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In re: Amendments to Fla Rules of Criminal Procedure

SC08-2163

>> 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 THIS 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 OUR ORAL ARGUMENT

FOR WEDNESDAY, JUNE 3RD.

THE FIRST CASE ON OUR CALENDAR

IS AMENDMENTS TO THE FLORIDA

RULES OF CRIMINAL PROCEDURE.

MR. BATEMEN.

>> CHIEF JUSTICE, MEMBERS OF THE

COURT, GOOD MORNING.

FOR THE RECORD, I'M TOM BATEMEN

AND I AM THE CHAIR OF THE

CRIMINAL PROCEDURAL RULES

COMMITTEE.

AT THIS TIME, AND FOR THE
RECORD, SO, TO BRING THE COURT
UP TO SPEED ON HOW THIS CASE GOT
HERE, THIS PROVISION WAS
PROPOSED BY THE COURT, AND WAS
SENT TO THE COMMITTEE TO ASK FOR
COMMENT.

AT ITS MEETING EARLIER THIS
YEAR, THE COURT SPENT LENGTHY
TIME TALK ABOUT IT AND MADE THE
RECOMMENDATION, THAT THE COURT
ADOPT THE RULE AS YOU HAVE
SUGGESTED IT, WITH A COUPLE OF
EDITORIAL CHANGES.

>> MR. BAITED MAN I HAVE A
QUESTION -- BATEMEN I HAVE A
QUESTION.

WE DID SEND IT TO THE COMMITTEE.
DID YOUR COMMITTEE AGREE INDIANA
VERSUS EDWARDS, DID IN FACT
MODIFY PORETTA SIGNIFICANTLY AND
WOULD MAKE THE RULE NOT IN
CONFORMITY, WITH -- IN OTHER
WORDS, DID YOUR COMMITTEE
DISCUSS THAT WITH THE COURT
SENDING IT OVER DID YOU ASSUME

WE HAD ALREADY MADE THE
DETERMINATION.

>> NO, THE CASE, THE ISSUE WAS
SENT TO A SUBCOMMITTEE WHICH
READ THE CASE VERY CAREFULLY,
CAME BACK WITH THE POSITION THAT
IT DID NOT -- WHAT YOU PROPOSED
WAS APPROPRIATE, PURSUANT TO THE
CASE.

>> BECAUSE, RIGHTED -- UNDER
THIS CURRENT RULE, IT WAS
BASICALLY -- WOULD BASICALLY
TELL A JUDGE THAT IF THE
DEFENDANT HAS BEEN FOUND
COMPETENT TO STAND TRIAL, AND GO
THROUGH THE OTHER COLLOQUY, THAT
THEY MUST ALLOW
SELF-REPRESENTATION.

>> AND THE ISSUE COMES DOWN -- I
THINK MR. GIFFORD WILL TALK
ABOUT THAT, I THINK THIS IS MORE
THEIR CONCERN, THE ISSUE I THINK
IT COMES DOWN TO THE COMPETENCY
-- WHETHER A DEFENDANT IS
COMPETENT TO STAND TRIAL --
COMPETENT TO STAND TRIAL AND
WHETHER THE DEFENDANT HAS THE
CAPACITY TO REPRESENT HIMSELF
BECAUSE OF THE SEVERE MENTAL

ILLNESS, MIGHT BE ACTUALLY TWO
DIFFERENT THINGS.

>> I THOUGHT THAT IS WHAT
INDIANA VERSUS EDWARDS SAYS,
COMPETENCIES TO STAND TRIAL,
THIS JUDGE -- DEFENDANT KOS
INCOMPETENT IN TRIAL BUT NOT BE
ABLE TO REPRESENT HIMSELF OR
HERSELF AND I THINK THE HARD
TRAINING THING FOR THE TRIAL
JUDGE WILL BE EVEN WITH THE
RULE, HOW DO YOU MAKE THIS OTHER
DETERMINATION, WITHIN INDIANA
VERSUS EDWARDS, WE COULD SAY,
ALL WE WANT IN THE RULE BUT IT
WILL HAVE TO DEVELOP IN THE CASE
LAW.

>> THERE IS NO QUESTION ABOUT
THAT.

THE COMMITTEE MEMBERS GENERALLY
WERE CONCERNED ABOUT THE USE OF
THE WORD "SEVERE" BECAUSE, WHAT
DOES IT MEAN?

IT IS A VERY SUBJECTIVE WORD AND
THERE WAS SOME DISCUSSION ABOUT,
MAYBE THAT OUGHT TO BE OUT OF
THERE AND SHOULD SAY, MENTAL
ILLNESS.

>> BUT ISN'T THE POINT -- AND I
GUESS AND I'LL ASK MR. GIFFORD
ABOUT THIS, BY USING THE WORDS
SEVERE MENTAL ILLNESS AND
READING THIS FACTS OF INDIANA
VERSUS EDWARDS, THE SUPREME
COURT WAS STILL ENVISIONING AN
EXTREME CASE WHERE
SELF-REPRESENTATION WOULD NOT BE
ALLOWED AND THE MORE WE SAY,
WELL, MENTAL -- THE DEFENDANT IS
MENTALLY ILL, THEN THE COURT CAN
DENY SELF-REPRESENTATION, WE
HAVE NARROWED THE RIGHT OF
SELF-REPRESENTATION AND REFER TO
MAKING A JUDGMENT CALL ABOUT
THAT.

>> HOW SEVERE IT IS, I MEAN --
>> ISN'T THAT, IN OTHER WORDS,
THE MORE -- IF IT HAS THE
QUALIFIER, "SEVERE MENTAL
ILLNESS" IT WILL ALLOW MORE
DEFENDANTS TO REPRESENT
THEMSELVES, THAN IF YOU JUST PUT
MENTAL ILLNESS.

>> MORE MENTALLY ILL --
>> MORE MENTALLY ILL DEFENDANTS,
AND WE KNOW THERE ARE --
>> THAT'S CORRECT.

>> THERE ARE A LOT OF MENTALLY
ILL DEFENDANTS.

>> YES.

AND WHO ATTEMPT TO DO A LOT OF
THINGS THEMSELVES, BUT YOU ARE
RIGHT.

AND THAT WAS A BIG CONCERN OF
THE COMMITTEE, AND IF YOU -- I'M
NOT SURE IF YOU LOOKED AT THE
NOTE THE BUT ORIGINALLY THE FULL
COMMITTEE DECLINED -- WANTED TO
ADOPT THE LANGUAGE, WANTED TO
ADOPT -- VOTE IN FAVOR OF THE
PROPOSAL, BUT THEN AFTER A LOT
OF DISCUSSION, ULTIMATELY, THERE
WAS A CLOSE VOTE, 15-13, I
BELIEVE, WAS THE ULTIMATE VOTE
THAT CAME OUT AFTER ALL OF THE
DISCUSSION ABOUT THE CAPACITY,
AND THE USE OF THE WORD SEVERE
AND ALL OF THESE THINGS,
ULTIMATELY CAME DOWN TO EXACTLY
WHAT YOU ARE SAYING, THAT THE
COURT NEEDS SOME KIND OF
GUIDANCE, BECAUSE WE HAVE
MENTALLY -- COURTS HAVE MEN
ATTEMPT -- COURTS HAVE MENTALLY
ILL --

>> ALWAYS WILL BE --

>> I UNDERSTAND, APPRECIATE
THAT.

COURTS HAVE MENTALLY ILL FOLKS
IN FRONT OF THEM -- JUDGES HAVE
THEM ALL THE TIME AND THE
QUESTION IS, WHAT DOES "SEVERE"
MEAN AND I THINK THAT IS WHAT IT
WILL AMOUNT TO, THERE IS NOT A
LOT OF GUIDANCE --

>> CAN I ASK --

>> ABOUT THE WORD SEVERE.

>> CAN I ASK A PRELIMINARY
QUESTION?

THE WAY I READ SUPREME COURT
DECISION IS THAT IT IS
AUTHORIZING THE STATE --

>> STATE -- SORRY.

>> -- TO PERMIT SELF--- REQUIRE
COUNSEL IN CASES WHERE THERE IS
SEVERE MENTAL ILLNESS BUT IT IS
PERMISSIVE AS OPPOSED TO A
REQUIREMENT THAT THE STATE DO
THAT.

AND WAS THERE ANY DISCUSSION IN
THE COMMITTEE ABOUT THAT ASPECT
OF THE DECISION?

OR IS THAT -- WAS THERE A
DIFFERENT INTERPRETATION OF WHAT

INDIANA VERSUS -- THE CASE

ACTUALLY SAYS.

>> I'M SORRY, JUSTICE CANADY,
READING THE CASE AS REQUIRING IT

OR --

>> I'M SAYING THAT, THE U.S.
CONSTITUTION PERMITS STATES TO
INSIST UPON REPRESENTATION BY
COUNSEL.

>> I DON'T THINK THERE WAS THAT
DISCUSSIONS, SPECIFICALLY.

>> WELL, BUT IT SEEMS LIKE TO
ME, THAT THERE IS REALLY A
QUESTION HERE, IF THIS -- IF
THIS SUPREME COURT DECISION IS
JUST A DECISION THAT PERMITS US
TO DO SOMETHING THE FACT THAT
WE'RE PERMITTED TO DO IT DOES
NOT MEAN WE NECESSARILY SHOULD
DO IT.

THERE IS A SEPARATE QUESTION OF
WHETHER, GIVEN THE PERMISSION TO
DO IT, WHETHER WE SHOULD TAKE
ADVANTAGE OF THAT AND DO IT.
AND SO THAT WASN'T DISCUSSED AT
ALL.

>> NOT IN THAT CONTEXT BUT I CAN
SAY THIS.

THAT THIS IS THE CRIMINAL
PROCEDURAL RULES COMMITTEE AND I
THINK THAT COMMITTEE GENUINELY
BELIEVES THAT DEFENDANTS OUGHT
TO BE JUDGES AND THE COURTS
OUGHT TO TREAT DEFENDANTS IN
EVERY WAY POSSIBLE, TO LET THEM
HAVE THE RIGHT OF
SELF-DETERMINATION IF THEY WANT
TO DO IT AND I THINK THAT THEY
BELIEVE THAT THE COURTS SHOULD
GIVE -- ALLOW THAT, IF IT IS
GOING TO BE ALLOWED.

>> GIVEN THAT, I MEAN, THAT IS
WHY I THOUGHT THAT THIS VERY --
VERY SPECIFIC LIMITATION, ONLY,
IF THE JUDGE FINDS THAT WHATEVER
IT MEANS, IF THERE IS A SEVERE
MENTAL ILLNESS, SO THEY ARE NOT
COMPETENT IN THE TRIAL PROCEED,
WILL THEY DENY THE RIGHT OF
SELF-REPRESENTATION, NOT DO IT
JUST BECAUSE SOMEBODY --

>> MENTALLY ILL.

>> DIAGNOSED AS MENTALLY ILL AND
JUDGES, YOU KNOW, NO -- JUDGES
AND COURTS, THESE ARE DIFFICULT
CASES, AND SO THAT IS THE
JUDGMENT CALL, WHICH IS THAT,

GIVEN THAT THE SUPREME COURT AT LEAST IS THE -- IF THE DEFENDANT IS SEVERELY MENTALLY ILL, I SORT OF TOOK THAT TO MEAN SIMPLE MENTAL ILLNESS, YOU KNOW, WAS NOT ENOUGH TO YOU KNOW -- NOT SIMPLE.

ALL MENTAL ILLNESS HAS SIGNIFICANT IMPACT ON OUR LIVES, BUT COULDN'T GO TO A LESSER STANDARD, FOR --

>> I SEE WHAT YOU ARE SAYING.

>> THE QUESTION IS, IS WHAT DOES "SEVERE" MEAN AND THAT BEGS THE QUESTION, AND THERE ARE NO CRITERIA FOR "SEVERE" AND WE --

>> WE WILL HAVE -- DOES IT HAVE TO BE A FACTUAL QUESTION EACH TRIAL JUDGE HAS TO MAKE.

>> I THINK YOU ARE RIGHT JUSTICE LABARGA BECAUSE JUDGES ARE ASKED TO MAKE DETERMINATIONS, AND WE TALK ABOUT EXPERT OPINIONS THAT COME IN AND MAJOR MENTAL ILLNESS, AND WHETHER THE PERSON IS COMPETENT TO UNDERSTAND WHAT HE OR SHE IS DOING AND SAYING AND THINKING, AND HOW -- HOW IS

A JUDGE GOING TO BE GUIDED BY
THE WORD SEVERE AND THAT IS A
CONCERN.

>> I THINK -- SORRY.

GO AHEAD.

>> DID THE COMMITTEE EVER
CONSIDER WHETHER OR NOT THEY
SHOULD PROPOSE SOMETHING ABOUT
SEVERE.

>> NO, IN TERMS OF -- LIKE A
DEFINITION OF SEVERE.

>> YES.

>> NO.

THEY DID NOT GO TO THAT EXTENT.

>> DID THEY EVEN DISCUSS IT.

>> THE DISCUSSION WAS,
ELIMINATING THE WORD -- USING --
LEAVING THE WORD IN THERE,
BECAUSE, THAT IS THE -- BECAUSE
THAT IS WHAT THE U.S. SUPREME
COURT SAID.

>> THEY USED THE WORD AND THAT
IS WHY WE USED THE WORD.

WE WEREN'T TRYING TO BE CREATIVE
HERE, WE WERE QUOTING RIGHT FROM
HOW THE SUPREME COURT IN INDIANA
VERSUS EDWARDS.

>> CORRECT.

>> DECIDED THE CASE --

>> AND THERE WAS DISCUSSION
ABOUT WHAT DOES SEVERE MEAN, AND
HOW DOES THE TRIAL JUDGE -- WILL
THE JUDGE BE GUIDED BY THAT
WORD.

>> AND, AT ALL, HAS THE
COMMITTEE LOOKED AT THE ISSUE UP
BY THE PUBLIC DEFENDERS... OR
DID YOU FEEL IT WAS OUTSIDE OF
WHAT YOU WERE ASKING.

>> WE DID NOT ADDRESS THAT AND
DID NOT REALIZE DILL UNTIL THE
ASSOCIATION COMMENTED THAT THAT
WAS GOING TO BE AN ARGUMENT THAT
WAS MADE AND OF COURSE THEY
WOULDN'T COULDN'T GO BACK TO
COMMITTEE UNTIME -- IN TIME AND
WE DID NOT DO THAT BUT THAT IS A
POSSIBILITY AND I THINK YOU
COULD SEND IT BACK FOR FURTHER
DISCUSSION IN LIGHT OF WHAT THEY
SAID AND ORAL ARGUMENTS.

>> AGAIN --

>> LIKE I QUESTION.

>> I DON'T KNOW, TYPICALLY ON
THE QUESTION OF COMPETENCY, TO
PROCEED.

>> YES, SIR.

>> IT IS THE TRIAL COURT -- THE WAY IT TYPICALLY HAPPENS AT THE TRIAL LEVEL, THE PARTIES STIPULATE TO THE REPORT OF THE PSYCHOLOGIST OR THE PSYCHIATRIST AND BASED ON THAT THE COURT MAKES THE FACTUAL FINDING THE DEFENDANT IS COMFORTABLE TEMPT OR NOT COMPETENT AND THE ONLY WAY FOR THIS TO WORK IS TO PROCEED UNDER THE SAME PREMISE AND THE COURT HAS TO HEAR EVIDENCE FROM SOMEONE, OR PERHAPS THE DEFENDANT'S OWN BEHAVIOR THROUGHOUT THE PROCEEDINGS, BECAUSE THE MEMBER IN THESE -- REMEMBER IN THESE CASES THE JUDGE IS PROBABLY WORKING WITH THE PERSON FOR MONTHS AND MONTHS AND DURING THE PROCEEDINGS THE COURT CAN MAKE OBSERVATIONS THAT WOULD LEAD HIM OR HER TO BELIEVE, WHETHER OR NOT THE PERSON IS COMPETENT AND KNOWS WHAT HE IS DOING AND IS NOT QUITE COMPETENT ENOUGH TO HANDLE HIS OWN DEFENSE, I THINK IT HAS TO BE A CASE BY CASE FACTUAL FINDING-TYPE THING.

>> AND THE WAY YOU SUGGEST IT IS
THE JUDGE, IF -- MAKING THESE
OBSERVATIONS HAS TO APPOINTED AN
EXPERT OR TWO TO ASSIST THE
COURT TO MAKE THIS FACTUAL
FINDING AND HAVE A HEARING.

>> YOU HAVE TO HAVE HEARING AND
A CASE BY CASE FACTUAL
DETERMINATION BY THIS COURT AND
PERHAPS THE COURT'S OWN
OBSERVATION AND I HAD A CASE
WHERE THE GUY WAS COMPETENT BUT
INSISTED ON -- COMPETENT BUT
INSISTED ON READING THE UNITED
NATIONS CHARTER, AND -- BUT HE
KNEW WHAT HE WAS DOING, HE WAS
COMPETENT TO PROCEED AND HE WAS
IN A DIFFERENT ZONE AND I MEAN,
I THINK THE COURT'S OBSERVATION.

>> AND YOU LET HIM REPRESENT
HIMSELF.

>> IN THAT CASE.

>> YES.

>> OH, NO WAY!

>> RIGHT, I BELIEVE -- I AGREE
WITH YOU, AND THOSE AMENDING THE
RULES, AT LEAST PUTS SOMETHING
IN IT FOR THE TRIAL JUDGE TO

THINK ABOUT, IN TERMS OF THE --

>> THE AREA OF JUDICIAL

EDUCATION.

>> SOUNDS LIKE A GOOD AREA OF

JUDICIAL EDUCATION.

>> AND WITH THAT YOU HAVE USED

YOUR TIME AND WE'LL GIVE YOU A

MINUTE OR SO FOR REBUTTAL.

>> IF I DON'T NEED IT, IF IS IT

ALL RIGHT IF I DON'T TAKE NIGHT

FINE WITH US!

>> THANK YOU!

>> MR. GIFFORD.

>> MAY IT PLEASE THE COURT, I'M

GLENN GIFFORD ON BEHALF OF THE

FLORIDA PUBLIC DEFENDER

ASSOCIATION AND WE WELCOME THE

COMMITTEE'S PROPOSAL LIKE

INDIANA VERSUS EDWARDS A BETTER

BALANCE TO RIGHTS TO

SELF-REPRESENTATION, AND THE

DEFENDANT'S RIGHT TO A FAIR

TRIAL THAN THIS CURRENT RULE

DOES AND WE THINK THE COURT CAN

GO FURTHER IN THE DIRECTION OF

PROTECTING THE RIGHT TO A FAIR

TRIAL WITHOUT VIOLATING THE

DEFENDANT'S RIGHT --

>> I WANT TO MAKE SURE, IT SAYS

THE PUBLIC DEFENDERS, WHO ARE
PROBABLY IN THE BEST POSITION TO
KNOW, UNDERSTAND THAT THERE ARE
MANY SITUATIONS WHERE, ALTHOUGH
THE DEFENDANT IS COMPETENT TO
STAND TRIAL, HIS
SELF-REPRESENTATION AND HER
SELF-REPRESENTATION MAY REALLY
AFFECT THIS FAIRNESS OF THE
PROCEEDINGS.

BUT WE HAVE PORETTA -- FARETTA
AS A RIGHT OF THE DEFENDANT AND
THE SUPREME COURT HAS NOT
RECEDED FROM THAT AND MY
QUESTION TO YOU IS HOW CAN WE
MAKE A MORE EXPANSIVE STANDARD
THAN THAT THE SUPREME COURT
COMMITTED SUBMITTED US TO DO,
WHICH IS IN CASES WHERE SOMEONE
IS SEVERELY, MENTALLY ILL THEY
ARE THE NOT COMPETENT IN THE
TRIAL PROCEEDINGS, THAT THAT IS
WHERE THEY SAY THE TRIAL -- THE
STATES ARE PERMITTED TO LIMIT
SELF-REPRESENTATION BUT NOT
GENERALLY BROADER THAN THAT.
AND SO, THAT IS MY CONCERN, IS
THAT, YOU KNOW, WHAT -- MAY BE A

BETTER BALANCE BUT MIGHT NOT IT
INTERFERE WITH THE FARETTA RIGHT
OF SELF-REPRESENTATION.

>> I DON'T THINK SO, SIR, IT WAS
A DEFENDANT WHO WAS COMPETENT TO
REPRESENT HIMSELF AND... AND HAD
THE CAPACITY TO
SELF-REPRESENTATION AND IN
INDIANA VERSUS EDWARDS, YOU HAVE
A DEFENDANT WHO WAS TWICE FOUND
INCOMPETENT AND TWICE FOUND
COMPETENT AND AFTER THE FIRST
TRIAL WITH COUNSEL ELECTED TO BE
PER SE AND THE COURT'S LANGUAGE
IN EDWARDS, THE COURT USES THAT
LANGUAGE AND ALSO THIS COURT
TALKS ABOUT CAPACITY AND WE
ASKED WHETHER THE CONSTITUTION
PERMITS THE STATE TO LIMIT THE
DEFENDANT'S SELF-REPRESENTATION
RIGHTS BY ASSISTING ON
REPRESENTATION ON THE GROUNDS
THE DEFENDANT LACKS THE MENTAL
CAPACITY TO CONDUCT THE TRIAL...
UNLESS REPRESENTATIVE AND THAT
IS THE KEY DISTINCTION, TWO
DISTINCTIONS, WE ARE TALK ABOUT
TRIAL REPRESENTATION, AND WHICH
IN GODINEZ VERSUS MORAN, ONE OF

THE CASES INDIANA VERSUS EDWARDS
IS BUILT UPON AND ALSO TALK
ABOUT DEFENDANTS WHO ARE
COMPETENTLY AND MAY LACK THE
CAPACITY TO REPRESENT
THEMSELVES, AT TRIAL.
NOT WITH THE PLEA, IT DOESN'T
TAKE MUCH CAPACITY TO REPRESENT
YOURSELF... A LAWYER AND
REPRESENT YOURSELF TO ENTER A
PLEA AND YOU HAVE DEFENDANTS WHO
ARE SEVERELY MENTALLY ILL AND
MENTALLY ILL THAT LACK THE
CAPACITY TO CONDUCT A TRIAL
DEFENSE AND LET'S SAY A CAPITAL
SEXUAL BATTERY CASE WHERE YOU
HAVE A WILLIAMSVILLE EVIDENCE
AND THE DEFENDANT IS TESTIFYING
BY VIDEO.

>> I HAVE READ -- LOOKED AT
THOSE CASES AND I DON'T THINK IT
IS TALK ABOUT CAPACITY IN THE
SENSE OR IN THE CONTEXT OF
PROFESSIONAL CAPACITY OR LEGAL
KNOWLEDGE CAPACITY.
SEEMS TO ME THOSE CASES ARE
REALLY TALK ABOUT MENTAL
CAPACITY.

>> AND THAT IS WHAT I'M TALKING ABOUT AS WELL, YOUR HONOR.

>> WHEN START TALK ABOUT THE NUANCES OF WILLIAMS RULE AND TALK ABOUT THE NUANCES OF MAYBE DNA AND THOSE KINDS OF THINGS YOU ARE REALLY GOING IN MY ESTIMATION OR EXPLAIN TO ME WHY YOU ARE NOT GOING FAR BEYOND THE CONCEPT OF A MENTAL CAPACITY, A MENTAL ILLNESS-TYPE OF THING AND NOT INTO EDUCATION -- EDUCATIONAL, MENTAL ACUMEN AND THOSE KINDS OF THINGS.

>> AND WE ARE TALKING ABOUT A DEFENDANT WHO CAN UNDERSTAND THE RULES, READ THE RULES AND UNDERSTAND WHEN IT IS EXPLAINED BY THE COURT WHAT IS INVOLVED IN WILLIAMS RULE EVIDENCE AND TESTIFYING BY VIDEOTAPE. AND NOT WITH THE KNOWLEDGE OF A LAWYER, THE SKILL OF A LAWYER, THE SKILL OF A LAYMAN WITH AVERAGE INTELLIGENCE, OUR CONCERN IS WHEN YOU LIMIT THE INQUIRY TO DEFENDANTS WHO ARE SEVERELY MENTALLY ILL YOU WILL NOT BRING INTO THE MIX

DEFENDANTS WHO ARE PERHAPS
BORDERLINE MENTALLY RETARDED,
MILDLY MENTALLY RETARDED,
SUBSTANDARD INTELLIGENCE, WHO
ARE NOT CAPABLE OF UNDERSTANDING
EVEN ON A LAYMAN'S LEVEL, THE
ISSUES INVOLVED, IN A TRIAL AND
THAT IS WE WE HAVE ASKED THE
COURT --

>> DON'T WE, I MEAN, EVEN NOW,
UNDER OUR STANDARDS IT SEEMS TO
ME THAT EVEN WHEN WE TALK TO THE
DEFENDANTS AND THE COLLOQUY IS
MADE, WE KNOW THAT THESE
DEFENDANTS ARE NOT GOING TO
UNDERSTAND AS JUSTICE LEWIS SAYS
THE INTRICACIES OF --

INTRICACIES OF ALL OF THE
EVIDENTIARY MATTERS THAT MAY
TAKE PLACE IN THE COURTROOM BUT
ANYONE LESS IF THE DEFENDANT HAS
A GENERAL UNDERSTANDING OF WHAT
IS GOING ON, AND THAT EVIDENCE
WILL BE PRESENTED AND THAT HE
HAS -- HE OR SHE -- HAS THE
CAPACITY TO PRESENTED WHATEVER
EVIDENCE THEY WANT TO DO IT,
EVEN THOUGH THEY MAY NOT HAVE

THE KNOWLEDGE OF HOW YOU PRESENT IT, PRECISELY, WE SAY, THAT YOU CAN IN FACT REPRESENT YOURSELF, BUT IT SOUNDS TO ME LIKE WHAT YOU ARE REALLY SAYING IS THAT IF THEY DON'T UNDERSTAND ALL OF THIS, THEN THEY CANNOT REPRESENT THEMSELVES.

>> YOUR HONOR, I THINK THE STANDARD THAT YOU ARE TALK ABOUT IS THE BASELINE COMPETENCE TO STAND TRIAL STANDARD.

AND WE KNOW FROM INDIANA VERSUS EDWARDS THE DEFENDANT CAN BE COMPETENT TO STAND TRIAL AND YET NOT COMPETENT TO REPRESENT HIMSELF.

>> NO, I'M TALKING ABOUT THE NUANCES OF -- HE'S COMPETENT TO STAND TRIAL, AND YOU SEEM TO REALLY, TO ME, TO BE GOING TO THE NUANCES OF HOW YOU PRESENT THINGS IN A HEARING.

AND WE KNOW THAT -- I MEAN, THERE ARE PROBABLY LAWYERS WHO DON'T PRACTICE CRIMINAL LAW WHO MAY NOT UNDERSTAND ALL THE NUANCES OF HOW YOU PRESENTED EVIDENCE IN A CRIMINAL CASE.

SO, I AM JUST NOT SURE THAT I
REALLY QUITE GET YOUR ARGUMENT
HERE.

>> THERE IS A BASELINE LEVEL OF
UNDERSTANDING, THE LAYMAN OF
NORMAL INTELLIGENCE WOULD HAVE
WITH YOUR STANDARD CRIMINAL
TRIAL, YOUR STANDARD MURDER
TRIAL, BUT TALK ABOUT NORMAL
INTENTION -- INTELLIGENCE.

>> I THOUGHT IT WAS TALK ABOUT
SEVERE MENTAL ILLNESS.

>> YOU CAN CERTAINLY,
CONTEMPLATE A CIRCUMSTANCE WHERE
SOMEONE WOULD BE DENIED THE
RIGHT TO SELF-REPRESENTATION,
SIMPLY BECAUSE THEY ARE NOT
SMART.

>> WELL, IF THEY ARE -- IF
SOMEONE IS BORDERLINE MENTALLY
RETARDED OR MILDLY MENTALLY
RETARDED AND EXERCISE THIS IS
RIGHT OF SELF-REPRESENTATION I
THINK IT IS WITHIN INDIANA
VERSUS EDWARDS AND THE JUDGE'S
PURVIEW TO EVALUATE THAT
DEFENDANT, PENDING UPON --

>> BUT IS THAT MENTAL ILLNESS.

>> NO, IT'S NOT.

>> THE CASE IS TALKING ABOUT IS
SEVERE MENTAL ILLNESS.

I THINK.

>> PART OF WHAT THE CASE IS
TALKING ABOUT AND IT ALSO TALKS
ABOUT THE DEFENDANT LACK THE
CAPACITY.

>> THAT IS ALL CASE IN THE
CONTEXT AND IT IS UNDERSTOOD
HERE, AT LEAST THE WAY I
UNDERSTOOD IT IS IN THE CONTEXT
OF ALONG THE CAPACITY ARISING --
AND THE LACK OF CAPACITY ARISING
FROM A MENTAL ILLNESS.

AND REALLY WHAT YOU ARE TALK
ABOUT IS SOMETHING THAT REALLY,
IS NOT RESTRICTED TO MENTAL
ILLNESS.

IT FOCUSES ON MENTAL ABILITIES.

>> AND NOT MERELY DETERMINATION
OF MENTAL ABILITY FROM THE JUDGE
TALKING TO THE DEFENDANT.

I THINK IT WOULD HAVE TO BE
SUBSTANTIATED AND USUALLY WHEN
YOU HAVE A COMPETENCY
DETERMINATION AND GENERALLY
COMPETENCY WILL BE AT ISSUE,
PART OF THAT EVALUATION IS GOING

TO BE AN EVALUATION FOR MENTAL
RETARDATION.

>> I THINK WHAT YOU ARE DOING
HERE -- AND AGAIN, YOU STARTED
OUT BY SAYING YOU APPLAUDED THE
FACT THAT WE ARE LOOKING AT AN
ADDITIONAL POTENTIAL LIMITATION
ON THE RIGHT OF
SELF-REPRESENTATION AND SEEMS TO
ME WHAT YOU TALK ABOUT IS MOST
OF US KNOW, AND WE HAVE A CASE
COMING UP RIGHT AFTER THIS AND
HAD ONE WHICH WILL BE REVERSED,
BECAUSE THE JUDGE DID NOT... IS
THAT MOST TIMES, THE DEFENDANTS
WILL DO BETTER, IF THEY HAVE
LAWYERS THAN IF THEY DON'T.
BUT THE U.S. SUPREME COURT
REAFFIRMED OVER THE DISSENT OF
JUSTICE SCALIA AND OTHERS THE
RIGHT OF SELF-REPRESENTATION AND
I READ THE OPINION AS NOT
ALLOWING STATES TO GO FARTHER IN
LIMITING THE RIGHT THAN THE
PARAMETERS OF THE MENTAL
ILLNESS.

AND, IT MAY BE THAT -- YOU KNOW,
IT HAS TO BE CHALLENGED IN A

CASE, YOU KNOW, WHERE THERE IS
SOMEBODY WHO IS marginally
INTELLIGENT AND YOU KNOW, THAT
THERE SHOULD NOT HAVE BEEN
ALLOWANCES OF
SELF-REPRESENTATION BECAUSE THE
RIGHT OF FAIR TRIAL BUT I DON'T
SEE HOW IN A RULES CASE, GIVEN
THAT WE ARE REALLY JUST TRYING
TO DEAL WITH WHETHER WE SHOULD
IM ELEMENT THE LIMITATION OF
EDWARDS THAT WE COULD GO FARTHER
AND GIVE ME WHERE WE HAVE
AUTHORITY TO DO THAT, UNDER THE
SUPREME COURT PRECEDENT.

>> IN EDWARDS, THE COURT DOES
TALK ABOUT MENTAL CAPACITY.
AND RATHER THAN SEVERELY MENTAL
ILLNESS.

>> BUT YOU READ ALL THE FACTS OF
INDIANA VERSUS EDWARDS, AS WAS
POINTED OUT BY JUSTICE LABARGA
THE MAN WAS FOUND TO BE
INCOMPETENT TO STAND TRIAL AND
ALL I'VE READ, JUST BECAUSE
SOMEONE IS COMPETENT TO STAND
TRIAL YOU HAVE TO LOOK AT THE
MENTAL ILLNESS -- WHETHER THIS
MENTAL ILLNESS IS SO SEVERE AS

TO INTERFERE WITH HIS ABILITY TO
REAL REPRESENT HIMSELF.

AND THAT THAT --

>> WHAT YOU ARE TALK ABOUT IS
CAPACITY FOR SELF-REPRESENTATION
AT TRIAL.

>> BUT, CAPACITY FOR -- YOU NOW
HAVE OPENED UP EDUCATION, YOU
HAVE OPENED UP TO INTELLIGENCE,
OPENED UP TO WHETHER HE'S GOT
PRIOR EXPERIENCE IN THE CRIMINAL
JUSTICE SYSTEM, AND THAT IS NOT
-- YOU KNOW, WE'D BE CHANGING
THE WHOLE NATURE OF THE FERETTA

--

>> I WOULD LIMIT TO IT MENTAL
CAPACITY AND GO NO FARTHER.

>> WE HAVE... DEFENDANT SEEKING
TO WAIVE HIS RIGHT TO COUNSEL.
INCOMPETENT TO WAIVE COUNSEL NOT
INCOMPETENT TO REPRESENT HIMSELF
AND I THINK WHAT YOU ARE SAYING
NOW IS THAT IF WE ARE GOING TO
ALLOW SOMEONE TO REPRESENT
HIMSELF, WE HAVE TO MAKE A
DETERMINATION THAT THE PERSON
HAS THE ABILITY TO DO SO.

>> THAT IS WHERE INDIANA VERSUS

EDWARDS REPRESENTS A SEA CHANGE
AND TALKS ABOUT THE DIFFERENT
RIGHTS AND RIGHT TO WAIVE
COUNSEL VERSUS THE RIGHT OF
SELF-REPRESENTATION.

>> AND IN BOWING, THE TRIAL
COURT ASKED THE DEFENDANT, HOW
MANY PEREMPTORY CHALLENGES DO
YOU HAVE, HOW MANY CHALLENGES
FOR CAUSE DO YOU HAVE, HOW MANY
HEARSAY QUESTIONS ARE THERE, IS
THAT WHERE WE ARE GOING.

>> IT IS NOT LEGAL SKILLS AND
WE'RE NOT ASKING THE JUDGE TO
CHANGE THE RULES, AND WE ARE
ASKING THE MENTAL CAPACITY TO
UNDERSTAND THE CONCEPTS AND NOT
THE DEFENDANT'S KNOWLEDGE OF
LEGAL ISSUES GOING TOWN TRIAL.

>> I WOULD JUST -- WHY WOULD IT
NOT LEAD US AND WE ARE NOT
SHOOTING THE MESSENGER, I HOME
YOU UNDERSTAND THAT, WE HAVE
SEEN WHAT HAPPENS THIS THESE
KINDS OF CASES WITH THAT RIGHT
BUT IT IS A RIGHT THAT EXISTS.

JUST TO SORT OF GO INTO THE
ISSUE OF WELL, ONE MAY SAY AND
SUGGEST THAT YOU DON'T HAVE THE

MENTAL CAPACITY TO DO THAT, BY
EVEN WAIVING THE RIGHT.
IT'S SO CLEAR, IF YOU DON'T KNOW
THE REVIEWS AND WHAT IS GOING ON
IN A PARTICULAR COURTROOM AT THE
TIME YOU ARE THERE, THAT IN AND
OF ITSELF SHOWS A LACK OF MENTAL
CAPACITY, TO HAVE AN
APPRECIATION OF WHAT IS GETTING
READY TO HAPPEN TO YOU.

>> IT IS THIS ABILITY TO
UNDERSTAND THE RULES, AND NOT
THE KNOWLEDGE OF THE RULES GOING
IN.

AND THAT IS THE DIFFERENCE I'M
DISCUSSING.

>> WITH THAT, MR. GIFFORD YOU
HAVE USED ALL OF YOUR TIME AND
MR. BATEMEN, IF YOU HAVE
ANYTHING --

>> I LEARNED LONG AGO, IF YOU
LISTEN CAREFULLY, THAT SOMETIMES
IT IS BETTER NOT TO SAY ANYTHING
AND I LISTENED TO YOUR QUESTIONS
AND I DON'T THINK THERE IS
ANYTHING I CAN SAY THAT WOULD
ADD, SO, UNLESS YOU HAVE A
QUESTION.

>> I GUESS, I JUST -- A CLOSING QUESTION, MR. GIFFORD ON BEHALF OF THE FLORIDA PUBLIC DEFENDERS ASSOCIATION REALLY RAISES TO ME A VERY SIGNIFICANT ISSUE AND WE SEE IT IN ALL DEATH PENALTY CASES WHERE THERE IS SELF-REPRESENTATION IS THAT THE -- YOU'RE AT THE TRIAL AND THE TRIAL IS NOT ANYWHERE NEAR WHAT WE UNDERSTAND A TRIAL TO BE. AND SO I MEAN, THE QUESTION REALLY COMES DOWN TO, WHETHER WITHIN ALLOWING SELF-REPRESENTATION AND LIMITING IT FURTHER HAS TO COME UP TO A RULE CHANGE OR A JUDGE SAYING, I WILL NOT PERMIT THIS. AND THEN, HAS TO BE SUCCESSFULLY ARGUED ON APPEAL... NOT PERMITTED AND IS THERE JUST IN TERMS OF YOUR YEARS OF THE CRIMINAL -- AS A CRIMINAL COURT JUDGE DO YOU AGREE WITH MR. GIFFORD HAVING FURTHER LIMITATIONS OF FERETTA WOULD ACTUALLY PROMOTE THE CONSTITUTIONAL VALUES OF FAIR TRIAL.

>> WELL, FIRST OF ALL, LET ME SAY I'M SYMPATHETIC TO THE ASSOCIATION'S POSITION, AND I UNDERSTAND, I DID SERVE AS A PUBLIC DEFENDER AT SOME POINT IN THE -- LONG AGO.

AND HAD THOSE CASES COME UP OFTEN.

BUT LOOKING AT IT IN THE CONTEXT OF THE WAY YOU PRESENTED IT TO THE COMMITTEE I'M NOT PREPARED TODAY TO SAY YOU SHOULD GO FURTHER THAN THAT.

THERE MIGHT BE ANOTHER OPPORTUNITY TO DO THAT BUT AS I WAS LOOKING AT, WHEN JUSTICE LABARGA MENTIONED -- THE RULE WAS AMENDED IN 1998, A LONG TIME AGO TO COVER THESE THINGS, AND PUTTING THE ONE MORE LIMITATION I THINK IS APPROPRIATE, UNDER THE CASE LAW RIGHT NOW.

I CAN'T ADD -- I DON'T THINK IT SHOULD ADD ANY MORE AND I THINK YOUR QUESTIONS WERE RIGHTED ON POINT, THAT IS WHY I DIDN'T FEEL LIKE I NEEDED TO ADDRESS IT ANY FURTHER.

>> THANK YOU.

>> THANK YOU VERY MUCH, THANK
BOTH OF YOU FOR YOUR ARGUMENTS
HERE TODAY.

WE'LL SEE YOU TOMORROW.