

>> WE'LL BE CALLING THE NEXT  
CASE.

JUSTICE QUINCE IS RECUSED ON  
THAT CASE.

THE NEXT CASE IS KILGORE VERSUS  
STATE.

PARTIES READY TO PROCEED?

>> YES, YOUR HONOR.

>> AGAIN I WANT TO REITERATE  
JUSTICE QUINCE IS RECUSED ON  
THIS CASE.

SO MR. HENNIS, YOU MAY BEGIN.

>> I'M WILLIAM HENNIS FROM THE  
CAPITAL COLLATERAL REGIONAL  
COUNSEL OFFICE IN FORT  
LAUDERDALE FOR MR. KILGORE.

BRIEFLY THIS CASE DOES HAVE  
SOMEWHAT CONVOLUTED HISTORY  
BEFORE THIS COURT.

THE DIRECT APPEAL WAS HEARD  
BACK IN 1996 WITH JUSTICE KOGAN  
DISSENTING BELIEVING THAT THE  
CASE SHOULD BE SENT BACK ON  
REMAND AND MR. KILGORE SHOULD  
BE RESENTENCED TO LIFE.

>> THIS IS POST-CONVICTION FOR  
12 YEARS?

>> YES, YOUR HONOR.

PART OF REASON FOR THAT IS  
BECAUSE OF THE ATKINS OPINION  
AND THE MENTAL RETARDATION  
LITIGATION THAT WENT ON IN  
POST-CONVICTION IN THE MIDST OF  
THE EVIDENTIARY HEARING.

OF COURSE THERE WAS ALSO  
ANOTHER ISSUE IN WHICH WE

LITIGATED WHETHER OR NOT CCRC SOUTH WAS ABLE TO CHALLENGE AND INVESTIGATE THE PRIOR VIOLENT FELONY AFTER WE RECEIVED WHAT WE BELIEVE WAS SOME BRADY INFORMATION DURING THE POST-CONVICTION RECORDS PROCESS.

SO, THAT'S, BRIEFLY THE HISTORY OF THE CASE BEFORE THIS COURT. I'D LIKE TO POINT OUT, JUST IN THE BEGINNING THAT DR. ^HENRY DEE, BOTH EXPERT AT TRIAL AND POST-CONVICTION AS PSYCHOLOGIST HE IS NOW DECEASED BUT HE SAID IN HIS POST-CONVICTION TESTIMONY AND HE TESTIFIED BEFORE CIRCUIT COURTS IN A LOT OF THE CAPITAL CASES THAT Y'ALL HAVE HEARD, THAT THIS WAS THE WORST CASE OF DIRE ECONOMIC AND CULTURAL DEPRIVATION HE HAD EVER SEEN.

>> THAT IS NOT THE ISSUE.

THE ISSUE IS QUESTION WHETHER THAT WAS PRESENTED BEFORE AND HE'S OF COURSE IS MENTAL HEALTH KIND OF GUY.

SO I MEAN, THERE IS NO QUESTION IN THIS CASE, I THINK THAT EVERYBODY'S, YOU DON'T NEED TO BEAT THE DRUM MUCH ON IT.

THIS IS PROBABLY ONE OF THE WORST BUT THE QUESTION IS WITH REGARD IS THERE INEFFECTIVE ASSISTANCE MANNER WHICH IT IS

PRESENTED.

PRIMARILY SEEMS TO ME THE INFORMATION ABOUT OAKLEY TRAINING CENTER WAS PROBABLY THE BIGGEST DEFICIENCY BUT HOW DOES THAT LEAD US TO REVERSAL HERE?

>> WE ALL UNDERSTAND.

THIS IS VERY DEPRIVED AND I THINK THAT IS VERY CLEAR FROM THE FACE OF THINGS.

BUT YOU DO UNDERSTAND THAT IS NOT REALLY ISSUE.

>> I THINK THE CASE COMES DOWN TO WHERE IS THE PREJUDICE HERE?

>> OKAY.

>> THE STATE'S POSITION IS BASICALLY THAT THE EVIDENCE AT THAT WAS PRESENTED WAS CUMULATIVE AND DIDN'T MAKE ANY DIFFERENCE, PARTICULAR THINK IN A SITUATION WHERE THE TRIAL COURT FOUND STATUTORY MENTAL HEALTH MITIGATORS AND NON-STATUTORY MITIGATION.

>> RIGHT.

>> OBVIOUSLY OUR POSITION THAT THE JURY NEEDED TO HEAR THAT INFORMATION ABOUT MISSISSIPPI. THEY NEEDED TO HEAR ABOUT WHAT HAPPENED IN OAKLEY TRAINING SCHOOL IN THE LATE 1950s AND EARLY 1960s.

>> JURY DID HEAR ABOUT THE MOONSHINE AND ALCOHOL USE AND THAT KIND OF THING.

>> THEY HEARD ABOUT IT THIRD HAND AND PRIMARILY THEY HEARD IT FROM DR.^DEE BASED ON SELF-REPORT BY MR.^KILGORE DAYS BEFORE THE TRIAL TOOK PLACE.

>> EVIDENCE WAS PRESENTED TO THEM.

>> SOME EVIDENCE IN MITIGATION WAS PRESENTED.

ENOUGH EVIDENCE FOR THE TRIAL COURT TO FIND BOTH MENTAL HEALTH MITIGATORS HOWEVER GIVING THEM ESSENTIALLY NO WEIGHT WHATSOEVER.

IN FACT, MENTIONING IN THE CONTEXT OF HIS SENTENCING ORDER, I THINK I SHOULD READ THIS.

THAT CONCERNING THE MITIGATION, MITIGATING CIRCUMSTANCES I FOUND THAT BOTH STATUTORY MENTAL HEALTH CIRCUMSTANCES WERE PROVED DURING THE PENALTY PHASE.

NEVERTHELESS, THERE'S LITTLE OR NOTHING ABOUT THE FACTS OF THIS CASE FROM WHICH ONE WOULD CONCLUDE AT THE TIME OF THE MURDER OR DURING THE 24 HOURS PRECEDING THE MURDER, MR.^KILGORE WAS UNDER THE INFLUENCE OF EXTREME MENTAL OR EMOTIONAL DISTURBANCE.

AS TO THE OTHER MENTAL HEALTH MITIGATOR HE DOESN'T REALLY MENTION IT IN EXCEPT IN

PASSING, HE DOESN'T MAKE THAT  
SAME KIND OF COMPARISON.  
THAT'S WHAT THE JURY NEEDED TO  
HEAR.

THE JURY NEEDED TO HEAR  
DR.^DUDLEY'S TESTIMONY HOW THE  
1978 MURDER AND MURDER IN THIS  
CASE WERE ESSENTIALLY THE SAME  
EVENT.

THEY WERE, THEY WERE AN EVENT  
THAT WAS BASED ON THOSE TWO  
STATUTORY MENTAL HEALTH  
MITIGATORS AND MR.^KILGORE'S  
CIRCUMSTANCES AT THE TIME OF  
THE TWO DIFFERENT MURDERS.  
THEY NEEDED TO HEAR FROM  
DR.^DEE AFTER HE REVIEWED ALL  
THE BACKGROUND MATERIAL.  
AFTER HE GOT THE INFORMATION  
FROM THE FROM THE SOCIOLOGIST,  
MISSISSIPPI EXPERT, EXACTLY  
WHAT HIS BASIS FOR HIS OPINION  
WAS.

THAT IS WHAT HE NEEDED TO  
PROVIDE.

>> BUT DR.^DEE SAID EVEN AFTER  
HEARING ALL THAT, OBTAINING ALL  
THAT OTHER INFORMATION, THAT  
HIS BASIC DIAGNOSIS AND OPINION  
DOES NOT CHANGE.

>> FAIR ENOUGH.

BUT THAT DIAGNOSIS AND OPINION  
WEREN'T COMMUNICATED TO THE  
JURY WITH THE DEPTH AND BREADTH  
THAT NEEDED TO BE COMMUNICATED.

>> THAT'S WHAT WE'RE BACK ON.

WE'RE BACK ON CASE THAT, I  
GUESS NOW JUDGE ALCOTT SHOULD  
HAVE PRESENTED MORE.

>> EXACTLY.

LOOK WHAT JUDGE ALCOTT DIDN'T  
DO. HE DIDN'T HIRE AN  
INVESTIGATOR --

>> SO WHAT?

THIS HAPPENED IN PRISON.  
WHAT ARE YOU GOING TO  
INVESTIGATE FURTHER?

I MEAN, IS THAT THEN A  
STRATEGY?

I THINK YOU REALLY NEED TO GET  
TO HEART OF WHAT THE CONCERNS  
ARE HERE, RATHER THAN SOME OF  
THOSE.

>> STATE'S POSITION WAS THAT  
THERE WAS NO REASON TO  
INVESTIGATE IN MISSISSIPPI  
BASED ON THE REMOTE POSSIBILITY  
THAT WE MIGHT FIND SOMEBODY WHO  
KNEW MR. KILGORE 30 YEARS AGO.  
THAT WASN'T WHAT WE WERE TRYING  
TO DO.

THE REASON WE DID SUCH A  
MASSIVE INVESTIGATION IN  
MISSISSIPPI WAS BECAUSE THAT  
WAS THE KEY DEFICIENCY IN THE  
PRESENTATION AT TRIAL.

>> AND YOU FOUND, AND YOU  
FOUND, AND YOU FOUND NO SCHOOL  
RECORDS THAT YOU WOULD BE  
LOOKING FOR, YOU FOUND NO  
RECORDS OF ANY SIGNIFICANCE.  
YOU MAY HAVE FOUND A FEW

MORE RELATIVES, THAT KIND OF THING, CORRECT?

>> ACTUALLY MOST SIGNIFICANT THING WE FOUND WERE THE JUVENILE COURT RECORDS.

>> THAT RELATE TO OAKLEY?

>> I HAD TO GO IN AND HAND WRITE BECAUSE THEY WOULDN'T PROVIDE THEM TO ME, EXPLAINING THE CONTEXT OF HIS JUVENILE ADMISSION TO OAKLEY IN SEGREGATION TIMES.

THAT IS A STORY THAT THE JURY NEEDED TO HEAR ABOUT --

>> LET ME, OAKLEY, BECAUSE JUSTICE LEWIS SAID OBVIOUSLY THAT WASN'T PRESENTED.

SOUND LIKE OAKLEY WAS A TERRIBLE PLACE.

HOW LONG WAS MR.^KILGORE IN OAKLEY?

>> I BELIEVE IT WAS ABOUT FOUR YEARS. 3 1/2 OR FOUR YEARS.

>> AND WAS, DID YOU HAVE HIS RECORDS DURING THE TIME HE WAS AT OAKLEY?

IN OTHER WORDS, I GUESS THERE WAS TESTIMONY THAT WHAT A TERRIBLE PLACE OAKLEY WAS BUT WOULDN'T YOU STILL HAVE TO RELATE THAT TO HOW IT WOULD HAVE AFFECTED MR.^KILGORE IN HIS FORMATIVE YEARS?

>> YES.

I THINK TO SOME EXTENT WE CERTAINLY TRIED TO DO THAT BUT

PUTTING ON THE TESTIMONY OF THE INMATE WHO WAS IN OAKLEY WITH HIM AT THE SAME TIME WHO WAS ALSO, FOR A TIME, ON DEATH ROW IN FLORIDA AND HE GOT OFF DEATH ROW BECAUSE HE WAS MENTALLY RETARDED.

AND HE TESTIFIED ABOUT HOW HE WAS SMARTER OF THE PEOPLE AT OAKLEY.

HE ALWAYS WAS A BETTER READER THAN MR.^KILGORE WAS.

PLUS WE HAD INTERVIEWS WITH STAFF THAT WORKED AT OAKLEY.

RECORDS WERE UNAVAILABLE.

PERHAPS I WOULD SUGGEST, IN BACK IN 1994, PRIOR TO THE TRIAL, JEFF HOLMES OR FOR THAT MATTER, MR.^ALCOTT, HAD MADE ANY ATTEMPT WHATSOEVER TO GO TO MISSISSIPPI, THEY WOULD HAVE HAD MORE LUCK GETTING THOSE RECORDS THAN WE DID.

>> THERE IS NO PROOF OF THAT, CORRECT?

BECAUSE WE'RE STUCK WITH IT.

>> PROFESSOR BELL DID TESTIFY BY THE TIME THAT HE WAS LOOKING FOR RECORDS AT OAKLEY THAT THEY HAD BEEN DESTROYED.

OF COURSE THAT WAS DURING THE TIME WE WERE INVESTIGATING IN POST-CONVICTION.

YOU KNOW, THE RECORDS WITH THE FEDERAL LAWSUIT TO SOME EXTENT, WE DID PROVIDE SOME OPINIONS,

ET CETERA, AS PART OF OUR  
BACKGROUND MATERIAL BUT --  
>> I WANT TO ASK ABOUT THIS THE  
INVESTIGATION.  
>> SURE.  
>> BECAUSE THIS DOES CONCERN ME  
IN TERMS OF ANY POSSIBLE  
DEFICIENCY.  
EVEN WE CAN DECIDE IT ON  
PREJUDICE.  
YOU HAD THE FIRST COUNSEL  
HOLMES, PLED HIM OUT.  
THEN THERE WAS A PENALTY PHASE  
IS THAT CORRECT?  
AN INITIAL PENALTY PHASE?  
>> HE PLED HIM OUT BASICALLY IN  
FRONT OF THE JUDGE.  
>> OKAY.  
RIGHT THEN HE -- DID HE PRESENT  
ANY EVIDENCE --  
>> HE PRESENTED SOME OF THE  
MENTAL HEALTH EVIDENCE IN THE  
RECORD WITH SOME OF THE EARLY  
EVALUATIONS BACK IN THAT TIME  
PERIOD, YES.  
>> OKAY.  
WHAT DID ALCOTT PRESENT THAT  
HOLMES DIDN'T PRESENT?  
IS YOUR ARGUMENT.  
ALCOTT ASKS FOR A -- HOLMES  
ASKED FOR SECOND CHAIR.  
>> YES.  
>> ALCOTT SAID HE DIDN'T NEED  
SECOND CHAIR.  
TO ME WAS DEFICIENT ABOUT THIS  
PERFORMANCE.

THIS ISN'T A SITUATION WHERE  
THE INVESTIGATION, IT WAS HARD  
TO FIND THE RELATIVES.

MOST OF THEM WERE LIVING IN  
LAKELAND.

>> THERE WERE LOCAL RELATIVES.

>> WHAT WAS MR. ^ALCOTT'S REASON  
HE PICKED ON THE TWO YOUNGEST  
ONES WHO WOULD HAVE PRESUMABLY  
THE LEAST KNOWLEDGE OF THE  
CHILDHOOD TO PUT THEM ON?  
DID HE SPEAK TO THE NINE OTHER  
SIBLINGS?

>> HE DIDN'T HAVE, HE DIDN'T  
REALLY HAVE AN ANSWER TO THAT  
QUESTION.

HE SAID THAT HE RELIED ON THE  
WORK THAT JEFF HOLMES HAD DONE  
ALMOST ENTIRELY.

THAT IT WAS HOLMES'S  
INVESTIGATION THAT HE RELIED  
ON, AND HOLMES'S RECORDS, HIS  
FILES THAT HE ESSENTIALLY  
DIDN'T TALK TO ANYBODY ELSE  
OTHER THAN TO PREPARE THEM  
IMMEDIATELY BEFORE THE  
EVIDENTIARY HEARING.

>> DID HOLMES DO AN  
INVESTIGATION?

>> HOLMES DID SOME  
INVESTIGATION.

>> SO ISN'T THAT, SO THAT'S A  
DIFFERENT SITUATION BECAUSE IF  
SOMEBODY ELSE HAS DONE THE  
INVESTIGATION, YOU DON'T HAVE  
TO REPLAY THE GROUND.

IN OTHER WORDS IS THERE --  
>> GOT TO REMEMBER WHAT  
HAPPENED IN HOLMES'S CASE.  
HOMES'S INVESTIGATION WAS BASED  
ON THE FACT HE BELIEVED IF HE  
PLEAD MR. ^KILGORE OUT, THAT THE  
JUDGE WAS GOING TO GRANT A LIFE  
SENTENCE, NO MATTER WHAT HE PUT  
ON.

THAT IS WHAT HE TESTIFIED TO.

>> BUT IN TRUTH OF  
CUMULATIVENESS I UNDERSTAND,  
JUST BECAUSE IT WAS TOUCHED ON,  
YOU KNOW, NOW IT IS A  
DIFFERENT, IT HAS MORE IMPACT.  
ARE YOU MAKING THE ALLEGATIONS  
THAT THE TWO SIBLINGS WHO  
TESTIFIED REALLY DID NOT HAVE  
KNOWLEDGE AS TO WHAT THEY  
TESTIFIED TO AND THAT THE  
PEOPLE THAT NOW TESTIFIED  
REALLY WOULD HAVE PAINTED THE  
PICTURE THAT WASN'T THERE  
BEFORE?

BECAUSE THAT'S WHERE THE ISSUE  
IS WHETHER IT IS CUMULATIVE  
AND, OBVIOUSLY THERE WASN'T A  
REASONABLE STRATEGIC DECISION  
BECAUSE HE DIDN'T TALK TO THE  
OTHER SIBLINGS.

SO I'M TRYING TO GET THAT  
FLAVOR FOR WHAT HIS RATIONALE  
WAS FOR NOT TALKING TO OTHER  
SIBLINGS AND WHAT ELSE DID THE  
OTHER SIBLINGS HAVE MUCH MORE  
IN DEPTH INFORMATION ABOUT HIS

CHILDHOOD?

>> WHAT YOU MENTIONED BEFORE IS  
SORT OF SELF-EVIDENT.

YOUNGEST SIBLINGS WOULD BE ONES  
WHO HAD LEAST EXPERIENCE  
GROWING UP IN MISSISSIPPI WITH  
MR. KILGORE.

THEY CERTAINLY WEREN'T IN A  
POSITION TO TALK VERY MUCH  
ABOUT HIS EARLIEST DAYS.

THERE WAS ONE OLDER BROTHER WHO  
TESTIFIED I BLOW WHO, IN  
POST-CONVICTION WHO GAVE A  
GOOD DEAL MORE DETAIL.

I DON'T THINK IT IS JUST FAMILY  
TESTIMONY THAT IS

IMPORTANT ABOUT MISSISSIPPI.

THE FOLKS WHO WERE PART OF THE  
BACKGROUND MATERIALS THAT THE  
EXPERTS RELIED ON, THAT IS THE  
OAKLEY EMPLOYEES, THE FOLKS IN  
THE, IN THE, THE AREA AROUND  
WHERE THE FAMILY LIVED.

>> BUT THAT, SEE THERE YOU  
HAVE, AGAIN I UNDERSTAND YOU  
CAN ONLY WORK WITH WHAT YOU DID  
BUT TALKING ABOUT WHAT OAKLEY  
WAS IN A VACUUM WITHOUT  
RELATING TO HIM IS STILL TO ME  
WE'VE GOT TO GET PREJUDICE DOES  
WITH THE AGGRAVATORS IN THIS  
CASE THIS COULDN'T HAVE BEEN  
POWERFUL STATUTORY MITIGATION.

>> THAT IS THE OTHER ISSUE TOO.

>> I'M NOT SEEING ALL  
CONNECTIONS BEING MADE.

>> FAILURE TO THE ATTACK THE AGGRAVATORS IS ALSO A SERIOUS DEFICIENCY ON THE PART OF ALCOTT.

HE STATED IN HIS TESTIMONY HE DIDN'T EVEN LOOK AT THE BACKGROUND MATERIALS OR THE STUFF ABOUT THE PRIOR VIOLENT FELONIES.

HE DIDN'T RESEARCH THEM.

HE DIDN'T LOOK AT PSIs.

HE DIDN'T EVEN LOOK AT THE RECORDS IN THE FILES.

HE DIDN'T EVEN DEPOSE BARBARA ANN JACKSON BEFORE WE TESTIFIED AT PENALTY PHASE.

SHE WAS PROBABLY THE KEY PENALTY PHASE WITNESS IN SUPPORT OF WHAT THE JUDGE FOUND AS THE MOST IMPORTANT AGGRAVATING FACTOR WHICH WAS THE 1978 MURDER WHICH HE DESCRIBED IN A SHORT PARAGRAPH. THAT DESCRIPTION IS COMPLETELY CONTRARY TO THE EVIDENCE THAT WE PUT ON AT THE POST-CONVICTION HEARING AND THAT SHOULD HAVE BEEN PUT ON IN AN INVESTIGATION ABOUT THOSE PRIOR VIOLENT FELONIES SPECIFICALLY.

>> WAS SHE DEPOSED DURING THE FIRST PROCEEDING?

>> SHE WAS NOT DEPOSED DURING THE FIRST PROCEEDING.

>> SHE TESTIFIED DURING THE

FIRST PROCEEDING?

>> SHE DID NOT --

>> WAS THERE RECORD TESTIMONY  
OF DURING THE FIRST PROCEEDING  
OF SOME KIND?

>> NO.

SHE WASN'T AT FIRST PROCEEDING.  
I DON'T BELIEVE SO.

IN ANY CASE, ALCOTT DIDN'T LOOK  
AT ANY PRIOR DEPOSITIONS, ANY  
PRIOR TESTIMONY.

HE DIDN'T ATTEMPT TO IMPEACH  
HERE.

OF COURSE HE DIDN'T HAVE THE  
ACCESS TO THE BRADY MATERIAL WE  
GOT DURING POST-CONVICTION.  
OUR OPINION WHAT SHE COULD HAVE  
BEEN IMPEACHED ABOUT THE FIRST  
SHOT WAS BY THE VICTIM IN 1978.  
THAT IT WAS A PROVOCATION KIND  
OF SITUATION.

THAT, IN FACT, BARBARA ANN  
JACKSON WAS MR. ^KILGORE'S  
GIRLFRIEND WHICH SHE DENIED AT  
TRIAL AND POST-CONVICTION.

>> I'M SORRY I HAVE A PROBLEM  
WITH YOUR ARGUMENT.

IT IS MY RECOLLECTION IN YOUR  
BRIEF YOU ARGUED THAT THE  
DEEFFICIENCY IS THE  
CROSS-EXAMINATION OF THIS  
WITNESS BECAUSE THE DEPOSITION  
TESTIMONY, THERE WAS CONFLICT  
WITH THE TRIAL TESTIMONY.

I FIND IT HARD TO UNDERSTAND  
YOUR ARGUMENT SHE WAS NEVER

DEPOSED, THERE IS NEVER ANY TESTIMONY WHEN THAT IS WHAT YOU'VE ARGUED IN YOUR BRIEF.

>> IT WAS DEPO IN THE 1978 CASE, YOUR HONOR.

THAT WAS THE DEPO.

SHE WAS DEPOSED IN 1978 PRIOR TO THE, PRIOR TO THE 1978 TRIAL WHERE SHE TESTIFIED.

>> THE ISSUE WAS SEXUAL RELATIONSHIPS WHETHER SHE HAD ONE OR DIFFERENT HAVE ONE WITH HIM, IS THAT CORRECT?

>> THAT'S RIGHT.

>> THAT WHAT YOU ARGUED IN THE BRIEF.

>> THAT IS WHAT WAS ARGUED IN THE BRIEF, YES.

>> AND DID THE, DID THE STATE AND EVERYONE CONCEDE AT TRIAL, OF THIS SEXUAL RELATIONSHIP?

>> I'M NOT SURE THERE WAS A CONCESSION.

I THINK THAT THERE WAS --

>> EVERYBODY TALKED ABOUT YES, THAT IT DID, SHE MAY HAVE SAID NO BUT THERE WAS SEXUAL RELATIONSHIP?

IF I'M USING WRONG WORD, YOU TELL ME WHAT THE RIGHT WORD IS. IT WAS DISCUSSED, WAS IT NOT?

>> THERE WAS SOME DISCUSSION, YES.

>> OKAY.

>> AND JUST BEFORE I GET COMPLETELY OFF THE POINT ABOUT

THE 1978 CASE, THE PSIE FOR '78 AND PAROLE INFORMATION PART OF THE RECORD WHICH ALCOTT NEVER LOOKED AT, CLEARLY INDICATE THERE WAS COMPLETELY DIFFERENT ACCOUNT OF WHAT HAPPENED AT THAT 1978 EVENT AND, IT SHOULD HAVE BEEN USED, SHOULD HAVE BEEN PUT BEFORE THE JURY.

THEY SHOULD HAVE KNOWN THE WHOLE STORY BECAUSE ULTIMATELY WHAT HAPPENED IS THE COURT RELIED ON THAT 1978 MURDER TO OFFSET THE STATUTORY MITIGATION THAT HE FOUND AND HE DIDN'T REALLY GIVE THE STATUTORY MITIGATION ANY WEIGHT ANYWAY. THAT IS THE PROBLEM WITH THIS CASE.

MR. KILGORE PROBABLY WOULD HAVE BEEN BETTER OFF IF TRIAL COUNSEL HADN'T FOUND ANY STATUTORY MITIGATION NO MATTER WHAT WAS PUT ON BECAUSE THEN HE MIGHT HAVE ACTUALLY HAD A CHANCE TO GET RELIEF BACK IN 1996 WHEREAS BY THE FINDING OF THE STATUTORY MITIGATION WITHOUT GIVING IT ANY WEIGHT AND CONNECTING STATUTORY MITIGATION TO THE FACT IT DIDN'T APPEAR TO HAVE ANY EFFECT ON THE CRIME, YOU KNOW, THAT'S THE PREJUDICE.

THE PREJUDICE IS THE FAILURE TO GIVE THE STATUTORY MITIGATION

EFFECT BY THE TRIAL, BY THE  
JUDGE AND THE FACT THAT THE  
JURY NEVER HEARD THE EVIDENCE  
SUPPORTING NON-STATUTORY  
MITIGATION AND BOLSTERING THE,  
THE NON- -- THAT IS WHAT THE  
MISSISSIPPI EVIDENCE WOULD HAVE  
DONE.

IT WOULD HAVE GIVEN THE JURY  
SOME REASON TO FIND THE  
NON-STAT MITS BY THEIR VOTE.  
INSTEAD OF 9-3.

OUR VIEW IT WOULD HAVE BEEN  
6-6.

>> YOU'RE IN YOUR REBUTTAL.

>> COULD I ASK YOU COMMENT ON  
ONE --

>> CERTAINLY.

>> I WAS DISTURBED ABOUT THE  
COMMENT WITH REGARD TO  
HOMOSEXUALTY.

GIVE IT YOUR BEST SHOT HOW THAT  
WAS HANDLED BY MR.^ALCOTT AND  
WHAT HE SHOULD HAVE DONE, WHAT  
WAS THE PREJUDICE?

>> I THINK VERY BRIEFLY  
THERE --

>> I DON'T WANT TO USE UP ALL  
YOUR TIME.

>> THERE WAS REALLY NO ATTEMPT  
TO DO THAT AT ALL.

HE SORT OF BLEW IT OFF IN OUR  
EXAMINATION OF HIM.

LIKEWISE WITH THE WHOLE IDEA  
USING ANY OF THE INFORMATION  
THAT WAS OUT THERE ABOUT THE

PRISON WITNESSES AND HOW CREDIBLE THEY WERE, HE SIMPLY DISREGARDED THAT.

HE SAID THAT IS NOT SOMETHING THAT I THINK THAT'S IMPORTANT.

FINALLY I WOULD SAY, LOOK TO CONEY VERSUS STATE.

AS YOU SAID IT IS PROVINCE OF THE JURY TO UNIQUELY SIFT THROUGH THE EVIDENCE.

THAT'S WHAT NEEDED TO HAPPEN HERE.

THE SAME EXPERT IN CONEY ALSO TESTIFIED IN THIS CASE, TOM HYDE.

TOM HYDE SAID, SURE THERE WAS A PREVIOUS NEUROLOGICAL.

BUT THIS GUY HAS GOT SOME SERIOUS THINGS GOING ON.

THERE NEEDED TO BE A MEDICAL DOCTOR BACK AT TO SAY THAT SO PEOPLE SITTING ON THE JURY WOULD KNOW THIS IS NOT JUST AN EXPERT WHO CAME IN A WEEK BEFORE TRIAL WHO IS SPOUTING OFF ABOUT THIS.

>> HE HAD THREE EXPERTS AT HIS TRIAL, DIDN'T HE?

>> HE HAD DR.^DEE.

>> DIDN'T HE HAVE DR.^KREMPER? AINSWORTH?

>> DR.^KREMPER TESTIFIED AT THE --

>> ORIGINAL TRIAL.

>> AT THE TRIAL COURT RELIED ON IN PART FOR THE SECOND

STATUTORY MITIGATING FACTOR.  
DR.^KREMPER ACTUALLY FOUND HIM  
TO BE INCOMPETENT TO PROCEED.  
THAT SORT SO OF A DIFFERENT  
ISSUE.

>> NOT EVIDENCE OF BRAIN DAMAGE  
AND ORGANIC BRAIN SYNDROME AT  
TRIAL?

>> THERE WAS EVIDENCE OF  
ORGANIC BRAIN SYNDROME AT TRIAL  
THROUGH DR.^DEE'S OPINION.  
IT WAS NOT REALLY CONFIRMED BY  
ANYTHING OTHER THAN DR.^DEE'S  
OPINION, ESSENTIALLY BASED ON  
SELF-REPORT AND HIS WAIS TEST.  
BRIEFLY ABOUT MENTAL  
RETARDATION.

I KNOW I'M IN REBUTTAL TIME.  
KEEP IN MIND THE JUDGE'S ORDER  
ON MENTAL RETARDATION IN THIS  
CASE.

ONLY RELIED ON THREE MENTAL  
I.Q. TESTS IN THE CASE.

KREMPER I.Q. TEST. '76.

EISENSTEIN IQ TEST IN '75 AND  
DEE I.Q. TEST IN '74.

GIVEN THIS COURTS RULINGS IN  
JONES AND CHERRY, OBVIOUSLY IQ  
SCORES ARE OVER 70.

>> YOU WILL NOW HAVE LESS THAN  
A MINUTE LEFT.

>> IF JONES AND CHERRY AREN'T  
GOOD LAW, EVENTUALLY IN THE  
FEDERAL COURTS, THEN OBVIOUSLY  
MR.^KILGORE IS IN A SITUATION  
WHERE, MISSISSIPPI INFORMATION

IS OF CRITICAL IMPORTANCE IN  
FINDING HIS ADAPTIVE BEHAVIOR  
MEETS THE MENTAL RETARDATION  
CRITERIA.

THAT IS ANOTHER IMPORTANT  
REASON FOR THE MISSISSIPPI  
EVIDENCE TO BE DEVELOPED.

IT SHOULD HAVE BEEN DEVELOPED  
BACK AT TRIAL BECAUSE, DR.^DEE  
TESTIFIED THAT HE WAS MENTALLY  
RETARDED BASED ON HIS SHORT  
FORM WAIS IQ SCORE OF 67.

I WILL SIT DOWN.

I SEE I HAVE 44 SECONDS.

>> MAY IT PLEASE THIS HONORABLE  
COURT.

MY NAME IS KATHERINE BLANCO  
WITH THE ATTORNEY GENERAL'S  
OFFICE OUT OF TAMPA  
REPRESENTING THE STATE OF  
FLORIDA.

BEFORE I BEGIN MY ARGUMENT I  
WOULD LIKE TO ADDRESS ONE  
MISSTATEMENT THAT OPPOSING  
COUNSEL MADE WITH REGARD TO  
DR.^KREMPER NOT TESTIFYING AT  
THE 1994 PENALTY PHASE.

HE MOST CERTAINLY DID TESTIFY,  
YOUR HONOR.

HIS TESTIMONY IS IN VOLUME 10  
OF THE 1994 PENALTY PHASE.

ONE OF HIS COMMENTS AT THAT  
PENALTY PHASE IN 1994 ADDRESSED  
THE BEATINGS.

THAT THE DEFENDANT WAS ALLEGED TO  
HAVE RECEIVED.

AND HE ATTRIBUTES THIS TO MR. ^KILGORE'S STATEMENT TO HIM, HE INDICATED THAT HE WAS BEATEN I THINK HE SAID FREQUENTLY AS A JUVENILE WITHIN REFORM SCHOOL. THAT IS AT PAGE 1486 OF VOLUME 10 OF 1994 RECORD.

>> CLEARLY THERE WAS NOT REAL DEVELOPMENT OF OAKLEY TRAINING CENTER?

YOU HAVE TO AGREE WITH THAT?

>> WE AGREE THERE WAS NO EXPOSE' ON OAKLEY TRAINING CENTER.

>> WOULD YOU GO OVER WERE THAT CERTAINLY, TO IF I'M TRYING THAT CASE SEEMS TO ME THAT'S PROBABLY SOMETHING YOU REALLY OUGHT TO DO?

BUT LET'S GO TO THE PREJUDICE ASPECT, WHAT WAS FOUND, WHAT WAS PRESENTED, COULD YOU ADDRESS THAT?

>> CERTAINLY YOUR HONOR.

I ALSO LIKE TO EMPHASIZE WHAT YOU HAVE HERE IS DEFENSE ATTORNEY, VERY EXPERIENCED DEFENSE ATTORNEY AT THE TIME, MR. ^ALCOTT, WHO CHOSE TO FOCUS ON THE DEFENDANT'S DETERIORATING MENTAL CONDITION. SO THAT WAS SOMETHING THAT WAS CLOSER IN TIME RATHER THAN ON THE DEFENDANT'S TIME SPENT IN OAKLEY 30 YEARS EARLIER.

SO WHAT DID WE HAVE PRESENTED?

>> WAIT A SECOND.

HOW COULD HE HAVE CHOSE TO  
FOCUS ON THE DETERIORATING  
MENTAL CONDITION OVER OAKLEY IF  
HE DIDN'T KNOW ABOUT OAKLEY?

>> HE KNEW ABOUT THE DEFENDANT BEING  
INSTITUTIONALIZED AT OAKLEY  
FROM 1962 TO 1965 HE TALKED  
ABOUT IT WITH DR.^DEE ABOUT THE  
DEPLORABLE CONDITIONS.

HE KNEW THAT THE DEFENDANT HAD BEEN  
IN A TRAINING SCHOOL WHEN HE  
WAS 12 TO 15.

>> -- NOT PURSUING THAT?  
I MEAN, IT'S THREE OR FOUR  
YEARS OUT OF SOMEONE'S LIFE IN  
THEIR FORMATIVE YEARS.

WHY IN THE WORLD WOULDN'T  
SOMEBODY LOOK AT THAT?  
WHY WOULDN'T THE LAWYER LOOK AT  
THE RECORDS OF THE PRIOR  
VIOLENT FELONIES?

WHY WOULDN'T THE LAWYER TALK TO  
ALL OF THE SIBLINGS?

I MEAN, I DON'T, YOU KNOW, YOU  
CAN'T HAVE REASONABLE STRATEGIC  
DECISIONS UNLESS YOU HAVE AN  
INVESTIGATION.

AND I THINK WHAT JUSTICE LEWIS  
ASKED YOU TO DO FOCUS NOW ON  
LACK OF PREJUDICE BECAUSE I  
THINK THAT A HARDER CASE FOR  
MR.^HENNIS.

THAT'S WHAT THE QUESTION WAS.  
SO NOT THAT THEY MADE A  
REASONABLE STRATEGIC DECISION

BUT HE JUST DIDN'T DO THE  
INVESTIGATION.

>> WELL, IF YOU JUMP STRAIGHT  
TO THE LACK OF PREJUDICE ON THE  
ABSENCE OF THE INFORMATION  
BILLION THE OAKLEY TRAINING  
SCHOOL, AND REMEMBER THE  
INFORMATION ABOUT THE OAKLEY  
TRAINING SCHOOL CAME ABOUT WHEN  
CCR RETAINED PROFESSOR BELL TO  
DO A ESSENTIALLY A SOCIOLOGICAL  
STUDY, LIKE A MITIGATION I  
GUESS, COLLECTION.

GO FIND OUT ABOUT OAKLEY.  
TALK TO PEOPLE THAT WOULD KNOW  
ABOUT OAKLEY. AND --

>> ISN'T THAT SOMETHING  
NORMALLY, YOU WANT TO DEFEND,  
YOU WANT THAT TO HAVE HAPPENED  
AT ORIGINAL, THE TIME OF THE  
ORIGINAL TRIAL?

>> WELL AT THE TIME THIS CASE  
WAS BEING TRIED YOU HAVE, AND  
YOU HAVE TO CREDIT MR. ^ALCOTT'S  
TESTIMONY TOO WHICH THE TRIAL  
COURT DID CREDIT, HE SAID THAT  
DID NOT FACTOR INTO THE CASE HE  
WAS PRESENTING.

THAT WAS, IT WAS REMOTE BY 30  
YEARS.

CERTAINLY WITH REGARD TO THE  
PENALTY PHASE HE WAS  
PRESENTING.

THE WHOOPING THAT THE DEFENANT SAID  
HE RECEIVED WERE IN FACT  
PRESENTED THROUGH THE TESTIMONY

OF DR. ^KREMPER.

BOTH AT THAT ORIGINAL 1990  
PENALTY PHASE AND THE 1994  
PENALTY PHASE, YOUR HONOR.

AND, IF YOU'LL JUST ALLOW ME TO  
DIGRESS ONE MOMENT WITH REGARD  
TO JEFF HOLMES AND INSTANCE OF  
PLEA.

THIS CASE WAS PREPARED FOR  
TRIAL.

THIS WAS NOT A CHANGE OF PLEA  
SITUATION AT GET-GO.

THEY WERE IN THE MIDST OF JURY  
SELECTION.

THIS CASE HAD BEEN FULLY  
PREPARED FOR TRIAL.

AND IN FACT THE DOC RECORDS HAD  
BEEN OBTAINED WITH REGARD TO  
THE PRIOR MENTAL HEALTH  
TESTIMONY OF THE DEFRNFSNT AND HAD  
BEEN FURNISHED TO DR. ^KREMPER.

AND SO YOU HAVE A CASE THAT HAS  
BEEN PREPARED FOR TRIAL.

AND WHO DOES MR. ^ALCOTT PRESENT  
IN THE 1994 CASE?

HE PRESENTS A CLINICAL  
PSYCHOLOGIST, AND A  
NEUROPSYCHOLOGIST AND CONTRARY TO  
OPPOSING COUNSEL'S  
REPRESENTATION A MEDICAL  
DOCTOR, PSYCHIATRIST.

TESTIMONY OF DR. ^AINSWORTH.

DR. ^AINSWORTH PASSED AWAY BY  
THIS TIME.

HIS TESTIMONY WAS READ INTO THE  
RECORD BY DR. ^DEE.

SO YOU HAVE THREE MENTAL HEALTH EXPERTS.

YOU ALSO HAVE A DOC WITNESS, MARY ANN HALL, TO TESTIFY WITH REGARD TO THE DEFENDANT'S CRYING AND BEING UPSET LEARNING PEARL, IS HOW THE VICTIM IS REFERRED TO, THAT PEARL IS DEAD AND HE APPEARED VERY REMORSEFUL.

TWO SISTERS TESTIFIED, TWO FAMILY MEMBERS.

YOU HAVE BOTH MISS SPEARMAN AND MISS CAISSON TESTIFY AS TO THE -- JURY KNEW THE DEFENDANT WAS GIVEN MOONSHINE AS A CHILD. HE WAS HARSHLY PUNISHED BY HIS MOTHER.

>> WHAT WAS AGE DIFFERENCE BETWEEN THE MR.^KILGORE AND HIS, THOSE TWO SIBLINGS?

>> I BELIEVE THAT THERE WAS FIVE YEARS WITH MATILDA AND TWO MORE.

THERE IS A BIG AGE SPAN.

THERE WERE 13 CHILDREN IN THE FAMILY.

ALBERT KILGORE, WHO MR.^ALCOTT HAS ALBERT'S NAME IN HIS TRIAL NOTES BUT ALBERT'S NAME IS CROSSED OUT.

ALBERT WAS BORN I BELIEVE IN 1938.

MR.^KILGORE WAS BORN IN 50. SO YOU HAVE A BIG AGE RANGE THERE.

ALBERT LEFT MISSISSIPPI TO  
IMPROVE HIS LIFE.

HE DID NOT WANT TO STAY IN  
MISSISSIPPI.

HE LEFT MISSISSIPPI AND DID NOT  
KNOW ABOUT THE DEFENDANT'S  
TROUBLES AND HIS OAKLEY  
EXPERIENCE.

>> ARE THERE SOME, FROM ZERO  
TO, HE'S IN A, HE'S IN THIS  
FACILITY AT OAKLEY FROM 12  
YEARS OLD TO 15 YEARS OLD?

>> THAT'S WHAT PROFESSOR BELL  
TESTIFIES THAT HE SAYS IT LOOKS  
LIKE IT WAS FROM 1962 TO 1965.  
AND SO HE WOULD HAVE BEEN 12 TO  
15 WHEN HE WAS GIVEN A FURLOUGH  
AT HOLIDAYS IN CHRISTMAS.

HE CAME TO LAKELAND WHERE HIS  
FAMILY RELOCATED.

AND HE DID NOT GO BACK TO  
OAKLEY.

AND SO YOU HAVE THEN AFTER  
THAT, AND PROFESSOR BELL, WE'VE  
GOT DOUBLE, TRIPLE HEARSAY FROM  
PROFESSOR BELL.

CERTAINLY, HE DID WHAT CCR  
ASKED HIM TO DO AND HE TALKED  
TO FAMILY MEMBERS AND NONE OF  
THEM HAD BEEN AT OAKLEY.

HE TRIED TO TALK TO STAFF  
MEMBERS WHO WERE AT OAKLEY AND  
OAKLEY, BY THE WAY IS STILL IN  
OPERATION.

HE WOULD GET CONFLICTING  
REPORTS.

AND THEN YOU HAVE CHARLIE THOMPSON.

CHARLIE THOMPSON, ALSO FORMER DEATH ROW INMATE, WAS ALSO AT OAKLEY AT THE SAME TIME.

HE WAS ACTUALLY THERE BEFORE MR. KILGORE AND HE WOULD TALK ABOUT THE FACT THAT THERE WAS HARSH PUNISHMENT.

WHAT IS THE HARSH PUNISHMENT? YOU WOULD GET WHOOPED IF YOU RAN AWAY OR DID SOMETHING BAD.

SO MR. THOMPSON SAID, WELL I DIDN'T RUN AWAY.

I DIDN'T WANT TO GET WHOOPED.

WELL, DID YOU KNOW OF MR. KILGORE GETTING CALLED TO THE SHOP?

THAT'S WHERE THE WHOOPINGS WOULD BE INFLICTED?

HE SAID YES.

OKAY, WELL HOW MANY TIMES?

HE SAID I THINK THREE.

SO YOU HAVE OVER THE COURSE OF HIS INCARCERATION YOU HAVE, NOW IN POST-CONVICTION

MR. THOMPSON'S TESTIMONY THAT DURING THAT THREE-YEAR PERIOD HE KNEW OF THREE WHOOPINGS THAT MR. KILGORE HAD WHILE AT OAKLEY FOR NOT FOLLOWING THE RULES OR FOR RUNNING AWAY OR FOR DISOBEYING.

AND HE SAID THAT IT WAS A HARSH PUNISHMENT SITUATION.

AND DEFENSE COUNSEL KNEW THAT

MR.^KILGORE HAD BEEN IN A  
REFORM SCHOOL.

AND HE REVIEWED IT AS REMOTE  
AND NOT RELATED TO THE CASE  
THAT HE WAS PRESENTING.

AND THE CASE HE WAS PRESENTING  
INCLUDED A FOCUS -- EXCUSE ME.

>> YOU KEEP SAYING THAT, IS  
THAT, YOU'RE RELYING ON --

>> I'M SORRY.

>> DIABETIC CONDITION,  
ALCOHOLISM, IS THAT WHAT THE  
EXPERTS WERE SAYING IS THE KEY  
TO THIS MENTAL ISSUE THAT WE  
NEED TO PRESENT?

IS THAT, IS THAT WHAT THIS CASE  
IS ABOUT?

>> THAT'S MUCH OF IT, YOUR  
HONOR.

HE WAS FOCUSING ON THE LIMITED  
INTELLIGENCE OF THE DEFENDANT AND  
SHOWING THAT IT WAS, HE IS  
TERMINAL RETARDATION AT TIME OF  
PENALTY PHASE.

HE USED IT AS A TERM THE LAYMAN  
WOULD UNDERSTAND.

THIS MAN'S CONDITION IS  
DETERIORATING.

HE IS IN CHRONIC DIABETIC  
STRESS, YOU KNOW.

AND ALSO WAS ASKED ABOUT THAT  
IN POST-CONVICTION.

HE SAID YES, IF MR.^KILGORE  
WERE LIVING OUT ON THE STREET  
HE MIGHT NOT HAVE SURVIVED.

HE HAS HAD NOW ONE LEG

AMPUTATED.  
BUT HIS BLOOD SUGAR LEVELS ARE  
CLOSELY MONITORED.  
BUT THROUGH THE TESTIMONY, YOU  
HAD TESTIMONY ABOUT SUFFERING A  
HEAD INJURY.  
THIS IS AT THE '94 PENALTY  
PHASE, YOUR HONOR.  
SUFFERING A HEAD INJURY.  
BEING SEVERELY PUNISHED.  
DEPRIVATION.  
GROWING UP IN RURAL  
MISSISSIPPI.  
VERY POOR FAMILY.  
NOT ENOUGH TO EAT.  
MR. KILGORE WOULD CRY BECAUSE  
HE DIDN'T ENOUGH TO EAT.  
YOU HAVE HUMANIZING TESTIMONY  
PRESENTED FROM THE FAMILY AND  
YOU HAD EXPERT TESTIMONY --  
>> I WAS TRYING TO FIND OUT  
AGAIN, OF THE, BUT THESE  
SIBLINGS WERE SEVERAL YEARS  
OLDER, YOUNGER THAN HE WAS, SO,  
IN THE EVIDENTIARY HEARING WERE  
THERE ANY SIBLINGS PRESENTED  
THAT REALLY HAD THE BEST VIEW  
OF WHAT THAT CHILDHOOD WAS, OR,  
DO WE NOT HAVE THAT SITUATION?  
>> WELL YOU DO HAVE SOME OF THE  
BROTHERS,  
SOME OF THE BROTHERS WHO ARE  
ALSO INCARCERATED.  
JIMMY DEAN KILGORE TESTIFIED.  
AND THE GIST OF HIS TESTIMONY  
WAS HE WAS NOT AT OAKLEY BUT

KNEW HIS BROTHER HAD BEEN IN TROUBLE.

KNEW HIS BROTHER COMPLAINED ABOUT GETTING WHOOPINGS. THAT THEIR MOTHER, HAD ALSO BEEN, SHE LOVED THEM BUT DRANK TO EXCESS.

WOULD GIVE THEM MOONSHINE AND WOULD WHIP THEM, ALSO VERY HARD BUT DID IT, SPARE THE ROD, SPOIL THE CHILD I THINK AS PROFESSOR BELL SAID IT.

SO THE GIST OF THAT TESTIMONY REINFORCES WHAT WAS PRESENTED BY THE SISTERS IN '94.

THE OLDER SISTER, MATILDA, WHO TESTIFIED THAT DEAN WOULD GET THE WORST OF THE PUNISHMENT FROM HIS MOTHER.

AND THE JURY KNEW THERE WAS A POOR CHILDHOOD.

MANY CHILDREN IN THE FAMILY. DEPRIVATION.

SUFFERING AT AN EARLY AGE.

THAT HE HAD IN FACT SUFFERED WHOOPINGS AND MENTAL HEALTH EXPERTS KNEW IT TOO.

AND THEY FOCUSED ON THE, THE STATUTORY MENTAL HEALTH MITIGATORS WHICH THE TRIAL COURT FOUND.

AND DEFENSE COUNSEL ARGUED THIS WAS NOT A CASE DEI HAVE SOING OF THE DEATH PENALTY.

BECAUSE, IN HIS VIEW, AND, AS HE EXPRESSED TO THE JURY,

MR. KILGORE DID NOT HAVE THE  
COPING SKILLS.

HE DID NOT, HAVE THE BENEFIT  
THAT OTHER, OTHER MOST  
CITIZENS, SITTING ON THAT JURY  
WOULD HAVE HAD.

SO HE MADE VERY SIGNIFICANT  
APPEAL FOR MERCY, EXCUSE ME FOR  
MERCY.

AND WITH RESPECT TO THE 1978  
CONVICTION, YOUR HONOR, AND  
TESTIMONY OF BARBARA JACKSON  
WELL THE STATE IN ITS  
OPENING ARGUMENT HAS SAID THAT,  
BARBARA JACKSON AT ONE TIME  
HAD BEEN BOYFRIEND AND  
GIRLFRIEND WITH KILGORE.

AND, POST-CONVICTION ONE OF THE  
DEFENDANT'S BROTHERS SAID,  
BARBARA JACQUES SON WAS TAKING  
ADVANTAGE OF HIM AND WOULD  
SLEEP WITH ANYBODY FOR MONEY  
AND COMMENTS LIKE THAT.

BUT THE BOTTOM LINE WAS, MISS  
JACKSON IN 1978 WAS IN HER  
HOME.

HER CHILDREN WERE ASLEEP.

THERE IS SOMETHING GOING ON  
OUTSIDE.

HER COMMON LAW HUSBAND, THOMAS  
WOODS, THROWS OPEN THE FRONT  
DOOR, FIRE AS WARNING SHOT AND  
ACTUALLY DETECTIVE KIEL IN HIS  
VERSION, HIS EXPLANATION OF THAT  
'78 OFFENSE TALKS ABOUT THAT  
DEFENSE.

WARNING SHOT FIRES FROM FRONT  
DOOR, GLASS IS BREAKING.  
COMES IN DEAN KILGORE.  
HE SHOOTS AND KILLS THOMAS  
WOODS AND THREATENS BARBARA  
JACKSON TO HARM EVERYBODY  
IN THE HOUSE TO, TO KILL  
EVERYBODY AND SHE GOES WITH HIM  
ENDS UP STAYING OVERNIGHT.  
HE TAKES HER TO A ORANGE GROVE  
OVERNIGHT AND SHE IS RELEASED  
NEXT MORNING.  
MR. ^ALCOTT SAID THIS MAN CAN  
NOT CONTROL, DOES NOT HAVE  
COPING SKILLS TO MANAGE  
HEARTACHE.  
HE WAS ON A ROLLER COASTER WITH  
BARBARA JACKSON.  
THE JURY HAD A FULL PICTURE OF  
WITH REGARD TO MR. ^KILGORE.  
FULL PICTURE WITH REGARD TO  
OAKLEY TRAINING SCHOOL.  
THE TRIAL WAS NOT AN INDICTMENT  
OF OAKLEY TRAINING SCHOOL OTHER  
THAN IT WAS A JUVENILE FACILITY  
WHERE HARSH PUNISHMENT WAS  
INFLECTED.  
WHERE, IN 1977 THERE WAS A  
THERE WAS 1983 ACTION WHERE  
OAKLEY, OFFICIALS OF THE STATE  
WERE NOT CRITICIZED BUT WERE  
TOLD, JUDGE CLEARLY EMPHASIZED,  
THEY UNDERSTOOD IT WAS BUDGET  
CONSTRAINTS BUT NEEDED TO COME  
INTO LINE WITH RESPECT TO  
PROVIDING CHILDREN ADEQUATE

HEALTH CARE, ADEQUATE  
EDUCATIONAL FACILITIES AND  
ADEQUATE FACILITIES FOR GIVING  
THEM THE OPPORTUNITY FOR  
REHABILITATION.

REMEMBER AFTER THIS 1965 AFTER  
THE DEFENDANT IS OUT OF OAKLEY,  
BETWEEN 1966 AND 1967 HE GETS  
INTO TROUBLE IN NEW YORK.

IN 1970 HE GETS TROUBLE IN  
FLORIDA.

USING A GUN.

AGGRAVATED ASSAULT CHARGE.

BARBARA JACKSON WAS ONE EVER  
VICTIMS IN THAT CASE AS WELL.

HE GOES INTO A BAR LOOKING FOR  
BARBARA.

HE STARTS SHOOTING.

IT HAPPENED TO BE A PACKAGE  
STORE LIQUOR LOUNGE IN LAKELAND  
AND, POLICE OFFICER COMES TO  
THE SITE.

GOING THROUGH THE, GOING UP TO  
THE SIDE DOOR AT THE LOUNGE.

DOOR FLIES OPEN, OUT COMES  
MR.^KILGORE, HE HAS A HANDGUN  
AND RAISES IT AND POINTS IT AT  
OFFICER.

MR.^KILGORE GOES BACK INSIDE.  
TAKES BARBARA HOSTAGE IN THE  
BATHROOM.

HE EVENTUALLY SURRENDERS AND  
GIVES HIMSELF UP.

SO FROM 1970 UNTIL 1977 HE IS  
INCARCERATED ON MULTIPLE PRIOR  
VIOLENT, MULTIPLE VIOLENT

FELONY OFFENSES.

HE IS THEN INCARCERATED AGAIN  
IN 1978 FOR THE MURDER OF  
THOMAS WOODS AND KIDNAPPING  
OFFENSE.

SO IT IS TRUE, THAT THE BULK OF  
HIS ADULT LIFE HAS BEEN SPENT  
INCARCERATED.

IT IS ALSO TRUE HE IS MAN OF  
VIOLENCE AND RESORTS TO  
VIOLENCE.

>> WHAT THEY'RE SAYING HISTORY  
OF VIOLENCE IS COMING OUT.

>> WELL, IF IT IS ATTRIBUTABLE  
TO THREE WHOOPINGS --  
YOUR HONOR, I'M SORRY.

I APOLOGIZE.

>> THE HISTORY OF VIOLENCE IS  
COMING OUT TOO, IN A  
SUBSTANTIAL WAY.

THE ONLY WAY OUT ON THIS IS TO  
LOOK AT THIS CHILDHOOD AND WHAT  
HAPPENED FROM ZERO TO 18, THAT  
MIGHT HAVE FORMED WHO HE WAS TO  
GIVE A CHANCE OF IT.

NOW YOU SAY THAT'S WHAT THEY  
DID.

MR. HENNIS IS SAYING, IT WASN'T  
WHOOPINGS THAT'S WHAT WE HAVE TO  
WEIGH.

YES, HE WAS A VIOLENT MAN.

THE ISSUE WAS, DID THIS STEM  
FROM TERRIBLE CHILDHOOD TRAUMA  
AND ABUSE, NEGLECT, WHATEVER?

>> YOUR HONOR I WOULD ASK THE  
COURT TO PAY CLOSE ATTENTION TO

CHARLIE THOMPSON'S TESTIMONY IN  
POST-CONVICTION WITH REGARD TO  
CIRCUMSTANCES IN OAKLEY.

MR. THOMPSON SAID THEY WOULD  
ALSO PLAY BASKETBALL.

THEY WOULD SHOOT MARBLES.

THEY WOULD GO TO CLASS IN THE  
MORNING.

AFTERNOON THEY WOULD WORK IN  
THE FIELDS DOING FARM WORK.

BEFORE THE DEFENDANT WENT TO OAKLEY,  
HE WAS IN SCHOOL WHEN THEY  
COULD AFFORD IT.

EXCUSE ME, WHEN THE OPPORTUNITY  
PRESENTED ITSELF.

THAT IS FROM HIS SISTER'S  
TESTIMONY AT 1994 PENALTY  
PHASE.

SHE SAID THE CHILDREN DID IN  
FACT HELP IN THE FIELDS.

YOU ALSO HAVE A BROTHER,  
ALBERT, WHO LEFT MISSISSIPPI  
AND HAS BEEN LAW-ABIDING.

SO IT IS NOT A, RECIPE FOR,  
CERTAINLY FOR, THAT THIS MAN IS  
GOING TO BECOME A KILLER.

WHAT YOU HAVE IS TESTIMONY THAT  
HE WAS PUNISHED AS A CHILD ON  
THREE INSTANCES HE WAS TAKEN  
AND, WHOOPED ACCORDING TO MR.  
CHARLIE THOMPSON.

>> ON THAT POINT ABOUT THESE  
WHOOPINGS, I MEAN THAT IS  
OBVIOUSLY THAT IT IS WHAT IT  
IS, BUT THERE WAS TESTIMONY ABOUT  
FREQUENT BEATINGS THE DEFENDANT

RECEIVED AS JUVENILE IN THE  
REFORM SCHOOL OFFERED IN THE  
PENALTY PHASE.

>> THERE WAS.

>> IT WAS NEGLECTED IN THE  
TRIAL COURT'S ORDER.

>> THAT'S TRUE.

>> SO THE DETAIL ON THAT DOES  
NOT SEEM TO BE THAT DIFFERENT  
THAN WHAT IS REFLECTED IN THE  
TRIAL COURT'S, IN THE  
SENTENCING ORDER.

>> THE TRIAL COURT WAS MADE  
AWARE OF IT, YOUR HONOR.  
THEY WERE NOT MADE AWARE,  
ADMITTEDLY OF THE DETAILS ABOUT  
OAKLEY TRAINING SCHOOL.  
AND AGAIN, THIS WAS NOT AN  
INDICTMENT OF OAKLEY TRAINING  
SCHOOL.

THIS WAS, THIS PARTICULAR  
DEFENDANT'S BACKGROUND AND THIS  
DEFENDANT'S HISTORY AND THIS  
DEFENDANT'S ACTIONS.

THANK YOU, YOUR HONOR.

IF NO FURTHER QUESTIONS.

JUSTICE PARIENTE I APOLOGIZE IF  
I CUT YOU OFF WHEN YOU ASKED A  
QUESTION.

I CERTAINLY DID NOT IN ANY WAY  
INTEND TO BE DISRESPECTFUL.

>> THANK YOU FOR THAT  
STATEMENT.

THANK YOU.

>> I DO APOLOGIZE TO THE COURT.

I DIDN'T MEAN ANY

MISREPRESENTATION ABOUT  
KREMPER.

I WAS THINKING KREMPER RATHER  
THAN AINSWORTH READ INTO THE  
RECORD.

ON THAT POINT FROM KREMPER'S  
TESTIMONY I THINK IT IS  
IMPORTANT TO RECOGNIZE THAT THE  
JUDGE DIDN'T FIND KREMPER  
CREDIBLE AS TO HIS TESTIMONY  
ABOUT THE PRESENCE OF MENTAL  
AND EMOTIONAL DISTURBANCE ON  
THE DAY OF THE CRIME.

KREMPER TESTIFIES SPECIFICALLY  
THAT MR. ^KILGORE HAS LIMITED  
ABILITIES TO THINK ABOUT HOW TO  
SOLVE PROBLEMS, COME UP WITH  
SOLUTIONS.

WASN'T JUST SOMETHING THAT  
HAPPENED THAT DAY OR THE DAY  
BEFORE.

THIS WAS SOMETHING THAT WAS  
ESCALATING.

QUESTION BY AL COT IS, JUST SO  
I'M CLEAR THEN, IS IT YOUR  
OPINION THAT THE TIME WE'RE  
TALKING ABOUT, THAT HE WAS  
UNDER THE INFLUENCE OF MENTAL  
OR EMOTIONAL DISTURBANCE ON  
THAT DAY?

KREMPER SAYS YES.

THAT'S NOT REFLECTED IN THE  
COURT'S ORDER.

HE COMPLETELY DISREGARDS THAT  
TESTIMONY BY KREMPER AND YET  
RELIES ON KREMPER FOR THE

SECOND MENTAL HEALTH MITIGATOR.  
THAT DOESN'T MAKE ANY SENSE TO  
ME.

IF THERE ARE ANY OTHER  
QUESTIONS I'LL BE GLAD TO TRY  
TO ANSWER THEM.

I'VE GOT 19 SECONDS LEFT.

>> YOU'RE OVER.

>> I'M OVER. OKAY.

>> THANK YOU.

>> THANK YOU, MEMBERS OF THE  
COURT.

>> TAKE THIS CASE UNDER  
ADVISEMENT.

THE COURT WILL BE IN RECESS  
UNTIL 9:00 TOMORROW MORNING.

>> PLEASE RISE.

SUPREME COURT IS NOW ADJOURNED.