

*The following is a real-time transcript taken as closed captioning during the oral argument proceedings, and as such, may contain errors. This service is provided solely for the purpose of assisting those with disabilities and should be used for no other purpose. These are not legal documents, and may not be used as legal authority. This transcript is not an official document of the Florida Supreme Court.*

## **Physicians Healthcare Plans, Inc. v. Raymond Pfeifler**

MR. CHIEF JUSTICE

GOOD MORNING AND WELCOME TO THE ORAL ARGUMENT CALENDAR OF THE FLORIDA SUPREME COURT FOR THIS TUESDAY MORNING, AND THE FIRST CASE ON THE ORAL ARGUMENT CALENDAR, CONSOLIDATED CASES PHYSICIANS HEALTHCARE VERSUS PFEIFLER AND KHAN VERSUS PFEIFLER. MR. McINTOSH, YOU MAY PROCEED.

MAY IT PLEASE THE COURT. THANK YOU, MR. CHIEF JUSTICE. I AM DOUGLAS McINTOSH, AND I REPRESENT THE PETITIONER PHYSICIANS HEALTHCARE PLANS, IN THIS PETITION HERE TODAY. THE PETITIONER KHAN AND SOUTH FLORIDA HOSPITAL DISTRICT HAVE GRACIOUSLY CEDED THEIR ARGUMENT TIME TO ME FOR THEIR PRESENTATION. WE ARE SEEKING, HERE, THIS COURT'S ALL-WRIT POWER FROM THE 17th JUDICIAL CIRCUIT FROM CONTINUING TO CURT. WE SEEK A WRIT PROHIBITING THE CREATION OF THIS COMPLEX CIVIL CASE DIVISION THAT EXISTS IN THE 17th CIRCUIT, AND WE ASK THAT THIS COURT PROHIBIT THE 17th CIRCUIT FROM EXERCISING.

IS IT A DIVISION OR A DOCKET?

IT IS, IN FACT, A DIVISION, YOUR HONOR. THE QUESTION IS CLEARLY ANSWERED BY THE ADMINISTRATIVE JUDGE'S ANNOUNCEMENT THAT THE CALENDAR CALL OF THESE CASES, WHEN HE SAYS, AS YOU KNOW, THIS IS REALLY OUR COMPLEX LITIGATION DIVISION. THAT IS AT THE RECORD APPENDIX 13.

WELL, THAT IS WHAT HE CALLS IT BUT IS THAT WHAT IT IS?

IN FACT, I SUBMIT TO YOU THAT WHAT WE HAVE SHOWN IN THIS RECORD, IT IS A DE FACTO PERMANENT DIVISION CREATED IN THE 17th CIRCUIT, FOR WHAT THEY HAVE TERMED COMPLEX CASES, THAT IS CASES IN EXCESS OF A CERTAIN DURATION OF TIME.

AND IT IS YOUR POSITION THAT THAT CANNOT BE DONE, EXCEPT BY RULE?

IT IS CONTRARY TO THE SUPREME COURT'S PRONOUNCEMENTS FOR GUIDELINES FOR THE USE OF THE SENIOR JUDGES, AS WELL AS CONTRARY TO THE LONG STANDING LINE OF PRECEDENT IN PARAT VERSUS ADAMS, WOOILD VERSUS DOZIER, CRUSAN AND ALL OF THOSE LINE OF CASES.

HOW ABOUT, WHILE WE ARE FACED HERE WITH, REALLY, AN ISSUE OF POLICY OR AN ISSUE OF LAW. WE ARE CONSTANTLY UNDER STRESS, WITH REFERENCE TO STRETCHING OUR RESOURCES, AND TRADITIONALLY, OF COURSE, THE USE OF RETIRED AND SENIOR JUDGES HAS BEEN A TREMENDOUS ASSET TO THE CHIEF JUDGES AROUND THE STATE, IN GIVING THEM SOME FLEXIBILITY, SO COULD YOU ADDRESS, FOR A MINUTE, YOU KNOW, WHETHER OR NOT WE JUST HAVE A PROBLEM HERE, A POLICY THAT MAY CLEARLY NEED MORE REGULATION AND CONTROL, OR WHETHER IT IS, REALLY, AN ABSOLUTEIST SITUATION, WITH REFERENCE TO THE LAW, BECAUSE CERTAINLY THE POLICY SIDE, I AM UNDERSTANDING, IF THERE ARE SOME PROBLEMS HERE WITH THE POLICY THAT NEED BETTER SUPERVISION AND STRICTER GUIDELINES AND THAT KIND OF THING LIKE THAT. ON THE OTHER HAND, I HAVE TO SAY AND OF COURSE IF IT ENDS UP BEING STRICTLY A LEGAL THING, THAT IS WHAT WE HAVE TO GO WITH, BUT I AM CONCERNED THAT WE WOULD HANDCUFF OURSELVES AND THE CHIEF JUDGES STRICTLY WITH REFERENCE TO THE USE OF A RESOURCE THAT S PREN SO VALUABLE, SO COULD YOU GIVE US THE BENEFIT OF

YOUR OBSERVATIONS IN THAT REGARD.

YES, YOUR HONOR. IN FACT, WE AS LITIGANTS IN THE 17th CIRCUIT ARE AS CONCERNED AS THE COURT IS, WITH THE EFFECT OF POSSIBLY HANDCUFFING THE SYSTEM. THERE IS NO QUESTION DATING BACK TO JUSTICE SHAW'S 1991 SUPREME COURT MEMORANDUM ON THIS ISSUE, THAT THE USE OF SENIOR JUDGES, DONE CONSTITUTIONALLY, A VALUABLE RESOURCE FOR THIS COURT AND EACH OF THE CIRCUIT COURTS IN THIS STATE, TO BE UTILIZED. THERE IS NO QUESTION ABOUT THAT. THE PROBLEM WE SUBMIT, IS THE TRI APARTHEID SYSTEM OF GOVERNMENT HERE IS DEMANDS THAT THIS COURT FORCE THE LEGISLATURE TO ENACT FUNDING TO FUND THE JUDGESHIPS THAT THIS COURT LABORED SO HARD, YEAR IN AND YEAR OUT, TO ESTABLISH THE NEED FOR. THE CHIEF JUDGES OUT THERE WORKING IN THE TRENCHES, TO SHOW THIS COURT HOW MANY JUDGES ARE NEEDED, CERTIFY IT TO THIS COURT. THIS COURT TURNS AROUND AND CERTIFIES IT TO THE LEGISLATURE, AND ABSENT THE ABILITY IN THIS COURT TO FORCE THE LEGISLATURE TO ENACT FUNDING, WE HAVE THE ELIMINATION OF THIS BRANCH OF GOVERNMENT.

UNDER WHAT AUTHORITY DOES THIS COURT HAVE TO MANDATE FUNDING BY THE LEGISLATURE? IS THERE ANY CASE THAT THIS COURT HAS EVER DIRECTED THAT THE LEGISLATURE FUND, EXPEND THE GENERAL REVENUE DOLLARS FOR ANY PARTICULAR --

THE GENERAL SEPARATION OF POWERS CONCEPT FOUND IN THE FLORIDA CONSTITUTION, WE WOULD SUBMIT, ALLOWS THIS COURT TO CERTIFY TO THE LEGISLATURE, THE EXACT NEED FOR JUDGESHIPS. THE LEGISLATURE IS, THEN, DUTY BOUND, WE SUBMIT UNDER THE CONSTITUTION, TO FUND THE CERTIFIED NEED FOR JUDGES. THERE IS A RECENT CASE THAT WE WILL FILE A NOTICE OF SUPPLEMENTAL AUTHORITY IN, OUT OF THE STATE OF PENNSYLVANIA, WHICH HAS A SIMILAR SYSTEM, WHERE THE STATE OF PENNSYLVANIA, I HAVE JUST LEARNED, HAS, IN FACT, SAID THAT, FOR THE TRIPARTHEID SYSTEM OF GOVERNMENT TO WORK, ONE, THE JUDICIAL BRANCH MUST BE ALLOWED TO CERTIFY THE NEED FOR JUDGES TO THE LEGISLATIVE BRANCH, AND THE LEGISLATIVE BRANCH MUST BE FORCED TO FUND THAT. GOING BACK TO JUSTICE ANSTEAD'S QUESTION, THOUGH, IS IT A POLICY OR A LEGAL SITUATION? I BELIEVE THAT WHAT WE HAVE IN THE 17th CIRCUIT HAS NOW RISEN TO THE LEVEL OF ILLEGAL, UNCONSTITUTIONAL ACTIVITY THAT MUST BE STOPPED BY THIS COURT.

ASSUMING THAT WE CONCLUDE THAT IT IS A POLICY ISSUE, COULD YOU PICK OUT ONE, TWO, THREE, FOUR OR FIVE TOP ISSUES THAT YOU FEEL NEED TO BE ADDRESSED AND TINKERED WITH THAT WOULD HELP REMEDY THE SITUATION, ASSUMING THAT WE DO CONCLUDE THAT IT IS A POLICY ISSUE?

I BELIEVE I COULD, YOUR HONOR. I THINK THAT JUSTICE WELLS'S WELL-THOUGHT-OUT MEMORANDUM OF 2001 THIS YEAR, WHICH SENT OUT STREAMLINED GUIDELINES AND REVISED GUIDES TO THE JUDGES WOULD BE INDICATIVE OF FACTORS THAT NEED TO BE CONSIDERED THAT ARE PRESENTLY BEING IGNORED IN THE 17th JUDICIAL CIRCUIT AND SHOULDN'T BE. NUMBER ONE, THE SENIOR JUDGE UTILIZATION PLAN SHOULD CONSIDER THE AVAILABILITY OF COUNTY JUDGES. THAT IS ELECTED OFFICIALS, TO SERVE IN CIRCUIT COURT TO ACCOMMODATE THE PRIORITY NEEDS OF THE COURT. THAT IS NOT BEING DONE IN THE 17th JUDICIAL CIRCUIT AND, INDEED, MUST BE, UNDER THE PRONOUNCEMENTS OF THIS COURT AND THE PRIOR GUIDELINES. NUMBER TWO, THERE SHOULD BE --

HOW DO WE KNOW THAT THAT IS NOT BEING DONE? DO WE HAVE ANY EMPIRICAL INFORMATION THAT SAYS IN LOOKING TO COUNTY COURT DOCKETS THAT THE ADMINISTRATIVE JUDGE JUST GOES RIGHT TO SENIOR JUDGES?

YES. IF YOU LOOK AT THE RECORD IN THIS CASE, YOUR HONOR, YOU WILL SEE THAT THE MEMORANDUM OF THE JUDGES THAT HAS BEEN PLACED IN THE RECORD, IS SIMPLY THE WAY IT

WORKS IS THERE IS A REQUEST BY THE PRESIDING CIRCUIT JUDGE TO THE ADMINISTRATIVE JUDGE, TO PLACE A CASE ON THE SENIOR JUDGE'S DOCKET THERE. IS A ABSOLUTE ABSENCE OF ANY INDICATION THAT THE ADMINISTRATIVE JUDGE, THEN, GOES THROUGH THIS COURT'S GUIDELINES TO FIRST CHECK TO SEE IF THERE IS A COUNTY COURT JUDGE AVAILABLE TO SIT AND PRESIDE OVER THAT PARTICULAR REQUESTED MATTER.

YOU ARE SAYING THAT THERE IS NO EVIDENCE ABOUT THAT, ONE WAY OR THE OTHER.

THE ONLY EVIDENCE THAT WE HAVE IS AT THE VARIOUS APPENDICES THAT HAVE BEEN PROVIDED TO THE COURT. THERE IS NOTHING IN A MEMORANDUM FROM THE JUDGE TO THE PRESIDING JUDGE THAT SAYS PLEASE PLACE THIS ON THE DOCKET AND THEN IT IS PLACED ON THE DOCKET. IN ADDITION, THERE IS A OPEN INATION FROM THE ADMINISTRATIVE JUDGE, AS REVEALED IN THE APPENDIX IN EXHIBIT D, DATED JANUARY 20, 2001, THAT WE ARE TOILING WITH IN BROWARD COUNTY, WHICH IS BASICALLY A CALL TO ALL CIVIL JUDGES TO ADMINISTRATIVE JUDGES TO SAY THAT I AM COUNTING A DOCKET, ONE YEAR DOCKET COMMENCING IN UARY 2002. SEND YOUR CASES DOWN. THERE IS NOTHING THAT SAYS THAT THE JUS, BEFORE REPLACING OSE THE DOCKET, CHECKING TO SE IF THE COUNTY COURT JUDGE IS THERE AND CN, IN FACT, PRESIDE OVER THE CASE. IN FACT IT IS NOT DONE. ISUBMIT TYOU THAT THE RECORD IS OTHERWISE. THE OPPOSITION WOULD HAVE PRESENTED SOME EVIDENCE OF THAT HAVING TAKEN PCE BY THE CHIEF JUDGE AND THE ADMINISTRATIVE JUD I THE 17th JUDICIAL CIRCUIT.

WE DO HAVE SOME ISSUES OF POINTS, SEPARATE AND APART FROM POLICY CONSIDERATIONS, AND AS I REVIEW SOME OF THOSE CASES, CERTAINLY WHAT YOU AND I MAY DISCUSS AS BEING DE FACTO PERMANENT, I DON'T KNOW FITS INTO THE CATEGORIES OF SOME OF THOSE CASES. COULD YOU HELP ME WITH THAT, TO PLACE THIS CASE IN THAT DISTINCTION BETWEEN TEMPORARY ASSIGNMENTS AND DE FACTO PERMANENT, PLEASE, SIR.

YES. I THINK ACTUALLY THE CASE OF WILD VERSUS DOZIER ANSWERS THE QUESTION IN THIS INSTANCE, OF WHY THIS IS A PERMANENT VERSUS A TEMPORARY ASSIGNMENT. IN THAT CASE, THE COURT SAID THAT THE SUCCESSIVE NATURE OF THE ASSIGNMENT, NOT JUST DURATION OF ASSIGNMENT, IS THE KEY. THE SUCCESSIVE NATURE OF THE ASSIGNMENT, THE TYPE OF CASE COVERED BY THE ASSIGNMENT, AND MOST IMPORTANT, THE PRACTICAL EFFECT OF THE ASSIGNMENT ON CIRCUIT COURT JURISDICTION, OVER PARTICULAR TYPE OF CASE, MUST BE CONSIDERED, TO DETERMINE WHETHER IT IS TEMPORARY OR PERMANENT. THE COURT HERE, HAS HELD, IN WILD VERSUS DOZIER, THAT WHERE THE PRACTICAL EFFECT IS TO CREATE A DEFACTO PERMANENT CIRCUIT JUDGE BY ADMINISTRATIVE ORDER, THAT IS INVALID AND I, IN FACT, NT ALLOWED BY THE CONSTITUTION.

HOW DOES THAT APPLY TO YOUR SET OF SENIOR JUDGES, AS YOU SEE IT?

WHAT WE HAVE IN BROWARD COUNTY IS WE HAVE A DE FACTO PERMANENT COURT APPOINTED BY ADMINISTRATIVE ORDER, OF NONELECTED JURISTS, WHO HEAR WHAT ARE TERMED COMPLEX LITIGATION CASES, CASES IN EXCESS OF THREE WEEKS. IN FACT, THE DOCKET DEMONSTRATES THAT THERE ARE TWO-WEEK CASES ON THE DOCKET. THERE ARE TEN-WEEK CASES ON THE DOCKET. ARE THERE JUDGES, ARE THE JUDGES THAT ARE ASSIGNED TO THIS DOCKET PERMANENT?

THE JUDGES ARE PERMANENT, IN THE SENSE THAT WE HAVE A CERTAIN AMOUNT OF RESOURCE THAT IS ATTRIBUTED TO THE 17th CIRCUIT BY THE CHIEF JUSTICE, TO OUR CHIEF JUDGE, OF A POOL OF POTENTIAL PERSONS WHO CAN SERVE AS RETIRED JUDGES. THOSE JUDGES COMPRIZE PERSONS FROM DADE COUNTY, BROWARD COUNTY PALM BEACH COUNTY AND OTHER COUNTIES, AND THAT IS ANOTHER ARGUMENT THAT WE HAVE THAT THE RESIDENCY REQUIREMENT GRAFTED INTO ARTICLE V IS BEING IGNORED BY THIS PARTICULAR PROCEDURE. THAT IS THAT WE ARE GETTING JUDGES THAT ARE NOT RESIDENT IN THE COUNTY OR TERRITORIAL JURISDICTION

SERVING, WHEN IN FACT THAT IS PROHIBITED BY THE CONSTITUTION OF THIS STATE.

DO THESE JUDGES IN THIS DIVISION HEAR ANYTHING OTHER THAN COMPLEX CASES?

IN THIS PARTICULAR DOCKET THAT WE ARE CONCERNED ABOUT, THE ANSWER IS NO. DO THESE JUDGES SERVE IN OTHER CAPACITIES? THE ANSWER IS YES. SOME OF THESE JUDGES DO, IN FACT HEAR SPEEDY TRIAL MATTERS, SERVE IN THE CRIMINAL SIDE OF THE BENCH IN THE 17th JUDICIAL CIRCUIT, BUT BY AND LARGE, WHAT WE HAVE IS USUALLY THERE ARE THREE JUDGES AT THIS SENIOR JUDGE'S DOCKET WHO DO NOTHING BUT THE CIVIL COMPLEX LITIGATION DIVISION. THOSE GENTLEMEN HAVE HISTORILLY BEEN THE THREE THAT COME FORWARD AND SERVE IN THAT AREA AND HEAR THESE CASES.

SO YOU ARE SAYING THAT IF, IN ANY CIRCUIT AROUND THE COUNTRY, AROUND THE STATE, REGARDLESS OF THE SENIOR JUDGE ISSUE, THAT A COMPLEX DIVISION OF THE IS CIVIL -- OF THE CIVIL DIVISION COULD NOT BE CRED BY ADMINISTRATIVE ORDER. IT WOULD NEED A LOCAL RULE.

YES. THAT IS EXACTLY WHAT WE ARE SAY SAYING.

THAT ARGUMENT DOESN'T TAKE INTO ACCOUNT WHETHER IT IS STAFFED BY SENIOR JUDGES OR CCUIJUDS. TELL ME WHAT ABOUT OUR CASE LAW WOULD SAY THAT THERE COULD BE A DIVISION OF THE CIVIL DIVISION THAT WAS FOR COMPLEX CASES. AND THAT YOU PUT YOUR MOST EXPERIENCED JUDGES IN THERE AND THAT THAT WOULD HAVE TO DONE Y LOCAL RULE.

I WOULD TAKE YOU TO THE PAREC VERSUS ADAMS CASE, JUSTICE QUINCE, AND THERE BEING VALID, YOU CANNOT PLANT THE JURISDICTION OF A PARTICULAR TYPE OF CASE ON A PERMANENT BASIS, UNDER THE PRONOUNCEMENTS AND TEACHINGS OF PARET. THEREFORE YOU CANNOT TAKE ALL COMPLEX CASES IN A PARTICULAR COURT AND SAY THIS IS WHERE YOU ARE GOING TO BE TRIED. YOU ARE GOING TO SIT HERE YEAR TO YEAR TO YEAR TO YEAR, TIL YOUR CASE IS DECIDED BY THIS ONE SELECT GROUP OF, AND WE SUBMIT, DE FACTO PERMANENT JUDGES, WHO ARE NOT ELECTED, CONTRARY TO THE CONSTITUTION.

IF THIS WAS STAFFED BY CIRCUIT JUDGES WHO WERE CIVIL DIVISION JUDGES AND THEY WERE, AND IT WAS ROTATED IN AND OUT, WHY COULDN'T THAT, THAT CANNOT BE DONE, YOU SAY, UNDER OUR CASE LAW, YOU KNOW, BY ADMINISTRATIVE ORDER? THAT WOULD REQUIRE A LOCAL RULE?

I BELIEVE THAT THE PRONOUNCEMENTS OF RET SAY THAT IT SHOULD REQUIRE A LOCAL RULE. I DO BELIEVE THAT THE CHIEF JUSTICE IS EMPOWERED TO DISPATCH JUSTICE IN A MANNER THAT YOU HAVE DECIDED, CALLING UP COUNTY COURT JUDGES, FOR EXAMPLE, BUT IT SHOULD BE ON A TEMPORARY BASIS. THIS ONE CASE NEEDS ASSISTANCE THIS TIME.

I GUESS I FEEL LIKE TWO CONCEPTS, THAT IS WHETHER A SENIOR JUDGE IS PERMANENT OR TEMPORARY, A SEPARATE ISSUE, APART FROM WHETHER THE DIVISION NEEDS TO BE ESTABLISHED BY LOCAL RULE OR ADMINISTRATIVE ORDER. NOW, THE TWO COME TOGETHER, AND THAT IS WHAT YOU ARE PARTICULARLY CONCERNED WITH, BUT I THINK WE PROBABLY, IN ANALYZING IT, NEED TO SEPARATE THE TWO LEGAL ISSUES, AS TO WHETHER THAT COULD BE DONE, YOU KNOW, IF A CIRCUIT DECIDED THAT THAT WOULD BE A GOOD WAY TO DEAL WITH COMPLEX CIVIL CASES, TO BE ABLE TO SET UP A SUBDIVISION OF THE CIVIL DIVISION TO HAVE JUDGES WHO WERE PARTICULARLY EXPERIENCED IN THAT DIVISION. I REALIZE HERE YOUR CONCERN IS THAT THERE ARE SENIOR JUDGES THAT MAY BE VERY THE TIME BUT MAYBE DON'T LACK THE EXPERTISE, AND THAT IS A CONCERN, BUT THAT, NOW WE GO BACK TO WHAT IS LAW AND WHAT IS POLICY.

WELL, AND I THINK THAT THE ISSUE, SO, IS HIGHLIGHTED BY THE KHAN AND THE SOUTH

BROWARD HOSPITAL DISTRICT PETITIONS, WHICH DEMONSTRATE THAT, IF YOU DO THAT, IF YOU CHOOSE THAT ROUTE FROM A POLICY PERSPECTIVE, YOU HAVE JUSTICE DENIED AND DELAYED, AND THAT IS -- IN THAT SORT OF A CONTEXT, BECAUSE THE WHOLE IDEA HERE IS TO FIND A CASE THAT IS BEGGIN FOR NEED, AS JUSTICE SHAW, IN HIS 1991 MEMORANDUM POINTS OUT. FIND THE CASES THAT ARE BEGGING FOR RELIEF BY TEMPORARY ADJUDICATION BY A SUBSTITUTE JUDGE AND GET THAT THROUGH THE SYSTEM F YOU CREATE A COMPLEX DIVISION, ALL YOU ARE DOING IS RELEGATEING THOSE CASES TO A DIVISION TO SIT, TO LANGUISH, TO MOVE IN A VERY SLOW FASHION. WE HAVE, ON THE DOCKET, 143 WEEKS OF CASES ALLEGELY GOING TO BE TRIED IN 48 WEEKS ON THIS CALENDAR. THE MATH DOES NOT WORK. THE CASES WILL SIT AND LANGUISH. THERE ARE 36 CASES TO BE TRIED BY THREE JUDGES. IT IS BETTER TO HAVE THOSE CASES TRIED BY THE TWELVE PRESIDING JUDGES OR OTHER COUNTY JUDGES WHO CAN COME UP ON A ONE-TIME BASIS AND TAKE ONE OF THE COMPLEX CASES AND TRY THEM.

HAVE THEIR BEEN ANY SURVEY DONE OR DO YOU KNOW WHETHER CASES MOVE SLOWER, COMPLEX CASES IN THIS CIRCUIT, THAN IN OTHER CIRCUITS THAT DO NOT USE THIS PROCEDURE?

I DO NOT KNOW OF ANY EMPERKAL SURVEYS THAT HAVE BEEN ACCOMPLISHED, BUT BY VIRTUE OF THE CALENDAR THAT HAS BEEN DEMONSTRATED HERE, AND I BELIEVE THE KHAN APPENDIX DEMDEM STRAITS EXACTLY HOW THIS IS -- APPENDIX DEMONSTRATES EXACTLY HOW THIS IS HAPPENING. THERE ARE FILES IN THE RECORD BY KHAN, HERE THAT, DEMONSTRATE THAT THESE CASES, JUDGE WILLIAMS WHO IS THE PRESIDING SENIOR JUDGE, SAT FOR A MONTH WITH NOTHING TO DO. THAT IS IN THE RECORD AT KHAN AND ENDICS TAB 12, PAGE 25-TO-26 THAT THE RAPAPORT CASE HAS SAT FOR OVER TEN YEARS AND FOUR YEARS WITH NO ACTIVITY IN THIS DOCKET.

I WILL READ THAT. DON'T USE UP ALL OF YOUR REBUTTAL TIME.

I SEE THAT MY LIGHT HAS GONE OFF. THANK YOU VERY MUCH. THANK YOU FOR YOUR TIME. MR. CHIEF JUSTICE

MR. FARMER.

THANK YOU, CHIEF JUSTICE WELLS. GOOD MORNING, YOUR HONORS AND MAY IT PLEASE THE COURT. IT IS WITH A GREAT SENSE OF PRIDE AND HUMILITY THAT I APPEAR BEFORE THIS COURT FOR THE FIRST TIME. I WANT TO, FIRST, TOUCH ON JUSTICE ANSTEAD'S QUESTION, BECAUSE TO US CLEARLY THIS IS A MATTER OF POLICY, RATHER THAN A MATTER OF LAW. WHAT THESE PETITIONERS ARE SAYING IS THAT THEY DON'T WANT THEIR TYPE OF CASE ASSIGNED TO THIS SENIOR JUDGE'S DOCKET, AND IT IS A DOCKET. IT IS NOT A DIVISION. THE JUDGES WHO WILL PRESIDE OVER THESE TRIALS DO JUST THAT. THEY PRESIDE OVER THE TRIALS. THEY MAY PRESIDE OVER SOME ASPECTS OF PRETRIAL RULINGS, SUCH AS MOTIONS IN LIMINE, THINGS IN PREPARATION FOR THE TRIAL. MR. CHIEF JUSTICE

BUT IT IS A REPRESENTATIVE TYPE OF THING, REGARDLESS OF WHAT WE LABEL IT. IT IS, IF YOU HAVE A CASE T YOU SAY IS GOING TO LAST FOR A CERTAIN PERIOD OF TIME, IN TORT OR IN A BUSINESS TRANSACTION, THEN THAT CASE IS GOING TO FIND ITS WAY TO THESE SENIOR JUDGES. ISN'T THAT THE WAY IT WORKS IN THE 17th CIRCUIT?

IT IS POSSIBLE THAT THAT TYPE OF CASE WILL FIND ITS WAY THERE, YES, JUDGE. AND YOU BRING UP --

IT IS PROBABLE THAT IT IS GOING TO FD WAY THERE.

THERE ARE TWO LEVELS OF DISCRETION THERE. THE CHIEF JUDGE, IN HIS DISCRETION CREATED THIS SYSTEM TO TRY TO UTILIZE THE RESOURCES AVAILABLE TO HIM. CLEARLY WE ALL KNOW THAT THERE ARE NOT ENOUGH JUDGES IN BROWARD COUNTY, VIRTUALLY IN ANY COUNTY IN THE STATE, BUT THE ASSIGNED JUDGE, TO WHOM THIS CASE IS ORIGINALLY ASSIGNED WHEN IT IS

FILED, YOU HAVE TO MAKE A REQUEST OF THIS JUDGE TO MOVE THE CASE TO A SENIOR JUDGE'S DOCKET. IT IS NOT AN AUTOMATIC THING. YES, BECAUSE THESE JUDGES ARE OVERWORKED AS A PRACTICAL MATTER JUSTICE WELLS, MAYBE MOST OF THE CASES THAT DO REQUEST THE MOVE ARE GRANTED THAT MOVE.

WHO MAKES THE REQUEST?

A PARTY. ONE OF THE PARTIES IN THE CASE CAN ASK THE ASSIGNED JUDGE, JUDGE, THIS IS A COMPLEX CASE THIS. IS A LENGTHY CASE. OTHER REASONS. YOU HAVE TO REMEMBER, ALSO, THE SENIOR JUDGE'S DOCKET IS USED FOR JAIL CAP RELIEF CASES AND STRIKE FORCE CASES, WHERE THERE IS A SPEEDY TRIAL PROBLEM COMING UP, SO THE SENIOR JUDGES ARE BROUGHT IN TO HEAR THOSE TYPES OF CASES AS WELL. THIS IS NOT JUDGE AS IT WAS TERMED BY THE PETITIONERS, A COMPLEX CIVIL CASE DIVISION. IT IS REALLY FAR FROM THAT. THERE IS A VAST VARIETY OF CASES THAT ARE ASSIGNED TO THIS DOCKET. BUT GOING BACK TO THE POLICY VERSUS LAW DECISION, THIS COURT HAS VESTED WITH THE CHIEF JUSTICE, THE CHIEF JUDGE, EXCUSE ME, OF THE 17th JUDICIAL CIRCUIT AND ALL CIRCUITS IN THIS STATE, THE DISCRETION. IT HAS, IN FACT, MANDATED THAT THE CHIEF JUDGE COME UP WITH A PLAN FOR THE EFFICIENT UTILIZATION OF RESOURCES AVAILABLE TO HIM OR TO HER. THAT IS IN THE RULES OF JUDICIAL ADMINISTRATION, AND THE COURT HAS GONE FURTHER AND SAID T, WHEN NECESSARY, FOR THE PROMPT, SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE, THAT A JUDGE FROM OUTSIDE THE CIRCUIT MAY BE TAPED FOR TEMPORARY DUTY, SO -- MAY BE TAPPED FOR TEMPORARY DUTY, SO WE HAVE GOT A SYSTEM --

I UNDERSTAND THAT THE CASE IS NOT MOVED TO THIS SPECIAL DIVISION BY REQUEST OF ONE OF THE PARTIES.

THAT IS BEFORE THE TRIAL. WHAT HAPPENS, JUSTICE SHAW, IS IT IS A CALENDAR CALL. THAT IS THE TRANSCRIPT THAT THE COURT HAS IN THE RECORD. AND YOU GO TO THIS CALENDAR CALL AND YOU FIND OUT WHEN YOU MAY BE SET FOR TRIAL DURING THIS DOCKET BUT PRIOR TO THAT TIME, THE ASSIGNED JUDGE IS RULING ON DISPOSITIVE MOTIONS, ON MOTIONS TO DISMISS, HANDLING DISCOVERY, DEALING WITH THE CASE, MAKING DECISIONS IN THE CASE. THE ENTIRE FILE, PER SE, OR THE CASE, IS NOT TRANSFERRED TO THIS SENIOR JUDGE'S DOCKET FOR EVERYTHING TO HAPPEN THERE. AND I WOULD REFUTE THE ASSERTION HERE, THAT THIS SENIOR JUDGE'S DOCKET CREATES SOME SORT OF ANOINTED DELAY.

WHY DO PARTIES MAKE THE REQUEST TO MOVE TO THE DOCKET THEN?

AS AN ATTORNEY WHO DOES PLAINTIFF'S WORK AND REPRESENTING THE PLAINTIFFS IN THIS CASE, THE PLAINTIFFS ASK FOR IT TO GET MOVED SO THEY CAN GET TO TRIAL MORE QUICKLY. I WAS ABOUT TO SAY THAT THE SUGGESTION THAT THIS SYSTEM CAUSES DELAY, I THINK, IS EXACTLY OPPOSITE. THIS SYSTEM GETS THESE CASES TO TRIAL. THE PROBLEM THAT YOU HAVE IS OFTENTIMES, THE JUDGES TO WHOM THESE CASES ARE ASSIGNED, HAVE A TOUGH CHOICE. THEY HAVE A FOUR-WEEK DOCKET, AND THEY HAVE THIS ONE CASE THAT IS GOING TO TAKE TWO AND-A-HALF, THREE WEEKS, FOUR WEEKS OF THAT DOCKET, AND IF IT GETS SET SOMEWHERE IN THE MIDDLE, IT NEVER GETS REACHED, BECAUSE IF THE EARLY CASES TAKE UP TOO MUCH TIME, THERE IS NOT ENOUGH TIME LEFT ON THAT DOCKET TO GET THIS LENGTHY CASE TRIED, SO IT GETS ROLLED OVER TO THE NEXT DOCKET AND PERHAPS THE NEXT DOCKET.

MR. FARMER, WHY WOULD IT NOT BE BETTER FOR THE JUDGE WHO HEARS ALL THE PRETRIAL MOTS AND GOES THROUGH THE CASE UP TO THE POINT OF TRIAL, TO BE THE ONE TO TRY IT? AS A FORMER TRIAL JUDGE, I WOULD OFTENTIMES MAND TRY ANOTHER JUDGE'S CASE, IF THAT JUDGE'S OTHER CASE WENT OVER AND THINGS LIKE THAT. IT WOULD SLOW THINGS DOWN FOR ME TO HAVE TO PICK UP AT THE POINT OF TRIAL AND GO BACK OVER ALL OF THE PRETRIAL MOTIONS AND WHAT HAS BECOME THE LAW OF THE CASE. WHY WOULD IT NOT BE BETTER FOR THE SENIOR

JUDGE TO GO AND SIT IN THE ACTIVE JUDGE'S DIVISION?

WELL, JUSTICE HARDING, I THINK IN A PANGLOSSIAN WORLD, THAT IS THE PERFECT SYSTEM, THAT WE HAVE THE SAME JUDGE RULING OVER EVERYONE, PRESIDING OVER THE ENTIRE CASE, BUT AGAIN I GO BACK TO POLICY AND LAW. THE CHIEF JUDGE IN THE 17th JUDICIAL CIRCUIT IS TRYING TO MAKE THE BEST AND MAKE DO WITH THE RESOURCE HE HAS, AND HE HAS DECIDED THAT, WITH THE LIMITED FUNDING AVAILABLE, WITH THE LIMITED NUMBER OF JUDGES AND THE INCREASE IN FILINGS EACH AND EVERY YEAR AND YOU KNOW THE SUGGESTION ABOUT WE DON'T HAVE ENOUGH TIME TO HEAR 36 CASES IN THREE JUDGES, THAT'S AN AVERAGE OF 12 TRIALS PER YEAR FOR THOSE THREE JUDGES. YOU LOOK AT THE STATISTICS IN THE APPENDIX MATERIALS, YOU WILL SEE THAT, ON AVERAGE, BROWARD COUNTY CIRCUIT COURT JUDGES WERE TRYING 24 CASES A YEAR IN 2000, SOMEWHERE AROUND 22, I BELIEVE, IN '99, AND SO THEY HAVE BEEN INCREDIBLY EFFICIENT IN BROWARD COUNTY, TRYING MORE CASES THAN ANYWHERE ELSE IN THE STATE, WITH MORE CASE FILINGS IN BROWARD COUNTY THAN ALMOST ANY OTHER CIRCUIT IN THE STATE, SO YOU KNOW, IT IS A CATCH-22, JUSTICE HARDING. I MAY BELIEVE THAT THIS IS A DISCRETIONARY CALL BY THE CHIEF JUDGE. IF IT IS NOT ILLEGAL, SHOULD THIS COURT EXERCISE ITS ALL-WRITS POWER AND GRANT A WRIT OF PROHIBITION, TELLING THIS CHIEF JUDGE THAT HE CANNOT ENACT THE SYSTEM? I DON'T THINK THAT IS PROPER. THANK YOU. MR. CHIEF JUSTICE

JUSTICE SHAW HAS A QUESTION.

HOW DO YOU REACH THE CONCLUSION THAT PEOPLE HAVE THE RIGHT TO HAVE THEIR CASES TRIED BY THEIR ELECTED JUDGES? IT SHOULD BE THE EXCEPTION, WHEN THAT IS NOT DONE. ARGUMENT HERE IS THIS IS BEING, THIS EXCEPTION IS ROUTINE.

WELL --

IS THAT A PROBLEM? DOES THAT PRESENT A PROBLEM?

FIRST OF ALL, JUSTICE SHAW, THESE TWO CASES THAT HAVE BEEN CONSOLIDATED, HAVE NOT YET BEEN ASSIGNED TO A PARTICULAR SENIOR JUDGE FOR TRIAL, SO WE DON'T KNOW IF THESE CASES ARE GOING TO BE TRIED BY A JUDGE WHO HAS FORMERLY SERVED IN THE 17th JUDICIAL CIRCUIT OR IN ANOTHER CIRCUIT, SO IN THAT REGARD I THINK THE PETITION IS PREMATURE, BUT IF A JUDGE WHO HAS NOT BEEN ELECTED CANNOT SERVE, THEN I THINK THE ENTIRE SENIOR JUDGES SYSTEM CANNOT STAND. THESE ARE JUDGES WHO FORMERLY SERVED BUT THEY WERE NOT REELECTED. THEY CHOSE TO RETIRE OR LEAVE THE BENCH AND ARE NO LONGER ENGAGED IN PRIVATE PRACTICE. THOSE ARE THE CRITERIA TO SERVE AS A JUDGE, SO THE ARGUMENT CAN BE MADE IN THE CIRCUIT, HE HAD TEN A JUDGE, FOR EXAMPLE, FROM THE 17th JUDICIAL CIRCUIT RETIRED AND THEN CAME BACK ON THE SENIOR JUDGES DOCKET TO SERVE, I THINK THE ARGUMENT CAN BE MADE BY THE PETITIONERS THAT, WELL, THIS JUDGE WASN'T REELECTED IN BROWARD COUNTY. THEREFORE IT IS UNCONSTITUTIONAL FOR HIM OR HER TO SIT ON THIS CASE. MR. CHIEF JUSTICE

IF YOU ARE DIVIDING YOUR TIME --

THANK YOU VERY MUCH, YOUR HONORS. I APPRECIATE IT.

MAY IT PLEASE THE COURT. I AM CHARLES FAHLBUSCH, ASSISTANT ATTORNEY GENERAL ON BEHALF OF THE 17th JUDICIAL CIRCUIT OF FLORIDA.

COULD YOU RETURN TO THE LEGAL ISSUES, INSTEAD OF THE POLICY THAT WE ARE TALKING ABOUT, AND THE JOINER OF THE CONCEPT OF TEMPORARY POINTS AND CREATING A DIVISIONAL CONCEPT OF THIS BEING, THEN, A DE FACTO PERMANENT ARRANGEMENT THAT WOULD, THEN, GET INTO HAD SOME OF THE EARLIER DISCUSSIONS HE. COULD YOU FOCUS ON THAT JUST A LITTLE BIT.

BE HAPPY TO, JUSTICE. THE ONLY CASE THAT I AM AWARE OF AND WHICH HAS BEEN CITED BY THE PARTIES, INDICATING THAT A SEPARATE DIVISION WAS SET UP IS PARET VERSUS ADAMS, WHERE WE HAD A COUNTY COURT JUDGE WHO WAS SITTING PERMANENTLY AS A CIRCUIT COURT JUDGE IN THE GLADES DIVISION. THE FACT IS THAT THIS COURT DEALT WITH A SIMILAR SITUATION IN THE MANN CASE CITED BY BOTH SIDES, AND THEY SAID, WITH REGARD TO IT, THE PETITIONERS CONSENT TEND THAT THE DRUG -- CONTEND THAT THE DRUG DIVISION, WHICH WAS THE ONE CONCERNED IN THAT CASE, COULD ONLY BE ESTABLISHED BY A LOCAL RULE APPROVED BY THIS COURT, IN IN ACCORDANCE WITH ARTICLE -- IN ACCORDANCE WITH ARTICLE V SECTION 20-C-10. THIS COURT DETERMINED THAT THAT WAS NOT A DIVISION. NOW, WITH REGARD TO PERMANENCY, THE, IT IS MY UNDERSTANDING, INCIDENTALLY, FROM READING THE PLEADINGS, THAT THAT IS AN ISSUE THAT THE PETITIONER HAS DROPPED, BUT ALL, WHAT HAPPENS HERE, ALL OF THESE ASSIGNMENTS ARERARY. THE ONLY THING THAT IS ONGOING IS THE SENIOR JUDGE'S DOCKET. EACH ASSIGNMENT OF EACH JUDGE COMES OUT OF THIS COURT ON A TEMPORARY BASIS. THE ASSIGNMENT IS TEMPORARY. EVERY CHALLENGE TO SIMILAR ASSIGNMENTS HAS CONTINUALLY DETERMINED THAT SUCH ASSIGNMENTS ARE TEMPORARY. EVERY PETITION FOR PROHIBITION AGAINST JUDGES THAT WERE ASSIGNED ON SUCH A BASIS, SUCH AS JUDGE FRANZA, HAS RESULTED IN PETITIONS FOR PROHIBITION BEING DENIED. THE FACT IS THAT THESE SENIOR JUDGES ARE BEING ASSIGNED ON A TEMPORARY BASIS, TO HEAR SPECIFIC CASES.

ARE THEY ROTATIONAL, THROUGH THIS, WHATEVER YOU WANT TO CALL IT, THE SECTION FOR SENIOR JUDGES. IS IT ROTATIONAL THAT YOU PICK UP SOME RETIRED JUDGES FROM ONE LOCATION AND THEN ANOTHER, OR IS IT A SYSTEM WHERE YOU ARE OPERATING AS THE SAME FIVE OR SIX JUDGES THAT ARE THERE ALL THE TIME?

WELL, I THINK ITSORE THAN FIVE OR SIX.

WHATEVER THE NUMBER IS.

IS THE --

IS THERE A CADRE OF SENIOR JUDGES THAT IS MADE UP OF THE SAME PEOPLE DAY AFTER DAY, YEAR AFTER YEAR, DECADE AFTER DECADE?

IN A SENSE, BUT LET ME THROW OUT A CONDITION TO THAT, JUSTICE IN THAT THESE ARE JUSTICES THAT, WHEN A CASE COMES UP FOR TRIAL, THE ADMINISTRATIVE JUDGE CALLS THEM AND SAYS ARE YOU, WE HAVE ONE COMING UP FOR TRIAL. JUDGE A, WOULD YOU BE AVAILABLE TO START IT NEXT MONDAY OR THE FOLLOWING MONDAY? THAT JUDGE WOULD HAVE THE OPTION OF SAYING OH, YES, I AM AVAILABLE OR I AM NOT AVAILABLE, SO THERE IS CERTAINLY NO GUARANTEE THAT, BECAUSE THEY ARE ON THE WHEEL OR SOMEWHERE ON THE LIST, THAT THE, THAT THAT JUDGE IS GOING TO TRY THAT CASE. THEY JUST NOTIFIED THE SENIOR JUDGE OF THE 17th CIRCUIT THAT THAT THEY MAY BE AVAILABLE, AND THEN THE ADMINISTRATIVE JUDGE OF THE CIVIL SECTION CHECKS, SO GIVEN THIS KIND OF SYSTEM, CERTAINLY THERE IS NO PERMANENCY TO SUCH ASSIGNMENT. IF THEY TAKE THE ASSIGNMENT, THEN THEY GO THROUGH THE ASSIGNMENT PROCEDURE AND THEY GET PAID AS A SENIOR COURT JUDGE.

WELL, IF WE APPROVE THIS SET UP, WHATEVER WE ARE GOING TO CALL, IT ESSENTIALLY IN THE 17th CIRCUIT, AND THIS HAS GONE FOR MANY YEARS, THE VAST OVERWHELMING MAJORITY OF THE MOST COMPLICATED CIVIL CASES ARE TRIED BY SENIOR JUDGES. IS THAT CORRECT? THERE IS NO QUESTION ABOUT IT. THAT THAT IS WHAT HAS HAPPENED IN THE 17th CIRCUIT, AND NO OTHER CIRCUIT HAS A SET UP LIKE IT.

I WOULD SAY THAT THE VAST MAJORITY OF LENGTHY CASES. NOW, THE FACT THAT A CASE IS LENGTHY DOES NOT NECESSARILY MEAN THAT IT IS COMPLEX, ALTHOUGH IT IS CERTAINLY AN

INDICATION THAT IT MAY BE.

WE ARE TALKING ABOUT MALPRACTICE. THESE ARE BOTH MALPRACTICE CASES. DOESN'T THE RECORD ESTABLISH THAT THE OVERWHELMING MAJORITY OF MEDICAL MALPRACTICE CASES IN BROWARD COUNTY ARE TRIED BY SENIOR JUDGES?

YES, IT D.

SO ESSENTIALLY, IF WE APPROVED THIS SET UP HERE, THERE IS NOTHING TO SAY THAT AROUND THE STATE, THAT SENIOR JUDGES WOULD BE THE SOLE JUDGES THAT WOULD BE TRYING COMPLEX CIVIL CASES IN THE STATE OF FLORIDA?

WELL, WHAT IT WOULD DO IS PERMIT CHIEF JUDGES TO DETERMINE THE BEST WAY TO MANAGE THE RESOURCES WITHIN THEIR CIRCUIT.

WELL, BUT, THE IDEA THAT, WHAT MR. FARMER SAID, WHICH IS THAT EVERY DOCKET IS, YOU KNOW, JUDGES HAVE FOUR-WEEK DOCKETS. MALPRACTICE CASES AND OTHER COMPLEX CASES GO TWO, FOUR TO SIX WEEKS, SO IF WE ARE SOLELY LOOKING AND SAYING THE MOST EFFICIENT TO DO IS JUST BRING IN THE SENIOR JUDGES TO TRY LONG CASES, AND THAT THAT -- THAT IS WHAT WE WOULD BE APPROVEING HERE, BECAUSE THAT SAME FACTOR, THAT IS THAT A JUDGE HAS A CERTAIN LIMITED DOCKET, IS TRUE AROUND THE STATE.

AS ONE POSSIBILITY, YOU WOULD SAY, YES, THIS IS ACCEPTABLE. THIS IS ONE OF A NUMBER OF ACCEPTABLE WAYS TO INCREASE JUDICIAL EFFICIENCY AROUND THE STATE.

YOU CAN SEE THAT WE, BY OUR VARIOUS MEMOS AND MANDATES OVER THE YEARS, THAT THAT IS, IN FACT WHAT WE HAVE ENCOURAGED BY OUR ADMINISTRATIVE ORDERS AND MEMOS?

WELL, OUR POSITION WOULD BE THAT THE COURT HAS PERMITTED IT, ALONG WITH A WIDE VARIETY OF MANAGEMENT TECHNIQUES, BUT WE ARE NOT HERE TO DETERMINE WHETHER THE 17th CIRCUIT IS UTILIZING THE BEST OR THE MOST EFFICIENT OR EVEN THE FAIREST TECHNIQUE. WE ARE HERE TO DETERMINE IF THEY ARE OPERATING IN AN UNCONSTITUTIONAL MANNER AND WE SUBMIT THAT THEY ARE NOT!

SO GOING BACK TO THE QUESTION I HAD, DO YOU SAY THAT, FROM OUR PRIOR CASE LAW, THAT A COMPLEX CIVIL CASE DIVISION COULD BE SET UP BY ADMINISTRATIVE ORDER AND DOESN'T REQUIRE A LOCAL RULE?

WITH ONE CAVEAT. THIS, OF COURSE, IS NOT A COMPLEX CASE DIVISION. IT A LONG DURATION CASE DIVISION, AND THIS COURT HAS SUGGESTED TO CHIEF JUDGES THAT LONG DURATION CIVIL CASES SHOULD HAVE A VERY HIGH PRIORITY, WITH REGARD TO BEING THE KINDS OF PRIOR-% THAT SENIOR JUDGES ON THE TO BE UTILIZED IN, BUT GIVEN THAT, YOUR QUESTION WAS COULD A SENIOR JUDGE SET UP A COMPLEX CASE DIVISION?

NO. NO. I DIDN'T SAY WHETHER IT HAD TO BE STAFFED BY SENIOR JUDGES. I -- TO BE STAFFED BY SENIOR JUDGES. I AM SAYING SHOULD A COMPLEX OR LONG CASE DIVISION BE SET UP BY ADMINISTRATIVE ORDER OR COULD BE REQUIRED BY LOCAL RULE, WHETHER IT IS STAFFED BY SENIOR JUDGES OR ELECTED CIRCUIT JUDGES?

IT IS OUR POSITION --

THAT IS BASED UPON MANN?

YES. BASED UPON MANN, IN WHICH WE HAD A DRUG CASE, AND THIS COURT SAID THAT IS PERFECTLY ACCEPTABLE, EVEN THOUGH THEY CALLED IT A DIVISION. IT WAS REALLY A

SUBDIVISION OF THE CRIMINAL COURT SUBJECT MATTER DIVISION. THAT WAS ACCEPTABLE. IT WAS AN EFFICIENT WAY TO UTILIZE JUDICIAL RESOURCES, AND THEREFORE WHERE IT WAS A SUBDIVISION, IT WAS PERFECTLY ACCEPTABLE TO SET IT UP BY ADMINISTRATIVE ORDER. WE HAVE, IF THIS IS A COMPLEX CASE DIVISION, THAT IT IS CONCERNED WITH CIVIL CASES, THEN WE WOULD HAVE EXACTLY THE SAME KIND OF SITUATION WITH REGARD TO A SUBDIVISION OF THE CIVIL CASE, CIVIL DIVISION, THAT MANN HAD WITH REGARD TO A SUBDIVISION CRIMINAL CASE. IT WOULD BE ONLY --

IT COULD BE SET UP TO HANDLE NOTHING BUT DEATH CASES?

I THINK THAT THAT COULD BE DONE, JUDGE. YES.

ALL THE DEATH CASES CONCEIVABLY COULD GO TO SENIOR JUDGES.

THAT IS POSSIBLE. ACTUALLY I KNOW THAT MANY SENIOR JUDGES ARE UTILIZED IN CAPITAL CASES.

AS I UNDERSTOOD THE FACTS OF THIS CASE, THIS DIVISION ISN'T JUST COMPLEX OR LONG-TERM, THAT YOU ACTUALLY HAVE THEM DOING CRIMINAL CASES AND OTHER THINGS, SO DOES THAT MAKE A DIFFERENCE, IN WHETHER OR NOT THIS IS ACTUALLY A SUBDIVISION OF THE CIVIL CIRCUIT COURT OR WHETHER THIS IS TRULY ANOTHER DIVISION OF THE COURT?

OKAY. MY UNDERSTANDING OF THE PROCEDURES ARE SLIGHTLY DIFFERENT FROM MR. FARMER'S. MY UNDERSTANDING IS THAT, ALTHOUGH SENIOR JUDGES ARE VERY COMMONLY USED FOR LONG DURATION CRIMINAL TRIALS, CAPITAL TRIALS, DEPENDENCY WORK, THAT THE SENIOR JUDGE'S DOCKET, JUDGE DRERBER, THE IS HE NOT YORB I DON'T REMEMBER JUDGE OF -- THE SENIOR JUDGE OF THE CIVIL DIVISION, CALLS LONG DURATION TRIALS, AND THESE ARE THE SAME SENIOR JUDGES USED IN THESE KINDS OF CASES ARE USED FOR A WIDE VARIETY OF OTHER WORK. THE DOCKET, THE PHRASE SENIOR JUDGES' DOCKET, REFERS TO THOSE CASES WITHIN CIVIL THAT HAVE BEEN REFERRED TO SENIOR JUDGES.

SO IN ANOTHER SITUATION, SUCH AS CRIMINAL CASES, NO PARTY HAS TO ASK THAT THIS, A SENIOR JUDGE BE ASSIGNED, AS THEY DO IN THIS DIVISION.

THAT IS TRUE, YOUR HONOR, AND ACTUALLY I AM NOT SURE THAT A PARTY DOES HAVE TO ASK. I DO KNOW THAT THE CIRCUIT JUDGE THEMSELVES, HAVE TO ASK. AND I KNOW THAT, EVEN IF A PARTY DOES ASK, IF THE ASSIGNED JUDGE DECIDES NOT TO REQUEST THAT IT BE PASSED TO THE SENIOR JUDGES DOCKET, THAT DOESN'T HAPPEN.

IF NEITHER PARTY ASKS, IS IT NOT THE PRACTICE THAT A JUDGE CAN, IF THE JUDGE DESIRES, TO TRANSFER THAT CASE?

IT IS MY UNDERSTANDING THAT THAT IS CORRECT, JUSTICE PARIENTE.

IS IT YOUR IDEA THAT THIS IS AN AVAILABLE TOOL OF JUDGES, RATHER THAN A DIVISION ASSUMING -- AN AVAILABLE POOL OF JUDGES RATHER THAN A DIVISION AS SUCH? A POOL OF JUDGES THAT CAN BE CALLED UPON?

THAT'S CORRECT, JUDGE. IT IS A TOOL, AN INSTRUMENT THAT A CHIEF JUDGE AND THE CIRCUIT COURT JUDGES CAN USE TO ASSIST THEM, WHICH IS ONE OF THE REASONS THAT THERE REALLY ISN'T A CONSTITUTIONAL PROBLEM HERE. THE CONSTITUTIONAL GRANT OF POWER TO THIS COURT, TO THE CHIEF JUSTICE, INDICATES THAT THE CHIEF JUSTICE SHALL HAVE THE POWER TO ASSIGN JUDGES OR JUSTICES, INCLUDING CONSENTING RETIRED JUDGES OR JUSTICES, TO TEMPORARY DUTY, IN ANY COURT FOR WHICH THE JUDGE IS QUALIFIED. NOW, THE PETITIONERS HAVE INDICATED THAT YOU HAVE TO BE ELIGIBLE TO ACTUALLY BE A JUDGE IN THAT CIRCUIT, BUT THE ELIGIBILITY REFERRED TO IN THE CONSTITUTION IS ELIGIBILITY TO HOLD OFFICE.

THESE SENIOR JUDGES DON'T HOLD OFFICE. THEY ARE THERE TO ASSIST THE ACTIVE CIRCUIT COURT JUDGES WHO DO.

WHILE YOU ARE CITING THAT, COULD YOU ADDRESS THE SEAMING CONTRADICTION THAT THE STATE HAS DECREED THAT PEOPLE MUST RETIRE AT AGE 70. AND YET THROUGH THIS PRACTICE HERE, THAT WE HAVE, FOR INSTANCE BE THE SAME JUDGE THAT HAS BEEN DISQUALIFIED AND FORCED TO RETIRE AT AGE 70 AND THEREFORE NO LONGER QUALIFIED TO SERVE, AND YET THAT SAME JUDGE CAN CONTINUE TO SERVE ON THESE CASES AND SOME WOULD ARGUE, AND I THINK SOME DO, THAT NOW YOU ARE TAKING A JUDGE THAT HAS BEEN DISQUALIFIED, BECAUSE OF AGE ON THIS, AND YOU ARE ASSIGNING THAT JUDGE THE MOST DIFFICULT OR MOST COMPLICATED OF CASES. AND WHAT WOULD YOU SAY, FOR INSTANCE, TO THE PUBLIC, AT SAID THAT AND SAID, WELL, HOW CAN THAT BE, THAT THIS JUDGE, WE HAVE A CONSTITUTION THAT SAYS THAT JUDGE MUST LEAVE THE BENCH, AND YET NEXT WEEK, THAT JUDGE IS ASSIGNED TO GO ON WITH THE SAME VERY, VERY COMPLICATED CASE.

I WOULD EXPLAIN, JUSTICE ANSTEAD, THAT, IF THIS JUDGE HAS REQUESTS TO SERVE, AND IS CHOSEN TO SERVE, THAT SENIOR JUDGE, IT HAD TO BE DETERMINED BY THE CHIEF JUSTICE OF THE FLORIDA SUPREME COURT AND BY THE CHIEF JUDGE OF THE CIRCUIT, WHICH HER TEMPORARY ASSIGNMENT, THAT THIS JUDGE, THIS RETIRED SENIOR JUDGE, WAS QUALIFIED TO SIT IN THAT COMPLEX CASE. THIS IS NOT SOMETHING THAT WOULD INEVITABLY HAPPEN, WITH REGARD TO EVERY RETIRED JUDGE WHO ASKS. MR. CHIEF JUSTICE

YOUR TIME IS UP. THANK YOU VERY MUCH.

WE CONTEND THAT THE APPROPRIATE VENUE IS THE COMMITTEE THAT THIS COURT SET UP NOT THE CONSTITUTION OR PETITION FOR PROHIBITION BEFORE THIS COURT. THANK YOU, YOUR HONORS. MR. CHIEF JUSTICE

THANK YOU. REBUTTAL.

IF IT PLEASE THE COURT. THANK YOU. THE STATEMENT THAT THE PARTY MAKES THE REQUEST IS, IN FACT, WRONG. THE SUPPLEMENTAL APPENDIX THAT WE HAVE FILED DEMONSTRATES, AT PAGE 67 AND 68, THE MEMORANDUM BY WHICH THESE CASES ARE BEING SENT TO THIS SENIOR JUDGES COMPLEX LITIGATION DOCKET. MEMORANDUM DATED JUNE 26, 2000, FROM THE CIRCUIT JUDGE; CHARLES GREEN TO THE HONORABLE GEORGE BRESHER, PLACED THE CASE ON THE SENIOR JUDGES DOCKET. MEMORANDUM AUGUST 2000, PLACED THE CASE ON THE SENIOR JUDGES DOCKET. THERE IS NO REQUEST BY THE PARTY AND INDEED IN THIS CASE TO PLACE THE CASE THERE. THE ONLY REQUEST THAT WAS MADE WAS THAT THE PARTY IN THIS CASE, THE PFEIFLERS, MADE THE REQUEST TO JUDGE GREEN, AFTER HE HAD ALREADY ANNOUNCED THAT THIS CASE WAS GOING TO THE SENIOR JUDGES DIVISION, TO REPLACE IT ON THE SENIOR JUDGES DIVISION, BECAUSE IT HAD GONE OUT OF ISSUE WITH AN AMENDED COMPLAINT AND THEN COME BACK TO ISSUE.

WHY WOULD THIS NOT BE GOVERNED BY MANN? WHY COULD AN ADMINISTRATIVE ORDER NOT DO THIS?

MANN, INVOLVED, NUMBER ONE DID NOT INVOLVE SENIOR JUDGES. MANN INVOLVED A DRUG COURT.

I AM TALKING ABOUT DIVISION AS OPPOSED TO A DOCKET.

THE MANN CASE CLEARLY WAS A SUBDIVISION OF THE CIRCUIT COURT DEALING WITH DRUG CASES. THIS IS NOT A GROUP OF CASES THAT RISE TO THE LEVEL OF EX-GENT CIRCUMSTANCES THAT THIS COURT HAS PREVIOUSLY OUTLINED THAT SUFFICE TO ALLOW A JUDGE TO MOVE CASES IN A CERTAIN GROUP IN THAT MANNER. I DO NOT BELIEVE MANN APPLIES HERE FOR THAT

REASON.

BACK IN THE FOURTH CIRCUIT, WE USED TO ASSIGN ALL THE ASBESTOS CASES TO A DOCKET, AND JUDGES WOULD COME IN AND HEAR THAT. THAT WAS ILLEGAL?

NO. IN FACT, ASBESTOS CASES AND TOBACCO LITIGATION CASES ARE THE PERFECT EXAMPE OF CASES THAT WOULD OTHERWISE DISRUPT CIVIL TRIAL CALENDARS. THAT IS THE SECOND THRUST TO THE TEST, UNDER THE GUIDELINES OF THIS COURT. NOT JUST LONG DURATION CASE BUT IT MUST BE A CASE THAT OTHERWISE DISRUPTS OTHER DOCKETS IN THE CIRCUIT. THE ASBESTOS CASES CLEARLY OTHERWISE DISRUPTED OTHER CIVIL DOCKETS. THE TOBACCO LITIGATION IN DADE COUNTY CLEARLY DISRUPTED OR CIVIL DOCKETS. THESE CASES DO NOT. OTHERWISE, BY DEFINITION, THE CASE --

WHAT IS DIFFERENT BETWEEN THESE CASES AND TOBACCO LITIGATION OR ASBESTOS?

THESE CASES ARE NO DIFFERENT THAN A DOCKET CALLED BY A CIRCUIT JUDGE HAS TWELVE, LET'S JUST SAY ACTUALLY THERE IS 40 CASES ON A DOCKET. FOUR OF THOSE CASES MAY TAKE UP THE WHOLE DOCKET, BECAUSE EACH OF THEM ARE ONE-WEEK DURATION CASES. THOSE FOUR CASES, JUST BECAUSE HEY ARE GOING TO TAKE UP THE WHOLE DOCKET, ARE NOT OTHERWISE CONSIDERED DISRUPTIVE TO BE TAKEN OUT AND SENT FOR TEMPORARY ASSIGNMENT TO A SENIORJUDGE, NO MORE THAN THESE DO. THESE CASES DO NOT PASS THE TEST OF THIS COURT FOR EXIGENT CIRCUMSTANCES TO BE SENT OUT OF THE SYSTEM OF AN ELECTED JURIS.

CAN'T YOU MAKE THE DECISION WHETHER I AM GOING TO GET ONE TRIED OR FOUR TRIED?

THAT CHOICE HAS TO BE MADE BUT MADE NOT IN THE SACRIFICE, IF YOU WILL, OF THE RIGHT TO ELECT JUDGES. JUSTICE SHAW'S QUESTION ABOUT, WELL, COULD WE DO THIS WITH DEATH CASES AND THE ATTORNEY GENERAL SAID YES. ABSOLUTELY NOT. BECAUSE IF DO YOU IT WITH DEATH CASES, YOU WOULD HAVE THEN CREATED A SPECIAL DIVISION THAT REMOVES THE RIGHT TO ELECTED JURISTS TO ALL DEATH-ROW INMANTES IN THIS STATE AND I SUGGEST TO YOU THAT WOULD BE UNCONSTITUTIONAL AND THIS COURT WOULD FIND IT UNCONSTITUTIONAL, BECAUSE IN THIS CASE YOU WOULD HAVE NONELECTED JUDGES SITTING AND PRESIDING OVER A DEATH ROW CASE. YOU CANNOT RELEGATE, THE SAME AS HERE, TO A NONELECTED JUDGE. MR. CHIEF JUSTICE

THANK YOU, YOUR TIME IS UP. THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THIS MATTER.