

>> ALL RISE!
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.

PLEASE BE SEATED.

WE NOW TAKE UP THE FINAL CASE
ON TODAY'S DOCKET, THE SUPREME
COURT OF FLORIDA VERSUS JOHN
PACCHIANA.

>> MAY IT PLEASE THE COURT,
MELANIE SURBER ON BEHALF OF THE
STATE.

I WOULD LIKE TO RESERVE 5
MINUTES FOR REBUTTAL.

THIS CASE IS ABOUT PROSECUTOR'S
THAT FEELING BASED ON 20 YEARS
EXPERIENCE THAT A JEHOVAH'S
WITNESS CAN'T SIT IN JUDGMENT.
COUNSEL FOR THE DEFENSE DID NOT
CONTEST THE REASON.

THEY CONTESTED WHETHER THE
PROSPECTIVE JUROR WAS A
JEHOVAH'S WITNESS.

IN THIS CASE THE JUDGE DID THE
RIGHT THING, THE DAUGHTER WAS
BROUGHT BACK INTO THE
COURTROOM, THEY INQUIRED AND
DETERMINED THE DOOR WAS IN FACT
A JEHOVAH'S WITNESS AND
CONFIRMED THE PROSECUTOR'S GOT
FEELING WHICH WAS NOT
CONTESTED.

THIS ISN'T THE TYPE OF
INVIDIOUS OR FLAGRANT
COMMONPLACE DISSEMINATION THAT
WAS ANTICIPATED, THIS CASE
BOILS DOWN TO WHO WE ARE VERSUS
WHAT WE BELIEVE WHEN WE ARE IN
THE COURTROOM.

>> LET'S ASSUME FOR THE MOMENT
RELIGION IS A PROTECTED BASIS,
ASSUME THAT FOR ME FOR A
MOMENT.

WHAT WOULD BE UNDER OUR CASE
LAW THE PROPER WAY TO PRESERVE
THAT OBJECTION?

>> TO ASK FOR A RELIGIOUS
NEUTRAL REASON.

>> DID THAT HAPPEN HERE?

>> KNOW.

>> A FEW THINGS NEED TO HAPPEN.

THEY HAVE TO OBJECT TO THE STRIKE, THEY NEED TO SAY, PLEASE CORRECT ME IF I'M WRONG, THAT IDENTIFY WHAT PROTECTED CLASS THE JURORS FROM. IT WOULD BE RELIGION, JEHOVAH'S WITNESS AND ASK FOR A RELIGIOUS NEUTRAL REASON, CORRECT?

>> YES.

>> WERE ANY OF THOSE THINGS MISSING?

WHAT WAS MISSING?

>> THAT BRINGS ME TO IN THIS CASE IT IS CLEAR IT WASN'T PRESERVED BECAUSE AT -- THIS HAPPENED DURING THE SECOND WEEK OF JURY SELECTION.

AT THE END, THE PROSECUTOR ASKED TO STRIKE THE JURY. THE DEFENSE COUNSEL ASKED FOR A REASON.

WE HAVE THE PROSECUTORS -- THEY MADE A RACE OBJECTION.

>> WHICH WAS PRESERVED.

>> LET ME ASK YOU.

WHEN THE PROSECUTOR EXERCISES CHALLENGED TRANSCRIPT, DEFENSE COUNSEL, HIS FIRST RESPONSE, CAN WE HAVE A RACE NEUTRAL REASON, HERE IS WHAT THE PROSECUTOR SAID, SHE IS A JEHOVAH'S WITNESS, NEVER HAD ONE SAY AND I HIGHLIGHTED IT, ALWAYS SAID THEY CAN'T SIT IN JUDGMENT.

SHE NEVER BROUGHT IT UP.

IS WHAT YOU ARE SAYING, THAT HAD THE PROSECUTOR SAID WE HAVE A RELIGION NEUTRAL REASON.

>> DEFENSE COUNSEL.

>> THAT GOES TO WHETHER RELIGION --

>> ASSUMING IT IS.

FOR THE PURPOSES OF PRESERVATION, HAD HE SAID OR SHE, CAN WE HAVE A RELIGION NEUTRAL REASON?

>> THIS COURSE SAID THAT IN THE SMITH.

THE OPPONENT OF THE STRIKE MUST

SAY THE PERSON IS A MEMBER OF A PROTECTED CLASS AND ASK FOR A REASON WHICH IN THIS CASE WOULD HAVE BEEN RELIGIOUS NEUTRAL.

THE TRANSCRIPT --

>> WHAT IS THE REASON WE ASK THAT THAT BE DONE?

WHAT PURPOSE?

>> BUT THE COURT ON NOTICE.

>> WHAT ABOUT THE PROSECUTOR SAYING SHE'S A JEHOVAH'S WITNESS?

DOES THAT PUT THE JUDGE ON NOTICE BECAUSE OF RELIGION?

>> IT PUTS THE JUDGE ON NOTICE, THE REASON HE IS CONCERNED ABOUT THAT IS IN 20 YEARS OF EXPERIENCE, ONCE AND CONTESTED BY ANY COUNSEL IN THE COURTROOM THE PROSECUTOR SAID I NEVER HAD A JEHOVAH'S WITNESS WHO HAS BEEN A PROSPECT OF JUROR SAY THEY CONSIDER IN JUDGMENT.

IT IS BASED ON A BELIEF WHICH IS SOMETHING THE PERIMETER HE HAS ALWAYS BEEN PROPER FOR TO CONTEST A JUROR BASED ON A PERSON'S BELIEF WHICH IS INTUITIVE AND WHAT A PERIMETER RECHALLENGE IS MEANT FOR.

>> THE RELIGION THE JEHOVAH'S WITNESS OFFERED WAS RACE NEUTRAL GENUINE REASON FOR THE STRIKE BASED ON RACE.

I'M NOT STRIKING BASED ON RACE BUT BECAUSE I BELIEVE A JUROR OF THIS RELIGION CANNOT SERVE ON THE JURY.

>> YES, YOUR HONOR.

>> THAT IS THE REASON GIVEN AND THAT IS ARGUED ABOUT THE GENUINENESS OF THAT GIVEN REASON, CORRECT?

>> THAT IS HOW IT COMES ABOUT. WHAT HAPPENS IN THIS CASE --

>> THIS WOULD HAVE PLAYED DIFFERENTLY IF THE STRIKE WAS I OBJECT TO THAT STRIKE BECAUSE OF RELIGIOUS-BASED REASON, THE JURORS A MEMBER OF A PROTECTED

CLASS ASSUMING IT IS A
PROTECTED CLASS WOULD HAVE
PLAYED OUT DIFFERENTLY.

>> IF THE OBJECTIVE HAD BEEN
MADE PROPERLY WOULD HAVE IN THE
JUDGE WOULD BE ON NOTICE WHAT
HE WAS CONSIDERING AT THE TIME
THE JUROR WAS CHALLENGED.

>>

>>

>> WHERE WE ARE CLEARER THAN
SAYING PARTY OBJECTING TO THE
OTHER SIDE AND USE OF
PEREMPTORY CHALLENGE ON RACIAL
GROUNDS MUST MAKE A FINALLY
OBJECTION ON THAT BASIS, SHOW
THE PERSON IS A MEMBER OF
DISTANT RACIAL GROUP AND
REQUEST THE COURT ASK THE
STRIKING PARTY FOR THE STRIKE.
THESE STEPS ARE MET, STEP ONE.
THAT SETS THE WHOLE THING UP.
IF THAT IS NOT FOLLOWED DO WE
HAVE A RECORD BY WHICH WE COULD
MAKE A DETERMINATION?

>> KNOW.

IF IT IS NOT PROPERLY INITIATED
WHICH WAS RAISED WITH RESPECT
TO THAT, IF NOT INITIATED
PROPERLY THE TRIAL COURT CANNOT
MAKE THE RULING.

ON RELIGIOUS GROUNDS.

>> SHOWING WHERE IN THE FOURTH
DCA'S DECISION WITH THE UNITED
STATES OR FLORIDA CONSTITUTION
AND WHAT DOES IT MEAN TO
CONSTRUE?

>> IN PART 2 OF JUDGE LEVINE'S
DECISION, IT IS THE SUM UP THAT
IT VIOLATES STATE AND FEDERAL
CONSTITUTION WITH RESPECT TO
EQUAL PROTECTION.

>> HE FINDS A VIOLATION BASED
ON WHAT HAPPENED HERE BUT WHERE
IS A CONSTRUING AND WHAT DOES
IT MEAN TO CONSTRUE A PROVISION
OF UNITED STATES AND FLORIDA
CONSTITUTION?

>> IN THIS CASE THE EXTENSION
OF BASSETT BECAUSE THIS COURT

FOR AS LONG AS BASSETT HAS BEEN
IN THE LAW HAS NEVER INCLUDED
RELIGION AS A BASIS.

>> THAT IS THE CASE, EXTENDING
CASE LAW, HOW DOES THAT
CONSTRUE A PROVISION OF FLORIDA
UNITED STATES CONSTITUTION?

>> THE EQUAL PROTECTION CLAUSE
AS RELATES TO CRIMINAL JURY
TRIAL BALANCING EQUAL
PROTECTION OF A PERSON'S RIGHT
TO SERVE ON A JURY AGAINST THE
DEFENDANT'S RIGHT TO FAIR
TRIAL.

>> WHAT ABOUT CONSTITUTIONAL
PROHIBITION?

>> IT IS ALMOST AN ASIDE THAT
THIS RESULTED IN IMPROPER
RELIGIOUS TESTS.

>> THAT IS THE CONCLUSION.

>> ARTICLE 6 CLAUSE 3, SPECIFIC
REFERENCE TO THE UNITED STATES
CONSTITUTION.

>> IS REFERENCE ENOUGH?

WHAT DOES CONSTRUE MEAN?

>> IT SEEMS AS THOUGH THAT WAS
AN AFTERTHOUGHT AFTER WRITING
THE ENTIRE OPINION TO SAY IT
WAS ALL ABOUT RELIGION AND THAT
IS NOT WHAT THE RECORD SAYS.
THIS IS ABOUT THE PROSECUTOR'S
EXPERIENCE WITH JEHOVAH'S
WITNESSES AS PROSPECT OF JURORS
THAT THEY CANNOT SIT IN
JUDGMENT BASED ON PERSONAL
BELIEF SO IT IS NOT A RELIGIOUS
TEST EVERY JEHOVAH'S WITNESS
MAY NOT SIT ON THE JURY.

WHAT WAS CONTESTED WAS WHETHER
THE JUROR WAS ABOUT WAS MADNESS
AND --

>> TO STAY ON THIS HERE, IN THE
SECOND FULL PARAGRAPH OF THE
OPINION, STRIKING A JUROR BASED
ENTIRELY ON HER PARTICULAR
RELIGIOUS AFFILIATION WITHOUT
ANY EVIDENCE, PREVENTING HER,
IT IS AN IMPERMISSIBLE
RELIGIOUS TEST IN VIOLATION OF
THE UNITED STATES AND FLORIDA

CONSTITUTION.

DON'T KNOW WHAT ELSE ANYONE HAS TO SAY.

>> DEFENSE COUNSEL DIDN'T CONTEST RELIGIOUS BELIEFS IN THIS CASE THEY CAN'T FIT IN JUDGMENT, THE RECORD FOR THE TRIAL JUDGE TO MAKE A GENUINE ARGUMENT WITH RESPECT TO THAT. WHAT HAPPENED IS IMPORTANT TO SEE THAT EVEN AFTER THE JUROR WAS BROUGHT IN, 2 OR 3 TIMES COUNSEL REITERATED AT THE TIME THE JUROR WAS STRUCK WE NEED TO PUT THE RACE NEUTRAL REASON. THE TRIAL COURT WAS NOT ON NOTICE THAT THIS WAS AN ISSUE AT THE TIME THE JUROR WAS STRUCK DURING SECOND WEEK OF JURY SELECTION.

>> I'M A FORMALIST WHEN IT COMES TO THINGS I LIKE, THINGS NICE AND TIGHT, ASK THE RIGHT THING.

DOESN'T ALWAYS HAPPEN THAT WAY AND THE ISSUE IS WAS THE JUDGE ON NOTICE?

PROSECUTOR -- WE KNOW JEHOVAH'S WITNESSES ACCORDING TO THE PROSECUTOR ALWAYS SAID THEY CAN'T SIT IN JUDGMENT.

WHAT ELSE DOES THE JUDGE NEED TO KNOW TO MAKE A PROPER RULING?

I UNDERSTAND THE RIGHT BUZZWORDS WEREN'T USED BUT IF PUTTING THE JUDGE ON NOTICE, WHAT ELSE DOES THE JUDGE NEED TO KNOW?

>> THE PROBLEM BECOMES DEFENSE ADMITS IT IS NOT EXTENDED TO COVER RELIGION IN THIS CASE, JEHOVAH'S WITNESSES, AND THAT IS WHAT THE JUDGE WAS NOT ON NOTICE OF AT THE TIME OF THE STRIKE.

NOT UNTIL 5 DAYS LATER WHICH I THINK SHOWS DEFENSE COUNSEL KNOWS THIS WASN'T PRESERVED AT THE TIME OF THE CHALLENGE,

DEFENSE COUNSEL FILES A MOTION FOR THE FIRST TIME, THE STATE SAYS ON THE RECORD THIS IS AN TIMELY -- UNTIMELY.

THE JUDGE SAYS THIS IS NOT BEEN EXTENDED TO RELIGION.

I'M DENYING IT BECAME A MOTION TO STRIKE THE PANEL WHICH MOTIONS ARE FILED IN PATTERN CASES WHERE DEFENSE COUNSEL FILED A MOTION ALLEGING A PATTERN OF DISCRIMINATION. HERE FOR THE FIRST TIME THE TRIAL JUDGE WAS PUT ON NOTICE 5 DAYS AFTER THE JURY WAS STRUCK AND A HEARING WAS HELD 7 DAYS AFTER.

THAT IS NOT HOW MELBOURNE IS INITIATED.

>> OUR LAW WITH RESPECT TO IMPERMISSIBLE PEREMPTORY STRIKES, HAS ALWAYS REQUIRED A CONTEMPORANEOUS OBJECTION.

>> YOU ALSO HAVE TO RENEW THAT OBJECTION AT THE END.

YOU CAN'T REVIVE OR RENEW SOMETHING THAT WAS NEVER CONTEMPORANEOUSLY MADE.

>> THAT IS THE PRESERVATION POINT.

TO MAKE A RACE NEUTRAL OBJECTION DURING THE FIRST HEARING AND REITERATED THREE TIMES AFTER THE JURORS WERE BROUGHT IN TO CONFIRM ALWAYS ARE NOT AND GRANTED ON A QUESTION.

>> KNOW DOUBT THE FACT SHE WAS A JEHOVAH'S WITNESS IN HIS EXPERIENCE WAS COULD NOT SIT IN JUDGMENT OR HAVE BELIEFS THAT WOULD MAKE IT DIFFICULT. EVERYONE AGREES THAT THE RACE NEUTRAL REASON.

>> SO DID THE FOURTH DCA. JUDGE GERBER AGREED IT WAS A RACE NEUTRAL REASON.

>> ISN'T IT -- WAS THERE A GENUINENESS FINDING MADE WHEN THE OBJECTION WAS MADE?

>> AT THE TIME.

>> WAS THE WORD GENUINENESS USED?

>> OVER THE DEFENSE OBJECTION, I FIND THE RECORD SUPPORTS A RACE NEUTRAL REASON BECAUSE OF THE CONCERN OF HER RESPONSES. THE JUDGE GRANTED THE TRIAL, YOU NEED TO PUT THE RACE AND REASON ON RECORD, RACE NEUTRAL AND THE JUDGE GOES THROUGH AN ANALYSIS OF -- THERE WAS DISCUSSION ON THE ISSUE OF SENTENCING AND WHAT SHE TALKED ABOUT.

>> I WANT YOU TO ANSWER WHAT THEY SAY IS PUT YOUR RATE NEUTRAL RAISIN.

>> THAT IS WHY THAT IS IMPORTANT.

>> BACK TO RACE, NOT RELIGION.

>> IS AN THAT PART OF THE PROBLEM.

AFTER A RACE NEUTRAL REASON WAS GIVEN EVERYBODY, THE DEFENSE LAWYER AND THE JUDGE KEPT SAYING WHERE IS THE RACE NEUTRAL REASON?

NOBODY WENT TO STEP 2.

MAYBE THEY DID IN THEIR MINDS BUT THE RECORD DOESN'T REFLECT THEY WERE GOING TO THE NEXT STEP WHETHER IT WAS GENUINE OR NOT.

>> TRIAL COURT WENT ON AND TALKED ABOUT THE BLIND RECORD AND OUT OF DEFERENCE TO THE MOVING PARTY IT SEEMS THERE WAS NO CONTEST.

TO BE FRANK INITIALLY.

>> UNDER HAYES THAT WAS NOT REQUIRED TO PRESERVE THE ISSUE BECAUSE THE TRIAL COURT IS REQUIRED TO AFFIRMATIVELY GENUINENESS.

AND IT IS NOT THAT THE TERMINOLOGY AND TO MAKE THE GENUINENESS FINDING ON THE RECORD, CORRECT?

>> THERE IS CONFUSION IN THE

CASE LAW.

JOHNSON HAS COME TO THIS COURT FROM THE FOURTH DCA ON WHETHER THE ISSUE IS PRESERVED THAT WAY SO WE ARE NOT PUTTING THE JUDGE IN THE ROLE OF THE ADVOCATE FOR THE PARTIES AND THAT WAS CONSISTENT WITH CONCURRENCE ISSUED BY THIS COURT.

THAT IS WHAT COMPLICATED THIS ISSUE AS IT COMES TO THE MERITS ANALYSIS BECAUSE IT WAS NOT PROPERLY PRESERVED.

THE COURT BELOW WAS ONLY ON NOTICE THAT THIS WAS A RACE ISSUE.

AS IT RELATES TO EXTENDING THE STATE, THE FEDERAL CONSTITUTION, THIS COURT IN CASE LAW HAS NEVER DONE THAT. BUSBY, DORSEY, SMITH, THIS COURT HAS ALWAYS SAID RACE, GENDER AND AS A RESULT OF ETHNICITY, ARE PROTECTED.

IT NEVER EXTENDED AND THERE IS NO GOOD REASON TO EXTEND TO JEHOVAH'S WITNESSES IN THIS CASE BECAUSE IT IS SOMETHING BASED ON PERSONAL BELIEF. WHO WE ARE VERSUS WHAT WE BELIEVE.

>> YOU SAID THAT A FEW TIMES AND IT STRIKES ME.

THE PRESERVATION ARGUMENT IS STRONG.

IN THE CONTEXT WHERE YOU ARE TALKING ABOUT RACE OR SEX YOU WOULD NEVER ALLOW SOMEONE, IF THERE WERE A PREDATORY CHALLENGE AND THE COUNSELOR ASKED FOR A 6 NEUTRAL OR RACE NEUTRAL REASON WE WOULD NEVER ACCEPT A RESPONSE THAT SAID IT IS NOT BECAUSE IT WAS RACE OR SEX BUT BECAUSE OF MY EXPERIENCE WITH PEOPLE OF THAT RACE OR SEX.

IN THE RELIGION CONTEXT HOW WOULD WE BE ABLE TO SEPARATE THE, QUOTE, BELIEFS FROM THE

AFFILIATION?

>> I WOULD SUGGEST IT IS QUITE CLEAR FROM SMITH THAT IN THAT OPINION THERE IS DISCUSSION ABOUT IMMUTABLE CHARACTERISTICS.

YOU KNOW RIGHT THEN THEY ARE NOT CHANGING.

GENDER IS NOT GOING TO CHANGE. PERSONAL BELIEFS ARE EVER-CHANGING AND YOU CAN GO SO FAR IN THE CAPITAL SENSE THE PRESENCE GO AGAINST THE DEATH PENALTY ARE A GOOD REASON FOR A PERIMETER READ STRIKE.

>> WHAT IS YOUR RESPONSE?

I AM SURE YOU READ JUSTICE THOMAS'S DISSSENT FROM THE DENIAL ON THE DAVIS CASE WHERE HE IS A SKEPTIC ABOUT THE CASE IN THE FIRST PLACE BUT BASICALLY SAYS NOW THAT WE HAVE GONE DOWN THIS PATH THERE IS NO PRINCIPLED BASIS FOR TREATING RELIGIOUS AFFILIATION DIFFERENT FROM RACE OR SEX.

>> THERE IS NO COMPELLING REASON TO EXTEND IT THAT FAR BECAUSE RELIGION IN PARTICULAR JEHOVAH'S WITNESSES IN THIS CASE BELIEFS ARE EVER-CHANGING. PERSONAL BELIEFS OF ALWAYS BEEN GROUNDED IN THE PEREMPTORY CHALLENGE BASED ON INTUITION, BASED ON PERSONAL BELIEFS. IN THIS CASE, WE KNOW THAT THE GOOD FEELING ABOUT THE PROSECUTOR ABOUT PERSONAL. WAS CONFIRMED.

>> IN THE DEATH PENALTY CASE PROSECUTORS ARE ALLOWED TO EXCUSE JURORS WHO HAVE A FIRM BELIEF AGAINST THE DEATH PENALTY.

I COULD NEVER EVER RECOMMEND DEATH, THEN YOU ARE EXCUSED. YET THAT BELIEF COULD CHANGE. NEXT CASE THAT COMES UP MAKES THE MEDIA COULD CHANGE THAT BELIEF REAL QUICKLY AND THAT IS

ALLOWED.

>> IT COULD.

THAT IS WHY IT SHOULD BE SUBJECT TO THE PERIMETER A CHALLENGE BECAUSE IT IS AN EVER-CHANGING BELIEVE AND IF THERE IS RECORD SUPPORT TO SHOW THAT BELIEF CHANGED, THAT IS THE DIFFERENCE AND IMMUTABLE CHARACTERISTICS ARE OBVIOUS.

>> ISN'T IT ALSO NOT JUST THE CHARACTERISTICS BUT THE STEREOTYPES, HISTORICAL STEREOTYPES ASSOCIATED WITH THOSE CHARACTERISTICS.

TO ASSUME PEOPLE OF A PARTICULAR RACE OR GENDER WILL TAKE A PARTICULAR VIEW OF THINGS IS PROBLEMATIC.

IS THAT ONE OF THE MAIN TEACHINGS OF THE CASE LAW FROM THE US SUPREME COURT?

>> YES, THAT IS.

>> A LITTLE DIFFERENT IN THIS CONTEXT, WHERE PEOPLE ARE SELF IDENTIFYING WITH A SET OF BELIEFS THAT ARE THERE AND KNOWN AND THAT IS NOT THE SAME TYPE OF STEREOTYPING THAT HAS GONE ON IN THESE OTHER CIRCUMSTANCES.

>> IT IS NOT.

WHAT HAPPENS BY EXTENDING IT THAT WAY AS IT COMPLICATES THE PEREMPTORY CHALLENGE.

WE ARE DETERMINING BELIEFS AND THINGS THAT ARE EVER-CHANGING. SOMEONE MAY OR MAY NOT SUBSCRIBE TO ALL OF THE BELIEFS AND THAT IS WHY THERE IS NO GOOD REASON TO EXTEND.

>> DO YOU AGREE WITH CASE LAW THAT EXTENDED IT TO JEWISH JURORS?

>> THAT WAS BASED ON THE ETHNICITY ANALYSIS.

>> HOW DOES JUDAISM AND ETHNICITY -- I KNOW THE LANGUAGE THEY USED BUT HOW DO YOU CHARACTERS IN JUDAISM AS AN

ETHNICITY AND WHY NOT EXCHANGE THE SAME ANALYSIS TO ANY OTHER RELIGION?

>> BECAUSE IF YOU LOOK, THE ANALYSIS WAS PRETTY INTRICATE. GOING NOT JUST FOR RELIGION BUT COMMUNITY COHESIVENESS WHICH DOES SEEM --

>> AS LONG AS THEY MADE THE ANALYSIS, THERE WERE STUDIES SHOWING 10% OF THE BROWARD POPULATION WAS OF JEHOVAH'S WITNESSES AND THERE WERE DOES HISTORICAL DISSEMINATION AGAINST HIM.

>> MAYBE, MAYBE NOT. THE PROBLEM IS WE DON'T HAVE A RECORD TO KNOW.

>> THAT IS DIFFERENT FROM SAYING RELIGION CAN NEVER BE AN EXTENSION BECAUSE THOSE ARE DIFFERENT THINGS.

>> THAT IS UNDER STATE CASE LAW.

TO DETERMINE WHETHER OR NOT TO FIND A PROTECTED GROUP IN A PARTICULAR PLACE IN THE STATE. THAT IS DIFFERENT FROM EXTENDING WHOLESALER THE EQUAL PROTECTION CLAUSE WHOLESALER. THERE MAY BE A CASE THAT THIS IS NOT IT.

WITH THAT I SEE I HAVE RUN OUT OF TIME.

HOPEFULLY I WILL BE ABLE TO RESERVE MY 5 SECONDS.

>> I WILL GIVE YOU ONE MINUTE FOR REBUTTAL.

>> MAY IT PLEASE THE COURT, FRED HADDAD ON BEHALF OF JOHN PACCHIANA.

THE MOMENT THE PROSECUTOR WENT TO STRIKE THE JUROR AND DEFENSE COUNSEL MISTER WILLIAMS SAID CAN WE GET A RACE NEUTRAL REASON SHE REPLIED SHE IS A JEHOVAH'S WITNESS AND THROUGH THE REST OF THAT.

>> THAT IS A RACE NEUTRAL REASON, CORRECT?

>> JEHOVAH'S WITNESS?
>> THAT IS A RACE NEUTRAL
REASON.
>> I DON'T KNOW.
IT IS STILL PREDICATED UPON A
PERSON'S RELIGIOUS
CHARACTERISTICS.
>> NOT RELATED TO RACE.
>> KNOW, OKAY, THAT -- I AM
SORRY.
DON'T KNOW IF IT IS THE
ACOUSTICS OR JUST TO ME BUT THE
DEFENSE LAWYER RIGHT AFTER
THAT, MISTER BOGAN SAID IT IS
THE RECORD.
THAT IS A RELIGIOUS-BASED
STRIKE.
WE PUT THE COURT ON NOTICE
RIGHT THEN AND THERE.
>> HERE IS THE ISSUE.
THERE IS NOT EVEN -- THAT IS A
STATEMENT OF THE OBVIOUS
BECAUSE THE REFERENCE OF A
JEHOVAH'S WITNESS, THAT IS
RELIGION BASED.
IN A CERTAIN SENSE THAT IS
TRUE.
THERE IS NO WAY YOU CAN DENY
THAT, SO THAT IS JUST STATING
WHAT IS ALREADY OBVIOUS.
IT IS DIFFERENT THAN YOU WOULD
HAVING A TYPICAL RACE BASED
STRIKE WHERE THERE ARE OTHER
THINGS GOING ON SUBSEQUENTLY.
IT IS A STATEMENT OF OBVIOUS
FACT BUT NEVER A SUGGESTION
THAT IT IS AN IMPROPER
RELIGIOUS-BASED STRIKE.
TOTALLY UNDEVELOPED AND THEN
THE WHOLE CONTEXT OF THE
DISCUSSION THAT FOLLOWS, BEAR
WITH ME FOR JUST A SECOND.
I WILL GIVE YOU YOUR CHANCE TO
RESPOND.
THE WHOLE CONTEXT OF THE
DISCUSSION THAT FOLLOWS, REALLY
FOCUSED ON RACE.
THE JUDGE MAKES THE RULING THAT
IT IS NOT RELIGION BASED AND
THEN NOBODY SAYS -- I AM SORRY.

MAKES THE RULING THAT IT IS NOT RACE-BASED AND NOBODY SAYS WHAT ABOUT THE RELIGION OBJECTION? IT IS SO -- HOW IN THE WORLD WITH THE JUDGE REALLY KNOW HERE THAT ANYBODY WAS ASSERTING THAT THERE WAS A VIOLATION OF THE CONSTITUTION BASED ON IMPERMISSIBLE RELIGION BASED STRIKE?

I SEARCHED THROUGH THIS AND DON'T SEE IT.

IT IS CONFUSING, I WILL ADMIT, BUT IT HAS TO BE, THERE HAS TO BE SOME CLARITY SO THAT A JUDGE CAN REALLY KNOW THAT SOMEBODY IS ASSERTING A VIOLATION.

IN AN AREA LIKE THIS, WHERE THIS IS NOT THE IMPERMISSIBLE WHAT HE OF STRIKES RELATED TO RELIGION IN A COMPLICATED AREA BECAUSE WE KNOW SOMETIMES PEOPLE CAN BE PROPERLY EXCLUDED BASED ON THEIR RELIGIOUS BELIEFS THEY ARTICULATE THAT ARE INCONSISTENT WITH THE RESPONSIBILITY THEY HAVE TO CARRY OUT AS A JUROR.

IN THAT CONTEXT IT SEEMS TO ME PARTICULARLY THERE HAS GOT TO BE MORE TO PUT THE JUDGE ON NOTICE.

TELL ME WHAT I AM MISSING.

>> AFTER THE -- MISTER BOGAN SAID THAT IS A RELIGIOUS-BASED STRIKE.

THE STATE SAYS YOU CAN SAY THAT FOR 20 YEARS AND MENTIONS ME BEING COUNSEL FOR THE CODEFENDANT, KNOWS ANY OF THEM. THEY ALWAYS SAID THEY CAN'T SIT AND WE GO INTO JEHOVAH'S WITNESSES, WHAT WAS SAID, SHE IS A JEHOVAH'S WITNESS AND GOES THROUGH.

MAKING THE DETERMINATION AFTER THEY BRING HER IN AND THE REASON IS UNCHANGING.

THE LAWYERS SAID THE COURT MAKES A RULING, RACE NEUTRAL.

AND THE JUDGE STILL SAID SHE IS A JEHOVAH'S WITNESS.

>> THE POINT IS THAT IS WHY IT IS RACE NEUTRAL AND THERE IS A RACE NEUTRAL REASON.

ISN'T IT?

THE ONLY REASONABLE WAY TO READ WHAT IS GOING ON HERE.

>> I CAN'T DISAGREE BUT THERE ARE OTHER PARTS OF THIS BECAUSE THE OBJECTION WAS RENEWED AND IF YOU LOOK AT JOINER THAT GETS US THROUGH PART OF THIS.

>> WHEN AN OBJECTION IS RENEWED IT WAS CONTEMPORANEOUSLY MADE. IT IS 2 STEPS IN THE PROCESS. IT HAS TO BE CONTEMPORANEOUSLY MADE PROPERLY AND BEFORE THE JURY IS SWORN IT IS PROPERLY RENEWED.

>> I AGREE ON THAT BUT THE PURPOSE OF THAT IS IF ALL OF THESE PUT THE COURT ON NOTICE WHAT THE BASIS IS, JUST LIKE --

>> ON THAT EVERYONE WOULD AGREE.

THE QUESTION IS DID THAT HAPPEN HERE?

>> I SUGGEST IT DID.

I SUGGEST JUDGES SINGULARLY UNNOTICED WITH THE OBJECTION WAS.

I KNOW THE LOWER COURT ALL THREE JUDGES FOUND WE PRESERVED THE ERROR BUT THE JUDGMENT IS ON NOTICE FROM THE FIRST MOMENT OF WHAT IT WAS AND --

>> IF THE JUDGE WAS ON NOTICE THAT THERE WAS A RELIGIOUS-BASED OBJECTION, YOU CAN'T STRIKE THIS, WHY WOULD THE JUDGE HAVE SO THERE'S A RACE NEUTRAL REASON SHE IS A JEHOVAH'S WITNESS?

THAT IS THE RACE NEUTRAL REASON.

HE WAS RESPONDING WHEN ASKED TO PUT ON THE RECORD WHAT THE BASIS FOR HIS RULING WAS?

HE WAS GIVEN THE RACE NEUTRAL

REASON THAT WAS GIVEN.

>> WHEN HE SAID THERE WAS MALPRACTICE TO KEEP ONE ON A JURY.

TO HIM IT IS A RACE NEUTRAL REASON.

>> THAT IS THE ONLY OBJECTION HE UNDERSTOOD HE WAS RESPONDING TO AND HE WAS WILLING ON AND HE WAS GIVING THE RACE NEUTRAL REASON.

>> I WISH THIS COURT HAD ALREADY DECIDED JOHNSON SO I WOULD KNOW WHAT TO ARGUE. THE PROSECUTOR WAS OBJECTING TO THE DEFENSE LAWYER AND WANTED A RACE NEUTRAL REASON. THE COURT SET ON APPEAL WE KNOW WHAT HE MEANT FROM THE CONTEXT OF WHAT WAS BEING SAID THAT HE MEANT.

>> I AM SORRY TO INTERRUPT BUT ISN'T THE ENTIRE IF YOU READ THIS EXCHANGE IN CONTEXT IT SEEMS TO ME IT GOES BACK TO WHAT JUSTICE LAWSON WAS ASKING. THE IRONY OF THE WHOLE THING GIVEN YOUR POSITION IS IT SEEMS THE WHOLE PREMISE OF THIS WAS YOUR SIDE TRYING TO ESTABLISH IT WOULD BE OKAY TO DO A RELIGION BASED STRIKE BUT THIS WHOLE THING IS PRETEXTUAL BECAUSE IT HASN'T BEEN ESTABLISHED SHE REALLY ADHERES TO THESE BELIEFS.

WHEN THE CO-COUNCIL SAYS SHE READS JEHOVAH'S WITNESS STUFF BUT DOESN'T SAY SHE IS A PRACTICING -- THE ONLY WAY TO MAKE SENSE OF THAT IS QUESTIONING THE GENUINENESS.

>> YOU SAID THAT.

>> ME?

IT WAS.

WHAT HAPPENED WAS WE HAD JURY QUESTIONNAIRES.

WHEN SHE WAS BROUGHT IN NOBODY QUESTIONS HER.

THE PROSECUTOR ASKED IF THIS IS

A PENCIL CAN YOU BELIEVE THIS IS A PENCIL?

HE NEVER QUESTIONED HER ABOUT ANYTHING ELSE AND THEN EXCUSED HIM AFTER BRINGING UP THE CHALLENGE.

HE SAID HE DIDN'T SAY HE WAS A JEHOVAH'S WITNESS.

AND I SAID IT IS RIGHT THERE.

>> THE POINT BEING IT WAS THE JEHOVAH'S WITNESS ISSUE WAS A PRETEXT AND IT WAS RACE-BASED AND THAT EVERYTHING THAT FOLLOWS IS TRYING TO FIGURE OUT DOES SHE HAVE THESE BELIEFS? IS SHE A PRACTICING JEHOVAH'S WITNESS?

THAT CULMINATES WITH THE JUDGE SAYING PUTTING IT THERE.

THERE IS NOTHING IN THE DISCUSSION HERE WHERE COUNSEL PUTS THE JUDGE UNNOTICED THERE IS A CONSTITUTIONAL PROBLEM WITH THAT.

>> WHEN WE BROUGHT THE MINNESOTA CASE.

THE FIRST SENTENCE OF THAT MOTION SAYS IN THE INTRODUCTION, WHAT APPEARS TO BE A CASE OF FIRST IMPRESSION IN FLORIDA SO THAT IS ALL THE MORE REASON IT IS NOT SOMETHING AS WELL-ESTABLISHED AS RACE OR SEX WHERE AS SOON AS YOU SAY THE WORD EVERYBODY IN THE COURT UNDERSTANDS WHAT THE ISSUE IS. IN THIS CASE TO THINK IT IS A RELIGIOUS-BASED STRIKE DOESN'T TELL THE COURT ANYTHING.

>> YOU DIDN'T RAISE IT PRIOR TO THE JURY BEING IMPANELED.

>> WE DID.

>> YOU RAISED THE ISSUE OF RELIGIOUS DISCRIMINATION?

>> RIGHT AFTER, BEFORE THE JURY WAS SWORN, YOU FILED A WRITTEN MOTION FOR MISTRIAL AND TO SELECT A NEW JURY.

AT THE HEARING ON THAT MOTION TO VERIFY WHAT THE JUDGE WAS ON

NOTICE OF, HERE'S WHAT THE
JUDGE SAID.

JEHOVAH'S WITNESSES ARE
PECULIAR AND I'M QUOTING.
MANY OF THEM IN MY EXPERIENCE
SAID THEY CANNOT JUDGE, GOD
JUDGES.

BASED ON THAT I FIND NO GENUINE
NON-RACE-BASED REASON.

HE GOES ON TO SAY, THE FACT
THAT THE JURY SAYS THAT SHE IS
A JEHOVAH'S WITNESS
NOTWITHSTANDING THE FACT THAT
SHE SAYS SHE CAN STILL BE FAIR
AND IMPARTIAL, YOU KNOW WHAT?
I DON'T FEEL COMFORTABLE WITH
THE FACT THAT SHE HAS THAT
RELIGION.

IN THE LAST PARAGRAPH,
JEHOVAH'S WITNESS, THAT AS A
RELIGION IT WOULD ALMOST BE
MALPRACTICE FOR A PROSECUTOR
LET SOMEONE ON THE JURY LIKE
THAT.

>> ABSOLUTELY.

>> THE JUDGE IS ON NOTICE.

>> LET ME ASK SOMETHING VERY
DIFFERENT AND THAT IS WOULDN'T
YOU AGREE THERE IS NO
INDICATION ON THIS RECORD THAT
AND IMPARTIAL JURY WAS SEATED
IN THIS CASE.

YOUR CLIENT GOT A FAIR AND
IMPARTIAL JURY?

>> I LOST.

I DON'T KNOW.

[LAUGHTER]

>> NOT AS IMPARTIAL AS YOU
WANTED.

>> ABSOLUTELY.

WHAT CAN I SAY?

WE CERTAINLY DIDN'T MOVE TO
STRIKE ANYMORE JURORS, WE DID
MOVE FOR A NEW TRIAL, WE MOVED
TO ENERGY JURORS, THAT WAS
DENIED BECAUSE OF SOME COMMENTS
THAT WERE MADE.

DON'T KNOW IF THAT IS IN THIS
RECORD.

>> IN THIS CONTEXT, WHERE YOU

ARE PUTTING ALL OF THESE RESOURCES POTENTIALLY INTO A RETRIAL, ISN'T IT, EVEN THOUGH YOU HAVE NO HARMFUL ERROR DURING THE TRIAL AND YOU HAVE SEATED A FAIR AND IMPARTIAL JURY, NO INDICATION OTHERWISE. DON'T YOU THINK IT IS IMPORTANT TO HAVE RULES THAT SAY IF YOU MAKE AN OBJECTION THAT IS GOING TO CAUSE THE PEOPLE OF THE STATE TO GO THROUGH THE PROCESS AGAIN EVEN THOUGH THERE IS NO INDICATION THE PROCESS WAS UNFAIR TO THE DEFENDANT OR TO THE STATE, THAT YOU ARE TO HAVE SOME REAL GOOD PRESERVATION REQUIREMENTS FOR AN OBJECTION UNDER THOSE CIRCUMSTANCES THAT WOULD ALLOW THE TRIAL JUDGE TO UNDERSTAND WHAT THE BASIS FOR THE OBJECTION IS AND TO RULE ON IT AND CONSIDER IT AT THE TIME HE IS DEALING WITH THAT POTENTIAL JUROR.

>> I THINK WHEN A JUROR IS IMPROPERLY EXCLUDED, CERTAINLY WITH RACE IT MANDATES A NEW TRIAL EVERY TIME.

I HAVE NEVER SEEN IT NOT MANDATE A NEW TRIAL.

IT WOULD BE THE SAME WITH A RELIGION BASED OBJECTION I WOULD ASSERT.

THE JUDGE WAS ON NOTICE.

I UNDERSTAND THE WORDING WAS NOT AS IT SHOULD HAVE BEEN BUT THERE IS NO QUESTION JUDGE LEVINSON FROM THE FIRST INSTANCE KNEW THAT WE WERE COMPLAINING ABOUT THE EXCLUSION OF THE PERSON IS A JEHOVAH'S WITNESS WHO STATED THAT SHE COULD BE FAIR, THAT SHE COULD LISTEN AS LONG AS IT WASN'T PASSING SENTENCE OR DEATH PENALTY CASE SHE COULD BE FAIR.

>> IF YOU LOOK AT THIS IN CONTEXT THE JUDGE CAN BE UNDERSTOOD.

HIS COMMENTS CAN BE UNDERSTOOD AS EMPHASIZING THE POINT THE STRIKE BASED ON HER ASSOCIATION WITH THE JEHOVAH'S WITNESS IS NOT A PRETEXTUAL GROUND THAT HAS BEEN GIVEN FOR HER EXCLUSION ON THE BASIS OF RACE WHICH WAS THE OBJECTION THAT WAS MADE.

REASON BE UNDERSTOOD FROM THIS CONTEXT FROM BEGINNING TO END? >> WE CAN BOTH UNDERSTAND DIFFERENT WAYS WHAT WAS SAID BUT ONE CAN TAKE IT ONE WAY OR ONE CAN TAKE IT ANOTHER BUT THE BOTTOM LINE IS SHE WAS EXCLUDED FROM THE SAME PREJUDICE AGAINST JEHOVAH'S WITNESSES THAT APPEARS IN THE DISSENTING OPINION I REFERENCED IN MY BRIEF.

WHEN JUSTICE DOUGLAS WAS TALKING ABOUT IT.

>> IT IS NOT A PREJUDICE AGAINST JEHOVAH'S WITNESS TO SAY YOU ARE NOT GOING TO SERVE ON A JURY IF IT IS YOUR RELIGIOUS POSITION THAT YOU CANNOT SIT IN JUDGMENT IN COURT.

AM I CORRECT?

IN SOME WAYS THAT IS AN ACCOMMODATION TO RELIGIOUS SENSITIVITY OF A PARTICULAR GROUP.

>> APOLOGIZE FOR INTERRUPTING. I WOULD AGREE WITH YOU IF THAT WAS WHAT WAS SAID BELOW BUT THAT IS NOT WHAT WAS SAID. SHE MADE IT EMPATHETIC SHE COULD SIT.

SHE SET ON THE CIVIL JURY, SHE COULD BE FAIR, SHE COULD FIND PROOF BEYOND REASONABLE DOUBT. OF THE PROSECUTOR PROVE THIS CASE SHE WOULD FIND HIM GUILTY. SHE SAID WITHOUT HESITATION. SHE WAS AS QUALIFIED AS ANYONE.

>> ONCE THE PROSECUTOR SAID TO THE JUDGE, THIS JUROR IS GOING

TO HOLD ME TO A HEIGHTENED BURDEN BEYOND A REASONABLE DOUBT, WHAT I CAN'T MEET IS THIS HEIGHTENED -- ARE THOSE BUZZWORDS SUFFICIENT ENOUGH TO GET BY?

>> IF THERE WERE ANY -- I HOPE HE'S NOT LISTENING BECAUSE I TRIED HUNDRED CASES WITH HIM. IF THERE WERE ANY SUPPORT, YES BUT THE ANSWER TO THE JURY, HE SAID I CAN'T MEET HER BURDEN. SHE NEVER SAID ANYTHING ABOUT HER BURDEN.

SHE SAID SHE COULD FOLLOW THE LAW, SHE COULD FOLLOW THE STANDARD WHATEVER WAS PROOF BEYOND REASONABLE DOUBT --

>> IT WASN'T A CLEAR AND CONCISE EVIDENCE?

>> THAT IS A LAYMAN'S TERM. CLEAR AND CONCISE COULD BE CLEAR AND CONVINCING AND IT WOULD BE FAVORABLE TO HIM. THAT IS LESSER STANDARD BE ON PROOF BEYOND REASONABLE DOUBT. SHE SAID AS LONG AS THE PROOF WAS THERE SHE WOULD FIND HIM GUILTY.

THAT IS AS FAIR AS ANYONE CAN BE.

>> IS THERE A PROBLEM WITH IS TRYING TO FIGURE OUT, PUT OURSELVES IN THE POSITION OF THE TRIAL COURT IN DEALING WITH THIS AND SECOND GUESSING THE TRIAL JUDGE?

SHE COULD HAVE THAT I CAN BE FAIR IN A WAY THAT WAS VERY HESITANT AND CONVEYED THAT I AM NOT SO SURE I CAN.

THE TRANSCRIPT COULD READ ONE WAY AND THE TRIAL JUDGE, YOU KNOW THIS IS A TRIAL ATTORNEY, THE TRIAL JUDGE COULD UNDERSTAND SOMETHING 180 ° FROM WHAT SHE WAS SAYING GIVEN THE WAY SHE WAS -- THE TRIAL JUDGE WHO LISTENED TO HER AGREED WITH THE PROSECUTOR THAT HE HAS

REASONABLE BASIS FOR CONCERN.
HOW CAN WE LOOK AT WHAT SHE
SAID IN A COLD TRANSCRIPT AND
COME TO A DIFFERENT CONCLUSION
PROSECUTOR SHOULDN'T HAVE?

>> YOU CAN LOOK AT THE COLD
TRANSCRIPT.

I CAN'T THINK OF THE WORD I
WANT TO USE WAS A FLOWING THING
THEY USE ON TELEVISION, A
SCRIPT AND IF YOU READ IT, IT
IS COHESIVE AND CLEAR SHE'S
LISTENING TO EVERYTHING BEING
SAID AND SHE CAN FOLLOW IT.
THERE IS NO HESITATION, NO
FOLLOW-UP BY THE PROSECUTOR ON
EVERYTHING SHE SAID.

NO QUESTION WHAT DID YOU MEAN
BY THIS OR THAT?

THERE IS NO SUGGESTION BY JUDGE
LEVINSON THAT ANYTHING IS NOT
THERE OTHER THAN IT IS
MALPRACTICE TO HAVE ONE.

IF HE SAID THAT A WEEK LATER IT
WAS HIS THOUGHTS.

IT IS OBVIOUSLY HE HAD NOT JUST
FORMULATE THAT OPINION IN THE
PROSECUTOR SAID IN 20 YEARS
TRYING CASES HE DOESN'T WANT
JEHOVAH'S WITNESSES.

>> I DON'T THINK THAT IS WHAT
HE SAID.

I THINK THE PROSECUTOR
INDICATED DURING HIS CAREER
JEHOVAH'S WITNESSES SAID THEY
COULDN'T SIT IN JUDGMENT AND
ARE EXCLUDED ON THAT BASIS.

>> I KNOW HE INCLUDED ME IN HIS
COMMENT BECAUSE I TRIED CASES
WITH A NUMBER OF TIMES BUT HE
SAID I JUST HAD IT A MINUTE
AGO.

SORRY.

THAT IS A RELIGIOUS-BASED
STRIKE.

YOU CAN SAY THAT BUT FOR 20
YEARS AND THE CO-DEFENDANT
KNOWS THEY HAVE ALWAYS SAID
THAT.

>> SHE IS A JEHOVAH'S WITNESS,

NEVER HAD ONE SAY, THEY HAVE ALWAYS SAID THEY CAN'T SIT IN JUDGMENT.

BASED ON HIS EXPERIENCE WITH HEARING THAT FROM PEOPLE OF THAT RELIGION WHO WERE IN THE JURY POOL AND SAY I CAN'T SIT IN JUDGMENT.

>> MOST OF THEM COME IN AND SAY THEY CAN'T SIT IN JUDGMENT WHEN YOU HAVE A PERSON -- SO YOU AGREE WITH THAT.

YOU ARE NOT THINKING THAT IS SOME PRETEXTUAL MADE UP THING.

>> I HAVE TRIED ENOUGH CASES OVER THE YEARS TO KNOW THE JEHOVAH'S WITNESSES MANY TIMES SAY THEY CAN'T SIT BUT WHEN HE SAID HE CAN'T SIT, SHE HAS A RIGHT TO SIT UNDER THE EQUAL PROTECTION CLAUSE.

ANY PERSON HAS A RIGHT TO SET.

>> THIS JUROR, WHAT THE STATE WAS SAYING WAS SHE NEVER BROUGHT IT UP.

THE JURY NEVER -- A RELIGION DID NOT ALLOW HER TO SIT IN JUDGMENT AND SHE DIDN'T BRING UP AT ISSUE.

>> WHAT HE WAS TALKING ABOUT SHE DIDN'T ANSWER.

SHE HAD IT IN HER QUESTIONNAIRE.

WE READ IT.

THE PROSECUTOR READ IT AND WHEN IT WAS TIME FOR THE STRIKE SHE SAID SHE IS A JEHOVAH'S WITNESS, TO LET OUT OF THIN AIR.

HE KNEW IT FROM READING HER QUESTIONNAIRE AND DIDN'T WANT TO ASK HER ABOUT IT.

SHE WANTED TO SIT, SHE SAT BEFORE, SHE COULD SIT, SHE COULD BE FAIR, SHE ANSWERED EVERY ONE OF HIS HYPOTHETICALS.

THE WAY HE WANTED AN ANSWER, THERE WAS NO BASIS TO STRIKE HER OTHER THAN BECAUSE HE DIDN'T WANT A JEHOVAH'S WITNESS

ON A JURY.

>> PROBABLY OUT OF TIME.

>> YOU HAVE 17 SECONDS.

I WOULD ASK THIS COURT TO
AFFIRM THE WISE DECISION OF THE
FOURTH DISTRICT.

>> THANK YOU.

>> IT DOESN'T MATTER THE JUROR
SAID SHE COULD BE FAIR AND
THIS WAS ABOUT A PREEMPTORY
CHALLENGE BASED ON, AS JUSTICE
CANADY SAID, CHIEF JUSTICE
CANADY SAID, THE PROSECUTOR'S 20
YEARS OF EXPERIENCE WHICH
EVERYONE IN THE COURTROOM THEN
AND NOW AGREED WAS SOMETHING
JEHOVAH'S WITNESSES HAVE ALWAYS
SAID, THAT THEY CAN'T SIT IN
JUDGMENT.

>> I'M SORRY TO INTERRUPT YOU,
BUT, I MEAN, THE PRESERVATION
ARGUMENT IS A VERY STRONG
ARGUMENT, BUT DO YOU ACKNOWLEDGE
THAT IF YOU EVER WERE GOING TO
GET TO A CASE ON THE MERITS ON
THIS RELIGION ISSUE, THAT A CASE
WHERE YOU HAVE A JUDGE SAYING IN
THE CONTEXT OF A JUROR WHO
REPEATEDLY INDICATES THAT THEY
WILL BE ABLE TO DO THEIR JOB IN
THIS CASE AND THEN YOU HAVE THE
JUDGE SAYING A JEHOVAH'S WITNESS
THAT, AS A RELIGION, IT WOULD
ALMOST BE MALPRACTICE, I MEAN,
SUBSTITUTE CATHOLIC, BAPTIST,
WHATEVER-- AGAIN, IN THE
CONTEXT OF THE JUROR SAYING I
CAN DO MY JOB HERE, I MEAN, DO
YOU ACKNOWLEDGE THAT THIS WOULD
BE KIND OF AN EXTREME CASE AS
FAR AS IF YOU EVER WERE GOING TO
FIND THAT THERE WERE AN
IMPERMISSIBLE, YOU KNOW, ACT OF
RELIGIOUS DISCRIMINATION, THAT
THIS WOULD BE IT?

>> NO, BECAUSE THAT COMMENT MADE
BY THE JUDGE WASN'T MADE JUST
OUT OF THIN AIR.

IT WAS MADE AFTER REVIEWING THE
OPINION OF MINNESOTA V. DAVIS

WHERE ALL OF THE LANGUAGE LED THE JUDGE TO THAT CONCLUSION. COUNSEL HAD COME IN AFTER THE JUROR WAS STRUCK, FILED A WRITTEN MOTION, AND THEN TWO DAYS LATER THEY WERE GOING TO HAVE A HEARING--

>> NO, BUT THIS WAS DURING THE INITIAL ARGUMENT --

>> THE MALPRACTICE COMMENT?

>> YEAH.

>> NO.

THAT WAS DURING THE SECOND DAY.

>> I'M SORRY.

>> IN THIS CASE JURY SELECTION-- AND I THINK CONTEXT IS VERY IMPORTANT FOR PURPOSES OF THAT-- STARTED WITH JURY QUESTIONNAIRES TO PREQUALIFY FOR A FOUR WEEK TRIAL WHICH WE KNOW IS GOING TO BE EXTENSIVE. WE HAVE TWO WEEKS, THE FIRST THREE DAYS THEY GO THROUGH THE QUESTIONNAIRES JUST FOR INITIAL PREQUALIFICATION IF PEOPLE CAN ACTUALLY SIT.

THEN WE GET TO ACTUAL VOIR DIRE, THEN WE HAVE AN OBJECTION MADE. A WEEK, FIVE DAYS LATER A MOTION IS FILED, AND A WEEK LATER AT A HEARING AFTER THE TRIAL COURT HAS REVIEWED THE DAVIS OPINION, BASED ON THAT OPINION THE TRIAL JUDGE SAID I'M NOT GRANTING THIS MOTION BECAUSE OF WHAT WAS SAID IN THE OPINION.

THAT'S WHAT THAT COMMENT RELATES TO WHEN YOU READ IT IN COMPLETE CONTEXT.

AND WITH THAT SAID, WE'D ASK THAT THE CASE BE REVERSED BECAUSE THE ISSUE IS NOT PRESERVED, AND THE FOURTH DISTRICT IMPROPERLY EXPANDED BEYOND RACE, GENDER AND ETHNICITY.

>> ALL RIGHT, WE THANK YOU BOTH FOR YOUR COMMENTS.

COURT IS NOW ADJOURNED.

