

>> ALL RISE.

HEAR YE, HEAR YE, HEAR  
YE, THE SUPREME COURT OF FLORIDA  
IS NOW IN SESSION, ALL WHO HAVE  
CAUSE TO PLEAD, DRAW NEAR, GIVE  
ATTENTION AND YOU SHALL BE  
HEARD.

LADIES AND GENTLEMEN, SUPREME  
COURT OF FLORIDA, PLEASE BE  
SEATED.

>> GOOD MORNING, WE WILL TAKE UP  
CASE NUMBER 22338, RODERICK  
MICHAEL ORME VERSUS THE STATE OF  
FLORIDA, I APOLOGIZE IF I DID  
NOT PRONOUNCE YOUR CLIENT  
HAPPENING CORRECTLY.

>> I AM BARBARA BUSHARIS  
REPRESENTING RODERICK MICHAEL  
ORME.

I RESERVE 5 MINUTES FOR  
REBUTTAL.

THANK YOU.

RODERICK MICHAEL ORME IS ASKING  
THIS COURT TO CONSIDER THE CLAIM  
THAT UNDER SENTENCE OF DEATH FOR  
THREE DECADES IS ITSELF CRUEL  
AND UNUSUAL PUNISHMENT RISING TO  
A LEVEL THAT VIOLATES THE UNITED  
STATES CONSTITUTION AND BY  
VIRTUE OF THE CONFORMITY CLAUSE  
THE STATE CONSTITUTION.

WE ARE AWARE THIS COURT HAS  
REJECTED SIMILAR CLAIMS IN THE  
PAST, BUT BELIEVE THAT THERE ARE  
REASONS TO RECONSIDER THAT IN  
LIGHT OF THE CIRCUMSTANCES  
PRESENTED BY THIS PARTICULAR  
CASE.

RODERICK MICHAEL ORME HAS TWICE  
BEEN SENTENCED IN A MANNER LATER  
FOUND TO BE ERRONEOUS OR  
UNCONSTITUTIONAL.

HE NEVER RECEIVED A UNANIMOUS  
JURY VERDICT.

HIS FIRST DEATH SENTENCE WAS  
HANDED DOWN AFTER A JURY  
RECOMMENDATION BY A VOTE OF 75,  
WHICH UNDER NO STRETCH OF THE  
IMAGINATION WOULD SATISFY THE  
STANDARDS THAT WE HAVE IN PLACE  
TODAY.

MOREOVER --

>> HE DECIDED HE DIDN'T WANT A

JURY IN THIS RESENTENCING, IS  
THAT CORRECT?

HE WAS VERY EXPLICIT ABOUT THAT  
AND THERE WAS -- YOU ARE NOT  
RAISING AN ISSUE ABOUT HIS  
WAIVER.

>> WE ARE NOT.

>> OR ANYTHING ABOUT THE WAIVER.  
HE WAVED THE JURY AND IT SEEMS  
AT LEAST AT THAT POINT, HE WAS  
WILLING TO ACCEPT RESPONSIBILITY  
FOR THE CRIME AND ACCEPT THE  
DEATH SENTENCE IF THE JUDGE  
THOUGHT THAT WAS APPROPRIATE.  
THAT'S WHAT HE SAID.

>> THAT IS WHAT HE SAID.

>> HAS HE CHANGED HIS MIND NOW?  
>> RODERICK MICHAEL ORME HAS NOT  
WAIVED HIS APPEAL.

THERE'S A DIFFERENCE BETWEEN  
WILLING TO ACCEPT SENTENCE OF  
DEATH AND ACQUIESCING IN GIVING  
UP THE APPEAL TO WHICH HE IS  
ENTITLED.

HE'S NOT WAIVING THE RIGHT TO  
HAVE THIS SENTENCE REVIEWED BY  
THIS COURT.

GIVING HIS WAIVERS OF  
MEDICATION, OF HIS PRESENCE OF  
THE JURY AND HIS THIRD AND MOST  
RECENT SENTENCING, THE GROUND  
WHICH WAS ARGUED IN THE TRIAL  
COURT IS THE GROUND THAT IS  
PRESENT FOR THIS COURT TO  
REVIEW.

>> I WANT TO FOLLOW-UP IN THE  
DISTINCTION ABOUT THERE BEING A  
DIFFERENCE BETWEEN HIS  
ACCEPTANCE OF RESPONSIBILITY AND  
HIS NOT GIVING UP HIS RIGHT TO  
APPEAL HIS SENTENCE TO THIS  
COURT, A DISTINCTION THAT I SEE  
BUT I WANT TO PRESS ON.

WHAT REMEDY DO YOU SEEK?

>> THE REMEDY IN THIS CASE,  
BASED ON THE LACKEY CLAIM, WOULD  
BE TO FIND THAT HIS SENTENCE IS  
UNCONSTITUTIONAL, AND SENTENCE  
HIM TO LIFE IN PRISON WHICH  
WOULD STILL BE A SEVERE  
PUNISHMENT FITTING THE CRIME.

>> DOESN'T THAT MAKE -- DOESN'T  
THAT DISSOLVE THE DISTINCTION  
YOU JUST MADE?

IF IN FACT THE REMEDY YOU ARE SEEKING ON HIS BEHALF IS CONTRARY TO THE REMEDY THAT HE WAVED, AREN'T WE LEFT EXACTLY WHERE YOU WERE BEFORE JUSTICE CANNADY ASKED HIS QUESTION, WHICH IS US NOT BEING ABLE TO MAKE SENSE OF WHAT HE REALLY WANTS?

>> RESPECTFULLY NO, YOUR HONOR, BECAUSE HE DIDN'T WAIVE THE RIGHT NOT TO BE KILLED, HE WAVED A JURY, HE WAVED MITIGATION, HE PUT HIS FATE IN THE HANDS OF A TRIAL JUDGE, BUT IT WAS POSSIBLE AT THAT POINT THOUGH HIGHLY UNLIKELY THAT THAT PARTICULAR TRIAL JUDGE COULD HAVE SENTENCED HIM TO LIFE BASED ON THE COMBINATION OF AGGRAVATING AND MITIGATED CIRCUMSTANCES.

I WOULD SAY IF HE DID NOT WAVE THE RIGHT FOR A LIFE SENTENCE TO BE CONSIDERED, THAT IS WHAT IS IN FRONT OF THE COURT NOW.

>> THE LACKEY CLAIM YOU ARE RAISING HERE TODAY, THE WHOLE PREMISE OF IT DERIVES FROM AN ASSENT BY JUSTICE BREYER IN 1998.

>> FIRST, JUSTICE STEVENS IN 95 AND THEN JUSTICE BREYER IN 1998.

>> SO WHETHER THAN THOSE DISSENTS, HAS THERE EVER BEEN A MAJORITY OPINION FROM THE UNITED STATES SUPREME COURT ABOUT ADOPTING THIS LACKEY CLAIM THAT SOMEONE SITS ON DEATH ROW TOO LONG IT BECOMES CRUEL AND UNUSUAL TO EXECUTE?

>> NO, THERE HAS BEEN NO MAJORITY OPINION EITHER ADOPTING OR REJECTING THAT.

THE COURT HESITANTLY REFUSED TO HEAR A NUMBER OF CASES AND ALLOWED THE DECISIONS OF LOWER COURTS TO STAND, THE COURT HASN'T ADDRESSED THE ISSUE.

>> IN THIS PARTICULAR CASE, HOW LONG HAS RODERICK MICHAEL ORME BEEN ON DEATH ROW?

>> HE WAS SENTENCED TO DEATH IN 1993 AFTER HIS FIRST TRIAL.

>> HAS ANY OTHER -- IN LINE WITH

THIS QUESTION HAS ANY OTHER STATE SUPREME COURT ADOPTED A LACKEY THEORY TO YOUR BELIEF?

>> NOT YET, YOUR HONOR.

>> SO IF WE ADOPTED THIS THEORY, WE WOULD GO AGAINST PRESIDENT WE HAVE SET, WE WOULD BE A SINGULAR OUTLIER IN THAT RESPECT.

>> WE WOULD BE.

ALTHOUGH FLORIDA HAS BEEN AN OUTLIER IN OTHER RESPECTS, THAT DOESN'T DETERMINE WHETHER THE CLAIM IS VALID OR SHOULD BE CONSIDERED BY THIS COURT.

>> SO YOUR POSITION ON THE CONFORMITY CLAUSE IS IT DOESN'T PRECLUDE US FROM BEING INNOVATORS ON AN ISSUE AS LONG AS THERE'S NOT A US SUPREME COURT DECISION THAT IS DIRECTLY ADDRESSING THE SAME ISSUE BEING RAISED?

>> THAT IS CORRECT.

THERE'S NOTHING TO CONFORM TO AT THIS POINT IN SUPREME COURT JURISPRUDENCE.

>> OTHER THAN ON THIS PRECISE ISSUE BUT THE ANALYTICAL FRAMEWORK, WE WOULD NEED TO CONFORM TO IF IT HASN'T BEEN CONSIDERED IN THE CONTEXT OF THIS, YOU THINK WE HAVE FREE REIGN TO APPLY THAT AND REACH WHATEVER CONCLUSION.

>> YES.

AT THAT THAT IF THE UNITED STATES SUPREME COURT DISAGREES AND WANTS TO TAKE A STEP FURTHER, THAT COURT WOULD BE ABLE TO DO SO ON REVIEW BUT THE COURT HAS NOT PRECLUDED A LACKEY CLAIM, THE COURT IS SIMPLY NOT RECOGNIZED IT TO DATE AND ONE OF THE THINGS THAT HAS HAPPENED AND CONTINUES TO HAPPEN, AS DOCUMENTED BY THE DEATH PENALTY INFORMATION CENTER IS THAT THE LENGTH OF TIME THAT PEOPLE ARE BEING KEPT UNDER SENTENCE OF DEATH HAS SLOWLY AND STEADILY CONTINUED TO RISE IN RECENT YEARS, THE AGE OF PRISONERS ON DEATH ROW HAS SLOWLY AND STEADILY CONTINUED TO RISE.

AND AT THE SAME TIME,  
EXONERATIONS HAVE CONTINUED TO  
HAPPEN.

ACCORDING TO THE DEFINITELY  
INFORMATION CENTER, EXONERATIONS  
OFTEN TAKE ANYWHERE FROM 20 TO  
25 YEARS BEFORE THEY WORK THEIR  
WAY THROUGH THE JUSTICE SYSTEM,  
AND SOMEBODY WHO IS DESERVING OF  
THAT CAN GET THE REMEDY THAT HE  
OR SHE NEEDS.

NOW OF COURSE EXONERATION IS NOT  
AN ISSUE HERE BUT THAT IS THE  
BACKDROP AGAINST WHICH IT IS  
APPROPRIATE AND IMPORTANT FOR  
THE COURTS TO BEGIN LOOKING AT  
THE LENGTH OF TIME FOR KEEPING  
PEOPLE SUBJECTED TO THESE  
CONDITIONS AND PROCEDURES.

>> WHAT'S THE LIMITING PRINCIPLE  
YOU HAVE TO OFFER THIS COURT IN  
THE RULE YOU ARE ASKING US TO  
ADOPT?

HOW LONG IS TOO LONG FOR LACKEY  
PURPOSES?

>> I THINK IT WOULD HAVE TO BE  
BASED ON THE CIRCUMSTANCES OF  
THE CASE, THE AGE OF THE  
DEFENDANT AT THE TIME THEY WERE  
SENTENCED, THE REASONS FOR THE  
DELAY, THE COURT HAS ALWAYS  
CONSIDERED THAT WHEN REJECTING  
THOSE CLAIMS, I THINK IT WOULD  
STILL BE PART OF THE ANALYSIS.

ANYTIME YOU TRY TO DRAW A BRIGHT  
LINE IN THESE CASES --

>> YOU ARE ASKING US TO  
INNOVATE, ASKING US TO OUT LIE,  
TO PROCLAIM A RULE.  
SO PROCLAIM IT FOR ME.

WHAT IS THE RULE YOU ARE ASKING  
US TO ADOPT EXACTLY?

>> IN THIS CASE, ALTHOUGH THE  
COURT HAS REJECTED SIMILAR TIME  
PERIODS IN THE PAST, WE ARE  
ASKING YOU TO HOLD THAT BEING  
UNDER SENTENCE OF DEATH FOR 30  
YEARS IS ITSELF CRUEL AND  
UNUSUAL PUNISHMENT.

>> BUT NOT 29?

>> THAT'S THE LINE DRYING, YOUR  
HONOR.

>> WHAT I'M GETTING AT IS YOU  
ARE NOT ASKING US TO DRAW A VERY

SATISFYING RULE FOR YOU.

>> IT IS NOT A VERY SATISFYING  
RULE TO KEEP PEOPLE ON DEATH ROW  
FOR DECADES EITHER, WITHOUT ANY  
FINALITY TO THEIR CASES, FOR  
THEM OR THE VICTIMS, FOR SOCIETY  
IN GENERAL.

>> I'M STRUGGLING A LITTLE BIT  
HERE BECAUSE TO THE EXTENT THAT  
IT IS CRUEL AND UNUSUAL  
PUNISHMENT, IT IS DONE, THAT HAS  
HAPPENED, SO I DON'T KNOW HOW  
YOU ARE -- REMEDY, CORRECTS WHAT  
YOU SAY IS WRONG.

>> BECAUSE, YOUR HONOR, THE  
POINT IN TIME THAT THE DEFENDANT  
OR THE INMATE IS NO LONGER ON  
DEATH ROW, THE CRUEL AND UNUSUAL  
PUNISHMENT HAS CEASED.

>> IT WOULD CEASE WHEN THE  
EXECUTION IS CARRIED OUT.

>> THAT IS TRUE, BUT WE DON'T  
KNOW WHEN THAT WILL HAPPEN.  
THESE TIME PERIODS -- GETTING  
LONGER AND LONGER.

>> BUT AGAIN, IT SEEMS CURIOUS  
TO ME THAT IN A CASE WHERE THE  
DEFENDANT SAID HE WANTED THE  
DEATH SENTENCE THAT WE ARE HERE  
ARGUING ABOUT THIS AND ARGUING  
THAT THIS IS TAKING TOO LONG.  
THIS PARTICULAR MANNER -- BASED  
ON THESE PARTICULAR  
CIRCUMSTANCES.

>> I HAVE TO RESPECTFULLY  
DISAGREE THAT HE SAID HE WANTED  
THE DEATH SENTENCE.

WHAT HE SAID, YOU CAN WATCH THIS  
ON THE INTERNET, HE SAID HE  
DOESN'T WANT TO DIE, BUT HE IS  
WILLING TO ACCEPT THE SENTENCE  
THE COURT HANDED DOWN.

HE'S NOT SEEKING TO DIE.

YOU HAVE SEEN DEFENDANTS IN THIS  
COURT BEFORE WHO HAVE REQUESTED  
EXECUTION, THIS IS NOT ONE OF  
THOSE.

>> HE DID SAY, I HAVE THE  
TRANSCRIPT HERE, WHAT IS  
REPRODUCED FROM THE TRANSCRIPT  
OF THE COURT ORDER, AFTER HE  
SAYS HE DOESN'T WANT TO DIE, HE  
IS NOT SUICIDAL, HE DOES GO ON  
TO SAY, BASICALLY, I'M ASKING,

BASICALLY, TO HAVE MY DEATH SENTENCE REINSTATED.

HE DID SAY THAT.

>> HE DID SAY THAT BECAUSE IT HAD BEEN HANDED DOWN PREVIOUSLY AND THAT WAS THE ISSUE --

>> YOUR HONOR, I'M HOPING THAT YOU, YOUR HONOR, WILL AGREE WITH MY CLAIM, MY MOTION, GO AHEAD AND REINSTATE MY DEATH SENTENCE. THAT IS MY GOAL.

>> ALONG WITH THE FACT THAT HE SAID HE IS NOT SUICIDAL AND DOESN'T WANT TO DIE, HE'S ASKING FOR REINSTATEMENT OF THE SENTENCE HAS TO DO WITH HIS ACCEPTANCE OF RESPONSIBILITY AND THE FACT THAT HE, AS HE SAYS, SEES THAT AS A WAY TO BRING JUSTICE AND BRING IT TO A CLOSE. AS WAS ARGUED IN THE TRIAL COURT, THE DEFINITIVE LIFE SENTENCE WOULD BRING THE CASE TO A CLOSE.

A DEFINITIVE LIFE SENTENCES SUBJECT TO LESS REVIEW, SCRUTINY, LESS COLLATERAL ATTACK THAN A DEATH SENTENCE IS.

SO THE GOAL OF FINALITY DOESN'T REQUIRE KILLING STEPHEN MATTHEW BANDER 7 RODERICK MICHAEL ORME. THE RECORD ALSO SHOWS, AND I THINK IT IS IMPORTANT THAT THIS COURT CONSIDER THAT HE'S NOT THE PERSON THAT HE WAS IN 1992 WHEN THIS HORRIBLE CRIME HAPPEN.

HAPPENED.

HE'S NOT THE PERSON HE WAS IN 1993 WHEN HE FIRST WAS SENTENCED TO DEATH.

THE EXPERT REPORT AT HIS MOST RECENT SENTENCING, ALTHOUGH IT FOUND NO CURRENT MENTAL HEALTH ISSUES REQUIRING CONSIDERATION AS ADDITIONAL MITIGATION NOTED THAT HE IS NO LONGER ABUSING SUBSTANCE, NO LONGER EXPERIENCING MENTAL HEALTH ISSUES, HAS HAD NO DISCIPLINARY REPORTS SINCE HE STOPPED TAKING PSYCHOTROPIC MEDICATION IN 2012, OVER A DECADE AGO, THE INTEREST WE HAVE --

>> WHEN WAS HIS BIPOLAR DISORDER  
DIAGNOSED?

>> I DON'T REMEMBER THE YEAR IT  
WAS FIRST DIAGNOSED BUT THE  
FAILURE TO FURTHER INVESTIGATE  
IT WAS THE REASON HIS FIRST  
SENTENCE WAS OVERTURNED ON  
COLLATERAL ATTACK WHICH WOULD  
INDICATE THERE WAS EVIDENCE OF  
BIPOLAR DISORDER BACK TO THE  
1990s.

>> THAT DIAGNOSIS HAS BEEN  
DISPUTED.

>> THE DIAGNOSIS THAT WAS NOTED  
AT HIS MOST RECENT AND  
SENTENCING.

THAT IS THE MOST --

>> EXPERT THAT DISPUTED THE  
BIPOLAR DISORDER DIAGNOSIS, HE  
HAS PROBLEMS, THAT WAS DISPUTED.

>> AT HIS RESENTENCING, YES.  
HAS HIS FIRST RESENTENCING,  
YES.

>> I UNDERSTAND WHY HE WOULD  
MAKE THIS A CLEMENCY CONTEXT BUT  
WHAT RELEVANCE DOES THIS HAVE TO  
THE LEGAL ARGUMENT YOU RAISED?

>> BECAUSE IT GOES -- I WILL GO  
BACK TO THE ORIGINAL DISSENTS  
FROM WHICH THESE CLAIMS HAVE  
SPRUNG.

IT GOES TO THE PURPOSES WE USE  
TO JUSTIFY EXECUTING PEOPLE,  
RETRIBUTION AND DETERRENCE.  
WHEN YOU HAVE SOMEBODY WHO HAS  
SHOWN THAT HE IS NOT THE SAME  
PERSON, HE HASN'T COMMITTED  
ADDITIONAL OFFENSES IN PRISON  
LET ALONE VIOLENT OFFENSES, HE  
HASN'T COMMITTED NONVIOLENT  
OFFENSES, HIS DISCIPLINE --  
SUBSTANCE ABUSE.

>> SOUNDS LIKE THAT WOULD  
TRANSFORM REPORTS, YOU COULD  
KEEP RAISING THIS AS NEW  
EVIDENCE, THAT WOULD TURN COURTS  
INTO PERPETUAL CLEMENCY BOARDS  
FOR AS LONG AS PEOPLE ARE ON  
DEATH ROW.

>> I DON'T THINK SO BECAUSE IT  
WOULD HAPPEN IN THE CONTEXT OF A  
RESENTENCING WHICH RODERICK  
MICHAEL ORME HAD, BECAUSE THIS  
COURT HAD MAINTAINED A JURY

SYSTEM.

>> WOULDN'T YOU BE ABLE TO KEEP SAYING THIS PERSON HAS BEEN SUBJECT TO A DEATH SENTENCE, THEY ARE NOT THE SAME PERSON ANYMORE, YOU ARE VIOLATING THEIR RIGHT -- ET CETERA ET CETERA. WOULDN'T YOU ETC. ETC.

. WOULDN'T YOU JUST KEEP MAKING THOSE ARGUMENTS AT EVERY KIND OF WHATEVER INCREMENTS IN TIME YOU THOUGHT WERE APPROPRIATE, RELITIGATING IT?

>> OUTSIDE OF THE FRAMEWORK OF DIRECT APPEAL AND COLLATERAL ATTACK ON A SENTENCE, I AM NOT -- IF YOU ARE SUGGESTING THAT SOMEBODY COULD BRING REPEATED HABEAS CORPUS PETITIONS AND THAT THEY HAD CHANGED --

>> WOULDN'T YOU CHARACTERIZE THIS THAT YOU COULD KEEP LITIGATING THAT?

>> THIS IS EVIDENCE THAT WAS IN FRONT OF THE COURT OF THE MOST RECENT SENTENCING, IT'S IN THE RECORD SO IT IS APPROPRIATE TO CONSIDER.

AND AGAIN, IT DOES GO TO THE PURPOSES FOR WHICH WE SAY WE EXECUTE PEOPLE, THOSE PURPOSES, THE GOALS OF RETRIBUTION AND DETERRENCE DIMINISH OVER DECADES.

AND ESPECIALLY WHEN YOU HAVE A DEFENDANT WHO HAS NOT COMMITTED A VIOLENT OFFENSE, IS NOT THE SAME PERSON HE WAS WHEN THE OFFENSE TOOK PLACE IT IS WORTH ASKING THE QUESTION, DOES IMPOSING A DEATH SENTENCE ON THIS DEFENDANT SERVE ANY GOALS?

OR IS IT JUST, AS JUSTICE STEVENS SAID, THE POINTLESS AND NEEDLESS EXTENSION OF LIFE WITH MARGINAL CONTRIBUTIONS TO ANY DISCERNIBLE SOCIAL OR PUBLIC PURPOSES?

IF I COULD RESERVE THE REMAINDER OF MY TIME.

THANK YOU.

>> GOOD MORNING.

STEVE WOODS ON BEHALF OF THE STATE.

MAY IT PLEASE THE COURT,  
BEGINNING WITH THE LACKEY CLAIM  
I WOULD BEGIN BY, IT IS HARD TO  
ADD ANYTHING TO WHAT HAS BEEN  
SAID ABOUT LACKEY CLAIM.  
THIS IS A FACIALLY INVALID  
CLAIM.

THE TIME ON DEATH ROW, HOWEVER  
PROLONGED CANNOT CONSTITUTE A  
VIOLATION OF THE EIGHTH  
AMENDMENT EVEN IF THERE WERE SAY  
30 YEARS OR SOME EXCESSIVE  
DURATION THAT DID CONSTITUTE A  
VIOLATION OF THE EIGHTH  
AMENDMENT, STILL, RODERICK  
MICHAEL ORME COULD NOT PREVAIL.  
THE REJECTION OF SEVERAL LACKEY  
CLAIMS, THESE ARE LACKEY CLAIMS  
FROM DEPENDENTS WHO HAVE BEEN ON  
DEATH ROW LONGER THAN MISTER  
LACKEY, ON DEATH ROW 33 YEARS.  
FERGUSON AND LAMPREY, OVER 30.  
SO EVEN A AND THERE IS NOT, BUT  
EVEN IF THERE WERE, A PERIOD OF  
TIME THAT WAS TOO EXCESSIVE HE  
COULD NOT PREVAIL.

WE WOULD ALSO POINT OUT THE  
DEFENDANT CONTRIBUTED TO THIS  
DELAY.

THERE HAS BEEN NO REASON PUT  
FORTH TO DEPART FROM THE  
CONTROLLING PRECEDENT ON THIS  
ISSUE.

THE DEFENSE SAYS YOU SHOULD  
CONSIDER MY CIRCUMSTANCES, I  
HAVE CHANGED, AND THERE WAS 11-1  
NONUNANIMOUS VOTE AND HE POINTS  
OUT, I'M NOT RESPONSIBLE FOR ALL  
OF THE DELAY, WE RESPOND TO THAT  
BY POINTING OUT, THERE ARE  
CIRCUMSTANCES THAT COULD BE  
SUFFICIENT, NO CIRCUMSTANCES CAN  
BE RELEVANT AND EVEN IF THEY  
WERE, THE ENTIRE ISSUE WOULD  
HAVE TO BE RESOLVED BY ARTICLE 1  
SECTION 17, HE CANNOT PREVAIL.

>> HOW DOES THE CONFORMITY  
CLAUSE FIND US GIVEN THE SILENCE  
FROM THE SUPREME COURT OF THE  
UNITED STATES?

>> THERE MUST BE A PERFECT -- AS  
YOU SAY, THE FEDERAL SUPREME

COURT HAS NOT SPOKEN ON IT,  
GIVEN THERE MUST BE A PERFECT  
OVERLAP BETWEEN EIGHTH AMENDMENT  
PROTECTIONS AND CRUEL AND  
UNUSUAL PROHIBITION IN FLORIDA.

THIS COURT COULD NOT DO IT  
BECAUSE IT WOULD NOT BE  
PERFECTLY IN LINE WITH WHAT THE  
FEDERAL SUPREME COURT HAS DONE.

>> YOU THINK WE ARE PRECLUDED  
FROM APPLYING THE SUPREME  
COURT'S STANDARDS TO AN ISSUE  
THEY HAVEN'T DIRECTLY RESOLVED?  
THAT GETS TO THE INNOVATION  
QUESTION.

DO YOU VIEW THE CONFORMITY  
CLAUSE IS REQUIRING US TO  
ESSENTIALLY SORT OF SIT BACK  
UNTIL SPECIFIC ISSUES ARE  
RESOLVED BY THE SUPREME COURT  
AND THEN SOMEONE CAN BRING THE  
IDENTICAL CLAIM HERE?

BECAUSE IT SEEMS LIKE ON THE  
FACE OF IT AS LONG AS WE ARE  
ANALYTICALLY GOING THROUGH THE  
SAME STEPS SUPREME COURT WOULD  
IN THE EIGHTH AMENDMENT CASE AND  
NOT REACHING AND ANSWER THAT IS  
DIFFERENT THAN WHAT THEY HAVE  
REACHED ON THE SAME ISSUE THAT  
THE CONFORMITY CLAUSE WOULDN'T  
PREVENT US FROM BEING THE ONES  
WHO ARE THE INNOVATORS.

>> THE CONFORMITY CLAUSE IS A  
SECONDARY ARGUMENT.

WE PRIMARILY RELY ON, THIS COURT  
HAS ADDRESSED THIS QUESTION NO  
FEWER THAN 12 TIMES, THREE OF  
THEM THROUGH DEFENDANTS WHO  
SPENT LONGER ON DEATH ROW THAN  
RODERICK MICHAEL ORME.

THE CONFORMITY CLAUSE IF THIS  
COURT WERE TO SAY UNDER  
CONFORMITY CLAUSE, LACKEY CLAIM  
-- THAT WOULD BE A NON-PERFECT  
OVERLAP BETWEEN THE EIGHTH  
AMENDMENT AT THE FEDERAL LEVEL  
AND ARTICLE 1 SECTION 17  
PROVISION.

IF I COULD BRIEFLY ADDRESS ISSUE  
2, THIS ISSUE ABOUT WHETHER  
SUFFICIENCY AND WEIGHT, I WILL  
POINT OUT UNDER THE CLEAR  
PRECEDENT FROM THE FEDERAL

SUPREME COURT AND THIS COURT,  
THERE'S NO QUESTION AS TO  
WHETHER SUFFICIENCY AND WEIGHT  
ARE ELEMENTS THAT NEED PROOF  
BEYOND REASONABLE DOUBT.

THERE HAS BEEN NO REASON STATED  
TO DEPART FROM THE PRECEDENT  
THAT IS CONTROLLING, AND NO  
REASON TO REVISIT WHAT HAS BEEN  
WELL-SETTLED.

WELL SETTLED.

IT IS ONLY THE EXISTENCE OF AN  
AGGRAVATED -- TO THE EXCLUSION  
OF EVERY REASONABLE DOUBT.

IF THERE ARE NO QUESTIONS.

THE STATE WOULD RESPECTFULLY ASK  
THIS COURT OF FIRM, THANK YOU.

THANK YOU.

>> THANK YOU, YOUR HONORS.

AS TO ISSUE 2, WHICH WAS RAISED  
FOR PRESERVATION PURPOSES.

I WILL DEFER TO WHAT IS IN THE  
BRIEFS WHICH I WOULD LIKE TO  
POINT OUT THAT THIS CASE  
ILLUSTRATES THE BROKENNESS OF

THE DEATH PENALTY SYSTEM.

WE CANNOT IMPOSE IT FAIRLY  
WITHOUT ALLOWING PEOPLE TO  
ATTACK THEIR SENTENCES.

RODERICK MICHAEL ORME DID ATTACK  
HIS SENTENCE FOR A VERY WERE  
VALID REASONS, HE DIDN'T FILE  
FRIVOLOUS APPEALS, HE DIDN'T  
BRING FLAVORLESS CLAIMS AND HIS  
SENTENCE WAS OVERTURNED TWICE.  
WE CAN'T EXECUTE PEOPLE MORE  
QUICKLY WITHOUT RUNNING THE RISK  
OF THAT SOMEBODY WHO EITHER WAS  
SENTENCED IMPROPERLY WILL BE  
EXECUTED OR SOMEBODY WHO IS  
FULLY INNOCENT WILL BE EXECUTED  
AND SO THAT IS THE CONUNDRUM  
THAT IS BEFORE THIS COURT.

WE SIMPLY SUGGEST THAT IN THIS  
CASE, BASED ON THE SITUATION  
RODERICK MICHAEL ORME PRESENTS,  
HE'S ARTIE BEEN PUNISHED AND TO  
KEEP HIM IN DEATH ROW WOULD BE  
CRUEL AND UNUSUAL, THANK YOUR  
HONORS.

>> THANK YOU, AND WE ARE  
ADJOURNED.