>> NEXT CASE ON THE DOCKET IS JOHN LEE HAMPTON V. STATE OF FLORIDA.
>> WHENEVER YOU ARE READY.
>> GOOD MORNING MISTER CHIEF JUSTICE AND MEMBERS OF THE COURT AND COUNSEL THE STATE.
MY NAME IS DAVID D. HENRY, I AM FROM TAMPA, TO MY LEFT IS JANET DRISCOLL AND WE ARE HERE TO ARGUE THE CASE OF THE STATE VERSUS JOHN LEE HAMPTON WHO WAS DENIED FOLLOWING A POSTCONVICTION HEARING AND THE ISSUE I WOULD LIKE TO FIRST ADDRESS IS ISSUE ONE.
THE COURT WRONGLY DENIED THE INTELLECTUAL DISABILITY CLAIM IN THIS CASE.
WE ESTABLISHED THAT THE EVIDENTIARY HEARING THAT MISTER JOHN LEE HAMPTON IS INTELLECTUALLY DISABLED.
THE CLAIM IS ALSO THAT TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO PURSUE THE ISSUE OF INTELLECTUAL DISABILITY AT THE TRIAL.
REGARDING THE 3 PRONGS MISTER HAMPTON MET ALL 3 PRONGS.
>> WAS THERE EVIDENCE CONCERNING MALINGERING?
>> EVIDENT THROUGHOUT TRIAL ABOUT MALINGERING AND WHETHER ESTHER HAMPTON WAS SOMEHOW FAKING COMPETENCY, FAKING PSYCHOTIC SYMPTOMS AND SUCH.
>> THE COURT CREDITED THE TESTIMONY OF MALINGERING?
>> IT WAS THE SAME JUDGE, JUDGE LUCE, AT THE TRIAL, AND POSTCONVICTION, AND THROUGHOUT THE HISTORY OF THE CASE EVEN IN POSTCONVICTION HE CONTINUED TO A CRIME MISTER HAMPTON WAS MALINGERING.
WITH REGARDS TO PRONG ONE, THIS IS THE IQ SCORE WE OBTAINED FROM DOCTOR JOSEPH SESSA AND THE IQ SCORE WAS 71.

THIS WAS ACTUALLY SCORED A YEAR
BEFORE HALL WAS DECIDED.
WE WERE A BIT CONCERNED BECAUSE
HALL HAD NOT COME OUT AND RAISE
THE LEVEL, THE BAR OF 75.
MISTER HAMPTON'S IQ SCORE WAS
71.
THERE WAS NOTHING TO SHOW MISTER
HAMPTON WAS MALINGERING ON THIS
IQ TEST.
DOCTOR CUNNINGHAM ADDRESSED THE
POSSIBILITY OF MALINGERING ON
THIS TEST AND FAKING THE TEST
AND TALKED ABOUT THE EMBEDDED
MEASURES IN THIS IQ TEST AND ON
ONE MEASURE IT WAS 50 OUT OF 50
WHICH WAS PERFECT AND ONE WAS 49
OUT OF 50 SO THERE IS EVIDENCE
TO CONTRADICT LOWER COURT'S
ORDER THAT THIS WAS SOMEHOW
MALINGERING AND YOUR HONOR'S,
THIS --
>> WHAT IS THE EVIDENCE TO
SUPPORT LOWER COURT'S INCLUSION
ON THAT POINT?
ISN'T THERE ALSO EVIDENCE THAT
WOULD SUPPORT THE LOWER COURT'S
CONCLUSION ON THAT POINT?
>> JUDGE LUCE'S OPINION WAS
CONSISTENT AND CITED TO ALL THE
EVIDENCE HE COULD TO SHOW --
>> THERE IS CONFLICT IN THE
EVIDENCE, DOESN'T THE COURT GET
TO DECIDE?
>> THE PROBLEM WITH THIS IS THIS
IS THE ONLY WAY WE CAN BE TO
PRONG ONE.
OF COURSE THE STATE WILL --
EXPERTS WILL COME TO THE
EVIDENTIARY HEARINGS OF THESE
CASES AND SAY THE DEFENDANT WAS
MALINGERING OR FAKING HIS TESTS.
>> WE CERTAINLY GET CASES WHERE
THERE IS NO EVIDENCE OF
MALINGERING.
THE STATE DOES NOT MAKE A CLAIM
OF MALINGERING, NO TESTIMONY
PRESENTED THAT MALINGERING TOOK
PLACE.
THE NOTION THAT THAT ARGUMENT IF

I UNDERSTAND WHAT YOU ARE
SAYING, THE STATE'S CLAIM THAT
THERE IS MALINGERING IN THE
EVIDENCE ABOUT MALINGERING NOT
TO BE DISCOUNTED OUT OF HAND,
NOT SURE I FOLLOW THAT.
>> I TELL YOU WHY STATES
EVIDENCE SHOULD BE DISCOUNTED IN
THIS CASE.
THE STATE'S EXPERT DID NOT SPEND
ONE MINUTE WITH MISTER JOHN LEE
HAMPTON.
I DON'T KNOW HOW A MENTAL HEALTH
EXPERT WITHOUT EVEN MEETING WITH
THIS GENTLEMAN CAN COME TO COURT
AND SAY HE IS NOT INTELLECTUALLY
DISABLED.
THE STATE CITED TO THE RAPE
CASE, STATES EXPERT ACTUALLY
SPENT 5 HOURS WITH MISTER
WRIGHT, 0 MINUTES WITH MISTER
JOHN LEE HAMPTON.
THE STATE'S EXPERT ADMINISTERED
TESTS AND HAD TESTS WHICH SHOWED
MISTER WRIGHT MAY HAVE BEEN
MALINGERING ON THAT TEST.
THERE IS ANOTHER DISTINGUISHING
FACTOR.
THIS IS WHY THE COURT SHOULD NOT
USE THAT TO DENY MISTER HAMPTON,
MISTER WRIGHT'S SCORES WERE
CONSISTENTLY ABOVE 75,
CONSISTENTLY ABOVE THE BAR,
WHICH WOULD BE REQUIRED TO GO
INTO PRONGS 2 AND 3.
MISTER HAMPTON HAS 71.
>> ON THAT 71, OTHER SCORES WERE
ABOVE THE 71.
DID HE HAVE 78 ON THE TEST,
80-SOMETHING ON ANOTHER TEST, SO
TO DISCOUNT THOSE TESTS?
>> YOU SHOULD.
DOCTOR CUNNINGHAM EXPLAINED
THERE WAS ONE SCORE UPWARDS OF
115 OR SOMETHING AND DOCTOR
CUNNINGHAM EXPLAINED THIS TEST
IS IMPOSSIBLE FOR HIM TO SCORE
SUCH A HIGH SCORE.
THERE WAS ONE IN THE 80s AND
DOCTOR CUNNINGHAM TALKED ABOUT

THIS, THE CULTURE OF FAIR TEST, THESE ARE GROUP TESTS, TESTS THAT ARE ADMINISTERED IN A GROUP SETTING WHICH, UNDER THE AAA IT, PSYCHOLOGICAL MANDATES, TALK ABOUT YOU CAN USE THESE TESTS, CULTURE TESTS WHICH IS THE 115 AND 86 BUT YOU CANNOT USE THESE SCORES TO DETERMINE IF IT MEETS PRONG ONE.
WE COULD FOCUS ON THE 78 BUT THE 78 HAS PROBLEMS, IF YOU POINTS OVER.
THIS WAS A TEST, DOCTOR CUNNINGHAM, WE DON'T HAVE THE RAW DATA ON THIS TEST SO WE DON'T KNOW WHO ADMINISTERED IT OR WHERE IT WAS ADMINISTERED OR WHAT VERSION OF THE TEST IT WAS, SO WITH 78, THE LAW HAS REALLY CHANGED IN THIS AREA.
AT THE TIME MISTER WATTS WAS DOING THIS CASE HE SHOULDN'T HAVE BEEN FAULTED SO MUCH BECAUSE THE LAW OF THE STATE WAS 75.
WITH 78 HE APPEARED TO BE OUTSIDE THE RANGE BUT THE PROBLEM IS IT HAD BEEN YEARS AND YEARS AND THERE WAS NOTHING TO PROHIBIT TRIAL ATTORNEY WATTS FROM OBTAINING ANOTHER IQ TEST.
WE ASKED ESTHER WHITE AT THE EVIDENTIARY HEARING WHAT ABOUT INTELLECTUAL DISABILITY?
DIDN'T TALK ABOUT THAT.
DOCTOR BERLIN WAS FOCUSED ON COMPETENCY.
DOCTOR BERLIN CAME OUT WITH A REPORT THAT SAID MISTER HAMPTON WAS COMPLETELY INCOMPETENT TO STAND TRIAL AND THERE WAS A NOTE SAYING ARE YOU GOING TO BE HELD INEFFECTIVE BECAUSE NO ONE TOLD THE COURT THAT I FOUND MISTER HAMPTON TO THE INEFFECTIVE?
THAT IS A VERY STRANGE EMAIL TO HAVE IN THIS CASE WHERE THE DEFENSE'S OWN MENTAL HEALTH EXPERT IS QUESTIONING WHETHER

TRIAL COUNSEL IS EFFECTIVE IN A CASE OR NOT.
>> WASN'T THERE EVIDENCE THESE TRIAL LAWYERS SAID THAT BERLIN WAS INCREDIBLE, THEY DIDN'T SEE ANYTHING THAT HE ALLEGEDLY HAD FOUND.
I AM TROUBLED WITH THE ASPECT ALL WE HAVE TO DO IS FIND AN EXPERT, YOU HAVE BEEN DOING THIS LONG ENOUGH TO KNOW YOU CAN BUY WHATEVER OPINIONS YOU WANT UP THERE BUT THE TRIAL LAWYERS ARE JUST LYING ABOUT THIS AND HAVE TO ACCEPT A PERSON WHO PROCLAIMS THEMSELVES TO BE AN EXPERT AND THE LAWYER SAYS EVERY TIME I DEAL WITH HIM, HE ALWAYS FINDS HIM INCOMPETENT, THAT IS WHAT HE IS KNOWN FOR.
CAN A TRIAL JUDGE CONSIDER THAT?
>> A TRIAL JUDGE CAN AND TRIAL JUDGE DID ACCEPT THAT.
THE PROBLEM WITH THAT IS THEY HAVE A DEFENSE EXPERT WHO SAYS MISTER HAMPTON IS INCOMPETENT.
THEN THEY FILED A MOTION TO DETERMINE COMPETENCY AND ONLY ASKED FOR ONE MORE EXPERT.
TRIAL COUNSEL WAS OF THE OPINION MISTER HAMPTON WAS COMPETENT TO STAND TRIAL SO THEY DISAGREED WITH DOCTOR BERLIN BUT THE PROBLEM IS MISTER HAMPTON WAS AT THE PODIUM GETTING READY TO ACCEPT A PLEA WHICH IS WHAT HE RASHLY SHOULD HAVE DONE.
HE IRRATIONALLY REJECTED THE PLEA AND WENT TO DEFENSE COUNSEL, THEY WERE SHOCKED, ABSOLUTELY SHOCKED.
AT THE MOMENT OF THAT SHOCK TRIAL COUNSEL THOUGHT ALL ALONG MISTER HAMPTON WAS COMPETENT TO MAKE DECISIONS BUT THE MOMENT OF SHOCK, THEY ABSOLUTELY HAD TO FILE ANOTHER MOTION TO TRY TO GET ANOTHER EXPERT TO DETERMINE WHETHER MISTER HAMPTON WAS COMPETENT OR NOT.

>> I PRACTICE CRIMINAL LAW A LONG TIME DEALING WITH DIFFICULT DEFENDANTS.
JUST BECAUSE SOMEONE DOESN'T RATIONALLY ACCEPT A PLEA OFFER MAKES HIM INCOMPETENT, A LOT OF THESE GUYS COME IN AND THEY OFFER PRETRIAL INTERVENTION, IF CONVICTED THEY GET 10 YEARS AND WON'T SIGNED THE AGREEMENT, HAVE 2 BLEED GUILTY.
WE GET THOSE AND THEY ARE NOT INCOMPETENT, JUST DIFFICULT.
HOUSE LAWYERS SAY YOU CAN BEAT THIS, THAT KIND OF THING.
>> IF YOU LOOK AT THE REPORT ON COMPETENCY YOU CAN SEE THE THINGS DOCTOR BERLIN SAID MIGHT HAPPEN DID HAPPEN.
HE COULD NOT HAVE ASSISTED COUNSEL, COULD NOT ACCEPT THE EVIDENCE AGAINST HIM OR MAKE A DECISION TO ACCEPT THE PLEA IN THIS CASE.
ANOTHER THING, I NEED TO TOUCH ON HURST AND THIS IS RELATED TO THE MITIGATION.
THIS IS ONE OF THE MOST HIGHLY MITIGATED CASES THIS COURT HAS SEEN.
THIS IS A CASE WHERE DOCTOR CUNNINGHAM FOUND 35 ADVERSE DEVELOPMENTAL FACTORS.
WHAT WAS THE STRATEGY?
IT WAS REASONABLE FOR TRIAL COUNSEL TO STRATEGICALLY PRESENT THIS EVIDENCE IN FRONT OF THE SPENCER HEARING.
HOW AS COUNSEL AND POSTCONVICTION CAN WE ANALYZE THE FRAMEWORK OF PREJUDICE?
NORMALLY I WOULD BE UP HERE ARGUING THAT THIS ADDITIONAL MITIGATION WOULD SWAY THREE JURORS IN THIS CASE.
I CAN'T SAY THAT NOW, HE HAS THREE VOTES FOR LIFE.
THERE IS NO WAY THIS CASE IS RETRIED.
THERE WILL BE UNANIMOUS VERDICT

FILING DOCTOR CUNNINGHAM AND
DOCTOR WOODS'S PRESENTATION OF
MITIGATION.
THIS MAN WAS PLACED IN A HOT,
BURNING OVEN.
THEY HEARD THAT.
BUT THEY DID NOT HEAR THE EFFECT
BEING PLACED IN A HOT BURNING
OVEN WOULD HAVE ON MISTER
HAMPTON.
THEY DIDN'T HEAR THAT MISTER
HAMPTON WAS SHIPPED OFF TO
GEORGIA.
THEY DIDN'T HEAR FROM DIEGO
PARKS WHO CAME FROM NEW YORK
CITY TO TALK ABOUT LIVING
CONDITIONS IN THIS TRAILER.
MY POINT IS JUST LIKE THE WALLS
CASE THE COURT JUST DECIDED.
THAT HEARING HAD TO BE REDONE
BECAUSE THE SCORE OF 70 VERSUS
75 THE COURT WITH ANALYZING
EVERYTHING UNDER IMPROPER
FRAMEWORK.
NOW AGAIN WE ARE IN AN IMPROPER
FRAMEWORK.
I CANNOT ARGUE THREE JURORS
WOULD BE SWAYED FROM ALL THIS
ADDITIONAL MITIGATION.
I CAN TELL YOU THERE IS NO WAY
THERE IS GOING TO BE UNANIMOUS
JURY VERDICT OF THIS CASE IS
RETRIED.
>> YOU RAISE HURST IN HABEAS
CORPUS YOU
>> THE HEAVIEST CLAIM IS WE
RAISED CLAIM ONE FOR APPELLATE
COUNSEL FAILURE TO RAISE
CONSIDERATIONS RELATED TO THE
HURST CLAIM.
>> WASN'T RAISED ON DIRECT
APPEAL?
>> IF IT WAS.
>> HOW IS IT INEFFECTIVE IF HE
RAISED IT?
>> SHE RAISED IT UNDER 6
AMENDMENT CONSIDERATIONS ONLY SO
THE CLAIM IS HER FAILURE UNDER
EIGHTH AMENDMENT CONSIDERATIONS
WITH AN EFFECTIVE, NO COURT HAS

FOUND EIGHTH AMENDMENT
IMPLICATIONS UNDER RING
VIOLATIONS.
THIS COURT HAS DONE SO.
>> FROM A PRACTICAL POINT OF
VIEW IF IT HAS BEEN RAISED, THE
SIXTH AMENDMENT IS THE CRITICAL
ISSUE, THEN IT WAS PRESERVED AND
YOU RAISED IT HERE, A NEW
PENALTY PHASE.
>> ABSOLUTELY.
TRIAL COUNSEL, APPELLATE COUNSEL
RAISED EIGHTH AMENDMENT
CONSIDERATIONS AS WELL AND THIS
IS WHY.
THIS CASE VIOLATED CALDWELL AND
THE UNITED STATES SUPREME COURT
CITED EIGHTH AMENDMENT
CONSIDERATIONS WHEN THE STATE
DIMINISHES GERRI ABSENCE OF
RESPONSIBILITY IN THE PENALTY
PHASE, US SUPREME COURT CITED
EIGHTH AMENDMENT CONSIDERATIONS
SO THIS IS ALL INTERRELATED.
>> THE SUPREME COURT SAID THE
DEATH PENALTY IS
UNCONSTITUTIONAL UNDER THE
EIGHTH AMENDMENT?
I DIDN'T THINK THEY HAD.
>> 6 AMENDMENT.
THIS COURT ON OCTOBER 15TH CITED
THE EVOLVING STANDARDS OF
DECENCY.
>> THE QUESTION OF APPELLATE
COUNSEL BEING INEFFECTIVE
MEANING EVERYBODY, THIS IS THE
DILEMMA WE HAVE, AT SOME POINT
WE HAVE -- WE REJECT AND WE
SHOULD HAVE RAISED IT, RAISED
IT, RAISED IT AND IT ENCOURAGES
AGAIN SOME LAWYERS DO THAT.
THEY FEEL IF EVENTUALLY
SOMETHING HAPPENS THEY PRESERVED
IT.
THE SIXTH AMENDMENT WAS
PRESERVED.
>> ABSOLUTELY.
I CAN'T FAULT APPELLATE COUNSEL
FOR FAILURE TO CITE THE EIGHTH
AMENDMENT BASED ON WHAT YOU

SAID.
WE COUNT FAULT TRIAL COUNSEL,
THE 78 SCORE WAS OUTSIDE 75 BUT
HERE IS WHY WE WOULD FAULT TRIAL
COUNSEL, THEY CHOSE THE WRONG
MENTAL HEALTH EXPERT.
DOCTOR BERLIN WAS NOT THE MAN TO
HIRE THIS CASE TO SEE IF MISTER
HAMPTON WAS INTELLECTUALLY
DISABLED BLUE SCHOOL RECORDS GO
ALL THE WAY, MISTER HAMPTON
FAILED FIRST GRADE, SECOND
GRADE, HELD BACK AT A TIME HE
SHOULD HAVE HAD 10TH GRADE
READING LEVEL, WRITING LEVEL WAS
ONLY AT THE THIRD GRADE LEVEL.
THERE ARE DOCUMENTED RECORDS
TRIAL COUNSEL DIDN'T HAVE THAT
SHOW ADOPTIVE DEFICITS THAT SHOW
DEFICITS IN ADAPTIVE
FUNCTIONING.
A LOT OF STUFF HAPPENED, THEY
APPEAR TO HAVE OCCURRED POSSIBLY
AT CONCEPTION AND HERE IS WHY.
POSSIBILITY OF INTELLECTUAL
DISABILITY AND MISTER HAMPTON AT
NATURAL FATHER AND NATURAL
MOTHER WAS ON SSI, DOCTOR
CUNNINGHAM TALKED ABOUT HOW IT
IS HEREDITARY, THERE WAS
PRENATAL ALCOHOL EXPOSURE.
IT APPEARS FROM CONCEPTION ALL
THE WAY THROUGH PREGNANCY, MAYBE
NOT ALL THE WAY THROUGH
PREGNANCY.
MISTER HAMPTON'S MOM TOLD WHAT
PREGNANT WAS, SHE DIDN'T KNOW
WHAT PREGNANT WAS.
AT AGE 2 HE HAD MENINGITIS.
WHEN DOES THIS MENTAL
RETARDATION HAPPEN?
IT HAPPENED EARLY IN THIS CASE.
HE HAD MENINGITIS.
THE PET SCAN, AND IF YOU LOOK AT
A PET SCAN.
THERE SHOULD HAVE BEEN.
THERE WERE TRIAL COUNSEL'S, GET
PET SCAN.
SCHOOL RECORDS AND GET IT.
>> THANK YOU VERY MUCH.

>> GOOD MORNING.
AND THE RESPONDENTS IN THIS CASE, I WOULD LIKE TO CLARIFY THAT COUNSEL RAISED THE HURST ISSUE AND IT WAS IN THE REPLY OF THE HABEAS CORPUS THE HAY BS, UNDER LIKE HE SAID, IN APPELLATE COUNSEL, EIGHTH AMENDMENT CLAIM.
IT WAS RAISED, APPELLATE COUNSEL DID RAISE 6 AMENDMENT CLAIM.
THE HURST ISSUE IS TACKED INTO A REPLY BRIEF.
IT WASN'T PROPERLY RAISED.
>> HERE IS MY PROBLEM WITH HOW WE LOOK AT THIS AND IT DEPENDS WHAT WE DECIDE ON RETROACTIVITY.
WHEN HURST FIRST CAME OUT IN ORAL ARGUMENTS IN FEBRUARY AND MARCH, THIS COURT ORDERED A BRIEFING ON THE ISSUE OF HURST.
AND SO THE -- IN HURST, I ASSUME THE OPINION DID NOT COME OUT UNTIL IT HAD BEEN DECIDED, WHEN THE PETITION FOR HAY BS --
>> I DON'T -- THERE IS AN ISSUE HERE, WE COULD HAVE PEOPLE FILE SUCCESSES AND MOTIONS.
AND APPLYING THIS IN SOME UNIFORM FASHION.
ARE YOU AWARE THE COURT DID A BRIEFING ON CASES THAT WERE SET IN ORAL ARGUMENTS IN FEBRUARY AND MARCH.
>> I AM PREPARED TO ARGUE AGAINST RETROACTIVITY.
>> AND HURST IS NOT RETROACTIVE.
IT IS A PROCEDURAL ACCRUAL.
IT IS DESCRIBED AS REFINEMENT, EVOLUTIONARY REFINEMENT IN CRIMINAL LAW AND UNDER JOHNSON THIS COURT HAS RECOGNIZED SUCH EVOLUTIONARY REFINEMENTS WOULD DESTROY THE STABILITY, UNSTABLE, UNBURDENED THE JUDICIAL MACHINERY OF THE STATE BEYOND REPAIR.
THE VICTIMS OF THIS CASE AND CITIZENS OF FLORIDA ARE CERTAINLY ENTITLED TO FINALITY.
AND 6 AMENDMENT RING CLAIMS DO

NOT INVOLVE, NOT FAIRNESS, IN
THE US SUPREME COURT, HAS GONE
SO FAR AS TO HOLD WHEN YOU LOOK
AT JURY FACT-FINDING VERSUS
JUDICIAL FACT-FINDING WE CAN'T
EVEN SAY WHETHER JURY
FACT-FINDING IS MORE FAIR.
IF YOU ARE TRYING TO BALANCE
FINALITY VERSUS FAIRNESS, THE
FINALITY WINS.
>> IT IS PRETTY FINAL AND
DIFFERENT FROM OTHER CASES OF
PEOPLE GOING ON TO PRISON AND
RELEASED.
THIS IS THE ULTIMATE.
>> WE CAN SAY THE PROCEDURES, IN
THIS CASE WERE FAIR, AND
RETROACTIVITY IS NOT NECESSARY
IN ORDER TO ENSURE THAT THE
DEFENDANT WOULD RECEIVE A DEATH
SENTENCE AGAIN.
IT IS NOT AT THAT LEVEL, DEATH
IS FINAL BUT WE DO NOT NEED TO
GO THERE.
WITH THIS CASE OR ANY CASE THAT
WOULD BE RETROACTIVE OR IN
POSTCONVICTION AND BEYOND.
GOING TO THE INTELLECTUAL
DISABILITY CLAIM, I WANT TO
POINT OUT THAT THIS WAS NEVER
RAISED BELOW IT ALL.
THE CLAIM THAT WAS TWOFOLD AND
THE IAC CLAIM, REALLY AND IAC
CLAIM THAT THERE WAS --
ATTORNEYS DO NOT RAISE IT, AND
WAS NEVER AN ISSUE.
THEY WERE NEVER CONFIRMED IN ANY
WAY ABOUT,
>> DID HE HAVE AN IQ OF 71.
>> THEY DID NOT.
THEY KNEW THAT --
>> THAT WAS GIVEN TO THEM --
>> DURING POSTCONVICTION.
IQ TESTING BY DOCTOR SESSA IN
2013.
>> THE ATTORNEYS WERE AWARE.
>> DID HE HAVE ANY PRETRIAL IQ
SCORES?
>> HE CERTAINLY DID.
THE POSTCONVICTION RECORD

DOESN'T DEVELOP WHETHER
ATTORNEYS WERE AWARE OF ALL OF
HIS IQ TESTING.
WE DO KNOW FROM THE RECORD HIS
ATTORNEYS WERE AWARE OF A SCORE
OF 89 THIS WAS ADMINISTERED WHEN
HE WAS 19 YEARS OLD.
THE OTHER SCORES --
>> WHAT TEST WAS THAT ON?
>> THE CFIT TEST --
>> THAT IS NOT A QUALIFIED TEST,
IS IT?
>> THAT WAS THE TEST THAT WAS
GIVEN THAT ATTORNEYS WERE AWARE
OF.
THEY ARE LOOKING AT THE SAME, HE
HAS 89 IQ STORE.
DOCTOR ROTHSCHILD EVALUATED
MISTER HAMPTON FOR COMPETENCY
AND DURING THE COMPETENCY
EVALUATION SAID THE WAY HE WAS
RESPONDING TO QUESTIONS,
ANALYSIS OF TIMELINES, ANYTHING
IN THAT EVALUATION WAS AROUND
FOUR HOURS WAS CONSISTENT WITH
AN IQ SCORE OF 89.
>> DID HE HAVE AN IQ TEST IN
1989 THAT WAS 78?
>> YES HE DID.
>> THAT IS ENTIRELY CORRECT.
THE STATE EXPERT TESTIFIED
DURING POSTCONVICTION THAT THE
78 SCORE WOULD ACTUALLY BE
HIGHER BECAUSE HE WAS GIVEN A
SCORE WHEN HE WAS 15 YEARS OLD
AND IF HE WOULD HAVE BEEN GIVEN
AN AGE APPROPRIATE TEST THE
SCORE WOULD BE HIGHER THAN IT
ACTUALLY WAS SO ALL THE
INFORMATION AVAILABLE TO HIS
ATTORNEYS DID NOT GIVE ANY SORT
OF RED FLAGS THAT INTELLECTUALLY
DISABILITY WAS AN ISSUE HERE AND
AS TO THE OTHER PROBLEMS THERE
WAS NO EVIDENCE OF IT.
>> DEVELOPMENT OF THOSE OTHER
TWO PRONGS.
ANY EVIDENCE ABOUT ONSET AND
FUNCTIONING IN THE COMMUNITY.
>> THE ATTORNEYS DID NOT SEE ANY

EVIDENCE OF THE OTHER TWO PRONGS
BUT DURING POSTCONVICTION,
MISTER HAMPTON HAD A FULL-BLOWN
INTELLECTUAL DISABILITY HEARING
WHERE HE PRESENTED EVIDENCE OF
ALL THREE PRONGS, AND EVEN
THOUGH THE ATTORNEYS WERE
OPERATING AT THE TRIAL LEVEL,
DURING POSTCONVICTION, WHEN A
HEARING WAS CONDUCTED, OUT AT
THAT TIME IN THE POSTCONVICTION
PORT, THE OPINION INCORPORATES
HALL AND ANALYZES ALL THREE
PRONGS AND FINDS THERE WAS NOT
EVIDENCE OF ONE PRONG ALONE ALL
THREE.
MISTER HAMPTON DIDN'T HAVE A
CHANCE ORIGINALLY BECAUSE THERE
WAS NO INTELLECTUAL DISABILITY
ISSUE.
BUT HE STILL WAS GIVEN AN
OPPORTUNITY AND FELT, TO SHOW
HIS BURDEN OF PROOF, HE DOESN'T
GET ANOTHER BITE OF THE APPLE
AND CANNOT SHOW PREJUDICE.
BECAUSE HE ALREADY HAD A CHANCE
TO PROVE DISABILITY.
IT WASN'T FOUND.
JUSTICE KENNEDY, YOU MENTIONED
THE STATE'S EXPERTS.
AND THE COURT FINDING, THE STATE
EXPERTS WERE CREDIBLE AND THAT
IS ABSOLUTELY CORRECT.
POSTCONVICTION COURT DID NOT
FIND DOCTOR CUNNINGHAM TO BE
CREDIBLE.
>> WHAT THE TRIAL JUDGE
EVALUATED, THE INFORMATION
CONCERNING WHETHER OR NOT THE
DOCTOR HAD QUESTIONED THE
ATTORNEY'S COMPETENCY.
IT WAS THE COMPETENCY OF THE
DEFENDANT.
>> YES.
THE COURT FOUND NO DEFICIENCY,
AND AS TO PREJUDICE, COUNSEL,
MISTER HAMPTON AT THE
POSTCONVICTION HEARING, TO PROVE
THIS CLAIM, MISTER HAMPTON WAS
INDEED INCOMPETENT.

THERE IS A COMPLETE FAILURE OF PROOF HERE AND NO WAY PREJUDICE CAN BE SHOWN IN THE POSTCONVICTION COURT WAS ENTIRELY CORRECT IN FINDINGS BY COMPETENT SUBSTANTIAL EVIDENCE WHICH IS TO DEFICIENCY THERE IS NONE HERE.
WHAT HAPPENED IS DOCTOR BERLAND WAS HIRED BY PUBLIC DEFENDERS OFFICE AND WHEN THE ATTORNEYS TOOK OVER, THEY CONTINUED TO USE DOCTOR BURSTYN, AND HE DID GIVE THE OPINION HAMPTON WAS INCOMPETENT BUT THAT WAS SOLELY BASED ON HIS ABILITY TO COMMUNICATE.
HE THOUGHT GIVEN THE OPPORTUNITY MISTER HAMPTON WOULD HAVE PROBLEMS COMMUNICATING WITH HIS ATTORNEYS.
THEY HAVE COMBINED EXPERIENCE OF 50 YEARS.
THEY MET WITH MISTER HAMPTON 60 TIMES, SPENT WELL OVER 120 HOURS WITH HIM AND NEVER HAD ANY ISSUE COMMUNICATING WITH HIM.
>> WHAT WAS DOCTOR BERLAND'S STATEMENT TO THAT EFFECT BASED ON?
>> WE DON'T KNOW.
THAT WAS HIS ANALYSIS AND THE ATTORNEYS DID NOT AGREE WITH IT AND DURING POSTCONVICTION THEY FELT DOCTOR BERLAND WAS TELLING THEM WHAT THEY WANTED TO HEAR.
THEY DIDN'T SEE ANY EVIDENCE TO CREDIT HIS TESTIMONY OR HIS OPINION AND THAT IS WHY THEY HAD THE COURT APPOINT DOCTOR ROTHSCHILD AND DID NOT FIND MISTER HAMPTON WAS INCOMPETENT, EXTREME EVIDENCE OF HIM MALINGERING.
AFTER THAT, DOCTOR KORMAN WAS ALSO APPOINTED TO EVALUATE HIM AND AGREED THERE WAS NO EVIDENCE OF HIM BEING INCOMPETENT, UNDERSTOOD EVERYTHING, AND THAT IS WHY IT NEVER BECAME AN ISSUE

FOR THE ATTORNEYS.
>> HE HAD A PRIOR RECORD, AND ANYONE -- ANY ISSUES DURING THOSE PRIOR PROCEEDINGS.
>> ABSOLUTELY NOT.
>> DOES THE COURT HAVE ANY QUESTIONS?
IF THERE ARE NO OTHER QUESTIONS THE STATE RESPECTFULLY ASKS THAT THIS COURT AFFIRMED THE LOWER COURT'S DENIAL ON POSTCONVICTION RELIEF.
>> I WANT TO GO BACK ONE MORE TIME TO THE ISSUE OF MALINGERING IN REGARDS TO THE ADMINISTRATION OF THIS IQ TEST.
DOCTOR GANACHE SAID HE WAS GIVING RANDOM AND IS, INTENTIONALLY WRONG ANSWERS ARE GIVING RANDOM ANSWERS.
IF YOU LOOK AT HIS TRIAL TESTIMONY WAS HE TAKING THAT?
MISTER HAMPTON WAS ON THE STAND, DENIED COUNSEL, TRIAL COURT SAID YOU ARE NOT TO SPEAK WITH YOUR CLIENT.
IN THE COURT ROOM MISTER HAMPTON IS ON THE STAND AND A QUESTION ABOUT HOW MANY PRIORS HE HAS AND ALL THE DISCUSSION IS ON THE FRONT, WHAT HE'S GOING TO ANSWER IN THE STATES IS HOW MANY CONVICTIONS DO YOU HAVE, PRESUMABLY MISTER HAMPTON UNDERSTOOD THIS.
APPARENTLY HE DID NOT.
FIRST QUESTION OUT-OF-THE-BOX HOW MANY PRIOR CONVICTIONS?
JUST ONE.
WAS HE FAKING THEN?
WITH THAT MALINGERING?
HE'S NOT ANSWERING WRONG BECAUSE HE'S FAKING, HE IS ANSWERING WRONG BECAUSE HE IS INTELLECTUALLY DISABLED.
HE CAN'T FOLLOW THE PROCEEDINGS IN FRONT OF HIM.
DOCTOR BERLAND WAS RIGHT IN THIS CASE.
WITH REGARDS TO THE LOWER

COURT'S ORDER ABOUT THE 71.
HERE IS A MAJOR PROBLEM WITH
THAT.
JUDGE LUCE SAID AS PAUL STATED
THESE IQ STORES ARE IN PRECISE.
THE US SUPREME COURT USE THAT TO
PUT MISTER HALL IN THE RANGE TO
ESTABLISH INTELLECTUAL
DISABILITY.
JUDGE LUCE USED THAT IN PRECISE
LANGUAGE TO SAY I CAN'T PLACE
FAITH IN THIS IQ SCORE BECAUSE
I'M TOLD THEY ARE IN PRECISE.
THIS IS A 52 PAGE PENALTY PHASE.
ONE PAGER CLOSING ARGUMENT AT
TRIAL, YOU READ THE PENALTY
PHASE, LOOKS MORE LIKE COUNTY
COURT MISDEMEANOR RESTITUTION
HEARING VAN DEATH PENALTY PHASE.
MY OPPONENT SAID ID WITHOUT
ADDITIONAL IN THIS CASE.
THIS WAS POST CHAIR BUT
PRE-HALL.
THE REASON ID WAS NOT AN ISSUE
IS BECAUSE OF FAILURE TO
INVESTIGATE.
MISTER WATTS SAID HE DIDN'T
DISCUSS IT WITH DOCTOR BERLAND.
WITH REGARDS TO THE 78, AND
EXPERIENCED MENTAL HEALTH EXPERT
IN THIS CASE, SOME LIKE DOCTOR
CUNNINGHAM, IF HIRED, DOCTOR
CUNNINGHAM OR SOMEONE WITH HIS
KNOWLEDGE AND IN HIS FIELD WOULD
TALK ABOUT HOW THAT 78 IS PUT
INTO RANGE, IN RANGE TO TALK
ABOUT TWO AND THREE.
WITH REGARDS TO RETROACTIVITY I
WOULD LIKE TO GREG VERSUS
GEORGIA IN 1976, FURMAN
RECOGNIZED IT IS DIFFERENT FROM
ANY OTHER PUNISHMENT IMPOSED IN
CRIMINAL JUSTICE.
BECAUSE OF THE UNIQUENESS OF THE
DEATH PENALTY FERMENT HELD IT
COULD NOT BE OPPOSED LOOKING AT
SENTENCING PROCEDURES CREATING A
SUBSTANTIAL RISK INFLICTED IN AN
ARBITRARY CAPRICIOUS MANNER AND
AS JUSTICE STEWART STATED THE

EIGHTH AND 14TH AMENDMENTS
CANNOT TOLERATE INFLICTION OF
SENTENCE OF DEATH UNDER LEGAL
SYSTEMS THAT PERMIT UNIQUE
PENALTY TO BE WANTONLY AND
FREAKISHLY IMPOSED.
THAT IS WHAT WE HAD IN THE STATE
OF FLORIDA AT THE TIME MISTER
HAMPTON WENT TO TRIAL.
THANK YOU FOR YOUR TIME AND I
ASK YOU TO REVERSE THE LOWER
COURT'S ORDER.