

>> ALL RISE!  
SUPREME COURT OF FLORIDA IS NOW  
IN SESSION.  
GOD SAVE THE UNITED STATES,  
GREAT STATE OF FLORIDA AND THIS  
HONORABLE COURT.  
LADIES AND GENTLEMEN, SUPREME  
COURT OF FLORIDA.  
PLEASE BE SEATED.  
GOOD MORNING, EVERYBODY.  
>> WELCOME TO THE FLORIDA  
SUPREME COURT.  
BEFORE I PROCEED, WE HAVE SOME  
GUESTS WATCHING THE PROCEEDINGS.  
I WOULD LIKE TO INTRODUCE THE  
LEGAL STUDIES PROGRAM FOR THE  
UNIVERSITY OF WEST FLORIDA.  
ARE YOU HERE?  
WELCOME TO THE COURT.  
HOPE YOU ENJOYED THE PROGRAM  
THIS MORNING.  
ALSO HAVE THE HOUSE MESSENGERS.  
ARE YOU HERE?  
THEY ARE MESSENGERING.  
>> THEY HAD ENOUGH YESTERDAY.  
OKAY, LET'S SEE.  
I HAVE BEEN TOLD THE INTERNS  
FROM THE UNIVERSITY OF SOUTH  
FLORIDA ARE PRESENT.  
THEY ARE INTERNING.  
THANK YOU SO MUCH.  
THE FIRST CASE ON THE DOCKET IS  
THE CASE OF CRIMINAL JURY  
INSTRUCTIONS AND CAPITAL CASES.  
>> GOOD MORNING.  
MAY IT PLEASE THE COURT.  
ON BEHALF OF THE FLORIDA CENTER  
FOR CAPITAL REPRESENTATION, I  
WOULD LIKE TO FIRST ADDRESS THE  
INITIAL QUESTION POSED BY THE  
COURT IN ITS RECENT ORDER,  
WHETHER IT BE JERRY, JURY,  
INCLUDING SPECIFIC  
INTERROGATORIES BY MITIGATING  
CIRCUMSTANCES.  
WE KNOW FROM LOCKETT AND  
HITCHCOCK, HEARST AND PERRY,  
MITIGATING CIRCUMSTANCES ARE AN  
INTEGRAL COMPONENT OF THE DEATH  
PENALTY PROCESS.

WE KNOW FROM THE SENTENCING STATUTE IF A JURY RETURNED A VERDICT OF LIFE THAT IS THE END OF THE PROCESS.

THE DEFENDANT IS SENTENCED TO LIFE BUT IF THE JURY RETURNS A DEATH VERDICT, THEN THE TRIAL JUDGE HAS THE DIFFICULT DECISION WHETHER TO ADHERE TO THAT VERDICT OR WHETHER TO INSTEAD IMPOSE A SENTENCE OF LIFE.

I DON'T SEE HOW INTERROGATORIES ON MITIGATING RISK COULD NOT BE IMPORTANT AND BENEFICIAL FOR THE TRIAL JUDGE.

>> IF A VERDICT OF DEATH IS ENTERED THE TRIAL JUDGE HAVE TO ENTER AN ORDER.

THE TRIAL JUDGE STILL HAS TO GO THROUGH THE PROCESS OF DELINEATING THE MITIGATING CIRCUMSTANCES.

IS THAT CORRECT?

>> THAT IS MY READING OF THE STATUTE AS WELL.

>> THE JURY IS INSTRUCTED WITH RESPECT TO MITIGATING CIRCUMSTANCES, WHAT EACH INDIVIDUAL JURY PRESUMES TO BE MITIGATING.

THE TRIAL JUDGE, 11 PEOPLE THOUGHT THEY WERE NOT MITIGATING AND ONE PERSON THOUGHT THAT IT WAS OR TWO THOUGHT THAT IT WAS.

I DON'T UNDERSTAND YOUR THEORY THAT THAT IS SOMEHOW HELPFUL. SUPPOSE THE JURY DOESN'T FIND MITIGATED, THE TRIAL JUDGE BELIEVES ARE APPROPRIATE TO BE CONSIDERED OR FIND SOME MITIGATED IS BUT NOT MORE MITIGATED IS.

>> WHEN IT COMES TO SENTENCING, ASKING THE SENTENCE OR TO DO A PERSONAL INDIVIDUALIZED WAY, ALMOST A JUDGMENT CALL, WHAT IS IMPORTANT AT THAT POINT WHAT THAT INDIVIDUAL BELIEVES TO BE MITIGATING.

THE FACT THAT ANOTHER JUDGE MAY

DISAGREE OR ANOTHER PERSON MAY DISAGREE, A JURY MAY FIND SOMETHING NOT MITIGATING 12-0 AND THE JUDGE COULD BELIEVE THAT IT WAS AND IF THEY EXERCISE JUDGMENT, MAKING THE FINAL DECISION.

>> IF YOU KNOW IT IS CONSIDERED TO BE MITIGATING, JUST TO FOLLOW THE JURY'S DEATH VERDICT.

>> ARE YOU SUGGESTING IF YOU HAVE TO DELINEATE MITIGATED THIS, YOU HAVE TO DELINEATE THE NUMBER OF JURORS WHO AGREE TO THAT OR DIDN'T AGREE TO THAT.

>> THAT IS GENERALLY DONE IN THE FEDERAL SYSTEM.

YOU DON'T HAVE TO SAY HOW MANY DON'T, YOU JUST SAY THE LITIGATOR IS FOUND AND HOW MANY JURORS FOUND IT.

>> JURY INSTRUCTIONS FOR FEDERAL COURTS USED IN COMING UP WITH THE INTERIM, THE LIST OF MITIGATING CIRCUMSTANCES, SPECIFICALLY HAVE THE VOTE ON NEAR DEATH PENALTY CASES.

>> THAT IS CORRECT.

>> DO YOU ADVOCATE FOR THE VOTE? THAT THE VOTE BE SHOWN?

>> YES.

>> WHAT ABOUT WHETHER THERE SHOULD BE A DIFFERENCE BETWEEN STATUTORY AND NONSTATUTORY?

>> THERE SHOULD BE NO DIFFERENCE BUT IF YOU WANT TO CALL THEM STATUTORY THE CATCH ALL IS INCLUDED IN THE STATUTE.

YOU COULD SAY THAT IS A STATUTORY MITIGATE OR.

>> FOR ALL THE TIME WE WERE LOOKING AT WHETHER THERE SHOULD BE SPECIAL INTERROGATORIES THERE WAS THE ARGUMENT THE CATCH ALL SHOULD NOT BE A CATCH ALL, IT SHOULD BE LISTED.

IS THE WAY IT IS DONE IN FEDERAL COURT, IF SOMEBODY SAYS LOW IQ THAT IS THE LITIGATOR, THEY ARE NOT INTELLECTUALLY DISABLED,

WOULD THAT BE SPECIFICALLY LISTED?

>> YES.

>> SOMETIMES DEFENDANTS GO FILES TO 40 MITIGATED, THEY HAD DIABETES WHEN THEY WERE 13.

>> THEY DO THAT AT THEIR PERIL CERTAINLY.

>> EVERYONE WOULD HAVE TO BE LISTED THAT THE DEFENDANT ARGUES THEY HAD EVIDENCE OF?

>> YES.

ANY MITIGATING CIRCUMSTANCE AND IF IT WASN'T MITIGATING TO THE JURY IT WOULD NOT BE FOUND BY THE TRIAL JUDGE HAS TO DECIDE WHETHER TO FOLLOW THE JURY OR NOT.

>> IF IT IS NOT UNANIMOUS, THAT IS THE END OF THE STORY, CORRECT?

>> I AM TALKING ABOUT A UNANIMOUS DEATH VERDICT, THE ONLY TIME THE TRIAL JUDGE HAS TO MAKE A DECISION, BECAUSE IT IS IMPOSED.

I WANT TO TALK ABOUT THE APPELLATE REVIEW AND HOW SPECIFIC JURY INTERROGATORIES.

>> YOU ARE OUT OF TIME.

>> MAY IT PLEASE THE COURT.

LET ME FOLLOW UP ON THE POINT MISSED GOTTLIEB WAS MAKING, I WANT TO TALK ABOUT BEYOND A REASONABLE DOUBT STANDARD.

LET ME START WHERE WE LEFT OFF.

>> SPECIFICALLY.

>> THE SIX CAPITAL CASES TRIED IN FLORIDA.

I HAVE THE NAMES I CAN SUBMIT AFTER THE ARGUMENT, ALL HAD SPECIFIC JURY INTERROGATORIES AS TO MITIGATING FACTORS.

I THINK THE CASE THE COURT MAY WANT TO LOOK AT.

>> WHAT EXTENT ARE YOU TALKING ABOUT?

>> THE JURY WROTE FINDINGS ON THE VERDICT FORM WITH THE VOTE AS TO THE MITIGATING FACTORS.

>> THERE WAS STATUTORY AND  
NONSTATUTORY?

>> IN THE FEDERAL SYSTEM YOU  
HAVE A WIDE BIRTH OF MITIGATING  
FACTORS SO THEY ARE NONSTATUTORY  
VERSUS NONSTATUTORY,  
RECOMMENDATION IS THE LANGUAGE  
BE OMITTED.

IT IS A VESTIGE FROM A BYGONE  
ERA AND MOST PLACES NATIONALLY  
THE DISTINCTION IS NOT MADE  
ANYMORE IN JURY INSTRUCTIONS.  
IT DOESN'T HELP IN THE VERDICT  
FORM.

THIS UNDERLYING IDEA THAT  
STATUTORY MITIGATE OR IS ARE  
MORE IMPORTANT.

THEY ARE NOT.

MENTAL RETARDATION HAS BEEN A  
SIGNIFICANT MITIGATED FOR MANY  
YEARS IT WAS NEVER LISTED IN THE  
STATUTE IN FLORIDA.

THE STATUTORY VERSUS  
NONSTATUTORY LANGUAGE BE OMITTED  
AND NON-MITIGATING FACTORS BE  
LIMITED THE WAY A TRIAL JUDGE  
WOULD IN ANY CIVIL CASE WHERE  
PARTIES CREATE JURY  
INSTRUCTIONS, LIST MITIGATING  
FACTORS.

AND MANY OF THEM THE STATUTORY  
WOULD BE RELIED ON AND THOSE BE  
PROVIDED SO THE JURY CAN MAKE  
FINDINGS THAT ARE RECORDED.  
HELPFUL CASES UNITED STATES  
VERSUS JOHNSON.

I WILL SUBMIT THE CITATION WHEN  
WE ARE DONE.

IT IS THE SEVENTH CIRCUIT CASE,  
THE JURY SHOULD NOT ONLY MAKE  
SPECIFIC FINDINGS ON MITIGATED  
IS BUT ALSO THEY SHOULD BE GIVEN  
THE OPTION OF LISTING ADDITIONAL  
MEDICATOR'S AN INDIVIDUAL JURY  
BELIEVES SHOULD BE CONSIDERED  
EVEN IF THE LAWYERS HAVEN'T  
ARGUED THAT.

>> YOU MENTIONED 6 CASES AND YOU  
WERE ABOUT TO SAY ONE WAS  
HELPFUL.

WERE THOSE THE CASES TRIED IN FLORIDA?

>> I WILL SUBMIT THE VERDICT FORM SO YOU CAN LOOK AT THEM WHEN WE ARE DONE.

THE POINT IS HAVING JURY FINDINGS ON MITIGATING FACTORS IN MY EXPERIENCE IS REMARKABLY HELPFUL TO THE TRIAL COURT. IF THE JURY RECOMMENDS DEATH THE TRIAL JUDGE HAS TO MAKE A FINDING AS TO WHETHER DEATH IS THE PROPER PENALTY.

HAVING AN UNDERSTANDING WHAT THE JURY RELIED UPON AS THE VOICE OF THE COMMUNITY IS HELPFUL TO THE TRIAL JUDGE IN MAKING THE ULTIMATE DETERMINATION.

>> THE FACULTY, THE COMMITTEE THAT IS COMPOSED AND THE COMMITTEE PARTLY JUDGES THAT IT WOULD NOT BE HELPFUL.

WHAT IS YOUR BASIS FOR SAYING THIS WOULD BE HELPFUL WHEN ALL THE JUDGES THAT GAVE US INPUT INDICATED OTHERWISE?

>> IRONICALLY WE JUST HAD A CONVERSATION HOW ON MOST ISSUES WE ARE IN AGREEMENT.

ON THIS ONE THE SLIGHT DISAGREEMENT, MY VIEW IS A TRIAL JUDGE WHO HAS TO MAKE A DETERMINATION WHETHER TO FOLLOW THE JURY'S RECOMMENDATION OF DEATH WOULD BE HELPED BY HAVING, QUOTE, THE VOICE OF THE COMMUNITY IS EXPRESSED IN JURY FINDINGS TO MITIGATING FACTORS AND WOULD HELP YOU IN YOUR APPELLATE REVIEW.

WHEN YOU CONDUCT A HARMLESS ERROR ANALYSIS YOU FISH THROUGH THE RECORD TO FIGURE OUT WHAT WAS GOING ON IN THIS PENALTY PHASE.

DID IT MATTER IF SOMEBODY OVERSTEPPED THE BOUNDS IN A PROSECUTORIAL ARGUMENT BY HYPOTHETICAL EXAMPLE.

WHEN YOU MAKE THAT HARMLESS

ERROR ASSESSMENT ON APPEAL IT WOULD HELP TO KNOW THIS PARTICULAR JURY THOUGHT A VERSUS B AS TO WHAT WAS MITIGATED AT THIS CASE.

YOU ARE NOT REQUIRED TO HAVE JURY FINDINGS BUT I THINK THE PROCESS IS MORE HELPFUL TO THE REVIEWING JUDGE AND ON APPEAL IF YOU HAVE IT WHICH IS THE THEORY IN THE FEDERAL SYSTEM.

ONE MINUTE LEFT, LET ME TURN TO BEYOND A REASONABLE DOUBT STANDARD AND UNANIMITY REQUIREMENT.

AND THE VERDICT FORMS BE, DND AS CURRENTLY DRAFTED BEYOND A REASONABLE DOUBT LANGUAGE IS NOT THERE FOR PURPOSES OF THE SUFFICIENCY DETERMINATION, FINDING WHETHER AGGRAVATION OUTWEIGHS MITIGATION OR THE FINDING AS TO WHETHER DEATH IS APPROPRIATE ULTIMATELY.

IN THE PROPOSED INSTRUCTIONS, THE JURY INSTRUCTION COMMITTEE PROVIDED PAGES 21 THROUGH 23, 3.1 TO SEE OF THE VERDICT FORM PROPOSED BY THE COMMITTEE, BEYOND A REASONABLE DOUBT STANDARD IS INCLUDED IN EACH OF THE FINDINGS REQUIRED BY HEARST AND PERRY AND MY STRONGEST RECOMMENDATION WOULD BE TO AVOID CONFUSION, TO BE CONSISTENT WITH HEARST, WITH PARRY AND THE UNITED STATES SUPREME COURT SIXTH AMENDMENT LAW EACH OF THOSE FINDINGS SHOULD HAVE BOTH UNANIMITY REQUIREMENT AND BEYOND A REASONABLE DOUBT STANDARD.

OUR RECOMMENDATION WOULD BE THAT YOU TAKE B, D AND E OF THE CURRENT PROPOSED INSTRUCTIONS, COMBINE IT WITH PAGES 21 THROUGH 22, REDRAFTING THE INSTRUCTION AND INCLUDE THE UNANIMITY AND BEYOND A REASONABLE DOUBT STANDARD AS TO EACH OF THOSE FINDINGS SO THE FINDING WOULD BE

WHY HAVE EXAMPLE NUMBER 3,  
AGGRAVATION OUTWEIGHS MITIGATION  
BEYOND A REASONABLE DOUBT FOUND  
UNANIMOUSLY BY THE JURY.  
THANK YOU VERY MUCH, YOUR  
HONORS.

>> GOOD MORNING.

IF IT PLEASES THE COURT, MY NAME  
IS PETER MILLS ON BEHALF OF THE  
FLORIDA PUBLIC DEFENDER  
ASSOCIATION.

I WAS GOING TO ADDRESS THE FIRST  
QUESTION THE COURT HAD AND I  
TEND TO AGREE WITH JUSTICE  
LAWSON THAT THE INTERROGATORIES  
WOULD CAUSE A PROBLEM.

IT WOULD BE CONFUSING FOR THE  
JUDGES BECAUSE THEY WOULD NOT  
KNOW IF THEY ARE BOUND OR  
PRECLUDED BY THE FINDINGS OF THE  
JURORS OR WHETHER THEY WERE  
MERELY INFLUENCED BY IT.

THE FEDERAL GOVERNMENT DOES USE  
-- I AM SORRY.

THE FEDERAL GOVERNMENT DOES USE  
FINDINGS BUT THEY GIVE AN  
OPTION.

IT IS NOT REQUIRED.

THERE IS AN OPTION IN THE EIGHTH  
CIRCUIT, THE STANDARD  
INSTRUCTIONS WHERE JURORS CROSS  
OUT THE ENTIRE PAGE AND DON'T  
LIST ANY FINDING FOR MITIGATION  
AND IT IS NOT ALWAYS REQUIRED IN  
THE FEDERAL SYSTEM EITHER.

WITH REGARD TO QUESTIONS.

>> NO ONE EXPERIENCED THAT?

>> I DON'T KNOW, YOUR HONOR.

THAT IS THE OPTION IN  
INSTRUCTIONS THE JURORS ARE  
TOLD.

THEY ARE TOLD TO CROSS IT OUT.

>> COMING FROM A SIMPLE  
BACKGROUND, WE HAD INTERROGATORY  
VERDICTS WHEN THE LEGISLATURE  
MANDATED PAIN AND SUFFERING IN  
SEVERAL CASES, THAT WAS ALL  
FILLED OUT AND I ALWAYS ADHERED  
TO THE THOUGHT, THE MORE  
SPECIFIC, THE MORE INFORMED THE



VERDICT IS FOR THE JURORS AS WELL AS THE JUDGE.  
FOR THE PUBLIC DEFENDERS THROUGHOUT THE STATE, THEY PREFER NOT TO HAVE FINDINGS OF MITIGATION.  
>> THE WAY THE FORMS ARE DRAFTED YES.  
>> IS THIS SOMETHING IN A PARTICULAR CASE IT SEEMS THE MITIGATION FINDINGS BENEFIT THE DEFENDANT, CERTAINLY --  
>> IT SHOULD BE AN OPTION.  
>> WHAT IF THE STATE DOESN'T WANT IT?  
>> SINCE IT IS THE DEFENSE MITIGATION IT SHOULD BE THE REQUEST THEY MAKE.  
IT SHOULD BE GIVEN RESPECT.  
>> HAS ANYONE THOUGHT OF THIS? THE DEFENDANT'S BURDEN OF PROOF, HAS ANYONE THOUGHT ABOUT THE CASES WHERE THE DEFENDANT WAIVED MITIGATION, LOOKING AT THE JUDGES HERE, USUALLY THE JUDGES RESPONSIBILITY TO FIND MITIGATION ANYWHERE IN THE RECORD HOW THAT WOULD WORK OR IS THAT FOR ANOTHER DAY?  
>> THAT IS FOR ANOTHER DAY, NOT A QUESTION I WAS PREPARED TO ANSWER.  
>> THINKING ABOUT INEFFECTIVE ASSISTANCE, WAVING THE OPTION. EVEN WHEN THEY CHOOSE TO THERE WILL BE ARGUMENTS.  
THAT WAS NOT THE RIGHT THING TO DO.  
>> IF YOU USE THE INTERROGATORIES, ONE THING I WOULD MAKE CLEAR IS THE FEDERAL SYSTEM ALLOWS JURORS TO MAKE FINDINGS NO ONE ARGUED.  
THE JURORS MIGHT FIND MITIGATION THAT LAWYERS DIDN'T ARGUE THAT WASN'T LISTED IN THE INSTRUCTIONS AND THAT SHOULD BE AN OPTION TOO AND THAT IS AN OPTION IN THE FEDERAL SYSTEM.  
>> I AM STRUGGLING, IF THERE IS

NO LISTING OF THE MITIGATION,  
WHEN A TRIAL JUDGE IS PREPARING  
THE ACTUAL SENTENCING ORDER, WE  
ARE SEEING THAT THE TRIAL JUDGE  
IS FREE TO FIND ANY MITIGATION  
HE OR SHE BELIEVES IS  
APPROPRIATE.

>> THERE SEEMS TO BE SOME  
PROBLEM AS FAR AS HOW THE TRIAL  
JUDGE IS VIEWING WHAT THE JURY  
DID IF THE TRIAL JUDGE HAS NO  
IDEA WHAT THE JURY DID.

>> THAT IS THE CONFUSION I THINK  
WOULD BECAUSE AND I UNDERSTAND  
WHAT YOU ARE TALKING ABOUT.

IF ONE OR TWO OR THREE JURORS  
MAKE A FINDING OF MITIGATION IS  
THE JUDGE BOUND BY THAT FINDING?

>> IF WE SAY NO, THEY HAVE THEIR  
OWN INDEPENDENT JUDGMENT BUT  
THEY CAN BE GUIDED AND HELPED BY  
WHAT THE JURY FOUND, OF COURSE  
THEY WOULDN'T BE BOUND, THEY  
WOULD BE BOUND ON THE  
AGGRAVATING FACTORS.

>> YES.

>> AS TO MITIGATION, A STRONG  
MITIGATION AS TO EMOTIONAL  
DISTRESS.

THE JURY DIDN'T FIND IT,  
CONSIDER THAT TO BE HELPFUL IN  
DECIDING THAT ON THEIR OWN.

>> I WOULD THINK THAT IS THE  
CONFUSING PART.

IF IT IS ONLY A FEW THAT FOUND  
IT.

>> THEN THEY WOULD KNOW, THEY  
WOULD THINK THAT WAS WHY THERE  
WAS, WHY IT WAS A UNANIMOUS  
VERDICT.

THESE ARE CASES WITH UNANIMOUS  
VERDICT.

THE JUDGE HAS TO DECIDE WHETHER  
THEY THEMSELVES WOULD FIND  
MITIGATION THAT ISN'T FOUND BY  
THE JURY.

YOU ARE ALMOST OUT OF TIME.

I'M HAVING TROUBLE.

>> I WOULD WANT IT MADE CLEAR TO  
THE JUDGES THAT THEY ARE NOT

BOUND OR PRECLUDED BY THE FINDINGS.

>> EVEN IF IT IS NOT CONFUSING, WE CAN TELL TRIAL JUDGES ARE NOT BOUND BY THE MITIGATION FINDINGS, WOULDN'T IT BECOME LOCATING TO THE TRIAL JUDGE? IN ITS WRITTEN ORDER, WHICH HAS TO DO WITH ALL THESE CASES, HAS TO DEAL WITH ALL THE AGGRAVATING AND MITIGATING CIRCUMSTANCES THE TRIAL JUDGE FINDS, THE TRIAL JUDGE WOULD HAVE TO SAY THIS MITIGATE ARE ONE JURY FOUND AND EVEN THOUGH I AGREE WITH THE 11 AND HERE IS WHY AND EXPLAIN WHY I FEEL COMPELLED TO EXPLAIN WHY THEY ARE REJECTING A FINDING OF ONE OR TWO JURORS, FEELS LIKE IT WOULD COMPLICATE THE PROCESS IN AN UNHELPFUL WAY.

>> THANK YOU FOR YOUR TIME.  
GOOD MORNING.

I AM JIM HANKINSON IN THE SECOND CIRCUIT REPRESENTING THE FACULTY OF CAPITAL CASES.

WE SUBMITTED OUR COMMENTS, VERY ARTICULATE COMMENTS.

YOU ARE PROBABLY BETTER TO RELY ON HER WRITING.

WE APPRECIATE YOU ALLOWING US TO BE HEARD.

I AM NOT SURE HOW HELPFUL I WILL BE.

OUR MOST PROBLEMATIC IS WHAT WE HAVE BEEN DISCUSSING, MITIGATING CIRCUMSTANCES.

WHAT WE ARE HERE TO DO IS ANSWER ANY QUESTIONS YOU HAVE.

IF THERE ARE QUESTIONS BEYOND THAT DISCUSSION I WOULD BE INTERESTED IN ANSWERING ANY QUESTIONS YOU HAVE.

>> WHETHER THEY SHOULD BE LISTED AND PUT THE JURY'S VOTE AS TO THOSE MITIGATED THIS IS OF INTEREST TO ME AND I'M INTERESTED IN KNOWING WHY JUDGES BELIEVE IT WOULD NOT BE HELPFUL.

>> THAT LEADS ME WHERE I WAS

GOING TO GO ANYWAY.  
IT IS OUR POSITION, MORE  
CONFUSING THAN HELPFUL.  
WHEN A JURY ANSWERS AND  
INTERROGATORY, ANSWERING YES OR  
NO, THEY DON'T EXPLAIN WHAT THEY  
MEAN.

LOOK AT THE ONE FEDERAL CASE I  
CITED AS AN EXAMPLE.

THE DEFENDANT WAS NOT 18, THE  
DEFENDANT WAS 18 SO THE JURY'S  
THINKING WAS SOMETHING OTHER  
THAN HIS CHRONOLOGICAL AGE.

THAT IS NOT VERY HELPFUL.

I DO THINK THERE WOULD BE A RISK  
AS A TRIAL JUDGE, TO SIMPLY  
ACCEPT THE FINDINGS OF THE JURY  
ON MITIGATION AND THAT IS A  
DANGER AND THE STATUTE  
SPECIFICALLY SAYS THE TRIAL  
JUDGE IS TO DO OTHERWISE, THE  
TRIAL JUDGE'S INDEPENDENT  
DETERMINATION OF MITIGATION.

>> IS YOUR CONCERN THE  
NUMBERING, OR LISTING THEM AT  
ALL?

WOULD IT BE HELPFUL TO LIST  
THEM, WITHOUT NUMBERS?

>> WE FEEL THAT IS MORE  
CONFUSING THAN HELPFUL.

>> ANY OF IT.

>> AS I SAY, THERE IS A DANGER.  
WHAT THE STATUTE CONTEMPLATES IS  
AN INDEPENDENT DETERMINATION  
AFTER THE JURY MADE A  
RECOMMENDATION, AS TO  
MITIGATION, AGGRAVATING, MAKING  
THEIR OWN INDEPENDENT  
DETERMINATION.

THERE IS A DANGER THAT A TRIAL  
JUDGE WILL WANT TO ACCEPT WHAT  
THE JURY SAID.

>> WE HAVE HAD THAT FOR THE LAST  
50 YEARS, VERY FEW CASES WHERE A  
JUDGE IMPOSES LIFE AFTER A JURY  
VOTES FOR DEATH.

MY QUESTION IS THE IDEA THAT YOU  
HAVE JUDGE CONFUSION, YOU DO  
THIS MARVELOUS JOB, I REMEMBER  
JUDGE EATON USED TO SAY THE MORE

INFORMATION IN THE VERDICT FORM,  
THE MORE INFORMED THE  
DECISIONMAKING.

IF A JURY FINDS -- SOME OF THESE  
STATUTORY MITIGATIONS WE SEE  
MORE IMPORTANT AND  
PROPORTIONALITY.

THE CRIME OCCURRED UNDER  
EMOTIONAL DURESS OR THE TIME OF  
THE CRIME.

HOW TO THE JUDGE, HAVING THAT  
INFORMATION AND TOLD THEY ARE  
NOT BOUND, HOW DOES THAT ADD TO  
THE JUDGE WHO DOES NOT HAVE THE  
BENEFIT AND IS THERE, THEY LIST  
THE AGGRAVATING FACTORS WITH THE  
STATE PROPOSED AND SOME HAVE  
MITIGATION THAT IS LESS  
IMPORTANT, THAT IS WHAT MY  
CONCERN IS, THERE IS A DAY  
MUNITION BY NOT HAVING A JURY  
VOTE IN THEIR.

>> LET ME RESPOND TO YOUR LAST  
COMMENT.

IT IS CONFUSING BECAUSE WE DON'T  
KNOW WHAT THE JURY MEANS, 60  
MITIGATING CIRCUMSTANCES LISTED  
IN THE JURY FINDS 50 OF THEM NOT  
TO BE ESTABLISHED, WHAT DOES  
THAT TELL US?

THERE IS A DANGER THAT  
DIMINISHES MITIGATION, THERE IS  
A MORE SERIOUS DANGER THAT ONE  
OR TWO JURORS THINK THIS IS  
MITIGATION, DECIDES THE REST OF  
THE JURY DISAGREES WITH ME,  
IGNORE THE INSTRUCTION ANYONE  
CAN CONSIDER MITIGATION.

>> BY NOT HAVING A VOTE ON  
MITIGATION.

>> PUTTING THE ACTUAL NUMBER  
DOWN.

THAT IS AN ARGUMENT FOR JUST  
LEAVING WHAT YOU FOUND.

>> A VOTE ON MITIGATION, 10 OF  
US FIND IT IS NOT MITIGATING TO  
FIND IT IS.

SOME QUELLING INFLUENCE ON THE  
TWO IN THE VAST MINORITY WHICH  
WOULD BE INCONSISTENT, ANY OF

THEM CAN CONSIDER ANY MITIGATION THEY DESIRE, IF THEY DON'T FIND MITIGATION THEY DON'T HAVE TO VOTE FOR THE DEATH PENALTY.

THERE IS THAT CONCERN, THEY DON'T FIND MITIGATION, WE MUST VOTE FOR THE DEATH PENALTY.

>> ARE THERE ANY OTHER ISSUES THAT YOU SEE THAT THE PROPOSED JURY INSTRUCTIONS ARE NOT PURSUANT TO THE STATUTE.

OR DO THEY TRACK THE STATUTE?

>> WE GET INTO SEMANTICS, THE REST OF THE INSTRUCTIONS TRACK THE STATUTE AND PULMONARY INSTRUCTIONS WE SUGGEST ARE THE 5-STEP VERSUS A 6 STEP PROCESS AND THE ONLY OTHER THING WE COULD COMMENT ON, AND AS A COMMITTEE, ON THE LAST QUESTION, WE NEED TO MAKE SURE WE ARE NOT INCONSISTENT BETWEEN HOW MANY STEPS IT IS IT SEEMS THAT THIS TIME THERE IS AN INCONSISTENCY WITH INSTRUCTIONS AND PRELIMINARY INSTRUCTIONS AND QUESTION IN QUESTION 4.

THEY NEED TO BE CONSISTENT.

>> DID THE FACULTY HAVE A GENERAL VIEW OF THE ALTERNATIVE INSTRUCTIONS PROPOSED BY THE COMMITTEE?

DID YOU LOOK AT THOSE?

>> WE DIDN'T TAKE A VOTE OF ANY FORM.

WE AGREED WE WOULD ONLY GET INTO THINGS EVERYBODY AGREED ON.

EVERYONE AGREED ON THE ISSUES THAT I PROPOSED.

WE DID NOT TAKE UP WHAT WE THINK OF JURY INSTRUCTIONS COMMITTEES ON PROPOSAL.

I HAVE GONE WAY OVER MY TIME. THANK YOU, SIR.

>> MAY IT PLEASE THE COURT, CHIEF JUSTICES, MY NAME IS JAMES COLAW, CIRCUIT JUDGE IN THE EIGHTH JUDICIAL CIRCUIT AND I HAVE THE PLEASURE OF HANDLING CAPITAL CASES FACULTY.

I AM HERE TODAY ON BEHALF OF THE  
STANDARD JURY INSTRUCTIONS AND  
CRIMINAL CASES.

I KNOW YOU RECEIVED THE  
COMMITTEE RESPONSE.

BASED ON THE LAST QUESTION ON  
COMMITTEES PROPOSED, BEFORE THE  
DECISION IN HURST CAME DOWN.

THE COURT ADDRESSED FOUR  
QUESTIONS RELATING TO THE FIRST  
QUESTION WHICH HAS TAKEN UP MOST  
OF THE DISCUSSION CONCERNING  
WHETHER THE VERDICT SHOULD  
INCLUDE A LISTING OF MITIGATING  
CIRCUMSTANCES OR NOT.

THE COMMITTEE, WITH THE FLORIDA  
PUBLIC DEFENDERS ASSOCIATION IN  
PROSECUTING ATTORNEYS  
ASSOCIATION AGAINST HAVING SUCH  
FINDINGS, ARTICULATED ALREADY.

I DON'T KNOW THERE ARE  
ADDITIONAL QUESTIONS CONCERNING  
THE ISSUE BEFORE WE DISCUSS  
OTHER MATTERS BUT ONE COMMENT.  
THE TRIAL JUDGE NOT HAVING ANY  
IDEA WHAT THE JURY DID.

THE INSTRUCTIONS, THE JURY WILL  
FOLLOW THE INSTRUCTIONS GIVEN BY  
THE TRIAL JUDGE.

THEY ARE TOLD WHAT MITIGATION IS  
PROFFERED BY THE DEFENDANT  
BELIEVED TO BE PROVEN BY THE  
DEFENDANT CONSIDER THE  
LITIGATION AND ENRAGE IN THE  
INDIVIDUAL WEIGHING PROCESS.  
THAT PROCESS IS AN INHERENTLY  
VAGUE PROCESS.

WE DO NOT GIVE THEM A SCALE TO  
PERFORM THAT PROCESS BUT WE DO  
KNOW WHAT THEY DID IN THE  
ULTIMATE VERDICT WITHOUT THOSE  
FINDINGS.

INDIVIDUALLY ALL 12 BELIEVED  
THAT THE WEIGHT OF THE AGGRAVATE  
HER IS PROVEN BEYOND REASONABLE  
DOUBT, OUTWEIGHS THE MITIGATION.  
THE QUESTION FROM THE  
COMMITTEE'S POINT OF VIEW IS NOT  
JUDICIAL CONFUSION, BUT THE  
UTILITY AT THAT POINT BY THE

TRIAL.

>> WE HEARD FROM THREE GIVING DIFFERING VIEWS.

I THOUGHT I HEARD FROM THE FLORIDA PUBLIC DEFENDERS THAT THEY WOULD LIKE THE OPTION TO HAVE THE MITIGATION.

THAT IS THE DEFENDANT'S ADVANTAGE TO HAVE MITIGATION. SHOULD THAT BE THE DEFENDANT'S OPTION?

>> THE COMMITTEE'S VIEW IS IT SHOULD NOT BE AN OPTION, THE MITIGATING CIRCUMSTANCES.

>> YOUR COMMITTEE HAS PUBLIC DEFENDERS ON IT SO THEY AGREED WITH YOU.

>> I APOLOGIZE IF I CONFUSED THE POINT.

THE FLORIDA PUBLIC DEFENDERS ASSOCIATION'S INITIAL RESPONSE, WRITTEN RESPONSE IN COMMENTS, THEY CAME AGAINST HAVING SPECIFIC FINDINGS.

I WILL GO WITH WHAT MR. MILLS PRESENTED, WE SHOULD NOT HAVE THOSE.

ARE THERE ANY OTHER ISSUES, THEY NEED TO BE ADDRESSED IN THE INSTRUCTIONS, AN OPPORTUNITY TO ADDRESS TO GO BEYOND THE QUESTIONS YOU IDENTIFY.

>> YOU WERE TALKING ABOUT INCONSISTENCIES, ARE THOSE ADDRESSED?

>> THE COMMITTEE BELIEVES THE SECOND QUESTION ARTICULATED, INCLUDING IN 711, BEFORE AGGRAVATING FACTORS WHETHER IT SHOULD INCLUDE ONE INTO.

THE COMMITTEE UNANIMOUSLY AGREED AS WELL THAT ONE IS REPETITIOUS AND SHOULD BE REMOVED IN THE 5-STEP PROCESS.

IN THAT VEIN AS YOUR QUESTION AS THE COMMITTEE VOTED AGAIN UNANIMOUSLY, AND SHOULD NOT BE DELETED AND SHOULD REMAIN IN THE INSTRUCTIONS AND DOES PROVIDE THE JURY WITH A ROADMAP BUT



SHOULD BE MODIFIED TO BE  
CONSISTENT WITH THE 5-STEP  
PROCESS, WITH RESPECT TO THE  
COURT'S SECOND QUESTION.  
THE COMMITTEE BELIEVES IT SHOULD  
BE A 5-STEP PROCESS CONSISTENT  
THROUGHOUT ALL THE INSTRUCTIONS  
AND IN THE VERDICT FORM.

>> YOUR PROPOSED INSTRUCTIONS  
WOULD ADDRESS AND RECTIFY THE  
PERCEIVED INCONSISTENCIES.

>> THAT WOULD BE THE COMMITTEE'S  
SUGGESTION.

>> THE PERCEIVED INCONSISTENCY,  
THE ELIMINATION OF NUMBER 2 AND  
5?

>> THE COURT'S SECOND QUESTION  
IN THAT AREA OF JURY  
INSTRUCTIONS THERE ARE SIX  
POINTS.

ONE AND 2 THE COMMITTEE BELIEVES  
ARE UNANIMOUSLY REPETITIVE.  
ONE OF THEM IS NOT NECESSARY.

IT COULD BE REWORDED TO  
ACCURATELY REFLECT THE LAW  
PROVIDED IN THE HURST DECISION  
AND MAKE THIS A 5-STEP PROCESS.  
THE 5-STEP PROCESS DETERMINING  
WHETHER THERE HAVE BEEN  
AGGRAVATE IS PROVEN BEYOND  
REASONABLE DOUBT, WHETHER THOSE  
AGGRAVATED ARE SUFFICIENT TO  
SUPPORT, TO IMPOSE A SENTENCE OF  
DEATH, WHETHER MITIGATING  
CIRCUMSTANCES EXIST, WHETHER THE  
AGGRAVATE HER'S OUTWEIGH THE  
TOTAL WEIGHT OF MITIGATING IS  
AND WHETHER THE DEFENDANT SHOULD  
BE SENTENCED TO DEATH INSTEAD OF  
LIFE IN PRISON.

>> THESE PROPOSED INSTRUCTIONS  
TRACK WHAT THE STATUTE SAYS.

>> OTHER THAN THE SUGGESTION I  
MADE.

I'M ALMOST OUT OF TIME.  
ONE OTHER SUGGESTION, THERE IS A  
SECTION OF THE INSTRUCTIONS,  
MERGER OF AGGRAVATED PARAGRAPHS,  
THE ORIGINAL ORDER AND THE  
VICTIM IMPACT EVIDENCE PARAGRAPH

ON PAGE 86 SUGGESTING THOSE SHOULD BE RELOCATED IN THE INSTRUCTIONS TO FOLLOW INSTRUCTIONS ON AGGRAVATE TO KEEP THEM AS CLOSE AS POSSIBLE TO THE AREAS THEY APPLY TO AVOID ANY CONFUSION.

I KNOW I'M OUT OF TIME UNLESS THERE ARE QUESTIONS.

>> I HAVE ONE OTHER QUESTION. IN YOUR SENTENCING VERDICT FORM OF THE WAY YOU WORD THE LAST QUESTION, WE THE JURY UNANIMOUSLY FIND THE STATE PROVE BEYOND REASONABLE DOUBT THE APPROPRIATE SENTENCE IS DEATH. THAT IS NOT A MATTER OF PROOF IN A FINDING BUT A MATTER OF JUDGMENT.

WOULDN'T IT BE MORE PROPERLY WE THE JURY UNANIMOUSLY AGREE THE APPROPRIATE SENTENCE IS DEATH?

>> I SEE WHAT YOU'RE REFERRING TO.

THAT WAS THE COMMITTEE'S INSTRUCTION AS A RESULT OF DELIBERATIONS.

I WAS NOT PART OF THE COMMITTEE WHEN THOSE CELEBRATIONS OCCURRED.

I DON'T KNOW THAT I COULD ANSWER THAT BEYOND WHAT THE COMMITTEE PROPOSED IN THE PROPOSED INSTRUCTIONS.

>> I WANT TO TAKE A COUPLE MINUTES TO THANK KAREN GOTTLIEB FROM MIAMI REPRESENTING THE FLORIDA CENTER FOR CAPITAL REPRESENTATION AT FLORIDA UNIVERSITY AND THE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS. I WENT TO THANK PETER MILLS FROM THE FLORIDA DEFENDANT'S ASSOCIATION.

THANK YOU FOR YOUR TIME, YOU TRAVELED A LONG WAY TO GET HERE AND YOUR DEDICATION TO THIS. ON THIS SIDE OF THE COURT ROOM, JUDGE JAMES HANKINSON CHAIRS THE CRIMINAL COURT STEERING

COMMITTEE.

ON TOP OF THAT HE IS ON THE FACULTY OF THE CRIMINAL CASE, CAPITAL CASE AT ALL JUDGES IN THE STATE OF FLORIDA MUST TAKE BEFORE THEY ARE PERMITTED TO PRESIDE OVER A DEATH PENALTY CASE.

ALSO, JUDGE JAMES COLAW IS ON THE FACULTY AS WELL.

I MAKE A GUEST APPEARANCE EVERY YEAR WHEN YOU TEACH IT.

I RECOGNIZE THEM BOTH WELL AND THE DAY JOB IS THEY ARE JUDGES. THANK YOU FOR YOUR SERVICE TO THIS COURT AND HELPING US TO FIGURE OUT WHAT TO DO.