>> TAKE UP THE CASE OF
ALLEN V. THE STATE.
COUNSEL FOR THE APPELLATE IS
READY.
>> THANK YOU, CHIEF JUSTICE
CANADY.
MAY IT PLEASE THE COURT, RICHARD
BRACEY ON BEHALF OF MR. ALLEN.
I HOPE TO FOCUS ON ISSUE ONE.
IN SHORT, THIS CASE SHOULD BE
REMANDED FOR A NEW PENALTY PHASE
TRIAL BECAUSE THE TRIAL COURT
FAILED TO RENEW THE OFFER OF
COUNSEL PRIOR TO THE PENALTY
PHASE TRIAL BELOW.
WITH THAT IN MIND, THIS CASE IS
ABOUT BEING FAITHFUL TO THE TEXT
OF THE FLORIDA CONSTITUTION.
IN THIS PARTICULAR, IT'S ABOUT
BEING FAITHFUL TO THE PORTION OF
ARTICLE I, SECTION 16 THAT
PROVIDES IN ALL CRIMINAL
PROSECUTIONS THE ACCUSED SHALL
HAVE THE RIGHT TO BE HEARD IN
PERSON BY COUNSEL OR BOTH.
>> COUNSEL, COULD I-- I'M SORRY
TO INTERRUPT YOU.
I APPRECIATE YOUR REALLY
THOUGHTFUL REPLY BRIEF ON THE
PRECEDENT AND EVERYTHING.
BUT FOR FUNDAMENTAL ERROR TO
KICK IN, IT WOULD HAVE TO BE A
CONSTITUTIONAL VIOLATION, RIGHT?
AND IT SEEMS LIKE THE TRAILER
OPINION, WHICH I'M ASSUMING IS
THE SOURCE OF THIS REQUIREMENT
THAT THE OFFER BE RENEWED BEFORE
EVERY CRITICAL STAGE, I MEAN,
THAT STRUCK ME AS BEING
COMPLETELY MADE UP AND NOT
GROUNDED IN THE TEXT AT ALL.
COULD YOU-- I MEAN, THERE'S NO
FEDERAL, THERE'S NO FEDERAL
COUNTERPART TO THAT REQUIREMENT,
RIGHT?
IN A CONSTITUTIONAL SENSE?
>> WELL, JUSTICE MUNIZ, MY
POSITION-- I JUST WANT TO MAKE
SURE I'M CLEAR ON YOUR QUESTION.
YOU'RE I SAYING THAT THE TRAILER

KIND OF REASONING AND CONCLUSION
APPEARS TO BE SORT OF UNTETHERED
FROM THE FLORIDA CONSTITUTIONAL
TEXT?
>> YEAH.
I MEAN, I KNOW THAT IT PURPORT
TO BE APPLYING TO ARTICLE I,
SECTION 16, BUT IT JUST KIND OF
ANNOUNCES THIS RULE THAT IT
DIDN'T SEEM LIKE IT WAS GROUNDED
IN TEXT, IT DIDN'T SEEM LIKE IT
WAS GROUNDED IN HISTORY, IT'S
NOT GROUNDED IN A COMPARISON TO
SOME SORT OF FEDERAL BASELINE.
AND I'M NOT SAYING-- I
UNDERSTAND THAT IT'S ALSO IN OUR
RULES OF PROCEDURE WHICH, YOU
KNOW, THAT SORT OF TAKES CARE
OF, YOU KNOW, THE REQUIREMENT OF
IT AND EVERYTHING, BUT IN ORDER
FOR IT TO RISE TO THE LEVEL OF A
CONSTITUTIONAL A VIOLATION NOT
TO DO THAT, IT JUST SEEMED LIKE
THE COURT JUST SORT OF ASSERTED
THAT AND, YOU KNOW, IT DIDN'T
SEEM LIKE IT WAS GROUNDED IN
ANYTHING OTHER THAN WHAT THE
COURT THOUGHT WOULD BE GOOD
POLICY.
>> WELL, I WOULD, I WOULD
DISAGREE, JUSTICE MUNIZ.
FIRST OF ALL, IF I COULD, I
WOULD LIKE TO ADDRESS SORT OF
THE PRECEDENT AND THE TEXT.
BUT ALSO TO THE EXTENT YOUR
QUESTION CONCERNS WHETHER AN
ERROR WOULD BE FUNDAMENTAL, OF
COURSE, I WOULD LIKE TO ADDRESS
THAT SEPARATELY IF I COULD.
BUT IN TERMS OF, ESSENTIALLY,
WHETHER THIS COURT-- WELL,
FIRST OF ALL, I SHOULD SAY THIS:
I DO NOT BELIEVE THAT TRAILER
WAS UNTETHERED FROM THE FLORIDA
CONSTITUTIONAL TEXT.
I BELIEVE THAT THAT IS A CORRECT
OPINION THAT'S GROUNDED IN THE
ACTUAL TEXT.
OF COURSE, I WOULD START BY
SAYING, YOU KNOW, THE QUESTION

IS NOT NECESSARILY WHETHER THAT OPINION IS RIGHT OR WRONG, BUT WHETHER THIS COURT SHOULD ABIDE BY IT.
AND MY BASIC POSITION WOULD BE THAT THIS COURT SHOULD NOT RECEDE FROM TRAILER.
AND UNDER ANY VIEW OF THE APPROACH TO STARE DECISIS OUTLINE IN POOLE THAT WOULD BE TRUE.
AND IN SHORT, THAT'S BECAUSE TRAILER WAS NOT CLEARLY ERRONEOUS.
IT DOES NOT CONFLICT WITH SOME HIGHER SOURCE OF AUTHORITY WHETHER IT BE THE FEDERAL CONSTITUTION, A STATUTE OR A DECISION OF THE UNITED STATES SUPREME COURT.
AND IF I COULD ELABORATE ON THAT A LITTLE BIT, YOU KNOW, THIS COURT HAS OBVIOUS AUTHORITY TO INTERPRET STATE CONSTITUTIONAL PROVISIONS TO PROVIDE GREATER AUTHORITY THAN THE FEDERAL CONSTITUTIONAL PROVISIONS AS A GENERAL MATTER.
CONFORMITY CLAUSES ARE AN EXCEPTION, BUT I DON'T BELIEVE THAT IS AN EXCEPTION THAT APPLIES HERE.
FURTHERMORE, CONTRARY TO THE STATE'S ARGUMENT, THE TRAILER DECISION DOES NOT CONFLICT WITH THE SIXTH AMENDMENT RIGHT TO SELF-REPRESENTATION.
AND I SHOULD JUST BACK UP A STEP AND SAY, FRANKLY, THE RIGHT GUARANTEED BY ARTICLE I, SECTION 16, IT IS DIFFERENT IN NATURE FROM THE SIXTH AMENDMENT RIGHT TO THE ASSISTANCE OF COUNSEL.
OF COURSE, THE UNITED STATES SUPREME COURT HAS ALSO, I'M SORRY, HAS ALSO CONCLUDED THAT THE SIXTH AMENDMENT IMPLIES THE RIGHT TO SELF-REPRESENTATION.
HERE I WOULD POINT OUT THAT THE TEXT OF THE FLORIDA CONSTITUTION

EXPLICITLY SAYS A RIGHT BOTH TO
BE HEARD IN PERSON OR BY
COUNSEL.
AND SO MY BASIC--
>> HOW DOES THAT, HOW DOES
THAT-- SO WHAT?
>> YES, SIR.
>> HOW DOES THAT MAKE IT
DIFFERENT?
>> OKAY.
YES, SIR, JUSTICE CURIEL.
WELL, IF I COULD TURN TO THIS
COURT'S REASONING IN TRAILER,
BECAUSE I THINK THE REASONING IN
TRAILER ACTUALLY ILLUMINATES
THIS ISSUE.
FIRST OF ALL, IN TRAILER THIS
COURT STARTED BY SAYING THAT A
PRIMARY RIGHT EMBODIED BY THE
RELEVANT PORTION OF ARTICLE I,
SECTION 16 IS THE RIGHT TO
DETERMINE ONE'S MANNER OF
REPRESENTATION.
THIS COURT WENT ON TO SAY THAT
RIGHT WOULD HAVE, IN ORDER FOR
THAT RIGHT TO HAVE MEANING, THAT
RIGHT HAS TO APPLY AT LEAST
CRUCIAL STAGE OF THE
PROSECUTION.
AND I THINK WHAT'S GOING ON
THERE IS THE PUBLIC MEANING OF
THE TEXT AT ISSUE ACCOUNTS FOR
THE FACT THAT CIRCUMSTANCES
CHANGE OVER THE COURSE OF A
CRIMINAL PROCEEDING.
IN PARTICULAR, THEY CHANGE--
THE CIRCUMSTANCES CHANGE
SIGNIFICANTLY FROM ONE CRUCIAL
STAGE OF A CRIMINAL PROCEEDING
TO THE NEXT.
>> BUT YOU'RE NOT ARGUING THAT
THE RIGHT IS ANY BROADER UNDER
ARTICLE I, SECTION 16 THAN IT IS
UNDER THE SIXTH AMENDMENT AS,
SAY, UNDERSTOOD IN FARETTA, ARE
YOU?
OR ARE YOU SAYING THAT THE
DEFENDANT'S RIGHT UNDER THE
FLORIDA CONSTITUTION DIFFERS IN
SOME MEANINGFUL SENSE THEN AS

IT'S BEEN HELD UNDER FARETTA AND
ITS PROGENY TO BE ARTICULATED BY
THE U.S. SUPREME COURT?
>> NO, SIR, JUSTICE CURIEL.
I DON'T BELIEVE THAT I'M TRYING
TO SAY THAT IT'S BROADER IN
SCOPE.
INSTEAD, I'M TRYING TO ARGUE
THAT IT'S SOMEWHAT DIFFERENT IN
NATURE.
I THINK THE FACT THAT THE
ARTICLE I, SECTION 16 USES THE
EXPLICIT WORD BOTH, I THINK BOTH
MEANS SOMETHING.
IT DOESN'T JUST SAY YOU HAVE THE
RIGHT TO--
>> WELL, HELP ME UNDERSTAND-- I
GUESS THAT WAS MY EARLIER
QUESTION.
WHAT DOES IT MEAN?
I MEAN, HOW DOES THAT AMPLIFY
THE RIGHT?
I MEAN, ARE YOU SAYING THAT
UNDER THE FLORIDA CONSTITUTION,
FOR EXAMPLE, A DEFENDANT WOULD
BE ABLE TO ENGAGE BOTH IN, YOU
KNOW, SPEAKING THROUGH COUNSEL
AND ALSO DIRECTLY TO THE COURT?
IS THAT WHAT THE WORD BOTH MEANS
IN THE CONSTITUTION UNDER YOUR
LIGHTS?
>> MY POSITION IS THAT THE WORD
BOTH AT LEAST MEANS WHAT THIS
COURT SAID IT MEANT IN TRAILER,
WHICH IS THAT AT ONE STAGE OF
THE PROSECUTION A DEFENDANT CAN
BE HEARD IN PERSON, BUT AT
ANOTHER CRUCIAL STAGE A
DEFENDANT CAN BE HEARD BY
COUNSEL.
AND SO I WOULD GO ON TO POINT
OUT THAT, NOT SURPRISINGLY IN
TRAILER, THIS COURT WENT ON TO
SAY THAT A DEFENDANT IS ENTITLED
TO DECIDE WHETHER THEY REQUIRE
THE ASSISTANCE OF COUNSEL AT
EACH CRUCIAL STAGE.
AND TO THAT END, THIS COURT ALSO
SAID THAT WHERE A WAIVER OF
COUNSEL IS SECURED AT ONE STAGE,

IT ONLY APPLIES AT THAT STAGE.
IT HAS TO BE RENEWED AT EACH
SUBSEQUENT CRUCIAL STAGE.
AND--
>> THAT'S WHERE REALLY, I MEAN,
BECAUSE NO ONE'S-- THIS CASE
ISN'T ABOUT SOMEONE ASKING FOR
COUNSEL OR ASKING TO DO
SOMETHING DIFFERENT AT A
DIFFERENT STAGE AND WHETHER
THAT'S OKAY.
I MEAN, THE QUESTION IS, IS THIS
SOMETHING IN THE TEXT THAT WOULD
SUGGEST THAT IT'S NOT ENOUGH TO
HAVE AN INFORMED WAIVER AT THE
OUTSET WHERE YOU TELL THE PERSON
THE RULES OF THE GAME, YOU
EXPLAIN TO THEM THAT, YOU KNOW,
IF YOU CHANGE YOUR MIND, WE CAN
ADDRESS THAT LATER, ETC., ETC.
WHY IT'S A CONSTITUTIONAL
VIOLATION NOT TO KEEP REPEATING
THE OFFER AT DIFFERENT STAGES OF
THE PROCEEDING.
>> YES, SIR.
WELL, JUSTICE MUNIZ,
AGAIN, PLEASE ALLOW ME TO SAY
THAT WE'RE NOT WRITING ON A
BLANK SLATE.
YOU KNOW, TRAILER HAS BEEN
ISSUED.
AND WHAT I WOULD SAY IS THAT THE
RESPECTIVE LANGUAGE, THE RIGHT
TO BE HEARD BOTH IN PERSON OR BY
COUNSEL, I MEAN, THAT IS A
VAGUELY-WORDED CLAUSE.
AND IT HAS WHAT I WOULD CALL A
BROAD PUBLIC MEANING, AND IT'S
PERFECTLY APPROPRIATE IN THOSE
CIRCUMSTANCES WHEN WE'RE DEALING
WITH A VAGUELY-WORDED TEXT FOR A
COURT TO, IN THE WORDS OF JAMES
MADISON, LIQUIDATE THAT MEANING,
TO EXPOUND ON WHAT THAT MEANS.
AND I DON'T THINK IT WAS CLEARLY
ERRONEOUS AT ALL FOR THIS COURT.
>> I'M JUST STRUGGLING TO SEE
HOW ANY AMBIGUITY IN THAT TEXT
IS RESOLVED BY THE REPEATED
INQUIRIES THAT ARE REQUIRED BY

TRAILER.
AND I'LL JUST OBSERVE IT SEEMS TO BE A FEATURE OF THESE CASES WHERE A DEFENDANT HAS CHOSEN SELF-REPRESENTATION THAT THE DEFENDANTS ARE ANNOYED AT LEAST AND SOMETIMES DISTRESSED BY THE REPEATED INQUIRIES.
YOU KNOW, I'VE TOLD YOU--
[LAUGHTER]
WHAT I WANT TO DO, WHY DO YOU KEEP ASKING ME ABOUT THIS?
AND SO THEY FEEL THAT SOMEHOW IT IS, IT IS ACTUALLY CALLING INTO QUESTION THE CHOICE THAT THEY HAVE CLEARLY ARTICULATED IN WHICH THEY, IT'S BEEN EXPLAINED TO THEM FROM THE BEGINNING IS SOMETHING THAT DOES NOT REQUIRE THAT THEY MAINTAIN THAT CHOICE THROUGHOUT DIFFERENT STAGES OF THE PROCEEDING.
NOW, ISN'T THAT ALL CORRECT?
>> WELL, CHIEF JUSTICE CANADY, I CERTAINLY ACKNOWLEDGE THAT THERE HAVE BEEN INSTANCES WHERE DEFENDANTS HAVE EXPRESSED SOME IRRITATION WITH THAT BEING RENEWED.
BUT I BELIEVE THAT'S FAR MORE THE EXCEPTION THAN THE NORM.
AND IF I COULD RETURN TO WHAT YOU INITIALLY STARTED OUT ADDRESSING, I WILL JUST SAY IT'S NOT A MATTER OF THE COURT CLEARING UP AMBIGUITY ABOUT THE TEXT, IT'S MORE THAT IT'S THE COURT'S PROPER ROLE TO DETERMINE HOW A VAGUELY-WORDED CONSTITUTIONAL PROVISION SHOULD APPLY IN A PARTICULAR CASE.
AND I BELIEVE THAT THAT'S WHAT THIS COURT DID IN TRAILER AND THAT IT'S SIMPLY NOT CLEARLY ERRONEOUS, IT DOESN'T CLEARLY CONFLICT WITH SOME HIGHER SOURCE OF AUTHORITY.
IN PARTICULAR, IT DOES NOT CLEARLY CONFLICT WITH THE SIXTH AMENDMENT RIGHT TO

SELF-REPRESENTATION.
AND IF I COULD BRIEFLY ELABORATE ON THAT POINT, THE UNITED STATES SUPREME COURT HAS A MADE CLEAR THAT IN DETERMINING WHETHER THE SIXTH AMENDMENT RIGHT TO SELF-REPRESENTATION IS VIOLATED, THE PRIMARY FOCUS IS ON WHETHER THE DEFENDANT HAD THE FAIR CHANCE TO PRESENT HIS OR HER OWN CASE IN HIS OR HER OWN WAY.
AND, CERTAINLY, SIMPLY RENEWING THE OFFER OF COUNSEL AT NOT EVEN EVERY STAGE OF THE PROCEEDING, BUT OUTSIDE OF THE PRESENCE TO HAVE JURY WOULD NOT INFRINGE UPON A DEFENDANT'S RIGHT TO PRESENT HIS OR HER CASE HIS OR HER OWN WAY.
SO, AGAIN, EVEN IF, EVEN IF THIS-- EVEN IF REASONABLE MINDS COULD DISAGREE THAT THE RIGHT TO BE HEARD IN PERSON, BY COUNSEL OR BOTH DOES NOT NECESSARILY REQUIRE-- WHEN IT'S APPLIED IN A PARTICULAR CASE, THAT THE OFFER BE REVIEWED AT EACH CRUCIAL STAGE, EVEN IF REASONABLE MINDS COULD DISAGREE, IT'S NOT CLEARLY I ROAN NOW.
IT DOESN'T CONFLICT WITH SOME HIGHER SOURCE OF AUTHORITY.
IT DOESN'T CLEARLY CONFLICT.
>> COULD YOU ADDRESS THE WAIVER ISSUE?
OBVIOUSLY, THIS, THE ISSUE WE'VE BEEN FOCUSING ON IS SUPER INTERESTING, BUT IT MIGHT BE KIND OF ACADEMIC IN THIS CASE GIVEN THE WAY THIS ACTUALLY PLAYED OUT.
>> YES, SIR.
YES, SIR.
WELL, WHAT I WOULD SAY THERE, JUSTICE MUNIZ, IS THIS-- MY UNDERSTANDING OF THIS COURT'S PRECEDENT IS THAT IN ORDER TO WAIVE A FUNDAMENTAL ERROR--
AND, OF COURSE, I'M DISTINGUISHING A FUNDAMENTAL

ERROR FROM A RUN-OF-THE-MILL, NORMAL ERROR.
BUT IN ORDER TO WAIVE FUNDAMENTAL ERROR, THE FUNDAMENTAL ERROR HAS TO BE INVITED.
AND MY UNDERSTANDING OF THIS COURT'S CASE LAW HERE, I'M THINKING OF KNIGHT V. STATE, LOWE V. STATE.
MY UNDERSTANDING-- I'M SORRY, NOT KNIGHT V. STATE, BUT LOWE V. STATE AND UNIVERSE UNIVERSAL INSURANCE COMPANY AGAINST--
[INAUDIBLE]
THE FUNDAMENTAL ERROR HAS TO BE REQUESTED OR AT LEAST AFFIRMATIVELY AGREED TO, AND THAT'S CONTRASTED TO MERELY ACQUIESCE TO--
>> HERE THOUGH, I MEAN, WASN'T THE DEFENDANT ESSENTIALLY GIVEN AN OPPORTUNITY TO CURE?
IT SEEMS LIKE THE ONLY REASONABLE WAY TO READ WHAT THE TRIAL COURT SAID HERE WAS ACKNOWLEDGING THAT HE SHOULD HAVE MADE THE OFFER BEFORE THE PENALTY PHASE STARTED AND ESSENTIALLY TELLING THE DEFENDANT IF YOU, IF YOU WANTED COUNSEL FOR THAT, THEN, YOU KNOW, THE IMPLICATION WAS WE'LL FIX IT, WE'LL DO IT AGAIN.
AND THE DEFENDANT SAID, NO, I'M FINE.
>> YES, SIR.
>> SO HOW MUCH MORE DO YOU HAVE TO DO TO WAIVE SOMETHING THAN THAT?
>> WELL, I BELIEVE FOR IT TO BE FUNDAMENTAL ERROR, JUSTICE MUNIZ, AND I WOULD LIKE TO ELABORATE A LITTLE BIT, IF I COULD.
BUT IN ORDER TO WAIVE FUNDAMENTAL ERROR, I BELIEVE IT HAS TO BE INVITED OR REQUESTED, AND I WOULD CONTRAST THAT TO WHAT HAPPENED HERE.

HERE THE TRIAL COURT DID, AFTER THE PENALTY PHASE TRIAL WAS OVER, DID QUESTION MR. ALLEN AND LATER CONDUCT AN EXTENSIVE COLLOQUY, AND MR. ALLEN SAID HE HAD NOT WANT TO BE DEFENDED BY COUNSEL.
I WOULD STRESS THAT WAS ACQUIESCENT TO EARLIER TRIAL.
I WOULD ALSO LIKE TO ADDRESS WHY, IN ESSENCE, THOSE POST HOC EFFORTS TO CURE THE TRIAL COURT'S EARLIER EFFORT FAILED SHORT.
FIRST OF ALL, I WOULD POINT OUT THAT THOSE POST HOC EFFORTS DID NOT PROVIDE MR. ALLEN WITH A MEANINGFUL OPPORTUNITY FOR PURPOSES OF ARTICLE I, SECTION 16, DETERMINE HIS MANNER OF REPRESENTATION AT THAT CRUCIAL STAGE OF A CAPITAL PROCEEDING.
AND I WOULD NOTE IN SUPPORT OF THAT, THE STATE AND TRIAL COURT BOTH MADE CERTAIN REMARKS AND LATER COLLOQUY.
FOR INSTANCE, THE STATE STARTED OUT BY SAYING, JUDGEMENT, WE JUST NEED MR. ALLEN TO REAFFIRM THAT HE DID NOT EARLIER WANT COUNSEL AT THE PENALTY PHASE TRIAL STAGE.
AND SHORTLY AFTER, MR. ALLEN, I JUST NEED YOU TO AFFIRMATIVELY RESPOND THAT YOU DID NOT WANT COUNSEL AT THIS EARLIER STAGE.
AND THEN LATER, PRIOR TO THE COLLOQUY, THE STATE AGAIN SPOKE TO THE COURT AND SAID, JUDGE, WE JUST NEED MR. ALLEN TO REAFFIRM THAT HE DID NOT WANT COUNSEL, AND, YOU KNOW, IN ESSENCE, WE JUST WANT TO TIE UP ALL THE LOOSE ENDS AND MAKE THE RECORD CLEAR.
I WOULD ARGUE IN THOSE CIRCUMSTANCES IT WAS CLEAR TO MR. ALLEN THAT HIS OPPORTUNITY TO BE HEARD BY COUNSEL AT THAT CRUCIAL STAGE HAD ALREADY COME

AND GONE.
I WOULD ALSO POINT OUT THAT THE
THE EXTENSIVE COLLOQUY WAS
PRIMARILY FOCUSED ON WHETHER HE
DESIRED COUNSEL AT THE UPCOMING
SPENCER HEARING, AND I WOULD
AGAIN NOTE THAT-- I WOULD
DIRECT THE COURT'S ATTENTION
JUST TO THE NATURE OF THIS
RIGHT, WHICH IS THE RIGHT TO
DETERMINE TO BE HEARD BOTH IN
PERSON AND BY COUNSEL.
SO, AGAIN, AT ONE STAGE A
DEFENDANT IN FLORIDA IS, HAS THE
RIGHT TO BE HEARD BY COUNSEL AND
AT A LATER STAGE HE OR SHE HAS
THE RIGHT TO BE HEARD IN PERSON.
>> REALLY WE'RE TALKING ABOUT, I
MEAN, THIS SORT OF GETS BACK TO
THE OTHER THING WHERE IT'S KIND
OF WHAT THE CASE IS ABOUT REALLY
IS THE RIGHT TO BE REMINDED
REPEATEDLY ABOUT YOUR RIGHT.
IT'S NOT ABOUT YOUR RIGHT TO
HAVE COUNSEL.
>> WELL, I BELIEVE THAT
ACCORDING TO THIS COURT'S
DECISION IN TRAILER WHICH,
AGAIN, I WOULD ARGUE IS NOT
CLEARLY ERRONEOUS, THAT IN ORDER
FOR A PERSON TO HAVE A
MEANINGFUL UNDERSTOOD, THAT THE
COURT HAS TO RENEW THAT OFFER.
AND THAT DID NOT HAPPEN HERE,
JUSTICE MUNIZ.
AND IF I COULD JUST BRIEFLY ON
THIS POINT OF WHETHER THE
COURT'S POST HOC EFFORTS
SECURED--
[INAUDIBLE]
I WOULD JUST LIKE TO DIRECT THE
COURT'S ATTENTION TO TWO THE
FLORIDA DISTRICT COURT OF
APPEALS DECISIONS THAT
ESSENTIALLY ARE CONCLUDED A
TRIAL COURT'S POST HOC EFFORTS
DID NOT CURE ITS EARLIER
FAILURE.
AND I BELIEVE THESE DECISIONS
ARE DISCUSSED ON PAGE 26 OF THE

REPLY BRIEF.
BUT IN--
[INAUDIBLE]
THAT'S ESSENTIALLY WHAT THE COURT CONCLUDED.
AND IF I COULD, MY HOPE IS TO ALSO BE ABLE TO ADDRESS FUNDAMENTAL ERROR ISSUE AFTER THIS.
BUT TO BRIEFLY ADDRESS THE FACTS OF BURL KEY, THERE, IN ESSENCE, THE DEFENDANT WAS CHARGED WITH THE VIOLATION OF PROBATION BASED IN PART AT LEAST, HE WAIVED HIS RIGHT TO COUNSEL AT THE PROBATION HEARING.
DID NOT RENEW THE OFFER A, BUT HE WAS FOUND IN VIOLATION, HE WAS SENTENCED.
THE TRIAL COURT THEN ASKED DO YOU WANT TO REPRESENT YOURSELF ON THE UPCOMING TRIAL, HE SAID, YES.
ON APPEAL THE DISTRICT COURT OF APPEAL BASICALLY SAID EVEN THOUGH THE DEFENDANT'S INDICATION AFTER THE VIOLATION OF PROBATION HEARING ANTICIPATED HE WANTED TO CONTINUE TO REPRESENT HIMSELF, THAT DIDN'T SECURE FAILURE TO REMOVE THE OFFER.
HOWARD ALMOST GOES ONE STEP FURTHER A WAY.
HOWARD REPRESENTED HIMSELF AT TRIAL, WAS CONVICTED, FILED A MOTION FOR NEW TRIAL.
THE SENTENCING STAGE PLAYED OUT OVER THE COURSE OF AT LEAST THE FIRST FEW WEEKS.
AT HIS FIRST APPEARANCE, THE OFFER OF COUNSEL WAS NOT RENEWED.
A COUPLE OF APPEARANCES LATER, THE DEFENDANT ANTICIPATED HE DID NOT WANT TO BE INDICATED THAT HE DID NOT WANT TO BE REPRESENTED BY COUNSEL.
SO AT LEAST ON THIS ISSUE OF WHETHER THE COURT'S POST HOC

EFFORTS HERE CURED ITS EARLIER FAILURE, I WOULD ARGUE THAT THOSE TWO DECISIONS SHOULD BE PERSUASIVE.
NOW, IF I COULD JUST MORE SQUARELY ADDRESS THE ISSUE OF WHETHER THE ERROR HERE WAS FUNDAMENTAL ERROR, MY BASIC POSITION WOULD BE THAT THAT ERROR AMOUNTED TO FUNDAMENTAL ERROR.
THE BASIC VALIDITY OF THE TRIAL.
THAT, STATED DIFFERENTLY, IT WENT TO THE-- I'M SORRY, WAS EQUIVALENT TO A VIOLATION OF DUE PROCESS.
AND I WOULD START BY NOTING THAT THE UNITED STATES SUPREME COURT AND THIS COURT HAVE NOTE THAT THE RIGHT TO COUNSEL IS FUNDAMENTAL ERROR.
THE U.S. SUPREME COURT HAS STATED THAT THAT RIGHT IS INDISPENSABLE TO THE FAIR ADD MANAGERS OF OUR ADVERSARIAL SYSTEM OF CRIMINAL JUSTICE.
AND I WOULD ALSO, AND I WOULD ALSO DIRECT THE COURT'S ATTENTION TO THE FACT THAT WE'RE DEALING WITH A PARTICULAR PORTION OF OUR ADVERSARIAL SYSTEM OF CRIMINAL JUSTICE, AND THAT'S THE PENALTY PHASE.
I DON'T BELIEVE THERE COULD BE A MORE CRUCIAL STAGE THAN THAT PARTICULAR STAGE, AND I THINK THAT PARTICULARLY TRUE IN FLORIDA WHERE ONE JUROR DECIDING THAT LIFE IS THE APPROPRIATE SENTENCE MEANS THAT THE DEFENDANT'S LIFE GETS SPARED.
I WOULD ALSO NOTE THAT THE UNITED STATES SUPREME COURT, AND HERE I'M REFERRING TO ITS DECISION IN UNITED STATES V. MARCUS FROM 2010, IT RECOGNIZED THE POSSIBILITY THAT A STRUCTURAL TYPE OF ERROR COULD AMOUNT TO PLAIN OR FUNDAMENTAL ERROR REGARDLESS OF ITS ACTUAL

IMPACT ON THE TRIAL.
AND I WOULD ARGUE HERE THAT THE COURT'S FAILURE TO RENEW THE OFFER OF COUNSEL, THAT IT'S ANALOGOUS TO A STRUCTURAL ERROR. EVEN THOUGH IT'S DIFFICULT TO DETERMINE ITS IMPACT--
>> MR. BRACEY, EXCUSE ME, BUT THAT'S WHERE I STRUGGLE.
I MEAN, GENERALLY WOULD YOU AGREE THAT FUNDAMENTAL ERROR HAS GOT TO BE ERROR THAT MADE A DIFFERENCE IN THE OUTCOME, CORRECT?
>> WELL, JUSTICE LAWSON, I DO THINK THAT IS OFTEN TRUE.
THE WAY I READ THIS COURT'S PRECEDENT-- AND HERE I'M THINKING OF KNIGHT V. STATE--
AS I READ KNIGHT, IT SOUNDS LIKE FUNDAMENTAL ERROR COULD ARISE EITHER FROM THE RESULT NOT BEING ABLE TO BE OBTAINED, YOU KNOW, WITHOUT THE ERROR, OR IF THE ERROR VITIATES THE INITIAL--
>> BUT HOW WOULD IT VITIATE THE BASIC VALIDITY OF THE TRIAL IF THE ERROR MADE NO DIFFERENCE WHATSOEVER?
>> WELL, JUSTICE LAWSON, I DON'T THINK WE CAN SAY THAT IT MADE NO DIFFERENCE.
>> WELL, WHY CAN'T YOU SAY THAT IN LIGHT OF MR. ALLEN'S FORCEFUL AND CLEAR STATEMENTS THAT HE DID NOT WANT TO BE REPRESENTED, HE WANTED TO REPRESENT HIMSELF AT THE PENALTY PHASE?
SO HE SAID IN HIS OWN WORDS AND IF HE'D BEEN GIVEN THE OFFER, HE WOULD HAVE DECLINED IT.
AND SO WE KNOW ON THIS RECORD THAT THE TRIAL JUDGE'S FAILURE TO MAKE-- GIVE THE REMINDER MADE NO DIFFERENCE.
>> YES, SIR.
WELL, JUSTICE LAWSON, AGAIN, I WOULD RETURN TO THE POINT THAT I DON'T BELIEVE THOSE POST HOC EFFORTS BY THE COURT TO CURE ITS

EARLIER FAILURE, THAT THEY
ACTUALLY CURED IT.
ONE, I DON'T BELIEVE IT WAS A
MEANINGFUL OPPORTUNITY FOR
MR. ALLEN TO REALLY SAY--
>> WASN'T IT A MEANINGFUL
OPPORTUNITY FOR HIM TO SAY WHAT
HE THINKS WHAT HE WOULD HAVE
DONE, WHETHER HE HAD CHANGED HIS
MIND OR NOT?
>> NOT--
>>-- CHANGED HIS MIND?
WHY IS IT THAT?
>> YES, SIR.
I WOULD SAY THAT, AGAIN, IT'S
IMPORTANT TO RECOGNIZE THAT THE
REMARKS THAT WERE MADE, THE SORT
OF LEAD-UP TO THOSE QUESTIONS
AND COLLOQUY WHICH MADE IT
CLEAR, I BELIEVE, THAT THIS WAS
A FORMALITY, THAT THAT SHIP HAD,
IN ESSENCE, ALREADY SAILED AND
THEY JUST NEEDED TO MAKE THE
RECORD CLEAR, THEY NEEDED HIM TO
AFFIRMATIVELY RESPOND THAT THAT
WAS THE CASE.
AND I WOULD ALSO, JUSTICE
LAWSON, COME BACK TO THE POINT
THAT FUNDAMENTAL ERROR, UNLIKE
JUST RUN OF THE MILL ERROR, IT'S
NOT WAIVED SIMPLY BY ACQUIESCING
TO IT AFTER THE FACT.
IT HAS TO BE INVITED ON THE
FRONT END.
I BELIEVE IT HAS TO BE REQUESTED
OR AT LEAST AFFIRMATIVELY AGREED
TO.
AND HERE I DON'T BELIEVE--
>> I'M NOT TALKING ABOUT WAIVER,
I'M JUST TALKING ABOUT THE BASIC
PREMISE THAT IT'S HARD TO WRAP
MY MIND AROUND THE FACT THAT
SOMETHING COULD BE CLASSIFIED AS
FUNDAMENTAL ERROR IF IT'S CLEAR
ON THE RECORD THAT WOULD HAVE
MADE ZERO DIFFERENCE.
AND I KNOW YOU HAVE AN ARGUMENT
THAT WE CAN'T TELL THAT BECAUSE
OF THE WAY THE QUESTION WAS LED
TO MR. ALLEN, BUT I'M ASSUMING

THAT-- I THINK IT'S CLEAR THAT
WHY SHOULD ANYTHING BE
CLASSIFIED AS FUNDAMENTAL ERROR
WHEN IT WOULD NOT HAVE MADE A
DIFFERENCE IN THE RECORD?
>> YES, SIR.
WELL, JUSTICE LAWSON, JUST TO
BRIEFLY REPEAT MYSELF, I MEAN, I
DO THINK THAT WITH STRUCTURAL
TYPE OF ERRORS THEY CAN AMOUNT
TO FUNDAMENTAL ERROR.
THEY CAN VITIATE THE VALIDITY OF
A TRIAL EVEN IF IT'S DIFFICULT
TO MEASURE THEIR ACTUAL IMPACTS.
AND, AGAIN, I WOULD JUST SAY
THAT HERE MR. ALLEN'S SORT OF
POST HOC ASSURANCE THAT HEED HAD
NOT WANTED TO BE REPRESENTED BY
COUNSEL IN THE CIRCUMSTANCES OF
THIS CASE, THAT DID NOT--
>> YES.
ONE MORE FOLLOW-UP.
I MEAN, AS I RECALL, YOU STATE
THAT VIEW THIS AS A STRUCTURAL
ERROR, BUT I DON'T BELIEVE THAT
YOU FOUND ANY CASE THAT
CLASSIFIES IT AS SUCH.
>> WELL, NOW, JUSTICE LAWSON, I
WOULD DIRECT THE COURT'S
ATTENTION, AND THESE ARE CITED
ON PAGE 33 OF THE INITIAL BRIEF,
MULTIPLE DISTRICTS COURT OF
APPEAL HAVE CONCLUDED THAT EVEN
WHERE A WAIVER OF COUNSEL IS
ACCEPTED BUT THE OFFER IS LATER
NOT RENEWED, THAT THAT IS PER SE
REVERSIBLE ERROR.
>> ARE ANY OF THOSE CASES OTHER
THAN THE OTHER TWO YOU MENTIONED
CASES IN WHICH THE RECORD IS
CLEAR THAT THE DEFENDANT SAYS HE
DID NOT WANT COUNSEL?
>> WELL, THE TWO I MENTIONED
WOULD BE THE PRIMARY ONES ON
THAT POINT.
>> ALL RIGHT.
COUNSEL, YOU'RE ENTERING YOUR
REBUTTAL TIME.
YOU MAY CONTINUE, BUT YOU ARE
CONSUMING REBUTTAL TIME.

>> THANK YOU, JUSTICE CANADY.
IF THERE ARE NO FURTHER
QUESTIONS AT THIS POINT IN TIME,
I WOULD RESERVE THE BALANCE OF
MY TIME FOR REBUTTAL.
>> COUNSEL.
>> THANK YOU, CHIEF JUSTICE
CANADY.
MAY IT PLEASE THE COURT, MICHAEL
KENNETT FOR THE STATE OF
FLORIDA.
THIS IS THE DIRECT APPEAL OF A
CONVICTION FOR FIRST-DEGREE
MURDER AND THE ACCOMPANYING
DEATH SENTENCE.
WITH REGARD TO-- AND THERE'S NO
QUESTION ABOUT THE SUFFICIENCY
OF THE EVIDENCE IN THIS CASE TO
SUPPORT THE CONVICTION, AND
THERE REALLY IS NO QUESTION THAT
THE AGGRAVATION, WHEN WEIGHED
AGAINST THE MITIGATION, IS
PROPORTIONATE.
SO THE ISSUES REALLY DO INVOLVE
THE RIGHT TO COUNSEL AND THE
CORRESPONDING RIGHT TO
SELF-REPRESENTATION WHICH ARE,
ESSENTIALLY, COMPETING RIGHTS
UNDER THE SIXTH AMENDMENT.
ISSUE ONE, WHICH IS WHAT THE
APPELLANT SPENT HIS TIME
DISCUSSING, DOES REVOLVE AROUND
THIS COURT'S DECISION IN
TRAILER.
AND IT'S QUITE CLEAR THAT
TRAILER UNNECESSARILY INTERFERES
WITH A DEFENDANT'S RIGHT TO
SELF-REPRESENTATION.
HOW MANY TIMES DOES A DEFENDANT
HAVE TO BE ASKED ARE YOU
SURE YOU DON'T WANT A LAWYER?
AND ALTHOUGH HE WAS RESPECTFUL,
THE APPELLANT IN THIS CASE, HE
CLEARLY EXPRESSED SOME
FRUSTRATION WITH THE COURT WHEN
HE WAS GOING THROUGH HIS THIRD
FARETTA INQUIRY.
AND HE SAID, BUT I WOULD SAY
I'VE BEEN THROUGH TWO FARETTA
THAT HEARINGS, I REAFFIRMED AT

LEAST TEN TIMES AND I REAFFIRM
RIGHT NOW I WOULD LIKE TO
REPRESENT MYSELF.
I DO NOT NEED OR WANT AN
ATTORNEY OR STAND-BY COUNSEL.
IT IS CLEAR THAT THE APPELLANT
WANTED TO REPRESENT HIMSELF.
HE WAS COMPETENT TO DO SO.
THERE ARE NO QUESTIONS ABOUT
COMPETENCY.
THERE WAS AN INDIANA V. EDWARDS
EVALUATION THAT WAS PERFORMED.
HE WAS DEEMED COMPETENT UNDER
INDIANA V. EDWARDS TO PROCEED
PRO SE, AND THERE ARE NO
ABSOLUTELY NO QUESTIONS THAT HIS
INITIAL WAIVER WAS KNOWING,
VOLUNTARY, INTELLIGENT AND MADE
WITH EYES WIDE OPEN.
>> WHAT DO YOU SUGGEST AS A
FORMER TRIAL JUDGE WHO--
[INAUDIBLE]
WHEN DO YOU GIVE THE FARETTA?
WHEN DO YOU SUGGEST IT SHOULD BE
DONE?
>> WELL, AT THE EARLIEST MENTION
THAT-- OR EARLIEST INDICATION
THAT THE DEFENDANT WANTS TO
PROCEED PRO SE.
AND THAT'S EXACTLY WHAT HAPPENED
IN THIS CASE.
IF WE GO BACK, WE LOOK-- THE
TRIAL ON THIS CASE TOOK PLACE IN
FEBRUARY OF 2019.
BUT IF YOU GO BACK TO NOVEMBER
26 OF 2018, THE DEFENDANT SIGNED
A WAIVER OF REPRESENTATION OF
COUNSEL.
LESS THAN A MONTH LATER AT A
PRETRIAL HEARING, THIS IS ON
12/20/18, THE TRIAL COURT WENT
THROUGH THE FIRST FARETTA
INQUIRY WITH THE DEFENDANT, AND
IT SATISFIED ALL THE
REQUIREMENTS OF A WAIVER, AND IT
DIDN'T INTERFERE WITH HIS RIGHT
OF SELF-REPRESENTATION.
AND THE TRIAL COURT WAS VERY
CLEAR WITH THE DEFENDANT THAT
HE, DEFENDANT HAD THE

OPPORTUNITY TO REINVOKE HIS
RIGHT TO COUNSEL AT ANY TIME.
I'LL READ TO YOU WHAT THE TRIAL
COURT SAID, IT'S VERY CLEAR.
PRIMARILY, I WANT YOU TO
UNDERSTAND THAT YOU'RE GOING
THROUGH THIS SCENARIO WITH ME OR
WITH A JUDGE, AT EVERY
OPPORTUNITY WAS YOU HAVE A RIGHT
TO CHANGE YOUR MIND.
IF YOU ARE GRANTED THE RIGHT TO
REPRESENT YOURSELF, YOU CAN
CHANGE YOUR MIND AND ASK FOR AN
ATTORNEY AT THAT POINT.
ALSO THE TRIAL COURT SAID, AND
AS I SAID BEFORE, AT ANY POINT
IN THE PROCESS IF YOU'RE ALLOWED
TO PROCEED BY YOURSELF AND YOU
WISH TO HAVE SOMEONE REPRESENT
YOU AT THAT TIME, THEN ALL YOU
NEED TO DO IS INQUIRE.
>> GOING BACK TO MY QUESTION,
YOU WOULD, YOU WOULD-- IF YOU
HAD CHOICES HERE, YOU WOULD
REQUIRE FOR A FARETTA INQUIRY TO
BE CONDUCTED THE FIRST TIME HE
SAYS-- AT THE BEGINNING OF THE
TRIAL SOMETIME.
BEFORE JURY SELECTIONS BEGIN?
IS THAT WHEN YOU WOULD DO IT?
OBVIOUSLY, THAT'S AN IMPORTANT
PART OF THE TRIAL.
>> ANYTIME THAT A DEFENDANT
INDICATES HE WOULD LIKE TO
PROCEED PRO SE, THEN THERE IS A
NEED FOR AN INQUIRY AND AT THE
EARLIEST OPPORTUNITY.
THAT'S WHAT HAPPENED IN THIS
CASE.
IT ALL HAPPENED PRETRIAL.
>> LET'S SAY I'M A DEFENDANT AND
I WALK INTO THE COURTROOM RIGHT
BEFORE JURY SELECTION BEGINS.
I DON'T WANT A LAWYER, I WANT TO
REPRESENT.
AT THAT POINT IN TIME A JUDGE
SHOULD CONDUCT A FULL FARETTA
INQUIRY, IS THAT CORRECT?
>> YES, YES.
>> OKAY.

HERE, IN YOUR TYPICAL CASE I CAN
MORE OR LESS ACCEPT YOUR
ARGUMENT MORE.
BUT IN A TYPICAL CASE, SAY IT'S
A ROBBERY.
YOU'VE GOT THE GUILTY PHASE AND
YOUR SENTENCING LATER ON.
HERE WE HAVE BASICALLY TWO
PLACES INVOLVING THE JURY.
THE PENALTY PHASE FOLLOWS WHICH
IS WHERE THE JUDGE DID NOT
RENEW.
SHOULD THERE NOT BE, AT LEAST IN
THESE TYPE OF CASES GIVEN THE
FACT THAT THE ULTIMATE PENALTY
IS GOING TO NEED--
[INAUDIBLE]
IN THESE TYPE OF CASES SHOULDN'T
THERE BE, AND IF I BUY YOUR
ARGUMENT THAT IT SHOULD WITH
LIMITED JUST ONE TIME, SHOULD IT
WITH THE BE ONE TIME BEFORE THE
GUILTY PHASE AND ONE TIME BEFORE
THE PENALTY PHASE?
>> I GUESS I HAVE TWO RESPONSES,
JUSTICE LABARGA.
THE FIRST IS THAT THE GUILT
PHASE AND THE PENALTY PHASE WERE
BACK TO BACK.
THIS IS A SHORT TRIAL.
AND THE JURY SELECTION TOOK ONE
DAY, THE ACTUAL GUILT PHASE TOOK
A DAY AND A HALF, AND AFTER THE
GUILT PHASE ENDED, THEY WENT
RIGHT INTO THE PENALTY PHASE
WHICH TOOK HALF A DAY.
IT WAS ALL VERY BACK TO A SHORT,
COMPRESSED PERIOD OF TIME.
IS SO MY SECOND RESPONSE IS
WHERE WOULD THAT REQUIREMENT
COME FROM?
CERTAINLY, DEATH IS DIFFERENT.
I UNDERSTAND THAT.
THE MOMENT YOU SAY DEATH IS
DIFFERENT YOU'RE SUGGESTING--
NOT YOU, I'M SORRY--
>> IT'S OKAY, I SAY IT ALL THE
TIME.
>> IS A SUGGESTION THAT THERE'S
A CRUEL AND UNUSUAL PUNISHMENT

AS SECT OR THAT THERE'S SOME
KIND OF EIGHTH AMENDMENT OVERLAY
ONTO ANOTHER CONSTITUTIONAL
RIGHT, IN THIS CASE A SIXTH
AMENDMENT RIGHT TO COUNSEL OR A
SIXTH AMENDMENT RIGHT TO
SELF-REPRESENTATION.
THE PROBLEM WITH THAT IS WHEN
YOU HAVE THAT KIND OF OVERLAY,
WE HAVE TO LOOK BECAUSE THERE'S
A CONFORMITY CLAUSE IN THE STATE
CONSTITUTION ABOUT THE EIGHTH
AMENDMENT.
WE HAVE TO LOOK TO SEE IF
THERE'S ANY U.S. SUPREME COURT
CASE LAW, AND THERE REALLY
ISN'T.
BECAUSE OF THE CONFORMITY
CLAUSE, THIS COURT, COURTS IN
FLORIDA ARE CONSTRAINED TO
PROVIDE NO MORE GREATER RIGHTS
UNDER THE EIGHTH AMENDMENT--
>> WELL, LET'S SAY IT'S A
ROBBERY CASE AND THERE'S A
CONFESSION.
THE MOTION TO SUPPRESS THE
CONFESSION IS FILED AND THERE'S
A HEARING ON THAT MOTION TO
SUPPRESS SCHEDULE.
AT THAT TIME, THE MORNING OF THE
HEARING, THE DEFENDANT COMES IN
AND SAYS I WANT TO REPRESENT
MYSELF.
I CAN DO A BETTER JOB THAN THESE
LAWYERS.
I WANT TO REPRESENT MYSELF.
AND THE JUDGE GOES THROUGH THE
ENTIRE FARETTA, DO DOES AN
EXCELLENT JOB AT IT, AND ALLOWS
HIM TO WAIVE COUNSEL AND HE
REPRESENTS HIMSELF.
NOW, SHOULD THAT WARNING NOT BE
REPEATED PERHAPS THREE MONTHS
LATER WHEN THE JURY TRIAL BEGINS
AND HE WANTS TO REPRESENT
HIMSELF THERE?
>> THE SIXTH AMENDMENT DOES NOT
REQUIRE IT.
>> OKAY.
SO JUST THAT ONE TIME?

>> YES.
AT SOME POINT WE HAVE TO RESPECT
THE DECISION OF THE DEFENDANT TO
REPRESENT HIMSELF.
>> WELL, THERE ARE TWO
DIFFERENT-- YOU SEE, THE THING
IS YOU'RE DEALING WITH TWO
DIFFERENT TYPE OF HEARINGS JUST
LIKE IN THE DEATH PENALTY
SITUATION.
YOU'RE DEALING WITH TWO TYPES OF
HEARINGS.
YOU'VE GOT THE GUILT PHASE AND
THEN YOU'VE GOT THE PENALTY
PHASE THAT REQUIRES A COMPLETELY
DIFFERENT VIEW OF IT AND HOW TO
HANDLE IT.
SHOULDN'T THERE BE IN BOTH?
>> NO, BECAUSE IT'S ALL ONE
TRIAL.
AND IN THIS CASE IT'S CLEAR, THE
RECORD THAT WE HAVE, IT IS CLEAR
THAT AT ALL POINT THROUGHOUT
THIS TRIAL IS DEFENDANT WANTED
TO REPRESENT HIMSELF.
WHAT ACTUALLY IS A QUESTION
RELATE A THAT VIOLATION BECAUSE,
UNFORTUNATELY, LAWYERS TOO OFTEN
USE THE TERM TO DESCRIBE A
SITUATION WHERE THE WAIVER
INQUIRY DOESN'T GO FAR ENOUGH.
BUT IN REALITY AN ACTUAL FARETTA
VIOLATION IS EXACTLY THE
OPPOSITE WHERE IT WOULD START TO
INTERFERE WITH THE DEFENDANT'S
RIGHT TO IS SELF-REPRESENTATION.
I JUST WANT TO STRESS THE POINT
THAT WE HAVE COMPETING
CONSTITUTIONAL POINTS HERE.
THE RIGHT TO COUNSEL, YES, BUT
ALSO THE RIGHT TO
SELF-REPRESENTATION UNDER
FARETTA.
SO A TRUE FARETTA VIOLATION
OCCURS WHEN A COURT-- WHETHER
TRIAL OR APPELLATE-- PUTS TOO
MANY OBSTACLES IN THE WAY FOR A
DEFENDANT TO EXERCISE HIS RIGHT
TO SELF-REPRESENTATION.
>> OKAY.

I UNDERSTAND A SITUATION LIKE
JUSTICE CANADY MENTIONED
EARLIER, THE FACT THAT
DEFENDANTS ARE, WE COMMONLY SEE
THAT IN THE TRANSCRIPTIONS, AND
THEY ARE ANNOYED AT BEING ASKED
OVER AND OVER AGAIN.
BUT THAT USUALLY OCCURS DURING
THE COURSE OF THE TRIAL.
IN SITUATIONS LIKE THE ONE I
JUST MENTIONED WHERE A LAWYER
MAY FILE A MOTION TO SUPPRESS
AND THREE OR FOUR OR FIVE MONTHS
LATER THERE'S A TRIAL, THERE'S A
BIG GAP THERE IN TIME.
I THINK THAT THE SITUATION THAT
YOU'RE MENTIONING IS THE FACT
THAT DURING THE TRIAL A JUDGE IS
REQUIRED-- WHAT IS IT THAT WE
CALL--
>> CRITICAL OR CRUCIAL STAGE OF
THE PROCEEDINGS.
>> AT EACH CRITICAL STAGE OF THE
TRIAL, JUDGE HAS TO GO BACK AND
READ THAT WHOLE FARETTA INQUIRY
AGAIN, OVER AND OVER AGAIN, I
CAN SEE THAT.
BUT I THINK WHEN WE'RE GETTING
WITH DIFFERENT HEARINGS IN
DIFFERENT TIMES, I THINK THAT'S
A DIFFERENT MATTER.
AND I THINK IT'S A BIG
DIFFERENCE BETWEEN A PENALTY
PHASE AND THE GUILT PHASE
REGARDLESS OF WHETHER YOU'RE
DOING TWO MONTHS APART FROM EACH
OTHER OR RIGHT AFTER THE GUILT
PHASE.
[AUDIO DIFFICULTY]
>> THIS WAS NOT A TRIAL THAT
SPREAD OVER A LONG PERIOD OF
TIME.
IT WAS A VERY CONDENSED TRIAL
BECAUSE THE DEFENDANT'S DEFENSE
WAS BASICALLY REASONABLE DOUBT,
I'M GOING TO MAKE THE STATE
PROVE IT.
JURY SELECTION, GUILT PHASE,
PENALTY PHASE ALL TOOK COURSE
OVER THREE DAY, AND THE OFFER OF

COUNSEL WAS RENEWED APPRECIATE
JURY SELECTION.
SO THE FACTS IN THIS CASE ARE A
LITTLE DIFFERENT UNDER YOUR
SCENARIO.
BUT EVEN URN YOUR SCENARIO,
AGAIN, UNDER THE SIXTH AMENDMENT
ALL THAT IS REQUIRED IS A VALID
WAIVER OF THE RIGHT TO COUNSEL
AND AN INVOCATION OF THE RIGHT
TO-- OR SELF-REPRESENTATION.
THAT'S ALL THAT IS REQUIRED
UNDER THE SIXTH AMENDMENT.
WHEN WE HAVE THESE PATERNALISTIC
PROTECTIONS THAT ARE MEANT TO
PROVIDE ADDITIONAL PROTECTIONS
TO THE RIGHT TO COUNSEL, WE
START TO RUN THE RISK OF
INTERFERING WITH THE RIGHT TO
SELF-REPRESENTATION WHICH IS
WHAT HAPPENED IN THIS CASE.
TRAILER RESULTED IN UNNECESSARY
INTERFERENCE WITH THE RIGHT OF
SELF-REPRESENTATION.
AND WE SEE IT IN THIS CASE AND
MANY CASES WHERE THERE ARE
NUMEROUS AND UNNECESSARY FARETTA
INQUIRIES.
THERE WERE THREE IN THIS CASE,
THE LAST TWO ARE COMPLETELY
UNNECESSARY.
OR WHETHER OR NOT THIS CASE
INTERFERENCE WENT TOO FAR, IT
DID NOT.
BUT I WOULD SUGGEST THAT IF THIS
COURT WERE TO REVERSE AND REMAND
FOR A NEW PENALTY PHASE, THAT
WOULD BE A FARETTA VIOLATION.
A REVERSAL IN THIS CASE BASED
UPON TAYLOR WOULD BE A VIOLATION
OF THE DEFENDANT'S RIGHT TO
SELF-REPRESENTATION.
BECAUSE AT ALL TIMES HE WANTED
TO REPRESENT HIMSELF, AND THE
COURT WOULD BE TAKING THAT AWAY
FROM HIM.
WHY?
BECAUSE THE TRIAL COURT DIDN'T
ASK HIM BETWEEN THE END OF THE
GUILT PHASE AND THE START OF--

>> YOU WANTED COURT-APPOINTED
COUNSEL?
>> AFTER THE GUILT PHASE WAS
DONE, THE TRIAL JUDGE ASKED
WHETHER YOU WOULD HAVE LIKED A
LAWYER KNOWING WHAT YOU KNOW
NOW, BASICALLY, AFTER THE GUILT
PHASE, AND HE SAID NO.
WHAT IF HE HAD SAID YES?
WHAT WOULD BE THE RIGHT RESULT?
WHERE--
>> WELL, THAT WOULD BE A
DIFFERENT CASE, CERTAINLY,
JUSTICE POLSTON.
THAT WOULD RAISE A QUESTION,
CERTAINLY, WHETHER WE-- AT THAT
POINT WOULD THE TRIAL COURT HAVE
NEEDED TO GO BACK AND REDO THE
PENALTY PHASE.
BUT THAT'S NOT THE ISSUE IN--
>> I KNOW, BUT WHAT'S YOUR
POSITION ON THAT?
>> IF WE GO BACK TO AND, AGAIN,
THERE WERE TWO KIND OF
POST-PENALTY PHASE EXCHANGES
BETWEEN THE TRIAL COURT AND THE
DEFENDANT.
ONE TOOK PLACE IMMEDIATELY AFTER
THE JURY WAS EXCUSED ON FEBRUARY
20TH, IS AND THEN ONE TOOK PLACE
THE NEXT DAY ON FEBRUARY 21ST AT
A POST-TRIAL HEARING.
WHAT IF AT ANY ONE OF THOSE THE
DEFENDANT SAID, YOU KNOW WHAT?
LOOKING BACK, I WISH I HAD.
SO WE WOULD HAVE AN INQUIRY, I
GUESS.
WE'D HAVE TO EXAMINE THE RECORD
AND SAY, OKAY, WAS HE FULLY
AWARE OF HIS RIGHTS?
DID HE KNOW THAT AT ANY POINT IN
THE PROCEEDINGS HE COULD SAY TO
THE TRIAL COURT I'M OVER MY
HEAD, I WANT A LAWYER.
AND WE WOULD GO BACK AND LOOK AT
THE RECORD AND SAY, OKAY, WAS
THAT MADE KNOWN TO HIM?
IT WAS CLEARLY.
IT WAS MADE KNOWN MULTIPLE
TIMES.

THERE WAS THE FARETTA INQUIRY ON
12/20/18, THE THREAT OF INQUIRY
A WEEK BEFORE TRIAL ON 2/6/19.
SO IF HE HAD SAID I WISH I HAD,
THAT'S A DIFFERENT CASE, AND WE
WOULD LOOK AT THE RECORD TO SAY
YOU WERE A AWARE, AT ANY POINT
IN THESE PROCEEDINGS YOU CAN
CHANGE YOUR MIND.
YOU HAVE TO MAKE THAT KNOWN TO
THE TRIAL COURT.
SO HIS SIXTH AMENDMENT RIGHTS
WOULD BE HONORED BECAUSE HE WAS
MADE AWARE.
HIS WAIVER WOULD BE STILL
KNOWING AND INTELLIGENT.
AND IF HE SAID KNOWING AFTER THE
PENALTY PHASE I WISH I HAD MY
OWN LAWYER, FROM THAT POINT
FORWARD NOW WE HAVE TO HAVE A
DIFFERENT SCENARIO WHERE THE
TRIAL COURT WOULD NEED TO
INQUIRE.
ARE YOU SAYING RIGHT NOW, YOU
KNOW, YOU WOULD LIKE AN
ATTORNEY?
AGAIN, WITH THIS RECORD WHERE IT
WAS CLEAR THE DEFENDANT KNEW HE
COULD REINVOKE HIS RIGHT TO
COUNSEL AT ANY TIME, THAT WOULD
NOT BE A BASIS FOR ANY KIND OF
REVERSAL OR GOING BACK IN TIME.
>> YOU WOULD AGREE THOUGH,
WOULDN'T YOU, THAT THERE'S NO
SENSE IN ASKING THE QUESTION
UNLESS THE COURSE IS INCLINED TO
DO SOMETHING.
>> YES.
>> IT ISN'T JUST IF THE
DEFENDANT HAD AT THAT POINT SAIL
KNOWING WHAT I KNOW NOW I WOULD
LIKE TO HAVE A LAWYER, IT CAN'T
BE THE CASE THAT THE COURT COULD
HAVE SAID, WELL, NOW, I NEED TO
CONSTRUCT A RECORD.
NEEDED AT THAT POINT TO BE
ACTUALLY READY TO DO SOMETHING
IF THE DEFENDANT FOUND THAT HE
WAS NOT HAPPY OR SATISFIED FROM
THE FARETTA STANDPOINT.

I AGREE IT'S NOT THIS CASE, BUT YOU WOULD AGREE WITH THAT, RIGHT?
>> I THINK WE NEED TO SEPARATE OUT THE SIXTH AMENDMENT FROM THE STATE CONSTITUTION.
THE JUDGE ASKED THESE QUESTIONS NOT NECESSARILY BECAUSE OF THE SIXTH AMENDMENT, BUT BECAUSE OF ARTICLE SR., SECTION 16 OF THE FLORIDA CONSTITUTION AND BECAUSE OF TRAILER.
THERE WOULDN'T BE STRUCTURAL ERROR AT THAT POINT IN TIME.
>> WHY NOT?
I DON'T UNDERSTAND.
IN SOME WAYS THIS WHOLE CONVERSATION IS AN ARGUMENT FOR WHY WE SHOULD NOT BE CONSTITUTIONALIZING THIS WHOLE ISSUE OF REMEETING OFFERS AGAIN AND AGAIN.
BUT IF WE TAKE TRAILER AS A GIVEN LEGALLY AT THIS POINT THAT IT WAS HAPPENING, OBVIOUSLY, IF THE FLORIDA SUPREME COURT HAS SAID THAT THE STATE CONSTITUTION REQUIRES YOU ON A CONSTITUTIONAL LEVEL TO KEEP REOFFERING THESE THINGS AND YOU DO DO IT, YOU'RE THE JUDGE, AND YOU REALIZE--
YOU GIVE THE PERSON, YOU KNOW, A QUESTION, THE WHOLE POINT IS TO EVENTUALLY HAVE A DO-OVER.
I'M JUST GOING TO KIND OF MANUFACTURE A RECORD FOR WHY I SHOULD KEEP MY HEAD DOWN AND JUST KEEP GOING.
>> YES.
ONCE AGAIN, TWO POINTS.
YOU'RE CORRECT THAT THIS DISCUSSION JUST SHOWS THE UNWORKABILITY OF TRAILER, AND I WOULD SUGGEST IF WE TALKED ABOUT ISSUE THREE, WE'D HAVE A SIMILAR DISCUSSION ABOUT THE MUHAMMAD LINE OF QUESTIONS WHICH IS, FOR SIMILAR REASONS, WRONG.
I'LL GO BACK TO THE QUESTION THAT YOU ASKED EARLIER, JUSTICE

MUNIZ.
THE SO-CALLED RIGHT TO HAVE THE TRIAL COURT RENEW THE OFFER OF COUNSEL AT EVERY CRITICAL STAGE OF THE PROCEEDINGS IS A NOT A RIGHT.
THEY'RE NOT THERE.
IT IS MADE UP BY THIS, BY THE COURT.
NOT THIS COURT, BUT BY THE COURT IN THE EARLIER DECISION.
SO IT IS CLEARLY A NONTEXTURAL RIGHT, AND IT'S, INTEND--
AGAIN, THERE IS NO STRUCTURAL ERROR BECAUSE THAT WOULD ONLY BE FOUND IF THERE IS A VIOLATION OF THE SIX EARTH AMENDMENT.
THERE ARE SOME DCA CASES THAT SUGGEST A SO-CALLED ERROR-- BUT THIS COURT HAS NEVER REALLY SPOKEN.
AND IN THE INITIAL GRIEF THE APPELLANT MAKES THE CLAIM OF FUNDAMENTAL ERROR, AND HE'S STUCK WITH THAT.
THE BURDEN IS ON HIM, AND HE CAN'T SHOW THAT THERE WAS A FUNDAMENTAL ERROR VIOLATION.
THEY JUST CAN'T BE SHOWN.
BUT THERE ARE SOME OTHER ISSUES TOO IF THE DEFENDANT SAID I WANT TO REPRESENT MYSELF AND I WANT A DEATH SENTENCE, NOW WE HAVE AN APPEAL WHERE THAT'S BEING CHALLENGED.
AND WHY?
WHY IS THAT THE CASE?
BASED UPON THIS RECORD, IT DOESN'T APPEAR THE APPELLANT EVER HAD THE OPPORTUNITY TO MAKE A DECISION WHETHER HE WANTED AN APPEAL IN THE FIRST PLACE BECAUSE THIS COURT SAYS AN APPEAL IS AUTOMATIC AND THE TRIAL COURT AT THE END OF THE PROCEEDINGS INFORMED THE DEFENDANT THAT AN APPEAL WOULD BE AUTOMATIC IN HIS CASE AND APPOINTED THE SECOND CIRCUIT COURT DEFENDER TO APPEAL,

COUNSEL FOR THE DEFENDANT.
AND THAT WAS FILED IN THE
CIRCUIT COURT EVEN THOUGH THE
DEFENDANT WAS STILL PRO SE AT
THAT POINT IN TIME.
SO IT DOES APPEAR TO BE SOMEWHAT
INCONSISTENT.
AND THE STATE WAS CERTAINLY--
WOULD CERTAINLY CONCEDE ONCE THE
APPEAL IS UNDERWAY, APPELLANT
COUNSEL IS THE CAPTAIN OF THE
SHIP.
NOT DURING THE TRIAL, BUT IS FOR
THE APPEAL, BUT IT SHOULD STILL
BE THE DEFENDANT'S CHOICE
WHETHER OR NOT TO SHOVE OFF,
WHETHER OR NOT TO LAUNCH THAT
SHIP THROUGH AN APPEAL.
AND THE RECORD DOES NOT INDICATE
THAT IT WAS THE DEFENDANT'S
CHOICE AT ALL TO DO THAT.
THAT'S WHY WE HAVE A SITUATION
AT THE TRIAL HE WANTED TO
REPRESENT HIMSELF VERY CLEARLY,
HE WANTED A DEATH SENTENCE, AND
NOW ON APPEAL HE'S ASKING FOR A
REDO OF THE PENALTY PHASE WHICH
APPEARS TO BE SOMEWHAT
INCONSISTENT.
>> WHAT'S GOING TO BE LEFT OF
OUR CASE LAW IN ALL THIS AREA
WHEN WE'RE DONE CHANGING ALL THE
STUFF THAT YOU'RE ASKING US TO
CHANGE?
>> WHAT SHOULD BE THERE.
[LAUGHTER]
BECAUSE-- AND I, IF WE'D LIKE
TO DISCUSS ISSUE THREE, WE CAN
DISCUSS ISSUE THREW AND THE
MUHAMMAD LINE OF CASES WHICH
ALSO SUFFER FROM A SIMILAR
PROBLEM IN THAT McCOY V.
LOUISIANA IS QUITE CLEAR THAT IT
IS-- AND WE'RE TALKING ABOUT
THIS TRIAL HERE-- IT'S THE
DEFENDANT'S CHOICE.
AND IF THE DEFENDANT DOES NOT
WANT TO PRESENT MITIGATION, THEN
THAT DECISION SHOULD BE
RESPECTED, OR AND WE SHOULDN'T

BE A APPOINTING WHAT IS REALLY A GUARDIAN AD LITEM.
I USE THAT TERM INTENTIONALLY BECAUSE IF YOU GO BACK TO THIS COURT'S DECISION IN HAM-IN IN 19188 AND LOCKHART IN 1995, THAT IS THE--
HE'S NOT A WARD OF THE STATE.
HE WAS COMPETENT TO PROCEED, HE WAS COMPETENT TO PROCEED PRO SE, SO THERE'S NO REASON TO TAKE AWAY HIS ABILITY TO BE THE CAPTAIN OF HIS OWN SHIP.
IT'S ROBBING THE INDIVIDUAL OF HIS DIGNITY AND HIS ABILITY TO BE AUTONOMOUS BECAUSE IT'S HIS TRIAL AND IT'S HIS LIFE AT STAKE.
AND McCOY V. LOUISIANA SAYS THAT.
IT'S INTERESTING TO NOTE THAT McCOY WAS A DEATH PENALTY CASE.
SO IT'S NOT-- I'M NOT TRYING TO TAKE AWAY JURISPRUDENCE, I'M JUST ADVOCATING THAT SOME OF THE COURT'S JURISPRUDENCE IS OUT OF STEP WITH U.S. SUPREME COURT CASE LAW.
AND I WOULD NOTE GOING BACK TO THE ROBERTSON DECISION, IT WAS CHIEF JUSTICE CANADY JOINED BY JUSTICE POLSTON IN A DISSENT, AND THE FIRST SENTENCE CITES TO A 1983 U.S. SUPREME COURT DECISION IN JONES V. BARNES.
THE MAJORITY COURT IGNORES THAT DECISION, BUT TWO YEARS AGO THE SUPREME COURT IN McCOY CITED TO BARNES.
AND JUST LAST YEAR IN 2019, IN I BELIEVE IT WAS THE GARZA DECISION, ONCE AGAIN TO JONES AND McCOY FOR THE EXACT SAME PROPOSITION THAT CHIEF JUSTICE CANADY CITED IN BARNES.
AGAIN, OOH I'M NOT TRYING TO TAKE ANYTHING AWAY, JUST TRYING TO BRING THIS COURT'S JURISPRUDENCE BACK IN LINE WITH

U.S. SUPREME COURT CASES.
SO BARRING ANY FURTHER
QUESTIONS, THE STATE
RESPECTFULLY ASKS THAT THE COURT
AFFIRM THE JUDGMENT AND SENTENCE
IN THIS CASE.
>> THANK YOU.
C.N. 8 RICHARD BRACEY, IS THERE
ANYTHING YOU WANT US TO BE OR
NOT?
>> YES, IF YOU LOOK ON PAGES
1150-1150 ONE OF THE RECORD AT A
PRETRIAL HEARING MISTER ALLEN
DISCUSSES FILING A MOTION TO
SUPPRESS HIS STATEMENTS.
HE DOES NOT FILE THAT MOTION
THAT MAKES CLEAR IF HE DECIDES
THE DEATH PENALTY HE INTENDS TO
PURSUE AN APPEAL AND I CAN
ASSURE THIS COURT IF MISTER
ALLEN DIDN'T WANT TO PURSUE THIS
APPEAL THAT FACT, WITHOUT
ANSWERING YOUR QUESTION --
>> THAT DOES.
>> MAY I PROCEED?
>> WE DO.
>> FIRST OF ALL I HOPE TO HIT
THE NUMBER OF POINTS.
THE UNITED STATES CONSTITUTION,
THE SIXTH AMENDMENT SAYS IN ALL
CRIMINAL PROSECUTIONS THE
ACCUSED SHALL HAVE THE
ASSISTANCE OF COUNSEL FOR HIS
DEFENSE, NOWHERE DOES IT SAY
THERE IS THE RIGHT OF SEVERAL --
SELF REPRESENTATION, THAT IS A
NON-TEXTUAL RIGHT THE SUPREME
COURT HAS APPLIED IN THAT
AMENDMENT.
IN CONTRAST C.N. SECTION 16
STATES IN ALL CRIMINAL
PROSECUTIONS THE ACCUSED SHALL
HAVE THE RIGHT TO BE HEARD IN
PERSON BY COUNSEL OR BOTH.
WE ARE DEALING WITH A TEXTUAL
RIGHT WHEREAS THE RIGHT OF SELF
REPRESENTATION IS A NON-TEXTUAL
RIGHT.
>> TO THE EXTENT THERE IS A
DIFFERENCE TEXTUALLY --

>> SERVER?
>> THERE IS THIS, I DON'T KNOW, THE STATE MIGHT BE OVERSTATING THE IDEA OF VIOLATING THE SIXTH AMENDMENT, HERE YOU HAVE A TEXTUAL RIGHT TO BE HEARD IN PERSON BY COUNSEL OR BOTH.
A PERSON IS GIVEN A CHOICE AT THE BEGINNING TO MAKE A VALID WAIVER THAT YOU ARE FULLY INFORMED ETC. ETC. SO THE ARGUMENT IS STRONGER FROM THE STATE CONSTITUTIONAL PERSPECTIVE.
>> I SIMPLY DISAGREE.
THE WORD BOTH HAS TO MEAN SOMETHING AND WHAT I THINK BOTH MEANS IS WHAT THE COURT SAID IN TRAILER WHICH CONFLICTS WITH HIGHER AUTHORITY, THAT IS FOR THAT RIGHT, THE RIGHT TO DETERMINE ONE'S MANNER OF REPRESENTATIVE IN TO HAVE MEANING HAS TO APPLY AT EACH STAGE OF THE PROSECUTION MEANING YOU CAN CHOOSE TO BE HEARD IN PERSON AT ONE THAT YOU HAVE THE RIGHT TO BE HEARD BY COUNSEL ON ANOTHER.
>> EVERYONE AGREES THAT IS THE COMMON DENOMINATOR, EVERYBODY AGREES WITH THAT, THE QUESTION IS TO MAKE AN INFORMED DECISION WHAT THE PERSON WANTS RECOGNIZING THEY CAN CHANGE THEIR MIND, DO YOU HAVE TO ASK THEM AGAIN AND AGAIN OR IS IT AS EFFICIENT UNDER FEDERAL LAW TO ASK ONE TIME?
AND PUT THE BURDEN ON THEM TO SPEAK UP AND CHANGE THEIR MIND?
THAT IS THE CONSTITUTIONAL ISSUE OF THE CASE.
>> IT IS AND I WILL SAY THIS.
REASONABLE MINDS CAN DISAGREE ON THAT POINT.
IT IS NOT CLEARLY ERRONEOUS.
THE COURT HAS ONLY SPOKEN IN TRABER AND THAT SHOULD CARRY THE DAY.

IT DOES NOT CONFLICT WITH THE
SIXTH AMENDMENT RIGHT OF SELF
REPRESENTATION.
THE SUPREME COURT MADE CLEAR IT
DOESN'T VIOLATE THE SIXTH
AMENDMENT RIGHT TO SELF
REPRESENTATION FOR TRIAL COURT
TO APPOINT STANDBY COUNSEL.
IT DOESN'T VIOLATE A DEFENDANT'S
SIXTH AMENDMENT RIGHT FOR
STANDBY COUNSEL TO PARTICIPATE
TO AN UNLIMITED EXTENT IN A
TRIAL BEFORE JURY.
IT DOESN'T VIOLATE THE SIXTH
AMENDMENT RIGHT TO SELF
REPRESENTATION FOR SEVERELY
MENTALLY ALL BUT COMPETENT
DEFENDANT TO BE REFUSED TO BE
ALLOWED TO REPRESENT HIMSELF.
WE HAVE A DEFENDANT WHO
UNDERSTAND THE CONSEQUENCES BUT
THEY ARE NOT ALLOWED TO
REPRESENT THEMSELVES.
IF THAT IS THE CASE IT BORDERS
ON THE ABSURD TO THINK SIMPLY
RENEWING THE OFFER OF COUNSEL
SOMEHOW VIOLATES THE SIXTH
AMENDMENT.
IF THAT WAS THE CASE WHAT WOULD
NOT VIOLATE THE SIXTH AMENDMENT
RIGHT TO SELF REPRESENTATION?
I WOULD POINT OUT, LET'S SEE.
STATE QUOTED A PORTION OF A
PRETRIAL HEARING, TOLD MISTER
ALLEN I WANT YOU TO UNDERSTAND
PAGE 59 OF THE RECORD YOU WILL
BE GOING THROUGH THIS SCENARIO
WITH A JUDGE AT EVERY
OPPORTUNITY BECAUSE YOU HAVE A
RIGHT TO CHANGE YOUR MIND.
IF YOU'RE GRANTED THE RIGHT TO
REPRESENT YOURSELF YOU CAN
CHANGE YOUR MIND AND ASK FOR AN
ATTORNEY AND I SUGGEST THE TAKE
AWAY FROM THAT IS IF YOU CHANGE
YOUR MIND WE ARE GOING TO BE
HAVING THIS CONFERENCE
REGULARLY, THAT IS WHAT YOU WILL
EXPRESS, THE FACT THAT YOU
CHANGED YOUR MIND.

I DON'T THINK IT IS RIGHT
EFFECTIVELY TO SAY MISTER ALLEN
WAS ON NOTICE HE COULD CHANGE
HIS MIND ANYTIME.
I WOULD EMPHASIZE STRONGLY
MISTER ALLEN WAIVED HIS RIGHT TO
PRESENT LITIGATION, TO BE
SENTENCED TO DEATH ON DEATH ROW
RATHER THAN A GENERAL
COMPILATION BUT HE WAS NOT A
DEATH PENALTY VOLUNTEER.
HE DID NOT FAIL TO BE SENTENCED
TO DEATH.
AT THIS PRETRIAL HEARING, HE
WOULD TAKE AN APPEAL, PLEASE A
FIRST-DEGREE MURDER, INSIST ON A
TRIAL, JURY SELECTION AND
INDIVIDUAL -- THAT WAS NOT AT
THE GUILT PHASE TRIAL WHERE HE
SAID THE STATE HAS TO PROVE MY
GUILT OR WAIVE THE RIGHT TO A
PENALTY PHASE JERRY, TO BE
SENTENCED TO DEATH IN FRONT OF
THE JURY.
MOST IMPORTANTLY IMMEDIATELY
AFTER THE JURY WAS DISMISSED HE
SAID I'M NOT SEEKING ONE
SENTENCE OVER ANOTHER.
THIS IS PAGE 299-296.
DISALLOWING THE PROCESS TO
HAPPEN.
IT WILL BE WHAT IT WILL BE, TO
ACCEPT THE CONSEQUENCES OF MY
ACTIONS.
IF THEY COME BACK WITH THE DEBT
BURDEN, IF THEY DON'T THEY
DON'T.
IF I COULD QUICKLY CONCLUDE THIS
COURT HAS RECOGNIZED THE WORDS
OF JUSTICE JOSEPH STORY, EVERY
WORD EMPLOYED IN THE
CONSTITUTION IS FOUNDED IN
ACCORDANT WITH OBVIOUS COMMON
SENSE MEANING.
ARTICLE 1 SECTION 16 PLAINLY
STATES THE DEFENDANT SHALL HAVE
THE RIGHT TO BE HEARD IN PERSON
AND BY COUNSEL.
MISTER ALLEN WAS NOT AFFORDED
THAT RIGHT, THEY SHOULD BE

FAITHFUL TO THAT TEXT AND EFFORT
THE DEFENDANTS.