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n re: Amendments to the Florida Rules of Criminal Procedure 3.172

THE COURT WILL CALL THE LAST RULES CASE FOR TODAY IN RE COLON AMENDMENTS TO THE FLORIDA RULE OF CRIMINAL PROCEDURE .

IS EVERYBODY GOING TO BE ON ONE SIDE?

WE WILL SPLIT UP.

AGAIN I KNOW WE HAVE 30 MINUTES ALLOCATED. I KNOW THIS COURT CANNOT TAKE UP ANY AMOUNT OF TIME ALLOCATED, BUT IT TURNS OUT LIKE THIS - - LOOKS LIKE THIS IS ALL STRAIGHTFORWARD. SO LET'S HAVE YOU INTRODUCE YOURSELF AND IF YOU DON'T WANT TO USE ALL OF THE TIME ALLOCATED WE WOULD BE DELIGHTED.

MAY IT PLEASE THE COURT, YOUR HONOR, ETHAN ANDREW WAY ON BEHALF OF THE FLORIDA BARS CRIMINAL PROCEDURE RULES COMMITTEE. I'M HERE ON BEHALF OF THE CHAIR, WE ARE HERE ON THE OUT OF CYCLE REPORT CONCERNING RULE 3.172, AND ON RESPONSE TO THE COURT'S REFERENCES IN WATROUS AND STAPLETON AND THEN, OF COURSE, THE HARRISON PION HAVING COME OUT, THIS WAS AN OUT OF CYCLE REPORT SUBMITTED NOVEMBER 18 OF 2004. IT WAS A 25-2 VOTE OF THE COMMITTEE AND APPROVED BY THE BOARD OF GOVERNORS .

I UNDERSTAND THAT YOU AGREE OR YOU AUTHORIZE BY THE COMMITTEE TO AGREE TO THE CHANGE THAT WAS SUGGESTED OR WHAT IS THAT?

BY THE CRIMINAL DEFENSE LAWYERS .

THERE IS A LITTLE BIT OF DEBATE AT WHAT I AM ALLOWED TO DO AND WHAT I AM NOT ALLOWED TO DO.

AUTHORIZE. JUST SAY AUTHORIZE .

I WOULD BE SURPRISED IF THERE WEREN'T.

WHAT WE ARE TALKING ABOUT IS ADDING LANGUAGE WHICH WOULD SAY FOR A SEXUALLY MOTIVATED OFFENSE.

YES, YOUR HONOR.

AND TAKING OUT THE - - OF A SEXUALLY VIOLENT OFFENSE AND ADDING SUCH AN OFFENSE.

ACTUALLY, YOUR HONOR, I SAW THERE TO BE TWO ISSUES. THE FIRST BEING THE FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS POSITION THAT THIS PROPOSED RULE, THIS PARAGRAPH 9, ALLIED TO ALL PLEA COLLOQUYS AND THEN THERE WAS REFERENCE IN THE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS ARGUMENT AS WELL AS THAT OF THE PUBLIC DEFENDER OF THE SECOND JUDICIAL CIRCUIT TO ADD IN THE LANGUAGE SEXUALLY MOTIVATED, AND I BELIEVE WHERE WE ARE LOOKING AT THIS IT WOULD BE AN ESSENTIAL ADDITION OF 14 MORE WORDS TO THE PROPOSED RULE. JUDGE BAITMAN AND THE CRIMINAL

RULES COMMITTEE DID NOT HAVE TIME TO HAVE THE COMMITTEE VOTE ON THAT PROPOSED LANGUAGE SO I CANNOT AS A REPRESENTATIVE OF THE COMMITTEE SAY THAT'S WHAT THE COMMITTEE WOULD DO BUT THEIR ARGUMENT IS WELL TAKEN IN THAT THE LANGUAGE PROPOSED BY MR. FRIEDMAN OF THE PUBLIC DEFENDER'S OFFICE DOES TRACK THE STATUTE, THE JIMMY RYCE STATUTE, AND THE ARGUMENT MADE BY THE FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS WITH REGARD TO AN OFFENSE THAT WAS SEXUALLY MOTIVATED IS WELL TAKEN.

WHAT DOES MR. FRIEDMAN PROPOSE THAT THE FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS DENIED? WHAT WAS THE LANGUAGE?

I BELIEVE THAT MR. FRIEDMAN'S PROPOSAL MORE THO ROUGHLY TRACKED THE STATUTE AND IN HIS PROPOSAL IN PARAGRAPH 7 HIS IS MUCH MORE DETAILED AND I BELIEVE THAT HE TAKES, AND I UNDERSTAND HE TAKES THAT DETAIL FROM THE STATUTE. JUDGE BATEMAN'S POSITION IN HIS RESPONSE WAS THAT THAT WORDING IS UNWELDY AND TOO LONG AND JUDGE BATEMAN REFERS IN A FOOTNOTE TO A COLLOQUY THAT HE CONDUCTS IN THE SECOND JUDICIAL CIRCUIT AND TO HIS PLEA FORM, NOT HIS PLEA FORM BUT THE PLEA FORM THAT HE AND SEVERAL MEMBERS OF THE BAR CAME UP WITH AND I USED IN HIS COURT ROOM WHICH IS A LITTLE MORE CONCISE AND A LITTLE BIT EASIER TO UNDERSTAND, THE DIFFERENCE IS HOW MANY TIMES DO YOU REPEAT THE PHRASE OR SEXUALLY MOTIVATED OR SEXUALLY MOTIVATED OR DO YOU JUST SAY IT ONCE?

ISN'T IT REALLY THAT THE ISSUE, I GUESS, IS WHETHER IT IS GIVEN SELECTIVELY OR GIVEN GLOBALLY, LIKE IN LOOKING AT THE ONE WHERE YOU TELL THE PERSON THAT THEY ARE NOT A U.S. CITIZEN AND MAY BE SUBJECT TO DEPORTATION, THAT'S GIVEN, THAT'S TOLD TO EVERYBODY BUT THAT IS DECISION WHETHER ASKING THE PERSON IF THEY ARE A U.S. CITIZEN OR NOT, BUT THE DECISION WAS MADE THAT INSTEAD OF JUST SAYING, LISTEN, AND IF YOU ARE THIS, THEN YOU ARE SUBJECT TO THAT. TO ASK EVERYBODY AS OPPOSED TO THE JUDGE HAVING TO DETERMINE WHETHER COLLOQUY SHOULD BE GIVEN IN A GIVEN INSTANCE.

YOUR HONOR, IT SHOULD BE GIVEN TO EVERYONE. NOW, AS A FORMER TRIAL JUDGE WHO HAD TO DO THIS ALL OF THE TIME, THAT'S WHERE I HAVE THE BIGGEST QUESTION AND CONCERN. TWO-FOLD. ONE, IT IS BECAUSE MAKING - - THERE ARE LIKE 15 OF THEM NOW THAT ARE MANDATORY AND IT GETS LONGER AND LONGER AND LONGER TO GO THROUGH THE PLEA COLLOQUY. SECOND IT IS A CONCERN ABOUT TOO MUCH HUMOR IN THE COURTROOM WHEN YOU HAVE SOMEBODY CHARGED WITH STEALING A NUT MOBILE OR STEALING IN PERRY THAT YOU'VE GOT TO ASK THEM

YOU MEAN AS MR. PARKER GOES.

HOW ABOUT TALKING ABOUT PENSACOLA.

SOMEbody STEALS A PIG OR A CAR ARE YOU GOING TO HAVE TO ASK THE MWA IS IT IS SEXUAL OFFENSE OR SEXUALLY MOTIVATED OFFENSE? I CAN SEE QUERIES AND A LOT OF HUMOR IN THE COURT ROOM BUT THE REALITY OF IT IS TO REQUIRE A JUDGE WHO IS DOING 150 PLEAS, A CCEPTANCE IN A DAY, AND GOING THROUGH THIS COLLOQUY TO DO SOMETHING THAT'S IRRELEVANT TO PROBABLY 95% OF THE CRIMES THAT YOU ARE TAKING PLEAS TO, SEEMS INSTEAD OF PLACING THE BURDEN ON THE STATE ATTORNEY OR THE PUBLIC DEFENDER WHO KNOWS CRIME MORE INTIMATELY THAT THAT MIGHT BE SOMETHING AT ISSUE IN THIS CASE TO PLACE THE NOTICE, PUT IT IN THE PLEA AGREEMENT OR PLACE THE JUDGE ON NOTICE.

YOUR HONOR, IN THE PRACTICAL EFFECT, IT DOES NOT TAKE A LOT OF TIME AT ALL, AND GIVEN WHAT HAPPENED IN THE PLEA COLLOQUY IT COMES RIGHT AFTER THE DETENTION

EP ORTA TION , WHICH FOR KPFERP I F Y OU A RE M AY BE IN P ER RY O R S OMEW HERE ELS E THEY ARE GOING T O S TART SNICKERING AT THE DEPORTATION A SPECT , WE ARE GOING TO SEND YOU TO L EO N C OUNTY.

OR P EN SACO LA W HE N YOU GET THE GUY W ITH THE H AT CH ET AND YOU ASK HIM WHETHER HE IS A U.S. CITIZEN AND I T BECOMES HUMOROUS.

BUT R ESPE CTFULLY, YOUR HONOR, THE PROBLEM YOU H AVE IS IF THE PERSON I S TAKIN G A PLEA THAT'S GOING T O RESULT IN THE DEPARTMENT OF CORRECTIONS S ENTENCE FOR STEALING THE CAR THA T HAENED TO HAVE THE PIG IN IT AND THEY HAV E T HI S PRIOR PLED DOWN S EXUA L B AT TE RY WHICH IS NOW A FELON Y BATTERY ON THE BACK O F SOMEBODY'S SCORE SHEET THAT'S THE FEAR THAT YOU ARE GOING TO HAVE. YOU PLED THEM OUT F OR STEALING THE CAR WITH THE PIG, THEY HIT D OC AND T HE N ALL OF THE SUD DE N THE MULTIPL E DISCIPLIN ARY T EAM TRACKS UP ON A 1 984 CONVICTION THAT IS SEXUALLY MOTIVATED SO I THINK IT HAS TO BE S AID TO E VE RYON E BECAUSE GENERALLY THE TYPES OF INDIVID UALS W HO F AL L WITHIN THE JIMMY RYCE PARAMETERS ARE NOT THE WORLD 'S BEST H ISTO RI AN S. IT IS VERY DIF FICULT F OR DEFENSE COUNSEL IN REVIEWI NG PRIOR RECORD , P ARTI CULA RL Y CRIMINAL PUNISHMENT C OD E SCORE SHEET TO SEE THIS 1 98 4 FELONY BATTERY I S R EALLY A CAPITAL SEXUAL BATTERY T HAT GOT P LED DOWN SO I T HI NK EVERYONE NEEDS TO BE MADE AWARE OF IT BECAUSE THERE IS THAT POTENTIAL T HA T I T IS THE PRIOR RECORD T HA T 'S GOING TO GET YOU, NOT T HE SPECIFIC OFFENSE WHI CH Y OU MAY BE TAKING A D OC S EN SE T O. I SEE I A M I N R EB UTTA L T IME. I WOULD T AKE MOST OF M Y T IME TO WRAP UP WHAT I WAS GOI NG TO BE SAYING , S O I BEL IE VE MR. M ILLER WOULD BE UP NEXT.

THANK YOU VERY M UC H .

MAY IT PLEASE THE COURT , I'M JIM MILLER FRO M JACKSONVILLE ON BEHALF OF THE FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS. J USTICE BELL , TO C ARRY UP WHERE YOU JUST STOED, SIR, I UNDERSTAND YOUR CONCERN, BUT THE REA L P RO BL EM H ER E IS NOT WITH THE I NS TANT O FF ENSE BUT THE FACT T HE Y CAN G O BACK TO THE PRIOR OFFEN SE AND WE KNOW THE PRA CTICAL REALITIES ABOUT THE PRIOR OFFENSES. THE JUDGE WHO ACT UALLY TAKES THE PLEA MAY N OT EVE N KNO W ABOUT THE PRIOR RECOR D THAT MUCH, AND I AGREE THAT THE PARTIES KNOW ABOUT IT , TOO, BUT NOT ALWAYS. AND SO THE PROBL EM IS EXACTLY THAT, WHERE YOU HAVE AN OFFENSE THA T W AS P LE D D OWN FROM L IK E A CAP ITAL SEXUAL BATTERY TO A SIM PL E BATTERY BECAUSE UNFORTUNATE LY JIMMY RYCE STATUTE IS S O B RO AD I T S AY S SEXUALLY MOTIV ATED O FFENSE .

ISN'T THI S PROTE CTIO N THEN FOR REALLY NOT THE JUDGE BUT THE DEFENSE ATTORNEY, THE PRO SE CUTO R , BECAUSE IT KIND OF SAYS IF YOU HAVE B EE N T HE N Y OU M AY BE SUBJECT TO I T , S O I T IS REALLY THEN THE D EF EN DANT CAN'T SAY L ATER IT W ASN'T A KNOWING PLEA?

O UR M OT IVAT IO N I S EXA CT LY THIS, YOUR HONOR. W HEN THE DECISION C AME T O START TELLING THE D EFENDANTS ABOUT DEPORTATION , M Y ORG ANIZATION NOTICED THA T AFTER THERE STARTED TO B E A COLLOQUY ON THAT AND W E DON'T KNOW THE EXACT NUM BE RS SO THIS IS S OMEWHA T ANECDOTAL B UT - -

IS I T I N A COL LOQU Y - - COLLOQUY OR A P LE A AGREEMENT?

IT IS I N BOT H. SO WHAT HAENS I S A S A PRACTICAL MATTER, YOU K NOW , EVEN LOOK , NOT HING IS G OI NG TO STOP DEFENDANTS FROM MAKING A CLAIM, ESPEC IA LL Y P RO S E C LA IMS , HOWE V ER , I F IT IS I N T HE C OLLOQU Y AND THE PLEA AGREEMENT , T HE CIRCUIT COURT CAN DENY T HE SE WITHOUT A HEARING AND THAT SAVES A LOT OF JUDICIAL

FROM Y OUR E XPERIENCE , SERIOUSLY, IS IT T HE C OLLOQUY O R T HE DEF ENDA NT JUST SAYING YES, YES , Y ES T O THE JUDGE A FTER HEARING THE JUDGE GOING THROUGH THE

QUESTION FOR SIX HOURS OR IS IT THE ATTORNEY S ITTING DOWN WITH THE PLEA AGREEMENT GOING THROUGH THE ITEMS , GETTING HIM TO INITIAL THE PAGES AND HAVING THAT WRITTEN PROOF THAT THEY HAVE GONE OVER IT AND THEN THE JUDGE ASKING THE DEFENDANT , HAVE YOU READ THE PLEA AGREEMENT, DID YOU DISCUSS ALL OF THE TERMS WITH YOUR CLIENT, DO YOU UNDERSTAND EACH AND EVERY TERM OF THE PLEA AGREEMENT? YES, YES, YES. IS THAT REALLY WHERE YOU REALLY PROTECT THE DEFENDANT OR IS IT THE JUDGE GOING THROUGH THIS MONOTONOUS SORT OF INQUIRY FROM PRACTICAL EXPERIENCE?

I CAN'T DISAGREE THAT SOMETIMES IT IS MONOTONOUS, HOWEVER , YOU CANNOT LEGALLY SEPARATE THESE TWO. THE COURT HAS THE ULTIMATE RESPONSIBILITY TO ASK THE QUESTIONS OF THE DEFENDANT AND MAKE SURE THAT THE PLEA WAS FREELY AND VOLUNTARILY ENTERED. YOU CAN'T SEPARATE THE TWO. I UNDERSTAND WHAT YOU ARE SAYING, BECAUSE AS A PRACTICAL MATTER THE PLEA AGREEMENT, ESPECIALLY IF THEY ARE SPECIFIC ENOUGH , IS REALLY WHERE THE MEAT OF THE MATTER IS. THE JUDGE USUALLY JUST ASK HAVE YOU GONE OVER THIS WITH YOUR ATTORNEY, HAVE YOU DISCUSSED THIS AND THAT. HOWEVER, YOU CANNOT SEPARATE THE TWO. BECAUSE, YOU KNOW , I PERSONALLY LITIGATED CASES WHERE THOUGH THERE WAS A GREAT PLEA AGREEMENT THE JUDGE DIDN'T TIE IT IN WITH THE QUESTIONS FROM THE COLLOQUY AND SO I HAVE BEEN ABLE TO GET A PLEA SET ASIDE SO THE PRACTICAL

IF IT IS IN THE PLEA AGREEMENT DO YOU NEED IT IN THE COLLOQUY?

I THINK AT THE LEAST THE WAY I READ THE CASE LAW IS YOU HAVE TO AT LEAST ASK DID YOU GO OVER THESE MATTERS WITH YOUR ATTORNEY BUT THERE IS CASE LAW THAT SAYS THAT THE PLEA AGREEMENT CANNOT BE A DIRECT SUBSTITUTE FOR WHAT THE COURT'S DUTY IS IN TERMS OF THE PLEADMENT.

AND THAT'S MY PROBLEM WITH THE RULE. MAKING IT MANDATORY IN THE RULE IF THE JUDGE DOESN'T DO IT EVEN IF IT IS IN THE PLEA AGREEMENT YOU HAVE A CASE OF DEFICIENCY BECAUSE THE JUDGE DIDN'T ASK ABOUT IT.

I DON'T THINK THERE IS ANY WAY FOR US TO GET AROUND THAT.

SO WHAT IS YOUR - - WHAT ARE YOU AUTHORIZED TO SUGGEST ON BEHALF OF YOUR GROUP?

YOU ARE RIGHT ON ITS FACE THE SEXUALLY MOTIVATED THING MAY NOT APPLY TO ALL CASES BUT I THINK THE ONLY WAY TO MAKE THIS STICK AND TO SAVE EVENTUAL TIME AND RESOURCES MAKE THEM DO IT IN EVERY CASE.

ALL FELONY CASES?

RIGHT. BECAUSE THE INSTANT OFFENSE MAY NOT BE SEXUAL BUT THE PRIOR ONE MAY BE.

DID YOU UNDERSTAND THAT THE COMMITTEE DIDN'T PROPOSE TO HAVE IT IN EVERY CASE?

YES.

SO I'M HEARING ABOUT WAY TODAY SAYING THE INTENT WAS TO HAVE IT IN EVERY CASE.

I'M SORRY. I DIDN'T KNOW ABOUT THEIR INTENT. ALL I KNEW WAS IF I FILED MY RESPONSES AND I GOT A LETTER FROM JUDGE BATEMANTELLING ME IN HIS RESPONSE THAT THEY ACCEPTED OUR COMMENTS.

WELL, THAT'S THE SAME STATEMENT. LET ME ASK YOU WHETHER OR NOT THERE APPEARED TO B

E SOME DIFFERENCE, AND I'LL HAVE TO ASK YOUR COLLEAGUE ABOUT THIS, TOO, BETWEEN THE PUBLIC DEFENDERS AND THE CRIMINAL DEFENSE LAWYERS SUGGESTED REVISION TO THE LANGUAGE. HAVE YOU ALL TALKED ABOUT THAT, AND ARE THERE REALLY ANY MEANINGFUL DIFFERENCES? FOR INSTANCE IF WE ACCEPT YOUR SUGGESTION ABOUT THE LANGUAGE, WILL THERE STILL BE AN ISSUE WITH THE PUBLIC DEFENDER'S SUGGESTION? HAVE YOU ALL TRIED TO WORK THAT OUT?

WE HAVE TALKED ABOUT IT. I DON'T DISAGREE WITH ANYTHING THEY SAY TO BE COMPLETELY HONEST WITH THE COURT. I MADE A DECISION ON BEHALF OF MY ORGANIZATION WHICH HAS BOTH PUBLIC DEFENDERS AND PRIVATE ATTORNEYS TO KEEP IT A LITTLE BIT SHORTER BECAUSE I WASN'T SURE, YOU KNOW, I THINK WE

THANK YOU VERY MUCH.

I READ JUSTICE BELLS' MIND ABOUT MAKING IT TOO LONG AND COMPLICATED.

THE PRIVATE LAWYERS ARE BEING PAID ON THE HOUR SO THEY WANT TO GET OUT OF THERE.

I DON'T GET PAID BY THE HOUR, YOUR HONOR.

THAT'S RIGHT. I REMEMBER THE FILES OF THE CRIMINAL DEFENSE ATTORNEYS.

I DON'T DISAGREE WITH THEM, YOUR HONOR. YOU ASKED A VERY INTERESTING QUESTION ABOUT WHETHER IT WOULD REALLY MAKE ANY DIFFERENCE IN TERMS OF THE LEGALITY OF THE PLEA. YOU KNOW, THIS IS ALWAYS SHADES OF GRAY. OBVIOUSLY WE WOULD HAVE IT NAILED DOWN EVEN MORE IF WE DID WHAT THE PUBLIC DEFENDER'S OFFICE DID. YOU ACCEPT OUR PROPOSAL AND THERE MAY BE QUESTIONS IF I HONESTLY ANSWER YOUR QUESTION SO THAT'S ABOUT ALL I CAN SAY ABOUT THAT. I HONESTLY BELIEVE THAT WHAT I PROPOSED WAS BETTER THAN THE ORIGINAL RULE, AND PERHAPS THE PUBLIC DEFENDER'S SUGGESTION IS EVEN A BETTER SOLUTION AND IF YOU DON'T HAVE ANY OTHER QUESTIONS THANK YOU VERY MUCH.

THANK YOU VERY MUCH FOR BEING HERE. MR. FRIEDMAN?

PLEASE THE COURT, ROBERT FRIEDMAN ON BEHALF OF THE PUBLIC DEFENDER'S OFFICE, SECOND JUDICIAL CIRCUIT. I THINK THE KEY TO THIS IS WHEN A TRIAL COURT DETERMINES VOLUNTARINESS OF A PLEA, THE TRIAL JUDGE NEEDS TO DETERMINE WHETHER OR NOT THE DEFENDANT UNDERSTANDS THE CONSEQUENCES OF THE PLEA. WHEN I FIRST SAW THE PROPOSED RULE, WHICH DOES NOT INCLUDE THE SEXUALLY MOTIVATED LANGUAGE THAT WAS PUBLISHED IN THE FLORIDA BAR NEWS, I DECIDED TO FILE A COMMENT BECAUSE I DID HAVE A PENDING TRIAL CASE WHICH I HAD ATTACHED AS AN ENDIX WHERE IT CLEARLY CAME UP TO SOMEBODY WHO WAS CHARGED BY INFIRMATION WITH SEXUAL BATTERY AND THEN ENTERED INTO A PLEA TO AN AGGRAVATED BATTERY SUBSEQUENTLY THE PETITION WAS FILED TO HAVE THE PERSON COMMITTED UNDER THE JIMMY RYCE ACT.

SO ACTUALLY IF IT IS OMITTED IT COULD ACTUALLY MISLEAD, IT WOULD BE BETTER TO SAY NOTHING ALMOST THAN TO SAY SOMETHING THAT DOESN'T COVER AN OFFENSE THAT MIGHT BE A PRECISE OFFENSE FOR JIMMY RYCE?

THAT COULD BE TRUE. I THINK WE'RE --

YOU PROBABLY HAVE A LOT OF PROBLEMS WITH THAT ASPECT OF IT, BECAUSE DOESN'T THE STATUTE ACTUALLY SAY THAT IT HAS BEEN FOUND BEYOND A REASONABLE DOUBT, THE CRIME WAS SEXUALLY MOTIVATED AND WE KEEP TALKING ABOUT PLEAS AND THINGS LIKE THAT AND WHEN YOU REALLY ENTERED THESE PLEAS THAT ARE -- IF YOU ARE PLEADING TO

SAY A BATTERY, AS O OS ED T O A SEX UAL BAT TERY , D OE S THA T PLEA I ND ICAT E I T H AS BEE N FOUND BEYOND A R EA SO NA BL E D OUBT THAT I T WAS SEX UA L LY MOTIVATED?

WELL, IN A P ER FE CT WORLD AT THE TIME OF A NY P LE A COLLOQUY THERE WOULD BE A F ACTUAL B ASIS R ECIT ED B Y T HE STATE ATTORNEY AND WE A LL KNOW THAT M ANY TIM ES P EOPL E STILL STIPULATE TO T HE PROBABLE CAUSE AFFIDAVIT AND THE PLEA GOES T HR OU GH . I MEAN, I THI NK T HE P RO BLEM THAT ARI SE S I S THA T , AND I C AN U SE M R. CON TR ILLO 'S C AS E AS AN EXA MP LE W HI CH I ATTACHED TO THE A ENDI X REALLY WHEN THI S C OM ES D OW N THE ROAD NOW TO A CIV IL COMMITMENT PROCEEDING WE'RE GOING TO BE TALKING ABOUT TWO SEPARATE STANDARDS O F PROOF. THE STATE IS GOING TO H AVE TO SHOW THAT, A, IN O RD ER T O AROVE IN A CIVIL COMMITMENT CASE OF A P RI OR PREDICATE ACT, A P RIOR O R PRIOR CONVICTION, T HEY A RE GOING TO HAVE TO SHOW , A , THAT T HE C RIME WAS C OM MITT ED BY PROOF O F B EY ON D A R EASONABLE DOUBT TO H AVE BEEN SEXUALL Y MOTIV AT ED AND THEN THE JURY WILL HAVE TO MAKE A SEP AR AT E DETERMINATION BY CLEAR AND CONVINCING E VI DENC E A S TO WHETHER OR N OT T HE F IRST ELEMENT OF T HE C IVIL COMMITMENT CRI TE RI A H AS BEE N MET AND I THINK T HAT BRING S UP QUEST IO NS T HA T MAY A RISE DOWN THE ROAD WITH THIS COURT AS T O W HA T T HE M OTIO N TO B IF UR CA TE A ND W HETHER OR NOT R ESPOND EN TS W OU LD B E ENTITLED TO T WO SEP AR AT E JURIES. B UT NON ET HE LESS , I T HINK I T IS IMPORTANT AND I THI NK FROM A POLICY STAND PO IN T , T O INC LUDE THE L AN GUAGE O F T HE SEXUAL M OT IV ATION , E IT HE R A S A PRIOR ACT O R I N T HE P RESENT A CT , FRO M A P OLIC Y STAND PO IN T T O FOR ECLO SE 3 .850 D OW N T HE R OA D W HE RE THE DEFENDANT WOULD BE ALLEGING A FF IR MATIVE MIS AD VI CE THAT MY L AWYER DID N OT, YOU KNOW, TELL ME THAT I WOU LD BE SUBJECT UNDER THE P URVI EW OF THE JIMMY RYCE ACT , B Y ENTERING INTO A PLEA O R T HI S O R S OMET HI NG FRO M - - O R S OMETHING FROM THE PAST. SO I THINK FROM A P OLIC Y STANDPO INT IT MAK ES G OO D SENSE FOR THIS COURT TO ADOPT T HE RULE.

HOW ABOUT T HE L ANGUAGE SUGGESTED BY THE CRI MINA L DEFENSE LAWYERS ASSOCIATI ON ?

WE LL, I DON 'T - - I THI NK WE'RE ON THE S AM E P AG E AS T O THAT T HE L AN GU AGE O F SEXUA L MOTIVAT ION HAS TO BE I N THE RULE AS IT R EL AT ES T O EIT HE R THE PRESENT EVENT O R P RIOR CONVICTION, BUT I DON'T BELIEVE IN THEIR COMME NT S THEY A CTUA LLY S PE LLED O UT PROPOSED LANGUAGE, W HI CH I HAD D ONE I N PA RAGR AP H 7 O F MY C OM ME NT S AND I N W HI CH MR. WAY IND ICATED I N T HE BEGINNING, WHICH I BASICALLY TRACKED , F RO M S ECTION 394.912.

WHAT, AS I U NDER ST AN D , THE P RO PO SE D ADD IT IO NA L LANGUAGE WOULD BE SIMPLY T O SAY OR SEXUA LL Y M OTIV AT ED OFF ENSE.

CORRECT.

A A S O OS ED T O P UT TING LANGU AGE I N T HA T H AS T O D O WITH D ETER MINE D BEYOND A REASONABLE D OUBT A ND GOI NG FURTHER THAT YOU RUN I NT O THE PROBLEM, NOT ONL Y T HA T JUSTICE B ELL BRINGS OUT , BUT Y OU U SE T HI S S TATU TORY LANGUAGE, AND IT J US T RUN S , I MEAN Y OU G LAZE O VE R PRETT Y Q UICKLY T HE P ER SO N THA T' S BEING READ TO , AND W E A RE TRYING TO M AK E I T SOMETHI NG THAT AT LEAST T HERE WOULD B E SOME T RI GGER I N THA T P ERSON'S MIN D T HA T T HE Y OUGHT TO B E O N T HE L OOKO UT .

I THINK FOR PUR PO SE S O F WHEN I FILED MY C OM ME NTS I WAS TRYING TO B E M ORE INCLUSIVE BY T RA CK ING T HE STA TUTE, BUT , O F C OURSE , AND I AGREE THAT I MEA N W E WOULD H AVE N O O B J EC TION O R B E I N AGREEMENT WITH A NY L AN GUAG E THAT ADDRESSES T HE ISSUE O F SEXUAL MOT IV ATIO N , E IT HE R I N THE PRE SENT O FFEN SE T HA T T HEY ARE PLEADING TO O R T O MAKE THE DEFENDANTS AWARE THAT IF YOU HAVE ONE I N Y OU R

PRIOR HISTORY.

THE IMPORTANT THING IS HAVING IT IN THERE AS OPPOSED TO THE ELABORATION, PERHAPS?

RIGHT, OR NOT HAVING IT AT ALL. I MEAN, THAT'S ESSENTIALLY OUR POSITION AND AS I INDICATED, I JUST TRIED TO BE MORE INCLUSIVE.

SO IF IT SAYS, A GAIN, THE CRIMINAL DEFENSE LAWYERS HAVE IT AS A SEXUALLY VIOLENT OFFENSE OR A SEXUALLY MOTIVATED OFFENSE?

RIGHT. AND IT SAYS THAT FOR BOTH PURPOSES OF, YOU KNOW, THE PRESENT OFFENSE AND THE PRIOR OFFENSE, THE NITHIK THAT WOULD BE SATISFACTORIAL AND THAT WOULD FAIRLY ADVISE THE DEFENDANTS OF THE CONSEQUENCES OF ENTERING INTO THE PLEAS.

YOUR INTENTION WOULD -- WELL, THE ACTUAL PLEA AGREEMENT SHOULD ALSO HAVE THAT IN THERE.

YES, I THINK IT SHOULD BE IN A WRITTEN PLEA AGREEMENT AND PART OF THE PLEA COLLOQUY.

IS THAT SOMETHING IS THE PLEA AGREEMENT FORM THAT'S ATTACHED TO THE RULES OR IS IT EVERY CIRCUIT HAS A DIFFERENT PLEA AGREEMENT?

I THINK EVERY CIRCUIT USES A DIFFERENT PLEA AGREEMENT FORMS.

HAS ANYONE EVER -- I GUESS THAT'S REALLY FOR THE RULES.

EVERY CIRCUIT OR EVERY JUDGE OR EVERY PROSECUTOR?

THAT IS CORRECT.

REALLY? THANK YOU. THANK YOU VERY MUCH. MR. WAY, DO YOU HAVE ANYTHING TO ADD?

JUST BRIEFLY, YOUR HONOR. IN TAKING UP THE FIRST ISSUE ON THE PLEA FORM AND FOR EXAMPLE, I MEAN, JUSTICE BELL IS CORRECT. THEY VARY FROM JUDGE TO CIRCUITS. IN THE SECOND JUDICIAL CIRCUIT, JUDGE BATEMAN HAS COME UP WITH ONE AND THE LAST FIVE PARAGRAPHS ARE BASICALLY ADDITIONS AND IT TALKS ABOUT SENTENCING ENHANCEMENTS, HFO AND OTHER THINGS SO IT ALL JUST VARIES.

SO AND JUDGE BATEMAN DOES THAT, WHEN HE IS DOING THE PLEA COLLOQUY HE DIDN'T GO OVER EVERYTHING AGAIN THEN, DOES HE JUST SAY HAVE YOU READ AND INITIALED EACH PART OF IT OR HOW DOES HE DO THAT?

HE WILL ASK, HAVE YOU READ THE PLEA FORM? HE WILL GO OVER THINGS. HE DOES ADD, THIS IS HOW LONG IT TAKES, DO YOU UNDERSTAND IF YOU ARE SENTENCED TO PRISON IN ANYCASE, HAVING BEEN CONVICTED OF A SEXUALLY MOTIVATED OR SEXUALLY VIOLENT OFFENSE AT THE END OF THE PRISON SENTENCE YOU COULD BE CIVILLY COMMITTED TO THE DEPARTMENT OF CHILDREN AND FAMILIES FOR UP TO THE REST OF YOUR LIFE UNDER THE JIMMY RYCE ACT, AND THEN HE MOVES ON TO THE ARE YOU SURE THIS IS WHAT YOU WANT TO DO LANGUAGE?

BUT THE COLLOQUY IS IN ADDITION TO THE PLEA FORM?

IN ADDITION TO THE PLEA FORM WHICH HE HAS IN HERE AS HIS PARAGRAPH 7. HE WAS NICE ENOUGH TO EMAIL TO ME AND I'VE COOPATED IT FOR MY OWN USE AND HE PUTS IN THERE THE JIMMY RYCE STATUTES AND WHAT'S NICE ABOUT THE WAY THAT IS USED IS IT PUTS DEFEN

SE C OUNSEL AND DEFEN DANTS O N NOTICE TO LOOK AT THE VAR IOUS STATUTES THAT ALY. I MEAN, 3 94 , WHI CH I S THE D EPARTMENT OF CHILDREN A ND FAMILY SER VICES STATUTE TO THE JIMMY RYCE ACT I S ACTUALLY IN THE WES T PAMPHLET, SORT OF THE BIBLE OF THE C RIMINA L DEF EN SE A ND PROSECUTORS.IT IS RIGHT THERE A ND S O PRESU MABLY WHEN YOUR C LIEN T IS REVIEWING THIS YOU HAV E THE RESOURCES AVAILABLE TO SAY THIS IS WHAT THE J IMMY RYCE ACT MEANS.

BUT AS FAR AS THE C OLLUQUY ITSELF , I T IS N OT IN ADDITION TO THAT. THE JUDGE IS ALSO D OING THE OTHER 14 MANDA TO RY T HINGS IN THE RULE IN ORDER T O D O T HE COLLOQUY, CORRE CT ?

HE I S GOING THROUGH W HA T HE IS R EQUARED TO AND H E HAS ADDED IN THE JIMMY R YC E LANGUAGE AND IT DOES NOT A DD A S IGNIFICANT AMOUNT O F TIME.

WHY I SN 'T THE RE A U NIFO RM PLEA AGR EEMENT THAT, YOU KNOW, JUDGES COU LD A DD T O , BUT WOULDN'T THAT BE OF USE TO HAVE I T U NI FO RM ?

R ESPECTFULLY , YOUR H ON OR , JUDGES ARE - - JUD GE S W IT HI N EVEN THEIR OWN C IRCUIT S SOMETIMES HAVE A TEN DE NC Y .

T HA T MAY B E B UT T HA T MAY NOT BE WHAT'S IN THE BES T INTERESTS OF THE SYSTEM.I MEAN, WE HAV E D OM ES TIC VIOLENCE INJUNCTIONS THAT ARE MANDATORY A ND O NE O F T HE PROBLEMS THAT C ON DITION S OF PROBATION, Y OU K NO W , THA T COMES UP IS T HAT T HE SE SOMETIMES THINGS DON'T GET IN THAT SHOULD GET I N.

I CAN S PEAK O N B EH AL F O F JUDGE BATE MA N THAT H E W OU LD LOVE I T I F T HE S TATE U SED HIS FORM.

AND HIS JURY I NSTR UC TIONS, TOO, I K NOW THAT.

IF THERE ARE NO F URTHER QUESTIONS, YOUR HONOR.

THANK YOU VER Y MUCH , MR. WAY.

THANK Y OU T O E VERYBO DY O N T HIS PARTI CU LAR R UL E AND BEING OF SERVICE TO THE COURT.WITH THAT, WE WILL BE IN RECESS UNTIL 9:00 T OM ORROW MORNING.