

>> ALL RISE.

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

ALL WHOEVER CAUSE TO PLEAD DRAW
NEAR, GIVE ATTENTION, AND YOU
SHALL BE HEARD.

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

[BACKGROUND SOUNDS]

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

>> MORNING.

WELCOME TO THE FLORIDA SUPREME
COURT.

THE FIRST CASE THIS MORNING WILL
BE CARTER V. STATE.

OH, I'M SORRY.

JUSTICE QUINCE WILL NOT BE
PARTICIPATING IN ORAL ARGUMENTS
BECAUSE OF SHE'S HAD A VERY,
VERY PERSONAL LOSS, AND SHE WILL
BE PARTICIPATING, HOWEVER, IN
ALL THESE CASES.

>> THANK YOU, AND GOOD MORNING.
MY NAME IS FRANK TOCINI, I
REPRESENT THE APPELLANT, PINKNY
CARTER, PARDON ME, AND I WOULD
LIKE TO FOCUS MY ARGUMENT ON OUR
CLAIM DEALING WITH AN
INEFFECTIVE ASSISTANCE OF
COUNSEL AT THE PENALTY PHASE.
I HAVE GREAT RESPECT FOR THE TWO
TRIAL COUNSEL WHO REPRESENTED
MR. CARTER AT THE TRIAL PHASE,
BUT ESSENTIALLY WHAT THEY DID
WAS PUT ON WHAT I CALL A GOOD
GUY DEFENSE AND BASICALLY
SAYING, YES, HE MAY HAVE
COMMITTED THESE HOMICIDES.
HE TOOK THE STAND, HE ADMITTED
WHAT HAPPENED, BUT LET ME TELL
YOU WHAT A GOOD GUY HE IS IN THE
PENALTY PHASE.

THERE WERE, THEY HAD INDICATIONS FROM THEIR INITIAL DOCTOR, DR. HARRY KROP, THAT THERE WAS SOME MENTAL IMPAIRMENT IN CONNECTION WITH MR. CARTER, AND THEN THEY WERE FEARFUL AND, I THINK, LEGALLY THE FACTS THAT THEY DID NOT WANT TO COME OUT WOULD HAVE COME OUT HAD THEY PUT ON DR. KROP.

BUT I SUBMIT THAT THE STRATEGY WAS INEFFECTIVE BECAUSE WHAT THEY GOT WAS SOMETHING LIKE 18 OR 20 WHAT I CALL NONSTATUTORY MITIGATORS INSTEAD OF ATTACKING THE STATE'S CCP AGGRAVATOR AND PUTTING ON AND SEEKING THE TWO MENTAL HEALTH MITIGATORS.

>> YEAH, BUT YOU-- I'M LOOKING AT THE JUDGE'S VERY COMPREHENSIVE ORDER, AND IT'S, IT GOES ON FOR MANY PAGES. AND ON YOUR POINT, HE REVIEWED DR. GOMEZ'S EVIDENTIARY HEARING TESTIMONY, THE TESTIMONY OF MR. WHITE AND MR. CHIPPERFIELD AND THE PENALTY, AND HE REVIEWED THE WHOLE PENALTY PHASE. AND THE COURT FINDS DEFENSE COUNSEL PRESENTED PERTINENT INFORMATION TO THE JURY, THEY CONDUCTED A THOROUGH INVESTIGATION FOR MITIGATION, MADE A REASONABLE STRATEGIC DECISION TO FORGO EXPERT TESTIMONY AND INSTEAD PRESENTED NEARLY 30 LAY WITNESSES WHO HIGHLIGHTED HIS STRENGTHS AND EXPLAINED HIS HARDSHIPS. NOW, WE'VE HAD CASES WHERE WE SORT OF QUESTION IF THAT'S, IF IT WASN'T JUST JUST A LICK AND A PROMISE AS FAR AS THE PENALTY PHASE.

WELL, WE'LL JUST DO THIS, WE'LL DO THAT.

BUT HERE YOU'VE GOT A JUDGE'S FINDING OF A THOROUGH INVESTIGATION, AND YOU WOULD AGREE THERE'S A THOROUGH INVESTIGATION HERE.

YOU'RE DISAGREEING WITH THEIR ULTIMATE CONCLUSION.

AND AS YOU SAY, THESE ARE TWO EXTREMELY EXPERIENCED DEFENSE ATTORNEYS.

AREN'T WE JUST NOW, IF WE WERE TO ACCEPT YOUR VIEW, JUST ESSENTIALLY SECOND GUESSING TRIAL JUDGE'S FINDINGS OF FACT AND ALSO DOING WHAT WE ARE INSTRUCTED NOT TO DO WHICH IS 20/20 HINDSIGHT?

WELL, THAT DIDN'T WORK, BUT IF YOU HAVE ANOTHER CHANCE, MAYBE YOU'LL DO IT A DIFFERENT WAY. BUT, AGAIN, YOU'VE GOT SOME PRETTY HORRENDOUS AGGRAVATING FACTORS IN THIS CASE.

SO I DON'T KNOW HOW YOU GET AROUND, I GUESS, THE FACTUAL FINDINGS, THE FACT THAT THERE WAS A THOROUGH INVESTIGATION, AND IT APPEARS TO ME THAT IT MAY NOT BE THE CHOICE YOU WOULD HAVE MADE, BUT IT WAS A REASONABLE STRATEGIC DECISION.

>> WELL, OBVIOUSLY, I DISAGREE WITH THE TRIAL COURT'S FINDINGS.

>> BUT HOW CAN-- YOU CAN DISAGREE WITH THEM, BUT WHY AREN'T THEY, THE FINDINGS OF FACT BASED ON COMPETENT, SUBSTANTIAL EVIDENCE THAT WE'RE BOUND TO FOLLOW?

>> WELL, I DON'T THINK THE TRIAL COURT TALKED ABOUT WHETHER TO PUT THAT ON IN THE SPENCER HEARING OR NOT.

HE TALKED ABOUT IT IN THE PENALTY PHASE.

I DO NOT RECALL JUDGE DAY MAKING

A FINDING THAT IT SHOULD NOT HAVE BEEN PUT ON IN THE SPENCER HEARING.

>> LET ME ASK YOU WHAT YOU'RE SUGGESTING AND WHAT YOU'RE ARGUING, I THINK, IS THAT DR. GOMEZ FOUND SOME RISK FACTORS IN YOUR CLIENT BASED ON HIS UPBRINGING.

AND HAD THAT BEEN ARGUED, PERHAPS A JUDGE WOULD HAVE BEEN CONVINCED OR THE JURY WOULD HAVE HEARD THE TWO STATUTORY MITIGATORS THAT YOU CLAIM WHICH ARE, I BELIEVE, YOU SAY HE SHOULD HAVE HAD-- HE WAS UNDER THE EXTREME INFLUENCE OF MENTAL OR EMOTIONAL, AND THE SECOND ONE HE WAS UNABLE TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM WITH THE REQUIREMENTS OF THE LAW?

THOSE TWO MITIGATORS, YOUR POSITION IS HAD THEY BEEN INCLUDED, SOMEHOW THINGS WOULD HAVE BEEN DIFFERENT?

>> WELL--

>> GIVEN THE AGGRAVATORS IN THIS CASE?

>> AND THAT'S, OF COURSE, THE ULTIMATE QUESTION, WOULD IT HAVE BEEN DIFFERENT, AND I SHOW THAT? BUT-- AND I SHOW THAT?

BUT CLEARLY, TO USE A STRATEGY WITH AN INDIVIDUAL WHO COMMITTED THREE HOMICIDES AND THEN NOT TO CALL NEUROLOGICAL EXPERTS IN THE SPENCER HEARING, I SUBMIT, IS INEFFECTIVE.

BECAUSE WHAT THEY SAID WAS, AND I THINK IT WAS MR. CHIPPERFIELD WHO SAID WE WANTED TO SHOW THAT, JUDGE THAT HE WAS A GOOD GUY. BUT OF THE 30 WITNESSES THEY CALLED, ONLY FOUR DEALT WITH HIS-- MOST OF THEM DEALT WITH

HIS WORK HISTORY, THE FACT THAT HE HELPED PEOPLE IN THE JAIL AND THING LIKE THAT.

>> PART OF BEING A GOOD GUY.

>> ABSOLUTELY.

ABSOLUTELY.

I'M NOT SUGGESTING THEY DIDN'T PRESENT THAT HE WAS A GOOD GUY.

WHAT I'M SUGGESTING IS THE STRATEGY TO PUT ON A GOOD GUY DEFENSE IN THE SPENCER HEARING AFTER, AFTER BEING CONVICTED OF THREE MURDERS, I DON'T THINK THAT HOLDS WATER.

>> REASONABLE FOR THEM TO CONCLUDE THEY DIDN'T WANT THIS INFORMATION ABOUT THESE, ONE VERY SERIOUS DOMESTIC VIOLENCE INCIDENT WHERE HE HELD A KNIFE TO HIS WIFE'S THROAT AND THE OTHER, THOSE OTHER THINGS THEY WERE CONCERNED ABOUT THAT WOULD COME OUT IF THEY ADOPTED THE STRATEGY YOU SUGGEST.

THEY DIDN'T WANT THE JUDGE TO KNOW ABOUT THAT EITHER.

I MEAN, BECAUSE THAT COULD INFLUENCE THE JUDGE.

>> WELL, I MEAN, I--

>> I MEAN, I DON'T UNDERSTAND WHY WE WOULD PRESUME THAT THE JUDGE WOULD NOT BE INFLUENCED IN HIS SENTENCING, THE ANALYSIS OF WHAT HE WOULD GO THROUGH TO IMPOSE THE SENTENCE, THAT HE WOULD BE UNINFLUENCED BY THOSE BAD THINGS.

>> WELL, I DON'T KNOW WHETHER THE JUDGE WOULD BE INFLUENCED, BUT PERHAPS HE WOULD BE, AND I'D SUBMIT FOR PURPOSES OF THIS DISCUSSION HE WOULD BE.

BUT ON THE OTHER HAND, THEY MADE NO ATTEMPT TO ATTACK THE CCP AGGRAVATOR TO AT LEAST BLUNT IT, AND SECONDLY, I DON'T KNOW HOW

MUCH WORSE IT CAN GET BY BRINGING UP A AGGRAVATED DOMESTIC BATTERY THAT OCCURRED IN THE PAST AFTER BEING CONVICTED OF THREE COUNTS OF FIRST-DEGREE MURDER.

>> WELL, BUT IF THE PICTURE THAT THE JURY AND THE JUDGE HAVE OF THIS DEFENDANT IS THAT THIS IS TOTALLY ABERRATIONAL, A DAY THAT IS UNEXPLAINABLE IN TERMS OF HIS, THE REST OF HIS LIFE, AND A MAN THAT'S NEARLY 50, I THINK, AT THE TIME THIS HAPPENED AND HAD HAD A PRODUCTIVE LIFE. BUT THEN WHEN YOU BRING IN THOSE OTHER THINGS, WELL, NOW THIS GUY'S DONE-- YOU CAN SEE THIS HAS HAPPENED BEFORE.

OR THINGS HAVE HAPPENED NOT LIKE THIS, BUT BAD THINGS HAVE HAPPENED THAT SHOW AN INCLINATION TO DO THIS SORT OF THING.

I MEAN, I DON'T UNDERSTAND WHY THAT'S--

>> AND, AGAIN--

>> UNREASONABLE FOR THE COUNSEL TO LOOK AT IT THAT WAY.

>> I THINK IT WAS REASONABLE AT THE PENALTY PHASE IN FRONT OF THE JURY.

I SUBMIT THAT IT WAS UNREASONABLE IN REGARD TO THE SPENCER HEARING.

>> WELL, I UNDERSTAND THAT'S YOUR POSITION, BUT I DON'T UNDERSTAND THE RATIONALE FOR THAT.

>> I-- JUDGES SENTENCE PEOPLE ALL THE TIME WITH CRIMINAL RECORDS, AND I RECOGNIZE THAT THE COURTS TAKE SOME CONSIDERATION OF AN INDIVIDUAL'S PAST AND SHOULD TAKE SOME CONSIDERATION OF AN INDIVIDUAL'S

PAST.

BUT BY PUTTING ON THE MENTAL MITIGATION AT THE SPENCER HEARING RATHER THAN IN FRONT OF THE JURY, IF THAT WAS THEIR TACTIC, THEY COULD HAVE EXPLAINED WHY THESE SITUATIONS, WHY HE EXPLODED THE WAY HE DID NOT ONLY WITH REGARD TO THE INSTANT OFFENSES, BUT WITH REGARD TO THOSE PAST OFFENSES AS WELL.

>> YOU KNOW, I THINK-- AND, AGAIN, I HAD FORGOTTEN YOU WERE MAKING THIS DISTINCTION.

YOU AGREE THEY WERE REASONABLE IN THEIR PRESENTATION TO THE JURY.

BUT NOW IT'S A QUESTION THEY'RE UNREASONABLE IN THEIR PRESENTATION TO THE JUDGE.

JUST SKIPPING TO, LET'S JUST SAY THERE WAS A THEORY, YOU KNOW WHAT?

THIS IS SUCH IMPORTANT, COMPELLING MENTAL HEALTH TESTIMONY THAT I'M GOING TO LET, YOU KNOW, LET IT COME OUT EVEN THOUGH, FRANKLY, I MEAN, I AGREE WITH WHAT JUSTICE CANADY'S SAYING.

WHEN YOU HEAR ABOUT THOSE DOMESTIC VIOLENCE INCIDENTS, IT REALLY CHANGES YOUR PICTURE OF THIS GUY.

AND, YOU KNOW, WE'RE HEARING A LOT ABOUT DOMESTIC VIOLENCE. BUT THAT'S, WELL, IT WASN'T JUST THAT DAY.

HE HAS-- AND I DON'T KNOW HOW GOING BACK TO THE JUDGE AND GOING BACK TO THE STANDARD DOESN'T UNDERMINE OUR CONFIDENCE IN THE OUTCOME.

SO MAYBE YOU CAN SPEND A FEW MINUTES ADDRESSING, ASSUMING

THAT THEY SHOULD HAVE PUT ON SOME MENTAL HEALTH TESTIMONY IN THE SPENCER HEARING.

HOW DOES IT UNDERMINE OUR CONFIDENCE IN THE OUTCOME GIVEN THE CIRCUMSTANCE OF THIS MURDER AND THE AGGRAVATING FACTORS? HOW COULD IT RESULT IN THE JUDGE DECIDING NOT TO FOLLOW THE JURY RECOMMENDATION OF DEATH, BUT DECIDING TO IMPOSE LIFE?

>> I THINK THAT ANY JUDGE-- AND I REALLY BELIEVE ANY JURY, BUT I WILL FORGO THAT FOR NOW-- WANTS TO HEAR ABOUT, ESSENTIALLY, WHAT MADE THIS PERSON TICK, WHAT'S IN HIS BACKGROUND, WHAT CAUSED THIS-- IF HE WAS A GOOD GUY ALL HIS LIFE OR THE MAJORITY OF HIS LIFE, AND THEN HAD THIS VOLCANIC EXPLOSION.

>> WELL, BECAUSE THIS IS-- HE KILLED, WHO?

WAS IT HIS EX-GIRLFRIEND?

>> YES.

>> OKAY.

AND THE EX-GIRLFRIEND'S BOYFRIEND AND THE EX-GIRLFRIEND'S-- THE CHILD OF HIS EX-GIRLFRIEND.

>> YES.

>> YOU KNOW?

AND SO JEALOUSY, I GUESS, YOU KNOW, HE HAD THIS EXPLOSION ACTING OUT.

HE'S 50 YEARS OLD, IT'S A-- THAT'S-- THIS WAS A GREAT GUY, AND HE WAS JUST BLINDED BY JEALOUSY.

BUT IT WASN'T LIKE THAT IT RISES TO A STATUTORY MITIGATOR THAT HE HAD THESE RISK FACTORS.

I DON'T WANT EVEN SEE THAT IN THIS-- I DON'T EVEN SEE THAT IN THIS CASE.

>> DR. GOMEZ TALKED ABOUT

COMORBID TRAUMA, HE TALKED ABOUT COMPLEX TRAUMA, HE TALKED ABOUT IMPULSIVITY, HE TALKED ABOUT--
>> BUT YET FOR 50 YEARS WITH ALL OF THOSE THINGS OTHER THAN THAT HE, BASICALLY, WAS ABLE TO LIVE HIS LIFE.

SO WHAT WAS IT THAT HE WOULD HAVE SAID ABOUT THE DAY OF THIS MURDER THAT WOULD HAVE JUST SAID TO THAT JUDGE, OH, MY GOODNESS, DESPITE KILLING THREE INNOCENT PEOPLE, I AM GOING TO OVERRIDE, I'M GOING TO DISAGREE WITH THE JURY'S RECOMMENDATION, AND THIS GUY IS WORTHY OF A LIFE SENTENCE?

>> I THINK DR. GOMEZ PLACED GREAT EMPHASIS ON THE FACT THAT MR. -- EXCUSE ME, MR. CARTER WAS ABANDONED AS A CHILD, AND HE TALKS--

>> BUT HE'S 50 YEARS OLD. I MEAN, AGAIN-- OR WHATEVER? HOW OLD IS HE?

>> HE WAS IN HIS LATE 40s, I BELIEVE.

MID TO LATE 40s.

>> SO IF THIS HAPPENED WHEN HE WAS 21, MAYBE, I MEAN, MAYBE THAT'D BE COMPELLING, HE'S ABANDONED AS A CHILD.

IT'S A SAD STATE OF AFFAIRS, BUT AS WE KNOW AND YOU KNOW IN DEATH PENALTY CASES, MOST OF THE DEATH PENALTY DEFENDANTS HAVE HORRIBLE CHILDHOODS.

WE KNOW THOSE ARE FACTORS THAT WILL END UP MAYBE EXPLAINING SOMETHING THAT'S UNEXPLAINABLE. BUT IF YOU SAY BUT YET HE OVERCAME THAT AND HE DID ALL THESE GOOD THINGS THROUGHOUT HIS LIFE, THAT GUY MIGHT BE WORTH SAVING, IT SEEMS TO ME THAT WAS THE BEST SHOT.

AGAIN, I'M SORT OF SAYING,
FRANKLY, I AGREE WITH WHAT THE
LAWYERS DID, AND I DON'T SEE HOW
THIS CASE WOULDN'T BE
QUALIFYING.

YOU KNOW, I MIGHT MAKE A
DIFFERENT DECISION IF I WAS THE
JURY, BUT AS A DEATH PENALTY
CASE.

I'M JUST NOT SEEING IT.

>> YOU'RE INTO YOUR REBUTTAL
TIME.

>> THANK YOU.

>> YOU CAN CONTINUE IF YOU WANT
TO--

>> I'LL WAIT UNTIL REBUTTAL,
YOUR HONOR.

>> MAY IT PLEASE THE COURT,
ASSISTANT ATTORNEY GENERAL
CHARMAINE MILLSAPS.

I'M GOING TO TALK ABOUT THE
ISSUE NUMBER ONE AS WELL.
FIRST, I WANTED TO CLEAR UP A
LITTLE BIT OF WHAT ACTUALLY
HAPPENED AT THE PENALTY PHASE.
YES, HE PRESENTED A GOOD GUY
MITIGATION, BUT HE HAD TO BE
VERY CAREFUL BECAUSE LAY
WITNESSES CAN OPEN THE DOOR TOO.
SO WHAT HE WAS DOING, AND I'LL
USE AS AN EXAMPLE JIMMY CHEN,
ONE OF THE WITNESSES THAT
DEFENSE COUNSEL PRESENTED WHO
TESTIFIED THAT HE WAS IN JAIL AT
THE SAME TIME THAT MR. CARTER
WAS.

AND HE, MR. CARTER, HELPED HIM
ADJUST TO THE LONG SENTENCE THAT
HE WAS FACING.

AND AT ONE POINT MR. CHEN, WHO
WAS 18 YEARS OLD, SAID-- HE WAS
ASKED BY DEFENSE COUNSEL DID YOU
TELL YOUR PARENTS ABOUT
MR. CARTER, AND HE SAID, YES,
AND I TOLD THEM HE WAS A GOOD
GUY.

DEFENSE COUNSEL HIMSELF STOPPED HIM RIGHT THERE AND SAID, YOUR HONOR, THIS ANSWER WAS NONRESPONSIVE.

WHAT WAS HE CLEARLY WORRIED ABOUT?

WHAT HAPPENED NEXT WAS THE PROSECUTOR STOOD UP AND SAID THAT THAT TESTIMONY HAD OPENED THE DOOR.

AND, BUT DEFENSE COUNSEL HIMSELF HAD STOPPED THE ANSWER, AND SO THE TRIAL COURT RULED, NO, IT DID NOT OPEN THE DOOR.

SO REMEMBER THE 27 LAY WITNESSES WHILE HE VERY MUCH PRESENTED GOOD GUY, HE HAD TO BE CAREFUL WITH THEM TOO.

YOU HAVE TO BE CAREFUL WITH LAY WITNESSES NOT TO OPEN THE DOOR. THE PROBLEM WITH MENTAL EXPERTS IS THEY AUTOMATICALLY OPEN THE DOOR.

SO HE PRESENTED WITHIN THE PARAMETERS OF KEEPING THAT DOOR CLOSED WHICH THEY TESTIFIED AT THE EVIDENTIARY HEARING WITH THE OVERWHELMING CONSIDERATION, PRESENT GOOD GUY BUT NOT OVER TO THE POINT WHERE IT BECOMES CHARACTER EVIDENCE THAT WOULD OPEN THE DOOR TO THIS.

SO THEY'RE BEING VERY CAREFUL.

AND LET ME GIVE YOU THE PAGE CITE ON THAT.

2694-2699.

THAT'S-- AND YOU CAN SEE DEFENSE COUNSEL HIMSELF MAKING SURE THAT THE DOOR STAYS CLOSED. SO HE'S WALKING A FINE LINE THERE.

BUT WHAT HE SAID WAS PUTTING ON THE MENTAL HEALTH EXPERTS WOULD AUTOMATICALLY OPEN THAT DOOR, AND THAT'S WHY HE DIDN'T WANT TO DO IT.

IT'S VERY CLEAR THAT KEEPING THAT DOOR CLOSED BOTH FROM THEIR EVIDENTIARY HEARING TESTIMONY AND FROM THE TRIAL TRANSCRIPT ITSELF WAS AN OVERWHELMING CONSIDERATION.

>> WHAT WOULD YOU CONSIDER TO BE THE WORST INFORMATION--

[INAUDIBLE]

>> IT WOULD HAVE BEEN THE 1994 WHICH IS JUST, IT'S NOT EVEN TEN YEAR WITHS BEFORE-- YEARS BEFORE.

SIX TO EIGHT YEARS BEFORE.

INCIDENTALLY, THE DEFENDANT WAS 47, JUST TO GET EXACTLY HOW OLD HE WAS STRAIGHT.

WHAT WOULD HAVE HAPPENED WITH THAT OKLAHOMA, WITH HIS EX-WIFE-- HER NAME WAS--

>> WELL, YOU DON'T HAVE TO GO INTO ALL THE DETAILS, THAT DOESN'T MATTER.

>> HER NAME WAS CARLA FINN, AND IT WAS A CONVICTION FOR AN ASSAULT WITH A DEADLY WEAPON, AND IT INVOLVED A KNIFE AND A MASK WHERE HE BROKE IN.

AND INCIDENTALLY, THEY WENT TO DR. GOMEZ, THE EXPERT THAT THEY SAY SHOULD HAVE BEEN PRESENTED, USED THAT AS, HE SAID THAT PROVED-- HE USED THAT AS A BASIS FOR SEXUAL DEVIANCY. THAT'S THE LAST THING YOU WANT TO DO IS WHEN YOU'RE TRYING TO PRESENT-- THINK HOW INCONSISTENT THIS IS.

A GOOD GUY DEFENSE, BUT YOUR OWN MENTAL HEALTH EXPERT THEN GETS UP AND TELLS THE JURY OR THE JUDGE, QUITE FRANKLY, THAT A HE'S A SEXUAL DEVIANT?

I WOULD ALSO LIKE TO TALK A LITTLE BIT ABOUT THE MENTAL IMPAIRMENTS THAT DR. --

>> SO THOSE, IT'S JUST THIS ONE INCIDENT THAT YOU SAY IS THE, IS THE WORST INFORMATION THAT WOULD HAVE COME OUT?

>> THAT IS THE WORST. THERE WERE SOME OTHER SPRINKLING.

INCIDENTALLY, I'M NOT SURE-- THE PROSECUTOR DEFINITELY KNEW ABOUT THE EX-WIFE, CARLA FINN. I'M NOT SURE HOW MUCH AT THE TIME THE PROSECUTOR KNEW.

FOR EXAMPLE, CHIPPERFIELD, ALAN CHIPPERFIELD WAS PRESENTING NOT JUST HOW HARD HE WORKED, BUT HE SERVED HIS COUNTRY IN THE AIR FORCE.

BUT, IN FACT, IN THE AIR FORCE THERE WAS A LITTLE PROBLEM AS WELL.

NOT THE DETAILS OF THOSE CAME OUT.

THE WORST INCIDENT IS THAT OKLAHOMA CONVICTION FOR ASSAULT WITH A DEADLY WEAPON.

BUT I'D LIKE TO TALK ABOUT I DON'T THINK MR. GOMEZ HELPS YOU, EVEN FORGETTING THAT FOR A MINUTE.

NOW, YOU CAN'T FORGET THAT BECAUSE THAT'S WHAT COUNSEL'S TESTIMONY IS THAT THEY'RE TRYING TO PREVENT.

BUT I'D ALSO JUST LIKE TO CONVINCING YOU INDEPENDENTLY THAT MR. GOMEZ, DR. GOMEZ IS NOT A GOOD WITNESS FOR YOU.

WHEN HE TALKS ABOUT MENTAL IMPAIRMENT, LET ME TELL YOU EXACTLY WHAT DR. GOMEZ DID. OKAY.

DR. KROP, WHO WAS HIRED BY E WE DEFENSE COUNSEL PRETRIAL, AND DR. MILLER DID SAY THERE WERE SOME SIGNS AND RECOMMENDED THAT THEY HAVE A PET SCAN AND AN MRI

DONE.

THIS WAS DONE PRETRIAL AS PART OF MENTAL MITIGATION.

SO THERE WAS NOT ONE, NOT TWO, BUT A THIRD MENTAL-- WELL, A THIRD EXPERT, DR. McRAINY, WHO DID BOTH AN MRI AND A PET SCAN. AND THERE WERE NO GROSS ABNORMALITIES.

YOU'RE NOT GOING TO GET VERY FAR WITH MENTAL IMPAIRMENT, BECAUSE WHAT THE STATE'S GOING TO BE ABLE TO DO IS GET THOSE MRIS AND A PET SCAN AND SHOW THERE'S NO MAJOR IMPAIRMENT.

MINOR LITTLE IMPAIRMENTS THAT, QUITE FRANKLY, ALMOST EVERYBODY HAS.

IT'S TRUE, DO NOT SHOW UP ON AN PET SCAN OR MRI.

BUT IT'S SO COMMON THAT IT'S MEANINGLESS MITIGATION.

I'D ALSO LIKE TO DIRECTLY TALK ABOUT THE DOJ STUDY.

THAT IS NOT A BASIS FOR STATUTORY MENTAL MITIGATION.

THE DOJ RISK AND PROTECTIVE FACTORS ARE NOT A BASIS FOR MENTAL MITIGATION.

THEY'RE A FORM OF MITIGATION BECAUSE THEY TALK ABOUT YOUR BACKGROUND AND POVERTY AND GROWING UP AND YOUR RISK FACTORS.

SO THEY'RE A FORM OF NONSTATUTORY, NONMENTAL MITIGATION.

YOU CAN'T EVEN USE THIS TO GET TO EITHER ONE OF THE STATUTORY.

THE DOJ STUDY IS NOT MENTAL MITIGATION.

IT'S ANOTHER TYPE OF MITIGATION, BUT IT DOES NOT SUPPORT ANY TYPE OF MENTAL MITIGATION, MUCH LESS STATUTORY.

THERE'S ANOTHER PROBLEM WITH THE

DOJ STUDY.

IT DOESN'T REALLY SEEM TO APPLY TO MR. CARTER.

ONE OF THE BIGGEST RISK FACTORS FOR VIOLENCE ACCORDING TO THE DOJ STUDY IS AGE.

AND AFTER A CERTAIN AGE, AFTER 40 YOUR RISK FOR VIOLENCE IS SUPPOSED TO GO DRAMATICALLY DOWN.

YET MR. CARTER IS 47 WHEN THIS CRIME OCCURS.

UNDERSTAND A LOT OF THE RISK AND PROTECTIVE FACTORS, FIRST, THEY WERE PRESENTED THROUGH THE LAY WITNESSES.

THEY WEREN'T CALLED THAT.

THEY WEREN'T LABELED THAT.

THEY JUST TALKED ABOUT HIS VERY GOOD WORK HISTORY, HIS SERVING HIS COUNTRY THROUGH THE AIR FORCE, HIS ATTENDING COLLEGE.

THAT'S THE OTHER THING.

THE DOJ RISK STUDY SAYS ATTENDING COLLEGE IS A RISK FACTOR.

YOUR RISK FOR VIOLENCE IS SUPPOSED TO GO DOWN.

ONCE AGAIN, THAT DOESN'T SEEM TO APPLY TO MR. CARTER WHO DID ATTEND COLLEGE YET STILL ENGAGED IN THE VIOLENCE.

I DON'T THINK-- THIS DOJ STUDY IS NOT GOING TO BE VERY COMPELLING TO A JUDGE WHEN IT DOESN'T SEEM-- IT'S NOT A BASIS FOR MENTAL MITIGATION AND DOESN'T ACTUALLY SEEM TO APPLY TO MR. CARTER.

SO I-- AND, YOUR HONOR, JUST TO CITE A CASE, IN THE CASE OF BRADLEY, THIS COURT HAS ALREADY REJECTED THAT WHEN YOU PRESENT A PARTICULAR TYPE OF MITIGATION CASE DURING PENALTY PHASE THAT YOU MUST SWITCH GEARS AND

PRESENT SOMETHING MORE OR
DIFFERENT AT SPENCER, AT THE
SPENCER HEARING.

THIS YOUR CASE OF BRADLEY,
YOU'VE ALREADY REJECTED THAT,
AND I PERSONALLY DON'T THINK AN
INCONSISTENT STUDY THAT IS
INCONSISTENT WITH YOUR DEFENSE,
THAT DOESN'T SEEM TO APPLY TO
THE DEATH DEFENDANT AND IS-- TO
THE DEFENDANT AND IS NOT A BASIS
JUST AS A MATTER OF LOGIC AND
LAW FOR ANY KIND OF MENTAL
MITIGATION IS GOING TO BE ANY
MORE COMPELLING TO A JUDGE THAN
IT WAS TO A JURY.

AND WE ASK YOU, WE ASK YOU TO
AFFIRM IF THERE ARE NO
QUESTIONS.

THANK YOU.

ASK YOU TO AFFIRM THE DENIAL OF
CONVICTION RELIEF.

THANK YOU.

>> COUNSEL, JUST ONE OBSERVATION
BEFORE YOU BEGIN.

THE JURY RECOMMENDATIONS THIS
THIS CASE-- IN THIS CASE, I
FIND IT TO BE INTERESTING AS TO
VICTIM PAFFORD IT WAS 9-3 FOR
DEATH.

AS TO VICTIM REED, THE
EX-GIRLFRIEND, IT WAS 8-4.

AND AS TO THE YOUNG GIRL, I
THINK SHE WAS A TEENAGER, IT WAS
LIFE.

BUT SOMEHOW WHATEVER DEFENSE
COUNSELS WERE DOING, THEY WERE
MOVING SOME OF THE JURORS.

THEY WERE BUYING IT.

>> I AGREE.

>> YOU DIDN'T GET NUMBERS, BUT
THEY WERE BUYING IT.

>> I-- I'M SORRY, I DIDN'T MEAN
TO INTERRUPT YOU.

>> NO, GO AHEAD.

>> I THINK THAT MR. CARTER'S

TESTIMONY ITSELF AT THE TRIAL WAS WHAT CONVINCED THE JURORS. I MEAN, HE TOOK FULL RESPONSIBILITY FOR WHAT HE DID. THE THEME FROM DEFENSE COUNSEL, AS PROBABLY I WOULD HAVE DONE, IS TO ARGUE THAT THESE ARE SECOND-DEGREE MURDERS AND NOT FIRST-DEGREE MURDERS.

BUT PUTTING MR. CARTER ON THE STAND WHO TOOK RESPONSIBILITY FOR THE ACTIONS HERE, I THINK, IS WHAT, IN MY OPINION, WHAT CONVINCED THE JURY.

>> WELL, SO GIVEN THAT AND, AGAIN, I GUESS YOU'RE SAYING WOULDN'T THE JURY SHOULDN'T HAVE HEARD THE OTHER THINGS.

WHAT JUSTICE LABARGA IS FOLLOWING UP ON, IT'S LIKE, WELL, NOW YOU START TO PUT ON SOMETHING, AND I DON'T AGREE MENTAL HEALTH IS NECESSARILY EXCUSES, BUT SOMEONE NEEDED TO UNDERSTAND WHY HE DID THIS. BUT DOESN'T IT STILL GO BACK TO THAT DR. GOMEZ REALLY DOESN'T EXPLAIN THAT, AND MS.MILLSAPS GIVES A PRETTY COMPELLING ALTERNATIVE THAT WHAT WOULD HAVE COME OUT WAS NOT EVEN, I MEAN, AGAIN, THEY DIDN'T HAVE TO PICK DR. GOMEZ, THEY HAD DR. KROP, AND THEY DID FOLLOW UP WITH DR. KROP.

DR. KROP HAD RECOMMENDED TESTING, AND ALL OF THAT DIDN'T REALLY SUPPORT A COMPELLING MENTAL HEALTH EXPERT TESTIMONY MITIGATION.

SO HOW DO YOU-- I'M STILL TRYING TO UNDERSTAND HOW YOU THINK JUST PUTTING IT ON THE SPENCER HEARING WOULD HAVE BEEN-- NOT PUTTING IT ON IS AN UNREASONABLE STRATEGY.

>> THREE DOCTORS FOUND THERE WAS SOME NEUROLOGICAL IMPAIRMENT. IT'S NOT UNUSUAL TO NOT FIND ANYTHING OR DOCUMENT ANYTHING FROM A PET/MRI SCAN CAN THAT IS A COMMON OCCURRENCE.

DR. GOMEZ'S POSITION, AS I SEE IT, WAS TO PUT ON USING THE DOJ AND IT'S ALSO A CDC, THEY JOINTLY DID IT, THESE RISK AND PROTECTIVE FACTORS, USING THAT AS A PLATFORM TO DEMONSTRATE THE TRAUMA THAT MR. CARTER SUFFERED IN HIS LIFE.

AND HE TALKED ABOUT COMORBID TRAUMA, AGGRAVATED TRAUMA AND COMPLEX TRAUMA.

AND THAT, I SUBMIT, IS WHAT AT LEAST THE JUDGE SHOULD HAVE HEARD IF NOT THE JURY.

>> SOUNDS LIKE JUST THINK ABOUT EVERY-- AND YOU'VE HAD A LOT OF DEATH CASE THAT IS YOU'VE HANDLED ON POSTCONVICTION.

THAT'S LIKE SAYING AND I KNOW WE-- UNLESS YOU PUT ON A MENTAL HEALTH EXPERT EVEN IF IT'S NOT REALLY COMPELLING TESTIMONY, YOU'RE DEFICIENT.

WE'VE NEVER, EVER ARTICULATED SUCH A RULE.

ARE YOU, ISN'T THAT SORT OF WHAT YOUR ASKING US TO DO HERE?

>> WELL, I BELIEVE THAT THEY HAD A STRATEGY THAT WAS INEFFECTIVE WITH REGARD TO NOT PUTTING THAT ON AT THE SPENCER HEARING.

MY EXPERIENCE HAS BEEN-- AND, OBVIOUSLY, I AM NOT AWARE OF EVERY CASE-- THAT USUALLY THE GOOD GUY DEFENSE DOESN'T WORK.

I MEAN, I--

>> I DON'T KNOW, I THINK WHAT JUSTICE LABARGA SAID, IT'S PRETTY INCREDIBLE THAT THE JURY DIDN'T FIND 12-0 ON ALL THREE OF

THESE, WHETHER IT'S HIM
ACCEPTING RESPONSIBILITY OR THE
JURY SAYING MAYBE, THIS GUY
SERVED HIS COUNTRY, HE DID ALL
THESE THINGS, AND THIS WAS AN
ABERRATION X HE'S ACCEPTING IT,
AND HE FEELS AWFUL ABOUT IT.
MAYBE HE SHOULD, SOME OF THEM
THOUGHT MAYBE HE WAS, YOU KNOW,
A LIFE SENTENCE SHOULD BE
IMPOSED.

AND ONCE YOU GET INTO THIS
OTHER, THE DOMESTIC VIOLENCE AND
THE AGGRAVATED ASSAULT CHARGES,
IS IT TRUE THEY WOULD HAVE HEARD
ABOUT, THE JUDGE, ABOUT HIM
BEING A SEXUAL DEVIANT?

>> THAT'S WHAT DR. GOMEZ WOULD
HAVE RECEIVED TO.

HOW IS THAT, HOW DOES THAT HELP?
THAT DOESN'T HELP YOUR CLIMATE.

>> WELL, AND RESPECTFULLY, I
DISAGREE.

WHILE I'M NOT-- I WOULDN'T BE
PROUD TO BE TAGGED WITH THAT
SEXUAL DEVIANT TITLE, I SUBMIT
CAN IT BE MUCH WORSE THAN BEING
CONVICTED OF THREE FIRST-DEGREE
MURDERS?

>> WELL, MY-- AGAIN, WE HEAR
THESE POSTCONVICTION CASES DAY
IN AND DAY OUT THIS ORAL
ARGUMENTS AND IN CONFERENCE, AND
I CAN'T HELP BUT THINK HAD HE
GONE, HAD THE DEFENSE ATTORNEY
GONE THE ROUTE YOU SUGGEST WITH
DR.GOMEZ AND LET THE CHIPS FALL
WHERE THEY WILL, YOU'D BE
STANDING HERE TELLING US THEY
SHOULDN'T HAVE DONE THAT, THENAR
HAVE GONE THE OTHER ROUTE--
THEY SHOULD HAVE GONE THE OTHER
ROUTE.

IT JUST SEEMS TO BE LIKE A
MONDAY MORNING QUARTERBACK IN
THESE CASES.

WHICHEVER ONE WORKS IS FINE.
IF IT DOESN'T WORK, YOU DIDN'T
DO YOUR JOB.

>> WELL, I'VE BEEN AT THE TRIAL
LEVEL TOO AND USED STRATEGIES
THAT DID NOT WORK, SO I
UNDERSTAND AND TRY AND DO BETTER
THE NEXT TIME.

BUT, AGAIN, AT LEAST IN THE LAST
TEN YEARS OR SO I'VE NEVER SEEN
A GOOD GUY DEFENSE WORK.

BUT ANYWAY, ARE THERE ANY OTHER
QUESTIONS?

THANK YOU.

>> THANK YOU.

THANK YOU FOR YOUR ARGUMENTS.