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Allen Cox v. State of Florida

SC05-914 | SC06-40

SPEAKING WITH THE ADDITIONAL FIVE WITNESSES THAT THE EXPERT WE USED IN THE POST CONVICTION, THE ADDITIONAL FAMILY MEMBERS THEY WERE ABLE TO CLEARLY SHOW THAT THAT IS JUST TOTALLY WRONG IMPRESSION OF WHAT HAPPENED. MR. COX GREW UP WITH AN ABUSIVE FATHER UNTIL THE AGE OF 10, ACTUALLY, HE WAS LIVING WITH HIS MOTHER, I BELIEVE, AFTER HIS DIVORCE, HIS MOTHER WAS TAKING EVERY DAY AND HIS SIBLINGS.

>> THE MOTHER, DID HIS MOTHER -- THIS IS PERSON WHO LEFT HIM AT HIS FATHER A HOUSE AT SOME POINT?

>> HIS BIOLOGICAL MOTHER AT AGE 10 DUMPED HIM OFF AT HIS FATHER'S HOUSE, BETTY GILBERT WHO WAS NOT INVESTIGATED, SHE WAS DISCOVERED AND KNOWN TO THE DEFENSE, BUT NEVER SPOKEN TO, NEVER INVESTIGATED, BETTY GILBERT WAS THE STEPMOTHER OR ACTUALLY ONE OF THE LATER WIVES OF RAY COX, THE FATHER, SHE WAS PRESENT AN OBSERVED THE DROP-OFF AN THE YELLING, YOU KNOW, YELLING. THAT CERTAINLY CLARIFIED THE CIRCUMSTANCES OF THAT ABANDONMENT.

THERE HAD BEEN SOME IN THE ORIGINAL PROCEEDING, IN THE ORIGINAL TRIAL, SOME MIPOR CONFLICT THAT THE COURT FOUND LESSENED THE WEIGHT OF THAT.

>> YOU ARE SPEAKING IN

RATHER GREAT DETAIL HERE.
NOT THAT THAT IS IMPORTANT
OR WHATEVER, BUT YOU NEED TO
GET TO THE JUGULAR SO TO
SPEAK.

WHAT DO YOU BELIEVE THE
CLEAREST OR THE STRONGEST
ARGUMENT THAT YOU PRESENTED
TO THE TRIAL COURT JUDGE,
FOR INSTANCE, OR DOES THE
TRIAL COURT GO WRONG IN
EVALUATING FROM HERE?

>> THE COX SENTENCING
PROCEEDING.

THE COX INVESTIGATION.
SNOW UNDER STRICKLAND, WE
HAVE IMPAIRED COUNSEL SON
THE ONE HAND WITH MR. STONE,
WHO WAS THE PRIMARY
DEVELOPER, SUPPOSED TO BE
THE PRIMARY ATTORNEY IN
MITIGATION AN INEXPERIENCED
SECOND CHAIR MR. HIGGINS WHO
CERTAINLY DIDN'T MEET THE
ABA STANDARDS THAT EXISTED
FOR A NUMBER OF YEARS BEFORE
THIS TRIAL AN ALSO SERVED IN
THE INTERIM BETWEEN THE TIME
THAT THE NEW RULE WAS
ADOPTED AS TO WHAT WAS
APPROPRIATE SECOND CHAIR
COUNSEL.

>> I THINK WHAT JUSTICE
ANSTEAD IS POINTING TO, CUE
SHOW AS YOU QUALITATIVE
DIFFERENCE IN WHAT WAS
PRESENTED IN THE COLLATERAL
PROCEEDINGS AS OPPOSED TO
WHAT WAS PRESENTED IN THE
TRIAL BECAUSE SHOW US THE
CRITICAL DIFFERENCE BECAUSE
WHAT WE HAVE, WE KNOW THAT
WE HAVE AN ATTEMPT OR ACTUAL
HIRING DR. BERLIN BEFORE AND
HE REFUSED OR WAS UNABLE TO
CONTINUE.

WE KNOW THAT THERE WAS
TESTIMONY FROM MEMBERS OF
THE FAMILY, MAY HAVE
SELECTED THE WRONG ONE, BUT
THAT IS WHERE THAT KIND OF
QUESTION IS GOING.

SHOW US, RATHER THAN WE
FOUND OTHER EXPERT, WE HAVE

FOUND DIFFERENT WITNESS,
THAT, I THINK, IS WHERE THAT
QUESTION WAS GOING, I THINK
YOU REALLY NEED TO RESPOND
TO THAT.

>> WELL, I WILL JUST POINT
BACK TO THE ONE INSTANCE
WHERE THE TRIAL COURT FOUND
THAT GRANDMA CURED THE BAD
CHILDHOOD OR ENDED THE BAD
CHILDHOOD, WHEN IT COMPOUND
IT AT THAT POINT.

GOING ON FROM, THERE OUR
WITNESS DR. ROBERT BERLIN
SPOKE TO FIVE WITNESSES THAT
HAD NEVER BEEN SPOKEN TO BY
DR. McMAHON OR DEFENSE
ATTORNEYS, DR. McMAHON
TESTIFIED IN THE EVIDENTIARY
HEARING SHE RELIED SOLELY ON
DEFENSE COUNSEL, STONE, TO
GIVE HER THE NAMES OF PEOPLE
WHOM SHE SHOULD SPEAK.

STONE, ON THE OTHER HAND,
SAID THAT HE BELIEVED THAT
HE HAD HEARD THE GILBERT,
BETTY GILBERT NAME, TALKED
ABOUT.

HE THOUGHT IT WAS IN
DR. McMAHON'S NOTE, HOWEVER,
DR. McMAHON DID NOT SPEAK
NOR DID DEFENSE COUNSEL
STONE AND RAY COX, THE
FATHER, TESTIFIED AT THE
EVIDENTIARY HEARING HE
SPECIFICALLY GAVE BETTY
GILBERT'S NAME.

>> DR. McMAHON, IF I RECALL,
TESTIFIED SHE HAD EXTENSIVE
TIME WITH THE DEFENDANT,
THAT IS CORRECT?

>> I DON'T KNOW THAT 11
HOURS IS EXTENSIVE.

I AM THINKING ON RECENT
HEARING WHERE THE STATE'S
OWN EXPERT SAYS IT TAKES 6
MONTHS TO WHIP ONE OF THESE
UP.

I WOULD IMAGINE THAT WOULD
INCLUDE MORE THAN 11 HOURS
OF BASE TIME SO TO SPEAK
WITH THE CLIENT.

>> SIX MONTHS WITH A
DEFENDANT?

I AM HAVING DIFFICULTY --
ARE TALKING ABOUT SIX MONTHS

--

>> MITIGATION OR MENTAL
HEALTH EXPERT, DEVELOPING A
MITIGATION CASE FOR A
CAPITAL CASE FOR THE
DEFENSE.

>> WHEN AT THE EVIDENTIARY
HEARING, WAS DR. McMAHON
CALLED?

>> YES, SHE WAS.

>> WAS SHE PRESENTED ALL OF
THIS ADDITIONAL EVIDENCE OR
WITNESS'S STATEMENTS AN ET
CETERA?

>> YES, AND SHE NIT-PICKED
IT APART AND SAID IT DID NOT
CHANGE HER OPINION.
SHE TESTIFIED ON DIRECT, SHE
TESTIFIED THAT THE WITNESSES
THAT DR. BERLIN RELIED UPON
HAD SOME INCOP CONSIST SIS
AND TRYING TO RECALL
CHILDHOOD MATTERS THAT
OCCURRED 20 OR MORE YEARS
AND THAT ALSO THAT
REGARDLESS OF WHAT HAPPENED
20 YEARS EARLIER, THAT IS
NOT THE EVALUATION HAS WE
MAKE, SHE WAS MAKING
EVALUATION OF HIS PRESENT
STATUS AT THE TIME OF TRIAL.

>> SECONDLY, AS TO COUNSEL,
YOU HAVE MADE THE ALLEGATION
THAT HE WAS IMPAIRED, THERE
IS ANY EVIDENCE BEFORE US
OTHER THAN THE ONE INCIDENT
AT THE BAR WITH THE DAD THE
ONE NIGHT IN KEN TUCK KIF
IMPAIRMENT?

>> NO, DURING HIS BRIEF
VISIT, CRITICAL VISIT TO
KENTUCKY, WE HAVE ONE
INCIDENT WHERE TWO WITNESSES
TESTIFIED THAT HE WAS DRUNK
AND IMPAIRED.
HIS OWN TESTIMONY ADMITTED
HE HAD ONE DRINK WHICH ANY
TRIAL COURT --

>> BUT AGAIN, OTHER THAN
GOING TO BAR ONE NIGHT AN
HAVING ONE DRINK OR FIVE
DRINK, THERE IS NO OTHER

EVIDENCE THAT THIS COUNSEL WAS IMPAIRED AT ANY OTHER TIME, IS THAT TRUE?

>> I DON'T RECALL ANY OTHER SPECIFIC, NO.

>> THIS IS SORT OF THE PROBLEM I AM HAVING, ALSO, WE COMPARE THIS WITH OTHER CAPITAL CASES AN OVER THE YEARS WE HAVE SEEN DEFENSE LAWYERS THAT ESSENTIALLY DO NOTHING OTHER THAN THAT THE WITNESSES SHOW UP AT THE COURTHOUSE AND THEY TALK TO THEM THERE AND WE FOUND THAT TO BE NOT SUFFICIENT PERFORMANCE.

IT IS LOW BAR BECAUSE WE ARE TALKING ABOUT YOUR CLIENT'S SIXTH AMENDMENT WAS VIOLATED AND I AM NOT SEEING HERE WITH, YOU KNOW, THEY TRIED TO GET BERLIN FIRST, HE WAS NOT AVAILABLE.

THEY ACTUALLY GOT A MENTAL HEALTH EXPERT.

THEY INTERVIEWED WITNESSES. THEY MADE STRATEGIC DECISIONS TO LIMIT WITNESSES.

WHERE IS -- I JUST DON'T SEE THE DEFICIENT PERFORMANCE.

I MEAN, YOU SEE I AM SURE YOU HEARD THE LAST, I SEE THINGS YOU CAN PICK APART, GEE, THEY SHOULDN'T HAVE DONE THAT, I I WOULD HAVE DONE THIS, THE 20/20

HINDSIGHT, BUT I AM HAVING A HARD TIME SEEING HOW THE FIRST STRICKLAND IS MET IN THE CASE BASED ON OUR CASE LAW AND OTHER CASES IN WHICH WE HAVE FOUND FAR LESS THAT DEFENSE LAWYER DID TO BE ADEQUATE PERFORMANCE.

>> ON THE FIRST PRONG, YOU CANNOT MAKE STRATEGIC DECISION NOT TO PULL WITNESSES IF YOU HAVE NOT SPOKEN WITH THEM.

MR. STONE TESTIFIED AT THE EVIDENTIARY HEARING THAT HE HAD MADE STRATEGIC DECISION TO CALL FOUR WITNESSES, BUT

WHEN YOU ONLY TALKED TO FIVE OR SIX.

>> THAT IS THE PROBLEM. I MEAN I DON'T THINK ANYTHING SAYS, IF YOU DON'T TALK TO EVERY POSSIBLE WITNESS AVAILABLE, YOU ARE GOING TO BE DEFICIENT BECAUSE YOU CAN'T MAKE STRATEGIC DECISION, I THINK THAT THOSE CASES REALLY TALK ABOUT SOMEONE WHO HAS NOT REALLY PURSUED WHAT WOULD BE A WHOLE DIFFERENT LINE OF MITIGATION, THEY CAN'T THEN SAY, WELL, WE DECIDED NOT TO PRESENT IT, NOT AN ISSUE, WELL I TALKED TO SIX WITNESS, I SHOULD HAVE TALKED TO TEN WITNESSES, THAT -- I CAN'T IMAGINE WHAT HOW THAT WOULD EFFECT OH THE CASES.

WHAT IS YOUR BEST, MAYBE I WILL ASK YOU THIS WAY, WHAT IS YOUR BEST CASE SUFFICIENT PERFORMANCE AN PREJ, DID YOU IN OTHER WORDS, AND WHAT CASE, AND WE DECIDED WE FOUND INEFFECTIVE ASSISTANCE OF COUNSEL THAT IS MOST SIMILAR TO THIS CASE?

>> I DON'T HAVE A CASE AT MY FINGERTIPS, I WOULD HAVE TO FIND A BRIEF ON THAT POINT. EACH CASE IS FACTUALLY UNIQUE.

IN THE CASE, THE DEFENSE COUNSEL, WAITING TO THE LAST MINUTE, HE DIDN'T EVEN FILE A MENTAL HEALTH MITIGATION NOTICE IN TIMELY FASHION. HE HAD TO GET SPECIAL DISPENSATION BECAUSE HE HAD NOT EVEN DEVELOPED A THEORY OF MENTAL HEALTH MIT IS GOING OR ANY MIT IS GOING AT THE POINT ON FEBRUARY 28th, I BELIEVE, WHEN THEY PRIN COURT.

>> HOW LONG?

>> IT WAS MARCH TRIAL.

>> HOW OLD WAS THIS DEFENDANT?

HE WAS ABOUT 37.

I AM NOT SURE.

>> SO THE ISSUES OF HOW MUCH YOU GO BACK INTO THE CHILDHOOD OF SOMEBODY IS ALREADY IN PRISON, YOU KNOW, IT IS GOING TO KIND OF DETERMINE WHAT YOUR STRATEGY IS GOING TO BE, CORRECT? I MEAN, IT IS NOT LIKE SOMEONE WHO IS 19 OR 20 AND IS COMMITTING A CRIME, DO YOU SEE THAT AS BEING A DIFFERENCE THAT AT THE AGE OF THE DEFENDANT AND THE, HIS AND HOW MUCH REALLY MENTAL HEALTH MITIGATION OF A CHILDHOOD KIND OF THINGS WOULD SAY CHANGE A JURY'S DECISION, DO YOU?

>> CERTAINLY THE CHILDHOOD IS CRITICAL WHEN THERE ARE HEAD JURN RIS DEMONSTRATED DURING THAT CHILDHOOD, WE HAVE THREE INSTANCES, THE MULE INCIDENT, WHERE HE WAS HELPING IN KENTUCKY FARMERS, A WHOLE LOT OF LAND LOGGED AND THEY WERE DOWN A HILL, A MULE TOOK OFF, SLAMMED TIME IN A TREE, THE BUYSIVE FATHER SAY, THERE IS NOTHING WRONG WITH HIM.

HE SAT DOWN FOR A LITTLE WHILE.

THE EVIDENCE SHOWS THE GENTLEMEN WHO ACTUALLY, WHO WAS ALSO THERE HELPING SAID MR. COX, ALLEN COX, OUR DEFENDANT, WAS STUNNED AND HAD TO SIT IN A CAR FOR A NUMBER OF HOURS AND HAD BEEN UNCONSCIOUS.

FURTHER THEY DEVELOPED THE FACT THAT THE HEAD INJURIES WERE SUBSTANTIAL IN THE MOTORCYCLE ACCIDENT WHEN HE WAS ABOUT 16.

>> DO THEY HAVE HOSPITAL RECORDS ON THAT?

>> I DON'T BELIEVE WE GOT -- I BELIEVE THESE WERE GONE.

>> I AM UNDER THE IMPRESSION THERE WAS INFORMATION WITH

REGARD TO HELMET WEARING,
THERE WAS A HOOD INJURY,
THERE WAS NO DOCUMENTED
MEDICAL HEAD INJURY OF ANY
KIND.

AM I MISTAKEN?

>> WELL, I DON'T THINK WE
GOT ANY MEDICAL DOCUMENTS.
WE HAVE TESTIFIED OR
TOLD THE DOCTOR IN HIS
DETERMINATION OF THE BRAIN
DAMAGE THAT HE WAS, HIS HEAD
WAS ALL BEAT UP, HE HAD BEEN
RENDERED UNCONSCIOUS AND
THAT THE MOTORCYCLE, THAT SPECIFICALLY HEAD
TRAUMA.

THAT IS WHAT HE WAS ASKING.
I KNOW PEOPLE WHO SUFFERED
HEAD TRAUMA WITH A HELMET ON
INCLUDING MR. COX.

THAT KIND OF HEAD INJURY,
AND AGAIN, ANOTHER THING THE
STATE MAKES IS, WELL, HE
DIDN'T TELL ME ABOUT HEAD
TRAUMA, YOU KNOW?

ESPECIALLY UNEDUCATED
DEFENDANT SUCH AS MY CLIENT,
HE DOESN'T RECOGNIZE HEAD
TRAUMA UNTIL I STARTED
WORKING FOR CCRC AN LICENSED
TO THE EXPERTS TALK ABOUT
THE KINDS OF THINGS THAT ARE
HILLY RELEVANT, STUNNING
THAT ARE HIGHLY RELEVANT,
STUNNING!!\$\$!!!!!!!!!!!!!!
STUNNING -- CARD MILD
CONCUSSION NOT JUST LIKE IN
A FOOTBALL GAME.

EVERYONE OF THOSE IS AN
INSULT TO THE BRAIN THAT
CUMULATES!!\$\$!!!!!!!!!!!!!!
CUMULATES, OBVIOUSLY,
UNCONSCIOUS IN, ACCIDENTS,
RELATIVELY HIGH-SPEED --
MANNING EL IT BADLY THOSE
ARE KINDS OF INSULTS THAT
CONTRIBUTE TO THE -- A
CONCLUSION OF BRAIN DAMAGE,
THAT THEN DR. BERLIN I
BELIEVE ALSO DR. DEE
TESTIFIED WOULD RESULT IN
TWO STATUTORY MITIGATORS
THAT IS ANOTHER CRITICAL
DIFFERENCE BETWEEN WHAT OUR

WITNESSES PROVIDE AND WHAT
WAS PROVIDED AT TRIAL TWO
STATUTORY MITIGATORS MENTAL
HELP MITT ALLIGATOR UNABLE
TO CONFORM TO THE
REQUIREMENTS OF LAW AND
UNDER EXTREME -- EMOTIONAL!!\$\$!!!!!!!!!!!!!!!
EMOTIONAL -- PROBLEM, AT THE
TIME OFF THE FENCE, AND.

>> HE WHAT WAS.

>> THIS COURT RECOGNIZED
THESE ARE VERY IMPORTANT.

>> WHAT WAS ACTUALLY THE
MIDDLE EMOTIONAL STRESS THAT
WAS GOING ON AT THE TIME OF
THIS MURDER?

>> DR. BERLIN, WAS ONGOING
PSYCHOSIS!!\$\$!!!!!!!!!!!!!!!
PSYCHOSIS --

>> AND JUST BROUGHT ON BY
WHAT?

I DON'T REALLY UNDERSTAND
THEIR TESTIMONY AS TO WHY AT
THIS TIME WHEN THIS MURDER
TOOK PLACE THERE WAS AN
MENTAL OR EMOTIONAL
DISTURBANCE GOING ON.

>> IT WAS CONTINUING, I I
MEAN HE SIMPLY HIS STATE OF
MIND CONTINUOUSLY, WAS SUCH
-- AND THEN ALSO WORKED UP
AT THAT TIME, AND HE WAS
ALSO WORKED -- WORKED
AGITATED BY THIS THEFT OF
THE MONEY, AND THE PROBLEM
HE WAS IN, WITH -- AS FAR AS
BUYING MONEY I SEE I HAVE
THREE MINUTES LEFT.

>> YOU REALLY NEED TO TOUCH
ON OR --

>> THANK YOU.

>> SAVE FOR REBUTTAL WHAT!!\$\$!!!!!!
WHATEVER YOUR PLEASURE.

>> WELL I WILL GIVE THE
STATE FAIR SHOT AT IT.
FIRST, ON PIGMAYNARD \$\$JUDGE'S
RULING ON 6TH DAY STATED A
NUMBER REASONS WHY HE DENIED
THE MOTION FOR MISTRIAL ONE
WELL INTO THE TRIAL, I DON'T
UNDERSTAND HOW THAT IS A
REASON, TWO, \$\$STONE'S
QUESTIONING HAD BEEN
ANTAGONISTIC, YES, THREE,

STONE NEVER OBJECTED OR
MOVED FROM MISTRIAL ON TWO
PRIOR OCCASIONS IN THAT SAME
EXAMINATION WHERE MAYNARD
SAID HE PASSED A LIE
DETECTOR TEST THE STATE
ATTORNEY GROSCHULTZ, DURING
THAT SAME COLLOQUY THAT
MAYNARD KNEW HE WAS TIPPED
OFF A WEEK BEFORE WHEN THEY
PROFFERED HIS TESTIMONY, AND
GROSS SAID THE STATE
ATTORNEY SAYS HE WAS TOLD
NOT TO TALK ABOUT THIS.
AND YET HE DID.

IF YOU LOOK AT THE SEQUENCE
OF THE EXAMINATION, THAT
ESSENTIAL HE WILL --
ELEMENTS THE DEFENSE NEEDED
TO GET IN MAYNARD WAS THERE,
AND THAT HE WAS ALONG WITH
THE VICTIM WHEN THE
ESTABLISHING BEGAN, AND --
ESTABLISHING!!\$\$!!!!!!!!!!!!!!!!!!!!
ESTABLISHING, WASN'T
ADMITTING TO DOING STABBING
24 COMBLON 30, 2431, 3436 OF
TRANSCRIPT WASN'T NIL 2458
OR BEFORE THAT, SUBSTANTIAL
AMOUNT OF TIME, REASONABLE
AMOUNT OF TIME LATER, THAT
THE PUSH HIM TO THE POINT HE
REVEALS TWO LIFE SENTENCES.

>> YOU ARE SAYING IS USUALLY
WE HAVE ARGUMENTS, THAT
DEFENSE COUNSEL DIDN'T
CROSS-EXAMINE HARD ENOUGH
YOUR ARGUMENT THAT HE WAS
TOO HARD.

>> I'M ARGUING, DEFENSE
COUNSEL TESTIFIED AFTER ONE
OF THE REVELATIONS OF LIE
DETECTOR TEST BEING PASSED,
HE SAYS THIS MAN IS A LOADED
GUN, HE ALREADY KNEW THIS
GUY, THE COURT SAYS, WELL HE
ASSUMED THE I DON'T KNOW HOW
YOU CAN ASSUME THAT KIND OF
RISK WHEN YOU KNOW THIS GUY
HAS BOUNCING OFF-THE-WALL,
AND IS NONCOMPLIANT WITH ANY
INSTRUCTION BY THE COURT TO
NOT TO RESPOND ONLY TO THE
QUESTIONS AND --

>> -- TRIAL COURT GIVE --

>> SORRY?

>> DID THE TRIAL COURT GIVE
A LIMITING INSTRUCTION?

>> THE TRIAL COURT GAVE ONE,
THAT -- THE STATE RECOGNIZED
THE CONSTITUTIONAL DIMENSION
ASKED THE COURT OFFERED TO
LET THE COURT LIE TO THE
JURY SAY THERE WERE NO LIFE
SENTENCES!!\$\$!!!!!!!!!!!!!!!!!!!!
SENTENCES.

THEY KNEW HOW IMPORTANT AND
HOW CRITICAL HOW DAMAGING A
LIFE SENTENCE REVELATION
WAS, WHERE JURY REGARDLESS
OF THE FACT IN PRISON, THEY
DON'T KNOW WHAT HE WAS IN
PRISON FOR EVEN WITH 12
FELONIES THOSE TWO HAVE BEEN
12 MINOR -- RELATIVELY HE
MINOR DRUG OFFENSES INSTEAD
ALL THEY KNOW TWO LIFE
SENTENCE HEES THEY DON'T
KNOW HOW THE SCORE SHEETS
WORK THEY DON'T KNOW HOW YOU
CAN END UP WITH TWO LIFE
SENTENCES!!\$\$!!!!!!!!!!!!!!!!!!!!
SENTENCES, YOU KNOW, THEY
CAN'T IMAGINE A SITUATION
WHERE SOMEBODY, IS NOT A
REALLY BAD TERN.

>> BUT HOW CAN THAT EVEN BE
ATTRIBUTED TO THE DEFENSE
ATTORNEY HERE?

WHEN YOU LOOK AT THE
QUESTIONING THAT WAS GOING
ON, IF HE JUST THROWING THAT
OUT, NOT ENOUGHWHERE.
HOW CAN THAT BE ATTRIBUTABLE
TO THE DEFENSE ATTORNEY?

>> BECAUSE, HE ALREADY STATE
HE HAD WAS ALREADY ON THE
RECORD WITH THE COURT THE
MAN IS A LOADED GUN.
HE DOESN'T -- IS NOT
CONTROLLABLE RERESPONDS ON
IN SIK TIERS, UNRESPONSIVE!!\$\$!!!!!!!!!!!!!!!!!!!!
UNRESPONSIVELY PUTTING OUT
STAFF -- THAT IS BAD HE
ALREADY HAD THE ESSENTIAL
FACTS THAT HE NEEDED TO GET
FROM MR. MAYNARD,
MR. MAYNARD WAS PRESENT, AND

INTERVENED IN THAT.

AND THAT IS ALL HE WAS EVER GOING TO GET OUT OF HIM, AND THEN OUR CLIENT GOT ON THE STAND AND SAID MR. MAYNARD WAS THERE, YEAH, HE WAS TRYING TO STAB ME, THE VICTIM GOT ACCIDENTALLY STABBED IN THE PROCESS.

>> THANK YOU USED UP YOUR TIME.

>> MATE PLEASE THE COURT, STEVEN ASSISTANT ATTORNEY GENERAL ON BEHALF OF THE STATE OF FLORIDA I WOULD LIKE TO BEGIN BY ADDRESSING SOME OF \$COUNSEL'S MISSTATEMENTS REGARDING TRIAL COUNSEL'S INVESTIGATION INTO THE PENALTY PHASE IN THIS CASE NAMELY THAT IT WAS A LAST MINUTE EFFORT BY AN IMPAIRED ATTORNEY, WHICH IS TOTALLY CONTRADICTED BY THE RECORD IN THIS CASE, AND THE DEFENSE ATTORNEY IN QUESTION MR. STONE, WAS ATTORNEY FOR OVER 30 YEARS, AND HAD BEEN DOING NUMEROUS CAPITAL CASES HE TESTIFIED AT THE EVIDENTIARY HEARING THAT HE BEGAN HIS INVESTIGATION IMMEDIATELY, UPON HIS" APPOINTMENT IN THIS CASE THAT HE RETAINED DR. BERLIN AT THE OUTSET, AND SENT HIM, BEGAN ACCUMULATING MEDICAL RECORDS WHAT HAVE YOU BEGAN SENDING THOSE TO DR. BERLIN, AND RIGHT AFTER HIS APPOINT!!\$\$!!!!!!!!!!!!!! APPOINTMENT.

IT WASN'T UNTIL MONTHS BEFORE THE TRIAL, WAS SET THAT DR. BERLIN, NOTIFIED HIM THAT HE WOULD BE UNABLE TO CONTINUE IN HIS REPRESENTATION!!\$\$!!!!!!!!!!!!!! REPRESENTATION, AND THAT THE POINT, THE DEFENSE ATTORNEY WITHIN THREE DAYS RETAINED DRE LIZ BETH MA HE McMAHON THE TRIAL COURT FOUND WAS EMINENTLY QUALIFIED MENTAL

HEALTH EXSNEERT JUST TO
CLARIFY THE REASON THAT
BERLIN HAD NOTIFIED HIM THAT
HE COULDN'T GET INVOLVED
WASN'T BECAUSE HE FOUND
SOMETHING THAT WAS
DETRIMENTAL BUT JUST --

>> TOO MUCH -- THAT WAS HIS
TESTIMONY, WAS THAT HE WAS
HANDLING WAY TOO MANY
CAPITAL CASES AT THE TIME.

>> AT THE POINT McMAHON WAS
HIRED WHEN WAS THAT IN RE--
RELATIONSHIP TO --

>> ORIGINALLY, IT WAS --
ONLY A MONTH BEFORE THE
TRIAL BUT THE TRIAL SQUINTLY
GOT CONTINUED SIX MORE
MONTHS SHE HAD PLENTY OF
TIME DIDN'T TESTIFY --

>> THIS WASN'T ON THE EVE OF
TRIAL, OR AFTER THE --
GUILTY PHASE WHEN --

>> NO.
NO.

>> DR. McMAHON WAS I THINK,
NOVEMBER -- I BELIEVE, MAYBE
OCTOBER OF 9 #\$\$, AND THE --
99 THE MARCH IN MARCH 2000.

>> I MEAN YOU STRONGLY THEN,
TAKE ISSUE WITH WHAT COUNSEL
HAS STATED AS TO JEE RIGHT.

>> -- WHETHER THIS WAS --

>> DR. McMAHON GIVE
EXTENSIVE LIST OF MATERIAL
THAT SHE WAS 36D WHICH HAD
DEFENSE -- PROVIDED BY
OCCURRENCE COUPES IN ORDER
TO REVIEW HAD EVERY MEDICAL
RECORD COUNSEL TALKED ABOUT
HOSPITAL RECORDS ON
MOTORCYCLE ACCIDENT THEY DID
INDEED HAVE THOSE RECORDS
THAT CAME OUT THE
EVIDENTIARY HEARING THEY
WERE A NUMBER OF WITNESSES
WERE IMPEACHED WITH THAT HE
WAS WEARING A HE WILL 34E9
THERE WAS NO MEDICAL HISTORY
OF ANYTHING, INDICATING A
HEAD INJURY THAT HE
BASICALLY TORN UP HIS ANKLE
I BELIEVE AND BEEN
TRANSFERRED TO KENTUCKY

HOSPITAL BUT -- GETTING
SIDETRACKED!!\$\$!!!!!!!!!!!!!!!!!!!!
SIDETRACKED.
BUT DR. McMAHON HAS PLENTY
OF TIME SHE INTERVIEWED I
BELIEVE THE I WAS FIVE
WITNESSES HERSELF SHE DID
NOT RELY ON DEFENSE ATTORNEY
STONE SHE TESTIFIED THAT SHE
DID HER OWN IN FACT SHE TALK
TO OTHER PEOPLE, BESIDES THE
NAMES GIVEN TO HER, BY
DEFENSE ATTORNEY STONE, SHE
TALKED TO THE APPELLANTS TWO
SISTERS THE MOTHER AND
FATHER, AND I BELIEVE
ANOTHER FAMILY MEMBER IF I'M
NOT MISTAKEN, BUT BASICALLY,
WHAT COUNSEL IS UP HERE
ARGUING WHAT COURT ALREADY
POINTED OUT WHAT THE LOWER
COURT FOUND IN IT'S ORDER
WAS EVERYTHING PRESENTED AT
THE EVIDENTIARY HEARING WAS
MORE OF THE SAME IT WAS JUST
ADDITIONAL LAY WITNESS
TESTIMONY REGARDING WHAT HAD
COME OUT AT THE ACTUAL
PENALTY PHASE IN THIS CASE,
COUNSEL MAKES ARGUES IN
BRIEF THERE IS A WEALTH OF
INFORMATION!!\$\$!!!!!!!!!!!!!!!!!!!!
INFORMATION, LAY WITNESSES
THOSE WHAT FWHE'S NEVER
CALLED EIGHT THE EVIDENTIARY
HEARING WITH EXCEPTION I
HAVE A PELLANT\$\$'S SISTER
KATHY NOEL THE MUCH YOUNGER
SISTER FIVE YEARS OLD WHEN
APPELLANT WAS PROVED FROM
THE HOUSE THAT SHE REALLY
DIDN'T HAVE THAT MUCH
DEALINGS WITH THE APPELLANT.
THE DEFENSE ATTORNEY, THAT
REPRESENTED COX, TESTIFIED
THAT HE WENT WITH THE MUCH
OLDER SISTER, AT THE PENALTY
PHASE BECAUSE SHE WAS ONLY A
YEAR AND HALF SEPARATED FROM
-- IN AGE AND SHE HAD WENT
THROUGH THE SAME UPBRINGING
SO TO SAY, COULD TESTIFY TO
IT MUCH BETTER THAN THE
YOUNGER SISTER.

>> WHAT WAS THE WHAT DOES THE RECORD SHOW AS FAR AS THE DEFENDANT'S COOPERATION WITH -- MITIGATION.

>> AT THE OUTSET DEFENSE ATTORNEYS -- ATTORNEY SAID HIS CLIENT WAS -- DIDN'T WANT HIS FAMILY INVOLVED THAT HAMPER HE HAD SAID HE DIDN'T WANT TO IMMEDIATELY INTO REPRESENTATION GO BEHIND THIS CLIENT'S BACK AND TALK TO FAMILY MEMBERS WITHOUT HIS CONSENT WOULD BE YOU KNOW GET RELATIONSHIP OFF ON THE WRONG FOOT SO HE WORKED ON TRYING TO TALK TO THE DEFENDANT INTO ALLOW TO GO TALK TO HIS FAMILY MEMBERS BASED ON THE QUESTIONNAIRE THAT THEY HAVE HIM FILL OUT WHEN THEY REPRESENT HIM THAT HE KNEW THAT APPELLANT'S GRAND MOTHERS WERE THE MOST LOVING!!\$!!!!!!!!!!!!

LOVING -- PERSON IN HIS BACKGROUND SO HE WORKED ON TO GET TO TALK TO HER, AND EVENTUALLY!!\$!!!!!!!!!!!!!!
EVENTUALLY, CLIENT LENT AND ALLOWED, THAT AND AT WHICH POINT, ATTORNEY STONE WENT UP TO KENTUCKY, AND VIDEOTAPED!!\$!!!!!!!!!!!!!!
VIDEOTAPED, THE GRANDMOTHER!!\$!!!!!!!!!!!!!!\$
GRANDMOTHER'S -- TESTIMONY, ALSO MET WITH OTHER MEMBERS OF THE FAMILY THAT THE POINT IN TIME.

>> AT THE SAME POINT, WHERE SORRY, MR. COX'S ATTORNEY ALLEGES THAT THE DEFENSE ATTORNEY GOT DRUNK AND ONLY WAS THERE FOR A COUPLE OF DAYS, WHAT WAS WHAT REALLY HAPPENED IN THAT TIME PERIOD!!\$!!!!!!!!!!!!
PERIOD.

>> WELL, IT IS NEVER REALLY CLEAR NEVER REALLY CAME OUT EVIDENTIARY HEARING HOW LONG HE WAS IN KENTUCKY, IF THIS WAS THE TRIP THAT HE INDIVIDUAL TAPED I BELIEVE

IT WAS -- INDIVIDUAL TAPED I
TRIED TO PIECE TAEG CAN'T HE
WOULD NEVER ASK POINT-BLANK
HOW MANY DAYS WERE YOU THERE
I THINK THERE IS ONE
INDICATION IN THE DIRECT AA
BELL WHERE HE SAYS WAS GOING
UP THERE FOR A WEEK BUT BE
THAT AS IT MAY HE WENT UP
THERE, AND THEY ALLEGED THAT
ONE NIGHT, HE WENT OUT AND
GOT DRUNK, WELL HIS
TESTIMONY WAS THAT WE WENT
TO THIS TAFSH ATTORNEY MEET
TWO WITNESSES I INTERVIEWED
THOSE WITNESSES AND IN THAT
ONE DRINK, I MEAN, IN THE
GRAND SCHEME OF THINGS, HIS
DRINK THAT NIGHT MEANT
NOTHING TO HIS INVESTIGATION!!\$\$!!!!!!!!!!!!!!!!!!!!!!
INVESTIGATION, HE ALREADY
TALKED TO THE TWO WITNESSES,
AND HE TESTIFIED THAT HE GOT
SICK BECAUSE OF FOOD THAT HE
WAS -- IN KENTUCKY NOT
BECAUSE OF EXCESSIVE ALCOHOL
HE HAD -- TO DRANK.
>> AGAIN THE \$\$COURT'S MINDING
-- FIND WAS THAT THE COURT
MAKE A MIND -- FINDING AS TO
WHETHER HE WAS INTOXICATED
WHILE UP THERE?
>> THE COURT DID NOT RULE ON
THAT SPECIFIC POINT THERE
WAS A CONFLICT IN THE
TESTIMONY THE COURT DIDN'T
ADDRESS IT.
I SUBMIT NOT REALLY RELEVANT
AS TO HIS INVESTIGATION.
>> SO LET'S GO ON THE LAY
WITNESS!!\$\$!!!!!!!!!!!!!!
WITNESSES, HE WAS TOOK A
WHILE FOR TRIAL COUNSEL TO
CONVINCE THE DEFENDANT, THAT
HE SHOULD -- CORRECT.
>> BE TALKING TO HIS -- IS
>> FAMILY MEMBERS.
>> FAMILY MEMBERS, AND SO AT
THE POINT WHAT IS THE ISSUE
ABOUT WHEN THERE WERE
WITNESSES THAT MR. STONE
NEVER TALKED TO AT ALL, HOW
COULD HE MADE A DECISION NOT
TO CALL WHATTES INNES THAT

EITHER HE DIDN'T KNOW EXIST
OWED.

>> WELL, HE TALKED TO --
MR. STONE INTERVIEWED, A
GIRLFRIEND THAT THE
APPELLANT HAD FROM AGE OF 16
TO 18 YOU ALSO TO O HAVE TO
REMEMBER BASICALLY FROM 18
ON HE WAS IN JAIL EVERYBODY
THAT WE ARE DEALING WITH IS
PRETTY MUCH THAT CHILDHOOD
WITNESS.

SO HE TALKED TO THE
GIRLFRIEND THAT HE LIVED
WITH WEN 16 AND 18 THAT HE
HAD FOR TWO YEARS MADE A
STRATEGIC DECISION NOT TO
CALL HER IDENTITY TALK TO
THE OTHER GIRLFRIEND THAT --
COX HAD FOR TWO MONTHS IN
AND HER WERE -- TWIRN SPIST!!\$\$!!!!!!!
SPISTER SUPPOSEDLY HAD
WEALTH OF INFORMATION THOSE
WITNESSES WERE NEVER
PRESENTSED AT EVIDENTIARY
HEARING OTHER TWHAN DR.
BERLIN INTERVIEWED THEM WITH
THAT IS ONLY TIME THEY COME
OUT DR. BERLIN\$\$'S TESTIMONY.

>> WE DON'T HAVE WHAT
TESTIMONY WOULD BE.

>> IN SENSE OF DR. BERLIN'S
TESTIMONY THESE WITNESSES
WOULD HAVE SAID HE WAS
SUFFERING AUDITORY AND
VISUAL HALLUCINATIONS WHICH,
DR. McMAHON WENT --
THOROUGHLY POINT THE OUT ALL
CONTRADICTIONS --

>> WHAT ABOUT THE ISSUE OF
THE -- WHAT -- WAS STATUTORY
MITIGATORS!!\$\$!!!!!!!!!!!!!!!!!!!!
MITIGATORS, PRESENTED AT THE
INITIAL SENTENCING.

>> NO.
DR. McMAHON FOUND THAT THERE
WERE NO STATUTORY MITIGATORS
APPLICABLE IN THIS CASE
SUBSEQUENTLY SENT ALL THE
INFORMATION IN THE
POSTCONVICTION WENT UP
INTERVIEWED HER BASICALLY
SAID NO NONE OF THIS CHANGES
MY OPINION EITHER ALL THIS

INFORMATION THAT YOU HAVE
GATHER!!\$\$!!!!!!!!!!!!
GATHERED.

>> IRONIC, BERLIN TOO BUS TO
TESTIFY GOT McI MEAN NOW
COMES BACK, AND
POSTCONVICTION SAID OH WELL,
OF COURSE HE HAD THESE
MITIGATORS!!\$\$!!!!!!!!!!!!!!
MITIGATORS, I MEAN I -- DID
THE I'M -- B -- TRIAL COURT
VERY, VERY THOROUGH ORDER.
WHAT -- WHAT WERE THE TRIAL \$\$
COURT'S CONCLUSION HE ON THE
-- ON THE ISSUE OF WHAT HE
WAS WHETHER HE WAS DEFECTIVE
AND IN NOT OR JUST --

>> THE TRIAL JUM FOUND THAT
THE DEFENSE ATTORNEY WAS NOT
IN EFFECT -- BASICALLY
SAYING COUNSEL WAS RELYING
ON THE \$\$DEFENDANT'S OWN
WISHES!!\$\$!!!!!!!!!!!!
WISHES, HAND TO INTERVIEW
AND HIS OWN STATEMENTS
YOU'VE GOT TO REMEMBER THE
DEFENDANT DENIED A LOFT THIS
HEAD TRAUMA A LOT OF THE
TRIAL \$\$COURT'S FINDINGS, AND
THE POSTCONVICTION WERE
BASICALLY, THE DEFENDANT WAS
DENYING THIS, TO -- BOTH DR.
McMAHON AND TO HIS TRIAL
COUNSEL HOW COULD THEY COME
UP WITH THIS HEAD TRAUMA
WHEN MEDICAL RECORDS DON'T
SUPPORT IT WHATEVER, SO IT
WAS ALL REJECTED FOR THOSE
KIND OF REASONS, AND ALSO,
MORE IMPORTANTLY, MAYBE IS
THE TRIAL JUDGE, RELIED ON
DR. McMAHON'S TESTIMONY AT
BOTH PENALTY PHASE AND
EVIDENTIARY HEARING, AND THE
EVIDENCE PRESENT -- PRESENT!!\$\$!!!!!!!!!!!!
PRESENTED AT PENALTY FACE
FROM DR. GUTMANN OTHER
WITNESS AT PENALTY PHASE
BASICALLY SAID MENTAL
MITIGATORS DON'T APPLY IN
THIS CASE YOU HAVE A VERY
COLD CALCULATING PERSON THAT
BASICALLY MADE HIS BUSINESS
TO DECISION IN PRISON TO

PROTECT HIS DRUG TRADE BY
DOING THIS KILLING, THERE IS
JUST NO PSYCHOSIS ANYTHING
APPLICABLE AT THIS TIME.

SO --

>> IS THIS WAS THIS ORDER
PREPARED BY THE STATE NOT
THAT IT MATTERS -- THE VERY,
VERY THOROUGH ORDER.

>> THIS THE JUDGE T.

MICHAEL JOHNSON WAS A
CAPITAL PUBLIC DEFENDER DID
A NUMBER OF DEATH PENALTY
CASES BEFORE BEING APPOINTED
TO THE COURT.

AND SO HE IS VERY THOROUGH
WITH THE CAPITAL -- CASES.

>> THE SECOND ISSUE COUNSEL
TALKED ABOUT WAS INEFFECTIVE
ASSISTANCE OF GUILTY FAZE
COUNSEL AS IT RELATED TO
QUESTIONING OF -- P\$SIGMAYNARD
COUNSEL GOT UP HERE
REITERATED ARGUMENTS MADE ON
DIRECT APPEAL WHEN THIS WAS
AN ISSUE --

>> WHAT WAS THE PURPOSE OF
CALLING HIM?

OF HIM BEING PRESENTED AS --

>> HE WAS THERE HE WAS THERE
DEFENSE THAT HE WAS MORE
RESPONSIBLE FOR THE STABBING
OF THE APPELLANT TESTIFIED
THAT MAYNARD WAS THE ONE
THEY WERE CALLING HIM, AND
THEIR MAIN GOAL I THINK TO
INTRODUCE RE-- EVIDENCE TO
SHOW HOW VIOLENT, MAYNARD
WAS THAT HE COULD HAVE BEEN
THE THAT ONE HAD DONE THE
STBBING THAT WAS THEIR GOAL
PRESENT HIS TESTIMONY.

AND THEY SUCCEEDED IN DOING
THAT THEY MANAGED TO GET OUT
THE -- EVIDENCE AS IT
RELATED TO MAYNARD BASICALLY!!\$\$!!!!!!!!!!!!!!!!!!!!

BASICALLY, MR. STONE
TESTIFIED AT THE EVIDENTIARY
HEARING WANTED TO SHOW THE
JURY THIS GUY WAS VERY
VIOLENT NASTY INDIVIDUAL
COULD HAVE DONE THIS
STABBING THAT WAS HIS GOAL I
THINK THE TRIAL COURT MADE A

GREAT POINT IN IT'S ORDER
AND I THINK JUST -- JUSTICE
CANTERO MENTIONED HAD
DEFENSE ATTORNEY NOT
QUESTIONED HIM IN THE MANNER
THEY DID THEY WOULD BE COME
HUNG HERE SAYING HE WAS
INEFFECTIVE FOR NOT
QUESTIONING IN A VIGOROUS
MANNER SO IT IS A YOU KNOW,
A CATCH 22 NO MATTER WHAT HE
DID ON HIS QUESTIONING.
>> WHAT WAS THE TRIAL COURT
FOUND THAT ACTUALLY THE
ANSWER WASN'T RESPONSIVE.
>> RIGHT.
>> TO -- WASN'T AS IF HE WAS
GOING ALONG, AND -- DIDN'T
KNOW --
>> TOTALLY NONRESPONSIVE
ANSWER THAT WAS ALL ADDRESS!!\$\$!!!!!!!!!!!!!!
ADDRESSED ON DIRECT APPEAL
IN THIS COURT FOUND THAT IT
WAS NOT FUNDAMENTAL ERROR IT
WAS CERTAINLY HARMLESS, THAT
MR. MAYNARD VOLUNTEERED THAT
INFORMATION MR. COX WAS IN
-- CORRECTIONAL
INSTITUTION TUTION TESTIFIED
HE HAD 10 OR 12 VIOLENT
FELONY CONVICTIONS, THE JURY
WAS AWARE THAT THIS WAS YOU
KNOW THAT HE WAS SERVING
TIME.
SO --
>> TRIAL COURT GAVE --
LIMITING INVUKKION ON THAT!!\$\$!!!!!!
THAT --
>> YES, HE THEY ASKED WAS
THERE INFORMATION WITH
REGARD TO THE TYPE OF
INSTITUTION TUTION WHERE THIS
OCCURRED!!\$\$!!!!!!!!!!!!!!
OCCURRED, OR WHERE HE WAS
HOUSED!!\$\$!!!!!!!!!!!!
HOUSED, AND MEDICATION
ANYTHING DEVELOPED ALONG
LINES TO.
>> THERE WAS TESTIMONY AT
THE TRIAL REGARDING THAT
THIS WAS A WHAT THEY CALLED
A SIGHT CAM A NUMBER OF
INMATES WERE ON MEDICATION
AT THIS -- IT WAS -- I

BELIEVE THEY SAID HOUSED #
00 AND THERE WERE UNIT WHERE
14U7B OF THEM INMATES OR SO
WERE I GUS HOSPITALIZED --
IN THE REST OF INMATES, SOME
OF THEM WERE SOME OF THEM
WEREN'T SO IT WAS IT WAS
NEVER CLEAR THAT YOU KNOW,
IT NEVER THE CONNECTION WAS
MADE THAT THIS -- DEFENDANT
WOULD BE ON -- PSYCH
MEDICATION!!\$\$!!!!!!!!!!!!!!!!!!!!
MEDICATION.

>> NO -- DID IT COME OUT
NECESSITY THE COURSE OF THE
TRIAL THAT THIS MAN WAS
RUNNING A DRUG BUSINESS.

>> THAT WAS -- THE THEFT OF
THE 500 DOLLARS!!\$\$!!!!!!!!!!!!!!!!!!!!\$500 HE HAD IN HIS
FOOTLOCKER WAS THE
MOTIVATION FOR THIS KILLING,
THAT HE BELIEVED THAT THE
VICTIM HAD STOLEN THIS MONEY
FROM HIS FOOTLOCKER.

WAS WHAT --

>> OF YOU EXHAUSTED ALL YOUR
TIME DIFFICULT GIVE YOU TWO
MINUTES -- TO JUST A COUPLE
MINUTES.

>> -- JUST VERY BRIEFLY
EVIDENTIARY HEARING AT PAGE
7 # OF DR. MACMAN 30s
TESTIMONY SHE SAYS THAT SHE
RELIED SOLELY ON PDSTONE TO
PROVIDE WITNESS FORCES HER
TO SPEAK WITH IN HER
INVESTIGATION!!\$\$!!!!!!!!!!!!!!!!!!!!
INVESTIGATION.

SO IT ALL EVOLVES WHEN P.D.
STONE DID AN ADEQUATE
INVESTIGATION!!\$\$!!!!!!!!!!!!!!!!!!!!
INVESTIGATION, DR. BERLIN
ORIGINALLY ON THE CASE P.D.
STONE OBVIOUSLY DIDN'T GIVE
HIM ENOUGH WITNESSES, NOW,
WITH THE INVESTIGATION
POSTCONVICTION THE FIVE
ADDITIONAL WITNESSES AS WELL
AS ORIGINAL --

>> OBVIOUSLY DIDN'T GIVE
P.D. -- BERLIN ENOUGH
WITNESSES?

.
>> EXACTLY.

>> BUT I THOUGHT BERLIN SAID HE DIDN'T HAVE TIME TO DO TO DO THIS CASE.

>> I BELIEVE -- I BELIEVE THERE WAS QUESTION BERLIN WHY IS HE CLEANING HIS TESTIMONY NOW HE IS NOT CHANGING ANYTHING. HE HAS HE HAS A FULL PICTURE OF WHAT HAPPENED WHEREAS DR. McMAHON HAD ONLY HALF THE PICTURE ALSO THESE WITNESS!!\$\$!!!!!!!!!!!! WITNESSES, YOU LOOK -- INCREDULOUS!!\$\$!!!!!!!!!!!! INCREDULOUS.

>> YOU MAY -- YOU MADE THE STATEMENT THAT THE REASON ONE -- BERLIN WASN'T GIVEN ALL OF THE INFORMATION WHERE!!\$\$!!!!!! WHEREAS BERLIN AS IND IT SAYS THAT HE GOVERNMENT THE CASE NOT BECAUSE HE WASN'T GIVEN INFORMATION BUT BECAUSE HE DIDN'T HAVE TIME TO DO THE CASE.

>> I DIFFICULT DID TEED IMPLICATION ONE OF THE QUESTIONS FROM THE COURT THAT PERHAPS, WHY IS BERLIN -- THERE WAS A SUGGESTION THAT BERLIN IS DIFFERENT NOW THAN IT WAS THEN, THE DIFFERENCE IS, THE ADDITIONAL WITNESSES THAT HE WAS -- WAS PROVIDED IF THERE WAS ANY QUESTION ABOUT WHEN HE HAD A PROPER OPINION ORIGINALLY, DR. BERLIN ALSO IN RELYING ON ADDITION WAITES INNES, HE AHE IS ALLOWED TO DO THAT THAT ISES WHAT EXPERT IS ALLOWED DO IN DEVELOPING AN OPINION, THE STATE WOULD HAVE THE BURDEN IF THESE WITNESSES THEY HAVE FREE TO TALK TO THEM IN FACT I BELIEVE, DEPOSED A NUMBER OF THEM, AND WAS ALWAYS FREE TO CALL THEM IN, IF THEY FOUND ANYTHING INCONSISTENT WITH WHAT WAS DR. BERLIN UPON WHICH DR. BERLIN RELIED IT IS NOT OUR BURDEN TO BUT THE RES BUTTRESS THE --

>> THANK YOU VERY MUCH OF
YOU EXHAUSTED ALL YOUR
ADDITIONAL TIME.

>> THANK YOU.

>> THANK YOU FOR THE
ARGUMENTS WE WILL TAKE THE
CASE UNDER ADVISEMENT.