

WE WILL NOW MOVE ON TO THE NEXT CASE ON OUR DOCKET.

>> MAY IT PLEASE THE COURT, SCAFF 6, THE ISSUE IN THIS CASE IS A DEATH SENTENCE RETURNED IN BROWARD COUNTY BASED ON A 12-0 RECOMMENDATION, THE ISSUE I WOULD LIKE TO SPEAK TO THIS MORNING IS THE JURY SELECTION ISSUE WHICH LED TO AN ANOMALY IN THIS CASE.

MISTER HOJAN UNDER A DIFFERENT SET OF RULES IN FLORIDA, DIFFERENT BURDENS OF PROOF, DIFFERENT JURY INSTRUCTIONS ON THE ISSUES HAD THREE INDIVIDUALS THAT FELT THE LIFE SENTENCE WAS APPROPRIATE.

UPON THE REMAND, STRICTLY A PENALTY PHASE ALL 12 JURORS ARE COMMITTED TO DEATH.

THE RECORD IS CLEAR THE RESTRICTION THE COURT PLACED ON THE DEFENSE COUNSEL WAS THE REASON THEY TRUE CROSS-SECTION OF THE COMMUNITY COULD LOOK AT THIS FAIRLY AND IMPARTIALLY, THERE WERE NO INDIVIDUALS ON THAT JURY THAT FELT THE LIFE RECOMMENDATION WAS SUFFICIENT UNDER THE CIRCUMSTANCES.

THE ISSUE DEALS WITH HYPOTHETICAL QUESTIONS.

DEFENSE COUNSEL IN THIS CASE HAD BEEN TRAINED IN USE OF A METHOD OF USING HYPOTHETICAL QUESTION, A SINGLE QUESTION POSED TO ALL OF THE JURISTS THAT WOULD NOT REPEAT ANY FACTS OR CIRCUMSTANCES BUT WOULD ALLOW JURORS TO GIVE THEIR IMPRESSION TO TALK ABOUT HOW THEY FELT A BIT MITIGATING CIRCUMSTANCES IN LIGHT OF THE AGGRAVATION THE STATE EXPECTED TO PROVEN THE DEFENSE RECOGNIZED THE STATE WOULD LIKE TO BE TO PROVE BECAUSE THE CASE HAD BEEN TO BAR AT ONE POINT IN THE PAST.

>> CAN I INTERRUPT FOR A SECOND?

THIS HYPOTHETICAL ON PAGE 13-16 OF YOUR BRIEF SO WHEN YOU HAVE ALL THIS PREPARATORY STUFF AND GET DOWN TO THE SENTENCE IT DOESN'T MAKE ANY SENSE TO ME. IF I WERE IN YOUR, I WOULDN'T KNOW THE WHAT THE QUESTION WAS ASKING WHEN IT SAYS WHAT ARE YOUR FEELINGS ABOUT THE DEATH PENALTY IS THE ONLY APPROPRIATE PENALTY FOR THE GUILTY, IS THAT AN ASSERTION THAT THAT'S THE ONLY APPROPRIATE PENALTY? IT SEEMS LIKE YOU ARE ASKING US TO SAY IT WAS HARMFUL ERROR NOT TO ALLOW THE QUESTION THAT ON ITS FACE IS INCOHERENT?

>> I DON'T THINK THAT PORTION WAS DRAFTED BY DEFENSE COUNSEL. THAT QUESTION ITSELF WAS THE BEGINNING OF QUESTIONS YOU WOULD INQUIRE REGARDING THE FACT PATTERN, GOING TO GIVE US A HYPOTHETICAL.

THE STATE'S A BRIEF ON THE MATTER AND THE WAY THE COURT INTERPRETED WHAT DEFENSE COUNSEL IS TRYING TO DO EXPOSES THE PROBLEM.

IN THE BRIEF PRESENTED INDICATES, A HYPOTHETICAL QUESTION RELATED TO JURY SELECTION FOR THE PURPOSE OF UNCOVERING POTENTIAL JUROR BIAS AND AUTOMATIC DEATH SENTENCE. I DON'T THINK THAT WAS THE PURPOSE AT ALL.

HE WAS ATTEMPTING TO RANK THE JURISTS THAT ALREADY PASSED THE JUDGE'S QUESTION REGARDING AUTOMATIC DEATH SENTENCE OR BIAS AND THE STATE ATTORNEY'S QUESTION REGARDING THAT TO RANK THEM IN TERMS OF WHETHER A PREDATORY CHALLENGE INTELLIGENTLY USED AGAINST A PARTICULAR JUROR.

THAT IS THE PURPOSE OF THE JURY SELECTION METHOD THAT THIS ATTORNEY HAD BEEN RECENTLY, AND

WE MUST STICK TO THESE
QUESTIONS.

THAT REITERATED WHAT WAS DONE,
THE JUDGE AND THE STATE, HE WAS
NOT ALLOWED TO GO OUTSIDE THE
CONFINES OF THOSE QUESTIONS.
DEFENSE COUNSEL -- THERE ARE TWO
ROLES AT THAT POINT IN THE
PROCESS.

ONE IS TO HELP TO IDENTIFY
AUTOMATIC DEATH, JURORS THAT
WOULD NEVER IMPOSE THE DEATH
SENTENCE AND REMOVE THEM BUT I
WOULD SUGGEST IN A CASE LIKE
THIS EVEN MORE IMPORTANT
QUESTION IS HOW CAN DEFENSE
COUNSEL ASKED QUESTIONS THAT
WOULD HELP THEM TO INTELLIGENTLY
ACCEPT THE PERIMETER HE
CHALLENGES THE LAW GIVES AND HE
WAS UNABLE TO DO THAT IN THIS
CASE BASED ON THE RESTRICTIONS
BY THE COURT.

THE BRIEF FROM THE STATE TALKS
ABOUT THE FACT THAT HE DID GO
BEYOND THE CONFINES, EVEN
AGAINST WHAT THE COURT WAS
ORDERING HIM TO DO.

IT IS OKAY BECAUSE HE WAS ABLE
TO GET OTHER QUESTIONS AND I
WOULD SUGGEST WITH THE GRAVITY
OF THE DEATH PENALTY, TO
RESTRICT DEFENSE COUNSEL FROM A
BASIC HYPOTHETICAL WHICH WOULD
ALLOW HIM, A TESTED METHOD
ACROSS THE BOARD IN THE STATE OF
FLORIDA AND AROUND THE NATION,
TO EXERCISE THIS, JUDICIAL
DISCRETION IN THIS CASE.

>> ONE QUICK QUESTION.

DID THE JUDGE IN THIS CASE
PROHIBIT ALL HYPOTHETICALS?

>> THERE WOULD BE NO
HYPOTHETICALS - THE ATTORNEY
ATTEMPTED TO GET SOME
HYPOTHETICAL QUESTIONS ANSWERED
BUT FROM THE TIME HE WAS
RESTRICTED FROM ASKING A SIMPLE
HYPOTHETICAL TO EACH OF YOUR THE
SAME WAY TO RANK THE RESPONSES,

AS ALREADY POINTED OUT THE RECORD WAS NOT AS CLEAR AS IT SHOULD HAVE BEEN ON WHAT HE WAS TRYING TO DO AND HOW HE WAS TRYING TO DO IT.

WE COULD SEE THIS PARTICULAR JUDGE DECIDED THE METHOD OF JURY SELECTION THAT WOULD BE EMPLOYED IN THIS CASE TO ALLOW THE ATTORNEY A CHANCE TO THE COUNCIL WITH IT.

THE RECORD REFLECTS IF YOU DON'T LIKE MY RULING TAKE IT TO THE SUPREME COURT.

>> HAVE YOU USED THIS METHOD IN TRYING OTHER CASES?

>> I HAVE USED OTHER METHODS OVER MANY YEARS, TRIED MANY FIRST-DEGREE MURDER CASES, THIS IS ALL NEW TO ME.

WHEN I WAS A PUBLIC DEFENDANT FOR 30 YEARS, IN PRIVATE PRACTICE, IN DEATH PENALTY CASES, FOR THE COURT TO BLOW THE ATTORNEY OUT OF THE WATER AT THE BEGINNING, BY TELLING HIM NOW, IT HAS HYPOTHETICALS.

REALLY PREVENTED HIM FROM HAVING A RATIONAL SYSTEM OF MEASURING THESE JURORS RESPONSES TO HOW THEY MIGHT RECEIVE THE MEDICATION THAT HE KNEW WOULD BE PRESENTED.

THE FACTS ARE MISTER HOJAN REFUSED TO ALLOW ANY PRESENTATION IN ITS ORIGINAL TRIAL AND THREE JURORS UNDER THE FACT PATTERN PRESENTED RECOMMENDED LIFE SENTENCES.

STILL MEDICATION PRESENTED THAT WAS COMPELLING IN SOME WAYS WAS ABLE TO GET NOW JURORS AS A REFLECTION OF THE JUDGE UNFAIRLY DEFENSE COUNSEL AND BEYOND -- CASES OF THIS GRAVITY WHERE THE STATE DEFIED DISCRETION WHEN THE DEFENSE COUNSEL GOT HELP AND THE JUDGE ASKED HIS OWN QUESTIONS GEARED LARGELY TOWARDS - THE UNIQUE FACT THE COURT FAILS TO

CONSIDER IS IN THE PROCESS OF NORMALLY SELECTING A JURY, PRESUMPTIONS, THE LAW ITSELF RELATING TO THE CHARGES GIVES ATTORNEYS AN OPPORTUNITY TO OBSERVE THE JURORS ANSWERING A BROAD CONTEXT TO FORM OPINIONS ABOUT WHICH JURORS WOULD BE MORE OR LESS LIKELY TO IMPOSE THE DEATH SENTENCE.

NONE OF THAT WAS PRESENT HERE BECAUSE IT WAS A RESENTENCING FOR THE ISSUE OF LIFE OR DEATH AND THAT HANDCUFFED THE ATTORNEY WITHOUT ANY OF THOSE OBSERVATIONS.

THIS METHOD OF JURY SELECTION IF ALLOWED COULD HAVE GIVEN HIM AN OPPORTUNITY TO GET THE JURORS TALKING ABOUT THOSE ISSUES.

MEDICATION VERSUS AGGREGATION, AND WHICH HE MIGHT FEEL HE WOULD LIKE TO LEAVE ON THE JURY IN TERMS OF THE SENTENCE RECOMMENDED WOULD BE.

UNDER THESE TOTALITY AFFECTS IT WAS AN ABUSE OF DISCRETION TO TEST THE THEORY THESE QUESTIONS SHOULDN'T BE ALLOWED AT ALL AND IT COULD BE SUSTAINED ON APPEAL AND DENIED ALL THE WAY TO THE FLORIDA SUPREME COURT.

ONE OF THE LAST TRIALS IF NOT THE LAST TRIAL THIS JUDGE DID BEFORE RETIREMENT AND IT IS CLEAR FROM THE RECORD THE ATTORNEYS FOR THE DEFENSE WERE AMBUSHED BY THIS, WEREN'T ALLOWED TO ASK THIS TYPE OF QUESTION WHEN IN FACT THE WAY THEY PREPARED AND SCRAMBLED TO DO THE BEST JOB THEY COULD BUT IT STILL WELL SHORT, THE EVIDENCE OF THAT, THE SAME FACT PATTERN UNDER BETTER LAW, UNDER THE JURY, BEYOND REASONABLE DOUBT, THE DEATH RECOMMENDATION. IT IS WIDE AND FOR GOOD REASON. EVERY CASE IS DIFFERENT, CIRCUMSTANCES ARE DIFFERENT AND

IT IS IMPOSSIBLE TO STATE WHAT QUESTIONS SHOULD BE ALLOWED A SHOULDN'T BE ALLOWED ACROSS THE BOARD.

TO USE THOSE DISCRETION TO ALLOW THE DEFENSE IN A CASE WHERE THEY HAVE NO OPPORTUNITY, WHETHER OR NOT A JUROR CONSIDERING JUDGMENT OF THE FACTS AND CIRCUMSTANCES WHERE THE ONLY THING THEY WILL BE JUDGING HIS LIFE OR DEATH. UNDER THE FACTS HERE IT IS CLEAR THIS IS AN ABUSIVE QUESTION, UNNECESSARY.

THE QUESTIONING THE DEFENSE WAS TRYING TO DO WOULD NOT HAVE TAKEN ANY LONGER THAN THE QUESTIONING THAT WAS CONDUCTED AND WOULD HAVE BEEN MUCH QUICKER AND FAR MORE TO THE POINT IF THE ATTORNEY HAD BEEN ALLOWED TO POSE THE QUESTIONS, SOME OF THE ISSUES POINTED OUT WOULD HAVE BEEN CLEARED UP WITH THE QUESTIONS IN RESPONSE.

UNDER THE FACTS AND CIRCUMSTANCES AGAIN THE GRAVITY OF THIS CASE AND I WOULD ASK THE COURT TO RULE ON ANOTHER PENALTY PHASE, TO PURSUE IN TERMS OF WHETHER JURORS QUALIFIED, WOULD THEY AUTOMATICALLY VOTE DEATH OR AUTOMATICALLY VOTE LIFE BUT HOW DO THEY FEEL ABOUT ISSUES OF MITIGATION VERSUS ISSUES THAT ARE PRESENTED, NOT TO PREJUDGE THESE, BUT ALSO POINT OUT THE DEFENSE WAS TRYING TO GET JURORS TO GET INTO A PARTICULAR POSITION.

THE JUDGMENT AND THAT AT TRIAL AS TO THE STATE ATTORNEY AND THAT IS NOT INTENDED FOR JURY SELECTION AT ALL.

THAT IS CLEARLY A PROBLEM. IT IS A METHOD THAT ALLOWS THE JURORS TO TALK ABOUT HOW THEY FEEL IN LIGHT OF A PARTICULARLY HEINOUS FACT PATTERN WITH MITIGATION CONSIDERED BASED ON

THE MOST HORRIFIC CASE WHICH IS THE PATTERN, THE DEFENSE ATTORNEY WAS TRYING TO GIVE. WOULD IT MATTER IF HE WAS ABUSED AS A CHILD IF IN FACT HE WAS ABLE TO PROVE IN TERMS OF AGGREGATION.

HOW DO THEY RESPOND TO THE QUESTIONS IS THE ONLY BASIS THE ATTORNEYS WOULD HAVE BE PEREMPTORY ON THIS.

I WOULD RESERVE THE REST OF MY ARGUMENT TIME.

>> MAY IT PLEASE THE COURT, CHARLES PAUL-THOMAS PHOENIX LISA-MARIE LERNER WITH THE STATE, THE COURT DID NOT HAMSTRING THE DEFENSE IN ANY WAY, THE COURT RESTRICTED COUNSEL A SPECIFIC TYPE OF QUESTION.

THE TYPE OF HYPOTHETICAL QUESTION WHERE COUNCIL PRESENTED A FACT PATTERN FOR POTENTIAL JURORS AND ASK THEM TO PREJUDGE HOW THEY WOULD VOTE GIVEN A PATTERN THAT HE WAS SUGGESTING AND THE IMPORTANCE OF PREVENTING BY DENYING COUNSEL THIS OPPORTUNITY TO DO THE HYPOTHETICAL, NO MATTER WHAT ANSWER THE JUROR WOULD GIVE, ENGAGING IN PREJUDGING A FACT PATTERN, CERTAIN FACTS HAVING MORE VALUE, THAT IS THE HARM THESE COMMITMENT QUESTIONS CAUSE THAT THE JUDGE WILL LIKELY NOT ABUSES DISCRETION IN PREVENTING IT FROM HAPPENING.

FLORIDA DOES NOT DEVELOP A LONG CASE LAW IN THIS TYPE OF QUESTION, IN THE ROUTINE EVENT COUNSEL FROM USING THIS METHOD FROM GOING INTO HYPOTHETICAL QUESTIONS WHICH ASK FOR COMMITMENT ONE WAY OR THE OTHER FROM POTENTIAL JUROR MEMBER, CREATES A BIAS OR PREJUDICE WITHIN THE JUROR FOR WHAT THEY WILL HEAR WHEN THE ACTUAL

EVIDENCE COMES IN AND SO IT WAS ONLY THAT TYPE OF QUESTION, DEFENSE COUNSEL COMPLETELY HAD ACCESS TO ALL OTHER AREAS, COVERED A COUPLE HUNDRED PAGES OF TRANSCRIPT, WENT INTO MITIGATION AND AGGRAVATION AT GREAT LENGTH AND GOT THE INDIVIDUAL JURORS, THE STATED PURPOSE TO REPORT A SIDEBAR AND HAS LONG DISCUSSIONS WITH A NUMBER OF PEOPLE ABOUT THEIR ATTITUDES ON MITIGATION AND AGGRAVATION.

I REFERENCED ONE PARTICULAR JUROR ON PAGE 12-13 WHERE THE JUROR ACTUALLY SAID SOMETHING ALONG THE LINES THAT IF YOU WERE TO ASK ME AT THE BEGINNING OF THIS PROCESS I MAY HAVE GIVEN YOU A DIFFERENT ANSWER BUT NOW I UNDERSTAND THE IMPORTANCE OF MITIGATION AND I UNDERSTAND THE IMPORTANCE OF BACKGROUND IN ASSESSING WHAT RECOMMENDATION WE ARE TO GIVE.

IF THAT'S NOT EVIDENCE THE DEFENSE COUNSEL SUCCESSFULLY EDUCATED THESE INSURERS ON THE IMPORTANCE AND NATURE OF MITIGATION AND WHAT IS MITIGATION I DON'T KNOW THAT YOU COULD GET A MORE BLATANT EXAMPLE OF INSURER ABSORBING THAT INFORMATION AND THE DEFENSE COUNSEL DID ASK SOMEWHAT HYPOTHETICAL QUESTIONS ABOUT PREMEDITATION, SPENT PAGES ON THE CONCEPT OF PREMEDITATION AND WHETHER OR NOT IT WOULD TRUMP MITIGATION.

HE EDUCATED THE JURORS ON THAT AREA AS WELL.

COUNSEL IN HIS BRIEF MENTIONS HE WAS CONCERNED THAT DEFENSE COUNSEL COULDN'T GET INTO QUESTIONS OF WHETHER LIFE WAS ALWAYS AN OPTION.

HE DID.

HE SPENT A LONG PERIOD OF TIME

QUESTIONING THE JURORS, GETTING THEM TO ACKNOWLEDGE NO MATTER HOW MUCH AGGRAVATION IS PRESENTED LIFE IS ALWAYS AN OPTION FOR THEM TO GO OUT. NEVER NOT A MEDIC DEATH SENTENCE NO MATTER WHAT THE STATE PRESENTS SO IF THE COURT LOOKS AT THE ENTIRE RECORD THE DEFENSE COUNSEL WAS NOT STYMIED, AND HE WAS NOT AMBUSHED BY THE COURT PREVENTING HIM GOING TO THIS ONE TYPE OF HYPOTHETICAL QUESTION AND IF THE COURT HAS NO FURTHER QUESTIONS THE STATE ASKS THE JUDGMENT AND SENTENCE BE OVERTURNED.

>> COUNSELOR?

>> IT IS PRETTY CLEAR HYPOTHETICAL QUESTIONS SHOULD BE PERMITTED IN A DEATH PENALTY CASE, HYPOTHETICAL QUESTIONS, THE COURT'S RULING WAS WITHIN THE THREE CORNERS OF THE QUESTIONS WERE THE FOUR CORNERS, THE FACT THAT COUNSEL FOR THE STATE TRIED TO GET AROUND THEM IN A DEATH PENALTY CASE. IT WAS ERRONEOUS, TO STICK WITH THE QUESTIONS, WOULD NOT HAVE GIVEN DEFENSE COUNSEL IN THAT FASHION AND THE FACT COUNSEL WENT LEFT, WENT RIGHT, TRIED TO GO OVER AND AROUND DID NOT REMOVE THE FACT THAT IN A CASE OF THIS GRAVITY THE COURT SHOULD HAVE WITH THEIR DISCRETION ALLOWED THE DEFENSE AND OPPORTUNITY TO ASK QUESTIONS THAT RANK THESE JURORS IN TERMS OF THEIR LIKELIHOOD RECOMMENDING DEATH, LIKELIHOOD OF LIFE SENTENCE RECOMMENDATION.

>> SORRY TO INTERRUPT.

COULD YOU BE MORE SPECIFIC, NOT CLEAR TO ME WHAT EXACTLY THE RULE OF LAW, IN THE SENSE THAT IT SEEMS LIKE IF THE QUESTION IS IS IT REVERSIBLE ERROR NOT TO ALLOW SPECIFIC PROFFERED

QUESTIONS, IF YOU'RE ASKING FOR SOMETHING MORE GENERAL, TO ALLOW COUNSEL TO DO XYZ, TRYING TO UNDERSTAND WHAT IS THAT?

IT SOUNDS LIKE LOOKING AT THE RECORD AND COUNSEL ON THE OTHER SIDE MADE, NOT AS IF THE ABILITY TO EXPLORE SOME OF THESE OBVIOUSLY IMPORTANT ISSUES UNTIL YOU UNDERSTAND HOW TO ARTICULATE WHAT THE ERROR IS.

>> JUDICIAL DISCRETION, THE REASON IT SHOULD BE WIDE IS EVERY CASE IS DIFFERENT, EVERY CASE HAS CERTAIN CIRCUMSTANCES THAT HAVE TO BE DEALT WITH BUT PARTICULARLY IF I COULD PROFFER WHAT THE RULE OF LAW SHOULD BE, WHEN THE DEFENSE COUNSEL, ONLY FOR THE ISSUE THAT THERE NEEDS TO BE MORE DISCRETION THAN THERE WOULD BE IN A CASE WITH PART TALKING ABOUT THE GENERAL QUALIFICATIONS WITH THE PROCESS IS ABOUT.

THOSE OBSERVATIONS MADE AT THAT STAGE ARE CRUCIAL AND CARRY OVER INTO THE FINAL DECISION AS TO WHICH JURORS, TO SAY THE STATE CAN GO FORWARD AND THE JUDGE CAN GO FORWARD ON THE ISSUE AND WE'D THESE PEOPLE OUT, UNDER THE CIRCUMSTANCES WITHOUT THE OPPORTUNITY TO ANSWER STANDARD QUESTIONS FOR GUILT OR INNOCENCE TO BE RESTRICTED TO THE QUESTIONS WAS AN ABUSE OF DISCRETION UNDER THE CIRCUMSTANCES.

IT WAS NOT ARTICULATED WELL BY DEFENSE COUNSEL, GRANTED THE QUESTION DOES NOT ACCURATELY STATE WHAT THE METHOD OF JURY SELECTION HE'S TRYING TO USE REALLY IS AND HOW IT SHOULD BE USED BUT THAT WOULD HAVE CLEARED ITSELF UP AND ALLOW THE PROSPECT, HE WAS SHUTDOWN BEFORE HE COULD PUT THE HYPOTHETICAL OUT IN FRONT OF THE JURORS AND

WHAT RESULTED FROM THE
OBJECTIONS.

>> AND INTERRELATED QUESTION.
ASSUMING THAT THE ROLE THAT
WOULD COME OUT, IT IS ERROR NOT
TO ALLOW HYPOTHETICAL QUESTIONS
ON THIS TOPIC IN THE SENTENCING
PHASE PROCEEDING, HOW WOULD YOU
SHOW HARMFUL ERROR WHEN A CHILD
JUDGE ALLOWED QUESTIONING ON THE
TOPIC, IT APPEARS FROM THE
RECORD THAT HE WAS ABLE TO FULLY
EXPLORE THE TOPIC IN A DIFFERENT
MANNER?

>> YOU SEE REVERSIBLE ERROR HERE
AS YOU LOOK AT THE FIRST TRIAL
AND THE FACT THAT MITIGATION
PRESENTED THE SAME
CIRCUMSTANCES, SAME FACTS, THREE
JURORS, SOME MERIT TO A LIFE
SENTENCE.

>> IS THERE ANY SUPPORT FOR THE
FACT THAT YOU DIDN'T GET THE
RESULT YOU WANTED?
GENERALLY IN THESE CASES THE
TEST IS WHETHER THE RECORD
REFLECTS THE TRIAL COURT BARRED
COUNSEL FROM SUFFICIENTLY
COVERING A TOPIC THAT WAS
IMPORTANT TO THE TRIAL WITH
POTENTIAL JURORS SO HE COULD NOT
UNCOVER BIAS AND IF IT APPEARS
HE COULD UNCOVER BIAS GIVEN THE
LATITUDE THAT WAS GIVEN THEN I
AM NOT AWARE OF ANY CASE OR
PRINCIPLE OF THE LAW THAT WOULD
ALLOW YOU TO SAY WE LOST AND
ASSUME IT IS HARMFUL.

>> THE FOCUS ON BIAS WAS WHAT
THE TRIAL JUDGE WAS FOCUSING ON.
I THINK THE RESPONSIBILITY OF
DEFENSE COUNSEL IN LIGHT OF THE
CHANGES IN LAW THAT OCCURRED IN
THE STATE OF FLORIDA IS TO BE AS
CAREFUL IN EXERCISING PEREMPTORY
CHALLENGES AS MAKING SURE A
BIASED JUROR ONE WAY OR ANOTHER
DOESN'T GET ON THE PANEL
PARTICULARLY IN AN ERA WHEN WE
QUALIFY JURORS, SOMETHING IN THE

AREA OF 4-1 OF THE JURORS ARE
EXCUSED FOR BIAS ARE LESS
FAVORABLE JURORS, NOT ABLE TO
GET ON THE JURY BECAUSE OF
STRONG ETHICAL CONVICTION
AGAINST THE DEATH PENALTY AND
THEN TO REMOVE ALL OF THOSE
JURORS ALONG WITH SMALLER NUMBER
THAT PERHAPS IF SOMEONE IS
CONVICTED OF MURDER DEATH WOULD
ALWAYS BE APPROPRIATE.

TO RESTRICT THE ABILITY OF
COUNSEL WITH NO PROCESS, NO
OPPORTUNITY TO ANSWER THOSE
QUESTIONS, STICK WITH IN THE
THREE OR FOUR CORNERS AND BE
LOOKING ONLY FOR EXCLUDABLE BIAS
BECAUSE CHALLENGES, IGNORES THE
FACT THAT OUR OBLIGATION IS
DEFENSE COUNSEL IS TO EXERCISE
DIRECTORIES AS WELL AND THE LAW
PROVIDES) PEREZ AND THE ABILITY
OF DEFENSE COUNSEL TO ASK
QUESTIONS THAT WOULD ALLOW SOME
MEASURE OF RANKING OF THE JURORS
ON THAT ISSUE UNDER THESE
CIRCUMSTANCES, THIS UNIQUE FACT
PATTERN I SUBMIT TO THE COURT
ABUSE OF JUDICIAL DISCRETION,
THERE WAS NO NEED FOR IT AND
UNDER THE CIRCUMSTANCES AND
ABUNDANCE OF CAUTION, THREE
JURORS RECOMMENDED, I WOULD
SUGGEST MISTER HOJAN GET A NEW
PENALTY PHASE WHERE HIS
ATTORNEYS GET THOSE CHALLENGES.
THANK YOU.

>> WE THANK YOU AND OPPOSING
COUNSEL FOR YOUR ARGUMENTS.
THAT IS THE LAST CASE ON TODAY'S
DOCKET SO THE COURT WILL STAND