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**Ian Deco Lightbourne v. State of Florida  
SC06-2391**

ALL RISE.

O YEA, O YEA, OYEA.

THE SUPREME COURT OF FLORIDA  
IS NOW IN SESSION.

ALLTHOSIS HAVING BUSINESS  
BEFORE THIS COURT DRAW NIGH,  
GIVE ATTENTION, AND YOU  
SHALL BE HEARD.

GOD SAVE THE UNITED STATES,  
THE GREAT STATE OF FLORIDA,  
AND THIS HONORABLE COURT.

>> GOOD MORNING.

LADIES AND GENTLEMEN, THE  
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

GOOD MORNING FRIENDS,  
WELCOME TO THE ORAL ARGUMENT  
CALENDAR FOR THURSDAY,  
OCTOBER 11.

THE FIRST CASE ON THE  
CALENDAR IS LIGHTBOURNE.  
COUNSEL READY TO PROCEED?

>> GOOD MORNING.

MAY IT PLEASE THE COURT.  
SUZANN KEFFER ON BEHALF OF  
THE APPELLANT IAN DPEK DECO  
LIGHTBOURNE WE ARE HERE  
AFTER THE DENIAL OF THE  
MR. LIGHTBOURNE'S CLAIM  
UNDER THE 8th AMENDMENT  
CHALLENGING THE METHOD OF  
EXECUTION IN FLORIDA, LETHAL  
INJECTION PURSUANT TO THIS  
COURT'S REMAND FOLLOW  
MR. LIGHTBOURNE'S ALL WRITS  
PETITION.

THE ISSUE AS IT WAS PHRASED  
TO THE CIRCUIT COURT AND AS  
IT WAS PHRASED TO THIS COURT  
ON APPEAL WAS WHETHER THE  
CURRENT LETHAL INJECTION  
PROCEDURE, WHICH WAS  
PROMULGATED FOR EXECUTIONS  
AFTER AUGUST 1st, 2007, DRIESED  
-- ADDRESSED THE FAILURES

AFTER ANGEL DIAZ SEPTEMBER  
13th, 2006.

>> COULD YOU, FOR US SO THAT  
WE CAN SET THE FRAMEWORK FOR  
THIS GIVE US YOUR  
UNDERSTANDING OF WHAT THE  
PROTOCOL IS FOR THE STATE OF  
FLORIDA AND THEN I THINK  
THAT'LL FORM A BASIS FOR YOU  
TO THEN ARGUE TO US WHAT YOU  
THINK ARE THE FLAWS IN THAT  
THAT WOULD CONSTITUTE THIS  
HEAVY RISK OF CRUEL AND  
UNUSUAL PUNISHMENT OR  
WHATEVER THAT YOU'RE ARGUING,  
BUT COULD YOU GIVE US AN  
OUTLINE OF YOUR  
UNDERSTANDING OF WHAT THE,  
WHAT THE CURRENT PROTOCOL IS  
AND THEN POINT OUT THAT THE  
FLAWS THAT YOU BELIEVE EXIST  
THERE.

>> AS TO THE CURRENT  
PROTOCOL, IT IS A DOCUMENT  
SEVERAL PAGES LONG, BUT TO  
COVER THE --

>> WELL, I DON'T KNOW ABOUT  
THE DOCUMENT AND ALL THAT --  
TELL US WHAT IT, IT PROVIDES  
FOR THREE SEPARATELY DRUGS,  
FOR INSTANCE, AND YOU KNOW,  
SO, LET'S GET RIGHT TO T..

>> OKAY.

>> WE REALLY DON'T HAVE A  
GREAT DEAL OF TIME.

>> OF COURSE.

>> AND SO LET'S GET RIGHT TO,  
YOU KNOW, WHAT --

>> CERTAINLY.

AS YOU MENTIONED THERE ARE  
THREE DRUGS THAT ARE USED IN  
FLORIDA.

IT'S SODIUM THEOPENTAL,  
WHICH IS THE ANESTHETIC DRUG  
WHICH CAUSES THE INMATE TO  
BECOME UNCONSCIOUS SO HE  
WON'T FEEL THE SECOND TWO  
DRUGS.

THE POINT OF THE SODIUM  
THEOPENTAL IS BECAUSE THE  
POTASSIUM CHLORIDE IS QUITE  
PAINFUL, AND THE BELOW,  
DR. HEATH DEQUATED IT TO THE  
PAIN YOU WOULD EXPERIENCE

DURING SURGERY.  
THE SECOND DRUG IS THE  
PANCURONIUM BROMIDE, THE  
PURPOSE FOR LETHAL  
INJECTIONS OF PROCURONIUM  
BROMIDE IS THE PARALYTIC.  
IT RENDERS ALL THE MUSCLES  
PARALYZED.  
POTASSIUM CHLORIDE STOPS THE  
INMATE'S HEART.  
THAT IS THE FINAL DRUG WHICH  
WOULD CAUSE DEATH.

>> MAY I JUST, AS YOU GO  
THROUGH THIS, ASK YOU JUST  
ABOUT THE DRUGS, AS I READ  
YOUR BRIEF, AS I READ THE  
TESTIMONY IN THE EXTENSIVE  
HEARING THAT JUDGE ANGEL  
HELD, I DIDN'T SEE A REAL  
ATTACK ON THE THREE -- THE  
THREE-DRUG PROTOCOL, THAT IT  
SEEMED THAT EVERYONE AGREES  
THAT IF THE SODIUM  
THEOPENTAL DID ITS JOB THAT  
THE PERSON WOULD BE  
ANESTHETIZED AND THAT ANY  
OTHER DRUG WOULD NOT CAUSE  
RISK OF PAIN.

IS THAT -- AND SCHWAB HAS A  
SLIGHTLY DIFFERENT TAKE ON  
THE PARALYTIC ANGEANT BUT DO  
YOU AGREE THE THRUST OF WHAT  
YOU ARGUED AND WHAT YOU  
PRESENTED BEFORE JUDGE ANGEL  
AND WHAT WE HAVE TODAY IS  
NOT AN ATTACK ON THE AMOUNT  
OF THE DRUGS ADMINISTERED OR  
THE FACT OF THERE BEING  
THREE DRUGS?

>> I THINK PART -- THE  
ATTACK WAS ON THE PROCEDURES  
THEMSELVES AND HOW THE  
DEPARTMENT OF  
CORRECTIONICIZE CARRYING OUT  
THE LETHAL INJECTION  
EXECUTIONS.

AS PART OF THAT, THE THREE  
DRUGS ARE, I MEAN, YOU CAN'T  
GET AROUND IT, THE THREE  
DRUGS ARE PART OF THE  
PROCEDURES.

>> I GUESS WHAT I AM ASKING  
BECAUSE THERE WAS REFERENCE  
IN EARLIER LITIGATION TO THE

LANSET ARTICLE THAT THE FIVE GRAMS, YOU KNOW, WHETHER THAT WAS REALLY ENOUGH, AND IT, IT APPEARED TO ME BOTH IN THE TESTIMONY AS WELL AS IN THE, IN YOUR BRIEF THAT THAT'S ABANDONED, THAT THAT'S NO QUESTION BUT THAT THE FIVE GRAMS, IF POPULAR PROPERLY ADMINISTERED WILL RENDER SOMEBODY, EITHER IF YOU CALL INTO A SURGICAL PLAN OF AN STESHA, UNCONSCIOUS, UNABLE TO FEEL ANY PAIN WHATSOEVER.

>> I THINK THAT THAT'S TRUE THAT THE EXPERT SAID IF FIVE GRAMS OF SODIUM THEOPENTERAL PROPERLY DELIVERED.

THAT'S THE KEY PHRASE F. THEY ARE PROBABLY DELIVERED THEY WOULD RENDER SOMEBODY UNCONSCIOUS HOWEVER THE PROBLEM HERE, AND AS WE SAW IN DIAZ, IT CAN ARISE THAT THEY ARE NOT PROPERLY DELIVERED BECAUSE OF --

>> I UNDERSTAND THAT. WE'RE JUST TRYING TO GET TO, BECAUSE THERE'S LITIGATION ALL OVER THE COUNTRY AND YOU KNOW THE SUPREME COURT'S ACCEPTED CERT.

I'M JUST TRYING TO MAKE SURE THAT IN THIS STATE, THAT THERE ISN'T A QUESTION THAT THERE IS ENOUGH IN THE PROTOCOL, ENOUGH SODIUM PENTLE THAT IF IT'S PROPERLY DELIVERED AND IF CONSCIOUSNESS OR UNCONSCIOUS IS PROPERLY ASSESSED THE INMATE WILL FEEL NO PAIN WHATSOEVER.

>> I THINK THE AMOUNT CERTAINLY, EVEN IF MR. LIGHTBOURNE'S CHALLENGE PRIOR TO THE ALL WRITS PETITION, THE AMOUNT WAS NOT NECESSARY IN QUESTION. IT'S WHETHER THERE'S ADEQUATE DELIVERY, AND THEN YOU ARE GIVE AGPARALYTIC AGENT.

AND IF THERE'S NOT PARALYTIC

--

>> I THINK THE ANSWER'S YES.  
I THINK WE ARE BOTH ON THE  
SAME PAGE.

>> AS FAR AS ADEQUATE  
DELIVER, THE PROTOCOLS CALL  
FOR AN INTERVENUS INJECTION.

>> THAT'S CORRECT.

>> SO I THINK YOUR CLAIM IS  
NOT SO MUCH WHAT THE  
PROCOCALL ITSELF BUT WITH  
THE DANGER THAT THE PROTOCOL  
WOULD NOT BE FOLLOWED IN  
PARTICULAR CASES.

>> WELL, I THINK CERTAINLY  
WHAT WE HAVE NOW IS THAT DOC,  
AND THIS COURT HAS HELD  
PREVIOUSLY THAT DOC IS  
ENTITLED TO A PRESUMPTION  
THAT THEY ARE GOING TO  
FOLLOW THEIR PROCEDURES AND  
THEY ARE GOING TO DO WHAT  
THEY SAY THAT THEY DO.

I THINK WE ARE IN A POSITION  
NOW THAT WE CAN NO LONGER  
RELY ON DOC TO DO WHAT THEY  
SAY THEY ARE GOING TO DO.  
THE THE DIAZ EXECUTION IS  
THE BEST EVIDENCE OF THAT  
WHAT HAS UNRAVELED SINCE  
THEN IS THAT DOC WAS NOT  
FOLLOWING THEIR PROCEDURES.  
THERE WERE SIGNIFICANTLY  
DEVIATIONS FROM THEIR  
PROCEDURES, SPECIFICALLY IN  
THE WAY THAT THEY WERE  
ADMINISTERING THE DRUGS THE  
WAY THAT EXECUTIONERS WENT  
AHEAD AND ADMINISTERED THE  
DRUGS.

>> WHAT'S THE REMEDY FOR  
THAT.

>> I'M SORRY.

>> BUT NOW THAT THEY HAVE  
CHANGED THAT PROTOCOL, AND  
THEY, AS I UNDERSTAND IT ARE  
DOING TRAINING AND THOSE  
KINDS OF THINGS, WHY DON'T  
WE NOW STILL GIVE THEM THE  
PRESUMPTION THAT THEY ARE  
GOING TO DO THEIR JOB  
CORRECTLY?

>> WELL, I THINK THAT --

>> I MEAN --

>> ONE OF THE IMPORTANT THINGS BELOW IS THAT THE TESTIMONY OF ALL THE DOC PERSONNEL WAS SO INCONSISTENT AS TO WHO WILL BE PARTICIPATING IN FUTURE EXECUTIONS, WHETHER THE PRIMARY EXECUTIONER FROM DIAZ WILL BE PARTICIPATING IN FUTURE EXECUTIONS OR NOT. THE SECRETARY OF THE DEPARTMENT SAID HE WOULD.

>> BUT IS IT REQUIRED THAT THE SAME PEOPLE DO THIS OR AS LONG ASING THE PEOPLE WHO DO IT ARE QUALIFIED, HAVE WHATEVER, HAVE GONE THROUGH WHATEVER TRAINING IS NECESSARILY, HAVE WHATEVER CERTIFICATES, ET CETERA, THAT ARE NECESSARY T. DOESN'T HAVE TO BE THE SAME PEOPLE.

>> I'M CERTAINLY NOT ARGUING IT HAS TO BE THE SAME PEOPLING, AND I WOULD CALL INTO QUESTION IF IT WAS THE SAME PEOPLE THAT DID THE DIAZ EXECUTION BECAUSE I BELIEVE THE TESTIMONY BELOW ESTABLISHED THAT THEY DIDN'T FOLLOW PROCEDURE AND WERE INCOMPETENT IN WHAT THEY DID.

HOWEVER, I DON'T THINK THE QUESTION ENDS THAT THEY'RE DOING -- THAT THE PEOPLE ARE QUALIFIED AND TRAINED. I THINK THAT BELOW WE WERE DENIED THE OPPORTUNITY TO QUESTION AND EXAMINE THE SO-CALLED MEDICAL PERSONNEL THAT ARE INVOLVED.

ALL WE HAVE IS THE REPRESENTATION OF DOC THAT THEIR MEDICAL PERSONNEL AND THEIR -- THEY'RE MEDICAL PERSONNEL AND THEY'RE QUALIFIED.

WE KNOW NOTHING ABOUT THE EXECUTIONERS, THE FACT IS AND AS JUSTICE PARIENTE POINTED OUT, THIS CASE HAS

BEEN GRANTED CERT -- NOT THIS CASE, BUT A LETHAL INJECTION CASE HAS BEEN GIVEN CERT BECAUSE OF CHALLENGES ACROSS THE COUNTRY.

IN THOSE OTHER CHALLENGES ACROSS THE COUNTRY, ATTORNEYS AND DEFENDANTS HAVE BEEN ABLE TO QUESTION THOSE PERSONNEL WHO ARE DIRECTLY RESPONSIBLE FOR ADMINISTERING THE DRUGS, THE EXECUTIONERS, AND THEY'VE BEEN ABLE TO QUESTION THE MEDICAL PERSONNEL INVOLVED. WE DON'T HAVE THAT IN FLORIDA.

SO I DON'T THINK WE CAN SAY THAT BECAUSE DOC SAYS THEY'RE QUALIFIED, THAT MEANS THEY ARE.

I THINK THAT THEY NEED TO BE PUT TO QUESTIONING IN AN ADVERSARIAL SETTING, AND CERTAINLY THAT HAS BEEN DONE IN OTHER STATES.

>> SO YOU ARE ASKING THAT EVERYONE WHO HAS -- MAY OR PARTICIPATE IN ANY EXECUTION THAT YOU HAVE A OPPORTUNITY TO QUESTION THEM, GO THROUGH THEIR BACKGROUNDS, ET CETERA?

IS THAT WHAT YOU'RE, YOUR YOUR ARGUMENT REALLY BOILS DOWN TO?

>> I DON'T THINK IT'S ANY PERSON.

IT'S THE EXECUTIONERS, AND WHAT DOC IS CALLING MEDICAL PERSONNEL.

IN TERMS OF AS IT STANDS NOW, THERE ARE, THERE'S A PRIMARY EXECUTIONER AND A SECONDARY EXECUTIONER, AND THERE ARE WHAT WE'VE BEEN TOLD SIX MEDICAL PERSONNEL THAT ARE INVOLVED IN THESE PROCEEDINGS.

NOW, THAT NUMBER HAS CHANGED THROUGHOUT THE COURSE OF THE PROCEEDINGS BELOW.

>> BUT HASN'T DOC SET OUT

CERTAIN STANDARDS FOR TRAINING, THAT IS THAT THEY HAVE TO BE TRAINED IN ADMINISTERING INTRAVENOUS INJECTIONS AND, AND -- I'M HAVING A LITTLE DIFFICULTY WITH SORT OF THE MOVING TARGET CONCEPT HERE. THAT IS, WHAT YOU SEEM TO BE ARGUING HERE IS THAT YOU'RE NOT ATTACKING THE THREE-DRUG PROCEDURE.

YOU ACCEPT IF THE FIRST DRUG IS ADMINISTERED IN THE PROPER DOSAGE THAT IT WILL RENDER THE INMATE UNCONSCIOUS, SO NOW YOU'RE FOCUSING ON WHETHER OR NOT DOC HAS SET PROPER STANDARDS FOR TRAINING THE PERSONS THAT ADMINISTER THE DRUGS. IS THAT RIGHT?

>> WELL, I THINK THAT YOU'RE CALLING IT A MOVING TARGET, HOWEVER, THERE ARE SEVERAL FACETS OF THIS PROCEDURE THAT ARE STILL INADEQUATE. AND WE'VE POINTED THAT OUT THROUGHOUT THE PROCEEDINGS BELOW AND IN OUR BRIEF TO THIS COURT, THOSE AREAS AND I CAN SPECIFICALLY LIST THEM IS THAT THE IF THE SODIUM THIOPENTAL NOT ADMINISTERED THROUGH A WORKING IV, THEN THERE IS A POSSIBILITY THAT THE INMATE WILL WAKE UP AND FEEL THE PAIN OR WILL NEVER GO UNCONSCIOUS AND FEEL THE PAIN.

THE SECOND PART IS THAT THE PEOPLE THAT ARE PARTICIPATING, THE MOST, DOING THE MOST CRITICAL ASPECTS OF THE LETHAL INJECTION, I DON'T KNOW WHAT THEIR TRAINING IS.

I DON'T KNOW THAT THEY'RE ADEQUATELY TRAINED. WE THOUGHT THEY WERE ADEQUATELY TRAINED BEFORE DIAZ, AND WE FOUND OUT THAT NOT ONLY ONCE BUT TWICE, AND ACTUALLY THREE TIMES BECAUSE



A THIRD ATTEMPT WAS MADE THE PERSON THAT PUT IN THE IVs WENT CLEAR THROUGH THE VEINS.

WE FOUND OUT THAT --

>> ARE YOU ARGUING THAT DOC DOESN'T HAVE PROPER TRAINING STANDARDS FOR THOSE PERSONNEL?

THAT IS THAT THEY, DON'T REQUIRE ENOUGH HOURS OF TRAINING TO DO THESE THINGS OR ARE YOU JUST SAYING WELL, WE DON'T KNOW WHAT'S GOING TO HAPPEN, WHICH IS, IT SEEMS TO ME NOT REALLY A VALID ATTACK ON WHAT DOC IS, IS DOING.

SO LET'S COME BACK AND LET'S TRY TO BE AS SPECIFIC AS POSSIBLE SO THAT WE UNDERSTAND WHAT, WHAT THE FLAW IS BETWEEN POINTING OUT TO OR FLAWS.

IS THAT THAT DOC DOESN'T MANDATE SUFFICIENT TRAINING. IS THAT IT.

>> YES, WE ARE CALLING IT TRAINING BUT I WANT TO BE CLEAR.

I AM TALKING ABOUT NOT ENOUGH TRAINING FOR THE EXECUTIONERS AND WE HAVE NO IDEA AT THIS POINT WHAT THEIR BACKGROUND IS.

WHAT THEIR QUALIFICATIONERIZE SO IT GO BUSINESS YOBD TRAINING.

IT'S A LITTLE BIT MORE THAN TRAINING AND THERE HASN'T BEEN SUFFICIENT TRAINING FOR THESE SPECIFIC.

HE DOESN'T KNOW IF THEY HAVE EVER DONE EXECUTIONS BEFORE.

>> YOU ARE NOT ARGUING ABOUT THE STANDARD.

YOU ARE JUST ARGUING THAT YOU DON'T KNOW WHETHER OR NOT PARTICULAR PEOPLE THAT PARTICIPATE HAVE THE TRAINING?

OR WHAT?

I MEAN, AGAIN, I'M HAVING DIFFICULTY WITH WHETHER OR

NOT YOU'RE DISPUTING THE  
STANDARDS THAT ARE SET OR  
ARE YOU DISPUTING WHETHER OR  
NOT SOMEBODY THAT COMPLETES  
THE COURSE, FOR INSTANCE, IS,  
IS GOING TO BE COMPETENT TO  
DO TTHAT THERE MIGHT BE, YOU  
KNOW, THERE STILL MIGHT BE  
NEGLIGENTOLOGGANT AND OR  
MIGHT NOT GET IT RIGHT.

>> I THINK THAT --

>> IS IT THE STANDARDS?

>> IT'S ABSOLUTELY THE  
STANDARDS, SPECIFICALLY IN  
TERMS OF THE EXECUTIONERS,'S  
NO STANDARDS SET FORTH IN  
THE PROCEDURES EXCEPT FOR  
THAT THEY BE AN ADULT AND  
HAVE GOOD MORAL CHARACTER  
AND HAVE BEEN TRAINED.  
THE WARDEN TESTIFIED THEY'VE  
BEEN TRAINED UNDER HIS  
TRAINING.

THAT'S T. I DON'T KNOW  
ANYTHING ELSE ABOUT THEM  
BECAUSE MR. LIGHT BROERN WAS  
DENIED THE OPPORTUNITY TO  
QUESTION THE EXECUTIONERS  
BELOW.

>> WELL, IN REVIEWING ALL  
THESE ALLEGATIONS THAT  
YOU'RE MAKING, WHAT STANDARD  
ARE WE SUPPOSED TO USE IN  
DETERMINING WHETHER THE, THE  
DEPARTMENT OF COLLECTIONS  
METHODS VIOLATE THE 8th  
AMENDMENT, AND THAT'S REALLY  
WHAT WE NEED TO DETERMINE.  
NOT WHETHER THEY'RE  
PERFURCATE BUT WHETHER THEY  
CONSTITUTE CRUEL AND UNUSUAL  
PUNISHMENT.

>> CERTAINLY.

>> WHAT STANDARD DO WE USE  
IN REVIEWING THESE BOTHUDS?

>> WHAT I HAD -- METHODS.

>> WHAT I HAD SET FORTH IN  
MY BRIEF IS WHETHER THERE IS  
A FORESEEABLE RISK OF THE  
INFLICTION OF UNNECESSARY  
PAIN.

>> WHERE DO YOU GET THAT  
FROM.

>> WELL, I DREW THAT FROM

THE 8th CIRCUIT RELYING ON THE UNITED STATES SUPREME COURT IN HILL, AND I LOOKED TO THE HILL LITIGATION IN THE UNITED STATES SUPREME COURT.

I'D ARGUE AT THIS POINT AND THE FACT THAT UNITED STATES SUPREME COURT IN BAZE V. REES TO TAKE UP ISSUE WITH THIS TO SPECIFICALLY WHAT THE STANDARD IS, THAT'S GONE OUT THE WINDOW.

>> BUT YOU KNOW IN BAZE THAT ARGUE FOR A DIFFERENT -- I MEAN, I DON'T KNOW IF IT'S A DIFFERENCE -- DISTINCTION WITHOUT A DIFFERENCE, BUT THEY ARGUE FOR THAT CARRYING OUT A METHOD NOT CREATED IN UNNECESSARY RISK OF PAIN AND SUFFERING.

DO YOU EQUATE THOSE TWO FORESEEABLE RISK AND UNNECESSARY RISK.

>> I CERTAINLY THINK THEY'RE EQUATABLE.

I DON'T KNOW IF IN TERMS OF, YOU KNOW, I'VE ASKED THIS COURT TO HOLD THE PROCEEDINGS IN ABEYANCE TO SEE WHAT THE UNITED STATES SUPREME COURT IS GOING TO DO.

I DON'T KNOW THAT THAT DIFFERENCE IS SIGNIFICANT IN THIS COURT'S DETERMINATION OF IF THEY WILL WAIT.

WHAT IS IMPORTANT ABOUT BAZE V. REES AND IF YOU READ THE PETITION IN ITS ENTIRETY THE PETITION MAKES CLEAR THAT THERE ARE NUMEROUS STANDARDS ACROSS THE COUNTRY BEING UTILIZED RIGHT NOW, AND THAT IT WAS IMPERATIVE FOR THE U.S. SUPREME COURT TO SET A UNIFORM STANDARD.

AND IN FACT, WITHIN THE BRIEF --

>> WE ALSO KNOW THAT THIS COURT IN JOANS HAS SET OUT A STANDARD.

THAT IS THE STANDARD THROUGH

THIS DATE IN FLORIDA,  
CORRECT?

>> THAT'S CORRECT.

THE COURT DID --

>> AND THAT'S BASE UPON TWO  
UNITED STATES SUPREME COURT  
DECISIONS.

CORRECT?

>> THAT'S CORRECT.

>> AND THAT'S WHAT THE  
CONSTITUTION OF FLORIDA  
REQUIRES.

IS THAT WE SET -- HAVE A  
STANDARD WHICH CONFORMS TO  
THE UNITED STATES SUPREME  
COURT.

STANDARD.

CORRECT?

>> I AGREE THAT THIS COURT  
HAS SET FORTH A STANDARD,  
AND IN DOING SO, RELIED ON  
TWO UNITED STATES SUPREME  
COURT CASES.

AS THE BAZE PETITION POINTED  
OUT WHEN THEY ARGUED IT THAT  
THOSE TWO CASE SAID, GREG  
AND RESWEBBER THEY WERE NOT  
8th AMENDMENT CHALLENGES TO  
METHODS OF EXECUTION.

THE UNITED STATES SUPREME  
COURT HAS NOT DECIDED WHAT  
THE STANDARD IS IN OVER 100  
YEARS.

>> I'M MORE CONCERNED, AND I  
THINK JUSTICE CANTERO ASKED  
YOU EARLIER WHAT -- ABOUT  
WHAT THE REMEDY IS AND  
JUSTICE ANSTEAD SAYING IT'S  
A MOVING TARGET.

I DON'T THINK IT'S A  
CRITICISM PER SE OF WHAT  
YOU'VE ATTEMPTED TO DO, AND  
I KNOW YOU'VE BEEN VERY  
INVOLVED IN THIS, BUT THE  
PROBLEM IS IS THAT WE  
STARTED OUT, AGAIN, BEFORE  
DIAZ AND THERE WAS A LOT OF  
ATTACKS ON THE, THE ADEQUACY  
OF SODIUM PENTAL.

WE HAVE GOT TWO CHANGES IN  
PROTOCOLS, INCLUDING WHAT I  
CONSIDER TO BE VERY  
SIGNIFICANT, AND I KNOW YOU  
CRITICIZE IT, BUT THAT NOW

THERE IS A MANDATORY STOP  
AFTER SODIUM PENTAL IS  
ADMINISTERED TO MAKE SURE  
THAT THE PERSON IS  
UNCONSCIOUS.

SO IF, EVEN IF THE  
EXECUTIONER OR WHOEVER'S  
PUTTING IN THE -- IF YOU  
CALL THAT PERSON THAT'S  
PUTTING THE IV LINE IN HAS  
MADE A MISTAKE, NOW THERE'S  
A CHANCE TO STOP OR THERE'S  
A MANDATE TO STOP.

I -- MY QUESTION REALLY IS  
HOW MUCH CAN THIS BRANCH  
INTERFERE WITH THE TRAINING  
THAT GOES ON.

ARE WE SUPPOSED TO -- LIKE  
SAY TODAY YOU, YOU DEPOSE  
THE, THE EXECUTIONER IN DIAZ  
AND THE DAY BEFORE THE  
EXECUTION, SECRETARY  
McDONOUGH AND THE WARDEN  
REALIZE THEY HAVE TO PUT  
SOMEONE ELSE IN.

DO WE STOP THE EXECUTION AND  
MAKE SURE THAT THAT PERSON'S  
ADEQUATELY TRAINED?

SO THAT'S, IN TERMS OF THE  
REMEDY OR HOW FAR YOU GO IN  
QUESTIONING WHAT THE EXECUTE  
BRANCH IS DOING, THAT IS MY  
PROBLEM IS THE, IF THE  
PROTOCOLS ARE BETTER THAN  
THEY WERE, AND THEY, YOU'RE  
NOT ATTACKING THE THREE DRUG  
PROTOCOL, WHAT ELSE WOULD  
YOU ASK US TO, TO DO?

>> I WANT TO MAKE IT VERY  
CLEAR, BECAUSE I THINK PART  
-- THERE WERE MANY ASPECTS  
OF THE PROCEDURE THAT I AM  
CHALLENGING BECAUSE THERE  
ARE MANY FAILURES TO IT, AND  
WHILE FIVE GRAMS MAY BE  
SUFFICIENT, THAT DOESN'T  
MEAN THAT OVERALL THERE  
THREE DRUGS ARE ADEQUATE.  
THERE IS A VERY SERIOUS  
PROBLEM WITH ADMINISTERING  
THE PANCURONIUM BROMIDE  
BECAUSE IT WOULD MASK IF  
THERE WAS -- BUT THERE  
CERTAINLY WAS TESTIMONY

BELOW THAT THE PANCURONIUM BROMIDE IS PROBLEMATIC IN THIS, IN THE THREE DRUG COCKTAIL, AND I --

>> YOU'RE DODGING THE QUESTION I THINK THAT SHE'S ASKING IF THE SODIUM THIOPENTAL THEY STOP AND THEY CHECK THE CONSCIOUSNESS AS THEY'VE IDENTIFIED IN THE NEW PROTOCOL.

WHERE'S YOUR PROBLEM WITH THAT?

YOU KEEP ON GOING BACK TO THE SECOND DRUG BUT I WANT YOU TO ANSWER THAT QUESTION.

>> ABSOLUTELY.

WHAT I'VE SET FORTH AND WHAT WE'VE ARGUED THAT IT'S AN INADEQUATE MEANS OF ASSESSESING CONSCIOUSNESS. IT IS NOT SIMPLY WHETHER THE INMATE IS CONSCIOUS OR UNCONSCIOUS.

THERE NEEDS TO BE A DEPTH OF AN ANESTHESIA HERE AND DOCTOR HEATH'S TESTIMONY BELOW WAS VERY CLEAR THAT SHAKING AN INMATE, BRUSHING THEIR EYE LASHES CALLING THEIR NAME IS INSUFFICIENT TO DETERMINE DEPTH OF ANESTHESIA.

>> PHYSICIAN FROM GEORGIA?

>> I BELIEVE BOTH DR. SPERRY AND DR. DERSHWITZ SAID THIS IS WHAT IS USED IN BASIC LIFE SUPPORT AND THAT'S HOW YOU WOULD DETERMINE WHETHER THEY ARE UNCONSCIOUS BUT IT IS THE FACT YOU ARE ADMINISTERING AN ANESTHESIA. AND SO, NEITHER OF THOSE WITNESSES GOT INTO THAT ASPECT OF IT IN TERMS OF SAYING THAT THIS WAS SUFFICIENT.

>> SO ARE YOU REALLY SAYING THAT IN THIS PROCEDURE, YOU REALLY NEED MEDICAL PEOPLE TO DO -- DO THIS?

ISN'T THIS WHAT YOU ARE REALLY ARGUING, THAT WE NEED MEDICAL PEOPLE TO ADMINISTER

ALL OF THESE DRUG SNSS.

>> THERE NEEDS TO BE A MEDICAL DETERMINATION OF CONSCIOUSNESS OR UNCONSCIOUSNESS AFTER THE ADMINISTRATION OF THE SODIUM THIOPENTAL TO ENSURE THAT THE INMATE IS PROPERLYLY ANESTHUCIZED.

THERE NEEDS TO BE MEDICAL PERSONNEL INVOLVED IN THIS PROCEDURE AT VARIOUS STEPS THROUGH THE WAY.

THE IVs ARE IN THE WAY.

>> WHAT ARE MEDICAL PERSONNEL?

IN OTHER WORDS, THIS IS WHERE THE MOVING TARGET COMES IN BECAUSE IF YOU'RE TALKING ABOUT MEDICAL PERSONNEL IN TERMS OF PHYSICIANS THAT HAVE TAKEN AN OATH NOT TO PARTICIPATE IN THE APPLICATION OF THE DEATH PENALTY, THEN YOU ARE TALKING IN CIRCLES, YOU WILL NEVER HAVE -- IS THAT WHAT YOU ARE TALKING ABOUT? THAT THEY HAVE TO BE.

>> I THINK MEDICAL PERSONNEL

--

>> WHAT ARE MEDICAL PERSONNEL?

>> WELL, I THINK THERE NEEDS TO BE PEOPLE PEOPLE TRAINED IN THE ADMINISTRATION OF AN STESIOLOGIST.

THE FACT OF THE MATTER IS DR. HEATH SAID IT IS

POSSIBLE FOR MEDICAL PERSONNEL TO PARTICIPATE.

HE REFERENCED STUDIES WHICH INDICATED THERE ARE DOCTORS THERE ARE PEOPLE, AN THESIOLOGIST WILLING TO PARTICIPATE.

BECAUSE IT IS DIFFICULT TO FIND I DON'T THINK THAT'S A POSSIBLE.

>> WITH OUR ASSISTANCE YOU HAVE EXHAUSTLOAD YOUR TIME.

>> THANK YOU.

>> MAY IT PLEASE THE COURT I'M KEN NUNNELLEY.

THE ISSUE IS NOT THE DRUGS.  
WE'VE GOT THAT ESTABLISHED.  
THE TESTIMONY AT THE  
EVIDENTIARY HEARING FROM ALL  
OF THE DOCTORS WAS THAT IF  
SODIUM, AND POTASSIUM  
CHLORIDE ARE PROPERLY  
ADMINISTERED IN THAT ORDER  
TO THE INMATE THROUGH A  
WORKING INTRAVENOUS LINE,  
THE RESULT WILL BE LETHAL.  
>> MR. NUNNELLEY.

>> SHE AGREED WITH THAT SO  
SHE WENT TO THE NEXT STEP  
AND SHE WAS ADDRESSING THE  
QUESTION ON QUALIFICATIONS,  
TRAINING, FOR THOSE STEPS.  
SO I THINK THAT REALLY IS  
WHERE HER ARGUMENT WAS  
HEADED.

>> LET ME TRY, JUSTICE LEWIS,  
TO PARSE OUT THE ROLES OF  
THE PERSONNEL INVOLVED IN  
THIS PROCESS.

THEY REALLY FALL INTO, INTO  
I GUESS FOUR CATEGORIES.  
YOU HAVE AN FDLE OBSERVER OR  
ACTUALLY TWO OF THEM.  
WE ARE NOT TALKING ABOUT  
THEM SO WE CAN SET THAT ONE  
OFF TO THE SIDE.  
WE ARE NOT TALKING ABOUT  
THEM.

YOU HAVE SECURITY PERSONNEL,  
DEPARTMENT OF CORRECTIONS  
OFFICERS THE FACT OF THE  
MATTER IS THAT ALL OF THESE  
DOC PERSONNEL ARE EXTREMELY  
SENIOR PEOPLE, THE LOWEST  
RANKING ONE IS A COLONEL, AT  
LEAST FIVE OF THEM ARE  
WARDENS OF INSTITUTIONS  
THROUGHOUT THE STATE.  
THE OTHER CATEGORY OF PEOPLE  
AND THIS IS WHAT, THE NEXT  
CATEGORY, THE EXECUTIONER,  
THE EXECUTIONER DOES ONE  
THING AND ONE THING ONLY,  
AND THAT IS TO PUSH THE  
SYRINGE CONTAINING THE  
VARIOUS DRUGS.  
HE DOES NOT START THE IVs.  
HE IS NOT RESPONSIBLE FOR  
ANY SORT OF CONSCIOUSNESS



ASSESSMENT OF THE INMATE OR ANYTHING ELSE.

WHETHER HE DOES IS PUSH THE DRUGS.

ANY SUGGESTION TO THE CONTRARY IS ABSOLUTELY INCORRECT.

THE FOURTH CATEGORY OF PEOPLE IS WHAT WE'RE REALLY TALKING ABOUT, AND THIS DOES SEEM TO BE A MOVING TARGET.

THE FOURTH CATEGORY OF PERSONNEL IN THE PROCESS IS WHAT HAS BEEN VARIOUSLY DESCRIBED AS TECHNICAL PERSONNEL OR MEDICALLY QUALIFIED PERSONNEL.

THOSE TWO TERMS HAVE BEEN USED INTERCHANGEABLY THROUGHOUT THIS LITIGATION.

THE RESPONSIBILITY OF THE MEDICALLY QUALIFIED PERSONNEL IS TO START, WELL, FIRST OF ALL, WE HAVE TO HAVE THE DRUGS, MEDICALLY QUALIFIED PEOPLE MEETING THE CRITERIA SET OUT IN FLORIDA STATUTES TO MIX DRUGS ARE REQUIRED TO PERFORM THAT PROCEDURES.

IT IS WRITTEN DOWN WHAT TRAINING, LICENSURE AND CERTIFICATION.

>> DO YOU UNDERSTAND AN ACTUAL PHARMACIST MIXES THE DRUGS?

>> YES, MR. ANSTEAD.

THE DRUGS ARE MIXED BY A LICENSED PHARMACIST.

>> MR. NUNNELLEY, BEFORE I UNDERSTAND WHAT IS HAPPENING, I NEED TO UNDERSTAND WHAT STANDARD WE USE TO REVIEW WHAT'S HAPPENING AND WHAT DOES THE STATE SAY IS THE STANDARD WE SHOULD USE IN DETERMINING WHETHER THE, WHATEVER THE STATE IS DOING VIOLATES THE 8th AMENDMENT.

>> LET ME GIVE YOU A TWO-PART ANSWER TO THAT. FIRST OF ALL, THE STANDARD THAT IS THE LAW IN THIS

STATE IS JONES, WHICH IS  
WANTON INFLICTION OF PAIN.  
THAT IS THE LAW.  
IT WAS THE LAW IN JONES.  
IT WAS REAFFIRMED AS THE LAW  
WHEN THIS COURT ISSUED SIMS,  
AND LET ME BE VERY  
CLEAR: SIMS IS THE LAW.  
NOTHING HAS CHANGED WITH  
REGARD TO WHETHER OR NOT  
SIMS IS GOOD LAW IN THIS  
STATE.  
IT IS.  
IT HAS NEVER, EVER BEEN  
OVERRULED.  
WITH THAT SAID, AND I  
BELIEVE THAT THAT IS IN FACT  
THE PROPER STANDARD.  
IF WE ASSUME FOR THE SAKE OF  
ARGUMENT ONLY, AND I AM NOT  
CONCEDING THAT THIS IS THE  
APPROPRIATE STANDARD BUT THE  
DEFENDANT HAS ARGUED FOR A  
STANDARD OF FORESEEABLE RISK.  
COME SOUNDS AN AWFUL LOT  
LIKE TORT LAW TO ME, BUT NOT  
BEING A TORT LAWYER, I AM A  
LITTLE BIT UNCOMFORTABLE TO  
ME BUT LET ME GIVE YOU AN  
EXAMPLE OF WHAT FORESEEABLE  
RISK.  
>> BUT ANY HUMAN IN THE  
UTILIZATION OF TOXIC  
CHEMICALS THAT YOU HAVE  
FORESEEABLE RISK.  
>> WELL, JUSTICE LEWIS --  
>> IS THAT NOT WHERE THAT  
WOULD LEAD SNUS.  
>> I THINK LIFE IS A  
FORESEEABLE RISK.  
WHEN I PICK UP A RENTAL CAR,  
I MAY HAVE A FLAT TIRE UP  
HERE.  
I CAN'T PREVENT THAT.  
I CAN LOOK AND SEE THERE'S A  
SPARE TIRE IN THE CAR AND A  
JACK IN HERE --  
>> THERE'S A AMOUNT OF RISK  
YOU HAVE TO FOCUS ON.  
CREATE A VERY HIGH RISK,  
THAT'S ONE THING.  
IF YOU CREATE JUST AN  
ORDINARY RISK THAT GOES LONG  
WITH THE TOXIC DRUGS THAT

ARE BEING ADMINISTERED, THAT  
MIGHT BE A DIFFERENT THING,  
SO HOW,,,  
BELOW WAS.

ONCE THE IV IS STARTED --  
>> LET ME UNDERSTAND THAT.  
IF I GO TO THE DOCTOR'S  
OFFICE OR THE LAB OR THE,  
WHEREVER, AND I'M ASSUMING  
THAT SOMEBODY TRAINED UNDER  
THE FLORIDA STANDARDS EITHER  
THE STATUTES OR THE  
ADMINISTRATIVE REGULATIONS,  
THE SAME STANDARDS ARE  
IMPOSED ON THE PEOPLE FOR  
DOC.

THAT'S SET OUT OF THE IN THE  
PROTOCOL.

>> YES.  
THAT IS SET OUT ON THE  
PROTOCOL.

>> LET ME JUST ASK, ON THAT  
ONE, ON -- AT THE TIME OF  
THE DIAZ EXECUTION, WAS THE  
PERSON THAT WAS RESPONSIBLE  
FOR STARTING THE IV THE SAME  
TYPE OF PERSON THAT IS  
SOMEONE THAT DID IT EVERY  
DAY?

>> YES, MA'AM.

>> ALL RIGHT, SO NOTHING HAS  
CHANGED -- I THOUGHT THAT,  
AGAIN, TRYING TO, YOU SAID  
NOTHING'S CHANGED SINCE SIMS,  
BUT, OF COURSE, THE DIAZ  
EXECUTION OCCURRED.  
AND THINGS DID GO WRONG.  
NOW WHETHER THAT CONSTITUTES  
CRUEL AND UNUSUAL PUNISHMENT  
IN ITSELF IS REALLY, WE'VE  
GONE BEYOND THAT.

SO I GUESS I'M CONCERNED AS  
YOU SAY THIS IS WHAT HAS THE  
DOC DONE AND WHAT DO WE  
KNOWINATE RECORD THEY HAVE  
DONE SINCE DECEMBER OF 2006  
TO LESSTHEN POSSIBILITY THAT  
THE IV WILL NOT GO THROUGH  
SOMEONE'S VEINS INTO THE  
SOFT TISSUE?

>> OKAY, LET ME ANSWER THAT  
THIS WAY.

I'M NOT -- I PROMISE I'M NOT  
TRYING TO EVADE THE QUESTION

BUT I HAVE GOT TO ANSWER IT  
A LITTLE BIT DIFFERENTLY  
FROM THE WAY YOU'VE PUT T.  
WE ARE ENSURING TRAINED  
PERSONNEL OF DOING THIS.  
WE ARE ENSURING THAT  
PERSONNEL WHO DO THESE  
THINGS ARE THE ONES STARTING  
THE IVs, AND WHAT WE ARE  
DOING --

>> IS THAT NEW?

NO AMENDMENT.

THAT'S THE SAME -- NO MA'AM,  
THAT'S THE SAME THING WE  
HAVE BEEN DOING.

WHAT HAS BEEN ENHANCED SINCE  
DIAZ IS THE TRAINING OF THE  
NONMEDICAL PERSONNEL TO WHAT  
PUBLIC SAFETY PERSONNEL  
WOULD CALL AN AWARENESS  
LEVEL OF WHAT THESE DRUG  
DOOMPTS WE HAVE ADDED THE  
PAUSE THAT YOU TALKED ABOUT  
AFTER THE INJECTION AT THE  
PENTHOL AND BEFORE WE GO  
INTO THE SECOND DRUGS.

THE WARDEN'S ASSESSMENT --  
THE WARDSON THE ONE THAT  
WALKS UP TO THE INMATE,  
BRUSHES HIS EYE LASHES A  
BASIC NEUROLOGICAL  
ASSESSMENT ACCORDING TO THE  
TESTIMONY --

>> YOU'RE -- I STILL WANT TO  
STOP ON THE PERSON THAT'S  
ACTUALLY PUTTING THE IV IN  
BECAUSE WHAT YOU SAID THAT  
THE EXECUTIONER PUTS THE,  
NOT MERELY BECAUSE IT'S  
SIGNIFICANT, BUT PUTS THE  
LETHAL DRUGS IN.

IT'S SORT OF SOMETHING YOU  
WOULD SAY ALMOST ANYONE CAN  
DO SO IT'S ALREADY SET UP SO  
THE PROBLEM IN DIAZ WAS THE  
PERSON THAT WAS RESPONSIBLE  
FOR ACTUALLY PULL PUTTING  
THE IV LINE INTO THE VEINS?

>> YES.

>> PUT IT ALL THE WAY  
THROUGH.

AND IS THAT PERSON NOT NEAR  
-- IS THAT -- THAT WAS THE  
OTHER THING I JUST WANTED TO

UNDERSTAND WAS, IS THE PERSON NOT RIGHT BY THE INMATE WHEN HE OR SHE IS PUTTING THE IV LINE IN? OR ARE THEY RIGHT THERE? >> THE INMATE -- THE PERSON STARTING THE IV IS STANDING RIGHT BESIDE THE INMATE TOUCHING HIM. THE TESTIMONY WAS, IVs ARE PROBLEMATIC. EVERY DOCTOR WHO TESTIFIED HAS SAID, YES, I'VE STARTED -- HAD IVs GO BAD. THE WAY YOU PREVENT THAT AND THE WAY YOU DEAL WITH IT IS TO MONITOR THE IV WHILE IT'S BEING USED, AND THAT IS WHAT IS BEING DONE. >> AND HOW IS IT BEING MONITORED NOW? >> THE PERSON WHO STARTED THE IV, OKAY, THE PERSON THAT DID THE STICK, IF YOU WILL, IS STANDING BESIDE THE ASSISTANT TEAM WARDENIC WHO ND IS STANDING BESIDE THE EXECUTIONER, IN OTHER WORDS, IF WE -- THE WAY THE COUNSEL IS SEATED HERE, IF I'M THE PERSON WHO STARTED THE IV, TO MY LEFT IS THE ASSISTANT TEAM WARDEN TO HIS LEFT IS THE EXECUTIONER. THE PERSON WHO STARTED THE IV IS WATCHING THREE CLOSED CIRCUIT TV MONITORS, TWO OF WHICH ARE FOCUSED ON THE INMATE'S ARMS ON THE IV SITES AND THE THIRD OF WHICH IS ON THE INMATE'S FACE. >> IS THAT SOMETHING NEW. THAT IS AN ENHANCEMENT. >> OKAY SO, THEY'RE NOT RIGHT THERE BY THE INMATE, BUT THEY ARE RIGHT WATCHING WHAT IS GOING ON. >> YES, MA'AM. THEY ARE ABOUT THREE FEET AWAY. THREE TO FIVE FEET. >> AM I CORRECT THAT THE, THAT THE AUGUST PROTOCOL ALSO INCLUDES FOR THE

STICKERS, NOW I TAKE IT THE  
STICKERS ARE THE PEOPLE THAT  
PUT THE IV IN.

>> YES, YOUR HONOR..

>> AND THEY, THE NEW  
PROTOCOL SETS UP THAT THEY  
MUST EITHER BY AN ASCP, AN  
NCA, A OR AN AMT?

>> YES, YOUR HONOR.

>> OKAY OKAY.

NOW THAT WAS NOT IN THE  
AUGUST.

THAT WAS NOT IN THE DIAZ  
PROTOCOL.

>> NO.

>> IT WAS NOT EXPLICITLY SET  
OUT IN THE DIAZ PROTOCOLS.

>> BUTS YOU ARE SAYING THEY  
WERE -- THOSE WERE IN  
ACTUALITY WHAT THE  
QUALIFICATIONS WERE AT THE  
TIME.

>> YES, MA'AM.

YES, MA'AM.

>> SO WHAT GOING TO WHAT'S  
BETTER, NOW, WHAT'S BEEN  
IMPROVED I WANT TO FOCUS ON  
TO ME WHAT THE CRITICAL PART  
IS IS THE ASSESSMENT OF  
CONSCIOUSNESS.

AND MY ONLY CONCERN, AND I  
DON'T KNOW IF IT RISES TO A  
CONSTITUTIONAL CONCERN, IS  
THAT THE PAUSES THERE, AND  
THAT'S IMPORTANT.

BUT IT'S, IT SPECIFIES IN  
THE PROTOCOL THAT THE WARDEN  
SHALL BE THE ONE TO ASSESS  
CONSCIOUSNESS.

THE WARDEN HAS TESTIFIED, AT  
LEAST THE WARDEN CAN EBHIS  
AND HAS TESTIFIED WHAT HE'LL  
DO TO ASSESS CONSCIOUSNESS,  
BUT THAT'S THE PROCESS OF  
ASSESSISHIN' CONSCIOUSNESS  
HAS NOT BEEN FORMALIZED IN  
ANY DOCUMENT.

SO -- ASSESSING

CONSCIOUSNESS HAS NOT BEEN  
FORMALIZED IN ANY DOCUMENT  
SO IF ANYONE WHO HAS NO  
EXPERIENCE DOING IT HOW DO  
WE ENSURE THAT THAT PROCESS  
IS GOING TO BE COMPETENTLY

PERFORMED OR, OR DOES THIS COURT NOT EVEN HAVE THAT OBLIGATION TO BE CONCERNED AS TO WHETHER IT'S COMPETENTLY PERFORMED.

>> DO YOU SEE -- SO WHO'S GOING -- IT'S NOT IN THE PROTOCOL ABOUT HOW TO ASSESS CONSCIOUSNESS.

WE -- THE WARDSON NOT MEDICALLY TRAINED. WE KNOW THAT.

AND SO WE DON'T HAVE ANY ASSURANCE OF THAT.

AND THEN THE LAST PART OF THAT IS EVEN IF WE DON'T, IS THAT SOMETHING THAT THIS -- THE JUDICIAL BRANCH SHOULD BE CONCERNED WITH?

>> THE WARDEN IS NOT A MEDICAL DOCTOR, HE'S NOT A PARAMEDIC.

HE IS A FIRST RESPONDER, AS ARE ALL DEPARTMENT OF CORRECTIONS PERSONNEL.

THE, THE CONSCIOUSNESS ASSESSMENT THAT IS USED IN THIS PROCESS, THE SHAKE AND SHOUT PART OF IT, IS WHAT IS TAUGHT TO EVERYBODY WHO LEARNS TO PERFORM CARDIOPULMONARY RESUSCITATION.

IT IS A BASIC FUNDAMENTAL NEUROLOGICAL ASSESSMENT THAT ACCORDING TO THE TESTIMONY OF DR. GURSH WITS CAN COMPETENTLY AND ADQTSLY BE PERFORMED BY A LAY PERSON.

BUT IT IS NOT JUST THE WARDEN WHO MAKES THAT DETERMINATION.

THE A, THE MEDICALLY QUALIFIED PERSON, WHO STARTED THE IV LINES AND IS WATCHING AT ALL TIMES ON THE TV MONITORS IS -- LET ME -- HE IS ALSO WATCHING THE CONSH -- CONSCIOUSNESS ASSESSMENT, BOTH THROUGH THE WINDOW AND ON THE TV MONITORS.

>> IS THERE A REASON --

>> DOES THE WARDEN ACTUALLY

COME NEXT TO THE INMATE TO  
DO THE ASSESSMENT.

>> YES, MA'AM.

THE WARD CMNS UP AND TOUCHES  
THE INMATE.

HE BRUSHES HIS EYELASH.

THAT'S THE FIRST THING HE  
DOES.

HE APPROACHES THE INMATE  
FROM BEHIND TO DO THAT WHERE  
THERE IS NO, TO ELIMINATE  
THE POSSIBILITY OF THE  
INMATE TRYING TO FEIGN  
UNCONSHSNESS.

>> I THINK PART OF THE --  
UNCONSCIOUSNESS.

>> I THINK PART OF THE  
QUESTION WAS IF THAT  
PARTICULAR WARDEN ISN'T  
AVAILABLE TO DO IT, IS THERE  
A CHECK LIST WHERE WE KNOW  
THAT THEY GO THROUGH, THEY  
STICK A PIN IN OR THEY BRUSH  
THE, THE, THE EYELASHES OR,  
AND THEN THEY DO, YOU KNOW,  
ANOTHER THING OR SHOUT OR  
SHAKE 'EM BY THE SHOULDERS.  
IS THERE A CHECK LIST OF A  
STANDARDIZED WAY TO VALIDLY  
CHECK CONSCIOUSNESS?

>> THERE IS A --

>> AS I UNDERSTOOD IT, FOR  
INSTANCE, THE PHYSICIAN FROM  
GEORGIA, DID TESTIFY ABOUT  
MANY OF THESE THINGS.

BUT HAS IT BEEN REDUCED TO A  
STANDARD OR A CHECK LIST  
TYPE THING SO THAT WE KNOW  
THAT THAT EXERCISE INCLUDES  
THOSE THINGS?

>> THE CHECK LIST THAT IS  
MAINTAINED BY ANOTHER WARDEN  
STANDING BY THE -- WHO IS  
STANDING KIND OF BEHIND THE  
EXECUTIONER --

>> THERE IS A RECHECK LIST?

>> YES, AND IT'S -- THE  
BOTTOM LINE, IT'S ON THE  
CHECK LIST, AND THE  
FUNDAMENTAL BOTTOM LINE  
ISSUE FOR THIS COURT IS THAT  
UNDER THE PROCEDURES, WHICH  
CANNOT BE DEVIATED FROM,  
WITHOUT THE EXPRESS CONSENT



OF THE LEAD WARDEN, ARE  
ABSOLUTELY CLEAR THAT UNTIL  
THAT INMATE IS UNCONSCIOUS,  
THEY ARE NOT GOING TO INJECT  
THE SECOND DRUG.

THE EXECUTIONER CAN DO  
NOTHING WITHOUT THE EXPRESS  
COMMAND OF THE TEAM LEADER,  
THE TEAM WARDEN.

>> COULD YOU SPECIFY -- THE  
CHECK LIST.

I JUST WANT TO MAKE SURE.  
IF WE SOOTHE CHECK LIST IN  
EVIDENCE, IT'S GOING TO TO  
SAY ASSESS CONSCIOUSNESS?

>> I BELIEVE IT DOES,  
JUSTICE PARIENTE.

>> BUT IT'S NOT GOING TO SAY  
HOW TO ASSESS CONSCIOUSNESS.

>> I DO NOT BELIEVE IT SAYS  
HOW YOU DO IT.

>> SO IF WARDEN CANNON ISN'T  
AVAILABLE OR IF IT'S NEXT  
YEAR AND THERE'S NEW PEOPLE,  
WHAT ASSURANCE OR SHOULD  
THIS JUDICIAL BRANCH BE  
CONCERNED THAT IF SOMEBODY  
ELSE COMES IN, DOESN'T --  
ISN'T TOLD BY WARDEN CANNON  
WHAT HE WAS DOING, THAT IT  
WON'T BE FOLLOWED THROUGH IN  
A THOROUGH, THE OURO WAY  
THAT YOU ARE NOW DESCRIBING  
IT.

>> BECAUSE, JUSTICE  
PARIENTE, THE TEAM PERSONNEL  
ARE CROSS-TRAINED.

WARDEN CANNON HAS A STEP UP  
TEAM WARDEN WHO IS THE  
ASSISTANT TEAMMATE LEADER  
WHO IS ALSO BY THE WAY A  
WARDEN IN HIS OWN RIGHT.  
THE ASSISTANT TEAM WARD  
THANT I REFERRED TO THAT'S  
STANDING BY THE EXECUTIONER,  
HE IS CROSS-TRAINED IN  
WARDEN CANNON'S DUTIES.  
HE IS CROSS-TRAINED IN ALL  
ASPECK OF WHAT WARDEN CANNON  
DOES SO TO ANSWER YOUR  
QUESTION, ABSOLUTELY, IF  
TIMMY CANNEN IS NOT THERE,  
DAVID HARRIS WILL BE AND  
DAVID HARRIS KNOWS TO DO

EXACTLY WHAT MR. CANNON IS DOING.

>> LET ME ASK MR. NUNNELLEY YOUR OPPONENT BROUGHT UP THE FACT THAT IS, THAT WE ALL KNOW THAT THE U.S. SUPREME COURT HAS GRANTED CERT IN THE BIAS CASE OUT OF KENTUCKY.

AND SET FORTH THREE ISSUES THAT IT'S GOING TO DECIDE. WHAT IS THE STATE'S POSITION AS TO WHETHER THIS COURT SHOULD HOLD AN ABEYANCE, THIS, THIS CASE, OR SHOULD COME FORWARD ISSUE AN OPINION WITHOUT THE, THE U.S. SUPREME COURT HAVING ENTERED AN OPINION?

>> THERE IS NO BASIS FOR A STAY, AND THERE'S SEVERAL REASONS FOR THAT.

FIRST OF ALL, THERE ARE THREE QUESTIONS AT ISSUE IN BAZE.

THE FOURTH QUESTION, THE CRASH CARD ISSUE WAS STRICKEN BY THE U.S. SUPREME COURT.

THE SECOND AND 30 QUESTIONS EXPLICITLY DEAL ONLY WITH THE DRUGS.

THOSE ISSUES ARE NOT BEFORE THIS COURT.

ANY ATTEMPT TO TRY TO RAISE THEM LATER BY

MR. LIGHTBOURNE WOULD BE PROCEDURALLY BARRED UNDER FLORIDA LAW.

THAT'S NOT IN PLAY.

THE FIRST ISSUE, ALSO IS, AGAIN, ALL ABOUT THE DRUGS. AND THIS CASE IS --

>> I THOUGHT ONE OF THE ISSUES WAS WHAT IS THE STANDARD THAT COURTS SHOULD USE IN METHOD OF EXECUTION CASES TO DETERMINE WHETHER IT'S CRUEL AND UNUSUAL PUNISHMENT?

>> THEY HAVE FRAMED THAT, HOWEVER, JUSTICE CANTERO IN THE USE OF THE DRUGS WHEN THEY CLAIM THERE ARE NEW OR

BETTER DESIGNER DRUGS TO BE USED.

BUT TO ANSWER -- TO CUT PAST -OF THIS --

>> LET'S -- JUST TO ANSWER JUSTICE CANTERO'S QUESTION, DOES THE 8th AMENDMENT PROHIBIT MEANS FOR CARRYING OUT A METHOD OF EXECUTION THAT CREATE AN UNNECESSARY RISK OF PUFRING.

THAT'S THE FIRST QUESTION.

>> AGAIN WE ARE AT THE CERT STAGE.

WE ARE NOT AT THE MERIT STAGE, I DON'T KNOW WHAT THEIR ULTIMATE ARGUMENT IS GOING TO BE --

>> BUT YOU HAVE URGED US TO USE THE SIMILAR STANDARD.

>> FLORIDA'S PROCEDURES WILL MEET ANY STANDARD THEY MAY POSSIBLY CHOOSE TO APPLY.

IF IT'S FORESEEABLE RISK, WHICH I WOULD SUGGEST IS THE MOST DEFENSE-FRIENDLY STANDARD WE CAN THINK OF, WE MEET THAT.

IT'S VERY CLEAR THAT WE DO.

IF IT'S UNNECESSARY RIDGE, AND I'M NOT SURE THAT'S REALLY MUCH DIFFERENT FROM FORESEEABLE RISK BUT ASSUMING IT IS, IT'S A LITTLE HIGHER PROBABLY.

>> WHY IN THE WORLD WOULD WE MOVE FORWARD AND APPROVE AN EXECUTION WHEN THERE IS SOME POSSIBILITY AT LEAST THAT THE U.S. SUPREME COURT WILL GIVE SPECIFIC GUIDANCE ON THIS VERY ISSUE IN TERMS OF LETHAL INJECTION?

WHY, WHY, WHAT IS THE URGENCY IN HAVING AN EXECUTION GO FORWARD WHILE WE'RE AWAITING WHAT WILL BE THE ABSOLUTELY CONTROLLING LAW IN THIS AREA?

WHAT, WHAT IS THE URGENCY OF HAVING AN EXECUTION WHEN WE KNOW U.S. SUPREME COURT IS GOING TO SHED LIGHT ON THIS AND THERE IS AT LEAST SOME

POSSIBILITY THAT WE MAY BE  
OUT OF KILTER WITH WHAT THEY,  
THEY DO?

ARE WE SO ABSOLUTELY CERTAIN  
OF THE OUTCOME HERE THAT  
THERE IS NO RISK THAT THE  
U.S. SUPREME COURT MAY DO  
SOMETHING AND, AND WHAT'S  
THE URGENCY, I GUESS, IS MY

--

>> JUSTICE ANSTEAD, THE  
DEPARTMENT OF CORRECTIONS,  
HAS BEEN IN THE FRONT ON THE  
DEVELOPMENT OF THESE  
PROCEDURES.

THIS COURT'S BEEN INVOLVED  
IN THE LIGHTBOURNE  
LITIGATION AS WELL.

WE'RE NOT FOLLOWING IT ALONG  
BEHIND THE OTHER STATES.

WE'RE IN FRONT OF THE OTHER  
STATES IN ALL OF THIS.

AND THE U.S. SUPREME COURT  
QUITE HONESTLY IS GOING TO  
DO WHAT THEY ARE GOING TO DO,  
BUT THIS COURT SHOULD FOLLOW  
SETTLED LAW UNDER -- AS  
ANNOUNCED IN SIMS, WHICH HAS  
BEEN UPHELD.

>> BUT WEIR IN FRONT OF THE  
OTHER STATES APPARENTLY,  
AFTER, WHAT HAS BEEN TERM  
ADBOTCHED EXECUTION.

AND THE, THE, THE EXECUTE  
BRANCH TAKING THAT VERY  
SERIOUSLY, I.E., THE  
GOVERNOR'S APPOINTMENT OF A  
COMMISSION THAT LOOKED AT  
THIS VERY THOROUGHLY AND OF  
COURSE THE EVIDENCE OF THEIR  
FINDINGS IN A WENT INTO THE  
HEARING HERE, AND OF COURSE,  
THIS COURT THEN ALLOWING  
THAT ISSUE TO BE FURTHER  
LITIGATED, YOU KNOW, BECAUSE  
OF THAT.

AND GRANTED, THAT IT APPEARS  
THAT DOC HAS RESPONDED AND,  
AND VIRTUALLY EVERY WAY  
POSSIBLE.

WHICH IS ONE OF THE CONCERNS  
BY SOME OF THE OTHER COURTS  
AROUND THE COUNTRY.  
BUT I'M HAVING DIFFICULTY

SEEING WHAT THE URGENCY IS  
IN GOING FORWARD WITH AN  
EXECUTION WHEN WE'RE ABOUT  
TO GET THE LAW FROM THE  
HORSE'S MOUTH.

YOU KNOW, CONTROLLING THIS  
ISSUE.

>> WE MAY GET THE LAW FROM  
THEM OR IT MAY TURN OUT LIKE  
NELSON WHERE THEY DON'T  
ANSWER THE QUESTION WE HAVE  
BEFORE US BUT THE BOTTOM  
LINE IS THAT COURT AS I HAVE  
SAID IN MY PLEADINGS CAN  
PROTECT ITS OWN JURISDICTION  
AND SHOULD DO IT.

THIS COURT SHOULD FOLLOW  
FLORIDA LAW, WHICH IS BASED  
ON GREGG AND RESSWEBBER  
WHICH REMAINS THE LAW UNLESS  
SOMEBODY CHANGES IT, AND  
PERHAPS MAKE AN ALTERNATIVE  
FINDING THAT UNDER THE MOST  
POSSIBLE DEFENSE-FRIENDLY  
STANDARD, LIGHTBOURNE CANNOT  
CARRY HIS BURDEN OF PROOF.

>> IT'S NOT THE ISSUE OF  
WHETHER WE CONTINUE TO  
FOLLOW OUR LAW.

WHICH I CAN ASSURE YOU WE  
WILL.

THE ISSUE IS WHETHER OR NOT  
THERE IS SOME RISK THAT THE  
U.S. SUPREME COURT WILL, AS  
I SAY.

YOU KNOW, WILL GIVE US THE,  
THE, THE EXPLICIT LAW ON  
THIS VERY ISSUE.

AND IN FACE OF THERE, I  
CAN'T SEE ANY URGENCY TO  
GOING AHEAD AND HAVING AN  
EXECUTION, WHICH IS  
IRREPAIRABLE, OBVIOUSLY  
SHOULD THE SUPREME COURT SAY  
WE GOT IT WRONG.

>> BUT JUSTICE ANSTEAD, AND  
WE ARE ROLLING OVER INTOTIA  
WAB REALLY.

IF YOU DECIDE THERE IS NO  
FORESEEABLE RISK, THAT  
FORESEEABLE RISK IS THE  
STANDARD AND APPLY  
FORESEEABLE RISK AND UPHOLD  
THE PROCESS, AND THE U.S.

SUPREME COURT COMES OUT AND SAYS, OKAY, IT'S FORESEEABLE RISK.

WE WERE RIGHT.

IF WE APPLY FORESEEABLE RISK AND THEY COME OUT AND SAY IT'S WILLFUL AND WANTON AND THERE FLECTION OF PAIN.

>> YOU ARE TALKING ABOUT TWO SEPARATE ISSUES.

>> WE'RE NOT GETTING TO -- HE'S REALLY ASKING -- IF YOU CAN ANSWER TFINE, BUT WE'RE GOING AHEAD.

HE IS ASK FIGURE THERE'S SOME REASON YOU CAN RESPOND IF THERE'S SPECIFIC REASON OR NEED TO PROCEED AHEAD. NOT WHETHER THE LAW CAN PERMIT IT BUT WHETHER THERE'S SOME SPECIFIC EXPRESS REASON TO PROCEED.

>> THE ANSWER, THE ANSWER REALLY FALLS IN THE SCHWAB CASE, WHICH IS TO SOME DEGREE DEPENDENT UPON THIS CASE.

>> THERE IS NO WARRANT IN THIS CASE.

>> THAT'S REALLY SCHWAB OR I'LL IT NOW OR IN 25 MINUTES.

>> I'LL ANSWER IT SOONER OR LATER TODAY.

>> THERE, THERE IS, JUSTICE LEWIS, MAY I HAVE PERMISSION TO ASK ONE QUESTION?

ONE THING THAT WON'T BE IN SCHWAB THAT I WANT TO ASK ABOUT IS THE ISSUE CONCERNING WHAT'S REFERRED TO AS HAD DIEHOUSE MEMO. IF WE ASSUME THAT IT COMES IN, IT REFERS TO ANOTHER WAY OF ASSESSING CONSCIOUSNESS, THIS BISPECTRAL INDEX MONITOR, MY QUESTION ON THAT IS THAT AS TO THE SECOND QUESTION FROM THE U.S. SUPREME COURT, WHICH IS THAT DO THE MEANS CARRYING OUT AN EXECUTION CAUSE AN UNNECESSARY RISK OF PAIN IF THERE IS A SHOWING THAT

READILY AVAILABLE  
ALTERNATIVES THAT POSE LESS  
OF A RISK COULD BE USED?  
IF THE SUPREME COURT  
ANSWERED THAT QUESTION YES,  
CAN YOU TELL ME WHY THE USE  
OF THIS MONITORING DEVICE IS  
NOT A MORE RELIABLE UNIFORM  
WAY OF ASSESSING  
CONSCIOUSNESS?

>> THE BIS MONITOR, AND I'M  
AFRAID THIS IS GOING TO BE A  
LONG ANSWER, THE BIS  
MONITOR, THE BISPECTRAL  
MONITOR HAS BEEN USED ONCE  
IN NORTH CAROLINA.

THAT THE ONLY PLACE IT HAS  
BEEN USE.

NO OTHER STAY HAS IT IN  
THEIR PROCEDURES TO USE A  
BIS MONITOR T. REQUIRES AN  
ADDITIONAL PERSON.

I'M -- I'M ALL IN THE REALM  
OF, YOU KNOW, HYPOTHESIS TO  
SOME DEGREE HERE, JUSTICE  
PARIENTE, BUT I PRESUME IT  
WOULD REQUIRE AN ADDITIONAL  
PERSON TO MONITOR.

I'M SURE -- I KNOW THAT  
PERSON WOULD HAVE TO BE  
TRAINED TO INTERPRET WHAT IS  
BEING SHOWN ON THE BIS  
MONITOR, AND THE FACT OF THE  
MATTER IS, THE BIS MONITOR  
IS DESIGNED AND INTENDED FOR  
USE IN SURGERY IN SPECIFIC  
PATIENT CIRCUMSTANCES.  
SPECIFICALLY IN THE CASE OF  
A PATIENT WHO HAS  
EXPERIENCED INTEROPTATIVE  
EXPERIENCE OF --

>> IS THAT IN THE RECORD OF  
THIS CASE.

>> I'M NOT SURE IF IT IS OR  
NOT.

I KNOW IT'S IN THE RESEARCH  
BUT I'M NOT SURE IF THAT'S  
IN THE RECORD BECAUSE THE  
BIS MONITOR WASN'T AT ISSUE  
HERE.

I'VE GIVEN YOU SEVERAL  
REASONS IN MY BRIEF FOR WHY  
THE DIEHOUSE MEMO DID NOT --  
SHOULD NOT -- MEMOS SHOULD

NOT PROPERLY HAVE BEEN --  
WERE PROPERLY NOT ALLOW  
UNDER TO EVIDENCE.  
THEY'RE NOT ATTORNEY -- THEY  
ARE ATTORNEY-CLIENT  
PRIVILEGED.

THE HILL LITIGATION, THE  
RUTHERFORD LUTTIGATION WAS  
GOING FULL BOARD WHEN THOSE  
MEMOS WERE DRAFTED IF THAT'S  
NOT IN ANTICIPATION OF  
LITIGATION.

I DON'T KNOW WHAT IT IS.  
BECAUSE THOSE MEMOS WERE  
WRITTEN AFTER HILL HAD COME  
BACK FROM THE U.S. SUPREME  
COURT TO THE 11th CIRCUIT  
AND THEN SENT BACK TO THE  
FEDERAL DISTRICT COURT FOR  
FEDERAL PROCEEDINGS.

I DON'T KNOW WHAT THAT IS IF  
NOT LITIGATION.

THE ATTORNEY'S CLIENT  
PRIVILEGE HAS NOT BEEN  
RAISED.

>> WE ARE GOING FAR ASTRAY  
OF THE QUESTION.

IF YOU CAN BRING YOUR ANSWER  
TO A CONCLUSION TO THE USE  
OF THE MONITOR AND THAT IF  
THERE IS A DETERMINATION  
LATER.

THAT'S WHERE THE QUESTION IS  
GOING.

IF THERE WAS A DETERMINATION  
LATER THAT THERE IS  
EQUIPMENT AVAILABLE AND  
WOULD THAT NOT IMPACT OUR  
CASE I THINK IS WHERE THAT  
QUESTION IS, NOT ITS  
ADMISSIBILITY BUT IF YOU CAN  
ANSWER THAT, THEN THAT'S  
FINE ALSO.

>> WELL, THE BIS MONITOR, IS  
NOT NECESSARY, AND BAZE, AS  
I I READ THE PETITION IS  
FOCUSED ON THE DRUG THAN ON  
THE USE OF TECHNOLOGY AND  
THE DRUGS OF COURSE ARE NOT  
AT ISSUE HERE AND I DO NOT  
BELIEVE THE BIS MONITOR IS  
IN THE BAZE CERT PETITION.  
I DON'T REMEMBER SEEING T.  
THAT PETITION IS VERY



SPECIFIC ABOUT WHAT THEY ARE  
TALKING ABOUT AND WHAT THEY  
ARE ASKING FOR.

I WILL ASK THE COURT TO  
AFFIRM THE LOWER COURT.

THANK YOU.

>> THANK YOU.

ALTHOUGH YOU HAVE USED YOUR  
TIME THE STATE HAS USED  
ADDITIONAL TIME SO I AM  
GOING TO GIVE YOU TIME TO  
RESPOND.

>> JUST BRIEFLY ON THE BAZE  
ISSUE, I THINK THAT  
PARTICULARLY IN LIGHTBOURNE,  
THERE IS NO EX-EXECUTION  
DATE SET.

THERE IS NOT ANY URGENT  
REASON WHY THIS COURT NEEDS  
TO DECIDE AND MAKE A  
DECISION BECAUSE THE FACT OF  
THE MATTER IS IF THIS COURT  
GETS IT WRONG,  
MR. LIGHTBOURNE WILL BE BACK  
TO ARGUE THE STANDARD.

>> THERE'S NO --

>> NO, THERE'S NOT.

THERE'S NOT.

>> WOULD YOU GO BACK TO THE  
STATE SAYS THAT THE, THE  
SAME TRAINING REQUIREMENTS  
AND STANDARDS, IF I GO AND  
HAVE BLOOD DRAWN OR WHATEVER  
AT THE HOSPITAL OR THE  
DOCTOR THAT THOSE SAME  
STANDARDS ARE APPLICABLE TO  
THE PEOPLE THAT PLACE THE  
INTRAVENOUS FLUIDS HERE.  
I'M RR HAVING IS HE RIGHT?  
IS.

>> THERE IS A LIST IN THE  
PROCEDURES THAT LIST OUT THE  
MINIMAL POSSIBLE  
QUALIFICATIONS UP OF WHO  
COULD PUT AN IV IN.  
THAT IS, IS FLU BOUGHTMIST  
THEY SAY CAN DO IT.  
HOWEVER THEY HAVE THAT FLU  
BOUGHTMIST MONITORING THE  
CONSCIOUSNESS OF THE INMATE  
AND I WOULD ARGUE, AND AS  
DR. HEATH POINTED OUT THAT  
THE PHLEBBOTOMIST.  
I WANT TO BE CLEAR THAT THIS

GOES BEYOND WHAT STATUTORY TRAINING IS AND SAYS.

THIS GOES TO THE FACT THAT WE DON'T KNOW THESE PEOPLE'S PERSONNEL RECORDS AND THEIR EMPLOYMENT.

WE DON'T KNOW IF THEY ARE, YOU KNOW, MAKING MISTAKES IN THEIR EMPLOYMENT.

THEY'VE BEEN CITED FOR PROBLEMS IN THEIR WORK FILE.

WE DON'T KNOW WHAT ANY OF THEIR BACKGROUND IS.

IF THEY'VE EVER HAD ANY COMPLAINTS FILED AGAINST THEM.

WHEN THIS --

>> YOU SEEM TO BE SUGGESTING THAT EVERY TIME DOC HIRES A NEW PERSON THAT MAY BE IN, INVOLVED IN THIS, THAT YOU HAVE THE RIGHT BEFORE THEY HAVE AN EXECUTION TO GO AND DEPOSE THAT PERSON OR GET THEIR RECORDS AND GO THROUGH AND I'M HAVING A LOT OF DIFFICULTY THERE.

AS TO WHETHER WE COULD IMPOSE THAT KIND OF SUPERVISION.

OVER THE EXECUTIVE BRANCH.

EVERY TIME THEY HIRE SOMEBODY NEW, THAT, THERE'S GOING TO BE A FULL INVESTIGATION NOW BY THE JUDICIAL BRANCH.

THERE'S A PROBLEM OF THAT. IS THERE NOT?

>> I'M ARGUING WHAT'S RELEVANT TO LIGHTBOURNE AND WHAT WE KNOW IN LIGHTBOURNE, WHO WILL BE PARTICIPATING. I HAVE BEEN TOLD THAT THOSE PEOPLE ARE CHOSEN SOON IT'S NOT JUST THE LIGHTBOURNE CASE.

WE ARE TALKING ABOUT AT WHAT POINT DOES THIS PROCESS BECOME A VIOLATION OF A CONSTITUTION?

ISN'T THAT WHAT WE ARE REALLY TALKING ABOUT?

BECAUSE IT, IT'S NOT A, A CASE-BY-CASE IN THIS DOCTOR.

MAY HAVE, MAY HAVE A DEGREE FROM THE FINEST INSTITUTION. WE'VE GOT ANOTHER ONE THAT DOES NOT.

WE HAVE ONE DOCTOR THAT HAS COMPLAINTS FILED AGAINST HIM AND OTHERS THAT DO NOT.

SO WE'RE REALLY NOT TALKING ABOUT A JUDICIAL BRANCH MANAGING AND BECOMING INVOLVED UNDER A SEPERATION OF POWERS ANALYSIS IN WHAT'S THE RESPONSIBILITY OF THE EXECUTIVE BRANCH ARE, WE?

>> I DON'T THINK I AM ASKING THE JUDICIAL BRANCH, BUT AT SOME POINT THERE HAS TO BE SOME QUESTIONING OF THE PEOPLE INVOLVED IN THIS. JUSTICE ANSTEAD YOU HAD WRITTEN AND CONCURRED IN AN EVENT THAT KNOW THE CREDENTIALS AND BACKGROUND OF THESE INDIVIDUALS WOULD BE IMPORTANT TO THE ASSESSMENT OF WHETHER THERE IS AN 8th AMENDMENT VIOLATION.

THAT'S EXACTLY WHERE WE ARE HERE.

THEY SAID THAT THEY WERE TRAINED BEFORE IN DIAZ, NOT ONLY, THE ONLY PROBLEM IN DIAZ WAS NOT TAT IT PUNCTURED THE VEINS AND THAT THEY MADE A MISTAKE WHEN THEY PUT THE NEEDLES IN BUT THAT THEY NEVER FOLLOWED UP. THEY WALKED AWAY. THEY DIDN'T DO THE PROPER MONITORING.

--

>> BUT THEIR -- THAT'S WHERE I BELIEVE THAT THERE HAS BEEN IMPROVEMENT IN, BY THE RECOGNITION THAT THERE -- AFTER YOU PUT WHAT IS REALLY A LETHAL DOSE OF THE SODIUM THIOPENTAL THAT THERE WILL BE AN ASSESSMENT AND THE EXECUTIVE BRANCH HAS RECOGNIZED THAT IT'S GOAL IS TO ENSURE A PAINLESS EXECUTION.

I MEAN, THAT IS WHAT --  
THEY'RE NOT TRYING TO CAUSE  
PAIN.

THEY UNDERSTAND THAT.

SO I DON'T -- YOU KNOW, I  
THINK THAT THE QUESTION OF  
HOW FAR WE WOULD GO IN IN  
THE CONTINUOUS CBPTION OF  
THE TRAINING OF PERSONNEL  
CAUSES ME CONCERN.

>> I THINK THOUGH, I WANT TO  
POINT OUT THAT WHY  
MR. NUNNELLEY SAYS WE ARE IN  
THE FRONT OF OTHER STATES, I  
DON'T THINK WE ARE.

THE FACT OF THE MATTER IS  
THAT OTHER STATES HAVE FAR  
MORE INFORMATION ON THEIR  
EXECUTION PROCESS THAN  
FLORIDA HAS EVEN AFTER THESE  
PROCEEDINGS.

THE FACT OOT MATTER IS THAT  
THESE PEOPLE ARE BEING  
QUESTIONED IN OTHER STATES  
TO DETERMINE AND COURTS ARE  
RELYING ON THAT INFORMATION  
IN DETERMINING WHETHER OR  
NOT THERE'S AN 8th AMENDMENT  
VIOLATION.

THE ASSESSMENT OF  
CONSCIOUSNESS THAT'S IN  
PROCEDURES IS INSUFFICIENT  
GIVEN THAT WE KNOW THAT THE  
ANESTHESIA CAN BE INADEQUATE  
SPECIFICALLY IF THERE'S  
INFILTRATION, AND THEY CAN  
DETECT THAT.

HERE MR. DIAZ WAS CONSCIOUS,  
HE WAS AWAKE AND THEY  
PROCEEDED WITH THE SECOND  
DRUG.

THERE, THERE IS NO MEDICAL  
DETERMINATION STILL OF  
WHETHER INMATE IS FULLY  
UNDER A DEPTH OF ANESTHESIA,  
ANESTHESIA WHICH WOULD BE  
EQUIVALENT TO WHAT'S NEEDED  
FOR SURGERY WHEN YOU ARE  
INJECTING POTASSIUM  
CHLORIDE.

I WANT TO QUICKLY POINT OUT

--

>> I'M STILL AT THE POINT  
WHERE YOU SEEM TO BE

SUGGESTING NOT JUST A MEDICAL PERSON, WHICH, YOU KNOW, THERE ARE ALL KINDS OF PEOPLE THAT ARE PART OF THE MEDICAL PERSONNEL BUT YOUR ARGUMENT REALLY SEEMS TO BE THAT YOU NEED SOMEONE WHO IS MORE AKIN TO A MEDICAL DOCTOR THERE TO MAKE SURE THAT THIS PERSON IS CONSCIOUS OR UNCONSCIOUS AND THAT THAT FIRST STEP HAS GONE PROPERLY.

AND SO WHERE, WHERE DO YOU GET THAT SORT OF BROAD, THIS IS WHAT WE NEED THERE WHO HAS SAID THAT YOU NEED THAT KIND OF PERSON THERE?

>> WELL, I THINK THAT DR. HEATH'S TESTIMONY, NOT SIMPLY A MEDICAL DOCTOR BUT SOMEONE THAT NEEDS TO BE TRAINING IN ASSESSING DEPTH OF ANESTHESIA.

THAT CAN BE, THERE ARE NURSES TRAINED TO DO THAT. SO IT'S NOT SIMPLY A MEDICAL DOCTOR.

>> WELL, WE HAVE ANOTHER MEDICAL DOCTOR WHO SAYS THAT OTHER PEOPLE CAN IN FACT DO IT.

AND SO HOW DO WE TREAT THIS TESTIMONY WHEN WE HAVE PEOPLE WHO ARE SAYING DIFFERING THINGS ABOUT THIS?

>> WELL, I THINK CERTAINLY THAT THERE ARE OTHER STATES WHICH DO HAVE DOCTORS IN PLACE THAT ARE DOING A MEDICAL DETERMINATION OF CONSCIOUSNESS.

IF YOU LOOK AT MISSOURI, THEY ARE, THEY HAVE, AND YOU LOOK AT THAT OPINION OF TAYLOR v. CRAWFORD, THEY HAVE, I DON'T KNOW IF IT'S A MEDICAL DOCTOR OR A NURSE, BUT THEY HAVE MEDICAL PERSONNEL.

>> THE QUESTION IS NOT QLOUNT OTHER STATES HAVE OTHER PERSONNEL. THE QUESTION WAS WASN'T

THERE EVIDENCE OFFERED  
DURING THE, THE HEARINGS  
THAT WERE CONDUCTED IN THIS  
CASE, AND MY RECOLLECTION  
BETION THAT IT WAS THE  
PHYSICIAN FROM GEORGIA, THAT  
DR. TESTIFIED THAT THE  
METHODS USED BY DOC WERE  
PERNICATELY REASONABLE IN  
DETERMINING THE LEVEL OF  
CONSCIOUSNESS.

>> I WOULD POINT OUT THAT --

>> SO IF THERE'S THAT  
EVIDENTIARY BASIS FOR THE  
TRIAL JUDGE HERE THEN TO  
FIND DOC'S STANDARDS ADD QT.

>> I WOULD POINT OUT THAT IT  
WAS DOCTOR SPERRY FROM  
GEORGIA.

HE IS A FU-- FORENSIC  
PATHOLOGY AND HAS PRACTICED  
PATHOLOGY FOR YEARS.

>> NOW YOU ARE GOING TO HIS  
CREDIBILITY AND THAT'S  
SOMETHING -- DO YOU AGREE  
THOUGH THAT HE DID TESTIFY  
THAT THESE WERE ADEQUATE  
WAYS TO DETERMINE  
CONSCIOUSNESS.

>> JUSTICE ANSTEAD, MY  
RECOLLECTION IS THAT THOSE  
QUESTIONS WERE TO DR. SPERRY  
AND DR. GURSH WITS.

-- GERSH WITS.

I THINK THAT WITH DERSHWITZ  
WHEN IT WAS ASKED OF HIM  
WHEN SHAKING AN INMATE AND  
BRUSHING THEIR EYE LASHES HE  
DISTINGUISHED BETWEEN DEPTH  
OF ANESTHESIA THAT THAT  
WOULD NOT BE SUFFICIENTFRONT  
THAT AND HE SAID THAT IT  
WOULD BE SUFFICIENT FOR  
CONSCIOUSNESS VERSUS  
UNCONSCIOUSNESS.

I DON'T BELIEVE IT WAS EVER  
POSED TO HIM WHETHER OR NOT  
IN THIS CONTEXT YOU WOULD  
NEED A DETERMINATION OF  
DEPTH OF ANESTHESIA VERSUS  
CONSCIOUSNESS AND I DID  
SPECIFICALLY LOOK AT THAT  
RECORD.

>> AND WITH THAT, YOU HAVE

DOUBLED YOUR TIME.

>> OKAY.

THANK YOU.

I WOULD JUST URGE THE COURT,

AGAIN, TO HOLD IT IN

ABEYANCE PENDING THE SUPREME

COURT'S UNITED STATES

DECISION.

>> WE THANK COUNSEL ON BOTH

SIDES.

FOR AN ENLIGHTENING

ARGUMENT.