

>> LADIES AND GENTLEMEN, THE APPELLATES SUPREME COURT. PLEASE BE SEATED.

>> NEXT CASE ON THE COURT CALENDAR, CONDE VERSES STATE.

>> GOOD MORNING, MAY IT PLEASE THE COURT, THIS IS AN APPEAL AND DENIAL OF THE MOTION FILED IN SOUTH FLORIDA BY MR. CONDE AFTER THE HEARING.

WOULD LIKE TO DIRECT THE ATTENTION OF THE COURT TO CLAIM NUMBER 3, FAILURE TO IDENTIFY A CRITICAL WITNESS.

THE FACTS THAT ARE RELEVANT, HAVING TO DO WITH FAILURE TO IDENTIFY THIS CRITICAL WITNESS NEEDS TO BE UNDERSTOOD, MR. CONDE WAS ARRESTED FOR SEVERAL HOMICIDES, HE SPENT TIME IN INTERROGATION.

UPON ARRIVAL IN METRO WEST RESIDENTIAL FACILITY HE MET THE CHAPLAIN, CHAPLAIN BIZARRO WHO HAD NO RELATIONSHIP WITH HIM AT ALL PRIOR TO THAT TIME.

THIS IS NOT LIKE HIS PRIEST OF A NUMBER OF YEARS.

THAT CONCERNED ME.

AS I UNDERSTOOD PART OF THE ARGUMENT, THIS LAWYER SHOULD HAVE PRESENTED IT BECAUSE THIS WOULD BOLSTER HIM BEING SEXUALLY MOLESTED AT AN EARLY AGE.

THAT IS WHAT THE TESTIMONY WAS GOING TO BE.

HE CONFIDED IN HIM, BUT THIS WAS ONLY -- THE STATEMENT SAYING THIS WAS A FABRICATION AND THIS ONLY OCCURS AFTER ALL THE CRIMES HAVE OCCURRED AND AFTER THE ARREST AND INTERROGATION AND YOU HAD THAT INFORMATION THROUGH OTHER WITNESSES, YOU HAVE OTHER FAMILY MEMBERS, HELP ME UNDERSTAND HOW THE ONE CHAPLAIN, OTHER THAN THE FACT THAT HE WAS SUCH A CRITICAL WITNESS HERE -- >> THE ARGUMENT IS RECENT FABRICATION BECAUSE IT TAKES PLACE AFTER THE ARREST. THERE IS TIME TO COME UP WITH IT, SAY I HAVE TO COME OF WITH A REASON WHY I DID THIS. ALLEGATION THAT HE HAD BEEN SEXUALLY ABUSED AS A CHILD CAME THROUGH ANOTHER PERSON WHO OVERHEARD THIS. I UNDERSTAND THAT. HOWEVER, THE ACCUSATION THAT THIS IS A FABRICATION, MR. CONDE HAS TWO ATTORNEYS, A SOCIAL WORKER, PSYCHIATRIST, AND FIVE YEARS TO COME UP WITH IT. THAT IS THE ALLEGATION. MR. CONDE HAD NOT MET WITH AN ATTORNEY, HAD NOT MET WITH A SOCIAL WORKER, HAD NOT MET WITH A PSYCHIATRIST, CAME FROM BEING INTERROGATED FOR MANY HOURS, HE THEN IS IN A STATE OF -- I DON'T WANT TO SAY, BECAUSE I WASN'T

THERE.

>> I UNDERSTAND.

HE HAD AN OPPORTUNITY TO MEET WITH PROFESSIONAL COACHES TO TELL HIM WHAT TO SAY, SO THIS WOULD ESTABLISH THAT FACT.

>> EXACTLY.

THIS WOULD MINIMALLY ESTABLISH THE FACT THAT WHEN THIS GENTLEMAN, MR. CONDE, COMES OUT OF POLICE CUSTODY INTO CORRECTIONS, HE WALKS IN AND TELLS A PASTOR WHO GOES TO THE SYSTEM BECAUSE HE WAS IN SUCH SAD SHAPE, YOU WANTS TO MINISTER TO HIM AND CONFESSES TO HIM, TELLS HIM I WAS MOLESTED AS A CHILD.

AT THAT POINT IT APPEARS THAT MR. CONDE WAS LINKING THAT MOLESTATION TO HIS HORRIBLE BEHAVIOR.

>> LET ME ASK YOU THIS.

THE CHAPLAIN WAS IDENTIFIED IN DEFENSE COUNSEL AND SENTENCING PROCEEDINGS, SOUGHT TO HAVE IT TESTIFIED, THE TRIAL COURT EXCLUDED THE TESTIMONY BECAUSE HE WAS BASICALLY -- HE HAD NOT BEEN LISTED.

THERE WAS SOME INEFFECTIVENESS. EXPLAIN HOW YOU CAN POSSIBLY ESTABLISH PREJUDICE IN LIGHT OF OUR CONCLUSION IN THE DIRECT FIELD IN 2003 THAT EVEN IF THE TRIAL COURT'S MADE AN ERROR IN

EXCLUDING THE CHAPLAIN'S
TESTIMONY IT WAS HARMLESS BEYOND
A REASONABLE DOUBT.

IF THE EXCLUSION WAS HARMLESS,
HOW CAN THE FAILURE OF COUNSEL
TO GET A TIMELY LESSON TO THE
WITNESS RESULT IN PREJUDICE THAT
COULD CAUSE US TO VACATE THE
SENTENCE?

>> WE NEED TO LOOK AT THE
SITUATION AS IT PLAYED OUT IN
COURT, ALSO THE FACT THAT MR.
CONDE'S INITIAL CONFESSION TO
CHAPLAIN BIZARRO HAS TO BE
VIEWED IN TERMS OF THE LATER
INTERACTION OF MR. FINK AND MR.
RODRIGUEZ WHOSE ATTORNEYS ARE
SAYING --

>> WHAT YOU ARE DOING IS ARGUING
WITH OUR CONCLUSION IN THE CONDE
CASE.

IN OTHER WORDS, WHAT JUSTICE
KENNY READ THESE SHOWS THAT WE
CONSIDERED IT.

YOU MAY SAY WE WERE WRONG, A
HARMLESS ERROR AND WE SHOULDN'T
HAVE ABUSED IT, BUT IT IS THE
LAW OF THE CASE.

HOW DO WE CHANGE THAT
CONCLUSION?

IF IT IS A HARMLESS ERROR, IT
CAN'T BE PREJUDICED UNDER
STRICKLAND.

>> I UNDERSTAND THAT.

I HAVE A TOUGH CLAIM HERE.

THE ISSUE IS AT THE TIME OF THE

APPEAL, THE FACT THAT THIS
CHAPLAIN BIZARRO WAS A VERY
WELL KNOWN INDIVIDUAL WHO HAD
TWO INDIVIDUALS WORKING FOR THE
STATE AND WAS UNKNOWN AT THE
TIME OF THE ARGUMENT FOR THE
TRIAL COURT AND AT THE TIME OF
THE APPEAL, THE FACTS
SURROUNDING THE ELABORATION OF
MR. CONDE'S BACKGROUND BY THE
DEFENSE WAS UNKNOWN.

MISSING THIS WITNESS AND
CONVINCING THIS PARTICULAR
INDIVIDUAL, IT WASN'T AS WAS
REPRESENTED TO THE COURT.

>> THAT GIVE YOU, PERHAPS, AN
ARGUMENT ON THE DEFICIENCY
PROCESS.

HOW DO YOU GET AROUND THE
PREJUDICE PROCESS WHICH
UNDERMINES OUR CONFIDENCE IN THE
PENALTY PHASE IF WE HAVE ALREADY
MADE THE STATEMENT?

>> BECAUSE THE UNDERMINING OF
THE CONFIDENCE IN THE PENALTY
PHASE, I UNDERSTAND THEY ALREADY
MADE IT.

BUT I BELIEVE IT HAS TO BE
VIEWED IN LIGHT OF THE EVIDENCE
RELATING TO FAILURE OF DISCOVERY
AND TO THE FACT THAT IT DID
EXACTLY WHAT JUSTICE LEWIS
BROUGHT UP, HAVING TO DO WITH
THE RECENT FABRICATION WHICH
WOULD HAVE SHOWN IT WAS NOT A
RECENT FABRICATION.

IT IS LINKED TO THAT AS FAR AS THAT, WHERE I BELIEVE MR. CONDE CAN GET PAST THE INJURY TONE.

>> DID YOU RAISE THE CLAIM THAT COUNSEL WAS INEFFECTIVE ON APPEAL IN NOT BRINGING THAT POINT UP AND EXPLAINING IT? YOU ARE SAYING WE SHOULDN'T HAVE SAID IT WAS HARMLESS, BUT MAYBE WE DIDN'T HAVE ALL OF THE FACTS SINCE THE FACTS WERE THERE, DIDN'T ARGUE IT PROPERLY TO THE TRIAL COURT AND THE RECORD TO US WAS NOT COMPLETE.

IS THAT WHAT YOU ARE TRYING TO SAY?

>> THE FACTS WEREN'T THERE. THE FACT THAT WERE THERE FOR THE APPELLATE COUNSEL --

>> DID THEY ARGUE ABOUT THE RECENT FABRICATION TO THE TRIAL JUDGE?

>> YES.

ADDITIONALLY --

>> DID THEY ARGUE THAT TO THE TRIAL JUDGE, THEY TRIED TO GET THE WITNESS ALLEGEDLY IN, THAT IS WHY THEY NEEDED THIS WITNESS?

>> I BELIEVE THEY DID BUT I DON'T HAVE THAT SPECIFIC ANSWER. I KNOW THAT THE STATE ARGUED IN CLOSING TO THE JURY THAT IT WAS A RECENT FABRICATION AND THAT WAS ONE OF THE POINTS BROUGHT UP TO ATTACK THIS ALLEGATION TO THE PSYCHOLOGIST, THAT IT WAS A

RECENT FABRICATION.

>> LET ME ASK YOU WHAT THE RECORD SHOWS, ABOUT WHETHER THIS PRIEST AT ANY POINT REFUSED TO TALK TO COUNSEL?

>> HE DID.

>> IF HE REFUSED TO TALK TO COUNSEL, HOW CAN THEY BE FAULTED FOR NOT LISTING HIM AS A WITNESS IN WHAT HE IS GOING TO SAY IF HE WON'T TALK TO THEM, THEY CAN'T KNOW WHAT HE IS GOING TO SAY, HOW CAN THEY LISTENED TO HIM?

HOW COULD THEY BE EXPECTED TO LISTEN?

>> I UNDERSTAND THAT.

THE ISSUE IS --

>> MR. CONDE'S CHOICE, THAT HE DIDN'T GIVE THE POLICE PERMISSION, DOES NOT WANT TO VIOLATE A CONFIDENCE AND DISCLOSE THAT INFORMATION UNLESS THE DISCLOSURE WAS PERMITTED BY MR. CONDE, HE CHOSE NOT TO GIVE THAT INFORMATION.

THAT IS MR. CONDE'S CHOICE.

>> MR. CONDE NEVER CHOSE NOT TO GIVE THEM PERMISSION.

THE ISSUE HAS TO DO WITH THE FACT THAT THIS DISCLOSURE OCCURRED ON THE FIRST STAGE OF HIS ARRIVAL.

CONDE STAYED IN METRO WEST SEVERAL YEARS PENDING TRIAL.

THERE ARE A COUPLE YEARS WORTH

OF TIME THAT CHAPLAIN BIZARRO IS NOT IDENTIFIED EVEN THOUGH PRIOR TO TRIAL, THE EVIDENCE IS HIS EXISTENCE, NOT TO THE MITIGATION FACE, PRIOR TO THE TRIAL, HIS EXISTENCE WAS REVEALED TO THE SOCIAL WORKER AND INVESTIGATOR, AND THE SOCIAL WORKER KNEW OF CHAPLAIN BIZARRO AND THAT DISCLOSURE.

SO THE SOCIAL -- SOCIAL WORKER PRIOR TO THE TRIAL, NOT PRIOR TO THE LATE TRIAL, PRIOR TO THE TRIAL, CHAPLAIN BIZARRO KNEW OF THE DISCLOSURE.

WE HAVE THE FAILURE TO ADEQUATELY INVESTIGATE, TO REASONABLY INVESTIGATE AND SPEAK TO YOUR OWN PEOPLE, FOR THE ATTORNEYS TO SPEAK TO THEIR OWN SOCIAL WORKER AND ASK HIM WHO HE HAS SPOKEN TO.

ADDITIONALLY, THE ISSUE HAS TO DO WITH THE REASONABLE INVESTIGATION ASKING A CLIENT, DO YOU HAVE A PRIEST, DO YOU CONFESS WITH ANYBODY, AND MAY I SPEAK WITH HIM, IT IS NOT UNREASONABLE.

THAT IS MISSING AN OBVIOUS ONE. IN FACT, MR. RODRIGUEZ SAID THAT ALTHOUGH HE RECOGNIZED THE LITIGATION COUNSEL, HE RECOGNIZED THE IMPORTANCE -- RELIGIOUS AFFILIATION, HE HAS A SPIRITUAL ADVISOR SEE HIM

WEARING SOME SORT OF CROSS, HE
DID NOTHING.

HOW REASONABLE IS THAT?

HOW REASONABLE IS IT TO LIMIT
SPEAKING TO THIS INDIVIDUAL?

THE FACT OF THE MATTER IS WE
TOLD HIM AFTER HE MET -- AFTER
HIS ATTORNEY, DID YOU ASK HIM IF
HE HAS SPOKEN WITH ANYBODY?
OTHER THAN POLICE OFFICERS, IS
THERE ANYBODY ELSE YOU HAVE
SPOKEN TO?

HOW REASONABLE IS THIS
INVESTIGATION, PARTICULARLY IN
LIGHT OF THE TESTIMONY?

NOW CONDE PROVIDED THE
EVIDENTIARY HEARING.

FIVE MINUTE FOR THE REBUTTAL.

>> YOU HAVE ANOTHER MINUTE
BEFORE YOUR FIVE MINUTES.

IS THERE ANY OTHER ISSUE YOU
CARE TO ADDRESS?

>> NO, UNLESS THE COURT HAS ANY
QUESTIONS, I WANT TO CONCENTRATE
ON THIS ONE.

>> THE ASSISTANT ATTORNEY
GENERAL ON BEHALF OF THE STATE,
THE FACT OF WHAT CHAPLAIN
BIZARRO HAD TO SAY, THERE WAS NO
TESTIMONY WHATSOEVER FROM THE
TIME CHAPLAIN BIZARRO HAD THE
POST CONVICTION HEARING, HE
TESTIFIED AT THE SPENCER
HEARING, YOU HAD THAT TESTIMONY
APPROVED, FOUND IT HARMLESS AND
UNDER YOUR CHANDLER LINE OF

CASES THE DEFENDANT CANNOT SHOW,
ADDITIONALLY, THE TRIAL COURT --
>> WAS THE ARGUMENT MADE AT THE
APPELLATE LEVEL THAT IT WASN'T
HARMLESS BECAUSE CHARGES OF
RECENT FABRICATION?

>> I BELIEVE SO BECAUSE ONE OF
THE TRIAL COURT'S FINDINGS WAS
THE EVIDENCE WAS CUMULATIVE,
THAT WAS ONE OF THE REASONS HE
FOUND HE WAS NOT GOING TO ALLOW
THIS TO BE REPRESENTED, IT WAS
SELF-SERVING COMING UP AFTER HE
HAD BEEN ARRESTED AND PUT IN
JAIL.

AND CUMULATIVE BECAUSE MISS
HERBIS CLAIMED THE DEFENDANT
HAD BEEN SEXUALLY --

>> THE TIMING, TALKING TO
SOMEBODY AFTER YOU HAVE ALREADY
TALKED WITH LAWYERS AND
PROFESSIONALS, KNOWING WHAT YOU
THEORETICALLY HAVE BEEN COACHED,
WHAT YOU HAVE TO SAY TO GET
AROUND THIS THING, IT MAY BE
DIFFERENT IS WHAT THE ARGUMENT
IS, DIFFERENT THAN IF HE IS
ARRESTED, NEVER TALKED TO
ANYBODY AND CONFIDES IN SOMEONE
WHO IS A HOLY PERSON.

THAT IS THE ARGUMENT.

>> OF COURSE THE DEFENDANT,
COUNSEL APPOINTED FOR HIM AT
FIRST APPEARANCE.

HE HAS COUNSEL.

HE MET CHAPLAIN BIZARRO IN

THE JAIL AFTER HE HAD BEEN
THERE.

>> YOU'RE SAYING THAT IS
NON-MERITORIOUS POSITION.
YOU HAVE ALREADY MET WITH
COUNSEL.

SO THAT IS, OKAY.

>> YOU'RE FACING THE CHARGES.
YOU'RE ALREADY CAUGHT ON SIX
MURDERS.

YOU'RE ALREADY CAUGHT ON
ANOTHER ATTEMPTED MURDER.
YOU'RE ALREADY IN JAIL AND THEN
THE MEET THE CHAPLAIN.
ADDITIONALLY, COUNSEL DID LOOK
INTO WHETHER OR NOT THE
DEFENDANT WAS SEXUALLY ABUSED.

HE ASKED ALL HIS FAMILY.

HE ASKED THE DEFENDANT.

MENTAL HEALTH EXPERT ASKED.

THE DEFENDANT, NONE OF HIS
FAMILY SAID ANY SUCH THING.

THEY ASKED IF HE WAS RELIGIOUS.

THEY WERE TOLD HE WASN'T
TERRIBLY RELIGIOUS.

THEY TOLD HIM NOT TO SPEAK TO
ANYBODY IN THE JAIL.

SO THEY HAD NO REASON TO GO
LOOKING FOR A PRIEST.

>> THE ARGUMENT SEEMS TO BE
THAT A SOCIAL WORKER WHO
WAS EVIDENTLY WORKING FOR THE
DEFENSE HAD THIS INFORMATION IN
THEIR POSSESSION.

WHY WASN'T THAT INFORMATION
THEN TRANSMITTED TO THE

ATTORNEY?

>> WELL, THAT IS WHAT THE DEFENDANT'S FAMILY MEMBERS TESTIFIED TO AT THE POST-CONVICTION HEARING INCONSISTENTLY BACK AND FORTH. SHE, THE DISCLOSURE OF CHAPLIN BIZARRO ACCORDING TO COUNSEL ONLY CAME DURING THE MIDDLE OF TRIAL WHEN THEY SENT OUT PEOPLE LOOKING FOR PEOPLE TO SHOW HE WAS A GOOD PRISONER.

THEY HAD SUBPOENAED CHAPLAIN BIZARRO TO COME IN TO TALK ABOUT HE IS GOOD PRISONER. I HAVE SOME OTHER STUFF BUT I CAN'T TALK TO YOU WITHOUT TALKING TO HIM BECAUSE. HE COMES BACK TO THE DEFENDANT AND TELLS THEM.

>> COMES BACK AND WHAT?

>> COMES BACK AND TELLS THE DEFENSE ATTORNEYS THERE HAD BEEN THIS DISCLOSURE.

WHILE THE DEFENDANT'S SISTER CLAIMED THERE HAD BEEN THIS DISCLOSURE ABOUT SEXUAL ABUSE WELL IN ADVANCE THE RECORD IS HE DISCLOSED IT FAIRLY SHORTLY BEFORE TRIAL EVEN TO MISS HERBIS.

WHO DID TESTIFY ABOUT IT BEFORE THE JURY.

IF THE COURT HAS NO FURTHER QUESTIONS.

THE STATE RESPECTFULLY REQUESTS

YOU AFFIRM.

>> ANY REBUTTAL?

>> YOUR HONOR.

YOUR HONOR I WOULD LIKE TO ADDRESS THE ISSUE THAT THE STATE HAS JUST PUT UP THAT HE HAD APPOINTED COUNSEL AT FIRST APPEARANCE.

APPOINTED COUNSEL AT FIRST APPEARANCE, PERSON SHOWING UP IN FRONT OF TV SAYS, BE QUIET. YOU'RE ACCUSED OF THIS AND MOVE ON.

THAT IS, YES, YOU HAVE AN ATTORNEY, AND, YES, HE IS STANDING NEXT TO YOU BUT, THAT'S NOT A SITUATION WHERE MR. CONDE COULD SIT THERE AND START, START COMING UP WITH A DEFENSE THEORY AND WHY --

>> I THINK YOUR BIGGER HERE IS THAT IS THAT IT WAS, THE TRIAL JUDGE MADE A DETERMINATION IT WAS CUMULATIVE THE TESTIMONY YOU AGREED THE TESTIMONY WAS HEARD AT THE SPENCER HEARING.

>> YES.

>> YOU DIDN'T PUT ON ANY, YOU DIDN'T PUT ON THIS PRIEST IN AN EVIDENTIARY HEARING.

SO, CORRECT?

>> RIGHT.

>> SO WHAT HE IS SAYING AT THE SPENCER HEARING.

CLEARLY THE ARGUMENT WOULD HAVE OPINION MADE THAT IT WASN'T

CUMULATIVE BECAUSE IT WOULD
REBUT CHARGES OF RECENT
FABRICATION.

WE SAID, IT WAS HARMLESS BEYOND
A REASONABLE DOUBT.

IF IT IS HARMLESS BEYOND A
REASONABLE DOUBT, WHETHER WE
WERE RIGHT OR WRONG SAYING
THAT, WE SAID IT.

WE DON'T KNOW TAKE THIS CASE
AND SAY WELL, UNLESS YOU'RE
ASKING US TO RECEDE, AND WE
DON'T RECEDE IN THOSE CASES
FINAL.

THAT IS THE CONCEPTUAL PROBLEM
THAT I'M NOT SURE YOU'VE
ACTUALLY CONFRONTED HEAD ON THE
PREJUDICE PRONG.

>> YOUR HONOR, I UNDERSTAND
THAT.

I UNDERSTAND THAT.

>> I MEAN NORMALLY THE WITNESS
APPEARS, YOU FIND A WITNESS
AFTERWARDS.

SO THE APPELLATE RECORD IS NOT,
YOU KNOW, THAT'S WHY THEN WE'RE
ABLE TO LOOK AT SOMETHING NEW.

BUT THIS ISN'T SOMETHING NEW.
THIS IS SOMETHING THAT IT WAS
PART OF THE APPELLATE
PROCEEDINGS.

>> BUT THE ISSUE IS THAT AT THE
TRIAL LEVEL AND AT PART OF THE
APPELLATE PROCEEDINGS THE
BACKGROUND AS TO HOW THAT
HAPPENED WAS NOT FLESHED OUT.

>> WHAT YOU'RE SAYING WE NOW
LOOKING AT THAT SAY, WELL, IF
WE HAD KNOWN THIS, WHATEVER
THIS IS, WE WOULD HAVE RULED
DIFFERENTLY AND WE DIDN'T HAVE
THAT INFORMATION BECAUSE
COUNSEL WAS INEFFECTIVE IN
BRINGING IT, NOT BRINGING IT TO
OUR ATTENTION?

>> BECAUSE COUNSEL, I'M NOT
SAYING THAT MR.^FINK LIED TO
THE COURT WHEN HE SAID, I JUST
FOUND OUT ABOUT THIS.
BUT MR.^FINK DID NOT
COMMUNICATE WITH HIS, THE
PEOPLE THAT WERE WORKING WITH
HIM WHO HAD IDENTIFIED THIS
INDIVIDUAL, AND THAT IS WHERE
THE DEFICIENCY OCCURS.
BECAUSE WE HAVE, THEY HAD
ALREADY IDENTIFIED HIM SOME WAY
SHAPE OR FORM, CHAPLAIN BIZARRO
ASKED A PERSON THAT COULD
TESTIFY IN MR.^CONDE'S MATTER.
THAT HE WAS NOT A RISK.
THAT HE WAS A GOOD PRISONER.
OBVIOUSLY YOU HAVEN'T SPOKEN TO
HIM IN ANY DEGREE AND ONLY
TALKING TO HIM RIGHT THERE AND
THEN.
THAT IS WHAT CHAPLAIN BIZARRO
TELLS HIM I HAVE ADDITIONAL
INFORMATION.
HAD THEY DONE SO PREVIOUSLY,
HAD THEY SPOKEN TO HERBIS, HAD
HE ASKED THE CLIENT WHO ARE YOU

SPEAKING WITH, WHO IS YOUR
PRIEST, THEN THEY WOULD HAVE
DISCOVERED THIS INFORMATION.

>> THIS SEEMS A LITTLE
INCONSISTENT, THAT CHAPLAIN
BIZARRO, THE CHAPLAIN COMES
TO TRIAL AND WON'T GIVE ANY
INFORMATION ON THE SEXUAL ABUSE
UNTIL THE DEFENDANT ALLOWS HIM
TO DO THAT.

IS THAT THE INFORMATION?

>> YES, IT IS.

>> IS THAT THE INCONSISTENT
WITH WHAT THE PRIEST SAID
BEFORE?

>> I DON'T UNDERSTAND.

>> SEEMS YOU'RE PAINTING A
PICTURE THE CHAPLAIN COMES IN
TESTIFY HE A GOOD PRISONER,
MODEL PRISONER, NOT GOING TO BE
ANY PROBLEMS.

BUT THEN SAYS I HAVE OTHER
INFORMATION BUT WOULD NOT SAY
WHAT THE OTHER INFORMATION WAS
UNTIL THE DEFENDANT ALLOWED HIM
TO DO SO.

YET ON THE OTHER HAND, HE
ALREADY TOLD THAT SAME THING.

THAT SEEMS TO BE INCONSISTENT.

HE ALREADY TOLD THE SOCIAL
WORKER ABOUT THIS.

>> NO, I UNDERSTAND WHAT YOU'RE
SAYING.

YOUR HONOR, WHAT MR. CONDI TOLD
MISS GALINDO AND TOLD HIS SISTER
NELLY, THE FACT AND RELEVANCE

AND IMPORTANCE OF CHAPLAIN
BIZARRO AND MISS HERBIS HAD BEEN
TOLD BY MR. ^COULD NOT DE --
>> NOT BY THE PRIEST?
>> NOT ABOUT THE PRIEST.
OF HIS CONFESSION OF THE PRIOR
ABUSE.
>> OKAY.
>> TO CHAPLAIN BIZARRO BEFORE
THE TRIAL.
>> OKAY.
>> THAT IS WHERE ONE HAND
SPEAKING TO THE OTHER AND THAT
INFORMATION DID NOT GO IN FRONT
OF JUDGE BAGLEY.
THAT BACKGROUND DID NOT GO IN
FRONT OF JUDGE BAGLEY.
THAT BACKGROUND DIDN'T MAKE IT
IN FRONT OF THIS COURT BECAUSE
IT WAS UNAWARE.
>> EVEN IF WE HAD NOT MADE THE
CONCLUSION ABOUT HARMLESS ERROR
WE DID IN THE DIRECT APPEAL,
IF, WE LOOK AT THIS IN THE
CONTEXT THAT, AT LEAST, TO SOME
EXTENT LATIF, THAT IT IS
DIRECTLY, REPEATEDLY
CONTRADICTED, HOW COULD WE GET
TO PREJUDICE?
>> BECAUSE, YOUR HONOR, IT HAS
TO DO WITH THE, IT'S CUMULATIVE
INSOFAR MISS HERBIS SAYING HE
HAD COMPLAIN OF IT.
IT IS NOT CUMULATIVE IN THE,
INSOFAR, BEING IN FRONT OF A
JURY, A SENTENCING JURY AND THE

TIMING OF THE CONFESSION, THE
TIMING, THE MOMENTS AND HOW
MR. ACONDE WAS AT THE MOMENT
THAT HE ADMITTED THIS TO
CHAPLAIN BIZARRO.

THAT IS, THAT'S WHERE WITH THE
DIFFERENCE, DIVERGENCE OCCURS.

>> YOU STILL HAVE TO SHOW THAT
THE DEATH SENTENCE WOULDN'T
HAVE BEEN IMPOSED AND THERE ARE
SOME PRETTY WEIGHTY AGGRAVATORS
IN THIS CASE, BUT WOULD BE HARD
TO THINK THAT ONE TESTIMONY
WOULD CHANGE THE BALANCE OF THE
EVALUATION.

I MEAN, YOU WOULD HAVE TO GET
THROUGH THAT TOO.

>> I DO AGREE, YOUR HONOR.

>> YOU'RE OUT OF YOUR TIME.

>> THANK YOU.

>> WOULD YOU, BEFORE YOU SIT
DOWN, WOULD YOU TELL US, WERE
YOU APPOINTED TO THIS CASE BY
WHOM?

OR EXCUSE ME?

>> CAPITAL COLLATERAL REGISTRY.

>> YOU WORK FOR THE CAPITAL
COLLATERAL?

>> NO. I'M APPOINTED FROM THE
REGISTRY.

>> OH, FROM THE REGISTRY, OKAY.

THANK YOU.

>> THANK YOU.