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## **Lawrence Taylor v. School Board of Brevard County**

CHIEF JUSTICE: GOOD MORNING, EVERYONE. WELCOME TO THE FLORIDA SUPREME COURT. GENTLEMEN, IT LOOKS LIKE YOU ARE ALL READY ON THE FIRST CASE, TAYLOR VERSUS SCHOOL BOARD OF BREVARD COUNTY. IF COUNSEL IS READY, YOU MAY PROCEED.

MAY IT PLEASE THE COURT. I AM JOE WILLIAMS WITH THE WINTER PARK FIRM OF TROUTMAN WILLIAMS IRVIN GREEN AND HELMS, AND I REPRESENT THE PETITIONER IN THIS CASE, LAWRENCE TAYLOR, WHICH PRESENTS A GREAT QUESTION OF FIRST IMPORT TO THE COURT, THE JUDICIAL CONSTRUCTION OF THE UNRELATED WORKS EXCEPTION TO THE GENERAL COEMPLOYEE IMMUNITY, PROVIDED BY SECTION 441 OF THE FLORIDA STATUTES. THE GENESIS OF THIS CASE OCCURRED SEVEN YEARS AGO THIS LAST SATURDAY. AT THAT TIME, MR. TAYLOR, WHO WAS A SCHOOL BUS ATTENDANT FOR THE SCHOOL BOARD, WAS ASSIGNED TO A BUS, A SCHOOL BUS THAT TRANSPORTED EXCEPTIONAL CHILDREN. INCLUDED IN THOSE CHILDREN WERE CHILDREN WHO WERE WHEELCHAIR BOUND. THE BUS THAT HE WAS ASSIGNED TO HAD A WHEELCHAIR LIFT AFFIXED TO IT, AND PART OF HIS DUTIES, WHEN THE, WHEN A WHEELCHAIR-BOUND CHILD WAS BEING PICKED UP OR LEFT OFF, WAS TO GO OUTSIDE AND OPEN THE DOORS OF THE LIFT. THE DRIVER INSIDE WOULD, THEN, PUNCH THE BUTTON AND THE LIFT WOULD DEPLOY.

WAS THAT HIS ONLY JOB? WAS MR. TAYLOR, LIKE, A TEACHER WHO WAS ASSIGNED A BUS DUTY OR ANYTHING, OR WAS HE JUST A BUS ATTENDANT?

JUSTICE QUINCE, HE WAS JUST A BUS ATTENDANT. HE WAS A PART-TIME EMPLOYEE, BUT THAT WAS HIS FULL-TIME JOB AS A PART-TIME EMPLOYEE. HE WAS TRAINED TO WORK WITH THESE EXCEPTIONAL CHILDREN, AND HE ACCOMPANIED THE BUS DRIVER ON THE BUS, AND ONE OF HIS DUTIES AND INCLUDING UNLOADING AND LOADING CHILDREN, WAS TO KEEP THE EXCEPTIONAL CHILDREN OCCUPIED AND AMUSED, SO THAT THEY WOULD NOT INTERFERE WITH THE DRIVER'S OPERATION OF THE BUS.

DO WE KNOW WHETHER OR NOT AT ANY TIME THERE WERE TEACHERS WHO, ALSO, DID THIS KIND OF ASSIGNMENT?

THAT IS NOT IN THE RECORD OF THIS CASE, JUDGE QUINCE OR JUSTICE QUINCE.

WELL, HE WAS PRIMARILY ASSIGNED, THEN, TO SEE THAT THEY SAFELY ENTERED AND EXITED THE BUSES. WOULD THAT BE PRETTY MUCH THE JOB DESCRIPTION THEN?

THAT WAS ONE OF HIS PRIMARY ASSIGNMENTS. HE DID IT EVERYDAY, SEVERAL TIMES A DAY, GOING TO SCHOOL AND COMING BACK FROM SCHOOL, BUT IN ADDITION TO THAT, HE WAS RESPONSIBLE FOR EVACUATING THE BUS, IF THERE WAS AN EMERGENCY, AND LIKE I SAY, KEEPING THE CHILDREN OCCUPIED, SO THAT THEY WOULDN'T DISETRACT THE DRIVER FROM HIS DUTIES.

LET ME ASK YOU THIS, IF WE USE -- WOULDN'T DISTRACT THE DRIVER FROM HIS DUTIES.

LET ME ASK YOU THIS. IF WE USE THE SPECIFIC PURPOSE RATIONALE, WHERE DO WE DRAW THE LINE? IS EACH CASE THEREAFTER, A CASE BY CASE ANALYSIS, OR HOW, WHERE DO YOU DRAW THAT LINE, UNDER THE --

WHEN YOU ARE MAKING THAT DETERMINATION, JUSTICE SHAW, I THINK YOU HAVE TO LOOK, AS I HAVE SAID IN MY BRIEFS, AT THE TOTAL EMPLOYMENT RELATIONSHIP OF THE TWO EMPLOYEES TO THEIR JOINT EMPLOYER AND TO EACH OTHER. YOU HAVE TO LOOK AT JOB DESCRIPTION. YOU HAVE TO LOOK AT THE TERMS OF THE EMPLOYMENT. YOU HAVE TO LOOK AT THE TRAINING THAT THE EMPLOYMENT REQUIRES. YOU HAVE TO LOOK AT THE SPECIFIC DUTIES OF THE INDIVIDUALS THAT ARE INVOLVED, AND I THINK, WHEN YOU, WHEN YOU APPLY THOSE KIND OF CRITERIA TO THIS CASE, THEN YOU ARE LEFT WITH ONE CONCLUSION, AND THAT IS THAT MR. TAYLOR'S JOB, HIS PRIMARY ASSIGNMENT, WAS UNRELATED TO THE JOB OF THE MECHANICS THAT WERE IN THE SHOP, AND I UNDERSTAND THAT YOU MAY BE CONCERNED ABOUT A SPECIFIC-PURPOSE TEST THAT IS TOO NARROW.

IT DOESN'T TAKE MUCH IMAGINATION TO GET SOME VERY CLOSE SITUATIONS. THAT IS THE PROBLEM I AM ENCOUNTERING.

I THINK IN SOME SITUATIONS YOU ARE GOING TO HAVE FACTUAL DISPUTES. I THINK THIS CASE IS VERY UNIQUE, BECAUSE WE HAVE DEVELOPED A VERY RICH FACTUAL RECORD FOR THE COURT.

WHAT IS THE STATUTORY CONSTRUCTION PRINCIPLES THAT WE SHOULD BE FOLLOWING? BECAUSE WE HAVE GOT A TERM "UNRELATED WORKS", AND IF WE GO AND, UNDER ORDINARY PRINCIPLES OF STATUTORY CONSTRUCTION, THAT TERM ISN'T DEFINED, HOW IS IT THAT YOU ARE GOING ABOUT TO TELL US WHAT TEST SHOULD BE FORMULATED? COULD YOU GO BACK, FIRST, AND SAY WHAT PRINCIPLES OF STATUTORY CONSTRUCTION ARE WE SUPPOSED TO FOLLOW, IN TAKING WHAT THE LEGISLATURE HAS GIVEN US AS A TERM THAT IS UNDEFINED, AND GO FROM THERE.

JUSTICE PARIENTE, I THINK, AT THE OUTSET, YOU HAVE GOT TO LOOK AT THE PLAIN LANGUAGE OF THE STATUTE, AND I SUBMIT THAT SOME OF THE DCA'S WHO HAVE RULED ON THIS QUESTION, DIDN'T SEEM TO HAVE DONE THAT. THE STATUTE REQUIRES THAT THE EMPLOYEES BE OPERATING IN FURTHERANCE OF THE EMPLOYER'S BUSINESS. THAT IS THE PRECONDITION BEFORE THE EXCEPTION EVEN APPLIES AT ALL, AND YET WE HAVE CASES LIKE LANG AND CASES LIKE THE TAYLOR CASE FROM THE DCA, WHICH SAY, WELL, THEY WERE OPERATING IN FURTHERANCE OF EDUCATION-RELATED SERVICES. OR THEY WERE OPERATING IN PROVISION OF TRANSPORTATION TO SCHOOL BUS CHILDREN IN BREVARD COUNTY. IF THAT IS THE TEST YOU APPLY, THEN, AS JUDGE MINER SAID IN HIS DISSENT IN THE VOSS CASE, IT IS HARD TO IMAGINE ANY INSTANCE WHERE THE UNRELATED WORKS EXCEPTION WILL APPLY.

YOU ARE CRITIZING SOME OF THE OR ANALYZING SOME OF THE DISTRICT COURT DECISIONS, BUT WHAT WE ARE LOOKING FOR IN ANSWER TO JUSTICE SHAW'S QUESTION, FOR INSTANCE, YOU GAVE SORT OF A TOTALITY OF THE CIRCUMSTANCES KIND OF RESPONSE, AND WE ARE LOOKING FOR SOMETHING THAT, PERHAPS, MIGHT BE A LITTLE MORE HELPFUL IN TERMS OF APPLYING A RULE CONSISTENTLY TO DIFFERENT FACTUAL SITUATIONS, SO FOR INSTANCE, SHOULD WE TAKE THIS EXCEPTION TO THE ORDINARY WORKERS CORPS SAYINGS COVERAGE AND CON -- WORKERS COMPENSATION COVERAGE, AND SHOULD WE CONSTRUE IT LIBERALLY OR SHOULD WE CONSTRUE IT NARROWLY? THAT IS IT IS AN EXCEPTION, SO SHOULD WE CONSTRUE IT NARROWLY, AS MOST EXCEPTIONS USUALLY ARE CONSTRUED, OR SHOULD WE CONSTRUE IT BROADLY? GIVE US YOUR VIEW, WITH REFERENCE TO THAT.

MR. CHIEF ANSTEAD THAT, IS AN EXTREMELY IMPORTANT POINT IN THE ANALYSIS OF THIS CASE, AND I APOLOGIZE FOR MISUNDERSTANDING JUSTICE SHAW, IN HIS QUESTION. WHAT WE ARE TALKING ABOUT HERE IS A CONSTITUTIONAL RIGHT THAT HAS EXISTED SINCE DAY ONE, IN THE STATE OF FLORIDA. THE RIGHT OF AN EMPLOYEE TO SUE A NEGLIGENT EMPLOYEE FOR DAMAGES OUTSIDE OF THE SCOPE OF THE WORKERS COMPENSATION STATUTE. THAT IS A RIGHT THAT HAS BEEN IN PLACE AND WAS IN PLACE, EVEN UNDER THE ORIGINAL ENACTMENT BACK IN THE 1930s, OF THE WORKERS COMPENSATION LAW.

LET ME STOP YOU THERE FOR A MINUTE, REALIZING THE HISTORY OF THE RIGHT TO SUE AND THE WORKERS COMP SCHEME AND THE CONSTITUTIONALITY AND THE TENSION THAT IS THERE. THE LEGISLATURE CLEARLY HAS PASSED A SCHEME, WHERE THEY INTEND THAT WORKERS ORDINARILY BE COVERED BY THIS WORKERS COMPENSATION SCHEME, IF THEY ARE INJURED ON THE JOB, AND THAT THE RIGHT TO BRING THAT ACTION CLEARLY WOULD BE AN EXCEPTION. IS THAT NOT CORRECT? AND SO I GUESS WHAT I AM SAYING IS IT APPEARS, IF WE ARE CONSTRUING LEGISLATIVE POLICY, THAT WE WOULD BE IN A POSITION HERE OF CONSTRUING THIS EXCEPTION NARROWLY, WOULD WE NOT? IF THAT IS OUR FOCUS. SO HELP ME WITH THAT, THAT IS THAT WOULD YOU GO DEGREE THAT, IF WE TAKE THE POLICY OF THE LEGISLATURE AND ADDRESS IT FROM THAT STANDPOINT, THAT WE WOULD BE CONSTRUING THIS EXCEPTION NARROWLY.

I DISAGREE WITH THAT, MR. CHIEF JUSTICE.

OKAY. GO AHEAD.

HERE IS WHY. BECAUSE THE RIGHT EXISTED AT COMMON LAW AND WAS PRESERVED AT COMMON LAW, UNDER THE ORIGINAL ENACTMENTS, AND WAS PRESERVED UP UNTIL 1978, WHEN THE UNRELATED WORKS EXCEPTION WAS PASSED. WHAT THAT DID, IT DIDN'T TAKE SOMETHING OUT OF THE IMMUNITY SECTION AND PRESERVE IT. IT JUST PRESERVED SOMETHING THAT WAS ALREADY THERE AND HAD BEEN THERE, A CONSTITUTIONAL RIGHT, SO I AM ASKING THAT THE COURT CONSTRUE THIS EXCEPTION LIBERALLY, IN FAVOR OF THE CONSTITUTIONAL RIGHT THAT HAS EXISTED FROM DAY ONE AND THAT EXISTS TO THIS DAY, IF YOU ARE ENGAGED IN UNRELATED WORKS IN PUBLIC OR PRIVATE EMPLOYMENT.

WELL, UNDER YOUR TEST, IF SOMEBODY IN A FACTORY, PEOPLE HAD ALL DIFFERENT TYPES OF DUTIES, WOULD YOU HAVE UNRELATED WORKS EXCEPTIONS FOR COEMPLOYEES, WHERE THEY ARE ALL WORKING IN THE SAME PLACE, OR IS THIS, YOU KNOW, SOMEBODY IS THE FORM. SOMEBODY IS, YOU KNOW, IN THE ASSEMBLY. DOES IT, DO YOU ENVISION THAT TYPE OF BROAD, LIBERAL THING WHERE YOU JUST LOOK AT WHAT THEIR SPECIFIC JOB DUTY IS?

IF YOU LOOK AT THE TEST IN LOPEZ VERSUS VILLACHIZ, WHICH IS THE CLOSEST, I THINK, TO THE CASE HERE, IT POSITS A SPECIFIC PURPOSE TEST, AND THAT WAS THE CASE WHERE THE FUNERAL HOME HAD A SEPARATE GARAGE THAT MAINTAINED, AND THE FUNERAL HOME EMPLOYEE WAS INJURED, DRIVING A CAR THAT HAD BEEN NEGLIGENTLY MAINTAINED, AND IN THAT CASE, LOPEZ SAID THESE EMPLOYEES WERE WORKING AT SEPARATE LOCATIONS HERE.

SO YOU ARE SAYING THE LEGISLATURE, REALLY, MEANT TO HAVE THAT, IF EVERYONE IS AT ONE LOCATION, THEN YOU COULDN'T SUE, BUT IF THEY HAPPEN TO BE IN SEPARATE BUILDINGS, THAT YOU WOULD BE ABLE TO SUE? I MEAN, AGAIN, FOLLOWING ALONG, NOW, WITH POLICY, I AM JUST HAVING A HARD TIME UNDERSTANDING, ASSUMING THERE IS THIS EXCEPTION, WHY THE PHYSICAL LOCATION IS THE KEY. YOU KNOW, IF YOU ARE GOING TO BE SAYING BROADLY, MOST PEOPLE SHOULD BE ABLE TO SUE COME EMPLOYEES, SOMETHING IS NOT -- SHOULD BE ABLE TO SUE COEMPEMPLOYS, SOMETHING IS NOT MAKING SENSE TO ME.

JUSTICE PARIENTE, I DON'T THINK IT IS THAT SIMPLE, AND IF YOU LOOK AT THE LEGISLATIVE HISTORY OF THE ACCIDENT, THERE IS A SUBVERSION AT 636, TAB 5 OF OUR INITIAL BRIEF, IT SAYS THAT THE SAME EMPLOYER MAY HAVE A CAUSE OF ACTION, IF HE IS OPERATING IN FURTHERANCE OF EMPLOYER'S BUSINESS, BUT THEY ARE NOT ASSIGNED TO THE SAME JOB SITE, OR ARE ASSIGNED PRIMARILY TO UNRELATED WORKS. NOW, THIS SAME JOB SITE LANGUAGE WAS DELETED IN THE FINAL ENACTMENT.

WHAT PRINCIPLE OF STATUTORY CONSTRUCTION WOULD HAVE US LOOKING AT SOME DRAFTING VERSION OF A STATUTE? I MEAN, I UNDERSTAND YOU MADE THAT ARGUMENT, BUT, AND THAT IS WHY I ASKED YOU ABOUT THE PRINCIPLES OF STATUTORY CONSTRUCTION THAT WE ARE

SUPPOSED TO EMPLOYEE IN THIS CASE, AND I AM NOT REALLY SEEING WHICH ONES WE ARE USING, IF WE FOLLOW THAT PRINCIPLE.

I CITED TO THE COURT THE MAYO CASE, WHICH IS IN THE BRIEF. THIS COURT'S AUTHORITY, WHICH STATES THAT, IF THE LEGISLATURE DELETES LANGUAGE FROM THE PREDECESSOR BILL THAT IS IN THE FINAL FORM OF THE BILL, THAT IS NOT IN THE TIME FORM OF THE BILL THAT, THAT RAISES AN EXTREMELY STRONG PRESUMPTION THAT THE LEGISLATURE DID NOT INTEND THAT THAT PARTICULAR LANGUAGE APPLY.

THAT IS WHERE THE LEGISLATION HAD BEEN IN EFFECT AND THEN A NEW LAW COMES INTO EFFECT.

WELL, THIS WAS A NEW LAW FROM THE OUTSET. I MEAN, THIS GOES BACK TO IS THE -- THIS GOES BACK TO 1978.

UNDER YOUR ANALYSIS HERE, WHAT WOULD HAPPEN IF THE SAME MECHANIC, IF YOUR CLIENT WAS HAVING TROUBLE WITH THIS LIFT, SAID WE BETTER GET A MECHANIC OVER HERE, TO BE SURE, YOU KNOW HAD, THAT IT IS ALL RIGHT. THE MECHANIC CAME OVER AND ADJUSTED IT. DIDN'T CATCH THE REAL PROBLEM THAT WAS THERE AND THEN STOOD OUTSIDE THE BUS AND SAID IT IS ALL RIGHT NOW, AND THEN YOUR CLIENT WAS INJURED WHILE THE MECHANIC IS STANDING RIGHT THERE. I TAKE IT THAT, UNDER YOUR VIEW, THEN, BECAUSE THE MECHANIC IS RIGHT THERE, THAT NOW THEY WOULD BE ENGAGED IN RELATED WORKS. WHAT WOULD BE THE OUTCOME OF AN ANALYSIS THERE, WHERE THEY ARE BOTH ATTEMPTING TO MAKE THE LIFT SAFE FOR THE CHILDREN TO COME OFF THE BUS AND, OF COURSE, ONE OF THEM DOES IT NEGLIGENTLY, BECAUSE HE HAS SOME EXPERTISE ABOUT THAT, THEN STILL UNRELATED WORKS?

WELL, IT IS, AND THE REASON THAT IT IS, IS YOU HAVE TO LOOK AT THE PLAIN LANGUAGE OF THE STATUTE, WHICH REQUIRES THAT THE EMPLOYEES BE ASSIGNED PRIMARILY TO UNRELATED WORKS. NOW, THE MECHANIC'S ASSIGNMENT IS STILL PRIMARILY MECHANICAL-RELATED DUTIES. THE SCHOOL BUS ATTENDANT'S PRIMARY ASSIGNMENT IS STILL HELPING THE CHILDREN ON THE SCHOOL BUS.

SO YOU WOULD ADVOCATE A VERY BRIGHT LINE.

YES, THE SAME BRIGHT LINE THAT WAS IN THE VILLACHEZ VERSUS LOPEZ CASE.

SO THERE WOULD ONLY BE THE EXCEPTION UNDER THAT FOR EMPLOYEES THAT WERE ACTUALLY WORKING WITH A MECHANIC. IN PERFORMING MECHANICAL DUTIES ON THE SCHOOL BUS. ANYBODY THAT WAS USING THE SCHOOL BUS, UNDER YOUR ANALYSIS, WOULDN'T FIT WITHIN THIS EXCEPTION.

I HAVE TO GO TO THE FACTS IN THE CASE. THERE MAY BE A FACTUAL QUESTION CONCERNING THE SCHOOL BUS DRIVER, BECAUSE THE SCHOOL BUS DRIVER DID HAVE SOME INTERACTION WITH THE MECHANICS, WHERE HE HAD TO REPORT BUS MALFUNCTIONS.

IT SEEMS TO ME THAT, ONCE YOU START DOWN THAT ROAD, YOU REALLY RUN INTO THE PROBLEM WITH YOUR THEORY, IN THAT JUST SIMPLISTICLY, WHY DOESN'T THIS UNRELATED WORKS THE WHOLE IDEA, MEAN THAT THERE IS A RECOGNITION THAT YOU ARE GOING TO HAVE COMPANYS -- COMPANIES OR GOVERNMENTAL BODIES THAT ARE GOING TO BE PERFORMING A LOT OF DIFFERENT THINGS IN THE COURSE OF THEIR BUSINESS, AND WE ARE NOT GOING TO SAY THAT SOMEONE THAT IS, THAT WOULD BE AS IF THEY WERE WORKING FOR SOMEBODY ELSE, WOULD COME WITHIN THE IMMUNITY, BUT SHOULDN'T IT BE TO THAT EXTENT, WITH THE ANALYSIS BEING THEY WERE REALLY GOING TO BE WORKING -- THIS IS LIKE THEY WERE WORKING FOR SOMEBODY ELSE.

I DISAGREE WITH THAT, SIMPLY BECAUSE, JUSTICE WELLS, SIMPLY BECAUSE THAT IS NOT WHAT THE LANGUAGE IN THE STATUTE, ITSELF, SAYS. I MEAN, I THINK THE LANGUAGE IS FAIRLY CLEAR CONCERNING ASSIGNED PRIMARILY TO UNRELATED WORKS IN PUBLIC OR PRIVATE EMPLOYMENT, AND IF THE COURT IS GOING TO ENFORCE THAT LANGUAGE, I DON'T THINK IT CAN BE IN SUCH A RESTRICTED FASHION FOR THE GIANT TYPE OF ENTERPRISE THAT YOU, THAT YOU ARE DESCRIBING. WE ARE TALKING ABOUT PRESERVING A CONSTITUTIONAL RIGHT TO FLORIDA'S WORKERS HERE.

DID YOU ANSWER THE QUESTION AS TO WHETHER, IN A FACTORY SETTING, WHERE THEY ARE ALL IN THE SAME FACTORY, WOULD THERE, WOULD A COEMPLOYE BE ABLE TO SUE ANOTHER, IF ONE IS WORKING IN THE CALF TEAR YEAH AND THE -- IN A CAFETERIA AND THE OTHER IS WORKING UPSTAIRS IN A GIANT ASSEMBLY LINE.

IF THEY HAVE DIFFERENT PRIMARY ASSIGNMENTS AND WORK IN DIFFERENT AREAS, THEN YES, I THINK THE UNRELATED WORKS EXCEPTION WOULD APPLY.

CHIEF JUSTICE: YOU ARE IN YOUR REBUTTAL TIME.

THANK YOU.

MAY IT PLEASE THE COURT. MY NAME IS MICHAEL BOWLING. I AM HERE ON BEHALF OF BREVARD COUNTY. IT IS CLEAR THE SCHOOL HAS CERTAIN FACTS IN THE CASE. I AM OPEN FOR QUESTIONS.

GIVEN THAT THIS WAS A SCHOOL TRIP FOR A CLASS, AND IT IS THE TEACHER WHOSE, HER OR HIS DUTIES ARE TEACHING THE CLASS, NOTHING TO DO WITH THIS, BUT IS ON THE SCHOOL BUS, JUST LIKE ALL THE OTHER CHILDREN THAT DAY, AND THE BUS LIFT, SOMETHING HAPPENS AND THAT TEACHER IS INJURED. IS THAT WITHIN OR WITHOUT THE SCOPE OF THE COEMPLOYEE IMMUNITY EXCLUSION?

IT WOULD CERTAINLY BE A LOT FURTHER AWAY FROM THIS SITUATION. WHETHER IT WOULD OR IT WOULDN'T, I CAN'T ANSWER THE QUESTION, BUT I ACKNOWLEDGE THAT.

WE HAVE, YOU ARE NOT ANSWERING THE QUESTION.

MY ANSWER IS YES, YOUR HONOR. MY ANSWER IS THE UNRELATED WORKS EXCEPTION WOULD APPLY, BECAUSE THEY ARE NOT, THEY ARE PROBABLY NOT, I AM ASSUMING THEY ARE NOT ASSIGNED TO THE SAME WORK LOCATION. I AM ASSUMING THEY DON'T HAVE THE SAME SUPERVISORS. I AM ASSUMING THIS IS NOT A JOB SHE HAS DONE BEFORE OR SHE REGULARLY DOES. MAKING THOSE ASSUMPTIONS, THEN, YES, THE UNRELATED WORKS EXCEPTION APPLIES.

WHAT IS THE KEY?

WHAT IS THE KEY?

IS IT THE SUPERVISOR, IS IT THE LOCATION, OR IS IT THE WORK?

EXCUSE ME, YOUR HONOR. GO AHEAD.

OR DOES IT TAKE A COMBINATION OF ALL OF THOSE, SO THAT WE ARE BACK TO THE SPECIFIC FACT CASE BY CASE ANALYSIS?

I DON'T KNOW HOW ELSE YOU CAN DO IT, YOUR HONOR. I THINK YOU HAVE TO LOOK AT ALL OF THE FACTORS. ANY BRIGHT-LINE TEST SEEMS SIMPLISTIC.

TOO TAKE OUT ALL OF THE JARGON, WHAT DID THE LEGISLATURE INTEND TO COVER WITH THE

INTENT AND PURPOSE OF THAT UNRELATED WORKS EXCEPTION? WHAT ARE THEY ENVISIONING? LET'S TALK ABOUT THAT.

AS FAR AS WHAT I CAN SEE, WHAT I THINK THEY ARE TRYING TO DO IS TO SEPARATE PEOPLE WHO HAVE NOTHING TO DO WITH EACH OTHER, LIKE JUSTICE WELLS WAS MENTIONING, KIND OF LIKE THEY ARE DIFFERENT EMPLOYERS, DIFFERENT, THEY ARE NOT RELATED IN ANY WAY, TO EACH OTHER. I MEAN, THE SITUATION WE HAVE HERE IS WE HAVE PEOPLE DOING, FUNCTIONING IN THE SAME DIRECTION. ONE OPERATES THE LIFT. THE OTHER REPAIRS THE LIFT. THEY ARE BOTH EMPLOYEES OF THE SAME EMPLOYER. THEY ARE BOTH EMPLOYEES OF THE SAME DIVISION. THEY ARE BOTH DOING THE SAME PRIMARY FUNCTION. THEY ARE BOTH TRYING TO GET KIDS TO SCHOOL SAFELY. THAT CAN'T BE WHAT THE LEGISLATURE WAS TALKING ABOUT. THEY HAD TO BE TALKING ABOUT PRIMARILY UNRELATED. IT HAS TO BE SOMETHING WHERE THE EMPLOYEES JUST DON'T SEEM TO HAVE MUCH CONTACT. JUST BECAUSE THEY ARE COEMPLOYEES, THEY SHOULDN'T BE ABLE.

SO UNDER YOUR THEORY, IF, IN FACT, A TEACHER IS ASSIGNED, SAY, ONCE A WEEK OR ONCE A MONTH TO, IN FACT, DO THE SAME KIND OF DUTIES THAT MR. TAYLOR HAD TO DO IN THIS CASE, THEN ALTHOUGH THE TEACHER'S PRIMARY RESPONSIBILITY IS TEACHING, THEY WOULD FALL UNDER THIS UNRELATED WORKS OR WOULD NOT FALL UNDER THIS UNRELATED WORKS EXCEPTION?

I CAN'T, ASSUMING THEY DON'T HAVE THE SAME SUPERVISORS, ASSUMING THEY DON'T WORK AT THE SAME WORK LOCATION, THERE HAS TO BE, IT CAN'T SIMPLY BE THAT THE TEACHER DOES THIS ONCE A MONTH. I MEAN, THAT, AGAIN, IF YOU TAKE THIS BRIGHT-LINE TEST, IT BECOMES SIMPLISTIC.

WHAT ABOUT THE SITUATION WHERE YOU, SOMEONE MAINTAINS THE EQUIPMENT AND YOU USE THE EQUIPMENT. ARE YOU LUMPING THEM IN, THEN, AS RELATED WORKS? BECAUSE YOU USE THE EQUIPMENT THAT IS BEING MAINTAINED, THEN YOU FALL INTO THE RELATED WORKS AS OPPOSED TO UNREPRESENTED WORKS?

AGAIN, ASSUMING THAT THEY HAVE THE SAME JOB LOCATION, ASSUMING THAT THEY HAVE THE SAME BUSINESS PURPOSE. I AM SORRY. I HAVE TO GO ALONG WITH WHAT HIS CASE BY CASE.

USUALLY THE MECHANICS, WELL, I GUESS, IN THE FACTORY, THEN, SITUATION, BECAUSE THE MECHANIC MORE THAN LIKELY WOULD COME TO THE FLOOR AND SERVICE THE EQUIPMENT AS OPPOSED TO TAKING IT SOMEPLACE, THEN YOU THINK THAT THAT MAKES IT RELATED WORKS.

YES.

BUT IF THE MECHANIC HAD TO TAKE THE EQUIPMENT TO ANOTHER LOCATION, WE WOULD PROBABLY FALL OUTSIDE OF THE RELATED WORKS?

I DON'T THINK SO IN THAT CASE. IF THE MECHANIC IS WORKING ON A PIECE OF EQUIPMENT THAT IS GOING TO BE WORKED ON BY, GOING TO BE USED BY A COEMPLOYEE, THEY ARE BOTH WORKING ON THAT SAME PIECE OF EQUIPMENT.

HOW DOES THAT WORK, THOUGH, IF WE REALLY TAKE, FOR INSTANCE, OBVIOUSLY A VERY LARGE SCHOOL DISTRICT, AND THERE IS ONE CENTRAL GARAGE, AND THERE IS HUNDREDS OF SCHOOL BUSES, DOZENS IF NOT HUNDREDS OF OTHER VEHICLES, YOU KNOW, THAT THE SCHOOL SYSTEM HAS, THAT THE WORKERS THERE, IN THE GARAGE, WORK AT ONE LOCATION, AND THAT IS, YOU KNOW, THEIR WORK IS TO WORK ON THESE VEHICLES, AND YOU HAVE GOT 100 OR MORE SCHOOLS IN THE PARTICULAR SCHOOL DISTRICT, AND NOW YOU ARE TALKING ABOUT ATTENDANCE AT AN ELEMENTARY SCHOOL LOCATED 50 MILES FROM THAT CENTRAL GARAGE, THAT YOU ARE SAYING THAT, REALLY, THEY ARE ENGAGED IN THE RELATED WORKS IF THAT IS

THE WAY YOU COME AT THE QUESTION, WITH THIS MECHANIC THAT NEVER LEAVES THE GARAGE, YOU KNOW, BE ONE DAY HE IS WORKING ON THE AUTOMOBILE THAT BELONGS TO THE SCHOOL SUPERINTENDENT, AND THE NEXT DAY HE IS WORKING ON THE SMALL BUS, AND THE NEXT DAY HE IS WORKING ON THE BIG BUS, AND HE IS WORKING ON ALL DIFFERENT COMPONENTS OF THAT, AND THAT IS ABOUT AS UNRELATED TO THIS CLEAN-CUT, NEAT, UNIFORMED PERSON THAT IS SAYING, CHILDREN, NOW, BE CAREFUL, YOU KNOW, AS YOU COME OFF THE BUS, IF YOU VISUALIZE THAT, AND I AM HAVING SOME DIFFICULTY, YOU KNOW, WITH THAT SORT OF VISUAL IMAGE THAT I AM CONSTRUCTING HERE.

I UNDERSTAND, BUT FORTUNATELY, I DON'T HAVE THAT PROBLEM IN THIS CASE. THE FACTS IN THIS CASE IS MR. TAYLOR WORKED AT THE SAME LOCATION AS THE BUS ATTENDANT. THERE WERE DIFFERENT BUS DEPOTS. THERE WAS THE SOUTH AREA BUS DEPOT. THIS WAS A BUS ATTENDANT WHO WORKED SPECIFICALLY ON A TYPE OF BUS THAT THE MECHANIC WAS WORKING ON. I UNDERSTAND WHAT YOU ARE SAYING, BUT IF, THE COURT SEEMS TO BE ASKING ME TO HELP YOU DRAW A BRIGHT-LINE TEST, AND I WISH I COULD.

I TAKE IT THAT YOU WOULD COME DOWN ON THE SIDE OF NARROWLY CONSTRUEING --

OBVIOUSLY THE WORKERS COMPENSATION STATUTE IS TO BE BROADLY APPLIED TO EMPLOYERS AND NARROW IN, AND ITS EXCEPTIONS TO BE NARROWLY CONSTRUED.

YOU SEEM TO BE NOT TOO FAR FROM YOUR OPPONENT.

EXCUSE ME, YOUR HONOR.

YOU SEEM TO BE NOT TOO FAR REMOVED FROM YOUR OPPONENT IN YOUR ARGUMENT. HOW WOULD YOU DISTINGUISH TAYLOR FROM LOPEZ? WHAT DO YOU THINK THE DISTINGUISHING FEATURES OF THOSE TWO CASES?

I WILL BE QUITE FRANK WITH YOU, YOUR HONOR. I DON'T REALLY THINK THERE IS ALL THAT MUCH DIFFERENCE BETWEEN THE TWO CASES. THE DIFFERENCE BETWEEN THE TWO CASES IS, IN MY VIEW, IS LOPEZ SEEMS TO FOCUS PRIMARILY ON THE LOCATION OF THE WORK. I AM NOT STANDING HERE IN FRONT OF THE COURT SAYING THAT LOCATION OF THE WORK IS NOT A RELEVANT CONSIDERATION. IT OUGHT TO BE. BUT LOPEZ, THAT SEEMS TO BE THE DETERMINATIVE FACTOR. I DON'T THINK THAT SHOULD BE THE DETERMINATIVE FACTOR, BUT IT DOESN'T MATTER THIS CASE, BECAUSE WE WORKED AT THE SAME LOCATION ANYHOW.

WOULD YOU AGREE IT IS A CASE BY CASE ANALYSIS.

CORRECT.

YOU HAVE TO GO THROUGH.

WHAT WORK DID THIS INDIVIDUAL PERFORM AT THE SAME LOCATION, OTHER THAN REPORTING TO WORK THERE, IF HE IS REALLY ASSIGNED TO WORKING WITH THE CHILDREN IN EXITING THE BUS, AND WHAT DID HE DO AT THE MECHANICS, AT THE DEPOT?

THEORETICALLY MR. TAYLOR WOULD COME TO THE BUS DEPOT AND CHECK IN WITH HIS BUS DRIVER AND SIGN IN. HE WOULD GO OUT TO THE BUS. HE AND THE BUS DRIVER WERE SUPPOSED TO DO A LITTLE MAINTENANCE CHECK ON THE BUS, INCLUDING RUNNING THE WHEELCHAIR LIFT.

SAFETY CHECK. HE IS NOT GOING TO REPAIR IT. JUST SAFETY KIND.

SAFETY CHECK, AND THEN THEY WOULD GO OUT ON THE ROAD, AND THEN THEY WOULD RETURN AT THE END OF THE ROUTE.

SO HE REALLY DID NOTHING AT THIS LOCATION. HIS JOB FUNCTION WAS, REALLY, OUT ON THE ROAD, AT THE SCHOOLS, WHEN THE CHILDREN WERE ACTUALLY THERE, OTHER THAN THE SAFETY INSPECTION.

HIS JOB FUNCTION INVOLVED THE USE OF THE WHEELCHAIR LIFT, AT LEAST IN PART.

BUT HE DIDN'T USE IT THERE BECAUSE THERE WERE NO CHILDREN AT THE DEPOT, WERE THERE?

NO, THERE WERE NOT.

SO IT WAS ONLY USED WHEN IT WAS OUT ON THE STREET OR AT THE SCHOOL, PICKING UP THE CHILDREN.

CORRECT.

NOW, IF WE HAVE, FOR INSTANCE, THE SAME MECHANIC WHO HAS JUST REPAIRED THE BRAKES ON THE SUPERINTENDENT'S CAR AND WANTS TO BE SURE THEY ARE WORKING ALL RIGHT, AND SO HE DRIVES IT AROUND THE SCHOOL GROUNDS AND STRIKES THIS BUS ATTENDANT, I TAKE IT THAT NOW WE ARE GOING TO HAVE A CHAMELEON-LIKE CHANGE, AND NOW THAT THE MECHANIC DRIVING THE VEHICLE AROUND IS GOING TO BE ENGAGED IN UNRELATED WORKS IF THOSE ARE THE --

IT WOULD DEPEND ON THE CASE.

HOW WOULD YOU --

ACCORDING TO LOPEZ --

TAKE THAT HYPOTHETICAL THAT I HAVE JUST DESCRIBED TO YOU. THE SAME MECHANIC, THE SAME ATTENDANT, EXCEPT NOW IT IS THE MECHANIC AFTER WORKING ON THE BRAKES, DRIVING THE CAR AROUND, STRIKES THE ATTENDANT WHILE HE IS DRIVING THE CAR, SO IS THERE WORKERS COMP IMMUNITY, OR DOES THE EXCEPTION APPLY OR NOT?

ACCORDING TO LOPEZ, WORKERS COMPENSATION IMMUNITY WOULD APPLY.

ACCORDING TO YOU.

ACCORDING TO ME. AGAIN, THE MECHANIC AND THE BUS AND THE ATTENDANT WORK OUT OF THE SAME LOCATION. IT WOULD BE A MUCH CLOSER CASE. I WOULD HAVE TO -- I DON'T KNOW.

HELP ME WITH SOME OF THE CASES FROM THE OTHER DISTRICT COURTS, AND SPECIFICALLY PALM BEACH COUNTY V KELLY AND SCHOOL BOARD OF BROWARD VERSUS VICTORAN. IN KELLY, IT IS A CLASSIC CASE OF TWO EMPLOYEES WORKING IN TWO DIFFERENT DEPARTMENTS AND THERE IS A HAPPENSTANCE OF AN ACCIDENT AND THERE IS NO RELATIONSHIP OTHERWISE.

ONE WORKS AT, THEY CHECK IN AT THE SAME PLACE, BUT THEY WORK AT ENTIRELY DIFFERENT LOCATIONS. THEY HAVE ENTIRELY DIFFERENT JOBS.

THE ACCIDENT IS SORT OF A HAPPENSTANCE, AND THAT SORT OF SEEMS TO BE A CLASSIC EXAMPLE OF UNRELATED WORKS.

CORRECT.

BUT SOMEBODY IN THE STATE WORKS FOR DOC AND THEY JUST HAPPEN TO HAVE AN ACCIDENT, AND YOU HAVE GOT TWO SCHOOL BUS DRIVERS. THEY BOTH HAPPEN TO WORK FOR THE SCHOOL

BOARD, BUT THEY AGAIN, HAPPEN TO HAVE A HAPPENSTANCE ACCIDENT BETWEEN TWO SCHOOL BUSES, AND THERE THE FOURTH DISTRICT SAYS, NO, THEY ARE BOTH INVOLVED IN DRIVING BUSES, FURTHERING, TAKING CHILDREN TO SCHOOL. THERE IS NO RELATIONSHIP BETWEEN THE TWO OF THEM. HOW DO YOU, AGAIN, I AM NOT SEEING WHERE THIS EVEN THE LINE OF THE DISTRICT COURTS ARE DRAWN, IN TERMS OF TRYING TO GET AN OVERALL POLICY, GOING BACK TO I AM TROUBLED, LIKE JUSTICE LEWIS IS, WHAT IS IT, WHAT POLICY ARE WE ENFORCING, WHEN WE SAY KELLY, YES, YOU CAN SUE, YOU KNOW, VITTORAN YOU CAN'T. THIS YOU CAN OR YOU CAN'T. WHAT IS --

I RECOGNIZE THE, YOUR HONOR'S PROBLEM WITH VICTORAN. THE BUS DRIVER, THE QUESTION SEEMS TO BE HOW YOU INTERPRET THE TERM "PROJECT". WHEN YOU SAY PEOPLE ARE INVOLVED IN THE SAME PROJECT, HOW DO YOU DETERMINE THAT TERMINOLOGY?

I DON'T KNOW WHERE WE GET PROJECT FROM. IT SAYS UNRELATED WORKS.

BUT THE CASE BY CASE CASES SEEM TO USE THE TERM "INVOLVED IN THE SAME PROJECT".

THAT IS MORE VAGUE THAN UNRELATED WORKS.

AND THAT IS THE PROBLEM. I MEAN, I UNDERSTAND WHAT YOU ARE SAYING IN KELLY, IN VICTORAN, WHAT IS THE PROJECT? THEY ARE SAYING ANYBODY TRANSPORTING STUDENTS. IT IS A QUESTION. I AM NOT GOING TO ARGUE THAT KELLY, THAT VICTORAN NECESSARILY PROVIDES A GOOD RULE, BUT I DON'T HAVE THAT PROBLEM. I KEEP COMING BACK TO THAT.

BUT WE HAVE GOT THAT PROBLEM. WE, HOW, THEY ARE GOING BACK TO JUSTICE SHAW'S ORIGINAL QUESTION THERE, FOR HOW NARROWLY YOU DEFINE PURPOSE, SPECIFIC PURPOSE VERSUS GENERAL PURPOSE, YOU TAKE, IN THE LANGUAGE CASE THAT, THEY DEFINE -- IN THE LANG CASE THAT, THEY DEFINE, THAT EVERYONE WORKING FOR THE SAME SCHOOL IS INVOLVED IN THE SAME TEAM, YET THEY ARE DOING COMPLETELY UNRELATED WORKS. I MEAN, ONE IS A CUSTODIAN DRIVING A GOLF CART AND THE OTHER IS TEACHING IN THE SCHOOL, YET THEY ARE SAYING BECAUSE THEY ARE ALL INVOLVED IN PROVIDING EDUCATION SERVICES, THEY ARE RELATED. YOU COULD BE ADVOCATING A TEST TO SAY IN YOUR SCHOOL DISTRICT, EVERYBODY IS INVOLVED IN PROVIDING EDUCATION SERVICES AND THERE SHOULDN'T BE ANY UNRELATED WORKS EXCEPTION.

THERE IS ACTUALLY, ONE COULD FOLLOW DICTA IN LOPEZ, I MEAN IN LANG FOR THAT.

YOU ARE NOT ADVOCATING THAT BROAD, THAT WOULD EVISCERATE ENTIRELY THAT SECTION.

IT WOULD RENDER THE RULE MEANINGLESS. I ACKNOWLEDGE THAT, BUT THE ONLY WAY THAT I CAN SEE THAT WE EVALUATE THAT IS TO LOOK AT ALL OF THE RELEVANT FACTORS, LOCATION BEING ONE OF THEM, JOB DUTIES BEING ONE OF THEM, THE PURPOSE OF WHAT THEY ARE DOING BEING ONE OF THEM. CONNECTION BETWEEN --

COULD YOU GO BACK ON THE POLICY ISSUE AND TELL US WHAT YOU SURMISE TO HAVE BEEN THE FACTUAL SITUATIONS THAT EXISTED OUT THERE OR SITUATION, THAT THE LEGISLATURE WAS SEEKING TO ADDRESS, AT THE TIME THIS LEGISLATION WAS ENACTED? IN OTHER WORDS TYPICALLY, FOR INSTANCE, WE SEE SOMETHING ACTUALLY HAPPENING, MAYBE A DECISION OF THIS COURT OR THE DISTRICT COURT OF APPEALS OR SOME FACTS THAT EXIST OUT THERE, AND A LEGISLATOR COMES WITH HIS COLLEAGUES AND SAYS, YOU KNOW, WE HAVE GOT TO ADDRESS THIS ISSUE. WHAT ISSUE WAS IT THAT THE LEGISLATURE WAS ADDRESSING, WHEN THIS CAME UP?

I WISH I COULD PUT MY HANDS ON IT RIGHT NOW, BUT I DO BELIEVE THAT YOUR HONOR IS CORRECT. IN FACT, THIS AMENDMENT WAS THE RESULT OF A DECISION OF THIS COURT BACK IN 1978, AND THAT, BECAUSE THERE WAS NO COEMPLOYEE EXCEPTION, THE LEGISLATURE, IN FACT,

CREATED ONE, AND THE, OBVIOUSLY WHAT THE LEGISLATURE IS TRYING TO DO IS EXTEND THIS PROTECTION TO COEMPLOYEES, AT LEAST WHERE THEY ARE NOT INVOLVED IN PRIMARILY UNRELATED WORKS. UNFORTUNATELY THE LEGISLATURE DID NOT DEFINE THE TERM.

SO THERE WAS SOME UNRELATED SITUATION OUT THERE, WHERE THE IMMUNITY WAS APPLIED, AND THE LIMITATION OF WORKERS COMPENSATION THAT THE LEGISLATURE SAW TO BE NOT APPROPRIATE.

AND ACTED ON IT, YES.

OKAY.

SO IF WE HAVE TO LOOK AT THIS AND EVALUATE EACH OF THE FACTORS, YOU SAY LOCATION AND OTHER THINGS THAT HAVE TO BE LOOKED AT, THEN IT BECOMES A FACTUAL QUESTION IN EACH CASE, AND SHOULD THAT BE, AND IF THAT IS THE CASE, SHOULD IT BE DETERMINED ON, IS THAT A JURY QUESTION THAT NEEDS TO BE ANSWERED?

NOT NECESSARILY. AS MR. WILLIAMS CORRECTLY POINTED OUT, WE DEVELOPED A PRETTY COMPLETE RECORD HERE. THERE IS NOT REALLY ANY SUBSTANTIAL FACTUAL DISPUTE. WE DO HAVE SOME DISPUTES OVER INTERPRETATION OF WHAT A PERSON MIGHT BE, BUT WE AGREE PRETTY MUCH WHAT THE RECORD IS. MR. TAYLOR WAS INJURED WHILE OPERATE AGO WHEELCHAIR LIFT. MECHANICS ALLEGEDLY WERE NEGLIGENT.

BUT THE QUESTION STILL IS YOU BASICALLY BOTH, I AM SURE, DISAGREE ON WHETHER OR NOT THAT EQUATES TO RELATED WORKS. OR UNRELATED WORKS WHICHEVER THE QUESTION.

WE CERTAINLY DISAGREE WITH THAT, BUT I THINK WE BOTH BELIEVE THAT THAT IS A QUESTION OF LAW. WE HAVE SET FORTH THE FACTS FOR THE COURT. THE COURT CAN THEN APPLY WHATEVER THE APPROPRIATE TEST IS. MY VIEW, EITHER THE LOPEZ TEST OR THE TAYLOR TEST OR LANG TEST, WHATEVER YOU WANT TO PUT, THE RESULT IS THE SAME. WE WERE INVOLVED IN UNRELATED WORKS BUT THE FACTS, WE MANAGED TO SET FORTH IN THE CASE. THERE MAY BE SITUATIONS WHERE YOU CAN'T, AND IT MIGHT, THERE MIGHT BE JURY QUESTIONS BECAUSE OF. THAT I BELIEVE THERE ARE REPORTED DECISIONS TO THAT EFFECT, WHERE THE UNRELATED WORKS EXCEPTION WAS NOT RULED UPON, BECAUSE THERE WERE FACTUAL QUESTIONS.

I HATE TO CONTINUE THIS HYPOTHETICALS, BUT TAKE A HOSPITAL, BECAUSE THAT WAS, I GUESS, ONE OF THE CASES. AND YOU HAVE GOT AN EMPLOYEE, A NURSE WHO SLIPS AND FALLS. IN SCENARIO ONE, THE MAINTENANCE WAS DONE NOT BY A THIRD PARTY, SO THERE IS NO ISSUE OF WORKERS COMPENSATION IMMUNITY. THEY COULD SUE PLUS GET THEIR REMEDY. IN THE NEXT SITUATION, WHAT IT IS SOMEBODY WHO IS ON THE FLOOR THAT DOES THE WAXING EVERY, YOU KNOW, CONSTANTLY, AND SO THEY ARE ON THE SAME FLOOR. THEY HAVE GOT THE SAME GENERAL SUPERVISOR. THE THIRD SCENARIO IS IT IS A LARGE HOSPITAL, AND THE WAXING OF THE FLOORS ARE DONE AT NIGHT BY ACCRUE THAT IS, YOU KNOW, WORKS IN A SEPARATE PLACE IN THE HOSPITAL. WHAT IS THAT SITUATION, WHERE THERE IS NO RELATIONSHIP. THEY NEVER SEE ONE ANOTHER. THEY HAVE GOT A DIFFERENT SUPERVISOR, BUT THEY ARE BOTH WORKING FOR THE HOSPITAL?

AGAIN, ASSUMING THEY DON'T HAVE, THEY ARE NOT EMPLOYEES OF THE SAME DEPARTMENT, THEY DON'T HAVE THE SAME SUPERVISOR, THEY WORK IN DIFFERENT AREAS OF THE HOSPITAL, THEY ARE LOCATED IN DIFFERENT AREAS OF THE HOSPITAL, I THINK AN ARGUMENT THE UNRELATED WORKS EXCEPTION APPLIES WOULD BE COMPELLING.

AND THEN WHAT POLICY THERE FOR IS BEING FOSTERED? IS IT SOMETHING I AM LOOKING FOR, SOMETHING ABOUT RESPONSIBILITY THAT THERE IS SOME CONTROL FACTOR THAT SOMEBODY HAS TOWARDS A COEMPLOYEE, THAT IS AND EXTENT, IF THEY ARE SO AT ENWAITED IN WHAT

THEIR -- ATTENUATED IN WHAT THEIR ASSIGNMENTS ARE? THERE HAS GOT TO BE SOMETHING THAT EITHER MAKES SENSE, WITH REGARD TO THE WORKERS COMPENSATION SCHEME OR NOT, IN ORDER FOR US TO, I THINK, HELP THE DISTRICT COURTS, AT LEAST IN THEIR FUTURE OCCASION.

THERE HAS GOT TO BE SOME CONNECTION BETWEEN THE ACTIONS OF THE EMPLOYEES. THAT IS BASICALLY WHERE I THINK WE ARE GOING. THEY HAVE GOT TO BE CONNECTED. THEY HAVE GOT TO BE AIMING AT THE SAME DIRECTION. THEY HAVE GOT TO HAVE SOME SORT OF ENTER PLAY, INTERACTION, NOT NECESSARILY FACE-TO-FACE, BUT THEY HAVE GOT TO BE WORKING ON THE SAME SORT OF THING. I MEAN, IF SOMEBODY WAXES THE FLOOR AT 2:00 A.M. AND A NURSE SLIPS AT 7:00 A.M. AND THEY HAVE NEVER LAID EYES ON EACH OTHER AND NO SIMILARITY IN JOB FUNCTIONS OR SUPERVISOR OR THINGS OF THIS NATURE, THEN IT BECOMES VERY ATTENUATED, BUT IF WE HAVE PEOPLE WORKING ON THE SAME OBJECT, DOING THE SAME SORT OF THING FOR THE SAME PURPOSE, I THINK WE HAVE GOT SOMETHING THERE.

LET'S GET A LITTLE CLOSER. LET'S SAY ONE IS A MECHANIC AND ONE IS A PAINTER, AND THEY BOTH WORK FOR THE CITY, MAINTAINING BUSES, SINCE WE ARE TALKING ABOUT SCHOOL BUSES. WHAT IS THE SITUATION?

I HAVE GOT NO PROBLEM WITH THAT, THE UNRELATED WORKS EXCEPTION WOULD NOT APPLY. THEY ARE BOTH WORKING ON A BUS. I MEAN THERE, HIS CASE AUTHORITY ON THIS VERY POINT. I MEAN, WE HAVE GOT ONE WHERE THERE IS AN ELECTRICIAN AND A WELDER OR SOMETHING. THEY ARE WORKING ON THE SAME CONSTRUCTION PROJECT. THEY ARE BOTH INVOLVED IN DOING THE SAME SORT OF THING. THEY ARE BOTH IN THE SAME LOCATION. THEY HAVE BOTH GOT THE SAME CHAIN OF COMMAND AT SOME POINT. THEY ARE ACTING TOWARDS THE SAME GOAL.

WELL, ARGUABLY WITH -- ARGUABLY BOTH HERE ARE KEEPING THE BUS IN MECHANICAL AND PHYSICAL SHAPE TO RUN.

THE MECHANIC AND TAYLOR ARE WORKING AT THE SAME LOCATION FOR THE SAME PURPOSE. THEY ARE OPERATING THE SAME PIECE OF MACHINERY. THANK YOU, YOUR HONOR.

CHIEF JUSTICE: THANK YOU VERY MUCH. REBUTTAL.

LET ME ASK YOU ONE QUESTION AND GET THIS OUT OF THE WAY.

YES, SIR.

WHAT DO YOU SEE AS AS OUR STANDARD OF REVIEW HERE TODAY? ARE WE REVIEWING A QUESTION OF LAW? A QUESTION OF FACT? OR A MIXED QUESTION?

WE ARE ASKING THE COURT TO CONSTRUE, LEGALLY CONSTRUE THE UNRELATED WORKS EXCEPTION, TO TELL US AND TO TELL THE DISTRICT COURTS OF APPEAL IN THIS STATE, WHAT STANDARDS ARE TO BE APPLIED, WHEN QUESTIONS OF THIS SORT ARE TO BE ADDRESSED BY THE TRIAL COURTS AND THE DISTRICT COURTS OF APPEAL.

BUT IF OUR STANDARD, THE RESULTS COME OUT DIFFERENTLY IF WE ARE REVIEWING A QUESTION OF LAW, AS OPPOSED TO A QUESTION OF FACT. THAT IS WHY I ASK THAT QUESTION.

IN MY BRIEF, I TOLD YOU THAT I THOUGHT THIS WAS A DE NOVO STANDARD OF REVIEW, BECAUSE IT DEALT WITH CONSTRUCTION OF THE STATUTE.

SO YOU THINK WE ARE REVIEWING A QUESTION OF LAW AGAIN.

I AM SORRY?

YOU THINK WE ARE REVIEWING A QUESTION OF LAW, IS THAT CORRECT?

YES, YOUR HONOR. YES, YOUR HONOR.

WOULD YOU RESPOND TO THE QUESTION I POSED TO YOUR COLLEAGUE THERE, WITH REGARD TO, REALLY, WHAT IS THE INTENT AND PURPOSE? WHAT WAS THE LEGISLATURE REALLY TRYING TO COVER HERE IN LANGUAGE THAT EVERY FLORIDA CITIZEN WOULD UNDERSTAND, AND THEN THE SECOND PART, HE HAS LAID OUT SOME OF THESE SUPERVISION, LOCATION, ALL OF THESE THINGS. DO YOU AGREE WITH WHAT HE HAS SUGGESTED TO US, AND IF SO, WHERE DO YOU DEPART ON THAT INTERPRETATION? THOSE TWO QUESTIONS.

I HAVE MY NOTES, I WAS GOING TO ADDRESS YOUR QUESTION ON THE POLICY AND JUSTICE PARIENTE'S, ALSO. I THINK YOU START OUT WITH AN EMPLOYER IS IMMUNE FROM SUIT BECAUSE THE EMPLOYER HAS THE DUTY AND THE BURDEN TO PROVIDE WORKERS COMPENSATION BENEFITS TO AN EMPLOYEE INJURED ON THE JOB. COEMPLOYEES DON'T HAVE THAT BURDEN, SO THERE HAS TO BE ANOTHER REASON WHY THE LEGISLATURE ADOPTED THIS FOR COEMPLOYEES. I THINK THAT REASON WAS PRIMARILY TO PREVENT OR REDUCE STRIFE IN THE WORKPLACE. OBVIOUSLY IF YOU HAVE TWO PEOPLE WHO ARE WORKING SIDE-BY-SIDE TO EACH OTHER, AND ONE OF THEM INJURIES THE OTHER NEGLIGENTLY, IF "A" SUES "B" AND THEY ARE REPORTING TO THE SAME WORK STATION EVERYDAY, THAT IS GOING TO CAUSE SOME STRESS IN THE WORKPLACE, AND I THINK WHAT THE LEGISLATURE TRIED TO DO WAS TO CRAFT AN EXCEPTION THAT WOULD PRESERVE THE CONSTITUTIONAL RIGHT, AS BROADLY AS POSSIBLE, WHILE MINIMIZING THAT POTENTIAL FOR STRIFE OR CONFLICT IN THE WORKPLACE, WHERE TWO FELLOW EMPLOYEES ARE, WERE INVOLVED IN THAT. DOES THAT ANSWER YOUR QUESTION?

WELL, NO, IT IS AN ANSWER TO IT. I MEAN YES, AND WHETHER THAT IS WHERE IT GOES, I DON'T KNOW.

THAT IS WILLIAMS ON THE LAW, SO --

IT IS IMPORTANT THAT WE UNDERSTAND.

RIGHT.

HOW ABOUT THE SECOND ASPECT. DO YOU AGREE WITH THAT TEST THAT HE POSED?

WHAT WAS THAT? I AM SORRY.

THAT IS HE POSED THE TEST OF LOCATION. YOU REPORT TO THE SAME JOB SITE. DO YOU HAVE THE SAME SUPERVISOR. WHAT IS THE NEXUS OF YOUR WORK. HE SAID YOU ARE BOTH USING THE BUS. HE WENT THROUGH ABOUT FOUR OR FIVE DIFFERENT ELEMENTS.

I THINK REPORTING TO THE SAME JOB SITE, UNDER KELLY, IS, REALLY, IRRELEVANT, BECAUSE IT IS, AGAIN, YOU TALK ABOUT WHERE YOUR PRIMARY ASSIGNMENT IS. I THINK YOU HAVE --

YOU ALL DIFON WHAT THE PRIMARY ASSIGNMENT WAS? HE SAYS IT IS THE OPERATION OF THE LIFT. DO YOU DIFFER ON THE PRIMARY ASSIGNMENT OF TAYLOR?

MR. TAYLOR'S PRIMARY ASSIGNMENT, AS I INDICATED, OPERATION OF A LIFT WAS ONE PART OF THAT ASSIGNMENT, BUT IT WAS NOT THE ENTIRE ASSIGNMENT. AND I DON'T THINK, JUST BECAUSE THE NEGLIGENT EMPLOYEE AND THE NONNEGLIGENT EMPLOYEE HANDLED THE SAME OR HAD CONTACT WITH THE SAME INSTRUMENTALITY, THAT NEGATES THE UNRELATED WORKS EXCEPTION.

CHIEF JUSTICE: WE ARE GOING TO HAVE TO DRAW TO A CLOSE ON THAT NOTE, BECAUSE ON YOUR

TIME IS EXPIRED. THANK YOU, BOTH, VERY MUCH.