

Other Business Must Go On, Including Two Death Warrants

By: Melanie Kalmanson

After graduating from the FSU College of Law in 2016, Melanie Kalmanson clerked for Justice Barbara J. Pariente until Justice Pariente's mandatory retirement in January 2019. After her clerkship, Melanie joined the Litigation Practice at Akerman LLP, where she represents business and individual clients in all phases of litigation in state and federal court, including appeals.

While the litigation involving the 2000 Presidential election was almost all-consuming, the Court's other responsibilities did not disappear or even slow down during those busy 36 days. Rather, in addition to handling the influx of cases caused by the election, the Court had to maintain its other operations.

When the storm of election-related cases started, it was oral argument week and the Court had a full schedule of arguments ahead—which, alone, required hours of preparation.¹ It also required the Court to be on the bench hearing those cases every morning of that week. Of course, the Court also conferenced and decided other cases that were not heard at oral argument.

But if adding the *Bush v. Gore* cases to the Court's usual caseload was not enough, on November 14, Governor Jeb Bush signed two death warrants scheduling back-to-back executions for December 7 and December 8.² The warrants scheduled the execution of Edward Castro for December 7 and the execution of Robert D. Glock for December 8.³ When a death warrant is signed, as retired Justice Quince recently said, “[t]here’s always last-minute litigation”⁴ Defendants often raise last-minute claims regarding the constitutionality of the defendant’s

¹ Peggy A. Quince, *Lunch and Learn*, LEAGUE OF WOMEN VOTERS (Aug. 21, 2020).

² *Id.*

³ See *Glock v. Moore*, 776 So. 2d 243 (Fla. 2001); *Execution List: 1976-Present*, FLA. DEP'T CORR., <http://www.dc.state.fl.us/ci/execlist.html>.

⁴ Quince, *supra* note 1.

sentence, death warrant, and/or scheduled execution.⁵ Those pleadings require thorough review by the Court under incredible time pressure even under normal conditions.

While Castro had waived his right to raise any additional claims, Glock filed such a last-minute petition after his warrant was signed. The Court scheduled oral argument in Glock's case for November 30 but later removed the oral argument from the calendar. On December 7—the same day the Court held its second oral argument on cases related to the Presidential election—the Court granted Glock a stay of execution.⁶

Later that night around 6:00 p.m., Castro was executed⁷—meaning that at least one Justice and the Clerk of Court were working on the execution that night because, during each execution, the Chief Justice (or the Chief's designee) and the Clerk must be on the phone with the Governor's office in case the Court is needed for something. Glock was ultimately executed on January 11, 2001.⁸

When thinking about the momentous amount of work the Supreme Court of Florida completed throughout those 36 days in the winter of 2000, it is easy to lose sight of the fact that *Bush v. Gore* was just part of the Court's duties during that time. Of course, the intricacies of the 2000 election are the most historically significant part of the story, but it is important to remember that the Justices also had to diligently maintain all Court operations—some of which were matters of life and death.

⁵ For more about litigation surrounding death warrants, see generally Melanie Kalmanson, *Somewhere Between Death Row and Death Watch: The Procedural Trap Capital Defendants Face in Raising Execution-Related Claims*, 5 U. PA. J.L. & PUB. AFFAIRS (2020).

⁶ *Glock*, 776 So. 2d 243.

⁷ *Execution List*, *supra* note 3; *Edward Castro Executed By Lethal Injection; Death-Row Inmate Convicted In Death of Three Men*, MURDERPEDIA, <https://murderpedia.org/male.C/c1/castro-edward.htm#:~:text=STARKE%2C%20Fla.%2C%20Updated%206,was%20carried%20out%20without%20incident>.

⁸ *Execution List*, *supra* note 3.