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**Jerry Michael Wickham v. State of Florida**

**SC05-1012 | SC07-1137**

THE NEXT CASE IS WICKHAM VERSUS  
THE STATE.

>> GOOD MORNING, MAY IT PLEASE  
THE COURT.

I WANT TO -- I'VE GOT QUITE A  
FEW ISSUES AND TO MEET THE  
STRICTURES OF TIME I WOULD LIKE  
TO ADDRESS TWO OF THEM THIS  
MORNING WITH THE COURT'S  
PERMISSION IN THE FOLLOWING  
ORDER.

I WOULD LIKE TO ADDRESS THE  
ISSUE OF WHETHER THE CIRCUIT  
COURT, THE JUDGES SHOULD RECUSE  
THEMSELVES AND I WOULD LIKE TO  
ADDRESS, TO SHARE WHETHER WE  
WERE PERMITTED TO BRING THE  
CASE.

WITH RESPECT TO THE FIRST ISSUE  
AND THE VERY FIRST DAY WE FILED  
A 3850, WE TOOK THE POSITION  
VERY STRAIGHTFORWARDLY THAT  
JUDGE MCCLURE IS THE FIRST JUDGE  
BUT ALL THE JUDGES AND THE  
CIRCUIT SHOULD RECUSE THEMSELVES  
AND THE JUDGE FOR ANOTHER  
CIRCUIT BE BROUGHT IN.

WE REPEATED THAT MOTION EVERY  
TIME A NEW JUDGE APPEARED OR NEW  
MEMBERS THAT WERE APPOINTED TO  
THE BENCH.

>> IT IS A RARE CIRCUMSTANCE  
UNDER OUR LAW.

IT IS A VERY RARE CIRCUMSTANCE  
UNDER OUR LAW ISN'T IT, THAT WE  
REQUIRE AN ENTIRE JUDICIAL  
CIRCUIT TO RECUSE ITSELF?

>> IT IS VERY RARE.

AS WE POINTED OUT TO HIM ALL THE  
CASES THAT WE CITED, AND I WILL  
MENTION SOME OF THEM TODAY WHEN  
THIS COMES UP, HAS BEEN DONE AND  
THIS COURT NOTICED IN THE

HODGINS DECISION WHERE YOU DID NOT DECIDE IT BUT THERE WAS APPROVAL AND THE JUDGES RECUSED THEMSELVES BECAUSE THEY DIDN'T WANT TO RULE ON THE CREDIBILITY OF ONE OF THEIR COLLEAGUES.

>> HAS THERE EVER BEEN A CASE THAT EXISTS IN FLORIDA WHERE WE HAVE FOUND IT A USE OF DISCRETION OR AS A MATTER OF LAW AN ENTIRE CIRCUIT WAS REQUIRED TO RECUSE ITSELF BECAUSE THEY WOULD HAVE TO DETERMINE THE INEFFECTIVE ASSISTANCE?

>> WE HAVE NOT RULED ON THIS ISSUE TO MY KNOWLEDGE.

>> THAT WAS A CIRCUMSTANCE WHERE THE PARTIES WENT THROUGH THE HEARING AFTER THE DEFENDANT LOST AN APPEAL FOR THE FIRST TIME. HE SAID, BY THE WAY, THAT CIRCUIT, THOSE JUDGES SHOULD NOT HAVE HEARD IT AND HIS COURT RULED THAT THERE IS NO PER SE RULE.

IT IS NOT AUTOMATIC IN EVERY CASE.

[INAUDIBLE]

>> THE MINUTE WE FILED THAT 30 AND 50 AND SIX TIMES SINCE. WE REPEAT EVERY TIME WE REFILE THAT.

THE STATES RAISE THE NOTION THAT IT WAS TOO LATE AND I DON'T UNDERSTAND IT.

JUDGE PADOVANO, WHO IS ONE OF THE CHARACTERS HERE SAW THIS CASE.

[INAUDIBLE]

>> HE SAW THIS CASE AND THE CASE WENT UP TO THIS COURT.

THERE IS NOTHING PENDING FOR THE CIRCUIT COURT.

MY BAR ASSOCIATION CALLED ME ON DUE DILIGENCE.

I THEN REACHED A CONCLUSION, WE HAD TO RAISE A COUNCIL CASE.

UNTIL THAT MOMENT THERE WAS NO CONFLICT.

THE RESULT OF ALL OF THIS, KEEP GOING BACK TO THE MEMBERS OF THE CAST IF YOU WILL, JUDGE DEKKER REFERRED TO THIS CASE BECAME A COUNTY JUDGE IN 1988.

JUDGE PADOVANO BECAME A CIRCUIT COURT JUDGE IN '88 AND THROUGHOUT JUDGE DEKKER'S CAREER HE WAS IN A SUPERIOR POSITION BECAUSE WHEN HE WENT ON THE CIRCUIT COURT HE WENT ON THE COURT OF APPEAL IN THE 1990'S.

>> LET ME ASK THIS QUESTION, YOU ARE TALKING ABOUT REVIEWING OF CASES.

EACH JUDGE IN FLORIDA IS AN INDEPENDENT ELECTED CONSTITUTIONAL OFFICER.

AND YOU HAVE NOT ALLEGED ANY PERSONAL RELATIONSHIPS OR THAT THERE WAS A SUPERVISORY RESPONSIBILITY AND ANY OTHER RELATIONSHIP?

>> I DID NOT INQUIRE.

WHAT WE DO KNOW IS THAT JUDGE PADOVANO HAS REVIEWED NOW THE 82 DIFFERENT DECISIONS THAT JUDGE DEKKER --

IN ADDITION AS TIME WENT ON JUDGE PADOVANO'S WIFE IS ON THE BENCH AND JUDGE HANKINSON WAS APPOINTED AS A PROSECUTOR IN THIS CASE.

[INAUDIBLE]

>> ONCE YOU DON'T HAVE A PER SE RULE THEN YOU HAVE TO DRAW A LINE.

WHEREVER THAT LINE IS DRAWN.

>> SO YOU ARE ASKING FOR A PER SE ROLE?

>> I AM NOT ASKING FOR A PER SE RULE BECAUSE I DON'T THINK YOU HAVE TO BECAUSE YOU OF OUR PARTY ADDRESS THAT.

HERE WE HAVE A CIRCUMSTANCE, KEEP IN MIND JUSTICE PARIENTE, WHAT HAPPENED HERE, HE HAD TO DO FOUR THINGS.

FIRST OF ALL HE HAD TO DETERMINE WHETHER JUDGE PADOVANO ACTED WITHIN CONFIDENCE.

SECOND, THERE WERE ISSUES OF CREDIBILITY HERE AND WHAT HAPPENED WAS THAT, WHEN THE COLLEAGUES OF MINE INTERVIEWED JUDGE PADOVANO AS PART OF OUR DUE DILIGENCE, HE MADE STATEMENTS ON THE COURT ISSUE HERE, NAMELY WHETHER WICKHAM

WAS -- HE TESTIFIES AND SAYS  
IT'S THE EXACT OPPOSITE.

I SAID JUDGE PODOVANO DO YOU  
REMEMBER BEING INTERVIEWED?  
HE SAID I WAS NOT INTERVIEWED.  
>> HE SAID I NEVER MET HIM, SO I  
CALLED HIS LAWYER AND SHE SAID,  
HERE ARE MY NOTES, TYPE THEM UP.  
HE SAID EXACTLY WHAT WAS IN THE  
3850.

I CHECKED MY RECORD AND YES I  
INTERVIEWED HIM BUT I DID NOT  
SAY THAT.

>> IT SEEMS TO ME THAT YOU ARE,  
YOU EITHER ARE ASKING FOR A PER  
SE RULE WHERE YOU WERE SAYING  
THAT JUDGE PADOVANO HAD  
DEMONSTRATED SOME DEGREE OF  
PREJUDICE IN THIS CASE OR HIS  
COLLEAGUES DID BECAUSE, WHAT  
CONCERNS ME IS THAT, IN EVERY  
CRIMINAL POST CONVICTION CASE,  
WITH SOME EXCEPTIONS, WE NOW  
HAVE STRICKLAND ISSUES, AND SO  
WE HAVE A SITUATION IN WHICH  
THERE ARE MANY STATES THAT ELECT  
ITS TRIAL JUDGES.

WE HAVE MANY OF THE PEOPLE WHO  
ARE COLLEAGUES MOVING ON TO THE  
BENCH, AND SO A PERSON A RULE  
WOULD GREATLY AWAY ON A JUDICIAL  
SYSTEM.

>> IF I COULD READ FROM THE  
OPINION OF ONE OF THE JUDGES AND  
THIS IS IN THE RECORD AS ONE OF  
THE MANY DECISIONS WE SUBMITTED,  
JUDGE PENNOCK RULED THAT ONE OF  
THE WITNESSES WHO IS ABOUT TO  
APPEAR BEFORE HIM IS ONE OF HIS  
COLLEAGUES IN THE SAID THE  
SPECIFIC CLAIMS ALLEGED BY THE  
CREDIBILITY GIVEN THAT FACT THIS  
COURT DOES NOT BELIEVE IT IS  
APPROPRIATE TO PASS ON  
CREDIBILITY OF A FELLOW JUDGE  
WHO PRESIDES WITHIN THE SAME  
CIRCUIT COURTHOUSE.

MORE IMPORTANTLY THE POSSIBILITY  
THAT THE DEFENDANT MAY  
REASONABLY PERCEIVE HE IS NOT  
RECEIVED IN IMPARTIAL REVIEW AND  
I THINK JUDGE DEKKER SHOULD HAVE  
DONE THAT.

ADDITIONALLY JUDGE HANKINSON

TESTIFIED, YOU HAVE SEEN HERE A NUMBER OF THESE GIGLIO ISSUES. PLUS, WE SUBMITTED A NUMBER OF AFFIDAVITS THAT JUDGE DEKKER FOUND TO BE SUFFICIENT THAT THE PROSECUTION FUNCTION, NOT JUDGE HANKINSON HIMSELF, THE PROSECUTION FUNCTION CAN EMBELLISH THE TESTIMONY OF THE WITNESSES.

WE PUT THOSE AFFIDAVITS IN, WHICH SHE FOUND TO BE SUFFICIENT.

>> LET ME ASK YOU THIS.

>> CAN I FINISH?

ALL I CAN SAY IS THAT JUDGE WILKINSON BREATHED A SIGH OF RELIEF WHEN SHE FOUND OUT SHE EXCLUDED THAT TESTIMONY.

>> YOU ALLUDED BEFORE TO THE 82 OR SOME DECISIONS THAT JUDGE PADOVANO HAD REVIEWED.

WHAT CIRCUIT ARE YOU ARGUING THAT THE CASE SHOULD HAVE BEEN TRANSFERRED TO?

>> ANYTHING OUTSIDE OF THE DISTRICT.

>> LET'S ASSUME IT GOES TO THE 14TH CIRCUIT, AND IT GOES TO A JUDGE THERE, THE FIRST DISTRICT REVIEWED DECISIONS FROM THAT CIRCUIT AS WELL.

IT REVIEWS DECISIONS FROM SEVERAL CIRCUITS IN NORTH FLORIDA SO IT APPEARS THAT YOUR ARGUMENT WOULD REQUIRE NOT ONLY THAT IT NOT BE IN THE SECOND CIRCUIT BUT IT THAT WOULD HAVE TO GO TO A CIRCUIT OUTSIDE OF THE FIRST DISTRICT.

>> I WOULD AGREE.

>> THAT IS DIFFERENT FROM WHAT YOU JUST SAID AND WHAT YOU HAVE ARGUED IN YOUR BRIEF.

I DON'T THINK YOU ARGUED IT WOULD HAVE TO GO OUTSIDE THE FIRST DISTRICT.

>> I AGREE, IT HAS TO BE SOMEONE WHO IS --

>> LET ME TAKE ANOTHER STEP. JUDGE PADOVANO, THERE IS AN OPENING IN THIS COURT.

IF YOU WOULD APPLY TO BECOME A SUPREME COURT JUSTICE, THE ACTOR

BRING IN ANOTHER STATE?

>> THERE ARE THREE ANSWERS TO THAT.

BY AND LARGE YOU DON'T HAVE DETERMINATION OF CREDIBILITY. SECOND YOU ARE IN THE SUPREME COURT, YOU DON'T HAVE CIRCUMSTANCES LIKE JUDGE DEKKER BECAUSE THERE'S NO ONE MORE SUPREME THAN HIMSELF. THIRD, THERE ARE SOME CASES WHERE --.

>> I DON'T THINK THAT REALLY ANSWERS THOSE QUESTIONS BECAUSE AS TO EACH CIRCUIT JUDGE IN THE STATE, WE WOULD BE A SUPERIOR SO WE WOULD -- JUDGE PADOVANO WOULD THEN, IF HE WERE JUSTICE ON THIS COURT, BE SUPERIOR TO EVERY CIRCUIT JUDGE.

>> MY POINT IS THAT, IF JUSTICE PADOVANO -- I THOUGHT THAT WAS YOUR QUESTION. HE WOULD CLEARLY RECUSE HIMSELF. YOU WOULD NOT BE IN A CIRCUMSTANCE --

[INAUDIBLE]

[INAUDIBLE]

>> IT SEEMS TO ME THE QUESTION HERE IS IF YOU ARE A WITNESS.

>> THAT HAPPENED TO ME AS A TRIAL JUDGE.

I GOT CALLED BACK WHILE I WAS ON THIS COURT TO BE A WITNESS IN A MURDER CASE THAT I WAS THE TRIAL JUDGE OVER, SO THAT ARGUMENT WAS ACCEPTED, THAT 3.851 COULD NOT BE HEARD ANYWHERE IN FLORIDA. BY A FLORIDA JUDGE.

>> THE CREDIBILITY IS A MAJOR DISTINCTION.

THE OTHER POINT IS THAT OUR CASE RAISED THIS QUESTION, AND THAT IS THAT THERE'S NO OTHER ALTERNATIVE THEN YOU'VE GOT TO HEAR IT, BUT WE DO HAVE AN ALTERNATIVE HERE.

THERE WERE FOUR DECISIONS IN OTHER CASES INCLUDING IN THIS COURT YOU NOTED, IT IS NOT LIKE WE ARE ASKING FOR --

>> IT DID NOT ABUSE DISCRETION AND IN DOING SO WE ARE NOT GOING TO REVERSE A CHIEF JUDGE FOR

RECUSING THE ENTIRE CIRCUIT.

>> LET ME MOVE TO MY SECOND POINT.

LET ME SET UP THIS ISSUE IN THE FOLLOWING WAY.

JUDGE MCCLURE'S -- RELIED ON SPECIFICALLY NAMED WITNESSES FOR PREMEDITATION.

HE WAS RELYING ON MAINLY NOT JUST THEIR TESTIMONY ABOUT THE CRIME BUT SPECIFIC SENTENCES WHERE THEY HAD PREMEDITATION, WHAT WITNESS SAID THE JURY SAID IN ADVANCE THERE WAS GOING TO BE A KILLING AND THEN THERE IS SOME JAILHOUSE CELLMATES OF HIS WHO SAID THEY CLAIM THAT HE LATER ON ADMITTED TO GETTING RID OF A WITNESS, VERY SPECIFICALLY ON THAT TESTIMONY.

PART OF OUR DUE DILIGENCE, WE FOUND OUT THESE PEOPLE ARE ACROSS THE COUNTRY.

WE TALKED TO THEM AND THEY SAID -- I DON'T WANT TO GO INTO THE DETAIL, BUT ON THAT ISSUE HE DID NOT SAY THERE IS GOING TO BE A KILLING AND WE WERE FORCED TO SAY THAT.

WE SUBMITTED THOSE AFFIDAVITS. JUDGE DEKKER DID THE FOLLOWING AND I WANT TO BE CLEAR WHERE WE ARE PROCEDURALLY.

>> WHICH ISSUE ARE YOU ON?

>> I AM ON THE ISSUE.

>> GIVE ME A NUMBER.

>> EIGHT.

THAT IS RAISED IN THE 3850.

JUDGE DEKKER SAID THIS IS BASICALLY SUFFICIENT, WE HAVE TO HAVE A HEARING ON THIS ISSUE.

WE SHOW UP AT THE HEARING AND THE STATE GETS VERY ACTIVELY INVOLVED AND SAYS YOUR HONOR YOU SHOULD ADVISE THESE PEOPLE AND APPOINT A LAWYER.

SO JUDGE DEKKER SYSTEMATICALLY CALLS THE WITNESSES UP, AND LET ME READ YOU ONE OF THE MANY STATEMENTS.

THIS IS WHAT SHE SAID TO ONE OF THE JORDAN'S.

SHE SAYS, I HAVE NO IDEA OF WHAT YOUR ANTICIPATED TESTIMONY IS

BUT THERE'S A POSSIBILITY IF YOU  
TELL SOMETHING COMPLETELY  
DIFFERENT AS A MATTER OF LAW  
CONSTITUTES A CRIME OF PERJURY.

>> THAT IS TRUE.

[INAUDIBLE]

>> SHE DID NOT.

[INAUDIBLE]

>> HERE IS WHAT IS ERRCO.

LET ME FINISH SHOWING HOW KEY IT  
IS.

IN HER OPINION, SHE SAID, THEY  
TOOK THE FIFTH AS INSUFFICIENT  
EVIDENCE.

THE STATE THEN MOVED FOR A  
REHEARING.

BY THE WAY, DID YOU REALLY MEAN  
TO SAY IT WAS INSUFFICIENT  
ANYWAY?

SHE SAID NO BECAUSE THEY DID NOT  
PUT IT IN TESTIMONY IN THAT  
TRIAL.

HERE IS WHY IT IS WRONG.

IT IS WRONG FOR THREE REASONS.

ONE IS THEY DID NOT HAVE A -- IF  
THEY HAD PURGED THEMSELVES, THE  
STATUTE HAS RUN AND WE KNOW THAT  
BECAUSE THIS COURT --

>> LET ME STOP YOU RIGHT THERE  
BECAUSE IT SEEMS LIKE THE TRIAL  
JUDGE'S PURPOSE WAS TO ALLOW THE  
WITNESS TO OBTAIN AN ATTORNEY.  
FOR THE ATTORNEY TO ADVISE THEM  
WHETHER THEY WOULD BE COMMITTING  
PERJURY AND THE ATTORNEY COULD  
HAVE SAID ALL THIS DO YOU ARE  
ARGUING, THE STATUTES OF  
LIMITATION IS RUN, THERE'S NO  
FIFTH AMENDMENT ISSUE AND THEN  
THE WITNESS COULD TESTIFY.

THE TRIAL JUDGE DID NOT SAY THIS  
IS PERJURY, DON'T TESTIFY.

THE COURT SAID IT MAY BE THAT IF  
YOU SAY SOMETHING THAT IS  
CHANGING YOUR TESTIMONY, THAT  
COULD BE PERJURY, I DON'T KNOW.

>> I THINK THAT IS WRONG.

>> THAT'S WHY IT'S WRONG, BUT  
THEY WERE ALLOWED TO GET AN  
ATTORNEY AND THE ATTORNEY COULD  
ADVISE HIM WHETHER THAT WAS  
RIGHT OR WRONG.

>> THE SITUATION YOUR HONOR,  
EITHER ONE OF TWO THINGS IS

GOING TO HAPPEN.

HE COMMITTED PERJURY IN 1988 IN WHICH CASE MY CLIENT IS GOING TO FACE PERJURY TESTIMONY, OR THEY ARE ABOUT TO COMMIT PERJURY AND THE FIFTH AMENDMENT DOES NOT APPLY TO FUTURE PERJURY, IT JUST DOES NOT.

>> THE POINT IS THE LAWYER COULD TELL THE CLIENT EXACTLY WHAT YOU ARE SAYING AND THE CLIENT CAN THEN MAKE THAT DECISION BASED ON AN INFORMED CHOICE.

>> IT COULD EXPLICITLY.

I DON'T BELIEVE SO IN MY CLIENT'S SITUATION.

WE KNOW YOU HAVE SUFFICIENT EVIDENCE BUT BECAUSE OF THE CAUTIOUS LAWYER -- I THINK THE JUDGE SHOULD HAVE TOLD THEM UNDER THESE CIRCUMSTANCES IF YOU DON'T HAVE TESTIMONY -- AND IT GETS WORSE HERE YOUR HONOR.

FIRST, AT LEAST TWO OF THE WITNESSES WERE CALLED BY THE STATE AND WE THINK CERTAINLY THOSE TWO, AND REALLY ALL OF THEM, HAD IMMUNITY.

FINALLY YOUR HONOR, DID THE DEFENSE ASK FOR INSTRUCTION OF IMMUNITY?

NO.

WHAT WE DID DO IS WE SAID THEY CAN'T HAVE IT BOTH WAYS, NAMELY IF THEY ARE GOING TO INSIST THAT THESE PEOPLE NOT TESTIFY, THEN THE OTHER EVIDENCE WE HAVE SHOULD COME IN.

LET ME GIVE YOU A SPECIFIC EXAMPLE.

ONE OF THE KEY WITNESSES WAS TAMMY JORDAN.

SHE TESTIFIED AT TRIAL THAT MY CLIENT SAID THERE IS GOING TO BE A KILLING.

SHE WAS RELIED ON BY JUDGE MCCLURE.

SHE GAVE AN AFFIDAVIT THAT DID NOT HAPPEN.

SHE LIVED SOMEPLACE IN RURAL GEORGIA AT THE TIME, AND I WENT UP THERE AND TOOK HER DEPOSITION AND THE STATE CROSS-EXAMINED HER.

SO WE HAVE COMPLETE TESTIMONY.  
THE STATE HAD HER ARRESTED,  
BROUGHT DOWN TO TALLAHASSEE JUST  
SO SHE COULD GO ON THE STAND AND  
TAKE THE FIFTH.

AND THEN THE JUDGE SAYS I AM NOT  
GOING TO TAKE THIS DEPOSITION  
TESTIMONY.

>> DID YOU ARGUE THAT SHE HAD  
BEEN MADE UNAVAILABLE?

>> YES.

>> AND THE JUDGE REFUSED TO  
ALLOW THE DEPOSITION?

>> THAT WAS HER POINT ON THE  
BRIEFING.

AND THEN WE ALSO SAID YOU REALLY  
CAN'T HAVE IT BOTH WAYS BECAUSE  
ALL OF OUR STATEMENTS COME IN.

>> MY UNDERSTANDING IS THAT  
COUNSEL DID NOT OBJECT TO THE  
PERJURY WARNING, DID NOT OBJECT  
TO APPOINTMENT OF COUNSEL AND  
DID NOT OBJECT TO THE INVOCATION  
OF THE FIFTH AMENDMENT PRIVILEGE  
AND DID NOT SAY JUDGE GIVE HER  
IMMUNITY FOR ANY PERJURED  
STATEMENTS, NONE OF THOSE  
THINGS.

>> WE WERE REGULARLY OBJECTING  
TO THIS WHOLE PROCESS AND EITHER  
THEY SHOULD TESTIFY, WHICH WE  
STRONGLY URGE THAT THEY DO, OR  
THEIR EXISTING TESTIMONY COMES  
IN.

IN ADDITION YOUR HONOR THERE WAS  
A PATTERN BUILDING HERE AND IT  
WASN'T UNTIL THE END WE REALIZED  
THEY WERE SYSTEMATICALLY DOING  
IT SO EVERY SINGLE WITNESS WAS  
KEPT OFF THE STAND AND AT THE  
END WE EXPRESSLY MADE OUR  
POSITION ON JUDGE DEKKER THAT  
THIS PATTERN IS KEEPING US FROM

--

>> I JUST HAVE TROUBLE WITH THE  
JURISPRUDENCE OF HOLDING A JUDGE  
INFORMING A WITNESS OF THE  
WITNESSES' CONSTITUTIONAL RIGHT  
AS REVERSIBLE ERROR.

>> IT IS NOT, BUT WHEN A JUDGE  
SAYS HE MAY BE COMMITTING  
PERJURY HERE, I THINK THAT IS  
REVERSIBLE ERROR, WHEN THERE'S  
NO FIFTH AMENDMENT PRIVILEGE,

THERE JUST ISN'T.

IN 1988 EITHER THE STATUTE IS  
RUN AND THEY ARE SAYING YOU  
SHOULDN'T TESTIFY, SHE MIGHT  
ADMIT THE CONVICTION BASED ON  
PERJURY TESTIMONY, THAT IS IN  
THE JUDGMENT OF TESTIMONY.

>> YOU HAVE ALREADY EXHAUSTED,  
YOUR TIME BUT WE WILL GIVE YOU A  
COUPLE OF MINUTES.

>> STEVE WHITE, ASSISTANT  
ATTORNEY.

A FEW POINTS, NUMBER ONE IS  
COUNSEL I RESPECTFULLY DISAGREE  
WITH COUNSEL'S REPRESENTATION  
THAT THE ALLEGATIONS WERE MADE  
REPEATEDLY AND THE MOTIONS  
PRESENTED IN THE TRIAL COURT.

[INAUDIBLE]

>> YES YOUR HONOR THIS IS A  
DISQUALIFICATION.

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

[INAUDIBLE]

>> WELL YOUR HONOR, NUMBER ONE I  
THINK THERE ARE OBJECTIVE FACTS  
IN ADDITION TO THE TESTIMONY OF  
JUDGE HANKINSON AND JUDGE  
PADOVANO THAT YOU CANNOT GET.  
IF YOU WANT TO PEEL OFF THAT  
FIRST LAYER.

[INAUDIBLE]

[INAUDIBLE]

>>> HE SAID IT, YOU KNOW,  
GOING TO SAY JUDGE -- YOU  
KNOW -- CREDIBILITY SO THAT  
MY POINT IS, PROOF IS IN THE  
PUDDING WHAT HE  
PRODUCED AT TRIAL -- HE LAID  
OUT.

>> WAIT, I THOUGHT THAT THE  
PROCEED ABOUT RECUSAL WAS  
WHETHER YOU HAD A TRIBUNAL A  
PROPERLY CONVENED TRIBUNAL  
TO MARRY MAKE THAT HE  
DECISION NOT WHETHER  
IMPROPERLY CONVENED  
TRIBUNAL GOT IT RIGHT.

>> WELL --

>> THAT IS THE -- I MEAN  
BECAUSE THEN YOU ARE GOING

BEHIND ALL THESE THINGS  
SEEMS YOU COULD YOU SAY AM  
DETERMINED -- FROM A DIFFERENT  
PERSPECTIVE THEN, IN  
HINDSIGHT DID YOU GET IT  
RIGHT?

>> I WAS TRYING TO ADDRESS  
JUSTICE PARIENTE'S CONCERN.

>> YOU JUST -- THAT IS WHERE  
YOU ARE GOING SUBSTANTIVELY IF  
THEY GOT IT RIGHT, WE DON'T EVEN  
HAVE AN ISSUE --

>> IN TERMS OF GETTING IT  
RIGHT I'M NOT TALKING ABOUT  
RIGHT VERSUS WRONG, I'M  
TALKING ABOUT WHAT TRIAL  
COUNCIL ACTUALLY DID IN  
TERMS OF PRODUCING THINGS IN  
THE COURTROOM THAT THE COURT  
CAN LOOK AT AN OBJECTIVE  
RECORD BEYOND HAVING TO MAKE  
A CREDIBILITY DETERMINATION.

THE JUDGE PADOVANO SAID I  
DID THIS, THIS AND THIS,  
AND -- I'M TALKED TO  
DEFENDANT AT LENGTH, ET  
CETERA, ET CETERA, ET  
CETERA, THE RECORD SPEAKS  
FOR ITSELF IN TERMS OF  
QUALITY OF THE WORK THAT  
JUDGE PADOVANO DID.

>> -- WHAT YOU ARE REALLY  
SAYING IS NO JUDGES IN THE  
STATE COULD EVER HAVE  
DECIDED DIFFERENTLY ON THIS  
ISSUE, AND THAT IS -- ALL  
THE TIME THERE WERE JUDGES,  
THAT AT TIMES FIND -- TRIAL  
COUNSEL INEFFECTIVE BASED ON  
CERTAIN THINGS.

IT DOESN'T HAPPEN ALL THE TIME,  
OCCASIONALLY, AND I DON'T  
KNOW THAT YOU HAVE ANSWERED  
MY QUESTION, ABOUT THE  
DIFFERENCE TO ME, FROM EVERY  
OTHER CASE THAT I'VE SEEN,  
WHERE JUDGES ARE INVOLVED DO  
I THINK ALLEGATIONS WHAT WAS  
GOING TO BE GOING ON AS FAR  
AS JUDGE PADOVANO IN THOSE  
THESE TYPES OF THINGS, ARE  
DIFFERENT IN TIME THAN OTHER  
-- THAN OTHER CASES, AND NOT  
SURE YOU HAVE -- HOW TO

DIRECT THAT AGAIN ESPECIALLY WITH THE OTHER FACTORS THAT WERE INVOLVED WITH THIS CIRCUIT AND JUDGE PADOVANO WAS -- CHIEF JUDGE -- APPELLATE COURT -- [INAUDIBLE]

>> I WOULD RESPECTFULLY DISAGREE THAT WE DON'T HAVE CREDIBILITY DETERMINATIONS IN MANY IF NOT ALL OF THESE 3851 CASES, YOUR HONOR IT IS A MATTER OF DEGREE, ADMITTEDLY WE DO HAVE A NUMBER OF CREDIBILITY DETERMINATIONS IN THIS CASE, BUT JUDGE DEKKER MADE -- BUT NEVERTHELESS WE HAVE CREDIBILITY DETERMINATIONS VIRTUALLY EVERY 3051 APPEAL THAT WE HAVE.

>> IN THIS CASE ONE OF THE TROUBLING ONES THAT I THINK JUSTICE PARIENTE POINTED OUT IS THAT WE HAVE JUDGE PADOVANO SAYING HE WAS NOT DISTRACTED BY HIS RUN FOR CIRCUIT JUDGE, YET WE HAVE THE PERSON WHO WORKED WITH HIM WHO FELT VERY UNCOMFORTABLE AND REALLY FEELS THAT HE WAS. AND SO DIDN'T THE CIRCUIT COURT JUDGE DEKKER HAVE TO MAKE A CREDIBILITY DETERMINATION BETWEEN THOSE TWO EXPLANATIONS OF WHAT WAS GOING ON IN THIS OFFICE AT THAT TIME?

AND, OF COURSE, IT LOOKED LIKE THE CREDIBILITY DETERMINATION WAS MADE IN FAVOR OF JUDGE PADOVANO.

>> WELL, I BELIEVE THAT IS MISS GREENBERG THAT YOUR HONOR IS REFERRING TO, AND I BELIEVE SHE LEFT THE DEFENSE TEAM ABOUT SIX MONTHS BEFORE THE TRIAL.

SOS I MEAN SHE -- HER ROLE IN TERMS OF TRIAL PREP WAS FAIRLY MINIMAL.

JUST BY -- JUDGE PADOVANO I BELIEVE RECEIVED THE CASE IN

APRIL OF 88.

THE TRIAL WAS LATE NOVEMBER,  
EARLY DECEMBER '88.

>> ALL THIS TIME WHEN WAS  
THE -- THE VOTE FOR CIRCUIT  
JUDGESHIP AUGUST, SEPTEMBER,  
NOVEMBER?

>> IT WAS IN THE SUMMER  
ROUGHLY OF 1988.

I DON'T HAVE  
THE EXACT DATE.

>> DURING  
MOST OF THE TIME THAT THIS  
REPRESENTATION WAS GOING ON.  
>> FROM ABOUT ROUGHLY AUGUST  
AND HE WAS -- WELL -- I  
THINK IT WAS TWO OR  
THREE MONTHS OF THAT PERIOD  
YOUR HONOR I DON'T KNOW THE  
EXACT PERIOD OF TIME.

BUT --

>> LET'S GO TO SOME EVEN  
MORE DIRECT.

WAS THERE AS I READ IT THERE  
APPEARANCE TO HAVE BEEN AT  
LEAST A CREDIBILITY  
DETERMINATION NECESSARY FROM  
WRITTEN DOCUMENTATION OF  
WORK PERFORMED THERE WOULD  
SAY A DISCREPANCY BETWEEN  
THAT AND TELL YOU TESTIMONY  
THAT SOMEONE WOULD HAVE TO  
RESOLVE.

THAT THERE WAS A DESCRIPTION  
OF WORK PERFORMED AND  
TESTIMONY OF FAR GREATER WORK  
PERFORMED THAN THE WORK SHOWS  
WAS THAT PART OF THE --

>> JUST -- JUDGE PADOVANO  
TESTIFIED IN FACT THAT HE  
DID A LOT OF PRO BONO WORK.

>> NO, I UNDERSTAND THERE  
WAS, SOMEONE HAD TO EVALUATE.  
DO I ACCEPT THE RECORD  
EVIDENCE OR DO I ACCEPT  
THE EVIDENCE --

WAS THAT SOMETHING THAT HAD  
TO BE DONE?

>> HAD TO BE DONE, I WOULD  
ARGUE NO YOUR HONOR THAT THE  
RECORDS DID SHOW THAT HE DID  
AN ENORMOUS AMOUNT OF WORK ON  
THE CASE.

NOW, IT WASN'T BROKEN DOWN

TO THE DEGREE THAT WE WOULD  
LIKE TODAY, BACK IN 1988.  
HE KEPT RECORDS IN GENERIC  
FORMAT, TRIAL PREP,  
INTERVIEW WITNESSES,  
DEPOSITIONS, SO ON.

>> WE ARE HAVING DISCUSSION  
THAT MEANS THAT SOMEONE HAD TO  
LOOK AT IT, MAKE THAT  
DETERMINATION; CORRECT?

>> IN TERMS OF LOOKING AT  
HIS LOGS TO JUSTIFY HIS  
BILL, I MEAN THAT WAS ONE OF  
THE FACTORS THAT WERE  
PRESENTED TO THE TRIAL  
COURT, YES, YOUR HONOR.

>> BUT ISN'T IT CORRECT  
THAT IN -- IN EVERY INSTANCE  
IN WHICH THERE IS A CLAIM OF  
INEFFECTIVE ASSISTANCE OF  
COUNCIL THAT THERE IS AN  
EVALUATION SOMEWHERE ALONG  
THE LINE AND MOSTLY AT  
CENTRAL POINTS OF THE CASE?  
CREDIBILITY OF WHAT?  
OF THE LAWYER.

>> EXACTLY, YOUR HONOR.  
I MEAN I DON'T THINK I HAVE  
HANDLED ONE 3850, 51  
APPEAL DID NOT INVOLVE  
CREDIBILITY DETERMINATION  
WHERE THERE IS --

>> I UNDERSTAND THAT -- SO  
IF I UNDERSTAND THAT MAY BE  
IT DOESN'T RISE TO THE LEVEL  
-- MOST OF THE TIME, IT  
SHOULD HAVE DONE MORE  
INVESTIGATION, YOU KNOW, IT  
IS -- NOT REALLY ABOUT ARE  
THEY TRUTHFUL ABOUT WHAT WAS  
GOING ON.

WHAT THEY OBSERVED.  
THIS SEEMS TO ME DIFFERENT  
IN TIME, HIRE AN EXPERT OR  
SOMEBODY WHO HAVE HAD YOU  
KNOW THAT IS THOSE ARE -- IT  
IS THAT IS DECIDING WHERE  
THEY DID THEY I MEAN --  
STRATEGIC DECISION -- I  
CAN'T YOU KNOW -- LIKE GOING  
TO EACH OF THESE THINGS TO  
ME, THE FACT THAT TIME  
RECORD SHOWS ONLY YOU  
KNOW -- JUSTICE LEWIS -- 14

HOURS SPENT THAT IS WHAT IT SAYS AND -- [INAUDIBLE] THAT IS A DIFFERENT TYPE OF CREDIBILITY.

>> I WOULD I WOULD CONTEST THAT YOUR HONOR.

>> I UNDERSTAND IF IT WERE ME I WOULD HAVE TROUBLE -- MAKING THAT TYPE OF A CREDIBILITY DETERMINATION ABOUT A COLLEAGUE I DON'T KNOW I THINK WE MAY BE IN -- FANTASYLAND HERE, LET'S JUST -- I WOULD BE -- TALKING ABOUT IT, SERIOUS ALLEGATIONS THAT IF WE WANT TO ENCOURAGE JUDGES TO -- RECUSAL WHERE THERE IS IMPARTIALITY COULD BE PUT A LITIGANT IN FEAR THAT THEY'RE NOT GOING TO HAVE A TOTALLY NEUTRAL DECISION MAKER SO WE WANT TO -- SINCE IT'S NOT LIKE UP ON SUPREME COURT WE'VE GOT TO DECIDE -- WE WANT TO ENCOURAGE JUDGES IN THOSE SITUATIONS WHERE IT COULD BE UNCOMFORTABLE FOR THEM AND LOOK UNCOMFORTABLE -- TO RECUSE, SO THAT IS YOU KNOW WE'RE NOT LOOKING AFTER THE FACT IT LOOKS LIKE YEAH, PROBABLY, MAYBE JUDGE DEKKER WAS RIGHT, BUT STARTING OUT MAYBE THERE WASN'T ENOUGH AT THE BEGINNING FOR JUDGE DEKKER ON NOTICE AND THAT IT WAS GOING TO BE THAT TYPE OF YOU KNOW -- YOU DON'T REALLY HAVE TO DECIDE WHETHER HE'S TELLING THE TRUTH OR NOT, CAN PUT ON NOTICE YOU'RE GOING TO HAVE TO MAKE THESE KINDS OF DECISIONS MAYBE WASN'T SUFFICIENT, THAT IS ANOTHER ARGUMENT THAT YOU HAVE THAT IT WAS TOO BROAD A MOTION TO RECUSE -- [INAUDIBLE] IN THIS CASE.

>> WELL, IT WAS NARROWED TO THE DEGREE THAT THEY DID NOT ALLEGE WHAT THEN -- WHAT THEY ARE ALLEGING NOW IN A TIMELY MANNER, THAT IS.

WHICH DID --

>> -- PRESERVATION --

>> WOULD NOT ALONE SOMEONE ON NOTICE THAT THEY ARE THAT THEY SHOULD RECUSE TO THAT FIRST TIME I FOUND THEY WANTED TO -- ALL THE JUDGES WITHIN THE FIRST DCA A JURISDICTION RECUSED WAS IN MOTION FOR REHEARING, WHICH WAS I BELIEVE, 2001. OF COURSE JUDGE PADOVANO HAD BEEN ON DCA SINCE 96.

>> I WAS UNDER THE IMPRESSION THERE WAS A MOTION THERE WAS SOME DIFFERENT PROCEDURES, BUT I WAS UNDER THE IMPRESSION THERE WAS A MOTION FILED TO RECUSE THE ENTIRE COURT EARLY ON.

ARE YOU SAYING NO?

THERE IS NOT --

>> 1995, YOUR HONOR, TO RECUSE THE JUDGES WITHIN THE SECOND JUDICIAL CIRCUIT BECAUSE OF JUDGE PADOVANO'S POSITION AS JUDGE THEN CHIEF JUDGE BUT --

>> I THINK AGAIN THE ISSUE WHETHER SHOULD BE A WHOLE DIFFERENT -- YOU ARE AGREEING THAT THE MOTION TO RECUSE THE ENTIRE SECOND CIRCUIT WAS FILED IN 95 INTO IN 1995, ALSO, YOUR HONOR, THERE HAS BEEN A CONTENTION I BELIEVE IN THE REPLY BRIEF THERE WAS NO LITIGATION ONGOING AS TO POSTCONVICTION UNTIL THE 3850 WAS FILED IN 1959.

UNTIL THEIR ARCHITECT BEING IN THIS CASE DIDN'T START TELL YOU THEN WHETHER IN PUBLIC RECORDS, IN FACT, MOTIONS AND ORDERS, ET CETERA, IN 1994, FULL YEAR BEFORE THE MOTION WAS FILED, SO I MEAN THERE WAS LITIGATION THAT WAS ONGOING.

IT WASN'T CONTENTIOUS AT THAT POINT BUT THERE WAS LITIGATION ONGOING BEFORE

THE 1995 .3850 AND MOTION TO DISQUALIFY WAS FILED.

>> THERE WAS NO INDICATION AT THAT POINT THAT THERE WAS GOING TO BE YOU KNOW, NUMEROUS ALLEGATIONS THAT AFFECTED THE ASSISTANCE OF COUNCIL WE KNOW WE HAVE THESE KIND OF ALLEGATIONS BUT THAT THE POINT THERE WAS NOTHING SPECIFIC ABOUT JUDGE PADOVANO'S PERFORMANCE.

>> I HAVEN'T SEEN ONE YET YOUR HONOR WHERE THE DEATH PENALTY WAS IMPOSED WHERE THERE WEREN'T THIS KIND OF ALLEGATION.

>> LET ME ASK ONE QUESTION GETTING BACK TO WHAT JUSTICE PARIENTE ASKED HOW DETAILED WERE THE MOTIONS TO DISQUALITY, DID THEY SAY GENERIC OF COLLEAGUES OR DID THEY GO INTO DETAIL ABOUT THE NEED TO TEST THE SERIOUS QUESTIONS ABOUT THE CREDIBILITY OF CONFLICTING WITNESSES?

>> AS TO THE -- FIRST OF ALL -- I WOULD -- I WOULD CONTEST THE MOTIONS PLURAL TO DISQUALIFY YOUR HONOR. ONE MOTION TO DISQUALIFY 95 YOU MAY CONSTRUE A MOTION FOR REHEARING AS A SECOND MOTION TO DISQUALIFY IT WASN'T STYLED AS SUCH, THAT WAS 2001.

BUT THE INITIAL MOTION TO DISQUALIFY DID MENTION JUDGE PADOVANO'S POSITION AND COLLEGIALLY AND -- I WOULDN'T SWEAR TO THIS BUT I'M FAIRLY SURE DID MAKE SOME ALLEGATION IN TERMS OF CREDIBILITY DETERMINATION SO THAT IT DID GO INTO ANY DETAIL AT ALL JUST AS TO THE TWO WITNESSES WHO WOULD -- CONTRADICT WHAT PADOVANO TESTIFIED TO AS FAR AS PREPARATION THEY DON'T BELIEVE IT WENT INTO THAT LEVEL OF DETAIL, YOUR

HONOR.

I HAVE TO REREVIEW IT TO  
BE HONEST WITH YOU.

>> -- ANY AUTHORITY THAT IT  
REQUIRES IT BE THAT DETAILED  
THAT --

>> SORRY.

>> IS THERE ANY AUTHORITY  
THAT REQUIRES THAT A MOTION  
TO RECUSE BECOME THAT  
DETAILED THAT YOU HAVE EVERY  
-- THE NAME OF THE WITNESS  
THE EXACT SUBSTANCE OF THE  
TESTIMONY THAT A REQUIREMENT  
IN ANY CASE THAT WE HAVE AN  
RECUSAL.

>> I'D ARGUE YOUR HONOR  
THE DEFICIENCY SPECIFICITY  
UNTIL 2001 WERE ALLEGING  
IN PLEADINGS IN ONE PLEADING  
THAT WAS PENDING, THAT THE  
JUDGES OF THE SECOND JUDICIAL  
CIRCUIT SHOULD BE RECUSED  
BECAUSE OF JUDGE PADOVANO'S  
POSITION AS JUDGE AND CHIEF  
JUDGE, AND BY THE TIME WE  
GET TO 2001, HE -- 2003 THE  
-- HEARING IN 2004,  
EVIDENTIARY HEARING HE IS NO  
LONGER IN THAT POSITION,  
AT ALL.

>> I KNOW BUT -- ELEVATED  
ABOVE, THAT HE IS ALREADY  
ABOVE THAT.

I THINK THAT IS A VERY  
DISINGENUOUS ARGUMENT.  
HE IS NOW ON THE APPELLATE  
COURT.

-- ARE YOU SAYING  
EVERYTHING, EVERYTHING BELOW  
IS MOOT WOULD YOU --

>> I WOULD ARGUE THAT IS A  
DIFFERENT ARGUMENT NOW THIS  
JUDGE WILL BE REVIEWING,  
JUDGES, VERSUS THIS JUDGE'S  
COLLEAGUE OF YOURS.

I WOULD ARGUE, CONTEND THAT  
IS A DIFFERENT ARGUMENT, YOUR  
HONOR.

>> WHAT IS?

THE -- WOULD YOU MOVE TO THE  
ISSUE OF THE THAT RAISES AS  
TO THE THREATS  
OF THE WITNESS.

>> THE SUPPOSED THREATS YOUR HONOR?

>> RIGHT.

MAY I -- MENTION ONE OTHER LOOSE END THAT I KNOW I'M RUNNING OUT OF TIME, IN TERMS OF -- VERY, VERY BRIEFLY, IN TERMS OF THE PRODUCT THAT COUNCIL PRODUCED, I MEAN, THERE WE ARE LOOKING AT EVERYTHING THAT WENT INTO WHAT HE DID AT TRIAL.

AND SO I WOULD ARGUE THAT THAT IS NOT IRRELEVANT TO A DETERMINATION OF HOW MUCH THE TRIAL JUDGE -- JUDGE DEKKER HAD TO WEIGH JUDGE PADOVANO'S TESTIMONY AT THE EVIDENTIARY HEARING HEARING.

>> DO YOU HAVE OBJECTIVE INDICIA OF WHAT -- ALL THE PREPARATION THAT HE DID DO, GETTING READY FOR TRIAL BY WHAT HE ACTUALLY PRODUCED AT TRIAL, GETTING TO THE --

>> THANK YOU, GETTING TO THE THREATS ISSUE, A FEW POINTS I WOULD LIKE TO MAKE, ONE IS THE PROSECUTOR WAS CAREFUL THE JUDGE CAREFUL NOT TO BRING THIS UP WHILE WITNESSES WERE PRESENT ISN'T -- THE PROSECUTOR MADE SURE TAMMY JORDAN FOR EXAMPLE I BELIEVE WAS NOT IN THE COURTROOM WHEN THE PROSECUTOR BROUGHT THIS UP BASICALLY WHAT WE ARE TALKING ABOUT IS TELLING A CITIZEN WHAT THEIR RIGHTS ARE, AND GIVING THEM COUNSEL TO COUNSEL THEM WHAT THEIR RIGHTS ARE.

THEN AS CITIZENS A DETERMINATION AS TO WHETHER THEY WILL TESTIFY AND RUN THE RISK OF COMMITTING PERJURY ANOTHER THING ANOTHER POINT I WANTED TO MAKE, TOO, THAT THE PERJURY IS NOT NECESSARILY CHOOSING BETWEEN THE TRUTHFULNESS OF THE 1988 TRIAL TESTIMONY, OR THE 2004 EVIDENTIARY HEARING

TESTIMONY, THE CONFLICT  
BETWEEN THE SWORN  
TESTIMONIES  
WOULD CONSTITUTE PERJURY IN  
AND OF ITSELF --

>> IS THAT A NORMAL  
PROCEDURE?

I MEAN WE HAVE MANY TIMES  
PEOPLE WHO COME  
INTO COURT AND THEY ARE  
EXPECTED TO RECONT EITHER  
ALL OR A PORTION OF  
TESTIMONY THEY GAVE AT TRIAL  
SO IS IT NORMAL PROCEDURE  
WHEN WE HAVE THESE KINDS OF  
PEOPLE WHO ARE COMING IN, AND  
THE TRIAL JUDGE WOULD THEN  
TELL THEM OKAY, YOU  
TESTIFIED BEFORE, AND YOU  
KNOW, IF YOUR TESTIMONY NOW  
IS DIFFERENT, YOU MIGHT BE  
SUBJECT TO PERJURY.  
IS THAT A NORMAL PROCEDURE?  
OR IS THIS WHAT HAPPENED  
HERE OUTSIDE THE NORM OF WHAT  
GOES ON?

>> I HAVE NO PERSONAL OR  
RECORD SUPPORT TO ANSWER  
THAT QUESTION, YOUR HONOR.  
I KNOW MY POSITION --

>> HAVE YOU FOUND ANY OTHER  
CASES WHERE THIS KIND OF  
ISSUE HAS COME UP?

>> NO, YOUR HONOR.

>> WELL --

>> BUT I MEAN --

>> -- EXCUSE ME.

GO AHEAD.

>> YES, SIR, SORRY.

>> WELL, THE SPECIFIC  
QUESTION WAS THE  
ISSUE CONCERNING THE USE OF  
THE DEPOSITION OF THE  
WITNESS FOR GEORGIA.  
WHEN -- YOUR OPPONENT SAYS  
THAT HER DEPOSITION HAD BEEN  
TAKEN AND THEN SHE TOOK THE  
FIFTH AND THERE WAS NO  
ALLOWANCE OF THE DEPOSITION.

>> I DON'T -- I CONSTRUED  
THE ISSUE AS BEING THAT  
THE STATE SCARED THESE  
WITNESSES FROM TESTIFYING AT  
THE TRIAL, NOT THAT THE

DEPOSITION WAS ERRONEOUSLY EXCLUDED, YOUR HONOR.

BUT --

>> OKAY.

WELL, I WILL HAVE TO CHECK THE RECORD ON THAT.

>> IS THE STATUTE OF LIMITATIONS STATEMENTS AND ARGUMENTS OF INMATE IS THAT A CORRECT ARGUMENT, I MEAN IS THAT TRUE?

THAT THE STATUTE OF LIMITATIONS ALREADY EXPIRED? NOTHING SHE COULD HAVE SAID COULD HAVE CAUSED HER TO BE SUBJECT OR HE OR --

>> THAT IS ABSOLUTELY INCORRECT YOUR HONOR BECAUSE ONE OF THE ELEMENTS WOULD BE INCONSISTENT SWORN TESTIMONY IN 2004, PLUS THERE IS NO STATUTE OF LIMITATIONS RELATED TO CAPITAL CASES.

>> THAT IS NOT A CAPITAL CASE IT IS PERJURY --

>> WHAT I'M ASKING ABOUT IS THAT IT WOULD HAVE OCCURRED AT THAT MOMENT, THEREFORE, THAT IS WHEN THE CRIME WOULD HAVE OCCURRED.

IS THAT WHAT YOU ARE SAYING? SO --

>> THERE'S TWO WAYS THERE ARE TWO DIFFERENT WAYS PERJURY COULD HAVE BEEN COMMITTED YOUR HONOR ONE IS BY THE SWORN TESTIMONY 2004 BEING FALSE, OR THE 1988 TESTIMONY BEING FALSE THAT IS THE FIRST WAY, THE SECOND WAY.

>> THEREFORE COULD IT BE OH --

>> A CONFLICT BETWEEN THREE TWO AS TO MATERIAL MATTER BEING TESTIFIED TO.

THAT CONFLICT IN AND OF ITSELF CONSTITUTES THE PERJURY, AND THE THAT CRIME IS NOT COMPLETED TILL THE 2004 TESTIMONY.

SO THERE IS --- CLEARLY IS NO STATUTE OF LIMITATIONS PROBLEM IN TERMS OF PERJURY.

I'M OUT OF TIME IN  
TERMS --

>> FINISH YOUR ARGUMENT,  
PLEASE.

>> IN TERMS OF

IMMUNITY, THERE IS NO  
IMMUNITY AS TO PERJURY, THE  
IMMUNITY CONCERNS THE  
CONTENT OF THE TESTIMONY  
UNRELATED TO THE PERJURY  
ITSELF, SECONDLY, YOUR  
HONOR, REAL QUICK POINT IN  
TERMS OF THE TRIAL COURT'S  
ORDER, RELYING ON A LOT OF  
THIS EVIDENCE A FEW FACTS  
FOR THE COURT TO CONSIDER IN  
TERMS OF TRIAL COURT'S  
RELIANCE UPON SOME OF THIS  
TESTIMONY IS NUMBER ONE IT  
IS -- TRIAL COURT DID NOT  
SPECIFY THIS TESTIMONY, THE  
TRIAL COURT AND ITS ORDER  
PAGE 249 ON THE RECORD  
RELIED UPON THE FACTS THAT  
SOME WITNESSES SUPPORTED,  
McLAREN FOR EXAMPLE  
DR. MCLAREN TESTIFIED AS TO  
SOME FACTS THE DEFENDANT  
TOLD THEM THEY NEEDED MONEY  
THEY FELT LIKE DOING A  
ROBBERY THE DEFENDANT TOLD  
MCLAREN SOMEBODY COULD GET  
HURT DEFENDANT EVEN TOLD  
DR. MCLAREN AFTER THE FIRST  
TIMER I SHINED THE SECOND  
TIME TO -- TO GET DROPPING --  
SO, THERE IS OTHER EVIDENCE  
IN ADDITION TO THESE  
PARTICULAR WITNESSES TO  
SUPPORT THE TRIAL COURT'S  
DETERMINATION OF COURSE WE  
ALSO HAVE PRIOR VIOLENT  
FELONY DEFENDANT SHOOTING  
CAB DRIVER IN THE HEAD STANDING  
OVER HIM SHOOTING HIM IN THE  
HEAD AGAIN AS THE -- EXTREMELY  
WEIGHTY FELONY.

THE STATE REQUESTS THE COURT AFFIRM  
THE TRIAL COURT'S DENIAL OF THE  
MOTION TO VACATE JUDGMENT  
AND DENY HABEAS.

>> REBUTTAL, REAL QUICK.

>> VERY, VERY BRIEF, ON THE  
RECUSAL ISSUE, OUR REPLY

PAGE 30 PAGE THREE WE LISTED  
ALL THE TIMES GOING BACK TO  
THE VERY FIRST TIME.

>> I'M CONCERNED ABOUT THE  
SUFFICIENCY OF THE  
ALLEGATION I GUESS REALLY THAT  
YOU WOULDN'T HAVE TO GO  
IN TO -- YOU KNOW, SONG AND  
VERSE, DIDN'T MOTION TO  
RECUSE THE ENTIRE CIRCUIT --

>> AND CREDIBILITY  
SPECIFICALLY MENTION  
CREDIBILITY TO BE HONEST,  
DIDN'T KNOW HOW BAD IT WAS  
GOING TO BE IN THE SENSE  
WHEN -- I WAS FLABBERGASTED  
WHEN JUDGE PADOVANO TOLD UNDER  
OATH I NEVER MET THESE  
PEOPLE I WAS  
FLABBERGASTED WHEN HE  
CONTRADIKED GENE GREENBERG.

>> DID YOU MAKE ANOTHER  
MOTION?

>> ON THE SPOT, NO, I  
DID NOT, DID NOT, AFTER THE NEXT  
QUESTION I DIDN'T DO IT  
AGAIN.

I'M NOT SURE YOU CAN  
DO IT ON A ROLLING BASIS BY  
THE WAY, GETTING WORSE, YOUR  
HONOR, I DID NOT DO THAT ON  
THE ISSUE OF THE WITNESSES  
MY COLLEAGUES MADE THREE  
STATEMENTS, THAT I HAVE TO  
CORRECT.

FIRST HE SAID THAT JUDGE  
DEKKER DID NOT MAKE THE  
ADMONITION.

I GUESS, IN THE PRESENCE  
OF WITNESSES THAT IS WRONG.  
I READ THE -- THE COURT ONE  
THERE ARE OTHERS, STATEMENT  
OF JUDGE DEKKER MADE TO THE  
WITNESS YOU MAY BE PERJURING  
YOURSELF, SECOND, MY  
COLLEAGUE SEEMED TO BE  
TRYING TO INSINUATE INTO  
HERE THAT HE COMPLETED THE  
FIFTH AMENDMENT IN ORDER NOT  
TO COMMIT PERJURY THAT IS  
WRONG -- WHAT THE SUPREME  
COURT HAS HELD IN -- I CAN GIVE  
YOU THE CITATION TO IT -- IS THAT  
WHEN YOU TESTIFY YOU ARE

FACED WITH A DILEMMA DO I  
TELL THE TRUTH OR NOT.  
YOU ARE NOT EXCUSED FROM THAT  
DILEMMA ASSERTING THE FIFTH  
AMENDMENT, YOU JUST AREN'T -- IF  
YOU ARE IMMUNIZED YOU CAN  
STILL BE PROSECUTED FOR PERJURY  
SO THERE IS NO GROUNDS FOR  
FIFTH AMENDMENT ON THAT ON  
THE STATUTE OF LIMITATIONS,  
HAD RUN YOUR HONOR  
THERE IS A THREE-YEAR  
STATUTE OF LIMITATIONS IN  
1988 WHEN THEY TESTIFIED AT  
TRIAL, THAT HAD RUN, AND  
CLEARLY IT'S NOT THE CASE THAT IT  
ONLY STARTS TO RUN WHEN THE  
SECOND ONE HAPPENS, WE KNOW  
THAT.

>> BUT IF THE FACT-FINDER FINDS  
THAT THE FALSE STATEMENT WAS  
IN 2004.

>> RIGHT.

>> THE STATUTE OF  
LIMITATIONS HASN'T RUN ON  
THAT.

>> FOR PERJURY.

BUT I'M  
TALKING ABOUT CONTRADICTORY  
STATEMENT OF THE STATUTE  
THEY ARE SAYING WE DON'T  
HAVE TO PRESUME THEY  
ARE GOING TO COMMIT PERJURY  
THEY -- ALL THEY HAVE TO DO  
IS SHOW CONTRADICTION, AND  
THE STATUTE ON THE  
CONTRADICTORY STATEMENT  
STATUTE CLEARLY RUNS FROM  
THE FIRST ONE, AND WE KNOW  
THAT, BECAUSE THE STATUTE OF  
LIMITATIONS WAS EXTENDED IN  
1997 I BELIEVE IT WAS RIGHT  
AFTER THE ROBBER DECISION  
MR. McCLAIN ARGUED WHERE  
SEVERAL DEGREE OF JUSTICES  
ON THIS COURT WERE FURIOUS  
THAT SOMEONE COULD PUT IN  
RIGHT THEN A  
CONTRADICTORY STATEMENT  
AND FORCE THE -- STATED TO  
PROVE PERJURY HARDER THE  
STATUTE WAS AMENDED AFTER IT  
HAD RUN IN MY CASE THEY  
WOULDN'T HAVE TO DO IT IF IT

ONLY STARTED TO RUN ON  
SECOND STATEMENT THE STATUTE  
ON PERJURY IN 88 HAD RUN THE  
STATUE ON CONTRADICTARY  
STATEMENT HAD RUN.  
AND THE ONLY BASIS LEFT FOR  
THEM TO ASSERT THE FIFTH WAS I  
DON'T WANT TO HAVE TO FACE  
THE DILEMMA TELLING THE TRUTH  
OR NOT AND THAT IS NOT A DEFENSE.  
THANK YOU VERY MUCH  
FOR YOUR COURTESY.  
I APPRECIATE IT VERY MUCH.

>> WE'LL TAKE THE CASE UNDER  
ADVISEMENT.

THE COURT WILL  
TAKE A SHORT MORNING RECESS AT  
THIS TIME.

>> ALL RISE.

THE COURT STANDS IN RECESS.

XXXXXXXXXXXXXXXXXXXX

>> PLEASE RISE.