

>> ALL RISE.

HEAR YE HEAR YE HEAR YE, THE
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.

ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR, GIVE ATTENTION, YOU SHALL
BE HEARD.

GOD SAFE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.

[BACKGROUND SOUNDS]

>> LAING, THE SUPREME COURT--
LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.

PLEASE BE SEATED.

>> GOOD MORNING.

WELCOME TO THE FLORIDA
SUPREME COURT.

BEFORE WE BEGIN, JUSTICE QUINCE
WILL NOT BE PRESENT FOR ORAL
ARGUMENT THIS WEEK DUE TO A
VERY, VERY PERSONAL LOSS.

SHE WILL, HOWEVER, PARTICIPATE

IN ALL THE CASES THAT WILL BE
HEARD THIS WEEK.

THE FIRST CASE UP THIS MORNING
IS EAGLIN V. STATE OF FLORIDA.
COUNSEL, YOU MAY PROCEED.

>> GOOD MORNING.

ELIZABETH STEWART WITH CCRC
SOUTH FOR DWIGHT EAGLIN.

WE ARE HERE TODAY ON THE APPEAL
OF THE DENIAL OF MR. EAGLIN'S
3851 POSTCONVICTION MOTION.

I WOULD LIKE TO SPEND MY TIME
THIS MORNING DISCUSSING THE
FIRST CLAIM IN OUR BRIEF, THE
INEFFECTIVE ASSISTANCE OF
COUNSEL AT THE PENALTY PHASE.
SPECIFICALLY, I WOULD LIKE TO
DISCUSS TRIAL COUNSEL'S
UNREASONABLE AND FAR-FETCHED
TRIAL STRATEGY FOR THE
PENALTY PHASE.

MR. EAGLIN WAS CONVICTED AND
SENTENCED TO DEATH FOR THE

MURDERS OF A PRISON GUARD AND A
FELLOW INMATE AT CHARLOTTE
CORRECTIONS DURING A FAILED
ESCAPE ATTEMPT.

THE DEFENSE PRESENTED NINE AND
ONLY NINE NONSTATUTORY
MITIGATORS RELATING TO THE
FLORIDA DEPARTMENT OF
CORRECTIONS' NEGLIGENCE IN
ALLOWING THE INCIDENT TO OCCUR
AT THE PRISON.

AS ARTICULATED BY NEIL
McLAUGHLIN, ONE OF THE TRIAL
ATTORNEYS, THE DEFENSE WAS DON'T
KILL TOMMIE BECAUSE D.O.C.
CAN'T CONTROL.

JUDGE BLACKWELL, THE TRIAL
COURT, FOUND THAT-- REJECTED
ALL NINE OF THESE NONSTATUTORY
MITIGATORS.

>> THERE'S AN INTERESTING FACT
THAT THE JURY, 8-4, ACTUALLY,
SOMEBODY BOUGHT THIS.

NOW, HERE IS MY PROBLEM WITH

THIS CASE FOR YOU.

WE'VE GOT BOTH, OF COURSE,

DEFICIENT PERFORMANCE ISSUES,

AND LET'S ASSUME THAT THEY

SHOULD HAVE, THERE WAS NO REASON

THAT THEY COULDN'T ALSO HAVE PUT

ON SOME MENTAL HEALTH

MITIGATION.

THIS DEFENDANT WAS IN PRISON

FOR, WHAT, AT THE TIME--

>> FIRST-DEGREE MURDER.

>> FIRST-DEGREE MURDER, AND HE

KILLED A PRISON GUARD,

ONE OR

TWO? >> ONE PRISON GUARD AND

ONE INMATE.

>> OKAY.

SO I'M TRYING TO FIGURE OUT IN

TERMS OF UNDERMINING CONFIDENCE

IN THIS ALMOST WHAT, IF THERE'S

EVER A DEATH PENALTY CASE, WHAT

DIFFERENCE ANY OF THIS MENTAL

HEALTH MITIGATION WOULD HAVE
MADE IN A, IN UNDERMINING OUR
CONFIDENCE.

IN OTHER WORDS, WHAT WASN'T
PRESENTED THAT WOULD SO CHANGE
THE CALCULUS--

>> UH-HUH.

>> THAT IT WOULD HAVE BEEN
MORE, YOU KNOW, IT WOULD MEAN
THAT PROBABLY THIS WAS, SHOULD
HAVE BEEN A LIFE RECOMMENDATION
OR NOT A DEATH PENALTY.

>> WELL, I MEAN, I THINK THERE
ARE TWO ISSUES.

I MEAN, I THINK, FIRST--

>> YOU UNDERSTAND, IN OTHER
WORDS, YOU HAVE A VERY--

>> YEAH.

>> AND YOU'VE GOT A DEFENDANT
WHO ON THE RECORD SAID HE DID
NOT WANT HIS FAMILY INVOLVED AND
A DEFENSE LAWYER OR LAWYERS THAT
SAID WE AGREE WITH THAT DECISION

AS WELL.

SO YOU KIND OF HAVE IT SET AS TO
WHAT THEY WERE DECIDING TO DO.

>> WELL, E MEAN, THE IF-- WOULD
YOU LIKE ME TO ADDRESS THE
WAIVER ISSUE FIRST?

>> WELL, NO.

WHY DON'T YOU ADDRESS HOW YOU
COULD EVER OVERCOME THE ESHOO ON
THE PREJUDICE.

>> WELL, I THINK THERE ARE
TWO ISSUES.

THE FIRST ISSUE IS THAT JUDGE
BLACKWELL FOUND THAT THE
MITIGATION PRESENTED WAS
REPUGNANT, TO ORDER IN A SOCIETY
WHICH STRIVES TO LIVE BY
THE LAW.

AND THIS COURT ON DIRECT APPEAL
WAS ALSO VERY OFFENDED BY THE
EVIDENCE PRESENTED AT THE
PENALTY FADES.

SO I THINK IT'S FAIR TO SAY THAT

THE EIGHT JURORS WHO DID VOTE
FOR LIFE WERE EQUALLY AS AS
OFFENDED.

BUT I THINK SECOND OF ALL, WHICH
IS PROBABLY MORE IMPORTANT, IS
THAT--

>> HOW--

[INAUDIBLE]

>> I'M SORRY, WHO VOTED FOR
DEATH.

THAT WAS A MISSTATEMENT.

THANK YOU.

BUT I THINK THAT WAS EVEN MORE
IMPORTANT IS THAT THE JURY HEARD
NOTHING ABOUT MR. EAGLIN BEFORE
THEY SENTENCED HIM TO DEATH,
NOTHING.

NOTHING THAT WOULD HUMANIZE
THEM.

NOTHING ABOUT HIS FRAILTIES, HIS
CHARACTER, HIS STRUGGLES, HIS
SUCCESSES.

NOTHING ABOUT HIS MORAL

CULPABILITY.

AND INSTEAD WHAT THEY HEARD WAS
THAT MR. EAGLIN WAS A MONSTER
WHO COULDN'T BE CONTROLLED.

>> WHEN YOU SAY NOTHING ABOUT
HIS MORAL CULPABILITY, AGAIN,
I'M SORT OF SITTING WITH A
DEFENDANT, AGAIN, WHO HAS, IS IN
PRISON FOR MURDER, AND HE'S NOW
MURDERED AGAIN AND AGAIN WITHIN
THE PRISON CONFINES.

I JUST-- SO WHEN YOU SAY MORAL
CULPABILITY, WAS THERE ANYTHING
ABOUT WHAT SHOULD HAVE BEEN
PRESENTED THAT WOULD-- AND I
HOW OLD WAS MR. EAGLIN AT THE
TIME?

HE WAS 27?

>> YEAH.

>> THAT WOULD HAVE BEEN
PRESENTED?

I MEAN, WHAT WAS MOST COMPELLING
MITIGATION THAT WOULD HAVE

SOMEHOW SAID, OH, HE'S NOT AS
MORALLY CULPABLE OF THESE
MURDERS OR FOR THE PRIOR
MURDER--

>> RIGHT.

WELL, I THINK THERE ARE TWO
ISSUES.

THE FIRST ISSUE WAS HIS MENTAL
ILLNESS, AND IT'S A MENTAL
ILLNESS.

MR.EAGLIN HAD THREE DIAGNOSES.

HE WAS, HE SUFFERED FROM BIPOLAR
DISORDER, AND IT WAS A DISORDER
THAT WAS VERY WELL DOCUMENTED
NOT ONLY IN HIS CHILDHOOD
RECORDS, BUT ALSO IN THE
D.O.C.'S RECORDS.

AND THEY HAD HAD, IDENTIFIED AND
DIAGNOSED HIM WITH BIPOLAR
DISORDER AND TREATED HIM
SIGNIFICANTLY FOR SEVERAL YEARS
WHILE HE WAS INCARCERATED.

>> DID THEY-- THE ATTORNEYS

KNEW THAT, AND DIDN'T THEY HAVE,
DIDN'T THEY THEMSELVES HIRE A
MENTAL HEALTH EXPERT TO EXPLORE
THIS?

>> THE ATTORNEYS HIRED DR.KROP
WHO--

>> AND WHAT DID DR. KROP TELL
THE ATTORNEYS?

>> THAT HE SUFFERED FROM A
SERIOUS PSYCHIATRIC DISORDER,
BIPOLAR DISORDER.

>> I THOUGHT HE ALSO SAID HE
DIDN'T THINK HIS TESTIMONY WAS
GOING TO BE PARTICULARLY
HELPFUL.

>> NO, ACTUALLY, IT WAS THE
OPPOSITE.

MR.WIT KEY DISMISSED THE
BIPOLAR DISORDER TO.

HE SAID BIPOLAR IS JUST AN
EXCUSE FOR BAD BEHAVIOR, THAT HE
DIDN'T WANT TOMMIE EAGLIN TO BE
SENTENCED TO LIFE BECAUSE HE WAS

BIPOLAR.

>> WAIT, WAIT, HOLD IT--

>> MR. WITHE IS WHO?

>> THE LEAD ATTORNEY IN THE
CASE.

>> SO HE REJECTED TO PUTTING
THAT EVIDENCE ON BECAUSE HE
DIDN'T WANT HIM TO BE SENTENCED
TO LIFE?

>> HE DIDN'T WANT HIM TO BE
SENTENCED TO LIFE FOR A MENTAL
ILLNESS LIKE BIPOLAR DISORDER
BECAUSE IT WAS JUSTIFICATION FOR
BAD--

>> YOU TELLING ME, YOU SAY THE
CONDUCT OF THE ATTORNEYS IN THIS
CASE WAS DESIGNED TO MAKE SURE
THAT MR.EAGLIN GOT THE DEATH
PENALTY?

>> I'M SAYING THAT--

>> I MEAN, THAT'S A PRETTY
SERIOUS CHARGE.

>> RIGHT.

>> YOU'RE SAYING THAT THERE WAS
POWERFUL MENTAL HEALTH
MITIGATION, THESE ATTORNEYS
DECIDED NOT TO PUT IT ON BECAUSE
THEY REALLY WANTED MR.EAGLIN TO
GET THE DEATH PENALTY?
IS.

>> NO, I THINK THAT-- NO.
I THINK WHAT HAPPENED WAS THEY
DECIDED ON THE D.O.C. NEGLIGENCE
STRATEGY IN LIEU OF ANYTHING
ELSE, IN LIEU OF THIS MENTAL
HEALTH ILLNESS, IN LIEU OF HIS
BACKGROUND, AND IT'S VERY CLEAR
THAT MR. WITHE, THE LEAD
ATTORNEY, DID NOT HAVE AN
UNDERSTANDING OF EIGHTH
AMENDMENT JURISPRUDENCE.

>> LET ME ASK YOU THIS, DIDN'T
DR.KROP ALSO DIAGNOSE HIM AS
HAVING ANTISOCIAL PERSONALITY
DISORDER?

>> HE DID.

>> DOESN'T THE PROBLEM LIE

THEREIN?

>> WELL, I BELIEVE THAT THIS
COURT HAS FOUND PREJUDICE EVEN
WHEN A DEFENSE EXPERT HAS
FOUND--

>> BUT WE HAVE REPEATEDLY-- WE
HAVE SAID REPEATEDLY THAT SUCH A
DIAGNOSIS CAN WEIGH HEAVILY--

[INAUDIBLE]

MITIGATION.

THE OLD TO DOUBLE-EDGED SWORD,
IS THAT CORRECT?

>> RIGHT.

WELL, AND I THINK THAT IN THIS
CASE THE TRIAL COUNSEL REALLY
DID NOT HAVE CLUES IN TERMS OF
PRESENTING EVERYTHING.

AND WHAT THEY DID INSTEAD WAS
PRESENT THIS NOVEL IDEA OF
MITIGATION THAT HAD NO LEGAL
FOUNDATION AT ALL.

>> WELL, NOW, YOU SAY NOT MUCH

TO LOSE--

>> WELL--

>> WHAT DO YOU MEAN BY THAT?

>> BECAUSE THEIR CLIENT WAS
SERVING A LIFE SENTENCE AND
KILLED TWO PEOPLE IN AN ATTEMPT
TO ESCAPE.

>> WELL, DOES THAT GO TO
PREJUDICE IN.

>> WELL, IT CERTAINLY, I MEAN,
IT CERTAINLY IS A DIFFICULT
CASE, BUT CERTAINLY THIS IS A
CASE WHERE THERE WAS A
TREMENDOUS AMOUNT OF MITIGATION.

I MEAN, I WOULD SAY, I THINK
IT'S FAIR TO SAY THAT THE
MAJORITY OF OUR CAPITAL
DEFENDANTS SUFFER FROM REALLY
TERRIBLE CHILDHOODS.

>> WELL, AND THOSE ARE THE CASES
THAT WE DEAL WITH DOWN HERE
EVERY WEEK--

[INAUDIBLE]

OVER AND OVER AGAIN.

OBVIOUSLY, THERE ARE ISSUES

HERE.

BUT LET'S LOOK AT THIS CASE.

HE'S SERVING A LIFE SENTENCE IN
PRISON FOR MURDER.

>> YES.

>> AND THEN HE COMES UP WITH

THIS PLAN TO ESCAPE, AND HE

KILLS A GUARD BY MASHING HER

HEAD WITH A-- SMASHING HER HEAD

WITH A SLEDGEHAMMER THREE TIMES,

BUT THAT'S NOT ENOUGH.

HE ALSO WANTS TO KILL THIS OTHER

PRISONER BECAUSE THE PRISONER

DISRESPECTED HIM IN PRISON

SOMEHOW.

SO HE KILLS HIM.

THE JURY HEARS THIS.

THERE WAS FIVE AGGRAVATORS IN

THIS CASE, AND ONE OF THEM WAS

THE PRIOR VIOLENT FELONY

AGGRAVATOR.

SO THE JURY GOT TO HEAR ABOUT I
HOW HE WAS SERVING A LIFE
SENTENCE IN PRISON FOR HAVING
KILLED SOMEBODY.

AND HE COMES UP WITH THIS PLAN
TO ESCAPE AND LET ME KILL WHO I
NEED TO KILL JUST SO I CAN GET
OUT OF HERE.

AND BY THE WAY, SINCE I'M GOING
TO KILL SOMEBODY, I MIGHT AS
WELL KILL THIS OTHER GUY WHO
DISRESPECTED ME.

AND SOMEHOW IT IS YOUR POSITION
THAT HAD COUNSEL BROUGHT OUT THE
FACT THAT HE HAD ALL THESE
ISSUES GROWING UP, THAT I
SOMEHOW THAT'S GOING TO PERSUADE
THE JURY TO RECOMMEND LIFE
IMPRISONMENT.

I JUST DON'T SEE THE PREJUDICE
HERE.

>> WELL, AND I THINK WHAT I WAS
SAYING WAS, YOU KNOW, THE

MAJORITY OF OUR CLIENTS DO
SUFFER FROM TERRIBLE CHILDHOODS,
BUT MR. EAGLIN'S CHILDHOOD WAS
REALLY EXCEPTIONALLY HORRIFIC.
I MEAN, IN POSTCONVICTION HIS
FATHER TESTIFIED THAT HE HELD
HIS 3-YEAR-OLD SON UP BY HIS
FEET AND BEAT HIM UNTIL HE BROKE
HIS LEG.

AND WE HAVE NOT ONLY FAMILY
MEMBERS WHO TESTIFIED ABOUT
THIS, BUT SOCIAL WORKERS AND
SOCIAL SERVICE PROVIDERS WHO
TALK ABOUT IN DETAIL NOT ONLY
WHAT HAPPENED TO MR.EAGLIN, BUT
ALSO THE CONSEQUENCES OF THAT.

>> OKAY.

NOW YOU-- LET'S JUST GO BACK TO
THE MENTAL ILLNESS, BECAUSE NOW
YOU'RE GOING INTO THE CHILDHOOD.
ON THE MENTAL ILLNESS, YOU
MENTIONED IT'S BIPOLAR.
NOW, THAT'S CERTAINLY A

DIAGNOSIS, BUT WHAT ABOUT THIS
CRIME WAS A PRODUCT OF HIS
BIPOLAR MENTAL ILLNESS?

>> WELL, OUR EXPERT TESTIFIED IN
POSTCONVICTION THAT MR.EAGLIN
WAS NOT MEDICATED AT THE TIME OF
THE INCIDENT.

D.O.C. HAD SPENT QUITE A LOT OF
EFFORT MEDICATING MR. EAGLIN AND
MONITORING MR. EAGLIN FOR THIS
DIAGNOSIS.

AND A FEW MONTHS BEFORE THE
INCIDENT, MR. EAGLIN WENT OFF
HIS MEDICATION.

AND HE WAS UNMEDICATED AT THE
TIME, AND HE WAS IN A MANIC
STATE OF MIND AT THE TIME THAT
THE MURDERS WERE COMMITTED.

>> THAT WOULD HAVE BEEN THE
MENTAL HEALTH--

>> THAT IS THE STATUTORY
MITIGATOR--

>> NO, I UNDERSTAND.

BUT THAT'S WHAT YOU'RE,

THAT'S-- OKAY.

NOW, ON THE ISSUE OF THE
TERRIBLE CHILDHOOD, LET'S NOW GO
BACK TO THE WAIVER.

THE ISSUE OF A DEFENDANT WHO
SAID I DO NOT WANT MY FAMILY
INVOLVED.

IT'S NOT LIKE THIS IS A NEWBIE
TO MURDER.

I MEAN, HE ALREADY HAD THIS LIFE
SENTENCE.

>> UH-HUH.

>> HE SAID THAT, AND EVEN THOUGH
HE SAID IT, THEY STILL LOOKED
INTO THE MITIGATION.

THEY PURSUED MITIGATION TO
SEE-- AND YOU'RE SAYING, WELL,
THEY CLOSED THEIR MINDS.

WELL, THEY WERE OBVIOUSLY TAKING
STEPS TO STILL INVESTIGATE IT.

BUT THEN THE ON-THE-RECORD
WAIVER THAT IS THAT HE AGREED

WITH THE STRATEGY.

AND SO EXPLAIN HOW IN THAT SITUATION WHERE THEY STILL PURSUED THE MITIGATION EVEN THOUGH HE SAYS HE DOESN'T WANT HIS FAMILY INVOLVED, THAT YOU CAN SAY THAT NOW YOU CAN COME BACK AFTER THE DEATH SENTENCES HAVE BEEN IMPOSED AND SAY THAT THE DEFENDANT REALLY DIDN'T, HE REALLY DID WANT HIS FAMILY INVOLVED?

>> WELL, AND I THINK THERE ARE SEVERAL ISSUES THIS.

I THINK, FIRST, THIS COURT HAS RECOGNIZED THAT WHEN THERE IS A COLLOQUY AT THE TRIAL, YOU HAVE TO LOOK BEYOND THE COLLOQUY AT THE ATTORNEY AND WHETHER THE ATTORNEY EXPLORED ALL AVENUES AND ALSO WAS ABLE TO ADEQUATELY COUNSEL THEIR CLIENT ABOUT THE RISKS INVOLVED IN THE WAIVER.

>> DIDN'T THIS DEFENDER HAVE AN
IQ OF 117?

>> YES, HE DID.

>> NOW, MOST OF THESE CASES WE
HEAR THEY'RE JUST BELOW OR JUST
IQs OF NOT THAT HIGH, SO
THIS--

>> RIGHT.

>> CLEARLY COULD UNDERSTAND
WHAT WAS GOING ON.

HE'D ALREADY BEEN IN PRISON FOR
ONE MURDER, SO--

>> THERE'S NO DOUBT THAT
MR. EAGLIN IS INTELLIGENT, BUT
THERE'S ALSO NO DOUBT HE SUFFERS
FROM A SERIOUS MENTAL ILLNESS,
AND HE WASN'T MEDICATED AT
THE TIME BEFORE HIS TRIAL.

BUT I WANT TO BACK UP A LITTLE
BIT AND TALK ABOUT THE COLLOQUY.
I THINK THAT THIS, WHAT HAPPENED
IS MR. EAGLIN'S WAIVER, THE ONLY
TIME HE TALKED TO HIS COUNSEL

ABOUT WHAT HE WANTED AT THE
PENALTY PHASE WAS A MONTH AND A
HALF AFTER THE INCIDENT
OCCURRED.

AND EVEN BEFORE THAT MEETING
TOOK PLACE, TRIAL COUNSEL HAD
ALREADY DECIDED THAT THEY WERE
GOING TO PURSUE D.O.C.

NEGLIGENCE EXCLUSIVELY AND THAT
THEY WERE NOT GOING TO WATER
DOWN THE STRATEGY OR THE
MITIGATION WITH INFORMATION
ABOUT MR. EAGLIN.

AND SO WHEN HE HAD THAT--

>> BUT EVEN THOUGH THEY DECIDED
IT, DID THEY NOT HIRE A
MITIGATIONING SPECIALIST, DID
THEY NOT DO WORK TOWARD TO
LOOKING AT THE FAMILY HISTORY
AND ACTUALLY HAVE WITNESSES
INTERVIEWED?

DID THEY NOT DO THAT?

>> THEY, TO A CERTAIN EXTENT

THEY DID.

>> BUT THAT'S IMPORTANT--

>> YES.

>> SO YOU'RE SAYING THEY MADE UP
THEIR MINDS, BUT WERE THEY JUST
DOING THIS TO, LIKE, GET THE
HOURS UP?

I MEAN--

>> IT'S REALLY HARD TO
UNDERSTAND WHAT THEY WERE DOING
BECAUSE IT'S ALMOST LIKE THEY
WENT THROUGH THE MOTIONS.

THEY HIRED CHERYL PETRI WHO WAS
THE MITIGATION SPECIALIST, BUT
THEY TOLD HER NOT TO
INVESTIGATE.

THEY WENT AND TALKED TO THE
MOTHER, BUT THEY-- IF THEY KNEW
ANYTHING ABOUT THE CASE, THEY
KNEW THE MOTHER HAD NOT HAD ANY
CONTACT WITH MR.EAGLIN SINCE HE
WAS AN INFANT, AND NO
INFORMATION--

>> I HATE TO INTERRUPT, BUT

YOU'RE DOWN TO YOUR

REBUTTAL TIME.

JUST WARNING.

>> OKAY.

WELL, ANYWAY, AND ONE THING I'D

LIKE TO SAY ABOUT THE STRATEGY

IS THAT FUNDAMENTALLY MR. WITHE

COULD NOT ADVISE HIS COUNSEL

BECAUSE HE DIDN'T UNDERSTAND

THE LAW.

HE DIDN'T UNDERSTAND THE EIGHTH

AMENDMENT REQUIREMENT OR RIGHT

OF A CAPITAL DEFENDANT TO HAVE

AN INDIVIDUALIZED SENTENCING.

SO REGARDLESS OF THE

INVESTIGATION, THERE WAS NO WAY

THAT HE COULD PROPERLY COME HIS

CLIENT IN TERMS-- COUNSEL HIS

CLIENT IN TERMS OF THE RISKS

INVOLVED IN WHATEVER HE WAS

CHOOSING TO WAIVE.

AT THIS POINT, I'LL SAVE

MY TIME.

THANK YOU.

>> MAY IT PLEASE THE COURT,
ASSISTANT ATTORNEY GENERAL
STEPHEN AKE ON BEHALF OF THE
STATE OF FLORIDA.

THE POSTCONVICTION COURT
PROPERLY FOUND TRIAL COUNSEL WAS
INEFFECTIVE WILL IN THIS CASE,
AND TRIAL COUNSEL CERTAINLY
UNDERSTOOD THE LAW--

>> BUT HERE'S THE THING, YOU'VE
GOT A LOT OF HARD QUESTIONS
THERE, AND I THINK YOU HAVE THE
STATE, I THINK THIS CONVICTION
STANDS.

BUT FOR THE LIFE OF ME, I AM
TRYING TO FIGURE OUT WHAT THESE
DEFENSE LAWYERS THOUGHT THEY
WERE DOING.

I MEAN, THE D.O.C. NEGLIGENCE AS
A MITIGATION STRATEGY TO SAY,
WELL, THE D.O.C. DID IT, NOT

HIM?

>> WELL, I--

>> LET ME FINISH.

>> OKAY.

>> AND EVEN IF YOU THOUGHT I'LL
PUT THAT IN THERE BECAUSE WHY
WERE THEY PUTTING THIS
HOMICIDAL, YOU KNOW, MANIAC IN A
WORK CREW SO TO SPEAK, WHAT--
AND THEY KNEW ABOUT, AS JUSTICE
LABARGA POINTED OUT, THEY WERE
GOING TO KNOW ABOUT THE PRIOR
VIOLENT FELONY, WHERE'S THE
DOUBLE-EDGED SWORD TO TALK ABOUT
HIS MENTAL ILLNESS ISSUES, HIS
CHILDHOOD ISSUES?
IT DOESN'T-- ONE, IN THIS CASE,
I MEAN, THERE WEREN'T
PAINTING-- NORMALLY YOU'D SAY,
WELL, WE'RE GOING TO PUT THE
GOOD GUY DEFENSE ON.
AND, THEREFORE, WE DON'T WANT TO
PUT ON ALL THIS OTHER STUFF.

BUT THEY DIDN'T HAVE THE GOOD
GUY DEFENSE, THEY HAD THE HE'S A
REALLY BAD GUY DEFENSE.

SO I'M TRYING, AGAIN, ALTHOUGH I
DON'T THINK THERE'S, NO MATTER
WHAT, I DON'T KNOW HOW YOU
OVERCOME WHAT THIS CRIME WAS
ABOUT, HIS PRIOR ISSUES, I JUST
DON'T SEE IT.

AND I DON'T THINK, FRANKLY, THE
MITIGATION ALTHOUGH IT'S
CERTAINLY SOMEWHAT COMPELLING
WHEN YOU HAVE HIS BROTHER AND
THE BROTHER DID WELL, THE KIND
OF MITIGATION THAT WOULD HAVE
OUTWEIGHED IT.

BUT I AM CONCERNED ABOUT THE
STRATEGY.

IT DOES SEEM A LITTLE OFF.

>> WELL, TRIAL COUNSEL EXPLAINED
THE STRATEGY AT THE HEARING AND,
BASICALLY, YOU HAVE A COUPLE
FACTORS HERE.

YOU HAVE THE DEFENDANT NOT
WANTING TO INVOLVE HIS FAMILY IN
THIS.

BUT COUNSEL STILL WENT OUT FROM
THE GET GO AND STARTED
INVESTIGATING HIS BACKGROUND.

BUT HE BASICALLY, HIS TESTIMONY
WAS THE FAMILY'S SOCIAL
BACKGROUND PRESENTED A
DOUBLE-EDGED SWORD BECAUSE THE
STATE THROUGH CROSS-EXAMINATION
WAS GOING TO BRING OUT A NUMBER
OF FACTORS THAT WERE GOING TO BE
DETRIMENTAL TO MR. EAGLIN.

>> BUT THIS IS WHAT I'M-- I
MEAN, HOW MUCH MORE DETRIMENTAL
THAN-- IF SOMEBODY IS BY THE
TIME THEY'RE 3, 4 OR 5 THEIR
VIOLENT CHARACTER IS SET BECAUSE
OF THINGS THAT WERE BEYOND THEIR
CONTROL, JUST LET'S SAY THAT'S,
YOU KNOW, BEING HUNG AND BROKEN
LEG AND BEING TAKEN AWAY

FROM HIS FATHER GOING INTO
FOSTER CARE.

HOW, KNOWING THAT THE JURY WAS
GOING TO HEAR ABOUT THE MURDERS
WHICH WERE, YOU KNOW, WERE
TERRIBLE, YOU KNOW?

KILL A GUARD AND THE PRIOR
MURDER.

HOW MUCH WORSE, I MEAN, IF YOU
AT LEAST FIND OUT A LITTLE BIT
ABOUT WHO THIS DEFENDANT WAS,
WHAT KIND OF TERRIBLE CHILDHOOD
HE HAD, I'M JUST NOT SEEING WITH
THE DOUBLE-EDGED SWORD IS HERE.

>> I THINK COUNSEL STILL HAS THE
RIGHT TO WEIGH THE POTENTIAL
NEGATIVE INFORMATION COMING OUT
BECAUSE HIS FEAR IS GOING TO
HEAR THIS GUY, GRANTED, HAD THAT
BAD CHILDHOOD EARLY ON BUT THEN
WAS ADOPTED BY A FOSTER FAMILY
THAT PROVIDED A LOVING OUTLET
FOR HIM.

HE DID WELL IN SCHOOL, HE WAS
CLASS PRESIDENT, ON THE FOOTBALL
TEAM--

>> THAT'S ANOTHER THING.

THEN HE GOT INTO BOXING, I'D BE
THINKING MAYBE HE DID HAVE BRAIN
DAMAGE THAT OCCURRED THAT CAUSED
HIM TO BE OFF.

YEAH, CLASS PRESIDENT?

IT'S SUCH AN UNUSUAL BACKGROUND.

BUT IF YOU'RE, AS A LAWYER,
WHERE IS IT THAT YOU COULD USE
IN ALL OF THE MITIGATION CASES
THAT YOU COULD USE THE
NEGLIGENCE OF D.O.C. AS
MITIGATION?

I MEAN, I'M SURPRISED THE JUDGE
ACTUALLY ALLOWED IT TO BE
PRESENTED.

>> WELL, YOUR HONOR, THEY ARGUED
ON DIRECT APPEAL IT WAS ERROR
NOT TO FIND THAT IN MITIGATION.
EAGLIN'S COUNSEL THOUGHT

THAT WAS--

>> WHAT DID WE SAY ABOUT THAT?

>> YOU REJECTED IT ON DIRECT
APPEAL.

AND, ACTUALLY, THE--

>> WHAT IS MITIGATION?

WHAT DO WE SAY, ANY ASPECT OF
WHAT?

>> DEFENDANT'S BACKGROUND,
CHARACTER OR RECORD.

>> WHAT WAS THE NEGLIGENCE?

THE NEGLIGENCE WAS THAT D.O.C.
WAS NEGLIGENT IN ALLOWING EAGLIN
TO ESCAPE?

IS THAT WHAT IT WAS?

>> ALLOWING HIM TO BE IN A WORK
CREW WITH ACCESS TO ALL THESE
TOOLS AND BEING UNSUPERVISED OR
SUPERVISED WITH JUST ONE GUARD.
THERE WAS A NUMBER OF FAILURES
ON D.O.C.'S PART THAT THEY
INTRODUCED TESTIMONY AS TO SHOW
THAT, BASICALLY, I THINK IT WAS

FOUR OR FIVE INMATES WERE IN
THIS WORK CREW AT NIGHT IN THIS
POD WHERE THEY WERE BUILDING A
NEW WIG OF THE--

>> I MEAN, IS IT COMMON TO HAVE
SOMEONE SENTENCED TO LIFE
IMPRISONMENT WHOM, FROM WHAT I
HEAR FROM GUARDS AND PRISON
OFFICIALS, THEY'RE THE MOST
DANGEROUS BECAUSE THEY HAVE
NOTHING TO LOSE?

>> RIGHT.

>> IS IT COMMON TO HAVE SOMEONE
SERVING A LIFE SENTENCE WITH NO
POSSIBILITY OF PAROLE WORKING ON
CREWS OUT THERE?

>> I HAVE NO IDEA, YOUR HONOR.
I DON'T KNOW.

>> BEFORE PEOPLE BOUGHT THAT,
THAT DEFENSE.

>> RIGHT.

I KNOW THE ONE THING YOU HAVE TO
KEEP IN MIND IS THAT TRIAL

COUNSEL IN THIS CASE HAD JUST
FINISHED WATCHING THE STEVEN
SMITH CASE, CO-DEFENDANT.

AND IN THAT CASE TRIAL COUNSEL
IN EAGLIN'S CASE AND IN SMITH'S
CASE WORKED TOGETHER ON THE
D.O.C. NEGLIGENCE.

THEY DEPOSED THE SAME WITNESSES
N. SMITH'S CASE, THEY PRESENTED
THE SAME D. O. C. NEGLIGENCE AND
THE WHOLE MENTAL MITIGATION AND
CHILDHOOD HISTORY, AND IT CAME
OUT WITH A VOTE OF 9-3.

COUNSEL WAS AWARE IT DIDN'T WORK
IN STEPHEN SMITH'S CASE AND MADE
THE DECISION NOT TO PRESENT
THAT.

>> HOW DO THEY KNOW WHICH ONE
DIDN'T WORK, THE NEGLIGENCE OR
THE MENTAL HEALTH?

>> WELL, THEY JUST WERE AWARE
THAT PRESENTING THAT DIDN'T WORK
OUT AND THAT THE STATE HAD

CROSS-EXAMINED HIS WITNESSES
AND BROUGHT OUT NEGATIVE
INFORMATION.

COUNSEL WITHE TESTIFIED, HE WAS
WORRIED THAT THE TWO ASSISTANT
STATE ATTORNEYS IN THIS CASE
WERE GOING TO CROSS-EXAMINE HIS
WITNESSES AND BRING OUT
INFORMATION THAT WOULD BE
DETRIMENTAL TO HIM.

SO THAT WAS HIS REASON.

NOW, YOU ALSO HAVE TO REMEMBER
THAT HIS CLIENT DIDN'T WANT THAT
INFORMATION PRESENTED AS TO THE
FAMILY.

THE MENTAL MITIGATION WAS
DIFFERENT.

WE HAVE AN ON-THE-RECORD WAIVER
AT THE TIME OF THE PENALTY PHASE
AS TO THE SOCIAL FAMILY
BACKGROUND.

AND THEN THE COURT ASKED EAGLIN
AND HE AGREED, SAID THAT WAS THE

CASE.

THEN TRIAL CAME SAID AS TO THE
MENTAL MITIGATION, THAT'S MY
DECISION.

I BELIEVE THAT'S GOING TO TO BE
DANGEROUS FOR THE JURY TO HEAR,
AND MY CLIENT AGREES WITH ME.

SO HE, AGAIN, EAGLIN AGREED WITH
THAT STRATEGY.

BUT TRIAL COUNSEL HAD
INVESTIGATED IT.

HE HAD DR. CM.

DR. KROP TESTIFIED HE HAD MORE
RECORDS IN THIS CASE THAN IN ANY
CASE HE'S EVER HAD.

SO COUNSEL WAS AWARE OF
DR. KROP'S EVALUATION AND IT WAS
BASICALLY BIPOLAR DISORDER,
ANTISOCIAL PERSONALITY DISORDER
AND POLYSUBSTANCE ABUSE.

SO HE BASICALLY SAID I DON'T
WANT THE JURY HEARING ALL THE
DRUG ABUSE, THAT KIND OF

INFORMATION.

IT'S NOT GOING TO OFFSET THE
BIPOLAR, SO IT'S GOING TO BE
DETRIMENTAL TO MY CLIENT, I
DON'T WANT TO PRESENT THAT.

THAT IS A REASONABLE, SOUND
TRIAL STRATEGY AFTER FULL
INVESTIGATION, AND THIS COURT
HAS HELD THAT THIS YOU CAN'T
HAVE INFECT I, DEFICIENT
PERFORMANCE BASED ON THAT.

NOW AS YOUR HONOR POINTED OUT,
THE PREJUDICE HURDLE IS ALSO A
VERY HIGH HURDLE TO OVERCOME IN
THIS CASE.

YOU HAVE THE TRIAL JUDGE
SENTENCING EAGLIN TO DEATH FOR
THESE TWO MURDERS, AND HE FOUND
THE CHILDHOOD, HORRIFIC
CHILDHOOD ABUSE IN HIS
SENTENCING ORDER.

SO THE ONLY THING YOU'RE REALLY
MISSING IS MAYBE FURTHER DETAILS

ON THAT AND THEN THE MENTAL
MITIGATION WHICH, AGAIN, IS THE
BIPOLAR AND THE ANTISOCIAL
PERSONALITY DISORDER.

THERE'S NO WAY THAT'S GOING TO
OUTWEIGH THE AGGRAVATORS IN THIS
CASE WHEN EAGLIN WAS SERVING
LIFE IN PRISON FOR ANOTHER
MURDER.

IF THIS COURT DOESN'T HAVE ANY
FURTHER QUESTIONS--

>> JUST ONE.

I'M JUST CURIOUS, ON THE
PREVIOUS MURDER, THE ONE THAT HE
WAS SERVING--

>> RIGHT.

>> THE LIFE SENTENCE ON, DID
THE STATE SEEK THE DEATH PENALTY
IN THAT CASE?

>> ORIGINALLY, THEY DID.

AND THAT'S WHY COUNSEL HAD HIRED
CHERYL PETRI IN THIS CASE, WAS
THEY WAS THE MITIGATION

SPECIALIST IN THE PINELLAS CASE,
AND SHE HAD DEVELOPED ALL THESE
RECORDS.

SO COUNSEL RETAINED HER IN THIS
CASE SO SHE COULD PROVIDE THAT.
THAT WAS ONLY TWO YEARS PRIOR TO
THIS MURDER.

SO THERE REALLY WASN'T MUCH TO
REFRESH IN THIS CASE BECAUSE HE
HAD BEEN IN D.O.C. THIS WHOLE
TIME.

I THINK HE WAS SENTENCED TO
DEATH IN JANUARY-- I'M
SORRY, HE WAS SENTENCED TO LIFE.
THE STATE CAME OFF THE DEATH
PENALTY--

>> SO IT WAS A NEGOTIATED ME?

>> I DON'T KNOW WHAT HAPPENED,
YOUR HONOR, THE RECORD DOESN'T
SHOW, AND I NEVER LOOKED IT UP.

>> BUT IT WASN'T A JURY
RECOMMENDATION.

>> NO.

>> IT DID NOT GO TO A PENALTY PHASE.

>> NO, YOUR HONOR, IT DID NOT.

>> SO THERE ISN'T A RECORD OF PRIOR MENTAL HEALTH MITIGATION.

>> NO.

BUT TRIAL COUNSEL IN THIS CASE UTILIZED A LOT OF THE DOCUMENTS FROM BOTH THE ATTORNEY AND THE MITIGATION SPECIALIST IN THIS CASE.

THEY HAD ALL THAT SHIPPED OVER, SO THEY HAD ALL THAT INFORMATION, IT JUST NEVER WENT TO THE PENALTY PHASE IN THAT CASE.

>> ALL RIGHT, THANK YOU.

>> THANK YOU, YOUR HONOR.

>> I BELIEVE THAT THE INITIAL CASE, EAGLIN'S FIRST CASE, THERE WAS A PLEA, AND IT DID NOT GO TO, GO TO TRIAL.

>> DO YOU KNOW WHETHER COUNSEL

HAD WORKED UP A PENALTY PHASE
DEFENSE?

>> COUNSEL HAD STARTED TO, AND
THAT'S WHAT MS. PETRI PROVIDED
TO MR. WITHE IN THE SECOND CASE.
BUT IT CERTAINLY WASN'T
COMPLETE.

>> WHAT WAS THE DETAILS OF THE
PRIOR HOMICIDE THAT THE JURY
HEARD IN THIS CASE?

HOW DID THAT ONE OCCUR?

>> YOU KNOW, YOUR HONOR, I CAN'T
REMEMBER AT THIS POINT THE
DETAILS OF WHAT THEY HEARD.

I DO BELIEVE THE FIRST CASE--
WHAT THE JURY HEARD.

WAS THE MURDER OF A GENTLEMAN
OUTSIDE A STRIP CLUB.

I WANT TO BACK UP A LITTLE BIT
AND TALK ABOUT MR. SMITH'S CASE,
THE CO-DEFENDANT'S CASE, BECAUSE
THE STATE DID RAISE THAT.

I THINK IT'S VERY, VERY

DIFFICULT TO COMPARE THOSE TWO
SENTENCING PHASES BECAUSE EVEN
THOUGH THERE WERE THE SAME
AGGRAVATORS PRESENTED, THE JURY
HEARD IN MR. SMITH'S CASE THAT
HE WAS A SERIAL RAPIST.

THEY HEARD THAT MR. SMITH HAD
RAPED AND MURDERED AN ELDERLY
WOMAN, AND THAT'S WHY HE WAS
SERVING A LIFE SENTENCE.

AND THAT PRIOR TO THAT HE HAD
RAPED A LITTLE GIRL, AND PRIOR
TO THAT HE HAD RAPED HIS OWN
SISTER.

AND THE JURY HEARD THAT HE HAD
INTENDED TO RAPE THE VICTIM IN
THIS CASE, A FEMALE PRISON
GUARD.

>> WELL, THAT WOULD NOT HAVE
COME BEFORE THIS JURY, DID IT?

>> IT DID.

>> ALL, EVERY ASPECT OF ALL
THESE PRIOR RAPES CAME TO THIS

JURY AS BEING FUNNELED THROUGH
THE ONE PRIOR DEATH CASE?

>> I READ THE DIRECT APPEAL, AND
I BELIEVE THAT'S WHAT WAS IN THE
DIRECT APPEAL--

>> YOU'RE TALKING ABOUT THE JURY
IN THIS CASE WASN'T HEARING
THAT.

>> I APOLOGIZE.
THE JURY IN MR. SMITH'S CASE.

>> OH, OKAY.

>> WE'RE TALKING ABOUT
MR. SMITH'S CASE.

I APOLOGIZE.

>> SO, BUT THE POINT BEING IF
YOU'RE LOOKING TO THE SMITH CASE
OR ASKING TO LOOK AT THAT IN
SOME FASHION, THIS JURY WAS NOT
PRIVY TO THE FACTS IN THE
SMITH CASE.

>> NO.

>> AND SO THAT SHOULD NOT COME
INTO PLAY IN THE ANALYSIS--

>> I'M JUST ADDRESSING WHAT THE STATE HAS ARGUED IN TERMS OF THE PREJUDICE, IN TERMS OF, WELL, MR. SMITH'S JURY DIDN'T BUY THE SOCIAL HISTORY BECAUSE THEY PRESENTED THAT.

WELL, MR. SMITH'S JURY HEARD A WHOLE LOT MORE, TOO, ABOUT MR. SMITH IN TERMS OF HIS PRIORS, IN TERMS OF THE FACT THAT HE WAS A RAPIST--

>> AND WE DON'T HAVE ANY OF THAT, DO WE?

>> I'M SORRY?

>> WE DON'T HAVE ANY OF THAT IN OUR RECORD, DO WE?

>> NO, YOU DON'T.

>> HOW DOES THIS APPELLATE COURT JUST PULL OUT OF THE AIR SOMETHING LIKE THAT?

>> WELL, I'M JUST, YOUR HONOR, I'M JUST ADDRESSING WHAT THE STATE HAD--

>> WELL, I UNDERSTAND.

BUT YOU NEED TO ADDRESS IT OR
DEFEAT IT THROUGH WHAT'S IN OUR
RECORD.

>> OKAY.

>> RATHER THAN CHASING SOMEPLACE
ELSE.

>> OKAY.

>> I MEAN, THAT'S--

>> SO WE HAVE THAT.

IS THERE, SMITH'S DIRECT-- IS
THAT IN THE DIRECT APPEAL
OPINION?

>> YES, IT IS.

I WOULD ALSO JUST LIKE TO TALK
BRIEFLY ABOUT FROM WITHE'S
RATIONALE IN TERMS OF THE
STRATEGY.

MR. WITHE DID NOT TESTIFY THAT
MR. SMITH, WHAT HAPPENED IN
MR. SMITH'S CASE PLAYED INTO THE
REASONS WHY HE CHOSE TO ONLY
PURSUE D.C. NEGLIGENCE, AND I

WANTED TO CLARIFY THAT.

IT WAS VERY CLEAR FROM THE
RECORD FROM HIS TESTIMONY THAT
HE WAS REALLY ENAMORED BY THIS
KIND OF FAR-FETCHED IDEA OF
MITIGATION AND THAT BECAUSE OF
THAT, BECAUSE OF HIS PERSONAL
BELIEFS IN IT HE REALLY
DISMISSED EVERYTHING ELSE THAT
WE KNOW ABOUT MITIGATION AND
WHAT SHOULD BE PRESENTED IN A
CAPITAL PENALTY PHASE.

IF THERE ARE NO MORE QUESTIONS?

>> THANK YOU FOR YOUR ARGUMENTS.

>> THANK YOU.