>> PLEASE RISE.
HEAR YE HEAR YE HEAR YE.
THE SUPREME COURT OF FLORIDA IS
NOW IN SESSION.
ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR, GIVE ATTENTION, AND YOU
SHALL BE HEARD.
GOD SAVE THESE UNITED STATES,
THIS GREAT STATE OF FLORIDA AND
THIS HONORABLE COURT.
>> LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
PLEASE BE SEATED.
>> GOOD MORNING AND WELCOME TO
THE FLORIDA SUPREME COURT.
THE FIRST CASE ON OUR DOCKET
TODAY IS RIGTERINK VERSUS THE
STATE OF FLORIDA.
>> I'M DAVID PERRY AND I
REPRESENT MR. RIGTERINK IN
REGARDS TO THE ISSUES THAT ARE
BEFORE THE COURT TODAY.
AND I THINK THAT I'D LIKE TO
START OUT, BY INDICATING THAT I
BELIEVE THAT THIS COURT HAS
ALREADY REACHED THE DECISION
THAT IS APPROPRIATE IN THIS
MATTER, THAT THIS COURT WHEN IT
FIRST HEARD THE CASE, THAT
POWELL AND RIGTERINK MADE A
DECISION BASED ITSELF IN STATE
LAW AND OUR CONSTITUTION OF THE
STATE OF FLORIDA AS OPPOSED TO
RELYING UPON AND MAKING A
DETERMINATION THAT YOU MUST
FOLLOW THE PRECEDENT OF MIRANDA

WITHIN THE U.S. SUPREME COURT.
>> MAY I ASK A QUESTION ALONG THOSE LINES.
>> CERTAINLY.
>> IF MIRANDA IS NOT THE PARAMETER WITHIN WHICH THE STATE PROVISION IS TO BE VIEWED, WHAT THIS IS PARAMETER?
AS I RETRACE IT AGAIN AND GO OVER AND AGAIN AND SAY WHAT DOES IT MEAN DOES IT NOT TAKE US TO MIRANDA AS THAT IS WHAT THE CLAUSE MEANS.
>> I THINK WHAT I READ IN TRAILER, AND WHAT THE COURT HAS DONE IN TRACING ITS HISTORY BACK AS TO HOW WE REACH CONCLUSIONS IN REGARDS TO TERMING WHEN, IF THE STATE CONSTITUTIONAL ISSUE VERSUS THE FEDERAL CONSTITUTIONAL ISSUE AND HOW WE PUT THOSE TOGETHER TOGETHER, WHAT THE TRAILER COURT SAID AND THIS COURT SAID WAS THAT...
>> LANGUAGE IS DIFFERENT THAN THE LANGUAGE WE HAVE, IN RIGTERINK AND IN POWELL AND I THINK THAT IS WHY, WHEN THE COURT LOOKED AT THAT, AND, LOOKED AT TRAILER, SAID, THAT UNDER ARTICLE ONE, SECTION 9 OF THE CONSTITUTION, THAT WE BELIEVE THAT THE -- THAT THE ACTUAL WARNINGS ARE GIVING IN RIGTERINK AND THE IDEA THAT YOU WOULD -- SAY TO THE DEFENDANT,

YOU HAVE THE RIGHT TO A LAWYER,
BEFORE ANY QUESTIONING.
>> ISN'T THIS CASE, EVEN UNDER
THE UNITED STATES, PRECEDENT SET
BY POWELL, ISN'T THIS CASE
DISTINGUISHABLE FROM POWELL,
THERE IS NO CATCH-ALL PHRASE AND
I APPRECIATE AND I THINK WE DO
HAVE AN INDEPENDENT RIGHT, IN
FLORIDA, AND I APPRECIATES THAT
WE WILL HAVE TO FIGURE OUT
WHERE, YOU KNOW, WHAT ARE THE
DIFFERENCES.
BUT, AS FAR AS FOR THE UNITED
STATES CONSTITUTION, DO YOU READ
POWELL THERE IS NO RIGHT TO AN
ATTORNEY DURING QUESTIONING.
>> WHAT POWELL IS SAYING IS,
THEY DO THEIR OWN INTERPRETATION
OF WHAT THE WARNINGS IN POWELL
ARE, AND THEY EXTEND IT, BUT,
BASICALLY, SUGGEST THAT BY
GIVING THE WARNINGS THE WAY THEY
DID IN POWELL IS ENOUGH TO
EXPLAIN TO A DEFENDANT THAT YOU
HAVE THE RIGHT THROUGHOUT, THAT
IT IS LIKE THE THRESHOLD --
>> I'M ASKING YOU, THEM, UNDER
THE UNITED STATES CONSTITUTION,
THERE IS A RIGHT TO A LAWYER,
BOTH BEFORE AND TO -- THROUGHOUT
QUESTIONING, CORRECT.
>> I BELIEVE THAT IS WHAT TOLD
US IN POWELL.
>> THAT IS WHAT, WHAT THEY'RE
GREATER RIGHTS UNDER THE FLORIDA

CONSTITUTION.
>> THE GREATER RIGHTS ARE,
WITHIN ARTICLE 1, SECTION 9, HOW
IT HAS BEEN INTERPRETED, IS THE
DISCUSSION DUE PROCESS IN
FLORIDA, MEANS THAT THERE HAS TO
BE A -- THEY HAVE TO BE ABLE AND
WE CAN DECIDE HERE WHETHER OR
NOT WE THINK THAT A PARTICULAR
WARNING WAS GIVEN IN A CASE, NOT
ONLY CONVEYS TO A DEFENDANT,
THAT HE HAS THE RIGHT BEFORE,
BUT, ALSO, DURING AND I --
>> DOES THAT MEAN, UNDER THE
FLORIDA CONSTITUTION, DO YOU
HAVE TO EXPLICITLY TELL THE
DEFENDANT THAT -- THAT HE OR SHE
HAS THE RIGHT TO HAVE AN
ATTORNEY, DURING QUESTIONING?
>> WELL, I THINK THAT WHAT...
THE COURT HAS INDICATED,
PREVIOUSLY IN THOSE CASES IS
THAT THERE HAS TO BE A CLEAR
UNDERSTANDING FROM THE WARNING
THAT IS GIVEN, THAT THAT IN FACT
IS THE CASE AND I THINK, IF YOU
GO -- BOTTOM LINE IS, TO ME,
WHEN YOU LOOK AT THE CASE, AND I
AGREE WITH YOUR HONOR WHEN --
WHEN YOU SUGGESTED RIGTERINK IS
DIFFERENT.
BECAUSE, IT IS -- WHEN YOU LOOK
AT THOSE ACTUAL WARNINGS, THE
RIGTERINK WARNINGS ARE WORSE
THAN THE WARNINGS --
>> YOU HAVE NOT ARGUED THAT THE

WARNING AT ISSUE HERE, VIOLATES FEDERAL LAW, HAVE YOU?
>> NO, I HAVE NOT.
>> BUT YOU HAVE EFFECTIVELY CONCEDED THAT THE WARNING HERE IS CONSISTENT WITH FEDERAL LAW. ISN'T THAT CORRECT?
>> WELL, I... I GUESS THAT WOULD BE CORRECT.
AND IT MEETS THE DECISION THAT THE SUPREME COURT JUST MADE IN POWELL, AND OF COURSE, MY CASE IN REGARDS TO THAT -- HISTORY OF THAT IS I WAS --
>> BUT, OKAY.
>> STATE LAW WAS NOT SATISFIED AS WELL, BECAUSE, WHEN YOU READ THE RIGTERINK POLICY, IT IS CLEAR THAT THIS COURT WAS DOING THE ANALYSIS, BASED UPON STATE LAW FIRST, WHICH IS WHAT I THINK TRAILER REQUIRED AND WHAT THE COURT HAS DONE IN THE PAST, WHICH IS, LOOK AT WHETHER OR NOT IT MEETS MUSTER UNDER STATE LAW.
>> BUT THE RIGHT OF ACCESS TO COUNSEL, YOU WOULD CONCEDE, IS THE SAME UNDER FEDERAL LAW, AS IT IS UNDER STATE LAW, CORRECT?
>> CORRECT.
>> SO, THE QUESTION HERE IS WHETHER THESE PARTICULAR WARNINGS, ADEQUATELY CONVEY OR REASONABLY CONVEY TO THE DEFENDANT OR SUSPECT THOSE RIGHTS.

ISN'T THAT CORRECT?
>> CORRECT.
>> WHAT YOU ARE SAYING IS, ONE
-- THERE IS A FEDERAL VIEW, OF
WHAT -- WHETHER THESE ARE
ADEQUATE TO CONVEY THE SAME
RIGHTS, AND THEN THERE IS A
DISTINCT STATE VIEW, OF WHETHER
THE WARNINGS ARE ADEQUATE TO
CONVEY THE STATEMENT RIGHTS.
-- SAME RIGHTS AND IT SEEMS TO
ME TO BE STRANGE FOR US TO TAKE
THE POSITION WHILE THE U.S.
SUPREME COURT DECIDED CERTAIN
WARNINGS WOULD ADEQUATELY CONVEY
THE RIGHT OF ACCESS TO COUNSEL,
BUT WE'D DECIDE THAT THEY DON'T
ADEQUATELY CONVEY, THE RIGHT OF
ACCESS TO COUNSEL.
>> I UNDERSTAND THAT.
EXCEPT THE SUPREME COURT
THEMSELVES, SAID IT WAS OKAY TO
DO THAT AND I THINK WE HAVE --
>> I UNDERSTAND, I UNDERSTAND
THAT.
>> AND, I'M NOT --
>> I'M NOT SAYING WE DON'T HAVE
THE POWER TO DO THAT.
AND, THE U.S. SUPREME COURT DOES
NOT SUGGEST WE DON'T HAVE THE
POWER TO DO THAT.
WHAT MY QUESTION IS, IT MAKES
SENSE FOR US TO DO THAT?
>> I THINK IT MAKES SENSE TO DO
THAT, BECAUSE, WHEN YOU LOOK AT
THE WARNINGS THAT ARE GIVEN,

AND, WHAT -- WHAT A DEFENDANT IS FACED WITH, ONE OF THE PRIMARY GOALS, OBVIOUSLY, OF THIS COURT, AND OF THE STATE IS TO MAKE SURE THAT BEFORE WE'RE GOING TO INTRODUCE EVIDENCE THAT COULD OBVIOUSLY END IN A HORRIBLE RESULT, WHICH IN A CASE LIKE THIS, COULD END UP IN THE DEATH OF THE DEFENDANT, WE WANT TO MAKE SURE THAT WHAT IS CONVEYED TO A DEFENDANT IS SOMETHING THAT CLEARLY STATES TO THEM, SO THEY CLEARLY UNDERSTAND WHAT THEIR RIGHTS ARE.
UNDER THE FLORIDA CONSTITUTION.
>> CAN POWELL BE REASONABLY INTERPRETED TO SAY THAT THE RIGHTS THAT WERE GIVEN ARE ADEQUATE BECAUSE OF THE CATCH-ALL?
OR DO -- DOES POWELL BASICALLY SAY THAT EVEN WITHOUT THE CATCH-ALL THE WARNINGS WOULD HAVE... [INAUDIBLE].
>> I THINK WHAT THE COURT SEEMS TO BE INTERPRETING IN REGARDS TO THAT, IS THAT BASED UPON THE STATEMENT THAT IS MADE IN POWELL, IN THE WARNINGS, THAT THAT COULD CONVEY TO SOMEBODY THAT, BY SAYING YOU HAVE THE RIGHT --
>> WHEN YOU SAY STATEMENT YOU ARE TALKING ABOUT THE FINAL CATCH-ALL STATEMENT.

>> YES.
>> THESE CAN BE EXERCISED AT ANY TIME.
>> BUT, TRUE, BUT THEY SEEM TO EVEN INDICATE THAT THE ORIGINAL WARNING, ITSELF, THE FIRST WARNING --
>> FIRST THREE --
>> YES, ARE NOT, BECAUSE OF THEIR SUGGESTION THAT THAT CONVEYS TO A PERSON THAT IT IS THE START OF, LOOKS LIKE BEFORE QUESTIONING BEGINS, IS AN INTERPRETATION THAT MEANS, IF IT IS BEFORE, THAT MEANS IT IS ALL WISE.
>> IF THAT IS THE CASE, WHAT IS YOUR ARGUMENT?
BECAUSE YOU HAVE THE FIRST THREE WARNINGS, BASICALLY, THAT WOULD GIVE AN -- WERE GIVEN IN POWELL, IN THIS CASE AND WHAT IS YOUR ARGUMENT?
>> WELL, EXEMPT, TWO THINGS, ONE IS THAT, IS THAT WHAT THAT IS DOING, IS MAKING THEIR OWN INDIVIDUAL INTERPRETATION, OF WORDING.
ALL RIGHT, WHICH THE COURT MADE THE DIFFERENT INTERPRETATION OF, ALREADY IN PRIOR, TO THAT DECISION BEING MADE AND I BELIEVE IT IS DIFFERENT, BECAUSE, POWELL DOES HAVE THE CATCH-ALL AND HAS, LIKE -- AND THEY TALK ABOUT THAT, WHEN YOU

FINISH THE WARNINGS IN POWELL,
POWELL ACTUALLY SAYS THAT
KEEPING THESE RIGHTS IN MIND,
LANGUAGE, WHICH IS -- SUGGESTS
TO THE DEFENDANT THAT THE RIGHTS
ARE STILL ENFORCED, ALL THE WAY
THROUGH THE PROCEEDING,
RIGTERINK DOESN'T HAVE THAT AT
ALL, IN FACT, IT IS ALMOST THE
POP SIT, IF YOU THINK ABOUT IT.
RIGTERINK SAYS IN THOSE
WARNINGS, YOU HAVE THE RIGHT
BEFORE AND THE NEXT AND THE LAST
STATEMENT IS, IF YOU NEED THE
ASSISTANCE OF COUNSEL ONE CAN BE
APPOINTED BY THE COURT.
OKAY?
AND, JUST THINK ABOUT THAT, IF
YOU ARE A DEFENDANT, FACING THE
SCENARIO, I CAN DECIDE WHETHER I
WANT TO TALK TO YOU BEFORE I
START TALKING TO YOU BUT IF I
WANT THE ASSISTANCE OF COUNSEL I
HAVE TO WAIT UNTIL I CAN BE
BEFORE A COURT, IN ORDER TO DO
THAT.
BECAUSE, IF I CAN'T AFFORD MY
OWN LAWYER.
BECAUSE THE COURT HAS TO APPOINT
ME A LAWYER, RIGHT?
AND YOU ARE SITTING THERE IN A
POLICE DEPARTMENT, WITH LAW
ENFORCEMENT, AT THAT TIME, SO,
OBVIOUSLY, IT IS ALMOST LIKE IT
SEPARATES IT EVEN FURTHER.
EITHER YOU DECIDE NOW YOU WILL

TALK OR DON'T LATER AND I THINK
THE WAY THE U.S. SUPREME COURT
MADE THE DETERMINATION IN POWELL
WHERE THE WORDING WAS DIFFERENT,
IS THAT IT DID USE BOTH.
USED THE ORIGINAL STATEMENT,
THAT YOU CAN TALK TO SOMEBODY
BEFORE BUT ALSO USED THE
LANGUAGE AFTER, WHICH INCLUDED
THE FACT THAT THERE WAS THE
CATCH-ALL PHRASE.
>> BASED ON YOUR ARGUMENT, HERE,
THAT -- THE WAY YOU PRESENTED
THE CASE, IF WE ACCEPT YOUR
ARGUMENT, AND YOU PREVAIL HERE,
WOULDN'T IT BE A LOGICAL
CONSEQUENCE OF THAT THAT WE'D
ALSO MAINTAIN THE REVERSAL IN
POWELL?
>> YES.
>> THAT'S WHAT I THOUGHT.
>> YES.
I THINK IT SHOULD.
I THINK IT SHOULD APPLY TO BOTH
CASES, BECAUSE I BELIEVE THAT
THIS COURT -- IN THAT YOUR
PREVIOUS DECISION IN BOTH CASES
MADE IT VERY, VERY CLEAR.
>> THE QUESTION APPLIES -- WAIT
A MINUTE.
YOU ANSWERED HIS QUESTION YES.
AND THEN YOU SAY IT SHOULD APPLY
TO BOTH CASES.
WHAT SHOULD APPLY.
>> THERE SHOULD BE A REVERSAL IN
BOTH CASES AND THE COURT SHOULD

DETERMINE THE WARNINGS IN POWELL
ALSO WERE NOT SUFFICIENT.
>> IS THERE ANY DIFFERENCES IN
THE LANGUAGE THAT ARTICLE ONE,
SECTIONS 9 AND THE 5tH AMENDMENT
OF THE CONSTITUTION...
[INAUDIBLE]?
>> I BELIEVE THERE ARE --
>> IS THAT WHAT YOU ARE RELYING
ON, DIFFERENT LANGUAGE.
>> >>, WHAT I'M RELYING ON IS
THE FACT THAT THIS COURT
HISTORICALLY SINCE TRAILER USED
ITS OWN REASONING IN DETERMINING
THAT WE'RE GOING TO SET THE
FLOOR WITH THE FEDERAL LAW, AND
WE'RE GOING TO SET THE CEILING
WITH STATE LAW.
>> WELL, I UNDERSTAND THE
CONCEPT, BUT, MANY TIMES WHEN
THAT HAPPENS, ACTUALLY THERE ARE
DIFFERENCES IN THE LANGUAGE OF
THE CONSTITUTION.
I DON'T SEE THAT.
>> WILL, THERE IS NOT -- I MEAN,
NO, BUT WHEN YOU LOOK AT THE
INTERPRETATION OF WHAT THE COURT
HAS INTERPRETED, ARTICLE ONE,
SECTION 9, I THINK THROUGHOUT
HISTORY, AND WHEN YOU LOOK AT
THE CASES THE COURT HAS SEASON
SEEN SINCE THAT TIME, THERE IS
THE CASE THAT IS CITED BY US IN
HODGES, A SEPARATE ISSUE AND THE
COURT IS DETERMINING, IN THAT
CASE, WHETHER OR NOT PRE-ARREST

AND PRE-MIRANDA SILENCE CAN BE USED IN A CASE AND YOU KNOW THAT UNDER FEDERAL LAW THAT THERE ARE CERTAIN DEATH --... SILENCE THAT CAN BE ADMITTED, AND IT IS IMPORTANT HOW THE FEDERAL LAW IS INTERPRETED UNDER THE 5tH AND 6TH AMENDMENT AND HOW IT IS INTERPRETED IN FLORIDA IN REGARDS TO ARTICLE ONE, SECTION 9 AND THEY POINT OUT THOSE DIFFERENCES AND I THINK THIS COURT ALSO POINTED OUT THOSE DIFFERENCES IN MILLER WHEN YOU DECIDED THAT IN REGARDS TO DETERMINING THAT YOU CAN MAKE A DECISION BASED UPON FLORIDA LAW AND LOOK AT THAT FIRST AND TO LOOK AT ARTICLE ONE, SECTIONS NINE FIRST, BEFORE YOU MOVE ON TO THE FEDERAL CONSTITUTION, AND IF YOU DETERMINE UNDER OUR PRECEDENT AND UNDER THE ARTICLE ONE, SECTION 9 IN FLORIDA, THAT IT DOESN'T MEET OUR CONSTITUTIONAL STANDARD, THEN YOU DON'T GO ANY FURTHER OR NEED TO EVEN LOOK AT THE FEDERAL LAW AND THE CONSTITUTION, OF THE U.S.

>> WHY SHOULD A NOTICE IN YOUR VIEW THAT SATISFIES THE... [INAUDIBLE] WHAT SHOULD THE NOTICE SAY.

>> IT SHOULD BE WHAT ALMOST EVERY POLICE DEPARTMENT IN

FLORIDA CHANGED TO, I FIND THAT IRONIC AND THE COURT POINTS OUT IN ITS OPINION BEFORE THE U.S. SUPREME COURT, WHEN THE U.S. COURT IS TALKING ABOUT IT, THEY TALK ABOUT THE FACT THAT THE CHANGES HAVE BEEN MADE ALREADY. THAT EVEN IN FEDERAL INVESTIGATIONS, THEY HAVE CHANGED THE WARNINGS.
AND, ALMOST EVERY STATE COURT, THE WARNINGS HAVE BEEN CHANGED. THE DEFENDANT NEEDS TO BE ADVISED OF HIS RIGHT TO AN ATTORNEY BEFORE AND DURING QUESTIONING.
>> THAT IS NOT WHAT TRAILER SAYS.
>> NO, IT DIDN'T, THE HELP OF AN ATTORNEY AND THEY SAID THAT WAS ENOUGH, IF YOU LOOK AT THE PLAIN MEANING OF THAT, THAT THAT IS OKAY.
AND SO I GUESS PART OF IT IS --
>> TRAILER WAS WRONG.
>> NO!
BECAUSE IT IS DIFFERENT TO SAY HELP VERSUS, SAY, JUST BEFORE QUESTIONING.
AND, THEN, MOVE RIGHT ON -- AND IF YOU NEED A LAWYER, WE'LL HIRE ONE LATER.
THERE IS A BIG DIFFERENCE BETWEEN THOSE THINGS BECAUSE I THINK YOU CAN CLEARLY SAY -- YOU ARE ENTITLED TO A HELP OF A

LAWYER, OKAY?
THAT DOESN'T SUGGEST TO ME THAT
I HAVE TO MAKE THAT DECISION AT
ANY PARTICULAR TIME AND THAT IS
WHAT TRAILER TALKED ABOUT, IN
DECIDING THAT THAT WAS
SUFFICIENT UNDER ARTICLE ONE,
SECTION 9, SAYS TO MEET THERE A
FLORIDA'S CONSTITUTIONAL LAW AND
THE DIFFERENCES IS TO LIMIT IT
AND SAY IT IS JUST BEFORE.
IF IT IS DIFFERENT, PLAIN
MEANING AND THAT IS THE PROBLEM
WE HAVE.
I THINK GOING BACK TO TRAILER.
>> THAT IS THE ANALYSIS THE U.S.
SUPREME COURT ACCEPTED AS OKAY,
RIGHT?
THEY HAVE REJECTED THE NOTION OF
BEFORE AND DURING FOR PURPOSES
OF THE FEDERAL LAW, AT LEAST.
>> WELL, BUT WHAT THEY SAID WAS
THAT THEIR BELIEF THAT BEFORE
AND THEN HAVING THESE RIGHTS IN
MIND, CAN EXERCISE THEM AT ANY
TIME, WAS ENOUGH TO MEET IT.
WHICH ISN'T THE WARNINGS IN
RIGTERINK.
>> I LOOK BACK AT YOUR BRIEF.
ARE YOU THEN, MAKE SURE, ARE YOU
INTENDING TO CONCEDE THAT UNDER
FEDERAL LAW, THESE WARNINGS
WOULD BE ADEQUATE?
BECAUSE, I DON'T READ POWELL AS
CONTINGENT ON THE "BEFORE"
MEANING BEFORE, MEANING DURING,

BUT SAYS SPECIFICALLY IN COMBINATION, COMBINATION, THE TWO WARNINGS, CONTAIN POWELL'S RIGHT TO HAVE AN ATTORNEY PRESENT, NOT ONLY AT THE OUTSET BUT AT ALL TIMES.
THIS LACKS THE CATCH ALL PHRASE.
MY QUESTION IS, ON BEHALF OF MR. RIGTERINK, ARE YOU CONCEDING, HAVE YOU CONCEDED THAT UNDER FEDERAL LAW, AND POWELL, THE WARNINGS GIVEN HERE, WOULD BE ADEQUATE?
>> NO.
BECAUSE OF THE FACT THAT WE DON'T HAVE THE CATCH-ALL.
>> WHEN I ASKED YOU THAT SAME QUESTION EARLIER -- YOU SAID YES.
AND YOUR BRIEF SAYS WHAT YOUR BRIEF SAYS.
AND, YOUR BRIEF NEVER MAKES AN ARGUMENT THAT -- NOT ABOUT --
>> NOT ABOUT THAT, IT DOES NOT.
>> THAT THESE WARNINGS VIOLATE FEDERAL LAW.
>> CORRECT.
>> WE --
>> AND YOU WON'T FIND IT.
>> WE WILL FIND NO ARGUMENT.
YOU ASSERT THAT THE UNITED STATES SUPREME COURT HELD THAT THE WARNINGS IN THIS CASE, I GUESS MEANING RIGTERINK, SATISFIED MIRANDA AND WHERE YOU GOT THAT, I DON'T KNOW.

BECAUSE --
THAT IS WHAT YOU ASSERT.
>> I THINK THAT IS BASED ON THE FACT THAT WHEN THEY REACHED A DECISION IN RIGTERINK THEY RELIED JUST ON POWELL --
>> BUT IT WAS A VACA AND REMAND FOR RECONSIDERATION OF THE LINE-UP WHICH DOESN'T REALLY DECIDE ANYTHING OTHER THAN IT IS VACATED AND REAMENDED FOR RECONSIDERATION IN LIGHT OF.
>> THIS IS IMPORTANT, WE'RE HERE, AND, OTHERWISE, WE'RE GOING TO BE HERE SUBSEQUENTLY ON INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS BUT IT IS YOUR UNDERSTANDING WHEN THE U.S. SUPREME COURT VACATED THE POSITION THEY MADE IT A DETERMINATION THAT... MET THE REQUIREMENTS OF FEDERAL LAW?
>> NO.
AND --
>> THEN WHY IS -- CAN YOU TELL ME, THEN, WHY YOUR BRIEF CONCEDES SOMETHING THAT MAKES TO ME, NO SENSE?
IT DOESN'T HAVE THE CATCH-ALL PHRASE?
>> I GUESS WHAT I WAS TRYING TO DO IN THE BRIEF WAS BECAUSE OF THE FACT THAT BOTH CASES WENT TOGETHER, AND WERE RETURNED TOGETHER, THE IDEA THAT THEY MADE THEIR DECISION ON POWELL,

AND MADE THE ARGUMENTS IN ALL --
AND ALL THE REASONING IN POWELL
AND VACATED IT AND SENT
RIGTERINK BACK, TO ME, IT IS
IMPORTANT FOR THE COURT TO
UNDERSTAND THAT UNDER EITHER
CASE, THESE POSITIONS EXIST AND
THERE IS A DIFFERENCE IN
RIGTERINK AND... AND THAT IS KEY
AND THAT IS WHY MY ARGUMENT IS,
UNDER STATE LAW, THEY ARE FORCED
TO MAKE THE DECISION ALONE,
WITHOUT LOOKING AT WHETHER OR
NOT IT WOULD MEET THE WARNINGS
THAT WERE THERE BECAUSE THE
COURT DIDN'T TALK ABOUT IN
RIGTERINK WHETHER WARNINGS WERE
DIFFERENT AT ALL AND THE COURT
DIDN'T --
>> DIDN'T -- THERE WAS NO
DECISION.
>> RIGHT.
I KNOW, THERE WAS NO ANALYSIS,
BY THEM IN REGARDS TO THAT.
SO, HERE, THE COURT NOW CAN MAKE
A DECISION BASED UPON RIGTERINK,
IN THE WARNINGS THAT ARE GIVEN
THERE, WHETHER OR NOT THEY ARE
SUFFICIENT OR NOT AND I BELIEVE
--
>> CAN YOU ARTICULATE FOR ME,
PLEASE, THE DIFFERENCES BETWEEN
THE STANDARD WARNING REQUIRED
UNDER STATE LAW, AS YOU ARE
ASSERTING, AND THE STANDARD
REQUIRED UNDER FEDERAL LAW?

>> PARTICULARLY FROM THESE...
[INAUDIBLE].
>> WELL, UNDER FEDERAL LAW, WHAT THE COURT HAS DETERMINED IS THAT BY MAKING THE STATEMENT TO A DEFENDANT, THAT YOU ARE REQUIRED -- ENTITLED TO BE TOLD THAT BEFORE ANSWERING ANY QUESTIONS, YOU ARE ENTITLED TO REQUEST A LAWYER.
THAT -- AND AS LONG AS THE COURT THEN TELLS -- AS LONG AS LAW ENFORCEMENT TELLS THEM THAT AS A RESULT OF THAT, KEEPING THOSE RIGHTS IN MIND, THAT COVERS THE TWO AREAS BEFORE AND DURING.
AND, THAT THE DIFFERENCE IS THAT UNDER FLORIDA STATE LAW, I BELIEVE THAT WE HAVE REQUIRED THAT THERE BE ENOUGH LANGUAGE TO INDICATE THAT IT BE BOTH BEFORE AND DURING AND THAT --
>> WHAT IS THAT BASED ON.
>> THAT IS BASED ON ARTICLE ONE, SECTION NINE, I BELIEVE.
>> THE CONSTITUTION DOESN'T SAY THAT.
>> NO, I UNDERSTAND.
IT IS BASED UPON THE DECISIONS THAT HAVE BEEN RECEIVED IN TRAILER, BECAUSE I THINK THAT IS WHAT THE COURT TALKS ABOUT.
>> AND WHAT DECISION IS RELIED UPON IN TRAILER, TO MAKE THOSE STATEMENTS?
MIRANDA, ISN'T NIGHT RIGHT, IT

IS.
>> THIS IS WHAT TROUBLES ME.
I THINK THAT IT IS PRETTY CLEAR,
THAT TRAILER DESCRIBES SOMETHING
THAT IS INDEPENDENT, STANDS
ALONE, IN FLORIDA, AND AGAIN
DOESN'T TEP US WHAT THOSE
PARAMETERS ARE, AND...
[INAUDIBLE] AS I STARTED LOOKING
AT THIS, AND I SAY, OKAY, WE
HAVE THE SEPARATE RIGHT BUT HOW
IS IT DEFINED?
WHAT DO YOU HAVE TO DO AND THAT
CASE TELLS ME I HAVE TO LOOK AT
MIRANDA, MIRANDA USES... AS FAR
AS THIS DISCUSSION, U.S. SUPREME
COURT, AND THAT INTERPRETATION
OF MIRANDA, THEIR INTERPRETATION
DOESN'T REQUIRE THOSE SPECIFIC
WORDS, THEY CAN BE SOME OTHER --
CAN TAKE SOME OTHER STATEMENT,
CORRECT.
>> CORRECT.
>> SO THAT IS WHERE I AM
STRUGGLING, IS TRYING SAY, WELL,
WE ARE SAYING THAT IT IS
SEPARATE AND INDEPENDENT, YET WE
ARE PUTTING IT INTO PARAMETERS,
BACK TO MY FIRST QUESTION, WE'RE
SAYING THE PARAMETERS, WHERE
DOES IT COME FROM?
COMES FROM MIRANDA.
DOES THAT MEAN ONLY AT THE TIME
TRAILER WAS DECIDED OR DOES THAT
MEAN OTHER CASES IN THE HISTORY
OF MIRANDA AS THIS APPLIES AT

THE FEDERAL LEVEL?
DO YOU SEE THE --
>> YES, SIR.
>> WHAT I'M TRYING TO UNDERSTAND IS, ARTICULATION OF WHAT IS DIFFERENT.
AND IT IS DIFFICULT.
I, I MEAN, THAT IS...
>> [INAUDIBLE].
>> YOU CAN PROCEED.
>> THANK YOU.
>> OKAY.
>> WELL, IT IS DIFFICULT TO DEFINE, BECAUSE, THERE HAS BEEN, YOU KNOW... FLORIDA APPEARS TO CONSISTENTLY SINCE TRAILER, WITH CASES AND EVEN BEFORE THAT TRIED TO MAKE A DETERMINATION TO ENSURE THAT AN INDIVIDUAL UNDERSTANDS COMPLETELY WHAT THOSE RIGHTS ARE AND I THINK WE HAVE, YOU KNOW, THE PLAIN LANGUAGE OF MIRANDA, AND, HOW IT TALKS ABOUT IT, BUT THE U.S. SUPREME COURT IS -- HAS SAID HERE'S THE FLOOD, WE ARE LAYING IT FOR YOU AND YOU CAN DECIDE FROM THERE, AND I THINK IN FLORIDA, IN THESE DECISIONS THAT HAVE BEEN HEARD, SINCE THEN, WE SEE THAT WE HAVE' GREATER RIGHT, BUT THIS COURT HAS BEEN CONCERNED, TO MAKE SURE THAT YOU HAVE A FULL UNDERSTANDING, BOTH AT THE BEGINNING, DURING AND AT THE END OF A CONFESSION, OF A

STATEMENT THAT IS GOING TO BE GIVEN.
WHICH IS WHY I THINK THE COURT DECIDED POWELL THE WAY HE DID IN THE FIRST PLACE AND WHY HE DECIDED --
>> HERE'S ANOTHER PROBLEM, THOUGH, MIRANDA IS NOT THE CONSTITUTIONAL RIGHT.
IT IS THE WAY THAT THE UNITED STATES SUPREME COURT CHOSE TO... CONSTITUTIONAL RIGHT AND YOU HAVE SAID THE CONSTITUTIONAL RIGHT IS ALREADY THE SAME UNDER FEDERAL AND FLORIDA LAW WHICH IS THE RIGHT OF ACCESS TO COUNSEL, AND BOTH BEFORE AND DURING, AND, NOW, THE ONLY POSSIBLE WAY YOU GO UNDER FLORIDA LAW IS TO SAY THAT UNDER FEDERAL LAW, THEY'VE INTERPRETED MIRANDA TO MEAN THE WARNINGS HAVE TO REASONABLY CONVEY THE RIGHT TO HAVE AN ATTORNEY PRESENT.
DURING QUESTIONING.
AND, UNDER FLORIDA LAW, IT IS NOT ENOUGH FOR IT TO REASONABLY CONVEY, IT HAS TO CLEARLY CONVEY.
IS THAT -- THE DISTINCTION.
>> YES.
I THINK --
>> NOW, GOING -- WHERE DOES THAT COME FROM, BECAUSE WE THINK THAT THE UNITED STATES SUPREME COURT WAS WRONG IN POWELL?

WE'RE GOING TO SAY, WE'RE GOING TO CHOOSE TO SAY, NO, UNDER OUR STATE CONSTITUTION, TO GET VINDICATION WE WANT IT TO CLEARLY CONVEY, BASED ON WHAT?
>> WELL, I THINK IT IS... I DON'T KNOW THAT I KNOW THE ANSWER TO THAT, I DON'T KNOW THAT I KNOW IN PARTICULAR, WHAT --
>> IN WRITING AN OPINION, YOU KNOW, WE CANNOT GO -- WE WANT TO DO IT THAT WAY BECAUSE WE THINK THAT IS BETTER POLICY, OR CAN WE?
>> WELL TO A CERTAIN EXTEND WE CAN BUT I THINK THE COURT IN DECIDING BOTH OF THOSE CASES ALREADY MADE THE REASONING AND DECISION AND THAT IS WHY THEY DECIDED TO... IN THE FIRST PLACE, IS THE WARNINGS THAT WERE GIVEN IN POWELL AND OF COURSE THE DIFFERENT WARNINGS GIVEN IN RIGTERINK, WERE NOT SUFFICIENT UNDER THE FLORIDA CONSTITUTION. AND, WE'VE DISCUSSED THE WHOLE IDEA THAT UNDER THE FEDERALIST PRINCIPLES YOU GET TO DECIDE THIS BASED UPON STATE LAW FIRST. AND, THAT YOUR INTERPRETATION OF THAT, AT THAT TIME, WAS IT DID NOT CLEARLY EXPLAIN TO THE DEFENDANT, THAT HE HAD A RIGHT OF -- TO A LAWYER, BEFORE, AND DURING QUESTIONING.

BECAUSE THERE IS NOTHING THAT
SUGGEST THAT'S OR SAYS THAT IN
THE WARNING.
AND THAT IS WHY THE COURT MADE
THE DECISION THE WAY HE DID IN

IN THE FIRST PLACE, AND
GOING THROUGH YOUR ANALYSIS
THERE.
I THINK YOU ALL RIGHT
DECIDED ISSUE.
IF YOU TAKE THE CASE AND
DECIDE NOT TO DO ANYTHING
WITH IT, AND SAY WE'RE GOING
TO MAKE A DETERMINATION THAT
WHAT HAS BEEN STATED IN THE
SUPREME COURT OPINION IS
SUFFICIENT TO US AND WE'RE
GOING TO FOLLOW THAT, THEN
WHAT EWE SAYING IS THAT THE
WARNINGS ARE GOOD ENOUGH,
AND --
>> WE'RE NOT ARGUING POWELL
HERE.
THAT'S MY FACULTY, I MELT
THE WARNINGS ARE ENOUGH IN
FLORIDA.
THAT AS LONG AS YOU ADVISE
THEM THEY HAVE THE RIGHT TO
A LAWYER BEFORE BEING
QUESTIONED, THAT'S SNUFF
THAT'S A SUFFICIENT MIRANDA
WARNING IN THE STATE OF
FLORIDA.
WE'VE SEEN THOSE CHANGED AND
HAD THIS COURT DETERMINE

THAT WASN'T SUFFICIENT, THAT
IT DID NOT CLEARLY EXPLAIN
OR ALLOW A DEFENDANT TO
UNDERSTAND WHAT THEIR
WARNINGS ARE.
AND YOU HAVE THE RIGHT TO
STOP THEM AT ANY TIME AND
SAY I WANT A LAWYER NOW.
NONE OF THAT IS EXPLAINED.
AND IT DOESN'T MATTER,
FRANKLY.
IN HIS CASE, HE DIDN'T HAVE
A PRIOR HISTORY, WHICH IS
SOME OF THE ARGUMENTS MADE,
SAYING YOU'VE BEEN INVOLVED
WITH LAW ENFORCEMENT BEFORE
TO YOU SHOULD HAVE BETTER
KNOWLEDGE.
THE SUPREME COURT
ACKNOWLEDGED THAT IT'S NOT A

CASE BY CASE ANALYSIS.
YOU'RE TALKING ABOUT A
DEFENDANT OF FIRST
IMPRESSION WHO'S TOLD YOU
HAVE THE RIGHT TO A LAWYER
BEFORE, AND I THINK THIS
COURT ANALYZED THAT, AND
MADE A DECISION THAT IT
WASN'T SUFFICIENT, THAT IT'S
NOT ENOUGH, AND THERE'S
NOTHING IN THE WITHIN OF THE
U.S. SUPREME COURT IN
SENDING THIS CASE BACK, THAT
SAYS THAT YOU HAVE TO CHANGE
THAT.

IN FACT WHAT THEY INDICATED
WAS IS THAT IT'S UP TO YOU
TO MAKE A DECISION FROM
THERE --
>> YOU'RE DOWN TO 1 MINUTE,
IF YOU WANT ANY TIME FOR
REBUTTAL, THIS IS A GOOD
TIME TO STOP.
>> THANK YOU.
>> GOOD MORNING, SCOTT BROWN
ON BE HALF OF THE STATE OF
FLORIDA.
THE SUPREME COURT'S DECISION
IN POWELL CONTROLS THE
OUTCOME OF THIS CASE.
IN FACT, APPELLANT IN HIS
BRIEF, DIDN'T CONCEDE THAT
THE WARNINGS YOUR ADEQUATE
UNDER THE 5TH AMENDMENT.
>> APPARENTLY HE DID IS T
BASED ON A MISCONCEPTION
WHEN HE SENT IT BACK FOR
RECONSIDERATION THAT THEY
MADE A DETERMINATION THAT
WAS SUFFICIENT, BUT LET'S
ASSUME, LET'S GO BACK TO MY
QUESTION, BECAUSE WE ARE
GOING TO HAVE TO BE SURE
THAT WE'RE CLEAR ON THE LAW.
YOU WOULD AGREE THAT POWELL
HAS THE CATCH-ALL AFRAID
THAT YOU COULD INVOKE THESE
AT ANY TIME.
IN POWELL THEY SAY SEVERAL
TIMES, THAT'S JUST ONE, A

COMBINATION OF TWO THAT
REASONABLY CONVEY THE RIGHT
OF AN ATTORNEY NOT ONLY AT
THE OUTSET BUT DURING THE
INTERROGATION.
>> I AGREE THAT THE CATCH
ALL IS MISSING, BUT I
CONTEND AND MAINTAIN THAT
WHAT THEY DID IN POWELL WAS
UNDER CUT THE COURT'S ENTIRE
RATIONAL FOR DECIDING
RIGTERINK.
AND THIS COURT DECIDED THAT
THE WARNINGS MISLEADING
BECAUSE THEY SAID HE WOULD
HAVE THAT LAWYER PRESENT
PRIOR TO QUESTIONING.
IN POWELL, THEY ESSENTIALLY
ADOPTING THE CALIFORNIA
SUPREME COURT'S RATIONALE IN
ADDRESSING THE IDENTICAL
WARNING WE HAVE HERE WITHOUT
A CATCH-ALL AFRAID.
THEY SAID TELLING HIM HE HAS
THE RIGHT TO AN ATTORNEY
BEFORE OR PRIOR TO
QUESTIONING IS NOT LIMITING.
IN FACT, GIVEN IT'S COMMON
MEANING AND TO A PERSON OF
ORDINARY INTELLIGENCE, IT
WOULD BE UNREASONABLE TO
BELIEVE THAT COUNSEL WOULD
BE AVAILABLE BEFORE
COUNSELING AND THEN SHUTTLED
OUT.
I GUESS --

>> I'M LOOKING AT THEIR CONCLUDING AFRAID, WHICH SAYING WE REACHED THE CAME CONCLUSION IN THIS STATE.
THE FIRST STATEMENT THAT WAS HE COULD CONSULT WITH A LAWYER BEFORE ANSWERING QUESTIONS, AND THE SECOND THAT WAS HE COULD EXERCISE THE RIGHT TO AN ATTORNEY WHILE INTERROGATION UNDER WAY.
THE COMBINATION CONVEYED HIS RIGHT TO HAVE AN ATTORNEY

PRESENT NOT ONLY AT THE OUTSET BUT AT ALL TIMES.
WHERE IN POWELL DOES IS SAY IF YOU ONLY HAVE A RIGHT TO COUNSEL BEFORE QUESTIONING, THAT THAT REASONABLY CONVEYS THAT YOU HAVE THE RIGHT TO HAVE AN ATTORNEY PRESENT AT ALL TIMES.
>> I'LL QUOTE FROM THE COURT.
THE LANGUAGE THAT THIS COURT BELIEVED WAS MISLEADING.
THE LANGUAGE IN POWELL THAT THE COULD TALK TO A LAWYER BEFORE ANSWERING ANY OF OUR QUESTIONS, WAS NOT MISLEADING.
BEFORE MERELY CONVEYING.
MAINLY BEFORE HE ANSWERED ANY QUESTIONS AT ALL.

THE RATIONALE COULD NOT BE MY MORE CLEAR.
THE SUPREME COURT, THE FACT THAT THEY REVERSED THIS COURT IN RIGTERINK --
>> ONLY MENTIONED THAT IT COULD BE A MATTER OF STATE LAW.
>> I AGREE WITH YOU THAT THE PART THAT SAYS BEFORE IS MISLEADING, BUT THAT RATIONALE HAS BEEN UNDER CUT, AND IT MAY BE ACADEMIC HERE IF IT'S CONCEDED, BUT I DON'T SEE HOW THE WARNING WITHOUT THE CATCH-ALL IN POWELL WOULD HAVE BEEN ADEQUATE.
AND THEY DON'T DISCUSS THAT IN POWELL.
THEY DIDN'T NEED TO GET TO IT.
>> YOUR HONOR, IF THIS COURT RELIED ON THE INTERPRETATION OF MR. RIGTERINK'S ADVISEMENT, YOU FOUND IT MISLEADING.
THE SUPREME COURT ANALYZED THE SAME LANGUAGE AND SAID

IT IS NOT MISLEADING.
CHIEF JUSTICE CANADY SAID IN ANOTHER COURT, THAT ANOTHER COURT FOUND THE SAME RIGHTS WARNINGS REASONABLE.
HE WAS GIVEN THE WARNING

THAT HE HAS THE RIGHT TO
HAVE AN ATTORNEY PRESENT
HIRE TO QUESTIONING, I WOULD
SUBMIT THIS IS A STRONGER
WARNING THAT POWELL RECEIVED
BECAUSE IT HAS THE WORD
PRESENT IN THE SAME SENTENCE
THAT HE HAS A RIGHT TO AN
ATTORNEY.
WHERE ELSE IS AN ATTORNEY
GOING TO BE EXCEPT PRESENT
WITH A DEFENDANT, AT A STAR
BUCKS DOWN THE ROAD?
>> THE INTERPRETATION OF THE
CALIFORNIA COURT AND YOUR
ARGUMENT IS BASED UPON AN
ASSUMPTION OR POSITION THAT
WHATEVER EXISTS IN FLORIDA,
PARAMETERS OF THAT ARE
DEFINED BY MIRANDA, CORRECT?
>> WHAT HAPPENS WHEN YOU
WAKE UP TOMORROW AND THE
U.S. SUPREME COURT SAYS
WE'RE NOT GOING TO REQUIRE
ANY WARNINGS AT ALL.
MIRANDA NO LONGER EXISTS?
WHERE ARE WE?
>> THAT'S AN INTERESTING
QUESTION.
I DON'T BELIEVE THEY WERE
GIVEN THAT OPPORTUNITY IN
DICKERSON AND --
>> HUMOR ME IF YOU WILL, I'M
TRYING TO UNDERSTAND.
YOU'RE A GOOD LAWYER, TRY TO
UNDERSTAND HOW ALL THIS FITS

TOGETHER IN THE SISTER
COURTS, WHAT HAPPENS?
>> I WOULD ARGUE AS AN
ADVOCATE FOR THE STATE, THAT
THIS COURT SHOULD FOLLOW THE
OPINION OF THE SUPREME
COURT.
IF IT IS WELL REASONED AND

VALID, AND AGAIN, THEY WERE
--
>> YOU WOULDN'T NEED A
WARNING AT ALL THEN IN
FLORIDA IN >> IN THAT
UNLIKELY SCENARIO, IT'S HARD
FOR ME.
THIS COURT MAY AS A MATTER
OF POLICY, THEORETICALLY
BECAUSE WE HAVE A
LONGSTANDING POSITION OF
WARNINGS IN THIS STATE,
COULD POINT TO AN ASPECT IN
OUR CONSTITUTION.
THE SUPREME COURT HAS BEEN
GIVE THAN OPPORTUNITY AND
THEY DECLINED TO DO SO, SO
IT'S EXTREMELY UNLIKELY, AND
I'D HAVE TO CONTEMPLATE IT,
BUT THIS COURT HAS FOLLOWED
MIRANDA FROM THE U.S.
SUPREME COURT.
TRAILER, AND OWEN WERE
CONSISTENT WITH OPINIONS
FROM THE SUPREME COURT.
AND IN OWEN, 3 YEARS LATER,
EWE SAID IT WAS GROUNDED ON

STATE CONSTITUTIONAL LAW,
YOUR DECISION IN THAT CASE
WAS NO DIFFERENT FROM
CONCLUSIONS REACHED BY THE
SUPREME COURT.
>> BUT THAT LANGUAGE THEN IN
TRAILER WHERE THE COURT SAYS
BASICALLY, WE OLD THAT TO
ENSURE THE VOLUNTARINESS OF
--
REQUIRES THAT PRIOR TO
INTERROGATION IN FLORIDA,
SUSPECTS MUST BE TOLD THAT
THEY HAVE A RIGHT TO REMAIN
SILENT, ANYTHING THEY CAN
SAY CAN BE USED AGAINST THEM
IN COURT, AND THEY HAVE A
RIGHT TO THE LAWYER'S HELP,
AND IN THE FOOTNOTE, THEY
SAY THAT THE LAWYER'S HELP
MEANS DURING BEFORE AND
DURING QUESTIONING, SO --
THAT LANGUAGE IN TRAILER

ACTUALLY MEAN THEN.
>> THIS COURT BELIEVED IT
WAS DECIDING TRAILER WAS
CONSISTENT WITH MIRANDA.
>> SPECIFICALLY SAYING
ARTICLE 1 SECTION 9 OF THE
FLORIDA CONSTITUTION.
>> RIGHT, WHICH EXACTLY
MIRRORS THE RELEVANT
LANGUAGE IN THE 5TH
AMENDMENT, SO IF WE'RE GOING
TO READ SOMETHING INTO

ARTICLE ONE SECTION NINE, I WOULD LIKE MY OPPONENT TO POINT TO UNIQUE LANGUAGE THAT'S NOT CONTAINED IN THE 5TH AMENDMENT OF THE U.S. CONSTITUTION.
>> YOU MEAN THAT THE COURT CAN'T INTERPRET THAT THAT'S WHAT ARTICLE 9 SECTION -- ARTICLE ONE SECTION 9 MEANS. WHEN I READ TRAILER, IT'S SAYING THAT THIS COURT IS INTERPRETIVE IT IS DO YOU HAVE THE RIGHT TO HAVE A LAWYER'S HELP BEFORE YOUR STATEMENT ARE ADD ADMISSIBLE, AND THAT THE LAWYER'S HELP MEAN THAT'S YOU HAVE A RIGHT TO HAVE A LAWYER PRESENT AND DURING QUESTIONING.
>> AND CERTAINLY THAT'S WHAT THE WARNING MR. RIGTERINK WAS GIVEN IN THIS CASE MEANS.
IF THIS COURT WERE ARTICULATING SOME INVALUABLE WARNING.
>> I JUST DON'T UNDERSTAND HOW TELLING A SUSPECT THAT YOU HAVE THE RIGHT TO HAVE A LAWYER BEFORE WE TALK TO YOU, IS THE SAME ASSAYING -- IF YOU COULD JUST EXPLAIN THAT --
>> WHAT SUPREME COURT SAID,

IT WAS A FULLY FUNCTIONAL
WARNING PURSUANT TO MIRANDA,

AND IT WAS UNREASONABLE.
IF THE DEPARTMENT IS TOLD
WHEN HE'S BEING QUESTIONED
IN THE INTERROGATION ROOM
YOU HAVE THE RIGHT TO HAVE
AN ATTORNEY PRESENT PRIOR TO
QUESTIONING, WITHOUT ANY
RESTRICTION ON HIS USE OR
THE DURATION OF THE ATTORNEY
SERVICES, WHY WOULD A
DEFENDANT BELIEVE THAT HE'S
GOING TO BE SHUTTLED OUT
DURING QUESTIONING, AND IN
FACT, THERE IS NO EVIDENCE
IN THIS CASE, THE COLLEGE
EDUCATED MR. RIGTERINK WAS
MISLEAD OR CONFUSED WITHIN
OR MR. POWELL, OR ANY
DEFENDANT IN THE STATE OF
FLORIDA HAS BEEN CONFUSED OR
MISLEAD BY SIMILAR WARNINGS,
WE'RE TALKING ABOUT
TECHNICALLY PARSING LANGUAGE
THAT THE SUPREME COURT SAYS
WE SHOULD NOT DO.
AND THIS COURT HAS
TRADITIONALLY FOLLOWED THE
SUPREME COURT.
AND IF WE DEPART FROM
FOLLOWING.
>> IF WE'RE HERE ARGUING
THIS AND COURTS ALL OVER THE
COUNTRY HAVE ARGUED THIS TO

SAY THAT A DEFENDANT IS
AUTOMATICALLY GOING TO
UNDERSTAND IT, SEEMS A BIT
FAR FETCHED TO ME.
>> WHAT'S FAR FETCHED TO ME
IS THAT COURTS DON'T ALWAYS
USE COMMON SENSE, AND THAT'S
THE EVIDENCE, THE EVIDENCE
WE HAVE HERE.
THE DEFENDANT IN THIS
COUNTRY HAS BEEN CONFUSED OF
THESE WARNINGS.
YOU DON'T HAVE A TRANSCRIPT
--
>> YOU DON'T HAVE
TRANSCRIPTS OF THOSE AT ALL.
YOU DON'T KNOW WHAT

DEPARTMENT SAID EXCEPT
GENERALLY WHAT POLICE
OFFICER SAYS THE DEFENDANT
SAYS >> WE HAVE A TRANSCRIPT
IN THIS CASE.
>> MR. BROWN, DO CAN WE HAVE
ANY AUTHORITY OR CASE LAW
YOU WANT TO GIVE TO US SAYS
NO YOU CAN'T OR YOU CAN LOOK
AT LOOK AT THE VIDEO OF WHAT
WAS GOING ON HERE TO MAKE
THE FINAL DETERMINATION OF
THE TOTALITY OF THE
CIRCUMSTANCES WHETHER THIS
IS A COERCED CONFESSION.
>> WE HAVE THE VIDEO HERE.
>> I UNDERSTAND I WATCHED
IT.

>> .
DO YOU HAVE ANY AUTHORITY
THAT SAY SAYS I CAN OR I
CANNOT?
>> I THINK MIRANDA IS BASED
ON A COMMON UNDERSTANDING OF
THE WORD USED.
SO YOU DON'T NECESSARILY,
YOU DO NOT REACH THE
PARTICULAR DEFENDANT IF THE
WARNINGS ARE ADEQUATE
PURSUANT TO MIRANDA.
>> MY QUESTION IS CAN I LOOK
AT THE VIDEO AND USE IT OR
NOT USE IT.
>> YOU CAN USE IT BECAUSE
IT'S FAVORABLE TO THE STATE.
AND AGAIN, WHAT SUPREME
COURT DID IN POWELL, IT
WASN'T CRITICAL TO THEIR
DECISION, BUT THEY LOOKED AT
MR. POWELL'S SYSTEM, AND
THERE WAS NO EVIDENCE THAT
HE WAS MISLEAD OR CONFUSED
BY HIS RIGHTS AND WARNINGS.
A PERSON OF ORDINARY
INTELLIGENCE, AND GIVEN
WORDS ORDINARY ON COMMON
MEANING, THE FACT THAT THE
COURTS ARE PARSING THE
LANGUAGE, AND YOU CERTAINLY

KNOW, YOUR HONOR, AND EVERY
COURT KNOWS THE PARAMETERS
OF MIRANDA, AND TEST PART OF
POPULAR CULTURE NOW.

>> BUT IF YOU'RE LOOKING AT
STRICTLY LANGUAGE, THEN WHAT
DOES THE WORD BEFORE MEAN.
I'M NOT GOING TO ASK YOU --
WE CAN ARGUE ALL DAY ABOUT
WHETHER OR NOT BEFORE MEANS
TECHNICALLY BEFORE YOU START
ASKING QUESTIONS, OR WHETHER
OR NOT IT INCLUDES ALL THE
TIME FROM THE BEGINNING OF
QUESTIONING THROUGH THE END.
>> BUT THE SUPREME COURT
RESOLVED THAT QUESTION.
THEY SAID WITHOUT ANY
SUBSEQUENT MEANING, --
THE RIGHTS WARNING WAS MORE
EFFECTIVE, BECAUSE IT
MENTIONED PRESENT.
YOU A RIGHT TO HAVE AN
ATTORNEY PRESENT AND PRIOR
TO QUESTIONING.
A REASONABLE QUESTION.
WHAT DOES PRESENT MEAN?
TWO BLOCKS DOUBT ROAD?
SO REALLY WHAT WE'RE DOING
IS PARSING THE LANGUAGE HERE
AND NOT USING WHEY SUBMIT TO
THE BE COMMON SENSE AND
EXAMINING THE WORDS USED
HERE.
THERE IS NO DISTINCT LINE OF
MIRANDA PRECEDENT ARTICULATE
BY THIS COURT.
AND THIS STATE SPECIFICALLY,
IT'S DECISION ON TRAILER,
ARTICLE ONE SECTION 9 WAS NO

DIFFERENT FROM THE
CONCLUSION REACHED ON ISSUED
BY THE SUPREME COURT.
>> SO THE RANG WAGE IN
RIGTERINK.
USING THE IMPACT RIGHTS
WARNING AND AN APPELLANT
COURT, YOU CANNOT SUBMIT
THAT A DEFENDANT CAN HAVE AN
ATTORNEY PRESENT AND HE WILL

LEAVE THE ROOM WHEN
QUESTIONING BEGINNING.
AND THE JUDGE'S OPINION IN
THE SECOND DISTRICT, WE
CANNOT CONCEIVE OF ANY
REASON WHY FLORIDA WOULD
HAVE A CONSTITUTIONAL
JUSTIFICATION FOR A MORE
EXTENSIVE MIRANDA WARNING
THAN THE ONE REQUIRED BY THE
U.S. CONSTITUTION.
AND WHEN THIS COURT DEPARTED
FROM CASES DIRECTLY ON POINT
FROM THE SUPREME COURT, SUCH
AS IN THE FOURTH AMENDMENT
REALM, THIS COURT BACK IN
THE 80S FILED THE GOOD FAITH
EXCEPTION.
ARTICULATED BY THE SUPREME
COURT, IT COULD POINT TO
SOME DIFFERENT RANG WAGE
WELCOME AND I BELIEVE IT'S
ARTICLE ONE, SECTION 16, THE
EXCLUSIONARY RULE WAS INTO
OUR STATE CONSTITUTION.

HOWEVER THE EXCLUSIONARY
RULE WAS CREATED BY THE
SUPREME COURT, AND THIS
COURT REASONED IT HAD THE
FORCE OF ORGANIC LAW IN
FLORIDA.
SO WHEN IT DEPARTED BEFORE
THE CONFORMITY AMENDMENT, IT
HAD AN UNDER LYING
RATIONALE.
IT COULD POINT TO LANGUAGE
IN OUR STATE CONSTITUTION
THAT REQUIRED WELCOME OR
WOULD ALLOW THIS COURT TO
PROVIDE SEPARATE TREATMENT
FOR FLORIDA.
THIS THIS CASE YOU CAN'T
POINT TO ANY.
IT SAYS IT'S IMPACT IS THE
SAME THING AS THE 5TH
AMENDMENT UPON WHICH IT WAS
DEVELOPED AND MIRRORS.
AGAIN YOU CANNOT CONCEDE,
THE STATE CANNOT CONCEDE FOR
ANY REASON WHY THIS COURT

SHOULD DRIFT FROM AN
ESTABLISHED --
AND IT SHOULD FOLLOW IT'S
TRADITION.
>> SO REALLY, WHAT YOU'RE
SAYING IS, JUST LIKE NOW,
THE 4TH AMENDMENT HAS BEEN
NULLIFIED, THAT IT'S UNDER
FLORIDA CONSTITUTION, AND
THE 8TH AMENDMENT, THAT

REALLY, WE MIGHT AS WELL NOT
HAVE FOR ALL INTENTS AND
PURPOSES, A FLORIDA
CONSTITUTION FOR INFORM
DEFENDANT'S RIGHTS IN
CRIMINAL CASES?
THAT'S WHAT YOU'RE SAYING.
>> NO I'M NOT SAYING THAT.
>> YOU'RE SAYING THERE'S
NEVER A REASON UNDER THE
FLORIDA CONSTITUTION,
THERE'S NO REASON FOR
PUTTING THAT INTO THE
FLORIDA CONSTITUTION BECAUSE
OBVIOUSLY THE CITIZEN OF THE
STATE ARE PROTECTED BY THE
FEDERAL CONSTITUTION, AND
THAT THE LANGUAGE IN TRAILER
SAYS THAT THE FEDERAL
CONSTITUTION SETS A FLOOR,
AND THAT'S IT, IS REALLY
WITHOUT MEANS WHATSOEVER.
WHAT WE'RE SAYING IS YOU
SHOULD HAVE --
>> IS SOMETHING IN ARTICLE 1
SECTION 9 THAT WE ARE TO
ANALYZE FLORIDA LAW AND
FEDERAL LAW AS IT DOES IN
OTHER PROVISIONS OF OUR
CONSTITUTION.
>> I DON'T THINK IT CAN BE
ANY CLEARER BECAUSE IT
EXACTLY MIRRORS THE LANGUAGE
OF THE 5TH AMENDMENT, IT'S
NOT LIKE WE PULLED --
>> EXPRESSION SAYING THAT WE

SHOULD FOLLOW FEDERAL FLAW
THIS INTERPRETATION?
>> NO THERE IS NO CONFORMITY
AMENDMENT APPLICABLE.

THERE HAS BEEN NO NEED FOR
ONE, YOUR HONOR.
NOT YET.
AND IF FOR A MOMENT THIS
COURT WERE CONSIDERING
CREATING A MIRANDA RULE,
APPLICABLE ONLY TO FLORIDA,
THEN HISTORY TEACHES US FROM
THE SUPREME COURT, THAT WHEN
THE COURT EXPANDS AND
CREATES A RULE, YOU MUST
WEIGH THE COSTS VS. THE
BENEFIT OF THAT RULE.
AND I SUBMIT TO YOU THAT
SUCH AN EXAMINATION WOULD
NOT SURVIVE THIS CASE ALONE.
YOU HAVE A BRUTAL DOUBLE
HOMICIDE OF JEREMY JARVIS
AND ALICE SON SOUSA.
THE DETECTIVES USED A
PREPRINTED POLK COUNTY
SHERIFF'S FORM.
>> SPEAKING OF THAT FORM,
YOUR OPPONENT SAYS FROM THE
TIME OF THE CASES, POLICE
DEPARTMENTS AROUND THE STATE
HAVE CHANGED THEIR MIRANDA
WARNINGS TO INCLUDE A
WARNING ABOUT HAVING COUNSEL
PRESENT DURING QUESTIONING.
, IF ANY, THAT IS THE CASE,

WHAT'S THE DOWNSIDE, THEN,
OF HAVING SUCH A DECISION.
IF THE POLICE OFFICER'S HAVE
ALREADY CHANGED THEIR
WARNING, DEFENDANT'S ARE NOW
BEING GIVEN THESE KIND OF
WARNINGS, WHAT'S THE
DOWNSIDE.
>> FIRST OF ALL, IT'S NOT A
SOUND PROPOSITION OF LAW FOR
THE COURT TO DECIDE ON THESE
INDICATION CASES.
>> YOU WERE ABOUT TO TALK
ABOUT THE CARD THAT WAS
GIVEN, AND I'M ASKING YOU
ABOUT THE ONE THEY'RE NOW
USING INSTEAD OF WHAT THEY
WERE USING AT THAT TIME.
IS THERE SOMETHING WRONG

WITH SUCH A WARNING, IF THEY
HAVE IN FACT CHANGED AND
INCLUDED THAT IN IT?
>> NO, IN FACT IT'S WISE
POLICE WORK TO CHANGE
SOMETHING ANY TIME IT COMES
INTO QUESTION.
THERE WERE THREE
JURISDICTION, RATHER LARGE
JURISDICTION, THAT RELIED ON
A FORM CALLED INTO QUESTION
BY THIS COURT'S DECISION IN
POWELL.
THE TAMPA POLICE, THE
BROWARD COUNTY, AND THE
POLK, THESE ARE LARGE

JURISDICTION AND A NUMBER OF
PIPELINE CASES.
SO YOU ASK ME WHAT'S THE
HARM?
THE HARM IN THIS CASE IS
THAT THESE OFFICERS WERE
ACTING IN GOOD FAITH, BASED
UPON A FORM THAT HAD NOT
BEEN PREVIOUSLY CHALLENGED.
THEY RED MR. RIGTERINK HIS
RIGHTS, HE READ THEM IN
WRITING.
THERE WAS NO INDICATION HE
WAS CONFUSED OR MISLEAD.
REVERSING HIS CONVICTIONS
ALONE, THE COST TO THE STATE
AND THE VICTIM'S FAMILY IS
NOT WORTH ANY SMALL BENEFIT
TO THE JUSTICE SYSTEM IN
FLORIDA EXPANDING THE RULE.
>> LET ME ASK YOU A
QUESTION.
YOU MENTIONED THE BROWARD
COUNTY SHERIFF'S, I THOUGHT
AND I LOOKED BACK, THAT IN A
SERIES OF CASES SEVERAL
YEARS AGO WELCOME THAT THE
4TH DISTRICT FOUND THOSE
WARNINGS WERE DEFECTIVE, AND
THOSE WENT STRAIGHT TO THE
U.S. SUPREME COURT, WHICH IN
THOSE CASES HAD DENIED.
AM I INCORRECT IN MY MEMORY
ABOUT THAT?

>> I THINK THOSE CASES FIRST

WOUND THEIR WAY UP HERE,
YOUR HONOR, I THINK THEY
WERE PART AND PARCEL OF THE
LITIGATION IN POWELL.
>> THESE WERE SEVERAL YEARS
BEFORE
WHEN YOU SAY BROWARD AND PIPELINE CASES, MY
UNDERSTANDING, I DON'T KNOW IF THEY WERE SIMILAR TO
WHAT POWELL WARNINGS WERE, BUT THOSE LONG SINCE HAD
FOUND TO BE DEFECTIVE, AND THERE WAS NO REVIEW BY
THE U.S. SUPREME COURT AT THAT TIME, AND NOW THOSE
ARE BEING USED, AND DO I HAVE AN INTEREST --
THE POLICE DEPARTMENTS USE
THE WARNINGS SO THERE IS NO
QUESTION.
I GUESS, THERE'S NO
ASSURANCE THAT IF WE DECIDE
THIS CASE ONE WAY OR
ANOTHER, THAT THE POLK
COUNTY SHERIFF'S DEPARTMENT
WILL GO BACK TO USE WHAT
THEY HAD?
>> I THINK THIS WAS RAISED
IN THE SUPREME COURT IN
POWELL, OFFICERS AND POLICE
DEPARTMENTS HAVE NO --
THERE'S NO BENEFIT TO A
POLICE DEPARTMENT IN USING
NOVEL FORMS OF MIRANDA.
MIRANDA CAN PROTECT A POLICE
DEPARTMENT FROM FUTURE LEGAL
CHALLENGES IN APPROPRIATE
FORMS.
SO THERE'S NO EVIDENCE THEIR
GOING TO EXPERIMENT WITH
NOVEL FORMULATIONS OF

MIRANDA, AND THE RIGHTS
WARNING IN THIS CASE WAS
ADEQUATE TO MR. RHODE ISLAND
--
RICK --
NO YOU'RE GOING TO FOLLOW

PRICE AND DUCK WORTH, BUT
WE'RE GOING TO EXCLUDE
POWELL.
I DON'T THINK IT MAKES SENSE
IN FLORIDA WHERE THERE'S NO
SEPARATE JUSTIFICATION OF
THAT WHICH EXISTS THROUGHOUT
THE COUNTRY, AND DISTRICT
COURTS OF APPEAL ALREADY ARE
FINDING FLORIDA THE --
>> MY PROBLEM STILL GOES
BACK TO THE FACT THAT I
DON'T THINK, I DON'T THINK
WE CAN APPLY POWELL AND SAY
THESE WARNINGS BECAUSE THEY
DO NOT HAVE A CATCH-ALL,
HAVE THE RIGHT TO COUNSEL
DURING QUESTIONING.
I THINK THAT'S MY PARTICULAR
PROBLEM BECAUSE I DON'T SEE,
I REREAD POWELL, AND I DON'T
SEE IT AS COMPELLING OR
REQUIRING THE RESULT.
YOU CAN SAY, WELL WE'VE GOT
A --
WE SHOULD DO IT BECAUSE WE
SHOULD UPHOLD THE MURDER
CONVICTION IN THIS CASE, AND
I APPRECIATE THE -- THAT IF

HE WAS REALLY MISREAD.
BUT WHAT'S THE TOTALITY
WHETHER HE HAD A KNOWING,
THAT'S NOT BEFORE US.
SO I THINK YOU HAVE, IT
MAKES A --
MAKE A SORT OF PRACTICAL
POINT THAT WE HAVE TO LOOK
AT.
BUT I'M CONCERNED THAT IF I
DON'T READ POWELL AS
MANDATING THIS RESULT.
BUT YOU'RE SAYING THAT NO,
READING POWELL MANDATES THIS
RESULT.
>> I BELIEVE IT DOES, AND MY
OPPONENT IS SEE THAT IN THIS
BRIEF.
>> THE STATE OF FLORIDA, THE
LAW, HE MAY HAVE CONCEDED IT
OUT OF A MISUNDERSTANDING OF

WHAT U.S. SUPREME COURT
DID.
USUALLY WHEN THEY HAVE
PIPELINE CASES, THEY SAY WE
DO, REMAND FOR
RECONSIDERATION UNDER THE
CASE.
WE DON'T LOOK AT THE CASE
ITSELF.
IS THERE ANY INDICATION THAT
THE U.S. SUPREME COURT
LOOKED AT THE WARNINGS IN
THIS CASE.
>> YOUR HONOR, AS ONE THAT

RED IT, THE WARNING WAS
FRONT AND CENTER.
>> BUT WE CITED POWELL IN
RIGTERINK.
I SUGGEST THAT THE ENTIRE
RATIONALE IN RIGTERINK WAS
BASED ON POWELL AND THE
LANGUAGE BEFORE OR PRIOR TO
SOMEHOW LIMITED THE RIGHT TO
COUNSEL, AND THAT IS THE
RATIONALE WHICH WAS REJECTED
BY THE SUPREME COURT IN
POWELL.
AND MY FINAL POINT, JUSTICE
PARIENTE, THIS COURT DID NOT
REALIZE YOU'RE GOING BEYOND
WHAT MIRANDA REQUIRES, AND
IF GOES BEYOND, IT SHOULD AT
THE VERY LEASE DO A COST
BENEFIT ANALYSIS.
I SUBMIT THAT THE COST
BENEFIT ANALYSIS WOULD NOT
BE WORTH ANY MINIMALLY
BENEFICIAL JUSTIFICATION FOR
A SECOND MIRANDA RULE.
>> CORRECT, THAT IS
CERTAINLY AN OPTION IF YOU
WERE EXPANDING A RULE, I
UNDERSTAND THAT MIRANDA WAS
APPLIED PERSPECTIVELY.
>> AS YOU SAID, IT'S VERY
SIMPLE IF IN SIXTH MONTHS
FROM NOW, THIS IS WHAT
SHOULD BE A PERSPECTIVE LAW,
OR THIS IS NOT A COST FOR
THE POLICE DEPARTMENTS TO

MAKE SURE THEY HAVE A
STANDARD WARNING THROUGHOUT
THIS STATE.
>> CORRECT, YOUR HONOR.
I THANK YOU FOR YOUR TIME
AND YOUR CONSIDERATION.
>> VERY BRIEFLY, I JUST WANT
TO REAFFIRM THERE IS NO
CONFORMITY AMENDMENT AS
JUSTICE PERRY REQUESTED.
IT DOES NOT PROVIDE THAT THE
COURT MUST FOLLOW ANY
FEDERAL PRECEDENT, WHICH IS
DIFFERENT FROM OTHER
SECTIONS, SO IT'S CLEAR
THERE THE COURT CAN REACH
IT'S OWN DETERMINATION UNDER
STATE LAW.
I DO NOT MEAN TO SUGGEST
THAT FOR SOME REASON DOING A
COST BENEFIT ANALYSIS SHOULD
BE CONSIDERED IN THIS CASE.
I THINK THE WARNINGS THAT
WERE GIVEN IN RIGTERINK AND
THE DECISION THAT WAS MADE,
THAT WAS GIVEN WELCOME THEY
HAVE CHANGED IN POLK COUNTY,
THEY CHANGED IN TAMPA LONG
BEFORE ANY OF THE CASES WENT
PAST THE SECOND COURT OF
APPEAL, THEY ADDRESSED THE
ISSUES AND LOOKED AT THEM.
EVERYBODY HERE IS
INTERPRETING THE WARNINGS IN
A DIFFERENT FASHION AND

SAYING THAT MAY CONVEY TO A DEFENDANT WHAT THEIR POSITION SHOULD BE AT THE TIME THEIR CONFRONTED BY LAW ENFORCEMENT VS. ONE JUSTICE TO ANOTHER, ONE COURT TO ANOTHER, TO TWO LAWYERS ARGUING WHETHER THAT CLEARLY CONVEYS IT'S A FLORIDA CUSHION REQUIRES, CLEARLY CONVEYS THE RIGHT TO A LAWYER BEFORE AND DURING QUESTION, IS THE REASON THE CONFUSION EXISTS, AND THAT IN BOTH OPINIONS, THE COURT

INDICATED THAT THIS COURT CAN INDEPENDENTLY REACH IT'S OWN DECISION, HERE IS WHAT MIRANDA MEANS, AND THE U.S. CONSTITUTION, HOWEVER YOU HAVE THE RIGHT TO REACH THIS DECISION ON YOUR OWN AND DETERMINE WHETHER OR NOT IN MR. RIGTERINK'S CASE THERE WAS SUFFICIENT AND ADEQUATE WARNINGS GIVEN UNDER THE FLORIDA CONSTITUTION ARTICLE ONE SECTION NINE.
THE FACT THAT THE LANGUAGE IS THE SAME, IT DOESN'T MEAN THE INTERPRETATIONS IN THE PAST HAVE BEEN THE SAME, AND THIS COURT HAS INDEPENDENTLY MADE THEIR OWN INTERPRETATIONS WHICH IS WHY

TRAILER HAS LANGUAGE AND
HELP, AND MILLER, SINCE
THEN, WHEN THE COURT
ACKNOWLEDGED THAT YOU HAVE
THE RIGHT TO LOOK AT YOUR
OWN DECISIONS IN ARTICLE ONE
SECTION NINE IN THE
CONSTITUTION.
I THINK BY DOING THAT, IF DO
YOU THAT, IT'S CLEAR THE
WARNINGS WERE DEFICIENT, AND
THIS COURT SHOULD CONTINUE
WITH WHAT WAS THE PREVIOUS
DECISION IN RIGTERINK, WHICH
IS THAT THE WARNINGS WERE
NOT ADEQUATE, AND
MR. RIGTERINK IS ENTITLED TO
A NEW TRIAL.
>> THANK YOU VERY MUCH, WE
THANK BOTH OF YOU.
THE COURT WILL NOW STAND IN
RECESS FOR 10 MINUTES.