

>> LADIES AND GENTLEMEN, THE  
SUPREME COURT OF FLORIDA.  
PLEASE BE SEATED.

>> WELCOME TO THE FLORIDA  
SUPREME COURT.  
OUR FIRST CASE FOR THE DAY IS  
POOLE V. STATE OF FLORIDA.  
YOU MAY PROCEED.

>> MAY IT PLEASE THE COURT, I'M  
STEVE BOLTON, PUBLIC DEFENDER'S  
OFFICE.

I REPRESENT THE APPELLANT, MARK  
POOLE.

THERE ARE FOUR CASE-SPECIFIC  
ISSUES IN THIS CASE, AND I'VE  
ONLY GOT 20 MINUTES OF ARGUMENT  
SO, OBVIOUSLY, WHATEVER I DON'T  
GET TO IN THE ORAL ARGUMENT, I  
WILL RELY ON THE INITIAL AND  
REPLY BRIEFS.

START WITH THE VIOLATION OF  
POOLE'S RIGHTS AND THE JURORS'  
RIGHTS UNDER THE BATSON  
AND MILLER EL CASES.

IT INVOLVES TWO AFRICAN-AMERICAN  
JURORS.

NOW, THE CASE LAW IS PRETTY  
CLEAR THAT THE STATE CAN USE A  
PREEMPTORY CHALLENGE TO  
CHALLENGE THE JUROR WHO'S  
OPPOSED TO THE DEATH PENALTY BUT  
SHORT OF BEING WITHERSPOON  
EXCLUDABLE.

IF THE JUROR IS AGAINST THE  
DEATH PENALTY, WOULD HAVE --  
EQUIVOCATES ABOUT WHETHER OR NOT  
THEY CAN IMPOSE A PARTICULAR  
CASE OR IF THEY HAVE EXPRESSED  
WHAT THEY CALL UNEQUIVOCAL  
DISCOMFORT WITH THE DEATH  
PENALTY.

THAT DID NOT OCCUR IN THIS CASE.  
JURORS BLANDON AND WARING,  
LIKE MOST OF THE JURORS IN THIS  
CASE, INDICATED VERY CLEARLY  
THAT THEY COULD AND WOULD FOLLOW  
THE LAW IN AGGRAVATING AND  
MITIGATING CIRCUMSTANCES.

>> THE QUESTION THAT WAS ASKED  
OF THE JURORS WAS IF YOU HAD A

CHOICE, IF YOU HAD AN OPPORTUNITY TO VOTE AS TO WHETHER WE COULD KEEP THE DEATH PENALTY OR NOT IN THIS STATE, HOW WOULD YOU VOTE.

WAS THAT QUESTION ASKED OF ALL THE JURORS OR JUST THE AFRICAN-AMERICAN JURORS?

>> IT WAS ASKED OF SOME OF THE FIRST GROUP OF JURORS, NOT ALL.

>> I THOUGHT ALL OF THE FIRST GROUP, I THOUGHT ALL OF THE FIRST GROUP WAS ASKED THAT QUESTION.

>> NO, ABSOLUTELY NOT.

WHAT HAPPENED WAS, IS THE PROSECUTOR WHEN HE MADE THE STRIKE SAID I'VE ASKED ALL THE JURORS THAT QUESTION.

THEN HE CAUGHT HIMSELF AND SAYS, WELL, NO, NOT ALL OF THEM DEPENDING ON HOW THEY WERE ANSWERING MY QUESTION ABOUT HOW THEY FEEL PHILOSOPHICALLY ABOUT THE DEATH PENALTY.

SO MANY OF THE FIRST GROUP OF JURORS WERE NOT ASKED THAT QUESTION.

NONE OF THE SECOND GROUP OF JURORS WAS ASKED THAT QUESTION OR, FOR THAT MATTER, THE SECOND GROUP OF JURORS WERE NOT EVEN ASKED THE BASIC QUESTION ABOUT HOW DO YOU FEEL ABOUT THE FACT THAT WE HAVE CAPITAL PUNISHMENT OR THAT WE CAN TAKE A LIFE FOR TAKING A LIFE?

>> BUT THAT SECOND GROUP OF JURORS WERE ASKED ABOUT CAPITAL PUNISHMENT, WERE THEY NOT?

>> THEY WERE ASKED IF THEY COULD FOLLOW THE LAW, AND THE ONE WHO SAID HE COULDN'T WAS EXCUSED. ALL THE REST OF THE, THE EIGHT SAID THEY COULD, BUT THAT'S THE SAME THING WARING AND BLANDON SAID.

>> SO YOUR ARGUMENT THAT EVERY JUROR HAS TO BE ASKED THE SAME SPECIFIC QUESTION ABOUT THE

DEATH PENALTY IN ORDER FOR ANY STRIKE BASED ON FEELINGS ABOUT THE DEATH PENALTY TO BE A VALID STRIKE?

>> NO, I DON'T THINK EVERY JUROR HAS TO BE ASKED EXACTLY THE SAME QUESTIONS, BUT I DO THINK IT'S INDICATIVE OF PRETEXT.

THE THIRD PRONG OF MELBOURNE, WHICH IS WHAT WE'RE ALL AGREED THAT WE'RE ON, IS WHETHER OR NOT THE REASON GIVEN IS UNDER ALL THE CIRCUMSTANCES IS VOIR DIRE WHETHER IT'S GENUINE OR PRETEXTUAL.

>> IN ORDER TO BE PRETEXTUAL, IN MY MIND, AT LEAST YOU WOULD HAVE TO HAVE SOME OF THE OTHER JURORS WHO WERE, IN FACT, ASKED THE SAME QUESTION TO HAVE ANSWERED IT THE SAME WAY, AND YET THEY STAYED ON THE JURY.

AND SO MY QUESTION TO YOU IS THOSE JURORS WHO WERE ASKED THAT QUESTION WHICH WAS IS THERE ANY JUROR WHO WAS NOT STRICKEN WHO ANSWERED THE QUESTION THE SAME WAY THESE TWO JURORS DID?

>> NO, THERE WAS NOT.

BUT I THINK THAT UNDER THE MILLER EL CASE AND OTHER CASES THAT DISPARATE QUESTIONING IS INDICATIVE OF PRETEXT, AND THAT'S WHAT YOU HAVE HERE. I'M NOT SAYING EVERY JUROR HAD TO BE ASKED THE EXACT SAME QUESTION.

WHAT I AM SAYING THIS IS THIS: THE PROSECUTOR SAID I'VE ASKED EVERY JUROR THAT QUESTION, AND THEN HE SAYS, NO, I HAVEN'T.

BUT I'VE ASKED THEM THAT QUESTION DEPENDING ON HOW THEY REPLIED TO MY QUESTION ABOUT --

>> I JUST WANT TO ASK AS FAR AS THE QUESTION THAT WAS ASKED, IF YOU WOULD GO INTO THE VOTING BOOTH AND VOTE, HOW WOULD YOU VOTE, THERE'S NOTHING -- YOU'RE NOT SAYING THAT ITSELF WOULD BE

AN -- THAT WAS NOT AN IMPROPER QUESTION?

>> THAT'S CORRECT.

THAT WAS NOT AN IMPROPER QUESTION.

>> OKAY.

IT'S A LITTLE DIFFERENT THAN WHAT YOU'RE -- YOU KNOW, COULD YOU IMPOSE DEATH?

IT SEEMS TO ME THAT A LOT OF JURORS WOULD ANSWER I'M NOT SURE WHETHER I'D VOTE TO ABOLISH IT, IT WOULD HAVE NOTHING TO DO WITH THEIR FEELINGS ABOUT THE --

>> I DON'T THINK THAT'S AN IMPROPER QUESTION.

>> OKAY.

>> I THINK IT'S, AGAIN, INDICATIVE OF SOME OF THE THINGS THAT JUROR WARING WAS NOT ALLOWED TO FINISH HER ANSWER. SHE WAS CUT OFF IN MID SENTENCE. YOU KNOW, IF THERE WAS THIS HYPOTHETICAL REFERENDUM, HOW WOULD YOU VOTE?

SHE STARTS OFF "I'M NOT SURE BUT I" -- AND THEN SHE GETS CUT OFF. THAT'S FINE.

THAT'S ALL WE NEED TO HEAR.

>> AND WHAT WAS THE PROFILE OF THOSE TWO JURORS THAT WERE STRUCK?

THEY WERE -- I MEAN, THE JUDGE OBSERVED THAT THEY WERE YOUNG. DO YOU HAVE -- WHAT'S YOUR -- ANY ISSUES WITH REGARDING THE JUDGE SORT OF SUPPLYING THE RACE-NEUTRAL REASON AND THEN THE PROSECUTOR JUMPING ON THAT REASON?

>> WELL, THE PROSECUTOR DIDN'T JUMP ON IT RIGHT AWAY.

THE FIRST THING THAT HAPPENED IS WHEN THE JUDGE ASKED DO YOU HAVE ANY OTHER REASONS FOR THE STRIKE BESIDES THEIR ANSWER ON THIS CAPITAL PUNISHMENT REFERENDUM, AND THE PROSECUTOR SAYS, NO, I DON'T.

LATER ON, I MEAN, PROBABLY SEVEN

OR EIGHT PAGES LATER INTO THE VOIR DIRE, THE JUDGE SAID, WELL, I THOUGHT YOU WERE GOING TO SAY AGE.

EVEN THEN THE PROSECUTOR DIDN'T COMPLETELY JUMP ON AGE.

HE DIDN'T GIVE AGE AS A REASON UNTIL THE FOLLOWING DAY.

>> YEAH.

BUT THE PROSECUTOR, FOR EXAMPLE, I HAVE THE TRANSCRIPT HERE.

JUROR WARING, 21 YEARS OLD.

AND WHEN HE ASKED HOW OLD ARE YOU, SHE SAID 21.

AND THE PROSECUTOR ASKED HOW DO YOU FEEL ABOUT BEING ASKED TO DO THIS JOB WHEN YOU'RE BARELY OLD ENOUGH TO VOTE.

SO THE PROSECUTOR DID MAKE INQUIRIES IN THAT AREA WHICH MAY HAVE BEEN WHY THE JUDGE THOUGHT THAT HE WAS GOING TO USE THAT AS A REASON.

>> WELL, RIGHT.

>> IT'S NOT LIKE THE JUDGE CAME OUT OF THE --

>> BUT THE FACT THAT THE JUDGE THOUGHT HE WAS GOING TO USE IT BUT HE DIDN'T USE IT, THE JUDGE SAID MR. AGUERO, DO YOU HAVE ANY REASONS FOR THIS CHALLENGE OTHER THAN THE REASON YOU STATED FOR THE DEATH PENALTY REFERENDUM, NO, I DON'T.

THAT COULDN'T BE ANY CLEARER.

NOW, IN THE NOEL CASE, THEY TALKED ABOUT -- ACTUALLY, THE REASONS GIVEN IN NOEL WERE KIND OF SIMILAR TO THE REASONS GIVEN HERE.

THE FLORIDA SUPREME COURT HAS NEVER SAID THAT AGE IS A GOOD REASON FOR A STRIKE BUT NOTED THAT SOME OF THE DCAs HAVE.

BUT THE KEY HERE IS THE FACT THAT YOU HAVE TO GO BY WHAT THE REASONS WERE GIVEN.

THE ASSISTANT ATTORNEY GENERAL SAYS ALL THE PROSECUTOR WAS DOING HERE WAS -- LET ME SEE IF

I CAN FIND THE EXACT LANGUAGE.  
UM, BASICALLY, ALL HE WAS TRYING  
TO DO WAS IMPANEL A PANEL OF  
OLDER, MATURER JURORS WHO COULD  
AND WOULD IMPOSE THE DEATH  
PENALTY.

>> ISN'T THAT WHAT THE  
PROSECUTOR SAID?

I BELIEVE THE NEXT DAY IS WHEN  
HE ACTUALLY SAID, YES, THESE  
WERE YOUNG PEOPLE, AND I'VE  
STRICKEN OTHER YOUNG PEOPLE, AND  
I'M TRYING -- AND HE ACTUALLY  
SAYS THAT HE'S TRYING TO GET A  
JURY OF OLDER PEOPLE.

>> NEXT DAY.

NEXT DAY.

BUT IF THAT WAS ON HIS MIND WHEN  
HE STRUCK JURORS WARING AND  
BLANDON, WHAT COULD HAVE BEEN A  
MORE GOLDEN OPPORTUNITY FOR  
SAYING SO WHEN DO YOU HAVE ANY  
REASONS FOR THESE STRIKES?

NO, I DON'T.

THAT'S PRETTY CLEAR.

>> THE JUDGE IS EVALUATING THE  
GENUINENESS OF THE REASONS BEING  
OFFERED.

SO GOING BACK TO THE QUESTION  
THAT THE REASONS OFFERED WERE  
THEY WERE UNCERTAIN ABOUT HOW  
THEY WOULD VOTE, AND I GUESS WE  
GO BACK TO THAT IN THIS CASE  
WITH THE JUDGE HAVING GONE  
THROUGH ALL THE STEPS AND HAVING  
MADE FINDINGS WHERE UNDER OUR  
CASE LAW SHOULD WE BE REACHING A  
DIFFERENT CONCLUSION ABOUT WHAT  
ACTUALLY HAPPENED HERE?

>> WELL, I THINK THE CASE LAW, I  
MEAN, THE MAIN CASE LAW I WOULD  
CITE ON THIS CASE IS NOEL.

BUT I THINK YOU ALSO HAVE TO  
LOOK AT MILLER EL WHICH SAYS  
THAT YOU HAVE TO LOOK AT THE  
ENTIRE VOIR DIRE AND LOOK AT THE  
EVIDENCE OF WHAT THE -- YOU  
KNOW, TO DETERMINE GENUINENESS  
AS OPPOSED TO PRETEXT.

AND WHAT I WANT TO GO BACK TO

HERE, THERE WERE A LOT OF DIFFERENCES BETWEEN WHO GOT THE HOW WOULD YOU VOTE AND WHO DIDN'T GET IT.

BUT WHAT I THINK IS REALLY CRUCIAL, OKAY, THEY HAVE THE FIRST GROUP OF JURORS WHICH IS A LARGE GROUP.

AND THEY THINK THEY'VE PICKED 12 JURORS, AND THEY'RE JUST WORKING ON THE ALTERNATES.

BUT THEN MS. MOORE, IT TURNS OUT, KNOWS THE VICTIM'S MOTHER, AND SHE CAN'T SERVE ON THE JURY. SO NOW WE'RE BACK DOWN TO 11, AND WE'RE PICKING AT LEAST ONE JUROR WHO'S GOING TO SERVE ON THE JURY AND POSSIBLY AS MANY AS ALL EIGHT BECAUSE THE DEFENSE HAD ONLY USED ONE PREEMPTORY. IT'S ORIGINALLY NINE.

ONE OF THEM GETS REMOVED BECAUSE HE WAS OPPOSED TO THE DEATH PENALTY IN ALL CIRCUMSTANCES.

ALL OF A SUDDEN, THE PROSECUTOR HAS LOST INTEREST IN THIS QUESTION ABOUT NOT ONLY HOW WOULD YOU VOTE IN THIS HYPOTHETICAL REFERENDUM, BUT EVEN THE QUESTION HOW DO YOU FEEL PHILOSOPHICALLY ABOUT THE FACT THAT WE HAVE A LAW IN FLORIDA THAT ALLOWS CAPITAL PUNISHMENT?

HE DIDN'T ASK ANY OF THOSE JURORS --

>> WHAT WAS THE MAKEUP OF THAT SECOND, WHAT WAS THE MAKEUP OF THE SECOND GROUP OF EIGHT PEOPLE?

WERE THEY ALSO PEOPLE WHO HAD BEEN IN THE ORIGINAL JURY POOL THAT WAS ASKED SOME OF THESE QUESTIONS?

>> I DON'T BELIEVE SO.

I THINK -- I DON'T BELIEVE THAT THEY WERE.

THEY WERE -- NO, THEY WERE CERTAINLY NOT ASKED INDIVIDUALLY THESE QUESTIONS.

>> NO, I UNDERSTAND THAT.  
BUT MY QUESTION IS, WAS SOME OF  
THESE PEOPLE, AND, YOU KNOW,  
THERE WAS A BIGGER POOL THAN THE  
11 THAT HAD BEEN CHOSEN AND THE  
ONES WHO HAD BEEN STRICKEN FOR  
EITHER CAUSE OR PEREMPTORILY.  
SO WERE SOME OF THE PEOPLE IN  
THE EIGHT ALSO PEOPLE WHO HAD  
BEEN IN THE ORIGINAL LARGER  
POOL?

>> TO THE BEST OF MY  
RECOLLECTION, I WOULD HAVE TO  
SAY, NO.

I THINK THEY MIGHT HAVE GOTTEN  
QUESTIONS LIKE ARE YOU ELIGIBLE  
TO SERVE OR WHATEVER.  
BUT THE REASON I SAY NO ON THE  
DEATH PENALTY QUESTIONS IS  
BECAUSE WITH THE FIRST LARGER  
GROUP, INITIALLY THE JUDGE ASKED  
THE WITHERSPOON QUESTIONS, YOU  
KNOW, CAN YOU, YOU KNOW, CAN YOU  
IMPOSE -- YOU KNOW, ARE YOU SO  
FOR IT THAT YOU'D AUTOMATICALLY  
VOTE FOR OR VOTE AGAINST, AND  
THEN THAT OCCURRED AGAIN WITH  
THE SECOND GROUP OF EIGHT.  
THE JUDGE FIRST ASKED THE  
QUESTIONS ARE THERE ANYBODY IN  
THIS GROUP THAT WOULD NOT IMPOSE  
THE DEATH PENALTY OR WOULD  
AUTOMATICALLY IMPOSE THE DEATH  
PENALTY.

AND ONE JUROR OF THE SECOND  
GROUP OF EIGHT WAS EXCUSED FOR  
THAT REASON.

THEN THEY WENT TO THE INDIVIDUAL  
QUESTIONING BY THE PROSECUTOR  
AND THEN LATER BY THE DEFENSE  
ATTORNEY.

SO I THINK THAT, AGAIN, UNDER  
THE MILLER EL CASE, I THINK YOU  
HAVE TO LOOK AT THE DISPARATE  
QUESTIONING AS BEING INDICATIVE  
OF PRETEXT.

YOU HAVE TO LOOK AT THE COMING  
UP WITH AN ADDITIONAL REASON THE  
NEXT DAY AS BEING INDICATIVE  
PRETEXT.



AND I THINK MOST IMPORTANTLY, I MEAN, THE COURT HAS MADE IT CLEAR THAT --

>> BUT I GUESS WHAT TROUBLES ME ABOUT THAT IS THE JUDGE ACTUALLY MADE HIS DETERMINATION UNDER THE MELBOURNE STANDARD A DAY BEFORE. AND SO NOW YOU'RE TELLING US THAT WE HAVE TO LOOK AT HIS RULING BASED ON WHAT WENT ON THE NEXT DAY?

BECAUSE THE NEXT DAY HE SAYS I'LL PUT THIS ON THE RECORD AND MOVE ON.

AND SO THE --

>> ACTUALLY --

>> IT DOESN'T SEEM THAT THE TRIAL JUDGE WAS INFLUENCED BY THE PROSECUTOR'S STATEMENTS THE NEXT DAY.

>> BUT HE SHOULD HAVE BEEN INFLUENCED BY WHAT HAPPENED THE NEXT DAY.

AND I THINK THAT ACTUALLY GOES TO SOMETHING THAT I THINK IS IMPORTANT TO POINT OUT HERE WHICH IS THAT, UM, THE STATE IN ITS BRIEF DOES NOT ARGUE ANY KIND OF PRESERVATION.

THEY BASICALLY DO NOT CONTEST PRESERVATION IN THIS CASE.

I DIDN'T DEAL WITH IT IN THE REPLY BRIEF BECAUSE THE STATE DIDN'T RAISE IT.

NOW, I THINK WHAT'S IMPORTANT HERE I WAS ANTICIPATING THE COURT MIGHT SAY TO ME, OKAY, DON'T WE HAVE A PROBLEM HERE WHEN YOU POINT TO HOW THE PROSECUTOR DEALT WITH THE SECOND GROUP OF JURORS, THE DISPARATE QUESTIONING?

I THINK MY ANSWER TO THAT IS WHAT YOU'RE TALKING ABOUT. THE JUDGE TWICE ASSURED DEFENSE COUNSEL THAT YOU'VE PRESERVED THIS.

YOU DON'T NEED TO OBJECT AGAIN. THIS IS PRESERVED.

AND I HAVE FIVE CASES, NONE OF

WHICH ARE CITED IN EITHER BRIEF,  
THAT STAND FOR THAT PROPOSITION  
THAT YOU DON'T NEED TO OBJECT  
AGAIN ON A -- YOU DON'T NEED TO  
COMPLY WITH JOYNER WHEN THE  
JUDGE HAS ASSURED YOU THAT YOUR  
OBJECTION IS PRESERVED.

I DID NOT CITE ANY OF THOSE  
CASES BECAUSE THE STATE DIDN'T  
CONTEST IT.

BUT IF THE COURT WOULD LIKE, I  
COULD FILE NOTICE OF  
SUPPLEMENTAL AUTHORITY, YOU  
KNOW, WITH THOSE CASES.

BUT THE POINT IS, THE DEFENSE  
WAS BASICALLY TOLD YOU DON'T  
NEED TO OBJECT AGAIN.

SO THEN GOING BACK TO MILLER EL,  
I THINK THAT YOU HAVE TO LOOK AT  
THE ENTIRE CONTEXT OF THE VOIR  
DIRE TO DETERMINE WHETHER THE  
PROSECUTOR'S REASONS WERE  
GENUINE OR PRETEXTUAL.

NOW, I WANT TO GET BACK TO THE  
KEY THING ABOUT -- I ABSOLUTELY  
AGREE THAT IF THESE JURORS HAD  
EXPRESSED ANYTHING THAT COULD BE  
FAIRLY TERMED OPPOSITION TO THE  
DEATH PENALTY, UNEQUIVOCAL  
DISCOMFORT WITH THE DEATH  
PENALTY, DISCOMFORT WITH THE  
DEATH PENALTY, THEN MY ARGUMENT  
WOULD BE WEAKER.

BUT THEY DIDN'T.

THEIR ANSWERS WERE EXEMPLARY.

THEY WERE ASKED TO RATE  
THEMSELVES ON A 1-10 SCALE, THEY  
RATED THEMSELVES AT A 5.

THERE WAS ONE, I THINK, ONE 4  
AND A HANDFUL OF 6s.

>> BUT THAT'S NOT THE TEXT.

WE'RE NOT LOOKING AT A CAUSE  
CHALLENGE.

THE ISSUE IS WHETHER, AND I  
THINK THAT THE KEY AND I'M  
LOOKING AT NOEL IS THAT WHERE  
JURORS SIMILARLY SITUATED WHO  
ARE WHITE, WERE THEY LEFT ON THE  
JURY EVEN THOUGH THEY ANSWERED  
THE QUESTION IN A SIMILAR

MANNER, AND I THINK YOUR ANSWER WAS --

>> THE PROBLEM IS --

>> -- THEY'RE NOT.

>> IT'S NOT SO MUCH COMPARATIVE ANALYSIS WHAT I HAVE AS DISPARATE QUESTIONING.

THAT QUESTION IN A SIMILAR MANNER ONLY BECAUSE THEY WERE NOT ASKED THAT QUESTION.

AND THAT'S, AGAIN, WHY I SAY MILLER EL COMPELS REVERSAL IN THIS CASE.

>> WHAT WERE THE -- THERE MUST -- THERE WAS A PREDICATE BEFORE THE FATAL QUESTION.

>> THE PREDICATE SUPPOSEDLY --

>> AND SO I WOULD ASSUME YOU'RE SAYING THEY'VE NOT QUESTIONED ALL OF THE JURORS IN THE SAME WAY.

EXPLAIN TO US AS YOU SEE WHAT WAS THE DIFFERENCE.

YOU'RE SAYING IT'S, THERE WAS IDENTICAL QUESTIONING.

HOW ABOUT THE RESPONSES?

WERE THE RESPONSES IDENTICAL?

>> NO.

WHAT I'M SAYING IS THERE WASN'T IDENTICAL QUESTIONING.

>> JUST THAT ONE QUESTION.

I MEAN, THE PREDICATE TO GET TO THAT POINT.

>> EVEN THE PREDICATE, EVEN THE PREDICATE WAS NOT IDENTICAL.

IT WASN'T IDENTICAL QUESTIONING, AND IT WASN'T IDENTICAL --

THEY'RE, THE SECOND GROUP OF JURORS WAS NOT EVEN ASKED THE PREDICATE.

THEY WERE NOT EVEN ASKED HOW DO YOU FEEL ABOUT CAPITAL

PUNISHMENT PHILOSOPHICALLY, HOW DO YOU FEEL ABOUT THE FACT THAT

WE HAVE A LAW IN THIS COUNTRY THAT ALLOWS US TO TAKE A LIFE FOR A LIFE.

THAT WAS THE PREDICATE QUESTION THAT, ACCORDING TO THE PROSECUTOR, DETERMINED WHETHER

YOU GOT THE REFERENDUM QUESTION.  
BUT THE FACT IS EVEN AMONG THE  
FIRST GROUP OF JURORS THERE WAS,  
FOR EXAMPLE, THE THIRD  
AFRICAN-AMERICAN JUROR, IPPERT,  
GOT THE REFERENDUM QUESTION, GOT  
THE HOW WOULD YOU VOTE QUESTION.  
NOW, SHE ANSWERED IT.  
SHE DIDN'T SAY I DON'T KNOW, SHE  
DIDN'T HESITATE, SHE JUST SAID I  
WOULD VOTE FOR IT.  
BUT SHE GOT THE QUESTION  
BASED -- HER ANSWER TO THE  
PREDICATE QUESTION WAS ALMOST  
IDENTICAL TO THE ANSWER THAT  
JUROR SIMMS HAD TO THE PREDICATE  
QUESTION, AND NOBODY ASKED JUROR  
SIMMS THE REFERENDUM QUESTION.  
THIS GETS KIND OF CONVOLUTED,  
BUT IF YOU LOOK AT THE BRIEFS, I  
THINK YOU CAN SEE THERE WAS A  
LOT OF SELECTIVE QUESTIONING TO  
GET THESE ANSWERS.  
THEN WHEN THE ANSWERS WERE GOT,  
JUROR WARING WAS, YOU KNOW,  
BASICALLY CUT OFF WHEN SHE WAS  
TRYING TO, YOU KNOW, I MEAN, I  
GUESS SHE WAS AMAZING.  
PEOPLE DON'T NORMALLY THINK HOW  
THEY VOTE IN A HYPOTHETICAL  
REFERENDUM.  
BUT I THINK YOU CAN LOOK AT ALL  
THE ANSWERS IN CONTEXT, AND THEY  
WERE EXEMPLARY.  
THEY WERE EXACTLY THE KIND OF  
JURORS THAT BOTH SIDES SHOULD  
WANT IN A DEATH CASE.  
THEY CONSIDER THE AGGRAVATING  
AND MITIGATING CIRCUMSTANCE,  
THEY COULD RECOMMEND DEATH IF  
THE AGGRAVATORS OUTWEIGHED THE  
MITIGATORS, THEY COULD RECOMMEND  
LIFE IF THE MITIGATORS  
OUTWEIGHED THE AGGRAVATORS.  
THE PROSECUTOR ASKED COULD YOU  
LOOK AT THIS DEFENDANT, MARK  
POOLE, IN THE EYE AND TELL HIM  
THAT YOU VOTED FOR DEATH?  
BECAUSE HE'LL KNOW IT.  
THEY ALL SAID, YES.

THEY WERE ASKED TO RATE  
THEMSELVES ON A SCALE OF 1-10,  
AND THEIR ANSWER WAS 5.  
YOU DON'T HAVE UNEQUIVOCAL  
DISCOMFORT --

>> YOU ARE IN YOUR REBUTTAL  
TIME.

>> I'M JUST GOING TO TAKE ABOUT  
30 SECONDS --

>> TAKE AS MUCH TIME AS YOU  
WANT.

>> BUT IN THE NOEL CASE THEY  
TALK ABOUT THAT NOEL'S JUROR  
ORTEGA EXPRESSED ONLY MIXED  
FEELINGS ABOUT THE DEATH  
PENALTY.

IN OTHER WORDS, HIS ANSWERS WERE  
EXEMPLARY.

AND I THINK THAT THERE'S NO  
LAWFUL BASIS TO CONCLUDE THAT  
WARING AND BLANDON WERE NOT  
PROPER JURORS, THEY DID NOT  
EXPRESSION ANY KIND OF  
OPPOSITION TO THE DEATH PENALTY  
OTHER THAN AN ANSWER THAT, YOU  
KNOW, INDICATES THOUGHTFULNESS,  
YOU KNOW?

I'VE GOT TO THINK ABOUT THAT.  
I'M GOING TO SIT DOWN NOW, AND  
I'LL RESERVE THE REST OF MY  
TIME.

>> GOOD MORNING.

SCOTT BROWN ON BEHALF OF THE  
STATE OF FLORIDA.

I WANT TO CLARIFY ONE THING.

INITIALLY, MR. BOLTON IS  
CLAIMING THAT JURORS BLANDON AND  
WARING WERE TARGETED FOR  
QUESTIONS THAT WERE NOT ASKED OF  
OTHER MEMBERS OF THE PANEL.  
JUROR BLANDON WAS NEVER ASKED  
THE TARGETED OR ALLEGEDLY  
TARGETED QUESTION.

HE WAS NOT ASKED BY THE  
PROSECUTOR HOW WOULD YOU VOTE IF  
THERE WAS A REFERENDUM IN THE  
STATE OF FLORIDA TOMORROW, HOW  
WOULD YOU VOTE.

>> AND WHAT QUESTION WAS HE  
ASKED?

>> HE WAS ASKED PHILOSOPHICALLY,  
LIKE ALL THE OTHER JURORS, HOW  
DO YOU FEEL ABOUT THE DEATH  
PENALTY?

NOW, JUROR BLANDEN WAS SEATED  
NEXT TO JUROR WARING.

SO HE SAID YOU HAD ASKED HER  
THIS QUESTION, AND HE  
VOLUNTEERED, I'M NOT SURE, LIKE  
HER -- JUROR WARING -- HOW I  
WOULD VOTE ON IT.

SO THE ENTIRE FACTUAL PREMISE OF  
HIS ARGUMENT IS INCORRECT.

>> BUT HIS REAL PREMISE HERE IS  
THAT HOWEVER MANY PEOPLE THAT  
WERE ON THIS PANEL, NOT ALL OF  
THEM WERE ASKED THIS QUESTION  
ABOUT IF YOU HAD A REFERENDUM  
HOW WOULD YOU VOTE, WOULD YOU  
VOTE TO HAVE A DEATH PENALTY IN  
THE STATE?

BUT AS I UNDERSTOOD IT, A NUMBER  
OF OTHER THAN WARING AND BLANDON  
WERE.

SO TELL US WHO WAS AND WHO  
WASN'T.

>> YOUR HONOR, THERE WERE FOUR  
QUESTIONS ASKED BY THE  
PROSECUTOR OF JURORS; JUROR DAY,  
ARUSCA, WARING AND IPPERT.  
TWO WERE WHITE, TWO WERE BLACK.  
THAT ANSWER, HOWEVER, WAS  
VOLUNTEERED SEVEN TIMES.

>> BUT THE --

>> SO --

>> BUT I THINK, THOUGH, IN  
FAIRNESS IF A QUESTION IS BEING  
STILL TARGETED AND THE JUROR IS  
VOLUNTEERING, THEY DON'T NEED TO  
ASK THE QUESTION.

I MEAN, IT'S PRETTY CLEAR THAT  
THIS WAS IF YOU'RE SITTING BACK  
AS A PROSECUTOR, YOU HAVE GOT A  
BLACK DEFENDANT AND WHITE  
VICTIMS.

SO YOU'RE EVEN -- ASIDE FROM  
PREJUDICE AS FAR AS, YOU KNOW,  
MOTIVATION OR RACIAL  
DISCRIMINATION, IT STANDS TO  
REASON THAT YOU ARE GOING TO,

YOU WOULD PREFER NOT TO HAVE IN THAT SITUATION, YOU'D RATHER HAVE WHITE JURORS THAN BLACK JURORS.

I MEAN, IF WE'RE JUST BEING PERFECTLY HONEST ABOUT IT. SO YOU'RE SHAKING YOUR HEAD. I MEAN, THE FACT IS THAT THERE WERE THREE BLACK JURORS ON THIS WHOLE PANEL AND TWO WERE STRICKEN.

SO ONE OLDER BLACK MALE SAT, RIGHT?

>> I BELIEVE SHE WAS FEMALE.

>> WHITE JURORS.

>> FEMALE, IT WAS AN OLDER FEMALE.

>> FEMALE.

AND THE REST WERE WHITE, 11 WHITE JURORS.

>> ALL OLDER, MIDDLE-AGED, AND EACH OF THEM WERE PERCEIVED BY THE PROSECUTOR AS STRONG DEATH PENALTY JURORS.

I DISAGREE WITH YOU.

YOU'RE SAYING, WELL, HE DIDN'T HAVE TO ASK THAT QUESTION.

YOU'RE SPECULATING THE PROSECUTOR MUST HAVE HAD A RACIALLY DISCRIMINATORY MOTIVE EVEN THOUGH HE DIDN'T ASK THAT QUESTION OF BLANDON.

OH, HE WOULD HAVE.

REALLY?

THAT'S NOT WHERE THE CASE LAW SITS, YOUR HONOR.

IT'S HIS BURDEN TO PROVE DISCRIMINATION AND THE STRIKES WERE EXERCISED IN A DISCRIMINATORY MANNER.

SO YOU'RE STANDING THAT ON ITS HEAD TO SAY, AHA, HE WOULD HAVE ASKED THAT QUESTION.

BUT YOU KNOW WHAT?

HE ASKED THAT QUESTION OF WHITE JURORS TOO.

THERE WAS NO TARGETED QUESTIONING OF JURORS.

AND UNLIKE THIS COURT'S DECISION IN NOEL, IN THAT CASE THE

PROSECUTOR'S INITIAL REASON FOR THE STRIKE IS I DIDN'T LIKE HIM, OH, HE'S YOUNG, HE'S YOUNG LIKE THE DEFENDANT.

BUT YOU KNOW WHAT YOU HAD IN NOEL WHICH YOU DON'T HAVE HERE IS YOU HAD A COMPARATIVE WHITE JUROR OF THE SAME AGE.

SO THE REASONS GIVEN IN NOEL WERE NOT NEARLY AS STRONG AS THE REASONS IN THIS CASE.

AND YOU KNOW WHAT?

JUROR IPPERT WHO ANSWERED THE QUESTION WITHOUT HESITATION HOW WOULD YOU VOTE ON THE DEATH PENALTY TOMORROW, I WOULD VOTE FOR IT, SHE SAT ON THE JURY.

SO WHAT THE RECORD REFLECTS IN THIS CASE IS A PROSECUTOR WHO WANTED AN OLDER, MORE EXPERIENCED AND STRONG DEATH PENALTY JURY.

THERE IS NO TARGETED --

>> I GUESS THE -- IF THE PROSECUTOR AT THE POINT WHERE HE WAS ASKED FOR HIS RACE-NEUTRAL REASON WOULD HAVE SAID I AM, YOU KNOW, THEY'RE YOUNG, AND THEY EXPRESSED THIS, WE PROBABLY WON'T BE HERE ON THIS ISSUE, YOU KNOW?

IT'S JUST THE WAY THAT IT WAS DONE, AND SO I AGREE WITH YOU THAT IT LOOKS LIKE THAT WAS MAYBE IN THE BACK OF HIS MIND THAT HE WANTED OLDER JURORS.

I MEAN, IT MAKES, YOU KNOW, RATHER THAN SOMEBODY 18, 19, NOT KNOWING -- WHATEVER THEY WERE, 20, 21.

YOUNG, VERY YOUNG.

SO THAT'S -- WHAT DO YOU SAY ABOUT THAT AS FAR AS WHETHER THE REASON IS GENUINE?

IF THE REASON REALLY IS THAT I WANT OLDER JURORS, WHICH I GUESS APPELLATE COURTS HAVE SAID, WOULD BE RACE-NEUTRAL REASONS.

THE -- AND WE'RE LOOKING AT GENUINENESS NOT REASONABLENESS;



THAT IS, WHETHER THE PROSECUTOR ACTUALLY HAD, YOU KNOW, THE REASON THAT HE WAS OFFERING. THE FACT THAT HE DIDN'T OFFER IT, HOW DO WE EVALUATE THAT? >> WELL, YOUR HONOR, I THINK YOU CAN EVALUATE THE TOTALITY OF THE CIRCUMSTANCES HERE.

WHAT DID THE PROSECUTOR WANT? HE STRUCK JUROR MARUSKA WHO GOT THE -- WHO'S WHITE, WHO GOT THE HOW WOULD YOU VOTE TOMORROW. IT WAS KIND OF A LOOP AT THIS POINT I WOULD VOTE TO KEEP IT IN PLACE.

BUT THE JUROR, IF MEMORY SERVES WITH 31, WHEN HE BACK STRUCK THAT JUROR, HE SAID YOUNG AND NOT STRONG ON THE DEATH PENALTY. SO HE WAS USING YOUTH TO SELECTIVELY TARGET HIS PANEL. AND, AGAIN, IT'S RATHER CLEAR, IF YOU LOOK AT THE PANEL, YOU KNOW, WOULD JURORS BLANDON AND WARING FIT IN ASIDE FROM RACE? WOULD THEY HAVE FIT IN WITH THE REST OF THE JURORS?

NO, THEY WOULDN'T. THEIR RESPONSES ON THE DEATH PENALTY WERE WEAKER, THEIR LIFE EXPERIENCE WAS TRUNCATED.

>> HE SAYS THAT THEY MADE THE SAME KIND OF -- ON THE GENERAL QUESTIONS ABOUT WOULD YOU VOTE IF EVIDENCE DEMONSTRATED WHATEVER, THOSE KINDS OF QUESTIONS -- THAT THOSE JURORS MADE THE SAME KIND OF ANSWER. SO ONLY THE ANSWER TO THE QUESTION ABOUT THE REFERENDUM MADE THEM DIFFERENT FROM THE OTHER JURORS.

NOW, IS THAT A CORRECT STATEMENT?

>> NO, IT'S NOT AND, ACTUALLY, I WENT THROUGH IN THE STATE'S BRIEF, AND THERE WERE REASONS -- THE PROSECUTOR STARTED WITH EVERYBODY.

HE WANTED TO KNOW YOUR

PHILOSOPHY.

AND, REMEMBER, THIS IS A  
RESENTENCING TRIAL.

WHAT'S THE MOST IMPORTANT THING  
AS A PROSECUTOR YOU'RE GOING TO  
WANT?

YOU DON'T HAVE A GUILT PHASE.  
CAN THEY VOTE FOR THE DEATH  
PENALTY.

HE ASKED EACH AND EVERY JUROR  
PHILOSOPHICALLY HOW YOU FELT.  
NOW, SOME OF THE JURORS WERE I  
STRONGLY BELIEVE IN IT.  
HE'S NOT GOING TO FOLLOW UP WITH  
A QUESTION.

I WENT THROUGH EACH JUROR'S  
RESPONSE.

THERE'S USUALLY REASON FOR A  
FOLLOW-UP.

IF THEY SAID MIXED FEELINGS,  
YOU'VE GOT TO FOLLOW UP WHETHER  
WHITE OR BLACK.

AGAIN, THE RECORD DOES NOT  
SUPPORT THIS NOTION THAT ONLY  
BLACKS WERE TARGETED FOR  
QUESTIONING.

EACH JUROR WAS, HE WAS TRYING TO  
GET WHAT ARE YOUR OPINIONS ON  
THE DEATH PENALTY.

IF YOU ANSWERED THE QUESTION I'M  
A SUPPORTER OF THE DEATH  
PENALTY, A STRONG SUPPORTER, YOU  
DIDN'T GET A FOLLOW UP.

YOU DIDN'T NEED ONE.

AND, REMEMBER, VOIR DIRE IS A  
DIALOGUE.

IF HE WENT DOWN THE LINE AND  
ASKED THE SAME QUESTION THE SAME  
WAY OF EACH JUROR, IT WOULDN'T  
BE AN EFFECTIVE VOIR DIRE.

AND IT WOULDN'T BE.

AND THE RECORD COMPLETELY  
CONTRADICTS THE NOTION THERE WAS  
TARGETED QUESTIONING.

>> BUT WHAT ABOUT THE FACT THAT  
WHAT PART OF THE ARGUMENT WAS  
THIS WAS REALLY NOT AN IMPORTANT  
QUESTION TO THE PROSECUTOR,  
BECAUSE THE NEXT DAY WHEN WE  
HAVE THE PANEL OF EIGHT THAT'S

BEING QUESTIONED THAT QUESTION NEVER EVEN CAME UP AND NOT EVEN ANY QUESTIONS ABOUT THE GENERAL FEELINGS ON THE DEATH PENALTY?

>> WELL, HERE'S A CRITICAL DISTINCTION.

NOW, MR. BOLTON KEEPS CALLING THIS A SECOND GROUP OF JURORS. WELL, YOU KNOW WHAT?

MR. AGUERO THOUGHT THIS PANEL WAS ONLY FOR ALTERNATES. THEY HAD ALREADY SELECTED 12 JURORS.

NOW, LATER AT SOME POINT DURING THAT DAY IT WAS ONE JUROR KNEW THE MOTHER OF VICTIM L.W., SO YOU HAD TO SELECT AN ALTERNATE. BUT THAT SECOND GROUP OF JURORS, THEY WERE ALTERNATES.

AND WHAT THE JUDGE DID, THE PROSECUTOR AND THE DEFENSE ATTORNEY BEFORE THAT GROUP OF ALTERNATE JURORS WHEN THEY FIRST CAME IN, HE SAID YOU'RE GOING TO GET A VERY SHORTENED VERSION OF JURY SELECTION BECAUSE YOU'RE ALTERNATES.

IT WAS CLEAR THAT THIS ALTERNATE GROUP AND, AGAIN, HE SAYS THE SECOND GROUP OF JURORS.

AT THIS POINT THEY'D EXERCISED STRIKES.

HE THOUGHT THEY HAD 12, AND THERE WAS SOME CONCERN THAT THEY'D HAVE TO REPLACE ONE JUROR.

BUT REMEMBER, EACH AND EVERY ONE OF THEM -- NOT ONLY THE PROSECUTOR, BUT THE DEFENSE ATTORNEY -- DID A GREATLY TRUNCATED VERSION OF VOIR DIRE FOR THE ALTERNATE GROUP.

SO, AGAIN, IF YOU LOOK AT THE TOTALITY OF THE CIRCUMSTANCES HERE, IT IS ABUNDANTLY CLEAR THAT THESE JURORS WERE NOT DISCRIMINATED AGAINST, AND MR. POOLE WAS NOT DISCRIMINATED AGAINST BECAUSE OF RACE.

>> WHO WAS THE, WHAT WAS THE

POINT OF THE PROSECUTOR THEN ON THAT SECOND DAY AFTER THE JUDGE HAD ACCEPTED HIS RACE-NEUTRAL REASONS FOR STRIKING THE TWO BLACK JURORS, WHAT WAS THE POINT OF HIM COMING BACK THE NEXT DAY AND SAYING, OH, JUDGE, BY THE WAY, THESE ARE YOUNG PEOPLE, AND I DON'T WANT YOUNG PEOPLE ON MY PANEL?

I MEAN, IT SEEMS TO ME HE'S NOW TRYING TO CONTINUE TO JUSTIFY HIS STRIKING OF THESE JURORS.

>> YOU KNOW WHAT, YOUR HONOR?

I DON'T THINK -- I THINK THE FIRST REASON IS PERFECTLY LEGITIMATE, AND IT'S BORNE OUT BY THE RECORD.

BUT IT'S ALSO BORNE OUT BY THE PRACTICE.

AND, JUSTICE LABARGA, YOU POINTED OUT THE PROSECUTOR FOCUSED ON AGE IN WARING.

HE NOTICED, HEY, YOU'RE PRETTY YOUNG HERE.

YOU'RE 21 AND 22.

FEW PROSECUTORS ARE GOING TO KEEP A 21-YEAR-OLD ON A CAPITAL JURY.

AND I DON'T THINK IT'S A CONTRIVED RESPONSE IN THAT SENSE.

BECAUSE, AGAIN, YOU CAN'T POINT TO A YOUNG JUROR, THE YOUNGEST ONE WAS AN AFRICAN-AMERICAN IN HER 40s.

SO I DON'T THINK IT'S CONTRIVED IN THIS CASE.

AND AGAIN, IT'S NOT LIKE NOEL WHERE YOU HAD A WHITE JUROR WHO WAS OF THE SAME AGE AS THE PREEMPTORILY-STRUCK SPANISH JUROR.

SO THAT'S NOT WHAT WE HAVE TODAY.

AND, AGAIN, I THINK THE BURDEN NEVER LEAVES THIS TABLE TO PROVE PURPOSEFUL DISCRIMINATION.

>> IF IN THIS CASE ALL OF THE BLACK JURORS HAD BEEN YOUNG AND

THEY WERE ALL STRUCK, WOULD THAT BE -- WOULD YOU HAVE A HARDER ARGUMENT?

BECAUSE I GUESS I'M SENSITIVE TO THE ISSUE THAT AGE IS LIKE RACE, IT'S, YOU KNOW, IT'S WHAT YOU HAVE AT THIS PARTICULAR POINT IN TIME.

AND, YOU KNOW, THIS IDEA THAT WE'RE GOING TO STRIKE EVERYONE OVER 60, OR WE'RE GOING TO STRIKE EVERYONE UNDER 30 WHEN WE ENCOURAGE -- PART OF THIS IS THE RIGHT OF PEOPLE TO SERVE ON JURIES WHERE WE ENCOURAGE JURY SERVICE AND ESPECIALLY FOR YOUNG PEOPLE.

SO WHAT MESSAGE IS THAT TO BE STATED, AND IS THAT A PROBLEM? IN OTHER WORDS, WE HAVE -- THAT AGE IS USED AS A BASIS TO STRIKE JURORS FROM SERVICE ACROSS THE BOARD?

>> WELL, YOUR HONOR, I THINK THAT THE SUPREME COURT IN, I BELIEVE IT WAS RICE, HAS SAID THAT AGE IS AN APPROPRIATE OR GENUINE REASON FOR A PREEMPTORY STRIKE.

BUT, YOU KNOW, I AGREE WITH YOU. THAT'S AN INTERESTING ISSUE. AND I'M SURE PROSECUTORS GRAPPLE WITH IT.

WELL, IS THE COURT GOING TO COME DOWN AND SAY LATER ON WE CAN'T USE AGE?

BUT I THINK WHEN YOU LOOK AT LIFE EXPERIENCE, I THINK THAT'S IMPORTANT ON A JURY.

THIS IS A VERY WEIGHTY DECISION. AND I KNOW WE TRUST YOUNG PEOPLE WITH VOTING AND MILITARY SERVICE, BUT I THINK IT'S A LEGITIMATE REASON, AND I WOULD WANT AN EXPERIENCED JURY TO EVALUATE THE EVIDENCE AND RENDER A FAIR VERDICT.

AND I THINK THE CASE LAW IS ABUNDANTLY CLEAR THAT IT IS A PROPER REASON FOR A STRIKE.

AND, AGAIN, WE HAD A GENUINE RACE-NEUTRAL REASON THAT WAS ACCEPTED BY THE TRIAL JUDGE --  
>> I GUESS WHAT I WAS ASKING, AND I COMBINED TWO QUESTIONS. IF IT WAS THAT ALL THE PANEL, THE YOUNG PEOPLE WERE BLACK HYPOTHETICALLY AND THEY WERE ALL STRUCK, WOULD YOU HAVE A HARDER TIME THEN SHOWING THAT THERE WASN'T PRETEXT?

>> IT WOULD BE, CERTAINLY, AN INTERESTING CASE AND CERTAINLY NOT ONE I WOULD WANT TO ARGUE. BUT AGE IS A LEGITIMATE REASON. AND MAYBE THEY COULD -- THAT WOULD BE A PROBLEM WITH THE JURY POOL.

AND THEN MR. BOLTON WOULD COME IN AND SAY, WELL, IT'S A JURY POOL PROBLEM. IT'S DISCRIMINATION AND HOW THEY'RE BRINGING THE PEOPLE FROM THE, I DON'T KNOW, THE LOCAL AREA.

BUT AGAIN, I THINK IN THIS CASE IT'S NOT EVEN A CLOSE QUESTION. YOU DEFER TO THE TRIAL JUDGE, AND THE BURDEN BELOW AND HERE NEVER LEAVES THIS TABLE. AND HE HASN'T COME CLOSE TO SHOWING PURPOSEFUL DISCRIMINATION IN THIS CASE. THANK YOU.

>> REBUTTAL?

>> IF THE PROSECUTOR WANTED TO KNOW THE JURORS' PHILOSOPHY ON THE DEATH PENALTY, THEN WHY DID HE LOSE INTEREST ON THE SECOND DAY WITH THE SECOND GROUP?

>> BUT THAT WAS -- NOW, RESPOND TO WHAT MR. BROWN SAID WHICH IS HE BELIEVED THAT THESE WERE ALTERNATES.

>> IF YOU READ THE ENTIRE VOIR DIRE IN SEQUENCE, EARLY ON THEY BELIEVED THEY WERE SELECTING ALTERNATES. BUT BEFORE ANY OF THE DEATH PENALTY QUESTIONING OCCURRED, AT

ONE POINT THEY HAVE 12 JURORS FROM THE FIRST GROUP, AND THEY ANNOUNCE NOW WE'RE SELECTING ALTERNATES, RIGHT?

NOBODY'S GOING TO BACK STRIKE YET.

THAT'S WHERE WE'RE AT.

THEN WAS THE SITUATION WITH MS. MOORE, AND SHE'S TAKEN OFF THE JURY BECAUSE SHE KNEW THE VICTIM'S MOTHER, AND AT THAT POINT WE HAVE 11 JURORS, AND ALL BETS ARE OFF.

NOW WE KNOW AT LEAST ONE JUROR AND POSSIBLY TWO, THREE, FIVE, EIGHT ARE GOING TO COME FROM THE

SECOND GROUP.

AND THAT WAS KNOWN BY THE TIME ANY OF THE DEATH PENALTY QUESTIONING OCCURRED.

THEY ALREADY KNEW THAT MOORE WAS GONE, AND THEY ALREADY KNEW THEY WEREN'T JUST SELECTING ALTERNATES.

I ALSO --

>> LET ME ASK YOU THIS BEFORE YOU MOVE OFF OF THAT.

WAS THIS A TRUNCATED VOIR DIRE? I MEAN, WAS IT, WERE THERE NOT AS MANY QUESTIONS ASKED OF THIS GROUP OF EIGHT AS WE HAD IN THE ORIGINAL SELECTION OF THE 11?

>> THAT'S SOMETHING I'M WONDERING ABOUT, BECAUSE MR. BROWN SAID THEY ACTUALLY TOLD THE JURORS YOU GUYS ARE ALTERNATES, WE'RE NOT GOING TO ASK YOU A LOT OF QUESTIONS.

I DON'T REMEMBER THAT, AND IT WOULD BE REALLY WEIRD TO BE TELLING PEOPLE THAT EARLY IN THE PROCEEDING YOU GUYS ARE ALTERNATES ESPECIALLY WHEN, IN FACT, THEY KNEW AT THAT POINT THAT AT LEAST --

>> MY QUESTION REALLY IS WHEN YOU LOOK AT THE TRANSCRIPT OF IT, WAS IT A SHORTER --

>> YES.

>> -- VERSION OF --

>> IT WAS SHORTER IN PART  
BECAUSE THERE WERE ONLY EIGHT  
JURORS.

IT WAS SHORTER IN PART BECAUSE  
THE PROSECUTOR HAD LOST INTEREST  
IN THIS WHOLE LINE OF  
QUESTIONING THAT HE HAD BEFORE.  
AND IT WASN'T JUST BECAUSE HE  
THOUGHT THESE ARE JUST  
ALTERNATES, BECAUSE HE KNEW AT  
LEAST ONE JUROR AND POSSIBLY  
MORE THAN ONE JUROR WAS GOING TO  
SIT ON THE ACTUAL JURY, AND AS  
IT TURNED OUT -- I THINK IT WAS  
MR. HARRIS -- TURNED OUT TO BE  
THE JURY FOREMAN.

HE CAME FROM THE SECOND GROUP.  
SO I THINK WHAT HAPPENED HERE,  
YOU KNOW, I DON'T WANT TO ACCUSE  
MR. AGUERO OF BEING A RACIST.  
I DON'T KNOW HIM PERSONALLY, BUT  
I KNOW PEOPLE WHO KNOW HIM, AND  
I DON'T THINK PEOPLE THINK THAT.  
BUT IN LINE WITH WHAT JUSTICE  
PARIENTE WAS SAYING, IT'S A  
BLACK-ON-WHITE CRIME.

THE VICTIMS WERE YOUNG.  
POOLE WAS NOT PARTICULARLY  
YOUNG, BUT THE VICTIMS WERE  
YOUNG.

IF ANYTHING, YOUNGER PEOPLE  
MIGHT IDENTIFY WITH THE VICTIMS.  
THAT WAS DISCUSSED IN THE NOEL  
CASE.

BUT THIS IS A CASE WHERE POOLE'S  
FAMILY WAS CRUCIAL WITNESSES IN  
THE PENALTY PHASE, PENALTY PHASE  
ONLY.

HE HAD A VERY ADMIRABLE,  
CLOSE-KNIT FAMILY FROM OUT IN  
LOUISIANA.

I BELIEVE EIGHT OR NINE FAMILY  
MEMBERS TESTIFIED --

>> YOU'RE OUT OF TIME.  
IF YOU COULD QUICKLY COME TO A  
CONCLUSION.

>> I'M JUST -- UM, I'M GOING --  
I'LL JUST SAY THAT ON THE  
QUESTION OF AGE, THE PROSECUTOR



WAS ASKED DO YOU HAVE ANY OTHER  
REASONS AT THE TIME TO STRIKE,  
AND HE SAID, NO.  
THANK YOU.  
>> THANK YOU FOR YOUR ARGUMENTS.