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**JAMES ARMANDO CARD v. STATE OF FLORIDA
CASE NO. SC06-1383**

>> NEXT CASE ON CALENDAR IS
CARD VERSUS STATE.
>> MAY IT PLEASE THE COURT.
CLYDE TAYLOR ON BEHALF OF THE
APPELLANT JAMES ARMANDO CARD
AND ROBERT HARRISON.
WE'RE HERE ON DENIAL OF 851
AFTER EVIDENTIARY HEARING. PRIMARY
ISSUE OF WHETHER OR NOT THE
TRIAL COURT ERRED IN
DETERMINING THERE WAS NOT
STATUTORY MITIGATOR, NO
INEFFECTIVE ASSISTANCE OF
COUNSEL BY THE ATTORNEY WHO
HANDLED THAT CASE.
IT IS THE POSITION --
>> ARE YOU AND MR.^HARRISON IN
SAME GROUP OR HOW DID BOTH OF
YOU --
>> I'M SORRY, I'M HANDLING THE
ARGUMENT TODAY.
>> BUT YOU WORK WITH
MR.^HARRISON?
>> YES, MA'AM, I DO.
THANK YOU.
>> OKAY.
>> THE POSITION THAT THE APPELLANT
TAKES IS THAT FROM JUMP
STREET, WHEN WHEN THE JUDGE
DEDE COSTELLO IN PANAMA CITY,
ON AUGUST 18th, '97, MR.^CARD
SHOULD GET A RESENTENCING WHICH
IS WHAT HER ORDER REFERENCED,
THAT SHE THEN APPOINTED THREE
WEEKS
LATER AN ATTORNEY WHO DID
NOT HAVE ANY OF THE BASIC
QUALIFICATIONS TO HANDLE
A DEATH PENALTY CASE?
HE HAD LIMITED TRIAL EXPERIENCE,
ABSOLUTELY NO ABA STANDARDS,
IN CONJUNCTION WITH DEATH
CASES?
>> WHAT THE ARGUMENT IS IS
THAT HE FAILED TO DO
INVESTIGATION OF MITIGATION
OF MENTAL HEALTH, SEEMS

LIKE HE -- VERY POOR ONE --
>> OUR POSITION IS THAT EVEN
THOUGH THERE WERE REAMS AND
REAMS AND REAMS OF PAPER THERE'S
NO DOUBT THAT HE SPENT HOURS OF
TIME LOOKING THROUGH 20, 18
YEARS' WORTH OF PAPERWORK,
IF YOU DON'T KNOW WHAT YOU
ARE LOOKING FOR IT IS
IRRELEVANT HOW MANY HOURS
YOU SPENT ON THE CASE.
AND IN THIS PARTICULAR CASE,
HE ADMITTED AT THE
EVIDENTIARY HEARING HE
REALLY DIDN'T REALIZE WHAT
STATUTORY MITIGATORS WERE.
I THINK WE CITED THAT AT PAGE
33 OF OUR BRIEF, HE WAS
ASKED SPECIFICALLY DID YOU
HAVE A -- "WERE YOU AWARE OF
STATUTORY MITIGATORS
INCLUDING EXTREME MENTAL OR
EMOTIONAL DISTURBANCE?"
"YES, BUT I DISREGARDED IT BECAUSE
I WAS PRESENTING HIM AS A
HUMANIZING FIGURE, HE ALWAYS
MAINTAINED INNOCENCE, THE
FACT A DEFENDANT IN A TRIAL
MAINTAINS INNOCENCE IN A
GUILT PHASE 15 YEARS LATER
SECOND PENALTY PHASE IS
TOTALLY IRRELEVANT.
YOU CAN PRESENT ALTERNATIVE THEORIES
TO A JURY, CERTAINLY HAVE THE
OBLIGATION TO SEEK THEM OUT.
>> BUT IN THIS CASE --
>> YES?
>> -- WE HAVE THE ATTORNEY
HAVING MULTIPLE PEOPLE LOOK
AT THIS DEFENDANT.
AND WASN'T THERE AN MRI
DONE, EEG, AND -- THEN WE
HAVE, ON THE OTHER HAND, AT
THIS POSTCONVICTION WE HAVE
AN EXPERT WHO REALLY DID NOT
EVEN EXAMINE THIS PARTICULAR
DEFENDANT.
TELL ME WHAT WAS
WRONG WITH THE INVESTIGATION
AND THESE MULTIPLE PEOPLE
WHO LOOKED AT THE
DEFENDANT AT THE TIME OF THE
ACTUAL TRIAL.
>> VERY WELL, IN CONJUNCTION

WITH THE -- TALKING ABOUT
THE TIME OF THE RETRIAL?

>> RETRIAL.

>> THOSE PERSONS HAD THE
SAME RECORD -- AVAILABLE TO
THEM THAT DR. MOSMAN HAD
AVAILABLE TO THE DEFENSE,
AND BASICALLY GOES ALL THE
WAY BACK TO THE FIRST TRIAL
WHERE THERE WAS A TESTIMONY,
OF AN EXPERT, AT THE PENALTY
PHASE.

IN THAT CASE DR. HORD
OPINED THAT THERE WAS
EXTREME MENTAL DISTURBANCE
WITH THIS DEFENDANT, AND THE
-- ELSE WENT INTO A COMPANY
OTHER NONSTAT
MITIGATORS, THERE WERE
REPORTS AVAILABLE TO BOTH
DOCTOR HANEY, WHICH WAS THE
STATE'S -- THE DEFENSE,
MR. WHITTON'S EXPERT FROM
CARTWRIGHT, RAY CARBONELL,
SMITH OVER YEARS SHOWING ALL
SORTS OF PROBLEMS WITH THIS
DEFENDANT, LATE IN THE GAME
MR. WHITTON DID REQUEST,
WHICH I THINK WAS AT THE
TIME THE BEST THEY HAD, AN MRI
TO BE DONE IN CONJUNCTION
WITH POSSIBLE ORGANIC BRAIN
DAMAGE.

AN MRI WAS IN FACT PERFORMED
THAT CAME BACK NORMAL, BUT --

>> -- DR. MCCLAREN

WASN'T HE HIRED TO ASSIST
WITH THE MENTAL HEALTH
INVESTIGATION, THEN WE HAD
DR. ELVERY, DID MRI AND EEG'S.
NOT ONLY DID HE REVIEW ALL
THE RECORDS FROM THE FIRST
PENALTY PHASE, BUT HE MET --
ALONG WITH DR. HANEY WITH
DR. CARBONELL, CONCLUDED HER
TESTIMONY, WOULD NOT BE GOOD,
I GUESS WHAT I'M CONCERNED ABOUT,
WE ALWAYS -- WHEN CONCERNED
SOMEBODY IS NOT EXPERIENCED WE
ARE GOING TO REALLY SCRUTINIZE THAT
MORE.

BUT I WAS NOT ONLY IMPRESSED
WITH THE AMOUNT OF
INVESTIGATION THAT WAS DONE,

BUT THAT UNLIKE THE FIRST PENALTY PHASE THE DEFENSE LAWYER PUT ON VERY QUALITATIVE LAY WITNESS MITIGATION FROM FAMILY MEMBERS, AND HE HAD A COHERENT THEORY OF DEFENSE THAT WAS TO ME FAR MORE INTELLIGENT THAN THE FIRST FAILED PENALTY PHASE, AND I MIGHT ADD THAT NOT ONLY DID HE HAVE THAT HISTORY, BUT HE HAD THAT ANSWER, FIRST PENALTY PHASE THERE WAS AN EVIDENTIARY HEARING ON INEFFECTIVE ASSISTANCE OF THE FIRST PENALTY PHASE COUNSEL, NOT THAT -- OTHER EVIDENCE WAS PUT ON, THE TRIAL JUDGE IN THIS COURT DIDN'T FIND ANY INEFFECTIVE ASSISTANCE IN THE FIRST PHASE WHEN NO LAY WITNESSES WERE PUT ON, THIS IS THE CONTEXT THIS CASE COMES TO US.

SO THERE IS MASSIVE, AMOUNT OF INFORMATION, THERE IS NOTHING YOU HAVE UNCOVERED THAT THIS DEFENSE LAWYER DIDN'T UNCOVER, YOU HAVE NOW ADDED TWO EXPERTS THAT REALLY SAY THINGS THAT AREN'T QUITE IMPRESSIVE TO ME IN TERMS OF ESTABLISHING MUCH OF ANYTHING.

>> I GUESS TO TRY TO RESPOND TO YOUR QUESTION, MY BACKGROUND IS PRIMARILY TRIAL.

WHEN I LOOK AT THIS CASE DETERMINE WHAT WAS PRESENTED TO THE SECOND JURY THE PANAMA CITY JURY YOU WENT TO BAT BASICALLY WITHOUT EVEN TRYING TO BRING BEFORE THEM ANY STATUTORY MITAGATORS. THAT WAS OFF THE CHARTS, ALL THAT THIS LAWYER SAID HE WAS TRYING TO DO WAS QUOTE HUMANIZE THIS DEFENDANT IN CONJUNCTION WITH THE CASE.

>> LET ME LOOK AT WHAT KIND OF MURDER THIS WAS. THIS WASN'T SOME TYPE OF

SPUR-OF-THE-MOMENT YOU KNOW,
SEXUAL BATTERY THAT ENDED UP
ESCALATING.

THIS WAS SOMEBODY WHERE A
ROBBERY OF THE -- OF MONEY
AND COMING BACK AND PAYING
OFF THE PERSON.

I'M A BIG BELIEVER IN
LET'S LOOK FOR STATUTORY
MITIGATION THAT IS GOING TO
BE IMPRESSIVE, HE HAD AN IQ OF
1 2 --

>> NOT A TYPICAL DEFENDANT,
AND WHERE IS THE EXTREME
EMOTIONAL DISTRESS WHERE
IS THAT GOING TO COME FROM
YOU CAN'T JUST SAY
THAT THAT IS GOING TO
SAVE THE DAY WHEN YOU HAVE
GOT THIS HORRENDOUS CRIME
THAT OCCURRED.

>> I THINK YOU HAVE GOT TO
GO BACK AND LOOK AT DR.
HORD'S ORIGINAL TESTIMONY
THAT FIRST TRIAL, DR. CARBONELL,
STEVE VAILS.

>> WE LOOKED, THAT WASN'T
SUFFICIENT BUT IT DIDN'T
PRODUCE ANY STATUTORY
MITIGATION AFTER THE FIRST
PENALTY PHASE, DID IT?

>> FROM THE JUDGE'S ORDER
WRITTEN, PREPARED BY THE
STATE SUBSEQUENTLY
REJECTED, THAT IS WHY WE ARE
HERE, BUT YOU HAVE TO GO
BACK YO THAT FIRST JURY, TAKING
INTO ACCOUNT YOUR HONOR'S
CHARACTERIZATION OF HOW THAT
OCCURRED, WITH ONLY ONE
WITNESS THAT VOTE WAS 7 TO 5.
THERE WAS A 7 TO 5 VOTE OUT
OF THAT WEST FLORIDA JURY,
WITH ADMITTEDLY LIMITED
TESTIMONY, PRESENTED
THAT JURY, YET A NUMBER OF
YEARS LATER IN PANAMA CITY,
FLORIDA, WITH NO ATTEMPT AT
STATUTORY OR STATUTORY
MITIGATORS, AND ALBEIT THERE
WERE A FEW WITNESSES THAT
TESTIFIED, AND THEY
TALKING ABOUT HIM BEING A
HUMANIZED PERSON, VOTE TURNS

OUT 11 TO 1, SO WE NEVER --

>> YOU SAY IF THIS DEFENSE
LAWYER HAD DONE EXACTLY THE
SAME THING AS WAS DONE AT
THE FIRST PENALTY PHASE THAT
WE WOULD HAVE TO FIND THAT
HE WAS -- THAT HE WAS --

>> I CAN'T SAY THAT BECAUSE
WE HAVE A JURY ISSUE, AND I
WOULD CERTAINLY BE REMISS IF
I WAS TRYING TO PREDICT WHAT
A JURY WOULD DO, BUT I'M
SAYING THAT IF -- IF YOU TAKE A
LOOK AT ALL OF THE -- THE
FOOTPRINT THAT WAS
AVAILABLE, FOR AN
EXPERIENCED LAWYER, AT THE
TIME OF MR. CARD'S SECOND
TRIAL, USING AS AN EXAMPLE
THE 3850 THAT HAD BEEN
PREPARED BY MR. NULLIS YOUR
HONOR REFERRED TO, HAD A SLEW
OF -- GUIDELINES, IF YOU WILL,
TO PRESENT AT A TRIAL, HAD
-- THE STATUTORY MITIGATORS
THEN ATTEMPTED TO BE
INTRODUCED ALONG WITH A
SPIN-OFF FROM UNDER THE
UMBRELLA OF A STATUTORY
MITIGATOR, OTHER NONSTAT, WHO
CAN SAY WHETHER OR NOT THAT
JURY VOTE WOULD HAVE BEEN
ANOTHER 7 TO 5?

>> LET'S LOOK AT THE
STATUTORY MITIGATORS THAT
YOU CLAIM ARE OUT.
OBVIOUSLY, THAT SHOULD HAVE BEEN
PRESENTED.

YOU OBVIOUSLY ARE CLAIMING
THAT THERE IS AN AGE
STATUTORY MITIGATOR;
CORRECT?

>> YES.

>> THIS MAN IS 34 YEARS OLD.

>> AT THE TIME OF THE
OFFENSE.

>> AT THE TIME OF THE
OFFENSE.

HE HAS NOTHING CLOSE TO ANY
KIND OF LOW IQ, AND SO WHERE
IN THE WORLD WOULD WE HAVE
HAD EVIDENCE, WHERE IS THERE
EVIDENCE HERE THAT THIS MAN
WAS -- WOULD FIT INTO THE AGE

MITIGATOR?

>> ONE OF THE EARLY REPORTS AVAILABLE SHOWED AN IQ OF 78 FROM HIS HIGH SCHOOL EVALUATION, WHICH WOULD HAVE BEEN AT AN AGE WHEN HE IS --

>> -- IS THAT THRESHOLD --

>> I DON'T THINK THERE IS A BRIGHT LINE RULE ON IT, BUT THE COURTS ASKING WHAT THERE WOULD HAVE BEEN TO PRESENT, HE HAD A LOW IQ AT LEAST AT ONE TIME, AND IT RANGED ALL THE WAY UP TO 130, WITH A HALF A DOZEN PEOPLE OPINING THAT DIFFERENT IQ'S --

>> IF WE ACCEPT YOUR 75 IQ, WHAT DO WE HAVE TO GO WITH THAT, THAT WOULD DEMONSTRATE THIS MAN WAS FUNCTIONING AT SOME KIND OF 18 OR BELOW AGE LEVEL?

>> ACCORDING TO DR. CARTWRIGHT'S REPORTS IN THE FILES AVAILABLE TO COUNSEL AT TRIAL HE HAD PROBLEMS WITH IMPULSE CONTROL, WITH SELF-DESTRUCTIVE -- COULD NOT HAVE ANY MEANINGFUL INSIGHT OR PLANNING ABILITIES, THE SAME THING.

>> AND THAT DEMONSTRATES YOU HAVE A LOW -- AREN'T THERE --

>> EMOTIONAL AGE OF CERTAINLY UNDER 34, AND PERHAPS AN EMOTIONAL AGE, A LOT LESS THAN THAT WHERE YOU CANNOT CONTROL --

>> "PERHAPS," YOU KEEP SAYING "PERHAPS."

>> ON BEHALF OF MY CLIENT I OUGHT NOT TO DO THAT SO I APOLOGIZE, BUT YOU KNOW THAT WOULD BE THE ARGUMENT THAT WOULD BE PRESENTED, YOU WOULD WANT TO PUT IN FRONT OF THE JURY, LET THEM --

>> WHY ISN'T ALL THIS -- REALLY, WE ARE TALKING ABOUT A STRATEGIC DECISION THAT COUNSEL MADE AFTER

INVESTIGATING THE
POSSIBILITY OF USING MENTAL
HEALTH MITIGATORS AFTER
SPEAKING WITH DOCTORS,
REJECTED THAT, AND MAKING THE
STRATEGIC DECISION NOT TO
PRESENT THAT EVIDENCE.

>> JUDGE COSTELLO SORT OF
REFERENCED THAT IN A
PASSING WAY IN HER ORDER
DENYING RELIEF.

MY RESPONSE WOULD BE I DON'T
SEE HOW YOU CAN CREDIT THAT AS
BEING A STRATEGIC DECISION IF YOUR
BELIEF, AS TESTIFIED TO BY
THE LAWYER, WAS BECAUSE HIS
CLIENT AT LEAST ON THE
RECORD, FOR ALL HE KNEW, HAD
NEVER ADMITTED TO THE
OFFENSE.

HE COULDN'T COME IN
WITH A STATUTORY MITIGATOR
THAT THE OFFENSE WAS
COMMITTED UNDER EXTREMELY
MENTAL OR EMOTIONAL
DISTURBANCE.

THAT IS SIMPLY
NOT THE CASE.

SO IF YOU ARE
LOOKING AT IT FROM THE WHOLE
WRONG PERSPECTIVE, YOU ARE
TRYING TO FIND THE -- THE
CIRCUMSTANCES TO PUT IN THE
CIRCULAR HOLE TO PROVE A
MITIGATOR, YOU'VE GOT IT IN
FRONT OF YOU, YOU DON'T
REALIZE THEY ARE THERE, WHAT
THEY CAN PROVE THE DEFENDANT
IS DEPRIVED BECAUSE HE NEVER
HAS THAT OPPORTUNITY TO
PRESENT IT TO THE JURY.

>> DIDN'T HE TESTIFY THAT HE
-- WELL, DIDN'T DR. HANEY
TESTIFY THAT HE AND COUNSEL
INTERVIEWED DR. -- MET WITH HER,
THEY AGREED AFTER SHE WOULD
MAKE A POOR WITNESS?

>> YES, THAT IS EXACTLY
WHAT THE TESTIMONY WAS, AND
DR. HANEY MADE THAT
ASSESSMENT ALONG WITH
MR. WHITTON.

>> DR. CARBONELL, OF COURSE,
DISTINGUISHED PROFESSOR FROM

FLORIDA STATE HAD ENTIRE
BACKGROUND INFORMATION --
>> STRATEGIC DECISION TO NOT
USE HER DOESN'T ELIMINATE
WHY THEY WOULD NOT GET
SOMEONE ELSE WHO COULD
EVALUATE AND DIAGNOSE, WHICH
DR. HANEY COULD NOT DO.
HE MADE THAT EXTREMELY
CLEAR.

>> ONE OF THE FINDINGS,
FIRST OF ALL, WHATEVER JUDGE
COSTELLO DID OR DIDN'T DO I
FOUND HER ORDER EXTREMELY
COMPREHENSIVE, WITH SOME
PRETTY -- FINDINGS, ONE
THING THAT SHE SAID, TELL ME
IF THIS IS CORRECT OR NOT,
DEFENDANT REFUSED TO BE
EVALUATED BY HIS OWN EXPERTS
FOR THESE PROCEEDINGS.

IS THAT CORRECT?

THAT'S TRUE.

>> OKAY.

HOW DO WE IN
LOOKING AT -- YOU KNOW WHAT
YOU ARE SAYING IS SHE MAY BE --
IF IT HAD BEEN PRESENTED
THIS WAY 7 TO 5, 20 YEARS
AGO, WOULD HAVE BEEN 6 TO 6
BUT ALL -- OUR VIEW IS
WHETHER -- OUR PREJUDICE ISSUE
IS WHETHER OUR CONFIDENCE IS
UNDERMINED.

NOW -- TO SAY

THIS DEFENDANT IS TRYING
TO ESTABLISH A MENTAL HEALTH
MITIGATION WON'T EVEN BE
EXAMINED BY YOUR EXPERT AT
THIS EVIDENTIARY HEARING,
WHAT KIND OF CREDIBILITY
DETERMINATION DO WE GIVE TO
TWO EXPERTS THAT COME IN 30
YEARS AFTER THE CRIME TO
TALK ABOUT SOME VAGUE TERMS,
MENTAL HEALTH MITIGATION?

>> I THINK YOU HAVE TO GIVE
THEM CREDIT IF THEY HAVE IN
FACT REVIEWED THE SAME
DOCUMENTS THAT PRESUMABLY
DR. HANEY LOOKED AT, COULDN'T
MAKE DIAGNOSIS BASED ON --

>> WHAT IS THE -- EFFECT OF
WHAT THEY SAID TO THAT, THE

BEST AND WORST OF --

>> WHAT DR. --

>> WHAT THEY SAID

ABOUT THESE MENTAL HEALTH
MITIGATIONS.

>> THAT JAMES ARMANDO CARD,
FROM ELEMENTARY AGE, SHOWED
ALL SORTS OF PROBLEMS, MENTAL
DISTURBANCE PROBLEMS, THAT HE
WAS CONSIDERED BIZARRE,
CRAZY, HOSPITALIZED, HAD FIVE --
DEPENDING ON WHICH REPORT
YOU READ, BETWEEN 3 AND 5
SELF-INFLICTED WOUNDS, THREE
GUNSHOTS, MAYBE FIVE GUNSHOTS
AS WELL AS KNIFE WOUNDS, HE
WAS DISCHARGED THE SECOND
TIME FROM THE MILITARY
BECAUSE OF PSYCHIATRIC
PROBLEMS, HE HAD BEEN
HOSPITALIZED REPEATEDLY
THROUGHOUT HIS LIFE UP TO
THE TIME OF THE OFFENSE.

>> THAT IS WHAT DR. HANEY
DOCUMENTED HIS HISTORY AND
BACKGROUND, DR. HANEY WAS
AWARE OF ALL THIS.

>> BUT DR. HANEY SAID HE
COULD NOT DIAGNOSE WHETHER
OR NOT THIS IN FACT WOULD BE
A STATUTORY AGGRAVATOR, FOR
EXAMPLE, OR MITIGATOR, HE
COULDN'T DO THAT.

HE WAS SIMPLY THERE TO
ASSIST THIS LAWYER, TO
HUMANIZE THE DEFENDANT.
SO OUR POSITION IS THAT WE
JUST NEVER HAD A SHOT, WE --
THAT JURY, AND IT STARTS WITH
THE JURY, OUR POSITION, THE
APPELLANT'S POSITION THAT
EVERYTHING STARTS WITH THE
JURY, ONCE YOU ARE GIVEN THAT
NEW TRIAL.

AND THAT YOU HAVE AN
OBLIGATION TO PRESENT
EVERYTHING TO THE JURY, YOU
ARE DOWN 5-0 BASED ON AN
EARLIER CASE, FIVE STATUTORY
AGGRAVATORS FOUND, YOU NEED
TO GO IN FIGHTING AND NOT --

>> I'M SORRY.

>> JUST ONE QUICK -- ABOUT
STRATEGY, I NOTICE THAT YOU

MADE A REQUEST FOR DNA, THAT
MOTION WAS DENIED.
YOU NOTICED IT FOR APPEAL BUT DID
NOT ADDRESS IT IN YOUR
BRIEF.

CAN YOU JUST
EXPLAIN THAT FOR ME?
HAVE YOU ABANDONED THE DNA CLAIM?
>> WE DID.

THAT IS BEING
HANDLED IN A DIFFERENT
MANNER AT THIS TIME, NOT
RAISED AT THIS POINT, HAS
BEEN ABANDONED IN THE BRIEF.
THANK YOU.

>> OKAY.
THANK YOU, JUDGES.

>> MR. WHITE.

>> THANK YOU, YOUR HONOR.
STEPHEN WHITE REPRESENTING
STATE OF FLORIDA APPELLEE.

>> I'M GOING TO PLAY DEVIL'S
ADVOCATE.

>> YES, MA'AM.

>> YOU HAVE -- WAS THIS THIS
LAWYER'S FIRST DEATH PENALTY
CASE?

>> FIRST CASE THAT HE TRIED
TO DEATH PENALTY.

HE TESTIFIED HE DID HAVE TWO
OTHER CAPITAL CASES BUT THE
STATE WAS NOT SEEKING DEATH
IN THOSE CASES.

HE DID TRY

BETWEEN 12 AND 24 OF THE
JURY TRIALS ATTENDED I THINK
SOME -- HE TESTIFIED TO --

>> QUALIFIED, QUALIFIED OR
UNQUALIFIED ON THE -- STANDARD?

>> I DON'T KNOW THE
TECHNICAL ANSWER TO THAT,
YOUR HONOR.

I KNOW THE TRIAL
COURT DID ADDRESS HIS
QUALIFICATIONS AT THE TIME,
AND IT WAS INDICATED AT
THAT TIME THAT -- THAT HE
WAS QUALIFIED BY THE TRIAL
COURT, BUT IN TERMS OF THE
DETAILED SPECIFICATIONS, ABA,
I DO NOT KNOW THE ANSWER TO
THAT QUESTION.

>> IT SEEMS TO ME THAT YOU
ARE HERE IN FLORIDA -- AND

YESTERDAY WE HAD A CASE
WHERE THE ISSUE WAS -- SAN
FRANCISCO, HERE, SAN
FRANCISCO AND YET, A
PROFESSOR OF PSYCHOLOGY THAT
IS NOT A PSYCHOLOGIST, PSYCHIATRIST,
I DON'T RECALL, I MEAN I RECALL IN
CASES WHERE SOMEONE DOESN'T
WANT BAD STUFF TO COME IN,
YOU KNOW, ABOUT SOMEBODY'S
PRIOR VIOLENT BEHAVIOR,
TRYING TO LIMIT IT.

>> RIGHT.

>> BUT IN TERMS OF -- YOU
WOULD AGREE THAT JUST BECAUSE
HE HAS DENIED THAT HE
COMMITTED THE CRIME DOESN'T
PREVENT SOMEBODY FROM TRYING
TO SHOW HIS MENTAL STATUS
AND HIS WHOLE HISTORY OF
BEING MENTALLY UNSTABLE.

>> AND IN FACT -- DEFENSE
COUNSEL WHITTON DID FULLY
EXPLORE THAT, YOUR HONOR, WITH
AN EYE TOWARDS POSSIBLY DOING
THAT HAVING CONSULTED WITH,
CONSIDERED, EXPLORED WITH
FIVE MENTAL HEALTH EXPERTS,
INTERVIEWED DR. HORD,
INTERVIEWED WITH DR. HANEY,
INTERVIEWED DR. CARBONELL
OBTAINED EVALUATION OF DR.
MCCLAREN, A POSSIBILITY OF
ORGANIC BRAIN DAMAGE,
FOLLOWED UP WITH AN EEG, MRI
WITH THE NEUROLOGIST,
ULTIMATELY HIRED THE WEST
COAST EXPERT, BY THE WAY,
MOST OF THE EVIDENCE WAS
FROM THE WEST COAST, THE
DEFENDANT GREW UP ON THE
WEST COAST.

AND IN FACT PAM ROGERS, HIS
MENTAL HEALTH INVESTIGATOR,
WAS ALSO FROM THE WEST COAST,
I BELIEVE THE OREGON AREA THERE
WAS EVIDENCE
RECORDS, ET CETERA, THE
NEIGHBORHOODS, SO ON, WERE ON
THE WEST COAST, THERE WERE
REASONS FOR HIRING WEST
COAST EXPERT.

PAM ROGERS WAS THE PERSON WHO LED
MR. WHITTON TO DR. HANEY,

SHE HAD RECOMMENDED DR. HANEY VERY -- VERY, VERY POLITE.

>> DR. HANEY TESTIFIED IN OTHER DEATH PENALTY CASES? I BELIEVE, I BELIEVE THAT IS CORRECT, I -- I KNOW HE TESTIFIED AS TO THE NUMBER OF DEATH PENALTY CASES BUT I CAN'T GIVE YOU A FIGURE.

>> MAY I FOLLOW UP QUICKLY WITH --

>> HE HAS DONE EXTENSIVE RESEARCH IN TERMS OF THE IDEOLOGY OF CRIMINAL BEHAVIOR, INCLUDING HOMICIDES, THAT IS WHAT LED HIM TO -- TO APPEAL TO JEFF WHITTON, IT IS NOT LIKE THIS IS A FIELD ALIEN TO HIS LEGAL -- HIS RESEARCH. HE HAD DONE SUBSTANTIVE RESEARCH AND PUBLISHED IN THE AREA OF THE RISK FACTORS THAT GO INTO SOMEONE BECOMING A MURDERER.

>> WHY DID MR. WHITTON TESTIFY THAT HE DID NOT USE DR. HORD, WHO WAS ALMOST SUCCESSFUL -- BY THE APPELLANT'S ARGUMENT IN THE FIRST CASE WHY DIDN'T HE GO BACK AND USE DR. HORD?

>> THERE WERE TWO MAIN REASONS, YOUR HONOR. JEFF WHITTON TESTIFIED HE DID NOT USE DR. HORD.

ONE IS THAT WHEN HE -- WHEN HE, JEFF WHITTON, INTERVIEWED DR. HORD, DR. HORD KEPT TALKING ABOUT THE RAPE CHARGE -- AND KEPT BRINGING UP THE RAPE CHARGE.

JEFF WHITTON SAID THERE IS NO RAPE HERE. IF YOU GO BACK TO THE 1999 RECORD, JEFF WHITTON WENT OVER THE VICTIM'S BLOUSE WAS TORN, HE WENT OUT OF HIS WAY TO FILE A MOTION IN LIMINE TO EXCLUDE ANY POSSIBLE MISREPRESENTATION OF ANY SEXUAL BATTERY, HE SAID WAIT A MINUTE, THERE IS NO SEXUAL BATTERY IN THIS

CASE.

IN FACT IF YOU -- IF YOU
VIEW THAT AS ENLIGHTENED BY
HIS OTHER WORDS THAT HE DID
TO EXCLUDE ANY REFERENCE TO
IT, SO DR. HORD KEEPS
REFERRING TO SEXUAL BATTERY.

>> HE REFERRED TO IT IN THE
FIRST TRIAL?

TO A RAPE?

>> I DON'T BELIEVE, I DID
READ DR. HORD'S TESTIMONY IN
THE FIRST TRIAL.

I DIDN'T SEE ANY
REFERENCE TO THAT, YOUR
HONOR, AT ALL IN THE FIRST
TRIAL.

BUT JEFF WHITTON BROUGHT IT
UP, "WAIT A MINUTE, THERE IS NO
SEXUAL BATTERY IN THIS CASE."

THEN DR. HORTON RESPONDS,
"THAT DOESN'T MAKE ANY
DIFFERENCE TO MY DIAGNOSIS."

BUT THE SECOND REASON
GOES BACK TO THE STRATEGY
THAT DEFENSE COUNSEL CHOSE
TO HUMANIZE THE DEFENDANT.
OF COURSE, DR. HORD'S WHOLE
THEME IN THE FIRST TRIAL,
SOCIOPATHIC PERSONALITY,
ANTISOCIOPATHIC
PERSONALITY OF THE --
DEMONSTRATE CONFLICTED
IN WITH THE HUMANIZING THE
PUTTING MULTIPLE
WITNESSES ON THE STAND.

I LISTED IN THE BRIEF, MOTHER,
BROTHER-IN-LAW, CATHOLIC
PRIEST, DIRECTOR, CATHOLIC
CHARITIES, ET CETERA, ET
CETERA.

>> WERE THEY ABLE TO KEEP
OUT AGAIN -- WE ALWAYS I'M
SURE, EVERY CASE DEFENSE
LAWYER WANTS TO HUMANIZE THE
DEFENDANT, I MEAN THE WHOLE
IDEA I GUESS THAT YOU WANT
THAT PERSON NOT TO LOOK LIKE
THE MONSTER THAT THEY ARE IN
COMMITTING A MURDER WITH
AS TO HERE IS THE WHOLE
STORY, SO WHAT WAS IT THAT
BY NOT PUTTING ON MENTAL
HEALTH MITIGATION THAT -- WAS

THERE SOMETHING THEY SUCCEEDED
KEEPING OUT ABOUT THIS
DEFENDANT?

>> ANTISOCIAL PERSONALITY
DISORDER THE TRIAL COURT
CHARACTERIZED, THIS COURT
ADDRESSED MULTIPLE TIMES IN
ITS OPINIONS IN TERMS OF
REASONABLENESS OF USING
HUMANIZING STRATEGY --

>> THIS IS A 34-YEAR-OLD IQ
SOMEWHERE BETWEEN 78 AND
140.

>> MAYBE 130, I THINK, DR.
RAY SAID COULD BE 130.

>> IN ANY EVENT, VERY HIGH --

>> AGAIN, THIS IS SO --
WE'VE GOT THAT 34 YEARS
OLD, DID HE HAVE A LIFELONG
HISTORY OF COMMITTING VIOLENT
CRIMES?

SO SOME RECORDS THEY
WOULD RELY ON SHOWED THAT IT
WAS PRIMARILY THEFT AND
BURGLARY, BUT HE ALSO HAD AN
ASSAULT-AND-BATTERY ARREST, A
CARRYING CONCEALED WEAPON
ARREST, THE OREGON REPORT
INDICATED THAT AT THAT TIME,
THAT HE WAS UNDER ARREST FOR
CARRYING -- A CONVICTED FELON
IN POSSESSION OF A FIREARM.

>> BUT NOT PRIOR VIOLENT
FELONIES.

>> NOTHING THAT QUALIFIED AS
AN AGGRAVATOR.

>> SO WE KNOW WAS IT -- THEY
SUCCEED BY NOT PUTTING ON
MENTAL HEALTH MITIGATION,
KEEPING OUT LOTS OF NEGATIVE
THINGS?

I'M TRYING TO UNDERSTAND
THAT PART, WHETHER THAT WAS
PART OF THE STRATEGY -- KEEP
OUT REALLY SOME REALLY BAD
THINGS ABOUT THIS DEFENDANT?

>> MY FIRST POSITION, YOUR
HONOR, IS THAT DEFENSE
COUNSEL REASONABLY
EXPLORED THIS OTHER AVENUE,
REJECTED THIS OTHER AVENUE,
HAVING INTERVIEWED DR. HORD
AND DR. CARBONELL, CAME TO
THE CONCLUSION I WILL HUMANIZE

THE DEFENDANT, DID A MASTERFUL
JOB USING DR. HANEY, BY
NOT USING A MENTAL HEALTH
CLINICIAN WAS ABLE TO AVOID
ANTISOCIAL PERSONALITY
DISORDER MULTIPLE DIAGNOSES
IN THE RECORD, AND DR. HANEY
WAS ABLE TO CHERRY PICK FROM
THE DEFENDANT'S BACKGROUND,
IN TERMS OF THESE RISK
FACTORS, ARTFULLY AVOID
HAVING TO BRING IN
ANTISOCIAL PERSONALITY
DISORDER, A MASTERFUL
TACTIC, IN MY OPINION.

>> I THINK IT WAS MASTERFUL --
IF IT HAD GONE FROM THE
FIRST TRIAL 11 TO 1, AND
THIS ABOUT AS 7 TO 5, I KNOW
WE CAN'T ALWAYS BE --
OKAY, BUT, THERE IS -- THERE
IS SOMETHING ABOUT 7 TO 5,
11 TO 1 AT LEAST ON ITS
FACE, LOOKS LIKE THIS WAS
LESS SUCCESSFUL.

>> INTERESTING TWIST TO
THAT, YOUR HONOR, IS THAT
THIS IS CLASSIC HINDSIGHT,
HE GOT -- HE DID GET 7 TO 5 THE
FIRST TIME, TRUE, AND HE
USED DR. HORD WHO TESTIFIED
AS TO SOCIOPATHIC
PERSONALITY, IN FEDERAL
COURT HAD AN EVIDENTIARY
HEARING IN WHICH DR.
CARBONELL TESTIFIED I
GLANCED AT BRIEFS CCR AMONG
OTHER THINGS ARGUING THE
DEFENSE COUNSEL SHOULD HAVE
HUMANIZED THE DEFENDANT, HERE WE
COME UP TO A NEW SENTENCING
HEARING, THAT IS EXACTLY WHAT
JEFF WHITTON DOES,
HINDSIGHT, JUDGING PAST
BEHAVIOR COMPOUNDED BY
HINDSIGHT JUDGING PAST
BEHAVIOR, CLASSIC IN TERMS OF
WHAT STRICKHAND PROHIBITS.

>> THAT'S WHAT THEY DID IN OUR
EVERYDAY -- DID THEY SAY IT WAS A
MISTAKE TO CALL DR. HORD IN
THE FIRST, BECAUSE THERE WAS
AN EVIDENTIARY HEARING IN THIS,
IN THIS COURT, IN

THIS FLORIDA COURT DID THEY ARGUE THAT IN THE FLORIDA COURT EVIDENTIARY HEARING, THAT THERE WAS SUFFICIENT, NOT HUMANIZING --

>> I KNOW THERE WAS A 3850, I KNOW THE DENIAL OF 3850 WAS AFFIRMED, I'M AWARE OF THE FEDERAL EVIDENTIARY HEARING.

>> I THINK THERE WAS ONE --
>> TO ADDRESS THE PREJUDICE PRONG, THEY -- DIDN'T YOU EVER COVER MORE WITNESSES THAT SHOULD HAVE BEEN PUT ON AS YOU SAID THESE WERE SOME PRETTY GOOD WITNESSES THEY PUT TOGETHER, THERE WERE NO WITNESSES FIRST TIME AROUND, LOTS OF LAY WITNESSES THE SECOND TIME.

>> DR. HORD WAS THE ONLY DEFENSE WITNESS THE FIRST TIME.

>> LET'S ASSUME THAT AFTER YOU SEE, DR. HORD WASN'T GOOD BUT WE NEED TO GO WITH MENTAL HEALTH YOU ARE SAYING THEY LOOKED AND LOOKED THEY LOOKED AT ALL THOSE PEOPLE, THEY SAID NOBODY REALLY HAS ANYTHING BUT NOW, THEY ARE SAYING NO, BUT THERE WAS SOMETHING, WE JUST NEED TO LOOK FARTHER, WE PUT ON DR.

-- MOSMAN I FORGET THE OTHER ONE WHAT DID THEY HAVE TO SAY THAT WOULD PUT THIS CASE IN A DIFFERENT

>> NOT OM DR. MOSTMAN THE ONLY DEFENSE WITNESS TO TEST AT THIS EVIDENTIARY HEARING.

>> IS IT TRUE THE DEFENDANT DID NOT ALLOW HIMSELF TO BE

--

>> THAT IS CORRECT DR. MOSMAN WASN'T ABLE TO INTERVIEW DR. MCCLAREN OR DR. CARBONELL.

>> SO WHAT DID DR MOSMAN HAVE TO SAY?

>> ESSENTIALLY DUE TO HIS, MR. CARD'S HARSH UPBRINGING, TOGETHER WITH HIS COGNITIVE DIFFICULTIES THAT HE

WAS LABORING UNDER
EXTREMELY EMOTIONAL
DISTURBANCE AT THE TIME OF
THE CRIME.
LOOK AT THE FACTS
OF THE CRIME, YOUR HONOR.
THE TRIAL COURT, I REALIZE THE
ORDER WAS THROWN OUT BUT,
NEVERTHELESS, IT WAS
AFFIRMED ON APPEAL, THE TRIAL
COURT REJECTED ALL
MITIGATION FIRST TIME, AND
BASICALLY, AND I -- AND I
LOOKED AT OUR BRIEF, IN THAT
REGARD, AND WE WERE ARGUING
AND I THINK IT IS A
RATIONALE ARGUMENT TO MAKE
AT THIS POINT TO JUSTIFY THE
FOLLY OF -- OF THE
DEFENDANT'S POSITION, THIS
THIS APPEAL IN THE CRIME THE
DEFENDANT CALLS VICKI -- TO
GET YOUR MONEY FOR YOU, AND
THEN, HE -- HE ROBBED,
KILLS, ACTUALLY, HE GOES BY
THE WESTERN UNION AND SEES
SOMEBODY ELSE IN THERE, I
WILL COME BACK, THEN HE
COMES BACK, AND HE
REPEATEDLY SLASHES THE
VICTIM MISS FRANKLIN, AND
TAKING HER OUT TO A REMOTE
AREA THEN HE GOES TO THE AREA --
BY THE WAY, HE HAD GLOVES ON
HAD A KNIFE WHEN HE WENT
IN WESTERN UNION, LABORING
UNDER EXTREME EMOTIONAL
DISTURBANCE, WITH ALL
RESPECT IS ABSURD UNDER THE
FACTS OF THIS CASE IF ONE --
CREDITS -- VICKI'S TESTIMONY,
GLOVES HIDDEN, KNIFE, TAKES
HER OUT TO A REMOTE AREA, SLITS
HER THROAT, THEN GOES TO
VICKI, PENSACOLA, TRAVELED THERE TO
PAY HER MONEY, WHIPS OUT A
WAD OF BILLS, SHE SAID DID
YOU ROB A 7-ELEVEN, JOKING
AROUND.
HE SAID, WELL, NO.
I DIDN'T DO THAT, HE SPILLS
HIS GUTS IN TERMS OF TELLING
WHAT HAPPENED.
BUT IF YOU -- WHICH HAS BEEN

DONE IN THIS CASE, THE DEFENDANT WAS FOUND GUILTY, AT THE FIRST INSTANCE BY THE JURY, IF WE CREDIT VICKI ELROD THERE IS NO WAY IN LABORING UNDER EXTREMELY EMOTIONAL DISTURBANCE THE MENTAL HEALTH EXPERT SIDE, THE STATE'S POSITION IN TERMS OF MENTAL HEALTH EXPERTS, DEFENSE COUNSEL DID EXACTLY WHAT HE WAS SUPPOSED TO DO. HE REVIEWED VOLUMINOUS BOXES OF MATERIALS, BOXES OF DOCUMENTS, THE OLD TRIAL, REVIEWED OLD EXPERTS, MADE A RATIONALE, REASONABLE DECISION IN TERMS OF WHICH TACTIC TO TAKE, GIVEN EVERYTHING THAT HE HAD BEFORE HIM.

IN TERMS OF HIS EXPERIENCE ALSO, I WOULD MENTION THAT HE DID ENLIST THE HELP OF AN EXPERIENCED LAWYER, UNFORTUNATELY, THE DETAILS OF THAT LAWYER'S EXPERIENCE ARE NOT IN THE RECORD IN THIS CASE, BUT HE USED JOHN O'BRIEN AS A CONSULTANT THROUGHOUT THE TRIAL. HE SAT WITH HIM PRESENT BUT THE -- PRIMARILY EVERY LAWYER HAS THEIR FIRST CAPITAL CASE, I MEAN THIS WAS JEFF WHITTON'S FIRST CAPITAL CASE, AND WHAT HE DID WAS, I WOULD SUBMIT, EXTRAORDINARY IN TERMS OF THE QUALITY OF REPRESENTATION THIS DEFENDANT RECEIVED BY JEFF WHITTON, GIVEN EVERYTHING HE HAD BEFORE HIM.

IN TERMS OF HIS EXPERIENCE I ALSO I WOULD MENTION THAT HE DID ENLIST THE HELP OF AN EXPERIENCED LAWYER. UNFORTUNATELY THE DETAILS OF THAT LAWYERS EXPERIENCE ARE NOT IN THE RECORD IN THIS CASE BUT HE USED JOHN O'BRIEN, AS A

CONSULTANT THROUGHOUT THE TRIAL.

HE SAT WITH HIM BUT THE PRIMARY THRUST, EVERY LAWYER HAS THEIR FIRST CAPITAL CASE.

THIS WAS JEFF WHITTON'S FIRST CAPITAL CASE.

WHAT HE DID WAS EXEXTRODINARY IN TERMS OF QUALITY OF REPRESENTATION THIS DEFENDANT RECEIVED BY JEFF WHITTON. GIVEN EVERYTHING THAT HE WAS FACING EVERYTHING IN THIS PARTICULAR CASE.

I WOULD SUBMIT THE TRIAL COURT WAS CORRECT REJECTING IAC, INEFFECTIVE ASSISTANCE OF COUNSEL, THAT JEFF WHITTON'S BEHAVIOR WAS PRETTY CLOSE TO EXEMPLARY.

SO WE WOULD ASK THE TRIAL COURT'S ORDER BE AFFIRMED.

>> THANK YOU.

THANK YOU VERY MUCH.

BRIEF REBUTTAL.

>> IN RESPONSE TO A COUPLE COMMENTS --

>> YOU ADDRESSED A ISSUE OF PREJUDICE HERE.

WHAT EVIDENCE SHOULD THE COUNSEL HAVE PRESENTED THAT WOULD HAVE SO UNDERMINEDDED CONFIDENCE IN OUR OUTCOME OF TRIAL?

>> OUR POSITION IS THE TESTIMONY, THE TESTIMONY AT A TRIAL CONCERNING THE STATUTORY MITIGATOR OF EXTREME MENTAL OR EMOTIONAL DISTURBANCE WOULD HAVE CARRIED SIGNIFICANT WEIGHT WITH THE JURY BASED UPON THE TESTIMONY OF DR.^MOSMAN AND THE HIGHLIGHTS THE DOCUMENTS THAT HE REVIEWED.

WITH EVERY GOOD DOCUMENT IS SOMETHING THAT IS BAD OBVIOUSLY.

>> WHAT DID YOU PRESENT AT THE EVIDENTIARY HEARING?

>> WE PRESENTED DR.^MOSMAN'S TESTIMONY CONCERNING -- YES, SIR, THAT'S WHAT WE, HE FOUND THERE WAS EXTREME DISTURBANCE BASED UPON --

>> HOW ABOUT COMMENTING ON YOUR OPPONENT'S ARGUMENT, JUST A COUPLE MINUTES AGO.

>> ABOUT?

>> DESCRIBING THE CIRCUMSTANCES OF CRIME, THAT AT LEAST SUPERFICIALLY APPEARS TO CONTRAST VERY SHARPLY WITH THE MITIGATOR?

>> IT CONTRASTS SHARPLY WITH THE MITIGATOR BASED UPON THE ARGUMENT AND WHAT THE EVIDENCE THE FIRST JURY HEARD.

THERE IS NO QUESTION ABOUT THAT.

WITH ONE EXCEPTION.

IF YOU GO BACK TO HORD'S TESTIMONY FROM THE FIRST TRIAL WHICH THAT JURY HEARD, THE SAME JURY THAT VOTED 7-5, HIS TESTIMONY WAS, THAT THIS DEFENDANT WAS SO IMPULSIVE THAT HE COULD NOT HAVE PREPLANNED THIS EVENT.

IT WAS PROBABLY PANIC REACTION, REALIZING HE WAS IN TROUBLE.

THEREFORE IT WAS NOT, HE WAS ACTING UNDER EXTREME DISTRESS.

NOW OUR POSITION WOULD BE, HAD THAT BEEN PRESENTED, IF THE JURY COULD HAVE CONSIDERED THAT IN CONTRAVENTION TO ONE OF THE STATUTORY AGGRAVATORS THAT MR.^WHITTON KNEW THAT HE WAS GOING TO BE FACING, THAT IS THE CALCULATED AND PREMEDITATED AGGRAVATOR.

>> IS THERE EVIDENTIARY HEARING, DR.^MOSMAN'S TESTIMONY WAS PRESENTED WITHOUT THE BENEFIT OF HAVING INTERVIEWED THE DEFENDANT?

>> AND DR.^MOSMAN INDICATED THAT IN HIS YEARS OF EXPERIENCE DEALING WITH DEATH PEN CASES IT WAS NOT UNUSUAL FOR DEATH ROW INMATES TO REFUSE TO BE INTERVIEWED.

>> THAT'S NOT THE POINT THOUGH. POINT IS WHETHER HE DETERMINED A AN OPINION WITHOUT HAVING INTERVIEWED THE DEFENDANT?

>> OUR POSITION IS THAT HE COULD AND HE DID BASED UPON ALL

THE OTHER RECORDS.

>> WHAT ABOUT THE TRIAL COURT'S POSITION?

WHAT ABOUT THE TRIAL COURT'S FINDING?

>> THE TRIAL COURT FINDING THAT HE DID NOT.

OUR POSITION WAS THAT HE COULD. NOW ONE OF THE OTHER CONCERNS I HAD, CONCERNING THE EXPERIENCE OF THE LAWYER IN DISREGARDING THIS STATUTORY MITIGATOR PRESENTATION TO A JURY IS THE INEXPERIENCE.

HE INDICATED THAT HE WAS NOT QUALIFIED IN A MOTION THAT HE FILED ON JANUAR 8th OF '98 ASKING FOR CO-COUNSEL.

THAT WAS DENIED.

HE DENIED ANOTHER MOTION APPOINTMENT OF CO-COUNSEL THAT MET ABA STANDARDS.

THAT WAS DENIED.

IN HEARING ON MARCH 20th, OF '98, HE REQUESTED A ADDITIONAL HELP AND WAS DENIED.

PAM ROGERS, THE EXPERT REFERED TO BY COUNSEL, FILED AN AFFIDAVIT ON JANUARY 17th, 1999, LESS THAN 90 DAYS PRIOR TO TRIAL.

IN THAT AFFIDAVIT SHE SAID NEVER IN HER 12 YEARS OF HANDLING AGGRAVATION CASES HAS SHE BEEN INVOLVED WITH ONE THAT WAS SO LESS PREPARED THAN THIS ONE. 90 DAYS FROM THE CASE.

HER AFFADAVIT IS FOUND IN VOLUME 11 AT PAGE 1927.

THE LAWYER WAS NOT QUALIFIED TO HANDLE THIS CASE.

THANK YOU.

>> THANK YOU VERY MUCH.

WE'LL TAKE THE CASE UNDER ADVISEMENT.

COURT WILL STAND IN RECESS.

>> ALL RISE.