

>> NEXT CASE FOR THE DAY IS, IN RE:
RULES REGARDING POST-CAPITAL
CONVICTION RULES.

>> MAY IT PLEASE THE COURT.

>> SURE KNOW HOW TO CLEAR OUT A
COURTROOM, DON'T YOU.

>> I HOPE IT WASN'T ANYTHING I
SAID.

PERHAPS THEY KNEW WHAT I
INTENDED TO SAY.

GOOD MORNING.

MAY IT PLEASE THE COURT.

MY NAME IS KEVIN EMAS.

I'M THE CHAIR OF THE CAPITAL
POST-CONVICTION SUBCOMMITTEE OF
THE CRIMINAL COURT STEERING
COMMITTEE AND WE ARE HERE ON A
REFERRAL THAT THIS COURT MADE IN
CREATING THE CAPITAL
POST-CONVICTION SUBCOMMITTEE TO
RECOMMEND RULES TO INCREASE THE
OVERALL EFFICIENCY OF THE
CAPITAL POST-CONVICTION PROCESS.
I'D LIKE TO TAKE FIVE MINUTES AT
THE BEGINNING TO SPEAK TO THE
COURT AND ANSWER QUESTIONS AND
THEN, IF I MAY, FIVE MINUTES OF
REBUTTAL, BASED UPON THE
COMMENTS MADE BY THE OTHERS WHO
ARE HERE.

WHEN THE COURT CREATED THE
CAPITAL POST-CONVICTION
SUBCOMMITTEE, IT ASKED US TO
INCREASE THE OVERALL EFFICIENCY
OF THE PROCESS BY RECOMMENDING
ANY RULE CHANGES WE BELIEVE WERE
APPROPRIATE.

WE INVITED STAKEHOLDERS FROM ALL
THREE BRANCHES INCLUDING THE
LEGISLATIVE AND EXECUTIVE, THE
AG'S OFFICE, STATE ATTORNEYS,
PUBLIC DEFENDERS, CCRC AND
CONDUCTED A SURVEY OF EXPERIENCED
CIRCUIT COURT JUDGES HANDLING
CAPITAL TRIAL AND CAPITAL
POST-CONVICTION CASES.

THE OVERALL CONSENSUS IS THAT
THE RULES WORK RELATIVELY WELL
AND THAT NO SWEEPING CHANGES OR
OVERHAUL WAS NEEDED AND I THINK

THAT IS IN PART BECAUSE OF THE CHANGES THAT THIS COURT HAS MADE OVER THE LAST 15 YEARS TO INCREASE THE EFFICIENCY AND IMPROVE THE RELIABILITY OF CAPITAL TRIALS AND CAPITAL POST-CONVICTION.

BUT WE DID MAKE SOME SIGNIFICANT RECOMMENDATIONS TO THIS COURT. SOME OF THEM ALLOWED FOR LESS TIME AND SOME OF THEM FRANKLY ALLOWED FOR ADDITIONAL TIME AND WHILE THAT MAY SEEM SOMEWHAT COUNTERINTUITIVE SINCE WE WERE ASKED TO INCREASE THE EFFICIENCY, THE SUBCOMMITTEE WAS SENSITIVE TO THE FACT THAT EFFICIENCY DOES NOT SIMPLY MEAN CREATING --

>> LET ME ASK YOU ABOUT THE LESS TIME.

>> YES.

>> WHY WOULD WE AND WHAT IS THE PRESENT PROBLEM WITH THE TIME LIMITATIONS THAT ARE IN PLACE FOR NEWLY-DISCOVERED EVIDENCE AND WHEN A NEW CONSTITUTIONAL ISSUES COMES UP?

WHY WOULD WE CHANGE THE TIME TO, I GUESS IT IS 180 DAYS THAT YOU'RE PROPOSING NOW FOR THOSE?

>> THAT IS CORRECT.

CURRENTLY THE RULE DOES NOT CONTAIN A PROVISION BUT BY CASE LAW THE TIME LIMITATION THAT HAS BEEN IMPOSED IS ONE YEAR FROM THE TIME THE EVIDENCE IS NEWLY DISCOVERED OR SHOULD HAVE BEEN DISCOVERED IN THE EXERCISE OF DUE DILIGENCE AND ONE YEAR FROM THE, WHEN A DATE NEW RULE OF LAW IS HELD RETROACTIVELY.

>> WHAT IS WRONG WITH THE ONE YEAR LIMITATION?

>> THE SUBCOMMITTEE BELIEVED THERE WAS NO REASON TO HAVE ONE YEAR.

THAT 180 DAYS SHOULD BE ENOUGH TIME, CERTAINLY FROM THE TIME A RULE IS ANNOUNCED TO APPLY

RETROACTIVELY, EVEN FROM THE TIME WHEN NEWLY DISCOVERED EVIDENCE IS --

>> AGAIN, I COMMEND YOU, YOUR SUBCOMMITTEE AND I THINK PROBABLY THE MOST IMPORTANT PART IS THE CASE MANAGEMENT OF TRIAL JUDGES WHICH THE LEGISLATURE WOULD GIVE ELECTRONIC REPORTING FOR EVERY TRIAL AND ALSO GIVE STAFF ATTORNEYS EVERY JUDGE, THAT IS HEARING POST-CONVICTION AND DEATH CASES BECAUSE WE KNOW THAT IT'S HEAVY LIFTING IS ON THE PART OF THE TRIAL JUDGE.

>> YES.

>> TO GET THESE CASES MOVING. SO BUT THAT'S NOT, WE CAN'T DO THAT.

SO, I GUESS MY QUESTION ON IT IS, IT GETS TO WHERE, IF IT IS TRULY A CASE OF NEWLY-DISCOVERED EVIDENCE, KNOW WHAT THE CCR PEOPLE MAY GO THROUGH, A YEAR SEEMS LIKE IT IS, GET WHAT THEY HAVE TO GET TOGETHER.

THE AFFIDAVIT AND EVERYTHING THEY HAVE GOT TO PLEAD. MAYBE FOR A NEW CONSTITUTIONAL RULE.

WE HAVE MENTAL RETARDATION NOW. WE'RE GOING TO MAKE EVERYBODY TRY TO DO THIS IN THE NEXT SIX MONTHS?

AND SO I THINK, QUESTION I HAVE IS THAT REALLY WHERE YOU YOU FOUND THE LOGJAM?

>> I DON'T THINK THAT IS WHERE WE FOUND THE LOGJAM, TO BE QUITE HONEST.

>> WHERE DID YOU SEE IT IS THE QUESTION I WANT TO KNOW? IF WE'RE GOING TO BE AMENDING RULES THAT THIS COURT HAS REALLY TAKEN THE TIME TO GET THIS PROCESS GOING, WHAT WAS THE BIGGEST PROBLEM THAT YOU, YOUR COMMITTEE DISCOVERED?

>> WELL, I WOULD SAY THAT ONE OF THE BIGGEST PROBLEMS IS WITH

TRANSCRIPTS AND GETTING THE
COURT REPORTER TO GET THE
TRANSCRIPTS --

>> WHAT ARE WE DOING?

>> WE'RE PROPOSING TO AMEND THE
RULES OF JUDICIAL ADMINISTRATION
TO PROHIBIT DIGITAL REPORTING
AND SIMPLY DOESN'T WORK.

>> NO ONE DISAGREES WITH THAT I
DON'T THINK.

>> UTILIZATION OF REAL TIME
WHERE IT IS AVAILABLE.

PART OF THIS IS LEAP OF FAITH
THE LEDGE YOU'RE WILL FUND AND
GIVE COUNTIES AND CIRCUITS THE
NECESSARY MONEY THAT WILL ALLOW
THEM TO USE REAL TIME
TRANSCRIPTS.

IF WE HAVE REAL TIME, THOSE CAN
BE PROVIDED TO TRIAL COURT AND
UP TO THIS COURT ON A MUCH MORE
TIMELY BASIS.

AN ADDITIONAL LOGJAM, SO TO
SPEAK OR AT LEAST AN ADDITIONAL
RECOMMENDATION IS THE
ELIMINATION OF PRO SE
REPRESENTATION.

THE DELAY THAT IS OCCASIONED BY
PRO SE REPRESENTATION IN CAPITAL
CONVICTION POST-PROCEEDINGS IS
ONE OF IDEAS RAISED IN SURVEY OF
CIRCUIT JUDGES.

THIS COURT IN LAMBRIX
ACKNOWLEDGED THERE IS NO FEDERAL
CONSTITUTIONAL RIGHT TO COUNSEL
IN CAPITAL POST-CONVICTION.

THIS COURT IN DAVIS PROHIBITED
PRO SE REPRESENTATION ON DEATH
PENALTY DIRECT APPEALS AND
GORDON PROHIBITED PRO SE
REPRESENTATION IN APPEALS FOR
POST-CONVICTION PROCEEDINGS.

THE RATIONALE IS FAIRNESS,
RELIABILITY, UNIFORMITY IN THE
APPLICATION.

>> ALSO ONCE THE WARRANT IS
ISSUED THEY HAVE GOT TO HAVE A
LAWYER.

UNLESS THEY HAVE WAIVED.

WE'RE ONLY TALKING ABOUT IF

THEY'RE NOT WAIVING?

>> THAT'S CORRECT.

WE'RE NOT TALKING ABOUT WHERE THEY WANT TO WAIVE AND DISMISS PROCEEDINGS.

WE'RE TALKING ABOUT IF THEY WISH TO REPRESENT THEMSELVES IN THE PROCEEDINGS PRO SE.

>> ONE OF THE PROBLEMS PRO SE OR FRANKLY SOMETIMES WITH PARTICULAR LAWYERS, EXCESSIVE AND SUCCESSIVE, LAMBRIX IS A GOOD EXAMPLE OF THAT IS SUCCESSIVE.

IS THERE SOME REQUIREMENT, AGAIN, NEWLY-DISCOVERED EVIDENCE IS ONE THING BUT WHEN THERE IS JUST SUCCESSIVE AFTER SUCCESSIVE AFTER SUCCESSIVE, SOME OTHER REQUIREMENT, IN GOOD FAITH, THE ATTORNEY HAS, WHATEVER BECAUSE, THAT TO ME, AGAIN, I DON'T WANT TO CUT OFF SOMEBODY WHO HAS A GUILT ISSUE AND A PENALTY, MOSTLY OF THE SUCCESSIVE MOTIONS WE SEE ARE NOT MAYOR TORY.

>> THERE ARE TWO THINGS THAT THE SUBCOMMITTEE RECOMMENDED IN THAT REGARD AND THE FIRST ONE RELIES UPON THIS COURT ADOPTING NO REPRESENTATION RULE.

ELIMINATE SIGNATURE AND OATH REQUIREMENT OF THE DEFENDANT HIMSELF TO THE MOTION.

PROVEN COUNTERPRODUCTIVE BECAUSE IN ORDER TO OBTAIN THE DEFENDANT'S SIGNATURE WE HAVE, WE HAVE BEEN TOTAL COLLATERAL CONSULT IS ESSENTIALLY HELD HOSTAGE TO RAISING CLAIMS BEFORE THE CLIENT IS WILLING TO SIGN OFF ON THE PETITION.

THIS COURT ADOPT AS NO PRO SE REPRESENTATION, IT WOULD REQUIRE SIGNATURE OF THE ATTORNEY AND CERTIFICATION THAT WE STRENGTHENED THE REQUIREMENTS ON ALLEGING GOOD FAITH THAT THEY HAVE SPOKEN WITH THE CLIENT AND

CLIENT'S AWARE.

THE SECOND RECOMMENDATION THAT WE HAVE MADE TO THIS COURT IS ADOPTING THE SUCCESSIVE MOTION LANGUAGE IN 38.50 WHICH GIVES THE COURT DISCRETION TO DISMISS WHEN IT BECOMES, FOR EXAMPLE AN ABUSE OF THE PROCESS, ABUSE OF THE CAPITAL POST-CONVICTION PROCEDURE.

>> WOULD YOU GO BACK AND ANSWER THE QUESTION THAT WAS CUT OFF AND THAT WAS, YOU WERE ANSWERING ABOUT THE COURT REPORTING AND THEN SHIFTED TO ANOTHER ONE. HAVE YOU ANSWERED EVERYTHING ON COURT REPORTING?

BECAUSE THE CASES THAT WE HAVE SEEN IS TRYING TO EVEN LOCATE THE COURT REPORTER WHO IS MANY TIMES, LEFT THE STATE AND IF THE LEGISLATURE DOESN'T AUTHORIZE REAL-TIME, SO IT IS THERE AND DONE ON THE DAY --

>> THAT IS EXACTLY CORRECT, JUSTICE LEWIS.

AS I INDICATED, MANY OF THE RECOMMENDATIONS THAT WE MAKE ARE ON THE ASSUMPTION THAT THE LEGISLATURE BY ITS INTENT IN AN ENACTING TIMELY JUSTICE ACT IS GOING TO PROVIDE THE NECESSARY FUNDING FOR US TO IMPROVE THE OVERALL EFFICIENCY AND COURT REPORTING IS ONE OF THESE KEY --

>> ON THAT ISSUE, DID THE COMMITTEE DISCUSS ANYTHING ABOUT WAYS TO REMEDY OR PREVENT THAT TYPE OF -- WE'VE HAD CASES HERE THAT WOULD LANGUISH FOR A YEAR, TRYING, AND REPORTS KEEP COMING BACK, WE'RE TRYING TO FIND THE COURT REPORTER, THAT KIND OF THING.

WAS THERE ANY DISCUSSION ON WAYS TO REMEDY THAT, IF WE DON'T HAVE REAL TIME?

>> WE HAVE NOT.

IN THE CASE MANAGEMENT ORDERS THAT WE HAVE PROPOSED AND WE

PROPOSED FOUR OF THEM AND WE'RE NOT ASKING THE COURT TO REQUIRE THAT THE TRIAL COURTS USE THEM BUT WE'RE RECOMMENDING THEY BE POSITIVE, BECOME A PART OF THE JUDICIAL EDUCATION SERIES FOR CAPITAL CASES.

IT IS AT THAT TIME THAT THE TRIAL COURT ACTUALLY APPOINTS THE COURT REPORTER WILL BE USED THROUGHOUT THE CAPITAL POST-CONVICTION PROCESS.

PRESUMABLY AT THAT TIME, WHEN YOU MAKE THAT DECISION WHO YOU'RE GOING TO USE AND HOPEFULLY GIVE THE TRIAL COURT THE NECESSARY DISCRETION AND OVERVIEW, LONG VIEW, SO THEY WILL UTILIZE SOMEBODY WHO THEY KNOW IS AROUND AND WILL BE AROUND AT THE PROCESS.

>> I SEE YOUR TIME IS UP BUT I'M A LITTLE CONFUSED ABOUT WHAT THE TERM MEANS, THIS IS IN THE CONTENTS OF THE BRIEF.

>> YES.

>> YOU TALK ABOUT ONE CLAIM AND THAT YOU CAN ONLY HAVE ONE LEGAL ARGUMENT FOR THE CLAIM.

WHAT DOES THAT MEAN EXACTLY?

>> WHAT WE FOUND IN DISCUSSING AND THROUGH THE SURVEY OF CIRCUIT COURT JUDGES QUITE OFTEN IT WAS NOT UNTIL THE ORDER WAS RENDERED THEY DISCOVERED THERE WERE ISSUES AND CLAIMS RAISED IN FOOTNOTES OR AS A SUBISSUE IN AND OTHER WISE SINGULARLY TITLED CLAIM.

SO THE ORDER HAD TO BE REDONE OR COMING UP TO THIS COURT ON REVIEW WHERE THOSE ISSUES WERE NOT PROPERLY FLESHED OUT.

WE SIMPLY WANT TO MAKE SURE THAT --

>> SAYING THAT A CLAIM CAN HAVE CONTAIN ONLY ONE LEGAL ARGUMENT SEEMS A LITTLE DIFFICULT TO ME. I MEAN ONE CLAIM, YOU MAY HAVE SEVERAL REASONS FOR MAKING THAT

CLAIM AND THAT ARE TWO SEPARATE LEGAL ARGUMENTS.

AND SO, I'M A LITTLE CONCERNED ABOUT THE WORDING OF THAT PARTICULAR SUBSECTION.

>> I THINK IT WAS, SIMPLY TO INSURE THAT THE CLAIMS AND THE ARGUMENTS TO EACH CLAIM ARE SEPARATELY PLED.

SO WHEN THE STATE FILES ITS ANSWER, THE PLEADINGS HAVE BEEN FRAMED, APPROPRIATELY, WHEN THE COURT MAKES ITS DECISION AND RENDER ITS ORDER IT CAN ADDRESS EACH AND EVERY CLAIM OF ISSUE THAT HAS BEEN RAISED.

I THINK THE SUBCOMMITTEE IS PROBABLY LESS CONCERNED ABOUT THAT LANGUAGE, CONTINUING TO BE IN THERE, CONTAINING ONE LEGAL ARGUMENT BECAUSE I CERTAINLY SEE, JUSTICE QUINCE, YOUR CONCERNS ABOUT MULTIPLE ARGUMENTS TO A SINGLE CLAIM.

I DON'T THINK WE INTENDED TO PROHIBIT THAT -- I DO SEE --

>> TO UNDERSTAND THIS, WE DON'T WANT TO HAVE LITIGATION OVER IT. A LOT OF TIMES THE CLAIM IS THE LAWYER WAS INEFFECTIVE, DIDN'T OBJECT.

CLOSING ARGUMENTS ARE, PLENTY OF DIFFERENT ONES, REALLY EASIER FOR THAT TO BE ONE CLAIM WHICH IS CLOSING ARGUMENTS BUT WHY COULDN'T THAT BE DESIGNATED AS A SUBCLAIM?

>> IT CAN.

IN FACT THAT'S WHAT WE'RE EXACTLY REQUIRING IN OUR LANGUAGE.

EACH CLAIM OR SUBCLAIM SHALL BE SEPARATELY PLED.

IT DOESN'T MEAN --

>> OKAY.

>> WE DON'T WANT THEM HIDDEN. WE WANT THEM OUT IN THE OPEN SO THAT THE STATEMENT FRAMES THE PLEADINGS APPROPRIATELY AND I'M NOT SUGGESTING ANY ULTERIOR

MOTIVE BUT THIS MAKES CERTAIN
THAT ALL PARTIES ARE AWARE OF
WHAT --

>> ANYONE OPPOSE THAT?

>> THERE WERE --

>> I GUESS I WILL FIND OUT.

>> THERE WERE NO COMMENTS --

ACTUALLY, ORIGINALLY, ORIGINALLY
WE HAD A MUCH MORE STRINGENT
REQUIREMENT AND WE SAID YOU
CAN'T PUT THEM IN FOOTNOTES AND
YOU CAN'T DO THIS.

>> WE DON'T WANT THAT.

>> BECAUSE OF THE COMMENTS
RECEIVED WE ACTUALLY LOOSENED
THE LANGUAGE JUST A LITTLE BIT
AND I DON'T KNOW IF WE'LL HAVE
ANY COMMENTS FROM THE OTHER
COMMENTERS.

THANK YOU VERY MUCH.

>> MAY IT PLEASE THE COURT.
SUZANNE KEFFER ON BEHALF OF THE
CCRCs.

I DO APPLAUD THE EFFORTS THAT
THE SUBCOMMITTEE HAS MADE WITH
RESPECT TO THE RULE AND I THANK
THE SUBCOMMITTEE AND THE COURT
FOR ALLOWING ME TO COME AND
SPEAK TODAY.

..

IT HAS BEEN WORKING SINCE THIS
COURT PUT IT INTO EFFECT IN
2001, AND I THINK PART OF THE
PROBLEM WITH THE PROPOSED
RULES -- AND, AGAIN, WITH ALL
DUE RESPECT TO THE EFFORTS THAT
THE SUBCOMMITTEE HAS MADE -- IS
THAT IT'S FOCUSING ON PROBLEMS
THAT DON'T NECESSARILY EXIST.
AND WHAT HAS HAPPENED FROM OUR
STANDPOINT IS THAT THE PROPOSED
RULES ARE NOW A FURTHER ATTEMPT
TO UNLEVEL THE PLAYING FIELD
AGAINST THE DEFENDANTS.

AND I WANT TO TALK ABOUT WHAT
JUSTICE QUINCE AND JUSTICE
PARIENTE MENTIONED ABOUT --

>> LET ME JUST, IF I COULD MAKE
A BRIEF COMMENT AND GIVE YOU AN
OPPORTUNITY TO RESPOND TO IT.

THERE HAVE BEEN SOME SIGNIFICANT PROBLEMS WITH DELAYS IN CASES. WE'VE SEEN CASES THAT HAVE COME HERE, FIRST POST-CONVICTION MOTION REACHING US MAYBE TEN YEARS AFTER IT WAS FIRST FILED. THAT'S ON THE EXTREME SIDE. BUT CASES THAT WOULD REACH US FIVE, SEVEN YEARS LATER, I DON'T THINK THOSE ARE -- THEY'RE CERTAINLY NOT THE NORM, BUT THEY HAVE, UNFORTUNATELY, NOT BEEN UNCOMMON.

SO I THINK A LOT OF THE EFFORT HERE IS TO TRY TO ADDRESS THAT. SO THE NOTION THAT EVERYTHING IS WORKING FINE UNDER THE EXISTING SYSTEM OF RULES, I THINK, RUNS UP AGAINST THAT REALITY OF THESE CASES THAT ARE DELAYED FOR AN EXTENDED PERIOD OF TIME.

NOW, I'M VERY SENSITIVE TO THE FACT THAT IN MANY OF THESE, IN THESE TYPES OF CASES THE DEFENSE ORDINARILY HAS NO MOTIVE TO PUSH THE PROCESS FORWARD.

I UNDERSTAND THAT.

BUT IT CREATES A DYNAMIC THAT HAS RESULTED IN THESE LONG DELAYS.

SO I THINK THAT'S, JUST AS YOU'RE LOOKING AT THIS, THAT'S PART OF THE BACKDROP THAT'S THE MOTIVATION FOR LOOKING AT WAYS THAT WE CAN MAKE SURE THAT THE PROCESS IS WORKING PROPERLY WITH DUE PROCESS, ABSOLUTELY, GUARANTEED AND AS THE TOP PRIORITY.

BUT WITH SOME CONCERN FOR THE TIMELINESS OF DISPOSITION.

>> I UNDERSTAND WHAT YOU'RE SAYING.

I THINK THAT SOME OF THE CASES YOU'RE REFERRING TO, TEN YEARS OR MORE, WE HAVE TO LOOK AT THE FACT THAT MANY OF THOSE PREDATE THE LATEST INCEPTION OF RULE 3.851.

I THINK, ALSO, THE FIVE TO SEVEN

YEARS, THERE IS ALWAYS GOING TO BE OUTLIERS, THERE IS ALWAYS GOING TO BE THOSE CASES THAT DO TAKE LONGER.

THIS IS A COMPLEX PROCESS, AND I THINK THAT'S SOMETHING THAT EVERYBODY NEEDS TO ACKNOWLEDGE, THAT, YOU KNOW, THIS ISN'T A ONE SIZE FITS ALL.

EVERY CASE IS COMPLEX, AND THE PROCESS ITSELF IS COMPLEX.

AND I AGREE THAT THERE ARE DELAYS IN THE PROCESS.

I THINK, THOUGH, JUDGE AMOS POINTED OUT IN TRANSCRIPTS, I WOULD AGREE WITH THAT COMPLETELY.

HAVING TO BE THERE AND TRY AND GET TRANSCRIPTS, AND SOMETIMES THEY TAKE OVER A YEAR, AS JUSTICE LEWIS SAID.

I AGREE WITH THOSE THINGS.

I THINK ONE OF THE AREAS WHERE THERE'S THE GREATEST DELAY AND WHICH WAS NOT ADEQUATELY ADDRESSED BY THE SUBCOMMITTEE IS PUBLIC RECORDS.

THE FACT OF THE MATTER IS THAT THE DEFENDANT IS HELD TO STRICT TIME FRAMES.

WE'RE UP AGAINST A FEDERAL CLOCK THAT WE HAVE TO MEET OR BE BARRED IN FEDERAL COURT.

WE'RE UP AGAINST A TIME FRAME OF ONE YEAR IN THE STATE COURT THAT WE HAVE TO MEET, OR WE'RE, COULD BE BARRED FROM RAISING CLAIMS.

THAT'S SIGNIFICANT TO A DEFENDANT.

WHEN YOU'RE FACING THE PUBLIC RECORDS ISSUES AND AGENCIES ARE NOT RESPONDING, THEY'RE NOT COMPLYING AND THEY'RE NOT BEING HELD TO THE SAME STANDARDS AS THE DEFENDANT, THE ONLY PERSON THAT IS PREJUDICED IS THE DEFENDANT.

SO I WOULD AGREE THERE ARE DELAYS IN THIS PROCESS.

I THINK THAT THERE HAVE BEEN NO

SIGNIFICANT CHANGES MADE TO THE PUBLIC RECORDS PROCESS TO ADDRESS THE EXTENSIVE DELAYS THAT ARE OCCURRING THERE AND THE NONCOMPLIANCE THAT IS OCCURRING THERE.

>> WELL, YOU KNOW, WE HAD THAT PROBLEM AND THEN CREATED THE REPOSITORY.

AND I MUST SAY THAT SINCE THAT POINT IN TIME, I DON'T THINK THIS COURT HAS BEEN ADEQUATELY INFORMED AS TO WHAT THOSE CONTINUING PROBLEMS ARE OR WHAT SHOULD BE DONE TO RESOLVE THEM. THAT -- HOW COULD YOU HELP US IN THAT REGARD THEN?

>> WELL, I THINK, CERTAINLY -- AND I CAN SPEAK FROM LITIGATION FROM THE STANDPOINT OF MY OFFICE --

>> RIGHT.

>> WE'VE REPEATED BY PUTTING IN OUR PLEADINGS WHERE THE DELAYS IN PUBLIC RECORDS ARE, WHO IS NOT COMPLYING.

AND THEN WE DO BRIEF THAT TO THIS COURT.

NOT IN EVERY CASE.

SOMETIMES THERE'S MORE SIGNIFICANT ISSUES THAT NEED TO BE HEARD.

BUT WE ARE TRYING TO MAKE AN EFFORT OF MAKING A RECORD OF THOSE THINGS.

I DO WANT TO TALK --

>> WELL, LET'S GO -- JUST BECAUSE THERE'S THE ONE EXTREME WHERE, NOT CRITICIZING ANYONE IN PARTICULAR, THE FISHING EXPEDITION.

IT'S NOT JUST WHAT'S IN THE REPOSITORY, BUT EVERYTHING ON PERSONNEL RECORDS, THIS AND THAT.

IS THERE AN AREA OF THE STATE WHERE THEY DO IT BETTER?

ARE THERE SOME STATE ATTORNEYS' OFFICES THAT WORK VERY WELL WITH YOU TO TRY TO GET -- EVEN THOUGH

THEY'RE NOT DIRECTLY UNDER THEM -- TO TAKE CARE OF ALL THOSE TYPES OF AGENCIES TO REALLY SAY, LISTEN, THIS IS IMPORTANT TO US, YOU NEED TO GET THESE RECORDS?

YOU KNOW?

UNLESS IT BECOMES RIDICULOUS, PLEASE GIVE THEM -- OR IS IT BAD THROUGHOUT THE STATE?

>> NO.

I THINK THERE'S CERTAIN AREAS WHERE IT'S WORSE THAN OTHERS.

>> WHERE IS IT BETTER?

>> I HATE TO STAND HERE AND POINT FINGERS --

>> NO, IT'S IMPORTANT, BECAUSE SOMETIMES WE SET UP SOMETHING AND WE'RE, YOU KNOW, YES, IT WORKS WELL HERE BECAUSE THIS IS HOW IT'S DONE.

OR IS IT THE JUDGE THAT MAKES IT MORE DIFFICULT?

WE NEED TO KNOW THAT.

>> I THINK IT'S ALL OF THE ABOVE.

I THINK THERE ARE CIRCUITS WHERE THE AGENCIES, IN FACT, ARE NOT COMPLYING WHETHER IT BE THE SMALLER LAW ENFORCEMENT AGENCIES THAT DON'T UNDERSTAND THE RULE AND DON'T UNDERSTAND WHAT THEIR OBLIGATIONS ARE OR LATE INITIAL PRODUCTION ON BEHALF OF SOME STATE ATTORNEYS' OFFICES.

I THINK IT'S ALSO DIFFICULT AT TIMES GETTING THE JUDGES TO UNDERSTAND WHY THESE RECORDS ARE NECESSARY.

AND I APPRECIATE YOUR CONCERNS ABOUT FISHING EXPEDITIONS.

I THINK WE MAKE EFFORTS TO REALLY TAILOR RECORDS TO OUR CASES AND WHAT WE NEED.

WE MAKE EXTENSIVE ARGUMENTS AS TO WHY THOSE RECORDS ARE NEEDED.

I DON'T WANT TO -- I HAVE SOME OTHER COMMENTS I'D LIKE TO MAKE IF WE CAN MOVE ON FROM THE PUBLIC RECORDS.

I APPRECIATE WHAT JUSTICE QUINCE AND JUSTICE PARIENTE SAID ABOUT THE SUCCESSIVE CLAIMS AND THE FACT THAT THE PROPOSED RULES DRAMATICALLY CUT THE TIME THAT POST-CONVICTION ATTORNEYS HAVE FOR MAKING THESE SUCCESSIVE CLAIMS --

>> YOU AGREE WITH THE YEAR, EVEN THOUGH THEY'RE NOT IN THE RULE, THAT WE HAVE PROPOSED?

>> YES, I AGREE WITH THE YEAR. THE YEAR HAS BEEN WORKING. THE YEAR IS NOT A LITIGATION TIME PERIOD, IT'S, IN FACT, THE PERIOD THAT POST-CONVICTION ATTORNEYS USE TO BUILD THEIR CASES.

>> SUCCESSIVE.

>> CORRECT.

TO BUILD THEIR SUCCESSIVE CLAIM. AND I THINK IT IS ESPECIALLY IMPORTANT IN LIGHT OF THE SUPREME COURT'S RECENT RULING IN HALL.

THAT REALLY SHOWS THAT THAT YEAR TIME PERIOD AND SUCCESSIVE CLAIMS IN GENERAL ARE VERY IMPORTANT TO CORRECT ERRONEOUS DECISIONS AND ERRONEOUS CONSTITUTIONAL INTERPRETATIONS. AND SO I CERTAINLY THINK THAT THAT'S IMPORTANT.

I ALSO WANT TO TALK A LITTLE BIT ABOUT A RECENT DEVELOPMENT, AND WE DID SUPPLEMENT --

>> I KNOW.

BUT THEN WE ALSO HAVE THE ONES THAT ARE THE RIGHT TO -- THE MARTINEZ CLAIMS THAT WE GOT. WE GOT HALF THE LAWYERS RAISING THAT AND HAD TO KEEP ON DENYING THEM AND CITING THE SAME CASES. I MEAN, WE COULD DECIDE IN A PARTICULAR SITUATION, COULDN'T WE, TO SHORTEN IT IF IT'S REALLY THE CASE WHERE THERE REALLY ISN'T EVEN RETROACTIVITY?

>> BUT I THINK IN A SITUATION -- AND I DON'T KNOW THAT I

NECESSARILY AGREE WITH YOU ON THE MARTINEZ CLAIMS.

HOWEVER, I THINK IN THAT SITUATION WHERE YOU MENTIONED THERE'S SUCCESSIVE AFTER SUCCESSIVE AFTER -- THE COMMITTEE HAS, AS JUDGE AMOS POINTED OUT, THEY'VE ADDRESSED HOW A COURT CAN DEAL WITH THAT AND HOW A COURT CAN DISPOSE OF THAT.

AND, IN FACT, THE CURRENT RULE IF IT'S A NON-MERITORIOUS CLAIM, THE COURT CAN DISPOSE OF IT PRETTY QUICKLY.

THE TIME FRAMES ONCE YOU FILE YOUR SUCCESSIVE, THEY TEND TO MOVE.

SO I DON'T THINK THAT'S AN ISSUE OF DELAY.

AND, AGAIN, YOU'RE ALWAYS GOING TO HAVE OUTLIERS WHO FILE SUCCESSIVE AFTER SUCCESSIVE AFTER SUCCESSIVE.

AND THE REMAINING CAPITAL DEFENDANTS SHOULD NOT BE PUNISHED BY THOSE OUTLIERS.

I WANT TO SPEAK JUST BRIEFLY, TOO, ABOUT THE RECENT DECISION FROM THE 11TH CIRCUIT IN LUGO, BECAUSE I THINK THEY HAVE POINTED OUT A REAL PROBLEM IN FLORIDA IN TERMS OF REPRESENTATION GOING INTO FEDERAL HABEAS AND REPRESENTATION CONTINUING FROM STATE COURT INTO FEDERAL HABEAS THAT I THINK HAS NOT BEEN ADDRESSED BY THE SUBCOMMITTEE.

THE REQUIREMENTS TO BE A LEAD COUNSEL IN CAPITAL POST-CONVICTION DO NOT REQUIRE SEPARATE FEDERAL EXPERIENCE. IT'S AN EITHER/OR SITUATION. YOU CAN HAVE TWO OF ANY OF THE FOLLOWING, AND THE CCRCs THINK THAT IT'S NECESSARY THAT LEAD COUNSEL BE REQUIRED TO HAVE SOME FEDERAL EXPERIENCE IF THEY'RE GOING TO HANDLE A POST-CONVICTION

CASE.

OTHERWISE WE'RE IN THE SITUATION WHERE THE FEDERAL TIME CLOCK'S BLOWN, IT CREATES ADDITIONAL LITIGATION, ADDITIONAL PROBLEMS IN FEDERAL COURT.

AND THAT'S A REAL PROBLEM AS WE'VE SEEN IN LUGO THAT THE STATE OF FLORIDA IS ADDRESSING. I JUST WANT TO SAY REALLY QUICKLY --

>> LET ME ASK YOU THIS.

I'M A LITTLE BIT CONFUSED ABOUT WHO REPRESENTS THE DEFENDANT IN FEDERAL COURT.

>> THE POST-CONVICTION ATTORNEY IS SUPPOSED TO CONTINUE REPRESENTATION THROUGH FEDERAL COURT.

>> OKAY.

>> CERTAINLY, THE CCRCs, WE CONTINUE FROM STATE COURT ALL THE WAY THROUGH.

WE GET THE APPOINTMENT --

>> DO WE KNOW OF THESE 34 CASES THAT THE 11TH CIRCUIT POINTS TO WHO WERE THE ATTORNEYS?

ARE THESE THE CASES WHERE THERE WAS A PRIVATE ATTORNEY, AND THAT'S HOW IT GOT LOST ALONG THE WAYSIDE?

OR WHO WAS -- DO WE HAVE THAT KIND OF INFORMATION?

>> MY UNDERSTANDING AND FROM OUR REVIEW OF THE LIST IS THAT THE VAST MAJORITY OF THOSE CASES ARE NOT CCRC CASES.

THEY WERE PRIVATE REGISTRY ATTORNEYS.

>> AND THOSE ATTORNEYS, PRIVATE REGISTRY ATTORNEYS, ARE THEY SUPPOSED TO CARRY ON INTO FEDERAL COURT ALSO?

>> THAT'S MY UNDERSTANDING OF WHAT OUR STATUTE SAYS.

BUT THE PROBLEM IS NOT ONLY CARRYING ON INTO FEDERAL COURT, THE FACT IS THEY HAVE TO BE COGNIZANT OF THAT FEDERAL TIME CLOCK.

THE FEDERAL TIME AND THE STATE TIME ARE RUNNING CONCURRENTLY FOR THAT FIRST YEAR.

>> IT'S ABSOLUTELY ASTONISHING THAT, AND WE OUGHT TO IF WE HAVE THE MISSION ON CAPITAL CASES THAT EVERY ONE OF THESE 34 ATTORNEYS -- I THOUGHT IT HAD STOPPED.

I CAN UNDERSTAND RIGHT AT THE TIME THAT IT CAME INTO EFFECT THERE MIGHT HAVE BEEN ONE ATTORNEY THAT DIDN'T REALIZE IT. BUT REALLY ISN'T THERE SOME WAY OTHER THAN THAT THEY HAVE TO HAVE THE EXPERIENCE LITIGATING THAT WE COULD PUT SOMETHING IN LIKE THE BEGINNING NOTICE IS THAT IN EVERY CASE SOMEBODY, THE STATE ATTORNEY, SOMEBODY NOTIFIES THE ATTORNEY THIS IS THE ADEPA TIME LIMIT SO THAT WE NEVER HAVE THAT SITUATION?

I MEAN, SOMETHING EASIER THAN THAT YOU HAVE EXPERIENCE.

IT'S, I MEAN --

>> I'M NOT POSITIVE IT'S THAT SIMPLE, BECAUSE IT'S A VERY COMPLICATED RULE, AND THERE NEEDS TO BE SOME --

>> IT MUST NOT BE THAT COMPLICATED BECAUSE THEY SAID IN LUGO EVERY OTHER STATE, NO OTHER STATE HAS THIS PROBLEM EXCEPT FOR FLORIDA.

>> I THINK BECAUSE THEY'RE PROVIDING THE EXPERIENCED COUNSEL.

AT LEAST THAT'S THE WAY I READ LUGO.

I DON'T KNOW EACH STATE'S REQUIREMENTS.

>> WE'RE BEHIND ALABAMA AND MISSISSIPPI?

IT'S REALLY -- WE'VE GOT TO LOOK AT THAT.

>> I AGREE.

I AGREE.

AND MY TIME IS UP, SO I WILL ASK YOU TO TAKE A LOOK AT MY --

LISTEN TO THE COMMENTS AND TAKE
A LOOK AT THE RULES.

>> THANK YOU.

>> GOOD MORNING, MAY IT PLEASE
THE COURT, I'M THE ASSISTANT
ATTORNEY GENERAL ON BEHALF OF
THE ATTORNEY GENERAL'S OFFICE.
THE ATTORNEY GENERAL'S OFFICE
HAS FILED COMMENTS TO THE
AMENDMENTS PROPOSED BY THE
SUBCOMMITTEE TO THE, FOR THE
FLORIDA CRIMINAL PROCEDURE
3.851.

TODAY I INTEND TO FOCUS MY
COMMENTS TO TWO PROVISIONS OF
THOSE PROPOSED AMENDMENTS.
NUMBER ONE IS THE AMENDMENT
WHICH STRIKES THE OATH
REQUIREMENT, AND NUMBER TWO IS
THE PROVISION THAT DEALS WITH
TRIAL COUNSEL'S FILES.
THE SUBCOMMITTEE IN ITS RESPONSE
HAS APPEARED TO EMBRACE THE
COMMENTS OF THE ATTORNEY
GENERAL'S OFFICE IN REGARD TO
TRIAL COUNSEL'S FILES.

SO I WILL BRIEFLY COMMENT ON OUR
POSITION REGARDING TRIAL COUNSEL
BUT PRIMARILY RESPOND TO THE
STRIKING OF THE OATH
REQUIREMENT.

THE CAPITAL DEFENDANTS SHOULD
NOT BE TREATED ANY DIFFERENTLY
THAN ANY OTHER DEFENDANT SEEKING
POST-CONVICTION RELIEF.

THAT IS, THERE ARE PLEADING
REQUIREMENTS IN PLACE AND THAT
HAVE BEEN IN PLACE, AND PART OF
THOSE REQUIREMENTS ARE THE OATH.

>> BUT THEIR REASON FOR IT --
COULD YOU -- IS THIS.

FIRST OF ALL, IT'S COUPLED WITH
DEFENDANTS DON'T GET TO JUST
FILE WHATEVER THEY WANT WHICH IS
SO, YOU KNOW, IF WE DON'T
ALLOW -- IF WE ALLOW PRO SES TO
CONTINUE, WHICH I AM TOTALLY
AGAINST, THEY SHOULD HAVE THE
OATH.

BUT WHAT CCR TOLD THE COMMITTEE

IS THAT THEY'RE BEING HELD
HOSTAGE TO HAVE TO FILE ALL
THESE OTHER METICULOUS CLAIMS
AND THAT THAT'S NOT GOOD FOR THE
SYSTEM.

SO WHAT, WHERE THEY'RE BEING
REPRESENTED BY PROFESSIONAL
COUNSEL, WHAT'S -- AFTER THE
INITIAL -- I'M ASSUMING WE COULD
KEEP THE INITIAL ONE AS THE
MAJOR ONES -- WHAT IS THE REAL
OBJECTION THAT WE EXPECT LAWYERS
TO ACT PROFESSIONALLY AND ONLY
FILE WHAT THEY HAVE GOOD FAITH,
WHEN THEY HAVE POST-CONVICTION?
I MEAN, SUCCESSIVE, THEY HAVE TO
ATTACH, YOU KNOW, LOTS OF
INFORMATION.

WHAT'S THE, WHAT'S THE
OBJECTION?

>> THE OBJECTION IS, IS THAT
WHILE THE ATTORNEY IS THE
DRAFTER OF THE CLAIMS AND THE
STRATEGY IN POST-CONVICTION, IT
IS THE CLIENT, IT IS THE
DEFENDANT WHO IS THE SOURCE OF
THE FACTS THAT SUPPORT THE
CLAIMS.

AND AS SUCH, THAT DEFENDANT
SHOULD SWEAR AND AFFIRM THAT
THOSE FACTS ARE TRUE AND
CORRECT.

>> BUT IF IT'S A
NEWLY-DISCOVERED WITNESS THAT
CCR FINDS, WHAT ARE THEY --
DON'T THEY HAVE TO ATTACH, LIKE,
AN AFFIDAVIT OR THE SPECIFICS
ABOUT THIS WITNESS?

IN OTHER WORDS, THE DEFENDANT'S
IN, YOU KNOW, A FLORIDA PRISON.
HOW DOES THE DEFENDANT KNOW WHAT
THE WITNESS TOLD TO CCR?

HOW CAN THEY SWEAR TO THAT?

>> I UNDERSTAND YOUR POINT, YOUR
HONOR.

THE CONCERN OF THE ATTORNEY
GENERAL IS THE INITIAL
POST-CONVICTION MOTION THAT IS
BEING FILED WHICH IS THE KEY
DOCUMENT IN POST-CONVICTION

PROCEEDING.

IT IS THE GATEWAY TO THE
POST-CONVICTION PROCESS.

>> SO YOU ARE SAYING THAT IF IT
WAS JUST, IF IT WAS INITIAL
POST-CONVICTION AND THAT WAS
REQUIRED TO BE UNDER OATH OR
THAT THAT -- BUT NOT FOR
SUCCESSIVE, OR YOU WANT THEM FOR
EVERYTHING, JUST --

>> I THINK STRIKING THE OATH
REQUIREMENT COMPROMISES THE
INTEGRITY AND THE RELIABILITY OF
THE PROCESS.

CAPITAL LITIGATION BY ITS VERY
NATURE IS COMPLEX.

THE CASES ARE DIFFICULT, THE
CLIENTS ARE DIFFICULT, THE FACT
SCENARIOS ARE DIFFICULT.

BUT, HOWEVER, THAT BEING THE
CASE, WE SHOULD NOT SACRIFICE
THE INTEGRITY AND RELIABILITY OF
THE PROCESS THAT WE HAVE HAD IN
PLACE.

AND THIS COURT SAID IN 1985 WHEN
THE COURT LOOKED AT AN OATH
REQUIREMENT WHERE A DEFENDANT
ATTEMPTED TO FILE AN OATH WHERE
HE INSTEAD OF SWEARING AND
AFFIRMING FACTS WERE TRUE AND
CORRECT, HE SAID, WELL, THIS IS
TO THE BEST OF MY KNOWLEDGE, AND
THIS COURT SAID --

>> IN POST-CONVICTION WE DO KNOW
THAT THE CCRC, REGISTRY COUNSEL,
THEY'VE DONE OTHER INVESTIGATION
BEYOND WHAT IS IN THE RECORD
FROM THE TRIAL.

AND QUITE OFTEN, I MEAN, IN THIS
YEAR PERIOD YOU'VE GOT ALL THIS
INFORMATION THAT'S BEEN
GATHERED, AND IT REALLY IS CCRC
OR WHATEVER ATTORNEY IT IS AND
THEIR INVESTIGATORS WHO REALLY
SHOULD BE TELLING US TO THE BEST
OF THEIR ABILITY THAT THIS IS
THE INFORMATION THEY GATHERED AS
OPPOSED TO THE DEFENDANT WHO
REALLY IS JUST GETTING IT SORT
OF SECONDHAND FROM THE LAWYERS

AND THE INVESTIGATORS, AREN'T THEY?

>> I WOULD SAY, YES, BUT I WOULD ALSO SAY, NO.

BECAUSE THE VERY NATURE OF THESE POST-CONVICTION CLAIMS, THEY ARE NON-RECORD CLAIMS.

THE INFORMATION THAT THEY ARE THIS RECEIPT OF A POST-CONVICTION ATTORNEY, CCRC, A PRIVATE ATTORNEY, REGISTRY COUNSEL, WHOEVER THAT MAYBE, IS RECEIVING THAT INFORMATION FROM A DEFENDANT ABOUT WHAT DID OR DID NOT OCCUR.

>> I MEAN, THAT'S THE POINT, I THINK, THAT JUSTICE QUINCE IS MAKING.

FROM WHAT WE SEE IS THAT IT IS NOT COMING FROM THE DEFENDANT, AND WHAT COMES FROM THE DEFENDANT MOST TIMES IS THE NONSENSICAL STUFF.

AND THEN THEY REFUSE TO SIGN THE DOCUMENT UNLESS THE LAWYER PUTS THE NONSENSE IN WITH THE REST OF IT.

THAT'S WHAT HAPPENED AT LUGO. LUGO IS A CLASSIC EXAMPLE OF THAT.

HE AND HIS, THE CO-DEFENDANT IN THAT CASE, THAT THEY WANTED TO GET INTO ALL KINDS OF BAHAMIAN LAW, AND THEY REFUSED TO SIGN THE PLEADINGS.

SO WHAT'S A LAWYER DO?

>> YOUR HONOR, I UNDERSTAND THAT.

AND THAT ONE CASE AND THAT ONE EXAMPLE SHOULD NOT, FOR ALL OF THE CASES, WE SHOULD NOT TAKE AWAY THE OATH BECAUSE WE HAVE A CASE --

>> IT'S NOT JUST ONE.

THAT JUST JUMPS OUT BECAUSE IT GOT MENTIONED TODAY, AND IT WAS ONE OF THE CLEAR EXAMPLES THAT YOU'D SEE.

AND IT CAUSED RIPPLES AND RAMIFICATIONS THROUGHOUT THE

PROCESS.

>> AS AN ALTERNATIVE THAT YOU CAN EITHER HAVE THE CLIENT SWEAR TO IT OR THE ATTORNEY SAY THAT THIS IS FILED IN GOOD FAITH ON, YOU KNOW, ON BELIEF AND ALL THAT.

>> THE SUBCOMMITTEE, IN ITS RESPONSE TO OUR COMMENTS, THEY AMENDED THE CERTIFICATION REGARDING GOOD FAITH AND THE RESPONSIBILITIES UNDER THE FLORIDA BAR ETHICAL RULES. HOWEVER, ETHICAL RULES HAVE ALWAYS BEEN IN PLACE.

>> BUT HERE'S THE THING AGAIN. YOU MAKE THIS ASSUMPTION THAT THE POST-CONVICTION MOTION IS INFORMATION THAT THEY JUST SIT DOWN WITH THEIR CLIENT AND GO, SO TELL ME WHAT ELSE YOUR ATTORNEY DIDN'T DO.

MY EXPERIENCE OVER 16 YEARS FOR THE GOOD POST-CONVICTION ATTORNEYS IS THAT THAT IS ABSOLUTELY NOT WHAT THEY DO. THEY GET THE RECORDS, AS MS. KEEFER WAS TALKING ABOUT. THEY INTERVIEW THE ATTORNEY. THEY TALK TO THE DOCTORS. THEY GET DIFFERENT MEDICAL. NONE OF IT, I MEAN, THE STUFF THAT COMES FROM THE DEFENDANT WOULD BE, WELL, MAYBE I TOLD MY ATTORNEY THIS, AND THEY DIDN'T DO IT.

SO I DON'T SEE HOW, AGAIN, IF WE'RE TRYING TO KEEP THE PROCESS INTEGRITY, IT SEEMS TO ME THIS IS A GOOD PROVISION, AND I DON'T SEE HOW THE ATTORNEY GENERAL -- UNLESS YOU, YOU KNOW, IF THERE'S SOMETHING FRIVOLOUS THAT'S FILED, THE ATTORNEY SHOULD GET SANCTIONED.

BUT THE -- EVEN TO THE DEATH ROW INMATE, WHAT?

ARE YOU GOING TO SANCTION HIM TO SOLITARY CONFINEMENT?

IN OTHER WORDS, IT DOESN'T

REALLY -- I DON'T SEE HOW IT HELPS.

BUT, AGAIN, THAT'S OUR PERSPECTIVE.

DO YOU HAVE ANYTHING THAT SHOWS THAT WITHOUT IT THIS IS GOING TO BE, THE PROCESS IS GOING TO BE ABUSED?

BY ATTORNEYS?

>> I'M NOT SUGGESTING THAT ATTORNEYS ARE ABUSING THE PROCESS, YOUR HONOR.

WHAT I'M, WHAT I'M SUGGESTING IS THAT HAVING A DEFENDANT VERIFY THAT THAT CERTAIN, THAT HE HAS READ THE CONTENTS OF THE MOTION, HE KNOWS WHEN THE MOTION'S FILED, HE KNOWS WHAT HAS HAPPENED, HE IS SWEARING TO THE FACTS, THE SUPPORTING FACTS THAT ARE FORMING THE BASIS OF THAT MOTION TO SOME, TO A LARGE EXTENT.

LATER -- THAT SIGNING, THAT SWEARING, THAT AFFIRMATION HAS LATER CONSEQUENCES WHEN RAISED BY THE DEFENDANT THAT HE ASSERTS DIFFERENT FACTS, HE ASSERTS DIFFERENT CLAIMS, HE ALLEGES POST-CONVICTION COUNSEL DIDN'T DO A CERTAIN JOB.

SO IF THERE IS A DOCUMENT IN THE BEGINNING WHERE THE DEFENDANT IS, HAS SUPPORTING FACTS THAT HE IS SWEARING THEY ARE TRUE AND CORRECT, THAT THAT DOCUMENT IS IN PLACE WHERE THE DEFENDANT CANNOT LATER CLAIM -- WELL, HE HAS SWORN TO IT THAT THOSE FACTS ARE NOT TRUE AND CORRECT.

NOW, THE RULES, ETHICAL RULES HAVE WORKED ALONGSIDE THE POST-CONVICTION RULES.

SO THEY ARE ADDED INTO THE NEW RULE AS PROPOSED, BUT THEY DO NOT SUBSTITUTE FOR THE OATH.

>> THANK YOU.

>> AND --

>> IF YOU COULD JUST SUM UP.

>> OKAY.

I RESPECTFULLY REQUEST THAT THE COURT CONSIDER THE COMMENTS SUBMITTED BY THE ATTORNEY GENERAL.

THANK YOU VERY MUCH FOR THE OPPORTUNITY TO SPEAK TODAY.

>> THANK YOU.

>> MR. CHIEF JUSTICE, AND MAY IT PLEASE THIS COURT, MY NAME IS TYLER STUBBS, AND I'M WITH THE FIRM OF JACOBS, SHOLZ AND ASSOCIATES, AND I'M HERE ON BEHALF OF THE FLORIDA'S STATE ATTORNEYS' OFFICES ACROSS THE STATE.

AND I'M HERE TO OPPOSE THE ADDITIONAL RESPONSIBILITIES THAT ARE BEING PLACED ON THE STATE'S ATTORNEYS IN THE CONTEXT OF THE POST-CONVICTION RECORDS PRODUCTION PROCESS PROPOSED UNDER THE RULE 3.82, SUBPART E, SUBPART 1.

AND I HAVE TWO REASONS FOR THIS. THE FIRST IS THAT POST-CONVICTION COUNSEL IS BEST SUITED AND BEST SITUATED TO INSURE THE INDUCTION OF ANY PUBLIC RECORDS THAT EXIST.

AND SECONDLY, THE VAGUE EXPECTATIONS THAT ARE CREATED BY THE RULE OFTEN AS REVISED ONCE THE COMMENTS WERE RECEIVED, THEY ARE GOING TO INEVITABLY LEAD TO LITIGATION, THEY'RE GOING TO LEAD TO DELAY, AND IT'S GOING TO CAUSE UNNECESSARY CONFUSION.

NOW THE RULES THAT I'M DISCUSSING, THEY'RE ON PAGE 35 OF THE RESPONSE FROM THE SUBCOMMITTEE, IF YOU'D LIKE TO REFERENCE THOSE.

BUT AS A PRELIMINARY MATTER BEFORE I PROCEED WITH THE ARGUMENT, THE FPAA WOULD LIKE TO EXTEND AN IMMENSE AMOUNT OF APPRECIATION TO JUDGE AMOS AND HIS SUBCOMMITTEE FOR THE FINE WORK THAT HAS BEEN ACCOMPLISHED. IT'S BEEN A PATIENT PROCESS AND

A THOUGHTFUL PROCESS, AND WE APPRECIATE THAT A GREAT DEAL. NOW TURNING TO THE STATE'S ATTORNEYS' RULE IN THE POST-CONVICTION RULE AS WE SPOKE ABOUT JUST MOMENTS AGO, THERE'S AN UNDERLYING RATIONALE TO WHY THERE WAS AN ADDITION TO THE PUBLIC RECORDS PROCESS, AND THAT WAS THAT THE BOTTLENECKS THAT WERE CREATED IN THE PUBLIC RECORDS PRODUCTIONS PROCESS, THERE IS AN ASSUMPTION -- YOU CAN FIND THIS IN APPENDIX D-34 AND IN THE PETITION, PAGE 46, AND THE SUBCOMMITTEE SAYS IT THEMSELVES.

THE SUBCOMMITTEE BELIEVES THE STATE SHOULD TAKE A MORE PROACTIVE ROLE IN THE PUBLIC RECORDS PRODUCTION PROCESS.

>> SO THIS RULE, RIGHT NOW THE STATE ATTORNEYS ARE REQUIRED TO NOTIFY THE AGENCIES AT THE CONCLUSION OF THE DIRECT APPEAL, IS THAT CORRECT?

>> THAT'S CORRECT.

>> AND THAT THEY ARE ABOUT PUBLIC RECORDS.

AND SO THIS RULE SIMPLY ASKS, BASICALLY I ASSUME, FOR SOME FOLLOW UP, TO JUST MAKE SURE THAT THESE AGENCIES HAVE DONE THAT, RIGHT?

IS THAT WHAT THE RULE CHANGE IS?

>> IT -- THAT IS CORRECT, JUSTICE QUINCE, BUT THERE'S MORE TO THAT.

SO THE INITIAL PROPOSED LANGUAGE WAS THAT THE STATE ATTORNEYS SHALL INSURE TIMELY PRODUCTION OF PUBLIC RECORDS AND A WRITTEN NOTE OF COMPLIANCE BY EACH STATE LAW ENFORCEMENT AGENCY WITH A COPY TO THE TRIAL COURT.

SO THE LANGUAGE THAT WAS PARTICULARLY TROUBLING FOR PROSECUTORS AND THIS SAME LANGUAGE IS EXPECTED OF THE ATTORNEY GENERAL --

>> DID THEY CHANGE THAT LANGUAGE?

>> THE LANGUAGE AFTER OUR COMMENTS WERE SUBMITTED, THE COMMENTS WERE RECEIVED FAVORABLY, AND THE LANGUAGE WAS CHANGED TO THE STATE ATTORNEY SHALL MAKE ALL NECESSARY EFFORTS TO INSURE TIMELY PRODUCTION OF PUBLIC RECORDS AND A WRITTEN NOTICE OF COMPLIANCE.

>> OKAY.

>> SO OUR ISSUE HERE TODAY, AND WE APPRECIATE THE SOFTENING OF THE LANGUAGE AS WE HAVE NO TECHNICAL ABILITIES TO INSURE THE PRODUCTION OF THE PUBLIC RECORDS, BUT THAT THE "SHALL MAKE ALL NECESSARY EFFORTS" IS QUITE A VAGUE STANDARD THAT -->> BUT REALLY WHAT IT'S SAYING, AGAIN, AND I APPRECIATE WHAT YOU'RE SAYING.

THE PUBLIC, WHEN THE STATE ATTORNEY TALKS, MORE LIKELY THE LAW ENFORCEMENT AGENCIES ARE GOING TO LISTEN.

AND I DON'T KNOW, I ASKED MS. KEEFER WHICH AREAS OF THE STATE, YOU KNOW, IF THE STATE ATTORNEY HAS AN ATTITUDE, WE'RE HELPING WITH THIS BECAUSE, LISTEN, GOING TO MOVE THIS ALONG.

IF WE SAY NOTHING OR WE OURSELVES OBSTRUCT -- HAPPENS IN CERTAIN STATE ATTORNEYS' OFFICES -- OBSTRUCTED, THEN WE'RE JUST, I MEAN, THEY'RE PUBLIC RECORDS.

SO THEY COULD HAVE GOTTEN THEM THROUGH PUBLIC RECORDS, BUT WE REQUIRED THEM TO DO IT THROUGH THE RULES.

SO I GUESS THE QUESTION IS IT'S VAGUE, BUT DON'T WE UNDERSTAND THAT IT'S GOOD FAITH, THAT THE STATE ATTORNEY CONTACTS THOSE AGENCIES AND SAYS, LISTEN, THIS IS PRODUCTION, WE'D APPRECIATE

IF YOU DO THIS SO WE CAN MOVE
THIS CONVICTION ALONG?
I -- THIS POST-CONVICTION ALONG?
I MEAN, TO ME, THAT NEEDS TO
BE -- THAT'S WHAT WE'RE
CONTEMPLATING.
YOU CAN'T FORCE THEM TO DO IT.
WHAT'S WRONG WITH THAT?
>> WHAT YOU SAID IS EXACTLY
CORRECT, JUSTICE PARIENTE.
THE STATE'S ATTORNEYS ARE ALL OF
A SAME MIND, AND THEY ARE IN THE
PLACE TO HELP THIS PROCESS
ALONG.
WHAT DOES "SHALL MAKE ALL
NECESSARY EFFORTS" MEAN?
IS THAT A PHONE CALL?
IS THAT A LETTER?
IS THAT SENDING A PROSECUTOR TO
GO TO A SHERIFF'S OFFICE AND GO
THROUGH THEIR FILES TO FIGURE
OUT WHAT IT IS?
IT'S GOING TO LEAD TO CONFUSION
AND, INEVITABLY, LITIGATION
WHICH WILL HAVE THE UNINTENDED
EFFECT OF DELAYING THIS PROCESS.
SO TO YOUR POINT, ISN'T THIS A
GOOD IDEA TO THE STATE AGENCIES
MORE PROACTIVE, THE -- THERE ARE
COMMENTS RELATED TO THE STATUS
CONFERENCES THAT ARE IN RULE
3.851, AND LANGUAGE COULD BE
INCLUDED INTO THE COMMENTS THAT
THERE'S AN EXPECTATION OF GOOD
FAITH ON THE PARTS OF THE STATE
ATTORNEYS TO INSURE THE RECORDS
PRODUCTION.
>> SO WHAT ABOUT JUST PUTTING
THAT?
THAT THE ATTORNEYS WILL ACT,
STATE ATTORNEY WILL EXERCISE ALL
GOOD FAITH IN ASSISTING AND
INSURING THE PRODUCTION OF THE
RECORDS?
WOULDN'T -- NOT THE "SHALL," AND
"USING GOOD FAITH," WOULD THAT
HELP?
>> THAT WOULD BE AGREEABLE.
YES.
THE -- AND IT COULD EVEN GO INTO

THE COMMENT JUST LIKE THE STATUS CONFERENCES ARE FOR THE TIMELY RESOLUTION OF PUBLIC RECORDS ISSUES AND OTHER PRELIMINARY MATTERS.

>> BUT YOU'RE SAYING YOU BELIEVE ALL STATE ATTORNEYS UNDERSTAND, AND HELM, REPRESENT ALL 20, THAT THIS IS A WAY THAT IF IT'S NOT PRODUCED, IT'S DELAYED.

AND WE DO SEE DELAYS.

YOU KNOW, I CAN'T PICK OUT WHICH ONES.

USUALLY BY THE TIME IT GETS UP TO US, WE GO LET THE TRIAL JUDGES DECIDE.

BUT IT'S REALLY THAT IDEA THAT AT THE HELM EACH STATE ATTORNEY SAYS IT'S IMPORTANT, LET'S GET THIS PUBLIC RECORDS PRODUCTION DONE.

>> AND THE STATE'S ATTORNEYS' OFFICES AGREE.

BUT THERE'S ALSO A SECOND REASON FOR WHY I OPPOSE THE ADDITIONAL RESPONSIBILITIES, IS THAT THE POST-CONVICTION COUNSEL IS IN THE BEST SITUATION TO GET THESE RECORDS.

>> BUT THAT'S THE WHOLE POINT. THEY SEE IT'S THE DEFENDANT WHO'S ASKING FOR RECORDS, AND THEY GO, WHY AM I GOING TO HELP THAT GUY?

I MEAN, AND THEN IT ENDS UP GOING BEFORE THE JUDGE WHO HAS BETTER THINGS TO DO TO TRY TO GET THIS CASE PROCESSED.

SO IT DOES SEEM LIKE THE -- I DON'T -- WHEN YOU SAID THAT, THAT THE CCR IS IN THE BEST POSITION, I DON'T SEE HOW --

>> [INAUDIBLE]

>> -- YOU TALKING ABOUT THE ATTORNEY GENERAL'S OFFICE OR THE DEFENDANT'S ATTORNEY?

>> THE POST-CONVICTION COUNSEL, THE DEFENDANT'S ATTORNEY --

>> THE DEFENDANT'S ATTORNEY. WHY WOULD HE --

>> THAT'S CORRECT.
BECAUSE THE REMAINDER OF RULE
3.852 IS ON THE ABILITY TO GET
THE RECORDS WHICH INCLUDES THE
ABILITY TO COMPEL PRODUCTION AND
THINGS AT THE --

>> I KNOW.
BUT WE DON'T WANT TO KEEP IT OUT
OF THE COURTS.

THAT'S THE WHOLE IDEA.
WE WANT EVERYBODY TO COOPERATE
TO GET THESE RECORDS SO THAT
IT'S NOT AN ISSUE FOR THE JUDGE,
AND IT'S NOT A DELAY.
IT IS REALLY -- THAT'S WHY I
DON'T SEE HOW -- THEY'RE IN THE
BETTER POSITION TO FILE A MOTION
TO COMPEL.

>> UH-HUH.
>> BUT THE JUDGE, YOU KNOW,
THESE ARE JUDGES WHO HAVE NO
STAFF ATTORNEYS TRYING TO FIGURE
THAT OUT.

AND AS JUSTICE LEWIS SAID
BEFORE, 3.852, IT WAS A
NIGHTMARE.
MR. JACOBS PROBABLY REMEMBERS.
SO THIS IS JUST THAT STEP, I
GUESS.

AND I APPRECIATE YOUR COMMENTS.
SHOULDN'T BE "SHALL" MAYBE.
>> THANK YOU, JUSTICE PARIENTE.
I'LL YIELD THE REMAINDER OF MY
TIME TO JUDGE AMOS.

>> MR. MORRISON.
>> THERE IS NO MORE TIME.

[LAUGHTER]
>> JOHN A. MORRISON ON BEHALF OF
THE FLORIDA PUBLIC DEFENDERS'
ASSOCIATION.

THANK YOU VERY MUCH FOR THE
OPPORTUNITY TO APPEAR TODAY.
I HAVE TWO SMALL BORE COMMENTS
DEALING WITH C4 AND F6.
C4 IS THE REQUIREMENT ON WHETHER
THE PUBLIC DEFENDERS TURN OVER
THE ORIGINAL FILES OR COPIES.
PUBLIC DEFENDERS ASSOCIATION
BELIEVES THAT THIS CASE WAS --
THE DILLINGER CASE THAT THIS

COURT CITED BACK IN THE LATE '90s -- WAS THE CORRECT LAW. NO ATTORNEY KNOWING THAT A MALPRACTICE SUIT WAS COMING, WHICH IS, ESSENTIALLY WHAT I --

>> LET ME ASK YOU THIS: IS THERE -- WHAT'S THE DIFFERENCE IN TURNING OVER THE ORIGINAL VERSUS A COPY?

I MEAN, SUPPOSEDLY IF YOU'RE GOING TO COPY IT, YOU'RE COPYING EVERYTHING JUST AS IT IS, SO DOES IT MAKE A DIFFERENCE? AS LONG AS A COPY OF THE ATTORNEY'S RECORDS IS GIVEN TO THE NEXT ATTORNEY?

>> I BELIEVE THE DIFFERENCE COMES DOWN TO IF SOMETHING GOES MISSING, YOUR HONOR.

>> I'M SORRY?

>> IF SOMETHING GOES MISSING, YOUR HONOR. IF THERE IS A DISPUTE AS TO WHAT WAS IN THE FILE. WHEN YOU TURN OVER THE ORIGINAL AND IT'S OUT OF THE CONTROL OF THE ORIGINAL ATTORNEY, AND THEN THERE CAN BECOME FACTUAL DISPUTES. WELL, IT WAS IN THERE BEFORE I GAVE IT TO YOU. IT'S JUST A FAR BETTER PROCESS.

>> HOW DOES IT WORK NOW? HOW DOES IT WORK NOW?

>> I BELIEVE WHAT WORKS NOW IS UNDER THE DILLINGER STANDARDS, ALTHOUGH DIFFERENT PUBLIC DEFENDERS HAVE DIFFERENT RELATIONSHIPS WITH CCRCs, AND THERE ARE -- THERE'S A VARIETY OF ACTUAL PRACTICES ACROSS THE STATE.

>> SO THE IDEA WAS, I GUESS THEY FOUND THAT THE VARIETY OF PRACTICES WAS CAUSING PROBLEMS. SO ARE YOU SAYING THAT THERE ARE PLACES WHERE THE PUBLIC DEFENDER DOES OR THE PRIVATE COUNSEL DOES TURN OVER THE ORIGINAL FILE?

>> I CAN'T SPEAK FOR THE PRIVATE

COUNSEL --

>> -- THE 11TH CIRCUIT.

>> I BELIEVE WE COPY.

>> BUT YOU DON'T, YOU KNOW,
AGAIN, THAT WOULD BE HELPFUL TO
KNOW.

>> I BELIEVE THAT WE -- I CAN'T
SWEAR TO YOU THIS PROCEDURE
PROCEDURE HAS BEEN CONSISTENT
THROUGH TIME EVEN IN OUR OFFICE.

>> ISN'T IT GOING TO BE
DIFFERENT ONCE FILES BECOME
DIGITAL?

>> THAT WAS MY NEXT COMMENT,
JUSTICE QUINCE, IS THAT, GOD
WILLING, IN THE NEAR FUTURE --

>> I DON'T THINK GOD HAS
ANYTHING TO DO WITH DIGITAL
RECORDS.

[LAUGHTER]

>> IT MAY TAKE --

>> YOUR HONOR, I STILL HAVE
FAITH, AND I BELIEVE IN
MIRACLES.

[LAUGHTER]

AND THEN, FRANKLY, AS I KNOW OUR
OFFICE IS MOVING MORE AND MORE
TO DIGITAL RECORDS, AND THE
FILES ARE BECOMING MORE
DIGITALIZED.

THERE ARE STILL SOME FOGIES SUCH
AS MYSELF WHO MUST SEE
EVERYTHING ON PAPER.

BUT THE YOUNGER ATTORNEYS, WHEN
YOU ASK THEM FOR A PIECE OF
PAPER, THEY GO TO THEIR COMPUTER
AND PULL IT UP.

>> I MEAN, MOST OF THE TIME WHAT
THE PD IS GETTING IS, FIRST OF
ALL, EVERYTHING THAT WAS ENTERED
INTO EVIDENCE IS IN THE COURT
FILE TALKING ABOUT THEIR NOTES?

>> SOMETIMES.

AND THOSE ARE BECOMING MORE AND
MORE DIGITALIZED AS WELL, AT
LEAST IN OUR OFFICE.

>> OKAY.

WHAT IS IT, THE FILE THAT MAKES
A DIFFERENCE WHETHER IT'S THE
ORIGINAL OR THE COPY?

>> THE ISSUES, I BELIEVE, GOES TO JUST AN ATTORNEY WOULD SAY, LOOK, IT WAS IN THE FILE WHEN I GAVE IT OVER TO CCRC, AND CCRC SAYS WE NEVER GOT IT.

THAT'S WHY THE BEST THING IS JUST A COPY.

WE GIVE THEM A COPY, WE KNOW EXACTLY WHAT THEY GAVE.

AND IT SEEMS TO BE THE EASIEST APPROACH TO IT.

[INAUDIBLE CONVERSATIONS]

>> STILL A LITTLE CONFUSED WITH THAT, BECAUSE IF YOU HAVE SOMETHING IN YOUR FILE --

>> YES, MA'AM.

>> -- AND THEY SAY THEY DON'T HAVE IT IN THEIR FILE OR VICE VERSA, I'M JUST -- I'M MISSING IT, BUT I'LL LEAVE IT ALONE.

>> OKAY.

IN WHICH CASE I WILL USE MY REMAINING MINUTES TO TALK ABOUT THE SECOND ISSUE IN F6 WHICH IS WE APPRECIATE THAT THE COMMITTEE HAS REMOVED WHAT WE REFER TO AS THE KIDDER PROBLEM BY ONLY REQUIRING THE TURNING OVER OF EXPERT REPORTS IF THE EXPERT WILL BE TESTIFYING.

WE DISAGREE, HOWEVER, WITH THE COMMITTEE'S MAINTAINING THE REQUIREMENT THAT ALL EXPERTS WHO WILL BE TESTIFYING CREATE REPORTS.

WE THINK THIS IS A DANGEROUS PRECEDENT.

WE OFTEN --

>> ARE WE TALKING ABOUT IN THE DEATH CASE ITSELF OR THE POST-CONVICTION?

>> WELL, IN THE -- THE RULE APPLIES TO POST-CONVICTION. THE PRECEDENT IS OUR CONCERN. OUR CONCERN IS THE PRECEDENT REQUIRING EXPERTS WHO ARE TESTIFYING TO CREATE REPORTS --

>> THAT HAS NOTHING TO DO WITH THE DEATH CASE THEN.

THAT REALLY WOULD BE --

>> YOUR HONOR, WE CAN, WE CAN
ENVISION THE FOLLOWING
CONVERSATION IN A COMMITTEE THAT
GOES, WELL, IF IT'S A GOOD
ENOUGH RULE IN A DEATH CASE, IT
MUST BE GOOD ENOUGH FOR 3.220.
AND, THEREFORE, ALL EXPERTS MUST
CREATE REPORTS, CREATING A HUGE
FINANCIAL PROBLEM FOR US.

THEREFORE --

>> IS THAT THE ISSUE, FINANCIAL?

>> YES.

YES.

WE DO NOT -- IF WE CHOOSE --
WITH OUR EXPERTS WE WANT TO BE
ABLE TO CHOOSE WHETHER OR NOT WE
WANT AND NEED A REPORT AND
WHETHER WE WANT TO PAY FOR IT.
THAT'S THE ISSUE.

I HAVE 19 SECONDS LEFT.

I'LL TAKE ANY QUESTIONS FROM THE
PANEL --

>> YOU'RE OVER.

>> OH, I'M SO SORRY.

[LAUGHTER]

I WAS OVERLY OPTIMISTIC.

>> THANK YOU FOR YOUR TIME.

>> THANK YOU.

>> WOULD YOU LIKE TO RESPOND?

>> YES.

IF I MAY JUST BRIEFLY RESPOND TO
SOME OF THE COMMENTS.

FIRST, WITH REGARD TO THE
ORIGINAL FILE VERSUS THE COPY,
ORIGINALLY THE SUBCOMMITTEE
PROPOSED THIS RULE TO MAKE IT
UNIFORM WITH THE TIMELY JUSTICE
ACT WHICH REQUIRED THAT THE
ORIGINAL FILE BE TURNED OVER TO
COLLATERAL COUNSEL.

IN THE COMMENTS WE WERE MADE
AWARE OF LONG V. DILLINGER IN
THE CASE LAW, AND UPON
DETERMINING THAT, THE
SUBCOMMITTEE BELIEVED THIS TO BE
A PROCEDURAL ISSUE -- NOT A
SUBSTANTIVE ISSUE -- WE HAD TO
CHANGE THE LANGUAGE OF THE RULE
TO MAKE IT CONSISTENT WITH LONG
V. DILLINGER.

WE BELIEVE IT'S SUBJECT TO THE CASE LAW THIS SUPREME COURT HAS SET OUT, THAT THE ORIGINAL FILE STAYS WITH TRIAL COUNSEL.

AND SO THIS ENGENDERED SOMETHING OF A TEMPEST IN A TEAPOT WHEN IT WAS NOT ORIGINALLY INTENDED TO DO ANYTHING BUT TO SIMPLY MAKE IT UNIFORM WITH THAT PROVISION OF THE TIMELY JUSTICE ACT.

WITH REGARD TO PUBLIC RECORDS, I THINK, JUSTICE PARIENTE, YOU GOT IT EXACTLY RIGHT.

IT IS AN ACKNOWLEDGMENT OF THE RELATIONSHIP BETWEEN THE ATTORNEY GENERALS OR THE STATE ATTORNEY'S OFFICE AND THOSE ENTITIES THAT ARE NORMALLY INVOLVED IN PUBLIC RECORDS PRODUCTION AND INSURING SOME PROACTIVE NATURE ON THEIR PART TO INSURE THIS PUBLIC RECORDS PRODUCTION WHICH IS ONE OF THOSE LOG JAMS THE TRIAL COURTS HAVE MENTIONED AND AN UNFAMILIARITY THE TRIAL COURTS HAVE IN CAPITAL -- ONE OF THE UNIQUE ASPECTS OF CAPITAL POST-CONVICTION, OF COURSE, IS THAT IT INVOLVES PUBLIC RECORDS PRODUCTION.

TRIAL COURTS ARE NOT -- TRIAL JUDGES ARE NOT GENERALLY FAMILIAR WITH THAT RULE --

>> WE SHOULD HAVE A SPECIAL DECISION JUST FOR IF SOME POOR JUDGE, PUBLIC RECORDS --

>> WHOEVER DIDN'T ATTEND THAT MEETING --

[LAUGHTER]

IS CLEARLY SELECTED FOR THAT.

>> JUDGE AMOS, THE QUESTION THAT AS LONG AS I'VE BEEN ON THE COURT IS, HOW DO YOU GET THE CASES MOVING THROUGH THE COURT SYSTEM.

IN THE CIVIL AREA, IT'S PRETTY CLEAR.

DEFENDANTS DON'T MOVE CASES ALONG, IT IS THE PLAINTIFF.

AND WE HAVE RULES THAT YOU DON'T MOVE THE CASE ALONG, THEN YOUR CASE GETS DISMISSED.

IN THIS AREA THERE JUST SEEMS TO BE LIKE SOME, LIKE, OH, MY GOD, IF WE HAVE TO ASK A STATE ATTORNEY TO MOVE THIS CASE FORWARD, IT'S LIKE THEY'RE ALWAYS -- THE DEFENDANT GETS BLAMED FOR EVERYTHING.

>> YES.

>> SO IS THERE ANY DISCUSSION ON HOW TO HAVE THE ATTORNEY GENERAL'S OFFICE IN THE POST-CONVICTION SETTING HAVE SOME RESPONSIBILITY FOR THE MOVEMENT FORWARD OF THESE CASES?

IF A CASE GETS KIND OF STALLED OR LOST, WE HOPE THAT THAT DOESN'T HAPPEN, BUT WE KNOW IT DOES.

WELL, WHO SHOULD BE THE ONE TO BRING THAT UP?

SHOULDN'T IT BE THE PARTY THAT'S TRYING TO PUT THE DEFENDANT TO DEATH?

I MEAN, I'M JUST -- I'VE ALWAYS BEEN PUZZLED BY THIS.

HAS THE COMMITTEE DISCUSSED ANYTHING ABOUT THAT?

>> WE DID DISCUSS IT, AND WE THOUGHT IT'S A RESPONSIBILITY THAT NEEDS TO BE SHARED BY EVERYBODY BECAUSE THERE ARE CERTAIN ASPECTS DURING CERTAIN TIME FRAMES OF THE PROCESS ITSELF WHERE SOMEONE BECOMES PRIMARY.

BUT ULTIMATELY, FRANKLY, WE DECIDED IT NEEDS TO BE THE COURT.

ONE OF THE THINGS THAT CHIEF JUSTICE POLSTON DID WAS TO AUTHORIZE THE CREATION OF AN INTERNET-BASED CASE MANAGEMENT SYSTEM.

CREATE MORE TRANSPARENCY IN THE MONITORING OF THESE CANDIDATES AT THE TRIAL COURT LEVEL. THAT WILL HELP SIGNIFICANTLY.

>> WELL, WE HAVE BEEN REPORTING TO THE COURT FOR 10, 12 YEARS AND DIDN'T SOLVE ALL THAT BEFORE.

>> WELL, I --

>> WE USED TO GET THESE REPORTS. I WAS IN THE FRONT OFFICE IN 2006, AND WE GOT THESE REPORTS THEN.

>> YEAH.

>> AND YOU SAW WHICH CIRCUITS WERE HAVING PROBLEMS.

YOU PICKED UP THE PHONE AND CALLED, OH, YEAH, WE'LL GET TO IT.

AND NOTHING WOULD HAPPEN IN SOME CIRCUITS.

>> I THINK THE AVAILABILITY, THOUGH, OF THIS TRANSPARENT METHOD OF BEING ABLE TO SIMPLY GO ONLINE AND FIND OUT WHAT THE STATUS OF THE CASE IS BY THIS COURT, BY THE CHIEF JUDGES OF THE VARIOUS CIRCUITS, WILL ALLOW FOR QUICKER MONITORING AND WILL AVOID THE KIND OF DELAY THAT WE HAVE SEEN FROM THESE OUTLIER CASES.

>> MAYBE -- WHAT'S THE PROBLEM, MAYBE IT WASN'T PROPOSED.

I ECHO WHAT JUSTICE LEWIS IS SAYING.

EVERYONE HAS TO DO SOMETHING, BUT MOST OF IT, IT IS THE DEFENDANT.

AND WHEN WE SEE AND -- AGAIN, IT'S NOT -- IT IS MUCH, MUCH BETTER THAN WHEN WE FIRST CAME HERE.

>> IT IS.

>> BUT IT IS STILL STARTLING.

IT DOESN'T SEEM THAT THE ATTORNEY GENERAL IS ANY MORE ANXIOUS TO GET INTO IT THAN THE DEFENDANT.

>> I THINK ABSENT A LEGISLATIVE COMMAND NEITHER THE ATTORNEY GENERAL, NOR THE STATE ATTORNEY'S OFFICE CAN COMPEL THESE --

>> I DON'T MEAN FOR THAT.
>> OH, YOU MEAN IN A BROADER SENSE.
>> THAT'S IT'S BEEN, YOU KNOW, IT'S TIME TO GET IT FOR THE FINAL HEARING, YOU KNOW? TO BRING IT TO THE JUDGE'S ATTENTION.
DO YOU THINK THE STATUS CONFERENCES WILL DO THAT?
>> I THINK THE STATUS CONFERENCES HAVE DONE IT, AND ONE OF THE THINGS WE DID RECEIVE IN FEEDBACK FROM CIRCUIT JUDGES WHO WERE INVOLVED IN POST-CONVICTION PROCESS IS THEY ACTUALLY SCHEDULE EVEN MORE STATUS CONFERENCES THAN THAT WHICH IS REQUIRED UNDER THE RULE.
I THINK HAVING MINIMUM STANDARDS FOR ATTORNEYS IS GOING TO HELP A LOT, AND ONE THING THAT WAS NOT MENTIONED AND WILL PROVIDE, I THINK, SOME ADVANTAGE TO US IS IF THIS COURT ADOPTS THESE MINIMUM STANDARDS, FLORIDA CAN OPT IN UNDER THE FEDERAL PROVISIONS THAT ALLOW TWO THINGS.
ONE IS ADDITIONAL FEDERAL GRANT MONEY WHICH IS, OF COURSE, IMPORTANT.
BUT SIGNIFICANTLY, WILL ALLOW US TO HAVE EXPEDITED FEDERAL HABEAS REVIEW IN WHICH A 450-DAY LIMIT IS IMPOSED ON FEDERAL HABEAS REVIEW.
CURRENTLY, THERE IS NO TIME DEADLINE FOR FEDERAL COURT --
>> THAT'S HUGE.
SO THAT'S PROBABLY ONE OF THE MOST IMPORTANT THINGS --
>> IT IS.
AND I DIDN'T REALLY HAVE A CHANCE TO SUGGEST IT.
BUT IF THE COURT WOULD READ OR REVIEW AGAIN OUR PETITION UNDER 3112, THOSE MINIMUM STANDARDS WILL ALLOW THAT OPT IN AND, I

THINK, WILL REDUCE DELAY IN
FEDERAL COURT WHERE ORDINARILY
WE HAVE --

>> BEFORE YOU SIT DOWN, THERE'S
A COUPLE THINGS.

NUMBER ONE, AS FAR AS THE
EFFECTIVE DATE OF THIS ACT --
ASSUMING THE COURT AGREES WITH
JANUARY 1, 2015, SIX MONTHS FROM
NOW -- IS THAT SUFFICIENT TIME
FOR EVERYBODY TO GET THEIR DUCKS
IN A ROW?

>> IF THE, IF YOU, CHIEF
JUSTICE-ELECT LABARGA, MEAN FOR
THE ENTIRETY OF THE REVISIONS, I
WOULD SAY PROBABLY IT WOULD WORK
EXCEPT FOR THE MINIMUM
STANDARDS.

I THINK THIS COURT MIGHT WANT TO
CONSIDER A SEPARATE EFFECTIVE
DATE TO ALLOW FOR THAT
ADDITIONAL TIME.

>> IF WE AGREE WITH THE PRO SE,
WHAT IS -- FOR THOSE CASES THAT
RIGHT NOW ARE IN PRO SE, AND I
GUESS JUDGES HAVE ALLOWED
LAWYERS TO WITHDRAW.

THEY REALLY CAN'T UNDER THE
REGISTRY, IS THE WAY I READ IT.
IS THERE ANY, DID ANYONE DISCUSS
HOW WE GET THEM TO GET --

>> I'M AFRAID THE SUBCOMMITTEE
DID NOT DISCUSS THAT, AND
CERTAINLY THIS COURT COULD SAY
FOR ANY INITIAL PETITIONS THAT
ARE FILED --

>> WE COULD, BECAUSE WE'RE GOING
TO HAVE -- DO YOU KNOW HOW MANY
RIGHT NOW ARE NOT REPRESENTED?

>> DO NOT, I DO NOT KNOW.

>> BECAUSE WE COULD ENACT A RULE
TO HAVE -- WE COULD DO THAT BY
RULE, TO GET A PROCEDURE FOR
REAPPOINTMENT.

>> YES, THAT'S TRUE.
OR GRANDFATHER.

>> I WASN'T DONE YET.

>> I APOLOGIZE.

>> AND SECONDLY, HAVING
PARTICIPATED IN THIS COMMITTEE

WITH YOU UP UNTIL THE POINT THAT IT BECAME A CASE BEFORE THE COURT AND I HAD TO WITHDRAW MORE OR LESS, I WANTED TO MAKE SURE TO COMMEND THE CHAIRPERSON FOR THE JOB HE'S DONE.

KEVIN WAS RIGHT THERE EVERY DAY PUSHING IT, AND THIS, AS YOU CAN SEE FROM ALL THAT WE COVERED, IT WAS NOT AN EASY PROCESS.

A LOT OF PEOPLE HAD DIFFERENT OPINIONS THAT WERE ON THE COMMITTEE.

AND I THINK THIS IS A PRETTY GOOD OUTCOME DEPENDING ON WHAT WE DO WITH IT.

BUT I DO WANT TO TAKE THIS OPPORTUNITY TO COMMEND JUDGE AMOS FOR TAKING THE TIME OUT OF HIS BUSY SCHEDULE DOWN AT THE THIRD DCA.

YOU KNOW, GOD KNOWS HOW MANY PCAs WEREN'T GRANTED DURING THIS TIME.

[LAUGHTER]

>> THERE'S GOING TO BE EVEN MORE.

[LAUGHTER]

>> PERHAPS HOW MANY WERE GRANTED.

[LAUGHTER]

BUT I DO WANT TO THANK YOU. I THINK I SPEAK FOR THE COURT ON THAT BEHALF.

>> THANK YOU ALL.

IT'S BEEN A PRIVILEGE.

THANK YOU VERY MUCH.

>> COURT IS IN RECESS FOR TEN MINUTES.

>> ALL RISE.

