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**State of Florida v. Dean Kilgore**

**SC06-1763**

>>> PLEASE RISE.  
>> GOOD MORNING.  
>> GOOD MORNING.  
GOOD MORNING.  
>> LADIES AND GENTLEMEN, THE  
FLOIDA SUPREME COURT.  
PLEASE BE SEATED.  
  
>> THE NEXT CASE ON OUR  
CALENDAR THIS MORNING IS STATE  
VERSUS KILGORE.  
MISTAKE BLANCO.  
>> A CHANGE IN TABLES HERE.  
>> IT IS, YOUR HONOR, A  
STRANGE LAND OVER THERE.  
-- MAY IT PLEASE THIS  
HONORABLE COURT MY NAME IS  
KATHRYN BLANCO WITH THE  
ATTORNEY !\$\$!!!!!!!!!!!!!!  
ATTORNEY GENERAL'SOFFS, I'M  
REPRESENTING THE STATE OF  
FLORIDA IN THESE PROCEEDINGS,  
IT IS AN IMPORTANT ONE THING  
PERFECTLY CLEAR WE ARE HERE  
THIS MORNING ON DEAN KILGORE  
1978 NONDEATH-PENALTY CASE WE  
ARE NOT HERE ON MR. KILGORE\$\$'S  
1989 PRISON MURDER FOR WHICH  
THE DEATH PENALTY WAS IMPOSED.  
THIS CASE ARISES FROM THE 1978  
NONCAPITAL PROCEEDING.  
>> SO I UNDERSTAND, YOUR ISSUE  
IS ONE OF REALLY \$\$STATE'S  
STATUTORY CONSTRUCTION WHICH  
IS WHETHER IT WAS A JUDGE  
GRIFFIN DID A BIG AGGRAVATORS  
SMALL AGGRAVATE\$\$!!OR, THE  
INTERPRETATION OF THE STATUTE  
IS THAT P\$\$CR CANNOT REPRESENT  
DEATH PENALTY DEFENDANT, ON A  
POST KWIEKZ -- CONVICTION  
MATTER IN ANOTHER CASE EVEN IF  
ONE THAT THE DEATH PENALTY  
RESTED ON.

>> THIS CASE THE PARTICULAR FACTS OF THIS CASE ARE NOT AS IMPORTANT OVER THESALL STATUTE AND THE APPEAR REPLY KAUGS.

>> THAT IS -- ABSOLUTELY TRUE --

>> DOESN'T MATTER, WHETHER IT IS A IT IS A SLAM-DUNK, OR IT IS A LONG SHOT, IF THE STATUTE DOESN'T ALLOW IT, IT DOESN'T ALLOW IT.

>> EXACTLY, ANDS.

>> IS THAT YOUR POSITION THAT UNDER NO CIRCUMSTANCES COULD CCRC BE APPOINTED, OR COULD CCRC PURSUE EVEN IF IT IS LIKE THE REALLY GOOD FACTS, TO SET ASIDE THIS CONVICTION, STATUTE SAYS NO YOU CAN'T DO IT.

>> AS JUDGE GRIFFIN SAID IN -- NO, MEANS NO.

TWO OF THE MEMBERS IT WAS ACTUALLY, THE SECOND DISTRICT PANEL COMPRIZE FIND THREE MEMBERS OF THE FIFTH DISTRICT COURT OF APPEAL JUDGE GRIFFIN OFFERED DISSENT THE COURT WELL AWARE OF THE OPINION IN THIS CASE AND JUDGE GRIFRP'S HE SAID IT THE STATUTE MEANS WHAT IT WILL SAYS NO MEANS NO.

>> JUST LET ME ASK CAN YOU IN THE PRACTICAL EFFECT, LET'S JUST ASSUME THAT CCRC AGAIN, DISCOVERS IN THEIR INVESTIGATION, THAT THERE IS A REAL PROBLEM WITH APPEARED UNDERLYING PRIOR VIOLENT FELONY!!!!\$!!!!!! FELONY.

THEY DO THEY ARE THEY EVEN PROHIBITED FROM I MEAN THAT IS INVESTIGATION, SO THEY OBVIOUSLY HAVE TO CHECK INTO IT BECAUSE IT IS THEY FIND THAT OUT.

WE ALLOW UNDER THE YOU KNOW THE GRAND PROGENY FOR A COUNSEL TO BE APPOINTED, WOULD YOUR POSITION BE THEN IF THE JUDGE ON POSTCONVICTION OF THE OTHER CASE, FOUND THAT THERE WAS YOU KNOW, IT MET CRITERIA THAT THERE IS WE DIDN'T WANT

THIS DEFENDANT PROSECUTING, HE NEEDS AN ATTORNEY, IT CCR DON'T COULDN'T BE APPOINTED THAT YOU WOULD HAVE TO GO OUT TO A PRIVATE ATTORNEY, AND THE PRIVATE ATTORNEY, WOULD HAVE TO TAKE OVER THAT POSTCONVICTION, PROCEEDING!!\$\$!!!!!!!!!!!!!! PROCEEDING?

>> JUSTICE PARIENTE IT US THE \$\$ STATE'S POSITION INDEED CCR IS NOT AUTHORIZED TO REPRESENT CAPITAL DEFENDANTS IN

NONCAPITAL CASES --

>> WOULD HAVE TO GO AHEAD AND APPOINT ANOTHER ATTORNEY --

>> COULD BE ABOUT PUBLIC DEFENDER YOUR HONOR.

>> RNT AREN'T THEY PRO HIBEDIT!!\$\$!!!!!! HIBEDITED.

>> ACTUALLY, YOU HAVE, A DECISION, I BELIEVE, IN RUSSO A DISCUSSION OF THAT, AND A CASE, THAT WE CITED IN OUR REPLY BRIEF, THAT RECENTLY CAME OUT OF THIRD DISTRICT COURT OF APPEAL BY THE NAME OF MANN!!\$\$!!!!!!

MANN.

NOW IN IN ANM THE THIRD KT COURT HELD THE PUBLIC DEFENDER IS NOT AUTHORIZED TO UNILATERALLY APPOINT THEMSELVES IN NONCAPITAL POST CONVICT SHUN CASES ACTUALLY WHAT CCR DID IN THIS CASE UNILATERALLY DECIDED THEY WERE GOING TO INITIATE, NONCAPITAL POST CONVICTION PROCEEDINGS IN A NONCAPITAL CASE, IN MANN A SIMILAR SITUATION HAPPENED WITH RESPECT TO THE PUBLIC DEFENDER!!\$\$!!!!!!

DEFENDER'S OFFICE, NOW, MANN WAS DECIDE TO FEW MONTHS AGO BY THIRD DEBT KRAERL SAYING THE -- COURT APPEAL SAYING THE PUBLIC DEFENDER MAY NOT REPRESENT DEFENDANTS IN NONCAPITAL POST CONVICTION CASES WITHOUT BEING APPOINTED TO DO SO.

NOW, AS THIS COURT MAY OR MAY

NOT KNOW, BECAUSE I DON'T KNOW WHERE IT IS IN THE BRIEFING SCHEDULE BUT I BELIEVE, THAT THE PUBLIC DEFENDER\$\$'S OFFICE IN MANN FILED A PERHAPS A NOTICE TO INVOKE DISCRETIONARY JURISDICTION I BELIEVE THE JURISDICTIONAL BRIEFS HAVE BEEN FILED IN THAT CASE I DID DO NOT WROEFSH THERE HAS BEEN DISPOSITION IN MANN THIS OF AS OF THIS CASE.

>> STRIKES ME BEFORE REVISION SEVEN IT REALLY MATTERED THE STATE AT LEAST WAS IF YOU HAD THE PRIVATE ATTORNEY, MIGHT HAVE BEEN THE -- RESPONSE!!\$\$!!!!!!!!!!!!!! RESPONSIBILITY NOW UNDER REVISION SEVEN, IF IT IS ALL GOING TO THE OUT OF THE OR ALL COMING OUT OF THE STATE COFFER, WHICH POT IT COMES OUT OF.

>> WELL, YOU KNOW, YOUR HONOR THE LEGISLATURE HAS THE AUTHORITY CERTAINLY AND DID, CREATE THE OFFICE OF -- CCR, BACK IN 85 WHEN CCR FIRST CAME INTO BEING THERE WERE AMENDMENTS TO THAT CHAPTER 27, WITH RESPECT TO HANDLING CAPITAL POSTCONVICTION LITIGATION!!\$\$!!!!!!!!!!!!!! LITIGATION.

TO STEP INTO THE BREECH ESSENTIALLY!!\$\$!!!!!!!!!!!!!! ESSENTIALLY, 1985, ENACTMENT, IN 1997, THEN REGISTERED COUNSEL WAS ADDED IN 1997 OR 1998, TO ALLEVIATE THE OVERREADS BURDENED OR THE STRAPPED RESOURCES OF CCR, AND THIS COURT AND -- REPEATEDLY HAS SAID THAT REGISTRY COUNSEL IN CCR STAND IN SAME POSITION THEY ARE RESPONSIBILITY IS TO IN FACT CHALLENGE

POSTCONVICTION DEATH PENALTY CASES IN THE DEATH DOOETH --

>> LET ME MAKE SURE I GOT THE ANSWER, IF THEY ARE THEY PRECLUDED FROM LOOKING INTO THE MERITS, AS TO WHETHER ONE OF THE AGGRAVATORS, WHICH

WOULD BE A PRIOR VIOLENT  
FELONY!!\$!!!!!!  
FELONY, IS SUSCEPTIBLE TO  
ATTACK IS THAT BEYOND THEIR  
STATUTORY ABILITY?  
WHAT IS YOUR ANSWER TO THAT?  
>> YOUR HONOR.  
>> -- FILING THE CASE --  
>> RIGHT THE -- THEY CANNOT  
INITIATE THE POSTCONVICTION  
LEGISLATION WHAT THEY CAN DO  
-- LITIGATION WHAT THEY CAN DO  
I WOULD ASSUME EVERY CASE THEY  
LOOK TO SEE IF THERE IS A  
VALID POST CONVICT SHUNL  
CHALLENGE, THAT IS AVAILABLE  
TO THEM, IN THE DEATH-PENALTY  
CASE!!\$!!!!!!  
CASE, WELL, THE COURT HAS  
NEVER HELD THAT EVEN TRIAL  
COUNSEL IS INEFFECTIVE FOR  
FAILING TO CHALLENGE A  
20-YEAR-OLD PRIOR VIOLENT  
FELONY CONVICTION, WHAT CCR IS  
ATTEMPT DOING YOUR HONOR WITH  
ALL DUE RESPECT IS BOOTSTRAP  
THEIR CAPITAL REPRESENTATION  
IN THE PRISON MURDER CASE WITH  
A 25 -- ALMOST 30-YEAR-OLD  
NONCAPITAL CONVICTION,  
INITIATE OWING.  
>> STATUTORY.  
>> THE ZBHEESHGS OKAY.  
>> SHE ASKED, CAN THEY NOT  
LOOK INTO IT I THINK THAT WAS  
HER QUESTION NOT --  
>> FRANKLY, YOUR HONOR WHAT  
CCR LOOKS INTO IS SOMETHING  
THAT WE WON'T BE PRIVY TO WE  
DON'T KNOW THE SCOPE OF THEIR  
INVESTIGATION.  
>> WELL THERE IS.  
>> HE WE ONLY KNOW THAT THE  
LEGISLATURE HAS SAID THAT --  
>> THERE IS NO ANSWER TO HER  
IS THAT WHAT YOU ARE SAYING.  
>> PROBABLY NOT BECAUSE I  
DON'T I THINK THE STATUTE --  
THE STATUTE PRECLUDES THEM  
FROM INITIATING POSTCONVICTION  
LITIGATION!!\$!!!!!!  
LITIGATION.  
>> NOT LONG AGO THERE WAS A  
MAJOR ISSUE OUT THERE WITH

REFERENCE TO CONVICTIONS THAT HAD BEEN OBTAINED AND SECURED WITHOUT THE ASSISTANCE OF COUNSEL.

AND UP UNTIL JUST REALLY A FEW YEARS AGO, YOU KEPT SAYING THOSE POP UP, THAT IS THAT SOMEBODY DISCOVERED, OH, MY COMOSH!!\$!!!!!! COMOSH -- MY GOSH, THAT PRIOR CON DESCRIBINGION, MAY NOT CONVICTION MAY NOT BE VALID IF YOU EXAMINE IT IT WAS A SERIOUS FELONY, AND YOU LOOK, AND YOU SEE THAT THERE WERE NO COUNSEL, OR WHAT I'M TRYING TO SAY IS YOU KNOW THOSE CAME UP, IN ALL KINDS OF FORMS, SO YOU ARE NOT SUGGESTING ARE YOU IF COUNSEL SAW ONE OF THOSE, USED AS AN AGGRAVATE\$\$!!OR, IN A DEATH-PENALTY CASE THEY WOULDN'T HAVE SOME OBLIGATION TO SAY WELL WAIT A MINUTE, YOU KNOW, WE APPARENTLY ARE THE FIRST ONES TO DISCOVER THAT, AND YOU KNOW, WE NEED TO CALL IT WILL TO \$\$SOMEBODY'S ATTENTION.

EVEN IF IT IS JUST THE DEFENDANT.

AND YOU KNOW, BUT SO I'M HAVING DIFFICULTY WITH IN ALSO, DIFFICULT, I THINK, WE HAVE GOT TO BE CAREFUL ABOUT JUMPING INTO THE MERITS OF THE THING, FROM WHAT I PERCEIVE TO BE A FAIRLY NARROW ISSUE THE STATE HAS PRESENTED, THAT IS OF TRYING TO KEEP THESE REGIONAL OFFICES, WITHIN THE BOUNDS THAT HAVE BEEN DELEGATED TO THEM.

THAT IS THE WAY I UNDERSTOOD THE \$\$STATE'S PRESENTATION TO BE MADE.

THAT IT IS NOT A GRAM ISSUE, THAT OTHER COUNSEL IF TRIAL COURTS FOUND THAT IT WAS NECESSARY, WHATEVER, THAT OTHER COUNSEL COULD BE APPOINTED.

BUT THAT IN TERMS OF THE RESPONSIBILITIES AND DUTIES OF

CCR, THAT IT SHOULD NOW AM I  
MISREADING WHAT THE STATE  
IS --

>> NO YOUR HONOR IF I MAY  
ADDRESS I BELIEVE THAT WAS  
PERHAPS A COMPOUND QUESTION.

>> TO ME.

WITH RESPECT TO THE GIDIAN  
ISSUES, ABOUT -- COURT WELL  
AWARE CAME OUT OF THE UNITED  
STATES SUPREME COURT LAST WEEK  
BASICALLY SAID EXCEPT FOR A  
GIDEON CLAIM THERE WILL NOT BE  
REPRESENT ACTIVE THEY HAVE NOT  
FOUND RETROACTIVE APPLICATION,  
UNDER A NEW LAW, IN  
POSTCONVICTION!!\$!!!!!!!!!!!!!!  
POSTCONVICTION.

SO GIDEON, WITH RESPECT TO  
THOSE TYPE OF GIDEON CLAIMS  
AND THERE IS A DISCOVER OF A  
GIDEON CLAIM YES YOU MAKE THE  
DEFENDANT AWARE OF IT.

YOU KNOW RULE 385049 CAPITAL  
DEFENDANTS DESIGNED FOR  
NONCAPITAL DEFENDANTS ALSO  
ANTICIPATED THAT THE MAJORITY  
OF THE CASES WOULD BE FILED  
BROI SAY LITIGANTS A FORUM I  
WAS ADOPTED SO THEY COULD FILL  
IN BLANKS SO IT WAS --

ESSENTIALLY!!\$!!!!!!!!!!!!!!  
ESSENTIALLY, A MADE AVAILABLE  
FOR THEM, THAT THEY COULD DO  
IT WITH RELATIVE EASE IN FACT  
ALTHOUGH!!\$!!!!!!!!!!!!!!

ALTHOUGH.

>> -- IN GRAM SAID -- SO IF  
ABSOLUTELY!!\$!!!!!!!!!!!!!!  
ABSOLUTELY --

>> JUDGE THAT WHATEVER, KIND  
OF THING, BUT, SO BUT LET ME  
RETURN YOU KNOW AWAY FROM THE  
MERITS AGAIN, THOUGH, IS THE  
ISSUE THE STATE IS PRESENTED,  
REALLY VERY NARROW ISSUE, AND  
THAT IS WHORNLT UNDER-- WHEN  
OR NOT UNDER THE SCHEME  
LEGISLATURE SET UP THAT THE  
LEGISLATURE WOULD CONTEMPLATE  
THAT CCR OFFICE COULD ALSO  
ASSUMING THAT THE VALIDITY OF  
IT THAT MR. MIGHT BE COULD GO  
AND ALSO REPRESENT THE

DEFENDANT, IN A PRIOR IN A  
POSTCONVICTION CASE, IN A  
PRIOR -- IS THAT THE NARROW  
ISSUE THE STATE IS PRESENTING  
TO US?

OR WHETHER CCR HAS BEEN STRICT!!\$\$!!!!!!  
STRICTLY LIMITED TO APPEARANCE!!\$\$!!!!!!

APPEARANCES IN CAPTAIN CASES  
SO THAT THE ISSUE I BELIEVE  
YOUR HONOR THE LEGISLATIVE  
AUTHORIZATION TO CCR WITHIN  
THE LEGISLATUREDITION KREGS  
ONLY TO REPRESENT IN CAPTAIN  
CASES

>> A NARROW ISSUE.

>> YES, IT IS YOUR HONOR, WITH  
RESPECT TO THE FACT THAT AN  
ISSUE MIGHT ARRIVE IN A PRIOR  
NONCAPITAL CONVICTION, THAT  
PLACES THIS DEFENDANT AND HIS  
NONCAPITAL CASE IN THE SAME  
POSITION, OF EVERY OTHER  
DEFENDANT IN A NONCAPITAL  
CASE, CONVICTED OF SERIOUS  
CHARGES!!\$\$!!!!!!

CHARGES, SO --

>> WHAT WE REALLY HAVE HERE  
THEN IF CCRC, OR REGISTRY  
COUNSEL COMES ACROSS SOME  
CONVICTION THAT IS USED AT THE  
PRIOR VIOLENT FELONY, THEY CAN  
IN FACT BRING THAT TO THE  
ATTENTION OF THE DEFENDANT,  
THE COURT, AND THE COURT CAN  
USE THE GRAM STANDARD TO  
DECIDE WHEN OR NOT, THE  
DEFENDANT NEEDS TO HAVE AN  
ATTORNEY APPOINTED, FOR  
POSTCONVICTION IN THAT  
PARTICULAR CASE IS THAT WHERE  
THE STATE IS IN THIS.

>> YOUR HONOR THE STATE IS

THAT THE CCR CAN NEVER

INITIATE, POSTCONVICTION

LITIGATION!!\$\$!!!!!!

LITIGATION, ON BEHALF OF A

CAPITAL DEFENDANT, IN A

NONCAPITAL CASE.

>> I I MEAN.

>> THEY CAN CERTAINLY ALERT

THEIR CLIENT, OR AS PART OF

THEIR DEATH PENALTY

REPRESENTATION!!\$\$!!!!!!

REPRESENTATION, MAKE THE COURT

AWARE, YOU KNOW, CERTAINLY  
THAT THERE IS AN ISSUE, OUT  
THERE!!\$\$!!!!!!  
THERE.

THEY MAY NOT BE THE ONES TO  
REPRESENT THEM.

THE STATUTE DOES NOT HAVE TO  
BE CHANGED.

IT IS CCR DOES -- DOES NOT  
HAVE AUTHORITY TO EXPAND THE  
LEGISLATIVE INTENT.

>> I APOLOGIZE YOUR HONOR.

>> NOT YOUR FAULT BELIEVE ME.

>> THIS IS ESSENTIALLY MATTER  
OF STATUARY CONSTRUCTION  
RIGHT.

>> IT IS YOUR HONOR.

>> WHEN JUDGE GIVEN HE GIVEN  
SAID NO MEANS KNOW THE ONLY  
PLACE I SEE NO MEANS NO IS IN  
REGARDS TO REGISTRY COUNSEL  
WHERE THERE ARE SPECIFICALLY,  
PROHIBITED FROM REPRESENTING  
DEFENDANTS IN NONCAPITAL CASES!!\$\$!!!!!!  
CASES.

I CONTINUE -- I DON'T SEE THAT  
IN THE CCR STATUTE, SO HOW DO  
WE GET TO NO MEANS KNOW IN --  
NO IN THE CCR STATUE.

>> YOU GET TO NO MEANS NO I  
DON'T YOU ARE HONOR WHEN YOU  
LOOK AT THE HISTORY OF  
STATUTE, THE 85 CREATION OF  
CCR THE 19 EXCUSE ME 97-98  
ADDITION OF REGISTRY, THIS IS  
AN EXPLANATION TO MAKE SURE  
PRIVATE COUNSEL PRIVATE BAR  
APPOINTED AS REGISTRY, KNEW  
WHAT CCR ALREADY KNEW, AND  
THAT IS THAT THEY WERE NOT  
AUTHORIZED TO GO IN, TO  
NONCAPITAL CASES.

THAT THEY WERE SPECIFICALLY  
LIMITED!!\$\$!!!!!!

LIMITED, SO IF WELL.

>> TELL ME WHERE IN STATUTE WE  
FIND THAT.

BECAUSE -- IT IS A MATTER OF  
STATUTORY CONSTRUCTION WE HAVE  
TO FIND WHERE IN THE STATUTE,  
IS IT THAT THE STATUTE,  
LIMITS, REPRESENTATION, TO  
CERTAIN AREAS?

>> YOU FIND IT IN FOUR SECTION!!\$\$!!!!!!

SECTIONS OF THE STATUTE PLUS  
THIS \$\$COURT'S INTERPRETATION  
WHERE YOU ARE SAYING THAT IT  
CLASS ERTHAT THE LEGISLATURE  
INTENDED THAT REGISTRY AND CCR  
COUNSEL STAND IN THE SAME  
POSITION.

SO YOU FIND IT, IN THE STATUTE  
YOUR HONOR, YOU WILL FIND IT,  
IN 277001, WHERE IT THERE IS A  
SPECIFIC EXPLANATION OF  
LEGISLATIVE INTENT AND  
FINDINGS OF COURSE AS WELL,  
KNOWS YOU DON'T NEED TO LOOK  
FOR THE INTENT OF THE THE  
LEGISLATURE IF IT IS SET OUT  
IN THEIR IN THE PARAGRAPH SUCH  
AS LEGISLATURE HAS DONE HERE,  
THAT EXPLAINING THEIR  
LEGISLATE INTENT THAT -- CCRC  
MAY CHALLENGE ANY FLORIDA  
CAPITAL CONVICTION AND  
SENTENCED, THE NONCAPITAL 1978  
CASE IS NOT THE CAPITAL  
CONVICTION OF THE SENTENCE YOU  
ALSO FIND IN 277002 SUBSECTION  
4 WITH THE DISCUSSION ON  
LIMITATION ON CAPITAL  
REPRESENTATION!!\$!!!!!!!!!!!!!!  
REPRESENTATION.

WHERE IT SAYS THAT -- NO  
ATTORNEY MAY BE APPOINTED TO  
REPRESENT ANY DEFENDANT  
COLLATERAL LEGAL PROCEEDINGS  
EXCEPT AS EXPRESSLY AUTHORIZED  
THIS IS AN EXPRESS  
AUTHORIZATION!!\$!!!!!!!!!!!!!!  
AUTHORIZATION, OF POWER.

SO IF IT IS NOT SO IT IN  
THERE, CCR IS NOT PERMITTED TO  
DO THIS.

YOU ALSO FIND IT YOUR HONOR IN  
27702, THE DUTIES OF CCR,  
SHALL FILE ONLY THOSE POST  
CONVICT SHOURN COLLATERAL  
ACTIONS AUTHORIZED BY STATUTE,  
AGAIN A DIRECT AUTHORIZATION,  
FROM THE LEGISLATURE, 27706,  
PRO HIT HE PROHIBITING PRIVATE  
PRACTICE OF LAW ESSENTIALLY  
WOULD BE AS IF A PRIVATE  
ATTORNEY WOULD COME IN AND LIT  
GAT THE NONCAPITAL CONVICTION,  
AND ALSO, IN 27711.

JUSTICE CANTERO JUST ASKED  
ABOUT, NOW THE TITLE OF THAT  
SECTION IS TERMS AND  
CONDITIONS OF APPOINTMENT OF  
ATTORNEYS IN POSTCONVICTION  
COLLATERAL PROCEEDINGS THIS  
COURT AGAIN IN -- MOSS  
INTERPRETED THAT REGISTERED  
COUNSEL AND CCR STAND IN THE  
SAME POSITION, IF YOU WERE TO  
ACCEPT, CCR'S ARGUMENT THAT  
NO, REGISTRY COUNSEL AND CCR  
COUNSEL ARE NOT IN THE SAME  
POSITION, THEN WITH ALL DUE  
REPUBLICAN YOUR HONOR, THAT --  
RESPECT YOUR HONOR CREATES AN  
EQUAL PROTECTION PROBLEM AND  
OF COURSE, UNDER 27711 THERE  
ARE TWO SUBSECTIONS, SECTION  
1C, REFERS TO COLLATERAL  
LITIGATION FILED IN THE TRIAL  
COURT, THAT IMPOSED THE  
CAPITAL SENTENCE, AND 2711,  
11, MAY NOT REPRESENT IN A  
PROCEEDING CHALLENGING A  
CONVICTION!!!!\$!!!!!!  
CONVICTION.

>> HOW RELEVANT IS AN ANALYSIS  
OF THE FEDERAL HABEAS  
REPRESENTATION OF CCR FOR  
CAPITAL DEFENDANT?  
IN OTHER WORDS, STARTING WITH  
THE FIRST CREATION OF THE  
SINGLE STATEWIDE OFFICE, IN  
LAWYERS, FROM CCR,  
REPRESENTING SAME DEFENDANTS  
IN FEDERAL HABEAS PROCEEDINGS?

>> HOW RELEVANT IS AN --  
>> IT IS QUITE RELEVANT  
BECAUSE IT IS AND LEGISLATURE  
WAS ENVISIONED THAT WHEN IT  
PROVIDES FOR THE FUNDS FOR  
EXAMPLE WHEN CCR REPRESENTS A  
CAPITAL DEFENDANT IN HIS  
FEDERAL HABEAS CORPUS HABEAS  
CORPUS PROCEEDINGS TO  
CHALLENGE THAT JUDGMENT AND  
SENTENCE.  
THEY PROVIDE FOR REIMBURSEMENT  
OF PAYMENT FROM THE DEPARTMENT  
OF JUSTICE.  
THE CRIMINAL JUSTICE ACT  
RATHER, AND SO IN FEDERAL

HABEAS CORPUS HABEAS CORPUS  
PROCEEDINGS THIS COURT ALREADY  
ADDRESSED OKAY IN FEDERAL  
HABEAS CORPUS THAT IS ENVISION!!!!\$!!!!!!  
ENVISIONED AS A DIRECT CHAL.

>> HOW EX-SPLITS, HOW EX!!\$!!  
EX-EXPLICIT IS IN THE STATUE  
SCHEME FOR CCR THAT COUNCIL  
MAY REPRESENT THE DEFENDANT,  
IN FEDERAL HABEAS CORPUS, OR  
YOU KNOW, FOR -- PROCEEDINGS  
IN THE U.S. SUPREME COURT?

>> WELL, I BELIEVE THAT IT HAS  
BEEN SO IT, ACTUALLY YOUR  
HONOR.

>> WITH RESPECT TO THE STATUE  
I WOULD JUST HAVE 20 -- TO  
PULL THAT THE 702 PORTION OF  
THE STATUTE.

BUT IT IS IT IS AGAIN, IT IS A  
DIRECT CHALLENGE, IT IS  
CONTEMPLATED AS A DIRECT CHAL.  
TO THE JUDGMENT -- AND WHAT  
YOU INTERPRET IT THE  
LIMITATIONS ON CCR OR THE LACK  
OF AUTHORIZATION FOR CCR TO DO  
FEDERAL CIVIL RIGHTS

LITIGATION!!!!\$!!!!!!  
LITIGATION, OR 1983 ACTION,  
WHICH AGAIN WAS AFFIRMED BY  
THIS COURT OR ADDRESSED BY  
THIS COURT RECENTLY IN DIAZ,  
THIS COURT IN KENNY ALSO SAID  
THAT -- CCR HAS NO AUTHORITY  
TO FOR CAPITAL TO REPRESENT  
CAPITAL DEFENDANTS IN FEDERAL  
CIVIL RIGHTS ACTIONS AT ISSUE,  
AND HAS NO AUTHORITY, TO  
REPRESENT CAPITAL DEFENDANTS  
IN ANY CIVIL ACTION NOT DIRECT!!!!\$!!!!!!

DIRECTLY CHALLENGING THE  
LEGALITY OF THE JUDGMENT AND  
SENTENCE OF SUCH -- SUCH  
DEFENDANT AND THAT IS -- PAR  
GRAL IN -- VERSUSKIN KENNY.

>> WELLING INTO REBUTTAL YOU  
HAVE GOT ABOUT A MINUTE.

>> THANK YOU YOUR HONOR IF I  
MAY RESERVE THE REMAINDER OF  
MY TIME, THANK YOU.

>> YOU ARE A WELL SEASONED  
VETERAN NOW.

>> THANK YOU.

>> MAY IT PLEASE THE COURT.

THERE IS NOTHING IN THE CCR  
STATUTE IN CHAPTER 27 THAT

3R50E67B9S CCR --

PREREPRESENTS CCR FROM  
REPRESENTING.

>> ACTUALLY, DOESN'T THE  
STATUTE HAVE TO MANDATE, THAT  
CCR HAS THE AUTHORITY TO DO  
IT?

>> YES.

>> NOT IT IS NOT A MATTER OF  
THEIR BEING A PROHIBITION IN  
THE STATUTE IT IS A MATTER  
THAT THE STATUTE ASKED TO  
EXPRESSLY SAY IT IN CCRC, AS  
THAT POWER.

>> YES THE LEGISLATURE,  
CREATED CCR TO PERFORM  
SPECIFIC DUTIES, THE DUTIES  
SEEK TO GO PERFORM ON BEHALF  
OF OUR CLIENT MR. KILGORE, ARE  
FULLY WITHIN THE STATUTES  
REQUIREMENTS!!!!\$!!!!!!!!!!!!!!  
REQUIREMENTS.

THE STATUE ALSO -- STATUTE  
EXPLICITLY SAYS THERE  
ERCERTAIN DUTIES WE CANNOT  
PERFORM CIVIL LITIGATION  
REPRESENTING PRO BONO.

>> MY CONCERN IS THAT I DON'T  
READ IN THE STATUTE, ANY  
SPECIFIC AUTHORITY THAT IS  
GIVEN TO CCRC TO FILE AN  
ACTION IN ANY ACTION EXCEPT  
THE POST 3.851, AND I WOULD BE  
CONCERNED ABOUT COURT HEARING  
IT, BECAUSE OF THE  
RAMIFICATION!!!!\$!!!!!!!!!!!!!!  
RAMIFICATIONS.

IF WE DID THAT, THEN WOULD CCR  
C BE ABLE TO GO INTO THE STATE  
OF TEXAS AND FILE IN AN ACTION  
IN TEXAS?

FOR -- TO GET AN UNDERLYING  
CONVICTION OR STATE OF  
WASHINGTON, OR -- JUST -- WE  
HAVE HAD THOSE CASES COME UP  
REMETO ONE IN KANSAS.

>> CORRECT STATE VERSUS  
ARMSTRONG PRIOR CONVICTION IN  
MASSACHUSETTS, THAT WAS SET  
ASIDE, AND MR. ARMSTRONG GOT  
RELIEF!!!!\$!!!!!!  
RELIEF.

>> CCR GET THE RELIEF?

>> YES, 99MR. ARMSTRONG?

>> YES.

>> YES, HE WAS REPRESENTED BY  
CCR COUNSEL.

>> IN MASSACHUSETTS?

>> OH, NO, NO I'M SORRY.

-- THOSE CASES DO ARISE,  
OBVIOUSLY NOT EVERYBODY IN  
CCIS GOING TO BE ABLE TO  
TRAVEL TO EVERY OTHER STATE  
AND LITIGATE THERE

>> AGAIN, I THINK IT IS,  
JUSTICE CANTERO RAISES  
INTEREST POINT ABOUT CLEAR  
PROHIBITION IN THE REGISTRY

THAT THE WAY I WAS READING THE  
STATUTE, IT DOESN'T SEEM THAT  
THERE IS 99SPECIFIC AUTHORITY,  
WITH MISS BLANCO TO HAVE AT  
LEAST, AGREEING, I DON'T WANT  
TO USE THE WORD CONCEDING,  
THAT YOU ARE CERTAINLY NOT  
PROHIBITED FROM LOOKING INTO  
IT, ADVISING THE DEFENDANT,  
PRESUMABLY!!\$!!!!!!

PRESUMABLY, ADVOCATING EVEN TO  
THE TRIAL JUDGE, THAT THIS IS  
THE CASE THAT IT REL NEEDS  
APPOINTMENT OF COUNSEL, WHERE  
IS IN TERMS OF FOR THE -- IF  
THERE IS NO STATUTORY MANDATE,  
MAYBE, IS THERE ANY OTHER  
AND, 99THERE IS NO  
CONSTITUTIONAL MANDATE UNLESS  
THE GRAM FACTORS ARE VIOLATED  
BUT THAT DOESN'T MEAN THEY  
HAVE TO BE -- CCRC IS THE ONE  
THAT WOULD REPRESENT THAT  
PERSON, HOW DO YOU RESPOND TO  
THAT?

>> I THINK IN MOST  
CIRCUMSTANCES, UNDER, GRAM,  
AND YOU KNOW, TO THE POINT OF  
PUBLIC DEFENDER, OR OTHER  
ATTORNEY, WOULD ACTUALITY GO  
AGAINST THE POLICY THAT GIVES  
RISE TO THE PROHIBITIONS IN  
THE STATUTE, NAMELY, EXHAUST!!\$!!!!!!  
EXHAUSTING THE STATE TREASURY.

>> THAT IS BUT THAT IS JUSTICE  
WELLS SAYS, I THINK AND I WILL  
BE SURPRISED IF THE IF THE  
STATUTE CREATING THIS WAS

REALLY THINKING OFS THIS PARTICULAR DISCREET ISSUE IT SEEMS LIKE THIS IS AN LEGISLATIVE DECISION ONE WAY OR ANOTHER IN MOST CASES THERE WOULD BE REPRESENTATION OF A DEFENDANT, BUT IF PUBLIC DEFENDER!!\$\$!!!!!!!!!!!!!! DEFENDER'S OFFICE, PRIVATE COUNSEL, REIMBURSED, IT IS -- YOU KNOW THE POLICY REASON YOU MAY WOULD NOT TO ARGUE THE LEGISLATURE IS MORE EFFICIENT FOR CCRC TO DO IT SOUNDS LIKE IT PROBABLY WOULD BE --!!\$\$!! --99PROBABLY WOULD BE BUT WE ARE DEALING WITH WHETHER THE STATUTE AUTHORIZES IT THAT IS WHERE IMHAVING A PROBLEM SEEING JUST WELLS WAS SAYING WHETHER AUTHORIZES IT OR ON THE OTHER HAND DOES IT WHEN TO BE THE WAY THAT CLEAR PROHIBITION YOU ARE AUTHORIZED TO DO IT WILL?

>> WELL, CLEARLY, THERE IS A LEGISLATURE -- SET UP CCR, TO FORM CERTAINLY DUTIES, AND HE SERVICES TO THE CLIENT AND THE PEOPLE STATE OF FLORIDA.  
THERE ARE SPECIFIC PROHIBITION!!\$\$!!!!!!!!!!!!!! PROHIBITIONS CERTAIN ACTIONS CCR MAY NOT FOR INSTANCE REPRESENT CLIENTS PRO BONO SO FORTH.

IN A CASE LIKE MR. KILGORE'S, WHERE, BOTH AGGRAVATORS.  
>> WHAT IS THAT POLICY THAT YOU CAN'T -- IN OTHER WORDS, YOU COULDN'T TAKE OFF YOUR CCRC!!\$\$!!!!!!  
CCRC AND TELL THE JUDGE LISTEN I'M GOING TO WORK AT NIGHT, YOU ARE NOT GOING TO HAVE TO PAY ANYTHING BUT I WILL TAKE CARE BECAUSE THIS SUCH A MERITORIOUS THING COULD REALLY AFFECT HIS CONVICTION STATUTE DOESN'T ALLOW YOU TO DO THAT?

>> RIGHT STATUTE IS VERY EXPLICIT WITH REGARD TO PRO BONO REPRESENTATION THAT ISSUE HAS BEEN BEFORE IN THE COURT BEFORE I CAN UNDERSTAND THE

POLICY -- REASONS BEHIND THAT.

>> LET ME ASK YOU ABOUT  
PRACTICAL ASPECTS OF THIS  
TRYING TO FIND IN THE LANGUAGE  
IF THE OPINION BELOW, I THINK,  
JUDGE SHARP REFERRED TO THE  
SITUATIONS AS RARE.

AND IN MY EXPERIENCE, HERE, IT  
SEEMS LIKE ABOUT, 75% OF  
DEATH-PENALTY CASES INVOLVE A  
PRIOR VIOLENT FELONY, I DON'T  
THINK THAT WE CAN LIMIT, THE \$\$  
COUNSEL'S ABILITY TO CONTEST  
THOSE PRIOR VIOLENT FELONIES  
TO ONLY PRIOR MURDERS.

IF IT IS FOR ONE IT IS FOR ALL  
SO IT SEEMS TO ME WE ARE  
OPENING UP REALLY CAN OF WORMZ  
WHEN 75% OF THE APPEALS  
INVOLVE PRIOR VIOLENT FELONY  
NOW CCRC IS GOING TO SAY WE  
ALMOST HAVE A DUTY FORGET THE  
AUTHORIZATION WE NOW HAVE A  
DUTY TO GO AND TRY TO CONTEST  
THOSE PRIOR VIOLENT FELONIES  
ESPECIALLY IF THERE IS ONLY  
ONE PRIOR VIOLENT NEILL IF WE  
CAN GET THAT KNOCKED OFF, THEN  
OF COURSE WE CAN GET THE  
OTHERS IF OF IT IS A PRIOR  
VIENLT FELONY WHY NOT SOME OF  
THE OTHER AGGRAVATORS, THEN,  
NOW WE ARE REALLY GETTING INTO  
DEEP WATERS.

>> WELL, I UNDERSTAND THAT  
CONCERN, I CAN ONLY SAY THAT  
CCR CANNOT RAISE A CLAIM, IF  
IT IS NOT A COLORABLE FOR  
VIABLE CLAIM.

>>,000 HOW COLORABLE IF ON THE  
MURDER OCCURRED MANY YEARS  
OOZE YOU ARE PROBABLY  
PROCEDURALLY BARRED FROM IT  
WILL SO IF THIS IS ISSUE  
REGARDING BRADY VIOLATION  
MR. KILGORE HAD NO REASON TO  
KNOW ABOUT I DON'T WANT TO GET  
INTO THE MERITS OF THE CASE  
UNLESS THE COURT SPECIFICALLY  
WANTS ME TO THERE IS NO RECORD  
ON THAT YET.  
THE BOTTOM LINE IS MR. KILGORE  
CAN'T BE HELD RESPONSIBLE FOR  
THE STATE WITHHOLDING

POTENTIAL BRADY INFORMATION  
WHEN THAT DOES COME TO LIGHT  
CCR DOES HAVE A DUTY TO  
CHALLENGE THE AGGRAVATORS IF  
IT IS BASED ON A  
CONSTITUTIONALLY INFIRM PRIOR  
CONVICTION!!\$\$!!!!!!!!!!!!!!  
CONVICTION.

>> BUT IF YOU HAVE TO DO IT  
BRINGING OTHER LITIGATION  
THERE IS A -- AND STATUTE,  
27.702 THERE IS A STATEMENT  
THAT THAT IS ADAPT COLLATERAL  
REASONABLE COUNSEL THE  
ATTORNEYS APPOINTED FOR --  
PURSUANT TO 27.710, THE  
REGISTRY ATTORNEY SHALL FILE,  
ONLY THOSE POSTCONVICTIONAL  
COLLATERAL ACTIONS, AUTHORIZED  
BY STATUTE.

SO TELL ME WHAT STATUTE  
AUTHORIZES CCRC OR REGISTRY  
COUNSEL TO FILE THAT ACTION.

>> I THINK THAT THE STATUTE  
ITSELF, SPEAKS TO CHALLENGE  
THE PRIOR CONVICTION, BECAUSE  
IT IS PART AND PARCEL OF THE  
DEATH SENTENCE.

WITHOUT THE PRIOR CONVICTION,  
THE MAJOR -- FORGET THE MAJOR,  
ONE OF THE AGGRAVATORS OR IN  
MR. KILGORE'S CASE POSSIBLY  
BOTH AGGRAVATORS WOULD BE  
STRUCK, THE STATUTE  
SPECIFICALLY SPEAKS TO --

>> IT SAYS AN ACTION  
AUTHORIZED BY STATUTE.

>> SURE.

>> WHERE IN THIS STATUTE,  
POINT TO ME IN THIS STATUTE  
WHERE IT AUTHORIZES A  
NONCAPITAL PROCEEDING.

>> YOUR HONOR IT IS SPECIFIC  
TO NOT AUTHORIZING A  
NONCAPITAL PROCEEDING.  
HOWEVER!!\$\$!!!!!!

HOWEVER, BY THE STATE USING  
THIS AGGRAVATE\$\$!!OR, TO JUSTIFY A  
DEATH-PENALTY CASE, IT BECOMES  
PART AND PARCEL OF THE  
DEATH-PENALTY CASE.

>> TO REALLY ANSWER THE  
QUESTION IT THE ANSWER IS THAT  
THERE IS NOTHING IN THIS

STATUTE THAT AUTHORIZES CCRC  
TO INITIATE ANY KIND OF ACTION  
THAT IS A NONCAPITAL  
PROCEEDING!!!!\$!!!!!!!!!!!!!!  
PROCEEDING.

IS NOT THAT CORRECT?

>> THAT IS WHAT THE STATUTE  
SAYS.

HOWEVER, IN A CASE SUCH AS  
MR. KILGORE'S WHERE THAT  
AGGRAVATE!!!!\$!!!!!!!!!!!!!!  
AGGRAVATOR, WHERE THE PRIOR  
EXCUSE ME WHERE THE NONCAPITAL  
PROCEEDING IS CHALLENGING AN  
AGGRAVATE\$!!!!OR THAT IS USED TO  
JUSTIFY DEATH SENTENCE I DONT  
THINK YOU CAN DISTINGUISH  
BETWEEN THE TWO.

>> DON'T YOU THINK THAT THIS  
IS EXACTLY WHAT THE  
LEGISLATURE WAS THINKING ABOUT  
HERE?

THEY DON'T WANT CCRC, IN -- OR  
REGISTRY COUNSEL, IN ALL OF  
THESE CASES, AS JUSTICE  
CANTERO SAID PROBABLY 75%  
MAYBE EVEN MORE OF THEM, HAVE  
-- PRIOR VIOLENT FELONY CCRC  
IS TO EXPEND THE -- LIMITED  
ROIRZ AVAILABLE TO THEM TO GO  
OFF CHASING EVERY PRIOR  
VIOLENT FELONY, THAT IS IN  
THESE CAPITAL CASES, DON'T YOU  
THIS I THAT THAT IS THE  
PURPOSE OF THE LEGISLATURE  
LIMITING THESE TO CAPITAL  
PROCEEDINGS!!!!\$!!!!!!!!!!!!!!  
PROCEEDINGS?

>> I DON'T KNOW THAT THAT IS  
THE PURPOSE OF THAT.  
OF THAT PROVISION.

THE PROHIBITIONS, OF CCR, ON  
CCR COUNSEL REPRESENTING  
CLIENTS!!!!\$!!!!!!  
CLIENTS, IN CIVIL LITIGATION  
PRO BONO, AND SO FORTH, ARE  
VERY SPECIFIC.

THE LEGISLATURE HAD THE  
OPPORTUNITY TO READDRESS THIS  
ISSUE GOING BACK TO KENNY AND  
JONES.

VERY BUTTERWORTH I'M SURE THE  
LEGISLATURE IS AWARE THERE ARE  
SEVERAL CCR CASES, WHERE CCR

IS REPRESENTING, THEIR CLIEPTS!!!!\$!!!!!!  
CLIEPTS, CHALLENGING THE PRIOR  
FELONY!!!!\$!!!!!!  
FELONY -- AND THE LEGISLATURE  
HAD PLENTY OF OPPORTUNITY TO  
ACT ON THAT, AND CHANGE THE  
LAW.

>> LET ME ASK THIS QUESTION,  
THEY HAVEN'T CHANGED THE LAW  
IN YOUR ARGUMENT, BUT THE  
STATUTE SPECIFICALLY LIMITED  
TO THE YOU DO NOT AGREE TO  
ACTIONS IN THIS STATE.

>> THE YES THE TERMS OF THE  
STATUTE SFLIEMENT EX-SUPPRESS  
TERMS OF THE STATUTE LIMIT TO  
THE COURTS IN THIS STAYS PLUS  
THE FEDERAL YOU CAN DO THE  
FEDERAL CASES

>> CORRECT.

>> BUT THE COURTS IN THIS  
STATE.

SO AS JUSTICE WELLS SAID IF  
THIS PRIOR VIOLENT FELONY  
OCCURRED IN GEORGIA WHAT  
EXPRESS AUTHORITY WOULD YOU  
HAVE TO FILE AN ACTION IN  
GEORGIA?

>> I CAN'T SAY THAT I WOULD  
HAVE AN EXPRESS AUTHORITY, GO  
TO GEORGIA, NOR WOULD ANY ONE  
THAT I KNOW AT CCR BE ABLE TO  
GO TO GEORGIA BUT I THINK IF  
THE CONVICT SHAIN ROSE IN  
JORMG!!!!\$!!!!!!

JORMGA IT WOULD BE THE  
RESPONSIBILITY OF THE PUBLIC  
DEFENDER SYSTEM IN GEORGIA, TO  
-- TO CHALLENGE THAT CASE.

>> WE GO BACK TO THIS  
SITUATION, WHICH IS THAT  
WITHOUT THERE BEING A  
CONSTITUTIONAL VIOLATION, THE  
STATE IS BASICALLY SAID, AND  
YOU OBVIOUSLY GOT BRADY  
INFORMATION!!!!\$!!!!!!  
INFORMATION, SO YOU MUST HAVE  
BEEN INVESTIGATING THIS PRIOR  
VIOLENT FELONY, NOBODY IS  
SAYING, THAT YOU CAN'T  
ACTUALLY LEAST I'M NOT HEARING  
IT INVESTIGATE, A PRIOR  
VIOLENT FELONY TO SEE IF  
GROUNDS THERE ARE TO SET IT

ASIDE OR TO -- EVEN, AND THEN  
TO ADVISE, THE DEFENDANT AND  
THEN EVEN -- THE CASE TO THE  
TRIAL JUDGE THAT THIS IS THE  
KIND OF CASE THAT HAS MERIT,  
BUT IS REALLY NEEDS  
REPRESENTATION!!\$!!!!!!!!!!!!!!  
REPRESENTATION, IT IS JUST  
MEANS, THAT YOU ARE NOT THE  
ONE TO -- THAT THEN PURSUE  
THAT CASE NOW, WE MAY LOOK AND  
SAY THAT IS A GOOD POLICY BAD  
BOEFL OEFL POLICY THAT IS WHAT  
LEGISLATURE PROBABLY HAD IN  
MIND OR DIDN'T IN HE DIDN'T --  
HAVE IT IN MIND BUT I DON'T --  
I THINK THAT IS NOT FOR THIS  
COURT, ABSENT THERE BEING A  
CONSTITUTIONAL VIOLATION, SO  
YOU DO SEE THAT YOU ARE NOT  
LIMITED IN YOUR REPRESENTATION!!\$!!!!!!!!!!!!!!  
REPRESENTATION, BECAUSE YOU  
STILL CAN INVESTIGATE THIS  
UNDERLYING PRIOR VIOLENT  
FELONY TO SEE IF IT IS JUST  
LIKE ANY OTHER AGGRAVATE\$\$!!!!OR  
SUBJECT TO ATTACK.  
BUT YOU -- THE STATUTE DOESN'T  
THEN ALLOW YOU TO SEPARATELY,  
REPRESENT THE CLIENT IN  
SETTING ASIDE THAT ACKNOWLEDGE  
-- AGGRAVATE\$\$!!!!OR --  
>> I THINK THE STATE COULD  
OBJECT SAY THE ARE SPENDING  
CCR FUNDS ON THIS  
INVESTIGATION OBJECT ATTENTION  
RECORDS SO FORTH.  
>> THOOVENT SAID THAT YET THAT  
IS NOT -- THEY HAVEN'T SAID  
THAT YET THAT IS NOT BEFORE  
US.  
>> RIGHT IT SEEMS TO ME THAT  
IF I'M GOING TO BE ABLE TO  
INVESTIGATE THE CLAIM WHO  
WOULD BE BETTER TO REPRESENT  
THE CLIENT THAN CCR.  
>> I MAY TOTALLY AGREE WITH  
YOU OBVIOUSLY JUDGE SEEING  
THIS SAW IT WAS AN IMPORTANT  
CONVICTION BUT AGAIN, I THINK,  
CAN'T GET AROUND, AS WE HAVE  
TO DO FOR ALL CASES, WHAT IF  
IT IS AN UNIMPORTANT  
CONVICTION WE'RE WE CAN'T

START MAKING AS THE  
QUALITATIVE!!\$\$!!!!!!!!!!!!!!  
QUALITATIVE, JUDGMENTS, ON HOW  
IMPORTANT THAT CONVICTION WAS.

>> I WOULD SUBMIT THAT ANY  
PRIOR VILENT FELONY USED TO  
AGGRAVATE A DEATH PENALTY IS  
GOING TO BE -- DEATH SENTENCE  
IS GOING TO BE A SIGNIFICANT  
AGGRAVATE!!\$\$!!!!!!!!!!!!!!  
AGGRAVATOR.

>> WOULD YOU ADDRESS THE --  
EQUAL PROTECTION ARGUMENT THE  
STATE MADE YOU DO AGREE OR  
DISAGREE THAT REGISTRY COUNSEL  
SPECIFICALLY IS PRECLUDED FROM  
DOING ANYTHING, BUT  
POSTCONVICTION CAPITAL  
COLLATERAL CASE?

>> MY UNDERSTANDING IS THAT  
THE REGISTRY COUNSEL ARE PRO  
4IBITTED FROM REPRESENTING  
CLIENTS PRO BONO MUCH SAME AS  
CCR.

I DON'T KNOW THAT THERE IS ANY  
EXPLICIT --

>> 27711, 1C SAYS  
POSTCONVICTION CAPITAL  
COLLATERAL PROCEEDINGS, AND IT  
DEFINES IT MEANS ONE SERIES OF  
COLLATERAL LITIGATION OF AN  
AFFIRMED CONVICTION AND  
SENTENCE OF DEATH.

SO I THINK WOULD YOU AGREE,  
THAT THIS ACTION THAT YOU ARE  
SEEKING TO BRING, IS NOT AN  
ATTACK ON A CONVICTION AND  
SENTENCE OF DEATH.

IT IS OH --

>> NONCAPITAL CASE, THAT YOU  
ARE SEEK TO GO SET ASIDE.

>> WITH RESPECT I DON'T AGREE  
WITH THAT.

I THINK THAT ONCE THE  
AGGRAVATE\$\$!!!!OR IS INTRODUCED IN  
THE DEATH-PENALTY CASE, AS --  
AS TO SUPPORT THE DEATH STEN  
IT BECOMES PART AND PARCEL OF  
THAT DEATH PENALTY CASE.

>> YOU DO AGREE THERE ARE  
GOING TO BE TWO LITIGATION  
HAS?

THAT YOU WOULD HAVE TO GO TO  
THE COURT THAT HAS

JURISDICTION OVER THAT OTHER  
CASE GOING TO BE DIFFERENT  
THAN THIS COULD YOUS -- COURT.  
>> CORRECT, AND -- ARGUABLY  
UNTIL THAT PRIOR VIOLENT  
FELONY IS SET ASIDE YOU DON'T  
REALLY HAVE A CLAIM FOR  
CHALLENGE THE AGGRAVATE\$\$!!OR.

UNDER PAUL, AND --

>> SO IT WOULD REQUIRE TWO  
LITIGATIONS YOU HAVE TO  
COMPLETE THAT FIRST LITIGATION!!!!\$!!!!!!!!!!!!!!  
LITIGATION, THEN COME BACK AND  
DO THIS LITIGATION, SO THERE  
WOULD BE TWO SERIES OF  
LITIGATION!!!!\$!!!!!!!!!!!!!!  
LITIGATIONS.

>> YEAH, I WOULD THINK THAT  
BOTH COULD BE COMPLETED, ON A  
SORT OF A -- PARALLEL BASIS  
AND WE WOULDN'T HAVE TO  
COMPLETELY GO THROUGH ONE  
LITIGATION BEFORE THE OTHER I  
UNDERSTAND YOUR CONCERN.

>> BUT IN ANSWER TO JUSTICE  
QUESTION, WHAT ABOUT 27711  
PARREN 11 WHICH SPECIFICALLY,  
STATES.

THAT AN ATTORNEY THIS REGISTRY  
COUPES, UNDER 27.710, TO  
REPRESENT A CAPITAL DEFENDANT,  
IT GOES ON, TO SAY MAY NOT  
REPRESENT THE CAPITAL  
DEFENDANT CHALLENGE A  
CONVICTION OR SENTENCE OTHER  
THAN THE CONVICTION AND  
SENTENCE OF DEATH FOR WHICH  
THE APPOINTMENT WAS MADE.  
IS NOT THAT A CLEAR INDICATION  
THAT IN ANSWER TO HIS QUESTION  
THAT REGISTRY COUNSEL CANNOT  
DO WHAT YOU ARE TRYING TO DO  
IN THIS CASE?

>> I THINK, IF THE PRIOR  
CONVICTION HAS NO BEARING ON  
THE DEATH SENTENCE THAT THAT  
WOULD BE TRUE.

>> BUT THERE IS NO LANGUAGE IN  
HERE, THAT SAYS OTHER THAN  
WHEN USED FOR AN AGGRAVATING  
CIRCUMSTANCE SAYS THEY CANNOT  
REPRESENT THEM CHALLENGING  
CONVICTION OR SENTENCE OTHER  
THAN THE CONVICTION OR

SENTENCE OF DEATH FOR WHICH  
THEY WERE APPOINTED.

>> SURE.

THE RESPONSIBILITIES OF  
COLLATERAL COUNSEL TO  
CHALLENGE THE SENTENCE OF  
DEATH NECESSARILY IS GOING TO  
INVOLVE CHALLENGE THE  
AGGRAVATING FACTORS WHETHER  
THEY ARE ACT, CCP, SO FORTH  
THE WAY THAT WE CHALLENGE.

>> SO THIS SENTENCE YOU ARE  
REALLY SAYING -- OTHER THAN A  
CONVICTION AND SENTENCE THAT  
IS USED AS AB A -- AS AN  
AGGRAVATED CIRCUMSTANCE THAT  
IS WHAT THE STATUTE REALLY  
MEANS IS THAT YOU ARE SAYING.

>> I THINK THAT IF THE  
LEGISLATURE WERE CONCERNED,  
ABOUT THE REPRESENTATION OF  
MILTON AND PRESS TORNGS RIVERA  
THE OTHER CASES WHERE THIS  
ISSUE HAS ARisen BEFORE, THEY  
HAVE HAD OPPORTUNITY OVER THE  
LAST TEN MORE THAN 10, 15  
YEARS, TO PROHIBIT CCR TO  
CHANGE THE STATUTE, SO THAT IT  
IS MORE CLEAR.

THIS IS NOT BELOW KILGORE IS  
NOT THE FIRST TIME THAT CCR  
HAS REPRESENTED A DEFENDANT --  
AGGRAVATE\$!!!!OR -- AND THE  
LEGISLATURE!!!!\$!!!!!!!!!!!!!!  
LEGISLATURE, HASN'T SAID THAT  
WE CAN'T DO IT.

>> BUT THEY HAVE SAID IT AS IT  
TOOOOS AS TO REGISTRY WHETHER  
THAT SAYS YOU CAN DO IT WOULD  
THEN PUT SOMEBODY WHO IS  
REPRESENTED BY THE REGISTRY,  
IN A -- WORSE SITUATION, I  
MEAN I SEE, MR. DO YOU PROOES,  
MR. HENNIS SEEMS TO ME, THAT  
YOU GOT, A NEAR AND VICTOR, TO  
SAY MAKE IT CLEAR, WHETHER  
THIS IS THE KIND OF THING YOU  
WANT US TO BE DOING OUR WANT  
IT TO BE DONE ANOTHER WAY, I  
MEAN, I JUST FEEL LIKE WE ARE  
REALLY STEPPING INTO THE  
LEGISLATIVE ARENA IN TRYING TO  
FILL IN THESE GAPS THAT MAYBE  
WE ARE -- THOUGHT ABOUT, MAYBE

WEREN'T THOUGHT ABOUT.

>> I UNDERSTAND, THAT CONCERN.  
BUT I WOULD JUST HAVE TO COME  
BACK TO THE FACT THAT AGAIN,  
THIS IS -- THIS IS NOT  
SOMETHING NEW THIS IS -- THIS  
HAS BEEN ADDRESSED BY THE  
COURT BEFORE.

>> HAS ALSO BEEN ADDRESSED BY  
THE LEGISLATURE AND IN 1997  
THE LEGISLATURE AMONG PASSING  
THE REGISTRY, ALSO, MY  
RECTION, IS, AMENDED 924, AND  
ADD THAT SECTION 9,!!\$\$!NINE, AND 251  
WHICH MADE IT EXPRESS THAT NO  
RESOURCES OF THE STATE SHALL  
BE PAID FOR EMPLOYEES, OR USES!!\$\$!!!!!!  
USES, SEVERAL OTHER PEOPLE  
THERE, OR ENTITIES, THERE, FOR  
THE PURPOSES OF BRINGING  
COLLATERAL ACTION ALSO IN  
EXPRESSLY STOUL OR  
STATUTORILY MANDATED DIDN'T  
SAY WE ARE GOING THIS BY  
IMPLICATION IT SAYS IT HAS TO  
BE EXPRESSLY MANDATED, AND, IN  
TRYING TO GET FUNDS, FOR CCRC.  
IT IS IMPORTANT, THAT THIS  
COURT ADHERE TO WHAT THE  
LEGISLATURE HAS DONE IN THIS  
AREA!!\$\$!!!!!!  
AREA.

>> I THINK BY PUTTING THE  
BURDEN OF CCR ON CHALLENGING  
THE CONVICTION AND SENTENCE  
BUT BY NOT ALLOWING THEM TO  
CHALLENGE THE AGGRAVATORS,  
THAT ESTABLISHED THAT  
SENTENCE, WE ARE -- WE ARE NOT  
BEING ABLE TO FULFILL OUR  
RESPONSIBILITY UNDER THE  
STATUTE.

I UNDERSTAND, THE \$\$COURT'S  
CONCERN WITH REGARD TO THAT,  
AND THERE -- THERE IS A VAGARY  
THERE, IN THE STATUTE THE WAY  
THAT IT IS WRITTEN, I DON'T  
THINK THAT IT IS PROPER TO  
READ ANYTHING ADDITIONAL INTO  
THE STATUTE AS THE STATE WANTS  
TO DO.  
IN TERMS OF THE LEGISLATIVE  
INTENT AND SO FOR THE I DON'T  
SEE ANYTHING IN THE STATUTE

THAT PREVENTS US FROM DOING  
THE DUTY THAT WE ARE BOUND TO  
DO TOED A INDICATED ON BEHALF  
OF OUR CHALLENGES AND  
CHALLENGE THE DEATH SENTENCE  
BY CHALLENGING THE ACTIVATE\$\$!!OR.

-- AGGRAVATE\$\$!!OR.

>> AND YOU COULD NOT FULFILL  
THAT DUTY, BY THE BRINGING OF  
A ACTION BY PUBLIC DEFENDER,  
APPOINTED COUNSEL, AND IF IN  
FACT THAT ACTION IS OVERREADS  
TURNED -- OVERREADS TURNED YOU  
WOULD BE ABLE TO USE IT IN  
COLLATERAL PROCEEDINGS OR IF  
AFFIRMED DOUBT HAVE THAT  
ARGUMENT ANYMORE.

>> YOUR QUESTION IS -- THE  
PUBLIC DEFENDER ASSUME THE  
ROLE OF.

>> I AM SAYING, THAT IF THE  
PUBLIC DEFENDER, IS APPOINTED,  
OR SOME OTHER COUNSEL IS  
APPOINTED, TO TAKE CARE OF  
THIS OTHER THAN CAPITAL CASE,  
THEN YOU WOULD THEN HAVE BEEN  
IN A POSITION, AS THE CAPITAL  
ATTORNEY, TO EITHER SAY, THAT  
CONVICTION HAS BEEN OVERREADS  
TURNED, OR THE -- YOERN TURNED  
OR THE STATE WOULD SAY THAT  
CONVICTION AFFIRMED, IT HAS  
BEEN GONE THROUGH, THE  
PROCEEDINGS!!!!\$!!!!!!!!!!!!!!  
PROCEEDINGS.

CORRECT?

>> THAT IS CORRECT, BUT AGAIN  
THAT WOULD BRING US BACK TO  
THE OTHER POLICY CONSIDERATION!!!!\$!!!!!!!!!!!!!!  
CONSIDERATIONS OF THE EXPENSE,  
AND THE USE OF LIMITED  
RESOURCES!!!!\$!!!!!!!!!!!!!!  
RESOURCES.

>> OUR ASSISTANCE OF YOU  
XAUSTEDED ALL YOUR TIME THANK  
YOU FOR THE ARGUMENTS I THINK  
THE COURT UNDERSTANDS THE  
POSITION YOU PRESENTED YES,  
MA'AM YOU HAVE A MINUTE AND A  
HALF!!!!\$!!!!!!  
HALF.

>> JAIFRNG HE THANK YOU BRIEF!!!!\$!!!!!!  
BRIEFLY JUSTICE PARENT AE FOR  
CLARIFICATION THE STATUTE DOES

NOT AUTHORIZE CCR, TO GO OUT,  
AND UNDERMINE PRIOR VILENT  
FELONY CONVICTIONS, IN THIS  
PARTICULAR CASE THERE WAS AN  
INVESTIGATION, IN POLK COUNTY  
IN THE POLK COUNTY  
DEATH-PENALTY CASE, AND THE  
1978 WAS CASE WAS ALSO, A POLK  
COUNTY CASE, AND RECORDS, IN  
THE BRADY CLAIM WHICH IS THE  
DANGER OF INTERMINGLING THESE  
THE INVESTIGATION THAT CCR  
DID, LED TO THEM MAKING A  
BRADY CLAIM IN THEIR 1989 CASE  
IS, DO NOT WANT TO BE.

>> I WANT TO MAKE SURE SO YOU  
ARE SAYING NO, THEY CANNOT  
THEY CAN'T EVEN INVESTIGATE  
THE MERITS THAT WOULD HAVE TO  
BE LEFT TO THE DEFENDANT --  
DEATH ROW P\$\$RO SE, TO LOOK INTO  
THE MERITS OF ANYTHING THAT  
HAPPENED IN THE OTHER PRIOR  
VIOLENT FELONY?

>> YOUR HONOR, AND PERHAPS, MY  
RESPONSE WAS INART FULL IN  
THEY COME UP DURING THE COURSE  
OF THEIR LEGITIMATE  
INVESTIGATION, AND IN THEIR  
DEATH-PENALTY CASE, WITH FOR  
EXAMPLE A GIDEON A VIOLATION  
ON A PRIOR CASE THEY CERTAINLY  
IT WOULD BE BANT UPON --  
INCUMBENT UPON THEM TO ALERT  
THE DEFENDANT THEY MAY NOT GO  
TO 19 # #\$\$, FLIPPING THROUGH  
THE 1978 FILES, INTERVIEWING  
WITNESSES.

>> THAT IS NOT THE CERTIFIED  
QUESTION HERE IS IT.

>> NO, IT IS NOT THE QUESTION  
ACTUALLY IS ON -- REVIEW OF

WHETHER THE TRIAL COURT DEPART!!\$\$!!!!!!

DEPARTED FROM THE ESSENTIAL  
REQUIREMENTS OF THE LAW IN  
RULING THAT UNDER CHAPTER 27,  
UNDER BUTTERWORTH VERSUS  
KINNEY!!\$\$!!!!!!

KINNEY, OLIVE VERSUS MOSS CCR  
WAS STATUTORILY AUTHORIZED TO  
REPRESENT DEFENDANT DEAN  
KILGORE IN NONCAPITAL CASE THE  
ANSWER TO THAT IS SQUARELY NO,  
THERE WAS NO DEPARTURE FROM

**THE ESSENTIAL REQUIREMENT OF  
THE LAW.**

>> THANK YOU.

>> THANK YOU YOUR HONOR.

>> I THINK WE UNDERSTAND THE  
ARGUMENTS!!\$\$!!!!!!!!!!!!!!

ARGUMENTS.

>> THANK YOU VERY MUCH.

>> THANK YOU VERY MUCH