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Ollie James Goad vs Florida Department of Corrections

THE FINAL CASE ON THE COURT'S CAL ENCAR -- -- ON THE COURT'S CALENDAR, THIS MORNING, IS GOAD VERSUS DEPARTMENT OF CORRECTIONS. THANK YOU, COUNSEL. MR. SEIGEL.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. I REPRESENT MR. GOAD IN THIS MATTER. THIS CASE PRESENTS THE ISSUE WHETHER THE STATUTE ENACTED IN 1994, IN WHICH THE END RESULT WOULD RESULT IN A MONETARY LIABILITY OF \$400 HOW TO MR. GOAD -- OF \$400 HOW TO MR. GOAD CAN -- OF \$400 HOW TO MR. -- OF \$4 00,000 TO MR. GOAD CAN BE APPLIED RETROACTIVELY. IT IS OUR POSITION THAT VIOLATES THIS COURT'S FLORIDA STATUTE AND, ALSO, THIS COURT'S POSITION ON WHEN THIS STATUTE CAN BE RETROACTIVELY APPLIED.

DO YOU SEE IT AS A CIVIL STATUTE OR A CRIMINAL STATUTE?

WE SEE IT AS . CRIMINAL STATUTE VERY CLEARLY, THAT DESPITE THE FACT THAT THE LEGISLATURE KNEW THAT THERE WAS A DICHOTOMY BETWEEN STATUTES WHICH WERE CRIMINAL AND STATUTES WHICH WERE CIVIL, AND DESPITE THE FACT THAT THE LEGISLATURE PUT THE WORD "CIVIL" IN, IT SEEMS LIKE EVERY PARAGRAPH OF THE ACT, THAT, IN FACT, THE ONLY CONSTRUCTION THAT ONE CAN LEGITIMATELY GIVE TO THE STATUTE IS THAT IT IS A PUNITIVE STATUTE, THAT IT IS A PENAL STATUTE THAT IS CRIMINAL IN NAUGHT -- INNATE.

ISN'T WHAT THEY ARE DO -- IN NATURE.

ISN'T WHAT THEY ARE DOING IS SEEKING TO RECOVERY USNG COSTS FROM THE SEDATE THIS STATUTE WAS ENACT -- FROM THE DATE THIS STATUTE WAS ENACTED, ON UP. FOR EXAMPLE, I DON'T KNOW HOW THE DOC DOES, IT BUT THEY MADE THE POSITION THAT, BEFORE 1994, THEY WEREN'T CHARGING INMATES FOR MEDICAL TREATMENT, BUT IN 1994 THEY SAID WE CAN'T ABSORB THIS. WE ARE GOING TO, NOW, CHARGE THE DEFENDANT FOR MEDICAL TREATMENT. WHY ISN'T THAT CIVIL? HOW IS THAT -- HOW IS THAT PUNITIVE?

WELL, ONE WAY IT IS PUNITIVE IS IN THE MAGNITUDE OF WHAT WE ARE TALKING ABOUT HERE. IS MEDICAL TREATMENT HERE. THE FACT THAT THEY ARE GOING TO CHARGE IT TO THE PRISONER, IT DOESN'T TALK ABOUT ANYTHING ELSE. HERE THEY TALK ABOUT \$50,000 A YEAR, AND LARGE AMOUNTS OF MONEY. THERE IS A DIFFERENCE IN KIND. THERE IS, ALSO, I THINK, AN IMPORTANT DIFFERENCE IN THAT --

BUT AS FAR AS THE AMOUNT IS CONCERNED, WASN'T THAT EXCESSIVE FINE ARGUMENT MADE IN THE PRIOR CASE? CONFIRMING THIS PARTICULAR STATUTE?

NO. IT WAS NOT MADE IN THIS PARTICULAR CASE. IT WAS MADE IN THE MECHANIC CASE, WHICH DOESN'T DEAL WITH THE QUESTION OF RETRO ACTIVITY.

IT DOES DEAL WITH EXCESSIVE FINES.

IT DID, BUT IT IS SUCH A SHORT DECISION, AND IT DOESN'T, REALLY, LOOK AT THE STATUTE, IN TERMS OF WHETHER IT IS, REALLY, CRIMINAL OR CIVIL. IT JUST SAYS IT DOESN'T VIOLATE IT FOR PROTECTION AND DUE PROCESS, BUT IT, REALLY, DOESN'T ADDRESS ANY OF THE ISSUES THAT ARE BEFORE THE COURT TODAY, AND I THINK THAT ARE VERY FRESH FOR THE COURT. THIS COURT DIDN'T CONSIDER, AND IT CERTAINLY DIDN'T CITE THE CASE IN SAYING THAT THIS

STATUTE IS CIVIL OR CRIMINAL. IT SIMPLY SAID THAT IT DIDN'T VIOLATE PROTECTION OF DUE PROCESS, AND THAT IT WOULD JUST SIMPLY, THAT THIS WAS A JUDGMENT FOR MONEY DAMAGES. OKAY. TO BE COLLECTED IN THE ORDINARY WAY. IT IS KIND OF --

IF WE CONSIDER THIS A STATUTE, I UNDERSTAND THAT THE TEST IS CONSIDERABLY MORE DIFFICULT THAN YOUR BURDEN. COULD YOU PREVAIL, IF IT IS A CIVIL STATUTE?

I THINK, IF IT IS A CIVIL STATUTE, THE CASE IS DISTINGUISHABLE FROM THE STATE LAFORET CASE, WHICH WAS DECIDED A COUPLE OF YEARS AGO, IN AN EARLIER ARGUMENT. IN THAT CASE, THE LEGISLATURE ENACTS A STATUTE THAT RESULTS IN A \$200,000 LIABILITY FOR ACTS THAT TOOK PLACE BEFORE THE STATUTE. THIS COURT SAYS YOU CAN'T DO THAT. THAT YOU ARE CREATING NEW LIABILITY. YOU CAN'T CREATE NEW LIABILITY THAT ATTACH TO ACTS THAT HAVE BEEN COMPLETED BEFORE THE STATUTE OCCURRED. THIS IS IDENTICALLY -- THIS IS AN IDENTICAL SITUATION. MR. GOAD SUBMITS HIS -- COMMITS HIS CRIMES, AND IN 1990 OR 1991, HE IS SENTENCED. AT THE TIME HE HAS COMMITTED HIS CRIMES, AT THE TIME HE IS SENTENCED, HE HAS NO RESPONSIBILITY, NO LIABILITY FOR COSTS OF INCARCERATION. THREE OR FOUR YEARS LATER, THE LEGISLATURE COMES ALONG AND ADOPTS A STATUTE AND SAYS NOW YOU PAY \$50 A DAY, \$18,000 A YEAR.

BUT ARE YOU JUST REFERRING TO THE \$50 BEFORE THE STATUTE IS ENACTED, OR ARE YOU SAYING THAT ITS STATUS WAS ESTABLISHED EARLY ON, WHEN HE WAS INCARCERATED, AND EVEN AFTER THE STATUTE, HE COULD NOT BE CHARGED?

THAT IS OUR POSITION, JUSTICE SHAW, THAT HIS OBLIGATIONS WERE FIXED, AT THE TIME THAT HE WAS -- THAT HE COMMITTED HIS CRIME AND THAT HE WAS SENTENCED, AND AT THE TIME THAT THAT HAPPENED, THERE WAS SEVERAL EXPECTATIONS AND OBLIGATION, AND THAT THIS IS A NEW LIABILITY WHICH THE STATE WISH TOES IMPOSE, IN THAT, UNDER SEVERAL DUE PROCESS DECISIONS OF THIS COURT, PARTICULARLY LOUISIANA FORT, WHICH WE -- LAFOR TE., WHICH WE SUBMIT IS DIRECTLY ON POINT, THAT THE STATE CAN'T GO BACK AND SAY, THIS IS TRUE, YOU DID SOMETHING IN 1990, AND WE HAVE CHANGED THE RULES IN 1994, BUT NOW WE ARE GOING TO APPLY IT TO YOU.

BUT ISN'T THERE ACTUALLY A DUE PROCESS, WHEN THE STATE LEGISLATURE COMES OUT AND SAYS THAT PRISONERS ARE AN EXPENSE TO THE STATE OF FLORIDA. HENCEFORTH, WE SHALL CHARGE THEM \$50 A DAY, TO COMPENSATE THE STATE. WHAT IS WRONG WITH THAT, WHEN WE GO FORWARD WITH THAT?

IN A VACUUM --

CAN THE LEGISLATURE MAKE THAT DETERMINEMATION?

IN A VACUUM, FOR NEW OFFENDERS, SUCH AS SALTANIC, THAT IS NOT THE CASE, BUT WHAT IS GOING ON HERE IS THERE IS A RECEIPT-ACTIVE OR RETRO SPECULATIVE AND -- RETROACTIVE OR RETRO SPECULATIVE -- RETROSPECTIVE STATUTE. MR. GOAD HAS A LIABILITY THAT IS ACQUIRED ORP OR FIXED TO PRIOR THINGS HE HAS DONE. IF THIS WERE A FRESH CASE, AND MR. GOAD WERE RELEASED FROM PRISON AND TO GO OUT AND COMMIT NEW CRIMES AND WERE TO, AGAIN, BE CONVIED AND,AGAN, BE INCARCERATED, THEN THERE WOULDN'T BE ANYTHING WRONG WITH USING THE STATUTE, UNDER THE FACTS OF THIS CASE, BUT THAT IS NOT WHAT THE SITUATION IS HERE.

SO USING MY MEDICAL ANALOGY, WHAT YOU SAY THERE IS HIS OWN MEDICAL CONDITION AROSE AFTER THE DAY THAT -- THE EFFECTIVE DATE OF THE STATUTE, SO WOULDN'T THAT SITUATION BE RETROACTIVE?

THAT IS THE SIMPLE WAY TO DISTINGUISH THESE KINDS OF CASES THAT DEAL WITH EXPENSES

THAT COME UP ALONG THE WAY, THAT THEY ARE NEW EVENTS. I THINK IT IS WHAT DISTINGUISHES SOME OF THE CASES FROM AROUND THE COUNTRY THAT DEAL WITH KIND OF LITTLE ADMINISTRATIVE CHARGES THAT ARE IMPOSED, BECAUSE THEY ARE, ALL, IMPOSED FOR NEW EVENTS, NOT FOR EVENTS WHICH ARE INHERENT IN THE CONVICTION AND THE ORIGINAL SENTENCE. I MEAN, MR. GOAD WAS SENTENCED, IN 1990 OR 1991. HE WAS GOING TO SPEND THE 25 OR 30 YEARS THAT -- I HAVEN'T GOT BACK TO MY -- THE TIME THAT HE WAS SENTENCED TO INCARCERATION, RIGHT THEN AND THERE. THAT IS WHY THAT WAS FIXED.

BUT IT IS PROBABLE THAT HE WOULD HAVE -- HE WOULD INCUR MEDICAL EXPENSES, DURING THAT TIME.

WELL, IN ACTUALITY, UNDER THE STATUTE AND UNDER THE REGULATIONS, THE ONLY MEDICAL EXPENSES THAT HE IS CHARGED WITH ARE SELF-INITIATED VISITS TO SICK CALL. IF HE BECOMES ILL AND THE DEPARTMENT OF CORRECTIONS THINKS HE NEEDS MEDICAL CARE, HE IS NOT CHARGED. IF IT TURNS OUT THAT HE GOES TO SICK CALL AND HE HAS LOTS AND LOTS OF SERIOUS MEDICAL PROBLEMS, HE MAY BE CHARGED FOR THAT INITIAL \$3 OR \$4 VISIT, BUT HE IS NOT CHARGED FOR WHATEVER HAPPENS AFTER THAT, BECAUSE --

WHAT YOUR ARGUMENT, BASICALLY, IS, IS THAT, AT THE TIME HE COMMITTED THE CRIME, HE DIDN'T HAVE NOTICE THAT HE WAS GOING TO BE CHARGED FOR ROOM AND BOARD. IS THAT CORRECT?

THAT'S RIGHT, YOUR HONOR.

LOOKING AT THAT FROM THE REVERSE, THAT A PERSON COMMITTED A CRIME, DID HE HAVE A VESTED RIGHT TO FREE ROOM AND BOARD, FROM THEN AND FOR THE REST OF HIS LIFE, IF HE WAS SENTENCED TO LIFE? OR FOR FREE MEDICAL TREATMENT, BY REASON OF COMMITTING THE CRIME? AND BEING CONVICTED OF IT?

I AM NOT SURE THAT I LIKE THE TERM "VESTED RIGHT", BUT THE CASE SAYS -- THE CASE LAW TALKS ABOUT EXPECTATIONS AND NEW OBLIGATIONS, AND WHAT THE STATE HAS DONE, HERE, IS IMPOSE A NEW OBLIGATION, A NEW MONETARY OBLIGATION. AND SO, IN THAT SENSE, YES, HE HAD A VESTED RIGHT.

BUT EVERYBODY HAS AN OBLIGATION TO PAY FOR THEIR OWN SUSTNANCE. DOES THE FACT THAT YOU ARE CONVICTED OF A CRIME GIVE YOU SOME RIGHT NOT TO PAY FOR THAT?

TRADITIONALLY, FOR 150 YEARS OR HOWEVER LONG FLORIDA HAS BEEN A STATE AND FOR HOWEVER LONG THE UNITED STATES HAS BEEN AROUND, TRADITIONALLY, PRISONERS DID NOT PAY FOR ROOM AND BOARD. THAT WAS PART AND PARCEL OF THE COST OF THE CRIMINAL JUSTICE SYSTEM. TO INCARCERATE INDIVIDUALS, AND THE STATE FURNISHED A PRISON, AND IN THE PRISON --

AT A CERTAIN POINT, THE STATE CAN SAY WE ARE GOING BROKE. HOUSING AND FEEDING PRISONERS, AND WE HAVE DECIDED THAT MANY OF THESE PRISONERS HAVE RESOURCES THAT WE CAN GO AGAINST. THEIR -- THAT WE CAN GO AGAINST. THEIR HOMES, YACHTS, WHATEVER, AND THE STATE DECIDES, IN ITS WISDOM, THAT FROM NOW ON, WE ARE GOING TO CHARGE \$50 A DAY, AND WE WILL COLLECT IT FROM THOSE THAT WE CAN, AND OF COURSE, THEY CANNOT COLLECT IT FROM SOME, BUT WE ARE NOT DOING THIS TO PUNISH ANYBODY. WE ARE DOING THIS TO PAY, TO MAKE THE PRISONERS PAY FOR THEIR KEEP. YOU ARE SAYING THAT THAT IS A DECISION THAT THE LEGISLATURE, THE STATE LEGISLATURE CANNOT MAKE?

THE STATE LEGISLATURE CAN MAKE THE DECISION TO DO IT FOR NEW OFFENDERS, WHO GET SENTENCED TO PRISON. THAT IS NOT WHAT THIS CASE IS ABOUT. WHAT WE ARE SAYING IS THEY CAN'T DO IT RETROACTIVELY. THAT THEY CAN'T ENACT NEW LEGISLATION, WHICH RESULTS IN

LARGE MONETARY LIABILITY, AND THEN APPLY IT TO PEOPLE WHO HAVE ALREADY BEEN INCARCERATED, WHO HAVE ALREADY BEEN CONVICTED.

IF WE DO NOT ACCEPT YOUR PREMISE THAT -- THAT THIS IS A CRIMINAL STATUTE, CAN THEY DO IT, IF WE AGREE THAT IT IS A CIVIL STATUTE?

IF YOU DECIDE THAT IT IS A CIVIL STATUTE, THEN OUR POSITION IS THAT YOU CAN'T -- THAT THIS STATUTE CANNOT BE ENFORCED AGAINST MR. GOAD, BECAUSE OF THE LAFORTE CASE. THAT CASE IS DIRECTLY ON POINT, IN THAT MR. GOAD'S POSITION IS IN DISTINGUISHABLE FROM THE INSURANCE COMPANY, FAN THE INSURANCE COMPANY IS PROTECTED FROM A \$200,000 LIABILITY, THERE IS NO REASON WHY MR. GOAD SHOULDN'T BE PROTECTED FROM A \$400,000 LIABILITY. THAT ALL THE RELATIONSHIP BETWEEN THE PARTIES WERE FIXED BEFORE THE STATUTE CAME INTO BEING, AND THAT, IF IT IS A CIVIL STATUTE, A REMEDIAL STATUTE, THAT IT CANNOT BE APPLIED TO SOMEBODY WHO, WHERE THE TRIGGERING EVENT OCCURRED BEFORE THE STATUTE CAME INTO BEING. I, ALSO, WANT TO ADDRESS THE QUESTION OF WHETHER IT, REALLY, IS A CIVIL STATUTE OR WHETHER IT IS, REALLY, A PENAL STATUTE, AND I KNOW THE COURT, IN ALCANIC AS ASSUMED THAT IT WAS A CIVIL STATUTE, BUT IF YOU LOOK AT WHAT IS GOING ON AND ASSUMES THAT THE COURT HAS TO, DESPITE THE FACT OF WHAT THE LEGISLATURE SAYS, LABELS ARE NOT THE END-ALL AND THE BE-ALL HERE, AND YOU, REALLY, HAVE TO LOOK AT WHAT IS HAPPENING, AND I THINK IT IS IMPORTANT, IN TERMS OF DECIDING WHETHER THIS IS CRIMINAL OR WHETHER THIS IS CIVIL, TO RECOGNIZE THAT THE ONLY TRIGGER FOR THIS STATUTE IS A CRIMINAL CONVICTION AND INCARCERATION. THERE IS NO OTHER WAY THAT ANYBODY CAN BE LIABLE, UNDER THIS STATUTE, AND IF YOU LOOK AT ALL OF THE CASES, CITED IN OUR BRIEF AND THEY ARE CITED IN THE DEPARTMENT'S BRIEF, IF YOU LOOK AT ALL OF THE CASES, IT IS THE SAME Z -- WHAT ON -- IT IS THE SAME -- WHAT ARE KNOWN AS CIVIL PENALTIES. ALL OF THOSE CASES AND ALL OF THOSE STATUTES, ALL, HAVE AN INDEPENDENT EXISTENCE, AND SO THE COURTS CAN SAY, YES, IT IS CIVIL INNATE, BECAUSE THIS MONETARY PENALTY WE ARE IMPOSE IMPOSING, THIS JOB DISQUALIFICATION WE ARE IMPOSING, NONE OF THEM DEPEND ON THE FACT THAT THE PERSON HAS COMMITTED A CRIME AND BEEN SENTENCED TO PRISON.

BUT YOU AGREETHIS IS A COMPENSATORY SCHEME.

I THINK IT IS A PUNITIVE SCHEME, AND I, ALSO --

YOU DON'T AGREE THAT IT A SCHEME TO BE COMPENSATED FOR WHAT IS BEING PROVIDED?

THAT IS WHAT IT SAYS. IT CERTAINLY IS, TO THE EXTENT THAT THE STATE --

CONSTRASTING THAT TO A PENALTY SCHEME, WHERE JUST A FINE OR WHATEVER HAS NO RELATIONSHIP TO WHAT IS BEING PROVIDED, HERE, YOU DON'T AGREE, THEN, THAT THERE IS ANY RELATIONSHIP TO WHAT IS BEING PROVIDED.

WELL, I THINK THATTHERE IS A DIRECT RELATIONSHIP OF COST. I DO AGREE WITH THAT.

ISN'T THAT A COMPENSATORY SCHEME?

WELL, YOU KNOW, UNDER THE FEDERAL SYSTEM, THE COURT IMPOSES FINES EQUAL TO THE COST OF INCARCERATION. THE FEDERAL SYSTEM, UNDER THE SENTENCING GUIDELINES, THE FEDERAL SYSTEM ADMITS THAT, SURE, THERE IS A SCHEME TO COMPENSATE FOR THE COST, BUT IT IS PART AND PART OF THE CRIMINAL PROCESS, AND WE ADMIT THAT, AND WE CALL IT A FINE. HERE, FOR - - HERE, THE ONLY THING THAT YOU ACCOMPLISH, BY CALLING THIS A CIVIL PENALTY, IS TO INSULATE THE STATE FROM ITS OWN LIABILITY, WHICH IS WHAT IS, REALLY, GOING ON IN THIS SITUATION. I MEAN, MR. GOAD ALLEGES THAT HE IS INJURED BY THE NEGLIGENT CONDUCT OF THE STATE. HE HAS GOT -- THE MAXIMUM HE CAN RECOVER IS \$100,000, IF THERE IS LIABILITY. THE STATE CAN FILE A COUNTERCLAIM, AND IN THIS CASE ASK FOR \$400,000. THAT IS WHAT IS

REALLY GOING ON HERE.

YOU MR IN YOUR REBUTTAL.

THAT ISSUE, AND THAT WAS SOMETHING I WAS ACTUALLY GOING TO ASK THE DEPARTMENT OF CORRECTIONS, HOW THIS IS ACTUALLY BEING APPLIED IN REAL LIFE, SAYING THAT IT IS BEING APPLIED IN, EITHER, AN INCONSISTENT OR INCONSISTENT OR PUNITIVE WAY, TO DISCOURAGE LAWSUITS, TO CAUSE PEOPLE THAT ARE GETTING RELEASED FROM PRISON NOT TO BE ABLE TO GET OUT ON THEIR OWN, YOU KNOW, UP ON THEIR OWN FEET, IS A DIFFERENT ISSUE. IS THAT IN OUR RECORD, AS FAR AS BEING ABLE TO MAKE ANY DETERMINATION THAT IT IS BEING UNFAIRLY APPLIED?

NOT IN THIS CASE. THAT IS ANOTHER CASE THAT IS SITTING SOMEWHERE IN THE BACK ROOM.

THANK YOU. MR. McCOY.

MAY IT PLEASE THE COURT, YOUR HONORS, I AM CHARLIE McCOY HERE, ON BEHALF OF THE DEPARTMENT. I HAVE GOT SO MANY PROBLEMS WITH WHAT OPPOSING COUNSEL IS ARGUING, I ALMOST DON'T KNOW WHERE TO START, YOUR HONOR, BUT I GUESS I HAVE TO START WITH A THUMBNAIL SKETCH THE EXPOS FACT-ISSUE. I WOULD -- EXPOS FACTO ISSUE. I WAS TO DEFINE INCARCERATION COSTS. REGARDLESS OF THE NATURE OF THE CRIME, HAD MR. GOAD NOT BEEN IN PRISON, WOULD HAVE FACED -- HE WAS IN PRISON ABOUT THREE YEARS BEFORE THE STATUTE TOOK EFFECT. AT NO TIME DID THE STATE TRY TO RECOVER THE INCARCERATION COSTS.

IS THIS A STATE FACILITY THAT HE IS IN?

YES, YOUR HONOR, A STATE PRISON.

THERE IS NO ATTEMPT TO TRY TO LINK IT TO BEING IN A FACILITY WHERE, SAY, ONE FACILITY, THERE ARE INMATES, I UNDERSTAND, THAT ARE ACTUALLY ABLE TO EARN MONEY, THROUGH THE PRISON INDUSTRY?

YOUR HONOR, I AM NOT COMPLETELY FOLLOWING YOUR QUESTION. I AM SORRY.

I GUESS I AM TRYING TO UNDERSTAND THAT THIS IS JUST A FLAT \$50, NO MATTER WHERE YOU ARE IN THE STATE. THAT IS WHAT IS ASSESSED AGAINST YOU?

YES, YOUR HONOR.

AND DID THEY, EVERY YEAR, GIVE EACH INMATE A BILL FOR \$1,000, AND SEEK TO COLLECT ON IT? -- FOR \$18,000, AND THEN SEEK TO COLLECT ON IT?

NO, YOUR HONOR, THE PRACTICE OF THE DEPARTMENT IS NOT TO INVOKE THE STATUTE GENERALLY.

SO IN THAT RESPECT, THERE IS SOME LEGITIMACY TO THE ARGUMENT THAT THIS ISN'T BEING COLLECTIVELY APPLIED.

ABSOLUTELY NOT, YOUR HONOR, AND I WANT TO EMPHASIZE TWO THINGS. THAT IS AN ISSUE COMPLETELY OUTSIDE THIS CASE. IT WAS NEVER RAISED BELOW, AND I RESENT COUNSEL BRINGING IT UP NOW. SECONDLY COUNSEL STATED THE ALCANIC POSITION ON PRECISELY THIS POINT. HE SAID IT WAS OKAY WITH BEING A CIVIL STATUTE. THAT IS ABSOLUTELY INCORRECT. THIS COURT ANALYZED THE STATUTE AND SAID, AMONG OTHER THINGS, THAT WE INCLUDE IMPOSE AGO PER DIEM CHARGE, PERMIT COLLECTING, AND FURTHERMORE WE DETERMINE THAT \$50 A DAY IS A REASONABLE CHARGE FOR INCARCERATION. THE AVERAGE CHARGE FOR

INCARCERATING FELONS IS \$50 A DAY, AND IN GIVING LATITUDE THAT THIS COURT SET UP SOMETHING LIKE THAT, FOUND IT ACCEPTABLE. THERE IS NO PROBLEM WITH THE \$50. NOW, IF IT IS \$50 A DAY, THEN THAT IS FINE, AND FROM A DUE PROCESS STANDPOINT, HOW CAN THE ACCUMULATION OF \$50 A DAY SOMEHOW ENLARGE INTO AN EXCESSIVE FINE, WHICH WAS, ALSO, AN ISSUE NEVER BEFORE RAISED IN THIS CASE.

LET ME ASK YOU THIS. IN CONSIDERING WHETHER IT IS CIVIL OR CRIMINAL, CAN WE TAKE INTO CONSIDERATION THE CIRCUMSTANCES UNDER WHICH IT IS ACTIVATED? IN FACT, THE WAY IT CAME IN HERE, AS A COUNTERCLAIM. WE NEVER TRIED TO COLLECT IT, UNTIL MR. GOAD DECIDED TO SUE THE DOC, AND ONCE HE SUED D.O.C., THEN D.O.C. COMES BACK WHAT COUNTERCLAIM AND ASSERTS IT. CAN WE TAKE THIS INTO CONSIDERATION, IN DETERMINING WHETHER IT IS PUNITIVE OR CIVIL?

WELL, YOUR HONOR, AGAIN, THAT GOES TO THIS WHOLE SELECTIVE ENFORCEMENT CLAIM THAT IS IN ANOTHER CASE, AND I RAISE IT, BUT FIRST LET ME TRY TO ANSWER YOUR QUESTION. FIRST, THE STATUTE IS CIVIL. HE SUED IN NEGLIGENCE. THE COUNTERCLAIM SAYS THE STATE HAS A CAUSE OF ACTION, EITHER ORIGINAL ACTION OR A COUNTERCLAIM, AND THERE IS ABSOLUTELY NO CONSTITUTIONAL RIGHT THAT YOU HAVE, IF YOU HAVE A REMEDY TA YOU NECESSARILY HAVE THE ABILITY TO COLLECT DAMAGES. IT IS PERFECTLY REASONABLE --

I UNDERSTAND THAT, BUT I AM SAYING IF IT IS USED IN A PUNITIVE FASHION, CAN WE CONSIDER THAT?

WHAT IS PUNITIVE ABOUT COUNTERCLAIMING FOR ACTUAL LOSS THAT THE STATE HAS INCURRED, INCARCERATING SOMEONE?

WELL, IT IS DEBATABLE WHETHER IT WAS USED, IN THIS INSTANCE, IN A PUNITIVE FASHION. BUT IF YOU HAVE A -- LET ME ASK MY QUESTION FIRST. IF YOU HAVE A STATUTE THAT THE LEGISLATURE DESIGNATES CIVIL, AND THEN IT IS USED IN A PUNITIVE FASHION, WILL THE COURT WILL BE TO CONSIDER THAT, IN DETERMINING WHETHER IT IS, IN FACT, A CRIMINAL STATUTE?

WELL, YOUR HONOR, THE PROBLEM I HAVE DIFFICULTY ANSWERING YOUR QUESTION, BECAUSE COUNTERCLAIMING TO RECOVER COSTS WHEN AN INMATE SUES IS NO MORE THAN SAYING WE DON'T GENERALLY GO OUT AND TAKE THE TIME AND EXPENSIVE LITIGATION AGAINST JUDGMENT-PROOF INMATES. IF THERE IS A POSSIBILITY OF THEM RECOVERING, WE ARE GOING TO ASK FOR A SET-OFF, IF WE RECOVER UNDER OUR COUNTERCLAIM. TO BE HONEST WITH YOU, I CAN'T ACCEPT THE FACT THAT THIS IS A PUNITIVE USE IN A STATUTE. TO COUNTERCLAIM, SECONDLY --.

IF THAT IS YOUR ANSWER, I ACCEPT YOUR ANSWER AS, YES, WE CAN CONSIDER THAT.

YOU CAN CONSIDER IT, BUT IT IS NOT A PUNITIVE MEASURE, TO COUNTERCLAIM, WHEN SOMEBODY SUES YOU FIRST AND YOU ARE ACTUALLY JUST SEEKING TO RECOVER YOUR OWN ACTUAL COSTS.

JUSTICE SHAW, THOUGH, I THINK, IS ASKING, MAYBE IN A DIFFERENT CONTEXT. LET'S SAY THAT THERE WAS A REGULATION. THE DEPARTMENT OF CORRECTIONS HAD, AND IT SAID, IF YOU GET A DISCIPLINARY INFRACTION, THAT HERE ARE THE PENALTIES THAT WE MAY IMPOSE ON YOU. AND THEN PENALTY FIVE WAS WE MAY DECIDE TO IMPOSE THIS \$50 A DAY CHARGE AGAINST YOU. AS A RESULT OF THIS DISCIPLINARY INFRACTION, AMONGST THE OTHER THINGS THAT WE MAY USE THIS PENALTY FOR THAT. WOULD THAT CHANGE ANYTHING?

NO, YOUR HONOR. IT WOULDN'T, BECAUSE TWO POINTS. FIRST OF, EVEN IF YOU CONSIDERED IT PUNITIVE, IT WOULD BE A PUNITIVE INSTANCE THAT THE STATUTE HAS APPLIED. IT WOULD NOT GO TO THE FACIAL VALIDITY. IT DEPENDS ON WHAT THEY ARE CHALLENGING HERE. SECONDLY,

IF -- LET'S ASSUME IT IS NOT A QUESTION OF RETRO ACTIVITY OR ANYTHING LIKE THAT, AND YOU HAVE GOT AN INMATE WHOSE CRIME, THE STATUTE, THE DEPARTMENT SAID, OKAY, WE ARE GOING TO GO AHEAD AND CHARGE YOU FOR INCARCERATION. THE LAW, AS YOU CAN SEE, ALLOWS THEM TO DO SO, AT LEAST PROSPECTIVELY, AS THEY SAY IT, IF YOU HAVE A PERFECTLY LEGAL VALID MOTIVE FOR DOING IT, THE MOTIVES ARE IMMATERIAL. IT WOULDN'T MATTER.

THAT IS ONLY IF YOU USED IT PUNITIVELY.

BASED ON A CONSTITUTIONAL STANDARD, IF YOU SAID WE ARE ONLY GOING TO GO AFTER BLACK PRISONERS OR WHITE PRISONERS. IF YOU INVOKE THE STATUTE, ON THE BASIS OF RACE, THEN, YES, BUT THAT IS SO FAR-FETCHED --

WHAT IF YOU IF JOKE IT, ON THE BASIS OF SOMEONE INVOKING THEIR RIGHTS TO THE COURTS. USING YOUR SAME ANALOGY, THEN, IT SEEMS TO ME THAT YOU ARE SAYING THAT YOU HAVE A CONSTITUTIONAL RIGHT TO HAVE ACCESS TO THE COURTS, AND IF IT IS ONLY APPLIED IF YOU SEEK REDRESS IN THE COURTS, THEN CAN WE CONSIDER THAT?

YOUR HONOR, THE RIGHT OF ACCESS TO THE COURTS IS TO BRING YOUR CLAIM. IT IS NOT TO, NECESSARILY, RECOVER ALL OF THE DAMAGES YOU SEEK, IN LIGHT OF THE FACT THAT SOMEBODY ELSE HAS A PERFECTLY LEGAL COUNTERCLAIM. THAT IS THE DIFFERENCE. THEY ARE TRYING TO ELEVATE THE ABILITY TO RECOVER DAMAGES, UP TO WAIVE THE SOVEREIGN IMMUNITY CAP, WITH FORCE THE COURT. THERE HAPPENS TO BE A COUNTERCLAIM THAT THE INCARCERATION COSTS WOULD EQUAL A \$500,000 CAP, AND SO THE COURT HAS DENIED IT AND THERE HAS NEVER BEEN AN AMOUNT ESTABLISHED. WE BOTH ARE ON DIFFERENT SIDES IN THE BALDWIN CASE. I DO WANT TO POINT OUT A CASE THAT I FOUND ON APPEAL IN A TOTALLY DIFFERENT CIRCUIT AND SO FORTH, BUT IT IS STATE VERSUS GARLAND, DECIDED BY THE ELEVENTH CIRCUIT LAST YEAR, 216 SO.2D. IT SAID THAT INMATES, ONLY, WITH REGARD TO THE CIVIL RIGHTS ACT, IF INMATES ARE BRINGING SUITS FOR DAMAGES, AFTER 1993, AND THEY SEEK COMPENSATION FOR EMOTIONAL STRESS-TYPE INJURIES, THEY HAVE TO MAKE AN EMOTIONAL SHOWING OF INJURY. AFTER THAT, THE COURT SAYS THE CLAIM IS NOT VALID. THE COURT REINSTATED THE PANEL DECISION ON THAT POINT, AND SAID THAT THE U.S. CONSTITUTION DOES NOT REQUIRE A TORT-TYPE REMEDY FOR EVERY CONSTITUTIONAL RIGHT IT VIOLATED, AND THEY CITE A BUNCH OF U.S. SUPREME COURT CASES FOR THAT PROPOSITION.

WE HAVE THAT BATTLE RAGING ALL THE TIME, WHETHER THERE IS ONE UNDER THE FLORIDA LAW BUT NOT UNDER THE CONSTITUTION.

THAT IS THE POINT I WANT TO GET TO NOW. IF THE U.S. CONSTITUTION DOES NOT REQUIRE A TORT-TYPE REMEDY FOR EVERY CIVIL RIGHTS VIOLATION, IT IS ABSOLUTELY EXTRAORDINARY TO THINK THAT THE FLORIDA CONSTITUTION WOULD NECESSARILY REQUIRE A TORT-TYPE REMEDY FOR EVERY NONCIVIL RIGHTS-TYPE INJURY, AND, AGAIN, ACCESS TO THE COURTS HAS NOT BEEN DENIED HERE. ALL IT IS HIS DESIRE TO RECOVER DAMAGES.

LET'S ASSUME THAT THERE IS A CIVIL STATUTE. I WOULD LIKE YOU TO ADDRESS THE SPECIFIC ISSUE, AS TO WHETHER THIS IS, IN FACT, A RETROACTIVE APPLICATION, UNDER THE THEORY THAT IT IS STATUS AS A CONVICTED CRIMINAL, WAS THE PREDICATE FOR THIS CHARGE, AND THEREFORE THAT THERE ARE NEW LIABILITIES ARISING FROM ACTS COMPLETED BEFORE THE EFFECTIVE DIT. I THINK THAT IS, REALLY, HIS STRONGEST ARGUMENT, AND COULD YOU DISTINGUISH, BOTH, LAFLORETTE AND THOSE TYPES OF CASES THAT DO NOT ALLOW RETROACTIVE CREATION OF ADDITIONAL LIABILITY?

YES, YOUR HONOR. FIRST, DON'T AGREE THAT THE STATUTE APPLIED RETROACTIVE AT THE LITERAL LEVEL, BECAUSE IT IS FROM ITS EFFECTIVE DATE, FORWARD, ON, BUT IF YOU FEEL THAT THE STATUTE IS TRIGGERED BY A RETROACTIVE --

HE IS NOT VOLUNTARILY BEING HOUSED AT THIS PLACE. HE IS BEING HOUSED THERE, BECAUSE OF THE SENTENCE THAT WAS IMPOSED, AS A RESULT OF THE CRIME. LET'S JUST MAKE -- SO WE KNOW THAT WE ARE BEING STRAIGHT WITH ONE ANOTHER ON THIS.

CERTAINLY, YOUR HONOR. THE STATUTE IS PROPERLY RELYING ON AN ANTECEDENT FACT, WRATH -- ON AN ANTECEDENT FACT, AND THAT IS PROPER.

BUT LIABILITY DOES SOLELY FLOW FROM THE FACT THAT HE WAS CONVICTED AFTER CRIME, BEFORE THE EFFECTIVE --

THE FACT THAT HE WAS INCARCERATED, YOUR HONOR. HAD HE BEEN OUT ON JULY 1, HE WOULD NOT HAVE INCURRED ANY INCARCERATION COSTS. THAT IS VERY IMPORTANT. IF HE HAD FINISHED ANY TERM OF IMPRISONMENT, BEFORE THE STATUTE, HE WOULD NOT BE LIABLE.

BUT HIS SENTENCE WAS FIXED. HE DIDN'T GET AN INCREASED SENTENCE AFTER -- THAT IS NOT LIKE -- THAT IS THE OPPOSITE SITUATION. WAS OUT ON PROBATION, THEN, AFTER THE EFFECTIVE DATE OF THE PROBATION, THAT --

I WANT TO ANALOGIZE TWO THINGS, YOUR HONOR. FIRST HABITUAL FELON STATUTE. THE HABITUAL OFFENDER STATUTE, FOR REPEAT FELONS. PEOPLE WERE CONVICTED. THEY GOT A LENGTHIER SENTENCE, OBVIOUSLY FINISH -- PUNISHMENT, BASED ON THE FACT OF COMMITTING CRIMES --

BUT THAT IS NOT AN ENHANCED SENTENCE.

THE ELIGIBILITY OF THE ENHANCED SENTENCE DID NOT ARISE, BUT FOR THE CRIME. THERE IS ANOTHER ANALOGY I WANT, IN THE FACT THAT THIS STATUTE -- IN THE FACT THAT THIS STATUTE IS TRIGGERED ONLY BY INCARCERATION. I HAVE GOT THREE STATUTES THAT WERE ALL DISCUSSED IN THE BRIEF, THAT KIND OF GO WITH THIS. THE FIRST IS THE OPERATIVE FACT OF THE STATUTE, THE STATEMENT THAT IT BETTER OPERATES AGAINST CRIMINALS, I THINK, IS THE BETTER WAY TO LOOK AT IT, EITHER FOR EXPOS FACTO OR FOR CONCERNS. EYE -- I -- I AM NOT CONCERNED ABOUT. THAT IF SOMEBODY COMMIT A CIVIL WRONG, BACK IN 1990, AND IN 1994, SOMETHING GETS PASSED TO SAY THAT, NOW, SOMEHOW, WE CAN GET PUNITIVE DAMAGES. WE WOULD NEVER ALLOW PUNITIVE DAMAGES TO BE ASSESSED, IF THE ACT OCCURRED BEFORE THE DATE OF THE STATUTE. ISN'T THAT WHAT LAFLORE. IT IS ALL ABOUT?

REMEMBER, LAFLORE. IT WAS INSURANCE POLICY AND AN INCREASED AMOUNT OF LIABILITY OR SOMETHING. THOSE WERE PERFECTLY LEGAL CONTRACTS, BASED ON LAWS THAT WERE ENTERED AT THAT POINT IN TIME. THE ONLY THING HE IS ARGUING TRIGGERS THIS STATUTE IS A PRIOR CRIME. IT GOES BACK TO WHAT JUSTICE WELLS SAID. DOES HE HAVE SOME RIGHT THAT HE DOES NOT HAVE TO COMPENSATE THE STATE, BECAUSE HE COMMITS SOME CRIME? WHAT SORT OF CONTRACTUAL OR ANALOGOUS RELATIONSHIP IS THERE, IN THIS CASE, THAT WOULD MAKE THOSE CASES, SUCH AS THE ONES INVOLVING INSURANCE POLICIES AND THOSE TYPE OF THINGS, APPLICABLE BY ANALOGY. ALSO I WANT TO POINT OUT TO YOUR HONOR THAT SEVERAL CASES WE DISCUSSED IN THE BRIEF, INVOLVED CHALLENGES TO A VARIETY OF STATUTES ON THE EXPOSE FACTO, DUE PROCESS AND JEOPARDY GROUNDS, ALL THREE TRIGGERED BY THE FACT THAT SOMEONE HAD EITHER BEEN CONVICTED OF A CRIME OR IS STILL IN PRISON, AND THE DOUBLE JEOPARDY PROCS, VARIOUS CLAIMS WORK. THE FIRST CASE THAT COMES TO MIND IS THE U.S. COURT'S DECISION IN MORALES. THAT WAS AS TO THE LENGTH OF PAROLE HEARINGS SET BY SERIOUS FELONY.

THIS IS ONLY IF THE CRIMINAL --

THEY DIDN'T HAVE ANY PROBLEM WITH THE EXPOS FACTO STATUTE OR ANYTHING ELSE. OBVIOUSLY THOSE PEOPLE COMMITTED A CRIME IN THE PAST.

IS THAT A SIMPLE RESTITUTION?

RESTITUTION. THERE IS SOME KICKOFF. IT TENDS TO TREAT RESTITUTION FOR THE VICTIM AFTER CRIME, MAYBE, MORE AS A PART OF A CRIMINAL PENALTY. THE DIFFERENCE, OF COURSE, IS WE ARE NOT SEEKING, THROUGH THIS STATUTE, RESTITUTION FOR THE VICTIM. WE ARE NOT SEEKING ANY COSTS DIRECTLY RELATED TO THE CRIME. THEY DON'T SEEK RESTITUTION FOR THE VICTIM. THEY DON'T SEEK COMPENSATION FOR THE PUBLIC DEFENDER SERVICES, THE JUDGE'S SALARY, ANYTHING.

IS THAT HOW WE SHOULD LOOK AT IT, THEN, IS THIS SEEKING ADDITIONAL MONIES FROM THE DEFENDANT, AS A RESULT OF THE CRIME?

NOT AT ALL. ABSOLUTELY NOT.

BUT IF WE DISAGREE, AND SAY, NO, THIS IS BEING DIRECTLY SOUGHT, BECAUSE OF THE CRIME THAT HE COMMITTED, AND JUST LIKE WE, PROBABLY, WOULDN'T ALLOW THAT IF THERE WAS ADDITIONAL COSTS FOR RESTITUTION THAT, YOU KNOW, OCCURRED AFTER, SOMETIME AFTER THE INITIAL RESTITUTION, WOULD WE ALLOW THOSE COSTS TO BE RECOVERED IF, SAY, THE PERSON WAS UNDERGOING MEDICAL TREATMENT, ONGOING, CAN WE GO BACK AND REQUEST THE DEFENDANT TO PAY THOSE COSTS? IS THAT -- CAN THAT HAPPEN?

IF YOU WOULD SAY THAT THE CRIME AND THE TREATMENT EVENT, THEN YOU NEED TO GO THROUGH ALL OF THESE FACTORS THAT THE U.S. SUPREME COURT DECISION IN KENNEDY VERSUS MORALES, AND ALL OF THOSE ARE STILL NOT PUNITIVE. I CAN WALK THROUGH EACH ONE OF THOSE, INDIVIDUALLY, BUT THE ESSENTIAL ATTRIBUTE IS THAT THE, FIRST, IT IS A PURELY MONETARY PENALTY, BECAUSE NO OTHER CONSEQUENCE. IT DOESN'T CHANGE THE LENGTH OF SENTENCE, GAIN TIME, RELEASE DATE, CONDITIONS OF CONFINEMENT, CONDITIONS OF RELEASE. THERE ARE NO SANCTIONS, IF AN INMATE IS UNABLE TO PAY. THE THIS COURT SAID, AS WAS SAID IN ALCANIC, SIMPLY HAS A CIVIL JUDGMENT AND IT IS RECORDED FOR 20 YEARS, AND THE INMATE, LATER, OUT OF PRISON AND WINS THE LOTTERY, THEN THE STATE CAN MOVE TO EXECUTE A LIEN ON THOSE AS -- ASSETS. I THINK IF YOU CONSIDER THE CRIME THE TRIGGERING EVENT, THEN, STILL, GOING THROUGH THOSE SEVEN FACTORS, HAVE TO CONCLUDE IT IS A CIVIL STATUTE. NOW, I WANT TO EMPHASIZE SOMETHING. THE LEGISLATURE REPEATEDLY DECLARED AND IMPOSEING COUNSEL BELITTLED THAT THIS IS AN IMPOSEING STATUTE, A LIEN, CIVIL CAUSE OF ACTION, GROUNDED ON HUDSON. THE COURT, IN THE DOUBLE JEOPARDY CONTEXT, SAID THAT THAT LEGISLATIVE DECLARATION IS ENTITLED TO GREAT WEIGHT. THEY WENT SO FAR AS TO EVEN RECEDE FROM ONE OF THEIR OWN, EARLIER DECISIONS, SAYING IT IS WRONG TO IGNORE, FROM A PUBLIC POLICY GROUNDS, THE LEGISLATIVE DECLARES, AND THEN SKIP STRAIGHT TO THE PENALTY. HERE WE NOT ONLY HAVE A STATUTE THAT IS NOT NEUTRAL. IT IS REPEATEDLY, AS COUNSEL SAID, DECLARED TO BE CIVIL. THAT IS ENTITLED TO GREAT DEFERENCE, AND I STRONGLY URGE THIS COURT NOT TO OVERLOOK THAT THE. I THINK IT IS SO STRONG THAT, IN EFFECT, WHAT THE LEGISLATURE HAS DONE IS SET UP A REBUTTABLE PRESUMPTION, AND THE ONLY WAY THE LEGISLATURE CAN GO THROUGH AND OVERCOME THAT IS TO, AGAIN, GO BACK TO THE MARTINEZ FACTOR AND MAKE A SHOWING. JUSTICE PARIENTE, I WANT TO GO BACK TO THE WHOE IDEA THAT HIS STATUS WAS FIXED, AS AN INCARCERATED FELON, FOR SUCH A LONG PERIOD OF TIME THAT HE WOULDN'T BE OUT OF JAIL BEFORE THE STATUTE HAPPENED TO TAKE EFFECT. AGAIN, SOMEONE IN THE JACKSON VERSUS STATE CASE, WHICH WE CITED IN THE BRIEF, FIRST DCA CASE FROM 1998. THIS COURT DECLINED REVIEW IN '99. THERE WAS A STATUTE PASSED, THAT PROHIBITED, AT LEAST BY SIGNIFICANT RESTRICTIONS ON FELONS, EVER OBTAINING FIREARMS. THAT PARTICULAR CASE, THE FELONS' CRIME WAS COMMITTED BEFORE THE STATUTE TOOK EFFECT. EXPOSE FACTO CHALLENGE, REJECTED BY THE FIRST DCA. THAT PERSON'S STATUS, AS A CONVICTED FELON, WAS FIXED, ABSENT APART OR WHATEVER, FOR A PERIOD OF TIME, AND THE RESTRICTION ON FIREARMS IS HIGHLY ANALOGOUS TO THE SITUATION WE HAVE HERE.

ALBEIT THAT SITUATION WASN'T TRYING TO RECOVER MONEY, BUT THE STATUTE, PRE AND ENACTMENT OF THE -- PREENACTMENT OF THE CRIME, WAS NOT CHANGED. THE EXPOS FACTO AND DOUBLE JEOPARDY CHALLENGES WERE, BOTH, REJECTED, SO I WOULD EXPECT THAT THAT STATUS, WHETHER TRIGGERED BY CRIME OR INCARCERATION OR WHATEVER, MAKES THAT STATUTE PUNITIVE. WHAT YOU HAVE TO LOOK AT IS THE NATURE OF THE PENALTY, WHICH IS JUST CIVIL RECOVERY OF THE ACTUAL COSTS OF THE STATE. IT IS NOT BEYOND THE STATE'S ACTUAL COSTS, AS DEFINED WITH JUSTICE LEWIS, OR JUSTICE ANSTEAD, IN YOUR QUESTIONS. IT IS SIMPLY TO RECOVER ACTUAL COMES LOSES, EITHER ORIGINAL OR -- ACTUAL LOSSES, EITHER ORIGINAL OR COUNTERCLAIM, AND I WANT TO GO BACK TO THIS WHOLE DUE PROCESS ARGUMENT. THIS IDEA OF CHANGING EXPECTATIONS, WELL, PROSPECTIVELY, THAT IS AFTER THE STATUTE'S EFFECTIVE DATE, TO MAKE SOMEONE LIABLE FOR COSTS IS, REALLY, NO MORE THAN JUST GOAD SAYING HE DOESN'T LIKE THE LAW CHANGING THE WAY HE DISAGREES WITH, AND IN FACT I HAVE QUOTED YOU IN THE BRIEF, FROM THE U.S. SUPREME COURT, SAYING, AND THEY WERE TALKING, IN THAT PARTICULAR CASE, ABOUT CHANGES, HOW YOU CAN USE YOUR LAND AND SO FORTH, YOU BUY LAND WITH A CERTAIN -- YOU MIGHT ENTER A CONTRACT WITH SOMEBODY TO BUY LAND. AFTER YOU EVER ENTERED A CONTRACT, THE ZONING CHANGES. YOU CAN'T USE IT FOR WHAT YOU REASONABLY AND LAWFULLY INTENDED TO DO. THAT IS JUST TOO BAD. YOU HAVE NO RIGHT THAT THE LAW NOT CHANGE. THAT IS, REALLY, WHAT HE IS ARGUING, IN THE GUISE OF DUE PROCESS. I SEE THE RED LIGHT IS ON, YOUR HONOR, SO THANK.

THANK YOU, MR. McCY. MR. SEIGEL.

IF, AT THE TIME THE DEFENDANT CAME IN, THE PRISON SYSTEM WAS SERVING THREE FULL MEALS A DAY, AND SUBSEQUENTLY, FIVE YEARS INTO HIS SENTENCE, IT WAS A LEGISLATIVE DETERMINATION THAT PRISONERS SHOULD GET ONLY TWO MEALS, TWO FULL MEALS A DAY, IS THAT DIFFERENT FROM YOUR SITUATION?

THE QUESTION IS WOULD THAT VIOLATE THE EXPOS FACTO CLAUSE, IN TERMS OF RETRO ACTIVITY. IT WOULD. IS IT AN INCREASE IN PUNISHMENT WOULD BE THE ISSUE, AND OBCOULD ARGUE ABOUT THAT -- AND ONE COULD ARGUE ABOUT THAT, AND I THINK THE PRISON WOULD, PROBABLY, LOSE THAT CASE. IN FACT THERE IS A CASE OUT THERE FROM SOME OTHER STATE.

WHY WOULD HE LOSE THAT?

BECAUSE THE COURT WOULD CONSIDER, YOU KNOW, HOW MUCH FOOD YOU GET, I DON'T THINK, WOULD CONSIDER THAT TO BE PUNISHMENT, ALTHOUGH I THINK PRISONER ADVOCATES WOULD CONSIDER IT TO BE PUNISHMENT, BUT THAT IS JUST ABSOLUTELY DIFFERENCE IN KIND. I MEAN, IT IS APPLES AND ORANGES, TO TALK ABOUT, YOU KNOW, TWO HOT MEALS A DAY INSTEAD OF THREE, AS OPPOSED TO \$400,000. WE ARE JUST NOT TALKING ABOUT THE SAME THING, AND WE ARE NOT TALKING ABOUT THE SAME THING, WHEN WE RECOGNIZE, EVEN THOUGH IT IS NOT A LEGAL -- AN ISSUE THAT WAS LEGALLY RAISED IN THIS CASE, AND WE TALK ABOUT WHAT IS HAPPENING HERE, THIS IS BEING USED TO PREVENT ACCESS TO COURTS OR BEING USED TO PREVENT PRISONERS FROM VINDICATING OR FROM RECOVERING, WHEN THEY HAVE BEEN INJURED BY THE STATE'S OWN WRONGDOING. NOT IN THIS PARTICULAR CASE.

IN THIS CASE YOU ARE TALKING ABOUT FREE BOARD. YOU ARE SAYING HE IS ENTITLED TO FREE BOARD.

WELL, NO, WE ARE JUST SAYING -- WE ARE NOT SAYING HE IS ENTITLED TO FREE BOARD. WE ARE SAYING HE IS SBILTHED NOT TO HAVE HIS FREE BOARD CHANGED TO PAY BOARD, RETROACTIVELY. THAT IS WHAT RE SAYING, JUSTICE SHAW.

AS A PRACTICAL MATTER, THE DEPARTMENT, PROBABLY, WOULD NOT BE ABLE TO COLLECT, EVEN IF THEY, IN THIS PARTICULAR CASE, RECEIVED \$400,000 ON THEIR COUNTERCLAIM. ONCE MR. GOAD LEFT PRISON, THE DEPARTMENT, MORE THAN LIKE, WOULD NOT BE ABLE TO COLLECT.

WOULD YOU AGREE THAT THAT IS THE CASE?

WELL --

UNLESS, SAY, HE WROTE A BOOK ABOUT HIS PRISON EXPERIENCE AND MADE A LOT OF MONEY.

WELL, I WOULD AGREE THAT THE CHANCES OF THE DEPARTMENT COLLECTING ANY MONEY FROM MR. GOAD ARE PROBABLY SLIM AND NONE, AND THEY PROBABLY ERRED --

IF HE DID, IN FACT, WRITE A BOOK ABOUT HIS PRISON EXPERIENCE, WHY SHOULDN'T THE PEOPLE OF THE STATE, BASICALLY, GET SOME OF THAT MONEY BACK, FOR ALL OF THE MONEY THAT THEY INVESTED DURING HIS YEARS OF INCARCERATION?

PROSPECTIVELY, THAT IS PROBABLY UNOBJECTIONABLE, BUT THAT IS NOT THE CASE HERE. WE ARE TALKING ABOUT RETROACTIVE.

THANK YOU, MR. SEIGEL. THE COURT WILL BE IN RECESS. THE MARSHAL: PLEASE RISE.