03-530

THE SUPREME COURT OF THE GREAT STATE OF FLORIDA IS NOW SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, GIVE ATTENTION AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE COURT.

CHIEF JUSTICE: GOOD MORNING.

MARSHAL: LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: GOOD MORNING EVERYONE. WELCOME TO THE FLORIDA SUPREME COURT. WE APOLOGIZE, IF WE WERE A COUPLE OF MINUTES LATE. WE HAD SOME IMPORTANT EMERGENCY BUSINESS TO TAKE CARE OF, IMMEDIATELY BEFORE WE CAME OUT ON THE BENCH. WE APPRECIATE COUNSEL BEING READY ON THIS FIRST CASE, AND WE UNDERSTAND THAT THE MARSHAL IS ALSO PREPARED, THE WAY THAT YOU HAVE DIVIDED YOUR TIME, THAT HE WILL GIVE EACH OF YOU A WARNING WITH A RED LIGHT, IF YOU HAVE USED THE ALLOTED TIME, SO WITH THAT, IF COUNSEL IS READY TO PROCEED, YOU MAY PROCEED. GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. KAREN KAMER ON BEHALF OF THE PETITIONER POST-NEWSWEEK STATIONS FLORIDA INC., DOING BUSINESS AS WPLG, CHANNEL 10 IN MIAMI. AS THIS COURT IS AWARE, THIS ARISES OF THE DOMESTIC VIOLENCE PROSECUTION OF MARY ANN CAROLLO. SPECIFICALLY THE DISCOVERY MATERIAL, THE POLICE PHOTOGRAPH OF HER ALLEGED INJURIES INFLICTED BY HER HUSBAND, PLUS HER TAPED TRANSCRIPT AND STATEMENT ABOUT IT TO THE POLICE.

YOU HAVE ALREADY GOTTEN ALL OF THIS INFORMATION.

YES, WE HAVE, JUSTICE WINS. -- JUSTICE QUINCE.

WHEN DID YOU GET THIS INFORMATION WITH RELATIONSHIP TO YOUR MOTION TO COMPEL BEING FILED?

WE SUBMITTED THE REQUEST TO THE MIAMI POLICE DEPARTMENT, CUSTODIAN ADMITTED VINGD CUSTODY OF THESE RECORDS, THE DAY OF THE INCIDENT, I BELIEVE FEBRUARY 7 OF 2001. THERE WERE A NUMBER OF ITEMS THAT WERE QUALIFIED -- THAT WERE REQUESTED, INCLUDING THE PHOTOGRAPHS AT ISSUE HERE. THE FOLLOWING MORNING WE MADE A PUBLIC RECORDS REQUEST FOR THAT. WE DID NOT GET A RESPONSE FROM THE CITY OF MIAMI NOR DID WE GET THE CITATION OF ANY VALID STATUTORY EXEMPTION FOR ALMOST THREE WEEKS. I GOT INVOLVED OWED-.

AT THE TIME THAT YOU FIRST FILED YOUR MOTION FOR -- I GOT INVOLVED --

AT THE TIME THAT YOU FIRST FILED YOUR MOTION FOR PUBLIC RECORDS, THESE RECORDS WERE EXEMPT. YOU FILED THEM PRIOR TO ANY KIND OF DISCOVERY IN THIS CASE?

WHAT WE DID JUSTICE QUINCE WAS MAKE THE PUBLIC RECORDS REQUEST, AND OUR POSITION AT THAT TIME WAS IMMEDIATELY THAT EVENING OF THE INCIDENT, THE SUBSTANCE OF THE RECORDS HAD ALREADY BECOME KNOWN, THE NATURE OF MRS. CAROLLO'S INJURIES, WHAT HAD TRANSPIRED IN THE COUPLE'S HOME IN THOSE EARLY HOURS, SO THE SUBSTANCE WAS ALREADY OUT AND IN OUR POSITION IT COULD NEVER BE AN ACTIVE CRIMINAL INVESTIGATION FROM THAT

POINT.

THAT IS NOT THE ISSUE WE ARE DECIDING TODAY, CORRECT?

THAT'S CORRECT, JUSTICE PARIENTE, AND TO RESPOND FURTHER TO JUSTICE QUINCE, WE HAD TO FILE A LAWSUIT THREE WEEKS LATER, BECAUSE WE WEREN'T GETTING ANY RESPONSE, AND AT THAT POINT WE GOT INTO THE DISCOVERY ISSUE.

HOW ABOUT COMING BACK TO SQUARE ONE.

YES, SIR.

AND REMIND US OF THE ISSUE THAT IS BEFORE US, THE LEGAL ISSUE THAT IS BEFORE US.

IT IS A VERY NARROW LEGAL ISSUE, CHIEF JUSTICE, AND THAT IS WHETHER CRIMINAL INVESTIGATIVE INFORMATION IS ACCESSIBLE TO THE PUBLIC UNDER OUR PUBLIC RECORDS ACT, WHEN A CRIMINAL DEFENDANT WITHDRAWS HIS CRIMINAL, WITHDRAWS HIS DISCOVERY, PRIOR DISCOVERY DEMAND, AS THE MAYOR DID HERE, ONCE HE REALIZED WHAT WE WERE LOOKING FOR.

LET ME ASK YOU A QUESTION. WHEN WAS THE INFORMATION FILED IN THIS CASE? WHEN WAS THE INFORMATION FILED IN THIS CASE?

THE CHARGING DOCUMENT. THE CHARGING DOCUMENT.

THATION, YOUR HONOR. WHAT I UNDERSTAND -- THAT I DON'T KNOW, YOUR HONOR. WHAT I UNDERSTAND AND THE RECORD REFLECTS THIS, IS THAT THE MAYOR FILED, HIS LAWYER FAILED, TOGETHER WITH A WRITTEN NOTICE OF APPEARANCE, ALSO FILED A WRITTEN PLEA OFING IN, WHICH WOULD -- OF NOT GUILTY, WHICH WOULD OBVIATE THE NEED FOR ARRAIGNMENT AND AT THE SAME TIME HE FILED HIS SCARFIENT -- SERVEIANT DEMAND.

IT IS MY UNDERSTANDING UNDER THE RULE THAT HE HAS THE RIGHT TO DO SO AFTER THE FILING OF A CHARGING DOCUMENT.

SO, IF THE CHARGING DOCUMENT HAD NOT BEEN FILED IN THIS CASE, WHAT IS YOUR POSITION AS TO THE ATTACHMENT OF THE DEFENDANT'S RIGHT TO PARTICIPATE IN DISCOVERY?

WELL --

IN OTHER WORDS, IF THE DEFENDANT'S RIGHT HAD NOT ATTACHED IN THE FILING OR THE REQUEST, BECAUSE IT IS VERY COMMON, FROM MY EXPERIENCE, IN THESE TYPES OF CASES, WHAT DEFENSE COUNSEL WILL DO IS, WHEN THEY ARE RETAINED, THEY WILL FILE THEIR NOTICE OF APPEARANCE ON BEHALF, SO THAT IT PROTECTS THE CLIENT'S FIFTH AMENDMENT RIGHTS, A AND THEY WILL GO AHEAD AND FILE THE NOTICE OF PARTICIPATION AND DISCOVERY, JUST AS A MATTER OF THAT IS HOW THEIR OFFICE POLICY IS TO GET IT OUT.

THAT IS MY UNDERSTANDING AS WELL.

BUT IF THE RIGHT TO PARTICIPATE IN DISCOVERY DOES NOT ATTACH FOR THE DEFENDANT, HE OR SHE HAS NO RIGHTS TO PARTICIPATE IN DISCOVERY UNTIL THE CHARGING DOCUMENT HAS BEEN FILED, AND THE DEFENDANT WITHDRAWS THE REQUEST FOR PARTICIPATE IN DISCOVERY BEFORE THE RIGHT ATTACHES, THEN RESPOND TO THAT, HOW THAT AFFECTS YOUR CLIENT'S POSITION.

WELL, I THINK THE CERTIFIED QUESTION BELOW, CAN BE ANSWERED, REGARDLESS OF WHETHER, IN THIS PARTICULAR INSTANCE, THE DEFENDANT'S DISCOVERY DEMAND IS ELECTION TO

PARTICIPATE -- HIS ELECTION TO PARTICIPATE IN DISCOVERY WAS OVERRULED OF THE THE THE JUDGE RULED THAT IT WAS TIMELY AND FOUND THAT THE WITHDRAWAL WAS NOT SO VEILED ATTEMPT TO TRY TO UNLAWFULLY CONTROL THE PUBLIC'S RIGHT OF ACCESS TO PUBLIC RECORDS, BUT I THINK THE CERTIFIED QUESTION CONTEMPLATES THAT WITHDRAWAL CAN BE NO ANY ONE OF A NUMBER OF -- CAN BE FOR ANY ONE OF A NUMBER OF REASONS.

LET ME GO AT IT FROM THIS DIRECTION. WOULD YOU AGREE THAT, OR AS REQUIRED BY LAW, CONTEMPLATES RULE 3.220? 3.220 IS THE METHOD BY WHICH YOU ARE REQUIRED BY LAW, TO PRODUCE THE DOCUMENT. WOULD YOU AGREE WITH THAT?

YES, I WOULD, JUSTICE WELLS. THAT IS ONE WAY REQUIRED, AN ELECTION TO PARTICIPATE IN DISCOVERY IS ONE WAY TO BE, QUOTE, REQUIRED BY LAW, CLOSE QUOTE, TO, THAT THE DOCUMENTS, MATERIAL BE GIVEN TO THE DEFENSE.

IF WE ARE CONTEMPLATING THE ENFORCEMENT OF THE STATUTE, 119, ON THE BASIS OF 3.220 AND WITH THIS CONTEMPLATION, THAT THESE ARE LAW ENFORCEMENT MATERIALS, THEN WHAT MYTERN CONCERN IS, IS THAT -- WHAT MY CONCERN IS, IS THAT THE STRUCTURE OF 3.220 IS TO GIVE 15 DAYS UPON WHICH THERE IS TO BE A, BY THE CUSTODIAN OF THE RECORDS, AN ABILITY TO REACT TO THE NOTICE OF DISCOVERY, SO THAT THEY CAN GO IN AND GET A PROTECTIVE ORDER, AND AS I UNDERSTAND YOUR POSITION, WHAT YOU ARE SAYING IS THAT, IMMEDIATELY UPON THE FILING OF THE NOTICE, THAT IS THE "REQUIRED BY LAW", BUT THAT WOULD OBVIATE THIS 15 DAYS AND THE ABILITY OF THE CUSTODIAN TO GO IN AND GET SOME TYPE OF PROTECTION, WOULD IT NOT?

I UNDERSTAND YOUR CONCERN, JUSTICE WELLS. IN OUR POSITION, IS THAT THE TEXT OF 3-C-5, SECTION 119.011-3-C-5, WHICH SAYS THAT MATERIAL IS NOT CRIMINAL INFORMATION, IF IT IS EITHER GIVEN TO THE PERSON ACCUSED OR REQUIRED BY LAW TO BE GIVEN TO THE PERSON ACCUSED, THAT NOT ONLY THE PLAIN LANGUAGE CHOSEN BY THE LEGISLATURE BUT THE LEGISLATIVE HISTORY AND POLICY OF THIS STATE, IN FAVOR OF OPEN GOVERNMENT, SUPPORTS, AND IN FACT COMMANDS A READING OF THE PHRASE "REQUIRED BY LAW", TO INCLUDE INSTANCES, THE MOMENT THAT A CRIMINAL DEFENDANT ELECTS TO PARTICIPATE IN DISCOVERY, BECAUSE AT THAT MOMENT, REGARDLESS OF THE 15 DAYS IN WHICH THE STATE HAS TO RESPOND, AT THAT MOMENT, THE STATE IS UNDER COMPULSION OF LAW, IS REQUIRED BY LAW, IS UNDER DIRECTION OF LAW, TO PRODUCE THE MATERIALS, AND WE THINK THAT --

DOESN'T THAT ELIMINATE THE ABILITY OF THE CUSTODIAN OF THE RECORD, OF HAVING A NEUTRAL MAGISTRATE EXAMINE THE REQUEST, TO SEE IF, IN ACTUALITY, IT FITS WITHIN THE PUBLIC RECORDS LAW, BECAUSE UNDER YOUR THEORY, THE FILING OF THE DOCUMENT, THERE IS NO WAY THAT THE CUSTODIAN COULD GET ANY PROTECTION FROM DISCLOSURE!

THAT IS RESPECTFULLY, JUSTICE WELLS, THAT IS NOT OUR POSITION, BECAUSE OUR POSITION IS, IF THE CUSTODIAN HAS A VALID STATUTORY EXEMPTION TO ASSERT, IT IS THE OBLIGATION OF THE CUSTODIAN TO DO SO AND THE LAW, THIS COURT HAS HELD THAT, AND THE STATUTE IS QUITE CLEAR.

THE PROBLEM WITH THAT IS THAT, GOING BACK TO JUSTICE WELLS, THERE MAY BE AN OBJECTION SUCH AS THIS OVERLY BURDENSOME, WHICH MAY NOT NECESSARILY BE PARALLEL TO WHAT THE PUBLIC RECORDS EXEMPTION IS, AND IF THE JUDGE DETERMINES THAT THAT IS CORRECT, THEN THEY WOULD LIMIT THE SCOPE OF THE DISCOVERY. SO THAT IS NUMBER ONE. NUMBER TWO, THE PROBLEM I HAVE WITH YOUR ARGUMENT, THAT IT JUST DOESN'T MAKE ANY SENSE THAT A DEFENDANT WOULD NOT GET MATERIALS FOR 15 DAYS, BUT THAT THE, YOU KNOW, THE MEDIA WOULD GET IT IMMEDIATELY. AND THIRD OF ALL, THE FACT THAT THE RULE ALLOWS FOR WITHDRAWAL OF A REQUEST, WOULD MEAN THAT, WHEN THE MEDIA, IF THEY REQUESTED IT THE DAY AFTER THE WITHDRAWAL, THERE WOULD NO LONGER BE A REQUIREMENT BY LAW, BUT

IF THEY REQUESTED IT THE DAY BEFORE, THEY WOULD, AND THOSE ARE MY CONCERNS.

I UNDERSTAND YOUR CONCERNS, AND I WOULD ANSWER THEM AS FOLLOWS, WITH RESPECT TO WHAT I UNDERSTAND TO BE A FAIRNESS ARGUMENT THAT YOU MIGHT BE MAKING.

REQUIRED BY LAW. WE ARE INTERPRETING, AGAIN, WHAT THE ISSUE IS, IS WHAT DOES "REQUIRED BY LAW" MEAN, IN THE CONTEXT OF CRIMINAL COURT DISCOVERY?

IT CAN MEAN ANY ONE OF A NUMBER OF THINGS. OUR POSITION HERE AND THE FACTS HERE, IN THIS CASE, WERE AN ELECTION TO PARTICIPATE IN DISCOVERY, AND I WILL POINT OUT THAT NO COURT IN THE STATE HAS EVER OPINED THAT THE ONLY WAY CRIMINAL INVESTIGATIVE INFORMATION, OTHERWISE EXEMPT, CEASES TO BE CRIMINAL INVESTIGATIVE INFORMATION AS DEFINED BY CHAPTER 119 AND THUS AVAILABLE FOR PUBLIC INSPECTION, UPON DELIVER TO THE DEFENSE. THAT HAS NEVER BEEN THE LAW IN THIS STATE AND NO COURT, INCLUDING THIS COURT, HAEFERS OPINED AS SUCH. AS A MATTER OF FACT, THE LEGISLATURE SPECIFICALLY CHOSE TWO AVENUES THROUGH WHICH OTHERWISE EXEMPT CRIMINAL DISCOVERY MATERIAL COULD BE AVAILABLE TO THE PUBLIC, AND THIS ASSUMES, OF COURSE, NO OTHER VALID STATUTORY EXEMPTION APPLIES.

WHAT WOULD BE THE PROBLEM WITH A RULE THAT SAYS THAT WHAT WE REALLY, WHAT IS REALLY MEANT BY THAT PARTICULAR SECTION, A SECTION CONCERNING HAVING TO GIVE IT TO THE DEFENDANT, THAT AFTER THE 15-DAY PERIOD, WHETHER THE DEFENDANT HAS ACTUALLY GOTTEN IT OR NOT, THAT, THAT IS WHEN YOUR RIGHT, THE PUBLIC'S RIGHT TO IT ATTACHES TO RECEIVING THIS INFORMATION?

OUR POSITION JUSTICE QUINCE, THAT THE LEGISLATURE CHOSE TWO AVENUES, AND WITH ALL DUE RESPECT, IT WOULD NOT BE FOR THIS COURT TO AMEND THE PUBLIC RECORDS ACT. IN FACT, UNDER HENDERSON, THE TWO HENDERSON CASES --

BUT IT WOULDN'T REALLY BE AMENDING THE ACT. THIS WOULD BE AN INTERPRETATION OF WHAT THAT PHRASE MEANS. "REQUIRED TO BEGIN TO THE DEFENDANT."

I COULD ACTUALLY POINT OUT TO THE COURT THAT I FOUND TWO CASES, REPORTED DECISIONS, IN WHICH IT WAS EXPRESSLY DISCUSSED THAT THE DISCOVERY DEMAND HAD BEEN MADE, SERVED, AND FILED, BUT THE 15 DAYS HAD NOT EXPIRED, AND THE ISSUE OF ACCESSIBILITY TO THE PUBLIC WAS THE ISSUE IN THE CASE. ONE IS A CIRCUIT COURT CASE OUT OF PALM BEACH, A REPORTED DECISION, THE CHERABINO CASE WE CITED TO THE COURT AND THE OTHER CASE UNDERLYING IN THIS COURT'S DECISION IS FLORIDA NEWSPAPERS VERSUS McCRARY, WHERE IN THIS COURT'S OWN OPINION IT SPECIFICALLY DISCUSSES THAT THE MATERIALS AT ISSUE THERE HAD BEEN REQUESTED BY THE TWO CODEFENDANTS BUT HAD NOT YET BEEN TURNED OVER, AND THE ISSUE WAS WHETHER THE PUBLIC COULD GET IT. OF COURSE THE TWO DEFENDANTS WERE ABLE TO MEET THE 3-PART LEWIS TEST AND ABLE TO OBTAIN A PROTECTIVE ORDER, BUT THAT IS NOT OUR CASE.

AREN'T YOU IGNORING ONE OF THE POLICY CONCERNS THAT, REALLY, UNDER LIES THIS PROCEDURE, AND THAT IS AS A PRACTICAL MATTER, WASN'T THE LEGISLATURE REALLY SAYING THAT, SINCE THE DEFENDANT HAS TO BE PROVIDED THIS INFORMATION, AND THEREFORE IT IS NO LONGER GOING TO BE SECURE, WITH THE STATE, THEN IT WILL NO LONGER BE A RECORD THAT DOESN'T HAVE TO BE DISCLOSED, BECAUSE IT IS LIKE THE CAT IS OUT OF THE BAG, AND THAT THAT, REALLY, IS THE UNDERLYING POLICY THAT IS BEHIND THIS PARTICULAR REQUIREMENT THAT THERE IS NO LONGER ANY EXEMPTION FOR THE STATE TO HOLD THIS RECORD? YOU, YOURSELF, IF I UNDERSTAND IT CORRECTLY, HAVE ACKNOWLEDGED THAT THE DEFENDANT CAN CONTROL THIS BY NOT REQUESTING THE RECORD. IS THAT CORRECT? IN OTHER WORDS, IF THE DEFENDANT DOESN'T --

IT IS A CHOICE TO PARTICIPATE. THAT'S CORRECT.

IT IS THE DEFENDANT'S CHOICE, SO WHY, IF IT IS THE DEFENDANT'S CHOICE, WHY SHOULDN'T THAT WORK JUST AS WELL, IF THE DAY AFTER THE DEFENDANT DOES THAT, THE DEFENDANT, THEN, SAYS, OH, NOW I REALIZE THAT THERE IS THIS OTHER, OPENLY, YOU KNOW, I REALIZE THAT THAT IS WHAT THE SITUATION IS, AND THEREFORE, AND THE STATE HAS NOT PROVIDED THIS TO ME, THE 15-DAY PERIOD HAS NOT PASSED, AND I WITHDRAW MY REQUEST, JUST AS I MADE THE DECISION TO MAKE A REQUEST TO BEGIN WITH. AND AS A PRACTICAL MATTER, WHY, IF THE UNDERLYING POLICY IS, ONCE THE CAT IS OUT OF THE BAG, THEN IT SHOULD BE A PUBLIC RECORD, AND THE STATE SHOULD BE ABLE TO -- SHOULDN'T BE ABLE TO HOLD IT, WHY SHOULDN'T IT WORK THAT WAY?

WELL, THEY ARE ALL PUBLIC RECORDS. I GUESS THE QUESTION IS WHETHER THEY ARE ACCESSIBLE, BUT THIS COURT, AND OF COURSE IT IS THE DEFENDANT'S CHOICE TO PARTICIPATE IN DISCOVERY, AND WHAT WE ARE SAYING, WE ARE NOT SAYING THE DEFENDANT CANNOT WITHDRAW. HE CAN WITHDRAW TO HIS HEART'S CONTENT. WHAT WE ARE SAYING IS THAT WITHDRAWAL CAN HAVE NO EFFECT ON THE PUBLIC'S RIGHT OF ACCESS, BECAUSE THAT WOULD GO CONTRARY --

LET ME ASK, THE THIRD DISTRICT EXPRESSED IN ITS OPINION, WHICH WE NEED TO ALSO KEEP IN MIND THE INTEGRITY OF THE CRIMINAL JUDICIAL SYSTEM, WHEN INTERPRETING RULE 3.220 AND YOUR ARGUMENT, AND 3.220 IS DESIGNED TO PROVIDE FOR RECIPROCAL DISCOVERY, SO THAT WHEN THE DEFENDANT ELECTS TO PARTICIPATE IN DISCOVERY, NOT ONLY DOES THE STATE HAVE TO PROVIDE DISCOVERY BUT SO DOES THE DEFENDANT, AND THE THIRD DCA'S CONCERN WAS, BY MAKING THESE RECORDS PUBLIC RECORDS, AS SOON AS THE REQUEST IS MADE, REGARDLESS OF WHETHER THE DEFENDANT WITHDRAWS THE REQUEST,, THE STATE MUST NOW PRODUCE THE DOCUMENTS. THE DEFENDANT CAN WITHDRAW HIS PARTICIPATION IN DISCOVERY AND OBTAIN THE SAME INFORMATION THROUGH PUBLIC RECORD, WITHOUT HAVING TO ENGAGE IN RECIPROCAL DISCOVERY. NOW, DOESN'T THAT IMPOSE A BURDEN ON THE SYSTEM AND MAKE IT UNFAIR TO THE STATE AND GIVE THE DEFENDANT AN UNFAIR ADVANTAGE?

THAT IS, WITH RESPECT JUSTICE CANTERO, THAT IS THE LEGISLATIVE SCHEME WE HAVE BEEN GIVEN, AND IT IS OUR POSITION THAT WE MUST RESPECT THAT. THIS COURT, AND I REALIZE I AM IN MY REBUTTAL TIME, BUT THIS COURT IN CANELLA, IN 1984, MADE IT VERY CLEAR THAT THE SUBJECT OF PUBLIC RECORDS CANNOT CONTROL THE PUBLIC'S ACCESS TO THOSE RECORDS. THE ONLY ENTITY THAT CAN DO THAT IS THE LEGISLATURE.

BUT GOING BACK TO JUSTICE WELLS'S ORIGINAL QUESTION, REQUIRED BY LAW, IN EACH CASE, HAS TO BE LOOKED AT IN THE CONTEXT OF THE RULE OF THIS CASE, THIS CASE, IN THE RULE OF PROCEDURE, SO WHAT WE ARE REALLY DOING IS INTERPRETING WHETHER, UNDER THE RULE OF PROCEDURE, WHETHER REQUIRED BY LAW OCCURS AT THE TIME OF THE DISCOVERY REQUEST OR AT 15 DAYS, AND THAT IS NOT CONTROLLED BY THE LEGISLATURE. THAT IS CONTROLLED BY THE LANGUAGE OF THE RULE.

I UNDERSTAND THAT, JUSTICE PARIENTE, AND WE CITED IN OUR PAPERS TO TRY TO HELP EXPLAIN THAT AND WE ALSO CITED ANALOGIES TO A WITNESS SUBPOENAED, THE WITNESS WHO IS UNDER SUBPOENA IS REQUIRED BY LAW, IS UNDER COMPULSION OF LAW TO APPEAR, REGARDLESS IF THE DATE OF APPEARANCE MAY BE AT SOME FUTURE DATE. WE ARE ALL REQUIRED BY LAW, TO PAY TAXES, ALTHOUGH APRIL 15 MAY BE AT SOME FUTURE DAY. IT IS OUR POSITION THAT THIS COURT, EVEN IF THIS COURT SHOULD HAVE DOUBTS ABOUT THE MEANING OF THE PHRASE "REQUIRED BY LAW", IT SHOULD CONSTRUE IT BROADLY, CONSISTENTLY WITH THE UNDERLYING POLICY OF 119, WITH THIS COURT'S UNBROKEN LINE OF PRIOR PRONOUNCEMENTS, IN ITS OVER AVERAGING COMMITMENT TO PUBLIC -- IN ITS OVER ARCHING COMMITMENT TO PUBLIC ACCESS. THAT CAN INCLUDE A VARIETY OF THINGS. EXCULPATORYTORY -- EXCULPATORY LAW UNDER

BRADY. THE MOMENT THAT A DEFENDANT DISCOVERY --

YOU DO AGREE THAT IT IS NOT REQUIRED BY LAW TO BE DISCLOSED, UNTIL THE PIECE OF PAPER IS FILED WITH THE CLERK'S OFFICE, TO PARTICIPATE IN DISCOVERY.

THE SERVICE AND FILING, I THINK THE RULE SAYS.

YOU AGREE WITH THAT.

YES.

LET ME ASK THE QUESTION IF, FROM A LAWYER'S OFFICE BY MISTAKE, A CLERICAL PERSON HAPPENS TO SENDS IT OUT IN THE WRONG FILE, AND IT IS FILED IN THE CLERK'S OFFICE. WHAT IS YOUR SITUATION THERE? THEY SAY OH, MY GOODNESS, IT IS A MISTAKE. IT HAS BEEN FILED BUT NOT THIS SITUATION, ONE WHERE A TRUE MISTAKE HAS OCCURRED AND EVERYONE AGREES IT IS A MISTAKE. WHAT IS YOUR RESULT UNDER REVIEW, IS THAT IT MUST BE PRODUCEED ANYWAY, THE DOCUMENT?

I HAVE TWO RESPONSES, ONE IS THAT I HARKEN BACK TO, ONCE THE LANGUAGE IS ON THE TABLE, AND I AM QUOTING FROM THE COURT, IS ON THE TABLE, NO ONE CAN TAKE IT OFF BUT THE LEGISLATURE. SECONDLY WITH THE FLORIDA STAR OR COHEN CASE, THE NAME OF THE RAPE VICTIM, THAT KIND OF THING. ONCE IT IS AVAILABLE, IT IS UNFORTUNATE IF THE DISCLOSURE WERE INADVERTENT, BUT PARTICULARLY WHEN WE ARE DEALING WITH THE PUBLIC RECORDS ACT -- TIME NOT TALKING ABOUT IT BEING DISCLOSED. IT IS THAT THE NOTICE WAS INADVERTENTLY FILED.

IT HAS BEEN PUT ON THE TABLE. THAT IS A APPROPRIATE READING OF THE PHRASE "REQUIRED BY LAW".

YOU ARE QUICKLY USING ALL OF YOUR, BUT I AM JUST REMINDING YOU.

I AM JUST RESPONDING IT TO THE COURT'S QUESTIONS. THANK YOU.

GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. I AM ON BEHALF THE STATE OF FLORIDA TOGETHER WITH REGINE MONESTIME AND BENEDICT KUEHNE ON BEHALF OF THE STATE OF FLORIDA. THERE IS NO QUESTION THE STATE FAVORS OPEN GOVERNMENT. THERE IS NO QUESTION ABOUT THAT AND THAT THE STATE BE ALLOWED TO PROSECUTE CASES AND KEEP CERTAIN CRIMINAL INVESTIGATIVE AND INTELLIGENCE INFORMATION SECRET, UNTIL OTHERWISE MADE PUBLIC. AND IT COMES DOWN TO A QUESTION OF WHAT DOES "REQUIRED" TO BE GIVEN, MEAN? THE MEDIA WOULD HAVE YOU BELIEVE THAT THE MOMENT THE DEMAND IS MADE THAT, THE MEDIA, THE PUBLIC IS ENTITLEDED TO IMMEDIATE PRODUCTION. THAT RUNS CONTRARY TO THE RULE, RULE 3.220, CLEARLY ENVISION THAT IS THE STATE HAS 15 DAYS AND MORE IN MILLER CITED BY THE STATE IN ITS BRIEF.

ARE WE GOING TO HAVE SOME KIND OF A RULE HERE, NOW, WHERE A STATE ATTORNEYS OFFICE THAT IS VERY EFFICIENT IN RESPONDING TO THESE KINDS OF REQUESTS, THAT WE HAVE ONE SITUATION, BUT A STATE ATTORNEYS OFFICE THAT YOU KNOW, IS PRETTY SLOW IN RESPONDING AND THROWS UP EVERY OBJECTION IN THE BOOK, IS TREAT ADD DIFFERENT WAY? IN OTHER WORDS JUST BECAUSE OF THAT, IN OTHER WORDS, IS IT GOING TO BE A MATTER OF THE STATE ATTORNEYS OFFICE WAITING FOR THAT REQUEST FOR DISCOVERY, HAS THE PACKAGE READY, AND DELIVERS IT, YOU KNOW, THE SAME DAY WE ARE GOING TO HAVE ONE RULE, BUT IF IT IS THE STATE ATTORNEYS OFFICE THAT ALWAYS WAITS AND LET'S THE 15 DAYS PASS, WE HAVE ANOTHER? IS THAT, ARE WE GOING TO GET INTO AN SITUATION LIKE THAT, AND ARE THOSE GOOD

REASONS TO WITH WITHHOLD PUBLIC RECORDS? -- TO WITHHOLD PUBLIC RECORDS?

NO, JUSTICE. THE RULE SAYS "GIVEN OR REQUIRED TO BE GIVEN." AS A PRACTICAL MATTER, THERE ARE TIMES WHEN, ON SIMPLE CASES, DISCOVERY IS HANDED OVER AT ARRAIGNMENT, WITH THE FILING OF THE INFORMATION. THE STATE WILL ANNOUNCE STATE'S FILING X CHARGE, HANDING OVER DISCOVERY IN OPEN COURT, AND THAT USUALLY INCLUDES VERY BASIC DISCOVERY. THEN THERE IS A CONTINUING OBLIGATION FOR DISCOVERY THROUGHOUT THE RULES AND THE STATE WILL CONTINUE TO PROVIDE DISCOVERY DURING THE COURSE OF THE PROCEEDINGS. IN VERY COMPLICATED CASES AND IT DEPENDS ON THE CASE AND THE ATTORNEY, DISCOVERY IS NOT ALWAYS HANDED OVER AT ARRAIGNMENT. SOMETIMES THERE IS AND SOMETIMES THERE ISN'T, BUT THE QUESTION IS SO IT IS REQUIRED TO BE GIVEN OR REQUIRED TO BE GIVEN. IN THOSE CASES WHERE THE DEFENDANT FILES A DEMAND FOR DISCOVERY AT ARRAIGNMENT AND NO RIGHT TO PARTICIPATE IN DISCOVERY ATTACHES UNTIL THE CHARGING DOCUMENT IS FILED, AND THAT IS USUALLY DONE AT THE ARRAIGNMENT, IF AT ARRAIGNMENT, THERE IS A DEMAND FOR DISCOVERY AND IF, AT ARRAIGNMENT, THOSE DOCUMENTS ARE TURNED OVER, AT ARRAIGNMENT, THEN PURSUANT TO HENDERSON, THE DEFENDANT IS BOUND AND CAN NO LONGER WITHDRAW.

BUT EXPLAIN TO ME WHAT HAPPENS IN A SITUATION IN WHICH THE NOTICE IS FILED UNDER THE RULE. THE STATE, WITHIN THE 15 DAYS, STEPS IN AND FILES A MOTION FOR PROTECTIVE ORDER, AND, NOW, THEN, THE 15 DAYS, THEN, GOES ON BY. IS IT THE STATE'S POSITION THAT THE DOCUMENTS ARE NOT PUBLIC, UNTIL SUCH TIME AS THE COURT RULES ON THE MOTION FOR PROTECTIVE ORDER?

THAT IS NOT THE CASE THAT WE HAVE HERE, BUT I WOULD MAKE THE ARGUMENT THAT THE MOTION FOR PROTECTIVE ORDER DOES TOLL, IF YOU WILL, THE 15 DAYS IN THE OBLIGATION TO PRODUCE, BECAUSE IF THE 15 DAYS, IF THE OBLIGATION TO PRODUCE THE DOCUMENTS, REGARDLESS OF THE MOTION FOR PROTECTIVE ORDER WHICH HASN'T BEEN HEARD FOR ANY VARIETY OF REASONS, IF THE, IF THAT DID NOT TOLL THE 15 DAYS, THEN THE MOTION FOR PROTECTIVE ORDER WOULD NECESSARILY BECOME MOOT, AND I THINK MOST COURTS, ALTHOUGH THAT IS NOT WHAT IS BEING LITIGATED HERE AND I AM NOT AWARE OF ANY CASES SPECIFICALLY ADDRESSING THAT, I WOULD THINK, THOUGH, THAT THAT WOULD ACCESS A TOLLING.

BUT ACTUALLY, UNDER THE WAY THIS WORKED, FROM THE STATE'S PERSPECTIVE, IS THAT, IF THE STATE STEPS IN AND FILES A MOTION FOR PROTECTIVE ORDER, THEN THE DOCUMENTS, REALLY, WOULD NOT BE SUBJECT TO DISCLOSURE, UNTIL THE ORDER ON THE MOTION FOR PROTECTIVE ORDER WAS IN EFFECT, FINAL.

CORRECT, AND THE RULES DO PROVIDE.

IT WOULD MEAN THROUGH APPEAL.

CORRECT.

BUT THAT WOULD ONLY AFFECT THE MATTERS THAT THE STATE SOUGHT PROTECTION FOR.

CORRECT.

WOULD IT NOT? IN OTHER WORDS, IT WOULDN'T AFFECT, REALLY, THAT MASS OF GENERIC INFORMATION OR DOCUMENTS.

CORRECT. AND IT IS A VERY CASE SPECIFIC CASE, AND THE RULE SPECIFICALLY ALLOWS THAT, IF THE STATE WERE TO FILE A MOTOR VEHICLES FOR PROTECTIVE ORDER FOR WHATEVER REASON AND THE MOTION FOR PROTECTIVE ORDER WERE TO BE GRANTED, THEN THE DEFENDANT COULD

WITHDRAW HIS DEMAND FOR DISCOVERY.

BUT I TAKE IT THAT THE STATE, IN THE MEANTIME, EVEN AFTER HAVING FILED A MOTION FOR PROTECTIVE ORDER, WOULD HAVE ALREADY PROVIDED THOSE OTHER RECORDS.

PERHAPS: PERHAPS. THAT IS SPECULATIVE.

OBLIGATION WOULD BE THERE TO DO THAT, WOULD IT NOT, NOTWITHSTANDING THE STATE WOULD BE REALLY IN VIOLATION OF THE DISCOVERY RULES, IF THEY WEREN'T PROVIDING THOSE THINGS THAT THEY DIDN'T MAKE SUBJECT TO THIS MOTION FOR PROTECTIVE ORDER? IF YOU HAVE GOT 20 THINGS AND YOU FILE A MOTION FOR PROTECTIVE ORDER AS TO ONE, YOU CAN'T STAY YOUR REQUIREMENT TO PROVIDE THE OTHER 19, BY FILING THAT MOTION FOR PROTECTIVE ORDER AS TO ONE?

UNLESS THE STATE SPECIFICALLY ASKS FOR IT AND THE TRIAL COURT, WITH RESTRICTION OF THE CRIMINAL CASE, SPECIFICALLY GRANTS A STAY OF ALL DISCOVERY. IN THE MEANWHILE, I WOULD SAY YOU ARE CORRECT, IN THAT THE STATE DOES HAVE AN OBLIGATION TO PROVIDE, IF THE STATE IS SEEKING TO PROTECT ONE PIECE OF EVIDENCE, AND THERE ARE 19 OTHER PIECES OF EVIDENCE, THAT THE STATE EITHER PRODUCE THOSE 19 PIECES OR ASK THE COURT TO PUT A STAY ON ALL DISCOVERY, UNTIL IT IS RESOLVED, BECAUSE IT COULD VERY WELL BE, AND FRANKLY IF I WERE ON THE CASE THAT, IS WHAT I WOULD DO, BECAUSE IF THE DEFENDANT WERE TO WITHDRAW HIS DEMAND --

ISN'T THE STATE'S POSITION SIMPLY THAT IT IS EITHER THE EXPIRATION OF THE 15 DAYS OR THE ACTUAL PRODUCTION OF THE DOCUMENTS THAT TRIGGERS THE, THESE BECOMING PUBLIC RECORDS?

THE STATE'S POSITION IS THAT REQUIRED TO BE GIVEN SHOULD BE READ TO MEAN THAT THERE IS A ENFORCEABLE RIGHT, ENFORCEABLE OBLIGATION AND IT COULD COME WITHIN THE 15 DAYS. CRIMINAL PROCEDURE ALSO ALLOWS THE COURT TO MODIFY THE TIME FOR PROVIDING DISCOVERY AND THE MANNER OF DISCOVERY AND TIME AND PLACE OF DISCOVERY, SO IF THE TRIAL COURT WERE TO, FOR EXAMPLE, PUT A TOLL ON THE 15 DAYS AND SAY, OKAY, NO DISCOVERY UNTIL WE RESOLVE THIS ONE PARTICULAR ISSUE, THEN THE 15 DAYS WOULD NOT BE A DETERMINATIVE NUMBER.

I AM NOT TALKING ABOUT THE HYPOTHETICAL OF THE TOLLING OR WHATEVER. I AM TALKING ABOUT A CASE LIKE THIS, WHERE THERE IS NO MOTION FOR PROTECTIVE ORDER BUT THERE IS SUBSEQUENTLY BEFORE THE RECORDS ARE ACTUALLY PRODUCED, WITHDRAWAL OF THE REQUEST FOR DISCOVERY. AND SO THE STATE, I TAKE IT, WOULD TAKE THE POSITION THAT, IN THAT INTERIM PERIOD, THAT THAT, THAT THE LAW DID NOT OPERATE TO MAKE THESE PUBLIC RECORDS, IN THAT INTERIM PERIOD.

ONCE THERE IS A ENFORCEABLE RIGHT, I THINK THE STATUTE CAN BE READ, GIVEN OR REQUIRED TO BE GIVEN, IF THERE IS A DEMAND FOR DISCOVERY AND THERE IS A OBLIGATION UPON THAT 15th DAY. THE FACT THAT THE DEFENDANT ARGUABLY, IF THE DEFENDANT CHOOSES NOT TO ENFORCE ITS DISCOVERY RIGHTS ON THE 15th DAY AND WILL GET AROUND TO IT EVENTUALLY AND DOESN'T ACTUALLY ON THE 15th DAY SAY, HEY, WAIT A MINUTE, WHERE ARE MY DOCUMENTS, FOR WHATEVER REASON. I THINK THERE IS A ARGUMENT THAT COULD BE MADE THAT SAYS, WELL, OKAY THERE IS AN OBLIGATION TO PRODUCE IT. THE FACT THAT THE DEFENDANT IS NOT ACTUALLY ENFORCING ITS RIGHTS, DOESN'T MEAN THAT THE MEDIA OR THE PUBLIC CAN'T COME IN AND ENFORCE THOSE RIGHTS.

IN FACT, THE EXEMPTION IS LIFTED IF IT IS PRODUCED OR REQUIRED BY LAW. SO IT CONTEMPLATES THAT THERE MAY NOT BE ACTUAL PRODUCTION. DO YOU AGREE WITH THAT?

AS MUCH AS I WOULD LIKE NOT TO, I WOULD HAVE TO AGREE THAT A FAIR READING OF THE STATUTES, WHICH SAYS GIVEN OR REQUIRED TO BE GIVEN, ONCE AN ENFORCEABLE RIGHT ACCRUES OR VESTS.

YOU ARE READING IN WHAT IS ENFORCEABLE RIGHT.

WHAT ARE SAYING, TALKING ABOUT WHAT DOES REQUIRED TO BE GIVEN, MEAN? AND I WOULD SUBMIT THAT "REQUIRED TO BE GIVEN" MEANS THAT, ONCE AN ENFORCEABLE RIGHT ACCRUES, THEN THE STATE IS OBLIGATED TO PRODUCE THE DOCUMENTS. IT IS ARGUABLE THAT, ON THE 15th DAY THERE IS A ENFORCEABLE RIGHT THAT THE DEFENDANT COULD CHOOSE TO ENFORCE BUT CHOOSES, FOR WHATEVER REASON, NOT TO. I WOULD HAVE TO SAY IN ALL FAIRNESS, THE STATUTE COULD BE READ TO SAY THAT THE PUBLIC COULD COME IN AND SAY, WELL, THERE IS ENFORCEABLE RIGHT AT THAT POINT, THAT THE DEFENDANT HAS, AND THEREFORE WE CHOOSE TO ASSERT THAT RIGHT.

IS THIS A SITUATION THAT HAPPENS ON A REGULAR BASIS, WHERE A DEFENDANT FILES THE DISCOVERY REQUEST AND THEN WITHDRAWS BEFORE THE 15 DAYS?

IT IS NOT A VERY COMMON OCCURRENCE, BUT THERE ARE STRATEGIC REASONS WHY IT DOES HAPPEN.

WHY DO WE HAVE TO ANSWER THIS QUESTION, THEN, IF IT DOESN'T HAPPEN ON A REGULAR BASIS?

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THE THIRD DISTRICT CERTIFIED THE QUESTION.

I UNDERSTAND THAT.

I WILL SAY THIS, THAT IT DOES AFFECT THE WAY CRIMINAL CASES ARE TRIED. IT VERY BROAD READING, THE STATE IS PERFECTLY CONTENT WITH THE THIRD DISTRICT OPINION AND BELIEVES THAT IT WAS ACTUALLY CORRECT IN ITS INTERPRETATION AND ABSOLUTELY LOGICAL TO ASSUME THAT THE MEDIA HAS AN ENFORCEABLE RIGHT WHEN THE MEDIA HAS FILED, WHILE IT HAS NO ENFORCEABLE RIGHT FOR A MINIMUM OF 15 DAYS. THAT IS ABSOLUTELY ILLOGICAL --

THE ANSWER TO MY QUESTION, THEN, IS THERE IS NO REASON WHY WE HAVE TO ANSWER THE QUESTION. YOU HAVE AN OPINION FROM THE THIRD DCA.

YES, JUDGE.

WAS THE INFORMATION EVER FILED IN THIS CASE?

I BELIEVE THE INFORMATION WAS FILED ON MARCH 5 OR MARCH 7 AT THE ARRAIGNMENT.

YOU ARE SHARING YOUR TIME WITH YOUR COLLEAGUES.

I AM OVER MY TIME. SIMPLY, I WOULD POINT OUT THAT --

WE WILL HAVE TO TAKE IT ON THE BRIEFS THAT YOU HAVE SUBMITTED.

FOR THE REASONS SUPPORTED IN THE BRIEF, WE WOULD RESPECTFULLY SUBMIT THAT WITHDRAWAL PLACES THE PARTIES IN THE POSITION THEY WERE, HAD THE DEMAND NOT BEEN MADE IN THE FIRST INSTANCE. THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH. GOOD MORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. REGINE MONDAYES TIME -- MONESTIME ON BEHALF OF THE CITY OF MIAMI. I WOULD LIKE TO ADDRESS ONE ISSUE AT THE TOP, AND THAT IS WHETHER THE CITY OF MIAMI DID INDEED RESPOND TO THE PUBLIC RECORDS REQUEST BY POST-NEWSWEEK EARLY IN FEBRUARY, SPECIFICALLY FEBRUARY 7. THEY MADE AN INITIAL PUBLIC RECORDS REQUEST AND THE FOLLOWING DAY ON FEBRUARY 8, THE CITY OF MIAMI DID RESPOND AND SAY THAT THESE PARTICULAR DOCUMENTS, THE PHOTOGRAPH AND THE TEN-PAGE STATEMENT, WERE EXEMPT UNDER PUBLIC RECORDS AND THE CONFIDENTIALITY. THE CITY OF MIAMI DID RESPOND TIMELY, AND THERE WAS NO VIOLATION OF PUBLIC RECORDS IN THAT REGARD. WITH REGARDS TO THE SPIRIT BEHIND WHAT THIS "REQUIRED BY LAW" MEANS, I THINK THAT IT IS IMPORTANT FOR US TO LOOK AT WHETHER THE DEFENDANT PARTICIPATED IN DISCOVERY. IT IS NOT JUST MERE FILING OF THE PAPER THAT VESTS. THAT JUST TRIGGERS THIS RULE 3.220 BUT AT THE POINT THAT HE BEGINS TO ENGAGE IN THAT DISCOVERY AND BEGINS TO PARTICIPATE IN DISCOVERY, THEN THE ETHICAL OBLIGATION ATTACHES AND HE IS OBLIGATED TO PRODUCE EVIDENCE.

WHAT IS THE RULE THAT THE CITY WOULD LIKE TO SEE THIS COURT COME OUT WITH? IT IS THE 15 DAYS OR AS SOON AS THE DEFENDANT ACTUALLY RECEIVES DISCOVERY, IS THAT WHEN THE PUBLIC'S RIGHT TO THIS INFORMATION ATTACHES?

I THINK THAT IT IS REQUIRED BY LAW, SO WHATEVER DOCUMENTS THE STATE IS OBLIGATED TO PRODUCE, i.e. BRADY, EXCULPATORY EVIDENCE THAT YOU KNOW, PRETTY MUCH NO MATTER WHAT THE CASE, THE STATE MUST DIVULGE THOSE EXCULPATORY MATERIALS. OR THOSE DOCUMENTS THAT HAVE ALREADY BEEN GIVEN TO THE DEFENDANT.

WE ARE IN A SITUATION WHERE A DEFENDANT HAS FILED A DEMAND FOR DISCOVERY. WHEN DOES THE PUBLIC'S RIGHT TO THE MATERIALS THAT WOULD BE INCLUDED IN THAT DEMAND FOR DISCOVERY ATTACH? WOULD IT ATTACH WHEN THE ACTUAL MOTION IS FILED? 15 DAYS LATER, OR WHEN THE STATE ACTUALLY GIVES THE INFORMATION TO THE DEFENDANT? I WOULD ASSUME ONE OF THOSE POSITIONS IS WHAT THE CITY --

I THINK IT IS EITHER/OR. IT IS EITHER AFTER THE 15 DAYS LAPS OR, IF, AFTER THE FIRST DAY, THE -- LAPSE, OR IF AFTER THE FIRST DAY THE STATE DOES PRODUCE THE MATERIAL TO THE DEFENDANT, OBVIOUSLY THEN AT THAT POINT, IT IS NO LONGER EXEMPT AND CONFIDENTIAL, SO I THINK IT IS BOTH SITUATIONS. THERE WAS A QUESTION RAISED ABOUT THE INTERIM PERIOD AND WHETHER, DURING THAT PERIOD, WHETHER IT IS CONFIDENTIAL OR NOT. THE POST-NEWSWEEK SEEMS TO ARGUE THAT, AS SOON AS THE DOCUMENTS ARE, AS SOON AS THE NOTICE IS FILED, THEN REGARDLESS OF THAT INTERIM PERIOD, AT THAT POINT, IT IS PUBLIC, BUT, AGAIN, THE RULE CONTEMPLATES THE 15 DAYS FOR A REASON, AND WE HAVE TO GIVE, WE HAVE TO GIVE MEANING TO THAT RULE.

I UNDERSTAND THE QUESTION ABOUT THE INTERIM PERIOD TO MEAN THE INTERIM BETWEEN THE EXPIRATION OF A 15-DAY PERIOD, AND THE WITHDRAWAL REQUEST, MEANING THE WITHDRAWAL REQUEST, THE WITHDRAWAL OF THE DISCOVERY WAS MADE ON THE 18th DAY, BUT IN THE MEANTIME, BETWEEN THE 15th AND 18th DAY, THERE HAS BEEN NO MOTION FOR PROTECTIVE ORDER FILED. IS THERE AN OBLIGATION AT THAT TIME, TO PRODUCE THE RECORDS AS PUBLIC RECORDS?

I BELIEVE THAT, YES, IF, AFTER THE 15th DAY THE STATE DOES NOT RESPOND WITH A MOTION OF PROTECTIVE ORDER, AND IF WE, IF THOSE DOCUMENTS ARE NOT EXEMPT FOR ANY OTHER REASON, THEN, YES, THEY WOULD HAVE TO BE PRODUCED.

SO WHAT HAPPENS IF, ON THE 15th DAY EXPIRES AND THERE IS A WITHDRAWAL ON THE 18th DAY, AND THERE IS A REQUEST FOR PUBLIC RECORDS FROM POST-NEWSWEEK ON THE 20th DAY?

WELL, IF THE DOCUMENTS ARE ALREADY GIVEN --

NO DOCUMENTS HAVE BEEN GIVEN, BUT THE TIME HAS EXPIRED ON THE 15th DAY. THERE IS A WITHDRAWAL, AND THE 18th DAY, AND THERE IS A PUBLIC RECORDS REQUEST ON THE 20th DAY.

OKAY. THE QUESTION IS, THEN, WHETHER, WITHIN, WHETHER, WITHIN, AFTER THAT 15th DAY, WERE THOSE DOCUMENTS REQUIRED TO BE GIVEN, AND I BELIEVE THAT AFTER THAT 15th DAY, YES, THAT THOSE DOCUMENTS WERE REQUIRED TO BE GIVEN, AND IF THEY WERE REQUIRED TO BE GIVEN, THEN OBVIOUSLY JUST LIKE THE BRADY MATERIAL, THEY WOULD NOT BE EXEMPT.

SO AT THAT POINT ON THE 18th DAY OF THE WITHDRAWAL OF THE REQUEST, CANNOT MAKE THEM NONPUBLIC, WAS ALREADY MADE PUBLIC.

EXACTLY. THAT IS OUR POSITION.

OKAY.

THE POSITION IS THAT THEY ARE NO LONGER REQUIRED TO BE GIVEN, AT THE TIME THAT THE DEMAND WAS MADE. THAT IS WHAT I SAID. UNLESS THE COURT HAS ANY OTHER QUESTIONS, WE JUST ASK, WITH REGARD TO JUSTICE CANTERO'S QUESTION ABOUT WHETHER YOU NEED TO RESPOND TO THE CERTIFIED QUESTION, WE DON'T BELIEVE THAT YOU HAVE TO RESPOND TO THE CERTIFIED QUESTION. I THINK THAT THE THIRD DCA'S OPINION IS WELL LAID OUT. I THINK IT IS WELL-REASONED, AND THEY COME TO THE CORRECT RESPONSE, AND IT SHOULD BE AFFIRMED ON THAT BASIS.

THANK YOU.

THANK YOU.

I RISE, YOUR HONORS, TO PROVIDE THE COURT WITH THE UNDERSTANDING THAT THE REASON THIS CASE BECAME A CONFLICT IS BECAUSE WE HAD A CONFLICT BETWEEN MR. CHIEF JUSTICE

IF YOU WILL INTRODUCE YOURSELF FOR THE RECORD.

BEN KUHN, REPRESENTING THE MARROW-BEN KUEHNE, REPRESENTING THE MAYOR IN CONFLICT ON THIS ISSUE. THE NEWSPAPER AGENCY WENT TO A SEPARATE COURT ALTHOUGH IT HAD SOUGHT ACTION IN A CRIMINAL CASE. A CIVIL JUDGE DECIDED RECORDS IN A CRIMINAL CASE, WHICH HAD NOT YET BEEN REQUIRED TO BE DISCLOSED, SHOULD BE DISCLOSED. THUS POTENTIALLY COMPROMISING THE ABILITY OF THE CRIMINAL CASE JUDGE AND, AS THIS COURT HAS ACKNOWLEDGED IN SEVERAL CASES, INCLUDING THE ROSE CASE AND OUR BLAZE -- AND ARBLAZE CASE, THE COURT OVER WHICH THE CRIMINAL CASE IS PENDING, HAS THE JURISDICTION TO DECIDE A PUBLIC RECORDS REQUEST IN THAT CASE.

MR. KUEHNE, WOULD YOU ADDRESS, YOU HAVE COVERED A BROAD SPECTRUM OF LAW IN YOUR EXPERIENCE, AND WOULD YOU PROVIDE US WITH YOUR ANALYSIS OF THIS BALANCE THAT WE NEED TO REACH, HERE, BETWEEN THE RIGHT OF THE PUBLIC TO THOSE DOCUMENTS, AND THE PUBLIC RECORDS LAW, WITH REGARD TO THE EXEMPTIONS. WHERE DOES THAT BALANCE ANSWER? -- -- BALANCE? HOW DOES THAT FIT IN THIS SCENARIO?

YES, JUSTICE, WE BELIEVE THERE IS A BRIGHT-LINE RULE THAT SAYS, WHEN A DEFENDANT RECEIVES DISCOVERY, WHATEVER DISCOVERY IS, OR THE DEFENDANT HAS AN ENFORCEABLE RIGHT TO THAT DISCOVERY, i.e. THE STATE IS LATE IN GIVING THAT DISCOVERY, THAT IS THE SAME TIME THAT THE PUBLIC'S RIGHT TO THOSE MATERIALS ATTACH.

WOULD THAT BE EITHER THE DATE THAT THE DOCUMENTS ARE RETURNED TURNED OVER OR THE

PASSAGE OF THE 15 DAYS WITHOUT THE FILING AFTER PROTECTIVE ORDER?

YES, JUSTICE WELLS, AND I WANT TO NOTE THAT THE WITHDRAWAL OF A DISCOVERY REQUEST, AS THE COURT HAS NOTED IS AUTHORIZED BY THE RULE, BUT IT SAYS "WITH COURT APPROVAL." SO TO THE EXTENT THAT THE COURT IS CONCERNED THAT THERE COULD BE AN EFFORT AS POST-NEWSWEEK SAYS, TO MASK RECORDS, THE COURT IN THE CRIMINAL CASE, HAS TO APPROVE THE WITHDRAWAL OF THE DISCOVERY REQUEST, AS HAPPENED HERE.

WHICH PART OF THE RULE IS THAT?

YOUR HONOR, RULE 3.220-D-3. THE DISCOVERY PROVISIONAL ALLOWING THE COURT TO PERMIT WITHDRAWAL FROM DISCOVERY OBLIGATIONS AND ENTITLEMENTS.

YOU KNOW, THE THIRD, I AM LOOKING AT THAT RULE, AND I GUESS NO ONE RAISED IT PRECISELY, BUT IT WOULD APPEAR TO CONTEMPLATE WHERE THERE IS A MOTION FOR PROTECTIVE ORDER FILED, BECAUSE, AND OBVIOUSLY IT JUST SEEMS LIKE IT IS SORT OF A CONFUSING PLACE TO PUT THE WITHDRAWAL PART, IN THE SAME SECTION THAT HAS TO DO WITH PROTECTIVE ORDERS.

YOUR HONOR, I DO UNDERSTAND THE COURT'S LOOKING AT THAT RULE, THE PRACTICAL EFFECT OF THE CRIMINAL JUSTICE SYSTEM ACROSS THE STATE, IS THAT WITHDRAWALS ARE PERMITTED WITH COURT APPROVAL. IT HAPPENS NOT EVERYDAY BUT IT HAPPENS REGULARLY.

YOU AGREE IT SAYS THE FILING OF THE MOTION FOR PROTECTIVE ORDER WILL AUTOMATICALLY STAY THE TIMES PROVIDED. IF A PROTECTIVE ORDER IS GRANTED, THE DEFENDANT MAY, WITHIN TWO DAYS THEREAFTER OR AT ANY TIME BEFORE THE PROSECUTOR FURNISHS THE INFORMATION OR MATERIAL, WITHDRAW THE DEFENDANT'S NOTICE OF DISCOVERY AND NOT BE REQUIRED TO FURNISH RECIPROCAL DISCOVERY.

YES, YOUR HONOR.

THAT IS THE ONLY PLACE WHERE WITHDRAWAL IS MENTIONED?

YES, JUDGE, THAT IS THE PROVISION FOR WITHDRAWAL. I WOULD NOTE, AS THE COURT HAS POINTED OUT IN ONE OF THE QUESTIONS, I BELIEVE JUSTICE BELL NOTED THAT THE RULE SPECIFICALLY CONTEMPLATES THE REQUESTING DISCOVERY AT THE TIME OF ARRAIGNMENT. PRACTICALLY SPEAKING, THAT IS NOT THE WAY THE CRIMINAL JUSTICE SYSTEM WORKS IN THE STATE OF FLORIDA. DEFENDANTS REQUEST DISCOVERY EARLY ON IN THE CASE WITH THE NOTICE OF APPEARANCE. TECHNICALLY, IF THE COURT IS GOING TO LOOK TO THE TECHNICAL STRICTURES OF THE RULE OF CRIMINAL PROCEDURE, IT IS ONLY AT THE TIME OF ARRAIGNMENT THAT A DISCOVERY DEMAND BECOMES EFFECTIVE. IT IS TECHNICALLY PREMATURE AT THAT TIME. WE HAVE, IN THIS SITUATION, A WITHDRAWAL OF THE DISCOVERY REQUEST, AT THE VERY FIRST TIME THAT DISCOVERY IS TECHNICALLY ALLOWED TO BE REQUESTED. THAT BEING AT ARRAIGNMENT AND APPROVED BY THE COURT, AND I WOULD CLOSE, YOUR HONORS, BY ASKING THE COURT TO SERIOUSLY CONSIDER, IN DECIDING THIS IMPORTANT PUBLIC POLICY QUESTION, THE ROLE OF THE TRIAL COURT, WHO HAS, WE BELIEVE, PARAMOUNT JURISDICTION, AS THIS THIRD DCA SAID IN FOOTNOTE 2, AND THE POTENTIAL COMPROMISE WITH THAT ABILITY, TO DECIDE THE COURSE OF THE CRIMINAL CASE, BY ALLOWING A CIRCUIT JUDGE IN A CIVIL CASE TO DECIDE A COMPETING PUBLIC RECORDS REQUEST. THANK YOU.

CHIEF JUSTICE: YOU JUST HAVE A BRIEF PERIOD.

DO YOU MAKE AN ARGUMENT, EXCEPTING THAT, FOR THE MOTION OF PROTECTIVE ORDER FILED, THERE IS NO WITHDRAWAL OF REQUEST AFTER IT HAS BEEN FILED?

OUR POSITION IS THAT HOWEVER RULE 3.220 PERMITS WITHDRAWALS, THAT THEY WOULD BE

PERMITTEDED IN THAT FASHION, BUT WHATEVER THE REASON FOR WITHDRAWAL, IT IS OUR POSITION THAT THE PHRASE "REQUIRED BY LAW", WAS CHOSEN BY THE LEGISLATURE FOR A REASON. IT IS BROADLY WORDED. IF THE LEGISLATURE HAD INTENDED TO SAY "ENFORCEABLE RIGHT", IT WOULD HAVE SAID SO. THIS COURT HAS ACKNOWLEDGED THAT THE LEGISLATURE IS THE REGULATOR, IF YOU WILL, OF THE PUBLIC'S RIGHT OF ACCESS TO PUBLIC RECORDS. THE 2-TO-1 PANEL DECISION OF THE THIRD DISTRICT IS THE EXCEPTION TO A GENERATION LONG, ALMOST GENERATION-LONG FUNCTIONING OF RULE, OF SECTION 3-C-5, WITH THE UNDERSTANDING THE "REQUIRED BY LAW", INCLUDES A VARIETY OF CIRCUMSTANCES, INCLUDING WHEN THE DEFENDANT SERVES AND FILES HIS DISCOVERY DEMAND.

LET ME ASK YOU A QUESTION, THIS RULE REQUIRES RECIPROCAL DISCOVERY.

YES, SIR.

IS THE LOGICAL EXTENSION OF YOUR POSITION IN THIS CASE, THE DEFENDANT FILES A NOTICE TO PARTICIPATE AND WITHDRAWS IT, SO THE STATE HAS TO PROVIDE DISCOVERY. THEY PROVIDE IT TO YOU. DO YOU ALSO HAVE THE RIGHT TO THAT ENFORCE THE STATE'S RIGHT TO GET INFORMATION FROM THE DEFENDANT?

NO. WE ARE NOT, THE PUBLIC, THE PRESS IS A SURROGATE FOR THE PUBLIC, AND THE PUBLIC DOES NOT HAVE A DISCOVERY OBLIGATION OR A DISCOVERY RIGHT. WE ARE SIMPLY EXERCISING OUR RIGHT UNDER THIS STATE'S PUBLIC RECORDS ACT, TO THE RECORDS OF OUR STATE AGENCIES. WITH RESPECT TO THE FAIRNESS ARGUMENT JUSTICE QUINCE RAISED, THAT IS THE LEGISLATIVE SCHEME WE HAVE. IF PEOPLE ARE DISSATISFIED WITH THAT, IF THE DEFENSE, SAY THE CITY SHOULD SEEK CHANGE INS THE LEGISLATURE. FOR ALL OF OUR BRIEFS AND ORAL ARGUMENT HERE, I WOULD ASK THE COURT TO QUASH THE 2-TO-1 PANEL DECISION OF THIRD DISTRICT AND AFFIRM THE TRIAL COURT'S ORDER AS WE HAVE REQUESTED. THANK YOU.