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## **Amendments to Florida Rules of Criminal Procedure**

PLEASE RISE. HEAR YE , HEAR YE , HEAR YE. THE SUPREME COURT OF THE GREATSTATE OF FLORIDA IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEA , DRAW NEAR , GIVE ATTENTION AND YOU SHALL B E HEARD. GOD SAVE THESE UNITED STATES , THE GREAT STATE OF FLORIDA , AND THIS HONORABLE COURT.

GOOD MORNING. LADIES AND GENTLEMEN, THEFLORIDA SUPREME COURT. PLEASE BE SEATED.

GOOD MORNING EVERYONE AND WELCOME TO THE FLORIDA SUPREME COURT . WE ARE HE ESPECIALLY PLEASD THAT COUNSEL ON THE FIRST CASE HAVE ANNOUNCED THAT THEY DO NOT INTEND TO USE THE FULL ALLOTMENT OF TIME THAT WE GRANTED. AND SO HOPEFULLY WITH THE COOPERATION AND AID OF THE MARSHAL , WE CAN STICK BY THAT AND GET OFF TO A REFRESHING START THIS MORNING. SO WITHOUT ANY FURTHER ADO , WE WILL CALL THE AMENDMENTS TO THE FLORIDA RULES OF CRIMINAL PROCEDURE. YOU READY TO PROCEED , YOU MAYPROCEED.

GOOD MORNING I'M OLIN SHINHOLSER. I AM CHAIR OF THE CRIMINAL PROCEDURE RULES COMMITTEE OF THE FLORIDA BAR. I AM PREPARED TO ADDRESS ANYOF THE COURT'S QUESTIONS AND CONCERNS REGARDING THE ISSUES THAT ARE PENDING BEFORE YOU TODAY . INITIALLY ONLY WILL ADDRESS TWO OF THE PROPOSED RULE AMENDMENTS. BECAUSE OF ONE OF THE COMMENTS FILED , I BELIEVE IT IS IMPORTANT TO NOTE THAT THE INTERNAL RULES OF THE CRIMINAL PROCEDURE RULES COMMITTEE REQUIRE A TWO-THIRDS VOTE OF THE COMMITTEE , OR OF COMMITTEE MEMBERS WHO ARE PRESENT AND VOTING TO SUBMIT A RULES SUBMISSION TO THE BOARD OF GOVERNOR'S AND TO THIS PARTICULAR COURT. I WOULD ALSO LIKE TO NOTE THE BORT OF GOVERNORS IN THIS PARTICULAR CASE APPROVED OUR RULES PETITION UNANIMOUSLY BY A VOTE OF 33 TO NOTHING. THE COMMITTEE IS CONSIDERED ALL THE COMMENTS FILED BOTH AT THE BOARD OF 0 GOVERNORS LEVEL AND TO THE COURT. IT RECOMMENDS NO CHANGES TO OUR INITIAL PROPOSAL. SPECIFICALLY REGARDING PROPOSED RULE 3.575 , PERTAINING TO JURY INTERVIEWS. THE COMMITTEE HAS CONSIDERED THE ALTERNATIVE PROPOSAL OF THE ATTORNEY GENERAL BUT AGAIN HAS CHOSEN TO STAND BY ITS INITIAL SUBMISSION. THE COMMITTEE TAKES NO ISSUE WITH THE ATTORNEY GENERAL THAT THE CASE LAW THAT THE ATTORNEY GENERAL HAS CITED IS CORRECT. THE MAJORITY POSITION OF THE COMMITTEE IS THAT THE THRESHOLD TO OBTAIN COURT PERMISSION FOR JUROR INTERVIEWS WOULD NOT INCLUDE THE REQUIREMENT FOR A SWORNPLEADING OR AFFIDAVIT , NOTWITHSTANDING THE CURRENT CASE LAW.

YEAH , BUT HOW DOES THIS DO YOU HAVE A POSITION ON WHETHER THIS WOULD ELIMINATE THE RIGHT TO , FOR INFORMAL INTERVIEWS? THIS IS ESPECIALLY IN THE POST CONVICTION SETTING?

OUR POSITION DOES NOT ADDRESS SUCH SPECIFIC ISSUE. I KNOW THAT I BELIEVE THE ATTORNEY GENERAL HAS REQUESTED THAT THE COURT IN FACT LIMIT THE RIGHT TO ADDRESS JURORS BY COURT ORDER , IF I REMEMBER , MS. SNURKOWSKI POSITION BUT THE COMMITTEE HAS NOT REQUESTED THAT.

SHOULDN'T BE THAT SOMETHING IF WE ADOPT THE RULE , A NOTE SHOULD INDICATE THIS IS STILL PERMITTED OR NOT SO WE DON'T HAVE LITIGATION OVER THAT ISSUE?

MY OWN PERSONAL OPINION IS THAT WOULD BE GOOD. BUT I'M HERE TO REPRESENT THE COMMITTEE. AND I MUST TELL YOU THAT THE COMMITTEE DOES NOT TAKE THE POSITION THAT THAT SHOULD BE REQUIRED.

OKAY , WELL SO IF THEN SO THE COMMITTEE'S VIEW WAS NOT THIS WOULD BE THE EXCLUSIVE MEANS OF INTERVIEWING JURORS?

WE HAVE NOT TAKEN THAT POSITION, THAT'S CORRECT.

SO WHAT WAS THE VIEW OF THE FIVE MEMBERS OF THE COMMITTEE THAT DISSENTED O N THIS PROPOSAL?

THERE WAS QUITE A BIT OF DISCUSSION BUT THE MINORITY POSITION IN THIS PARTICULAR CASE IS IN FACT THAT WE SHOULD HAVE TO HAVE A SWORN PETITION. AFTER WE RECEIVE THE PROPOSED PETITION FROM THE ATTORNEY GENERAL TO MODIFY , I SENT THAT INFORMATION OUT TO THE COMMITTEE MEMBERS. THERE WAS NO CHANGE IN OUR POSITION. I BELIEVE THE VOTE CHANGED SLIGHTLY, THE MINORITY POSITION INCREASED TO MAYBE SOMEWHERE AROUND 7 VOTES , BUT THE MINORITY POSITION WOULD BE IN FACT THAT WE SHOULD FOLLOW THE LAW AS IT IS CURRENTLY SET OUT. THAT IS , HAVE A SWORN AFFIDAVIT OR SWORN PETITION THAT WAS I HAVE GONE BACK AND REVIEWED THE MINUTES. THERE WAS NOT A LOT O F DISCUSSION ON THIS ISSUE. THE ONLY INFORMATION I HAVE IS THE LIMITED INFORMATION FROM THE COMMITTEE MEMBERS WHEN THEY SENT THEIR E-MAILS TO ME IN RESPONSE TO THE ATTORNEY GENERAL'S.

SO YOU WOULD NOT KNOW WHETHER OR NOT THE COMMITTEEWOULD BE OPPOSED T O A COMMITTEE NOTE SAY WHICH INDICATES THAT THE FLORIDA BAR RULE CONCERNING INTERVIEWING INFORMAL INTERVIEWS OF JURORS IS STILL APPLICABLE?

THAT WOULD BE CORRECT , I DON'T KNOW WHETHER THE COMMITTEE WOULD AGREE TO THAT.

LET ME ASK YOU IF I CAN GET OUT ON THE TABLE THE GENERAL PHILOSOPHY THAT THE RULES COMMITTEE APPROACHES THESE MATTERS . AND THAT I S , I T WOULD SEEM T O ME THAT WHERE THE COMMITTEE I S , THE REPORTS HAVE COME BACK ON VARIOUS MATTERS , IS THAT IF THERE IS A MATTER WHICH I S IN CONTROVERSY , BUT WHICH THERE HAS NOT BEEN A DEFINITIVE STATEMENT , EITHER THAT IS DOWNFORM AT THE COURT O F AFTER PEELS LEVEL OR BY THIS COURT , THAT THE COMMITTEE IS NOT GOING TO STRIKE OUT AND RESOLVE THAT CONFLICT IN A RULE , THAT IT IS GOING TO WAIT FOR THIS COURT OR A DEFINITIVE STATEMENT OUT OF THE COURT O F APPEALS. IS THAT BASICALLY WHERE THE COMMITTEE IS?

YOUR HONOR , I DON'T KNOW THAT I WOULD GO EXACTLY THAT FAR. BUT I DO BELIEVE THAT THERE IS A , EVEN AMONG THE , THOSE WHO FAVOR PARTICULAR PROPOSAL , I BELIEVE THERE WAS A I HATE TO USE THE WORD CONSERVATIVE , BUT A CONSERVATIVE TREND AMONG THE COMMITTEE NOT T O CREATE NEW RULES WHEN NOT NECESSARY. ONE OF OUR SUBCOMMITTEE CHAIRS IS IN FACT A DEFENSE ATTORNEY , ONE OF THE COMMENTS THAT WE HAD WAS A SUGGESTION THAT ALL OF OUR VOTES FOLLOW UPON PARTY LINES , IF YOU WILL. AND I THINK THAT IS IN FACT NOT CORRECT. I THINK WHAT YOU'RE SUGGESTING IS TRUE , THAT THERE IS A CONSERVATIVE BEND TO THE COMMITTEE REGARDLESS OF WHERE YOU STAND NOT TO UNNECESSARILY CREATE NEW RULES.

IN OTHER WORDS , THAT THE RULES ARE THE RULES COMMITTEE IS NOT ATTEMPTING TO SET OUT NEW LAW. IT'S INTENDING T O REFLECT WHAT THE LAW IS AS THE COMMITTEE UNDERSTANDS IT , IS THAT SFAR?

I WOULD HAVE TO SAY TYPICALLY SO , BUT AS YOUR HONOR KNOWS AT LEAST , TWO OF OUR PROPOSED RULES PROPOSALS TODAY IN FACT ARE IN CONTRAVENTION OF CURRENT CASE LAW. AND SO WE HAVE TAKEN POSITIONS THAT DO CONTRADICT CASE LAW.

OKAY.THANK YOU VERY MUCH.

ARE YOU GOING TO DISCUSS AT ALL THE PRE-SENTENCE REPORT I N CAPITAL CASES? THAT RULE THAT WAS PROPOSED?

I HAD NOT INTENDED TO ADDRESS THAT BUT I'M CERTAINLY PREPARED TO DO THAT IF THE COURT WISHES.

WELL , SEEMS TO ME IN THE AG'S COMMENTS , THE Y WERE VERY CONCERNED ABOUT WHETHER OR NOT THE RULE WAS GOING TO BE TOO INCLUSIVE OF THE KINDS O F INFORMATION THAT SHOULD BE ATTACHED OR INCLUDED IN A PRE-SENTENCE INVESTIGATIONWHEN THE DEFENDANT ACTUALLY WEIGH WAIVES MITIGATION. AND I ASSUME YOUR COMMITTEE LOOKED AT WHAT THE AG'S COMMENTS AND YOU DON'T BELIEVE THAT THERE SHOULD BE ANY KIND OF LANGUAGE WHICH WOULD SAY TO THE , A T LEAST SOMETHING TO THE EXTENT OF WHERE PRACTICABLE O R SHOULD, IF THAT INFORMATION IS AVAILABLE OR SOMETHING TO THAT EFFECT?

IN FACT , NO , WE DON'T. I SENT THAT PARTICULAR LANGUAGE TO THE COMMITTEE AND THE COMMITTEE THOUGHT IT WAS SUPERFLUOUS , IT WAS UNNECESSARY. WE DON'T BELIEVE THAT THE PROPOSED RULE WOULD GIVE THE DEPARTMENT OF CORRECTIONS ANY MORE OR LESS AUTHORITY THAN WHAT THEY ALREADY HAVE IN TERMS OF THE INFORMATION THEY WOULD OBTAIN. I KNOW THE ATTORNEY GENERAL WAS CONCERNED ABOUT , FOR EXAMPLE , CONFIDENTIAL RECORDS. BUT WE DON'T B ELIEVE THAT THE CURRENT RULE GIVES DOC ANY MORE OR ANY LESS AUTHORITY THAN WHAT THEY ALREADY HAVE.

IS IT A QUESTION OF AUTHORITY OR IS IT A QUESTION OF ABILITY TO COMPLY WITH WHAT THE RULE REQUIRES? IF THE RULE SAYS THAT IT SHALL , SHOULD, MUST CONTAIN THESE THINGS AND THE DOC BECAUSE OF THE DEFENDANT'S UNWILLINGNESS TO COOPERATE , THE DEPARTMENT IS UNABLE TO PROVIDE THAT INFORMATION , DOES NOT THAT NOT JUST SET UP ANOTHER ISSUE FOR APPEAL ? THAT THE PSI DID NOT CONTAIN THIS INFORMATION AND YOU GO THROUGH ALL THIS DISCOVERY ABOUT MENTAL HEALTH RECORDS I N ANOTHER STATE THAT WE DON'T HAVE ANY JURISDICTION OVER , CAN'T FORCE THE INFORMATION , ETCETERA, ETCETERA?

I THINK THE BOTTOM LINE ANSWER IS YES , POSSIBLY SO. BUT FRANKLY , I WOULD BE CONCERNED IN SUGGESTING TO THE COURT THAT YOU COULD CREATE BY RULES THE OBTAINING OF CONFIDENTIAL INFORMATION. I HAVE SOME CONCERN WHETHER THAT IS SOMETHING THAT SHOULD BE ADDRESSED BY STATUTE A S OPPOSED TO BY RULE.

I'D JUST LIKE TO ASK YOU ABOUT THE RULE ABOUT THE DEFENDANT 'S PRESENCE OR ABSENCE AT A PRE-TRIAL CONFERENCE. APPARENTLY THE WAY THE RULE WAS PHRASED , IT SAID PRESENT UNLESS WAIVED BY THE DEFENDANT IN WRITING. AND NOW IT IS ADDING THIS ADDITION, BUT IT DOESN'T LIMIT THE AUTHORITY TO WHAT IS PRESENT AT ANY PROCEEDING WITHOUT LIMITATION. A LOT OF TIMES WHEN THE COURT SENDS OVER REQUESTS TO TAKE CARE OF RULES , WE KNOW WHAT THE PROBLEM I S , APPEAR THAT WE ARE TRYING TO GET SOLVED AND THEN WE GET BACK A LETTER THAT SAYS YOU'RE NOT DOING ANYTHING. BUT WHAT THIS ONE SEEMS TO HAVE TO D O WITH WHAT IS HAPPENING ON THE GROUND , THAT IS, WHAT REALLY I S THE TRAIL JUDGES, WHAT'S BEEN FRUSTRATING THEM OR THE OPPOSITE. I GUESS I'M CONCERNED AND I'D LIKE TO GET YOUR TAKE FROM THE COMMITTEE'S POINT O F VIEW ON , IS IT THAT IT WAS THE CASE LAW THAT SEEMED THAT IT GOT TOO RESTRICTIVE , NOW LED TO THIS? AND WHY AREN'T SOME OF THE PROPOSALS LIKE THAT B Y PUBLIC DEFENDER DILLINGER , WHY WEREN'T THOSE CONSIDERED AS BEING A GOOD COMPROMISE TO SORT OF THIS NOW KIND O F TAKING BACK , CAN B E WAIVED BUT NOW THE COURT CAN ORDER IT ANY TIME THE COURT WANTS TO?

THE SUBCOMMITTEE CHAIR, WHO HANDLED THIS PARTICULAR REFERRAL IS IN FACT A DEFENSE ATTORNEY IN CENTRAL FLORIDA. HIS SUBCOMMITTEE FEELS THAT THIS IS A MATTER THAT THE

POWER TO DO THAT IS A MATTER THAT IS INHERENT IN THE COURT. COURT HAS INHERENT POWER TO DO THAT IN SPITE OF THE CASE LAW. I THINK IT IS QUITE SIGNIFICANT THIS COMES FROM SAUB COMMITTEE WHO IS CHAIRED BY A DEFENSE ATTORNEY .

I GUESS MAYBE IT SEEMS LIKE THERE IS NOT A PROBLEM IN CENTRAL FLORIDA. THERE MAY BE A PROBLEM IN SOUTH FLORIDA WHEREVER THE CASES AROSE. THIS IS SORT OF AN EXAMPLE OF SOMETHING WHERE CASE LAW NOW HAS SET IT OUT BUT WE ARE VARYING , SEEMS TO BE AS YOU SAY CHANGING CASE LAW WITHOUT HAVING A CASE OR CONTROVERSY IN FRONT OF US TO REALLY UNDERSTAND WHAT THE RAMIFICATIONS MAY BE. WITHOUT ANYTHING TO GUIDE THE JUDGES' DISCRETION , THIS WOULD ALLOW THE JUDGE TO SAY IN EVERY PRE-TRIAL CONFERENCE I AM GOING TO WANT THE DEFENDANT PRESENT. I MEAN THIS RULE ALLOWS THAT.

THAT IS CERTAINLY A CONCERN THAT HAS BEEN RAISED BY OTHER COUNSEL THAT ARE HERE , THAT THERE COULD BE ABUSE. AND HAVE SUGGESTED THERE HAVE BEEN ABUSES AROUND THE STATE BY JUDGES. IT IS NOT THE COMMITTEE'S INTENT TO GIVE TRIAL JUDGES THE AUTHORITY TO MANDATE DEFENDANTS BE PRESENT IN ALL CASES.WE ARE SIMPLY ASKING FOR THE DISCRETION TO DO THAT. FOR EXAMPLE, THE JURY TRIAL STATUS CONFERENCE I REFERRED TO IN MY RESPONSE, THE WORST CASE SCENARIO , YOU'D BECOME AWARE THE DEFENDANT IS POTENTIALLY GOING TO FAIL TO APPEAR, PERHAPS THE BONDS MAN HAS ALERTED THE COURT THAT THE DEFENDANT HAS FLOWN THE COOP TO CANADA AND YET YOU HAVE GOT TO BRING IN A JURY TO DETERMINE WHETHER THAT'S TRUE. AND SO THOSE ARE THE TYPES OF SITUATIONS WE'D LIKE TO HAVE THE DISCRETION IN. I AM THE FIRST TO SIT HERE AND TELL YOU AS A TRIAL JUDGE , I DO NOT WANT TO REQUIRE EVERY DEFENDANT IN EVERY CASE TO HAVE TO APPEAR AT ALL PRE-TRIAL PROCEEDINGS.

BUT IF YOU'RE GOING TO HAVE A PROBLEM , YOU'D WANT TO KNOW ABOUT IT AHEAD OF TIME?

THAT'S CORRECT. AND ALSO I THINK IT IS SIGNIFICANT TO CONSIDER THE USE OF THE JURY TRIAL STATUS CONFERENCE, BE IT THROUGH THIS RULE OR PERHAPS SOME ALTERNATIVE LANGUAGE . IT IS A VERY EFFECTIVE DOCKET CONTROL MECHANISM REQUIRING THE DEFENDANT TO APPEAR A DAY OR TWO BEFORE TRIAL.

WELL WHY WOULD THE COMMENT THEN I THINK ATTORNEY CAMEL , HOWEVER FOR GOOD CAUSE AND APPROPRIATE NOTICE , THE COURT MAY REQUIRE THE PERSONAL PRESENCE OF THE DEFENDANT IN ANY PROCEEDING. WOULD THAT I MEAN THAT SEEMS LIKE THAT WOULD COVER YOUR SITUATION WITHOUT , AND SHOWING THAT IT IS LIMITED AS OPPOSED TO JUST OPEN ENDED.

UNDERSTANDING I MUST REPRESENT THE COMMITTEE , YOU KNOW, WHAT THE COMMITTEE'S POSITION IS. IN ALL CANDOR , I THINK THAT IS A POSSIBLE VIABLE ALTERNATIVE.

JUSTICE BELL HAS A QUESTION.

JUST REAL QUICK , THE AMENDMENT TO 3.150 REGARDING REPRESENTATION. THE LAST SENTENCE OF THE PROPOSAL IS SOMEWHAT DIFFERENT KNOWLEDGE THE LANGUAGE IN THE FEDERAL RULE. IS THERE A REASON FOR THAT? YOUR PROPOSAL SAYS THE COURT SHALL TAKE SUCH MEASURES AS ARE NECESSARY TO PROTECT EACH DEFENDANT'S RIGHT TO COUNSEL. THE FEDERAL RULE SAYS UNLESS THERE IS GOOD CAUSE TO BELIEVE NO CONFLICT OF INTEREST IS LIKELY TO ARISE , THE COURT MUST TAKE APPROPRIATE MEASURES TO PROTECT EACH DEFENDANT'S RIGHT TO COUNSEL. AND IT IS A LITTLE BIT DIFFERENT BUT AS A TRIAL JUDGE , IT IS A LITTLE UNCLEAR FOR ME AND ESPECIALLY WITHOUT COMMENT , EXACTLY WHAT A COURT MUST DO. I THINK WE KNOW FROM PRACTICE , BUT WAS THERE ANY , I WAS JUST WONDERING WHY THE LANGUAGE WAS DIFFERENT NO CARRIER RING CONNECT 1200 qq

NO, SIR, WE WEREN'T AWARE OF THAT CASE. I REMEMBER NOW THE CASE YOU'RE REFERRING TO.

WE WERE NOT AWARE OF THAT CASE WHEN WE DISCUSSED THIS NOR DID WE CONSIDER IT .

I HAVE A RULE ON 3.800 T O FILE A MOTION FOR REHEARING FROM DAENL. I WAS WONDERING, IN WHAT OTHER RULE DO WE ALLOW ONLY ONE SIDE TO FILE A MOTION FOR REHEARING AND WHY WOULDN'T WE ALLOW THE STATE TO FILE A MOTION FOR REHEARING FROM A GRANTING THE MOTION UNDER THE RULE ?

I BELIEVE IT WAS THE INTENT OF THE COMMITTEE TO CONFORM THAT PARTICULAR RULE WITH THE PROVISION IN 3850 THAT PROVIDES FOR A REHEARING AND I CONSISTENT WITH THE 3.850 MOTION FOR REHEARING RULE. I DON'T HAVE THAT IMMEDIATELY IN FRONT OF ME BUT IF IT IS NOT CONSISTENT , THEN PERHAPSTHAT WAS AN OVERSIGHT. BUT THAT WAS IN FACT OUR INTENT. THE REFERRAL I BELIEVE CAME FROM EITHER THIS COURT OR ANOTHER COURT ASKING US TO LOOK AT THAT ISSUE. AND THE COMMITTEE WAS SIMPLY TRYING TO GRANT THE MOTION FOR REHEARING JUST IN THE SAME SENSE THAT YOU HAVE IT WITH A 3.850. NO MORE , NO LESS WAS MY RECOLLECTION.

ALL RIGHT. THANK YOU VERY MUCH . MS. SNURKOWSKI.

GOOD MORNING.

GOOD MORNING, M Y NAME IS CAROLYN SNURKOWSKI. STATE BY WAY OF THE ATTORNEY GENERAL'S AFS HAS FILED COMMENTS WITH REGARDS TO RULES BUT I WOULD INITIALLY LIKE TO MAKE ONE LITTLE COMMENT WITH REGARD TO 3.180 AND THE ADDED LANGUAGE THAT'S FOUND IN THAT RULE WITH REGARD TO THE WHEN A DEFENDANT HAS AFFIRMATIVELYMADE A STATEMENT THAT HE IS WAIVING ATTENDANCE, THAT MAY NOT PUT IN A RULE THAT IT CAN BE USURPED BY THE JUDICIARY WITH REGARD TO THAT. I THINKTHAT IS INHERENT IN THE POUFERT COURTS OR IF A CHANGE IN THE PROCEEDINGS VERY AWAREOF THE DEFENDANT'S PRESENCE IS NECESSARY AND COURT IS INTENDING TO PROTECT THE DEFENDANT'S RIGHT BUT I DON'T THINK WE OUGHT TO PUT IN A RULE THAT THE COURT CAN USURP THE ABILITY OF A DEFENDANT TO MAKE AN AFFIRMATIVE WAIVER. THAT IS KNOWING WITH REGARD TO HIS ATTENDANCE AT A PROCEEDING.

SO DO YOU BELIEVE THAT THE COMMENT THAT WAS FILED IN INDICATING THAT YOU ACTUAL HAVE TO SEND NOTICE ON GOOD CAUSE FOR DOING SO? WOULD THAT SOLVE THE PROBLEM?

I THINK THAT WOULD SOLVE THE PROBLEM , BUT I JUST HAVE A QUESTION ABOUT WHY WE'RE ACTUALLY DOING THIS. I MEAN WE HAVE CASE LAW THAT PRETTY MUCH EXPLAINS THAT THE METHOD BY WHICH YOU GO ABOUT DOING THIS IS TO ALLOW THE DEFENDANT TO MAKE A KNOWING SHOWING WAIVER. AND WE HAVE HIS LAWYERREPRESENTING HIM. HE IS REPRESENTED. NOW IN SOME OF THE COMMENTARY , I DON'T WANT TO TAKE THE THUNDER AWAY FROM SOMEBODY ELSE BECAUSE OTHER PEOPLE AREGOING TO SPEAK ABOUT THIS. IT SEEMS TO M E VERY CLEAR IF THERE IS SOME PROCEEDING WHERE THE DEFENDANT IS ABSOLUTELY NECESSARY , THEN I THINK THAT IS A DIFFERENT MATTER.

WHAT ABOUT THE EXAMPLE THAT THE JUDGE DEPOSITED JUST A FEW MINUTES AGO? ISN'T THAT SORT OF A GOOD SENSE?

YES , IT IS.

WHERE THEY'RE VESTING THE JUDGE WITH THE DISCRETION , YOU'RE GOING TO B E PICKING A JURY.

RIGHT, I THINK THAT IS A NOTICE OF PROVISION , IT IS NOW NOT JUST GOING TO BE A PRE-TRIAL HEARING. THAT MAY BE A MATTER OF A STATUS HEARING, MAY BE A MATTER OF DETERMINING MATTERSTHAT ARE REALLY NOT INHERENT IN THE , WHAT WE CALL THE CRITICAL STAGE OF

THE PROCEEDINGS. IT IS SOMETHING THAT'S JUST MECHANICAL THAT GOES ON DURING THE COURSE OF A PRE-TRIAL EVENT. AND I FEAR IT IS .

UNDER THE RULE AT ANY PRE-TRIAL CONFERENCE AND I DIDN'T LOOK THROUGH ALL THE RULES. IS THAT , IN THE CIVIL SIDE A PRE-TRIAL CONFERENCE IS A SPECIFIC ONE EVENT.

I THINK THIS IS MULTI FACETED. I DON'T THINK IT HAS DELINEATION AS TO A SPECIFIC THING.

ANYTHING PRE-TRIAL COULD BE A PRE-TRIAL CONFERENCE?

I THINK THAT , IN SOME AREAS , THAT'S WHAT IT IS CALLED. AND WE'RE NOT -TOO ARTICULATE WITH REGARD TO EXACTLY WHAT WE ARE INTENDING TO DO.

WHERE IS THERE ANY INDICATION OUT THERE THOUGH THAT JUDGES WOULD ABUSE THE AUTHORITY , THAT IS , IT SEEMS TO ME THAT ALL THE CASE LAW SETTINGS ARE ALL TO THE CONTRARY.

I AGREE.

JUDGES ARE PERFECTLY , YOU KNOW , WILLING TO , IF YOU HAVE A DEFENDANT WHO WANTS TO WAIVE THAT RIGHT , YOU KNOW , ASSUMING THE PROPER SAFE GUARDS ARE THERE , SAY I .

I'M NOT SUGGESTING THAT. ACTUALLY I'M MORE CONCERNED WITH THE ABILITY OF A DEFENDANT TO TAKE ACTION , WHICH KIND OF LEADS ME TO , OR HAVE ACTION TAKEN OR MAKE A DECISION WHICH LEADS ME TO WHY I'M HEAR WITH REGARD TO 3.710. THAT WAS JUST A TRICKY WAY TO GETTING TO THAT RULE. LED INTO THAT. THE IDEA HOW WE ARE GOING TO ENFORCE OR TRY TO PRESENT EVIDENCE WITH REGARD TO THE MOHAMMED DECISION , THE STATE WOULD CONTEND AND HAS MADE OBJECTION TO THE RULE AS PRESENTED AND WOULD AGREE WITH THE COURT I THINK AS A MAJORITY OF THE COURT BECAUSE SEEMS LIKE IN NELSON AND IN MOHAMMED, MOST OF THE COURT MEMBERS WOULD AGREE THAT A PSI IN A CAPITAL CASE IS A GOOD THING. AND THE STATE WOULD SUGGEST THAT YOU NOT ADOPT THIS RULE AND RIGHT OF RULE THAT SAYS IN ALL CAPITAL A CASES A PSI MUST BE OBTAINED.

YOU SAY THAT IT SHOULD BE OBTAINED IN ALL CASES?

IN ALL CAPITAL CASES , YES, MA'AM.

JUST SAY A PSI , YOU HAVE A PSI BUT NOT GO INTO WHAT SHOULD BE INCLUDED IN THE PSI?

THE REASON FOR THAT , IF YOU LOOK AT STATUTE 921.231, THE PSI RULE WIS REQUIRES DOC TO PREPARE THESE THINGS , EVERYTHING THIS COURT WANTS IS IN THERE. IF WHAT THE COURT WANTS IS NOT IN THERE, IT IS BECAUSE , IN IN A PSI REPORT GIVEN TO YOU , IT IS BECAUSE DOC CAN'T OBTAIN BECAUSE THERE HASN'T BEEN A WAIVER. THIS RULE IS NOT GOING TO SOLVE THAT PROBLEM.

WASN'T , AND I HAVE TO LOOK BACK AT THE DECISION. IN MANY CASES , THE TYPE OF RECORDS THAT WE ARE TALKING ABOUT FOR THE ONE WHERE THE DEFENDANT JUST WAIVES THE RIGHT TO PRESENT EVIDENCE , THE STATE ACTUALLY HAS THAT EVIDENCE, YOU KNOW , THEN I SEE MANY CASES WHERE THE STATE-DEFINITELY PROVIDES IT. I GUESS THE QUESTION WHETHER IT ACTUALLY COMES FLU A PRE-SENTENCE INVESTIGATION REPORT OR IT GETS TO THE COURT THROUGH ALL AVAILABLE MEANS , WHICH WOULD INCLUDE AFFIRMATIVELY THAT THE STATE WHO CAN OBTAIN MUCH OF THIS INFORMATION AND MAYBE HAS , SO IN TRYING TO PUT ALL THE EGGS IN THE PRE-SENTENCE INVESTIGATION BASKET , I MEAN IT SEEMS LIKE WE HAVE SEEN CASES WHERE THIS MOHAMMED DECISION IS WORKING WITHOUT THE RULE. WHERE JUDGES ARE DOING THIS AND SEEMS LIKE IT IS HAVING ITS I'M TRYING TO UNDERSTAND AGAIN IN TERMS OF

REALLY THE ISSUE WE WERE DEALING WITH MOHAMMED , WHERE YOU SEE THE PROBLEM ARISING.

I THINK , AGAIN , MOHAMMED HAS TO DO WITH WHETHER I N FACT A DEFENDANT CHOOSES TO PUT ON MITIGATION AND WHETHER THEREIS A MEANS BY WHICH YOU CAN GET AROUND HIS AND FINDING OUT INFORMATION THAT WOULD GENERATE MITIGATION IN HIS BEHALF SO THAT THE COURT HAS A BROADER PICTURE AND UNDERSTANDING OF WHAT THE APPROPRIATE PENALTY WOULD BE. AND WHAT I'M SUGGESTING TO YOU IS THAT IF YOU'RE ASKING AND SAYING THAT A PSI ONLY IN THOSE CASES IS IMPORTANT , I SAY THAT IS WRONG. I THINK YOU'RE GENERATING ISSUES. SO I THINK YOU HAVE TO HAVE IN ALL CAPITAL CASES. AND I THINK ACROSS THE BOARD THAT SOLVES ANY ISSUES THAT MAY ARISE WITH REGARD T O INEQUITY.

REMEMBER , WHEN WE SENT THAT TO THE COMMITTEE BACK I THINK IN 2000 , AND LIKE MANY THINGS THAT HAPPENED OVER THE YEARS , BECAUSE OF THIS TWO-THIRDS VOTE, THERE WAS NO TWO-THIRDS VOTE WHICH I ASSUME MEANT BOTH DEFENSE ATTORNEYS AND THE STATE WERE AGAINST IT. I MEAN WERE YOU O N THE COMMITTEE AT THAT TIME?

I DON'T THINK I WAS ON THE COMMITTEE AT THAT TIME. AND I APPRECIATE WHY THERE MAY BE VARIANCES WITH REGARD TO ACCEPTING A PSI BEING OBTAINED IN EVERY CASE. OBVIOUSLY A DEFENSE COUNSEL , FOR EXAMPLE , IT SEEMS T O ME MOST EASIEST EXAMPLE WOULD BE A DEFENSE COUNSEL WOULD FIND THAT THERE MAY BE INFORMATIONIN THE PSI THAT IS NOT PARTICULARLY FLATTERING TO HIS CLIENT, WOULD NOT WANT A PSI PREPARED.

AND IN OTHER WORDS , HELP ME ON THIS. IN A PRE-SENTENCE INVESTIGATION REPORT, ESPECIALLY IN A CAPITAL CASE , HAVING IT DONE BY THE DEPARTMENT OF CORRECTIONS , ARE THEY A A LOT OF IT IS SELF-REPORTING. THEY TALK TO THE DEFENDANT, IF THE DEFENDANT WILL TALK T O THEM. BUT A LOT IS GATHERING JUST WHAT'S ALREADY IN THE DOC RECORD.

NO , IT IS NOT. AND THAT'S WHY I REFER THE COURT TO 921.231 BECAUSE IT IS A VERY LONG , LAUNDRY LIST O F WHAT FACT HAS TO BE OBTAINED WITH REGARD TO A PSI. IT IS HISTORY , CHILDHOOD , MILITARY RECORDS, IT IS SCHOOL RECORDS.

BUT WHAT IS IN THIS RULE IS DIFFERENT FROM WHAT YOU HAVE TO GET IN A PSI UNDER SECTION 985 OF THE FLORIDA STATUTE?

WHAT'S DIFFERENT I THINK I S THAT YOU'RE MAKING IT A RULE AND YOU'RE MAKING IT YOU'RE SUGGESTING, WE DON'T HAVE THAT , THAT IS GOING TO BE PROBLEMATIC AND SUBJECT TO A FURTHER REVIEW. I DON'T THINK THAT WE HAVE WE DON'T HAVE THAT LONG TENTACLE.

IF YOU GET I S IS PSI THAT DOES NOT COMPLY WITH SECTION 985?

I DON'T THINK YOU CAN SAY THAT BECAUSE YOU'RE PRESUMING THAT THERE WAS AN AFFIRMATIVE REASON WHY IT COULDN'T B E COMPLIED WITH VERSUS JUST UNAVAILABLE INFORMATION O R THE DEFENDANT WAS UNWILLING TO ALLOW THAT INFORMATION TO B E FORTH COMING. SO I THINK THERE IS A LOT OF ISSUES THERE. YOU KNOW , TO ME THE BEST WORLDAS FAR AS WRITING THIS RULE WOULD AGAIN TO BE APPLY IT IN ALL CAPITAL CASES. IF YOU WANT TO HAVE A COMMITTEE NOTE THAT BASICALLY SAYS THAT YOU SHOULD , THAT ALL DISPATCH YOU SHOULD TRY TO COMPLY WITH 921.231 AS FAR AS THE LAUNDRY LIST CONTAINED IN THAT RULE AS TO OBTAINING A PSI , THEN I THINK THAT WOULD AT LEAST BE INFORMATIVE OF BOTH THE DEFENSE COUNSEL , THE STATE AS WELL AS THE DEPARTMENT OF CORRECTIONS AS TO WITH THE RESPONSIBILITIES ARE.

A NUMBER OF YEARS AGO WE HAD THAT ISSUE BEFORE US THOUGH, THE STATE OPPOSED HAVING THAT DONE IN EVERY CASE. AND WE ENDED UP WITH A DECISION THAT SAID WELL , WE URGE TRIAL JUDGES T O DO IT , BUT WE ARE NOT GOING TO MANDATE IT. BUT I AM HAVING DIFFICULTY

WITH THE OTHER ASPECT OF YOUR TREATMENT OF THIS ISSUE. ORDINARILY IN THE OVERWHELMING MAJORITY OF CASES IS A POSITIVE THING THAT THIS COURT ALSO ENACT A RULE CONSISTENT WITH WHAT LEGISLATION HAS BEEN DONE. YOU KNOW , THE EVIDENCE CODE , JUST VIRTUALLY WHY WOULDN'T THAT EXAMPLE BE A GOOD ONE HERE , THAT WE HAVE A RULE ALSO , YOU KNOW , THAT PARALLELS THE STATUTORY BECAUSE THESE ARE OVERLAPPING RESPONSIBILITIES OF THE JUDICIARY. AND THE EXECUTIVE BRANCH IN CORRECTIONS AND SENTENCING. I AM HAVING DIFFICULTY WHY .

WELL MAYBE I AM JUST CONNECTING WITH YOU TOO BECAUSE FRANKLY I WAS SAYING THE SAME THING. I WAS THINKING , MY POSITION AGAIN IS THAT IN ALL CAPITAL CASES PSI OUGHT TO BE OBTAINED , THAT TAKES CARE OF ANY PROBLEMS WITH REGARD TO DISKREPSS WITH REGARD TO A CERTAIN DEFENDANT WHO MAY FALL IN A CLASS WHO MAY BE ENTITLED TO ONE VERSUS ONE THAT DOES NOT. THAT IS MY FIRST ARGUMENT OR STATEMENTS WITH REGARD TO THAT. SECOND THING IS THAT ANYTHING WITH REGARD TO THE NATURE OF WHAT IS CONTAINED IN THE PSI , I DON'T KNOW THAT YOU NEED T O SAY THAT. WE HAVE A STATUTORY PROVISION THAT SAYS WHAT SHOULD BE CONTAINED IN A NORMAL PSI. AND I THINK THE HELPFUL TASK WOULD BE TO PROVIDE I T IN A COMMENTARY VERSUS THE RULE ITSELF BECAUSE YOU DON'T KNOW WHAT IS GOING T O CHANGE. YOU DON'T KNOW WHEN SOMETHING IS GOING TO HAPPEN. OR YOU WATER IT DOWN SO MUCH IN THE RULE THAT YOU SAY IT IS AN OPEN ENDED THING. NOT ONLY DO WE HAVE THIS OR ANY OTHER THING LIKE OUR CATCHALL MITIGATOR. SO I MEAN , I THINK THERE IS MANY WAYS OF FASHIONING THIS AND GETTING T O THE SAME THING. ONLY THING I WANTED TO MAKE PERFECTLY CLEAR TO THE COURT , IN MY VIEW IS THAT A PSI I S NOT GOING TO SOLVE YOUR PROBLEMS WITH REGARD TO AN INDIVIDUAL WHO CHOOSES NOT T O ON THE TRUE MOHAMMED SITUATION, A INDIVIDUAL WHO TRULY CHOOSES NOT TO PRESENT MITIGATING EVIDENCE AND FAILS TO WAIVE THAT SOMEHOW A N ENTITY OTHER THAN THE DEFENDANT GOING TO BE ABLE TO GET THAT INFORMATION AND BRING IT BEFORE THE COURT.

WELL WE ARE NEVER GOING TO BE ABLE TO D O BETTER THAN THE BEST WE COULD DO. THAT IS ALWAYS HUMAN NATURE.

I SEE MY RED LIGHT IS ON BUT I WOULD LIKE TO MAKE ONE MORE COMMENT IF THE COURT GIVES ME INDULGENCE. THAT HAS TO DO WITH 3.575 , STATE WOULD URGE YOU ADOPT THE POLICIES SET FORTH BY THE COURT IN BAPTIST HOSPITAL. I THINK THAT IS A GOOD RULE. I THINK THAT BY DOING THAT YOU THEN ELIMINATE SOME OF THE ISSUES WITH REGARD .

TALKING ABOUT REQUIRING THAT THE , YOU ONLY GET TO TALK TO A JUROR IF YOU HAVE FILED A MOTION WITH THE COURT?

YES, YOUR HONOR.

THIS WOULD THEN ELIMINATE THE BAR RULE WHICH ALLOWS YOU TO HAVE AN INFORMAL?

YES.

WHAT WOULD BE THE ADVANTAGE OF DOING THAT?

BECAUSE I THINK , YOU KNOW , THERE IS SOMETHING DIFFERENT, AND I KNOW IT I S GOING TO BE HARD TO ARTICULATE IN A SHORT PERIOD OF TIME.

WELL MY PROBLEM WITH THIS IS THIS. HOW DOES A DEFENDANT GET TO HAVE THE KIN D OF INFORMATION YOU WOULD NEED IN THAT MOTION IF THE DEFENDANT DOES NOT HAVE SOME, AT LEAST SOME INFORMAL KNOWLEDGE FROM A JUROR TO GIVE TO THE COURT?

I THINK WE ARE TALKING ABOUT WHETHER YOU'RE GOING TO FLY SPEC THE JUROR VERSUS INFORMATION COMING TOWER ATTENTION. I THINK SOMETHING MORE TIMES THAN NOT WHEN

JURY QUESTIONS OR JURY ISSUES COME ABOUT AS TO MISCONDUCT , IT IS BECAUSE SOMEBODY HAS COME FORWARD WITH THAT VERSUS A DEFENSE LAWYER GOING IN AND INTERVIEWING EVERYBODY AND FINDING OUT IF EVERYBODY HAD THE SAME LUNCH OR EVERYBODY HAD WHATEVER THEY'RE GOING TO ASK QUESTIONS ABOUT.

BUT WHEN A JUROR GETS IN TOUCH WITH A LAWYER AND SAYS XYZ HAPPENED DURING THE COURSE OF OUR DELIBERATIONS , THE ATTORNEY WOULD NORMALLY TALK WITH THIS JUROR BEFORE , THEN GOING TO THE COURT AND SAYING.

IT IS NOT THE EXCEPTION OF THE LAWYER GOING TO THEM. IT IS INFORMATION COME T O THE LAWYER. AND THEN ASKING THE COURT THAT THEY HAVE INFORMATION THAT SEEMS TO QUALIFY WITH REGARD TO THIS RULE. AND I THINK THAT IS THE CLEAR WAY OF DOING IT. WE DO NOT ALLOW THE INTERFERENCE WITH THE JURY DELIBERATIVE PROCESS OR WHAT GOES ON IN THE JURY ROOM OTHER THAN MISCONDUCT. AND OTHER ISSUES OF THAT ILK. I THINK THERE IS A DIFFERENCE IN THE CRIMINAL ARENA VERSUS THE CIVIL ARENA WHERE YOU HAVE DIFFERENT DYNAMICS GOING ON. IN THE CRIMINAL ARENA WE ARE TALKING ABOUT WHETHER IN FACT THE STATE HAS PROVED , BEYOND A REASONABLE DOUBT THOSE OTHER KINDS OF THINGS. WE HAVE HAD CASES WHERE BIBLES ARE BROUGHT IN AND THAT SORT OF THING. BUT THOSE ALL CAN BE HANDLED. WE ARE TALKING ABOUT WHAT IS THE ISSUE? HAVE THEY PROPERLY DETERMINED THAT THE EVIDENCE IS PROOF BEYOND A REASONABLE DOUBT? I DON'T KNOW IF WE ARE AT A POINT OR EVEN HAVE CASE ISSUES THAT RAISE THAT ISSUE. SEEMS TO ME THAT I S THE CORE ISSUE.

WHY SHOULD WE THOUGH , FOR INSTANCE , ALLOW NEWSPAPER REPORTERS TO CONTACT FORMER JURORS IN THAT INFORMAL MANNER AND YET NOT ALLOW THE PEOPLE MOST AFFECTED NOT T O HAVE THAT INFORMAL CONTACT?

WELL , I THINK THAT BECAUSE , THAT IS A PROCESS THAT WE HAVE. I THINK THAT THE PARTIES HAVE A MUCH MORE VESTED INTEREST IN AS STAIN ASCERTAINING. I THINK THE NEWSPAPERS AND PEOPLE THAT ARE INQUIRING THESE INDIVIDUALS HAVE A REASON TO FIND OUT WHAT HAPPENED VERSUS THE , A FISHING OR POSSIBLE EXPEDITION BY THE PARTIES TO FIND OUT AND FIND A BASIS UPON WHICH THEY HAVE A VESTED INTEREST IN THAT , MUCH MORE.

RIGHT NOW AGAIN , THERE IS NO RULE. SO I ASSUME THAT THE DEFENSE LAWYER TOOK THE PROCEEDING UNDER THE FLORIDA BAR RULE. YOU KNOW , I DON'T SEE REPORTS OF ABUSES THAT HAVE TAKEN PLACE WHERE EVERY CASE A MOTION .

IT IS NOT. BUT THERE ARE PROBLEMS. THE STATE CITED THE CASE AS PART OF ITS APPENDIX T O THIS THAT WHERE THE ISSUES ARE BEING , ARE PROBLEMATIC AND MAY NOT BE ACROSS THE BOARD. BUT THE QUESTION IS , THERE IS AN OPPORTUNITY AND THERE IS A REASON AND WE HAV E A RULE THAT IS CONTRARY TO WHAT THIS CASE LAW IS IN THE STATE WITH REGARD TO PERPETUATING THIS. AND I DON'T THINK WE OUGHT TO MAKE THE PROBLEM MORE DIFFICULT. I THINK WE OUGHT TO MAKE IT CLEAR WHAT THE LAW IS AND HAVE IT UNIFORM AND NOT HAVE CONFUSION OUT THERE. AND NOT GENERATE AN ISSUE WHERE THERE IS NOT TOO MANY ISSUES. THANK YOU.

THANK YOU VERY MUCH .

GOOD MORNING.

GOOD MORNING , YOUR HONOR. MY NAME IS MAY IT PLEASE THE COURT MY NAME IS DOCTOR ROBERT DAVID MALOVE. I AM VERY EXCITED TO HAVE AN OPPORTUNITY TO MAKE AN ORAL ARGUMENT BEFORE THE COURT. BEFORE THE COURT IS A MOTION TO AMEND SEVERAL RULES. HOWEVER , M Y REMARKS ARE GOING TO BE LIMITED TO RULE 3.18083 REGARDING THE PRESENCE OF THE DEFENDANT. LET ME SAY THAT AT THE OUTSET , THIS PROPOSED RULE CHANGE IS A BAD

IDEA AND OUGHT TO BE REJECTED BY THE COURT. THE COMMITTEE NOTE INDICATES THAT THE MATTER CAME BEFORE THE COMMITTEE BECAUSE THERE WAS CONCERN OVER RECENT COURT DECISIONS THAT HAD FAR FROM INTERPRETED RULE 3.1803. WHAT THIS HONORABLE COURT MAY NOT KNOW, I WAS THE ATTORNEY OF RECORD AND I CAN ASK YOUR QUESTIONS YOUR HONOR WHAT HAPPENS ON THE GROUND AND ABUSES. I WAS THE ATTORNEY OF RECORD IN THE TWO APPELLATE DECISIONS FAVORABLE TO MY CLIENT OUT OF THE THIRD DISTRICT COURT OF APPEALS, WHERE TWO JUDGES REFUSED TO HONOR MY CLIENT'S WRITTEN WAIVERS OF PRESENCE AT A PRE-TRIAL CONFERENCE. IN MAC DERMONT VERSUS STATE, WHICH IS A T 824 SO2D 333 FLORIDA THIRD DCA, FACTS WERE AS FOLLOWS. CHARLES MAC DERMONT HAD HIS ARRAIGNMENT ON FRIDAY, AUGUST NINTH. AND IN ACCORDANCE WITH 3.1808 2: WE FILED A WRITTEN WAIVER OF ARARN ARRAIGNMENT. AND WRITTEN PLEA OF NOT GUILTY. WHEN WE WENT TO ARRAIGNMENT, THE DEFENDANT WAS NOT PRESENT AND THE COURT RESET THE CASE FOR FOUR DAYS LATER ON AUGUST 13.

WHAT ACTUALLY GOES ON AT THE ARRAIGNMENT? I MEAN BEFORE YOU CAN, I CAN REALLY DECIDE WHETHER OR NOT HE HAD THE RIGHT OR THE JUDGE HAD THE RIGHT TO SAY YOU NEED TO BE AT ARRAIGNMENT, WHAT WAS GOING ON AT THE ARRAIGNMENT?

FILED THE PLEADINGS, THE STATE INDICATES THAT THEY HAVE AN INFORMATION. THEY FILE THE CHARGES. WE ANNOUNCED OUR APPEARANCE, FILED OUR PLEADINGS. IN SOME CASES WITH DISCOVERY IS COMPLETE, A PACKET IS HANDED TO US WHERE THE STATE HAS 15 DAYS TO PROVIDE DISCOVERY TO US.

IS THIS FELONY OR MISDEMEANOR?

BOTH WERE FELONY B S LOANS.

AND IN BOTH CASES YOU WERE PRIVATELY RETAINED COUNSEL?

YES, YOUR HONOR.

AND IN BOTH CASES YOUR CLIENT WAS OUT ON BAIL?

YES, SIR.

WHAT WAS -SO ON THE GROUND, YOU DO DEFENSE WORK, BOTH IN BROWARD AND IN DADE COUNTY?

THAT'S RIGHT.

HAS THIS ONLY BEEN A PROBLEM IN A COUPLE, WITH A COUPLE OF JUNLS?

EXPLAIN WHAT'S GOING ON.

WELL, THE STOUT CASE WAS OUT OF THE FOURTH DISTRICT. AND THAT IS CITED IN THE MATERIALS.

YOU CAN ALWAYS HAVE EXCEPTIONAL. TELL US WHAT THE, IN A COMMON SENSE WAY WHAT YOU PERCEIVE TO BE THE PROBLEM. YOU HAVE SAID IT IS NOT INDIVIDUAL JUDGES OR IS IT INDIVIDUAL JUDGES?

I THINK THE JUDGES WANT DEFENDANTS IN COURT BECAUSE THEY WANT TO CLOSE CASES. AND WHAT HAPPENS IS, WE'RE RUNNING TO COURT TO ANSWER FOR THESE HEARINGS THAT ARE

OFTEN FREQUENTLY SET AND WE CAN'T GET THE WORK DONE T O TAKE THE DEPOSITIONS AND WE HAVE TO REPORT TO THE COURT THAT NOT ALL THE WITNESSES ARE HERE , WE ARE NOT READY FOR TRIAL. MORE WITNESSES NEED TO B E RESET. AND WHAT HAPPENS IS BY HAULING THE DEFENDANT BACK INTO COURT ON A CONTINUOUS BASIS , THEY HAVE TO MISS WORK. IF THEIR WAIVERS AREN'T APPROVED. THEY LOSE THEIR BENEFITS. THEIR FAMILIES LOSE THEIR BENEFITS, HEALTH CARE BENEFITS. AND THEY'RE FACED WITH A DECISION, DO I TAKE THIS PLEA TO GET IT OVER WITH BECAUSE OTHERWISE, YOU KNOW , MAYBE THEY CAPITULATE.

SO YOU FEEL LIKE IT IS A FORM OF HARASSMENT?

UNFORTUNATELY IT IS.

SO THESE ARE BLANKET REQUIREMENTS WHERE EVERY DEFENDANT , OR ARE YOU TALKING INDIVIDUALISTIC DECISIONS BY THE TRIAL JUDGE?

NOTWITHSTANDING THE WAY THE CASE LAW IS , THERE ARE STILL JUDGES IN MIAMI-DADE COUNTY IN THE 11TH CIRCUIT THAT HAVE THE CLERK'S OFFICE ISSUE A NOTICE THAT SAYS YOUR ATTENDANCE IS MANDATORY AT A PRE-TRIAL CONFERENCE.

EVERY DEFENDANT?

EVERY PRE-TRIAL CONFERENCE , AND YOU'RE RIGHT , THERE IS NO DEFINITION ABOUT WHAT A PRE-TRIAL CONFERENCE.

EVEN THOUGH THERE IS NO PARTICIPATION BY THE DEFENDANT?

NO. IT IS JUST T O INCONVENIENCE AND TO WEAR DOWN , JUST LIKE MR. TRETTIS SAID IN HIS REMARKS.

WOULD IT APIECE YOUR CONCERNS IF THERE WAS INSERTED IN THE RULE EITHER A GOOD CAUSE REQUIREMENT OR A , THE PROVISION THAT THIS ABILITY OF THE JUDGE TO OVERRIDE A WAIVER CAN BE EXERCISED ONLY ONCE OR TWICE OR SOME SPECIFIC NUMBER OF TIMES?

SHOULD BE SOME KIND O F LIMITATION YOUR HONOR.

I'M SORRY , GO AHEAD.

CERTAINLY NEEDS TO B E SOME KIND OF LIMITATION BECAUSE WHAT WE SEE IS THAT WHAT HAPPENED FOR EXAMPLE IN MAC DORM MOTT IS TYPICAL. FOUR DAYS AFTER THE ARRAIGNMENT BECAUSE THE RULE SAYS YOU CAN WAIVE YOUR PRESENCE.

WHAT ABOUT IF THE RULE HAD A PROVISION THAT IF THERE IS A WAIVER THAT GOOD CAUSE WOULD HAVE TO BE DEMONSTRATED?

ABSOLUTELY.

WOULD THAT TAKE CARE OF THAT?

GOOD CAUSE SHOULD HAVE TO BE DEMONSTRATED .

IN THE FACE OF A WAIVER.

TO COMMUNICATE A PLEA OFFER TO A DEFENDANT IS OUR OBLIGATION AS IT IS. WE ARE , THERE ARE RULES I N PLACE AND MECHANISM S WHERE ATTORNEYS HAVE TO COMMUNICATE A PLEA OFFER AND IF W E DON'T.

HOWEVER, WHAT WE ARE CONFRONTED WITH INCREASINGLY IN CRIMINAL LAW AND OBVIOUSLY OUR CONCERN IS MAINLY WITH THE FACT THAT THE VAST MAJORITY OF THESE CASES ARE PUBLICLY DEFENDED AND THAT THERE IS POST CONVICTION CASES THAT , THAT ARE INCREASINGLY ABOUT DISAGREEMENTS OF WHAT'S SAID BETWEEN LAWYERS AND CLIENTS. AND THAT COMMUNICATION AND THAT'S THE TOTAL WE GET SO FOCUSED ON THAT THAT THERE NEEDS TO BE SOME PROTECTION THAT WHAT I S ACTUALLY GOING ON IN THE PRE-TRIAL I S NOT GOING TO RESOLVE IN SOME KIND OF POST CONVICTION PROCEEDING.

ONE REMEDY I CAN PERCEIVE IS THAT THE WAIVER THERECOULD BE MORE THAN ONE WAIVER. FOR EXAMPLE, WAIVER COULD BECOME STALE. A CASE COULD B E SIX MONTHS OLD AND MAYBE HASN'T BEEN ANY RECENT CONTACT WITH THE DEFENDANT.BUT IF THE COURT WOULD SAY LET'S , FOR EXAMPLE , THIS WAIVER NEEDS TO BE EXECUTED TEN DAYS BEFORE THE PROPOSED HEARING , WE KNOW THAT THERE IS A COMMUNICATION GOING ON BETWEEN THE ATTORNEY AND HIS CLIENT. THERE IS AN A SIGNATURELINE, THERE IS N O FORM , I USUALLY SAY MY CLIENT HAS AUTHORIZED ME T O REPRESENT HIM AND HE IS FULLY AWARE OF THE CIRCUMSTANCES OF WHAT'S GOING ON.

WOULD YOU AGREE THAT THE TRIAL COURT DOES HAVE THE INHERENT POWER TO DO THAT?

THE COURT HAS THE POWER TO DO IT , YES, SIR. BUT I AM WHAT I AM AFRAID OF IS HAPPENING IN REALITY , THESE ARE BEING USED AS TOOLS.

IS THEY ARE ABUSED?

YES, SIR.

IN ANSWER TO ACTUALLY JUSTICE WELLS , AND WE ARE NOT HERE TODAY TO SOLVE THAT PROBLEM , BUT WOULD THERE BE ANY REASON IF THE ISSUE IS THAT THE JUDGE WANTS T O MAKE SURE THAT THE PLEA IS BEING PROPERLY COMMUNICATED B Y THE DEFENSE ATTORNEY TO THE CLIENT , THAT THE , THAT THE CLIENT SIGN A BE IF IT IS REJECTED , SIGN A STATEMENT THAT I RECEIVED THIS PLEA OFFER AND IT'S BEEN REJECTED? IT IS NOT REALLY CHORUS , BUT SEEMS TO BE THAT MIGHT BE A WAY IF WE DO GET THOSE CASES ON POST CONVICTION. I AM SURE DEFENSE ATTORNEYS DON'T LIKE IT ANY MORE THAN THE COURT , .

I THINK M Y ANSWER TO YOUR QUESTION IS MULTI PART. FIRST OF ALL , JUDGES WHAT HAPPENS , THEY HAVE DEFENDANTS COME INTO THE COURT SO THEY CAN EYEBALL THEM AND LET THEM KNOW WHAT THEY'RE LOOKING AT. THERE IS NO WAY FOR A DEFENDANT TO MAKE A DECISION TO TAKE A PLEA FOUR DAYS AFTER THE ARRAIGNMENT BEFORE THE ATTORNEY THAT HE'S PAID MONEY TO CAN GO TO WORK . NO PATIENT WOULD ALLOW A DOCTOR TO DO SURGERY WITHOUT MRI'S , X-RAYS AND WHATEVER YOU HAVE. WE CAN'T ADEQUATELY DO OUR JOB AND I THINK YOU GET INTO THE SITUATION OF THE POST CONVICTION MATTERS WHEN AN ATTORNEY CAN'T DO HIS JOB BECAUSE THE CASE I S BEING , COMING BACK ON A REPEATED BASIS AND THE CLIENTS ARE WORN DOWN AND TAKE A PLEA BEFORE THE CASE IS READY TO GO.

I JUST WANT SO IN TERMS , THIS IS GOING ON IN THE GROUND. WHEN I WAS ASKING ABOUT , IT APPEARS THAT IT IS GOING ON IN THE GROUND IN SOUTH FLORIDA. IT DOESN'T APPEAR , I MEAN SINCE IT WAS A TWO-THIRDS VOTE TO APPROVE I T , THAT DEFENSE ATTORNEYS WERE ON THIS , THAT THERE WAS CONCERN IN THE REST OF THE STATE THA T THAT TYPE OF PRACTICE THAT YOU'RE REFERRING TO IS GOING O N IN CENTRAL FLORIDA OR NORTH FLORIDA.

CAN'T SAY. I A M NOT A MEMBER OF THE COMMITTEE. I WOULD LIKE TO BE. BUT , AND I DON'T KNOW THE COMPOSITION , WHETHER THERE IS JUDGES AND PROSECUTORS OR DEFENSE ATTORNEYS AND WHETHER THERE IS IN FACT A MIND SET THAT JUDGES AND PROSECUTORS HAVE TO BE IN COURT , WELL WE MAY AS WELL HAVE THE DEFENDANT HERE TOO. DON'T KNOW IF THAT'S HAPPENING.I DON'T KNOW IF THE REPRESENTATION OF WHAT'S ON THE COMMITTEE IS

REALLY THE SENTIMENT OF WHAT PRACTITIONERS HAVE ACROSS THE STATE. I JUST KNOW THAT IS THE SENTIMENT OF THAT COMMITTEE.

REMEMBER , YOU CAN ALWAYS ATTEND COMMITTEE MEETINGS.

I DID.

LET M E ASK YOU A QUESTION AND I AM VERY SYMPATHETICWHERE YOU'RE COMING FROM A S A PRIVATE PRACTITIONER. BUT THE TRIAL COURT HAVING A VERY HEAVY DOCKET , GOT STATE ATTORNEY, PUBLIC DEFENDER BOTH OVERWORKED AND YOU G ET TO DOCKET DAY AND YOU REALIZE THERE HAS BEEN NO COMMUNICATION BETWEEN THE STATE AND THE PUBLIC DEFENDER AND THE DEFENDANT. AND THE ONLY WAY TO NOT CONTINUE THE CASE AGAIN THAT'S BEEN SET FOR TRIAL AND BEEN NO COMMUNICATION IS TO HAVE THESE CONFERENCES SO THEY ARE ACTUALLY THERE TO COMMUNICATE.

I COME A T IT FROM A DIFFERENT DIRECTION.I SEE MY LIGHT IS ON , CAN I HAVE YOUR PERMISSION?

ANSWER THE QUESTION.

I THINK IF WE STOPPED HAVING THESE UNNECESSARY HEARINGS ON FRIDAY BECAUSE THERE IS NO TRIALS GOING O N IN THE COURTHOUSE ON FRIDAY , WE PICK UP ONE DAY A WEEK FOUR DAYS A MONTH , ALMOST A WEEK , EVERY MONTH.WHERE WE COULD TRY CASES AND THE COURT'S TIME COULD BE USED MORE PRODUCTIVELY , RATHER THAN HEARING, WELL , A WITNESS DIDN'T SHOW UP OR I NEED SOME MORE TIME TO TAKE DEPOSITIONS.

DO YOU SERVE ON ANY LOCAL ADVISORY COMMITTEES IN DADE COUNTY?

I SERVE ON THE TRAFFIC RULES COMMITTEE.

BUT NOT ON A COMMITTEE THAT TAKES THE CRIM THE LOCAL CRIMINAL RULES?

NO. THERE IS ANOTHER ATTORNEY HERE WITH RESPECT TO THAT.

I WANT TO COMMEND YOU FOR TAKING THE TIME AND THE EFFORT AS A PRIVATE ATTORNEY FIRST TO FILE THESE REMARKS. BUT ALSO TO TRAVEL ALL THE WAY TO TALLAHASSEE TO MAKE YOUR POINT KNOWN. THANK YOU.

THANK YOU VERY SHALL YOUR HONOR. IT'S A PLEASURE.

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GOOD MORNING.

GOOD MORNING.

STILL HAVE AN OPPORTUNITYTO HONOR THIS AGREEMENT TO TAKE LESS THAN AN HOUR.

I WILL HONOR MY AGREEMENT , I PROMISE JUST LIKE THE LAST LAWYER TO GET UP BEFORE THE JURY.

MAY IT PLEASE THE COURT MY NAME IS SCOTT FINGERHUT. I MAY BE THE COMBINATION OF LAWYER THAT YOU WANT TO FIRE THE QUESTIONS A T BECAUSE I AM NOT HER HERE IN M Y CAPACITY AS VICE CHAIR OF JUDGE SHINHOLSER 'S RULES COMMITTEE. ALTHOUGH IT'S BEEN A PRIVILEGE TO SERVE UNDER HIM. I AM HERE AS A A MIAMI CHAPTEROF THE FLORIDA CRIMINAL DEFENSE LAWYERS. AND BEEN A PROSECUTOR I N MIAMI-DADE COUNTY. JUSTICE BELL YOUR

HYPOTHETICAL IS THE TYPE OF GOOD CAUSE WHERE A JUDGE COULD SAY THERE HAS BEEN NO DIALOGUE, BRING SOMEBODY IN. WHICH THE RULE ALREADY PROVIDES FOR BECAUSE I AM ASKING THE COURT NOT TO ADOPT A RULE WITHOUT A SPECIAL SPEECHING THAT BRINGS A BLANKET REQUIREMENT IN THAT MAY CONFLICT BY THE WAY WITH 318082.

AGAIN LET ME ASK YOU THE SAME THING. WOULD IT ADDRESS YOUR CONCERNS IF WE INSERTED A GOOD CAUSE REQUIREMENT?

JUST USING THE WORDS GOOD CAUSE, JUDGE, I HAVE A FEELING WE WILL BE BACK HERE EVENTUALLY TO FIGURE OUT JUST HAVING SOMEONE ENTER A PLEA.

DO YOU HAVE ALTERNATIVE LANGUAGE?

IF THE TRIAL JUDGE CAN EXPRESS ON THE RECORD GROUNDS OTHER THAN FOR THE MERE FACT OF ENTERING A PLEA, WHICH IS AGAIN JUST OFF THE TOP OF MY HEAD, FOR LEGITIMATE CASE MANAGEMENT OR FEAR OF RISK OF FLIGHT OR DANGER TO THE COMMUNITY.

BUT ISN'T THE BEST WE CAN USUALLY DO WITH LANGUAGE SOMETHING LIKE GOOD CAUSE? THAT IS, WE JUST WE HAVE LIMITATIONS THERE AND OF COURSE THAT'S GOING TO, IN THE EYE OF THE BEHOLDER KIND OF THING. BUT WE JUST HAVE TO WORK WITH THE IMPRECISION OF WORDS AND LANGUAGE.

YOU'RE RIGHT CHIEF JUSTICE ANSTEAD. WHICH IS PROBABLY WHY THE BEST RESULT APPEAR.

YOUR POSITION IS THERE SHOULD BE A SPECIAL REASON, A GOOD REASON OF GOOD CAUSE IF THERE IS A WAIVER FOR MAKING THE DEFENDANT HERSELF APPEAR IN THE COURTROOM?

WOULDN'T IT ALSO ADDRESS YOUR CONCERNS IF ONE, IF IT IS LIMITED TO ONCE OR TWICE OR WHATEVER SO YOU'RE NOT DOING IT CONSTANTLY?

NO, WITH ALL RESPECT JUSTICE CANTERO. I DON'T THINK PUTTING A KNEE MERE CAL REQUIREMENT IN THE RULE IS GOING TO HELP. I THINK LESS IS MORE IN THIS INSTANCE. I THINK IT IS VERY LIMITED CIRCUMSTANCES WE HAVE SEEN THE PROBLEM ARISE. MOST TRIAL JUDGES DO NOT FORCE PEOPLE TO COME. AND THE ONES WHO DO ARE APPRIZED OF THE RULE AND NORMALLY IN MY EXPERIENCE, THE OLDER I GET, MY BEING LESS INCLINED TO WANT TO MAKE MY LIVING AS SOMEONE'S ADVERSARIES. WORKING SOMETHING OUT HERE, BENCH AND BAR AGREE ON ALL SIDES. IT IS REALLY UNNECESSARY TO AMEND THE RULE. MOST I'M SORRY JUSTICE QUINCE.

WHAT ABOUT THE LAW IN CRUZ VERSUS STATE? THE LANGUAGE IN CRUZ VERSUS STATE? IF WE JUST ADD THAT LANGUAGE NOTWITHSTANDING THE WAIVER IF DEFENDANT'S PRESENCE IS NEEDED TO DETERMINE WHETHER THE PLEA HAS BEEN OFFERED OR ACCEPTED. THERE IS GOOD REASON TO DO SO AND NOTICE IS GIVEN?

YOU WOULD WANT TO ADD THAT INTO THE RULE?

YES, IF WE TALK ABOUT GOOD REASON AND NOTICE.

AGAIN, AGREEING WITH JUSTICE CANTERO, THERE MAY NOT BE ANY BETTER WE CAN DO THAN ADDING GOOD CAUSE LANGUAGE AND LEAVING IT UP TO THE GOOD FAVORITE PARENTS STATE AND DEFENSE PUBLIC AND PRIVATE TO HANDLE THE ISSUE.

SO IF WE ACCEPT YOUR POSITION, THEN THE ONLY TIME THAT A DEFENDANT SHOULD BE REQUIRED TO COME IS TO THE ARRAIGNMENT UNLESS THAT'S A WAIVE, AND THEN TO TRIAL?

MAY I REPHRASE YOUR QUESTION AND PUT IT DIFFERENT A DIFFERENT WAY? THERE IS NO QUESTION THAT THIS COURT CAN AMEND THE RULE EXACTLY AS PROPOSED BY THE COMMITTEE. SHOULDN'T SURPRISE YOU THAT MOST OF THE VOTE CAME DOWN ALONG QUOTE-UNQUOTE PARTY LINES. MOST, ALTHOUGH THANKFULLY WE HAVE NOT SEEN THIS IN THE COURTROOM TODAY. AS I AM SURE YOUR WELL AWARE. IN A COUNTY LIKE MIAMI A FELONY ALONE THERE HAS BEEN 40,000 CASES FILED IN 2002 AND 2003 , THREE HUNDRED JUROR TRIALS. THAT IS A LOST HASHING OUT. THAT IS WHAT MOSTLY THE LAWYERS DO AND MAKES FOR A LOT OF ORGANIZATION WORK.

LET ME , IN HOW MANY OF THOSE GET SETTLED ON THE DAY OF JURY SELECTION?

PROBABLY A WHOLE BUDGE.

AND HOW MANY JURORS NOT ONLY A WHOLE BUNCH.

HOW MANY JURORS NOT ONLY YOUR CLIENTS , BUT JURORS WHO HAVE TO GET OFF WORK , COME UP AND SHOW UP AND YOU HAVE GOT 30 TRIALS SET FOR A TWO WEEK TRIAL PERIOD AND YOU END UP WITH TWO TRIALS?

PROBABLY A WHOLE BUNCH. WHICH IS WHY I PHRASE IT THIS WAY WITH ALL RESPECT JUSTICE BELL. THIS IS A GRACE WE HAVE AFFORDED FOR 32 YEARS APPARENTLY NOW. THE ACCUSED IN CRIMINAL CASES. WE DON'T HAVE TO DO THIS. THE COURT DOESN'T HAVE TO DO IT. IT IS A MASSIVE DISPLACEMENT OF PERSONNEL , JUSTICE SYSTEM CIVIL AND CRIMINAL , PARTICULARLY CRIMINAL , PARTICULAR IN MIAMI. IT DOESN'T ONLY , I AM NOT GOING TO USE THE WORD INCONVENIENCE, BECAUSE BEING ACCUSED OF A CRIME IS AN INCONVENIENCE TO YOUR LIFE. BUT THE MASSIVE DISPLACEMENT OF PEOPLE , NOT JUST THE DEFENDANTS WHO COME TO COURT , BUT THE EMPLOYERS WHO HIRE THEM, THE PEOPLE WHO CARE FOR THEIR CHILDREN WHEN THEY COME. IT CAN BE A CLOSE CALL WASTE OF TIME AND USUALLY ISN'T BECAUSE WE ALL PLAY BALL TOGETHER. WE ARE TRYING TO DO THE BEST WE CAN TO HELP PEOPLE LESS FORTUNE THAN OURSELVES.

AGAIN, IS THIS HAPPENING IN EVERY DIVISION OF COURT IN MIAMI-DADE THAT HAS CRIMINAL CASES OR ARE WE AGAIN TALKING ABOUT A COUPLE OF JUDGES THAT HAVE TRIED TO DO THIS AND DO IT THIS WAY?

JUSTICE PARIENTE , THESE ARE ISOLATED INSTANCES IN MY HUMBLE OPINION.

SO YOU DON'T THINK THE RULE NEEDS TO BE AMENDED BECAUSE YOU DON'T THINK THERE IS A PROBLEM?

NO , WITH ALL RESPECT. IN BREVARD SOME JUSTS DON'T EVEN SIT OVER DOCKET CALENDARS. MOST INCARS RA EARTHED DEFENDANTS AREN'T BROUGHT OVER. WE DON'T . MY MAIN POINT HERE AND MY LIGHT IS ON. I AM KEEPING MY PROMISE CHIEF JUSTICE. IS THAT I HOPE THE COURT PERMITS THE DEFENDANTS KEEP THIS GRACE OF GETTING ALONG WITH THEIR LIVES PENDING THE ADJUDICATION OF THEIR CASES. THOUGH WE HAVE THE POWER TO DO OTHERWISE.

THANK YOU ALL VERY MUCH FOR HELPING US WITH THESE IMPORTANT RULE CHANGES. THANK YOU JUDGE FOR PRESIDING OVER THAT.