>> ORDER IN THE COURT, THE
SUPREME COURT OF FLORIDA IS IN
SESSION.
CHARLES T. CANADY PRESIDING.
>> GOOD MORNING AND WELCOME TO
THE REMOTE SESSION OF THE
FLORIDA SUPREME COURT.
THE CASE THAT WE CONSIDER NOW IS
AMENDMENTS TO PROCEDURE 3.851
AND FLORIDA RULE OF APPELLATE
PROCEDURE 9.142.
I WOULD LIKE TO FIRST RECOGNIZE
JUDGE SISCO.
>> THANK YOU VERY MUCH CHIEF
JUDGE KENNEDY.
>> MAY I PIECE THE COURT, I AM
JUDGE MICHELLE SISCO AND I AM ON
THE CRIMINAL PROCEDURE RULES
COMMITTEE OF THE FLORIDA BAR.
I WOULD LIKE TO THANK YOU FOR
ALLOWING ME TOO APPEAR REMOTELY.
IF I COULD I WOULD LIKE TO BEGIN
WITH MY COMMITTEES, WITH THE
DELETION OF THE AUTOMATIC APPEAL
REQUIREMENTS CURRENTLY CONTAINED
IN RULES 3.851 AND 9.542 AND
THAT WOULD BE AUTOMATIC APPEALS
OF THE TRIAL COURT TO GRANTING
OF A MOTION TO DISMISS A CLOSE
CONVICTION MOTION OR A MOTION TO
DISCHARGE COUNSEL AT A POST
CONVICTION PROCEEDING.
OUR COMMITTEE VOTED TO RETAIN
THIS IMPORTANT.
DEATH IS DIFFERENT IS A COMMON
REFRAIN IN THE TRIAL COURTS WHEN
DEALING WITH THESE CASES.
OUR COMMITTEE FEELS MAINTAINING
THIS IMPORTANT SAFEGUARD IS IN
KEEPING WITH THE SENTIMENT.
THIS WAS A UNANIMOUS OPINION OF
ALL THE MEMBERS OF THIS
COMMITTEE.
MOVING NEXT TO THE REMOVAL OF
THE REQUIREMENT AND 3.851, THE
CAPITAL DEFENDANTS MUST BE
REPRESENTED IN ALL
POST-CONVICTION PROCEEDINGS.
IN DISCUSSING THIS ISSUE AS A
COMMITTEE WE REVIEWED THE
COURT'S 2013 OPINION AND LAMBRIX
VERSUS STATE LAMBRIX ACTS AS
WELL AS THE COURTS OPINION IN

2014 WHICH IMPLEMENTED THE CHANGE TO REQUIRE REPRESENTATION OF COUNSEL FOR CAPITAL DEFENDANTS IN A POST-CONVICTION PROCEEDING.
AS YOU ALL ARE AWARE LAMBRIX WAS A CAPITAL CASE AUTHORED BY THE COURT IN 2013 BEFORE THE REAL CHANGE OCCURRED.
IN THAT CASE IT DENIED THE DEFENDANT'S FOURTH AND FIFTH SUCCESSIVE POST-CONVICTION MOTION AND DENIED THE DEFENDANTS MOTION TO DISCHARGED HIS APPOINTED COUNSEL.
IN THAT OPINION THIS COURT ACKNOWLEDGED A CAPITAL DEFENDANTS RIGHT TO SELF REPRESENTATION BUT STATED ON PAGE 900 OF THAT OPINION, ANY RIGHT TO SELF DETERMINATION AND SELF REPRESENTATION DURING POST-CONVICTION PROCEEDINGS, HOWEVER, DOES NOT OUTWEIGH THE COURTS SOLEMN DUTY TO ENSURE THE DEATH PENALTY IS IMPOSED IN A FAIR, CONSISTENT AND RELIABLE BANNER AND GUARANTEES THE ADMINISTRATIVE RESPONSIBILITY TO MINIMIZE DELAYS IN THE POST-CONVICTION PROCESS.
IN DENYING THE DEFICIENT PROHIBITION FOR THE TRIAL COURT'S DENIAL OF DEFENDANT'S MOTION TO DISCHARGE COUNSEL, THIS CITED TO THE UNITED STATES SUPREME COURT OPINION IN MARTINEZ VERSUS CALIFORNIA.
IN MARTINEZ VERSUS CALIFORNIA THE UNITED STATES SUPREME COURT IN THE FEDERAL SYSTEM THERE IS NO SIXTH AMENDMENT RIGHT FOR DEFENDANTS TO BE PERMITTED TO REPRESENT THEMSELVES IN THE APPELLATE PROCESS.
AS THE SIXTH AMENDMENT GUARANTEES ONLY APPLY TO INDIVIDUALS WHO HAD NOT YET BEEN CONVICTED.
IN THE STATUS OF A DEFENDANT IN A POST-CONVICTION POSTURE WERE CONSTITUTIONALLY DISTINCT FROM THOSE PENDING TRIAL.
THE UNITED STATES SUPREME COURT

DID CREATE AN EXCEPTION FOR
STATE COURT POST-CONVICTION
PROCEDURES AS DICTATED BY THE
RESPECTIVE STATE COURT
CONSTITUTIONS.
SECONDLY, THAT OPINION AND
LAMBRIX THAT THE DEFENDANT HAD
ALREADY REQUESTED COUNSEL TO BE
APPOINTED WHEN THE DEATH WARRANT
WAS ISSUED.
THE COURT NOTED THAT PERMITTED
THE DEFENDANT TO DISCHARGE
COUNSEL AT THAT STAGE IN THE
CURRENT STAGE OF THE POST
CONVICTION PROCEEDING AND
REAPPOINTING COUNSEL WHEN THE
DEATH WARRANT WAS ISSUED WOULD
ONLY CREATE DELAYS WHEN THE
DEATH WARRANT WAS ISSUED.
AFTER CONCEDING THESE CASES ARE
COMMITTEE BY A VOTE OF 30 - 5
VOTED THAT THE REQUIREMENT FOR
THE APPOINTMENT OF COUNSEL FOR
CAPITAL DEFENDANTS AND POST
PROCEEDINGS SHOULD REMAIN.
THE MAJORITY EXPRESSED THE SAME
CONCERN AS EXPRESSED BY ALMOST
ALL OF THE OTHER STAKEHOLDERS
WITH SUBMITTED COMMENTS IN THIS
CASE.
FOR EXAMPLE, INEVITABLE DELAYS
OF THE STATED GOAL OF RESOLUTION
OF ALL POST-CONVICTION
PROCEEDINGS FOR CAPITAL
DEFENDANTS WITHIN TWO YEARS OF
THE FILING OF THE INITIAL
POST-CONVICTION MOTION.
THE LOGISTICAL ISSUES OF AN
INMATE ON DEATH ROW CONDUCTING
DISCOVERY IN PARTICULAR HE
DISCOVERED DISCOVERY
DEPOSITIONS.
THE LACK OF THE DEFENDANT'S
ABILITY TO OBTAIN RECORDS NOT
ONLY FROM THE REPOSITORY BUT ANY
OTHER OUTSIDE SOURCES.
PARTICULARLY A NUMBER OF
TECHNOLOGICAL ADVANCEMENTS SINCE
LAMBRIX WAS DECIDED IN 2013.
THAT IS A LOT OF DISCOVERY
EXCHANGES OCCURRING IN
ELECTRONIC FORMAT.
THAT WOULD BE DIFFICULT FOR
INMATES ON DEATH ROW.

EVEN THE MOST BASIC ISSUE OF THE ABILITY OF CAPITAL DEFENDANTS TO FILE MOTIONS ELECTRONICALLY THROUGH THE PORTAL WOULD REPRESENT CHALLENGES.
WE DISCUSSED AS A COMMITTEE THAT THESE ISSUES ARE PARTICULARLY ACUTE IN DEATH WARRANT PROCEEDINGS DUE TO THE COMPRESSED TIMELINE.
PARTICULARLY IF THE EVIDENTIARY HEATER HE IS RETIRED.
AS YOU ARE AWARE, THE GOVERNOR WILL INCLUDE AN EXECUTION DATE ON THE FACE OF THE DEATH WARRANT.
THIS SETS IN MOTION AN EXTREMELY EXPEDITED PROCESS FOR THE COURTS TO RESOLVE ALL POST-CONVICTION MATTERS.
BY WAY OF EXAMPLE I HAVE HANDLED TWO OF THE DEATH WARRANT PROCEEDINGS BEFORE, THE MOST RECENT ONE BEING IN 2019 DATA BOBBY JOE LONG.
IN THE CASE INSIDE THE DEATH WERE OF APRIL 29, 2019.
THE EXECUTION WAS SCHEDULED FOR MAY THE 23RD OF 2019.
AS THE PRESIDING TRIAL COURT JUDGE I WAS GIVEN UNTIL MAY 6 OF 2019 TO CONCLUDE ALL PENDING MATTERS OF THE TRIAL COURT LEVEL AND ISSUE A WRITTEN ORDER.
MR. LONG'S CASE, THIS INCLUDED AN EVIDENCE HEARING WITH EXPERT WITNESSES REGARDING MR. LONG'S INDIVIDUAL MEDICAL CONDITION AND WHETHER THE THREE DRUG PROTOCOL FOR EXECUTION WOULD IMPLICATE THE EIGHTH AMENDMENT PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT.
THIS WAS A TOTAL OF EIGHT DAYS.
FOR THE TRIAL COURT JUDGE, MEANING ME, TO COMPLETE AN EVIDENTIARY HEARING WITH EXPERT WITNESS TESTIMONY AND AUTHOR WRITTEN ORDER.
I WAS ONLY ABLE TO MEET THIS DEADLINE WITH THE ACCOMPANYING PROFESSIONALISM AND TIRELESS WORK OF COUNSEL FOR THE ATTORNEY GENERAL'S OFFICE, DEFENSE

COUNSEL AND COUNSEL WITH THE
DEPARTMENT OF CORRECTIONS.
IN ALL CANDOR I DO NOT THINK
THAT THIS WOULD'VE BEEN
EMPIRICALLY POSSIBLE WITH A PRO
SE CAPITAL DEFENDANT.
WITH ALL OF THAT BEING SAID I
WOULD LIKE TO ACKNOWLEDGE THE
MINORITY POSITION ON OUR
COMMITTEE.
I THINK THE SENTIMENT IS ONE OF
PHILOSOPHY AND BEST REPRESENTED
BY JUSTICE KHALIL'S DISSENT IN
MARTINEZ WHERE HE STATED OUR
SYSTEM OF LAWS GENERALLY PRESUME
THAT THE CRIMINAL DEFENDANT
AFTER BEING FULLY INFORMED KNOWS
HIS OWN BEST INTEREST AND DOES
NOT NEED THEM DICTATED BY THE
STATE.
ANY OTHER APPROACH IS UNWORTHY
OF A FREE PEOPLE.
AS JUSTICE FRANKFORD PUT IT FOR
THE COURT IN ADAMS VERSUS UNITED
STATES TO REQUIRE THE ACCEPTANCE
OF COUNSEL IS TO IMPRISON A MAN
AND HIS PRIVILEGES AND CALL IT
THE CONSTITUTION.
THANK YOU VERY MUCH JUSTICES,
IT'S BEEN AN HONOR AND A
PRIVILEGE APPEARING IN FRONT OF
YOU TODAY.
>> I HAVE A QUESTION.
>> YEP.
>> I UNDERSTAND THE CONCERNS AND
LET ME SAY BEFORE I GET TO MY
QUESTION, WE APPRECIATE YOUR
COMMENTS, YOUR COMMITTEE'S
COMMENTS AND ALL THE OTHER
COMMENTS THAT THE COURTS
RECEIVED.
THIS IS THE THORNY ISSUE AND
THERE IS PHILOSOPHICAL
DIFFERENCES WHIRLING AROUND.
WE APPRECIATE THE VARIOUS
OPINIONS IN THE VARIOUS
POINSETTIA BENDING.
LET ME ASK ABOUT ONE THING WE
STARTED ON THIS JOURNEY WITH
DAVIS.
A RAISE SOME ISSUES ABOUT THE
SCOPE OF A DEFENDANTS WAIVER OF
CLAIMS.
YOU HAVE ANY THOUGHTS ABOUT HOW

WE SHOULD ADDRESS THAT.
ONE VIEW, IF YOU ARE GOING TO WAIVE PROCEEDINGS THAT IS ONCE AND FOR ALL IN FOREVER, THAT IS NOT THE POSITION THE COURT TOOK.
WE THOUGHT THAT WAS NOT WHAT WE WANTED, THE MAJORITY DID NOT WANT THAT.
THERE WAS ALSO THE THOUGHT, MAYBE YOU SHOULD ONLY BE ABLE TO WAIVE THE CLAIMS THAT ARE ACTUALLY CURRENTLY PENDING.
ANOTHER THOUGHT, IF YOU DO EXPRESSLY YOU COULD WAIVE THOSE CLAIMS AND ANY OTHER CLAIMS.
IF YOU DO THE EXPRESSLY AND THE CLAIMS THAT ARE PENDING WOULD NOT BE CONSTRUED AS A WAIVER OF ALL FUTURE CLAIMS, DO YOU HAVE ANY THOUGHTS?
>> THANK YOU, JUSTICE KENNEDY, MY COMMITTEE DID NOT DISCUSS THIS PARTICULAR ISSUE.
I'M GIVING YOU JUST MY PERSONAL OPINION.
I JUST WANT TO MAKE CLEAR THAT WE DID NOT DISCUSS IT.
I DON'T WANT TO SPEAK ON BEHALF OF.
BASED ON MY OWN PERSONAL OPINION.
I DO THINK THAT A DEFENDANT SHOULD BE PERMITTED TO WAIVE ANY AND ALL CLAIMS, I DON'T NECESSARILY THINK THAT HAS TO BE JUST PENDING CLAIMS.
THEY WOULD BE TWO CAVEATS TO THAT, HOWEVER, IN MY OPINION.
ONE WOULD BE FOR NEWLY DISCOVERED EVIDENCE.
IF IT TRULY CONSTITUTED NEWLY DISCOVERED EVIDENCE.
I THINK THAT WOULD BE ONE EXCEPTION.
>> SO YOU ARE SAYING EVEN IF THEY SAID I AM DONE WITH THIS PROCESS, I DON'T WANT ANY MORE OF THIS, IT IS VERY CLEAR THAT THEY INTEND TO WAIVE FUTURE CLAIMS OF UNDISCOVERED OR NEWLY DISCOVERED EVIDENCE, YOU SAY THEY STILL SHOULD BE ABLE TO DO IT?
I JUST WANT TO BE CLEAR ABOUT

THAT.
>> IT CAUSES ME SOME HARDWARE BECAUSE YOU DON'T KNOW WHAT YOU DON'T KNOW.
WHAT IF SUDDENLY AS A CAPITAL DEFENDANT YOU'VE WAIVED ALL YOUR POST-CONVICTION RIGHTS AND DID YOU GET A LETTER FROM THE FBI THAT SAYS OH MY GOSH, THE DNA TESTIMONY THAT WAS PROVIDED TO CONVICT YOU WAS ACTUALLY FAULTY. IT CANNOT BE RELIED UPON ANY FURTHER.
I THINK AT THAT POINT WOULD BE AGREED TO PROHIBIT A DEFENDANT FROM RAISING THE ISSUE.
THAT IS WHY ONE EXCEPTION WOULD BE NEWLY DISCOVERED EVIDENCE FOR ME PERSONALLY.
THE SECOND ONE WOULD BE DEATH WARRANT PROCEEDINGS.
THERE IS TWO ISSUES, STEPPING BACK TO DEATH WARRANTS THEY DON'T ALWAYS REQUIRE A HEARING.
THE FIRST WHAT I DID DID NOT REQUIRE A HEARING, IT WAS MATTERS OF LAW AND I ROLLED ON THEM, THE CHALLENGES TO THE THREE DRUG PROTOCOL FOR EXECUTION IF THAT WAS SETTLED BY THE FLORIDA SUPREME COURT AND THERE WAS NO REASON FOR AN EVIDENTIARY HEARING IN MY OPINION.
IN MR. LONG'S CASE, HE HAD A SPECIFIC MEDICAL CONDITION AND BECAUSE OF THE MEDICAL CONDITION, HIS ARGUMENT WAS THE EXECUTION PROTOCOL WOULD INFLICT CRUEL AND UNUSUAL PUNISHMENT ON HIM.
THE SECOND I CAN THINK OF FOR DEATH PROCEEDINGS, IF THERE IS A CHANGE IN THE THREE DRUG PROTOCOL FOR EXECUTIONS I THINK IS TRICKY WHAT YOU ALL HAVE SEEN THERE WILL BE A CHALLENGE THAT THE FIRST DEFENDANT POSTED CHANGE IN THE EXECUTION PROTOCOL AND THE CONSTITUTIONAL CHALLENGE TO THE PROTOCOL FOR THE FIRST DEFENDANT UNDER A DEATH WARRANT AN EVIDENTIARY HEARING WILL BE CALLED FOR.

I DO THINK AGAIN WITH
DEFENDANTS.
THEIR MEDICAL CONDITION MAY
CHANGE OVER THE YEARS THEY ARE
INCARCERATED.
THE THREE DRUG PROTOCOL MAY HAVE
AN IMPACT ON THEM THAT HAS NOT
BEEN CONTEMPLATED.
THOSE WOULD BE THREE EXCEPTIONS,
TWO, ONE FOR DEATH WARRANTS I DO
THINK THAT DEATH WARRANT SHOULD
BE EXCLUDED AND I THINK FOR
NEWLY DISCOVERED EVIDENCE.
OTHER THAN THAT I THINK
DEFENDANTS HAVE AS ALL
DEFENDANTS, CAPITAL DEFENDANTS
AND REGULAR DEFENDANTS TO MAKE
THE NO INVOLUNTARY AND
INTELLIGENT WAIVER OF ALL
POST-CONVICTION CLAIMS.
>> THANK YOU.
>> LET ME QUICKLY ASK WHAT IS
THE UTILIZATION OF STANDBY
COUNSEL?
AND WHEN A DEATH WARRANT IS
GOING ON?
>> AGAIN, WE DID NOT DISCUSS THE
ISSUE SPECIFICALLY BECAUSE THE
VAST MAJORITY VOTED TO RETAIN
COUNSEL.
THE DEFENDANT SHOULD STILL BE
REQUIRED TO HAVE POST-CONVICTION
COUNSEL.
AGAIN, I CANNOT SPEAK TO THAT AS
FAR AS WHAT THE COMMITTEE FEELS.
I CAN ONLY SPEAK TO MY
INDIVIDUAL OPINION ON THAT.
>> YOU HAVE A LOT OF EXPERIENCE,
WHAT IS YOUR VIEW ON THAT?
>> AND FULL DISCLOSURE I VOTED
WITH THE MINORITY.
I WAS ONE OF THE FIVE GUTFELD
THAT DEFENDANTS SHOULD HAVE THE
RIGHT TO SELF REPRESENT AND
POST-CONVICTION PROCEEDINGS IF
THEY CHOOSE.
THAT DOESN'T UNDERCUT ALL THE
ARGUMENTS I JUST MADE I BELIEVE
EVERY WORD I JUST SAID REGARDING
HOW INCREDIBLY CHALLENGING IT
WOULD BE.
IT WOULD BE INCREDIBLY
CHALLENGING.
I DO THINK, IF A DEFENDANT, IF I

AM THE LAST JUDGE THAT DEFENDANT MAY EVER SEE BEFORE THE EXECUTED AND THAT DEFENDANT WANTS TO REPRESENT THEMSELVES, I WOULD BE INCLINED TO LET THAT DEFENDANT DO SO.
IT JUST COMES DOWN TO A PHILOSOPHICAL ISSUE WITH REGARDS TO THE APPOINTMENT OF STANDBY COUNSEL THAT WOULD HAVE TO BE AUTOMATIC.
I DO THINK SOME OF THE COMMENTS, PARTICULARLY THE BY THE CRIMINAL COURT STEERING COMMITTEE, THEY DID MAKE SOME REALLY VALID ARGUMENTS REGARDING HOW STANDBY COUNSEL IS NOT NECESSARILY A GREAT SUBSTITUTE BUT MY OWN PERSONAL OPINION, IF THE COURT WERE TO CHANGE THE RULES, IT WOULD HAVE TO BE AUTOMATIC, IT WOULD HAVE TO BE.
FOR ALL OF THE REASONS I JUST DISCUSSED, ALTHOUGH THE LOGISTICAL ISSUES, WITH ANY EVIDENTIARY HEARING.
>> YOU STARTED OFF WITH A PRETTY COMPELLING ACCOUNT OF YOUR DEATH FOR EXPERIENCE IN THE TIMEFRAME AND YOU CONCLUDED YOUR STORY BY SAYING YOU WHEN THE BEEN ABLE TO DO IT WITHOUT COUNSEL.
OBVIOUSLY YOU WERE THE FIRST STEP IN A PROCESS THAT WAS GOING TO HAVE STEPS.
IF THERE HAD BEEN DELAYS, CAN YOU PLAY OUT FOR US, ARE YOU SUGGESTING UNLESS THE GOVERNOR READJUST HIS TIMEFRAME TO ACCOUNT FOR THE SELF REPRESENTATION.
ARE WE INTRODUCING INEVITABLE DELAYS INTO THESE THINGS OR WHAT.
>> IN MY OPINION, AGAIN, I'M NOT SPEAKING ON BEHALF OF THE COMMITTEE BUT YES.
I THINK THEN, THE GOVERNOR WOULD HAVE TO BE COGNIZANT OF THE FACT THAT SELF REPRESENTATIVE DEFENDANT WHO WAS ON DEATH ROW IS GOING TO FACE CHALLENGES IN LITIGATING THE POST-CONVICTION PROCEEDINGS THAT ARE REPRESENTED

DEFENDANT WOULD NOT.
I STAND BY WHAT I SAID.
IF BOBBY JOE LONG TODAY, IF THAT SAME CASE AND I WAS ONLY GIVEN EIGHT DAYS, I DO NOT BELIEVE I COMPLETED AN EIGHT DAYS.
I DO NOT, EFFECTIVELY.
AND FAIRLY.
>> THANK YOU.
ALL RIGHT, WE THANK YOU VERY MUCH, JUDGE.
NOW WE WILL GO TO KIEFER.
>> GOOD MORNING, MAY I APPEASE THE COURT ON BEHALF OF CAPITAL.
>> I MISPRONOUNCE YOUR NAME.
>> NO PROBLEM. ON BEHALF OF REGIONAL COUNCIL SOUTH.
THE COMMENT THAT WE SUBMITTED TO THE COURT FOCUSED PRIMARILY ON THE ISSUE OF UNDERREPRESENTATION.
WE URGE THE COURT TO CONTEMPLATE WHETHER OR NOT A CAPITAL DEFENDANT SHOULD BE ALLOWED TO REPRESENT HIM OR HERSELF BASED ON SEVERAL CONSIDERATIONS, PRACTICAL CONSIDERATIONS, ADMINISTRATIVE CONSIDERATIONS, EQUITABLE AND CONSTITUTIONAL CONSIDERATIONS.
REMARKABLY, I SAY THIS HAVING BEEN IN THE CAPITAL POST-CONVICTION ARENA FOR SOME TIME.
ALL OF THE AGENCIES AND COMMITTEES THAT SUBMITTED COMMENTS AGREED THAT A CAPITAL POST-CONVICTION SHOULD NOT BE PERMITTED TO REPRESENT HIMSELF.
AND THEY AGREED ACROSS THE BOARD ON THOSE REASONS THAT I JUST MENTIONED, LIKE I SAID THAT IS AN AGREEMENT THAT WE DON'T OFTEN SEE IN CAPITAL LITIGATION FOR SURE.
I WANTED TO TALK AT LITTLE BIT AND JUDGE SISCO DID MENTION THE PRACTICAL CONSIDERATIONS.
BUT AS AN ATTORNEY REPRESENTING POST-CONVICTION DEFENDANTS, THE PRACTICAL CONSIDERATION REALLY ARE SUBSTANTIAL.
I THINK THE HEART OF THOSE CONSIDERATIONS IS ACCESS.

ACCESS TO WITNESSES, ACCESS TO
RECORD, LEGAL MATERIALS, ACCESS
TO EXPERTS.
ACCESS TO OPPOSING COUNSEL
PRIMEAU SIGNIFICANTLY ACCESS TO
THE COURT ITSELF.
THERE SIMPLY IS TOO MANY MOVING
PARTS AND CAPITAL
POST-CONVICTION FOR A CONVICTED
DEFENDANT TO BE ABLE TO NAVIGATE
FROM DEATH ROW.
WHAT ARE THE MOST SIGNIFICANT
AREAS, IT IS A LARGE PART OF
CAPITAL POST-CONVICTION
LITIGATION AS PUBLIC RECORDS.
THE PUBLIC RECORD LITIGATION
THAT WE PARTAKE IN IS UNIQUE TO
THE AREA OF THE LAW.
RULE 3.852 APPLIES ONLY TO
CAPITAL POST-CONVICTION.
WHAT THAT MEANS, THIS IS BEYOND
THE DISCOVERY THAT A DEFENDANT
WOULD RECEIVE PRETRIAL.
THIS IS VOLUMES AND VOLUMES AND
VOLUMES OF RECORDS.
>> THESE ARE OBVIOUSLY VERY
SIGNIFICANT REAL WORLD
CONSIDERATIONS THAT THE COURT IS
VERY MINDFUL OF AND I THINK THE
COMMENTERS ARE UNANIMOUS ABOUT,
I WONDER IF YOU COULD RESPOND TO
WHAT JUDGE SISCO WAS SAYING
ABOUT THE ROLE OF A WEAVER IN
THIS ENTIRE CONSIDERATION.
WHAT IMPORTANCE DO YOU DESCRIBE
THE WAIVER FOR THE DEFENDANT WHO
DOES NOT WANT THE VOLUMES OF
EVIDENCE, WHO DOES NOT WANT TO
MAKE THE DEEP DIVE THAT YOU ARE
SUGGESTING IS DIFFICULT TO MAKE.
HOW DOES THAT FIGURE INTO YOUR
ANALYSIS?
>> IT DEPENDS ON IF YOU ARE
TALKING ABOUT WAIVER OF THE
POST-CONVICTION PROCEEDINGS OR
YOU ARE SAYING WAIVER AND
DISMISSAL OF COUNSEL TO
REPRESENT YOURSELF.
ONE WAIVER OF PROCEEDINGS WE ARE
ALL FAMILIAR WITH DAVIS.
I THINK CERTAINLY I WOULD ECHO
THEIR RIGHT TO WAIVE THE
PROCEEDINGS AS LONG AS THE
PROCEDURES ARE IN PLACE TO MAKE

SURE THAT WAS RELIABLE AND THAT
INVOLVES AUTOMATIC APPEAL TO
THIS COURT OF WHAT OCCURRED IN
THE TRIAL COURT.
I DO AGREE WITH JUDGE SISCO,
THERE ARE ISSUES THAT ARISE IN
THE DEFENDANT MAY NOT KNOW.
AS SHE SAID THE DEFENDANT
DOESN'T KNOW WHAT HE DOESN'T
KNOW.
THERE COULD BE CHANGES IN THE
LAW OF THE CONSTITUTIONAL
MAGNITUDE, WE SAW THAT AT FIRST.
THERE CAN BE NEWLY DISCOVERED
EVIDENCE.
THERE HAVE BEEN TIMES WHERE
WITHOUT REACHING OUT FOR THE
INFORMATION HAVE RECEIVED
LETTERS THAT MAY SUGGEST NEWLY
DISCOVERED EVIDENCE.
CERTAINLY THERE ARE ISSUES THAT
ARISE DURING A DEATH WARRANT,
LITIGATION OF METHOD OF
EXECUTION.
WHILE IT REMAINS THE LETHAL
INJECTION, THE DRUG PROTOCOL HAS
CHANGED MANY, MANY TIMES.
>> I AM WILLING TO STIPULATE
GOING WITHOUT COUNSEL IN A DEATH
PROCEEDING IS A BAD IDEA.
LET'S JUST ASSUME THAT EVERYONE
AGREES IT'S A TERRIBLE IDEA AND
THERE IS NOTHING TO RECOMMEND
IT.
I GUESS THE QUESTION WHAT YOU DO
WITH THE CORE FACT THAT IT IS
STILL WITHIN THE REALM OF
SOMEONE'S CHOICE TO FIRE A
LAWYER, NOT WANT TO PROCEED.
HOW DO WE THREAD THE NEEDLE WHAT
IS THE RULE YOU WOULD HAVE US
HAVE?
>> THE WAY THE RULE IS WRITTEN
NOW TAKING INTO CONJUNCTION
DAVIS ANOTHER ISSUES MAY ARISE
THAT HE WOULD NEED COUNSEL FOR.
I THINK IT WORKED IN THAT THERE
ARE PROCEDURAL SAFEGUARDS IN
PLACE SO THAT WHEN A DEFENDANT
MAKES THAT CHOICE, HIS
COMPETENCY IS REVIEWED AND THEN
IT'S CONDUCTED OF THE DEFENDANT
PROVIDED THAT HE IS COMPETENT
AND BEEN FOUND COMPETENT, THEN

THERE IS THE SAFEGUARD THAT THE
DEFENSE ATTORNEY THAT HAS BEEN
FIRED FILES AUTOMATIC APPEAL,
THAT IS TO SAFEGUARD THAT NEEDS
TO BE IN PLACE TO ENSURE THAT
THE TRIAL COURT IN THE
PROSECUTOR AND THE DEFENSE
ATTORNEY HAVE GONE THROUGH THE
PROCESS IN PLACE TO DETERMINE
THE DEFENDANT, LIKE I SAID IS
COMPETENT AND THIS IS NO
INTELLIGENT INVOLUNTARY.
I THINK IN TERMS OF THE
AUTOMATIC APPEAL THAT IS
SOMETHING THAT NEEDS TO REMAIN
IN PLACE.
I WANT TO GO BACK, YOU MENTIONED
WHAT DO WE DO WITH THE DEFENDANT
THAT DOES NOT WANT TO AVAIL
HIMSELF OF THE POST-CONVICTION
PROCESS ALLOWS FROM FILING 3850
WENT TO THE PUBLIC RECORD
PROCESS, INTERVIEWING WITNESSES,
HIRING EXPERTS, WHATEVER IT MAY
BE.
IF THE ASSUMPTION IS THAT THEY
WILL REPRESENT THEMSELVES BUT
NOT AVAIL THEMSELVES OF WHAT THE
POST-CONVICTION PROCESS
PROVIDES, THEN WE ARE TALKING
ABOUT REVIEW THAT IS NOT
MEANINGFUL AND EFFECTIVE.
>> HOW DO YOU RESPOND TO THE
POINT THAT THEY ARE FULLY
INFORMED AND AN EXPLANATION IS
MADE ABOUT THE DIFFICULTIES WITH
SELF REPRESENTATION, JUST LIKE
WE HAD IN THE LORETTO CONTEXT.
IT'S NOT EASY TO REPRESENT
YOURSELF IN A CAPITAL MURDER
TRIAL EITHER.
THEY ARE ALL ISSUES AND
DIFFICULTIES WITH THE DEFENDANT
WHO DOES THAT.
BUT THEY ARE TOLD AND IF THEY
DECIDE TO DO IT THAN THE
DIFFICULTIES THAT THEY HAD
CHOSEN TO ASSUME.
HOW DO YOU RESPOND TO THAT?
>> I THINK THE POST-CONVICTION
PROCESS AND THE ROLE TO BE
REPRESENTED BY COUNSEL, SPEAKS
TO HOW THE DEATH PENALTY IS
ADMINISTERED IN THE STATE OF

FLORIDA AND HOW IT MUST BE
ADMINISTERED IN THE STATE OF
FLORIDA TO MEET THE DEMANDS.
ALL OF THESE THINGS HAVE BEEN
PUT IN PLACE IN ORDER TO MEET
WITH THE UNITED STATES SUPREME
COURT REQUIRED.
WHEN YOU DO AWAY WITH THAT AND
YOU SAY WE MADE THIS KNOWING
WAIVER THEY'RE NOT GOOD AT
PUBLIC RECORDS.
THEY KNOW THEY'RE NOT GOING TO
BECAUSE IT'S DIFFICULT.
YOU WERE TAKEN AWAY A PIECE OF
THAT COMPONENT.
I STARTED TO SAY THAT THE
PROBLEM WITH THAT, IS NOT JUST A
DISRUPTION OF THE CRIMINAL
JUSTICE SYSTEM.
IT'S A DISRUPTION OF
CONSTITUTIONAL MAGNITUDE.
>> COUNSEL, I AM SORRY TO
INTERRUPT YOU.
IT SEEMS TO ME YOUR STRONGER
ARGUMENT IS A DISRUPTION TO THE
SYSTEM BECAUSE IT SEEMS -- I'M
NOT SURE I'M UNDERSTANDING THE
QUESTION RIGHT.
MY UNDERSTANDING IN THIS
PROPOSAL IS IF THE COURT ALLOWS
SELF REPRESENTATION, THEN THE
SYSTEM WILL ESSENTIALLY HAVE TO
ACCOMMODATE THAT BY GIVING THE
PERSON ACCESS TO A LAW LIBRARY,
GIVING THEM RECORDS IN A WAY TO
MEET WITH PEOPLE, ET CETERA, ET
CETERA.
IT HAS NOT BEEN MY UNDERSTANDING
THAT WE ARE GOING TO PROCEED IN
A WAY THAT ASSISTED THIS PERSON,
YOU CAN REPRESENT YOURSELF BUT
IF IT IS NOT CONVENIENT FOR US
TO ALLOW YOU TO DO ALL THESE
THINGS, THEN YOU ARE OUT OF
LUCK.
THAT IS SORT OF CONSEQUENCE OF
YOUR DECISION.
TO ME I UNDERSTAND IN SOME WAY
THE PHILOSOPHICAL THING OF
PERSONAL CHOICE, BUT THE PERSON
PUT THEMSELVES IN A POSITION OF
BEING CONVICTED OF CAPITAL CRIME
IN THE FIRM ON APPEAL, ET
CETERA.

THERE ESSENTIALLY MAKING A
CHOICE THAT HAS A COLLATERAL
CONSEQUENCES FOR A LOT OF OTHER
PEOPLE INCLUDING THE VICTIMS
FAMILIES WHO WILL BE SUBJECTED
POTENTIALLY TO THESE DELAYS AND
YADA YADA.
MY UNDERSTANDING OF THIS
PROPOSAL THAT IS BAKED IN TO A
PROPOSAL TO LET SOMEONE
REPRESENT HIMSELF.
IS IT YOUR UNDERSTANDING IF
SOMEONE CHOOSES TO REPRESENT
THEMSELVES THAT THEY AREN'T --
PEOPLE AREN'T GOING TO HAVE TO
ACCOMMODATE THE RECORDS AND THE
WITNESSES, ET CETERA, ET CETERA.
>> I THINK THE PROBLEM IS, HOW
DO THOSE ACCOMMODATIONS HAPPEN.
>> RIGHT, THE POINT IS, LET ME
JUST ASK YOU FOR GETTING THE
LOGISTICS OF HOW, ISN'T YOUR
ASSUMPTION THAT THEY WILL HAVE
TO TRY TO BE MADE.
PUTTING ASIDE, OBVIOUSLY WE
CAN'T ANTICIPATE ALL THE
DIFFERENT THINGS.
IS THE PROPOSAL AS YOU
UNDERSTAND IT THAT ESSENTIALLY
IF THE BURDEN IS ON THE SELF
REPRESENTED PETITIONER LITIGATE,
WHATEVER YOU WANT TO CALL HIM OR
ARE WE GOING TO HAVE TO TRY TO
ESSENTIALLY FACILITATE THE SELF
REPRESENTATION BY DOING WHATEVER
IT TAKES LOGISTICALLY TO GIVE
HIM ACCESS TO THE THINGS HE
WOULD NEED TO BE ABLE TO DO.
>> CERTAINLY, THIS IS THE ROUTE
THE COURT GOES TO REPRESENT
THEMSELVES.
ALL OF THESE DIFFERENT AGENCIES
IN THE COURT AND THE STATE
ATTORNEYS ARE GOING TO HAVE TO
ACCOMMODATE THAT DEFENDANT.
WHAT OUR COMMENTS POINT OUT, IT
IS BEYOND DIFFICULT IN THIS
CIRCUMSTANCE.
I WON'T BELABOR IT.
WE LAID OUT IN OUR COMMENTS THE
CASE OF SALAZAR.
IN THE COURT ALLOWED MR. SALAZAR
TO REPRESENT HIMSELF.
I DON'T BELIEVE THEY GOT MUCH

FURTHER THAN ADDITIONAL
LITIGATION OVER THE LITIGATION
THAT IS INHERENT IN PUBLIC
RECORDS.
THEY HAD TO APPOINT A SPECIAL
MAGISTRATE TO GO TO THE RECORDS
AND DECIDE WHICH ONES COMPLY
WITH DOC'S ADMINISTRATIVE CODE
AND WHAT HE COULD RECEIVE.
THERE IS CERTAIN SECURITY
CONCERNS I DON'T KNOW THAT THEY
COULD DO AWAY WITH THEM AND
ALLOW A SELF REPRESENTED CAPITAL
CONVICTION OFFENDED TO
ADEQUATELY REPRESENT HIMSELF.
WE SPELLED OUT SOME OF THOSE
PROBLEMS IN OUR COMMENTS AND
ULTIMATELY MR. SALAZAR WAS
APPOINTED COUNSEL AGAIN.
IT SIMPLY WAS NOT WORKING IN THE
STATE HAD TO POINT OUT WHAT
GORDON SAID IN THE FACT THAT IT
WASN'T WORKING.
WHILE THEY SEEM LIKE AN
PRACTICALITIES THAT MAY BE CAN
BE ACCOMMODATED IN REALITY FOR
THE STAKEHOLDERS IN THIS PROCESS
WE KNOW IT'S NOT GOING TO
HAPPEN.
AND THAT'S WHEN IT'S NOT JUST
DELAY, IT'S NOT JUST DISRUPTION
OF THE STREAMLINING OF THIS
PROCESS.
IT BECOMES CONCERNS OF
CONSTITUTIONAL MAGNITUDE,
FAIRNESS RELIABILITY AND
CONSISTENCY THIS.
>> LET ME EXPORT AND TRY TO
ARTICULATE AND GET YOUR REACTION
TO MY CONCERN ABOUT THE RULE AS
IT EXIST AND LET ME START WITH
MY ASSUMPTION THE WAY IT WORKS,
THAT A DEFENDANT THAT HAS ONLY
TWO OPTIONS, THEY CAN WAVE
EVERYTHING AND THEREFORE NOT BE
HEARD IN THE COURT OF LAST
RESORT IN THE CASE IN WHICH THE
SENATE DEATH IS IMPOSED OR
THEY CAN KEEP COUNSEL OR NOT
REALLY HAVE A SAY IN WHAT THE
COUNCIL DOES.
THEY MAY WANT TO SAY TO US THIS
IS MY LIFE AT STAKE IN THIS IS
THE CLAIM I WANT TO MAKE.

YOU MAY SAY, THAT IS NOT A CLAIM
I CAN MAKE.
BUT WORKING TO MAKE ALL THESE
OTHERS.
I DON'T WANT YOU TO MAKE ALL
THOSE OTHERS.
THEN YOU CAN WAVE EVERYTHING
INCLUDING THE CLAIM THAT YOU
WANT TO MAKE.
THERE CONSTITUTIONAL
IMPLICATIONS OF THAT THEY HAVE A
RIGHT OF SELF REPRESENTATION WE
ARE TELLING THEM.
THAT IS TROUBLING TO ME, WHAT AM
I MISSING IN THE EXPLANATION OF
HOW IT WORKS WITH CHOICE OF THE
DEFENDANT THAT THIS IS MAKING.
>> I AGREE, IT IS A TROUBLING
CHOICE FOR A DEFENDANT TO MAKE
TO GIVE UP ALL OF HIS CLAIMS AND
NOT HAVE COUNSEL OR STAY WITH
COUNSEL AND AS YOU SAID.
>> AND LOSE COMPLETE CONTROL IN
WHICH THE STATE HAS IMPOSED THIS
PENALTY, YOU CANNOT TALK TO THE
COURT.
IT SEEMS LIKE ALMOST.
>> YOU'RE REALLY LOSING CONTROL
OF OFFENSE, NOT DEFENSE THIS IS
OFFENSE.
>> I UNDERSTAND THAT WHAT THE
COUNCIL HAS A ROLE FOR A REASON.
I THINK LAMBRIX ADDRESSES YOUR
QUESTION IN THIS REGARD BECAUSE
LAMBRIX FILED CLAIMS AND
PETITIONS AND OVER AND OVER IN
THE COURT CONSTANTLY FOUND THAT
THE CLAIMS WERE MERITLESS,
FRIVOLOUS AND DISMISS THEM.
>> LET ME ASK YOU THIS, WHAT IF
WE HAD A PROCEDURE THAT ALLOWED
FOR THE APPOINTMENT OF COUNSEL
REQUIRED IT BECAUSE OF ALL OF
THE INDIRECT CONSTITUTIONAL
CONCERNS THAT WOULD SUGGEST THAT
COUNSEL IS NEEDED AND NECESSARY.
BUT LIKE AND ENTERS PRECEDING IN
THE RULE THAT THE CLIENT WOULD
MAINTAIN CONTROL, THE CLIENT
DOES NOT WANT TO BRING A CLAIM
THEN YOU WOULD NEED TO ABIDE BY
COUNSEL'S WISHES.
IF A CLIENT WANTED TO BRING A
MERITLESS CLAIM YOU CAN FILE

THAT SAID MY CLIENT WANTS TO
PRESENT THIS CLAIM, I DON'T
THINK THERE'S A BASIS FOR IN THE
LAW AND HERE'S WHY, THIS IS THE
CLAIM.
WHAT ABOUT THAT PROCEDURE THAT
WOULD ALLOW YOU TO SHEPHERD HIM
THROUGH IF THE CLIENT AGREES TO
MAKE THE BEST ARGUMENT THAT YOU
CAN BUT IF THE CLIENT DOESN'T
AGREE, PRESENT ARGUMENT.
WERE PRESENT WHATEVER ARGUMENT
IT IS THAT THE CLIENT WANTS TO
PRESENT.
IT IS THE CLIENTS CASE, NOT YOUR
CASE.
>> UNDERSTAND THAT THOUGHT
PROCESS.
WHAT I WILL SAY, I POINT THE
COURT BACK TO LAMBRIX AND WHAT
IS HEADED LAMBRIX.
I THINK THE POINT IS OFTEN TIMES
IN COURT IS OVERBURDENED WITH
PRO SE DEFENDANTS FILING CLAIMS
THAT ARE MERITLESS OR FRIVOLOUS.
EVEN IN THAT SCENARIO THE COURT
WOULD STILL HAVE TO BE
ADDRESSING THESE CLAIMS.
LAMBRIX SPEAKS DIRECTLY TO THIS.
IT IS EXACTLY THE SITUATION.
>> I CAN GUARANTEE YOU IT WILL
BE MUCH EASIER MUCH MORE
EFFICIENT TO ADDRESS THE CLAIMS
COMING FROM YOU IN A BRIEF THIS
IS THIS IS THE CLAIM, THIS IS
THE LAW RELATING TO THIS AREA
AND THIS IS WHAT MY CLIENT
WISHES TO PRESENT.
THAT WOULD BE SIGNIFICANTLY
EASIER TO DEAL WITH THE MOST
CASES THE PRO SE THINGS THAT I
GOT WHEN I WAS ON THE DISTRICT
COURT OF APPEAL FOR A LIVING.
>> COUNSEL, JUSTICE LAWSON IS
OFFERING YOU AN OFFBRAND.
YOUR POSITION, LET ME ASK IT NOT
HISTORICALLY, WOULD YOU PREFER
JUSTICE LAWSON'S ALTERNATIVE TO
THE PROPOSAL TO ALLOW PEOPLE TO
REPRESENT THEMSELVES?
>> CERTAINLY, I THINK IF THERE
IS A PROVISION THAT ALLOWS US AS
PART OF OUR 3851 WERE A INITIAL
HIDEOUS.

THAT WOULD ALLOW US TO RECOGNIZE
AN ISSUE THAT THE DEFENDANT
WANTS TO RAISE.
THAT IS CERTAINLY SOMETHING TO
EXPLORE.
THAT IS NOT WHAT WAS PRESENTED
HERE.
I'M NOT SURE I'VE EXPLORED THAT
THOROUGHLY AND WHAT THAT WOULD
LOOK LIKE.
>> I THINK HE IS SUGGESTING
ISSUES THAT THEY WOULD NOT WANT
TO RAISE BUT ALSO A PROCESS
WHERE THE COURT COULD HEAR TO
THE EXTENT THAT THE PETITIONER,
HIM OR HERSELF DID NOT WANT
CLAIMS RAISED A LAWYER SAYING
THEY WANT TO RAISE IN THE COURT
CAN SAY DO YOU UNDERSTAND BLAH,
BLAH, BLAH AND IF THE COURT IS
SATISFIED, THE PETITIONER IS
MAKING ANNOYING DECISION NOT TO
PURSUE THOSE CLAIMS THEN THE
CLIENT WINS, NOT THE LAWYER AND
THEN THE CLAIM GOES AWAY.
>> I THINK WHAT YOU ARE
REFERRING TO, I'VE HAD THIS
HAPPEN WHERE I PLED PENALTY
PHASE MITIGATION CLAIMS.
THE CLIENT ALLOWED INVESTIGATION
ALLOWED TO DEVELOP THAT CLAIMANT
PUT IT IN 3851 AND ULTIMATELY
WHEN WE WENT TO EVIDENTIARY
HEARING, THE CLIENT WANTED TO
WAIVE THE SPECIFIC CLAIM THAT
WAS DONE.
THAT WAS MY OBJECTION.
SOMETHING YOUR SUGGESTED IS
ALREADY IN PLACE.
I DO HAVE THAT RIGHT TO WAIVE
THE CLAIM AS LONG AS IT'S
SNOWING.
KNOWING IS REALLY THE KEY, IT
MEANS THAT COUNSEL HAS TO HAVE
THE ABILITY TO INVESTIGATE AND
PROVIDE THE ENTIRE CLAIM TO
THEIR CLIENT.
I THINK WHAT YOU'RE SAYING
JUSTICE NUNES, IT'S ALREADY
SOMETHING THAT HAS HAPPENED,
THERE ARE SCENARIOS WHERE IT IS
NOT ALL OR NOTHING TO WAIVE YOUR
ENTIRE POST-CONVICTION
PROCEEDINGS BECAUSE YOU DON'T

AGREE WHAT COUNSEL WANTS TO PUT FORTH.
THERE ARE SCENARIOS THAT THEY WAVE CLAIM, THEY DON'T WANT TO CLAIM, THEY DON'T WANT YOU TO PUT A LETHAL INJECTION CLAIM ON THERE.
WHATEVER IT MAY BE, THAT SCENARIO HAS TAKEN PLACE AND THEY DO HAVE CONTROL IN THAT SENSE.
>> IF THERE ARE NO OTHER -- I'M SORRY, GO AHEAD.
IF THERE ARE NO OTHER QUESTIONS.
>> I WAS GOING TO SAY THANK YOU.
>> THANK YOU, WE WILL MOVE ON TO THE CRIMINAL LAW SECTION.
>> MAY I PLEASE THE COURT, I AM ARGUING ON BEHALF OF THE CRIMINAL LAW SECTION OF THE FLORIDA BAR FOR THE CRIMINAL LAW SECTION, OPPOSING THE PROPOSED RULE CHANGE WAS INFORMED BY HIS CAPITAL CASES COMMITTEE WHICH CONSIST OF JUDGES, PROSECUTORS, DEFENSE ATTORNEYS, LAW PROFESSORS IN ORDER TO ENSURE A BALANCED APPROACH IN THE VERY COMPLEX AREA OF LAW.
I WILL BELABOR ECHOING ALL THE COMMENTS REGARDING THE LOGISTICAL AND PRACTICAL CHALLENGES, BUT THE WIDESPREAD AGREEMENT AMONG ALL OF THE STAKEHOLDERS DOES WAIVE HEAVILY IN FAVOR OF THE COURT DECLINING TO ADOPT THE PROPOSED RULE CHANGES.
I WANT TO SPEAK FURTHER AND ADDRESS ANY CHANGES THAT THIS COURT HAS AND I WILL FOLLOW UP ON THE QUESTIONS.
I WOULD LIKE TO SPEAK ALLOWING SELF REPRESENTATION OF THE CRIMINAL LAW SECTION THAT I TOUCH ON THE OTHER ISSUES.
ALLOWING SELF REPRESENTATION IN THE FACE OF THESE LOGISTICAL PRACTICAL CHANGES ACTUALLY RISES TO A LEVEL VIOLATION OF DUE PROCESS THAT IS REQUIRED IN THE CAPITAL CASES AND DOES JEOPARDIZE AND UNDERMINE CONFIDENCE IN THE DEATH PENALTY.

THIS COURT HAS RECOGNIZED THIS.
THIS COURT RECOGNIZED THE LONG-STANDING AND SOLEMN DUTY TO ENSURE THE DEATH PENALTY IS ADMINISTERED IN A FAIR AND CONSISTENT AND RELIABLE MANNER.
THIS OF COURSE, COMES FROM THE UNITED STATES SUPREME COURT ITSELF.
THIS IS THE EIGHTH ONLY ALLOWS THE DEATH PENALTY IF THEY CAN BE IMPOSED FAIRLY AND WITH REASONABLE CONSISTENCY.
FLORIDA HAS REQUIRED IN THE CONSTITUTION TO INTERPRET ITS LAWS IN ACCORDANCE WITH THE UNITED STATES SUPREME COURT.
>> WITH ALL DUE RESPECT, THE RIGHT THAT THE U.S. SUPREME COURT IS THE RIGHT OF THE DEFENDANT, IS IT NOT.
>> A RIGHT OF THE DEFENDANT.
>> YES, ALSO THE CITIZENS OF THE STATE OF FLORIDA AND THE STATE TO HAVE THE DEATH PENALTY.
THERE IS AN INHERENT DUTY FOR VICTIMS AND ALL STAKEHOLDERS TO BE SURE, ADMINISTERING THE DEATH PENALTY IN A FAIR AND RELIABLE MANNER.
IS NOT JUST FOR THE DEFENDANT.
>> UNDERSTAND, I DON'T UNDERSTAND AND WHAT THE U.S. SUPREME COURT HAS SAID.
>> THE UNRELIABILITY AND ALL OF THAT, THAT REALLY IS AN INDIVIDUAL THING, IT SEEMS MORE COMPELLING ARGUMENTS THAT ALL THE OBJECTORS ARE PUTTING FORWARD, WE ARE NOT LIVING IN LIBERTARIAN PARADISE WERE 70 CAN MAKE THIS CHOICE AND THEY LIVE WITH THE CONSEQUENCES AND THAT'S THEIR DECISION.
NEGATIVE IMPACT THE ENTIRE SYSTEM TO THE STATE ATTORNEY IN THE DOC PEOPLE AND PEOPLE HAVE TO BE STANDING BY COUNSEL, ET CETERA.
IS NOT ONE OF THE DEALS WHERE SOMEONE IS EXERCISING THE RIGHT OF AUTONOMY IS AFFECTING A LOT OF OTHER PEOPLE TO IN A WAY, MY PERSONAL CONCERN SPEAKING FOR

MYSELF IS NOT A CONCERN TO
DEFEND THEIR RIGHT TO A FAIR
REVIEW THAT WILL BE VIOLATED.
MY CONCERN WHAT THEY'RE DOING TO
EVERYBODY ELSE THROUGH THE
SELFISHNESS.
WE ARE NOT TALKING ABOUT THE
DEFENSIVE POSTURE.
THIS IS POST-CONVICTION THEY ARE
ON OFFENSE AND BEEN FOUND
GUILTY.
THEY ARE IMPOSING ALL KINDS OF
COSTS A LOT OF OTHER PEOPLE NOT
BECAUSE OF A CONSTITUTIONAL
RIGHT TO SELF REPRESENTATION BUT
A COMMITMENT TO A POLICY IDEA
AND A PHILOSOPHICAL IDEA.
>> I THINK THAT SPEAKS TO THE
UNITED STATES SUPREME COURT THAT
SPEAKS TO SOME OF THAT WITH
RESPECT TO THE RIGHT TO SELF
REPRESENTATION AT TRIAL EVEN
THAT IS NOT UNLIMITED.
IT ACTUALLY TALKS A LOT ABOUT
THAT THE DIGNITY AND THE
AUTONOMY AND THAT'S THE REASON
BEHIND THE SELF REPRESENTATION
CASES BUT THERE ARE LIMITS EVEN
AT TRIAL WHEN DOING SO WITH
DOING EXACTLY WHAT YOU'RE SAYING
OVERBURDENED THE SYSTEM, MAKE A
MOCKERY OF THE SYSTEM ALLOW FOR
DECREASED RELIABILITY IN THE
PROCESS ACROSS ALL ASPECTS I
THINK THERE IS PRECEDENT TO KEEP
THE RULE AS IT IS THERE IS NO
RIGHT TO SELF REPRESENTATION
IT'S A DIFFERENT STANDARD.
THERE IS HISTORICAL APPROACH IN
SUPPORT FOR LIMITED THE RIGHT
AND DEATH IS DIFFERENT.
THE CONCERN, CAN UNDERMINE
RELIABILITY, THE WAY I WAS TAKEN
ABOUT AND PRESENTING TO THE
COURT HAS A UNIQUE SYSTEM
REPRESENTATION IT'S VERY UNIQUE
AMONG OTHER STATES, MOST STATES
DO NOT REQUIRE ORGANIZATION OF
CAPITAL POST-CONVICTION
LEGISLATION, OUR LEGISLATOR HAS
CREATED THE CCRC IN THIS COURT
HAS RATIFIED THAT SYSTEM TO THE
FAVOR OF DISMANTLING IT, THERE
WAS A PERIOD OF TIME WE CCRC

NORTH WAS CLOSED AND IT WENT TO
THE REGISTRY AS A PILOT PROGRAM
THERE WAS DEADLINES AND A LOT OF
LAWYERS THAT DIDN'T KNOW WHAT
THEY WERE DOING AND DOING
CAPITAL WORK.
WHEN THE JUSTICE ACT PASSED AND
THEY BROUGHT BACK CCRC NORTH WAS
EXACTLY FOR THAT TO BRING BACK
TO THE RELIABILITY AND
UNIFORMITY IN CAPITAL
POST-CONVICTION REPRESENTATION
SO THERE ARE NOT DELAYS AND
THERE ARE FAIR AND PROCESS THAT
GOES FORWARD.
TO ME IN SPEAKING ON BEHALF OF
THE COMMENT IF WE ALLOW THIS
PRESENTATION IT WILL DEVOLVE THE
SYSTEM INTO CHAOS, MUCH LIKE IT
DID WHEN CCRC NORTH CLOSE,
FLORIDA IN THIS COURT HAS
AUTHORIZED THE ORGANIZED SYSTEM
OF CAPITAL POST-CONVICTION
REPRESENTATION AND THE ROLE
CHANGES SET THAT BACK IN WITH
THE SYSTEM AT RISK OF
UNDERMINING THE BREAD LIABILITY
IN THE SYSTEM WHICH IS REQUIRED
FOR GOOD HAVE A DEATH PENALTY.
I'M HAPPY TO ANSWER ABOUT IN THE
LABOR OF THE CLAIMS IN THE
CONVERSATION WITH MS. KEFFER, I
DO THINK THE ROLE AS WRITTEN IS
ALREADY ALLOWING FOR THAT.
3.851 REQUIRES THE LAWYER TO
CERTIFY THAT THEY'VE GONE OVER
THE CLAIMS OF THE DEFENDANT AND
EXPLAIN ALL OF THE CLAIMS THE
CASES THAT I'VE HANDLED SINCE
I'VE BEEN HERE, WHERE A
DEFENDANT WANTED TO REPRESENT
THEMSELVES, WHAT THEY WANTED TO
DO IS PRESENT IN CLAIM THAT
THEIR ATTORNEY SAID WOULD BE A
VIABLE CLAIM.
, THEIR ONE CHANCE TO PRESENT
THE CASE THAT THEY WANT IN THEIR
CASE OF A LEGAL ARGUMENT AND WE
SAY NO, YOU CANNOT BE HEARD ON
THAT.
YOU CAN HAVE A LAWYER YOU CANNOT
BE HEARD ON THAT.
>> I'VE BEEN DOING THIS FOR A
LONG TIME AND THOSE SITUATIONS

HAVE COME UP WHERE WE DO PRESENT
A CLAIM TO THE COURT, EXACTLY
HOW YOUR HONOR DESCRIBE AND THE
CLIENT PRETTY MUCH WANTS THIS
CLAIM TO BE RAISED, THIS IS THE
LAW AND THIS IS WHY WE DON'T
THINK IT'S APPROPRIATE.
CANDIDLY SOME OF THOSE CLAIMS
ARE DIRECT RESULT IN PRODUCT OF
THE CLIENTS SEVERE MENTAL
ILLNESS.
THAT IS WHAT NOBODY HAS
MENTIONED.
I KNOW THE COMMENTS IN THE
MENTAL HEALTH COALITION, THE
VAST MAJORITY OF THE DEFENDANT
TO WANT TO REPRESENT THEMSELVES
HAVE SEVERE MENTAL ILLNESS.
IN INTO DELUSIONAL CLAIMS.
I HAD A CLIENT.
>> THAT IS A COMPETENCY ISSUE.
>> YES AND NO, EDWARDS TALKS
ABOUT EXACTLY THAT, YOU COULD BE
COMPETENT TO STAND TRIAL AND
ALSO BE SO SEVERELY MENTALLY ILL
THAT YOU COULD NOT IN FACT
PRESENT YOUR CASE TO THE COURT
IN A COMPETENT MANNER.
I'VE HAD CLIENTS WHO HAVE HAD
DELUSIONAL FIXED BELIEFS THAT
ALL THE EXPERTS BELIEVED IN THE
COURT IN THE LOWER COURT HAS
FOUND WITH RESPECT TO CASES, THE
CLIENT WHO ROUTINELY BELIEVED
THAT HE WAS HELD WITHOUT COUNSEL
AND GIDEON VERSUS WAYNE ENTITLED
HIM TO AUTOMATIC RELEASE, NOT
JUST RELIEF BUT RELEASE, HE HAD
50 YEARS IN FIVE LIFE SENTENCES
IN ANOTHER STATE, HE
PERSEVERED ON THAT CLAIM FOR
YEARS HE FILED PROCEEDED CLAIMS
AND ULTIMATELY THE COURT FOUND
HIM NOT COMPETENT TO PROCEED,
BUT FOR A PERIOD OF TIME HE IS
FOUND COMPETENT TO PROCEED BUT
NOT COMPETENT TO REPRESENT
HIMSELF FROM THE EXACT REASON.
I THINK THE HYBRID THAT YOUR
HONOR IS IN PLACE WITHOUT MAKING
THE PROPOSED RULE CHANGES.
THE LAST THING I WILL SAY AND
ANSWER ANY QUESTIONS IN RESPECT
TO THE WAIVER I ECHOED THE

SENTIMENT OF KEEPING THE DIRECT
REVIEW OF THE WAIVER IS CRITICAL
FOR THIS COURT.
THIS COURT AGAIN THE SOLEMN DUTY
IS TO SAFEGUARD AND MAKE SURE
DEATH PENALTY IS RELIABLE AND A
MINISTRY FAIRLY.
ALLOWING THIS PROCEDURE WHEN
THERE IS A COMPLETE WAIVER
REALLY DOES SUPPORT, AND THE
RESOURCES I UNDERSTAND OBVIOUSLY
THE CASE BEFORE THIS COURT
EXTENDS RESOURCES, THE HONOR AND
LAW CLERKS BUT THEY ARE A RARE
APPEAL PROCESS.
I THINK ALLOWING AND DOING AWAY
WITH THAT DOES STRIP OF AN
IMPORTANT SAFEGUARD THAT THE
FEDERAL COURT AS THEY ARE GOING
TO REVIEW THESE CASES AND AS
THEY DO REVIEW THE DEATH PENALTY
CASES IN ONE WAY OR ANOTHER AS
IT HAPPENS GIVES THEM THE
BENEFIT OF A STATE COURT FINDING
OF THE HIGHEST STATE COURT
MAKING A FINDING THAT THAT
APPEAL WAS KNOWING AND
VOLUNTARY.
I'M HAPPY TO ANSWER ANY FURTHER
QUESTIONS, WE WOULD IN ORDER TO
ENSURE FAIRNESS AND RELIABILITY
AND FLORIDA'S DEATH PENALTY WE
URGE THIS COURT TO DECLINE TO
ADOPT THE PROPOSED RULE CHANGES
INTO CONTINUE TO PROHIBIT SELF
REPRESENTATION AND MAINTAIN THE
DIRECT REVIEW.
THANK YOU VERY MUCH.
>> THANK YOU VERY MUCH.
>> GOOD AFTERNOON YOUR HONORS,
MAY I PLEASE THE COURT, MY NAME
IS LAURA ROE AND I REPRESENT THE
APPELLATE COURT RULES COMMITTEE.
IT IS NICE TO SEE YOU ALL AGAIN
THIS WEEK.
IT IS A RARE PLEASURE THAT I GET
TO SEE YOU ALL TWICE IN ONE WEEK
BUT I AM GLAD TO BE HERE AND
THANK YOU FOR LETTING ME APPEAR
REMOTELY.
CURRENTLY RULE 3851 PROHIBITS
THE DEFENDANT SENTENCED TO DEATH
FOR REPRESENTING HIMSELF OR
HERSELF OF CAPITAL

POST-CONVICTION PROCEEDINGS.
ALSO REQUIRES THE MOTION SEEKING
DISMISSAL OF THE PROCEEDINGS
INCLUDE A REQUEST TO DISCHARGE
COUNSEL.
THE COURT'S PROPOSED AMENDMENTS
TO RULE 3851 B6 ELIMINATE THE
PROHIBITION AGAINST SELF
REPRESENTATION AND THE
REQUIREMENT THAT ANY WAIVER OF
THE DISMISSAL OF PENDING
POST-CONVICTION AND THE
DISCHARGE OF COUNSEL.
IN PREPARING HIS COMMENTS THE
COMMITTEE CONSIDERED WHETHER
AUTOMATIC REVIEW OF SUCH ORDERS
IS STILL NECESSARY AND
APPROPRIATE FOR THE MAJORITY
AGREEING IT STILL WAS.
THE COMMITTEE IDENTIFIED THE
CONCERNS WITH THE LANGUAGE AS IS
BEEN DRAFTED, SPECIFICALLY
REGARDING THE ROLE DISCHARGED IN
STANDBY COUNSEL AND PROCEEDINGS.
FINALLY THE COMMITTEE DISCUSSED
AT LENGTH THE SELF
REPRESENTATION FOR CAPITAL
DEFENDANTS WITH THE MAJORITY
AGREEING THE ASSISTANCE OF
COUNSEL BENEFITED DEFENDANTS AND
FOR CAPITAL JUSTICE SYSTEM AND
IT WAS FOR THE COURT TO
DETERMINE.
THIS COURT SPECIFICALLY ASKED
WHETHER MAINTAINING THE
PROVISIONS FOR AUTOMATIC APPEALS
WHEN A MOTION TO DISCHARGE
COUNSEL OR DISMISS THE CAPITAL
POST-CONVICTION PROCEEDINGS,
CONTINUE TO BE NECESSARY AND
APPROPRIATE, THE MAJORITY OF THE
COMMITTEE, THE BOAT WAS 29 TO
TEN THAT THE RULE SHOULD
CONTINUE TO PROVIDE FOR
AUTOMATIC REVIEW OF ORDERS,
DISCHARGING COUNSEL OR
DISMISSING CONVICTION
PROCEEDINGS.
HOWEVER, THE COMMITTEE
IDENTIFIED A NUMBER OF FACTORS
FOR THE CONSIDERATION ON THIS
ISSUE.
IN SUPPORT OF THE MINORITY
POSITION THAT THE REVIEW IS NO

LONGER NECESSARY OR APPROPRIATE
THE COMMITTEE IDENTIFIED TWO
PRACTICAL FACTORS FOR
PROCEEDINGS IN DISCHARGE COUNSEL
AS PER THE TIME TO RESOLVE A
CAPITAL CASE.
IT TAKES ABOUT A YEAR OR MORE TO
LITIGATE EVEN WITH AN EXPEDITED
BRIEFING SCHEDULE.
THE COMMITTEE AS A PRACTICAL
MATTER DID NOT LOCATE ANY
REPORTED CASE THAT THIS COURT
DETERMINED THAT THE DEFENDANT
WAS ACTUALLY INCOMPETENT TO
AFFECT THE WAIVER OR THE WAIVER
WAS INVOLUNTARILY.
MORE FUNDAMENTAL OR SOME OTHER
PRACTITIONERS TODAY HAVE SAID
PSYCHOLOGICAL OR SPIRITUAL
PERSPECTIVE REQUIRING DISCHARGE
OF COUNSEL TO REPRESENT THE
DEFENDANT FOLLOWING AN ORDER
GRANTING THE DEFENDANTS REQUEST
TO DISCHARGE COUNSEL AND
FIGHTING THE DEFENDANT WAS
COMPETENT TO MAKE THAT DECISION
WOULD SEEM ANTITHETICAL TO THE
DEFENDANTS RIGHT OF
SELF-DETERMINATION.
THE MINORITY OF THE COMMITTEE
MEMBERS FELT THE DEFENDANT WHO
SUCCEEDS IN MOVING TO DISTRICT
COUNSEL SHOULD BE PERMITTED TO
PRO SE AND TO DECIDE WHETHER TO
PROCEED WITH THE CASE AT ALL.
BASED ON SOME OF THE COMMENTS
FROM THE COURT THIS MORNING I
DID WANT TO POINT OUT FOR THE
COURTS BENEFIT, IN SUCH A
SITUATION UNDER RULE 3851, I
THINK SUB 8B IF THE BUDGET IS
GRANTED AND COUNSEL IS
DISCHARGED, DISTRICT COUNSEL IS
DIRECTED TO BOTH FILE THE NOTICE
OF APPEAL OR SEEKING REVIEW IN
THE FLORIDA SUPREME COURT AND TO
FILE THE INITIAL BRIEF, HOWEVER,
BOTH THE DEFENDANT AND THE STATE
ARE PERMITTED TO SERVE
RESPONSIVE BRIEFS, THE
DEFENDANT'S PARTICIPATION AS A
PRO SE LITIGANT IS NOT TOTALLY
BARRED BY THE CURRENT LANGUAGE
OF THE RULE AMENDMENTS.

THE COMMITTEE DISCUSSED SEVERAL FACTORS IN SUPPORT OF THE MAJORITY POSITION THE AUTOMATIC REVIEW IS STILL APPROPRIATE THIS TIME.
PRIMARILY THE COMMITTEE WAS PERSUADED THE AUTOMATIC REVIEW FUNCTIONS AS AN IMPORTANT SAFEGUARD IN FORESTRY CAPITAL JUSTICE SYSTEM.
IF THE DECISION TO APPEAL IS LEFT SOLELY TO THE DEFENDANT WHO SOUGHT THE DISCHARGE OF COUNSEL OR THE DISMISSAL OF PROCEEDINGS ALTOGETHER, IT IS LIKELY THAT SUCH ORDERS WILL INVADE APPELLATE REVIEW.
A DEFENDANT WHO HAS OBTAINED THE RELIEF THAT HE SAW IS UNLIKELY TO VOLUNTARILY SEEK REVIEW OF THE ORDER GRANTING HIM THAT RELIEF.
APPELLATE REVIEW OF A WAIVER OPPOSED EVICTION PROCEEDINGS OF NO INVOLUNTARY MAINTAINS CONFIDENCE IN THE RELIABILITY OF FORESTRY CAPITAL JUSTICE SYSTEM WHICH HAS OTHER PARTICIPANTS IN TODAY'S ARGUMENT HAVE FLESHED OUT IN MORE DETAIL IN FEDERAL HAITI AS CONSEQUENCES AND OTHER CONCERNS DOWN THE LINE IN A CAPITAL CASE.
, COMPARED TO THESE CONCERNS, THE COMMITTEE ULTIMATELY CONCLUDED THE RESOURCES AND MAINTAINING AUTOMATIC APPEALS THEY WERE COMPARABLY AMENABLE TO THE CONSEQUENCES OF ELIMINATING THEM REGARDING THE LANGUAGE OF THE CURRENT AMENDMENT, THE COMMITTEE AND UNANIMOUSLY 9.4 D2 ONE AND DEED TO AS BEEN PROCEDURALLY CONSISTENT AS THE PROPOSED CHANGES TO RULE 3851 AND THE CHANGES PERMITTING A CAPITAL DEFENDANT TO DISCHARGE COUNSEL OR DISMISS A PROCEEDING WITH THE COURT'S RULING IN DAVIS WE STATE.
HOWEVER, THE COMMITTEE HAD A FEW CONCERNS REGARDING THE PROPOSED LANGUAGE AS CURRENTLY DRAFTED.
FIRST AS REGARDING DISCHARGE

COUNSEL, THE PROPOSED AMENDMENT
TO RULE 3851 AND 9.14D, BOTH
CONTEMPLATE THE DISCHARGE
COUNSEL WILL FILE A NOTICE
SEEKING REVIEW AND THE INITIAL
BRIEF.
HOWEVER, IF THE ORDER TO BE
REVIEWED DOES NOT IN FACT
DISCHARGE COUNSEL AND ONLY
DISMISSES PROCEEDINGS, THERE
WOULD BE NO DISCHARGE COUNSEL IN
ORDER TO DIRECT FILING THE
NOTICE OF REVIEW.
THAT FLOWS INTO THE COMMITTEE'S
CONCERNS REGARDING THE LANGUAGE
ABOUT STANDBY COUNSEL.
THE PROPOSED AMENDMENTS TO 3851
I-9 A REQUIRE THE COURT TO
STANDBY A COLLATERAL COUNSEL
REGARDLESS OF THE
POST-CONVICTION COURT DISCHARGES
COLLATERAL COUNSEL.
NOW THAT WE ARE ALLOWING
DEFENDANTS TO CHOOSE TO
DISCHARGE COUNSEL OR DISMISS
PROCEEDINGS WERE BOTH THERE
COULD BE A SITUATION IN WHICH
THEY CHOOSE TO DISMISS
PROCEEDINGS BUT NOT DISCHARGE
COUNSEL WE BELIEVE THIS ISSUE
CAN BE CORRECTED BY AMENDING THE
NEW PROPOSED LANGUAGE TO APPLY
ONLY WHEN A MOTION TO DISCHARGE
COUNSEL HAS ACTUALLY BEEN
GRANTED BY THE POST-CONVICTION
COURT.
THE OTHER ISSUE, IDENTIFIED BY
THE COMMITTEE REGARDING STANDBY
COUNSEL.
ONCE THEY HAVE BEEN APPOINTED
THE RULE OF STANDBY COUNSEL IS
NOT DEFINED IN EITHER RULE SET
WHILE DISCHARGE COUNSEL IS
REFERRED TO AND GIVEN
INSTRUCTION IN STANDBY COUNSEL
IS NOT.
IF IT IS DISCHARGE COUNSEL, THAT
SHOULD FILE THE NOTICE OF APPEAL
AND THE INITIAL BRIEF, AND
STANDBY IN DISCHARGE COUNSEL
HAPPENED NOT BE THE SAME
ATTORNEY, IT IS UNCLEAR HOW
STANDBY COUNSEL IS GOING TO
PARTICIPATE IN THE FOLLOWING

APPEAL.
THE FINAL THING THAT THE COMMITTEE DISCUSSED AT LENGTH WAS SELF REPRESENTATION.
AS MY TIME IS DRAWING TO A CLOSE, I WILL JUST NOTE, A MAJORITY OF THE COMMITTEE DID VOTE AND AGREE THAT THE SUPPORT OF COUNSEL IN CAPITAL CASES WOULD LIKELY BE A BENEFIT TO DEFENDANTS, THE COURTS AND THE TIMELY RESOLUTION OF CAPITAL CASES BASED ON THE FACTORS IDENTIFIED BY OTHER COMMENTERS.
WE NOTED, ESPECIALLY THE COMMENTS OF THE FLORIDA MENTAL HEALTH ADVOCACY COALITION AND THE COMMENT OF THE DEPARTMENT OF CORRECTIONS REGARDING THE SERIOUS LIMITATIONS ON SELF REPRESENTATION FOR ESPECIALLY CAPITAL DEFENDANTS IN THE CURRENT SYSTEM AS IT EXISTS TODAY.
IF THERE ARE NO QUESTIONS FROM THE COURT, I WILL CONCLUDE BUT.
BUT I'M HAPPY TO ANSWER ANY QUESTIONS IF YOU HAVE THEM.
THANK YOU.
>> THANK YOU, COUNSEL, WE THANK ALL OF THE PARTICIPANTS IN TODAY'S ARGUMENT.
AND FOR THEIR ARGUMENTS.
AND ALL THE OTHER COMMENTERS FOR THEIR PARTICIPATION IN THIS CASE.
THAT IS THE FINAL CASE ON TODAY'S DOCKET THIS SESSION OF THE FLORIDA SUPREME COURT IS ADJOURNED.