>> ALL RISE.
>> HEAR YE, HEAR YE, HEAR YE.
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR, GIVE ATTENTION YOU SHALL
BE HEARD.
GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.
LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.
PLEASE BE SEATED.
>> GOOD MORNING.
WELCOME TO THE FLORIDA SUPREME
COURT.
THE FIRST CASE ON THE DOCKET IS
LAMBRIX V. STATE.
COUNSEL, WHENEVER YOU'RE READY.
>> MAY IT PLEASE THE COURT,
COUNSEL, FOR THE RECORD, MY NAME
IS MARTIN McLEAN, I'M HERE
TODAY REPRESENTING CARY MICHAEL
LAMBRIX.
THIS COURT DIRECTED BRIEFING,
AND I THINK THE BEST PLACE TO
START IS WITH WHAT IT HELD.
FOR ME, I THINK THE MOST
SIGNIFICANT PASSAGE IS THAT THE
FACTS UNDER FLORIDA LAW THAT
HAVE TO BE FOUND TO RENDER A
FIRST-DEGREE MURDER DEFENDANT
DEATH ELIGIBLE ARE THE PRESENCE
OF SUFFICIENT AGGRAVATING
CIRCUMSTANCES, THAT THEY EXIST
AND ARE SUFFICIENT TO JUSTIFY
THE IMPOSITION OF A DEATH
SENTENCE, AND THAT NO
MITIGATION, NO MITIGATING
CIRCUMSTANCES OUTWEIGH THE
AGGRAVATION.
>> [INAUDIBLE]
>> ABSOLUTELY.
>> THE THRESHOLD ISSUE.
UNLESS HEARSE IS TO BE APPLIED
RETROACTIVELY ON POSTCONVICTION,
THESE OTHER QUESTIONS ABOUT HOW
IT PARTICULARLY APPLIES IN
SPECIFIC CASES DOESN'T MATTER.
IN THIS CASE, RIGHT?

>> NO.
RETROACTIVITY IS DEPENDENT UPON IDENTIFYING EXACTLY WHAT HEARST HOLDS.
HEARST HAS, IN'S SENSE, OVERTURNED EVERY DECISION IN THIS COURT ADDRESSING RING UNTIL JANUARY OF THIS YEAR, AND THEY'RE PREMISED UPON THE NOTION THAT RING ONLY REQUIRES ONE AGGRAVATOR.
THAT'S NOT FLORIDA LAW, THAT'S NOT WHAT HEARST SAYS, AND SO THE RETROACTIVITY ANALYSIS HAS TO BEGIN WITH THAT, HAS TO RECOGNIZE THAT A WHOLE LINE OF CASES FROM THIS COURT HAVE BEEN OVERTURNED.
THIS IS EXACTLY WHAT HAPPENED AFTER HITCHCOCK V. DUGGER.
AT ISSUE IN HITCHCOCK WAS LOCKET V. OHIO.
LIKE ARIZONA V. RING, IT DID NOT ADDRESS THE FLORIDA STATUTE.
IT ADDRESSED OHIO'S STATUTE.
IN LIKE WHAT HAPPENED WITH RING, THE U.S. SUPREME COURT HAD SAID THE FLORIDA STATUTE'S FINE.
AND FLORIDA STATUTE LIMITED THE MITIGATION TO A LIST OF MITIGATING CIRCUMSTANCES.
THE U.S. SUPREME COURT IN LOCKET IN 1978, TWO YEARS AFTER PROFIT, SAID, NO, THAT'S NOT CONSTITUTIONAL.
YOU CAN'T LIMIT THE MITIGATION.
>> SO LET ME ASK YOU, YOU'RE SAYING THAT HEARST SAYS THAT THE DECISION OF WHETHER TO IMPOSE DEATH WHICH IS THAT SUFFICIENT AGGRAVATING CIRCUMSTANCES EXIST AND OUTWEIGH SUFFICIENT MITIGATING.
SO, THEREFORE, WHETHER DEATH SHOULD BE IMPOSED MUST BE FOUND BY A JURY.
IS THAT WHAT YOU'RE SAYING?
>> I'M SAYING THAT'S WHAT HEARST SAYS.
>> BUT IT'S NOT-- SEE, I THINK

A LOT OF US HAVE SPENT A LOT OF TIME READING HEARST, INCLUDING THE BRIEF THAT THE PETITIONERS FILED WHICH ONLY TALKED ABOUT FINDINGS OF AGGRAVATING CIRCUMSTANCES.
SO TELL US HOW CAN THE U.S. SUPREME COURT, DO YOU THINK THEY WENT-- INCLUDING SCALIA-- WENT BROADER THAN WHAT THE PETITIONER ARGUED, WHICH WAS THAT THE FINDINGS WERE WHETHER THE, FOR THE JURY AS WHETHER, WHAT THE AGGRAVATING CIRCUMSTANCES ARE?
>> WELL, WHAT THEY DID IS THEY RELIED UPON WHAT THEY SAID IN APPRENDI, THAT WHAT HAS TO BE FOUND IS WHAT'S DEFINED IN THE STATUTE, THE FACTS THAT ARE IN THE STATUTE.
AND THEY SPECIFICALLY QUOTED THE STATUTE.
AND THE STATUTORY LANGUAGE IS THE PRESENCE OF SUFFICIENT AGGRAVATING CIRCUMSTANCES.
IT'S NOT JUST ONE AGGRAVATING CIRCUMSTANCE, IT'S SUFFICIENT AGGRAVATING CIRCUMSTANCES.
THAT'S QUOTED SPECIFICALLY THIS HEARST.
IN HEARST.
AND IT'S QUOTED IN THE CONTEXT OF THAT'S THE FACTS THAT HAVE TO BE FOUND BY THE JUDGE TO RENDER THE FIRST-DEGREE MURDER CONVICTED INDIVIDUAL ELIGIBLE FOR A SENTENCE OF DEATH.
AND SO, YES, THE OPINION IN HEARST TIES IT BACK TO FLORIDA STATUTE.
THAT'S WHAT APPRENDI SAYS.
APPRENDI SAYS YOU LOOK AT THE STATUTE.
THAT'S WHAT RING SAID.
IN RING THE STATUTE SAID ONLY ONE AGGRAVATING CIRCUMSTANCE, AND THE DEATH, THE JUDGE CAN IMPOSE DEATH.
OUR STATUTE IS DIFFERENT.
OUR STATUTE SAYS THERE HAS TO BE

SUFFICIENT AGGRAVATING
CIRCUMSTANCES.
AND IT IS IN KEEPING WITH THE
VALUE OF FURMAN THAT THE PURPOSE
OF THE AGGRAVATING CIRCUMSTANCES
ARE TO NARROW, TO INSURE THAT
IT'S THE WORST OF THE WORST.
AND WHAT'S HAPPENED SINCE THEN
IS THAT THIS COURT HAS
ACKNOWLEDGED THE AGGRAVATING
CIRCUMSTANCES ARE NOT FUNGIBLE.
SOME ARE MORE WEIGHTY THAN
OTHERS.
AND THE LEGISLATURE KEEPS ADDING
AGGRAVATING CIRCUMSTANCES.
AND IF THE LIST OF AGGRAVATING
CIRCUMSTANCES KEEPS BROADENING,
THEN THIS COURT WOULD BE
REQUIRED IF ONLY ONE AG WAS
NECESSARY TO REVISIT PROVE FETE
AND FURMANN EVERY SINGLE TIME
AN AGGRAVATING CIRCUMSTANCE IS
ADDED.
BUT IT'S NOT BECAUSE FURMAN IS
BEING SATISFIED BY THE
REQUIREMENT THAT THERE BE A
FACTUAL DETERMINATION THAT THE
AGGRAVATING CIRCUMSTANCES ARE
SUFFICIENT TO JUSTIFY A SENTENCE
OF DEATH.
THAT'S IN THE INSTRUCTION THAT
THE JURY IS GIVEN.
THAT'S IN THE STATUTE.
THAT'S WHAT THE JUDGE IS
REQUIRED TO FIND, SUFFICIENT
AGGRAVATING CIRCUMSTANCES.
AS A RESULT, NO ONE AGGRAVATING
CIRCUMSTANCE RENDERS SOMEONE
DEATH ELIGIBLE UNLESS THERE'S A
FINDING THAT IT'S SUFFICIENT.
FOR EXAMPLE, IN THE COURSE OF A
FELONY IS AN AGGRAVATOR.
AND THIS COURT IN PROFETT V.
STATE SAID THE FACT THAT IT WAS
IN THE COURSE OF A ROBBERY, YES,
THAT'S AN AGGRAVATOR, BUT THAT'S
NOT SUFFICIENT TO JUSTIFY A
SENTENCE OF DEATH IN KEEPING
WITH FURMAN.
AND SO THE AGGRAVATING

CIRCUMSTANCES ARE NOT
TALISMANIC.
IT'S THAT ASPECT OF HEARST THAT
REQUIRES IT TO BE APPLIED
RETROACTIVELY.
BECAUSE THAT'S WHAT THIS COURT
DID WITH HITCHCOCK.
IN HITCHCOCK-- ACTUALLY, IT'S
IN THOMPSON V. DUGGER.
THIS COURT ISSUED ITS OPINION IN
SEPTEMBER OF 1987 HOLDING THAT
HITCHCOCK WAS RETROACTIVE
BECAUSE IT REVERSED A WHOLE LINE
OF CASES FROM THIS COURT.
AND THAT'S THE PROBLEM.
THE STATE-- YESTERDAY I WAS AT
A CANDIDATE MANAGEMENT.
IN-- CASE MANAGEMENT.
THE STATE'S POSITION WAS HEARST
ONLY APPLIES TO THOSE WHOSE
CONVICTIONS AND SENTENCES WERE
NOT FINAL ON JANUARY 12, 2016.
AND WHAT IS IGNORED ARE ALL THE
DECISIONS FROM THIS COURT FROM
THE TIME WE'RE IN ISSUE UNTIL
JANUARY 12, 2016 THAT ARE
WRONGLY DECIDED.
>> HAS THE U.S. SUPREME COURT
HELD RING TO BE RETROACTIVE IN
OTHER CONTEXTS?
>> THE U.S. SUPREME COURT HAS
ONLY ADDRESSED IT IN FEDERAL
HABEAS CONTEXT.
AND FEDERAL HABEAS HAS A UNIQUE,
SUPPOSED TO GIVE DEFERENCE TO
STATE COURTS.
STATE COURTS ARE TREATED AS THE
BULWARK.
WE TRUST THE STATE COURTS TO DO
THE RIGHT THING.
AND SO THIS DEFERENCE HAS LED
TO--
[INAUDIBLE]
AS THE STANDARD.
THIS COURT'S NOT ADOPTED IT.
THIS COURT HAS ADOPTED WHIT IN
RECOGNITION OF THIS COURT BEING
FRONT LINE INSURING THAT THE
CONSTITUTION IS COMPLIED WITH.
NOW--

>> HAS THE U.S. SUPREME COURT
RULED ON THE RETROACTIVITY OF
RING?
>> YES, IN-- THE U.S. SUPREME
COURT SAID THE RETROACTIVITY
ANALYSIS FOR FEDERAL HABEAS IS
DIFFERENT THAN THE RETROACTIVITY
ANALYSIS IN THE STATE COURT
ITSELF.
>> THEY RULED IT--
>> FEDERAL HABEAS GIVES
DEFERENCE TO THE STATE COURT.
>> THEY RULED IT'S NOT
RETROACTIVE?
>> THAT'S CORRECT.
THAT'S UNDER THE--
>> SO WE SHOULD APPLY A WHIP
STANDARD, NOT TEA, AND,
THEREFORE, HOLD U.S. SUPREME
COURT?
IS THAT YOUR ARGUMENT?
>> THE U.S. SUPREME COURT HAS
NOT ADDRESSED THE RETROACTIVITY
OF HEARST.
WHAT'S BEFORE THIS COURT IS THE
RETROACTIVITY OF HEARST.
>> WELL, HEARST DEALS WITH RING,
DOES IT NOT?
>> YES, IT DOES.
BUT WE HAVE A DIFFERENT STATUTE.
WE HAVE A STATUTE THAT REQUIRES
SUFFICIENT AGGRAVATING
CIRCUMSTANCES, NOT JUST ONE
AGGRAVATOR.
>> WELL, BUT WE HAD THAT SAME
STATUTE WHEN WE DECIDED JOHNSON
V. STATE, DID WE NOT?
>> YES.
BUT THIS COURT IN JOHNSON V.
STATE SAID APPRENDI APPLIES, AND
BECAUSE THERE'S THE AUTO AGS IN
THE, OF PRIOR CONVICTION OR
CONTEMPORANEOUS CONVICTION AND
ONLY ONE AGGRAVATING
CIRCUMSTANCE IS NECESSARY, RING
IS NOT RETROACTIVE UNDER--
>> WELL, WE SAID SOME DIFFERENT
THINGS.
WE HAD ALTERNATIVE HOLDINGS IN
JOHNSON V. STATE, ISN'T THAT

CORRECT?
>> WELL--
>> AND ONE OF THE HOLDINGS WAS A HOLDING ABOUT THE RETROACTIVITY OF RING.
>> A HOLDING ABOUT THE RETROACTIVITY OF RING PREMISED UPON A MISUNDERSTANDING OF WHAT RING SAID, YES.
>> WELL, IT'S A HOLDING THAT INVOLVED THE WHIT ANALYSIS--
>> YES.
>> AND IT SAYS, OKAY, IF WE DID APPLY RING, THEN RETROACTIVELY THIS IS WHAT, THIS IS THE WAY WE WOULD LOOK AT THE CONSEQUENCES OF THAT.
AND WE DECIDED IT SHOULD NOT BE APPLIED T RETROACTIVELY.
>> ON THE BASIS OF THIS COURT'S MISUNDERSTANDING OF RING, THAT'S WHAT THIS COURT SAID.
BUT THIS COURT DID NOT UNDERSTAND RING CORRECTLY, AND WE KNOW THAT AS A MATTER OF FACT BECAUSE THE U.S. SUPREME COURT HAS SAID SO.
>> WELL, I UNDERSTAND.
WE SAID, WE DEALT WITH THE RING QUESTION ON THE MERITS, BUT WE ALSO DEALT WITH THE RING QUESTION OF RETROACTIVITY.
>> ABSOLUTELY.
>> AND FOR PURPOSES OF THAT, WE HAD TO ASSUME THAT IT WOULD HAVE AN IMPACT ON CASES.
>> NO.
BUT THIS COURT ASSUMED IT UNDERSTOOD RING.
IT DIDN'T.
AND SO THE ANALYSIS OF THE IMPACT, THE SUBSTANTIAL UPHEAVAL IS DIFFERENT JUST LIKE HITCHCOCK V. DUGGER WAS A FLORIDA SUPREME COURT CASE SAYING LOCKETT V. OHIO APPLIES IN FLORIDA.
THE U.S. SUPREME COURT IN HEARST SAYS THE PRINCIPLES OF APPRENDI AND RING APPLY IN FLORIDA.
THIS COURT, AFTER RING CAME OUT

IN BODSON, SAID INSTILL THE LAW,
AND RING DOESN'T APPLY IN
FLORIDA.
AND IF IT DOES APPLY IN FLORIDA,
IT'S ONLY ABOUT WHETHER THERE'S
ONE AGGRAVATING CIRCUMSTANCE.
IT NEVER IN JOHNSON RECOGNIZED
THAT IF--
>> WELL, I'M JUST LOSING ME HERE
BECAUSE WE GO THROUGH THE AN
ACCESS IN JOHNSON OF THE PURPOSE
OF THE NEW RULE, THE RELIANCE ON
THE OLD RULE AND THE EFFECT ON
THE ADMINISTRATION OF JUSTICE.
I DON'T SEE HOW THAT ANALYSIS IS
GOING TO BE ANY DIFFERENT NOW
THAN IT WOULD HAVE BEEN THEN.
BASED ON THE CIRCUMSTANCES THAT
YOU'RE TALKING ABOUT.
>> IT ABSOLUTELY IS DIFFERENT
BECAUSE WE NOW HAVE HEARST
RULING THAT OVER A HUNDRED CASES
THAT REST ON BODSON HAVE BEEN
WRONGLY DECIDED BY THIS COURT.
>> WELL, IT'S A BIGGER IMPACT ON
THE ADMINISTRATION OF JUSTICE.
>> ABSOLUTELY.
AND THAT'S WHAT WHIT SAYS, THE
BIGGER THE IMPACT, THE MORE
SUBSTANTIAL UPHEAVAL IT IS, THAT
WAS THE BASIS OF HOLDING
HITCHCOCK RETROACTIVE.
BECAUSE IT OVERTURNED A LONG
LINE OF CASES.
>> WELL, BUT HEARST IS NO MORE A
WATERSHED THAN RING WAS.
WOULD IT BE CONSIDERED THAT?
>> WELL, IT ABSOLUTELY IS MORE
OF A WATERSHED, BECAUSE
THIS COURT SAID RING WASN'T A
WATERSHED BECAUSE--
[INAUDIBLE]
WAS STILL THE LAW.
AND WE NOW KNOW IT'S NOT THE
LAW.
HEARST INDICATES NOT ONLY IS
BODSON WRONG, HILL V. FLORIDA IS
WRONG, SPAZ JANUARY KNOW V.
FLORIDA IS WRONG.
ALL OF THEM HAVE BEEN WIPED OUT.

>> WELL, BUT YOU, AGAIN, I'M STRUGGLING HERE WITH TRYING TO UNDERSTAND THIS BECAUSE, OBVIOUSLY, WHENEVER WE CONFRONT A QUESTION OF RETROACTIVITY, THAT MEANS THAT THERE WERE SOME DECISIONS THAT WERE PREVIOUSLY DECIDED WRONGLY, OKAY?
THAT'S THE ONLY REASON YOU GET INTO THE QUESTION OF RETROACTIVITY.
>> AND WHIT INDICATES THE MORE SUBSTANTIAL THE UPHEAVAL IN THE LAW, THE MORE IT SHOULD BE APPLIED RETROACTIVELY.
>> WELL, I DON'T-- LET'S GO BACK TO THE QUESTION OF JOHNSON. I AGREE THAT YOU COULD ALMOST SAY IT'S DICTA BECAUSE THE MAJORITY OF THE COURT HAD NEVER HELD RING APPLIED IN FLORIDA. HOWEVER, ON THE PRONG THAT TALKS ABOUT THE EFFECT ON THE ADMINISTRATION OF JUSTICE, WHAT WE SAY IS THAT-- AND THIS WOULD APPLY TO MR. LAMBRIX WHOSE CONVICTION WAS FINAL 30 YEARS AGO-- THAT ATTEMPTING TO APPLY RING RETROACTIVELY MAY ACTUALLY LEAD TO NEW PENALTY PHASE PROCEEDINGS THAT WOULD BE LESS COMPLETE AND, THEREFORE, LESS ACCURATE THAN THE PROCEEDINGS THEY WOULD REPLACE.
NOW, THIS GOES BACK TO THE QUESTION, AND SO THAT STATEMENT, WHICH IS WHAT I THINK JUSTICE CANADY WAS SAYING, WHICH IS THAT WE'VE NOW HAD ANOTHER DECADE OF CASES THAT, CASES THAT ARE 30 YEARS OLD.
YOU'RE ASKING FOR A NEW PENALTY PHASE FOR MR. LAMBRIX, RIGHT?
>> NO, I'M ASKING FOR A LIFE SENTENCE BECAUSE IF HEARST APPLIES, MR. LAMBRIX HAS NOT BEEN CONVICTED OF CAPITAL FIRST-DEGREE MURDER.
THERE HAS BEEN NO JURY FINDING--

>> WELL, THAT'S NOT-- THAT IS A
WHOLE OTHER ISSUE WHICH IS THAT
HE WAS-- HE HAD TWO
CONTEMPORANEOUS MURDERS.
IN FLORIDA--
>> WHICH WERE NOT SUBMITTED TO
THE JURY.
>> BUT IN FLORIDA YOU DO NOT GET
INTO THE DOOR OF CAPITAL DEATH
SENTENCES UNLESS THERE'S ONE
AGGRAVATING CIRCUMSTANCE.
THAT'S DIFFERENT--
>> AND FOUND SUFFICIENT.
AND FOUND SUFFICIENT BY THE
JURY.
>> NO, WE'RE TALKING ABOUT IN
FLORIDA.
IF YOU DON'T HAVE ONE
AGGRAVATING CIRCUMSTANCE, YOU
GET A LIFE SENTENCE.
>> IF YOU DON'T HAVE SUFFICIENT
AGGRAVATING CIRCUMSTANCES TO
JUSTIFY DEATH UNDER THE FLORIDA
STATUTE, YOU GET A LIFE
SENTENCE.
>> WELL, YOU KNOW, I GUESS WE'RE
NOT GOING TO SIT HERE ARGUING.
THE QUESTION IS, SO NOW YOU'RE
SAYING, NO, YOU WOULDN'T HAVE A
NEW PENALTY PHASE, THAT
EVERYBODY THAT WAS SENTENCED IN
FLORIDA UP TIL THE PRESENT WOULD
GET A LIFE SENTENCE.
>> UNDER FLORIDA LAW THERE HAS
NOT BEEN A CONVICTION OF THE
FACTS NECESSARY TO IMPOSE DEATH.
DOUBLE JEOPARDY ATTACHES.
AND SO THE EFFECT ON THE
ADMINISTRATION OF JUSTICE,
THAT'S WHY I SAY YOU CAN'T DO
THE RETROACTIVITY ANALYSIS
WITHOUT UNDERSTANDING HEARST.
>> OF COURSE, I SEE YOU'RE IN
YOUR REBUTTAL.
I HAVE TO ASK YOU A QUESTION.
YOU HAVE ASKED FOR A MOTION TO
RELINQUISH.
>> YES.
>> IS THAT FOR AN EVIDENTIARY
HEARING?

>> YES.
>> AND WHAT WOULD THAT BE ON THE ISSUE OF RETROACTIVITY THAT WOULDN'T BE ARGUED IN FRONT OF THIS COURT AS TO WHETHER IT'S FIRST RETROACTIVE?
>> IT WOULD BE TO PRESENT THE EVIDENCE OF THE IMPACT ON COUNSEL AND THE STRATEGIC CHOICES COUNSEL WOULD MAKE.
AFTER HITCHCOCK THIS COURT RULED THAT TO THE EXTENT THAT THE PRIOR LAW CONSTRAINED COUNSEL, YOU HAD TO LOOK OUTSIDE THE RECORD TO DETERMINE THE EFFECT ON THE PROCEEDING.
AND IF COUNSEL KNOWS THAT THE JURY HAS TO RETURN A UNANIMOUS, BINDING VERDICT FINDING SUFFICIENT AGGRAVATING CIRCUMSTANCES, IT WOULD CHANGE HOW COUNSEL WOULD APPROACH THE CASE.
YOUR HONOR, I WOULD SAVE THE REST OF MY TIME FOR REBUTTAL.
THANK YOU.
>> GOOD MORNING.
SCOTT BROWNE WITH THE ATTORNEY GENERAL'S OFFICE ON BEHALF OF THE STATE OF FLORIDA.
HEARST ANNOUNCED A NEW PROCEDURAL RULE HOLDING RING APPLICABLE TO FLORIDA, BUT IT WAS A VERY NARROW PROCEDURAL RULING.
>> YOU KNOW, HERE'S THE PROBLEM THAT WE'RE GOING TO HAVE.
MR. McCLAIN WANTS TO REDUCE EVERY SENTENCE TO LIFE, THE STATE WANTS TO SAY THIS IS THE NARROWEST RULING EVER.
I THINK WE HAVE TO COME UP WITH SOMETHING THAT IS ACTUALLY WHAT HEARST HOLDS AND WHAT THE FLORIDA STATUTE IS.
SO IF THE STATE IS REALLY GOING TO GO THE OTHER EXTREME, WE'RE NOT GOING TO HAVE A VERY HELPFUL ORAL ARGUMENT.

SO DO YOU HAVE-- IF, BECAUSE IT'S-- THE RIGHT TO A JURY TRIAL, A RIGHT TO A JURY TRIAL IS NOT IN FLORIDA AT LEAST A PROCEDURAL RULE.
NOW, I UNDERSTAND WHAT THE U.S. SUPREME COURT SAID SUBSEQUENTLY IN HOLDING THAT RING WAS NOT RETROACTIVE.
BUT I'M NOT SURE I UNDERSTAND YOUR ARGUMENT THAT IT'S A PROCEDURAL RULE.
SO COULD YOU ELABORATE ON THIS VERY NARROW HOLDING THAT YOU THINK HEARST CAME UP WITH.
>> WELL, YOUR HONOR, THIS COUNT HAS HELD THAT RING ANNOUNCED A NEW PROCEDURAL RULE.
THE SUPREME COURT SAID RING ANNOUNCED A NEW PROCEDURAL RULE--
>> WHAT DOES THAT MEAN IN WHAT DOES THAT MEAN?
IF IT'S BASED IN THE SIXTH AMENDMENT, WHAT DOES THAT MEAN?
A PROCEDURAL RULE WOULD BE, YOU KNOW, 30 DAYS AFTERWARDS YOU CAN DO THIS OR THAT.
BUT A PROCEDURAL RULE IS NOT THAT SOMEONE HAS A RIGHT TO A JURY TRIAL BEFORE THE DECISION AS TO WHETHER TO IMPOSE DEATH IS MADE.
THAT'S NOT, TO ME, THE SIXTH AMENDMENT IS NOT A PROCEDURAL RULE.
>> WELL, YOUR HONOR, YOU'VE HELD, THIS COURT HELD EXACTLY THAT.
AND, AGAIN, IT'S IMPORTANT TO NOTE THAT THE NORMAL COURSE IF YOU ANNOUNCE A NEW PROCEDURAL RULE-- AND, AGAIN, THE ONLY ISSUE IN LAMBRIX'S CASE THAT THIS COURT NEEDS TO DECIDE IS RETROACTIVITY.
AND IF IT IS A NEW PROCEDURAL RULE AND THERE IS NO ARGUMENT THAT IT CANNOT BE.
EACH AND EVERY COURT TO REVIEW

APPRENDI, BLAKELY, ALL OF THE PROGENY FROM APPRENDI ON HAVE FOUND THAT IT ANNOUNCED A NEW PROCEDURAL RULE.
AND THAT DISTINGUISHES IT FROM THIS COURT'S DECISION IN FALCON V. STATE.
AND THERE YOU HAD A RULE THAT ESSENTIALLY PROHIBITED A MANDATORY LIFE SENTENCE FOR JUVENILES WITHOUT THE POSSIBILITY OF PAROLE.
AND BOTH THIS COURT AND SUBSEQUENTLY THE SUPREME COURT IN THE MONTGOMERY V. LOUISIANA HELD THAT THAT RULE WAS SUBSTANTIVE AND MUST BE APPLIED RETROACTIVELY.
AND, AGAIN, THIS COURT WOULD STICK OUT LIKE THE PROVERBIAL PINK ELEPHANT IF IT FOUND RING-- WELL, HEARST RETROACTIVE AND, THEREFORE, RING RETROACTIVE.
>> LET ME ASK YOU THIS QUESTION WITH REGARD TO APPRENDI AND RING.
CAN A DECISION SUCH AS HEARST BE FOUND IN THAT PROGENY YET GO FURTHER TO CAUSE A SUBSTANTIVE IMPACT, YET BE FOUNDED ON THAT UNDERLYING PROCEDURAL ANNOUNCEMENT OF APPRENDI AND RING?
>> YOU KNOW, THAT'S AN INTERESTING QUESTION, YOUR HONOR, AND I HAVEN'T FOUND A SINGLE CASE WHERE THAT IS TRUE.
IN BUTTERWORTH, THE FIRST CIRCUIT ADDRESSED THAT ISSUE.
IN THAT CASE THE DEFENDANT WAS SAYING, AHA, WE NOW KNOW THAT APPRENDI WAS THIS WATERSHED RULE.
AND THE COURT SAID, NO, IT'S NOT, BECAUSE BY ITS VERY NATURE CONSTITUTIONAL INTERPRETATIONS BUILD ON ONE ANOTHER.
SO EACH BUILDING BLOCK FROM APPRENDI ON HAS BEEN HELD ALMOST

UNIVERSALLY TO BE NOT
RETROACTIVE.
NOW, THIS--
>> WELL, THAT'S THE QUESTION.
I MEAN, DOES THAT MEAN THAT THAT
CAN NEVER HAPPEN WITHOUT REGARD
TO WHAT THE HOLDING OF A NEW
CASE MAY BE?
>> I THINK IT IS IN THEORY
POSSIBLE.
THIS COURT WOULD PROBABLY BE THE
ONLY ONE TO DO THAT.
IN OTHER WORDS, YOU'D HAVE TO
REVISIT YOUR DECISION IN
JOHNSON, AND IT WASN'T NEAR
DICTA, BECAUSE THE FIRST
QUESTION YOU NEED TO ASK OR
ANSWER IN A POSTCONVICTION CASE
IS DOES THIS NEW RULE, THIS
DECISION FROM THE SUPREME COURT
IN RING APPLY RETROACTIVELY.
AND IN JOHNSON THIS COUNT
RESOUNDINGLY ANSWERED THAT
QUESTION, NO.
AND YOU WENT THROUGH ALL THE
WAINWRIGHT V. WHIT FACTORS, AND
I SUBMIT TO YOU, JUSTICE CANADY,
LIKE YOU WERE INDICATING, EVERY
SINGLE ONE OF THOSE FACTORS, THE
PURPOSE OF THE RULE, THE IMPACT
ON THE JUDICIAL SYSTEM AND GOOD
FAITH ALL MILITATE IN FAVOR OF
FINDING HEARST IS NOT
RETROACTIVE.
>> BUT AT THE SAME TIME, YOU
KNOW, THERE'S GOT TO BE
SOMETHING TO THE LAW THAT'S
BEYOND JUST TECHNICALITIES AND
THAT ONE PERSON IS EXECUTED
TODAY, BUT THE ONE THAT COMES UP
TOMORROW IS NOT, AND THERE'S
REALLY NO DIFFERENCE IN THEIR
CASES.
>> YOUR HONOR, THE DIFFERENCE
IS--
>> SO I'M STRUGGLING WITH, YOU
KNOW, THE WORD GAMES.
I APPRECIATE ALL THOSE THINGS, I
UNDERSTAND THE DIFFERENCES, BUT
DOESN'T THERE COME A POINT IN

TIME WHERE ONE HAS TO LOOK AT
THIS AND SAY WHAT ARE WE DOING?
WE'RE PUTTING PEOPLE TO DEATH,
AND IT'S ON THE SAME, SAME
POSTURE ONE GETS DEATH AND ONE
DOES NOT?
>> JUSTICE LEWIS, HERE'S WHY YOU
WOULD NOT DO THAT HERE.
ASIDE FROM THE DRAMATIC AND
DEVASTATING IMPACT ON THE STATE
AND VICTIMS' FAMILY MEMBERS, THE
SUPREME COURT INDICATED THAT A
PROCEDURAL RULE THAT DOES NOT
IMPLICATE FUNDAMENTAL FAIRNESS
DOES NOT NEED TO BE APPLIED
RETROACTIVELY.
>> OKAY.
WELL, I THINK WE COULD HAVE A
DISCUSSION--
>> YOU'RE WELL AWARE OF THE
ARGUMENT, YOUR HONOR.
BECAUSE HERE THE QUESTION IS,
WELL, IS A JUDGE ALONE
FACT-FINDING SO SERIOUSLY
DIMINISH THE ACCURACY OF THE
PROCEEDING THAT NOT HAVING THE
JURY MAKE ONE, THE FINDING OF
ONE AGGRAVATING FACTOR, DOES
THAT UNDERMINE THE FUNDAMENTAL
UNFAIRNESS OF THE PROCEEDING?
AND BOTH THIS COURT IN JOHNSON
AND THE SUPREME COURT IN
SUMMERLAND ANSWERED THAT
QUESTION.
FOR EVERY ARGUMENT--
>> THE FIRST SENTENCE IN HEARST
SAYS WE HOLD THE SENTENCING
SCHEME UNCONSTITUTIONAL.
THE SIXTH AMENDMENT REQUIRES A
JURY-- NOT A JUDGE-- TO FIND
EACH FACT NECESSARY TO IMPOSE A
SENTENCE OF DEATH.
A JURY'S MERE RECOMMENDATION IS
NOT ENOUGH.
THAT IS, IN MY VIEW, GOES WAY
FARTHER THAN RING DID BECAUSE WE
KNOW IN FLORIDA THAT AS MR.
McLAIN ARGUED ALTHOUGH I DON'T
AGREE WITH MUCH OF WHAT HE SAID
AS FAR AS THE IMPACT, THAT THE

JURY HAS TO FIRST FIND
SUFFICIENT AGGRAVATORS, AND THEN
THEY HAVE TO FIND THE
MITIGATORS, AND THEN THEY HAVE
TO WEIGH IT.
AND THE WHOLE IDEA IF YOU READ,
GO BACK TO DIXON AND WHAT
JUSTICE I HAVE VIN SAID WHEN HE
LOOKED AT OUR SCHEME, THE WHOLE
IDEA WAS TO LIMIT DISCRETION.
MY CONCERN, AND IT GOES ALONG
WITH JUSTICE LEWIS, LIKE FOR
MR. LAMBRIX WE'VE GOT--
ALTHOUGH HE COMMITTED TWO
MURDERS, WE'VE GOT AN 8-4 JURY
RECOMMENDATION.
TWO MORE JURORS VOTING FOR LIFE,
HE WOULD HAVE HAD LIFE.
SO WE HAVE GOT SUBSTANTIAL
INEQUALITY IN FLORIDA IN THE
WAY, IN WHAT HAPPENS.
BUT WE LOOK, FIRST AND FOREMOST,
AT WHAT THE JURY DOES.
IF THE JURY SAYS 6-6 OR 7-5 IN
FAVOR OF LIFE, WE IMPOSE LIFE
SENTENCE.
SO WE REALLY LEAVE IT, FIRST, TO
THE JURY.
SO HOW DOES THAT, HOW DOES THE
HOLDING-- YOU SAY IT ONLY SAYS
ONE FACT NECESSARY, AND I'M
READING THIS, AND I, LISTEN, I
WAS THE PRIOR VIOLENT FELONY.
I'VE BEEN SAYING THIS FOR 14
YEARS THAT WE HAD A PROBLEM WITH
OUR SCHEME BUT NOT BECAUSE OF
WHAT THE U.S. SUPREME COURT
SAID.
HOW DO YOU ANSWER THEIR BROAD
HOLDING THAT IT ACTUALLY--
THEY'RE NOT SAYING WHAT THEY'VE
SAID?
>> WELL, FIRST OF ALL, YOUR
HONOR, WE HAD TWO MURDERS.
THERE WAS A 10-2 DEATH
RECOMMENDATION FOR THE MURDER OF
ALEISHA BRYANT IN THIS CASE.
HOWEVER, I THINK YOU'RE
MISREADING HEARST.
>> I JUST, AGAIN, IT WOULD BE

HARD FOR ME-- DO YOU AGREE THE
FIRST PARAGRAPH SAYS WHAT I--
>> I THINK THE FIRST PARAGRAPH
IS BROADLY STATED IN HEARST.
I AGREE WITH YOU 900%-- 100%.
BUT THERE IS NO RIGHT TO JURY
SENTENCE ANYTHING A CAPITAL
CASE.
THAT'S WHAT JUSTICE BREYER
ARTICULATED.
REMEMBER, HEARST WAS ONE OF
THOSE FEW TRUE RING CASES.
THE SUPREME COURT WENT MORE THAN
12 YEARS WITHOUT ACCEPTING A
SINGLE CASE FROM FLORIDA BASED
ON RING.
WHAT I MEAN BY A TRUE HEARST
CASE IS THERE WAS NO WAY ANY
JURY FINDINGS WERE IMPLICATED IN
FINDING AN AGGRAVATOR DURING THE
GUILT PHASE.
AND IF WE GO BACK TO APPRENDI
AND RING,S IT IS SIMPLY AN
ELIGIBILITY DETERMINATION.
WHAT DOES FLORIDA REQUIRE TO
MAKE A DEFENDANT ELIGIBLE FOR
THE DEATH SENTENCE?
>> WELL, I THEY'S WHERE THIS
THING HAS SPLIT PATHS.
I THINK THE WORD "ELIGIBLE" HAS
BEEN USED HISTORICALLY IN RING
AND APPRENDI WHEN TALKING ABOUT
ELIGIBLE.
YOU MAY BE ELIGIBLE FOR A LOT OF
DIFFERENT THINGS, BUT THAT DOES
NOT MEAN A JURY HAS FOUND THAT
THE DEATH SENTENCE SHOULD BE
IMPOSED.
SO THAT'S SORT OF LIKE THE REAL
QUESTION HERE, DOES HEARST JUST
GET RID OF THAT VOCABULARY OF
ELIGIBLE FOR THE DEATH SENTENCE?
?
>> NO, YOUR HONOR.
IN FACT--
>> IT SEEMS TO ME THAT THEY HAVE
WITH THE FIRST SENTENCE--
>> YOUR HONOR.
>> I'VE READ IT OVER AND OVER
AND OVER.

AND, WE HAVE, WE'VE STRUGGLED
WITH THIS.
>> IN KANSAS V. MARSH, EXCUSE
ME, AFTER WHICH WAS RELEASED
AFTER HEARST, THE SUPREME COURT
UPHELD A CASE IN WHICH THE JURY
WASN'T EVEN ADVISED ON HOW THEY
SHOULD WEIGH MITIGATING
CIRCUMSTANCES.
IN OTHER WORDS, WHAT IS THE
STANDARD OF PROOF.
THEY MADE IT VERY CLEAR THAT IF
YOU'RE GOING BEYOND ELIGIBILITY
AND YOU'RE NOW IN THE SENTENCING
OR DETERMINATION PHASE, THAT'S A
MATTER OF JUDGMENT.
AND, AGAIN, THAT'S WHAT JUDGES
DO EVERY DAY IN THIS COUNTRY.
ONCE YOU'RE ELIGIBLE, YOU'RE
OVER HERE FOR THE MAXIMUM
SENTENCE.
WHAT OTHER FACTS HAVE YOU
MADE--
>> WELL, I DON'T THINK--
[INAUDIBLE]
OUR TRIAL JUDGES WOULD STILL DO
THE SENTENCING WHICH I THINK
HEARST SAYS THEY CAN'T DO.
>> NO, YOUR HONOR.
ALTHOUGH HEARST HAS BROADER
LANGUAGE, AGAIN, BECAUSE THOSE
TWO AGGRAVATING CIRCUMSTANCES
WERE NOT FOUND BY THE JURY.
AND THEY REMANDED FOR A HARMLESS
ERROR ANALYSIS IN THAT CASE.
BUT AGAIN, I THINK IF YOU HAVE A
PRIOR VIOLENT FELONY, THERE IS
NOTHING IN HEARST THAT
INDICATES--
[INAUDIBLE]
IS UNSOUND.
IN FACT, THEY'VE REAFFIRMED
THAT.
THEY SAID, AGAIN, THE FACT OF A
PRIOR VIOLENT FELONY TAKES YOU,
IF IT TAKES YOU INTO THE NEXT
HIGHER RANGE, YOU'RE OKAY.
AGAIN, HEARST DOESN'T SAY JURY
SENTENCING IS REQUIRED.
>> THE ONLY PROBLEM--

>> IF YOU READ THAT IN HEARST--
ONLY JUSTICE BREYER SAID THAT.
>> I AGREE WITH YOU.
BUT HERE'S THE THING, I'VE
LOOKED AT KANSAS V. CARR, AND
THEY WERE TALKING ABOUT WHETHER
YOU NEEDED A JURY INSTRUCTION
THAT SAYS THAT MITIGATION NEED
NOT BE FOUND BEYOND A
REASONABLE DOUBT.
THEN JUSTICE THOMAS GOES INTO
THIS CONCEPT OF HOW THE DEATH
PENALTY IS IMPOSED, AND HE TALKS
ABOUT THE CONCEPT OF MERCY.
BUT REALLY THAT'S NOT HOW THE
DEATH PENALTY WORKS IN FLORIDA.
AND IT PROBABLY-- AND, AGAIN, I
THINK KANSAS WAS A JURY
SENTENCING STATE, RIGHT?
WHERE THEY HAD TO FIND IT
UNANIMOUSLY.
>> YES.
>> BUT AT LEAST HE SAYS EVERY
FACT NEEDS TO BE FOUND BY A
JURY.
SO THE QUESTION I HAVE, AND
MAYBE WE GO BACK TO LAMBRIX, IS
IT WOULD APPEAR TO ME AT THE
VERY LEAST THAT HEARST IS SAYING
THAT EVERY AGGRAVATING
CIRCUMSTANCE HAS TO BE FOUND BY
THE JURY IF YOU REALIZE KANSAS
AND THAT.
SO IF THAT'S THE HOLDING, THAT
EVERY AGGRAVATING CIRCUMSTANCE
HAS TO BE FOUND SO THE JUDGE
THEN KNOWS WHETHER THEY'D BE
SUFFICIENT AND THEN DO THE
WEIGHING PROCESS, HOW WOULD THAT
AFFECT RETROACTIVITY?
WOULD YOUR ARGUMENT STILL BE THE
SAME--
>> EXACTLY THE SAME, YOUR HONOR.
BECAUSE, AGAIN, THE FIRST
QUESTION YOU ANSWER, IS IT
RETROACTIVE.
THIS CASE WAS FINAL MORE THAN 30
YEARS AGO.
THERE IS NO REASON IN LAW OR
LOGIC, NOTHING COMPELLING THAT

REQUIRED THIS COURT TO
RETROACTIVELY APPLIED A RULE
THAT BUDGET EVEN-- APPRENDI
WASN'T EVEN A GLIMMER IN THE
SUPREME COURT'S EYE AT THE TIME
MR. LAMBRIX WAS TRIED.
>>
[INAUDIBLE]
WHAT ABOUT THE HYPOTHETICAL
EXAMPLE WHERE THERE MAY BE OTHER
CASES OUT THERE THAT THE CASE
WAS AFTER RING.
DOES HEARST APPLY BACK TO WHEN
RING WAS DECIDED?
>> NO, YOUR HONOR, BECAUSE YOU
WOULD HAVE TO REVISIT JOHNSON
AND FIND THAT THERE WAS NO GOOD
FAITH RELIANCE.
AND EVEN THIS COURT HAS NOTED
THAT SINCE RING WAS ANNOUNCED,
THIS COURT IN MORE THAN PROBABLY
70 CASES NOW, I LOST COUNT, HAD
DENIED CHALLENGES BASED ON RING.
SO THE STATE, AGAIN, WHAT RING
ANNOUNCED WAS A CASE WHERE THE
JUDGE ALONE-- THE JURY WAS
DISMISSED, AND THEN THE JUDGE
FOUND EVERYTHING.
THERE WAS NO JURY RECOMMENDATION
FOR DEATH.
AND, AGAIN, IT WAS AN
ELIGIBILITY CASE, BUT FLORIDA
WAS A DIFFERENT SYSTEM.
WE HAD A HYBRID SYSTEM WHERE THE
JURY HAD SIGNIFICANT
PARTICIPATION.
IN FACT, JUSTICE O'CONNOR
INDICATED IN HER DISSENT THAT
THIS NOW CASTS SOME DOUBT ON THE
HYBRID STATES.
SO WHAT HEARST DID IS SIMPLY
MAKE IT CLEAR NOW BY
OVERRULING--
[INAUDIBLE]
AND SPAZZIANO, THAT FLORIDA'S
SYSTEM IS CONSTITUTIONALLY
UNSOUND TO THE EXTENT THAT THE
JURY DOES NOT MAKE AN EL
JUSTIFIABLE DETERMINATION.
AND, AGAIN, IT'S A LIMITED

HOLDING.
I UNDERSTAND, JUSTICE PARIENTE, THAT THEY USE THE WORD, THE PLURAL, AGGRAVATING CIRCUMSTANCES.
BUT UNDER FLORIDA LAW THERE'S NO MAGIC NUMBER OF AGGRAVATING CIRCUMSTANCES THAT NEED TO BE FOUND TO SUPPORT A DEATH SENTENCE.
ONE IS SUFFICIENT.
>> ON THE ISSUE OF THE HYPOTHETICAL, I THINK THE NEXT CASE, ACTUALLY, IS KNIGHT, DEALS WITH THAT.
BECAUSE THAT IS POST-RING, PRE-HEARST.
SO I GUESS-- ARE YOU ON THAT CASE, THE NEXT CASE?
>> NO, YOUR HONOR.
>> OKAY.
BECAUSE I THINK THERE IS A DIFFERENT ARGUMENT FOR THOSE POST-RING CASES, ESPECIALLY THE WAY WE LOOKED AT JAMES AND SOME OF THE, HOW WE APPLIED THE HAC AGGRAVATOR AND THE JURY INSTRUCTION WHERE WE SAID THOSE CASES SHOULD GET THE BENEFIT OF, IN THAT CASE ESPINOSA, I THINK.
>> YES, YOUR HONOR, BUT AGAIN--
>> SO LET'S THE STICK WITH MR. LAMBRIX.
I JUST WANT TO MAKE SURE, BECAUSE WE'VE GOT A DEATH WARRANT PENDING.
>> THAT'S CORRECT, YOUR HONOR.
>> WE'VE GOT TO MAKE A DECISION ON RETROACTIVITY.
BUT THE QUESTION I HAVE IS MR. McLAIN SEEMS TO THINK THAT THIS SHOULD ALL BE SENT BACK TO THE TRIAL COURT FOR SOME TYPE OF EVIDENTIARY HEARING.
COULD YOU ADDRESS THAT ISSUE?
>> ABSOLUTELY NOT, YOUR HONOR, BECAUSE, FIRST OF ALL, IT WOULD BE UNTIMELY.
SO THE TRIAL COURT IN THIS CASE COULD NOT ACTUALLY ITSELF FIND

HEARST RETROACTIVE.
BECAUSE THE PLAIN LANGUAGE OF
OUR RULES OF CRIMINAL PROCEDURE
REQUIRE A TRIAL JUDGE TO FIRST
ASSESS, WELL, WHY AM I HERE NOW
ON THIS LONG CASE?
AND IT HAS TO BE A NEW RULE,
CONSTITUTIONAL RULE WHICH HAS
BEEN HELD RETROACTIVE.
SO I DON'T KNOW THAT REMANDING
THE TRIAL COURT WOULD ACCOMPLISH
ANYTHING.
IN FACT, WE ARGUE IN OUR BRIEF
IT'S FUTILE.
I THINK THIS COURT AND SHOULD
BASED UPON THE OVERWHELMING
WEIGHT OF PRECEDENT NOT JUST IN
THE STATE OF FLORIDA, BUT IN
EACH AND EVERY OTHER STATE--
NEVADA, GEORGIA, IDAHO-- THOSE
STATES AS WELL WERE CONFRONTED
WITH HOW DO WE APPLY RING.
THEY ALL DETERMINED THAT RING
WOULD NOT APPLY RETROACTIVELY.
AND, AGAIN, YOU HAVE A SUPREME
COURT CASE DIRECTLY ON POINT.
AND, JUSTICE LEWIS, I NOTE THAT
IN YOUR CONCURRING OPINION ON A
JURY OVERRIDE CASE ANTICIPATED
VERY SOLIDLY THAT THE
INTERPRETATIONS OF APPRENDI AND
RING AND THE CONCEPTS DRIVE MY
CONSIDERATION THAT RING CANNOT
BE CLASSIFIED AS BEING A
FUNDAMENTAL SIGNIFICANCE OR
SUFFICIENT MAGNITUDE TO WARRANT
RETROACTIVE APPLICATION.
THIS COURT--
>> [INAUDIBLE]
>> EXCUSE ME, YOUR HONOR?
>> WE CAN BE WRONG.
>> WELL, YOUR HONOR--
>> WE HAVE TO BE BIG ENOUGH TO
ADMIT.
I ALSO WROTE EARLY ON THAT
EITHER THE APPRENDI/RING CASES,
EITHER FLORIDA'S SYSTEM WAS
ENTIRELY ILLEGAL, OR RING AND
APPRENDI HAD NOTHING TO DO WITH
OUR SYSTEM.

>> AND, YOUR HONOR, YOU WENT THROUGH THOSE VERY FACTORS VERY SERIOUSLY UNDER WHIT, AND YOU DETERMINED, PROPERLY, THAT RING WOULD HAVE NO RETROACTIVE APPLICATION IN FLORIDA.
AND, AGAIN, THE JUSTIFICATION FOR DOING SO IS SIMPLY LACKING, BECAUSE THE ARGUMENT THAT JUDICIAL FACT FINDING IS SO MUCH--
>> LET ME ASK YOU THIS QUESTION. LET'S ASSUME, LET'S GO TO MR. McLAIN'S DEATH CON, THAT IT MEANS THAT EVERY AGGRAVATOR HAS TO BE FOUND AND MITIGATE ASKED BY THE-- MITIGATED BY THE JURY. WITH THAT MIND, CAN YOU GO BACK AND STILL TALK ABOUT RETROACTIVITY AND THE JOHNSON FACTORS.
>> WELL, YOUR HONOR, THAT WOULD BE A CATASTROPHIC APPLICATION, BECAUSE WE HAVE NEARLY 400 INMATES IN FLORIDA SENTENCED TO DEATH.
AND IT WOULD PROVIDE AN IMMENSE BURDEN TO YOUR JUDICIAL RESOURCES, THE STATE'S RESOURCES.
BUT I THINK MORE IMPORTANTLY, THESE ARE HORRIBLY TRAGIC CASES, AND THEY NECESSARILY INVOLVE THE UNTIMELY DEATH OF A HUMAN BEING, OFTEN MORE THAN ONE UNDER HORRENDOUS CIRCUMSTANCES.
AND TO UNSETTLE THE EXPECTATIONS OF VICTIMS' FAMILY MEMBERS IN THAT MANNER WITHOUT ANY COMPELLING JUSTIFICATION IS CLEARLY UNWARRANTED.
AND, AGAIN, I'M NOT AWARE OF ANY PROVISION IN THE FLORIDA CONSTITUTION OR STATUTE OR THIS COURT'S JURISPRUDENCE THAT WOULD ALLOW THIS COURT TO SIMPLY SAY, HEY, WE'RE-- AS MR. McLAIN SUGGESTS, LET'S GIVE THEM ALL LIFE SENTENCES.
THAT'S NOT A LEGALLY TENABLE

POSITION.
>> EVERYBODY WHO'S FILED AN AMICUS AS FURMAN REQUIRES THIS TO OCCUR.
>> WELL, FURMAN WAS A SPECIAL AND WIDELY SWEEPING DECISION.
I MEAN, BASICALLY THERE YOU HAD THE SUPREME COURT SAYING THE DEATH PENALTY CANNOT BE APPLIED CONSTITUTIONALLY.
YOU HAD, I BELIEVE, SIX CONCURRING OPINIONS.
BASED UPON FURMAN, THE STATE ITSELF SAID LET'S BASED ON 775 WHICH WAS, I BELIEVE, ENACTED TWO DAYS AFTER FURMAN, SENTENCE HIM TO LIFE.
BECAUSE AT THAT TIME THERE WAS NO PROSPECT OF HAVING A CONSTITUTIONAL DEATH PENALTY IN FLORIDA, AND THERE WAS NO TEMPLATE FOR ONE.
SO RATHER THAN GO THROUGH YEARS OF LITIGATION, THE STATE ACTUALLY CONCEDED THAT THEY SHOULD BE SENTENCED TO LIFE.
AND THIS IS NOT THE SITUATION BEFORE THIS COURT.
WE HAVE A PART OF OUR STATUTE WAS DETERMINED UNCONSTITUTIONAL.
IT'S PROCEDURAL.
IT CAN BE FIXED, IT WILL BE PICKED.
THE STATE-- FIXED.
THE STATE ASKS YOU, RESPECTFULLY, TO AFFIRM THE JUDGMENT OF THE LOWER COURT BELOW AND FIND THAT HEARST IS NOT RETROACTIVE.
THANK YOU.
>> THANK YOU.
>> THE COMPELLING JUSTIFICATION IS THAT THE FLORIDA STATUTE HAS BEEN DECLARED UNCONSTITUTIONAL.
WE DO NOT HAVE A CONSTITUTIONAL STATUTE IN PLACE.
MOREOVER--
>> BUT YOU'RE NOT RELYING ON THE STATUTORY PROVISION THAT SAYS IF THE DEATH PENALTY IS RULED

UNCONSTITUTIONAL, THE STATUTE
SAYS YOU IMPOSE LIFE, RIGHT?
YOU'RE NOT RIDING ON THAT.
>> WELL, IT'S THERE.
>> I UNDERSTAND.
YOU'RE NOT HONESTLY AND
LEGITIMATELY RIDING ON THAT.
>> I'M MORE RELYING ON THE--
>> RIGHT.
>>-- THE NECESSARY CONVICTION
IS NOT IN PLACE.
>> RIGHT.
>> BUT I WANT TO ADDRESS ANOTHER
POINT, JUSTICE LEWIS, THAT YOU
BROUGHT UP.
WHAT WAS NOT AT ISSUE IN
SUTHERLAND, FOR EXAMPLE, WAS
JUST A STRAIGHT UP TEA
APPLICATION.
IS THE EIGHTH AMENDMENT
IMPLICATIONS IN A CAPITAL CASE
WHEN YOU APPLY THE RETROACTIVITY
ANALYSIS IN SUCH A WAY THAT IT'S
ARBITRARY.
IT TURNS UPON WHEN.
AND AS I POINTED OUT, I HAVE A
CLIENT I REPRESENT, THE CRIME
WAS 1981.
HE GOT A RESENTENCING IN 2010.
HIS DIRECT APPEAL IS GOING TO BE
ARGUED IN MARCH OF THIS YEAR.
HE'S GOING TO GET THE BENEFIT OF
HEARST.
THERE'S NO QUESTION.
IT'S A 1981 CRIME.
RICKY ROBERTS, ANOTHER OF MY
CLIENTS, 1984 CRIME.
HE'S PENDING ON RESENTENCING IN
THE CIRCUIT COURT.
HASN'T HAPPENED YET.
HE'S GETTING THE BENEFIT OF
HEARST.
PAUL HILLMAN, NEW TRIAL ORDER.
IT'S STILL PENDING.
HOPEFULLY, IT DOESN'T GO TO A
PENALTY PHASE.
BUT IF IT DOES, HE GETS THE
BENEFIT OF HEARST.
HILDWIN V. FLORIDA.
AND SO IF THIS COURT DOESN'T

APPLY IT RETROACTIVELY, IT'S
GOING TO CREATE AN EIGHTH
AMENDMENT ISSUE IN TERMS OF THE
ARBITRARY MANNER IN WHICH PEOPLE
GET THE BENEFIT OF HEARST.
THAT'S WHAT MAKES THIS DIFFERENT
THAN JUST SIMPLY APPRENDI
RETROACTIVITY.
THIS IS A DEATH PENALTY CASE,
EIGHTH AMENDMENT IMPLICATION.
NOW HEARST--
>> BUT THE U.S. SUPREME COURT,
THERE WAS, YOU KNOW, AN EIGHTH
AMENDMENT ARGUMENT, A VERY LONG
ONE, ABOUT US BEING AN OUTLIER
WHICH I STILL THINK IS A
SIGNIFICANT PROBLEM FOR-- AND
WE HAVEN'T DISCUSSED THAT TODAY.
BUT THE UNITED STATES SUPREME
COURT DID NOT ADDRESS THE EIGHTH
AMENDMENT, AND SO DOES-- BUT
NOW YOU'RE SAYING THAT SOMEHOW
THE WHIT RETROACTIVITY COULD,
HAS TO BE DIFFERENT IN A DEATH
PENALTY CASE?
>> YES.
IN ORDER TO AVOID FURMAN
PROBLEMS.
>> WASN'T WHIT A DEATH PENALTY
CASE?
>> YES.
AND THAT'S WHY IT SAYS A
SUBSTANTIAL UPHEAVAL.
THAT'S WHY AFTER HITCHCOCK
EVERYBODY GOT THE BENEFIT OF IT.
THE PEOPLE WHO WERE TRIED BEFORE
LOCKETT GOT THE BENEFIT OF IT.
THE PEOPLE WHO WERE TRIED AFTER
LOCKETT GOT THE BENEFIT OF IT.
PEOPLE IN 3850s GOT THE
BENEFIT OF IT.
EVERYBODY GOT THE BENEFIT OF
HITCHCOCK.
AND THAT'S, THIS IS THE SAME.
THIS IS, ACTUALLY, A BIGGER
UPHEAVAL THAN HITCHCOCK WAS.
BECAUSE IT GOES TOWARDS
SUBSTANTIVELY WHAT IS THE CRIME.
THIS IS SUBSTANTIVE.
THIS IS NOT PROCEDURAL.

IT'S AN ELEMENT OF THE OFFENSE.
SUFFICIENT AGGRAVATING
CIRCUMSTANCES IS NOT JUST A
PROCEDURAL NICETY.
IT'S NOW AN ELEMENT OF THE
OFFENSE, AND THIS COURT HAS NOT
PREVIOUSLY RECOGNIZED THAT FACT.
THAT IS A SUBSTANTIVE CHANGE IN
THE LAW, AND IT SHOULD BE
APPLIED RETROACTIVELY.
BECAUSE THE ELEMENTS OF THE
OFFENSE HAVE CHANGED.
AND IT DATES BACK TO THE
STATUTE.
EVERYBODY SHOULD GET THE BENEFIT
OF IT.
I JUST WANT TO MAKE THE POINT
THAT KANSAS V. MARSH WAS AN
ATETH AMENDMENT DECISION, HEARST
IS A SIXTH AMENDMENT DECISION.
KANSAS VERY MARSH HAS NOTHING TO
DO WITH HEARST.
THE STATE BROUGHT UP MONTGOMERY
V. LOUISIANA.
I'VE NOT HAD A CHANCE TO BRIEF
THAT.
I WOULD LIKE TO BE ABLE TO
SUBMIT A SUPPLEMENTAL BRIEF
ADDRESSING MONTGOMERY VERY V.
LOUISIANA.
AGAIN, THIS IS NOT PROCEDURAL.
THIS IS SUBSTANTIVE.
AND TO EXECUTE PEOPLE IN FLORIDA
ON THE BASIS OF A STATUTE THAT
HAS BEEN DECLARED
UNCONSTITUTIONAL IS JUST WRONG.
AND I WOULD ASK THIS COURT TO
ENTER A STAY OF EXECUTION IN
ORDER TO ALLOW FULL BRIEFING AND
A REMAND AS TO THE HARMLESS
ERROR ANALYSIS IN TERMS OF THE
EFFECT ON THE ATTORNEYS, ETC.
BUT I THINK THAT THE FIRST STEP
IS TO STAY THE EXECUTION SO THIS
COURT CAN THOROUGHLY ANALYZE
HEARST NOT JUST IN ONE CASE IN
ISOLATION, BUT HAVE A COMPLETE
UNDERSTANDING.
BECAUSE THAT'S WHAT HAPPENED
AFTER RING.

IT WAS SORT OF AD HOC.
IT CAME UP IN BODSON AND KING.
THIS COURT SHOULD NOT ADDRESS
THIS AD HOC.
THANK YOU, YOUR HONORS.
>> THANK YOU FOR YOUR ARGUMENTS.
JUSTICE QUINCE HAD BEEN RECUSED
FROM THE LAMBRIX CASE.
SHE IS NOW COMING INTO THE COURT
FOR THE SECOND CASE.