

>> 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 THE COURT'S
CALENDAR TODAY IS PASHA VERSUS
STATE.

MR. BOLOTIN?

>> MAY IT PLEASE THE COURT,
STEVE BOLOTIN, I REPRESENT THE
APPELLANT, KHALID ALI PASHA.
HE STANDS CONVICTED OF TWO
COUNTS OF FIRST DEGREE MURDER.
AND NEVER HAD HIS DAY IN COURT,
HE HAD A DAY -- A WEEK IN COURT
BUT NEVER HAD HIS DAY IN COURT,
AT THE OUTSET, HE IS NOT THE
MOST EASY GOING FOR MALLEABLE
INDIVIDUAL FOR -- AND DEFENDANTS
NEVER ARE AND HE'S PRIDEFUL,
ARTICULATE, AND A BIT STUBBORN,
MISTRUSTFUL, AND THE COURTROOM
DEMEANOR IS APPROPRIATE AN
COURTEOUS, AND, HE BASICALLY HAS
A TEMPERAMENT OF A LAWYER.

IN THIS CASE, A RIFT DEVELOPED BETWEEN HIM AND HIS GUILT PHASE ATTORNEY, NICK SINARDI AND IT BEGAN AS A -- TRIAL STRATEGY BUT GOES BEYOND THAT. AND, IT BECAME A PERSONAL DISTRUST ISSUE AS WELL. WHAT HAPPENED HERE IS MR. SINARDI CONCLUDED AND IT DOESN'T PARTY WHETHER HE WAS RIGHT OR WRONG, WHETHER THE ANALYSIS WAS ON TARGET OR TO THE BUT DECIDED THE ONLY WAY TO TRY THE CASE WAS TO CONCEDE HIS GUILTY OF SECOND DEGREE MURDER AND TRY AND AVOID A DEATH SENTENCE AND MR. PASHA PROTESTED AND DIDN'T WANT TO DO THAT. HE WANTED TO MAINTAIN HIS EN SENSE AND PUT THE STATE TO ITS PROOF.

>> YOU ARE -- YOU ARE STARTING WITH WHAT HAPPENED IN THE FINAL DISCUSSION OF WHETHER SINARDI WOULD BE DISCHARGED. DO WE IN ANALYZING ANYTHING ABOUT PORETTA LOOK TO THE HISTORY IN THIS -- FARETTA LOOK TO THE HISTORY THAT HE BEGAN WITH A PUBLIC DEFENDER AND A PRIVATE ATTORNEY, GONZALEZ AND HERNANDEZ AND TWO YEARS HE REPRESENTED HIMSELF AND THEN, THE -- HE OBTAINED A LAWYER, AND, HAD FRUSTRATION WITH NOT GETTING RECORDS AND THEN HAD

SINARDI AND FRASER FOR THAT PERIOD AND DOES THAT FACTOR IN OUR ANALYSIS AS TO WHETHER THE JUDGE RULED CORRECTLY.

>> YES.

IT FACTORS IN.

I DON'T THINK IT IS DISPOSITIVE.

WHERE IT COMES INTO PLAY.

THERE IS HISTORY HERE AND I NEED TO DOES IT IN MORE DEPTH IN SOME OF THINGS I POINT OUT IN THE REPLY BELIEVE IN HAVING TO DO WITH WHAT THE STATE REPRESENTED. BUT IF THERE HAS BEEN NO HI AT ALL.

MR. -- IT WOULD BE IRRELEVANT WHAT MR. PASHA'S REASONS WERE FOR HIS DISSATISFACTION WITH HER SINARDI AT ALL, HE COULD HAVE NOT LIKED THE WAY HE COMBS HIS HAIR AND THAT WOULD HAVE BEEN FINE, BECAUSE, THERE IS A HISTORY HOR, I THINK IT BECOMES RELEVANT, TO SHOW, OKAY. THE STATE IS CLAIMING THAT MR. PASHA'S REQUEST WAS INSINCERE AND MANIPULATIVE FOR PURPOSES OF DELAY AND THEN IT IS IMPORTANT TO LOOK AS TO WHETHER OR NOT HE HAD GOOD FAITH REASONS FOR HIS REQUEST. AND HE CLEARLY DID HAVING TO DO SPECIFICALLY WITH MR. SINARDI AND NOT TO DO WITH THE PAST HISTORY.

I WANT TO DISCUSS ONE THING ON

THE PAST HISTORY THAT I THINK IS IMPORTANT.

THE STATE MAKES THE CLAIM THAT IT IS -- BRIEFED THAT EVERY TIME, CONSISTENTLY ON THE EVE OF TRIAL, MR. PASHA COULD CHANGE HIS MIND AND THEREFORE HIS REQUEST FOR MANIPULATIVE AND INSINCERE AND THAT IS NOT TRUE.

YEAH, HE IS A CLASSIC FARETTA DEFENDANT AND LIKES TO DO THINGS HIS OWN WAY BUT ONCE HE REPRESENTED HIMSELF AND GOT OUT AND GONZALES WAS STAND BY COUNSEL AND GONZALES AND HERNANDEZ HAD BEEN REMOVED AND HE HAD BEEN DEFENDING HIMSELF AND THE PRETRIAL DECISIONS, JUDGE TIMMERMAN AND JUDGE THAPE WOULD LECTURE HIM AND HE FELT THE JAILS AND RULES WERE ARBITRARY IN TERMS OF HIM HAVING ACCESS TO DISCOVERY MATERIALS AND HE HAD FOUR AND THEN FIVE BOXES OF DISCOVERY MATERIALS AND HE ONLY GOT ONE BOX AT A TIME AND IF I HAD TO WRITE THE BRIEF AND ONLY HAD 1/5 OF THE RECORD AT ANY GIVEN PART AND DIDN'T HAVE ACCESS TO THE THIRD PART UNTIL I GOT RID OF THE FIRST PART, I WOULD HAVE A PROBLEM TOO, AND THE JUDGE WATCH WRONG TO TELL HIM I WILL NOT TELL THE JAIL HOW TO RUN THEIR JAIL, IT IS A SECURITY ISSUE AND THIS IS

SOMETHING YOU WILL HAVE TO DEAL WITH BECAUSE YOU ARE REPRESENTING YOURSELF.

AND, I BELIEVE AT LEAST FIVE OR SIX TIMES DURING THE PRETRIAL PROCEEDINGS JUDGES CHASTISED MR. PASHA, THIS IS YOUR FAULT, YOU CANNOT GET ACCESS TO MATERIALS, BECAUSE YOU HAVE AND IN CYST TENSE OF...

>> AND THE TRANSFERRED TO THE TRIAL DIVISION.

>> JUDGE PADGETT AND THE CASE WAS GOING TO TRIAL AND HE HAD PROBLEMS WITH ACCESS TO MATERIALS 0.AND HE WAS READY TO GO TO TRIAL.

AND, YOU ARE, GOING BACK AND FORTH AND THE JUDGE SAYS IT WILL NEVER GET BETTER WITH THE ACCESS TO MATERIALS THING, I'LL SET THE TRIAL AND IT WILL GO AND THEN, HE UPDATES THE FARETTA INQUIRY, AGAIN, ARE YOU SURE, SURE YOU DON'T WANT TO REQUEST THE LAWYER?

THINGS WOULD BE BETTER FOR YOU, HERE, IF YOU HAD A LAWYER.

ARE YOU SURE YOU WANT TO REPRESENT YOURSELF AND GO TO TRIAL NEXT WEEK AND HE SAID I WANT TO REPRESENT MYSELF, HE WAS INVITED TO CHANGE HIS MIND THE EVE OF TRIAL AND DIDN'T DO IT. HE SAID I'M GOING TO REPRESENT MYSELF.

WHAT HAPPENED WAS, THIS IS ON MONDAY, THE TRIAL WAS GOING TO BEGIN ON THE FOLLOW MONDAY. ON I BELIEVE IT WAS FRIDAY THE PARTIES ARE IN COURT AND THE STATE DISCOVERED A PIECE OF EVIDENCE THAT IT ALWAYS HAD, SURVEILLANCE TAPE FROM THE AETNA BUILDING, WHICH IT THOUGHT WAS WORTHLESS, THERE WAS NOTHING ON THE TAPE TO BE OF ANY USE, THE DAY -- PREVIOUS DAY, THE POLICE OFFICERS WERE UP AT THE FDA, ORLANDO, REVIEWING THE SURVEILLANCE TAPE AGAIN AND FOUND, LO AND BEHOLD, THERE IS SOMETHING WE CAN USE AND SOMETHING SHOWS SOMETHING HERE AND MR. PASHA HAS NOT SEEN IT AND WE CAN'T GO TO TRIAL YET AND THE JUDGE AGREES, YOU CANNOT GO TO TRIAL YET BECAUSE OF THIS AND THE STATE SAYS IT WILL BE IMPORTANT TO OUR CASE THOUGH IT TURNED OUT IT WAS TRIVIAL. BUT, THAT'S WHY JUDGE PADGETT BASICALLY SAYS OKAY. I'LL RETURN THE CASE TO JUDGE TIMMERMAN AND WHENEVER THIS IS READY FOR TRIAL AGAIN SOMEDAY YOU CAN SEND IT BACK TO ME. WHEN IT CAME BACK TO TRIAL, YOU KNOW, IT WENT TO JUDGE FUENTE FOR TRIAL THE FOLLOWING YEAR. THE PERIOD OF TIME WHEN MR. PASHA REQUESTED COUNSEL WAS

THREE MONTHS AFTER THAT.
IN NOVEMBER OF '06.
WHEN THEY WERE GOING ON ABOUT
SOME PHOTOGRAPHS THAT WERE AT
ISSUE, AND MR. PASHA SAID, WELL,
I CAN GET TOGETHER WITH THE
STATE ATTORNEY AND WE CAN LOOK
AT THE NEGATIVES AND THE JUDGE
SAID HOW WILL DO YOU THAT?
WILL HOLD IT UP TO A LIGHT AND
HE SAYS THERE IS A MACHINE YOU
CAN LOOK THROUGH AND THE JUDGE
SAYS YOU DON'T HAVE ACCESS TO
THAT, IF YOU HAD A LAWYER YOU
WOULD HAVE ACCESS TO THAT, YOU
SHOULD HAVE A LAWYER... AND AT
THIS POINT WHEN THE TRIAL IS NOT
IMMINENT, MR. PASHA RELENTS, THE
5TH OF THE 6TH TIME HE HAS BEEN
CHASTISED FOR HIS INSISTENCE ON
GOING TO TRIAL PRO SE AND HE
SAYS FINE I WANT A LAWYER AND HE
MAKES IT CLEAR I WANT A LAWYER
WHO WILL WORK FOR ME AND THE
JUDGE SWITCHES GEARS, HE HAS
BEEN CHASTISING FOR INSISTING ON
REPRESENTING HIMSELF AND NOW FOR
CHANGING HIS MIND, WHICH HE HAS
BEEN INVITED TO DO REPEATEDLY.
>> THAT IS NOT WHAT HAPPENED.
LOOK AT THE TRANSCRIPT.
YOU ARE ELECTED TO REPRESENT
YOURSELF.
I WANT A LAWYER.
ARE YOU CHANGING YOUR MIND NOW,
SIR YOU WANT COUNSEL TO

RECOMMEND YOU.

I'VE ALWAYS WANTED COUNSEL TO REPRESENT ME.

I NEVER WANTED TO BE PRO SE.

I AM PRO SE BECAUSE I'M FORCED TO BE.

THAT IS WHAT HE SAID.

>> AT WHICH POINT NOW.

>> ON THE HEARING ON NOVEMBER 29.

2006.

>> RIGHT.

OKAY.

>> NOW HE'S SAYING, I'VE ALWAYS WANTED A LAWYER.

EACH AFTER HE HAD A NUMBER OF -- EXCUSE ME, AFTER HE HAD A NUMBER OF... AND HE'S ALWAYS MAINTAINED I WANT TO REPRESENT MYSELF.

SUDDENLY HE SAYS I ALWAYS WANTED A LAWYER.

HOW THAT IS NOT...

>> WHAT HE MEANS IS THAT I WANT A LAWYER BUT THESE LAWYERS I GET DON'T DO WHAT I WANT THEM TO DO AND GIVEN I HAVE GOT THESE LOWERS I WANT TO REPRESENT MYSELF.

HE'S NOT BEING INCONSISTENT.

THIS IS THE SAME POSITION HE TOOK AT THE TIME OF THE NELSON HEARING AND FARETTA HEARING AT TRIAL.

YEAH, IT IS GREAT TO HAVE A LAWYER, I'D LOVE TO, BUT NOT THIS GUY.

AND, YOU KNOW, THE PROBLEM HE'S GOT WITH MR. SINARDI IS SPECIFIC TO HIM AND IT DOESN'T PLAY INTO ANYTHING THAT IS BEFORE IT. I DON'T KNOW WHAT HIS REASONS WERE FOR HAVING A PROBLEM WITH PUBLIC DEFENDERS OR BRIAN GONZALEZ BUT THE PROBLEM WITH MR. SINARDI IS THAT HE DEMANDED BASICALLY SAID, I AM GOING TO CONCEDE HIS GUILTY OF 2ND DEGREE MURDER AND IN EFFECT PLEAD GUILTY NOT ONLY WITHOUT ASSURANCES OF VOLUNTARINESS, BUT OVER HIS PROTEST.

>> WHAT IS THE PROBLEM WITH MR. GONZALES, NOVEMBER 19TH HEARING, HE SAID I WANT A LAWYER BUT I DON'T WANT MR. GONZALES REPRESENTING ME.

SINARDI IS NOT GOOD AND GONZALES IS NOT GOOD.

WHAT IS HIS PROBLEM.

>> I DON'T KNOW WHAT THE PROBLEM WITH GONZALES WAS, HE WASN'T SATISFIED WITH HIM AND WASN'T DOING WHAT HE WANTED HIM TO DO ON DISCOVERY.

THERE IS NO INDICATION THAT ANY OF THE PRIOR PEOPLE HAD TOLD HIM THEY WERE GOING TO PLEA...

CONCEDE THE GUILT OF SECOND DEGREE MURDER.

I CAN'T TELL YOU SPECIFICALLY WHAT HIS PROBLEM WITH GONZALES WAS, IT IS PROBABLY FAIR TO SAY

FROM WHAT I CAN SEE OF
MR. PASHA, FAIR TO SAY THERE
AREN'T MANY LAWYERS HE WOULDN'T
HAVE HAD A PROBLEM WITH.
I CAN GIVE YOU THAT.

--

>> LET ME ASK YOU SOMETHING ELSE
ABOUT WHEN SOMEONE IS
REPRESENTING THEMSELVES.
IS IT THE TRIAL JUDGE'S
OBLIGATION AT EVERY POINT, EVERY
HEARING, WHATEVER, TO OFFER THE
DEFENDANT COUNSEL AGAIN?
YOU SEEM TO BE TAKING ISSUE WITH
THE FACT THE TRIAL JUDGES WOULD
TELL HIM, LOOK THIS WOULD GO
SMOOTHER IF YOU HAD A LAWYER,
ARE YOU SURE YOU WANT TO
REPRESENT YOURSELF?
ISN'T THAT THE TRIAL JUDGE'S
OBLIGATION AT EVERY STAGE OF
THESE KINDS OF PROCEED.

>> YES.

AND I'M NOT TAKING ISSUE WITH
THAT.
HE WASN'T WILLIE-NILLY CHANGING
HIS MIND, HE WAS DOING WHAT
PEOPLE WERE TELLING HIM HE OUGHT
TO DO.
AND I'M NOT SAYING IT WAS
INAPPROPRIATE OF THE JUDGES TO
RENEW IT.
THERE ARE CASES WHERE IF A JUDGE
RENEWED THE OFFER LIKE PRETRIAL,
7 OR 8 OR 10 HEARINGS HE MAY NOT
BE REQUIRED TO DO IT AT THE 11th

OR THE 12th, AT SOME POINT IT IS UNDERSTOOD THE CLIENT KNOWS IT. ALTHOUGH, CLEARLY YOU HAVE TO RENEW IT, CERTAINLY AT THE TRIAL OR PENALTY PHASE, WHAT I'M SAYING HERE IS WHEN THE ONE TIME WHEN PUSH CAME TO SHOVE, THE CASE WAS GOING TO TRIAL AND THE JUDGE SAYS I'M NOT CONTINUING THIS CASE, THIS IS GOING TO TRIAL.

DO YOU -- THINGS WOULD GO BETTER IF YOU HAD A LAWYER, DO YOU WANT A LAWYER?

MR. PASHA SAID NO, I WANT TO REPRESENT MYSELF AND HE WAS ABOUT TO DO THAT AND THE STATE CAME UP WITH NOT EVEN A NEW PIECE OF EVIDENCE BUT CHANGE IN PERCEPTIONS, THAT PIECE OF EVIDENCE AND THAT CAUSED THAT PARTICULAR DELAY.

NOW, WHAT I'M TRYING TO SAY IS, I'M NOT SAYING THE CASE DIDN'T TAKE LONGER TO COME TO TRIAL THAN IT WOULD HAVE IF YOU HAD A CLIENT WHO SAID I'LL LET MY LAWYER HANDLE EVERYTHING.

I UNDERSTAND THAT IS TRUE. BUT THE QUESTION IS WAS HIS REQUEST MADE SPECIFICALLY WITH REGARD TO MR. SINARDI PRIOR TO THE TRIAL, WAS THAT DONE, CAN THE STATE SHOW IT WAS DONE FOR PURPOSES OF DELAY OR TO GAIN THE SYSTEM.

AND...

>> ISN'T THAT THE CASE, THERE IS CERTAINLY NO FINDING BY THE TRIAL COURT THAT INDICATES THAT IT WAS DONE... AND FURTHERMORE THERE ARE STATEMENTS BY THE TRIAL COURT THAT INDICATE THAT THE DEFENDANT HERE BEHAVED HIMSELF AND HAD BEEN COURTEOUS AND OTHERWISE CONDUCTED HIMSELF IN A WAY THE TRIAL COURT COULDN'T FAULT.

>> THAT'S CORRECT.

AND WHAT HAPPENED HERE, THE INITIAL FARETTA HEARING, ABSOLUTELY -- BEFORE TRIAL, LET ME GO THROUGH THE SEQUENCE, BECAUSE THINK IT IS IMPORTANT. HE REQUESTED A NELSON HEARING. INITIALLY TO REMOVE SINARDI AND HAD A NELSON HEARING AND HE DIDN'T PREVAIL AT THAT.

I'M NOT SAYING HE SHOULD HAVE PREVAILED AT THE HEARING. AT THE END OF THE HEARING HE STARTS INVOKE HIS RIGHT TO SELF-REPRESENTATION AND SAYS, JUDGE YOU WILL NOT REMOVE SINARDI AND THEREFORE I DON'T WANT HIM, I'LL REPRESENT MYSELF AND THE JUDGE SAYS, THAT IS NOT BEFORE ME NOW.

FILE A MOTION AND I PROMISE I'LL HEAR IT BEFORE TRIAL AND HE WAS GOOD AT HIS WORD AND HEARD IT BEFORE TRIAL, THEY HAD A FARETTA

HEARING, PRIOR TO THE FARETTA HEARING MR. SINARDI STATED ON THE RECORD, IN THE HEARING OF MR. PASHA, NUMBER ONE, I CANNOT REPRESENT HIM THE WAY HE WANTS TO BE REPRESENTED.

I CAN'T MAKE A REASONABLE DOUBT ARGUMENT, ARGUE FOR HIS INNOCENCE AND I DON'T THINK ANYBODY COULD.

I COULDN'T REPRESENT HIM THAT WAY, EFFECTIVELY.

HE SAID -- HE'S SAYING I CANNOT PUT THE STATE TO ITS PROOF AND ARGUE THAT THEY DIDN'T PROVE HIM GUILTY OF MURDER, EFFECTIVELY.

HEARING THAT, GIVES MR. PASHA, WITHOUT EVEN ANYTHING MORE, A GOOD FAITH REASON TO SAY, OKAY. FINE I'LL DO IT MYSELF.

BUT IN ADDITION TO THAT, MR. SINARDI ARGUES CASE LAW AND HE'S EXTENDING THE CASE LAW WAY BEYOND WHERE IT GOES.

HE'S ARGUING THE NIXON CASE, AND THE HARVEY CASE, AND BASICALLY IS -- NIXON AND HARVEY SAY WHERE A LAWYER CONCEDES GUILTY OF A CHARGED CRIME TOR LESSER AND THE RECORD DOESN'T SHOW WAIVER OR CONSENT OR ANYTHING LIKE THAT THEY WILL NOT PRESUME INEFFECTIVENESS OF COUNSEL PER SE FROM THAT.

THE QUESTION, INEFFECTIVENESS OF COUNSEL WILL BE DETERMINED UNDER

THE STRICKLAND VERSUS WASHINGTON STANDARD AND HE'S EXTENDING IT TO A SITUATION OF WHERE THE CLIENT SAYS BEFORE TRIAL, I DON'T WANT YOU TO TO THIS. EMPHATICALLY DON'T WANT YOU TO CONCEDE I'M GUILTY OF SECOND DEGREE MURDER, I DIDN'T KILL THESE PEOPLE, I'M INNOCENT AND WANT YOU TO PUT THE STATE TO ITS PROOF AND ARGUE MY INNOCENCE. NIXON AND HARVEY GIVEN THE RIGHT WHAT HE INTENDS TO DO OVER MR. PASHA'S OBJECTIONS, THE JUDGE WAS SKEPTICAL AND MADE A NUMBER OF COMMENTS SAYING I DON'T THINK HE CAN DO THAT AND IT WOULD REQUIRE CONSENT AND HE ARGUES AND SAYS, I THINK NIXON AND HARVEY LET ME DO THAT AND THEY ARGUE BUT BEFORE AND AFTER THE FARETTA INQUIRY, SINARDI STATES HIS INTENTION. DO CONCEDE HIS GUILTY OF SECOND DEGREE MURDER AND ULTIMATELY BACKED OFF, I SUPPOSE BECAUSE OF THE JUDGE'S STATEMENTS, QUESTIONING WHETHER OR NOT HE COULD DO THAT AND THE JUDGE SAID, I CAN'T TELL YOU HOW TO TRY YOUR CASE, BUT, IN THE -- SANDWICH BETWEEN HIS STATEMENTS THAT HE IS GOING TO CONCEDE GUILTY OF SECOND DEGREE MURDER AND, CAN'T REPRESENT MR. PASHA, SANDWICHED BETWEEN THAT IS THE

FARETTA INQUIRY, WHICH BEGINS WITH, ARE YOU CERTAIN YOU WANT TO PROCEED?

I UNDERSTAND THE MOTION TO MEAN THAT YOU DO NOT WANT TO BE REPRESENTED, BY MR. SINARDI.

ARE YOU ABSOLUTELY CERTAIN THAT YOU WANT TO REMEMBER YOURSELF, AND HE SAYS YES.

AND GO THROUGH A TEXTBOOK FARETTA INQUIRY AND PASSES WITH FLYING COLORS.

>> WHICH INQUIRY IS THAT? WHAT DAY.

>> THAT WOULD BE, I BELIEVE, OCTOBER...

>> THE 22ND MAY HAVE BEEN THE NELSON HEARING.

I THINK THE -- FARETTA HEARING WAS DAYS BEFORE TRIAL, LIKE FIVE DAYS AFTER THE NELSON HEARING. CHECK IT HERE.

DATE OF THE...

>> AFTER A WRITTEN MOTION WAS FILED AND JURY SELECTION WAS GOING TO BEGIN.

>> I BELIEVE THE MORNING.

JURY SELECTION --

>> FILED A WRITTEN MOTION TO PROCEED PRO SE.

>> FILED THE WRITTEN MOTION AS HE WAS DIRECTED TO DO BY THE TRIAL JUDGE WHO SAID I PROMISE I'LL HEAR IT BEFORE TRIAL.

>>... YES.

WAS IT --

>> OCTOBER 22ND.

[INAUDIBLE].

>>... FILED A WRITTEN MOTION TO PROCEED PRO SE WHICH WAS AS PROMISED HEARD BEFORE TRIAL ON OCTOBER 22ND.

>> [INAUDIBLE].

>> NO, THAT WAS BROUGHT OUT ALSO TO NELSON -- AT THE NELSON HEARING AND THE FARETTA HEARING.

>> LET ME ASK YOU, WHAT IS YOUR POSITION, YOUR CLIENT IS ENTITLED TO CHOICE OF COUNSEL? AND IF I DON'T -- THE LAWYER I WANT, THEN I WANT TO GO PRO SE.

>> HE'S NOT -- ABSOLUTELY NOT ENTITLED TO CHOICE OF COUNSEL. HE'S ENTITLED, BECAUSE -- BECAUSE HE DIDN'T MEET HIS BURDEN ON THE NELSON INQUIRY, WE'D TALK ABOUT A DIFFERENT ISSUE, HE DIDN'T MEET THE BURDEN ON THE NELSON ISSUE, THE COURT CALLED IT THE NELSON ULTIMATUM, I WILL NOT REPLACE THIS LAWYER, DO YOU WANT TO GO WITH THIS LAWYER OR REPRESENT YOURSELF AND HE MADE HIS CHOICE ABUNDANTLY CLEAR, GIVEN THE ONLY CHOICE AVAILABLE TO ME UNDER THE LAW I DO NOT WANT SINARDI AND I'LL REPRESENT MYSELF AND HE COULDN'T HAVE BEEN CLEARER AND NEVER BACKTRACKED FROM THAT.

>> THE JUDGE DECIDED THE REQUEST WAS EQUIVOCAL.

>> THE JUDGE DECIDED THE REQUEST ON OCTOBER 22nd WAS EQUIVOCAL BASED ON HIS ANSWERS AT THE END OF THE FARETTA INQUIRY PART.

>> IN OUR STANDARD OF REVIEW OF THAT, JUDGE -- WHICH JUDGE.

>> JUDGE FUENTE.

>> HAD HE HAD PRIOR EXPERIENCE WITH THIS DEFENDANT?

A LITTLE BIT.

NOT --

>> I'M ASKING, IS IT A LEGAL, FACTUAL MIXED QUESTION OF LAW AND FACTS THAT THE -- WE SEE THE RECORD AND IT DOES -- HE FILED HIS MOTION TO PROCEED PRO SE. BUT IN LOOKING AT THE HISTORY, IS THERE A BASIS IN THE RECORD FOR THE JUDGE TO FIND THE REQUEST WAS IN FACT NOT UNEQUIVOCAL?

WHAT IS OUR STANDARD.

>> I BELIEVE THE STANDARD IS DE NOVO AND IS A PURE LEGAL QUESTION AND YOU CAN SEE HIS ANSWERS AND DETERMINE LEGALLY WHETHER IT WAS EQUIVOCAL.

>> HE SAID I'D LOVE TO HAVE A LAWYER, DEFINITELY WOULD RATHER HAVE A LAWYER.

OKAY.

BUT APPARENTLY I DON'T HAVE THE CHOICE.

>> HE'S RESPONDING TO THE NELSON ULTIMATUM.

WHAT HE'S SAYING -- I'M SORRY.

-- MR. PASHA'S INTELLIGENCE AND CANDOR HURTS HIM, HE'S SAYING, IN AN IDEAL WORLD OF COURSE I WOULD RATHER HAVE A LAWYER, PERRY MASON, JOHNNIE COCHRAN, BUT I HAVE HIM AND I DON'T LIKE THE WAY HE'S TRYING MY CASE. LOOK AT THE COURT'S BODY OF LAWEN FARETTA, VIRTUALLY EVERY CASE YOU HAVE IS LIKE THAT. YOU DON'T GET -- GILL VERSUS COOKSEY, YOU DON'T HAVE A GUY UNLESS HE IS CRAZY, WHO SAYS I WANTED TO BE A LAWYER AND I THINK IT WILL BE FUN TO REPRESENT MYSELF AND I'D RATHER REPRESENT MYSELF THAN HAVE ANY LAWYER IN THE WESTERN WORLD. YOU DON'T GET THAT. YOU GET, I DON'T LIKE THIS GUY THE STATE APPOINTED FOR ME. IF I'M STUCK WITH HIM, STUCK WITH WHAT HE'S INSISTING ON DOING THE TRIAL I'D RATHER DO IT MYSELF. THAT IS WHAT MR. PASHA ABSOLUTELY DID AND LOOK AT FARETTA ITSELF, IT TALKS ALL THE TIME ABOUT THE, YOU KNOW, THE RIGHT TO COUNSEL DOESN'T MEAN THE STATE HAS A RIGHT TO IMPOSE COMPULSORY COUNSEL AGAINST THE DEFENDANT AND AGAINST HIS WILL AND PATERNALISTICALLY SAY... IT TALKS ABOUT THE PROBLEM WITH THE SPECIFIC ORDER.

>> THERE IS AN IMPORTANT UNDERLYING ISSUE ABOUT THE OVERLAY OF NIXON BECAUSE -- I'M CONCERNED AND HOPE TO ADDRESS THIS.

IF -- DO YOU BELIEVE UNDER NIXON AND PROGENY THAT EVEN IF, AGAIN THE DEFENDANT UNEQUIVOCALLY STATED I DON'T WANT THIS STRATEGY, THE LAWYER WOULD BE ABLE TO PURSUE THE STRATEGY HE THOUGHT WAS BEST FOR THE LAWYER, YOU THINK THAT IS TOO -- GOES -- NOT WHAT NIXON SAID.

>> NOT WHAT THEY SAY, IT GOES WAY TOO FAR.

>> SO THE OPTIONS THAT MR. -- MR. SINARDI WOULD EITHER SAY, LISTEN I CAN'T FOLLOW THE STRATEGY SO I WOULD HAVE TO WITHDRAW FROM REPRESENTATION. I MEAN, BECAUSE IF HE DOESN'T FEEL HE COULD PURSUE THIS DEFENSE, IN GOOD FAITH, HOW CAN HE REPRESENT THE LAWYER? CLIENT.

>> HE COULD HAVE DONE THAT AND THAT MIGHT HAVE BEEN BETTER AND WOULD HAVE SOLVED HIS PROBLEM.

>> WHAT ABOUT IF HE APPOINTED ANOTHER COUNSEL AND THE NEXT COUNSEL HAD THE SAME PROBLEM.

>> THAT'S WHY I THINK THE JUDGE WAS PROBABLY RIGHT IN REFUSING TO APPOINT ANOTHER COUNSEL.

>> WHAT'S THE PROBLEM HERE.

>> MR. PASHA SHOULD HAVE BEEN ABLE TO DO IT HIMSELF.

>> EVEN IF THE STRATEGY, YOU SAY BECAUSE THE STRATEGY, EVEN IF IT IS UNREASONABLE, IT IS THIS DEFENDANT'S STRATEGY.

>> THAT IS FARETTA.

READ FARETTA AND FARETTA SAYS A LOT BETTER THAN I COULD SAY IT.

WHAT I'M SAYING IS, YOU TALK ABOUT NIXON AND HARVEY.

ALL RIGHT?

WE KNOW FOR EXAMPLE THE STRATEGY OF TRIAL IS FOR THE COUNSEL AND THE OBJECTIVES OF REPRESENTATION ARE FOR THE CLIENT.

HERE WE'RE TALKING ABOUT THE OBJECTIVES OF REPRESENTATION.

A LAWYER CAN'T TELL YOU I'LL DO MY JOB AND WALK OUT OF HERE AND GO HOME AND FARETTA TALKS ABOUT THAT.

THE CONSEQUENCES OF CONVICTION ARE ON THE DEFENDANT.

THE LAWYER CAN'T SAY TO THE GUY I'LL DO IT THE WAY I FEEL GOOD ABOUT MYSELF PROFESSIONALLY AND I'LL GO HOME AND FEELING GOOD AND THE FACT THAT YOU ARE 64 AND WILL DO THE REST... ANYTHING

OTHER THAN ACQUITTAL AS A PRACTICAL MATTER TO MR. PASHA MEANT YOU WILL SPEND THE REST OF YOUR LIFE IN PRISON AND FROM MR. PASHA'S VANTAGE POINT WAS REASONABLE TO SAY I DON'T WANT

THE OBJECTIVE YOU ARE TRYING TO
GET FOR ME.

>> THE FACT OF THE MATTER IS...

[INAUDIBLE].

OBJECTIVELY, GIVEN THE EVIDENCE
HERE, IT MIGHT NOT HAVE BEEN
REASONABLE.

BUT THAT IS BESIDE THE POINT
WHEN IT COMES TO THE FARETTA
RIGHT, HE'S AN AUTONOMOUS
INDIVIDUAL AND IF HE WANTS TO
REPRESENT HIMSELF AND HE -- MEET
THE TEST, HE'S ALSO THE -- HAS
THE RIGHTS TO REPRESENT HIMSELF
UNDER OUR CONSTITUTION.

>> ABSOLUTELY TRUE.

IT DOESN'T HAVE TO BE REASONABLE
BUT I THINK IT IS WORTH NOTING
THAT IN MR. PASHA'S CASE IT
MAKES SENSE GIVEN THE SITUATION
HE FOUND HIMSELF IN.

I'M NOT SURE I WOULDN'T MAKE THE
SAME CHOICE AND I'M 60, AND
MAYBE I'M UNREASONABLE.

BUT I THINK A DEFENDANT HAS A
RIGHT TO ONE DAY IN COURT.

I WANT TO MAINTAIN MY INNOCENCE
AND PUT THE STATE TO ITS PROOF
AS JUDGE LABARGA SAID, IF
MR. SINARDI HAD AN ABSOLUTE
ETHICAL PROBLEM TO WHERE HE
COULDN'T REPRESENT -- COULDN'T
ETHICALLY REPRESENT MR. PASHA
UNDER THE CIRCUMSTANCES HE
SHOULD HAVE MOVED TO WITHDRAW
AND WHAT DO YOU DO, APPOINT

ANOTHER LAWYER?

THAT WOULD BE DISCRETIONARY WITH THE JUDGE AND HE COULD HAVE SAID, YOU MADE YOUR BED, LIE IN IT AND THAT IS WHAT HE SAID.

>> AGAIN GOING BACK TO THE PORTION OF THE TRANSCRIPT I READ YOU ARE CLIENT SAYS, I ALWAYS WANTED A LAWYER.

>> MY CLIENT IS IN A WEIRD WAY A VERY HONEST GUY AND THAT IS WHAT HE SAID AT THE FARETTA HEARING.

>> HE'S WREAKING HAVOC WITH THE RECORD.

>> NO.

HE'S NOT.

WHAT HE'S SAYING IS ENTIRELY COHERENT.

HIS STATEMENTS, IF YOU READ THE RECORD, HIS STATEMENTS HAVE BEEN CONSISTENT.

IN AN IDEAL WORLD I WANT A LAWYER.

I LIKE LAWYERS, LAWYERS ARE -- I WORKED WITH LAWYERS, SOME ARE GREAT, SOME ARE TERRIBLE.

>> AND IN AN IDEAL WORLD I WANT A LAWYER BUT UNDER THE LAW, I DON'T HAVE THAT CHOICE, YOU HAVE PRESENTED ME WITH TWO CHOICE, NOT 3, NOT 6, NOT INFINITE VARIETY OF CHOICES, YOU HAVE GIVEN ME TWO, I CAN HAVE MR. SINARDI GET UP AND TELL THE JURY, I COMMITTED THE MURDER I DIDN'T COMMIT... HE WAS AS

UNEQUIVOCABLE AS HE COULD BE,
AND I DON'T SEE INCONSISTENCY
AND THE PROBLEM IS HE HURT
HIMSELF BY RESPONDING TO THE
JUDGE'S QUESTIONS WITH CANDOR.

>> YOU ARE WELL INTO YOUR
REBUTTAL.

IF YOU WANT TO SAVE TIME.

>> I'LL DO THAT.

>> THANK YOU.

MR. BROWNE.

>> SCOTT BROWNE ON BEHALF OF THE
STATE.

PETITIONERS NELSON AND FARETTA
MANEUVERINGS IN THE CASE
SUCCESSFULLY DELAYED HIS TRIAL
FOR FIVE YEARS.

>> LET'S GET TO THE POINT HERE.

WHERE IN THE WORLD DO YOU POINT
IN THE RECORD TO SAY THAT
MR. PASHA'S REQUEST FOR COUNSEL
WAS EQUIVOCAL.

>> THE LANGUAGE JUSTICE LABARGA
MENTIONED AND CHIEF JUSTICE
QUINCE WE HAVE A RECORD OF PASHA
SUCCESSFULLY INVOKE HIS RIGHT TO
PROCEED PRO SE AND I'D LIKE --

>> I'M REALLY CONCERNED WITH
WHAT IS EQUIVOCAL SAYING I DON'T
WANT THIS LAWYER TO REPRESENT ME
AND YOU SAID HE'S NOT
INEFFECTIVE.

MY ONLY CHOICE, THAT IS LEFT TO
ME, IS TO REPRESENT MYSELF, SO
THAT'S WHAT I WANT TO DOCUMENT
WHAT IS EQUIVOCAL ABOUT THAT AND

THAT IS IN ESSENCE WHAT
MR. PASHA SAID.

>> IF HE LEFT IT AT THAT, AND
REMEMBER WHAT WE HAVE IS THE
JUDGE INTERCHANGE ON THE MORNING
OF TRIAL -- ENTERTAINING ON THE
MOTION OF TRIAL THE UNTIMELY
MOTION TO REPRESENT HIMSELF.

>> AFTER THE NELSON HEARING, HE
SAID I WANT TO REPRESENT MYSELF
AND THE JUDGE SAID YOU NEED TO
PUT IT IN WRITING.

>> NO.

HE DIDN'T AT THE NELSON, FIVE
DAYS PRIOR TO TRIAL THEY HAD A
FULL AND FAIR NELSON INQUIRY AND
AT NO POINT DURING THAT HEARING,
FIVE DAYS PRIOR TO TRIAL, DID
MR. PASHA STATE EQUIVOCAL OR
UNEQUIVOCALLY.

>> YOU ARE SAYING IT WAS
UNTIMELY, JUSTICE QUINCE WANTED
TO STICK WITH WHETHER THE
REQUEST WAS UNEQUIVOCAL.

>> THE JUDGE WAS WELL ADVISED AT
THAT POINT, GIVEN THE HISTORY,
TO FIND IT UNTIMELY AND THE
TRIAL JUDGE --

>> DIDN'T FIND IT UNTIMELY.

>> HE GOES, OKAY, THAT IS YOUR
RIGHT AND EMBARKED ON A THOROUGH
FARETTA INQUIRY.

AT THE CONCLUSION OF THAT WHEN
HE'S ASKED, ARE YOU SURE YOU
WANT TO DISCHARGE MR. SINARDI
AND REPRESENT YOURSELF?

HE SAYS WELL, IT IS WISER TO
HAVE A LAWYER BUT HE DID NOT
THINK SINARDI PUT FORTH EFFORT
IN MY SITUATION AND WHEN ASKED
IF HE WANTED A LOWER BUT NOT
SINARDI, HE REPLIED, YES, SIR,
BUT I DON'T HAVE THAT CHOICE.
THAT MEANS I HAVE THE ONLY
ALTERNATIVE TO GO PRO SE.
AT THAT POINT, THE TRIAL COURT
SAID, WAIT, I'M FINDING THIS
EQUIVOCAL.

>> BUT...

>> NEXT PARAGRAPH AND STATEMENT.

>> EXACTLY, YOUR HONOR --

>> AS I STATED, I WOULD LOVE TO
HAVE A LAWYER, DEFINITELY, I
WOULD RATHER HAVE A LAWYER.

>> YES YOUR HONOR.

>> CONCLUDING STATEMENT.

>> EXACTLY, YOUR HONOR.

AT THE THE POINT, THE JUDGE IS
TELLING HIM, HEY, I'M FINDING
THIS EQUIVOCAL, CLARIFY THIS FOR
ME AND WHAT DOES HE SAY, AS I
STATED I'D LOVE TO HAVE A
LAWYER, WOULD DEFINITELY RATHER
HAVE A LAWYER BUT APPARENTLY I
DON'T HAVE THAT CHOICE.
AND THAT IS WHEN THE JUDGE SAID
I'M FINDING THIS EQUIVOCAL.

YOUR STATEMENTS TO ME --

>> YOUR OPPOSITION SAYS THIS IS
THE CLASSIC KIND OF STATEMENT
THAT FLOWS OUT OF FOLLOWING A
NELSON INQUIRY WHERE PEOPLE ARE

UPSET AND SAYING ARE NOT DOING
WHAT YOU SHOULD DO FOR ME AND IT
IS HIS VIEW THE LAW IS THAT THIS
IS SUFFICIENT TO PERMIT THE
SELF-REPRESENTATION, THAT IS AN
UNEQUIVOCAL QUESTION.

>> I DISAGREE WITH YOU.

>> WHERE IS THE LAW.

WHAT LAW DO YOU RELY ON TO TAKE
THE POSITION.

>> THIS COURT'S DIGS IN HARDWICK
VERSUS STATE.

AND THE FALLBACK POSITION IS I
WOULD RATHER REPRESENT MYSELF
THEN AND THE COURT INDICATED
THAT EQUIVOCAL AND THE BURDEN IS
ON THE DEFENDANT.

THE FALLBACK POSITION IS ALWAYS
YOUR RIGHT TO COUNSEL.

>> HOW DOES THIS CASE DIFFER
FROM WEAVER.

IT SEEMS WEAVER IS A CASE THAT
IS PRETTY MUCH ON ALL FOURS.
FACTUALLY AND LEGALLY WITH THIS
CASE, IN THAT SITUATION WHEN
WEAVER SAYS, BASICALLY, I DON'T
WANT THIS MAN SO I'LL REPRESENT
MYSELF.

WE SAID THAT'S UNEQUIVOCAL.

>> I DISAGREE WITH THE LANGUAGE.
WHEN YOU SAY YOU LOVE TO HAVE A
LAWYER.

MR. BOLOTON IS A SHARP APPELLATE
ADVOCATE AND IF WE COME UP HEAR
AND THE JUDGE DISCHARGED
MR. SINARDI AND FORCED PASHA TO

GO TO TRIAL PRO SE, MR. BOLOTIN
WOULD THROW THE SAME WORDS BACK
AT US.

THAT IS THE POINT.

IF YOU ARE GOING TO INVOKE THE
RIGHT TO REPRESENT YOURSELF,
LET'S BE CLEAR ABOUT IT.

BECAUSE THE JUDGE IS PLACED IN A
DIFFICULT POSITION ON THE
MORNING OF TRIAL.

>> LET ME ASK YOU THIS...

>> VIEW.

>> I APPRECIATE YOUR
FRUSTRATION.

THIS IS NOT A CONSTITUTIONAL
RIGHT THAT -- IS ONE OF MY
FAVORITE CONSTITUTIONAL RIGHTS
AND I THINK THE TRIAL JUDGES ARE
FACED WITH TERRIBLE SITUATIONS
WITH DEFENDANTS LIKE THIS, AS
HAS BEEN CONCEDED.

THIS IS MY CONCERN IN THIS CASE.
AS JUSTICE CANADY SAID EARLIER,
THE SUBJECT DID NOT FIND THAT
THIS WAS MADE FOR PURPOSES OF
DELAY.

THE GUY, HE SAID THE DEFENDANT
CONDUCTED HIMSELF IN AN
APPROPRIATE MANNER IN ALL WAYS,
WAS POLITE.

THE PARTICULAR DISPUTE REALLY
GOES TO ME TO THE CORE OF WHY
SOMEBODY MIGHT -- HAS A RIGHT TO
REPRESENT HIMSELF.

HE ADD MEANTLY DISAGREED WITH
MR. SINARDI'S DECISION TO

ESSENTIALLY CONCEDE MURDER AND GO ON A DEFENSE OF LACK OF PREMEDITATION.

HE SAYS I'M NOT GUILTY.

THAT'S THE DEFENSE I WANT TO SET FORTH.

MR. SINARDI IN MANY OF THESE COLLOQUIES SAID, I DON'T FEEL GOOD FAITH AS A LAWYER I CAN GO THAT ROUTE.

THERE'S QUESTION OF COURSE IF IT GOES TO THE NEXT STAGE, AND WE AFFIRM AND WHETHER HE'S BEEN EFFECTIVE OR GOING THE ROUTE HE WENT.

BUT TO ME IT GIVES A CLASSIC REASON FOR A DEFENDANT WHO IS BEING FOOLHARDY IN ASSERTING THE RIGHT, SAYING I DISAGREE WITH THE STRATEGY, I WANT ONE THAT WOULD GIVE ME ACQUITTAL, GIVE ME A THOUSAND LAWYERS AND NO LAWYER WOULD SAY THAT IS A REASONABLE STRATEGY BUT THAT IS THE ESSENCE OF THE RIGHT AND WHY WE ALLOW FARETTA AND THE RIGHT TO REPRESENT ONE'S SELF.

TO ME IT PUTS THIS CASE, OVERLAY OF THIS DISAGREEMENT ON THE FUNDAMENTAL STRATEGY THAT THERE SHOULD BE SELF-DETERMINATION, A DEFENDANT WHO WANTS TO -- LISTEN I CAN'T GO WITH THE STRATEGY.

MR. SINARDI IS NOT FEELING COMFORTABLE GOING WITH A COMPROMISE STRATEGY AND THAT

WOULD BE HARD TO PUT HIM TO THAT TEST, UNDER THAT CIRCUMSTANCE, HE SHOULD BE ABLE TO REPRESENT HIMSELF AND THAT, TO ME, MAKES THE CASE DIFFERENT FROM SOME OF THE OTHERS WHERE YOU GO BACK AND FORTH AND BACK AND FORTH AND THEY ARE DISSATISFIED WITH EVERYONE.

PLEASE HELP ME WITH THAT DILEMMA.

WHICH IS, THIS DEFENDANT DID NOT WANT THE DEFENSE MR. SINARDI WAS PREPARED TO OFFER.

>> YOUR HONOR IT IS A CONTINUATION WITH EVERY PRIOR COUNSEL, JUSTICE LABARGA, THE PUBLIC DEFEND WAS DISCHARGED BECAUSE HE DIDN'T SUFFICIENTLY BELIEVE IN HIS INNOCENCE.

>> WASN'T THERE A CONFLICT. THE PUBLIC DEFENDER'S OFFICE DIDN'T HAVE A CONFLICT IN THIS CASE.

>> NO, YOUR HONOR.

IN FACT THE INITIAL JUDGE IN THE CASE GAVE AFTER A FULL NELSON HEARING SAID THE PDs ARE NOT INEFFECTIVE.

HE DISCHARGED HIM ANYWAY AND ENTER MR. HERNANDEZ AND GONZALES AND YOU HAVE A LONG HISTORY.

>> MAYBE THE HISTORY -- BUT WHEN JUSTICE LABARGA SAID ABOUT THE COLLOQUY ON NOVEMBER 29TH, WHAT HE SAID -- AND I MADE A NOTE --

SAYS, I WILL NOT ACCEPT... I
FEEL A PERSON NOT WORKING HARD,
I DON'T CARE IF IT IS MOSES, I
DON'T WANT WORKING -- I DON'T
WANT HIM IF HE DOESN'T HAVE MY
INTEREST AT HEART.

LIKE I SAID, I HAVE BEEN WORKING
WITH POLITICS AND LAWYERS SINCE
I WAS 16, NOT AS A VICTIM BUT
WITH THEM IN THEIR DUTIES AND
COUNSEL ARE SMART PEOPLE AND
KNOW A LOT.

I HAVE SEEN THEM PUT FORTH AN
EFFORT TO WORK AND THOSE WHO
DON'T IF I HAVE THOSE WHO DON'T
PUT A FORTH EFFORT I DON'T WANT
THEM, THEY PUT AN EFFORT.

THEN I DEFINITELY WANT A LAWYER.
AND THAT SEEMS TO ME, HE
DISAGREED WITH EVERY LAWYER,
HE'S INSISTING ON HIS INNOCENCE,
ANY GOOD LAWYER IS SAYING, YOU
CAN'T WIN THIS WAY, AND THEY
WERE ALL CERTAINLY TELLING HIM
WHAT HIS -- IS REASONABLE BUT IT
SEEMS UNDER OUR LAWS, NOT ONLY
THEN DID HE HAVE A RIGHT TO
REPRESENT HIMSELF BUT A RIGHT TO
REPRESENT HIMSELF AND DECIDE ON
A FOOLHARDY STRATEGY PROBABLY
MORE LIKELY TO GET HIM CONVICTED
IN A FASTER WAY THAN ANY OTHER
KIND OF STRATEGY.

ISN'T THAT WHAT FARETTA IS ALL
ABOUT.

>> YES, YOUR HONOR AND AGAIN IF

YOU -- YOU HAVE TO PROVIDE DEFERENCE TO THE TRIAL JUDGE IN THIS CASE AND WE HAVE SUPPORT IN THE RECORD THAT MR. PASHA'S REQUEST WAS GIVE CALL.

BECAUSE WE HAVE PRIOR FARETTA INQUIRIES WHERE, THEY GO ARE YOU ABSOLUTELY CERTAIN, MR. PASHA THAT YOU DON'T WANT AN ATTORNEY TO REPRESENT YOU --

>> YOU SAY I WOULDN'T -- WHAT YOU SAY IN RESPONSE, NO, I WANT AN ATTORNEY BUT ONE WHO WILL ADVOCATE FOR MY INNOCENCE, AND YOU HAVE NOT BEEN ABLE TO FIND ONE FOR ME AND I HAVE NO OTHER CHOICE.

>> I CITE NUMEROUS PRIOR FARETTA INQUIRIES WHERE HE DOESN'T EQUIVOCATE AND SAYS ARE YOU CERTAIN YOU DON'T WANT A LAWYER. THEN AFTER FIRING HIS SECOND SET OF APPOINTED COUNSEL, AND JUDGE TIMMERMAN IS GETTING FRUSTRATED AND SAID YOU WANT TO GO PRO SE AND NOW, YOU SAY ALL OF A SUDDEN YOU WANT AN ATTORNEY AND WHAT YOU ARE DOING, IS DELAYING THIS CASE AND DRAGGING IT OUT. THIS IS A UNIQUE RECORD.

>> LET ME SEE IF I UNDERSTAND THIS.

FARETTA INQUIRIES, IT IS TO TAKE PLACE.

IF THERE HAS BEEN A -- AN UNEQUIVOCAL REQUEST TO PROCEED

PRO SE, RIGHT.

>> CORRECT, YOUR HONOR.

>> THRESHOLD.

FOR THE FARETTA INQUIRY.

WE HAD THE FARETTA INQUIRY HERE.

AND ALL THIS STUFF THAT YOU HANG
YOUR HAT ON COMES AFTER IT.

AT THE CONCLUSION OF THE FARETTA
INQUIRY, IS THAT CORRECT.

>> THAT'S CORRECT.

>> WELL, SO DOES THAT HAVE A
BEARING ON WHETHER THE TRIAL
COURT HAS ABUSED ITS DISCRETION
OR NOT.

>> YES.

AND THAT'S A GOOD POINT.

THE TRIAL JUDGE IS GIVING HIM
THE BENEFIT OF THE DOUBT THIS IS
A LEGITIMATE REQUEST AND ISN'T
THAT THE POINT OF THE FARETTA
INQUIRY AND WE'LL ADVISE HIM AND
GO THROUGH A LENGTHY LIST OF THE
REASONS WHY YOU ARE BETTER OFF
TO HAVE COUNSEL AND THE JUDGE
DID THAT AND THEN HE SAYS ARE
YOU ABSOLUTELY CERTAIN YOU DON'T
WANT A LAWYER, HE HEARS
EQUIVOCATION.

AND HE HAS TO MAKE THIS
DECISION, AND IT IS A TOUGH ONE
ON THE MORNING OF TRIAL.

THAT IS WHAT --

>> IN FAIRNESS, IN THE FARETTA
INQUIRY THE CONTEXT IS THE COURT
IS EXPLAINING TO HIM ALL THE
REASONS THAT IT MAKES GOOD SENSE

TO HAVE A LAWYER.

RIGHT?

>> CORRECT.

>> AND FOR HIM TO ACKNOWLEDGE THAT, AT THE CONCLUSION OF THAT, IS JUST TO SHOW THAT HE UNDERSTOOD WHAT WAS GOING ON. BUT THE POINT HERE IS, THAT HE CAN'T GET A LAWYER WHO IS GOING TO REPRESENT HIM THE WAY HE WANTS TO BE REPRESENTED.

AND, AS HE ULTIMATELY SAYS IT SEEMS TO ME DECISIVELY IS THAT HE HAS NO CHOICE BUT TO GO PRO SE.

>> AGAIN THAT IS WHERE THE STATE DISAGREES.

IF THE JUDGE SAID HERE'S A FEW CONCEPTS FOR AN INQUIRY, THE POINT IS TO GIVE HIM THAT TIME AND CHANCE TO CHANGE HIS MIND AND WHAT HE HEARS AT THE END IS AGAIN, I CAN'T STRESS ENOUGH, THIS IS A MORNING OF TRIAL REQUEST.

FIVE DAYS BEFORE TRIAL.

HAD A NELSON INQUIRY.

NOW, JUDGE FUENTE SAID, I WANT TO HEAR IT BEFORE TRIAL.

IF YOU HAVE ANYTHING, ELSE, HE DOESN'T ELECT TO PROCEED PRO SE AND WITNESS UNTIL THE MORNING OF TRIAL.

OCTOBER 22nd AND FILES THIS IN OPEN COURT.

>> I MEAN, I KNOW YOU DON'T

BELIEVE SO BUT I REALLY THOUGHT
IN THIS RECORD IT WAS -- THERE
WAS A PLACE WHERE THIS JUDGE
TOLD HIM TO PUT IT IN WRITING AT
THE END OF THE OTHER HEARING.

>> HE DID.

>> AND --

>> DIDN'T I I WANT TO HELP
MYSELF AND HE SAID IF YOU HAVE
ANYTHING ELSE BUT THIS IS A LONG
HEARING, WHY WAIT UNTIL THE
MORNING OF TRIAL WHICH THE STATE
SUBMITS IS UNTIMELY.

AND THE JUDGE WAS WELL ADVISED
BASED ON THIS RECORD TO REJECT
IT OUT OF HAND.

HE HAD FIVE DAYS TO SIT THERE
AND KNOW THAT HE WAS GOING TO
INVOKE THE RIGHT TO PROCEED ON
HIS OWN AND HE DIDN'T DO THAT.

HE INDICATED AND WE HAVE A
PATTERN, ULTIMATELY --

>> BUT THE WAY I SEE THIS IS,
THAT HE ACTUALLY DID THAT AT THE
OTHER HEARING.

AND THE JUDGE SAYS THAT IS NO
BEFORE ME BUT PUT IT IN WRITING.
YOU MAKE A LOT OF THE FIVE DAYS
BUT IN THE SCHEME OF THINGS IT
DOESN'T SEEM TO ME --

>> I CANNOT DISAGREE ANY MORE
AND I MADE THE SPECIFIC QUOTE,
IN MY BRIEF, HE NOT ONCE SAID --
HE SAID I HAVE THE RIGHT TO
EITHER -- THIS IS WHAT MR. PASHA
SAID, I HAVE THE RIGHT TO

PRE-WITH COUNSEL OR RIGHT TO
PROCEED PRO SE, NO CLOSURE,
UNEQUIVOCAL REQUEST AND HE COMES
IN ON THE MORNING OF TRIAL.

THIS IS A UNIQUE RECORD.

WE HAVE THREE JUDGES, NOT ONE,
NOT TWO, THREE, QUESTIONED HIS
TACTICS IN THIS CASE, IN A CASE
WITH OVERWHELMING EVIDENCE OF
GUILT.

JUDGE PADGETT, WHEN...

>> WOULDN'T THAT BE A PROBLEM,
IF THEY HAD CONTINUITY OF JUDGES
PERHAPS THEY WOULDN'T HAVE BEEN
FRUSTRATED, EACH JUDGE LOOKS
BACK, THIS HAPPENED, AND THIS
HAPPENED AND... COULD THAT NOT
SLANT THE JUDGES'...

>> THAT IS A GOOD POINT IN TIME,
JUDGE FUENTE WAS ACTUALLY --
WOULD HAVE BEEN IN A BETTER
POSITION HAD HE KNOWN ALL THE
PRIOR MACHINATIONS AND HE WAS
GENERALLY AWARE OF THE HISTORY
AND JUDGE PADGETT INSTRUCTS HIM
AND HE'S COMPLAINING I'M NOT
READY FOR TRIAL.

CAN I HAVE ANOTHER 90 DAYS, IN
AUGUST OF...

>> THIS ISSUE, THE JUDGE DIDN'T
FIND IT WAS -- MOTION MADE FOR
THE PUPS OF DELAY.

THIS IS THE -- GOING BACK,
NELSON HEARING OCCURRED ON
OCTOBER 17.

THE DEFENDANT AT THAT POINT

AFTER THE TRIAL JUDGE SAID I'M
NOT GOING TO DISCHARGE
MR. SINARDI.

THE DEFENDANT SAYS, IS A RIGHT,
A RIGHT TO HAVE A LAWYER
APPOINTED IF I CAN'T HAVE...
AFFORD ONE AND ALSO HAVE THE
RIGHT NOT TO HAVE A LAWYER IF I
DON'T WANT TO AND THE COURT SAID
THAT IS NOT BEFORE ME.

NOW YOU HAVE A MOTION TO
DISCHARGE MR. SINARDI AND I
HEARD EVERYTHING AND DENIED IT.
YOU HAVE ANOTHER REQUEST, I
HONESTLY, PUT ANYTHING YOU WANT
ME TO CONSIDER, IN WRITTEN FORM
AND I'LL PROGRAM I'LL HEAR IT
BEER TRIAL.

YES, SIR.

I ASSURE YOU OF THAT.

WELL, THIS IS... THAT'S WHAT --
IS THAT NOT EXACTLY THAT HE WAS
SAYING I WANT TO PROCEED PRO SE
AND THE JUDGE SAID PUT IT IN
WRITING AND I'LL PROMISE YOU
I'LL HEAR IT BEFORE TRIAL.

>> YOUR HONOR, ONE THING WE KNOW
IS MR. PASHA SPEAKS UP AND
SPEAKS OUT AND I DON'T KNOW HOW
YOU CAN FIND -- HE WAS INVOKE
HIS RIGHT TO PROCEED PRO SE AND
IF HE HAD WE WOULD HAVE HAD AN
ORDERLY PROCESS AND MAYBE A
HEARING THERE AND INSTEAD HE
WAITS UNTIL THE MORNING OF THE
TRIAL THAT AND JUDGE GIVES HIM

THE BENEFIT OF THE DOUBT AND I
DISAGREE, JUSTICE PARIENTE,
THERE IS A FINDING BY JUDGE
FUENTE AFTER TWO-AND-A-HALF DAYS
OF JURY SELECTION, WHEN PASHA
SAYS IT IS MY FIRM AND FAIR AND
FINAL DECISION, I WANT TO
PROCEED PRO SE.

THERE IS A SPECIFIC FINDING BY
JUDGE FUENTE IT WAS UNTIMELY AND
DILATORY.

>> AT THAT POINT, AFTER THAT,
AFTER HE RENEWS IT, DURING VOIR
DIRE WHICH IS ANOTHER QUESTION,
AND, DURING OPENING STATEMENT,
SO, THE OTHER PART THAT IS --
AGAIN AS I SAID I'M SYMPATHETIC
TO YOUR ARGUMENT AND NOT,
HONESTLY, WHEN I READ THE CASE I
-- I SAID NOT ANOTHER ONE OF
THESE SITUATION.

THE DEFENDANT, IT IS NEVER A
GOOD SITUATION FOR THE COURT
SYSTEM AND PROBABLY THE
DEFENDANT.

I APPRECIATE THAT.

>> IT'S NEVER A GOOD SITUATION
FOR THE COURT SYSTEM AND
ULTIMATELY, PROBABLY, FOR THE
DEFENDANT, SO I APPRECIATE THAT.
BUT AT THE SAME TIME THAT HE --
THE SAME HEARING, I THINK,
OCTOBER 22ND, I STILL GO BACK TO
MR. SINARDI SAYING I'M STILL AT
A JUNCTURE OF WHETHER OR NOT I'M

GOING TO BE ABLE TO REPRESENT HIM ON SECOND-DEGREE MURDER AGAINST NOT GUILTY.

AVOIDING A DEATH PANEL IN THIS CASE WOULD BE SECOND-DEGREE MURDER, SO I'M STILL STUCK WITH THAT, AND HE KEEPS TALKING ABOUT HOW HE'S ON THE HORNS OF A DILEMMA PROFESSIONALLY.

AND I DON'T, I DON'T KNOW IF THERE'S ANOTHER CASE WHICH HAS THAT UNEQUIVOCAL A STATEMENT BY THE DEFENSE LAWYER THAT HE REALLY HAS TO GO WITH THAT STRATEGY OR WILL HAVE ETHICAL PROBLEMS, AND I THINK THAT BACKDROP, TO ME, IS AN IMPORTANT FACTOR THAT I DO BELIEVE THEY'VE READ TOO MUCH INTO NIXON TO SAY THAT A DEFENDANT KNOWING WHAT THE TRIAL STRATEGY IS HAS TO JUST GO WITH THE TRIAL STRATEGY THAT THE DEFENSE LAWYER SAYS, OR THAT'S IT.

SO THAT'S MY, THAT'S MY ADDITIONAL CONCERN HERE.

>> AND, YOUR HONOR, I THINK IF YOU HAD A DIFFERENT DEFENDANT, ONE WHO DID NOT HAVE PASHA'S HISTORY AND THIS ALL OF A SUDDEN CAME UP ON THE EVE OF TRIAL, YOU WOULD GIVE MR. PASHA THE BENEFIT OF THE DOUBT THAT THIS WASN'T JUST A DELAY.

WE HAVE A HISTORY HERE.

WE HAVE HIM REPEATEDLY

DISCHARGING COMPETENT ATTORNEYS,
WAITING UNTIL THE EVE OF TRIAL,
HAVING THE SAME CONFLICT HE'LL
HAVE WITH ANY ATTORNEY APPOINTED
TO HIS CASE AND FIVE DAYS PRIOR
TO TRIAL WE HAVE A NELSON
HEARING AND MORNING OF TRIAL
THIS COMES UP.

SO GIVEN THAT HISTORY I THINK WE
HAVE TO DEFER TO THE TRIAL JUDGE
AND HIS DISCRETION AT THAT
PARTICULAR TIME.

AND, AGAIN, IT'S A DIFFICULT
QUESTION, BUT WE HAVE TIME TO
SIT HERE AND PARSE HIS WORDS OUT
AND CONSIDER IT.

AND THAT'S WHY IT IS AN ABUSE OF
DISCRETION REVIEW.

IF REASONABLE PEOPLE CAN
DIFFER --

>> WELL, WHY -- WELL, WHY IN
THIS KIND OF SITUATION WHERE YOU
ARE STATING THAT THERE PASHA IS
THE TYPE OF DEFENDANT WHO'S
GOING TO HAVE A PROBLEM WITH ALL
OF THESE LAWYERS, IT SEEMS TO ME
THE BETTER THING TO DO IN A
SITUATION LIKE THAT IS WHEN THE
TRIAL JUDGE SAYS THERE'S NOTHING
WRONG WITH THIS LAWYER, THIS
LAWYER IS BEING EFFECTIVE, GO
THROUGH THE INQUIRY AND SAY, YOU
KNOW, I DON'T THINK THIS IS IN
YOUR BEST INTERESTS, BUT YOU
HAVE THE ABSOLUTE RIGHT TO DO
THIS AND JUST LET MR. PASHA TAKE

THE CHIPS AS THEY COME BY
REPRESENTING HIMSELF?
>> AND THAT WAS ONE POSSIBLE
OUTCOME, BUT THE JUDGE WAS
CONCERNED THAT IT WAS AN
EQUIVOCAL REQUEST, AND THE LAST
MR. PASHA SAID ON THAT MORNING
OF TRIAL INQUIRY WAS, I'D LOVE
TO HAVE AN ATTORNEY.
HE'S PROBABLY THINKING NO MATTER
WHICH WAY I RULE HERE, I'M GOING
TO BE REVERSED.
>> BUT ISN'T THAT, BUT THAT
REALLY IS THE SITUATION WHEN A
DEFENDANT TRIES TO DISMISS AN
ATTORNEY AND THE TRIAL JUDGE
SAYS, NO, THERE'S NO GOOD REASON
TO DISMISS THIS ATTORNEY AND
HAVE ANOTHER ONE APPOINTED BY
THE STATE, MOST OF THESE
DEFENDANTS REALLY WOULD RATHER
HAVE AN ATTORNEY, THE ONE THEY
WANT.
BUT WHEN THEY CAN'T, THEY GO ON
AND PROCEED.
WE SEE IT, WE SEE IT MORE TIMES
THAN I THINK WE SHOULD, BUT
THAT'S THE STATE OF THE LAW.
AND THE TRIAL JUDGE IN THIS
CASE, I THINK, JUST TOOK IT
BEYOND WHAT OUR CASE LAW
REQUIRES.
>> SO THE ENTIRE HISTORY OF
MANIPULATION IN THIS CASE, THE
THREE JUDGES WHO HAD QUESTIONED
HIS BEST TACTIC, YOU KNOW WHAT

IT WAS?

DELAY.

HE'S CAUGHT RED-HANDED WITH THE
MURDER WEAPON.

>> THE JUDGE, I THINK THIS IS
THE -- I GUESS WE CAN AFFIRM ON
A GROUND THAT THE JUDGE DIDN'T
FIND, BUT THE JUDGE DIDN'T FIND
THAT THE MOTION WAS MADE FOR
PURPOSE OF DELAY, AND THAT'S --
YOU'RE ABSOLUTELY RIGHT THAT
THERE'S CASE LAW THAT SAYS IF
IT'S DETERMINED THAT THE MOTION
IS MADE PURELY TO MANIPULATE,
PURPOSE THIS DELAY, THEN THE
TRIAL JUDGE HAS A RIGHT TO DENY
THE REQUEST.

BUT WE NEED TO -- YOU'RE ASKING
US TO INTERPRET OR MAKE A
DECISION THAT THE TRIAL JUDGE
DIDN'T MAKE.

HE DIDN'T SAY, WELL, YOU'RE JUST
NOW, YOU'RE TRYING TO DELAY
AGAIN, AND AS JUSTICE PERRY
SAID, I MEAN, IT MAY BE A
COMBINATION.

THIS MAN WENT THROUGH, HE HAD
ALL THESE DIFFERENT JUDGES, ALL
OF THEM ARE SORT OF TELLING HIM,
YOU KNOW, YOU REALLY SHOULD HAVE
A LAWYER EVEN THOUGH THE TWO
YEARS HE DIDN'T HAVE A LAWYER HE
APPARENTLY WAS GETTING ON FINE,
SO YOU GOT THAT AS WELL.

BUT THAT'S MY CONCERN IS THAT
THE RECORD, YOU KNOW, IF THE

TRIAL JUDGE MADE A FINDING THAT IT WAS DONE FOR PURPOSE OF DELAY OR MANIPULATION, YOU COULD SAY THE RECORD SUPPORTS THAT. BUT THE JUDGE DIDN'T MAKE THAT FINDING.

>> YOU KNOW, AND THAT'S AN INTERESTING POINT.

>> DID THE JUDGE MAKE THAT FINDING?

>> HE ULTIMATELY MADE THAT FINDING.

>> WHEN DID HE MAKE THAT FINDING?

>> ON THE 24TH AFTER TWO-AND-A-HALF DAYS OF JURY SELECTION.

"I'M FILING LATE SIMPLY FOR THE PURPOSES OF DELAYING THIS TRIAL."

>> THAT'S A DIFFERENT MATTER. THAT IS ENTIRELY DISTINCT FROM HIS INITIAL DETERMINATION THAT THE REQUEST WAS EQUIVOCAL. AND SO THAT, I THINK YOU HAVE TO GO BACK AND ANALYZE WHETHER THE STATUS OF THAT INITIAL REQUEST, AND HE CERTAINLY MADE NO FINDING AND DID NOT SAY ANYTHING IN CONNECTION WITH THAT REQUEST AND THAT INITIAL DETERMINATION THAT INDICATED THAT HE BELIEVED IT WAS FOR DELAY.

>> WELL, NO. AND THERE'S NO SPECIFIC FINDING. I'VE NEVER MADE THAT

REPRESENTATION, BUT I THINK THE HISTORY WARRANTS THAT FINDING.

>> DURING THE -- ANOTHER POINT BEFORE WE GET AWAY FROM IT. ON THE NOVEMBER 29TH HEARING WHERE MR. PASHA INDICATED, I'VE ALWAYS WANTED A LAWYER, THE COURT DID MAKE ON THE RECORD THE FOLLOWING STATEMENT: "I AM BEGINNING, FRANKLY, BEGINNING TO WONDER, MR. PASHA, YOU'RE NOT A STUPID PERSON. YOU SAY YOU DON'T WANT THE LAWYER, THEN YOU SAY YOU DO. YOU DON'T WANT ONE THEN, YOU DO NOW. WHAT YOU'RE DOING IS DRAGGING THIS CASE OUT." COURT DID MAKE THAT STATEMENT.

>> EXACTLY.

AND JUDGE PADGETT ALSO MADE THAT STATEMENT EARLIER WHEN HE WAS QUIBBLING ABOUT HIS DISCOVERY, HE'S NEVER READY FOR TRIAL. IN MARCH OF 2005 THE JUDGE SAYS, "LET'S GET THIS THING READY FOR TRIAL." "OH, I'M NOT READY, YOUR HONOR. DON'T PUT IT ON THE CALENDAR." FOR TWO YEARS HE REPRESENTS HIMSELF AND THEN CHANGES HIS MIND. OH, I'D LOVE TO HAVE A LAWYER, I WANT TO HAVE A LAWYER. YOU CAN'T LOOK AT THIS CASE IN ISOLATION AND GO, GIVE MR. PASHA

THE BENEFIT OF THE DOUBT BECAUSE WE HAVE A HISTORY WHERE HE HAS NOT EARNED THAT BENEFIT.

>> I THOUGHT THAT THE POINT WHEN HE WANTED, ASKED FOR THE LAWYER OR SAID THAT HE WOULD TAKE A LAWYER THAT IT WAS THE STATE THAT HAD ADDITIONAL EVIDENCE THAT HAD BEEN DISCOVERED.

IS THAT NOT, IS THAT INACCURATE? IN OTHER WORDS, WAS READY TO GO TO TRIAL AND THEN THE STATE CAME UP WITH SOME ADDITIONAL EVIDENCE?

THAT'S WHETHER MR. BOLOTIN REPRESENTED.

HE'S USUALLY PRETTY ACCURATE IN TERMS OF WHAT HE RECALLS.

>> YOUR HONOR, I'M NOT SURE IF THAT WAS THAT HEARING DATE. WHAT THE RECORD REFLECTS IS THAT IN THE FIVE-YEAR DELAY THAT IT TOOK FOR THIS CASE TO GET TO TRIAL, ONE DELAY OF ONE-THREE MONTHS WAS ATTRIBUTED TO THE STATE.

THAT'S IT.

AND WE GO BACK AND LOOK AT EVERY TIME HE CHANGES COUNSEL, THERE'S A YEAR DELAY.

YOU'RE BUILT IN A YEAR DELAY.

MR. PASHA KNOWS THAT.

HE FIRES HIS FIRST COMPETENT ATTORNEY, SECOND COMPETENT ATTORNEY, THERE'S ANOTHER YEAR.

REPRESENTS HIMSELF FOR TWO

YEARS, ANOTHER DELAY SOLELY
ATTRIBUTABLE TO MR. PASHA.
THEN WHEN JUDGES ARE GETTING
TIRED OF DEALING WITH HIM AND
SAYING, LOOK, THIS IS AN OLD
CASE, WE'VE GOT TO GET THIS TO
TRIAL, PASHA SAYS, OH, WAIT A
MINUTE, I WANT A LAWYER NOW.
SO HIS MANEUVERINGS WERE HIS
BEST STRATEGY IN THIS CASE.
>> I THINK YOU HAVE TO AGREE,
THOUGH, AT THAT HEARING THE
STATE DID COME IN AND SAY WE
HAVE THIS VIDEO OF THE CRIME
SCENE, AND WE WANT TO LOOK AT IT
MORE CLOSELY.
>> CORRECT.
>> SO THERE WAS THAT POINT, AND
AT THAT POINT WASN'T IT AT THIS
POINT, ALSO, THAT MR. PASHA
SAYS, WELL, I WANT A LAWYER?
BECAUSE I NEED A LAWYER TO LOOK
AT THESE PICTURES OR SOMETHING
TO THAT EFFECT?
>> I THOUGHT THAT HEARING CAME
LATER.
THAT WAS IN NOVEMBER.
I BELIEVE IN AUGUST OF 2006 THEY
WERE DISCUSSING A TRIAL DATE --
>> OKAY.
SO IT WAS IN AUGUST THAT THE
STATE SAYS I HAVE THIS TAPE I
WANT TO LOOK AT MORE CLOSELY?
>> I BELIEVE SO, AND I COULD BE
WRONG.
>> SO JUST THREE MONTHS LATER

MR., MR. PASHA ASKS FOR AN
ATTORNEY.

>> YEAH, IN THE NOVEMBER
HEARING.

AND AGAIN, WHEN THAT OCCURRED,
PASHA DIDN'T SAY HE WAS READY
FOR TRIAL.

IN FACT, HE SAID I COULD HAVE 90
DAYS, HOW ABOUT 90 DAYS OUT?
HE'S NOT SAYING I'M READY FOR
TRIAL.

HE NEVER ONCE SAID THAT.

MAYBE I COULD BE READY FOR TRIAL
IF I HAD ALL MY DISCOVERY
MATERIALS.

IF ONLY I HAD ALL FIVE BOXES OF
MATERIAL, I COULD GET READY FOR
TRIAL.

SO I THINK IT MISREPRESENTS THE
RECORD TO SAY THE STATE'S ONE
DELAY OF ANYWHERE BETWEEN ONE
AND THREE MONTHS EXCUSES PASHA'S
FIVE YEARS BETWEEN FLIP-FLOPPING
ON THE ISSUE OF COUNSEL.

AND, AGAIN, THAT'S PRETTY MUCH
WHY WE MAKE THAT A DISCRETIONARY
CALL.

>> FOR PURPOSES OF --

[INAUDIBLE]

DO YOU LOOK AT EACH STAGE OF
PASHA --

[INAUDIBLE]

OR EVALUATIONS THAT GO ON IF
THERE'S AN ERROR AT ANY POINT
ALONG THE WAY, IS THAT
AUTOMATICALLY REVERSIBLE ERROR?

HOW DOES THAT WORK?

>> YOU KNOW, I DON'T THINK IT
WOULD BE.

I WOULD AGREE WITH MR. BOLOTIN
ON THAT.

I THINK IF YOU HAD AN ERROR
WHICH WASN'T CRITICAL STAGE OF
THE PROCEEDINGS, THAT WOULD HAVE
NO IMPACT.

THE PRIOR FARETTA INQUIRIES ARE
ONLY IMPORTANT BECAUSE THEY SHOW
MR. PASHA KNOWS HOW TO ELECT TO
REPRESENT HIMSELF.

HE'S NONE OF THIS I'D LOVE TO
HAVE AN ATTORNEY, OH, NO, I
NEVER WANT TO BE PRO SE.

HE KNOWS HOW TO DO IT.

HE IS GAMING THE SYSTEM.

AND, AGAIN, THAT'S HIS BEST
TACTIC IN THIS CASE.

THE STATE ALSO WOULD LIKE TO
BRIEFLY MENTION THAT THIS COURT
HAS NOT SPECIFICALLY ARTICULATED
A TIMING REQUIREMENT FOR A
DEFENDANT TO INVOKE THE RIGHTS
OF SELF-REPRESENTATION.

AND I'VE CITED A NUMBER OF
JURISDICTIONS, WHAT IS CLEAR TO
THE STATE IS THAT A PROPER RULE
WOULD BE PRIOR TO TRIAL.

CALIFORNIA REQUIRES INVOCATION A
REASONABLE TIME PRIOR TO TRIAL
OR IT IS ENTIRELY WITHIN THE
SOUND DISCRETION OF THE TRIAL
JUDGE.

THE RULE, THE BETTER RULE

PERHAPS, IS SOMEWHAT MORE
LENIENT TO A DEFENDANT THAT THE
DEFENDANT HAS A CLEAR AND
UNEQUIVOCAL RIGHT TO REPRESENT
HIMSELF.

IF HE INVOKES THAT RIGHT PRIOR
TO THE DAY OF TRIAL --

>> DOESN'T FARETTA REQUIRE THAT
THE INQUIRY BE CONDUCTED AT EACH
CRITICAL STAGE OF THE TRIAL?

>> I BELIEVE THERE'S SUBSEQUENT
CASE LAW REQUIRING YOU OFFER --

>> THAT CRITICAL STAGE OF TRIAL
THAT WOULD BE VOIR DIRE, I
GUESS, OPENING STATEMENT, MOTION
FOR JUDGMENT OF ACQUITTAL --

>> YOUR HONOR, I DON'T THINK
THAT'S TRUE, THAT'S CORRECT, BUT
WHAT FARETTA REQUIRES
CONSTITUTIONALLY AND HASN'T BEEN
INTERPRETED BY COURTS OF APPEAL
IS A REASONABLE TIME PRIOR TO
TRIAL IF A DEFENDANT
UNEQUIVOCALLY ELECTS THE RIGHT
TO SEE ON HIS OWN OR PRO SE,
THEN HE HAS THAT CONSTITUTIONAL
RIGHT.

BUT IF HE DOESN'T INVOKE IT A
REASONABLE TIME PRIOR TO TRIAL,
THE JUDGE HAS DISCRETION TO DENY
IT AS HE DID IN THIS CASE.

>> WHAT IS THE REQUIREMENT THAT
THE FARETTA INQUIRY BE CONDUCTED
AT EACH CRITICAL STAGE OF THE
TRIAL IF IT DOESN'T MATTER AFTER
A JURY'S SELECTED?

WHAT I'M SAYING IS LET'S SAY
THAT CRITICAL STAGE OF THE TRIAL
IS, YOU KNOW, OPENING STATEMENT
OR CLOSING ARGUMENT.
IF AT CLOSING ARGUMENT TIME IF I
GIVE THE DEFENDANT AND CONDUCT A
FARETTA INQUIRY, AND HE SAYS,
OKAY, I JUST REALIZED I'M OVER
MY HEAD, I WANT A LAWYER,
AND IF WHAT YOU'RE SAYING IS
ANYTIME AFTER THE JURY IS
SELECTED YOU'RE IT, YOU'RE BY
YOURSELF --

>> YES, YOUR HONOR.

YOU CAN'T FLIP-FLOP.

AGAIN, JURY SELECTION IS A
CRITICAL PART OF THE TRIAL.

I DON'T THINK FARETTA STANDS FOR
THE PROPOSITION THAT, YOU KNOW,
PRIOR TO JURY SELECTION IF YOU
HAVE ONE FULL AND FAIR FARETTA
INQUIRY, YOU HAVE TO REPEAT
THAT.

I WOULD SAY IN A CAPITAL CASE
YOU'RE WELL ADVISED TO PRIOR TO
SENTENCING.

BUT ONE FULL AND FAIR FARETTA
INQUIRY.

AGAIN, THE GREATER WEIGHT OF
OPINION SEEMS TO GIVE -- I SEE
I'M IN --

>> WELL, YOU CAN FINISH YOUR
STATEMENT.

>> WELL, THE GREATER WEIGHT OF
AUTHORITY AND I'VE CITED
MINNESOTA AND SOME OTHER STATES,

INDIANA, THEY REQUIRE A DEFENDANT TO MAKE THAT CHOICE PRIOR TO TRIAL BECAUSE, AGAIN, WHAT YOU HAVE IN THIS CASE IS A RUSHED PROCEDURE.

THE JUDGE HAS TO MAKE THE DETERMINATION WHEN THE JURY'S THERE, THE STATE HAS MARTIALED ITS RESOURCES.

WE WOULD ASK THAT THIS COURT ARTICULATE A TIMING REQUIREMENT. THANK YOU.

>> MR. BOLOTIN, AS COUNSEL HAS INDICATED HE CONSIDERS YOU A VERY COMPETENT LAWYER, AND I THINK THE COURT DOES AS WELL.

>> THANK YOU.

>> IF WE ARE DEALING WITH, JUST LISTEN, JUST THIS ISOLATED PORTION IF A DEFENDANT IN THE CASE SAYS AS I'VE INDICATED TO YOU, JUDGE, ALL ALONG THAT I, I'D LIKE TO HAVE A LAWYER, I DEFINITELY WOULD RATHER HAVE A LAWYER, BUT I HAVE NO CHOICE, IS THERE A FLORIDA CASE THAT SAYS THAT'S AN UNEQUIVOCAL AS A MATTER OF LAW, AN UNEQUIVOCAL STATEMENT THAT I WANT TO REPRESENT MYSELF?

>> I THINK PROBABLY THE CLOSEST CASE TO IT IN FLORIDA WOULD BE WEAVER.

NOW, I'VE CITED A NUMBER OF CASES FROM FEDERAL AND OTHER STATE JURISDICTIONS THAT DEAL

DIRECTLY WITH THAT.

FIRST OF ALL, WITH THE QUESTION OF A CONDITIONAL REQUEST SAYING, YOU KNOW, I'D LIKE TO HAVE A LAWYER IN THEORY, BUT NOT THIS GUY.

ADAMS V. CARROLL, THE MINNESOTA CASE, RICHARDS --

>> BUT WE DON'T HAVE ONE YET THAT SPECIFICALLY SAYS THAT?

>> OH, YEAH.

>> FROM FLORIDA?

YOU SAID WEAVER.

>> FOR THAT PROPOSITION OF LAW, LET ME SEE HERE.

I CITED THE BEST CASE ON IT IS ADAMS V. CARROLL WHICH IS QUOTED AT LENGTH IN MY REPLY BRIEF. UNITED STATES V. ALLEN FROM THE --

>> OKAY.

SO WE THEN DO HAVE AS A MATTER OF LAW THOSE WORDS REQUIRE THAT TRIAL JUDGES ALLOW A DEFENDANT SELF-REPRESENTATION?

>> THOSE WORDS ARE AN UNEQUIVOCAL REQUEST.

THE CASES SAY JUST BECAUSE IT'S CONDITIONAL, IN OTHER WORDS, JUST BECAUSE IT'S IN RESPONSE TO THE NELSON ULTIMATUM DOESN'T MAKE IT --

>> WE HAVEN'T SAID IT LOUDLY AND CLEARLY ENOUGH BECAUSE IF THAT IS THE LAW -- BECAUSE YOU'RE TAKING THE POSITION THIS IS AS A

MATTER OF LAW, NOT A, THIS IS
NOT A FACTUAL, THIS IS NOT A --
>> RIGHT.

>> -- THIS IS A MATTER OF LAW
THAT APPARENTLY WE HAVEN'T SAID
IT --

>> WELL, WE'D LIKE THE COURT TO
SAY IT LOUDLY AND CLEARLY --
>> BECAUSE THE NEXT TIME YOU'RE
GOING TO HAVE SOMEONE HERE WHO
DOESN'T HAVE A LAWYER, AND IN A
DIFFERENT SITUATION CERTAINLY
THIS IS NOT A NIXON SITUATION,
AND THAT FIGHT SORT OF COERCED
WHAT WE'RE TALKING ABOUT, BUT
WE'RE GOING TO HAVE OTHERS THAT
ARE GOING TO FOLLOW THIS THAT
DON'T HAVE THAT CLEAR CUT
PROBLEM.

>> THAT'S TRUE.

>> SO I THINK THAT OUR JOB IS TO
CLARIFY, MAKE SURE THE LAW'S
CLEAR.

>> WELL, I WOULD SAY TO MY
BRIEF, MY INITIAL BRIEF ON PAGE
42 AND 43 FOR A NUMBER OF CASES
ON THAT, BUT I THINK WHAT'S
INTERESTING IS WHEN MY OPPONENT
WAS ASKED IF HE HAD ANY OPINION
IF IT WAS AN EQUIVOCAL REQUEST.
HE CITED HARWOOD.
HARWOOD REPEATEDLY ASKED FOR NEW
COUNSEL, ADMITTED HIS
INCOMPETENCE AND STATED, I'M NOT
CHOOSING TO REPRESENT MYSELF.
THAT'S PRETTY MUCH THE OPPOSITE

OF WHAT WE'VE GOT HERE.

>> WELL, YOU ALSO HAVE -- THIS WAS THE HEARING, I MEAN, THE MOTION, NO ONE'S ARGUING THE MOTION ITSELF WAS UNEQUIVOCAL THAT HE FILED, THE WRITTEN MOTION.

DO YOU WANT TO ADDRESS JUST THE FIVE-DAY -- IS THERE AN ISSUE ON THE --

>> YEAH, IF I HAVE ANY TIME --

>> WELL, YOU'VE ONLY GOT 30 SECONDS.

>> FIRST, YOU'VE GOT THE NELSON HEARING WHERE HE STARTS TO SAY GIVEN HOW YOU'VE RULED, I HAVE A RIGHT TO A LAWYER OR NOT A LAWYER.

THE JUDGE CUTS HIM OFF, HE FILED A MOTION, IT WAS HEARD BEFORE TRIAL, EVERYTHING'S FINE WITH TIMELINESS.

AGAIN, I HAVE TO RELY ON MY BRIEF ON THIS.

THERE ARE FLORIDA DCA CASES AND CASES FROM TEXAS, VIRGINIA, THE 11TH AND FIFTH CIRCUIT THAT WOULD SAY EVEN HIS RENEWED MOTION MADE DURING JURY SELECTION BUT BEFORE THE JURY WAS SELECTED AND SWORN, EVEN IF THAT HAD BEEN HIS INITIAL REQUEST, THAT WOULD HAVE BEEN TIMELY.

NOW, I AGREE WITH THE STATE THAT THE CASES FROM VARIOUS

JURISDICTIONS ARE ALL OVER THE
MAP ON THAT, BUT THE FLORIDA DCA
CASES WHICH IF THE DEFENDANT WAS
GOING TO GO BY ANYTHING PRETTY
CLEARLY INDICATE THAT EVEN THE
RENEWED REQUEST DURING JURY
SELECTION WAS TIMELY.

THIS WAS A RENEWED REQUEST.
AGAIN, HE WAS AS UNEQUIVOCAL AS
HE COULD BE.

IF MY ONLY CHOICE IS SINARDI, I
WANT TO REPRESENT MYSELF.
I DON'T EVEN KNOW HOW MR. PASHA
WOULD HAVE BENEFITED.

HE WAS IN JAIL, HE WAS NOT
GETTING BOND, HE WASN'T GOING
ANYWHERE.

MR. PASHA'S CONCERN WAS AN
ACQUITTAL, AND THE ONLY TIME
THIS CASE WAS -- THEY TALK ABOUT
IT IN THEIR BRIEF ABOUT THE EVE
OF TRIAL.

HE KEEPS CHANGING HIS MIND ON
THE EVE OF TRIAL.

THERE WAS ONE EVE OF TRIAL HE
WAS INVITED TO CHANGE HIS MIND,
AND HE DIDN'T.

THERE WAS NO -- GIVEN THE GOOD
FAITH REASON HE HAD, THERE'S NO
INDICATION OF DELAY OR
INSINCERITY OR MANIPULATION.

THANK YOU VERY MUCH.

>> ALL RIGHT.

THANK YOU BOTH FOR YOUR
ARGUMENTS.

THE COURT REALLY APPRECIATES

YOUR CONTRIBUTION TO THIS CASE.
THANK YOU.

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