

ALL RISE

THE SUPREME COURT OF COURT  
IS NOW IN.

GIVE ATTENTION AND YOU SHALL  
BE HEARD.

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

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

>> HELLO AND WELCOME, THE  
FIRST CASE ON OUR DOCKET  
TODAY IS VALLEN TINE --  
VALENTINE VERSES THE STATE  
OF FLOOR.

>> GOOD MORNING, I'M  
REPRESENTATIVES MR. TERRANCE  
VALENTINE.

I WOULD LIKE TO START WITH  
ISSUE THREE, AND IF TIME  
PERMITS I WILL MOVE ON TO  
ISSUE ONE.

TRIAL COUNCIL WAS COMPLETELY  
INEFFECTIVE FOR FAILING TO

INVESTIGATE AND PREPARE  
STATUTORY AND NONSTATUTORY  
LITIGATION.

>> DO YOU WANT TO GIVE US A  
PICTURE OF WHAT EVIDENCE  
SHARE HEARING SHOWS COUNSEL  
DID, AND THEN WHAT YOU  
PRESENTED, AND I'LL --  
WITH THIS IN MIND --  
HE DID OR THEY DID CONSULT  
WITH A MENTAL HEALTH EXPERT,  
AND MADE DECISIONS AS TO  
WHAT TO GIVE THAT EXPERT AND  
NOT, AND THEN YOU HAVE YOUR  
EXPERT THAT NOW IS SAYING  
SOMETHING DIFFERENT, BUT YOU  
REALLY HAVE A SITUATION  
WHERE WE HAVE SO MANY CASES  
THAT SAY WHO IS GETTING A  
BETTER EXPERT, AND NOT  
SUFFICIENT PERFORMANCE, AND  
OF COURSE, WITH THIS CRIME,  
ALSO ADDRESSING PREJUDICE.

>> YES, YOUR HONOR.

THIS IS NOT JUST A CASE OF

GETTING A BETTER EXPERT.

THIS IS IN LINE OF PORTER  
VIEW AND COLIN, THEY  
RETAINED DR. GUMASH, HE WAS  
RETAINED BY MR. FUENTE, HE  
SPOKE TO MR. LOPEZ ABOUT THE  
CASE AND DID NOT GIVE HIM  
ANY BACKGROUND MATERIALS FOR  
PREPARATION.

THEY LOOKED INTO COMPETENCY,  
HE BILLED THREE HOURS TOTAL  
IN THIS CASE --

>> WHAT DID HE DO IN THOSE  
THREE HOURS.

>> HE LOOKED AT MINIMAL  
BACKGROUND MATERIAL, DECIDED  
HE WAS COMPETENT, AND  
DECIDED HE WOULD BE A MODEL  
PRISONER.

>> WAS HE HIRED TO DETERMINE  
COMPETENCY OR --

>> NOT SOLELY TO DETERMINE  
COMPETENCY, HE WAS RETAINED  
TO LOOK INTO ISSUES OF  
POSSIBLE MENTAL HEALTH AND

MITIGATION IN GENERAL.

>> WHAT BACKGROUND WAS HE PROVIDED WITH.

>> VERY MINIMAL, I DON'T BELIEVE THEY CAN ARTICULATE

--

>> DID THAT INVESTIGATE, THIS DEFENDANT GREW UP IN COSTA RICA?

>> YES, YOUR HONOR, DID THEY INVESTIGATE ANYTHING --

HE WAS 38 OR SOMETHING.

>> YES AT THE TIME OF THE CRIME HE WAS ABOUT 38-39 YEARS OLD.

>> DID THEY INVESTIGATE HIS BACKGROUND IN COSTA RICA?

>> NOT REALLY, THEY PRESENTED THREE PENALTY PHASE WITNESSES.

THEY GOT INTO THE BACKGROUND INFORMATION --

>> THEY OBVIOUSLY DID INVESTIGATE --

>> NOT REALLY, YOUR HONOR.

>> LET'S GO TO THIS, I'M  
GOING TO JUST ACCEPT THERE  
WAS, IT DOES SEEM LIKE  
DR. GUMASH DIDN'T DO VERY  
MUCH, I'M NOT SURE HOW MUCH  
THERE WAS TO DO, WHAT IS IT  
YOU PRESENTED THAT WAS SO  
COMPELLING THAT WOULD SHOW  
THAT THERE HAD TO BE  
DEFICIENCY BECAUSE THERE WAS  
THIS WEALTH OF MITIGATION  
THAT WAS NEVER UNCOVERED?

>> THE THREE WITNESSES HE  
PUT ON IN PENALTY PHASE SAID  
HE'S A GOOD GUY, A HARD  
WORKER, AND WILL BE A MODEL  
PRISONER.

THE OLDER SISTER THAT  
TESTIFIED, MENTIONED THAT  
MR. VALENTINE RECEIVED HEAD  
INJURIES AS A CHILD, KNOCKED  
UNCONSCIOUS A FEW TIMES  
WELCOME AND DR. D THOUGHT  
THERE WAS MAYBE A BRAIN  
INJURY.

SO HE INVESTIGATED THE BRAIN  
INJURY ISSUE.

>> BUT THERE YOU HAVE A  
SITUATION WHERE --  
WHAT'S UNREASONABLE ABOUT  
HAVING RELIED ON DR. GUMASH  
FROM THE POINT OF THE  
ATTORNEY.

>> IT'S THE LACK OF  
PREPARATION MATERIALS GIVEN  
TO THE DOCTOR.

HE JUST REVIEWED JAIL  
RECORDS.

THREE WITNESSES WERE  
PRESENTED TO TALK ABOUT HIS  
FAMILY BACKGROUND, SO  
MR. LOPEZ WAS ABLE TO SPEAK  
TO MRS. PINETTA BEFORE  
TRIAL, AND IF SHE TOLD  
MR. LOPEZ HE GOT KNOCKED  
UNCONSCIOUS, THEN DR. LOPEZ  
SHOULD HAVE TOLD THE DOCTOR.

IT IS YOUR HONORS OUT  
MR. VALENTINE HAS BRAIN  
DAMAGE.

>> WHAT DID THE JUDGE SAY

ABOUT THAT THAT?

>> IN POSTCONVECTION?

>> YES.

>> THE JUDGE IS NOT

NECESSARILY IMPEACH THE

TESTIMONY, WHAT THE JUDGE

DETERMINED WAS THE FACT

THERE'S NO PREJUDICE BECAUSE

THAGGRAVATORS WERE --

AGGRAVATORS ARE SO SERIOUS

THAT THERE WAS NOTHING THAT

WOULD MAKE ENOUGH OF A

DIFFERENCE --

>> LET'S JUMP TO THAT.

THESE ARE, YOU KNOW EACH

TIME I SAY THIS, THIS IS THE

WORST CRIME, THIS IS A

HORRENDOUS VEIN KICK --

CRIME.

AND HE PUT HIS EGGS IN THE

ALIBI CAMP TO SAY HE WASN'T

THERE, HE INFORMS COSTA

RICA.

.

THE IDEA THAT HE WAS UNDER  
EXTREME EMOTIONAL DISTRESS

--

THESE WERE PLANNED CRIMES.

THEY WERE DONE WITH --

WE SAY THIS ISN'T AN HAC

CASE, THERE IS HAC, CCP, NOT

ONLY GREAT WEIGHT, BUT THEY

SHOULD BE GIVEN GREAT WEIGHT

IN TERMS OF THAT, AND HE IS

38, WHAT WOULD BRAIN DAMAGE

--

HOW DOES THAT SAY THAT IT

WOULD MITIGATE THESE VERY

STRONG AGGRAVATORS IN THIS

CASE?

I'M JUST NOT SEEING IT, YOU

MENTION PORTER FROM THE U.S.

SUPREME COURT, WE'RE TALKING

ABOUT SOMEBODY'S STELLAR

MILITARY RECORD NEEDED TO

BE DEVELOPED, BUT I'M NOT

SEEING ANYTHING HERE THAT

CHANGES THE PICTURE --

YEA, THERE IS SOMETHING,

MAYBE MENTAL MITIGATION  
COULD OR SHOULD HAVE BEEN  
PRESENTED, BUT THAT'S NOT  
REALLY THE STANDARD, WHAT'S  
YOUR ANSWER TO THAT.

>> FIRST OF ALL, IT'S NOT A  
QUANTITATIVE ANALYSIS.

>> WE UNDERSTAND THAT, BUT  
THE NATURE OF THIS CRIME,  
THE AGE OF THIS MAN, THE  
FACT THAT HE CAME TO FLORIDA  
WITH THIS INTENT, AND  
EXECUTED THIS VICIOUS, THIS  
VINDICTIVE CRIME FOR NO  
PECUNIARY GAIN, IT ALMOST  
MAKES IT WORST --

>> HE KILLED HIS WIFE AND  
WIFE'S LOVER, BUT REGARDING  
THE --

YOU MENTIONED THE ALIBI  
ISSUE, THE PENALTY PHASE  
COUNSEL, THEY NEVER THOUGHT  
THIS CASE COULD GO TO  
PENALTY PHASE WHICH IS IS  
NOT A VERY EFFECTIVE OR

COMPETENT DECISION TO MAKE.

>> I THOUGHT --

I WANT TO ASK, I THOUGHT

THAT WAS SOMEWHAT --

WHEN I SAW THAT I HAD TO

READ THAT AGAIN THAT THEY

SAID I DIDN'T REALLY --

HE THOUGHT HE HAD A WINNER

THE GUILT PHASE.

HE HAD THE LIVE WITNESS, MY

WIFE STATING THAT'S THE MAN

THAT SHOT ME.

AND HE DIDN'T SPEND MUCH

TIME ON PENALTY PHASE, THEY

PUT ON THREE WITNESSES THAT

SAID THIS IS A GOOD GUY, AND

THEY DID A 3-HOUR

EVALUATION.

DR. D. WHEN HE DID HIS

EVALUATION HE FOUND MOOD

DISTURBANCE, GRANDIOSE

THINKING.

MR. VALENTINE TOLD DR. D

THAT MY MOTHER HAS TO HAVE

MY PERMISSION BEFORE SHE CAN

DIE.

I TOLD HER YOU CANNOT DIE

WITHOUT MY PERMISSION.

HE THINKS HE HAS SEWER

SUPERIOR ABILITIES.

>> WHEN YOU TRY TO FIGURE

OUT WHAT WOULD MOTIVATE

SOMEBODY TO DO THIS KIND OF

CRIME, YOU COULD COME UP

WITH THAT YOURSELF AND SAY

THAT A "NORMAL PERSON" WOULD

ACCEPT THE FACT THAT HIS

PERSON LEFT HIM AND HAS

STARTED AND CATEGORIZE THIS

AS ADULTEROUS RELATIONSHIP,

THERE WERE ISSUES, BUT THEY

WERE LIVING AS A FAMILY

UNIT, SHE WAS PREGNANT, THEY

HAD A CHILD TOGETHER, AND HE

DID NOT ACCEPT IT.

WELL, I GUESS THAT WOULD BE

WHAT --

THERE MUST BE, YOU KNOW,

THERE MUST BE A PERSONALITY

DISORDER.

DOES IT RISE TO THE LEVEL OF  
A MENTAL ILLNESS THAT  
COULDN'T --  
AND I UNDERSTAND THIS ISN'T  
THE STANDARD FOR MENTAL  
MITIGATION, BUT TO MITIGATE  
THE CRIME THAT SOMEHOW HE  
COULD NOT CONTROL HIS  
ACTIONS BECAUSE AT THE  
MOMENT OF THE CRIME, WHEN HE  
SAW HIS WIFE WITH THIS  
PERSON THAT IT JUST OVERCAME  
HIM, I'M NOT SEEING THAT  
PICTURE, SO SAYING THESE  
THINGS, IT STILL DOESN'T  
CHANGE THE WAY THE  
AGGRAVATORS WOULD BE VIEWED,  
DOES IT?

>> WELL DR. D FOUND  
EMOTIONAL DISTURBANCE,  
EMOTIONAL DISORDER, AND THE  
FACT FINDER NEEDS TO KNOW  
THE FULL MAKE UP OF THE  
PERSON THEY'RE EVALUATING.  
HERE, IT WAS PRESENTED TO

THE FACT FINDER THAT HE IS A  
HARD WORKING GUY WITH NO  
CRIMINAL HISTORY.

WE'RE NOT DOING AIN'T SOCIAL  
PERSONALITY DISORDER.

THIS GUY HAS NO PRIOR  
HISTORY OF VIOLENCE AT ALL.

SO ONE OF THE PHRASES, AND I  
WILL PARAPHRASE, THE FACT  
FINDER NEEDS AN ACCURATE  
DEPICTION OF WHO THEY'RE  
SENTENCING TO DEATH.

>> THEY CHOSE TO PUT ON --

THE POSITIVE IMAGE OF  
SOMEBODY TO SAY HE'S WORTH  
SAVING, AND FRANKLY THAT  
SEEMS LIKE GOOD STRATEGY TO  
ME BECAUSE TO PORTRAY HIM AS  
A DERRANGED THINKING  
INDIVIDUAL, THAT'S THE  
PERSON THAT COMMITTED THIS  
CRIME, IT DOESN'T PROVOKE  
ANY THOUGHT THAT YOU'RE  
GOING TO SAY AGAIN, HE CAN'T

--

THAT IT MITIGATES THE KIND  
OF AGGRAVATION HERE.

IT'S --

PORTER WAS ABOUT HERE IS  
SOME INFORMATION THAT'S  
GOING TO PORTRAY HIM IN A  
WONDERFUL LIGHT.

OTHER CASES ARE THAT THERE  
ARE SERIOUS MENTAL HEALTH  
MITIGATION.

SOMEBODY ABUSED THEIR WHOLE  
LIFE, THEY'VE BEEN IN  
INSTITUTIONS, THEY HAVE  
THEIR SCHOOLING, AND YOU  
HAVE A LAWYER THAT JUST  
MISSED THAT ALL, THAT'S NOT  
THIS CASE.

>> YOUR HONOR, YOU MEDICAL  
EXAMINER OTHER CASES THAT  
DOES INVOLVE ABUSE AND DRUG  
HISTORY, BUT TIME AND TIME  
AGAIN THIS COURT AND THE  
UNITED STATES SUPREME COURT  
STATES THAT YOU HAVE TO  
INVESTIGATE MENTAL HEALTH.

AND IN THIS CASE, THE TRIAL  
COUNSEL DECIDED NOT TO THE  
DO THAT.

>> THERE'S WHERE I --

WHETHER YOU HAVE TO OR NOT  
IN ANY CASE, I WILL GIVE IT  
TO YOU THAT IN THIS CASE  
YEA, YOU HAVE TO INVESTIGATE  
IT, TO INVESTIGATE IT YOU  
GIVE IT TO A MENTAL HEALTH  
EXPERT, AND UNLESS IS AN  
INC. CLAIM, THAT THE MENTAL  
HEALTH EXPERT --

IT'S OKAY TO RELY ON THEM.

SO IT'S NOT LIKE THEY RELIED  
ON SOMEBODY THAT WAS AN  
UNKNOWN QUALITY.

>> THIS IS A PARTIAL INK  
CLAIM.

THE LATE DR. D SPENT 16  
HOURS POURING OVER ALL KINDS  
OF DOCUMENTS AND A LOT OF  
AMOUNT OF TIME WITH  
MR. VALUEN TIME.

"NORMAL PEOPLE" DON'T DO

WHAT MR. VALENTINE DID.

AND THE SEVERE MENTAL

ILLNESS AND GRANDIOSE

THINKING, LIKE BIPOLAR

DISORDER, IF IT'S AN ISSUE,

IT HAS TO BE PRESENTED TO

THE FACT FINDER.

IF MR. LOPEZ HAS PREPARED

HIS EXPERT FOR BIPOLAR

DISORDER OR OTHER MENTAL

ILLNESSES FOR HIS

GRANDIOSE THINKING, THE

TRIAL COUNSEL DIDN'T DO

THAT, HE DID NOT BEHAVE IN A

COMPETENT MANNER IN THIS

PARTICULAR CASE.

AND BRIEFLY I WOULD LIKE TO

TOUCH ON ISSUE ONE.

.

THAT INVOLVES THE PROSECUTOR

IN THIS CASE, MRS. KAREN

COX.

SHE WAS SANCTIONED BY THIS

COURT FOR CONDUCT, AND HERE,

INVOLVING IMPROPER ARGUMENTS

DURING CLOSING ARGUMENT.

I KNOW U. S. B. STERBA, BUT  
MRS. COX MISLEAD THE JURY BY  
PRESENTED A WITNESS UNDER  
THE FALSE NAME --

>> I'M FAMILIAR WITH THAT  
CASE, BUT IN HERE, THE  
COUNSEL WAS AWARE ABOUT  
THAT, AND I THINK IN THE  
OTHER CASE, THE DEFENSE  
COUNCIL WASN'T EVEN AWARE OF  
THE TRUE IDENTITY OF THE  
WITNESS, AND THE JURY WAS  
AWARE THEY LIVED TOGETHER AS  
A FAMILY UNIT, CORRECT?  
WASN'T THE JURY AWARE?

>> IF COUNCIL --  
COUNSEL WAS AWARE OF THAT,  
HE SHOULD HAVE DONE A MOTION  
TO MAKE SURE THE NAME --

>> BUT WASN'T COUNSEL'S  
TRIAL STRATEGY TO IMPEACH  
HER WITH THIS INFORMATION.

>> YES, AND HE DID --

>> SO ON A MOTION IN LIMINE

HE COULDN'T --

>> THAT'S CORRECT, BUT THEN

HE NEEDS TO OBJECT EVERY

TIME LIBIA PORCHEA IS USED.

>> HE KILLED HIS WIFE AND

LOVER IN AN AFFAIR.

THEY PORTRAYED HIM AS A

DERANGED MAN, --

WE HEAR ABOUT THE SPOUSE

FINDS OUT THAT THE OTHER

SPOUSE IS CHEATING AND THEY

LOSE THEIR MIND.

IF THEY MADE A BETTER EFFORT

TO MAKE SURE THE NAME WAS

NOT USED, DON'T TRY TO TRICK

AND FOOL THE JURY, WE COULD

BE LOOKING AT SECOND DEGREE

MURDER AND WE WOULDN'T BE

HERE RIGHT NOW >> THEY DID

TRY THIS AS AN ALIBI CASE --

>> SO IT DOESN'T REALLY --

THE PROBLEM WAS THAT THEY

CHOSE A DEFENSE WHICH YOU

HAVEN'T CHALLENGED AS BEING

AN IMPROPER WAY TO HAVE

DEFENDED THIS CASE, SO NOW  
TO SAY THAT THE JURY WOULD  
HAVE LOOKED AND SAID HE WAS  
A DISTRAUGHT HUSBAND, THAT'S  
LIKE SECOND GUESSING IT.

THE ISSUE OF THE LIVIA  
PORCHEA, HERE IS A NEW LIFE,  
AND MAN, AND THE CRAZY  
EXCOMES IN.

>> YOU'RE DOWN TO THREE  
MINUTES TOTAL.

>> I YES, I WOULD LIKE TO  
SAVE THE REST, THANK YOU  
VERY MUCH, YOUR HONOR.

>> GOOD MORNING, MAY IT  
PLEASE THE COURT, I'M KAREN  
DETMER FROM THE ATTORNEY  
GENERAL'S OFFICE, >> BEFORE  
YOU START YOUR SUBSTANTIVE  
ARGUMENT, I WAS LOOKING AT  
THE AGE OF THIS CASTE, THE  
POSTCONVICTION MOTION WAS  
FILED IN 2001, IT'S 2011,  
IT'S TEN YEARS, THE SAME  
JUDGE WAS PRESIDING IN THESE

POSTCONVICTION HEARINGS --  
WHEN WE LOOK AT THINGS LIKE  
THIS, WE SAY THIS IS NOT  
ACCEPTABLE.

>> ABSOLUTELY, IT'S NOT  
ACCEPTABLE, AND THE ONLY  
GOOD THING I CAN SAY ABOUT  
IT IS MOST OF THE REASONS  
FOR THE DELAY IN THIS CASE  
ARE GONE AND ARE NO LONGER  
AROUND.

PRELIMINARILY MR. VALENTINE  
WENT THROUGH A SERIES OF  
ATTORNEYS.

WHEN HIS DISTRICT APEE WAS  
FORMED, THEY GOT OFF THE  
CASE AND HE WENT THROUGH A  
SERIES OF ATTORNEYS THEN.

NICK IS AN ATTORNEY IN TAMPA  
THAT REPRESENTED HIM FOR  
MANY YEARS AND FILED THE  
INITIAL POSTCONVICTION  
NOTICE IN THIS CASE.

IT WAS AMENDED SEVERAL  
TIMES.

AT THAT TIME, UNFORTUNATELY,  
MY OFFICE HAD VERY LITTLE  
EXACT WITH WHAT WAS  
HAPPENING AT THE STATE  
ATTORNEY'S OFFICE.

WE DIDN'T HAVE THE ONLY  
TOOLS THAT WE HAVE TODAY  
WITH THE DOCKETS AND THE  
TOOLS AVAILABLE TO MONITOR  
CASES CLOSER AT THAT TIME.

ALSO SOME OF THE  
PERSONALITIES INVOLVED WITH  
THE STATE ATTORNEY'S OFFICE,  
THINGS HAPPENED AND  
EXTENSION AFTER EXTENSION  
WAS GRANTED WITHOUT ANY  
OBJECTION AND WAS STIPULATED  
TO BY THE STATE WITHOUT MY  
OFFICE EVEN KNOWING ABOUT  
IT.

I THINK A LOT OF THOSE  
THINGS HAVE BEEN TAKEN CARE  
OF.

>> YOU OBVIOUSLY LOOKED INTO  
THIS --

YOU GIVE IT --

I MEAN IT'S EXTREMELY  
FRUSTRATING THAT WITH THE  
REQUIREMENT OF THE QUARTERLY  
REPORTS, THIS IS NOT  
SUPPOSED TO HAPPEN.

THIS IS 2001, NOT 1991, AND  
THE COURT HAS JUST SORT OF

--

IT'S DISCONCERTING.

>> ABSOLUTELY, AND I  
ENCOURAGE THIS COURT TO STAY  
INVOLVED.

THIS COURT IS PROACTIVE  
ABOUT KEEPING THESE CASES  
MOVING AND WE WELCOME THAT  
WITH MY OFFICE.

IT WAS EXTREMELY FRUSTRATING  
THAT A EVIDENCE SHARE  
HEARING WAS SET AGAIN AND  
AGAIN AND AGAIN, EVENTUALLY  
CCR COMES BACK INTO THE CASE  
AND WERE ALLOWED TO AMEND  
THE MOTION WE HAD FOR MANY  
YEARS, AND THEN, YOU KNOW

THERE HAVE BEEN OTHER THINGS  
ALSO, JUDGE BARBIS WAS  
INVOLVED IN A VERY SERIOUS  
MOTORCYCLE ACCIDENT AT A  
CRITICAL TIME.

THERE HAVE BEEN A NUMBER OF  
REASONS FOR THE DELAY, BUT I  
FEEL MOST OF THOSE WE HAVE  
OVERCOME AT THIS POINT AND  
ARE NOW MOVING FORWARD.

AS TO THE ISSUE WITH THE  
MENTAL MITIGATION, I THINK  
WHAT'S IMPORTANT TO POINT  
OUT FROM THE BEGINNING, IS  
THAT WALTER LOPEZ, WHO IS A  
VERY EXPERIENCED CAPITAL  
DEFENDER, WAS APPOINTED AS  
PENALTY PHASE COUNSEL, NOT  
GUILT PHASE COUNSEL AT THIS  
POINT.

SO HIM SAYING I DON'T KNOW  
IF WOULD GET TO PENALTY, HE  
WASN'T FOCUSED ON A GUILT  
PHASE INFORMATION THAT TOOK  
HIM AWAY, HE SAID DESPITE

THINKING IT WOULDN'T GO  
THERE, IT WAS MY JOB TO  
PREPARE FOR IT.

IT'S PERSONAL BRIEF ABOUT  
WHETHER OR NOT IT WOULD GET  
TO A PENALTY PHASE HAD  
NOTHING TO DO WITH HIS  
INVESTIGATION IN ANY WAY.

>> I GUESS WHAT I WAS --

I WAS STRUCK WITH THAT  
STATEMENT, BUT NOW YOU  
CLARIFIED THAT --

WHAT YOU JUST SAID, THAT HE  
DIDN'T EXPECT IT TO GET TO  
THE PENALTY PHASE --

>> OF COURSE, WHEN IT WAS  
INITIALLY IN JANUARY OF 1990  
WHEN IT WAS TRIED, THE JURY  
COULD NOT REACH A VERDICT.

SO IT MAY BE IN SOME  
PEOPLE'S MINDS --

>> THERE'S AN ACCOMPLICE TOO  
THAT WAS NEVER IDENTIFIED OR  
FOUND, SO THERE IS THAT  
MISSING LINK.

BUT YOU LOOK AT SOMETHING  
LIKE THIS CRIME, AND YOU SAY  
THIS PERSON CAME FROM --  
WHERE WAS HE LIVING AT THE  
TIME?

>> NEW ORLEANS TO FLORIDA,  
AND DESIGNED TO HUMILIATE  
AND KILL, AND YOU GO THE  
ONLY WAY TO EXPLAIN THIS IS  
TO EXPLAIN SOMETHING ABOUT  
HIS MENTAL STATE THAT WOULD,  
THAT WOULD SAY, LISTEN, THIS  
IS A GUY HIS WHOLE LIFE THAT  
DID NOT ACCOUNT THAT WAY,  
AND THE WHY OF IT AS A  
POSSIBLE WAY TO SAVE HIM.

I GUESS THAT AN EXPERT IN  
THIS KIND OF CASE THAT  
SPENDS 3 HOURS AND HOW LONG  
DID HE SPEND WITH THE  
DEFENDANT HIMSELF?

>> 3 HOURS, IT WAS VERY  
DIFFICULT BECAUSE OF THE 14  
YEAR DELAY, DR. GUMASH BY  
THE TIME OF THE HEARING

COULD NOT RECALL

SPECIFICALLY A LOT OF WHAT

HE HAD DONE.

>> DID HE ONLY SPEND ABOUT 3

HOURS ON THE CASE.

>> THAT'S ACCORDING TO A

BILLING HE SUBMITTED AT THE

TIME, HE SPENT THREE HOURS

WITH MR. VALUEN TIME, AND HE

HAD CONSULTATIONS, AND

REVIEWED RECORDS, THERE WAS

ANOTHER DEFENSE LAWYER

INVOLVED THAT BECAME A

JUDGE, AND THAT LAWYER, NOW

JUDGE, DID THE HEAVY

LIFTING --

>> YES.

>> AND HE GOES ON THE BENCH,

AND WE SEE THIS SOMETIMES, A

NEW PERSON TAKES OVER, DO

THEY REALLY --

WHAT ARE THEY LEFT WITH, AND

WHAT DO THEY DO?

SO WHEN MR. LOPEZ, WHEN HE

TAKES OVER, WHAT DOES HE SAY

--

DOES HE SPEND TIME WITH  
DR. GUMASH?

>> YES, AND I THOUGHT THEY  
SAID WE DIDN'T SEE ANY  
EVIDENCE OF MENTAL ILLNESS  
IN THE DEFENDANT, BUT THE  
ISSUE, ISN'T THERE SOME  
SUBSTANTIAL MENTAL  
MITIGATION THAT COULD MAYBE  
BE DEVELOPED, AGAIN, TO  
EXPLAIN TO THE JURY, WHAT  
ABOUT THIS DEFENDANT THAT  
COULD HAVE CAUSED THIS TYPE  
OF BEHAVIOR THAT THEY NEVER  
EXHIBITED IN ANY OTHER PART  
OF HIS LIFE.

>> YOU MAKE IT SOUND LIKE  
THIS WAS AN AN A PPERASTON,  
FIRST YOU HAVE HIS  
RELATIONSHIP WITH OLIVIA, HE  
CALLS HER, FINDS WROTE SHE  
IS, HE'S CALLING HER AND  
THREATENING HER, >> DID THAT  
COME IN IN THE GUILT PHASE?

>> SO LET ME MODIFY WHAT I'M  
SAYING, SO YOU HAVE A  
PATTERN AS TO THIS PERSON,  
AS TO HIS WIFE, IT IS STILL  
HIS WIFE --

>> WELL, YOU KNOW, I DON'T  
KNOW THERE WAS EVER ANY KIND  
OF JUDICIAL FINDING ON THAT.  
THAT'S ONE OF THE BIG  
QUESTIONS, WERE THEY MARRIED  
OR NOT.

AT THE TIME, VALENTINE AND  
LIVIA BELIEVED THEY WERE  
DIVORCED --

>> HOW LONG WERE THEY  
DIVORCED OR SEPARATED OR  
WHATEVER IT WAS?

>> IT WAS MORE THAN A YEAR  
BECAUSE THEY MOVED TO --  
THEY MOVED TO FLORIDA AND  
ACCORDING TO LIVIA'S  
TESTIMONY, SHE DIDN'T WANT  
VALENTINE TO KNOW WHERE SHE  
WAS GOING.

THEY MOVED TO FLORIDA, AND

IT HAD BEEN AN EXTENTATIVE  
PERIOD OF TIME.

>> HE WOULD NOT ACCEPT THAT  
SHE LEFT HIM, IS THAT THE  
WAY THIS WAS TRIED BY THE  
STATE?

>> APPARENTLY, I MEAN HE,  
HIS MOTIVE WAS REVENGE.  
HE WAS MAD AT HER AND HIM  
EXPWHRP SO, WITH THAT, DO  
YOU NOT AS A REASONABLE  
DEFENSE LAWYER WHOSE ONLY  
JOB IS THE PENALTY PHASE TO  
EXAMINE EVERYTHING YOU CAN

--

AGAIN, THIS WAS TRIED ONCE,  
THEY HAD A PENALTY --  
YOU KNOW IT'S LIKE, THIS WAS  
AROUND FOR AWHILE, IT WAS  
RETRIED, DON'T YOU GO AND  
LOOK AT EVERYTHING YOU CAN  
TO SEE WHAT IS AVAILABLE  
THAT WOULD EXPLAIN THIS  
PARTICULAR DEFENDANT  
ADMITTING THIS HORRIBLE ACT?

>> ABSOLUTELY, AND THESE

ATTORNEYS DID THAT.

AND LOPEZ, IF YOU LOOK AT

WALTER LOPEZ'S --

>> IT WASN'T JUST ONE ACT,

HE --

>> CORRECT, CORRECT.

>> WHAT I THINK REALLY

STANDS OUT, IS THAT LOPEZ

WORKED VERY CLOSELY WITH

WILLIAM FUENITE IN TALKING

ABOUT WHAT HE DEVELOPED.

THEY HAD AN INVESTIGATOR

THAT DID A LOT OF HILLS

BURRO COUNTY CASES, YOU MAY

HAVE SEEN HIS NAME BEFORE,

THEY MADE SEVERAL TRIPS TO

COSTA RICA FOR GUILTY AND

PENALTY PHASES.

THEY EXPLORED ALL OF THE

MITIGATION, THE CHILDHOOD

AND BACKGROUND, THERE'S NOT

AN ISSUE ABOUT THE OTHER

ASPECTS OF MITIGATION.

IT'S A VERY NARROW ISSUE

ABOUT THE MITIGATION.

SO HE WAS PART OF THAT, BUT  
THERE WAS MUCH MORE  
INVESTIGATED, AND WHILE THE  
JUDGE WAS THE ONE THAT  
NORMALLY RETAINED HIM, HE  
SPOKE WITH THEM AND THEY  
CONSULTED TOGETHER, AND I  
KNOW THAT --

>> I GUESS I KEEP, AND I  
APPRECIATE THAT, AND I THINK  
YOU GIVING THE WHOLE PICTURE  
IS HELPFUL.

HERE IS --

I GUESS IT'S THE THREE HOURS  
TO THINK YOU DO VERY MUCH AS  
A MENTAL HEALTH EXPERT IF  
YOU'RE TALKING TO ONCE SET  
OF DEFENSE LAWYERS, ANOTHER  
SET OF DEFENSE LAWYERS AND  
YOU'RE SUPPOSED TOE VALUATE.

>> THAT ISN'T ALL JUST 3  
HOURS, IT'S JUST 3 HOURS  
WITH MR. VALUEN TIME.

THE CONSULTATION WITH THE

ATTORNEYS IS MOST PART OF 39  
HOURS.

DR. GUMASH TALKED WITH THE  
PROSECUTOR BECAUSE THEY  
SUBMITTED A STIPULATION  
INSTEAD OF PRESENTING THE  
DOCTOR TO THE JUDGE TO TALK  
ABOUT HIS POSSIBILITY FOR  
REHABILITATION AND OTHER  
MITIGATION HE HAS NO HISTORY  
OF PRIOR MENTAL HEALTH  
PROBLEMS.

IF YOU TAKE TO MENTAL HEALTH  
EXPERTS, PSYCHOLOGISTS LIKE  
TO DO LOTS OF TESTS, A  
PSYCHIATRIST TALKS TO  
SOMEONE JUST AN HOUR, AND  
THEY WILL MAKE THEIR  
DETERMINATION ON THAT EXAM.

WE KNOW THAT THE DOCTOR, WAS  
ABLE TO TALK ABOUT HIS  
STANDARD PRACTICE, THAT HE  
WOULD HAVE BEEN LOOKING FOR  
MENTAL MITIGATION  
PARTICULARLY, AND I THINK HE

CAN GET ENOUGH OF A FEEL FOR  
THE TESTING HE IS DOING TO  
DETERMINE IF THERE ARE RED  
FLAGS OR REASONS FOR OTHER  
TESTING AND HE SAID IF HE  
HAD ANY OTHER INDICATION OF  
SOMETHING TO FIND, HE WOULD  
HAVE GOTTEN ANOTHER EXPERT,  
OR THAT A FURTHER EVALUATION  
WOULD HAVE BEEN DONE AT THAT  
TIME HE HAS AN INFLATED  
SENSE OF IS SELF-.

SO THERE'S REALLY NO  
SURPRISE THERE.

I THINK THERE IS A LITTLE  
SURPRISE, I KNOW THE COURT  
IS VERY FAMILIAR WITH DR. D,  
HE WOULD FIND BOTH STAT TIRE  
MENTAL MITT GATORS APPLY.  
HE DIDN'T EVEN GIVE THEM THE  
SECOND MIDDLE MITT GATOR  
WHICH IS UNUSUAL FOR DR. D,  
EVEN IF YOU LOOK AT HIS  
TESTIMONY IT'S NOT ANYTHING  
PERSUASIVE.

THEY SAY THIS WAS A PORNLY  
PLANNED CRIME, AND HE DROVE  
FROM THREE STATES AWAY WAS  
WAITING AT HER HOUSE, READY  
TO COMMIT THESE HORRIBLE  
ACTS BUT FOR THE FACT THAT  
LIVIA DID NOT DIE WHEN SHOT  
TWICE IN THE HEAD, HE MAY  
HAVE GOTTEN AWAY WITH IT SO  
DEE'S TAKE ON IT IS THAT  
THIS WASN'T A VERY WELL  
PLANNED CRIME, IF IT WAS  
WELL PLANNED HE WOULD NOT  
HAVE BEEN CAUGHT.

I THINK THAT'S A REASONABLE  
INFERENCE FROM THE RECORD  
AND THE HISTORY OF THE  
CRIME, AND THAT'S ONE REASON  
HIS TESTIMONY WOULD HAVE  
BEEN REJECTED.

YOU ALSO HAVE TO LOOK AT  
MR. VALENTINE AND WHAT HE  
WAS DOING AT THE TIME.

MR. VALENTINE DID NOT WANT  
ANY MENTAL HEALTH ISSUES

RAISED.

HE WAS TIGHT LIPPED ABOUT  
HIS HISTORY AND MADE  
STATEMENTS THAT DR. DE, DID  
NOT THINK COULD BILLION TRUE  
ABOUT HIS ENGINEERING  
BACKGROUND AND OTHER THINGS  
EVEN THOUGH HE WAS VERY  
INTELLIGENT, HIS IQ WAS  
ABOUT 113.

SO ONCE YOU PUT DR. DEE ON,  
IT DOESN'T EXPLAIN TO THE  
JURY WHY THIS HAPPENED OR  
GIVE HIM ANY SUBSTANTIAL  
MITIGATION AT ALL WHICH IS  
WHAT TRIAL COURT ULTIMATELY  
INCLUDED IN THIS CASE, THERE  
WAS NO DEFICIENT PERFORMANCE  
BECAUSE THEY WERE ENTITLED  
TO RELY ON OF THE HIM AT  
THAT TIME.

MR. LOPEZ WAS AWARE OF THE  
STATUTORY FACTORS.  
HE COMPLIED WITH THAT, THERE  
WAS REFERENCE TO THE FIRST

CASE WHAT HAPPENED, AND IT  
WAS A SECOND COUNSEL COMING  
ON.

HE FILED A MOTION SEEKING TO  
HAVE A CONFIDENTIAL EXPERT  
APPOINTED.

THE NEW ATTORNEY CAME ON AND  
TOLD THE TRIAL COURT I DON'T  
SEE A REASON FOR EVALUATION,  
WE WAIVE IT AND THAT THAT IS  
OBVIOUSLY NOT WHAT HAS BEEN

--

IT DOES SHOW THAT HE WAS  
DEFICIENT IN THE EVALUATION  
HE PERFORMED, YOU CAN'T JUST  
SAY THE TIME FACTOR THROWS  
EVERYTHING OUT.

IT'S ENOUGH TO INDICATE THAT  
THERE IS A REASON OR ANY  
SUBSTANTIAL MENTAL  
MITIGATION THAT CAN BE  
DEVELOPED AT THAT POINT.

I DON'T NOWHERE THE IDEA  
CAME FROM THAT HE ONLY  
LOOKED AT COMPETENCY ISSUES,

HE WAS LOOKING AT PENALTY  
PHASE ISSUES, HE KNEW WHEN  
THE MENTAL MITT GATORS WERE,  
AND THERE IS NO SHOWING THAT  
HE FELT LIMITED, IF HE WAS  
LOOKING AT COMPETENCY ISSUES  
HE WOULD BE TALKING TO GUILT  
PHASE COUNSEL AT ALL.

SO I THINK IT'S PRETTY CLEAR  
AND WAS PRETTY CLEAR BOTH TO  
THE DOCTOR AND TO THE  
DEFENSE ATTORNEYS THAT HE  
WAS WORKING ON MITIGATION  
AND NOT JUST --

I KNOW THERE HAVE BEEN  
SEVERAL TIMES WHERE THE  
ISSUE WAS THAT THERE MAY  
HAVE BEEN AN EXPERT RETAINED  
FOR GUILT PHASE PURPOSES.

IT'S REFUTED THAT HE WAS  
LOOKING FOR PENALTY PHASE  
ISSUES HERE.

I WILL TURN TO THE FIRST  
ISSUE, I THINK I REVIEWED  
JUST ABOUT EVERYTHING HERE,

BUT THIS IS CLEARLY NOT A  
CASE SIMILAR TO THE STERVA  
CASE, THE COMMENT COMMENTS  
AND REFERENCES TO LIVIA WERE  
NOT MISLEADING IN ANY WAY.

>> DID THEY ACTUALLY GET  
MARRIED?

>> APPARENTLY NOT, NOBODY  
HAS BEEN ABLE TO FIND A  
MARRIAGE CERTIFICATE, LIVIA  
SAYS SHE THOUGHT SHE SAW THE  
DIVORCE DECREE --

>> THIS HAPPENS IN  
LOUISIANA, --

I UNDERSTAND THERE WAS NOT A  
DIVORCE, BUT WAS THERE A  
MARRIAGE?

>> THERE WAS NEVER A  
MARRIAGE CERTIFICATE THAT  
ANYBODY OFFERED INTO  
EVIDENCE.

HER TESTIMONY WAS SHE  
THOUGHT THEY HAD BEEN  
MARRIED.

I DON'T KNOW IF THEY HAD A

CEREMONY, I DON'T KNOW WHERE

THE DISCONNECT IS --

>> I DON'T THINK THIS IN THE

END IS, YOU KNOW, THE --

A BIG DEAL IN THE WHOLE

SCHEME, BUT READING THE

ORDER AND THE OPINION, WE

REFER TO THEM AS HUSBAND AND

WIFE, AND IT'S JUST A

SLIGHTLY --

IT CHANGES IT A LITTLE BIT.

IT DOESN'T GO TO WHERE --

>> INSTEAD OF A DERANGED --

>> YEA, THEY CERTAINLY

BELIEVED, VALENTINE BELIEVED

THEY WERE MARRIED AT THAT

TIME AND THAT WAS ALL BEFORE

THE JURY BECAUSE IN THE

GUILT PHASE COUNTY TILL --

COUNSEL --

>> WHAT WAS THE MOTION THEY

FILED, OR HAD THEY NOT?

>> I DON'T BELIEVE THEY HAD

IN THAT --

HE AND THE PROSECUTOR TRIED

TO EXPLORE THE ISSUE, AND  
THEY SAID LOUISIANA LAW IS  
STRANGE AND COMPLICATED ON  
THIS, I THINK IF YOU TALK TO  
THE DEFENSE ATTORNEY >> THEY  
WERE PUTTING IS SOMETHING  
OVER AND THE DEFENSE LAWYER  
KNEW WHATEVER HE NEEDED TO  
KNOW AND CROSS EXAMINED THE  
SURVIVING VICTIM ON THIS  
ISN'T THE >> YES, AND HE  
POINTED OUT THEY COULD NOT

--

HE CROSS EXAMINED HER VERY  
THOROUGHLY ON THAT AND TRIED  
TO SHOW THAT THE SMAIRNLG  
NOT WHAT HE SAID IT WAS, BUT  
EVEN VALENTINE TESTIFIED HE  
THOUGHT THEY WERE DIVORCED  
AND THERE WAS A VALID  
MARRIAGE, THAT'S HOW  
EVERYONE WAS OPERATING AT  
THE TIME, AND THE COURT  
FOUND THERE WAS NOTHING  
MISLEADING OR INFLAMMATORY

ABOUT THE COMMENTS, I SEE  
I'M OUT OF TIME, THANK YOU,  
I ASK THIS COURT TO AFFIRM  
TO ORDER AND DENY  
POSTCONVICTION RELIEF.

>> THANK YOU, REGARDING THE  
MENTAL MITIGATION, WILLIAMS  
V. SMITH AND WILLIAMS V.  
TAYLOR, AS YOU MENTIONED,  
YOU HAVE TO DO EVERYTHING  
YOU CAN --

>> BUT WHAT YOU DIDN'T  
INCLUDE, AND I DON'T BLAME  
YOU FOR IT, IS THEY WENT TO  
COSTA RICA, THEY WENT TO  
TEXAS, THEY WENT TO  
LOUISIANA, THEY UNCOVER  
BACKGROUND WITNESSES, YOU'RE  
NOT ATTACKING THEIR  
INVESTIGATION ON THE  
BACKGROUND INFORMATION, SO,  
IT GOES TO, WE'RE FOCUSED ON  
IT WAS UNREASONABLE TO RELY  
ON THE DOCTOR SAYING HE  
REALLY DIDN'T THINK THERE

WAS ANYTHING OTHER THAN  
THIS, THAT HE PRESENTED, AND  
GIVEN THAT THIS WAS GOING TO  
BE AN ALIBI DEFENSE, WHICH  
IS A LITTLE DIFFERENT THAN I  
DIDN'T DO IT, AN ALIBI  
DEFENSE IS I'M IN ANOTHER  
PLACE, I THINK IT MAKES IT  
EVEN A LITTLE MORE DIFFICULT  
TO TRY TO GO AND TALK ABOUT  
HIS SUPER EGO AND --

>> SO I JUST --

BUT YOU AGREE WITH THAT,  
RIGHT?

YOU'RE NOT CRITICIZING THEIR  
OTHER INVESTIGATION?

>> WE'RE NOT CRITICIZING THE  
NONMENTAL MITIGATION  
INVESTIGATION EXPWHRP SO --  
THAT DISTINGUISHES THAT, TO  
TALK ABOUT A FULL  
INVESTIGATION OF A PERSON'S  
BACKGROUND.

>> I WOULD NOT SAY --

I DON'T THINK IT DOES

DISTINGUISH IT, BECAUSE I  
BELIEVE YOU NEED TO LOOK IN  
THE PERSON'S FULL BACKGROUND

--

>> I'M NOT SAYING THAT, I'M  
SAYING WHAT'S YOUR BEST CASE  
THAT YOU THINK THIS IS MOST  
LIKE?

>> I THINK OUR BEST CASE  
IT'S MOST LIKE IS PORTER,  
HEARST, --

THIS JUDGE SENTENCED SOMEONE  
WITHOUT KNOWING THEY HAD  
BRAIN DAMAGE.

WE WOULD NOT BE SITTING HERE  
TODAY, MR. VALENTINE WOULD  
BE SERVING A LIFE SENTENCE.

AND HE SPENT A TOTAL OF 7.5  
HOURS ON THE CASE AS A  
WHOLE, 3 HOURS WITH  
MR. VALENTINE.

THIS IS A CAPITAL CASE.

OUR LATE DOCTOR DEE SPENT 16  
HOURS WITH BRAIN DAMAGE,  
MOOD DISORDER, AND BIPOLAR

DISORDER, IF THE JUDGE HEARD  
THAT, SOMEBODY WITH NO  
PENALTY DISORDER OR HISTORY  
OF VIOLENCE AT ALL, HE  
DIDN'T HAVE A FULL PICTURE  
OF WHO HE WAS SENDING TO  
DEATH.

NANNY MY LAST 20 SECONDS, IT  
SEEMS LIKE A SLIGHT THING,  
BUT AS YOU MENTION, THIS  
CASE --

THERE WAS NO PROOF OF ANY  
KIND OF MARRIAGE  
CERTIFICATE, NO PROOF OF  
MARRIAGE, OR ANY TYPE OF  
MARRIAGE, SO THERE'S NO FACT  
OF A MARRIAGE, SO YOU CAN'T  
MISLEAD THE JURY TO GET A  
CONVICTION, A STATISTIC, TO  
DO GOD'S WORK.

YOU HAVE TO FOLLOW THE  
FACTS.

THE FACTS ARE SHE IS MRS. --

I WOULD LIKE TO JUST ASK  
THIS THE COURT REVERSE THE

SENTENCE OF DEATH AND

REVERSE THE CON --

CONVICTION, THANK YOU FOR

YOUR TIME.

>> WE THANK YOU BOTH FOR

YOUR ARGUMENT.