

*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.*

## **Dale Edward Sjuts v. State of Florida**

MR. CHIEF JUSTICE: NEXT CASE ON THE ORAL ARGUMENT CALENDAR IS SJUTS VERSUS STATE. MS. BRUECKHEIMER.

THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. I AM AN ASSISTANT PUBLIC DEFENDER AND REPRESENTING THE PETITIONER MR. SJUTS. THE LEGISLATURE WAVED ITS MAGIC WAND AND DECLARED ME A CIVIL LAWYER, JUST AS IT DID THE TRIAL ATTORNEYS IN MY OFFICE, AND YET EVERY TIME WE TRY TO USE THE RULES OF CIVIL PROCEDURE, WE GET SHUT DOWN. WE TRIED TO GET DISCOVERY IN MR. SJUTS CASE, AND THEY SAID THE RULES OF DISCOVERY DON'T APPLY TO THE STATE. WE TRIED TO FILE COUNTERCLAIMS, AND THEY SAY YOU ARE AN ASSISTANT PUBLIC DEFENDER. YOU CAN'T FILE COUNTERCLAIMS. THESE COUNTERCLAIMS, HOWEVER, ARE INTRICKLY CONNECTED TO WHY MR. SJUTS IS BEING HELD IN CUSTODY, SO TO SAY THAT WE CAN ONLY REPRESENT HIM IN A LITTLE BOX AND CAN'T GO OUTSIDE THAT BOX, IS TO INFRINGE ON OUR RIGHTS TO PRACTICE AS A PROFESSIONAL.

THEY DID ALLOW -- I MEAN TWO OF THE COUNTERCLAIMS ARE NOT AT ISSUE, COUNT 2 AND 3 AND 4, THE DECLARATORY JUDGMENT --

AS FAR AS I KNOW, THEY HAVEN'T BEEN ADDRESSED AS ALL. -- AT ALL.

THIS COUNTERCLAIM HERE IS FOR DAMAGES.

DAMAGES AND INJUNCTIVE-TYPE RELIEF.

IF YOU HAD A CRIMINAL CASE AND SOMEBODY, THEY ALLEGEDLY WERE FALSELY ARRESTED AND GOT EVIDENCE THROWN OUT OR WHATEVER, WOULD YOU BE ENTITLED TO BRING A SEPARATE CASE FOR A 1983 ACTION ARISING OUT OF SOMETHING THAT OCCURRED IN A CRIMINAL CASE?

WELL, IN A CRIMINAL CASE, I HAVE SO MANY OTHER OPTIONS AVAILABLE TO ME, THAT I WOULDN'T BE LOOKING AT CIVIL REMEDIES. I MIGHT BE LOOKING AT HABEAS RELIEF, MOTIONS TO SUPPRESS, I HAVE OTHER REMEDIES. I DON'T HAVE A LOT OF THOSE REMEDIES AVAILABLE TO ME, IN A CIVIL CASE, SO WE ARE HAVING TO LOOK ELSEWHERE.

YOU WANTED TO GET THE DOCTORS' EXAMINATION THROWN OUT.

NOT JUST EXAMINATION BUT ALL THE FRUITS FROM THAT EXAMINATION.

HOW WOULD A 1983 ACTION FOR DAMAGES WOULDN'T DO THAT?

WELL, THE INJUNCTIVE PART WOULD, BECAUSE THERE WERE, LIKE, SEVERAL REQUESTS. ONE WAS FOR DAMAGES, ATTORNEYS FEES, AND THEN INJUNCTIVE RELIEF.

THAT IS WHAT I ASKED YOU. I THOUGHT THE INJUNCTIVE, CERTAIN PORTIONS WERE STILL, WERE PROCEEDING.

WELL, COUNTERCLAIMS THREE AND FOUR HAVE JUST NEVER BEEN ADDRESSED. THEY ARE JUST OUT THERE, AND THE COURT HAS NEVER ADDRESSED THEM, BUT WITHIN THE COUNTERCLAIM OF ONE AND TWO, WHEN YOU ASK, WHEN YOU LOOK AT WHAT THE FOUR THINGS WE ASK FOR IN COUNTERCLAIM ONE OR COUNTERCLAIM TWO, IT IS THE ENJOYMENT OF THE USE AND ITS FRUITS

OF THE REPORT, AS WELL AS THE DAMAGES. THEY ARE ASKED FOR TOGETHER, AND THAT IS WHAT THE COURT THREW OUT. I MEAN TOTALLY DISMISSED.

BUT I THINK THE POINT HERE IS THAT, DON'T YOU STILL HAVE A REMEDY AVAILABLE TO GET THAT INFORMATION THROWN OUT OF THE CASE? YOU MAY NOT STILL HAVE A REMEDY AVAILABLE FOR MANY DAMAGES, BUT THE PORTION THAT IS APPLICABLE TO THE JIMMY RYCE CASE. THAT IS WHETHER OR NOT YOU ARE GOING TO USE THE DOCTOR'S REPORT OR ANY FRUITS OF IT, THERE ARE STILL MOTIONS YOU CAN FILE TO ELIMINATE THOSE.

THE ONLY MOTION THAT THEY HAVE MENTIONED SO FAR, IS A MOTION IN LIMINE, AND I AM NOT SURE A MOTION IN LIMINE WILL DO THAT.

THEY MAY NOT HAVE MENTIONED THE MOTION, BUT THAT DOESN'T MEAN THAT NOTHING IS AVAILABLE.

WELL, MOTION TO SUPPRESS DOESN'T APPEAR TO BE AVAILABLE. A MOTION IN LIMINE WOULD, MAYBE, KEEP OUT THE REPORT BUT WOULDN'T KEEP OUT THE FRUITS AND WOULDN'T PREVENT THE STATE FROM USING THE FRUITS. WE --

BUT IF THE JUDGE RULED THAT IT SHOULD NOT BE USED, IT WOULD NOT COME IN, WOULD IT?

MAYBE THE REPORT -- IF THE REPORT COULDN'T BE USED AT ALL, THEN THE WHOLE CASE WOULD HAVE TO BE THROWN OUT.

AREN'T YOU JUST DEALING WITH POSSIBILITIES AND, IN MOST CIVIL CASES, WHEN A MOTION IN LIMINE IS PRESENTED TO A COURT AND A COURT GRANTS IT, THEN THAT IS A WAY THE TRIAL IS CONDUCTED. ISN'T THAT CORRECT?

YES, IF THE COURT GRANTS THE MOTION IN LIMINE, I WOULD THINK THAT IT WOULD BE LIMITED TO TALKING ABOUT THE REPORT. IN THE JIMMY RYCE CASE, THOUGH, IF YOU THREW OUT THE REPORT --

WE DON'T HAVE THAT SITUATION.

NEW YORK CITY WE DON'T.

LET ME ASK YOU THIS. ARE YOU BASING YOUR CLAIM TO BE ABLE TO BRING THESE ACTIONS ON BEHALF OF THIS DEFENDANT, ON THE BASIS OF A STATUTORY GRANT, OR ARE YOU MAKING ANY CONSTITUTIONAL --

I THINK THE STATUTE IS PRETTY CLEAR THAT WE CAN'T DO COUNTERCLAIMS. AS A MATTER OF FACT, THE STATUTE IS KIND OF VAGUE. IT MAKES IT SOUND LIKE, IF THE CLIENT GETS INVOLVED IN HIS OWN COUNTERCLAIMS, WE MIGHT GET THROWN OFF THE CASE, TOO, ALTHOUGH THE STATE CLAIMS THAT THAT IS NOT --

BUT WHAT IS THE BASIS UPON WHICH YOU ARE CLAIMING THAT YOU HAVE THE RIGHT OR THAT THIS DEFENDANT HAS THE RIGHT TO HAVE YOU MAKE THESE CLAIMS?

HIS CONSTITUTIONAL RIGHT TO HAVE AN ATTORNEY, UNFETTERED BY STATE BOUNDARIES THAT HAVE INFRINGED UPON OUR ABILITY TO PRACTICE, AS A MEMBER OF THE FLORIDA BAR. OONA THAT IS IN CONNECTION WITH --

AND THAT IS IN CONNECTION WITH HIS INCARCERATION AND FREEDOM?

EXACTLY. THIS ISN'T YOUR TYPICAL CIVIL CASE, WHERE WE ARE JUST TALKING ABOUT MONEY.

WE ARE TALKING ABOUT THE FACT THAT HE HAS BEEN IN CUSTODY FOR A NONCRIMINAL OFFENSE, SINCE JANUARY OF 1999.

IS THE PROBLEM IS THAT THE RELIEVE YOU SOUGHT, A 1983 ACTION, FIRST OF ALL YOU CAN'T BRING IT AGAINST THE STATE. YOU HAVE CONCEDED THAT.

BUT WE COULD CHANGE THE NAMES OF THE PARTIES.

AND MAYBE THAT IS WHAT I HAVE BEEN FOCUSING O THE FACT THAT A 1983 CLAIM, A TRADITIONAL CLAIM, IS ACTION FOR MONEY DAMAGES, AND YOU ARE NOW SAYING YOU ARE REALLY CHANGING THE FOCUS TO SAY THAT YOU NEED TO HAVE OTHER AVAILABLE REMEDIES, IN ORDER TO DEAL WITH THIS CASE, AND IF THAT WERE SHOWN THAT, IS THAT YOU WERE CUTOFF, REALLY PRECLUDED, BECAUSE OF SOME ARBITRARY STATUTE OF LIMITATION, THAT WOULD BE ONE THING, BUT YOUR REAL INTEREST HERE IS NOT TO SAY I THINK MR. SJUTS SHOULD HAVE AN ACTION FOR DAMAGES, THAT SOMEONE ELSE COULD BRING THAT ACTION FOR DAMAGES IN A SEPARATE PROCEEDING BUT IT IS YOUR REPRESENTATION IN THE JIMMY RYCE REALLY BEING THWARTED? THAT IS REALLY THE QUESTION.

ALONG WITH THE MONEY DAMAGES COST IDEA THAT THESE DOCTORS, SOMETIMES PEOPLE DON'T UNDERSTAND THAT WHAT THEY HAVE DONE IS WRONG AND SHOULDN'T BE DONE AGAIN, UNLESS THEY HAVE SOME KIND OF DETERMINATE UPON THEM. IF THE POLICE OFFICER'S REPORT OR HIS ARREST IS THROWN OUT BECAUSE HE FILED A FOURTH AMENDMENT -- HE VIOLATED THE FOURTH AMENDMENT THAT, IS A DETERMINATIONTIVE ON THE POLICE OFFICER.

ARE YOU BRINGING THIS AS A CLASS ACTION?

NO. I AM JUST SAYING THAT MR. SJUTS'S CONSTITUTIONAL RIGHTS WERE VIOLATED, AND THE MONEY DAMAGES WOULD PUNISH THE DOCTOR FOR HAVING VIOLATED HIS RIGHTS, GIVE MR. SJUTS SOME KIND OF COMPENSATION FOR HAVING BEEN ILLEGALLY DETAINED, WITH HIS RIGHTS BEING VIOLATED, AND --

THAT IS NOT REALLY RELEVANT, HERE, TO JIMMY RYCE. I MEAN, TO HIS CUSTODY, AS IT WERE, UNDER THE "JIMMY RYCE" ACT THAT IS REALLY SEPARATE AND APART, THAT IS NOT REALLY NECESSARY FOR RESOLUTION OF THE JIMMY RYCE CASE, IS IT?

THEY CAN'T USE THE REPORTS, BECAUSE THE DOCTOR --

I AM TALKING ABOUT GOING BEYOND THE USE OF THE REPORT. YOU ARE TALKING ABOUT PUNISHING THE DOCTOR, SO THAT THIS WOULDN'T HAPPEN AGAIN IN THE FUTURE, BUT THAT ASPECT OF IT REALLY ISN'T NECESSARY, WHEN WE ARE DEALING WITH THE "JIMMY RYCE" ACT, ITSELF.

WELL, WE, ALSO, HAVE MR. ORTEGA PRESENTLY EVENLY IN FRONT OF THE COURT ON THE SAME THING THIS. COURT HAS HELD THAT OUT, AND I DON'T BELIEVE THE BRIEFS HAVE BEEN DONE. MR. ORTEGA HAD A DIFFERENT DOCTOR, WHOM I BELIEVE DID THE SAME KIND OF THING TO HIM, AND MAYBE THIS IS SOME SYSTEMATIC WAY THAT PEOPLE ARE TRAINED TO GET INFORMATION OUT OF OUR CLIENTS, BUT I AM REPRESENTING TWO DIFFERENT PEOPLE HERE, AND THESE TWO DIFFERENT DOCTORS USED DIFFERENT METHODS TO OBTAIN THEIR STATEMENTS AND USE THEM AGAINST THEM, TO HOLD THEM IN CUSTODY, PENDING THE OUTCOME OF THEIR TRIAL, SO WE ARE NOT SEEING EXACTLY CLASS ACTION, BUT I AM SEEING SYSTEMATIC ABUSE.

IS THERE SOMETHING THAT PROHIBITS OR PREINCLUDES THE FILING OF WHATEVER CIVIL RIGHTS ACTIONS MAY BE FILED BY SOMEONE REPRESENTING THOSE INDIVIDUALS? IF THAT IS THAT YOU ARE SEEKING RETRIBUTION AND COMPENSATION FROM WITNESSES, IS WHAT YOU SEEM TO BE SAYING, WHAT PREINCLUDES THAT?

THAT IS AN ARGUMENT THAT THE STATE MAKES, THAT, YOU KNOW, THAT ATTORNEYS FEES, IF YOU SUCCESSFUL IN A 1983 LAWSUIT, ARE AWARDED TO THE ATTORNEY, BUT WE HAVE TO KEEP SEVERAL THINGS IN MIND HERE, AND THAT IS, ONE, THESE PEOPLE ARE NOT POLITICALLY CORRECT. I MEAN, THEY ARE NOT PEOPLE THAT YOU KNOW, PRIVATE BAR RUNS OUT TO TRY TO REPRESENT. THE OTHER THING IS THAT "JIMMY RYCE" ACT IS A RELATIVELY NEW AREA. IF AN ATTORNEY WANTS TO TAKE ON WORK HE IS NOT GOING TO BE PAID FOR, UNLESS HE IS SUCCESSFUL AND UNTIL THAT POINT, THERE IS NO ONE OUT THERE WHO THINKS THAT THIS IS A FANTASTIC AREA AND THE NEXT FIVE TEN OR SOMETHING. THEY ARE NOT -- FEN-PHEN OR SOMETHING. THEY ARE NOT LINING UP AT THE DOORS.

WHAT IS THE CONSTITUTIONAL BASIS OR CLAIM, BECAUSE THERE IS NOT SOMEONE LINED UP AT THE DOOR AS YOU SAY, IS THAT REALLY THE ISSUE THAT WE MUST DISCUSS?

THERE ARE THINGS THAT WERE DISCUSSED IN THE IDEA OF ANOTHER ATTORNEY STEPIING IN TO REPRESENT THESE INDIGENT, INCARCERATED PEOPLE, IS NIL TO NONE, AND I JUST SAY THAT THAT IS GOING TO BE TRUE HERE THAT, THERE WON'T BE -- IF WE ARE FORCED TO STEP ASIDE, THERE WON'T BE ANYONE ELSE TO FILE THESE. I MEAN, THESE PEOPLE WILL BE ON THEIR OWN, AND THEY HAVE BEEN INCARCERATED, I MEAN, UNLIKE OTHERS, THESE PEOPLE HAVE ALREADY COME UP OFF OF AN INCARCERATION, WHERE THEY HAVE DONE, PERHAPS, LENGTHY SENTENCES FOR A CRIME THAT THEY HAVE COMMITTED. THEY HAVEN'T BEEN OUT IN THE WORLD FOR A LONG TIME, AND NOW THEY ARE IN CUSTODY. I MEAN THEY DIDN'T WALKOUT THE DOOR AND GET PULLED BACK IN. THEY WERE NEVER RELEASED, SO THE IDEA OF THEM HAVING SOMEONE ELSE TAKE OVER THESE LAWSUITS IS JUST IMPRACTICAL. AND UNREALISTIC. IF WE AREN'T THERE, THEY WILL HAVE NO ONE. BASICALLY, YOU KNOW, WHAT WE ARE SAYING IS THAT, SINCE -- IT IS INTERCONNECTED TO THE ACTUAL LAWSUIT, THAT THEY COULDN'T HAVE FILED THE "JIMMY RYCE" ACT PETITION, WITHOUT THESE DOCTORS, WITHOUT THEIR STATEMENTS, WITHOUT THEIR ASSESSMENTS. THIS IS WHAT IS HOLDING THESE PEOPLE IN CUSTODY, ARE THESE ASSESSMENTS, AND THESE ASSESSMENTS ARE DEFECTIVE AND FAULTY.

ARE YOU SAYING THAT THIS IS A COMPULSORY COUNTERCLAIM, BECAUSE I DON'T REALLY, AS I UNDERSTAND A COMPULSORY COUNTERCLAIM, MEANING IF IT WASN'T FILED WITHIN THE PERIOD OF TIME THAT IT WAS TO BE, THAT YOU WOULD BE PRECLUDED FROM FILING IT. YOU ARE NOT TAKING THAT POSITION?

WE DID TAKE THE POSITION THAT IT WAS COMPULSORY, ALTHOUGH IT DOESN'T SHOW UP --

ONE OF THEM IS NOT EVEN A PARTY, SO IT COULDN'T AND COUNTERCLAIM AS TO THE DOCTOR, AND THE STATE --

WE WERE CLAIMING THAT WE COULD BRING HIM IN AS A PARTY, UNDER 1.170-H, NOT AS A THIRD PARTY BUT AS A REAL PARTY, SINCE HE IS, QUOTE, A STATE AGENT, GIVEN THE AUTHORITY -- I MEAN, THE ONLY REASON HE WENT IN TO TALK TO THESE PEOPLE IS BECAUSE HE WAS AN ACT FOR THE STATE, SO --

WHAT OTHER AREAS ARE YOU IMPLICATING, BY IF THIS WERE TO BE APPROVED, ARE YOU NOT IMPLICATING NUMEROUS AREAS WHERE THERE WOULD BE THESE KINDS OF ACTIONS, BECAUSE IT IS ALWAYS THE STATE INVOLVED AND THERE IS ALWAYS WITNESSES INVOLVED. I MEAN "BAKER" ACT. YOU LOOK AT, I MEAN, HOW FAR DOES THIS GO?

WELL, I THINK, WHEN YOU LOOK AT THAT HAVERTY CASE, WHERE THEY -- THAT HAFFERT CASE, WHERE THEY TALK ABOUT PERSONAL RESPONSIBILITY VERSUS MY OFFICE RESPONSIBILITY, YOU HAVE TO LOOK TO SEE IF THERE WAS SOME KIND OF YOU KNOW, LIKE, BAD FAITH OR GOING ON, ON THE PART OF THESE INDIVIDUALS. I MEAN HERE WE HAVE DOCTORS VIOLATING THESE PEOPLE'S RIGHTS. IT COULD HAVE BEAN DONE RIGHT BUT IT IS NOT. AT LEAST IT THE WASN'T

DONE IN THIS CASE OR IN MR. ORTEGA'S CASE, SO THE QUESTION IS "JIMMY RYCE" ACT IS THE ONLY AREA WHERE WE DON'T GO BEYOND THE CIVIL, I MEAN, YOU KNOW, THIS IS THE ONE AREA WHERE WE HAVE BEEN APPOINTED TO. "BAKER" ACT CASES. I HAVE NEVER HAD THIS CROP UP IN ANY "BAKER" ACT CASES WE HAVE DONE.

YOU COULD, IF YOU HAD INAPPROPRIATE EVALUATIONS.

IF WE HAD DOCTORS THAT WERE VIOLATING MENTAL PEOPLE'S RIGHTS.

IT WOULD BE IN ANY AREA THAT YOU WOULD HAVE SOMEONE ALLEGEDLY VIOLATING SOMEONE'S RIGHTS. I MEAN THE PANDORA'S BOX IS OPEN. IT IS FREE GAME.

KEEPING IN MIND THAT WE HAVE ALREADY BEEN APPOINTED TO REPRESENT THESE PEOPLE. THESE AREN'T PEOPLE THAT I AM GOING OUT IN THE STREET TO FIND. WE HAVE BEEN APPOINTED TO REPRESENT THESE PEOPLE AND NOW WE WANT TO REPRESENT THEM, AND I THINK THAT THE NATURE OF THE RICE ACT -- THE RYCE ACT BEAST WOULD BE IT WOULD BE DIFFICULT TO FIND, AND NOW WE ARE LAWYERS IN THE STATE OF FLORIDA.

HOW IS THIS DIFFERENT FROM FILING SUCH AN ACT IN A REGULAR CRIMINAL CASE THAT THE PUBLIC DEFENDER WOULD HANDLE?

ATTACKING A PROSECUTOR OR SOMETHING, FOR HAVING DONE SOMETHING OR A POLICE OFFICER.

ANY KIND OF 1983 ACTION, BASED ON WHAT WENT ON IN THE COURSE AFTER CRIMINAL INVESTIGATION OR A PROSECUTION. HOW WOULD YOU LIMIT IT TO JUST THESE JIMMY RYCE SITUATIONS?

WELL, OTHER THAN THE FACT THAT IT HASN'T BEEN DONE, IT IS JUST NOT DONE AS A MATTER OF PRACTICE, BUT LET'S SAY YOU SAID THAT THIS WAS OKAY, AND THEN YOU ARE AFRAID THAT WE HAVE OPENED THE FLOODGATES. YOU KNOW, JUST NARROWING IT DOWN TO THESE CIVIL ACTIONS WHERE WE ARE REPRESENTING PEOPLE CIVILLY. I MEAN, IT IS -- I DON'T HAVE ANY PROBLEM WITH SAYING I CAN'T DO IT IN A CRIMINAL CASE. MY CLIENTS GET THEIR RELIEF, AND THEY GET OUT OF JAIL.

WHAT HAPPENS, IF THERE IS A 1983 VIOLATION ORAL EDGED 1983 VIOLATION, IN THE COURSE AFTER CRIMINAL CASE?

-- IN THE COURSE OF A CRIMINAL CASE? WHAT HAPPENS TO THAT ACTION?

I DON'T KNOW. WE DON'T PURSUE THEM. YOU KNOW, WE DON'T PURSUE THEM.

SO THAT WOULD BE THE SAME THING HERE. IT MAY OR MAY NOT BE BROUGHT AT SOME OTHER POINT BY ANOTHER LAWYER OR THE DEFENDANT, HIMSELF.

IF THE CLIENTS' RIGHTS ARE VIOLATED, WE GET THEM OUT ON A MOTION TO DISMISS, BASED ON A VIOLATION OF THE STATUTE, AND THE CLIENT IS USUALLY HAPPY TO BE RELEASED. NOW, IN THIS PARTICULAR CASE, LET'S SAY THE REPORTS ARE PUT ASIDE. WELL, MY GUESS IS THEY ARE JUST GOING TO GO OUT AND GET ANOTHER DOCTOR AND THESE PEOPLE WON'T GET RELEASED, BECAUSE THERE IS NO DOUBLE JEOPARDY. THERE IS NO EX POST FACTO. AT LEAST THEY CLAIM IS THERE NOT BECAUSE IT IS CIVIL, SO THEY CAN JUST KEEP GETTING MORE DOCTORS' REPORTS AND MORE ASSESSMENTS DONE. MR. CHIEF JUSTICE: MS. BRUECKHEIMER, YOU ARE IN YOUR REBUTTAL TIME.

THANK. I WILL SAVE THE REST FOR REBUTTAL. MR. CHIEF JUSTICE: MR. WARNER.

MAY IT PLEASE THE COURT. SOLICITOR GENERAL TOM WARNER, SPEAKING FOR THE STATE OF FLORIDA TODAY. THIS, THE SOLE BASIS FOR THE JURISDICTION OF THIS COURT WAS A QUESTION PRESENTED, ALLEGEDLY AFFECTING A CONSTITUTIONAL CLASS OF OFFICERS, TO WIT, DO PUBLIC DEFENDERS HAVE STATUTORY AUTHORITY TO PURSUE COUNTERCLAIMS FOR CIVIL DAMAGES IN "JIMMY RYCE" ACT CASES? THAT WAS THE QUESTION IN THE COURT BELOW, AND THAT IS THE QUESTION THAT THE COURT BELOW ANSWERED, THAT THERE WAS NO STATUTORY AUTHORITY. THE ANSWER TO THAT QUESTION IS, NO, THEY DO NOT HAVE STATUTORY AUTHORITY. YOU SHOULD AFFIRM THE SECOND DCA AND I THINK THERE ARE THREE POINTS THAT I WOULD LIKE TO BE ABLE TO COVER THIS MORNING. ONE IS THERE IS NO STATUTORY AUTHORITY. THEY HAVE NOT CITED YOU ANY STATUTORY AUTHORITY. THE SECOND IS THERE IS NO NECESSARY -- NECESSITY FOR THIS COURT TO CREATOR IMPLY SOME SORT OF AUTHORITY, IN ORDER TO PUBLIC DEFENDERS TO FULLY REPRESENT THEIR CLIENTS IN "JIMMY RYCE" ACT CASES AND DEFEND THEIR LIBERTY INTERESTS, AND THIRDLY, ALTHOUGH THIS IS A RATHER MUNDANE POINT THERE, IS NO VIABLE CLAIM IN THIS CASE, AND THEREFORE IT RAISES A QUESTION AS TO WHETHER THIS CASE SHOULD EVEN BE HERE AND WHETHER YOU SHOULD EVEN REACH THE QUESTION OF WHETHER THEY HAVE STATUTORY AUTHORITY. IF THERE IS NO COUNTERCLAIM TO BRING, THEN I AM NOT SURE THIS IS A RIGHT CASE TO DECIDE THAT ISSUE. AS REGARDS TO THE NO STATUTORY AUTHORITY, I THINK THAT IS SELF-EVIDENT, BUT I WOULD LIKE TO POINT OUT THAT THERE WAS NO CERTIFIED QUESTION TO THIS COURT SO WE MUST GO ON WHAT THE SECOND DCA DID BEFORE, WHICH IS SAYING THERE IS NO STATUTORY AUTHORITY. I MIGHT ADD THAT I DON'T SEE A CONSTITUTIONAL CHALLENGE TO THE "JIMMY RYCE" ACT IN THIS CASE, SO WE ARE NOT IMPLICATING THE CONSTITUTIONAL RIGHTS OF THIS DEFENDANT IN REGARD TO THE STATUTE, ITSELF. AND IT IS ABSOLUTELY CLEAR THAT --

ISN'T ONE OF THE COUNTERCLAIMS THE ACTUAL -- A QUESTION CONCERNING THIS CONSTITUTIONALITY OF THE STATUTE?

CORRECT. BUT THAT IS NOT BEFORE THIS COURT. AND I SUPPOSE, WITHIN THE CIVIL CONTEXT, I DON'T KNOW THAT WE HAVE A DISAGREEMENT THAT THE PROPER WAY TO DO THAT IN A CIVIL CASE WOULD BE TO FILE A CLAIM THAT THE STATUTE IS UNCONSTITUTIONAL, ALTHOUGH I AM NOT SURE YOU HAVE TO DO IT THAT WAY. YOU CAN RAISE IT BY AN AFFIRMATIVE DEFENSE, TOO, I SUPPOSE, BUT OBVIOUSLY THIS -- THESE CASES, BECAUSE THEY IMPLICATE LIBERTY INTERESTS, ARE A HYBRID BETWEEN CIVIL AND CRIMINAL, AND THERE IS SOMEWHAT OF A CLASH BETWEEN RULES, BUT I DON'T SEE ANY REASON WHY THEY CAN'T BE HARMONIZED.

THE STATE DID NOT CONTEST THE COUNTERCLAIMS THREE AND FOUR? I KNOW IT IS NOT A PART OF THE SECOND DISTRICT OPINION, BUT DID THEY --

I DON'T THINK WE HAVE REACHED -- I DON'T THINK WE HAVE REACHED THAT POINT, TO BE HONEST WITH YOU. I DON'T THINK THAT QUESTION HAS BEEN ANSWERED.

WHAT DO YOU SEE AS THE EXTENT OF AUTHORITY OF THE PUBLIC DEFENDER, UNDER 394.9163 TO REPRESENT DEFENDANTS?

I THINK THE QUESTION --

WHAT IS THAT AUTHORITY?

THE STATE AGREES THAT, WHEN SOMEONE'S LIBERTY INTERESTS ARE AT STAKE AND THEY ARE INTGENT, THEY HAVE A CONSTITUTIONAL RIGHT TO BE REPRESENTED BY COUNSEL, SO THE STATE OF FLORIDA HAS PROVIDED AN INDIGENT DEFENDANT WITH THE RIGHT OF COUNSEL, TO PROTECT THAT INTEREST. I THINK THAT IS WHAT THE STATUTE IS INTENDED TO DO, TO MAKE SURE AND AFFIRM THAT WE ACKNOWLEDGE THAT OBLIGATION TO PROVIDE THAT COUNSEL TO DEFENDANT LIBERTY INTERESTS, BUT I THINK THE LEGISLATURE DID NOT INTEND TO GIVE BROAD AUTHORITY

TO REPRESENT THEM ON CIVIL CLAIMS FOR DAMAGES AND, IN FACT, LATER ON AMENDED THAT STATUTE TO MAKE IT PERFECTLY CLEAR THAT THAT IS WHAT THEY DID NOT INTEND TO DO, SO I THINK THE PUBLIC DEFENDERS ARE AUTHORIZED TO REPRESENT "JIMMY RYCE" ACT DEFENDANTS, TO PROTECT THEIR LIBERTY INTERESTS AND DO WHATEVER THEY NEED TO DO, AND I THINK THE SECOND POINT THAT I WAS GOING TO GET TO IS THAT THERE IS NO INDICATION IN THIS CASE THAT THERE IS ANYTHING PREVENTING THE PUBLIC DEFENDER FROM FULLY REPRESENTING THEIR CLIENTS IN REGARD TO THEIR LIBERTY INTERESTS.

DO YOU AGREE THE CLAIM IN THE COUNTERCLAIM IS THAT THE DOCTOR TOLD THE DEFENDANT THAT, IF HE DIDN'T CONSENT TO THE EVALUATION HE WOULDN'T BE RELEASED. MISREPRESENTATION, AND THE QUESTION IS HOW DO THEY -- HOW WOULD THEY VINDICATE THAT INTEREST. THAT IS THAT HE WAS SUBJECTED, I GUESS, TO AN UNLAWFUL EXAMINATION, WITHIN THE CONTEXT OF THE CIVIL CASE, AND DO THEY HAVE -- DO THEY HAVE THE RIGHT TO, IN FACT, SEEK THAT RELIEF?

YES, THEY DO, BUT I THINK A POINT THAT I WOULD LIKE TO MAKE FIRST, IS THAT THERE WAS AN ASSERTION IN THE BRIEF THAT THE DR. WALDMAN REPORT WAS A CONDITION PRECEDENT TO THE "JIMMY RYCE" ACT, AND I THINK THERE WAS A STATEMENT HERE THAT THE WHOLE CASE WOULD HAVE TO BE THROWN OUT, IF THERE WAS A PROBLEM WITH DR. WHAT WOULD EN'S REPORT. THAT IS NOT TRUE UNDER THE STATUTE. UNDER THE STATUTE, THERE IS A MULTIDISCIPLINARY TEAM THAT IS APPOINTED TO REVIEW AND MAKE A RECOMMENDATION, BUT THERE IS A HEARING IN COURT ON PROBABLE CAUSE, UNDER THE "JIMMY RYCE" ACT, TO DETERMINE WHETHER THE DEFENDANT SHOULD BE HELD, PENDING AN ADVERSARIAL FULL TRIAL ON THE ISSUES. THERE IS NO REQUIREMENT THAT THERE BE AN ANY INTERVIEW, AND THERE IS NO INDICATION THAT THE WHOLE CASE WOULD BE THROWN OUT, BECAUSE THERE WAS SOMETHING WRONG WITH DR. WHAT WOULD EN'S REPORT.

YOU ARE GETTING INTO THE MERITS AS TO WHAT WOULD HAPPEN. WHAT I AM SAYING --

YOU FILE A MOTION IN LIMINE. IF THERE IS IMPROPER PREJUDICIAL EVIDENCE, YOU FILE A MOTION IN LIMINE. MATTER OF FACT, THE PUBLIC DEFENDER'S OFFICE HAS ASSERTED THAT THE EXCLUSIONARY RULE IN CRIMINAL CASES IS AVAILABLE TO THEM IN THIS CASE. THAT ISSUE IS NOT BEFORE THIS COURT AND IT HASN'T BEEN BRIEFED BUT THEY DO HAVE REMEDIES AVAILABLE TO THEM, IF THEY THINK THERE IS IMPROPER EVIDENCE BEING USED IN THE CASE.

WELL, IF THEY, IF THE COUNTERCLAIM, I HAVE TO LOOK AT IT, FOR THE 1983 ACTION, INCLUDED AN INJUNCTIVE CLAIM TO PREVENT DR. WALDMAN'S TESTIMONY FROM BEING USED, WOULD THAT BE DIFFERENT? IN OTHER WORDS IS IT -- IS THE STATE OBJECTING TO THE FACT THAT MONETARY DAMAGES IS BEING SOUGHT OR IS IT THE IDEA THAT ANY TYPE OF AFFIRMATIVE RELIEF IS BEING SOUGHT BY THE PUBLIC DEFENDER? I MEAN, THE DIFFERENCE BETWEEN JUST TO SAY, NO, WE ARE NOT -- WE ARE NOT GOING TO HAVE PUBLIC DEFENDERS FILING ACTIONS FOR DAMAGES, BUT SHORT OF IT THAT, ANYTHING THAT IS RELEVANT TO THE CASE, AS FAR AS DEALING WITH THE EVIDENCE IN THE CASE AND SEEKING TO EITHER HAVE IT EXCLUDED, THAT WOULD AFFECT THE JIMMY RYCE PROCEEDINGS, WOULD BE PROPERLY WITHIN THE SCOPE OF REPRESENTATION.

THE STATE HAS MANY OBJECTIONS. BUT I CAN THINK OF A COUPLE OF MAJOR ONES, RIGHT OFF THE BAT. THE FIRST ONE I CAN THINK OF IS WE DON'T WANT TO TURN EVERY "JIMMY RYCE" ACT CASE INTO A CIVIL RIGHTS ACTION, WITH ALL THE FULL-BLOWN ASPECTS OF IT. THERE IS AN ATTEMPT, IN THE STATUTE, TO EXPEDITE AND DETERMINE THE MERITS OF THE "JIMMY RYCE" ACT ACTION, UNDER THE STATUTE, CIVIL RIGHTS ACTION WOULD ESSENTIALLY GROUND THE WHOLE PROS TOES A HALT.

BUT THAT IS NOT -- IF, INSTEAD OF HAVING THE ASSISTANT PUBLIC DEFENDER, THE DEFENDANT

HAD A PRIVATE ATTORNEY, AND THAT PRIVATE ATTORNEY WOULD HAVE A RIGHT TO BRING THE JIMMY RYCE PROCEEDINGS TO A HALT, ASSUMING --

THAT IS MY SECOND POINT. UNDER FEDERAL LAW, YOU CANNOT SUE THE STATE OF FLORIDA, PERIOD END OF STORY. SO THERE IS NO COUNTERCLAIM.

MERITS. I THINK WHAT IS UNFORTUNATE HERE IS WE ARE SORT OF INTERTWINED WITH THE MERITS, AS OPPOSED TO THE OVERALL PRINCIPLE, WHICH IS SHOULD THE ASSISTANT PUBLIC DEFENDER BE ABLE TO DO WHAT IS NECESSARY, IN ORDER TO VINDICATE HIS RIGHTS, AND SO I AM ASKING CAN YOU SEPARATE OUT, IS IT IMPORTANT THAT IT IS AN ACTION FOR DAMAGES THAT, OTHER --

THE ACTION FOR DAMAGES IS TOTALLY IRRELEVANT TO THE "JIMMY RYCE" ACT CASE. THE "JIMMY RYCE" ACT, YOU HAVE A PRIOR CONVICTION FOR A VIOLENT SEXUAL ACT. DO YOU HAVE A PROPENSITY TO GO OUT AND COMMIT THESE ACTS AGAIN? THAT CAN BE DONE.

YOU WERE SAYING, EVEN IF THIS WAS NOT AN ASSISTANT PUBLIC DEFENDER, THAT THIS COUNTERCLAIM UNDER THE CIVIL RIGHTS LAW FOR DAMAGES, HAS NO PLACE IN A JIMMY RYCE. IT CANNOT BE BROUGHT.

WHETHER OR NOT IT IS A PUBLIC DEFENDER OR WHETHER IT WAS A PRIVATE ATTORNEY.

THERE IS NO OPPOSING PARTY TO BRING A COUNTERCLAIM FOR A CIVIL RIGHTS IN THIS CASE, WHICH IS WHY I MENTIONED, AS THIRD POINT, I AM NOT SURE WHY WE EVEN GET TO THESE OTHER --

YOU DON'T THINK WE SHOULD DISCHARGE JURISDICTION?

EXCUSE ME?

SHOULD WE JUST DISCHARGE JURISDICTION, THEN, IN THIS CASE?

AS LONG AS THE THIRD DCA'S OPINION IS AFFIRMED, I DON'T CARE WHAT THE APPARATUS, BUT IF YOU ARE TRYING TO DECIDE IF THE PUBLIC DEFENDERS CAN BRING A PARTICULAR CLAIM, THE PROBLEM IS THERE IS NO PARTICULAR CLAIM IN THIS CASE. THE OPPOSING PARTY IS THE STATE OF FLORIDA, AND YOU CANNOT SUE THE STATE OF FLORIDA FOR CIVIL RIGHTS.

IT IS YOUR POSITION THAT PROHIBITION OF THIS DOCTOR TESTIFYING CAN, OR THE ISSUE RELATING TO WHETHER THIS DOCTOR SHOULD TESTIFY IN THIS CASE, CAN BE RESOLVED BY THE TRIAL JUDGE, WITHIN THE RULES OF PROCEDURE GOVERNING CIVIL CASES.

ABSOLUTELY, AND, AGAIN, I WANT TO POINT OUT THERE IS NO MENTION IN THE STATUTE, OF A DOCTOR'S REPORT. THE STATUTE MENTIONS AN ASSESSMENT BY THE ENTIRE MULTIPLE -- MULTIDISCIPLINARY TEAM. THE DOCTOR, HERE, ONLY COMES INTO PLAY BECAUSE THE STATUTE SAYS WE MUST OFFER A PERSONAL INTERVIEW TO THE DEFENDANT, AND IT IS GRANTED, AND THE DOCTOR DOES ISSUE REPORT.

BUT WHETHER THAT IS RIGHT OR WHETHER THAT IS WRONG, IT IS YOUR POSITION THAT THIS IS A VEHICLE FOR THAT.

YES.

THE ISSUE OF ANY DOCTOR TESTIFYING AND THE QUALIFICATIONS OF THE DOCTOR AND THE CONTENT OF THE TESTIMONY TO BE CHALLENGED.

A WELL-RECOGNIZED PROCEDURE TO DO THAT, THE MOTION IN LIMINE THAT THE EVIDENCE IS IMPROPER AND SHOULD BE EXCLUDED FOR SOME REASON AT WHICH TIME IS CERTAINLY WITHIN THE TRIAL JUDGE'S PARAMETER TO DO. THAT I NOTED IN THE BRIEF THAT THEY SAID THIS CASE HAS BEEN SUBJECT TO EXTENSIVE MOTION PRACTICE, SO WHY THAT WOULDN'T HAVE TAKEN PLACE ALREADY, IT IS NOT CLEAR TO ME. THE -- THERE IS, ALSO, AN ISSUE I SUPPOSE THAT I SHOULD ADDRESS THAT SOMEHOW THIS IS INTERFERING WITH THE INDEPENDENCE OR THE AUTHORITY OF THE PUBLIC DEFENDTER TO FULLY REPRESENT THEIR CLIENTS ON AN ETHICAL BASIS. I DON'T SEE THAT THIS ISSUE WAS RAISED BELOW, BUT, AGAIN, I THINK THESE ARE UNRELATED MATTERS, AS I THINK WAS APPOINTED OUT BY THE COURT EARLIER HERE. IF THERE HAD BEEN UNREASONABLE FORCE IN THE ARREST AFTER DEFENDANT, WHICH MIGHT GIVE RISE TO SOME SORT OF CIVIL RIGHTS CLAIM AGAINST SOMEBODY, THAT PERSON IS IN THE SAME POSITION AS ANYBODY ELSE IN SOCIETY, IF THEY FEEL THEY HAVE A CLAIM, THEY CAN HIRE AN ATTORNEY H THERE IS A PROVISION FOR ATTORNEY FEES TO BRING IT. TO HAVE PUBLIC DEFENDERS TO GO OUT AND DO THAT, I WOULD ASERT, RAISES MORE CONCERNS OF CONFLICTS BETWEEN PURSUING A CIVIL CLAIM AND DEFENDING THE PERSON IN THE CRIMINAL ACTION. AND SINCE THE PUBLIC DEFENDERS, ALSO, HAVE ASSERTED IN THIS COURT, THAT THEY ARE SUBJECT TO LIABILITY FOR LEGAL MALPRACTICE, IT CREATES AN ADDITIONAL SET OF CONCERNS AND CIRCUMSTANCES, TO ALLOW THEM TO HAVE THE AUTHORITY TO PURSUE CIVIL COUNTERCLAIMS FOR DAMAGES IN THESE PARTICULAR CASES. I WOULD, ALSO --

IN THE REAL WORLD, IN MANY INSTANCES, THESE CASES AREN'T AS CLINICALLY CLEAN AS, THIS IS CRIMINAL OVER HERE AND THIS IS CIVIL OVER HERE. SOMETIMES THEY BLEED OVER ON TO EACH OTHER. AND PRIVATE COUNSEL, IN TRIAL STRATEGY, RECOGNIZES THIS AND PROCEEDS IN THAT DIRECTION. IS IT THE STATE'S POSITION THAT, IF YOU HAD A SITUATION SUCH AS THIS, WHERE THERE WAS THIS BLEEDING OVER IN TRIAL STRATEGY, WOULD SAY THAT, OKAY, I CAN HELP MY CRIMINAL CASE BY PURSUING THE CIVIL, THE PUBLIC DEFENDER WOULD NOT BE ALLOWED TO DO THAT?

I THINK THE PUBLIC DEFENDER'S RESPONSIBILITY IS TO DEFEND THE LIBERTY INTERESTS OF THEIR CLIENT AND CHALLENGE THE BASIC FACTORS OR CRITERIA UNDER THE "JIMMY RYCE" ACT, AS TO WHETHER THEIR CLIENT SHOULD BE CONFINED BEYOND THEIR PRISON TERM, AND THAT SHOULD BE THEIR SOLE FOCUS AND RESPONSIBILITY, NOT IN ATTEMPTING TO COLLECT DAMAGES. I MIGHT POINT OUT THAT PART OF THE DAMAGES WOULD BE TO BE WRONGFULLY CONFINED OR RESTRAINED BECAUSE AFTER ALLEGED VIOLATION OF CIVIL RIGHTS. WELL, YOU COULD, ALSO, BE WRONGFULLY SITTING IN JAIL, IF YOUR PUBLIC DEFENDER COMMITTED LEGAL MALPRACTICE AND DIDN'T DO WHAT WAS APPROPRIATE IN THE CRIMINAL CASE, TO GET YOU OUT, WHICH MIGHT GIVE RISE TO DAMAGES ON THE CIVIL SIDE, FOR AN ATTORNEY TO SUE THE PUBLIC DEFENDER FOR ILLEGAL MALPRACTICE.

THE PUBLIC DEFENDER MIGHT FEEL THAT HE COULD DEPOSE THE DOCTOR MORE EXTENSIVELY, IF HE HAD A CIVIL SUIT PENDING, THAN JUST A CRIMINAL ACTION.

SIR, THAT MAY BE CORRECT, BUT IN THE CONTEXT OF THIS CASE, IT HAS BEEN RAISED THAT THERE IS SOME ETHICAL PROBLEM ABOUT THE INDEPENDENCE OF THE PUBLIC DEFENDER IN THIS CASE AND THE ETHICAL RULES OF THE FLORIDA BAR. I WOULD SUBMIT TO YOU THAT, WHEN AN ATTORNEY ATTEMPTS TO REPRESENT SOMEBODY IN CONFLICTING MANNERS, THAT IS WHAT DESTROYS YOUR INDEPENDENCE OF THOUGHT AND FOCUS, AS FAR AS REPRESENTING THEM IN THIS PARTICULAR MATTER. IT IS USUALLY A PROVEN IN ETHICS OF REPRESENTING YOUR CLIENT ON SOME OTHER UNRELATED MATTERS THAT BEGINS TO CLOUD YOUR JUDGMENT, SO I THINK THAT, IF WE ARE GOING TO RAISE THAT KIND OF A SPECTOR IN THIS CASE, THE SAFER COURSE WOULD BE TO MAKE SURE THAT THEY CONCENTRATE ON THE JOB OF DEFENDING LIBERTY INTEREST INS THIS CASE AND NOT BE WORRYING ABOUT COLLECTING DAMAGES AGAINST THE STATE OF FLORIDA. THEY HAVE ALL THE REMEDIES THAT THEY FULLY NEED TO REPRESENT THEIR CLIENTS AND THE DEFENDING LIBERTY INTERESTS, WITHOUT GETTING INTO ALL OF THESE

OTHER PROBLEMS ON THE CIVIL SIDE. I, ALSO, POINT OUT THAT, WHEN THEY FILED THEIR NOTICE OF APPEAL WITH THE SECOND DCA, THEY BRING AS PERMISSIVE COUNTERCLAIMS, NOT COMPULSORY COUNTERCLAIMS, AND I THINK THEY ARE NOW TRYING TO CHANGE HORSES IN MIDSTREAM, BECAUSE THEY WOULD LIKE TO PRESENT THIS IN THE BEST LIGHT, AS IF THERE IS SOME NECESSITY OR SOME EMERGENCY TO THEIR CLIENT. THEIR CLIENT IS NOT BEING PREJUDICED, ANYMORE THAN ANY OTHER CITIZEN OF THIS STATE THAT MAY HAVE A CLAIM AND SHOULD SEEK AN ATTORNEY TO REPRESENT THEM IN THAT ACTION. I DID NOT HEAR MUCH, IF ANY, ARGUMENT BY THE PUBLIC DEFENDERS ON WHETHER THIS WAS A COMPULSORY OR PERMISSIVE COUNTERCLAIM. I SAY THAT IT IS IRRELEVANT TO THE MAIN QUESTION HERE, AS TO WHETHER THEY HAVE STATUTORY AUTHORITY TO REPRESENT THEM IN CIVIL DAMAGES, SINCE IT WASN'T DISCUSSED IN THE MAIN ARGUMENT, I WON'T GO INTO IT, EITHER. I WOULD JUST RESPECTFULLY REQUEST THAT THIS COURT AFFIRM THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL. THANK YOU. MR. CHIEF JUSTICE: THANK YOU, MR. WARNER. REBUTTAL?

THANK YOU.

YOU DON'T CONCEDE THAT THERE IS NO VIABLE COUNTERCLAIM IN THIS CASE?

NO. I DO NOT. I THINK THAT --

-- KATHLEEN CONCERN I COULD HAVE BEEN LISTED. MAYBE MR. -- KATHLEEN KERNY COULD HAVE BEEN LISTED. MAYBE MR. BUTTERWORTH.

WE ARE NOT DEALING WITH "COULD HAVES" BUT WE ARE DEALING WITH THE SITUATION THAT WE HAVE PRESENTLY STANDING, RIGHT?

PAW THE JUDGES ALL RULED, WE DON'T HAVE -- BECAUSE THE TRIAL JUDGE STOPPED AS OUR AUTHORITY, NONE OF THOSE OTHER AREAS GOT DEVELOPED, AND BECAUSE IT WAS, LIKE, WELL, YOU CAN'T DO THIS, SO THEREFORE WE NORTH GOING TO LET YOU GO ANY FURTHER.

WOULD YOU EXPLAIN, FOR ME, HOW YOU CAN FILE A COUNTERCLAIM AGAINST SOMEONE WHO IS NOT A PARTY, UNDER THE RULES OF CIVIL PROCEDURE IN FLORIDA?

IF THEY BROUGHT IN UNDER 1.170-H.

WHICH IS WHAT?

WHICH IS BRINGING THE DOCTORS IN AS A THIRD -- WE WERE GOING TO BRING THEM IN NOT AS A THIRD PARTY, BUT AS A PARTY TO THE CLAIM, AS A COUNTERCLAIM, GOING TO BRING HIM IN. THAT IS ALL I CAN SAY ON THAT ONE. WE WERE GOING TO BRING HIM IN, AND WE WOULD CHANGE IT UP FROM STATE TO OTHERS, BUT THE REALITY IS WE DIDN'T GET TO THE MERITS. THE COURT STOPPED US, BEFORE WE COULD GET TO THE MERITS, AND THE SECOND DCA EVEN NOTED, IN ITS OPINION THAT, THE JUDGE RAUS WRONG FOR DOING THINGS, AND THEN START TALKING ABOUT IMMUNITY AND THE COUNTERCLAIMS NOT BEING AGAINST THE STATE. THOSE THINGS WERE NEVER ADDRESSED. WE DIDN'T GET TO THE MERITS BECAUSE WE WERE TOLD WE COULDN'T AND IF THIS COURT SAYS WE COULD HAVE BUT WE HAVEN'T, SO THEREFORE THEY ARE NOT GOING TO GIVE US RELIEF, THEN WE WON'T BE ABLE TO GO BACK AND SAY LET'S REDRAFT THIS. THE SECOND DCA'S DECISION WILL STAND, AND WE WILL BE PROHIBITED FROM DOING THAT.

DO YOU AGREE THAT THE ACTIONS THAT YOU SHOULD BE ABLE TO TAKE ARE THOSE THAT WOULD BE NECESSARY TO DEFEND THIS MAN'S LIBERTY?

RIGHT.

AND SO I GUESS I AM STILL HAVING A PROBLEM WITH HOW, ALTHOUGH IN, MAYBE A GLOBAL

SENSE, ACTIONS FOR DAMAGES HAVE SOME SALUTORY EFFECT, ACTIONS FOR DAMAGES WOULD BE IN THE CONUNDRUM AFTER LIBERTY INTEREST INTEREST.

IF THE DOCTORS ARE FORCED TO DEAL WITH THE FACT THAT THEY WON'T BE ABLE TO USE COERCIVE TACTICS, OUR CLIENTS WON'T HAVE THEIR LIBERTY INTERESTS SO MUCH AT STAKE.

AGAIN, BUT ISN'T THAT SAME EXACT ARGUMENT WOULD BE USED TO SUPPORT YOUR BEING ABLE TO BRING A 1983 CASE AGAINST POLICE OFFICERS WHO ACT WRONGFULLY IN A CRIMINAL CASE, TO SAY, YOU KNOW, SUPPRESSING THE EVIDENCE DOESN'T DO IT PERSONALLY. WE ARE GOING TO REALLY TRY TO VINDICATE OUR CLIENTS' LIBERTY INTERESTS IN THE FUTURE, AS TO BRING THESE 1983 ACTIONS?

LIKE I SAID, C AND D OF THE FIRST COUNTERCLAIM, TALKED ABOUT COMPENS OTHER AND PUNITIVE ONLY -- AND COMPENSORY ONLY AGAINST DR. WALDMAN. WE DIDN'T ASK AGAINST THE STATE. JUST DR. WALDMAN. SO KEEP THAT POSITION, AND AS FAR AS THE COMPULSORY AND OUR CHANGING IN MIDSTREAM, I ATTACHED TO THE COURT THE APPENDIX IN MR. ORTEGA'S DECISION, THE NOTICE OF APPEAL IS HOW THE JUDGE RULED. SHE WANTED THEM TO BE PERMISSIVE SO THAT THEY COULD BE DISMISSED WITHOUT PREJUDICE, AND THAT IS HOW SHE RULED IT, AND THAN IS WHY THE MOTORIES OF APPEAL SAYS OUR POSITION HASN'T CHANGED ON THIS. AS FAR AS WHAT THE REAL WORLD IS DOING AND THE CIVIL VERSUS CRIMINAL, ALL YOU HAVE TO DO IS LOOK AT THE FACT THAT WHO CREATED THE JURY INSTRUCTIONS FOR "JIMMY RYCE" ACT. DID THE CIVIL PEOPLE DO THAT? NO. THE CRIMINAL PEOPLE DID. THAT WHEN WE WERE FOUND THAT WE COULDN'T DO DISCOVERY RULES, DID THE CIVIL PEOPLE ADDRESS THAT? NO. THE CIVIL PEOPLE HAVEN'T TOUCHED THIS WITH A TEN-FOOT POLE. WE ARE HAVING -- MR. CHIEF JUSTICE: MS. BRUECKHEIMER, I THINK YOUR TIME IS UP.

THANK YOU. MR. CHIEF JUSTICE: THANK YOU, COUNSEL, FOR YOUR ASSISTANCE IN THE CASE.