Amendment to Rules of Juvenile Procedure

THE FIRST ITEM THAT WE HAVE ON THE AGENDA THIS MORNING ARE THE RULES OF JUVENILE JUDICIAL PROCEDURE. THERE ARE A COUPLE OF HOUSEKEEPING MATTERS THAT I WOULD LIKE TO ADVISE YOU FIRST. FIRST, JUSTICE HARDING IS NOT ABLE TO BE HERE FOR ORAL ARGUMENT THIS MORNING, BECAUSE HE IS ATTENDING THE FUNERAL SERVICES OF A VERY CLOSE FRIEND IN JACKSONVILLE, BUT HE WILL PARTICIPATE IN THE DECISION IN THIS MORNING'S CASES, AND HE WILL HAVE THE OPPORTUNITY TO VIEW, BOTH, THE VIDEO AND THE AUDIO OF THIS MORNING'S PRESENTATIONS, AND SECONDLY, I NOTE AND HIM PLEASED THAT WE HAVE PARTICIPATION BY A NUMBER OF INTERESTED PERSONS WHO ARE GOING TO ADDRESS THE COURT THIS MORNING. I ASK EVERYONE TO HONOR THE TIME PERIODS, BECAUSE WE WILL STRICTLY ADHERE TO THE TOTAL TIME PERIODS, AND SO THE TIME YOU SAVE IS YOUR COLLEAGUES', IN THIS PROCESS, SO IF WE COULD, NOW, PROCEED, I THINK, MS. KRAMER.

CHIEF JUSTICE WELLS. JUSTICES OF THE SUPREME COURT. IF IT MAY PLEASE THE COURT, MY NAME IS THERESA KRAMER. I HAVE BEEN ASKED TO APPEAR BEFORE THIS COURT, TODAY, BY THE COMMITTEE ON THE JUVENILE COURT RULES. THEY HAVE ASKED ME TO APPEAR, ON BEHALF THE MAJORITY. THERE IS A MINORITY OPINION THAT WAS, ALSO, FILED, FROM THE COMMITTEE, AND DEBORAH SCHROTH WILL BE APPEARING, AS WELL, FOR THE COMMITTEE ON THE MINORITY OPINION. WE WERE DIRECTED BY THIS COURT, IN THE DECISION THAT THIS COURT HANDED DOWN, IN MW, TO MOVE FORWARD AND DRAFT RULES OF PROCEDURE, DEALING WITH THE PLACEMENT OF MINOR CHILDREN, WHO ARE IN THE LEGAL CUSTODY OF THE DEPARTMENT OF CHILDREN AND FAMILIES, IF THEY ARE NEEDED TO BE PLACED IN RESIDENTIAL TREATMENT CENTERS. IN DOING SO, WHEN THE MW OPINION WAS HANDED DOWN BY THIS COURT, THIS COURT FOUND THAT THERE WAS A TOTAL LACK OF DIRECTION IN, BOTH, THE STATUTE AND THE RULES, FOR WHAT PROCEDURES SHOULD BE FOLLOWED, IF A CHILD IS TO BE PLACED IN A RESIDENTIAL TREATMENT CENTER FOR MENTAL HEALTH TREATMENT. IN REVIEWING, BOTH, THE RULES AND THE STATUTES, THIS COURT RULED THAT A PREPLACEMENT HEARING WAS REQUIRED, BY THE STATUTE, AT THAT POINT IN TIME, BUT THERE WAS NO DIRECTION, AS TO HOW THAT HEARING WOULD BE CONDUCTED, WHETHER THERE WAS A RIGHT TO A GUARDIAN AD LITEM OR AN ATTORNEY FOR THAT HEARING FOR THE CHILD, WHETHER OR NOT THERE WERE TIME STANDARDS THAT MUST BE COMPLIED WITH FOR THAT HEARING. SO THIS COURT DIRECTED THE COMMITTEE TO COUP WITH THOSE STANDARDS, UNTIL SUCH POINT AS THE LEGISLATURE DID. SHORTLY AFTER YOUR RULE WAS RENDERED, RULING WAS RENDERED IN THIS CAUSE, THE LEGISLATURE, IN FACT, ENACTED A STATUTE, AMENDING CHAPTER 39 AND INSTITUTING SECTION 39.407, SUB5. THIS SECTION FOLLOWS, VERY CLOSELY, WITH THE PROCEDURES WHICH YOU DISCUSSED HEAVILY IN YOUR OPINION IN MW. THOSE PROCEDURES BEING THOSE OF PAR HAM, THE U.S. SUPREME COURT CASE, DEALING WITH THE COMMITMENT OF A CHILD, A MINOR CHILD.

39.405 HAS A REQUIREMENT IN IT THAT THERE BE A GUARDIAN AD LITEM.

YES, SIR.

AND I NOTE THAT THERE IS, SORT OF THE FOCAL POINT, HERE,, TO BEGIN WITH, IS THE -- WHETHER THERE IS GOING TO BE AN APPOINTMENT FOR -- OF COUNSEL FOR -- ONE FOR THE GUARDIAN AD LITEM, AND, SECONDLY, FOR THE CHILD. AND THAT THE COMMITTEE RECOMMENDED THAT THERE BE A GUARDIAN AD LITEM HAVE COUNSEL, AND THAT THE CHILD HAVE COUNSEL, AT THE DISCRETION OF THE TRIAL COURT.

YES, YOUR HONOR.

NOW, MY QUESTION GOES TO WHETHER THERE WAS THOUGHT GIVEN TO HOW THAT COUNSEL, FOR EITHER ONE OF THEM, WAS GOING TO BE FUNDED.

YES, SIR. AS FAR AS THE COUNSEL FOR THE GUARDIAN AD LITEM, THE FUNDING THAT IS CURRENTLY AVAILABLE AND, OF COURSE, AS YOU KNOW, THE COURT GOVERNS THE GUARDIAN AD LITEM PROGRAM. THAT IS A PART AND PARCEL OF THE JUDICIARY FUNCTION. THEY, EACH OF THE GUARDIAN AD LITEM PROGRAMS, CURRENTLY HAVE LEGAL COUNT HE WILL, IN -- COUNSEL, IN THEIR LEGAL PROGRAMS, AND THAT PROVIDES FOR LEGAL COUNSEL ON THESE EVERY TYPE OF ISSUES.

BUT NOT EVERY GUARDIAN AD LITEM IS A LAWYER.

THAT'S CORRECT, YOUR HONOR.

NOT EVERY GUARDIAN AD LITEM PROGRAM PROVIDES FOR A STATE LAWYER TO BE A GUARDIAN AD LITEM, IS IT?

YES, YOUR HONOR, EXCEPT WHERE THE ORANGE COUNTY BAR HAS COME FORWARD, AND THEY HAVE VOLUNTEERED TO TAKE THE PLACE OF THE GUARDIAN AD LITEM PROGRAM THERE.

THERE IS, ALSO, SOME COUNTY FUNDING THAT IS INVOLVED IN THAT PROGRAM. MY CONCERN IS THAT WE ARE IN THE MIDST OF HAVING TO PAY PARTICULAR ATTENTION TO HOW THINGS ARE FUNDED.

YES, YOUR HONOR, VERY SERIOUSLY NOW.

NOT ONLY BECAUSE OF THE BUDGETARY CONSTRAINTS FOR THIS YEAR, BUT BECAUSE OF THE CHANGE IN THE CONSTITUTION, IN 1998. AND I AM CONCERNED THAT WE DO NOT SET UP, IN THE RULES, ANYTHING THAT IS GOING TO INHIBIT THESE CASES GOING THROUGH PROCEEDINGS, AND SO I -- THAT IS THE REASONS THAT I DIRECT THAT QUESTION. HOW ABOUT FOR THE DISCRETIONARY COUNSEL FOR THE CHILD. WHO IS GOING TO PAY FOR THAT?

WELL, THE DISCRETIONARY COUNSEL FOR THE CHILD, AGAIN, THAT WILL BE ON A CASE-BY-CASE BASIS, BY THE TRIAL COURT JUDGE, AND IF YOU FOLLOW THE MANDATES IN THE PUBLIC DEFENDER'S STATUTE, THE PUBLIC DEFENDER IS REQUIRED, THE REQUIRED ENTITY, TO REPRESENT ANY INDIVIDUALS IN INVOLUNTARY MENTAL HEALTH COMMITMENT PROCEEDINGS.

HAS THIS BEEN AN ASSESSMENT OF WHAT THE FISCAL IMPACT OF THIS WOULD BE ON THE PUBLIC DEFENDER'S OFFICE?

NOT AT THIS POINT IN TIME. THE APPROXIMATE FIGURES THAT WE HAVE IS, CURRENTLY, AS OF DECEMBER OF THE YEAR 2000, THERE WERE APPROXIMATELY 1200 CHILDREN IN RESIDENTIAL TREATMENT CENTERS THROUGHOUT THE STATE OF FLORIDA. NOW, THE ISSUE, AND AGAIN, THE ISSUE THAT WE BROUGHT FORWARD, THE COMMITTEE, WE WERE VERY, VERY COGNIZANT OF THE BUDGETARY CONCERNS OF APPOINTMENT OF LEGAL COUNSEL TO CHILDREN. WE FELT THAT THERE MAY BE, IN SOME CASES, WHERE THAT WOULD BE APPROPRIATE, AND THE TRIAL COURT JUDGE WOULD BE THE MOST APPROPRIATE INDIVIDUAL TO MAKE THAT DETERMINATION OF WHETHER APPOINTMENT OF LEGAL COUNSEL WAS PROPRIETOR NOT, CONSIDERING THE ISSUES AND THE AGE OF THE CHILD AND THE ABILITY TO EXPRESS A TRUE DESIRE, WHICH COULD BE MOVED FORWARD ON.

WELL, WAS THE REASON THAT THE MAJORITY COMMITTEE DID NOT RECOMMEND APPOINTMENT OF COUNSEL FOR THE CHILD, NOW, AGAIN, THIS IS NOT -- FOR THIS RULE, THIS IS NOT FOR EVERY

DEPENDENCY CASE BUT ONLY WHEN THE DEPARTMENT DECIDES THAT THE CHILD SHOULD BE IN RESIDENTIAL TREATMENT, CORRECT?

YES.

SO WE HAVE A SITUATION, RIGHT NOW, THEN, WHERE WE HAVE GOT A ATTORNEY FOR BOTH PARENTS. WHERE DOES THAT COME FROM?

THAT CAME FROM THE LEGISLATURE. THE LEGISLATURE VERY SPECIFICALLY STATED THAT, IN 1998, THEIR LEGISLATIVE SESSION, THEY MANDATED THAT ATTORNEYS BE APPOINTED FOR INDIGENT PARENTS IN DEPENDENCY PROCEEDINGS, SO THEY MADE THE BUDGETARY HIS DECISION -- BUDGETARY DECISION TO HAVE ATTORNEYS APPOINTED. THEY DID NOT DO SO, WHEN THEY AMENDED CHAPTER 39.

SO BASICALLY WE HAVE A SITUATION, THIS IS WHERE I GUESS THE MINORITY REPORT, I WOULD LIKE YOU TO ADDRESS, WHERE WE HAVE GOT A HEARING WHERE THE CHILD IS EITHER TO BE OR HAS, ALREADY, JUST BEEN COMMITED TO A RESIDENTIAL TREATMENT FACILITY, PRESUMABLY AGAINST HIS OR HER DESIRES, AND THE ONLY PERSON, THEN, IN THAT PROCEEDING THAT DOESN'T HAVE AN ATTORNEY TO REPRESENT HIS OR HER INTEREST IS THE CHILD. COULD YOU ADDRESS JUST POLICY ISSUES, AS TO WHY THE MAJORITY REPORT RECOMMENDED AGAINST HAVING COUNSEL APPOINTED IN THAT, REALLY, EXTRAORDINARY SITUATION, WHICH IS WHEN RESIDENTIAL TREATMENT IS BEING SOUGHT FOR THE CHILD.

YES. I WOULD BE GLAD TO DO THAT. THEY WERE VERY, VERY CONCERNED THAT, FIRST OF ALL, OF THE BUDGETARY CONSTRAINTS, BUT MORE IMPORTANT THAN THAT --

JUST SO WE GO -- WAS THAT A PART OF THE DECISION THAT IS THE BUDGETARY ISSUES ENTERED INTO THE DECISION NOT TO MANDATE IT? IN OTHER WORDS WAS NOT AN ISSUE AS TO THE BUDGETARY CONSTRAINTS THAT THEY WOULD HAVE --

NO, YOUR HONOR, NOT AT ALL. NOT AT ALL. THAT WAS JUST ONE PIECE OF IT. PROBABLY THE MAIN PIECE -- THERE ARE TWO MAIN PIECES THAT WENT INTO THAT. TO THIS. ONE, FIRST AND FOREMOST, WAS THE ABILITY FOR A CHILD'S DESIRED -- DESIRES TO TRULY BE WHAT IS IN THE BEST INTEREST OF THAT CHILD. WE HAVE CHILDREN OF ALL AGES AND ALL CAPACITIES THAT WE DEAL WITH, DAY IN AND DAY OUT IN THE JUVENILE SYSTEM, PARTICULARLY IN THE DEPENDENCY SYSTEM. MANY OF THEM HAVE SEVERE EMOTIONAL PROBLEMS, SEVERE MENTAL HEALTH PROBLEMS, BECAUSE OF THE VERY NATURE OF WHAT THEY HAVE EXPERIENCED IN THEIR VERY SHORT LIVES, AND THOSE CHILDREN HAVE A VERY LIMITED CAPACITY TO TRULY MAKE THE CRITICAL LIFE'S DECISIONS THAT YOU AND I MIGHT BE ABLE TO MAKE AS ADULTS. THEY, IN BEING A CHILD, IN JUST BEING A CHILD, THEY ARE LIMITED, BUT EVEN MORE SO, THEY ARE LIMITED BY WHAT THEY HAVE SUFFERED IN THEIR SHORT LIVES, SO WE WERE CONCERNED THAT, REALLY, INSTEAD OF SUBJECTING THEM TO ALL OF THE A CUT REPRESENTS THAT GO -- A CUT RELATES THAT GO ALONG -- ACRUTREMENTS THAT GO ALONG WITH LEGAL COUNSEL, TRIALS AND HEARINGS AND EVIDENTIARY HEARINGS, WE FELT IT WAS MORE IMPORTANT, MORE CRITICAL, THAT THAT CHILD BE DEALT WITH ON THE BASIS AND IN THE AGE CATEGORY THAT WOULD BE APPROPRIATE WITH THE CARE OF A GUARDIAN AD LITEM, WITH THE CARE OF THIS QUALIFIED EVALUATE OR THAT IS APPOINTED, INDEPENDENTLY FROM THE DEPARTMENT, THAT THEY BE GIVEN THAT OPPORTUNITY TO BE HEARD THERE.

WHAT IS THE REASON, THEN, FOR THE ATTORNEY TO BE APPOINTED FOR THE GUARDIAN AD LITEM, IF THE GUARDIAN AD LITEM WAS NOT AN ATTORNEY. WHERE DOES THAT FACTOR INTO THIS CALCULUS?

WELL, WHAT WE WERE CONCERNED ABOUT IS THAT THE GUARDIAN AD LITEM, BECAUSE OF THE NATURE OF THE FACTS AND PROCEEDINGS AND WELL BE DEALING WITH A CHILD, WOULD BE IN

THE BEST INTEREST OF THOSE CHILDREN, AND WE FELT THAT THE BEST INTEREST OF THOSE CHILDREN WAS OF CONCERN. THAT IS WHAT THE ENTIRE CHILD WELFARE SYSTEM IS ABOUT, PROTECTING THE INTERESTS OF THOSE CHILDREN.

YOU ARE SPEAKING HERE, TODAY, FOR THE RULES COMMITTEE.

YES, MA'AM.

ARE YOU PRESENTLY EMPLOYED BY THE DEPARTMENT OF CHILDREN?

YES, MA'AM, I AM.

SO ARE YOU, NOW, ARTICULATING THE VIEW OF THE DEPARTMENT OF CHILDREN AND FAMILIES OR THE VIEW OF THE RULES COMMITTEE THAT IS MADE UP OF JUDGES AND LAWYERS? OR CAN YOU -- BECAUSE YOU, REALLY, WHAT YOU ARE ESPOUSING THE PHILOSOPHICAL DIFFERENCE WITH THE GROUP IN THE MINORITY POSITION THAT HAVE APPEARED, THROUGH THEIR COMMENTS, TO SAY THAT, ACTUALLY WHAT YOU ARE SAYING IS THAT IT DOESN'T HELP THE BEST INTEREST OF THE CHILD, FOR THE CHILD NOT TO FEEL THAT HE OR SHE HAS A VOICE IN THAT COURTROOM, AND HIS OR HER OWN VOICE, IN ORDER TO BE HEARD, THAT THAT IS ACTUALLY DETRIMENTAL.

CORRECT, BUT I AM SPEAKING ON BEHALF OF THE COMMITTEE, AND IN THE COMMITTEE THERE WERE SOME VERY IMPASSIONED DISCUSSIONS ABOUT THE BEST INTERESTS OF THE CHILD, AND MANY INDIVIDUALS SPOKE THAT WERE IN THE MAJORITY, THAT THEY, THEMSELVES, ARE PARENTS OF CHILDREN, THAT THEY, THEMSELVES, KNOW AND HAVE EXPERIENCED, FIRSTHAND, THE LIMITATIONS OF CHILDREN, TO BE ABLE TO MAKE DECISIONS, SO THIS IS A COMMITTEE POSITION.

BUT WE ARE, REALLY, ONLY TALKING, AGAIN, FOR THIS CASE, IS IT RELATIVELY RARE, IN TERMS OF THE PLACEMENT THAT IS THE RESIDENTIAL PLACEMENT FOR A CHILD IN A MENTAL HEALTH FACILITY? I KNOW THERE IS SUCH LIMITED SPACE, ACTUALLY, IN FUNDING, THAT THAT IS A RELATIVELY RARE SITUATION.

IT IS RELATIVELY RARE, BUT WHEN WE LOOKED AT THE NUMBERS, THE -- OF THE PLACEMENTS THAT THE DEPARTMENT OF CHILDREN AND FAMILIES ACTUALLY PAYS FOR, APPROXIMATELY 10 PERCENT OF THOSE ARE RESIDENTIAL GROUP CARE. MR. CHIEF JUSTICE: MS. KRAMER, I THINK YOU NEED TO BE AWARE OF YOUR TIME AND ALLOW MS. SCHROTH.

SHE WAS GOING TO TAKE OVER AT 15 MINUTES, SHE WAS GOING TO TAKE OVER FOR KEN.

YOU ARE RIGHT THERE.

THANK YOU, YOUR HONOR.

WERE YOU GOING TO ADDRESS THE PREPLACEMENT VERSUS POST PLACEMENT, OR HOW IS THAT GOING TO GET ADDRESSED?

I WAS GOING TO DO THAT.

IN TERMS OF DIVIDING YOUR TIME.

SHE WAS GOING TO TAKE TEN MINUTES. I WAS, THEN, GOING TO DO REBUTTAL FOR TEN MINUTES, AFTER THE --

GOOD MORNING, CHIEF JUSTICE WELLS, JUSTICES, MAY IT PLEASE THE COURT. I AM DEBORAH

SCHROTH. I AM A MEMBER OF THE JUVENILE RULES COMMITTEE, AND I AM ONE OF THE AUTHORS OF THE MINORITY OPINION TO THIS COURT.

WOULD YOU EXPLAIN HOW THIS WORKS IF YOU HAVE A CHILD WHO IS, REALLY, OF TENDER AGE I GUESS I AM A LITTLE CONCERNED ABOUT HOW COUNSEL WOULD WORK, IF YOU HAVE A CHILD, SAY, LESS THAN SIX YEARS OLD. I AM NOT SURE HOW THAT INTERACTION BETWEEN THE CHILD AND THE ATTORNEY WOULD ACTUALLY WORK.

WELL, FIRST, LET ME SAY THAT THERE WILL BE VERY, VERY FEW CHILDREN UNDER THE AGE OF SIX THAT ARE PLACED INTO RESIDENTIAL PLACEMENT CENTERS. HOWEVER, AT THAT POINT --

DO WE HAVE ANY THAT YOU KNOW OF RIGHT NOW? I THINK SHE SAID 1200 CHILDREN IN --

YES, AND THOSE ARE THE STATISTICS THAT THE DEPARTMENT PUTS OUT AND MS. KRAMER SAID IT. I DO NOT, HOWEVER, KNOW HOW MANY CHILDREN UNDER SIX ARE IN THOSE PLACEMENTS.

DO WE HAVE ANY CHILDREN UNDER SIX YEARS OLD?

NOT THAT I FOUND, SIR. THE DEPARTMENT HAS STANDARDS FOR CHILDREN, AND THOSE STANDARDS INDICATE THAT, WHEN A CHILD IS NOT ABLE TO FULLY COMMUNICATE WITH HIS OR HER ATTORNEY, SUCH AS A CHILD OF TENDER YEARS, THEN THE ATTORNEY TAKES ON MORE OF A ROLE THAT LOOKS LIKE A GUARDIAN. HOWEVER, THE ATTORNEY, THE IMPORTANCE OF THE ATTORNEY IS NOT JUST TO CONTEST OR NOT CONTEST WHETHER THE CHILD SHOULD BE PUT INTO THE PLACEMENT BUT, WHEN YOU LOOK AT THE LEGISLATION, THE -- THERE HAS TO BE A TREATMENT PLAN FOR THAT CHILD. THE ATTORNEY WILL BE ABLE TO INTERACT WITH WITHIN THE TERMDATION OF THE -- WITHIN THE DETERMINATION OF THE TREATMENT PLAN. THE ATTORNEY WILL BE ABLE TO ACT WITHIN THE FACILITY, WITH THE CHILD, IF THE CHILD HAS NEED FOR PLACEMENT, WHILE IN THAT FACILITY AND DEALING WITH THE CHILD'S EDUCATIONAL ISSUES WHILE IN THAT FACILITY, BECAUSE THE EDUCATION OF THE CHILDREN IS VASTLY DIFFERENT THAN WHAT THEY RECEIVE, WHEN THEY ARE ABLE TO GO, PHYSICALLY, TO A PUBLIC SCHOOL.

NOW, I TAKE IT THAT, WHERE YOU ARE ON THE SPECTRUM IN THE MIGHT NOT ONORITY REPORT, IS THAT YOU -- IN THE MINORITY REPORT, IS THAT YOU WANT COUNSEL FOR THE CHILD TO BE MANDATORY?

YES, YOUR HONOR.

AND IS IT YOUR VISION THAT THIS IS GOING TO BE A PUBLIC DEFENDER? AN ASSISTANT PUBLIC DEFENDER?

YOUR HONOR, THE MINORITY DID NOT SIT AND DETERMINE EXACTLY HOW THAT WOULD BE FUNDED. HOWEVER, IT IS, CERTAINLY, ONE OF THE OPTIONS IS FOR THE LEGISLATURE TO AMEND CHAPTER 27, I BELIEVE IT IS, TO, THEN, REQUIRE THE PUBLIC DEFENDER TO REPRESENT THESE CHILDREN.

THERE IS NO, PRESENTLY, NO CASE OUT OF THIS COURT THAT SAYS THAT IT IS A CONSTITUTIONAL REQUIREMENT. IS THAT CORRECT?

THAT'S CORRECT, YOUR HONOR.

THERE IS NO CASE OUT OF THE U.S. SUPREME COURT THAT SAYS IT IS A CONSTITUTIONAL REQUIREMENT.

THAT'S CORRECT, YOUR HONOR.

WHAT HAPPENS, UNDER THIS SITUATION, IF WE PUT THIS RULE IN EFFECT AND THERE IS NO FUNDING TO PAY FOR THESE LAWYERS? HOW DO THESE CASES GO FORWARD?

FIRST, LET ME SAY THAT WE BELIEVE THAT IT IS A CONSTITUTIONAL RIGHT FOR THESE CHILDREN, THAT THIS COURT, IN MW, DIRECTED THE COMMITTEE TO ADOPT RULES, WHICH WOULD ENSURE THE CHILD TO HAVE A MEANINGFUL OPPORTUNITY TO BE HEARD. A MEANINGFUL OPPORTUNITY TO BE HEARD IS A HALLMARK OF PROCEDURAL DUE PROCESS. THE DISGREEMENT BETWEEN THE MAJORITY AND THE MINORITY INCORPORATED ON -- DISAGREEMENT BETWEEN THE MAJORITY AND THE MINORITY INCORPORATED ON WHETHER THE CHILD HAD THE AUTHORITY TO REQUIRE APPOINTMENT OF COUNSEL. IN THE DEBATE IN THE FULL COMMITTEE, THE MAJORITY INDICATED THAT THEY BELIEVED THAT THAT IS A SUBSTANTIVE RIGHT THAT THIS COURT CANNOT TOUCH, ONLY THE LEGISLATURE CAN.

ISN'T THE LAST PRONOUNCEMENT OUT OF THIS COURT, ON THIS ISSUE OF THE CONSTITUTIONAL REQUIREMENT, DB?

YES, YOUR HONOR, IT IS.

AND THAT DID NOT PROVIDE A CONSTITUTIONAL BASIS FOR THIS, DID IT?

WELL, YOUR HONOR, IN RE DB AND DS, IT HAD TO DEAL WITH WHETHER THE PARENTS HAD A RIGHT TO COURT-APPOINTED DEPENDENCY PROCEEDINGS, AND IN FACT THIS COURT DID FIND THAT THERE WAS A CONSTITUTIONAL RIGHT. IN CERTAIN INSTANCES, THERE WAS A CATEGORICAL RIGHTS FOR PARENTS TO HAVE APPOINTED COUNSEL, AND THOSE WERE WHEN PARENTS WERE FACING TERMINATION OF PARENTAL RIGHTS. IN ALL OTHER PROCEEDINGS, THIS COURT SAID THAT THE TRIAL COURTS HAD TO LOOK AT THE TOTALITY OF THE CIRCUMSTANCES, TO BE SURE THAT PARENTS WOULD BE -- WOULD HAVE A MEANINGFUL OPPORTUNITIES TO BE HEARD, WITHOUT COUNSEL, AND IF, IN FACT, THEY DID NOT, THEN THEY WERE ENTITLED TO COURT-APPOINTED COUNSEL. SADLY, THAT DECISION WAS HONORED AT THE TRIAL COURT LEVEL, PRIMARILY IN THE BREACH, RATHER THAN IN THE SPIRIT IN WHICH IT WAS INTENDED, AND THAT IS A PART OF THE REASON, I BELIEVE, THAT THE LEGISLATURE FINALLY -- NOT THE ONLY REASON BUT PART THAT THE LEGISLATURE FINALLY REQUIRED APPOINTMENT OF COUNSEL FOR PARENTS, BECAUSE PARENTS ACTUALLY, IF THEIR CASE ULTIMATELY WENT TO TERMINATION, WERE ABLE TO STOP THE TERMINATION OF PARENTAL RIGHTS.

WOULD YOU TELL ME, PLEASE, EXACTLY THE ROLE OF THE GUARDIAN AD LITEM AND WHERE IT FALLS SHORT IN PROVIDING THE SERVICE THAT THE CHILD'S ATTORNEY WOULD PROVIDE, ESPECIALLY IF THE GUARDIAN AD LITEM IS A LAWYER OR HAS A LAWYER. WHAT IS THE GAP THERE? I AM NOT SURE I SEE IT.

YOUR HONOR, THE GUARDIAN AD LITEM IS CHARGED WITH PRESENTING AND REPRESENTING THE BEST INTERESTS OF THE CHILD. , TO BEGIN WITH, THAT IS A VERY A.M. OR FUSS STANDARD. -- AMORPHUS STANDARD. IT CARRIES, WITH IT, BIASES. AND, IN THE CHILD'S BEST INTERESTS, ALL THE GUARDIAN CAN SAY TO THE COURT IS THE CHILD WAGETS "X", AND -- THE CHILD WANTS "X", AND WE BELIEVE -- AND THEN THE GUARDIAN AD LITEM INDICATES WHAT IS IN THE BEST INTEREST OF THE CHILD.

SO WOULDN'T THAT BE THAT LAWYER'S ROLE, ALSO, TO DO WHAT IS BEST FOR THE CHILD?

NO, YOUR HONOR. WHEN A CHILD HAS A LAWYER, THAT LAWYER IS THERE TO REPRESENT THE INTERESTS, STATE INTERESTS OF THE CHILD, AND IT IS THE COURT'S OBLIGATION TO SORT OUT, FROM ALL THE TESTIMONY THAT IS PRESENTED TO IT, WHAT, ACTUALLY, IS IN THE CHILD'S BEST INTERESTS. AND THE CHILD HAS A PERSPECTIVE ON WHAT HAS OCCURRED, IN HIS OR HER LIFE. WHY IT WOULD BE THE RIGHT THING FOR THE CHILD TO BE COMMITTED OR NOT COMMITTED,

THAT THE COURT SHOULD HEAR, AND UNDER THE CURRENT SYSTEM, PROPOSED BY THE MAJORITY, THE COURT WOULD NOT NECESSARILY HAVE THE OPPORTUNITY TO HEAR THAT. THE BEST --

ARE THERE ANY PROPOSED GUIDELINES FOR THE TRIAL COURT, TO DETERMINE IF A CHILD SHOULD HAVE AN ATTORNEY? IN THE MAJORITY PORTION, IT IS IN THE DISCRETION OF THE TRIAL JUDGE, CORRECT?

CORRECT.

ARE THERE ANY STANDARDS?

NOT THAT I HIM AWARE OF, JUSTICE, AND, IN FACT, THERE IS A TRIAL, A PILOT PROJECT IN OSCEOLA AND ORANGE COUNTIES, THIS YEAR, THAT WAS FUNDED BY THE LEGISLATURE, THAT ALLOWS THE COURT TO APPOINT AN ATTORNEY FOR A CHILD, BUT THERE ARE NO STATUTORY GUIDELINES, AS TO WHEN THE COURT SHOULD DO THAT.

AS A PRACTICAL MATTER, JUST FOLLOWING UP ON WHAT JUSTICE SHAW IS ASKING YOU ABOUT, AND I KNOW THE CHILDREN'S COMMISSION IS LOOKING INTO THE IDEAS, THE IDEAL REPRESENTATION FOR CHILDREN. WHEN YOU HAVE A GUARDIAN AD LITEM THAT IS ADVOCATING FOR THE BEST INTERESTS OF THE CHILD, AND BASED ON ALL THE INFORMATION HE OR SHE HAS AVAILABLE, AND YOU HAVE AN ATTORNEY THAT IS THERE, THAT IS REPRESENTING WHAT THE CHILD WANTS, WHAT -- ARE THERE ANY STUDIES TO SHOW WHAT HAPPENS, IN TERMS OF THE RELATIONSHIP BETWEEN THE CHILD, THEN, AND THE GUARDIAN AD LITEM, THAT, STILL, IS TRYING TO ACT IN THE CHILD'S BEST INTERESTS? IS THAT DESTRUCTIVE OF THAT RELATIONSHIP? HOW DOES THAT, IN FACT, WORK, AND ARE THERE ANY MODELS WHERE THE ATTORNEY, IN FACT, BOTH ADVOCATES FOR THE BEST INTERESTS BUT, ALSO, REPRESENTS WHAT THE CHILD'S STATED INTERESTS ARE, AS WELL? DO YOU UNDERSTAND WHAT I AM ASKING? EYE UNDERSTAND WHAT YOU ARE ASKING. I AM --

I UNDERSTAND WHAT YOU ARE ASKING. I AM NOT AWARE OF THE STATUS. PERHAPS ONE OF THE COMMENTORS WILL HAVE THAT INFORMATION. I, PERSONALLY, HAVE REPRESENTED A NUMBER OF CHILDREN, INCLUDING ONE CHILD WHO WAS COMMITTED TO A FACILITY IN JACKSONVILLE, THAT I HAD TO FILE A WRIT OF HABEAS, TO HAVE HER RELEASED, AND I WILL TELL YOU THAT, IF I SAT BACK AND TRIED TO DETERMINE WHAT WAS IN HER ACTUAL BEST INTERESTS, THAT WOULD HAVE SOURED THE RELATIONSHIP THAT SHE AND I HAD AND CONTINUE TO HAVE, AND I WOULD NOT HAVE BEEN ABLE TO ADVOCATE FOR HER AT ALL. THAT IS MY READ ON THAT SITUATION. SHE, TRULY, NEEDED AN ATTORNEY TO ADVOCATE FOR HER NEEDS. THE COURT WAS THE SDIDER OF FACT, HOWEVER -- WAS THE DECIDER OF FACT, HOWEVER. I NEVER FELT LIKE I WAS COMPETENT IN MY ETHICAL OBLIGATIONS, BECAUSE IT IS NOT MY JOB TO DECIDE A CASE. IT IS THE COURT'S JOB.

IS THIS SOMETHING THAT HAPPENS ON A RATHER FREQUENT BASIS, THAT THE GUARDIAN, THAT THE CHILD'S BEST INTERESTS AND WHAT THE CHILD WANTS WOULD BE AT ODDS, OR IS THIS A RELATIVELY RARE SITUATION?

JUSTICE, I WOULD VENTURE TO SAY THAT, THE OLDER THE CHILD IS, THE MORE LIKELY IT IS THAT WHAT THE CHILD WANTS DIVERGES FROM WHAT SOME OTHER ADULT THINKS IS IN THAT CHILD'S BEST INTEREST. MY TIME IS UP. I THANK YOU ALL VERY MUCH.

MR. LINK.

MAY IT PLEASE THE COURT. MY NAME IS TODD LINK. I AM A CERTIFIED LEGAL INTERN FROM THE UNIVERSITY OF MIAMI. I AM HERE, TODAY, REPRESENTING THE VIEWS EXPRESSED BY TWO GROUPS THAT HAVE SUBMITTED BRIEFS TO THIS COURT. THE FIRST GROUP IS THE UNIVERSITY OF

MIAMI LAW CLINIC, WHO ARE MW'S ORIGINAL COUNSEL. THE SECOND GROUP IS COMPLIES PRIZED OF PROFESSOR -- IS COMPRISED OF PROFESSOR LINICK AND MS. LAND, WHO CONTEMPLATED THIS RULE. WHEN THIS COURT LAST LEFT THIS CASE, YOU INSTRUCTED THE JUVENILE RULES COMMITTEE TO ADDRESS CERTAIN SAFEGUARDS THAT NEEDED TO TAKE PLACE, PRIOR TO COMMITTING AN INDEPENDENT JUVENILE TO A RESIDENTIAL TREATMENT CENTER. SAY I AM GOING TO DISCUSS THE DIFFERENCE BETWEEN THE LAW AND JURISPRUDENCE, IN REGARD TO THREE ISSUES, THE FIRST BEING THE CHILD'S RIGHT TO AN ATTORNEY AND THE SECOND BEING THE CHILD'S RIGHT TO A PRECOMMITMENT HEARING, AND THE THIRD BEING THE CHILD'S RIGHT TO BE HEARD IN COURT, WHICH SHOULD INCLUDE THE RIGHT --

LET ME ASK YOU, AND I WOULD BE INTERESTED IN YOUR COLLEAGUE'S COMMENTS ON THISEST, RECOGNIZING -- ON THIS, RECOGNIZING THAT ALMOST ALL OF THESE CHILDREN INDIGENT, BUT LET ME ASK YOU, IN ORDER TO GET INTO, COME UNDER 39.407, THERE IS NO REQUIREMENT THAT THERE BE A TERMINATION OF PARENTAL RIGHTS. IS THAT CORRECT?

CORRECT.

SO YOU HAVE A PARENT WHO HAS AN INTEREST IN THIS MATTER, TOO, CORRECT?

THE SITUATION CAN ARISE WHEN THERE IS A PARENT, CORRECT.

AND IN THAT INSTANCE, A PARENT, AND IN THIS INSTANCE, WOULD THIS MANDATORY COUNSEL FOR THE CHILD, ONE, WOULD THE INDIGENCY BE BASED UPON THE PARENTS' FINANCIAL ABILITY TO PAY OR WOULD IT BE ON THE CHILD'S, AND SECONDLY, WHERE DOES -- HOW DO WE DIFFERENTIATE, IN THIS SITUATION, BETWEEN THE ADVOCACY FOR THE CHILD AND THE DETERMINATION OF WHAT THE PARENT'S RIGHTS ARE, IN A SITUATION?

IN A SITUATION, IF THERE IS A PARENT, THE COURT HAS PROVIDED SIGNIFICANT DEFERENCE TO THE RIGHT OF THE PARENT TO RAISE THEIR CHILDREN. IF THE PARENT OR THE JUVENILE ARE INDIGENT AND CANNOT AFFORD THE ATTORNEY, WE WOULD ADVOCATE THAT THE ATTORNEY SHOULD BE APPOINTED IN THAT CASE, AND THERE IS SIGNIFICANT LAW OF THIS COURT, REPRESENTING THE RIGHT TO RAISE THEIR CHILDREN. IF THAT EXISTS, THEN IT SHOULD BE THE RIGHT OF THE PARENT IN THIS CASE, TO MAKE THE DECISION. PRIMARILY WE ARE CONCERNED WITH DEPENDENT CHILDREN WHO ARE IN THE CUSTODY OF THE DEPARTMENT OF CHILDREN AND FAMILIES, WHERE A PARENTAL RELATIONSHIP HAS BEEN TERMINATED, AND THERE WAS A SIGNIFICANT DIFFERENCE, BETWEEN THE WAY THAT A PARENT WOULD RAISE A CHILD AND BETWEEN WHAT THE DEPARTMENT SEEKS, IN RAISING THE CHILD.

IN THE SITUATION THAT JUSTICE WELLS IS TALKING ABOUT, WE WOULD, THEN, THEORETICALLY, HAVE THE CHILD AND THE CHILD'S LAWYER, THE GUARDIAN AD LITEM WOULD STILL BE APPOINTED, CORRECT, SO YOU HAVE A GUARDIAN AD LITEM AND HIS OR HER LAWYER.

CORRECT.

AND THEN THE PARENTS, OF COURSE, IF THEY WANTED TO TAKE AN INTEREST, EITHER ONE OR BOTH, WOULD, THEN, BE ABLE TO COME IN, ALSO, AND ADVOCATE WHATEVER INTERESTS THEY HAVE.

WELL, IN THAT CASE, THE LAWYER WOULD BE REPRESENTING THE PARENTS, WHO ARE ADVOCATE FOTH CHILD'S INTERESTS. ON -- ADVOCATING FOR THE CHILD'S INTERESTS. IN THAT SITUATION, THE PARENT WOULD BE ADVOCATING FOR THE CHILD'S INTERESTS.

AND NO GUARDIAN AD LITEM WOULD BE APPOINTED?

THERE WOULD BE NO NEED FOR GUARDIAN AD LITEM, IF THE PARENT IS ADVOCATING FOR THE

CHILD'S BEST INTEREST, IN THAT CASE.

WHAT WOULD THE RULE PROVIDE?

THE RULE PROVIDES FOR, WHEN THE CHILD IS DEPENDENT AND PARENTAL RIGHTS HAVE BEEN TERMINATED, AND IN THAT CASE THE CHILD WOULD BE ADVOCATED --

YOU CAN HAVE A CHILD WHO IS DEPENDENT, WHOSE PARENTS' PARENTAL RIGHTS HAVE NOT BEEN TERMINATED.

I BELIEVE SO.

IF THE RIGHTS HAVE BEEN TERMINATED, I WOULD ASSUME THAT THE PARENT WOULD HAVE NO STANDING TO BE A PART OF THIS PROCEEDING, BUT WHERE IT IS NOT RENDERED, THEY CAN BE THERE, AND THE GUARDIAN AD LITEM WOULD BE THERE, ALSO. AND THEN THE CHILD MAY BE ON THE OTHER SIDE.

CORRECT. CORRECT. IN REGARD TO THE RIGHT TO AN ATTORNEY, WE BELIEVE THAT THE RULE PROPOSED BY THE CHILDREN'S LAW CLINIC, BEST SUPPORTS THE CHILD'S MENTAL WELL HEALTH. THOSE ARE SUPPORTED BY THE PARTIES HERE, TODAY, THAT SUBMITTED COMMENTS TO THE COURT. IN THE SITUATION OF JURISPRUDENCE, FROM THAT STANDPOINT, THE CHILD HAS A VOICE, AND THE COURT WANTS THAT VOICE TO BE HEARD. THROUGH REPRESENTATION BY AN ATTORNEY, THAT IS THE BEST WAY FOR A CHILD TO EXPRESS HIS OR HER VOICE TO THE COURTS. NOT ONLY IS THE ATTORNEY THE BEST PERSON TO REPRESENT THE VOICE OF THE CHILD, BUT THE ATTORNEY WILL, ALSO, PROVIDE A VAFLEDATION TO THE PROCEEDINGS -- A VALIDATION TO THE PROCEEDINGS.

HOW IS A CHILD'S DESIRE BEING EXPRESSED NOW? HOW DOES THE COURT KNOW WHAT THE CHILD WANTS NOW? DOES THE GUARDIAN, AS PRACTICAL MATTER?

THE GUARDIAN HAS TO SUBMIT A REPORT, WHICH DILL ENYATES THE REQUESTS OF THE CHILD -- DELINEATES THE REQUESTS OF A CHILD, WHICH COULD BE IN CONFLICT WITH WHAT IS IN THE CHILD'S BEST INTERESTS FORM.

BUT IS IT INCUMBENT UPON THE GUARDIAN TO INCLUDE THE CHILD'S WISHES IN THE REPORT?

IT DOES NEED TO BE INCLUDED IN THE WRITTEN REPORT. YES. THE FACT THAT THE VOICE AND VALIDATION, AS I DISCUSSED PREVIOUSLY, THE VALIDATION COMES, IN THIS CASE, FROM THE FACT THAT A CHILD, THROUGH REPRESENTATION OF AN ATTORNEY, WILL FEEL THAT THE COURT HAS NOT ONLY HEARD HIS VOICE BUT THE COURT HAS CONSIDERED WHAT THE CHILD HAS TO SAY, THROUGH REPRESENTATION. IN THIS CASE, EVERYONE HAS AN ATTORNEY EXCEPT FOR THE CHILD. THE DEPARTMENT OF CHILDREN AND FAMILIES, BY STATUTE, WILL BE REPRESENTED BY AN ATTORNEY. THE GUARDIAN AD LITEM, THROUGH THE MAJORITY RULE, HAVE AN ATTORNEY. THE CHILD STANDS AS THE ONLY PARTY THAT WILL NOT HAVE REPRESENTATION OF AN ATTORNEY. THE GUARDIAN AD LITEM WAS, WHAT JUSTICE SHAW RECOGNIZED EARLIER, CAN BE IN CONFLICT WITH WHAT HE OR SHE FEELS IS WITHIN THE CHILD'S BEST INTEREST. IF WHAT THE CHILD WANTS IS DIFFERENT FROM WHAT THE GUARDIAN AD LITEM PERCEIVES, THEN, STATUTORILY, THE GUARDIAN AD LITEM AND THE GUARDIAN AD LITEM'S ATTORNEY WOULD BE ARGUING IN DIRECT OPPOSITION TO WHAT THE CHILD WANTS.

OTHER THAN THE CHILD HAVING AN ADVOCATE, WHEN IT HAS INDEPENDENT COUNSEL, THE CHILD'S WISHES ARE KNOWN TO THE COURT, AS I UNDERSTAND, IS THAT CORRECT? AND THE ADDITIONAL INGREDIENT THAT THE CHILD GETS, BY HAVING AN INDEPENDENT COUNSEL AS AN ADVOCATE. IS THAT WHAT THIS AMOUNTS TO?

WE WOULD ARGUE THAT YOU CAN'T BE SURE THAT THE CHILD'S WISHES ARE O'CLOCK REPRESENTED TO THE -- ARE BEING REPRESENTED TO THE COURT, 100 PERCENT, THROUGH THE GUARDIAN AD LITEM, IF THE CHILD DOES NOT HAVE THE OPPORTUNITY TO ADDRESS THE COURT. IT IS NOT PRESENCE OF THE CHILD EXPRESSING HIS OR HER WISH TOAST COURT, DIRECTLY. IT IS WHAT WE -- WISHES TO THE COURT DIRECTLY. IT IS WHAT WE CALL A FILTERED REPRESENTATION.

BUT THE CHILD'S WISHES ARE KNOWN, THROUGH A WRITTEN REPORT, IS THAT CORRECT?

THROUGH A WRITTEN REPORT, YES.

BUT THERE IS NO ONE ADVOCATING FOR THE CHILD.

CORRECT.

SO THAT IS THE ADDED IN GREETIENT.

-- INGREDIENT.

CORRECT.

IS THERE AN ADDITIONAL THEY WERE PUT I CAN?

-- THERAPEUTIC?

I WOULDN'T SAY IN THE COURT. YOU ARE LAYING THE GROUNDWORK FOR THERAPY IN THE HOSPITAL. THE LONG-TERM MENTAL HEALTH --

DO WE HAVE A RECORD IN THE COURT ON THIS CASE? WAS THEIR TEST MONEY TAKING TAEN?

THERE WAS A -- THEIR TESTIMONY TAKEN?

THERE WAS A PRE-WRITTEN REPORT, WRITTEN BY JUDGE LAND.

BUT THERE WASN'T ANY INTENTION?

I DON'T THINK THE COMMITTEE HAD ANY CONTEMPLATION OF REPRESENTATION BY COUNSEL AND JURISPRUDENCE.

WHEN THE UNIVERSITY OF MIAMI LAW CLINIC IS INVOLVED, THEY WERE INVOLVED IN THE MW CASE, AND ACTUALLY IN THAT CASE, COUNSEL WASN'T THE ISSUE, BECAUSE THE JUDGE APPOINTED COUNSEL. IS THERE CIRCUMSTANCES WHERE, AFTER EVALUATING EVERYTHING, THE ATTORNEY IS ABLE TO DETERMINE THAT THE DECISION IS NOT ONLY IN THE BEST INTEREST OF THE CHILD BUT, IN FACT, AFTER CONSULTATION WITH THE CHILD, THE CHILD ACTUALLY UNDERSTANDS WHY THIS COMMITMENT IS BEING SOUGHT AND THEREFORE THERE ISN'T A NEED TO ACTUALLY GET INTO AN ADVERSARIAL MODE. DO YOU KNOW ANYTHING ABOUT HOW THAT HAS WORKED IN ACTUALITY?

EVEN IF THE CHILD IS IN AGREEMENT, THROUGH THE PROFESSORS THAT RUN THE CLINIC, IT SEEMS TO AID THE THERAPEUTIC BENEFITS OF MAINTAINING AN ATTORNEY CLIENT RELATIONSHIP.

UNDER THE PROPOSED RULES, I THINK -- WE HAVE SEVERAL PROPOSED RULES, BUT I THOUGHT THAT THE RULE PROPOSED BY THE UNIVERSITY OF MIAMI WOULD NOT REQUIRE AN ATTORNEY TO BE APPOINTED, IF THE GUARDIAN AD LITEM INDICATED THAT THE CHILD WAS IN AGREEMENT.

OUR PROPOSED RULE IS ONE THAT USES A "MAY" STANDARD, IF THE CHILD DOES NOT CONTEST PLACEMENT. IF THE CHILD CONTESTS PLACEMENT, THEN WE WOULD ASK FOR THE "SHALL" STANDARD, CORRECT.

BUT IT ISN'T MANDATORY, AND WHETHER THE GUARDIAN AD LITEM INDICATES THERE IS DISAGREEMENT, IT IS ONLY IF THERE IS DISAGREEMENT THAT THE ATTORNEY IS APPOINTED.

YES. WE WOULD ASK THAT, IN THE SENSE OF ONLY IF THERE IS A DISAGREEMENT, THERE SHOULD BE A MANDATORY APPOINTMENT OF COUNSEL. CORRECT. IN REGARDS TO THE PREPLACEMENT HEARING, YOUR HONORS, WE BELIEVE THAT THERE WAS LANGFROM THIS COURT, IN MW, THAT SAID THAT THE MW DECISION SHOULD NOT STAND FOR A SEVERAL-WEEK DELAY, IN PROVIDING AN EVIDENTIARY HEARING TO CHILDREN FACING COMMITMENT. THE RULE PROPOSED BY THE MAJORITY WOULD PROVIDE MUCH LONGER THAN A SEVERAL-WEEK DELAY. ACCORDING TO THAT RULE, A CHILD CAN GO, ACTUALLY, FIVE AND-A-HALF OR SIX WEEKS, BEFORE EVER HAVING AN EVIDENTIARY HEARING, IN FRONT OF THE COURT. THIS COURT, ALSO, SAID, IN MW THAT, THE RULES COMMITTEE NEEDS TO BALANCE THE NATURE OF A DEPENDENCY PROCEEDING AGAINST THE PROCEDURAL SAFEGUARDS THAT SHOULD TAKE PLACE PRIOR TO COMMITMENT. YOUR HONORS, PREPLACEMENT HEARING WOULD NOT ONLY PROTECT THE LIBERTY AND PRIVACY INTERESTS OF THESE CHILDREN. IT WOULD, ALSO, ALLOW FOR MORE EFFECTIVE TREATMENTS, BECAUSE THE CHILD WOULD NOT FEEL AS IF THEY ARE BEING COERCED INTO SOME SORT OF TREATMENT PLAN, AND STUDIES HAVE REVEALED THAT PATIENTS THAT FEEL COERCION INTO TREATMENT RECEIVE FAR LESS EFFECTIVE RESULTS.

DO YOU HAVE AN EMERGENCY PROVISION IN THAT RULE?

YES, WE DO, JUSTICE QUINCE. WE FEEL THAT, IF IT IS AN EMERGENCY, IF AN INDEPENDENT EVALUATE OR DETERMINES THAT THERE IS A EMERGENCY PLACEMENT NEEDED, WE CERTAINLY DO NOT CONTEST TO THE PLACEMENT OF A CHILD IN A RESIDENTIAL TREATMENT CENTER, WITHOUT A PRECOMMITMENT HEARING, IN EMERGENCY SITUATIONS.

MR. LINK, I THINK YOUR TIME IS --

THANK YOU, JUSTICE.

THANK YOU VERY MUCH, FOR BEING HERE TODAY.

GOOD MORNING, YOUR HONORS. MAY IT PLEASE THE COURT. MY NAME IS CHRIS ZAWISZA, AND I AM WITH MIAMI UNIVERSITY. WE WERE THE A.M. I CAN CUSS CURE EYE IN THE -- WE WERE THE AMICUS CURAIE IN THE CASE. THROUGH BAR FUNDING, IN ANSWER TO JUDGE SHAW'S QUESTION, OUT OF ALL OF THOSE HUNDREDS OF CHILDREN, I THINK THERE WERE ONLY TWO CASES IN WHICH THE BEST INTERESTS AND THE CHILD'S WISHES CONFLICTED, AND IN THE CASE WHERE WE COULDN'T REPRESENT BOTH POSITIONS, WE HAD TO WITHDRAW AS COUNSEL AND REPRESENT THE CHILD'S LEGAL INTERESTS, AS TO WHAT THE CHILD'S BEST INTERESTS WERE, AS LEGAL COUNSEL. THE IMPORTANT ISSUE, HERE, IS THE CHILD'S LEGAL STATUS IS AT STAKE, AND THAT IS OF PERSONAL INTEREST TO THE CHILD THAT IS SO IMPORTANT THAT IT RISES TO THE LEVEL OF, IN THE INTEREST OF TW, IN WHICH THIS COURT SAYS, IF AN INTEREST IS SO PERSONAL TO THE CHILD, THE CHILD HAS THE RIGHT TO HAVE THAT INTEREST PERSONALLY EXPRESSED, AND THE ONLY WAY TO DO THAT FOR A CHILD IS TO GIVE THAT CHILD A LAWYER.

BASED ON YOUR EXPERIENCE, YOUR FIRST STATEMENT THAT, IN THE HUNDREDS OF CASES, THERE ARE ONLY TWO CASES IN WHICH THE BEST INTERESTS AND THEIR LEGAL INTERESTS CONFLICTED. SO DO YOU ENVISION, THEN, THAT IT IS, AN ATTORNEY IS APPOINTED FOR THE CHILD, THAT IT IS NOT NECESSARY TO HAVE A GUARDIAN AD LITEM? HOW DOES THAT WORK? IN OTHER WORDS, IF YOU ARE SAYING, WELL, YOU ARE REMITTING BOTH WHAT IS IN THEIR BEST INTEREST, AS WELL AS WHAT THEIR STATED INTERESTS ARE.

YOUR HONOR, MY PREFERENCE WOULD BE FOR THE ATTORNEY TO REPRESENT THE CHILD AND NOT THE GUARDIAN AD LITEM MODEL, PARTICULARLY IN THESE CASES, BECAUSE I THINK IT IS SO IMPORTANT FOR THAT CHILD'S VOICE TO BE EXPRESSED TO THE TRIER OF FACT. THE ATTORNEY, THE RELATIONSHIP BETWEEN THE GUARDIAN AD LITEM IS NOT A CONFIDENTIAL RELATIONSHIP.

SO YOU ARE SAYING, THEN, IN THAT SITUATION, IF YOU, AS THE ATTORNEY, DETERMINE THAT THE BEST INTERESTS ARE DIFFERENT FROM THE STATED INTERESTS, AND YOU HAVE AN OBLIGATION, THEN, TO --

TO INFORM THE TRIER OF FACT THAT THE -- THE CHILD --

A SEPARATE GUARDIAN, AND THEN WHAT HAPPENS IN THAT SITUATION?

AND THEN THE TRIER OF FACT HAS THE DISCRETION TO APPOINT A GUARDIAN AD LITEM IN THAT INSTANCE.

DID YOUR ORGANIZATION MAKE PRESENTATION TO SAY LEGISLATURE, WHEN THE STATUTE WAS AMENDED IN 1998?

YES, YOUR HONOR.

AND WAS-ON-DID YOU ADVOCATE, TO THE LEGISLATURE, THAT THERE BE ATTORNEYS FOR EACH CHILD?

WE DID, YOUR HONOR. AND THAT THERE BE A HEARING IN EVERY CASE, AND IT WAS A COST FACTOR.

THEY MADE THE DECISION --

A COST FACTOR.

A COST FACTOR FOR THE LEGISLATURE, AND YOU MADE A DECISION THAT THE ONLY THING THAT WAS GOING TO BE STATUTORILY MANDATED WAS THE GUARDIAN AD LITEM.

THAT WAS ALREADY IN THE LAW. THEY DIDN'T HAVE TO CHANGE ANYTHING.

SO THEY JUST DIDN'T CHANGE ANYTHING.

JUSTICE PARIENTE ASKED IF THERE WERE ANY READINGS, REGARDING THE VARIOUS MODELS, AND CITED IN OUR MATERIALS TALKS ABOUT THREE MODELS. THERE IS THE EXPRESS WISHES MODEL. THERE IS THE GUARDIAN AD LITEM MODEL. THERE IS THE HYBRID MODEL, WHICH WAS THE MODEL WE USED IN COURT, WHICH WAS REPRESENTING BOTH INTERESTS, UNLESS THEY CONFLICTED, AND THEN MOVING FOR THE APPOINTMENT OF A GUARDIAN AD LITEM. ANOTHER MODEL THAT GOES TO ONE OF JUSTICE QUINCE'S QUESTIONS IS WHAT DO YOU DO WITH A CHILD OF TENDER YEARS? THE MODEL YOU HE USED, SUGGESTED BY JEAN COE PETERS, IS THAT THE LAWYER REPRESENT THE CHILD'S LEGAL INTERESTS, AND IN THIS SITUATION, THE CHILD'S LEGAL INTERESTS IS FREEDOM FROM RESTRICTIVENESS. THE CHILD'S LEGAL INTEREST IS LIBERTY, SO THE LAWYER WOULD BE ADVOCATING, BOTH THE LAW AND THE FACTS REGARDING LIBERTY, AND THAT IS THE WAY CHILDREN OF TENDER YEARS ARE REPRESENTED, THROUGH COUNSEL.

YOU ARE IN BROWARD COUNTY. IS THAT WHERE YOUR REPRESENTATION TAKES PLACE?

MY REPRESENTATION WAS IN MIAMI-DADE COUNTY.

I KNOW A LAWYER, IN THE MW CASE, A LAWYER HAD BEEN APPOINTED FOR THIS CHILD,

THROUGH THE UNIVERSITY OF MIAMI. WHEN CHILDREN'S FIRST IS APPOINTED, SINCE YOU ARE A NONPROFIT, IS THE STATE, THEN, PAYING FOR THAT REPRESENTATION?

WHEN WE REPRESENTED THESE CHILDREN, LEGAL SERVICES OF GREATER MIAMI, WE HAD A SPECIAL GRANT FROM THE FLORIDA BAR FOUNDATION, TO REPRESENT THESE CHILDREN'S INTERESTS, SO THE STATE WAS NOT PAYING OUR FEES.

AS OF TODAY, WHEN THE JUDGE IN BROWARD COUNTY DECIDES AN ATTORNEY IS NECESSARY IN CHILDREN'S FIRST, ARE THERE ORGANIZATIONS LIKE THAT THAT ARE AVAILABLE TO REPRESENT THE CHILD'S INTEREST?

THERE ARE SOME. THOSE MOES OF THE COURT POINTS ARE -- THERE ARE SOME. MOST OF THE COURT'S POINTS ARE THROUGH PRIVATE COUNSEL AND ARE COUNTY FUNDS. YOUR HONOR ASKED ABOUT THE REPRESENTATION OF THE PARENT. UNDER IN REDB AND DS, ANY TIME THERE IS MANDATORY APPOINTMENT OF COUNSEL FOR PARENTS, IF CRIMINAL CHARGES MIGHT RESULT, AND IF IT IS A TERMINATION OF PARENTAL RIGHTS HEARING. A CIVIL CASE INVOLVES THE CHILD'S LOSS OF LIBERTY NOT THE PARENTS'S, SO THERE WOULD NOT BE AUTOMATIC RIGHT TO COUNSEL FOR PARENTS IN THIS CASE. OF COURSE WE HOPE THAT THE PARENTS HAVE ENOUGH INTEREST TO COME TO THE HEARING AND REPRESENT THEIR POSITION, BUT THERE IS NO MANDATORY APPOINTMENT OF COUNSEL IN THAT SITUATION.

BUT WHEN YOU ARE CONSIDERING THE CHILD'S INTERESTS, IS THE ROLE OF THE GUARDIAN AD LITEM BROADER, REALLY, THAN INDEPENDENT COUNSEL'S ROLE WOULD BE, IN GUARDING THE CHILD'S FREEDOM?

I DON'T SEE THE ROLE AFTER GUARDIAN AD LITEM AS BEING BROADER. EACH HAS TO DO INVESTIGATION, PRESENT FACTS, PRESENT EVIDENCE, PRESENT LEGAL ARGUMENTS. PRESENT WITNESSES. THE ONLY DIFFERENCE IS THE POSITION THEY ARE TAKING AND THE CONFIDENTIALITY OF THE RELATIONSHIP BETWEEN ATTORNEY AND CLIENT AND THE FACT THAT THE GUARDIAN AD LITEM IS NOT BOUND BY THE RULES OF PROFESSIONAL CONDUCT.

WELL, I THINK YOU, PROBABLY, SEE WHAT WE ARE GETTING AT. IF YOU CAN'T HAVE BOTH, IF FINANCIAL CONSTRAINTS DON'T ALLOW FOR HAVING THE INDEPENDENT COUNSEL AND COUNSEL FOR THE GUARDIAN AD LITEM, IT WOULD BE YOUR POSITION THAT THE INDEPENDENT COUNSEL FOR THE CHILD WOULD BE PREFERABLE. IS THAT --

YES, YOUR HONOR, AND I MAKE THAT POSITION, BECAUSE I RECOGNIZE THAT THIS COURT HAS SAID THERE IS NO CONSTITUTIONAL RIGHT TO COUNSEL FOR THE CHILD, EXCEPT IF YOU GET TO THE INTEREST OF TW SITUATION, WHERE IT IS A DERIVATIVE RIGHT OF THE RIGHT TO HAVE A HEARING. THEN YOU COME DOWN TO POLICY REASONS, AND AS WE SAID IN OUR PAPERS AND, CERTAINLY, THE THERAPEUTIC JURISPRUDENCE PAPERS HAVE SHOWN, WE FILED A SUPPLEMENTARY AUTHORITY, A LAW REVIEW ARTICLE, THAT TALKED ABOUT LISTENING TO CHILDREN. THE FACT THAT --

I THINK MS. BOHR NEEDS AN OPPORTUNITY.

I JUST HAVE ONE. YOU SAID THAT -- HAS THIS COURT RULED THAT THERE IS OR IS NOT A CONSTITUTIONAL RIGHT TO COUNSEL FOR A CHILD, WHEN THEY ARE BEING COMMITTED INVOLUNTARILY TO A RESIDENTIAL TREATMENT FACILITY?

THIS COURT HAS KNOTS REACHED THAT ISSUE -- HAS NOT REACHED THAT ISSUE, AND I WOULD THAT IN RE TW IS THE CLOSEST AUTHORITY TO THAT. THANK YOU.

MR. CHIEF JUSTICE AND MAY IT PLEASE THE COURT, SARAH BOHR, SPEAKING ON BEHALF OF THE PUBLIC INTEREST LAW SECTION. OUR SECTION CONCURS IN A MINORITY REPORT OF THE JUVENILE

COURT RULES COMMITTEE. I WOULD LIKE TO SPEAK, BRIEFLY, THIS MORNING, REGARDING THE STANDARD OF PROOF TO USE IN THESE PROCEEDINGS. THE PUBLIC INTEREST LAW SECTION MADE FOUR POINTS IN THEIR COMMENTS. THEY BELIEVE IN THE RIGHT TO COUNSEL, AT THE EARLIEST OPPORTUNITY IN THESE PROCEEDINGS, PREFERABLY AT THE TIME OF ASSESSMENT BY THE EVALUATE OR. THEY BELIEVE THE -- BY THE EVALUATE OR. THEY BELIEVE THE CHILD'S INTERESTS SHOULD BE REPRESENTED IN ALL PROCEEDINGS. THEY BELIEVE THAT, IN THE CASE OF EMERGENCY --

EXCEPT FOR THAT THIRD ONE, AND I KNOW THAT MS. KRAMER IS GOING TO ADDRESS IT. IT SEEMS TO ME THAT RULE 104-C, SINCE THIS DEALS WITH THE CHILD'S CASE PLAN, THE STATUTE REQUIRES THAT THERE BE AN AMENDMENT TO THE CASE PLAN, BEFORE THE CHILD IS COMMITTED, AND ARE YOU PREPARED TO ADDRESS --

I COULD SAY BRIEFLY, FROM MY EXPERIENCE, REPRESENTING PARENTS IN JUVENILE PROCEEDINGS, THE CASE PLANS ARE TYPICALLY AMENDED WITHOUT COURT HEARINGS. THEY KIND OF COME THROUGH. THE CASE PLAN IS PRESENTED. THEY ARE NOT AN EVIDENTIARY HEARING. THEY ARE JUST, GENERALLY, WHERE, IF THERE IS A HEARING AT ALL, WHERE THE CASE PLAN IS PRESENTED. IT HAPPENS, USUALLY, AT JUDICIAL REVIEW HEARINGS, AND THE CASE PLANS ARE AMENDED.

THE JUDGE HAS TO APPROVE OR A -- APPROVE FOR A CHANGE IN PLACEMENT.

YES.

I DON'T THINK THE MINORITY REPORT DEALT WITH THIS. HOW CAN THERE BE A COMMITMENT TO A RESIDENTIAL FACILITY, WITHOUT SOME TYPE OF HEARING BEFORE THE CHANGE OCCURS? UNDER THE PRESENT STATUTORY FRAMEWORK.

WE, CERTAINLY, BELIEVE THERE SHOULD BE HEARINGS.

I AM TALKING ABOUT RIGHTS, AND I AM TALKING ABOUT WHETHER THE STATUTE ACTUALLY REQUIRES THAT THAT HAPPEN.

I THINK AN ARGUMENT CAN BE MADE THAT THE STATUTE, AS IT IS WRITTEN NOW, DOES REQUIRE THAT, BUT LOOK AT MW. MB WAS PLACED IN A -- MW WAS PLACED IN A FACILITY, WITHOUT AN AMENDMENT TO THE CASE PLAN, ITSELF.

WE ASKED THAT THAT BE ADDRESSED IN THE RULES, AND IT DOESN'T SEEM TO HAVE BEEN.

I AM SPEAKING ON BEHALF OF WHAT THE PUBLIC INTEREST LAW SECTION ADDRESSED, AND THEY DIDN'T GET INTO THE DETAILS.

YOU ARE THE FORMER CHAIR.

I AM A FORMER CHAIR OF THE JUVENILE COURT RULES COMMITTEE, BUT I AM HERE, TODAY, WEARING A DIFFERENT HAT. THIS COURT NOTED AN ORDER PLACING A 15-YEAR-OLD DEPENDENT CHILD IN A LOCKED RESIDENTIAL FACILITY, DEPRIVED THAT CHILD OF LIBERTY, AND THIS COURT STATED, IN THE HERMAN VERSUS HUDDLESTON CASE, THAT THIS COURT HAS REQUIRED CLEAR AND CONVINCING PROOF OF EVIDENCE, WHEN ISSUES OF LIBERTY ARE AT STAKE, AND THE PUBLIC CERTAINLY BELIEVES THAT PUTTING A CHILD IN A LOCKED FACILITY IS CLEARLY THAT SITUATION, AND THAT THE STANDARD SHOULD APPLY IN THOSE PROCEEDINGS. THANK YOU.

MS. GIEVERS.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS KAREN GIEVERS, AND I AM HERE, THIS

MORNING, REPRESENTING THE CHILDREN'S ADVOCACY FOUNDATION, ON BEHALF OF ALL OF THE CHILDREN IN FLORIDA'S FOSTER-CARE SYSTEM. I WOULD ASK THAT YOUR HONORS TAKE A HALF STEP BACK, TO LOOK AT EXACTLY WHAT IT IS THAT WE ARE HERE TO LOOK AT, KIND OF THE FOREST VIEW, IF YOU WILL, TO SEE WHERE THE PARTICULAR TREES ARE THAT WE ARE ADDRESSING. THE CHILDREN FOR WHOM THE DEPARTMENT DECIDES A RESTRICTED PLACEMENT IN A RESIDENTIAL TREATMENT CENTER IS NECESSARY, ARE TYPICALLY THOSE THAT HAVE BEEN IN STATE CUSTODY, IN THE FOSTER-CARE SYSTEM, FOR MANY YEARS. THEY HAVE, GENERALLY, BEEN SUBJECTED TO MULTIPLE CHANGES IN PLACEMENT. THEY HAVE BEEN SUBJECTED, WHILE IN STATE FOSTER CUSTODY, TO ABUSE OR NEGLECT. THE FLORIDA SYSTEM HAS BEEN KNOWN FOR SEVERAL YEARS, TO NOT BE FUNCTIONING IN THE BEST INTERESTS OF THE CHILDREN, AND THE RECORD BEFORE THIS COURT, WHICH INCLUDES THE RECENT OPAGA REPORT, REFLECTED THAT, DURING THE MOST RECENT FISCAL YEAR, OVER 1200 OF THE CHILDREN IN THE STATE'S FOSTER CUSTODY WERE, THEMSELVES, ABUSED OR NEGLECTED, WHILE IN THE STATE FOSTER SYSTEM. THERE IS A LONG TRACK RECORD OF THINGS BEING ONE WAY ON THE STATUTE BOOKS AND ANOTHER WAY IN THE REALITY OF THE TRENCHES. FOR YEARS, THE STATUTES HAVE REFLECTED THAT EVERY CHILD IN THE DEPENDENCY SYSTEM SHOULD HAVE A GUARDIAN AD LITEM, AND THE DEPARTMENT, AS A MATTER OF FORM, REQUESTS THE APPOINTMENT OF A GUARDIAN AD LITEM. THE REALITY IS THAT LESS THAN FIFTH PERCENT OF THE CHILDREN IN THE SYSTEM HAVE A GUARDIAN AD LITEM.

HOW MANY CHILDREN ARE IN THE SYSTEM TOTALLY, AND WHAT PERCENTAGE ARE WE TALKING ABOUT, WHO WILL GET SENT TO RESIDENTIAL TREATMENT FACILITIES?

THE NUMBER THAT GETS SENT TO RESIDENTIAL TREATMENT FACILITIES ARE GENERALLY LESS THAN 10 PERCENT. THE EXACT NUMBER IN THE SYSTEM, AT ANY GIVEN POINT IN TIME, SEEMS TO VARY, DEPENDING ON DATA, BUT AT THIS POINT IT APPEARS TO BE AROUND 18,000, BASED ON THE RECENT NUMBERS THAT HAVE BEEN -- THAT HAVE COME OUT.

18,000 TOTALLY.

TOTAL CHILDREN, OF WHICH THEY ARE, NOW, SAYING 1200 ARE IN RESIDENTIAL TREATMENT CENTERS. WHAT LED TO THE ADOPTION OF THE STATUTE AND THE -- WAS, OF COURSE, THE SUN SENTINEL SERIES, THAT SHOWED THAT MANY OF THESE CHILDREN THAT WERE IN LOCKED PLACEMENTS DIDN'T NEED TO BE THERE. THERE WAS NO MEDICALLY DEFENSIBLE REASON FOR THEM TO BE PLACED THERE, SO THAT IS BEFORE THIS COURT.

HOW DOES IT HAPPEN THAT A GUARDIAN AD LITEM WOULD NOT BE APPOINTED?

THERE WEREN'T AREN'T ENOUGH VOLUNTEERS TO LOOK OVER WHAT IS HAPPENING WITH THE PAID CASE WORKERS. VOLUNTEERS, THEMSELVES, THE FRONT LINE GUARDIANS, ARE VOLUNTEERS. THEY ARE SUPERVISED BY PAID STAFF. THERE MAY OR MAY NOT BE A PROGRAM ATTORNEY, AND I WOULD CAUTION, IF WE LOOK AT THE BIG PICTURE, THAT YOU CANNOT COUNT ON THE GUARDIANS AD LITEM TO DEFEND THE INTERESTS OF THE CHILD. THEIR ROLE, ORIGINALLY, IS TO MAKE SURE THAT SERVICES THAT ARE NEEDED ARE PROVIDED, BUT THE CURRENT BUDGET RECOMMENDATIONS OF OUR GOVERNOR DOESN'T INCLUDE A SINGLE PENNY FOR THE GUARDIAN AD LITEM PROGRAM.

YOU HAVE A STATUTE. IF THE STATUTE IS NOT FOLLOWED, WHAT HAPPENS?

WHAT HAPPENS, REALISTICALLY, THE COURT LOOSE AROUND AND SAYS, WELL, I DON'T HAVE A VOLUNTEER GUARDIAN. I HAVE BEEN ADVISED BY THE PROGRAM THERE ISN'T ONE, OR IF THE CHILD'S PARENTAL RIGHTS ARE TERMINATED, EVEN IF THERE HAS BEEN ONE, TYPICALLY THAT GUARDIAN HAS BEEN PULLED AND ASSIGNED TO ANOTHER CHILD, SO THAT WOULD BE THE CHILD, MANY TIMES, THAT WE WOULD BE TALKING ABOUT, THAT WOULD BE MOST LIKELY TO BE PUT IN A RESIDENTIAL TREATMENT CENTER. THE CASES GO RIGHT ON. THE JUDGES DON'T STOP

THE CASES AND SAY WE ARE NOT GOING TO DO ANYTHING, UNTIL THIS CHILD HAS A GUARDIAN AD LITEM. YOU HAVE THE DEPARTMENT, THE DEPARTMENT'S ATTORNEYS, THE PARENTS, THE PARENTS' ATTORNEYS. AND THEY JUST KIND OF DO THEIR THING, BACK AND FORTH, AS TO WHEN THE PARENT IS GOING TO HAVE VISITATION OR, TO FOR UNIFICATION IS EVER GOING TO MANY -- TO HAPPEN, OR THE GUARDIAN IS APPOINTED, BUT UP UNTIL THAT POINT THE CHILD HAS NO REPRESENTATION.

FOR CHILDREN THAT ARE GOING TO BE COMMITTED TO A LOCKED RESIDENTIAL FACILITY, FIRST OF ALL, DO YOU HAVE THE PROFILE THAT JUSTICE QUINCE TALKED ABOUT? ARE THEY CHILDREN OVER THE AGE OF TEN TO 17, VERSUS THE YOUNG CHILDREN, ARE THEY CHILDREN WHOSE PARENTS' RIGHTS HAVE, ALREADY, BEEN TERMINATED? DO WE HAVE ANY INFORMATION ABOUT THE PROFILE OF THESE CHILDREN?

THE DEPARTMENT DOES NOT REGULARLY TRACK THE DATA IN THAT FORMAT. I CAN TELL YOU THAT MANY OF THE CHILDREN THAT ARE PLACED IN THESE FACILITIES, HISTORICALLY HAVE BEEN PLACED THERE, EVEN IN PARENTAL RIGHTS HAVE NOT BEEN TERMINATED. THERE WAS THE CASE OF KARINA, REPRESENTED IN OUR PAPERS.

JUSTICE WELLS ASKED SOME QUESTIONS. WE, NOW, HAVE A STATUTE THAT BOTH PARENTS HAVE ATTORNEYS. WE THEORETICALLY HAVE THE GUARDIAN AD LITEM, AND I THINK THE COURT IS TRYING TO UNDERSTAND, IN THE REAL WORLD, WHY DOESN'T THAT SUFFICE, TO GIVE THIS CHILD A VOICE AS TO WHETHER HE OR SHE SHOULD OR SHOULDN'T BE IN LOCKED RESIDENTIAL MENTAL HEALTH FACILITY.

BECAUSE GENERALLY, IN THAT SITUATION THAT WE ARE TALKING ABOUT, WHERE PARENTAL RIGHTS HAVE NOT BEEN TERMINATED, THERE IS NOT ALWAYS ADVANCE NOTICE TO THE PARENTS OF WHAT IS HAPING TO THE CHILD. THE DEPARTMENT HAS NO OBLIGATION AND HAS NOT, GENERALLY, ADVISED THE PARENTS OR THEIR ATTORNEYS, THAT THEY ARE GOING TO PUT THE CHILD ANYWHERE. THEY IGNORE THE REQUIREMENTS THAT YOUR HONOR REFERRED TO, THAT THERE BE A COURT APPROVAL OF A GOAL CHANGES, PRIOR TO THE CHANGE IN PLACEMENT. THERE IS NO NOTICE GIVEN. THE PARENT MAY OR MAY NOT FIND OUT ABOUT THE CHANGE IN PLACEMENT OR THE COMMITMENT, AND THE DEPARTMENT, QUITE FRANKLY, HISTORICALLY HAS MADE IT CLEAR THEY DON'T CARE WHAT THE PARENTS THINK ABOUT WHETHER A CHILD SHOULD BE IN A LOCKED FACILITY OR NOT.

BUT WOULDN'T THAT HELP, THEN, IN THIS SITUATION, IF YOU HAD TO LOOK AND SAY, IS IT -- MAYBE ONE ISN'T MORE IMPORTANT THAN THE OTHER, BUT THAT NOTICE PRIOR TO THE COMMITMENT AND THE NOTICE TO THE PARTIES IS AN OPPORTUNITY TO BE HEARD BEFORE THE COMMITMENT, AND IF THE PARTIES ARE, ALSO, THE PARENTS, THAT, AT LEAST, WOULD GO SOME WAY IN ALLEVIATING WHAT YOU SEE AS A PROBLEM.

I DON'T THINK THAT WOULD PROTECT THE CHILD, YOUR HONOR, BECAUSE EVEN IF THE PARENTS WERE AROUND AND WERE GIVEN NOTICE, THEY ARE, TO SOME DEGREE, SUBJECT TO TRYING TO MAKE THE DEPARTMENT HAPPY, AND ALL THE INCENTIVES ARE FOR THE PARENTS NOT TO MAKE WAVES. THE CHILD HAS A LEGAL RIGHT TO HIS OR HER OWN ATTORNEY ADVOCATE. IDEALLY, THE CHILD WOULD, ALSO, HAVE A GUARDIAN AD LITEM, TO MAKE SURE THAT SERVICES WERE BEING PROVIDED. REALLY IDEALLY, THE SYSTEM WOULD WORK GREAT WITHOUT NEEDING GUARDIAN AD LITEMS OR ATTORNEYS. BUT THE FACT IS THAT THE RECORDS BEFORE THE COURT REFLECT THAT THE SYSTEM DOESN'T WORK AS WE WOULD ALL WANT. THE SYSTEM, EVEN WITH PARENTS HAVING --

YOUR TIME IS UP.

YES, YOUR HONOR, IF I CAN JUST FINISH MY SENTENCE, THE COURT'S INDULGENCE. THE SYSTEM

HAS NOT PROTECTED THE RIGHTS OF THE CHILDREN, AND THIS COURT HAS A TRACK RECORD THAT RECOGNIZES THE CONSTITUTIONAL RIGHTS OF THE CHILDREN, WHERE PRIVACY INTERESTS ARE RECOGNIZED. WE APPRECIATE USUAL ATTENTION TO THIS ISSUE AND WOULD SUGGEST THAT IT IS TIME. IT IS RIGHT AND IT IS JUST FOR, ONCE AND FOR ALL, THE ATTORNEY RIGHT FOR CHILDREN IN THIS LIMITED SITUATION, TO BE MADE MANDATORY AND THAT PRO BONO ATTORNEYS WILL BE FOUND, IF THEY ARE NOT OTHERWISE AVAILABLE.

THANK YOU.

MS. KRAMER.

YES, YOUR HONOR. JUST BRIEFLY, I WOULD LIKE TO SUM UP ON THE ISSUE OF APPOINTMENT OF LEGAL COUNSEL.

MS. KRAMER, WOULD YOU ADDRESS JUST THIS ONE AREA THAT I HIM HAVING SOME CONCERN WITH, AND THAT IS WE HAVE A SYSTEM THAT IS DEPENDENT, TO A GREAT EXTENT, UPON A YARD GUARDIAN AD LITEM KIND OF -- UPON A GUARDIAN AD LITEM KIND OF APPROACH. WE ARE HEARING, THIS MORNING, THAT THAT IS NOT WORKING AND MAY BEFALLING SHORT IN MANY RESPECTS. HOW DO YOU PERCEIVE A RELATIONSHIP, IF ANY, BETWEEN THE APPOINTMENT OF COUNSEL AND THE GUARDIAN AD LITEM CONCEPT? IS THIS SOMETHING THAT WOULD ENHANCE? IS IT SOMETHING THAT WOULD AND NEGATIVE? IS IT SOMETHING THAT WOULD JUST PEANUTRAL? IS IT SOMETHING IN ADDITION? DOES IT HAVE ANY IMPACT UPON PROVIDING GUARDIAN AD LITEMS WITHIN THE SYSTEM?

THAT IS A DECISION THAT HAS BEEN GRAPPLED WITH LAST YEAR BY THE LEGISLATURE, AND, AGAIN, THIS YEAR, THEY WILL BE GRAPPLING WITH THAT THE. THE GUARDIAN AD LITEM PROGRAM HAS BEEN BEEN UNDER-FUNDED, AND IT HAS BEEN -- HAS BEEN UNDER-FUNDED, AND IT HAS BEEN DIFFICULT FOR THEM TO MOVE FORWARD. GUARDIAN AD LITEMS ARE REQUIRED IN, ONE, AND NOW TWO SPECIFIC AREAS, FOR TERMINATION OF PARENTAL RIGHTS AND, NOW, FOR COMMITMENT OF A CHILD TO A RESIDENTIAL TREATMENT CENTER. IN THE LEGISLATURE SETTING FORWARD THAT THOSE ARE THE TWO PRIORITY AREAS IN WHICH GUARDIANS CAN BE PLACED, THE GUARDIAN AD LITEM PROGRAMS CAN, NOW, PRIORITIZE THEIR CASE POINTS TO ENSURE. IN FACT, THE STATUTE SAYS THAT A CHILD CANNOT BE PLACED IN A RESIDENTIAL TREATMENT CENTER, UNLESS A GUARDIAN AD LITEM HAS BEEN APPOINTED FOR THAT CHILD, SO, FOR A -- THE DEPARTMENT OR THE STATE OF FLORIDA TO PLACE THAT CHILD, PRIOR TO APPOINTMENT OF A GUARDIAN AD LITEM, WOULD BE TOTALLY AND COMPLETELY CONTRARY TO THE STATUTES, SO THAT IS A PRECURSOR. IF WE ARE APPOINTING ATTORNEYS FOR CHILDREN, WE ARE GOING TO BE DRAWING OFF FUNDS THAT ARE CURRENTLY AVAILABLE TO THE GUARDIAN AD LITEM PROGRAM. THE STATE OF FLORIDA CANNOT BEAR THE COSTS OF BOTH SYSTEMS, AND THE QUESTION IS WHICH IS THE MOST APPROPRIATE FOR THE CHILD'S BEST INTERESTS, OR THE CHILD, BEING A JUVENILE WHO DOESN'T UNDERSTAND THE COMPLEXITIES OF LIFE, FOR THEIR DESIRES TO BE REPRESENTED.

WHAT IS THERE IN THE RECORD THAT SAYS THAT THE STATE OF FLORIDA CANNOT -- WHAT COSTS -- DO WE KNOW WHAT COSTS WE ARE TALKING ABOUT, IN THAT THE STATE OF FLORIDA CANNOT --

I DON'T HAVE THE FUNDING FIGURES HERE RIGHT NOW, BUT LAST YEAR THE LEGISLATURE GRAPPLED WITH THIS ISSUE. IN FACT LEGISLATION WAS BEFORE THEM, TO HAVE ATTORNEYS APPOINTED ACROSS THE STATE, IN DEPENDENCY HEARINGS, AND THEY SPECIFICALLY SAID, YOU KNOW, NO, THAT WOULD BE AN IMPOSSIBLE BURDEN. THEY STEPPED BACK. THEY DEVELOPED A PILOT PROGRAM, WHICH GAVE THE COURT THE DISCRETION. DID NOT MANDATE IT FOR EVERY CHILD. GAVE THE COURT THE DISCRETION TO APPOINT LEGAL COUNSEL FOR CHILDREN, AND THAT IS A THREE-YEAR TRIAL PROGRAM THAT WE DO NOT HAVE THE RESULTS OF YET.

BUT YOU ARE TALKING ABOUT A BROAD --

WITH THE IMPRESSION THAT ALTHOUGH THE STATUTE SAYS ONE THING, BECAUSE IT IS A VOLUNTARY SYSTEM AND YOU CAN'T GET THESE GUARDIAN ADD LIGHT ELMS, THE SYSTEM ROLLS ON -- AD LITEMS, THE SYSTEM ROLLS ON. NEVERTHELESS. AND SO YOU COULD END UP WITH A CHILD NOT BEING REPRESENTED BY A GUARDIAN AD LITEM. IS THIS -- AM I MISSING SOMETHING THERE?

ACTUALLY, YES, YOUR HONOR. THE STATUTE SPECIFICALLY STATES THAT THE CHILD CANNOT BE PLACED, UNLESS THE CHILD HAS A GUARDIAN AD LITEM APPOINTED.

I UNDERSTAND WHAT THE STATUTE SAYS, BUT AS A TRACK PRACKCAL --

THE GUARDIAN AD LITEM PROGRAM, ALTHOUGH IT UTILIZES VOLUNTEERS TO REPRESENT, THE -- BUT AS A PRACTICAL --

THE GUARDIAN AD LITEM PROGRAM, ALTHOUGH IT UTILIZES VOLUNTEERS TO REPRESENT, THE STAFF, ITSELF, CAN BE A GUARDIAN AD LITEM FOR THE CHILD, SO EVEN THOUGH IT IS NOT A VOLUNTEER, THE STAFF MEMBER, THEN, WOULD HAVE TO FUNCTION AS GUARDIAN AD LITEM FOR THE CHILD THAT IS BEING PLACED IN A RESIDENTIAL TREATMENT PROGRAM, SO THE CHILD WOULD NOT GO UNREPRESENTED. IN FACT THAT WAS THE CRUX OF THE MW CASE. THIS COURT, ITSELF, POINTED OUT THAT THE CHILD, IN MW, WAS REPRESENTED BY LEGAL COUNSEL. THAT CHILD HAD SOMEONE TO REPRESENT THEIR LEGAL INTERESTS, BUT THAT FAILED THAT CHILD. THE CHILD DID NOT HAVE A GUARDIAN AD LITEM, AND THIS COURT, AND I QUOTE THIS COURT IN SAYING, OF PARAMOUNT CONCERN IS THE QUESTION OF WHETHER MW PERCEIVED THAT ANYONE HAD HIS BEST INTERESTS AT HEART, WHEN HE WAS PLACED, AGAINST HIS WISHES, IN A LOCKED PSYCHIATRIC FACILITY, WITHOUT THE OPPORTUNITY TO BE HEARD. IN FACT, THIS COURT SPECIFICALLY STATED AND QUESTIONED THE ISSUE IN THE OPINION ON MW, OF WHETHER OR NOT THAT ATTORNEY WAS TRULY DOING WHAT WAS RIGHT BY THAT CHILD, BECAUSE THAT ATTORNEY FAILED TO RELINQUISH OR REQUEST THIS COURT TO RELINQUISH JURISDICTION, IN ORDER TO GO BACK AND ATTEMPT TO GET THAT CHILD OUT OF RESIDENTIAL TREATMENT.

MS. KRAMER, I THINK YOUR TIME IS UP. THANK YOU VERY MUCH. WE APPRECIATE COUNSEL, ALL COUNSELS' INTERESTS IN THIS MATTER, AND THE COURT TAKES IT UNDER ADVISEMENT. I WOULD LIKE TO TICKLARLY RECOGNIZE THAT WE HAVE A -- PARTICULARLY RECOGNIZE THAT WE HAVE A CLASS OF STUDENTS FROM SAND ELWOOD HIGH SCHOOL IN JACKSONVILLE, WHO ARE JOINING US FOR ORAL ARGUMENT THIS MORNING. I HAD THE GREAT PLEASURE OF BEING AT SANDALWOOD HIGH SCHOOL IN JANUARY, AND I AM DOUBLY HAPPY THAT EACH OF YOU COULD COME AND JOIN US THIS MORNING, AND WE ARE GOING TO, NOW, TAKE OUR MORNING RECESS, THOUGH, FOR 15 MINUTES. THE COURT WILL BE IN RECESS. THE MARSHAL: PLEASE RISE.