UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEPHEN LOUIS MITCHAM, Petitioner, v VINCE CULLEN, Warden of California State Prison at San Quentin, Respondent	Case No C-97-03825 VRW ORDER

The court directs the parties to submit briefs addressing the applicability of Batson v Kentucky, 476 US 79 (1986), to the ineffective assistance of counsel subclaim of claim D, in light of the fact that petitioner's underlying challenge to the prosecutor's use of peremptory challenges was raised neither at trial nor on direct appeal. See Thomas v Moore, 866 F2d 803, 805 (5th Cir 1989) (Supreme Court's decision giving retroactive effect to Batson in cases pending on direct appeal does not conflict with determination that timely objection is requisite to the application of Batson); Ruff v Armontrout, 77 F3d 265, 268 (8th Cir 1996) (counsel need not anticipate change in existing law to render constitutionally effective assistance).

The parties shall address this issue before filing the surreply and response requested in the court's Order Regarding Claim D, filed on August 25, 2010.

Petitioner shall file his brief within 21 days of the date of this Order. Respondent shall file his response within 21 days of the date of service of petitioner's brief.

IT IS SO ORDERED.

DATED:

VAUGHN R WALKER
United States District Chief Judge