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**In re: Amendments to Rules of Juvenile Procedure
SC06-140**

A RIGHT TO A COMPETENT --

JUSTICE: EXCUSE ME. I AM NOT SURE YOU ARE ANSWERING MY QUESTION. WE GIVE PARTIES THE RIGHT IN FEDERAL COURT TO DO THAT AND THEY CAN SAY I REFUSE AND I WANT TO GO BEFORE A JUDGE. WHY CAN'T WE GIVE THEM AN OPTION IN DEPENDENCY STATE COURT?

WHEN YOU ARE TALKING ABOUT PARENTAL RIGHTS, DEPENDENCY IS TOO IMPORTANT A DECISION. IT IS NOT GOING TO AFFECT JUST THIS FAMILY BUT GENERATION AFTER GENERATION AFTER GENERATION, AND I THINK THE COMMITTEE BELIEVES, NOT THE JUDGE, BECAUSE NOT ONLY THE LAW REQUIRES IT BUT ALSO BECAUSE IT IS NEEDED FOR POLICY REASONS TO MAKE A STATEMENT. WE HAVE SEEN THE LEGISLATURE, 55, 56 JUDGES, I THINK, THIS TIME FOR THE CERTIFICATION NEEDS OF JUDGES. WE HAVE SEEN THEM PASS LAWS CREATING A GAL, GUARDIAN AD LITEM, 100 PERCENT COMMITMENT AND THE BEST MONEY THERE. WE HAVE SEEN RESOURCES GO TO COMMUNITY-BASED CARE TO GIVE BETTER OPTIONS FOR CHILDREN. THIS IS NOT JUST A DECISION. THIS IS ACTUALLY A STATEMENT ABOUT WHAT WE NEED FOR CHILDREN. ARE THEY GOING TO HAVE A JUDGE. ARE THEY GOING TO HAVE A GENERAL MAGISTRATE. SHELTERS CAN'T BE HEARD BY GENERAL MAGISTRATE JUST BECAUSE OF THEIR NATURE. YOU HAVE TO HAVE TEN DAYS, INCLUDING --

JUSTICE: CAN WE GO INTO THAT JUST FOR A MOMENT. IS THERE ANY OTHER WAY, BECAUSE OF THE TIMING PERIOD, WE KNOW THAT GENERAL MAGISTRATES ARE USED THROUGHOUT THE SYSTEM, AND THEY MAKE RECOMMENDATIONS THAT BECOME FINAL IF CERTAIN THINGS ARE NOT DONE AND THOSE KINDS OF THINGS. IS IT IMPOSSIBLE TO WORK WITH THOSE TIMETABLES FOR REVIEW, SO THAT MAGISTRATES COULD CONSIDER THE DECISION-MAKING PROCESS AND THEN HAVING TIME FOR OBJECTIONS OR WHATEVER NEEDS TO BE DONE. IS THAT TOTALLY IMPOSSIBLE IN THIS AREA THAT WE ARE TALKING ABOUT, OR COULD WE ACCOMPLISH THIS BY MODIFICATION, POSSIBLY, OF OTHER RULES?

WELL, I THINK YOU HAVE GOT A GOOD POINT. MAGISTRATES ARE DEFINITELY NEEDED AND THEY DO A LOT IN PUSHING TO GET CASES TO PERMANENCE. WE KNOW THAT AND EVERYONE WHO USES THEM, EVEN PEOPLE WHO WERE AGAINST GENERAL MAGISTRATES, NOW THAT WE USE THEM, THEY ARE SAYING THIS IS NECESSARY. THIS IS GOOD FOR CHILDREN, BUT I THINK WHEN YOU TALK ABOUT THE TIME FRAMES, YOU HAVE GOT TIME STANDARDS. TIME STANDARDS ARE 88 DAYS FOR JUDICIAL DISPOSITION. HOW DO YOU DO THAT WITH THE TEN DAYS YOU HAVE GOT TO WAIT, JUST TO HAVE THE OPPORTUNITY FOR AN EXCEPTION, AND THEN THERE MAY BE EVEN MORE TIME, SO IF YOU HAVE A GENERAL MAGISTRATE HEARING THESE CASES, YOU HAVE AUTOMATICALLY LOST PROBABLY 20 DAYS OUT OF 68, 88 DAYS, TO GET A DISPOSITION FOR A CHILD IN SHELTER. SO I WANT TO RESERVE SOME TIME IN CASE SOME ARGUMENTS COME UP, UNLESS --

CHIEF JUSTICE: JUSTICE LEWIS, WAS THAT RESPONSIVE TO YOUR CONCERN?

THAT I S FINE.

I AM WILLING TO TRY AGAIN .

JUSTICE: THAT IS FINE.

LA STLY BEFORE I SIT DO WN , LINDA MERRILL, A CHILD ADVOCATE IN VOLUSIA COUNTY THAT ADVO CATES FOR NEEDS FOR CHILDREN, WHENEVER THERE IS A ME ETING , BE IT COMM UNITY ALLIANCE , WHENEVER WE ARE TALKING BUREAUCRACY AND RESOURCES AND ST UF F , SHE GOES REMEMBER, THE CHILD IS IN THE MIDDLE OF THE ROOM. WE HAVE GOT TO F O CUS ON THECHILD AND THE CHILDREN SHOULD HAVE A DEPENDENCY JUDGE , AR TICLE V JUDGE HEARING ITS CASE. THANK YOU VERY MUCH.

CHIEF JUSTICE: ALL RIGHT. ARE WE GOING TO HEAR FROM. MR. JONES FI RST?

GOOD MORNING. MY NAME IS ROBERT JO NES, AND I CURRENTLY SERVE AS AN IMAGE STRA IGH T IN -- AS S ERVE AS A MAGISTRATE IN M IAMI.

CHIEF JUSTICE: ARE YOU APPEARING ON BEHALF OF THE CHILDREN?

I AM FOR THE CHILDREN.

CHIEF JUSTICE: E XCUSE ME. WE ARE ALL HERE ON BE HALF CHILDREN BU T ARE YOU REPRESENT AGO GROUP OR?

I AM REPRESENTING MYSELF. I WOULD LIKE TO URGE THIS COURT TO DO AT LE AST FOUR THINGS AND I AM GOING TO OUTLINE THEM VERY QUICKLY AND THEN COME BACK T O THEM. THE FIRST THING IS I AM GOING TO URGE THIS COURT VERY STRONGLY TO CREATE THE USE OF IM AGE STRAIGHTS. OVER THE PAST FEW YEAR S WE HAVE APPROACHED IT ON A PIECEMEAL BA SIS.

CHIEF JUSTICE: DON'T WE HAVE TRIAL COURT PERFORMANCE AND ACCOUNTABILITY THAT EITHER HAS TO ADDRESS OR WASGOING TO CONTINUE TO ADDRESS THE USE OF IMAGE STRAIGHTS?

I WAS IN THAT WORK -- THEUSE OF MAGISTRATES?

I WAS IN A WORK GROUP THAT ADDR ESSED THAT ONE PARTICULAR AREA AND THEN WE HAD ANOT HER WORK G ROUP ADDRESSING CERTIFICATION.

CHIEF JUSTICE: SO YOU ARESAYING NO.

I AM SAYING NO.

JUSTICE: IS THERE A SPECIFIC ARTICLE V AUTHORIZATION FOR USE OF IMAGE STRAIGHT ? -- OF MAGISTRATE ?

NO , YOUR HONOR.

JUSTICE: IS THERE A SPECIFIC STATUTE?

THERE ARE STATUT ORY PROVISIONS.

JUSTICE: THOSE HAVE TO DO WITH FUNDING , PAYMENT FOR MAGISTRATES.

ACT UALLY I DON'T HAVE THE ARTICLES IN FRONT OF ME BUT THERE ARE PROVISIONS FOR USEOF MAGISTRATE S IN SERT AREAS.

JUSTICE: IS THERE DISCIPLINE PROVIDED?

NO, YOUR HONOR. AND THIS IS ONE OF THE REASONS THAT I AM ENCOURAGING THE USE OF
STEERING COMMITTEE TO LOOK AT THESE THINGS, BECAUSE WE NEED TO LOOK AT THINGS
SUCH AS BEST PRACTICE AND USE OF MAGISTRATES.

CHIEF JUSTICE: LET'S GO ON.

THE OTHER THING IS TO URGE THIS COURT NOT TO BASE ITS DECISION IN THIS PARTICULAR MATTER ON WHETHER THE WORD JUDGE IS USED INSTEAD OF THE WORD COURT. FRANKLY THAT IS A VERY SLIPPERY SLOPE. UNLESS THERE IS SPECIFIC LEGISLATIVE HISTORY FOR LEGISLATIVE INTENT LANGUAGE IN THE STATUTE THAT SAYS ONLY A JUDGE, EVEN WHERE PARTIES ARE WILLING TO WAIVE THE REQUIREMENT OF HAVING THE JUDGE HEAR THE FIRST INSTANCE -- CHIEF COURT YOU, BEFORE, THREE AND FOUR, I KNOW YOU ARE A MAGISTRATE IN MIAMI-DADE. WHAT IS THE USE OF IMAGE STRAIGHTS -- OF MAGISTRATES IN MIAMI-DADE?

THEY ARE USED FOR VARIOUS THINGS AND NOT FOR STATUTORY-RELATED PROVISIONS. NO TERMINATION OF PARENTAL RIGHTS OR DEPENDENCY.

CHIEF JUSTICE: OR SHELTER?

OR SHELTER.

CHIEF JUSTICE: ANYWHERE ELSE ARE THEY USED FOR TERMINATION OF DEPENDENCY -- FOR TERMINATION OF PARENTAL RIGHTS, DEPENDENCY OR SHELTER?

NOT THAT I AM AWARE.

CHIEF JUSTICE: CAN YOU TELL US THE REASON THAT THERE HAVE NOT BEEN A USE OF MAGISTRATES IN THESE AREAS?

I THINK WE HAVE A SUFFICIENT NUMBER OF JUDGES IN OUR CIRCUIT, DEDICATED TO THESE PARTICULAR TYPES OF CASES, SO THAT WE DON'T HAVE TO USE THE SUPPLEMENTAL RESOURCE TO HEAR THOSE TERMINATION CASES. ALSO I THINK WE MAY HAVE DETERMINED THAT THE BEST PRACTICE IN MIAMI, BECAUSE OF THE NUMBER OF JUDGES THAT WE HAVE THERE, DICTATES THAT OUR JUDGES SHOULD HEAR THOSE CASES IN OUR CIRCUIT.

CHIEF JUSTICE: SO YOU WOULD SAY THAT, BY IMPLICATION, AND I DON'T WANT TO SAY, PUT WORDS IN YOUR MOUTH, THAT IF TERMINATION OF PARENTAL RIGHTS AND SHELTER HEARINGS, THAT WE OUGHT TO HAVE JUDGES AT TERMINATION OF PARENTAL RIGHTS AND DEPENDENCY.

YES, YOUR HONOR.

CHIEF JUSTICE: WHAT IS NUMBER THREE AND FOUR?

TO ENCOURAGE THE PAST PRACTICE OF HARMONIZING RULES WHERE POSSIBLE AND NOT CREATING CONFLICTS IN THE COURT RULES, AND CREATING CONFLICTS IN THE COURT RULES IN SEVERAL OCCASIONS WOULD NOT HARMONIZE THE RULES.

JUSTICE: WHICH RULE ARE YOU REFERRING TO?

THE CHANGES THAT WOULD REQUIRE THE INITIAL EXCEPTIONS TO BE FILED AS OPPOSED TO SERVICE. THE FAMILY LAW RULE REQUIRES SERVICE IN THE PETITION. IT SAYS SERVE NOT FILE. WITH RESPECT TO THE PROBATE RULE, SERVE, NOT FILE. WITH RESPECT TO THE, I THINK I SAID THE CIVIL RULE, FAMILY RULE, PROBATE RULE, ALL SAYS SERVE THE INITIAL

EXCEPTION.WE CHAN GE IT TO FILE HERE, MY POSITION IS WE ARE GOING TO CREATE A CONF LICT . EITHER WE SHOULD DO IT A CROSS THE BO ARD AND HARMONIZE THE RULE OR NOT APPROVE THIS AT THIS TIME .

CHIEF JUSTICE: THIS DOESN'T HAVE T O DO WITH THE USE OF MAGISTRATE. THAT IS A SEPARATE ISSUE OF.

SEPARATE ISSUE BUT PART OF THE PROPOSAL . L AST BUT NOT LEAST I URGE THE COURT T O MAINTAIN ENOUGH FLEXIBILITY IN THIS RULE TO ACCOMMODATE THE UNIQUE NE EDS AND CIRCUMSTANCES OF VARIOUS CIRCUITS IN THE STATE , FOREXAMPLE WHERE THEY ARE USING A MAGISTRATE TO HA NDLE THE T YPES OF REFERENCES IN THE PROPOSAL , YOU MAY NEED IT THERE. THEY MAY NOT HAVE SUFFICIENT RESOURCES TO BE AB LE TO TIM ELY ADDRESS THESE PARTICULAR MATTERS AND IT LOOKS LIKE A VERY SUCCESSFUL PRO CESS IN THE SECOND CIRCUIT, SO I AM SUGGESTING THAT ANY TIME WE CREATE ARULE W E REALLY NEED TO CONSIDER THE UN IQUE CIRCUMSTANCES AND NEEDS OF VARIOUS CIRCUITS.

CHIEF JUSTICE: IT SEEMS ALITTLE ODD AND I HAVE SEEN T WO JUDGES FROM THE SEC OND CIRCUIT HERE AND I HAVE ONLY ADMIRATION FOR ALL OF THE JUDGES OF ALL TWENTY CIRCUITS THAT, HOPEFULLY NOWWITH AL MOST A FULL COMPLEMENT OF JUDGES A FTER THIS YEAR 'S CERTIFICATION, THAT WE WOULD HAVE ONE CIRCUIT , THE SECOND THAT WOULD HAVE UNIQUE NEEDS THAT ARE NOT EXISTENT IN THEOTHERS, AND FR ANKLY I HAVE NOT HEARD THAT AS A REASON WHY IN THE SECOND CIRCUITTHEY ARE USING MAGISTRATESRATHER THAN JUDGES .

AGAIN , I AM NOT SURE IF THE SECOND IS THE ONLY CIRCUIT THAT HAS THOSE UNIQUE NEEDS. I KNOW THAT PART OF THE ARTICLE V RE VISION 7 , A LOT OF CIRCUITS ENDED UP WITH MAGISTRATES THAT NEVER HAD THEM AND I KN OW THAT SOME OF THOSE CIRCUITS HAVE BEEN STRUGGLING TO DETERMINE HOW TO BEST USE THAT RES OURCE , AND I KNOW THAT T HEY HAVE LOOKED AT DEPENDENCY AS AN AREA WHERE THEY MAY BE INTERESTED IN USING A MAGISTRATE, IF THEY CAN DETERMINE THAT THE BEST PRACTICES IN THAT CIRCUIT D ICK E IGH T -- DIC TATE IT .

JUSTICE: WOULD YOU ANSWER THE QUESTION THAT I OPOSED TO YOUR COLLEAGUE -- THAT I P OSED TO YOUR COLLEAGUE , WITH RE GARD TO ALTER ING THE TIME PE RIOD , AND WHE THERTHAT IS AT ALL A THEORETICAL POSSIBILITY, SO T HAT IF WE F IND IT A RUB OR CONFLICT WITH THE STATUT E, THAT IT WOULD ST ILL PROV IDE THE OPERATIVE TIMES AND STILL PROVIDE THE OPPORTUNITY TO USE A RESO URCE, IF THAT IS THE BEST WAY FOR A CIRCUIT TO SO LVE THEIR PROB LEMS.

ON THE SHELTER HEARINGS , E VEN IN MY COMMENT , I SUPPORTED THAT PART OF THE PROPOSAL, NOT BECAUSE OF THE OBJECTION PROVISION THAT WAS REFERRED TO BY THE RU LES COMMITTEE, BUT BECAUSE OF THE EX CEPTION , BECAUSE ACTUALLY IF YOU LOOK AT THE OBJECTION PORTION OF THERULE, THE HEARING IS SUPPOSED TO TAKE P LACE PRIORTO THE EXP IRATION OF TEN DAYS, THEN YOU JUST SHRIMP HAVE TO FILE YOUR OBJECTION PRIOR TO THE COMMENCEMENT OF THE HEARING, SO THERE IS A DIFFERENCE BETWEEN WHAT THE RULES COMMITTEE SAID ANDWHAT THE RULE SAID. ON THE EXCEPTIONS , I DO HAVE A CONCERN ABOUT THAT , AND PARTIES , I THINK , MAI NTAIN THE CONSTITUTIONALITY OF HAVING A MAGISTRATE HEAR A MATTER. PARTIES NEED TO HAVE AC CESSTO THAT ART ICLE V AN NEX E PTIONS ALL OW FOR THAT ACCESS, AND I THINK IT WOULD BE A PROBLEM.

JUSTICE: DO YOU THINK IT WOULD BE A PROBLE M IF, BEFORE THE OR DER IS EN TERED , THAT THERE IS A OPPORTUNITY TO OB JECT TO WHA TEVER THAT RECOMMENDATION IS THAT HAS BEEN MADE BY A MAGISTRATE AND THOSE ARE SUBMITTED TO AJUDGE AND THE JUDGE GOES THROUGH THE DECISION-MAKING PROCESS , DO YOU THINK THAT RUNS INTO A CONSTITUTIONAL I SSUE ?

WITH RESPECT TO FILING OBJECTIONS OR THE EXCEPTIONS TO THE DECISION, THE MAGISTRATE, I DO BELIEVE THAT, BECAUSE I BELIEVE YOU NEED TO MAINTAIN ACCESS TO THAT ARTICLE V, AND YOU DO NEED TO HAVE A RECORD BROUGHT BEFORE THAT ARTICLE V JUDGE FOR THE PURPOSE OF -- JUDGE JUDGE BUT DO WE HAVE, IS THERE A POSSIBILITY WITHIN THE STRENGTH YOUR -- WITHIN THE STRUCTURE AND THE TIME PERIODS THAT WE HAVE, TO ACCOMMODATE, TO DO THAT, AND YOU THINK THAT IS A PHYSICAL IMPOSSIBILITY?

UNLESS YOU DO SOMETHING LIKE AN AMENDMENT RULE TO REQUIRE IN THAT TYPE OF SITUATION THAT THE COURT HAVE A, BASICALLY A HEARING DE NO VO. BUT EVEN THEN, THAT WOULD BE A PROBLEM, I THINK, FOR A SHELTER HEARING.

CHIEF JUSTICE: GOING BACK, THINKING OF A TERMINATION OF PARENTAL RIGHTS CASE THAT COULD GO ON FOR DAYS OR WEEKS, I AM JUST THINKING OF WHAT THOSE EXCEPTIONS, I MEAN, HOW, PRACTICALLY, THAT OPERATES, AND I SUPPOSE, A GAIN, IT IS OPERATING IN THE SECOND JUDICIAL CIRCUIT, BUT FOR A MEANINGFUL REVIEW OF THOSE KINDS OF COMPLEX DETERMINATIONS, YOU HAVE TO HAVE THE WHOLE RECORD, AND--

AND THE WHOLE RECORD, JUST LIKE IF THEY ARE GOING TO TAKE A DECISION UP FROM THE TRIAL JUDGE TO THE APPELLATE COURT, YOU HAVE TO HAVE A COMPLETE RECORD, AND THE RULE MAINTAINS A REQUIREMENT THAT THE MAGISTRATE HAS TO MAINTAIN A RECORD, EITHER BY ELECTRONIC MEANS OR BY A COURT REPORTER, HAS TO MAINTAIN, OF COURSE, ANY DOCUMENTARY EVIDENCE THAT COMES IN, AND IF THERE IS GOING TO BE A REVIEW AFTER EXCEPTIONS ARE FILED, THE TRIAL JUDGE WILL HAVE THE COMPLETE TRANSCRIPT, AS WELL AS THE DOCUMENTS.

CHIEF JUSTICE: WITH, YOU HAVE USED TEN MINUTES AND I KNOW WE NEED TO SAVE FIVE, AND I APPRECIATE YOUR COMING UP. I KNOW YOU HAVE BEEN QUITE AN IMPORTANT VOICE FOR GENERAL MAGISTRATES, AND THANK YOU FOR APPEARING HERE TODAY.

THANK YOU, YOUR HONOR.

MAY IT PLEASE THE COURT. I AM JOYCE SIBSON DOVE AND I REPRESENT THE ATTORNEYS IN THE SECOND CIRCUIT. WE ARE THE ONLY CIRCUIT THAT WE KNOW OF THAT IS DOING TERMINATION OF PARENTAL RIGHTS TRIALS AND DEPENDENCY TRIALS WITH A MAGISTRATE, AND I THINK SOME OF IT IS HISTORICAL, BECAUSE WE WERE PRIVILEGED TO BE ABLE TO GET A, THEN GENERAL MASTER VERY EARLY IN THE PROCESS.

JUSTICE: WHAT DO YOU TELL THE PARTIES PRIOR TO OR AT THE TIME THAT A CASE IS ASSIGNED TO A GENERAL MAGISTRATE? DO THEY INFORM THE PARTIES THAT THEY HAVE A RIGHT TO HAVE A HEARING BEFORE AN ARTICLE V JUDGE?

I HAVE REPRESENTED PARENTS SINCE 1984, AND I HAVE HAD HUNDREDS OF CASES. SINCE WE WERE ABLE TO USE MAGISTRATES, MASTERS IN OUR SYSTEM, I HAVE TALKED TO MY CLIENT ABOUT THIS IS NOT A JUDGE. JUDGES ARE CONSTITUTIONAL OFFICERS. THAT SOMETIMES MAY BE FLIES OVER THE TOP OF THEIR HEAD, BUT THE CIRCUMSTANCES OF WHAT YOU HAVE BEFORE YOU ABOUT YOUR CHILDREN MAY BE HEARD BY A JUDGE.

JUSTICE: YOU ARE SAYING YOU TELL YOUR CLIENTS THAT.

I DO.

JUSTICE: BUT ARE ALL PEOPLE WHO APPEAR BEFORE A MAGISTRATE, ALL CONTROLLED BY THE COURT SYSTEM, THAT THEY HAVE A RIGHT TO DO, TO HAVE AN ARTICLE V JUDGE?

YOUR HONOR, I THINK THAT THEY ARE GIVEN A COPY OF SOMETHING WHICH SAYS THAT THEY

HAVE A RIGHT, AT THE TIME THAT THE CASE IS REFERRED , WE HAVE SO MANY INDIVIDUALS WHO DO NOT READ , I THINK IT DOES FALL TO THE PARENT'S ATTORNEY TO EXPLAIN THIS, AND WE EXPLAIN IT WHEN WE SWITCH PROCEEDINGS TO TERMINATION OF PARENTAL RIGHTS , AND WE SAY A GAIN , THIS IS WHERE YOU MIGHT LOSE THE RIGHTS OF YOUR CHILDREN. AGAIN HAD, THIS IS A MAGISTRATE NOT A JUDGE. YOU CAN HAVE A JUDGE. WHAT WOULD YOU PREFER?

DOES THIS REQUIRE A CONSENT TO THE REFERRAL OR IT AN AUTOMATIC REFERRAL? IS IT AN OPT IN OR OPT OUT?

REFERRALS ARE AUTOMATIC AND WE HAVE TO OPT OUT OF THE OPPOSITE TO GO TO THE MAGISTRATE. THE VAST MAJORITY OF OUR CASES ARE WITH A MAGISTRATE.

JUSTICE: IS IT AN UNDERSTATEMENT WHEN YOU SAID THAT IT GOES OVER THEIR HEAD SOMETIMES. ISN'T IT , REALLY, I MEAN, YOU YOU ARE STANDING HERE , AND AN UNDERSTANDING PERSON AND CONCERNED LAWYER , IT SEEMS TO ME THAT THESE ARE THE MOST VULNERABLE , THE WEAKEST , AND THE LEAST UNDERSTANDING GROUP OF INDIVIDUALS THAT PROBABLY OUR COURT SYSTEM TOUCHES.

THAT IS TRUE , YOUR HONOR, AND I THINK THE CIRCUMSTANCES THAT WE HAVE , HAVE TAUGHT ME A LOT. INITIALLY WHEN WE GET OUR MAGISTRATE, I OBJECTED TO MY CLIENT GOING TO TERMINATION OF PARENTAL RIGHTS WITH EITHER OF THE TWO OFFICERS THAT HAVE TAKEN THAT POSITION, AND THAT WAS WHY. IN THESE LAST FEW YEARS THAT WE HAVE HAD A PERSON IN THE POSITION , WHAT I HAVE LEARNED AND I AM ALSO ON THE RULES COMMITTEE WITH MR . ABRAMOWITZ AND I ARGUED IT AT THE TIME, I HAVE LEARNED THAT THE TIME THAT THESE PARENTS WANT TO TALK AND THEY WANT TO EXPOSE THEIR STORY AND EXPLAIN WHAT HAPPENED, IS ALSO A CRITICAL PART. THEY AREN'T USED TO THE COURT SYSTEM , AND THIS IS ONE AREA WHERE THEIR NEED TO TELL THEIR STORY AND THEIR NEED TO DISCUSS WHAT HAPPENED AND THE NEED TO BE KNOWN WHEN THEY COME IN THE COURT IS VERY HIGH .

JUSTICE: SO WHEN DO THE PEOPLE IN DEPENDENCY AND TERMINATION CASES EVER SEE THE JUDGE? I MEAN, IF A MAGISTRATE IS DOING ALL OF THESE HEARINGS , THEN A JUDGE ONLY SEES THE CASE, IT WOULD SEEM , IF THERE ARE EXCEPTIONS TO THE MAGISTRATE'S REPORT , AND SO THE PARTIES ACTUALLY NEVER SEE THE JUDGE?

THAT IS FAIRLY, THAT IS TRUE , YOUR HONOR , WE ARE NOT SEEING THE JUDGE.

CHIEF JUSTICE: HOW DOES THE CHILD OBJECT?

THE GUARDIAN AD LITEM PROGRAM IS GENERALLY RESPONSIBLE FOR THE CHILD, UNLESS --

CHIEF JUSTICE: IF THERE IS NOT A GUARDIAN AD LITEM IN ARRIVE CASE , HOW DOES THAT , WE HAVE GONE TO SHELTERS. NOW IT IS DEPENDENCY. HOW DOES THE CHILD OBJECT TO THIS?

THE CIRCUMSTANCES FOR US HAVE BEEN VERY POSITIVE IN BEING ABLE TO GET A PROGRAM ON A MAJORITY OF CASES WHERE THE CHILDREN ARE NOT ELIGIBLE FOR AN ATTORNEY ON THEIR OWN , BUT YET THERE IS A LOT OF CASES WHERE THERE IS NOT A PROGRAM TO OBJECT, AND WHERE IF THE CHILD HAS NOT BEEN TO RESIDENTIAL TREATMENT OR IS NOT IN DEPENDENT LIVING , IS NOT GOING TO HAVE A SEPARATE VOICE , BUT I THINK THE ISSUE ABOUT WHETHER THE STORY OF THE FAMILY GETS TOLD AND WHETHER THE OFFICER --

CHIEF JUSTICE: BUT I AM HEARING SOMETHING THAT IS GREATLY DISTURBING TO ME, AND WHAT I AM HEARING YOU SAY IS THAT SOMEHOW, BECAUSE IT IS IN FRONT OF A MAGISTRATE, THE, THERE WILL BE TIME FOR THE PARENTS OR THE CHILD TO HAVE HIS OR HER STORY HEARD , WHEREAS THE IMPLICATION IS THAT , IF IT GOES BEFORE A JUDGE , THAT THAT JUDGE WILL NOT LISTEN AND ALLOW THE PARENT TO BE HEARD. IS THAT WHAT , AND I CANNOT , YOU MAY BE

SAYING THAT , BUT I HOPE THAT THAT IS NOT THE REASON THAT WE WOULD BE HAVING MAGISTRATES VER SUS JUDGES.

NO. NO. NOT AT ALL. AND THE JUDGES WHO HEAR THESE CASES WHICH I HAVE DONE FOR OVER 14 YEA RS , OVER HALF OF THE M HAVE BEEN COMPLETELY WITH JUDGES. THEY DO TAKE THE TIME ANDTHE FA CTS COME OUT , BUT THE SYSTEM IN THE REST OF THE STATE AS OP POSED TO WHAT WE ARE DOING IN THE SECOND CIRCUIT, IS THAT ALL OF THE ADMINISTR ATIVE HEARINGS AND JUDICIAL REVIEWS AND PERMANENCE I REVIEWS AND EVEN THE MOTIONS FOR CUSTODY AND MOTIONS FOR CH ANGE FROM SUPERVISED TO UNSUPERVISED ARE IN FRONT OF THE MAGISTRATE, AND THEN WHEN THERE IS NO ADJUDICATORY HEA RING, THEY SW ITCH BACK TO A JUDGE WHO HAS NEVER SEEN THE CASE.

CHIEF JUSTICE: THAT IS THE FIRST TIME THAT I AM HEARING SOME THING WH ICH IS A WHOLE DIF FERENT ISSUE, WHICH IS THE I DEA OF HAVING ONE DECISION-MAKER FROM BEGINNING TO END, WHICH IS RECOMMENDED, REALLY , B Y THE PUGH COMMISSION, AND WE ARE BASICALLY OUT OF TIME. THAT IS A WHOLE DIF FERENT ISSUE THAT I THINK IS A CRITICAL ONE THAT W E HAVE NOT EVEN TOUCHED ON. BUT I WANT TO , BECAUSE WHAT YOU ARE SAYING IS SO IMPORTANT, TO MAKE S URE THAT JUSTICE LE WIS AND JUSTICE BELL, YOU HAVE QUESTIONS BEFORE.

JUSTICE: WHAT ARE THEJUDGES IN THE SECOND CIRCUIT HEARING, IF THEY ARE NOT HEARING THESE MA TTERS IN DEPENDENCY?

IN DEPENDENCY WHEN AN OBJECTION IS MADE TO THE MAGISTRATE, THE N THE MATTER COMPLETELY GOES BEFORE THE JUDGE.

JUSTICE: I KNOW, BUT IF THERE IS NO OBJECT ION.

NOTHING .

JUSTICE: I GUESS WHAT MY CONCERN IS, WHEN I WAS A CIRCUIT JUDGE AND THE ONLY THING WE HAD AT THAT TIME WAS HEARING OFFICER AND CHILD SU PPORT ENFORCEMENT , AND I WOULD GET STACKS, TWOSTACKS IN MY OFFICE ABOUT THIS HIGH , AND ABSENT OBJECTION, THE TENDENCY AND THE RISK WAS YOU ARE JUST SIGNING OFF ON THEM AND THERE IS NO REAL REVIEW, SO IN ESS ENCE REALLY WHAT WE ARE SAYING HERE IS THE MAGISTRATES ARE THE JUDGES IN THESE CASES, AND THE JUDGES ARE NOT HAVING ANY INVOLVEMENT IN THESE , OTHER THAN SIGNING OFF ON THE ORDER , UN LESS THERE IS THE RARE EXCEPTIO N.

IT IS MY EXPERIENCE THAT, WHEN IT COMES TO AN ADJUDICATORY HEARING OR A HEARING WHICH DOES IN VOLVE A SUBSTANTIVE CHANGE WHERE THECHILD IS GOING , THAT THE JUDGE ON THE CASE IS REVIEWING THE FILE AND LOOKING AT WHAT EVER IS AVAILABLE. WE RECEIVE CA LLS FROM THEIR OFFICES , A SKING QUESTIONS. I K NOW THE DEPARTMENT HAS BEEN CALLED IN ON CERTAIN CAS ES, AND THEN ALL OF US WHO ARE ON THE CASE GETCALLED IN. I FIND THEM TO BE VERY PROACTIVE IN SAYING WHAT ARE WE DOING HERE.

JUSTICE: WHO IS DOING ALLOF THE HEARINGS BEFORE. I AS SUME THAT THE MAGISTRATE S ARE IN ES SENCE DOING ALL OF THE HEARINGS IN THESE CASES.

YES , THEY ARE, AND IN THEREST OF STATE. THE ESS ENCE FOR US IS WE DON'T WANT THE ADJUDICATORY HEARING PLUCKED FROM THE STREAM AND G IVEN TO SOMEONE WHO HAS NEVER MET THE PARENT AND NEVER MET THE CHILDREN AND THEN RETURNED TO THE MAGISTRATE FOR A LONG PERIOD OF TIME AND THEN ONCE A GAIN PLUCKED FROM "THE ST REAM" OF PROCEEDINGS AND PA SSED , AND ALTHOUGH DOING AN EXCE LLENT JOB , IT IS A FANTASTIC INNOVATION FOR THE FAMILIES WHO NEED ALL OF THEIR CASES IN ONE PL ACE. THE REALITY IS THAT MORE OF THE DEPENDENCY CASES ARE NOT ABLE TO BE OVER THERE , BECAUSE THERE IS ONLY ONE CASE. THE PARENTS WERE NOT MARRIED OR SOMETHING , THERE IS NO

OTHER BASIS TO COME TO THE ATTENTION OF THE COURT, SO WHEN WE HAVE THE MAGISTRATE S CONDUCTING HEARING A FTER HEARING AFTER HEARING FOR M ONTH AFTER MONTH THAT , IS THE CONS ISTENCY .

JUSTICE: SO WHAT W E ARE DOING IS PL UCKING THE TRIAL JUDGE COMPLETELY OUT OF THE PROCESS.

THE TRIAL JUDGES IN GENERAL HAVE NOT BEEN HEARING ADMINIST RATIVE AND JUDICIAL P ORTIONS OF THE HEARINGS, THAT IS T RUE , BUT IT HAS BEEN YEARS N O W.

JUSTICE: THE WHOLE SHEBANG.

UNLESS IT IS OBJECT ED TO , YES , IT HAS BEEN YEARS THAT WE HAVE DO NE IT , SO WE HAVE SEEN IT AND WE HAVE SEEN IT O VER A LONG PERIOD OF TIME THAT THOSE PARTIES ARE COMING, THE PARENTS ANDCHILDREN ARE COMING TO THECOURT ON A REGULAR BASIS AND BEING HEARD BY THE SAME OFFICER , A BLE TO HAVE THAT OFFICER RECOGNIZE THEM, ASK THEM PERS ONAL QU ESTIONS , ASK THEM WHAT IS GOING ON WITH THE CHILD THAT THEY MAY HAVE MET PREVIOUSLY, AND THAT THERE IS A FEELING OF I A M ACCOUNTABLE.

CHIEF JUSTICE: ALL RIGHT.WITH OUR HE LP , YOU ARE MUCH OUT OF YOUR TIME. THANK YOU FOR APPEARING TODAY AND FOR BEING RESPONSIVE TO OUR QUESTIONS.

THANK YOU.

I WOULD LIKE TO TAKE ANOTHER SHOT AT JUSTICE L EWIS'S QUESTION IF I COULD. THE GUARDIAN AD LIT EM W ROTE , DENNIS MO OR E 'S GENERAL COUNSEL WR OTE A PLEADING IN THIS CASE, AND THEY TA LKED ABOUT A TIME FRAME TO GETTHE EXCEPTIONS IN. THEY GO FURTHER THAN THE SHELTERS. THEY INCLUDE RESIDENTIAL TREATMENT , SURGERY , PSYCH TROPIC MEDICATION , ANDBECAUSE IT IS SO URGENT YOU'REALLY DON'T HAVE THE TIME. I CALLED THEM RIGHTAFTERWARD AND SA ID I A G REE WITH YOU AND I WILL ARGUE THAT HERE AND CONCUR THAT IF IT SOMETHING LIKE THAT WHEREYOU NEED TO HAVE A SH ELTER , YOU NEED HAVE A JUDGE, THEN --

CHIEF JUSTICE: WHAT A BOUTTHIS IDEA THAT WE DON' T HAVE A CONSISTENT DECISION-MAKER. THAT IS THAT MA NY O F THE CASES OR , ARE REALLY BEING HEARD ALONG THE WAY BY A MAGISTRATE, AND THERE ARE SEPARATE DECISION-M AKERS,MAYBE NOT EVEN THE SAME ONE , DEPENDENCY , TERMINATION OF PARENTAL RIGHTS, SHELTER HEARINGS . IS THAT --

THERE IS A GOOD ARGUMENT WHERE THE JUDGE NEVER SAW SOMETHING EN TERED FOR JUDICIAL REVIEW UNTIL THETIME OF THE TRIAL . BUT YOU HAVE GOT TO REMEMBERWHEN YOU DO THAT TRIAL, IT HAS GOT TO BE SELF-CONTAINED WHAT HAPPENS THERE. THERE IS A ARGUMENT TO GET THAT TRIAL FOR PARENTSBEFORE A JUDGE THAT HASN'T HEARD THE H I STORY DAY IN AND DAY OUT AND YOU HAVE TO HEAR IT AT THAT T IME AND BECAUSE OF THE EVIDENCE AND ALL OF THAT , IN THE END THE JUDGE NEEDS TO LOOK AT THE EVIDENCE TO MAKE DECISION ON THE WITNESSES AND THE CASES. I WOULD ALSO LIKE TO POINT OUT, I KNOW WE TALKED ABOUT PARENTAL RIGHTS ANDCONCERNED THAT A JUDGE WOULDN'T HEAR THAT , BUT DEPENDENCY CASES, IF THERE IS ADJUDICATION O F DEPENDENCY, THAT DOESN'THAVE TO BE PROVED FOR THE TERMINATION OF PARENTAL RIGHTS, AND I THINK THAT IS IMPORTANT WH Y THE JUDGE NEEDS TO BE THERE, TO O. RECENTLY THE LEGISLATURE , I THINK IT WAS THREE YEARS AGO , PASSED A LAW ON CONTINUEANCES.IN THAT NEW LAW THEY SAIDWITH REGARD TO JUDICIAL REVIEWS AND TIME FRAMES , THEY SAID THAT HEARING IS A RIGHT OF THE CHILD . THEY ARE VERY SPECIFIC ABOUT THAT IN THE LEGISLATURE. AND THE RULE FOLLOWED , BECAUSE WE PUT THAT I N THE R ULE, AND I WOULD ASK AT THIS TIME TO CON TINUE THETRENDS FOR CHILDR EN. THIS COURT SINCE THE '9 0s , WITH CERTIFICATION OF NEED , TALKING ABOUT CHILDREN BEING THE MOST PR IZED POSSESSION , SHOULD CONTINUE THAT.I

WASN'T A WARE THAT A CHILD COULD GO THROUGH THE WHOLE SYSTEM WITHOUT EVER SEEING A JUDGE, AND I THINK THAT ALONE IS SAYING SOMETHING. I THINK THE LEGISLATURE AND THE EXECUTIVE BRANCH EXPECTS THE LEADERSHIP FROM THE COURT TO SUPPORT WHAT THEY HAVE DONE IN LEGISLATION AND REQUEST FOR CERTIFICATION OF NEEDS OF JUDGES.

CHIEF JUSTICE: WHAT IS YOUR BACKGROUND, MR. ABRAMOWITZ. IN OTHER WORDS WHAT TYPE OF LAW DO YOU PRACTICE? -- PRACTICE?

I AM CURRENTLY THE DISTRICT ADMINISTRATOR FOR THE DEPARTMENT OF CHILDREN AND FAMILIES IN WHAT USED TO BE THE 19th CIRCUIT. I USED TO BE THE -- NINETEENTH CIRCUIT. I USED TO BE THE ATTORNEY FOR THE DJJ.

CHIEF JUSTICE: BUT THE DCF --

WHEN THEY TALKED, ONE OF THE COUNSEL CAME IN AND SAID IT IS THE DEPARTMENT'S POSITION THAT JUDGES SHOULD NOT HEAR DEPENDENCY, PTR AND SHELTERS.

JUSTICE: SHOULD NOT HEAR.

SHOULD NOT HEAR. NOW, BECAUSE OF THEIR INTEREST IN CHILDREN, THEY HAVE WAITED AND PARTNERED WITH THE COURT, SO THEY HAVE NOT OBJECTED, BUT THEY HAVE TAKEN THE POSITION THAT THE JUDGES SHOULD HEAR, JUDGES SHOULD HEAR TPR AND DEPENDENCY. DID I SAY THAT WRONG? I APOLOGIZE. BUT YOU KNOW, NO, THEY HAVE OBJECTED AT WHICH TIME IS IN THE RECORD. -- THEY HAVE OBJECTED. IT IS IN THE RECORD. BERNSTEIN, IN THE EMAIL THAT THEY CAME OUT AND HAVE TAKEN THAT POSITION, AND I THINK THAT IS CRITICAL, BECAUSE IF YOU DO MAKE A CHANGE, THERE IS GOING TO BE NEEDED TIME BECAUSE THE DEPARTMENT WOULDN'T UNILATERALLY DO SOMETHING BECAUSE IN THE BEST INTEREST OF CHILDREN, IN FACT THE COURT IN THE EARLY '90s, UNLIKE THE PRACTICE OF LAW, THEY DIDN'T SAY TO DAY STOP PRACTICING LAW, THEY GAVE TIME TO MAKE SURE THAT IT HAPPENS PROPERLY, AND THIS MAY BE THE PERFECT TIME WHEN THE NEW CERTIFICATION OF JUDGES THAT IS ARE COMING TO THE SECOND CIRCUIT, TOO, SO IT MAY AND OPPORTUNITY.

CHIEF JUSTICE: I APPRECIATE IT IF YOU STAY UP HERE, BECAUSE I WOULD MAYBE HAVE A QUESTION ON THE NEXT CASE, BECAUSE THE JUVENILE RULES COMMITTEE DID WEIGH IN.