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Amendments to Rules of Criminal Procedure: Postconviction DNA Testing

MARSHAL: PLEASE RISE. HEAR YE. HEAR YE. HEAR YE. THE SUPREME COURT OF THE GREAT STATE OF FLORIDA IS NOW SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING EVERYONE AND WELCOME TO THE FLORIDA SUPREME COURT. I APPRECIATE YOU ALL BEING READY TO GO IN THE FIRST CASE. YOU ALL HAVE COLORADO UNTAERL, AND -- YOU ALL HAVE VOLUNTARILY, AND WE APPRECIATE THE FACT THAT YOU HAVE AGREED ON THE DIVISION OF TIME. EACH OF YOU, HOWEVER, UNDER THIS AGREEMENT HAS VERY LIMITED TIME, SO WE WILL APPRECIATE IT, VERY MUCH, IF YOU WILL GET RIGHT TO THE POINT. OBVIOUSLY THE COURT IS WELL FAMILIAR WITH THE UNDERLYING CIRCUMSTANCES IN THE VARIOUS PROPOSALS THAT ARE OUT THERE AND THE ISSUES, SO IF YOU CAN GET RIGHT TO THE POINT HERE AND THEN BEAR WITH US, IF WE HAVE QUESTIONS. SO WITHOUT ANY FURTHER ADO, MR. SSHINHOLSER IS FIRST. YOU MAY PROCEED. MR. MARSHAL IS GOING TO TURN ON A RED LIGHT WHEN YOUR TIME IS UP, SO IF YOU WILL RESPOND TO THAT WITHOUT THE CHIEF HAVING TO COME OFF THE BENCH TO TAKE CARE OF IT.

YES, SIR. YOUR HONOR, I ASK TO RESERVE ONE MINUTE OF TIME FOR REBUTTAL AT THE CONCLUSION OF THE OPPONENTS' REMARKS. MS. GINSBERG IS PRESENT HERE THIS MORNING BUT WILL NOT BE ADDRESSING THE COURT. OUR COMMITTEE IS SQING THAT THIS COURT EX -- OUR COMMITTEE IS ASKING THAT THIS COURT EXTEND FLORIDA RULE OF CRIMINAL PROCEDURE FOR A ONE-YEAR PERIOD. THERE ARE TWO THINGS I WOULD LIKE TO POINT OUT TO YOU IN PARTICULAR THIS MORNING. FIRST OF ALL, THERE WERE NO COMMENTS FILED SUGGESTING THAT THIS RULE SHOULD BE EXTENDED. SECONDLY IT HAS BEEN REPORTED IN THE MEDIA THAT AT LEAST THREE STATE ATTORNEYS HAVE SUGGESTED THAT THEY WILL CONTINUE TO ADDRESS THESE PETITIONS, EVEN IF THE COURT DOES NOT GRANT THIS EXTENSION. I THINK THAT IS IMPORTANT IN REC -- AND RECOGNIZED, IN THE NEED FOR THE EXTENSION. LASTLY, I WOULD LIKE TO SUGGEST THIS COURT HAS JURISDICTION TO ADDRESS THE COMMITTEE'S REQUEST UNDER ARTICLE V SECTION 2-A OF THE FLORIDA CONSTITUTION, UNDER THE CASE OF ALLEN VERSUS BUTTERWORTH. I THANK YOU FOR CONSIDERING OUR PETITION ON AN EMERGENCY BASIS. UNLESS YOU HAVE QUESTIONS, JUDGE BATEMAN WILL NEXT ADDRESS THE COURT.

IS THIS ONE-YEAR EXTENSION REALLY GOING TO BE ENOUGH, CONSIDERING HOW LONG WE HAVE HAD TWO YEARS OF THIS. IS ONE YEAR REALLY GOING TO SATISFY THE CONCERNS OF THE COMMITTEE?

JUSTICE QUINCE, THE ANSWER IS PERHAPS NOT. WHEN MR. D'ALEMBERTE ADDRESSED OUR COMMITTEE, THAT WAS A CONCERN OF THE COMMITTEE. HE QUITE CANDIDLY TOLD US THAT ONE YEAR MIGHT NOT BE ENOUGH. THAT WAS DEBATED IN COMMITTEE, AND IN FACT THE COMMITTEE VOTED FOR THE ONE YEAR.

CHIEF JUSTICE: THANK YOU.

MAY IT PLEASE THE COURT.

CHIEF JUSTICE: GOOD MORNING, JUDGE.

GOOD MORNING. TOM BATEMAN. I AM HERE ON BEHALF OF THE CHAIR OF THE CRIMINAL COURT STEERING COMMITTEE. JUDGE EATON, WHO IS TEACHING AT THE CAPITOL COMMISSION PROGRAM TODAY -- AT THE CAPITAL COMMISSION PROGRAM TODAY. TWO THINGS I WOULD LIKE TO RAISE TODAY. ONE IS PRACTICAL CONSIDERATIONS FROM THE COMMITTEE STANDPOINT. IF YOU EXTEND THIS RULE, WE DON'T THINK A YEAR IS ENOUGH AT ALL. THE FOLKS THAT ARE INVOLVED IN THIS HAVE SAID THAT IT TAKES THREE-TO-FIVE YEARS TO INVESTIGATE SOME OF THESE CASES. THERE HAVE BEEN TWO YEARS, ALREADY, FOR SOME. WHAT WE WOULD LIKE TO SEE IS THERE BE SOME FINALITY.

JUDGE BATEMAN, LET ME ASK YOU THIS, DOES THE STATUTE CREATE A SUBSTANTIVE RIGHT TO A DNA TEST?

LET ME SAY THIS, JUSTICE WELLS. WE WERE ASKED TO COMMENT AS TO THE EXTENSION OF THE RULE. IF YOU REALLY WANT ME TO COMMENT ON THAT PART, I WILL GIVE YOU MY COMMENT, BUT I AM NOT SURE THE COMMITTEE --

I NOTED THAT WHAT JUDGE EATON FILED, HE DISCUSSED THAT EXTENSIVE, SO IF YOU ARE NOT PREPARED TO DO THAT, THAT IS FINE.

NO. IT IS SUBSTANTIVE, BUT WE ALSO FEEL THAT IT IS A PREROGATIVE OF THE COURT, TO PUT IN PLACE THE PROCEDURES TO IMPLEMENT THIS. AND IN FACT, THE COURT HAS DONE THIS IN OTHER SITUATIONS, AND WE FEEL THAT THE COURT HAS THE, UNDER ITS RULE-MAKING AUTHORITY, TO, LIKE IT DOES IN THE OTHER POSTCONVICTION AREAS, TO EXTEND --

IS THERE A PRACTICAL PROBLEM, WHEN WE HAVE A RULE THAT PROVIDES ONE THING AND THERE IS A STATUTE THAT PROVIDES ANOTHER?

WELL, THERE IS A, CERTAINLY THERE IS A QUESTION, BUT THE ISSUE COMES DOWN TO WHETHER A PERSON'S CITIZEN'S CONSTITUTIONAL RIGHTS ARE NOT BEING PROTECTED BECAUSE OF SOME POLICY THAT MAY BE OUT THERE, AND WE HAVE, THE BRANCH HAS A RESPONSIBILITY AND A DUTY, I THINK, TO FOLLOW THE CONSTITUTION, TO MAKE SURE THAT A PERSON WHOSE RIGHTS MAY BE BEING VIOLATED, ARE PROTECTED, AND THAT IS THE BEAUTY OF THE WHOLE, OUR WHOLE SYSTEM OF GOVERNMENT TO HAVE THAT CHECK AND BALANCE.

JUDGE --

THANK YOU.

THE THING IN LOOKING AT ALL OF THESE THAT I HAVE BEEN CONCERNED WITH THROUGH THIS PROCESS, IS THAT WHILE THE HABEAS OR COLLATERAL REVIEW IS CERTAINLY IN PLACE ALONG THE LINES THAT JUSTICE WELLS HAS INDICATED, IF THERE IS SOMETHING THAT IS SUBSTANTIVE, THAT IS SEPARATE AND APART FROM THIS, HOW IS THAT TO BE TREATED, BECAUSE YOU ARE REFERRING TO THAT AS A CONSTITUTIONAL SUBSTANTIVE RIGHT, AND I AM WONDERING THE SOURCE OF THAT AND HOW IT RELATES TO THE PROCEDURAL RELIEF OF A HABEAS OR COLLATERAL, BUT YOU HAVE, WHAT IF THE STATE SAID WE ARE GOING TO DO X, Y AND Z AS A SUBSTANTIVE NATURE AND WE ARE GOING TO GIVE THIS TO YOU BUT ONLY DURING THIS WINDOW. I AM TROUBLED THAT THAT IS SEPARATE FROM THE PROCEDURAL PROCESS OF WHATEVER YOU HAVE, NOT THAT YOU CAN FORCE THE STATE TO GO AND DO THIS EXTRA STEP CONSTITUTIONALLY.

BOTH THE STATUTE AND THE RULE HAVE THAT CATCH OWL PROVISION THAT, IF THE EVIDENCE WAS NOT KNOWN, IF DUE DILIGENCE WAS FOUND, YOU CAN STILL BRING THIS, NOTWITHSTANDING THE FACT THAT THERE MIGHT BE SOME EXPIRATION. IF A PERSON IS

INNOCENT, IF A PERSON IS INNOCENT, WE ARE NOT TALK ABOUTING IN BUT INNOCENT, THEN DOESN'T THE COURT, WE BELIEVE THE COURT HAS THE RESPONSIBILITY TO MAKE SURE THAT THAT PERSON'S RIGHTS ARE PROTECTED.

LET ME, AS PRACTICAL QUESTION, LET'S ASSUME THAT THERE WAS A DEFENDANT THAT WAS IN WITH, WITHIN THE TWO YEARS OF HIS OR HER CONVICTION, AND THEY BRING A 3.851 OR 3.750, AND ONE OF THE THINGS THAT -- OR 3.850, AND ONE OF THE THINGS THAT THEY ARE ASKING IS THAT THERE IS DNA EVIDENCE. HAVE YOU HANDLED THOSE KINDS OF CASES, AS FAR AS DOES THE STATE, IS IT THEN TESTED BY FDLE. HOW DOES THAT HAPPEN?

I HAVE, IN FACT, HANDLED THOSE, AND WE BELIEVE ONE OF THE FIRST ONES FILED IN THE STATE. THE STATE DIDN'T OBJECT. WE WENT THROUGH THE TESTING PROCESS. FDLE ENTERED THEIR RESULTS AND I DID THE RULING. ALREADY THERE HAS BEEN ANOTHER FILING IN THAT CASE. THAT IS PART OF THE FINALITY ISSUE THAT WE ARE CONCERNED ABOUT, BECAUSE THE PETITIONERS ARE ASKING FOR A DIFFERENT KIND OF TEST. THAT IS WHY WE ARE SUGGESTING THAT IDENTIFY THESE CASES, GIVE THE PROJECT OR WHOEVER IS GOING TO FILE, THIS GIVE THEM SIX MONTHS, TELL US WHAT CASES WE ARE. IT HAS BEEN REPORTED THAT THERE ARE BETWEEN 550 AND 700 CASES, BUT WE DON'T, AND IN FACT IT HAS BEEN REPORTED THEY REALLY DON'T KNOW HOW MANY THERE ARE, SO IDENTIFY THOSE CASES, GIVE THEM SOME TIME, LET'S GET IT FILED AND THEN LET'S GET IT RESOLVED. THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH.

MAY IT PLEASE THE COURT. I AM JOHN MORRISON ON BEHALF THE FLORIDA PUBLIC DEFENDER ASSOCIATION. THE OTHER LAWYERS ADDRESSING THE COURT ARE MR. ROBERT HARPER, WHO WILL SPEAK ON BEHALF THE FACL AND THE INNOCENCE PROJECT AND MR. PASSAGE I KNOW-, WHO IS -- AND MR. PACIN. WHO IS PEEKING ON BEHALF OF -- MR. PACINO, WHO IS SPEAKING ON BEHALF OF THE WRIT. WE ARE DEEPLY CONCERNED WITH THE IDEA OF ANY DEADLINE ON INNOCENCE. WE BELIEVE THAT, AT ANY TIME, ANYWHERE, ANY WAY, THAT A PERSON WHO IS IN BRICHB IS FOUND TO BE INNOCENT. THAT PERSON SHOULD BE RELEASED.

WELL, LET ME ASK YOU THIS, EVEN IF WE DECIDE TO AMEND THE RULE, FOR ONE YEAR, WHATEVER. BUT THE STATUTE IS STILL THERE THAT SAYS THAT YOU ONLY HAVE THAT ORIGINAL TWO-YEAR PERIOD. WHAT IS A TRIAL JUDGE, PRACTICALLY, GOING TO DO, WHEN THERE IS A RULE THAT SAYS ONE THING AND THE STATUTE THAT SAYS SOMETHING ELSE?

I THINK, IN, I THINK AT LEAST SUBSALENT-, THIS COURT -- SUB SALENTO, THIS RULE OF -- THIS COURT, THE RULE, THE TIMING IS PROCEDURAL. THAT IS JUSTICE ADD KIN'S -- JUSTICE ADKINS' SORT OF GREAT PROCEDURE. THE TIMING, ORDER, THE STEPS, THAT IS PROCEDURAL AND THAT IS BEFORE THIS COURT, AND I BELIEVE I STRING CITED ABOUT A PAGE WORTH OF CASES IN MY COMMENTS TO STAND FOR THAT PROPOSITION. THE TRIAL COURT, I THINK, WOULD SIMPLY HAVE TO LOOK AT THOSE TWO AND REALIZE THE TIMING IS PROCEDURAL.

WHAT IS TRULY, I THINK, PUZZLING TO ME, AND MAYBE IT IS JUST MY CONFUSION, IS THAT IF YOU TAKE THAT POSITION TO A LOGICAL CONCLUSION, THEN YOU WOULD DO AWAY WITH STATUTES OF LIMITATIONS, STATUTES OF REPOSE THAT ALL OF THOSE MATTERS WOULD BE PROCEDURAL, AND IT SEEMS TO ME THAT WE HAVEN'T DEALT WITH THOSE THAT WAY UNDER OUR JURISPRUDENCE.

NO, YOUR HONOR, AND THE CASE LAW, AND I REGRET I DIDN'T HAVE TIME TO SORT OF GO THROUGH THE WHOLE THING BUT THE CASE LAW IS VERY CLEAR THAT THAT IS SUBSTANTIVE, BUT THAT TIMING, THE ACTUAL WHEN YOU FILE MOTIONS IS, IS SIMPLY PROCEDURAL, AND THE ORDER IN THE STEPS OF HOW THIS IS PROCEDURAL. WE ARE PARTICULARLY CONCERNED IN THIS SITUATION. BECAUSE THE EXCEPTION TO THE DEADLINE, THE DUE DILIGENCE EXCEPTION, IS SIMPLY ILLUSION OR I IN THE CONTEXT OF -- ILLUSION OTHER IN THE CONTEXT OF -- ILUSORY IN

THE PROCESS OF DNA. KNOWING WHAT TECHNIQUES AND THINGS ARE OUT THERE. FRANKLY I CONCLUDED IN MY COMMENTS, I DIDN'T KNOW BEFORE I STARTED MY RESEARCH. TO EXPECT A PRISON POPULATION TO KNOW THIS IS JUST REALLY UNFAIR. AND THEN KNOWING HOW THAT APPLIES TO A PARTICULAR CASE, EVEN IF YOU KNOW THERE IS SUCH A THING AS Y CHROMOSOME DNA TESTING, TO KNOW HOW THAT APPLIES IN A CONTEXT OF MULTIPLE PERPETRATOR RAPES OR FINGERNAIL SCRAPINGS OR ANYTHING LIKE THAT, THAT IS ALMOST IMPOSSIBLE. WE ARE VERY CONCERNED THAT DEADLINES AND DUE DILIGENCE HAVE NOTHING TO DO WITH INNOCENCE, AND I THANK YOU FOR YOUR ATTENTION.

CHIEF JUSTICE: THANK YOU. -.

GOOD MORNING. YOUR HONOR, THESE JURISDICTIONAL ISSUES TO ME HAVE BEEN VERY TROUBLING, ALTHOUGH I DON'T KNOW THAT I AGREE WITH THE COURT'S ANALYSIS ON THESE ISSUES, BUT I DO BELIEVE WHEN WE ARE LOOKING AT THE PUBLIC INTEREST IN THIS CASE, ALL BRANCHES OF GOVERNMENT AGREE INNOCENT PEOPLE SHOULDN'T BE IN JAIL. THE GUILTY MAN IS OUT. HE IS STILL THERE, IS NO FINALITY TO THOSE VICTIMS WHEN THAT MAN IS OUT, SO IT IS UP TO THE COURTS AND THE LAWYERS TO REMEDY THIS SITUATION. AND THERE CAN BE NO LIMITATION ON A PERSON WHO IS INNOCENT. OUR GOVERNMENT HAS NO INTERESTNESS KEEPING THOSE INNOCENT -- INTEREST, IN KEEPING THOSE INNOCENT PEOPLE IN JAIL AND ALLOWING THAT GUILTY MAN TO BE FREE. I SUBMIT THE SUBSTANTIVE RIGHT HERE IS THE FREEDOM OF THAT PERSON WHO HAS DONE NOTHING WRONG AND WHO IS WRONGLY IN JAIL, AND I SUBMIT THAT JUDGMENT IS NOT FINAL, AND I SUBMIT THAT THERE IS A REMEDY. I THINK IT IS, IF WE REALLY HAD THE TIME AND REALLY HAD THE CASE, A PURE HABEAS ISSUE IS HERE AND WE SHOULD DISTINGUISH BETWEEN PURE HABEAS PRACTICE AND POSTCONVICTION PRACTICE THE WAY IT SHOULD BE. IT HAS BECOME BLURRED IN STATE STATE AND FEDERAL COURT BECAUSE OF THE DEATH PENALTY PRACTICE, BUT THERE IS PLENTY OF ROOM FOR A REMEDY HERE, AND IT CAN'T WITH A STATUTE OF LIMITATIONS FOR THOSE PEOPLE WHO DID NOTHING WRONG. WE ARE AT A STAGE IN DEVELOPING SCIENCE WHERE WE DON'T JUST MERELY HAVE A POLYGRAPH. WE CAN PROVE ABSOLUTE CERTAINTY, NOT BEYOND A REASONABLE DOUBT BUT BEYOND ALL POSSIBLE DOUBT, THAT THERE IS INNOCENCE IN THESE FEW, THIS SUBCLASS OF CASES, WITH THIS AVAILABLE, THE COURT HAS TO COME UP WITH A REMEDY, AND IF WE HAVE TENSION WITH THE STATUTE, I THINK IT IS ONLY TEMPORARY. THE HOUSE OF REPRESENTATIVES IN CONGRESS, PASSED THE INNOCENCE PROTECTION ACT YESTERDAY. IT IS COMING. THERE IS A PREFILED BILL BY SENATOR VILLALOBOS. THIS STATUTE IS GOING TO BE REVISITED THIS SESSION. WE SUBMIT THE TENSION IS TEMPORARY. AND THE SOLUTION IS WITHIN THE RULE-MAKING POWER OF THIS COURT. 925.11 WAS PASSED AFTER ALLEN V BUTTERWORTH. IT WAS PASSED BEFORE THE RULE. THE RULE OBVIOUSLY WILL SUPERSEDE THE STATUTE OF LIMITATIONS SET OUT IN 925.11. I JUST THINK WE LAWYERS, THIS COURT, HAS AWAY TO REMEDY AND COME UP WITH A SOLUTION, BUT IT CANNOT, WE SUBMIT, INCLUDE THE STATUTE OF LIMITATIONS. ANY KIND OF STATUTE OF LIMITATIONS OR ANY KIND OF LIMITATION ON THIS ACTION WOULD HAVE TO INCLUDE SOME SORT OF DATE, AND THE DATE WOULD HAVE TO BE THE DATE FROM WHICH SOMEBODY IS NOTICED, AND SO THIS RULE NEEDS TO BE REVISITED IN TERMS OF NOTICE, AND SO WHAT GOOD IS NOTICE, IF EVIDENCE IS NOT BEING PRESERVED OR IS BEING DESTROYED, SO IT HAS TO BE A COMPREHENSIVE ANALYSIS OF THOSE ISSUES AS WELL, PRESERVATION AND NOTICE, AND WHEN WE ARE TALKING ABOUT EVIDENCE, WE ARE TALKING ABOUT SOMETHING UNIQUELY IN THE PROVE INCOF THE -- PROVINCE OF THE COURT. WE ARE TALKING ABOUT IN THE FEDERAL SYSTEM, IT IS TO BE PRESERVED DURING THE DURATION OF THE SENTENCE. WE ARE TALKING ABOUT IN STATES, WE HAVE GOT CLERKS AGENCIES, TRADITIONALLY UNDER THE JUDICIAL BRANCH, WHO ARE HOLDING THIS EVIDENCE. I SUBMIT THERE IS AN ADMINISTRATIVE ORDER PROCEDURE. I SUBMIT THERE IS A MANDAMUS PROCEDURE, WHERE THIS COURT CAN MAINTAIN THE STATUS QUO UNTIL WE GET THROUGH THIS TENKTS, NOT EVEN AN IMPASSE -- THIS TENSION, NOT EVEN AN IMPASSE, AND I SUBMIT THAT THIS IS A DECREASING CASELOAD, NOT LIKE DEATH PENALTY. IT IS NOT GOING TO BE AN INCREASING. IT IS NOT A DELAY TACTIC. EVERYBODY WANTS TO DO THIS QUICKLY. THOSE PEOPLE WANT TO BE OUT OF JAIL.

IN THE EVIDENCE IS IN THE POSSESSION OF THE STATE AND IT, AND THE NEW TECHNIQUE COMES OUT, HAS ANY, HAVE THEIR BEEN ANY CLAIMS THAT THIS IS ACTUALLY BRADY MATERIAL? IN OTHER WORDS, ONCE THE NEW EVIDENCE, THE NEW DNA TESTING COMES TO LIGHT, AND THEY HAVE, THE STATE AGENCY STILL HAS THE DNA, WHY WOULDN'T THAT BE JUST AN OBLIGATION ON THE PART OF THE STATE TO HAVE TO TEST IT AND DISCLOSE IT?

I THINK IT IS AN OBLIGATION. I THINK IT IS BRADY TYPE, AND EVEN NOT ONLY BRADY TYPE BUT BEYOND BRAID. THE STATUTE IS WRITTEN FOR MITIGATING A SENTENCE AS WELL AS PROVING ACTUAL INNOCENCE, SO IT IS EVEN BROADER THAN MY ARGUMENT. MY ARGUMENT IS THIS SUBCLASS OF PEOPLE WHO DID NOTHING WRONG WHO ARE IN CUSTODY, BUT WHEN YOU HAVE NOT JUST EXONERATING BUT EXCULPATORY EVIDENCE, THERE --

UNDER THAT KIND OF ANALYSIS, WOULD THE STATE, THEN, BE OBLIGATED TO DO SOMETHING EVERY TIME SOME NEW SCIENTIFIC TEST COMES OUT THAT YOU COULD PERFORM ON ANY OF THIS KIND OF INFORMATION? THIS KIND OF MATERIAL?

I AM NOT SURE THAT THAT WOULD NECESSARILY BE THE OBLIGATION OF THE STATE, BUT IT SEEMS TO ME THE PETITIONER OR HIS COUNSEL WOULD HAVE THAT OBLIGATION, TO MAKE SURE THAT EXAMINATION IS DONE.

CHIEF JUSTICE: ALL RIGHT. THE MARSHAL HAS --

THANK YOU, YOUR HONOR.

CHIEF JUSTICE: THANK YOU.

MAY IT PLEASE THE COURT. GREG TRUCINO ON BEHALF OF THE PETITIONER MICHAEL IRVIN. THIS COURT HAS MANY OPTIONS AVAILABLE TO IT, NOT THE LEAST OF WHICH WOULD BE MANDAMUS OR THE ALL-WRITS JURISDICTION. THE EASIEST WAY FOR THIS COURT TO ADDRESS THE PRESERVATION OF EVIDENCE ISSUE IS TO DO WHAT THIS COURT DOES BEST, INTERPRETATION OF STATUTE. SECTION 925.11 SAYS DURING THE TIME PERIOD, THE EVIDENCE SHOULD BE PRESERVED AND ONLY DESTROYED UPON NOTICE. AFTER THAT TIME PERIOD, IT MAY BE UNILATERALLY DESTROYED. IF THIS COURT IS TO EXERCISE ITS UNILATERAL RULE-MAKING AUTHORITY --

DOESN'T IT SAY TIME PERIOD INDICATED IN THE OTHER SUBSECTION?

THAT IS THE POINT, YOUR HONOR. IT IS A LITTLE UNCLEAR T CAN BE READ TO ALWAYS REQUIRE - - UNCLEAR. IT CAN BE READ TO ALWAYS REQUIRE NOTICE. IT CAN ALSO BE READ, WE BELIEVE, BY A LAW ENFORCEMENT AGENCY OR CLERK'S OFFICE OR ANY OTHER ENTITY HOLDING EVIDENCE, TO ALLOW FOR UNILATERAL DESTRUCTION WITHOUT NOTICE TO ANYBODY. IN THAT REGARD, THAT WILL MOOT ANY ACTION OF THIS COURT, UNDER ITS PLENARY POWER TO ENACT RULES OF PROCEDURE, AND WITH REGARD TO THAT PLENARY POWER, THERE IS NO OBJECTION BEFORE THIS COURT. THE COURT DOES NOT HAVE THAT POWER. IF THE COURT EX-TEBDZ THE TIME PERIOD -- EXTENDS THE TIME PERIOD WITH THE ONE YEAR, WHICH THERE IS NO OBJECTION, THAT EXTENSION IS ABSOLUTELY MEANINGLESS, IF AN ENTITY IS UNILATERALLY ALLOWED TO DESTROY EVIDENCE, WITHOUT SUFFICIENT NOTICE AND OPPORTUNITY TO BE HEARD. ON TOP OF THAT, THERE IS THE STOPGAP MEASURE THAT WAS MENTIONED BRIEFLY, THE DUE DILL DILL GENERALS SECTION. NOW, THE DUE -- THE DUE DILIGENCE SECTION. NOW, THE DUE DILIGENCE SECTION SAYS YOU CAN FILE THIS AT ANY TIME, IF THE FACTS ALLEGED IN THE CLAIM COULD NOT BE FOUND UNDER DUE DILIGENCE. THAT SECTION WILL BE RENDERED ABSOLUTELY POSITIVELY MEANINGLESS, IF EVIDENCE IS ALLOWED TO BE UNILATERALLY DESTROYED, WITHOUT ANY NOTICE OR OPPORTUNITY TO BE HEARD. COURTS AND RULE-MAKING AUTHORITIES, LEGISLATURE AND LEGISLATIVE ENACTMENTS, DO NOT INSERT MEANINGLESS LANGUAGE. IT IS SORT OF THE MIRROR IMAGE OF THE ARGUMENT THAT WHICH IS LEFT OUT OF A

STATUTE, IS AN INTENT, IS TO INTENTIONALLY OMIT IT FROM THAT STATUTE. THAT WHICH IS INSERTED, WOULD SEEM TO BE INTENTIONALLY MEANT TO HAVE SOME WEIGHT -- MEANT TO HAVE SOME WEIGHT, TO HAVE SOME MEANING, SO IF WE ALLOW -- YES.

UP TO THE TIME THAT THE STATUTE WENT INTO EFFECT, TALKING ABOUT NON-DEATH CASES, RIGHT, BECAUSE IN DEATH CASES, THE EVIDENCE HAS TO BE MAINTAINED UNTIL THE END.

YES.

UP UNTIL THAT TIME, WHAT WOULD HAVE PREVENTED OR WOULD ANYTHING HAVE PREVENTED A STATE AGENCY OR LOCAL AGENCY FROM DESTROYING DNA EVIDENCE?

UP TO THE TIME OF THE ENACTMENT OF 925.11?

CORRECT.

ACTUALLY THERE WAS NOTHING PREVENTING THAT, AND IN OUR EXPERIENCE, WE HAVE COME ACROSS SITUATIONS WHERE THAT HAPPENED. THE ISSUE NOW -- SITUATIONS WHERE THAT HAPPENED. THE ISSUE NOW IS, SINCE THE LEGISLATURE HAS ENACTED THIS RULE, EXCUSE ME THIS STATUTE, GIVING THE RIGHT TO BRING THESE CLAIMS INTO COURT, ALLOWING DESTRUCTION OF EVIDENCE WITHOUT NOTIFYING ANYBODY THAT THIS IS GOING TO HAPPEN, IS GOING TO HAVE SOME GRAVE CONSEQUENCES. NUMBER ONE, IT IS GOING TO MOOT ANY OPTION TO GET INTO COURT THERE. IS GOING TO BE A NONJUDICIAL DETERMINATION BY SOMEBODY, THAT DEFENDANT AB OWNER C IS -- A, B OR C, IS BARRED UNDER THIS SECTION. DUE DILIGENCE SHOULD ONLY BE INTERPRETED AS APPLIED OR NOT APPLIED BY THE JUDICIAL BRANCH. IT SHOULD NOT BE, IN ESSENCE, FUNCTIONALLY ERADICATED BY THE UNILATERAL ACTION OF A SHERIFFS OFFICE, A CLERKS OFFICE, WHO DECIDES FOR WHATEVER REASON THEY ARE RUNNING OUT OF ROOM.

YOU ARE ADVOCATING THAT THIS COURT ENTER AN INTERPRETATION OF THIS STATUTE IN THIS PROCEEDING.

I AM ADVOCATING SEVERAL THING ACTION -- SEVERAL THINGS, YOUR HONOR. ONE OF THE WAYS THAT THIS COURT COULD PROTECT EVIDENCE, LET'S ASSUME FOR THE SAKE OF ARGUMENT THAT THIS COURT DOES NOT WISH TO EXERCISE ITS PLENARY POWER TO AMEND THE RULE. THERE IS STILL THAT DUE DILIGENCE STANDARD. IF THERE IS NO MECHANISM TO PRESERVE THAT EVIDENCE, THE DUE DILIGENCE STANDARD IS ERADICATED. ONE OF THE WAY TO SAY PREVENT THAT FROM HAPPENING IS SIMPLE STATUTORY INTERPRETATION. ANOTHER WAY TO PREVENT THAT FROM HAPPENING IS THROUGH THE COURT'S RULE-MAKING AUTHORITY. ANOTHER WAY TO PREVENT THAT FROM HAPPENING IS THROUGH MANDAMUS TO ORDER ALL GOVERNMENT AGENCIES, SPECIFICALLY THOSE OUTLINED IN 925.11, WHICH IT DOES, DO, IS TO GIVE THIS STATUTE SOME MEANING, BECAUSE THE DUE DILIGENCE STANDARD HAS NO MEANING. IT HAS PROBLEMS, GRANTED, AND I AM NOT A BIG FAN OF IT, BUT GRANTED IT IS THERE AND IT GIVES THE DEFENDANT THE RIGHT TO WALK INTO COURT AND SAY I AM NOT TIME BARRED, BECAUSE I COULD HAVE NOT HAVE -- I COULDN'T HAVE FOUND THIS OUT.

WE HAVE TALKED ABOUT EVIDENCE. YOU HAVE LISTED SEVERAL HUNDRED INDIVIDUALS THAT MIGHT BE AFFECTED. THERE ARE, HOW MANY IN OUR PRISON POPULATION, BUT WE ARE TALKING ABOUT HUNDREDS OF THOUSANDS?

AND WE GET LETTERS DAILY, YOUR HONOR.

WELL, IT SEEMS TO ME TO THERE HAS TO BE, WHETHER IT IS DONE BY RULE, AND I DON'T KNOW THAT THERE IS A PROPOSAL, SOMETHING THAT IS MORE MANAGEABLE THAN JUST SAYING WHATEVER ANY AGENCY IN THE WHOLE, HOWEVER OLD THE CRIME, WHATEVER, WHETHER THE

GUY CONFESSED, JUST TO HAVE TO KEEP IT FOREVER.

THOSE ARE CONCERNS, AND THOSE CONCERNS ARE ADDRESSED BY GIVING PROPER NOTICE AND OPPORTUNITY TO BE HEARD AND HAVE THAT DETERMINATION MADE BY A JUDICIAL OFFICER, NOT BY A NONJUDICIAL OFFICER.

YOU ARE TALKING ABOUT, AGAIN, ARE YOU IN YOUR --

CHIEF JUSTICE: YES. IN OTHER WORDS --

MY YELLOW LIGHT IS ON.

WHO IS GOING NEXT?

IT MR. CHIEF JUSTICE

MS. SNURKOWSKI.

YOU ARE IN YOUR REBUTTAL. I WILL ADDRESS THAT, HOPEFULLY, LATER.

CHIEF JUSTICE: THE STATE.

MAY IT PLEASE THE COURT. MY NAME IS CAROLYN SNURKOWSKI FROM THE ATTORNEY GENERAL'S OFFICE. I WOULD LIKE TO INITIALLY PROVIDE THE COURT WITH THE ATTORNEY GENERAL'S POSITION WITH REGARD TO THE RULE. HE IS VERY MUCH IN FAVOR OF, IF THIS COURT IS INCLINED TO DO SO, EXTENDING THE RULE FOR A YEAR. HE FEELS, AND LIKE ALL OF US, AND I THINK APTLY SAID BY MR. HARPER, THE STATE, NO ONE WANTS AN INNOCENT PERSON IN JAIL, BUT I THINK WE NEED TO DELINEATE WHAT WE ARE TALKING ABOUT VERSUS ARE WE TALKING ABOUT INNOCENT PEOPLE OR ARE WE TALKING ABOUT UNIDENTIFIED INDIVIDUALS WHO ARE MAKING ASSERTIONS THAT THERE IN FACT MAY BE DNA EVIDENCE OUT THERE THAT MAY EXONERATE THEM, AND THAT IF THE RULE DOESN'T EXTEND FOR A YEAR OR WHATEVER PERIOD OF TIME THE COURT CHOOSES, THAT IT WILL BE DESTROYED AND THEY WILL NOT HAVE AN OPPORTUNITY TO DO. THAT I THINK WE HAVE TO HARKEN BACK TO WHERE WE WERE PRIOR TO THE IMPLEMENTATION OF THE RULE AND TO THE STATUTE, ITSELF, WHERE YOU HAVE THIS GOING ON ALL ALONG. WE HAD THE OPPORTUNITY, DEFENDANTS HAD THE OPPORTUNITY, MAYBE NOT VERY SUCCESSFULLY BUT THAT IS NOT THE HALLMARK BY WHICH WE JUDGE WHETHER WE HAVE SOMETHING AVAILABLE OR RIGHTS AVAILABLE. THE FACT THAT WE HAD THE OPPORTUNITY TO HAVE INDIVIDUALS CHALLENGE AND TEST DNA POSTCONVICTION, AGAIN, THEY MAY HAVE NOT BEEN THE MOST SUCCESSFUL BUT THAT IS REALLY NOT WHAT WE ARE TALKING ABOUT.

LET ME ASK YOU A QUESTION. HOW IT WAS DONE BEFORE THE STATUTE, IF SOMEBODY SAID THAT, AGAIN, I THINK YOU HAVE GOT BRAID MATERIAL, I AM INNOCENT THERE, IS --

IT WAS A POSTCONVICTION MOTION THAT WAS FILED AND CERTAINLY THERE WOULD HAVE BEEN ALLEGATION THAT IS THERE IS EVIDENCE OUT THERE. I AM INNOCENT. I HAVE ALWAYS MAINTAINED MY INNOCENCE, THERE AND HAS BEEN SOME MISHAP TO GIVE BRADY, MISHANDLING BY THE STATE WITH REGARD TO THE EVIDENCE, AND IF IN FACT THE COURT DETERMINED THAT THERE WAS A COLORFUL SHOWING MADE, THEN WE WENT FORWARD WITH THAT AND THERE WAS TESTING.

UNDER THIS COURT'S CASE LAW, THAT HAD TO BE BROUGHT WITHIN THE TWO-YEAR PERIOD, ONE-YEAR PERIOD, DEPENDING ON WHETHER YOU WERE UNDER 3.850 OR UNDER ZIGLER.

YES, YOUR HONOR. THAT'S RIGHT. SO THEREFORE WE HAD AN OPPORTUNITY AND THERE WAS THE

FORMAT LAID OUT, WHERE THESE ISSUES COULD BE TESTED. AND WHAT NOW HAS HAPPENED IS THAT BOTH THE LEGISLATURE AND THIS COURT HAS GOTTEN TOGETHER AND MADE DETERMINATIONS THAT, OKAY, LET'S MAKE IT MORE CODIFIED. WE ARE NOT VESTING A RIGHT. I MEAN, I HEARD THAT ALL MORNING. WE, WHAT RIGHT HAVE WE VESTED IN THESE INDIVIDUALS? WE HAVE GIVEN THEM AN OPPORTUNITY, THROUGH LEGISLATIVE ENACTMENT AND COURT RULE, TO CHALLENGE EVIDENCE AND GO TO THE TRIAL COURT AND SAY I HAVE EVIDENCE HERE OR THERE IS EVIDENCE IN MY CASE THAT CAN BE TESTED THAT WAS NOT TESTED. IT IS VERY CLEARLY ARTICULATED THIS. IS NOT A CONFUSING RULE.

ARE YOU SAYING, THEN, THAT THIS IS NOT ANY KIND OF SUBSTANTIVE CHANGE, AND SO IT WOULD BE WITHIN THE COURT'S RULE-MAKING POWER TO DETERMINE WHAT THE TIME PERIOD SHOULD BE?

I THINK THAT THERE IS A FINE LINE, AND THIS COURT, WHEN IT FIRST IMPLEMENTED THE RULE, DETERMINED THAT IT WAS NOT NECESSARY TO GO DOWN THAT PATH AND MAKE A DETERMINATION AS TO WHETHER, IN FACT, SUBSTANTIVE, PROCEDURAL. I THINK THIS COURT TOOK THE HIGHER GROUND. INSTEAD OF CHALLENGING AND SAID THERE IS AN IMPORTANT ISSUE THAT WE HAVE HERE. NOW --

WE ARE GOING TO CONTRADICT THE STATUTE NOW. IF WE ARE GOING TO EXPAND THE RULE WHEN THE STATUTE ISN'T EXPAND, NOW WE HAVE TO EXPAND THAT ISSUE.

THERE IS TIME BETWEEN RULE AND THE STATUTE, IN EFFECT, AS FAR AS THIS IS ANECDOTAL, BUT WE KNOW THAT THIS THE LEGISLATURE HAS LOOKED AT THIS AND IS POSSIBLY GOING TO MAKING THOSE MODIFICATIONS, SO IT IS NOT LIKE THIS IS A CONTROVERSE THAT I NO ONE WANTS TO DEAL WITH OR A CONTROVERSY WHERE EVERYBODY IS AT LOGGERHEADS. IT IS EVERYBODY LOOKING FOR A SOLUTION.

IN THE MEAN TIME?

IN THE MEANTIME --' WHEN THE LEGISLATURE MEETS AND -- IN THE MEANTIME --

WHEN THE LEGISLATURE MEETS AND DECIDES TO DO WHAT THE LEGISLATURE DECIDES TO DO.

THE LEGISLATURE HASN'T COME IN HERE AND FILED A BRIEF ON BEHALF OF THE LEGISLATURE AND SAYING THAT WE SHOULD NOT EXTEND THIS BECAUSE WE BELIEVE THIS IS SOMETHING WITHIN OUR PURVIEW. YOU DON'T HAVE ANYTHING BEFORE YOU, AND THAT IS MY REAL COMPLAINT ABOUT THIS WHOLE MATTER WITH REGARD TO NO ONE IS OPPOSED TO THIS COURT EXTENDING THE RULE FOR A YEAR PERIOD OF TIME AND LET'S SEE WHAT HAPPENS. WHAT WE ARE HERE --.

WHAT ABOUT --

OKAY. THE ISSUE --

-- PRESERVATION OF EVIDENCE?

THE ISSUE HAS COME ABOUT BECAUSE WE HAD AN ALL WRITS FILED BEFORE THE COURT AND THE STATE ASKED THAT YOU HOLD THAT IN ABEYANCE, BECAUSE IF YOU EXTEND THE RULE THEN WITH REGARD TO THE IMMEDIACY OF RESOLVING IT IS DISSIPATED.

HOW IS IT DISSIPATEED? THE STATUTE --

WE ARE TALKING ABOUT TRYING TO KNOCK DOWN STRAW MEN. WE HAVE NOT HAD ONE BIT OF EVIDENCE, NOT ONE ANECDOTAL STORY BEFORE THIS COURT, THAT REFLECTS THAT ANY

EVIDENCE HAS BEEN DESTROYED, THAT ANYBODY IS OUT THERE. YOU HEARD MR. HARPER SAY THERE ARE THREE STATE ATTORNEYS WHO HAVE COME UP AND SAID IN PUBLIC THAT, THEY WILL CONTINUE TO ALLOW, IF SOMEBODY COMES FORWARD, THEY WILL CONTINUE TO ALLOW DNA TESTING TO HAPPEN. I SUSPECT THAT IS ACROSS THE BROAD SPAN. YOU HAVE CLERKS OFFICES THAT HAVE SCHEDULING, RETENTION SCHEDULES. THAT HAS ALWAYS EXISTED THIS. IS NOT LIKE OCTOBER 1 SUDDENLY BECAME A DAY OF INFAMY.

SO THE STATE'S SUGGESTION IS THAT, REALLY, THIS IS A FAIRLY SIMPLE ISSUE, AND THAT IS THAT, IF THE COURT, BY AMENDING THE RULE, EXTENDS THE PERIOD FOR A YEAR, THAT HAND-IN-HAND WITH THAT, WILL BE THE OBLIGATION TO PRESERVE THE EVIDENCE, AS THAT HAS GONE ALONG WITH THE RULE AND THE STATUTE BEFORE.

I THINK THAT IS INHERENT.

THAT IS JUST A STRAIGHTFORWARD EXTEND THE PERIOD OF TIME FOR A YEAR, AND THAT IMPLICIT IN THAT WILL BE THE EXTENSION OF THE REQUIREMENT TO PRESERVE THE EVIDENCE.

I WOULD HOPE SO. I WOULD THINK THAT WOULD BE A FAIR ASSESSMENT.

THAT IS REALLY A PRACTICAL SOLUTION.

ISN'T THAT REALLY WHAT WE ARE AFTER HERE?

I JUST WANT TO CLARIFY, WOULD THAT BE PROPER STATEMENT?

I THINK THAT WOULD AND PROPER STATEMENT, YOUR HONOR. AND TO THE EXTENT THERE ARE CLERKS OUT THERE WHO MAY NOT HAVE, I THINK THIS COURT HAS AUTHORITY WITH WHERE THE EVIDENCE MAY LIE, WITH THE STATE ATTORNEYS OFFICE, RARELY IT IS THE STATE ATTORNEYS OFFICE THAT PHYSICALLY HAS SOME OF THE EVIDENCE. HAD THEY MAY. IT IS SHERIFFS OFFICES. THE STATE IS NOT REALLY OPPOSED TO THE PROPOSAL BY JUDGE EATON, WITH REGARD TO ADDING TO THE RULE WITH REGARD TO A NOTIFICATION REQUIREMENT. I DON'T THINK THAT IS A PARTICULARLY OWEDEIOUS TASK. I THINK IT HAS TO HAVE SOME CONSIDERATION, THOUGH, WITH REGARD TO WHAT CASES, AND I THINK THAT THE SUGGESTION BY JUDGE EATON AND HIS STEERING COMMITTEE, AND THE STEERING COMMITTEE, THAT THESE CASES BE IDENTIFIED, BECAUSE THAT IS, THAT IS THE ISSUE BEFORE THIS COURT! THERE, THE STATE HAS ARGUED THERE IS NO JURISDICTION, RESPECTFULLY, WITH REGARD TO MANDAMUS AND TO ALL WRITS, BECAUSE THERE HAS NOT BEEN A SHOWING WITH REGARD TO A CASE BEFORE THE CASES BEFORE THE COURT. THE THREE DEFENDANTS WHO HAVE NAMED, AND THE INNOCENCE PROJECT, THE INNOCENCE PROJECT HAS CLEARLY IDENTIFIED IN THEIR AFFIDAVITS, THAT THEY ARE NOT COUNSELS OF RECORD FOR THESE INDIVIDUALS, THEY HAVE NOT IDENTIFIED THESE PEOPLE AND FRANKLY I AM VERY CONCERNED AND I THINK THE ATTORNEY GENERAL IS VERY CONCERNED WITH THE FACT THAT, WHILE THEY MAY BE TRYING TO CULL THROUGH THIS PROCESS AND FIND THOSE INDIVIDUALS WHO MAY OR MAY NOT HAVE AN INNOCENCE CLAIM, THIS IS NOT THE RIGHT OF THE INNOCENCE PROJECT. THIS IS THE RIGHT OF AN INDIVIDUAL. AND SO THOSE INDIVIDUALS WHO MAY NOT BE ON THEIR LIST TO FILE PLEADINGS --

WHAT IS IT, WHAT IS IT THAT YOU OPPOSE THAT IS BEING PROPOSED BY THE VARIOUS PROPONENTS?

I AM NOT REALLY, I AM NOT ADVERSE TO THE YEAR RULE.

BUT ANY, SO WHAT IS THE PART THAT YOU ARE NOT OPPOSED TO THE --

EXCUSE ME.

YOU JUST FEEL THAT THE TENOR OF THIS IS MAKING IT SOUND LIKE THERE IS SOME BAD FAITH GOING ON AND YOU WANT TO CLEAR THAT UP.

ABSOLUTELY, THERE IS BAD FAITH ON THE PART OF THE STATE THAT CERTAINLY EVIDENCE IS BEING DESTROYED. IT HAS BEEN REPORTED ALL OVER THE COUNTRY THAT FLORIDA, OCTOBER 1, IS GOING TO DESTROY ALL OF THE EVIDENCE AND ALL OF THE INNOCENT PEOPLE WERE GOING TO GO BYE-BYE. WHEN YOU THINK ABOUT IT, THE EXAMPLES THAT THEY USE, THOSE WERE INDIVIDUALS WHO WERE DETERMINED TO BE INNOCENT OR NOT GUILTY BECAUSE OF DNA PROOF, BUT THEY DIDN'T HAVE THE RULE. THEY DID BEFORE THE RULE OCCURRED. THEY DIDN'T NEED THE RULE TO DEMONSTRATE THEIR CLAIMS. AND SO THE STATE IS REALLY TRYING TO SUGGEST TO THE COURT THAT WE HAVE GOT THIS, ALL THIS DUST CIRCLING, AND I THINK WHAT WE REALLY NEED TO DO IS SIT BACK AND THINK ABOUT WHAT WE REALLY WANT TO DO. WHAT WE REALLY WANT TO DO IS APPARENTLY GIVE AN OPPORTUNITY, BUT I THINK --

LET ME SEE IF I CAN TRY TO UNDERSTAND. WHAT THE STATE IS PROPOSING IS THAT THE RULE BE EXTENDED, AND THAT WAY,, AND THAT THE WRIT BE DISMISSED WITHOUT PREJUDICE, SO TO SPEAK.

YES, YOUR HONOR.

AND THAT, THEN, THAT WILL GIVE EVERYONE AN OPPORTUNITY TO SEE WHAT THE LEGISLATURE DOES.

BUT IT ALSO GIVES AN OPPORTUNITY FOR THE INDIVIDUAL DEFENDANTS TO GO FORWARD. I WOULD HOPE THAT THERE WILL BE SOME ACTION ON THE PART OF THE INNOCENCE PROJECT AND THE OTHER PROJECTS THAT ARE ENTERTAINING THIS, TO CONTACT THOSE INDIVIDUALS AND DECIDE IF THEY WANT THOSE INDIVIDUALS TO LITIGATE AND NOT HAVE TO WAIT UNTIL THEIR CASE IS BEING INVESTIGATED.

IN A NORMAL POSTCONVICTION MOTION, THERE, CERTAINLY THERE ARE PLEADING REQUIREMENTS, BUT THERE ARE LESS, THERE ARE MORE GENERAL, AND MAYBE ON REBUTTAL, I COULD HEAR THIS. THE DNA RULE REALLY REQUIRES SOME VERY, VERY, VERY SPECIFIC ALLEGATIONS THAT, REALLY, DOES REQUIRE WHOEVER IS BRINGING THIS TO DO A LOT OF GROUNDWORK BEFORE, YOU KNOW, RATHER THAN USE THE, YOU KNOW, THE POSTCONVICTION PROCEEDINGS, SORT OF AS A FISHING EXPEDITION. ION IF THAT IS FROM THE STATE'S POINT OF VIEW, WHETHER THAT VERY RIGID PLEADING REQUIREMENT IS CAUSING, YOU KNOW, THE PETITIONERS NOT TO FEEL THEY CAN FILE IT UNTIL ALL OF THOSE DUCKS ARE IN A ROW. HAVE YOU --

I THINK THAT IS WHAT HAS HAPPENED HERE. I THINK THERE HAS BEEN A PROBLEM WITH PERCEPTION THAT JUST ONE GROUP OF INDIVIDUALS CAN DO THIS IN A MERITORIOUS WAY, AND THAT THEY WILL BE, THEY WILL PREVAIL. I MEAN, THAT SHOULD NOT BE THE STANDARD BY WHICH SOMEBODY GOES FORWARD, AND IF SOMEBODY ASSERTS THAT THEY HAVE AN INNOCENCE OR THEY ARE INNOCENT AND THEY HAVE EVIDENCE TO DO THAT, AND I DON'T THINK, FRANKLY I FIND IT VERY DISCONCERTING THAT SOMEBODY WOULD SUGGEST THAT THESE PLEADING REQUIREMENTS ARE REALLY TASKFUL, BECAUSE IF YOU LOOK AT THEM, THEY ARE JUST SAYING "MAKES ASSERTIONS". WE HAVE GOT CASE LAW OUT THERE IN THE DISTRICT COURTS WITH REGARD TO ONE OF THE ISSUES IS THAT IDENTITY IS AN ISSUE, AND WE HAVE CASE LAW THAT SHOWS WHERE THERE WAS SOME CONFUSION AND THE COURT ACQUIESCED AND SAID MAYBE IS THERE IDENT OR MAYBE THERE IS NOT BUT WE ARE GOING TO OPEN IT UP AND ALLOW THE TESTING, SO I THINK WE OUGHT TO ALLOW THE CIRCUIT COURTS THAT ARE REALLY GOING TO BE HANDLING THIS MATTER TO SORT THROUGH THIS. THAT IS THE WHOLE POINT, AND THUS FAR WE HAVE NOT SEEN THE KIND OF DISRUPTION THAT HAS BEEN BROUGHT TO THIS COURT'S ATTENTION. I, AS I SAID, I AM VERY CONCERNED THAT THE TIME FRAME THAT IT TAKES TO

INVESTIGATE, IT IS NOT THAT THEY HAVE TO PROVE THE INDIVIDUAL INNOCENT WHEN THEY GO TO THE CIRCUIT JUDGE TO ASK FOR DNA TESTING. ALL THEY HAVE TO DO IS MAKE A FINDING OR A SHOWING THAT IT COMPLIES WITH 853, AND THEY HAVE NOT DONE THAT. ALL THEY HAVE DONE IS GOTTEN THE BALL ROLLING, BUT I THINK THAT PERHAPS WE, THEY NEED TO RETHINK, AND THIS IS MY PERSONAL OPINION NOW, NOT THE ATTORNEY GENERAL'S OPINION, BUT IT SEEMS TO ME THEY NEED RETHINK HOW THEY HAVE APPROACHED TRYING TO GET THESE INDIVIDUALS REPRESENTED.

CHIEF JUSTICE: SO I THINK, IF I AM GETTING IT FROM THE STATE, IT IS SORT OF SAYING THAT THE PROCEDURE THAT IS IN PLACE, REALLY AIN'T BROKE, AND IF YOU EXTEND THAT PROCEDURE, FOR ANOTHER YEAR, THAT IT IS REALLY A FAIRLY STRAIGHTFORWARD WAY TO ADDRESS THIS.

I THINK THAT IT KIND OF, AS I SAID, SETTLES THE DUST A LITTLE BIT. IT PROVIDES THE OPPORTUNITY FOR THE PRISON PROJECT PEOPLE AND ALL OF THE PRO BONO INDIVIDUALS TO CONTINUE TO GO THROUGH THEIR PROCESSING. IT DOES NOT, IT DOES NOT, I MEAN, AGAIN, WE HAVE NOT, WE DON'T HAVE THAT EVIDENCE OUT THERE THAT SUDDENLY EVERYBODY IS HAVING A BONFIRE AT THE LOCAL COURTHOUSE.

THESE, I GUESS THE INNOCENCE PROJECT IS DOING THIS PRO BONO, BUT THE STATUTE HAD PROVIDED FOR A LAWYER. IS THERE A COMPENSATION ASPECT?

YOU KNOW, THERE IS, AND THAT IS ANOTHER ISSUE THAT I THINK JUSTICE WELLS HAS BROUGHT THROUGH HIS QUESTIONING, AND THAT IS, YOU KNOW, THE STATUTE ITSELF, AND IF, IN FACT, THERE WILL BE CONTINUING FUNDING FOR THE DNA TESTING. I THINK THAT YOU HAVE --

I HIM ASKING ABOUT THE ATTORNEY, BECAUSE IF, YOU -- I AM ASKING ABOUT THE ATTORNEY, BECAUSE IF, YOU KNOW, IN A NON-DEATH CASE THERE WOULDN'T BE AN AUTOMATIC RIGHT TO AN ATTORNEY. THE STATUTE PROVIDES FOR ONE.

YOU MEAN A CAPITAL CASE?

NONCAPITAL CASE. DOESN'T THE STATUTE PROVIDE FOR ATTORNEYS?

I THINK IT IS AN ISSUE, LIKE WITH REGARD TO A COLORFUL SHOWING, THE COURT HAS THE INHERENT AUTHORITY TO APPOINT COUNSEL. I DON'T RECALL HAVING A SPECIFIC PROVISION AND I MAY BE VERY WRONG WITH REGARD TO THAT, BUT THE POINT, AGAIN, IS THAT THIS CLAIM IS NOT ANY DIFFERENT. I MEAN, WE MAY WANT TO THINK IT BECAUSE WE LOOK AT TERMS OF INNOCENCE AND WE SAY OH, MY GOSH, THAT IS AN IMPORTANT ISSUE. WE DON'T WANT ANY INNOCENT PERSON INCARCERATED, BUT THE BOTTOM LINE IS THIS IS LIKE ANY OTHER CLAIM. AN INDIVIDUAL WHO SAYS MY CONVICTION HAS WRONGFULLY OCCURRED, FOR WHATEVER REASON SAYING I AM INNOCENT OR THEY DIDN'T PROVE MY GUILTY, SO IT COVERS THE WHOLE WATERFRONT WITH REGARD TO CLAIMS THAT ARE PRESENTED BEFORE THE COURT. THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH. ' I WILL TRY TO BE AS BRIEF AS I CAN ON REBUTTAL BUT I WOULD REMISS IF I DIDN'T RECOGNIZE THE EFFORTS OF THE CRIMINAL DEFENSE LAWYERS.

CHIEF JUSTICE: YOU HAD A MINUTE AND THAT MINUTE IS GONE. YOU JUST HAD A COUPLE OF MINUTES. WHAT, IT SEEMS TO ME IN A SENSE, AND OF COURSE THIS COURT HAS TO EVALUATE ALL OF THIS, BUT WHAT IS IT THAT THE STATE HAS NOT AGREED TO? IN TERMS OF VINDICATING, HASN'T MS. SNURKOWSKI REALLY LAID OUT A VERY CANDID AND PRACTICAL RESOLUTION TO THIS ISSUE FOR NOW?

I BELIEVE SHE HAS, YOUR HONOR. THE ONLY SLIGHT WRINKLE IS THIS ISSUE OF 925.11, BECAUSE WE DO KNOW OF AT LEAST ONE CASE WHERE 3853 WAS FILED, GRANTED, AND THE EVIDENCE WAS DESTROYED AT THAT POINT. WE ARE NOT SUGGESTING A BONFIRE OR ANYTHING. WE JUST WANT

TO BE SAFE, TO BE SURE THIS COURT CAN EXERCISE ITS JURISDICTION, BUT IF THEY ARE IN AGREEMENT AND THERE IS NO DISAGREEMENT --

I THINK THEY ARE SAYING IT IS IMPLICIT.

I APPRECIATE COUNSEL'S CANDOR ON THAT, AND UNLESS THERE ARE FURTHER QUESTIONS, I HAVE NOTHING ELSE.

CHIEF JUSTICE: THANK YOU ALL VERY MUCH. THE COURT IS GOING TO STAND IN RECESS FOR FIVE MINUTES, BEFORE WE HEAR THE NEXT CASE.

MARSHAL: PLEASE RISE.