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## **Media General Convergence, Inc. v. Chief Judge of the Thirteenth Judicial Circuit**

NEXT CASE ON THE COURT'S ORAL ARGUMENT CALENDAR IS MEDIA GENERAL VERSUS CHIEF JUDGE. MR. MARSHAL, IT IS MY UNDERSTANDING THAT THE WAY WE ARE GOING TO GO FORWARD HERE IS THAT THE PETITIONERS WHO ARE REPRESENTED, BOTH, BY MR. THOMAS MR. McGUIRE AND MR. WARNER, HAVE DIVIDED THEIR TIME, AND MR. THOMAS WILL HAVE EIGHT MINUTES TO BEGIN WITH AND THEN MR. WARNER WILL FOLLOW HIM. IS THAT CORRECT?

THAT'S CORRECT, YOUR HONOR. MR. CHIEF JUSTICE

YOU MAY PROCEED.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. GREGG THOMAS OF HOLLAND & KNIGHT ALONG WITH MY PARTNER JIM McGUIRE, REPRESENTING MEDIA GENERAL OPERATIONS, THE OWNERS OF THE TAMPA TRIBUNE AND WFLATV. THIS PREVENTS THE COURT WITH CRITICAL ISSUES REGARDING JUDICIAL RECORDS, THE EXEMPTIONS THAT APPLY TO JUDICIAL RECORDS, AND THE PROCEDURES AVAILABLE TO GAIN ACCESS TO JUDICIAL RECORDS. INTERESTINGLY, THIS CASE INVOLVES PUBLIC OFFICIALS, PUBLIC ACCESS, AND PUBLIC SCRUTINY, THREE VERY IMPORTANT VALUES.

WHEN YOU MAKE YOUR ARGUMENT, WOULD YOU PLEASE DISTINGUISH BETWEEN THE JUDGE WARD RECORDS THAT HAVE TO DO WITH THE INVESTIGATION OF THE COMPLAINT, AND WHAT, THIS GENERALIZED SECONDARY 3-8-2000 REQUEST THAT BROADLY SOUGHT ALL THE FRATERNIZATION RECORDS AND SOCIAL CONTACT BETWEEN JUDGES.

YES, YOUR HONOR. AS EARLY AS OCTOBER 1999, THE TRIBUNE, BY ITSELF, MADE A REQUEST TO THE CHIEF JUDGE FOR INFORMATION ABOUT COMPLAINTS OF SEXUAL HARASSMENT MADE AGAINST JUDGE WARD. THOSE ARE THE JUDGE WARD RECORDS. THERE ARE FOLLOW-UP JUDGE WARD REQUESTS THAT ASK FOR EMAILS, CORRESPONDENCE, BROADEN THE REQUEST, AND THOSE OCCUR IN MARCH OF 2000. IN THE SAME MONTH, IN MARCH, THERE WERE REQUESTS FOR JUDICIAL RECORDS THAT WERE MADE OR RECEIVED BY THE CHIEF JUDGE, CONCERNING FRAT SAINTION, ROMANTIC -- FRATERNIZATION, ROMANTIC RELATIONSHIPS OR SEXUAL CONDUCT BETWEEN 13 CIRCUIT COURT JUDGES AND OTHER COURT PERSONNEL THAT IS THE SHERIFFS OFFICE AND OTHER.

THAT IS FOR ANY JUDGE AND ANY COUNTY PERSONNEL, ANY RECORDS ABOUT SOCIAL RELATIONSHIPS.

FRATERNIZATION, ROMANTIC RELATIONSHIPS OR SEXUAL CONDUCT BETWEEN CIRCUIT JUDGES AND OTHERS. YOUR HONOR, IT WAS A BROAD REQUEST, AND I THINK, IN RESPONSE TO IT, WE GOT A STRAIGHT DENIAL. THERE WAS NO EFFORT TO COME BACK TO US AND SAY WHAT DO YOU REALLY WANT? IS THERE A LIMITATION HERE? ARE THERE SOME THINGS THAT YOU CAN NARROW IN AND PROVIDE US. BUT, YOUR HONOR, INTERESTINGLY, THE RULE THAT THIS COURT ADOPTED 2.051, DEFINES JUDICIAL RECORDS VERY BROADLY. IT SAYS THAT THEY ARE ALL RECORDS THAT ARE MADE OR RECEIVED, PURSUANT TO COURT RULE OR ORDINANCE OR IN CONNECTION OF A TRANSACTION WITH ANY BUSINESS BETWEEN ANY COURT OR COURT AGENCY.

IF FRATERNIZATION RECORDS EXIST, REALLY, ARE NOT JUDICIAL RECORDS. YOU ARE REQUESTING THOSE UNDER SOME OTHER CATEGORY?

NO, YOUR HONOR. THEY ARE JUDICIAL RECORDS. THEY ARE THE RECORDS THAT, IN, WE DIDN'T ASK EVERY JUDGE ABOUT THIS, AND THE EXAMPLE GIVEN ABOUT A NOTE OR A CARD BETWEEN JUDGES, THESE WERE JUDGES THAT RESIDED IN THE CHIEF JUDGE. THE CHIEF ADMINISTRATIVE OFFICER IN THE COURT, WHO WAS THERE IN HIS CAPACITY AS WE KNOW FROM THE WARD RECORDS, TO RESOLVE DISPUTES BETWEEN JUDGES.

FOR EXAMPLE, THEN, A NOTE BETWEEN ONE JUDGE TO SOMEONE ELSE'S SECRETARY, SAYING LET'S MEET AT THREE O'CLOCK, WOULD YOU CONSIDER THAT A FRATERNIZATION RECORD?

RIGHT. NO, YOUR HONOR, BECAUSE OF THE PERSON WE MADE THE REQUEST TO. IF I WAS JUDGE A AND SENT A NOTE TO MY JUDICIAL ASSISTANT SAYING LET'S GO TO THE BAR B TONIGHT, IT IS NOT A JUDICIAL RECORD THAT WE WANTED. WE ONLY WANTED THOSE RECORDS THAT ENDED UP WITH THE CHIEF JUDGE. WE NEVER WANTED ALL THE COMMUNICATION BETWEEN JUDGES AND OTHER PERSONNEL.

BUT THEY WERE RECEIVED BY THE CHIEF JUDGE'S OFFICE. SO SOMEONE SENDS A GENERAL EMAIL AROUND, LET'S ALL GET TOGETHER AT SOMEBODY'S HOUSE ON SUNDAY, THAT IS, THAT SECOND REQUEST IS -- I DON'T MEAN TO DETRACT FROM YOUR ARGUMENT, I JUST WANT TO MAKE SURE, WHEN WE'D ARE LOOKING AT WHAT IS INVOLVED IN THIS CASE THAT IS SEEMS LIKE THAT -- THAT IT SEEMS LIKE YOU WENT FROM THE SPECIFIC TO THE BROADEST, AND THERE IS -- MAKE A DISTINCTION.

YOUR HONOR, ILL CANDIDLY ADMIT THE SECOND REQUEST WAS MUCH BROADER THAN THE FIRST, BUT IT WAS REALLY TO CAPTURE MATTERS THAT THE CHIEF JUDGE WAS HANDLING IN, AS A CHIEF JUDGE, NOT IDLE CONVERSATION BETWEEN MEMBERS OF THE COURT AND OTHER PERSONNEL.

TO ORG NOOITION -- TO ORG THIGHS -- TO ORGANIZE THIS IN TERMS THAT WE HAVE TO LOOK AT IT WOULD YOU EXPRESS THE DIFFERENCE BETWEEN THE RECORDS OF THE CHIEF JUDGE AND WHAT OTHER JUDGES WOULD HAVE? I THINK THAT WILL HELP US IN TERMS OF GIVING A FRAMEWORK.

YES, YOUR HONOR. IN OCTOBER THERE WAS SOME INDICATION THAT THERE WAS SOME SEXUAL HARASSMENT BY JUDGE WARD INVOLVING COURT PERSONNEL. IN FACT, FROM THE RECORDS WE KNOW, ALTHOUGH NOT DELIVERED BY THE CHIEF JUDGE HERE, WAS THAT THERE WERE CERTAIN EMAILS THAT THE JUDGE HAD SENT TO JUDICIAL HAD SENT TO JUDICIAL ASSISTANTS AND THEN -- HAD SENT TO JUDICIAL ASSISTANTS AND THEN LATER CONTACT WITH OTHER JUDGES OR THE CHIEF JUSTICE. WE HE KNOW, BECAUSE WE GOT THE RECORDS -- WE KNOW, BECAUSE WE GOT THE RECORDS AFTER THE JQC AND PROBABLE CAUSE HEARING. WE BELIEVE THOSE ARE CHIEF JUDGE RECORDS, BECAUSE IT WAS APPARENT THE CHIEF JUDGE WAS ACTING, IN HIS ADMINISTRATIVE ROLE, TO TRY TO RESOLVE THE DISPUTE THAT OCCURRED BETWEEN THAT JUDGE AND THE OTHER PEOPLE IN THE COURTHOUSE. WE THINK, CLEARLY, THOSE RECORDS SET WITHIN THE DEFINITION THAT THIS COURT HAS ENUNCIATEED IN 2.051 FOR JUDICIAL RECORDS AND CERTAINLY MEETS ARTICLE I, SECTION 24 OF THE CONSTITUTION, WHICH HAPPENED IN 1992, AND BROADENED THE DEFINITION. WE DON'T THINK THERE ARE ANY EXEMPTIONS THAT APPLY TO THOSE RECORDS. CERTAINLY 2.051 --

NO EXEMPTIONS? SHOULD THERE BE A NOTE THAT COMES IN TO THE CHIEF JUDGE, AS AN ADMINISTRATIVE JUDGE, THAT JUDGE X, I BELIEVE, IS DOING, IS HAVING AN IMPROPER RELATIONSHIP WITH A JA, IN SUCH-AND-SUCH AN OFFICE. UNFOUNDED. HE GETS THIS IN ANONYMOUSLY. IS THIS SUBJECT, IS THIS THE KIND OF THING YOU ARE TALKING ABOUT?

YES, YOUR HONOR. I BELIEVE THAT WE ARE ENTITLED TO THAT RECORD, AND I DON'T BELIEVETHAT THERE IS A EXEMPTION THAT IS APPLICABLE TO THAT. NOW, IF WE WERE TALKING

ABOUT A JQC PROCEEDING, BEFORE PROBABLE CAUSE WAS FOUND, THEN WE WOULD CERTAINLY HAVE A RULE LIKE THAT, BUT I DON'T THINK THERE IS A EXEMPTION THAT SPECIFICALLY IS APPLICABLE TO THIS CIRCUMSTANCE.

HOW ABOUT TAKING --

BUT THIS CAN BE PRETTY DAMAGING TO THIS JUDGE, IF THERE IS A PAPER THAT THIN THEN -- THAT THEN TAKES THAT AND RUNS WITH IT AND IT IS ANONYMOUS SOMETHING OR OTHER THAT SOMEBODY SENDS IN.

YOUR HONOR, PUBLIC OFFICIALS ARE PUT IN AN UNIQUE CIRCUMSTANCE. THIS RULE APPLIES EVERYDAY TO PUBLIC OFFICIALS THROUGHOUT THE STATE OF FLORIDA. WE HAVE LIVED WITH IT WITH REGARD TO NONJUDICIAL OFFICIALS SINCE 1967, AND WE BELIEVE THAT IT WORKS PRETTY WELL THAT, THOSE MATTERS THAT ARE, DO NOT HARM THE JUDICIARY, DO NOT HARM PUBLIC OFFICIALS.

HOW ABOUT TAKING ON THE RATIONALE OF THE MAJORITY OF THE SECOND DISTRICT? SPECIFICALLY INSOFAR AS THE REASONS THAT THEY SET OUT.

YOUR HONOR, THEY HE NEWS ANNUNCIATEED -- THEY ENUNCIATED EXEMPTIONS. FIRST OF ALL THEY SAID THERE WEREN'T EXEMPTIONS. I THINK THAT IS CONCEDED BY RESPONDENT THAT THERE CERTAINLY WERE JUDICIAL RECORDS. THE SECOND WITH REGARD TO MANUALS WITH REGARD TO SEXUAL HARASSMENT POLICIES, SOME OF WHICH WERE ARTICULATED BY THIS COURT IN ADMINISTRATIVE RULE AND SOME OF WHICH ARE IN WORKBOOKS ARTICULATED BY THE JUDGE, HIMSELF. WE THINK, CERTAINLY, UNLESS THIS COURT PASSES A RULE PURSUANT TO ITS RULE-MAKING ABILITIES, THOSE WORKBOOKS AND ENUNCIATEED ORDER ARE NOT APPLICABLE. WE THINK THEY JUST DON'T COME WITHIN THE CONFINES, AND THE ONLY TIME AN AMENDMENT CAN BE MADE IS BY THIS COURT, FOLLOWING ITS RULE-MAKING AUTHORITY. CHIEF CHEF CHIEF YOU ARE ARE IN YOUR RE-- MR. CHIEF JUSTICE

YOU ARE IN YOUR REBUTTAL.

YES, YOUR HONOR. MR. CHIEF JUSTICE

THANK YOU. MR. WARNER.

MAY IT PLEASE THE COURT. TOM WARNER, SOLICITOR GENERAL OF FLORIDA, SPEAKING ON BEHALF ROBERT BUTTERWORTH ATTORNEY GENERAL IN THE STATE OF FLORIDA. I HOPE TO COVER AT LEAST THREE POINTS WITH YOU THIS MORNING, DURING MY ORAL ARGUMENT. THE FIRST QUESTION THAT I WANT TO RAISE WITH YOU IS THE FACT THAT THE CERTIFIED QUESTION IN THIS CASE DOES NOT FAIRLY REPRESENT OR ACCURATELY REFLECT EITHER THE CIRCUMSTANCES OR THE LEGAL ISSUES IN THIS CASE. I BELIEVE THAT THE SECOND DCA FRAMED THE QUESTION TO YOU, ALONG THE LINES OF UNDER WHAT CIRCUMSTANCES ARE DOCUMENTS REFLECTING SOCIAL, ROMANTIC OR SEXUAL RELATIONSHIPS OF JUDGES SUBJECT TO DISCLOSURE? THE PROPER QUESTION HERE, BEFORE THE COURT, BASED UPON WHAT WAS INVOLVED IN THIS CASE, ARE DOCUMENTS MADE OR RECEIVED BY THE CHIEF JUDGE IN CONNECTION WITH HIS INVESTIGATION OF IMPROPRIETIES AT THE COURTHOUSE BETWEEN JUDGES AND COURTHOUSE PERSONNEL, SUBJECT TO DISCLOSURE? AND I THINK WHEN THE QUESTION IS PROPERLY PUT TO YOU AND IT IS APPLIED TO THE FACTS OF THIS CASE, THE ANSWER IS YES. THESE ARE PUBLIC RECORDS.

SO YOU, ON THIS, THE BROAD SECOND REQUEST THAT SOUGHT ANY FRATERNIZATION RECORDS THAT MIGHT HAVE MADE THEIR WAY INTO THE CHIEF JUDGE'S OFFICE, YOU WOULD, YOU WOULDN'T DEAL WITH THAT PARTICULAR REQUEST? BECAUSE WE DON'T EVEN KNOW WHAT THOSE ARE, SINCE THEY WERE NEVER RESPONDED TO. HOW WOULD YOU --

RIGHT. I DON'T THINK THAT IS THE ISSUE IN THIS PARTICULAR CASE. I THINK THAT THE PROBLEM IN THIS CASE IS THE CHIEF JUDGE HAS ADMITTED THAT HE WENT OUT AND INVESTIGATED AND ACCUMULATED THESE DOCUMENTS, AND THAT WAS WHAT WAS REQUESTED. I THINK IT IS A FAIR QUESTION THAT WAS PRESENTED HERE, JUST A MINUTE AGO, ABOUT WHETHER THIS REQUEST WAS TOO BROAD. IT MAY HAVE BEEN TOO BROAD, BUT THE CHIEF JUDGE DID NOT REJECT THE REQUEST ON THE BASIS THAT IT WAS TOO BROAD. OTHER GOVERNMENT OFFICIALS HAVE DONE THAT, WHERE THE REQUEST IS TOO BROAD, BUT THERE WAS NEVER ANY RAISING OF AN ISSUE HERE THAT THIS REQUEST WAS TOO BROAD.

IF IT COMES TO THE ATTENTION OF THE MEDIA THAT THE CHIEF JUDGE IS MEDIATING A SQUABBLE BETWEEN TWO JUDGES IN HIS CIRCUIT, AND SOMEHOW THE PRESS HEARS ABOUT THIS, WOULD THAT BE SUBJECT TO --

YOUR HONOR, WITH ALL DUE RESPECT, THE QUESTION OF WHETHER THERE OUGHT TO BE AN EXEMPTION FOR CONFIDENTIALITY IS NOT THE SAME QUESTION AS TO WHETHER THERE IS ONE. IF THE CHIEF JUDGE --

BRING THE PARAMETERS OF THIS AND SEE HOW FAR THIS THING GOES.

I THINK, UNDER THE CONSTITUTION OF FLORIDA, IF THE CHIEF JUDGE IS ACTING IN HIS OFFICIAL CAPACITY -- IS ACTING IN HIS OFFICIAL CAPACITY, IN HIS ADMINISTRATIVE CAPACITY, AND HE GENERATES DOCUMENTS, THERE AN EXEMPTION THAT APPLIES? IN THIS PARTICULAR CASE, THERE IS NO EXEMPTION THAT APPLIES TO THE DOCUMENTS THAT HE ACCUMULATED IN CONNECTION WITH HIS INVESTIGATION.

SO IF HE, IF THE CHIEF JUDGE RECEIVED CONTINUED COMPLAINTS ABOUT SOME IMPROPER BEHAVIOR ON THE PART OF A JUDGE AND THE JUDGE DID NOTHING, IF THEY DIDN'T ACTUALLY GO AHEAD AND INVESTIGATE, WOULD THE RECEIPT OF THAT INFORMATION BE SUBJECT TO DISCLOSURE?

I DON'T BELIEVE THAT THE ISSUE IS PRESENTED IN THIS CASE, BUT MY RESPONSE WOULD BE THAT, IF ACHIEVE -- IF A CHIEF JUDGE RECEIVES A DOCUMENT THAT COULD BE CONSTRUED TO CONSTITUTE A COMPLAINT, I THINK THE CHIEF JUDGE COULD FORWARD THAT ON TO THE JQC WITHOUT MAKING COPIES. HE HAS NOW TRANSFERRED A COMPLAINT TO THE JQC.

MAKE THE LINE OF DEMARCATION WHETHER THE CHIEF JUDGE DID WHAT HE OR SHE COULD DO TO INVESTIGATE, WHICH WOULD BE SOMETHING WE THINK OF AS A GOOD THING TO MAKE SURE IT IS A BASELESS OR WHAT YOU WOULD BE SAYING IS, ONCE THEY DID SOMETHING THAT WOULD BE A GOOD THING, THAT WOULD BE, THEN, SUBJECT TO DISCLOSURE, BUT IF THE CHIEF JUDGES SAID, HEY, THIS IS NOT PART OF, I DIDN'T SIGN UP FOR THIS. I DON'T CARE WHAT CHIEF, WHAT JUDGE A IS DOING WITH YOU KNOW, BAILIFFS AFTER HOURS AND DOESN'T DO ANYTHING, THEN YOU ARE SAYING THAT WOULDN'T BE SUBJECT TO, IF THE CHIEF JUDGE KNEW ABOUT IT, THAT WOULDN'T BE SOMETHING THAT WOULD BE A RECORD?

I THINK THAT ANYTHING THAT THE CHIEF JUDGE DOES IN HIS CAPACITY AS CHIEF JUDGE, TO GENERATOR RECEIVE RECORDS IN CONNECTION WITH THE BUSINESS OF THE COURT, ARE PUBLIC RECORDS. THE QUESTION, THEN, BECOMES IS THERE AN EXEMPTION. AND THAT IS WHAT SQUARELY IS PRESENTED IN THIS CASE, AND IN THIS CASE, THERE IS NO EXEMPTION. THE SECOND DCA ATTEMPTED TO SHOE HORN THIS INTO A CIVIL RIGHTS COMPLAINT. IT DOESN'T FIT. THE CHIEF JUDGE, IN HIS BRIEF, ESSENTIALLY REJECTED THE SECOND DCA'S REASONING HERE AND ATTEMPTED TO COME UP WITH SOME OTHER BASIS, THAN IS A POINT THAT I WOULD LIKE TO MAKE WITH YOU, THAT THE RULES THAT HE IS CITING THERE REFERS TO COURT RECORDS. THE POWER OF THE COURT TO PROVIDE FOR SOME CONFIDENTIALITY OF COURT RECORDS. COURT RECORDS HAS A SPECIFIC DEFINITION WITHIN THE RULES OF JUDICIAL ADMINISTRATION, AND RULE 2.075, AND COURT RECORDS MEANS THE CONTENTS OF A COURT FILE, DEPOSITIONS FILED

WITH THE CLERK, TRANSCRIPTS, EXHIBITS, IN THE CUSTODY OF THE CLERK, ELECTRONIC, VIDEO AND STENOGRAPHIC TAPES OF DEPOSITIONS OR OTHER PROCEEDINGS. THAT IS THE MEANING OF COURT RECORD, WITHIN THE RULES OF JUDICIAL ADMINISTRATION.

YOU KNOW, I AM STARTING TO BECOME CONCERNED ABOUT THIS NOTION, AS FAR AS HOW FAR THE CHIEF JUDGE'S RESPONSIBILITY GOES, BECAUSE YOU SAID, JUST A MOMENT AGO, THAT, REALLY, WHAT, IF IT WAS AN IMPROPER ACTION ON, OR A POTENTIAL IMPROPER ACTION ON THE PART OF THE JUDGE, MAYBE THE BETTER COURSE WOULD BE FOR THE CHIEF JUDGE TO ACTUALLY REFER IT ON TO THE JQC, AND THERE ARE ACTUAL SPECIFIED EXEMPTIONS THE JQC HAS, WITH REGARD TO THOSE RECORDS, THAT WILL PROTECT THEIR INVESTIGATION OF IT, UNTIL THERE IS PROBABLE CAUSE FOUND, WHICH TAKES CARE OF WHAT JUSTICE SHAW WAS SAYING WAS HIS CONCERN THAT MAYBE CHIEF JUDGES SHOULDN'T BE THE ONES GETTING THIS TYPE OF COMPLAINT.

LET ME BE VERY CAREFUL ABOUT THE DISTINCTION THERE. WHAT I SAID WAS THAT, IF THE CHIEF JUDGE RECEIVES A DOCUMENT THAT COULD BE CONSTRUED TO BE A COMPLAINT, I THINK THE CHIEF JUDGE COULD FORWARD THAT ON TO THE JQC, BUT IF THE CHIEF JUDGE GOES OUT AND INVESTIGATES AND ACCUMULATES INFORMATION AND DOCUMENTS, AS THE CHIEF JUDGE, THEY ARE PUBLIC RECORDS, AND THE QUESTION IS WHAT DO YOU DO WITH THEM THEN. WHETHER THE CHIEF JUDGE SHOULD DO THAT OR NOT, THE CHIEF JUDGE, IN FACT, DID DO THAT, AND I THINK IT RAISES THE OTHER QUESTION, AND THE REASON THAT THE STATE OF FLORIDA IS HERE, AGAIN, BECAUSE NOT ONLY THE RESULT ARE WE CONCERNED ABOUT HERE, BUT THE REASONING OF SECOND DCA, TO TRY TO COME UP WITH AN AVOIDANCE OF THE PUBLIC RECORDS ACT, ON THE BASIS THAT THE CHIEF JUDGE HAS NO AUTHORITY TO SUPERVISE ANYBODY, IS THE WRONG MESSAGE TO THE PUBLIC. IT IS THE WRONG MESSAGE TO OTHER LOCAL GOVERNMENT OFFICIALS RESPECT AND IT IS THE WRONG MESSAGE TO THE JUDGES. IN THIS STATE, FIRST OF ALL, IT --

ISN'T IT A PROBLEMATIC SOLUTION TO THAT, TO SAY THAT THE CHIEF JUDGE CAN INSULATE THIS DOCUMENT, BY IMMEDIATELY FORWARDING IT TO THE JQC, BUT IF THE CHIEF JUDGE DOES SOMETHING THAT IS REASONABLE AND GOES AND TRIES TO MEDIATE THIS DISPUTE, THEN THE CHIEF JUDGE COMES AFOUL OF THE PUBLIC RECORDS RULE.

AND SO DOES THE SUPERINTENDENT OF SCHOOLS AND THE COUNTY MANAGER AND EVERY OTHER LOCAL, STATE, AND GOVERNMENT OFFICIAL OF THIS STATE.

BUT DOES THE CHIEF JUDGE COME AFOUL OF THE RULE BECAUSE OF THE MANNER IN WHICH PUBLIC RECORDS IS DEFINED IN THIS RULE?

PUBLIC RECORDS ARE DEFINED IN THE CONSTITUTION AS ANY DOCUMENT MADE OR RECEIVED BY A GOVERNMENT OFFICIAL IN CONNECTION WITH THE OFFICIAL BUSINESS OF THE COURT. THAT IS WHAT THE CONSTITUTION SAYS. AND I THINK, WHETHER IT IS UNCOMFORTABLE OR NOT, THAT IS WHAT THE CONSTITUTION PROVIDES, AND THE CONSTITUTION CLEARLY INDICATES THAT THE COURT IS SUPPOSED TO BE UNDER THE SAME RULES AS ANYBODY ELSE. IF THE CHIEF JUDGE IS ACTING AS A MANAGER, LIKE I SAID, SUBSTITUTE SUPERINTENDENT OF SCHOOLS. COUNTY MANAGER. BUREAU CHIEF. ANY OTHER STATE, COUNTY, OR LOCAL GOVERNMENT OFFICIAL, WE WOULD NOT BE HERE TODAY. YOU HAVE PREVIOUSLY SAID, AND I THINK IT IS THE RIGHT RULE, THAT YOU CAN'T SAY THIS WASN'T PART OF MY OFFICIAL DUTIES, AND THEREFORE IT IS NOT A PUBLIC RECORD. THAT ISSUE HAS BEEN LITIGATED IN THE COURTS OF THIS STATE, AND IT IS THE BAD TIME AND IT IS THE WRONG TIME TO SUDDENLY ANNOUNCE A RULE THAT, IF IT IS NOT A SPECIFIC DUTY OR AN AUTHORITY OF THE CHIEF JUDGE, THAT IS NOT A PUBLIC RECORD. THE CHIEF JUDGE HAS CONCEDED IN THIS CASE THAT THESE ARE PUBLIC RECORDS. AGAIN, IT IS NOT AN ISSUE OF WHETHER IT WAS TOO BROAD. IT IS NOT AN ISSUE OF A PERSONAL BIRTHDAY CARD THAT YOUR DAUGHTER OR YOUR SON MAY SEND YOU. THE QUESTION HERE IS HE ADMITS HE CONDUCTED AN INVESTIGATION, AND THAT IS THE RECORDS THAT WE ARE CONCERNED ABOUT,

THAT ARE SUBJECT TO IT. BUT THE OTHER MESSAGE HERE, IS, ACCORDING TO THE SECOND DISTRICT COURT OF APPEAL, THAT SAID THERE IS NO ONE IN CHARGE OF THE COURTHOUSE, THAT NONIS ACCOUNTABLE -- THAT NO ONE IS ACCOUNTABLE OR RESPONSIBLE FOR WHAT HAPPENS IN THE COURTHOUSE, THAT IS THE PROBLEM PRESENTED BY THIS CASE. WHETHER OR NOT THERE ARE ANONYMOUS ACCUSATIONS AGAINST SOMEBODY THAT MAY BE UNFOUNDED, IF YOU ARE GOING TO TRY TO FASHION SOME SORT OF RULE TO PROTECT AND SHIELD, THEN YOU ARE ALSO PROTECTING AND SHIELDING PEOPLE WHO MAY HAVE DONE SOMETHING WRONG. IF, IN FACT, IT IS A MATTER FOR THE JQC, AS I SAID, IF IT CONSTITUTES A COMPLAINT, IT CAN BE FORWARDED, BUT THE JQ Cs FILES ARE CONFIDENTIAL. THE COMPLAINT IS CONFIDENTIAL.

THERE TENDS TO BE A GAP, BECAUSE, AGAIN, YOU GET THE COMPLAINT. RIGHT NOW, THE FACT IS THAT DOING NOTHING IS GOING TO BE BETTER, BECAUSE IT IS NOT GOING TO BE SUBJECT TO DISCLOSURE, BECAUSE ALL YOU DID WAS RECEIVE IT, THEN THE PROBLEM IS YOU WANT THE CHIEF JUDGE TO DO AT LEAST SOMETHING, ENOUGH THAT, IF THEY THINK THERE IS SOMETHING THAT NEEDS TO BE FURTHER INVESTIGATED THAT THEY SEND IT TO THE JQC, BUT YET THEN IT IS CONFIDENTIAL, BUT SOMEHOWjF THE PART THAT IS THE INITIAL TERMINATION -- DETERMINATION AS TO WHETHER THE THRESHOLD QUESTION IS NOT CONFIDENTIAL, I GUESS, AND MAYBE THERE IS JUST A GAP IN THE CONSTITUTION.

THERE SO NO GAP IN THE CONSTITUTION. THERE IS NO EXEMPTION THAT THIS COURT ENACTED IN ITS 1992 RULE THAT COVERS THIS SITUATION, AND THERE HAS BEEN NO EXEMPTION ENACTED BY THE LEGISLATURE TO COVER THIS. THERE MAY VERY WELL BE OTHER CIRCUMSTANCES WHERE EXEMPTIONS HAVE BEEN ENACTED AND JUSTIFIED, BUT IN THIS PARTICULAR CASE, THERE IS NOT ONE THAT APPLIES TO AND I THINK FOCUSING ON THE WORD "COMPLAINT", AS REGARDS TO, PERHAPS, JUDGE WARD, IS NOT THE APPROPRIATE WAY TO LOOK AT THE SECOND SET OF RECORDS HERE. MR. CHIEF JUSTICE

YOUR TIME IS UP.

THAT THAT IS NOT APPROPRIATE, BECAUSE THOSE ARE NOT EXACTLY A COMPLAINT. THEY ARE DOCUMENTS THAT HE CREATED OR RECEIVED. THANK YOU. MR. CHIEF JUSTICE

THANK YOU, COUNSEL. I UNDERSTAND COUNSEL, MARSHAL, YOU ARE GOING TO GIVE EACH PERSON A RED LIGHT.

WE HAVE WORKED IT OUT, CHIEF JUSTICE.

CHIEF JUSTICE AND DISTINGUISHED MEMBERS OF THE SUPREME COURT, MAY IT PLEASE THE COURT. FIRST LET ME INTRODUCE MYSELF. MY NAME IS STEVE YARITY. I AM HERE WITH -- MY NAME IS STEVE YERRID. WE WERE HONORED TO SERVE AS PRO BONO AS A SERVICE TO BOTH BAR AND JUDICIARY. WE ARE HERE TODAY TO REPRESENT THE CONFERENCE OF CIRCUIT COURT JUDGES, ROB AZINA AND DEXTER THOMAS. THEY BOTH HAVE DONATED THEIR TIME. THE OBJECT TO BE ADDRESSED, AS I THINK I HEARD JUSTICE PARIENTE MENTION THIS MORNING, THERE IS THE MAKE-BELIEVE WORLD AND THERE IS THE REAL WORLD. FORTUNATELY FOR ME I AM TALKING TO SEVEN JUSTICES THAT ARE VERY FAMILIAR WITH THE COURT'S POWERS UNDER ARTICLE V OF THE UNITED STATES CONSTITUTION AND THE FLORIDA CONSTITUTION. AS ENUNCTEED TIME AND AGAIN, WHEN YOU MET WITH JUSTICE HARDING AND JUSTICE SHAW IN THE 1992 AMENDMENT PROCESS,, ARTICLE II 1, SECTION 4. THE PUBLIC'S MESSAGE NEEDS TO BE TODAY, FOREVER AND FOREVER MORE STRONG, THAT THE JUDICIARY NEEDS TO BE LOOKED AT TO MAKE SURE IT IS DISCHARGING ITS SOLEMN RESPONSIBILITIES AS JUDGES IN DISPENSING JUSTICE.

LET'S START HERE WITH ARE THESE DOCUMENTS JUDICIAL RECORDS OR ARE THEY NOT? AND WHY?

I WILL ANSWER THAT QUESTION IN TWO PARTS, IF YOU PLEASE, JUSTICE QUINCE. THE BIRTHDAY

CARDS, THE FRATERNIZATION RECORDS, YOU ASKED TO DIVIDE IT INTO TWO GROUPS. THOSE GROUPS, IN THEIR NATURAL STATE, IN THE FRATERNIZATION, SOCIALIZATION, THE INTERACTION BETWEEN PEOPLE ARE NOT JUDICIAL RECORDS. THE RECORDS WITH REGARD TO JUDGE WARD ARE APPROPRIATELY JUDICIAL RECORDS. THAT CONCESSION MUST BE MADE, BECAUSE OF THE PROBABLE CAUSE FINDING, AND THE ULTIMATE INCLUSION OF THE CHIEF JUDGE'S ADMINISTRATIVE ROLE OF ACCUMULATING DOCUMENTS, AND I BELIEVE YOU MENTIONED SITTING DOWN, TRYING TO WORK OUT SQUABBLES, WHICH I THINK IS A REASONABLE ALTERNATIVE TO FILING IMMEDIATELY, CHARGES WITH THE JQC. THOSE MATTERS CAN ARISE AND SHOULD BE TREATED AS JUDICIAL RECORDS, AND THEN WE FALL INTO THE 2.051 EXCEPTIONS WHICH I BELIEVE TWO OF THE JUSTICES, IN FACT ALL SEVEN OF YOU PARTICIPATED.

BEFORE WE GET TO THE EXCEPTIONS, IF YOU GO BACK TO THE FRATERNIZATION RECORDS THAT WERE REQUESTED HERE.

YES.

WE ARE ALL NOT SURE EXACTLY WHAT IT COVERS, BUT ASSUMING THAT IT IS SOMETHING OTHER THAN ME SENDING AN EMAIL TO JUSTICE PARIENTE ABOUT LUNCH OR DINNER OR WHATEVER, SOCIAL OCCASION WE MAY HAVE, BUT IT IS MORE OF ME SENDING ANEMIL TO A MALE JUDICIAL ASSISTANT, ASKING TO HAVE DRINKS OR SOMETHING, SOMETHING WITH SOME KIND OF SEXUAL OVERTONES. ARE THOSE KINDS OF FRATIZATION RECORDS JUDICIAL RECORDS, OR ARE THEY STILL IN THAT SOCIAL REALM THAT YOU WERE TALKING ABOUT?

THEY ARE IN THE DOMAIN THAT I WOULD CALL INDIVIDUAL RIGHTS AND LIBERTIES OF PEOPLE TO BE AMERICANS. NO, THOSE ARE NOT JUDICIAL RECORDS. BECAUSE SOMEONE WORKS WITH THE COURT --.

BUT IF THEY ARE SENT TO THE CHIEF JUDGE.

YES.

THEY STILL HAVE NO PARTICULAR CHARACTER.

I DON'T THINK THE FACT THAT HE RECEIVES THEM IN THE ORDINARY COURSE OF AFFAIRS, MAKES THEM OR DOES NOT MAKE THEM JUDICIAL RECORDS. IF IT IS SOMETHING IMPROPER, LET ME USE THE EXAMPLE, JUDGE FULMER, IN THE DISSSENT, IF YOU RECALL USES THE EXAMPLE AFTER LEASEHOLD. A LEASE IS NOT ENUMERATED OF THE ADMINISTRATIVE DUTIES AFTER CHIEF JUDGE, SHE POINTS OUT VERY ADEQUATELY AND OFFICIALLY, THESE ARE, QUOTE, COURT RECORDS. NO ISSUE WITH THAT. A BIRTHDAY CARD IS A GREAT EXAMPLE. A BIRTHDAY CARD SENT BETWEEN MEMBERS OF THE COURT FROM JUDGE A TO JUDGE B OR JAA TO JUDGE B OR JAB, IS NOT IN ITSELF, IN ITS NATURAL STATE, ANYTHING THAT CONCERNS A COURT RECORD, BUT IF INCLUDED IN THE CARD IS, BY THE WAY, I WANT TO MEET YOU AFTER WORK, AND I WANT TO PICK UP WHERE WE LEFT OFF, BECAUSE I REALLY THINK A LOT OF BLAH BLAH BLAH BLAH, THAT MAY RAISE EYEBROWS. IT MAY CAUSE ATTENTION. IT MAY ELEVATE.

IF SUCH A CARD IS SENT TO THE CHIEF JUDGE, IT IS NOT ADDRESSED TO THE CHIEF JUDGE BUT IT IS SENT TO THE CHIEF JUDGE AS SOMETHING HE SHOULD LOOK INTO.

JUSTICE QUINCE, EXACTLY.

WHAT DOES IT BECOME THEN?

WHEN IT IS SENT TO THE CHIEF JUDGE, THE ONLY EXPLANATION COULD BE IT IS SENT, IF HE IS NOT A NORMAL RECIPIENT, IT IS SENT IN HIS CAPACITY AS THE CHIEF JUDGE. THEREFORE IT WOULD BECOME A COURT RECORD OF THE TYPE, AND THEN WE CAN TALK TO THE 2.051

EXCEPTIONS, AND I SEE A DISTINCTION WITHOUT A DIFFERENCE IN THE AG'S THOUGHT PROCESS, THAT NOW SOMEHOW THE AMENDMENTS AND EXPLANATIONS AND THE RULES OF 1992 AND PRIOR DON'T CONCERN EXEMPTIONS AND EXCEPTIONS. THEY DO.

SO A PRELIMINARY MATTER, SO YOU ARE NOW AGREEING THAT THE COMPLAINTS OR WHATEVER YOU CALL THEM OF THE SEXUAL HARASSMENT AGAINST JUDGE WARD, WHICH JUDGE ALVAREZ INVESTIGATED, DO CONSTITUTE JUDICIAL RECORDS.

THEY DO CONSTITUTE JUDICIAL RECORDS.

SO WHEN JUDGE ALVAREZ, ON OCTOBER 18, 1999, RESPONDED TO THE REQUEST AND STATED HIS RESPONSE WAS HE DIDN'T HAVE THE REQUESTED RECORDS.

NO. WITH ALL RESPECT, JUDGE PARIENTE I DON'T HAVE THE LETTER IN FRONT OF ME. MY RECOLLECTION IS THE WORDS "NO COMPLAINTS" ARE ACTUALLY IN QUOTATION MARKS IN HIS CORRESPONDENCE, WHICH MEANS THERE WERE NO COMPLAINTS, WHICH IS ACCURATE THEN AND REMAINS ACCURATE THROUGHOUT PROCEEDINGS. THE TWO BOTH DOCUMENT AND MEMORIALIZE, AS THE CHIEF JUSTICE TALKED ABOUT, IT WAS ONE OF THE SITUATIONS WHERE THE CHIEF JUDGE SAT DOWN WITH THE POTENTIAL OFFENDED PARTIES AND WORKED IT OUT AND THEY MADE IT CLEAR THAT THEY DID NOT WANT TO PURSUE THE SEXUAL HARASSMENT. BY THE WAY, THAT WAS HOW IT WAS COUCHED. SEXUAL HARASSMENT. IT WAS EVEN -- SEXUAL HARASSMENT. IT WAS EVEN DESCRIBED THEN AS A POTENTIAL SEXUAL HARASSMENT MATTER, SO HE MEMORIALIZED THROUGH AFFIDAVITS THAT WERE PREPARED, THE OPPOSITE THEY HAD OF NOT PURSUING. LET JUST ADD, BECAUSE IT IS A GERMANE CONSIDERATION, ONE OF THE THINGS I BELIEVE I AM HEARING, IS THAT SOMEHOW THERE IS A MESSAGE TO HIDE OR PUT IN SECRECY THE ACCUSED. WELL, THAT IS BECAUSE YOU ARE ALL JUSTICES, AND IT SOUNDS SO GREAT COMING FROM THE MEDIA. BECAUSE YOU KNOW, THERE IS A DIVERGENCE BETWEEN THE JUDICIARY AND THE MEDIA. YES, THEY DO OFTEN SERVE US GREATLY IN SOCIETY, GETTING US TO KNOW A LOT OF FACTS WE WOULD NOT OTHERWISE KNOW, BUT UNFORTUNATELY, THE DIVERGENCE OCCURS WITH THE MOTIVATION, AND I DON'T REALLY CARE WHAT THE PAPERS SAY. THE FACT IN THE REAL WORLD IS THEIR MOTIVATION, IN PART, IS NOT ONLY TO DISSEMINATE PUBLIC KNOWLEDGE BUT, ALSO, TO SELL NEWSPAPERS, AND WHAT YOU JUST MENTIONED JUSTICE SHAW, IN FACT, DID OCCUR, AND IT OCCURRED IN THE THIRTEENTH CIRCUIT. IT PART OF OUR APPENDIX. IT INVOLVED A 58-YEAR-OLD JUDGE NAMED JUDGE PALOMINO, WHO RECEIVED AN UNSWORN COMPLAINT. THE COMPLAINANT, WHO REFUSED TO BREAK THE ANONYMITY, SENT A COPY TO THE JQC AND, ALSO, THE MEDIA. THE MEDIA, WITHOUT WAITING FOR PROBABLE CAUSE, WITHOUT WAITING FOR JUSTIFICATION, WITHOUT WAITING FOR SUBSTANTIATION, WROTE A VERY NICE ARTICLE, INVOLVING THIS PARTICULAR JUDGE, THAT TALKED ABOUT UNSIGNED LETTER, ACCUSED JUDGE OF AFFAIR. IT WAS NEVER SUBSTANTIATED. IT NEVER WENT ANYWHERE, EXCEPT TO ABOUT 500,000 HOUSEHOLDS IN THE TAMPA -- HOUSEHOLDS IN THE TAMPA BAY AREA. WHAT IS WRONG WITH THE POSITION THAT, IF AN ADMINISTRATIVE JUDGE RECEIVES AN INQUIRY IN HIS POSITION AS ADMINISTRATIVE JUDGE.

YES, YOUR HONOR.

AND IN RESPONDING TO THAT INQUIRY, WHAT HAVE YOU, CERTAIN PAPERWORK AND INVESTIGATIVE MATTERS ARE GENERATED, THAT THAT IS PUBLIC RECORD? WHAT IS WRONG WITH THAT POSITION?

I THINK THAT NOTION IS ABSOLUTELY ACCURATE, AND, IN FACT, IS DEALT WITH QUITE NICELY IN THE JQC PROCESS AND THE PROBABLE CAUSE DETERMINATION. MY VIEW OF THAT IS THAT THOSE MATTERS ARE, THEN, RECEIVED. THEY ARE KEPT. CERTAINLY PRESERVED, WHETHER THEY ARE EMAILS IN ACCORDANCE WITH YOUR RULINGS AND THE LIKE OR ANY OTHER TYPE OF COMMUNICATION OR DOCUMENTATION. THOSE ARE KEPT IN THIS CASE, KEPT AND TRANSMITTED

TO THE JQC. THEY WERE DISSEMINATED BY VIRTUE OF THE FILING UP HERE IN THE SUPREME COURT.

THE PERIOD BEFORE THEY ARE TRANSMITTED, THAT IS WHERE WE ARE HAVING THE PROBLEM.

THE CHIEF, AND THE PROBLEM OCCURS NOT WITH THE ACCUSED JUDGE. THE PROBLEM OCCURS WITH THE VERY TYPE OF PROCESS THE SECOND DCA UTILIZED IN SEXUAL HARASSMENT CASES OR POTENTIAL CASES. THE HORRIBLE INVASION OF THE INDIVIDUAL'S RIGHTS NOT TO BE DISCLOSED. THE INVASION THAT OCCURS NOT JUST FOR THE ACCUSED BUT SOMETIMES FOR THE ACCUSER, WITNESSES. WE WANT PEOPLE TO COME FORWARD INTO A PROCESS THAT IS PROTECTED BY CONFIDENTIALITY, SO IT WOULD BE VERY CLEAR, WHAT I AM SAYING IS THOSE MATTERS OF THIS NATURE, THAT INVOLVE POTENTIAL IMPROPER OR SEXUAL CONDUCT, I MEAN MAKE NO MISTAKE THAT IS WHAT IS BEING SOUGHT, A SEX SCANDAL TYPE SITUATION. THOSE MATTERS SHOULD BE PROTECTED UNTIL THE LAST POSSIBLE MOMENT, UP AND TO AND INCLUDING THE PROCEEDING, WHERE INDIVIDUALS' NAMES ARE REDACTED OR WHATEVER, SO THE ANSWER IS I THINK THOSE MATTERS BECOME A MATTER OF RECORD, WHETHER THEY ARE, QUOTE, PUBLIC, IS, AGAIN, SUBJECTED TO, I THINK, THE ARTICLE V, I BELIEVE IT IS SECTION 12 IN THE JQC CREATION. YOU SEE YOU, DON'T WANT TO HAVE A CHIEF JUDGE, LET ME GIVE YOU A VERY QUICK EXAMPLE. MR. CHIEF JUSTICE

YOU ARE USING MR. ALVAREZ'S TIME.

I INTEND TO DO THAT BECAUSE WE WORK TOGETHER. I JUST WANTED TO TELL YOU THAT, FOR EXAMPLE, THE CASE OF JUDGE WARD, THE PROBABLE CAUSE FINDING OCCURRED. THE FILING HAPPENED AND THEN THE PRESS GOT THE MATERIALS. EVEN THOUGH THEY KNEW THE JQC HAD THEM, THEY CONTINUED TO SEEK FROM THE CHIEF JUDGE, AND NOW I GUESS THEY HAVE CITED A BUNCH OF CASES SAYING THE CHIEF JUDGE REALLY TRIED TO TRANSFER THEM TO ANOTHER AGENCY TO AVOID DISCLOSURE.

YOU CONCEDE THAT IT IS A RECORD. WHAT TRIGGERED IT, NOW, ALL OF A SUDDEN, A PUBLIC RECORD?

WHEN PROBABLE CAUSE IS FOUND. I THINK WHEN PROBABLE CAUSE IS FOUND IT IS A PUBLIC RECORD. NOW, HERE IS THE TWIST. I AM SORRY.

YOU KNOW, YOU HAVE CONCEDED THAT AT LEAST THE JUDGE WARD RECORDS ARE JUDICIAL RECORDS. I STILL AM NOT SURE WHAT YOU ARE CLAIMING TO BE THE EXEMPTION HERE.

WELL, THE EXEMPTION, WITH REGARD TO THE RECORDS CLAIMED BY THE, QUOTE, RECORDS CLAIMED BY THE MEDIA, NUMBER ONE, WE DON'T CONCEDE THAT THAT VAST MAJORITY OF THE MATERIALS CLAIMED ARE PUBLIC RECORDS.

FOR THOSE THAT ARE PUBLIC RECORDS, WHAT EXEMPTIONS APPLY HERE?

THE EXEMPTIONS APPLY IN 2.051.

WHICH IS?

WHICH ARE, WHICH HAVE TO DO WITH THE EXEMPTIONS ENUNCIATED IN THE MISCONDUCT OF JUDGES. THAT WOULD BE THE OLD SECTION, AND I DON'T HAVE IT. C-3? YEAH. C-3, WHICH WAS, THEN, BROKEN OUT TO INCLUDE JUDGES AND OTHER PARTIES. IT WOULD, ALSO, BE INCLUDED IN C-8, WHICH I BELIEVE IS A JQC EXEMPTION. IT WOULD, ALSO, BE INCLUDED IN C-9, WHICH I BELIEVE TALKS ABOUT PREJUDICE.

HOW DO DOCUMENTS AND JUDGE ALVAREZ'S POSSESSION, BECOME GETTING JQC EXEMPTION?

THEY BECOME, WITH ALL RESPECT THEY DON'T HAVE TO BE JQC DOCUMENTS, UNDER 2.051, TO BE EXEMPTED.

SO --

THE J --

BECAUSE THEY INVOLVE THE POSSIBLE MISCONDUCT OF A JUDGE, YOU ARE SAYING, THAT THAT IS --

YES, JUSTICE QUINCE. YOU ASKED ME ONE REASON. THAT IS ONE REASON. THE SECOND REASON IS THE SEXUAL HARASSMENT, UNLESS YOU WANT TO DISREGARD AND ASSUME FOR THIS ARGUMENT AND ASSUME FOR ALL TIME THAT YOUR 1995 ADMINISTRATIVE ORDERS, THE SEXUAL HARASSMENT VARIOUS GUIDELINES AND POLICIES THAT YOU HAVE ALL ADOPTED FOR THE SUPREME COURT, AND I ASSUME EVERY CIRCUIT COURT AND APPELLATE COURT --

SO YOU ARE ADOPTING THE REASONS GIVEN BY THE SECOND DISTRICT ABOUT THE SEXUAL HARASSMENT MEMO.

ABSOLUTELY, AND I HOPE THAT THAT WAS CLEAR IN OUR BRIEF, ALTHOUGH I CAN'T TAKE ALL THE CREDIT FOR MY BRIEF. IF IT WAS INCLUDED I AM SURE I MADE IT CLEAR, AND IF IT WASN'T INCLUDED, IT WAS MR. ALVAREZ'S FAULT. BUT LET ME POINT OUT THE LAST THING THAT I BELIEVE WE NEED TO TOUCH UPON. THEY ARE GOING TO COME BACK ON REBUTTAL AND TALK ABOUT THE PUBLIC'S RIGHT TO KNOW. IT IS FUNDAMENTALLY ESSENTIAL THAT PEOPLE IN THIS PROCESS KNOW AS WE MOVE INTO THE NEXT MILLENNIUM, THAT THEY HAVE A RIGHT OF CONFIDENCE AND CONFIDENTIALITY THAT IS NOT UNREASONABLY WITHHELD NOR LIBERALLY TAKEN AWAY BY SOME OTHER PARTY'S ACTION, AND I AM TALKING ABOUT THE "TIMES" CASE VERSUS AG, WHICH IS THE CASE WHERE I THINK YOU HAD CHILD ABUSE POTENTIALLY ALLEGED AND YOU DECIDED IT AND THE ISSUE IS WHETHER, IN FACT, THE SHERIFF COULD GIVE UP THE IDENTITIES OF THE PEOPLE INVOLVED AND YOU CAME IN AND SAID WAIT A MINUTE. THERE IS MORE THAN THE ACCUSED AND THE ACCUSER. THERE ARE ALSO THE VICTIMS AND WITNESSES. COUNT DO THAT. CONFIDENTIALITY DOES NOT CLOAK SECRECY OR WRONGDOING. IT IS TO PROTECT INNOCENCE AND UNFOUNDED ALLEGATIONS AND ASSERTIONS AGAINST PEOPLE THAT AREN'T LIKE THE PUBLIC SCHOOL SUPERVISORS, PEOPLE THAT ARE LOOKED UPON IN OUR SOCIETY, TO DO SUCH THINGS AS DECIDE PRESIDENTIAL ELECTIONS OR DECIDE WHETHER SOMEONE IS GOING TO LIVE OR DIE OR DECIDE WHETHER SOMEONE IS GOING TO HAVE THEIR LIBERTY TAKEN AWAY. THE INTEGRITY AND THE DIGNITY THAT YOU MUST CARRY, NO MATTER WHETHER YOU HAVE THE ROBES ON THIS WONDERFUL BODY OR THE ROBES OF OUR THIRTEENTH CIRCUIT, THEY CANNOT BE SUBJECTED TO THE TYPE OF DISPARAGING TREATMENT. THE LAST THING I WANT, LOOK IN YOUR APPENDIX ABOUT DETECTIVE GOMEZ, TALKING ABOUT ALL OF THE THINGS THAT THE JUDGES IN THE THIRTEENTH CIRCUIT DID. THIS IS ALL ON THE HEELS OF ALL OF THIS. AT PAGE 9 OR PAGE 12, THERE WAS NO DEPUTY GOMEZ. ONE DIDN'T EXIST AND THERE WAS A RETRACTION ULTIMATELY ABOUT THIS STORY THAT PLAYED ON THE FRONT PAGE OF THEIR UP IN. THERE WAS NO DETECTIVE GOMEZ. HOW DO YOU GET THAT BACK? MR. CHIEF JUSTICE

I THINK YOU ARE NOW INTO MR. DOUGLAS'S TIME.

THAT I WON'T TAKE. THANK YOU VERY MUCH FOR YOUR TIME.

I WILL TRY TO RESERVE A LITTLE TIME FOR MR. ALVAREZ. ALL I WANT TO SAY ON BEHALF OF MY CLIENTS, WHICH ARE THE CIRCUIT JUDGES AND ALL THE JUDGES IN THE TRIAL COURTS IN FLORIDA, IS THAT THE BASIC ISSUE IN THIS CASE OVERRIDING ALL OF THE TECHNICAL ISSUES, IS THE INDEPENDENCE OF THE JUDICIARY, SOMETHING WE GIVE A LOT OF ATTENTION TO. IT IS REQUIRED THAT THAT THE JUDICIARY BE PROTECTED FROM UNREASONABLE INTRUSION ON

THEIR PRIVACY, EACH AND EVERY ONE OF THEM, IN ORDER TO PERFORM THEIR DUTIES IN AN INDEPENDENT MANNER AND NOT TO BE INFLUENCED BY THE FEAR OF CONSTANT HARASSMENT BY WHETHER IT BE THE PRESS OR ANY OTHER PUBLIC --

WERE ANY OF THEEPS DOCUMENTS JUDICIAL DOCUMENTS THAT WERE -- WERE ANY OF THESE DOCUMENTS JUDICIAL DOCUMENTS THAT WERE SUBJECT TO BE GIVING THEM OUT TO THE PRESS OR ANYONE ELSE WHO MADE A REQUEST FOR THEM?

FIRST, LET ME SAY I AGREE WITH ALL OF THE POSITIONS TAKEN BY PREVIOUS COUNSEL ON THAT POINT. BUT WHAT I WOULD POINT OUT, THAT THE CHIEF JUDGE HERE, IF HE IS SUBJECTED TO A SEPARATE RULE RELATING TO EXEMPTIONS, THEN THERE WOULD BE NO POINT IN HAVING A CHIEF JUDGE, BECAUSE HIS FUNCTION, AS POINTED OUT IN SOME OF THE QUESTIONS AMONG THEM INHERENT FUNCTIONS ND WHAT HE IS ELECTED TO DO IS TO SUPERVISE AND KEEP THE JUDICIARY WITHIN HIS CIRCUIT, WORKING TOGETHER AND AVOIDING THESE TYPES OF CONFLICTS.

SO YOU ARE SAYING, THEN, THAT TE HIEF JUDGE OF EACH CIRCUIT SHOULD HAVE THE SAME KIND OF EXEMPTION, IF THEY ARE INVESTIGATING, SOME KIND OF SITUATION, SHOULD HAVE THE SAME KIND OF EXEMPTION THAT WE GIVE THE JQC, WHEN THEY ARE INVESTIGATE AGO SITUATION.

I WOULD SAY, IF WE HOLD OTHERWISE, WE ARE DOING WHAT HAS BEEN SOUGHT FOR A LONG TIME TO BE DONE, AND THAT IS TO SUBVERT THE CONFIDENTIALITY OF JQC PROCEEDINGS. THIS WOULD ABSOLUTELY BE A BEGINNING OF THE END OF JQC CONFIDENTIALITY, AND I DON'T THINK THAT IS APPROPRIATE, AS A MATTER OF PUBLIC POLICY. THAT IS ALL I HAVE TO SAY ON BEHALF OF MY CLIENTS, EXCEPT TO SAY WE LEAVE THIS ISSUE WITH THOSE OF YOU WHO, LIKE MY CLIENTS, LIVE IN THE REAL WORLD, AS IT RELATES TO THESE MATTERS. THANK YOU. MR. CHIEF JUSTICE

THANK YOU.

JUST ONE THING. I WOULD LIKE MR. ALVAREZ JUST TO SAY ONE THING ABOUT JUSTICE SUNDBERG'S OPINION WITH REGARD TO CAMERAS IN THE COURTROOM.

I WILL GIVE MR. ALVAREZ ONE MINUTE HERE, AND SO --

CHIEF JUSTICE THANK FOR YOU THAT ONE MINUTE. WHAT I WOULD LIKE TO DO IS SPEAK OF THE POST "NEWSWEEK" DECISION THAT WAS RENDERED BY JUSTICE SUNDBERG, AS FAR BACK AS 1979, BECAUSE A LOT OF THE ISSUES AS PRESENTED TO THE COURT TODAY WERE PRESENTED BACK AT THAT TIME. THAT WAS A DECISION IN WHICH THIS COURT DECLARED ACCESS TO PROCEEDINGS BY ELECTRONIC MEDIA, AND IF YOU RECALL THE HEART OF THAT DECISION, AND THE THOUGHT PROCESS CONDUCTED BY THE JUDGE AT THAT TIME, HE CONSIDERED SEVERAL ISSUES. HE CONSIDERED SUNSHINE IN THE COURTROOM. I DON'T THINK ANYONE CAN DOUBT THE PUBLIC HAS AN ABSOLUTE RIGHT TO KNOW THE GOVERNMENT IS FUNCTIONING APPROPRIATELY. SECONDLY, HE CONSIDERED WHAT TYPE OF DYSFUNCTION MAY ARISE BY THE MEDIA'S PRESENCE IN THE COURTROOM, AND WHAT DID HE SAY ABOUT THAT? AT THAT TIME HE SAID THE MEDIA IS WELCOME TO OBSERVE WITHOUT INTRUSION. THE MEDIA IS WELCOME O OBSERVE IN ACCORDANCE WITH THE STANDARDS OF THE SUPREME COUT. THE SUPREME COURT ALWAYS HAS THE EXCLUSIVE RULE-MAKING AUTHORITY. MR. CHIEF JUSTICE

THANK YOU, MR. ALVAREZ.

AND THIRDLY, SIR, IF I MAY SAY SO, HE RECOGNIZED THE RIGHTS OF INDIVIDUALS, SUCH AS THOSE ACCUSED WRONGFULLY OF UNSUBSTANTIATED ACTS. MR. CHIEF JUSTICE

REBUTTAL?

JUSTICE SUNDBERG ALSO SAID THAT WE DON'T WANT TO PUT THE JUDICIARY IN A BUSHEL BASKET AD PROTECT THEM THAT WAY. THERE ARE THREE KOFER VALUES THAT ARE PARA-- THERE ARE THREE CORE VALUES THAT ARE PARAMOUNT AND MORE IMPORTANT THAN ISSUES RAISED TODAY. THERE ARE PROCEDURES APPLICABLE WITH REGARD TO PETITIONS FOR WRIT OF MANDAMUS ARE AWKWARD, AND I THINK THEY ARE EVIDENCED BY THE LACK OF A REAL RECORD IN THIS CASE. IN NORMAL 119 LITIGATION, THERE IS A CREATION OF A RECORD. THE IN CAMERA DOCUMENTS HERE COULD HAVE BEEN PLACED BEFORE A SPECIAL MASTER OR SENT TO THE SECOND DCA. YOUR HONORS WOULD HAVE HAD A REAL RECORD TO LOOK AT, TO ADJUDICATE THESE CLAIMS, AND THAT IS ONE OF THE CONCERNS THAT I AM SURE YOU ARE STRUGGLING WITH AND THAT WE ALWAYS STRUGGLE WITH.

YOU ARE TALKING ABOUT CHANGING OUR RULES ABOUT HOW THESE PROCEDURES ARE HANDLED. BUT COULD YOU JUST GO BACK TO THE EXEMPTION QUESTION.

YES, YOUR HONOR.

WHY DOESN'T THIS FALL UNDER 3-A, WHICH IS COMPLAINTS ALLEGING MISCONDUCT AGAINST JUDGES, UNTIL PROBABLE CAUSE IS ESTABLISHED?

THE FACTS IN THIS CASE ARE ABSOLUTELY CLEAR. NEVER COMPLAINTS MADE.

BUT YOU ARE -- IF SOMEBODY COMPLAINS, ABOUT CONDUCT, WHY ISN'T THAT A COMPLAINT?

SHE SAID SHE DIDN'T WANT TO MAKE A FORMAL COMPLAINT. SHE IS SATISFIED -- SHE SAYS THAT ON THE RECORD.

IT WAS A FORMAL COMPLAINT.

WHAT WE ASKED HIM FOR WERE COMPLAINTS OF SEXUAL HARASSMENT AND SEXUALLY-INAPPROPRIATE CONDUCT.

IF THERE WASN'T A COMPLAINT, THEN THERE WASN'T ANYTHING TO PRODUCE, SO JUDGE ALVAREZ WAS CORRECT WHEN HE RESPONDED THERE WEREN'T ANY.

HE WAS DEAD WRONG, YOUR HONOR.

YOU SAID THERE WEREN'T. > COMPLAINTS AND/OR DOCUMENTS INVOLVING INAPPROPRIATE COMMENTS. THERE WERE CLEARLY INAPPROPRIATE COMMENTS MADE HERE.

I GUESS I AM JUST HAVING TROUBLE AGAIN, AND MAYBE IT IS GOING BACK TO QUESTIONING WHY THAT ISN'T, WHY COMPLAINT HAS TO BE USED IN SOME NARROW CONCEPT, WHEN A BROADER CONCEPT WOULD PROTECT WHAT WE ARE TRYING TO PROTECT HERE, WHICH IS UNFOUNDED COMPLAINTS, UNTIL SOMEBODY FINDS THAT THERE IS --

YOUR HONOR, WE CAN JUMP THAT HURDLE HERE, TOO, BECAUSE IT SAYS UNTIL A FINDING OF PROBABLE CAUSE. WHEN WE MADE THE MARCH REQUEST, THE JQC HAD ALREADY FOUND PROBABLE CAUSE. AT THAT MOMENT, THOSE MARCH 8 AND 9, THE JQC FOUND PROBABLE CAUSE ON MARCH 1. SO WHATEVER THE HURDLE THAT WAS THERE KNOW THE OCTOBER DOCUMENTS WAS OVER, BY THE TIME WE MADE THE REQUEST IN MARCH. MR. CHIEF JUSTICE

I THINK YOU ARE OUT OF TIME.

THANK YOU VERY MUCH, YOUR HONOR. MR. CHIEF JUSTICE

THANK YOU, AND WE APPRECIATE VERY MUCH, THE PRO BONO WORK AND THE WORK OF ALL

COUNSEL ON THIS VERY IMPORTANT ISSUE AND YOUR APPEARING HERE THIS MORNING. THE COURT WILL BE IN RECESS.