>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE,
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR, GIVE ATTENTION.
YOU SHALL BE HEARD.
GOD SAVE THESE UNITED STATES,
GREAT STATE OF FLORIDA,
HONORABLE COURT.
[THE JUSTICES TOOK THE BENCH.]
>> LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> GOOD MORNING.
WELCOME TO THE FLORIDA SUPREME
COURT.
THE FIRST CASE ON THE DOCKET IS
SALAZAR VERSUS STATE.
>> MAY IT PLEASE THE COURT, I'M
RICK SICHTA.
I REPRESENT MR. SALAZAR, THE
APPELLANT AND PETITIONER IN THIS
CASE.
>> PLEASE TALK INTO THE MIC.
>> I'M SORRY.
I WANT TO TALK ABOUT TWO ISSUES
TODAY, THE FIRST BEING ONE OF
THE MOST BASIC RIGHTS UNDER THE
SIXTH AND FOURTEENTH AMENDMENT
AND THAT IS THE RIGHT TO A FAIR
AND IMPARTIAL AND UNBIASED JURY.
THIS COURT IN SINGER V STATE, IF
THERE'S ANY REASONABLE DOUBT TO
DOUBT A JUROR'S IMPARTIALITY,
THAT JUROR MUST BE STRUCK FOR
CAUSE.
IN THIS CASE DEFENSE COUNSEL
MOVED TWICE FOR CAUSE ON A JUROR
THAT TAUGHT THE VICTIM'S
SIX-YEAR-OLD CHILD WHILE THIS
CASE WAS GOING ON, HAD
CONVERSATIONS ABOUT THE CASE
WITH OTHER TEACHERS WHERE THEY
HAVE LUNCH AND SPECIFICALLY
STATED THAT SHE HAD BIAS AND
SYMPATHY FOR THIS CHILD.
>> IF IT WAS -- SHOULD HAVE BEEN
A CAUSE CHALLENGE, IS THERE --
COULD YOU GO OVER THAT THE JUDGE

-- THAT HE ASKED FOR A
PEREMPTORY AND THEN HE
IDENTIFIED A JUROR.
BUT THEN DID HE THEN SAY I AGREE
TO THE JURY?
WHAT WAS THE SEQUENCE?
AND HOW CLOSE IN TIME DID THE
OBJECTION AND THE IDENTIFICATION
OCCUR TO WHEN HE THEN SAID I
ACCEPT THE JURY?
>> YES, YOUR HONOR.
THERE WERE TWO OBJECTIONS.
ONE OCCURRED EARLY IN JURY
SELECTION RIGHT AFTER THIS JUROR
SAID THAT SHE HAD SYMPATHY AND
BIAS FOR THE CHILD AND THEN
TALKED ABOUT HER EXTREME VIEWS
ON THE DEATH PENALTY AND SAID
SHE WOULD NOT HAVE A PROBLEM
RECOMMENDING DEATH IF FACTS WERE
STRONG.
DEFENSE COUNSEL OBJECTS.
IT'S CLEAR THAT THE JUDGE
UNDERSTANDS THEY'RE TALKING
ABOUT THIS JUROR BECAUSE THE
JUDGE SAYS THIS JUROR SAID SHE
HAD THIS CHILD IN HER CLASS.
>> SHE HAD THE CHILD OF ONE OF
THE VICTIMS.
>> THE ONE THAT WAS SHOT TWICE
IN THE HEAD, YES.
AND IT'S UNCLEAR WHETHER THAT
CHILD IS ACTUALLY THE CHILD OF
THE MOTHER THAT WAS ACTUALLY
KILLED IN THIS CASE.
WE DON'T KNOW.
THE RECORD IS UNCLEAR.
BUT STILL IT'S DEFINITELY ONE OF
THE VICTIMS.
THAT BRINGS UP AN EXCELLENT
POINT.
>> LET'S JUST GET TO THE
PRESERVATION ISSUE BECAUSE
MISS CAMPBELL IS SAYING IT
WASN'T PRESERVED.
YOU'RE TALKING ABOUT A HABEAS
CLAIM.
SO IF IT WASN'T PRESERVED, THEN
THE APPELLATE LAWYER WOULD NOT
BE DEFICIENT IN RAISING IT.

THE DEFENSE LAWYER MIGHT BE
DEFICIENT IN NOT PRESERVING IT,
BUT IN CARATELLI YOU WOULD HAVE
TO SHOW THAT A BIASED JUROR
ACTUALLY SAT, AND THIS JUROR WAS
STRUCK.
SO IT'S REALLY JUST THE
APPELLATE ISSUE.
>> AFTER THE FIRST OBJECTION
THERE WAS ANOTHER OBJECTION
WHERE THE COUNSEL SAID I WANT TO
STRIKE THIS JUROR AGAIN BECAUSE
OF HER EXTREME VIEWS OF THE
DEATH PENALTY AND I WANT TO PUT
ON ANOTHER JUROR.
SO HE EXHAUSTS HIS PEREMPTORIES.
THE JUDGE AGAIN --
>> DID YOU SAY HE EXHAUSTED HIS
PEREMPTORY CHALLENGES?
>> YES, YOUR HONOR.
>> DID HE REQUEST ADDITIONAL
CHALLENGES?
>> HE DID.
SO HE'S DONE EVERYTHING HE IS
SUPPOSED TO UP TO THIS POINT.
>> HE GOT ONE ADDITIONAL
PEREMPTORY CHALLENGE.
>> THAT'S CORRECT.
>> AND YOU'RE ONLY CLAIMING THAT
ONE OF THE JURORS -- THAT ONE OF
THE CAUSE CHALLENGES WAS
IMPROPER, IMPROPERLY DENIED.
>> JUROR W, THE ONE THAT
EXPRESSED SYMPATHY AND BIAS FOR
THE CHILD, THAT'S CORRECT.
AND TO ANSWER YOUR HONOR'S
POINT, WHEN THAT ATTORNEY MOVED
FOR THAT CAUSE CHALLENGE, THE
JUDGE RECOGNIZES WHY HE'S MOVING
FOR IT.
THIS JUROR WAS ONE OF THE
TEACHERS OF THIS CHILD AND SHE
HAD VIEWS ON THE DEATH PENALTY,
BUT SHE SAID SHE COULD BE FAIR
AND IMPARTIAL.
BUT SHE SAID IT BEFORE SHE SAID
SHE WAS BIASED.
ON THE NEXT PAGE ON THE RECORD,
1101 ON VOLUME 11, THE VERY NEXT
PAGE THEY PICK THE JURY.

THEY SAY DEFENSE ACCEPTS.
AND EVERY SINGLE DISTRICT COURT OF APPEAL AND OUR MIDDLE DISTRICT COURT IN FLORIDA SAYS THAT THERE'S AN EXCEPTION.
WHAT YOU'RE TALKING ABOUT IS THE COURT IN JOINER, WHERE IT SAYS IF DEFENSE COUNSEL DOESN'T OBJECT RIGHT BEFORE THE JURY WAS SWORN, THERE MUST HAVE BEEN SOME INTERVENING CAUSE THAT SAID I DON'T NEED TO OBJECT.
>> DEFENSE COUNSEL SAID DEFENSE AGREES, RIGHT?
WASN'T IT INCUMBENT UPON THE LAWYER AT THAT MOMENT TO SAY I OBJECT?
>> NO.
IT WOULD HAVE BEEN FUTILE BECAUSE IT'S A PAGE AFTER HE GIVES HIS OBJECTION AGAIN.
>> WHAT DOES IT MEAN WHEN HE SAYS DEFENSE AGREES?
>> HE MEANS THAT HE KNOWS HE CAN'T DO ANYTHING FURTHER.
JUDGE, THIS HAS BEEN EXPLAINED IN THE FIRST, SECOND, THIRD, FIFTH DISTRICTS.
>> WHEN THE JUDGE SAYS TO MAKE SURE WE'RE IN AGREEMENT, HE SAYS ANY OBJECTION, AND THE DEFENSE SAYS DEFENSE AGREES.
SO THAT DOESN'T MEAN THAT DEFENSE AGREES?
>> NOT WHEN HE OBJECTED ON THE VERY NEXT PAGE.
>> YOU MEAN THE PAGE BEFORE.
>> THANK YOU.
THE PAGE BEFORE.
HE SPECIFICALLY SAID IT, NOT ONCE, BUT TWICE TO THIS JUDGE.
THE VERY NEXT PAGE HE SAYS I AGREE BECAUSE HE CAN'T DO ANYTHING ELSE.
IF THE ATTORNEY SAYS IT A THIRD TIME, THE JUDGE IS PROBABLY GOING TO CHASTISE HIM BECAUSE HE DID IT 30 SECONDS BEFORE THAT.
>> THE JUDGE IS ACTUALLY INVITING AN OBJECTION.

IT'S A DIFFERENT SITUATION IF
THE JUDGE JUST PROCEEDS.
BUT THE JUDGE IS INVITING AN
OBJECTION.
SO THE IDEA THAT SOMEHOW THE
JUDGE IS GOING TO BE UPSET OR
THAT IT'S FUTILE WHEN THE JUDGE
IS INVITING IT, I DON'T GET
THAT.
>> THE JUDGE INVITED IT THE
FIRST TIME
>> BUT HE'S INVITING IT AGAIN.
>> HOW MANY TIMES DOES HE HAVE
TO OBJECT?
DOES HE HAVE TO OBJECT A THIRD
TIME 30 SECONDS AFTERWARDS?
THAT'S WHAT ALL THE OTHER COURTS
IN FLORIDA, THE DISTRICT COURTS,
SAY.
>> THIS IS SORT OF AN
INTERESTING ISSUE.
THE POINT IS IF THIS HAD BEEN
BROUGHT UP ON DIRECT APPEAL,
WOULD THIS COURT HAVE SAID IT
WASN'T PRESERVED.
AND YOU'RE SAYING BASED ON ALL
THE CASE LAW, THAT WOULDN'T HAVE
HAPPENED.
BUT MY QUESTION REALLY IS -- AND
THIS IS -- WE GET THIS
INEFFECTIVE ASSISTANCE OF
APPELLATE COUNSEL.
>> RIGHT.
>> ARE WE POSITIVE THAT THIS
TRANSCRIPT'S ACCURATE, THAT
THAT'S WHAT HAPPENED?
DO WE KNOW WHETHER -- AND DOES
THIS MATTER, THAT THE APPELLATE
ATTORNEY LOOKED AT THIS, TALKED
TO THE DEFENSE ATTORNEY TO
DISCUSS THIS.
DO WE KNOW WHETHER THERE WAS A
REASON THAT THE APPELLATE
COUNSEL DIDN'T BRING IT UP?
DOES THERE NEED TO BE AND HAS
THERE EVER BEEN -- NOT IN THIS
COURT, BUT IN ANY OF THE COURTS
-- A LIMITED RELINQUISHMENT FOR
-- TO -- ASSUMING WE AGREE WITH
YOU -- AND THERE MAY BE SOME

THAT DON'T, BUT I'M SOMEWHAT
SYMPATHETIC TO YOUR VIEW, BUT I
DON'T KNOW IF IT'S AN AUTOMATIC
YOU JUST -- IF YOU WOULD HAVE
WON ON THE APPEAL, YOU JUST WIN
HERE.
IN OTHER WORDS, IS THE STANDARD
EXACTLY THE SAME.
THAT IS, IF WE WOULD HAVE
REVERSED BASED ON THIS ON DIRECT
APPEAL, DO WE HAVE AN OBLIGATION
TO REVERSE ON THIS ON
POST-CONVICTION EVEN THOUGH NO
BIASED JUROR SAT.
SAME IN CARATELLI.
SHOULD THE STANDARD BE
DIFFERENT?
>> NO.
I THINK THE STANDARD SHOULD BE
THE SAME.
>> BUT WHY?
IN OTHER WORDS, WHAT YOU END UP
HAVING IS A POTENTIAL AN
APPELLATE LAWYER MISSES
SOMETHING AND JUST SAYS THIS
WILL GIVE SOMEBODY A FREE PASS
YEARS LATER FOR A NEW TRIAL.
SO DON'T WE NEED TO -- BEFORE WE
JUST SAY AUTOMATICALLY,
SHOULDN'T -- IS THERE ANY CASE
LAW ON THAT, THAT IT'S EXACT
SAME STANDARD?
OR WHY WOULDN'T IT GO BACK TO
UNDERMINING CONFIDENCE IN THE
OUTCOME AND USING THE CARATELLI
STANDARD FOR SOMETHING LIKE THIS
INVOLVING A JUROR?
NO BIASED JUROR SAT.
>> I'M UNAWARE OF ANY CASE LAW
THAT MAKES THAT DISTINGUISHMENT.
>> DOESN'T HELP YOU.
DOESN'T WHAT I'M SAYING MAKE
SENSE?
>> I THINK IT'S IRRELEVANT
BECAUSE UNDER EITHER STANDARD
THIS IS GOING TO BE REVERSED.
THIS JUROR EXPRESSED ACTUAL
BIAS.
>> BUT SHE DIDN'T SIT.
>> RIGHT.

>> YOUR CLIENT WAS NOT CONVICTED BY A JURY THAT INCLUDED THIS JUROR.
>> BUT OUR CLIENT'S DUE PROCESS RIGHTS WERE VIOLATED WHEN THAT CAUSE PROCESS WAS NOT CHALLENGED AND THAT OTHER JUROR ALLOWED TO SIT UNDER A STANDARD THIS COURT HAS BEEN USING FOR YEARS.
>> SO YOU'RE SAYING YOU CAN BRING SOMETHING UP ON POST-CONVICTION AND IT'S THE IDENTICAL STANDARD.
IF IT HAD BEEN A REVERSAL ON THE ORIGINAL APPEAL, IT'S THE EXACT SAME STANDARD FOR POST-CONVICTION.
I'M NOT SURE THAT THAT MAKES JURIS PRUDENTIAL SENSE IF WE'RE TRYING TO PROTECT THE INTEGRITY OF THE PROCESS.
>> HONESTLY, I DON'T KNOW THE ANSWER TO THAT QUESTION, JUDGE.
ALL I KNOW IS THIS SHOULD HAVE BEEN BROUGHT UP ON DIRECT APPEAL BECAUSE IT STOOD OUT VERY CLEAR TO EVERYBODY INVOLVED IN OUR FIRM.
THIS IS A JUROR THAT SAID SHE COULD BE FAIR AND IMPARTIAL, BUT THEN EXPRESSES HER BIAS AND STRONG FEELINGS FOR THE DEATH PENALTY, WAS NEVER REHABILITATED BY ANYBODY, AND THEN THE TRIAL COURT MAKES THE ERROR AND THE APPELLEE ALSO FOLLOWS ALONG THE SAME LINES.
>> WE'VE TALKED ABOUT THIS JURY ISSUE.
WE'RE NOT GOING TO COME TO A CONSENSUS, BUT I'D LIKE YOU TO ADDRESS THE INEFFECTIVE ASSISTANCE OF COUNSEL AT THE PENALTY PHASE ISSUE.
>> YES, YOUR HONOR.
I WANT TO SAVE TIME FOR MY CO-COUNSEL HERE.
IN THIS CASE THERE WERE SIX -- AND I HATE TO USE THE ADJECTIVE FLIMSY MITIGATORS.

THERE WAS BARELY ANY
INVESTIGATION DONE.
DR. CROP SAID I SAW THE CLIENT
ONCE.
HE ASKED FOR MORE RECORDS AND
TESTING AND THEY IGNORED HIM.
IN POST-CONVICTION --
>> YOU'RE SAYING THEY DIDN'T
GIVE HIM ANY OTHER INFORMATION
ABOUT THE CASE OR --
>> NO.
>> -- OTHER RECORDS, ANYTHING.
>> NOTHING.
IT WAS CLEAR FROM THE RECORD,
EVEN HIS TESTIMONY IN
POST-CONVICTION THEY IGNORED
HIM.
HE COULDN'T EVEN GET PAID ON
THIS CASE.
HE HAS AN IQ OF 67.
HE FELL FROM A ROOF AND BROKE
TWO OF HIS TEETH.
HE WAS UNCONSCIOUS.
I WANT TO SAVE SOME TIME.
TWO OF OUR EXPERTS FOUND HE WAS
MENTALLY RETARDED.
SO WE'RE TALKING ABOUT A GOOD
GUY DEFENSE WHICH WASN'T
ACCURATE WHEN YOU LOOK AT THE
FACTS.
COMPARED TO AN IQ OF 67, TWO
GUYS FIND HIM MENTALLY RETARDED.
THIS NOT ONLY GOES TO THE GUILT
PHASE, IT GOES TO THE PENALTY
PHASE, BECAUSE THEY'RE TRYING TO
DETERMINE WHO WAS MORE CULPABLE,
THE CODEFENDANT OR SALAZAR, WHO
HAS BEEN A FOLLOWER HIS ENTIRE
LIFE, WHICH WAS UNREBUTTED BY
THE RECORD, HAS AN IQ OF 67.
>> DIDN'T HE RUN A DRUG
BUSINESS?
I MEAN, WHAT'S THE EVIDENCE ON
THAT?
>> THERE ISN'T ANY EVIDENCE.
IT WAS JUST BY THE STATE
WITNESSES THAT ARE TESTIFYING
AGAINST HIM.
>> WELL, THAT'S EVIDENCE.
>> YOU'RE RIGHT.

YOU'RE RIGHT.
MY VIEW OF EVIDENCE SOMETIMES IS DIFFERENT, ESPECIALLY WHEN --
>> (INAUDIBLE)
>> YES, SIR, ESPECIALLY WHEN YOU HAVE SOMEBODY WHO'S SAVING HIS LIFE BY TESTIFYING AGAINST MY CLIENT.
THEY DON'T KNOW ANYTHING ABOUT MR. SALAZAR.
WHEN YOU GET THE EXPERTS IN HERE, YOU GET AN ENTIRELY DIFFERENT PICTURE.
NOW, THE JURY IS GOING TO HEAR THAT IN THE GUILT PHASE AND PENALTY PHASE.
NO CODEFENDANT IN THIS CASE EXCEPT MR. SALAZAR IS ON DEATH ROW.
IT GOES TO PROPORTIONALITY, CULPABILITY AND I'D LIKE TO SAVE TIME FOR MY CO-COUNSEL IF THAT'S POSSIBLE.
>> OKAY.
>> THANK YOU.
>> MAY IT PLEASE THE COURT, GOOD MORNING.
LESLIE CAMPBELL WITH THE ATTORNEY GENERAL'S OFFICE ON BEHALF OF THE STATE.
TO CONTINUE WITH WHAT CO-COUNSEL -- WHAT OPPOSING COUNSEL WAS DISCUSSING WITH REGARD TO THE PENALTY PHASE INEFFECTIVE ASSISTANCE OF COUNSEL, WHILE IT IS TRUE THAT DR. CROP DIDN'T HAVE THE INFORMATION THAT HE HAD REQUESTED, HE DID MAKE CERTAIN FINDINGS THAT THE DEFENDANT WAS COMPETENT TO STAND TRIAL AND ALSO THAT HE DIDN'T SEE ANY ORGANIC BRAIN DAMAGE OR --
>> WHAT KIND OF EXAMINATION DID HE DO OF THE DEFENDANT?
>> BASICALLY A COMPETENCY EVALUATION, YOUR HONOR.
>> AND DOES A COMPETENCY EVALUATION INCLUDE BRAIN DAMAGE INFORMATION?
WAS HE GIVEN A PET SCAN OR

SOMETHING LIKE THAT?
>> NO, HE DID NOT.
BUT INTERESTINGLY NEITHER DID
THE DEFENSE IN THE EVIDENTIARY
HEARING.
THEY HAD ANOTHER DOCTOR WHO SAID
THAT THERE WERE SOME COGNITIVE
PROBLEMS AND POSSIBLE ORGANIC
PROBLEMS.
DR. HARVEY DID NOT GO FURTHER.
HE DID NO IMAGING.
HE DID NO NEUROPSYCH TESTING.
THEREFORE, EVEN AS THE TRIAL
COURT FOUND THERE WAS DEFICIENCY
OF COUNSEL, THERE CERTAINLY IS
NO PREJUDICE BECAUSE THE CLAIM
WASN'T PROVEN DURING THE
EVIDENTIARY HEARING THAT HAD
BEEN GRANTED.
>> AND WHAT WERE THE MITIGATING
FACTORS FOUND IN THIS CASE?
DID THE TRIAL JUDGE FIND ANY
KIND OF MENTAL ISSUES OR
COGNITIVE ISSUES AS A MITIGATOR?
>> IT WAS THE NONSTATUTORY, SUCH
AS NOT BEING THE SHOOTER, THE
DEFENDANT CAME FROM A BROKEN
HOME, THERE WAS POVERTY.
HE HAD A GOOD RELATIONSHIP WITH
HIS FAMILY.
HE WAS A GOOD STUDENT IN THAT HE
GOT A VOCATIONAL DEGREE.
AND HE HAD GOOD BEHAVIOR.
>> SO WHAT DID THE JURY AND THE
JUDGE KNOW ABOUT HIS IQ?
>> NOTHING, YOUR HONOR.
IT WASN'T PRESENTED.
>> WELL, SO -- I'M NOT SURE IF
IT'S UNDER DEFICIENCY OR
PREJUDICE.
SO WHY NOT?
WHY DIDN'T THEY KNOW THAT HE HAD
A LOW IQ?
WOULD THAT NOT HAVE INFLUENCED
THE IDEA OF WHO REALLY DID THE
CAREFUL PLANNING, WHETHER THE
CODEFENDANT THAT FLIPPED WAS
REALLY SORT OF EMBELLISHING HOW
HE HAD BEEN FORCED TO HELP
COMMIT THIS CRIME?

IT SEEMS THAT THOSE ARE VERY
RELEVANT FACTORS.
AND WHAT'S THE REASON IT WASN'T
EXPLORED OR BROUGHT OUT?
>> AND THAT'S ONE OF THE REASONS
WHY DEFICIENCY WAS FOUND.
THEY DIDN'T GO FORWARD --
>> SO YOU AGREE THERE'S
DEFICIENCY.
>> THE TRIAL COURT FOUND
DEFICIENCY, YES.
>> SO IT REALLY IS A QUESTION OF
--
>> OF PREJUDICE.
>> -- OF PREJUDICE, AND I GUESS
THERE WHEN YOU JUST GAVE THE
MITIGATORS THAT THE JUDGE FOUND,
IT JUST SEEMS LIKE THAT'S PRETTY
WEAK AGAINST THE HEINOUS NATURE
OF THIS CRIME, THAT YOU WOULD
HAVE THIS KIND OF SUBSTANTIAL
MITIGATION THAT JUST WAS NOT
EXPLORED OR PRESENTED.
>> WELL, SUBSTANTIAL MITIGATION,
YOUR HONOR, I WOULD SAY THAT IT
IS NOT.
EVEN THOUGH LOW IQ WAS FOUND ON
THE EVIDENTIARY HEARING AND WE
HAVE A 67 AND A 68 ON THE WAIS,
WE HAVE A 72 ON THE
STANFORD-BINET.
THERE WAS TESTIMONY OF THE
DIFFICULTIES THAT GO INTO DOING
AN IQ TEST IN JAIL.
HOWEVER, THAT BEING SAID, THERE
WERE ALSO FINDINGS WHERE THE
DEFENSE -- EXCUSE ME, THE
DEFENSE EXPERT WAS SAYING, WELL,
I FOUND ADAPTIVE FUNCTIONING
DEFICITS.
I KNOW THAT DOESN'T JUST GO TO
THE IQ.
I'M TRYING TO ANSWER YOUR
HONOR'S QUESTION.
DR. OAKLAND RELIED ON ANOTHER
DEFENSE EXPERT'S TESTING AND
REPORT WITHOUT TALKING TO THE
DEFENDANT, WITHOUT TALKING TO
THE BROTHER AND WITHOUT DOING
ANY OF HIS OWN TESTING, CAME UP

WITH FUNCTIONAL ACADEMICS,
SELF-CARE AND SELF-DIRECTION
DEFICITS FOR THE ADAPTIVE
FUNCTIONING.
HOWEVER, THE TRIAL COURT FOUND
THIS EVIDENCE: THAT THERE WAS
-- THE DEFENDANT WAS ABLE TO GET
HIS COMMERCIAL DRIVER'S LICENSE
WHEN ONLY 40% OF THE PEOPLE WHO
TAKE THAT TEST ACTUALLY PASS.
THERE WAS AN UNDERSTANDING AND
USE OF LEGAL REFERENCES AND THAT
IS EVIDENT BY THE ARGUMENTS THAT
THE DEFENDANT MADE DURING THE
TRIAL AND ALSO IN THE
POST-CONVICTION AND THE
PLEADINGS THAT HE FILED.
AND THE DEFENDANT DEMONSTRATES
COMPETENCE TO PROCEED PRO SE.
FOR SELF-CARE THE DEFENDANT
APPEARED WELL-GROOMED, DRESSED
APPROPRIATELY AND HE WAS CLEAN.
HE WAS CARING FINANCIALLY FOR
HIMSELF, HIS CHILDREN AND HIS
FAMILY.
HE MAINTAINED A BANK ACCOUNT OF
ABOUT $1,000, A $1,000 BALANCE.
HE UNDERSTOOD THE VALUE OF HIS
PERSONAL ASSETS.
AND HE WAS A SAFE DRIVER.
HE HAD HIS OWN TAXI BUSINESS AND
WAS MAKING CHANGE FOR THOSE
PATRONS.
AND SELF-DIRECTION, MOVING TO
THE UNITED STATES TO MAKE A
BETTER LIFE FOR HIMSELF.
HE TRAVELED INTERNATIONALLY
BETWEEN THE UNITED STATES AND
TRINIDAD, WHICH REQUIRES A VISA.
HE FLED TO ST. VINCENT AFTER THE
CRIME IN A DISGUISE AND WITH
FAKE IDENTIFICATION.
HE MANAGED HIS LEGAL CASE
STRATEGY FROM JAIL, DRAWING A
MAP OF THE CRIME AREA.
HE MASTERMINDED THE CRIMES AND
DIRECTED OTHERS.
HE REPRESENTED HIMSELF IN THE
COURTROOM CONCERNING DISCOVERY,
DELAYS, INDIGENCY AND CONSULATE

CONTRACTS.
IN FACT, HE EXPLAINED TO PRIOR DEFENSE COUNSEL THE EXTRADITION, EXPULSION, SPECIALITY DOCTRINE IN ORDER TO MAKE HIS CLAIM.
AND HE PURCHASED, HE SOLD AND HE PAID TAXES ON REAL ESTATE.
AND HE'S MAKING ADEQUATE REQUESTS FOR CASE RESOURCES THAT HE DID BEFORE THE TRIAL COURT, THE EVIDENTIARY HEARING COURT.
AND HE ALSO PAID FOR LEGAL REPRESENTATION.
SO ALL OF THOSE THINGS BELIE AN IQ OF 72 TO 67.
AND THAT'S WHY, YOUR HONOR, THE EVIDENCE THAT WAS --
>> WELL, THAT WOULD BE -- AND THAT'S PRETTY STRONG EVIDENCE, AND I DON'T KNOW -- IT'S WHY THE CLAIM OF MENTAL RETARDATION IS WEAK.
BUT AS FAR AS I THINK WE'RE GOING TO WHETHER THE JURY SHOULD HAVE BEEN ABLE TO EVALUATE ALL THIS OTHER MITIGATION THAT EXISTED.
THEY MAY HAVE REJECTED IT.
THEY MAY HAVE SAID, LISTEN, THIS IS NOT CONSISTENT WITH HIS LIFE.
YOU KNOW, HIS POOR UPBRINGING.
BUT THE QUESTION IS DOES IT UNDERMINE CONFIDENCE IN THE OUTCOME IF THE JURY DOES NOT HAVE THE OPPORTUNITY TO ASSESS ALL THAT OTHER INFORMATION.
THAT'S REALLY THE QUESTION.
>> AND IT DOESN'T UNDERMINE CONFIDENCE GIVEN THIS OTHER INFORMATION.
SO ALL WE'RE ADDING IS THAT HE SUPPOSEDLY DID POORLY ON THREE IQ TESTS.
THAT'S THE SUM SUBSTANCE OF --
>> WELL, WHAT ABOUT HIS HEAD INJURY?
>> HIS HEAD INJURY IS NOT SUPPORTED BY THE EVIDENCE.
NO IMAGING WAS DONE AND NO NEUROPSYCH TESTING WAS DONE.

SO ALL WE HAVE OUT HERE IS AN ALLEGATION THAT I FELL FROM THE ROOF AS A CHILD.
THERE ISN'T ANYTHING TO SUPPORT THAT THERE WAS ANY PERMANENT DAMAGE FROM THAT FALL.
SO, AGAIN, EVEN THOUGH THE TRIAL COURT FOUND DEFICIENCY FOR NOT PURSUING AND INVESTIGATING FURTHER, THERE IS NOTHING THAT UNDERMINES CONFIDENCE IN THIS PARTICULAR SENTENCE.
AND IN ADDITION, WHILE THEY DIDN'T PURSUE EVIDENCE FROM -- MENTAL HEALTH EVIDENCE, DEFENSE COUNSEL DID GO DOWN TO TRINIDAD, MET WITH CERTAIN PEOPLE DOWN THERE, TRIED TO GET THE MEDICAL DOCTOR, TRIED TO GET INFORMATION FROM THE FAMILY.
THEY GOT THE SCHOOL RECORDS.
EVEN AFTER THIS FACT, HE GRADUATED FROM SCHOOL AND THEN WENT FORWARD INTO THE VOCATIONAL --
>> THEY GOT THE SCHOOL RECORDS AND THEY DIDN'T GIVE THEM TO DR. CROP?
>> THEY DID NOT GIVE THEM TO DR. CROP.
>> AND THE EXPLANATION FOR THAT?
>> THEY DIDN'T GIVE THEM TO DR. CROP.
THAT'S WHY DEFICIENCY --
>> WHAT DOES THE SCHOOL RECORDS DEMONSTRATE?
I THOUGHT THE SCHOOL RECORDS ACTUALLY DEMONSTRATE THAT HE WASN'T A BAD STUDENT.
DID HE GET PROMOTED TO SOME KIND OF LEVEL THAT OTHER PEOPLE ARE NOT PROMOTED TO?
>> HE WENT TO SECONDARY SCHOOL, PASSED FIVE OUT OF THE SIX CLASSES.
HE WAS IN VOC SCHOOL AND DID CARPENTRY WORK.
THAT'S EVIDENCE THAT HE HAS SELF-DIRECTION.
>> BUT IS THERE ANYTHING IN

THOSE SCHOOL RECORDS THAT DEMONSTRATES THAT HE WOULD HAVE HAD REALLY LEARNING PROBLEMS BACK, YOU KNOW, BEFORE THE ONSET OF -- BEFORE AGE 18.
>> NO.
THE ONLY MENTAL RETARDATION -- EXCUSE ME, INTELLECTUAL DISABILITY CLAIM OR PRONG THAT THE TRIAL COURT FOUND WAS THAT IT WAS A LOW IQ.
HE DIDN'T FIND A BASIS TO UNDERMINE THOSE FIGURES, SO HE FOUND THAT THAT PRONG WAS SUBSTANTIATED.
WITH REGARD TO THE OTHER MITIGATION, THE TRIAL COURT LOOKED AT THE FAMILY MITIGATION THAT HAD BEEN PRESENTED AND FOUND THAT THE INFORMATION THAT IS -- WAS BEING PRESENTED AT THE EVIDENTIARY HEARING REALLY WAS MORE OR LESS CUMULATIVE OR IT DIDN'T GIVE ANY WEIGHT OR IT DIDN'T UNDERMINE CONFIDENCE IN THE VERDICT IN THIS RESPECT: THE DEFENDANT SAYING, OH, I CAME FROM A BROKEN HOME AND MY PARENTS DIVORCED, WHICH THE JURY KNEW THAT THE PARENTS DIVORCED.
WELL, WHAT IT TURNS OUT TO BE IS THAT THE DEFENDANT'S PARENTS DIVORCED WHEN THE DEFENDANT WAS 23 YEARS OLD AND ALREADY HAD A CHILD.
AND THE MOTHER MOVED TO THE UNITED STATES.
THE DEFENDANT EVENTUALLY MOVED TO THE UNITED STATES AFTERWARDS.
SO VERY LITTLE VALUE OR WEIGHT COMES FROM THIS NEW MITIGATION.
AND THERE WAS NO PROOF OF MALNOURISHMENT, WHICH WAS ALSO A CLAIM, FOR TWO WEEKS THE CHILDREN DID NOT EAT AS WELL AS THEY SHOULD.
AND, AGAIN, THE BRAIN INJURY REALLY WAS NOT SUPPORTED.
AND THERE WAS NO CHANGE IN THE SENTENCE FOUND BY THE TRIAL

COURT.
HE SAID THAT HE WAS THE TRIAL JUDGE WHO HAD SENTENCED THE DEFENDANT AND HE SAID IT MADE NO DIFFERENCE TO HIM.
IT WAS NOT SOMETHING THAT UNDERMINED HIS CONFIDENCE IN THE VERDICT.
WOULD YOUR HONOR WISH ME TO TURN TO THE JUROR ISSUE?
>> SURE.
>> OKAY.
WITH REGARD TO THE JUROR, WHILE SHE MADE COMMENTS THAT SHE HAD BIAS FOR THE CHILD OR SHE HAD A SPECIAL CONCERN FOR HIM, SHE HAD SYMPATHY FOR HIM --
>> AND THIS WAS THE VICTIM'S CHILD.
>> THE VICTIM'S CHILD.
THERE WERE TWO VICTIMS IN THIS CASE.
THE FATHER SURVIVED.
ANYHOW, HER STATEMENTS, THAT PORTION OF THE STATEMENT WASN'T PRESERVED, WASN'T GIVEN TO THE TRIAL JUDGE.
>> WHERE WAS IT?
WHERE IN THE PRESERVATION SCHEME DID THE TRAIN FALL OFF THE TRACK?
WHERE WAS IT THAT THE ATTORNEY DID NOT DO ENOUGH TO PRESERVE IT?
CAN YOU PINPOINT THAT?
>> IN TWO SPOTS, BY NOT IDENTIFYING EVERY ISSUE THAT HE TOOK EXCEPTION WITH THIS JUROR.
ALSO, IT FELL OFF THE TRACKS BECAUSE HE ACCEPTED THE JURY.
HE DID NOT GO FORWARD AND SAY, YES, REMEMBER, YOUR HONOR, I'M STILL OBJECTING BECAUSE I --
>> WHAT IS IT THAT A LAWYER IS SUPPOSED -- THIS IS AN AREA THAT EVEN AT THE TRIAL COURT LEVEL YOU'RE SITTING THERE AS A JUDGE AND LAWYERS JUST DON'T KNOW HOW TO DO IT.
WHAT IS IT A LAWYER'S SUPPOSED

TO DO TO PRESERVE A CHALLENGE?
>> HE SHOULD BRING FORWARD EVERY SINGLE BASIS FOR OBJECTING TO A PARTICULAR JUROR FOR CAUSE.
>> THIS IS WHEN THE OBJECTION'S MADE.
>> WHEN THE OBJECTION'S INITIALLY MADE.
>> JUDGE, I HEREBY CHALLENGE JUROR SMITH FOR THE FOLLOWING REASONS.
>> YES.
>> ONCE THAT'S DONE, IS THERE AN OBLIGATION TO RAISE THAT ISSUE AGAIN?
>> IF HE USES ALL OF HIS PEREMPTORY CHALLENGES AND THERE'S STILL SOMEONE THAT HE WISHES TO STRIKE, HE NEEDS TO PUT ON THE RECORD THAT HE'S OBJECTING.
HE WOULD USE A STRIKE FOR THAT NEXT JUROR.
AND HE WOULD HAVE USED THAT STRIKE HAD HE NOT USED IT ON THIS OTHER OBJECTIONABLE JUROR THAT HE CLAIMS HE HAD TO USE --
>> SO THE ATTORNEY HAS TO ASK FOR ADDITIONAL PEREMPTORY CHALLENGES.
>> YES, YOUR HONOR.
>> ALL RIGHT.
>> YES, TO IDENTIFY THE JURORS HE WISHES TO STRIKE.
>> SO HE ASKS FOR ADDITIONAL CHALLENGES AND LET'S SAY THAT IS DENIED.
>> YES.
>> OKAY?
WHAT ELSE DOES HE OR SHE NEED TO DO TO PRESERVE THE ISSUE?
>> BEFORE THE JURY IS SWORN, HE NEEDS TO AGAIN OBJECT AND PUT THOSE REASONS ON THE RECORD.
>> OKAY.
>> AND THAT IS WHERE HE DID NOT OBJECT.
NOW, UNDER JOINER --
>> JUST, AGAIN, BECAUSE WE'VE GOT THE REAL WORLD HERE.

WE'VE GOT A PAGE, 1101, 1102.
THE ISSUE HERE IS THAT THIS JUROR HAD THE CHILD OF ONE OF THE VICTIMS IN HER READING CLASS AND -- I MEAN, IT DOESN'T GET MORE -- I MEAN, IT CAN GET CLOSER, BUT WE HAVE I THINK IN CASES MORE RECENTLY SORT OF EXPLAINED, IF THERE'S ANY DOUBT, YOU EXCUSE.
AND IT'S DIFFERENT WHEN SOMEONE SAYS, WELL, I DON'T KNOW IF I CAN BE FAIR AND IMPARTIAL WHEN THEY ACTUALLY HAVE THAT EXPERIENCE.
SO LET'S ASSUME THE CAUSE CHALLENGE SHOULD HAVE BEEN GRANTED AND THE JUDGE KNEW, WHATEVER ELSE SHE MIGHT HAVE SAID, HE KNEW THIS WAS THE JUROR THAT HAD THE CHILD OF THE VICTIM, RIGHT?
THERE'S NO QUESTION.
BECAUSE HE MENTIONS IT.
>> HE'S AWARE.
>> WHEN IT'S RENEWED BEFORE THE JURY'S ACCEPTED, DOESN'T HE AT THAT POINT SAY, JUDGE, I AGAIN ASK FOR A PEREMPTORY CHALLENGE. I WOULD IDENTIFY MRS. G., WHO I WOULD ADDITIONALLY STRIKE, AND I REQUEST AN ADDITIONAL CHALLENGE. WAS THAT DONE?
>> YES.
HE ASKED --
>> OKAY.
AND THEN IS IT TWO DAYS LATER OR IS IT TWO MINUTES LATER THAT THE -- ARE WE READY TO PROCEED? DO YOU ACCEPT THE JURY?
AND WE'RE SAYING THAT -- IF THE JUDGE -- IF THE DEFENSE LAWYER AFTER DOING EVERYTHING WE SAY DOESN'T SAY, YEAH, BUT, JUDGE, REMEMBER, I OBJECTED BEFORE AND YOU DENIED IT TWICE, BUT I'M JUST GOING TO SAY ONE MORE TIME, THAT THAT WOULD BE SOMETHING WE REQUIRE A DEFENSE ATTORNEY TO DO?

>> YES, YOUR HONOR, AND THE
REASON BEING THERE'S THE JURY
SELECTION IN BETWEEN WHERE THEY
ACTUALLY PICK THE JURORS.
SO IF THE MIX NOW IS ACCEPTABLE,
HE MAY HAVE CHANGED HIS MIND.
THAT'S WHY JOINER SAYS YOU NEED
TO OBJECT BEFORE THE JURY IS
SWORN.
>> WHAT HAPPENED FROM THE TIME
IN THE TRANSCRIPT -- AND WE HAVE
THE TRANSCRIPT -- FROM THE TIME
OF THE LAST I WANT AN ADDITIONAL
JUROR, ALL THE PEREMPTORIES WERE
DONE, SO HE COULDN'T DO ANYTHING
MORE.
DID THE STATE THEN DO ANYTHING
FURTHER?
>> THERE WAS THE JURY SELECTION,
IS MY RECOLLECTION, WHERE THEY
WERE GOING TO -- WERE TAKING
THIS PERSON, THAT PERSON, THE
NEXT PERSON.
AND I BELIEVE THERE WAS ANOTHER
PEREMPTORY IN THERE.
SO IT WASN'T --
>> DID MRS. G. SIT, THE ONE THAT
HE SAID HE WOULD HAVE STRUCK.
DID SHE SIT?
>> YES.
>> I GUESS WE'RE JUST GOING TO
HAVE TO LOOK AT THIS.
LET ME GO TO THE ISSUE I WAS
ASKING MR. SICHTA ABOUT.
LET'S ASSUME IF IT HAD BEEN
RAISED ON DIRECT APPEAL, WE
WOULD HAVE REVERSED BASED ON --
WE WOULD HAVE REVERSED.
IS THERE ANY CASE LAW THAT SAYS
THAT THE STANDARD FOR THE
INEFFECTIVE ASSISTANCE OF
APPELLATE COUNSEL ON
POST-CONVICTION IS THE SAME
STANDARD THAT WOULD BE APPLIED
IN DIRECT APPEAL?
OR IS THERE A BASIS WHEN IT
COMES TO JURY SELECTION FOR --
AND THIS IS A FRIENDLY QUESTION
-- FOR APPLYING THE CARATELLI
STANDARD TO JURY SELECTION AS

WELL, SINCE THERE IS NO
IDENTIFICATION A BIASED JUROR
SAT.
WHY SHOULD WE APPLY THE SAME
STANDARD?
THAT IS, IF IT WOULD HAVE BEEN A
REVERSAL BECAUSE OF THIS ISSUE.
>> YOU SHOULDN'T APPLY THE SAME
STANDARD.
YOU SHOULD --
>> AND ARE THERE ANY CASES IN
THIS STATE OR ACROSS THE COUNTRY
THAT HAVE LOOKED AT THIS?
>> THERE ARE CASES FOLLOWING
CARATELLI BECAUSE THE POINT IS
THAT A NONBIASED JURY HEARD THIS
CASE.
SO WE'RE -- BY ALLOWING
BASICALLY A GOTCHA TACTIC BY NOT
BRINGING UP ON DIRECT APPEAL AND
THEN BRINGING IT UP ON
POST-CONVICTION --
>> WELL, WE DON'T KNOW WHAT
HAPPENED.
WE DON'T KNOW IF THIS DEFENSE --
THIS APPELLATE LAWYER JUST
MISSED IT BECAUSE IT'S SO
GLARING.
WE DON'T KNOW THAT.
SO LET'S ASSUME THERE'S
DEFICIENCY.
BUT WHAT CASES FROM AROUND THE
COUNTRY HAVE USED CARATELLI FOR
INEFFECTIVE ASSISTANCE OF
APPELLATE COUNSEL?
>> IT'S UNDER THE STRICKLAND
STANDARD THAT YOU HAVE TO SHOW
THAT A BIASED JUROR SAT.
>> WHICH CASE HAS APPLIED IT AT
THE APPELLATE LEVEL?
>> I DON'T REMEMBER OTHER THAN
CARATELLI, WHICH WAS FROM THIS
COURT.
>> BUT THAT WAS ABOUT
PRESERVATION AT THE TRIAL COURT,
FOR THE TRIAL LAWYER.
YOU WOULD SAY THE SAME STANDARD
SHOULD APPLY AT THE APPELLATE
LEVEL.
>> JOINER IS SAYING YOU HAVE TO

PRESERVE IT IN --
>> WELL, WE'RE ASSUMING IT WAS PRESERVED HERE, BUT WHAT I'M ASKING YOU, AGAIN, MY QUESTION IS I DON'T SEE A REASON WHY CARATELLI ALSO SHOULDN'T APPLY AT THE APPELLATE LEVEL.
>> CORRECT.
IT'S A PREJUDICE ARGUMENT, YOUR HONOR.
IN ORDER TO OVERTURN SOMETHING THAT'S FINAL, A FINAL CASE, IT HAS TO BE SOMETHING MORE THAN JUST --
>> BUT THAT WASN'T YOUR ARGUMENT.
YOU WERE SAYING THE POST-CHALLENGE WAS NO GOOD, THAT THE DEFENSE ATTORNEY NEEDED TO GO THROUGH ANOTHER HOOP.
I'M GIVING YOU ONE MORE WAY, WHICH IS THAT A BIASED JUROR DIDN'T SIT.
>> THAT'S CORRECT, YOUR HONOR.
I BELIEVE WE CITED TO CARATELLI THAT THE STANDARD IS YOU HAVE TO SHOW MORE.
NOTHING MORE WAS SHOWN IN THE BRIEF.
THERE WAS NOTHING BROUGHT UP ABOUT THE JUROR THAT DID SIT THAT WAS BIASED.
SO TO OVERTURN ON DIRECT APPEAL OR EVEN HERE, TO OVERTURN THE CASE, IT'S --
>> WELL, WE WOULD HAVE -- BUT ON DIRECT APPEAL YOU DON'T HAVE TO SHOW A BIASED JUROR SAT.
WE'VE ALREADY VISITED THAT.
>> THAT'S CORRECT, YOUR HONOR.
AND I SEE THAT I'M OUT OF TIME, SO UNLESS THE COURT HAS ANY ADDITIONAL QUESTIONS, I ASK THE COURT TO AFFIRM THE DENIAL OF POST-CONVICTION RELIEF AND TO DENY HABEAS RELIEF.
THANK YOU.
>> THANK YOU.
>> GOOD MORNING.
JOE HAMRICK ON BEHALF OF

MR. SALAZAR.
AS TO THE RECORD DURING JURY SELECTION, ON PAGE 102 WHEN THE LAST OBJECTION IS MADE BY DEFENSE COUNSEL, IMMEDIATELY THEREAFTER THE COURT DENIES THE CHALLENGE, AND THEN GOES BY NAMING WHICH JURORS ARE GOING TO SIT AND WHICH ARE BEING STRICKEN.
THE NEXT WORDS OUT OF THE COURT'S MOUTH ARE STATE.
STATE SAYS STATE WILL AGREE AND REFERENCE IS MADE TO DEFENSE COUNSEL.
THERE IS NOTHING INTERVENING.
SAME DAY.
>> COULD YOU ADDRESS THIS ISSUE ABOUT CARATELLI, THOUGH?
>> YES.
>> WHAT POSSIBLE REASON WOULD WE APPLY A DIFFERENT STANDARD TO INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL THAN WE WOULD APPLY TO INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL?
>> AS TO THE DEFICIENCY PRONG --
>> NO, NOT THE DEFICIENCY.
>> IT'S ALL ABOUT PREJUDICE.
YOU'RE SHIFTING IT TO PREJUDICE.
THE STATE WOULD HAVE BEEN SUCCESSFUL ON APPEAL.
CARATELLI IS THE HEIGHTENED STANDARD IN POST-CONVICTION.
>> THAT'S NOT REALLY HOW CARATELLI -- SEE, BECAUSE THERE, IF IT HAD BEEN PRESERVED IN CARATELLI, THAT WAS THE WHOLE ISSUE.
THERE WOULD HAVE BEEN A REVERSAL ON THE DIRECT APPEAL.
BUT WHAT WE SAID IS ON THE QUESTION OF JUROR SELECTION, THAT THERE HAS TO BE PROOF OF A BIASED JUROR SITTING.
SO THE QUESTION -- AND YOU MAY NOT HAVE THOUGHT ABOUT THIS, WHY CARATELLI SHOULDN'T APPLY FOR THE INEFFECTIVE ASSISTANCE OF

APPELLATE COUNSEL.
>> I THINK THE GENERAL STANDARD ANYTIME -- I'M NOT SURE WHY IT WOULD BE DIFFERENT.
>> AND MAYBE YOU WANT TO TALK ABOUT THE OTHER ISSUE, WHICH IS IT DOES SEEM LIKE MISS CAMPBELL HAS SAID THAT THERE'S AN AWFUL LOT TO SHOW THIS WAS A VERY HIGH-FUNCTIONING PERSON, THAT HAD GOTTEN HIS COMMERCIAL TAXI LICENSE, HAD FIGURED OUT HOW TO GET OUT OF THE UNITED STATES, HAD DONE ALL THESE PRETTY SOPHISTICATED THINGS.
>> THAT'S PRECISELY WHAT I WOULD LIKE TO TALK ABOUT WITH THE COURT.
AS DR. OAKLAND, THE LATE DR. OAKLAND, AN EMINENT PSYCHOLOGIST, EXPLAINED, INTELLECTUAL DISABILITY IS NOT THE STANDARD HERE.
WE'RE ALLOWING TO THE MEDICAL COMMUNITY DEFINITION FOR MENTAL RETARDATION.
>> AGAIN, I UNDERSTAND THAT.
WE LOOK AT ALL THREE THINGS.
I'M JUST ASKING -- AGAIN, WE'RE NOT REALLY TALKING -- LET'S ASSUME THAT MENTAL RETARDATION IS OFF THE TABLE.
WHY DOES THIS -- WHY WOULD THIS ADDITIONAL EVIDENCE HAVE UNDERMINED THE CONFIDENCE?
I MEAN, WHAT IS IT ABOUT HIS EARLY LIFE?
I MEAN, I'M PRETTY IMPRESSED THAT THIS GUY HAD THIS COMMERCIAL DRIVER'S LICENSE.
IT WOULD BE ONE THING TO HAVE A TAXI -- I MEAN, A DRIVER'S LICENSE.
AND IT LOOKS LIKE HE CARRIED ON A PRETTY SOPHISTICATED LIFE.
>> AS TO THE TAXI, HIS MOTHER WAS PAYING FOR THAT TAXI.
HIS PARENTS ARE PAYING ALL THE ELECTRIC BILLS.
HE QUALIFIES FOR INTELLECTUAL

DISABILITY WITH HIS IQ.
AS TO THE BRAIN DAMAGE,
DR. HARVEY DID TESTING.
INCLUDED THERE IS LIKELY
INSTANCES OF BRAIN DAMAGE.
EVEN THE STATE'S OWN DOCTOR
ACKNOWLEDGED THAT SOMETHING IS
GOING ON AS TO THE SPATIAL
PROCESSING AND IT APPEARS LIKELY
THERE IS BRAIN DAMAGE.
>> IS THERE SOME REASON NO PET
SCAN WAS DONE OR SOME OTHER KIND
OF TESTING THAT WOULD HAVE TOLD
US SPECIFICALLY IF THERE WAS OR
THERE WASN'T?
>> THERE WASN'T THE MEDICAL
CLINICAL TESTING DONE, YOUR
HONOR.
BUT OUR ARGUMENT IS THAT IT IS
MORE THAN SUFFICIENT, THE
EVIDENCE THAT WAS BROUGHT OUT BY
DR. HARVEY, CORROBORATED BY
DR. PRITCHARD, THAT A JURY HAS
TO HEAR THIS.
MR. SALAZAR CAN'T BE PUT TO
DEATH WITHOUT A JURY HAVING
CONSIDERED THIS NEW INFORMATION
PRESENTED.
YOUR QUESTION ABOUT THE SCHOOL
RECORDS, THEY'RE DEFINITELY
INDICATIVE OF WHAT THE DOCTOR
SAID, WHO WENT BACK TO TRINIDAD
TO CONDUCT INVESTIGATION, WHO
CONCLUDED THAT MR. SALAZAR
DEVELOPED ACADEMIC DEFICITS
EARLY ON.
HE WAS IN THE BOTTOM 5% OF THE
STUDENTS THERE.
HE WAS PLACED -- EVERY TIME
THERE'S A FORK IN THE ROAD FOR
STUDENTS AS TO THE NEXT LEVEL,
MR. SALAZAR WAS ALWAYS IN THE
BOTTOM TIER, THE BOTTOM THIRD
TIER.
THEN THAT IN SECONDARY SCHOOL,
WHERE WE HAD THE POST RECORDS,
MR. SALAZAR WAS FOUND TO BE --
AND ONLY TO GET ABOVE A 50% IN
ONE OUT OF SIX CLASSES AND THAT
WAS ARTS AND CRAFTS.

AND SO I WOULD INVITE THE
COURT'S ATTENTION TO THE CASE OF
PHILLIPS THAT THIS COURT DECIDED
AS BEING REMARKABLY SIMILAR.
IF I MAY JUST MAKE A FEW BRIEF
REFERENCES TO THAT CASE.
I SEE MY TIME IS EXPIRED.
>> ONE MINUTE.
>> IN PHILLIPS, IN WHICH THE
DEFENDANT STALKED A PAROLE
OFFICER WHILE HE WAS ON PAROLE
AND MURDERED HIM, THIS COURT
FOUND IT WAS ERROR NOT TO GRANT
HIM A NEW SENTENCING PHASE.
IT FOCUSED ON THAT HE WAS
WITHDRAWN AND SOCIALLY ISOLATED,
HAD AN IQ OF 73 TO 75.
IN MR. SALAZAR'S CASE, THE
MENTAL MITIGATION IS EVEN
STRONGER.
THE MAJOR MISTAKE THE TRIAL
COURT MADE WAS IN NOT ASKING THE
QUESTION WHETHER THERE'S A
REASONABLE PROBABILITY THE JURY
WOULD HAVE REACHED A DIFFERENT
RECOMMENDATION.
IT REWEIGHED THE MITIGATORS.
THAT IS AS A MATTER OF LAW
ERROR.
AND THEN THE KEY RELEVANCY THAT
THIS COURT FOUND IN PHILLIPS WAS
THAT THE NEW MENTAL HEALTH
MITIGATION UNDERCUT THE
STATUTORY AGGRAVATOR, THE COLD,
CALCULATED AND PREMEDITATED.
IF THE JURY HAD HEARD THIS
ADDITIONAL MENTAL HEALTH
INFORMATION, THEY WOULD LIKELY
HAVE RECOMMENDED LIFE RATHER
THAN DEATH.
>> THANK YOU.
YOUR TIME IS UP.
>> THANK YOU, YOUR HONOR.
>> THANK YOU FOR YOUR ARGUMENTS.