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Lucille Roberts v. Francisco Tejada, M.D.

NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS ROBERTS VERSUS TAYE HEED A. -- TEJADA. MR. KLEINBERG.

GOOD MORNING, MAY IT PLEASE THE COURT. MY NAME IS DAVID KLEINBERG,, AND I AM HERE ON BEHALF OF LUCILLE AND FRED ROBERTS. THIS IS A, AND I COULD, I WOULD WISH TO RETAIN FIVE MINUTES FOR REBUTTAL. THIS IS A MEDICAL NEGLIGENCE CASE, INVOLVING A FATAL OVERDOSE OF FUDR CHEMOTHERAPY, FROM WHICH FRED ROBERTS SUFFERED THE IN DIGITY OF DEATH BY DIARRHEA, AND THROUGH WHICH LUCILLE ROBERTS LOST HER CHILDHOOD SWEETHEART AND HUSBAND OF NEARLY 50 YEARS. HOWEVER, IT COMES BEFORE THIS COURT ON A VERY NARROW AND SPECIFIC LEGAL ISSUE, AND IT IS A LEGAL ISSUE THAT IS SO FUNDAMENTAL TO OUR JUDICIAL SYSTEM AND SO INGRAINED IN OUR HISTORY AND SENSE OF FAIRNESS, AS TO BE AN INALIENABLE RIGHT. IN THIS CASE, THE ROBERTS WERE DEPRIVED OF A FAIR TRIAL BY A JURY OF THEIR PEERS, A COMPETENT HONEST, FAIR JURY OF THEIR PEERS.

DO YOU AGREE THAT DELLA ROSA IS CONTROLLING?

IS --

DELLA ROSA IS CONTROLLING HERE. DO YOU AGREE?

CLEARLY THE DELLA ROSA CASE CONTROLS THE ISSUE OF JUROR MISCONDUCT, JUROR NONDISCLOSURE. YES, SIR.

HOW DO YOU DISTINGUISH THIS CASE FROM IT THEN?

I DON'T. I THINK THIS CASE --

YOU THINK --

THIS CASE IS DELLA ROSA. THIS COURT, PARTICULARLY, JUSTICES WELLS, SHAW, HARDING, AND I BELIEVE YOU WROTE THE OPINION, JUSTICE ANSTEAD, CLEARLY STATED AND WENT BACK 50 YEARS INTO OUR HISTORY, THE RIGHT TO A FAIR TRIAL BY HONEST JURORS IS SO FUNDAMENTAL AND SO INALIENABLE, AND THAT ANY MISCONDUCT BY A JUROR, IN FAILING TO DISCLOSE THEIR HISTORY, IN FAILING TO RESPOND TRUTHFULLY AND FULLY, DEPRIVED THE LITIGANTS OF THE RIGHT TO A FAIR TRIAL.

ISN'T -- GO AHEAD. BUT ISN'T THE POINT, HERE, THAT IT IS THE APPLICATION OF DELLA ROSA, PARTICULARLY WHAT STEPS HAVE TO BE TAKEN BY COUNSEL, IN ORDER TO BALANCE THE FINALITY NECESSARY FOR, WITH A JURY VERDICT, AGAINST WHAT WAS THE STATEMENTS THAT WERE MADE AND THE REMOTENESS, IN TIME, OF THESE TWO PARTICULAR PROBLEMS?

WELL, YOUR HONOR, YOU THREW A COUPLE OF THINGS OUT THERE, AND I WOULD LIKE TO ADDRESS THEM INDIVIDUALLY. THE FIRST DEALS WITH THE FINALITY ISSUE. THERE HAS BEEN MUCH MADE THAT THE PUBLIC NEEDS FINALITY, AND YOUR HONOR, I SUBMIT TO YOU, IN ALL DUE CANDOR, THAT FINALITY APPEALS IN COMPARISON -- PALES IN COMPARISON TO THE NEED OF THE PUBLIC TO HAVE KNOWLEDGE THAT THE TRIAL WAS FAIR, AND JUST BECAUSE IT IS EXPEDIENT TO SAY IT IS OVER, DOES NOT GIVE THE PUBLIC THE CONFIDENCE THAT THE

JUDICIARY SYSTEM IS WORKING. SO TO THE EXTENT THAT FINALITY NEED BE WEIGHED WITH FAIRNESS, IT IS NOT CLOSE. IN THIS CASE, AS TO REMOTENESS, I HAVE ADDRESSED IN MY BRIEF, SEVERAL EXAMPLES. AND THE BEST THING I CAN SAY TO YOU, YOUR HONOR, IS PEOPLE ARE PEOPLE. WE ARE HUMAN BEINGS. WE SUFFER THE FRAILTY OF THE HUMAN CONDITION, AND WE CARRY WITH US BAGGAGE. EVERY MEMBER OF THIS PANEL, MYSELF, AND EVERY OTHER PERSON HAS BY ASSIST AND PREJUDICES THAT DO NOT ERODE WITH TIME.

ALL RIGHT. BUT THE QUESTION HERE, IS THAT WHETHER THERE IS THIS MATTER IS, REALLY, A FACT-INTENSIVE SITUATION THAT HAS TO BE JUDGED CASE BY CASE, THIS ONE WAS JUDGED. OR WHETHER THERE IS SOME OVERRIDING LEGAL PRINCIPLE THAT IS CAUSING SOME DEGREE OF DIFFICULTY THAT THIS COURT SHOULD ADDRESS. I MEAN, THAT --

WELL, AGAIN, I THINK I NEED TO ANSWER THAT IN TWO PARTS. FIRST OF ALL, YOUR HONOR IS IMMINENTLY CORRECT. THIS IS FACTUALLY INTENSIVE, AND THE TRIAL COURT, IN THIS CASE, MADE FACTUAL FINDINGS, SPECIFIC FINDINGS, AFTER TEN MONTH'S LABOR, AFTER FIVE HEARINGS, AFTER MOTION AND MOTION AND DOCUMENTATION THAT THICK, BEING SUBMITTED TO THE COURT, MADE FINDINGS OF FACT WHICH WERE COMPLETELY IGNORED AND SDARDED BY -- AND DISREGARDED BY THE THIRD DISTRICT COURT OF APPEALS, CONTRARY TO ITS REVIEW AND THE CANONS IT HOLDS. THERE IS SOMETHING WE CAN DO HERE, AND I BELIEVE IT IS A GOOD QUESTION. IT IS A FAIR QUESTION. THIS COURT, AND I APOLOGIZE ON NOT PICKING UP ON THIS UNTIL MOMENTS AGO. THIS COURT, ON MARCH 8 OF THIS YEAR, APPROVED AND ADOPTED A NEW JURY INSTRUCTION, RECOMMENDED BY THE COMMITTEE, WHICH, NOW, EXACTLY AS I HAVE ASKED IN MY BRIEF, INSTRUCTS THE JURY PANEL, YOU BETTER THINK THIS THROUGH, AND IF YOU ARE NOT SURE, YOU RAISE YOUR HAND, AND IF YOU DON'T TELL THE TRUTH, IF YOU WITHHOLD INFORMATION, THAT IS THE SAME AS A FALSEHOOD, AND YOU CAN AND WILL BE SUBJECTED TO CIVIL AND CRIMINAL PENALTIES. THIS HONORABLE COURT HAS NOW ADOPTED JUST THAT STANDARD, 1.0, AND I BELIEVE --

TO FOLLOW UP JUST AN A LITTLE ON -- JUST A LITTLE ON JUSTICE WELLS'S PREMISE, AND THAT IS THE PROP PROBLEMATIC NATURE OF THE APPLICATION -- OF THE PROBLEMATIC NATURE OF THE APPLICATION OF DELLA ROSA, AND WE NEED TO LOOK AT IT, BECAUSE IT APPEARS THAT DISTRICT COURTS ACROSS THE STATE ARE STRUGGLING WITH THE APPLICATION, SO IT DOES APPEAR THAT THIS IS ALMOST A "GOTCHA" KIND OF SITUATION, AFTER A TRIAL IS OVER, OR AT LEAST PERCEIVED THAT WAY. MAYBE IT IS NOT. BUT IT COMES DOWN TO THE ISSUE OF SO OFTEN WE, AS LAWYERS, TALK TO OURSELVES, AND WE USE WORDS THAT WE UNDERSTAND THAT MAYBE JURORS DON'T, SO WHAT PART DOES THAT PLAY, IN THIS ANALYSIS, AND WHAT PART DOES REMOTENESS PLAY, IN CONNECTION WITH THAT DISCUSSION? OR SHOULD IT PLAY OR DOES IT PLAY?

AS TO REMOTENESS, I DON'T THINK IT DOES. THAT IS MY OPINION. I DON'T THINK IT DOES. BUT I THINK WHAT YOUR HONOR IS ADDRESSING IS HOW IS IT APPLIED, AND THAT IS WHERE THERE IS A FAIL-SAFE. THERE IS A NET DOWN THERE. WE ARE NOT GOING TO FALL TO THE GROUND, AND THE NET IS THE DISCRETION OF A TRIAL JUDGE WHO SITS IN THE COURTROOM, WHO WATCHS THE FACES OF THE JURORS, WHO SEES THE INFLECTION OF THE VOICES, WHO SEES THEIR EYES FOGGED OVER WHEN THEY ARE CONFUSED.

DOES DELLA ROSA LEAVE ENOUGH DISCRETION WITH THE TRIAL JUDGE?

I BELIEVE IT DOES, AND I AM NOT ASKING THIS COURT TO MAKE A RULING, AND I DON'T KNOW THAT IT IS NECESSARY TOO THIS -- FOR THIS COURT TO MAKE A RULING THAT FIVE YEARS IS TOO REMOTE OR 20 YEARS IS TOO REMOTE OR THERE IS NO SUCH THING AS REMOTENESS, BUT I THINK WHAT I AM ASKING THIS COURT TO DO, SPECIFIC TO LUCILLE ROBERTS, IS TO SAY THAT THE TRIAL JUDGE MADE THESE FINDINGS OF FACT, AND THEY CANNOT BE ASSAILED AT THIS LEVEL, AND THE THIRD DISTRICT --

AS TO THE FINDINGS THAT WERE MADE, ARE YOU ASKING FOR A PER SE RULE AT THAT POINT?

ONCE A TRIAL JUDGE MAKES A FINDING THAT THERE WAS CONCEALMENT, THAT IT WAS RELEVANT, THAT IT WAS NOT THE PRODUCT OF A LACK OF DILIGENCE, THEN I BELIEVE THERE IS A PER SE RULE, AND THIS COURT HAS ALREADY MADE THAT PER SE RULE, AND IT IS CALLED DELLA ROSA, AND THE APPLICATION OF IT, OR THE REVIEW IT, RATHER, COMES --

BUT YOU HAD REVIEW AND IT IS RELEVANT, SO IT IS NOT A PER SE RULE, IF YOU READ THAT INTO IT. IT IS RELEVANT.

MAYBE I MIGHT ANSWER YOUR QUESTION TOO BROADLY. I THINK, AS TO PRIOR LITIGATION, FRANKLY, IF YOU ASKED A JUROR A QUESTION, NOW, IF I SAID DOES ANYONE HERE EVER, YOU KNOW, BORROWED A PENCIL IN SECOND GRADE AND DIDN'T RETURN, IT AND THEY SAY NO, AND I GO AND FIND THEIR SECOND-GRADE CLASSMATE WHO SAYS YES, YOU MIGHT HAVE SOME RELEVANCE PROBLEMS THERE, BUT I THINK THE WAY THIS COURT HAS SET UP DELLA ROSA, AND I THINK CORRECTLY, SO THE ISSUE OF LITIGATION HISTORY AND BIAS AND PREJUDICE INHERENT THERE TO IS SO INTERTWINED WITH THE ROLE OF A JUROR THAT, YES, IT IS RELEVANT, BUT IF A TRIAL JUDGE MAKES A FINDING OF FACT, HAVING DONE AN INTERVIEW, IF YOU WILL, OR HAVING SEEN AND BE THERE TO APPRECIATE, HE MAKES A FINDING THAT IS NOT RELEVANT, AND THEN IT COMES UP BASED ON REVIEW OF ABUSIVE DISCRETION. HERE THE TRIAL COURT NEVER MADE ABUSIVE DISCRETION AND NEVER FOUND OR ACKNOWLEDGED AS TO THE TRIAL JUDGE, SO THERE IS A NET DOWN THERE, JUSTICE LEWIS, AND IT IS CALLED THE TRIAL JUDGE, AND WE HERE AT THE THIRD LEVEL AND THE DISTRICT COURT AND ALL OF THE OTHER COURTS, WE RELY UPON THOSE TRIAL JUDGES TO DO THEIR JOB.

WHAT ABOUT LET'S GET TO THE -- GOAT TO -- LET'S GO TO THE THIRD PRONG, THE THIRD DISTRICT HAS SAID RECENTLY, AND THE OTHER TRIAL COURTS HAVE FOLLOWED, THAT IF THIS IS SOMETHING THAT COULD BE EASILY ASCERTAINED PRIOR TO THE COMMENCEMENT OF JURY SELECTION, THAT IS A QUICK SEARCH OF THE CLERK'S RECORDS, THEN THAT SHOULD GO TO THE DUE DILIGENCE PRONG. WHAT -- SOME OF US WERE TRIAL LAWYERS. IT HAS BEEN A FEW YEARS FOR SOME OF US, BUT WHAT IS WRONG WITH THAT, AS A POLICY PRINCIPLE, BECAUSE IT DOES CUT BOTH WAYS. YOU HAVE A LONG TRIAL, AND NOW THE NEW GAME IN TOWN IS EACH SIDE GOES, IF THEY ARE NOT HAPPY WITH THE VERDICT, AND THEY GO AND THEY TRY TO FIND WHAT THEY CAN ON THE JUROR, AND WHAT THE THIRD DISTRICT SEEMS TO BE SAYING IS, WAIT A SECOND. IF YOU COULD GO DOWNSTAIRS AND THAT INFORMATION IS RIGHT THERE, AND YOU COULD FOLLOW-UP, AND ESPECIALLY HERE YOU HAVE GOT SOMEBODY WHO, WHERE THE AUTOMOBILE ACCIDENTS WERE ALMOST 30 YEARS AGO, WHY PUT THE SYSTEM IN THAT POSITION? WHAT IS -- TELL ME, FROM A PRACTICAL OR POLICY POINT OF VIEW, WHY THAT IS NOT A GOOD IDEA?

YOUR HONOR, YOU HAVE TOUCHED UPON WHAT, TO ME, IS THE MOST TROUBLING PART OF THE THIRD DISTRICT COURT'S OPINION. MY FIRST RESPONSE IS THIS COURT HAS ALREADY TOLD THEM NO. THEY TRIED TO DO IT IN DELLA ROSA, ONE, WHEN IT WAS BEFORE THE THIRD DISTRICT COURT OF APPEALS. THIS COURT SENT A RESOUNDING "NO". WE WILL NOT REQUIRE TRIAL LAWYERS TO DO INTERTRIAL OR PRETRIAL INVESTIGATION.

WE ADOPTED THE DISSENTING OPINION. IT IS NOT EXPRESSLY IN THE DELLA ROSA OPINION. I WOULDN'T CALL THAT RESOUNDING.

OKAY. BUT I MEAN, WHEN THIS COURT ADOPTS AN OPINION, I PERSONALLY HIM GOING TO RESPOND TO IT AND RECOGNIZE IT AND TREAT IT AS BINDING PRECEDENT, AS I THINK THE THIRD DISTRICT COURT WAS REQUIRED TO DO.

BUT NOW WE HAVE THE BENEFIT OF SEEING HOW MANY CASES ARE COMING UP TO THE

APPELLATE COURTS, AND IT SEEMS THAT THIS IS, AGAIN, AND THIS IS WHAT JUSTICE LEWIS IS TALKING ABOUT, IT IS STARTING TO LOOK LIKE IT IS A LITTLE BIT OF A GAME THAT IS GOING ON.

LET ME RESPOND TO YOU, AS BEST I CAN. FIRST OF ALL, THERE IS NOT THAT MANY CASES. THERE IS LESS THAN A DOZEN CASES OUT OF TENS OF THOUSANDS OF JURY TRIALS, SINCE DELLA ROSA WAS DECIDEDED IN 1995. THAT IS LIKE SAYING THAT WRITS OF HABEAS CORPUS OR INEFFECTIVE ASSISTANCE OF COUNSEL ARE GAMES. WHY DIDN'T YOU STAND UP IN THE MIDDLE OF THE TRIAL AND SAY IT IS INEFFECTIVE ASSISTANCE OF COUNSEL. WHY DOES HE WAIT FOR AN ADVERSE VERDICT? YOUR HONOR, IT IS NOT A GAME OF "GOT CHA" AND IT IS NOT A DO OVER. IT GOES TO THE EFFECTS OF THE JURY.

WHAT IS WRONG WITH THE REQUIREMENT OF HAVING A LAWYER FIND WHAT IS READILY AVAILABLE IN A REASONABLE TIME? WHAT IS WRONG WITH THAT REQUIREMENT?

TWO THINGS. MAYBE EVEN MORE THAN THAT. THE FIRST IS IT IS UNWORKABLE. I REMEMBER WHEN I READ MY FIRST JOHN GRISHAM BOOK, AND WE GOT A LISTING OF THE POTENTIAL VENIRE TWO WEEKS BEFORE TRIAL. I HAVE BEEN TRYING CASES FOR 14 YEARS. WE HAVE NEVER SEEN THAT BEFORE. WE GET IN THERE. IT IS TEN O'CLOCK ON A MONDAY MORNING. I HAVE GOT AN HOUR OF VOIR DIRE JURY INSPECTION, AND I HAVE GOT AN HOUR FOR A JUROR TO GET UP ON A STAND, AND I AM NOT GOING TO GET TO IT.

WE HAVE SOME CASES WHERE WE COULD BE INSERT JURISDICTIONS WHERE IT IS VERY EASY TO ASCERTAIN THAT AND SHOULDN'T THAT BE -- SHOULD THAT BE PART OF THE IS MOVING PARTY'S BURDEN, AS FAR AS THE DUE DILIGENCE PRONG, TO SAY IT IS NOT WORKABLE IN THIS CASE, AND THERE IS A RECORD THEN?

I THINK IT IS PART OF THE BURDEN OF THE MOVING PARTY, TO PROVE DILIGENCE, AND I THINK IN THIS CASE IT WAS DONE.

I AM ASKING YOU WHY SHOULDN'T THE DILIGENCE PART BE WHETHER THE RECORDS WERE READILY AVAILABLE OR NOT.

AGAIN, THERE IS INSUFFICIENT TIME TO GO DO THAT, NUMBER ONE. NUMBER TWO, IN THIS CASE, AND LET'S SEE IF WE CAN'T FOCUS ON THIS CASE FOR A MOMENT, AND THEN WE GO TO THE OVERALL PICTURE. THIS THIS CASE --

IT TOOK A PICTURE THAT SHE IS ASKING FOR, WHICH IS WHAT WOULD HAVE HAPPENED IN THE DADE COUNTY COURTHOUSE, HAD YOU TRIED TO DO IT? I THINK THAT IS WHAT SHE IS ASKING. WAS IT PRACTICAL?

ASSUMING I WENT DOWNSTAIRS AND WAITED IN LINE AND I GOT A CLERK AND WAITED AND ASKED THEM TO PRINTOUT THIS THING. WHAT I WOULD SEE IS 400 ENTRIES FOR ONE JUROR AND 600 ENTRIES ON ARTURO MENENDEZ, AND I HAVE GOT THOSE TWO NAMES ON THE PANEL. WHAT DO I DO NOW? NOT TO MENTION THAT SOME OF THE RECORDS WERE OLD AND IN THIS CASE THEY HAD TO BE OBTAINED OFF SITE. I HAD TO SEND AWAY TO HISTORICAL ARCHIVES AND PULL MULTIPLE BOXES FROM A STORAGE BUILDING. THEY HAD TO GET THEM FROM A STORAGE BUILDING. IT TOOK TEN MONTHS TO SUFFICIENTLY BEAR MY BURDEN, WHICH I DID, AND TO PROVE IN THIS CASE THAT THERE WAS NONDISCLOSURE, AND THE TRIAL JUDGE FOUND THE FACT THAT IT COULD NOT POSSIBLY HAVE BEEN DUE TO A LACK OF DUE DILIGENCE, AND, I THINK, YOUR HONOR, WE MISS THE POINT. THE POINT IS IT THE LAWYER'S OBLIGATION TO GO AND INVESTIGATE AND CROSS-EXAMINATION AND INTERROGATE JURORS? THAT IS NOT OUR JOB. THE JOB IS FOR THE JUROR TO RAISE THEIR RIGHT HAND AND SWEAR TO TELL THE TRUTH, AND JITION MONTHS AGO THIS COURT, AND I COMMEND THIS COURT AND I AM HAPPY YOU DID IT, THIS COURT SAID LISTEN, MR. AND MS. JUROR, YOU BETTER TELL THE TRUTH, OR YOU ARE LOOKING AT CONTEMPT.

ONE OF THE JURORS, A CASE THAT OCCURRED OVER 25 YEARS AGO, WHERE SHE WAS THE PLAINTIFF, AND IN THIS CASE, WEREN'T THERE, YOU REPRESENT THE PLAINTIFF, WOULDN'T YOU HAVE TO ESTABLISH THAT YOU WOULD HAVE, IT WOULDN'T BE AN EXCUSE FOR CAUSE. THAT YOU WOULD HAVE PRESENTORILY CHALLENGED HER?

FIRST I RESPECTFULLY SUBMIT THE ANSWER IS, NO, I DO NOT. I DON'T THINK I HAVE TO DO. THAT AS JUSTICE ANSTEAD WROTE, ADOPTING THE OPINION OF JUSTICE HATCHET MANY YEARS AGO, THE PREJUDICE IS PRESUMED. I DON'T HAVE TO PROVE THAT THIS PERSON, AS A PLAINTIFF, WOULD HAVE SIDEED FOR ME OR AGAINST ME OR I WOULD HAVE CHALLENGED HER. THE PREJUDICE IS PRULED. BUT THE SECOND THING I WOULD SAY IN RETURNS TO THAT, IS, YOUR HONOR, MR. BETANCOURT AND MR. RODRIGUEZ, TWO JURORS ON THIS PANEL WHO WERE JURORS WOULD HAVE TOLD ME OF THAT CASE, I STRUCK THEM. I STRUCK THEM.

YOU ARE INTO YOUR REBUTTAL TIME.

I APOLOGIZE. I WOULD RESPECTFULLY RESERVE THAT TIME. THANK YOU.

THANK YOU. MS. LEINICKE.

MAY IT PLEASE THE COURT. MY NAME IS SHELLY LEINICKE. I AM HERE ON BEHALF OF DR. TEJADA. IN THIS CASE THERE WAS NO CHALLENGE TO THE VERDICT PER SE. WHAT WE HAVE HERE IS A TRIAL COURT WHO VERY RELUCTANTLY FELT THAT HIS HANDS WERE ABSOLUTELY TIED BY A PER SE RULE AND ORDERED A NEW TRIAL, BECAUSE TWO JURORS DID NOT DISCLOSE REMOTE OR IRRELEVANT INFORMATION.

WHAT IS WRONG WITH THE PER SE RULE HERE? WHY SHOULDN'T WE HAVE A PER SE RULE? ISN'T A DEFENDANT ENTITLED TO HAVE A FAIR AND IMPARTIAL JUROR? -- I AM SPAR -- IMPARTIAL JURY?

BOTH PARTIES ARE ENTITLED TO A FAIR AND IMPARTIAL JURY, AND I DON'T BELIEVE DELLA ROSA IS A PER SE RULE. I DON'T BELIEVE DELLA ROSA IS SAYING THAT, IF THERE IS A FAILURE TO DISCLOSE, THERE IS AUTOMATICALLY, CATAGORICALLY, A NEW TRIAL. WHAT DELLA ROSA, IN FACT, SAYS, IS IF, IN FACT THERE, IS A NONDISCLOSURE, YOU THEN HAVE A THREE-PRONGED TEST THAT MUST BE MET TO DETERMINE WHETHER OR NOT THERE WAS PREJUDICE AND A BASIS FOR A NEW TRIAL. YOU MUST, IF THERE WAS A NONDISCLOSURE, SHOW THAT THERE WAS CONCEALMENT BY THE JUROR. YOU MUST, ALSO, SHOW THAT WHAT WAS, IN FACT, CONCEALED, WAS RELEVANT AND MATERIAL, AND YOU, ALSO, HAVE TO SHOW THAT THERE WAS DUE DILIGENCE IN THE INQUIRY THAT WAS MADE.

THE TRIAL JUDGE, IN THIS INSTANCE, WENT THROUGH THOSE, AND SO WHERE DID THE TRIAL JUDGE GO WRONG? WHAT -- WHERE IS THERE NOT SUBSTANTIAL EVIDENCE TO SUPPORT THE TRIAL JUDGE'S DETERMINATION ON EACH OF THOSE?

THE TRIAL JUDGE REPEATEDLY SAID THAT HE DID NOT THINK THAT EITHER OF THESE TWO JURORS WAS BEING UNTRUTHFUL. WE ATTACHED A COPY OF THE TRANSCRIPT OF THE HEARING ON THE MOTION FOR NEW TRIAL TO THE BRIEFS, IN THE THIRED DISTRICT COURT OF APPEAL -- IN THE THIRD DISTRICT COURT OF APPEAL, AND IT WAS CERTAINLY DISCUSSED WITH THE COURT THERE. THE TRIAL JUDGE SAID REPEATEDLY, IN THAT HEARING TRANSCRIPT, THAT HE WOULD NOT ASSUME THAT EITHER OF THE JURORS WAS BEING UNTRUTHFUL. HE SPECIFICALLY STATED THAT HE WAS NOT FINDING THERE WAS INTENTIONAL CONCEALMENT. HE WAS SPECIFICALLY STATING IN THERE, THAT HE THOUGHT THAT THE MATTER WAS REMOTE. HE SAID THAT HE HOPED THE THIRD DISTRICT SENT THE CASE BACK. THE TRIAL JUDGE SAID, AT PAGE 43 OF THAT TRANSCRIPT, THAT WHAT HE WAS SAYING IN THE TRANSCRIPT WAS CERTAINLY PART OF, WAS TO BE CONSIDERED BY THE THIRD COURT, BEYOND THE WRITTEN ORDER, AND HE SAID THAT HE THOUGHT THAT HE WAS SIMPLY BOUND BY DELLA ROSA, THAT BECAUSE THERE WAS THE

NONDISCLOSURE BY THE JURORS, FOR WHATEVER REASON, THAT HE HAD NO ALTERNATIVE BUT TO SAY THAT THAT WAS -- THAT THAT WAS RELEVANT, THAT THERE WAS THE LACK OF DISCLOSURE, AND HE MUST REVERSE. RESPECTFULLY, THE THIRD DISTRICT AGREED WITH THE TRIAL JUDGE AND SAID TWO PRONGS OF DELLA ROSA CLEARLY WERE NOT MET. THERE WAS NO RELEVANCE OR MATERIALITY HERE, AND THERE WAS NO REMOTENESS. -- AND THERE WAS REMOTENESS. ALL IT TAKES IS ONE OF THESE PARTICULAR POINTS. AS TO THE ONE JUROR WHO, A YEAR OR SO EARLIER, HAD, ON HER OWN, FILED A DOMESTIC VIOLENCE COMPLAINT AND THEN NINE DAYS LATER WITHDRAWN IT, THAT CERTAINLY HAD NO RELEVANCE. THIS WAS A MEDICAL MALPRACTICE CASE. THIS WAS A MAN WHO WAS DYING OF CANCER. BEST CASE SCENARIO HAD 18 MONTHS TO LIVE. HE WAS GIVEN A COURSE OF TREATMENT THAT MIGHT ALLOW HIM TO REACH THAT 18 MONTHS, OR IT MIGHT NOT. PART OF IT DEPENDED ON WHETHER THE REST OF HIS BODILY SYSTEMS MAINTAINED THEIR INTEGRITY OR NOT.

WHY SHOULD WE -- YOU SEEM TO BE DRAWING A DISTINCTION THAT WE MUST HAVE THE SAME OR SIMILAR CASE, BUT IT SEEMS AS THOUGH DELLA ROSA IS REACHING FOR, MAYBE, SOMEONE HAS HAD A BAD EXPERIENCE WITH THE LEGAL SYSTEM NOT NECESSARILY CIVIL OR CRIMINAL, BUT IT IS JUST THAT SOMETHING HAS HAPPENED TO YOU WITH THE CIVIL SYSTEM, AND FOR GOOD OR BAD, MORE AND MORE OF OUR CITIZENS ARE ENCONSIDERING THE JUDICIAL SYSTEM, ONE -- OR ENCOUNTERING THE JUDICIAL SYSTEM ONE WAY OR ANOTHER.

EXACTLY, AND THE CASES HAVE COME BACK AND SAID THAT THERE SHOULD BE A NEW TRIAL BECAUSE OF NONDISCLOSURE HAVE BEEN EXACTLY THAT SITUATION, WHERE EITHER YOU HAVE A SIMILAR SITUATION WHERE I THINK THERE IS ABOUT 11 CASES IN THE LAST THREE YEARS OR SINCE 1998 ON THIS. EITHER YOU HAVE HAD A SIMILAR SITUATION THAT WAS NOT DISCLOSED. YOU HAVE HAD A PERSONAL INJURY CASE OR WHATEVER, OR YOU HAVE BEEN IN A SITUATION WHERE YOU HAD A NUMBER OF ENCOUNTERS WITH THE SYSTEM, WHERE YOU HAVE HAD FIVE JUDGMENTS AGAINST YOU, WHERE YOU HAVE SUED A NUMBER OF PEOPLE, WHERE ONE OF THE CASES, I THINK THERE WERE 20 PRIOR LAWSUITS. CERTAINLY THAT KIND OF INFORMATION, IF NOT DISCLOSED, WOULD, PERHAPS, INDICATE A BIAS OR PREJUDICE, BECAUSE YOU HAVE EITHER FOUND YOURSELF THE VICTIM OF THE SYSTEM, ON A NUMBER OF OCCASIONS, BY HAVING BEEN SUED, OR YOU HAVE USED THE SYSTEM AS A PLAINTIFF ON A NUMBER OF OCCASIONS, TO WHERE SOMEONE MIGHT FEEL THAT YOU HAVE A PREDILECTION THERE, BUT IN THIS SITUATION HERE, THE CASE THAT WE HAVE, THIS CASE SHOULD BE AFFIRMED, BECAUSE IN THIS CASE, NOTHING THAT THE JURORS DID NOT DISCLOSE HAD ANY RELEVANCE OR MATERIALITY OR WOULD HAVE SHOWN ANY RELATIONSHIP OR BIAS IN THIS CASE. AGAIN, WE HAVE A VERY COMPLICATED MEDICAL MALPRACTICE CASE, AND WE HAVE, ON THE ONE HAND, ONE JUROR WHO DID NOT DISCLOSE THAT SHE HAD HAD PENDING, FOR NINE DAYS, A DOMESTIC VIOLENCE CASE. THAT CERTAINLY DOES NOT INDICATE THAT SHE IS EITHER PRO-PLAINTIFF ANTI-PLAINTIFF, PRO DOCTOR, KNOWS ANYTHING ABOUT CANCER, HAS ANY THOUGHT ABOUT WHAT RECOVERY LIMITS SHOULD BE, ANY OF THE KINDS OF THINGS THAT ARE PREJUDICIAL ISSUES.

WHAT WE ARE MORE CONCERNED HERE ABOUT THE LEGAL RULE THAT IS OUT THERE, AND SO WOULD YOU ADDRESS, IN OTHER WORDS, THE OBVIOUSLY EVERYONE IS CONCERNED ABOUT THE OUTCOME OF A PARTICULAR CASE, NOT JUST THAT THE OUTCOME COMES ABOUT. BUT WOULD YOU DISCUSS THE RULING BY THE THIRD DISTRICT, WITH REFERENCE TO THE DUE DILIGENCE, HAVING TO INCLUDE OR APPARENTLY MANDATING THAT THE LAWYERS DO A SEARCH AT THE COURTHOUSE, HERE, AND THAT NOW WE ARE TALKING ABOUT, PERHAPS, SUBSTITUTING, WE GET COMMENTARIES BOTH WAYS, ONE ARTIFICIAL RULE IN PLACE OF THE DIFFERENT ARTIFICIAL RULE, SO, BUT, WOULD YOU ADDRESS THAT PART OF THE THIRD DISTRICT'S RULE SOMETHING.

CERTAINLY, AND IF I MIGHT SAY FIRST, I THINK DELLA ROSA IS CERTAINLY COMPLIED WITH AND IS STILL GOOD LAW, AND I THINK THAT THE DUE DILIGENCE ISSUE IS RECEIVE RABL FROM THE COURT'S OPINION IN -- IS SEVERABLE WITH THE COURT'S OPINION IN THIS CASE. I THINK, WITH THE LACK OF RELEVANCE AND LACK OF CONCEALMENT IN THIS CASE, IT CAN BE CONFIRMED. AS TO

THE SUGGESTION THAT WAS MADE BY THE THIRD DISTRICT FOR, PERHAPS, RESOLVING THIS ISSUE, AND I THINK THE THIRD DISTRICT CORRECTLY RECOGNIZED THAT THERE IS SOME GAMES MAN SHIP GOING ON. THE ISSUES, SOME OF THESE OTHER POST TRIAL COMBING THE RECORD KIND OF THINGS HAVE BEEN RESOLVED RECENTLY. FOR INSTANCE CLOSING ARGUMENT. YOU CAN'T GO BACK, AFTER THIS COURT'S RECENT OPINION, YOU CAN'T GO BACK AND COMB THE RECORD AND FOR THE FIRST TIME RAISE CLOSING ARGUMENT ISSUES AS FUNDAMENTAL ERROR BROADLY, BUT SPECIFICALLY YOUR INQUIRY IS TO THE DUE DILIGENCE. THERE IS A COUPLE OF POINTS. FIRST OF ALL, THAT MAY NOT BE WORKABLE IN EVERY CASE OR IN EVERY COURTHOUSE. CERTAINLY IF YOU ARE GOING TO HAVE A ONE-DAY TRIAL, I DON'T KNOW THAT YOU ARE GOING TO WANT TO TAKE A BREAK AND DO THAT, BUT IF YOU HAVE GOT A CASE HERE, THEN THIS IS SUCH A GOOD CASEaL FOR CONSIDERATION HERENi, BECAUSE YOUnr HAVE WHAT WAS A CLEANLY-TRIED CASE, A LONG CASE,w3d8AND CERTAINLY PLENTY OF TIMENi TOnrcninr DO, DURING,w3co BEFORE THE JURY WASe--SWORN INNi,nrNicom/vco WHAT WAS DONE AFTER TRIAL, WHEN SOMEONE WAS THAT ISw3nr ITco BECOMES EASIER ALL THE TIME, ASw3 JUDGESNiNi HAVE COMPUTERSnr ON, SITTIg BENCH, IT IS VERYNi EASYNi TO SIMPLY SOMEONE WITH THATnr NAME WAS INVOLVED IN PRIORco LITIGATION, AND THENNi YOU,Ni PERHAPS, WOULD JUROR INDIVIDUALLYco, SO THAT THAT ISNi BEARING DOWN.

I AM NOT SURE I UNDERSTAND ARE37%vaN SUGGESTING, NOW,coconrNi THATco THEco COURT HAVENiNiNico A RESPONSIBILITY? BECAU] SYSTEM THAT WE HAVENi NOW, AND THAT IS THAT THENi PARTY TO THISco CASE -- THPoco PARTIES OF THIS CASE ARE RELYING ONiRN WHATEVER INFORMATION I'r O JURORSnrc?$RgNi THESE QUESTIONNAIRES, ANDnA3co THEN, OF COURSE, THE MORE Anr GREAT CONCERNco THAT ANYnr,nr THISnrco RULE THAT IS PROPOSED BY THE TIID DISTRICT,Ni WOULD BE UNWORKABLEnr AND WOULD BENi ARBITRARILY APPLIEDw3nr. THAT IS PUTco THEcoNi BURDEN ON TuEz LITIGANTS,Ni NOW, TO KNOW THENi ANSWER TOcocod8ThDSnr ASKNi THENiNi JURORSw3, AND THEREFORT3nI3 INNi ESSENCE, MAKINGS7 THATNi ASPECTNi OF THE VOIR DIRENi, REALLY, MEANINGLESS, WHEREAS THAT, OFNTaIS CRITICALLYnrNi IMPORTANT,co ASNi TO CANDIDco DISCL0URESNi BYco THEco JURORS, DURING THE COURSE OFNi THAT E4INATION. HOW WE COULD HAVE AokcoNi WORKABLEcoNiNi]KKn%i RULE, AS SUGGeS!ED BY THE THIRD DISTRICt,i THOUGH,ToAT WOULDNi PUTnrnr JURORS IN ESSENCE, BEFORE THEY QUESTIONNiNi THE JURORS, ANDR)U 2(a/ LATER BENinr SHOWNcoc?$UdAT, WELL, BY REASONABLE INv9WRe8URJR)Uz BEFOREHANDcoco, ANDi'3 THEREFORE ANYTHING LIKENinr THATNiNi, TxA% Aco REASONABLE INVESTIGATION WOULD HAVE REVEALEDo, THAT YOU ARE ESTOPPEDnrn"i FROMNi RAISINGNiN HE EVEN THOUGHNiNi THE -- EVEN THOUGH THE JUROR DIDN'T DISCLOSE IT DURING THE VOIR DIRE.nr ISnr THAT REALLY A WORKABLE RULE?nr

I AMNi NOT SUQu@Q!AT THATcoco i&o EXACTLY WHAT WAS CONTEMPLATED HEREco, ANDco IN FACT, THAT ISSUE CAN BE SEVERED OUT FROM THE THIRDnr DISTRICT'S OPINION, AND WE WOULDco STILLNiNi HAVE ANNinr AFFIRMANCE HERE.

YOU CAN SEVER THAT OUT BECAUSEco OF THEok OTHERNin2H#INDINGSnKofs6cw3

YOU AGREE THAT THAT COULD BE A PROBLEM.

IT MAY BE WORKABLEco IN SOME CASES. OTHERS.co IT IS CERTAINLYco WITHNi POTENTIAL, AND THIS COURT, I THINK,co MIGHT, AN ELABORATIONok OF WHERE DELLAco THISNicwi C8.n6 CERTAINLY YOU HAVE, INcoco OUR CASEco, CLEAR FINDINGco OF, BY THDoow3e$%L COURT, Afs6cNi SPECIFICpF9DING OF NO CONCEALMENT. YOU HAVE A SPECIFICNi FiL2&NG OF REMOTENESS, AND Wd ULTIMATELY DONicook THE INVESTIGATIONNicoNicoco,Ni DOWNSTREAM, YOUNi FINDNi THAT THERE, THAT THOSE, INNip(U o MATTERSnrNi ARE(cd8CONFIRMED. NOW, THE DUE DILIGENCE --

HOW DO WE KNOW THERE IS NOco CONCEALMENT IN THIS CASE? IS CONCEALMENT, AND I NEED TO UNDERSTAND THIS,Ni ASNi ANnr ANDTATION OF DELLANi ROSA, HOW ISco CONCEALMiQco ESTABLISHED? LET'S PUTNi ASIDE THEco DOMESTIC VIOLENCEcoNi CHARGE.nrNi WE HAVEco GOT

LITIGATIONo5 THAT OCCURRED INcoNi THENiNi 1970snr=)i. DO WE KNOW ON THISnr RECORD,nr WHETHERc(aHISNi JUROR FORGOTNicocoNiNiNinr ORNico THATNi SHE SHE DECIDED NOTnr TONi DISCLOSE THAT,wDcoco ISNi THAT RELEVANTNi, WHQHER THE JURORcoNi ANDco SHENi DECIDED NOT TOcoc"DISCLOSEnr IT?Ni

ONNi?;o3 THE RECORD TH8E HAVE HERE, WE HAVEnr NO DEFINITIVENinr$%eZl8ESTABLISHMENT THAT THIS WASNi THENiSAME JUROR.co PROBABLKKT WASNi, SAME INDIVIDUAL. PROBABLY IT WASco, BUT ITnr ISNinr NOT DEFINITIVELYcoNico ESTABLIShW4 COUNTY COURT MATTERS FROMco SEVERAL YEARS AGO, WHERE, ASSUMING ITnr IScoNi MRS. FORNELL ANDNi HERNi HUSBANDNi WERE INVOLVED IN THEco COUNTYNi COURT MATTERS.co WE DONi NOT KNOW, BECAUSENinr HER HUSBAND WAS THEnr FIRST NAMED PARTY,Ni WHETHER SHE WASNiNi EVERcocZiNi AWARE OF FhGSE THINGS.

IS THAT CONCEALMEf< PRONG OF DELLANi ROSA, OMS TBaa REQUIRE TAO THE PERSON KNEW ABOUTNi IT ANcico DIDN'T DISCLOSE IT?nrnrNiORo7Lr ISw3 IT JUST THAT ITnr]KkNRdTEDcoNico AND THE LITIGANTco DIDN'T KNOW ABOUT IT ENOUGH FOR CONCEALMENT? I AM STILL CONFUSED ABOUT THATco PRONG.

nr5r I THINK THENi PRONGSNinr, REALLY,nrNi INTERRELATING TO EACH OTHES,co CERTAINLY THISNi INFORMATIONNi WAS REMOTE,N=cgD WAS FOUND TO BE REMOTE, ANDcoow3 THEREFORENicococo THATNiNiNiw3YmNRONG ISNi ESTABLISHEDco THERE.nr]Kk AS TO CONCEALMENTo[Ni, THERE ARE &+.(p:Qz THAT SAYco THEcMERE FACT THATw3 YOU N'T KNOWco ABOUT IT, IS ENOUGHNi TO SHOW YOU ARE SAYING YOU HAD Acoe7

co SO THERExD HAS TO BENi SOME$-/pKNOWING ASPECTNi. IN THIS CASE,AmaN DON'T REALLY KNOW THAT,nr BECAUSE THERE WASKM(-NEVER ANi JURY Int)cVIEWnrcoco OFNi THE --e%OF THAT JUROR.Ni

THAT IScoNi CORRECT.JzDkd8THERE WAS NOo7Oco INTERVIEW.co

ANDcoco THE MATERIALITY. DOES MATERIALITYNi,co CERTAINLY, 20,NiNico 25 YEARScocoNiNi, SINCEco A SIGNIFICANTcoC,3 LAWSUIT, COULD -- MATERIALITY ISNkD#hDVY- WHETHER YOU WOULDok HAVE STRUCK THE JUROR FOR CAUSE, WHETHER YOU WOULD HAVE INQUIRED FURTHER?Ninr WHAT IS THE MATERIALIYicoNi ASPECT?w3m!6HCJ%

nr THE CASESnrw3Ni SUGGEST THAT YOU HAVE TO LOOK AT THESE ONNiNiYm A CASE-BY-CASE BASISNi, AND INiBHINK mTERIALITY IS EXACTLYcoco THE TYPE OF ISSUES THAT YOUR HONOR HASnr JUST BEEN RAISING.Ni OBVIOUSLY IFNiV PARTICIPANTNinr INco A SIMILARcocococoASE ANDnr RECOVERED OR HADwMfcoNi TONi PAYNi ANi SEVEN-FIGURE VERDICT'c, EVENnr IF ITNico WASco TEN OR 15 YEARS AGO, THATco CERTAINLY WOULDnr BE SOMETHING YOU WOULD WANT TO KNOW ABOUT.coNi NOW, THE FACT THAT;oR SOMEONE MAY4X HAVE HADNinr Anr TRAFFIC CASEco ORcoNi SOME SMALLco COUNTYNi COURTnr SMALL CLAIMSnrcoN@6HCJ% TITLEcoco CLOUDNiNi TWENTY YEARS AGOco HASNi ABSOLUTELY NOconr RELEVANCENi OR3W MATERIALITY TOco WHAT WE HAVEnrcoNi HERE.NkM 20co CASES OR A NUMBER OFnr CASES OVER THE YEARSco,nr IT CERTAINLY SHOWS SOME FAMILIARITY WITHS7 THE SYSTEM, OF THEnrco LEGAL SYSTEM,co AND BEARS FURTHER INQUIRYcoNi, ANDSIQ!AT IS WHY YOU HAVE TO, THEN, LOOK AT THE FACTS OFNi THESE CASES ONcoco A CASE-BY-CASE BASIS, TO DETERMINE WHETHER OR NOTnr SOMETHING IS MATERIAL,q AND WHEN YOUNi GO THROUGH THE CASES THAT WE HAVWo HAD HERE, IN THE LAS+H- YEARSnr, IN THE BIRCH CASE,nrNi A JURORNinr HAD Aco $1,000coco SMALL CLAIM CASE IN A MEDICAL MALPRACTICEnr ACTION THAT WAS NOT MATERIAL. INNicoco DREWco,co A JUROR, ONE LAWYERnr HAD AGO. MATERIALco, IS THE APPELLATE COURT ARENi THEYNi MAKINGok THAT DECISION,nr ON IScTHAT A TRIAL COURT DETERMINATION?Tr THE TRIAL3WSyca MAKING THESE DECISIONS AND THEN THE APPELLATENi COURT WASfa AFFIRMING.

co DOES THISco CASE NEED TO GO BACKcoco, BECAUSE THE TRIAL COURT, DID THE TRIAL COURT

EVERcooh DETERMINATIONnrNi, AS TOco WHETHER THISnr WAS MATERIALcoconrw6OR DID THE TRIALNiok COURT THINK,co ERRONEOUSLY,Ninr THAT,nr IF THERE WAS SOMETHING REVERSEED?

n9QNi TRIALNi COURT MADENi SPECIFICNi STATEMENTS IN THE HEARING ON THE MOTION FOR A NEW TR)a&, THAT THERE WASNiNifa NO MATERIALIALITY TOnrKM(-EITHER OF THESE THINGS, AND IN FACTNiYO ALSOcom/v,Ni SUGGESTED THAT THERE MIGHTNi HAVENiNi -- WELL, LET ME STOPco AND SAY THIS, THDHEco TRIAL COURT, ALSONi, SAIDnr THE REASONco THE TRIAL a IS THEnr TRIAL COURT SAID THERENi WAS A QUESTION AS TO WHETHER THERE HAD BEENco ANYNiNiNi LITIGATION EXPERIENCE.Ni HAVE YOU BEEN IN LI(Ae8URJn BEFORE.C(AND THOUGHT THATNi, UNDERco THE CASE LAW,Ni AS IT THENok EXISTEDnr,nMQ!AT THAT WAS Anr SUFFICIENT INQUIRY TO ESTABLISH DUE DILIGENCE. THE RECENTco CASES THAT HAVE COME OUT, IN THE LASTN THESE TENco ORKOkIN 11ASES, HAVE SAID=o[VERYNi CLEARLYNi, THAT ASKINGnrNi4URORS HAVE YOUco ANYNIi LITgION EXPERIENCE, A LAY PERSON WHO Iwonr NOT PART OF THE BENH OR BAR, PROBABLY DOEScoNiNi NOTco UNDERSTAND THATnr, BECAUSE IN ONE OF THE DECISIONS THAQi WAS CITED,Ni LITIGATION. OTHER PEOPLE HAVE SAIDco THEYt(DON'T UNDERSTAdm THATNi SMALLnr CLAIMS ARE PARTNqr OF LITRgpaION.N4 I SUENi VEONE OR I AM SUED FOR DAMAGES, AND INico AMco INNi COURT.Ni THEY DO NOT SEEM TO RANi6ENinrNinrNi THAT WILL DISPUTES OR CUSTODYcoco BATTLESNi OR UNCOeeQ:UQb DIVORCESnrco OR ANYnr[5 PROFESSIONnr,nr RECOGNIZE AS LITIGATION, ARE,NiNi IN FACT, LITIGATION.; PERHAPS THE WAY"azco RESOLVE THIS IS TONIi HAVENiNi A MOREnwinrNi CLEARnr INSTRUCTIONw3 TOo[w3Ym?;oi THE]IN#zaRY, BY THE COURT, EXPLAININGcoco THENico BERADTHNi OFC A BROAD, V Z SPECIFIC STATEMENT HAVE YOU EVERn;BEEN INVOLVED INcoco ANY KIND OF CLAIMS?Ni ANY DIVORCE ACTIONS?co HE WENT THROUGHnr A LITANY ofNici BING TS%iNiNi OUTLINE. LIST OF THINGS THATo7O HE MADEco INQUIRY OFNi, SO I MEAN,Ni IN FAIRNESS HERE, ITnrNWaTnN AS THNWGH THE LAWYER, DID HE NOTNi,nr TRY TOco ELUCIDATE THAT CONCEPT?coco

THE QUESTION HERE ISnrNinr IT WASNi Ap MONPtWnVo ITNiNi CITED INNi THE TEJADANiNi OPINION,c THE QUESTION FROM THE COURT IS HAVE= YOU BROUGHT ANi C AGAINST SOMEONE ELSE, SEEKING MONEYcoN%uaji THEM,Ni ORco= BROUGHT AN ACTION AGAINST YOU, SEEKJnw3co MONEY FROM YOU,nr ANE"IT COULD BE BECAUSEcoNi OF AUTO ACCIDENT, BREACHNNiNicoco OF CONTRACT, MANY OTHERnr THINGS,co DIVORCES AND WHATNOT.'

WHAT DID COUNSEL SAY? QuMrg/ THENNi COUNSEL'SOvamr QUESTIONNi WAS I MEAN6z ANY KIND OF LAWSUITnr, DIVORCE, COLLECTION OF A DEBT,coco BREACH OF CONTRACTcow3NiNF ASSAULT AND DEFECTIVEycNc PRODUCT,NiNi MEDICAL NEGLIGEN AGAIN,co ALLconr OF-9 THOSE KIND OFNi THINGS, ON THE HEELS OF WHAT THExDco CiE Q HAD ASKEDNi,cco WEREo7O DAMAGES, MONEY DAMAGE ISSUES, WHERE YOU WEREco TRYING TO GETnr MOBl. CERTAINLY THAT WOULD NOT HAVE BEEN BROAD ENOUGH TO HAVE COVERED THE INQUIRY AS TONiYQ ONE JUROR, BETTER ERA,> AND HERnrconr -- BAR?; ERA, AND THEco CRIMINAL --nrycNc BERREIRAco, WHERE THERE WAS ANi CRIMINAL ACTION ANDNiNiok A DOMESTICnr VIOLENCE THING. THATNi CERTAINLY WA DAMAGES.nr

WITHw3 REGARD TOn"i WHAT THE COURTnrS7 SAID,nrnr COUNSEL DIDN'T SAYNi MONEY DAMAGES, DID HE?nr

COUNSEL SAiWHERE YOU HAVENi BEEN A PARTY TO @oco LAWSUIT, ANDNi THENnr WEf< ON TO GIVEco HIS DEFINITIONnr08aeU:uRa. THE DUENinrw3 DILIGENCEap&=9G ISco A CLOSED QUESTION. THERE IS NOco QUESTION ABOUT THAT AND I SEE THATNi I HIM OUTnr OF TIME. INcook THIS PARTICULAR CASE,w3 THEnr TRIAL JUDGE MADEcoco SPECIFIC FINDINGSNi ON TWO OF THE pSN OFNi DELLAcmK ROSA, ANDfa THOG)rcoNicoNiNiw3nr ARE APPROPRIATE FOR AFFIRMANCEcoNi OF THEnr JUDGMENT INnr THIS CASE, TOok THEco EXTENT THE THIRD DISTRICT TRIED TO FASHION ANi REMEDYnNiNi TO THENi OR ELABORATE ONco DELLAnr ROSA, ON THE DUEco DILIGENCE PRONG, SO THAT WE DO NOT CONTINUE TO HAVEco THIS FLOOD OF NEW CASES,[N WHERE PEOPLE AREN@BOMINGnr BACKok]Kk iw3 POSTnrSaARWNi THIS COURTku8RgLY IS NOT BOUND TONi A=aGN

THAT.nrNiNi THISNi CASE CANNi BEnr AFFIRMED,co EVENnrco mJEna DISTRICT'SNi POTENTIAL REMEDY.

THANK YOU,co COUNSEL.

THANK YOU VERYNi MUCH.N-WKjK

MR.nrw3Ni KLEINBERG.

I AMeaJn TIME TO ADDRESS EVERYTHING THATcoNi It(U7G)-NNinr

LET ME ASK YOUNi THIS REAL qU5jNN

nr OKAY.

DO YOU AGREE THATNi THEN!o)yJjX 6HCJ% JUDGEnr SAID THATco THT, THISNi INFORMATION WAS NOTNi RELEVANT ANDw/Q FINDING, JUST TO THE OPQMSITE OF THAT?

YOU COULD NOT BE MORE CORRECT.N I DISAGREENiQp)TEDLY. THE DEFEedCNTS IN THIS CASE, THEco RESPONDENTS INNi THIS CASE ATTEMPT TO THPo OUT BUZZWORDS TAKEN OUTNi THE WORDcow3 "REMOTENESS". YOUw3co ARE RIGHT HE DID.Ni BEING A GOOD JUDGE, HE STOPPED AND THOUGHTco ABOUT I, AND HEnr CONSIDERED REMOTENESSNi, ANDco HE SAIDco THIS IS REMOTEco, BUTnr YOU KNOW WHAT?Ni IN MY REPLY BRIEF, Ico SPECIFICALLY INCLUDED THOSE PORTIONS OF THEco EXCERPT WHICHcP6HCJ% WERENico MISQUOTEDco ANDNi WHICH WEREcoNi3W OMITTEDaBXookcoNi THENi DEFENDANT,coco BECAUSE WHAT THE COURT SAIDcocoNi3W WAS IT DOESNi SEEM TONinrnr BENiNi TWENTY YEARS REMOTE. ", BUT IT DOESN'T SEEM TO MATTER BECAUSE IT COULD HAVEnrcofa LED TO A LEGITIMATE INQUIRY BYnrNi PLAINTIFF'S COUNSEL, DURINGco THE VOIR DIRE, AND IT COULD HAVE LED TO RELEVANT INFORMATIONNi ABJa THEc!RU'uJ Ni AND ISN'T THAT WHAT DELLA ROSANi SAID WOi WERE SUPPOSEDa(A8TO DONi, AND ISN'T THAT WHAT JUSTICE Kn$TEAD SAID, INNi THENi O.Ie CASENi ANDnr SUPPORT)J/co JUDGE HATCHET IN THE ROGERS CASE? ISN'T THAT WHAT WE ARE SUPPOSED TO DO?

Ninr SHOULDN'T WE,nr ALSO SHE HAS ARGUED THAT WEnr THESE ARENiNiNiok THE JURORS THAT WEREco mZTHATNi THESE JURORS ARE THE PERSONS WHO ARE NAMED IN THAT.NiTJek WE NEED TO GEti MORE INFORMATNco AND DETERMINE IF THESENi ARE THE SPECIFIjk JURORS?nr

NO, YOU DON'T. IT IS ANico PREi'&TEROUSNi CONTENTION.nr WE WENT THROUGHNi TEN MONTHS OF PULLING RECORDSco ANDNiNzTHEN GOING ANDnrNiNi DOINGo7O INVESTIGATIVEnr BACKGROUNDS, AND WEw3co CLEARLY ESTABLISHEDNi THIS WASok THELGaN FORE NECESSARILY. SHENi WORKSco --NiNinrco FORNELL. SHE WORKS @V THE COCONUT GROVE?BANK INNi CL AND]J FORNELL. WE GOTNicoNi HER SWORNpP DOMESTIC ABUSE CASE. THERE ISnr NOco DOUceW4Zl8ANDNi THE JUDGENi MADEnr SPECIFICFINDINGS OF FACT AND MR. McCOY, THE TRIAL COUNSEL, CONCEDEDNico THAT YEAH, THIS LOOKSNi LIKE THENi RIGHTco PEOPLE. WE WENT THROUGHNi GREAT LENGTHS, THEY WERE.nr

Wd NATURE OF THE AUTOMOBILE ACCIDENT THAT WASN-tNNi DISCLOSED?

WHAT WE KNOWNi ABOUT IT IS --co

Ni WAS IT Anr SMALL CLAIGs/)snnr WENinr KNOW NOTHING. SHE NEVER TOLDNizUJN HOW DO I KNOW?Ni THAT IS THEnnPOINT. HOW DO INi KNOW WHAT SHE --

WHY SHOULDNwTiokNi THAT JUROR HAVE BEEN INTERVIEWED, THENNi, BEFOREco THE JUDGEcyo MAKESNi A DECISIONco TO GIVEhYGU Aco NEWNi TRIAL?ok

TWONi THINGS.nr ONE, JUSTICE OVERTONnr SAYING THAT JUSTICEcoco ANSTEAD'Scook OPINIONnr INnr DELLA ROWSco A ITco WASN'T REQUIRED UNDER EXISTXi LAW. TWOcoPoc I ASKED FOR ANcwi INTERVIEW AT EVERY STAGENiw IM CERTAINLY ENTITLED TO GO POSTURE. WHAT ARE YOU GOING TO SAY IT LCTTERED?m'pDID YOUNi GOcoNi BACK ANDnrNIi REDONi THE CARco ACCIDEetNi AND DIDnr ITco MATTER?Ni I OBJECT TONi GETTING PAID.

YOU WERE INTERVIEWING AcMo PLAINTIFF.nr IFNi3W SHE WAS A PLAINTIFF AND SHE HADNi A REAR END COLLISION AND COI GOODNi FAITH --ncoNicoN$(aT(UQb -- COLLECTED $A 00, YLeco CAN'Tco IN GOOD FAITHnr --Ni COLLECTEDw3 $500, YOU CAN'T IN GOOD FAITH TELL ME THATcon'i SHE COULDN)w: HAVE BEEN STRUCK PREEMPTORILY.

Nico MAYBE SHENiNiok GOTconrco $500 AND MAYBE SHEnr= THOUGHTNiNiNi SHE DESERVED $500Ni MILLION. MAYBENi SHE WASN'T HAPPY WITHNi THATco AND NOWco SHE IS GOING TOnr STICKNi IT TO THEnr DEFENDANT,coNi AND HEREW ARE IN TALLAHASSEE, FLORIDANico, TENnr YEARS LATER AND WE AREw3 IN TALLAHASSEE FLORIDA, AOFNi ALL SHE HAD TOnrOKNcoNHO WAS TELL MEnr.

nr HOW COULD ITco BE THAT]Qc0@6HCJ% DIDN'T REMEMBER?w3

AGAIN, IT IS EASY FOR HER TO COME KMnr BEcoNinrNi --co TONi COME IN AND SAY I DSfg'T REMEMBER. IT IS ANico SELF-SERVINGnr STATEMENT. FIRST OF ALL!co DON'Tn GET HUNG UP ON WHAT THE[o JUDGE'S TERMS WERE. HE Vb IT WAc"i ASKED FORNi AND ITNi SHOUIHAVE BEEN RESPONDED TO.Ni SECONDLY, SHE WASw3 SERVEDcoM. PERSONAL SERVICE.nrd8SHE ANSWEREDNiNi INTRIOGATORIESNi. SHEconr SATco FORNiNV DEPOSITION.co SHENico SIGNmDznrnr SETTLEMENTNi PAPERS. SHENVD.O[jr NOT HER HUSBAND.Ni ITNi IS IN THE RECO&A9co WEnr PRODUCED THA THE COURT. THATco ISNi WHY IT TOOKw3 TENnrco MONTHS. HEY, GOTCHA,cocoNi3WnrNi FREEBIEco, NEW TRIAL. WE WORKEDNi AT THIS, TOok MAKEnr SURE WE DIDou THE RIGHT WAY. THE JUDGE MADE THE[nY REQUISITE FINDINGS.53 HE SAID, LOOK, ITco SHOULD HAVEco ELICITED A RESPONSE. THE MANok SHOULD HAVE BEEN ABLE TO ASK, QUOTEw3,co IT WAS FAIR GAME FOROTH OFc"THE LAWYERSnr TO ce AND JUST BECAUSE ANi PERSON ISw3 A PLAINTIFFco, IT DOESN'T MEAN THEnrcoN)0@6HCJ% PERSON WILL SIDE WITHNi THE PLAINTIFF, AND JUST BECAUSE ANi PERSON I ANN'i DEFENDANT DOESN'T MEAN THEY WILL SIDE WITH THE DEFENDANT. I SEE MY TIME IS UP AND I THANK THE COURT FOR THEIR TIME TODAY.w3 I RESPECTFULLY." ASK THAT THENi TRISl JUDGE'S ORDERNi BE AFFIRMED ANDN) THAT THE THIRD DISTRICT BEnrnr REVERSEDNi, ANDco I APPROcTE THE TIME THAT YOU HAVE GIVEN ME TOD=W THANK YOU.

THANK BOTHN.' mUNSEL FORNi THEIR ASSISWq