

>> PLEASE RISE.

LADIES AND GENTLEMEN, THE  
FLORIDA SUPREME COURT.

>> GOOD MORNING AND WELCOME TO  
FLORIDA SUPREME COURT.

FIRST CASE ON THE DOCKET THIS  
MORNING IS BANKS V. STATE.

>> THE CASE ARISES OUT OF  
JACKSONVILLE IN 2005, WHICH  
MR. BANKS IS CONVICTED OF  
FIRST-DEGREE MURDER AND  
SENTENCED TO DEATH.

ON THE EVENING OF MARCH 9th,  
10th, 2005, MR. BANKS WAS  
SELLING COCAINE OUT OF THE HOUSE  
APARTMENT OR HOUSE IN  
JACKSONVILLE DURING THE EVENING,  
MS. VOLUM HAD BOUGHT FROM MR. BANKS.  
IN THE PAST IF SHE DIDN'T HAVE  
MONEY SHE WOULD PAWN THINGS SUCH AS  
HER COMPUTER, JEWELRY, SOMETIMES  
SEX FOR DRUGS.

IN THE EVENING OF THE MURDER,  
MR. BANKS AND MS. VOLUM ARE  
HAVING A PARTY AND DRINKING A  
LOT AND ALSO USING DRUGS.  
THEY SAID HE WALKED OUT OF HER  
HOUSE AND WENT BACK TO HIS  
APARTMENT THAT HE SHARED WITH  
SUDIE JOHNSON.

MS. JOHNSON SAID HE WAS IN HIS  
UNDERWEAR IN PILLOWCASE.  
HE HAD A LAPTOP COMPUTER WHICH  
HE GAVE TO HER.

AT THE TIME, HE ALSO SAID SHE  
ASKED WHERE HE GOT THIS AND AND

HE SAID HE MURDERED SOMEBODY AND  
SHE TRANSLATED HE KILLED  
SOMEBODY AND ALSO IT WAS FOR  
A MURDER PAYBACK.

LATER A TV NEWSCAST WAS TALKING  
ABOUT THE MURDER AND JOHNSON AND  
BANKS ARE BOTH LOOKING AT IT AND  
HE TURNED TO HER AND SAID I DID  
THAT.

A COUPLE WEEKS LATER,  
MR. JOHNSON WOULD GO TO THE  
POLICE AND TELL THEM THE THINGS  
HE TOLD HER.

AND HERE WE ARE TODAY.

IN MY BRIEF I RAISED SIX ISSUES,  
BUT I ONLY WANT TO TALK ABOUT TWO OR  
THREE OF THESE ISSUES.

THE FIRST ONE DEALING WITH THE  
CHALLENGE BY THE STATE TO  
RESPECT THE JURORS.

THOSE WERE CHALLENGED BY THE  
STATE.

WHEN THE DEFENSE COUNSEL  
CHALLENGED THE USE OF PEREMPTORY  
ON THESE TWO JURORS BECAUSE THEY  
WERE SINGLE.

THAT EXCUSE HAS GOT TO HAVE BE  
SOME GENUINE REASON,  
SOME CONNECTION BETWEEN THAT  
REASON AND FACTS OF THE CASE.

>> DOES THERE REALLY -- DOES  
MELBOURNE SAY THAT THERE'S GOT  
TO BE IN EXCESS OR THAT THE  
REASON HAS TO BE GENUINE.

AND IN THIS CASE, AS WE LOOK AT  
THE, CAN WE LOOK AT THE FACT

THAT THE STATE ALSO STRUCK AT  
LEAST ONE WHO WAS IN THAT SAME  
SITUATION?

SO THE QUESTION FIRST IS, WHERE  
IN MELBOURNE IS IT THAT THERE  
HAS TO BE A NEXUS BETWEEN THE  
REASON AND I -- LET ME FINISH MY  
QUESTION.

LET ME FINISH MY QUESTION SO  
WE'LL HAVE IT AT LEAST.

THERE HAS TO BE A NEXUS BETWEEN  
THE REASON AND THE CIRCUMSTANCES  
OF THE CRIME?

>> I THOUGHT IT CAME MAYBE NOT  
SO MUCH MELBOURNE BUT ANOTHER  
CASE, NOVELL.

BUT IF THERE HAS TO BE A WATCH  
CONNECTION.

THERE STILL HAS TO BE SOME  
GENUINE, SOME RECENT EXPLANATION  
FOR THIS.

AND WHEN WE LOOK AT THIS THE  
REASON THE STATE GAVE SIMPLY  
JUST DOESN'T REALLY MAKE ANY  
SENSE.

IF THERE WERE --

>> THERE AGAIN YOU GET TO THE  
GENUINENESS OF IT MAY NOT BE  
REASONABLE.

AS LONG AS IT'S GENUINE, ISN'T  
THAT WHAT WE HAVE TO LOOK AT?  
THE FACT THAT OTHER JURORS WHO  
ARE SIMILARLY SITUATED WERE ALSO  
STRICKEN PRETTY MUCH ANSWERS THE  
INQUIRY.

>> YOU ALSO ADDRESS THE ISSUE,

DON'T YOU HAVE TO SHOW SYSTEMIC  
EXCLUSION OF BLACKS.

IF YOU JUST SHOW ONE BLACK IN  
THIS CASE, ONE BLACK WHO WAS  
EXCUSED.

AND THE REASON --

THERE WERE SOME WHITES WHO WERE  
EXCUSED FOR BEING SINGLE.

>> ONCE YOU GET TO THAT POINT,  
WHERE IT IS NOT SOMETHING THAT  
IS SPECIFICALLY AIMED AT  
EXCLUDING JURORS THAT OTHER  
JURORS WHO ARE EXCLUDED FOR THE  
SAME REASON, DOESN'T THAT PRETTY  
MUCH ANSWER OUR --

>> NO, I DON'T THINK SO.

THAT IS YOU'RE GOING TO THE SOURCE  
THAT'S CONNECTING THE TWO CASES,  
THAT YOU DON'T HAVE TO SHOW A  
PATTERN.

YOU DON'T HAVE TO SHOW IN A  
SYSTEMATIC EXCLUSION OF  
BLACKS FOR ONE REASON.

IN FACT, HE SAID IF THERE'S ONE  
BLACK THAT IS EXCUSED FOR ONE  
REASON, THAT'S GOOD ENOUGH  
REASON FOR THE STRIKE.

SO WHEN YOU LOOK AT THE REASON AND  
THE STATE WAS USING HER STAND, IT  
ALMOST SUFFICES LOGIC  
WHY THE CLOTURE SINGLE, WHY THAT  
SHOULD MAKE A DIFFERENCE.

>> THAT'S WHY IT'S CALLED A  
PEREMPTORY CHALLENGE.

THEY DON'T HAVE TO HAVE A GOOD  
REASON.

IT WAS A GOOD REASON, IT WOULD BE SOMETHING THAT WOULD RISE TO A CAUSE CHALLENGE.

>> IT HAS TO BE MORE THAN -- WE WERE CAPRICE OR ARBITRARY.

THERE'S GOT TO BE SOME REASON, SOME GENUINE -- I MEAN, THAT'S WHAT THEY'RE ALL GOING AFTER.

>> WAS THIS DEFENDANT SINGLE?

>> YES.

HE LIVED WITH SUDIE JOHNSON.

>> I THINK THE PROBLEM COMES WHEN IN THE SITUATION AND IT'S VERY DIFFERENT FROM SOME OF THE THE OTHER CASES WE LOOKED AT WHERE THE SAME EXACT REASON IS USED TO STRIKE WHITE JURORS AND WE HAVE BLACK JURORS SITTING IN THIS JURY.

NOW THAT THE TOTALITY OF THE CIRCUMSTANCES ANALYSIS THAT SEEMS TO ME THAT UNLESS WE ARE GOING TO SAY THAT FOR PEREMPTORY, THERE'S GOT TO BE A NEXUS BETWEEN THE REASON AND THE CIRCUMSTANCES OF TIME, I DON'T SEE HOW THAT IN THIS CASE THAT WE COULD FIND THAT THERE WAS A MELBOURNE VIOLATION.

>> WELL, I THINK WHEN YOU START LOOKING AT SOME OF WHAT THE DCA'S ARE SAYING, THERE WAS IN FACT THE SAME STATE ATTORNEY'S OFFICE IN JACKSONVILLE WAS USING A SINGLE CASE.

THEY WERE LOOKING FOR A NEXUS

BECAUSE THEY SAID IN ONE CASE  
THEY SAY WELL, THEY USE THE  
SINGLE BECAUSE THERE WAS A  
BURGLARY LAW.  
THERE IS A NEXUS BETWEEN THERE.  
THEY SAID WE DON'T LIKE IT BUT  
IT'S UNDER THE CIRCUMSTANCES.  
>> AND YOU DON'T WANT TO USE ALL  
YOUR TIME ON THIS BUT I DO HAVE  
ONE OTHER QUESTION.  
IF YOU COULD ESTABLISH THE  
REASON THE STATE WAS STRIKING  
WAS SOMETHING THAT WAS  
DISPROPORTIONATELY AFFECTING  
BLACKS.  
THAT MIGHT BE A DIFFERENT  
SITUATION.  
SO IF YOU HAVE SOMETHING THAT  
IS -- SOMETHING IN THE  
POPULATION THAT WE KNOW IS  
DISPROPORTIONATE OR A MINORITY.  
BUT YOU HAVEN'T EVEN ATTEMPTED  
TO ESTABLISH THAT THE SITUATION.  
>> I'LL BE HONEST.  
I TRIED TO LOOK AT THE CONSENSUS  
DATA FROM JACKSONVILLE, THAT  
WOULD TAKE ME SIX MONTHS TO DO  
IT.  
BUT YOU ALSO HAVE THE FACT THAT  
THEY HAVE A RIGHT THEMSELVES TO  
SIT ON JURIES.  
THEY ARE BEING SYSTEMATIC --  
>> NOW WE WOULD BE GOING AND  
MAKING -- THAT THEY WILL  
DIFFERENT ARGUMENT.  
ARE YOU SAYING THEY ARE

PROTECTED?

>> NO, WHAT I'M SAYING IS WHEN  
USE THE GENUINENESS AND YOU HAVE  
TO START LOOKING AT IS THIS AS A  
GENUINE REASON?

WHETHER THEY'RE BLACK OR WHITE,  
THEN YOU'RE EXCLUDING AN ENTIRE  
CLASS OF PEOPLE.

UNLESS YOU ARE A PROPERTY OWNER  
AND ARE MARRIED, YOU'RE NOT  
GETTING SUMMONED IN  
JACKSONVILLE.

>> THAT'S A DIFFERENT ISSUE  
THOUGH.

>> BUT WHEN YOU SAY NOT ONLY  
DOES BANKS HAVE A RIGHT TO A  
FAIR IMPARTIAL JURY, YOU ALSO  
SAY IT'S THE RIGHT OF THE  
PEOPLE, CITIZENS OF THAT JURY.  
HIS PRODUCT IN MY BRIEF HERE  
THAT I DON'T THINK IT  
SPECIFICALLY ARGUES IN THE  
CONTEXT ALONE.

>> WELL, THAT'S A PROBLEM.

>> I MEAN, THAT MAY BE A SURVEY  
PRESERVATION PROBLEM.  
BUT IT GOES TO THE PROBLEM THAT  
THIS PROSECUTOR IS PROSECUTING  
BECAUSE OF THE RISK.

[INAUDIBLE]

[INAUDIBLE]

>> WELL, I THINK OF IT SUBJECT  
TO --

[INAUDIBLE]

[INAUDIBLE]

>> IT HAS TO BE GENUINE REASON.

IN FACT, IT CAN BE ACHIEVED BY A  
LAW ENFORCEMENT OFFICER.

>> I MEAN, YOU WOULD HELP ME  
UNDERSTAND THIS BECAUSE IT SEEMS  
YOU ARE URGING THE ROLE THAT  
WOULD PROHIBIT THE PEREMPTORY  
CHALLENGE FOR EVERY CITIZEN IN  
FLORIDA.

ALL WITHOUT SOME TYPE OF  
CATEGORY THAT WILL FALL INTO  
WHETHER I GO TO CHURCH OR  
WHETHER I LIVE ON THE SOUTH SIDE  
OF TOWN.

I MEAN, WE'LL ALWAYS HAVE THAT.  
IT SEEMS THAT -- I UNDERSTAND  
WHAT YOU'RE SAYING, BUT  
DOESN'T -- WOULDN'T IT JUST  
STRIKE ALL ACROSS THE BOARD THAT  
WE'D NEVER HAVE A PEREMPTORY  
CHALLENGE TO THAT?

>> NO, THAT'S WHAT JUSTICE  
PARIENTE WAS SAYING.

WE GIVE A LOT OF DISCUSSION.  
BUT WHEN YOU'RE CHALLENGED TO,  
OTHER REASON BECAUSE YOU'RE  
SINGLE AND RANTING BECAUSE YOU  
DON'T HAVE TIES TO THE COMMUNITY,  
YOU DON'T CARE WHAT'S GOING  
ON.

THAT'S THE LOGIC STATE WAS USING  
IN THIS CASE.

IF WE USE THAT LOGIC, GOVERNOR  
CRIST WOULD NOT HAVE SET THE JURY  
IN TALLAHASSEE.

THOMAS JEFFERSON, ANDREW  
JACKSON, BOTH PRESIDENTS OF THE

UNITED STATES WERE SINGLE.

>> MAYBE THEY WOULDN'T HAVE THOSE PARTICULAR PEOPLE ON THE JURY.

THAT'S THE WHOLE IDEA OF PEREMPTORY.

UNLESS IT IS A SUBTERFUGE FOR A RACIAL DRIVEN REASON, WHICH IS WHERE MELBOURNE AND ITS PROGENY CAME FROM, THAT PROSECUTION WAS SYSTEMATICALLY EXCLUDING BLACKS IN THE JURY, I THINK WE GO DOWN A PATH WHERE YOU WOULD BE ADVOCATING THAT WE REALLY SHOULDN'T HAVE PEREMPTORIES, WHICH IS WHAT SOME SCHOLARS HAVE SAID, THAT THEY'VE OUTLIVED THEIR USEFULNESS AND WE HAVE TO BE MORE LIBERAL ON CAUSE CHALLENGE.

>> I UNDERSTAND.

BUT LET ME CLOSE THIS OFF.

>> WELL, YOU'VE RAISED SOME INTERESTING ISSUES.

>> AND I MEAN, GOING BACK TO JUSTICE CANADY'S QUESTION OR COMMENT.

THE POINT I WOULD BRING OUT IF YOU'VE ALSO SAID THAT CLASSES OF PEOPLE HAVE THE NEED FOR PROTECTION.

CITIZENS HAVE AN EQUAL PROTECTION RIGHT TO SIT ON JURIES WITHOUT THIS PROSECUTOR --

[INAUDIBLE]

>> AS LONG AS IT IS RACE  
NEUTRAL, THAT'S ACCEPTABLE.  
>> WELL, NOT BY UNDER THE  
PROTECTION ANALYSIS.  
NOW AS FAR AS WHETHER IT'S  
PRESERVED BY --  
>> I THOUGHT WE WERE TALKING  
ABOUT MELBOURNE.  
>> THAT CAME OUT OF MELBOURNE.  
THEY BELIEVE HE SAID CITIZENS  
HAVE A RIGHT TO SIT ON JURIES.  
IN THE WAY I LOOK AT IT IS, IT  
ALSO TRANSCENDS --  
>> IF IT EXCLUDED EVERY BLACK ON  
THE JURY, MAYBE.  
BUT THERE WERE TWO ON THE JURY.  
MAYBE THREE.  
>> LET ME MOVE ON TO SOMETHING A  
LITTLE DIFFERENT.  
ONE THING THAT WAS SORT OF  
SURPRISING TO ME WESTERN STATES  
CASE THEY PUT ON JAMES POLLOCK  
HAD MATCHED BANKS' DNA.  
BEFORE TRIAL, THE DEFENSE  
COUNSEL HAD FILED A MOTION  
SAYING WE EXPECT THAT CASE TO  
PRESENT THIS TESTIMONY BUT THEY  
DON'T ANTICIPATE THE STATISTICAL  
EVIDENCE SHOWING THAT THIS MATCH  
HAS SOME PHYSICAL SIGNIFICANCE.  
HE HEARD THE MOTION OF THE TAKE  
THIS TO TRIAL.  
IN A SENSE, THE STATE DOES NOT  
INTEND TO PRESENT THE EXPERT TO  
TAKE THE STATISTICAL EVIDENCE OF  
THIS.

BEFORE THE TRIAL OF BRIM AND BUTLER.  
THEY WOULD SAY DNA ANALYSIS IS A  
TWO-STEP PROCESS.

ONE IS MAKE A MATCH AND THE  
OTHER IS YOU'VE GOT TO SHOW THE  
SIGNIFICANCE OF THIS, WHICH THEY  
DID NOT DO.

AND IN FACT, THE STATE SAID  
AFTER THE MOTION AFTER THE  
PRELIMINARY HEARING SAID WE  
DON'T PLAN ON DOING THIS.

AND AFTER THE TRIAL HE SAYS IF I  
DO PLAN ON PRESENTING THIS  
EVIDENCE --

>> WOULDN'T IT GO TO THE WEIGHT  
OF THE EVIDENCE RATHER THAN THE  
ADMISSIBILITY?

I REALIZE THERE ARE SOME  
STATEMENTS IN BRIM AND BUTLER  
ABOUT THIS BEING A TWO-STEP  
PROCESS.

BUT IF THERE IS A MATCH, IT IS  
AT LEAST, WOULD SEEM TO ME TO BE  
ADMISSIBLE EVIDENCE.

AND WOULD RATHER NOT HAVE  
EXPERTS WHO ARE GOING TO TESTIFY  
OUTSIDE THEIR FIELD MIGHT  
TESTIFY AS TO THIS POPULATION  
FREQUENCY STATISTICS.

BUT WOULDN'T THAT BE AN ARGUMENT  
TO MAKE THAT THE DEFENSE WOULD  
MAKE, LISTEN, YOU SAID THERE'S A  
MATCH BUT HE HASN'T TOLD YOU  
WHETHER THIS IS THE MOST COMMON  
DNA PROFILE OR IT'S ONE IN A  
GAZILLION OR WHATEVER THEY

USUALLY COME UP WITH.  
SO IT SEEMS LIKE IT HELPS THE  
DEFENDANT AND THAT WE CAN SAY.  
BUT HOW DOES IT NOT MAKE IT --  
HOW DOES THAT MAKE IT  
INADMISSIBLE?

>> LIKE YOU SAY, BRIM AND  
BUTLER, THE BURDEN IS ON THE  
STATE.

THEY WANT THE EVIDENCE THEN.  
THEY HAVE GOT TO BE THE BURDEN.

>> THAT'S WHAT I'M ASKING, WHY  
ISN'T THE BURDEN THAT IF THERE  
IS A MATCH, HOW SIGNIFICANT IT  
IS THAT THE PIECE OF EVIDENCE  
GOES TO THE WEIGHT.

THAT SEEMS TO ME TO BE A LOGICAL  
WAY TO LOOK AT DNA EVIDENCE.

>> NO, I DON'T THINK SO AT ALL.  
I THINK WHAT IT'S DOING IS  
CONFUSING THE JERSEY INTO  
THINKING IT'S 13 POINTS REALLY  
MEANS SOMETHING.

THEY ARE NOW JUDGING --

[INAUDIBLE]

THEY DON'T MAKE A FINGERPRINT  
IDENTIFICATION.

YOU DON'T KNOW THAT MEANS  
ANYTHING.

WE PUT ALL --

>> I AGREE WITH YOU.

THIS IS THE FIRST TIME I'VE SEEN  
A CASE WHERE WE DON'T HAVE THE  
POPULATION STATISTICS.

AND I FIND IT INTERESTING, BUT  
BLOOD TYPING --

WE DON'T BRING IN STATISTICAL INFORMATION FOR BLOOD TYPING AND WE ADMIT THAT, DO WE NOT?

>> YES.

>> AND THE BLOOD TYPING IS THAT THIS BLOOD TYPE FOUND AT THE SCENE IS CONSISTENT WITH THE DEFENDANT BLOOD TYPE AND WE DON'T REQUIRE ANY FURTHER INFORMATION, DO WE IN CONNECTION WITH THAT?

>> NO, I DON'T THINK SO.

>> I SEE WHERE YOU REACHED IN THOSE CASES BECAUSE I POSE NORMALLY PRESENTED THE DATA ABOUT THESE CASES IS UTTERLY ESSENTIAL THAT YOU DO THAT. I WAS A LITTLE SURPRISE THAT THE ELECTORATE.

>> [INAUDIBLE] THAT I DON'T PLAN ON DOING THIS. AND IT SEEMS TO ME THAT AGAIN YOU ARE CONFUSING THE JURY WHEN YOU SAY WE HAVE FINGERPRINTS, YOU KNOW.

>> YOU'RE SAYING THE DNA BECAUSE OF THE WAY IT'S PRESENTED TODAY IS SO DETRIMENTAL OR SO IMPORTANT OR SO SIGNIFICANT OR HAVE SUCH GREAT EXPLOSIVE VALUE THAT IF YOU DON'T TAKE IT TOGETHER, IT THEN BECOMES MISLEADING.

>> I THINK THERE'S THAT POSSIBILITY BECAUSE EVERYBODY WATCHES CSI AND ALL THOSE SHOWS AND 152 JILLION -- THERE'S A

REAL POSSIBILITY THE JURY WILL  
GIVE IT MORE THAN IT DESERVES  
ABOUT POPULATION STATISTICS.  
I DON'T KNOW WHY THE PROSECUTOR  
DIDN'T DO IT IN THIS CASE.  
BECAUSE I BET OTHER CASES WHERE  
IT 13 OSI AND ONE -- BUT THEY  
DIDN'T DO IT.  
WHEN YOU SAY IN BRIM AND BUTLER  
THAT THEY DIDN'T DO IT.  
THAT'S WHAT YOU SAY.  
IT'S AN ADMISSIBILITY ISSUE  
BECAUSE IF YOU DON'T PUT THAT  
STUFF IN THERE AND DON'T PUT THE  
POPULATION STATISTICS IN THERE,  
THE REAL POSSIBILITY IS THE JURY  
WILL GIVE THAT MORE  
CONSIDERATION THAN IT REALLY  
DESERVES BECAUSE IT BECOMES  
CONFUSING.  
WE SIMPLY DON'T KNOW WHY THE  
PROSECUTOR, MAYBE THOSE 13 LOCI,  
MAYBE THEY REALLY WEREN'T  
IDENTIFIED INSIDE OF ONE OF 142  
JILLION THERE'S ONLY ONE OR TWO.  
WE DON'T KNOW AND SO THAT'S THE  
PROBLEM AS WE'RE SITTING HERE AS  
THE JURY.  
>> ONCE AGAIN, WAS THIS ARGUED?  
>> YES, HE TOLD ME BRIM AND  
BUTLER SAYS THEY DID IT AT TRIAL  
AND THE PROSECUTOR SAYS I DON'T  
PLAN ON DOING THAT.  
IF I PLAN ON DOING THAT I'LL  
GIVE THE CREDIT, BUT HE NEVER  
DID.

SO THAT WAS ARGUED.

THE DEFENSE COUNSEL SPECIFICALLY  
CITED BRIM AND BUTLER.

>> TO THE ARGUMENT PUT THIS ON  
WHETHER THE POPULATION  
STATISTICS SATISFIED IT?

>> NOT AT ALL.

SPECIFICALLY THE MOTION  
ELIMINATING AND THAT THE STRIKE  
SPECIFICALLY SAYS, I DON'T WANT  
TO RELITIGATE BRIM AND BUTLER.  
THIS IS A TWO-STEP PROCESS THAT  
SPECIFICALLY SAID THAT.

AND AT TRIAL, HE SAYS, YOU KNOW,  
TYPICALLY THIS THING WE HAD  
DR. POLLOCK.

AND HE SAYS THAT'S RIGHT AND  
POLLOCK CAN ALSO DO IT IF HE  
WANTS TO, BUT THEY WANT SPECIFIC  
STATISTICS AND THAT WAS BROUGHT  
UP AND LITIGATED.

>> IS THAT YOUR EXPERIENCE AND I  
THINK WE'VE HAD THIS IN ANOTHER  
CASE AND I'M NOT SURE IF WE'VE  
REACHED IT YET, BUT THE PERSON  
THAT DOES THE DNA ANALYSIS MAY  
NOT BE A PERSON THAT CAN -- THAT  
DOES HAVE THAT EXPERTISE IN THE  
FREQUENCY STATISTICS OR IS IT  
REALLY JUST A MATTER OF RUNNING  
ANOTHER PROGRAM OR IS IT ANOTHER  
SPECIALTY?

>> IN THIS CASE, THEY SEEM TO  
THINK DR. POLLOCK DOES BOTH.  
IT SEEMS SPECIFICALLY DOESN'T TALK  
ABOUT MATCHES.

BECAUSE IT REQUIRES AN EXPERTISE  
IN THAT SORT OF STUFF.

THEY TYPICALLY WILL CALL TO  
SEPARATE.

>> I MEAN, THIS IS AN IMPORTANT  
AREA CERTAINLY BECAUSE WE DON'T  
WANT TO ENCOURAGE UNQUALIFIED  
TECHNICIANS TO BE GIVING  
ADVICE.

AGAIN, YOUR ARGUMENT ON THIS  
WOULD BE THAT THIS HAS TO GO TO  
THE ADMISSIBILITY BECAUSE  
OTHERWISE THERE IS NO  
SIGNIFICANCE TO JUST THE FIRST  
STOP.

IN ORDER TO KNOW THAT, DON'T WE  
NEED TO HAVE SOME KIND OF  
ANOTHER EVIDENTIARY BASIS ON  
THAT THAT IS -- TO SAY THAT DNA  
WITHOUT THE POPULATION STATISTICS  
IS ESSENTIALLY MEANINGLESS?

>> WELL, I THINK IF YOU DO GET  
STATISTICS, LIKE I SAY, THIS --  
I HAVEN'T SEEN THIS BEFORE.

>> YOU EVER CASE WITH A FINE DNA  
AND IT IS A ONE OUT OF TWO DNA.  
IT'S ALWAYS THESE INCREDIBLE  
NUMBERS.

>> THAT'S EXACTLY THE PROBLEM.  
YOU AND I HAVE ALSO MISSED CASES  
WHERE THE LOWEST I THINK IS  
11700 --

[INAUDIBLE]

I THINK MOST PEOPLE ARE SO  
ENAMORED WITH DNA AND SO  
CONVINCED OF THE FINGERPRINTS

THAT THE POPULATION STATISTICS,  
THERE'S A POSSIBILITY THAT THEY  
MAY GIVE IT MORE WEIGHT AND MORE  
CONSIDERATION THAN THEY REALLY  
DESERVE.

SO BECAUSE --

>> I GUESS IN THIS SITUATION,  
THE DEFENDANT TO STAND AND SEE  
IF IT'D BEEN THERE.

AND HE ALSO GAVE A REASON WHY  
HIS BLOOD WOULD HAVE BEEN THERE,  
THEY SAID SOMETHING SOMETHING  
ABOUT A CUT -- FOR SOME REASON --

>> HE CUT HIMSELF ON A CRACK  
PIPE OR SOMETHING.

>> SO HOW IS THAT DNA EVIDENCE  
EVEN HARMFUL HERE BECAUSE HE  
ADMITS TO BEING THERE?

HE JUST SAYS HE DIDN'T KILL HER.

>> THEY TOOK THE TIME TO EXPLAIN  
IT FOR US IF HE HADN'T, SHE MAY  
NOT HAVE BECAUSE THE CASE LUNGES  
HARD LARGELY ON SUDIE JOHNSON.  
SO SAY A TIMELESS AND HAD NO  
IMPACT ON THE VERDICT --

[INAUDIBLE]

THIS EVIDENCE PUTS THEM AT THE  
CRIME SCENE AT THE TIME OF THE  
MURDER.

SHE THEN IS AT THE MURDER  
SCENE THAT NIGHT, BUT THIS  
CERTAINLY PUTS HIM AT THE CRIME  
SCENE.

SO WOULD HAVE AN EFFECT ON THE  
JURY VERDICT IN LIGHT OF THE  
FACT THAT SUDIE JOHNSON'S

TESTIMONY --

>> DIDN'T THE FOOTPRINT IN THE BLOOD SORT OF PUT THEM THERE ALSO?

>> WELL, I THINK SO.

>> AGAIN, WE'RE LOOKING AT THE DNA EVIDENCE AND AS SUCH A DAMNING EFFECT AND SO POWERFUL THAT PEOPLE SIMPLY SAY WE HAVE PROSECUTED SUDIE JOHNSON BUT WE'VE GOT THE DNA THERE.

WHEN YOU START LOOKING --

>> WHAT ABOUT THE FACT ON CROSS EXAMINATION THEY ASKED HIM ABOUT THE POPULATION STATISTICS, BUT SOMEHOW THEY GOT INTO THE DOCTOR STARTED EXPLAINING WHEN YOU HAVE ONE COMPARISON THAT IT DOESN'T MEAN VERY MUCH.

BUT THE MORE THAT YOU HAVE, THE MORE IT IS A MATCH TO THAT PARTICULAR DEFENDANT.

AND WHEN YOU GET 13 AS HE HAD 11 OF THE EXAMPLES, IT REALLY IS A MATCH FOR THIS PERSON.

I MEAN, ISN'T THAT SORT OF EXPLANATION THAT WOULD CERTAINLY GET IF THEY HAD DONE THE POPULATION STATISTIC ALSO?

>> I GUESS I WOULD SAY THE STATE'S FAILURE TO TRY AND PRESENT THE STATISTICS.

[INAUDIBLE]

ISN'T THAT A COMPARISON KIND OF ANALYSIS?

>> WELL, MAYBE, BUT THEN

DR. POLLOCK IS QUALIFIED TO MAKE THAT OBJECTION.

>> YOU DIDN'T OBJECT TO THAT PARTICULAR --

>> LET'S DON'T GET HUNG UP ON THIS.

THE STATES FAILED TO REQUIRE WHAT'S IN BRIM AND BUTLER.

>> BRIM AND BUTLER SPECIFICALLY STATES YOU HAVE TO BRING IN --

>> THEY SPECIFICALLY SAID WE'RE NOT GOING TO DO IT.

THAT'S THE ARGUMENT.

NOW, IF WE WANT TO MOVE ON I'D LIKE TO TALK ABOUT THE CROSS EXAMINATION OF SUDIE JOHNSON.

THAT SUDIE JOHNSON IS THE ONE WHO GAVE THE POLICE THE DAMNING STATEMENTS THAT BANKS HAD MURDERED SOMEBODY AND IT WAS A PAYBACK, BUT SHE HAS A CREDIBILITY PROBLEM.

SHE MADE IT TWO WEEKS AFTER HEARING IS TO TELL THE POLICE.

SHE WAS APPARENTLY ROMANTICALLY INVOLVED WITH HIM AND BROKE UP WHILE HE WAS IN JAIL.

THERE WAS SOME QUESTION TO HER CREDIBILITY.

THAT'S WHAT THE CROSS-EXAMINATION IS TRYING TO DO IS ATTACK HER CREDIBILITY.

THEN HE SAYS AT SOME POINT, YOU CHANGED YOUR MIND?

MS. JOHNSON SAYS YES AND THE NEXT POINT DID YOU CHANGE YOUR

MIND BECAUSE MR. BANKS HAD SEX?  
SHE SAID THAT WAS NOT THE  
REASON, THE REASON WAS I  
SUPPORTED MR. BANKS --  
>> WAS THERE ANY MOTION ELIMINATING  
ON THIS?  
>> NO.  
>> SO HOW IN A CROSS  
EXAMINATION, HOW WOULD SHE KNOW  
THAT SHE COULDN'T OFFER THAT IF  
HE KEPT ON ASKING, DID YOU CHANGE  
YOUR MIND?  
WHY DID YOU CHANGE YOUR MIND?  
SHE CHANGED HER MIND BECAUSE HE  
FOUND OUT HE AND MS. VOLUM HAD  
SEX.  
HOW WOULD SHE KNOW AS A WITNESS  
THAT SHE'S NOT SUPPOSED TO GO  
INTO -- AND THEN SHE GOES I  
SUPPORTED MR. BANKS ALL THE WAY  
UNTIL I SAW THE TAPE OF HIM  
STABBING MR. WILLIAM JOHNSON AND  
THEN AT THAT POINT THE DEFENSE  
APPROPRIATELY OBJECTS, SO SHE  
DOESN'T SAY ANYTHING MORE THAN  
THAN THE JUDGE RECOGNIZES THIS  
WAS ERROR BUT HE DENIES THE  
MOTION FOR MISTRIAL, GIVES A  
CONSTRUED AS INSTRUCTION WHICH  
THE DEFENDANT AGREED WITH AND  
THEN THE STATE AGREED NOT TO  
MENTION IT IN CLOSING ARGUMENT.  
AND THEN THE NEXT DAY THE JUDGE  
PULLED THE JURORS.  
SO WHAT NOW, HOW CAN YOU SAY  
WITHOUT THERE HAVING BEEN A

MOTION AND ELIMINATE IT AND EVERYTHING ELSE THAT THIS JUDGE DID AND THAT THE PROSECUTION AGREED NOT TO USE IT, THEY DIDN'T INVITE IT, THAT IT WOULD REQUIRE HIM TO HAVE A MISTRIAL?

>> YOU HAVE A COUPLE THINGS GOING ON.

ONE YOU'RE SAYING THAT THE MOTION DIDN'T ELIMINATE THEREFORE HE SHOULDN'T BE SURPRISED BY HER ANSWER.

AND THEN YOU'RE ALSO ARGUING HOMICIDE.

I SEE NO REQUIREMENT IN THE LAW THAT THE DEFENSE LAWYER HAS TO RAISE BY MOTION ANYTHING HE SEES OBJECTION.

THE PURPOSE OF CROSS-EXAMINATION IS TO ALLOW LEADING QUESTIONS AS TO EXACTLY WHAT COUNSEL DID IN THIS CASE.

HE'S TRYING TO GUIDE MS. VOLUM TO GET THE ANSWERS HE WANTS AND BY ASKING HIS LEADING YES OR NO TYPE OF QUESTIONS TO CONTROL THEIR ANSWERS.

>> LET'S JUST ASSUME -- I THINK YOU ARE CONCERNED THAT SAY WASN'T INVITED ERROR AND YOU SAY CROSS EXAMINATION SHOULD BE THE PLACE WHERE THERE'S GOING TO BE INVITED THERE.

LET'S DECIDE WHETHER THE DEFENSE BUT ARE THERE OR WHETHER SHE WOULD'VE GONE OR NOT.

AND YOU'RE IN YOUR REBUTTAL, SO YOU MAY WANT TO SAVE IT, BUT ABOUT THE FACT THAT THE JUDGE DID EVERYTHING WE WANT A TRIAL TO DO AND THE PROSECUTION DID EVERYTHING THAT THEY SHOULD'VE DONE.

>> WELL, AGAIN --

[INAUDIBLE]

>> WHETHER A MISTRIAL SHOULD THE --

>> WHAT THE COURT SAID WHEN YOU START TALKING ABOUT UNCHARGED CRIME, THOSE TYPES OF ALLEGATIONS ARE SO CORROSIVE THAT THEY ARE VIRTUALLY IMMUNE TO A CURATIVE CONSTRUCTION.

SO THAT'S WHAT WE'RE SAYING THAT THIS SORT OF ERROR ALLEGATION IS SO SERIOUS THAT YOU SIMPLY COULDN'T CURATE IT.

>> IF YOU WANT TO SAVE YOUR --

>> I'VE GOT -- ANYWAY, THANK YOU VERY MUCH.

>> MAY I PLEASE THE COURT.

MEREDITH CHARBULA, ASSISTANT ATTORNEY GENERAL COUNSEL FOR THE APPELLEE.

I'D LIKE TO START OUT WITH THE RECITATION OF THE FACTS BY COUNSEL REGARDING THE FACT THAT MS. VOLUM WAS BUYING CRACK FROM THE DEFENDANT OR SHE ALLOWED HIM TO USE HIS HOUSE AS A TRAP.

ALL THAT SELF-SERVING TESTIMONY

FROM THE SENATE, THE JURY WAS FREE TO REJECT IT.

>> LET'S GO INTO SOME LEGAL ISSUES.

THE DNA, I'VE NEVER SEEN THE DNA PUT ON IN THAT FASHION.

WHEN IT DOES CREATE SOME QUESTIONS HERE.

WHAT IS YOUR RESPONSE TO THIS THAT YOU NEED TO COUPLE IT WITH SOME STATISTICS OR BECAUSE OF WHAT DNA HAS COME TO BE KNOWN AS?

THE BE-ALL END-ALL IN EVERY CASE IS THAT UNLESS YOU TRIED IT, IT BECOMES IMPROPERLY SUGGESTIVE OR IMPROPERLY CONTROLLING?

>> WELL, I'D LIKE TO SAY FIRST OF ALL THAT THIS USE IS NOT PRESERVED.

IF THIS COURT LOOKS AT THE MOTION IN LIMINE, WITH THE TRIAL RECORD --

[INAUDIBLE]

THE EJECTION WAS NEVER AND HAS NEVER BEEN THIS EVIDENCE IS NOT ADMISSIBLE WITHOUT THE POPULATION -- THE MOTION IN LIMINE AS YOU QUITE CORRECTLY SAID JUSTICE CANADY WAS JUSTICE. AT TRIAL THAT JUSTICE WAS PREDICATE AND YES THE COUNCIL MENTIONED BRIM AND BUTLER AND MENTIONED THE TWO PARTED THE TEST THAT THIS COURT, THAT INDICTED BECAUSE IN NEITHER BRIM OR

BUTLER WAS THE ISSUE OF  
ADMISSIBILITY.

IN BRIM IT WAS NEITHER HAD TO BE  
TESTED IN THE VALOR WITH THE  
QUALIFICATIONS OF THE EXPERT  
WITNESS.

NOT ONE TIME DID THE TRIAL  
COUNSEL SAY, YOUR HONOR,  
DR. POLLOCK'S TESTIMONY IS  
ADMISSIBLE WITHOUT THE  
POPULATION STATISTICS.

AFTER HE FINISHED TESTIFYING IT  
DIDN'T TESTIFY ABOUT THE  
POPULATION STATISTICS HE DIDN'T  
MOVE TO STRIKE THE TESTIMONY  
SAYING THAT THE EVIDENCE WAS  
INADMISSIBLE.

NOT ONE TIME DID THE DEFENSE  
COUNSEL SAY THIS IS INADMISSIBLE  
AND I THINK THE RECORD WILL BACK  
THAT UP.

HOWEVER, WE HAVE DR. POLLOCK  
TESTIFYING ABOUT VARIOUS ITEMS  
AT THE SCENE.

A BLOODY TOWEL THAT HAD SOME  
TIME UNDER AND BANKS BLOOD ON IT.

A FULL DNA PROFILES FOR STR,  
SHORT TIME REPEAT DNA.

SO THE FULL PROFILE IS 13.

HE TESTIFIED THAT THE BLOOD ON  
THE TOWEL THAT HAD BANKS'  
BLOOD ON ALL 13 LOCI.

AND ON THE BAND-AID BOX.

SO EXPLAIN TO THE JURY THAT THINKING.

BANKS' BLOOD HAD ALL 13.

OTHER ITEMS OF EVIDENCE SUCH AS

BLOODY FOOT PRINT, SOME OTHER BLOOD FOUND AT THE SCENE WERE HER LOCI AND 13, WHICH ALLOW THE DEFENSE COUNSEL TO SAY WELL, YOU KNOW, IF YOU MISSED ON THE SEVEN LOCI BELONGING TO DONALD BANKS, THAT MEANS IT DIDN'T MATCH THE EIGHTH ONE, IT WOULDN'T BE DONALD BANKS.

>> DO YOU KNOW ANY CASE WHERE THIS IS, AS JUSTICE LEWIS HAD ASKED MR. DAVIS.

AREN'T ALL THE CASES THAT WE'VE REVIEWED UP TO THIS TIME INCLUDE POPULATION FREQUENCY STATISTICS?

>> I DON'T KNOW IF I CAN REPRESENT THAT TO BE THIS CASE.

I THINK CERTAINLY IT'S TYPICAL, BUT THIS COURT HAS NEVER SAID THAT DNA EVIDENCE IS NOT ADMISSIBLE WITHOUT THE POPULATION STATISTICS.

>> HOW ABOUT YOU SAY DOUBLE WE SAT IN BRIM AND BUTLER IS DITKA? WE SAY IN BRIM CAN WE CLARIFY AND EMPHASIZE THAT THE DNA TESTING PROCESS CONSISTS OF TWO DISTINCT TEST -- STEPS.

FIRST STEP OF THE DNA PROCESS RELIES UPON THE PRINCIPLES OF MOLECULAR BIOLOGY AND CHEMISTRY.

AND THEN IT GOES A SECOND STATISTICAL STEP IS NEEDED TO GET SIGNIFICANCE TO THAT MATCH.

AND THEN WE SAY IN THE SAME OPINION, IT'S IMPORTANT TO

RECOGNIZE THAT THE DNA TESTING  
IS A TWO-STEP PROCESS.  
THE FACT THE MATCH IS FOUND IN  
THE FIRST FIVE MAY BE  
MEANINGLESS WITHOUT QUALITATIVE  
OR QUANTITATIVE ESTIMATES  
DEMONSTRATING THE SIGNIFICANCE.  
WE SAID THAT.

>> MAY BE.

>> WE DID SAY THAT?

>> YOU SAID MAY BE.  
MAY BE MISLEADING.

BUT HERE WE HAVE AN EXPERT WHO  
HAS SEEN OF COURSE THE ISSUE IN  
BRIM AND BUTLER WAS NOT THE  
ADMISSIBILITY OF THE ISSUE  
WITHOUT ONE.

BUT HERE WE HAVE A DNA EXPERT  
SEEING A FULL DNA STR PROFILE IS  
13 LOCI.

IT WAS FOUND THAT 13 LOCI.

EITHER THE JURY HEARING A FULL  
PROFILE 13, FULL PROFILE ON THE  
TOWEL AND BAND-AID BOX.

BUT THAT ALLOWED THE DEFENSE TO  
EXPLOIT THE FACT THAT AT THE  
EIGHTH LOCI HE WOULD HAVE  
BEEN ABLE TO TELL ON THE EIGHTH  
LOCI IT WOULD HAVE BEEN  
BANKS THAT WOULD'VE EXCLUDED  
HIM.

THAT IT ALLOWED HIM TO EXPLOIT  
THAT.

NOW, ANOTHER THING IS THAT THE  
COUNCIL MENTIONED MR. BANKS WAS  
FORCED TO TAKE THE STAND.

HE NEVER MADE THAT CLAIM AT TRIAL.

OF COURSE, HE NEVER MADE THE OBJECTION THAT THE DNA EVIDENCE WAS ADMISSIBLE WITHOUT THE POPULATION STATISTICS SO IT FOLLOWED THAT HE WOULDN'T SAY I'M BEING FORCED TO TAKE A STAND BECAUSE OF THIS DNA EVIDENCE ONLY.

AND AS YOU POINTED OUT, JUSTICE PARIENTE, HE'S GOT BLOODY FOOTPRINTS IN THE HOUSE, HE'S GOT HIS FINGERPRINT ON A BEER CAN.

>> WE AGREE WITH THAT.

WE UNDERSTAND THAT THE EVIDENCE EXISTS.

IT IS A VERY PRECISE LEGAL ISSUE WITH REGARDING THIS KIND OF EVIDENCE.

AND WHAT HARM IT IS MAYBE A TOTALLY DIFFERENT ISSUE, BUT ARE YOU SAYING THAT THEY SHOULD HAVE FILED A MOTION TO FRYE TEST AND JUST BE ADMISSION OF THE MATCHES WITHOUT --

>> THE DEFENSE COUNSEL DOES NOT WANT -- SHE'S GOT A DNA REPORT IN HIS HAND.

HE DOES NOT WANT MR. POLLOCK TO THE COURT SAID DR. POLLOCK TO SAY THE 13 LOCI MEANS ONE AND 56 QUADRUPLE AFRICAN-AMERICANS. SO WHY WOULD THEY EVER CHALLENGE THE ADMISSIBILITY OF DNA AND

PROBABLY THAT'S WHY THE COUNCIL  
DIDN'T DO THIS.

WHY WOULD THEY EVER SAY DNA IS  
NOT ADMISSIBLE WITHOUT THE  
POPULATION STATISTICS AS THEY  
DON'T WANT THE JURY TO HEAR ONE  
AND 56 QUADRILLION  
AFRICAN-AMERICANS.

>> AS WE GO DOWN THE ROAD, THIS  
CASE TO STAND FOR THE PRINCIPLE  
OF LAW IN OTHER CASES, DNA THAT  
REALLY IS MAYBE NOT AS FOUND  
HERE OR AS INCULCATING HERE AND  
USE IT FOR SOME EVIL MEANS.  
THAT'S WHAT THE CONCERN WOULD  
BE.

WE ESTABLISH SOME KIND OF RULE  
OF LAW BUT IT'S ADMISSIBLE IN  
ANOTHER POST ABOUT ANY NEXUS,  
THEN THAT MEANS WHETHER THERE'S  
A CLOSE ONE OR ONE THAT'S NOT  
EVEN REMOTELY CLOSE THAT  
EVIDENCE OF CONSENT.

>> NOT NECESSARILY BECAUSE THE  
DEFENSE CAN STILL CHALLENGE FOR  
RELEVANCY.

LET'S SAY YOU HAVE ONE OF 13 LOCI  
USING STR TESTING.

THEY CAN STILL CHARGE ON  
RELEVANCY.

>> THAT TENDS TO PROVE  
SOMETHING.

HOW MUCH DOESN'T HAVE TO PROVE A  
100%.

IT'S ONE 10th OF 1%, AND THEY  
TEND TO PROVE SOMETHING.

SO IT'S A PRETTY DIFFICULT  
ARGUMENT TO MAKE THE RELEVANCE  
OBJECTION IS GOING TO BE  
SUFFICIENT TO PREVENT AN EVIL.  
MAYBE THIS CASE DIDN'T HAPPEN  
HERE BECAUSE OF OUR FACTS.  
BUT THE DANGER PRESENT IN THIS  
AREA SEEMS TO ME TO BE A GREAT  
EVIL FOR ALL KINDS OF CASES,  
CIVIL, CRIMINAL.

>> AGAIN YOUR HONOR, I WOULD SAY  
THAT WHEN A DNA EXPERT EXPLAINS  
TO THE JURY THAT A DEFENDANT'S  
MATCHES THE FULL PROFILE AND  
THEN TESTIFIES THAT THERE'S ONLY  
A NOTCH OF SEVEN OF THE 13.  
AGAIN, THE JURY IS ALLOWED TO  
WEIGH THAT.

CERTAINLY IT GOES TO WEIGHT AND  
CERTAINLY AS YOU POINTED OUT  
JUSTICE LEWIS, BLOOD EVIDENCE IS  
ADMISSIBLE WITH EVIDENCE OF THE  
BLOOD TYPING US FIVE ENZYMES  
THAT PRETTY CLEARLY IDENTIFIED  
THEM AT THE SCENE WITHOUT ANY  
KIND OF POPULATION STATISTICS.

>> BUT THE WORLD, THE COMMON  
SENSE THAT EVERYONE KNOWS  
THERE'S ONLY A CERTAIN NUMBER OF  
BLOOD TYPES.

SOMEONE HEARING THAT THE BLOOD  
TYPES MATCHED DOESN'T HAVE THE  
POWER OF DNA.

AND I THINK THAT LEAVES AS I'M  
HEARING MR. DAVIS SAYING AND  
WHAT JUSTICE LEWIS IS SAYING IS

WE HAVE ASSIGNED DNA, SUCH A POWERFUL ROLE IN OUR JUSTICE SYSTEM, THAT WHEN WE HEAR THAT THIS IS THE ONLY KIND OF EVIDENCE THAT CAN BE TESTED YEARS AFTER THE CONVICTION BECAUSE OF THE DNA THEY CAN EXONERATE.

BUT NOW WE'RE TALKING ABOUT WHAT DO WE MEAN WHEN WE SAY THERE'S DNA THAT EXONERATES OR DNA THAT INCORPORATES?

AND YOU'RE SAYING IT IS WE REALLY ONLY HAVE TO WORRY ABOUT THE FIRST STEP BECAUSE THERE WAS THIS OTHER EVIDENCE OR IN THE NEXT TRIAL, IS IT OKAY TO JUST PUT ON DNA AND SAY THERE WAS ONLY EIGHT AREAS TO MATCH AND THAT'S OKAY, TOO.

>> OF COURSE.

BECAUSE THEY CAN THEN SAY TO THE CROSS DEFENSE EXPERT AND SAY OKAY, YOU ARE ABLE TO DEVELOP AT THE 9TH LOCI.

SO IF MY CLIENT'S DNA DOESN'T MATCH, HE WOULD BE EXCLUDED. AND THEN ARGUE TO THE JURY THAT THEY SHOULD DO VERY LITTLE WEIGHT ON THE DNA EVIDENCE BECAUSE THEY DIDN'T DEVELOP THE FULL PROFILE.

BUT HERE ALSO YOU HAVE TO -- AND I UNDERSTAND THE CONCERN OF RULE OF LAW, BUT I THINK TO SAY THAT THIS IS ABSOLUTELY REQUIRED FOR

ADMISSIBILITY IS NOT NECESSARY.  
YOU'VE GOT THE DEFENSIBILITY TO  
CONTEST RELEVANCY, FOR PREDICATE  
ALTERCATIONS OF THE EXPERT,  
RELIABILITY --

>> YOU MAY BE SAYING THAT THIS  
CASE DIDN'T DEVELOP THAT ISSUE  
WELL ENOUGH FOR AN INFORMED  
DECISION, EVEN BY THIS COURT.  
THAT MAY BE WHAT YOU'RE SAYING  
HERE IS THAT THE SHOULD OF BEEN  
LITIGATED FULLY BELOW AS THEY  
DON'T PRODUCE IT THAN I HAVE A  
HEARING ON IT AND THEY PRESENT  
THE EVIDENCE THAT WE DON'T HAVE  
THAT.

>> THAT'S CORRECT BECAUSE THEY  
NEVER MADE THAT OBJECTION AND  
THEY DON'T HAVE THAT.  
CERTAINLY THIS IS NOT THE CASE  
TO DO THAT.

AND I THINK JUST LIKE, YOU KNOW,  
OTHER EVIDENCE, OTHER SCIENTIFIC  
EVIDENCE, YOU KNOW, THIS  
PARTICULAR THING GOES TO THE  
WEIGHT OF THE EVIDENCE  
ESPECIALLY IN THIS CASE WHERE  
YOU HAVE A LOW PROILE.

>> DO YOU ASK THAT THREE OF DNA  
LOCI, THAT IS A BELL  
RINGER?

>> I CERTAINLY BELIEVE DNA  
EVIDENCE IS VERY, VERY  
COMPELLING EVIDENCE.  
YOU HAVE A DEFENDANT ADMITTING  
OR CLAIMING THAT HE HAD

CONSENSUAL SEX WITH HER.

AND BY THE WAY, THOSE WERE ALL  
HER LOCI, THE SEMEN

FOUND IN HER VAGINA AND TOWEL.

HE CLAIMS THAT HE BLED ON THE  
FLOOR BECAUSE HE CUT HIMSELF ON  
THE FOREFINGERS WITH A CRACK  
PIPE.

YET RIGHT AFTER THE MURDER HE GOES  
TO THE HOSPITAL WITH A STAB WOUND ON  
HIS LEG JUST LIKE THE STAB  
WOUNDS ON LINDA VOLUM'S ANYBODY.

AND IT'S STILL THERE TWO WEEKS  
LATER WHEN THEY ARREST HIM ON  
THE JOHNSON CASE.

>> LET ME ASK YOU THIS ABOUT THE  
POPULATION FREQUENCY OF THE  
LOCI.

I KNOW MR. DAVIS BASICALLY HAD  
TO SAY THAT YOU HAVE TO HAVE  
THAT KIND OF EVIDENCE TO GO WITH  
HOWEVER MANY LOCI.

WOULD IT BE HER POSITION THAT IF  
YOU HAVE 13 WHICH IS ALL THAT  
WOULD SHOW THE COMPLETE MATCH  
BUT YOU DON'T NEED IT, BUT IF  
YOU HAVE LESS THAN THAT THAT SHE  
WOULD IN FACT NEED THAT KIND OF  
IS THERE ANY ROOM FOR MAKING  
POPULATION STATISTIC INFORMATION  
IN THE DNA TECHNOLOGY?

>> NO, YOUR HONOR, I DON'T THINK  
THIS COURT SHOULD IMPOSE THE  
REQUIREMENT BECAUSE IT CAN IT  
GOES TO WEIGH OUT THE EVIDENCE,  
NOT THE ADMISSIBILITY.

BECAUSE THE TESTIMONY IS FULL  
PROFILES AT STR 13 FROM THE  
DEFENDANT THE DEFENDANT MATCH  
MATCHED THE THE 17.

SO IF THE DEFENDANT MATCHED IT  
THREE OR SIX OR SEVEN WHAT ARE  
SOME OF THE EVIDENCE THAN THE  
JURY IS ENTITLED TO GIVE THAT IT  
WANTS.

THE ANSWER TO YOUR QUESTION AS  
NOW I DO NOT BELIEVE UNDER ANY  
CIRCUMSTANCES AT THE POPULATION  
STATISTICS WILL BE REQUIRED.

IN MOST CASES THE STATE IS GOING  
TO WANT TO DO THAT BECAUSE ONE  
AND 56 QUADRILLION PEOPLE IS  
PRETTY POWERFUL.

BUT HERE THE DEFENDANT ADMITTED  
THAT IT WAS IN THE APARTMENT  
THAT HE HAD CONSENSUAL SEX AND THE  
BLOOD ALL OVER HER APARTMENT.

>> ISN'T IT TRUE THAT TO  
UNDERSTAND THE MATCHING --  
[INAUDIBLE]

IT MEANS YOU NEED TO KNOW MORE.

FOR INSTANCE, FOR LOCI, I

DON'T KNOW WHAT THAT MEANS.

I MAY BE ABLE TO LOOK AT SOME  
CASES AND FIGURE THAT OUT FROM  
WHAT THE TESTIMONY HAS BEEN IN  
OTHER CASES, BUT A LAYPERSON,  
KNOWLEDGEABLE ABOUT IT, WOULDN'T  
HAVE A FRAME OF REFERENCE TO  
UNDERSTAND THE SIGNIFICANCE OF  
THAT PARTICULAR SCIENTIFIC FACT.

>> IF YOU LOOK AT THE EVIDENCE

IN THIS CASE, THE DNA EXPERT,  
DR. POLLOCK TOOK TWO PIECES OF  
EVIDENCE, THE TOWEL THAT HAD  
LINDA VOLUM'S BLOOD AND MR. BANKS  
AND LAYOUT WITH A PARTICULAR LOCI  
WERE IN SHOW THE JURY THE  
MATCH BETWEEN BANKS AND VOLUM.  
YOU HAVE DR. POLLOCK EXPLAINING  
WHAT LOCI ARE AND WHAT THEY MEAN.  
SO EXCEPT FOR THE POPULATION  
STATISTICS AND YOU SEE VERY WELL  
IN THIS CASE DR. POLLACK  
EXPLAINING WHAT THAT MEANS.  
>> FROM WHAT WAS SAID THERE,  
COULD THE JURY FIGURE IT OUT, GET  
A SENSE OF THE PROBABILITY  
THAT THE SUBSTANCE COULD HAVE  
COME FROM SOMEBODY ELSE?  
>> CERTAINLY FOR THE ONES WERE  
13 WHICH WOULD HAVE BEEN ZERO  
BECAUSE ONE AND 56 QUADRILLION  
THERE'S NOT THAT MANY PEOPLE.  
WHEN DR. POLLOCK SAYS THE WHOLE  
DNA PROFILE --  
>> HAVING SAID THIS, ISN'T THERE  
STRONG AS ARGUMENT THAT THE  
FAMILY WAS NOT ARGUED, IS AN  
PRESERVED AND IT'S REALLY NOT  
TEED UP FOR THIS COURT TO  
CONSIDER?  
>> ABSOLUTELY.  
>> WOULD YOU SHARE WITH US THE  
PRACTICAL PROBLEMS THAT YOU FACE  
IN THE COURTROOM GETTING READY  
FOR TRIAL?  
BECAUSE YOU'RE CLEARLY ON THE

ONE THAT WAS A FULL MATCH, THE STATE OR ANY AUTHORITIES WANT TO PUT ON THE STATISTICAL EVIDENCE TO SAY THIS IS A BELL RINGER.

WHAT ARE THE PRACTICAL PROBLEMS? WHAT'S HAPPENING?

THERE'S SOMETHING GOING ON THAT JUST BEYOND THIS ONE WITNESS.

>> I THINK WHEN YOU HAVE A CASE, A PROSECUTOR HAS GOT MAKE A CALL, YOU'VE GOT TO TRY THE CASE IN FRONT OF IT INHERES THERE IS A CASE WHERE THERE'S NO DISPUTE THAT THE DEFENDANT IS GOING TO ADMIT THAT HE WAS THERE.

HE HAS TO EXPLAIN HIS FINGERPRINT ON THE BEER CAN, THE BLOODY FOOTPRINTS OF PERSON THE DNA HAS GOT TO EXPLAIN THAT. HIS EVIDENCE IS THERE, HE'S GOING TO TESTIFY.

PROSECUTORS FACED WITH THE CASE WITH THE DEFENSE WAS THAT I WAS THERE, BUT SOME OTHER DUDE DID IT.

BECAUSE THERE WAS AN UNKNOWN FINGERPRINT, BLOODY FINGERPRINT FOUND AT THE SCENE.

SO THAT WAS HIS DEFENSE.

YES, I WAS THERE, BUT I LEFT AND SHE WAS ALIVE WHEN I LEFT.

FOR THE PROSECUTOR TRYING THE CASE IN FRONT OF HIM.

HE'S GOT DR. POLLOCK TESTIFYING ABOUT THE DNA.

HE SAYS YES I WAS THERE, YES I

BLED AT THE SCENE.

HE HAS HAD CONSENSUAL SEX WITH  
HER.

THAT'S WHY ALL MY STUFF IS  
THERE.

FOR THE PROSECUTORS TRYING TO  
USE THE CASE.

>> GOING FURTHER HERE, BECAUSE  
OBJECTION WAS THAT POLLOCK  
WASN'T QUALIFIED IN THE AREA OF  
POPULATION PROOF OF THE  
STATISTICS.

SO ARE YOU SAYING THAT THE STATE  
MADE A JUDGMENT THAT RATHER THAN  
TRYING -- TO THE JUDGE EVER WERE  
LONG THAT WHETHER HE WAS OR  
WASN'T QUALIFIED?

>> THAT THIS COMMITTEE WAS  
QUALIFIED TO TESTIFY.  
THEY DID CHALLENGES  
QUALIFICATIONS.

THE COURT SAID THEY QUALIFIED TO  
POPULATION STATISTICS.

>> THAT WASN'T IN HIS REPORT.  
THERE'S NOTHING IN THIS RECORD THAT  
SHOWS WHAT HE THEN CAME TO THE  
CONCLUSION ON REGARDING THE  
POPULATION FREQUENCY STATISTICS?

>> THE REPORT WOULD'VE BEEN  
TURNED OVER ON DISCOVERY AND IN  
THE COURTS FILED, BUT NOT IN  
THIS RECORD.

IT HAPPENED, BUT  
IT'S NOT IN THIS RECORD.

>> AND THE STATE FOR SOME REASON,  
EVEN THOUGH HE WAS TOLD YOU CAN

ALLOW THIS EXPERT TO TESTIFY ON  
POPULATION FREQUENCY STATISTICS,  
MADE A DECISION NOT TO ASK THOSE  
QUESTIONS?

>> YES, MA'AM.

>> AND WE DON'T KNOW THE REASON  
I ASK --

>> IT'S NOT IN THE RECORD.

WHAT WE DO KNOW IS THAT THE  
DEFENSE SAID YES I WAS THERE AND  
I LEFT AND SOME OTHER  
DUDE DID IT.

FOR INSTANCE, HE WAS SEEN USING  
HER ATM CARD AT TWO IN THE  
MORNING.

HE WAS SEEN BY MS. JOHNSON  
DRIVING HER CAR, LINDA VOLUM  
CAR.

HE GAVE HER COMPUTER TO SUDIE  
JOHNSON.

AS JOHNSON DID NOT GO TO THE  
POLICE.

SHE WAS INTERVIEWED IN THE  
JOHNSON MURDER AND SHE TOLD THE  
POLICE WHAT MR. BANKS HAD TOLD  
HER.

NONETHELESS, HE WAS SEEN USING  
HER ATM CARD, WHICH HAD NO MONEY  
ON IT SO HE COULDN'T GET ANY MONEY  
OUT OF IT.

WAS SEEN DRIVING HER CAR.

ALL THIS EVIDENCE WAS THERE AND  
THE PROSECUTOR TRIED THE CASE IN  
FRONT OF HIM.

I'D LIKE TO IF I MAY TALK A  
LITTLE BIT ABOUT THE SUDIE

JOHNSON ISSUE.

ONE OF THE THINGS YOU HAVE TO GUARD AGAINST A LITTLE BIT AND MR. DAVIS IN HIS BRIEF TALKED ABOUT THE QUESTION, THE QUESTION TRIAL COUNSEL ASKED MS. JOHNSON WAS WHETHER THAT'S AN INVITED RESPONSE.

THE COUNCIL ADMITS IT WAS AN INVITED RESPONSE BUT IS NOT FAIR. IF YOU LOOK AT THE QUESTION AND WHAT IS TALKED ABOUT, DID YOU CHANGE YOUR MIND BECAUSE HE FOUND OUT THAT HE WAS IN MS. VOLUM --

[INAUDIBLE]

CHANGE HER MIND BECAUSE HE FOUND OUT HE AND MS. VOLUM HAD SEX? WAS THAT A YES OR NO ANSWER? THE STATE SAYS NO.

IF YOU LOOK AT THE THOMPSON CASE, THOMPSON IS PRETTY MUCH GUIDANCE FOR THIS COURT IN THIS CASE AND THOMPSON, THE GROUNDSKEEPER OR SUPERVISOR AT THE CEMETERY SAW MR. THOMPSON GOING INTO THE BUILDING WITH THE TWO VICTIMS.

BUT HIS CREW HAD SEEN HIM WITH A GUN IN HIS POCKET.

SO AFTER THE DEFENSE COUNSEL ASKED HIM TWICE, HAD HE SEEN MR. THOMPSON AND HE DENIED IT, BUT SAID HIS CREW SAW IT, THE DEFENSE COUNSEL SAID WHEN MAJOR CRUISE TO HIM?

THAT POINT, MR. JOHNSON SAID  
HAD HIS TEAM GO IN THE OFFICE  
WHERE THE TWO WOMEN WERE AND  
THEY SAW A GUN IN HIS POCKET.  
THIS COURT SAID THAT WASN'T FAIR  
RESPONSE TO THE QUESTION ASKED.  
I THINK IN THIS CASE THIS IS  
EVEN MORE RESPONSIVE.  
BECAUSE IT WAS NOT DUE TO CHANGE  
HER MIND BECAUSE HE FOUND OUT HE  
AND MS. VOLUM WERE HAVING SEX  
WAS ARGUABLY COULD BE ANSWERED  
BY A WITNESS WHO KNOWS WHAT  
THEY'RE DOING, YES OR NO.  
>> SHE DID THAT.  
THE QUESTION BEFORE WAS WHOSE  
CROSS-EXAMINATION?  
PLEASE ANSWER MY QUESTION WITH A  
YES OR NO.  
DID YOU CHANGE YOUR MIND?  
YES.  
CHANGE YOUR MIND BECAUSE HE AND  
MS. VOLUM HAD SEX?  
NO, THAT WASN'T THE REASON.  
AND THAT'S THE ANSWER.  
ANYTHING ELSE IS VOLUNTEERING.  
NOW, YOU'RE SAYING THAT IT WOULD  
NOT HAVE BEEN -- THAT THE  
STATEMENT WAS AN ERROR.  
EVERYBODY TREATED IT AS IF IT  
WERE AN ERROR.  
THEY GIVE A CURATIVE  
INSTRUCTION.  
THE STATE DIDN'T TRY TO ARGUE  
TIME I'M SURE FOR YOU VERY  
HELPFULLY THAT THEY WEREN'T

GOING TO USE IT IN THE CLOSING ARGUMENTS.

AND THE JUDGE THE NEXT DAY WAS CONCERNED ENOUGH ABOUT THE STATEMENT THAT HE PULLED THE JURY, WHILE IF IT'S INVITED RESPONSE, IT'S NOT ERROR. NONE OF THAT HAD TO HAVE BEEN.

>> WELL, JUSTICE PARIENTE, THE OBJECTION WAS SUSTAINED.

>> THERE'S NO REASON TO SUSTAIN AN OBJECTION.

YES OF COURSE THERE IS.

WE ALL ADMIT THAT THE TESTIMONY OF THAT ROBBERY WAS NOT ADMISSIBLE.

THAT'S NOT AN ISSUE.

THAT'S INADMISSIBLE -- THE PROSECUTION COULD NOT HAVE BROUGHT THAT EVIDENCE DOWN.

WHAT HAPPENED IS THE DEFENSE COUNSEL, WHAT IS TRYING TO IMPEACH HER, TRYING TO IMPEACH SUDIE JOHNSON TO IMPRESS ON THE JURY SHE WAS NOT A VICTIM BECAUSE SHE FOUND HIM AND MS. VOLUM WERE HAVING SEX. THEY WERE HAVING CONSENSUAL SEXUAL RELATIONS THEY WERE FREE TO REJECT.

>> WHAT I FIND INTERESTING IN THIS CASE IS THAT EVEN BEFORE THAT PARTICULAR QUESTION, IT SEEMS TO ME THIS WHOLE -- NOT THE WHOLE CROSS-EXAMINATION, THE PART OF THE PROCESS OF THE

EXAMINATION STARTED WITH, YOU KNOW, YOU WROTE LETTERS TO HIM FOR A LONG TIME, THEN YOU STOPPED WRITING LETTERS.

YOU WERE IN HIS CORNER FOR A LONG TIME, WHY WOULD YOU NO LONGER IT HIS CORNER?

AND SO EVEN THOUGH THAT ONE QUESTION MAY NOT HAVE NECESSARILY -- IT SEEMS TO ME THAT THE DEFENSE ATTORNEY WAS SORT OF BUILDING UP TO WHY IN THE WORLD DO YOU CHANGE YOUR MIND ABOUT YOUR SUPPORT OF THIS DEFENDANT?

>> WHICH OF COURSE IS MY POINT EXACTLY.

IF HE WANTED TO, THE PROBLEM WITH INVITED ERROR FORCES IF YOU ALLOW THEM TO INVITE ERROR AND I'M NOT SAYING THIS HAPPENED IN THIS CASE.

IF YOU ALLOW HIM TO INVITE ERROR BY THE INTRODUCTION OF INADMISSIBLE EVIDENCE, THE DEFENSE COUNSEL CAN PROVOKE A MISTRIAL AGAINST HIM.

SO THAT'S OBVIOUSLY A REASON WHY YOU DON'T WANT TO DO THAT.

BUT AT THIS POINT, SHE SAYS THE QUESTION HAD CHANGED HER MIND BECAUSE YOU FOUND HE AND MS. VOLUM IS TO SAY THIS IS THE REASON.

>> SO WHEN THIS WOULD MAINLY, THAT JOHNSON HAD SAID NO THAT

ISN'T THE REASON, THEN THE STATE  
GOT UP UNRESTRICTED AND SAID NOW I  
WANT TO BE ABLE TO -- HE'S  
OPENED THE DOOR.

NOW I WANT TO SAY I WANT THE  
JURY TO KNOW WHAT WAS THE  
REASON.

HE'S OPENED THE DOOR.

I MEAN, THAT IS HOW IT WOULD  
COME BEFORE THE COURT.

>> HE MIGHT.

AND AT THAT POINT YOU WOULD HOPE  
THE STATE FOR US TO NOT QUESTION  
WILL ASK FOR PERMISSION FROM THE  
TRIAL COURT.

>> OF COURSE THEY WOULD TAKE  
THAT AT THE PROSECUTOR WAS GOING  
TO DO THAT WHICH DIDN'T HAPPEN  
IN THIS CASE.

HE WOULD'VE TAKEN IT OUTSIDE THE  
HEARING OF THE JURY TO MAKE SURE  
ARGUMENT THAT HE OPEN THE DOOR.

THE THING IS CLEARLY THE  
EVIDENCE WAS INADMISSIBLE BUT  
INVITED BY THE DEFENSE BECAUSE  
THE EXACT QUESTION AND I WOULD  
URGE THIS COURT TO GO BACK AND LOOK  
AT ITS OPINION OF THOMPSON  
BECAUSE IT WAS MUCH LESS  
RESPONSIVE TO THE DEFENSE  
COUNSEL'S QUESTION THAN THIS ONE  
WAS.

CHANGE HER MIND BECAUSE SHE FOUND  
HE AND MS. VOLUM WERE HAVING  
SEX?

THAT IS A REASON TO GIVE ME THE

REASON.

SO THAT'S WHAT SHE DID.

THE THING IS THIS IS A MISTRIAL STANDARD AND THE JUDGE, THIS COURT IS URGED WHEN EVIDENCE COMES OUT THAT IS PROMPTED A MOTION FOR MISTRIAL THAT A CURATIVE INSTRUCTION IS ONE WAY THE JUDGE CAN HANDLE IT AND THIS IS EXACTLY HOW HE DID TWICE OFFERED IN CURATIVE INSTRUCTION, TWICE ACCEPTED BY THE DEFENSE.

PROSECUTOR DID NOT ARGUE IT.

WE'RE NOT TARGETING THIS WAS ADMISSIBLE DEFENSE FROM THE GUILT PHASE.

WE'RE SAYING AT THIS POINT IT WAS INVITED ERROR THAT JUDGE CURATED IT WITH TWICE THE INSTRUCTION, THE PROSECUTOR DIDN'T ARGUE IT AND THERE'S SIMPLY NO WAY THAT THIS VITIATED THE ENTIRE PROCEEDINGS.

>> AT THIS POINT, THE JURY DOESN'T EVEN KNOW WHO MR. WILLIAM JOHNSON IS AND IT HAS MENTIONED STABBING AT THAT POINT IT STOPPED.

FOR WHATEVER REASON, THE STATE DIDN'T EVEN, IN THE SECOND PHASE, THE PENALTY PHASE, DIDN'T EVEN KNOW THAT JOHNSON DIED AS A RESULT OF THIS CRIME.

>> BECAUSE HE WAS CONVICTED OF ATTEMPTED 6-DEGREE MURDER, BECAUSE MS. JOHNSON LINGERED FOR

A PERIOD OF TIME, HE DIED AFTER TRIAL BEFORE SENTENCING, BUT AFTER TRIAL.

THE STATE FOR CONCERN OF FAIRNESS TO THE DEFENDANT DID NOT ATTEMPT TO INTRODUCE THAT HE HAD DIED HERE AT AND OF COURSE, THAT GOES TO THE PENALTY PHASE ISSUE DATE I CAN'T CALL MR. JOHNSON TO TESTIFY ABOUT THIS CRIME BECAUSE HE WAS DEAD. SO, I THINK WHEN YOU LOOK AT THOMPSON AND LOOK AT THIS CASE, THE ANSWER WAS CLEARLY INVITED ERROR IN A DIRECT INVITED RESPONSE.

THE CURATIVE INSTRUCTIONS ARE FAIR FOR THE PROSECUTOR TOO MUCH AGAIN AND WAS NEVER MENTIONED AGAIN.

CLEARLY IT DID NOT THIS VITIATE THE ENTIRE PROCEEDINGS AND A FAIR TRIAL.

INSOFAR AS THE FIRST ISSUE THAT MR. DAVIS ARGUED, I THINK THIS COURT IN MELBOURNE HAS SAID -- I THINK ONE OF THE PROBLEMS AND DCA, UNFORTUNATELY COURTS DOING THIS MORE OFTEN IS MUSHING TOGETHER STEP ONE -- OR STEP TWO IN STEP THREE.

IN MELBOURNE THIS COURT SAID MELBOURNE IS A THREE-STEP PROCESS.

EACH PARTY AS A WHOLE.

THE SENSORS MAKE AN OBJECTION,

SECOND, IF THAT'S WHAT HE OFFERS  
THERE IS NEUTRAL REASON.

I THINK IT'S REALLY IMPORTANT TO  
UNDERSTAND THAT THE JUDGE HAS  
THAT SLIGHTLY NO INTERVENTION,  
NO REQUIRED FUNDING, NO  
NOTHING OF STAGE TWO.

SO WHEN HE GOES TO STEP THREE  
AND ALLOWS THE STRIKE, THEN HE'S  
MAKING THE GENUINENESS.

BECAUSE REMEMBER WE HAVE A  
PRESUMPTION THAT STRIKES ARE  
EXERCISED IN A NONDISCRIMINATORY  
WAY.

BUT WHAT'S REALLY IMPORTANT IN  
THIS CASE IS THE DEFENSE NEVER  
OBJECTED TO THE FACTUAL BASIS  
FOR THE STRIKE.

THEY NEVER DISPUTED THAT THREE  
WHITE JURORS WERE STRICKEN FOR  
THE EXACT SAME REASON.

IN MELBOURNE OF COURSE RELIED ON  
SUPREME COURT.

THERE'S ABSOLUTELY NO REASON OR  
NO BASIS TO CONCLUDE THAT IT HAS  
TO BE IN EXCESS IN STEP TWO  
BETWEEN THE REASON FOR THE  
STRIKE IN THE TRIAL.

AND THE ONLY ISSUE IN STEP THREE  
IS THE GENUINENESS OF THE  
STRIKE.

HERE YOU HAVE TWO  
AFRICAN-AMERICAN JURORS,  
WHEN MR. BRADLEY CHALLENGED  
MR. FORD, THE FIRST ONE WAS  
AGAINST THE WHITE JUROR,

MR. WALKER, SINGLE RENTER, THE PROSECUTOR NOTED HE PASSED OVER ANOTHER AFRICAN-AMERICAN JUROR WHO WAS 45 YEARS OLD AND OWNED HIS OWN HOME.

THE COURT SUBSEQUENTLY NOTED THERE WAS ANOTHER AFRICAN-AMERICAN ON THE JURY AND IT WAS FINALLY TWO AFRICAN-AMERICANS AND A HISPANIC OR THERE IS NO ACTUAL CLAIM THAT HE DIDN'T EXERCISE THE PEREMPTORY CHALLENGE BETWEEN WHITE JURORS.

ABSOLUTELY NOTHING FOR THE TRIAL COURT TO EVEN BELIEVE THAT THERE WAS A DISCRIMINATORY REASON FOR THE STRIKE.

SO WHEN YOU LOOK ABOUT THOSE FACTS, IT'S CLEAR THAT THE TRIAL JUDGE CORRECTLY HELD MELBOURNE AND THE STRENGTH WERE PERMISSIBLE IN THE CANADIAN NO ERROR.

>> SO, I WOULD ASK

MR. BANKS IS SENTENCED TO DEATH.

>> MAY I PLEASE THE COURT.

GOING BY PRESERVATION DNA THING.

FRANKLY I'M JUST KIND OF A GAS.

I DON'T UNDERSTAND WHY THIS ISSUE BECAUSE HE FOLLOWS THE MOTION TO ILIMIN AND SAYS THE STATE DOESN'T PUT STATISTICAL EVIDENCE AT ITS OWN PERIL AT THE HEARING OF THE TRIAL.

I THINK HE SAID BRIM IN OTHER

CASES HAVE TO DO WITH THE  
POPULATION --

[INAUDIBLE]

I MEAN, I CAN'T UNDERSTAND WHY  
THIS IS NOT PRESERVED.

>> I GUESS WHAT I WOULD'VE  
EXPECTED IF IN MY LOOK CAREFULLY  
AT THIS ISSUE AND WHEN HE  
DOESN'T SAY ANYTHING ABOUT  
POPULATION FREQUENCY, SHOULDN'T  
AT THAT POINT THE DEFENDANT  
MOVED TO STRIKE HIS ENTIRE  
TESTIMONY?

IS THAT THE BASIS FOR THE  
ADMISSIBILITY OF THE DNA?

>> YOUR HONOR,  
BECAUSE THE STATE LIBERTY IS  
REFUSING TO DO SOMETHING THE  
DEFENSE HAS PUT THEM ON NOTICE  
TWICE THAT HE NEEDS TO DO THIS.  
HE IS NOW BEING BLAMED FOR THE  
STATE'S FAILURE.

THAT JUST KIND OF BOGGLES MY  
MIND.

THE DEFENSE COUNSEL PUT THEM ON  
THE LIMITING AT THE HEARING AND  
THEN THE STATE SAYS IF I PLAN TO  
PUT THESE ON, I WILL PLAY THE  
PREDICATE.

DOES THE DEFENSE HAVE TO NOW  
TAKEN BY THE HAND AND SAY YES  
YOU REALLY DO NEED TO DO THIS  
BECAUSE BRIM AND BUTLER REQUIRE  
IT.

>> YOUR POSITION TO THIS COURT  
IS THAT IN A TRIAL COURT BELOW

THAT THE DNA TESTING WAS NOT  
ADMISSIBLE IN THE EVIDENCE  
BECAUSE THE STATISTICAL  
INFORMATION WAS NOT PRESENTED.

>> THAT'S CORRECT.

>> OKAY.

>> THANK YOU BOTH FOR YOUR  
ARGUMENTS HERE TODAY.