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Margorie Willis v. Gami Golden Glades, LLC.

CHIEF JUSTICE: GOODMORNING.

GOOD MORNING. MAY IT PLEASE THE COURT. I AM BARBARA YEEN GREEN , AND I REPRESENT MARJ ORIE AND WAY RAY WILLIS , WHO WERE THE PLAINTIFFS BELOW. THIS RELATES TO THE CASE WHERE THE PLAINTIFF WAS VICTIM AFTER ARMED ROBBERY AND HAD A GUN HELD TO HER HEAD AND CLIC KED. THE ROBBER LI FTED UP HER CLOTHES AND PATTED HER DO WN , LOOKING FOR MO NEY. TOOK HER PURSE AND TOOK H ER CAR AND TOOK HER BELONG IN GS THAT WERE IN THE CAR.

CHIEF JUSTICE: W HAT WAS , THE PATTING DO YOU KNOW HOLDING THE GUN TO THE HEAD , DID THE TRIAL COURT NOT SEE THAT AS AN IMPACT ?

THE TRIAL COURT DID NOT SEE THAT AS AN I MPACT , YOUR HONOR, AND NE I THER DID THE THIRD DISTRICT. THERE IS LANGUAGE IN THE CASE LAW, HOWEVER THAT, AN IMPACT CAN BE VERY SLI GHT. IT CAN BE ANYTHING VISIBLE OR INVISIBLE , LA RGE OR SMALL, THAT TOUCHES OR E NTERS THE PLAINTIFF'S BODY THAT CLEARLY HA ENED HERE.

LE T ME A S K YOU , SHOULD OUR LAW ON , AND I KNOW THAT YOUR BRIEF AND SOME OTHERS , EXPRESS, MAYBE, SOME FRUSTRATION WITH THE LAW A S IT EXIST , BUT SH OULD OUR LAW ON WHETHER EMOT IONAL DISTRESS DAMAGES S ARE RECOVERABLE , DEP END ON WHETHER THE ROBBER ACT UALLY TOUCHES SOME BODY'S HEAD OR NOT?

I THINK THAT IS WHERE THE LAW DOES D RAW THE LINE RIGHT NOW, BUT I DO N'T THINK THAT IS WHERE IT SHOULD DRAW T HELINE, YOUR HONOR. NO, I DON'T . AS I HAVE SA ID IN THE BRIEF , THE "IMPACT RULE" IS A VERY BAD WAY TO DECIDE THIS KIND OF CASE. I THINK MS. WILLIS'S SITUATION FITS IN TO IF , BUT I DON'T THINK IT IS A GOOD WAY TO DE CIDE THIS KIND O F CASE. I THINK THE " IMPACT RULE" SHOULD BE ABOLIS HED .

I THINK YOUR BRIEF UNDERSTANDS THAT OUR DILE MMA , I GUESS , WITH THE "I MPACT RULE", IN TRYING T O PUT SHALL SOME KIND OF LIMIT O N RECOVERY, SO THAT NOT EVERY SINGLE TORT C L AIM IS NOW, ALSO, AN EMOTIONAL DISTRESS DAMAGES CLAIM, AND TRYING TO DRAW THE LINE, SO THAT ONLY THOSE FULLY LEGI TIMATE CLAIMS, ARE ONES THAT CAN B E RECOVERED IN DA MAGES , BUT I DON'T THINK THIS COURT OR ANY OTHER COURT, HAS, REALLY, BEEN ABLE TO DISTINGUISH THE GOOD FROM THE BAD KIND OF ARGUMENT.

WELL , I THINK THE "IMPACT RULE" IS A BAD WAY T O DISTINGUISH THE GOOD FROM THE BAD . BUT I THINK THAT ABOLISHING THE "IMPACT RULE" WOULD BE CONSISTENT WITH OUR P U BLIC POLICY OF HO LDI NG W RONG DOERS RESPONSIBLE FOR THE CRIME THEY CAU SED . IT WOULD COMPE NSATE T HEINJURED, WHICH IS A IMPORTANT PUBLIC P OLICY. FLORIDA IS IN THE MIN ORITY RIGHT NOW . ALMOST EVER YBODY ELSE , ACCORDING TO THIS COURT I N THE GONZALEZ CASE TEN YE ARS AGO , ALMOST EVE RYBODY ELSE HAS ABOL ISHED THE "IMPACT RULE".

BUT YOUR FIRS T LINE OF ATTACK, IF I UNDERSTAND IT, IS TO AR GUE TO US THAT YOU DO COME W ITHIN THE EXCEPTION THAT PROVIDES THAT, IF THERE IS CON TACT , HOWEVER SLIGHT OR SMALL , THEN , THE "IMPACT RULE" DOES NOT A LY TO YOUR CASE. IN OTHER WORDS, THAT YOU FIT THE CASE LAW OUT OF THIS COURT , DEFINE WAG CO N TACT IS. IS THAT CORRECT?

I THINK WE DO.

THAT IS YOUR CASE .

I THINK WE DO, YOUR HONOR.

YOU DON'T NEED US TO ABOLISH THE RULE, IN OR DE R FOR YOUR CASE TO FIT.

YOU DON'T, BUT YOU DO NEED TO CLARIFY IT , BECAUSE THERE ARE THREE OR FOUR LOWER AELLATE COURT CASES WITH SIM ILAR FA CTS. WE ARE WITH A GUN HELD TO SOMEBODY'S HEAD AND THEY A REPUSHED. THEY ARE HELD UP , I T HINK THERE ARE AT LE AST THREE HOTEL CASES, THE RECORD HOTEL CASE COMES TO MIND THAT THE THIRD DIST RICT BELOW SAID WE CAN'TDISTINGUISH T I TOLD THEM IN ORAL ARGUMENT, I COU LDN'T REALLY DIST INGUISH IT.

THAT IS WHY WE HAVE THE CONFLICT JURISDICTIONAL BASIS , TO RESOLVE THAT KIND OF CONF LICT. IF THOS E CASES ARE OUT THERE AND IF THEY SU LIED RJ O R SOME OF THOSE WHER E THERE WAS A CONSENTUAL TOUCHING DURING THE EXAM AND TH ER E WAS THE VER BAL R E PORT , SO DO WE, REALLY, NEED TO GET IN AND TRY TO ERR AIS TO ERASE OVER 1 0 ON YEARS OF LAW, GOING BA CK TO 1 89 OVER 100 YEAR S OF LAW, GOING BACK TO 189 3, IN THE CONTEXT THAT WE ARE TALKING ABO UT?

YOU DON'T HAVE TO IN THIS CASE, YOUR HONOR .

DO WE NOT , IN YOUR OPINION , HAVE TO D EAL WITH THOSE THING YOURSE LF CONCERNED WITH , AS FAR A S TLUNING IS CONF USION OUT THERE , FOR RESOLVE IT, I F THAT IS WHAT NEEDS TO BE DONE.

YES, YOUR HONOR, YOU COULD. YOU COULD CLAR IFY WHETHER WE MEAN REALLY ANY KIND OF TOUCHING AND REALLY MEAN A NYKIND OF IN JURY AR ISE ING FROM THE INCIDENT AS A WH OLE . MS. WILLIS DOES HAVE PHYSICAL SYMPTOMS , BUT HER PRIMARY PROBLEM IS PSYCHOLOGICAL, AND PERHAPS SOMEONE ELSE WHO IS DEVASTATED PSYCHOLOGICALLY , WOULD NOT HAVE THE PHYSICAL SYMPTOMS THAT MS . WILLIS HAS.

LET ME ASK YOU THIS . YOU SAY THAT THERE ARE S OME CLEAR CASES THAT SAY THAT THE SLIGHTEST I MPACT IS ENOUGH. WHAT CASES ACTUALLY SAY THAT , BECAUSE IT SEEMS TO ME THAT THE CASES THAT I HAVE LOOKED AT, REALLY, TALK ABOUT SOME KIND OF INJURY , OR THEY TA LK IN TE RMS OF THE STILLBIRTH KINDS OF CASES AND THOSE THINGS, SO TELL ME A CASE FROM THIS COURT, THAT SAYS THAT THE SLIGHTEST IMPACT I S SUFFICI ENT.

THE CASE FROM THIS COURT THAT SAYS THAT , I S THE DEL CASE, WHICH THE ZELL CASE WHICH C ITES THE CO X CASE , AND THE ZELL CASE INVOLVES IN IMPACT TO THE PLAINTIFF, SO IT REALLY IS DI CTA , BUT THE LANG UAGE IS OUT THERE , AND ZELL TALKS ABOUT THE COX CASE, WHICH IS ASBESTOS FIBER, WHICH IS MICROSCOPIC, AND, ALSO , THE ELECTROCUTION CASE, WHERE IT IS ELECTRICITY. I ME AN, YOU CAN'T GET ANY SMALLER THAN ELECTR ONS .

ON THE B ODY .

YES. DEFINITELY EFFECT ON THE B ODY.

CHIEF JUSTICE: WHAT A BOUTIN HAGAN? THAT WAS SWALLOWING OF COCA-COLA.

AND THIS COURT SAID AND MAYBE THAT IS PART OF THE CONFUSION , THIS COURT SAID THAT IS NOT IMPACT , BUT INGESTION IS OUTSIDE T HE "IMPACT RULE". SO THAT THE COURT L OOKED AT SOME CASES THAT HAD SAID THAT IMPACT INC LUDES INGESTION. BUT THEN COURT SAID THAT IS NOT IMPACT, AND I THINK THAT IS PART OF WHERE SOME OF THE CONFUSION COMES FROM . I

THINK THAT IT WOULD BE EXTREMELY HELPFUL, IF THIS COURT WOULD CLARIFY THE "IMPACT RULE", BUT HONESTLY, AND I THINK THE PATTING DOWN OF MS. WILLIS AND LIFTING UP HER CLOTHES, I THINK, WAS, REALLY, AN IMPACT THAT REALLY HAD A HORRIBLE EFFECT ON HER.

CHIEF JUSTICE: YOU WOULDN'T SAY THAT IS A SLIGHT INJURY. I MEAN, THAT IS A SIGNIFICANT BATTERY.

THAT IS VERY SIGNIFICANT.

CHIEF JUSTICE: THAT IS WHY THIS CASE, I GUESS WELL HEAR FROM MS. KLEIN. I MEAN, I CAN'T IMAGINE A MORE, YOU KNOW, INVASION OF SOMEONE'S PERSONAL BODY, THAN THIS SITUATION.

THAT IS EXACTLY RIGHT, YOUR HONOR.

CHIEF JUSTICE: I MEAN, THERE ARE SOME. I SHOULD N'T SAY I CAN'T. BUT THIS CERTAINLY IS NOT A, YOU ARE NOT SAYING THIS IS INSIGNIFICANT.

NO. I AM NOT SAYING THAT AT ALL. I AM JUST SAYING THAT, IF SOMEONE HAS A GUN HELD TO THEIR HEAD AND CLICKED, AND SOMEONE ELSE HAS A GUN OVER HERE AND CLICKED, IT IS NOT GOING TO BE A WHOLE LOT OF DIFFERENCE, BUT WHAT DOES MAKE THIS CASE WORSE, WAS THE PHYSICAL INVASION OF HER BODY.

CHIEF JUSTICE: WHAT DO YOU SEE THE OTHER "OR" IS -OR SIGNIFICANT MANIFESTATIONS FROM THE EVENT, WHAT DO YOU SEE THIS ON CASE LAW, HAS TO BE THE KINDS, SOMEONE HAD TO HAVE SUFFERED A HEART ATTACK OR DOES, AGAIN, THE KINDS OF THINGS THAT YOU END UP HAVING SLEEPLESS NIGHTS, YOU HAVE STOMACH UPSET, YOU GET AN ULCER. ARE THOSE UNDER OUR CASE LAW, ENOUGH TO MANIFEST A, BE EXCLUDED FROM THE "IMPACT RULE"?

WELL, IN ZELL IT WAS AN ULCER.

MR. CHIEF JUSTICE: IN ZELL WE SAID IT WAS OR WAS NOT?

THAT WAS HELD SUFFICIENT. IN THE CASE THAT INVOLVED THE, I AM SORRY. I LOST MY TRAIN OF -I LOST MY TRAIN OF THOUGHT FOR A MINUTE. IN RJ VERSUS HUMAN, A THOSE CASE THAT INVOLVED THE MISDIAGNOSIS OF AIDS AND THIS COURT SAID ORDINARY TOUCHING BY THE DOCTOR AND SO FORTH, WOULDN'T BE ENOUGH, BUT TOXIC SIDE EFFECTS OF DRUGS TAKEN TO TREAT THE MISDIAGNOSED AIDS, WOULD BE, BUT, THEN, A CASE CAME OUT OF THE SECOND DISTRICT, SUBSEQUENT TO THAT, THAT SAID, WELL, THE NORMAL SIDE EFFECTS OF MEDICATION TAKEN FOR PSYCHOLOGICAL INJURY, WOULD NOT BE ENOUGH. SO I THINK IT IS VERY UNCLEAR, AT LEAST IN THE LOWER COURT, WHAT KIND OF PHYSICAL MANIFESTATION IS ENOUGH.

THAT IS AN OTHER PROBLEM, AGAIN, WE HAVE THIS "IMPACT RULE" TO PROTECT AGAINST FRIVOLOUS CLAIMS, SUEDLY. YET SOMEBODY THAT GOES TO A PSYCHIATRIST, GETS MEDICATION. WE HAVE GOT TO DISTINGUISH BETWEEN SOMEBODY THAT MAY BE VERY SOME THAT MAY HAVE SOME SIDE EFFECTS AND SAY WHETHER THAT IS OR IS NOT.

EXACTLY. IT IS NOT A MEANINGFUL DISTINCTION. IT DOESN'T REALLY HELP TO YOU SORT THE GENUINE CASES FROM THE CASES THAT ARE NOT GENUINE.

WHAT WOULD BE A, WHAT WOULD BE YOUR POSITION ON WHAT WOULD BE A WAY TO DO THAT?

WELL, THERE IS A COUPLE OF WAYS THAT WE HAVE ADVOCATED IN OUR BRIEF. I THINK THIS CASE, IN PARTICULAR, BECAUSE IT ARISES OUT OF INTENTIONAL TORTS THAT ARE RECOGNIZED IN

THE COMMON LAW, WHETHER THERE IS INJURY OR NOT , ASSAULT AND BATTERY, THAT IS A EASY WAY TO DE CIDE T HIS CASE. THIS COURT COULD JUST SAY

BUT AN INTENTIONAL TORT AS REGARDS THE HOTEL.

RIGHT. THE HOTEL DID NOT COMMENT INTENTIONAL TORT BUT THE HOTEL IS RESPONSIBLE FOR THE DAMAGES RISE RING FROM THE INTENTIONAL TORT .

RISI NG FROM THE INTENTIONAL TORT.

VIS-A-VIS THE NEGLIGENCE CASE .

CHIEF JUSTICE: WHICH ISNOT A FALSE CLAIM.YOU HAVE GOT A SITUATIONWHERE SOMEONE HAS BEEN TOUCHED IN AN ASSAULT AND BATTERY , BUT THAT HEL PS THIS CASE, BUT AS JUSTICE WEL LS IS ASKING, HOW , THEN , WOULD YOU TAKE EVERY OTHER CASE THAT , IN RJ , THOSE SIT UATIONWHERE IS YOU ARE TRYING TO PREVENT ALL OF THESE TORT CLAIMS FROM BEING BROUGHT?

I THINK YOU COULD DO IT BY ABOLISHING THE "IMPACT RULE". THE AM ICUS HAS CITE A DDNUMBER OF CASES FROM OTHER JURISDICTIONS, ALL OF WHICH OBSERVED THAT, IN JURISDICTION THAT IS HAVE ABOLISHED THE "IMPACT RULE" , THERE HAS NOT BEEN THIS FLOODGATES PROBLEM THAT THE COURTS HAVE BEEN CONCERNED WITH .

HOW DO WE KNOW THAT ARE THERE STUDIES DONE? ARE THERE LAW REVI EW ARTICLES?

THE CASES THAT SPECIFICALLY CI TE THAT ARE THE KEMPER C ASE OUT OF TENNESSEE IN 19 96 , THE BASS CASE FROM MISS OURI IN 1983 AND THE NEEDER MAN CASE OUT OF PENNSYLVAN IA I N 19 70 , AND EACH TIME THERE HAVE BEEN MORE JURISD ICTION ABOL ISHED . THE "IMPACT RULE" , I KN OW THERE WAS AT LEAST ONE LAW REVIEW AR TICLE THAT THEY A LLCITE, BUT THERE HAVE BEEN N O OTHERS. THERE IS NO EVID ENCE HE RE IN THIS RECO RD THAT , THERE WOULD BE FLOODGATES . THE COURTS ARE NOT FL OODED RIGHT NOW, WITH ASSAULT AND BATTERY CASES , AND THE COURTS HAVE A LOT O F T O OLS THAT MAY BE , AT THE TIME T HE"IMPACT RULE" WAS CREATED , THEY DIDN'T HAVE O R W ANT CLEAR. THERE IS 57.10 5, IF IT IS A FRAUDULENT CLAIM. THE COURT'S INHERENT AUTHORITY T O DISMISS OR SANCTION FRAUD ULENT CLAIMS, THAT IS AN AREA OF LAW THAT IS NOW VERY WELL SET OUT.

HOW DO YOU PROVE A FRAUDULENT CLAIM, IFSOMEBODY IS ALLEGE ING PSYCHOLOGICAL D AMAGE ? HOW WOULD ANY DEFENDANT WHO SEEKS DISM ISSAL OF THE CLAIM AS FRAUDULENTLY FI LED , BE ABLE TO DO SO , IF IT IS STRICTLY PSYCHOLOGICAL INJURY?

WELL , THE COURT , FOR EXAMPLE , COULD REQUIRE MEDICAL OR PSYCHOLOGICAL EXPERT TESTIMONY. THAT WOULD BE ONE WAY. THE COURT COULD REQ UIRE CORROBORATING EVIDENCE THAT THE EVENT OCCURRED. AN EXAMPLE

BUT OUTSIDE OF REQU IRING SOME PH YSICAL , IN THAT LAND OF SP IRIT ALTERNAT E OR WHATEVER, THE PHRASE OF SAUNDERS, OVER 1 00 YEARS AGO , BECAUSE YOU KNOW, MOS T OF THIS IS SE LF REPO RTING OF THE P ERSON TO THE PSYCHOLOGIST AND PSYCHOTHERAPIST OR PSYCHIATRIST. THAT IS IN ANY PHYSICAL MANIFESTATI ON.

THAT IS TRUE. YOU KNOW, I THINK THAT THAT IS A DIFFICULTY . AND I ADMI T THAT THAT IS A DIFFICULTY, BUT W E HAVE JURIES.

CHIEF JUSTICE: I G UESS PLAYING THE DE VIL ' AD VOCATE WITH JUSTICE BELL , I MEAN, IN IN THIS SITUATION SHE WAS HIT AND THEN SHE DECIDESTHAT SHE HAS GOT HEADACH ES AND GOES TO A DOCTOR AND REPORTS HEAD ACHES , WE ALLOW THAT TO GO TO THE JURY. I MEAN, TO ME THAT

MIGHT BE MORE FRIVOLOUS THAN SOMEBODY WHO, I MEAN , I THINK THAT WHAT WE ARE STILL STRUGGLING WITH HERE , IS THIS TRUST THAT PEOPLE THAT HAVE GENUINE PSYCHOLOGICAL ISSUES OR MENTAL ISSUES , AND THERE IS A REPORT OUT , THE REPORT THAT A LOT OF PEOPLE SUFFER FROM MENTAL ILLNESS IN THIS SOCIETY, THAT WE HAVE , SOMEHOW THAT THAT IS A, WE ARE GOING TO SEE THAT AS LESSER INJURY THAN SOMEBODY THAT MIGHT HAVE HAD A PHYSICAL CONTACT, BUT MY CONCERN IS , AS I LOOK AT THIS CASE LIKE SOUNDERS THAT STARTED THIS ALL , I AM NOT EVEN SURE WHERE THAT CASE WOULD BE TODAY, IF WE HAD AN IMPACT, DIDN'T HAVE A "IMPACT RULE". IT WAS A NEGLIGENT HANDLING OF A TELEGRAM . THE PLAINTIFF WAS UNAWARE THAT THE WIFE WAS DEATHLY ILL. I MEAN, PROBABLY, I SN'T THAT JUST A SITUATION THAT WOULD BE HANDLED BY FORESEEABILITY AND SAY THAT THERE IS , REALLY, NOT , THE DUTY DID NOT EXTEND TO THESE TYPES OF DAMAGES. I MEAN , IT SEEMS TO ME THAT IS SO MUCH MORE MEANINGFUL. A LOT OF THESE CASES LIKE THIRD PARTY BYSTANDERS, WOULD NOT BE RECOGNIZED , I THINK, EVEN IF YOU DIDN'T HAVE A KOBALINGT RULE , AND A "IMPACT RULE" , AND THAT WOULD BE , IT SEEMS TO ME, A BETTER CONSTRUCT, THAT YOUR TORT LAW TAKES CARE OF MOST OF THOSE KIND OF ODD CASES.

I THINK THAT IS TRUE , AND I THINK WHAT YOU GET WITH THE "IMPACT RULE" , IS DRAWING ARTIFICIAL LINES THAT, REALLY , WEED OUT A LOT OF THE REAL SERIOUS INJURIES. AN EXAMPLE, IS

LET ME GO BACK TO THIS LINE DRAWING. I MEAN , HERE , YOU HAVE A SITUATION IN WHICH THIS PLAINTIFF WAS IN A PARKING LOT , AND NOW WAS THERE A WITNESS TO THIS ASSAULT ?

NO.

SO YOU HAVE , REALLY , HER STATEMENT THAT SHE WAS ASSAULTED. IS THAT RIGHT? DO YOU HAVE ANY PHYSICAL EVIDENCE THAT SHE WAS ASSAULTED?

THE CAR WAS STOLEN.

ANY PHYSICAL EVIDENCE THAT SHE WAS TOUCHED?

NO. THERE IS HER TESTIMONY.

HER TESTIMONY.

YES , YOUR HONOR.

SO HER TESTIMONY IS THAT SHE WAS TOUCHED.

YES.

AND HER TESTIMONY IS THAT SHE WAS INJURED .

YES.

CORRECT ? NOW , I TAKE IT THAT , FROM WHAT I HAVE READ HERE , THAT THERE WAS SOME PHYSICAL MANIFESTATION THAT SHE HAD HAD SOME TYPE OF TRAUMA IN THAT SHE DID HAVE SOME PHYSICAL FINDINGS. CORRECT?

YES, YOUR HONOR.

BUT IF SHE HAD NO PHYSICAL FINDINGS AND WE WERE LEFT WITH JUST TESTIMONY OF THE PSYCHIATRIST, REALLY, THE ONLY THING WE HAVE IS THE TESTIMONY OF THE PERSON THAT IS IN THE PARKING LOT. CORRECT?

YES. AND YOU HAVE

THAT IS WHAT THE PSYCHIATRIST RELIES ON.

YES, AND YOU HAVE THE JURY, TO SEE THE WITNESS. THIS COURT WAS JUST TALKING ABOUT, IN THE LAST ARGUMENT, THE IMPORTANCE OF HAVING , OF BEING ABLE TO SEE THE WITNESSES. A JURY SEES THE WITNESSES AND EVALUATES THEIR CREDIBILITY . I THINK THAT OUR SYSTEM RELIES VERY HEAVILY ON JURIES, AND I THINK PROPERLY SO .

BUT ISN'T THAT BE , ISN'T , THE SITUATION THAT I DESCRIBED , THE SITUATION THAT THE "IMPACT RULE" WAS DESIGNED TO SAY THAT, IN THAT SITUATION, THAT THE COURT SYSTEM CANNOT RESPOND , BECAUSE THERE ISN'T A RELIABLE BASIS TO MAKE A DETERMINATION OF THE INJURY.

WELL, THAT MAY BE WHAT IT WAS DESIGNED FOR, BUT THAT IS NOT HOW IT WINDS UP. YOU HAVE GOT CASES LIKE THE ARDETE CASE THAT JUST CAME OUT OF THIRD DISTRICT, WHERE THE LADY GOT STUCK IN AN ELEVATOR AND HAD A HEART ATTACK, AND THE COURT SAID, WELL, IF A HEART ATTACK COMES FROM BEING STUCK IN AN ELEVATOR, THERE IS NO IMPACT AND THEREFORE THERE IS NO RECOVERY, BUT IF A HEART ATTACK CAME IN PART FROM JUMPING OUT OF THE ELEVATOR , THEN YOU HAVE GOT RECOVERY. WELL, THEN, YOU ARE FORCING YOUR EXPERTS TO KIND OF SQUEEZE THEIR CASE INTO , SQUEEZE THEIR TESTIMONY INTO THAT BOX. YOU KNOW, I TALK ABOUT THE SITUATION IN MY BRIEF. IT IS EXACTLY WHAT IS GOING ON IN ALL OF THE CASES THAT TALK ABOUT ABOLISHING THE "IMPACT RULE". THEY ALL SAY THAT. WHAT YOU GET IS CREATIVE PLEADINGS AND CREATIVE TESTIMONY, TO TRY TO FIT INTO THE "IMPACT RULE" , AND THERE REALLY OUGHT TO BE A BETTER WAY .

CHIEF JUSTICE: YOU ARE VERY MUCH IN YOUR REBUTTAL. I WANT TO MAKE YOU AWARE OF THAT.

THANK, YOUR HONOR. WE WOULD ASK THE COURT TO REVERSE AND REMAND THIS CASE FOR A TRIAL ON THE MERITS.

CHIEF JUSTICE: MS. KLEIN.

GOOD MORNING . BEHIND A KLEIN HERE ON BEHALF OF GAMI GOLDEN GLADES , AGE BE PRESENTING THE ARGUMENT , AND WITH ME TODAY IS MR. MORGAN HAD, WHO IS COUNSEL FOR AMERICAN SECURITY. THERE IS NO REASON WHY THIS CASE IS BEFORE THIS COURT NOW. THERE IS NOTHING HAS CHANGED IN THE LAST TWO - - THERE IS NOTHING THAT HAS CHANGED IN THE LAST TWO AND-A-HALF YEARS , SINCE THE GRACIE CASE REAFFIRMED THE VIABILITY OF THE "IMPACT RULE" .

CAN I ASK A COUPLE OF QUESTIONS. THIS RULE IS ALWAYS REFERRED TO AS THE "IMPACT RULE" , IS IT NOT?

THAT'S CORRECT.

ARE YOU AWARE OF ANY STATE ANYWHERE , ANY COMMON LAW , REFERRING TO IT AS THE DEMONSTRABLE INJURY RULE ?

NO , I AM NOT .

AND DO YOU AGREE THAT , IN THE DECISION FROM INTERNATIONAL SAUNDERS AND , CANY IN 1950 AND IN AND KIRKSY IN 1950 , THAT THIS HAS ALWAYS BEEN BUILT ON IMPACT, NOT A QUESTION OF DEMONSTRABLE INJURY. DO YOU AGREE WITH THAT?

I LOOK OF THAT THE I BELIEVE THAT THE CONCEPT OF DEMONSTRABLE PHYSICAL INJURY HAS

ALWAYS BEEN IMPLICIT IN THE "IMPACT RULE".

WELL , CAN YOU POINT TO ME A CASE WHERE THIS DEVELOPED FROM, BECAUSE AS I READ THE CASES, THIS DEMONSTRABLE INJURY CAME IN CASES OF NO IMPACT, AND IF YOU HAD NO IMPACT, THEN YOU WERE GOING TO REQUIRE THEM TO SHOW SOMETHING, BUT IT WAS NEVER , IN ANY OF THE HISTORICAL CASES, I HAVE GONE THROUGH VERY CAREFULLY, ALIENATED WHERE THERE WAS AN IMPACT, HOWEVER SLIGHT OR HOWEVER LARGE.

WELL, I THINK THAT IS ONE OF THE PROBLEMS THAT WE DO HAVE HERE , IS THAT, THROUGHOUT THE YEARS , THE "IMPACT RULE" AND THE BYSTANDER RULE HAVE SORT OF MELDED TOGETHER, AND OPOSING COUNSEL HAS ARGUED , BEFORE BOTH THE APPELLATE AND TRIAL COURTS, THAT IT IS ONE AND THE SAME AND IT CAN BE CLEARLY NOT. IN THE BYSTANDER RULES , WHERE THERE IS CLEARLY IMPACT BECAUSE THE BYSTANDER WAS NOT THE PERSON INVOLVED IN THE INCIDENT , THEN THERE IS THE REQUIREMENT OF A DEMONSTRATIVE PHYSICAL INJURY ARISING FROM EMOTIONAL DISTRESS.

WHERE THERE IS NO IMPACT ON THAT PERSON.

THAT'S CORRECT. OBVIOUSLY, IN ORDER TO HAVE A BYSTANDER RULE , THERE WOULD HAVE TO BE THAT ADDITIONAL ELEMENT , BUT , YOUR HONOR , IN THE RELEVANT CASE, DEFINED THE "IMPACT RULE" NOT A BYSTANDER RULE.

THAT WAS A NONIMPACT CASE, CORRECT?

THAT , IT WAS , YES , THAT'S CORRECT.

THE PROBLEM WE GET IS THE RULE FROM NONIMPACT CASES, TO SAY WHAT THE RULE IS WHEN THERE IS A TOUCHING. THAT IS WHERE WE SEEM TO HAVE A PROBLEM. IS THERE A CASE, FOR EXAMPLE , WHERE SOMEONE, NO ONE ELSE SEES IT BUT ONE TRIPS OVER A ROOT ON PROPERTY AND HAS A FALL DOWN . AND NO ONE ELSE SEES IT. THERE IS NO BRUISING OR ANYTHING. IS THERE ANY RULE OF LAW IN THAT KIND OF CASE, THAT SAYS, NO, YOU CAN'T RECOVER IN A FALL DOWN KIND OF CASE .

NO , BECAUSE, THEN , YOU HAVE THE ADDITIONAL ELEMENT OF A DEMONSTRATIVE PHYSICAL INJURY.

NO. I AM SAYING YOU FELL DOWN. THAT WAS THAT IS THE EXTENT. THEORETICALLY YOU WOULD HAVE A CAUSE OF ACTION , WOULD YOU NOT?

NO.

YOU HAVE TO HAVE A DEMONSTRABLE INJURY IN A SLIP AND FALL CASE , BEFORE, THAT IS YOUR VIEW, BEFORE THERE IS A CAUSE OF ACTION.

ABSOLUTELY. OTHERWISE , OTHERWISE

WOULD YOU SHARE WITH US A CASE THAT WOULD HOLD THAT.

THAT THERE HAS TO BE A PHYSICAL INJURY ARISING .

A DEMONSTRABLE INJURY. ANY KIND OF TORT THAT WE HAVE OTHER THAN NO FAULT. WE HAVE LIMITED THAT. BUT IN THE COMMON LAW , FOR TRESPASS TO THE PERSON, THAT THERE MUST BE A DEMONSTRABLE INJURY AS PART OF THE ELEMENT FOR THE CAUSE OF ACTION FORM AND , SEE , I AM NOT FINDING ACTION. AND , SEE , I AM NOT FINDING IT WHERE WE ARE AT.

NO, I DON'T , I WOULD AGREE WITH YOUR HONOR , BUT I THINK THAT IS IMPL ICIT I N THE "IMPACT RULE", THAT, WHERE THE SOLE INJURY IS PSYCHOLOGICAL AND NOT RESULTING FROM A PH YSICAL INJURY, THAT IS WHERE W E DRAW THE LINE . I WOULD AGREE WITH THE COURT , THAT TO SOME EXTENT , I T IS ARBITRARY. A LOT OF BR IGH T LINE RULES ARE ARBITRARY. WHAT IS THE DIFFERENCE BETWEEN A STATUTE OF LIMITATIONS AT FOUR YEARS AND THREE YEARS AND 3 54 DAYS ? THAT IS A BRIGHT-LINE RULE. THE TORT THRESHOLD IS A BRIGHT-LINE RULE. THEY ARE GOING TO BE

COURT THRESHOL D. AREN'T WE TA LKING IN THIS CASE, FOR INSTANCE, ABOUT A NEGLIGENT BREACH OF SECURITY. IN OTHER WORDS, A SECURI TYCASE, RIGHT? THAT IS THE DUTY ON THE PART OF, WHAT IT A HO TE L OR MOTEL?

HOTEL.

OKAY. IN OTHER WORDS, WE ARE TALKING ABOUT YOU DI DN'T PROVIDE THE SEC URITY THAT A REASONABLE HOTEL OR WHATEVER , WOULD HAVE PROVID ED. YOU BREACHED THAT DUTY , THAT YOU O WED TO ME , RIGHT ? ISN'T THAT WHAT THIS CASE IS?

YES AND NO , YOUR HONOR. I , YES , IT IS A NEGLIGENCE SECURITY CASE.

HOW WOULD YOU PLEAD IT?

PLED AS A NEG LIGENT SECURITY CASE BUT I T HAENED OFF PREM ISES.

I THAT REALIZ E.

I AM SPLITTING HA IRS.

HOW THAT WORKS ITSELF OUT , WHETHER THEY CAN PROVE A CAUSE OF ACTION , BUT HE LP M E WITH WHY I N THE WORLD WOULDN'T THIS PERSON WHO HAS BEEN ASSA ULTED , L ET'S BRING IT BACK OVER INTO THE PARKING LOT OF THE HOTEL , AND YOU KNOW , AND THERE WAS A BREACH OF SECURITY OR WHATEVER , BEEN ASSAULTED AND HER CAR TA KEN AWAY FROM HER, AND IF WHAT SH E SAYS IS TRUE , THE GUN STUCK T O HER HEAD O R A GUN STUCK IN HER FACE FOR THAT MA TTER, YOU KNOW, WHY IN THE WORLD WOULD SHE NOT BE ENT ITLED TO A CAUSE OF ACTION HERE AGA INST THE HOTEL? OF COURSE ASSU MING THAT THEY DID BREACH THE DUTY HERE. YOU KNOW, THIS WHOLE COUNTRY HAS BEEN IN DE BATE ABOUT TORTURE AND THE PSYCHOLOGICAL, AND DOING AL L THAT KIND OF T HING , AND , OFCOURSE, THE CLAS SIC THING IS PUT AGO GUN TO SOMEBODY'S HEAD AND CLICK. MY GOD. HOW ANYBODY EVEN SURVIVES THAT OR R E TAINS THEIR SANITY. SO TELL ME , INC LUDING T HEFACT THAT THE GUN TOUCHED HER HEAD , AND THE OTHER PHYSICAL CONTACT THAT WAS HERE, WHY SHE IS NOT ENTITLED TO RECOVER AND WHAT , I AM HAVING DIFFICULTY I N THIS PARTICULAR CASE , WITH THE EXIS TING LAW OF HOW YOU CAN SAY THAT THERE IS NO CAUSE OF ACTION HERE.

BECAUSE THE CAUSE OF ACTION, THE ULTIMATE CAUSE OF ACTION FOUND IN NEGLIGENCE, NOT IN INTENTIONAL TORT , AS JUSTICE CANTERO NOTED , HOW IT , AGAIN, DID NOT PUT A GUN TO THIS WO MAN 'S HE AD!

BUT IF HE BUT IF WE ARE CONCERNED ABOUT PUTTING AN IS SUE TO NEGLIGENT CLAIMS , LET'S SAY SHE LIED ABOUT THIS WHOLE THING. OF COURSE ANY PLAINTIFF COULD SAY THAT, AS JUSTICE LEWIS SAID, IF SHE SLIED AND FELL ON YOUR PARKING BUMPER THAT WASN'T SUOSED TO BE THERE, MAYBE SHE DIDN'T. MAYBE SHE REALLY GOT IT WHEN SHE WAS HOME. WE HAVE GOT THAT CYNICISM, AND, AGAIN , SOMETIMES THAT HAENS , BUT RARE LY. SO WHY, T H OUGH , W IT H THIS GENUINE CRIMINAL A T TACK , WITH THE TOUCHING , WOULD A NYOF THE POL ICIES THAT LE D TO THE "IMPACT RULE" IN THIS STATE OVER 1 00 YEARS AGO , BE FURTHERED BY DISALLOWING THIS CLAIM, AS OO SED TO THE OOSITE, WHICH IS WE KNOW THAT A CRI MINAL

ACT OCCURRED, AND NOW THE ISSUE, REALLY, IS , REALLY FOCUSED ON IS YOUR CLIENT , ARE YOUR CLIENTS RESPONSIBLE FOR THAT , BECAUSE THAT , THE REAL DILEMMA, BUT AS FAR AS FOR THE SAKE OF THE SYSTEM , THE FACT THAT THIS WAS AN INTENTIONAL TOUCHING , IS WHAT SHOULD TAKE IT OUTSIDE OF THE "IMPACT RULE" , AND WHAT IS YOUR RESPONSE TO THAT?

THE RESPONSE TO THAT IS THE BASIC SLIPPERY SLOPE ARGUMENT. WHAT IS THE DIFFERENCE BETWEEN BEING TOUCHED WITH A GUN OR HAVING THE GUN TWO INCHES FROM YOUR HEAD OR FOUR INCHES FROM YOUR HEAD OR NOT HAVING A GUN POINTED AT YOU AT ALL BUT STILL BEING THE VICTIM AFTER CRIME, FOR EXAMPLE HAVING YOUR CAR STOLEN. WHERE ARE YOU GOING TO DRAW THE LINE?

CONVICTED AFTER LEAST ASSAULT AND BATTERY, RIGHT?

WELL , ASSAULT.

AT LEAST ASSAULT AND BATTERY. IS THE BATTERY COMMITTED WHEN THE GUN TOUCHES A HEAD? IS AN ASSAULT COMMITTED WHEN A WEAPON IS ASSAULT COMMITTED WHEN YOU TOUCH THE HEAD AND BATTERY WHEN YOU CARRY OUT THAT THREAT ? SO WE HAVE AN ASSAULT AND BATTERY. IF YOU ALL AGREE AND SHE IS TELLING THE TRUTH AND YOU ARE ABLE TO SHOW THAT IT WAS HER HUSBAND OR BOYFRIEND THAT DROVE OFF WITH THE CAR AND SHE MADE ALL THIS UP, THEN, YOU KNOW , THERE IS NOT GOING TO BE ANY CLAIM, BUT YOU ARE NOT TALKING ABOUT THAT, ARE YOU?

IT IS TOO EARLY IN THE CASE TO TELL , JUDGE.

THERE IS NO APPEARANCE OF THAT.

NOT ON THIS RECORD, NO.

THAT WILL TAKE CARE OF ITSELF, WILL IT NOT?

THAT WILL TAKE CARE OF ITSELF, BUT THE PROBLEM IS NOT SO MUCH PROVING OR DISPROVING THE TORT , WHICH IN YOUR EXAMPLE , A GAIN , IS NOT COMMITTED BY THE HOLIDAY INN. IT IS COMMITTED BY A CRIMINAL.

SO THE GUN CAUSED A SCRATCH ON HER, IS THAT GOING TO BE ENOUGH CONTACT?

BASED ON THE BRIGHT-LINE TEST , THE TEST GOING BACK OVER 100 YEARS, YES, THAT WOULD BE ENOUGH.

IS E.

CHIEF JUSTICE: JUSTICE CANTERO.

WHEN WE TALK ABOUT BRIGHT-LINE TESTS AND ARBITRARINESS IN DRAWING THE LINE, HAVEN'T WE DRAWN THE LINE AT THE FACT THAT YOU HAVE PUT THE GUN AND TOUCHED THE HEAD WITH THE GUN? ISN'T THAT ENOUGH OF AN IMPACT, UNDER OUR CASE LAW, OR DO WE NEED SOMETHING ELSE?

I BELIEVE WE NEED SOMETHING ELSE. I BELIEVE, UNDER THE MOST RECENT DEFINITION OF THE "IMPACT RULE" AND THE ROLLE CASE, THERE HAS TO BE A PHYSICAL INJURY SUFFERED AS A RESULT OF AN IMPACT , AND THE EMOTIONAL DISTRESS DAMAGES MUST FLOW FROM THAT PHYSICAL INJURY .

SO , REALLY, WHAT WE HAVE TO FIGURE OUT IS WHETHER OUR RULES REQUIRE IMPACT ONLY,

WHICH I GUESS YOU CONCLUDE THE IMPACT EXISTS, OR WHETHER IT REQUIRES, THEN, PHYSICAL INJURY AS A RESULT OF THE IMPACT.

I THINK THAT THE "IMPACT RULE" HAS ALWAYS REQUIRED THAT DEMONSTRATIVE PHYSICAL INJURY, AT LEAST IN THEORY, BUT OVER THE YEARS, WHILE CERTAIN COURTS HAVE WANTED TO ERODE IT OR TO GET AROUND IT, THEY HAVE FOCUSED ON THE PHRASE "IMPACT", TO SIMPLY ARGUE THAT THE MERE TOUCHING IS SUFFICIENT. BUT IN THEORY BUT IN REALITY, IN ORDER TO MEET GOALS OF THE "IMPACT RULE", TO MAKE IT SOMEWHAT AN ARBITRARY RULE FOR WEEDING OUT THOSE CASES WHICH ARE MOST LIKELY TO BE FRAUDULENT, THE DEMONSTRATIVE PHYSICAL IMPACT INJURY PORTION OF THE RULE IS IMPERATIVE, AS PART AND PARCEL OF THAT RULE. OTHERWISE THE EXCEPTIONS WOULD SWALLOW THE RULE, AND WE

HASN'T THAT, REALLY, SORT OF HAPPENED OVER THE YEARS? WE HAVE MADE EXCEPTIONS AND SAID IT DOESN'T APPLY, WHEN YOU ARE, INGEST SOMETHING, WHEN YOU HAVE A STILLBIRTH, LEGAL MALPRACTICE AND SO ON AND SO ON, SO AREN'T WE REALLY AT THE POINT THAT THE PETITIONER IS ARGUING HERE, THAT, REALLY, WE SHOULD JUST ABOLISH THE "IMPACT RULE" AND, MAYBE, MOVE TO SOME OTHER FORM OF TRYING TO WEED OUT THESE FRIVOLOUS CLAIMS FROM REAL EMOTIONAL DISTRESS CLAIMS.

WELL, THE PROBLEM WITH THE OTHER APPROACH IS SUGGESTED BY JUSTICE PARIENTE, AND JUSTICE ANSTEAD, AND FOR EXAMPLE THE FORESEEABILITY ANALYSIS IS THAT IT LEAVES THIS WHOLE CONCEPT, UP TO THE DISCRETION OF JUDGES AND THE VAGUENESS OF AN INJURY.

BUT ISN'T THAT WHAT WE DO IN NEGLIGENCE CASES ALL THE TIME? I MEAN, ISN'T THAT AN ELEMENT OF ANY OTHER KIND OF NEGLIGENCE CLAIM THAT IS BROUGHT?

IT IS TO THE EXTENT THAT YOU CAN ARGUE ABOUT WHETHER OR NOT A PARTICULAR INJURY WAS FORESEEABLE. THE PROBLEM WITH FOCUSING ON WHETHER OR NOT EMOTIONAL DISTRESS WAS THE FORESEEABLE RESULT OF THE TORT, THAT ARGUMENT WOULD SWALLOW THE RULE. ANYBODY COULD ARGUE IN ANY CASE, THAT EMOTIONAL DISTRESS NECESSARILY RESULTS FROM SUFFERING A TORT.

CHIEF JUSTICE: I AM STILL HAVING TROUBLE, I GUESS, TO GO BACK WITH WHETHER WE ARE GOING TO ABOLISH THE "IMPACT RULE" OR KEEP IT IN THIS CASE, WHAT IT MEANS, AND MAYBE IT IS FOLLOWING UP WITH WHAT JUSTICE CANTERO AND JUSTICE LEWIS SAID. WHERE ARE YOU SAYING THAT, IN OUR CASE LAW, THAT WE HAVE SAID THAT THE DISCERNIBLE PHYSICAL INJURY HAS TO FLOW FROM THE IMPACT, AS OPPOSED TO THAT THERE EITHER IS AN IMPACT AND THEN YOU GET THE DAMAGES, OR IN THE ABSENCE OF ANY IMPACT, THERE HAS TO BE A DISCERNIBLE PHYSICAL INJURY OR ILLNESS FLOWING FROM THE EMOTIONAL DISTRESS.

IN ROLLE AND, IN THE ROLLE CASE, WHICH, AGAIN, WAS NOT ONE OF THOSE CASES, NEVERTHELESS THE DEFINITION OF THE "IMPACT RULE" IS SET FORTH IN THAT CASE, WAS BEFORE A PLAINTIFF CAN RECOVER DAMAGES FOR EMOTIONAL DISTRESS, THE EMOTIONAL DISTRESS MUST FLOW FROM PHYSICAL INJURY SUSTAINED IN THE IMPACT. THAT WAS THE DEFINITION USED BY THIS COURT IN ROLLE VERSUS HOLT. NOW, I WOULD AGREE

I WROTE THAT OPINION.

CHIEF JUSTICE: I CLARIFIED IT IN MY CONCURRENCE. I HAVE NEVER, AND, AGAIN, I AM SURE THAT THAT WAS REFERRING TO THE TYPE OF ACTION THAT WAS BEING BROUGHT, BECAUSE I DON'T THINK THERE HAS EVER BEEN A CASE THAT DOESN'T SAY, I MEAN, UNLESS IT IS CONFUSED, IT IS AN EITHER/OR SITUATION, SO OBVIOUSLY WE HAVE TO CLARIFY FOR SURE.

AND I ABSOLUTELY THINK THAT, IF THIS COURT DECIDES TO WRITE AN OPINION, CHIEF, OF COURSE, IS COMPLETELY DISCRETIONARY WITH THE COURT BECAUSE IT IS HERE ON A CERTIFIED

QUESTION, IF THE COURT DOES THAT, I WOULD AGREE THAT THERE NEEDS TO BE SOME CLARIFICATION. IN REVIEWING THE RECENT EXCEPTIONS TO THE "IMPACT RULE", IT HAS BECOME INCREASINGLY DIFFICULT TO SEE WHERE THAT BRIGHT LINE EXISTS.

CHIEF JUSTICE: I DON'T KNOW THIS THIRD DISTRICT CASE, WHERE SOMEBODY HAD, IN AN ELEVATOR THAT WAS STURX HAD A, SUFFERED A HEART ATTACK, AND THE THAT WASSUCCESS, HAD SUFFERED A HEART ATTACK AND THE THIRD DISTRICT SAID THAT WAS NOT WITHIN THE "IMPACT RULE"?

IT WAS NOT WITHIN THE "IMPACT RULE", UNLESS THE PLAINTIFF COULD DEMONSTRATE THAT THE HEART ATTACK RESULTED FROM JUMPING OFF THE ELEVATOR. NOW, I THINK - -

CHIEF JUSTICE: YOU HAVE BEEN A VERY ACCOMPLISHED AELLATE ADVOCATE, THAT THAT KIND OF MAKES THE LAW LOOK A LITTLE RIDICULOUS, DOESN'T IT?

I ABSOLUTELY AGREE, AND I THINK WHAT THE COURT NEEDS TO DO IS, BECAUSE IT HAS, OVER AND OVER AND OVER AGAIN, REAFFIRMED THE VIABILITY OF THE "IMPACT RULE", IS TO GO BACK AND TO MAKE THAT BRIGHT LINE, AND TO EXPLAIN TO THE COURTS, ONCE AND FOR ALL, FIRST OF ALL, THAT THERE IS A DIFFERENCE BETWEEN APPLICATION OF THE "IMPACT RULE", WITH RESPECT TO THE PLAINTIFF WHO WAS INVOLVED IN THE INCIDENT, VERSUS THE BYSTANDER RULE, WHICH I THINK IS PART OF THE CONFUSION, AND, ALSO, TO CLARIFY THAT, WHILE THERE MAY BE EXCEPTIONS FOR PUBLIC POLICY REASONS OR STATUTORY REASONS, THAT IT IS FOR THIS COURT TO MAKE THOSE EXCEPTIONS, AND NOT FOR THE LOWER COURTS ON A CASE BY CASE RESULT-ORIENTED DECISION. THAT IS A LOT OF THE PROBLEM. THE PROBLEM IS NOT WITH THE RULE. THE PROBLEM IS WITH THE APPLICATION OF THE RULE. THE PROBLEM IS WITH THE COURTS RENDERING RESULT-ORIENTED RESULT-ORIENTED DECISIONS, AND LIKE IN THE THIRD DISTRICT CASE, GOING THROUGH MENTAL GYMNASTICS, TO GET TO WHERE THEY WANT.

CHIEF JUSTICE: BECAUSE IF THE REASON FOR THE RULE WAS TO WEED OUT CLAIMS THAT REALLY DIDN'T BELONG IN THE TORT SYSTEM AND THE JUDGE SEES THE CLAIM IN FRONT OF HIM OR HER THAT WE KNOW IS LEGITIMATE. WE UNDERSTAND THERE IS A PSYCHOLOGIST OR PSYCHIATRIST THAT IS TESTIFYING. WE HAVE THE SENSE THAT THE PERSON IS REALLY SUFFERING FROM VERY SIGNIFICANT EMOTIONAL INJURIES, THAT THERE IS JUST A DISCOMFORT TO SAYING THAT THAT, THE COURT HAS, THE DOOR IS CLOSE TO DO THAT PERSON, WHEREAS YOU KNOW IN THE NEXT CASE, SOMEBODY HAD A SLIP AND FALL AND YOU KNOW, STRAINED THEIR ARM AND IS BACK TO WORK AND THAT IS COMING IN. I MEAN, YOU KNOW, I WOULD PROBABLY RATHER GET RID OF SLIP AND FALLS THAN THESE CASES, IF WE WERE GOING TO WEED THEM OUT. I AM SURE YOU WOULD LIKE THAT, TOO, BUT I JUST THINK THAT THAT IS WHERE THE DISCOMFORT IS, IS MAYBE IT GOES BACK TO WHAT MS. GREEN SAID, IS IT IS NOT THE WAY IN THIS CURRENT 21st CENTURY, WHERE WE UNDERSTAND THERE ARE MENTAL ISSUES, PSYCHOLOGICAL ISSUES THAT, WE SHOULD HAVE THIS ANTIPHANY TOWARDS THOSE KINDS OF ISSUES THAT, IF SOMEBODY STRAINS THEIR ANKLE THAT, THE COURT HOUSE DOOR IS OPEN TO THEM AND THAT IS WHAT JUDGES ARE STRUGGLING WITH.

THAT IS TRUE, BUT IF ANYTHING, WE ARE A FAR MORE LITIGIOUS SOCIETY THAN WE HAVE EVER BEEN AND ANYONE CAN PAY AN EXPERT TO SAY ANYTHING IN ANY CASE.

ISN'T THAT ALSO A PROBLEM? ISN'T THIS, DOESN'T THIS RULE SORT OF PUT PEOPLE IN A CIRCUMSTANCE OF HAVING TO FIND AND SAY, WELL, YOU BETTER GO GET THIS KIND OF TESTIMONY, BECAUSE OTHERWISE YOU ARE GOING TO BE BARRED, AS OPPOSED TO KIND OF JUST SAYING, LISTEN, THERE MAY BE AN INJURY OR MAYBE THIS IS JUST A DE MINIMUS SITUATION TAKE OCCURRED. YOU KNOW, BEING A VICTIM OF ASSAULT AND BATTERY, MAYBE A LOT OF PEOPLE GO ON WITH THEIR LIVES AND ARE NOT TRAUMATIZED BY IT. MAYBE THE ANSWER IS THE TORT ITSELF. THE LEGISLATURE HAS BEEN CONSIDERING WHETHER THE TORT,

ITSELF, SHOULD BE ABOLISHED, SO THAT IS, CERTAINLY WOULD DEAL WITH ALL OF THOSE CASES IF THAT OCCURRED.

WELL, THE "IMPACT RULE" HAS ALWAYS LOOKED AT.

WE HAVE TO LOOK AT WHAT IS GOOD TO SOCIETY. I DON'T DISPUTE THAT THERE IS GOING TO BE GENUINE CASES WHERE A REMEDY IS DISBARRED. I CAN'T DISPUTE. THAT HOWEVER, WHAT I THINK WE CAN ALL RECOGNIZE IS THAT, OPENING CAN THE COURTHOUSE DOORS TO ANY CASE, WHERE A PLAINTIFF CLAIMS, WITH OR WITHOUT A PHYSICAL INJURY, I HAVE A PSYCHOLOGICAL IMPACT. I AM VERY STRESSED BECAUSE OF IT. HOW ARE DEFENDANTS GOING TO DEFEND THEMSELVES? THEY HAVE THE SAME RIGHTS AS PLAINTIFFS, AND IN THOSE CASES, WHERE THERE IS LITERALLY NO WAY TO DISPUTE THE PLAINTIFF'S CLAIM, THAT IS UNFAIR TO THE DEFENDANT, AS TO THOSE PLAINTIFFS WHOSE LEGITIMATE CLAIMS ARE BARRED. THERE IS GOING TO HAVE TO BE SOME ARBITRARY LINE DRAWN, AND I WOULD SUGGEST TO THIS COURT, THAT IF ANYTHING, THE COURT SHOULD BACK OFF AND MAKE THOSE BRIGHT LINES MORE CLEAR THAN THEY HAVE BEEN, AND MAKE IT CLEAR TO THE LOWER COURTS, THAT IT IS ONLY THE COURT THAT CAN CHANGE THOSE BRIGHT LINES. THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH. YOU JUST ENDED EXACTLY AT THE RED LIGHT, WHICH IS UNUSUAL FOR THIS WEEK. SO WE THANK YOU. MS. GREEN. HOW MANY MINUTES ARE LEFT?

I HAVE ZERO.

CHIEF JUSTICE: OKAY.

A COUPLE OF QUICK POINTS. IF I MAY. DEFENDANTS CAN HIRE PSYCHOLOGISTS, TOO, AND EXAMINE PLAINTIFFS, AND PLAINTIFFS MAY THINK TWICE BEFORE SUBJECTING THEMSELVES TO SOMETHING THAT IN TIME FOR A CASE THAT DIDN'T REALLY HAPPEN.

CHIEF JUSTICE: I THINK THE TIME IS UP, THEN THANK YOU VERY MUCH. ALL RIGHT. THE COURT WILL TAKE ITS MORNING RECESS. WE WILL NORTHBOUND RECESS FOR 15 MINUTES.

MARSHAL: PLEASE RISE.