

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

>> NEXT CASE ON THE COURT'S
AGENDA IS BARWICK V. STATE.
MR. DOSS.

>> MAY IT PLEASE THE COURT, TODD
DOSS ON BEHALF OF DARRYL
BARWICK.

WE'RE HERE IN THE DENIAL OF
MR. BARWICK'S 3850 MOTION AFTER
A POSTCONVICTION EVIDENTIARY
HEARING, AND WE HAD -- WHAT I'D
FIRST LIKE TO DISCUSS WITH THE
COURT IS THE DENIAL OF RELIEF IN
REGARDS TO THE PENALTY PHASE.

>> CAN I ASK, YOU KNOW, IF YOU
COULD PAINT -- THIS WAS, THE
CASE WAS RETRIED.

AND IN THE SECOND CASE THE
DEFENSE LAWYER PUT ON SEVEN
MENTAL HEALTH EXPERTS AND 11 --

>> AND SEVEN LAY WITNESSES.

>> SEVEN LAY WITNESSES.

AND YOUR CONTENTION IS THAT HE
JUST SORT OF, HE JUST, LIKE,
FOUND EVERYBODY THAT WAS, HAD
BEEN USED BEFORE AND JUST SAID
I'LL PUT 'EM ON AND NEVER TALKED
TO ANYBODY?

>> THAT'S, THAT'S --

>> NOW, THAT ISSUE THAT THERE
WAS NO SCREENING, THAT THIS WAS
SORT OF THROW THE PAINTS AND
SEE, YOU KNOW, WHERE IT GOES,
HOW IS THAT ESTABLISHED IN YOUR,

THE EVIDENTIARY HEARING?

>> WELL, IT'S ESTABLISHED IN THAT THE TRIAL COUNSEL, MR. ADAMS, WHO IS SINCE DECEASED, HE ACTUALLY STATED IN THE RECORD THAT THAT'S WHAT HE WAS ATTEMPTING TO DO.

HIS THEORY WAS HE WASN'T GOING TO HIDE ANYTHING, THAT HE WAS GOING TO BRING IT OUT.

>> BUT AS FAR AS -- HE WAS NOT THE LAWYER IN THE FIRST CASE.

>> THAT'S CORRECT.

>> DID ALL THOSE EXPERTS TESTIFY THE FIRST TIME?

>> I DON'T BELIEVE EVERY ONE OF THEM DID.

SOME OF THEM WERE FROM THE PRIOR INCARCERATION REGARDING A SEXUAL BATTERY.

>> BUT YOU SEEM TO SAY THAT IS THERE ANY EVIDENCE THAT HE DIDN'T TALK TO THESE WITNESSES BEFORE HE PUT THEM ON?

>> ABSOLUTELY.

>> EVIDENCE?

>> ABSOLUTELY.

AND DR. ANNIS, AT FIRST HE COMES IN, AND HE'S SAYING HE'S UNSURE EVEN WHICH SIDE'S CALLING HIM. HE DOESN'T KNOW WHETHER THE STATE'S CALLING HIM OR WHETHER THE DEFENSE IS CALLING HIM AND WHO REALLY WANTS TO EVEN HAVE HIM TESTIFY.

AND THEN YOU'VE GOT DR. WARRINER

WHO COMES AND SAYS ON THE RECORD
THAT HE HAD ACTUALLY TOLD
MR. ADAMS, DON'T CALL ME, I'M
NOT GOING TO GIVE YOU
ANYTHING --

>> BUT THAT SUPPORTS THE
CONCLUSION THAT HE ACTUALLY
TALKED TO HIM.

>> THAT WAS MY QUESTION.
IN OTHER WORDS, MY QUESTION WAS
IT MAY BE NOT A GREAT STRATEGY
OR, I GUESS YOU'RE ASKING US TO
SAY INEFFECTIVE, DEFICIENT PER
SE TO DO IT.

BUT IF HE TALKED TO THESE
INDIVIDUALS AND HE MADE A
DECISION BECAUSE SOME OF THEM
THE STATE COULD HAVE CALLED IN
THAT IF THEY WERE SOME PEOPLE
THAT EVALUATED HIM IN CONNECTION
WITH THE PRIOR RAPE, SO IT
WASN'T LIKE THEY WERE
CONFIDENTIAL EXPERTS.
SO HE MADE A CALCULATED DECISION
TO, YOU KNOW, TO PUT IT ALL OUT
THERE.

>> I DON'T, I DON'T BELIEVE IT
WAS A CALCULATED DECISION IF
YOU'RE NOT PROVIDING THEM ANY
INFORMATION, THAT YOU'RE JUST
CALLING EVERYBODY THAT'S EVER
SPOKEN TO THE GUY AND YOU BRING
'EM FORTH.

THERE'S NO INDICATION ON THE
RECORD THAT HE GAVE THEM ANY
MATERIAL WHATSOEVER AS IT

RELATED TO MR. BARWICK, NOR DID HE PREPARE WITH HIS EXPERTS SO THAT THERE COULD BE AN EXPLANATION OF, OKAY, THIS GENTLEMAN SUFFERED FROM HORRENDOUS CHILD ABUSE, THAT --

>> BUT YOU'RE, I GUESS MY PROBLEM IS YOU'RE SORT OF SPECULATING ON THAT BASED ON THE WAY THEY TESTIFIED.

THE ONLY PERSON THAT YOU CALL AT THE EVIDENTIARY HEARING WAS MR. EISENSTEIN?

>> THAT'S CORRECT.

EISENSTEIN.

>> OKAY.

SO IN TERMS OF THE ISSUE AS -- REALLY WAS THIS SOMETHING WHERE, YOU KNOW, NORMALLY YOU SEE THE SITUATION GO THEY DIDN'T CALL ANY MENTAL HEALTH EXPERTS, AND NOW WE HAVE A CASE WHERE I THINK HE CALLED TOO MANY MENTAL HEALTH EXPERTS.

AND I'M HAVING TROUBLE FINDING THE DEFICIENCY BASED ON THE RECORD THAT WE HAVE.

>> IT'S, I DON'T BELIEVE IT'S THAT HE CALLED TOO MANY, IT'S THAT HE DIDN'T PREPARE THE ONES THAT HE HAD, NOR DID HE --

>> WELL, THAT'S WHAT I'M ASKING IS HOW DO WE KNOW THAT HE DIDN'T PREPARE THEM, AND IF WHAT YOU JUST SAID IN RESPONSE TO MY QUESTION AS JUSTICE CANADY ASKED

YOU AS TO ONE OF THE WITNESSES
SAID THAT I TOLD HIM NOT TO CALL
ME?

>> RIGHT.

AND THEN GOES ON TO TALK ABOUT
HOW HE BELIEVES HE'S COMMITTED
OTHER CRIMINAL ACTS THAT HE
HASN'T BEEN PROSECUTED FOR AND
THAT HE'S EXTRAORDINARILY
DANGEROUS --

>> NOW, WHICH WITNESS --

>> DR. WARRINER.

>> AND WHAT WAS WARRINER'S --
HOW DID HE COME INTO THE CASE?
WAS HE SOMEBODY THAT --

>> HE WAS SOMEONE --

>> -- WAS RETIRED?

>> HE WAS SOMEONE THAT HAD COME
IN THAT HAD EXAMINED MR. BARWICK
PREVIOUSLY.

SO NONE OF THE --

>> SO CAN I ASK YOU THIS
QUESTION?

IS SOMETHING, IF MR. ADAMS HAD
PUT ON ANY MENTAL HEALTH
MITIGATION, THE STATE WOULD HAVE
BEEN FREE TO CALL THIS WITNESS,
CORRECT?

>> I DON'T KNOW, I DON'T KNOW
THAT.

I DON'T KNOW THAT THEY WOULD
BECAUSE I DON'T HAVE AN
INDICATION AS TO WHETHER IT WAS
CONFIDENTIAL OR NOT BECAUSE THIS
WAS A JUVENILE PROCEEDING THAT
HE ENDED UP BEING SENTENCED ON

THAT I BELIEVE DR. WARRINER HAD
COME INTO CONTACT WITH HIM AND
THEN HAD COME INTO CONTACT WITH
HIM, MY RECOLLECTION IS POST,
YOU KNOW, POST-SENTENCING AS
TRYING TO GIVE SOME TREATMENT.

>> WELL, WHAT WAS IT THAT, WAS
THE DEFENSE STRATEGY IN THIS
CASE AT THE PENALTY STAGE AS I
UNDERSTOOD IT WAS THAT I WANT TO
BRING OUT ALL OF THE INFORMATION
ABOUT THIS MAN'S LIFE SO THAT
WHAT THEY WERE TRYING TO
DEMONSTRATE TO THE JURY WAS
THAT, YES, THIS MAN HAS
PROBLEMS, BUT IT REALLY IS THE
SYSTEM THAT FAILED HIM.

IS THAT WHAT I'M GETTING FROM
THIS?

IS THAT WHAT DEFENSE COUNSEL
SAYS WAS HIS STRATEGY?

>> WHERE IN VOLUME 23, PAGE 672
HE ACTUALLY SPEAKS A LITTLE BIT
ABOUT IT, AND HE SAYS THAT HE'S
INTENDING TO CALL EVERY
AVAILABLE MENTAL HEALTH
PHYSICIAN TO SHOW KNOWING THAT
SOME OF THE TESTIMONY WAS NOT
GOING TO BE FAVORABLE TO ME, BUT
JUST TO SHOW THIS JURY WE'RE NOT
HIDING ANYTHING.

>> AND HE DOESN'T GO ON TO TALK
ABOUT THE WHOLE NOTION OF THE
SYSTEM REALLY HAD FAILED HIM
THAT ALL OF THIS REALLY WILL
DEMONSTRATE --

>> I REMEMBER --

>> EXCUSE ME.

>> I'M SORRY.

>> THAT THE DEFENDANT REALLY HAD A PROBLEM AND SHOULD HAVE HAD SOME HELP ALONG THE WAY?

>> MR. PALK FOR THE STATE I REMEMBER HIM SAYING IN CLOSING, "DON'T GET TIED UP IN THAT."

I DON'T KNOW THAT THAT WAS THE MAIN THEME FROM, FROM TRIAL COUNSEL.

THE INTERESTING THING IS THE TRIAL COURT HERE FOUND NO MITIGATION, THAT THERE WAS ABUSE, BUT THERE WAS NO MITIGATION.

AND THIS IS A 12-0 RECOMMENDATION.

THIS, THIS -- I HESITATE TO CALL IT A STRATEGY WHEN YOU JUST THROW EVERYBODY UP THERE AND YOU DON'T HAVE ANY KIND OF THEME, YOU DON'T HAVE ANY KIND OF PREPARATION, AND YOU'RE BRINGING OUT ALL THIS NEGATIVE INFORMATION ABOUT YOUR CLIENT AS OPPOSED TO --

>> WELL, DID HE HAVE ANY POSITIVE INFORMATION?

>> ABSOLUTELY.

>> I MEAN, DR. EISENSTEIN SAID HE HAD ANTISOCIAL BEHAVIOR. HIS TESTIMONY WASN'T POSITIVE.

I MEAN, IT COULD HAVE BEEN VIEWED EITHER WAY.

I MEAN, THE STRATEGY WAS TO SHOW THAT I'M, I'M GONNA ESTABLISH MY INTEGRITY, HIS INTEGRITY AND SORT OF SAY THAT AS JUSTICE QUINCE JUST SAID THAT, YOU KNOW, THIS GUY WAS DAMAGED AND WAS DAMAGED BECAUSE OF THE STATE. PEOPLE DIDN'T INTERVENE IN HIS ABUSE, ETC., ETC.

>> THE DOCTOR TESTIFIED THAT THREE STATUTORY MENTAL MITIGATORS WERE PRESENT. THE OTHER DOCTOR TESTIFIED NONE OF THEM WERE PRESENT.

>> DR. ADAMS --

>> HE SAID FOUR OF SEVEN WERE PRESENT.

>> I'M TALKING AS TO THE STATUTORY MENTAL MITIGATORS. HE SAID FOUR OF THE SEVEN INDICATORS WERE PRESENT BUT THAT THIS GENTLEMAN SUFFERS FROM SEVERE BRAIN DAMAGE, AND THAT WAS BROUGHT OUT IN THAT HE LOST CONSCIOUSNESS MANY TIMES FROM THE BEATINGS THAT WERE GIVEN BY HIS FATHER WITH 2X4s, BY --

>> DIDN'T THAT COME IN BEFORE?

>> BUT ALL THAT INFORMATION ABOUT HIS BACKGROUND CAME IN. I MEAN, THEY PAINTED A PICTURE THAT WAS PRETTY, PRETTY SAD PICTURE THAT'S NOT DISSIMILAR FROM A LOT OF THESE CASES ABOUT THE BACKGROUND OF THE DEFENDANT. NOW, TO THE EXTENT THAT YOU'RE

CLAIMING THAT DR. EISTENSTEIN --
FORGIVE ME IF I'VE MISPRONOUNCED
IT -- BUT YOUR WITNESSES OF
TESTIMONY WOULD HAVE BEEN BETTER
FOR THE DEFENSE.

EVEN IF THAT IS ACCEPTED, ISN'T
IT TRUE THAT THERE WAS STILL
SUBSTANTIAL OVERLAY BETWEEN WHAT
YOUR WITNESS WOULD HAVE
TESTIFIED TO AND WHAT THE OTHER
WITNESSES -- NOW, YOUR WITNESS
DID GO FURTHER AND TESTIFY THAT
HE BELIEVED THAT THE SEXUAL
MITIGATORS WERE ESTABLISHED, BUT
THE BASIC PICTURE OF THE
DEFENDANT THAT EMERGED FROM HIS
TESTIMONY IS NOT REALLY THAT
DIFFERENT.

THAN WHAT EMERGED AT THE TRIAL.
ISN'T THAT TRUE?

>> I DISAGREE WITH THAT.

I THINK THIS IS A PERFECT
EXAMPLE THAT JUST SAYING THE
WORD "CHILD ABUSE" AND JUST
GOING THROUGH THE ACT DOESN'T
CONNECT IT UP NEITHER FOR THE
TRIAL JUDGE, NOR FOR THE JURY.
THE REASON WE HAD EXPERTS IS TO
CONNECT THIS ACT THAT HAPPENED
TO THE BEHAVIOR THAT RESULTED.
AND THAT'S EXACTLY WHAT THE
TRIAL COURT JUDGE SAYS IN THE
SENTENCING ORDER IS HE DOESN'T
SEE THE CONNECTION BETWEEN THE
CHILD ABUSE THAT OCCURRED AND
THE BRAIN DAMAGE THAT OCCURRED

AND THE THINGS THAT WERE OUT THERE, AND MR. BARWICK IN HIS ACTIONS ON THAT DAY.

THAT'S WHAT DR. EISENSTEIN WAS ABLE TO DO.

AND JUST BECAUSE YOU BRING A LOT OF PEOPLE OUT, THAT DOESN'T MEAN THAT THE SUBSTANCE OF THEIR TESTIMONY WAS PROPERLY PREPARED BY AN EFFECTIVE ADVOCATE PROVIDING THE INFORMATION AS NEEDED, DEVELOPING THE COHERENT STRATEGY AS OPPOSED TO, YOU KNOW WHAT?

DOESN'T MATTER WHATEVER THEY'RE GOING TO SAY.

IF THEY CAME INTO CONTACT WITH HIM, I'M GOING TO THROW THEM UP THERE, AND I'M GOING TO PAINT THIS ABUSIVE PORTRAIT, BUT I'M GOING TO GET OUT THAT HE'S ANTISOCIAL, HE'S EXTREMELY DANGEROUS, AND HE'S DOING THINGS WE DON'T EVEN KNOW ABOUT AND HASN'T BEEN CAUGHT FOR.

THAT WAS BY THE DEFENSE.

>> WELL, IN THE CASE HE WAS, HAD JUST BEEN RELEASED FROM PRISON FOR A RAPE, IS THAT CORRECT?

>> THAT'S CORRECT.

SEXUAL BATTERY.

>> AND SO IT OCCURRED WITHIN, WHAT, TWO MONTHS?

>> A LITTLE BIT MORE, BUT CLOSE.

>> MY PROBLEM WITH ALL OF THIS, AND IT DOES SEEM THAT MR. ADAMS,

YOU KNOW, I MEAN, WE DON'T
SECOND GUESS IT, BUT IT DOES
SEEM KIND OF THE FACT THAT HE
PUT ON THESE PEOPLE THAT ARE
SORT OF, I'M REALLY NOT HELPING
YOU, AND THAT'S WHAT THE JUDGE
RELIED ON.

BUT IN TERMS OF THE PREJUDICE ON
THIS IT JUST SEEMS THAT THE
AGGRAVATION IS SO STRONG IN THAT
HE HAD JUST BEEN RELEASED FROM
PRISON, AND THEN HE COMMITS THE
ACT --

>> WHICH MAKES IT THAT MUCH MORE
EGREGIOUS AND THAT MUCH MORE
IMPORTANT THAT YOU'VE GOT TO
CONNECT THESE SO THAT THEY CAN
UNDERSTAND THIS YOUNG MAN'S
BEHAVIOR, AND THAT SIMPLY WASN'T
DONE.

THE STATE DID NOT EVEN
CROSS-EXAMINE DR. WARRINER AND
THEN GOES ON IN CLOSING TO USE
DR. WARRINER'S TESTIMONY TO TALK
ABOUT HOW EXTREMELY DANGEROUS
DARRYL BARWICK IS AND USE IT TO
ESTABLISH THEIR CASE.

SAME THING WITH THE TESTIMONY OF
DR. ANNIS.

WHEN YOU LOOK AT IT, IT DOESN'T
MAKE ANY SENSE THAT WITH THE
FACTS AS YOU RELAY, JUSTICE
PARIENTE, THAT YOU'RE JUST GOING
TO THROW EVERYTHING OUT THERE
AND THAT IT DOESN'T MATTER IF
THAT EXPERT SAYS YOUR CLIENT'S

EXTREMELY DANGEROUS.

IT DOESN'T MATTER THAT YOUR
EXPERT'S GOING TO SAY THAT HE'S
ANTISOCIAL AND HE'S COMMITTING
OTHER ACTS.

THAT'S THE FUNCTION OF THE
ADVOCATE IS SO THAT YOU GET YOUR
EXPERT, AND YOU TAKE THIS LIFE
HISTORY, AND YOU CONNECT IT UP
SO THAT IT PRODUCES SOME
MITIGATION.

AND WE HAD DR. EISENSTEIN THAT
COMES IN AND TESTIFIES, YES,
THERE'S THREE STATUTORY
MITIGATORS PRESENT HERE IN THIS
CASE.

ONES THAT WERE SPECIFICALLY
REFUTED BY DR. ANNIS THAT WAS
CALLED BY THE DEFENSE, AND
THAT'S A STARK COMPARISON WHEN
YOU LOOK AT THE TWO.

I THINK THAT IF YOU JUST LOOK AT
THE SURFACE AND YOU SAY, WELL,
THERE'S SEVEN EXPERTS CALLED,
YOU WOULD THINK THAT SOMETHING
OF VALUE WOULD BE, WOULD BE
DRAWN FROM THAT.

BUT WHEN YOU REALLY LOOK AT THE
RECORD AND YOU REALLY LOOK AT
THE HISTORY AND YOU COMPARE IT
TO WHAT DR. EISENSTEIN WAS ABLE
TO PRODUCE ONCE HE WENT IN AND
DID THE TESTING, ONCE HE HAD THE
MEDICAL RECORDS, ONCE HE HAD THE
SCHOOL RECORDS, ONCE HE HAD A
COMPLETE PICTURE OF WHO DARRYL

BARWICK WAS, THEN HE COULD SAY,
WELL, HERE, THIS IS WHAT
EXPLAINS THIS YOUNG MAN'S
BEHAVIOR WHEN YOU CONNECT UP
THIS BRAIN DAMAGE.
THIS IS HOW AIFECTS HIM IN A
STRESSFUL SITUATION.
AND HE LIKENED IT TO A
THERMOSTAT THAT HAD NO CONTROL,
THAT THERE WAS NO MODULATION.
THAT WHENEVER ANGER OR
FRUSTRATION, OR SOMETHING,
HEIGHTENED EMOTION CAME THERE
IS NO MODULATION THERE.
AND THAT, SPECIFICALLY,
EXPLAINS HOW THAT TRAIN DAMAGE
RELATES TO THE ACT THAT
OCCURRED ON THE DATE OF,
REBECCA WENDT'S MURDER.
WHEREAS THE OTHER DOCTORS THEY
DIDN'T HAVE ANYTHING THEY COULD
TESTIFY TO REGARDING THAT.
THEY DIDN'T GET THE COMPLETE
PICTURE.
NONE OF THEM DID AN EVALUATION
FROM THE FIRST TRIAL TO THE
SECOND TRIAL.
NOBODY EVER WENT BACK AND SAW
MR.^BARWICK.
THERE IS SIX-YEAR INTERVENING
PERIOD THERE.
>> AREN'T YOU ARGUING
INEFFECTIVE ASSISTANCE OF
EXPERTS?
IS THAT YOUR ARGUMENT?
>> NO, SIR.

I BELIEVE THAT, I BELIEVE THAT
IT WAS, MR. ^ADAMS'S
RESPONSIBILITY TO PROVIDE THEM
WITH THE RECORDS THAT ARE
NECESSARY AND IT WASN'T A
SITUATION WHERE HE HAD
CONTACTED THEM WELL IN ADVANCE.

THE RECORD ACTUALLY SHOWS THAT
HE, HE DIDN'T ASK FOR ANY
EXPERTS TO BE APPOINTED UNTIL
TWO WEEKS BEFORE THE GUILT
PHASE STARTED.

SO YOU HAVE THE GUILT PHASE AND
THEN, THERE WAS I BELIEVE A
WEEK IN BETWEEN WHEN YOU HAD
THE PENALTY PHASE.

SO IT WASN'T A LENGTHY PERIOD
OF TIME WHERE HE IS PREPARING
THE, EXPERTS, AND, HE SHOULD
HAVE, HE SHOULD HAVE BEEN TAKEN
CARE OF THAT.

AND HE WASN'T.

WITH THE COURT'S PERMISSION,
I'M GOING TO SAVE THE REST FOR
REBUTTAL, THE REST OF MY TIME.

>> MAY IT PLEASE THE COURT.

MEREDITH CHARBULA, ASSISTANT
ATTORNEY GENERAL.

I'M COUNSEL FOR THE APPELLEE.

FIRST I WOULD LIKE TO ADDRESS
THE ALLEGATION THAT THE EXPERTS
WEREN'T PROVIDED WITH
SUFFICIENT INFORMATION, TO DO A
THOROUGH EVALUATION.

THAT IS SIMPLY NOT SUPPORTED BY
THE RECORD.

AND I SAY THAT, FOR TWO
REASONS, NUMBER ONE, MR. ^ADAMS,
TOOK THIS CASE ABOUT FIVE
MONTHS BEFORE TRIAL.

MR. ^BARWICK WAS REPRESENTED BY
A GENTLEMAN NAMED ROY LAKE WHO
IS ALSO DECEASED.

DIED AT AGE OF 49 IN 2008.

AND, MR. ^LAKE HIRED A
MITIGATION EXPERT.

AND, THAT MITIGATION EXPERT AND
THAT IS STARTING ON PAGE 1055
OF THIS POST-CONVICTION RECORD
DID A LOT OF INVESTIGATION,
COMPILED A LOT OF RECORDS ON
PAGE 1058 OF THE
POST-CONVICTION RECORD THERE IS
A NOTATION THAT XEROX, COLATED
AND COMPILED, 1,000-PAGE
THREE-VOLUME NOTED BOOK FOR
PSYCHIATRISTS TO BE APPOINTED.

ON APRIL 16th, '91 HE ORGANIZED
AND SUMMARIZED MR. ^BARWICK'S
PRIOR PRISON RECORDS.

HE SUMMARIZED THE TRIAL
TESTIMONY.

HE SUMMARIZED HIS PRISON
CONDUCT, HIS CATALOGING
SPECIFIC DATA FOR EASY
REFERENCE USAGE AND ATTORNEY
FOR EXPERT WITNESSES.

THIS WAS ALL DONE FOR MR. ^LAKE.

MR.^LAKE TESTIFIED WHEN HE
ASKED TO BE RELIEVED FOR THIS
TRIAL HE TURNED OVER, BECAUSE
OF AN AUTO ACCIDENT.

MR.^LAKE SUFFERED HEAD INJURIES
AND HIS DOCTOR OPINED HE
COULDN'T CONTINUE.

MR.^LAKE SAYS I TURNED
EVERYTHING I HAVE OVER TO
MR.^ADAMS.

MR.^ADAMS TOLD THE COURT THAT
MR.^LAKE GAVE ME.

THIS NOTION THAT HE DID NOT
GATHER DATA, FIRST OF ALL,
ABSOLUTELY NO EVIDENCE OF THAT
PRESENTED AT THE EVIDENTIARY
HEARING.

BUT IT IS CONTRADICTED BY THE
RECORD.

>> I GUESS MY CONCERN HERE, AND
I DON'T KNOW THAT IT RISES TO A
CONSTITUTIONAL CONCERN BECAUSE
WE GIVE SUCH LATITUDE, ON
STRATEGIES, IS THAT, IT DOES,
APPEAR, AS IF THE IDEA THAT YOU
ARE JUST GOING TO, LET'S SEE,
WHO ARE ALL THESE WITNESSES, IN
THE FILE.

I'M GOING TO PUT THEM ALL ON,
BECAUSE I WANT TO BE OPEN AND
HONEST ABOUT IT.

I'M GOING TO PUT IT ON, THE
JUDGE ENDS UP, RELYING ON THE
EXPERT THAT IS THE DEFENDANT
PUT ON, TO SHOW THAT THERE WAS
NO STATUTORY MITIGATION.

SO IT DOES CONCERN ME.

AS I SAID, I DON'T ON THAT IS
IS A CONCERN THAT WOULD WISE TO
A STRICKLAND DEFICIENCY, BUT
WHAT CAN YOU TELL ME THAT, TO
SHOW THAT THERE WAS THIS, THE
REASONABLE STRATEGY THAT WHEN
HE LOOKED AT FOUR OF THE
EXPERTS, OR, WHO WERE THERE HE
GOES, OH, MY GOODNESS, THOSE
ARE GOING TO END UP BEING
CALLED BY THE STATE ANYWAY, SO
I BETTER PUT THEM ON TO KIND OF
SOFTEN IT BUT I'M GOING TO
START OUT WITH, AT LEAST I'M
GOING TO START OUT WITH MY TWO
STRONGEST WITNESSES TO SHOW
THERE IS EXTREME EMOTIONAL
DISTURBANCE.

HOW DO WE GET THERE?

>> I THINK, THAT TESTIMONY THAT
THE STAT MITIGATORS DIDN'T
APPLY CAME OUT DURING
CROSS-EXAMINATION OF THE EXPERT
WITNESSES.

A JURY IS NOT TOLD YOU SHOULD
WASTE STATUTORY MITIGATORS YOU
SHOULD WEIGH NON-STATUTORY
MITIGATORS.

WHAT IS IMPORTANT IS, THIS IS
NOT AND I ALSO WANT TO GO BACK
TO MY POINT, WHEN YOU LOOK AT
THE TESTIMONY OF DR. ANNIS AND
DR. McCLAREN, WHEN THEY DID
THEIR EVALUATION THEY
CONSIDERED PRISON RECORDS,

PRIOR PSYCHOLOGICAL RECORDS,
HIS CONFESSION.

>> I'M NOT SURE YOU ANSWERED MY
QUESTION.

>> I WILL.

>> AGAIN, THIS CASE, CERTAINLY
IS A DEATH PENNALITY CASE AT
SOME LEVEL.

BUT THIS IS A, YOU KNOW, THIS
DEFENDANT STARTED SEXUALLY DEIF
RANT -- DEVIANT BEHAVIOR AT A
VERY YOUNG AGE AND HAD
DOCUMENTED HISTORY OF BEING
SEXUALLY I ABUSED AND YOU KNOW,
THIS CRIME OF OPPORTUNITY, IS,
ONE WITH THE, ONLY WAY TO SAVE
HIM FROM THE DEATH PENALTY,
WOULD HAVE BEEN TO DEVELOP
STRONG, MENTAL HEALTH
MITIGATION FOR, AT LEAST FOR
THE JUDGE TO TAKE INTO
CONSIDERATION.

>> FIRST OF ALL, JUSTICE
PARIENTE THERE IS ABSOLUTELY NO
EVIDENCE HE WAS SEXUALLY ABUSED
AS A CHILD.

HE WAS PHYSICALLY ABUSED.

DR.^EINSTEIN SAID HE THOUGHT
SEXUAL BUT COULD NOT
CORROBORATE THAT.

WHAT YOU HAVE TO LOOK AT THE
CASE IN CONTEXT OF, NUMBER ONE,
TRIAL COUNSEL CALLED LAY
WITNESSES INCLUDING HIS FATHER
WHO WAS THE ONE, METING OUT ALL
THE PHYSICAL ABUSE.

AND, IT IS VERY POWERFUL I
THINK WHEN YOU HAVE A FATHER
WHO GETS ON THE STAND AND SAYS,
YES, I BEAT MY SON WITH REBAR,
WITH A TWO-BY-FOUR.
I KNOCKED HIM UNCONSCIOUS.
I DON'T REALLY SEE ANYTHING
WRONG WITH THAT.
TO ME THAT IS VERY POWERFUL
EVIDENCE FOR A JURY TO SAY, OH,
MY GOSH NO WONDER HE TURNED OUT
TO BE HE IS BECAUSE HIS FATHER
SAW NO PROBLEM WITH KNOCKING
HIM OUT WITH A TWO-BY-FOUR.
>> WE'RE ATTACKING USE OF LAY
WITNESSES.

WERE THEY CALLED AT THE FIRST
TRIAL?

>> SOME OF THEM WERE CALLED AT
THE FIRST TRIAL.

A LOT OF THEM WERE CALLED IN
THE GUILT PHASE TO SUPPORT THE
INSANITY DEFENSE.

ALSO, ABOUT FOUR OF THE EXPERTS
MAYBE, FIVE, DR.^BELLER, ANNIS,
ANNIS WAS CALLED BY THE STATE.

DOCTOR HORDE, FIRST TRIAL.
DR.^ANNIS TESTIFIED HE WASN'T
INSANE.

MR.^BELLER AND DR.^WARNER,
FOUND HE WAS.

THAT WAS AT FIRST TRIAL.
INSANITY DEFENSE OF COURSE
FAILED.

WHAT YOU HAVE HERE IS A TRIAL

COUNSEL, DOES NOT, JUSTICE
PARIENTE YOU'RE ABSOLUTELY
RIGHT, THIS IS NOT A TRIAL
COUNSEL WHO IS FACED WITH THE
DILEMMA DO I PUT ON MENTAL
EVIDENCE, MENTAL MITIGATION
EVIDENCE TO SHOW THAT MY CLIENT
IS A PRODUCT OF HIS CHILDHOOD.

OR, DO I PRESENT REALLY GOOD
GUY EVIDENCE AND SHOW THAT THIS
IS AN ABERRATION.

I MEAN, MR. BARWICK NEVER
SERVED IN THE MILITARY.

HE HAD NEVER DONE GOOD WORKS,
THERE WAS NOT A SINGLE POSITIVE
THING ANYONE HAS SAID ABOUT
THIS MAN, EXCEPT THAT, AGE 13
HE STARTED, ACTING OUT SEXLY.
HE WAS, YOU KNOW, HE WAS IN A
JUVENILE SYSTEM.

AT AGE 16 YEARS, TEN MONTHS, HE
RAPED, A YOUNG WOMAN, UNDER A
REMARKABLY SIMILAR
CIRCUMSTANCES.

HE WALKED INTO HER APARTMENT
WHILE SHE WAS THERE HE HAD A
MASK ON.

HE HAD A KNIFE.

HE RAPED HER.

>> MISS CHARBULA, I GUESS THE
QUESTION COMES, WE SEE THESE
KIND OF CASES WITH, DEFENDANTS,
WHO ARE, BOTH HAVE LONG
HISTORIES OF ABERRANT BEHAVIOR.

BUT THE PROBLEM I SEE IS THAT, WHEN YOU ARE TALKING ABOUT MITIGATION, YOU NEED TO, EVEN THOUGH A PERSON HAS, MENTAL ILLNESS, OR A SOME KIND OF DEVIANT BEHAVIOR, YOU NEED TO SHOW SOMETHING, IF YOU'RE TALKING ABOUT THE YOU'RE PRESENTING A MITIGATING CASE, YOU HAVE TO SHOW, SOMEHOW CONNECT THIS, AND SHOW WHY IT IS MITIGATING.

SO HOW DID MR.^ADAMS SHOW THAT THIS, DESPITE ALL OF THIS THE THINGS THAT HE HAD DONE IN HIS LIFE, HOW THAT MITIGATED THIS CRIME?

>> BECAUSE THE EXPERTS WERE THE ONLY PERSONS WHO COULD PROVE EVIDENCE, WHO COULD PRESENT EVIDENCE.

HE COULD ARGUE THAT HIS CHILD ABUSE CAUSED HIM TO BE A MONSTER.

BUT ONLY ARE THE EXPERTS COULD PROVE TWO THINGS.

NUMBER ONE, THAT THERE WAS A CONNECTION BETWEEN HIS CHILD ABUSE AND WAY HE WAS.

IF YOU LOOK AT THEIR TESTIMONY, THEY DID.

AND, MORE IMPORTANTLY WITH DR.^WARNER, DR.^WARNER SAW BARWICK, WHEN HE WAS JUST 1 YEARS OLD AND HE CAME IN BEFORE THE JURY AND HE TESTIFIED, YOU

KNOW, MR. BARWICK, IS A
DANGEROUS MAN, AND I BLEW IT.
I SHOULD HAVE HAD HIM
INSTITUTIONALIZED.
WHEN HE SHOULD HAVE BEEN
INSTITUTIONALIZED.
AS A RESULT OF HIS PERSONALITY
WARPED BY HIS FATHER.
I DIDN'T RECOGNIZE IT.
HE SHOULDN'T HAVE EVER BEEN OUT
IN THE FIRST PLACE.

I BLEW IT.

SO ONLY DR. WARNER COULD COME
IN AND TESTIFY HE HAD THE
OPPORTUNITY TO INTERVENE AND
PUT MR. BARWICK IN A PLACE
WHERE HE WOULD NEVER HURT
ANYONE AND HE DIDN'T PICK IT UP
AND ONLY DR. WARNER COULD DO
IT.

>> ANY OF THE OTHER EXPERTS TIE
ALL OF THIS HISTORY AND WHY HE
SHOULD HAVE, WHY THE STATE
SHOULD HAVE INTERVENED?
BECAUSE I THOUGHT THAT WAS WHAT
MR. ADAMS STRATEGY WAS?

>> ABSOLUTELY.

>> WHO ELSE SAID THAT THE STATE
SHOULD HAVE INTERVENED AT SOME
EARLIER POINT IN THIS
DEFENDANT'S LIFE?

>> NONE OF THEM TESTIFIED AS TO
THAT.

THAT WAS DR. WARNER.

MR. BELLER TESTIFIED, ARE
BARWICK DOESN'T THINK LIKE THE

REST OF US AND WE'VE GOT THE
ABUSE CONNECTION.

DR. ^McCLAREN TALKED ABOUT THE
ABUSE CONNECTION IN HIS
CONDUCT.

SO, WE HAVE THESE EXPERTS
TESTIFYING AS TO THAT HE IS A
DISTURBED YOUNG MAN BUT WE HAVE
DR. ^WARNER TYING IT UP SAYING,
WELL THE REASON WHY HE WAS
STILL OUT THERE, WAS BECAUSE, I
FAILED TO RECOGNIZE JUST HOW
DANGEROUS HE IS.

>> I'M TRYING TO THINK BACK
OVER CASES, THAT, WE HAVE HAD
INEFFECTIVE ASSISTANCE OF
COUNSEL CLAIMS WHERE SOMEONE
PUTS ON TWO EXPERTS AND THE TWO
OF THEM CONTRADICT EACH OTHER.

WE GO WELL, YOU KNOW, WE'VE
AGAIN GIVEN LEEWAY.

BUT THIS IDEA, I UNDERSTAND HE
COULDN'T LIMIT THEMSELVES TO
GOOD GUY TESTIMONY IN THIS
CASE, BUT THE IDEA THAT YOU
WOULD SEARCH THROUGH A FILE,
LOOK AT ALL OF THIS AND JUST
GO, I'M JUST GOING TO PUT
EVERYBODY ON, I DON'T THINK, I
EVER SEEN A CASE WHERE THAT'S
DONE.

IT IS NOT REALLY A STRATEGY.

IT IS LIKE, YOU'RE GOING,
THERE, FOUR OF THESE GUYS, YOU
KNOW, INEVITABLE.

IF YOU PUT SEVEN EXPERTS ON,
THEY'RE GOING TO CONTRADICT ONE
ANOTHER.

YOU KNOW, TWO IS.

BUT WHY, I JUST DON'T

UNDERSTAND HERE, HOW WE KNOW
THIS WAS A REASONABLE
STRATEGIC, DECISION TO PUT ON
PEOPLE, THAT, WERE NOT GOING TO
BE HELPFUL AND WOULD ACTUALLY
CONTRADICT WHAT MAY BE TWO OR
THREE OF THE BETTER EXPERTS,
WOULD HAVE SAID?

>> WELL I DON'T THINK YOU WOULD
FIND ANY PARTICULAR, I MEAN YOU
HAVE SOME THAT SAY HE IS
ANTISOCIAL.

YOU'VE GOT DR.^WALKER
TESTIFYING THAT HE IS, HE'S
INTERMITTENT EXPLOSIVE
DISORDER, WHICH IS NOT A MAJOR
MENTAL ILLNESS.

BUT YOU ACTUALLY DON'T HAVE
THEM SAYING WELL, HE IS WRONG,
THIS OTHER PERSON IS WRONG.
WHAT YOU HAVE IS A COMPLETE
PICTURE.

AGAIN I WANT TO SAY TO YOU, IF
YOU LOOK AT THIS CASE, YOU WILL
REALIZE IN THE PENALTY PHASE,
MR.^ADAMS HAD, NOTHING ELSE.
IT WAS CREDIBILITY WITH THE
JURY.

AND, IT WAS, TO SHOW THAT,
WHILE MR.^BARWICK WAS,
ESSENTIALLY, DAMAGED BEYOND

REPAIR, THAT THE SYSTEM FAILED TO INTERVENE.

ALSO REMEMBER, THAT HE PRESENTED THIS SAME TESTIMONY THROUGH HESS LAY WITNESSES.

JANICE SANTIAGO, WHO IS A SISTER, SAID WHEN SHE LEFT THE HOUSE, SHE CALLED THEN HRS, ABOUT HER FATHER.

NOTHING WAS DONE.

ANOTHER WITNESS WHO WAS A NEIGHBOR, TESTIFIED, I SAW IRA BARWICK BEATING THOSE KIDS.

WE INTERVENED AND TOLD HIM KNOCK IT OFF.

WHEN ASKED DID YOU DO ANYTHING OR CALL THE AUTHORITIES?

NO.

SO THE LAY WITNESSES SUPPORTED THAT AS WELL AS PROVIDING ANECDOTAL LIKE DR. EISEN TEEN EVIDENCE OF THE CHILD ABUSE.

EXPERTS TIED IT TOGETHER TO SHOW THE WAY HE WAS AND SYSTEM SYSTEM FAILED HIM.

ALSO EVEN IF YOU SAY DEFICIENT PERFORMANCE LOOK AT DR. EISENSTEIN'S TESTIMONY.

COLLATERAL COURT FOUND IT CUMULATIVE TO OTHER EXPERTS.

IF YOU GO ONE BY ONE YOU WILL SEE THAT IS ABSOLUTELY TRUE.

DR. EISENSTEIN SAID HE HAD ANTISOCIAL TRAITS.

TWO POINTS DURING THE COLLATERAL COURT'S ORDER HE

EXPRESSES SOME ISSUE ABOUT
DR.^EISENSTEIN'S CREDIBILITY
WHY?

EVEN SHOW HE OPINED BARWICK
DIDN'T PREMEDITATE THIS IN SAME
WAY SOMEONE NORMAL WOULD, HE
DIDN'T EVEN QUESTION HIM ABOUT
THE DETAILS OF RAPE THAT WAS
ALMOST STRIKINGLY AND
CHILLINGLY SIMILAR TO THIS CASE
EXCEPT THE ONLY DIFFERENCE IS,
THE FIRST VICTIM, MANAGED TO
TALK HIM, TALK BARWICK OR
CONVINCE BARWICK SHE WOULDN'T
REPORT HIM.

HE WASN'T GOING TO MAKE THAT
MISTAKE NEXT TIME.
HE DIDN'T READ HIS CONFESSION.

DR.^EISEN STEIN DIDN'T READ HIS
CONFESSION.

ANY NOTION THAT DR.^EISENSTEIN
SAID BRAIN DAMAGE DIDN'T
CONTRIBUTE TO THE MURDER IS NOT
SUPPORTED BY THE RECORD.

DR.^EISENSTEIN SAID THAT THIS
BRAIN DAMAGE MAKES HIM
DEFICIENT IN TERMS OF THINKING
PROCESS.

MAKES HIM DIFFICULT FOR BARWICK
TO THINK PROBLEMS THROUGH.
BARWICK WOULD HAVE PROBLEMS
EXPRESSING HIMSELF WHICH WOULD
LEAD TO FRUSTRATION.

HE SAID INTERMITTENT EXPLOSIVE
DISORDER KICKED IN AT SOME

POINT DURING THE ATTACK.

THAT IS EXACTLY WHAT DR. ^WALKER SAID.

DR. ^WALKER SAYS HE HAS GOT INTERMITTENT.

DR. ^EISENSTEIN SAID, AGAIN, DR. ^EISENSTEIN SAID HE WASN'T ANTISOCIAL, BUT THAT HE HAD FOUR OF THE SEVEN TRAITS AND ONLY THREE OF THE TRAITS ARE NECESSARY FOR THEIR DIAGNOSIS.

DR. ^EISENSTEIN SAID REASON I DON'T THINK HE IS ANTISOCIAL I DON'T REALLY THINK HE HAS DISREGARD FOR SAFETY OF OTHERS.

I DON'T BELIEVE THIS BEHAVIOR IS REPEATED.

THIS IS DESPITE EVIDENCE THAT AT AGE 13 HE EXPOSED HIMSELF, GRABBED A BREAST OF A YOUNG WOMAN.

HE HAD ANOTHER BATTERY.

HE RAPED A WOMAN UNDER SIMILAR CIRCUMSTANCES.

AND AT LEAST TWO TIMES, COLLATERAL COURT EXPRESSED DOUBT ABOUT HOW THE JURY WOULD JUDGE DR. ^EISENSTEIN'S

CREDIBILITY WHEN HE FAILED TO READ BARWICK'S CONFESSION.

HE FAILED TO KNOW SOME OTHER SIGNIFICANT FACTS ABOUT HIS DEVELOPMENT.

INCLUDING HE HAD A DRIVER'S

LICENSE.

HE DIDN'T EVEN ASK HIM ABOUT
THE PRIOR RAPE.

AND BARWICK GAVE HIM A STORY
THAT WASN'T TRUE.

HE SAID HE WALKED INTO THE
KITCHEN, WANTED TO HAVE SEX
WITH HER AND, SHE, HE COULDN'T.

SO, ULTIMATELY THEY FAULT.

-- FOUGHT.

BUT EISENSTEIN AGREED WITH, SO
A LOT OF IT WAS CUMULATIVE.

ALL AGREED HE HAS RELATIVELY
NORMAL IQ.

DR.^EISENSTEIN SAID HE HE HAD
BRAIN DAMAGE.

DR.^McCLAREN TESTIFIED AT TRIAL
HE HAD BRAIN DAMAGE.

DR.^WALKER TESTIFIED AT TRIAL
THAT HE HAD BRAIN DAMAGE.

SO, DR.^EISENSTEIN TESTIFIED
THAT BARWICK HAD LEARNING
DISABILITY.

DR.^.

EISENSTEIN SAYING THINGS ARE
CUMULATIVE.

>> EXPLAIN TO US, HOW DR.^EISEN
STEIN REACHES CONCLUSION THAT
MENTAL HEALTH IN MITIGATORS DO
APPLY?

>> DR.^EISENSTEIN TESTIFIES
100% FOR THE DEFENSE.

HE RELATED THE SAME BASIC SAME
FACTS OR, WITHOUT ANY KIND OF
EXPLANATION OF WHY THESE

OCCURRED EXCEPT THAT HIS
OPINION, THAT HE HAS BRAIN
DAMAGE, HE HAS INTERMITTENT
EXPLOSIVE DISORDER.

HE WAS, HAD AN ABUSED
CHILDHOOD.

>> -- OR THE TWO MITIGATORS.

>> HE DIDN'T REALLY EXPLAIN WHY
HE THOUGHT HE DID.

HE JUST DID.

AND, BASED ON THE TOTALITY OF
THE CIRCUMSTANCES.

WHICH, BUT, HE ALSO TESTIFIED,
WHEN YOU LOOK AT, PREJUDICE, HE
ALSO TESTIFIED THAT, BARWICK IS
SEXUAL DEVIANT.

HE IS A EXHIBITED SEXUAL
DEVIANT BEHAVIOR.

HE IS NOT MENTALLY ILL.

HE DOES NOT HAVE A MENTAL, HE
IS NOT BIPOLAR AND NOT
SCHIZOPHRENIC AND NOT DISACT
FAV TIFF DISORDER.

SO HE IS NOT MENTALLY ILL.

DISAFFECT TIFF.

TALKED ABOUT PRIOR DEVIANT
SEXUAL BEHAVIOR, THE RAPE.

THE ANY NOTION THAT
DR.^EISENSTEIN WOULD NOT HURT
HIM AS MUCH AS IF YOU WANT TO
ASSUME THE OTHER EXPERTS HURT
HIM IS NOT SIMPLY BORNE OUT BY
THE RECORD.

GOING BACK TO THE NOTION THAT
THE TRIAL COUNSEL DIDN'T TALK
TO THE EXPERTS?

ONLY THING HE IS HANGING HIS
HAT ON.

HE DIDN'T CALL DR.^ANNIS, DR.
HORD OR DR.^McCLAREN AT
EVIDENTRY HEARING.

DID TRIAL COUNSEL DO ANY
PREPARATION WITH YOU? DIDN'T
CALL THE WITNESS THE ONLY THING
HE HANGING HIS HAT ON DIDN'T
TALK TO THEM, DR.^ANNIS
QUESTION ABOUT WHETHER HE
TESTIFIED AND SUBPOENAED BOTH
BY THE STATE AND DEFENSE, SAYS
I GET SUBPOENAED BY BOTH.

HE DID NOT SAY I DON'T KNOW WHO
I'M HERE TO TESTIFY FOR.

HE SAYS, I DON'T KNOW, WHO, WHO
WANTS ME THE MOST HERE TODAY.
WELL, HE TESTIFIED FOR THE
STATE.

AT THE ORIGINAL TRIAL.

AND SO I DON'T KNOW WHETHER
THIS CAME FROM THE FACT HE WAS
SUBPOENAED BY BOTH.

HE DID NOT SAY I NEVER TALKED
TO TRIAL COUNSEL.

DR.^WARNER, AS YOU POINTED OUT
JUSTICE CANADY, ADAMS, SAID, WE
KNOW HE TALKED TO WARNER
BECAUSE WARNER SAID, YOU KNOW,
I REALLY CAN'T HELP YOU.

DR.^WARNER IS, BUT
SUBJECTIVELY, MAYBE DR.^WARNER
THAT WAS TRUE.

BUT TRIAL COUNSEL, STRATEGY,
HIS NEED FOR DR.^WARNER WAS TO

SHOW THE JURY, PERSONALLY, ONE
THING FOR DR. ^EISENSTEIN TO SAY
OR ANOTHER EXPERT TO SAY,
DR. ^WARNER SCREWED UP.
AND HE SHOULD HAVE DONE MORE.
IT IS QUITE ANOTHER FOR THE
EXPERT WHO COMES IN AND SAYS,
OH, MY GOSH, I FAILED, I MESSED
UP.
I SHOULD HAVE RECOGNIZED THAT
HE IS DANGER TO HIMSELF AND
OTHERS.
HE SHOULD HAVE BEEN
INSTITUTIONALIZED AND I MISSED
IT.
AND THAT'S WHY I ESSENTIALLY
THE INFERENCE IS, THAT'S WHY
WE'RE HERE.
SO WE HAVE TRIAL COUNSEL
SAYING, THE STRATEGY, NUMBER
ONE, GET CREDIBILITY WITH THE
JURY.
NUMBER TWO, SHOW THIS
HORRENDOUS PHYSICAL ABUSE, ON
THE PART OF HIS FATHER.
HIS MOTHER IS FAIR TO
INTERVENE.
ATTEMPTS BY A SISTER AND
NEIGHBOR TO INTERVENE FAILED.
ATTEMPTS BY, THE COURT SYSTEM
TO GET HIM INTERVENTION, WITH
DR. ^WARNER, FAILED.
IT IS NOT BARWICK'S ENTIRE
FAULT.
HAD SOMEBODY CALLED HRS, HAD
THEY RESPONDED.

HAD SOMEONE CALLED THE POLICE.

HAD DR. WARNER GOTTEN RIGHT,
BARWICK WOULD BE INSTITUTIONAL
ICED AND NOT FACING DEATH
PENALTY.

NOT FOR THIS WASN'T A
HORRENDOUS CRIMES.

NOT FOR WHAT HE IS NOT,
MENTALLY DEFECTIVE.

DON'T GIVE HIM THE DEATH
SENTENCE BECAUSE PEOPLE COULD
HAVE INTERFERED.

HE IS A PRODUCT OF HIS CHILD
ABUSE.

HE DOESN'T DESERVE THE DEATH
PENALTY.

AND IF YOU LOOK AT ADAMS,
CLOSING ARGUMENT, THAT IS WHAT
IT WAS.

I'M NOT TRYING TO BLAME THE
SYSTEM.

ADAMS, AGAIN YOU CAN SEE HIM
VERY, YOU KNOW, GETTING
CREDIBILITY WITH THE JURY.

I'M NOT TRYING TO BLAME THE
SYSTEM.

BUT WHEN IT COMES TO WHETHER
YOU'RE GOING TO SENTENCE MY
CLIENT TO DEATH, LOOK AT THE
FACT THAT THE SYSTEM FAILED MY
CLIENT AND HAD THEY NOT, HE
WOULDN'T BE HERE AND THEREFORE,
HE DOESN'T DESERVE TO DIE.

SEE I'M OUT OF TIME.

ABSENT ANY OTHER QUESTIONS, I

WOULD ASK THIS COURT TO AFFIRM
THE COLLATERAL COURT'S DENIAL
OF POSTCONVICTION RELIEF AND
DENY, MR. ^BARWICK'S PETITION
FOR HABEAS CORPUS.

>> THANK YOU.

>> IN REBUTTAL THE STATE, THE
STATE IS MISSING THE POINT.
THIS SO-CALLED, STRATEGY,
NUMBER ONE, WAS NEVER ESPOUSED
BY MR. ^ADAMS.

THE ONLY STRATEGY WAS WHAT I
HAD READ TO THE COURT,
REGARDING, CALLING EVERY
WITNESS.

THERE IS --

>> WHY WOULD WE NOT LOOK TO THE
CLOSING ARGUMENT TO SEE, WHEN
HE TELLS THE JURY THIS IS WHAT
YOU HAVE BEEN SHOWN?
DOES THAT NOT REFLECT THE
STRATEGY?

>> WHEN IT SAYS HE IS NOT
TRYING TO BLAME THE SYSTEM.
HE IS, HE IS, HE DOESN'T HAVE A
COHERENT, COHERENT STRATEGY AND
ONLY TIME HE EXPRESSES HIS
STRATEGY, IS FROM THE PORTION
THAT WAS, CITED.

THIS, THIS MAN, TRIAL COUNSEL
WAS SIMPLY, HE WASN'T USING
EXPERTS FOR THE POINT OF USING
EXPERTS.

THE POINT OF USING EXPERTS TO
CONNECT CHILD ABUSE AND BRAIN
DAMAGE.

OTHERWISE WE COULD CALL FACT
WITNESSES FOR OF IT.
WOULDN'T NEED ANYONE OTHER THAN
WHO {KA} CALL ABUSE ON.

>> SEEMS I'M MISSING IT.

SEEMS AS THOUGH THIS IS CASE
WHERE PERSON GOT A BRUTAL
MURDER, TERRIBLE SET OF
CIRCUMSTANCE YOU'RE DEALING
WITH AND A LAWYER TRYING TO
SAVE THE LIFE.

THAT IS HIS BEST BET TO TRY TO
SAVE THAT LIFE AND TRY TO GET
CREDIBILITY TO TRY TO SHOW
THEM, THAT HE WAS IN CONTACT
WITH AND HE HAD EXPERTS BEFORE
AND HE CAME IN CONTACT WITH
DOCTORS, AND TO HAVE A DOCTOR
COME ON, OR A PSYCHOLOGIST, TO
COME BEFORE THE JURY AND SAY,
MAN, I MISSED IT.

IF I HAD DONE MY JOB, WE
WOULDN'T BE HERE TODAY, THIS
MURDER WOULD NOT HAVE OCCURRED,
TO ME THAT IS, THAT IS PRETTY
POWERFUL WHEN YOU HAVE NOTHING.

IN THIS CASE YOU HAVE NOTHING
TO DO.
YOU HAVE NOTHING TO WORK WITH.

>> THE POINT GAINING
CREDIBILITY YOU HAVE TO HAVE
SOMETHING YOU'RE ADVANCING THAT
YOU WANT CREDIBILITY FOR.
WHAT HE IS ADVANCING HIS CLIENT

IS EXTREMELY DANGEROUS.

DR. ANNIS TESTIFIED FOR THE STATE ORIGINALLY, COME UP AND SAY NO STATUTORY MITIGATORS APPLY WHATSOEVER.

AND HE DOES NOTHING TO CONNECT THIS ABUSE.

YOU HAVE TO CONNECT IT.

AND THE JUDGE, THE SENTENCING JUDGE SAYS, THERE'S NO CONNECTION.

HE FINDS NO MITIGATION.

YOU GOT A JURY THAT FINDS 12-0 ON THE DEATH RECOMMENDATION.

I AGREE THERE IS, SOME VERY, VERY, DIFFICULT FACTS TO DEAL WITH BUT THAT HEIGHTENS, THAT HEIGHTENS WHEN YOU NEED TO DO AS TRIAL COUNSEL SO THAT YOU HAVE TO GET, GET THAT CONNECTION, AND HAVE A COHERENT THEORY, RATHER THAN HAPHAZARDLY SOMEONE COME IN CONTACT WITH HIM, GOOD OR BAD, WHETHER THEY CAME INTO CONTACT, THROUGH THE DEFENSE HIRING HIM.

WHETHER THEY CAME IN CONTACT THROUGH THE STATE.

>> WAS THERE ANY WITNESS THAT HAD ALL GOOD THINGS?

WAS THERE A SINGLE EXPERT THAT IF THEY HAD BROUGHT THEM IN TO TESTIFY WOULD DO ONLY HELP?

>> NO.

THERE IS BAD FACTS OUT THERE.

>> SO NO MATTER WHO YOU CALL

YOU'RE GOING TO GET, YOU'RE
GOING TO DRAG, THINGS THAT YOU
WOULD RATHER NOT BE THERE BUT
FACTUALLY THEY ARE THERE.

SO MISSING THIS HOW --

>> THAT IS PRESENT IN EVERY
CASE.

IN EVERY CASE I ARGUED BEFORE
THE COURT.

>> IF THE EXPERT IF HE NOT
CALLED ANY OF THESE AND ONLY
CALLED EXPERT YOU PUT ON WILL
FACE THE SAME SITUATION.

>> I DISAGREE.

>> OKAY.

>> HE IS NOT.

BECAUSE DR. ^EISENSTEIN EXPLAINS
WHY THESE CIRCUMSTANCES
CONTRIBUTED TO THE ACTIONS ON
THAT DAY.

HE CONNECTS UP.

HE TESTIFIES TO THINGS THAT
THESE OTHER EXPERTS DIDN'T SUCH
AS HIM, SEEING HIS FATHER RAPE
HIS MOTHER.

>> SEEMS WHEN WE GO THERE L
WE'RE BACK INTO THE LINE OF
CASES SAY, JUST BECAUSE YOU CAN
FIND A BETTER EXPERT DOESN'T
MEAN WE'RE GOING TO GRANT
RELIEF ON COLLATERAL REVIEW
BECAUSE YOUR VIEW IS THIS IS A
BETTER EXPERT.

>> WELL IT IS ABSOLUTELY A
BETTER EXPERTS BUT THE OTHER
EXPERTS WEREN'T TESTIFYING TO

REALLY ANYTHING THAT WAS
STRATEGICALLY DEVELOPED.
YOU HAVE TO HAVE A REASONABLE,
INFORMED OPINION TO BE ABLE TO
BRING THESE, INDIVIDUALS FORTH.

THAT WASN'T, THAT WASN'T THE
CASE HERE.

AND, SO DR. EISENSTEIN IS ABLE
TO TAKE THIS AND SAY, YOU KNOW
WHAT?

WE DO HAVE SITUATIONS WHERE HE
HAS REPEATED CRIMES, SIMILAR,
SIMILAR CIRCUMSTANCE, BUT, HE
SAW, HE SAW HIS FATHER RAPING
HIS MOTHER.

HE, WAS LOCKED IN THE BACKYARD
WITH HIS SIBLINGS,

THEY FIND PORNOGRAPHY AND HIS
OLDER SIBLING HAS HIM ACT IT
OUT WITH HER.

SO YOU SEE THAT CONNECTION WHY
YOU HAVE THE DEVIANT BEHAVIOR
AND IT STRINGS IT TOGETHER SO
THAT THE JURY AND JUDGE WOULD
BE ABLE TO SAY, HEY, YOU KNOW
WHAT?

NOT JUST THE FACT HE IS ABUSED
AND TURNED OUT TO BE A BAD GUY.

IT IS THIS ABUSE, DIRECTLY
CONTRIBUTED TO EXACTLY WHAT
HAPPENED.

OTHERWISE, WHY NOT JUST PUT THE
FAMILY MEMBERS UP, AND SAY
THERE IS A LOT OF ABUSE THERE.

THERE IS NO POINT HAVING THE
EXPERT OTHERWISE.

WHENEVER COUNSEL WENT INTO WHAT
WAS REFLECTED BY THE RECORD,
WHAT HAD BEEN, GATHERED BY
MR.^LAKE.

THAT WAS NEVER PRESENTED IN THE
POSTCONVICTION HEARING.

AND THERE IS NO INDICATION THAT
THAT EVER MADE TO IT TO
MR.^ADAMS AND MR.^ADAMS
ACTUALLY RECEIVED IT AND
TRANSFERRED IT, TO THE DOCTORS
AND I SEE I'M OVER TIME.

THANK YOU.

>> THANK YOU.

BOTH FOR YOUR ARGUMENTS HERE
TOD