

THE NEXT CASE ON THE COURT'S
AGENDA THIS MORNING IS DESIREE
VERSUS STATE OF FLORIDA.
ARE THE PARTY IS READY?
MAY PROCEED.

>> GOOD MORNING.

ERIC PINKARD WERE HERE ON BEHALF
OF THE LOWER THROUGH D50 ON
THOSE CONVICTION MOTION.

>> THIS IS A DEFENDANT TO WAIVE
TO MITIGATION.

>> THERE WAS A WAY FOR
AUTHENTICATION.

>> AND YOUR POINTS ARE ALL ABOUT
WHETHER HE WAS COMPETENT TO
WAIVE IT AND THEN THE SECOND
POINT IS WHETHER HE SHOULD HAVE

STILL PRESENTED VISUAL EVIDENCE
TO THE HEARING?

>> THOSE ARE PRECISELY THE TWO
ISSUES THAT WAS GETTING READY TO
ADDRESS.

BASICALLY WHAT HAPPENED IN THE
CASE IS ULTIMATELY MR. DESSAURE
PREPARED A FORM FOR HIM TO SIGN
AND IT WAS PRESENTED TO THE
COURT AND WITH ENOUGH FORMS ITS
DATES I JOIN IN THE STATE AND
SEEKING FAITH SIDES AND THIS WAS
THE FIRST TIME IN THE CASE THAT
MR. DESSAURE --

>> WAS THAT NOT PRESENTED TO
ANYONE?

I MEAN, WAS THE NOTE GIVEN TO
THE COURT, TO THE STATE, WHO HAD
THIS NOTE?

>> THE DEFENSE ATTORNEY HAD A
NOTICE OF IT ON THE LIST ABOUT
AS A LAWYER AND FIND OUT
CONTRACT SIGNED BY MR. DESSAURE
AS A WAY FOR.

AFTER THEY'RE TWO DIFFERENT
WAIVERS RESENTED GOOD ONE THAT
MR. WATSON PREPARED FOR THE
PENALTY PHASE OR BEFORE THE
TRIAL TO RAISE AND THEN THERE
WAS ANOTHER ONE BUT BE PREPARED
AFTER MR. DESSAURE SAID HE
DIDN'T WANT TO PRESENT ANY
EVIDENCE.

>> IS THAT IN ESSENCE WHAT
DEFENDANTS ARE DOING WHEN THEY
WAVE THE PRESENTATION OF
MITIGATION EVIDENCE IN THESE
DEATH PENALTY CASES?

>> WELL, I THINK THERE'S
WAVERING PRESENTATION OF
MITIGATING EVIDENCE IS ONE
THING.

AND THEN SIGNING A FORM SAYING I
JOINED ON THE STATE IS SEEKING A
DEATH SENTENCE IS AN ENTIRELY
DIFFERENT MATTER.

AND IN THIS CASE, THERE WAS
MENTAL HEALTH THAT ARE TIRED AT
THE TIME FOR A MENTAL-HEALTH
EXPERT HIRED AT THE TIME TO YOUR

MAYOR WHO HAD SEEN MR. DESSAURE INITIALLY PERFORMING TO EVALUATIONS OF MR. DESSAURE AND HE FOUND THEM AT THAT TIME IN MARCH OF 2001 TO BE COMPETITION.

AND HE ALSO BEEN OF A POSTTRAUMATIC STRESS DISORDER.

>> WHAT YOU'RE SAYING IS YOU ARE SAYING THAT SOMEBODY WHO IS SIGNING A PAPER THAT SAYS THERE'S JOINING IN SEEKING THE DEATH PENALTY AND WEAVING MITIGATION, THE TYPE CAN DRIVE TO THE PERSON NOT BEEN COMETARY. YOU HAVE TO KNOW WHETHER THEY KNOW INVOLUNTARY WHAT WAS SAID IN THE PROPER.

SO I'M NOT SURE HOW IT FOLLOWS, THAT IT SHOULD BE A NOTICE HE HAS BECOME AN INCOMPETENT RICE ISLAND THAT PAPER.

IS THAT YOUR ARGUMENT?

>> IF MY ARGUMENT AND ALSO AT THE MENTAL-HEALTH EXPERTS WHO TESTIFIED AT POSTCONVICTION HEARING ALSO TESTIFIED TO.

>> HOW TO ADD IN?

TO BE OUT IN THE FACT THAT AT A LATER POINT DIDN'T HE SAY JUDGE I DON'T WANT THE DEATH PENALTY. IT WANT YOU TO GIVE ME A LIFE SENTENCE.

DON'T YOU READ THAT INTO THE EQUATION ALSO?

>> MY WAY OF THINKING IS THE COURT TO DENY THE MOTION TO THE WAY THAT PART OF IT OR DIDN'T CONSIDER THAT PART OF IT BECAUSE IT'S TRUE THAT MR. DESSAURE LATER AT THE HEARING SAID HE CHANGED HIS MIND AND THAT HE WANTED A MITIGATION EVIDENCE

PRESENTED.

AND AT THAT TIME AT THE SPENCER
HEARING THE LAWYER DIDN'T
PRESENT THE MENTAL-HEALTH
LITIGATION TESTIMONY AVAILABLE
THROUGH DR. MAYER BECAUSE THE
TESTIMONY AND THAT YOUR MAYOR HE
HAD BEEN CALLED BY THE DEFENSE

COUNSEL TO CONSULT WITH HIM ABOUT THE FIVE THAT MR. DESSAURE HAVE FOUND A FORM THAT SAID I JOIN IN THE STATE IN SEEKING A DEATH SENTENCE.

THIS IS IN MY OPINION ABOUT THE SIGNIFICANCE OF THAT.

WE TOO EXPERIENCED MENTAL-HEALTH EXPERTS IN THE CASE.

DR. D. AND DR. MAYER THAT IT IS SIGNIFICANT DIFFERENCE OF GENERAL NOT WANTED TO PUT FORTH THE FEDERAL MITIGATION OF THE ADJOINING THE STATES SEEKING DESCENDENTS.

DR. MAYER WAS CRYSTAL CLEAR IN HIS TESTIMONY THAT HAD HE BEEN CONTACTED IN THE HINTS HE MR. DESSAURE IN SIX MONTHS HAD EXPIRED LAST EVALUATION OF HIM.

>> HOW DOES THAT DIFFER FROM A DEFENDANT WHO SAYS, YOU KNOW, I DIDN'T DO THIS.

I'M NOT GOING TO PUT ON MITIGATION.

BUT WOULD RATHER DIE THAN SPEND THE REST OF MY LIFE IN PRISON.

HOW DOES THIS DIFFER FROM THOSE KINDS OF SITUATIONS?

>> ONE THING DIFFERENT IS MR. TRADE SEVEN WOULD HAVE TO TAKE THESE ON A CASE-BY-CASE BASIS.

WE'RE NOT TALKING ABOUT DIRECT APPEAL ISSUE WERE YOU PROTECTING MOBILE THAT THERE'S AN ADEQUATE COLLOQUY FROM THE TRIAL COURT BECAUSE THERE WAS A COLLOQUY FROM THE TRIAL COURT IN THIS CASE I DID ASK MR. DESSAURE ABOUT IT BUT WERE TALKING ABOUT POSTCONVICTION EFFECTIVENESS OF

COUNSEL.

IN THIS CASE THE MENTAL-HEALTH
EXPERTS THEMSELVES COVERED THE
ONLY WAS TO TESTIFY AT THE
POSTCONVICTION HEARING SAY THOSE
ARE TWO DIFFERENT THINGS,
ESPECIALLY IN THIS CASE WE HAVE
A 20-YEAR-OLD PERSON ON TRIAL

I-INDIA SAT ON ON SEVEN
DIFFERENT OCCASIONS THE MAN HAD
TRIED TO COMMIT SUICIDE IN
FAIRLY CLOSE PROXIMITY TO WHEN
THIS CRIME OCCURRED.
EUROPE'S TAKE THAT INTO ACCOUNT
A MONTH OF THE MENTAL-HEALTH
EXPERTS IN THIS CASE SAID.
DR. MAYER SAID HAD I BEEN TOLD
ABOUT THE SWORD UPON IMMEDIATELY
AND THEY WOULD'VE INSISTED UPON
EVALUATION BECAUSE THIS IS
ADDITIONAL STUFF AIRED EVEN
MR. WATTS HIMSELF STATED THAT AS
HIS TESTIMONY THAT THIS WAS AN
ADDITIONAL STEP THAT
MR. DESSAURE HAD NOT DONE IN THE
PAST.
WE HAVE THE TESTIMONY OF DR. D.
STATING THAT HE WOULD ALSO SAID
THERE SHOULD BE ANOTHER
COMPETENCY EXAM BASED ON THE
FACT THAT THIS MAN, 20-YEAR-OLD
MAN ATTEMPTED TO COMMIT SUICIDE
ON SEVERAL -- MICKEY'S.
AND WHEN HE SAID THE REASON THAT
HE DIDN'T WANT TO GO FORWARD
WITH IT WAS WHAT SHE SAID
JUSTICE KLEMENT.
AND THAT WAS THE REASONING THAT
MR. WATTS SAID THAT MR. DESSAURE
SAID THE REASON HE DIDN'T WANT
ANY MITIGATION TESTIMONY
PRESENTED.
>> BECAUSE HE DIDN'T WANT TO BE
REJECTED BY THE JURY?
>> THAT'S WHAT MR. WATTS FOR THE
MR. DESSAURE EXCAVATION WAS I
GOING TO BE REJECTED BY THE
JURY.
SO YOU'VE GOT A PERSON AS TO
WHETHER HE WANTS ANY MITIGATION

TESTIMONY.

AT TIMES HE DOES AND AT TIMES HE
DOESN'T.

I'M ON THE PERSON PREPARED BY
HIS OWN ATTORNEY PRESENTS A FORM
SAYING I DON'T WANT TO TAKE
MEDICATION BUT I WANT TO JOIN
THE STATE IS SEEKING THE DEATH

SENTENCE.

>> IS ONE OF THE FACTORS TO LOOK AT IS ALSO THE COMPETENCE OF COUNSEL THAT THEIR CLIENT IS COMPETENT.

THEY ARE THE ONES WHO DECIDE. AND NO LAWYERS IN THIS CASE EVER RAISED THE QUESTION ON THE PARTY DEFINED.

>> DR. MAYER HAD DONE A COMPETENCY EVALUATION, BUT I THINK YOU'RE CORRECT THAT THE LAWYER'S CASE, ALTHOUGH MR. BERRY COBB WAS EXPERIENCED DEFENSE ATTORNEY WITH OVER 22 YEARS OF EXPERIENCE ON MANY CAPITAL CASES SAID WHEN HE SAW BOOKWORM AT THE EVIDENTIARY HE WAS IMMEDIATELY GOTTEN ANOTHER COMPETENCY EVALUATION, ESPECIALLY WHEN PEOPLE WHO ARE COMPETENT TO THAT.

IS IT YOUR POSITION THAT JUST BECAUSE HE SIGNED THE FARM THAT AUTOMATICALLY BRINGS IN THE COMPETENCY?

>> I PUT THE MENTAL-HEALTH EXPERTS WITH WHAT DR. DEAN SAID THAT THE PERSON SUCH AS THIS IS NOT REFUTED THE TESTIMONY BECAUSE THERE IS NO STATE DOCTOR THAT A PERSON OF THE AGE OF MR. DESSAURE OF THE PRIOR SUICIDAL ATTEMPT OF THE INCONSISTENCY OF THE STATEMENTS AGAIN WE'VE GOT A SITUATION WHERE ONE POINT HE WANTS TO JOIN THE STATE IN SEEKING A DEATH SENTENCE AND LATER HE WANTS THE EVIDENCE PRESENTED.

>> CAN I ASK YOU A QUESTION? IF THE FORMAT SAID I DON'T WANT

TO PROVIDE MITIGATION, I
UNDERSTAND THAT THE LEGAL
CONSEQUENCES OF NOT PRESENTING
MITIGATION IS THAT THE DEATH
PENALTY.

DO YOU HAVE ANY EVIDENCE THAT
THAT LT SHOULD BE ENCLOSED?

DOES THAT INDICATE ANY

COMPETENCE?

>> I WOULD INDICATE THE MENTAL-HEALTH EXPERTS TO TESTIFY THE HEARINGS.

THERE WERE NO OTHER HEALTH EXPERTS.

>> THE THING I'M STRUGGLING WITH HERE IS WHAT YOUR ARGUMENT IS THAT THAT IS THAT IT'S ALMOST LIKE THIS IS A SHOCKING PHRASE.

YOU KNOW TOLD THE SKY HE NEEDS TO PUT IT ON.

IS THAT THE EVIDENCE THAT THE TRIAL LAWYER KEPT TELLING HERE'S WHAT YOU NEED TO DO.

YOU CAN DO IT, THOSE KINDS OF THINGS.

AND SO THAT FOR MY FINAL OUT OF THE HOUSE TO BRING YOU SOME END TO TELL HIM AND TO PRESENT THIS KIND OF EVIDENCE.

>> MY POSITION IS IN ADDITION TO THIS CONVERSATION TAKING PLACE BETWEEN THE LAWYER THEY NEED TO BE A MENTAL-HEALTH EXPERT.

>> SIMILARLY EVERY TIME THAT THERE IS A DECISION BY A DEFENDANT WHO HAS BEEN FOUND GUILTY TO NOT PREVENT MITIGATION THAT MAY HAVE THE SAME WORLD THAT WE NEED A COMPETENCY EXAMINATION BECAUSE THAT IS ESSENTIALLY IS ANOTHER LEGAL RESULT ON AGGRAVATING FACT EARTH.

IT'S ALMOST LIKE WE'RE PLAYING WITH WORDS HERE SEEMS TO ME AND HELP ME UNDERSTAND WHY THAT'S NOT THE CASE.

>> WELL AGAIN, I'LL GO BACK TO THE POINT THAT DR. MAYER AND.YOUR TRAINING IF THAT'S NOT

THE CASE BECAUSE THERE'S A THINK
A SIGNIFICANT DIFFERENCE.

>> THEY'RE NOT LEGAL EXPERTS.

THEIR EXPERTS OTHER PERSON IS
COMPETENT OR NOT COMPETENT.

>> YOU WITH PAY AS A PER SE RULE
THAT WOULD MITIGATION IS REFUSED
AND THE RESULT IS GOING TO BE

THE STATE PUTS ON AGGRAVATING FACTORS IN THE DEATH PENALTY WITH THE DEATH SENTENCE IS GOING TO BE THE RESULT.

I MEAN, THAT'S JUST A NORMAL -- THAT'S WHAT'S GOING TO HAPPEN. AND TO TELL SOMEBODY BACK, THEN IT AUTOMATICALLY WILL REQUIRE COMPETENCY EVALUATION.

>> I'M NOT ARGUING A PER SE RULE.

>> SOUND LIKE YOU ARE BECAUSE OF THIS ONE FROM A AND ALTHOUGH IT'S JUST AS THE BURGERS OF THE LAWYERS DIDN'T SEE ANY PROBLEMS IF THERE'S ONE AND IT WAS ONE PIECE OF PAPER AND THAT'S GOING TO REQUIRE WE ACCEPT THE TRIAL SITE.

>> WELL, IT'S ISOLATING IN THAT MANNER IS NOT THE WAY THE MENTAL-HEALTH EXPERT THAT WHAT THEY DID IS THIS IS MR. DESSAURE IN THE CASE BE SOMEONE I KNOW ABOUT MR. DESSAURE AND DR. MAYER HAD DEALT WITH.MR. DESSAURE THAT HE HAD THE SUICIDE AND MENTAL-HEALTH ISSUES ALREADY THAT WERE KNOWN TO DEFENSE COUNSEL AND HAD BEEN ARTICULATED WHEN YOU GOT THAT INFORMATION AS THE MAN'S LAWYER AND HE DID SEE --

>> WE SHOULD'VE DONE THAT ANYWAY WHEN HE STARTED REFUSING TO PRESENT VINDICATION.

AT THAT POINT IT'S THE SAME THING.

THAT'S THE LEGAL CONSEQUENCES OF WHAT'S HAPPENING.

SO WHEN THAT HAPPENS, WHAT YOU'RE SAYING IS THAT COMPETENCY

EXAMINATION IS REQUIRED.
I'M SAYING THE ADDITIONAL
LANGUAGE WITHIN THE FORM YOU
FIND IS AN ADDITIONAL
DEMONSTRATION OF THE VERSE AND
AS A MENTAL-HEALTH ISSUE AND NOT
TO BE ADDRESSED NOT BY A VOYEUR
TALK INTO A BOOK THE

MENTAL-HEALTH EXPERTS I WAS
READY AVAILABLE WILLING AND ABLE
TO DO ANOTHER COMPETENCY
EVALUATION.

>> AT THE MENTAL-HEALTH EXPERTS
SAY IT IS HEARING THE YOUR
CLIENT IS IN FACT INCOMPETENT
NOW OR WE'RE JUST REFERRING BACK
TO THE POINT WHERE THERE WAS
MITIGATION EVIDENCE?

THE

>> DR. D SAID HE FELT AT THE
TIME HE WAGED HE WAS
INCOMPETENT.

DR. MAYER I DON'T THINK IT IS
OPINION NOT FIRE.

HE SAID HE WOULD'VE STRONGLY
SUGGESTED THAT HE GOT THE
INFORMATION OF THE DEFENSE COUNT
TOLD IN ITS UNCONTROVERTED THAT
THIS QUESTION OF THE TESTIMONY
AS TO WHETHER MR. WATTS CALLED
HIM OR NOT WITH THIS WAIVER WAS
OWING ON BUT ITS UNCONTROVERTED
THAT HE DID NOT GIVE DR. MAYER
THE INFORMATION AT ITS FINEST
FORM.

I JOINED IN THE STATE IS SEEKING
A DEATH SENTENCE.

[INAUDIBLE]

>> I BELIEVE HE STILL FELT THE
SAME OPINION ABOUT THE POSTER
MEDIC STRESS SYNDROME BEING
PRESENT IN MR. DESSAURE, CORRECT
IF THAT'S WHAT YOU'RE ASKING ME.
HE FOUNDED TO BE COMMON, DID SIX
MONTHS BEFORE IN MARCH 2001 AND
IN THE PROCESS WENT ON WITH NO
MORE BETWEEN DR. MAYER AND
MR. DESSAURE.

THE FORM GET TIME LATER IN
SEPTEMBER 2001 AND HE WAS

CALLED, BUT NOT TOLD ABOUT THE
CONTENT.

THERE WAS ANOTHER COMPETENCY
EVALUATION BASED ON THE FACT
ENTRÉE THAT.

>> I THINK WHAT I'M STRUGGLING
WITH IS THE DEFICIENCY PROBLEM
WE HAVE FINANCED BY THE TRIAL

COURT IN THE TRIAL COURT'S ORDER
FIGHTING ESSENTIALLY THE OTHER
WAS NO DEFICIENCY.

EVEN IF SOMETHING SHOULD'VE
ALERTED HIM TO TALK TO DR. MAYER
CAN COME IN THE FORM WAS NOT THE
INITIAL FORM, WHICH I'M NOT SURE
IT IS OR ISN'T.

INITIATES OUGHT TO BE WHETHER
OUR CONFIDENCE IN THE OUTCOMES
UNDERMINE, THAT IS WHETHER IF HE
IS SORT OF THE COMPETENCY EXAM
THEY WOULD'VE BEEN A DIFFERENT
RESULT OF THE WOULD'VE BEEN ABLE
TO WITH THE MITIGATION AND
WOULD'VE HAD -- I'M NOT SURE
WHAT WOULD'VE HAPPENED AT THAT
POINT.

I DON'T KNOW ON THIS RECORD THAT
YOU'VE ESTABLISHED A SECOND
PRODUCT STRICKLIN, WHICH IS THE
PREJUDICE.

>> WHILE THE PREJUDICE WOULD HE
DO THEY PERSON HIS COMPETENCY
WAS IN QUESTION WAS ALLOWED TO
PROCEED.

THAT'S DEFICIENT IN AND OF
ITSELF I BELIEVE GOOD ENOUGH
THAT HE DIDN'T PRESENT THIS AT
THE SPENCER, FOR WHICH THERE WAS
NO EXPLANATION GIVEN THE DEFENSE
COUNSEL AT THE EVIDENCE YOU'RE
HEARING AS TO WHY WHEN
MR. DESSAURE CHANGED HIS MIND
AND WANTED IT PRESENTED THAT
THIS EVIDENCE AND THE WEST --

>> WHAT DID MR. DESSAURE
ACTUALLY SAY AT THE?

DID HE SAY I WANT THE COUNCIL TO
PRESENT THIS EVIDENCE OR DID HE
SAY HE WANTED THE COURT TO
CONSIDER HIM HAVING A LIFE

SENTENCE?

I'M NOT SURE EXACTLY WHAT
MR. DESSAURE ACTUALLY SAID TO
THE COURT.

HE WAS NOT AS PRECISE AS YOU PUT
IT I WANT THE TESTIMONY
PRESENTED.

HE SAID I CHANGED MY MIND AND A

DAY TO OTHER LIGHT SENTENCE
BECAUSE I TALKED TO MY FAMILY
AND I DON'T WANT TO PUT THEM
THROUGH ME BEING EXECUTED I
THINK IS WHAT HE SAID.
THE SUMMARY OF IT.
I DON'T KNOW ABOUT THE PRECISION
ABOUT WHAT I JUST SAID.
AT THIS POINT YOU'RE WELL INTO
YOUR REBUTTAL.
IF YOU WANT TO ARGUE ANYTHING
ELSE BEFORE REBUTTAL?
>> I'LL SIT DOWN AT THIS TIME.
>> MAY IT PLEASE THE COURT?
ASSISTANT ATTORNEY GENERAL
STEPHEN AKE ON THE STATE OF
FLORIDA.
>> ON THIS FORM USED WITHOUT A
FORM THAT THE DEFENDANT -- I
DIDN'T LOOK AT IT IN THE RECORD.
WHO PREPARES THE FORM?
>> THE TESTIMONY FROM MR. WATTS
WAS THAT MR. IS DESSAURE TYPED
IT UP ON HIS COMMUNITY BUT IT
WAS MR. DESSAURE LANGUAGE IN
MR. DESSAURE WAS THE ONE WHO
SIGNED IT AND MR. WATTS SAID HE
SENT A CERTIFICATE OF SERVICE
NATOLI SIGNED ANY WITHOUT
ADOPTING THE ADDITION OF THE
SUPPORTING HIS CLIENT AND THAT'S
WHY HE DID IT.
SO WHEN HE AGREED TO FOLLOW HIS
CLIENTS WISHES COME HE WAS
MAKING ANOTHER DETERMINATION
THAT HE WAS UNDERSTANDING WHAT
HE WAS DOING AND THEY AGREED
WITH HIM AND HIS QUESTION OF
COMPETENCY.
THE MAC AND MR. WATTS NEVER
QUESTIONED MR. DESSAURE.
HE HAD BEEN PRESENTED BECAUSE

THE CRIME HAPPENED IN 99 IN THE
PD'S OFFICE CAME ON AND HAVE
BEEN FOR TWO YEARS GOOD AND THEN
THEY TURNED IT OVER BASED ON
CONFLICT TO MR. WATTS.
BUT NEITHER THE PUBLIC DEFENDER
TO REPRESENT A PORT TO YOURS OR
THE MR. WATTS BOTH TESTIFIED

THAT NO QUESTIONS ABOUT
MR. DESSAURE CLEARLY COMPETENCY.

>> WHERE OF THE WORLD DID
MR. DESSAURE GET THE LANGUAGE
THAT DEFENSE COUNSEL SAYS HE
SIMPLY PUT IN TO THIS FORM?
IS THAT SOME LANGUAGE OR A FORM
THAT HAS BEEN USED IN OTHER
CASES ANY MYTH GOTTEN IT FROM
SOME OTHER INMATE OR SOMETHING?
I DON'T THINK I EVER HAVE SEEN
OR HEARD OF THAT.

>> MR. WASDIN RECALLED DOING
THAT CERTAINLY SAID THAT WASN'T
HIS LANGUAGE.

I KNOW THERE WAS A DISCUSSION
ABOUT MOHAMAD AT THE TIME THIS
IS TAKING PLACE AND I THINK THE
VERY FIRST WAY FOR A LOT OF THAT
LANGUAGE CAME FROM THE MOHAMAD
OPINION BECAUSE WHAT HAPPENED IS
THE GUILT PHASE OF THE JURY
RETURNED THEIR VERDICT LATE AT
NIGHT, 11:00 AT NIGHT AND THE
ATTORNEYS AT THAT TIME SAID WE
KNOW ARE THE THREE THINGS
MR. DESSAURE IS GOING TO WITH
THE TOURISTS ON MITIGATION
BECAUSE THIS IS SOMETHING THAT'S
BEEN ONGOING, BUT WE WANT TO
TALK TO HIM SOME MORE.
THE NEXT MORNING THEY COME INTO
COURT AND FILE THE FIRST WAIVER.
AND THEY THEN RECESSED THE CASE
FOR THE WEEKEND BECAUSE THEY
WANT TO DEPOSE THE STATE HASN'T
OPPOSED THE REMARRIED A PERIOD
AND I WANT TO CORRECT SOME OF
THE FACT THAT COUNCIL WAS TALKED
ABOUT HIS USE OF ITS
UNCONTROVERTED THAT.OR MAYER
NEVER KNEW ABOUT THIS, BUT THE

RECORD AT THE TIME MR. WATTS
INPUT ON THE RECORD AT THE TIME
THEY COME BACK ON SEPTEMBER 11
AFTER DEPOSING. ERROR MAYOR
SEPTEMBER 10 AND THEN ISSUE THAT
SECOND WAIVER AND MR. WASDIN
SAYS I TALK TO DR. MAYER AND HE
SAYS HE'S CONFIDENT TO DO THIS.

BUT THE EVIDENCE YOU'RE HEARING
THEY COULDN'T RECALL SPECIFICS
BECAUSE IT'S BEEN SIX YEARS.

>> ARE YOU ARGUING THAT THIS
FORM WAS ACTUALLY SHOWN TO
DR. MAYER?

>> NO, I DO NOT KNOW WHETHER WE
SHOWN TO THEM OR NOT.

I'M JUST POINTING OUT ITZKOWITZ
AVENTYL THAT I KNOW I TOLD
DR. MAYER THIS.

>> HE TOLD IN THE SUBSTANCE.
AND THEN WE ALSO KNOW WE TALKED
TO HIM THE DAY BEFORE AND
OBVIOUSLY NEITHER ONE OF THEM --

>> HE WOULDN'T SAY THE COUNCIL
TALK TO HIM THE DAY BEFORE.
RIGHT, THE WAIVER WAS
INTRODUCED.

IN THE PUT ON THE RECORD THAT HE
FOUND HIM COMPETENT TO DO THIS,
MEANING THIS WAIVER.

>> WHAT DR. MAYER IS SANE IF I
HAD KNOWN THE EXACT AUTHORITY
FRANKLY WHEN DEFENDANTS ARE
WAVING THE IS MITIGATION,
THEY'RE ESSENTIALLY SAYING THEY
PUT ME TO DEATH.

I MEAN, THERE MAY BE DIFFERENT
PARTS OF THIS IS THAT IT'S
ALWAYS BEEN OUR CONCERN BY WHAT
MITIGATION IN THE RECORD IS THAT
THE EFFECT OF THE GOOD

>> DR. MAYER CERTAINLY KNEW THIS
WAS NOT GOING TO ISSUE WITH
DESSAURE BECAUSE HE WAS
UNCOOPERATIVE WITH THEM.

WHEN HE MET WITH HIM FOR HIS
FIRST VISIT AN HOUR AND HALF IN
THE SECOND WAS 45 MINUTES.

HE WAS NOT COOPERATING WITH HIM
AND DR. MAYER KNEW AT THAT TIME

EVEN WHEN THE PD'S OFFICE WAS ON THE CASE THAT IT WAS A STRONG LIKELIHOOD THAT HE WOULD END UP LEAVING PRESENTATION AND MITIGATING EVIDENCE.

>> AT THE ACTUAL SENSOR HEARING, WHEN MR. DESSAURE DECIDED THAT SHE NO LONGER WANTED TO HAVE A

DEATH SENTENCE, BUT WANTED THE COURT TO CONSIDER AND POSITION OF A LIFE SENTENCE, WHAT HE ENDURED OR WAS THERE ANYTHING THAT HINDERED THE DEFENSE ATTORNEY AT THAT POINT FROM INTRODUCING DR. MAYER'S TESTIMONY.

BECAUSE WHEN YOU LOOK AT THE MITIGATING EVIDENCE OF THE TRIAL COURT ACTUALLY FIND, THERE'S NOTHING ABOUT MENTAL HEALTH ISSUES AND NOT, CORRECT?

>> YOUR HONOR, BASICALLY THERE'S A COUPLE WAIVERS OF DR. MAYER'S TESTIMONY.

AT THE NONJURY PENALTY PHASE, THE COURT DOES A LENGTHY COLLOQUY AFTER EVERY WITNESS IS PROPER.

MR. WATTS IS PROPER TO EACH MITIGATION WITNESS AND DESSAURE SPECIFICALLY WITH DR. MAYER'S TESTIMONY.

ANOTHER CENSOR YOUR NEW CHANGED HIS MIND AND MR. WATTS ATTORNEY TESTIFIED THE ONLY REASON HE CHANGED HIS MIND IS BECAUSE HIS GIRLFRIEND WAS THERE AND SHE HAD THREATENED TO CUT OFF ALL COMMUNICATIONS WITH HIM IF HE DID NOT RECEIVE THE LIGHT SENTENCE.

SO HIS POSITION AT THE SPENCER HEARING WAS I WILL ALLOW HER TO TESTIFY MY GRANDMOTHER AND THEN HE SPOKE AT THIS HEARING. HE SPECIFICALLY SAID I'M NOT BRINGING ANYTHING FOR THE WITNESSES THAT BY DIFFERENCE OF COUNSEL IS INVESTIGATED AND PREPARED FOR IMPROPER.

AND EVEN SUBSEQUENT TO THAT, THE TRIAL JUDGE INDICATED AT THE END OF THE SPENCER HEARING, I REALIZE DR. MAYER OR THE PROPER DR. MAYER'S TESTIMONY BUT NOT GOING TO CONSIDER THAT BECAUSE THEY HAVEN'T PRESENTED BY TESTIMONY TO THAT EFFECT.

AND THEN GAVE THE DEFENDANT --
>> IS THAT CORRECT?
IS THAT A CORRECT DETERMINATION
THAT THE CANNOT CONSIDER THAT
BECAUSE THERE WAS NOT PRESENTED
A SLIDE TESTIMONY?
>> RIGHT, IF THIS PROPERTY DOES
NOT TO CONSIDER IT.
>> THESE OTHER CASES WE
ENCOURAGE FROM JUDGES TO
CONSIDER MITIGATION ANYWHERE.
BUT HE HAS SINCE TAKEN AWAY THAT
WAY FOR NOW.
HE IS NOW PRESENTING A CASE AND
HE IS PRESENTING MY TESTIMONY,
BUT HE IS CHOOSING NOT TO
PRESENT THE TESTIMONY OF
DR. MAYER.
>> DOES THE TRIAL JUDGE NOT
CONSIDER HIS TESTIMONY?
AND I COULD'VE BEEN RAISED --
WAS I RAISED AS A DIRECT ISSUE?
>> NO, I DO NOT BELIEVE SO.
I DO NOT RECALL IF THAT WAS.
>> I GUESS IN THE ETHERNET WE
KNOW THAT DR. MAYER'S TESTIMONY
REALLY WAS ABOUT THE PTSD IN
THIS HISTORY OF SUICIDE
ATTEMPTS.
>> AND ACTUALLY THE SUICIDE
ATTEMPT WAS NOT BY MUCH OF HIS
TESTIMONY.
HIS IT WAS POSTTRAUMATIC STRESS.
>> FROM BEING RAISED BY HIS
MOTHER WAS A DEALER CRACK AND
LIVING IN THE HOME WHEN SHE WAS
DEALING DRUGS AND THE FACT THAT
HIS OLDER BROTHER WAS KILLED
WHEN MR. DESSAURE WAS 16 YEARS
OLD, HIS BROTHER WAS SOMEWHAT OF
A FATHER FIGURE WAS KILLED.
THOSE ARE WHAT HE BASED HIS

DIAGNOSIS OF POSTTRAUMATIC
STRESS DISORDER ON.
NOW THE INTERESTING THING WITH
THAT IS I WAS GOING BACK TO
DESSAURE WAITING NIGHTS IN WHO
IS GIVEN ANOTHER CHANCE EVEN
AFTER THE SPENCER HEARING AND
ENTERING ANOTHER WAIVER SAYING I

REALIZED THAT IF I DON'T CALL
THAT HER MINUTE COURT DID NOT
CONSIDER THIS EVIDENCE AND AGAIN
WITH THAT.

>> THAT WAS DONE RIGHT BEFORE
SENTENCING OCTOBER.

THAT WAS ANOTHER --

>> .COM THE RECORD.

>> WASN'T ON THE RECORD OR
SOMETHING THAT WAS WRITTEN?

>> NO, IT WAS FILED I THE
DEFENSE ATTORNEY ON BEHALF OF
MR. DESSAURE.

>> IS SOMETHING THAT WAS
PRINTED, NOT SOMETHING THAT WAS
PROBABLY DONE.

TONIGHT IT'S IN A DIRECT APPEAL
RECORD TEMPERATURE TO DATE IS
OCTOBER 26, 91 WHEN THEY POORLY
PRONOUNCED SENTENCING ANYTHING
IN THAT DOCUMENT THAT ARE WATTS
IS UNDER THE IMPRESSION THAT
JUDGE WILL ALLOW US TO PRESENT
MORE EVIDENCE BUT WERE
SPECIFICALLY NOT DOING THAT.
AND THAT'S BASED ON OUR CLIENTS
WISHES.

CANNOT BE TESTIFIED TO IS THAT
HIS CLIENT WAS DIRECTING HIM AS
TO WHICH WITNESSES HE PRESENTED
ONCE HE CHANGED HIS MIND.

BUT THERE'S BEEN NO EVIDENCE
GOING BACK TO THE ACTUAL CLIENT.

THERE'S BEEN NO EVIDENCE TO SAY
HE WAS INCOMPETENT AT THE TIME.

DR. D TESTIFIED THAT IN HIS
OPINION ANY DEFENDANT WHO DOES
THIS IS INCOMPETENT AND THEN

DR. MAYER'S TESTIMONY --

>> WELL, LET ME JUST TO BE RIGHT
THERE BECAUSE AS I UNDERSTAND
IT, THE DEFENSE ARGUMENT, WAS

THE DOCTOR SEEN ANYONE WHO SIGNS
THIS KIND OF STATEMENT IS
INCOMPETENT OR ANYONE WHO WAYS
MITIGATION IN A DEATH PENALTY
CASE IS INCOMPETENT?

>> ANYONE WHO MAKES VINDICATION
IS INCOMPETENT.

HE IS NOT ASSISTING HIS ATTORNEY

ANYMORE AND THEREFORE HE'S INCOMPETENT.

I THINK HE DID SAY THAT HE HAD ONE CASE WHERE HE CLAIMED SOMEBODY THAT WE RACE ON INCOMPETENT.

AS A GENERAL RULE, HIS LEAF ANYONE WHO DID THAT WAS INCOMPETENT.

DR. MAYER SAID IF HE WAS AWARE OF THE SPECIFIC SECOND WAVERS, THAT IT WOULD'VE RAISED A QUESTION IN HIS MIND AS TO COMPETENCY.

BUT AGAIN THE RECORD REFLECTS A TRIAL ATTORNEY IN FACT BASED ON THE RECORD HE SPOKE TO DR. MAYER AND FOUND INCOMPETENT.

SIX YEARS LATER HE SAYS HE DOESN'T RECALL THE CONVERSATION AND MR. WATTS TESTIFIED HE HAD THAT CONVERSATION I JUST DON'T REMEMBER WOULDN'T THAT IT WAS. THIS COURT HAS NO FURTHER QUESTIONS, I ASK OF YOU FROM THE COURTS ORDER.

>> THANK YOU, MR. AKE.

>> IS MR. AKE OF CORRECT ABOUT THOSE ADDITIONAL COMMENTS BY MR. DESSAURE MADE AT THE SPENCER HEARING?

>> I BELIEVE WHAT HE SAYS AND WHAT THE RECORD REFLECTS.

AS TO THE ISSUE OF WHAT WAS SOLD TO DR. MAYER, I THINK WHAT MR. WATTS SAYS WAS THAT THE UNCONTROVERTED NATURE OF THIS TESTIMONY AS HE DIDN'T TELL DR. MAYER ABOUT THE CONTEXT REFORM AT ANY POINT IN TIME.

>> HE DIDN'T TELL AN EVEN IN GENERAL TERMS THAT THE DEFENDANT

WAS DOING THIS?

>> WHILE DR. MAYER SAID HE
DIDN'T RECEIVE A CALL AT ALL AND
THAT MR. WATTS WAS SAYING THERE
WAS A DISCUSSION OR A PHONE CALL
TO HIM.

>> WHAT'S REFLECTS ME RECORD IS
THE TIME OF THE TRIAL.

>> AT THE TRIAL MR. WATTS TOLD THE COURT HE HAD TALKED WITH DR. MAYER.

I HAVE TO BRING IN -- A LOT OF DEFENDANTS WOULD RAISE MITIGATION FOR A VARIETY OF REASONS, NOT BECAUSE THEY WANT TO JOIN THE STATE IN SEEKING THEIR EXECUTION.

THEY WOULD RAISE MITIGATION A LOT OF TIMES THEY DON'T WANT TO PUT THEIR FAMILY THROUGH THE TESTIMONY OR HAVE THEM CALL TO TALK ABOUT CHILDHOOD ISSUES OR WHAT NOT OR WHETHER THEY WERE ABUSED OR NOT ABUSED AND THAT'S RELATIVELY COMMON THING.

BUT IT'S NOT A COMMON THING FOR SOMEONE TO SIGN A FORM SAYING THAT HE IS SEEKING JOINING THE STATE IS SEEKING HIS OWN EXECUTION.

IN ALL THE PEOPLE THAT EXPERIENCE OF THE CRIMINAL JUSTICE SYSTEM HAVE TESTIFIED AT THE EVIDENTIARY HEARING ON THIS MATTER.

DR. D, DR. MAYER, THEY'LL SET IT WAS AN UNUSUAL HAPPENING IN THE COMPETENCY EVALUATION.

>> IS THE FIRST CASE YOU KNOW FOR THE DEFENDANT ACETIC JOINED IN THIS DATE SEEKING THE DEATH PENALTY?

>> NOT THE FIRST CASE I'VE EVER HEARD OF.

UNLESS THERE'S ANY OTHER QUESTIONS, I'LL CONCLUDE MY REMARKS.

>> ALL RIGHT.

THANK YOU BOTH FOR YOUR ARGUMENTS HERE TODAY.

THE COURT WILL NOT TAKE ITS
MORNING RECESS FOR 10 MINUTES.
>> PLEASE RISE.