>> NEXT CASE FOR THE DAY IS PETERSON V.  STATE OF FLORIDA.
>>> YOU MAY PROCEED WHEN READY, COUNSEL.
>> MAY IT PLEASE THE COURT. MY NAME IS DAVID HENDRY, AND WITH DAVID DRISCOLL, WE REPRESENT THE APPELLANTS IN THE MATTER CHARLES PETERSON, AND I WOULD LIKE TO START BY SAYING THAT WE -- WHEN YOU HAVE A BIASED JUROR SERVE ON A CAPITAL CASE, WE CAN'T HAVE CONFIDENCE IN THE OUTCOME OF THAT CASE.
IN THIS PARTICULAR CASE, WE HAD NOT JUST ONE BIASED JUROR BUT WE HAVE FIVE BIASED JURORS WHO ACTUALLY SAT ON THIS JURY.
>> LET ME -- ON THIS, YOU'RE GOING TO WHETHER THEY'RE BIASED.
DOES THERE FIRST HAVE TO BE EFFICIENCY?
IN OTHER WORDS, THIS LAWYER THAT WAS IN EVIDENTIARY HEARING AND THE LAWYER EXPLAINED WHY HE KEPT THESE JURORS ON THE JURY.
YOU'RE SAYING THAT WAS UNREASONABLE, BUT THAT'S NOT WHAT THE TRIAL COURT FOUND.
>> WELL, YOUR HONOR, THERE IS A PARALLEL HERE BECAUSE WE HAVE TO LOOK AT TWO THINGS.
WE HAVE TO LOOK AT THESE JURORS' RESPONSES AND BECAUSE WE'RE IN POST-CONVICTION, WE HAVE TO LOOK AT TRIAL COUNSELS' EXPLANATION AS TO WHY THE JURORS SAT.
>> WAS THAT RAISED -- YOU'RE SAYING THEY SHOULD HAVE BEEN STRICKEN FOR CAUSE.
>> YES, YOUR HONOR.
>> SO, IS THAT ALSO A HABEAS ISSUE, THAT THE LAWYER WAS NOT COMPETENT BECAUSE THAT

LAWYER DIDN'T RAISE THE ISSUE
ON APPEAL?
>> NO, YOUR HONOR.
THE ISSUES HERE BETWEEN THESE
FIVE JURORS, THERE WAS NO
MOVE MADE TO EXCUSE THESE
JURORS FOR CAUSE.
SO THERE BEING NO MOVE†--
>>†SO ALL YOU HAVE TO DO ON
POST-CONVICTION IS YOU CAN
DEMONSTRATE THAT THERE'S A
BIASED JUROR, SAYING THEY
MUST HAVE BEEN INEFFECTIVE?
INEFFICIENT?
THIS IS THE FIRST TIME I'VE
SEEN SO MANY JUROR ISSUES
BEING MOVED INTO
POST-CONVICTION, WHEN WE
ORDINARILY WOULD BE LOOKING
AT THIS AS A QUESTION AS TO
WHETHER THERE WAS A CHALLENGE
RAISED AND WHETHER THE JUDGE
PROPERLY DENIED A CAUSE
CHALLENGE, RIGHT?
>> YES, YOUR HONOR.
>> THIS ONE IS -- YOU'RE
SAYING THIS LAWYER SO MISSED
THE BOAT THAT IT SHOULD HAVE
BEEN OBVIOUS TO EVERYONE
THERE THAT THESE ARE FIVE
BIASED JURORS --
>> YES, YOUR HONOR.
>> -- FOR HOWEVER MANY.
>> AT LEAST FIVE, YOUR HONOR.
THERE WAS NO MOVE MADE
WHATSOEVER†--
>>†OKAY, SO 5 OF THE 12,
YOU'RE SAYING, WERE BIASED
THAT SAT ON THIS JURY?
>> YES, YOUR HONOR.
>> NOW WHAT I WANT TO --
BECAUSE I FILED TWO WEEKS
AGO, AND I FILED THAT AS
SUPPLEMENTAL AUTHORITY.
AND WHAT I WANT TO TALK ABOUT
IS, FIRST OF ALL, WE HAVE TO
LOOK AT THE JURORS'
RESPONSES.
>> LET ME JUST -- BEFORE YOU
GET INTO THAT.

I'M A LITTLE CONFUSED ABOUT
WHAT HAPPENED WITH JUROR
THOMAS WALBOLT.
>> WHO?
>> JUROR THOMAS WALBOLT.
>> YOU CAN EXPLAIN TO ME,
WHAT WAS HIS COMMUNICATION
WITH THE JUDGE, AND WHEN DID
THAT HAPPEN?
>> JUROR WALBOLT WAS PERHAPS
THE MOST TROUBLING JUROR OF
THESE FIVE BECAUSE WE HAVE
NOT JUST ONE INSTANCE OF
JUROR MISCONDUCT, BUT TWO
INSTANCES OF JUROR
MISCONDUCT.
BEFORE THE MISCONDUCT
OCCURRED, HE MADE
QUESTIONABLE COMMENTS WHICH
WOULD CAUSE ONE TO REALLY
QUESTION WHETHER HE CAN BE
FAIR AND IMPARTIAL ON THIS
JURY.
SO WOULD YOUR HONOR LIKE TO
--
>> MY UNDERSTANDING IS THAT
THIS PARTICULAR JUROR HAD
CONTACT WITH THE TRIAL JUDGE.
>> YES, YOUR HONOR.
>> DID THAT HAPPEN DURING THE
TRIAL?
>> THAT HAPPENED, I BELIEVE,
DURING VOIR DIRE.
>> DURING VOIR DIRE.
I CALL THAT A TRIAL.
NOW, THIS IS WHERE I'M
CONFUSED.
DID AT SOME POINT IN TIME,
THE TRIAL JUDGE GIVE COUNSEL
THE OPTION TO EXCUSE THIS
JUROR?
>> YES, YOUR HONOR, IT
APPEARED THAT JUDGE ALLEN
DID, IN FACT, PROMPT THE
DEFENSE AND ALMOST INVITED
THEM TO SAY WHAT DO YOU WANT
TO DO WITH THIS JUROR?
>> DID THAT OCCUR AFTER THE
JURY HAD BEEN SWORN, OR WAS
THAT DURING VOIR DIRE?

>> BOTH, YOUR HONOR.
THE FIRST INSTANCE OF
MISCONDUCT IS WHEN THIS JUROR
SAT DOWN WITH JUDGE PETERS
AND JUDGE ALLEN AND SAID CAN
YOU BELIEVE ALL THESE JURORS
WHO SAY THEY'RE ANTI-DEATH
PENALTY?
THEY OBVIOUSLY DON'T WANT TO
SERVE ON THIS JURY.
>> CAN YOU EXPLAIN TO ME THE
DYNAMICS HOW THAT HAPPENED.
WERE THEY IN THE COFFEE SHOP
OR SAT WITH THE JUDGE, WHAT
HAPPENED?
>> YOUR HONOR, IN PINELLAS
COUNTY THERE'S A BIG
CAFETERIA DOWNSTAIRS.
IT'S A BUSY PLACE AND HUGE
LINE OUTSIDE.
YOU HAVE JURORS, YOU HAVE
LAWYERS, YOU HAVE JUDGES, SO
EVERYONE IS MIXED TOGETHER.
SO IT'S JUST -- IT JUST SEEMS
VERY BIZARRE YOU WOULD HAVE A
JUROR GOING UP TO THE TRIAL
JUDGE PRESIDING OVER THE CASE
TO GOSSIP ABOUT THE RESPONSES
THAT ARE MADE BY THE PANEL.
SO JUDGE ALLEN, I THINK, WAS
PROMPTING THE DEFENSE, LET'S
GET RID OF THIS GUY.
GET RID OF HIM.
HE PROMISED THE COURT DURING
VOIR DIRE DISCUSSION, HE
PROMISED THEM, I'M NOT GOING
TO USE SPECIAL KNOWLEDGE OR
EXPERIENCE I HAVE.
I HAVE A BROTHER WHO HAS A
JURY TRIAL CONSULTANT.
>> DID JUDGE ALLEN COME BACK
AFTER THE CONTACT WITH THE
JUROR AND THE COFFEE SHOP?
>> UH-HUH.
>> DID HE COME BACK IN THE
COURT DURING VOIR DIRE AND
INFORM EVERYONE THAT THAT HAD
HAPPENED?
>> ABSOLUTELY.
>> AND WAS IT AT THAT POINT

IN TIME THAT THE JUDGE
SUGGESTED THAT -- PERHAPS
THAT SHE EXCUSE THIS JUROR?
>> IT SURE SEEMED TO BE AN
INVITATION TO STRIKE THAT
JUROR.
THE MOVE WAS NOT MADE.
SO OUR ARGUMENT IS THAT, AT
THAT POINT IN TIME, BASED ON
HIS PRIOR RESPONSES, IT
SHOWED BIAS.
THEN ON THE FIRST INSTANCE OF
JUROR MISCONDUCT, THAT NEEDS
TO GO.
THE SECOND MISCONDUCT IS THE
MOST TROUBLING CASE IN A
SINGLE-BULLET DEATH PENALTY
CASE.
THIS WAS OVERHEAD BY THE
CLERK IN THE VERY COURT
DISCUSSING FIRST-DEGREE
MURDER JURY INSTRUCTIONS,
FELONY MURDER JURY
INSTRUCTIONS WITH THE PANEL.
APPARENTLY THERE WAS A NURSE,
AND WALBOLT SAID TO HER, I
HAVEN'T HEARD ABOUT THIS IN
THE MEDIA.
THE JUROR WAS QUESTIONING WHY
WOULD THIS BE A DEATH PENALTY
CASE?
NO, NO, NO, YOU ARE GOING TO
HEAR TWO WAYS TO PROVE
FIRST-DEGREE MURDER, IF YOU
LOOK AT THE EXACT STATEMENT
THAT WALBOLT SAID TO THE
COURT BECAUSE THE COURT
QUESTIONED HIM.
SHE SAID, HERE WE GO AGAIN
WITH THE JUROR.
WHAT WAS SAID?
HE SAID, NO, JUDGE, I WASN'T
TALKING ABOUT THIS CASE.
I WAS JUST TALKING ABOUT
FIRST-DEGREE MURDER IN
GENERAL.
HE'S BASICALLY INSTRUCTING
THE JURORS AS TO LAW.
THERE'S DOUBT BEING EXPRESSED
BY THE JURORS.

WHY IS THIS A DEATH PENALTY
CASE?
HE'S FORMING THIS GROUP OF
JURORS HERE THAT YOU'RE GOING
TO HEAR ABOUT FELONY MURDER.
HE SAID WE HEARD ABOUT FELONY
MURDER.
THERE WERE NO FELONY MURDER
JURY INSTRUCTIONS PRIOR TO
THE LUNCHTIME DISCUSSION.
HE PROMISED THE COURT BECAUSE
HE'S GOT FAMILY -- HE HAS --
ACTUALLY, I BELIEVE IT'S
SYLVIA WALBOLT.
HE SAID, THIS IS MY
SISTER-IN-LAW, AND SHE
ACTUALLY WRITES JURY
INSTRUCTIONS HERE IN THE
STATE OF FLORIDA.
WHEN WE HAVE CASE LAW, THE
CASE THAT I CITED WAS A JUROR
WENT INTO THE JURY
DELIBERATION ROOM WITH AN
IPHONE AND LOOKED UP THE
DEFINITION OF "PRUDENCE."
THAT CASE WAS REVERSED.
THE ONLY PLACE YOU CAN GET
JURY INSTRUCTIONS IS FROM THE
COURT.
>> WAS THAT DIRECT APPEAL OR
POST-CONVICTION?
>> THAT WAS DIRECT APPEAL.
>> SO LET'S GO BACK.
THE ISSUE -- THAT'S WHAT I
ASKED YOU.
AS YOU NOW POINTED OUT, ALL
OF THIS OCCURRED IN -- BEFORE
THE JUDGE -- AS FAR AS
MR.†WALBOLT, BEFORE THE
DEFENSE LAWYER.
YOU ARE SAYING HE WAS
EFFICIENT IN NOT STRIKING
MR.†WALBOLT.
>> ABSOLUTELY.
>> WHAT WAS YOUR EXPLANATION
THAT HE DIDN'T WANT TO STRIKE
HIM?
>> YOUR HONOR, HE -- DURING
DIRECT EXAMINATION WHEN I WAS
EXAMINING RICHARD WATTS WHO

HAS AT LEAST SEVEN DEATH
CASES -- ON DEATH ROW.
HE SAID, I DON'T REMEMBER
HAVING ANY SPECIFIC
DISCUSSIONS WITH MY
CO-COUNSEL ABOUT THIS
PARTICULAR JUROR, AND ABOUT
WHY WE WOULD WANT TO KEEP
HIM.
AS I SAID, THERE'S A PARALLEL
BETWEEN INITIAL RESPONSES OF
JURORS, AND THE INITIAL
RESPONSES OF TRIAL COUNSEL
WHEN HE'S ASKED ABOUT ANY
ALLEGED STRATEGY, ANY
STRATEGY THAT MIGHT HAVE
TAKEN PLACE WHEN HE'S
ANALYZING THIS JUROR.
SO AS THIS COURT SAID IN
MATERANS TWO WEEKS AGO, AND
I'M GOING TO SAY THIS, WE
NEED TO LOOK AT THE INITIAL
RESPONSES OF THIS TRIAL
COUNSEL AS TO HIS
EXPLANATION.
HE TOLD US WITH REGARDS TO
THE FIVE JURORS, HE SAID, I
DON'T REMEMBER ANY SPECIFIC,
STRATEGIC DECISIONS THAT WE
HAD WITH REGARDS TO KEEPING
THE JURORS.
I WILL CONCEDE THAT, ON
CROSS-EXAMINATION, HE CAME TO
FIND -- AND I THINK WHAT WE
WERE DEALING WITH THERE IS
POST HOC RATIONALIZATION AS
TO WHY HE MIGHT HAVE KEPT
JURORS.
>> HERE'S MY PROBLEM.
IF THIS JUROR HAD COMMITTED
SUCH EGREGIOUS MISCONDUCT, AS
THEY'RE ALLEGING, DOESN'T THE
JUDGE INDEPENDENTLY HAVE SOME
OBLIGATION TO ENSURE THAT
JUROR DOESN'T -- FOR EXAMPLE,
SAY IT'S A JUROR THAT
EXPRESSED OPENLY RACIAL BIAS.
>> YES.
>> AND THE DEFENSE LAWYER IS
ASLEEP AT THE SWITCH OR

SOMETHING.
WHERE IS THE TRIAL -- AGAIN,
WHAT WE'RE DOING HERE IS
MOVING INTO POST-CONVICTION,
SOMETHING THAT SHOULD BE IN
DIRECT APPEAL, AND THAT IS
WHY IN CARATELLI WE TRY TO
MOVE THE BAR TO MAKE IT VERY
DIFFICULT FOR THERE TO BE
POST-CONVICTION RELIEF FOR
SOMETHING THAT SHOULD BE A
DIRECT TRIAL ISSUE.
AND SO HELP ME WITH THAT AS
TO, AGAIN, THIS IDEA THAT IF
THE TRIAL -- TRIAL LAWYER
SEVERAL YEARS LATER CAN'T
SAY, WELL, AND APPARENTLY AN
EXPERIENCED DEATH PENALTY
LAWYER MAYBE, FROM WHAT YOU
JUST SAID, DECIDES THAT I
WANT THAT JUROR ON.
ISN'T THERE SOME PRESUMPTION
THAT THAT IS REASONABLE?
THAT THE LAWYER MADE THAT
DECISION?
THAT AGAIN, THIS IS NOT JUST
ONE BIASED JUROR, THIS GUY
MISSED THE BOAT ON 5 OF THE
12.
THAT'S, GEEZ, THIS GUY MUST
BE THE WORST LAWYER IN, YOU
KNOW, PINELLAS COUNTY?
IN THE STATE?
>> YOUR HONOR, I WAS -- THIS
COURT RECENTLY CAME OUT WITH
A CASE OF ROBARS, ANOTHER
CASE FROM RICHARD WATTS, AND
A DIRECT APPEAL CASE, AND IT
WAS UNUSUAL FOR THE COURT TO
ENGAGE IN EXTENSIVE
DISCUSSION AS TO THE
POSSIBILITY OF INEFFECTIVE
ASSISTANCE OF COUNSEL, AND AS
THIS COURT HAS DONE MANY,
MANY TIMES, THIS IS A DIRECT
APPEAL CASE.
>> YOU SPENT A LOT OF TIME ON
THIS ONE ISSUE.
IF THIS GUY IS SO INCOMPETENT
THAT HE'S ASLEEP AT THE

SWITCH THROUGHOUT, WHAT IS
YOUR -- OTHER THAN THE JURY
ISSUE, WHAT OTHER
DEFICIENCIES ARE GLARING TO
SHOW THAT SAYS HE DIDN'T
OBJECT TO THAT ONE QUESTION
OR DIDN'T OBJECT TO THAT
CLOSING ARGUMENT.
IT'S KIND OF PICKED APART.
BUT I LIKE TO SEE IT.
WHAT'S THE WHOLE VIEW?
IS THIS A GUY THAT DIDN'T
INVESTIGATE?
IS THIS A GUY THAT DIDN'T
PRESENT MITIGATION.
WHAT'S THE WHOLE PICTURE TO
SHOW THAT PROBABLY HE WAS
SLEEPING THROUGH THIS TRIAL?
I KNOW THAT'S NOT THE
STANDARD, BUT YOU UNDERSTAND
WHAT I'M SAYING.
YOU CAN'T PICK THIS PART OR
THAT PART AND SAY GET ANOTHER
TRIAL.
>> YES, YOUR HONOR.
THERE'S TWO OTHER INSTANCES I
WOULD LIKE TO TALK ABOUT, AND
I THINK THE FIRST ONE THAT I
SHOULD TALK ABOUT, BECAUSE
THIS HAPPENED VERY MUCH SO IN
VOIR DIRE AGAIN --
>> I'D LIKE TO ASK YOU A
QUESTION ABOUT MR.†WALBOLT.
WHAT SHOWS HE WAS ACTUALLY
BIASED?
YOU HAVE SHOWN IT WAS PLAIN
ON THE FACE OF THE RECORD HE
WAS BIASED.
I THINK YOU CAN SHOW PLAINLY
ON THE FACE OF THE RECORD
THAT HE WAS LOQUACIOUS.
BUT I DON'T SEE WHAT
DEMONSTRATES THE BIAS.
CAN YOU IDENTIFY THAT FOR ME?
>> YES, YOUR HONOR.
HE SAID THAT HE HAD BEEN
ROBBED BEFORE.
HE SAID HIS WIFE WAS ROBBED
TWICE.
HE COULDN'T BELIEVE THAT

THE†--
>>†THERE'S A PRESUMPTION OF
BIAS THAT ANYONE WHO HAS BEEN
A VICTIM OF A CRIME WILL BE
DISQUALIFIED FROM SERVING AS
A JUROR.
IS THAT YOUR POSITION?
>> THAT'S NOT MY POSITION,
YOUR HONOR, LOOKING AT THE
MATERANS CASE, THAT JUROR WAS
-- I'LL CALL HIM A BURGLAR
HATER.
HE'S BEEN ROBBED, HIS WIFE
HAS BEEN ROBBED TWICE BEFORE.
IT'S NOT LIMITED TO THAT AS
WELL.
HE SAID HE WORKED VERY
CLOSELY WITH LAW ENFORCEMENT.
HE MENTIONED C.P.D. AND S.O.,
THE ACRONYMS FOR THE LAW
ENFORCEMENT AGENCIES.
THE REAL PROBLEM HERE IS HE
SAID I HAVE SPECIALIZED
KNOWLEDGE ABOUT JURY
INSTRUCTIONS AND JURY TRIALS
BUT PROMISED I'M NOT GOING TO
USE THAT IN THE CASE.
HE DID THAT IN THE CAFETERIA.
WE HAVE THE MISCONDUCT THERE.
AND THE BIAS SHOWS THAT IF HE
AND THE TRIAL JUDGE -- PLOPS
HIMSELF DOWN IN FRONT OF THE
TWO JUDGES AND SAYS, CAN YOU
BELIEVE THE TWO PEOPLE ARE
ANTI-DEATH PENALTY?
WHAT THAT SAYS IS HE'S A
PRO-DEATH PENALTY PERSON.
HE'S NOT GOING TO BELIEVE
ANYONE WHO SAYS THEY ARE
ANTI-DEATH PENALTY.
>> THE TRIAL COUNSEL HAS
OVERARCHING CONCERN IN
PICKING THE JURORS, WAS THE
PENALTY PHASE.
IN TERMS OF A DEATH CASE AND
WHERE THEY STOOD ON THE DEATH
PENALTY, MR.†WALBOLT, DIDN'T
THAT MEAN THAT ANYBODY ELSE
-- THAT HE WAS BIASED TOWARD
THE DEFENDANT?

>> THERE WERE SOME
DISCUSSIONS ABOUT WHETHER
SOMEONE MIGHT BE, YOU KNOW,
REALLY REQUIRING A GREAT BAR
BEFORE THEY COULD IMPOSE THE
DEATH PENALTY.
BUT YOUR HONOR, I WANT TO GO
BACK TO -- AND I WILL CONCEDE
THERE WERE COMMENTS MADE FROM
THE PARTICULAR JURORS ABOUT,
PERHAPS NOT BEING SO PRO
DEATH BUT COULD HAVE BEEN
TAINTED BY WALBOLT.
GOING BACK TO PARIENTE, ANY
JUROR WHO EXPRESSED ANY KIND
OF APPREHENSION AS TO WHETHER
OR NOT THEY MIGHT IMPOSE THE
DEATH SENTENCE, THE
PROSECUTOR SAID, LOOK, THIS
IS THE LAW, AND THE
LEGISLATURE IS MANDATED THAT
THIS IS THE LAW.
SO THIS GOES INTO ISSUE TOO,
BECAUSE IF THE JURORS MIGHT
HAVE EXPRESSED MAYBE NOT --
THEY'RE NOT GOING TO IMPOSE
THE DEATH PENALTY.
THE STATE MADE SURE TO
PREJUDICE THEM AND MADE IT
SEEM LIKE VIOLATION OF
FARRELL AND BROOKS; THAT
DEATH IS MANDATED IN THIS
CASE.
THE STATE USED THAT WORD
"MANDATED" IN SEVERAL,
SEVERAL INSTANCES.
>> IF YOU READ THAT IN
CONTEXT, THAT ISN'T WHAT HE'S
SAYING THERE.
IT'S THAT THE STATE HAS
MANDATED THE FACTORS THAT YOU
GOT TO CONSIDER, BECAUSE
RIGHT AFTER THE WORD
"MANDATE" IS USED, IT MAKES
REFERENCE TO THE JURY'S
DETERMINATION.
I DON'T SEE HOW, IN THE
CONTEXT THERE, THAT IS AN
INDICATION THAT THE
PROSECUTOR IS SAYING YOU MUST

GIVE THE DEATH PENALTY IN
THIS CASE.
WHY AM I WRONG ABOUT THAT?
>> YOUR HONOR, LOOKING AT THE
TRANSCRIPT, FIRST HE SAID THE
LEGISLATURE ON YOUR BEHALF
HAS DECIDED THAT IS THE
CIRCUMSTANCES IN WHICH A
PERSON COULD BE PUT TO DEATH.
COULD YOU SIGN THAT VERDICT
FORM?
HE'S BASICALLY SAYING, IF YOU
SIT ON THIS JURY†--
>>†THAT'S NOT WHAT BROOKS
SAYS AT ALL.
BROOKS AND IRVIN ARE THE SAME
PROSECUTORS IN CASES.
NOT CLOSE TO THE WORDS YOU
JUST SAID.
>> WITH JUROR STEVENS, SHE
SAID ABSOLUTELY, ABSOLUTELY,
SHE WENT SO FAR TO SAY I'M A
VERY LAW-ABIDING CITIZEN.
THE JURORS WERE INSTRUCTED IF
THEY COME HERE WITH THE
INCLINATION OF BIAS, THEY
SHOULDN'T BE SITTING IN THE
JURY.
THIS IS IN FRONT OF
DICKERSON.
IN THE STATE OF FLORIDA, THE
LEGISLATURE INDICATED UNDER
CERTAIN CIRCUMSTANCES, DEATH
IS THE APPROPRIATE
PUNISHMENT.
WITH JUROR BERTELL, THEY SAID
YOU INDICATED YOU HAVE TO
LOOK AT THINGS AND FEEL
WHETHER OR NOT IT IS
APPROPRIATE, AND WE'VE HAD
DISCUSSIONS HOW THE
LEGISLATURE HAS TAKEN THAT
OUT OF YOUR HANDS A BIT.
WOULD YOU FOLLOW THE LAW?
AND THE JUROR ANSWERED YES.
WITH BERTELL, THE JUROR SAID
WE'RE GOING TO WAIVE THINGS.
>> EVERY TIME THE JUROR
TOUCHES ON THE SUBJECT
DOESN'T MEAN IT'S AN IRVIN OR

OTHER CASE VIOLATION.
BROOKS, BECAUSE -- THE
LEGISLATURE HAS ESTABLISHED
THIS WEIGHING, AND IT'S A
VERY DIFFICULT SUBJECT TO
DISCUSS FOR LAY PEOPLE, AND
JUST THE FACT THAT IT'S
DISCUSSED DOESN'T SEEM TO ME
-- DOES IT†-- THAT IT
AUTOMATICALLY FLIPS OVER INTO
IMPROPER DISCUSSION?
>> WELL, YOUR HONOR, THERE
ARE SO MANY INSTANCES AND
AGAIN, THIS IS A
SINGLE-BULLET DEATH PENALTY
CASE.
THE JUDGE ADDRESSED THE
JURORS IN FRONT OF THE WHOLE
JURY PANEL ACTUALLY USING THE
WORD "MANDATED."
>> WELL, YES, THE QUESTION
IS, IN CONTEXT, AS TO WHAT
THE LEGISLATURE REQUIRES.
BUT YOU KNOW, WHEN YOU TRY
THIS -- I THINK IT WEAKENS
YOUR ARGUMENTS ON OTHER
POINTS WHEN YOU TRY TO
STRETCH SOME OF THE
STATEMENTS INTO A BROOKS OR
IRVIN, WHICH WERE THE MOST
INFLAMMATORY STATEMENTS YOU
CAN FIND.
THESE AREN'T EVEN CLOSE TO
THAT.
>> WELL, YOUR HONOR, I'LL
STICK BY MY ARGUMENTS IN THE
BRIEF AND WHAT THE TRANSCRIPT
SAID AND JUST TO ADDRESS THE
SECOND PORTION OF THE IEC,
THAT I'D LIKE TO TALK TO THE
COURT ABOUT, IS THE FAILURE
TO CONSULT AN EXPERT IN
EYEWITNESS IDENTIFICATION,
WHEN YOU TALK ABOUT ASLEEP AT
THE SWITCH.
THIS IS AN ATTORNEY WHO
REPEATEDLY TALKED ABOUT BOOKS
ON HIS BOOKSHELF THAT TALKED
ABOUT EYEWITNESS
IDENTIFICATION.

THE PROBLEM IS THE BOOKS ARE
NOT EVIDENCE.
THE JURY DOES NOT KNOW ABOUT
THE BOOKS ON THE BOOKSHELF.
>> DID EYEWITNESS
IDENTIFICATION EXPERTS
TESTIFY IN COURT?
>> YES, YOUR HONOR.
>> WHAT WOULD THE EXPERTS SAY
THAT THE WITNESS IN THE
POSITION HE OR SHE MAY HAVE
BEEN IN COULD NOT HAVE SEEN
WHAT HE OR SHE SAW?
>> YES, YOUR HONOR, WE
CONTACTED DR.†BRIGHAM, AND
DR.†BRIGHAM TESTIFIED
EXTENSIVELY AND FINDINGS ARE
DETAILED IN THE BRIEFS
STARTING IN PAGE 58.
[INAUDIBLE]
>> I WANT TO TALK ABOUT THE
SIMMONS CASE.
THERE WERE SEVERAL CONCURRING
--
[ INAUDIBLE ]
>> I'M SORRY.
>>†EXPERT IS REVERSIBLE
ERROR?
>> I DON'T BELIEVE SO.
I'M SURE I WOULD HAVE CITED
THE CASE.
>> ACTUALLY SAID THE REVERSE.
WHEN THE JUDGE DIDN'T ALLOW
AN EYEWITNESS IDENTIFICATION
EXPERT, THAT IT WAS NOT
DISCRETION, I THINK I
DISAGREED WITH THAT.
WITH THE EXTENSIVE TESTIMONY
OF DR.†BRIGHAM, DID HE
ACTUALLY IMPEACH THE
EYEWITNESS IDENTIFICATION OF
THE PARTICULAR INDIVIDUALS
THAT IDENTIFIED THE†--
>>†ABSOLUTELY, YOUR HONOR.
THIS WAS A MASS PERPETRATOR
AND THIS INVOLVED
CROSS-RACIAL IDENTIFICATION.
>> HE SAID THOSE WERE
UNRELIABLE IDENTIFICATION.
>> ABSOLUTELY.

THE PRESENCE OF A GUN, THE
STRESS, THERE'S A BODY ON THE
FLOOR.
>> DID COUNSEL CATCH ON ALL
OF THE CROSS-EXAMINATION OF
THE EYEWITNESSES, IN TERMS OF
VETTING, WHETHER OR NOT THEIR
TESTIMONY WAS CREDIBLE IN
TERMS OF THE OPPORTUNITY TO
SEE AND CROSS-RACIAL AND
STRESS AND ALL OF THOSE?
>> I UNDERSTAND WHAT YOU'RE
SAYING.
HE DID TOUCH -- THIS IS A
CAPITAL CASE AND DEATH IS
DIFFERENT AND SHOULD HAVE
CONSULTED DR.†JACK BRIGHAM.
>> DIDN'T HE SAY HE READ A
BOOK BY THIS WOMAN WHOSE
THESIS WAS BASED ON ELIZABETH
WAS ESSENTIALLY THE SAME AS
DR.†BRIGHAM?
>> YOUR HONOR, THERE'S NO
SUBSTITUTE FOR DR.†BRIGHAM'S
TESTIMONY.
>> I MIGHT AGREE WITH YOU
THAT I THINK HE SHOULD COME
TO A TIME WHERE WE DO ALLOW
EXPERTS.
BUT THE TIME HAS NOT -- IT
HASN'T COME AND SO NOW WE'RE
GOING TO SAY THAT SOMEBODY
WAS DEFICIENCY, HOW MANY
YEARS AGO?
NOT HIRING AN EXPERT THAT,
MORE LIKELY THAN NOT, WOULD
HAVE BEEN DISALLOWED BY THE
TRIAL COURT.
THAT'S MY PROBLEM WITH THAT
ISSUE IS THAT THIS IS SUCH AN
EGREGIOUS DEFICIENCY.
>> YOUR HONOR, LET ME JUST
SAY THAT WHAT WE HAVE SEEN IN
THE CASE LAW IS EVOLVING
STANDARD OF DECENCY AND THE
ASSESSMENT OF THE
ADMISSIBILITY OF THIS TYPE OF
TESTIMONY.
FOR A THIRD EXAMPLE, I'LL
JUST MENTION IS THAT THE

WILLIAMS RULE EVIDENCE --
THERE WAS REPEATED COMMENTS,
REPEATED TESTIMONY FROM TRIAL
COUNSEL THAT HE HAD A
STRATEGY NOT TO CHALLENGE THE
WILLIAMS RULE EVIDENCE.
MOSTLY THERE IS DEFICIENT
PERFORMANCE ALL ACROSS THE
RECORD.
>> YOUR TIME HAS EXPIRED.
I'LL GIVE YOU ADDITIONAL TIME
FOR REBUTTAL.
>> MAY IT PLEASE THIS
HONORABLE COURT.
I'M KATHERINE BLANCO, ON
BEHALF OF THE ATTORNEY
GENERAL'S OFFICE.
THERE ARE A COUPLE OF
STATEMENTS I WOULD LIKE TO
POINT OUT, IN THE BEGINNING
OF MY ARGUMENT, THAT HAS TO
DO WITH THE INQUIRY JUSTICE
LABARGA MADE ABOUT THE
LUNCHTIME CONTACT WITH THE
TRIAL COURT.
AS THE TRIAL COURT, WHICH IS
JUDGE LINDA ALLEN -- AS SHE
DESCRIBED, IT WAS SITTING IN
THE LUNCHROOM WITH JUDGE
PETERS.
AT THAT PARTICULAR TIME IS
WHEN THE PROSPECTIVE JUROR
SAT DOWN WITH JUDGE PETERS.
APPARENTLY THEY HAD GONE TO
HIGH SCHOOL TOGETHER.
THERE WAS AN UPCOMING
REUNION.
THERE WAS A REASON TO HAVE
MADE CONTACT WITH THE
INDIVIDUAL, AND HE DID SIT
DOWN AT THIS POINT IN TIME.
JUDGE ALLEN REALIZED IT WAS
ONE OF HER JURORS, AND SHE
GOT UP AND LEFT, AND THE
COMMENT THAT WAS MADE BY
WALBOLT, HE COULDN'T BELIEVE
THERE WERE SO MANY JURORS
OPPOSED TO THE DEATH PENALTY.
IN A WAY IT WAS COMMENTS MADE
AT THE BENCH, EVERYBODY WANTS

TO GET OFF THIS JURY.
WE'VE NEVER SEEN SO MANY
PEOPLE LOOKING TO GET OFF A
JURY WITH A TWO-WEEK TRIAL.
AND SO THAT FIRST COMMENT WAS
PROSPECTIVE JUROR WALBOLT'S
COMMENT TO JUDGE PETERS, WHO
WAS SITTING AT THE TABLE.
TRIAL COURT JUDGE ALLEN
BRINGS PARTIES ABOUT IT,
BRINGS MR.†WALBOLT IN AND
INQUIRES, SWEARS HIM IN,
INQUIRES ABOUT THE CONTACT.
AND THE REQUEST OF THE
DEFENSE AT THAT POINT IN TIME
IS INSTRUCT HIM NOT TO HAVE
CONVERSATIONS ABOUT THIS
CASE, ABOUT ANY CASE; DO YOU
UNDERSTAND?
HE AGREED THAT HE UNDERSTOOD.
HE DID NOT CONSIDER IT TO BE
A COMMENT ON WHAT WAS
HAPPENING, PARTICULARLY WITH
RESPECT TO THE FACTS OF THIS
CASE, ONLY THAT SEEMED LIKE A
LARGE MAJORITY OF THE PANEL
WERE AGAINST THE DEATH
PENALTY.
>> WHAT ABOUT -- THAT COMMENT
IS A LITTLE BIT TROUBLING,
BUT WHAT ABOUT THE WHOLE
NOTION THAT MR.†WALBOLT WAS
INSTRUCTING THE OTHER JURORS
ABOUT FIRST-DEGREE MURDER?
WE ALL KNOW THAT IT'S THE
TRIAL JUDGE WHO INSTRUCTS THE
JURY ON, YOU KNOW, THE CRIMES
THAT ARE ALLEGED.
SO HOW ARE WE SUPPOSED TO
TREAT THE NOTION THAT
MR.†WALBOLT IS GOING TO
EDUCATE THE JURORS ABOUT WHAT
IS FIRST-DEGREE MURDER?
>> JUSTICE QUINCE, THE STATE
DISPUTES THERE WAS AN
INSTRUCTION TO THE OTHER
JURORS ABOUT THE CATEGORIES,
AND THE TRIAL COURT, THE
POST-CONVICTION COURT
DISPUTES THE DEFENSE

CHARACTERIZATION THAT
MR.†WALBOLT WAS INSTRUCTING
THE JURORS.
THE SECOND CONTACT THAT
YOU'RE DISCUSSING --
>> TWO WAYS TO COMMIT
FIRST-DEGREE MURDER?
>> THE DISCUSSION WAS THAT
THE DEFENSE ATTORNEYS AND THE
STATE HAD BOTH DISCUSSED THAT
THERE HAD BEEN NO JURY
INSTRUCTIONS.
THE DEFENSE ATTORNEYS AND THE
STATE HAD BOTH DISCUSSED WITH
THE JURORS THAT THERE WERE
TWO TYPES OF FIRST-DEGREE
MURDER, PREMEDITATED AND
FELONY MURDER.
A GENERAL DISCUSSION ON THIS,
AND THERE WAS ONE NURSE
PROSPECTIVE JUROR THAT
MR.†WALBOLT WAS TALKING TO,
AND THEY BROUGHT HIM BACK IN.
THE CLERK WAS THE ONE WHO
SAID WE HAVE ANOTHER
CONVERSATION BY MR.†WALBOLT.
BRING HIM BACK IN.
THEY BRING MR.†WALBOLT BACK
IN.
HE SAYS -- THE COURT SAYS YOU
KNOW, THE COURT WILL INSTRUCT
ON THE LAW.
THE JURY HAS BEEN TOLD THEY
ARE GOING TO RECEIVE
INSTRUCTIONS FROM THE COURT
ON THE LAW, THAT HE DIDN'T
CONSIDER IT A SUBSTANTIVE
DISCUSSION OF THE CASE
BECAUSE IT HAD BEEN WHAT THE
DEFENSE ATTORNEYS AND THE
PROSECUTION HAD BEEN TALKING
ABOUT.
THE TRIAL COURT DOES, AT THIS
TIME, TURN TO THE DEFENSE.
WHAT DO YOU WANT TO DO?
AT THAT POINT IN TIME, THE
DEFENSE SAYS, REINSTRUCT.
THEY'RE NOT STRIKING WALBOLT.
THEY ARE KEEPING WALBOLT AND,
AS JUSTICE PERRY POINTED OUT,

WHAT ARE MR.†WALBOLT'S VIEWS
ON THE DEATH PENALTY?
HE WAS OF THE VIEW THAT HE
WOULD NOT BE IN FAVOR OF THE
DEATH PENALTY EXCEPT IN A
CASE WHERE IT WAS AN
INDIVIDUAL ON DEATH ROW THAT
WAS ACCUSED OF KILLING A
CORRECTIONS OFFICER.
SO THE OVERARCHING
STRATEGY†--
>>†LET ME SAY SOMETHING.
>> I'M SORRY, JUSTICE
LABARGA.
>> I COULD SPEND THE REST OF
THE WEEK TELLING YOU JURY
STORIES BASED ON MY
EXPERIENCE, AND THERE'S
ALWAYS ONE OR TWO ON EVERY
PANEL THAT CAN CAUSE
PROBLEMS, AND FOR SOME REASON
LAWYERS WANT TO KEEP THOSE
TWO.
LET ME ASK YOU THIS:  IT
SEEMED TO ME -- THIS IS WHAT
I HAVE PROBLEMS WITH.
THE ONE TRIAL COUNSEL LEARNED
ABOUT THIS JUROR'S, MORE OR
LESS, LEANINGS, AND THE JUDGE
GIVES HIM THE OPPORTUNITY TO
STRIKE HIM.
I GUESS AT THAT POINT IN TIME
THEY'RE GOING TO PLUG IN THE
ALTERNATE.
HAD THE JURY BEEN SWORN IN?
>> THE JURY HAD NOT BEEN
SWORN.
THAT WAS THE SECOND POINT I
WANTED TO CORRECT.
THE JURY HAD NOT BEEN SWORN
AT THE TIME OF THE SECOND.
>> WE HAVE A COMPETENT JUROR
WHO THINKS HE KNOWS IT ALL,
WHO CAN TAINT THE ENTIRE
PANEL AND HE'S GIVEN THE
OPPORTUNITY TO GET RID OF
THIS GUY, AND HE DOESN'T TAKE
IT.
AM I MISSING SOMETHING?
>> THAT'S A MATTER OF HIS

TRIAL STRATEGY.
IT FIT IN WITH HIS TRIAL STRATEGY, A REASONABLE DECISION TO KEEP A JUROR ON THE PANEL THAT WAS VERY DEFENSE FAVORABLE, PARTICULARLY FOR THE PENALTY PHASE.
>> WELL, THE OTHER PART ABOUT IT, AND THE FRIENDLY QUESTION, WHEN I REALIZED WHO THE SISTER-IN-LAW WAS, SYLVIA WALBOLT, WHO I KNEW WAS A LAWYER WHO HAD LIBERAL VIEWS. MS. WALBOLT'S FIRM REPRESENTS DEATH ROW INDIVIDUALS, AND I WOULD SUSPECT THAT THE -- AND I THINK WATTS BY SAYING HE KNEW WHO HE WAS WOULD THINK THAT THAT WOULD BE HELPFUL TO HIM, IF THE PERSON WAS TALKATIVE, MIGHT BE TALKATIVE IN THEIR FAVOR.
EVEN THOUGH THEY SAID WATTS DIDN'T REMEMBER WHY HE DIDN'T STRIKE HIM.
DIDN'T HE TALK ABOUT KNOWING ABOUT WALBOLT'S RELATIONSHIP WITH SYLVIA WALBOLT?
>> WELL, THERE WAS DISCUSSION THAT THE EVIDENCE WAS MORE GENERAL THAN THAT, BUT IT WAS CLEAR TO EVERYONE IN THE PINELLAS COUNTY AND HILLSBOROUGH COUNTY.
I'D LIKE TO ADDRESS THE FACT HE MIGHT NOT REMEMBER.
THAT DOESN'T TAKE AWAY PRESUMPTIONS.
>> HE DOESN'T SAY ANYTHING HE WANTS TO KEEP HIM ON.
>> HE DIDN'T RECALL ALL THE REASONS BUT WE HAVE IN THE RECORD THE CONTEMPORANEOUS DECISION WHEN THE TRIAL COURT SAYS DO YOU WANT -- WHAT DO YOU WANT TO DO?
REINSTRUCT HIM?
THAT IS CONSISTENT WITH THE STRATEGIC†--

>>†DID HE DISCUSS EACH AND
EVERY JURORS' PEREMPTORY
CHALLENGE OR CHALLENGE TO
CAUSE THE DEFENDANT?
>> IT WAS ABSOLUTELY, YOUR
HONOR.
>> AGREED?
>> REASONABLE TO LISTEN TO
THE CLIENT AND TO MAKE THAT
STRATEGIC DECISION.
THERE WAS AN INFORMED
STRATEGIC DECISION AS TO WHAT
JURORS TO KEEP.
>> LET'S ASSUME THAT STILL,
AS JUSTICE CANADY ASKED, IS
THAT AN ACTUALLY BIASED JUROR
HAS TO SIT.
WHERE IS THE -- THIS IS THE
PERSON THAT PEOPLE WOULDN'T
WANT ON A JURY BECAUSE
THEY'RE TALKATIVE OR THINKS
HE'S A KNOW-IT-ALL.
UNDER OUR CASELET, DOES THAT
MAKE HIM BIASED?
>> NO, YOUR HONOR, THERE IS
NO BIAS FOR ANY OF THE
JURORS.
>> HOW DO YOU DEMONSTRATE
ACTUAL BIAS?
AS I UNDERSTAND HIS ARGUMENT,
HE'S SAYING THIS IT'S
DEMONSTRATED BECAUSE HE WAS A
ROBBERY VICTIM, HIS WIFE WAS
A ROBBERY VICTIM A COUPLE OF
TIMES, I BELIEVE HE SAID
SOMETHING ELSE, BUT SO WHAT
DO YOU SHOW TO SHOW THAT A
VICTIM†--
>>†ON THIS PARTICULAR CASE,
YOUR HONOR, OR IN CARATELLI,
YOU HAVE TO SHOW BIAS IN
FACT, BIAS AGAINST THIS
DEFENDANT.
THE FACT THAT YOU HAVE --
CERTAINLY THERE IS NO PER SE
CAUSE CHALLENGE BASED UPON
INDIVIDUALS THAT ARE VICTIMS,
AND I UNDERSTAND VERY CLEARLY
THAT CCR WOULD LIKE TO TURN
THIS INTO A DIRECT APPEAL

CASE.
WE ARE NOT ON DIRECT APPEAL,
WE ARE HERE ON A CLAIM OF
INEFFECTIVE ASSISTANCE OF
TRIAL COUNSEL AND UNDER
CARATELLI.
>> HE MAY HAVE BEEN ABLE TO
BE STRICKEN FOR CAUSE.
>> NO.
>> BUT YOU COULD -- LET'S SAY
YOU CONCEDE.
>> OKAY, YOUR HONOR.
>> LET'S SAY HE COULD HAVE
BEEN STRICKEN FOR CAUSE.
THAT'S NOT, AS I UNDERSTAND,
WHAT WE WENT TO IN CARATELLI.
IT'S NOT HE COULD HAVE BEEN
STRICKEN FOR CAUSE.
IT HAS TO BE AN ACTUAL BIAS.
AND I THINK THERE IS --
AGAIN, I CAN'T CALL IT UP.
IT'S MORE THAN YOU WERE A
VICTIM OF A CRIME.
>> ABSOLUTELY, YOUR HONOR.
I BELIEVE FORMER JUSTICE
CANTERO OFFERED THE OPINION,
AND I BELIEVE THE OPINION WAS
UNANIMOUS IN CARATELLI.
OKAY, YOU MAY HAVE HAD A
CAUSE CHALLENGE AND DIDN'T
RAISE THE TRIAL CHALLENGE.
TRIAL COUNSEL DIDN'T RAISE
IT.
HE DIDN'T USE PEREMPTORY AND
ASK FOR ADDITIONAL AND DENIED
THEM.
THAT WOULD COMPLETELY TURN
PRESERVATION OF ERROR ON ITS
HEAD.
THAT'S HOW THE COURT, IN
GREAT LENGTHS IN CARATELLI,
SAID YOU HAVE TO SHOW BIAS IN
FACT.
WHAT DO YOU HAVE?
YOU HAVE AN INDIVIDUAL WHO
SAID HE WOULD TREAT ALL
WITNESSES EQUALLY, SO THE
DISCUSSION ABOUT LAW
ENFORCEMENT ON BOTH SIDES,
QUITE FRANKLY -- BECAUSE BOTH

HAVING LAW ENFORCEMENT AND
BEST EVIDENCE PRACTICE
DEALING WITH BOTH CRIMINAL
AND CIVIL PRACTICE -- THAT HE
WOULD NOT AFFORD ANY SPECIAL
CREDIBILITY TO LAW
ENFORCEMENT OFFICERS TO
TESTIFY.
HE HIMSELF SAID HE HAD BEEN
ARRESTED IN THE†'70S FOR
TRESPASS, AND COMING DOWN SO
STRONGLY WITH RESPECT TO HIS
VIEWS ON A DEATH
RECOMMENDATION.
ATTORNEY WATTS STATED THAT
HE, ON BALANCE, WOULD LOOK
FOR JURORS WHO WOULD BE VERY
RECEPTIVE TO A LIFE
RECOMMENDATION IN THIS CASE.
THE RECOMMENDATION WAS 8-4.
SO YOU HAVE A DECISION LIKE
THAT, THAT WAS MADE IN HARVEY
AND IN OWEN, AND OWEN IS A
CASE FROM THIS COURT THAT HAS
BEEN ADDRESSED BY THE 11TH
CIRCUIT, OF COURSE.
AND WE CITED IN OUR BRIEFS
AND THE DISCUSSIONS IN OWEN
WHERE YOU HAVE A VICTIM -- A
PERSON THAT HAS BEEN A VICTIM
OF VERY SERIOUS CRIMES
INVOLVED IN THERE, AND A
DISCUSSION OF WHY, ON
BALANCE, TRIAL COUNSEL CAN
MAKE A REASONABLE STRATEGIC
DECISION TO NOT STRIKE THIS
PARTICULAR JUROR.
IT FITS IN WITH THEIR
OVERARCHING STRATEGY, THE
NOTION THAT THE JURORS COULD
BE FAIR AND IMPARTIAL AND
INDEED ASSURED THE PARTIES,
WHEN QUESTIONED, THAT THEY
COULD FOLLOW THE LAW.
NOW, AGAIN, THIS MORNING, CCR
-- EXCUSE ME, MR.†HENDRY IS
TRYING TO FIT THIS INTO A
DIRECT APPEAL CASE, WHICH, OF
COURSE, THE COURT IS WELL
AWARE IT IS NOT.

IN THIS PARTICULAR CASE, THE
POST-CONVICTION JUDGE, WHO IS
THE SAME JUDGE THAT PRESIDED
AT THE TIME OF TRIAL,
CONDUCTED THE EVIDENTIARY
HEARING IN THIS CASE AND MADE
SPECIFIC FINDINGS, WHICH ARE
SUPPORTED BY SUBSTANTIAL
COMPETENT EVIDENCE IN THE
RECORD AND ADDRESSED EACH OF
THE CHALLENGED JURORS AND
EXPLAINED WHY HER DISCUSSION
AS TO WHY THERE WAS NO
DEFICIENT PERFORMANCE AND NO
RESULTING PREJUDICE.
MR.†HENDRY HAS ALSO MADE A
COMMENT THIS MORNING ABOUT
THE EXPERIENCE OF MR.†WATTS.
MR.†WATTS HAD OVER 25 YEARS
TRYING CRIMINAL CASES.
MR.†MCDERMOTT, WHO HAS SINCE
PASSED AWAY, WAS UNAVAILABLE
FOR THE EVIDENTIARY HEARING,
BUT PRIMARILY GUILT PHASE
COUNSEL.
MR.†MCDERMOTT HAD OVER 45
YEARS' EXPERIENCE, AND THE
FACT THAT MR.†WATTS MAY HAVE
CLIENTS THAT ARE ON DEATH ROW
MEANS HE IS WILLING TO TAKE
THE MOST DIFFICULT CASES AND
THEY ARE SCRUTINIZED BY THIS
COURT, AND THOSE THAT HAVE
GONE THROUGH POST-CONVICTION,
AND THE DEATH PENALTY IS
UPHELD ON THEM AGAINST
CHALLENGES OF INEFFECTIVE
ASSISTANCE OF COUNSEL, MEANS
THE COURT HAS REJECTED HIS
CLAIM.
SO SOME SORT OF SUGGESTION
MAY BE MADE HE HAS CLIENTS ON
DEATH ROW.
THAT'S TRUE.
THAT'S WHAT HAPPENS WHEN YOU
TAKE THE DIFFICULT CASES,
SOME WITH HORRIFIC FACTS.
REST ASSURED, THE COURT KNOWS
MUCH BETTER THAN I COULD
ELABORATE HOW DIFFICULT THESE

CASES ARE, AND HOW MUCH
EFFORT IS PUT IN TO MAKE SURE
HE'S NOT ASLEEP AT THE WHEEL.
>> ON CARATELLI, THE JUROR IN
QUESTION WAS NOT IMPARTIAL,
THAT THE JUROR WAS BIASED
AGAINST THE DEFENDANT, AND
THE EVIDENCE OF BIAS MUST BE
PLAIN ON THE FACE OF THE
RECORD.
THAT'S THE STANDARD.
>> THAT'S THE STANDARD.
AND YOU DO NOT HAVE THAT
HERE, YOUR HONOR, AS JUSTICE
CANADY NOTED.
HE WAS LOQUACIOUS BUT NOT
ESTABLISHED THE ACTUAL BIAS.
I WILL BE HAPPY TO ADDRESS
THE OTHER JURORS IF YOU WOULD
LIKE.
YOU KNOW, THE COURT HAS ANY
QUESTIONS ABOUT OTHER JURORS.
I THINK CERTAINLY THE TRIAL
COURT ADDRESSED THEM AT
LENGTH†--
>>†THIS IS VOIR DIRE.
DID THE DEFENDANT EXERCISE
THAT -- DID THE DEFENSE
LAWYER EXERCISE PEREMPTORY
CHALLENGE?
>>†OH, YES, YOUR HONOR, OVER
50 CAUSE CHALLENGES WERE
GRANTED.
BOTH SIDES EXERCISED A TOTAL
OF 21 PEREMPTORIES.
10 PEREMPTORIES THEY
EXERCISED AND GRANTED
ADDITIONAL PEREMPTORIES TO BE
EXERCISED.
>> A LOT OF THE CAUSE
CHALLENGES BECAUSE THE PERSON
COULD NOT SERVE TWO WEEKS AND
PERSONAL REASONS.
>> A LOT OF THEM ARE AGREED
TO, CERTAINLY, YOUR HONOR.
YOU HAD ONE OF THE CAUSE
CHALLENGES TO INDIVIDUALS OF
A PSYCHIC.
>> THE CHALLENGE OF FAILURE
TO MAKE AN OPENING STATEMENT,

ARE WE REFERRING TO THE
SANDWICH TYPE OF THING?
>> NO, THE DEFENSE, CCR IN
POST-CONVICTION, SAID TRIAL
COUNSEL WAS INEFFECTIVE
BECAUSE THEY SAID THEY WOULD
RESERVE OPENING STATEMENTS.
YOU COME ON THE HEELS OF THE
PROSECUTORS' OPENING, AND
RESERVED OPENING STATEMENTS.
MR.†WATTS WAS ASKED ABOUT
THIS IN POST-CONVICTION AND
HIS RESPONSE WAS, AT THAT
TIME WE WANTED TO RESERVE IT.
WE DIDN'T WANT TO MAKE
OPENING STATEMENT.
ONE OF THE ISSUES THE COURT
IS WELL AWARE OF IS THE
WILLIAMS RULE, AND THERE WERE
MULTIPLE WILLIAMS RULE CASES
ELIGIBLE TO BE PRESENTED.
AT THE PRETRIAL HEARING,
THERE WERE ACTUALLY SIX, AND
THEY INVOLVED CASES BEGINNING
IN FEBRUARY OF 1997 THROUGH
AUGUST OF 1998, AND SO YOU
HAVE A POSSIBILITY OF SIX
WILLIAMS RULE CASES COMING
IN.
NOW DEFENSE ALWAYS KNEW
PROBABLY NOT ALL OF THEM.
THE STATE WOULDN'T TRY AND
PRESENT ALL OF THEM.
YOU DON'T WANT IT TO BE A
FEATURE OF THE TRIAL.
THEY HAD WITNESS PROBLEMS.
WITH RESPECT TO ONE OF THE
CASES, THEY WEREN'T CERTAIN
THEY WERE GOING TO USE ALL
SIX.
>> ONE OF THE WILLIAMS RULE
CASES THAT WAS PRESENTED, DID
IT INVOLVE THE RAPE CASE?
>> ONE DID INVOLVE THE RAPE
CASE, YOUR HONOR.
DURING THE GUILT PHASE, THE
EVIDENCE WAS SANITIZED.
THE VICTIM IN THIS CASE, I'LL
REFER TO HER AS M.P.,
TESTIFIED ABOUT A ROBBERY.

AND THE DNA EVIDENCE CAME IN
BY STIPULATION AND THE
STIPULATION READ DURING THE
COURSE OF THE ROBBERY AND THE
VICTIM -- DURING ROBBERY, AND
YOU HAVE THAT IN THE RECORD
SAYING "ROBBERY."
>> THE REASON I ASK THAT,
GOING BACK TO JURY SELECTION,
THERE WAS A JUROR THAT WAS
KEPT ON THE PANEL, JOHNSON,
WHO APPARENTLY WAS RAPED WHEN
SHE WAS 16 YEARS OLD.
IF COUNSEL KNEW THAT THEY HAD
BEEN GIVEN NOTICE OF THE
POTENTIAL OF A WILLIAMS RULE
CASE BEING PRESENTED WHERE
RAPE WAS INVOLVED, HE KEPT
HER ON THE JURY, IS CONCERN.
>> I'LL REFER TO IT AS JUROR
A.J.
JUROR A.J., WHEN SHE WAS 16,
TESTIFIED THAT SHE HAD BEEN
THE VICTIM OF A RAPE.
THE CHARGE WAS AGAINST THE
INDIVIDUAL BY THE NAME OF
CEDRIC BAILEY.
HE WAS CHARGED WITH UNLAWFUL
SEXUAL CONDUCT AGAINST AN
INDIVIDUAL ABOVE THE AGE OF
12.
APPARENTLY BAILEY AND A.J.
KNEW ONE ANOTHER, THERE WAS
SOME WORKING RELATIONSHIP,
AND IT OCCURRED OVER A COURSE
OF TIME.
JUROR A.J. DISCLOSES THE
INCIDENT THAT HAPPENED WHEN
SHE WAS 16.
BY THE TIME OF THIS TRIAL --
SHE IS NOW 23 OR 24 AT THE
TIME OF TRIAL.
SHE INDICATES THAT THIS HAD
HAPPENED TO HER, AND SHE WAS
ASKED IF HER EXPERIENCE OF
BEING A VICTIM WOULD AFFECT
HER ABILITY TO SIT ON A CASE
BECAUSE SHE'S GOT A CASE
THAT'S MURDER.
REMEMBER, THEY'RE KEEPING THE

RAPE OUT OF GUILT PHASE.
SO WOULD THIS AFFECT YOU?
NO, I CAN SIT ON IT.
SHE WAS UNEQUIVOCAL IN THAT.
WOULD YOU GIVE LAW
ENFORCEMENT ANY SPECIAL
CREDIBILITY OR ATTACH THAT TO
THEIR TESTIMONY?
IN THIS PARTICULAR CASE, SHE
WAS SOMEWHAT DISSATISFIED
THAT HER ATTACKER ONLY GOT A
TWO-YEAR SENTENCE.
SO ANY RESENTMENT SHE MIGHT
HARBOR ARGUABLY MIGHT BE
AGAINST THE STATE.
SHE FELT HE GOT TOO LIGHT OF
A SENTENCE, AND SO YOU LOOK
AT WHAT HAPPENS IN THE GUILT
PHASE AND THE PENALTY PHASE,
IN THE GUILT PHASE, CASE IS
SANITIZED TO DESCRIBE THIS AS
A ROBBERY.
I UNDERSTAND THE DEFENSE MUST
HAVE ASSUMED IT WAS A RAPE,
BUT IT'S ALWAYS REFERRED TO
AS THE M.P. CASE AND THE
ROBBERY.
WHEN YOU GET TO PENALTY
PHASE, THEN YOU HAVE THE
DEFENSE BEING -- HAVING TO
DEAL WITH THE FACT THERE ARE
13 PRIOR VIOLENT FELONY
CONVICTIONS FOR THIS
PARTICULAR INDIVIDUAL.
HE HAS NINE LIFE SENTENCE.
SO IF THEY ARE SAYING SOMEHOW
THAT THE -- THAT THIS
INDIVIDUAL ASSURED EVERYONE
SHE FOLLOWED THE LAW, THE
FACT SHE WAS A VICTIM WOULD
HAVE NO IMPACT ON HER
DETERMINATION.
SHE FELT HE SHOULD HAVE
GOTTEN A HARSHER SENTENCE AND
GETS TO THE PENALTY PHASE AND
LEARNS THIS PERSON HAS NINE
LIFE SENTENCES.
THEY ADDRESS, VERY
SPECIFICALLY, THE ALLEGATIONS
THAT ARE RAISED.

THE LAST ALLEGATION AS TO
JUROR A.J., BECAUSE I BELIEVE
MY TIME IS RUNNING UP, IS
THAT THERE WAS A BOOKING
PHOTO, THAT SOMEHOW CEDRIC
BAILEY RESEMBLED THE
DEFENDANT.
THE BOOKING PHOTO THEY
INTRODUCED IS FROM 2006.
THE TRIAL IS 2005.
THIS BOOKING PHOTO IS
CERTAINLY NOT AVAILABLE TO
DEFENSE COUNSEL, AND ALSO
WHEN THE STATE, IN
POST-CONVICTION, SAYS HERE'S
THE PHOTO OF THE GUY WE'RE
BRINGING IN AT THE TIME --
AND THE JUROR NEVER SAYS THIS
MAN ON THE STAND RESEMBLES MY
PERPETRATOR -- WELL, THAT'S
BECAUSE THE ARGUMENT IS HE
DIDN'T.
THE DEFENSE NEVER PROVED
THERE IS A RESEMBLANCE.
THERE IS A DISPARITY IN SIZE
AND AGE BECAUSE THE DEFENDANT
IS, I BELIEVE, 46 AT THE TIME
OF TRIAL.
>> YOU'RE OUT OF TIME.
>> THANK YOU, I APPRECIATE
YOUR ALLOWING ME TO ARGUE.
>> TWO QUICK POINTS.  FIRST
ABOUT WALBOLT AND KUNCL.
MR.†WATTS WAS ASKED DO YOU
HAVE SPECIFIC RECOLLECTION OF
HAVING DISCUSSIONS WITH
MR.†MCDERMOTT?
TALKING ABOUT WHETHER OR NOT
YOU SHOULD STRIKE WALBOLT.
HE SAID I DON'T HAVE A
SPECIFIC RECOLLECTION.
WHEN READ THE EXACT RECORD
DISCUSSION, HE WAS QUITE
SURPRISED IN REVIEWING YOUR
RESPONSE, YES, HE DIDN'T ASK
FOR A CURATIVE INSTRUCTION.
GOING TO NICOLE KUNCL.
SHE DID NOT FOLLOW THE LAW ON
THE PRESUMPTION OF INNOCENCE
BASED ON THIS RESPONSE.

SHE SAID I WANT TO HEAR FROM
MR.†PETERSON, AND THE COURT
HAD TO INTERJECT AND SAY, YOU
KNOW, THIS IS THE LAW.
WE HAVE A PRESUMPTION OF
INNOCENCE AND THE RIGHT TO
REMAIN SILENT.
SHE SAID, I'M TOTALLY CLEAR
WHAT THE JUDGE SAID.
I THINK I WATCHED ENOUGH
"JUDGE JUDY" TO UNDERSTAND
IT'S THE STATE'S
RESPONSIBILITY TO PROVIDE US
WITH THE BURDEN OF PROOF.
I WOULD LIKE TO HEAR WHAT
MR.†PETERSON HAS TO SAY.
I WOULD LIKE TO HEAR.
IF HE CHOOSES TO, SO BE IT.
I FEEL LIKE THE GENTLEMAN IN
FRONT OF ME, THE ONE WHO
HARBORED PRESUMPTION OF
GUILT.
IF YOUR LIFE IS ON THE LINE,
WOULDN'T YOU LIKE TO GET UP
AND SAY, LOOK, NICOLE, I'M
NOT GUILTY.
I THINK I SEE A PIECE OF IT.
THAT STATEMENT SHOWS SHE
UNDERSTANDS THE LAW AND
PRESUMPTION OF INNOCENCE, BUT
SHE'S GOING TO PRESUME HE'S
GUILTY.
>> I WENT THROUGH THAT EVERY
DAY OF MY LIFE ON THE TRIAL
BENCH.
EVERYONE COMES IN WITH THAT
ATTITUDE.
ONCE THE JUDGE EXPLAINS WHAT
THE LAW IS, THEY ACCEPT THE
LAW.
THEY DON'T HAVE TO TESTIFY.
I'LL RESPECT THAT.
MOST PEOPLE COME IN WITH THAT
ATTITUDE AND WANT TO HEAR
FROM THE DEFENDANT BECAUSE
THEY DON'T KNOW WHAT THE LAW
IS.
>> OUR POSITION IS IF YOU
READ MS. KUNCL'S RESPONSE,
SHE WENT TO THE PRESS AFTER

VERDICT.
MIGHT HAVE BEEN DIFFERENT HAD
THE DEFENDANT COME UP AND
TESTIFIED.
I'M OUT OF TIME, I CONCLUDE
SAYING MR.†PETERSON WAS
DENIED THE RIGHT TO FAIR AND
IMPARTIAL JURY.
>> THANK YOU FOR YOUR
ARGUMENTS.
COURT IS IN RECESS FOR TEN
MINUTES.
>>> ALL RISE.