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## **State of Florida v. Bennie Demps**

THERE WAS NO STATE-FUNDED PROGRAM TO PAY LAWYERS IN CAPITAL COLLATERAL CASES. ALL OF THE LAWYERS WHO WORKED IN THAT TIME FRAME WERE VOLUNTEERS. TODAY, THERE IS A ROBUST PROGRAM FOR PUBLIC REPRESENTATION IN CAPITAL COLLATERAL CASES, AND SIMPLY STATED, WE ARE HERE TO ASK THIS COURT'S GUIDANCE, WITH RESPECT TO THE PROPER ADMINISTRATION OF THE REGISTRY ACT, CHAPTER 27 PART 4.

IS IT THAT BROAD A QUESTION THAT WE ARE HERE ON TODAY? IN OTHER WORDS, IS, WHAT IS THE ULTIMATE POSITION OF THE STATE CONCERNING THE AMOUNT OF FEES THAT SHOULD HAVE BEEN PROPERLY AWARDED UNDER THE ACT? WHAT, WAS THERE, LEAVING ASIDE WHETHER MR. SALMON VERSUS MR. SHAVER. WAS THERE AN OVERALL CAP THAT SHOULD HAVE BEEN AWARDED, IF THE STATE HAD BEEN SATISFIED WITH, IF THAT HAD OCCURRED?

I CAN GIVE YOUR HONOR THE BASIC POSITION. WE HAD A SITUATION WHERE THERE WAS A REGISTRY LAWYER WHO WAS APPOINTED AND A NONREGISTRY LAWYER WHO HAD BEEN ON THE CASE, WHO WAS NEVER ACTUALLY APPOINTED BUT WHO WAS NOT GIVEN THE OPPORTUNITY TO DEPART THE CASE BY THIS COURT.

THE COURT SPECIFICALLY REQUIRED THAT MR. SALMON STAY ON?

YES, IT DID THE.

SO THAT THE EXECUTION DATE COULD BE, TO THE EXTENT POSSIBLE, HONORED, TO, SO THAT COUNSEL WOULDN'T GO, WOULDN'T HAVE TO FAMILIARIZE HIMSELF OR HERSELF WITH THE CASE.

YES. THE BOTTOM LINE WAS THAT THERE WERE TWO COUNSEL INVOLVED IN THE APPEAL, AND AT THE CONCLUSION OF THE APPEAL, THE COURT SAID THAT BOTH PARTIES SHOULD SUBMIT THEIR FEE APPLICATIONS TO THE COURT. NOW, WHEN THAT WAS DONE, THE CONTROLLERS'S OFFICE WAS CONTACTED, AND A SUGGESTION WAS MADE TO THIS COURT BY THE ATTORNEY GENERAL THAT CHAPTER 27 PART 4 MIGHT BE IMPLICATED, AND THE COURT ORDERED THE COMPTROLLER'S OFFICE, AT THE TIME, TO RESPOND, AND THE CONTROLLER'S OFFICE BASICALLY SAID THIS. IT SAID THAT WE CAN ONLY PAY \$100 AN HOUR NOT \$200 AN HOUR, NOT \$225 AN HOUR, BECAUSE THAT IS WHAT THE LAW SAYS AND WE HAVE NO DISCRETION. THE LAW SAYS THAT ONLY ONE REGISTRY COUNSEL WILL BE APPOINTED PER CASE BUT THE REGISTRY COUNSEL MAY SECURE A CO-COUNSEL THAT HE OR SHE APPOINTS, AND THE REGISTRY COUNSEL MAY BILL FOR THAT PERSON THERE. IS NO PROVISION WHATSOEVER FOR A NONREGISTRY COUNSEL TO BILL THE STATE.

IN THIS CASE, YOUR BOTTOM LINE IS THAT MR. SALMON'S FEE IS NOT PAYABLE UNDER CHAPTER 27.

OUR POSITION IS THAT IT IS PAYABLE, IF THE REGISTRY COUNSEL BILLS THE STATE ON BEHALF OF CO-COUNSEL.

BUT THAT WAS NOT BEGUN, WAS NOT DONE IN THIS CASE.

THAT WAS NOT DONE, JUSTICE QUINCE, BECAUSE OUR TWO OSTENSIBLE CO-COUNSEL REFUSED TO RECOGNIZE THAT EACH OTHER WAS CO-COUNSEL, AND EACH SUBMITTED THEIR OWN FEE

APPLICATION, WITHOUT REFERENCE TO THE OTHER INDIVIDUAL, AND BOTH OF THEM SAID WE ARE NOT TRYING TO GET FEES UNDER CHAPTER 27.

DOES THAT MEAN, IS IT, THE DEPARTMENT'S POSITION THAT THIS COURT HAS NO POWER TO ACT UNDER THE EX-GENT CIRCUMSTANCES OF A WARRANT, WHERE THE EXECUTIVE BRANCH HAS SCHEDULED AN EXECUTION, AND THAT THIS COURT IS PROCESSING A CASE IN TAKING INTO CONSIDERATION THE SCHEDULE OF THE EXECUTION AND THE FACT THAT THE PROPER PROCEEDING HAS TO HAVE COUNSEL? DOES THIS COURT HAVE NO POWTER TO ACT IN THAT --

I WOULD NEVER EVEN -- NO POWER TO ACT IN THAT --

I WOULD NEVER EVEN BEGIN TO SUGGEST THAT. OUR COURT HAS GREAT RESPONSIBILITIES IN CONNECTION WITH THE DEATH PENALTY JURISPRUDENCE, AND IT NEEDS TO DO WHAT IT NEEDS TO DO.

AND IN FACT, THEN, THIS COURT DID HAVE THE POWER TO REQUIRE MR. SALMON TO REMAIN ON THE CASE AND TO RECOGNIZE THAT THAT WAS GOING TO HAVE TO BE A PAID SERVICE.

YOUR HONOR, THAT IS THE COURT'S, THE COURT'S DETERMINATION. I MEAN, WE ARE ONLY HERE SEEKING GUIDANCE FROM THE COURT AS TO WHAT THE PROPER ROLE OF THE STATE'S FISCAL OFFICE SHOULD BE, REGARDING PAYING FOR ALL OF THIS.

SO IF THE COURT SEEMS TO SAY THAT, UNDER THIS CIRCUMSTANCE, THAT MR. SALMON WAS REQUIRED TO STAY ON THE CASE BY THIS COURT, UNDER THE EXIGENT CIRCUMSTANCES OF THE WARRANT PERIOD, AND IF WE ACCEPT THAT THE \$100 PER HOUR IS AN APPROPRIATE AMOUNT, IS THERE ANOTHER QUESTION AS TO WHETHER THE AMOUNT THAT CAN BE AWARDED SCHAEFER AND SALMON CAN EXCEED THE \$25,000, BECAUSE STILL WITH THE \$100, IT WOULD EXCEED \$25,000.

WE HAVE CALCULATED \$26500 AVAILABLE FOR, UNDER THE STRICTEST READING OF THE STATUTE, AS AVAILABLE TO PAY FOR BOTH, AND MY CALCULATION IS IT COMES OUT VERY CLOSE, AND OBVIOUSLY IF THE COURT DETERMINED THAT IT WANTED TO PAY BOTH AND SUITED THAT THE CAP SHOULD BE EXCEEDED AND THAT IS THE COURT'S PREROGATIVE, UNDER RELATED CASES.

YOU ARE NOT QUESTIONING AT THIS POINT, UNDER THIS APPEAL, THE REASONABLENESS AMOUNT OF HOURS, EITHER MR. SCHAEF ERROR MR. SALMON EXPENDED IN THE REPRESENTATION OF MR. DEMPS IN THIS COURT?

OUR ONLY CONCERN IS WITH THE HOURLY RATE AND WE COULD NOT EXCEED THAT. WE ARE ALSO CONCERNED THAT THERE NOT BE A BREAKDOWN IN THE GATEKEEPER ARRANGEMENT WHICH IS ESTABLISHED UNDER CHAPTER 27 PART 4, WHERE THE BILLING PASSES THROUGH REGISTRY COUNSEL, BECAUSE WE SEE THAT AS A TREMENDOUS POTENTIAL SOURCE OF ABUSE, AND ALSO A LIMITATION ON THE ACCOUNTABILITY THAT WAS SET UP BY STATUTE, TO HAVE ALL OF THE BILLINGS FLOW THROUGH THE CONTRACTOR.

I AM SORRY. WHAT WAS THAT? I AM NOT SURE I UNDERSTOOD THE LAST CONCERN THAT YOU HAD.

WELL, WE DO NOT HAVE A SITUATION UNDER THE LAW, WHERE DIRECT BILLING BY CONTRACTORS, WHETHER THEY BE INVESTIGATORS, WHETHER THEY BE PROCESS SERVICES OR INDEED CO-COUNSEL, AND THE STATUTE, AT LEAST IN OUR VIEW, SETS UP THE REGISTRY COUNSEL, AND THE STATUTE SAYS THAT THERE WILL ONLY BE ONE REGISTRY COUNSEL. THAT PERSON IS A GATEKEEPER, THROUGH WHOM ALL OF THE BILLS TO THE STATE FLOW, AND BY SUBMITTING THOSE BILLS, THE COUNSELOR, THE OFFICER OF THE COURT CERTIFIES THAT THOSE EXPENDITURES WERE --

IN THIS CASE THAT COULD NOT HAVE WORKED, BECAUSE MR. SCHAEFER WAS NOT RESPONSIBLE FOR MR. SALMON, UNDER THE CIRCUMSTANCES OF THIS CASE.

IT WOULD HAVE BEEN, YOUR HONOR, IF MR. SCHAEFER HAD AGREED TO SUBMIT MR. SALMON'S BILLS, BUT IN THIS CASE BOTH WANTED IN EXCESS OF \$200 AN HOUR, SO I WOULD AGREE WITH YOU AS A PRACTICAL MATTER, IT WAS NOT CLEARLY AN OPTION.

ONE OF THE THINGS IN THIS CASE IS THAT MR. -- ONE OF THE CLAIMS IN THIS CASE IS THAT MR. SHAFER WAS ENTITLED TO \$200 AN HOUR BECAUSE HE DIDN'T HAVE A REGISTRY CONTRACT. IS THAT BEING STATED HERE?

YOUR HONOR, WE, AS THE STATE'S FISCAL OFFICE, DON'T HAVE INVESTIGATORS WHO ARE RUSHING OUT TO GRAB COURT-APPOINTED LAWYERS TO MAKE SURE THAT THEY DO A CONTRACT. I MEAN, MR. SCHAEFER WAS A MEMBER OF THE REGISTRY, WHO ACCEPTED REPRESENTATION UNDER THE REGISTRY, KNOWING FULL WELL WHAT THE STATUTE SPECIFIED.

UNDER NORMAL CIRCUMSTANCES, WHEN WE ARE NOT IN, SAY, A WARRANT PERIOD AND SOMEONE IS, IN FACT, APPOINTED TO REPRESENT AN INDIGENT DEATH-ROW INMATE, DO THEY FILE OR SIGN A REGISTRY CONTRACT?

THE STATUTE DOES REQUIRE THAT THE COUNSEL EXECUTE A CONTRACT WITH US, AND THAT IS PRIMARILY FOR BILLING PURPOSES, BECAUSE YOU HAVE SUCH THINGS IN THERE AS WHERE YOU SUBMIT YOUR BILLS, WHAT FORM YOU DO SUBMIT THEM, HOW QUICKLY YOU ARE GOING TO GET A RESPONSE.

IS THAT CONTRACT PER CASE OR JUST ONCE YOU BECOME REGISTRY COUNSEL, YOU UNDERSTAND THE TERMS?

JUSTICE BELL, IT IS PER CASE. WHEN EACH INDIVIDUAL COURT-APPOINTED REPRESENTATION TAKES PLACE, WE DO HAVE THEM HAPPEN A LOT.

UNDER THE CIRCUMSTANCES OF THIS CASE, WE CAN UNDERSTAND THIS REPRESENTATION REALLY ONLY LASTED A COUPLE OF WEEKS, THAT THERE WAS REALLY NOT A LOT OF TIME TO GO THROUGH THE FORMAL ITS OF SIGNING A CONTRACT, AND SO WHY, ALSO, UNDER THE CIRCUMSTANCES OF THIS CASE, COULDN'T WE, IN ESSENCE, SAY THAT MR. SALMON WAS, IN FACT, CO-COUNSEL TO MR. SCHAEFER, EVEN THOUGH THEY DIDN'T HAVE THE OPPORTUNITY TO GO THROUGH THE FORMALITY OF SAYING I WANT YOU TO BE MY CO-COUNSEL?

THEY CLEARLY WERE CO-COUNSEL, IN FACT. I MEAN, WE, THE RECORDS OF TIME FOR BOTH GENTLEMEN INDICATED THAT THEY CONFERRED AND WORKED TOGETHER ON THE BRIEF. I MEAN, AS A MATTER OF FACT, THEY WERE CO-COUNSEL.

IS THIS ESSENTIALLY ENOUGH TO HAVE MR. SALMON, IN ESSENCE, APPOINTED BY MR. SAFER? -- BY MR. SCHAEFER?

IF MR. SALMON IS TO BE PAID AT ALL, OUR CLAIM IS THAT IT SHOULD BE AT \$100 PER HOUR IN THE CAPACITY OF CO-COUNSEL, BECAUSE OTHERWISE, THE TRIAL COURT ESSENTIALLY DID SAY YOU ARE A MEMBER OF THE REGISTRY, BUT ONLY FOR PURPOSES OF PAYMENT. THAT IS A LEGAL FICTION THAT I DON'T THINK THE COURT HAS TO REACH, AND WE THINK THAT IT HAS PERSONISH US POTENTIAL, BECAUSE IF WE DON'T HAVE A COURT REGISTRY, GUYS, I AM HIM GOING TO GRAB YOU, AND YOU CAN BE ON THE REGISTRY FOR PURPOSES OF THIS. THIS DEFEATS THE PURPOSE OF HAVING A REGISTRY OF QUALIFIED COUNSEL WHO ARE DEATH-PENALTY EXPERIENCED, TO BE INVOLVED IN THE CASE, SO WHAT WE ARE SIMPLY TRYING TO DO IS TO MAKE SURE THAT THE ULTIMATE REASON WHY THE RIDGE CITY WAS -- THE REGISTRY WAS CREATED WAS SIMPLY TO

GET PAYMENT TO FOLKS.

I WAS GOING TO ASK YOU ABOUT YOUR POSITION ON THE EXPERT FEES THAT WERE ORDERED TO BE PAID FOR THE ATTORNEYS THAT TESTIFIED ON BEHALF OF, THIS IS MR. SALMON.

YES, YOUR HONOR. OUR POSITION IS THAT MR. SALMON WAS NOT THE PREVAILING PARTY IN THAT HEARING, NUMBER ONE, SO I MEAN, JUST UNDER THE TRADITIONAL ANALYSIS, IF YOU DO NOT WIN, YOU ARE NOT ENTITLED TO GET YOUR COST OF SUIT.

WELL, YOU SAID THAT YOU DIDN'T CONTEST, AT LEAST YOU ARE NOT CONTESTING HERE THE NUMBER OF HOURS, BUT REING THE TRANSCRIPT OF THE HEARING -- BUT READING THE TRANSCRIPT OF THE HEARING, WASN'T THE ISSUE AS TO WHETHER MR. SALMON'S HOURS ARE A REASONABLE AND CONTESTED MATTER BY THE STATE?

NO. NO. THERE WAS NOT A WORD SAID ABOUT THE NUMBER OF HOURS. THE ONLY ISSUE THAT WE RAISED WAS THE QUESTION OF THE HOURLY RATE. AND WE ALSO RAISED THE NOTION THAT HE WAS NOT ON THE REGISTRY AND THIS IMPLICATED THE CO-COUNSEL PROVISION, BUT WITH RESPECT TO THE SITUATION, THE PRIMARY ENGINE DRIVING THE TRAIN WAS THE QUESTION OF THE HOURLY RATE. AND --

COME BACK TO THE CO-COUNSEL ISSUE THERE. IF THE STATE OR THE COMPTROLLER -- DID THE STATE OR THE COMPTROLLER TAKE THE POSITION THAT HE WAS NOT ENTITLED TO FEES AT ALL, BECAUSE HE WAS NOT A PART OF THE REGISTRY PROCESS?

WE WERE IN THE POSITION WHERE WE TOOK THE POSITION THAT HE WAS THEORETICALLY NOT ENTITLED TO FEES, BUT THE REALITY IS WE ARE CERTAINLY NOT IGNORANT OF THE FACT THAT THE COURT HAD REQUIRED MR. SALMON TO STAY ONBOARD, AND THROUGHOUT OUR SUBMISSIONS TO THIS COURT AND TO THE TRIAL COURT, WE WERE SUGGESTING THAT THE TWO CASES SHOULD BE HEARD TOGETHER, AND THAT MR. SALMON'S FEES SHOULD COME UNDER THE RUBRIC OF CO-COUNSEL.

BUT THAT HE IS ENTITLED TO FEES. IN OTHER WORDS, WHEN YOU TALK ABOUT, YOU WERE RESPONDING TO THE QUESTION ABOUT PREVAILING PARTY.

YES.

ORDINARILY, IF YOU TAKE A POSITION THAT SOMEONE IS NOT ENTITLED TO FEES AT ALL, BECAUSE OF THIS STATUTORY REASON, THEN, AND THEN THEY RECEIVE FEES, THAT SUSTAINED, THEN THEY WOULD BE THE PREVAILING PARTY, IN OTHER WORDS IN A SIMPLICITY -- A SIMPLISTIC EXAMPLE.

IN A SIMPLISTIC EXAMPLE, BUT THIS IS A BIT MORE COMPLICATED, YOUR HONOR, BECAUSE IN THIS CASE HE WAS NOT ENTITLED TO GET FEES UNDER CHAPTER 27. HE WAS ENTITLED TO GET FEES OUT OF SOME OTHER CORPUS OF FUNDS IN THE UNIVERSE.

CHIEF JUSTICE: THE MARSHAL HAS REMINDED US THAT WE HAVE REACHED THE TIME THAT YOU HAVE SAVED FOR REBUTTAL. THAT DOESN'T MEAN YOU HAVE TO STOP RIGHT THERE.

I WILL SIT DOWN, THEN, AND RESERVE MY TIME FOR REBUTTAL. THANK YOU VERY MUCH.

CHIEF JUSTICE: COUNSEL

GOOD MORNING. MY NAME IS JACK ROSS. I AM HERE ON BEHALF OF THE BILLING CROSS OPPONENT, BILL SALMON IN THIS CASE, AND I WOULD LIKE TO ASK THAT FIVE MINUTES BE RESERVED FOR SURREBUTTAL WITH REGARD TO THE CROSS APPEAL.

YOU ARE ONLY REPRESENTING MR. SALMON, IS THAT CORRECT?

YES, YOUR HONOR, THAT IS CORRECT. I WOULD LIKE TO MAKE FOUR POINTS TO THIS COURT. ONE IS THIS CASE IS NOT GOVERNED BY CHAPTER 27. SECOND IS, AS MANY QUESTIONS SEEM TO INDICATE, THE COURT HAS THE INHERENT AUTHORITY TO GO OUTSIDE OF THE STATUTORY SCHEME FOR PAYMENT OF COUNSEL FOR THE ACCUSED, WHEN NECESSARY, TO PROTECT THE ACCUSED'S SIXTH AMENDMENT RIGHTS.

IS THIS CASE OUTSIDE OF CHAPTER -- IF THIS CASE IS OUTSIDE OF CHAPTER 27, THEN WHERE DO THE FUNDS COME FROM, TO PAY MR. SALMON'S FEE?

YOUR HONOR, THIS COURT HELD IN MACOMBSON IN 1986, THAT THIS COURT HAS THE INHERENT AUTHORITY TO A WARED FEES -- AWARD FEES OR TO APPROVE FEES COUNSEL REPRESENTING THE CRIMINALLY ACCUSED, AND THE COURT SAID, I BELIEVE THE QUOTE WAS, THAT THE TREASURY MAY NEED TO MAKE SOME ADJUSTMENTS.

WHOSE TREASURY, I GUESS, IS WHAT I AM GETTING TO HERE. IF IT DOESN'T COME OUT OF THE FUNDS THAT ARE SPECIFICALLY SET ASIDE UNDER CHAPTER 27, FOR CONFLICT COUNSEL, THEN WHERE IS THAT FUND?

YOUR HONOR, I DON'T BELIEVE THAT IT IS APPROPRIATE FOR COUNSEL TO SUGGEST TO THE STATE HOW TO ADJUST ITS BUDGET TO COMPLY WITH THIS COURT'S ORDERS. I BELIEVE THAT IS AN EXECUTIVE FUNCTION, BUT THERE IS NO QUESTION THAT THIS COURT HAS THE AUTHORITY TO REQUIRE THE STATE TO EXERCISE THAT FUNCTION. THAT WAS HELD IN THE MACOMBSON CASE AND WAS, AGAIN, REITERATED BY THIS COURT, WITH REGARD TO THE VERY STATUTE, CHAPTER 27, IN THE OLIVE VERSUS MOSS CASE APPROXIMATELY ONE YEAR AGO TODAY.

GIVE US A THUMBNAIL SKETCH, AGAIN, OF MR. SALMON'S INVOLVEMENT IN THIS CASE, AS IT, THEN, ULTIMATELY LEADS TO THE ORDER AWARDING HIM FEES HERE.

YES, YOUR HONOR. MR. SALMON APPEARED ON BEHALF OF MR. DEMPS IN THE TRIAL COURT, ON THE BASIS OF A LIMITED NOTICE OF APPEARANCE. IN THE TRIAL COURT ONLY.

THIS IS A VOLUNTARY APPEARANCE BY MR. SALMON.

YES, YOUR HONOR, A VOLUNTARY APPEARANCE IN THE TRIAL COURT. AND THE RECORD BELOW REFLECTS THE DECISION OF THE TRIAL COURT CLEARLY REFLECTS THAT THAT VOLUNTARY APPEARANCE WAS LIMITED SOLELY TO THE PROCEEDINGS IN THE TRIAL COURT.

AND UNDER THIS, UNTHE CIRCUMSTANCES HERE, HE RE-- UNDER THE CIRCUMSTANCES HERE, HE REPLACED COUNSEL WHICH WAS REGISTRY COUNSEL, DID HE NOT?

YES.

MR. HARRISON WOULD HAVE HAD THE OBLIGATION TO FOLLOW IT ALL OF THE WAY TO ITS CONCLUSION, WOULD HE NOT?

THAT'S CORRECT, YOUR HONOR.

SO MR. SALMON DECIDED THAT HE WAS GOING TO REPLACE THIS COUNSEL AND TO STOP IN THE REPRESENTATION. IS THAT A FAIR ANALYSIS THEN?

I AM NOT SURE I UNDERSTAND YOUR QUESTION, BUT I WILL --

DID HE STOP BEFORE HE WENT TO THE APPELLATE PROCESS.

HE MADE THE DECISION AND MADE IT KNOWN TO THE TRIAL COURT AT THE TIME THAT HE APPEARED THAT HIS NOTICE OF APPEARANCE IS A LIMITED APPEARANCE. BASED ON THAT, THE COURT MADE THE DECISION TO ALLOW MR. HARRISON TO WITHDRAW AS COUNSEL.

PLEASE PROCEED WITH THE CHIEF'S QUESTION. I JUST NEEDED THAT CLARIFIED. THANK YOU.

AND, YOUR HONOR, AFTER THE DECISION IN THE COURT BELOW, THERE WAS A PRO SE APPEAL TO THIS COURT. THIS COURT, THEN, FILED AN ORDER, ENTERED AN ORDER, SETTING FORTH BRIEFING SCHEDULE. IT BECAME APPARENT THAT MR. SALMON WAS NOT COUNSEL FOR MR. DEMPS IN THIS COURT, AND THAT IS WHEN YOUR HONORS DRAFTED MR. SALMON, I BELIEVE THE DATE WAS MAY 25, AND DIRECTED THAT MR. SALMON FILE A BRIEF IN THIS COURT ON BEHALF OF MR. DEMPS. ON MAY THE 27th, THIS COURT FILED AN AMENDED ORDER, GIVING A BRIEF EXTENSION FOR THE FILING OF THAT BRIEF AND SETTING FORTH THAT MR. SALMON SHOULD SUBMIT HIS FEES TO THIS COURT. THAT IS ANOTHER EXAMPLE OF HOW THIS COURT FOUND THAT CHAPTER 27 DID NOT APPLY TO THIS CASE, BECAUSE --

LET'S COME BACK. THE CONCERN, AT LEAST THAT I HAVE, THAT, BY COUNSEL COMING IN, QUOTE, UNDER THIS VOLUNTARY APPEARANCE, WHEN THERE IS A SCHEME IN PLACE SET UP BY THE LEGISLATURE THAT WOULD SEEMINGLY ADDRESS THE SITUATION OF HAVING COUNSEL AVAILABLE, AREN'T WE AT GREAT RISK, THEN, OF, IN ESSENCE, IGNORING OR DOING AN END RUN AROUND THE STATUTORY SCHEME THAT HAS BEEN WORKED OUT FOR THIS, IF WE ALLOW COUNSEL TO COME IN AND, QUOTE, VOLUNTARILY, BUT THEN END UP ENTITLED TO FEES OUTSIDE THE STATUTORY SCHEME THAT HAS BEEN SET UP, AND SO THIS IS SORT OF A WORST OF ALL WORLD SCENARIO, INSTEAD OF HAVING THIS SYSTEM, YOU KNOW, WHICH HAS TAKEN A LONG TIME TO GET TO THIS POINT TAKE WE ARE ALL GETTING AT HERE, IF WE UNDERMINE THE STATUTORY SCHEME, IF WE ALLOW SOMETHING LIKE THIS TO HAPPEN, BECAUSE COUNSEL COMES IN, QUOTE, AS A VOLUNTEER COUNSEL BUT THEN ENDS UP BEING COMPENSATED EVEN BEYOND THE STATUTORY SCHEME THAT IS IN PLACE. HELP ME WITH THAT.

I CAN SEE YOUR CONCERN WITH THAT YOUR HONOR, AND I THINK IT IS ONE THAT IS REASONABLE TO ADDRESS. THERE ARE SAFEGUARDS TO PREVENT THAT SITUATION. THE FIRST SAFEGUARD IS IN THE TRIAL COURT, WHERE THE TRIAL COURT CERTAINLY HAS THE AUTHORITY NOT TO ACCEPT A LIMITED NOTICE OF REPRESENTATION AND TO REQUIRE COUNSEL TO DECIDE, AT THAT TIME, WHETHER HE OR SHE IS TO BE COUNSEL FOR THE DURATION. THE OTHER OPTION THAT IT PRESENTS ITSELF TO THE TRIAL COURT, IS TO ALLOW THE LIMITED REPRESENTATION OF THE NONREGISTRY COUNSEL, BUT TO REQUIRE THAT THE REGISTRY COUNSEL REMAIN ON AS COUNSEL OF RECORD, FOR JUST SUCH AN ALTERNATIVE, AND THE THIRD OPTION IS TAKE, ONCE THAT DECISION HAS BEEN REACHED, THEN THE ORIGINAL REGISTRY COUNSEL CAN BE REAPPOINTED OR THE, OR NEW REGISTRY COUNSEL, AS THIS, AS HAPPENED IN THIS CASE, CAN BE APPOINTED. I THINK THAT WHAT TAKES US OUTSIDE OF THAT SITUATION IN THIS CASE IS THIS COURT'S RECOGNITION THAT THIS WAS AN EXTREME AND UNUSUAL CASE, AS SET FORTH IN MACOMBSON AND IN OLIVE.

LET ME ASK YOU A QUESTION. WHAT WAS PRESENTED TO THE TRIAL COURT, OTHER THAN A REQUEST TO SUBSTITUTE FOR REGISTRY COUNSEL ON A LIMITED BASIS, LIMITED APPEARANCE, HAVING DONE THIS MANY TIMES, I NEVER GOT MAYBE AS GOOD OR CLEAR OF AN EXPLANATION, SO HELP ME OUT. WHAT IS ON THE RECORD HERE BEFORE THE TRIAL COURT AS TO WHY YOUR CLIENT NEEDED AND WANTED TO SUBSTITUTE FOR REGISTRY COUNSEL?

YOUR HONOR, THE NOTICE OF APPEARANCE THAT WAS FILED WITH THE TRIAL COURT, SPECIFICALLY STATED THAT THE APPEARANCE WAS LIMITED TO THE TRIAL COURT, AND I DON'T BELIEVE IT IS IN THE RECORD BECAUSE I DON'T BELIEVE THERE IS A TRANSCRIPT OF THAT HEARING IN THE RECORD, BUT IT IS MY UNDERSTANDING THAT THAT WAS VERBALLY DISCUSSED AT THE HEARING AS WELL. I THINK, FOR PURPOSES OF THE RECORD ON THIS CASE, THERE IS A

VERY CLEAR FINDING BY JUDGE JUNTA AT THE TRIAL LEVEL, AT THE FEE HEARING, THAT MR. SALMON WAS IN FACT, DID, IN FACT, MAKE A LIMITED APPEARANCE, WITH THE PERMISSION OF THE TRIAL COURT, AND THAT HIS DUTY TOYS MR. DEMPS AT THAT TIME WERE VERY CLEARLY LIMITED TO THE TRIAL COURT. AS I SAID, THIS IS A UNIQUE SITUATION WHERE THIS COURT APPARENTLY MADE THE DECISION THAT THE REGISTRY PROCEDURE, AS APPLIED IN THIS CASE, WAS NOT ADEQUATE TO PROTECT MR. DEMPS'S RIGHTS, UNDER THE --

MR. SALMON WASN'T, I MEAN, I DIDN'T COME IN AS A PRO BONO COUNSEL.

NO.

HE CAME IN AS A PAID COUNSEL.

THAT IS CORRECT, YOUR HONOR.

AND IT IS RATHER UNIQUE IN MY SERVICE ON THIS COURT, FOR A LAWYER TO COME IN TO A POSTCONVICTION TRIAL SETTING AND THERE BE SOME TYPE OF LIMITATION ON WHAT THAT LAWYER IS GOING TO SELF-IMPOSE ON THE PROCESS, NOT TO HANDLE THE CASE THROUGH AN APPEAL. THAT IS WHAT, TO ME, IS UNIQUE, AND I AM READING HERE, THE ORDER THAT WAS ENTERED BY THE TRIAL JUDGE IN THAT PARTICULAR FEATURE OF THIS, THOUGH HARRISON WAS ALLOWED TO WITHDRAW, THE ETHICAL RESPONSIBILITIES ON MR. SALMON CONTINUING AND THE REPRESENTATION OF THIS CLIENT, THAT HE HAD UNDERTAKEN FOR PAY, WAS NOT ADDRESSED IN THIS ORDER, OR AM I MISSING AN ORDER?

I AM SORRY, YOUR HONOR. I DIDN'T MEAN TO SUGGEST THAT THAT WAS ADDRESSED IN THIS ORDER. I SAID MR. SALMON'S APPEARANCE, NOTICE OF THE DOCUMENT THAT HE FILED ON THE NOTICE OF APPEARANCE.

IT SEEMS TO ME THAT ONE OF THE THINGS THAT HAPPENED DURING THAT PERIOD OF TIME, AND I WAS ON THIS COURT AT THAT TIME, WAS THE RECOGNITION THAT MR. DEMPS WAS GREATLY AT-RISK IN THESE PROCEEDINGS, AND THAT MR. SALMON HAD UNDERTAKEN THE RESPONSIBILITY TO REPRESENT MR. DEMPS, AND ALL OF A SUDDEN, MR. SALMON WAS GOING TO DISAPPEAR ON MR. DEMPS. AND THAT WAS OF GREAT CONCERN TO THIS COURT IN THIS PROCESS. AND THAT STILL IS OF GREAT CONCERN TO ME, THAT A LAWYER UNDERTAKING A REPRESENTATION OF A CAPITAL DEFENDANT HAS A RESPONSIBILITY TO BE PART OF THIS PROCESS. NOW, WHERE DOES THAT PLAY INTO THIS WHOLE --

I THINK THE OPERATIVE WORDS THAT YOUR HONOR USED WAS THAT MR. SALMON ATTEMPTED TO SELF-IMPOSE THAT LIMITATION ON MR. DEMPS AND ON THE COURT, AND I THINK THAT IT IS IMPORTANT TO RECOGNIZE THAT THAT WAS A PROCEDURE THAT THE TRIAL COURT HAD THE TOTAL AUTHORITY TO REJECT. TRIAL COURT --

THERE WAS NO DOUBT IN ANY LAWYER'S MIND, WAS THERE, THAT BEYOND THE TRIAL COURT, WHICHEVER WAY THE TRIAL COURT ENTERED AN ORDER, THAT THERE WAS GOING TO BE AN APPEAL? THAT WAS GOING TO HAPPEN, RIGHT?

I DON'T THINK THERE IS ANYTHING IN THE RECORD TO REFLECT WHAT COUNSEL WERE THINKING, BUT I THINK THAT IS A REASONABLE INFERENCE TO BE DRAWN, GIVEN THE WAY WE KNOW THESE CASES ARE HANDLED.

AND UNDER THE STATUTORY SCHEME, THAT PROCESS HAD MR. DEMPS REPRESENTED, CORRECT?

IT DID, YOUR HONOR.

AND SO I AM CONCERNED ABOUT THE LAWYERS' RESPONSIBILITY NOT THE TRIAL JUDGE'S

RESPONSIBILITY IN THAT SITUATION. THE LAWYER'S RESPONSIBILITY NOT TO LEAVE THIS CLIENT WITHOUT REPRESENTATION, KNOWING THAT THERE IS GOING TO BE A FURTHER PROCEEDING.

I THINK, YOUR HONOR, THAT THERE IS TWO PLACES WHERE THAT SITUATION, CERTAINLY I THINK THE LAWYER HAS THE RIGHT TO COME IN AND SAY TO THE COURT, I WOULD LIKE TO APPEAR ON BEHALF OF THE THIS DEFENDANT UNDER CERTAIN CIRCUMSTANCES, AND I THINK AT THAT POINT, THE COURT HAS THE RIGHT TO ACCEPT OR REJECT THAT APPEARANCE. I THINK THE COURT ALSO HAD THE RIGHT, AT THAT POINT, TO REQUIRE MR. HARRISON TO CONTINUE ON, SINCE AS YOUR COURT POINTED OUT, THE REASONABLE INFERENCE IS THAT ALL FOLKS KNEW THERE WOULD BE AN APPEAL. AND THEN THE COURT AND MR. SALMON COULD REASONABLY HAVE ANTICIPATED THAT, IF THERE WAS A NECESSITY OF AN APPEAL, WHICH WAS HIGHLY LIKELY THAT, CHAPTER 27 COULD AGAIN BE USED BY THIS COURT OR BY THE TRIAL COURT.

YOU KNOW, GOING BACK TO THE ORDER OF NOVEMBER 30, 1999, AT THE POINT WHEN MR. DEMPS CONFERRED AND SAID HE WISHES MR. SALMON TO REPRESENT HIM. HE DIDN'T WISH MR. HARRISON TO DO SO. AND AT THAT POINT, THERE IS, MR. HARRISON IS BEING REMOVED FROM THE CASE. WHERE IS EVERYBODY ON THE PAGE AS TO WHAT HAPPENED IF, WHEN THAT, IF THAT MOTION IS DENIED? IT WAS THE EXPECTATION MR. HARRISON WAS GOING TO COME BACK IN AND REFAMILIARIZE HIMSELF WITH EVERYTHING THAT HAD HAPPENED WHEN HE WAS NOT COUNSEL?

YOUR HONOR, CANDIDLY, I AM NOT SURE THAT THAT, OF WHAT PEOPLE WERE THINKING. I AM NOT SURE THAT THAT ISSUE WAS EVER ADDRESSED BY ANYONE, EITHER VERBALLY OR MENTALLY AT THAT TIME.

WHAT WE ARE ASKING HERE IS THAT WHY WOULDN'T MR. SALMON, AS THE PERSON WHO IS NOW UNDERTAKING TO REPRESENT MR. DEMPS, BE THE INDIVIDUAL RESPONSIBLE FOR, REALLY, MAKING SURE THAT MR. DEMPS WAS GOING TO BE FULLY PROTECTED IN THIS REGARD, AND HAVING MR. HARRISON OFF THE CASE WAS NOT GOING TO FULLY PROTECT THEM.

I THINK THAT, IN HINDSIGHT, YOUR HONOR, IT WOULD HAVE BEEN A BETTER DECISION TO ACCEPT MR. SELMON'S APPOINTMENT, REPRESENTATION, AND TO REQUIRE OR ALLOW MR. HARRISON TO STAY ON AS COUNSEL. AND I THINK THAT, AFTER HAVING GONE THROUGH THIS PROCESS, THAT PERHAPS, AND THAT IS ONE OF THE REASONS I BELIEVE THIS IS A UNIQUE SITUATION, I DON'T BELIEVE THAT THOSE KINDS OF MISTAKES ARE GOING TO BE MADE. THOSE ARE GOING TO BE MADE AGAIN. BUT I THINK THIS COURT WAS FACED WITH A SITUATION WHERE, PERHAPS, A JUDGE DID MAKE A MISTAKE IN ALLOWING MR. HARRISON TO WITHDRAW.

MAYBE IT IS NOT THE JUDGE THAT MADE THE MISTAKE. MAYBE IT IS COUNSEL THAT DID NOT PROVIDE FOR THE PROTECTION OF HIS CLIENT. BEYOND THE TERMINATION OF THOSE PROCEEDINGS IN SOME WAY. IS THAT AN INCONCEIVABLE POSITION?

THAT IS CERTAINLY NOT INCONCEIVABLE, YOUR HONOR.

SO WE MUST, IF WE HAVE A MISTAKE OR A BREAKDOWN, AND THE QUESTION IS WHERE IS THAT VISITED AT THIS POINT IN TIME THEN? THAT IS REALLY WHAT IT COMES DOWN TO. HOW SHOULD THAT BE HANDLED?

YOUR HONOR, I THINK THAT, WELL, I SEE THAT I AM INTO REBUTTAL, SO I WOULD LIKE TO ANSWER THAT AS BRIEFLY AS I CAN. I THINK, YOUR HONOR, THAT THE QUESTION BEFORE THIS COURT IS, SHOULD NOT BE A CASTING OF BLAME. IT SHOULD BE RECOGNIZING THAT, AT A VERY CRUCIAL TIME, MR. DEMPS DID NOT HAVE COUNSEL, AND MAYBE MR. SALMON, MAYBE THE TRIAL COURT, MAYBE MR. DEMPS, MAYBE MR. HARRISON SHOULD HAVE ANTICIPATED THAT PROBLEM AND HAVE AVOIDED IT, BUT AT THAT POINT, THIS COURT WAS FACED WITH A DEFENDANT WHO WAS FACING AN EXECUTION WARRANT AND REQUIRED COUNSEL, AND MADE THE DECISION THAT IT REQUIRED COUNSEL. YOU MADE THE UNIQUE AND EXTRAORDINARY DECISION THAT REGISTRY

COUNSEL UNDER CHAPTER 27, COULD NOT ADEQUATELY PROVIDE THAT REPRESENTATION.

THAT WASN'T SO EXTRAORDINARY UNDER THE CIRCUMSTANCES, WAS IT? THAT IS THAT THIS COURT WAS FACED, AT THE TIME, WITH A LAWYER THAT HAD BEEN REPRESENTING THIS DEFENDANT.

YES, YOUR HONOR.

IN THOSE PROCEEDINGS, AND THAT NOW WANTED TO BAIL OUT, SEEMINGLY, WHEN THAT LAWYER OBVIOUSLY WOULD BE THE LOGICAL ONE TO CONTINUE, ESPECIALLY SINCE WE ARE UNDER A WARRANT SITUATION, AS OPPOSED TO HAVING REGISTRY COUNSEL, FOR INSTANCE EITHER OPTION THERE, THAT IS EITHER A NEW REGISTRY LAWYER, AND HERE WE WOULD BE STANDING THE WHOLE THING ON ITS HEAD, IF WE APPOINTED ANOTHER LAWYER AND NOW SAID, WELL, OF COURSE, WE HAVE GOT TO PUT A STAY ON THE WARRANT AND EVERYTHING, BECAUSE THIS LAWYER, WHO KNOWS HOW LONG IT WOULD TAKE FOR THAT LAWYER TO BECOME FAMILIAR, AS MR. SALMON ALREADY WAS FAMILIAR WITH THE PROCEEDINGS THAT HE HAD REALLY INITIATED BY HIS STEPPING INTO THE CASE AS HE HAD BEFORE, SO I AM HAVING A LITTLE TROUBLE SAYING THAT IT WAS AN EXTRAORDINARY THING FOR THIS COURT TO DO, TO KEEP MR. SALMON, WHO WAS THE LAWYER, IN THE CASE AT THAT TIME.

TWO THINGS IN RESPONSE TO THAT, YOUR HONOR. FIRST, I THINK BAIL OUT IS A LOADED TERM, AND, OF COURSE YOUR HONOR IS ENTITLED TO USE LOADED TERMS, AND I THINK THAT, REALLY, THE ACCURATE THING IS WHEN MR. SALMON STEPPED IN, HE STEPPED IN WITH EVERYONE'S RECOGNITION THAT THERE WOULD BE THAT LIMITATION. I DID NOT MEAN TO SUGGEST THAT IT WAS AN EXTRAORDINARY SITUATION, EXTRAORDINARY THING FOR MR. SALMON TO BE APPOINTED UNDER THOSE CIRCUMSTANCES. IT WAS AN EXTRAORDINARY SITUATION FOR THE COURT, AND THEREFORE THE COURT DID WHAT MADE A LOT OF SENSE, IN ORDER TO MAINTAIN THAT --

WHAT I AM REALLY ASKING IS WHETHER THAT REALLY IS AN ACCURATE TERM, TO SAY EVERYONE UNDERSTOOD THAT HIS PARTICIPATION WOULD BE THIS NARROW, LIMITED CIRCUMSTANCE, AND THAT NOBODY WOULD REASONABLY ANTICIPATE THAT THERE WOULD BE AN APPEAL, AS YOU HAVE CONCEDED, THAT THAT IS CLEARLY THE LOGICAL THING TO COME NEXT IS THAT THERE WOULD BE AN APPEAL, SO THAT WE HAVE TO SORT OF CLOSE OUR EYES, THEN, AND SAY, WELL, IS WHAT EVERYBODY, THEN, ANTICIPATED IS THAT THERE WOULD BE AN APPEAL, BUT OBVIOUSLY THERE WILL HAVE TO BE A STAY, WHILE ANOTHER LAWYER WAS BROUGHT IN TO HANDLE THE APPEAL? IS THAT WHAT YOU ARE SAYING EVERYBODY ANTICIPATED THAT?

I DON'T THINK THAT WAS EVER ANTICIPATED. I DON'T THINK, I DON'T THINK IN THIS -- I THINK IN THIS SITUATION, AGAIN THIS IS PURELY SPECULATION. THE ONLY THING IN THE RECORD IS THE REFLECTION THAT MR. SALMON APPEARED IN A LIMITED MANNER.

WE ARE USING YOUR TERM FOR REBUTTAL ON CROSS APPEAL, AND SO LET'S, UNLESS THERE ARE OTHER QUESTIONS, YOU MIGHT WANT TO PAUSE.

I WOULD LIKE TO RESPOND THAT I DON'T THINK THAT WAS ANTICIPATED BY ANYBODY, INCLUDING MR. SALMON AT THAT TIME. I DON'T THINK THE THOUGHT PROCESS WENT THAT FAR AT THE INITIAL STAGES. THANK YOU.

CHIEF JUSTICE: THANK YOU. COUNSEL. REALIZING YOU ARE IN THE POSITION OF REBUTTAL ON YOUR APPEAL AND THE RESPONDING TO THE CROSS APPEAL, I THINK THEY ARE SO CLOSE TOGETHER HERE, YOU GO AHEAD AND RESPOND.

THANK YOU, MR. CHIEF JUSTICE.

THIS WAS THE FOURTH 3.850 MOTION THAT THIS BEEN RAISED IN THIS CASE, AND IT SEEMS TO ME REMARKABLE TO CONSIDER THAT THEIR MAIN HAVE BEEN APPEAL ON THE FOURTH TIME AROUND. SECONDLY, ON THE ISSUE OF THE LIMITED NOTICE, THERE IS NO LIMITED NOTICE OF APPEARANCE IN THIS RECORD. COUNSEL APPEARS TO BE DRAWING AN INFERENCE FROM SOMETHING, BUT THERE IS NO DOCUMENT IN THE RECORD THAT WOULD REPRESENT THAT MR. SALMON ENTERED A LIMITED NOTICE OF APPEARANCE. AND SO I AM, YOU KNOW, SOMEWHAT AT A LOSS TO UNDERSTAND HOW THAT HAS BECOME SUCH A --

WHAT ABOUT THE DOCUMENT AUGUST 10 OF 1999? IT COMES NOW BILL SALMON ENTERS A SPECIAL LIMITED NOTICE OF APPEAL ON BEHALF OF BERNIE DEMPS FOR REPRESENTATION. ISN'T THAT, THAT IS IN THE RECORD.

WELL, THEN, I AM IN ERROR, PERHAPS I DID NOT TAMPA GREAT DEAL OF SIGNIFICANCE, YOUR HONOR -- I DID NOT ATTACH A GREAT DEAL OF SIGNIFICANCE, YOUR HONOR, BECAUSE AS I UNDERSTAND THE ETHICS OF COUNSEL, YOU CONTINUE ON, ESPECIALLY WHEN YOU ARE DEALING WITH THIS VERY GRAVE CASE.

APPARENTLY, AND WE HAVE GOT TO ACCEPT SOME OF THIS IN GOOD FAITH. APPARENTLY THERE WAS CONCERN ABOUT WHETHER MR. HARRISON SHOULD STAY ON OR NOT, AND SINCE WE DON'T HAVE A RECORD OF WHETHER, WHAT WAS DISCUSSED, WHETHER THE NOTICE OF APPEARANCE WOULD MEAN THAT HE WOULD, ALSO, CONTINUE ON FOR THE REST OF THE CASE OR NOT, CLEARLY THERE WAS SOME BREAKDOWN IN THIS PROCESS HERE, THAT WE HOPE WON'T OCCUR IN THE FUTURE.

YES, YOUR HONOR. I DON'T THINK THERE WAS ANY QUESTION THAT MR. HARRISON WAS SENT AWAY WITHOUT --

LET ME SEE IF I UNDERSTAND THE BOTTOM LINE. YOUR BOTTOM LINE, IF I AM READING EVERYTHING THAT YOU ARE SAYING OUT HERE AND BEING CANDID WITH THE COURT, IS THAT THERE SHOULD BE COMPENSATION HERE, THAT IT SHOULD BE WITHIN THE FRAMEWORK OF THE COMPENSATION ALLOWED UNDER THE LEGISLATION THAT WAS SET UP FOR THIS. AND THAT THIS NOT BE AN EXCEPTION CREATED, CERTAINLY FOR THE AMOUNT OF THE FEES THAT WOULD BUST THIS LEGISLATION IN YOUR --

THAT IS EXACTLY CORRECT.

YOU ARE NOT ARGUING AGAINST THE LIMITATION. IT IS THE AMOUNT OF COMPENSATION THAT IS OF CONCERN TO THE STATE. ISN'T THAT CORRECT?

AND I WOULD LIKE TO MAKE A POINT WITH REGARD TO WHAT MR. ROSS SAID, WITH REGARD TO THERE ARE FUNDS AND THIS COURT CAN JUST ORDER THEM. THERE IS VALID FUNDS TO PAY FOR COUNSEL IN CAPITAL COLLATERAL REPRESENTATION, THAT THIS LEGISLATURE HAS SAID IT HAS THE MEANS FOR PAYING. THE COURT DOESN'T HAVE TO GO AND FIND OTHER APPROPRIATION, AND I WOULD SUGGEST THAT THIS WOULD BE INAPPROPRIATE, FOR THE COURT TO REACH OUT AND DO THAT, WHEN YOU HAVE AN APPROPRIATION THAT IS RIGHT THERE, SO, AND ALSO, I HAVE TO RESPOND TO MR. ROSS'S SUGGESTION THAT THE REGISTRY SYSTEM FAILED MR. DEMPS. THE REGISTRY SYSTEM DID NOT FAIL MR. DEMPS. I MEAN, MR. SCHAEFER WAS SUMMONED AT THE 11th HOUR TO STEP UP TO THE PLATE IN A SITUATION THAT IT APPEARED MR. DEMPS WOULD NOT BE REPRESENTED, DURING THE FINAL PERIOD OF HIS PARTICIPATION IN THE LEGAL SYSTEM. AND THAT WAS NOT ANYTHING THAT WAS MR. SCHAEFER'S FAULT. THAT WAS NOT ANY RESPONSIBILITY OF THE REGISTRY PROGRAM. THAT WAS THE IRREGULAR CIRCUMSTANCES GENERATED BY MR. SALMON. EXCUSE ME. THANK YOU, YOUR HONOR.

CHIEF JUSTICE: THANK YOU VERY MUCH. COUNSEL. MR. MARSHAL, HOW MUCH TIME? OKAY.

YOUR HONOR, IN THAT ONE-HALF MINUTE, I WOULD LIKE TO MAKE TWO POINTS. THE FIRST IS, THOUGH WE HAVE USED THE TERM CO-COUNSEL, AND MR. SALMON CERTAINLY WAS CO-COUNSEL OF MR. SCHAEFER, CHAPTER 27 DOESN'T USE THE TERM CO-COUNSEL. IT USES THE TERM ASSISTANT COUNSEL, CHAPTER 27, 26 REFERS TO ASSISTANT. THAT IS APPOINTED BY THE REGISTRY COUNSEL. THAT IS NOT WHAT HAPPENED HERE.

I GUESS WHAT WE ARE TRYING TO DO IS THAT NO ONE IS SAYING THAT MR. SALMON ISN'T GOING TO GET COMPENSATED. THE TRIAL COURT'S ORDER GAVE HIM \$18,000 FOR A, ESSENTIALLY A TWO-WEEK PERIOD OF TIME, UNDERSTANDING THOSE ARE VERY TRYING TWO WEEKS, REALLY, TO SAY THAT SOMEHOW WE SHOULD, HE IS DECLARING THIS WHOLE REGISTRY ACT UNCONSTITUTIONAL UNDER THE UNIQUE FACTS OF THIS CASE, SORT OF DEFIES MY, YOU KNOW, REASONABLE EXPECTATIONS ABOUT WHAT A LAWYER ETHICALLY WOULD WANT TO BE ADVANCING UNDER THE CIRCUMSTANCES, THAT ARE, THAT THIS COURT IS FACED WITH.

LET ME JUST SAY THAT I AM --

YOU CAN RESPOND, EVEN THOUGH YOUR TIME IS UP.

I AM PLEASED TO HEAR THAT NO ONE IS SUGGESTING THAT MR. SALMON NOT GET PAID AT ALL, BECAUSE WHEN I CAME HERE THIS MORNING, IT WAS MY IMPRESSION THAT THE STATE WAS SUGGESTING THAT THE ENTIRE AWARD SHOULD BE, SHOULD BE SET ASIDE. WITH REGARD TO THE AMOUNT THAT HE IS BEING AWARDED, I BELIEVE THAT THE COURT, THE COURT BELOW, ERROR IN THAT SITUATION WAS SIMPLY TO REJECT THE UNCONTROVERTED EVIDENCE AS TO WHAT A REASONABLE AMOUNT WOULD BE AND TO ENTER AN AWARD BASED ON THE FACT THAT, IN DIFFERENT CASES, THERE WERE ATTORNEYS THAT WERE WILLING AND AVAILABLE TO ACCEPT REPRESENTATION FOR LESS.

CHIEF JUSTICE: OKAY. THANK YOU VERY MUCH. THANK YOU ALL, VERY MUCH, FOR YOUR HELPFUL IN SIGHT. -- INSIGHT.