT OF THE DAVEY CASE, WHAT IS THE STANDARD OF OUR REVIEW OF THE COMMISSION'S DETERMINATION HERE?

THAT IS A DIFFICULT QUESTION, YOUR HONOR, BECAUSE I THINK THE STANDARD , THE STANDARD ITSELF , IS ACTUALLY VERY CLEAR. THE STANDARD IS CLEAR AND CONVINCING, AND WE SORT OF HAVE A CHICKEN AND THE EGG PROBLEM WITH THAT STANDARD , AND WITH THAT ANALYSIS IN THE LATER CASES , I THINK PARTICULARLY THE FORD DECISION, THIS COURT SAID THE FINDINGS ARE ONLY ENTITLED TO PERSUASIVE FINDINGS, IS IF THIS COURT FIRST FINDS THAT THEY MEET THE STANDARD OF CLEAR AND CONVINCING. IN EARLIER CASES, MAYBE LAMONT AND DAVEY , ALSO , THE STATEMENT WAS SIMPLY MADE THAT THE FINDINGS AND RECOMMENDATIONS OF THE PANEL ARE ENTITLED TO GREAT WEIGHT AND ARE PER WAYS I HAVE PERVASIVE FORCE AND EFFECT. SO WE HAVE GOT TO SOLVE THAT PROBLEM , THAT JURISPRUDENCE NOW EXISTS. IN RESPONSE TO YOU ON THIS CASE, JUDGE , I DON'T THINK IT MAKES ANY DIFFERENCE , BECAUSE ULTIMATELY BEFORE THIS COURT IS NOW WHAT I BELIEVE IS CLEAR AND CONVINCING EVIDENCE.

WELL , WOULD YOU ARTICULATE FOR US AND MEET HEAD ON THE CHALLENGE O F YOUR OPPONENT HERE , THATTHERE WAS NOT CLEAR AND CONVINCING EVIDENCE THAT HE ADVISED HIS CLIENT TO FLEE THE JURISDICTION. WHA T IS THE STRONGEST EVIDENCE IN THE RECORD TO SUPPORT THAT CHARGE?

YES , YOUR HONOR. I HAD TR IED TO DETERMINE WHICH ONE WOULD BE THE STRONGEST , B E CAUSE THE JUSTICES HAVE ALREADY IDENTIFIED THE THREE WITNESSES WHO TESTIFIED , AND, PERHAPS THE MOST DIRECT , IS THE T ESTIMON Y OF DIANA JIMINEZ 'S FA THER, WHO TESTIFIED THAT , IN A CONVERSATION WITH THERESPONDENT, THE RESP ONDENT ADVISED HIM , IF YOU REPEAT THIS, EXCUSE ME , WE CAN PUT YOUR DAUGHTER ON A P LANE TO PUERTO R ICO AND FROM PUERTO RICO TO COLOMBIA. THE DOCTOR'S RECOLLECTION OF THAT CALL WAS CLEAR AND CREDIBLE. WE, ALSO , HAVE THE TESTIM ONY OF HIS OFFICE MATE , ATTOR NEY , WHO TESTIFIED , IF YOU REPEAT THIS, I WILL DENY I IT . THAT IS JUDGE HENSON S PEAKING AND THIS IS MR . NEESMITH REPE ATING WHAT JUDGE HENSON TO LD HIM, AND MR. NEESMITH TESTIFIED , IF YOU REPEAT THIS, I WILL DENY IT. I TOLD DR . JIMINEZ , DIA NA S HOULD FLEE TO COLOMBIA , BUT ULTIMATELY, PERHAPS WHAT MAKES THE MOST COMPE LLING EVIDENCE IN T HIS CASE, YOUR HONOR , IS THE TESTIMONY OF DIANA JIMINEZ , HERSELF. IN THIS CASE , THE RESPONDENT HAS CLAIMED THAT DIANA HAS ACKNOWLEDGED THAT THE RESPONDENT NE VER ADVISED HER TO FLEE TO COLOMB IA, AND IDON'T THINK THAT ACCURATELY REFLECTS WHAT THIS WOMAN'S TESTIMONY WAS. IF YOU LO OK IN THETRANSCRIPT AT PAGES 73-TO- 77 AND ACTUALLY WE ENCOURAGEYOU TO DO THIS. WE HAVE VIDEOTAPED DEPOSITIONS THAT WERE USED IN THIS CASE . WATCH HER VIDEOTAPED DEPOSITION IN THIS MATTER.IT IS IN CROSS-EXAMINATIONFROM THE RESPON DENT'S COUNSEL IN WHICH SHE G OES ON IN THE TRANSCRIPT FOR FOUR PAGES , AND SHE EXPLAINS IN DETAIL , CONVINCINGLY AND CREDIBLY, THAT THE JUDGE WAS RELENTLESS IN PUTTING BEFORE HER FOR HER CONSIDERATION, THE OPPOSITE OF FLEEING TO COLOMBIA , AND THAT CAME UP IN THE CONTEXT , YOUR HONOR , OF YOUR SENTENCE COULD BE 35 Y EARS , DON'T YOU STILL HAVE YOUR PASSPORT? DON'T YOU HAVE FAMILY IN COLOMBIA? THIS IS A VERY SERIOUS CHARGE YOU ARE GO ING TO LOSE , AND THE COMMISSION FOUND IN DETAIL, THAT THAT WAS CONVINCING, AND IT LASTED OVER A SUBSTANTIAL PERIOD OF T IME . SO I THINK ULTIMATELY , AS THIS COURT HAS SAID , YOU CONSIDER THE TOTALI TY OF IT , SO I HAVE DIFFICULTY WEIGHING THOSE, YOUR HONOR, BUT IN MY FINAL ANALYSIS , I THINK IT IS DIANA 'S TESTIMONY WHICH BECOMES THE M OST CR EDIBLE.

CHIEF JUST ICE: HOW DID MR . NEESMITH COME FORTH? THE COMPLAINT WAS FILED BY THE JIMINEZ ES , IS THAT CORRECT?

THER E WAS A COMPLAINTFILED WITH THE FLORIDA BAR BY THE JIMINEZ ES , YES, MA 'AM.

CHIEF JUSTICE: AND THEN ULTIMATELY IT WAS REFERRED OVER TO THE JQC?

I AM TR YING TO REMEMBER HOW THAT HAPPENED.I THINK THAT, AL THOUGH THE COMPLAINT WAS FILED WITH THE FLORIDA BAR , I BELIEVE THIS MAY BE IN THE RECO RD, THE CHIEF JUDGE OF THE CIRCUIT BECAME A WARE OF THE CHARGES. THERE WAS SOME PUBLICITY SURROUNDING THE CHARGES, AND THE CHIEF JUDGE MAY HAVE BROUGHT THE MATTER TO THE JQC.

WHAT IS MR. NE ESMITH 'STESTIMONY?WHAT IS IN THE RECORD ABO UTHOW DID HE, THEN , COME FORTH?

WE LEARNED OF MR . , THE COMMISSION, EXCUSE ME , LEARNED OF MR . NEESMITH 'S EXISTENCE BECAUSE OF A PRIOR STATE ATTO RNEY INVESTIGATIONIN WHICH THE STATE ATT ORNEY TOOK A STATEMENT FROM MR . NEESMITH , AND THAT IS HOW THE COMMISSION, THROUGH ITS INVESTIGATOR, FOUND MR . NEESMITH, AND ONCE WE GOT THE RECORDS OF THE STATE ATTORNEY'S INVESTIG ATION, THEN WE FURTHER PURSUED THE MATTER WITH MR . NEESMITH ANDTOOK IT .

CHIEF JUSTICE: MR. NEESMITH WAS COREPRESENTING THESE CLIENTS?

EARLY ON, YOUR HONOR, IN THE MATTER, AND THE CHRONOLOGY OF THIS WAS AS FOLLOWS. IT WAS ON DECEMBER 15 THAT THE JUDGE ACTUALLY UNDERTOOK TO REPRESENT DINE, A WENT TO THE JAIL AND VISITED HER REPRESENT DIANA AND WENT TO THE JAIL AND VISITED HER AND TOOK THE RETAINER CHECK, BUT BEFORE THE JUDGE ACTUALLY ENDED HIS TERM.

CHIEF JUSTICE: THE REASON I AM ASKING THIS IS THE ULTIMATE ALTERNATIVE TO THE, THAT HE ADVISED THEM TO FLEE, IS THAT ALL THREE OF THEM GOT TOGETHER THAT, IS THE ATTORNEY AND DR. JIMINEZ AND M.S. JIMINEZ, AND THEY, ALL, BASICALLY CONCOCTED THIS STORY, AND SO I AM TRYING TO UNDERSTAND THE CONTEXT OF WHAT THEIR RELATIONSHIP, YOU KNOW, WHAT, THE ATTORNEY'S RELATIONSHIP WAS WITH THE CLIENTS, OTHER THAN REPRESENTING THEM AT THE BAIL BOND SMAN HEARING. DID HE HAVE A CONTINUING RELATIONSHIP WITH THEM?

I DIDN'T QUITE UNDERSTAND WHERE YOU ARE GOING BUT I DO NOW AND I WILL ANSWER PRECISELY AND DIRECTLY. I BELIEVE THE RECORD ESTABLISHED THAT, AFTER THE BAIL BOND HEARING, THERE WAS NO FURTHER SUBSTANTIAL INVOLVEMENT OF ATTORNEY NEESMITH IN THE JIMINEZ CASE. THERE WAS ISSUES IN THE RECORD OVER WHETHER ATTORNEY NEESMITH THOUGHT HE WAS GOING TO HAVE AN INVOLVEMENT IN THE CASE AND THOUGHT HE WAS ACTUALLY GOING TO END UP BEING CO-COUNSEL WITH THE JUDGE IN THE CASE, AND THERE WERE SOME ISSUES THAT WERE BROUGHT UP OVER WHETHER THAT FACT THAT, ATTORNEY NEESMITH DID NOT CONTINUE ON IN THE REPRESENTATION OF THE JUDGE, CAUSED SOME ANIMOSITY IN THIS MATTER. I THINK THE RECORD PRECISELY REFLECTED, YOUR HONOR, THERE WAS A MEETING REFLECTED, YOUR HONOR, THERE WAS A MEETING SCHEDULED IN WHICH THE ATTORNEY NEESMITH THOUGHT HE WAS TO MEET WITH THE JIMINEZES AS A GAIN. HE WAS SHARING OFFICE SPACE. THE MEETING HAD ALREADY HAPPENED AND THE JIMINEZES WERE LEAVING AND AFTER THAT HE HAD NO FURTHER INVOLVEMENT IN THE MATTER.

DURING THE TRIAL PROCEEDINGS, DID HE HAVE ANY REPRESENTATIONS OF THE JIMINEZ FAMILY?

YES.

IT DID NOT END.

I AM SORRY. TO BE PRECISE, YOUR HONOR, IN CONNECTION WITH THE TRIAL, THAT WAS THE END OF IT.

YOU SAID IT WAS THE END BUT IT WASN'T THE END. TELL US THE REST OF THE STORY.

THE REST OF THE STORY WAS, AFTER THE TRIAL WAS OVER, I BELIEVE DR. JIMINEZ CAME BACK TO DR. NEESMITH AND ASKED HIM TO HANDLE FOR HIS DAUGHTER, A POST TRIAL PROCEEDING.

IN THIS IDENTICAL MATTER.

YES, SIR, THE SAME CASE.

IS THAT WHAT PRODUCED THE STATEMENT TO THE STATE ATTORNEY?

PARDON ME, SIR?

IS THAT WHAT PRODUCED THE STATEMENT BY MR. NEESMITH TO THE STATE ATTORNEY? IS THAT HOW THE STATE ATTORNEY BECAME INVOLVED IN ALL OF THIS? WAS THAT AN ISSUE IN THE COLLATERAL PROCEEDINGS?

NO. I AM NOT AWARE THAT IT CAME UP. I AM NOT EXACTLY SURE AS TO HOW IN THE RECORD, THE STATE ATTORNEY GOT TO THAT ISSUE, BUT AFTER THE TRIAL WAS OVER, DIANA JIMINEZ WAS SERVING 15 YEARS, THERE WERE SOME POST TRIAL MOTIONS IN AN EFFORT TO REDUCE OR SET ASIDE THE SENTENCE OF 15 YEARS, AND THAT WAS HANDLED BY ATTORNEY NEESMITH.

IS THAT A CONCERN BEFORE THESE CHARGES WERE BROUGHT AGAINST JUDGE HENSON DID THAT OCCUR BEFORE THESE CHARGES WERE BROUGHT AGAINST JUDGE HENSON?

YES, THEY WERE.

AND CONCLUDED BEFORE THAT TIME?

ALL OF THE POST TRIAL MOTIONS WERE DENIED.

TELL US SOMETHING ABOUT THE FEE ARRANGEMENTS IN THE CASE, THE INVOLVEMENT OF ATTORNEYS ANY FEES CHARGED, ANY FEES RECEIVED, UNTIL, REALLY, THE CONCLUSION OF THE CASE.

RIGHT. THE RETAINER AGREEMENT WHICH WAS SIGNED ON DECEMBER 15, WHICH WAS IN EVIDENCE, CALLED FOR THE PAYMENT OF A NONREFUNDABLE RETAINER OF \$50,000. THAT WAS DECEMBER 15, WHEN THE AGREEMENT WAS ACTUALLY SIGNED BY DR. JIMINEZ. I BELIEVE THE EVIDENCE SHOWED IT WAS ON THAT DATE THAT HE, ALSO, DELIVERED TO THE JUDGE, A CHECK IN THE AMOUNT OF \$15,000, \$20,000. WHICH WAS DELIVERED TO THE JUDGE ON DECEMBER 15. THEREAFTER, IN ACCORDANCE WITH THE FEE AGREEMENT, SUBSEQUENT INSTALLMENTS, THE REST, MOST OF THE REST OF THE RETAINER WAS PAID, APPARENTLY ONLY \$45,000 OF IT WAS PAID. THE DOCTOR COMPLAINED ABOUT THE FEE, DID NOT PAY THE LAST \$5,000 OF THE FEE, AND ACTUALLY I BELIEVE IN EVIDENCE WAS A LETTER FROM THE JUDGE OFFERING TO RETURN \$5,000 OF THE FEE, IN CONSIDERATION OF THE DOCTOR AGREEING NOT TO FILE -- THE DOCTOR DEGREEING NOT TO FILE CHARGES, AND THE DOCTOR AGREEING NOT TO FILE CHARGES, AND THAT WAS IN THE CONCLUSION OF THE JQC.

CHIEF JUSTICE: ONE OF THE SUGGESTIONS WAS THAT SHE FLEET COUNTRY BECAUSE HE WAS NOT PREPARED TO GO TO TRIAL. IN LOOKING AT THE CONCLUSIONS OF THE RECORD, THE JQC, ARE CONTRADICTED BY THE FACT THAT THERE WERE DEPOSITIONS. THERE WAS A STRATEGIC REASON FOR NOT FILING A MOTION, THAT THERE WAS CONTACT WITH AN EXPERT, THAT IT WASN'T A SITUATION OF JUDGE HENSON HAVING DONE NO DISCOVERY, AS, THAT THAT STATEMENT WAS MADE IF WE DISAGREE ON. IF WE DISAGREE WITH THE JQC ON THAT FINDING, HOW DOES THAT AFFECT THE ULTIMATE CONCLUSION.

LET ME ADDRESS THAT, YOUR HONOR, IN TWO PARTS, FIRST AS TO THE PREPARATION FOR TRIAL. THE CONCLUSION THAT THE JUDGE HAD DONE DISCOVERY IN PREPARATION FOR TRIAL, WAS A TACTIC NOT TO GO FORWARD, BUT AS THE JUDGE ADMITTED IN HIS TESTIMONY WAS HIS PERCEPTION OF THE CASE WAS THAT IT WAS A CLEAR LOSER AND THERE WAS NO CHANCE FOR DIANA TO WIN, AND ON THE SITUATION OF THE EXPERT, THERE WAS AN EXPERT CONSULTED BUT THERE WAS NO EXPERT TO TESTIFY, SO THERE WAS NO EXPERT TESTIMONY AT THE TRIAL, IF IT WERE TO OCCUR IN APPROXIMATELY 30 DAYS. ULTIMATELY THE PRESENCE OF MOTIVATION IN THIS CASE IS ONLY A FACTOR TO BE CONSIDERED IN TOTALITY WITH THE REST OF THE EVIDENCE, AND IN THIS CASE, I THINK THE COMMISSION, WENT SPECIFICALLY TO THAT ISSUE, TRYING TO FIND THE BASIS FOR MAKING THE REST OF THE STATEMENT OF THESE WITNESSES, CLEAR AND CONVINCING, OF SOME REASON WHY THE JUDGE WOULD HAVE DONE, THIS AND UNFORTUNATELY IT IS PART OF THE HUMAN CONDITION, YOUR HONOR, THAT WHEN WE LOOK BACK ON CONDUCT THAT WAS WRONG, THE QUESTION CAN, ALSO, OFTEN BE ASKED, WHAT WERE YOU THINKING, AND PEOPLE WANTED, THE COMMISSION WANTED TO UNDERSTAND WHAT THE JUDGE WAS THINKING IN THIS MATTER, AND THAT WAS PART OF THEIR DETERMINATION,

BASED UPON THE EVIDENCE BEFORE THEM, THAT THE TRIAL, ALTHOUGH SOME WORK HAD BEEN DONE, WAS NOT IN THE CONDITION THAT IT WOULD EFFECTIVELY PROCEED, AND THE OTHER REASON THEY FOUND MOTIVATION, WAS THE BELIEF THAT, IN FACT, IF DIANA JIMINEZ CHOSE TO FLEE, THAT SHE WOULD NOT BE EXTRADITED.

LET ME MAKE SURE THAT I AM CLEAR ON THIS, EVERYBODY KEEPS REFERRING TO THE COMMISSION HERE. WE ARE DEALING WITH POST 1998 COMMISSION. CORRECT? IN WHICH THERE IS A DIVISION BETWEEN THE INVESTORIPANEL AND INVESTIGATORY PANEL AND THE HEARING PANEL, CORRECT?

EXACTLY, YOUR HONOR.

AND THE FINDINGS AND RECOMMENDATIONS OF THE COMMISSION, QUOTE, COME FROM THE HEARING PANEL.

THAT IS EXACTLY CORRECT. THAT IS THE WAY I THINK, I THINK DEFINED IN OUR BRIEF AS THE ADJUDICATORY PANEL, IS THE WAY WE DID THAT, AND THERE WAS SIX MEMBERS OF THAT PANEL. ONE OTHER THING THAT I GUESS I WOULD GO BACK TO, IN TERMS OF THE PANEL, BECAUSE IT WAS A COMMENT OF THIS COURT THAT, IN EVALUATING THE FINDINGS, THEN JUSTICE OF A COMMISSION, THE SUPREME COURT HAS OBSERVED THAT THE FINDINGS OF THAT COMMISSION ARE ENTITLED TO THE KIND OF DEFERENCE WE HAVE TALKED ABOUT HERE TO DAY, BECAUSE OF THE CONSTITUTIONAL COMPOSITION OF THAT COMMISSION, IN TERMS OF WHO THOSE PERSONS ARE, AND THE MEMBERS OF THIS PANEL ARE IDENTIFIED IN THE BRIEF, AND WHAT I WOULD ENCOURAGE MR. CHIEF JUSTICE

LET ME ASK ON THAT, I DID NOTE THE COMPOSITION OF THE SIX MEMBERS, AND I, ALSO, NOTED THAT ON THE CHARGE, THE VOTE WAS 4-2. IT BECAME A MATTER OF INTEREST TO ME, WHO THE TWO WERE, BECAUSE YOU KNOW, IT WAS TWO JUDGES ON THAT COMMISSION THAT WOULD AFFECT MY EVALUATION, AND AS I UNDERSTAND IT, THIS IS CONFIDENTIAL AS TO THE VOTE. SO WHEN YOU LOOK AT THE COMPOSITION, WE HAVE NO IDEA IF IT WERE THE TWO JUDGES THAT DISSENTED OR THE TWO LAY PEOPLE, AND IF THAT, SO, THE COMMENT ON THE 4-2, ARE WE JUST TO IGNORE THAT IT WAS A 4-2, OR IS THAT, WE SHOULD HAVE ASSUMED IT WAS A 6-0? DOES IT HAVE ANY SIGNIFICANCE IN THIS CASE?

I WOULD LIKE TO SAY IT HAS NO SIGNIFICANCE, YOUR HONOR

CHIEF JUSTICE: BUT YOU BROUGHT IT UP, BECAUSE YOU WERE COMMENTING THAT, NOT ONLY IS THIS JUST AN ORDINARY JURY. THIS IS A COMPOSITION THAT HAS CONSTITUTIONAL SIGNIFICANCE.

THAT'S RIGHT, AND FOR THE PURPOSE OF THE 4-2 VOTE, I HAVE TO SAY I DON'T THINK IT HAS A LEGAL SIGNIFICANCE BECAUSE THERE IS NOT A SLIDING SCALE OF WEIGHT AS TO WHAT THE ADJUDICATORY PANEL DID, BASED UPON THE VOTE. ONCE THE CONSTITUTIONAL CASE LAW ESTABLISHED, SAFEGUARDS ARE MET, OF A SUPER MAJORITY, WHICH WAS MET HERE, AND ONCE THE PANEL, ADJUDICATORY PANEL APPLIES THE APPROPRIATE CLEAR AND CONVINCING STANDARD, THEN THOSE FINDINGS ARE IN FACT, ENTITLED TO THAT, AND WE DON'T KNOW, YOUR HONOR, WHAT MEMBERS VOTED WHICH WAY. THE FINDINGS, I THINK, ARE DELIBERATELY SILENT ON THAT, BUT WHAT I WOULD ENCOURAGE THIS COURT TO DO, IS LOOK AT WHAT THE CONDUCT OF THE PANEL WAS IN THIS CASE, AT THE PROCEEDING. IF YOU LOOK AT THE RECORD CLOSELY, PARTICULARLY AT THE QUESTIONING FROM THE PANEL MEMBERS, THEMSELVES, YOU WILL SEE THAT THE PANEL MEMBERS ARE FOCUSED. THEY ARE INTENSE IN WHAT THEY ARE DOING. SOME OF THE MOST WITHERING CROSS-EXAMINATION IN THIS CASE, CAME FROM MEMBERS OF THE COMMISSION, THE PANEL, ADJUDICATORY PANEL OF THE COMMISSION-CALLED WITNESSES, IN WHICH THEY AT GREAT LENGTH PROBED THEM EFFECTIVELY TO UNDERSTAND WHAT WAS GOING ON, AND THE OTHER THING I THINK IN THIS RECORD, EVIDENCE, I

THINK, FOR THIS COURT, IS THAT THE PANEL DID PRECISELY WHAT THEY WERE REQUIRED TO DO IN THIS MATTER , IS REMEMBER IN THIS MATTER THERE WERE FIVE CHARGES THAT ACTUALLY WENT TO RESOLUTION BEFORE THE ADJUDICATORY PANEL. THE FIRST OF THOSE CHARGES WAS THE ADMITTED MISCONDUCT IN RE GARDS TO PRACTICING LAW WHILE STIL L A JUDGE. THE SECOND OF THOS E WAS THE DIANA JIMINEZ MATTER , WHICH WE DISCUSSE D AT LENGTH AND THE EVIDENCE THAT SUPPORTED THAT. THERE WERE THREE OTHER CHARGES, CHARGES REG ARDING H ECTOR RODRIGUEZ, A CLIENT OF THE JUDGE'S WHO DID FLEE AND DIDN'T TESTIFY BECAUSEHE WAS NEVER FOUND , AND THIS PANEL FOUND AGAINST THE COMMISSION ON THAT AND THEN TESTIMONY FROM J ERRY LEE THOMPSON, ANOTHER CLIENT OF THE JUDGE WHO DID NOT FLEE BUT TESTIFIED THAT HE WAS TOLD BY THE JUDGE TO FLEE , AND LAST LY, THERE WAS A CHARGE THAT THE JUDGE FA ILED TO PROPERLY AD VISE DIANA ABOUT A PLEA O F FER, WHICH RESULTED IN A PLEA OFFER BEING LOST , AND NOW INSTEAD OF THE THEN -OFFERED TWELVE YEARS , DIANA IS SERVING 16 Y EARS, AND WHEN YOU LOOK AT THOSE CHARGE ANSWER WHAT THE RECORD IS , WHAT YOU WILL SEE FROM THOSE CHARGES AND THE FINDINGS OF THE COMMISSION , IS THE COMMISSION WAS DOING , THE ADJUDICATORY PANEL WAS DOING PREC ISELY WHAT THIS COURT HAS CHARGED IT WITH DOING IN EVAL UATING THE DISPUTE IN THE EVIDENCE AND COMING UP WITH CLEAR AND CONVINCING EVIDENCE, WHICHIS ULTIMATELY WHAT THEY DID .

CHIEF JUSTICE: GO AHEAD.

WOULD YOU ADDRESS WHAT IF ANY NE XUS , EITHER TIME OR SUBSTANCE , THERE MAY HAVE BEEN, WITH REGARD TO THESE COLLATERAL PROCEEDINGS, AND ANY OF THE SU BSTANCE OF WHAT WE ARE TALKING A BOUT TO DAY , AND UTILIZATION OF A NY OF THAT MATERIAL , TO ADVANCE INTEREST IN THE COLLATERAL PROCEEDINGS , IF THE RECORD SHOWS ANYTHING ABOUT THAT .

THE THING THAT THE RECORD SHOWS, YOUR HONOR, IN T ERMS OF THE COLLATERAL PROCEEDINGS THAT YOU ARE TALKING ABOUT, OF THE THREE DIFFERENT CHARGES RE LATEING TO FLE EING , JIMINEZ , JE RR Y LEE THOMPSON.

THE COLLATERAL PROCEEDINGS I AM REFERRING TO GO TO THE FLEEING CHARGES IN THE CH RALRAL PROCEEDINGS , GOING TO THE JIMINEZ CHARGESAND WHETHER THIS NEX US IS A CONDUCT OF STATUS FOR THE INDIVIDUAL AS A BASIS FOR RELIEF BY THIS CLIENT AND AS A RES ULT OF THAT SHOWS ANY NEXUS OR NO NEXUS WHATSOEVER.

I AM TRYING TO REC ALL PRECISELY , YOUR HONOR, IF THERE IS ANYTHING IN THERECORD OF THE PROS THE POST TRIAL COLLAT ERAL PROCEEDINGS REGARDING THE F LEEING ADVIC E. I DON'T BELIEV E THERE WAS BUT I AM NOT 100 PERCENTSURE.

CHIEF JUSTICE: WHEN DURING THE TESTIMONY UNDER OATH, DID IT OCCUR AFTER THE POSTCONVICTION PROC EEDINGS WERE CONCLUDED OR DURING THE TIME THAT THEY WERE STILL ONGOING ?

THE MOTIONS , I BELIEVE , WERE F ILED FAI RLY E ARLY , BUT , ALSO, I THINK THAT THE STATEMENT WAS TA KEN FROM THE , BY THE STATE ATTORNEY FAIRLY EARLY, TOO, YOUR HONOR. I THINK BOTH THOSE IT EMS ARE IN THE RECO RD. I JUST CAN'T RE MEMBER THE PRECISE JUXTAPOSITION O F THE DATES OF THOSE TWO THINGS.

CHIEF JUSTICE: THANK YOU. WITH OUR HELP, YOUR TIME HAS EXPIRED, IF YOU WOULD LIKE TO CONCLUDE.

THANK YOU V ERY MUCH. THE INTEGRITY OF OUR JUDGES HAS NEVER BEEN MORE IMPORTANT THAN IT IS TODAY . ULTIMATELY , THIS PROCEEDING IS NOT ABOUT PRINCIPLY ABOUT , SANCTIONING THIS RESPONDENT . IT IS ABOUT PRESERVING THE CONFIDENCE , THAT OUR

CITIZENS DESERVE TO HAVE IN OUR JUDICIARY. TO ACCOMPLISH THIS IMPORTANT OBJECTIVE , WE RESPECTFULLY REQUEST THAT THIS COURT ACCEPT THE RECOMMENDATION OF THE ADJUDICATORY PANEL OF THE JUDICIAL QUALIFICATIONS COMMISSION.

CHIEF JUSTICE: REBUTTAL .

THE COURT HAS HIT UP ON AN IMPORTANT POINT THAT I WOULD LIKE TO ADDRESS BRIEFLY , AND THAT IS THE RELATIONSHIP OF THE THREE WITNESSES THAT HAVE ACCUSED JUDGE HENSON . NEESMITH, M S. JIMINEZ AND HER FATHER.MR. NEESMITH WAS INVOLVED IN THIS CASE FROM THE VERY BEGINNING.HE DID THE BOND HEARING. HE EXPECTED TO GET HALF THE FEE.HE WAS, THEN, SHUT OUT AND DID NOT INDICATE GET PAID. A FTER DID NOT GET PAID. AFTER DIANA WAS SENTENCED , THE RECORD WILL SHOW THAT HE WAS HIRED BY THE JIMINEZ FAMILY TO DO POSTCONVICTION. AND DIE AND I AND DIANA 'S TESTIMONY TAKEN IN 2004 , SHE TOLD US FOR THE FIRST TIME THAT HER CONVICTION HAD BEEN , I BELIEVE TIMING WE ISS THE STATEMENTS THAT WERE MADE WOULD SHOW THE PROCEDURE WAS ONGOING WITH REGARD TO HIS REPRESENTATION.

DO WE KNOW THAT THIS HAD ANYTHING TO DO WITH THE PROCEEDINGS THAT WAS ADVANCED IN THE ISSUE OF COLLATERAL PROCEEDINGS?

I DON'T THINK WE KNOW FROM THIS RECORD, YOUR HONOR. THE SECOND MATTER THAT THE COURT BROUGHT UP IN MR . RUSSELL 'S PRESENTATION WAS THE MATTER OF MOTIVATION. MOST PEOPLE DON'T DO SOMETHING FOR NO REASON AT ALL , AND THAT IS ONE OF THE THINGS YOU HAVE TO ASK YOURSELF, IS WHY WOULD , ASSUME JUDGE HENSON DID THIS, WHY WOULD HE DO IT, AND THE PANEL CAME UP WITH THE CONCLUSION THAT IT WAS BECAUSE HE WAS NOT PREPARED FOR TRIAL, YET THEY FOUND HIM , HE WAS NEVER FOUND GUILTY OF THAT. HE WAS NEVER FOUND GUILTY OF THAT, SO IF YOU BASE THE FINDING ON THE MOTIVATION, IT FALLS RIGHT THERE .

DO WE CONSIDER AT ALL , WHETHER OR NOT, WE KNOW THAT HE WAS ACQUITTED OF HAVING COUNSELED TWO OTHER CLIENTS TO FLEE, BUT ONE OF THOSE CLIENTS DID HAD, IN FACT , FLEE THE JURISDICTION , SO HOW DO WE CONSIDER THAT IN THIS WHOLE SCHEME OF WHETHER OR NOT COUNT TWO WAS, IN FACT

JUSTICE QUINCE , I DON'T THINK THAT YOU CAN CONSIDER THAT. THERE IS CLEAR LAW THAT YOU CANNOT, AND THIS IS IN THE CRIMINAL , YOU CANNOT CONSIDER ACQUITTED CONDUCT IN SENTENCING OR IN THIS CASE, SANCIONING A JUDGE.

I AM STILL , MR . KIRKCONNELL , CONCERNED ABOUT WHAT THE STANDARD OF REVIEW IT. NOW , THE DAVEY CASE CAME ALONG PRIOR TO THIS DIVISION BY THE CONSTITUTION , THAT YOU HAD AT THAT POINT IN TIME, THE PROSECUTOR AND THE JUDGE BELOW , BEING ONE AND THE SAME. SINCE THAT TIME , THAT DIVISION, DOESN'T THAT AFFECT THE DEFERENCE THAT THIS COURT HAS TO SHOW TO THESE DETERMINATIONS BY THE PANEL , OF THE JQC THAT HEARS THIS MATTER? I MEAN , HOW ARE WE GOING TO MAKE NOT ONLY IN THIS CASE BUT IN OTHER CASES, A DETERMINATION THAT WOULD BE ON WHAT THE EVIDENCE WAS BEFORE THE JQC?

YOUR HONOR , THE COMPOSITION OR THE DIVISION OF THE COMMISSION MAY HAVE CHANGED, BUT THE CONSTITUTION HAS NOT CHANGED.ARTICLE V SECTION 12 , SETS OUT WHAT THIS COURT MAY DO. THE COURT MAY ACCEPT, REJECT , OR MODIFY IN WHOLE OR IN PART, THE FINDINGS OF THE COMMISSION .

IT CHANGED THE STRUCTURE OF THE COMMISSION , THE CONSTITUTION DID, SINCE DAVEY.

THAT'S CORRECT , YOUR HONOR , BUT THE CONSTITUTION HASN'T CHANGED, IS MY POINT .

CHIEF JUSTICE: BACK ON THE STANDARD REVIEW, WE ARE ENCOURAGED TO READ THE RECORD, WHICH WE DO, BUT THERE IS STILL SOMETHING WITH LIVE PROCEEDINGS, AND SO WE NEVER CAN PUT OURSELVES PRECISELY WHERE THE COMMISSION MEMBERS WERE, WHO MADE A DETERMINATION THAT JUDGE HENSON WAS NOT TRUTHFUL. IT IS REALLY THE ULTIMATE ISSUE HERE, AND SO, AND I GO BACK TO THIS ISSUE THAT EVERYDAY WE REVIEW CRIMINAL CONVICTIONS AND INNDEATH PENALTY CASES, WHICH HAVE CONVICTIONS IN DEATH PENALTY CASES, WHICH HAVE FELONS PUTTING SOMEONE ELSE IN, TO DEATH BECAUSE THEY SAY THAT THIS PERSON MURDERED, IS AN EYEWITNESS, AND WE LOOK AT IT, AND WE KNOW THAT THE STANDARD FOR THE JURY IS BEYOND A REASONABLE DOUBT, BUT WE REVIEW WHETHER THOSE FINDINGS OF THE JURY ARE SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE. NOW, ARE YOU SUGGESTING, AND I KNOW DAVEY DOES HAVE SOME CONFUSING LANGUAGE IN THERE, THAT WE REALLY HAVE TO GO BACK AND USE A REVIEW THAT WOULD BE MORE, A HARsher OR GREATER REVIEW THAN THE KIND OF REVIEW THAT WE GIVE TO FINDINGS IN A DEATH-PENALTY CASE?

YOUR HONOR, I CERTAINLY WOULD NOT SUGGEST THAT, BUT I DO SUGGEST THAT YOU HAVE TO LOOK AT THE VALIDITY OF THE CONCLUSIONS. AND WHETHER, A, THEY ARE SUPPORTED BY EVIDENCE, B, WHETHER THEY ARE CHARGED CONDUCT, AND I BELIEVE WE DON'T HAVE THAT HERE. FINALLY, YOUR HONOR, NO LITIGANT APPEARING BEFORE JUDGE HENSON WHILE HE WAS A COUNTY JUDGE WAS AFFECTED BY THIS. HE WAS NOT PERFORMING ANY JUDICIAL DUTIES AT THE TIME. HE FREELY ADMITTED AND I HEARD YOU, JUSTICE PARIENTE, SAY TO THE PRIOR JUDGE THAT IT WAS COMMENDABLE THAT SHE HAD ADMITTED HER MISTAKE. JUDGE HENSON ADMITTED HIS MISTAKE ON THIS. I WOULD ASK YOU TO TAKE THAT INTO CONSIDERATION. WE THANK FOR YOU THE COURT'S CONSIDERATION.

CHIEF JUSTICE: THANK YOU VERY MUCH. BEFORE CALLING THE NEXT CASE, I JUST WANT TO INQUIRE OF THE MARSHAL AS TO THE SOUND SYSTEM PROBLEMS THAT WE HAVE HAD THIS MORNING. SO THAT WE KNOW WHETHER THESE HAVE BEEN SOLVED OR WILL CONTINUE. [NO AUDIO]

CHIEF JUSTICE: I AM GOING TO FIND OUT IF WE ARE GOING TO HAVE INTERFERENCE WITH YOUR ARGUMENTS, BUT I AM SURE WITH ALL OF YOU BEING EXPERIENCED PRACTITIONERS, IT WILL NOT AFFECT YOU. WE HAVE BEEN TOLD THAT THE SOUND SYSTEM WAS REWIRING BY WFSU THIS SUMMER SO THAT WE COULD ENHANCE THE QUALITY OF OUR BROADCAST. THIS DOESN'T QUITE SOUND LIKE AN ENHANCED BROADCAST, BUT HOPEFULLY WE WILL BE ABLE TO SOLVE IT BEFORE THE END OF TODAY. SO IT