In Re: Amendments to Rules of Criminal Procedure

SC06-2065

ALL RISE, PLEASE.
THE SUPREME COURT OF FLORIDA
NOW IN SESSION.
ALL THOSE HAVING BUSINESS
BEFORE THIS COURT DRAW NIGH,
GIVE ATTENTION.
YE SHALL BE HEARD.
GOD SAVE THE UNITED STATES,
THE GREAT STATE OF FLORIDA,
THIS HONORABLE COURT.
LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
PLEASE BE SEATED.
GOOD MORNING, FRIENDS, AND
WELCOME TO THE ORAL ARGUMENT
CALENDAR FOR THURSDAY,
FEBRUARY 15.
THE FIRST MATTER WILL BE
AMENDMENTS TO THE FLORIDA
RULES OF CRIMINAL PROCEDURE.
READY TO PROCEED?
>>.
>> THANK YOU, YOUR HONOR F.
IT PLEASE THE COURT.
MY NAME IS WILLIAM VOSE.
I AM THE CHAIRMAN OF THE
2006-2007 CRIMINAL PROCEDURE
RULES COMMITTEE OF THE
FLORIDA BAR.
I REPRESENT THE MEMBERS OF
THE FLORIDA BAR AND MORE
ESPECIALLY THE CRIMINAL
PRACTITIONERS OF THE FLORIDA
BAR.
OUR COMMITTEE IS A COMMITTEE
COMPOSED OF 37 MEMBERS.
THOSE MEMBERS CONSIST OF 14
DEFENSE COUNSEL, 11
PROSECUTORS, 10 JUDGES, AND
TWO LAW PROFESSOR, WHICH IS
A, WE BELIEVE AFAIR DISBRGS
ACROSS THE CRIMINAL JUSTICE
FIELD.
AND WE FEEL A GOOD
REPRESENTATION TO PRESENT
RULES TO THIS COURT.

THE MATTER WE'RE HERE TODAY UPON IS THE CLOSING ARGUMENT OF SUMMATION RULE.
IF YOU WILL REMEMBER, THIS RULE HAS BEEN ARGUED IN THE CRIMINAL COURTS AT LEAST IN THE CRIMINAL LAW SECTION OF THIS STATE SINCE ITS INCEPTION IN THE 70s, PLUS THIS ISSUE HAS BEEN AROUND FOR MANY YEARS, AND ESPECIALLY PROSECUTORS TAUMT ATTEMPTING TO CHANGE THE RULE.
IT LANGUISHED THE THEORY, THE THEORY LANGUISHED AND NEVER REALLY CAME TO FRUITION UNTIL THE APPELLATE COURTS OF THIS STATE STARTED WRITING OPINIONS ABOUT PROBLEMS IN THE PROSECUTION OF CASES BECAUSE OF 3.850s WHERE IN CERTAIN CASES, BECAUSE I BELIEVE THIS IS A MINOR POINT, BUT IN CERTAIN CASES ADEFENSE COUNSEL WERE TRYING TO TAKE A TACTICAL ADVANTAGE BY NOT PROPOSING WITNESSES SO THAT THEY CAN GET THE CLOSING AURM.
NOW, SOME OF THE LARGEST PROPONENTS OF THIS RULE ARE MEMBERS OF THE JUDICIARY.
YESTERDAY, JUDGE EATON APPEARED IN FRONT OF YOU, AND AFTER HE HAD TO GO BACK TO CENTRAL FLORIDA, WE WENT TO LUNCH, AND HE WANTED ME TO MAKE SURE I REMINDED THE COURT IT WAS HIS OPINION ANDPOINT OF THE CRIMINAL COURT HEAR'S KMILY THAT THIS SHOULD BE CHANGED TO THE PRESENT FORM TODAY.
>>
[INAUDIBLE]
[INAUDIBLE]
>> JUSTICE PARIENTE, I DON'T BELIEVE THERE IS REALLY AN ISSUE.
IT IS A PROCEDURAL RIGHT OR, IT IS A MATTER OF PROCEDURE, HOWEVER,, AND BY I TOTALLY AGREE WITH YOU, THAT THE

RULE HAS BEEN REPEALED, THE
FORMER RULE.
AND THEREFORE THE COMMON LAW
IS IN EFFECT IN FLORIDA.
AND BECAUSE, OR AT LEAST IN
MY OPINION, AND I BELIEVE IN
THE OPINION OF MANY TRIAL
JUDGES AND THE OPINION OF
MANY LAWYERS THAT THE COMMON
LAW IS IN EFFECT, I BELIEVE
THE CASE WAS WILKIE v. STATE
OUT OF THIS COURT THAT
BASICALLY LAID DOWN WHAT THE
COMMON LAW WAS IN
REAFFIRMING THAT THE OLD
RULE WAS A SUBSTANTIVE RIGHT
OR A PROCEDURAL RIGHT,
EXCUSE ME.
BUT BECAUSE THE LEGISLATURE
REPEALED THE RULE OCTOBER
1st, AND THAT'S ONE OF THE
REASONS WHY WE HAS TOON GET
A RULE PROPOSAL TO YOU AS
QUICKLY AS WE COULD, THE,
AND SENSE THE COMMON LAW IS
IN EFFECT, THE COMMON LAW IN
THE STATE OF FLORIDA AS I
UNDERSTAND IT AND MOST
PEOPLE UNDERSTAND IT THAT I
KNOW OF IS THAT THE PARTEN
WITH THE BURDEN OF PROOF
GETS THE CLOSING SUMMATION
AND SO THEREFORE IN THEORY,
THERE IS A RULE IN EFFECT,
THE RULE OF THE COMMON LAW.
SO YOU, YOU HAVE THE CHOICE,
OF COURSE, TO, A, DO NOTHING
AND LOEFB THE COMMON LAW IN
EFFECT WHICH WOULD THEN
ALLOW TRIAL COURTS AND
DISTRICT COURTS OF APPEAL TO
KIND OF ARGUE AND DEBATE
EXACTLY WHAT THAT COMMON LAW
IS BECAUSE THERE IS A MYRIAD
OF CASES ON TOR YOU CAN, YOU
COULD POSSIBLY REINSTATE THE
OLD RULE IN THE FACE OF THE
LEGISLATURE.
>> [INAUDIBLE]
>> THE MAJORITY OF OTHER
STATES IN THE FEDERAL COURTS,
YES WE ARE, AND WE BELIEVE
THAT THE CRIMINAL COURT
STEERING COMMITTEE'S PROPOSE

TOOL YOU IN 2005 THAT'S IN
THEORY, THAT WAS, BECAUSE
THIS WAS BEFORE THE COURT
WHEN THE LEGISLATURE
REPEALED THE PRESENT RULE,
AND THEN YOU REFERRED IT
BACK TO US.
WE HAD ALREADY COMMENTED ON
THE PROPOSAL.
YOU REFERED IT BACK TO US,
AND THAT TOOK IT OUT OF YOUR,
YOUR PACKET FOR THE, I
BELIEVE IT WAS THE JURY
INNOVATIONS SUBMISSION.
AND WE, WE REVIEWED IT.
AND WE REVIEWED THE
LEGISLATION AND DECIDED THAT
THENO CARRIERc@XNO CARRIERRINGCONNECT 115200
AzULE WAS PROPOSED BY A
CIRCUIT JUDGE IN ORLANDO,
JUDGE CULLEN.
JUDGE CULLEN WAS A
PROSECUTOR FOR ABOUT TWO
YEARS, AND HE --
>> WHAT WAS THE VOTE OF THE
COMMITTEE, THE RULES
COMMITTEE?
>> THE RULES COMMITTEE WAS
23-7.
>> AND SO THE MINORITY
REPORT, THE MINORITY REPORT
THEN IS WRITTEN ON BEHALF OF
SEVEN?
>> YES,.
I JUST,, I DID NOT VOTE, SO
THERE IS, OUT OF 37, THERE
WERE SIX PEOPLE THAT WEREN'T
THERE, AND MY VOTE'S NOT
COUNTED SO IT WAS 23-7.
>> [INAUDIBLE]
>> NO.
I.
I THINK THAT, I SERVED ON
THE CRIMINAL PROCEDURES
RULES COMMITTEE FOR MANY
YEARS, THIS TIME FOR ABOUT
SIX YRNGS BUT BEFORE I WAS
ON IT FOR ABOUT 15, AND WHEN,
WHEN PEOPLE BECOME APOINTED
TO THESE RULES COMMITTEES,
GENERAL THEY CAN RISE ABOVE
THEIR, THEIR PROFESSION SO
TO SPEAK IF THEY ARE A
PROSECUTOR OR A DEFENSE

ATTORNEY.
AND THAT'S NOT ALWAYS TRUE.
BUT I CAN TELL YOU THIS WAS
A ACROSS THE BOARD VOTE.
NOT EVERYBODY THAT VOTED FOR
IT WERE PROSECUTORS THOUGH I
BELIEVE MOST MOST
PROSECUTORS DID BUT I'M SURE
THERE WERE DEFENSE ATTORNEYS
THAT DID.
>> [INAUDIBLE]
[LAUGHTER]
>> ALTHOUGH YOU SAID AT THE
BEGINNING IT WAS A MINOR
POINT, ONE OF THE JIFKSS FOR
THIS DOES SEEM TO BE THAT
DEFENSE ATTORNEYS WILT NOT
CALL WITNESSES OR HOLD BACK
ON EVIDENCE IN ORDER TO GET
THE INITIAL AND CONCLUDING
FINAL ARGUMENTS, AND I WANT
TO KNOW IF THERE IS REALLY
ANY TRUE EVIDENCE TO SUPPORT
THAT.
I MEAN, I HAVE SEEN OVER THE
YEARS A FEW CASES WHERE
PEOPLE TALK ABOUT THEY
SHOULD'VE CALLED SOMEBODY
AND DIDN'T, BUT, I'M NOT
SURE THAT I HAVE SEEN ANY
EVIDENCE THAT THIS IS A
PERSUASIVE -- PERVASIVE KIND
OF PRACTICE GOING ON.
>> I CAN'T ARGUE TO YOU
EVIDENCE EITHER.
I CAN TELL YOU THAT IT'S THE
PERCEPTION OF MOSTLY OF THE
JUDICIARY, OF TRIAL JUDGES
AND DISTRICT COURT OF APPEAL
JUDGES WHO HAVE TO HANDAL
AND DEAL WITH 3.850EST AND I
THINK IN THEIR MIND IT'S WON
BECAUSE OF THE 3.850s IN THE
DEA AND IT'S OUR RULE TO
CRAFT RULES TO HANDLE THIS
PROBLEM THAT THEY SEE THIS
AS A WAY TO CURB SOME OF
THESE 3.850EST, IT'S
SOMETHING THAT THEY CAN
VISIBLY SEE THAT THEY COULD
CHANGE.
BUT AGAIN, I HAVE, NO, I
HAVE NO STATISTICS THAT IN
72% OF THE CASES, I'M SURE

IT HAPPENS.
TO WHAT EXTENT IT HAPPENS, I CAN'T ARGUE ANY NUMBERS TO YOU.
>> [INAUDIBLE]
[INAUDIBLE]
>> THAT'S.
THAT'S, NO.
TO BE HONEST WITH YOU, NO.
WE NEVER DISCUSSED THAT ISSUE.
AND I KNOW IN THE MINORITY REPORT, THERE IS A DISCUSSION THERE OF THAT
THIS DEALS WITH STRONG STATE CASES AS OPPOSED TO WEAK STATE CASES.
AND AFTER 33 YEARS OF BEING A TRIAL LAWYER, I HONESTLY WOULD NOT WANT TO LEAVE THAT DECISION UP TO THE TRIAL COURT ON WHETHER OR NOT THIS IS A STRONG OR A WEAK CASE.
I BELIEVE YOU ARE THEN ASKING THE JUDGE TO WEIGH IN ON THE EVIDENCE AND WE OF COURSE IN THE STATE COURT DON'T DO THAT AND WE DON'T ALLOW THE TRIAL JUDGES TO DO THAT.
>> WILL THIS HAVE, IF WE ADOPT THE PROPOSED, THE COMMITTEE'S PROPOSED RULE, IS THE, IS COMMITTEE CONSIDERED WHAT EFFECT THIS HAS ON 3.78 OH, THE SENTANCY HEARING IN CAPITAL CASES?
>> YES, IN FACT, WE HAVE SPECIFICALLY EXCLUDED.
THIS DOES NOT APPLY TO CAPITAL.
THIS IS ONLY FOR NONCAPITAL HEARINGS IN FACT, IF YOU'LL EXCUSE ME, IF YOU LOOK AT 3.381, THE PROPOSED 3.381 TSTARTS IN ALL CRIMINAL TRIALS EXCLUDING THE SENTENCING PHASE OF AKEEPTLE CASES AT THE CLOSE OF THE EVIDENCE THE PROSECUTING ATTORNEY, ET CETERA.
WE CONSIDERED THAT AND IF THAT WAS IN FACT JUDGE COHEN'S CONSIDERATIONS.

I MENTIONED TO JUDGE COHEN
HE HAD SIX OR SEVEN YEARS AS
A DEFENSE LAWYER AND THEN HE
BECAME A TRIAL JUDGE.
AND HE'S FROM THE 9th
SKUSHTH CIRCUIT, AND I HAVE
A LOT OF RESPECT FOR HIM,
ESPECIALLY HIS MIND BECAUSE
HE HAS TRIED MANY, MANY
CASES ON ALL SIDES AND I
THINK HIS INTENT, AND WE ALL
AGREE WOULD HIM, WAS TO MAKE
THE TRIAL OF CASES MORE
EFICIENT IN THE LONG RUN AND
WE BELIEVE THAT THIS SHOULD.
>> MR. VOSE, YOU ARE NOW
GOING INTO YOUR COLLEAGUE'S
TIME, IT APPEARS.
MR. JACOBS.
>> I -- OH, YES, I AM.
>> MR. JOCKBS, WERE YOU
GOING TO DO A PRESENTATION?
YOU WERE GOING TO DO
REBUTTAL?
OKAY.
ALL RIGHT.
>> MAY IT PLEASE THE COURT,
GOOD MORNING.
ONE OR TWO TIMES AGO, THE
PRIVILEGE I HAD TO APPEAR
BEFORE THE COURT, WE WERE
DEALING WITH THE OPPOSED
AMENDMENT TO CHANGE THE RULE
THAT WOULD EXCUSE THE
DEFENSE DST'S PRESENCE AT
PRETRIAL CONFERENCES AND THE
QUESTIONED I RECEIVED FROM
THE COURT PRIMARILY FROM
JUSTICE PARIENTE ARE WHY ARE
WE HERE?
WHAT'S HAPPENING ON THE
GROUND?
WHAT'S GOING ON IN THE TRIAL
COURT TO COMPELTUSE CHANGE A
LONG-STANDING PROCEDURAL
RULE.
AND THEN AS NOW, AS JUSTICE
CONVINCE NOTICED, THERE IS
NO IMPERICAL EVIDENCE, THERE
ARE NO STATISTICAL ANALYSES,
THERE IS NO CASE PRECEDENT
TO COMPEL THE COURT TO
REVERSE COURSE ON 150 YEARS.
>> WELL, WE DO HAVE TO REACT

SOMEHOW TO THE LEGISLATURE'S ENACTMENT OF THE LAW.
AND EITHER ACCEPT IT OR REJECT IT IF WE BELIEVE IT'S PROCEDURAL.
SO IT'S NOT LIKE WE ARE JUST, AS JUSTICE PARIENTE POINTED OUT EARLIER, THIS DIDN'T COME OUT OF THE BLUE, AT LEAST NOT NOW.
>> UNDERSTOOD.
>> ONE OF THE COMMENTERS, I DON'T KNOW IF IT WAS YOU OR SOMEONE ELSE, ARGUED THAT THE DEFENDANT GOING LAST WAS A VESTED RIGHT.
WAS THAT YOU OR?
>> THOSE, THOSE WORDS WERE WRITTEN BY ME TAKING LANGUAGE FROM HEF RN AND PRESTON.
>> I GUESS IRONICALLY IF IT'S A VESTED RIGHT IT IS A SUBSTANTIVE RIGHT AND THE LEGISLATURE COULD TAKE IT AWAY.
>> WELL, IF I MAY DISAGREE MOST RESPECTFULLY JUSTICE CANTERO.
THE CHANGES IN THE FLORIDA CONSTITUTION AND THE SEPERATION OF THE POWERS IN THIS STATE THAT OCCURRED IN 1957 WEREN'T REALLY BROUGHT INTO BEING THE MODERN DISTINCTION WE KNOW OF BETWEEN SUBSTANTIVE LAW AND PROCEDURAL RIGHTS REALLY WASN'T UNTIL 1969 AND STATE v. GARCIA AND JUSTICE ATKINS CONCURRING OPINION.
EVEN BEFORE THEN, IT WASN'T UNTIL 1963 IN THE WAKE OF GIDEON THAT WE HAD ONE CRIMINAL PROCEDURAL RULE, CRIMPRO RULE 1 WHICH BECAME 1.850 WHICH BECAME 3.8 ZBIMT.
>> THOSE WERE THE GOOD OLD DAYS.
>> WELL, EVEN BEFORE ME, BUTTIUM GETTING THERE AT THE BILLY JOEL CONCERT MONDAY HE BASICALLY SAID HI THIS IS BILLY'S DAD WE WILL ALL BE

OUT SHORTLY AND WE ARE ALL FEELING THAT WAY NOW, AT LEAST I AM.
BECAUSE CLARENCE EARL GIDEON COULDN'T GET RELIEF ON HABEAS IN AN APPELLATE COURT.
THEY WANTED HIM TO GO TO THE TRIAL COURT.
THE CASES FROM WHICH THAT LANGUAGE IS CITED, AND I AGREE WITH YOU, IT MISH MIXES TERMS INAPPROPRIATELY LIKE SOME COURTS, NOT THIS COURT, WILL MIX REASONABLE CAUSE INSTEAD OF TALKING ABOUT REASONABLE SUSPICION WHICH I CAN TELL YOU FROM TEACHING AT FIY COLLEGE OF LAW, WE TRY AND KEEP THAT DISTINCT, PROBABLE CAUSE AND REASONABLE SUSPICION.
THE CASES IN WHICH THAT LANGUAGE WAS CITED PREDATE JUSTICE ATKINS' OPINION AND THE DIVIDING LINE BETWEEN SUBSTANTIVE AND PROCEDURE AND AS CHAIR VOSE AGREES AND CONCEIVES, THIS IS PURELY A MATTER OF THE WAY IN WHICH THE PROCEDURE OF TRIALS SHOULD OPERATE.
NOW, WE DIDN'T WANT TO LEAVE THE COURT EMPTY HANDED.
THE PARTIES UPON WHICH WHOSE COMMENT I FILED.
WE DID WANT EXPECT THE COURT TO SIMPLY REENACT THE OLD RULE.
THAT'S WHY TO GET RID OF ANY DOUBT WHATSOEVER, ALTHOUGH AGAIN THE CHAIR CONCEDES THAT THIS IS A MINOR POINT, AND I WOULD SUBMIT TO YOU RESPECTFULLY IT'S EVEN LESS THAN MINOR BECAUSE THERE'S NO PRECEDENT ON TWE INCLUDE A COLLOQUY IN OUR PROPOSAL JUST SO THE BENCH IS SURE AND THE STATE IS SURE THAT THE DEFENDANT CLEARLY UNDERSTANDS WHAT PROCEDURAL CONSEQUENCES COME FROM AVAILING HIM OR HERSELF OF

THIS OPTION, AND IT HAS
ALWAYS BEEN IN FLORIDA.
AN OPTION.
NOT TO DISCOURAGE THE
PRESENTATION OF SOMETHING
POSITIVE.
BECAUSE CASES ARE DIFFERENT.
SOMETIMES THE STATE'S CASE
IS STRONGER.
SOMETIMES THE DEFENDANT HAS
TO PRESENT.
>> YOU AGREE THAT THE
FEDERAL SYSTEM AND 47 OTHER
STATES COMPLY WITH THE
COMMON LAW RULE, WHICH IS
THE STATE ALWAYS GOES LAST
BECAUSE THE STATE HAS THE
BURDEN OF PROMT.
>> YEAH.
>> AND, I MEAN, IT SEEMS TO
BE WORKING IN 47 OTHER
STATES.
I HAVEN'T SEEN ANY OTHER
EVIDENCE THAT IT DOESN'T
WORK IN THOSE STATES SO NOW
THAT THE LEGISLATURE HAS
ENACTED THIS LAW, WHY NOT
CONFORM TO THE 47 OTHER
STATES IN THE FEDERAL
SYSTEM?
>> NOT WANTING TO POUNCE
UPON THE THIRD RAIL HERE, I
DO NOT WANT TO ADVS THE
COURT WHETHER TO TAKE ON THE
LEGISLATURE AND COOPERATE
WITH THE LEGISLATURE AND
RULEMAKING.
>> LET'S SAY WE AGREE THAT
THIS THIS IS PURELY
PROCEDURAL, WE CAN DO
WHATEVER WE WANT REGARDLESS
OF WHAT THE LEGISLATURE DID.
THE LEGISLATURE HAS, AS IT
HAS A RIGHT TO DO, HAS
REPEALED OUR RULE SO NOW WE
ARE LEFT WITH NOTHING AND WE
HAVE TO -- WE'RE STARTING
FROM SCRATCH ESSENTIALLY.
>> YES, SIR.
>> SO EVEN IF WE ARE
STARTING FROM SCRATCH, WHY
NOT CONFORM TO THE 47 OTHER
STATES WHO HAVE THE COMMON
LAW RULE?

>> THREE POINTS IN RESPONSE TO THAT, JUSTICE CANTERO. NUMBER ONE, JUST BECAUSE IT MAY BE WORKING IN OTHER JURISDICTIONS SHOULDN'T BLIND US FROM THE FACT OF WHY FLORIDA HAD THIS PROCEDURE IN THE FIRST PLACE, WHAT MAKES FLORIDA UNIQUE, AND WHY IT'S WORKING HERE. TO SAY THAT IT'S WORKING IN OTHER PLACICIZE CERTAINLY NOT TO SAY THAT IT'S NOT WORKING IN FLORIDA.
>> [INAUDIBLE]
[INAUDIBLE]
[INAUDIBLE]
>> WELL, IN ANSWERING THAT QUESTION, I WOULD LIKE TO SPEAK ABOUT WITH ALL --
>>
[INAUDIBLE]
[INAUDIBLE]
>> YOU'VE HIT RIGHT ON THE POINT --
[LAUGHTER]
YES, WHAT YOU SAID, JUSTICE. WHAT HE SAID.
[LAUGHTER]
THE REAL ARGUMENT WHY WE'RE HERE, IT'S NOT BECAUSE THE STATE BEARS THE BURDEN OF PROOF.
IT IS NOT BECAUSE OF THIS PERCEIVED TUG-OF-WAR BETWEEN THE COURT AND THE LEGISLATURE OVER SUBSTANCE AND PROCEDURE, AND IT IS CERTAINLY NOT AS HAS BEEN CONCEDED ABOUT ALLEGED INEFFECTIVE REPRESENTATION. AND GAMESMAN SHIP.
IT'S HERE BECAUSE THE STATE WANTS THE LAST WORD.
THE ACCUSED HAS IT.
THE STATE WANTS T. NOW I DON'T BLAME THEM.
WE ALL WANT THE LAST WORD IN ARGUMENTS.
WE'RE LAWYERS.
FOR BETTER OR WORSE, WE ARGUE FOR A LIVING.
BUT I WANT TO BE CLEAR ABOUT THE WHAT THE LEGISLATURE DID

AND WHAT IT DIDN'T.
SO THAT IS OF RECORD HERE
THIS MORNING.
>> BUT EVEN WITH THE, THIS
WHOLE ARGUMENT ABOUT THE
STATE WANTING THE LAST WORD,
DOESN'T THE COURT REALLY
HAVE THE LAST WORD IN THESE
KINDS OF PROCEEDINGS BECAUSE
DON'T WE GET THE COURT AFTER
THE PARTIES HAVE DONE THEIR
ARGUMENT MAKING THE FINAL
INSTRUCTIONS TO THE JURY?
SO IT ISN'T REALLY THE STATE
HAVING THE LAST WORD, IS IT?
>> WELL, IN TERMS OF THE
LITERAL LAST WORD, YES, OF
COURSE, JUSTICE CONSISTENCE,
THE COURT INSTRUCTS THE JURY
AND THEY SPEAK LAST, BUT IN
TERMS OF THE TRIAL PHASE,
AND WHAT'S HAPPENING IN
TERMS OF PRESENTATION OF
ARGUMENTS, WHICH IS WHY THE
ARGUMENT THAT THE STATE'S
BURDEN OF PROOF IS ONE OF
THE THINGS IN FAVOR OF
CHANGING THE RULE IS REALLY
A MISNOMER BECAUSE THE STATE
WINS ITS CASES THROUGH
EVIDENCE, NOT ARGUMENT.
IN THE LEGISLATURE, AS FILED
IN THE PROSECUTING
ATTORNEY'S PLEADING, THE
VOTE WAS NOT UNANIMOUS ON
THE MERITS.
THAT WAS NOT THE VOTE.
AND I WANT THE COURT TO BE
CLEAR ABOUT THIS.
THE LEGISLATURE CONCEDED BY
REQUIRING A TWO-THIRDS VOTE
BACK IN APRIL AND MAY OF
LAST YEAR THAT THIS WAS A
PROCEDURAL RULE.
FIRST AND FOREMOST.
ON APRIL 25TH, 2006, THE
VOTE IN THE HOUSE WAS 85 YEA,
31 NAY, AND ON MAY 1st 2006,
THE VOTE IN THE SENATE WAS
25 YEA, 11 NAY.
THEY DID NOT HAVE THE VOTES
TO REPEAL THE RULE.
SO INSTEAD, THEIR UNANIMITY
WAS A COMPROMISE HANDING

THIS OFF TO YOU.
AND IF YOU DEEM IT
PROCEDURAL, THEN YOU CAN RUN
WITH IT.
TO CONFIRM THAT UNDER OUR
CONSTITUTION WE HAVE
SEPERATION OF POWERS AND
THIS COURT CONTROLS PRACTICE
AND PRELIM --
>> LET ME ASK YOU A QUESTION
F. THE STATE WINS AICATE BY
EVIDENCE AND NOT BY ITS
ARGUMENT, ISN'T THE OTHER
SIDE OF THAT THAT THE STATE
LOSES ITS CASE FOR ABSENCE
OF SNEFDS AND NOT BY
ARGUMENT?
>> JUSTICE BELL, I WOULD
HOPE THAT, YES, STATE'S
CASES ARE STRONG ENOUGH TO
RISE AND FALL WHEN WE HAVE
COMMUNITY PARTICIPATION AND
DETERMINATIONS OF GUILT AND
INNOCENCE SITTING AS JURORS.
THAT FOLKS FROM OUR
COMMUNITY EITHER FIND THE
EVIDENCE COMPELLING AND
CONVICT OR NOT COMPELLING
AND ACQUIT.
FLORIDA HAS NEVER BEEN AN
EASY STATE WHEN IT'S COMING
TO PUNISHMENT.
WE HAVE ALWAYS BEEN TOUGH
THROUGHOUT HISTORY, AND I AM
NOT SPEAKING SOLEY BECAUSE
WE ARE ONE OF THE STATES
THAT STILL IMPOSE SAID DEATH
AS A PENALTY.
>> LET ME ASK YOU THIS.
ARE YOU HERE ALSO TO
ADVOCATE FOR THIS PROPOSED
NEW RULE ABOUT TELLING THE
DEFENDANT PRIOR TO THE
DEFENDANT RESTING THAT YOU
HAVE THE RIGHT TO PRESENT
WITNESSES AND, AND, AS I SEE
IT, THERE IS A SECOND PART
TO RULE 3.250 ABOUT TELLING
THE DEFENSE BEFORE THEY
REST.
>> YES, ONE OF OUR PROPOSALS,
IT'S IN THE COMMENT FILED.
IT WASN'T IN THE MINORITY
REPORT THAT I DRAFTED AS A

RULES COMMITTEE VICE CHAIR.
I'M NOT HERE IN THAT
CAPACITY TODAY.
BUT WE INCLUDED A PROPOSAL
FOR THE COURT NOT TO LEAVE
THE COURT EMPTY HANDED AND
JUST SAY --
>> WELL, EXPLAIN TO ME THE
PURPOSE OF THIS PART OF THE
RULE THAT SAYS IN THIS EVENT,
BEFORE THE DEFENSE HAS
RESTED ITS CASE, THE COURT
SHAT ADVISED THE ACCUSED
OUTSIDE THE PRESENCE THE
RIGHT TO CALL WITNESSES,
ET CETERA,.
>> YES, JUSTICE QUINCE.
THIS BEGAN AS CHAIR VOSE
NOTED IN THE COURT IT WAS
STEERING COMMITTEE WITH A
PROPOSAL FOR JUDGES BECAUSE
OF A PERCEPTION, I RESPAEKTFULLY
THAT THERE IS INEFFECTIVE
GAMESMANSHIP JUST TO GET THE
LAST WORD.
EVEN THOUGH THERE IS NO
EVIDENCE TO SUPPORT IT AS
YOU NOTEDDED.
TO ASSUAGE ANY CONCERN A
TRIAL JUDGE MIGHT HAVE, AND
THEN WHEN THE STATE CAME ON
BOARD ON TOP OF THE STEERING
COMMITTEE TO -- AND BY THE
WAY, I SHOULD MENTION
JUSTICE PARIENTE, THOSE
VOTES ARE BASICALLY ALONG
PARTY LINES IN THE RULES
COMMITTEE.
PROSECUTORS AND JUDGES OFTEN
TIMES AND ON THIS ISSUE
VOTED TOGETHER AND IT'S
BASED ON WHO'S IN ATTENDANCE
AT THE MEETING AND DEFENSE
ATTORNEYS ON THIS MEETING
VOTED UNIFORMLY.
IT WAS A PARTY VOTE ON THIS
ISSUE.
JUST TO ANSWER YOUR
QUESTION.
>> YOU WERE HEADING TOWARDS
THE REAL HEART OF OUR
ARGUMENT IN RESPONSE TO
JUSTICE CANTERO.
YOU TOLD HIM THERE WERE

THREE REASONS, ESSENTIALLY
REASONSENS, AND YOU WERE
GETTING READY TO ELABORATE
ON THEM BUT YOU WEREN'T
GIVEN THE CHANCE.
WOULD YOU ELABORATE ON THEM?
YOU SAID WHY WE HAVE TO KEEP
IT AS IT IS.
THESE ARE THE THREE REASONS
AND THEN YOU DIDN'T GET TO
FINISH.
>> THE PROSCUSHION MOST OF
THE TIME ENJOYATHIZE
STRONGER CASE.
AS IT SHOULD IN A SOCIETY
THAT PRIDES ITSELF ON LAW
ENFORCEMENT.
THE PROSECUTION HAS THE
RESOURCES.
THE PROSECUTION USUALLY HAS
MORE WITNESSES.
NORMALLY THEY'RE LAW
ENFORCEMENT WITNESSES AND
MORE CREDIBLE.
SO IN A STATE AS I MENTIONED
BEFORE, THAT'S NEVER BEEN
EASY ON CRIMINAL DEFENDANTS.
BEFORE WE HAD PEN TENCHRIES
THERE WAS A TIME WE CONTRACTED
PRISONERS INTO INDENTURED
SERVITUDE.
BEFORE WE GIVE YOU 99 YEARS,
WE'RE GOING TO LET YOU HAVE
THE LAST SAY.
WE ARE GOING TO LET YOU OPT
TO HAVE THE LAST SAY IN A
CASE WHERE YOU HAVE NOTHING
BETTER TO PRESENT THAN YOUR
OWN WORD AND MAYBE TRY AND
PROVE A NEGATIVE.
WE UNDERSTAND HOW IMPOSSIBLE
THAT S. SO BEFORE WE THROW
THE BOOK AT YOU, FOR THE
LAST 150 YEARS, THIS COURT
AND THIS STATE HAVE
SUPPORTED THIS RULE.
THAT'S WHY I CITED DICKERSON,
BOTH IN MY MINORITY REPORT
AND IN THE COMMENT.
I THOUGHT IT WAS
PARTICULARLY APT.
THE MIRANDA WARNINGS,
PROPHYLACTIC RULES, BECAME
WOVEN INTO THE FABRIC OF HOW

CRIMMINAL JUSTICE IS DONE IN THIS COUNTRY.
EVERY FLORIDA TRIAL LAWYER HAS BEEN SCHOOLED IN HOW OUR CLOSING ARGUMENT RULE WORKS.
AND IN DICKERSON, THE FEAR THAT THE WALLS WOULD COME TUMBLING DOWN OR WE SHOULD CONFORM NEVER HAPPENED BOSS MOST OF THE SUSPECTS STILL CONFESS AND LAW ENFORCEMENT ABIDES BY THE BILL OF RIGHTS AND STAVES OFF THE COURT'S APPLICATION OF THE EXCLUSIONARY RULE.
IF YOU CHANGE THIS RULE, IN OUR HUMBLE OPINION, JUSTICE ANSTEAD, CHIEF JUSTICE, SEVERAL THINGS ARE GOING TO HAPPEN.
NUMBER ONE, TRIALS WILL BE LONGER AND NEEDLESSLY SO.
TWO, APPELLATE COURTS WILL BE INUNDATED WITH QUESTIONS.
WITH PIPELINE QUESTIONS.
>> CAN YOU GO BACK TO NUMBER ONE.
WHY WOULD TRIALS BE LONGER AND NIDALIZELY SO.
>> BECAUSE JUSTICE CANTERO, BECAUSE NOW THERE IS NO REASON, NO TACTICAL REASON WHICH IS THE PURPOSE OF THE RULE AND WE SHOULDN'T BE ASHAMED TO ADMIT ESPECIALLY BOSS FLORIDA'S CRIMINAL JUSTICE ENVIRONMENT IS BM KG INCREASINGLY PUNITIVE.
TRIALS HAVE BECOME LONGER BECAUSE THERE IS NO TACTICAL ADVANTAGE NOT TO CALL A WITNESS ANYMORE AND THE CLIENTS MAY WANT THOSE WITNESSES CALLED.
THAT'S WHY CONTRARY TO THE POSITION.
>> WOULDN'T IT BE TO THE BENEFIT OF THE WITNESS TO CALL ALL THE WITNESSES TO TRIAL?
>> WITH RESPECT, MORE ORATORY OVER GOOD EVIDENCE.
IF YOU HAVE SOMETHING GOOD I PRESENT IT BUT IF YOU DON'T

AND YOU ARE PRESENTING IT
AND THE JURORS UNDERSTAND
YOU ARE WAETING THE COURT'S
TIME.
>> WOULDN'T THE DEFENSE
COUNSEL COUNSEL NOT TO
PRESENT THE EVIDENCE.
>> THE WITNESS MAKES THE
CALL AND THAT'S WHY
INEFFECTIVE DEFENSE CLAIMS
WILL RISE NOT FALL BECAUSE
THERE IS NO TACTICAL
ADVANTAGE NOT TO CALL
WITNESSES.
>>
[INAUDIBLE]
[INAUDIBLE]
>> THERE IS NO STUDY AS TO
THAT, JUSTICE PARIENTE, BUT
AS I CITED IN MY REPORT, AS
I SEE TEN SECONDS ON THE
CLOCK.
THIS SYSTEM IS BROKEN WHY
SHOULD WE BE LIKE 46 OTHER.
WHY CAN'T FLORIDA BE BOLD
AND BRAVE AND SOULFUL AND
OPEN HEARTED AND LET THEM
HAVE THE LAST SHOT.
CONVICTION RATES ARE UP, OUR
PRISONS AND JAILS ARE
TEEMING WITH INMATES AND
SUBSTANTIVE LAW IS BECOMING
INCREASINGLY MORE STRICT SO
WHAT'S BROKEN.
JUSTICE KOGAN WOULD WANT ME
TO SAY, IF IT AIN'T BROKE,
DON'T FIX IT.
THAT WOULD BE THE LEAD
COMMENT THAT I SHOULD SIT
DOWN.
I'M SPEAKING ON BEHALF OF
THE HUNDREDS OF THOUSANDS OF
PEOPLE ON INDICTMENT UNDER
THIS STATE AND THE MILLIONS
WHO ARE GOING TO FOLLOW LONG
AFTER WE'RE GONE TO BE
PROSECUTING FED.
-- PROSECUTED.
FLORIDA IS UNIQUE.
AGREED.
BUT I DON'T REFER TO IT AS
AN ANOMALY.
THIS PROCEDURAL GRACE WAS IN
PLACE FOR A REASON.

AND I AM LOATHE TO ALLOW IT
TO BE WIPED AWAY BECAUSE
MERELY WE'RE DIFFERENT.
A RULE FOR OVER 150 YEARS
HAS DEMONSTRATED FLORIDA'S
RECOGNITION OF THIS
PROCEDURAL PRECIOUS OPTION.
WHICH YOU HAVE THE SOUL
POWER TO PROTECT.
AND IN ALL EARNEST, THAT'S
WHAT I ASK THAT YOU DO HERE
THIS MORNING.
>> DID YOU HAVE THE
OPPORTUNITY TO FILL IN THE
SUBSTANCE OF YOUR THREE
POINTS?
>> I BELIEVE IN --
>> YOU HAVE?
>> THE FRAMING OF ALL THE
QUESTIONS, MR. CHIEF JUSTICE,
YES I HAVE AND I THANK YOU
FOR ASKING.
THANK YOU,, IT HAS BEEN MY
PRIVILEGE.
>> MR. JACOBS?
>> GOOD MORNING, AND MAY IT
PLEASE THE COURT THAT WE
HAVE THE FELLOW WITH THE
HAIR OVER HERE AGAINST THE
HAIRLESS BUT --
[LAUGHTER]
HE'S CERTAINLY.
>> [INAUDIBLE]
[LAUGHTER]
>> WELL, BILLY JOEL, HE
TAKES, HE AND BRUCE WILLS
SPEND A LOT OF TIME SHAVING
THEIR HEADS.
WE DON'T HAVE TO.
>> [INAUDIBLE]
>> I THINK IT'S IMPORTANT TO
KNOW HOW WE GOT HERE.
THAT'S ONE OF THE ISSUES
THAT WE GOT HERE BECAUSE OF
1803 OPINION IN SOUTH
CAROLINA WHERE THE SOLICITOR
SAID HE DIDN'T CARE.
THEN IN 1853, WE ADOPTED
THAT IN FLORIDA AND IT'S
BEEN HERE EVER SINCE.
NOW IF IT'S NOT BROKE, DON'T
FIX IT IS A TESTIMONY IN THE
LEGISLATURE AND ANOTHER
REASON WHY WE GOT HERE IS

BECAUSE TWO YEARS AGO THE CRIMINAL COURT STEERING COMMITTEE ASKED THAT THIS BE ADOPTED.
THEN JANUARY OF 06, THE CRIMINAL RULES COMMITTEE VOTED FOR THAT AS 17-7.
THE HOUSE OF REPRESENTATIVES VOTED FOR IT 115 TO REPEAL THE RULE AND SUGGEST TO YOU A DEFERENCE TO THE SUPREME COURT.
>> YOU ARE TELLING THE COURT PROCEDURAL WHAT'S HAPPENED HERE.
>> YES, SIR.
>> STILL NOT REALLY GET AGRESPONSE TO IF IT AIN'T BROKE, DON'T FIX IT, THAT'S IS, IF IT'S CLEAR AT SOME POINT.
[INAUDIBLE]
[INAUDIBLE]
ON LIMITED RESOURCES VERSUS THE INDIVIDUAL THAT STANDS AT THE DOCK YOU KNOW WITH LIFE AND LIBERTY AND RISK AND FLORIDA'S ESSENTIALLY GONE A DIFFERENT WAY IN TERMS OF EXAMINING THAT POSTURE AND SAID, WELL, YOU KNOW, WE'RE GOING TO GIVE THIS LITTLE PROCEDURAL BENEFIT TO THAT PERSON IN THE DOCK FACING THE AWESOME POWER OF THE STATE.
>> WELL, --
>> WHAT'S WRONG WITH THAT.
>> I THINK DIAZ v. STATE IN 1999 WHEN THE COURT ASKED YOU TO EXAMINE THIS RULE, THEY WERE CONCERNED ABOUT THE 3.850EST, AND WE FIND AS PROSECUTORS NOW WE HAVE A NEW COTTAGE INDUSTRY WITH 3.850s.
>> TELL ME WHAT STATISTICAL EVIDENCE HAS BEEN SUBMITTED THAT DEMONSTRATES TO US THAT THIS RULE HAS BEEN ABUSED AND THEREFORE, YOU'VE GOT LAWYERS OUT THERE COMMITTING MALPRACTICE.
WHAT -- HAVE YOU SUBMIT

ADLIST OF CASES WHERE THIS HAS BEEN DEMONSTRATED TO HAVE BEEN ABUSED?
>> WELL, I CAN ONLY TELL YOU FROM -- AND AGAIN, I HAVE BEEN INVOLVED IN THIS AS YOU KNOW IN THE LEGISLATURER FOR SEVERAL YEARS AND THE TESTIMONY BEFORE COMMITTEES HAS BEEN THAT MANY OF THE 3.850s, THEY'RE ALMOST AUTOMATIC WHERE THE FELLOW, THE LAWYER, HE OR SHE DECIDED NOT TO PUT ON THESE PARTICULAR WITNESSES.
MAMA SAYS, MY SON COULDN'T HAVE DONE THE B&E BECAUSE I -- HE WAS AT HOME WITH ME.
AND THE LAWYER DECIDES HE'S MAYBE NOT GOOD AN WITNESS AND HE HAS A CHANCE FOR A CLOSING ARGUMENT SO HE DOESN'T PUT ON THOSE WITNESSES.
>> WHAT YOU'RE TALKING ABOUT IS SORT OF ANECDOTAL.
>> WELL IT'S NOT REALLY SOMETHING THAT WE CAN GET OUR ARMS AROUND, SO YOUR, YOUR MAIN POSITION THEN IS, IS THAT THE RULE IS BEING ABUSED THAT CRIMINAL DEFENSE LAWYERS IN THE STATE OF FLORIDA ARE NOT BEING ETHICAL IN TERMS THAT THEIR DEFENSE, THAT IS THAT THEY ARE NOT PRESENTING EVIDENCE ON BEHALF OF THEIR CLIENTS. JUST SO THEY CAN GET THIS CLOSING ARGUMENT.
IS THAT, IS THAT BASICALLY THE, THE REASON FOR THE CHANGE IN YOUR VIEW?
>> I THINK YOUR RESTATEMENT OF THAT WAS LONGER THAN MY RESPONSE, BUT LET ME TELL YOU, THAT'S NOT MY VIEW.
MY VIEW IS THAT IT IS A MATTER OF FAIRNESS.
WE HAVE IN FLORIDA THE MOST LIBERAL AND OPEN DISCOVERY SYSTEM THERE IS.
FOR US TO SAY THAT THE DEFENSE IS NOT NOT ALMOST

EQUAL TO THE STATE IF NOT
EQUAL TO THE STATE AS FAR AS
RESOURCES ARE CONCERNED, NOW
LOOK AT WHAT PUBLIC
DEFENDERS BUDGET ARE WITH
$44 MILLION CONFLICT COUNSEL
BUDGET AND YOU COMPARE THAT
AGAINST THE STATE ATTORNEY'S
OFFICE I AM GOING TO TELL
YOU THAT THE PLAYER FIELD
HAS GOTTEN LEVEL.
I WOULD SUBMIT TO YOU THAT
IT'S A MATTER OF FAIRNESS.
ONE OF THE WITNESSES BEFORE
THE HOUSE COMMITTEE, AND
THERE WERE MANY MEETINGS ON
THIS.
THIS IS NOT SOMETHING THAT
SOMEONE JUST THOUGHT OF.
SHE WAS A VICTIM OF A RAPE.
AND, AND THE DEFENSE LAWYER
DECIDED HE WASN'T GOING TO
PUT ANYBODY ON, AND HE USED
CROSS-EXAMINATION,
CROSSEXAMINATION TO GET OUT,
ELICIT EVIDENCE BEFORE THE
JURY AS BEST HE COULD, AND
THEN HE, DECRIED AND RAN HER
DOWN THE ROAD AS FAR AS HER
REPUTATION'S CONCERNED IN
THE CLOSING ARGUMENT, AND
THAT WENT UNANSWERED.
AND IT WAS A TRAUMATIC THING
FOR HER.
AND SHE TESTIFIED TO THAT
BEFORE THE LEGISLATURE SO
THERE ARE A LOT OF THINGS
THAT GO ON IN THE
UTILIZATION OF THIS.
BUT, BUT IF IT'S GOOD ENOUGH
FOR 47 STATES, AND IT'S AN
1803, 1853 RULE, AND WE HAVE
A GREAT LIBERAL AND LEVEL
DISCOVERY IN FLORIDA, AND WE
DO SPEND A GREAT MANY
DOLLARS ON THE DEFENSE, WHAT
IS WRONG WITH US HAVING THE
SAME THAT OTHER FOLKS HAVE?
>> MR. JACOBS, YOU MENTIONED
TSEEMED TO BE A PRETTY BIG
PART OF IT, THE 3850s.
>> YES.
>> IS THAT THE VIEW OF THE
PROPONENTS OF THIS THAT THIS

REALLY IS CREATING A, A
LOGJAM OR WE ARE CREATING
ADDITIONAL 3850 LITIGATION?
IS THAT A REAL STRONG POINT
OR IS THAT JUST, JUST AN
ASIDE?
>> THAT'S, THAT'S ONE OF THE
POINTS THAT HAS BEEN MADE,
YES, SIR.
>> SIGNIFICANT POINT?
>> IN OTHER WORDS, IF YOU
DON'T PUT ON THE WITNESSES
--
>> I UNDERSTAND.
I'M TRYING TO GET TO THE
POINT, IS THAT A SIGNIFICANT
REASON FOR DOING THIS?
>> IF THAT'S -- WE BELIEVE
IT'S THE REASON THAT SHOULD
BE CONSIDERED, YES, SIR.
>> I UNDERSTAND CONSIDERED.
WELL THEN MY QUESTION WOULD
BE SHOULD WE BEFORE WE START
CHANGING SOMETHING THAT'S
BEEN IN EXISTING FOR THIS
PERIOD OF TIME, CHAKTUALLY
STUDY THE 3850s AND SEE, GET
ACTUAL DATA RATHER THAN IF
THIS IS A SIGNIFICANT POINT
AND THIS IS REALLY ONE OF
THE REASONS DRIVING IT, THEN
WE'LL KNOW FOR SURE.
WOULD THAT NOT BE A BERT
APPROACH THAN TO, WELL,
LET'S JUST ASSUME?
>> A LOT OF STUDYING HAVE
BEEN GOING ON.
IN DIAZ v. STATE I THOUGHT
IT WAS A VERY THOUGHTFUL
OPINION, 1999, IN THE
STEERING COMMITTEE EXAMINED
THIS WHOLE PROCESS IN THE
RULE -- THROUGH A PROCESS
AND THEY DECIDED THAT IT
OUGHT TO BE CHANGED.
THEN THE, YOUR CRIMINAL
RULES COMMITTEE IN JANUARY
VOTED IN FAVOR OF THE
STEERING COMMITTEE OF 06 AND
THEN THE LEFRN LEGISLATURE
HAD MANY MEETINGS OVER TWO
YEARS TTOOK TWO YEARS FOR
THIS TO BE PASSED AND THERE
WERE HEARINGS HELD BOTH THE

HOUSE AND SENATE A LOT OF DELIBERATION WENT ON ABOUT IT.
>> I UNDERSTAND THAT.
BUT IT STILL APPEARS THAT WE DON'T HAVE -- WE DON'T REALLY HAVE DATA THAT SUPPORTS T. WE HAVE GOT ANECDOTAL AND IT APPEARS TO US THAT SUCH AND SUCH BUT AGAIN WE ARE COMING BACK INTO STATEMENTS OW APPEARANCE AS OPPOSED TO HAS SOMEBODY REALLY, REALLY LOOKED AT THE NUMBERS ON THIS?
AND IF THAT'S THE SIGNIFICANT REASON FOR DOING THIS, IS IT, IS IT A TRUE FACTUAL BASIS?
>> WELL, YOU, YOU KNOW YOU CAN ALWAYS STUDY ANYTHING, AND THAT'S CERTAINLY YOUR PREROGATIVE AND I THOUGHT THE LEGISLATURE WAS DEFERENTIAL TO THE PREROGATIVES IN THE WAY THE BILL FINALLY PASSED 115-0 IN THE HOUSE AND 34-NOTHING IN THE SENATE SO IT'S UP TO YOU TO STUDY THAT.
WE ASK THAT YOU NOT DO THAT.
WE THINK ENOUGH STUDIES HAVE BEEN DONE.
THE ONLY GROUP REGARDING LAWYERS HAVE ALREADY AGAINST IT WERE THE BOARD OF GOVERNORS AND THEY HAD NO PROCESS.
>> BUT I AM NOT STILL HEARING THAT YES, WE KNOW WHAT THE NUMBERS ARE.
YOU KNOW, YOU HAVE SAID ALL THIS AND YOU HAVE SAID THERE HAVE BEEN HEARINGS AND ALL THIS BUT I AM STILL NOT GETTING AN ANSWER TO THE FUNDAMENTAL QUESTION.
>> I DON'T THINK THAT THAT IS THERE.
>> OKAY.
FAIR ANSWER THEN.
THAT'S --
>> I'VE HEARD A LOT OF

TESTIMONY OVER TWO YEARS
ABOUT IT, BUT I HAVE NOT
SEEN ANY NUMBERS.
THAT HAS NOT BEEN DERIVED.
BUT I WOULD SUBMIT TO YOU,
SINCE I HAVE GOT A RED LIGHT
COMING.
>> WELL OUR QUESTIONVISE USE
TDS UP.
GO AHEAD AND QUESTION.
>> I WOULD JUST SUBMIT TO
YOU THAT IT'S BEEN STUDIED.
IN IT'S CERTAINLY AN 1803,
1853 RULE.
WE ARE DIFFERENT FROM, WE
ARE AN EXTRAORDINARY
MINORITY IN THE UNITED
STATES OF AMERICA, AND IN
ALL THESE PROCESSES AND YOU
HAVE HAD IT STUDIED BY YOUR
STEERING COMMITTEE.
THEY RECOMMENDED IT.
AND THOSE WERE PRIMARILY
JUDGES.
YOU HAVE HAD IT STUDIED BY
THE CRIMINAL RULES COMMITTEE
TWICE OVER TWO YEARS.
YOU HAVE HAD IT STUDIED BY
THE HOUSE OF REPRESENTIVES
TTHE SENATE AND ALSO HAD THE
STUDIED AGAIN BY THE
CRIMINAL RULES COMMITTEE AND
THIS HAS ALL BEEN A PROCESS.
THIS DID NOT JUST HAPPEN.
IT'S BEEN A PROCESS.
THE ONLY GROUP THAT DIDN'T
HAVE A PROCESS WERE THE
BOARD OF GOVERNORS THAT
VOTED AGAINST IT.
SO I WOULD ASK AND URGE YOU
TO EITHER ADOPT THE RULE AND
NOT ADOPT THE RULE AND LET
THE COMMON LAW PREVAIL AND I
THANK YOU VERY MUCH FOR YOUR
KIND ATTENTION.
>> THANK YOU.
WE'LL TAKE THE RULE CHANGE
UNDER ADVISEMENT.