

>> PLEASE RISE.

FAMILIES AND GENTLEMEN, THE

FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> THE NEXT CASE ON THE COURT'S

AGENDA IS WADE V. STATE.

>> MONEY IS FRANK TASSONE.

WE REPRESENT THE APPELLATE, ALAN

LYNDELL WADE.

WITH THE COURT'S PERMISSION THE

PERSONAL BECAUSE I KNOW THE

COURT HAS SERVED ARGUMENT AND

READ BRIEFS FROM TWO OTHER

DEFENDANTS IN THIS CASE I WOULD

LIKE TO DISPENSE WITH BUT I'M

NOT OPPOSED TO TALKING ABOUT THE

FACTUAL ISSUES IN THIS CASE BUT

THE COURT IS WELL AWARE OF THE

FACTS IN THIS PARTICULAR CASE.

IN PREPARATION FOR THIS

ARGUMENT, WE WERE FORTUNATE

ENOUGH TO HAVE THE ABILITY TO

VIEW THE OR ARGUMENTS AGAINST

MR. JACKSON'S CASE, I AM AWARE  
OF THE QUESTIONS THAT WERE POSED  
IN BOTH OF THOSE CASES.

I WOULD LIKE TO TALK FIRST ABOUT  
THE ISSUES OF PROPORTIONALITY  
AND DISPARITY OF SENTENCES.

>> ON THAT, AS FAR AS WHAT IS  
SIMILAR OR DIFFERENT, YOUR  
CLIENT ACCORDING TO NIXON,  
PARTICIPATED IN THE BURIAL OF  
THESE TWO INDIVIDUALS ALIVE.

HE WAS RIGHT THERE AND  
THEREAFTER -- BURIED THESE TWO  
VULNERABLE PEOPLE LIVE.

>> I WILL NOT TRY TO PARRY WORDS  
OVER PARTICIPATED IN THE BURIAL  
OF THE VICTIMS.

MY RECOLLECTION OF MR. NIXON'S  
TESTIMONY AS HE DEPARTED THE  
SCENE WITH TIFFANY COLE LEAVING  
ALAN LYNDELL WADE AND MR.  
JACKSON AT THE BURIAL SITE.

THERE WAS NO DIRECT TESTIMONY  
THAT ALAN LYNDELL WADE  
PARTICIPATED IN THE BURIAL.

>> YOUR ISSUE ABOUT THE  
PROPORTIONALITY OF NIXON WHO  
PLED GUILTY TO SECOND-DEGREE  
MURDER AND YOUR CLIENT ALSO  
WHICH IN ITSELF BASED ON  
PRECEDENT WOULD BE A BASIS FOR  
NOT FINDING THIS BUT ON TOP OF  
THIS, YOUR CLIENT ACTUALLY  
BRINGING IN -- NIXON WAS HIS  
FRIEND, BROUGHT HIM IN.  
YOUR CLIENT REMAINED AFTER WITH  
JACKSON AND COLE.

>> YOU MEAN DID THE CAN BRING  
MR. NIXON INTO THIS -- THESE  
CRIMES?

THE EVIDENCE WAS HE RECRUITED  
MR. NIXON TO PARTICIPATE IN  
THIS.

WHETHER HE REMAINED AFTER, MR.  
NIXON WENT BACK TO HIS HOME WITH  
WHATEVER FUNDS HE GOT FROM  
PARTICIPATING IN THIS CRIME.

MR. WADE REMAINED WITH MR.  
JACKSON AND MISS COLE.

I THINK THEY WERE TOGETHER FOR

TWO OR THREE DAYS AND MR. NIXON  
RETURNED TO HIS HOME.  
IF I COULD TALK ABOUT  
PROPORTIONALITY AND DISPARITY OF  
SENTENCES, RECOGNIZE THE COURT'S  
OPINION, WHERE IT ESSENTIALLY  
SAID AN INDIVIDUAL IS CONVICTED  
OR PLEADS TO SECOND-DEGREE  
MURDER OR SOMETHING OTHER THAN  
FIRST-DEGREE, THE DISPARITY OF  
SENTENCE WON'T BE LOOKED AT BY  
THIS COURT.

THE COURT IS AWARE THAT THERE  
HAS BEEN A HISTORY OF CASES  
PRIOR TO ENGLAND AND IN MY  
OPINION ONE AFTER ENGLAND WHERE  
THE COURT HAS CONDUCTED AN  
ANALYSIS OF DISPARITY OF  
SENTENCES.

>> WHAT I AM ASKING, BE DEFINED  
ASSUME, YOUR PREMISE IS JACKSON  
-- THE MOST CULPABLE -- YOU  
WON'T ARGUE THAT, HELPING  
SOMEBODY ONE WAY OR THE OTHER.  
THAT DOESN'T MEAN HE GOT THE

DEATH SENTENCE.

WE ARE LOOKING AT THE DEATH  
SENTENCE, IF SHE WERE TO GET  
LIFE YOU MIGHT HAVE AN ARGUMENT  
THAT THIS WOULD BE COLE AND  
WADE.

YOU ARE SAYING LET'S JUST ASSUME  
EVEN THAT NIXON -- ALAN LYNDELL  
WADE IS MORE CULPABLE THAN  
NIXON.

COULD YOU ADDRESS THAT?  
DON'T YOU HAVE TO ACTUALLY SHOWS  
THAT HE IS LESS -- EQUALLY OR  
LESS CULPABLE?

>> WE TRIED TO DEMONSTRATE THAT  
IN OUR BRIEF.

I DON'T THINK THERE'S ANYTHING  
IN THE JUDGE'S SENTENCING ORDER  
IN MR. WADE'S CASE FOR MR.  
JACKSON'S CASE TO SHOW THAT  
THERE ARE DIFFERENT DEGREES OF  
CULPABILITY BETWEEN MISS COLE,  
MR. NIXON AND ALAN LYNDELL WADE.

>> IF YOU WANT PROPORTIONALITY,  
CLEARLY THIS IS PROPORTIONATE

BASED ON THE NUMBER OF  
AGGRAVATED IN THIS CASE,  
MITIGATE YEARS -- THE ONLY ISSUE  
THAT YOU WOULD HAVE THESE TO SAY  
SOME, IT IS NOT FAIR BECAUSE  
NIXON DIDN'T GET THE DEATH  
PENALTY.

I AM ASKING YOU, WHAT I JUST  
SAID, NIXON WAS BROUGHT IN BY  
ALAN LYNDELL WADE, ALAN LYNDELL  
WADE WAS PRESENT AT THE SCENE  
WHEN THESE ACTS OCCURRED, AND  
REMAINED AFTER WORDS, EVEN IF WE  
WERE TO ENGAGE IN IT, MORE  
CULPABLE?

>> RESPECTFULLY, I AGREE THAT IS  
WHAT THE FACTS WOULD SHOW.

I THINK THE TESTIMONY AND THE  
EVIDENCE WOULD SHOW ALAN LYNDELL  
WADE AND MR. NIXON WERE AT BEST  
EQUALLY AS CULPABLE.

I DON'T THINK ONE WAS MORE  
CULPABLE THAN THE OTHER.

YOU POINT OUT THE FACT WITH  
REGARD TO ALAN LYNDELL WADE.

IT WAS MR. NIXON WHO ENTERED THE  
HOUSE, HE BINDED THE VICTIMS.

WITH ALAN LYNDELL WADE.

HE FULLY PARTICIPATED IN THAT.

THERE IS NO DOUBT, I AGREE --

>> IT IS IN THE BALANCE.

>> I AGREE BUT I DON'T THINK IT

IS -- I DON'T THINK IT IS A

TRUMP CARD.

>> HOW ABOUT -- IF WE FIND MR.

NIXON WAS NOT AT THE SCENE OF

THE BURIAL, WAS NOT THE ONE

BURYING THESE PEOPLE LIVE, THAT

WAS ALAN LYNDELL WADE AND MR.

JACKSON, DOESN'T THAT SHOW ALAN

LYNDELL WADE IS MORE CULPABLE?

>> ABSOLUTELY BUT I DON'T THINK

THE COURT CAN MAKE THOSE

FINDINGS BECAUSE THERE'S NO

TESTIMONY TO SUPPORT THAT.

>> AT THE VERY LEAST HE

PARTICIPATED IN THAT.

WE KNOW THAT SOMETHING VERY

TERRIBLE HAPPENED ON THE SCENE

BECAUSE MR. JACKSON CAME BACK --

CLEARLY IT WAS A TWO MAN JOB

BURIAL.

WHEN YOU ARE ASKING US TO DO IS

SOMETHING THAT THE LAW DOESN'T

EVEN REQUIRE US TO DO WHICH IS

TO LOOK AT A PERSON WHO PLED

GUILTY TO SECOND-DEGREE MURDER.

GIVEN THAT YOU ARE MAKING THAT

ARGUMENT, WE ARE GIVING

ADDITIONAL FACTS AT LEAST FOR ME

SHOW GREATER CULPABILITY AND

BASIS FOR THE STATE TO HAVE

ENTERED A BARGAIN WITH NIXON

RATHER THAN OUT OF ALL THE

REASONS THEY WOULD DO THAT --

THE DEATH SENTENCE IN THREE

OTHER CASES.

>> I DON'T THINK THE STATE EVER

INDICATED WHY IT MADE A BARGAIN

WITH MR. NIXON AS OPPOSED TO

ALAN LYNDELL WADE.

>> DO THEY HAVE TO DO THAT?

I REMEMBER FROM A FEW YEARS AGO

-- SET THE HOUSE ON FIRE AND

PLEDGE TO SECOND-DEGREE.

A PERSON HAS TO JUSTIFY THE  
DECISION AND TO PLEAD WITH IF  
FROM A FUNDAMENTAL DUE PROCESS  
SITUATION THEY ARE NOT MAKING A  
DEAL WITH THE MOST CULPABLE  
PERSON TO GET THE DEATH SENTENCE

--

>> PERHAPS I SEE THE FACTS  
DIFFERENTLY THAN OBVIOUSLY YOUR  
HONOR DOES.

I KNOW THAT ALAN LYNDELL WADE  
RECRUITED MR. NIXON.

THAT IS WHAT THE TESTIMONY  
SHOWS.

WHETHER MR. WADE PARTICIPATING  
FURROWING SHOVELFULS OF THERE,  
THE VICTIMS IS UNKNOWN.

WHEN CAN MAKE THE ASSUMPTION BUT  
IT IS ONLY AN ASSUMPTION.

>> WHETHER MR. JACKSON DID IS  
OPEN.

>> ABSOLUTELY.

>> SOMEBODY DID.

TWO PEOPLE WERE THERE.

>> ALL FOUR OF THEM WERE AT THE

SCENE BUT THE TESTIMONY WAS ALAN  
LYNDELL WADE AND MR. JACKSON  
WENT TO THE BURIAL -- WEARS A  
LAST TWO AT THE BURIAL SITE.

>> AND WE KNOW THAT WHEN THE  
OTHERS LEFT THE VICTIMS HAD NOT  
YET BEEN BURIED.

>> THAT WAS THE TESTIMONY.

>> DIDN'T NIXON LEAD THE STATE  
TO THE GRAVE SITE?

DID NIXON LEAD THE STATE TO THE  
GRAVESITE?

>> HE DID.

WHEN MR. NIXON WAS ARRESTED -- I  
DON'T REMEMBER -- HE WASN'T  
TRUTHFUL IN WHAT HE TOLD LAW  
ENFORCEMENT AGENTS, CHANGED THE  
STORY AND LED LAW ENFORCEMENT TO  
THE GRAVESITE.

>> YOU ARE MAKING AN EIGHTH  
AMENDMENT ARGUMENT THAT GIVING  
THE DEATH PENALTY TO ALAN  
LYNDELL WADE IS QUOTE LAND  
UNUSUAL BECAUSE NIXON ALSO  
DIDN'T GET THE DEATH PENALTY?

IS THAT WHAT YOU ARE ARGUING?

>> I THINK THAT IS WHAT IT COMES  
DOWN TO.

I RECOGNIZE AS I SAID BEFORE  
WHAT THE COURT RULED IN ENGLAND,  
BUT I WOULD HOPE THAT IF THIS  
COURT HAD BEFORE IT SOMEONE WHO  
ENTERED A PLEA OF SECOND-DEGREE  
MURDER YOU HAVE THE TRIAL  
TRANSCRIPT OF THE OTHER  
DEFENDANTS OR CO-DEFENDANTS AND  
COME BEFORE THE COURT AND  
CLEARLY THE STATE ALLOW IMMUNITY  
TO THE TRIGGER MAN.

>> THERE'S A BASIS IN THIS  
RECORD.

DON'T YOU AGREE FOR THE PERSON  
WHO WAS WILLING TO TALK AND LEAD  
THEM TO THE BODY AND OSTENSIBLY  
HAD CULPABILITY?  
AND SOUGHT THE DEATH PENALTY FOR  
MR. NIXON AND JUSTIFIED IN  
GETTING THE DEATH PENALTY?  
A HORRIBLE, HORRIBLE CRIME.

>> THEY ARE TERRIBLE FACT,

HORRIBLE CRIMES BUT THE STATE  
DID SEEK THE DEATH PENALTY  
AGAINST MR. NIXON.

THEY FILED A NOTICE OF INTENT TO  
SEEK THE DEATH PENALTY.

THEY WERE CONCERNED THEY  
COULDN'T CONVICT ALAN LYNDELL  
WADE.

DATE IN NEED BRUCE NIXON FOR  
MICHAEL JACKSON'S CASE.

THEY DID NEED BRUCE NIXON  
ALTHOUGH HE WAS CALLED.

HE DID.

>> THE THING IS YOU ARE ASKING  
THIS COURT TO LOOK AT A DECISION  
THAT INVOLVES PROSECUTORIAL --  
PROSECUTOR'S DISCRETION.

THEY'RE GOING TO ENTER PLEAS.

IN A SERIES OF CASES OVER THE  
LAST DECADE THEY SAID THAT IS  
NOT UP TO US TO DO AND YOU  
ACKNOWLEDGE THAT.

>> NOT WITHOUT EXCEPTION.

I AM SORRY, SIR?

>> HYPOTHETICALLY -- ARM ROBBERY

-- [INAUDIBLE] -- SHOOTS THE  
CLERK AND LATER ON --  
[INAUDIBLE] -- WOULD YOU ARE  
SAYING UNDER THOSE CIRCUMSTANCES  
IN WHICH ENGLAND DOESN'T APPLY  
WHEN THE FACTS ARE THAT EXTREME?

>> ABSOLUTELY.

THE QUESTION -- YOU HAVE A  
NUMBER OF COMPETING INTERESTS.  
IS THE STATE'S PROSECUTORIAL  
DISCRETION -- IS THAT COMPLETELY  
UNFAIR?

THIS COURT HAS ANSWERED NO IN  
THE PAST.

I KNOW THAT THE COURT HAS BEEN  
CAUTIOUS IN TERMS OF SAYING ITS  
PROSECUTORIAL DISCRETION THEY  
HAVE A JOB TO DO AND THAT IS  
THEIR JOB.

BUT IF THIS COURT SEES WHAT IT  
CONSIDERS AN UNFAIR SITUATION OR  
WHAT THE TRIAL TRANSCRIPT  
REFLECTS WAS REALLY AN ABUSIVE  
DISCRETION OR OUTRIGHT MISTAKE  
BY THE STATE, THIS COURT DOES A

DISPARITY OF SENTENCES --

ANALYSIS.

[INAUDIBLE]

>> THE BEST CASE LAW IN SUPPORT  
OF IT?

THERE WERE APPROXIMATELY TEN  
CASES THAT THE COURT REVIEWED  
MOST OF WHICH CAME UP BEFORE  
ENGLAND.

THERE WAS AN ANALYSIS DONE IN  
SEXTON V. STATE --

>> I AM TALKING ABOUT WHERE THE  
FIRST SIGNATURE ASKING TO  
COMPARE THE CULPABILITY LED TO  
SECOND-DEGREE.

>> I DON'T HAVE ONE WITH REGARD  
TO A PLEA.

>> THAT IS WHERE WE HAVE TAKEN  
DIFFERENT PATHS.

NIXON REALLY WAS THE TRIGGER MAN  
OR SOMETHING.

THE MARKET IS HYPOTHETICAL.

>> SHOULDN'T THE TRIAL JUDGE  
TAKE THAT INTO CONSIDERATION IN  
THE SENTENCING ORDER?

>> I DON'T KNOW IF IT IS  
RECEIVED FROM PRECEDENT OR NOT.  
IF THIS COURT HAS CONDUCTED  
DISPARATE ANALYSIS IN CASES  
WHERE THERE WERE PLEAS OR  
CONVICTIONS TO LESSER OFFENSES  
PRIOR TO ENGLAND --

>> THE MOST RECENT PRECEDENT --  
[INAUDIBLE] -- THE PRECEDENT IS  
ENGLAND IS PRETTY UNPROVABLE.  
I DON'T KNOW HOW YOU CAN MAKE  
THE POSITION THAT WE WOULDN'T  
HAVE TO RECEIVE FROM ENGLAND.

>> THE CLOSEST CASE I HAVE IS  
THE HERNANDEZ CASE IN 2009 BUT  
THE COURT WAS REVIEWING A  
CONVICTION FOR FIRST DEGREE  
PREMEDITATED MURDER AND FELONY  
MURDER WITHOUT PREMEDITATION.  
THE COURT CONDUCTED A DISPARATE  
ANALYSIS IN THAT CASE.  
IT WASN'T A LESS INCLUDED  
OFFENSE.

>> IF WE DON'T AGREE THAT WE

SHOULD RECEIVE FROM ENGLAND --  
COULD YOU ADDRESS THE ISSUE --  
THE PROPORTIONALITY FOR ALAN  
LYNDELL WADE, AND 18-YEAR-OLD --  
HE APPARENTLY HAD A VERY  
DIFFICULT EARLY HISTORY WHERE HE  
WAS ACTING OUT EARLY ON.

--

>> I DON'T, I KNOW HE TESTIFIED  
IN THE MITIGATION PHASE OF THE  
TRIAL.

>> I THOUGHT HE TESTIFIED  
SOMEWHERE YOUR CLIENT SHOULD  
GET LIFE OR SHOULDN'T GET THE  
DEATH PENALTY.

>> HE DID.

HE WAS A FOLLOWER, FOLLOWED  
MR.^JACKSON.

EVEN THE STATE AGREES, THE  
STATE ACKNOWLEDGED I THINK IN  
ALL OF THE DEFENDANT'S CASES  
THAT JACKSON WAS THE LEADER.  
I DON'T THINK THAT IS IN  
DISPUTE.

WHETHER, WITH ALL DUE RESPECT  
ABOUT THE QUESTIONS WHO  
RECRUITED WHO, IF HE IS SECOND  
OR THIRD OR FOURTH PERSON  
RECRUITED I RESPECTFULLY  
DISAGREE, THINK THAT IS INDICIA  
PERHAPS OF HAVING MORE  
INVOLVEMENT BUT I DON'T THINK  
IT IS THE ACE OF SPADES  
THAT TRUMPS EVERYTHING.  
IF I COULD YOU TALK ABOUT  
COUPLE MORE ISSUES.  
WE FILED A MOTION TRYING GET  
THE COURT TO ENTER AN  
ORDER REQUIRING STATEWIDE  
GUIDELINES HOW PROSECUTORS SEEK  
THE DEATH PENALTY.  
THE COURT DENIED WITHOUT  
HEARING.  
WE FILED A MOTION WITH THE  
CAPITAL HEARING PROJECT,  
SCIENTIFIC STUDY DONE BY THE  
NATIONAL SCIENCE FOUNDATION.  
WE HAD WITNESSES WHO WERE  
PREPARED TO TESTIFY HOW JURORS,

A LARGE PERCENTAGE OF THE  
JURORS, REACH THEIR WELL IN  
ADVANCE OF THE, OF THE DECISION  
OF THE VERDICT IN THAT  
PARTICULAR, OF THE PARTICULAR  
CASE.

BOTH OF THOSE MOTIONS WERE  
DENIED WITHOUT ARGUMENT.

AND I KNOW I'VE GONE OVER MY  
INITIAL 20 MINUTES, BUT I  
CERTAINLY THINK THERE IS  
SUFFICIENT PROSECUTORIAL  
MISCONDUCT WITH REGARD TO  
SEVERAL GOLDEN RULE VIOLATIONS  
VOUCHING FOR THE CREDIBILITY OF  
BRUCE NIXON THAT RISE TO THE  
LEVEL OF BEING SUBSTANTIAL AND  
WOULD WARRANT A REVERSAL IN  
MR. WADE'S CASE.

I COULD SPEAK TO ISSUES NOW OR  
COUNSEL DEAL WITH THAT IN  
REBUTTAL.

>> THANK YOU.

>> THANK YOU.

>> MAY IT PLEASE THE COURT.

MEREDITH CHARBULA, ASSISTANT  
ATTORNEY GENERAL FOR THE  
APPELLEE.

I THINK THIS COURT HAS HIT  
THE NAIL ON THE HEAD THAT THIS  
COURT WOULD HAVE TO RETREAT FROM  
ENGLAND IN ORDER TO ACCEPT  
MR. WADE'S DISPARATE TREATMENT  
ARGUMENT.

THIS COURT HAS MADE CLEAR BOTH  
IN PLEA CASES AND WHICH THE  
DEFENDANT IS FOUND, THE  
CO-DEFENDANT IS FOUND GUILTY  
BY LESSER-INCLUDED OFFENSE OR  
SECOND-DEGREE MURDER, DISPARATE  
TREATMENT IS NOT PROPER WHEN  
YOU'RE NOT LOOKING AT LEGAL  
CULPABILITY.

I THINK WHAT MR. TASSONE  
IS HANGING HIS HAT ON IS  
FACTUAL CULPABILITY AS OPPOSED  
TO LEGAL CULPABILITY.

THIS COURT IN ENGLAND MADE VERY  
CLEAR VERY RECENTLY WHEN A  
CODEFENDANT CONVICTED OF LESSER

OFFENSE PURSUANT TO A PLEA,  
THEN DISPARIT TREATMENT IS NOT  
AN APPROPRIATE ANALYSIS.  
AND IT DOESN'T WARRANT  
REINTRODUCTION OF A DEATH  
SENTENCE TO LIFE ON THAT BASIS.  
EVEN IF YOU LOOK, EVEN IF YOU  
WANTED TO LOOK AT FACTUAL  
CULPABILITY, AGAIN I THINK  
COURT LATCHED ONTO THE TWO MOST  
IMPORTANT FACTS IN THAT  
MR.^WADE RECRUITED NIXON INTO  
THIS CONSPIRACY INTO THESE  
CRIMES.  
THE COURT MADE THAT FINDING AND  
IN ITS SENTENCING ORDER THAT  
MR.^WADE ALONE WAS RESPONSIBLE  
FOR MR.^NIXON'S PRESENCE.  
ALSO THE FACT IS, AS MR.^NIXON  
TESTIFIED, THAT WHEN HE LEFT THE  
GRAVESITE AT MICHAEL JACKSON'S  
INSTRUCTIONS THAT THE SUMNERS  
WERE STILL ALIVE AND WHEN THEY,  
OBVIOUSLY WHEN THEY RETURNED,  
THEY HAD PIN NUMBERS AND THEY

WERE FOUND BURIED ON JULY 16th  
OF 2005.

SO ONE CRITICAL FACTOR I THINK  
THAT ONE CAN TAKE A REASONABLE  
INFERENCE THAT, ALAN WADE AND  
MICHAEL JACKSON BOTH  
PARTICIPATED IN THE BURIAL,  
THIS IS NOT SHALLOW GRAVE, THIS  
IS SIX FOOT, BY FOUR FOOT  
GRAVE.

TOOK THREE OF THEM TO DIG IT.  
WHEN THEY PRE-DUG THE HOLE  
COUPLE DAYS BEFORE THE MURDER  
IN GEORGIA.

THREE OF THEM TO DIG IT.  
THEY TOOK THREE SHOVELS.

LEFT THEM AT THE GRAVESITE.  
THEY WERE ALTERNATING SHOVELS.  
NIXON SAID HE PARTICIPATED IN THE  
PREDIGGING.

WASN'T FULLY INVOLVED IN THE  
CONSPIRACY AND WASN'T AWARE OF  
THE EXTENT OF THE CRIME.

IT WAS ON THE WAY BACK WHERE  
WADE ASKED JACKSON IF NIXON

COULD COME INTO THE CONSPIRACY  
AND JACKSON SAID YES, AND NIXON  
WAS FULLY BROUGHT UP TO SPEED  
WHAT THE PLAN WAS.

SO I THINK IT IS A REASONABLE  
INFERENCE THAT WADE AND JACKSON  
PARTICIPATED IN THE BURIAL OF  
THESE PEOPLE ALIVE BECAUSE YOU  
HAVE THEM THERE ALONE FOR NOT  
ALL NIGHT.

YOU HAVE A SIX FOOT BY FOUR  
FOOT GRAVE AND, YOU HAD THREE  
PEOPLE PREDICTING THE HOLE.

AND NOW, IF YOU TAKE THREE  
PEOPLE TO PREDIG THE HOLE AND  
NOW YOU HAVE TWO PEOPLE ARE  
ALIVE AND SHOVEL FULLS OF DIRT  
ARE GOING ON TO THEIR BODIES.

I REASONABLE INFERENCE FROM THE  
EVIDENCE THAT BOTH FULLY  
PARTICIPATED.

>> WE HAVE THIS IN THE ORAL  
ARGUMENT ABOUT THE HAC.  
THE NIXON'S TESTIMONY IN THIS  
WAS CONSISTENT LEAST HE THOUGHT

THERE WAS TO BE A MURDER IT  
WOULD BE SOME KIND OF  
INJECTION, RATHER THAN THE  
BURIAL.

>> HE TESTIFIED TO THAT.

OF COURSE, TIFFANY COLE WAS IN  
A MUCH BETTER POSITION TO KNOW  
THAT WAS NEVER GOING TO BE THE  
CASE.

SHE WAS SLEEPING WITH MICHAEL  
JACKSON.

SHE WAS IN THE ROOM WITH  
MICHAEL JACKSON.

BUYING ALL THE MATERIALS FOR  
THE MURDERS.

>> CULPABILITY THAT NIXON, I  
MEAN, IF WE'RE LOOKING AT RELATIVE  
CULPABILITY ISSUES, THERE IS NO  
INDICATION THAT KNEW AHEAD OF  
TIME THAT THIS TYPE OF PLAN IS  
TO BURY THEM ALIVE WAS PART OF  
THE OVERALL MURDER PLAN.

>> EXACTLY. HE TESTIFIED TO THAT.

CERTAINLY HE WAS NOT IN THE SAME  
POSITION AS COLE TO KNOW THAT

WAS THE CASE BECAUSE HE WAS NOT  
SLEEPING WITH MICHAEL JACKSON  
AND WITH HIM CONSTANTLY, NOR  
WAS HE DOING THE SHOPPING WHICH  
TIFFANY COLE WAS OF COURSE.

SO WE HAVE THOSE TWO THINGS  
THERE.

THE FACT IS WE HAVE A DEEP SIX  
FOOT BY FOUR FOOT GRAVE.

WE HAVE WADE AND JACKSON LEFT  
AT THE SCENE.

WE HAVE THE FACT THAT THREE OF  
THEM PRE-DUG THE GRAVE.

IT IS NOT A SHALLOW GRAVE.

AND WE HAVE WADE BRINGING NIXON  
INTO THE CONSPIRACY.

SO, EVEN IN FACT WALLY YOU WERE

TO LOOK AT THIS, WHICH I THINK

IN ENGLAND SAYS YOU'RE NOT, YOU

CAN SEE THAT THERE'S SUFFICIENT

EVIDENCE THAT WADE IS CULPABLE.

INSOFAR AS THE TRIAL COURT

FAILING TO CONSIDER WADE OR

NIXON'S 45-YEAR SENTENCE, I

THINK YOU HAVE TO REMEMBER,

FROM THE RECORD THAT THE ORDER  
OF THE TRIALS WERE JACKSON,  
COLE AND WADE.

AT THE TIME WADE WENT TO TRIAL,  
AND I THINK THERE IS SOME  
SCATTERING THROUGH THE  
APPELLANT'S BRIEF WHERE HE  
TALKS HOW THE STATE TRIED  
DOWNPLAY BECAUSE NIXON'S DEAL  
BECAUSE HE HAD GOTTEN 45 YEARS.  
HE WASN'T ACTUALLY SENTENCED TO  
45 YEARS UNTIL AFTER THE  
PENALTY PHASE IN WADE'S CASE.

SO AT THAT POINT NIXON  
TESTIFIED TRUTHFULLY HE WAS  
FACING A 52-YEAR TO LIFE  
SENTENCE.

SO, ALL THOSE THINGS THE COURT  
TOOK INTO CONSIDERATION.

IF YOU LOOK AT THE VERY FIRST  
PAGE OF THIS SENTENCING ORDER,  
THE TRIAL COURT NOTED THAT  
BRUCE NIXON WAS SENTENCED TO 45  
YEARS.

SO, IT IS THE SAME TRIAL COURT.

HE WAS WELL AWARE BRUCE NIXON  
HAD BEEN SENTENCED TO 45 YEARS.  
MR.^WADE DID NOT ASK THE TRIAL  
COURT TO CONSIDER THAT IN  
MITIGATION.

NONETHELESS IT'S CLEAR THAT THE  
TRIAL COURT DID, BECAUSE IT'S  
CITED TO IN THE ORDER.

>> MR.^TASSONE ESSENTIALLY HAS NOT  
ARGUED OTHERWISE, LACK OF  
PROPORTIONALITY.

I WOULD LIKE CLARIFICATION ON  
THIS.

THIS IS AN 18-YEAR-OLD ADULT.  
THERE IS SOME EVIDENCE IN THE  
JUDGE'S SENTENCING ORDER THAT  
INDICATED DEFENDANT WAS EARLY  
DISCIPLINE PROBLEM THAT NEITHER  
THE SCHOOL SYSTEM NOR THE  
DEFENDANT'S MOTHER WERE ABLE TO  
ACCOMMODATE.

WAS THERE ANY MENTAL HEALTH  
TESTIMONY PRESENTED IN THIS  
CASE TO EXPLAIN WHAT  
ESSENTIALLY, IF ANYTHING WENT

WRONG IN THIS DEFENDANT'S EARLY  
LIFE THAT MIGHT HAVE HIM ON  
THIS PATH, NOT REALLY AGAIN AS  
AN EXCUSE.

I JUST WANT TO UNDERSTAND THE  
NATURE OF THE EXCUSE OR  
MITIGATION THAT WAS PRESENTED  
IF ANY.

>> OF COURSE.

THERE WAS NO MENTAL HEALTH  
EXPERT WHO TESTIFIED AT TRIAL.  
THERE IS NO EVIDENCE HE HAS ANY  
KIND OF MENTAL DISEASE OR  
DEFECT OR LOW IQ OR BRAIN  
DAMAGE.

SO THERE IS NO MENTAL HEALTH  
MITIGATION PRESENTED.

WE DO HAVE THE TESTIMONY OF HIS  
MOTHER, FREIDA GAINNEY, WHO GAVE  
US INSIGHT INTO ALAN WADE'S  
LIFE.

MISS GAINNEY TESTIFIED SHE  
DIVORCED ALAN'S FATHER WHEN HE  
WAS EIGHT.

BEFORE THE DIVORCE, MR.^WADE

HAD A LOT OF INVOLVEMENT IN HIS  
SON'S LIFE.

WAS NOT REGULAR FATHER-SON  
RELATIONSHIP AFTERWARDS.

THERE WAS LITTLE IF NO CONTACT.

IF YOU LOOK INTO THE

NON-STATUTORY MITIGATION THE

TRIAL COURT FOUND THERE WAS A

LOT OF MITIGATION AROUND HIS

DYSFUNCTIONAL FAMILY, NEGATIVE

FAMILY SETTING.

THE FACT THAT HIS MOTHER WAS AN

ABSENTEE MOTHER.

I WOULD URGE THE COURT TO LOOK

AT MISS GAINEY'S TESTIMONY

ALONG WITH MISS PAGE'S

TESTIMONY AND MR. DOTSON'S

TESTIMONY.

THIS WAS NOT A CASE MISS GAINEY

WAS ABSENTEE MOTHER BECAUSE SHE

WAS OUT TAKING DRUGS OR

ALCOHOLIC OR OUT RUNNING WITH

MEN.

MISS GAINEY A SINGLE MOTHER,

RAISING TWO SONS, WORKED 40

HOURS A WEEK.

LIVED 40 MILES AWAY WHERE SHE  
WORKED BEFORE SHE MOVED TO  
DUVAL COUNTY OR BEFORE SHE  
MOVED TO JACKSONVILLE.

SO SHE WAS GONE FROM THE HOME  
TO WORK.

THERE IS ABSOLUTELY -- WHEN ALAN  
WADE WAS 13 SHE WAS DIAGNOSED  
WITH BREAST CANCER.

UNDERGOING THERAPY AND WORKING  
FULL TIME TO SUPPORT HER SONS.

AT THE SAME TIME, ALAN IS  
GETTING IN TROUBLE IN SCHOOL.

SHE TAKES HIM OUT OF SCHOOL IN  
6th GRADE TO, BECAUSE SHE'S  
AFRAID HE IS STARTING TO RUN  
AROUND WITH THE WRONG CROWD.

SHE PUTS HIM IN PRIVATE SCHOOL,  
BUT AGAIN, SHE IS A SINGLE MOM.

SHE CAN'T AFFORD IT.

SHE TAKES HIM OUT OF SCHOOL.

SHE TRIES TO HOMESCHOOL HIM.

BUT OF COURSE, AGAIN HER WORK  
PRECLUDES FROM DOING THAT.

SHE PUTS HIM BACK IN SCHOOL.

YOU WILL SEE TESTIMONY THAT HE  
HAD TO REPEAT 6th GRADE.

IT WASN'T BECAUSE HE STRUGGLED  
ACADEMICALLY.

IN FACT MISS GAINNEY TESTIFIED  
HE WAS A MATH WIZARD.

WHEN HE WAS ARRESTED HE WENT  
INTO PRISON.

HE MADE NEARLY 100% ON THE GED  
AND STARTED TUTORING INMATES  
ACCORDING TO HIS MOM.

WHEN YOU LOOK AT THIS NOTION  
AFTER DYSFUNCTIONAL FAMILY AND  
WEIGHT TRIAL COURT SHOULD HAVE  
GIVEN IT, YOU SEE THIS NOTION  
OF ABSENTEE MOM WAS ONLY SINGLE  
MOTHER DOING VERY BEST FOR HER  
SON, WHILE AT THE SAME TIME HE  
WAS SKIPPING SCHOOL.

SHE HAD TO WITHDRAW HIM FROM  
SCHOOL IN 9th GRADE BECAUSE HE  
WAS CONSTANTLY TRUANT.

SHE WAS ON THE VERGE, HER  
TESTIMONY BECAUSE HE WOULDN'T

GO TO SCHOOL.

WHEN SHE MOVED HIM TO DUVAL  
COUNTY, SHE WOULD LITERALLY  
TAKE HIM TO SCHOOL.

DROP HIM OFF AND HE WOULD TAKE  
OFF.

WHEN THEY MOVED TO DUVAL  
COUNTY, HE WAS, HE CAUSED THE  
LANDLORD NOT TO RENEW THE LEASE  
ON THE APARTMENT BECAUSE HE WAS  
PLAYING MUSIC SO LOUD AND  
HAVING PEOPLE IN AND OUT OF THE  
APARTMENT, ACCORDING TO HIS  
MOM.

AND, YOU KNOW, ESSENTIALLY GOT  
HIM KICKED OUT OF THE  
APARTMENT.

ANY NOTION OF A STATUTORY  
MITIGATION OF BEING COMPELLING  
AT ALL HAS TO BE CONSIDERED IN  
THE TEXT OF THE FACT THAT  
MRS. ^GAINNEY WAS DOING THE  
ABSOLUTE BEST FOR HER SON AND  
HER SON WAS NOT FOLLOWING THE  
RULES.

HE WAS DISRESPECTFUL.

SHE HAD BREAST CANCER,

UNDERGOING CHEMOTHERAPY.

THERE IS ABSOLUTELY NO EVIDENCE

OF SEXUAL ABUSE, NO EVIDENCE OF

PHYSICAL ABUSE.

NO EVIDENCE THAT HE EVER

WITNESSED ANY VIOLENCE BETWEEN

HIS PARENTS.

HE WAS NEVER NEGLECTED.

HE HAD FOOD ON THE TABLE AND

CLOTHES ON HIS BACK.

THIS IS NOT A CASE WHERE THIS

IS COMPELLING NON-STATUTORY

MITIGATION, DESPITE THE MANY,

MANY, 20 OR SO NON-STATUTORY

MITIGATORS.

SO, WHEN YOU LOOK AT

PROPORTIONALITY YOU HAVE TO

LOOK AT THE MITIGATORS.

SEVEN STRONG AGGRAVATORS.

AND I THINK ONE OF THE THINGS I

THINK IS A PRACTICAL THING I'M

LOOKING AT, JUST RELATIVE

CULPABILITY.

ONE OF THE THINGS PRACTICALLY,  
IS YOU CAN'T REALLY LOOK AT  
RELATIVE CULPABILITY BECAUSE  
THIS COURT OF COURSE CONSIDERS  
THE DEATH SENTENCE IN TERMS OF  
THE MOST AGGRAVATED AND LEAST  
MITIGATED.

IF THE CODEFENDANT PLEADS TO  
SECOND-DEGREE MURDER HE DOESN'T  
HAVE A PENALTY PHASE.

SO YOU CAN'T REALLY SAY THAT  
THE MITIGATION, YOU KNOW ONE OF  
THE THINGS WE DO KNOW IS,  
BECAUSE THE RECORD WAS  
SUPPLEMENTED WITH THE NIXON  
PLEA HEARING OR SENTENCING  
HEARING.

NIXON DID PUT ON SOME EVIDENCE.  
ONE THING HE PUT ON HE HAS A IQ  
OF 79.

I SUBMIT THAT IF HE WOULD HAVE  
A PENALTY PHASE, THE NATURE OF  
THE EVIDENCE COULD HAVE BEEN  
VERY MUCH DIFFERENT.

SO, YOU CAN'T LOOK AT THE

MITIGATION EVIDENCE AND WEIGH

THAT IN ANY KIND OF

PROPORTIONALITY.

SO YOU SEE WHY THE PRACTICAL

EFFECT OF WHY THIS COURT

DOESN'T DO DISPARATE TREATMENT,

YOU CAN'T ABSENT A PENALTY

PHASE.

ONE OF THE CASES MR. TASSONE

CITED TO YOU HAS THE HAZEN

CASE AND THE CORMANDY SHOOTING OUT

OF THE 14th CIRCUIT OR OUT OF

PENSACOLA, I'M SORRY, OUT OF THE

FIRST.

IN HAZEN, BOTH THE MORE

CULPABLE NON-TRIGGERMAN AND

HAZEN WERE BOTH CONVICTED OF

FIRST-DEGREE MURDER.

THAT IS NOT EVEN A PROPER

ANALYSIS IN THIS CASE BECAUSE

BOTH OF CASES OR THE DEFENDANT

YOU CONSIDERED HAZEN AND

MR. BUFKIN WERE BOTH

NON-TRIGGER MEN.

BUFKIN GOT LIFE AS A RESULT OF

A PLEA BUT HE PLED TO  
FIRST-DEGREE MURDER AND SO DID  
HAZEN.

ANY NOTION THAT HAZEN HAS  
APPLICABILITY AT ALL IS SIMPLY  
NOT THE CASE.

>> WOULD YOU ADDRESS THE  
PROSECUTOR'S CLOSING ARGUMENT  
AND YOUR THOUGHT WITH REGARD TO  
URBIN AND HOW IT MAY OR MAY NOT  
APPLY TO THE ARGUMENTS HERE.

URBIN IS STRONG CASE.

>> URBIN IS STRONG CASE.

THIS CASE IS NOT ANYWHERE NEAR  
URBIN.

YOU HAVE, ONE OF THE THINGS YOU  
HAVE TO LOOK AT, SOME OF THE  
THINGS, THAT WERE CITED TO YOU  
BY THE APPELLANT THEY WERE SORT  
OF PULLED OUT OF CONTEXT.

FOR INSTANCE IN THE HAC  
ARGUMENT THAT AT RECORD PAGE  
1301 TO 1303, THAT IS WHEN HE  
IS TALKING ABOUT THE TERROR IN  
THE TRUNK AND BEING 1301 THE

PROSECUTOR IS STARTING TO THE  
EVIDENCE THAT APPROACHES THE  
HEINOUS, ATROCIOUS AND CRUEL  
AGGRAVATOR.

THERE IS NOT A SINGLE CRIME  
WHERE THE PROSECUTOR SAID  
IMAGINE YOURSELF IN THE TRUNK  
OF THE CAR, IMAGINE HOW  
TERRIFIED YOU WOULD BE IF THAT  
WERE YOU.

THERE IS NOT EVEN HINT OF THAT.  
IT DOESN'T EVEN COME CLOSE TO  
IT.

IT IS NOT GOLDEN RULE AND IT IS  
CERTAINLY NOT URBIN.

THE ONLY COMMENT THAT MIGHT  
HAVE, CAME WHEN HE WAS TALKING  
ABOUT A LIFE SENTENCE.

AND ONE, THEY URGED THE JURY TO  
CONSIDER NIXON'S LIFE SENTENCE  
AND THE FACT THAT A LIFE MEANS  
LIFE.

THAT IS CERTAINLY A PROPER  
ARGUMENT, THAT LIFE MEANS LIFE.

BUT IT IS ALSO PROPER FOR THE

PROSECUTOR TO SAY, TO ARGUE,  
MAKE AN ARGUMENT DEATH IS MORE  
APPROPRIATE DESPITE THE FACT  
THAT THE DEFENDANT WOULD SERVE  
LIFE IN PRISON.

AND THE ONLY THING I THINK THAT  
WAS IN URBIN WAS, YOU KNOW, THE  
PHRASE, THAT BE TAKING THE EASY  
WAY OUT.

BUT IF YOU LOOK AT THE REST OF  
THE ARGUMENT IN CONTEXT,  
THERE'S NO, THERE'S NO  
IMAGINARY --

>> SORT OF TELLING THE JURY,  
THAT YOU HAVE THE DUTY TO DO  
THIS.

THAT YOU'RE NOT DOING YOUR  
CIVIC DUTY IF YOU DON'T REACH  
THIS RESULT, THAT KIND OF THING  
SEEMS LIKE IT WAS PART OF  
THE --

>> I THINK IF YOU LOOK AT IT IN  
CONTEXT, THAT'S ONE WAY TO  
INTERPRET IT PERHAPS.

BUT IN NO WAY DID HE SAY YOU

HAVE TO, THAT THIS, YOU KNOW,  
IF YOU FIND THE AGGRAVATORS  
OUTWEIGH YOU HAVE TO RECOMMEND  
DEATH.

I THINK IF YOU LOOK AT IT IN  
CONTEXT YOU SEE REALLY WAS AN  
APPROPRIATE, HE WAS SAYING  
THAT UNDER THESE CIRCUMSTANCES  
UNDER THE EGREGIOUS NATURE  
THE CRIME IT'S APPROPRIATE.

WOULD I LIKE THE PROSECUTOR TO  
NEVER SAY THE WORDS, TAKE THE  
EASY WAY OUT? OF COURSE.

BUT WHEN YOU LOOK AT IT IN THE  
CONTEXT OF THE ENTIRE ARGUMENT,  
AND THE POTENTIAL IMPACT OF  
THAT ONE PHRASE, I THINK THIS  
COURT, EVEN IF IT FOUND ERROR  
IT WOULD BE HARMLESS ERROR.

>> WOULDN'T, WASN'T IT  
UNOBJECTED TO?

>> THAT PARTICULAR ONE I  
BELIEVE WAS UNOBJECTED TO.  
AND THERE WERE SEVERAL  
COMMENTS.

I CAN'T RECALL RIGHT THIS  
MOMENT WHETHER THAT PARTICULAR  
ONE WAS OBJECTED TO.

>> THERE WAS ONE THAT WAS --

>> MOST OF THEM WEREN'T.

>> -- WAS FILED WAS SEPARATE  
ISSUE BUT I UNDERSTOOD MOST OF  
THE ARGUMENTS THAT WERE BEING,  
UNDER ISSUE 3, WERE CONCEDED TO  
BE UNOBJECTED TO.

>> YES, YOUR HONOR.

I THINK THERE WAS A BELATED  
OBJECTION TO ONE COMMENT AND I  
I CAN'T RECALL IT.

I DID SOCIETY THAT FORTH IN MY  
BRIEF WHETHER THAT WAS THE ONE  
THAT WAS UNOBJECTED TO.

THE ISSUE FOUR WAS IN THE GUILT  
PHRASE AND I --

>> I THINK THE ONE THAT WAS  
OBJECTED TO IS, WHEN YOU'RE  
DONE, AND GUESS I WANT TO ASK  
WHAT ACTUALLY THIS IS SUPPOSED  
TO MEANING.

WHEN YOU'RE DONE I ASK YOU TO

WALK OUT NOT INTO THE DARKNESS  
OF GREED AND INTO THE TERROR OF  
THE NIGHT DRIVE IN THE BACK OF  
THE TRUNK BUT INTO THE LIGHT OF  
JUSTICE.

I THINK THAT WAS A, WHAT'S THAT  
ABOUT?

>> YOU KNOW, THAT WAS A VERY  
LAST COMMENT THE PROSECUTOR  
MADE WHEN HE ENDED HIS  
ARGUMENT.

>> HE MUST HAVE, HE MUST HAVE  
BEEN UP THAT BEFORE AND SHE  
THINKING, THAT'S A REALLY  
CLEVER GRADE ARGUMENT.

I HOPE ONE DAY WE CAN GET  
PEOPLE IN THE ATTORNEY  
GENERAL'S OFFICE TO, GOT TO TRY  
TO BE CAREFUL ON THESE  
ARGUMENTS.

BUT THIS ONE WAS, THIS WAS  
OBJECTED TO, WASN'T IT?

>> IT WAS. AND I THINK THAT,  
WHAT YOU,  
WHAT YOU HAVE TO LOOK AT AGAIN,

IS, THAT THE TOTALITY, THE  
ENTIRE ARGUMENT IN TERMS OF THE  
EVIDENCE.

AND AGAIN, IT DOESN'T, IN MY  
VIEW INTO GOLDEN RULE BECAUSE  
IT WASN'T ASKING THE JURY TO  
PUT THEMSELVES INTO THE TRUNK.

THE FACT IS --

>> I ASK YOU TO WALK -- YOU  
KNOW, AGAIN, WE EITHER LOOK AT  
THESE AND SAY, THIS IS REALLY  
APPROPRIATE OR IT'S NOT  
APPROPRIATE.

MAY NOT BE AS EGREGIOUS AS  
OTHER CASES BUT IT, YOU KNOW,  
IT IS NOT SOMETHING THAT I  
WOULD THINK WE COULD  
MEANINGFULLY DISTINGUISH, AT  
LEAST THAT COMMENT.

>> I UNDERSTAND, I UNDERSTAND  
AGAIN WHAT THIS COURT IS  
SAYING.

THIS COMMENT WAS A GUILT PHASE  
ARGUMENT.

AND, I THINK THAT WHEN YOU

LOOK AT, AGAIN SOME OF THE  
THINGS OF URBIN IS NOT THERE.  
THERE IS NO IMAGINARY SCRIPT.  
THE EVIDENCE WAS CLEARLY THEY  
WERE IN THE TRUNK OF THE CAR.  
BRUCE NIXON'S TESTIMONY WAS  
ESTABLISHED OWN REASON HE DID  
THIS FOR MONEY.

WHEN YOU LOOK AT THE  
DEFENDANT'S ACTIONS PAST THEY  
BURIED THE SUMNERS ALIVE, MONEY  
WAS THEIR SOLE GOAL.

IN FACT NIXON TESTIFIED THEY  
WENT IN, THEY WEREN'T AFTER,  
EVEN THOUGH THEY DID TAKE SOME  
COMPUTERS, THEY WEREN'T AFTER  
JEWELRY COMPUTERS, THE  
TELEVISION SETS.

THEY WANTED THE ATM CARDS.

THEY HAD CREDIT CARDS.

THEY WANTED MONEY AND THEY  
WANTED TO BURY THE SUMNERS SO  
THEY COULD TAKE AS MUCH MONEY  
OUT.

SO CLEARLY I THINK A REFERENCE

TO GREED IS SUPPORTED BY THE  
EVIDENCE.

A REFERENCE TO THE FACT IS, THE  
FACT IS THAT THE SUMMERS WERE  
DRIVEN IN THE TRUNK OF A CAR IN  
JULY OF 2005, BOUND WITH DUCT  
TAPE AND IN FRAIL CONDITION.

IT TRACKED THE EVIDENCE.

YES, IT MAY HAVE HAD A SLIGHT  
EMOTIONAL FLOW BUT THIS COURT  
HAS SAID, YOU KNOW, THAT EVEN  
ARGUMENTS WITH SLIGHT EMOTIONAL  
FLOW ARE NOT ERROR AS LONG AS  
THEY DON'T STRAY FROM THE EVIDENCE.

AND HERE GREED WAS CLEARLY THE  
MOTIVE FOR THE, ONE OF THE  
MOTIVES FOR THE HOME  
INVASION AND WHY THEY WANTED TO  
GO INTO THE HOUSE TO ATTACK  
THE SUMMERS.

YOU HAVE THE EVIDENCE OF THE  
TRUNK.

IT IS SLIGHT EMOTIONAL FLOW.

IS IT REVERSIBLE ERROR?

THE STATE WOULD SUBMIT IT'S

NOT.

YOU DON'T HAVE IMAGINARY

SCRIPT.

YOU DON'T HAVE, SHOW THE SAME

MERCY ARGUMENTS.

ALL THOSE ARGUMENTS THAT WERE

PRESENT IN URBIN AND BROOKS

AREN'T THERE.

CERTAINLY THIS CAN SAY TO THE

PROSECUTOR, WATCH YOUR RHETORIC

BUT IT CERTAINLY DOESN'T IN THE

CONTEXT OF EVIDENCE IN THIS

CASE, OF HIS GUILT, THE

EGREGIOUS NATURE OF THE CRIME,

THE EVIDENCE OF THE

PREPLANNING, PREDICTING THE

GRAVE, EVIDENCE THAT MR. ^WADE

WAS AT THE GRAVESITE CERTAINLY

DOESN'T WARRANT A NEW TRIAL.

>> THESE CASES TEND TO BE

AROUND FOR A LONG TIME

UNFORTUNATELY, IN TERMS OF

UNFORTUNATE FOR THE COURT

SYSTEM, FOR VICTIM, FOR THE

INTEREST OF JUSTICE.

BUT WHEN YOU SAY IT IS CLEAR HE  
DID ALL OF THIS, OTHER THAN  
BRUCE NIXON'S TESTIMONY, WHAT  
ELSE MAKE IT CLEAR THAT BRUCE,  
THAT ALAN WADE WAS, DID  
EVERYTHING THAT THE SENTENCING  
ORDER SETS FORTH AND THE STATE  
HAS ARGUED?

IS THERE ANY OTHER WITNESSES,  
ANY OTHER EVIDENCE?

>> ALAN WADE ADMITTED TO HIS  
MOM THAT MICHAEL JACKSON  
RECRUITED HE AND NIXON INTO HIS  
SCHEME?

>> SHE TESTIFIED THE GUILT  
PHASE.

SHE DENIED THE CONVERSATION  
HAPPENED.

SHE CALLED THE POLICE.

THERE WAS TAPE-RECORDED  
STATEMENT.

IT WAS ADMITTED AS EVIDENCE  
WITHOUT OBJECTION.

>> IT WAS?

>> ALAN WADE WAS SEEN SHOPPING

FOR SUPPLIES ALONG WITH TIFFANY  
COLE AND MICHAEL JACKSON THE  
DAY OF THE MURDER, JULY 7th.  
SURVEILLANCE CAMERAS OF  
WAL-MART CAUGHT HIM SHOPPING  
FOR, I BELIEVE IN THAT TRIP  
THEY BOUGHT THE GLOVES AND  
SARAN WRAP.

HE WAS SHOWN BUYING CLEANING  
SUPPLIES AFTER THE CRIME.

ALAN WADE'S FINGERPRINT WAS  
FOUND ON A MAGAZINE FOUND IN  
THE MAZDA, THE RENTED  
MAZDA THAT BELONGED TO CAROL  
SUMNER.

IT WAS IN A YELLOW BAG  
UNDERNEATH THE SEAT.

HIS FINGERPRINT WAS FOUND.  
THE KEYS TO THE LINCOLN TOWN  
CAR WERE FOUND BY HIS BEDSIDE  
IN HIS HOTEL ROOM WHEN HE WAS  
APPREHENDED.

>> AND HE WAS APPREHENDED,  
JACKSON AND COLE WERE IN THE  
SAME MOTEL RIGHT NEXT DOOR?

>> THEY WERE A COUPLE DOORS  
DOWN, YES, JUSTICE PARIENTE.  
THEY WERE ARRESTED TOGETHER.  
>> THAT I GUESS BRINGS BACK TO  
SOMETHING I ASKED MR. ^TASSONE,  
THAT IS MR. ^WADE NOT ONLY  
RECRUITED NIXON BUT REMAINED  
WITH THE TWO OTHER CODEFENDANTS  
TO, AS STEPS ENJOY THE FRUITS  
OF THE CRIME IS THAT --  
>> EXACTLY, EXACTLY RIGHT.  
AND SO WE HAVE THEM TOGETHER --  
>> MADE OUT TO HIMSELF?  
>> THERE WAS ALSO, YES, YOUR  
HONOR.  
MICHAEL JACKSON'S AND TIFFANY  
COLE'S HOTEL ROOM THERE WAS A  
CHECK MADE OUT TO ALAN WADE ON  
THE SUMNER'S ACCOUNT FOR  
\$8,000.  
IT WAS UNNEGOTIATED AT THAT  
POINT.  
BUT IT WAS A CHECK MADE OUT TO  
ALAN WADE.  
THAT WAS FOUND IN THE HOTEL

WHERE WADE, JACKSON AND COLE  
WERE.

ALSO, AFTER THE MURDER, BEFORE  
THEY TRAVELED TO SOUTH  
CAROLINA, ALAN WADE WAS LISTED  
ON GUEST REGISTER OF THE, OF A  
HOTEL.

I THINK IT WAS ON JULY 10th OR  
11th BEFORE THEY LEFT  
JACKSONVILLE WHILE THEY WERE  
USING THE ATM CARD.

THEY STAYED IN A HOTEL AND  
MICHAEL JACKSON, TIFFANY COLE  
AND ALAN WADE WERE ALL TOGETHER  
AT THAT TELL.

THE VIDEO SURVEILLANCE DID NOT  
PICK UP WADE BUT HE WAS LISTED  
AS ONE OF THE REGISTERED  
GUESTS.

TIFFANY COLE DID THE  
REGISTRATION AND ALAN WADE WAS  
LISTED AS REGISTRY GUEST.

WE HAVE THEM TOGETHER RIGHT  
AFTER THE MURDER.

WE HAVE WADE AND COLE AFTER THE

MURDER PURCHASING WHAT APPEARS  
TO BE CLEANING SUPPLIES.

WE HAVE HIM BEFORE THE MURDER  
IN WAL-MART BUYING SUPPLIES  
THAT WERE USED.

IF YOU RECALL FROM THE RECORD,  
BRUCE NIXON TESTIFIED WHEN HE  
AND ALAN WADE WENT INTO THE  
HOUSE, THEY WORE THE PLASTIC  
GLOVES THAT, AND PLASTIC GLOVES  
WERE ITEMS THAT THEY BOUGHT ON  
THE 7th OF JULY.

>> HOW MUCH MONEY DID NIXON  
RECEIVE FROM THE PROCEEDS OF  
THE CRIME?

>> NIXON TESTIFIED HE RECEIVED  
APPROXIMATELY 200 TO \$250.

AND AT A PARTY THAT HE  
ATTENDED AFTER THE MURDER ALEX  
GRIFFIS SAW HIM WITH A WALLET  
FULL OF 20s WHICH HE ESTIMATED  
WAS ABOUT \$200.

>> COUNSEL FOR THE DEFENDANT  
MENTIONED THE CAPITAL JURY  
PROJECT AND TRYING TO GET SOME

STANDARDS FOR THE STATE

ATTORNEYS IN SEEKING THE DEATH  
PENALTY.

HAVE WE MADE ANY STATEMENTS,  
MADE ANY OTHER STATEMENTS IN  
ANY OTHER CASES CONCERNING THIS  
CAPITAL JURY PROJECT?

>> NO, WE HAVEN'T.

I CERTAINLY WOULD DISPUTE THIS  
IS A SCIENTIFIC STUDY BUT  
NONETHELESS I GUESS WE'LL  
LITIGATE THAT AT SOME TIME DOWN  
THE ROAD.

BUT THE FACT IS THAT THERE'S  
ABSOLUTELY NO EVIDENCE IN THIS  
CASE OF JUROR MISCONDUCT.

HE HAS NOT MADE ANY ALLEGATIONS  
OF JUROR MISCONDUCT.

ANY KIND OF NOTION A STUDY THAT  
DOESN'T INVOLVE PARTICULAR  
JURORS THAT SAT ON MR. WADE'S  
CASE SHOULD INFLUENCE HIS CASE  
I THINK IS UNSUPPORTED.

ALSO THIS CASE, THIS COURT HAS  
NEVER ADDRESSED THE ISSUE OF

WHETHER ALL 20 ELECTED STATE  
ATTORNEYS IN THE STATE OF  
FLORIDA ARE REQUIRED TO HAVE  
UNIFORM STANDARDS FOR WHETHER  
TO SEEK THE DEATH PENALTY  
AGAINST A DEFENDANT.

CERTAINLY I WOULD SAY THAT THIS  
COURT SHOULD NOT DO SO BECAUSE  
THE DECISION TO SEEK THE DEATH  
PENALTY, JUST LIKE THE DECISION  
TO ENTER INTO A PLEA AGREEMENT  
IS AN EXECUTIVE DECISION OF THE  
PROSECUTOR AND WITHIN THEIR  
DISCRETION.

MORE IMPORTANTLY IS MR. TASSONE  
HAS ARGUED THAT ONE OF THE  
REASONS WHY THIS COURT SHOULD  
LOOK AT THIS ISSUE IS TO INSURE  
UNIFORMITY THROUGHOUT THE STATE.  
WELL, THIS COURT INSURES  
UNIFORMITY THROUGHOUT THE CASE  
IN EVERY SINGLE DEATH CASE  
BECAUSE YOU DO PROPORTIONALITY  
REVIEW IN EVERY SINGLE DEATH  
CASE.

WE HAVE LAYERS AND LAYERS OF  
REVIEW, BUT STARTING PRIMARILY  
YOU, THAT YOU REVIEW EVERY  
SINGLE CASE WITH STATED PURPOSE  
TO INSURE THERE IS UNIFORMITY  
IN THE STATE OF FLORIDA  
IMPOSING THE DEATH SENTENCE.  
SO ANY NOTION THAT THIS COURT  
SHOULD MANDATE THE EXECUTIVE  
BRANCH TO ADOPT UNIFORM  
STANDARDS, RESPECTFULLY I THINK  
WOULD BE A BREACH OF THE  
SEPARATION OF POWERS BUT ON A  
BIGGER SCALE AND MORE  
IMPORTANTLY IS, THAT, YOU  
EXAMINE CASE FOR THE STATED  
PURPOSE OF ENSURING  
UNENFORCEMENT AND SO --  
>> BUT THE TRUTH OF THE MATTER  
IS, WE DO NOT AND CAN NOT  
REVIEW CASES WHERE A LIFE  
SENTENCE IS IMPOSED OR WHETHER  
THE DEATH PENALTY WAS NOT  
SOUGHT TO SEE IF THOSE CASES  
ARE MORE EGREGIOUS.

THAT IN ONE CIRCUIT A DIFFERENT  
PHILOSOPHY.

WE ONLY HAVE SO MUCH CAPACITY,  
BUT I AGREE WITH YOU THIS DOES  
SEEM TO BE SOMETHING FOR THE  
EXECUTIVE BRANCH, NOT FOR THIS  
COURT IN TERMS OF THE LARGER  
QUESTION OF IMPOSING STANDARDS.

I DON'T THINK THERE IS BASIS WE  
CAN DO THAT CONSTITUTIONALLY.

>> I AGREE FULLY WITH YOUR  
HONOR.

IF, WHEN LOOKING AGAIN BACK, I  
THINK MR. TASSONE MADE SOME  
REFERENCES TO THIS NOTIONS OF  
GOLDEN RULE AND IMPROPER  
CONDUCT.

HE DIDN'T ELABORATE WHICH  
COMMENTS HE WANTED TO SPEAK  
ABOUT.

BUT I THINK WHEN YOU LOOK AT,  
AGAIN IN ISSUE THREE, THEY'RE  
UNPRESERVED.

SO HE WOULD HAVE TO SHOW  
FUNDAMENTAL ERROR AND I WOULD

URGE THIS COURT TO LOOK AT,  
WHEN CONSIDERING THE ENTIRE  
RECORD, THAT IN NO EVENT THAT  
THOSE COMMENTS ARE ACTUALLY  
ERROR AND UNPRESERVED.

IF THIS COURT WERE TO FIND  
ERROR THEY DON'T RISE TO  
FUNDAMENTAL ERROR.

INSOFAR AS THE ONE COMMENT THAT  
WAS PRESERVED, I THINK THIS  
COURT CAN CLEARLY DISTINGUISH  
IT FROM CASES SUCH AS URBIN AND  
BROOKS AND ANY ERROR WOULD  
ABSOLUTELY BE HARMLESS IN THIS  
CASE.

SO WE WOULD URGE THIS COURT TO  
AFFIRM MR. ^WADE'S CONVICTIONS  
FOR FIRST-DEGREE MURDER, TWO  
COUNTS, KIDNAPPING TWO COUNTS,  
ROBBERY, TWO COUNTS AND AFFIRM  
BOTH DEATH SENTENCES BOTH OF  
WHICH THE JURY RECOMMENDED  
DEATH BY 11-1.

THE TRIAL JUDGE ENTERED A VERY  
CONSIDERED ORDER IN THIS CASE.

AND WE WOULD URGE THIS COURT  
TO AFFIRM.

>> THANK YOU VERY MUCH.

REBUTTAL?

>> THANK YOU, YOUR HONOR.

MAY IT PLEASE THE COURT AGAIN,  
YOU KNOW, IN, AND PERHAPS, I  
KNOW THE COURT HAS DIFFICULTY  
IN THIS DISPARITY ISSUE AND I  
FIND ALMOST DOING IT WHAT CALL  
SIN MEASURING BUT I THINK THE  
FACTS IN THIS CASE SHOW NOT  
ONLY ALAN WADE RECRUITED BRUCE  
NIXON BUT THAT IT WAS BRUCE  
NIXON WHO GOT THE SHOVELS TO  
DIG THE HOLE.

THE HOLE WAS LOCATED VERY CLOSE  
OR CLOSER TO BRUCE NIXON'S  
HOUSE, THE GRAVE, AND WAS  
PRE-DUG AND I HEARD THE  
COUNSEL TALK ABOUT INFERENCES  
THAT THE COURT CAN MAKE.  
THE INFERENCE WAS THAT BURIAL  
SITE WAS SELECTED BY BRUCE  
NIXON.

MOST IMPORTANTLY, ALAN GRIFFIS  
OR ALEX GRIFFIS TESTIFIED AT  
TRIAL THAT BRUCE NIXON SAID TO  
HIM AT THIS PARTY WHERE HE WAS  
FLASHING THE MONEY,  
I BURIED TWO PEOPLE.

IS IT WORSE THAT SOMEONE BURIES  
TWO PEOPLE?

I MEAN ESSENTIALLY, AND I SAID,  
IN THE FIRST PART OF THIS  
ARGUMENT BRUCE NIXON WAS  
RECRUITED BY THE STATE TO  
TESTIFY AGAINST ALAN WADE  
PRIMARILY BECAUSE WITHOUT BRUCE  
NIXON, THERE WAS NO CASE, NO  
WINABLE CASE AGAINST ALAN  
WADE.

I, AGAIN, I'M AWARE OF WHAT THE  
COURT'S HOLDING IS.

>> I GUESS I'M NOT REALLY  
FOLLOWING YOU WHEN YOU SAY  
THERE WAS NO WINABLE CASE  
AGAINST ALAN WADE WHEN YOU HAVE  
WADE, WHO WAS FOUND WITH COLE  
AND JACKSON AT SAME MOTEL.

YOU HAVE HIS FINGERPRINTS ON  
CERTAIN ITEMS.

AND, I JUST DON'T  
UNDERSTAND WHY, EVEN ABSENT  
MR. ^NIXON, YOU DON'T HAVE A  
CASE AGAINST MR. ^WADE?

>> RESPECTFULLY, YOUR HONOR, I  
DON'T THINK THAT IS A WINABLE  
CASE.

I THINK THOSE FACTS COME IN ALL  
THE TIME WITH PEOPLE IN  
POSSESSION OF STOLEN PROPERTY,  
YOU KNOW.

>> THAT'S WHY, BUT AGAIN, THE  
STATE MADE A DECISION THAT IT  
WAS, IMPORTANT BECAUSE OF  
WADE'S INVOLVEMENT TO HAVE  
BRUCE NIXON ENTER A PLEA DEAL.

I MEAN THAT'S, I DON'T THINK  
ANYONE IS TRYING TO MINIMIZE,  
WHEN YOU'VE GOT DEFENDANTS WHO  
HAVE DONE SOMETHING THIS, THAT  
THERE ARE OCCASIONS WHERE THE  
STATE RECOGNIZES IT'S GOT TO  
MAKE A DEAL WITH ONE OF THE

DEFENDANTS AND HOPEFULLY FROM  
THE COURT'S POINT OF VIEW, IT  
MAKES THE DEAL WITH THE  
DEFENDANT WHO IS UNDER ALL THE  
CIRCUMSTANCES, LEAST CULPABLE.

BUT I'M SURE BRUCE NIXON  
UNDERSTOOD HE WAS SUBJECT TO  
THE DEATH PENALTY.

SO I'M NOT SURE AGAIN WHAT THAT  
DOES TO YOUR CONSTITUTIONAL  
ARGUMENT THAT IT WAS UNLAWFUL  
TO IMPOSE DEATH PENALTY ON  
WADE?

THE FACT THAT THEY NEEDED TO  
HAVE NIXON TO TESTIFY TO  
CONVICT WADE.

>> WELL, AGAIN, I WOULD BE  
REPEATING MYSELF IN RESPONSE TO  
THE QUESTION.

IN MY OPINION THAT AND THIS  
COURT AND AGAIN, I'M AWARE OF  
THE DECISION IN ENGLAND.

JUSTICE LABARGA BROUGHT UP A  
SCENARIO THAT ISN'T BEFORE THE  
COURT, MAY NEVER COME BEFORE

THE COURT BUT IF IT DOES COME  
BEFORE THE COURT THEN I THINK  
THE COURT WOULD HAVE TO MAKE  
THE DECISION WHETHER IT WOULD  
RECEDE FROM ENGLAND.

>> BUT MR. ^NIXON HERE, IT WAS  
ALSO NECESSARY FOR NIXON, FOR  
COLE.

I MEAN THAT'S THE WAY THESE  
THINGS DEVELOP WHEN THERE IS  
MULTIPLE PARTICIPANTS.

SO THAT RULE OF LAW IN THIS  
CASE WOULD LEAD NECESSARILY TO  
THE PRINCIPLE THAT THE STATE  
CAN NOT, CAN NOT CUT A DEAL  
WITH THE DEVIL TO GET TO OTHER  
PARTICIPANTS.

>> OH, I THINK CLEARLY AS AN  
EXECUTIVE DECISION, HAVING BEEN  
IN THAT POSITION, THE STATE HAS  
CUT DEALS WITH DEVILS BUT IF  
THEY CUT THE WRONG DEAL OR IF  
THAT PERSON IS EQUALLY CULPABLE  
I GUESS THE QUESTION THAT I  
HAVE IS, WHAT REVIEW, IF

ANY, WOULD THIS COURT GIVE IT?

WHAT REVIEW IF ANY, SHOULD THE  
TRIAL COURT GIVE?

>> I THINK WE REALLY ARE

MAJORLY CONCERNED THAT THE  
STATE DOESN'T CUT A DEAL WITH  
THE PRIMARY DEVIL BECAUSE ALL  
OF THESE PEOPLE WERE INVOLVED  
THIS CRIME, BUT WE KNOW, AS  
JUSTICE PARIENTE POINTED OUT,  
EARLIER IN YOUR ARGUMENT THAT  
MR.^JACKSON WAS THE MOVING  
FORCE IN THIS CASE AND YOU  
MIGHT HAVE HAVE AN ARGUMENT IF  
MR.^JACKSON HAD A LIFE  
SENTENCE.

PROBABLY A VERY GOOD ARGUMENT  
IF MR.^JACKSON HAD A LIFE  
SENTENCE IN THIS CASE BUT, OR,  
A 45-YEAR SENTENCE, WHATEVER IT  
IS, BUT WE'RE NOT AT THAT  
POINT.

>> I AGREE WE'RE NOT THERE IN  
MY REVIEW OF THE CASES WHERE  
THE COURT HAS CONDUCTED

ANALYSES, PRIOR TO ENGLAND, OF  
DISPARATE SENTENCES WHERE  
DISPARATE SENTENCES, ARE SOME  
OF MORE EGREGIOUS PERHAPS?  
SOME OF THEM COME CLOSE.

AS I INDICATED --

>> THERE IS WHOLE LONG LINE OF  
CASES EVEN BEFORE ENGLAND THAT  
WE HAVE, WE HAVE GONE SAID THE  
SAME THING BASICALLY.

>> I'M NOT SAYING THAT IS THE  
COURT'S POLICY FOR A LONG TIME  
BUT EVERY TIME THAT COURT MADE  
THAT POLICY THEY FOUND  
EXCEPTIONS TO THE POLICY IT IS  
THE COURT'S DECISION WHERE  
THOSE EXCEPTIONS ARE.

I WOULD LIKE TO TALK ABOUT THE  
COMMENT BY THE PROSECUTOR PUT  
IN THE TRUNK OF A CAR, BEING  
DRIFT, TERROR OF THE NIGHT,  
THINGS LIKE THAT.

YOU KNOW, I READ A LOT OF  
CASES, TRIED A LOT OF CASES.

I'VE NEVER SEEN THE GOVERNMENT

ARGUE THAT WHATEVER THE COMMENT  
IS, AND THEY ARGUED IN URBIN,  
THAT IT IS A FAIR COMMENT ON  
THE EVIDENCE.

AND THAT'S WHAT THE FACTS ARE.

BUT THAT COMMENT BY THE STATE  
IN THIS PARTICULAR CASE, THE  
LAST THING THAT THE JURY HEARD  
BEFORE THEY WENT IN TO  
DELIBERATE WAS A GOLDEN RULE  
VIOLATION.

>> BUT WELL, ISN'T THAT JUST A  
DESCRIPTION OF WHAT THE FACTS  
IN THIS CASE SHOW HAPPENED?  
I MEAN THERE WAS NO, THERE'S  
NO, CERTAINLY NO DIRECT APPEAL  
TO THE JURY TO PUT THEMSELVES  
IN THE PLACE OF THE, IN THE  
TRUNK.

THERE IS JUST A DESCRIPTION OF  
WHAT WAS HAPPENING TO THE  
PEOPLE IN THE TRUNK, WHICH IS  
HIGHLY RELEVANT TO THE HAC, AND  
HIGHLY RELEVANT TO THE WHOLE  
CRIME.

>> JUSTICE CANADY, I  
RESPECTFULLY DISAGREE.  
I THINK THAT COMMENT WAS  
DESIGNED TO PUT THE JURY IN THE  
POSITION OF THE VICTIM.  
HE DIDN'T SIT THERE AND SAY,  
REVIEW WHAT HAPPENED IN  
THIS CASE ABOUT THE VICTIMS  
BEING PLACED IN THE TRUNK OF  
THE CAR.  
ABOUT THE VICTIMS BEING BOUND  
AND GAGGED.  
HE CAME AS CLOSE AS HE COULD  
TO WHATEVER IMAGINARY LINE HE  
BELIEVED EXISTED AND THE ONLY  
THING HE DIDN'T SAY, IMAGINE  
YOURSELF IN THE TRUNK OF THE  
CAR.  
THE ONLY WORD HE DIDN'T USE, I  
THINK HE SAID, HOW ABOUT?  
NOW, AND I GUESS IT IS  
INTERPRETATION.  
>> I THINK THERE'S A PROBLEM  
THOUGH, I KNOW THE PARTICULAR  
LINE WE WERE TALKING ABOUT

WHERE THEY SAY WALK INTO LIGHT,

DON'T WALK INTO THE TRUNK.

IT IS IMPOSSIBLE, AS A HUMAN

BEING, CONSIDERING THE FACTS OF

THIS CASE, NOT TO HEAR WHAT

HAPPENED TO THESE TWO VICTIMS

AND NOT BE, UNDERSTAND THE

HORROR THAT MUST BE THERE.

NOW, AGAIN, THE DISTINCTION

SAYING, HERE ARE ALL THE FACTS,

THINK OF THE HORROR, IS ONE,

YOU KNOW, YOU'RE GETTING TO

GRADATIONS ABOUT WHERE GOLDEN

RULE FITS IN BUT YOU'RE NOT

GOING TO GET AROUND THE FACT

THAT THIS IS HIGHLY EMOTIONAL,

PREJUDICIAL TESTIMONY BECAUSE

OF THE FACTS OF WHAT HAPPENED.

AND I THINK THAT IS WHAT, SO

WHETHER I MIGHT AGREE THE

PARTICULAR PHRASING CONSTITUTES

GOLDEN RULE BUT, THE QUESTION I

WOULD HAVE IS, ISN'T IT

HARMLESS BEYOND A REASONABLE

DOUBT IN THE GUILT PHASE GIVEN

EVERYTHING AND GIVEN THAT THE  
TESTIMONY DID COME?

>> I THINK THAT IS A DECISION

THE COURT HAS TO MAKE.

I THINK IF THAT IS THE LAST  
WORDS TO THE JURY BEFORE THEY  
GROW INTO DELIBERATE, ALL THAT  
WAS DONE GET GET AS CLOSE TO A  
GOLDEN RULE VIOLATION. IF I COULD  
HAVE 30 SECONDS MORE.

THE COURT ASKED IF THERE WAS  
ANY PRIOR HISTORY IN THERE WAS  
REVIEW OF STATE ATTORNEY  
POLICY.

THERE WAS IN A CASE OF FREEMAN  
VERSUS STATE.

IT WAS REVIEW OF THE FOURTH  
JUDICIAL POLICY, NOT OF THE  
STATE ATTORNEY POLICY AND --

>> WAS THAT DONE IN THE FEDERAL  
COURT?

>> NO, I THINK IT WAS DONE  
BEFORE THE FLORIDA SUPREME  
COURT.

>> ALL RIGHT.

THANK YOU VERY MUCH.

>> THANK YOU.

>> WE APPRECIATE BOTH OF YOUR

ARGUMENTS IN THIS CASE.