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THE NEXT CASE ON THE COURT'S DOCKET THIS MORNING ARE CONSOLIDATED CASES, STATE VERSUS HAIRS AND STATE VERSUS GENTACY -- GENT -- GENTES. GOOD MORNING. GOOD MORNING. MAY IT PLEASE THE COURT. MY TIME IS TOM DUFFY. I REPRESENT THE STATE IN THIS CONSOLIDATED ARGUMENT. WE SOUGHT REVIEW OF THE TWO CASES FROM THE FIRST DISTRICT COURT OF APPEAL. IN HARRIS AND GENTES,, WE WILL MAKE THE FOLLOWING THREE POINTS. FIRST, MURRAY VERSUS REGIER, WHICH WAS RELEASED AFTER THE DECISION INS THIS CASE, WERE, IN THESE CASES, WERE RENDERED. CONCLUSIVELY SETTLES THIS ISSUE. CONTRARY TO THE RATIONALE EXPRESSED IN THE LEAD CASE, HAIRS, WHICH HAS HAD, OTHER THAN THE PRECEDENT-BOUND GENTES PANEL, GOTTEN NO SUPPORT ANYWHERE AND IS NOW SEEMINGLY ABANDONED BY THE FIRST DCA. SECOND POINT WE WILL TRY TO MAKE IS THAT THE RATIONALE OF MURRAY ADVANCES GOOD PUBLIC POLICY, AND THE RATIONALE EXPRESSED IN HARRIS RETARDS IT. THIRD, WE WILL ADDRESS THE CERTAIN FIED QUESTIONS -- THE CERTIFIED QUESTIONS, WHICH, I THINK, CAN ALL BE PRESSED INTO ONE SINGLE QUESTION, WHICH IS, DOES THE JIMMY RYCE ACT APPLY TO PEOPLE WHO WENT TO PRISON, PURSUANT TO A PLEA, AND HAVE PROBATION FOLLOWING THEIR INCARCERATION. THE PROCEDURAL HISTORY OF THIS CASE SHOWS HOW MURRAY VERSUS REGIER CONCLUSIVELY SETTLES THIS ISSUE. THE CASES OF MR. HAIREIES, MR. GENTES AND MR. MURRAY ARE FUNCTIONALLY IDENTICAL. ALL THREE WERE CHARGED WITH CRIMES THAT WERE SETTLED, THEIR CRIMINAL CASES WERE SETTLED WITH A PLEA AGREEMENT THAT CALLED FOR PRISON, FOLLOWED BY A TERM OF PROBATION. IN ALL THREE CASES, NEAR THE END OF THEIR PRISON SENTENCE, BUT PRIOR TO THE PROBATION ENSUING, SEXUALLY VIOLENT PREDATOR PROCEEDINGS WERE COMMENCED. IN ALL THREE CASES, EACH OF THEM CLAIMED THAT THE STATE COULD NOT PROCEED, BECAUSE TO DO SO WOULD VIOLATE A PLEA AGREEMENT. MURRAY CASE HELD THAT ANY BARGAIN THAT A DEFENDANT MAY STRIKE IN A PLEA AGREEMENT, IN A CRIMINAL CASE, WOULD HAVE NO BEARING ON A SUBSEQUENT INVOLUNTARY CIVIL COMMITMENT FOR CONTROLLED CARE AND TREATMENT. THAT, WE SAY, CONCLUSIVELY SETTLES THE ISSUE, IF THERE IS NO RELATIONSHIP BETWEEN THE PLEA AGREEMENT IN THE CRIMINAL CASE AND THE LATER FILED SEXUALLY VIOLENT PREDATOR PROCEEDINGS, THEN THE RULE IN HARRIS IS, HAS BEEN SUPERSEDED BY THE IMPENDING RULE HERE.

LET ME SEE HOW THIS ACTUALLY WORKS. HE HAS BEEN READY FOR RELEASE AND THEN HE GOES, UNDER THE TERMS OF THE PLEA AGREEMENT, WHAT WOULD HAVE BEEN THE MAXIMUM SENTENCE THAT HE WOULD HAVE RECEIVED? HE WAS JUST A CHILD UNDER, WAS IT A 25-YEAR-OLD?

TWO CASES. I AM NOT CERTAIN. I THINK THE FIRST ONE, HAIRS, WAS LEWD AND LASCIVIOUS, AND I THINK HE GOT, IT WOULD HAVE BEEN A 15-YEAR MAXIMUM TERM FOR LEWD AND LASCIVIOUS, CHILD UNDER TWELVE. GENTES, I BELIEVE, WAS SEXUAL BATTERY. AND HIS PROBATION WAS 30 YEARS. I KNOW THAT. AND HAIRS'S WAS EIGHT.

SO IT ACTUALLY SOUNDS LIKE IT ACTION -- AND HARRIS'S, WAS EIGHT.

WHAT WOULD IT AND MAXIMUM MANDATORY SENTENCE?

AT THE TIME THAT THEY WERE SENTENCED, I AM NOT CERTAIN OF THAT, BECAUSE I AM NOT CERTAIN WHAT THE LAW WAS, AT THE TIME THAT THEY WERE SENTENCED. NOW IT WOULD BE DIFFERENT.

THE AGREEMENT WAS THAT THEY, THEN, WOULD START TO SERVE PROBATION, AND IT WOULD BE A SPECIAL KIND OF PROBATION, WHERE THEY WOULD BE OUT IN THE WORLD, BUT THEY WOULD BE SUBJECT TO TREATMENT AS A SEXUAL OFFENDER.

THAT WAS THE TERMS, AT LEAST OF HARRIS'S PROBATION, YES.

AND IF THEY DIDN'T DO THAT, THEY WOULD BE BACK IN PRISON.

OR IF THEY DID ANY NUMBER OF OTHER THING RESPECT, THEY WOULD BE SUBJECT TO IT.

NOW -- OTHER THINGS, THEY WOULD BE SUBJECT TO IT.

NOW, THEY WERE FOUND TO BE SEXUALLY VIOLENT PREDATORS?

THEY WERE FOUND AFTER TRIAL, TO BE SEXUALLY VIOLENT PREDATORS.

NOW, IS IT THE STATE'S POSITION THAT THEY ARE SERVING THEIR PROBATION IN A PRISON-LIKE SETTING, WHERE THEY ARE NOT FREE TO GO.

MR. HAIREIES IS PRESENTLY, SO FAR AS I UNDERSTAND, SERVING HIS PROBATION. HE IS OUT. HE, HIS, THE LATEST THING I SAW, WHICH WAS THIS MORNING, HIS HOME ADDRESS IS IN QUINCY, SO HE IS OUT, PURSUANT, I SUPPOSE, TO A JUDGE'S ORDER. MR. GENTES IS, IN FACT, SERVING HIS PROBATION. THEY HAVE PROBATION OFFICERS DOWN THERE WHO VISIT. ALL OF THIS --

VIOLATE THAT PROBATION?

NOT NECESSARILY. YOU COULD COMMIT A NEW CRY. YOU COULD PUNCH OUT A GUARD. YOU COULD PUNCH OUT AN INMATE. YOU COULD STEAL SOMETHING. YOU COULD COMMIT A NEW CRIME BUT, YES, YOU ARE UNDER A GOOD DEAL MORE SCRUTINY THAN THE AVERAGE PROBATION OR THE AVERAGE PERSON ON COMMUNITY CONTROL.

BOTH OF THOSE DEFENDANTS, THOUGH, ARE ON PROBATION?

THEY ARE ON PROBATION. MR. GENTES IS STILL, SO FAR AS I UNDERSTAND, STILL IN THE CIVIL COMMITMENT CENTER. MR. HAIREIES APPEARS TO HAVE BEEN RELEASED. I AM BASING THAT ON A CONVERSATION WITH AEP OWESING -- WITH OPPOSING COUNSEL AND ALSO WHAT I SAW ON THE WEB SITE YESTERDAY.

THE PROBATION, THE FIVE YEARS OF THEM BEING COMMITTED COUNTS AS FIVE YEARS OF THEIR PROBATION.

YEAH, BUT THEY ARE NOT COMMITED FOR A NUMBER OF YEARS.

I UNDERSTAND, AND AS YOU SAID, MR., ONE OF THEM IS ALREADY OUT.

HE IS OUT NOW AND IS STILL ON PROBATION, SO THAT IF THEY WERE TO BE RELEASED FROM THE COMMITMENT CENTER, PRIOR TO THE TERM OF THEIR PROBATION, THEY, THERE WOULD, THEY WOULD STILL BE SERVING PROBATION.

EXPIRATION, BUT NOT THE FULL-TIME TERM. IT WOULD BE WHAT WAS LEFT.

WHAT WAS LEFT. RIGHT. IT DOESN'T, IN OTHER WORDS, IT DOESN'T TOLL THE PROBATION.

ONE OF THE ARGUMENTS THAT THE MAJORITY, THE CONCURRING OPINION IN HARRIS SEEMS TO MAKE HERE, IS THAT THE STATE, REALLY, HAD AN OPTION, BECAUSE THEIR PROBATION, THE

TERMS OF THEIR PROBATION, WOULD HAVE REQUIRED THE DEFENDANTS TO HAVE TREATMENT ANYWAY, IS THAT CORRECT?

YES.

THAT THE STATE, REALLY, HAD AN OPTION TO JUST DO THAT, AS OPPOSED TO DOING THE JIMMY RYCE CIVIL COMMITMENT.

WELL, NO, BECAUSE THE JIMMY RICE COMMITMENT COMES LATER.

DOES THE STATE HAVE THAT OPTION? THE STATE DOES NOT HAVE TO PROCEED WITH THESE DEFENDANTS UNDER THE JIMMY RYCE ACT. THEY COULD, IN FACT, HAVE JUST PUT THEM ON PROBATION AND HAD THEIR, I GUESS, SEXUALLY --

SEXUAL DYSFUNCTION, WE CAN CALL IT, FOR WANT OF A BETTER TERM.

THEY WERE TREATED FOR THAT WHILE THEY WERE ON PROBATION, AS CONDITION OF THAT PROBATION.

THERE COULD BE. THE PROBLEM WITH THAT POSITION, OF COURSE, IS THAT, AT THE END OF THEIR PRIB TERMS -- PRISON TERMS, A, AN EXPERT OPINION WAS RENDERED, SAYING THAT THEY WERE NOT REALLY PEOPLE WHO WOULD DO WELL IN A NONSTRUCTURED SETTING LIKE BEING FREE ON PROBATION TO GO TO SEXUAL DYSFUNCTION COUNSELING OR TO THOSE SECTIONS. THE TERMS --

PART OF THE JIMMY RYCE COMMITMENT IS THAT YOU HAVE TO DEMONSTRATE THAT THEY NEED TO BE IN A COMMITTED SETTING, IN ORDER TO BE TREATED?

THEY NEED TO BE DETAINED, YES, THEY NEED TO BE COMMITTED.

DOESN'T THAT MEAN, THOUGH, THAT YOU CHANGED YOUR MIND, BECAUSE IF THEY WEREN'T THE TYPE THAT WOULD DO WELL ON PROBATION, THEN THE STATE HAD AN OBLIGATION, BACK WHEN THEY WERE LOOKING AT THIS PLEA AGREEMENT, TO SAY WE ARE GOING TO INSIST ON THE FULL PRISON TERM.

WELL, IN THIR, BUT NOT IN PRACTICE. I MEAN, THERE IS A NUMBER OF REASONS, I MEAN, A PLEA TO, ALLOWING FOR PROBATION AT THE END BE, OR REQUIRING PROBATION -- AT THE END, OR REQUIRING PROBATION AT THE END OF A PRISON SENTENCE, IS NOT A CERTIFICATION, THE END OF PROBATION, THAT THIS PERSON IS OKAY IN THE COMMUNITY. THAT THIS IS, I MEAN, IF THAT WERE THE LAW, I MEAN, THE RAMIFICATIONS OF THAT FOR LIABILITY ARE UNTHINKABLE.

BUT THE BARGAIN, THOUGH, THAT THEY ARE LOOKING AT, THEY HAVE AN OBLIGATION JUST LIKE WE ARE LOOKING AT WHAT DISCIPLINE WE GIVE TO A LAWYER. THEY LOOK AT HOW STRONG ARE GOING TO BE THEIR CASES, THAN IS WHY, IN TERMS OF, AND I UNDERSTAND IT LOOKS LIKE MURRAY VERSUS REGIER MAY HAVE DECIDEDED THIS ISSUE, SO THAT MAY BE YOUR STRONGEST POINT, BUT I HAVE A PROBLEM WITH YOU KNOW, WHAT THE DEFENDANT HAS GIVEN UP, WHICH IS MAYBE THE EVIDENCE WAS VERY WEAK, AND THE STATE, IF THEY HAD INSISTED ONGOING TO TRIAL, THEY WOULD HAVE BEEN -- ON GOING TO TRIAL, THEY WOULD HAVE BEEN FOUND NOT GUILTY AND WOULDN'T HAVE BEEN SUBJECT TO THE JIMMY RYCE ACT AT ALL.

THE DEAL WAS THAT THEY MADE WAS THEY DID JUST AS YOU SUGGESTED, THEY GAVE UP THEIR RIGHTS FOR, IN RETURN FOR STATE'S EVIDENCE AND IN RETURN THE STATE, THEY GIVE UP SOME CONTROL OVER THEIR FREEDOM. IN OTHER WORDS THEY ARE GOING TO BE ON, IN PRISON AND THEN ARE GOING TO BE ON PROBATION. BOTH ARE PUNISHMENT, BOTH ARE CONTROLLED, BOTH ARE THINGS THAT THEY HAVE GIVEN UP. THAT IS THE CONSIDERATION BACK TO THE STATE.

HAVEN'T THEY, ALSO, MADE THEMSELVES SUBJECT, BY THIS PLEA, TO THE JIMMY RYCE ACT?

YES. THEY WOULD, AND --

HAVE THEY KNOWINGLY DONE THAT, IN THIS EXCHANGE? I TAKE IT THE POSITION OF THE STATE IS THAT, UNLESS THERE IS A EXPLICIT PROVISION IN THE PLEA AGREEMENT WITH REFERENCE TO --

I MEAN, EVEN, PERHAPS EVEN IF THERE WERE, THAT IS A QUESTION FOR ANOTHER DAY. CERTAIN STATES HAVE SAID THAT, EVEN IF YOU NEGOTIATE THAT AWAY, THAT DOESN'T NECESSARILY BIND THE STATE LATER, AND THE REASON FOR THAT --

IT CERTAINLY WOULD AFFECT THE VOLUNTARINESS OF THE PLEA, HOWEVER, WOULD IT NOT?

WELL, NOT NECESSARILY, BECAUSE THESE ARE COLLATERAL MATTERS THAT CAN'T BE, OUR POSITION WOULD BE, AND THAT LATER DAY, THAT THESE ARE LATER MATTERS THAT CAN'T BE ADDRESSED AT THE PRESENT TIME. LET'S SAY SOMEONE IS GOING TO PRISON FOR FIVE YEARS AND THEN WILL BE ON PROBATION THEREAFTER OR RELEASED THEREAFTER. YOU DON'T KNOW, AT FIVE YEARS OUT, WHAT THE MENTAL STATE OF THAT PERSON IS GOING TO BE, AND YOU MAY NOT KNOW THE MENTAL STATE OF THAT PERSON NOW.

AFTER THE CONVICTION, THOUGH, YOU DO NOT BECOME --

YOU CANNOT PURSUE, THE CONVICTION IS A CONDITION PRECEDENT, A NECESSARY CONDITION BUT IT IS NOT A SUFFICIENT CONDITION, IF THAT MAKES SENSE. IT IS AN OLD LOGIC TERM.

IF THE STATE'S POSITION IS THAT IT CAN'T PREDICT WHAT IS GOING TO HAPPEN IN THE FUTURE, THEN I GUESS THE RESPONSE IS, THEN YOU SHOULDN'T PUT THAT IN A PLEA AGREEMENT.

NOR DID WE. WE DID NOT PUT IT IN.

WE ARE JUST TALKING ABOUT YOUR FUTURE CASE, AND YOU SAID, WELL, EVEN IF WE PUT THAT IN THE PLEA AGREEMENT, WE CAN'T PREDICT THE FUTURE. WE DON'T KNOW WHAT IS GOING TO HAPPEN. THEN THE SOLUTION TO THAT IS TO INFORM THE DEFENDANTS THAT THEY CANNOT AGREE NOT TO PROCEED UNDER THE JIMMY RYCE ACT.

THAT WOULD BE THE BETTER PROCEDURE, BUT THAT IS NOT A QUESTION THAT IS PRESENTED HERE.

BUT YOU ARE TALKING PUBLIC POLICY NOW. WHAT ABOUT THE POLICY TO ENCOURAGE PLEA AGREEMENTS AND TO DISPOSE OF THESE CASES? IS THIS GOING TO WORK AGAINST THAT? IS THIS NOW GOING TO CAUSE THOSE CASES, THEN, TO GO TO TRIAL, AND THEN POTENTIALLY SEX OFFENDERS TO BE RELEASED, BECAUSE MORE OF THEM GO TO TRIAL, AND FLIP THE COIN, YOU KNOW, OF A JURY'S --

I HADN'T REALLY CONSIDERED THAT. I KNOW THAT, IN, UNDER THE HAIRS RATIONALE, THAT WOULD PUT THE STATE IN A BIND, AT THE TIME OF A PLEA, TO NOT ALLOW PROBATION AT THE END OF THE PLEA AGREEMENT, UNDER THE STRICT TERMS OF HARRIS. YOU WOULD SAY, I AM NOT GOING TO TIE MY HANDS, IF, BY TAKING THIS PLEA THAT REQUIRES PROBATION AT THE END OF THE SENTENCE, I AM, OR BY TAKING THE PLEA AT ALL, I AM HEAR BY SAYING THAT YOU ARE NOT GOING TO BE COMMITTED IN THE FUTURE.

MARSHAL HAS REMINDED YOU, YOU ARE IN YOUR REBUTTAL TIME.

OKAY. I WILL --

YOUR BASIC POSITION IS, REALLY, THAT MURRAY HAS RESOLVED --

MURRAY CONTROLS, AND I WILL GET INTO JUST BRIEFLY, THAT THE MAIN POLICY POINT THAT WE WANT TO MAKE IS THAT, UNDER HARRIS, THE PUBLIC IS DEPRIVED OF THE PROTECTION THAT THE ACT IS INTENDED TO GIVE IN AN ARBITRARY WAY. THERE IS NO REAL RELATIONSHIP, NO NEXUS BETWEEN YOUR DANGEROUSNESS IN THE FUTURE, AND WHETHER YOU SETTLED YOUR CRIMINAL CASE WITH A PLEA OR A TRIAL.

CHIEF JUSTICE: THANK YOU. COUNSEL.

MAY IT PLEASE THE COURT. COUNSEL. ROBERT FRIEDMAN ON BEHALF OF RESPONDENTS MORRIS HARRIS AND DONALD GENTES.

COUNSEL, THE COURT IN HARRIS, DIDN'T HAVE THE BENEFIT OF OUR DECISION IN MURRAY, RIGHT?

THAT IS TRUE, AND I WOULD LIKE TO TAKE THIS OPPORTUNITY TO SPEAK ABOUT MURRAY. FIRST, I WOULD LIKE TO SAY THAT, AS I EXPRESSED IN MY BRIEF, THAT MURRAY IS LIMITED TO THE ISSUE THAT WAS, THAT CAME BEFORE THE COURT, THE SUPERVISORY JURISDICTION OF THE DISTRICT COURT OF APPEALS.

BUT YOU HEARD, YOU HEARD YOUR OPPONENT QUOTE FROM MURRAY, AND ESPECIALLY THE SENTENCE WHERE IT SAYS WE CONCLUDE THAT ANY BARGAIN THAT A DEFENDANT MAY STRIKE IN A PLEA AGREEMENT IN A CRIMINAL CASE, WOULD HAVE NO BEARING ON A SUBSEQUENT INVOLUNTARY CIVIL COMMITMENT FOR CONTROLLED CARE AND TREATMENT. WHY DOESN'T THAT APPLY HERE?

JUDGE, WITH ALL DUE RESPECT TO THIS COURT'S DECISION IN MURRAY, MURRAY IS INTERNALLY INCONSISTENT AND HIS PREDICATE ASSUMPTION IS FALSE AND HERE IS WHY.

ARE YOU SAYING TO HOLD IN YOUR FAVOR, WE WOULD HAVE TO RECEDE FROM MUREY?

MY UNDERSTANDING IS, MURRAY FILED FOR REHEARING IN THIS COURT. THE COURT STAYED REHEARING IN MURRAY, PENDING RESOLUTION OF THIS COURT'S DECISION IN HARRIS AND GENTES, AND OF COURSE, HARRIS AND GENTES, IS BROUGHT BEFORE THIS COURT, UNDER A BREACH OF CONTRACT AND EQUITABLE ESTOPPEL THEORY OF LAW, BUT IN RESPONSE TO YOUR QUESTION AS TO MURRAY, THE PERTINENT SENTENCES IN MURRAY SPECIFICALLY STATE, MURRAY'S COMMITMENT CANNOT BE CONSIDERED CONTINUED PUNISHMENT FOR HIS CRIMINAL OFFENSE BUT WAS BASED UPON CLINICAL EVALUATIONS OF HIS PRESENT STATE. WHILE MURRAY'S PREVIOUS CONVICTION AFTER SEXUALLY VILE OFFENSE -- VIOLENT OFFENSE, SATISFIES ONE OF THE REQUIREMENTS AS A PREDATOR, CANNOT CONCLUDE THAT FROM HIS CONVICTION. THUS WE INFER THAT A BARGAIN STRUCK BY A CRIMINAL DEFENDANT HAS NO BEARING ON A CIVIL COMMITMENT, AND HERE IS WHY IT IS A LEGAL CONVICTION, BECAUSE WITHOUT A CONVICTION AS I BELIEVE WAS NOTED BY JUSTICE ANSTEAD, THERE CAN BE NO CIVIL COMMITMENT. A DIAGNOSIS OF A PRESENT STATE, DEPENDS ON A CONVICTION. IN FACT, A DIAGNOSIS --

THAT GETS BACK TO MY ORIGINAL QUESTION.

OKAY. I --

WILL WE HAVE TO RECEDE FROM MURRAY, IN ORDER TO RULE IN YOUR FAVOR IN THIS CASE? WOULD WE HAVE TO SAY MURRAY WAS WRONG?

YOU WOULD HAVE TO REEVALUATE MURRAY, IN LIGHT OF HARRIS AND ADDITIONALLY AS TO

WHAT I AM EXPRESSING HERE TODAY, WHICH WOULDN'T NECESSARILY NECESSITATE THIS COURT RECEDING FROM MURRAY, BECAUSE FOR EXAMPLE IN THIS CASE, MR. HAIRE US WAS DIAGNOSED WITH MARCH FEEL YEAH NOT -- WITH PARAPHELIA NOT OTHERWISE DESCRIBED. IN THE TRANSCRIPT, DR. SHAW TESTIFIED THAT, IN ORDER TO QUALIFY FOR THIS DIAGNOSIS, THE RECURRENT BEHAVIOR MUST BE BEYOND SIX MONTHS, SO IN MR. HAIREIES'S CASE, HE HAD A '92 CONVICTION AND A '9 -- IN MR. HAIREIES'S CASE, HE -- IN MR. HAIRS'S CASE, HE HAD A 1992 CONVICTION AND A 1995 CONVICTION, AND IN THE ABSENCE OF INFORMATION IN THAT CASE, HE HAD A 1995.

IS IT NOT THAT HE NECESSARILY QUALIFIES AS A SEXUALLY VIOLENT PREDATOR. DOES THERE ALSO HAVE TO BE THE ABNORMALITY? THAT IS PART OF THE CONVICTION.

IT DOESN'T MAKE SENSE, AND I HIM USING MR. HAIRE HAIRS'S CASE AS AN EXAMPLE. -- MR. HARRIS'S CASE AS AN EXAMPLE. IF WE CONSIDER THAT TO BE THE MENTAL STATE, HE SPECIFICALLY TESTIFIED, AT PAGE 107 OF THE TRIAL TRANSCRIPT, IN ORDER TO QUALIFY FOR THIS DIAGNOSIS, THE RECURRENT BEHAVIOR MUST BE BEYOND SIX MONTHS. HE COULD NOT MAKE A DIAGNOSIS, WITHOUT THE 1995 CONVICTION, AND IN ESSENCE, YOU WOULD HAVE TO HAVE TWO CONVICTION TO SAY MAKE THAT DIAGNOSIS.

COUNSEL, COULD YOU HELP ME WITH ONE CONCERN.

SURE.

AS ALL THESE ACTS STARTED COMING OUT AROUND THE COUNTRY, THE FIRST, AND THE INITIAL ATTACKS, WERE THAT THIS IS DOUBLE JEOPARDY. YOU HAVE ALREADY SERVED YOUR TIME, AND THIS IS JUST AN ADDITIONAL PENALTY KIND OF THING, AS PART OF IT IS ALL JUST PART OF THAT CRIMINAL CASE, BUT AS THE U.S. SUPREME COURT AND OTHER COURTS AROUND THE COUNTRY CAME DOWN IN THEIR INTERPRETATION, THEY SEEMED TO HAVE SEPARATED THIS KIND OF PROCEDURE OUT IN SAYING THIS IS A CIVIL KIND OF PROCEDURE. IT IS NOT WOUND UP IN, ALTHOUGH THAT MAY BE A CONDITION PRECEDENT, WE ARE GOING TO TREAT IT MORE LIKE A "BAKER" ACT KIND OF SITUATION, AND THAT IS THE WAY THAT THEY SAVE THE CONSTITUTIONALITY OF THE ENTIRE CONCEPT. NOW, WHY IS YOUR ARGUMENT, REALLY, NOT RUNNING CONTRARY TO THAT LINE OF CASES THAT WE SEEM TO HAVE TO WORK WITH?

WELL, I MEAN, THIS IS FAR FROM A "BAKER" ACT PROCEEDING. I MEAN, IN FACT --

NO, IT IS NOT REALLY FAR FROM IT. IT IS A QUESTION OF CIVIL COMMITMENT, BECAUSE YOUR BEHAVIOR, YOUR MENTAL, SEXUAL BEHAVIOR, IS SUCH THAT IT IS A DANGER TO YOURSELF OR THE PUBLIC, SO THAT IS THE WAY THE COURTS, YOU MAY DISAGREE WITH IT BUT THE U.S. SUPREME COURT AND OTHERS, AND OUR COURT, HAVE FOLLOWED THAT MODEL, SO THAT IS WHAT WE NEED TO BE ABLE TO GET AROUND, AND I NEED YOUR HELP ON THAT ISSUE.

RIGHT. I MEAN, YES, THIS IS A CIVIL PROCEEDING, AND I WOULD MAKE A DISTINCTION BETWEEN THE "BAKER" ACT, WHERE YOU HAVE A DYNAMIC CONDITION, WHEREAS IN THESE TYPES OF CASES, THE MENTAL CONDITION IS A STATIC CONDITION. IT IS A STATUS, BUT, YES, IN LIGHT OF THE FACT OF WHAT THE U.S. SUPREME COURT HAS SAID IN KANSAS V HENDRICKS, I MEAN, REALLY, WHAT WE HAVE HERE IS THIS PARTICULAR ISSUE THAT IS BEFORE THE COURT, HAS NOT BEEN ADDRESSED, AS FAR AS THE, THAT THE STATE SHOULD BE EQUITYBLY ESTOPPED FROM MAINTAINING A POSITION AS ASSERTED AT THE TIME OF THE PLEA AGREEMENT, BY FILING OF THE PETITION, AND THIS IS THE LINCHPIN OF THE ARGUMENT, IT IS A DISCRETIONARY ACT, THE EXERCISE OF WHICH BREACHED THE AGREEMENT.

YOU MENTIONED THAT IT WAS DISCRETIONARY, BUT YOU MENTIONED THAT WHAT HAPPENS BEFORE THE DISCRETION IS, PRIOR TO RELEASE, EVERYBODY THAT POSSIBLY QUALIFIES BY OFFENSE, IS SUBJECT TO EXAMINATION BY A MULTIDISCIPLINARY TEAM, THAT CORRECT?

THAT'S CORRECT.

AND THAT IS MANDATORY. THE EVALUATION.

IT IS NOT NECESSARILY MANDATORY, UNLESS THE MULTIDISCIPLINARY TEAM --

THAT IS MY POINT. THE MULTIDISCIPLINARY TEAM HAS TO, AS A MATTER OF LAW, DO THE EVALUATION, TO DETERMINE WHETHER OR NOT THEY QUALIFY PRELIMINARILY, AS A JETION SEXUALLY VIOLENT PREDATOR. -- AS A SEXUALLY VIOLENT PREDATOR. THAT IS MANDATORY, THEN THEY SEND THAT NOTICE TO THE STATE THAT, THIS PERSON QUALIFIES.

THERE IS A EXTRA STEP IN THERE. I MEAN, THE MULTIDISCIPLINARY TEAM MAKES A REVIEW OF THE PEOPLE RELEASED FROM PRISON, AND THEN FROM THERE, THERE IS A GROUP OF THREE AT THE DEPARTMENT OF CHILDREN AND FAMILIES, THAT DECIDES WHETHER OR NOT THERE SHOULD BE A FACE TO FACE EVALUATION, AT WHICH TIME PSYCHOLOGISTS A AND PSYCHOLOGISTS B GO OUT THERE.

BUT THESE ARE ALL DETERMINATIONS MADE RIGHT BEFORE RELEASE, CORRECT? AND OF SEXUAL OFFENDERS, WE ARE TALKING LESS THAN 2 PERCENT THAT QUALIFY FOR JIMMY RYCE, SO I JUST WANT TO MAKE IT CLEAR.

THAT IS NOT IN THE RECORD, IF YOU ARE ASKING ME TO SAY WHAT IS OUT IN THE PUBLIC, WHAT PERCENTAGE, I AM NOT CERTAIN. I DON'T BELIEVE THAT IS IN THIS RECORD AS TO WHAT PERCENTAGE, BACK AT THE TIME OF MR. HAIREIES'S CASE -- MR. HARRIS'S CASE, AS A POLICY MATTER, I THINK THAT THE WEB HAS GOTTEN SMALLER. I AM NOT SURE WE ARE GOING TO GO THERE. I AM NOT SURE OF MR. HAIRE HARRIS.

THAT IS JUST FROM MY EXPERIENCE IN DOING THESE HEARINGS, SO I APOLOGIZE FOR THAT, BUT MY POINT IS, ALL THIS DETERMINATION IS MADE AFTER CONVICTION, BASED NOT ONLY ON THE PRIOR RECORD BUT THE MAIN CONCERN IS THE PROPENSITY TO VIOLATE IN THE FUTURE, IS THAT CORRECT?

THAT IS CORRECT, BUT --

THAT IS NOT A DETERMINATION OR AGREEMENT MADE AT THE TIME OF SENTENCING, IS IT? IS IT, DOES THE STATE HAVE THE ABILITY TO DETERMINE FUTURE LIKELIHOOD OF OFFENDING, AT THE TIME THAT IT IS NEGOTIATING WITH THE DEFENDANT AS TO THE PLEA, OR IS THE STATE SIMPLY RELYING ON THE OFFENSE THAT OCCURRED AND AVAILABLE PUNISHMENT AT THE TIME?

AT THE TIME OF THE PLEA, DEFENSE COUNSEL, AS PART OF NEGOTIATIONS, WOULD SAY, OKAY, WE WILL HAVE DR. A GO EVALUATE MY CLIENT, AND AFTER THE REPORT COMES BACK, WE CAN DECIDE HOW TO NEGOTIATE, WHAT WE ARE GOING TO DO WITH IN THE NEGOTIATIONS, IF THAT IS WHAT YOU ARE ASKING ME.

BUT THAT WASN'T DONE IN EITHER HARRIS OR GENTES, IN THE CASES BEFORE US, WAS IT?

NO. IT WAS NEVER DONE.

SO THE FUTURE "BAKER" ACT, FUTURE DANGEROUSNESS WAS CONSIDERED IN THIS CASE, BY THE STATE OR THE DEFENDANT.

AT THE TIME OF MAKING THE PLEA, WHAT I AM MAKING A POINT HERE TODAY, WHY MURRAY IS BASED ON A FALSE ASSUMPTION, THAT EVEN AS A LIKELIHOOD OF REOFFENDING, DR. SHAW TESTIFIED AND IT IS IN THE TRANSCRIPT AT 107 AND AS TO THE ISSUE THE LIKELIHOOD OF

REOFFENDING, THAT A PRIMARY ISSUE HE CONSIDERED WAS THE FACT THAT MR. HARRIS OFFENDED AGAINST ONE VICTIM AND SUBSEQUENTLY REOFFENDED WITH A NEW VICTIM, SO MY POINT IS THIS COURT'S PRONOUNCEMENT THAT THE CRIMINAL, THAT WHAT HAPPENED AT THE PLEA AGREEMENT HAS NO BEARING ON A SUBSEQUENT INVOLUNTARY COMMITMENT PROCEEDING, IS JUST, IT IS A FALSE ASSUMPTION, BECAUSE HERE DOCTOR SHAW --

LET ME ASK YOU ANOTHER --

HE WROTE EVERY ELEMENT OF THE CASE. HE RELIED ON WHAT HAPPENED IN 1995.

RIGHT, AND MOST OF WHAT WE HAVE SEEN IS WHEN THEY SAY ANTISOCIAL PERSONALITY SDPORDER, THEY ARE CLEARLY -- DISORDER, THEY ARE CLEARLY RELYING ON THE PAST RECORD. TWO QUESTIONS I HAVE. IN TERMS OF THE ISSUE THAT THE PREDICATE ISSUE, WHICH WE HAVEN'T DIRECTLY DECIDED, BUT WE HAVE DECIDED IN PART OF IT, ALTHOUGH AT THE TIME THAT YOUR CLIENT ENTERED THIS PLEA AGREEMENT, THE JIMMY RYCE ACT DIDN'T EXIST, THE QUESTION FOR THE FUTURE IS, TELLING A DEFENDANT THAT THEY ARE SUBJECT TO COMMITMENT UNDER THE JIMMY RYCE ACT, IS THAT, UNDER OUR MOST RECENT CASE LAW, A DIRECTOR A COLLATERAL CONSEQUENCE? IN OTHER WORDS, IF, TODAY, THIS PLEA WAS BEING ENTERED, AS IT WAS, WOULD A JUDGE BE OBLIGATED TO TELL YOUR CLIENT OR WOULD YOU BE OBLIGATED TO TELL YOUR CLIENT THAT THEY WOULD BE, NOW, SUBJECT TO A FUTURE COMMITMENT UNDER THE JIMMY RYCE ACT?

JUDGE, MY POSITION IS THAT THIS NOTION OF DIRECT VERSUS COLLATERAL IS, I MEAN, TO CALL THE JIMMY RYCE ACT A COLLATERAL CONSEQUENCE, IS, DEFIES SOME LOGIC.

I UNDERSTAND. I AM NOT ASKING FOR YOUR PERSONAL OPINION. I AM ASKING YOU, BASED ON OUR CASE LAW, SUCH AS MAJOR AND PART LOW -- AND PARTLOW, WHICH IS, AND I DON'T AGREE EITHER, BUT THE LAW IS IN IT, THAT THIS WOULD BE A COLLATERAL CONSEQUENCE.

RIGHT. UNDER THE CASE LAW, IT IS CONSIDERED A COLLATERAL CONSEQUENCE, BUT I THINK, EVEN BY MY MY ANALYSIS HERE TODAY, I AM SAYING THAT IT IS NOT COLLATERAL, AND THIS COURT RECOGNIZED, LIKE IN THE DEPORTATION CASE IN GENEVE, A THAT, EVEN THOUGH THEY -- IN GENEVA, THAT EVEN THOUGH THEY FOUND COLLATERAL TO BE A -- THEY FOUND IT TO AND COLLATERAL CONSEQUENCE, IT WAS AMENDED BECAUSE OF THE SEVERITY OF CONSEQUENCE, AND THE SIMILARITY IN ASHLEY, WITH REGARD TO REASONABLE CONSEQUENCES IN REALIZATION, AND WHERE WE ARE GOING IS THAT, YES, WHEN THE APPROPRIATE CASE COMES --

YOU ARE TELLING YOUR CLIENT, I AM SURE THE PUBLIC DEFENDERS ARE TELLING THEIR CLIENTS THAT THESE ARE CONSEQUENCES OF ENTERING THE PLEA.

THEY SHOULD BE. OR, AND MY, I MEAN, FOR ANOTHER DAY, I MEAN, YOU KNOW, THE TRIAL COURTS SHOULD BE OBLIGATED. IN FACT, I MEAN, MY POSITION WOULD BE THAT RULE 3.172 SHOULD BE A --

ISN'T THAT PART, I GUESS IF IT IS NOT NOW AND IT WOULD REQUIRE A RULE AMENDMENT FOR THIS TO BE CONSIDERED A, SOMETHING THAT IS PART OF THE PLEA COLLOQUY, THEN DOESN'T IT FOLLOW THAT YOUR PLEA WOULD BE VOLUNTARY, BECAUSE IF A DEFENDANT TODAY, WOULDN'T HAVE TO BE TOLD ABOUT THE JIMMY RYCE ACT, THEN HOW COULD THAT BE A BASIS FOR SETTING ASIDE A PLEA, BASED ON IT NOT BEING KNOWING OR VOLUNTARY?

UNLESS THE LAWYER AFFIRMATIVELY MISSED A ADVISED THE CLIENT, UNDER THE PRESENT STATE AND UNDER THE PRESENT STATE OF THE LAW, IT WOULD NOT BE AN INVOLUNTARY PLEA. BUT THAT IS A DISTINCTION I WOULD LIKE TO ADDRESS FOR A MOMENT, IF I CAN, TOO, THAT, YOU KNOW, ALL OF THE OUT-OF-STATE CASES DECIDED BY -- CITED BY THE STATE, TO TALK ABOUT COLLATERAL CONSEQUENCES, IT ALSO CAME UNDER THEY WERE ATTACKING THE

VOLUNTARINESS OF THE PLEA IN THE COLLATERAL PROCEEDING. IN MR. HAIRE HARRIS'S CASE AND MR. GENES'S CASE, TALK ABOUT COMING BEFORE THE COURT IN A DIFFERENT POSTURE, TALKING ABOUT HE CAN QUIBBLE REMEDIES AND ALL OF THE -- ABOUT EQUITABLE REMEDIES AND ALL OF THE CASES CITED IN THE BRIEF, IT SEEMS TO ME THAT IF --

IT SEEMS TO ME THAT IF THIS IS NOT TO BE DECIDED ON VOLUNTARINESS, IT SEEMS TO ME THAT CHARGING THE STATE AS WELL, WITH EQUITABLE ESTOPPEL, WHEN THE JIMMY RYCE WASN'T EVEN IN EXISTENCE, I DON'T SEE WHERE THAT POLICY IS GOOD POLICY.

BUT UNDER CONTRACT PRINCIPLES, BECAUSE IT WAS A DISCRETIONARY ACT, ON THE PART OF THE STATE, I MEAN WE CAN USE MR. HARRIS'S EXAMPLE, YOU KNOW, MR. COMES, IN GADSDEN COUNT -- MR. COMBS, IN GADSDEN COUNTY, WAS THE SAME AS FILED IN 1995.

IN JUSTICE LEWIS'S EXAMPLE OF THE "BAKER" ACT AND LET'S ASSUME WE HAVE SOMEBODY WHO WAS ABOUT TO BE RELEASED FROM PRISON UNDER QUALIFICATIONS OF THE "BAKER" ACT AND IF RELEASED, WAS LIKELY TO HARM SOMEBODY ELSE. THAT WOULD APPLY TO YOUR POSITION OF THE PEOPLE IN THE "BAKER" ACT CONTEXT, THAT CORRECT, OR HOW CAN WE DISTINGUISH IT?

THAT IS THE DIFFERENCE, AGAIN, GOING TO PSYCHOLOGICAL PRINCIPLES, THE DIFFERENCE BETWEEN "BAKER" ACT AND LET'S SAY THE JIMMY RYCE ACT, IN A "BAKER" ACT PROCEEDING, WE ARE TALKING ABOUT DYNAMIC MENTAL CONDITIONS. SOMEBODY COULD BE SUICIDAL TODAY AND THEN THREE DAYS LATER, THEY ARE NO LONGER SUICIDAL. I MEAN, BASICALLY WE HAVE, IN THE CASES WE HAVE HERE TODAY, WE ARE TALKING ABOUT STATIC CONDITIONS WHERE THESE DOCTORS THAT ARE COMING IN TO TESTIFY, ARE RELYING ON A PREDICATE CONVICTION, ALBEIT IN MR. GENES'S CASE, FROM THE ACTUAL OFFENSE DATE WAS BETWEEN 1981 AND 1982. HE ENTERED INTO A PLEA IN 1993. AND SO THAT IS A -- STATIC CONDITION. THERE IS A BIG DIFFERENCE BETWEEN STATIC AND DYNAMIC.

BUT AREN'T THEY, ALSO, RELYING UPON THE MENTAL, THERE IS TWO COMMAS, YOU SEEM TO NOT ADMIT THAT THERE IS MORE THAN JUST PRIOR CONVICTION, THE STATIC. THERE IS ALSO THE MENTAL HEALTH COMPONENT THAT IS NECESSARY PREDICATE FOR SEXUAL VIOLENT PREDATORS TO BE DETERMINED.

RIGHT. BUT I THINK YOU ARE MISSING THE POINT, IS THAT, IF YOU LOOKED AT THE TESTIMONY OF THE DOCTOR, THEY ARE SPECIFICALLY, LIKE FOR THE DIAGNOSIS OF PARAFEEL YEAH, DR. SHAW SPECIFICALLY RELIED ON THE, YOU CAN'T HAVE THAT DIAGNOSIS, WITHOUT THE '95 CONVICTION, I MEAN, SO HE CAN'T TESTIFY AS TO A PRESENT MENTAL STATE, WITHOUT THAT CONVICTION.

TRUE IT IS PART OF THE FOUNDATION. YOUR POSITION IS IT IS THE ONLY FOUNDATION, THOUGH, IS THAT CORRECT?

MY POSITION IS THAT IT IS RELATED. THAT IS WHY I AM ASKING THIS COURT TO, YOU KNOW, TO LOOK AT MURRAY AGAIN, ALBEIT EITHER RECEDE OR LOOK AT MURRAY AGAIN, IN LIGHT OF THE EQUITABLE ESTOPPEL ARGUMENT, BECAUSE THE SENTENCES I READ TO THE COURT FROM THE MURRAY OPINION ARE INTERNALLY INCONSISTENT, BECAUSE I MEAN, WHAT MURRAY SAYS, I MEAN, IT IS, ONLY ONE OF THE CRITERIA, WELL, THE CRIMINAL CONVICTION 56 ECKTS ALL THREE -- AFFECTS ALL THREE CRITERIA.

MURRAY WAS REALLY DEALING WITH THE ILLEGALITY OF DETENTION. IT WAS A HABEAS CASE.

RIGHT, AND I THINK WHEN I FIRST CAME UP HERE AND I DISTINGUISHED THAT IN MY BRIEF, WHAT WAS BEFORE THE COURT IN MURRAY WAS A VERY NARROW, LEGAL ISSUE, AND THIS COURT JUST, YOU KNOW, AS AN ASIDE, ADDRESSED THE DUE PROCESS CLAIM AND THE DOUBLE JEOPARDY CLAIM.

BUT IT WASN'T JUST NARROW ISSUE OF WHO HAS JURISDICTION. THEY, ALSO, REACHED THE MERITS IN MURRAY, DIDN'T THEY? THE COURT SPOKE ABOUT THE MERITS OF THE CASE AND DIDN'T JUST SAY, NO, THE FOURTH DCA HAD JURISDICTION OF THIS CASE. GO AHEAD AND RULE ON IT. AFTER IT CAME BACK UP, IT RULED ON IT.

THEY RULED ON THE MERITS AS TO THE DUE PROCESS CLAIM AND THE DOUBLE JEOPARDY CLAIM, NEITHER OF WHICH IS BFB THE COURT HERE TODAY IN HARROW THE COURT HERE TODAY IN HARRIS AND GENTES. -- THE COURT HERE TODAY IN HARRIS AND GENTES, AND NOT ENTITLEDED TO RELEASE ON THAT BASIS, SO ON HIS DUE PROCESS CLAIM AND DOUBLE JEOPARDY CLAIM, I AM HERE TODAY ASKING THE COURT TO REEVALUATE MURRAY, IN LIGHT OF WHAT I SPOKE ABOUT, AS FAR AS HOW THE CRIMINAL CONVICTION RELATES TO ALL OF THE COMPONENTS OF A SEXUALLY VIOLENT PREDATOR ACT, IN ADDITION TO THE EQUITABLE ESTOPPEL CLAIM AND THE BREACH OF CONTRACT CLAIM, WHICH WAS NOT TAKEN INTO ACCOUNT, WHEN THIS COURT DECIDED MURRAY, AND I THINK IF YOU LOOK AT IT FROM AN EQUITABLE ESTOPPEL STANDPOINT, I MEAN, AND FROM A BREACH OF CONTRACT, ESPECIALLY THE FACT THAT, AND I CITED TO THE SENATE STAFF ANALYSIS, THE STATE ATTORNEY MAKES THE ULTIMATE DECISION WHETHER OR NOT TO FILE THE PETITION. I USE THE EXAMPLE OF MR. HARRIS, IT IS THE SAME STATE ATTORNEY WHO HE NEGOTIATED THE PLEA WITH IN 1995 THAT FILED IN 1999. HE DIDN'T HAVE TO, HE HAD THE DISCRETION NOT TO, BUT THE EXERCISE OF THAT DISCRETION YOU KNOW, BREACHED THE PLEA AGREEMENT. I MEAN, THE PUBLIC POLICY ISSUES AS YOU TALKED ABOUT WITH THE STATE, ARE IMMENSE. REALLY, WHERE ARE WE GOING WITH THIS. I MEAN, ON ANY CRIMINAL CASE OR EVEN IN COUNTY COURT, I THINK THIS WAS DISCUSSED IN THE DISSENTING OPINION, IN WESTERHEIDE, WHEN JUSTICE PARIENTE CITED JUSTICE LOCKET FROM IN RE LEON G IN ARIZONA, I MEAN, ARE WE GOING WITH THIS THAT IN COUNTY COURTS ON DRUNK DRIVING CASES, DOMEESTIC -- DOMESTIC BATTERY CASES, IS THE TRIAL COURT TO TELL ALL CRIMINAL DEFENDANTS THAT NOT ONLY ARE YOU GIVING UP YOUR RIGHT TO A JURY TRIAL AND YOUR RIGHT TO PRESENT WITNESSES AND DEFENSE AND YOUR RIGHT TO TESTIFY, BUT IN ADDITION TO THAT THE STATE AT ANY TIME CAN UNILATERALLY MODIFY AND CHANGE THE TERMS AND CONDITIONS OF THE AGREEMENT, BASED ON NO CONDUCT OF YOURSELF. I MEAN, NO CHANGE IN CONDUCTOR ANYTHING THAT YOU HAVE DONE, SO I MEAN, THE PROBLEM WITH THIS IS, THIS IS LEADING DOWN A SLIPPERY SLOPE.

CAN I ASK A QUESTION?

YES.

IS IT YOUR POSITION THAT THE STATE MAY AGREE AND THE DEFENDANT, NOT TO TRY TO COMMIT SOMEONE UNDER THE JIMMY RYCE ACT?

JUDGE, I WOULD SAY THAT THAT IS SOMETHING THAT I WOULD ENCOURAGE TRIAL ATTORNEYS TO DO, AND --

IF THAT IS THE CASE, THEN YOUR PARADE OF HORRIBLES DOESN'T COME TO FRUITION, BECAUSE YOU CAN AGREE IN THE PLEA AGREEMENT THAT, THE STATE WILL NOT SEEK. THAT.

THAT PRESUPPOSES, I MEAN, WE, WE ARE PRESUPPOSING THAT THAT WOULD NECESSARILY HAPPEN. BUT I MEAN, REALLY, IF YOU LOOK AT THIS CASE, HE HAVE EASTBOUND FROM THE -- EVEN FROM THE BREACH OF CONTRACT STANDPOINT MR. CHIEF JUSTICE

WE ARE GOING TO HAVE TO END IT ON THAT NOTE AND WILL TAKE IT ON THE ARGUMENT AND THE BRIEFS THAT YOU HAVE FILED. THANK YOU.

I WOULD ASK THE COURT TO RELY ON THE BRIEFS AS FILED IN APPEAL.

JUSTICE CANTERO, YES, YOU WOULD HAVE TO RECEDE FROM MURRAY, TO DO AS I THINK MR.

FRIEDMAN CANDIDLY ADMITTED. YOU WOULD HAVE TO RECEDE FROM IT, AND THE REASON FOR THAT IS --

RECEDE OR GRANT REHEARING?

WELL, GRANT REHEARING, PULL BACK FROM WHAT YOU SAID BEFORE. YOU WOULD HAVE TO, YOU WOULD HAVE TO PULL BACK FROM THAT. THAT LANGUAGE IN MURRAY IS VERY BROAD, ANN MURRAY DID REACH THE MERITS, ANN MURRAY WAS, IN FACT, A CONTRACT CLAIM. IT WAS COUCHED IN CONSTITUTIONAL TERMS. I PRESUME, TO GO THE ROUTE OF, THE HABEAS ROUTE, AND I HAVE READ THE TRANSCRIPT OF THE ORAL ARGUMENT HERE ON THAT CASE, AND THERE WAS, THAT WAS PRIMARILY WHAT THE ARGUMENT WAS ABOUT, WAS WHETHER HABEAS COULD BE HEARD BY THE, BY A COURT THAT DIDN'T HAVE APPELLATE JURISDICTION OVER THE TRIAL, WHETHER THAT, WHETHER HIS DETENTION WAS ILLEGAL, AND THAT WAS THE WAY IT CAME UP, BUT THE WAY IT CAME UP IN THE FOURTH DISTRICT'S OPINION IN MURRAY VERSUS CONCERN I, WAS -- VERSUS KERNY, WAS, AS SAID IN THE THIRD PARAGRAPH, THAT PETITIONER MOVED FOR SPECIFIC PERFORMANCE OF THE PLEA AGREEMENT. THAT IS A CONTRACT REMEDY, SO CONTRACT REMEDIES WERE PART AND PARCEL OF THE MURRAY CASE. THERE IS NO WAY TO DISTINGUISH MURRAY FROM THIS CASE THAT IS NOT, THAT HAS ANY MATERIAL BEARING. JUSTICE --

NOW THAT, OBVIOUSLY THE "RYCE" ACT IS OUT THERE, SHOULDN'T THIS BE A VIABLE PART OF THE PLEA AGREEMENTS?

THAT WOULD BE THE BETTER POLICY. CERTAINLY, AND I AM CERTAIN THAT GOOD LAWYERS DO ADVISE THEIR CLIENTS ABOUT IT.

HOW ABOUT JUDGES?

I HOPE THEY DO. THAT WOULD BE GOOD POLICY. IT IS OBVIOUSLY A QUESTION FOR ANOTHER DAY, WHETHER IT IS REQUIRED, THOUGH UNDER YOUR CASE LAW, JUSTICE PARIENTE, YOUR QUESTION CONCERNING DIRECTOR COLLATERAL, IT IS NOT PENAL AND IT IS NOT AUTOMATIC, SO THEREFORE IT IS COLLATERAL BY DEFINITION, SO OUR POSITION HERE IS THAT THAT WAS PART OF THE REASON THAT THE HARRIS CASE WAS POORLYLY REASONED, WAS THAT -- POORLY REASONED, WAS THAT THEY DISCOUNTED THAT AUTHORITY.

IT MAY NOT BE PENAL, BUT IT CERTAINLY IS A SIGNIFICANT RESTRAINT ON ONE'S LIBERTY, AND SO COULDN'T AN ARGUMENT BE MADE THAT, BECAUSE OF THAT FACTOR, THAT THIS REALLY IS A DIRECT CONSEQUENCE?

NO, BECAUSE IT IS NOT, IT IS NOT AUTOMATIC. IT HAS TO BE AN AUTOMATIC THING, FOR IT TO BE DIRECT. AND IN THIS CASE, THERE ARE A NUMBER OF STEPS THAT MUST BE GONE THROUGH, TO GET TO THE, TO GET SOMEBODY UNDER, COMMITTED. YOU HAVE TO HAVE AN EVALUATION BY THE STAFF, AS MR. FRIEDMAN SAID. YOU HAVE TO HAVE AN EVALUATION BY THE STAFF AT THE PRISON. YOU HAVE TO HAVE EVALUATION BY OTHER PSYCHOLOGISTS. AND THEN THERE IS A TRIAL.

THIS WHOLE PROCESS STARTED, PRETTY MUCH, AUTOMATICALLY, ONCE YOU ARE CONVICTED OF A PARTICULAR OFFENSE.

THAT IS MY UNDERSTANDING. I MEAN, I HONESTLY DON'T KNOW THE WORKINGS OF IT. I PRESUME THAT CERTAIN CONVICTIONS ARE RED FLAGGED AND THEY LOOK AT THE CIRCUMSTANCES OF THAT CONVICTION, TO SEE WHETHER THIS PERSON IS AMENABLE TO THE "RYCE" ACT. JUSTICE BELL, YOU ARE CORRECT, WE DID NOT ASSERT ANYTHING IN THESE PLEA AGREEMENTS, AND THE FACT THAT MR. COMBS IN QUINCY, IN 1995, BEFORE THE ACT WAS PASSED, DIDN'T, OBVIOUSLY COULD NOT HAVE ASSERTED ANYTHING RELATING TO THE JIMMY RYCE ACT. IT DIDN'T EXIST.

HAS THERE BEEN ANY POLICY DEVELOPED IN THE STATE ATTORNEYS OR THE ATTORNEY GENERAL'S OFFICE NOW? YOU WERE QUITE CANNED I HAD IN -- CANDID IN RESPONSE TO MY EARLIER QUESTION AS TO WHETHER NOW THIS SHOULD BE VERY VISIBLE IN PLEA BARGAINS, WITH REFERENCE TO SEX OFFENSES OR OTHER OFFENSES THAT MAY BE A PREDICATE ACT HERE. HAS THE STATE EXAMINED WHETHER OR NOT THE COURT SHOULD ENACT A RULE SIMILAR TO THE DEPORTATION CONSEQUENCES, AS JUSTICE QUINCE POINTS OUT? THIS IS POSSIBLY A LOT MORE SEVERE THAN DEPORTATION, IN TERMS OF POTENTIAL LIFETIME INCARCERATION. WHAT, DOES THE STATE, HAS THE STATE EXAMINED THAT ISSUE, IN TERMS OF THE ATTORNEY GENERAL ADVISING STATE ATTORNEYS OR THE STATE ATTORNEYS ASSOCIATION EVALUATING THIS, TO BE SURE THAT IT IS VISIBLE IN PLEA BARGAINS, NOW THAT THE ACT IS ON THE BOOKS?

I HATE TO, AFTER SUCH A NICE QUESTION, I HATE TO LET YOU DOWN, BUT I DON'T KNOW THE ANSWER. SO --

SO.

I CAN'T ADDRESS THAT. AS I SAID, IT WOULD BE BETTER POLICY, TO, IN TERMS OF VOLUNTARINESS OF ANY PLEA, IF ALL OF THE CONSEQUENCES ARE LAID OUT BEFORE THEM. JUST ROLLING ON, I KNOW YOU ALL ARE ANXIOUS TO LEAVE, BUT, WELL, I KNOW THERE ARE PROCEEDINGS THAT YOU ALL ARE ANXIOUS TO GET TO. WE WOULD ASK THAT YOU REPHRASE THE CERTIFIED QUESTIONS TO THE ONE THAT I RAISED EARLIER, ANSWER IT IN THE NEGATIVE, AND QUASH THOSE DECISIONS AND REMAND TO THE FIRST DISTRICT.

STANDBY TO MURRAY IS REALLY WHAT --

STANDBY TO MURRAY.

CHIEF JUSTICE: ALL RIGHT. THANK YOU VERY MUCH, ESPECIALLY IN RESPONDING TO THE MANY QUESTIONS THAT WE HAD. THE COURT WILL STAND IN RECESS, NOW, UNTIL NINE O'CLOCK TOMORROW MORNING.