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Report of the Supreme Court Workgroup on Public Records

MR.^CHIEF JUSTICE

GOOD MORNING, AND WELCOME TO THE ORAL ARGUMENT CALENDAR FOR THIS THURSDAY AT THE FLORIDA SUPREME COURT. THE FIRST MATTER THAT IS ON THE COURT'S CALENDAR, THIS MORNING, IS THE REPORT OF THE SUPREME COURT WORK GROUP ON PUBLIC RECORDS. JUDGE KAHN AND JUDGE WOLF, I NOTICE THAT YOU ARE GOING TO DIVIDE YOUR TIME HERE.

I THINK JUDGE WOLF, IF THE COURT HAS ANY SPECIFIC QUESTIONS ABOUT COMMENTS, OTHERWISE HE IS DECLINING. MR.^CHIEF JUSTICE

AND SO THE TEN AND TEN HERE IS FOR THE REBUTTAL TIME. MR.^KAHN, ARE YOU READY TO PROCEED. WOLF THANK YOU, MR.^CHIEF JUSTICE AND MAY IT PLEASE THE COURT. I AM CHARLES KAHN, TALLAHASSEE. I FANCY MYSELF HERE, TODAY, NOT AS AN ADVOCATE OR A DEFENDER BUT SIMPLY AS A PRESENTER OF THE VERY DILIGENT AND CAREFUL WORK OF THE PUBLIC RECORDS WORK GROUP, APPOINTED BY ADMINISTRATIVE ORDER OF THIS COURT IN SEPTEMBER OF LAST YEAR. SEVERAL MEMBERS OF THE WORK GROUP ARE HERE IN THE COURTROOM, TODAY. MR.^HILL, REPRESENTING THE BAR, IN PARTICULAR, IS HERE TODAY. WE WERE CHARGED, IN AN ADMINISTRATIVE ORDER AUTHORED BY THE COURT LAST SEPTEMBER, TO ADDRESS CERTAIN ISSUES HAVING TO DO WITH ACCESS TO PUBLIC RECORDS. THERE WAS SOME ATTENTION, IN THE ADMINISTRATIVE ORDER, TO ELECTRONIC RECORDS, REQUESTS FOR VOLUMINOUS RECORDS, RECORDS RETENTION, AND THIS OCCUPIED OUR TIME OVER THE COURSE OF FIVE OR SIX GATHERINGS OF THIS WORK GROUP AROUND THE STATE. I WILL TELL YOU AND REMIND THE COURT THAT THE WORK GROUP WAS COMPOSED NOT ONLY OF JUDGES BUT OF SOME ATTORNEYS, AND IMPORTANTLY OF REPRESENTATIVES OF THE CIRCUIT COURT CLERKS AND THE CIRCUIT COURT ADMINISTRATORS. WE HAD ONE OF EACH, OR ACTUALLY TWO FROM ADMINISTRATORS' OFFICES FROM LARGE METROPOLITAN JUDICIAL CIRCUITS THAT PARTICIPATED. THE WORK PRODUCT THAT CAME OUT WAS MAGNANIMOUS. WE DID NOT HAVE ANY DISSENTING REPORT TO FILE. WHAT I WOULD LIKE TO SAY IS THAT THIS WORK GROUP, CERTAINLY, WAS NOT CHARGED NOR COULD IT HAVE BEEN CHARGED WITH DETERMINING WHAT A PUBLIC RECORD IS, UNDER ARTICLE I SECTION 24 OF THE FLORIDA CONSTITUTION. MR.^CHIEF JUSTICE

LET ME DIRECT YOU, JUDGE KAHN, TO A COUPLE OF MATTERS, FOR WHICH THERE HAVE BEEN SOME COMMENT, ONE BEING THE PROPOSAL THAT THERE -- THAT THE REQUEST FOR ACCESS TO RECORDS SHALL BE IN WRITING, AND FROM WHAT I HAVE SEEN HERE, IS THAT THERE IS AN OBJECTION TO THAT BEING IN THE RULE, AS IT IS A VARIANCE FROM WHAT IS IN IT. COULD YOU SPEAK TO THAT COMMENT? AND SAY, WELL, THAT IS NOT WHAT THEY WERE ASKING FOR.

DID THE GROUP HAVE ANY DISCUSSION ABOUT ELECTRONIC FILING, STORAGE AND RETRIEVAL OF PUBLIC RECORDS? AND HOW THAT MIGHT WORK INTO THIS SITUATION? IN OTHER WORDS, WAS THERE A DISCUSSION ABOUT THAT AND WHAT THE PERCEPTION MIGHT BE AMONGST THE GROUP, OF HOW THAT MIGHT WORK? TO MAKE SPECIFIC RECOMMENDATIONS, ALTHOUGH WE DID MEET WITH REPRESENTATIVES OF THE SYSTEMS PEOPLE, FROM THE OFFICE OF THE STATE COURT ADMINISTRATOR. WE FELT LIKE THAT NEEDED TO BE LOOKED AT FURTHER. WE WERE MADE AWARE OF SITUATIONS IN VARIOUS PLACES AROUND THE STATE, WHERE THERE HAVE BEEN SUGGESTIONS, AND QUITE FRANKLY SOME GOOD SUGGESTIONS ABOUT EASIER PUBLIC ACCESS TO THOSE ITEMS THAT ARE ELECTRONICALLY FILED, BUT WE DON'T SPECIFICALLY HAVE A PROPOSAL AS TO HOW TO TRACK THE COURSE IN THE FUTURE, BECAUSE OF THE TECHNOLOGY ISSUES. FOR

INSTANCE, IT HAS BEEN TWO YEARS AGO, WE WERE TALKING ABOUT FLOPPY DISKS. A YEAR AGO WE WERE TALKING ABOUT WRITEABLE CD-ROMS. NEXT YEAR, QUITE FRANKLY, I AM NOT SURE WHAT WE ARE GOING TO BE TALKING ABOUT, IN TERMS OF INFORMATION STORAGE AND RETRIEVAL, BUT WE DO ACKNOWLEDGE THAT THESE ARE, IN MANY INSTANCES, GOING TO BE PUBLIC RECORDS, FOR WHICH CLERKS WILL HAVE TO PROVIDE ACCESS.

YOU SAID THAT YOU WERE NOT CHARGED WITH DEFINING PUBLIC RECORDS UNDER ARTICLE I SECTION 24.

YES, MA'AM.

BUT THE DEFINITION OF RECORDS OF JUDICIAL BRANCH, WHICH INCLUDE, I GUESS, UNDER ADMINISTRATIVE RECORDS, DOES DEFINE ADMINISTRATIVE RECORDS, IN A SENSE THAT IT IS TALKING ABOUT THE OFFICIAL BUSINESS, IN THE, JUDICIAL BRANCH OR ENTITY. COULD YOU ADDRESS THOSE CONCERNS, AS TO WHETHER THAT IS EITHER TOO NARROWLY DEFINING, BROADLY DEFINING, OR IS THAT A DEFINITION?

I AM PLEASED THAT I GET TO USE MY AID, AND I HOPE IT DOESN'T INCONVENIENCE THE COURT. I THINK IT IS HELPFUL AND NICE TO HAVE IT UP THERE. WHAT WE INTENDED TO DO WAS TO BE FAITHFUL TO THE LANGUAGE OF ARTICLE I SECTION 24, THE DEFINITION OF RIGHTS, AND WE THOUGHT IT POSSIBLE TO, IN OUR REFERENCE TO CHAPTER 119, THE DEFINITIONS SECTION, AND THE DEFINITION THAT WE CAME UP WITH, FOR RECORDS OF THE JUDICIAL BRANCH, WHICH IS THE ANTECEDENT, JUSTICE PARIENTE, TO WHAT YOU SAID, IN TERMS OF JUDICIAL RECORDS. THE FIRST PHRASE WE USED WAS "ALL RECORDS", AND THEN WE BASICALLY TRACKED, IF YOU WILL LOOK TO THE FIRST COLUMN AND THE THIRD COLUMN, WE TRACKED THE CONSTITUTIONAL LANGUAGE. THE THRUST OF YOUR QUESTION MAY, ALSO, BE WHY DID WE SEE A NEED TO EVEN COME UP WITH A CATEGORY OF ADMINISTRATIVE RECORDS, AND THAT CAN BE DEBATED, I THINK, EITHER WAY, BUT WE FELT LIKE WE KNEW WHAT THE COURT RECORDS ARE. I THINK FOR THE MOST PART, MEDIA AND LAWYERS KNOW WHAT COURT RECORDS ARE, BUT FOR ADMINISTRATIVE RECORDS, THERE HAD TO BE ANOTHER CATEGORY, AND ALTHOUGH WE DID DO ANOTHER DEFINITION, WE DID NOT DO AN EXCLUSIO ALTERIUS. I AM NOT GOOD ON MY LATIN. I SPEAK MUCH BETTER SPANISH THAN LATIN. IF WE GO TO A CIRCUIT COURT IN THE FIRST INSTANCE, TO DECIDE IF A PARTICULAR RECORD THAT IS NOT IN THE COURT FILE WAS ENGENDERED IN THE COURSE OF OFFICIAL BUSINESS, AND THAT, QUITE FRANKLY, IS A BOX THAT IS NOT GOING TO BE CLOSED BY ADOPTION OR EVEN MODIFICATION OF THIS RULE.

SO IN OTHER WORDS, JUST TRACKING OFFICIAL BUSINESS.

THAT IS WHAT WE THINK.

JUST TRACKING WHAT IS IN ARTICLE I.

YES, MA'AM. AND IT IS SUBJECT TO SOME DISCRETION AND FACTUAL DETERMINATION, AS TO WHAT OFFICIAL BUSINESS IS. MR. CHIEF JUSTICE

JUSTICE SHAW HAD A QUESTION.

THE SECRETARY OF STATE INITIALLY FILED A SUGGESTION THAT JUDICIAL RECORDS BE RETAINED, ACCORDING TO A RETENTION SCHEDULE ISSUED BY THE DEPARTMENT OF STATE AND ADOPTED BY THE SUPREME COURT, AND THEN THAT WAS WITHDRAWN, AS I UNDERSTAND IT. IS THAT CORRECT?

THE REQUEST, I AM NOT SURE IF IT WAS WITHDRAWN. WE ARE NOT SURE ABOUT THAT. WE KNOW WHAT THE COMMENT WAS, JUSTICE SHAW. WE ARE NOT SURE IF THEY STAND BY IT OR NOT. I CAN EXPLAIN OUR POSITION ON THAT.

IF YOU WOULD.

YES, SIR. WHAT WE DID, WE THOUGHT IT WOULD BE A GOOD IDEA TO TAKE A RECORD RETENTION SCHEDULE THAT HAD BEEN IN EXISTENCE FOR A PERIOD OF TIME AND USED TO ADMINISTER EXECUTIVE BRANCH RETENTION ISSUES UNDER CHAPTER 119, AND THAT HAPPENED TO BE THE SECRETARY OF STATES, AND I APOLOGIZE. I DON'T RECALL THE NOMENCLATURE, THE ACRONYM FOR THAT, BUT IT IS IN OUR APPENDIX TO THE REPORT. WE STATED THAT WE WERE GOING TO USE THAT AS A BASELINE, BUT WE FELT LIKE, IN RELIANCE ON THIS COURT'S POSITION INNATE AND THE POSITION IN WFTV, THAT THIS COURT IS THE ULTIMATE ARBITER CONCERNING CUSTODY RETENTION OF COURT RECORDS, AND THAT IT SHOULD BE UP TO THIS COURT TO HAVE THE FLEXIBILITY, AND THERE ALSO COULD BE A SEPARATION OF POWERS ISSUE, IF WE DELEGATED TO THE EXECUTIVE, THE QUESTION OF RETENTION OF RECORDS, AND QUITE FRANKLY, WE DON'T THINK THERE IS ANYTHING CONTROVERSIAL IN THE RECORDS RETENTION SCHEDULE, AND I THINK THAT IS BORNE OUT, THE ONE THAT WE PROPOSED. I THINK THAT IS BORNE OUT, WITH THE EXCEPTION OF THE JUDICIAL QUALIFICATIONS COMMISSION WHICH THEY CONCEDED TO. THEY WANTED A RECORDS PROVISION.

WHY WAS THERE CONCERN WITH COPYWRITING? I AM NOT SURE WHAT WE WOULD BE COPYWRITING AND WHY WE WOULD BE DOING IT. WHAT WAS THE DISCUSSION ON THAT PARTICULAR ISSUE?

THERE WAS SOME INTEREST IN THE OFFICE OF THE STATE COURT ADMINISTRATOR, AT LEAST, I KNOW, ABOUT QUESTIONS THAT MIGHT ARISE, WHERE THE COURT SYSTEM, I DON'T MEAN THIS COURT BUT THE BRANCH HAD SOMETHING THAT MIGHT ARGUABLY BE PROPRIETARY, WHETHER IT BE A SOFTWARE PROGRAM. THERE ARE THINGS THAT ARE USED TO TRACK PRISON POPULATIONS AND THAT SORT OF THING, SO BASICALLY WHAT WE DID IS TRY TO PRESENT SOME BACKGROUND, THAT WE DIDN'T MAKE ANY RECOMMENDATION, BECAUSE WE THOUGHT THE SLAW SATISFACTORY, BUT THAT IS THE REASON, JUSTICE QUINCE, IS IF SOMETHING PROPRIETARY MIGHT ARISE AND THERE MIGHT BE SOME SORT OF COMMERCIAL DISPUTE, BETWEEN SOMEONE IN THE BRANCH WHO HAD DEVELOPED SOFTWARE, FOR INSTANCE, AND A COMMERCIAL INTEREST.
MR.^CHIEF JUSTICE

YOU ARE IN YOUR REBUTTAL.

THANK YOU AND I WILL CONCEDE IT TO MR.^THOMAS. MR.^CHIEF JUSTICE

MR.^THOMAS.

MAY IT PLEASE THE COURT. GREG THOMAS OF HOLLAND & KNIGHT, ON BEHALF OF THE "ORLANDO SENTINEL". LET ME BEGIN, BY COMMENDING THE WORK OF THE WORK GROUP. FLORIDA HAS A RICH AND ILLUSTRIOUS HISTORY, WITH REGARD TO PUBLIC RECORDS. THAT HISTORY BEGAN FAR IN ADVANCE OF THE 1967 ENACTMENT OF THE PUBLIC RECORDS ACT AND THE SUNSHINE ACT. IN FACT, IT REALLY STARTS IN THE '30s. THOSE DECISIONS, I THINK, IMBUE THIS STATE WITH A SPECIAL RELATIONSHIP WITH ACCESS TO PUBLIC RECORDS. KEY TO THAT IS THE CHANGE IN THE FLORIDA CONSTITUTION, IN 1992, WHEN 82 PERCENT OF THE CITIZENS OF THIS STATE VOTED IN FAVOR OF ARTICLE I SECTION 24, WHILE THOSE OF US WHO PRACTICED MEDIA FOR A LONG TIME THINK THAT THIS IS AN ACT DIRECTED TO THE MEDIA. IN FACT IT IS NOT. IT IS AN ACT DESIGNED FOR AN ADVISED CITIZENRY. IT IS THE PRECURSOR BY WHICH CITIZENS CHALLENGE THEIR GOVERNMENT. WITHOUT THE ABILITY TO HAVE ACCESS TO RECORDS AND INFORMATION, NO CITIZEN CAN COMPETENTLY CRITICIZE OR HAVE INSIGHT INTO GOVERNMENT, AND IT IS FOR THAT REASON, THAT THE SENTINEL RAISES ESSENTIALLY FOUR ISSUES TODAY, WITH REGARD TO THE PROPOSALS. THE FIRST ISSUE UPON REFLECTION AND ARTICULATION, AND THE RESPONSE BY JUDGE KAHN AND HIS GROUP, WE CONCEDE. WE THINK THE DESCRIPTION ARTICULATED IN ARTICLE I SECTION 24 FOLLOWED, IN SECTION 119, AND WITH THE PROPOSAL BY

THE WORK GROUP, IS IN THE BEST INTERESTS OF ALL PEOPLE REQUESTING RECORDS. AND THAT CONSISTENCY, THE PARALLEL CONSTRUCTION BETWEEN ARTICLE I SECTION 24 AND 119 IN JUDICIAL RECORDS, IS WHAT WE HAVE AN INTEREST IN.

SO ARE YOU WITHDRAWING THE COMMENT CONCERNING THE TRANSACTION OF OFFICIAL BUSINESS, WANTING THAT LANGUAGE CHANGED?

YES, YOUR HONOR. I THINK THE MORE THAT WE LOOK AT 119, USING EXACTLY THE SAME WORDS, AND THE HISTORY FOR 34 YEARS, OF THE INTERPRETATION OF THAT ACT, AND THE WONDERFUL WAY IN WHICH THIS COURT AND THE DISTRICT COURTS OF APPEAL HAVE LIBERALLY INTERPRETED THAT LANGUAGE, WE FEEL COMFORTABLE WITH IT. NOW, WE DO NOT FEEL COMFORTABLE WITH SEVERAL OF THE OTHER RECOMMENDATIONS, AND VIGOROUSLY OPPOSE THE SUGGESTION THAT THE CITIZEN HAS TO MAKE THE REQUEST IN WRITING. RECENT STATISTICS SHOW US, UNFORTUNATELY IN THE STATE OF FLORIDA, THERE ARE 25 PERCENT OF OUR CITIZENS ARE FUNCTIONALLY ILLITERATE. THAT MEANS THEY CANNOT WRITE, THEY CANNOT READ. THEY HAVE DIFFICULTY ARTICULATING WHAT THEY WANT.

YOU WOULD AGREE, THOUGH, THAT COURTS FUNCTION ON THE BASIS OF MATTERS THAT ARE SUBMITTED IN WRITING.

YOUR HONOR, I AGREE. I THINK THAT IS THE PERCEPTION AND THE PROBLEM WITH THIS REQUEST. COURTS ARE USED TO DEALING WITH THE WRITTEN WORD. EVERY OTHER BRANCH OF GOVERNMENT DEALS WITH ALL REQUESTS. YOUR HONORS HAVE NEVER HAD A CASE, AND THERE HAS BEEN NO DCA CASE, WHERE THERE HAS BEEN A MISIDENTIFICATION OF WHAT THE DOCUMENT WAS. AND IF I CAN MOVE A LITTLE BIT TO THE SPECIFICITY REQUIREMENT, HAVING LITIGATED THESE ISSUES FOR A LARGE PERIOD OF TIME, WHAT REQUESTERS DO IS USUALLY MAKE A REQUEST, VIRTUALLY IN THE BLIND. THE REQUESTER IS THE NOVICE. THE CUSTODIAN IS THE PROFESSIONAL. THE CUSTODIAN KNOWS WHAT THE RECORDS ARE, AND USUALLY THERE IS A DIALOGUE BETWEEN THE REQUESTER AND THE CUSTODIAN. THAT DIALOGUE OFTEN HAPPENS ORALLY. WITH REGARD TO MY MEDIA CLIENTS, MOST OFTEN IT HAPPENS IN WRITING, BUT THERE IS NOT CONFUSION. THERE IS NOT THE NECESSITY TO MAKE THESE ??

HOW ABOUT PLAYING THESE OUT IN A MORE OF A REAL LIFE EXAMPLE, AND THAT IS WHAT IS THE DANGER, FOR INSTANCE, IN HAVING A LOG, WHERE THE TYPICAL SITUATION MIGHT BE CHECKING OUT A COURT FILE? I SEE CHECKING OUT. AT LEAST BRINGING TO THE COUNTER, OKAY, A COURT FILE.

YEAH.

THERE IS A LAW THERE THAT SHOWS THE COURT FILE WAS TAKEN FROM THE OFFICIAL, WHEREVER IT IS KEPT PHYSICALLY, AND BROUGHT OUT TO THE COUNTER. OKAY, NOW WE MAY HAVE A DIFFERENT EXAMPLE OF THAT. WE MAY HAVE ACTUALLY A SCREEN, AND THE FILE MAY BE, BUT, YOU KNOW, WHAT IS THE DANGER IN HAVING A LOG THAT MS. ^BROWN COMES IN AND SAYS, "I WOULD LIKE TO SEE," AND AS YOU SAY, THERE IS A LOT OF ORAL DISCUSSION ABOUT THAT, JUST TO CLARIFY, AND A LOT OF ASSISTANCE PROVIDED BY OUR DEPUTY CLERKS, TO GET THAT, BUT WHAT IS THE PROBLEM, THEN, WITH THE LOG, THAT SAYS "MISS BROWN CHECKED OUT THIS FILE AT THE COUNTER", AND HAD IT, AND THEN SHE CHECKED IT BACK IN, MUCH AS YOU MIGHT HAVE AT THE ARCHIVES OR A LIBRARY OR ANY OTHER INSIDE INSTITUTION. WHAT IS THE CHANGE IN THAT? MATTER OF FACT, DON'T WE PROVIDE, REALLY, A POSITIVE BY HAVING THAT?

YOUR HONOR, FOR SECURITY AND SANCTITY PURPOSES, I WOULD AGREE WITH YOU. IF SOMEONE IS GOING TO CHECK OUT A COURT FILE, I CERTAINLY THINK THERE NEEDS TO BE SOME CONTROL AND CUSTODY INVOLVED, BUT A CITIZEN OF THE STATE OF FLORIDA, WHETHER IT IS JIM BEHR OR WHETHER IT IS "THE MIAMI HERALD", NEED TO IDENTIFY WITH REQUEST FOR PUBLIC RECORDS, BECAUSE IT CAN BE INTIMIDATING. YOUR HONOR, WITH REFERENCE TO THE CASE OF BEVIN

VERSUS d'ALLESSANDRO. THEIR MR. ^BEVIN WAS ASKED ABOUT HIS CRIMINAL RECORD, IN A DISCOVERY REQUEST. WE ARE ALL LAWYERS. WE ARE SOPHISTICATED. WE KNOW HOW THE STATUTE OPERATES, BUT FOR THE NOVIATE IN THIS PROCESS, IT CAN BE INTIMIDATING TO HAVE TO WRITE THIS REQUEST. YOUR HONOR, I HAVE NO PROBLEM WHATSOEVER, THAT WHEN THE ORAL REQUEST IS MADE THAT, IT IS WRITTEN DOWN BY THE CUSTODIAN, SO THAT THE NATURE OF THE REQUEST IS PLACED, AND THE BURDEN IS PLACED ON THE CUSTODIAN, BUT TO MAKE SOMEONE ARTICULATE WHAT THEY WANT, I THINK, IS AN ADD BURDEN. IF I CAN MOVE FOR A SECOND, TO THE SPECIFICITY REQUIREMENT. MANY OF THE REQUESTS THAT ARE MADE ARE MADE FOR RECORDS WHICH HAVE NEVER BEEN SEEN BEFORE, AND IT PLACES, WE BELIEVE, AN UNNECESSARY BURDEN, TO REQUIRE THAT THE PERSON, THE CITIZEN REQUESTING THESE, SPECIFY. I THINK THE EXACT LANGUAGE IS TO ARTICULATE WITH SPECIFICITY, EXACTLY WHAT THE DOCUMENT IS. I THINK IN MANY INSTANCES -- THANK YOU, YOUR HONOR, FOR CLEANING UP MY MESS -- IT IS IMPORTANT THAT THE PROCESS AND THE DIALOGUE THAT OCCUR, OCCUR BETWEEN THE CUSTODIAN AND THE CITIZEN, AND THE MAJORITY OF TIMES, THOSE ARE WORKED OUT.

THE RULE ACTUALLY SAYS WITH SUFFICIENT SPECIFICITY, SO THAT THE CUSTODIAN WILL KNOW WHAT IS BEING REQUESTED. DO YOU HAVE SOME ALTERNATIVE LANGUAGE, BECAUSE THAT SEEMS PRETTY REASONABLE, THAT THE CUSTODIAN WOULD WANT TO KNOW BECAUSE ARE ASKING FOR.

YOUR HONOR, ABSOLUTELY ON THE SURFACE IT SEEMED REASONABLE, NEVER REQUIRED IN 119, NOT ARTICULATED IN THE SUPREME COURT REQUIREMENT THAT THERE BE THIS ADDED NECESSITY FOR SPECIFICITY. YOUR HONORS HAVE NEVER ADDRESSED THE MISIDENTIFIED CASE. THE DCA'S HAVE NEVER ADDRESSED A CASE. WE THINK IT IS UNNECESSARY LANGUAGE.

YOU ARE SUGGESTING THAT NOTHING BE THERE, NOT ANY SUBSTITUTION.

I THINK IF WE WOULD REPLACE WITH GENERALITY, RATHER THAN SPECIFICITY, WE COULD LIVE WITH LANGUAGE LIKE THAT.

WHAT HAPPENS NOW, WHEN THESE RECORDS REQUESTS ARE BEING MADE IN THE VARIOUS CIRCUITS? ARE THEY, ARE THE OFFICIALS ASKING THAT THEY BE PUT IN WRITING?

SOMETIMES THEY ARE, YOUR HONOR, AND SOMETIMES THEY ARE NOT. AND THAT HAPPENS WITH REGARD TO 119 ALL THE TIME. I HAVE CLIENTS, ON A DAILY BASIS, WHO CALL ME AND SAY THE SUPERVISOR OF ELECTIONS OR THE SHERIFF HAS SAID, "I NEED TO PUT THIS IN WRITING." I SAY IF YOUR INTENT IS LONG TERM AND YOU WANT TO MAKE SURE, WITH CLARITY, WHAT IT IS, BUT MY CLIENTS ARE THE SOPHISTICATED REQUESTERS OF DOCUMENTS.

I AM HAVING DIFFICULTY SEEING, AND IT JUST SEEMS FUNDAMENTAL IN THE ORDERLY PROCESSING OF INFORMATION, OF WHAT, IT IS LIKE BEING IN MANY LOCATIONS WHERE YOU ARE LOOKING THROUGH OLD NEWSPAPERS, AND THERE IS A LOG THERE, AND THEY ARE GOING TO BRING OUT THE NEWSPAPERS FROM THAT ERA OR THE TAPES OR THE VIDEO THINGS OF THAT, AND JUST FROM THE ORDERLY PROCESS OF WHO IS GOING TO HAVE POSSESSION OF THOSE, FOR THAT PERIOD OF TIME, AND FOR INSTANCE IF, LATER, AND LET'S SAY IT IS THE SYSTEM THAT PROBABLY PREVAILS NOW, IT IS A COURT FILE THAT IS BROUGHT OUT, AND PUT AT THE COUNTER, AND THEN LATER THERE IS A QUESTION THAT THERE WAS SOMETHING MISSING FROM THAT FILE. WELL, THE CLERK HAS AN ACCURATE RECORD, REALLY, OF WHERE THAT FILE WAS, VIRTUALLY ALL THE TIME. IT WAS IN THE FILE, BUT NO PART OF THE TIME IT WAS CHECKED OUT AT THE COUNTER, TO A NEWSPAPER PERSON, OR TO WHOEVER ELSE. IT JUST SEEMS LIKE, IN HUMAN EXPERIENCE ??

YOUR HONOR, 119 SPECIFICALLY ADDRESSES THAT QUESTION. AND REMEMBER THAT THIS IS NOT

A CUSTODY ISSUE. THERE IS NOT THE TRANSFER OF CUSTODY OF THESE DOCUMENTS. WHENEVER SOMEONE INSPECTS A PUBLIC RECORD, THE CUSTODIAN OR HIS OR HER DESIGNEE IS IN THE ROOM, WATCHING IT HAPPEN, OR A COPY IS MADE, AND THE COPY IS DELIVERED, SO THE SANCTITY IN 119, AT LEAST, IS PROTECTED BY SPECIFIC PROVISIONS THAT THE DOCUMENTS ARE NEVER, IN WHOLE, RELEASED TO THE REQUESTER. MR.^CHIEF JUSTICE

IF YOU ARE GOING TO MOVE TO OTHER POINTS, PLEASE KEEP IN MIND YOUR TIME.

YES, YOUR HONOR. THE FINAL POINT THAT I WOULD MOVE TO, IS THE REQUEST OF REQUIREMENT OF FORM. THE STUDY GROUP SAYS THAT THE FORM SHOULD BE DECIDED BY THE CUSTODIAN. WE HAVE SIGNIFICANT PROBLEMS WITH THAT. IF THE DOCUMENT EXISTS IN MULTIPLE FORMS, AS MANY DOCUMENTS IN FLORIDA DO, FOR INSTANCE, THEY EXIST IN ELECTRONIC FORM, THEY EXIST IN WRITTEN FORM, THEY MAY EXIST IN NOTE FORM. IT SHOULD BE THE DISCRETION OF THE REQUESTER TO BE ABLE TO SAY TO THE CUSTODIAN, FOR MY PURPOSES, I WOULD LIKE IT IN THE ELECTRONIC FORM, AND I AM GLAD TO PAY WHATEVER CHARGES THERE ARE FOR GETTING THAT FLOPPY DISC, AS OPPOSED TO GETTING A SHEATH OF PAPERS THIS LARGE. YOUR HONOR, YOU MIGHT REMEMBER THAT "THE MIAMI HERALD" WON A PULITZER PRIZE, IN 1993 OR '92, AFTER HURRICANE ANDREW, FOR ANALYSIS AND INSPECTION OF COUNTY CODE VIOLATIONS THAT RELATED TO WHICH INSPECTORS HAD LOOKED AT WHICH HOUSES, AND THEY DID THAT THROUGH A DATABASE RESEARCH. IF THEY HAD ONLY THE CUSTODIAN TO GIVE THEM, YOU KNOW, REAMS AND REAMS OF PAPERS ABOUT THIS, THAT ANALYSIS WOULD HAVE BEEN IMPOSSIBLE. THE REQUESTER SHOULD HAVE THE ABILITY TO MAKE THAT CALL. BUT THE REQUESTER SHOULD NEVER HAVE THE JUDICIAL BRANCH OR THE LEGISLATIVE BRANCH MAKE UP A RECORD OR CREATE A RECORD, AND I THINK JUDGE KAHN RECOGNIZES THAT IN THE COMMENTS. WHAT SHOULD HAPPEN IN THIS CIRCUMSTANCE IS, WE CAN'T MAKE GOVERNMENT MAKE A WRITTEN RECORD ELECTRONIC, BUT IF MULTIPLE COPIES EXIST, THE REQUESTER SHOULD BE ABLE TO HAVE THAT CALL, RATHER THAN THE CUSTODIAN. YOUR HONORS, THOSE ARE MY, ALL MY COMMENTS. THANK YOU VERY MUCH. MR.^CHIEF JUSTICE

THANK YOU, MR.^THOMAS. JUST KAHN, YOU HAVE REBUTTAL.

JUDGE KAHN, WHAT ?? GOING TO THE LAST THING THAT WAS SAID THERE, WHAT WOULD BE THE PROBLEM, IF THESE THINGS ALREADY EXIST IN THIS FORM, IS THERE A DIFFICULTY WITH THAT?

THERE REALLY IS VERY LITTLE DIVERGENCE, IN OUR VIEWS, IN THE MEDIA INTEREST VIEW AND THE WORK GROUP'S VIEW, JUDGE ANSTEAD. OUR CONCERN, QUITE FRANKLY, WAS TO BE FAITHFUL TO WHAT WE THINK IS EXISTING LAW IN THE STATE RIGHT NOW THAT, COURT CLERKS AND CHIEF JUDGES WHO ARE NOT ?? I DON'T MEAN TO USE THE WORD BUREAUCRAT DISPARAGINGLY AT ALL, BUT WHO ARE NOT IN THAT BUSINESS, THAT THOSE FOLKS NOT BE PLACED IN A POSITION OF ACTUALLY HAVING TO CREATE RECORDS, AND I THINK IT IS PRETTY CLEAR THAT THE SENTINEL DOESN'T HAVE A PROBLEM WITH THAT, BUT YES, SIR, THE THING THAT WE SUGGESTED AS A COMPROMISE, AND I DON'T WANT TO MISQUOTE MY OWN LANGUAGE, BUT IT WAS SOMETHING LIKE THE CUSTODIANS, THE FORM SELECTED COULD NOT BE ALLOWED TO FRUSTRATE OR THWART THE REQUEST, AND CERTAINLY IN THE CASE OF VOLUMINOUS RECORDS, IF THERE IS AN ELECTRONIC, IN ANY ELECTRONIC FORM THE RECORDS ARE AVAILABLE AND A CUSTODIAN SAYS, I WOULD PREFER TO GIVE YOU 10,000 PAGES, THE MEMBERS OF OUR GROUP WOULD BE THE FIRST TO SAY THAT IS SILLY AND THAT, REALLY, DOES FRUSTRATE THAT REQUEST, BECAUSE THEY WANT TO DO WITH THAT INFORMATION IS TO ANALYZE IT, AND YOU CAN'T ANALYZE, AND WE UNDERSTAND THAT, SO THERE IS NO PROBLEM WITH THAT. THE WRITTEN REQUEST ISSUE, QUITE FRANKLY, WE ARE NOT THAT FAR APART ON, EITHER. THAT IS A POLICY DECISION, I THINK THE COURT WILL NEED TO MAKE. WE HAD IN MIND A COUPLE OF THINGS. NUMBER ONE, WE HAD IN MIND THAT THERE IS NOTHING IN OUR PROPOSED LANGUAGE THAT WOUNDS, IF YOU WILL, THE INTEGRITY OF ARTICLE I SECTION 24. WE HAD ONE LINE THAT IS SUGGESTIONS THAT JUSTICE ANSTEAD MADE, IN TERMS OF EFFICIENCY AND KNOWING WHAT IS

WHAT, AND QUITE FRANKLY, WE ENVISIONED, PROBABLY MY FAULT, WE DIDN'T MAKE IT CLEAR ENOUGH THAT CERTAINLY THE CUSTODIAN, PARTICULARLY THE CLERK, WOULD HAVE A ROLE IN REDUCING THIS TO WRITING, SIMILAR TO WHAT MR.^THOMAS HAD SUGGESTED. I JUST, WE DIDN'T WANT TO MAKE THESE NEW RULES MORE VERBOSE AND WORDY. EVERY YEAR WHEN I GET WEST FLORIDA RULES, I COMPLAIN TO MY SECRETARY, GOSH, I HAVE ONLY BEEN OUT OF LAW SCHOOL FOR ONLY ?? I SHOULDN'T SAY "ONLY" ANYMORE. MR.^THOMAS AND I WERE THERE AT THE SAME TIME, BUT 25 YEARS AGO WEST FLORIDA RULES WERE LIKE THIS AND NOW THEY ARE LIKE THIS, AND WE WANTED TO KEEP THAT REASONABLE, BUT WE CERTAINLY UNDERSTAND THAT, IF A RECORDS CUSTODIAN IN OUR BRANCH OR ANY OTHER BRANCH DISCRIMINATED AGAINST SOMEONE WHO HAPPENED TO BE ILLITERATE AND THAT PERSON HAPPENED TO NOT BE ABLE TO WRITE AND REFUSED TO HELP THAT PERSON REDUCE IT TO WRITING, THAT MIGHT WELL, IN AND OF ITSELF, BE HELD TO BE A VIOLATION OF THE CONSTITUTION.

DID YOU SURVEY WHAT WAS GOING ON, OUT IN THE FIELD, IN THESE VARIOUS CIRCUITS? THAT IS WHEN THESE REQUESTS ARE MADE, ARE THE CLERKS ASKING THAT THEY BE REDUCED TO WRITING.

WE AGREE WITH THE COMMENTS OF "THE SENTINEL", THAT THERE HAS NOT BEEN A PARTICULAR PROBLEM WITH THIS ISSUE. WE DID HAVE, AS I MENTIONED, ONE COURT CLERK, MR.^AKE FROM TAMPA, WHO WAS THE ONLY ACTUAL CLERK. WE DID NOT DO A SURVEY. WE JUST SIMPLY DIDN'T HAVE THE RESOURCES TO DO THAT, BUT THE CLERKS AND THE COURT ADMINISTRATORS' PEOPLE THOUGHT THIS WAS A, THAT WHATEVER SLIGHT INCONVENIENCE HERE WOULD BE OUTWEIGHED BY THE FACT THAT WE ARE NOT PROFESSIONAL RECORDS PRODUCERS AND MAY NOT BE AS GOOD AS THE FOLKS AT CITY HALL IN MIAMI?DADE, FOR INSTANCE, IN DOING THAT. WE DON'T THINK THERE IS A PROBLEM, EITHER, BUT WE WOULD LIKE TO, IN THIS INSTANCE, WE THOUGHT, PERHAPS, MAYBE HEAD OFF ANY POTENTIAL LITIGATION, JUST LIKE WITH THE REQUEST OF THE FORM PRODUCED, MAYBE HEAD OFF A SERIOUS PROBLEM. WHAT WE DID DO, JUSTICE PARIENTE, IS EVERY COURT CLERK DOESN'T OPERATE LIKE THEY DO IN TAMPA OR EVEN TALLAHASSEE. YOU DO STILL HAVE LAKE CITY, CRESTVIEW, DEFUNIAK SPRINGS AND WAUCHULA, PLACES LIKE THAT WHERE THEY DON'T HAVE THE RESOURCES, AND PERHAPS WE MADE AN UNWARRANTED SURMISE ABOUT THAT, BUT WE SORT OF THOUGHT THAT THIS WAS AWAY TO ACCOMMODATE THOSE NEEDS. LET ME EMPHASIZE, AND I WILL STOP HERE, THAT THE BOTTOM LINE OF ALL OF OUR RECOMMENDATIONS IS THAT NOTHING THAT ANY OF US AS CUSTODIANS DO, AND ONE OF THE INTERESTING THINGS ABOUT THAT IS THAT EACH OF THE JUDGES IN THIS STATE ARE GOING TO HAVE TO COME TO GRIPS WITH THE FACT THAT WE ARE RECORDS CUSTODIANS, TO SOME EXTENT, NOTHING THAT WE PROPOSED, IN ANY WAY, SHOULD, AS I SAID, WOUND THE INTEGRITY OF ARTICLE I SECTION 24, AND WE FULLY RESPECT THIS COURT'S RIGHT TO MAKE SURE THAT IT DOESN'T. THANK YOU VERY MUCH FOR YOUR TIME. MR.^CHIEF JUSTICE

THANK YOU. WE APPRECIATE, VERY MUCH, THE COMMENTS AND THE EFFORTS OF THE WORK GROUP, AND WE WILL BE TAKING THIS MATTER UNDER SERIOUS ADVISEMENT. THANK YOU.