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**Nickulis Gillis v. State of Florida**

**SC06-1207**

ALL RISE.  
HEAR YE, HEAR YE, HEAR YE.  
THE SUPREME COURT OF FLORIDA  
IS NOW IN SESSION.  
ALL WHO HAVE CAUSE TO PLEA.  
DRAW NEAR, GIVE ATTENTION  
AND YOU SHALL BE HEARD.  
GOD SAVE THESE, THE GREAT  
STATE OF FLORIDA AND THIS  
HONORABLE COURT.  
>> GOOD MORNING.  
>> TPWAOD TPWAOD.  
-- GOOD MORNING LADIES AND  
GENTLEMEN, THE FLORIDA  
COURT.  
GOOD MORNING AND WELCOME TO  
THE ORAL ARGUMENT CALENDAR  
FOR TUESDAY APRIL 17th.  
THE FIRST CASE ON THE  
CALENDAR IS GILLIS vs. STATE  
OF FLORIDA.  
MISS EASLEY.  
I'M DOROTHY EASLEY.  
I'M A SPECIAL APPOINTED  
PUBLIC DEFENDER OF THE 11th  
JUDICIAL CIRCUIT DOWN IN  
MIAMI.  
WE'RE HERE ON CONFLICT  
JURISDICTION.  
I RAISED FOUR ISSUE THE  
INITIAL

NICK LIST GILLIS.  
DOROTHY EASLEY.  
MARIA ARM MASS.  
CONNIE RAY ISRAEL.  
PUTNAM COUNTY.  
JAMES McDONOUGH.  
ROBERT T STRAIN.  
KENNETH NUNNELLEY.  
WILLIAM THOMAS ZIEGLER, JR..  
JOHN HUSTON POPE.  
KENNETH NUN FELLLY.  
DOROTHY EASLEY.

HEAR YE, HEAR YE.

THAT THE DEFENDANT COULD, STOP  
QUESTIONING AT ANY POINT.  
WHY DOESN'T THAT, SENTENCE,  
DISTINGUISH THE FACTS OF THIS  
CASE FROM THE FACTS OF FROM THE  
FOURTH DCA?

>> FIRST OF ALL, YOUR HONOR,  
LET'S ESTABLISH WHAT WE'RE HERE  
FOR.

THAT IS NOT TO DEBATE THE  
SEMANTICS, TO DEBATE THE  
PRECISE LANGUAGE.

THE QUESTION IS UNDER BOTH  
MIRANDA AND UNDER TRAY LORE IS  
THE SUBSTANCE ADVISING  
DEFENDANT THUS THAT HE OR SHE  
CAN KNOWINGLY WAIVE THOSE  
RIGHTS.

QUESTION IS WHETHER OR NOT THE  
THIRD DISTRICT COURT OF APPEAL,  
THE METRO DADE FORUM,  
SUFFICIENTLY ESTABLISHES TO,  
SOMEONE OF COMMON UNDERSTANDING  
THAT THEY CAN TERMINATE  
QUESTIONING AT ANY TIME.

>> YOU BY THINK WE HAVE TO,  
FIRST, REACH WHETHER THERE'S A  
CONFLICT BETWEEN THE THIRD AND  
FOURTH.

>> AND IT'S OUR POSITION THERE  
IS A CONFLICT.

>> I THINK THAT'S THE SENSE OF  
JUSTICE CANTERO'S QUESTION AND  
MY QUESTION TO, IN READING THE  
CASESES FROM THE FOURTH AND  
READING THIS CASE FROM THE  
THIRD, IT RAP PIERCE THAT THERE  
IS A REAL QUESTION WHETHER  
THEY'RE MAKING A DECISION ON  
THE SAME PHRASE IN THE MIRANDA  
WARNING.

>> THE QUESTION IS, WHETHER OR  
NOT THEY'RE MAKING A DECISION  
AS TO THE SAME CONTENT IN THE  
MIRANDA WARNING.

THAT IS THE RIGHT TO TERMINATE  
QUESTIONING.

IRRESPECTIVE HOW THAT RIGHT IS  
THE ARTICULATED.

THE STATE PUT INTO THE RECORD  
BELOW MIRANDA WARNING FORMS  
FROM ALL OVER THE STATE OF  
FLORIDA AND THOSE MIRANDA

WARNING FORMS IN VARIOUS FORMS  
IN VARIOUS CHOSEN LANGUAGE  
ARTICULATE THE RIGHT TO  
TERMINATE LANGUAGE.

4th DISTRICT COURT OF APPEAL  
FORM DOES THAT.

THE THIRD DISTRICT COURT OF  
APPEAL FORM DOES NOT DO THAT.

I DID A NOTICE OF SUPPLEMENTAL  
APPENDIX SO WE COULD COMPARE  
THE FORMS AND WHAT IS BEING  
URGED BY THE 4th DISTRICT COURT  
OF APPEAL.

VERSUS THE METRO DADE FORM AND  
WHAT IS IN THE METRO DADE FORM.

THERE ARE TWO MINUTES MISSING  
IN THE THIRD DISTRICT COURT OF  
APPEALS.

THE METRO DADE FORM THAT ARE  
NOT IN TRAY LORE AND THEY'RE  
NOT IN THE WHAT IS {RURGE}ED BY  
4th DISTRICT.

>> WHAT WAS THE BASIS UPON  
WHICH THE THIRD DISTRICT?

>> I UNDERSTAND WHAT YOUR HONOR  
IS ASKING.

>> THIRD DISTRICT COURT OF  
APPEAL AND STATE OF FLORIDA  
TAKE THE POSITION THAT THE  
MIRANDA FORM, METRO DADE FORM  
IMPLICITLY ARTICULATES THE  
RIGHTSES TO A, TERMINATE  
QUESTION AT ANY TIME AND  
IMPLICITLY ARTICULATE THE RIGHT  
TO THE CONSULT WITH COUNSEL  
PRIOR TO CUSTODIAL  
INTERROGATION.

I THINK I'M GETTING WHAT YOUR  
HONOR IS ASKING ABOUT.

THE THIRD DISTRICT COURT OF  
APPEAL, POSITION IMPLICITLY  
COMMUNICATING THAT RIGHT IS  
GOOD ENOUGH.

THE FOURTH DISTRICT COURT OF  
APPEAL AND TRAYLOR AND THE U.S.  
SUPREME COURT AND MIRANDA TAKE  
THE POSITION THAT IMPLICITLY  
COMMUNICATE SOMETHING NOT GOOD  
YOU HAVE IN.

YOU CANNOT IMPLICITLY  
ARTICULATE THAT RIGHT.

YOU MUST EXPRESSLY ARTICULATE.

>> BUT YOU WOULD AGREE IF WE GET, FIRST THRESHOLD QUESTION TO ME --

>> OF COURSE.

>> ONCE WE ASSUME JURISDICTION THE THRESHOLD QUESTION THAT SEE IS WHETHER MIRANDA, AND TRAYLOR, OR TRAYLOR, IMPOSE A, OBLIGATION OR BELIEF.

TO THE ADVISE THE DEFENDANT OF HIS OR HER.

RIGHT TO RIGHT TO TERMINATE QUESTIONING AS OPPOSED TO, RESPONSIBILITY, ON GOING RESPONSIBILITY OF THE POLICE TO ENSURE THAT IN ANY MAN EVERY DURING THE QUESTION THAT INDICATE THEY DO NOT WANT TO CONTINUE QUESTIONING, THAT THEY MUST STOP QUESTIONING.

NOW, I READ THIS IDEA SO-CALLED RIGHTS, I READ TRAYLOR AS NOT REQUIRING THE, ADVISING OF A, OF A RIGHT TO TERMINATE QUESTIONING.

I THINK IT'S A GOOD IDEA, I WOULD HOPE, STANDARD FORM AROUND THE STATE AND THAT'S IN THERE, BUT IT'S WHETHER IT IS, A, RIGHT THAT MUST BE, ADVISED ADVISE THE DEFENDANT WHERE IS YOUR SOURCE OF TRAYLOR SAYS THAT THAT MUST BE A RIGHT THAT IS, COMMUNICATED TO THE DEFENDANT?

>> YOUR HONOR, CANDIDLY TRAYLOR DOES NOT {AR} TICK LATE THAT. THAT WAS NOT THE ISSUE IN TRAYLOR.

THE FORM USED IN TRAYLOR INTERESTINGLY IN OUR SUPPLEMENTAL APPENDIX THE FORM USED IN TRAYLOR SPECIFICALLY DOES ARTICULATE THAT.

THE ISSUE IN TRAYLOR WAS A DIFFERENT ISSUE WHICH WAS {WLOORPT}, THE RIGHT TO -- WHETHER OR NOT THE RIGHT TO CONSULT WITH COUNSEL WAS SUFFICIENTLY ARTICULATED.

THIS COURT DID NOT NEED TO GET TO THAT ISSUE.

>> THEY WERE VERY SPECIFIC ABOUT WHAT WAS REQUIRED TO BE

TOLD TO THE DEFENDANT.  
ON PAGE 965, TO 66, THE COURT SPECIFICALLY SAID, WE HOLD THAT ENSURE THE VOLUNTARINESS OF CONFESSION THE SELF-INCRIMINATION CLAUSE OF ARTICLE 1, SECTION 9, FLORIDA CONSTITUTION REQUIRES THAT PRIOR TO CUSTODIAL INTERROGATION IN FLORIDA, SUSPECTS MUST BE TOLD THEY HAVE A RIGHT TO REMAIN SILENT. ANYTHING THEY SAY WILL BE USED AGAINST THEM IN COURT. THAT THEY HAVE A RIGHT TO A LAWYER'S HELP AND THAT IF THEY CANNOT PAY FOR A LAWYER ONE WILL BE APPOINTED TO HELP THEM.

NOW, DOES THIS, FORM IN THIS CASE, DOES THAT GO THROUGH EACH OF THOSE RIGHTS THAT WERE REQUIRED BY TRAYLOR?

>> WELL, YOUR HONOR, FIRST OF ALL --

>> FIRST ANSWER MY QUESTION.

>> ALL RIGHT.

THEN MAY I ANSWER JUSTICE CANTERO'S QUESTION?

I'M SORRY, JUSTICE PARIENTE'S QUESTION, I LIKE TO FINISH ANSWERING THAT QUESTION.

WE WERE ASKING THE SOURCES OF RIGHTS.

TO ANSWER BOTH OF YOUR QUESTIONS, TRAYLOR DOES NOT EXPRESSLY ARTICULATE THAT. BUT THE FORM IN TRAYLOR EXPRESSLY CONTAINED IT.

>> JUSTICE PARIENTE ASKED YOU WHERE IN TRAYLOR THE COURT REQUIRED THAT THE DEFENDANT BE TOLD HE HAS RIGHT TO STOP QUESTIONING?

>> I HAVE RESPONDED TO THAT THAT TRAYLOR DID NOT EXPRESSLY REQUIRED THAT.

THAT WAS NOT THE ISSUE EXPRESSLY IN TRAYLOR.

LET'S STEP BACK FOR A MOMENT GO BACK TO THE FEDERAL SOURCES ON THIS ISSUE.

MIRANDA HAS BEEN CONSTRUED IN SUBSEQUENT CASE LAW, MIR {RABD}

TODAY AS THE DICTA TO INDICATE,  
RIGHT TO THE TERMINATE QUESTION  
SOMETHING A RIGHT EXPRESSLY  
ARTICULATED IT'S EXPRESSLY NOT  
ONE OF THE HOLDINGS.

THAT'S WHY WE'RE HERE TODAY  
DISCUSSING THAT.

HOWEVER MIRANDA HAS BEEN  
CONSTRUED IN THE MOSELEY VERSUS  
MICHIGAN DECISION AND  
SUBSEQUENT CASES ON RIGHT TO  
DETERMINE QUESTIONING AT ANY  
TIME.

>> DO MOSELEY OR ANY OF THOSE  
OTHER CASES REQUIRE THE  
DEFENDANT BE TOLD HE HAS A  
RIGHT TO STOP QUESTIONING?

>> IT IS ONE OF THE RIGHTS THAT  
SHOULD BE ARTICULATED AND I  
SUGGEST, IT'S OUR POSITION,  
THAT IF IT HAS NOT BEEN  
EXPRESSLY ADDRESSED IN TRAYLOR  
THIS COURSE SHOULD EXPRESSLY  
REQUIRE IT.

BUT LET ME EXPLAIN TO YOU WHY.

THE REASON WE SHOULD REQUIRE  
BECAUSE THERE ARE TWO DIFFERENT  
SETS OF RIGHTS TO REMAIN SILENT  
HERE.

THERE IS THE RIGHT TO REMAIN  
SILENT AT THE BEGINNING OF  
CUSTODIAL INTERROGATION.

THAT IS, AM I EVEN GOING TO  
ANSWER YOUR QUESTIONS?

AND THEN THERE IS THE RIGHT TO  
CONTINUE TO ANSWER YOUR  
QUESTIONS.

THAT IS A RIGHT TO REMAIN  
SILENT.

YES, IT IS.

BUT IT'S A DIFFERENT RIGHT.

IT'S SO VITAL AND SO IMPORTANT  
THAT IT SHOULD BE EXPRESSLY  
ARTICULATED.

>> HERE IS WHERE GOING BACK TO  
JUSTICE CANTERO'S QUESTION, IN  
MIAMI-DADE FORM, THAT YOU'RE  
ON, IT HAS RIGHT TO REMAIN  
SILENT.

YOU DON'T HAVE TO TALK.

YOU DO NOT HAVE HAVE TO ANSWER  
ANY OF MY QUESTIONS.

THAT IS EXPRESSING ADDITIONAL

RIGHTS IS, BUT AT ANY POINT THE QUESTION IS --

[INAUDIBLE]

YOU HAVE THE RIGHT TO TERMINATE QUESTION SOMETHING NOT EXACTLY A VERY -- YOU DON'T HAVE TO ANSWER ANY OF MY QUESTIONS MORE EASY TO WAY TO EXPRESS IT.

SO WHY DOES THIS PART, ASK THAT IS FORM ACTUALLY TWO DIFFERENT THINGS AS TO

[INAUDIBLE]

>> BECAUSE, THE THIRD DISTRICT TAKES THE POSITION, FIRST OF ALL WHAT DID THE THIRD DISTRICT SAY?

THE THIRD DISTRICT SAYS IT RIGHT IMPLICITLY ARTICULATED. WE TAKE A POSITION THIS IS RIGHT THAT MUST BE EXPRESSLY ARTICULATED.

SAYING THAT YOU DON'T HAVE TO ANSWER ANY OF MY QUESTIONS IS NOT THE SAME THING AS SAYING YOU HAVE THE RIGHT TO STOP ANSWERING MY QUESTIONS.

THAT IS NOT SOMETHING OF ORDINARY INTELLIGENCE.

EVERY TRANSACTION UNDER COMMON, AND ORDINARY UNDERSTANDING, ONCE WE SIGN WAIVER, AND ONCE WE BEGIN TO SPEAK, THOSE OF US WHO ARE NONLAWYERS DO NOT UNDERSTAND THAT TO MEAN YOU MUST CONTINUE ANSWERING QUESTIONS.

LOOK AT REAL ESTATE CONTRACTS

--

>> DIDN'T THIS COURT SPECIFICALLY REJECT THAT IN BROWN IN 1990?

>> IT SUGGESTS THE THAT COURT SPECIFICALLY REJECTED THAT IN BROWN UNDER FEDERAL LAW.

>> WELL I'M HAVING A HARD TIME, IF, TRAYLOR, WHICH I UNDERSTAND YOU'RE SAYING THAT, TRAYLOR CHANGED, BROWN BECAUSE, IT WAS, ON THE BASIS OF STATE LAW.

BUT THEN, EARLIER, RECOGNIZED THAT TRAYLOR DIDN'T EXPLICITLY DEAL WITH THE ISSUE.

THEN, BROWN, WHY DOESN'T BROWN JUST SIMPLY CONTROL THIS ISSUE?

>> WELL, YOUR HONOR, UNDER FEDERAL LAW WE CAN SEE THAT BROWN ARGUABLY DOES ADDRESS THIS ISSUE.

THE PROBLEM WITH BROWN AND THE PROBLEM WITH THE OTHER CASES THE STATE RELIES ON, LET ME GO AHEAD NAME THEM, TALKING ABOUT BROWN, WE'RE TALKING ABOUT COOPER, JOHNSON, AND CHAVEZ. THE DECISIONS THAT ADDRESS THE RIGHT TO CONSULT WITH THE COUNSEL PRIOR TO CUSTODIAL INTERROGATION.

THE PROBLEM WITH BROWN IS, THERE IS NOTHING IN THE BROWN DECISION THAT SUGGESTS IT WAS DECIDED ON STATE LAW. AND THAT MATTERS OF COURSE. THIS COURT HAS THE POWER TO CON TRUE ITS OWN CONSTITUTION IF THIS COURT WANTED TO CONSTRUE THE CONSTITUTION IN BROWN IT CERTAINLY COULD HAVE DONE SO. BUT THERE'S NOTHING IN THE BROWN DECISION THAT SUGGESTS THAT.

AND THEREFORE, FROM THE STANDPOINT OF PRECEDENTIAL VALUE.

BROWN DOESN'T GIVE US ANY GUIDANCE UNDER THE FLORIDA CONSTITUTION.

WE NEED THAT GUIDANCE.

>> HERE MY PROBLEM WITH THAT IS THAT, -- I HOPE SOMEHOW THERE COULD BE ONE --

[INAUDIBLE]

BUT I DON'T SEE WHERE IT RISES TO THE LEVEL OF CONSTITUTIONAL SIGNIFICANCE.

MIRANDA ITSELF ARE OF COURSE REAFFIRMED -- BUT TO SAY THAT IF THIS COURT WOULD SAY THAT OUR CONSTITUTIONAL AMENDMENT, WAS GIVING MORE RIGHTS THAN THE STATE CONSTITUTION BASED ON WHAT WE THINK IS A GOOD IDEA AND THAT'S WHERE I HAVE A PROBLEM WITH, WHERE IT RISES TO THE HE LEVEL OF CONSTITUTIONAL REQUIREMENTS THAT THIS REQUIRE IMPOSE.

IF IT DOESN'T, IT'S NOT  
CONSTITUTIONALLY BASED THAN  
WHAT OTHER, WE DON'T HAVE ANY  
OTHER AUTHORITY TO SAY IT  
SHOULD BE DONE --

[INAUDIBLE]

>> ARE WE ADDRESSING THE SULLY,  
RIGHT TO TERMINATE QUESTIONING  
OR THE RIGHT TO CONSULT WITH  
COUNSEL PRIOR TO CUSS TEED DEAL  
-- CUSTODIAL INTERROGATION OR  
OVERALL ISSUES BEING RAISE?.

>> RIGHT TO TERMINATE  
QUESTIONS.

>> YES, YOUR HONOR THERE ARE  
TWO ISSUES WE HAVE RAISED HERE.

>> RIGHT TO TERMINATE  
QUESTIONING.

>> RIGHT TO TERMINATE  
QUESTIONING IT IS OUR POSITION  
THAT MIRANDA DOES NOT EXPRESSLY  
REQUIRE IT.

IT IS OUR POSITION THAT THE  
CASES SUBSEQUENTLY CONSTRUING  
MIRANDA DO REQUIRE IT.

WE CITED CASE LAW, MOSELEY  
VERSUS MICHIGAN IS ONE OF THE  
CASES.

IN ADDITION THE TRAYLOR  
DECISION HAD THE RIGHT TO  
TERMINATE QUESTIONING.

MORE THAN HALF OF THE FORMS THE  
STATE PUT INTO THE RECORD BELOW  
ACROSS THE STATE OF FLORIDA  
CONTAIN THIS REQUIREMENT.

IT IS, TO THE EXTENT THE COURTS  
INCLUDES THAT THE RIGHT TO  
TERMINATE QUESTIONING, IS AN  
AREA THAT WE HAVE LEFT OPEN.  
THAT WAS LEFT OPEN IN MIR RAND  
TODAY.

IS AN AREA WE LEFT OPEN IN  
TRAYLOR, UNDER OUR DECLARATION  
OF RIGHTS UNDER THE  
SELF-INCRIMINATION CLAUSE WHICH  
WE HOLD IN A POSITION OF  
GREATER IMPORTANCE WE RETECH  
FULLY SUBMIT THAT THE COURT  
SHOULD CLOSE THAT GAP AND  
EXPRESSLY REQUIRE IT.

BECAUSE THERE ARE TWO DIFFERENT  
RIGHTS HERE.

I HOPE I'M ANSWERING YOUR

QUESTION, JUSTICE PARIENTE,  
THERE ARE TWO DIFFERENT RIGHTS  
HERE RIGHT TO REMAIN SILENT.  
ONE IS RIGHT TO BEGIN  
QUESTIONING WHICH IS THRESHOLD  
RIGHT.

THE OTHER IS TO CONTINUE  
ANSWERING MY QUESTIONS.  
AND IF SOMEONE IS NOT ADVISED  
EXPRESSLY OF THAT RIGHT, AND  
THE U.S. SUPREME COURT  
EXTENSIVELY DISCUSSES THAT IN  
THE MIRANDA DECISION, IF YOU'RE  
NOT EXPRESSLY ADVISED OF THE  
RIGHTS YOU CANNOT KNOW THAT  
UNDER COMMON AND ORDINARY  
UNDERSTANDING.  
AND IN TRANSACTIONS, IN  
CONSUMER PROTECTION  
TRANSACTIONS WAIVER OF RIGHT TO

--

>> THERE IS NO QUESTION MIRANDA  
IS MORE SPECIFIC RIGHTS THAT  
MUST BE WARNED OF, AND ON THAT  
I THINK YOU AGREE THE RIGHT TO  
TERMINATE QUESTIONING IS, NOT,  
AMONG THOSE THAT, AN INDIVIDUAL  
MUST BE WARNED B SO, LET'S --

>> I CAN SEE IT'S BEEN LEFT  
OPEN.

>> NOW THE OTHER ONE, NOW  
YOU'RE TALKING ABOUT I DIDN'T  
REALIZE, IS THAT ANOTHER  
CONFLICT ISSUE.

>> YES, IT IS, YOUR HONOR.  
RIGHT TO CONSULT WITH COUNSEL  
PRIOR TO CUSTODIAL  
INTERROGATION WAS NOT  
SPECIFICALLY IN CONFLICT WITH  
THE FOURTH DISTRICT COURT OF  
APPEAL OPINION.

BUT RECALL THAT THE {FOUSHT}  
DISTRICT COURT AFTER PAP PEEL  
DECISIONS RIPLEY, ROBERTS,  
FRANKLY, WEST THOSE DEALT WITH  
THE BROWARD FORM.  
THE BROWARD FORM ALREADY HAD  
THAT IN THERE.

>> THAT'S ALL IT HAD IN IT,  
RIGHT?

>> CORRECT.

EXACTLY, YOUR HONOR THE PROBLEM  
WITH THE BROWARD FORM IT DID  
NOT HAVE THE RIGHT TO CONSULT

WITH COUNSEL DURING  
INTERROGATION.

I'M SORRY, JUSTICE.

>> FIRST ISSUE I'M A LITTLE BIT  
CONCERNED ABOUT.

ARE YOU GIVING UP ON THAT  
ISSUE?

ARE YOU DOWN SEEDING THAT, THE,  
CASES I BELIEVE IT'S JOHNSON  
AND COOPER, CONTROLLING ON THAT  
ISSUE?

>> NO, YOUR HONOR.

I'M NOT CONCEDED THAT THE  
THEY'RE CONTROLLING ON THE  
ISSUE YOU OF FLORIDA LAW.  
WHAT I'M CONCEDE SOMETHING THAT  
THIS COURT HAS CONSTRUED  
MIRANDA, TO CONCLUDE THAT IT  
DOES NOT REQUIRE A RIGHT TO  
QUESTIONING.

A RIGHT TO TERMINATE  
QUESTIONING ANY TIME.

>> THERE IS POINT IN MIR RAND  
TODAY.

THERE IS A HOLDING IN MIRANDA  
SAID ACCORDINGLY WE HOLD THAT  
AN INDIVIDUAL, HELD FOR  
INTERROGATION, MUST BE CLEARLY  
INFORMED THAT HE HAS THE RIGHT  
TO CONSULT WITH AN WITH A  
LAWYER AND TO HAVE THE LAWYER  
WITH HIM DURING INTERROGATION  
UNDER THE SYSTEM FOR PROTECTING  
THE PRIVILEGE WE DELINEATE  
TODAY.

SO WHAT DO YOU, INTERPRET THAT  
STATEMENT AS MEANING?

>> WELL, THE RIGHT TO CONSULT  
WITH COUNSEL PRIOR TO  
INTERROGATION AND THE RIGHT TO  
CONSULT WITH COUNSEL DURING  
INTERROGATION.

I THINK IT'S IMPORTANT, IN BOTH  
MIRANDA AND IN TRAYLOR, THAT  
WE'RE NOT DECIDED EXCLUSIVELY  
ON FIFTH AMENDMENT GROUNDS  
ALTHOUGH THE U.S. SUPREME COURT  
SUGGESTS THAT THEY WERE.

MIRANDA CAME ON THE HEELS OF  
ESCOBIDO.

AND ESCOBIDO WAS DECIDED ON  
SIXTH AMENDMENT GROUNDS.

MIRANDA DECIDED ON FIFTH  
AMENDMENT GROUNDS AND BRINGS IN

RIGHT OF COUNSEL.

I HOPE I'M ADDRESSING YOUR QUESTION, YOUR HONOR.

>> BASED ON THIS STATEMENT I GUESS MY QUESTION TO YOU, IS THIS STATEMENT, DIFFERENT FROM WHAT THIS COURT SAID IN THE COOPER AND THE JOHNSON CASE?

>> WELL YOUR HONOR, WHAT THIS COURT SAID, IN THE COOPER AND JOHNSON CASE WAS, THAT THERE WAS NO RIGHT TO CONSULT WITH COUNSEL PRIOR TO CUSTODIAL INTERROGATION.

WHAT THE COURT WAS TAKING THE POSITION, THE ISSUES THAT WERE RAISED IN THOSE CASES WERE FEDERAL LAW ISSUES.

TO THE EXTENT THAT THIS COURT CONCLUDES THAT PERHAPS, MIRANDA DID SUPPORT THE RIGHT TO CONSULT WITH COUNSEL PRIOR TO CUSTODIAL INTERROGATION THAT WOULD BRING INTO QUESTION THE JOHNSON, COOPER AND CHAVEZ DECISIONS.

AND IN ADDITION, I THINK, IS SOMETHING THAT SEEMS TO HAVE BEEN OVERLOOKED AN AWFUL LOT IN THE CASE LAW WAS CLEARLY WITHIN THE FOUR CORNERS OF THE 9 MIRANDA DECISION I THINK YOUR HONOR IS ASKING ME ABOUT, ONE OF THE CONSOLIDATED CASES IN MIRANDA WAS WET OVER.

WESTOVER REVERSED FOR THE FAILURE TO ADVISE RIGHT TO CONSULT WITH COUNSEL PRIOR TO CUSTODIAL INTERROGATION.

THAT OF COURSE IS A VITAL RIGHT THAT WE HAVE.

WHAT THE U.S. SUPREME COURT SAYS IN THE MIRANDA DECISION IS THE RIGHT TO CONSULT WITH COUNSEL IS SORT OF THAT, SAFEGUARD THAT WE HAVE TO ENSURE THAT WE HAVE THE LAWYERS THERE TO POLICE THE POLICE.

TO MAKE SURE THAT THE CUSTODIAL INTERROGATION GOES APPROPRIATELY.

IF WE ARE NOT AT A MINIMUM ADVISING OF THE RIGHT TO CONSULT WITH A LAWYER AND OF

COURSE, HAVE ONE APPOINTED, FOR THE AVERAGE PERSON, IN THE AVERAGE, OF COMMON UNDERSTANDING, IF WE'RE NOT ADVISING THEM OF THAT RIGHT, THEN WE LOSE MANY OF THE SAFEGUARDS AND MANY OF THE PROTECTIONS THAT ARE REQUIRED BEFORE A WAIVER IS EVEN EXECUTED AND, THE, OTHER THING'S VERY, VERY IMPORTANT IN THE MIRANDA DECISION IS THE NOTION THAT, WE WANT ALL OF OUR CONFESSION, AND THE STATE OF FLORIDA WANTS THIS, WE WANT ALL OF OUR CONFESSIONS TO BE INTELLIGENTLY AND KNOWINGLY MADE PURSUANT TO AN TELL {GEPT}, KNOWING, -- INTELLIGENT, KNOWING WAIVER. ONLY WAY WE CAN DO THAT IS REQUIRE LAW ENFORCEMENT ARTICULATE EACH AND EVERYONE OF THESE RIGHTS. WE CANNOT PRESUME, IT IS NOT IMPLICIT WE CANNOT ASSUME THESE RIGHTS ARE GOING TO BE UNDERSTOOD BY SOMEONE OF COMMON UNDERSTANDING.

>> WITH THAT YOU'VE EXHAUSTED ALL OF YOUR TIME.

>> APOLOGIZE.

THANK YOU SO MUCH.

>> MISS ARMAS.

>> MAY IT PLEASE THE COURT, MARIA ARMAS. STATE OF FLORIDA.

I'M A LITTLE TOO SHORT.

>> CLARIFY SOMETHING FOR ME. I'M HAVING TROUBLE UNDERSTANDING THE CONFLICT HERE.

I THINK PART OF IT IS SOME CONFUSION IN THE THIRD DISTRICT'S OPINION HERE. THE THIRD DISTRICT SAID THAT WE NOTE THAT IN RIPLEY AND WEST THE {FOUSHTH} DISTRICT CONCLUDED MIRANDA FORM USED BY THE BROWARD SHERIFF'S OFFICE WAS DEFECTIVE FOR FAILING TO INFORM A SUSPECT HE COULD STOP QUESTIONING AT ANY TIME. I DON'T SEE THAT IN WEST.

IT APPEARS TO ME WHAT THE FOURTH DISTRICT SAID IN WEST FORM WAS DEFECTIVE BECAUSE IT FAILED TO INFORM THE DEFENDANT THAT HE COULD HAVE COUNSEL PRESENT DURING INTERROGATION. DID NOT SEEM TO ADDRESS AND MAYBE I JUST HAVEN'T SEEN IT, THE ISSUE IN THIS CASE WHICH IS FAILING TO INFORM DEFENDANT HE COULD STOP QUESTIONING.

>> I BELIEVE YOU'RE CORRECT IN THAT INTERPRETATION JUST AT THIS CANTERO WITH REGARDS TO WEST --

>> RIPLEY DIDN'T THEY?

>> IN RIPLEY, THEY PUT IT IN AS, ALMOST AS AN AFTERTHOUGHT.

IN RIPLEY THE COURT SAID MIRANDA FORM WAS DEFECTSTIVE BECAUSE COUNSEL, THE DEFENDANT WAS NOT WARNED OF THE RIGHT TO HAVE COUNSEL PRESENT DURING QUESTIONING OR HE COULD STOP THE INTERROGATION AT ANY TIME DURING QUESTIONING.

IT DOESN'T CITE ANY CASE LAW TO SUPPORT THAT PROPOSITION.

>> WEST ALSO HAS THAT IN. IT SEEMS LIKE AN AFTERTHOUGHT AS WELL.

>> EXACTLY.

I COULD NOT FIND THE SUPPORT FOR IT.

>> PROBLEM IS --

[INAUDIBLE]

WAS NOT INFORMED SHE WAS ENTITLED TO HAVE COUNSEL PRESENT DURING INTERROGATION OR, SHE COULD TOP THE INTERROGATION AT ANY TIME. BUT IT'S PRETTY CLEAR FROM ALL THE OTHER PREVIOUS DECISIONS THAT WHAT THE COURT HAD BEEN FOCUSING ON THE FACT HAVING COUNSEL PRESENT.

>> DURING QUESTIONING.

>> TWO OR THREE AS ONE OF THE VITAL, ESSENTIAL MIRANDA RIGHTS.

>> WARNINGS, YES.

AND TO ADDRESS THE ISSUE CONFLICT --

>> OUT OF NOWHERE.  
>> OUT OF NOWHERE THERE IS NO  
REAL SUPPORT FOR IT.  
I SEARCHED FOR IT.  
THERE WASN'T.

I WENT THROUGH THOSE CASES.  
NOW --.

>> YOU ALSO AGREE THE FORM, DO  
YOU THINK IT'S AN IMPORTANT  
DISTINCTION?

I GUESS THIS IS SIMPLY TWEAKS  
THE CONFLICT ISSUE, IF THERE IS  
A RIGHT, IS THE, IS THE RIGHT  
FORM THAT MIAMI-DADE POLICE  
DEPARTMENT USES, IS THAT  
SIGNIFICANT DIFFERENCE?

THAT YOU DON'T HAVE TO ANSWER  
ANY OF MY QUESTIONS WHICH,  
WHEREAS THE BROWARD ONE ONLY  
HAS RIGHT TO REMAIN SILENT?

>> LET ME JUST CLARIFY.

WE ARE HERE ON TWO QUESTIONS AS  
TO MIRANDA RIGHTS FORM USED BY  
MIAMI-DADE COUNTY AND ISSUES B,  
C, AND D UNLESS YOU WANT TO ASK  
ANY QUESTIONS ABOUT THAT.

THE FIRST QUESTION THAT WE'RE  
HERE FOR REPORTEDLY BECAUSE OF  
A CONFLICT IS PRIOR TO  
QUESTIONING, THAT FIRST  
WARNING.

THEN WE HAVE THE TERMINATION AT  
ANY TIME.

THAT'S THE SECOND QUESTION.  
MIAMI-DADE MIRANDA FORM IS MUCH  
MORE EXPANSIVE USED, THE FORMER  
FORM USED BY THE BROWARD  
SHERIFF'S OFFICE.

AND WITH REGARDS TO THE, RIGHT  
TO TERMINATE QUESTIONING AT ANY  
TIME, MIAMI-DADE INFORMS AN  
ACCUSED YOU DON'T HAVE TO  
ANSWER ANY OF MY QUESTIONS.  
THEY DON'T QUALIFY IT.

IT'S NOT LIMITED.

YOU DON'T HAVE TO ANY  
QUESTIONS, IT'S JUST ANY OF MY  
QUESTIONS.

THIRD DISTRICT COURT OF APPEAL  
TOOK THAT TO MEAN WHAT IT SAID.

>> IS THAT FORM, IS THERE -- IS  
THAT FORM THEY DO -- I GUESS.

>> AT LEAST TEN YEARS, YOUR

HONOR.

>> ISSUE WITH, FOR THE FUTURE,  
IS WHETHER, WE CAN HAVE ONE  
FORM,

[INAUDIBLE]

DIFFERENT FORM IN THE SAME WAY,  
YOU WOULD READ IN TRAYLOR AND A  
LOT OF OTHER FORMS -- WAS.

>> ALL FORMS THROUGHOUT THE  
STATE MOST PART TEND TO DIFFER  
IN SOME WAY OR ANOTHER.

>> THIS ONE, YOU HAVE A RIGHT  
TO STOP QUESTIONING --

>> THE OTHER FORMS IN THE  
STATE?

SOME OF THEM HAVE IT.

SOME OF THEM DO NOT.

WE DO NOT HAVE ONE SINGULAR  
FORM TO ADVISE A DEFENDANT OF  
MIRANDA WARNINGS.

BUT WITH REGARDS TO THE  
MIAMI-DADE FORM, THAT  
PARTICULAR LANGUAGE, AGAIN WE  
HAVE THE CASE OF BROWN WHICH  
DID ADDRESS THIS ISSUE.

>> WHAT I HAVE A CONCERN WITH,  
AS I THINK BIT, --, THERE WAS A  
CHANGE IN THE LAW NOT AS FAR AS  
TRAYLOR IS CONCERNED, ON IDEA  
WHAT IS INVOCATION OF THE RIGHT  
TO REMAIN SILENT?

AND, --

[INAUDIBLE]

BUT THE PROBLEM IS WE'RE NOW  
REQUIRING THAT A DEFENDANT  
CLEARLY, EXPRESS DURING  
QUESTIONING THAT HE OR SHE  
WANTS TO STOP QUESTIONING, FOR  
THEM TO STOP -- THEY INDICATE  
WHATEVER THE CHANGE IN THE  
LANGUAGE WAS.

SO WHAT I'M CONCERNED ABOUT IS  
THAT, PREVIOUSLY, ANYTHING THAT  
A DEFENDANT MIGHT SAY TO  
INDICATE THAT THERE WAS SOME  
QUESTION ABOUT WHETHER THEY  
WANTED TO CONTINUE, THE  
QUESTIONING, POLICE HAVE TO  
STOP.

NOW THAT IS NOT THE CASE.

IN TERMS OF MAKING SURE, THAT  
THEY UNDERSTAND WHAT THEIR  
RIGHTS ARE, DO YOU SEE, MAYBE  
NO ONE'S MADE THIS ARGUMENT --

THAT IT IS NOT CRITICALLY  
IMPORTANT TO ADVISE THE RIGHT  
TO STOP QUESTIONING AT ANY  
TIME?

>> THAT ARGUMENT HAS NOT BEEN  
RAISED HERE.

BUT AGAIN, THE BURDEN IS STILL  
ON THE POLICE TO, TO STOP  
QUESTIONING WHEN THE DEFENDANT  
EITHER ASKS FOR COUNSEL OR  
INDICATES HE OR SHE WOULD LIKE  
TO HAVE AN ATTORNEY PRESENT OR  
INDICATES IN ANY WAY, SHAPE OR  
FORM, I DON'T WANT TO ANSWER  
THAT QUESTION.

COULD BE THE QUESTION SAYS I  
DON'T WANT TO ANSWER THAT  
QUESTION.

WELL DO YOU WANT TO ANSWER ANY  
OTHERS?

YES OR NO?

AND THE MIAMI-DADE FORM CLEARLY  
GIVES THE DEFENDANT THE  
OPPORTUNITY SAYS YOU DON'T HAVE  
TO ANSWER ANY OF MY QUESTIONS.

THAT'S WHAT THE THIRD DISTRICT  
COURT OF APPEALS UPHELD.  
NOW MIND YOU, THE THIRD  
DISTRICT COURT OF APPEALS DID  
NOT CITE TO BROWN SPECIFICALLY  
BUT IT DID FOLLOW THE LOGIC OF  
BROWN WHICH, THE FOURTH  
DISTRICT COURT OF APPEALS DID  
NOT DO WHEN IT JUST SIMPLY  
SAID, YOU HAVE THE RIGHT TO  
TERMINATE QUESTIONING AT ANY  
TIME.

SO THE BSO FORM IS DEFICIENT.

>> WOULD YOU THEN SAY, AGAIN,  
IF THE MIAMI-DADE FORM ONLY HAD  
UNDER A, YOU HAVE THE RIGHT TO  
REMAIN SILENT, YOU DON'T HAVE  
TO TALK TO ME IF YOU DON'T WISH  
TO, AND DIDN'T HAVE THAT  
SECOND, YOU DON'T HAVE TO  
ANSWER ANY OF MY QUESTIONS,  
UNDER WHAT YOU SAID, BASED ON  
BROWN THAT WOULD NOT BE A  
CONSTITUTIONALLY DEFECTIVE --

>> RIGHT.

BECAUSE BROWN IS STILL GOOD LAW  
IN THE STATE OF FLORIDA.

AND, EVEN THOUGH WE HAVE

TRAYLOR COMING TWO YEARS LATER  
AND ALL THOSE OTHER CASES THAT  
HAVE GONE AFTERWARDS, BROWN HAS  
NEVER BEEN REVERSED.

THIS COURT DOES NOT -- REVERSE  
ITSELF.

AS TO THE ISSUE REGARDING TO  
HAVING AN ATTORNEY PRESENT  
PRIOR TO QUESTIONING THAT  
SPECIFIC LANGUAGE OF THE  
MIAMI-DADE FORM HAS BEEN UPHOLD  
IN THIS COURT ON AT LEAST THREE  
OCCASIONS THE THIRD DISTRICT  
COURT OF APPEAL CANNOT BE SAID  
TO HAVE DONE SOMETHING  
ERRONEOUS WHEN IT FOLLOWS THE  
PRECEDENT OF THIS COURT.

>> THIS LANGUAGE THAT LANGUAGE  
SAYS YOU WANT A LAWYER TO BE  
PRESENT DURING QUESTIONING?  
IMPLICIT IN THAT SEEMS TO BE  
THE STATEMENT THAT THAT IS WHEN  
YOU CAN HAVE A LAWYER PRESENT.

THAT YOU CAN'T HAVE A LAWYER  
PRIOR TO THE QUESTIONING.

SO --

>> YOUR HONOR --

>> SO WOULDN'T THAT LET ME JUST  
FINISH THE QUESTION, WOULDN'T  
THAT BE A VIOLATION OF THE  
LANGUAGE IN MIRANDA THAT  
SPECIFICALLY SAYS THAT YOU HAVE  
A RIGHT TO CONSULT WITH AN  
ATTORNEY AND, HAVE AN ATTORNEY  
PRESENT DURING QUESTIONING?

>> WELL, I JUST POINT OUT TO  
YOU RESPECTFULLY THE ACTUAL  
WARNING GIVEN ON THE MIAMI-DADE  
FORM, IF YOU WANT A LAWYER TO  
BE PRESENT DURING QUESTIONING,  
AT THIS TIME, OR ANY TIME  
HEREAFTER, YOU ARE ENTITLED TO  
HAVE THE LAWYER PRESENT.

CLEARLY, AT THIS TIME MEANS  
RIGHT NOW I'M GIVING YOU --

>> DURING QUESTIONING AT THIS  
TIME AND.

>> NO AT THIS TIME, WHEN I'M  
GIVING YOU THE WARNING.

WE HAVE NOT YET COMMENCED  
INTERROGATION OBVIOUSLY WE HAVE  
NOT GONE THROUGH THE ENTIRE  
MIRANDA WARNING.

LITERALLY AT THIS TIME, FROM THIS POINT FORWARD YOU WANT ATTORNEY PRESENT YOU'RE ENTITLED TO HAVE ONE PRESENT. I WOULD VICINITY OUT --

>> WE HAVE A DIFFERENCE IN INTERPRETATION TO THAT. SEEMS TO ME WHAT THEY'RE SAYING YOU HAVE A RIGHT HAVE LAWYER PRESENCE DURING QUESTIONING AT THIS TIME OR AT ANY TIME DURING THE QUESTIONING.

AND SO, IT'S, THE MIRANDA DECISION, WHILE IT DID NOT HOLD SPECIFICALLY ABOUT THE, QUESTIONING GETTING RID OF, STOPPING QUESTIONING AT ANY TIME, IT SEEMS TO ME, IT DOES SPECIFIC SAY, THAT YOU HAVE THE RIGHT TO CONSULT WITH AN ATTORNEY, AND THEN YOU HAVE THE RIGHT TO HAVE THAT ATTORNEY PRESENT DURING THE QUESTIONING.

DO YOU BELIEVE THAT'S WHAT THE MIRANDA DECISION SAYS?

>> THE MIRANDA DECISION DOES HAVE A REQUIREMENT THAT THE DEFENDANT BE WARNED THAT YOU HAVE THE RIGHT TO HAVE AN ATTORNEY PRIOR TO ANY QUESTIONING.

TRAYLOR HOWEVER, RELEGATED THAT LANGUAGE TO A FOOTNOTE.

TRAYLOR SIMPLIFIED THE MIRANDA WARNING ITSELF, SAID YOU HAVE A RIGHT TO A LAWYER'S HELP.

IN FOOTNOTE 13, AND BY THAT WE MEAN, BEFORE AND DURING.

NOT PUT IT AS PART OF THE ACTUAL LANGUAGE.

BUT THEY HELD WOULD BE SUFFICIENT TO WARN A DEFENDANT

--

>> WHAT WAS THE FORM -- WHAT DOES THE TRAYLOR FORM ACTUALLY SAY ON THAT?

>> I DON'T HAVE IT HANDY. IT'S IN THERE.

>> YOU DON'T KNOW IF IT ACTUALLY SAYS YOU HAVE A RIGHT TO CONSULT WITH AN ATTORNEY AND, HAVE A LAWYER PRESENT?

>> I BELIEVE IT DID BUT I HAVE

TO VERIFY THAT FOR YOU.

>> SEEMS TO ME AGAIN, IN TERMS OF RIGHT TO LAWYER, THOSE ARE -- THAT THOSE CAN'T BE, PUSHED TOGETHER.

THE PROBLEM WITH THE BROWARD FORM HAD, RIGHT TO LAWYER BEFORE QUESTIONING AND THAT IT DIDN'T -- YOU HAVE A RIGHT TO A LAWYER DURING QUESTIONING.

>> CORRECT.

AGAIN THE TWO DIFFERENT FORMS BEING COMPARED HERE, THAT'S WHY, JURISDICTIONAL BRIEF I ARGUED THAT --

>> MIRANDA WOULD CLEARLY BE CONTROLLING WHEN WE TALK ABOUT TRAY -- TRAYLOR OR OTHERS MIRANDA IS CONTROLLING OVER THAT, IS IT NOT?

>> ACCORDING TO TRAYLOR, TRAYLOR FIRST REQUIRES ANALYSIS BASED ON THE FLORIDA CONSTITUTION.

>> WHAT TRAYLOR IS DOING, IS SAYING OF COURSE, THAT STATES THROUGH THEIR CONSTITUTION AND, INTERPRETATION OF THE CONSTITUTION, HAVE THE RIGHT TO GRANT GREATER RIGHTS.

>> CORRECT.

>> BUT THE STATE HAVES NO RIGHT TO GRANT LESSER RIGHTS.

>> CORRECT.

>> THAN HAS BEEN GRANTED IN MIRANDA.

SO, JUSTICE QUINCE HAS BEEN ASKING YOU ABOUT.

THIS I HAVE A QUOTE FROM, A I HAVE QUOTE FROM MIRANDA RIGHT HERE THAT SAYS, QUOTE, AN INDIVIDUAL HELD FOR INTERROGATION MUST BE CLEARLY INFORMED THAT HE HAS THE RIGHT TO CONSULT WITH A LAWYER AND TO HAVE THE LAWYER WITH HIM DURING INTERROGATION.

NOW, --

>> MIAMI-DADE FORM DOES THIS.

>> WELL, WE'RE NOT, IN ANSWERING JUSTICE QUINCE'S QUESTION A MINUTE AGO THOUGH, YOU SAID YOU DID NOT AGREE THAT MIRANDA REQUIRED THAT OR AT

LEAST --

>> I'M SORRY I DID AGREE THAT IT DOES REQUIRE THAT UNDER MIRANDA TODAY.

I DID AGREE AS TO MIRANDA REQUIRING THAT.

I SIMPLY POINTED OUT TRAYLOR SIMPLIFIED THE LANGUAGE OF MIRANDA.

>> HOPE THAT YOU WOULD AGREE, WHAT THAT QUOTE THAT I JUST READ YOU MANDATES.

AND IT INCLUDES THAT HE HAS THE RIGHT TO CONSULT WITH A LAWYER AND TO HAVE THE LAWYER WITH HIM DURING INTERROGATION.

WOULD YOU AGREE WITH THAT.

>> YES, SIR, YOUR HONOR.

AND --

>> ON ANY FORM THAT DOESN'T SET THAT OUT, WOULD NOT BE IN COMPLIANCE WITH MIRANDA WOULD IT?

>> RIGHT.

I WOULD ALSO POINT OUT TO YOU UNDER CHAVEZ, JOHNSON AND COOPER THIS COURT PARTICULARLY LOOKED AT LANGUAGE SAID IT WAS SUFFICIENT UNDER MIRANDA.

>> NO I UNDERSTAND YOUR FURTHER ARGUMENT THERE.

I WANT TO BE CLEAR THAT YOU'RE NOT CHALLENGING THE FACT THAT A DEFENDANT MUST BE INFORMED THAT HE HAS THE RIGHT TO HAVE A LAWYER PRESENT DURING INTERROGATION?

>> OH I'M NOT CHALLENGING THAT AT ALL.

BUT I'M ALSO POINTING OUT THAT THE MIAMI-DADE FORM DOES DO THIS.

>> BUT WHEN YOU LOOK AT THE COOPER AND JOHNSON DECISIONS, I MEAN, REALLY, IN COOPER, THE DISCUSSION OF MIRANDA, IS, REALLY RELEGATED TO A FOOTNOTE.

IT'S, THEY SAY THAT, OTHER THAN TRAYLOR THERE IS JUST A FOOTNOTE.

AND THE JOHNSON OPINION REALLY DOES SORT OF, YOU KNOW, CITES TO COOPER WITHOUT ANY REAL

ANALYSIS.

SO, NEITHER OF THOSE CASES SEEM TO GO THROUGH ANY REAL ANALYSIS OF THE MIRANDA OPINION.

THEY JUST SORT OF, MAKE THE STATEMENT AND SAY, THAT THIS FORM COMPLIES WITH MIRANDA.

>> THAT'S TRUE.

>> SO, I MEAN IF WE'RE REALLY GOING TO LOOK AT WHETHER, WHAT THESE FORMS ARE SUPPOSED TO CONTAIN, AND IF WE START WITH MIRANDA AS THE BASE, THEN YOU THINK WE NEED TO LOOK AT THE EXACT LANGUAGE AND HOLDINGS IN MIRANDA TO MAKE A DECISION WHETHER OR NOT A FORM IS REALLY IN COMPLIANCE, SHOULDN'T WE.

>> I THINK YOU BEGIN WITH A ANALYSIS OF MIRANDA AS TO THE FORMS USED.

BUT IN THIS PARTICULAR CASE YOU HAVE THE MIAMI-DADE MIRANDA FORM THE STATE'S INTERPRETATION THAT IT DOES INFORM THE DEFENDANT OF RIGHT TO COUNSEL NOW AND THERE AFTER.

>> YOU'RE HERE DEFENDING THE MIAMI-DADE COUNTY'S RIGHTS FORM?

YOU'RE NOT HERE --

>> ALL THE FORMS THROUGHOUT THE STATE OF FLORIDA.

>> YOU'RE NOT HERE DEFENDING BROWARD'S?

>> NO.

BECAUSE BROWARD'S FORM HAS ALREADY BEEN CHANGED.

IT'S, NO LONGER THE FORM OF WEST, RIPLEY, BROADHURST AND FRANKLIN.

SO THAT'S GONE.

>> I GUESS MY CONCERN ABOUT IT IS, SAYING IF YOU WANT A LAWYER TO BE PRESENT DURING QUESTIONING, AT THIS TIME, OR ANY POINT THERE AFTER YOU'RE ENTITLED TO HAVE A LAWYER PRESENT.

THAT IS A LITTLE BIT, YOU'RE SAYING THE IT SAYS --

[INAUDIBLE]

>> I DON'T BELIEVE IT'S AMBIGUOUS AT ALL.

CLEARLY IT SAYS AT THIS TIME OR ANY TIME HEREAFTER.

AT THIS TIME I AM NOW JUST GIVING YOU THESE MIRANDA WARNINGS.

>> IT SAYS DURING QUESTIONING.

IT DOESN'T SAY -- IF YOU WANT A LAWYER TO BE PRESENT AT THIS TIME OR ANY TIME, SAYS AT THIS TIME OR ANY TIME THEREAFTER. IF YOU WANT A LAWYER TO BE PRESENT DURING QUESTIONING AT THIS TIME OR ANY TIME THEREAFTER, TO ME I READ I CAN ONLY GET A LAWYER DURING QUESTIONING.

>> BUT I WOULD DISAGREE WITH THAT INTERPRETATION THAT IT'S LIMITED TO, WELL, WE HAVE TO ACTUALLY COMMENCE THE INTERROGATION.

AT THIS TIME, INTERROGATION HAS NOT YET BEGUN.

>> BUT THE MORE I GUESS THE REAL QUESTION, I HAVE THE SAME PROBLEM HERE IS, IS THAT THE SENTENCE BEGINS WITH, PRESENT DURING QUESTIONING, COME MARKS, AT THIS TIME, OR ANY TIME THEREAFTER.

WHICH SEEMS TO MODIFY THE DURING QUESTIONING.

SO, THAT'S THE PROBLEM I HAVE WITH THIS FORM IS, THAT, THAT'S, READING OF THIS FORM, YOU DON'T THINK THAT IS REASONABLE READING OF IT?

>> I UNDERSTAND YOUR INTERPRETATION OF IT.

WHEN THE FORM IS INITIALLY READ TO THE DEFENDANT QUESTIONING HAS NOT YET BEGUN.

IT CLEARLY SAYS, AT THIS TIME.

THAT'S THE STATE'S INTERPRETATION, YOUR HONOR. DOES THIS COURT HAVE ANY OTHER QUESTIONS WITH REGARDS TO THE PRIOR OR TO THE, RIGHT TO COUNSEL PRIOR TO QUESTIONING OR THE RIGHT TO TERMINATE QUESTIONING AT ANY TIME? I WANT TO MAKE SURE I ANSWER

EVERYTHING?

NO.

THE STATE WILL REST ON ITS  
BRIEF, THANK YOU VERY MUCH.

>> YOU'VE EXHAUSTED ALL OF  
YOUR TIME.

I'LL GIVE YOU A MINUTE  
REBUTTAL.

>> VERY BRIEFLY.

WESTOVER, ONE OF THE DECISIONS  
IN MIRANDA SPECIFICALLY STATED  
ON PAGES 494, THROUGH 496, ON  
THE FACTS OF THIS CASE WE  
CANNOT FIND THAT WESTOVER  
KNOWINGLY AND INTELLIGENTLY  
WAIVED HIS RIGHT TO REMAIN  
SILENT AND HIS RIGHT TO CONSULT  
WITH COUNSEL PRIOR TO THE TIME  
HE MADE THE STATEMENT.

JUSTICE QUINCE, YOU'RE  
ABSOLUTELY CORRECT, THE  
PARENTHETICAL, AT THIS TIME, OR  
ANY TIME HEREAFTER IS DEPENDENT  
CLAUSE.

THAT DEPENDENT CLAUSE MODIFIES  
DURING QUESTIONING.

TO ANYONE WHO SPEAKS ENGLISH  
THEY ARE GOING TO UNDERSTAND  
THAT TO MEAN THEY HAVE A RIGHT  
TO HAVE ATTORNEY PRESENT DURING  
QUESTIONING.

THEY WOULD NOT UNDERSTAND THAT  
THAT RIGHT TO MEAN, THAT THEY  
HAVE THE RIGHT TO CONSULT WITH  
AN ATTORNEY PRIOR TO  
QUESTIONING.

JUSTICE PARIENTE, I WOULD SIM  
PLY LIKE TO DIRECT YOU YOU AND  
TO THE COURT TO THE RECORD  
WHERE THE STATE PUTS INTO THE  
RECORD MIRANDA FORMS FROM ALL  
OVER THE STATE AND WHAT YOUR  
HONOR WILL SEE IS THE  
OVERWHELMING MAJORITY OF THE  
COUNTIES ARE, INCLUDING THE  
RIGHT TO TERMINATE QUESTIONING  
AND THE RIGHT TO CONSULT WITH  
COUNSEL PRIOR TO INTERROGATION.

>> THANK YOU VERY MUCH.  
YOU MORE THAN EXCEEDED YOUR  
TIME.

>> I APPRECIATE YOUR TIME.

>> THANK YOU FOR YOUR

ARGUEMENTS.

WE'LL TAKE THE CASE UNDER  
ADVISEMENT, THANKS VERY MUCH.