

>> THE NEXT CASE IS
COLE V. STATE.
>> WHENEVER YOU'RE READY, SIR.
>> TODAY MARKS THE SIXTH TIME
THAT THIS COURT HAS DEALT WITH
THE CHILLING AND AWFUL STORY OF
THE SUMNER MURDERS DONE BY FOUR
YOUNG DEFENDANTS.
I'M WAYNE HENDERSON FROM ARE
ST. AUGUSTINE.
I REPRESENT MS. COLE.
MS. COLE, LIKE THE OTHERS,
FACED-- I WOULD SAY SHE FACED,
YOU KNOW, CERTAINTY FOR
CONVICTION FOR THESE UNDENIABLY
EVIL CRIMES.
AND THE STUPIDITY OF THE PLAN OF
THESE FOUR PEOPLE IS PRETTY MUCH
SHOWN ABOUT THE WAY THAT THEY
WERE QUICKLY CAPTURED AS THEY
BLUNDERED THEIR WAY BACK TO
SOUTH CAROLINA USING ATM
MACHINES ALONG THE WAY.
AND COLE'S JURY, I WOULD SUBMIT
TO YOU, SURELY WANTED TO ANSWER
A COUPLE QUESTIONS.
THEY WANTED TO KNOW WHY, WHAT
HAPPENED OR WHY.
THESE QUESTIONS WOULD HAVE BEEN
SOMETHING THAT, I THINK, ANY
REASONABLE JURY WOULD WANT TO
KNOW.
AND IT WAS GOING TO BE UP TO THE
LAWYERS TO DECIDE HOW TO TELL
THAT STORY AND TRY TO EXPLAIN IT
AND PUT SOME SENSE INTO IT.
AND THIS IS WHERE IT WENT WRONG
AND HOW IT WENT WRONG.
MR. TILL WAS APPOINTED IN AUGUST
OF 2005 TO REPRESENT HER.
PROBABLY NOT EVEN A MONTH
BEFORE-- AFTER THIS HAPPENED.
AND IT WAS 25 MONTHS LATER THAT
HE FIRST ASKED THE COURT TO MOVE
TO GET A MITIGATION SPECIALIST,
ABOUT 20 DAYS BEFORE TRIAL WAS
SET.
THAT'S WHEN HE FIRST ASKED THE
COURT THAT MITIGATION.
NOT A-- EXCUSE ME, A MENTAL

HEALTH EXAM, I'M SORRY.
HE HAD NOT ASKED FOR A
MITIGATION SPECIALIST.
MAYBE A MONTH EARLIER HE HAD
ASKED FOR THE COURT TO GIVE HIM
A SECOND CHAIR, AND TODAY PICKED
MR. FLETCHER, A SEASONED AND
KNOWING TRIAL LAWYER WHO KNEW
WHAT HE WAS DOING WHO WAS IN IT
FOR MAYBE TWO WEEKS.
LOOKED INTO A FEW THINGS AND
DECIDED HE COULDN'T GET PREPARED
IN TIME.
HIS SCHEDULE WAS TOO MUCH, SO HE
PULLED OUT.
WHAT HAD BEEN GOING ON ALL THIS
TIME IS THAT MR. TILL WAS
ASSUMED THAT MS. COLE WOULD
SURELY TAKE THIS PLEA OFFER THAT
WAS GIVEN TO HIM.
IT WAS A PLEA OFFER GIVEN
EARLIER IN THAT YEAR FOR A TERM
OF YEARS, AND MS. COLE WAS
OFFERED A TERM OF YEARS TO
TESTIFY AGAINST THE PEOPLE WHO
PUSHED THESE PEOPLE IN THE HOLE
AND BURIED THEM.
AND SHE COULDN'T FIGURE OUT HOW
TO TAKE THAT DEAL.
SURELY, SHE SHOULD TAKE IT.
MR. TILL WAS FRUSTRATED WITH
HER.
BUT HE COULDN'T SEEM TO EXPLAIN
THE FACT THAT THERE WAS THIS
THING CALLED, YOU KNOW, THE
PRINCIPLE THEORY.
IT WASN'T SINKING IN.
SHE WASN'T, SHE WASN'T ABLE TO
FATHOM IT.
SO INSTEAD OF ENGAGING A MENTAL
HEALTH SPECIALIST TO EXAMINE HER
MAYBE A MONTH OR TWO OR THREE
MONTHS AFTER THIS AND GIVE SOME
EDUCATION AS TO WHY SHE CAN'T
UNDERSTAND AND WHAT HER
FACULTIES ARE, ANYTHING LIKE
THAT, HE WAITED.
HE THOUGHT IT WAS GOING TO BE AN
EASY SHOT, THAT SHE'D JUST
PLEAD.

WE'D ALL GO HOME, WE WOULDN'T
HAVE TO DO SO MUCH WORK.
MAYBE THAT WAS IT, I DON'T KNOW.
I KNOW MR. TILL,
BUT IN ANY EVENT, NOTHING GOT
DONE.

>> HOW OLD WAS MS. COLE AT THIS
TIME?

>> MS. COLE WAS, I THINK, OVER
23 YEARS OLD WHEN THIS HAPPENED.

>> WHAT WAS HER CRIMINAL
HISTORY?

>> I'M SORRY?

>> HER CRIMINAL HISTORY BEFORE
THIS?

>> SHE HAD NO SIGNIFICANT
CRIMINAL HISTORY.

I THINK IT WAS CONSISTING OF
MAYBE A WORTHLESS CHECK THAT
SOMEHOW SHE AND HER MOTHER GOT
CONFABULATED ABOUT THE ACCOUNTS.

>> SO THEY ASKED FOR THE MENTAL
HEALTH EXPERT 20 DAYS BEFORE THE
TRIAL STARTS?

>> THAT'S CORRECT.

>> AND WAS THAT DR. MILLER?

>> THAT'S DR. MILLER.

>> AND DID THEY PUT DR. MILLER
ON THE STAND?

>> THEY DID PUT DR. MILLER ON
THE STAND IN THE PENALTY PHASE,
BUT, YOU KNOW, THE WAY
DR. MILLER FITS IN THIS THING IS
KIND OF STRANGE.

HIS NAME CAME UP EARLY BECAUSE
HE WAS GIVEN, HE WAS THE
PSYCHIATRIC EXAMINER THAT LOOKED
AT CO-DEFENDANT MICHAEL JACKSON.
BECAUSE JACKSON WAS TRYING TO
FAIN INSANITY OR SOMETHING LIKE
THAT.

SO THEY GAVE IT TO MILLER TO
INTERVIEW ALAN JACKSON-- I
MEAN, MICHAEL JACKSON.
AND THEN THAT ASSESSMENT WAS
SHARED WITH MR. TILL SO HE COULD
LOOK AT IT.

BUT THEN LATER ON MR. TILL
WANTED DR. COLE-- DR. MILLER TO
EXAMINE MS. COLE.

>> WELL, ARE YOU, ARE YOU
CRITICIZING THE DECISION TO USE
DR. MILLER?

>> AM I ARGUING--

>> ARE YOU CRITICIZING THE
DECISION TO USE DR. MILLER WHO
HAD ALREADY EVALUATED--

>> NO, I JUST THOUGHT IT WAS
CURIOUS, BECAUSE--

>> WELL, LET'S GET TO WHAT,
LET'S GET TO-- SO THE-- WHAT
DO YOU SAY, IT DOES SOUND LIKE
THIS DEFENSE LAWYER WAITED UNTIL
THE LAST MINUTE.

WAS THERE SOMETHING WHERE HE DID
ASK AT SOME POINT FOR A
MITIGATION EXPERT?

>> WELL, HE MENTIONED IT A
COUPLE TIMES.

WHAT HAD BEEN GOING ON WITH
THAT, THERE WAS NOTHING-- I
LOOKED AT EVERY WORD THAT I
COULD FIND, AND I DIDN'T FIND
THE WORD "MITIGATION" MENTION
INSIDE ANY TRANSCRIPT OR ANY
MOTION OR ANYTHING UP UNTIL
ABOUT THE 25TH, UNTIL SOMETIME
IN SEPTEMBER.

THAT MITIGATION THING DID COME
INTO EFFECT, AND IT WAS, IT WAS
ASKED ABOUT, BUT IT WASN'T--
THERE WAS NO OFFICIAL MOTION
DONE.

>> SO THE JUDGE DIDN'T DENY A
REQUEST FOR A MITIGATION EXPERT,
IT JUST WAS NEVER MADE?

>> HE MADE, HE MADE REQUESTS,
AND IT WAS DENIED.

>> JUST A QUESTION, I HAD
THOUGHT-- BECAUSE WE SEE THEM
IN OTHER CASES, THERE'S NOT A
REQUIREMENT YOU HAVE ONE--

>> CORRECT.

>>-- BUT IS THAT, WHAT WAS THE
REASON THE JUDGE DENIED THE
REQUEST?

>> WELL, AT ONE POINT IN THERE
WHEN WE WERE TALKING ABOUT IT,
HE WAS SAYING-- I'D HAVE TO
LOOK AT THE LANGUAGE, BUT HE WAS

SAYING HE THOUGHT MITIGATION SPECIALISTS WERE A WASTE OF MONEY, AND THEY WERE A GLORIFIED INVESTIGATOR.

BUT AT THE SAME TIME, HE WAS APPROVING MITIGATION SPECIALISTS FOR CO-DEFENDANT ALAN WADE WHO HAD, WHO HAD A MITIGATION SPECIALIST AND A SECOND LAWYER. BUT THAT WAS BROUGHT UP IN--

>> AND MS. COLE DID NOT HAVE A SECOND-- IT ENDED UP SHE ONLY HAD ONE LAWYER?

>> NO, SHE ENDED UP WITH THE SECOND LAWYER WAS APPOINTED. THE FIRST APPOINTED LAWYER, MR. FLETCHER, WITHDREW IN THE END OF OCTOBER-- IN THE END OF AUGUST.

AND ON THAT DAY, THEY SAID, WELL, WE'LL NEED TO HAVE A SECOND.

AND THEY LOOKED FOR A SECOND CHAIR FOR MR. TILL.

AND WHAT THEY FOUND IS THERE WAS A YOUNG LAWYER BY THE NAME OF MR. MASORI.

MR. MASORI WAS ASKED IF HE WAS INTERESTED.

HE WAS NOT REALLY QUALIFIED TO BE ON THE PANEL YET BECAUSE HE HADN'T FINISHED THE LIFE OVER DEATH-- FINISHED THE LIFE OVER DEATH NECESSARY COURSE, THREE DAYS OF CLE IN ORDER TO GET HIM IN THERE.

SO HE SAID HE WAS INTERESTED, BUT HE WOULD GO TAKE THE COURSE WHICH WAS GOING TO HAPPEN THE FIRST WEEK OF SEPTEMBER.

>> YOU'RE GONNA-- AND I-- SO THERE WAS A SECOND CHAIR, BUT MR. TILL WAS PRIMARILY RESPONSIBLE FOR BOTH THE GUILT AND THE PENALTY PHASE?

>> MR. TILL WAS-- HAD NOT DONE ANY WORK AT ALL ON THE PENALTY PHASE.

>> UNTIL WHEN?

AND NOBODY ELSE HAD?

>> NO PENALTY PHASE WORK HAD BEEN DONE BY MR. TILL--
>> OR ANYBODY ELSE.
>>-- OR ANYBODY.
>> OKAY.
SO TELL US NOW, BECAUSE LET'S JUST ASSUME THERE'S DEFICIENCY. JUST FOR, BECAUSE-- WHAT IS, WHAT WAS PRESENTED TO THE JURY, AND THEN WHAT HAVE YOU PRESENTED THAT YOU BELIEVE UNDERMINES CONFIDENCE IN THE OUTCOME?
>> PRESENTED TO THE JURY WAS THEY CHOSE TO PRESENT A WHAT'S CALLED, WHAT I WOULD CALL IS A GOOD GIRL THEME, THAT SHE WAS A GOOD GIRL, A GOOD PERSON, SHE'D HAD A GOOD LIFE AND CAME FROM THERE A GOOD BACKGROUND-- FROM A GOOD BACKGROUND AND HAD A BAD DAY GETTING MIXED UP WITH THE WRONG PEOPLE.
>> BUT WHAT DID DR. MILLER SAY?
>> AND DR. MILLER WAS CALLED AT THE PENALTY PHASE.
HE WAS CALLED TO TESTIFY. THEY DID NOT, THEY DID NOT PUT HIS REPORT IN TO THE JURY. THE REPORT WAS GIVEN LATER AT THE SPENCER HEARING.
BUT DR. MILLER TESTIFIED, AND WHAT DR. MILLER GOT UP-- AND YOU HAVE TO LOOK AT WHAT HIS REPORT SAID VERSUS WHAT HE SAID. IN HIS REPORT DR. MILLER DESCRIBED GIVING AN INTELLIGENCE TEST THAT HE DESCRIBED AS THE RAPID INTELLIGENCE ASSESSMENT TEST OR SOMETHING LIKE THAT. AND FROM THAT IN HIS REPORT HE SAYS SHE HAS AVERAGE INTELLIGENCE.
>> DID HE TALK ABOUT THAT SHE DIDN'T COME FROM A HAPPY, HEALTHY CHILDHOOD?
TO THE JURY?
>> HE TALKED ABOUT, HE TALKED ABOUT MIXED THINGS.
DR. MILLER--
>> I MEAN, IT JUST SEEMS LIKE

WHAT HE WAS SAYING WAS
CONTRADICTING THE PICTURE
ANYWAY.

>> HE WAS CONTRADICTING THE
PICTURE TO A CERTAIN DEGREE.

>> SO WHAT WAS IT, SO-- BUT
THEY PORTRAYED, WHO DID THEY PUT
ON THE STAND TO SAY SHE ACTUALLY
HAD A GREAT CHILDHOOD AND THIS
WAS A BAD DAY FOR HER?

>> THE, I THINK THERE WERE TEN
WITNESSES THAT WERE PUT ONBOARD,
AND ALL THESE WITNESSES SAID
THAT THEY WERE ASKED ABOUT THE
GOOD THINGS IN HER LIFE AND TO
SAY THE GOOD THINGS IN HER LIFE,
AND THAT'S WHAT THEY DID.

>> ISN'T THAT, THOUGH, AN
ACCEPTABLE STRATEGY TO TRY--
ISN'T THIS A CASE WHERE YOU'RE
NOW SAYING, WELL, THAT DIDN'T
WORK, NOW YOU WANT TO PUT ON A
DIFFERENT STRATEGY?

IN OTHER WORDS, NOW YOU WANT TO
SHOW THAT SHE REALLY CAME FROM A
HIGHLY DYSFUNCTIONAL CHILDHOOD
UPBRINGING, THAT SHE WAS
BASICALLY CODEPENDENT, DEPENDENT
ON MEN AND THAT SHE WAS HIGHLY
SUSCEPTIBLE TO BEING, YOU KNOW,
THAT SHE HAD A NEED TO BE-- ALL
OF THOSE THINGS THAT SEEM LIKE
THAT'S WHAT HAPPENED.

BUT THAT'S WHAT SHOULD HAVE BEEN
DONE.

ISN'T THAT JUST 20/20 HINDSIGHT?

>> THAT DID GET PRESENTED TO
SOME DEGREE BY DR. MILLER,
BECAUSE WHAT HE DID IS HE BASED
THAT ON A ACCEPT-PAGE AUTO--
SEVEN-PAGE AUTOBIOGRAPHY THAT
SHE GAVE.

THAT WAS THE ONLY THING HE HAD,
PLUS THE POLICE REPORTS, TO COME
UP WITH HIS OPINION.

AND THAT OPINION DIDN'T COME OUT
UNTIL THE 20TH OF NOVEMBER, AND
THAT WAS NINE DAYS BEFORE
PENALTY PHASE.

>> SO THEN WHAT ARE YOU, WHAT'S

THE NEW MITIGATION THAT SHOULD HAVE BEEN PRESENTED?

>> THE MITIGATION THAT WAS PRESENTED, YOU KNOW, I MEAN, THE ENTIRE THING THAT WAS PRESENTED AT LEAST TO THE JURY--

>> NO, IN THE EVIDENTIARY HEARING.

WHAT SHOULD THE JURY HAVE HEARD THAT THEY DID NOT HEAR INITIALLY?

>> WHAT THEY SHOULD HAVE HEARD, THEY SHOULD HAVE HEARD, THEY SHOULD HAVE HEARD AN ACCURATE ASSESSMENT OF HER INTELLIGENCE AND HER ABILITIES.

DR. MILLER IN HIS TESTIMONY SAID THAT SHE WAS OF ABOVE AVERAGE INTELLIGENCE, SHE HAD A 100-110 IQ WHICH WOULD PUT HER IN THE 90TH PERCENTILE.

THE AVERAGE STATEMENT THAT HE PUT IN HIS REPORT SAID GENERALLY AVERAGE, AND THAT'S GENERALLY REPORTED TO BE IN THE 80TH PERCENTILE.

INTERVIEWED ALL THE WITNESSES THAT ARE ASSOCIATED WITH HER, GAVE HER INTELLIGENCE TEST AND SO FORTH, AND HE DETERMINED THAT HER TRUE INTELLIGENCE WAS-- SHE WOULD BE IN ABOUT THE 10TH PERCENTILE.

I THINK SHE WAS DOWN TO AN IQ OF ABOUT 82, NOT UP AT THE 100-110. NOW, IF THE JURY WOULD HAVE HEARD THAT--

>> WELL, BUT YOU CAN'T, YOU KNOW, THERE USED TO BE-- WELL, THERE WAS A LAWYER THAT WE KNEW WELL THAT SAID YOU CAN'T FEIGN SMART.

SO WAS SHE GIVEN AN INTELLIGENCE-- I MEAN, WHAT WAS IN HER SCHOOL?

IS WHAT WAS HER IQ WHILE SHE WAS IN SCHOOL?

>> WE DIDN'T, WE DIDN'T HAVE AN IQ THING IN SCHOOL.

>> NOBODY--

>> WE HAD A TROUBLED STUDENT WHO HAD TROUBLE WITH HER GRADES, WHO FLUNKED CLASSES, WHO DROPPED OUT OF SCHOOL, WHO HAD TROUBLE, WHO WAS IN SPECIAL CLASSES AND THINGS OF THAT NATURE.

ALL OF THESE THINGS-- THOSE THINGS WERE THERE IN THE SCHOOL RECORDS, BUT THE SCHOOL RECORDS WERE NOT GIVEN TO DR. MILLER. HE DIDN'T GET ANY SCHOOL RECORDS.

HE GOT-- HE DIDN'T INTERVIEW ANY FAMILY MEMBERS WHAT DR. MILLER SAID WAS IN QUESTIONING ABOUT THAT IN HIS CROSS-EXAMINATION BY THE STATE, HE SAYS, WELL, NOBODY FROM THE FAMILY CALLED ME. AND IT WOULD BE UP TO THE FAMILY TO CALL ME.

IF I HAVE--

>> DID THEY HAVE THE SCHOOL RECORDS?

DID MR. TILL HAVE THE SCHOOL RECORDS?

>> MR. TILL COULD HAVE HAD THE SCHOOL RECORDS--

>> BUT HE DIDN'T.

HE DIDN'T GET THE SCHOOL RECORDS.

DID HE OR DIDN'T HE?

>> HE HAD A BOX OF RECORDS THAT THE FAMILY GAVE TO MR. MASRI. MR. MASORI SORTED THROUGH AND PICKED OUT WHAT HE WANTED. SOME OF THE SCHOOL RECORDS HE PRESENT INSIDE A 140-FRAME POWERPOINT DISPLAY OF A HAPPY, A HAPPY HOME.

>> SO DID MR. MASORI EXPLAIN WHY HE, AGAIN, THIS IS-- I THINK WHAT WE HAVE GOT HERE IS A TENSION AS TO WHETHER THIS WAS SO DEFICIENT THAT THIS WAS THE COMPLETELY WRONG DEFENSE TO PUT ON TO TRY TO SAVE HER LIFE, OR THERE WERE PEOPLE THAT WERE LOOKING AT ALL THIS INFORMATION AND SAID WE'D RATHER SHOW THAT

SHE WASN'T A TROUBLED CHILD,
THAT SHE JUST-- THIS WAS OUT OF
CHARACTER FOR HER, AND THAT'S
WHAT WE'RE PRESENTING.

>> THAT'S WHAT THEY TRIED TO
PRESENT.

>> WELL, SO WHY ISN'T, WHY--
AGAIN, WHAT DID THE JUDGE FIND
ABOUT WHETHER THIS WAS
REASONABLE STRATEGY OR JUST
SIMPLY NOT ACTUALLY
INVESTIGATING IT PROPERLY FROM
THE BEGINNING?

>> WELL, THE JUDGE THOUGHT IT
WAS REASONABLE, OF COURSE,
BECAUSE HE BELIEVED IT.

>> DIDN'T DR. MILLER TESTIFY IN
THE PENALTY PHASE ABOUT HER
BEING SEXUALLY ABUSED BY HER
FATHER AND BEING IN ABUSIVE
RELATIONSHIPS WITH BOYFRIENDS?

>> HE DID.

HE TESTIFIED THAT-- AND WHAT HE
DID IS THAT INFORMATION THAT HE
TESTIFIED WAS BASED TOTALLY UPON
RECEIVE REPORTING--

SELF-REPORTING BY MS. COLE.

>> HOW ELSE IS HE GOING TO GET
THE ABUSE OF A PERP--

>> I'M SORRY?

>> WHAT IS WRONG WITH
SELF-REPORTING WHEN A PERSON
SAYS I'VE BEEN ABUSED?

THAT'S HOW, THAT'S HOW THIS
COMES OUT.

>> WELL, THERE'S NOTHING WRONG
WITH SELF-REPORTING, BUT
ALSO WHAT YOU HAVE IS YOU DON'T
PRESENT EVERYTHING YOU SHOULD
PRESENT, AND THE DOCTOR DOESN'T
GET TO HEAR WHAT'S GOING ON, AND
HE MAY WANT TO HOLD HER MORE
ACCOUNTABLE, BECAUSE THE DOCTOR
THOUGHT SHE HAD A HIGHER
INTELLIGENCE THAN WHAT SHE DID
BASED UPON A FLAWED TEST THAT HE
GAVE.

SO HE CONTRIBUTED TO HIS OWN
MISPERCEPTION OF THIS WOMAN.

>> THAT SEEMS, IT SEEMS BEYOND,

THOUGH, JUST AS I HAD A GREAT
LIFE KIND OF A DEFENSE.

>> RIGHT.

>> THERE WAS NONE OF A-- MORE OF
A DEFENSE PRESENTED THAN THAT,
WASN'T THERE?

>> AT THE PENALTY PHASE?

>> YES.

>> ALL THE WITNESSES WERE IN
LINE WITH THE GOOD GIRL DEFENSE.
THE ONLY PERSON THAT SAID
ANYTHING THAT OPENED ANY WINDOWS
TO THE BAD SIDE OF HER WAS THE
SELF-REPORTING DONE BY
DR. MILLER.

AND WHAT DR. MILLER PRETTY MUCH
SAID AT THE END, AND SHE'S A
PERSON THAT DIDN'T HAVE A
PROBLEM.

SHE WASN'T SUFFERING FROM
ANYTHING, AND BASICALLY IF YOU
LOOK AT WHAT DR. MILLER REALLY
TESTIFIED TO--

>> THOSE SEEM LIKE SEVERE
PROBLEMS TO ME.

>> IT WOULD BE SEVERE-- WHY
WOULD YOU PUT ON A DOCTOR TO SAY
ALL THESE THINGS, IS THE POINT.
THE POINT IS IF THE DOCTOR THE
HAD BEEN A STATE WITNESS WHICH,
ESSENTIALLY, HE WAS, THE STATE
COULD HAVE CALLED HIM, BUT HAD
HE BEEN A STATE WITNESS, THE
DOCTOR-- THEN MR. TILL AND
MR. MASORI WOULD CERTAINLY HAVE
TO BE ASKED WHY THEY DIDN'T VET
DR. MILLER AS MUCH AS THEY
SHOULD HAVE, DISCOVER WHETHER OR
NOT HE WAS GIVING A REAL TEST OR
WHETHER HE WAS JUST READING TEA
LEAVES AND IF HE WAS DOING IT IN
A PROPER WAY.

AND DR. MILLER, YOU KNOW, ALSO
DESCRIBED ONE OF THE THINGS THAT
WAS GLARING--

>> [INAUDIBLE]

>> I'M SORRY?

>> WE DON'T REQUIRE THAT LAWYERS
BE EXPERTS THAT CAN EVALUATE
EVERYTHING AN EXPERT DOES.

I MEAN, THE LAWYER'S NOT GOING TO BE IN A POSITION TO MAKE PROFESSIONAL JUDGMENTS ABOUT THAT.

THERE MAY BE SOME OUTER RANGE OF, YOU KNOW, THINGS THEY DON'T EXPLORE.

THERE MAY BE SOME CIRCUMSTANCES WHERE THE LAWYER SHOULD BE ON NOTICE, BUT WHY WOULD THE LAWYER HERE KNOW THAT THIS, THE TEST WAS NOT A GOOD TEST THAT THE DOCTOR GAVE?

>> WELL, FOR ONE THING, YOUR HONOR, ANYTIME THAT THERE'S AN EXPERT OPINION THAT'S GIVEN, SOMEONE ON THE OTHER SIDE USUALLY IS THE ONE THAT'S GOING TO LOOK AT IT.

SO LAWYERS ARE GOING TO MAKE IT A POINT TO FIND OUT WHETHER OR NOT THE OPINION THEY'RE GETTING THAT THEY ARE DEPENDING ON IS A CORRECT ONE.

HERE MR. TILL AND MR. MASORI I GUESS JUST ASSUMED THAT DR. MILLER WAS GIVING THEM, YOU KNOW, EVERYTHING OUT OF WHOLE CLOTH WHEN HE SAID THAT SHE HAD A GAF OR FUNCTIONING THING OF 60.

HE SAID 60'S GOOD AND IT'S NOT GOOD AND THE LAWYERS TAKE HIS WORD FOR IT AND DON'T KNOW. THEY SAY SHE'S ABOVE AVERAGE INTELLIGENCE, BASED ON A TEST THAT REALLY DOESN'T GIVE YOU AN IQ.

ALL OF A SUDDEN AT THE PENALTY PHASE HE'S UPPING IT TO SAYING SHE'S GOT 100 TO 110 AND NOBODY IS CURIOUS AT ALL ABOUT WHERE HE GOT THIS OUT OF THIN AIR?

I MEAN, THE LAWYERS SHOULD KNOW AT LEAST WHAT THEY'RE PRESENTING.

AND IN THIS PARTICULAR CASE THEY'RE TAKING A WOMAN WHO IS EXTREMELY BLAMEWORTHY WITH ALL THE FACTS OF THIS CASE, WHATEVER

HER LIMITATIONS MAY BE.
WHAT IS IT?
SHE'S ABOVE AVERAGE
INTELLIGENCE, COMES FROM A GOOD
FAMILY.
>> IT SEEMS TO ME THAT EVEN THE
DOCTOR WHO OPINED AT THE
EVIDENTIARY HEARING DOESN'T -- I
MEAN, SHE'S NOT RETARDED.
THERE'S NO RETARDATION ISSUE
HERE, CORRECT?
>> NO, THERE'S NOT.
>> IT LOOKS LIKE SHE HAS AVERAGE
INTELLIGENCE, SO WHAT IS IT THAT
IS SO DIFFERENT THAT YOU
PRESENTED AT THE EVIDENTIARY
HEARING THAT WOULD MAKE US GO I
DON'T HAVE ANY CONFIDENCE IN
WHAT WENT ON IN THE PENALTY
PHASE?
>> I WOULD SUBMIT, YOUR HONOR,
THAT -- I ONLY GOT WHAT, A
MINUTE OR TWO LEFT?
I WOULD SUBMIT, YOUR HONOR, THAT
WHEN YOU GIVE A FLAWED TESTIMONY
THAT SOMEBODY IS OF 90
PERCENTILE INTELLIGENCE AND
THEY'RE REALLY DOWN IN 10% OF
INTELLIGENCE AND THE JURY GETS
IT AND THEY HEAR IT AND THEY'RE
GOING TO WEIGH ALL THE OTHER
STUFF TOGETHER, YOU CAN'T JUST
SAY FOR SURE THAT THEY'D FEEL
THIS WAY.
SHE'S CERTAINLY BLAMEWORTHY FOR
BEING INVOLVED IN THIS THING,
BUT WHEN IT COMES TO THE PENALTY
PHASE, WHAT ARE THEY GOING TO
DO, HOW ARE THEY GOING TO ASSIGN
IT, WHAT IS THE CULPABILITY OF
HERS?
THE STATE WOULD HAVE GIVEN HER
YEARS IN THE STATE.
WHY DIDN'T SHE TAKE IT?
MAYBE IT HAD SOMETHING TO DO
WITH HER INTELLIGENCE QUOTIENT
AND A LOT OF OTHER THINGS, HER
TRUST IN MEN AND A WHOLE BUNCH
OF OTHER STUFF.
SO WE'RE WAITING UNTIL THE VERY

END?

WE NEED TO RESOLVE THESE THINGS
ON THE FRONT END.

THAT'S WHY WE FALL INTO THIS
TRAP OF HAVING TO GO TO THESE
HEARINGS THAT ARE FLAWED BECAUSE
THEY DIDN'T AND THEY WAITED AND
THEY DEPENDED ON THE WRONG
THING.

I THINK I HAVE 30 SECONDS
REMAINING.

>> I'LL GIVE YOU TWO MINUTES FOR
REBUTTAL.

>> THANK YOU.

>> OKAY?

>> MAY IT PLEASE THE COURT,
CAROL SNURKOWSKI, ASSISTANT
ATTORNEY GENERAL, REPRESENTING
THE STATE.

I'D LIKE TO MAKE SOME
CORRECTIONS WITH REGARD TO THE
RECORD.

THERE WAS EVIDENCE THAT REFLECTS
-- I APOLOGIZE BECAUSE I DON'T
HAVE THE EXACT PAGE, BUT THERE
WAS EVIDENCE PRESENTED THROUGH
QUENTIN TILL THAT HE DID TALK TO
HER FOR THE PLEA AND THE NEED
FOR WHY IT WOULD BE IN HER BEST
INTEREST.

THERE WAS EXTENSIVE DISCUSSIONS
WITH HER AND HER MOTHER, SHIRLEY
DUNCAN.

AND IN FACT THE RECORD ALSO
BEARS OUT THAT HE WAS SUSPICIOUS
BECAUSE AT THE TIME THAT
MISS COLE WAS ARRESTED IN SOUTH
CAROLINA, HER MOTHER -- THAT WAS
THE FIRST TIME HER MOTHER KNEW
WHERE SHE WAS BECAUSE HER MOTHER
HAD BEEN LOOKING FOR HER AND
MADE SOME COMMENT ABOUT SHE WAS
GOING TO CALL THE POLICE BECAUSE
SHE WAS CONCERNED ABOUT THIS
23-YEAR-OLD DAUGHTER OF HERS.
IT HAPPENED THAT SHE CONTACTED A
FRIEND OF HERS WHO WAS A LAWYER.
APPARENTLY SHE WAS GETTING LEGAL
ADVICE AT THAT TIME WITH REGARD
TO THE LAW AND HAD CONVEYED

THAT.

AND MR. HILL WAS CONCERNED THAT THEY WERE GETTING MISINFORMATION WITH REGARD TO WHAT EXACTLY THE EVIDENCE WAS.

>> LET ME SEE IF I UNDERSTAND WHAT YOU'RE SAYING.

SHE WAS GETTING LEGAL ADVICE FROM SOMEONE OTHER THAN THE LAWYER THAT WAS APPOINTED FOR HER?

>> YES, BECAUSE THEY WERE TALKING.

IT WAS A FRIEND OF SHIRLEY DUNCAN AND THEY WERE TALKING TO THEM.

>> WELL, WE'RE HERE ON AN INEFFECTIVE ASSISTANCE CLAIM. IT SOUNDS LIKE THAT'S WHERE SOMEONE WAS GOING, THAT THE LAWYER SHOULD HAVE ENSURED THAT SHE HAD A LIFE GUILTY PLEA AS OPPOSED TO DEATH.

SO THAT'S NOT -- WHAT IS THAT RELEVANT TO?

>> IT'S RELEVANT TO THE FACT THAT THERE WAS I THINK A SUGGESTION THAT MISS COLE WAS NOT INTELLIGENT ENOUGH TO UNDERSTAND LEGAL ARGUMENTS.

>> AM I CORRECT THAT THE ISSUE AS TO WHETHER MR. TILL SHOULD HAVE GOTTEN A PLEA DEAL FOR MISS COLE IS NOT A CLAIM IN FRONT OF US.

>> THAT'S NOT A CLAIM IN FRONT OF YOU.

>> SO HERE'S MY QUESTION. IT SEEMS THAT -- AND THIS GOES TO THE DEFICIENCY PRONG. FROM MR. TILL'S OWN TESTIMONY, THAT HE WAS -- YOU KNOW, YOU WOULD -- OR I THINK MOST PEOPLE WOULD LOOK AT THIS WHOLE SITUATION AND SAY, LOOK, MISS COLE NEEDS TO GET A DEAL TO PLEAD OUT TO SOMETHING.

>> RIGHT.

HE WORKED A YEAR AND A HALF ON THAT.

>> SO HE WAS FOCUSING HIS ATTENTION ON THAT.
>> RIGHT.
>> AND THAT'S A GOOD THING. BUT DOES HE -- DO YOU FOCUS ON THAT TO THE EXCLUSION --
>> AND THAT'S NOT WHAT THE RECORD BEARS OUT.
>> I THOUGHT HE SAID UNTIL ALL OF A SUDDEN HE'S SPENDING ALL HIS TIME ON THAT.
OH, MY GOODNESS, THE TRIAL'S GOING.
WHEN DOES HE START PREPARING FOR THE PENALTY PHASE?
>> HE STARTED PREPARING IN JANUARY OF 2006, AFTER HIS APPOINTMENT.
HE WENT UP TO SOUTH CAROLINA, SPOKE TO THE MOTHER AND OTHER FAMILY MEMBERS, TOOK DEPOSITIONS WITH REGARD TO WHAT WAS GOING ON.
>> WHEN DOES HE FIRST GET A MENTAL HEALTH EXPERT?
>> IN THIS RECORD HE WAS TALKING TO MR. MILLER, DR. MILLER, AT THE TIME, BEFORE HE HAD HIM OFFICIALLY APPOINTED.
HE HAD DISCUSSED WITH HIM AND HE HAD BEEN DISCUSSING THE ISSUES WITH OTHER LAWYERS WHO WERE CODEFENDANT LAWYERS IN THIS CASE.
>> WHEN DID HE GET THE SCHOOL RECORDS?
>> THE SCHOOL RECORDS CAME OUT VERY EARLY ON BECAUSE HE OBTAINED INFORMATION FROM THE MOTHER.
SHIRLEY DUNCAN WAS HIS CONDUIT TO GETTING INFORMATION FROM SOUTH CAROLINA.
>> WHAT DO THE SCHOOL RECORDS SHOW ABOUT THIS CHILD?
>> WELL, THE DISCREPANCIES THAT WERE SHOWN, I DID A COMPARISON OF WHAT WAS SHOWN.
ALL RIGHT.
DR. MILLER MAKES A GENERAL

STATEMENT THAT SHE WAS A PRETTY GOOD OPPORTUNITY AND THAT SHE WENT TO THE 10TH GRADE AND GETS HER G.E.D. AND HAD SOME PROBLEMS. SHE WAS SHUTTLED FROM SCHOOL TO SCHOOL BECAUSE HER PARENTS WERE DIVORCED AND SHE WOULD STAY WITH HER FATHER AT SOME POINT IN TIME, SHE'D STAY WITH HER MOTHER AT SOME POINT IN TIME.

THERE WAS AN EXAMPLE THAT SHOWS HER MOTHER WENT UP TO INDIANA AND THEY WERE LIVING ON ASSISTANCE UP THERE.

AND SHE WAS WOEFULLY LACKING WITH REGARD TO-- APPARENTLY THE SCHOOLS IN SOUTH CAROLINA ARE NOT AS GOOD AS THE SCHOOLS IN INDIANA AND SHE WAS FALLING BACK AND HAVING DIFFICULTY IN SCHOOL AT THAT TIME, CLOSE TO THE TIME SHE LEFT SCHOOL.

>> HERE'S WHAT I'M CONCERNED ABOUT.

SHE TOLD DR. MILLER THAT SHE HAD BEEN SEXUALLY ABUSED BY HER BIOLOGICAL FATHER.

>> RIGHT.

>> WHO SUBSEQUENTLY DIED.

>> RIGHT.

>> OKAY.

SHE SAYS SHE TOLD HER MOTHER THAT.

>> SHE DID.

>> HER MOTHER BASICALLY CALLED HER A LIAR.

>> RIGHT.

>> AND IS THE TIME OF THE ABUSE, WHEN SHE DROPS OUT OF SCHOOL?

>> NO.

IT WAS AROUND WHEN SHE WAS EIGHT OR NINE YEARS OLD.

>> WAS THAT -- I MEAN, IT SEEMS THAT THE ONLY WAY TO SAVE THIS WOMAN'S LIFE IS TO SAY THAT NOT ONLY SHE WAS UNDER THE INFLUENCE OF JACKSON, BUT TO REALLY SAY LOOK AT THIS CHILD'S LIFE.

NOT THAT SHE HAD A HAPPY, HEALTHY, YOU KNOW, PRODUCTIVE

CHILDHOOD, BUT THAT SHE HAD A VERY TRAUMATIC CHILDHOOD AND THAT PSYCHOLOGICALLY SHE WAS A CODEPENDENT PERSON.

I MEAN, TO ME THE IMPRESSION THAT WE GOT LOOKING AT THE DIRECT APPEAL WAS THIS WAS A PERSON THAT CAME FROM A GOOD BACKGROUND AND THAT THIS WAS -- SHE WAS ONE OF THE LEADERS IN THIS VERY ELABORATE CRIME AND THAT REALLY THERE WAS NO ISSUE. THE MITIGATION WAS SORT OF -- I LOOKED AT THE DIRECT APPEAL. THERE WASN'T EVEN A DISCUSSION OF THE MITIGATION.

I GUESS I'M VERY CONCERNED THAT THIS PICTURE THAT THE DEFENDANT PUT THROUGH HER ATTORNEY WAS REALLY NOT CONSISTENT WITH WHAT AN INVESTIGATION OR A PROPER MENTAL HEALTH EXAMINATION WOULD HAVE REVEALED.

>> WELL, I WOULD DISAGREE WITH YOU BECAUSE I THINK --

>> YOU HAVE TO DISAGREE.

>> NO, I DON'T HAVE TO.

YOU ALL FOUND AND AFFIRMED BASED ON THE FACT THAT THE TRIAL COURT FOUND FOUR STATUTORY MITIGATING FACTORS: HER AGE, THAT SHE WAS JUST AN ACCOMPLICE, THAT SHE WAS UNDER THE INFLUENCE OF OTHERS AND SHE HAD NO SIGNIFICANT HISTORY.

THEN THERE WAS ANOTHER 10 OR 12 NONSTATUTORY MITIGATING FACTORS THAT WERE PROVEN AND FOUND TO BE WEIGHED AGAINST THE AGGRAVATING FACTORS IN THIS CASE.

>> DID SHE ASK FOR A MITIGATION SPECIALIST?

>> YES.

IT WAS DENIED BY THE TRIAL COURT, INDICATED HE DIDN'T THINK HE NEEDED ONE AT THAT POINT.

>> DID ANY OF THE OTHER DEFENDANTS HAVE --

>> YES.

JACKSON HAD ONE.

>> WHAT WAS THE JUDGE'S REASONING FOR NOT GIVING HER ONE?

>> AT THAT POINT HE SAID HE DIDN'T THINK THEY NEEDED ONE AT THAT POINT.

THERE WAS A SECOND TIME WHEN GREG MASORI AND QUENTIN TILL WENT TO THE COURT AGAIN AND THEY AGAIN DENIED THE MOTION.

>> DID THE SAME JUDGE TRY ALL THESE CASES, ALL DEFENDANTS?

>> YES, YOUR HONOR.

>> THE FACTS IN THIS CASE ARE SUCH THAT THIS YOUNG WOMAN'S THE ONE WHO KNEW THE VICTIMS.

>> RIGHT.

>> AND SHE'S THE ONE WHO DIRECTED THE GROUP TO THESE VICTIMS.

>> CORRECT.

>> SHE'S THE ONE WHO GOT THE INFORMATION THAT THEY SOLD THE HOME FOR \$99,000 OR WHATEVER.

>> RIGHT.

>> AND SHE WAS WITH THEM AT ALL TIMES.

>> CORRECT.

>> SO MY CONCERN IS WHAT ARE THE DIFFERENCES OR WHAT ARE THE SIMILARITIES BETWEEN THE TESTIMONY THAT THE EXPERT USED DURING THE ACTUAL TRIAL, DR. MILLER, AND HOW DOES THAT COMPARE WITH DR. HERKOFF? THERE ARE DIFFERENT WAYS TO LOOK AT THESE THINGS.

>> CORRECT.

>> WE SEE THESE CASES COME ALONG EVERY TIME POST-CONVICTION. IT'S A DIFFERENT VIEW AND OPINION THAN THE TRIAL EXPERT.

>> SURE.

>> THAT'S JUST THE WAY THESE THINGS WORK. THEY WOULDN'T PUT THEM ON IF THEY WERE NOT. BUT WHAT ARE THE DIFFERENCES? AS AN OFFICER OF THE STATE. BECAUSE THAT'S WHAT HE'S SAYING,

IS THAT MILLER PUT ON X AND
HERKOFF PUT ON Y AND THEY DON'T
MATCH AT ALL AND HERKOFF IS
CORRECT BECAUSE OF WHATEVER.

>> RIGHT.

WELL, I THINK THE REPRESENTATION
TODAY IS WRONG WITH REGARD TO
WHETHER THEY MATCHED OR NOT.
THEY WERE VERY SIMILAR.

IN FACT, DR. HERKOFF, WHO WAS
THE DEFENSE EXPERT AT THE
POST-CONVICTION HEARING -- AND I
CAN GIVE YOU THE RECORDS CITE AT
PAGE 1286 THROUGH 1288, SAID
THAT ULTIMATELY THEY BOTH SAID
THEY WERE VERY SIMILAR, THEY
CAME TO THE SAME RESULTS.

AND THE MORE IMPORTANT THING IS
THAT HE CRITICIZED -- HIS
EFFORTS ON THE STAND WERE TO BE
CRITICAL OF DR. MILLER.

DR. MILLER WAS DEAD AT THIS
POINT.

WE DID NOT HAVE HIS NOTES.

SO IT WAS A RECREATION OF WHAT
IN FACT HAD BEEN GIVEN TO HIM
AND WHAT HE LOOKED AT.

WE KNOW THAT HE GOT THE
SELF-REPORTING LETTER THAT
MR. TILL ASKED MISS COLE TO
WRITE AND IT WAS VERY VOLUMINOUS
IN THE SENSE OF KNOWLEDGE
BECAUSE IN FACT DR. HERKOFF
LOOKED AT THAT, ALSO, OKAY?

WE ALSO KNOW THAT HE GOT THE
RECORDS, BECAUSE MR. TILL
IMMEDIATELY ASKED FOR AN
INVESTIGATOR AND HE GOT A
GENTLEMAN NAMED RANDY JUSTICE,
WHO WENT UP TO SOUTH CAROLINA,
DID INVESTIGATIONS, AND ALL THE
WITNESSES TALK ABOUT HOW THEY
SAW -- MET MR. JUSTICE OR THEY
MET MR. MASORI OR THEY MET
MR. TILL WHEN THEY CAME UP.

>> AND THEY DID OR DID NOT HAVE
SCHOOL RECORDS?

>> THEY HAD SCHOOL RECORDS.

THE SCOPE WAS LIMITED BECAUSE NO
ONE SPOKE ABOUT THEM AT

POST-LITIGATION.

EVERYTHING WE TALK ABOUT THE SCHOOL RECORDS WERE REALLY UNREMARKABLE TO THE EXTENT THAT WE'RE TALKING ABOUT WHAT THEIR GRADES WERE IN A PARTICULAR AREA OF SCHOOL, NOTHING ABOUT MENTAL HEALTH PROBLEMS IN THE SCHOOL, NOTHING ABOUT SCHOOL TEACHERS COMING FORWARD AND SAYING X, Y AND Z.

AND IN FACT ULTIMATELY WHEN YOU LOOK AT WHAT DR. HERKOFF WAS TALKING ABOUT, HE WAS CRITICAL OF THE TESTING THAT WAS DONE, BUT AGAIN WE HAVE TO RECALL THAT DR. HERKOFF IS A PSYCHOLOGIST. HE DOES THE TESTING.

DR. MILLER IS A PSYCHIATRIST. HE DOES NOT NORMALLY DO THOSE KIND OF TESTINGS.

>> THAT'S SAYS SOMETHING ABOUT THESE CASES.

IF DR. MILLER WASN'T QUALIFIED TO DO THE TESTING, WHY DIDN'T THEY GET SOMEBODY TO ACTUALLY DO THE TESTING?

>> NORMALLY IF YOU HIRE A PSYCHOLOGIST, THEY HIRE -- IF YOU HIRE A PSYCHIATRIST, THEY USUALLY HAVE PSYCHOLOGISTS ON STAFF TO HELP THEM.

>> SO WHEN WAS DR. MILLER -- WHEN DID HE GET ON THIS CASE?

>> THE RECORD SHOWS THAT HE WAS ASSIGNED OR HE WAS APPOINTED TO THIS CASE IN NOVEMBER, 2007.

>> AND WHEN DID THE TRIAL START?

>> THE TRIAL STARTED -- THAT I DO NOT REMEMBER THE DATE.

>> WAS IT CLOSE IN TIME -- YOU SAID MR. TILL HAD BEEN ON SINCE 2005.

>> RIGHT.

CORRECT.

>> WAS NOVEMBER, 2007 CLOSE TO WHEN THE TRIAL BEGAN?

>> YES.

IT WAS WITHIN THREE MONTHS.

>> AND HOW LONG DID DR. MILLER

SPEND WITH --

>> HE SAW HER ON AT LEAST FOUR DIFFERENT OCCASIONS.

AND SO --

>> AND HE NEVER RECOMMENDED PSYCHOLOGICAL TESTING OR IQ TESTING?

>> NO.

>> AND HE WASN'T GIVEN THE SCHOOL RECORDS.

>> I WANT TO CLARIFY ONE THING.

>> WAS HE GIVEN THE SCHOOL RECORDS?

>> YES, HE DID.

HE HAD THE RECORDS THAT TILL HAD WITH REGARDS TO -- WAS OBTAINED IN SOUTH CAROLINA.

>> WAS SHE IN SPECIAL EDUCATION CLASSES?

>> I DON'T REMEMBER SEEING THAT PARTICULAR THING, BUT IT COULD HAVE BEEN BECAUSE --

>> SO WHAT THE APPELLANT SAYS, WHEN HE SAYS SHE WAS IN SPECIAL EDUCATION CLASSES, DOES NOT APPEAR IN THE RECORD.

>> I'M NOT SAYING IT DOESN'T APPEAR.

I DON'T RECALL SEEING THAT. BUT THAT WAS NOT ONE OF THOSE CRITICAL POINTS OF CONTENTION.

>> BUT TO ME -- SEE, MAYBE YOU AND I LOOK AT ABOUT A 23-YEAR-OLD GIRL BEING ON DEATH ROW, WHAT'S CRITICAL, WHICH IS, AS JUSTICE LEWIS SAYS, SHE'S THE ONE THAT KNOWS THESE PEOPLE, SHE'S THE ONE THAT IS TELLING THEM WHERE TO GO, AND THE ONLY HOPE OF SOMETHING HAPPENING IS THAT SHE DIDN'T -- SHE WANTED TO ROB THEM, BUT SHE WASN'T INTENDING TO KILL AND BURY THEM.
>> RIGHT.

>> SO -- BECAUSE SHE'S NOT GETTING OUT OF THIS WITHOUT A GUILTY VERDICT.

SO TO ME IF MY -- IF I'M DEALING WITH AN ABOVE-AVERAGE INTELLIGENT CLIENT VERSUS

SOMEBODY THAT WAS STRUGGLING AND IN SPECIAL EDUCATION CLASSES, I'D WANT TO KNOW THAT.

>> THE TRIAL RECORD IN THIS CASE AT 1269 THROUGH 1271, THE RECORD REFLECTS THAT WHEN DR. HERKOFF WAS CROSS-EXAMINED BY THE STATE, HE SAID THAT HE THOUGHT HE MADE A MISTAKE WITH REGARD TO HIS CALCULATIONS OF HER IQ AND IN FACT AT THAT POINT IN TIME HE SAYS HER IQ WAS 93.

SO THERE WAS A LOT OF DISCREPANCIES IN THIS RECORD WITH REGARD TO WHAT WAS HAPPENING AND NOT HAPPENING. I THINK THERE'S BEEN A LOT OF MISSTATEMENTS WITH REGARD TO WHAT WAS PRESENTED.

IN FACT, IF YOU HAD TO SUM IT UP AS TO WHAT THE MITIGATION SHOWED BETWEEN THE TRIAL AND THE POST-CONVICTION LITIGATION, YOU'D FIND THAT THERE WERE SEVERAL THINGS THAT HAPPENED. THEY HAD THE PEOPLE WHO HAD SEEN MISS COLE DURING THE YEAR AND A HALF SHE WAS INCARCERATED BEFORE TRIAL WERE JAIL PEOPLE AND PEOPLE THAT SHE HAD HAD CONTACT WITH IN THE JAIL.

AND THEY ALL SAID SHE WAS A COOPERATIVE, VERY HELPFUL PERSON, VERY NURTURING, CARING, CONCERNED ABOUT OTHER PEOPLE AND WOULD OFFER HER HELP AND ASSISTANCE.

>> BUT THAT WAS THE TRIAL, THAT SHE USED PEOPLE THAT WERE IN PRISON WITH HER?

>> YES.

>> TO TESTIFY TO WHAT A GOOD PERSON SHE WAS?

>> YES.

ALL RIGHT.

IT WAS THE MOTHER, SHIRLEY DUNCAN TESTIFIED, OKAY? AND SHE TALKED ABOUT HER WHOLE LIFE, THE TROUBLE SHE'S HAD. SHE HAD TROUBLE WITH HER, BUT

SHE WAS STRICT, SHE WAS A REBELLIOUS CHILD, SHE WOULDN'T FOLLOW RULES.

AND THAT WAS A THEME THAT WAS CONTINUED.

AND THERE WERE A COUPLE FAMILY MEMBERS THAT TALKED ABOUT THAT.

>> WAS SHE ASKED ABOUT THE SEXUAL ABUSE BY MR. TILL?

>> YES, SHE DID.

>> WHAT DID SHE SAY?

>> HER STATEMENT I BELIEVE WAS TO THE EFFECT THAT SHE ASKED HER ABOUT IT AND SHE WAS CONCERNED ABOUT IT.

SHE DID NOT BELIEVE IT WAS HER HUSBAND.

IT COULD HAVE BEEN HER CURRENT BOYFRIEND THAT WAS MORE LIKELY TO HAVE DONE THIS.

AND THAT WAS ALL THAT WAS SAID ABOUT IT.

>> AT AGE EIGHT OR NINE?

>> YES.

AROUND NINE.

>> SHE WOULD HAVE HAD A CURRENT BOYFRIEND?

>> HER MOTHER -- HER PARENTS DIVORCED EARLY ON.

>> OH.

HER MOTHER'S CURRENT BOYFRIEND.

>> I'M SORRY.

I'M SORRY.

YES.

THE MOTHER WAS TESTIFYING ABOUT HER BOYFRIEND.

>> SHE DIDN'T DENY IT MIGHT HAVE HAPPENED?

>> SHE DID NOT THINK IT WOULD HAVE BEEN HER NATURAL FATHER THAT HAD TOUCHED HER INAPPROPRIATELY.

AND IN FACT THERE WAS NO -- EXCUSE ME.

>> DID DR. HERKOFF IN HIS TESTIMONY UNDERMINE THE ACTIONS OR THE TESTIMONY AT TRIAL WITH REGARD TO THIS DEFENDANT'S PARTICIPATION IN THE EVENT, SUCH AS BEING OUT WHEN THEY DUG THE

ACTUAL HOLE THAT THESE VICTIMS WERE ULTIMATELY PLACED IN?

>> NO.

AS A MATTER OF FACT, HE DID NOT EVEN KNOW WHAT THE TESTIMONY WAS WITH REGARD TO JACKSON OR THE OTHER CODEFENDANTS.

ALL HE DID WAS HE TOOK A TEST -- HE TOOK INFORMATION FROM HER. HERSELF-REPORTING INFORMATION WAS WHAT HE BASED MOST OF HIS FINDINGS ON.

HE WAS -- AGAIN, IF YOU LOOK AT HIS TESTIMONY, HIS TESTIMONY WAS AN ATTEMPT TO BE CRITICAL OF DR. MILLER AND WHAT DR. MILLER DID AND NOT NECESSARILY THE VARIANCES THAT OCCURRED.

ALL THAT HAPPENED -- WHAT THREE THINGS -- I WAS TRYING BEFORE. THREE THINGS.

SHE WAS A PROSTITUTE.

THERE'S BEEN A BIG ARGUMENT AT THE TRIAL BELOW THAT WE SHOULD HAVE BROUGHT THAT UP.

THAT SHOULD HAVE BEEN SOMETHING MR. TILL SHOULD HAVE BROUGHT UP, SHE WAS A PROSTITUTE FOR SIX MONTHS.

WELL, HOW GOOD IS THAT?

THE FACT OF THE MATTER IS AND THIS RECORD BEARS OUT THAT, YEAH, SHE WAS A PROSTITUTE, BECAUSE SHE WAS A DRUG DEALER. SHE HAD TO SUPPORT HER DRUG HABIT.

SO SHE SOLD DRUGS.

AND SHE MET MR. JACKSON SELLING DRUGS.

HE TRIED TO ROB HER.

AFTER THAT THEY STARTED UP AN ACQUAINTANCE AND SUDDENLY NOW FOR THREE MONTHS THEY'RE GOING TOGETHER AND THEY'RE GOING TO GO DOWN TO JACKSONVILLE BECAUSE THEY'RE GOING TO START A BUSINESS TOGETHER.

AND THIS IS HOW THEN THE PROBLEMS AND THE ILL-FATED EVENTS OCCUR WITH REGARD TO THE

SUMNERS.

THIS IS NOT -- I MEAN, THE FACTS
OF THIS --

>> THAT WAS NOT KNOWN AT TRIAL?
OR IT WAS KNOWN AT TRIAL?

>> WHAT, THAT SHE WAS A
PROSTITUTE?

>> NO, THAT SHE WAS SELLING
DRUGS AND --

>> THIS CASE WAS SO SANITIZED
WITH REGARD TO WHAT KIND OF
ACTIVITY SHE ENGAGED IN.

HER FRIEND, HER COUSIN, AMBER
JONES, TESTIFIED AT THE TRIAL,
PENALTY PHASE, THAT SHE WAS A
LOVING, WONDERFUL GIRL WHO
HELPED HER TO HELP -- BECAUSE
HER FATHER WAS SICK AND HELPED
HER AND HELPED HER GET HER G.E.D..
THAT WAS THE TESTIMONY FROM
MISS JONES.

NOW BACK SEVERAL YEARS FORWARD.
NOW MISS JONES IS TELLING US
THAT, OH, YEAH, WE DID DRUGS
TOGETHER.

WE'D GO OUT IN THE STREETS.
YEAH.

WE WERE USING DRUGS.

>> THAT'S AT THE EVIDENTIARY
HEARING.

>> YES.

YES.

YES.

>> SO ARE YOU SAYING THAT THE
DEFENSE ATTORNEY DELIBERATELY --
I MEAN KNEW ABOUT HER AND
JACKSON'S RELATIONSHIP, WHAT
THEY WERE DOING, BUT TRIED TO
SANITIZE --

>> IT WAS SANITIZED, YES.

>> THE RELATIONSHIP TO --

>> THE ONLY THING HE DIDN'T KNOW
ABOUT -- I'M SORRY.

>> SO I'M TRYING TO REMEMBER
WHAT MY THOUGHT WAS.

>> I'M SORRY.

>> SO WERE THEY TRYING TO SAY
THAT THE JURY WOULDN'T HEAR OF
THESE OTHER ACTS OF HERS, I
GUESS?

>> RIGHT.

I THINK THEY TRIED TO MITIGATE THE BAD AS BEST POSSIBLE AND THEY DID SANITIZE THE CASE. HE HAD PEOPLE COMING IN AND TESTIFYING THAT SHE WAS A GOOD PERSON.

SHE DID GOOD THINGS.

SHE TOOK CARE OF HER DYING FATHER JUST BEFORE THIS BIG EVENT OCCURRED.

THOSE -- BUT THEY WEREN'T TOLD ABOUT THE OTHER THINGS.

AND WHEN SHE WENT TO --

>> BUT THE STATE COULD HAVE CROSS-EXAMINED HER -- HIM -- THE WITNESSES ABOUT THAT.

AND A LAWYER CAN'T KNOWINGLY PUT ON A WITNESS WHO IS TOLD THEM THAT SHE WAS A DRUG DEALER AND SAY, NO, I REALLY NEED YOU TO SAY THAT SHE WAS A GREAT PERSON. SO, I MEAN, THERE'S A -- I'M JUST NOT -- I UNDERSTAND THAT THERE MAY NOT BE PREJUDICE HERE, IS WHAT YOU'RE SAYING.

BUT I JUST QUESTION WHETHER MR. TILL BASED ON WHAT YOU WERE TELLING ME ACTUALLY HAD A STRATEGICALLY THOUGHT ABOUT BOTH DEFENSES AND CHOSE THIS ONE OR THIS SORT OF FELL OUT BECAUSE HE DIDN'T PREPARE ADEQUATELY.

>> NO.

IF I HAVE -- MY LAST FEW MINUTES TO CLARIFY, QUENTIN HAD A PLAN. HE THOUGHT THERE WAS NO WAY THEY SHOULD GO TO TRIAL.

HE WANTED TO GET A TRIAL.

>> AND THAT'S TRUE.

>> TRUE.

CONTEMPORANEOUS TO THAT, THIS IS A MAN WHO HAS HAD 75 CAPITAL CASES.

HE HAS PRACTICED CRIMINAL DEFENSE FOR 43 YEARS.

HE TEACHES NEW LAWYERS HOW TO REPRESENT PEOPLE IN DEATH CASES. AND HE'S ALSO -- HE WENT TO ONE OF THE -- HE WAS INVOLVED IN THE

LIFE AFTER DEATH WHEN IT FIRST STARTED.
SO THIS IS A MAN WHO UNDERSTANDS THE PROCESS.
HE UNDERSTANDS WHAT YOU HAVE TO DO.
HE SAID IF THIS HAD BEEN IN TRIAL BUT I DIDN'T THINK I WAS GOING TO GET -- I WAS NOT GOING TO GET A DEAL, I WOULD HAVE STARTED THE DAY I WAS APPOINTED TO WORK ON THE PENALTY PHASE, TOO.
BUT HE SAID I DID START.
HE DID START.
BUT HE PUT IT ASIDE BECAUSE HIS EMPHASIS WAS TO TRY TO FIND OUT.
THIS IS A MAN WHO WENT AND LISTENED TO EVERY WORD THAT OCCURRED DURING THE JACKSON TRIAL, BECAUSE THAT WAS THE FIRST TRIAL.
SO HE KNEW WHAT THE STATE WAS GOING TO GO FOR.
HE KNEW WHAT HE HAD TO FACE.
HE ALSO KNEW HOW TO SANITIZE THIS WOMAN'S CASE AND IN FACT HE DID.
AND SO WHEN IT CAME TIME OF GETTING CLOSER TO TRIAL, HE REALIZED HE NEEDED AN ASSISTANT.
SO WHEN MR. MASORI CAME IN, THEY DISCUSSED IT AND MR. MASORI AGREED THIS WAS A GOOD PLAN FOR THE CIRCUMSTANCES OF THIS CASE.
HE WENT UP THERE AND AGAIN TALKED TO THE FAMILY AND THE RECORD REFLECTS ALL THAT.
HE AGAIN PREPARED A HUGE POWER POINT THAT HE PRESENTED.
IT WAS AN ACCOUNTING OF HER WHOLE LIFE.
IT WAS THE GOOD AND ALL THE PEOPLE ARE STILL SAYING ABOUT HOW, OH, SHE WAS IN MY WEDDING, FRIENDS AND NEIGHBORS THAT THEY WERE CALLED TO TESTIFY.
THEY ALL SAID THAT.
THIS WAS A BIG PRESENTATION.
AND, YES, HE ALSO DID THE SMART

THING.

HE PUT ON DR. MILLER BECAUSE HE WAS CONCERNED THAT DR. MILLER, THERE MAY BE SOME MENTAL PROBLEMS WITH THIS WOMAN.

HOW COULD SOMEBODY JUST CHANGE LIKE THIS.

AND DR. MILLER TOLD US SHE HAD A LOW SELF-ESTEEM, HAD A BIRTHMARK UNDER HER EYE AND THAT WAS A PROBLEM FOR HER.

IT WASN'T THE CHILDHOOD THAT WAS BEING PORTRAYED AND IT WASN'T DEFICIENT IN PREPARATION FOR STRICT ANALYSIS.

THANK YOU.

>> COUNSEL, YOU GOT TWO MINUTES.

>> VERY FAST, WE TALKED ABOUT WHAT DR. MILLER REVIEWED, HIS REPORT.

IT SAYS HE TALKED ABOUT THE ARREST, BOOKING REPORT.

THE INFORMATION FILED, WHICH I'M ASSUMING IS THE INDICTMENT, WRITTEN HISTORICAL INFORMATION PROVIDED BY THE CLIENT, SYNOPSIS OF SOME FACT-FINDING DETECTIVE AND FOR TWO WEEKS IN CHARLESTON IN DECEMBER OF 2005.

HE DIDN'T ANY SCHOOL RECORDS. AS FOR QUENTIN TILL, THESE ARE HIS WORDS.

IT'S 19 DAYS BEFORE TRIAL.

HE'S IN FRONT OF JUDGE WEATHERBY.

AND HE SAYS ABSOLUTELY NOTHING HAS BEEN DONE AS FAR AS THE PENALTY PHASE.

NOTHING HAS BEEN DONE.

I'VE GOT NEW COUNSEL ONBOARD WHO'S JUST BEGINNING TO WORK ON IT.

EVERYTHING HAS BEEN DONE SO FAR IS ABSOLUTELY CONTRARY TO THE REQUIRED LIFE DEATH.

IT TELLS YOU YOU SHOULD HAVE BEEN CONCURRENT WITH THE GUILT PHASE.

AND HE GOES ON.

LATER ON HE SAYS I DID REQUEST

AN EXAMINATION FROM -- THIS IS AT TESTIMONY, FROM DR. MILLER, BUT I REALLY WASN'T EXPECTING ANYTHING MENTAL HEALTH-WISE. HE WASN'T LOOKING FOR IT. HE SAYS I DIDN'T SEE ANYTHING LATER ON.

MASORI DID THE PENALTY PHASE. DURING THAT INTERIM IN BETWEEN, MASORI'S WORKING ON THE PENALTY PHASE AND PUTTING TOGETHER HIS POWER POINT.

DURING THIS TIME MR. TILL'S INVOLVED IN A 2.5 FEDERAL TRIAL. MR. MASORI IS RUNNING THIS ON HIS OWN.

MR. TILL WAS ASKED, WHAT ABOUT MR. MASORI IN THIS INTERIM SAYING I NEED A MITIGATION SPECIALIST?

HE FILED THAT MOTION.

IT WAS NEVER HEARD.

IT WAS NEVER ANSWERED.

THEY DIDN'T ASK FOR A HEARING.

AND MR. MASORI SAYS -- WHEN ASKED MR. TILL ABOUT IT, WHY DID MR. MASORI ASK FOR A LITIGATION SPECIALIST IF YOU'RE WORKING THIS CASE?

I HAVE NO IDEA.

IT'S HIS MOTION.

THAT'S IN THE TRANSCRIPT.

SO HE'S INVOLVED, BUT HE'S NOT INVOLVED.

AND THEN AS FOR THESE OTHER WITNESSES, THE TESTIMONY OF THIS AUNT TERRY, SHE SAID I TESTIFIED THE FIRST TIME.

I SAW THAT POWER POINT.

IT WASN'T TRUE.

THE LIFE PORTRAYED WAS A LIE. SHE WAS SUICIDAL, DYSFUNCTIONAL AND SUFFERED FROM PSYCHIATRIC ABUSE.

NO ONE GOT ANY OF THAT INFORMATION TO DR. MILLER.

NO ONE REALLY GOT THAT INFORMATION TO MR. TILL.

IT WAS MR. MASORI THAT WAS DOING THE PENALTY PHASE INVESTIGATION.

MR. TILL REALLY WASN'T INVOLVED
IN IT.

THEY WERE DOING THE BEST THEY
COULD FOR SURE, BUT IF THIS
THING HAD BEEN DONE EARLIER IN A
TIMELY WAY, WE WOULDN'T BE
HAVING THIS DISCUSSION.

>> THANK YOU FOR YOUR ARGUMENTS.
COURT'S IN RECESS.

>> ALL RISE.