OKAY.
NOW WE HEAR FROM SERRANO V.
JONES.
AND I THINK WE HAVE DIFFERENT
COUNSEL?
>> THANK YOU, YOUR HONORS.
>> WHENEVER YOU'RE READY.
>> THANK YOU.
MAY IT PLEASE THE COURT, MY NAME
IS LOUIS CARRES, I REPRESENT
MR. SERRANO IN PETITION FOR WRIT
OF HABEAS CORPUS CHALLENGING THE
EFFECTIVENESS OF COUNSEL ON
DIRECT APPEAL.
THERE ARE TWO PRIMARY ISSUES I'D
LIKE TO THE TALK ABOUT TODAY
THAT WE BELIEVE DESERVES AND
REQUIRES MERIT-- REQUIRES
RELIEF THAT HAVE MERIT.
THE COURT HAS TALKED ABOUT THE
EFFECT OF HURST ON THIS CASE.
ONE OF OUR ISSUES WAS THAT HURST
WAS NOT ADEQUATELY ARGUED ON
DIRECT APPEAL.
IF IT HAD BEEN ADEQUATELY
ARGUED, MR. SERRANO WOULD BE IN
A DIFFERENT POSITION.
AND WE DIFFER WITH COUNSEL--
>> WHAT WOULD THEY, WHAT COULD
THEY HAVE DONE DIFFERENTLY ON
DIRECT APPEAL?
IN OTHER WORDS, WHAT YOU'RE
SAYING IS SOMEHOW THE U.S.
SUPREME COURT WOULD HAVE TAKEN
JURISDICTION OVER SERRANO RATHER
THAN WAIT AND TAKE JURISDICTION
OVER HURST?
>> WELL, IT'S A POSSIBILITY.
>> BUT ISN'T THAT, I MEAN, THE
ISSUE IS THIS COURT HAD MADE UP
ITS MIND, A MAJORITY OF IT, IN
2000 AND-- RING TIME THAT IT
WAS UP TO THE U.S. SUPREME COURT
TO DECIDE THE ISSUE.
AND IN CASE AFTER CASE THE U.S.
SUPREME COURT, EVEN IN
NON-UNANIMOUS CASES, HAD DENIED
JURISDICTION.
SO WHAT ELSE COULD--
>> YES, YOUR HONOR.

>>-- SHE HAVE SAID THAT WOULD HAVE SOMEHOW CHANGED US OR-- AND THAT'S WHAT YOU'D HAVE TO DO IS SAY--
>> I DON'T KNOW IF SHE COULD HAVE CONVINCED THE COURT DIFFERENTLY, BUT SHE SHOULD HAVE TRIED.
AND OUR POINT IS THAT IF COUNSEL HAD ARGUED THAT IF RING APPLIES TO FLORIDA-- WHICH HURST NOW HAS HELD, AND WE THINK HURST REALLY HOLDS ONE THING, THAT A JURY MUST MAKE ALL THE FINDINGS NECESSARY TO ENHANCE THE PUNISHMENT FROM A LIFE SENTENCE WHICH IS THE BASIC SENTENCE UP TO THE ENHANCED SENTENCE OF DEATH.
>> SO IS EVERYBODY FROM 2000 ON THAT DIDN'T GET TO THE U.S. SUPREME COURT AND THEY RAISED IT DEFICIENT BECAUSE THEY DIDN'T GET US TO CHANGE OUR MIND?
OR-- THAT'S WHAT I'M TRYING TO UNDERSTAND.
I MEAN, WHAT WE USUALLY SAY IS ONCE WE'VE REJECTED SOMETHING, WE DON'T WANT SOMEBODY TO KEEP ON ARGUING.
WE SAY IF YOU WANT TO PRESERVE IT, YOU KNOW, YOU DO IT IN A, ALMOST A BOILERPLATE WAY BECAUSE WE KNOW THEN YOU'VE RAISED IT, WE REJECTED IT--
>> I UNDERSTAND.
AND THERE'S A POINT TO WHERE COUNSEL CANNOT KEEP REARGUING WITH THE DECISION THE COURT HAS MADE.
IN OUR CASE WE DIFFER WITH WHAT WAS SAID EARLIER TODAY.
WE DO NOT BELIEVE THAT MR. SERRANO CAN BE SENT BACK FOR A NEW PENALTY PROCEEDING.
WE BELIEVE THAT THE 9-3 RECOMMENDATION UNDER THE SYSTEM THAT NO LONGER IS VALID GAVE THE STATE AN ADEQUATE OPPORTUNITY TO GET A UNANIMOUS VERDICT.

AND IT GOT HALFWAY THERE.
IT GOT FROM SIX TO NINE.
IT GOT HALFWAY TO WHAT IT
NEEDED.
>> BUT THEY RELIED ON THE FACT
THAT THEY DIDN'T NEED A
UNANIMOUS VERDICT.
THE JURY WAS NOT TOLD THAT THEIR
RECOMMENDATION HAD TO BE
UNANIMOUS, AND--
>> NO, THEY WERE NOT TOLD THAT.
THEY WERE TOLD IT ONLY HAD TO BE
A MAJORITY OF THE JURY.
>> OKAY.
SO WHY WOULD THEY GET THE
BENEFIT OF THE NEW STATUTE AS
OPPOSED TO A NEW PENALTY PHASE?
>> WELL, THEY DON'T GET THE NEW
STATUTE, IN OUR VIEW.
IN OUR VIEW, HE GETS LIFE
BECAUSE IT VIOLATES HIS RIGHT TO
JURY TRIAL UNDER FLORIDA'S
CONSTITUTION.
BECAUSE IF THE PROVISION OF
921141 WAS DECLARED
UNCONSTITUTIONAL, NO LONGER
EXISTS.
ALL THAT'S LEFT IS THE RIGHT TO
TRIAL BY JURY.
>> SO YOU WOULD SAY EVERYBODY
GETS LIFE FROM 1972 ON?
>> MAYBE FURTHER BACK, I DON'T
KNOW.
BUT, YES.
>> WELL, IT CAN'T BE MUCH
FURTHER BACK SINCE--
>> AT ALL TIMES APPLICABLE TO
THIS CASE, WHICH I DON'T WANT TO
ARGUE SOMEONE ELSE'S CASE WITH
MY CLIENT TIME ANY MORE THAN I
NEED TO.
I UNDERSTAND THE BROAD QUESTION
AND THE NEED FOR IT.
THE APPLICABLE DATES IN OUR CASE
ARE 1997 AND 2006, THE DATE OF
THE CRIME AND THE DATE OF THE
TRIAL.
ON BOTH OF THOSE DATES IF 921141
IS NOT VALID, WHAT IS LEFT IS
THE RIGHT TO TRIAL BY JURY.

IN ARTICLE I, SECTION 22.
THAT THE RIGHT TO TRIAL BY JURY SHALL BE SECURED TO ALL AND REMAIN INVIOLATE FOREVER.
FOREVER-- I'M SORRY, REMAIN INVIOLATE.
THE 1968 CONSTITUTION.
OUR CONTENTION IS THIS: THAT WHEN THE CONSTITUTION PROVIDED THAT, IT DID NOT CREATE A NEW RIGHT.
IT RECOGNIZED AN UNDERSTOOD RIGHT.
AND THAT IS THAT A JURY, RIGHT TO TRIAL BY JURY, THE MEANING OF THAT, THE WAY THE JURY SPEAKS TO US, THE ONLY WAY A JURY SPEAKS TO US IS WITH ITS VERDICT.
SPECIAL FINDINGS OR GENERAL VERDICT.
AND IT'S UNDERSTOOD THAT A VERDICT MUST BE UNANIMOUS TO BE A VERDICT OF A PETTY JURY.
PETTY JURIES DON'T GIVE MAJORITY REPORTS OR ANYTHING OF THAT KIND.
>> AND SO IS THIS WHAT YOU--
>> THE ONLY--
>> YOU'RE HERE ON AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM.
SO ARE YOU, IS THIS WHOLE LINE OF ARGUMENT, YOU'RE SAYING THIS IS WHAT THIS LAWYER SHOULD HAVE ARGUED?
>> YES.
>> FROM OKAY.
>> AND I'M SAYING IF THIS IS THE POSITION WE TAKE TODAY BECAUSE WE'VE RAISED HURST IN THE HABEAS PETITION, THAT HURST WAS PENDING, AND THE IF IT WAS DECIDED, HE WOULD BE ENTITLED TO A LIFE SENTENCE, BECAUSE THE RIGHT TO JURY TRIAL ANSWERS THE QUESTION.
WE BELIEVE THE APPLICATION OF--
>> JUST SO I'M CLEAR ON WHAT, JUST SO I'M CLEAR ON WHAT YOU'RE SAYING, IT SEEMS LIKE BASICALLY THE WHAT THE PROSECUTOR AND THE

ATTORNEY GENERAL HAS SAID AND
WHAT WE'VE BEEN SAYING, IT
SOUNDS LIKE HE PRESERVED HIS
HURST ARGUMENT TO BE CONSIDERED
BY US.
SO ASSUMING THAT HIS LAWYER
RAISED ALL THE ISSUES THAT YOU
CLAIM HE SHOULD HAVE RAISED,
WHY-- HOW WOULD HIS DECISION
TODAY BE DIFFERENT BEFORE US?
HOW WOULD HE BE BETTER OFF IF
HE'S ALREADY PRESERVED IT AND
WE'RE GOING TO CONSIDER IT?
>> WHAT SHOULD HAVE BEEN ARGUED
IS THAT IF THE RING DECISION
APPLIES TO FLORIDA AND NOW THAT
WE KNOW FROM HURST THAT THE
PROVISION FOR THE, THE FORMER
PROVISION FOR A RECOMMENDATION
BY MAJORITY IS INVALID.
SO WHAT IS LEFT?
WHAT HE SHOULD HAVE ARGUED AND
WHAT WE CONTEND TODAY IS THAT
THE RIGHT TO TRIAL BY JURY WHERE
THE STATE HAD AN ADEQUATE
OPPORTUNITY TO GET A UNANIMOUS
DECISION, A RECOMMENDATION IN
THAT INSTANCE BUT COULD NOT EVEN
GET A RECOMMENDATION OF 12, GOT
HALFWAY TO IT FROM 6 TO 12, LIFE
TO WHAT WOULD BE A UNANIMOUS
RECOMMENDATION.
THAT, BECAUSE THEY DIDN'T GET
THERE, THEY HAVE NO LEGITIMATE
CAUSE TO ARGUE FOR ANOTHER
CHANCE BEFORE ANOTHER JURY.
BECAUSE THEY HAD AN ADEQUATE
OPPORTUNITY UNDER INSTRUCTIONS
THAT WERE ADVERSE TO US.
THEY WERE NOT ADVERSE TO THE
PROSECUTION BECAUSE THEY DID NOT
INFORM THE JURY OF THE SOLEMNITY
OF THE VISION AND THE EFFECT. --
OF THE DECISION AND THE EFFECT.
SO THAT THE JURY HAD AN ADEQUATE
OPPORTUNITY.
OUR BELIEF IS THAT THE
CONSTITUTION OF 1968 PRESERVED A
RIGHT THAT WAS WELL UNDERSTOOD.
IN 1885, THE SAME PROVISION

EXACTLY WORD FOR WORD EXCEPT THE
WORD FOREVER AT THE END, THE
RIGHT OF TRIAL BY JURY SHOULD BE
SECURED TO ALL AND REMAIN
SECURED AND REMAIN.
THEY TOOK A RIGHT THAT WAS
UNDERSTOOD AND KEPT IT.
AND IN THE CONSTITUTION OF 1885
AFTER THE RECOGNITION OF
FEDERALISM AND THE STATES'
POSITION IN THE FEDERAL SYSTEM
AND THE BASIC RIGHTS OF
PROPERTY, LIBERTY, PURSUIT OF
HAPPINESS AND SAFETY, THE FIRST
ENUMERATED RIGHT IN THE
CONSTITUTION OF 1885-- WHICH
ALSO PRESERVED, SECURED TO ALL
AND TO REMAIN A RIGHT THAT
EXISTED BEFORE.
AND THE INCIDENTS OF THAT RIGHT
ARE A UNANIMOUS JURY VERDICT IS
THE ONLY VERDICT AT A PET THE
CITY JURY TRIAL-- PETTY JURY
TRIAL.
SO THAT THE, THE CONSTITUTION OF
1885, FIRST ENUMERATED,
INDIVIDUAL RIGHT IS THE RIGHT TO
TRIAL BY JURY.
IT COMES BEFORE SPEECH,
RELIGION, ASSEMBLY OR FREEDOM OF
THE PRESS.
AND THERE'S A REASON.
BECAUSE A JURY, THIS RESERVATION
OF RIGHT IS A RIGHT OF THE
CITIZENRY EXERCISING THEIR
SOVEREIGNTY TO SIT AS A
INDEPENDENT BODY WITH THE POWER
TO TRY THE FACTS OF THE CASE
BETWEEN THE INDIVIDUAL AND THE
PROSECUTION OF THE GOVERNMENT
THAT THIS STATE GOVERNMENT THAT
THE CONSTITUTION CREATES.
IN EVERY SINGLE CASE.
NOW WE KNOW FROM HURST TEACHING
US THAT THE JURY MUST TRY THE
FACTORS NECESSARY FOR THE
IMPOSITION OF A DEATH SENTENCE.
SO THE STATE HAS HAD AN ADEQUATE
OPPORTUNITY.
AND THE RIGHT TO TRIAL BY JURY

IS A CHECK ON ACCESS.
THE PEOPLE EXERCISING THEIR SOVEREIGNTY WILL SIT AND BE ABLE TO DISARM STATE AS FAR AS EXCESS OR OPPRESSION.
BUT IT'S A CHECK THAT SHOULD HAVE APPLIED HERE, SHOULD HAVE BEEN ARGUED IT APPLIES HERE.
AND THE LEGISLATURE HAS NO AUTHORITY EXCEPT TO DO TWO THINGS; TO ESTABLISH THE QUALIFICATIONS OF JURORS WHICH IS IN THE CONSTITUTION OF 1968, IT'S NOT IN 1885.
IT GIVES THE LEGISLATURE TWO POWERS; TO SET THE NUMBER OF QUALIFICATIONS OF JURORS, I'M SORRY, AND TO FIX-- AND THE NUMBER OF JURORS TO BE FIXED BY LAW.
AND THE NUMBER WAS FIXED.
IT WAS FIXED AT 12.
>> BUT YOUR DECISION--
>> AND THAT'S WHAT CONTROLS.
THE LEGISLATURE--
>> YOUR POSITION THEN IS THAT THE JURY, THE FINAL RECOMMENDATION OF THE JURY, THE FINAL STEP, THE RECOMMENDATION-- WE DON'T CALL IT THAT ANYMORE UNDER HURST, BUT THAT IS, YOU ARE CLASSIFIED AS A VERDICT, NOT A RECOMMENDATION.
AND UNDER FLORIDA HISTORY, A VERDICT IS DONE UNANIMOUSLY.
>> IT HAS TO BE.
THAT'S THE ONLY VERDICT KNOWN TO THE RIGHT TO TRIAL BY JURY.
AND THE STATE HAD AN OPPORTUNITY, A FAIR OPPORTUNITY TO GET 12.
UNDER AN INVALID SYSTEM BUT NOT AN INVALID SYSTEM THAT WAS UNFAIR TO THE STATE.
AND THE LEGISLATURE HAS NO POWER TO SET ANY NUMBER OF JURORS TO RETURN A VERDICT, ONLY TO SET THE NUMBER OF JURORS FOR THE JURY.
SO THAT WE OBJECT TO BEING TRIED

UNDER ANY OTHER SYSTEM OR BEING TRIED AGAIN BECAUSE THE RIGHT TO TRIAL BY JURY, WE THINK, IS GUARANTEED TO US, AND THE STATE HAD A FAIR OPPORTUNITY TO OBTAIN A NUMBER OF JURORS--
>> WELL, I THINK--
>> THAT MIGHT PUT US IN THE POSITION OF HAVING TO ARGUE--
>> I THINK YOU'VE RAISED AN INTERESTING POINT ABOUT THE FINAL RECOMMENDATION AND THAT--
>> WELL, THANK YOU.
I'D LIKE TO GO ON--
>> WAIT, WAIT, WAIT.
I HAVEN'T FINISHED YET.
>> I'M SORRY.
>> WHAT YOU SAY IS THE ONLY CHOICE IS REDUCING IT TO LIFE, AND THAT'S WHAT I'M NOT GETTING--
>> OKAY.
>>-- BECAUSE I DON'T UNDERSTAND WHY UNDER OUR JURISPRUDENCE WHETHER IT WAS THE HAC AGGRAVATOR WAS TOO BROAD OR ANYTHING ELSE THAT JEOPARDY HAS NOT ATTACHED IN ALLOWING A RESENTENCING WHERE THE STATE HAS A FAIR OPPORTUNITY TO CONVINCE THE JURY THAT THIS RECOMMENDATION-- WHICH THAT, TO A UNANIMOUS VERDICT ON THE AGGRAVATORS OUTWEIGHING THE MITIGATORS AND WHEREVER WE DECIDE UNDER, YOU KNOW, THE 10-2.
SO WHERE, HOW DO YOU JUMP FROM IT'S, THERE WAS A RIGHT TO HAVE A UNANIMOUS JURY RECOMMENDATION, THE STATUTE DIDN'T REQUIRE IT, THE STATE-- THIS COURT DIDN'T DECIDE, REQUIRE IT, THE U.S. SUPREME COURT DIDN'T REQUIRE IT--
>> THE STATE HAD AN OPPORTUNITY--
>>-- TO, THAT THE STATE DIDN'T HAVE A RIGHT TO RELY ON THAT JURISPRUDENCE?

>> WELL, THEY HAD A RIGHT TO
RELY ON THE JURISPRUDENCE, BUT
THEY DON'T HAVE A RIGHT TO
ANOTHER JURY.
THEY HAD AN OPPORTUNITY TO
CONVINCE ENOUGH JURORS UNDER THE
SYSTEM THAT WOULD REMAIN WHEN
921141--
>> WE'RE TALKING PAST EACH
OTHER, BECAUSE IT'S JUST LIKE
YOU DIDN'T-- EVERY DEFENSE
LAWYER DIDN'T REALIZE AFTER A
9-3 THAT THEY SHOULD SAY MAKE A
MOTION TO REDUCE IT TO LIFE
BECAUSE IT WASN'T UNANIMOUS.
>> WELL, THEY SHOULD.
BUT ON APPEAL AT TIME THAT HURST
IS PENDING AND THIS ISSUE IS
BEING AFTER RING, EVERYONE
SHOULD KNOW.
IF THE STATE HAD AN OPPORTUNITY
TO GET A UNANIMOUS VERDICT UNDER
THAT SYSTEM, THEY SHOULDN'T HAVE
A LEGITIMATE CLAIM TO HAVE
ANOTHER OPPORTUNITY BEFORE
ANOTHER JURY.
THE STATE DIDN'T KNOW THAT THE
RECOMMENDATION WON'T BE VALID--
WOULDN'T BE VALID AT THIS TIME
IN HISTORY, BUT IT IS.
BUT THEY HAD THE SAME
OPPORTUNITY TO CONVINCE 12
JURORS THAT THEY WOULD HAVE NEXT
TIME.
THEY HAD AN EQUAL OPPORTUNITY X.
THEY SHOULDN'T HAVE ANOTHER
OPPORTUNITY.
WE WANTED TO TALK, I WANTED TO
TALK BRIEFLY ABOUT--
>> WELL, YOU'RE DOWN TO YOUR
REBUTTAL TIME, SIR.
>> I KNOW I AM.
>> YOU'RE WELCOME TO CONTINUE.
>> I NEED TO RAISE THAT BECAUSE
I CAN'T ARGUE IT AFTER--
>> OKAY, WELL.
>>-- MY OPPOSING COUNSEL HAS
SPOKEN.
HE DIDN'T GET A FAIR APPEAL
BECAUSE COUNSEL FAILED TO RAISE

THE ISSUE, RAISE NINE ISSUES.
THE COURT, OF COURSE, DISCUSSED
THE ISSUE OF THE FIREARMS.
THE BUT THE BODY OF LAW A AS THE
LAWYERS' ARTICLE POINTS OUT,
SUMMARIZES ALL THE CASES FROM
1937 IN HARRIS UP TO THE TIME
OF--
[INAUDIBLE]
PENDING IN THIS COURT AT THE
TIME.
BUT THERE IS A SUBSTANTIAL,
CONSISTENT BODY OF CASE LAW
WITHOUT A SINGLE, SOLITARY
CONFLICTING CASE.
AGATHEUS UPHELD THIS BODY
OF CASE LAW.
IT'S NOT A QUESTION OF WHETHER
THEY SURVIVED AGATHEUS, IT
CONFIRMED THE CASE LAW A THAT
THERE MUST BE A CONNECTION
BETWEEN A FIREARM AND THE
OFFENSE OR SOME RELEVANT
MATERIAL FACT IN PROVING THAT
OFFENSE.
IN HARRIS, WE KNOW--
>> WHICH ISSUE ARE YOU ARGUING?
>> I'M ARGUING COUNSEL'S FAILURE
TO ARGUE THE ISSUE OF
ADMISSIBILITY OF THE FIREARMS
THAT WERE UNCONNECTED TO THE
CASE.
>> OH.
>> COUNSEL DID NOT ARGUE IT ON
APPEAL.
THE COURT DID REACH IT, BUT WE
BELIEVE ADVOCACY MATTERS, AND
COUNSEL, WE HAVE TWO DUTIES.
WEAVER OFFICERS OF THE-- WE'RE
OFFICERS OF THE COURT AND AN
ETHICAL DUTY TO ARGUE FOR OUR
CLIENTS ZEALOUSLY.
THE COURT HAS ONE OBLIGATION,
FAIR AND IMPARTIAL ARBITER.
BUT THE COURT WAS PUT IN THE
POSITION BY COUNSEL'S FAILURE TO
ARGUE EXISTING, SUBSTANTIAL CASE
LAW THAT WOULD HAVE KEPT OUT ALL
OF THOSE PHOTOGRAPHS THAT CAME
IN EVIDENCE, ALL OF THOSE

RECEIPTS THAT THE PROSECUTOR
REFERRED TO AS A PILE OF
RECEIPTS DURING CLOSING
ARGUMENT.
AN ARGUMENT BECAUSE HE HAD THESE
FIREARMS, HE'S MORE LIKELY TO
HAVE HAD THE MURDER WEAPON.
THAT COUNSEL'S FAILURE TO ARGUE
THAT PUT THE COURT IN THE
POSITION OF HAVING TO RAISE THE
ISSUE AND THEN DECIDE AN ISSUE
THAT YOU ESSENTIALLY ARGUE TO
YOURSELVES.
AND THAT WAS UNFAIR, IT DEPRIVED
MR. SERRANO OF HIS RIGHT TO HAVE
COUNSEL ADVOCATE FOR HIM X IT
REMOVED THE CONFIDENCE IN THE
OUTCOME OF THE PROCEEDINGS
BECAUSE THE OUTCOME WOULD LIKELY
BE DIFFERENT.
WE DON'T HAVE TO PROVE THAT.
WE DON'T HAVE TO PROVE AT THIS
STAGE FOR INEFFECTIVE ASSISTANCE
OF COUNSEL ON APPEAL, BUT WE DO
HAVE TO ESTABLISH THAT THERE IS
SOME QUESTION THAT DEPRIVES THE
PROCEEDINGS OF CONFIDENCE IN THE
OUTCOME.
BECAUSE ON DIRECT APPEAL THE
ISSUE WOULD HAVE BEEN WHETHER IT
WAS HARMLESS BEYOND A REASONABLE
DOUBT.
AND WE BELIEVE OF THAT WE'RE
ENTITLED TO A PLENARY APPEAL
AFRESH BEFORE THE COURT ON THAT
ISSUE WHERE WE HAVE A FAIR
OPPORTUNITY TO CONVINCE THE
COURT THAT THE TRIAL COURT
COMMITTED REVERSIBLE PREJUDICIAL
ERROR IN ADMITTING ALL THOSE
PHOTOGRAPHS THAT CAME IN
EVIDENCE.
YOU LOOK AT THE EXHIBITS AFTER
ALL OF THE HORRIBLE PHOTOS OF
THE CRIME SCENE-- THE BLOOD
SMEARS AND THE CARNAGE AND THE
INJURIES AND THE WOUNDS-- THEN
THERE ARE A COUPLE OF RECORDS.
THERE ARE TIMETABLES FOR
FLIGHTS, AND THERE IS A CREDIT

CARD STATEMENT.
AND THEN THE NEXT THING THAT COMES IN ARE ALL THESE PHOTOGRAPHS, POSED PHOTOGRAPHS OF WEAPONS THAT HAVE NO CONNECTION TO THIS CRIME.
>> I LET YOU GO ON, BUT THE TIMETABLE HERE SAYS YOUR TIME IS UP.
>> THANK YOU VERY MUCH.
>> SO THANK YOU.
>> MR. AKE.
>> PLEASE THE COURT, STEPHEN AKE, FOR THE RESPONDENT.
I SHOULD SHOULD BE HOPEFULLY BRIEF.
THE TWO CLAIMS WERE RAISED BY APPELLATE COUNSEL ON APPEAL BY MISS SILVERS WHO WAS HERE OF THE SHE RAISED BOTH OF THESE CLAIMS.
COUNSEL IS TRYING TO HAVE SECOND BITE OF THE APPLE BY RAISING THEM.
>> HE SAYS SHE DIDN'T RAISE THE ISSUE OF THE FIREARMS.
>> HE IS WRONG.
IF YOU LOOK AT BRIEF, REPLY BRIEF, SHE ARGUES, SHE DEFINITELY DOES IT MORE EXTENSIVELY IN THE REPLY BRIEF THAN THE INITIAL BRIEF BUT SHE RAISED IT.
>> DID SHE CITING AGATHEAS.
SHE FILED, CITED TO JACKSON IN HER REPLY BRIEF.
I BELIEVE COUNSEL SAID HE DIDN'T CITE TO THE BRIEF.
I THINK HE HAS MISTAKEN CITE FOR JACKSON.
SHE ARGUED JACKSON IN HER REPLY BRIEF.
THE COURT ADDRESSED THE ISSUE ON DIRECT APPEAL AND SAID THAT, THE FIREARM EVIDENCE WAS IN FACT RELEVANT TO SHOW THAT SERRANO WAS FAMILIAR WITH THE MURDER WEAPON THAT WAS USED AND EVEN IF THERE WAS AN ERROR IT WAS HARMLESS.

SO THIS WAS CLAIM THAT WAS
BRIEFED AND ADDRESSED BY THIS
COURT AND LIKEWISE THE SAME WITH
THE RING CLAIM.
THAT'S THE ISSUE THAT'S BEFORE
THIS COURT, IS WHETHER APPELLANT
COUNSEL WAS INEFFECTIVE.
OBVIOUSLY YOU CAN'T BE
INEFFECTIVE AND RAISE THE CLAIM
AND HAVE THEM ADDRESSED BY THIS
COURT.
UNLESS THE COURT HAS ANYTHING
SPECIFICALLY I RELY ON MY
PLEADING.
>> THANK YOU.
FOR YOUR ARGUMENTS.
THE COURT'S IN RECESS UNTIL
TOMORROW MORNING.