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**Noel Doorbal v. State of Florida**

**SC05-383 | SC06-1490**

>> NEXT CASE IS DOORBAL VERSUS  
STATE OF FLORIDA.

>>.

>> MS. SMITH.

>> MELODE.

SMITH ON BEHALF OF KNOW WELL  
DOORBAL, THE DENIAL OF THE  
POSTCONVICTION PETITION, AND I  
THANK THIS COURT AND STAFF FOR  
THE KINDNESS AND ACCOMMODATIONS  
FOR COUNSEL'S APPEARANCE TODAY.

>> MS. SMITH YOU HAVE A NUMBER  
OF POINT, AND IF YOU ARE GOING  
TO HIT ON ONLY A COUPLE OF THEM  
OR A FEW, WOULD YOU PLEASE  
ALERT US TO THOSE SO WE CAN  
DRAW OUR ATTENTION TO IT.

>> YES, THE CASE STAND OUT AS  
YOU A GREAT EXAMPLE OF HOW THIS  
CRIMINAL JUSTICE SYSTEM WORKS,  
PARTICULARLY IN CAPITAL CASES,  
IT IS NOT BROKEN OR FLAWED, IT  
IS WORKING PRECISELY THE WAY IT  
WAS DESIGNED TO WORK AGAINST  
FOUR PEOPLE, MENTALLY INFIRMED  
AND PERSONS WITHOUT PRIOR  
RESOURCES AND I WANT TO ADDRESS,  
PARTICULARLY, TWO CLAIMS, THE  
FIRST CLAIM IS THE NUMBER ONE  
CLAIM, IN THE APPEAL, AND THAT  
IS THAT JUDGE ALEX, SHOULD HAVE  
DISQUALIFIED HIMSELF PRIOR TO  
RULING ON THE POSTCONVICTION  
PETITION AND SHOULD HAVE DONE  
IT FOR A VARIETY OF REASONS.  
AND I KNOW YOU HAVE READ THE  
BRIEFS AND I DON'T WANT TO TELL  
YOU SOMETHING YOU ALREADY READ.

>> ON -- ON THE  
DISQUALIFICATION LET'S TALK A  
LITTLE BIT AS TO WHY THE CASE  
IS OR ISN'T SIMILAR TO A  
WATERHOUSE OR RIVERA, WHERE  
JUDGES HAVE GONE BEFORE PAROLE  
COMMISSIONS AND REALLY

EXPRESSED A VERY, VERY NEGATIVE VIEW OF A PARTICULAR DEFENDANT. AND HERE IT APPEARS THAT THE PRIMARY THRUST IS WE HATED JUDGE THAT COMMENTED UPON ONE OF THE WITNESSES.

FOLLOWING THAT TRIAL, IS THAT A FAIR --

>> YES, CHIEF JUSTICE AND NOT ONLY DID HE COMMENT ON -- HE DIDN'T JUST DISCUSS WITH THE FEDERAL COURT JUDGE AT THE SENTENCING HEARING, MR. SCHILLER, HE DIDN'T JUST DISCUSS THE DEMEANOR AS THE STATE WANTS TO PORTRAY HIS TESTIMONY, HE WAS A FORMIDABLE ADVOCATE FOR MR. SCHILLER IN WANTING A LENIENT SENTENCE FOR A PERSON WHO HAD BEEN CHARGED WITH 23 COUNTS OF MEDICARE FRAUD, \$4 MILLION OF MONEY FROM -- \$14 MILLION OF MONEY FROM MEDICARE AND MADE LIGHT ABOUT IT IN THE TRIAL --

>> CAN YOU ADDRESS HOW THIS IS SHOWING BIAS OR A PRE-DISPOSITION AGAINST YOUR CLIENT, WHEN WE TAKE A LOOK AT THAT, IN VIEW OF WHAT WAS SAID BY JUDGES IN WATERHOUSE AND RIFF -- RIVERA, DON'T THOSE CASES DEMONSTRATE A HIGHER BIAS AGAINST THE CLIENT BECAUSE REALLY HE SAID NOTHING AS TO YOUR CLIENT -- OR DID HE? THAT IS WHAT I AM LOOKING FOR.

>> YOUR HONOR, TO BE PRECISE, JUDGE ALEX FERRARE SPOKE CLEARLY THAT MR. SCHILLER WAS A CRUCIAL AND INDISPENSABLE WITNESS IN THE CASE THAT LAYS THE PREDICATE FOR THE DEATH PENALTY FOR MY CLIENT AND I THINK THAT REFERS TO MY CLIENT DIRECTLY.

HE ALSO --

>> BIASED AGAINST YOUR CLIENT? THAT IS WHAT I AM STRUGGLING WITH.

>> THIS IS THE MOST TROUBLING PART FOR ME, WHINE -- WHEN WE FOUND OUT THAT JUDGE FERRER MADE THESE ARRANGEMENTS WITH

MR. SHILLER'S ATTORNEY, WHILE HE HADN'T EVEN RULED ON THE MOTION FOR NEW TRIAL YET AND WAS MAKING ARRANGEMENTS TO TESTIFY, THREE WEEK AFTER THE MOTION FOR NEW TRIAL WAS RULED ON, THAT IS WHEN JUDGE FERRER TESTIFIED AT THE COMPETENCE --

>> LET ME ASK YOU A QUESTION. WAS HE SUBPOENAED OR VOLUNTARILY COME.

>> I CAN TELL YOU, UNFORTUNATELY, MR. -- WOULDN'T PROVIDE ANY AFFIDAVIT TO THIS, IN AN INTERVIEW WITH MR. SHILLER'S ATTORNEY, HE SAID HE COULDN'T REMEMBER WHEN HE CONTACTED HIM BUT GAVE ME YOU A HINT AND SAID, WE HAD TO PROVIDE THE GOVERNMENT WITH 30 DAY'S NOTICE --

>> IN THE RECORD -- YOU SHOULD CERTAINLY KNOW IN THE RECORD IF SHE WAS SUBPOENAED.

>> NOTHING IN THE COURT RECORD AND WE DON'T DOWN THE COURT RECORD, TO THE FEDERAL OFFICE AND GOT THE TRANSCRIPT, AND THERE WAS NO EVIDENCE THAT HE WAS SUBPOENAED.

THERE WAS NO EVIDENCE THAT SHOWS EXACTLY WHEN HE HAD BEEN CONTACTED OR I WOULD HAVE PROVIDED IT TO THE COURT.

>> HAS IT BEEN PLACED IN EVIDENCE IN THIS CASE?

>> WHAT I TOLD YOU, YES, SNIR PLACED IN EVIDENCE IN THIS CASE AND THIS RECORD.

>> YES, SIR.

>> CAN YOU SHOW ME WHERE?

>> WHAT DOES THE RECORD SHOW AS FAR AS WHO INITIATED THE CONTACT WITH THE JUDGE TO BECOME A WITNESS AND THEN, TELL US WHAT HAPPENED AFTER THAT. IN OTHER WORDS, WHAT DOES THE RECORD TELL US HOW THIS ALL GOT STARTED, AND THEN WHAT HAPPENED.

>> OKAY, THAT WAS A GOOD QUESTION, THE MOTION TO DISQUALIFY THE JUDGE WAS FILED BY CCRC AT THE BEGINNING OF THE

CASE AND I DON'T BELIEVE THEY PLACED ANYTHING ON THE RECORD. IN FACT THE DISCUSSION DIDN'T TAKE PLACE BETWEEN THE JUDGE -- AND THE JNL REFUSED TO DISQUALIFY HIMSELF WITHOUT A HEARING.

I DON'T BELIEVE THAT PART OF THE DISCUSSION CAME ON THE RECORD.

>> IT IS NOT IN THE MOTION, AND IT IS -- THAT WHAT IS WE ARE STRUGGLING WITH. IT APPEARS TO BE EXTRA RECORD. EXTRA-RECORD THINGS.

>> I KNOW IT CAME UP SEVERAL TIMES DURING OUR VARIETY -- NUMEROUS HEARINGS IN CIRCUIT COURT.

I ASKED THE JUDGE SPECIFICALLY, I NEED TO -- NEEDED TO KNOW WHEN, JUDGE, DID YOU LEARN ABOUT MR. SCHILLER AND KNOW HE WAS NOT ONLY PROSECUTED BUT, IS GOING TO BE ARRESTED ON THESE COURTHOUSE STEPS RIGHT AFTER HIS TESTIMONY --

>> THE DISCUSSION WENT ON ALMOST DURING THE TRIAL AND THIS IS NOT THE WITNESS. YOU ARE BLAMING THOSE TWO -- I THINK THE QUESTION WAS, WHERE IN THE RECORD DOES IT SHOW ABOUT THE ARRANGEMENTS FOR THE JUDGE TO BECOME INVOLVED IN TESTIFYING?

>> HE NEVER PROVIDED THAT INFORMATION ON THE RECORD. THOUGH WE ATTEMPTED TO CERTAIN IT AND IT IS IN THE REPORT THAT -- YOUR HONOR --

>> WHAT IS THIS DIFFERENCE, IN YOUR OPINION, IF THE JUDGE WORKING IN HIS OFFICE ONE DAY, AND A FEDERAL MARSHAL SERVES A SUBPOENA ON HIM, AND SAYS, YOU ARE COMMANDED TO APPEAR AT SUCH-AND-SUCH A PLACE AND SUCH-AND-SUCH A TIME.

YOU KNOW, TO TESTIFY. AND THE JUDGE GOES, PURSUANT TO THE LAWFUL SUBPOENA THAT HAS BEEN SERVED ON HIM, AND SWORN IN AS A WITNESS OR WHATEVER.

AND THEN, THE JUDGE SAYS, THAT IS PRESIDING OVER THE FEDERAL HEARING, THAT I'M CONSIDERING, YOU KNOW, WHAT SENTENCE TO IMPOSE ON THIS PERSON THAT HAS BEEN CONVICTED OF THIS CHARGE AND THAT CHARGE OR WHATEVER. AND THE FEDERAL PROSECUTOR HAS TOLD ME THAT THIS FEDERAL DEFENDANT, YOU KNOW, COOPERATED IN A PROCEEDING IN THE STATE COURTS OR WHATEVER.

AND COULD YOU VALIDATE THAT FOR ME AND TELL ME, YOU KNOW, WHAT ROLE THIS WITNESS PLAYED IN THE PROCEEDING AND BLANK CASE, WOULD THAT BE APPROPRIATE FOR A STATE JUDGE TO DO, SINCE THERE IS A COMPULSION OF THE SUBPOENA AND IS REALLY BEING ASKED FACTUAL QUESTIONS ABOUT THE ROLE THAT THE WITNESS PLAYED? I MEAN -- NOT -- NOT GETTING IN TO THE HOSPITAL NOT KNOWING WHETHER IT APPLIES TO THIS SITUATION BUT WOULD THAT BE APPROPRIATE FOR A STATE JUDGE TO DO.

>> I HOPE NOT, NOT WHILE HE IS STILL SITTING ON THE CASE. FOR THE DEFENDANT -- FOR THE DEFENDANT, WHO HE THEN -- HE KNOWS THIS CASE IS COMING BACK ON POSTCONVICTION AND IF THE COURT UPHOLDS THE CONVICTIONS AND SENTENCES, SO EVEN IN THAT SCENARIO WHICH ISN'T THE SCENARIO, BY THE WAY, BECAUSE THERE IS NO TESTIMONY, THE TESTIMONY IN THE FEDERAL SENTENCING HEARING THAT HAS BEEN ATTACHED SAYS THAT JUDGE -- THE JUDGE SAYS HE SPOKE TO MR. SHILLER'S LAWYER, ABOUT THIS CASE, AND ONLY ONE REASON WHY HE IS THERE, NOT BECAUSE OF THE SUBPOENA, BUT IT IS BECAUSE HE WANTS TO PROVIDE ADVOCACY, FOR A LENIENT SENTENCE AND THEN, HE SAYS A COUPLE OF OTHER THINGS, IF YOU DON'T MIND ME SHARING WITH YOU. HE SAYS -- BESIDES THE FACT THAT HE SAYS THAT MR. SCHILLER

WAS A CRUCIAL AND IN DISPENSIBLE WITNESS IN THE CASE, THAT LAID THE PREDICATE FOR THE DEATH PENALTY, HE ALSO SAYS THE CASE BOTHERED HIM TO SUCH AN EXTENT, THAT HE COULDN'T EVEN PUT IT INTO WORDS AND COULDN'T EVEN TELL THEM WHY HE FELT THE CASE WAS SO BAD.

HE COMPARED HIM IF YOU RECALL TO A PRISONER OF WAR AND THAT STRUCK ME AS BEING -- STRUCK ME AS A VERY SERIOUS IMPACT THAT IT HAD, THAT THAT TESTIMONY THAT THAT ENTIRE TRIAL HAD ON THE JUDGE AND THE JUDGE IS NOT ON THE BENCH ANYMORE AND THERE

--

>> -- THE FACT THAT THE TRIAL JUDGE MAY HAVE HAD SOME KIND OF INTEREST OR SYMPATHY FOR WHAT THE WITNESS SAID THEY WENT TO THROUGH, AND TO BY AS AGAINST YOUR CLIENT.

>> WELL, WHAT I'M CONCERNED ABOUT IN ADDITION TO WHAT I HAVE SHARED WITH YOU, MADAME JUSTICE IS THE JUDGE DID NOT TELL THE SENTENCING COURT THAT MR. SHILL ARE IN FACT COMMITTED PERJURY ON THE STAND AND DIDN'T TELL THE JUDGE THE FEDERAL SENTENCING JUDGE WHAT ARE YOU REFERRING TO AND WHY WOULD THE JUDGE HAVE ANY KNOWLEDGE MR. SCHILLER HAD COMMITTED PERJURY.

>> IF HE WAS TRYING TO COMMENT ON THE PERFORMANCE OR WHAT HAPPENED DURING THE TRIAL, AND HOW THIS WITNESS PUT HIMSELF OUT FOR THE STATE, IN ORDER TO GET THE DEATH PENALTY, IT SEEMS TO ME THAT THE JUDGE WOULD HAVE ALSO SAID, YOU KNOW, IT WAS ONE LITTLE THING, HE ACTUALLY LIED ABOUT HIS INVOLVEMENT IN MEDICAID FRAUD.

>> REALLY WHAT IT WAS -- LIKE A DEFENDANT SAYS, I DIDN'T DO THAT AND LATER ON, IT IS EITHER PROVEN THAT HE DID OR DID NOT AND SO YOURS WOULD REQUIRE HIM TO ADMIT, I AM A -- VIOLATING

THE LAW, I MEAN, SO THAT MAKES IT DIFFICULT BECAUSE AT THE TIME HE WAS NOT CONVICTED, CORRECT AND --

>> CORRECT HE COULD HAVE -->> AND NOT INDICTED AND HAD NOT BEEN ARRESTED, CORRECT AND HAD NOT ENTERED A PLEA, THOSE ARE ALL DIFFICULT AND THINGS OUT THERE THIS MAY BE GOING AROUND AND YOU SAY PERJURY AND THAT MAKES IT A LITTLE DIFFICULT BECAUSE NONE OF THAT HAD HAPPENED.

>> YOUR HONOR HE WAS NEVER ASKED THAT HE WAS INDICTED -- THE ARREST -- HE WAS ASKED IF HE WAS INVOLVED AND --

>> THE JUDGE MUST HAVE KNOWN HE WAS INVOLVED BECAUSE HE WAS BEFORE HIM IN THE FEDERAL COURT.

>> MY POINT EXACTLY AND THE JUDGE DIDN'T PROVIDE THAT LITTLE DETAIL.

>> YOU HAVE OTHER POINTS, YOU USED A LOT ON THIS ONE.

>> IT IS A VERY IMPORTANT ONE AND I THINK THE DISPOSITIVE CLAIM, BECAUSE EVERYTHING AFTER THAT, DEMONSTRATES THE FEAR THAT A JUDGE WOULD THEN DENY CLAIMS, SDEE MY MOTIONS FOR CONTINUANCE AND DENY OPPORTUNITIES TO.

>> YOU HAVE A NUMBER OF CLAIMS CONCERNING THE FAILURE TO -- WELL, DENIAL OF A NUMBER OF MOTIONS FOR CONTINUANCE, IF YOU WOULD, WOULD YOU PLEASE TELL US WHY IT WAS ERROR FOR THE TRIAL COURT TO HAVE DENIED THE MOTION FOR CONTINUANCE BASED ON TRIAL COUNSEL'S -- THE DEATH OF HIS FATHER, THE ILLNESS OF HIS MOTHER, THAT ASPECT OF THE CONTINUE NUNSES.

>> OKAY.

THAT REALLY IS ONE OF THE THREE CLAIMS, ISSUES I WOULD LIKE TO ADDRESS FIRED AS FAR AS MR. DOORBAL'S PETITION AND ONE IS INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

AND MR. DOORBAL DID NOT HAVE AN ATTORNEY SEATED NEXT TO HIM, HE HAD A DPREEFING SON.

, IS IT NOT REQUIRED -- A GRIEVING SON.

>> , IS IT NOT REQUIRED YOU DEMONSTRATE THE DEFICIENCIES, AND NOT THAT HE IS EMOTIONALLY NOT THERE AND MANY OF US HAVE SICK KIDS AND PROBLEMS AND SO -- THE QUESTION IS, HOW DOES IT IMPACT -- SENT, REALLY --

>> AND DEMONSTRATE NOT ONLY THE DEFICIENCIES BUT I'M SURE, JUSTICE QUINCE WILL ASK ABOUT PREJUDICE AND FIRST, DEFICIENCIES.

DEFICIENCIES INCLUDE THE FACT THAT HE WASN'T THERE, NOT A PERSON WHO -- YOU ROB THE DIRECT APPEAL.

HE DIDN'T OBJECT TO ALMOST -- HARDLY ANY OF THE ERRORS THAT WERE COMMITTED IN THE TRIAL COURT AND THAT WAS BROUGHT UP BY THE DIRECT APPEAL ATTORNEY. HE WASN'T AT THE PRETRIAL HEARING AND WASN'T AT THE DEPOSITIONS AND CALLED MORE THAN 90 WITNESSES AND DIDN'T ATTEND MOST OF THOSE DEPOSITIONS AND CRUCIAL PRETRIAL HEARINGS RIGHT BEFORE THE TRIAL.

>> HAVE YOU ARGUED IN YOUR BRIEF, I DON'T REMEMBER YOU ARGUING --

>> YES, IN THE FACTS SECTION, BUT I SPECIFICALLY SAID, FOR EXAMPLE IN OCTOBER OF 1997, THERE WAS A PRETRIAL HEARING ABOUT THE INVESTIGATION REGARDING SCHILLER. HE WASN'T THERE.

>> WAS THERE OTHER COUNSEL THERE.

>> NO.

>> FOR THE DEFENDANT --

>> OTHER CO-DEFENDANTS, BUT NOT COUNSEL FOR DOORBAL AND SAME THING HAPPENED TWO WEEKS BEFORE TRIAL WHEN -- IN JANUARY, THERE WAS ANOTHER HEARING ABOUT -- SCHILLER AND -- AGAIN, COUNSEL WAS NOT THERE AND WHERE WAS HE,

ON THE RECORD IN THAT HEARING,  
AND --

>> 90-SOME DEPOSITIONS IN THE  
CASE.

>> I DON'T KNOW IF THEY  
DISPOSED EVERYBODY, THERE WERE  
90 WITNESSES LISTED AND I THINK,  
ACTUALLY, I'M SORRY, MORE THAN  
THAT LISTED, AND 90 WITNESSES  
CALLED IN THE CASE.

>> AND HE DID NOT ATTEND ANY  
DEPOSITIONS.

>> NO, I DIDN'T SAY DIDN'T  
ATTEND ANY, HE DIDN'T ATTEND  
MOST OF THEM AND --

>> AND HOW MANY DID HE NOT  
ATTEND.

>> I DON'T HAVE AN EXACT  
NUMBER.

>> ISN'T THAT SOMETHING YOU  
NEED TO PROVE TO US, TO SHOW  
THERE WAS A DEFICIENCY HERE.

>> IN AN EVIDENTIARY HEARING I  
WOULD HAVE BEEN GLAD TO PROVIDE  
THE EVIDENCE AND WOULD HAVE  
BEEN GLAD TO HAVE GATHERED THAT  
WITH MR. -- HIS HELP AND EVEN  
IF HE WASN'T ON THE RECORD  
OFFICIALLY, HE KNOWS WHEN HE  
POPPED --

>> WHAT DID YOU -- LET ME --  
WHAT DID YOU SET FORTH AS -- IN  
YOUR MOTION AS TO THE  
PREJUDICE.

>> IN TERMS OF PREJUDICE, AGAIN,  
NOT ATTENDING THESE PRETRIAL  
HEARINGS, DEPOSITIONS, DURING  
THE CRITICAL -- DURING THE  
CRITICAL TIMES, LEADING UP TO  
THE TRIAL, MR. -- HE WAS NOT  
AWARE AND COULDN'T  
CROSS-EXAMINE, BRING ISSUES TO  
BEAR DURING THE TRIAL COURT --

>> I UNDERSTAND THAT THE  
GENERAL -- GENERALITY THERE,  
TELL ME WHAT YOU PLED AND I'M  
LOOKING AT YOUR MOTION AND I  
DON'T SEE, WHAT YOU PLED WAS  
EVIDENCE THAT EITHER WAS A --  
DID NOT -- DID NOT COME OUT, OR  
WHAT WAS THAT YOU SAY THAT THIS  
LAWYER'S DEFICIENCIES ENDED UP  
COSTING AS FAR THAT'S TRIAL IS  
CONCERNED.

>> ENDED UP COSTING MR. DOORBAL HAVING A LAWYER SITTING NEXT TO HIM, YOUR HONOR AND HAVING A JURY GO THROUGH A TRIAL ESSENTIALLY WITH A LAWYER THAT DIDN'T OBJECT THROUGHOUT THE WHOLE TRIAL, NOT CRAMMING WITNESSES AND WHEN HE -- CROSS-EXAMINING WITNESSES AND WHEN HE DID, NOT EFFECTIVELY, AND WHAT HE WANTED TO SAY IF THERE WOULD HAVE BEEN AN EVIDENTIARY HEARING, THE FIRST TIME HE REALIZED THESE ERRORS OCCURRED, WAS WHEN HE READ THE OPINION THOUGH COURT, HE DIDN'T REMEMBER BEING THERE, SO NUMB FROM LOSING HIS FATHER TWO WEEKS BEFORE THE TRIAL STARTED AND IF ANYBODY LOST A LOVED ONE YOU KNOW FOR A TIME YOU ARE OUT OF IT AND DON'T HAVE A CLUE WHAT IS GOING ON AND KNOW ENOUGH TO WITHDRAW.

AND I SAID WHY DIDN'T YOU WITHDRAW AT THAT POINT AND HE ASKED FOR A MONTH'S CONTINUANCE AND COURT GAVE HIM TWO WEEKS AND DIDN'T ARGUE WITH HIM AND HIS MOTHER WAS STILL IN THE HOSPITAL DURING ALL OF THIS TIME AND HAD SO MANY FAMILY PROBLEM AND FINANCIAL HARDSHIPS AN BLESS HIS HEART HE DID THE BEST HE COULD BUT WASN'T THERE AND ISN'T TANTAMOUNT TO A LAWYER SLEEPING OR WHO HAD ALZHEIMER'S OR DRUNK, THIS IS SOMEBODY WHO IS NOT THERE AND THAT IS MR. DOORBAL'S -- THE EFFECT OF HAVING NO LAWYER AT HIS TRIAL.

>> PLEASE, GO AHEAD, PLEASE, RESPOND TO THAT. BECAUSE YOU ARE DOWN TO JUST A FEW MINUTES.

>> RIGHT. LET'S TALK ABOUT THIS PENALTY PHASE, I DON'T KNOW HOW MANY TIMES I HEARD JUSTICE PARIENTE TELL PEOPLE AT MINIMUM YOU NEED SCHOOL RECORDS AND HAD A PEN ENALITY PHASE LAWYER -- >> WITH WHAT DOES THE -- IN

THIS RECORD.

>> IT SHOWS HE DID NOT PASS TWO GRADES, THEY ACTUALLY HAD -- GAVE HIM ALL Fs AND I FINALLY GOT THE SCHOOL RECORDS, BY THE WAY.

>> AGAIN THE MOTION WAS FILED IN JUNE, OF '04.

>> YES, SIR.

>> EVIDENTIARY HEARING WAS GRANTED, AND DIDN'T EVEN HAVE THE HEARING ON THAT UNTIL NOVEMBER.

>> NOT ON THAT ISSUE.

>> AND NO ONE WAS SENT TO RETRIEVE THE RECORDS UNTIL JANUARY OF '05.

AND THOSE WERE THEN NOT REALLY PLACED IN EVIDENCE, WERE THEY PROPER.

>> YES.

>> LET ME --

>> I DON'T RECALL SEEING THOSE BEING PROFFERED IN TO EVIDENCE OR ANY PROFFER OF TESTIMONY, AT THE EVIDENTIARY HEARING, ARE YOU TELLING ME THIS RECORD SHOWS THERE IS A PROP PROFFER OF EVIDENCE BY MR. DOORBAL, AT THE EVIDENTIARY HEARING.

>> I BELIEVE IT WAS ON JANUARY 21.

I WROTE IT ON A PIECE OF PAPER AND ASKED THE JUDGE IF I COULD PUT IT ON THE RECORD AND HE SAID, NO, GIVE US WHAT YOU WROTE.

AND THAT WAS THE PROFESSORER AND BASICALLY IN THERE I TALKED ABOUT THESE RECORDS AND NOW YOU ARE ASKING WHY WE DIDN'T GET THEM UNTIL JANUARY AND I'M NOT SURE WHERE WE ARE GOING BUT --

>> THE INVESTIGATOR WENT TO TRINIDAD AROUND JANUARY TO GET THE RECORDS.

>> POSTCONVICTION INVESTIGATOR.

>> THAT'S WHAT I'M TALKING ABOUT.

>> THE INVESTIGATOR WHO WENT BEFORE THE TRIAL, GOT NOTHING. THEY SAID IN FACT ON THE RECORD, IT IS IN THE RECORD THERE WAS A FIRE THAT THE RECORDS ARE

DESTROYED AND THAT IS JUST NOT TRUE.

NO HEALTH RECORDS AND TRIAL RECORDS AND NO BIRTH RECORDS, NO SCHOOL RECORDS THAT WOULD HAVE SHOWED THAT MR. DOORBAL WAS NOT THE BRAIN TRUST FOR -- ANYBODY ELSE MIGHT HAVE EVER BELIEVED THAT HE WASN'T ORGANIZED AND WASN'T METHOD -- METHODOLOGICAL AND I DON'T THINK HE IS MENTALLY RETARDED, I HIRED AN EXPERT TO LOOK AT THAT.

BUT THIS IS NOT -- THIS IS SIGNIFICANT MITIGATION THAT SHOULD HAVE BEEN PRESENTED AT TRIAL.

THIRD, ISSUE IS THE GIGLIO CLAIM AND I HAVE BEEN TOLD BY THE ESTATE AND THE COURT, THIS CLAIM WAS RAISED AND ADDRESSED AND PROCEDURALLY BARRED ON -- IN THE MOTION FOR NEW TRIAL, THAT IS JUST NOT FACT, THAT IS REVISOR HISTORY AND BRADY WAS RACED AND IT WAS AN ISSUE THE COURT DEALT WITH BUT NOT GIGLIO.

IT DOESN'T REQUIRE PREJUDICE AND IS A CLAIM THAT STATES CALL THE WITNESS TO THE WITNESS STAND WHO THEY KNOWINGLY -- WHO THEY KNEW WAS TESTIFYING FALSELY, NOT WHETHER HE WAS GUILTY OR INNOCENT, WE HAVE ESTABLISHED THAT.

THAT IS AFTER THE FACT. THEY KNEW THAT HE WAS TESTIFYING FALSELY, AND IT WAS TO A MATERIAL FACT AND THIS HAD TO DO WITH HIS INVOLVEMENT IN MEDICARE FRAUD WHICH THE STATE ALLEGED WAS THE MOTIVE FOR ALL OF THESE HORRIBLE ACTS AGAINST HIM.

AND GIGLIO IS AN IMPORTANT CLAIM AND I WILL RELY ON THE RECORD FOR THAT BECAUSE I'M PROBABLY OUT OF TIME AND -- >> ISN'T THAT A CASE WHERE THE DEFENSE KNEW ABOUT THAT? KNEW HE WAS BEING INVESTIGATED FOR FRAUD AND HE ESSENTIALLY -- THE DEFENSE KNEW HE HAD

COMMITTED FRAUD.

>> AND YOU KNOW WHAT?

WE WILL NOT QUIBBLE WITH WHO  
KNEW WHAT.

THE QUESTION IS, STATE CALLED  
THE WITNESS, TO THE STAND WHO  
THEY KNEW WAS TESTIFYING  
FALSELY, AND DID NOTHING  
ACCORDING TO GUZMAN AND -- IT  
IS -- IF NOTHING ELSE TELL THE  
JAR AND THE JUDGE HE'S BEING  
DISHONEST AND IT DIDN'T HAPPEN  
AND THEY SAID THEY GOT THE  
TESTIMONY IN THROUGH DELGADO  
AND THAT IS NOT TRUE, THE  
CLOSING ARGUMENT THE STATE  
ATTORNEY SAYS BELIEVE HIM OR  
NOT, YOU KNOW, YOU'LL MAKE THE  
DECISION.

THEY WERE NOT FORTHCOMING AND  
DID NOT UPHOLD THAT PART OF THE  
LAW.

>> YOU UTILIZED ALL YOUR TIME  
BUT I WILL GIVE YOU A COUPLE  
MINUTES.

>> SORRY.

THANK YOU.

>> TO RESPOND.

>> MAY IT FLEES COURT,  
ASSISTANT ATTORNEY GENERAL ON  
BEHALF OF THE STATE, SANDRA  
JAGGARD WITH REGARD TO THE  
DISQUALIFYING ISSUE, ITS IN  
EFFICIENT AND IS GROSSLY  
UNTIMELY AND THE TRIAL COURT  
PROPERLY DENIED THE MOTION --

>> MAY I ASK THIS QUESTION.

IS IT IN THE RECORD AS TO  
WHETHER JUDGE FERRER WAS  
SUBPOENAED OR NOT?

>> I'M NOT ENTIRELY SURE.

I DO KNOW --

>> I'M ASKING, IS THAT -- THE  
CANONS REQUIRE -- THEY PROVIDE  
THAT THEY SHALL NOT TESTIFY  
VOLUNTARILY AND AS TO A JUDGE  
MAY NOT INITIATE COMMUNICATION  
TO A SENTENCING JUDGE OR  
PROBATION CORRECTIONS OFFICER  
BUT MAY PROVIDE FOR SUCH  
INFORMATION FOR THE RECORD IN  
RESPONSE TO A FORMAL REQUEST.  
AND TO ME, I KNOW WE HAVE THESE  
CASES INVOLVING THE PAROLE

COMMISSION, BUT AS FAR AS THE  
-- WHAT WAS ALLEGED, THE  
TESTIMONY SEEMS TO HAVE GONE  
BEYOND, HE WAS A HELPFUL  
WITNESS, THE JUDGE TALKED ABOUT  
HIS OWN EMOTIONAL STATE IN  
TERMS OF SYMPATHY FOR THIS  
DEFENDANT AND ACTUALLY GAVE HIS  
RECOMMENDATIONS AS TO WHAT HE  
THOUGHT HE SHOULD GET AT THE  
SENTENCE AND SEEMS LIKE IT WENT  
BEYOND FACTUAL -- HELPFUL OR  
TESTIFYING THAT HE WAS HELPFUL  
IN THE TRIAL AND I KNOW YOU  
WANT TO TALK ABOUT IT NOT BEING  
TIMELY BUT WOULD LIKE TO TALK,  
TO ME, THAT CAUSES ME GREAT  
CONCERN, IF HE WAS NOT  
SUBPOENAED AND THE TESTIMONY IS  
WHAT IS IN THE RECORD, AS FAR  
AS WHAT WAS IN THE SENTENCING  
HERE.

>> THIS IS NO ALLEGATION IN THE  
MOTION TO DISQUALIFY THAT SHE  
WAS NOT SUBPOENAED OR ABOUT IT  
BEING PREARRANGED OR NO  
ALLEGATION ABOUT IT BEING A  
CONSPIRACY AND I AM NOT SURE --  
>> CONSPIRACY?

I AM NOT SAYING CONSPIRACY,  
SOMETIMES JUDGES, WHETHER --  
RULES ARE CLEAR ON THIS, AND  
I'M --

>> THAT WAS A SUGGESTION MADE  
THEN BREEFERX SOMEHOW IT WAS A  
CONSPIRACY BETWEEN THE STATE  
AND THIS JUDGE TO HAVE HIM  
TESTIFY SO THE STATE DIDN'T  
HAVE TO.

BECAUSE THE STATE GAVE THIS MAN  
NO BENEFIT, WE HURT HIM.  
BUT NONE OF THEAL ALLEGATIONS  
WERE IN THE MOTION AND I THINK  
JUDGE FERRER WHEN MS. SMITH  
ASKED ABOUT WHAT HAPPENED WITH  
THIS TOLD HER SHE WAS  
SUBPOENAED BUT I'M NOT SURE  
THAT IS IN THE RECORD.

>> YOU HAVE ANSWERED THAT ONE,  
BUT YOU BELIEVE THAT THAT IS --  
HOW ABOUT THIS SECOND, THAT IT  
GO OVER THE TOP, AS -- WHAT THE  
QUESTION.

>> THOSE INVOLVED IN WATERHOUSE

AND RIVERA, ALTHOUGH THOSE SAY -- ALLOWED TO SAY THE PERSON WAS BAD, A CASE LIKE SUAREZ, YOU CAN'T GO THE STEP FURTHER AND SAY THE PERSON NEEDS THE DEATH PENALTY AND THAT IS WHAT SHE IS SAYING, WOULD YOU ADDRESS THAT PART OF THE QUESTION.

>> HONESTLY, HIS TESTIMONY, IF YOU READ THIS IS FINDINGS ON THE PRIOR VIOLENT FELONYING A VARIETY THEY ARE ALMOST IDENTICAL TO HIS TESTIMONY. SO IF IT IS PROPER FOR HIM TO HAVE FOUND THAT IT IS PROPER FOR HIM TO HAVE MADE THOSE STATEMENTS ABOUT HIS FINDING TO A FEDERAL JUDGE AND SO, NO, I DON'T BELIEVE IT GOES OVER THE TOP.

>> WITH REGARD TO --

>> LET ME ASK YOU ABOUT THE LAWYER AT TRIAL, AND THE FACT THAT HIS FATHER DIED AND THAT. HOW MANY DEPOSITIONS DID HE NOT ATTEND?

>> I HAVE NO IDEA, BECAUSE THAT IS COMING UP FOR THIS FIRST TIME THIS MORNING. ABOUT HIM ATTENDING DEPOSITIONS OR NOT ATTENDING THIS DEPOSITIONS AND NONE OF THIS WAS ALLEGED IN THE MOTION. I DON'T RECALL.

>> WHAT WAS ALLEGED IN THE MOTION.

>> NOT -- IT SAID HIS FATHER WAS DYING, HE HAD FINANCIAL PROBLEMS AND THEREFORE HE WAS INEE EFFECTIVE AND HE WAS INEFFECTIVE BECAUSE HE DIDN'T RAISE THE ISSUES RAISED ON DIRECT APPEAL WHICH THIS COURT REJECTED.

AND THAT IT WAS THE OTHER CLAIMS OF INEFFECTIVENESS IN THE MOTION, WHEN WE HAD THE HUFF HEARING, THE GUILT PHASE AND THE INEFFECTIVENESS CLAIM SAID NOTHING, IT SAID HE SHOULD HAVE HIRED EXPERTS AND PRESENTED WITNESSES AND EVIDENCE AND THERE WAS NO

NAMING OF WITNESSES, NO NAMING OF EXPERTS, NO TOPIC OF DISCUSSION OF ANY OF THIS TESTIMONY.

WHEN WE HAD THE HUFF HEARING, THE JUDGE SAT THERE, AND CONTINUALLY ASKED THE DEFENDANT, WHAT EVIDENCE IS THIS?

YOU HAVE NOT ALLEGED THIS.

WHAT IS IT?

SHY WOULDN'T GIVE A RESPONSE, SHE SAID HER INVESTIGATOR KNEW, WE TOOK A BREAK SO SHE COULD TALK TO HER INVESTIGATOR AND CAME BACK AND SAID IT IS THIS TIMELINE AND HE SAID WHAT ABOUT IT, THE CRIMES OCCURRED OVER A LONG PERIOD OF TIME, WHAT ABOUT A TIMELINE?

AND A TIMELINE.

AND THAT IS HOW IT ENDED UP BEING SUMMARILY DENIED IS THERE WAS NOTHING THERE AND AS FAR AS GRANTEDTING A CONTINUED NEWS THERE IS NOTHING IN THE RECORD THAT SHOWS THE TRIAL COURT DENIED THAT LAST MOTION FOR CONTINUANCE, HE GRANTED NUMEROUS MOTIONS FOR CONTINUANCE AND THE RECORD SHOWS THAT THE TRIAL WAS SCHEDULED TO START THE DAY THE CONTINUANCE WAS SOUGHT, AND IT DIDN'T ACTUALLY START FOR 25 MORE DAYS ON A REQUEST FOR 30-DAY CONTINUED NUNS WHICH SOUNDS TO ME LIKE IT WAS KRANTED AND THERE IS NOTHING ELSE IN THE RECORD COMPLAINING -- GRANTED AND THERE IS NOTHING ELSE IN THE RECORD COMPLAINING I'M NOT READY TO GO AND WHEN THE TRIAL STARTED THE ATTORNEY MADE NO COMPLAINT THAT HE WAS NOT READY.

WITH REGARD TO THE SCHOOL RECORDS, IN FACT THE STATE HAD GOTTEN THE SCHOOL RECORDS ABOUT THIS DEFENDANT AND HAD PROVIDED THEM TO THE DEFENSE COUNSEL AND DEFENSE COUNSEL ATTENDED -- SENT AN INVESTIGATOR TO TRINIDAD TO SPEAK TO THE FAMILY AND SCHOOL TEACHERS PRETRIAL

AND WHAT THE SCHOOL YARDS SAID ABOUT MR. DOORBAL IS HE WAS THE MOST DESTRUCTIVE STUDENT DESERVING OF THE WORST CONDUCT MARK POSSIBLE AND EXTREMELY DIFFICULT STUDENT WHO DELIBERATELY SET OUT TO DISRUPT THE GOOD ORDER OF THE SCHOOL. I THINK NOT PRESENTING THAT TO A JURY MIGHT JUST HAVE BEEN A GOOD IDEA.

>> ONE AREA, COUNSEL IS SUGGESTING THAT THERE WAS SOME TYPE OF PROFESSORER, ACTUALLY MADE --

PROFESSORER AND WAS THERE A PROFFER IN THE HAND-WRITTEN SCRAP PIECE OF PAPER? I'M NOT SEEING THAT.

>> THERE WAS NO PROFFER THAT I RECALL, IT WAS A PROFFER ABOUT, I'VE HAD HIM EVALUATED AND THE EXPERTS NEED MORE TIME AND THAT'S NIGHT I UNDERSTAND THAT, BUT --

>> BUT NOT ABOUT WHAT ANY OF THESE EXPERTS WOULD SAY AND THE STATE IN FACT SOUGHT TO HAVE AFFIDAVITS PRODUCED FROM EXPERTS ABOUT WHAT THEY HAVE REVIEWED AND NEED TO REVIEW AND WE DIDN'T GET THAT.

>> SHE MADE REFERENCE THIS MORNING TO A HAND-WRITTEN PIECE OF PAPER.

>> SHE --

>> AND IS THAT IN THE RECORD SOMEWHERE.

>> IT WAS NOT HAND-WRITTEN. IT WAS A LENGTHY TYPE-WRITTEN STATEMENT BUT IT -- MY RECOGNIZE OF THAT STATEMENT IS IT WAS ALL ABOUT SHE NEEDED MORE TIME AND SHE WASN'T CONTINUING BECAUSE SHE WAS STILL INVESTIGATING NOT THAT THERE WAS ANYTHING IN THERE THAT COULD BE TESTIFIED ABOUT WHICH IS WHY THE STATE ASKED FOR AFFIDAVIT FROM THE EXPERT SAYING WHAT IS IT YOU HAVE DONE, WHAT IS IT YOU HAVE REVIEWED, WHAT IS IT YOUR PRELIMINARY OPINION, AND WE GOT BACK, I WAS

RETAINED, I HAVE BEEN PAID THIS MUCH.

AND THAT IS IT.

>> I MEAN, NOT TALK ABOUT CONTINUED NUNS OF THE EVIDENTIARY HEARING.

>> YES.

>> BECAUSE, WE ARE -- SO WE ARE CLEAR, THERE ARE TWO ISSUES ABOUT CONTINUANCES, ONE IS THE UNDERLYING TRIAL LAWYER WHOSE FATHER HAD DIED AND WHOSE MOTHER WAS IN TERRIBLE STATE AND WHETHER THERE SHOULD HAVE BEEN A CONTINUANCE ON THAT AND THAT, I THINK YOU HAVE CLARIFIED.

AS FAR AS THIS SITUATION, MY CONCERN REALLY HAS TO DO WITH, THAT WE HAVE THIS UNIQUE SITUATION OF A JUDGE WHO IS JUDGE FERRER, HAD TO LEAVE THE BENCH BY FEBRUARY 28th, 2005, NOT BECAUSE OF ANYTHING OTHER THAN HIS OWN PERSONAL PLAN TO BECOME A TELEVISION JUDGE WHICH HE NOW IS.

AND FROM THE SUMMARY NATURE OF THE ORDER, TO THE KINDS OF COMMENTS HE MADE, MY CONCERN IS THAT UNLIKE SOME OF THE OTHER JUDGES THAT WE SEE, WHO, YOU KNOW, ARE REALLY BENDING OVER BACKWARDS TO TRY TO MAKE SURE THAT THE TIME IS ADEQUATE TO PREPARE, WITHOUT IT GOING ON FOR YEARS AND YEARS, THAT THIS JUDGE REALLY WAS NOT GRANTING A CONTINUANCE BECAUSE OF HIS OWNER PERSONAL INTERESTS.

AND COULD YOU COMMENT ON THAT.

>> THE JUDGE MADE IT VERY CLEAR ON THE RECORD THAT THAT WAS SIMPLY UNTRUE.

HE HELD THE HUFF HEARING ON THIS CASE, ON NOVEMBER 9th --

>> WHEN WAS THE 3.850 MILD IN THIS CASE.

>> IT WAS FILED FIVE MONTHS BEFORE THE HUFF HEARING, BECAUSE WE TOOK, I HAD TWO MONTHS TO RESPOND, GIVEN --

>> AND THE TIME THE MOTION IS FILED, UNTIL THE EVIDENTIARY

HEARING IS HOW LONG.

>> NINE MONTHS, I BELIEVE.

>> AND YOU ARE AN EXPERIENCED  
LAWYER IN THESE CASES.

DO YOU KNOW OF ANY OTHER CASE  
WHERE THAT KIND OF -- YOU KNOW,  
FROM THE TIME OF FILING UNTIL  
THE TIME OF THE HEARING IS  
UNDER A YEAR?

>> IN FACT THE RULES REQUIRE  
IT.

SO, YEAH.

>> UNDER A YEAR FROM THE TIME  
OF FILING?

>> FROM THE TIME OF FILING THE  
MOTION I HAVE 60 DAYS TO ANSWER  
AN INITIAL MOTION, THE HUFF  
HEARING MUST BE HELD WITHIN  
90 DAYS, THE EVIDENTIARY  
HEARING IS REQUIRED UNDER YOUR  
RULE TO BE HELD WITHIN 90 DAYS  
AFTER THE HUFF HEARING.

>> I'M ASKING YOU AS A  
PRACTICAL MATTER --

>> YES.

>> IS THAT HAPPENING.

>> YES.

>> I GET THAT RULE ROUTINELY,  
THANK YOU!

>> GOOD TO HEAR, BECAUSE  
CERTAINLY --

>> YOU BREAK THE RULE, I TAKE  
YOU SERIOUSLY.

>> THERE IS NOTHING UNUSUAL  
ABOUT THE TIME PERIODS.

>> NO, AND WHAT HAPPENS IS SHE  
GETS FIVE MONTHS AFTER THE  
MOTION IS FILED, TO GET TO THE  
HUFF HEARING, WE SHOW UP ON THE  
DAY OF THE HUFF HEARING AND SHE  
HAS LETTERS FROM EXPERTS, SHE  
HAS RETAINED THE DAY BEFORE,  
THAT SHE IS SAYING ARE REPORTS,  
AND WE ARE LIKE, THOSE ARE NOT  
REPORTS, THOSE ARE LETTERS  
AGREEING TO BE RETAINED, YOU  
NEED EVIDENCE, THE JUDGE ADMITS  
THAT THE CLAIM WAS FASCIALY  
PLED AND MOTIONS ARE SUPPOSED  
TO BE PROPERLY PLED AND FULLY  
INVESTIGATED BEFORE THEY ARE  
FILED, YOU DON'T FILE THE  
MOTION AND THEN INVESTIGATE IT.  
HE, AT THAT POINT, WHEN HE IS

SET DINGDZ --

>> THIS IS, AGAIN, WE KNOW A REAL LIVE SITUATION, CCR HAD TO GET OFF THE CASE BECAUSE THEY HAD SOME PEOPLE LEAVE THE OFFICE, THEY HAD --

>> PEOPLE LEFT THE OFFICE, AND THEY CLAIMED A CONFLICT BASED ON THE FACT THAT ANOTHER TARIAN HAD RELATIVES WHO WORKED FOR THE BANK AND UNFORTUNATELY THE WAY THE STATUTE REGARDING CCR CONFLICT IS WRITTEN IF THEY ALLEGE A CONFLICT WE HAVE TO LET THEM OFF.

AND SO THE JUDGE HAD NO CHOICE BUT TO LET THEM OFF.

I THOUGHT LETTING THEM OFF -- I FOUGHT LETTING THEM OFF BUT WE WERE IN A NO-WIN SITUATION.

>> THIS IS A VERY UNUSUAL SITUATION, AND IT IS DISCONCERTING BECAUSE YOU HAVE SOMETHING WHERE THE RULE DOES REQUIRE AN EVIDENTIARY HEARING, SOMETHING -- IF SOMETHING IS PLED AND ONE ISSUE WAS GRANTED AND THEN THAT DOESN'T EVEN GET HEARD, BECAUSE THE --

>> BECAUSE THE DEFENDANT REFUSED TO GO FORWARD.

>> WELL, BECAUSE THE IDEA BEING THIS THERE WAS NOT ENOUGH TIME FOR HER --

>> YOUR HONOR, AT THE TIME WE WERE SITTING THE EVIDENTIARY HEARING, AT THE END OF THE HUFF HEARING, JUDGE FERRER EXTENDED THE TIME BEYOND THE 90 DAYS. HE LET HER GO AHEAD, TOLD HER GET YOUR EXPERT TO -- EXPERTS VALUE WAITING HIM AND HAVE US REPORTS BY THE BEGINNING OF JANUARY, AND INSTEAD WHAT REPORTS BY THE BEGINNING OF JANUARY. INSTEAD WHAT HAPPENS IS IN THE MIDDLE OF DECEMBER, WE COME IN, WE HAVE THE FIRST MOTION TO STAY ALL PROCEEDINGS, AND THE JUDGE SAY, NO, I'LL LIFT THE STAY ON THE -- ORDER.

WE THEN HAVE A CLAIM THAT MS. SMITH WAS TOO ILL TO ATTEND TO THAT, AND HE SAID, WELL, YOU

KNOW, AT THIS POINT YOUR EXPERTS SHOULD BE DOING THEIR EVALUATIONS, AND I'LL WORK WITH YOU AS MUCH AS I CAN, BUT YOUR EXPERTS SHOULD BE DOING THEIR EVALUATIONS NOW, SEND THE EXPERTS, WE'LL HAVE THE REPORTS, AND WE CAN DEAL WITH THIS LATER. THE CLAIM AT THAT POINT WAS I NEED TO SEND THE RECORDS TO THE EXPERT FIRST.

WHEN WE COME BACK IN JANUARY, THE EXPERTS STILL HAVEN'T SEEN THE DEFENDANT, AND WHEN THE STATE ASKS FOR THE RECORDS, WE'RE TOLD, WELL, I HAVEN'T SENT THE RECORDS TO THE EXPERT BECAUSE I WANTED TO DO THE EVALUATIONS FIRST.

THIS ALL SHOULD HAVE BEEN DONE BEFORE THE MOTION WAS FILED TO BEGIN WITH.

THEN YOU HAVE FIVE MONTHS BEFORE WE GET TO A HUFF HERING AND YOU YOU -- HEARING AND YOU DON'T BOTHER TO HIRE AN EXPERT UNTIL THE DAY BEFORE THE HOWG HEARING. AND THEN YOU GET ALMOST FOUR MONTHS AND YOU WAIT UNTIL YOUR EXPERT REPORTS ARE DUE AND EVEN LATER TO SEND ANYBODY TO TRINIDAD THAT YOU KNOW ARE MISSING.

UNDER THAT CIRCUMSTANCE, WHEN THE JUDGE IS CONFRONTED WITH SOMEONE WHO'S PLAIN NOT DOING THEIR JOB --

>> SINCE, OF COURSE, WE DON'T HAVE INEFFECTIVE ASSISTANCE OF POST CONVICTION BUT WE DO HAVE SOME MATTERS OF FUNDAMENTAL FAIRNESS, WOULD YOU TELL ME, JUST REFRESH MY RECALL AS FAR AS WHAT TYPE OF MENTAL EVALUATION WAS DONE FOR MR. DOORVILLE AT THE TRIAL AND WHAT WAS PUT ON AS FAR AS TESTIMONY IN TERMS OF MENTAL MITIGATION AT THE PENALTY PHASE.

>> I THAT DID NOT -- THEY DID NOT PUT ON MENTAL MITIGATION AT THE PENALTY PHASE. THEY HAD DOCTORS APPOINT TODAY EVALUATE THE DEFENDANT.

THE REPORT CAME BACK, WE DON'T HAVE THE REPORT BECAUSE IT WAS CONFIDENTIAL BECAUSE THEY NEVER PUT THEM ON, BUT WHEN THEY WERE ASKING FOR MORE FEES FOR DOCTOR BERLIN, THEY SAID HE HAD ALREADY DONE HIS TESTING.

SHOWS HIS IQ IS 100, WE HAVE SCHOOL RECORDS THAT SHOW, YOU KNOW, HE WAS A VERY DISRUPTIVE PERSON.

>> YOU COULDN'T GET THOSE REPORTS AT THE TIME OF TRIAL, BUT IN PREPARATION FOR AN EVIDENTIARY HEARING, WOULDN'T YOU NOW HAVE BEEN ABLE TO GET THE REPORTS?

>> I DON'T BELIEVE HE WROTE A REPORT.

BUT, YOU KNOW --

>> AGAIN, WE DON'T KNOW THAT.

>> WE DON'T KNOW, WE DO KNOW HE WAS EVALUATED.

WE DO KNOW THAT THE DOCTOR HAD DONE ALL THE TESTING THAT HE FELT NECESSARY, AND WE DO KNOW THAT THEY THEN DIDN'T CHOOSE TO PRESENT ANY EVIDENCE, CHOSE TO PRESENT A MITIGATION CASE BASED ON THE FACT THAT THIS DEFENDANT HAD A POOR CHILDHOOD, WAS BORN TO A MOTHER WHO WAS RAPED BY AN OLDER MAN, WHO WAS ABUSED BY THE MOTHER AND RAISED BY THE GRANDMOTHER AND HAD TO BE SENT AWAY FROM THE HOME BECAUSE THE MOTHER WAS SO ABUSIVE TO HIM, AND THAT HE WAS A WONDERFUL GUY WHEN HE CAME TO THE U.S.

EVEN THOUGH HE WAS USING STEROID HE WAS ALWAYS A NICE GUY UNTIL HE FELL UNDER -- INFLUENCE.

WE DO KNOW THEY PRESENTED MENTAL HEALTH MITIGATION BUT -- SHE HAD EVERY OPPORTUNITY IN THE WORLD TO GET THIS TOGETHER AND PRESENT THE EVIDENCE AT AN EVIDENTIARY HEARING, AND WHEN THE JUDGE WAS CONFRONTED WITH SOMEONE WHO REFUSE TODAY GO FORWARD, THAT'S A WAIVER OF THE CLAIM.

THE DEFENDANT WAS BROUGHT IN AND COLLOQUYED ABOUT HIS UNDERSTANDING, AND HE AGREED TO

DO THIS.

>> MS. SMITH MENTIONED AT THE BEGINNING OF HOW POOR PEOPLE IN THIS COUNTRY GET JUSTICE.

WAS HE RETAINED AS COUNSEL?

>> ORIGINALLY, YES.

HE WAS ORIGINALLY RETAINED WHEN IT WAS JUST THE SHILLER COUNT. WHEN IT BECAME THE MURDER COUNT, HE ASKED TO BE DECLARED INDIGENT AND APPOINTED -- THE STATE ASKED THAT BECAUSE THERE WERE THESE ASSETS IN THE DEFENDANT'S NAME, HE EXPLAINED WHY HE COULDN'T USE THESE ASSETS, HE REFUSED TO DO SO USING HIS FIFTH AMENDMENT PRIVILEGE.

THE JUDGE ORIGINALLY REFUSE TODAY APPOINT MR. THAT TALLY AND THEN HE SAID HE WOULD DRAW UNLESS APPOINTED.

>> WAS THERE ALSO CO-COUNSEL?

>> HE HAD CO-COUNSEL, HE GOT TWO DIFFERENT MENTAL HEALTH EXPERTS.

>> IS THERE ANYTHING IN THE RECORD ABOUT HIM BEING AN EXTREMELY EXPERIENCED DEFENSE ATTORNEY?

>> I DON'T RECALL, YOUR HONOR.

>> THE ALLEGED LYING IS THAT MR. SHILLER DENIED MEDICAID FRAUD.

THAT WAS BROUGHT UP IN THE MOTION FOR NEW TRIAL HEARING. IT COULD HAVE AND SHOULD HAVE BEEN RAISED ON DIRECT APPEAL. AND THE FACT THAT SOMEBODY AT THE TIME OF TRIAL, HE HAS NOT BEEN CHARGED.

HE HAS NOT BEEN CONVICTED. HE'S ONLY CHARGED AFTER THE SPENCER HEARING.

AND WHILE THE STATE MAY BELIEVE PEOPLE ARE GUILTY, THE PEOPLE CAN'T KNOW PEOPLE ARE GUILTY UNTIL THEY'RE ACTUALLY CONVICTED.

WE ALSO PRESENTED, WE HAD SHILLER TESTIFY I DIDN'T WANT COMMIT MEDICAID FRAUD, AND WHETHER HE DID OR NOT IS UNIMPORTANT TO THIS CASE. NO MATTER WHAT YOU DO NOT KIDNAP PEOPLE, TORTURE THEM FOR FOUR

WEEK, RUN THEM OVER TWICE WITH A CAR, TRY TO SET THEM ON FIRE.

YOU DON'T DO THAT.

AND SO THE FACT THAT THERE WAS MEDICAID FRAUD, NUMBER ONE, WAS KNOWN.

IT WAS KNOWN FROM THE PRETRIAL HEARINGS FORWARD.

THERE WAS ALL THIS DISCUSSION ABOUT HOW EVERYBODY KNEW HE WAS GOING TO BE TRIED.

AND THE FACT THAT YOU KNEW HIS TESTIMONY WAS CONTRARY TO WHAT YOU THINK IT SHOULD BE IS GROUNDS TO DENY A GIG LEO CROSS-CLAIM UNDER RATLY.

THE STATE HAD NO WAY OF KNOWING, IN FACT, HE WAS LYING.

WE KNEW THERE WAS DELGADO'S EVERY DAY THAT SUGGESTED HE WAS LYING, BUT IF YOU ASK HIM IF HE'S GUILTY OF A CRIME, IT'S NOT OUR OPINION THAT MATTERS.

>> WAS THAT EVIDENCE PUT ON?

>> YEAH, WE WERE ALL DOING MEDICAID FRAUD, AND SHILLER SAID, NO, WE WEREN'T.

THE STATE SAID TO THE JURY, YOU PICK.

WE DON'T CARE.

YOU JUST DON'T DO THIS WHETHER YOU'RE A CRIMINAL OR NOT A CRIMINAL.

>> WAS THAT THE STATE'S ARGUMENT IN CLOSING?

>> YES.

>> THE TRIAL JUDGE VIEWS HIS -- THAT'S REALLY NOT MATERIAL TO THE MURDER AND THE KIDNAPPING AND THOSE KINDS OF THINGS.

>> AND IT IS.

>> FOR A CLAIM, HOWEVER F YOU'VE GOT A CASE LIKE THIS, IT APPEAR IT IS EVIDENCE WAS DELGADO BOUGHT IT AND THEN THERE'S BAD BLOOD AND WHATEVER.

IF YOU HAVE THAT KIND OF SITUATION, DO YOU NEVER HAVE AN OPPORTUNITY OR A CIRCUMSTANCE ARISE IF ONE JUST MOORELY SAY, NO, I DIDN'T DO THIS?

DOES THAT TAKE THIS RIGHT OUT OF --

>> WELL, TO ME, YOUR HONOR, IT

WOULD DEPEND ON WHAT IT IS  
THEY'RE CLAIMING THEY DIDN'T DO.  
HE WAS CLAIMING HE DIDN'T  
DEFRAUD THE FEDERAL GOVERNMENT,  
THAT'S A CRIME.

AND THE STATE CAN'T KNOW, THE  
STATE ANY TIME IT PUTS ON A CASE  
BELIEVES A DEFENDANT IS GUILTY,  
WE WOULDN'T DO IT OTHER SIDE.  
WE BELIEVE WE HAVE THE EVIDENCE  
TO DO THAT.

SO IF IT WERE A QUESTION OF DID  
THIS CHECK GET EXCHANGED OR  
DIDN'T THIS CHECK GET EXCHANGED,  
AND WE HAVE THE CHECK WITH THE  
FINGERPRINTS, THEN PERHAPS WE  
SHOULD PRESENT THAT.

>> A STATE PROSECUTION, RATHER  
THAN A FEDERAL PROSECUTION,  
WOULD THAT MAKE A DIFFERENCE AS  
WELL?

THE CRIME, I'M JUST SAYING, THE  
CRIME.

IS IT A DIFFERENCE BECAUSE IT'S  
A FEDERAL CRIME AND THE STATE'S  
NOT INVOLVE INSIDE MAKING THOSE  
ALLEGATIONS?

>> WELL, IT'S A DIFFERENCE IF  
THE STATE IS INVOLVED.

THE REASON WE LET PEOPLE  
QUESTION PEOPLE ABOUT PENDING  
PROSECUTIONS IS THERE'S A MOTIVE  
TO CURRY FAVOR WITH THE STATE.  
AND AND WE'RE NOT EVEN THE  
PEOPLE PROSECUTING, IT'S A  
LITTLE HARD TO CLAIM YOU'RE  
CURRYING FAVOR WITH US.

>> WITH OUR HELP, YOU'VE USED UP  
ALL YOUR TIME.

MS. SMITH, I WANT TO GIVE YOU A  
COUPLE OF MINUTES TO RESPOND.

>> THANK YOU, CHIEF JUSTICE.  
I'VE NOTED PAGE 687 I BELIEVE  
IT'S A SUPPLEMENTAL.

MAYBE ACTUALLY IN THE ACTUAL  
INITIAL RECORD ON APPEAL, IT'S  
THE TWO-PAGE STATEMENT THAT  
WE'VE REFER TODAY IN THE COURT  
WHERE I TALKED ABOUT WHO THE  
EXPERTS WERE THAT WE WERE GOING  
TO CALL, DR. POPE OUT OF HARVARD  
UNIVERSITY, WENT BACK TO MY ALMA  
MATTER AND FOUND DR. POPE WHO  
WAS AN EXPERT IN STEROIDS.

IT WAS ONLY ONLY POST  
CONVICTION -- WE GOT THE  
TESTIMONY ON STEROIDS TO PROVIDE  
THE KIND OF MITIGATION THAT  
SHOULD HAVE BEEN PRESENTED  
DURING THE TRIAL.

THERE ARE A NUMBER OF OTHER  
EXPERTS, ONE OF THE WITNESSES --  
>> THIS TELLS WHAT THEY'RE GOING  
TO SAY, AND THIS IS AT 687?

>> YES, SIR.

WHAT THEY WERE LOOKING AT WAS,  
YOU KNOW, THE STATE HAS  
MISSTATED SOMEWHAT THE TIMELINE  
OF EVENT THAT IS OCCURRED.

WE DIDN'T RETAIN THESE EXPERTS  
THE DAY BEFORE THE HEARING.  
THE DAY BEFORE THE H AUTOMOBILE  
OUG WHEN I

KNEW THEY WEREN'T READY TO  
PROVIDE ME WITH SIGNIFICANT  
INFORMATION, I HAD THEM WRITE ME  
A LETTER SAYING THEY HAD BEEN  
RETAINED, AND I NEED TODAY TELL  
COURT WHY I DIDN'T HAVE ALL OF  
THE SPECIFIC INFORMATION I KNEW  
THE COURT WAS GOING TO BE  
LOOKING FOR.

AND THEN IN JANUARY, IT WAS OVER  
THE HOLIDAYS, NOBODY WENT TO  
TRINIDAD UNTIL RIGHT AFTER THE  
FIRST OF THE YEAR, AND THAT'S  
WHERE --

>> IS THERE A REASON THOSE  
RECORDS WEREN'T SECURED BACK  
BEFORE THE FILING OF THE MOTION  
IN JUNE OR SHORTLY AFTER JUNE  
2004?

>> YOUR HONOR, PICTURE THIS --

>> I DON'T WANT TO USE UP ALL  
YOUR TIME.

>> NO, NO, NO, I JUST WANT YOU  
TO PICTURE THIS, YOU'VE GOT A  
MONTH TO -- IN THE MODERN WORLD  
YOU'VE GOT A YEAR TO PUT IT  
TOGETHER WHERE YOU WOULD HAVE  
GONE TO TRINIDAD, WHERE YOU  
WOULD HAVE GONE TO HIRE PEOPLE.  
THE RECORD WAS SO BIG, IT WAS  
177 VOLUMES.

TO SIGN THAT PETITION, I HAD TO  
SWEAR, AND I DID, I SWEARED THAT  
I READ ALL THOSE --

>> AGAIN, I JUST REALLY WANT

TODAY KNOW IS THERE A REASON --  
>> WE DIDN'T HAVE TIME.  
THERE WASN'T TIME ENOUGH.  
YOU KNOW, I'M NOT A WHINER.  
I'M TRYING TO TELL YOU THIS IS A  
CASE, THIS IS A HUGE CASE.  
AN UNUSUAL CASE WHERE CCR WAS  
ALLOW TODAY WITHDRAW FLEE MONTHS  
BEFORE THE -- THREE MONTHS  
BEFORE THE PETITION WAS DUE.  
AS A LAWYER I DIDN'T WANT TO DO  
QUITE YET.  
SO WE DID WHAT WE COULD, WE  
ASKED FOR SOME TIME.  
I NEVER ONCE DIDN'T COME TO A  
HEARING BECAUSE I WAS ILL.  
I'M 52 YEARS OLD, I WAS NEVER  
SICK IN MY LIFE UNTIL A YEAR AND  
A HALF AGO.  
I WAS EXHAUSTED, I'M EXHAUSTED  
NOW, BUT I NEVER ONCE DIDN'T GO  
TO A HEARING OR COMPLAINED ABOUT  
GOING A HEARING EXCEPT THE  
TELEPHONIC HEARING TO TRY AND  
GET A JUDGE TO PAY ME A FEE.  
BUT WHAT I DID DO WAS I  
SEPTEMBER MY INVESTIGATORS, THE  
COURT WAS FIRM ABOUT HAVING THIS  
HEARING BEFORE HE LEFT THE  
BENCH.  
HE SAID, ON THE RECORD, I DON'T  
WANT TO LEAVE THIS CASE FOR  
ANOTHER JUDGE.  
HE'S GOT OTHER CASES HE'S HAVING  
TO LEAVE TO OTHER JUDGES WHEN HE  
LEAVES.  
WE WERE SO BLINDSIDED BY THE  
FACT THAT HE WASN'T GOIR GOING  
TO BE THERE FOR THE TIME PERIOD  
THAT WE HAD AN EXTRAORDINARY  
CASE, WE NEEDED EXTRAORDINARY  
TIME, AND THAT WAS DENIED US.  
THANK YOU FOR YOUR TIME, YOUR  
HONOR.  
>> WE THANK YOU BOTH, WE'LL TAKE  
THE CASE UNDER ADVISEMENT.  
THE COURT WILL TAKE ITS MORNING  
RECESS.  
>> PLEASE RISE.