# Amendments to Rule of Criminal Procedure 3.851(H)

CHIEF JUSTICE: GOOD MORNING AND THE NEXT MATTER ON THE COURT AND ORAL ARGUMENT CALENDAR, AMENDMENTS TO RULE OF CRIMINAL PROCEDURE 3.8 A 1-H. JUDGE -- 3.8 A 1-H. JUDGE EATON, ARE YOU READY TO PROCEED?

MAY IT PLEASE THE COURT. MY NAME IS O.H. EATON, JR., A CIRCUIT COURT JUDGE IN THE EIGHTEENTH CIRCUIT, AND A MEMBER OF THE COMMITTEE. JUDGE STAN MORRIS IS HERE MONITORING MY EFFORTS THIS MORNING. TO HIS RIGHT IS RAY AFUL, WHO IS CHAIR OF THE CRIMINAL RULES COMMITTEE, AND A SECOND COMMITTEE, BECAUSE THIS COURT MAY REMEMBER THAT YOU ASKED THE MORRIS COMMITTEE AND THE RULES COMMITTEE TO REVIEW THIS PROBLEM AND SEE IF WE NEEDED A RULE, AND IF WE COULD COME UP WITH A RULE THAT WE COULD PROPOSE, AND THAT IS WHAT WE HAVE DONE. I WOULD LIKE TO TAKE SOME OF MY TIME TO TALK ABOUT THE PROPOSED CHANGES, MADE BOTH BY THE ATTORNEY GENERAL AND BY MYSELF, BECAUSE I THINK THE RULE, ITSELF IS FAIRLY STRAIGHTFORWARD, AND THE SUGGESTED CHANGES, I THINK SOME OF THEM HAD SOME MERIT.

NOW, YOUR SUGGESTIONS ARE U?L, JUDGE MORRIS AND MR. RAFULE, BOTH, AGREE WITH MY POSITION, BUT MR. RAFULE HAD SOME THINGS HE WANTED TO SAY, AND HE IS GOING TO SPEAK.

CHIEF JUSTICE: IF YOU WILL ALL OBSERVE YOUR TIME.

THE FIRST THING I WOULD LIKE TO SUGGEST TO YOU IS WE UNFORTUNATELY USED THE TERM "VENUE" WHICH IS A TERM OF ART, IN DESCRIBING WHERE THESE HEARINGS ARE TO BE HELD, LOCATION, AND I THINK TO CHANGE IT TO LOCATION WOULD BE BETTER, BECAUSE VENUE IS A TERM OF ART. I FILED, BY THE WAY, A RESPONSE TO THE ATTORNEY GENERAL'S SUGGESTINGS, ALSO -- SUGGESTIONS ALSO, AND YOU MIGHT WANT TO TAKE A LOOK AT THAT, BUT I SUGGESTED THAT WE CHANGE THE WORD FROM VENUE TO LOCATION OF HEARINGS, BECAUSE VENUE IS THE SITE WHERE THE DEATH SENTENCE WAS IMPOSED BUT THE LOCATION OF THE HEARING IS SOMETHING DIFFERENT ALL TOGETHER. SECLY I SUGGESTED THAT THERE BE A SMALL CHANGE IN THE TRANSMITTAL OF THE RECORD SECTION, TO INCLUDE TRANSMITTING THE RECORD ELECTRONICALLY, IF THAT TECHNOLOGY IS AVAILABLE RESPECT AND, ALSO, TO TRANSMIT THE ORDER THAT IS ENTERED IN THE CASE.

ARE YOU GOING TO COMMENT ON THE ATTORNEY GENERAL'S SUGGESTIONS?

YES, MA'AM. YES, MA'AM.

COULD YOU COMMENT ON THE JUDICIAL ASSIGNMENT ISSUE?

YES. I WILL DO THAT. IN FACT, I THINK THAT IS NUMBER FOUR ON MY LIST. I WILL COME RIGHT TO IT IN JUST A MINUTE. THE THIRD THING THAT I WANTED TO TALK TO YOU ABOUT, THOUGH, IS, WELL, IT IS THE JUDICIAL ASSIGNMENT ISSUE. THE ATTORNEY GENERAL SUGGESTIONS THAT THE -- SUGGESTS THAT THE RULE OUGHT TO STAY A PREFERENCE AS TO WHO SHOULD HEAR THE CASE, AND IT WAS DECIDEDED SHOULD BE A JUDGE WHO HAS HEARD A POSTCONVICTION MOTION. I CAN'T THINK OF A CAPITAL CASE AT THIS STAGE OF THE PROCEEDINGS THAT WOULDN'T HAVE HAD AT LEAST ONE POSTCONVICTION MOTION FILE,TMAYE THERE WOULDN'T BE, NOTHING FILED, BUT NONETHELESS, I THINK TO MICROMANAGE THE ASSIGNMENT OF CASES IN A

PARTICULAR CIRCUIT IS NOT WEISS, AND WHILE IT CERTAINLY MAKES SENSE FOR THE JUDGE THAT IMPOSED THE IS SENTENCE TO HEAR THE PROCEDURES AFTER A DEATH WARRANT IS ISSUED ISSUED, THERE ARE CIRCUMSTANCES WHERE THAT MAY NOT BE THE APPROPRIATE THING TO DO, AND I THINK TO LEAVE IT TO THE CHIEF JUDGE OF THE CIRCUIT TO MAKE THAT DECISION, IS WISER THAN TO TRY TO MICROMANAGE IT.

WOULD THERE BE ANY MERIT IN HAVING, SORT OF A PRESUMPTION, IN FAVOR OF THE JUDGE?

I DON'T THINK YOU NEED TO PUT THAT IN THE RULE, BECAUSE I THINK THAT EXIST. IT MAKES SENSE FOR THE JUDGE THAT IS FAMILIAR WITH THE CASE, TO HAVE --

THE COMMITTEE DOESN'T SEE THAT, THEN, AS PROBLEM.

DOESN'T SEE IT AS A PROBLEM. THE NEXT THING THE ATTORNEY GENERAL SUGGESTED WAS THAT THERE OUGHT TO BE A PROVISION IN THE RULE THAT PROHIBITS THE TRIAL JUDGE FROM ENTERING A STAY OF EXECUTION. IN MY COMMENT THAT I FILED RECENTLY IN RESPONSE TO THAT, I CITED THE SECTION OF THE CONSTITUTION THAT GIVES THE CIRCUIT COURTS POWER TO ISSUE ALL RISKS NECESSARY, AND, ALSO, THE SHAFER CASE, WHICH APPROVED A CIRCUIT JUDGE ENTERING A STAY OF EXECUTION, IF POSTCONVICTION-RELIEF MOTION IS PENDING. IN ORDER TO FULLY DISPOSE OF THE MATTER. SO I SUGGESTED THE ATTORNEY GENERAL'S SUGGESTION IN THAT REGARD IS NOT WELL TAKEN.

DID THE COMMITTEE CONSIDER THAT LANGUAGE? AS I UNDERSTAND IT, THE ATTORNEY GENERAL'S COMMENT IS BASED ON STATUTE 922.061?

YES. RIGHT.

AND DID THE COMMITTEE LOOK AT THAT LANGUAGE IN THAT STATUTE AND DETERMINE --

NO, WE DIDN'T REALLY DO IT THE. THIS IS A RESPONSE TO THAT SUGGESTION, AND ACTUALLY I FOUND THE SHAFER CASE BY ACCESSING THE STATUTE, AND IT WAS ONE OF THE CASES THAT WAS AND TATED UNDER THE STATUTE, AND THIS COURT HAS -- THAT WAS ANNOTATED THASTATUTE, AND THIS COURT HAS SAID THAT THE CIRCUIT JUDGES HAVE THAT AUTHORITY. IT HAS BEEN THERE AND WAS THERE AT THE TIME THAT THE SHAFER CASE WAS DECIDED. THE NEXT THING THAT WAS SUGGESTED BY THE ATTORNEY GENERAL WAS THAT THERE MAY BE TIMES WHEN THE DEFENDANT WOULD NOT WANT TO BE PRESENT AT HEARINGS OR COULD NOT BE PRESENT FOR VARIOUS REASONS, SUCH AS BEING DISRUPTIVE AND HAVING TO BE REMOVED FROM THE PROCEEDINGS, AND WHILE QUITE FRANKLY, I HAVEN'T HEARD AFTER CASE WHERE THIS BECAME A PROBLEM, THE ATTORNEY GENERAL SUGGESTS THAT WE OUGHT TO INCLUDE SOMETHING IN THAT REGARD, AND IF THE COURT AGREES WITH THAT, I DON'T HAVE A PROBLEM WITH IT. I SUGGESTED SOME LANGUAGE IN MY RESPONSE THAT WOULD SAY A DEFENDANT MAY WAIVE THE RIGHT TO BE PRESENT AT ANY HEARING, IN WRITING, IF THE DEFENDANT IS ABSENT VOLUNTARILY OR IS REMOVED FROM THE HEARING BECAUSE OF DISRUPTIVE CONDUCT, THE HEARING SHALL PROCEED AS IF THE DEFENDANT WAS PRESENT. I THINK THAT TAKES CARE OF THAT PROBLEM.

IS THAT PARALLEL TO WHAT EXISTS IN THE RULES, CONCERNING OTHER PROCEEDINGS? RS WE SHOULDN'T REALLY HAVE A DIFFERENT --

I DON'T THINK IT STATES ANYTHING NEW.

BUT IS THAT THE SAME LANGUAGE OR WOULD YOU SUGGEST THAT THE SAME LANGUAGE, WHATEVER IT, BE USED,T GOVERNS DEFENDANTS' RIGHTS TO BE PRESENT AT HEARINGST E POST --

MY COLLEAGUES MAY KNOW MORE THAN I, BUTI CAN'T REMEMBER A RULE IN THE CRIMINAL

RULES THAT DEALS WITH IT.

SO WHY WOULD WE WANT TO HAVE ONE FOR THI

THE RAL SUGGESTED IT, AND I DON'T HAVE AN OBJECTION TO IT, SO IF YOU THINK THAT ITRY, FINE BUT LIKE I SAID, I DON'T REMEMBER EVER HAVING A SITUATION ARISE OR KNOW OF A SITUATION IN THE STATE THAT A ROSE WHERE THIS -- THAT AROSE WHERE THIS WAS A PROBLEM, BUT NONETHELESS, I DON'T RECALL HAVE -- I DON'T REALLY HAVE AN OBJECTION TO HAVING SOME GUIDANCE THERE.

THERE SHOULD BE A REASON, IF WE ARE GOING TO PUT A SPECIAL RULE INTO PLACE, MAYBE THE ATTORNEY GENERAL COULD SPEAK TO THAT.

YOU NEED TOK MISS SNURKOWSKI ABOUT THAT. THE NEXTE,I AGREE WITH IT, SHE SUGGESTED THAT PARAGRAPHS 7, 8 AND 9 OF THE PROPOSED RULE BE CHAD SLIGHTLY, BECAUSE IT ASSUMED, THE LANGUAGE OF THOSE RULES ASSUMED THAT THERE WAS GOING TO BE ADD EVIDENTIARY HEARING, AND THAT MAY NOT HAPPEN. IT MAY BE THAT THE ALLEGATIONS OF THE MOTION AREPLETY D BY THERECORD. IIT IS JUSTA MATTER OF LAWE SUGGESTED SOME CHANGES ON THOSE PARAGRAPHS, TO TAKEE OF THAT CONTINGENCY. FINALLY, THE ATTORNEY GENERAL SUGGESTED THAT THE PAPERS THAT ARE SERVED AFTER A DEATH WARRANT IS ISSUED, SHOULD BE SERVED BY X SIMM LEE TO ALL OF THE PARTIES, AND I -- BY FAX TO ALL OF THE PARTIES, AND I SUGGESTED THAT THE FAX IS GOING THE WAY OF THE 8-TRACK TAPE, BECAUSE EVERYTHING WILL BE TON OVER -- WILL BE DONE OVER THE INTERNET, WITH TECHNOLOGY GOING THE WAY IT IS GOING. BUT THESE PLEADINGS, IN SOME CASES, ARE VERY BULKY, AND TO TRY TO FAX SIMM LEE THICK, MULTI-PAGE DOCUMENTS SOMETIMES IS NOT VERY EASY. IF YOU HAVE ANY QUESTIONS, I WILL BE HAPPY TO ANSWER THEM.

WOULD THERE BE ANY OBJECTION, AS FAR AS A FACSIMILE IS CONCERNED, TO ALLOW IT WHERE PRACTICAL?

WELL, JUSTICE, HERE IS ONE OF THE FIRST THINGS THE RULE DOES IS IT REQUIRES THE ASSIGNED JUDGE TO HOLD A CASE MANAGEMENT CONFERENCE, THAN IS THE KIND OF THING YOU TAKE UP AT A CASE MANAGEMENT CONFERENCE. YOU GET THE LAWYERS THERE AND YOU SAY ALL RIGHT. DOES IT MAKE SENSE TO USE FAX SIMM LEE, OR SHOULD WE DO IT BY EMAIL OR HOW SHOULD WE DO IT? AND I THINK THAT ISY CASE PROBLEM, AND IT KIND OF DEPENDS ONE CASE ARISES. SOME COUNTIES ARE BETTER EQUIPPED TO HANDLE DIFFERENT KINDS KINDS OF ELECTRONIC TRANSMISSION -- DNDS OFCSIONSTER THAN OTHERS. THANK YOU.

CHIEF JUSTICE: MR. RAY FIELD OR WHO IS GOING TO GO NEXT HERE

MAY IT PLEASE THE COURT. I THOUGHT I WAS GOING TO HAVE FOUR MINUTES AND NOW APPARENTLY I HAVE A LOT OF TIME.

CHIEF JUSTICE: YOU CAN SAVE IT FOR ANOTHER DAY.

IS THERE A BANKING PROCESS? FIRST, TO SUGGEST THE THINGS THAT WE MIGHT WANT TO LOOK AT, WITH REGARD TO THAT, THEN, THE PREFERENCE TO THE TRIAL JUDGE, WE ARE SAYING PREFERENCE, OUR LANGUAGE THAT WE USE WHENEVER FEASIBLE RESPECT AND I THINK IT IS VERY GOOD TO PUT IN THE RULE AND TO HAVE SOME UNIFORMITY AND CONTINUITY THROUGHOUT THE STATE, WITH REGARD TO HOW WE ARE GOING TO HANDLE THESE CASES. I THINK IN TODAY'S DATE, WE DON'T HAVE THE REPRESENTATIVE REPRESENTATIVENESS OF HAVING THESE WARRANTS AND THE LITIGATION IN THOSE WARRANTS. IF AND WHEN IT BECOMES MORE ACTIVE, FOR LACK OF A BETTER TERM, I THINK YOU OUGHT TO HAVE SOME UNIFORMITY AND SOME UNDERSTANDING ABOUT HOW THIS IS TO BE PROCEEDED. THESE ARE CERTAINLY EXTRAORDINARY CIRCUMSTANCES AND TIMES.DON'T WE HAVE TO BE CAREFUL ABOUT THAT,

THOUGH? I KNOW ONE OF THE THINGS, AS YOU KNOW, WE HAVE BEEN FOCUSING ON TRYING TO DO THE VERY BEST WE CAN, FOR A NUMBER OF YEARS NOW, WITH THIS.

SURE.

AND ANECDOTALLY, ONE OF THE THINGS WE FOUND OUT THERE WAS ACTUALLY THERE WAS SOME OF THESE FILES THAT HAD FALLEN THROUGH THE CRACK OR WHATEVER. THEY HAD FALLEN THROUGH THE CRACK BECAUSE OF THIS PROBLEM ABOUT TRYING TO GET THE JUDGE THAT HAD HANDLED IT BEFORE, AND THAT JUDGE HAD MOVED ON TO OTHER DIVISIONS AND OTHER THINGS, AND THERE WAS A GREAT DIFFICULTY, AND IT ENDED UP, AS I SAY ANECDOTALLY, IT MAY HAVE COME FROM YOU OR OTHERS.

LET'S HOPEOT.

THAT THERE ACTUALLY WAS A PROBLEM CREATED BY THE PERCEPTION FROM THE CHIEFE THATD HAD THAT IT HAD TO BE HANDLED BY THE JUDGE BEFORE.

I AGREE WITH YOU.

IT IT BECAME MORE OF A PROBLEM, SO ISN'T THERE SOME WISDOM TO THE COMMITTEE'S RECOMMENDATION THAT, SINCE THIS APPARENTLY IS THE 4 OBVIOUS WAY TO HANDLE THE SITUATION. NOW I REMEMBER THE WAR STORIES OR THE BAD PROBLEMS, AND I AM APPREHENSIVE THAT A CHIEF JUDGE WILL TAKE US, SAYING THAT THERE IS A PRESUMPTION OR WHATEVER, AS BEING, WELL, I HAVE GOT TO DO THAT, THEN, AND IT WILL CREATE ANOTHER ONE OF THESE INSTANCES WHERE WE HAVE SOMETHING FALL THROUGH THE CRACK, BECAUSE THE JUDGE THAT IS NOW TRYING CIVIL CASES IN THE CIVIL DIVISION ISN'T GOING TO GET AROUND TO HANDLING SOMETHING.

BUT I THINK THAT WAS PART OF THE PROBLEM, THAT YOU DON'T HAVE YOU DIDN'T HAVE UNIFORMITY, AND, AGAIN, ALL WE ARE SUGGESTING IS THAT, WHENEVER FEASIBLE, PREFERENCE OUGHT TO BE GIVEN TO A JUDGE WHO HAS ALREADY ENTERTAINED THIS ISSUE.

ARE YOU CLAIMING THAT THAT IS NOT THE PRACTICE NOW?

I DON'T KNOW. THAT IS WHY I AM SAYING I THINK IT IS VERY GOOD --

THE COMMITTEE SEEMS TO SAY THAT INDEED --

I THINK IT IS MORE THEY ARE CONCERNED ABOUT MICROMANAGING, THAT WE ARE TRYING TO REGULATE. I AM CERTAINLY NOT INTENDING TO REGULATE WHAT ACHIEVE JUDGE DOES IN HIS -- WHAT A CHIEF JUDGE DOES IN HIS CIRCUIT, BUT THERE IS GUIDANCE TO THAT, AND I THINK IN ONE WAY WE ARE KIND OF MISSING THE POINT, BECAUSE I THINK THERE WAS, HAS BEEN PROBLEMS, AND I THINK WE NEED TO CLARIFY IT, BUT I THINK THE OTHER THING IS WE ARE NOW REQUIRING TRIAL JUDGES TO HAVE COURSES WITH REGARD TO THESE SPECIALTY CASES, AND WE OUGHT TO KNOW THAT, IF THOSE ARE THE PEOPLE THAT ARE DOING IT, THEN THOSE ARE THE PEOPLE THAT OUGHT TO GET THE CASES BACK, AND THERE ON THE NOT TO BE AN EXCUSE. MAYBE JUST BECAUSE YOU MOVEDN TO ANOTHERFH,E YOU OUGHT TO HAVE THE POWER TO BE RECRUITED. I DON'T THINK IT IS A MUST BUT I THINK IT IS WITH REGARD TO UNIFORMITY AS TO HOW SOMETHING SHOULD BE HANDLED WITHIN THIS STATE.

GOING BACK TO THE ORIGINAL RULE, THIS ONE IS NOT JUST ON THE DEATH WARRANT PROCEDURE, THAT WE DID CONSIDER AND REJECTED HAVING THAT IN THE POSTCONVICTION RULES.

PROVISIONS. SURE.

SO I AM CONCERNED ABOUT -- THE MAJOR GOAL OF THE COURT WAS TO MAKE SURE THAT THE DEATH WARRANT PROCEEDINGS PROCEDURES -- PROCEDURES WERE HANDLED EXPEDITIOUSLY AND TO THE BEST EXTENT POSSIBLE, UNIFORMLY, SO THAT IS MY CONCERN IS INPUTING THIS REQUIREMENT HERE, WE DIDN'T PUT IT ON THE, FOR THE OTHER POSTCONVICTIONS.

ACTUALLY I WOULD ASK YOU TO REVISIT THAT, BUT APART FROM THAT, THAT BEING ANOTHER DAY AND ANOTHER POINT IN TIME, I THINK THAT THIS IS A SPECIALTY PROCEEDING, AND THAT MORE LIKELY THAN NOT, PAST THE POSTCONVICTION, THAT TRIAL JUDGE WILL VERY LIKELY HEAR THE WARRANT CASE MUCH MORE QUICKLY THAN THEY MIGHT, WITH REGARD TO THE DIRECT APPEAL AND THE POSTCONVICTION.

BUT IF THERE HAS BEEN A JUDGE THAT HAS HANDLED THE POSTCONVICTION, I AM TRYING TO THINK AFTER CHIEF JUDGE, THAT IF THAT JUDGE THAT HANDLED THE POSTCONVICTION WAS NOT, WAS ACTIVE AND PRESENT IN THE CIRCUIT, WOULD NOT APPOINT THAT SAME JUDGE, OR THAT SAME JUDGE WOULDN'T BE HEARING THE --

AGAIN, IT IS NOT A MANDATORY REQUIREMENT. ALL WE ARE ASKING IS THAT PREFERENCE, AND THERE BE SOME UNIFORMITY AND GUIDELINES, WITH REGARD TO THIS RULE, AS TO PREFERENCE TO DO THAT. WITH REGARD TO THE SECOND SUGGESTION, ABOUT THE STAY OF EXCUSE, THE -- OF EXECUTION, THE STAY WOULD SUBMIT THAT, IF, IN FACT, THE COURT IS IN AGREEMENT WITH JUDGE EATON WITH REGARD TO HIS POSITION, AS TO THE FACT, AND I AM NOT ARGUING, ASSERTING THAT THE TRIAL COURTESN'T HAVE THE ABILITY TO GRANT A STAY THEN WE OUGHT TO TAKE THIS LANGUAGE OUT, BECAUSEY WHAT IS MOST TROUBLING ABOUT THE LANGUAGE IN THE RULE IS HOW EXPANSIVE AND HOW IT IS WORDED, AND THAT IS REALLY WHAT WE ARE TRYING TO ADDRESS. I THINK THAT, IF YOU LOOK AT WHAT THE REAL ROOUL SAID, A STAY OF EXECUTION SHOULD ONLY BE GRANTED WHEN REQUIRED DUE TO LOGISTIC DIFFICULTIES AND E WITNESSES AND OTHER CIRCUMSTANCES. WE ARE TALKING ABOUT TWO POINTS, UNDER WARRANTD EXTRAORDINARY EX-ING ITANCY OCCUR THAT WE OUGHT TO TAKE THAT INTO ACCOUNT, AND THEN WE SHOULD NOT HAVE ANY LANGUAGE AT ALL. IF HE HAS POWER TO GRAN THESE CIRCUMSTANCES, THEN WE OUGHT NOT TO HAVE ANY LANGUAGE AT ALL WITH REGARD TO THAT.

WE HAVEN'T HAD ANY DIFFICULTY WITH TRIAL JUDGES ABUSING THAT RULE, HAVE WE?

NO.

IF ANYTHING, THE RECORD HAS BEEN THE OTHER WAY AROUND. THAT IS JUDGES HAVE BEEN RELUCTANT TO, SO, WHY WOULD WE NOW, ALL OF SAWED EN, THINK THAT THE JUDGE -- ALL OF A SUDDEN, THINK THAT THE JUDGING WILL TAKE THIS RULE AND ENTER A STAY --

I THINK IT IS PRELIMINARY, THAT A TRIAL JUDGE MAY GRANT A STAY FOR GOOD CAUSE OR WHATEVER WE NORMALLY HAVE A REASON FOR STAY. BUT THAT IS NOT WHAT THIS RULE SAYS. WE ARE KIND OF DELINEATING CERTAIN THINGS THAT, YEAH, THAT IS OKAY. AND I WOULD CONTEND THAT WE ARE TRYING, WE ARE CAUSE MORE LITIGATION WITH REGARD TO A STAY. WE ARE GOING TO MOVE THE FOCUS OF WHAT WE ARE SUPPOSED TO BE DOING, FROM WHETHER WE ARE GOING TO EMBARRASS HIM OR SPEND ALL OUR TIME SPINNING WHEELS ABOUT WHETHER THERE SHOULD HAVE BEEN A STAY GRANTED OR SOMETHING, AND I THINK WE ON THE TO BE LOOKING AT THIS AS TO THE UNDERPINNINGS AS TO WHY WE ARE THERE AND THAT IS THE CASE AS TO WARRANT.

YOU THINK WE OUGHT TO REMOVE IT.

ABSOLUTELY. I THINK IT IS INHERENT WITHIN THE TRIAL COURT'S ABILITY TO DO THAT, BUT I THINK WE HAVE TO BEDFUL OF THE STATUTE, TO TOO. IT HAS BEEN IN -- OF THE STATUTE . BNN

PLACE, NOT ALWAYS ENFORCED, BUT IT HAS BEEN IN PLACE WITH REGARD TO THIS LANGUAGE, AND I CAN GUARANTEE YOU THERE IS SOMEPLACE IN THE RULE THAT TALKS ABOUT THE PROVISION OF IF A DEFENDANT IS BEING DISRUPTIVE, HE CAN BE REMOVED AND THE PROCEEDINGS WILL NOT STOP. THEY WILL GO O I THINK IT IS A TRIAL OF RULE BUT I DIDN'T MARK IT IN MY NOTES, MY LITTLE CHEAT SHEET TODAY, BUT I KNOW THERE IS A RULE, AND THIS LANGUAGE WITH REGARD TO THE PRESENCE OF THE DEFENDANT.

THERE IS, THOUGH, GOING BACK, RIGHT NOW, 3.851-H-3, SAYS, PRISONER'S PRESENCE SHALL NOT BE REQUIRED AT ANY HEARING OR CONFERENCE UNDER THIS RULE EXCEPT FOR THE EVIDENTIARY HEARING ON THE MERITS.

RIGHT.

SO WE NOW HAVE THIS RULE THAT CHANGED, THE PROPOSED RULE ACTUALLY HAS A CHANGE, IN THAT IT HAS IN PERSON OR ELECTRONICALLY.

UM-HUM.

AGAIN, JUST TO TRY TO UNDERSTAND THE PARALLEL NATURE, UNLESS WE ARE GOING TO AMEND THE POSTCONVICTION RULE, SEEMS TO ADD SOMETHING IN THAT IS NOT IN THAT RULE.

RIGHT. RIGHT.

AGAIN, MIGHT CREATE SOME CONFUSION.

RIGHT.

MAYBE THE RULE. I THINK THERE IS, MAYBE THE RULE THAT EXISTS APPLIES ACROSS THE BOARD, ANYWAY.

ACROSS THE BOARD. RIGHT. IT WAS JUST A MATTER OF WHEN WE HAD, WHEN WE HAVE A SPECIFIC PROVISION THAT TALKS ABOUT THE PRETSENS -- THE PRESENCE OF DEFENDANT, WE ARE REALLY TRYING TO DELINEATE THAT HE IS GOING TO BE THERE EVERY OCCASION, AND WE SHOULD DO EVERYTHING IN OUR POWER, WHETHER IT IS ELECTRONICALLY OR WHATEVER, AND I WAS TRYING TO SUGGEST TO THE COURT THAT THERE ARE OTHER RULES IN THE RULE THAT THIS IS GARNERED FROM THAT HAS TO DO WITH A DEFENDANT THAT IS DIFFICULT. YOU CANNOT FORCE --

THERE HIS CASE LAW.

ABSOLUTELY. BUT I DON'T THINK IT HURTS. IF YOU ARE GOING TO HAVE A RULE,NK THE POINT OF ALL OF THIS WAS TO ARTICULATE, UNDER WARRANT WHAT THE PROCEEDINGS ARE GOING TO BE, AND I DON'T THINK IT IS UNTOWARD FOR US TO LOOK TO AND MAKE SURE WE CAN MAKE IT AS COHOUT B G,TS COMPLETE AS POSSIBLE, SO THAT EVERYBODY UNDERSTANDS WHAT THE GAMEPLAN IS WHEN WE ARE OPERATING UNDER THIS KIND OF EXIGINTACY. THE STATE ALSO SUGGESTED LANGUAGE WITH TRANSCRIBING ALL PROCEEDINGS, AND I KNOW THAT IS DIFFICULT WHEN LITIGATED UNDER A WARRANT THAT MANY TIMES THE ONLY THING WE CAN GET UP HERE IS THE 6 EVIDENTIARY HEARING, AND I DON'T THINK THAT MEANS THAT WE ARE GOING TO STOP THE PROCESS SO THAT YOU CAN SEE WHAT IS GOING ON, BUT IF WE ARE DOING THIS IN AN EX-PED, I MANNER, WE OUGHT -- IN AN EXPEDITIOUS MANNER, WE OUGHT TO HAVE THE TRANSCRIPTS OF ALL OF THE PROCEEDINGS.

I DON'T RECALL THERE BEING AN OBJECTION OR A RESPONSE TO THAT?

NO. THAT WAS JUST PROPOSED, AND I WAS JUST SUGGESTING THAT.

YOU NEED TO BE VERY CAREFUL.

ANT LAST THING, OF COURSE, IS TRANSMITTAL BY FAX, AND -- AND THE LAST THING, OF COURSE, IS TRANSMITTAL BY FAX. I AM OLD SCHOOL, AND I KNEW US BEFORE FAXES AND WE HAD TO HAND DELIVER THEM BY PONY EXPRESS, BUT THE BOTTOM LINE IS CY TECHNOLOGY MIGHT INCREASE, BUT WE HAVE BEEN UNDER WARRANT AND I CAN TALK, NOW, ANECDOTALLY, UNDER WARRANT, AND SOMETIMES WE GET TRANSMIT ALWAYS BY FAX, OF THEEADINGS, AND THEN WE DON'T GET THEM OF THE LATER PLEADINGS, AND I THINK WE OUGHT TO HAVE SOME UNIFORMITY WITH REGARD TO THAT. IF THAT IS THE WITH ALL TO DO IT THEN FINE, BUT I THINK IN THE -- THE WHEREWITHAL TO DO IT, THEN FINE, BUT IN THE RULE CERTAINLY WE OUGHT TO HAVE THE CONFIDENCE OF SAYING WE WILL WAIVE THAT, BUT CERTAINLY I THINK WE OUGHT TO HAVE SOME MEANS OF DOING THAT THAT.

CHIEF JUSTICE: THANK YOU H MR MR. CANNON. I THINK YOU WERE GOING TO SPEAK FOR THREE MINUTES.

THANK YOU HAD, MR. CHIEF JUSTICE. I AM HERE FROM THE OFFICE OF CAPITAL COLLATERAL REGIONAL COUNSEL FROM THE MIDDLE DISTRICT OF FLORIDA. I GUESS THE PROPOSEDULS RLE, BECAUSE THIS IS WHAT WE DO ANYWAY. THE LAST TWO WARRANTS I WAS INVOLVED IN, THE LEN ROY BOTTOSON WARRANT -- THE LINROY BOTTOSON WARRANT, THIS IS WHAT WE DID. WE MAPPED IT OUT AND SO FORTH. THE ONLY PROVISION OF THE RULE THAT I WOULD SUBMIT TO THE COURT IS PROBLEMATIC, IS THE ONE REQUIRING OR ADDRESSING THE PRESENCE OF THE DEFENDANT. TO ME, THAT IS PROBLEMATIC, BECAUSE IT APPEARS THAT THE BURDEN IS ON THE DEFENDANT TO SHOW THAT IT IS PRACTICAL THAT HE GO THERE, AND AS JUSTICE PARIENTE, I THINK YOU POINTED OUT THERE IS SOME SORT OF INCONSISTENCY BETWEEN --

YOU ARE TALKING ABOUT THE PROPOSED RULE THAT SAYS IN PERSON AND PRACTICAL OR ELECTRONICALLY, WHICH ISN'T PRESENT, IN THE POSTCONVICTION RULE 3.851.

ABSOLUTELY CORRECTLY. I HAVE A PROBLEM WITH THAT, ONLY BECAUSE OF JUST NATURE OF THE PROCEEDINGS,. THESE WARRANT PROCEEDINGS ARE FAST. THEY ARE QUICK.

MAYBE, ISN'T THAT A REASON WHY ELECTRONIC PRESENCE MAY BE REQUIRED IN A GIVEN CASE, WHERE IT MIGHT NOT BE IN THE INITIAL POSTCONVICTION MOTION, WHERE IT IS NOT, TIME IS NOT OF THE ESSENCE?

SURE, BUT MY EXPERIENCE WITH ELECTRONICS, I AM NOT SURE IF WE ARE TALKING ABOUT THE INTERNET, TELEPHONE, IF WE TRIED WORKING OVER THE TELEPHONE DURING LINROY BOTTOSON AND YOU HAVE TRANSMISSION WITH ATTORNEYS, AND WE CAME HERE AND SO FORTH. YOU HAVE PROBLEMS WITH THE ATTORNEY/CLIENT PRIVILEGE, IF I WANT TO CONSULT WITH MY CLIENT DURING PROCEEDINGS, I CAN'T DO THAT THE. IT IS IMPOSSIBLE.

SO ELECTRONICALLY, IT CAN BE ANYTHING FROM A VIDEOCONFERENCE TO A TELEPHONE. IT IS NOT CLEAR IN THIS RULE.

HAD CORRECT. IT IS NOT CLEAR, AND WITH -- CORRECT, IT IS NOT CLEAR, AND WITH REGARD TO VIDEOCONFERENCING MY EXPERIENCE BEFORE COMING TO CAPITAL COLLATERAL WAS WORKING IN THE 13th JUDICIAL CIRCUIT,RKING FOR THEIC DEF, H HAD A LOT OF TECHNOLOGY VIDEOCONFERENCING, AND THAT WENT DOWN A LOT. THERE WERE PROBLWITH THAT, TOO. IT WAS SLOW AT BEST. IT WAS AGGRAVATING. I SEE THAT AS A WAY OF ACTUALLY SLOWING DOWN THESE PROCEEDINGS. IF YOU ARE IN THE MIDDLE OF A PROCEEDING AND YOU HAVE A WITNESS ON THE STAND AND YOUR CLIENT IS ON THE COMPUTER AND THE COMPUTER GOES DOWN AND WE ALL KNOW THAT COMPUTERS GO DOWN, THAT IS GOING TO STOP THE PROCEEDING. THE JUDGE HAS TO DECIDE WHAT TO DO. I HAVE TWO ALTERNATIVES, IN PERSON OR

ELECTRONICALLY.

IF I RECALL THE PROVISION WAS FOR NONE OF THE EVIDENTIARY MATTERS TO BE HANDLED, IN OTHER WORDS IF YOU ARE JUST HAVING A CONFERENCE AMONG THE LAWYERS BUT THE DEFENDANT, ALSO, CAN HAVE A PRESENCE, TOO, TO SET UP, TO, LET'S DEVELOP A GAMEPLAN, FOR INSTANCE, ABOUT HOW THIS IS GOING TO PROCEED, AND A JUDGE IS GOING TO SAY, WELL, WHAT HAVE YOU REALLY GOT HERE, AND DO WE NEED TO HAVE A FACE-TO-FACE CONFERENCE TO SET OUT THE ISSUES YOU KNOW, THAT ACTUALLY ARE GOING TO BE RAISED IN ANY EVIDENTIARY HEARING, AND ARE YOU SAYING IT IS NOT WORKING THAT WAY?

WELL, NO. WITH REGARDS TO, I THINK YOUR POINT, JUSTICE ANSTEAD, WITH REGARDS TO THESE INITIAL CONFERENCES, NO, THE, WE DON'T BRING DOWN THE CLIENT. WE DON'T BRING DOWN THE DEFENDANT.

SO THAT IS WORKING ALL RIGHT, AS FAR AS --

THAT IS FINE, YES, BECAUSE THEN WE GO BACK AND WE DO A PHONE CALL TO THE PRISON, DEPARTMENT OF CORRECTIONS. IT GIVES US A LOT OF LEEWAY WITH THAT AND SETS THAT UP. HOWEVER, WHEN WE GET TO THE EVIDENTIARY HEARING, WHICH IS WHAT THIS RULE SPECIFICALLY ADDRESSES, OR THE PROPOSED RULE, I THINK WE HAVE PROBLEMS, AND SERIOUS PROBLEMS AS I POINTED OUT.

CHIEF JUSTICE: I THINK YOUR TIME IS UP.

THANK YOU, MR. CHIEF JUSTICE. WE WOULD FINALLY JUST SAY NO PROBLEMS WITH ALL OF THE RULE, EXCEPT JUST OPPOSE THAT ONE SECTION.

CHIEF JUSTICE: THANK YOU. THANK YOU, COUNSEL, AND JUDGES, AND WE APPRECIATE VERY MUCH, YOUR ASSISTANCE AND ALL OF THE WORK THAT THE COMMITTEE CHAIRED BY JUDGE MORRIS -- STICEPARIENT.

JUST OF THE COMMITTEE. ONE QUESTION?

CHIEF JUSTICE: GO AHEAD. ANOTHER REASON FOR H-6 AND THE ELECTRONIC PRESENCE IN THE WARRANT PROCEDURE FOR THE EVIDENTIARY HEARING, VERSUS NOT HAVING THAT IN A 3.WILL 50-HOE IN A 3.850, WHAT WAS THAT WITH THE COMMITTEE?

THE PROBLEM IS, UNDER A WARRANT PROCEDURE, YOU HAVE SUCH LIMITED TIME, AND SOMETIMES THE LOGISTICS ARE PROBLEMS, SO WHAT WE TRIED TO BUILD IN A LITTLE BIT OF FLEXIBILITY, JUST IN THE EVENT, LET'S SAY, IT IS NECESSARY FOR THE COURT TO GO TO MIAMI TOY TAKE TESTIMONY FROM A PARTICULAR WITNESS AND THE DEFENDANT IS IN STARK, IT MIGHT MAKE SENSE TO TRY TO DO IT -- IS IN STARK, TO DO IT, IT MIGHT MAKE SENSE TO DO IT ELECTRONICALLY. I BELIEVE IN VIDEOCONFERENCE, BUT THE REALITY -- BUT THE REALIBILITY NOW IS JUST ABOUT AS GOOD AS ISSUING A WRIT.

CHIEF JUSTICE: THANK YOU.