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In re: Amendments to the Florida Rules of Judicial Administration

MARSHAL: HEAR YE. HEAR YE. HEAR YE. THE SUPREME COURT OF THE GREAT STATE OF FLORIDA IS NOW IN SESSION. ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR, AND YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES, THE GREAT STATE OF FLORIDA AND THIS HONORABLE COURT. LADIES AND GENTLEMEN, THE FLORIDA SUPREME COURT. PLEASE BE SEATED.

CHIEF JUSTICE: WE HAVE AN EXCITING MORNING TO DAY. BEGINNING WITH THE AMENDMENTS TO THE FLORIDA RULES OF JUDICIAL ADMINISTRATION, AND AS I UNDERSTAND IT, JUDGE ISOM, YOU ARE GOING TO INTRODUCE THE RULES AND THEN ALLOCATE YOUR TIME. THANK YOU VERY MUCH.

GOOD MORNING. THANK YOU AND MAY IT PLEASE THE COURT. MY NAME IS CLAUDIA RICKERT ISOM. I AM HERE THIS MORNING IN MY CAPACITY AS CHAIR OF THE FLORIDA BAR RULES OF JUDICIAL ADMINISTRATION. AND IN RESPONSE TO THE COURT'S NOTICE SETTING OUR PROPOSED AMENDMENTS FOR ORAL ARGUMENT. I WILL BE ASSISTED TODAY BY DAVID ROLAND, WHO IS A LONG TIME MEMBER OF OUR COMMITTEE. THE PROPOSED AMENDMENTS CONTAINED IN OUR REPORT ALSO INCLUDES EXTENSIVE DOCUMENTATION OF BACKGROUND MATERIAL. THERE ARE SIX PROPOSALS AND AN ADDITIONAL PROPOSAL WHICH HAS BEEN CARRIED OVER FROM OUR 2003 BY ANNUAL REPORT FOR YOUR CONSIDERATION TODAY. THREE PROPOSALS WERE NOT THE SUBJECT OF COMMENT OR REQUEST FOR ORAL ARGUMENT, AND THE COMMITTEE URGES THEIR ADOPTION BY THE COURT. THE OTHER PROPOSALS WHICH WILL BE THE SUBJECT OF ORAL ARGUMENT, WILL BE PRESENTED AS FOLLOWS. FIRST, JUDGE BERNSTEIN WILL BE SPEAKING IN SUPPORT OF PROPOSAL 2.085 REGARDING THE FILING OF THE NOTICE OF RELATED CASES. MR. KANEY WILL THEN PRESENT THE FIRST AMENDMENT FOUNDATION'S COMMENTS REGARDING THE COURT SECURITY CAMERA PROPOSAL IN 2.170-C-5, THEN MR. THOMAS WILL PRESENT MEDIA GENERAL OPERATION SUORT FOR THE PROPOSED AMENDMENTS AND REQUEST FOR ADDITIONAL AMENDMENTS TO 2.051, TO THOSE WHICH HAVE ALREADY BEEN PROPOSED BY THE COMMITTEE, REGARDING REQUEST FOR ACCESS TO JUDICIAL RECORDS. THIS WILL BE FOLLOWED BY MR. LOCICERO PRESENTING COMMENTS ON BE HALF OF THE EW SCRIS COMPANY, POST "NEWSWEEK" STATION FLORIDA INCORPORATED AND SUN BEAM TELEVISION CORPORATION, ABOUT THE PRIVACY AND CONFIDENTIALITY PROVISIONS INCLUDED IN RULE PROPOSAL 2.170-A -3-I AND 2.701-B PROPOSAL REGARDING PUBLISHING AND BROADCASTING, THE FACES OF PROSPECTIVE AND SEATED JURORS.

CHIEF JUSTICE: ARE YOU, AGAIN, GOING TO RESPOND TO THE MEDIA GENERAL'S CONCERNS ABOUT THOSE ISSUES, AFTER THEY PRESENTED THEIR

YES, YOUR HONOR.

CHIEF JUSTICE: THE OTHER QUESTION I HAVE, AND THIS IS JUST, THIS IS NOT A LIGHT THAT YOU NEED TO WORRY GOOD. TWO MINUTES YOU HAVE ENOUGH TIME. I WANTED TO ASK YOU BEFORE YOU SIT DOWN, ABOUT THE PROPOSED CHANGE TO THE THREE-YEAR CYCLE. ARE YOU ABLE TO TALK ABOUT THAT?

YES. THAT IS ONE OF OUR PROPOSALS.

CHIEF JUSTICE: I DON'T THINK IT MET WITH ANY OPPOSITION. OF COURSE THE COURT IS PROBABLY

MOST AFFECTED WITH THE BAR AND THE BAR PERSONNEL, FOR, WITH THAT, AND MY CONCERN IS, ALTHOUGH MANY OF THE RULES CYCLES SUCH AS THE PROBATE RULES, CIVIL RULES, ARE THREE YEARS IS PROBABLY MORE THAN OR ADEQUATE, THAT THERE ARE CHANGES EVERY YEAR IN THE AREA OF FAMILY ISSUES, JUVENILE ISSUES, AND I AM CONCERNED THAT, IF WE GO TO THREE-YEAR CYCLES FOR EVERYTHING, THAT WE MAY START TO HAVE MORE OF THE EMERGENCY PETITIONS, WHICH WERE EXACTLY WHAT WE WANTED TO AVOID. WAS THERE ANY CONSIDERATION ABOUT NOT HAVING EVERY RULE BE ON THE THREE-YEAR, MAYBE HAVE SOME TWO-YEAR AND SOME FOUR-YEAR? IN OTHER WORDS SOME, REALLY, DIDN'T NEED EVEN THREE YEARS. THEY COULD GO BACK TO FOUR YEARS, BUT OTHERS SHOULD STAY AT TWO YEARS, OR WAS IT

ACTUALLY NO. WE HAVE REPRESENTATIVES ON OUR COMMITTEE FROM ALL OF THE RULES COMMITTEES, YOU KNOW, THERE IS SOMEBODY FROM EACH OF THOSE SUBSTANTIAL RULES COMMITTEES THAT WOULD HAVE HAD AN OPPORTUNITY TO DISCUSS THIS, WHENEVER IT CAME UP, AND I BELIEVE THAT THERE WAS PRETTY MUCH UNANIMITY, THAT HAVING THIS TWO-YEAR CYCLE IS CREATING A BURDEN, BOTH ON THE VOLUNTEERS WHO ARE MEMBERS OF OUR COMMITTEES AND, ALSO, ON OUR FLORIDA BAR STAFF. AND THERE WAS NOT TO MY RECOLLECTION, THERE WAS NEVER A PROPOSAL THAT WE DO SOMETHING DIFFERENT FOR DIFFERENT RULES COMMITTEES, AND THE STAGGERED WAY THAT WE HAVE IT SET UP NOW, WHERE DIFFERENT COMMITTEES REPORT AT DIFFERENT TIMES IS INTENDED TO RELIEVE THAT PRESSURE OF EVERYBODY HAVING TO COME UP WITH SOMETHING ON THIS CYCLE.

CHIEF JUSTICE: THAT IS WHY I SUGGEST, BEING PARTICULARLY FAMILIAR WITH THE FAMILY AND JUVENILE, IT IS ALMOST INEVITABLE THAT THERE ARE LEGISLATIVE CHANGES ALMOST EVERY YEAR, IF NOT EVERY TWO YEARS, AND CERTAINLY OUR STAFF KNOWS THAT THAT IS THE CASE, AND SO THAT WAS, YOU KNOW, WE ARE SOMETIMES PROACTIVE, BUT IF THAT WASN'T CONSIDERED, I GUESS THAT IS SOMETHING THAT THE COURT STILL CAN TAKE INTO CONSIDERATION.

I DON'T RECALL ANYBODY REQUESTING SPECIAL CONSIDERATION BECAUSE THEY FELT THE TWO-YEAR CYCLE BETTER SERVED THE NEEDS OF THEIR COMMITTEE. THANK YOU. ALL RIGHT. AND WITH THAT, ILL TURN THE PROGRAM OVER TO JUDGE BERNSTEIN.

THANK YOU VERY MUCH. GOOD MORNING EVERYONE. MAY IT PLEASE THE COURT. SCOTT BERNSTEIN. I AM HIM SPEAKING TODAY ON BEHALF OF THE STEERING COMMITTEE ON FAMILIES AND CHILDREN IN THE COURTS. FOR THE BETTER PART OF TEN YEARS, THIS COURT HAS ENCOURAGED TRIAL JUDGE TO SAY COORDINATE RELATED CASES, AND JUST ABOUT EVERY CIRCUIT NOW HAS A PROCEDURE IN PLACE, FOR HOW TO HANDLE RELATED FAMILY CASES, WHEN THEY KNOW THAT THEY ARE RELATED TO EACH OTHER. BUT THAT IS THE PROBLEM. WE DON'T ALWAYS KNOW WHAT CASES ARE RELATED TO WHAT OTHER CASES. THAT IS WHAT WE WILL ATTEMPT TO DO, A NOTICE OF BROAD RELATED CASES IN FAMILY COURTS, WHICH WILL VERY SIMPLY ALLOW EACH NEW FAMILY CASE TO BE CONNECTED TO EVERY OTHER EXISTING CASE, SO THAT THE TRIAL COURT ADMINISTRATORS CAN, THEN, COORDINATE THEM PROPERLY. I WILL TELL YOU HOW I FIRST BECAME INTERESTED IN THIS ISSUE. ABOUT SEVEN YEARS AGO, WHEN I WAS SITTING ON THE BENCH IN A JUVENILE DELINQUENCY COURTROOM, I WAS CALLED ON 24 HOURS AFTER A CHILD HAD BEEN ARRESTED, TO MAKE A DECISION WHETHER TO KEEP HIM INSECURE DETENTION OR OFFER LET HIM GO HOME WITH HIS MOTHER PENDING TRIAL. MOTHER STOOD UP IN THE COURTROOM AND SAID I HAVE GOT A PLAN IN PLACE. I WILL MAKE SURE HE GOES TO SCHOOL AND MAKE SURE HE DOES HIS HOMEWORK AND MAKE SURE HE STAYS AWAY FROM BAD FRIENDS AND FOLLOWS AN OCCUR FEW. A CURFEW. SOUNDED GREAT. THEY LET THE MOTHER TAKE HIM HOME. I FOUND OUT LATER THAT THE SAME MOTHER IN THE SAME COURTHOUSE, HAD HAD HER PARENTAL RIGHTS TERMINATED A YEAR EARLIER BECAUSE OF SEVERE PHYSICAL ABUSE ON THAT CHILD, AND THAT INFORMATION WAS NOT GIVEN TO ME. THERE IS NO EXCUSE FOR THAT AND THIS NOTICE OF RELATED CASES WILL GO A LONG WAY TO

ALLOWING US TO IMPLEMENT THE FULL VISION OF UNIFIED FAMILY COURT .

CHIEF JUSTICE: IN THAT CASE, JUDGE BERNSTEIN , WHO WOULD HAVE THE BURDEN , I KNOW IN YOUR CIRCUIT YOU SEARCH FOR THE SE CASES NOW, BUT SINCE THIS IS INTENDED TO PUT SOME BURDEN ON THE PARTIES, IN THAT SITUATION , WHO WOULD BE REQUIRED TO FILE THAT NOTICE? WOULD WILL BE THE DEPARTMENT OF JUVENILE JUSTICE ?

NO. THE STATE ATTORNEYS OFFICE. THE WAY IT IS WRITTEN , WHOEVER FILINGS A PETITION IN A DELINQUENCY CASE, WOULD FILE A PETITION.THEY WOULD FILL OUT A FORM .

DO YOU ANTICIPATE THAT THIS WOULD BE A UNIFORM FORM THAT WOULD BE USED THROUGHOUT THE STATE, OR DOES EVERYONE GET TO MAKE THEIR OWN FORM?

WELL , WE HAD DECIDED IN THE RULES COMMITTEE, TO LEAVE IT UP TO EACH CIRCUIT , TO DEVELOP THEIR OWN FORMS. AT THE TIME THAT THIS WAS DISCUSSED IN THE RULES OF JUDICIAL ADMINISTRATION COMMITTEE , THOSE PARTICULAR RULES HAD NO FORMS ATTACHED TO THEM ANYWHERE. I HAVE BEEN TOLD THAT THE ICE HAS SORT OF BEEN BROKEN AND NOW THERE ARE SOME FORMS , AND I AM CERTAINLY HAPPY TO WORK WITH THEM AND DEVELOP A FORM IF THEY WANT.WE HAVE ONE IN MIAMI- DADE COUNTY.

CHIEF JUSTICE: I THOUGHT THERE WAS GOING PHONE A FORM ATTACHED WITH THIS A FORM ATTACHED WITH THIS .

THE COMMITTEE DID NOT WANT TO ADOPT A FORM AND WANTED TO LEAVE IT UP TO EACH INDIVIDUAL CIRCUIT TO DO, BUT I AM MORE THAN HAPPY TO WORK WITH THE BAR AND GET A FORM TOGETHER.

CHIEF JUSTICE: IT SEEMS TO MAKE IT SIMPLER FOR THE CLERK AND THE TRIAL COURT ADMINISTRATORS, WE WANT TO HAVE EXACTLY WHAT INFORMATION

I AGREE WITH YOU , WHICH IS WHY WE HAVE ONE IN MIAMI.

DO WE HAVE THE STATE ATTORNEY CLERKS, ARE THERE CIRCUIT JUDGES IN THE LOOP ON THIS?

EVERYBODY, PARTICULARLY ON THE STEERING COMMITTEE, THE COMMITTEE WAS COMPOSED OF JUST ABOUT EVERY DISCIPLINE YOU CAN IMAGINE , SO , YES , EVERYONE HAD INPUT. THE STATE ATTORNEYS, PRIVATE BAR, PUBLIC DEFENDERS, D JJ , EVERYONE.

WE JUST HAD A JUDGE HERE YESTERDAY IN ANOTHER RULES CASE, SAYING JUDGES AREN'T AWARE OF THESE MODIFICATION TO SAY RULES, NOT THIS ONE BUT ANOTHER ONE. I WANT TO MAKE SURE THAT THERE HAS BEEN COMMUNICATION WITH THE CHIEF JUDGES IN THE OTHER CIRCUITS.

THERE ARE SEVERAL CHIEF JUDGES WHO ARE ON THE STEERING COMMITTEE, AND THERE ARE SEVERAL TRIAL JUDGES WHO AREN'T ADMINISTRATIVE JUDGES , WHO ARE, ALSO , ON THE STEERING COMMITTEE.

THIS IS ALSO FULFILLING THE COURT'S MANDATE FROM THE 2001 OPINION.

THAT IS EXACTLY RIGHT. FROM THE 2001 OPINION.

DID THE COURT OR THE COMMITTEE CONSIDER A MORE EXPANSIVE REQUIREMENT , THAT IS THAT YOU ARE MAKING IT A REQUIREMENT OF THE STATE ATTORNEY.

ANY PETITIONER, AND IN A DELINQUENCY EXAMPLE , IT WOULD BE THE STATE ATTORNEY N

DISSOLUTION OF MARRIAGE CASE, IT WOULD BE THE PETITIONER. IN A DOMESTIC VIOLENCE CASE, IT WOULD BE THE PERSON REQUESTING THE INJUNCTION. WE DID CONSIDER MORE EXPANSIVE LANGUAGE. THERE WERE CERTAIN LEGAL AND ETHICAL PROBLEMS THAT CAME UP WITH MORE EXPANSIVE LANGUAGE, AND WE REALIZED THAT THERE WAS NO PERFECT SOLUTION TO ANY OF THEM, BUT WE DECIDED TO, THIS WOULD CAPTURE THE VAST MAJORITY OF THE CASES. WE ARE NOT UNDER ANY ILLUSIONS. I DON'T THINK IT WILL CATCH EVERY SINGLE CASE. IT WILL CATCH ALMOST ALL OF THEM AND WE FIGURED THAT THAT WAS A VERY STRONG START.

CHIEF JUSTICE: I JUST WANT TO, AGAIN, MAYBE YOU CONSIDERED THIS, YOUR HYPOTHETICAL WOULD NOT REQUIRE THE STATE TO FILE, BECAUSE IN YOUR CASE, THE RIGHTS HAD ALMOST BEEN TERMINATED, AND THIS SAYS IT MUST BE PENDING AT THE TIME THAT THE PARTY FILES A FAMILY CASE. THE WAY THE RULE READS.

BUT IF, ALSO, SAYS BUT IT, ALSO, SAYS IF IT AFFECTS THE COURT'S JURISDICTION, AND WHAT CONCERNS ME HERE IS, ALTHOUGH IT ISN'T NECESSARILY JURISDICTIONAL, IF A MOTHER STANDS UP AND SAYS I WANT TO TAKE CUSTODY OF THIS CHILD, THEN, I THINK THE STATE ATTORNEY IS OBLIGATED TO SAY, NO, THAT MOTHER CAN'T TAKE THAT CHILD.

THAT MAY BE WHAT JUSTICE ANSTEAD SUGGESTING IS WHETHER THERE SHOULD BE LANGUAGE THAT ANY TIME A PARTY KNOWS OF A RELATED CASE, THAT A NOTICE SHOULD BE FILED. THAT DOESN'T MEAN THAT IT IS OBLIGATORY, BUT IT TAKES IT OUT OF, WELL, I DIDN'T REALLY THINK IT FIT INTO, THIS AND WE SELF-SIZE IN THE WE EMPHASIZE IN THE COMMENT HOW STRONG THAT SHOULD BE.

IF YOU LOOK AT SUBSECTION 5, EACH PARTY HAS A CONTINUING DUTY TO INFORM THE COURT OF ANY PROCEEDINGS IN THIS OR ANY OTHER STATE THAT COULD AFFECT THE CURRENT PROCEEDINGS.

CHIEF JUSTICE: I SEE YOUR TIME IS UP. JUDGE BERNSTEIN, I WANT TO THANK YOU FOR COMING UP HERE, AND I, ALSO, WANT TO TAKE JUST A MOMENT TO THANK YOU, BECAUSE I KNOW THAT EVERY TIME THERE IS AN ISSUE INVOLVING CHILDREN AND FAMILIES, YOU HAVE COME TO TALLAHASSEE. YOU HAVE BEEN BEFORE THE LEGISLATURE EXTENSIVELY, AND I KNOW THAT, HOW MUCH TIME AND EFFORT YOU HAVE PUT INTO IT AND FOR THAT THE COURT IS VERY GRATEFUL.

THANK YOU. IT IS A PLEASURE. THANK YOU ALL, VERY MUCH.

MAY IT PLEASE THE COURT. I AM JOHN KANEY ON BEHALF OF THE FIRST AMENDMENT FOUNDATION, AND I HAVE THE EASIEST JOB OF THE DAY AND THE SHORTEST TIME. WE ARE HERE TO COMMENT ON THE PROPOSAL, WHICH READS THE COURT SECURITY CAMERAS SHALL BE USED FOR SECURITY PURPOSES ONLY. WE REVIEWED THE MATERIAL RELATING TO THAT, AND IT SEEMS THAT THIS EITHER IS HARDLY, MEANS HARDLY ANYTHING AT ALL, OR IT ATTEMPTS TO CREATE AN EXEMPTION OF A PUBLIC RECORD, AND THEN, IF A COURT ATTEMPTS TO MAKE SECURITY CAMERAS EXEMPT, THEN WE HAVE A CONSTITUTIONAL PROBLEM, BECAUSE UNDER THE SUNSHINE AMENDMENT, THAT POWER FOR BETTER OR FOR WORSE, HAS BEEN GIVEN EXCLUSIVELY TO THE LEGISLATURE, AND SO IF THE COURT ADOPTS THE RULE THAT SAYS "IT SHALL BE USED FOR", THEN THE NEXT QUESTION IS WHAT HAPPENS IF SOMEONE REQUESTS A COPY OF THE TAPE FOR SOME OTHER USE.

HAVE YOU HAD DISCUSSIONS WITH THE COMMITTEE ABOUT THAT AND WHAT HAS BEEN THE OUTCOME OF THOSE DISCUSSIONS?

WE HAD BRYNE COMMENTS WITH BOTH THIS COMMITTEE AND THERE WAS A PREVIOUS COMMITTEE THAT, ALSO, LOOKED AT THIS. I BELIEVE JUDGE ISOM'S COMMENT WAS THAT THE

COMMITTEE BLANCHED AT THE THOUGHT THAT THE COURT SECURITY CAMERAS, RECORDS OF THOSE PICTURES WOULD BE RECORDS OF THE JUDICIAL BRANCH. WELL, IT WOULD BE NICE IF THE COURT COULD, STILL, SAY WHAT IS AND WHAT IS NOT PUBLIC FROM AMONG ITS RECORDS, BUT SECTION 24-A OF THE CONSTITUTION, IS SELF EXECUTING, AND IT SAYS ANY PUBLIC RECORD THAT IS NOT EXEMPT BY LAW, IS AVAILABLE ON DE MAND.

NOW, WHY, GIVE ME THE REQUIREMENT OR DUTY OF AN OFFICIAL TO KEEP THESE PUBLIC RECORDS AS PART OF THE FUNCTION, LIKE THIS COURT, WE HAVE SECURITY CAMERAS TO PROTECT US INTERNALLY, FROM THREATS AND OTHERWISE. BUT HOW IS IT PART OF THE OFFICIAL BUSINESS OF THIS COURT, TO HAVE SECURITY CAMERA TAPE?

WELL, YOUR HONOR, I WOULD BEGIN BY SAYING THE DEFINITION OF A PUBLIC RECORD, IT DOES NOT REQUIRE THAT IT BE MADE AS A DISCHARGE OF A DUTY.

I REALIZE THAT.

OKAY. AND I WOULD SAY, NO, THAT IF THE COURT DID NOT CHOOSE TO MAKE, TO HAVE SECURITY CAMERAS OR TO RECORD WHATEVER THEY SHOWED, I DON'T KNOW OF ANY REASON WHY YOU COULDN'T CHOOSE TO DO. THAT IN WHICH CASE THERE WOULD BE NO RECORD, AND THIS WOULD BE, THAT WOULD BE ONE WAY TO INTERPRET THIS. THE CAMERA SHALL BE USED FOR SECURITY PURPOSES ONLY, WHICH MEANS YOU WOULD HAVE A BANK OF CAMERAS AND A BANK OF VIDEO SCREENS AND YOU WOULDN'T TAPE THEM. THAT HARDLY SEEMS PRACTICAL, FROM A SECURITY STANDPOINT, BUT THAT WOULD BE ONE WAY TO LIVE WITH THIS RULE, WITHOUT COLLIDING WITH THE CONSTITUTION ON THE PUBLIC RECORD EXEMPTION. ANOTHER WAY WOULD BE TO KICK IT ACROSS THE PARK AND ASK THE LEGISLATURE TO HELP YOU OUT, BUT I HAVE BEEN TOLD BY PEOPLE WITH A LOT OF EXPERIENCE IN THE LEGISLATURE, YOU HAVE TO BE CAREFUL WHAT YOU ASK FOR, BECAUSE YOU NEVER KNOW WHAT YOU ARE GOING TO GET!

IT SEEMS TO ME THAT THE INTENT OF THAT SECTION WAS THAT SECURITY CAMERAS WOULD NOT BE USED FOR THE PURPOSE OF BROADCASTING GENERALLY WHAT IS GOING ON, IN THE COURT PROCEEDINGS, AS OPPOSED TO JUST A REGULAR CAMERA IN THE COURTROOM, SO IS THAT NOT WHAT YOU READ IN THIS PARTICULAR INSPECTION?

I READ THAT IN THE COMMENTARY. THAT IS CERTAINLY THE LEGISLATIVE INTENT OF THE MEMBERS OF THE BRANCH THAT COMMENTED IN THE MATERIALS THAT WE HAVE. AND WHAT I SEE THERE, IS SOMETHING THAT, A CONCERN WITH I AM SORRY.

WELL, IF THAT IS TRUE AND THAT IS WHAT THEY SAY IN THE COMMENTARY, THEN DO YOU HAVE ANY PROPOSED LANGUAGE THAT WOULD BE SUBSTITUTED THAT WOULD ACTUALLY CARRY OUT THAT INTENT, AS OPPOSED TO WHAT YOU SEE, I THINK, AS A MORE BROAD INTENT?

YOUR HONOR, I WOULD NOT PROPOSE THAT THE COURT ADOPT A RULE OUT OF A CONCERN LABELED PRIVACY, WHICH, REALLY, IS A CONCERN, THE RIGHT TO BE ONLY A LITTLE BIT PUBLIC. THE WHOLE DRIFT OF THE COMMITTEE'S THINKING IS, HERE IS A PUBLIC COURTROOM. IT IS NOT CLOSED FOR ANY VALID REASON, AND ANYBODY CAN WALK IN HERE AND WATCH, IT BUT WE DON'T WANT IT ON THE INTERNET BECAUSE THAT IS TOO PUBLIC, SO IF IT GETS TOO PUBLIC, THEN IT INVADES A RIGHT, NOT OF PRIVACY, BECAUSE THERE IS NO PRIVACY IN A PUBLIC COURTROOM. IT, WE ARE TRYING TO WORK ON A RIGHT NOT TO BE ALL THAT PUBLIC.

SO IS YOUR CONCERN ONLY THE SECURITY CAMERAS RELATED TO ACTIVITY GOING ON IN THE PUBLIC COURTROOM, OR ARE YOU TALKING ABOUT SECURITY IN SECURED HALLWAYS, AND THE SECURED CAMERAS THAT SECURE THE WHOLE FACILITY?

YOUR HONOR, I CAN SEE A CLEAR DISTINCTION, AND I COULD RATIONALIZE DRAWING THE LINE

BETWEEN THE COURTROOM'S PROCEEDINGS AND THE SECURITY CAMERA IN THE MEN'S ROOM , FOR EXAMPLE, OR WHATEVER.

OUR JUDGE'S CHAMBERS OR WHATEVER, THAT AREN'T NECESSARILY ALWAYS OPEN.

THAT'S RIGHT. AND I WOULD SAY THAT WOULD SUORT A LEGISLATIVE DISTINCTION THAT WE SAY THE RECORDS OF SECURITY CAMERAS THAT ARE OUTSIDE THE PUBLIC COURTROOM , ARE EXEMPT. AND I COULD SEE A PUBLIC NECESSITY FOR THAT. MY PROBLEM IS , AND I WAS N'T AROUND IN '92 SO I CAN'T BE BLAMED FOR THIS ONE, BUT THE PROBLEM IS THE COURT SEEMS TO LACK THE POWER TO FASHION THAT KIND OF DISTINCTION AMONG PUBLIC RECORDS, UNTHE WAY THE CONSTITUTION READS TODAY.

DIDN'T WE HAVE AT ONE TIME, SOME LANGUAGE BUILT IN THAT TALKED IN TERMS OF THOSE THINGS WHICH WERE NOT PUBLIC BEFORE. SOME CONCEPT SUCH AS THAT , AS WHEN SOME OF THESE AMENDMENTS WERE PASSED?

WE HAVE, IN 2.051-C -8 , AN ABSORPTION OR AT LEAST CAROLAND I HAVE BEEN DEBATING THAT, BUT A RULE THAT SAYS ANYTHING THAT IS EXEMPT BY LAW, CONTINUES TO BE EXEMPT BY THIS RULE , AS WE ROLLED UNDER THE CONSTITUTION.

RIGHT. THAT KIND OF THING. WAS THERE NOTHING EXISTING IN THE PAST WITH REGARD TO SECURITY MEASURES, SUCH AS WRITTEN SECURITY PLANS FOR THE PROTECTION OF EMPLOYEES , THAT IS IN THIS AREA AT ALL? ARE WE JUST TOTALLY BLANK IN THE SECURITY AREA?

YOU KNOW , THAT IS A GOOD POINT , JUSTICE LEWIS. NOT ONLY THOSE THAT WERE THERE IN '92 BUT SINCE '92 , THE LEGISLATURE HAS ARTICULATED EXEMPTIONS AS EXEMPTIONS FROM THE CONSTITUTION, AS WELL, AND IT MIGHT VERY WELL BE , IN PARTICULARLY SOME OF THE POST 9/11 LEGISLATION , THAT ONE COULD FIND FOOTING FOR AN EXEMPTION IN THE STATUTE. I HAVEN'T DONE THAT WORK , BUT I WOULDN'T BE SURPRISED IF, AMONG THE 1,000 EXEMPTIONS, YOU MIGHT FIND ONE.

CHIEF JUSTICE: MR. KANEY, YOU SAID YOU HAD THE EASIEST AND SHORTEST JOB , BUT , OF COURSE, I THINK THIS RAISES LOTS OF VERY, VERY INTERESTING SIDE ISSUES AND CONCERNS, AND I AM SURE THE INTENT OF THE COMMITTEE WAS NOT TO SHIELD THE COURT PROCEEDINGS FROM PUBLIC VIEW , SINCE THAT IS DEFINITELY CONTRARY TO EVERY THING THAT THIS COURT HAS STOOD FOR. THANK YOU VERY MUCH FOR YOUR TIME.

THANK THE COURT VERY MUCH. THANK YOU.

IN 2003, THIS COURT THE MEDIA CONVERGENCE CASE AND LEFT A COUPLE OF ISSUES OPEN. THE COMMITTEE, AND WE HAVE ALAuded THEIR EFFORTS , HAVE ARTICULATED WHAT WE BELIEVE ARE CONTROVERSIAL ISSUES TO THE REVISION OF RULE 2.051. THAT IS A REQUEST TO A JUDGE AND THE DOCUMENTS , WILL BE IN CAMERA , REVIEWED IN CAMERA, AND THERE WILL BE THE ARTICULATION OF EXEMPTION. OUR CONCERN WITH THE RULE , IS THAT IT DOESN'T GO FAR ENOUGH. LET ME GIVE YOU A CLASSIC EXAMPLE. THERE IS AN EXEMPTION WITH REGARD TO SEARCH WARRANTS. IT APPEARS THAT 2.051-C -6 , SAYS COPIES OF ARREST WARRANTS AND SUPPORTING AFFIDAVITS RETAINED BY JUDGES, CLERKS OR OTHER COURT PERSONNEL , ARE EXEMPT. WELL, IF I ASK A COURT CLERK FOR THE RECORD, AND I AM DENIED ACCESS , I FILE IN CIRCUIT COURT AND HAVE FULL ACCESS TO THE CIVIL PROCEDURES THAT ARE THERE. IF ON THE OTHER HAND, I ASK A JUDGE FOR THE SAME SEARCH WARRANT AND IT IS IN HIS HANDS, THEN I HAVE TO GO TO THE DCA AND FILE A PETITION FOR MANDAMUS . I DO NOT HAVE , AVAILABLE , THE DISCOVERY PROCEDURES THAT I WOULD HAVE , IF I WAS IN CIRCUIT COURT. SO OUR ONLY REQUEST IS EITHER THE RULE OR COMMENTARY ACKNOWLEDGE, THAT WHEN I GO TO A DCA ON A COURT RECORD, THAT I HAVE THE OPPORTUNITY FOR A SPECIAL MASTER TO SUPERVISEDISCOVERY AND I HAVE LIMITED DISCOVERY. WHILE THIS MIGHT NOT HAPPEN IN EVERY CASE , CERTAINLY IN

THE MEDIA GENERAL CONVERGENCE CASE, HAD THOSE DISCOVERY PROCEDURES BEEN AVAILABLE, THEY WOULD HAVE EXPEDITED THE CASE AND PRESENT ADD RECORD FOR THE DISTRICT COURT OF APPEAL TO ADDRESS.

CHIEF JUSTICE: YOU ARE SUGGESTING IN YOUR PROPOSAL, THAT IT REALLY IS NOT SOMETHING THAT WOULD BE A MATTER OF RIGHT, IT WOULD BE UP TO THE APPELLATE COURT TO PERMIT PARTIES TO ENGAGE

ABSOLUTELY, YOUR HONOR, AND SUPERVISED BY THE APPELLATE COURT. THERE MAY BE NO REASONS FOR DISCOVERY ON THE FACE OF IT AND THE DOCUMENTS THAT ARE PRESENTED TO THE DCA, IT MAY BE AVAILABLE, BUT THE OPTION OF HAVING THOSE AVAILABLE AND SUPERVISED BY THE SPECIAL MASTER OR DCA, I THINK, WOULD BE BENEFICIAL.

CHIEF JUSTICE: NOW, THE COMMENT IS THAT THIS IS INHERENT IN THE COURT'S AUTHORITY, BUT HAVE YOU FOUND IN DOING THIS, THAT APPELLATE COURTS HAVE BEEN SORT OF AROACHING THIS IN DIFFERENT WAYS, MAYBE NOT BEING ASSURE ABOUT WHAT THEIR INHERENT AUTHORITY IS?

YOUR HONOR, CERTAINLY THE ONLY REAL TANGIBLE EXAMPLE WE HAVE IS MEDIA CONVERGENCE. CONVERGENCE. THE COURT DENIED A SPECIAL MASTER UNDER THE PROVISIONS OF THAT CASE. MR. CHIEF JUSTICE

IF THEY HAVE AN ABILITY TO DENY IT.

WE JUST NEED TO KNOW THAT IT IS AVAILABLE. THAT ALONE AND THE COMMENTARY FOR US THAT THE PROCEDURES ARE AVAILABLE, NOT THAT THEY ARE MANDATORY BY ANY NATURE. THE ONLY OTHER SMALL ISSUE WE HAVE, IS, AND JUSTICE, CHIEF JUSTICE PARIENTE, YOU ACKNOWLEDGED THIS IN THE MEDIA GENERAL CONVERGENCE CASE, THERE ARE SITUATIONS WHERE A JUDGE REVIEWS VIEWS A REVIEWS A COMPLAINT ABOUT ANOTHER JUDGE AND THEN CAN DO NOTHING ABOUT IT. THE COURT REQUIRES THAT, WHEN A COMPLAINT COME IN, THAT IT GO TO THE JCC WHERE WE HAVE A DETERMINATION OF PROBABLE CAUSE. PROBABLE CAUSE IS MADE, THEN THE MEDIA AND THE PUBLIC IN THE STATE OF FLORIDA HAVE ACCESS TO IT. WE THINK THAT THERE NEEDS TO BE SOME REVIEW OF THAT PROCEDURE. THAT IS, WHEN A JUDGE RECEIVES A COMPLAINT, IT NEEDS TO BE FORWARDED TO THE JQC.

CHIEF JUSTICE: ARE YOU AWARE OF THE PROCEDURES THAT HAVE BEEN ADOPTED BY THE CIRCUIT COURTS, THROUGH THE ADMINISTRATIVE ORDER?

YES, YOUR HONOR, I AM.

CHIEF JUSTICE: THAT WAS DONE EXPRESSLY IN RESPONSE. I SEE YOUR TIME IS UP. YOU THINK THERE SHOULD BE SOMETHING IN THE RULE.

YES, YOUR HONOR, BECAUSE I THINK A COMPLAINT CAN COME IN AND THEN A JUDGE CAN DECIDE NOT TO DO ANYTHING ON IT AT ALL AND IT NEVER GOES INTO THE PROCESS. THANK YOU VERY MUCH.

CHIEF JUSTICE: THANK YOU.

MAY IT PLEASE THE COURT. I AM HERE SO SPEAK ON BEHALF OF 13 TELEVISION STATIONS TO SPEAK ON 2.15 70, THE 2.170, THE ADDRESSING OF CAMERAS IN THE COURTROOM. WE ARE ADDRESSING THE PARAGRAPH THAT DEALS WITH BROADER PRIVACY CONCERNS, AS WELL AS THE NEW SUBPARAGRAPH B, THAT DEALS WITH JURORS SPECIFICALLY. SO IF I COULD, FIRST, TURN TO THE PRIVACY PROVISION AND QUOTE THAT FOR YOU, CAMERA CLOSURES WOULD BE JUSTIFIED QUOTE TO PROTECT RIGHTS OF PRIVACY AND PREVENT DISCLOSURE OF PRIVILEGED AND CONFIDENTIAL MATTERS. OUR CONCERN IS THAT THAT AMENDMENT HAS NOT BEEN IN THE

RULE FOR 25 YEARS. AND THAT , BY ADDING THAT AMENDMENT , IT WOULD JUSTIFY ADDITIONAL, NOT JUSTIFY BUT IT MIGHT SPUR AN ADDITIONAL CLOSURES, THAT IT WOULD INJECT UNCERTAINTY INTO A SYSTEM THAT HAS BEEN WORKING FOR 25 YEARS, AND THAT IT IS JUST NOT NEEDED, BECAUSE THIS COURT'S DECISIONS POST "NEWSWEEK" AND POST "NEWSWEEK"'S PROGENY , LAY OUT THE TESTS TO DETERMINING WHETHER A CAMERA CLOSURE IS JUSTIFIED FOR PRIVACY REASONS OR ALL SORTS OF DIFFERENT CONCERNS, AND THOSE DECISIONS, ALSO , SPECIFY THE PROCEDURE. IF, AFTER 25 YEARS OF A WORKING SYSTEM, AND UNDERSTAND THAT THERE ARE NO PROBLEMS AND CERTAINLY NO SYSTEMIC ISSUES THAT ARE DRIVING THIS AMENDMENT , BUT THAT IT IS AFTER 25 YEARS AFTER WORKING SYSTEM , YOU , NOW , ADD A PROVISION LIKE THIS, WE ARE CONCERNED ABOUT ADDITIONAL CLOSURES , AND THAT TRIAL JUDGES WILL REACT TO THIS AS SOMEWHAT OF A MANDATE BY THE COURT.

WHAT IS YOUR UNDERSTANDING OF THE COMMITTEE'S MOTIVATION TO BRING THIS MATTER?

IF YOU READ THE SIDE-BY-SIDE .

IF YOU WILL READ IT , IT IS THE SAME JUSTIFICATION FOR SECURITY CAMERAS . IT IS OUR YOUR UNDERSTANDING THAT THE SECURITY CAMERA IS A VERY NARROW AND LEGAL ISSUE AS MR . KANEY DISCUSSED , BUT THAT CAN BE BROADENED BECAUSE THERE IS NOTHING IN THIS RULE THAT LIMITS CONCERNS ABOUT PRIVACY. IT WOULD ALY ON ITS FACE, TO ALL POTENTIAL PROCEEDINGS IN WHICH CAMERAS ARE PRESENT IN THE COURTROOM. SO THERE WAS NO, FOR EXAMPLE , THERE WAS NO PROBLEM IN WEST PALM BEACH THAT SPAWNED THE COMMITTEE TO SAY, BOY , WE NEED TO PUT PRIVACY IN HERE, BECAUSE A CHILD WAS DAMAGED. THERE IS NOTHING LIKE THAT. THERE IS CERTAINLY NO STUDY OR ANY FACT FINDING THAT SAYS THERE IS A SYSTEMIC ISSUE WITH NOT PROTECTING PRIVACY CONCERNS THAT BE LEGITIMATE. THAT DROVE THE ADOPTION OF THE RULE. IT IS , REALLY , JUST SORT OF WHAT I CHARACTERIZE AS THE POLITICAL DISPUTE IN THE NINTH JUDICIAL CIRCUIT , ABOUT SECURITY CAMERAS.

BUT IS PRIVACY CONSIDERATIONS SOMETHING THAT TRIAL JUDGES ARE ALREADY USE AS A PART OF WHETHER OR NOT THEY ARE GOING TO, IN FACT , CLOSE OR HAVE SOME KIND OF CLOSURE OF THE PROCEEDINGS?

THEY DO, AND SOME TIMES LEGITIMATE PRIVACY CONCERNS JUSTIFY CAMERA CLOSURES , AND SOMETIMES THERE ARE PRIVACY FEARS THAT ARE PRESENTED TO TRIAL COURTS, THAT DO NOT JUSTIFY CAMERA CLOSURES .

I GUESS I AM TRYING TO GET TO, WHAT DOES THIS RULE ADD THAT ISN'T ALREADY PRESENT IN WHAT TRIAL JUDGES DO?

IT DOESN'T , IN MY OPINION , IT DOESN'T ADD ANY THING. TRIAL JUDGES ALREADY HAVE THE ABILITY TO DENY CAMERA CLOSURE, WHEN THE QUALITATIVELY DIFFERENT TESTS POST "NEWSWEEK" IS SATISFIED , AND AND PART OF OUR CONCERN IS THAT THE PROPOSED AMENDMENT DOESN'T GIVE TRIAL JUDGES THAT ENTIRE CONTEXT. I MEAN, YOU HAVE TO SATISFY A TEST. YOU HAVE TO GIVE NOTICE TO THE MEDIA. YOU HAVE TO HAVE A HEARING. IT DOESN'T DISRUPT THE TRIAL. I MEAN, WE SHOW UP AT LUNCHTIME AND ON BREAKS ALL THE TIME , TO ARGUE ISSUES WHEN THEY ARE PRESENTED. AND THAT YOU HAVE TO HAVE SOME SORT OF EVIDENCE, NOT NECESSARILY A FULL-BLOWN EVIDENTIARY HEARING WITH WITNESSES, BUT SOME SORT OF EVIDENCE THAT SUORTS A CAMERA CLOSURE, AND THEN ON-THE-RECORD FINDINGS.

YOUR CONCERN THAT THIS WILL BE CITED AS SOURCE OF AUTHORITY AS IF IT WAS A NEWSOURCE OF AUTHORITY , DIFFERENT FROM THE EXISTING LAW ON THE ISSUE. IS THAT

YOU PUT IT BE R NIE DID.

THAT WILL BE CITED , THEN , BY THE PARTIES THAT SEEK TO INVOKE ITS PROVISIONS SAYING,

WELL, I DON'T KNOW WHAT AUTHORITY YOU HAD BEFORE OR RESTRAINTS, BUT THE SUPREME COURT HAS SPECIFICALLY TOLD YOU NOW THAT YOU HAVE THE AUTHORITY TO DO THAT.

EXACTLY AND SINGLED OUT THAT PARTICULAR INTEREST.

BEFORE YOUR TIME IS UP

CHIEF JUSTICE: JUSTICE BELL HAD A

YOU MENTION THE TRIAL WHICH WAS SET IN TIME AHEAD OF TIME. WHAT IF YOU HAD A HIGH PROFILE DOMESTIC VIOLENCE CASE DOMESTIC VIOLENCE CASE AND THE JUDGE IS HEARING THOSE, AND THERE IS NOT TIME TO PUT IT ALL OFF AND HAVE THE MEDIA LAWYERS AND EVERYBODY ELSE INVOLVED, GATHER AND DO THE WITNESSES, ET CETERA, SO ARE YOU SAYING, LET'S SAY IT IS A HIGH PROFILE DOMESTIC VIOLENCE CASE AND IT IS SET ON A REGULAR ROUTINE BASIS, THAT IN THE INTEREST OF THE MEDIA AND THE JUDGE FEELS OR BELIEVES IN IT IN HIS OR HER DISCRETION THAT THAT PROCEEDING SHOULD BE CLOSED, THAT THE JUDGE HAS TO HAVE THIS HEARING OR OPEN IT. WHAT IS YOUR, IT IS DIFFERENT THAN A NORMAL TRIAL SITUATION.

WE MAY BE TALKING ABOUT TWO DIFFERENT ISSUES. UNDERSTAND THAT THE CAMERAS ARE ONLY PRESENT IN PROCEEDINGS THAT ARE OPEN TO START WITH. SO IT IS JUST AN ADDITIONAL WAY TO KIND OF BRING INFORMATION ABOUT A TRIAL TO THE PUBLIC.

DOMESTIC VIOLENCE HEARINGS ARE OPEN TO THE PUBLIC.

RIGHT. I UNDERSTAND THAT, YOUR HONOR, BUT WHAT THE, WE DEAL WITH THOSE ISSUES IN A VARIETY OF WAYS. IF THERE IS A PROBLEM IN A DOMESTIC VIOLENCE CASE, IT IS BEING HEARD ON AN EMERGENCY BASIS, SOMETIMES UNFORTUNATELY WE ARE TALKING ABOUT ACCESS AFTER A PARTICULAR HEARING HAS OCCURRED, BUT WE SET PRECEDENT FOR HOW FUTURE HEARINGS WILL BE CONDUCTED IF A PARTICULAR CASE, AND SOMETIMES, AND IT IS RARE, THERE IS NOT AN OPPORTUNITY TO BE HEARD BEFORE, BUT WE ARE HEARD BY TELEPHONE, WE TALK TO JUDICIAL ASSISTANTS AND FAX LETTERS OVER TO JUDGES. I MEAN, THERE ARE A LOT OF WAYS THAT WE TRY TO ACCOMMODATE.

I REALIZE, THE MEDIA AND I ALWAYS HAD A GREAT RELATIONSHIP AND WE WORKED ON THIS BASIS ALL THE TIME, BUT IT WAS, REALLY, A GENTLEMAN'S TYPE ARRANGEMENT AND DISCRETION WITH THE COURT, AND THE MEDIA WAS ALWAYS GOOD AT WORKING ON IT. MY CONCERN IS WHAT YOU ARE ASKING FOR IS A RULE THAT SAYS THAT THE JUDGE CANNOT EXERCISE THAT DISCRETION WITHOUT HAVING THIS PROCEDURAL PROCESS OF HEARING, NOTICE AND ALL OF THIS IN EVERY CASE.

WE ARE NOT ASKING FOR A RULE. WE ARE JUST ASKING YOU TO LEAVE 2.07-1 AS IT HAS BEEN FOR ALMOST 25 YEARS. THERE HAS BEEN SOME CHANGES BUT WE ARE NOT ASKING FOR ANY CHANGES. WHEN I CITE NOTICE AND A HEARING ARE REQUIRED, THAT IS BASED ON THE DECISION OF LAW OUT OF THIS COURT. WE ARE NOT ASKING YOU TO ADD ANYTHING TO IT.

CHIEF JUSTICE: YOUR TIME IS UP BUT JUSTICE WELLS HAD A QUESTION.

I AM INTERESTED IN YOUR COMMENT CONCERNING THE JUROR. TELL US WHAT YOUR PROBLEM IS HERE.

SOME OF THE COMMENTS ARE SIMILAR. WHAT IS MORE, OF GREATER CONCERN WITH THE JUROR PROVISION, IS THAT ESSENTIALLY, THAT PROVISION IN OUR READING, OVERRULES THE ADJUDICATORY CASE LAW OUT OF THIS COURT AND DOESN'T REQUIRE ANY NOTICE OR ANY HEARINGS OR ANY ADVERSARIAL PROCEEDING WHERE THE INTERESTS ARE FLESHED OUT

BEFORE A JUROR CLOSURE OCCURS, SO WE WOULD, A GAIN, ASK THAT THE COURT LEAVE THE RULE AS IT IS. SOMETIMES WE GET ACCESS TO JURORS. SOMETIMES WE DON'T. STIPULATIONS CAMERAS ARE PROHIBITED FROM PHOTOGRAPHING JURORS, BUT IN 2002, THIS COURT DECIDED THAT JIMMY RYCE MURDER CASE AND IN THAT CASE, SPECIFIED THAT NOTE NIECE A HEARING BEFORE JUROR CLOSURES WAS REQUIRED. SO, AGAIN, WE ARE ASKING, REALLY, WE ARE ASKING THAT 2.071 JUST STAY AS IT IS.

CHIEF JUSTICE: THANK YOU.

MAY I FOLLOW-UP WITH JUST ONE QUESTION ON THE JURORSITUATION. CERTAINLY THERE ARE SOME THAT ARE SUGGESTING THAT WE ARE IN A CRISIS, IN FLORIDA, WITH REGARD TO HAVING CITIZENS RESPOND FOR JURY SERVICE, AND DO YOU HAVE ACCESS TO OR COULD YOU PROVIDE US WITH ANY STUDIES THAT ADDRESS THE CONCEPT OF JUROR PARTICIPATION AND CONCERN FOR PRIVACY, WITH REGARD TO, MAYBE, HIGH PROFILE CASES AND THOSE KINDS OF THINGS? BECAUSE WE ARE FINDING THAT, IN SOME AREAS, IF IT IS AS LOW AS BELOW 30 PERCENT RESPONSE, TO THE SUMMONS TO APPEAR FOR JURY DUTY.

RIGHT. WHAT I CAN TELL YOU, YOUR HONOR, IS THAT THOSE CONCERNS THAT WERE, THAT THE COURT IS RAISING TODAY, WERE SIMILAR TO THE CONCERNS THAT WERE RAISED WHEN THE POST "NEWSWEEK" DECISION WAS BEING DECIDED. AND THAT OUR EXPERIENCE IS THAT THERE, THAT THE ADDITIONAL KIND OF INCREMENT ALEX POST YOUR THAT YOU GET WITH CAMERAS IN HIGH PROFILE CASES, HAS NOT BEEN REPEATEDLY CITED AS PROVIDING PROBLEMS WITH SEATING JURIES IN HIGHER PROFILE CASES. THAT HAS NOT BEEN AN INTEREST, AN ISSUE I AM AWARE, THAT HAS BEEN ATTEMPTED TO JUSTIFY ASSERTED TO JUSTIFY CAMERA CLOSURE IN A PARTICULAR CASE. WHAT NORMALLY COMES UP ARE THINGS LIKE JUROR TAMPERING AND CONCERNS LIKE THAT ABOUT JURORS.

ARE YOU FAMILIAR WITH THE WORK THAT THE ABA IS PRESENTLY DOING ON JUROR PARTICIPATION?

I AM NOT INTIMATELY FAMILIAR WITH ANY OF THAT.

THERE ARE CONCERNS ABOUT THAT, AS JUSTICE LEWIS SAYS, ONLY 14 PERCENT OF PEOPLE IN THE DISTRICT OF COLUMBIA ARE RESPONDING TO JURY SUMMONS. ACCORDING TO WHAT THEIR FINDINGS ARE. WE HAVE GOT A REAL PROBLEM.

I UNDERSTAND THAT, BUT I DON'T, YOU ASKED FOR SURVEYS. I AM NOT AWARE OF ANY SURVEYS THAT FACTOR IN THE CAMERA ISSUE WITH RESPECT TO THAT PROBLEM. BUT I AM, ALSO, NOT AWARE OF ANY TRIAL JUDGES THAT HAVE BEEN CITING TO US THAT, IN HIGH PUBLICITY CASES WITH CAMERA COVERAGE, THAT THEY HAVE DENIED CAMERA COVERAGE BECAUSE THEY CAN'T GET ENOUGH JUROR PARTICIPATION TO SEAT A JURY.

CHIEF JUSTICE: THAT WOULD BE, YOU JUST WANT TO MAKE SURE THERE IS A HEARING BEFORE THERE IS ANY DECISION MADE.

WE JUST WANT IT TO STAY THE SAME. THANK YOU.

CHIEF JUSTICE: THANK YOU VERY MUCH. JUDGE ISOM.

MY 18 MINUTES MELTED LIKE SNOW IN THE ROCKIES.

SHE HAS 8 MINUTES, YOUR HONOR.

CHIEF JUSTICE: WE PROBABLY USED.

I HAD EIGHT AND THEN AN ADDITIONAL TEN TO TALK ABOUT ARTERIOAMENDMENT. I WILL TRY TO BE BRIEF. I AM A 14- YEAR TRIAL COURT JUDGE. I HAVE SERVED IN EVERY DIVISION, INCLUDING DIVISIONS WITH THE RIGHT TO TRIAL BY JURY, SO I COME TO YOU NOT JUST AS CHAIR OF THIS COMMITTEE BUT FROM THE FRONT LINES OF OUR JUDICIAL SYSTEM. I HAVE BEEN INVOLVED IN HIGH PROFILE CASES. I HAVE NEVER HAD A CAMERA MAN INSIST ON FILMING MY JURY OR MY PROSPECTIVE JURORS. TALK ABOUT GENTLEMAN'S AGREEMENT. THEY DON'T DO IT. OKAY.

CHIEF JUSTICE: WHAT IS THE REASON FOR THE RULE? IF THERE IS NO PROBLEM, WHAT EVIDENTLY NOT EVERYBODY IS A GENTLEMAN.

CHIEF JUSTICE: BUT THE LAW AS IT EXISTS, PROTECTS, ALLOWS THAT TO BE, ALL OWS THE JUDGE TO NOT HAVE JURORS FILMED, AS LONG AS THEY HAVE HAD A HEARING FIRST.

EVIDENTIARY HEARING. IN THE FRENCHES, I HAVE HAD TRIAL IN THE TRENCHES, I HAVE HAD TRIAL WEEKS WHERE I HAVE HAD NINE CASES SET FOR TRIAL IN THE FELONY DIVISION. OF COURSE IT IS IMPROBABLE POSSIBLE IT IS IMPOSSIBLE TO TRY NINE CASES. I HAVE WORKED A LOT OF LUNCHES AND IN A DEPENDENCY CASE WHERE I HAD TO STOP EVERYTHING BECAUSE I HAD A HIGH PROFILE CASE INVOLVING A CHILD AND A MOTHER, THERE WERE JUDICIAL REVIEWS THAT HAD TO BE BACKED UP. I HAD A BUSY DOCKET. THIS IS NOT, WE DO NOT HAVE ACRES OF TIME AS TRIAL COURT JUDGES.

CHIEF JUSTICE: ARE WE SUGGESTING THAT THERE SHOULDN'T

I AM NOT SUGGESTING THAT, IN ORDER TO CLOSE AN ENTIRE PROCEEDING TO THE MEDIA THAT YOU SHOULDN'T HAVE AN EVIDENTIARY HEARING AND STATE A FACTUAL BASIS FOR CLOSING IT, BUT I AM SAYING THAT, IF WE ARE TALKING ABOUT NOT FILMING PROSPECTIVE JURORS, NOT FILMING SEATED JURORS, THAT WE SHOULD NOT HAVE TO HAVE AN EVIDENTIARY HEARING, IF WE ARE STILL ALLOWING THE MEDIA TO BE IN THE COURTROOM AND USE OTHER - -

CHIEF JUSTICE: A GAIN, YOU MENTIONED, BECAUSE THIS, THE DEPENDENCY DOESN'T HAVE JURORS, SO WE ARE TALKING ABOUT

I WAS RESPONDING TO MS. LE CYST TO MS. LOCICERO SAYING IT IS NOT A BIG DEAL. IT IS A BIG DEAL. IT IS A CONVERSATIONAL ISSUE. JUST IN THE TAMPA TRIBUNE TODAY, WE HAD A FEDERAL TRIAL WHERE AN ARTIST'S RENDERING OF THE PARTICIPANTS WAS USED BECAUSE CAMERAS ARE NOT ALLOWED IN THE COURTROOM. THIS IS PUBLIC POLICY. WHAT IS PUBLIC POLICY GOING TO BE, AND BEFORE I GET COMPLETELY SIDETRACKED, I WOULD LIKE TO GO THROUGH SOME OF THE OTHER THINGS THAT ARE BEFORE THE COURT TODAY. OUR COMMITTEE IS A MICROCAUSE YOU MEAN OF THE LEGAL COMMUNITY CRIME MOOD ROW A MICROCAUSE OF ALL OF THE COMMITTEES. WE HAVE GOT TRIAL COURT JUDGES AND MR. THOMAS, WE THANK HIM FOR HIS SORT OF OUR TWO PROPOSALS TO AMEND THIS RULE AND URGE TO YOU ADOPT THEM.

CHIEF JUSTICE: WHAT IS WRONG WITH THAT ADDITIONAL SUGGESTION THAT HE HAS TO D-1, UPON MOTION LIE A PARTY, THE APPELLATE COURT MAY PERMIT THE PARTIES TO ENGAGE IN EXPEDITED DISCOVERY TO DEVELOP THE FACTUAL RECORD. I MEAN, THAT WAS EXACTLY WHAT WAS MISSING IN MEDIA GENERAL AND FRUSTRATED US IN OUR REVIEW. WE DIDN'T HAVE ANY RECORD. SO I AM TRYING TO SEE WHERE IS THE DOWN SIDE OF THIS, IF IT IS INHERENT AUTHORITY, AT LEAST WE SHOULD SAY THAT IN THE COMMENT, THAT THEY HAVE GOT THE INHERENT AUTHORITY TO DO THAT.

AS I SAID, WE HAVE TALKED AT JUDGES ON OUR COMMITTEE AND I CONFERRED WITH THEM PRIOR TO TODAY'S ORAL ARGUMENT, AND THEY ASSURED ME THAT THEY DO HAVE THE INHERENT AUTHORITY TO DO THAT ALREADY AND DO SO WITH CRIMINAL CASES, WHENEVER THEY NEED TO APPOINT A SPECIAL MAGISTRATE AND TAKE ADVANTAGE OF THE

RUSE OF CIVIL PROCEDURE. IT IS NOT NECESSARY TO HAVE IT IN THERE AND IT IS A FIELD OF DREAMS ARGUMENT. IF YOU PUT IT IN THERE, IT WILL PROBABLY BE USED A LOT MORE OFTEN THAN IN THE HERNTA AUTHORITY THAT THE COURT HAS NOW TO USE THIS PROVISION, SO WE DON'T THINK IT IS - -

CHIEF JUSTICE: IS THERE A CASE THAT SAYS THAT? THAT IT IS INHERENT.

I DON'T KNOW IF THERE IS A CASE THAT SAYS THAT THERE IS, BUT ALLellate COURTS ALL OVER THE STATE OF FLORIDA USE THAT INHERENT AUTHORITY, WHENEVER THEY NEED FACT FINDING DONE, TO ASSIST THEM, SAY IT IS AN ADMINISTRATIVE TRIBUNAL THAT, THEY NEED TO HAVE SOMETHING DONE IN TERMS OF ATTORNEYS FEES. THEY CAN'T HAVE THE SCHOOL BOARD HAVE AN ATTORNEYS FEE HEARING. HAD HE APPOINT A SPECIAL MAGISTRATE IN THE CASE OF BELATED CRIMINAL APPEALS, THEY RE MAND IT FOR AN EVIDENTIARY PROCEEDING. THEY HAVE THE AUTHORITY, THE SECOND DCA DIDN'T SAY WE WOULD LIKE TO BE ABLE TO DO THIS BUT WE HAVE NO INHERENT AUTHORITY. THEY SUBPOENAED JUDGE ALVAREZ, THE SECOND DISTRICT COURT OF APPEAL, QUASHED THAT SUBPOENA, NOT BECAUSE THE RULES OF JUDICIAL ADMINISTRATION DIDN'T PERMIT IT, BECAUSE THEY FELT IT WAS NECESSARY. WITH THIS NEW PROPOSAL, THERE WILL BE MORE AFTER WRITTEN RECORD CITING THESE REASONS AND THE COURT WILL BE ABLE TO IF THEY WANT, TO HAVE AN IN CAMERA PROCEEDING AND THE ACTUAL RECORDS REQUESTED FOR INSPECTION. IF THE REVIEWING OR ALLellate COURT FEELS THEY NEED MORE AFTER RECORD, THEY HAVE THIS INHERENT AUTHORITY ALREADY, ANNUL NOTE IN RULE 9.00, IN THE SPECIAL WRITS PROVISION, THERE IS NOTHING THERE THAT SAYS THAT YOU CAN USE THE RULES OF CIVIL PROCEDURE IF YOU WANT DISCOVERY, YET I HAVE BEEN ASSURED BY MY ALLellate COLLEAGUES THAT YOU HAVE THAT INHERENT AUTHORITY. THE SECOND THING THAT IS PROPOSED TO CLOSE THE GIANT LOOPHOLE THAT MR. THOMAS IS CONCERNED ABOUT, I THINK IT WOULD BE A MISTAKE TO ENACT ANYTHING THAT WOULD CONTRADICT OR SUPPLEMENT OR PARALLEL OR PERHAPS EVEN INTERSECT THE JUDICIAL CODE OF CONDUCT CANON 3-D, WHICH ALREADY SPECIFICALLY PROVIDES WHEN A CHIEF JUDGE OR ANY JUDGE NEEDS TO FORWARD COMPLAINTS OF JUDICIAL MISCONDUCT TO THE JQC, THIS CLEARLY PROVIDES EVEN A VALID COMPLAINT CAN BE HANDLED ON A LOCAL LEVEL, BY DIRECT COMMUNICATION WITH THE JUDGE, IF THE JUDGE THINKS THAT THAT IS APPROPRIATE. AND IT DEFINES IN THE COMMENTARY, WHAT IS APPROPRIATE ACTION. MR. THOMAS WOULD SUGGEST THAT, IF A JUDGE REVIEWED A COMPLAINT AND FOUND THAT IT WAS NOT FRIVOLOUS THAT, IT WOULD HAVE TO GO TO THE JQC. WE THINK IT WOULD BE A MISTAKE TO DO ANYTHING THAT WOULD SUPPLEMENT OR CONTRADICT THE JUDICIAL CONDUCT CANON 3-D. MOVE CANON 3-D MOVING ALONG TO 3.071, THERE WAS CONCERN ABOUT THIS CARRIED OVER FROM THE LAST BIENNIAL REPORT THAT THIS PROPOSAL WOULD PERMIT VIDEO DETENTION HEARINGS IN JUVENILE DELINQUENCY CASES. THAT IS NOT IN THE RULE. IT IS NOT THE INTENT OF THE COMMITTEE. IF YOUR HONORS FEEL THAT THAT IS A POSSIBLE PROBLEM, THEN PLEASE JUST ADD TO THE PROVISION THAT THIS IN NO WAY MEANS TO ALLOW OR PERMIT APPEARANCE BY AUDIO VISUAL EQUIPMENT AT JUVENILE DELINQUENCY DETENTION HEARINGS. IT IS VERY, VERY SIMPLE AMENDMENT. IT ADDS IN, INSTEAD OF SAYING DELINQUENCY, WE ADD IN THE WORD JUVENILE, IT TO THE TYPE OF CASES WHERE THE JUDGE DOES NOT HAVE TO ALLOW SOMEBODY TO APPEAR TELEPHONIC, A PARTY TO APPEAR TELEPHONICALLY, AT A MOTION HEARING OF 15 MINUTES OR LESS, SO IT IS INCREASING THE PROTECTION. IN THE SECOND PART, IT IS ABOUT THE TESTIMONY. MY TIME IS GOING, THIS IS THE 2.071, USE OF COMMUNICATION EQUIPMENT, THE ONE THAT WAS ADDED ON FOR AN ADDITIONAL TEN MINUTES.

WHY ARE YOU CHANGING IT FROM DELINQUENCY TO JUVENILE? ARE THERE ANY PROBLEMS THAT YOU HAVE IN DETERMINING JUVENILE PROCEEDINGS, ALSO, IN OTHER IN DELINQUENCY PROCEEDINGS, ALSO IN OTHER KINDS OF JUVENILE CASES?

WELL, I THINK THIS, AGAIN, IS A CARRY OVER FROM THE LAST BIENNIAL REPORT, AND I THINK THIS WAS A RESPONSE TO THE FAMILY LAW SECTION THAT THEY FELT THAT THIS WAS

NECESSARY TO TAKE IT FROM DELINQUENCY TO DEPENDENCY . I AM SO RRY . MY RED LIGHT IS VERY RED.

YOU ARE JUST TRYING TO EXTEND THIS FLEXIBILITY ON THE PART OF THE PRESIDING JUDGE. PARTY.

IF THEY CAN CONDUCT HEARINGS OVER THE TELEPHONE, THAT EVERYBODY AGREES TO , FOR FOR INSTANCE - -

THIS ACTUALLY, IN THIS PARTICULAR SUBSECTION, IT SAYS THAT A JUDGE HAS TO ALLOW A PARTY TO HEAR TELEPHONICALLY, IF IT IS A MOTION HEARING OF 15 MINUTES OR LESS, UNLESS IT IS CRIMINAL, DELINQUENCY AND AELLATE. AND THIS HANG CHANGES THE WORD DELINQ AND THIS CHANGES THE WORD DELINQUENCY TO JUVENILE, IN REF LENS REFERENCE THAT JUVENILE DEPENDENCY CASES, THE JUDGE MIGHT ALSO WANT TO HAVE THAT PARTY IN FRONT OF THEM FOR A DEPENDENCY MOTION HEARING.

CHIEF JUSTICE: I DON'T HAVE THE PROPOSED RULE IN FRONT OF ME , BUT IT IS ONLY INTENDED, THEN, FOR MOTION HEARINGS THAT ARE 15 MINUTES OR LESS.

THAT IS THE FIRST PART. THE SECOND PART IS TO ALLOW TELEPHONIC TESTIMONY OVER THE OBJECTION AFTER PARTY. THAT IS THE PART I THINK THAT THEY WERE CONCERNED THAT IT MIGHT BE INTERPRETED TO APPLY TO JUVENILE DELINQUENCY DETENTION HEARINGS.

CHIEF JUSTICE: I AM CONCERNED , WHAT , DOES IT MEAN THAT, IN A TRIAL , A FAMILY CASE , OF SEVERAL DAYS' DURATION , THAT ANYBODY CAN HEAR BY TELEPHONE ?

IF THE JUDGE AND THE JUDGE, IN THE EXERCISE OF HER OR HIS SOUND DISCRETION THINKS THAT THAT IS WHAT IS FAIR, YES. I JUST HAD A CASE THE OTHER DAY, BECAUSE I AM BACK DOING FAMILY LAW NOW, WHERE WE HAD A WITNESS OUT-OF-STATE . THE PARTIES WERE NOT RICH. THEY COULDN'T AFFORD TO SEND THEIR ATTORNEYS UP THERE TO DO A DEPOSITION TO PERPETUATE TESTIMONY, BUT ONE OF THE PARTIES OBJECTED TO THAT WITNESS WHO WAS NOT RELATED TO ANYBODY , TESTIFYING BY PHONE . I HAD NO

SO FOR OUT-OF-STATE , BECAUSE I DIDN'T SEE THIS AS BEING ANY LIMIT ON WHERE THEY WOULD, COULD IT BE SOMEBODY IN TOWN, TOO?

SURE. AND , AGAIN, HAVING ANY THING BACK TO WHEN I WAS A PROSECUTOR, I HAD A DROUGHT AT USF TELL ME ONE TIME THAT, IF I MADE HIM COME TO COURT , I WOULDN'T LIKE WHAT HE HAD TO SAY, BUT IF I COULD HAVE HAD THAT EXPERT MEDICAL DOCTOR WITNESS TESTIFY BY PHONE, HE WOULDN'T HAVE HAD TO MISS ALL OF HIS POINTS.

BUT HE IS AN EXPERT WITNESS. YOU CAN USE A DEPOSITION THERE.

WELL , I COULD HAVE , IF I WOULD HAVE KNOWN SUFFICIENTLY IN ADVANCE TO

I THINK

CHIEF JUSTICE: I HAVE TO SAY THIS IS A VERY SIGNIFICANT CHANGE IN THE WAY THAT TRIALS ARE CONDUCTED , AND I THINK THAT IS WHY THE COURT HAS PUT IT ON FOR ORAL ARGUMENT , BECAUSE WE HAVE THOSE CONCERNS.

WELL, AGAIN, YOU HAVE TO REALIZE THAT THIS IS ONLY IN AN INSTANCE WHERE THE JUDGE THINKS THAT IT WOULD CREATE FAIRNESS IN A PARTICULAR SITUATION.

BUT YOU HAVE ALL KINDS OF CONFRONTATION CLAUSE BELLS AND WHISTLES GOING OFF , WHEN YOU SUGGEST ANYTHING LIKE THIS, AND OBVIOUSLY WE CAN'T CHANGE THE LAW . BY PROVIDING FOR SOMETHING LIKE THIS IN A RULE, SO WAS THERE A DEBATE IN THE COMMITTEE , ABOUT , WELL , WHAT ARE YOU GOING TO DO? YOU HAVE SAID AS A PROSECUTOR, THAT YOU HAD THE ISSUE , YOU KNOW, WITH THE DOCTOR. AND NOW THE DOCTOR TESTIFYING IN A CRIMINAL CASE, AND THE IDEA THAT A DOCTOR COULD GIVE HIS TESTIMONY BY TELEPHONE , AND THE DEFENDANT DOESN'T HAVE ANY OPPORTUNITY TO HAVE A DIRECT CONFRONTATION WITH WHAT THAT DOCTOR MAY HAVE TO SAY , YOU ARE SENDING OFF ALL KINDS OF ALARM BELLS AND WHISTLES KIND OF THING , SO WAS THERE A DEBATE IN THE COMMITTEE , ABOUT THE CONFRONTATION ISSUES?

LET ME APOLOGIZE FOR. THAT I DIDN'T MEAN TO SET OFF ANY EARLY BELLS. ANY ALARM BELLS. BACK WHEN I WAS A PROSECUTOR , THE STATE ATTORNEYS OFFICE HAD THE RESPONSIBILITY FOR REPRESENTING THE STATE OF FLORIDA IN A DEPENDENCY ACTION, AND THAT WAS A FAILURE TO TRY CASE, SO IT WAS NOT ONE THAT INVOLVED THE RIGHT OF CONFRONTATION , AND THIS PROPOSAL WAS IN RESPONSE TO THE FAMILY LAW BAR. AND IF YOU LOOK IN SUBSECTION 4, IT SAYS IN JUVENILE AND CRIMINAL PROCEEDINGS, THE DEFENDANT MUST MAKE AN INFORMED WAIVER OF ANY CONFRONTATION RIGHTS THAT MAY BE ABRIDGED BY THE USE OF COMMUNICATION EQUIPMENT, SO , CERTAINLY, WE ARE NOT MEANING TO CHANGE THE LAW OR DEPRIVE ANYBODY OF THEIR RIGHT TO CONFRONTATION . WE ARE RESPONDING TO A NEED , AND WE WANT TO LEVEL THE PLAYING FIELD FOR THOSE FINANCIALLY LESS CAPABLE PARTIES, IN ORDER TO HAVE ALL OF THE INFORMATION BEFORE THE COURT THAT THEY NEED, IN ORDER TO MAKE AN INFORMED DECISION ON ANY PARTICULAR CASE .

AS YOU LEVEL THE FIELD FOR ONE PARTY, YOU ARE UNLEVELING THE FIELD FOR THE OTHER PARTY, WITHOUT THE ABILITY TO HAVE A WITNESS THAT MAY BE CRITICAL AND DECISION-MAKING FOR THE DETERMINATION . WHAT HAPPENS TO A CHILD IN THIS STATE. ARE YOU SUGGESTING IT THAT WE NEED TO GO TO A COMPUTERIZED SYSTEM AND LET'S JUST FEED IT IN AND WHATEVER COMES ACROSS THE TV SCREEN , WE WILL HAVE JUDGES JUST RELY ON THAT. DO YOU FIND THAT OUR SYSTEM IS SO STERILE AND SO COLD THAT WE NO LONGER VALUE LOOKING AT A WITNESS , SEEING HOW A WITNESS RESPONDS IN THE COURTROOM, UNDER OUR ADVERSARY SYSTEM? IS THAT WHERE WE ARE HEADED?

I AM CERTAINLY NOT HEADING THERE. THIS IS NOT SAYING IN EVERY INSTANCE THIS IS JUST SAYING GIVE THE JUDGE THE AUTHORITY, WHEN THE JUDGE, IN EXERCISE OF HER OR HIS SOUND DISCRETION THINKS THAT IT IS FAIR TO DO THIS, I , FOR ONE , HIGHLY VALUE THE ABILITY TO OBSERVE A WITNESS , AND I ALWAYS INSTRUCT MY JURORS , DON'T GET SO INVOLVED IN YOUR NOTE TAKING THAT YOU FORGET THAT PART OF THE INSTRUCTION IS THAT YOU OBSERVE HOW THEY TESTIFIED. THEIR Demeanor WHILE TESTIFYING, SO, AND CERTAINLY IN JUVENILE CASES AND IN FAMILY LAW CASES, WHERE I AM GOING TO BE THE FINDER OF FACT , I WOULD MUCH RATHER HAVE THAT WITNESS HERE IN PERSON . BUT THERE MAY BE INSTANCES WHERE I THINK IT IS FAIR , EVEN IF ALL OF THE PARTIES DON'T AGREE, TO LET SOMEBODY IN OKLAHOMA TESTIFY BY PHONE , IF THEY HAVE GOT A NOTARY PUBLIC THERE THAT SAYS THAT THAT IS THEM , TESTIFY BY PHONE, IF THERE IS SOME INFORMATION THAT I THINK IS IMPORTANT TO ME AS FINDER OF FACT. AND THAT IS NOT FOR TODAY'S MATTER, EITHER , BUT I ANTICIPATE SOMEDAY I HAVE A SCREEN , AND I WILL BE ABLE TO SEE THAT WITNESS OUT IN OKLAHOMA TESTIFYING, SO I CAN BE ASSISTED IN ASSESSING THEIR CREDIBILITY. WE ARE GOING THERE, BUT THAT IS NOT PART OF TODAY'S PROPOSAL.

NOW IT IS EVEN WORSE BECAUSE YOU ARE ONLY GOING TO HAVE A VOICE ON A PHONE BOX, A LITTLE METAL BOX , AND CAN TESTIFY.

I WOULD NOT DO IT. I WOULD USE MY DISCRETION TO DECIDE WHEN I THOUGHT THAT THIS WAS A

FAIR PROCESS TO ENGAGE IN.

CHIEF JUSTICE: WITH OUR HELP AND, OF COURSE , THESE ARE, OF COURSE , A LOT OF SUBSTANTIAL MATTERS , WE ARE WAY, WAY OVER THE TIME , AND WE THANK YOU VERY MUCH . JUDGE ISOM, FOR BEING HERE FOR ALL OF THE WORK THAT YOU DO AS AND HAVE DONE AS CHAIR OF THIS COMMITTEE. IT HAS SEEMED LIKE, WITH ALL OF OUR QUESTIONS , SEEM LIKE A THANK LESS JOB BUT WE THANK YOU VERY , VERY MUCH FOR A LOT OF THE TIME AND EFFORT THAT YOU HAVE PUT INTO THIS AND FOR COMING UP TODAY. THANK YOU VERY MUCH.

THANK YOU THAT HAS BEEN AN HONOR.