

>> PLEASE RISE.

HEAR YE, HEAR YE, HEAR YE,
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.

ALL WITH A CAUSE TO PLEA, DRAW
NEAR, GIVE ATTENTION AND YOU
SHALL BE HEARD.

GOD SAVE THESE UNITED STATES,
THIS GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.

>> LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING, AND WELCOME TO
THE FLORIDA SUPREME COURT, WE
HAVE ONE CASE ON OUR DOCKET
TODAY, IT IS TAYLOR VERSUS
STATE.

>> GOOD MORNING, JUSTICES, CHIEF
JUSTICE CANADY, I'M MICHAEL
REITER, I REPRESENT MR. TAYLOR,
DENIAL FROM A POSTCONVICTION
MOTION AND WOULD FIRST LIKE TO
DISCUSS ISSUE FIVE AND GO ON TO
ISSUE 3, WHICH LIKELY FLOWS
THEREFROM, AND IF WE HAVE TIME,
AS YOU WANT.

ISSUE 5, WE DECLARE THAT TRIAL
COUNSEL WAS INEFFECTIVE.

IN FAILING TO INVESTIGATE AND
PREPARE HIMSELF FOR THIS TRIAL.
MOST POINTEDLY, TO DNA EVIDENCE.
THE COURT IN DENYING THE MOTION,
FOR -- THE CLAIM, LISTS ALL OF
THE QUESTIONS THAT COUNSEL POSED
TO DR. POLLOCK, FOR TRIAL

PURPOSES BUT HE DID NOT KNOW...

WHAT EXISTED AND DID NO RESEARCH
ON FRYE WHATSOEVER.

>> YOU ARE POINTING TO
DEFICIENCY IN COUNSEL'S
PERFORMANCE.

WHAT DO YOU HAVE THAT SHOWS THAT
PREJUDICE RESULTED FROM THAT
DEFICIENCY?

>> HAD THEY OBTAINED AND SPOKEN
TO SHIRLEY ZEIGLER OF
DR. POLLOCK, BOTH APPLYING THE
SAME SCIENCE, THE DNA ON TWO OF
THE FOUR PROBES WERE
INCONCLUSIVE.

>> SHE ALSO WOULD HAVE
TESTIFIED, DID SHE NOT, READING
THE RECORD IT IS CLEAR THAT SHE
SAID HER OPINIONS DID NOT VARY
FROM DR. POLLOCK'S.

>> NO, WHAT SHE SAID WAS, THERE
ARE TWO PARTS, THE TEST ITSELF
AND SHE WAS ASKED, DID HER TEST
RESULTS DIFFER FROM THAT OF
DR. POLLOCK AND SHE SAID, NO,
SLIGHTLY IT DID, AND THE
CONCLUSIONS THAT WERE DRAWN,
WERE DIFFERENT.

FOR EXAMPLE, THERE IS A PROCESS
IN DNA THAT, WHEN YOU RUN THE
TEST, THE PERSON WHO IS READING
THAT TEST, MAKES THE CONCLUSION
AS TO WHETHER THERE IS A MATCH
OR WHETHER IT'S INCONCLUSIVE AND
DR. POLLOCK SAID THERE WAS A
MATCH.

>> EXCUSE ME.

I AM HAVING PROBLEMS WITH THAT.
BECAUSE IT IS SIGNIFICANT WHAT
YOU ARE SAYING.

>> SURE.

>> THE DIALOGUE APPEARS, THE
QUOTE WE LOOK AT IN THE RECORD,
AND THE QUESTION WAS, TO HER WAS
OKAY.

SO IN TERMS OF YOUR FINDINGS,
VERSUS DR. POLLOCK'S FINDINGS,
IS THERE ANY DISPUTE?

ANSWER, I DIDN'T JUST BY LOOKING
AT COMPUTER PRINTOUT, DIDN'T SEE
ANY.

>> THAT'S RIGHT WITH REGARD TO
THE COMPUTER PRINTOUT THERE WAS
NO DISPUTE AS TO THOSE RESULTS.

>> FINDINGS.

>> THAT IS AN INTERPRETATION.

>> NOT A INTERPRETATION, IT IS
THE WORD USED.

>> BUT, JUSTICE LEWIS, YOU WILL
SEE WHEN THE SPECIFIC QUESTION
WAS ASKED OF HER, WITH THOSE
SPECIFIC... FOR EXAMPLE --

>> YOU KNOW THEY DISAGREED WITH
REGARD TO -- THE JUSTICE IS
ASKING YOU DID SHE HAVE A
DIFFERENT OPINION WITH REGARD TO
THE DNA AND ITS MATCH AND IF SO,
IN THE RECORD, CAN YOU DIRECT US
WHERE THAT IS.

>> ON EXHIBIT 7, WHICH ES THE
PROBES THEMSELVES, YOU WILL SEE
THAT THEY ARE BY THOSE FIND, BY

DR. POLLOCK AND ALSO BY
MS. ZEIGLER, NO MALE... WAS
DETECTED .

>> LOOK, LOOK, YOU CAN BREAK
DOWN ALL KINDS OF THINGS IN
THESE CASES AND ALL THE SCIENCE,
AGAIN, PLEASE ANSWER DIRECTLY
JUSTICE CANADY'S QUESTION AND
THAT IS DID WITNESS ZEIGLER HAVE
DIFFERENT CONCLUSIONS THAN
DR. POLLOCK --

>> I BELIEVE THAT IS TRUE.

>> TELL US WHERE IN THE RECORD
THAT APPEARS, THAT IS CRITICAL.

>> I WOULD HAVE -- I DID A BRIEF
--

>> THAT IS LIKE THE MOST
CRITICAL THING IN THE CASE,
ISN'T IT.

>> I APOLOGIZE, JUSTICE LEWIS, I
POINT TO THE PAGES WHERE SHE
SAYS, I FOUND TWO IN THE PROBES
INCONCLUSIVE.

>> LET ME SEE IF I CAN'T ASK
THIS QUESTION TO -- FOR TO YOU
RESPOND TO SOMETHING THAT IS IN
THE STATE'S BRIEF.

THEY SAID THAT YOU ATTEMPTED TO
ATTACK DR. POLLOCK, WHOSE
CONCLUSION AT TRIAL WAS THAT
TAYLOR'S DNA, IT WAS HIS DNA,
ONE IN 6 MILLION ODDS.

NOW, IS THAT WHAT DR. POLLOCK
SAID AT TRIAL.

>> PART OF IT, YES.

>> NOW, WE HAVE HAD ONE -- THAT

IS JUST -- THOSE ARE PRETTY GOOD ODDS, THERE ARE CERTAINLY ODDS THAT ARE, ONE IN, YOU KNOW, A TRILLION OR A BILLION, WHAT IS IT THAT YOU WERE ABLE TO SHOW THAT WOULD LEAD, IF WE WERE TO GIVE MR. TAYLOR A NEW TRIAL, BECAUSE OF THE QUESTIONS ABOUT THE DNA, WHAT WOULD YOU SHOW IN FACT THAT THE -- THOSE WEREN'T THE ODDS, THEY WERE MUCH LESS, WAS IT A MATCH?

NOT A MATCH?

IN OTHER WORDS, WHAT WAS THE -- WHAT IS THE TESTIMONY AS TO WHETHER THIS IS THE MATCH OR NOT?

BECAUSE THAT IS WHAT YOU ARE RELYING ON, IT IS -- YOU ARE QUESTIONING DR. POLLOCK, AND I'M TRYING TO UNDERSTAND, MS. ZEIGLER IT IT WAS NOT A MATCH OR 1 IN 1,000 OR WHAT.

>> IT IS MY UNDERSTANDING, IN BEING INVOLVED IN THE CASE, SHE SAID TWO PROBES WERE INCONCLUSIVE.

>> DO YOU UNDERSTAND THAT -- WHAT DOES THAT TRANSLATE INTO, AS FAR AS THE JURY WE WOULDN'T HAVE CONFIDENCE THAT THIS IS ACTUALLY A MATCH, ALL THE COURT SAID ON DIRECT APPEAL IS THAT IT WAS HIS DNA.

WHAT WOULD IT BE ABOUT THAT PARTICULAR FINDING, THAT WOULD

LEAD US TO CONCLUDE IT IS
PROBABLY NOT HIS DNA, MAY NOT BE
HIS DNA, IT IS NOT LIKELY IT IS.
ANYTHING OF THAT NATURE.

>> JUDGE MCCAULIE ASKED
DR. LIBBY, WITH THE REMAINING
PROBES YOU BELIEVE WERE ACCURATE
-- PROBES YOU BELIEVE WERE
ACCURATE, HIS ANSWER WAS 1 IN 10
TO 1 IN 100.

>> BASED ON DR. LIBBY WHO THE
JUDGE DID NOT FIND HIS
CREDENTIAL TO BE PROPER FOR
BEING ABLE TO TESTIFY --

>> IRONICALLY, THOUGH, ALSO THE
STATE INDICATES THE SAME THING
AND SAYS DR. GOLDSTEIN WAS A
PREEMINENT AND, BUT HE WASN'T IN
FORENSIC, EITHER AND MANY CASES
THE STATE UTILIZES ACADEMICS AND
DNA WHO ARE NOT IN FORENSICS AND
DO IT ALL THE TIME, EVEN VARGAS,
ACTUALLY A CASE THAT TOOK PLACE,
THREE MONTHS IN THE SAME
CIRCUIT, ON THE SAME ISSUE OF
DNA, UTILIZED ACADEMICS TO
TESTIFY AS TO THE DNA AND THE
PROBABILITY AS TO THE DATABASE
OF THE FBI WHICH WAS ULTIMATELY
REJECTED.

>> BUT IN THIS RECORD WHAT WE
HAVE IS A TRIAL JUDGE SAYING
THAT DR. LIBBY WAS NOT CREDIBLE.
AND, WE HAVE THE TRIAL JUDGE
INDICATING THAT EVEN THOUGH
DR. ZEIGLER SAID THAT THERE WAS

SOME DIFFERENCE IN THE PROBE,
THAT HER CONCLUSION WAS
BASICALLY THE SAME AS
DR. POLLOCK.

SO, HOW ARE WE TO NOW SAY THERE
IS A PROBLEM HERE, WHEN YOU
REALLY DON'T HAVE -- AND WHAT
HAS BEEN ASKED HERE, IS FOR YOU
TO POINT TO US SPECIFICALLY,
WHERE THE CONCLUSION WOULD BE
DIFFERENT.

>> WELL, ACTUALLY, I
RESPECTFULLY DISAGREE.

I THINK WE HAVE TWO ISSUES HERE.
WHEN SHE TALKS ABOUT -- AND THE
QUESTIONS, I WAS THERE AND MY
UNDERSTANDING OF THE RECORD WAS,
WHEN SHE WAS ASKED WITH REGARD
TO THE PRINTOUTS, DID YOU SEE
ANY SUBJECTIVE DIFFERENCE AND
HER ANSWER WAS NO AND WHEN ASKED
WHETHER CONCLUSIONS AS TO
WHETHER THEY WERE A MATCH ON
THOSE FOUR PROBES, SHE SAID TWO
OF THEM WERE INCONCLUSIVE AND I
SPECIFICALLY ASKED HER, IF
DR. POLLOCK SAID THAT THERE WAS
A MATCH ON THOSE TWO PROBES,
WOULD THAT HAVE BEEN IN
VIOLATION OF PROTOCOL AND SHE
SAID, AS I REMEMBER THE
PROTOCOL, IT WOULD HAVE BEEN IN
VIOLATION.

>> OKAY.

YOU SAID TWO.

TWO OF THE FOUR.

WHAT ABOUT THE OTHER TWO?

>> ONE OF THE --

>> THAT'S TRUE, SHE SAID THE OTHER TWO IN HER OPINION, MATCHED BUT DR. LIBBY SAID ONE IN 100 OR --

>> WAS DOCTOR ZEIGLER ASKED THE QUESTION, THAT WOULD BE THE NEXT QUESTION, IF ONLY TWO OF THE FOUR PROBES MATCHED, WAS -- WAS SHE ASKED, THEN, WHAT WOULD HER OPINION BE ABOUT WHAT THE PROBABILITY IS, THAT IT IS HIS DNA.

>> NO, NOR WOULD DR. POLLOCK, NEITHER WAS ASKED THE QUESTION, ACTUALLY THE ONE WHO ASKED THE QUESTION WAS JUDGE MCCAULIE.

>> BUT, AGAIN, THIS IS A CONCERN, BECAUSE IF THERE REALLY IS AN ISSUE WITH SEVERAL -- WITH THE PROBES AND THESE PROBES, THERE IS LESS PROBES THAN THE FBI RECOMMENDED AND CAUSES SOME CONCERNS BUT, I'M STILL -- I GUESS THE QUESTION IS, YOU SAY WE HAVE TO THEN ACCEPT WHAT DR. LIBBY SAYS, THOUGH THE TRIAL COURT FOUND THE TESTIMONY WAS NOT CREDIBLE TESTIMONY.

>> BUT WHEN YOU FOLLOW IT THROUGH, THE INVESTIGATION REQUIRED TO FIND THE INDIVIDUALS AND TAKE IT TO THE NEXT LEVEL, ISSUE 2, WHICH IS REQUESTING AN EVIDENTIARY HEARING ON FRYE,

THERE IS NO QUESTION UNDER VARGAS AND THE STANDARDS THAT EXISTED AT THE TIME HE WOULD HAVE BEEN GRANTED SUCH.

JUDGE MCCAULIE CITES TO THE FOOTNOTE RULING... HOLDING TO A LEVEL OF STANDARD OF LAW THAT DIDN'T EXIST AT THE TIME.

BUT, VARGAS WAS CLEAR, IF YOU TAKE JUDGE MCCAULIE'S FINDING LITERAL, THERE WAS NO STANDARD AT ALL FOR FRYE AT THE TIME AND WE KNOW, THERE WERE FRYE HEARINGS BEING CONDUCTED.

>> WHAT, IF THERE HAD BEEN A FRYE HEARING, WHAT IS YOUR CONTENTION ABOUT THE OUTCOME AS FAR AS WITH THE EVIDENCE -- WOULD IT BE FOUND NOT TO BE ADMISSIBLE.

>> THAT'S RIGHT.

I BELIEVE THAT IS THE -- THE JUDGE WOULD HAVE FOUND, THERE WAS VIOLATION OF PROTOCOL AND THE FACT THAT THERE WAS INCONCLUSIVE MATCHES ON AT LEAST TWO OF THE PROBES, ACCORDING TO DR. LIBBY, THERE WERE THREE AND THE JUDGE WOULD HAVE BEEN REQUIRED TO HAVE FOUND, UNRELIABLE.

AND THIS COURT IN ITS LOGIC AND, THE CO-DEFENDANT OF -- MURRAY FOUND WHEN YOU HAVE TWO ANALYSTS WITH TWO CONCLUSIONS TESTING THE SAME INFORMATION, IT MAKES THE

DNA LESS VIABLE, NOT MORE AND
YOU HAVE THE SAME SITUATION HERE
AND...

>> WHAT SHOULD THE LAWYER --
HE DID GET THE APPOINTMENT OF
WHAT WAS CONSIDERED -- WE CAN
DISPUTE IT, BUT, I MEAN, IF WHAT
WAS CONSIDERED AT THE TIME, THE
FOREMOST EXPERT FROM, I GUESS,
THE CDC, INSTITUTES OF HEALTH,
AND THERE IS TESTIMONY, IS THERE
NOT FROM MR. TASSONE THEY
DISCUSSED THIS AND THE ULTIMATE
DECISION WAS HE, WHILE YOU COULD
THROW STONES AT AND CROSS
EXAMINE IT, BUT EVEN THAT EXPERT
AT THAT TIME WAS OF THE VIEW
THAT YOU COULD NOT SUCCESSFULLY
OVERCOME THAT TESTIMONY, IS THAT
WHAT MR. TASSONE SAID.

>> A FAIR PARAPHRASING OF WHAT
IT WAS.

>> I'M --

>> WHAT HE ACTUALLY SAID HE
DIDN'T FIND ANY PROBLEMS WITH
THE TESTING THE WAY IT WAS DONE.

>> THE EXPERT DID NOT.

>> THAT'S RIGHT.

>> AND THAT IS WHAT HE TOLD THE
LAWYER.

>> THAT'S CORRECT.

>> AND, GAVE HIM AMMUNITION TO
SORT OF RIP DR. POLLOCK, WHICH
HE APPARENTLY DID, IN
CROSS-EXAMINATION.

AND, THEY FELT THAT THAT WAS

SUFFICIENT.

>> EXCEPT FOR THE FACT THAT THEY DIDN'T -- DR. GOLDMAN WHO I AM SURE THE STATEMENT SAID WAS NOT IN FORENSIC AND THEREFORE TO THE QUALIFIED, DR... [INAUDIBLE] WAS GOING TO CALL THE EXPERT AND WAS AWARE OF THE FACT THAT HE WAS NOT GOING TO BE AVAILABLE FOR THE TRIAL AND FILED A CONTINUANCE AND WITHDREW IT AND HAD NO FURTHER CONTACT WITH HIM AND AT THE EVIDENTIARY HEARING, MR. TASSONE ACKNOWLEDGED THE FACT HE DIDN'T HAVE THE RECORDS AND THE DOCTOR ONLY RECEIVED THOSE RECORDS WITHIN DAYS BEFORE THE TRIAL.

HE DID NOT KNOW ABOUT SHIRLEY ZEIGLER OR THE CONCLUSIONS --

>> WAIT, WAIT, HER INITIALS WERE ON THE PAPERWORK.

>> THAT'S RIGHT.

>> AND SO, NOBODY WENT FURTHER WITH REGARD TO THAT.

SO, THAT WASN'T HIDDEN OR ANYTHING.

SO, I MEAN, THEY CERTAINLY COULD HAVE KNOWN WHO THAT WAS.

>> BUT THEY DIDN'T AND IRONICALLY -- THERE ARE TWO POSITIONS, IN CLAIM FIVE, THEY SPECIFICALLY SAY AT PAGE 85, THAT EVEN WITH THE INFORMATION HE HAD ON ZEIGLER, THERE WOULD BE NO JUSTIFICATION, FOR ANY

KIND OF LAWYER TO ASK FOR A DELAY, YET PAGE 42, THEY SAY HE HAD THE INFORMATION AND COULD HAVE FOLLOWED UP ON IT, IT IS ONE OR THE OTHER AND YOU CAN'T DO BOTH AND THE POINT BEING IS, IT IS A LAWYER'S OBLIGATION TO INVESTIGATE.

>> SHOULDN'T THE EXPERT THEY HAD AT THE TIME HAVE THOSE DOCUMENTS?

THAT IS THE WAY I UNDERSTOOD.

>> HAD THE PROTOCOLS AND LOOK AT WHAT WAS RECEIVED FROM THE STATE THE PROTOCOL IS NOT EVEN INCLUDED.

IF YOU LOOK AT THE PROTOCOLS ATTACHED AS EXHIBITS IN THE CASE YOU WILL SEE THERE ARE AT LEAST TWO PROTOCOLS THAT WERE NOT FILED WITH REGARD TO DR. POLLOCK SAYING THERE WAS A MATCH ON TWO, ONE BEING THE FACT THERE WAS PROBES THAT EXCEEDED 10,049, VIOLATION OF PROTOCOL AND SAYS IN THE PROTOCOL YOU CANNOT FIND THE RESULT WHEN THE EXPECTED BAND FALLS IN A POSITION IT'S NOT SUPPOSED TO BE IN AND HE ACKNOWLEDGED IT DIDN'T FALL IN THE PROPER POSITION AND STILL CALLED IT A MATCH AND THOSE PROTOCOLS WERE IN EXISTENCE IN 1991 AND IF THERE WAS NO SPECIFIC STANDARD FOR A FRYE HEARING YOU SHOULD HAVE BEEN

HELD TO THAT STANDARD AND THAT IS THE PROTOCOLS, AND, THE STATE ALSO SUGGESTS... WELL, THE BOTTOM LINE HERE IS, IF THIS COURT IS CORRECT WITH REGARD TO MCCAULIE, WHEN YOU HAVE TWO -- RELY ON DNA AND YOU HAVE TWO EXPERTS, WHO LOOK AT THE SAME RESULTS, COME UP WITH DIFFERENT CONCLUSIONS, THAT INFORMATION IS NOT RELIABLE, IT WASN'T RELIABLE HERE AND, MR. TASSONE.

>> I GUESS IT GOES BACK TO...

TELL US SPECIFICALLY, NOTE TRIAL JUDGE ALREADY DISCOUNTED DR. LIBBY.

WHERE DO YOU GET THE TWO DIFFERENT RESULTS, OTHER THAN THE FACT THAT WE DO HAVE PROBLEM WITH THE PROBES, WHERE IS THE BASIC CONCLUSION DIFFERENT.

>> WELL, AGAIN, I HAVE TO GO BACK TO THE BRIEF AND I DON'T HAVE THE TIME TO POINT TO THE PAGES BUT IT IS THERE.

>> BUT YOU SHOULD BE ABLE TO TELL US THAT, YOU KNOW, DR. POLLOCK SAID IT WAS A MATCH AND SOMEONE ELSE SAID IT WAS NOT A MATCH.

>> I DID.

>> WHERE IS THIS -- THIS IS NOT A MATCH.

THAT IS WHAT WE ARE LOOKING FOR.

>> WHEN YOU SAY MATCH, THERE ARE FOUR PROBES THAT WERE DONE AND

DR. POLLOCK SAID ON ALL FOUR PROBES, THERE WAS A MATCH AND SHIRLEY ZEIGLER SAID THERE WAS NOT A MATCH, IT WAS INCONCLUSIVE ON TWO PROBES.

>> TWO WERE A MATCH AND SO, IS THAT ENOUGH FOR US TO SAY THAT THIS DNA EVIDENCE DOES NOT MATCH MR. TAYLOR.

>> TO THE EXTENT IT IS A JURY TO RELY ON OR PASS THE FRYE TEST I WOULD SAY THAT IS NOT.

>> AND YOU HAVE TESTIMONY TO THAT EFFECT.

>> DR. LIBBY SAID ONE MATCH.

>> THAT IT COULD NOT BE THIS DEFENDANT.

>> THAT'S CORRECT.

>> YOU ARE DOWN TO FOUR-AND-A-HALF MINUTES.

>> LET ME --

>> LET ME MAKE SURE YOU CLARIFY THAT.

I THOUGHT YOU SAID DR. LIBBY TOOK THE ODDS FROM 1 IN 6 MILLION DOWN TO 1 IN 10 OR 1 IN 100, THAT IS DIFFERENT THAN KING THEY IT'S NOT A MATCH.

>> I'M NOT SAYING THEY WEREN'T ALL MATCHES.

>> I WANTED YOU TO CLARIFY THAT.

>> IT'S NOT GENERALLY ACCEPTED AND I DIDN'T ASK IT AND THE STATE DIDN'T ASK IT.

>> WHY DIDN'T YOU ASK IT?

YOU HAVE THE BURDEN TO SHOW

PREJUDICE.

>> I HAVE --

>> WOULDN'T THAT BE PART OF WHAT IS REQUIRED TO SHOW PREJUDICE.

>> I DON'T KNOW I HAVE EVER SEEN ANYWHERE, SINCE THEN WHERE THERE IS A GENERALLY ACCEPTED NUMBER, IT BECOMES A QUESTION OF -- AND THE QUESTION IS, IS IT RELIABLE AND, WE CONTEND IT'S NOT, BASED ON TWO MATCHES.

NOT ACCEPTABLE... AT THAT TIME.

WITH REGARD TO ISSUE ONE, I'LL LEAVE THE... TO THE BRIEF BUT I WOULD ASK THE COURT TO CONSIDER THE ARGUMENT BECAUSE THE QUESTION OF AMENDING THE PLEA TO PERFORM TO THE... QUITE A BIT.

IT IS OUR CONTENTIOUS, 3.851 ONLY DEALS WITH AMENDMENTS PRIOR TO THE HEARING.

RULE 1.190, IN CIVIL PROCEDURE DEALS WITH EVIDENCE THAT COMES UP DURING THE HEARING.

AND, I THINK THERE IS A BLANK IN THERE AS TO REALLY WHAT RULES WITH WHICH RULE, RULES, REGARDING AMENDMENTS, WAS THE HEARING -- ONCE THE HEARING IS IN PLACE AND STARTS AND NEW INFORMATION COMES IN.

WE CONTEND THAT RULE 1.190 APPLIES.

I'LL SAVE THE REST FOR REBUTTAL.

>> PLEASE THE COURT, STEVE WHITE, REPRESENTING APPELLEE

COUNSEL.

I THINK WE NEED TO UNDERSTAND THE DEFENDANT'S STATEMENT TO THE DETECTIVE WHEN THE DEFENDANTS TOLD THE DETECTIVE, WHEN YOU GET THE RESULTS BACK, YOU ARE GOING TO COME AND GET ME AND WHEN YOU GET THE RESULTS BACK, OF THE TISSUE SAMPLES, BASICALLY THE DEFENDANT ADMITS IT WILL BE HIS AND WILL COME BACK POSITIVE AND PLUS, AS THE STATE ARGUED IN THE BRIEF IN THE -- ONE OF THE INTRODUCTORY SECTIONS, YOU HAVE THE DEFENDANT'S DIRTY HANDS IN TERMS OF LOOKING FOR THE JEWELRY...

>> I THINK THERE ARE -- THERE ARE OTHER EVIDENCE IN THE CASE.

>> SUBSTANTIAL.

>> BUT, IN TERMS OF HIM BEING PRESENT AS THE RAPIST, AS THE MURDERER, THE DNA EVIDENCE AND I DON'T KNOW BACK IN 1991, BUT THAT'S PRETTY POWERFUL EVIDENCE, OTHERWISE YOU HAVE HIM HAVING POSSESSION OF THE JEWELRY, PERHAPS, A JAILHOUSE SNITCH AND YOU HAVE THIS STATEMENT THAT I COULD ARGUE WOULD BE...

>> 30% ON THE -- 33% ALSO ON THE SEROLOGY, HE'S A TYPE-A SECRETER AND THAT IS 33% OF THE POPULATION.

>> WE ARE TALKING ABOUT THE DNA ON THE BLOUSE, IS THAT CORRECT.

>> YES, MA'AM.

>> AT TRIAL, DRS. POLLOCK TESTIFIED THAT THE ODDS OF TAYLOR'S DNA BEING AT THE SCENE WAS 1 IN 6 MILLION.

>> CORRECT.

>> AND, DOES THIS -- IS THE ISSUE OF DR. POLLOCK USING ONLY FOUR PROBES AND A QUESTION AS TO WHETHER -- DID THE STATE KNOW THAT ANOTHER ANALYST HAD QUESTIONED AT LEAST TWO OUT OF THE FOUR PROBES, AS NOT BEING A MATCH?

WAS THAT INFORMATION IN THE STATE'S POSSESSION, BEFORE TRIAL?

>> YOUR HONOR, THE STATE HAD THE SAME DOCUMENTS AS I UNDERSTAND IT, THAT WERE SUBMITTED TO DR. GOLDMAN WHO, BY THE WAY, WAS THE CHIEF OF THE SECTION, NIH AND HE IS A PREEMINENT AUTHORITY IN THE FIELD AND I WOULD CONTEST, TRYING TO PREPARE HIM WITH DR. LIBBY, BUT, THE STATE HAD -- WHATEVER THE STATE HAS, IT GAVE TO DR. GOLDMAN.

>> IT HAD THE INFORMATION FROM MS. ZEIGLER, THAT TWO OF THE PROBES WERE NOT A MATCH.

>> INCLUDED HER PRINTOUTS WITH HER INITIALS ON IT.

IT DID NOT SAY THOSE DOCUMENTS DID NOT SAY THE LAST TWO PROBES ARE NOT -- BUT --

>> IT SEEMS TO ME, I GUESS, LET ME SAY, IT SEEMS A BIG DEAL IF YOU ONLY HAVE -- ONLY HAVE FOUR PROBES, AND TWO OF THEM DON'T MATCH, I CAN'T -- IT MAY NOT END UP BEING THE STANDARD FOR EITHER BRADY OR WHATEVER, BUT IT SEEMS THE STATE DOES HAVE AN OBLIGATION THAT IF THERE IS -- ONE ANALYST SAYS THERE ARE MATCHES AND ANOTHER THAT SAYS NOT.

YOU KNOW, NOT WORRY ABOUT INITIALS AND SOMEONE TRYING TO FERRET IT OUT BUT ANOTHER EXPERT HAS A DIFFERENT CONCLUSION AND WE'RE TRYING TO GET TO THE TRUTH HERE, NOT PLAY HIDE THE BALL.

>> THAT GETS BACK TO MS. ZEIGLER'S TESTIMONY, THE COURT ALREADY POINTED OUT THE BOTTOM LINE IS WHEN IT -- WHEN WE -- ALL THE WAY THROUGH THE TESTIMONY, SHE SAID I DO NOT DISPUTE DR. POLLOCK'S FINDINGS. AND, SHE INDICATED ALSO IN A --

>> WOULD YOU TELL US, MR. WHITE, COULD YOU TELL US WHAT YOU UNDERSTAND YOUR OPPOSITION IS POINTING TO TO SUPPORT THE DEFENSE POSITION?

>> I THINK THE DISCUSSION OF THE TWO PROBES WAS SEVERAL PAGES EARLIER, IN HER TESTIMONY. WHEN I SAW THAT AT THE END OF HER TESTIMONY I THOUGHT, WOW.

SHE DOESN'T DISPUTE
DR. POLLOCK'S FINDINGS.
THAT TO ME WAS PRETTY CLEAR.
AND APPARENTLY JUMPED OUT AT THE
COURT.

>> YOU INTERPRET THAT WHAT IS
UNDERMINED IS THE FACT OF THE
TWO PROBES SHE WOULD SAY ARE
INCONCLUSIVE AND THAT IS THE
EXTENT OF IT?

THAT IS THE CONFLICT HERE WE ARE
DEALING WITH.

>> AND, ULTIMATELY, IT BOILED
DOWN TO A SUBJECTIVE
DETERMINATION, AND DR. POLLOCK
RELIED UPON HIS EXAMINING
HUNDREDS UPON HUNDREDS UPON
HUNDREDS OF AUTO RADIOGRAPHS AND
DETERMINED THE TWO BANDS THAT
WERE FAINT, WERE IN FACT, HAD
MUCH DEFINITION, WHERE, BASED ON
HIS EXPERTISE AND BEING A MEMBER
OF THE COMPUTER TECHNICAL
WORKING GROUP, ET CETERA, AND
HAVING SPECIAL TRAINING,
MS. ZEIGLER WAS GETTING INTO IT
AT THE TIME, DR. POLLOCK HAD
BEEN THROUGH ALL OF THIS
TRAINING AND HAD BEEN RECOGNIZED
BY THE FBI, AS SOMEBODY SPECIAL
TO SELECT AS ONE OF FOUR GOING
TO THE FIRST TRAINING SESSIONS I
MEAN, HIS CREDENTIALS WERE JUST
PHENOMENAL IN TERMS OF THE --
HIS ABILITY TO, BASED ON HIS
EXPERIENCE, TO DETERMINE IN

FACT, THE BANDS DID MATCH UP WITH MR. TAYLOR'S BANDS.

>> IS THAT THE VISUAL -- YOU AGREE THERE WAS AN ADMISSION TO -- THAT DR. POLLOCK ADMITTED IN THE TRIAL TO THE VISUALLY WEAK BANDS, WAS THAT --

>> THAT WAS BROUGHT OUT IN CROSS-EXAMINATION.

>> THOSE WERE THE TWO PROBES, THAT SHE WAS SAYING WERE NOT A MATCH, IS THAT CORRECT.

>> YES, MA'AM.

AND, THIS IS JUST -- TASSONY DID AN EXCELLENT JOB OF BRINGING OUT TO THE JURY.

>> IF, TODAY WE HAD THE DNA EVIDENCE LOOKED AT, ARE YOU SAYING DR. POLLOCK WOULD STILL BE ABLE TO TESTIFY THAT THIS IS A ONE IN 6 MILLION OR DO WE NOT KNOW WHAT THE RESULTED WOULD BE BECAUSE HE WASN'T ASKED AGAIN.

>> MY READING OF THE POSTCONVICTION TESTIMONY IS IN FACT OFF OF HIS OPINION... ONE IOTA IN 2007 AND THIS IS NOT STR, IT IS RFLP, BUT, OF COURSE, WHICH IS -- HAS BEEN ACCEPTED IN THE COURTS FOR QUITE A FEW YEARS NOW.

>> SO THIS IS AN EARLIER VERSION OF WHAT DNA IS ABLE TO --

>> IT IS RFLP...

>> THERE IS ANY DNA LEFT TO BE TESTED .

>> I INQUIRED... THIS IS NOT IN
THE RECORD AND I INQUIRED OF THE
PROSECUTOR AND HE DOESN'T KNOW

--

>> WE HAVEN'T HAD --

>> 3853 MOTION BY THE DEFENSE IN
TERMS OF TRYING TO GET IT
REANALYZED USING THE LATEST
TECHNOLOGY, WHICH, THE STATE
ADMITS IS THEIR BURDEN, PART OF
THEIR BURDEN.

BUT, I WANT TO GO BACK TO
MS. ZEIGLER AND HER
POSTCONVICTION TESTIMONY.
AND IN ADDITION TO NOT DISPUTING
THE FINDINGS OF DR. POLLOCK, SHE
ALSO TESTIFIED THAT IF THERE
WERE ANY GLARING DIFFERENCE
BETWEEN HER READ OF THE
RADIOGRAPHS AND DR. POLLOCK SHE
WOULD HAVE GOTTEN WITH HIM, AND,
THERE IS NO INDICATION THAT SHE
GOT WITH HIM OR CONSULTED WITH
HIM, AS A RESULT OF HER READING
VERSUS DR. POLLOCK'S.

SHE HAD DR. POLLOCK'S READING
WHEN SHE DID HERS AND HE DID HIS
FIRST AND SHE WAS THE SECOND
READ WHICH IS NOT REQUIRED BY
THE PROTOCOLS AND THAT IS NOT IN
THE PROTOCOLS AS THEY ARE --
WERE INTRODUCED INTO EVIDENCE,
AT THE POSTCONVICTION HEARING.
ALSO, DR. POLLOCK TESTIFIED THE
POSTCONVICTION HEARING THAT
MS. ZEIGLER CONCURRED WITH MY

CONCLUSIONS OR COULD HAVE DISCUSSED THEM WITH ME AND HE DIDN'T RECALL HER GETTING WITH HIM TO DISCUSS THEM AND ALL THE INDICATIONS ARE, WHEN IT GETS TO THE BOTTOM LINE, THOUGH SHE HAD PROBLEMS WITH THE READS ON THOSE TWO BANDS, THE BOTTOM LINE IS SHE DID NOT CONTEST THE FINAL RESULT.

THAT -- THOSE TWO ITEMS SUPPORT THE INTERPRETATION OF HER TESTIMONY, AS NOT DISPUTING THE FINDINGS.

AND OF COURSE THE DEFENDANT WASN'T GOING TO DISPUTE THOSE EITHER.

AND SAY WHEN YOU GET THE RESULTS COME BACK AND GET ME.

BUT IN TERMS OF VISUAL MATCHES.

DR. POLLOCK TESTIFIED IT WAS GENERALLY ACCEPTED IN THE SCIENTIFIC COMMUNITY TO DO SCIENTIFIC MATCHES.

THAT'S NOT IN PROTOCOL.

AS TO THE BAN LENGTH.

DR. POLLOCK TESTIFIED THAT THE EVIDENCE YOUR HEARING THAT HE WAS THE ONE THAT SET UP PROTOCOLS.

HE HOOK THE DECEMBER 1999 VERSION.

THIS WAS IN EARLY 1991 TO MID1991.

IT TOOK SEVERAL MONTHS.

HE ADJUSTED THOSE TO LOCAL
CONDITIONS.

AND BEFORE THIS EXAMINATION,
HE DID NOT CHANGE PROTOCOLS
IN ORDER TO DO THIS
EXAMINATION.

HE MARKED OUT THE PART OF
THE FBI THAT SAID 10, 094
SIZE MARKER AND HIS
RATIONALE FOR DOING THAT.

I DON'T RECALL THE DETAILS,
BUT YOU'RE HEARING WHY HE
DID THAT.

BUT THAT WAS NOT CHANGED IN
ORDER TO GET A POSITIVE
RESULT IN THIS CASE.

DR. POLLOCK USED HIS
EXTENSIVE EXPERIENCE AND
INTERPRETING HUNDREDS AND
HUNDREDS OF AUDIO RADIO
GRAPHS AND INTERPRETING
THOSE TWO BANS WHICH I WOULD
CONTEND THAT MRS. ZIEGLER
DID NOT DISPUTE IN TERMS OF

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THEIR MEANING IN THE ONE AND
SIX MILLION.

>> THE DEFENSE SUGGESTS,
AND DIRECTLY STATES, THAT
THE DEFENSE EXPERT.

DUE TO THE FAILURES OF
MR. TASSONE DID NOT HAVE
REGARDS TO THE PROTOCOLS FOR
WHAT WAS DONE TO THE DNA
TESTING TO SUFFICIENTLY COME

IN AND DEFEND THIS CASE.

>> , --

YOUR HONOR, I DON'T THINK
THAT'S CLEAR.

>> THE STATE PROVIDED A PACT
OF MATERIALS TO THE DEFENSE
EXPERT BEFORE THE TRIAL
STARTED.

WHEN HO MONDAY COMES ALONG.
THEY TELL THE TRIAL COURT
I'VE BEEN IN TOUCH WITH
DR. GOLDMAN WHO RECEIVED THE
MATERIALS AND THOSE
MATERIALS ARE LISTED.

I THINK IT'S STATE OR
DEFENSE EXHIBIT 5-7.

IT LISTS THE TYPES OF
MATERIALS PROVIDED
ENCLOSING 17 PAGES OF FDL
NOTES AND LISTS AND PAGES OF
PROCEDURES THAT WERE USED.

I DON'T KNOW IF THEY WERE
USED AND PROVIDED TO
DR. GOLDMAN WHETHER THOSE
ARE PROTOCOLS ARE NOT.

THE PROSECUTOR DIDN'T KEEP
THE PACKAGE AS SUCH OF THIS
IS WHAT I COPIED AND SEND TO
DR. GOLDMAN.

ON THE LIST ARE THE
PROCEDURES AND DOING THE
DLA.

THAT'S SOUNDS LIKE THE
PROTOCOLS TO ME.

IT'S THEIR BURDEN TO SHOW
THAT WE DID NOT.

AND IT WOULD BE NICER IF THE RECORD WERE CLEAR, BUT IN THE ABSENCE OF A CLEAR RECORD, THE DEFENSE LOSES.

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>> YOU'VE GOT INEFFECTIVE ASSISTANCE IS WHERE HE IS GOING WITH THIS.

.NET KNOW IF HE'S ESTABLISHED A BRADY, BUT HE'S SAYING THE EXPERT DIDN'T HAVE THE MATERIALS NECESSARY WITH REGARD TO CONTINUANCE OR HAVING HIS EXPERT TESTIMONY THAT'S WHAT'S GOING ON.

>> AND THAT GETS US TO WHAT DID THEY MEAN PROCEDURES PROVIDED BY DR. GOLDMAN. YOU HAVE HIM HIRING ONE OF THE PREMIUM DNA EXPERTS IN THE COUNTRY.

HE'S CHIEF OF A SECTION OF THE NATIONAL BOARD OF HEALTH, AND SENDING HIM IN LARGE PACT OF MATERIALS INCLUDING THE PROCEDURES, THE CASE NOTES, THE FDLE NOTES, ET CETERA, IT'S LISTED, AND RELYING UPON THIS EXPERT AND DOING HIS HE DID ONE HECK OF A JOB ON CROSS-EXAMINATION I WOULD ARGUE.

THIS IS 1991.

WE'VE SINCE THEN HAD 19

YEARS OF EDUCATION REGARDING
DNA.

BUT MR. TASSONE DID A VERY
COMPETENT JOB ON
CROSS-EXAMINATION.

>> THEY'RE NOT SAYING THE
CROSS-EXAMINATION WASN'T A
GOOD CROSS EXAM, IT SEEMS TO
ME THEIR ARGUMENT IS THAT
THE EXPERT DIDN'T HAVE ALL
THE MATERIAL THERE SO THERE
NO FRY TESTING OF WHAT WAS
DONE AT ALL.

SO THAT'S WHAT SEEMS TO BE
ARGUING.

>> MY RESPONSE IS WHAT WAS
MISSING?

WHAT DID YOU PROVE, DEFENSE,
THAT WAS MISSING?

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>> WELL WHAT WAS IT THAT --
I GUESS I THOUGHT, AND THESE
DETAILS ARE A LITTLE
DIFFICULT TO RECALL, BUT
THAT THE LAST TIME DOCTOR,
THAT MR. TASSONE SPOKE TO
HIS EXPERT, OCTOBER FIRST,
AND THAT THE INFORMATION
THAT THE STATE PROVIDED CAME
IN AFTER THAT TIME, AND IT
DOESN'T APPEAR THERE WAS ANY
FURTHER DECISION WITH YOUR
EXPERT.

AM I MISSING THE TIMELINE OR
THE ARGUMENT?

AND IF I'M NOT CORRECT,

DON'T, YOU KNOW DON'T SPEND
TIME TRYING TO --

>> I BELIEVE THAT MONDAY
MORNING, YOUR HONOR, THEY
CAME IN, THE PROCEEDING
WEEK, HE HAD PREVIOUSLY
FILED A MOTION FOR
CONTINUANCE.

HE SAID I NEED MORE TIME I
HAVE MY EXPERT THAT I NEED
TO CONTACT.

THERE WAS AN INDICATION THAT
DR. GOLDMAN WOULD NOT BE
AVAILABLE FOR TRIAL THAT
WEEK.

BUT WHEN THEY CAME IN ON
MONDAY, IT'S MY RECOLLECTION
THAT MR. TASSONE TOLD THE
TRIAL COURT THAT DR. GOLDMAN
HAD THE MATERIALS AND I
TALKED TO HIM ON THE PHONE
TWICE ON THE WEEKEND.

I FORGOT THE EXACT WORDS HE
USED.

BUT I BELIEVE THAT'S IN THE
TRIAL RECORD RIGHT BEFORE
JURY COLLECTION.

--

SELECTION.

IF I MY BRIEFLY ADDRESS
ISSUE ONE, I BELIEVE THEY
HEARD THAT COUNSEL HAS
INDICATED 3-5-1 WOULD
ORDINARILY APPLY EVEN THOUGH

THERE WAS A SHELL MOTION

HERE IN 1995.

BY THE WAY, WE ALSO HAVE AN AMENDMENT IN 2004, WE HAVE AN AMENDMENT IN 2005, WE HAVE MULTIPLE OTHER AMENDED OR SUPPLEMENTATIONS, ISSUES AND SO ON, SO BASICALLY, THIS WOULD BE THE FOURTH MAJOR REVISION.

>> WHAT --

COULD YOU IN A FEW SENTENCES TELL US WHATEVER RULE APPLIES, IF SOMETHING NEW COMES OUT, AT AN EVIDENTIARY HEARING THAT RACES A QUESTION ABOUT A DIFFERENT CLAIM OR ADDITIONAL CLAIM, WE WOULD LOOK AT THAT AND NOT JUST SAY NO WE'LL NEVER CONSIDER IT, BUT WHAT WOULD YOU SAY IS THE MAJOR -- IS THERE A NEW CLAIM RAISED? OR JUST A REFINEMENT IN THE ARGUMENT OF WHAT CLAIMS WERE REGARDING THE DNA?

>> THE STATE LISTED --

I DON'T KNOW.

I FORGET THE EXACT NUMBER. ROUGHLY A DOZEN NEW ASPECTS OF DNA THAT WERE BROUGHT OUT AT THE EVIDENCE SHARE HEARING THAT WERE NOT ALLEGED IN THE 340/--

>> BUT IF AN EXPERT TESTIFIED OR SOMEONE IN AN EVIDENTIARY HEARING, ISN'T

THAT THE EVIDENCE YOU'RE
GOING TO USE TO DECIDE IF
THERE IS A BRADY CLAIM.
I'M HAVING TROUBLE
UNDERSTANDING WHY --
IT'S NOT A NEW CLAIM, IT'S
JUST A REFINEMENT OF THE
EXISTING CLAIM UNLESS IT'S
CLEARLY SOMETHING, YOU KNOW
A NEW PIECE OF EVIDENCE CAME
OUT.
>> THAT'S STATE'S ARGUMENT
WITHOUT GOING DOWN THE WHOLE

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LIST OF THINGS OF MOTION TO
STRIKE.
HE LISTED.
IF YOU GO THROUGH
POST-CONVICTION EVIDENCE.
THE PROSECUTOR WENT THROUGH
THE 2005 VERSION, POINT BY
POINT, AND ASKED
DR. POLLOCK, THIS IS WHAT
THEY ALLEGED, WHAT DO YOU
SAY ABOUT THAT.
THEN HE GOES TO THE NEXT
SENTENCE IN THE
POST-CONVICTION MOTION.
DR. POLLOCK WHAT DO YOU SAY
ABOUT THAT.
IN TERMS OF THE NOTICE TO
THE STATE, WHAT THE STATE
SHOULD BE GOING THROUGH IN
REGARDS TO SPECIFICS, HE
REQUIRED TO ALLEGE SPECIFIC
FACTS IN THE MOTION.

YOU CAN HAVE ONE SET OF
FACTS AND THEN INTRODUCE A
DIFFERENT SET OF FACTS AT
THE HEARING AND LET YOU
AMEND IT.

IF WE'RE GOING TO GET DOWN
TO THAT, IF WE HAVE THESE
100 TO 200 PAGE
POST-CONVICTION POSITIONS
NOW WHEN 30, 40, OR 50
THINGS ALLEGED.

>> BUT WHEN WE --

THE ISSUE OF PLEADING AND I
THINK OF A CIVIL CASE.

YOU PUT THEM ON NOTICE.

THE NOTICE ISSUE IS THAT THE
DNA IN THIS CASE WAS NOT
RELIABLE, AND WE NOW HAVE
EVIDENCE THAT THE AT LEAST
TWO OF THE FOUR PROBES WERE
NOT RELIABLE ETC..

I'M NOT SURE HOW IF THERE'S
A REFINEMENT OF THAT AT THE
EVIDENTIARY HEARING, THAT
THERE'S ANY --

THEY HAVE A AMEND A MOTION
TO EVEN ALLEGE IT MORE
SPECIFICALLY?

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IS THAT WHERE WE'RE GOING ON
THESE CASES?

>> THE COURSE AND MANY, MANY
CASES AND I SITED A BUNCH OF
THEM IN MY BRIEF, HELD THAT
THE DEFENSE HAS TO ALLEGE
WITH SPECIFICITY WHAT'S

WRONG WITH SOMETHING.

WHAT SHOULD THE COUNSEL HAVE BROUGHT UP AND DIDN'T.

WHAT ARE THE SPECIFIC THINGS HERE, IN TERMS OF WHAT'S WRONG WITH THE DNA THAT THE STATE OR DEFENSE COUNSEL DIDN'T DO.

I SUPPLEMENTED LAST WEEK WITH A FEW CASES.

ONE OF THEM IS HENRAJ.

IT WAS A 2004 CASE.

AND IN THAT CASE, THERE WERE MULTIPLE ALLEGATIONS IN THE POST-CONVICTION MOTION ALLEGES IEC PENALTY PHASE WHICH IS A STANDARD ALLEGATION.

AND THERE WERE SPECIFICS IN THE MOTION AT THE HEARING THE DEFENSE INTRODUCES ADDITIONAL ASPECTS OF MITIGATION THAT THEY ALLEGE AFTER THE FACT THAT DEFENSE COUNSEL DID NOT DO.

THIS COURT ALTERNATIVELY HELD, THAT THOSE ADDITIONAL ALLEGATIONS, THAT WERE TESTIFIED TO IN THE EVIDENTIARY HEARING WERE BARRED BECAUSE THEY WERE NOT IN THE POST-CONVICTION MOTION.

>> AS I LOOKED AT THIS.

THE 14 THAT YOU SAY OR THE STATE SAYS WERE NOT THE

RENEW.

WEREN'T THESE JUST REALLY
THE --

IT SEEMED TO ME AS I LOOKED
AT IT, ALL PART AND PARABLE
OF THE PROBLEMS THE DEFENSE
WAS ASSERTING GOING FROM

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PROTOCOL THROUGHOUT THE GAM
ET.

IT'S NOT THAT THESE WERE
NEWS, JUST PART OF WHAT WAS
THERE, AND THE TRIAL COURT
SEEMS TO ME LOOKED AT AND
CONSIDERED THESE THINGS.

DO YOU AGREE ARE YOU CON
SEEMED THAT THE TRIAL
COURT INSTRUCT AND DIDN'T
CONSIDER ANY EVIDENCE WITH
REGARD TO THE TESTIMONY THAT
CAME IN?

>> I THINK ON THE IEC CLAIM
THE TRIAL COURT SAID THAT
BASICALLY WHAT DEFENSE
COUNSEL DID, AND WENT
THROUGH THE
CROSS-EXAMINATION, WAS
REASONABLE UNDER STRIKELAND.
AND THEREFORE DID AN
EFFECTIVE JOB.

I'M NOT SAYING THAT HE DID
NOT --

I DON'T KNOW WHAT HE
CONSIDERED AND WHAT HE
DIDN'T CONSIDER IN REGARDS

--

BECAUSE IT'S NOT IN THE
ORDER.

WHAT I KNOW IS AFTER HE
ISSUED THIS ORDER HE ISSUED
THE ORDER OF MOTION TO
STRIKE.

I WANT TO CLEAN UP WHAT IS
HERE TO GET THIS OVER.

ARE YOU SAYING THERE'S
SOMETHING OF MATERIAL VALUE
THAT THE TRIAL COURT DID NOT
LOOK TO?

>> ACTUALLY, YOUR HONOR, I
HAVE TO CONFESS THAT IN
TERMS OF WHAT HE TRIED TO
AMEND TO PUT IN, I DON'T
THINK IT MAKES A DIFFERENCE
IN THE OUTCOME OF THE CASE.
HE LOSES EITHER WAY IN MY
OPINION, BUT THE BOTTOM LINE
IS, TO THE DEGREE IT COULD
BE SIGNIFICANT, LIKE THE

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PRODUCT RULE, I THINK THAT
WAS SOMETHING HE TRIED TO
AMEND TO PUT IT IN AND I
WOULD CONTEND THAT
DR. POLLOCK WAS QUALIFIED.
BUT HE WASN'T.

>> I ASK THE COURT TO AFFIRM
THE TRIAL COURSE FOR THESE
REASONS AND ALL THE REASONS
IN THE STATE'S PLEADINGS.

>> THANK YOU.

>> IF I'M ASKING THE
QUESTION CORRECTLY.

AT PAGE 265 AND 266 OF
POST-CONVICTION RECORD.
MRS. ZIEGLER SAYS THE TWO
PROBES OF THE FOUR SHE FOUND
INCONCLUSIVE AS TO A MATCH.
DR. POLLOCK, AT PAGE 1698 OF
THE POST-CONVICTION RECORD
SAYS --

WHEN ASKED WHETHER OR NOT
WHAT WAS BEING DONE IN THE
SCIENTIFIC COMMUNITY.

HE SAYS NOT PRECISELY WHAT
WE WERE DOING IN FLORIDA,
BUT THE GENERAL FBI
PROCEDURE WAS GENERALLY
ACCEPTED YES.

WE TALK ABOUT PROTOCOLS.
MR. WHITE APPARENTLY IS NOT
FAMILIAR WITH WHAT THEY ARE.
THERE ARE BENCH NOTES AND
FRAGMENTS --

THOSE ARE THE EXHIBITS THAT
WERE PROVIDED TO COUNSEL
WITHIN FIVE DAYS OR FOUR
DAYS OF THE TRIAL.

THE PROTOCOLS YOU DO NOT SEE
ATTACHED.

THE PROTOCOLS WERE NOT GIVEN
WE GOT THEM IN
POST-CONVICTION.

I'M GOING TO SAY WITH
HONESTY.

COULD YOU HAVE GOTTEN THE
PROTOCOLS PREVIOUSLY,
POSSIBLE, BUT HE
SPECIFICALLY SAYS I DON'T

REMEMBER SEEING THEM.

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HE DID SPECIFICALLY SAY I
DID NOT PROVIDE PROTOCOLS TO
DR. GOLDMAN.

SO THEREFORE --

>> SO THEY MIGHT NOT KNOW
THE NAME SHIRLEY ZIEGLER,
BUT HER CONCLUSIONS THAT TWO
OF THE FOUR PROBES WERE
INCONCLUSIVE, WAS THAT IN A
DOCUMENT PROVIDED TO THE
DEFENDANT BEFORE TRIAL?

>> NO, I DISAGREE WITH THE
STATE'S ASSESSMENTS OF THE
FACTS.

HE DOES A SECOND READING.
SHE RUNS THE TEST THE SAME
AS DR. POLLOCK DID.

HE LOOKS AT THE NUMBERS.

SHIRLEY ZIEGLER SAYS, IF
THERE WAS SOMETHING
DIFFERENT ON MY RUN OF THAT
TEST FROM THAT OF
DR. POLLOCK'S IT'S HIS
OBLIGATION TO COME TO ME.

I WOULDN'T GO TO HIM.

IF IT WAS MY CASE AND HE DID
A SECOND CASE.

I WOULD GO TO HIM IT WOULD
BE MY RESPONSIBILITY.

HE DIDN'T DOT GO TO
DR. POLLOCK, WHICH SHE
ACKNOWLEDGES, I'LL GET TO IT
IN A MINUTE.

IT WAS HIS RESPONSIBILITY TO

GO TO HER AS FAR AS THE
PRINT OUT.

THE DIFFERENCES ARE, WHEN
YOU SPEAK TO THESE EXPERTS,
WHAT IS YOUR CONCLUSION
BASED ON THE PRINT OUTS.

POLLOCK SAYS THERE A MATCH.
TWO OF THE PROBLEMS ZIEGLER
SAYS ARE NOT A MATCH.

THAT'S THE DIFFERENCE IS THE
INTERPRETATION.

THAT WAS NOT REPORTED ON THE
RECORDS.

>> DID YOUR EXPERT --

DR. GOLDSTEIN HAVING THOSE
FOUR PROBES, TELL

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MR. TASSONE THAT TWO OF THE
FOUR WERE NOT A MATCH OR
INCONCLUSIVE?

>> THERE WAS NO DECISION BY
MR. TASSONE WHERE
DR. GOLDMAN SAID ANYTHING
ABOUT MATCHES OR NO MATCHES,
JUST THAT HE HAD NO PROBLEM
WITH THE TESTING.

THAT'S ALL HE SAID.

THAT DR. GOLDMAN DID IT ALL.

AT THE TIME OF THE TRIAL, HE
SPECIFICALLY SAID,

MR. TASSONE.

HE SAID ON THE DAY OF THE
TRIAL THAT I SPOKE WITH
DR. GOLDMAN, BUT HE HAD NOT
GONE THROUGH THE RECORDS HE
JUST RECEIVED AND SAID TO

THE JUDGE THAT I'M NOT GOING TO CALL HIM AND WITHDRAWAL THE CASE, AND IF I NEED TO I'LL CALL HIM DURING THE TRIAL.

WHEN ASKED AT TRIAL, HE HAS NO RECORD OF TALKING TO DR. GOLDMAN IN TRIAL.

YOU'RE IN OVERTIME I'LL GIVE YOU A MINUTE TO FINISH UP.

>> TWO THINGS, THEY SAID FOR CAUCASIANS IT WAS 1 AND 23 MILLION.

WITH POLLOCK'S EXPERTISE.

IN 1991, HE WAS AN ANALYST FOR PROXIMATELY A YEAR AND THREE MONTHS AND HE WENT TO THE SAME FBI CLASS AS DID SHIRLEY ZIEGLER.

THEY WERE EQUALS IN THAT FDLE LAB.

ONE WASN'T MORE SUPERVISOR OVER THE OTHER.

>> THANK YOU, THANK YOU BOTH.

THAT IS THE CONCLUSION OF THE COURT'S PROCEEDINGS FOR TODAY, WE ARE NOW ADJOURNED.

>> PLEASE RISE.