

>> WE WILL NOW CONSIDER THE  
THIRD CASE ON THE DOCKET,,.

>> HELLO, I'M MARK GRUBER,  
AND I'M REPRESENTING  
MR. BUTLER.

THERE IS A LARGE NUMBER OF  
PROBLEMS WITH THE GUILTY AND  
PENALTY PHASE --

>> WILL YOU START WITH THE  
PENALTY PHASE, IT SEEMS TO  
ME, I WILL NOT DISCOURAGE  
YOU ON THE GUILT, BUT I AM  
NOT --

I DON'T SEE THOSE CLAIMS AS  
STRONG.

BUT IN THE PENALTY PHASE,  
WHAT'S YOUR STRONGEST  
ARGUMENT ABOUT WHY THERE IS  
DEFICIENT PERFORMANCE.

>> WITH THE FIST --  
TO STATE THE FACTS OF WHAT  
WAS PRESENTED BY THE  
ATTORNEY WHO CALLED THE  
WITNESSES, THEY CALLED THE  
DEFENDANT'S FATHER, AND I

HAVE AN EXCERPT AFTER HIS  
TESTIMONY WHEN HE SAID TRULY  
REVEALING COMMENTS ABOUT THE  
FAMILY BACKGROUND --

>> DID SHE MEET WITH HIM AND  
GO OVER WHAT HIS TESTIMONY  
WOULD BE AND HOW MANY  
CHILDREN HE HAD?

>> WELL, THE PROBLEM WITH  
WHAT HAPPENED WITH THE  
EVIDENTIARY HEARING IS SHE  
SAID THINGS LIKE SHE DIDN'T  
REMEMBER AND SHE HAD  
COMMUNICATION WITH HIM.  
THE ATTORNEYS SAY THEY HAVE  
OTHER WITNESSES THEY  
INTENDED TO CALL, AND THEY  
THOUGHT THEY WERE THE BETTER  
WITNESSES, AND THEN THE  
WITNESSES DIDN'T SHOW UP.

>> OF ANY OF THOSE WITNESSES  
THAT DIDN'T SHOW UP, DID YOU  
PRESENT ANY OF THOSE  
WITNESSES AT THE PENALTY --  
I MEAN AT THE EVIDENTIARY

HEARING SAY THEY WOULD HAVE  
SHOWN UP OR --

DO WE HAVE ANY OF THOSE  
WITNESSES?

>> WE TALKED TO ANYBODY WHO  
WAS STILL AVAILABLE TO TALK.

WE PRESENTED THE GREAT AUNT  
AND --

>> I KNOW WHO YOU  
PRESENTED, WERE THOSE TWO OF  
THE ONES THEY WERE GOING TO  
PRESENT?

>> OKAY, THAT'S WHAT I ASKED  
YOU, SO YOU DIDN'T USE OR  
LOCATE OR THEY WERE STILL  
UNCOOPERATIVE ANY OF THE  
OTHER WITNESSES.

SO ISN'T THE ARGUMENT THAT  
IF EVEN IF THEY SUBPOENAED  
THEM, IT'S NOT A GOOD IDEA  
TO GO WITH UNCOOPERATIVE  
MITIGATING WITNESSES?

AND THEY SAID THEY CHANGED  
THEIR PRACTICES, AND  
CERTAINLY WE WOULD SUBPOENA

WITNESSES.

>> DO WE KNOW WHO THOSE  
WITNESSES ARE.

>> AT THE TOP OF MY HEAD, I  
DON'T HAVE THEIR NAMES DOWN.

>> BUT IT IS SOME PLACE IN  
THE RECORD, AND DID YOU  
ATTEMPT TO GET INTO CONTACT  
WITH THOSE WITNESSES.

>> OUR OFFICE CONTACTED  
THOSE WITNESSES, WE HAVE A  
MITIGATION EXPERT THAT DID A  
VERY THOROUGH FAMILY  
BACKGROUND CHECK AND  
TESTIFIED AT LENGTH AND --

>> I UNDERSTAND THAT, BUT I  
WANT TO KNOW WHAT THESE  
WITNESSES SAID TO YOU, THE  
SAME ONES THAT DID NOT SHOW  
UP AT THE PENALTY PHASE,  
WHAT DID THEY SAY AT YOUR  
OFFICE WHEN YOU ATTEMPTED TO  
CONTACT THEM AT THE EVIDENCE  
SHARE HEARING?

>> OKAY I --

IF THEY WERE UNCOOPERATIVE  
NOW AND THEY'RE STILL NOW  
UNCOOPERATIVE, HOW IS A  
DEFENSE ATTORNEY, EXPLAIN TO  
ME HOW THE DEFENSE ATTORNEY  
IS DEFECTIVE BECAUSE THESE  
PEOPLE ARE BEING  
UNCOOPERATIVE?

>> WELL THE TESTIMONY FROM  
THESE ATTORNEYS ON THIS  
POINT, THEY GAVE A LIST OF  
SPECIFIC NAMES AND THEY DID  
SAY WHAT THESE PEOPLE WERE,  
BEYOND THAT, THERE WERE NO  
TIME RECORDS.

THERE WERE NO ANY KIND OF  
DOCUMENTATION ABOUT WHEN SHE  
TALKED TO THEM, IF SHE  
TALKED TO THEM.

A LOT OF THESE WITNESSES  
WERE NAMED THAT WERE LOCATED  
BY THE PUBLIC DEFENDERS  
OFFICE, AND THEY STARTED  
WORKING UP THE BACKGROUND  
MITIGATION WHILE THE CASE

WAS BEING PREPARED AND THEN  
THEY DREW A CONFLICT OF  
INTEREST.

AND THEN MR. WATTS AND  
MRS. BERGETTI AND THEY  
BROUGHT IN VARIOUS DOCUMENTS  
THAT WERE IN THE COURT FILE.

NOW WHEN THE DEFENSE --  
WHEN THEY'RE BEING ASKED  
ABOUT THEM, THEY'RE SAYING  
OVER AND OVER AGAIN, IN THE  
EVIDENTIARY, THEY DON'T HAVE

--

>> I THINK YOU'RE MISSING  
THE VERY FUNDAMENTAL  
QUESTION.

DID YOU PRESENT EVIDENCE IN  
THE EVIDENTIARY HEARING AS  
TO WHAT EVIDENCE WOULD HAVE  
BEEN PUT ON BY THESE PEOPLE  
THROUGH A MITIGATION EXPERT  
OR THE WITNESSES THEMSELVES?

>> WELL --

>> IT'S VERY SIMPLE AND  
DIRECT SO WE COULD FIND WHAT

THEY WOULD HAVE SAID IF THEY  
HAD BEEN CALLED.

>> I'M --

YOU KNOW, I'M SORRY, BUT I  
THINK NO WE DID NOT HASH OUT  
AS TO WHAT THOSE SPECIFIC  
WITNESSES AS TO WHAT THEY  
WOULD HAVE SAID.

WHAT WE DID DO IS PRESENT  
THROUGH THE WITNESSES THAT  
WE THOUGHT BEST FOR OUR OWN  
AND THE BACKGROUND --  
WE PRESENTED WHAT WE THOUGHT  
WAS MITIGATING EVIDENCE.

>> LET ME FOCUS YOU EVEN  
MORE.

LET'S ASSUME DEFICIENCY.  
WHAT I WANT YOU TO DO IS,  
BECAUSE CLEARLY, JUNIOR  
BUTLER WAS A DISASTER, AND  
THE DEFENSE LAWYER SAID SO.  
SHE SAID IT WAS LIKE  
THROWING A PEN AT HER.  
I HAVE HAD THOSE  
EXPERIENCES, BUT THAT

DOESN'T MEAN I DIDN'T DO A  
GOOD JOB, IT JUST MEANS THAT  
SOMEONE DIDN'T TURN OUT TO  
BE LIKE I EXPECTED, AND THEN  
THE SISTER WAS A HORRIBLE  
DISASTER SHE HAD A DREAM AND  
SHE DREAMT, YOU KNOW, SO  
THAT TESTIMONY WAS A  
DISASTER BUT THE DEFENSE  
ATTORNEY RECOGNIZED THAT.  
NOW LET'S ASSUME IT WAS A  
RESULT OF HER DEFICIENT  
PERFORMANCE.  
WHERE IS, IT'S A ONE  
AGGRAVATOR CASE, BUT AS THE  
MAJORITY OF THE COURT FOUND  
IT'S A HORRENDOUS  
AGGRAVATOR, AND NOW GO TO  
THE MITIGATION.  
THE JUDGE DIDN'T FIND IN THE  
ORIGINAL SEASONING ORDER,  
THE MITIGATION OF BUTLER  
HAVING A TROUBLED CHILDHOOD,  
AND YOU CLEARLY PUT ON  
EVIDENCE OF A TROUBLED

CHILDHOOD.

AND I THINK ONE THAT WOULD  
BE MOST IMPORTANT WOULD BE  
THE MENTAL MITIGATION.

DID YOU HAVE EXPERTS IN THIS  
GO AROUND TO FOCUS ON THE  
MENTAL STATE THAT WOULD HAVE  
LED HIM TO COMMIT THIS  
HORRENDOUS ACT?

>> AS FAR AS ANY NEXUS WITH  
THE ACT ITSELF, AS FAR AS  
MENTAL MITIGATION AND THE  
SENSE OF ANYTHING OTHER THAN  
HIS INTELLECTUAL  
FUNCTIONING, WE DID NOT  
PRESENT ANY EVIDENCE OF --

>> WHY SHOULD OUR CONFIDENCE  
IN THE OUTCOME BE UNDERSTOOD

--

UNDERMIND.

WE HAVE CRYSTALLIZED, SO  
RIGHT NOW, ABOUT THE  
MITIGATION THAT WASN'T THERE  
IN THE ORIGINAL TRIAL?

>> THE MITIGATION THAT WAS

PRESENTED OVER THE COURSE OF  
THE HEARING, IT WAS THE  
INTELLECTUAL DISABILITY, AND  
MR. BUTLER DID BALK AFTER A  
I.Q. TEST, AND EVEN WHEN HE  
WENT TO SCHOOL, AND ONE OF  
THE TEACHERS SAID HE WAS  
"SLOW".

>> HE DIDN'T WANT TO HAVE AN  
I.Q. TEST BECAUSE HE WAS  
RESISTING BEING FOUND TO BE  
MENTALLY RETARDED?

>> YES.

YES.

HE DIDN'T --

YES.

>> SO YOU DIDN'T HAVE ONE.  
YOU HAVE NO I.Q. TEST OF  
HIS.

>> CORRECT.

>> TO MY KNOWLEDGE THERE'S  
NO I.Q. TEST.

>> HOW OLD WAS HE.

>> IN HIS EARLY 30s.

>> SO BEING A SLOW LEARNER

IN SCHOOL, BUT HOW DOES THAT  
UNDERCONFIDENCE, WE HAVE TO  
SEE COMPELLING LITIGATION.

YOU'RE SAYING THE SCHOOL  
THAT HE WAS DEPRECIATED --

>> THE BRUTAL CONDITIONS HE  
WAS RAISED, ESSENTIALLY ON A  
PLANTATION AS A CHILD IN  
THIS SETTING.

THE JUDGE COMMENTED ON THAT  
IT SEEMED LIKE WE WERE DOING  
ANOTHER INSTALLMENT OF "GONE  
WITH THE WIND" HE DID SAY  
THAT.

BUT THAT WAS A SETTING THAT  
WE HAD FOR HARRY BUTLER  
GROWING UP.

HE REALLY HAD NO EDUCATION  
TO SPEAK OF.

WHEN HE WAS ADMINISTERED  
THESE TESTS THAT DR. CADDY  
COULD GET HIM TO TAKE, HE  
COULD NOT SPELL ANYTHING.

HE IS ESSENTIALLY ILL  
ILLITERATE.

SO THAT'S AS FAR AS HE GOT

WITH SCHOOL.

WITH REGARD TO BEING BROUGHT

UP, THE SETTING HE WAS IN

THERE WAS A CHAOTIC FAMILY

SITUATION.

ESSENTIALLY THE HUSBANDS AND

FATHERS AND ROLES WERE BEING

CHANGED ON A DAILY BASIS.

THEY HAD NO MONEY AT ALL,

THERE WERE OUTHOUSES,

SHACKS, NO REAL

OPPORTUNITIES.

AND THE INDIVIDUALS LIVING

IN THE CIRCUMSTANCE WERE

GIVEN NO HELP OR STRUCTURE.

>> LET ME ASK ABOUT

DR. MEYER.

HE WAS USED IN THE SPENCER

HEARING IN THE ORIGINAL

CASE.

>> YES.

>> DR. MEYER SAYS MY

INFORMATION IS LIMITED, NOT

BASED ON SOCIAL SERVICE,

SCHOOL RECORDS OR OTHER  
RECORDS OF HIS CHILDHOOD.  
DID THE ATTORNEYS IN THE  
ORIGINAL CASE OBTAIN SCHOOL  
RECORDS OR SOCIAL SERVICE  
RECORDS, ARE THOSE NOW  
AVAILABLE AND DID YOUR  
EXPERTS USE IT TO PORTRAY A  
VERY DIFFERENT PICTURE OF  
MR. BUTLER?

>> THERE --

THE RECORDS THAT WE OBTAINED  
ARE ALL IN THE --  
ARE IN EVIDENCE IN THE  
EVIDENCE SHARE HEARING.  
BY DR. CADDY, AND THEY WERE  
REVIEWED.

>> WHERE DID YOU GET THOSE  
RECORDS?

>> ARE YOU SAYING THERE WERE  
NONE OF THOSE KIND OF  
RECORDS AND THE ORIGINAL  
ATTORNEYS FILES?

>> THERE WERE NO SCHOOL  
RECORDS, FOR EXAMPLE FROM

GEORGIA, BUT THERE WERE  
SCHOOL RECORDS FROM  
ST. PETE.

>> AND THEY DIDN'T GIVE THEM  
TO DR. MEYER?

>> NO, DR. MEYER SAYS HE WAS  
PROVIDED WITH THIS INTERVIEW  
WITH MR. BUTLER THAT WAS  
VERY SHORT, AND THEN A  
HYPOTHETICAL OUTLINE OF  
FACTS HE WAS ASKED TO  
CONSIDER.

>> DID YOU ASK THE ATTORNEYS  
WHY, AGAIN YOU HAVE A ONE  
AGGRAVATOR CASE, AND YOU GOT  
SOMEBODY THAT CLEARLY HAD A  
TROUBLED CHILDHOOD.

WHY THEY DIDN'T DEVELOP THE

--

AND AGAIN, BUTTING ON THIS  
FATHER --

I HAVE A HARD TIME  
UNDERSTANDING HOW GIVEN IF  
YOU HAD NOBODY YOU WOULD PUT  
ON THE FATHER UNDER THOSE

CIRCUMSTANCES, WHY THEY  
DIDN'T DEVELOP THE MENTAL  
MITIGATION?

OR THE, YOU KNOW THE WHOLE  
PICTURE.

WAS THAT ASKED WHY DR. MEYER  
WAS GIVEN SUCH A SKELETAL  
BIT OF INFORMATION.

BECAUSE THAT CONCERNS ME AS,  
YOU KNOW IN THIS CASE.

YOU SAY HO THEY HIRED A  
MENTAL HEALTH EXPERT, BUT IT  
SOUNDS LIKE THEY DIDN'T DO  
MUCH WITH HIM >> THEY HAD,  
EARLIER IN THE CASE, THEY  
HAD APPARENTLY CONSULTED  
WITH A DR. FIREMAN WHO WAS  
TRYING TO DO THIS  
PSYCHOLOGICAL MITIGATION  
FAIRLY ROUTINELY THERE.

THE ONLY THING THEY RECALL  
ABOUT IT IS THAT HE WAS NOT  
ESPECIALLY HELPFUL.

WHAT WAS INTRODUCED BY THE  
STATE AT THE HEARING WAS

CORRESPONDENCE SHOWING THAT  
TWO OF THEM HAD CONVERSED.

AND THAT'S ALL WE KNOW.

WE DON'T HAVE ANY INDICATION  
FROM THE DEFENSE ATTORNEYS  
THAT THEY WENT ANY FURTHER  
WITH DR.FIREMAN.

HE DID SEE MR. BUTLER.

>> SO WHAT DO YOU HAVE NOW,

OTHER THAN --

I'M NOT MINIMIZING THE  
TROUBLED CHILDHOOD, TELL ME  
WHAT YOU THEN HAVE ABOUT HIS

--

ABOUT WHAT YOU WOULD SAY  
SHOULD HAVE BEEN PRESENTED  
IN TERMS OF HIS MENTAL  
DISABILITY OR ILLNESS, OR  
ILLECTUAL FUNCTIONING, WHAT  
DOCTOR TESTIFIED TO THAT.

>> WHAT WE HAVE IS DR. CADDY

TESTIFYING TO THE

INTELLECTUAL DEFICIENCYS TO

THE BEST WE HOW OLD.

AND --

I HAVE A LINE AT THE END OF  
THE REPLY BRIEF.

IT'S EVIDENCE OF THE FAMILY  
BACKGROUND, PERSONAL  
HISTORY, SUBSTANCE ABUSE,  
BEING RAISED IN A CHAOTIC  
FAMILY CIRCUMSTANCE.

THERE'S NO PARENTING, SO HIS  
HOLDER BROTHER DIED AND THE  
OTHER ONE WENT TO PRISON.

THE --

THERE WAS VIOLENCE CARRIED  
OUT ON HIM, AND THOSE ARE  
ALL MITIGATING  
CIRCUMSTANCES.

>> BUT THEN YOU HAVE THE  
JUDGE SAYING ON PAGE 25 OF  
HIS ORDER, HE TOOK ALL OF  
THAT INTO ACCOUNT AND SAYS,  
WELL MEYER WAS RETAINED ONLY  
AFTER FIREMAN EVALUATED AND  
FOUND FINDINGS THAT WERE NOT  
ENOUGH.

THE MATTER OF THE SYSTEM OF  
WHAT WAS HEARD, HE GREW UP

AND HIS MOTHER AND  
GRANDMOTHER DIED WHEN HE WAS  
YOUNG, HE SAYS NONE OF THIS  
ADDITIONAL TESTIMONY WAS OF  
SUCH SIGNIFICANCE THAT HAD  
IT BEEN PRESENTED IT WOULD  
HAVE PERSUADED THE JURY TO  
HAVE A LIFE SENTENCE.

SO HE'S SAYING LET'S TAKE  
ALL OF THIS CHILDHOOD, IT  
STILL DOESN'T UNDERMINE  
CONFIDENCE IN THE OUTCOME.

>> AND THAT'S TRUE, THAT'S  
WHAT LOWER COURT DECIDED,  
AND WE'RE ARGUING THAT THERE  
IS PREJUDICE IN INEFFECTIVE  
ASSISTANCE OF COUNSEL  
SETTING WHEN YOU LOOK AT THE  
INFORMATION PRESENTED TO THE  
COURT AT THE TIME OF THE  
PENALTY PHASE, AND ASSUMING  
IT'S DEFICIENT,LY GO FURTHER  
AND SAY THAT IT MADE THINGS  
WORSE.

THE JURY --

>> I THINK THAT'S AN  
IMPORTANT POINT.  
IT WOULD HAVE BEEN BETTER  
FOR THEM TO PRESENT NOTHING  
THAN THE WITNESSES THEY  
PRESENTED.

>> MR. WATTS SAID THEY WERE  
TO SOME EXTENT USING A  
LINGERING DOUBT THEORY, AND  
THEN THE SISTER CAME IN AND  
SAID THE LORD TOLD HER THE  
NIGHT BEFORE THAT HE WAS  
GUILTY SO THAT DIDN'T HELP  
THE STRATEGY VERY MUCH.

>> YOU'RE INTO YOUR REBUTTAL  
TIME, BUT YOU HAVE A LOT OF  
EVIDENTIARY ISSUES IN THIS  
CASE, AND THE TRIAL --  
WAS FAULTY IN, WOULD YOU  
TELL US WHICH OF THESE IS  
YOUR BEST ISSUE?

BECAUSE I'M --  
THIS IS NOT A CASE WHERE  
THERE, IN MY ESTIMATION,  
WHERE THERE'S A LOT OF

EVIDENCE THAT REALLY  
CONNECTS MR. BUTLER TO THIS  
CASE.

SO WHAT DO YOU THINK OF ALL  
OF THESE EVIDENTIARY ERRORS  
THAT YOU PROPOSE, WOULD HAVE  
MADE A SIGNIFICANT  
DIFFERENCE HAD IT BEEN DONE  
DIFFERENTLY.

>> THANK YOU BY FAR IT'S OUR  
ARGUMENT THAT THERE IS A  
BLOODY PRINT ON THE PHONE.  
I REALLY WANTED TO GET THIS  
POINT OUT, THAT WITH THE  
ORDER FROM THE JUDGE SAYING  
THIS IS A PALM PRINT AND SO  
FORTH, IT'S NOT, CAROL DAVIS  
SAID THERE'S A PRINT, ON THE  
KNOWN, AND SHE CANNOT SAY  
FROM WHAT PART OF THE HAND  
IT CAME FROM.  
AND IT WAS THE STATE'S  
THEORY IT CAME FROM THE  
PALM.  
>> BUT SHE DID NOT SAY THIS

WAS PROBABLY A PALM PRINT.

>> I THOUGHT I READ THAT  
MULTIPLE TIMES THAT THIS WAS  
PROBABLY A PALM PRINT.

>> I AGREE WITH EXACTLY THE  
WORDS YOU'RE USING.

TO A DEGREE OF SCIENTIFIC  
CERTAINTY THERE IS A PRINT,  
THERE IS NOT A REASONABLE  
DEGREE OF CERTAINTY TO SAY  
IT'S A PALM PRINT.

>> LET'S CUT TO THE CHASE  
HERE.

ASSUMING THERE WAS A PRINT,  
A PALM PRINT OR FINGERPRINT,  
AND THAT IT DOES NOT FIT THE  
VICTIM, THE DEFENDANT,  
CHILD, OR OTHER PEOPLE WHO  
WOULD HAVE LOGICALLY BEEN IN  
THE HOUSE, WHERE DOES THAT  
GET YOU?

>> IT'S IN BLOOD.

IT WAS DEPOSITED THERE AT OR  
VERY SHORTLY AFTER THE TIME  
OF THE OFFENSE, AND IT

POINTS TO A PERSON AS YET

UNKNOWN.

AND ONE THING THAT'S GOING

TO --

IT'S UNIQUE ABOUT THIS CASE,

IS THAT'S EXACTLY THE

MISTAKE THAT DEFENSE COUNSEL

MADE SAYING THERE'S DNA HERE

THAT POINTS TO A PERSON THAT

IS UNKNOWN.

>> THE GLASS DOOR THING NOW,

RIGHT.

AND OF COURSE THEY HAD TO

WALK THAT BACK AND IT WAS

INCORRECT.

AND IN THE MEANTIME HERE IS

ALL OF THIS EVIDENCE THAT'S

THERE.

>> YOUR ARGUMENT IS THAT THE

JURY HEARD ABOUT BE BLOODY

PALM, AND THAT WE DON'T KNOW

WHOSE IT IS.

IT COULD HAVE BEEN THE

DEFENDANT OR THE VICTIM THAT

WOULD HAVE MADE THEM DECIDE

MR. BUTLER IS NOT THE

PERPETRATOR.

>> THAT IS DRAMATIC AND

TALKING ABOUT PERSONAL

DOUBT, BUT THE POINT I WANT

TO MAKE IS THAT THE STATE'S

REASON THAT IT'S A PALM

PRINT AND THE FACT THAT THE

REMAINS WERE CREMATED, AND

THE POLICE DID NOT OBTAIN

MAJOR CASE PRINTS THEY'RE

SAYING NOW WOULD HAVE BEEN

DONE, AND THEY CHANGED THEIR

POLICY AS A RESULT OF THIS

CASE, AND THEY NOW OBTAIN

MAJOR CASE PRINTS.

>> WHICH MEANS THEY TAKE THE

WHOLE HAND IS THAT WHAT THAT

MEANS?

>> AS I ANSWER IT, WHATEVER

PRINTS ARE ON THE HAND ARE

IN THE MAJOR CASE PRINTS.

THE POLITICAL DIDN'T DO THE

INVESTIGATION IN ORDER TO

ADDRESS THAT ISSUE.

AND THAT'S THE TYPE OF  
EVIDENCE THAT WOULD HAVE A  
GREAT IMPACT ON A TRIAL.

>> SO THE FINGERPRINT EXPERT  
IN THIS CASE, WHAT IS THE  
CASE.

CAROL DAVIS?

>> YES.

>> SHE WAS NOT EVEN DEPOSED.

>> SHE WAS CALLED BY DEFENSE  
COUNSEL.

>> SO SHE WAS CALLED IN  
TRIAL, BUT SHE WAS NEVER  
DEPOSED, AND ACCORDING TO  
DEFENSE TESTIMONY, HE WAS  
AWARE THERE WAS A PALM PRINT  
THAT DIDN'T BELONG TO HIS  
CLIENT OR ANYONE IN THE  
HOUSE, BUT DIDN'T THINK.

--

DIDN'T THINK OF IT.

>> WHAT DEFENSE COUNSEL SAID  
WAS CLEAR WITH REGARD TO  
THIS.

WE TALKED TO HIM ABOUT WHAT

HE SAID, AND THAT WAS THAT  
IN THE DISCOVERY PROCESS,  
THEY HAD THE PHOTOGRAPH AND  
THE RAW INFORMATION ABOUT  
THIS PRINT IN THEIR FILE, SO  
HE WAS ON NOTICE ABOUT IT,  
BUT HE SIMPLY MISSED IT AND  
DID NOT REALIZE IT'S  
SIGNIFICANCE.

HE SAID THAT IN THE  
EVIDENTIARY.

>> SO AS A DEFENSE LAWYER,  
HOW SIMPLE IT IS TO GET  
BEFORE A JURY AND TELL THEM,  
LADIES AND GENTLEMEN THERE  
IS A PALM PRINT WITH A  
FINGERPRINT THAT DOESN'T  
BELONG TO ANYONE IN THE  
CASE.

THAT IS WHO IS THIS PERSON,  
THIS WAS A WHODUNIT DEFENSE,  
RIGHT?  
YOU WEREN'T CLAIMING ANYONE  
ELSE.

>> YES, THE PRINT, THERE IS

EVIDENCE FROM THE SHAPE, --

DNA EVIDENCE, AND THAT'S

WHAT DEFENSE COUNSEL WAS

TALKING ABOUT.

THAT EVIDENCE WAS A

MISREADING OF THE RECORD.

WHAT I'M SAYING IS THAT IT'S

KIND OF IRONIC THAT AT THE

SAME TIME, THERE WAS A PRINT

ON THE PHONE FOUND INCHES

FROM THE VICTIM'S BODY IN

BLOOD, AND IT WAS THAT PRINT

THAT DEFENSE COUNSEL HAD THE

DATA, AND THE PHOTOGRAPH,

AND BY HIS ADMISSION HE

MISSED IT.

AND DEFENSE COUNSEL IN

CLOSING ARGUMENT ARE FORCED

TO WALK BACK WHAT THEY WERE

SAYING ABOUT THEIR PRINT.

>> YOU HAVE MORE THAN

EXHAUSTED YOUR TIME, I WILL

GIVE YOU A MINUTE FOR

REBUTTAL.

>> MAY IT PLEASE IT

HONORABLE COURT, I'M  
CATHERINE BLANCO, --  
BLANCO, >> CAN YOU CLARIFY  
THE CONFUSION WITH THE PALM  
PRINT AND THE FINGERPRINT.  
I DIRECT THIS COURT'S  
ATTENTION TO THE  
POSTCONVICTION RECORD,  
VOLUME FIVE AT 748, 752,  
WHERE CAROL DAVIS, THE  
EXAMINER TESTIFIED IT  
APPEARED TO BE A PARABLE  
PALM PRINT, AND IT WAS THE  
AREA BETWEEN THE INDEX  
FINGER AND THE THUMB.  
>> SO THERE WAS A PARTIAL  
PALM PRINT, AND IT WAS  
LOCATED WHERE?  
>> IT WAS ON THE TELEPHONE  
RECEIVER.  
ALL OF THE BLOOD FROM THE  
APARTMENT CAME BACK TO THE  
VICTIM >> THAT PALM PRINT,  
DIDN'T SHE TESTIFY THAT SHE  
RULED OUT ANY OCCUPANTS OF

THE HOUSE AND THE DEFENDANT.

>> RIGHT HARRY BUTLER, LISA  
FLEMING, THE VICTIM, THE  
BOYFRIEND OF THE SISTER, AND  
SHAWNA.

SHE WAS NEVER ABLE TO LINK  
THAT TO ANY OF THEM, SHE WAS  
NEVER ABLE TO RULE OUT  
LESLIE FLEMING BECAUSE SHE  
WAS CREMATED AND THEY DID  
NOT HAVE A PORTION OF  
PRINTS.

>> SO THERE WAS AN THARGT  
THE --  
PRINT MAY HAVE BEEN LEFT BY  
A THIRD PERSON.

>> WHEN LESLIE WAS  
DISCOVERED, THE PHONE WAS  
FOUND BY HER BODY.  
THE ONLY ONE WE CANNOT  
ELIMINATE OF THE OCCUPANTS  
AT THAT TIME, IS THE VICTIM.  
AND GIVEN THE PROXIMITY OF  
THE PHONE AND THE BLOOD, ALL  
OF THE BLOOD COMING BACK TO

THE VICTIM AT THE SCENE.

NO DNA BLOOD EVIDENCE LINKED

HARRY BUTLER AND THE JURY

KNEW THIS AT THE TIME OF

TRIAL.

>> SO IN TERMS OF HIS GUILT,

WHAT ARE THE ESSENTIAL PARTS

OF THE STATE'S CASE, AND YOU

WANT TO FOCUS, HOW MUCH DID

THE CHILD VICTIM, HOW

IMPORTANT IS HER TESTIMONY?

>> CERTAINLY IT WAS

IMPORTANT.

WE HAVE THE THREATS THAT ARE

MADE BY HARRY BUTLER BEFORE

THE MURDER THAT HE IS GOING

TO KILL BAY AND RED, BAY IS

THE VICTIM'S NICKNAME, RED

IS THE NICK MAKE THE OF

HARRY BUTLER'S COUSIN.

HE FELT THAT RED WAS CAUSING

BAY AND HARRY BUTLER THE

CONFLICT IN THEIR

RELATIONSHIP.

>> AGAIN, AND I UNDERSTAND

THAT KIND OF STATEMENT, BUT

--

AND WE DON'T HAVE A DOMESTIC

VIOLENCE EXCEPTION, BUT THIS

WAS HIS --

IT WASN'T HIS WIFE, BUT THEY

HAD HOW MANY CHILDREN

TOGETHER?

>> BAY WAS 236 WHEN HE WAS

KILLED, HARRY WAS 36.

THEY WERE TOGETHER SINCE BAY

WAS A TEENAGER --

>> SHE WAS UPSET BECAUSE HE

WAS HAVING AN AFFAIR WITH

SOMEONE ELSE.

>> DONNA HARTSFIELD.

>> THAT WAS HIS MOTIVE

ACCORDING TO THE STATE FOR

HIS MURDER.

>> THE STATE'S THEORY AT

TRIAL, CERTAINLY, BUT YOU

DON'T HAVE TO PROVE MOTIVE

WAS GIVEN THE CIRCUMSTANCES

OF BAY HAVING HIM PUT OUT OF

THE HOUSE AS SHAUNA

TESTIFIED THAT IT HAD BEEN A  
FRACTURED RELATIONSHIP AND  
SHE HAD TAKEN HIM BACK IN  
THE PAST.

ON THE 11TH HARRY BUTLER IS  
ARRESTED FOR DOMESTIC  
VIOLENCE AGAINST LESLIE  
FLEMING, WHEN SHE GETS TO  
THE SCENE SHE HAS BEEN  
CRYING AND HAS MARKS ON HIS  
ARM AND BACK, AND HE IS  
TAKEN TO JAIL AND BONDS OUT  
THE NEXT NIGHT AND THAT'S  
WHEN HE MAKES THE STATEMENTS  
REGARDING KILL BAY AND RED.

IN ADDITION, YOU HAVE AT  
THAT POINT IN TIME, YOU ALSO  
HAVE HARRY BUTLER SEEN IN  
THE PROXIMITY THE NIGHT THAT  
BAY WAS KILLED.

IT WAS BELIEVED TO BE BEFORE  
4 A.M. ON THE MORNING OF  
MARCH 14TH.

YOU HAVE LOLA YOUNG OUTSIDE  
OF HER HOME AND THE

APARTMENTS ARE FAIRLY CLOSE  
TOGETHER.

SHE IS GOING TO THE DUMPSTER  
BETWEEN 3:30 AND 4:40 IN IN  
THE MORNING.

SHE SEES AND RECOGNIZED  
HARRY BUTLER AND HE IS  
OUTSIDE OF LESLIE'S HOME AT  
THAT TIME.

SHE TESTIFIED AND SHE IS  
PICKED UP OUT OF HER  
MOTHER'S BED.

SHE IS PICKED UP BY HER  
FATHER, SHE SEES HIS FACE,  
SHE KNOWS IT'S HER FATHER.

SHE TESTIFIED THAT SHE HEARD  
HER MOTHER SAY STOP, STOP,  
AND SHE SAW HER FATHER'S LEG  
AND MOTHER'S LEG ENTWINED,  
AND THAT MORNING, WHEN  
SHAUNA FLEMING IS KNOCKING  
ON THE DOOR AT 7:30 A.M.,  
AND LASHARA WALKS PAST HER  
MOTHER'S BODY TO OPEN THE  
DOOR TO THE HOME.

IMMEDIATELY AFTER THAT YOU  
HAVE THE DEFT DISPOSING OF  
INCRIMINATING EVIDENCE, HIS  
T-SHIRT, SHORTS, UNDERWEAR  
AND SHOES.

THERE WERE A LOT OF DRUG  
ACTIVITY AT THE HOTEL --

>> EXCUSE ME JUST A MOMENT.

IN REGARD TO THOSE ITEMS HE  
WAS DISPOSING, THERE WAS NO  
BLOOD ON THEM --

>> THEY WERE UNABLE TO GET  
DNA.

THEY HAD BEEN WET, THEY HAD  
BEEN WASHED OR DEPOSITED IN  
THE DUMPSTER, --

DUMPSTER, AND THERE IS A  
T-SHIRT THAT MATCHED THE  
DEFENDANT'S SIZE, AND THE  
PROSECUTOR INQUIRES YOU HAVE  
A 34-36 SIZE, AND THEY SAY  
IT LOOKS LIKE IT'S THE SAME  
FROM THE OTHERS FROM A  
PACKAGE.

SO ESSENTIALLY WHATEVER IT

WAS WAS DEGRADED AND COULD  
NOT HAVE BEEN IDENTIFIED AT  
THAT POINT IN TIME.

YOU ALSO HAVE THE SHOES.

THEY ARE AN ISSUE AND ISSUE

ONE IN THE DEFENDANT'S

BRIEF, HE ADMITTED THEY'RE

HIS SHOES AND HE IS

VIDEOTAPED WITH THE SHOES,

BUT WHEN HE IS ARRESTED HE

HAS DENNIS TINELL'S SHOES.

>> AND DENNIS BORROWED THE  
SHOES FROM HIM.

>> THAT'S MR. BUTLER'S

TESTIMONY, HE SAYS IT WASN'T

ME, LOOK AT DENNIS OR DONNA

HARTSFIELD.

YOU HAVE HARTSFIELD AND

TINNELL.

NOTHING ON THE SHOES LINKING

THEM.

SO THAT IS UNDERMINED IN

POSTCONVICTION.

AND THE PLACE WHERE YOU FIND

THIS EVIDENCE, WHERE IT HAS

BEEN DISGUARDED --

>> WHERE THIS WAS DUMPSTER?

>> EXCUSE ME.

IT WAS A DUMPSTER THAT WAS  
CLOSE TO A CONVENIENCE STORE  
THAT WAS NEAR HARRY'S  
APARTMENT.

WHEN TINELL AND MR. BUTLER  
ARE WALKING BACK TO THE  
APARTMENT, THEY TAKE  
SEPARATE ROUTES.

MR. BUTLER IS ON THE ROAD,  
AND ANOTHER IS ON PINELLAS  
TRAIL, AND BUTLER TAKES A  
ROUTE PASSING BY THE  
DUMPSTER AND THEY ARE FOUND  
HALF WAY DOWN, AND COVERED  
IN FOOD AND MAGGOTS.

SO I WILL BE HAPPY TO ANSWER  
ANY QUESTIONS, BUT IT WOULD  
NOT BE FAIR TO ADDRESS THAT  
ANY MORE THAN THAT WITH  
RESPECT TO THAT POINT.

IF THERE ARE NO FURTHER  
QUESTIONS ABOUT THE PARTIAL

PALM PRINT ON THE PHONE, I  
WOULD LIKE TO ADDRESS ISSUE  
NINE OF THE DEFENDANT'S  
BRIEF, THE CLAIM OF  
INEFFECTIVE ASSISTANCE OF  
PENALTY PHASE COUNCIL.

>> LET ME ASK YOU ON THAT --  
THE OPINION OF THE COURT WAS  
4-

, AND FLOFS --

AND THERE WAS NO MITIGATION  
PRESENTED.

IN MY VIEW IT WAS WORSE THAN  
NO MITIGATION BECAUSE JUNIOR  
BUTLER WAS NOT ONLY NOT A  
SYMPATHETIC CHARACTER, BUT  
WHY WOULD YOU CALL HIM.

BUT MORE OF CONCERN, ABOUT  
WHAT WAS GOING ON WITH THESE  
DEFENSE LAWYERS, WHO ARE  
PARTICULARLY --

OR THE ONE WHO PRESENTED, IS  
THAT APPARENTLY, THE SISTER  
HAD A DREAM THE NIGHT  
BEFORE.

NOW, THE PROSECUTOR KNEW SHE  
HAD A DREAM BECAUSE IT COMES  
OUT IN CROSS EXAMINATION.

DID THE DEFENSE LAWYER NOT  
KNOW SHE HAD THIS DREAM?

AND WHY WOULDN'T SHE HAVE  
MOVED TO PREVENT THAT  
TESTIMONY, AND WHAT I'VE  
GOT, IS THAT --

LET ME SEE IF I CAN SEE THIS

--

NOT ONLY --

SO DURING CROSS CHANNEL  
NATION IT CAME OUT THAT THE  
PROSECUTOR MET WITH HER,  
THAT MORNING, AND TOLD HIM  
THAT GOD TOLD HER WHO DID  
THE CRIME AND IT WAS HER  
BROTHER.

THERE WAS NO OBJECTION OR  
REDISTRICT EXAMINATION NOT  
ONLY THAT YOU PUT SOMEBODY  
ON, BUT THAT YOU PUT SOMEONE  
ON WITH THIS CRITICAL PIECE  
OF EVIDENCE THAT SHOULD NOT

HAVE COME OUT.

AND WHEN IT COMES OUT, YOU  
DO NOTHING TO SAY SOMETHING  
ABOUT IT.

SO TELL ME WHAT THE  
SITUATION IS, ON IT'S FACE,  
IT LOOKS LIKE WHAT WERE YOU  
DOING, MRS. DEFENSE LAWYER  
WHEN SHE HAD NEVER DEALT  
WITH A DEATH CASE BEFORE.

>> YES, TO ANSWER YOUR  
QUESTION WITH REGARD TO THE  
SANDRA BROWN TESTIMONY,  
SANDRA IS MR. BUTLER'S  
SISTER.

THAT TESTIMONY DID COME OUT.  
THEY DID NOT ADDRESS IT IN  
POSTCONVICTION TO THE POINT  
THAT SHE KNEW OR DID NOT  
KNOW SO YOU HAVE THE WITNESS  
THAT TELLING ME GOD TOLD ME  
HARRY DID IT.

AND WHEN YOU'RE LOOKING AT  
THE COMMENT, AND YOU SAY  
OKAY, GOD TOLD ME HARRY DID

IT, AND WHEN MRS. SANDRA  
BUTLER TAKES THE STAND, SHE  
IS CRYING, SHE HAS TO REGAIN  
COMPOSURE, SHE IS OBVIOUSLY  
A PERSON OF FAITH.

THERE IS NEVER ANY STATEMENT  
THAT HARRY BUTLER MY BROTHER  
SHOULD GET THE DEATH PENALTY  
PHASE.

>> WHAT DID SHE OFFER IN  
MITIGATION.

>> THE WHOLE THING IS  
INCREDIBLE TO ME AS FAR AS  
WHAT WAS PRESENTED.

>> YOU KNOW, IT'S BAD FOR  
MR. BUTLER.

>> YOUR HONOR, AMBER --

>> WHAT DID THE SISTER  
TESTIFY TOO.

>> YES, THANK YOU YOUR  
HONOR, WITH REGARD TO WHAT  
SANDRA BUTLER TESTIFIED TOO,  
SHE TESTIFIED THAT HER  
BROTHER PROTECTED HER WHEN  
SHE WAS A CHILD.

WHEN THEY'RE GRANDMOTHER  
DIED THAT JUNEON WENT TO  
LIVE WITH MR. BUTLER, AND  
THAT SANDRA WAS STILL IN  
GEORGIA.

THAT SHE LOVED HER BROTHER,  
AND THAT SHE WAS OBVIOUSLY  
VERY UPDEBT --

UPSET ABOUT THIS, AND THAT  
SHE HAD PRAYED TO GOD.

AND THEN I THINK FOUR

QUESTIONS INTO THE

CROSS-EXAMINATION BY THE

PROSECUTOR ABOUT HAVING JUST

MET SANDRA THAT MORNING AND

WHAT SHE REVEALED TO HIM.

>> BUT THAT'S A CRITICAL

THING.

HOW DID HE JUST MEET HER

THAT MORNING.

DID SHE JUST GO UP TO THE

PROSECUTOR AND START TALKING

TO HIM ABOUT THIS DREAM OR

WHAT SHE WAS TOLD DURING THE

NIGHT OR HOW DID THAT ALL

COME ABOUT?

>> APPARENTLY WHAT HAPPENED  
ACCORDING TO THE PROSECUTOR  
SAID MRS. BUTLER, WE MET  
THIS MORNING, YOU SHOOK MY  
HAND, AND YOU TOLD ME YOU  
HAD A DREAM.

SO THEY WERE IN THE HALLWAY,  
NOT IN THE PRESENCE OF THE  
JURY, AND SHE APPROACHED HIM  
AND INTRODUCED HERSELF, AND  
TOLD HIM THAT SHE HAD THAT  
DREAM.

>> MR. WATSON'S POSTCONVICTION  
RESPONSE THAT THE TWO WITNESSES  
THEY'D HOPED TO PRESENT WERE  
ROBIN GREEN AND HARRY BUTLER  
JR., THE DEFENDANT'S OLDEST SON.  
NOW, NEITHER ONE OF THOSE  
WITNESSES WAS CALLED IN  
POSTCONVICTION BY CCR, SO THE  
QUESTION WAS, WELL, THEN YOU  
CANNOT ESTABLISH PREJUDICE FOR  
FAILURE TO CALL THOSE PARTICULAR  
WITNESSES.

IN ADDITION, THERE WERE  
ALLEGATIONS OR, APPARENTLY,  
INSTANCES OF DOMESTIC VIOLENCE  
INVOLVING HARRY BUTLER AND  
ROBIN.

AND, OBVIOUSLY, CCR MADE A  
DECISION NOT TO CALL ROBIN IN  
POSTCONVICTION AND NOT TO CALL  
HARRY JR. AND ANY OF THE OTHER  
WITNESSES THAT THE DEFENSE AT  
THE TIME OF TRIAL HAD  
INVESTIGATED.

WHAT THEY DO PRESENT IN  
POSTCONVICTION ARE A DISTANT  
RELATIVE WHO DID NOT KNOW THE  
DEFENDANT AS A CHILD.

HARRY BUTLER, UNTIL HE WAS 10  
YEARS OLD, LIVED WITH HIS  
GRANDMOTHER, HATTIE MAE, AFTER  
HIS MOTHER DIED.

AND BY ALL ACCOUNTS -- HIS  
ACCOUNT, ANYWAY, TO THE  
DOCTOR -- WAS THAT HE WAS A  
HAPPY-GO-LUCKY KID.

NOW, THIS STANDS IN CONTRAST TO

THE PORTRAYAL THAT THE DEFENSE  
POSTCONVICTION EXPERT REFERRED  
TO ATTEMPTS TO --  
>> WELL, WHAT DOES SHE BASE HER  
TESTIMONY ON?  
>> SHE WENT TO THE LOCATION  
WHERE THE DEFENDANT'S MOTHER WAS  
BURIED.  
SHE LOOKED AT THE, UM, FAMILY,  
THE TOBACCO FARM WHERE THEY GREW  
UP.  
SHE REVIEWED RECORDS, UM, SCHOOL  
RECORDS AND, UM, PEOPLE AROUND  
THE TIME THAT WOULD, HAD  
ALLEGATIONS AT LEAST THAT, UM,  
HATTIE MAE WAS BELOVED, UM, BUT  
HER HUSBAND WAS, UM, A HARSH  
DISCIPLINARIAN.  
THAT JUNIOR BUTLER WAS ACCUSED  
OF RUNNING AROUND ON WOMEN.  
ALSO THAT ALLEGATIONS FROM ANNIE  
BROOKENS -- NOW, THESE --  
MS. BROOKENS' TESTIMONY IS  
DIRECT, AND THAT INVOLVED HER  
RELATIONSHIP WITH JUNIOR BUTLER.

BUT WHEN MS. BROOKENS WAS INVOLVED WITH JUNIOR'S FATHER AND THERE WAS DOMESTIC VIOLENCE, THE DEFENDANT WAS IN GEORGIA. HE WAS STILL -- HE WASN'T LIVING WITH MS. BROOKENS AND JUNIOR AT THE TIME OF THESE INCIDENTS. SO IT'S REMOTE AS TO OTHER FAMILY MEMBERS.

THE DEFENDANT TESTIFIED AT TRIAL, AND HE TESTIFIED AT LENGTH AND HE GAVE A REALLY, UM, FACT-SPECIFIC AND LENGTHY CHRONOLOGY OF HIS EVENTS ON THE NIGHT OF THE 13TH, THE MORNING OF THE 14TH.

HE'S GOT A TIMETABLE, HE'S IDENTIFYING WITNESSES, HE'S SAYING WHO HE WAS WITH, WHERE HE WENT, WHEN HE WENT BACK, HIS MODE OF TRANSPORTATION.

AND HE, AGAIN, IS PLACING THE BLAME ON DENNIS TUNELL AS A PERPETRATOR OF THE CRIME OR A LIKELY SUSPECT.

AND, AGAIN, NOTHING IN  
POSTCONVICTION SUPPORTED THAT IN  
POSTCONVICTION OR AT THE TIME OF  
TRIAL.

UM, THE PENALTY PHASE WITNESSES  
THAT WERE CALLED DID ESTABLISH  
THAT THE DEFENDANT GREW UP --  
THE FAMILY WAS POOR.

THAT CAME OUT FROM JUNIOR  
BUTLER'S TESTIMONY, THE FAMILY  
WAS POOR, THAT THE DEFENDANT'S  
MOTHER HAD DIED WHEN HE WAS A  
CHILD, THAT THE DEFENDANT WAS  
RAISED BY HIS MATERNAL  
GRANDMOTHER UNTIL HE WAS 10 WHEN  
SHE DIED, AND THEN THE DEFENDANT  
WAS BROUGHT DOWN TO LARGO TO  
LIVE WITH HIS FATHER.

THE DEFENDANT'S FAMILY TREE WAS  
DONE EVEN AT THE TIME OF, UM,  
THE TRIAL TO TRY AND PRESENT A  
PICTURE.

IT DID NOT GO AS THE DEFENSE HAD  
PLANNED.

THE DEFENSE RECOGNIZED THAT IN

POSTCONVICTION.

BUT AS THE TRIAL COURT'S LENGTHY  
ORDER EXPLAINS, THE DEFENDANT  
FAILED TO ESTABLISH BOTH  
DEFICIENCY AND RESULTING  
PREJUDICE.

AND EVEN IF THEY COULD ESTABLISH  
A DEFICIENCY, THERE'S NO  
RESULTING PREJUDICE IN LIGHT OF  
THE AMPLIFICATION OF THE  
TESTIMONY THAT WAS PREVIOUSLY  
PRESENTED IN, EXCUSE ME, AT THE  
TRIAL.

AND I ASK THIS COURT TO AFFIRM  
THE TRIAL COURT'S ORDER DENYING  
CONVICTION RELIEF.

THANK YOU.

>> DEFENSE COUNSEL SAID THAT HE  
BELIEVED THERE WAS A DOMESTIC  
VIOLENCE EXCEPTION TO THE DEATH  
PENALTY AND THAT THIS CASE WOULD  
BE REVERSED AND REMANDED FOR A  
LIFE SENTENCE BY THIS COURT ON  
DIRECT APPEAL, THAT'S ON THE  
RECORD AS FAR AS THE EVIDENTIARY

HEARING.

THE PRINT, UM, THAT WE'RE  
TALKING ABOUT IS ALSO INTRODUCED  
BY US.

IT'S ON THE RECORD IN THE  
EVIDENTIARY HEARING, AND I'M  
ARGUING --

[INAUDIBLE]

AND IF IT IS A FINGER, THEN IT'S  
A THIRD PARTY.

>> WELL, AND WHAT'S THE  
EVIDENCE?

I UNDERSTAND YOUR VIEW AS A  
LITIGANT.

WHAT'S THE EVIDENCE FROM THE  
FOLKS DURING THE TRIAL?

ARE YOU REFUTING OR IN SOME WAY  
SUGGESTING THAT THERE'S NO  
EVIDENCE THAT THIS WAS A PALM  
PRINT?

>> THAT THIS WAS -- I'M SORRY?

>> YOU SAY IT'S A FINGERPRINT.

I UNDERSTAND THAT.

YOU WERE AN ADVOCATE.

WHAT'S THE EVIDENCE?

>> OKAY.

FROM THE TRIAL ITSELF THIS  
WAS -- I DON'T EVEN KNOW IF IT  
WAS INTRODUCED AT ALL.

I DON'T THINK IT WAS.

IT WAS COMPLETELY MISSED BY THE  
DEFENSE, AND THE STATE WAS  
STAYING AWAY FROM IT.

>> SO THERE'S NO EVIDENCE THAT  
THIS WAS A PALM PRINT FROM THE  
EXAMINER AND THAT SHE EXCLUDED  
EVERYONE BUT COULD NOT EXCLUDE  
THE VICTIM.

THAT'S NOT PART OF THE EVIDENCE  
IN THE UNDERLYING CASE?

>> THAT IS WHAT SHE SAID, YES.

>> OKAY.

YOU'RE SAYING IT'S A  
FINGERPRINT.

SO I'M TRYING TO SEE WHAT'S THAT  
BASED ON.

IS THERE EVIDENCE THAT THAT WAS  
A FINGERPRINT?

>> WHAT I'M SAYING IS THERE WAS  
A FINGERPRINT -- CAROL DAVIS

SAID WITHIN HER SCOPE OF  
EXPERTISE SHE COULD SAY THAT WAS  
A PRINT AND THAT IT HAD ENOUGH  
CHARACTERISTICS FOR  
IDENTIFICATION IF YOU FOUND THE  
KNOWN -- IF YOU FOUND ANOTHER  
ONE TO COMPARE IT TO.

SHE COULD NOT SAY TO THE DEGREE  
OF CERTAINTY WAS WHAT PART OF  
THE HAND IT CAME FROM.

SHE SAID IN HER OPINION THAT IT  
LOOKED MORE LIKE THE PART OF THE  
PALM.

OKAY.

WE'RE SAYING --

>> DID YOU HAVE ANY, DID YOU  
HAVE ANYONE THAT TESTIFIED THAT  
IT WAS A FINGERPRINT AND NOT THE  
PALM PRINT?

>> NO.

WE GOT AN EXPERT TO SAY EXACTLY  
WHAT I JUST SAID RIGHT NOW.

>> THERE IS -- IT'S -- YOU  
CANNOT GET AN EXPERT OUT THERE  
TO SAY --

>> TO SAY EXACTLY WHAT YOU JUST SAID.

>> RIGHT.

YOU CANNOT GET AN EXPERT TO SAY WHETHER IT IS A FINGER OR A PALM JUST LOOKING AT THE PRINT.

>> OKAY.

>> WITH REGARD TO THE PENALTY PHASE AND THE SISTER SAYING I HAD, YOU KNOW, GOD TOLD ME LAST NIGHT THAT MY BROTHER DID IT, IS THERE EVIDENCE THAT YOU PUT ON DURING THE EVIDENTIARY HEARING THAT THE DEFENSE LAWYERS KNEW THAT THIS WAS WHAT WAS GOING TO COME OUT DURING HER TESTIMONY?

>> NO, THEY DIDN'T.

>> THEY DID NOT, SO IT SHOCKED THEM.

>> THEY WERE SHOCKED BY IT.

>> OKAY.

AND DID THEY MEET HER THAT MORNING?

IS THERE ANY EVIDENCE IN REGARD TO MEETING WITH THAT WITNESS OR

TALKING WITH HER OR --

>> WHATEVER IT WAS, IT WAS  
EXTREMELY VAGUE, AND IT WAS BY  
LACK OF MEMORY, BUT THEY DID  
HAVE SOME MEETING WITH HER.

>> ALL RIGHT.

AND WAS THERE ANY EVIDENCE WITH  
REGARD TO PERFORMANCE OF  
LAWYERS?

WHEN A WITNESS STARTS TALKING  
ABOUT RELIGION AND GOD ABOUT  
STANDARDS OF HOW YOU, HOW YOU  
DEAL WITH THAT AS A TRIAL LAWYER  
WHETHER YOU ARE SUPPOSED TO  
HEAD-ON ATTACK CROSS-EXAMINATION  
BECAUSE RELIGION'S A VERY  
DELICATE ISSUE.

AND HOW -- IS THERE EVIDENCE IN  
THE EVIDENTIARY HEARING THAT  
IT'S BELOW STANDARDS TO NOT  
ATTACK A WITNESS WHO SAYS GOD  
TALKED TO ME LAST NIGHT?

>> I, IT APPARENTLY WAS DURING  
THE ARGUMENT.

WE DID PRESENT A PROFESSOR

DOWELL WHO TALKED ABOUT THE ABA  
GUIDELINES.

>> I KNOW THAT.

DID HE ADDRESS CROSS-EXAMINATION  
OF A WITNESS WHO IT APPEARS IS A  
VERY RELIGIOUS PERSON AND NOT  
PSEUDORELIGIOUS, HAS A VERY  
SPIRITUAL BACKGROUND?

WAS THERE EVIDENCE HOW LAWYERS  
ARE SUPPOSED TO DEAL WITH THAT?

>> THERE, THERE WAS AND HAS BEEN  
ARGUMENT FROM ME.

WHAT THE LAWYER SAID WAS THEY  
WERE IN SHOCK.

THEY SAT DOWN.

MR. SCHWARTZBERG, DESPITE HAVING  
TOLD THE JURY HE WASN'T GOING TO  
PARTICIPATE IN THE PENALTY  
PHASE, JUMPED IN AND GAVE AN  
IMPASSIONED PLEA.

WHY THE LAWYERS DID NOT PRESENT  
ANYTHING BEFORE THE JURY AT THE  
SPENCER HEARING --

>> THAT'S NOT WHAT I ASKED.

NO, I WAS ASKING YOU ABOUT THE

PRINCIPLES OF CROSS-EXAMINATION  
AND WHETHER IT'S DEFICIENT TO  
NOT ATTACK A WITNESS WHO'S  
SPIRITUAL AND TESTIFIES ABOUT  
SOMETHING OF A RELIGIOUS NATURE.  
THAT'S MY QUESTION.

>> THEY SHOULD HAVE DONE  
SOMETHING TO DEAL WITH IT.

>> THERE'S NO EVIDENCE FROM  
ANOTHER LAWYER, FROM ANY EXPERT  
ON THAT?

THAT'S YOUR PERSONAL VIEW.

>> WHAT HAPPENED WAS THEIR STAR  
DEFENSE WITNESS CAME UP WITH  
THIS TOTAL SHOCKING --

>> BUT YOU SAID YOU'RE  
CRITICIZING BECAUSE YOU DIDN'T  
CROSS AN ATTACKER ON  
CROSS-EXAMINATION.

I'M ASKING YOU WHETHER THERE'S  
ANY EVIDENCE OF -- IT'S A VERY  
SIMPLE QUESTION.

MAYBE THERE'S NO EVIDENCE.

>> I'M SORRY.

I DON'T THINK THE RELIGION

ASPECT HAS MUCH TO DO WITH IT.

IT HAS TO DO WITH A BAD DEFENSE

PRESENTATION ON PENALTY PHASE.

BUT THANK YOU.

>> WE THANK YOU BOTH.