

>> PLEASE 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 UNITED STATES,
THIS GREAT STATE OF FLORIDA, AND
THIS HONORABLE COURT.

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> GOOD MORNING, AND WELCOME TO
THIS SESSION OF THE ORAL
ARGUMENTS AT THE FLORIDA SUPREME
COURT.

WE HAVE THE FIRST CASE IS
AMENDMENT TO THE FLORIDA RULES
OF JUDICIAL PROCEDURE.

I SEE THAT WE HAVE A NUMBER OF
PEOPLE ARGUING ON THIS CASE,
THIS MORNING.

AND, SO I WOULD REALLY JUST ASK
THAT EACH OF YOU BE MINDFUL OF
THE TIME THAT YOU HAVE INDICATED
THAT YOU WILL TAKE IN YOUR
PRESENTATIONS.

MS. KREEGER YOU ARE THE FIRST UP
AND YOU HAVE FIVE MINUTES.

>> THANK YOU, MADAME CHIEF
JUSTICE.

JUSTICES.

AND I JUST WANT TO MAKE SURE
THAT WHAT WE'RE GOING TO DO IN
THE FIRST ORAL ARGUMENT IS

DISCUSS EVERYTHING BUT THE WHOLE SEALING PROPOSAL WHICH IS THE SUBJECT OF THE SECOND ORAL ARGUMENT.

>> THE CRIMINAL PIECE.

>> CRIMINAL -- OKAY.

YES, MA'AM.

>> OKAY.

>> OKAY.

AND, MAY I ASK CHIEF JUSTICE IF I MIGHT DO SOMETHING A LITTLE BIT DIFFERENT AND ASK JOHN KANEY TO JOIN ME AT THE PODIUM, SO THAT, TOGETHER, WE CAN RESPOND TO ANY QUESTIONS THAT YOU HAVE? JOHN KANEY LED THE WORK GROUP OF THE ACCESS COMMITTEE THAT WORKED SO HARD ON FORMULATING THE PROPOSED RULES.

>> OKAY.

SO -- 15 MINUTES TOGETHER.

>> YES, MA'AM.

>> IS THAT WHAT YOU ARE ASKING US.

>> IF THAT IS ALL RIGHT WITH YOU.

>> WE'LL SEE HOW THAT WORKS.

>> OKAY.

OKAY.

THANK YOU.

ALL RIGHT, AND I WILL DIRECT MY COMMENTS GENERALLY TO A BRIEF SNAP HOT OF THE HISTORY OF COMING BEFORE YOU TODAY, WITH THESE PROPOSED AMENDMENTS, AND THEN, JOHN WILL ADDRESS VERY

SPECIFICALLY SOME OF THE ASPECT OF THE LANGUAGE THAT WAS USED AND WHY.

>> I THINK WE ARE VERY FAMILIAR WITH WHY YOU ARE HERE AND I THINK YOU OUGHT TO GET RIGHT TO THE MEAT OF WHETHER YOU KNOW, THESE -- SOME OF THE COMMENTS IN THE FINITE SET OF EXEMPTIONS, WHAT YOUR ACCESS COMMITTEE HAS GIVEN PROPOSALS, THE JUDICIAL ADMINISTRATION HAS GIVEN TO PROPOSALS, YOU RESPONDED AND WANTED TO HAVE SPECIFIC COMMENTS ON THE ACTUAL SUBSTANCE OF THE RULES.

>> YES, MA'AM.

>> OKAY.

WELL, WE WERE DIRECTED BY THE ADMINISTRATIVE ORDER AS YOU ALL VERY WELL KNOW TO PROPOSE A FINITE SET OF EXEMPTIONS THAT ARE APPROPRIATE IN THE COURT'S CONTEXT.

SO THAT THE RULE, 2.420, WOULD BE ADMINISTRATIVELY FEASIBLE TO IMPLEMENT.

AND, SO, WE SET ABOUT THE TASK OF EXAMINING ALL 1006 STATUTORY EXEMPTIONS THAT ARE SCATTERED THROUGHOUT THE FLORIDA STATUTES, ONE BY ONE, TO IDENTIFY THOSE THAT WOULD BE APPROPRIATE IN A COURT CONTEXT AND WOULD BE IN LAY LANGUAGE, SUSCEPTIBLE, OF EASY IDENTIFICATION BY A COUNTER

CLERK IN A PAPER WORLD.

SO, THE 19 THAT HAVE EMERGED THAT ARE ON THIS TYPE ONE LIST ARE THOSE WHICH THE COMMITTEE AND BY THE WAY, IN DOING THIS, WE BROUGHT IN ALL OF THE STAKEHOLDERS THAT HAVE AN INTEREST INCLUDING CLERK REPRESENTATIVES, WHO CAME AND ADDRESSED THE COMMITTEE AND THE CONSENSUS WAS THAT THE 19 THAT YOU HAVE IS A WORKABLE LIST.

THEY CAN IDENTIFY THIS INFORMATION AS IT IS COMING IN, OR THESE DOCUMENTS AS IT IS COMING IN.

AND, SOME OF THEM FOR EXAMPLE, THE SOCIAL SECURITY NUMBERS AND THE ACCOUNT NUMBERS ARE SUSCEPTIBLE TO MECHANICAL REDACTION SO THAT WHEN WE DO MOVE TO DIGITAL RECORDKEEPING AND E-FILING, THAT THIS INFORMATION, THOSE KINDS OF INFORMATION CAN BE REDACTED, THE DOCUMENTS THAT ARE LISTED IN NUMBER ONE WILL COME IN SEALED, IF YOU WILL --

>> YOUR INTENT IS THAT THE FILER WILL FILE A FORM TO IDENTIFY FOR THE CLERK THAT THIS IS ONE OF THESE 19 --

>> THE FILER IS SUPPOSED TO IDENTIFY, BUT ON THE 19TH, THE CLERK AT THE SAME TIME HAS THE RESPONSIBILITY OF IDENTIFYING

THOSE 19.

>> BECAUSE I'M ASKING, WHO IS
SUPPOSED TO DEVELOP THE FORM?

I'M THINKING PRACTICALLY
SPEAKING, THE FORM THAT IS --

>> YOU KNOW --

>> WILL BE HELPFUL.

>> WHO DEVELOPS THE FORM, THE
COMMITTEE JUST DIDN'T GET TO A
CONSENSUS ON THAT, FRANKLY, AT
THE VERY BEGINNING WE HAD
PRESENTATIONS FROM THE CLERK,
WITH REGARD TO A FORM TO BE
ATTACHED TO EVERY FILING OR
INCLUDED IN EVERY FILING, AND, I
THINK WE KIND OF GOT BOGGED DOWN
IN THE DETAIL OF THAT NIGHT
SEEMS LIKE A GOOD IDEA BECAUSE
IT MAKES IT SIMPLER FOR THE
CLERK TO HAVE, HERE IS NOW
NUMBER 4, NUMBER 5, WHATEVER IT
IS AND I DO HAVE A QUESTION
ABOUT ONE AND MAYBE IT WILL BE
FOR MR. KANEY.

THE MEDIA TOOK ISSUE AND AGREED
WITH THE OVERWHELMING NUMBER OF
YOUR FINITE SET OF EXCEPTIONS
BUT TOOK ISSUE WITH FOUR OF
THEM.

AND THE ONE THAT I WAS
SPECIFICALLY WANTING TO ASK
ABOUT, IS THE STD RECORD, WHICH
IS SUB SECTION 5.

YOU SEEM TO SAY THAT THOSE ARE
ONLY ENTITLED TO THIS, YOU KNOW,
AUTOMATIC EXEMPTION IF THEY ARE

PROVIDED BY THE DEPARTMENT OF HEALTH.

OR THE AGENT.

AND THAT -- IS THAT WHAT THE --
WHAT THE ACCESS COMMITTEE
INTENDS, OR IS IT IF THE STD
RECORDS, WHOEVER PROVIDES IT,
GETS THE AUTOMATIC CAUGHT.

>> I BELIEVE THAT WE WERE FILING
-- WE WERE FOLLOWING THE
LANGUAGE OF THE STATUTE THAT
CREATED THE EXEMPTION.

>> WELL, THE STATUTE SAYS IT IS
PROVIDED BY THE DEPARTMENT OF
HEALTH.

>> RIGHT.

RIGHT.

>> SO IF THAT IS NOT IN THERE,
WOULDN'T THAT BE A WAY TO SOLVE
IT, BY PUTTING IT IN, ABOUT WHO
IS PROVIDING IT.

>> WE HAVE TO TRACK THE LANGUAGE
OF THE -- OF THE STATUTE,
BECAUSE IN EFFECT, THE STATUTORY
CONFIDENTIALITY HAS BEEN FROZEN
IN TIME.

BY THE 1992 CONSTITUTIONAL
AMENDMENTS, AND SO BY RULE, WE
CAN'T BROADEN A CLASS OF
INFORMATION OR DOCUMENTS THAT
SHOULD BE SEALED.

THAT CAN ONLY BE DONE BY THE
LEGISLATURE, BY A 2/3 VOTE.

>> THAT --

>> THE STATUTES -- I'M SORRY.

>> I NOTICE YOU HAVE A REFERENCE

TO THE STATUTE AND YOU ARE INTO
MR. KANEY'S TIME AND I'M NOT
SURE WHAT YOU GUYS WILL DO HERE
BUT THE REFERENCE TO THE
STATUTE, IS THAT YOUR WAY OF
SAYING ONLY AS IT PERTAINS TO
THE STATUTE, OR BECAUSE, JUSTICE
PARIENTE IS ASKING YOU, REALLY,
SHOULD IT SAY ONLY DOCUMENTS
THAT ARE RECEIVED FROM THAT
AGENCY.

>> CAN I ASK MR. KANEY TO
RESPOND TO THAT, BECAUSE YOU
WORKED SO HARD ON THAT, BUT IT
NEEDS TO BE AS IT WAS
CONSTRUCTED BY THE STATUTE,
RIGHT, JOHN?

>> [INAUDIBLE] YES.

THE WAY WE HAVE PHRASED THE
RULE, IT REFERS TO WHAT IS
EXEMPT UNDER THE STATUTES THE
STATUTE SAYS IN THE HANDS OF.

[INAUDIBLE] I WOULD THINK THAT
IF THAT RECORD IS COMING IN FROM
SOME OTHER SOURCE, IT NEED TO BE
A MOTION.

>> TO SATISFY THE MEDIA THERE IS
NO PROBLEM WITH US ADDING THAT
ADDITIONAL LANGUAGE SO THAT THE
CLERK DOESN'T HAVE TO GO LOOK AT
THE STATUTE.

IT IS IN THERE, SO THAT IS --
THAT IS -- ANSWERS THAT
QUESTION.

THERE IS NO PROVISION IN THESE
RULES RIGHT NOW AND I MAY BE --

MAY BE AN OVERSIGHT FOR NOTICE TO THIRD PARTIES WHO MIGHT BE AFFECTED BY THE RECORDS.

DID YOU REALIZE THAT, THAT THAT IS -- WAS THAT AN OVERSIGHT, JUDGE KREEGER, YOU ARE SHAKING YOUR HEAD.

>> IT'S BEEN A SUBJECT OF DISCUSSION AND PARTICULARLY AS WE WERE PREPARING FOR THIS ORAL ARGUMENT.

THE PRACTICALITY OF THAT HAS I THINK CONFOUNDED US.

AGAIN THIS IS ONE OF THESE AREAS WHERE, ESPECIALLY WHEN IT COMES TO DEALING WITH SELF-REPRESENTED LITIGANTS, AND...

>> SUB SECTION 4 THEN OF THIS -- I THOUGHT SUBSECTION 4 WAS THE ANSWER TO THAT BECAUSE IT SAYS THAT YOU ARE SUPPOSED TO GIVE NOTICE TO A NONPARTY OF THE -- >> OF THE MOTION.

>> CONFIDENTIAL INFORMATION. [INAUDIBLE].

>> YOU HAVE TO HAVE A SUGGESTION THAT THIS BE PUT IN THERE, SHALL GIVE NOTICE TO A THIRD-PARTY, NONPARTY OF THE FILING.

>> I DON'T HAVE A PROBLEM --

>> LET ME TELL YOU, WHAT I'M THINKING OF DOING, WITH MY -- THE COURT'S APPROVAL AND I HAVE BEEN LIAISON FOR THIS COMMITTEE IS THERE IS A NUMBER OF GLITCHES, SMALL AND BIG AND I

WAS THINKING IF WE, AFTER THIS,
AGREED WITH MOST BUT HAD
SUGGESTIONS, THAT, RATHER THAN
REPUBLICAN THIS, WE COULD SEND
OUT BY ORDER TO THOSE PARTIES
THAT HAVE COMMENTED WITH OUR --
THIS IS WHAT WE HAVE PROPOSED,
AND THEN, GET SOME RESPONSE
BACK, WITHOUT ANOTHER ARGUMENT
BECAUSE IT SEEMS LIKE THERE MAY
BE ON THIS PROPOSAL ANOTHER OF
PLACES WE MAY NEED TO DO THAT,
WOULD THAT BE ACCEPTABLE.

>> IT CERTAINLY WOULD, WITH THE
AC COMMITTEE.

>> LET ME ASK YOU --

>> YES, SIR.

>> [INAUDIBLE].

>> YES, SIR.

>> [INAUDIBLE].

>> YES, SIR.

>> HOW DO THESE RULES AFFECT
THAT.

>> I DON'T BELIEVE THEY DO.

BECAUSE THE PARTIES CAN AGREE,
THERE IS A MECHANISM WITHIN THE
RULE FOR INSTANCES WHERE THE
PARTIES TO THE CASE AGREE TO A
SEALER AND IT NEEDS TO BE POSTED
ON THE WEB SITE AND OPPORTUNITY
FOR THE NONPARTY TO BE HEARD IF
THE NONPARTY HAS AN ISSUE WITH
IT.

>> AS FAR AS AN ISSUE, ONE THING
WE COULDN'T FIGURE OUT IS THAT
WE KNOW WE WANT NONPARTIES TO

HAVE THE ABILITY TO VACATE THE ORDERS THAT ARE ENTERED BY THE COURT.

BUT DID YOU ENVISION A PROCEDURE WHERE THE NONPARTY COULD ALSO OBJECT TO THE DESIGNATION UNDER THE FIRST PART OF THE ORDER -- WHATEVER IT IS, D-1... OR -- DB-1 WHERE THE CLERK MAKES THE DESIGNATION?

>> AND, CERTAINLY THAT WOULD BE THE FAIR THING TO DO.

>> IS THERE A PROCEDURE IN THERE, RIGHT NOW?

>> I BELIEVE THE MOTION TO VACATE COULD BE MADE, AND CHALLENGE THE DECISION --

>> IT IS NOT REALLY VACATING AN ORDER, YOU'D HAVE TO MASSAGE THAT LANGUAGE.

AND I WANT TO MAKE SURE WE ARE CLEAR ON SOMETHING.

YOU SAID THAT -- TALKED ABOUT WHAT HAPPENED IN 1992, AND WE CAN'T GO BROADER.

THERE ARE SOME PEOPLE THAT FEEL WE NEED TO BE NARROWER, BECAUSE UNLESS THE LEGISLATURE INTENDED FOR SOMETHING TO APPLY TO COURT RECORDS, WE SHOULD NOT BE BROADER THAN THAT.

AND THERE IS A QUESTION OF... 1992 RULE.

WE ALL AGREE, WHATEVER THIS COURT ADOPTS, AND IT IS IN THE MEDIA OR ANY OTHER PARTY HAS AN

ISSUE WHETHER SOMETHING IN THE FIRST SET OF FINITE EXEMPTIONS ARE REALLY NOT -- SHOULD NOT BE AUTOMATICALLY EXEMPT OR CONFIDENTIAL, BUT THAT WILL BE -- TAKE PLACE IN A CASE IN CONTROVERSY, IS THAT WHAT THE ACCESS COMMITTEE ENVISIONED.

>> YES.

>> MR. KANEY, DID YOU HAVE ANYTHING TO ADD --

>> AND THE ONLY THING IN CLOSING I'LL SAY IS AFTER YOU HAVE HEARD FROM EVERYBODY ELSE I WOULD LIKE TO RESERVE A MINUTE OR TWO TO WRAP IT UP, IF I MAY.

>> WELL, IN THIS ONE ARE YOU GOING TO BE TALKING ABOUT THE SEALING PROPOSALS IN THE -- IN THE APPELLATE RECORDS, IS THAT PART OF THIS --

>> NO THAT IS ON THE SECOND CASE.

>> THAT IS WHAT I THOUGHT. ALL RIGHT.

>> MAY IT PLEASE THE COURT, I DON'T KNOW IF WE HAVE ANY TIME, AT THIS POINT, BUT --

>> YOU HAVE TWO-AND-A-HALF MINUTES LEFT, BETWEEN THE TWO OF YOU.

>> I'LL TAKE A MINUTE-AND-A-HALF IF I CAN POSSIBLY STOP IN THAT TIME.

THE ISSUE -- JUSTICE PARIENTE ONE THING I WANTED TO MENTION IS

THE ISSUE OF WHAT IS THE EFFECT
OF THE OTHER STATUTORY
EXEMPTIONS.

AND WE THINK THIS RULE, AS THE
COURT SAID IN THE ORDER,
CREATING THE COMMITTEE, WE'VE
NOT DECIDED ON THE ISSUE OF THE
ABSORPTION DOCTRINE AND TOOK
THAT AS A MAJOR GUIDEPOST, AND,
WHAT THIS RULE SAYS, IS THE 19
ARE FOR SURE ABSORBED.

SUBJECT TO ANY ISSUES ABOUT
APPLYING THE LANGUAGE.

THE OTHERS ARE FOR LITIGATION.

IF THERE IS A TACK-TWO
EXEMPTION, ITEM NUMBER 20 OR
WHATEVER, IT BE WOULD NEED TO BE
A MOTION AND ON ONE SIDE THEY
SAY, IT NEEDS TO BE ABSORBED AND
CAROL LOCICERO WOULD SAY, NO YOU
HAVE TO LOOK AT IT AND YOU HAVE
TO BALANCE AND SO FORTH BUT THAT
WOULD BE FOR LATER AND WE DON'T
THINK THIS RULE PREEMPTS THOSE
ARGUMENT IN EITHER WAY AND
LEAVES THE COURT WHERE IT HAS
SAID IT WANTED TO BE WITH
RESPECT TO ABSORPTION.

THE OTHER -- THERE IS ANOTHER
POINT THAT I WOULD LIKE TO
MENTION.

MR. DIMOND WILL BE SPEAKING AS
WELL.

THE RJA COMMITTEE MADE TWO
PROPOSALS REGARDING THE
DEFINITION OF CONFIDENTIALITY

WHICH IS AT THE FRONT OF OUR PROPOSAL.

OUR PURPOSE IN ADDING SOME LANGUAGE TO THAT DEFINITION IS TO MAKE CLEAR TWO THINGS.

ONE, IN THE COURT RULES, WHEN THE COURT SAYS EXEMPT, OR WHEN THE COURT SAYS CONFIDENTIAL IT MEANS THE SAME THING.

IF IT IS EXEMPT FROM ACCESS, A CLERK OR ANY OTHER -- CANNOT LET IT GO.

IT HAS TO BE A JUDGE PURSUANT TO THE MOTION AND ORDER.

SO, WE... TO CLEAR UP THAT TERMINOLOGY, WE SAID, IF IT IS -- EXEMPT MEANS CONFIDENTIAL AND CONFIDENTIAL MEANS IT IS NOT SUBJECT TO THE CONSTITUTIONAL RIGHT OR FORCE OF THE STATUTE WITHIN THAT.

AND, IT MAY NOT BE DISCLOSED EXCEPT TO PERSONS IDENTIFIED IN THE -- AN ORDER OR A RULE OR A STATUTE.

WE FOUND THAT THERE ARE PEOPLE OUT THERE, IN THE STATE OF FLORIDA, WHO BELIEVE THAT IN THE CLERK'S OFFICE, IF SOMEONE COMES IN, SAY FROM LAW ENFORCEMENT AND WANT TO SEE SOME SECRET DOCUMENT, HERE, WELL, WE DON'T THINK -- DIDN'T THINK THAT IS WHAT IT MEANS WHEN WE SAID IT IS CONFIDENTIAL.

SO, THAT IS THE PURPOSE OF THAT.

>> THERE ARE SEVERAL PLACES WHERE THE RULES OF JUDICIAL ADMINISTRATION COMMITTEE COMMENTED AND THEN THERE WAS SOME PLACES WHERE THE -- YOUR COMMITTEE UNDERSTANDABLY DIDN'T RESPOND, SO DO YOU NOT AGREE WITH THEIR PROPOSED ADDITIONS TO THE DEFINITION BOTH FOR CONFIDENTIALITY ON FOR EXEMPTIONS?

WOULD YOU LIKE TO -- THE WAY YOU PROPOSED NIGHT WE HAVE TO CONFESS ERROR HERE ON OUR PART.

>> OKAY.

>> THE IMPLICATIONS OF THE CHANGES IN TWO RESPECTS, OF THE RJA PROPOSAL, ONE IS, THE INSERTION OF THAT PHRASE, WITH THE TWO LITTLE "I" IN THE DEFINITION.

>> EXEMPT FROM DISCLOSURE UNDER THE PUBLIC RECORDS ACT AND SUBJECT TO NO STATUTORY PROHIBITION AGAINST SHOWING OF SUCH INFORMATION.

>> I THINK THAT I COULD GET THE COMMITTEE TO AGREE WITH ME IT DOESN'T ADD ANYTHING TO THE FIRST ONE AND COULD CONFUSE PEOPLE.

>> I THINK IT IS... OKAY.

>> AND THEN THE SECOND THING IS, THE INTRODUCTORY LANGUAGE LEADING INTO SUBSECTION C, WHICH COMES RIGHT AFTER THAT, IN THEIR

COMMENTS, WHICH... SUBSECTION C
AND THE EXISTING RULE SAYS, C,
EXEMPTIONS, THE FOLLOWING ARE
EXEMPT.

>> AND THEY SAY, CONFIDENTIAL
AND EXEMPT AND HAVE -- GO
THROUGH THEIR SEVERAL LINES, AND
YOU ARE OKAY WITH THAT ONE.

>> NO, WE'RE NOT.

>> OKAY.

>> ON SECOND THOUGHT.

ACTUALLY, THERE IS NOTHING
FOCUSES YOUR ATTENTION LIKE
PREPARING TO GET IN FRONT OF
THIS COURT.

WHEN WE DID THAT, THIS LANGUAGE
THAT THEY WANTED TO PUT IN THERE
AT FIRST IS UNNECESSARY AND,
SECOND, THAT REFERENCE TO
RECOGNIZE EXEMPT BY LAW, COULD
REIGNITE THE ABSORPTION ISSUE.

WHAT WE --

>> SO, WHAT WOULD YOU SUGGEST.

>> LEAVE IT.

LEAVE IT LIKE WE SAID.

THAT THAT LANGUAGE IS NOT NEEDED
UNLESS IT IS INTENDED TO RESTART
THE ABSORPTION DEBATE.

>> WOULD YOU AGREE WITH A
RENAMING OF CONFIDENTIAL AND
EXEMPT RECORDS.

>> THAT IS FINE.

THAT IS FINE.

THAT IS ONE OF THE PLACES WHERE
THE COURT USED THE WORD EXEMPT.
AND, THEN IT LISTED A SERIES OF

CONFIDENTIALITY, AND SO, WE --

>> AT THIS POINT, YOU HAVE USED
UP MORE THAN YOUR TIME.

UNLESS THERE IS SOME OTHER
QUESTION?

WHY DON'T WE HEAR FROM
MR. DIMOND.

>> THANK YOU VERY MUCH.

>> MAY IT PLEASE THIS COURT,
GOOD MORNING, I'M SCOTT DIMOND
AND REPRESENTING THE RULES OF
ADMINISTRATION [INAUDIBLE] AND I
SERVED AS THE ORIGINAL COMMITTEE
CHAIR OF THE SUBCOMMITTEE IN THE
DRAFT OF THE ORIGINAL...

[INAUDIBLE] AND THE LAST WAS THE
CHAIRMAN OF THE RJA DURING THE
TIME OF THE RJA'S PROPOSALS WERE
SUBMITTED.

AND I HAVE BACKGROUND IN THE
ORIGINAL CONSTRUCTION AND NOW,
SORT OF TAKING THAT TO THE NEXT
LEVEL WITH THESE LATEST CHANGES.
THIS MORNING, WHAT I WANT TO
TALK ABOUT BRIEFLY ARE THOSE FEW
WAYS IN WHICH THE RJA HAS
COMMENT TO THE COMMITTEE RULES
THAT WE THOUGHT COULD BE
IMPROVED UPON AND THERE AREN'T
MANY WE VIEWED AS SUBSTANTIVE
AND WE'VE GOTTEN INTO A FEW
MINUTES AGO THE ISSUE OF
ABSORPTION AND IT WAS NOT THE
RJA'S INTENTION TO INJECT THE
BROAD ARGUMENT INTO THE RULES BY
ADDING THE LANGUAGE AND FRANK

MOST OF THE REVISIONS THE RJA
SUBCOMMITTEE PROPOSED WERE MEANT
MORE AS ASSISTANCE TO
PRACTITIONERS TO A CERTAIN
EXTENT IT IS ESOTERIC AND THERE
ARE ASPECTS THAT ARE NEW AND AS
A LITIGATOR MOST FOLKS AREN'T
THERE DON'T UNDERSTAND THESE AND
AREN'T USING THEM AND WE TRIED
TO DO AS OFTEN AS WE COULD,
CLARIFY, STRUCTURALLY OR THE
ADDITION OF SOME NEW LANGUAGE
WHAT WAS BEING DONE SO THERE IS
NOT SO MUCH INSIDE BASEBALL FOR
THOSE OF US DOING IT A LONG TIME
THAT AND ONLY MAJOR SUBSTANTIVE
THING I'D LIKE TO ADDRESS FIRST
IS THE CONCEPT UNDER E-8, THE
ACTS COMMITTEE SUGGESTION ANY
ONE OF THESE MOTIONS IF SO
DESIGNATED BY ONE OF THE PARTIES
COULD BE DEEMED A PRIORITY
MOTION UNDER 2.215-G AND I CAN
TELL YOU THERE WAS STRONG
FEELINGS ON THE PART OF THE RJA
MEMBERS, THE 2.215-G PRIORITY
CATEGORY IS ALREADY FAIRLY BROAD
AND CONTAINED A LOT OF THINGS
THAT ARE -- WE VIEWED AS
SOMEWHAT MORE SIGNIFICANT THAN
THAT.
AND, WHAT WE PROPOSED WAS SIMPLY
THAT THAT ABILITY TO HAVE THE
LITIGANTS MAKE IT A PRIORITY
MATTER BE DELETED IN ITS
ENTIRETY.

AND THE BASIC COUNSEL IS
TWO-FOLD, ONE IS WE FELT IT
DIDN'T AS IMPORTANT AS IT IS,
RISE TO THE LEVEL OF TERMINATION
OF RIGHTS OR CHALLENGE OF AN
ELECTION, THE SOURCE OF -- SORTS
OF THINGS YOU SEE IN THE
PRIORITY OF STATUTE AS IT STANDS
AND, SECONDLY, GIVEN THE UNIQUE
CONTEXT OF THIS RULE THERE ARE
ALREADY A GOOD DEAL OF
PROCEDURAL SAFEGUARDS BUILT INTO
THIS IN TERMS OF TIMING --
>> WHAT IS -- THAT WAS GOING TO
BE MY QUESTION ALTHOUGH YOU SAY
THAT, WHAT IS THE TIMEFRAME FOR
A JUDGE TO RULE ON ONE OF THESE.
>> FOR INSTANCE YOU HAVE
ENVISIONED TWO POSSIBILITIES,
EITHER AN AGREEMENT SUBMITTED BY
THE PARTIES AND THE EXPECTATION
WAS IT WOULD BE RAPIDLY DEALT
WITH BECAUSE THERE WAS AN
AGREEMENT AN ALTERNATIVELY EVEN
WITH AN AGREEMENT... INAUDIBLE
PRESUMABLY FELT IT WAS NECESSARY
TO HAVE A HEARING OF THE PARTIES
AND THAT WOULD HAPPEN RAPIDLY
ANY WAY AND THE COURT HAD 30
DAYS TO SET THE HEARING AND THE
RULE DIDN'T SAY THE ORDER HAS TO
COME OUT OF A PARTICULAR PERIOD
OF TIME THERE ARE, NONETHELESS
ASPECTS OF THE PROCEDURE TO MOVE
THIS THING ALONG --
>> SO IT SAYS, THIS IS FOR

SOMETHING THAT IS -- BECAUSE,
LET'S CONSIDER WHETHER THE
PUBLIC, WHERE THE PUBLIC FITS IN
ON THAT.

THESE ARE RECORDS THAT ARE BEING
REQUESTED TO BE CONFIDENTIAL,
CORRECT?

AND WHILE THEY ARE BEING
REQUESTED TO BE CONFIDENTIAL,
THEY ARE REMAINING CONFIDENTIAL.

>> CORRECT.

>> ALL RIGHT SO IF YOU DON'T --
SET A HEARING AND THE HEARING IS
SET WITHIN 30 DAYS, HOW LONG
DOES THE COURT HAVE TO RULE ON
THAT RIGHT NOW.

>> THE RULE AS IT STANDS DOES
NOT REQUIRE THE COURT TO RULE --

>> WOULD IT BE BETTER THAN SUCH
A THING AS A PRIORITY CASE TO
SAY WITHIN 30 DAYS AFTER A
HEARING, THAT THE RULING HAS TO
BE ISSUED, OTHERWISE WE MIGHT
HAVE PERPETUAL CONFIDENTIALITY
WHICH IS, YOU KNOW, AGAIN, THIS
IS THE OTHER SIDE OF THE COIN ON
THIS.

>> THIS IS AN ARGUMENT THAT GOES
BACK TO THE INITIAL DRAFTING OF
THE RULE AND THERE WAS A LARGE
DISCUSSION ON THE SUBCOMMITTEE
AS TO WHETHER PUT A TIMEFRAME ON
THE COURT'S OBLIGATION TO ISSUE
AN ORDER AND -- [INAUDIBLE].

>> BUT, IF, BECAUSE IT'S NOT --
TO CALL IT A PRIORITY CASE IS

MAYBE A MISNOMER BUT TO SAY PROCEDURES NEED TO BE DONE WITHIN CERTAIN TIMEFRAMES, AT LEAST GIVES THE PARTIES AND THE PUBLIC KNOWLEDGE OF WHEN THIS -- WOULD THAT, EVEN THOUGH YOU DON'T WANT TO -- BUT THE JUDGES SAY YES, THERE SHOULD BE A TIMEFRAME.

>> NOTWITHSTANDING THAT, IT DIDN'T MAKE IT INTO THE FINAL RULE AND THERE WAS A REPORT ON THE SUBCOMMITTEE AND THE COMMITTEE AS A WHOLE FOR ADDING THAT KIND OF LANGUAGE BUT IN THE COMPROMISE OF LEGISLATION AS IT WERE DIDN'T MAKE IT INTO THE FINAL DRAFT AND I DON'T THINK THE RJA WOULD OPPOSE THAT KIND OF TINKERING WITH THE RULE, BECAUSE AGAIN OUR VIEW HAS ALWAYS BEEN BY THE NATURE OF THESE THINGS THEY ARE TO BE MOVED ALONG FAIRLY QUICKLY WHICH IS A REASON WE DIDN'T WANT TO MAKE IT A PRIORITY CASE, AND PUSH IT AHEAD OF LINE AGAINST... [INAUDIBLE] THERE ARE A COUPLE OF OTHER AREAS WHICH THE RJA MADE CHANGES AND SOME ARE STRUCTURAL AND YOU SEE THE WAY WE LAID OUT D-1 AND 2 AND NOW BECOMES, 1, 2 AND 3 AND LAYS OUT THE ITEMIZED EXEMPTIONS AND WHAT FLORIDA HAS TO DO WITH THOSE AND WHAT HAPPENS IF THERE IS A

CHALLENGE OF THE FILE OR THE DOCUMENT AND YOU'LL SEE THAT IN THE PROPOSED REVISIONS, WE SUBMITTED ON JANUARY 12TH. AND THE FINAL THING I'LL RAISE AND I DON'T THINK IT WAS INTENDED TO CREATE A MAJOR BROUHAHA, OR A FIGHT OF THE COMMITTEE, BUT IT WAS THE VIEW OF THE RJA, THAT THERE IS A SLIGHTLY DIFFERENT STANDARD THAT WOULD APPLY TO A C-7 OR C-8 DESIGNATION THAN TO A C-9 AND MAY BE BECAUSE OF HISTORICALLY, THE OBLIGATION OF THE COMMITTEE WAS TO CREATE A RULE THAT DEALT WITH WHAT WAS VIEWED AS MAYBE AN OVER -- OVERWILLINGNESS OF COURTS TO SEAL RECORDS IN THE -- DOCUMENTS IN THE COURT RECORD AND THAT WAS A C-9 PROBLEM BECAUSE IT CAME UNDER THE AMBIT OF A DISCRETIONARY, WIDE RANGING WIDE RANGING CONCEPT OF WHAT MIGHT BE CONFIDENTIAL AND THE RJA VIEWED 7 AND 8 AS BEING A LITTLE BIT DIFFERENT AND NOTWITHSTANDING THERE IS NOW A TIGHT LIST OF ITEMIZED EXEMPTIONS THAT ARE AUTOMATIC AT THE CLERK LEVEL AND WE ALWAYS VIEWED 7 AND 8 AS BEING A SLIGHTLY DIFFERENT PROCEDURE THAN 9 ONLY BECAUSE THEY PRESUMABLY ARE SUBJECT TO RULES OF STATUTES RAN A LITIGANT'S

VIEW THAT IT SHOULD BE
CONFIDENTIAL TO PROTECT MY
PRIVACY RIGHTS.

AND AS SUCH WE HAVE INJECTED IN
A COUPLE PLACES IN THE RULE THE
DESIGNATION OF SOME OF THESE
PROCEDURAL SAFEGUARDS INTENDED
TO ADDRESS THE C-9 WOULD NOT
APPLY TO A C-7 AND C-8 AND WE
HAVE SPOKEN WITH THE ACCESS
COMMITTEE AND I DON'T THINK WE
ARE WILLING TO PICK A MAJOR
FIGHT BUT REFLECTS THE RJA'S
RELUCTANCE TO TREAT THE C-7 AND
C-8 DESIGNATIONS WITH THE SAME
LEVEL OF SAFEGUARDS AS C-9 ONLY
BECAUSE THE PROBLEM STARTED WITH
C-9 AND WE DIDN'T VIEW THE
PROBLEM AS BEING QUITE AS BROAD
AS TO ENCOMPASS C-7 AND C-8.
AND BEYOND THAT, AGAIN, MINOR
REVISIONS, AND, I SEE I'M OVER
MY TIME, BUT, AS WE SAID, YOUR
HONORS HAVE ANY PARTICULAR
CONCERNS I'M HAPPY TO ADDRESS
THEM.

>> THANK YOU VERY MUCH.

OKAY.

WHO IS FIRST?

MS. LOCICERO.

>> I'M GOING BY THE ORDER ON THE
SHEET.

>> OKAY.

>> MAY IT PLEASE THIS COURT,
CAROL LOCICERO, REPRESENTING THE
FLORIDA MEDIA ORGANIZATION.

THAT HAVE COMMENTED ON THE RULE.
WE ARE TECHNICALLY I GUESS
LISTED AS AN OPPONENT BUT WE ARE
90% PROPONENTS OF THIS, ACCESS
TO COURT RECORDS VERSION OF THE
RULE.

IF I COULD ADDRESS, SPECIFICALLY
A FEW OF THE SHOWS THAT HAVE
COME UP THIS MORNING IN MY TIME
I WOULD LIKE TO DO THAT.

WITH RESPECT TO THE QUESTION
ABOUT DESIGNATING A MOTION OF
PRIORITY CASE, WHAT -- I DON'T
WANT TO GET HUNG UP IN THE
SEMANTICS BUT WHAT THE MEDIA
ORGANIZATIONS ARE LOOKING FOR IS
A WAY AND, HONESTLY, THE SMALL
SUBSECTION OF THESE CASES IN
WHICH WE BECOME INVOLVED, TO OF
HAVE SOME MECHANISM FOR
EXPEDITING CONSIDERATION.

THE LANGUAGE IN THE RULE MAKES
IT A PRIORITY, DESIGNATION.

WHAT WE ARE LOOKING AT IS THE
ABILITY -- I GUESS WE HAD TWO
OPTIONS.

WE COULD HAVE CHALLENGED THE
TIMING PROVISIONS AND THIS RULE,
BECAUSE, FROM A NEWS GATHERING
STANDPOINT, 30 DAYS IS A LONG
TIME AND THAT IS JUST 30 DAYS TO
GOT A HEARING AND THEN YOU DON'T
KNOW AS JUSTICE PARIENTE POINTED
OUT, WHEN THE ORDER IS
NECESSARILY GOING TO BE ENTERED.
SO IN THE PERCENTAGE OF THE

CASES IN WHICH WE MIGHT BE SEEKING TO FIGHT A CLOSURE MOTION, WE WOULD LIKE TO BE ABLE TO SHORTEN THOSE TIME PERIODS. AND, IT SEEMED, INSTEAD OF IMPOSING ACROSS THE BOARD SORT OF DIFFERENT TIME PERIODS ON THE WAY THE JUDICIAL SYSTEM CONSIDERS THOSE MOTIONS TO DETERMINE CONFIDENTIALITY, THAT THE MORE APPROPRIATE AND TARGETED THING WOULD BE TO PROVIDE A MECHANISM FOR EXPEDITING CONSIDERATION. SO, IF THE COURT WANTS TO MONKEY WITH THE LANGUAGE SOME, WHAT WE WOULD LIKE TO SEE IS SOMETHING THAT GIVES US THE ABILITY LIKE UNDER THE PUBLIC RECORDS ACT, WHEN WE ARE DEALING WITH ACCESS TO GOVERNMENT AGENCY CASES TO COME IN AND SEEK EXPEDITED CONSIDERATION AND EFFECTIVELY SHORTEN THE TIME PERIODS, IN THE RULE, BECAUSE, EVEN IF YOU PRESUME -- EVEN IF YOU HAVE A RECORD, LET'S SAY, THAT THE COURT DECIDES NOT TO CLOSE, YOU CAN IN EFFECT HAVE A CLOSURE IN PLACE THAT LASTS OVER 30 DAYS, AND THE MOTION -- IN THE MOTION CONTEXT AND IN THE CONTEXT OF A FILER IDENTIFYING A RECORD THAT THEY SAY IS CONFIDENTIAL UNDER STATUTE, THAT THE CLERK DETERMINES IT IS NOT

CONFIDENTIAL UNDER THE STATUTE,
YOU STILL HAVE AN AUTOMATIC
CLOSURE OF SEVEN DAYS AND WE ARE
LOOKING FOR A WAY AND AN -- AND
APPROPRIATE CASES TO COME IN AND
DO IT ON A MORE EXPEDITED BASIS.

>> WE ARE GIVING THE JUDGE --
YOU ARE OKAY WITH THE 30 DAYS
BUT IT IS -- THE FINITE TIME FOR
THE JUDGE TO RULE, IS THAT YOUR
CONCERN.

>> I DON'T KNOW I WOULD EXACTLY
SAY I'M OKAY WITH THE 30 DAYS IF
THE PRIORITY PROVISION IS TAKEN
OUT.

>> BECAUSE THE -- YOU KNOW, AS A
PRACTICAL MATTER AND WE HAVE
TRIEDED TO SAY WHAT WE THINK ARE
THE MOST IMPORTANT CASES, BUT,
AS A CIRCUIT JUDGE IT IS STILL
GOING TO BE WELL, I HAVE THIS
CASE ON MY CALENDAR, AM I
SUPPOSED TO GIVE THIS CASE
PRIORITY OR YOUR MOTION
PRIORITY?

AND, SO I THINK IT IS PROBABLY,
FOR JUDGES, YOU MAY HAVE
OVERDONE THE PRIORITY CASE THING
AND I WOULD DEFER TO MY CIRCUIT
JUDICIAL COLLEAGUES ON THAT.
BUT I THINK THAT IS REALLY THE
CONCERN.

>> AND, I DON'T KNOW IF THERE IS
A DIFFERENT TERMINOLOGY BETWEEN
SEEKING EXPEDITED CONSIDERATION
AND HAVING SOMETHING TECHNICALLY

DESIGNATED A PRIORITY CASE SA.

>> YOU CAN ALWAYS SEEK EXPEDITED CONSIDERATION AND THE QUESTION IS WHETHER IT IS MANDATORY AND THE ONLY WAY TO ACCOMPLISH THAT IS TO GIVE A TIMEFRAME.

>> AND IF... WHAT WE TRIED TO DO, WAS TO WORK WITH THE COMMITTEE ON ACCESS TO COURT RECORDS, TO COME UP WITH A SORT OF A COMPROMISE AND I UNDERSTAND WHAT THE COURT IS SAYING ABOUT PRIORITY CASES, BUT, THE 30 DAY TIMEFRAME, FOR EXAMPLE IS A HUGE ISSUE, WHEN YOU'VE GOT AN ONGOING MATTER, AND NORMALLY, WHAT WE FIND HAPPENS, IS THAT THE COURTS DO CONSIDER MOTIONS FOR CLOSURE OR MOTIONS FOR ACCESS, HOWEVER YOU WANT TO CALL THEM, ON A PRIORITY BASIS.

AND A CASE.

AND WHAT CONCERNS US IS THAT NOW, THEY ARE GOING TO HAVE TIMING PROVISIONS ON A RULE THAT SEEMED TO UNDO THAT PRIORITY BASIS OR THE --

>> SO YOU ARE SAYING YOU DIDN'T OPPOSE 30 DAYS, BUT, NOW YOU ARE CONCERNED --

>> THAT THE 30 DAYS CAN BECOME AN ISSUE, YES, YOUR HONOR, IF THE EXPEDITED CONSIDERATION PROVISION IS NOT IN THE RULE AND I THINK, AT LEAST, YOU KNOW, AND I KNOW I'M ONLY ONE LAWYER.

>> YOU HAVE THE MEDIA CAN THEN
COMPLAIN ABOUT THAT, THE ARTICLE
ABOUT THAT JUDGE.

-- WRITE AN ARTICLE ABOUT THAT
JUDGE

[LAUGHTER].

>> MOST OF THE TIME THEY WOULD
RATHER BE WRITING ABOUT THE
CASE!

BUT, THE -- SO THAT WAS SORT OF
THE -- IF THE SYSTEM WORKED IN
THE WAY THE RULE IS ENVISIONED
NOW WE WILL NOT COME IN AND
GRIPE ABOUT THE 30 DAYS.

IT CREATES HONESTLY, ISSUES FOR
US, IF WE HAVE A JUDGE THAT SAYS
I HAVE 30 DAYS TO HEAR THE
MOTION AND THAT WE CAN'T GET ANY
KIND OF EXPEDITED CONSIDERATIONS
OF THE MOTION.

AND I THINK MY TIME IS QUICKLY
EXPIRING.

WE DO HAVE CONCERNS WITH RESPECT
TO CREATING ANY ISSUES ABOUT
SORT OF FULL ABSORPTION OF THE
OVER 1,000 STATUTES, AND THAT
THE DEFINITION OF CONFIDENTIAL,
ANY DEFINITION OF CONFIDENTIAL
THAT WOULD CREATE ISSUES ABOUT
THAT, WOULD BE JUST A PROBLEM
THAT I THINK THE COURT ALREADY
WRESTLED WITH AND HAS GOTTEN
BEYOND.

BY AND LARGE, THE STATUTES
LISTED DON'T CAUSE US MUCH
CONCERN, I DO THINK SOME

LANGUAGE LIMITING IT TO THE DEPARTMENT OR MAYBE EVEN IN THE INTRODUCTORY LANGUAGE TO THE RULE, SAYING, IT PROVIDED BY COURT ORDER, BECAUSE A LOT OF THOSE STATUTES DO HAVE SORT OF EXEMPTIONS BUILT INTO THEM.

>> AND --

>> AND I THINK THAT IS ALL I HAVE TIME TO SAY.

>> ALL RIGHT, THANK YOU.

>> THANK YOU.

>> I WANTED TO THANK YOU PERSONALLY, YOU KNOW, WE HAVE BEEN AT THIS FOR A LONG TIME AND I THINK THAT THE... BEING THE REPRESENTATIVE FOR MANY OF THE MEDIA ORGANIZATIONS, EVERYTHING THAT I HAVE SEEN YOU HAVE CONDUCTED YOURSELF IN A VERY RESPONSIBLE, AND, YOU KNOW, CONSTRUCTIVE WAY THAT HAS BEEN HELPFUL TO THE COURT.

>> THANK YOU, YOUR HONOR, APPRECIATE THAT.

>> OKAY.

>> MAY IT PLEASE THIS COURT, I'M LAURA ROTH AND I'M HERE ON BEHALF OF THE CLERK OF VOLUSIA COUNTY.

>> WE ARE VERY IMPRESSED, THE CLERK OF VOLUSIA COUNTY HAS BEEN INVOLVED FROM THE BEGINNING AND HAS GIVEN US VERY -- A LOT OF CONSTRUCTIVE SUGGESTIONS, AND...

>> THANK YOU.

>>... WE APPRECIATE THAT AS WELL AS WELL AS ALL OF THE CLERKS' ASSISTANCE IN THE DIFFICULT MATTER.

>> AND SHE APPRECIATES BEING ABLE TO HAVE INPUT AND I WANT TO SAY QUICKLY WE VERY MUCH APPRECIATE THE COMMITTEE'S WORK AND COURT'S WORK TO NARROW DOWN THE THOUSAND EXEMPTIONS TO THE 19 EXEMPTIONS IDENTIFIED BY THE CLERK.

>> AND THE STATEMENT IN THE PETITION, WHICH IS AS IMPORTANT TO ME -- IMPORTANT TO ME, MOST OF THESE 19 ARE ALREADY REGULARLY BEING DONE BY THE CLERK.

>> YES.

>> AND THAT THEY UNDERSTAND THESE, AND THAT THESE ARE ONES THAT ARE THE TRADITIONAL ONES.

>> ABSOLUTELY.

IN FACT, WHEN THERE WAS SOME A LITTLE BIT OF DISCUSSION GOING ON ABOUT NOTICE TO OTHERS I WANTED TO POINT THAT OUT. THESE ARE ONES THAT ARE JUST SO CLEARLY CONFIDENTIAL, LIKE, FOR EXAMPLE, MAYBE THE MOST STRIKING IS THE CHAPTER 39.

ANYTHING UNDER CHAPTER 39, WELL, THAT IS ITS OWN WHOLE COURT DIVISION AND I MEAN, WE BASE, WHERE YOU FILE SOMETHING THAT IS CHAPTER 39, DEPENDENCY OR TPR,

IT IS ALREADY NOTED, YOU KNOW WHAT I MEAN, IT NEVER IS AN ISSUE AND NEVER WOULD THINK TWICE ABOUT THAT AND COMPROMISING THAT PROCESS, I REALLY HIGHLY RECOMMEND YOU DON'T VOID IT AND THOSE ARE BEING TAKEN CARE OF AT THE TIME, AND THERE IS SOMETHING SIMPLE BUT IT IS IMPORTANT TO US, IN SUBSECTION D, THE PROCEDURE FOR FILING THE RECORDS AND GIVES THE AUTOMATIC EXEMPTION, THE VERY LAST LINE ON THAT FIRST PARAGRAPH, SUBPARAGRAPH ONE SAYS IN THE EVENT THE CLERK DETERMINES SUCH INFORMATION IS NOT SUBJECT TO CONFIDENTIALITY UNDER THE IDENTIFIED PROVISIONS THE CLERK SHALL NOTIFY THE FILER WITHIN FIVE DAYS OF FILING AND MAINTAIN THE INFORMATION AS CONFIDENTIAL FOR SEVEN DAYS FROM THE DAY SUCH NOTICE IS SERVED, NOW, I KNOW BY IMPLICATIONS THAT SEEMS OBVIOUS TO US, THAT YOU ARE SAYING HERE, THAT WE CAN KEEP IT CONFIDENTIAL ONLY FOR THE SEVEN DAYS. HOWEVER, THERE WAS A PRIOR VERSION OF THE RULE, THAT MADE IT MORE CLEAR FOR THE FILERS, WHAT THEY WOULD NEED TO DO TO GET PAST THAT SEVEN DAYS. IT ALSO GAVE US MUCH MORE CLEAR AUTHORITY THAT IF YOUR SEVEN

DAYS ARE UP AND YOU HAVEN'T DONE
WHAT YOU NEED TO DO WE ARE GOING
TO MAKE IT PUBLIC.

AND BELIEVE IT OR NOT, I WILL GO
TO COURT, OVER AND OVER AND OVER
AGAIN, IF IT IS LEFT THIS WAY ON
PEOPLE SAYING, WHY DID YOU
RELEASE AFTER SEVEN DAYS, IT
DOESN'T SAY YOU CAN AND I KNOW
THE IMPLICATION IS CLEAR BUT ON
THE GROUND FLOOR I'LL GET
ARGUMENTS.

>> YOU ARE SUGGESTING WE CLARIFY
THAT.

>> THERE WAS LANGUAGE SUBMITTED
BY THE ACCESS COMMITTEE
THEMSELVES IN AN EARLIER VERSION
AND I DON'T KNOW WHY IT NEVER
CAME OUT AND IT USED TO SAY,
AFTER THAT SAID THE RECORD SHALL
NOT BE HELD AS CONFIDENTIAL FOR
MORE THAN, DID TEN DAYS BACK
THEN, MORE THAN TEN DAYS, UNLESS
THE FILER HAS FILED A MOTION
PURSUANT TO... AND THAT WOULD BE
SUBSECTION E NOW AND ALL I'M
ASKING IS FOR THAT LINE TO BE
REINSERTED AND WOULD JUST SAVE
SO MUCH PROCEDURAL HEADACHE.

>> I THINK -- I THOUGHT THE
COMMITTEE ACTUALLY MAY HAVE
AGREED WITH THAT.

>> THEY DID, AND -- JUDGE
KREEGER'S REPLY, ACTUALLY SHE
SAID --

>> THAT IS NOT --

>> SHE SAID THIS WHAT IS WE INTENDED BUT I DON'T WANT TO HAVE TO GO AROUND AND AROUND.

>> DO YOU... IS THERE AN ISSUE WITH THE 7 VERSUS TEN DAYS, THE ORIGINAL PROPOSAL IS PUBLISHED, SAID TEN DAYS.

>> YEAH.

I MEAN --

>> THERE IS AN --

>> THAT WOULD BE MORE THE FILER'S INTEREST, FOR US IT IS HERE NOR THERE AND WOULD GIVE THE FILER A MORE REALISTIC TIME, HONESTLY, PRO SE, WHEN THEY GET OR LETTER OR HANDED THEM THE LETTER, YOU ARE TELLING ME THE CONFIDENTIAL IS NOT IN THE 19, AND THE PRO SE PERSON IS FIGURING OUT HOW TO MOTION THE COURT.

>> IS THE DEVELOPMENT OF THE FORM SOMETHING THAT THE CLERK COULD, YOU KNOW, IF WE WERE TRYING TO PUT SOMETHING TOGETHER FAIRLY QUICKLY COULD THE CLERK HELP US.

>> ABSOLUTELY AND THE FORM AND THE FILER -- OF THE 19.

>> WOULD CHECK IT OFF AND WHERE IT IS, ONLY A TWO PAGES OF THE DOCUMENT, IDENTIFY THOSE PAGES.

>> SURE, THAT WOULD BE NO PROBLEM AT ALL CHECK BOX KIND OF THING, YES, AND IN SOME INSTANCES, LIKE I SAID IT ALMOST

--

>> ARE YOU WILLING TO HELP WITH THAT.

>> ABSOLUTELY.

I WOULD LOVE TO BE THE ONE THAT DRAFTS IT.

BUT IN SOME INSTANCES IT IS -- CHAPTER 39, HAS ITS OWN WHOLE DIVISION, I DON'T NEED A FORM EVERY TIME ARE FILING IT, A PETITION BECAUSE WE KNOW THAT BUT, AGAIN, IF YOU THINK A FORM WOULD BE HELPFUL FOR THE OTHERS, I WOULD BE GLAD TO HELP TRY AND CRAFT SOMETHING LIKE THAT.

AND I DID WANT TO QUICKLY MENTION, IF I COULD, ANOTHER THING I THINK YOU MAY NOT WANT ME TO GO INTO IT BECAUSE I GUESS IT BLEEDS INTO THE OTHER SECTIONS BUT I'M ASKING THE COURT TO PLEASE MAKE SURE THAT IT IS CLEAR IN ALL OF THESE VARIOUS SUB SECTIONS, WHAT IS CONFIDENTIAL, AND WHAT IS NOT AS FAR AS THE MOTION AND THE RECORDS SUBJECT TO...

>> WE'LL BE DISCUSSING THAT, IN THE CRIMINAL AREA.

>> CIVIL IS CLEAR AND CIVIL TRIAL LEVEL, A MOTION, AND IT IS OPEN.

AND SUBJECT TO OR CLOSED UNTIL RULED UPON AND GETS MURKY AFTER THAT.

TRIAL COURT CRIMINAL, NOT ON A

DOCKET.

BUT DOESN'T SAY IT IS
CONFIDENTIAL AND THEN GET TO
APPELLATE CRIMINAL AND IT IS --
EVERYTHING --

>> WILL YOU COMMENT ON THE
SECOND ONE.

>> NO, THAT IS WHY I WAS HOPING
TO PUT THAT IN QUICKLY, WE'RE
UNCLEAR ESPECIALLY ON -- YOU
KNOW, WE'RE THE ONES DOING IT ON
THE GROUND AND REALLY NEED TO
UNDERSTAND --

>> CAN'T HAVE A SECRET DOCKET.

>> AND WE ARE NEUTRAL, NO MATTER
WHAT YOU WANT BUT IT'S NOT
CLEAR, ON F-2 IN PARTICULAR IS
UNCLEAR BUT I THANK THE COURT
FOR THE TIME.

>> THANK YOU VERY MUCH.

OKAY.

WE HAVE ANOTHER GROUP TO COME UP
FOR THE SECOND CASE.

WHICH IS ALSO, THE AMENDMENT TO
THE RULES OF JUDICIAL
ADMINISTRATION.

ALL RIGHT, NOW ON THE SECOND
CASE, ARE THERE SIDES HERE, IT
DOESN'T LOOK LIKE IT.

NOW, SO IT DOESN'T MATTER, OKAY.
ABOUT THE ORDER HERE.

OKAY.

>> IT MIGHT HELP, THOUGH, I
GUESS WHAT I WOULD LIKE TO KNOW,
IS AS YOU GET, YOU KNOW, AS WE
ALLOCATE THE TIME, IT SEEMS LIKE

THE CRIMINAL RULES ARE THE BIG ISSUE, I WANT TO KNOW IF ANYONE IS GOING TO DISCUSS THE SEALING ON THE APPELLATE... OKAY.

ALL RIGHT, SOMEHOW MAYBE THAT COULD BE SEPARATED BECAUSE IT IS SORT OF A THING UNTO ITSELF.

>> HE HAS THE END -- THE NINE MINUTES AT THE END, MR. SOLOMON HAS THE NINE MINUTES AT THE END. LOOKS LIKE MR. KANEY, AGAIN, WE HAVE GOT, YOU KNOW, A NUMBER OF PEOPLE HERE, WITH FINITE TIME, SO, IF YOU WOULD PLEASE OBSERVE THE CLOCK.

>> THANK YOU, YOUR HONOR, AND PLEASE THE COURT, FOR THE ACCESS COMMITTEE, OUR INTEREST IN THIS RULE IS THE STANDARD WHICH MUST BE MET IN ORDER TO EFFECTUATE A SEALER.

ALL OF THE OTHER ISSUES THAT IS THE ONLY THING I'LL TALK ABOUT AND MAY NOT EVEN TAKE FIVE MINUTES ON THIS, BUT THE WAY THE PROPOSAL FROM RJA SAID THAT -- HAD LANGUAGE REFERRING TO, IF REVEALING THE PARTY TO THE SUBSTANTIAL ASSISTANCE AGREEMENT MIGHT LEAD TO ENDANGERING A PERSON, THEN IT SHOULD BE SEALED.

THE STANDARD IS... AT THE VERY BOTTOM OF THE TIER OF WHAT YOU HAVE TO SHOW AS A THREAT.

>> BUT, CAN -- I KNOW THAT YOU

ARE ALL VERY FAMILIAR WITH THIS.
BUT I WANT TO MAKE SURE I
UNDERSTAND SOMETHING.
WE, RIGHT NOW, HAVE UNDER THE
RULES PROCEDURES UNDER CERTAIN
SUBDIVISIONS THAT WOULD BE -- TO
MAKE THINGS CONFIDENTIAL UNDER
PARTICULAR, YOU KNOW,
SUBSECTIONS -- LITTLE "I" UNDER
THE RULE AS IT EXISTS -- I DON'T
HAVE MY GLASSES ON AND I'M
TRYING TO THINK OF... WHICH ONE.
BUT, THIS RULE IS DEALING OR
ATTEMPTING TO DEAL SOLELY WITH
THE CLASS OF RECORDS.
THAT WERE THE PROBLEMATIC CLASS
OF RECORDS THAT WERE BEING
SUBJECT TO FALSIFICATION BECAUSE
-- AND NOT APPEARING ON DOCKETS
AND THAT WAS -- IF I'M CORRECT,
IT IS PERTAINING TO PLEA
AGREEMENTS, SUBSTANTIAL
ASSISTANCE AGREEMENTS, OR
SIMILAR COURT RECORDS, MEANING
COURT RECORDS, SIMILAR TO PLEA
AGREEMENTS AND SUBSTANTIAL
ASSISTANCE AGREEMENTS, I JUST
WANTED TO UNDERSTAND THAT WE ARE
NOT DEALING WITH THE WHOLE
PANOPLY OF CRIMINAL RECORDS
HERE.

>> YES, MA'AM.

>> IS THAT RIGHT, IN THE RULE,
BECAUSE THE QUESTION IS WHETHER
THE MOTION IS... OKAY.
SO WITH THAT IN MIND, WHY IS IT

NECESSARY TO INCLUDE LANGUAGE THAT SAYS THAT CONSTITUTES A SERIOUS AND IMMINENT THREAT TO EITHER THE SAFETY OF A PERSON OR AN ACT OF CRIMINAL INVESTIGATION.

>> THE REASON IS, ACTUALLY IT GOES BACK TO THE SECRET DOCKET OR SUPER SEALER ISSUE, IF THE STANDARD IS AT DISCRETION, THAT IS WHERE A LOT OF THOSE SUPER SEALERS WERE COMING FROM, THEY WERE OF DISCRETION AND THERE IS NO WAY TO REVIEW THAT.

>> IF IT REFERRED BACK -- AND UNDER SUBSECTION 9, IF THE RULE RECEIVED BACK TO SUBSECTION 1, A CONFIDENTIAL... REQUIRED TO PREVENT A SERIOUS AND IMMINENT THREAT TO THE FAIR AND PARTIAL AN ORDERLY ADMINISTRATION OF JUSTICE, THAT COVERS ONE THING THAT IS ALL -- ALREADY THERE.

OR, TO PROTECT THE COMPELLING GOVERNMENT INTERESTS.

IN OTHER WORDS, YOU HAVE -- THAT IS ALREADY EXISTING STANDING ALONE BUT THIS WILL BE A HEIGHTENED LEVEL OF EVEN FURTHER SCRUTINY, OR, TO AVOID SUBSTANTIAL INJURY TO INNOCENT THIRD PARTIES, WHY DO WE NEED ADDITIONAL LANGUAGE IN THE RULE BEING PROPOSED, OTHER THAN TO IDENTIFY THAT IT IS MEANT TO COVER RECORDS THAT ARE

CONFIDENTIAL BECAUSE THEY
PERTAIN TO PLEA AGREEMENTS,
SUBSTANTIAL ASSISTANCE
AGREEMENTS, OR SIMILAR COURT
ORDERS?

DO YOU UNDERSTAND WHAT I AM
SAYING.

>> I ABSOLUTELY DO AND I THINK
THAT IS AN EXCELLENT POINT.
OUR COMMITTEE REACTED TO A
PROPOSAL THAT HAD THIS LANGUAGE
IN IT.

SINGLING OUT THESE SUBSTANTIAL
ASSISTANCE AGREEMENTS AND PLEA
AGREEMENTS AND THAT IS
ABSOLUTELY RIGHT.

THE --

>> THEIR RULE WAS SO -- SO
BROAD, REQUEST TO MAKE COURT
RECORDS CONFIDENTIAL THAT MAY
JEOPARDIZE -- MAY JEOPARDIZE THE
SAFETY OF A PERSON OR AN ACTIVE
CRIMINAL INVESTIGATION.

WELL, I MEAN, THERE IS ALREADY
THINGS COVERED UNDER C-9 THAT
WOULD, YOU KNOW, I THINK THAT
WAS WHY YOU WERE CORRECT, THAT
THAT IS TOO BROAD BUT YOURS
SEEMS LIKE IT IS TOO NARROW,
LIKE THE -- REASONABLE...

>> OUR INTENT WAS TO APPLY THE
BARREN STANDARD, THE C-9
STANDARD WHICH YOU JUST READ TO
ME, THOSE PRONGS AND IT WOULD BE
VERY MUCH CONSISTENT WITH THE
ACCESS COMMITTEE'S REACTION TO

THIS, IF THE RULE READ JUST AS YOU SAY, GO OVER TO C-9 AND FIND THE JUSTIFICATION AND SUSTAIN YOUR BURDEN IN THAT WAY.

>> THAT WOULD BE THE ONLY THREE I THINK THAT MAY BE... BUT, YOU KNOW, IT WOULD SEEM THAT THEN WE DON'T CREATE A NEW STANDARD.

>> I AM SURE FROM THE DISCUSSION WE HAD IN OUR COMMITTEE, OUR COMMITTEE WOULD FULLY SUPPORT THAT.

[INAUDIBLE] AND THAT, REALLY, IS THE ONLY COMMENT THE ACCESS COMMITTEE HAS SO I WILL...

>> ALL RIGHT.

>> YIELD BACK.

>> I BELIEVE --

>> CAN I RESERVE IT FOR THE FUTURE?

>> MR. BATEMEN, YOU ARE UP NEXT.

>> GOOD MORNING, MAY IT PLEASE THE COURT, TOM BATEMEN, [INAUDIBLE] ON BEHALF OF THE CRIMINAL PROCEDURE RULES COMMITTEE.

I'M THE IMMEDIATE PAST CHAIR AND AS A COINCIDENCE I WAS ON THE ORIGINAL CONFIDENTIALITY OF RECORDS WORK GROUP THAT --

>> I DON'T THINK THERE IS ANY COMMITTEE YOU HAVE NOT BEEN ON.

>> NOT VERY MANY, SANDY AND I HAVE PROBABLY BEEN A LOT OF THEM.

>> YOU MAY HAVE JUST VOLUNTEERED

YOURSELF FOR FURTHER ASSIGNMENTS
THIS MORNING.

>> NO, NO, DON'T DO THAT!

YOU JUST HIT THE ISSUE, JUSTICE
PARIENTE WITH REGARD TO THE
CRIMINAL PROCEDURAL RULES
COMMITTEE AND I WANT TO TELL YOU
THE ORIGINAL LANGUAGE THAT
MR. KANEY WAS TALKING ABOUT THAT
MAY JEOPARDIZE THE SAFETY OF A
PERSON OR AN ACTIVE CRIMINAL
INVESTIGATION, WAS WHAT THE
COMMITTEE VOTED OUT, AND
REMEMBER, THE COMMITTEE IS MADE
UP OF JUDGES, LAW PROFESSORS,
AND PUBLIC DEFENDERS --

>> MEANING THE RJA COMMITTEE.

>> YES.

THE -- THAT PARTICULAR LANGUAGE.
AND, FELT THE UNANIMOUSLY VOTED
THAT OUT, AND BOARDED OF
GOVERNORS UNANIMOUSLY VOTED THAT
OUT AS WELL AND THE LANGUAGE
THAT IS NOW -- THE ACCESS
COMMITTEE HAS PUT FORTH, THE
COMMITTEE VOTED UNANIMOUSLY AND
THE BOARD OF GOVERNORS VOTED 38
TO 0 IT WAS TOO NARROW AND WHAT
YOU SAID WOULD BE A COMPROMISE,
THAT IS JUST RIGHT.

THAT MIGHT WORK.

>> I DON'T WANT TO TAKE CREDIT
FOR THIS, THEY HAVE WONDERFUL
STAFF HERE --

>> I KNOW YOU DO, I KNOW YOU DO
BUT IT MIGHT BE A COMPROMISE AND

IT IS SOMETHING IN BETWEEN, IF
IT IS -- I THINK THIS STANDARD
IS SO STRICT, THE COMMITTEE FELT
THE STANDARD IS SO STRICT, IT
WOULD BE NEARLY IMPOSSIBLE TO
MEET IN A GIVEN CASE.

>> BUT YOUR IDEA, AGAIN, BECAUSE
I WANTED TO -- THIS HAS TO BE
WORKABLE FOR JUDGES, AND
EVERYTHING.

THIS IS REALLY -- MEANT TO DEAL
WITH THE CLASS OF DOCUMENTS THAT
THE STATE ATTORNEYS OR CONCERNED
-- ARE CONCERNED ABOUT AND
SOMEBODY IS ABOUT TO, YOU KNOW,
THE CONFIDENTIAL INFORMANT OR
WHATEVER AND THERE IS SOMETHING
THEY HAVE TO KEEP FROM THE
PUBLIC FOR A PERIOD OF TIME.

>> I THINK THE DEFENSE BAR ALSO
IS ON THE SAME PAGE.

IT WAS THIS -- THAT STATE DOCKET
THING THE DEFENSE DEPARTMENT IS
HAVING A PROBLEM WITH AND
SOMETHING MR. KANEY SAID ABOUT,
THERE WAS -- EVERYTHING WAS
SUBJECT TO DISCRETION,
PREVIOUSLY, AND YEAH, IT WAS
DISCRETION BUT IT WASN'T A
JUDICIAL DISCRETION, IT WASN'T
BEING BROUGHT BEFORE A JUDGE,
THEY WERE DOING IT ON THEIR OWN,
DOWN THERE IN SOUTH FLORIDA.

SO, I THINK THAT YOU --

>> YOU ALWAYS BLAME SOUTH
FLORIDA.

NOTHING LIKE THIS HAPPENS UP
HERE, HUH.

>> THERE MAY BE SOMEPLACE ELSE,
BUT, THEY ARE OFTEN LEADERS DOWN
IN SOUTH FLORIDA.

>> WE'LL HAVE A SPECIAL SET OF
RULES FOR SOUTH FLORIDA, HUH?

>> BUT, I THINK, UNDER THIS --
IF IT WERE FASHIONED IN A WAY
THAT NOW IT WENT BEFORE A JUDGE
AND A JUDGE THEN HELD A HEARING,
AND THEN MADE A DECISION, I
THINK THAT TAKES AWAY THAT
ISSUE.

>> I'M CONCERNED ABOUT -- I
DON'T KNOW IF YOU ARE -- THIS IS
PART OF YOURS, BUT I AM
CONCERNED THAT WE ARE MAKING THE
MOTION IN ALL CASES JUST
AUTOMATICALLY CONFIDENTIAL.
HAS THE COMMITTEE CONSIDERED
THAT PERHAPS THERE COULD BE
SOMETHING, YOU KNOW, THAT -- IN
THOSE CLASSES OF CASES WHERE THE
MOTION ITSELF IS REALLY -- HAS
REVEALED SOMETHING, THAT THERE
WOULD BE THE MOTION -- REQUEST
THE CONFIDENTIALITY OF THE
MOTION AS OPPOSED TO
AUTOMATICALLY MAKING THE MOTION
ITSELF.

>> I THINK IT WAS BECAUSE YOU...
IT IS VERY DIFFICULT CONTROL,
WHAT IS PUT INTO THE TITLE OF
THE MOTION.
SOME PRACTITIONERS WILL PUT WHAT

THEY ARE TRYING TO MAKE
CONFIDENTIAL AND IT GOES INTO
THE DOCKET.

>> BUT, IF THEY NEED THAT EXTRA
PROTECTION, BUT IT JUST SEEMED
TO ME THAT WE HAVE GOT IT RIGHT
NOW, WHAT IS THE POSITION ON --
OF THE COMMITTEE, ON WHETHER
THESE APPEAR ON A DOCKET.

>> THE COMMITTEE IS... THINKS
THEY SHOULD NOT APPEAR UNTIL A
JUDGE MAKES A DECISION ON THAT.

>> DON'T WE HAVE SECRET DOCKETS
AGAIN?

>> I -- NO, I DON'T THINK SO.

I THINK IT IS -- THERE SHOULD BE
SOME REFERENCE THAT A MOTION WAS
FILED -- BUT THE FINAL ONE OF
THE MOTION ADDS AND OFTEN ON
THESE ELECTRONIC DOCKETS,
ANYWAY, IF YOU LOOKED AT THEM
CAREFULLY, IT MIGHT JUST SAY,
MOTION.

IT MAY NOT SAY ANYTHING ELSE --

>> AS LONG AS THERE IS --

>> SOME REFERENCE TO IT.

>> WELL, WE WOULD HAVE TO
IDENTIFY IT AND THEN, WHAT ABOUT
-- ARE YOU GOING TO -- MAYBE
SOMEONE ELSE CAN IDENTIFY
WHETHER THE HEARINGS ARE
PRESUMPTIVELY CLOSED OR WHETHER
THEY HAVE GOT TO BE
PRESUMPTIVELY OPEN --

>> I AM NOT ADDRESSING THAT,
THAT WAS NOT AN ISSUE FOR US BUT

I THINK THE STANDARD WAS A REAL
PROBLEM FOR THE COMMITTEE, AND I
-- THAT WAS MY MAIN, MAIN POINT.

I HAVE 45 SECOND LEFT.

>> 45 SECONDS OVER.

>> OVER!

OH.

>> ALL RIGHT.

MR. MORRISON?

>> ON BEHALF OF THE FLORIDA
PUBLIC DEFENDER ASSOCIATION,
MATE PLEASE THIS COURT, WE HAVE
TWO POINTS HERE, THE FIRST IS AS
WAS OBSERVED, OUR PROBLEM REALLY
WAS, WITH THE FAKE DOCKET.

WE... WOULD LIKE THE COURT TO
MAKE THE RULE CLEAR THAT
ALTHOUGH, THE RULE...

[INAUDIBLE] SEALING OF DOCUMENTS
IT DOESN'T AUTHORIZE THE
ALTERATION AND CREATION OF FALSE
DOCUMENTS, AND ALSO CAME -- AS
PART OF THE INVESTIGATIVE REPORT
FROM THE MIAMI HERALD.

>> ISN'T THAT -- BUT THE RULES
HAVE NOT ADDRESSED THAT.

>> THE RULES HAVE IN THE
ADDRESSED THAT.

AND WE THINK THEY SHOULD, YOUR
HONOR, IT IS A SIMPLE SENTENCE,
NOTHING IN THIS RULE AUTHORIZES
THE ALTERING OF COURT DOCUMENTS.

>> IT IS AN ALTERATION, THE
WITHHOLDING OF INFORMATION,
BECAUSE THAT SEEMS TO HAVE COME
UP AS WELL, I MEAN, THOSE ARE --

IF WE DON'T PUT ANYTHING, BUT IT IS THERE, IS THAT AN ALTERATION? IS THAT NOT AN ALTERATION? HAVE WE ADDRESSED THAT? I DON'T KNOW WHAT THE ANSWER IS GOING TO BE, BUT IT SEEMS TO ME, WE NEED TO AT LEAST TALK ABOUT THAT TO SEE WHAT THE RESULT IS.

>> I AGREE WITH YOUR HONOR, THAT YEAH.

AND, THE RULE SIMPLY, SIMPLY SAYS, IT CURRENTLY, THIS IS WHAT YOU CAN DO.

AND, IT DOESN'T DRAW ANY BOUNDARIES AND ALTHOUGH THE JOKE IS, THAT THIS IS ONLY A SOUTH FLORIDA PROBLEM, MY EXPERIENCE IS, THAT ANYTHING SOMEWHERE -- SOMEONE, SOMEWHERE THINKS IS A GOOD IDEA, SOMEONE SOMEWHERE ELSE WILL EVENTUALLY ALSO THINK, IT IS A GOOD IDEA.

AND, FORESTALL THAT AND, REALLY PROVIDES GUIDANCE, TO THE TRIAL COURTS, AND THE PROSECUTORS AND THE DEFENSE ATTORNEYS, AND THE DEFENDERS.

WHO ARE PROBABLY NOT GOING TO FIND THE VERY -- THE STATUTE THAT PROHIBITS THIS.

>> YOU DON'T WANT SOMETHING THAT AUTHORIZES AT LEAST THE --

>> I THINK THAT -- THAT AT LEAST CLUES EVERYBODY OFF THAT THIS RULE DOES NOT ALLOW WHAT HAPPENED AND I THINK IT GOES A

LONG WAY TO SOLVING THE PROBLEM.

>> WHAT ABOUT THE ISSUE OF WHAT IS PRIVATE, AND WHAT IS PUBLIC?

WHAT IS THE PUBLIC DEFENDER'S POSITION ON WHETHER THE MOTION ITSELF IS -- REMAINS PRIVATE OR

--

>> WE HAVE NOT TAKEN A POSITION ON THAT, YOUR HONOR AND I'M AFRAID I AM NOT AUTHORIZED TO SPEAK ON BEHALF OF THE PUBLIC DEFENDERS ASSOCIATION WITH --

>> WHAT IT HAPPENING, THIS HAS NOT BEEN A SPECIFIC RULE IN EFFECT BUT THERE IS CRITICISM. WHAT HAPPENS RIGHT NOW ON THE GROUND, SOUTH FLORIDA, THE STATE ATTORNEY, THE PROSECUTOR WANT TO MAKE SOMETHING CONFIDENTIAL, A MOTION IS FILED AND NOT PUT ON THE DOCKET?

IS THERE... WHAT HAPPENS?

>> YOUR HONOR, HONESTLY I DO NOT KNOW THE ANSWER TO THAT QUESTION.

BEING AN APPELLATE ATTORNEY IT WOULD HELP AND I UNDERSTAND, BEING AN APPELLATE ATTORNEY, I DO NOT SEE THAT PARTICULAR NUANCE IN MY PRACTICE.

AND, AS I'M -- ALSO IN THE CIRCUIT COURT I HAVE NOT SEEN IT, MY SUSPICION IS IT IS ALL HAND... [INAUDIBLE].

>> YOU INDICATED YOU HAD A SECOND ISSUE.

>> YES, YOUR HONOR, THANK YOU.

SECOND ISSUE IS DEALING WITH FINAL CONVICTIONS, WE BELIEVE THE RULE SHOULD NOT ALLOW THE SEALING OR FINAL FELONY -- OF FINAL FELONY CONVICTIONS AND THE REASON BEING THOSE CONVICTIONS HAVE LEGAL SIGNIFICANCE IN OTHER CASES.

ANYPLACE THAT PERSON MAY BE A WITNESS, THAT IS IMPEACHMENT EVIDENCE, CONSTITUTION GIVES YOU A RIGHT TO INVESTIGATE AND TO FIND THAT EVIDENCE, AND THE RULES OF ETHICS REQUIRE THAT EVIDENCE NOT BE CONCEALED, AND WE DO NOT MEAN TO HAMSTRING THE USE OF CONFIDENTIAL INFORM MAN. THEY CAN BE DONE, INSIDE THE CASE.

IN OTHER WORDS, SUBSTANTIAL ASSISTANCE AGREEMENT CAN BE ENTERED INTO, AND THE CASE NOT CLOSED, THERE IS NO FINAL CONVICTION, AND SUBSTANTIAL ASSISTANCE AGREEMENTS, COMPLETED, OR NOT.

AND, THEN, THE ULTIMATE DISPOSITION OF THE CASE.

BUT, THE IDEA IS SO THAT THE FINAL CONVICTION IS NEVER -- WAS NEVER HIDDEN AND NEVER SEALED, AND THAT SHOULD NOT BE SEALED. THOSE ARE TWO POINTS, I'LL TAKE ANY TO THE QUESTION.

AND, I DEEPLY APOLOGIZE FOR NOT

DOING THE -- KNOWING THE ANSWER
TO THAT AND I WILL FIND THE
ANSWER TO THAT AND IF IT IS OKAY
WITH THE COURT I WOULD SUBMIT IT
BY LETTER OR --

>> WHAT WE MAY BE DOING IS
BECAUSE THERE ARE CHANGES IN
THESE RULES ANY WAY, REDRAFTING
THEM AND SENDING THEM OUT TO
THOSE WHO HAVE COMMENTED AND
THAT WAY THAT WILL ALLOW THIS --

>> IF THAT -- IF THAT IS CONVENE
TO THE COURT I WILL HOLD MY
COMMENT AND MAKE FACTUAL
REPRESENTATIONS ON THE SWORN
EVIDENCE IN THAT CONTEXT.

I THANK THE COURT FOR ITS TIME.

>> ALL RIGHT, THANK YOU.

>> GOOD MORNING, MAY IT PLEASE
THE COURT, FLEUR LOBREE, ALONG
WITH ARTHUR JACOBS, GENERAL
COUNSEL ON BEHALF OF THE FLORIDA
PROSECUTING ATTORNEY'S
ASSOCIATION.

>> COULD YOU ANSWER THE
QUESTION, BECAUSE OF HIS NATURE,
HIS PRACTICE HE COULD NOT
ADDRESS, IT APPEARS THAT AT ONE
POINT, JUST, THEY WERE MAKING
FALSE ENTRIES, IT APPEARS AND
THESE ALLEGATIONS WERE MADE THAT
THAT HAPPENED.

AND THAT IS WHAT SORT OF
GENERATED CONCERNS AND SO, WHAT
HAPPENS ON THE GROUND IN
RESPONSE TO JUSTICE PARIENTE'S

QUESTION?

WHAT IS HAPPENING.

>> WELL, IN PART I HAVE TO AGREE WITH MR. MORRISON THAT IT IS UNCLEAR WHAT IS HAPPENING, BECAUSE THERE IS NO PROCEDURE SET FORTH IN PLACE CURRENTLY, AND IT IS DIFFERENT WITH REGARD TO DIFFERENT COURTROOMS. BUT, GENERALLY SPEAKING WHAT HAPPENS, IS THE MATTER IS SET RATHER THAN SAYING REPORT REPLEA ON A PROGRESS DOCKET IT IS JUST REPORT RE:

STATUS AND THE PLEA IS ENTERED AND SEALED AND IS NOT REFLECTED ON THE DOCKET STILL THE SUBSTANTIAL ASSISTANCE IS COMPLETE AND UNSEALING OCCURS AND IT BECOMES A MATTER OF -- THE FACT THAT THE PLEA WAS ENTERED AND THE SENTENCE HAS BEEN ENTERED BECOMES A MATTER OF RECORD AT A LATER DATE.

I WOULD LIKE TO THANK MORE BATEMEN FOR BEING HERE AND SPEAKING ON BEHALF OF THE RULES COMMITTEE.

WHICH I AM CURRENTLY THE CHAIR OF, TO ALLOW ME TO BE HERE, IN AN ADVOCACY ROLE AS OPPOSED TO SPEAKING ON HALF OF WHAT THE RULES COMMITTEE VOTED BUT I WANT TO MAKE IT CLEAR TO THE COURT THE CRIMINAL PROCEDURE RULES COMMITTEE VOTED

UNANIMOUSLY IN FAVOR, THEY MAY JEOPARDIZE LANGUAGE, THAT VARIES BECAUSE THE CRIMINAL RULES COMMITTEE DID NOT FILE THEIR OWN REPORT.

>> IS THAT WHAT THE PROSECUTORS ARE ASKING FOR?

A BROAD RULE THAT WOULD SAY THAT REQUEST TO MAKE COURT RECORDS CONFIDENTIAL MAY JEOPARDIZE THE SAFETY OF A PERSON OR AN ACTIVE CRIMINAL INVESTIGATION?

LET ME JUST FINISH, THIS ASSUMES EVERYTHING THAT EXISTED, A WHOLE NEW STANDARD THAT RELATES, DOESN'T EVEN TALK ABOUT THE SUBSTANTIAL ASSISTANCE AGREEMENTS OR PLEA AGREEMENT, IT IS ANY COURT RECORDS.

>> WHAT THE STATE AND PROSECUTORS ARE ASKING FOR IS NOTHING THAT HASN'T ALREADY BEEN IN EXISTENCE BASED UPON THIS COURT'S JURISPRUDENCE AND SUPREME COURT JURISPRUDENCE AND EXISTING RULES OF PROCEDURE WITHIN THE CURRENT RULE OF JUDICIAL ADMINISTRATION THAT IS PRESENT IN OUR CASE LAW AND IN OUR STATE FOR A LONG TIME AND IS RECOGNIZED AS AN EXCEPTION UNDER ARTICLE ONE, SECTION 24.

WHAT WE ARE CONCERNED WITH IS PROTECTING THE SAFETY OF CONFIDENTIAL INFORMANTS, DEFENDANTS WHO ENTER INTO

COOPERATION AGREEMENTS WITH
LAW-ENFORCEMENT IN ORDER TO BE
PROACTIVE AND BE INVOLVED IN
UNDERCOVER LAW ENFORCEMENT
EFFORTS.

THIS IS AN INTERSECTION BETWEEN
LAW ENFORCEMENT AND CRIMINAL
INVESTIGATIONS AND THE JUDICIAL
SYSTEM.

ORDINARILY WITH SUCH
INVESTIGATIONS TAKING PLACE,
PRIOR TO THE TIME OF FILING
CRIMINAL CHARGES SO THERE WOULD
BE NO RECORD.

THERE ARE EXEMPTIONS IN EFFECT,
BUT THERE IS NOT BLANKET
CONFIDENTIALITY.

THERE IS A RULE THAT GOES BACK
TO THE COMMON LAW, LIMITED
PRIVILEGE IN FAVOR OF PROTECTING
THE IDENTITY OF A CONFIDENTIAL
INFORMANT AND THE CASE LAW FOR
THE UNITED STATES SUPREME COURT,
THE UNITED STATES VERSUS ROVIARO
ADOPTED BY THE SUPREME COURT IN
THE 1960S THAT SAYS THERE IS A
LIMITED CONFIDENTIALITY FOR A
CONFIDENTIAL INFORMANT.

THE PARTY SEEKING TO DISCLOSE
THE IDENTITY OF A CONFIDENTIAL
INFORMANT HAS THE BURDEN OF
PROOF TO DEMONSTRATE THAT IT IS
NECESSARY TO SUPPORT A SPECIFIC
DEFENSE THEORY OR TO PROTECT A
SIGNIFICANT CONSTITUTIONAL
INTEREST OF A DEFENDANT TO

COMPEL DISCLOSURE OF THE
IDENTITY.

>> BEFORE THE RULE, BEFORE THIS
PROPOSED RULE, WHAT PROVISION OF
NINE DID THE STATE GO UNDER TO
GET THE CONFIDENTIAL INFORMANT
IDENTITY REMAIN CONFIDENTIAL?

>> THE COURT MAY RECALL WHEN
THIS ARGUMENT WAS ARGUED LAST,
IN 2007, THE STATE ADVANCEMENT
THEORY SAID THIS IS CURRENTLY
PERMITTED UNDER SUBSECTION C8
PRESUMED TO BE CONFIDENTIAL BY
STATE LAW IN THE STATE OF
FLORIDA, OR PERHAPS UNDER C7,
ALL RECORDS MADE CONFIDENTIAL
UNDER THE CONSTITUTION --

>> THAT IS WHAT I AM ASKING YOU.
WE SAID WE WANT A SEPARATE RULE,
WE WERE SYMPATHETIC TO THE IDEA
WHAT THE STATE WAS ADVANCING,
THERE ARE CLASSES OF DOCUMENTS
IN PLEA AGREEMENTS, AGREEMENTS
THAT IDENTIFIED CONFIDENTIAL
INFORMANTS, THAT NEEDS
ADDITIONAL PROTECTION THAT MAY
NOT BE THERE FOR OTHER TYPES OF
RECORDS.

SO THE GOAL WAS TO MAKE IT
SPECIFIC SO EVERYONE KNEW WHAT
WE WERE TALKING ABOUT SO IF WE
HAD TO MAKE THE MOTION
CONFIDENTIAL, IF WE HAD TO MAKE
THE HEARING CONFIDENTIAL, WE
WOULD KNOW WE WERE DEALING WITH
A NARROW CLASS.

IT SEEMS TO ME IT HELPS THE STATE TO IDENTIFY AT LEAST STARTING OUT, THIS RULE THAT PERTAINS TO A PLEA AGREEMENT, SUBSTANTIAL ASSISTANCE AGREEMENT OR SIMILAR COURT RECORDS RELATING TO A CONFIDENTIAL INFORMANT OR ACTIVE CRIMINAL INVESTIGATION, IT SHOULD IDENTIFY THAT.

DO YOU DISAGREE WITH IDENTIFYING WHAT WE ARE TALKING ABOUT?

>> THE PROBLEM THE PROSECUTORS HAVE IS WHEN YOU ARE DEALING WITH THE SITUATION WITH REGARD TO CONFIDENTIAL INFORMANTS WHO ARE GOING OUT, INVOLVED IN UNDERCOVER LAW-ENFORCEMENT OPERATIONS, BY VIRTUE OF IDENTIFYING THAT THEY ARE COOPERATING WITH LAW ENFORCEMENT, PUTTING THAT LAW ENFORCEMENT AT RISK, LAW ENFORCEMENT OFFICERS THEY'RE WORKING WITH AND THEIR FAMILY MEMBERS, ALL AT RISK, BY VIRTUE OF THE FACT THAT THE CRIMINAL ELEMENT BECOMES AWARE --

>> I KNOW WHAT YOU ARE SAYING, BUT WHAT I AM ASKING, THE ORIGINAL PROPOSAL DOESN'T EVEN -- IT IS SO BROAD THAT NO ONE READING IT WOULD KNOW WE ARE CONCERNED WITH CONFIDENTIAL INFORMANTS.

I AM ASKING YOU WHY THERE ISN'T

A BETTER GOAL TO BE NARROWLY
TAILORED THAT ADDRESSES THE
CONCERN, BUT BE VERY SPECIFIC
ABOUT WHAT IT IS THAT IS BEING
REQUESTED, AND THE JUDGE KNOWS
THAT THIS IS THE KIND OF RECORD,
THE MEDIA KNOWS THIS IS THE KIND
OF RECORD, THAT IS WHY WE ARE
ASKING FOR THE MOTION ONLY BE
DESIGNATED BY A CERTAIN
DESIGNATION AS OPPOSED TO SAYING
MOTION TO KEEP JOHN SMITH'S NAME
CONFIDENTIAL AND PUT THAT ON THE
PUBLIC DOCKET.

NO ONE IS SUGGESTING THAT.

>> I RECOGNIZE THAT THE MEDIA
HAS EXPRESSED A CONCERN AND THE
COURT EXPRESSED CONCERN THAT THE
PHRASE MAY JEOPARDIZE -- TOO
BROAD AND UNCLEAR.

PERHAPS AN ALTERNATIVE PROPOSAL
COULD BE, RATHER THAN SAYING
WITH THE AXIS COMMITTEE
SUBSTITUTED, THE AXIS COMMITTEE
TOOK AND THAT EXISTING STANDARD
UNDER SUBSECTION C9Ai,
CONFIDENTIALITY REQUIRED TO
PREVENT AN IMMINENT THREAT TO
THE ORDERLY ADMINISTRATION OF
JUSTICE.

THEY TOOK THAT PHRASE, SERIOUS
AND IMMINENT THREAT, WHICH IS
THE LANGUAGE USED CONCERNING THE
INTERESTS OF PROTECTING THE
ADMINISTRATION OF JUSTICE.

>> CAN I STOP YOU?

THE PROPOSAL, WE WOULD SEND THIS OUT SO YOU CAN COMMENT, ANY MOTION DETERMINED WITH COURT RECORDS, A PLEA AGREEMENT, SUBSTANTIAL AGREEMENT OR OTHER COURT RECORDS THAT REVEAL THE IDENTITY OF A CONFIDENTIAL INFORMANT OR ACTIVE CRIMINAL INVESTIGATION IS CONFIDENTIAL UNDER SUBDIVISION -- WE WOULD IDENTIFY EITHER 9I OR LITTLE 1, LITTLE 3, LITTLE 5, OR 7 IN THE FORM OF A WRITTEN MOTION TO DETERMINE WHETHER A COURT RECORD IS CONFIDENTIAL.

THAT WAY YOU HAVE NOT IMPOSED ANOTHER LAYER, YOU HAVE IDENTIFIED FOR THE COURT AND THE WORLD THAT THIS IS THE NARROW TYPE OF DOCUMENT THAT CAN HAVE A MODIFIED HEARING.

>> THERE IS ONE COMMENT THAT I HAVE, THE EXISTING LANGUAGE OF THE RULE ISN'T ADEQUATE AND THIS IS WHY.

WITH REGARD TO Ai, POSING A THREAT TO THE ORDERLY ADMINISTRATION OF JUSTICE, PROSECUTING ATTORNEY'S ASSOCIATION IS CONCERNED IMMINENCE IS SOMETHING THAT CAN'T BE ESTABLISHED.

IF WE ARE IN A SITUATION WHERE WE KNOW THE THREAT TO INDIVIDUAL IS IMMEDIATE, LAW-ENFORCEMENT HAS A DUTY INDEPENDENTLY NOT TO PUT

SOMEBODY IN IMMINENT HARM.
THE COURT MAY BE AWARE OF THE
RECENT TRAGEDY THAT HAPPENED IN
TALLAHASSEE WHICH LED TO THE NEW
STATUTE CALLED RACHEL'S LAW, THE
LAW-ENFORCEMENT AUCTION, WE HAVE
AFFIRMATIVE DUTY TO CREATE
POLICIES AND PROCEDURES TO
PROTECT INDIVIDUALS -- WE CANNOT
HAVE A THREAT, A STANDARD THAT
REQUIRES THE IMMINENT THREAT,
THAT ELIMINATES THE WHOLE
PURPOSE OF HAVING THIS EXCEPTION
TO THE RULE.

THIS IS SOMETHING WHICH IS
NECESSARY TO PROTECT GOVERNMENT
INTERESTS.

THE CASE LAW EXISTING AND FOR
THEIR MEETING CONFIDENTIAL
INFORMANTS -- IF THE COURT IS
SATISFIED THAT THAT STANDARD IS
ADEQUATE TO THE PURPOSE OF THIS
RULE, THAT WOULD BE ADEQUATE
WITH THE PROSECUTING ATTORNEY'S
ASSOCIATION.

WITH REGARD TO AVOIDING THIRD
PARTIES, WE ARE CONCERNED NOT
ONLY WITH THIRD PARTIES BUT THE
PARTIES THEMSELVES, THE
DEFENDANT COOPERATING THE
SUBSTANTIAL ASSISTANCE AGREEMENT
COOPERATING WITH LAW
ENFORCEMENT.

THIRD-PARTY IS A CONCERN WITH
REGARD TO THAT.
PERHAPS AN ALTERNATIVE WOULD

SATISFY THE CONCERNS OF THE COURT, THE PROPOSAL BEING TOO BROAD AND SATISFY THE CONCERNS OF LAW ENFORCEMENT, WE MUST PROTECT THE SAFETY OF PERSONS, TO PROVIDE THE MOTION, INSTEAD OF SAYING CONSTITUTES A SERIES OF IMMINENT THREATS TO THE SAFETY OF A PERSON, PROVIDE THE MOTION SET FORTH, IT IS NECESSARY TO PROTECT THE SAFETY OF A PERSON OR AN ACTIVE CRIMINAL INVESTIGATION. THAT WOULD BE A REAL HARM AS OPPOSED TO A POTENTIAL HARM, BUT NOT HAVING IN A REQUIREMENT, WHICH IS A CONCERN FOR PROSECUTORS.

FINALLY, I WOULD LIKE TO --

>> YOU HAVE GONE BEYOND YOUR TIME.

IF YOU COULD SUM THIS UP BECAUSE THERE ARE OTHER PEOPLE.

>> THE ONE THING I WOULD LIKE TO SAY IS I DON'T BELIEVE IT IS NECESSARY TO DRAFT A BILL TO DEAL WITH EXTREME CIRCUMSTANCES WHICH ARE ABERRATIONS FROM THE NORM AND CODIFY IT IS NOT NECESSARY TO FALSIFY RECORDS BECAUSE FALSIFICATION SHOULD NOT TAKE PLACE, WE ARE NOT ADVOCATING FALSIFICATION. THERE NEEDS TO BE A MECHANISM WHEREBY THERE CAN BE NO INFORMATION OR ACCESS OF

INFORMATION AS OPPOSED TO
FALSIFICATION.

>> NOT FILING SOMETHING OR NOT
ENTERING SOMETHING IS NOT A
FALSIFICATION.

>> NEEDS TO BE A SEPARATE
DOCKET, SEPARATE FROM THE ACTIVE
PUBLIC DOCKET BECAUSE THE
EXISTENCE OF A MOTION ITSELF
COULD TRIGGER CONCERNS FOR THE
PERSON WHO IS COOPERATING WITH
LAW ENFORCEMENT.

WITH REGARD TO THE CONTENTION
THAT CRIMINAL DEFENDANTS NEED TO
HAVE ACCESS TO IMPEACHMENT
OPERATION AND A CONVICTION CAN
NEVER BE SEALED, SUBSTANTIAL
ASSISTANCE AGREEMENTS NEED TO BE
MADE WHEREBY THE PLEA IS ENTERED
AND A SENTENCE IS PENDING, THE
COOPERATION OF THE COOPERATING
DEFENDANT, THERE NEEDS TO BE A
MOTIVE FOR INCENTIVE FOR THE
DEFENDANT TO PERFORM IN ORDER TO
ENSURE THE COOPERATION TAKES
PLACE.

>> YOU REALLY HAVE MORE THAN
YOUR TIME HERE.

>> THANK YOU.

>> ALL RIGHT.

>> MAY IT PLEASE THE COURT, I
THINK WE'RE GETTING CLOSER TO
SOMETHING THAT SEEMS TO
ACCOMMODATE VARIOUS COMPETING
INTERESTS.

I WANT TO STEP BACK FOR A SECOND

AND STATE HOW I THINK THE RULE WORKS AND WHAT MAY BE OF CONCERN IN THIS RESTRICTED MOTION PRACTICE.

SEEMS TO ME WHAT THE RULE IS DENYING TO IS TECHNICALLY THE MOTION TO FEEL IS NOT DEEMED CLOSED, THE RULE PROHIBITS A DOCKET AND THE BEING MADE.

THE MOTION SITS IN A FILE THAT NO ONE KNOWS IS THERE.

THERE IS A CLOSED HEARING UNDER THE RULE AND A CLOSE ORDER UNDER THE RULE.

THE RESTRICTED MOTION PRACTICE BROACHES THE SUPER SEALER SITUATION.

>> WHAT YOU ARE ADVOCATING SEEMS TO BE ONE MOTION, THEN YOU HAVE TO FILE ANOTHER MOTION IN ORDER TO HAVE IT NOT MADE PUBLIC.

I AM JUST WONDERING, IF YOUR REQUEST REALLY IS A DUPLICATION.

>> I THINK WHERE THE MEDIA, THE ONES I REPRESENT ON THIS STAND, IS THAT WE ARE KIND OF SWALLOWING A TOUGH PILL ON THIS ONE.

WE HAVEN'T, IN ANY OF OUR COMMENTS, ADVOCATED THAT SEPARATE PRACTICE.

WHAT SHOULD HAPPEN TO ACCOMMODATE THE VARIOUS INTERESTS AND TO SAVE THE RULE FROM BEING UNCONSTITUTIONAL UNDER ARTICLE I, SECTION 24,

CREATING A NEW EXEMPTION IF IT CAN BE, YOU HAVE TO ESSENTIALLY GET BACK TO C9, AND THE RESTRICTED MOTION PRACTICE HAS TO BE TIED TO C9 AND THE STANDARDS THAT EXISTED AT THE TIME THE CONSTITUTIONAL AMENDMENT BECAME EFFECTIVE. TO THE EXTENT THAT THE RESTRICTED MOTION PRACTICE SPECIFICALLY IS LIMITED TO WHAT I THOUGHT WE'D DEALING WITH ALONG WITH HIS PLEA AGREEMENTS AND SUBSTANTIAL ASSISTANCE AGREEMENTS, THAT EXTREMELY NARROW CATEGORY OF DOCUMENTS, THAT IS TIED TO THESE HIGHER INTEREST THAT ARE LAID OUT IN THE NINE, THERE IS A POSSIBILITY OF CRAFTING A RULE THAT MIGHT BE CONSTITUTIONAL.

>> CAN I ASK ONE QUESTION?

DO YOU HAVE A DISAGREEMENT WITH WHAT WAS PRESENTED TO US AS THE BASIC AND FUNDAMENTAL LAW NOT ONLY FLORIDA BUT THE UNITED STATES WITH REGARD TO THESE KINDS OF MATTERS?

WE JUST HEARD THE STATE ATTORNEY SUGGEST TO US THAT THIS HAS BEEN PART OF A BASIC LAW.

DO YOU DISAGREE WITH THAT LEGAL INTERPRETATION OF WHAT THE LAW IS, UNDERLYING THIS DISCUSSION?

>> I DON'T KNOW THAT I DISAGREE.

THERE ARE DIFFERENT CONTACTS FOR

CONTROVERSIAL INFORMANTS.

YOU CAN HAVE A FILE WHERE THE
STATE ATTORNEY'S OFFICE IS
INVESTIGATING AND A CONFIDENTIAL
INFORMANT NAMED IN THAT FILE AND
IT NEVER GETS TO THE COURT
LEVEL.

AND THE PUBLIC RECORDS ACT, THE
NAME OF THE CONFIDENTIAL
INFORMANT WILL NOT BE REVEALED.

WHEN YOU GET TO THE COURT SYSTEM--
>> THAT IS WHAT WE'RE TALKING
ABOUT.

>> DISCOVERY BEING EXCHANGED
BETWEEN THE STATE AND THE
DEFENSE, THE DEFENSE IS NORMALLY
THE MOST DANGEROUS PARTY TO KNOW
THE NAME OF THE CONFIDENTIAL
INFORMANT, THE DECISION THERE
MIGHT BE SITUATIONS WHERE I
DON'T KNOW IF I CAN IMAGINE
SITUATIONS WHERE IT IS SAFE TO
GET TO THE DEFENSE --

>> WHAT THEY'RE TALKING ABOUT IS
WHEN A DEFENDANT INVOLVED IN
LITIGATION AGREES TO AN
ARRANGEMENT WITH THE STATE AND
THE STATE ATTORNEYS ARE SAYING
THAT IS NOT SOMETHING THAT OUGHT
TO BE AVAILABLE FOR FOLKS UNTIL
IT IS COMPLETED OR WHATEVER.
THEY ARE SAYING THIS IS BASED
UPON EXISTING U.S. AND FLORIDA
LAW.

I DON'T THINK THEY ARE TALKING
ABOUT THE APPEARANCE OF A NAME

IN A FILE.

THEY ARE TALKING ABOUT THE QUESTION OF -- I THOUGHT THAT WAS WHAT THE PRESS WAS TALKING ABOUT, ALTERATION OF THIS COURT FILED, SUPER SEALING IT SO YOU DON'T EVEN KNOW THAT THE FILE IS THERE.

WE PASS EACH OTHER ON THIS DISCUSSION.

>> THAT IS HOW THE RESTRICTED MOTION PRACTICE WORKS.

TO THE EXTENT THAT THE RULE IS NARROWED, WE ARE ON RECORD AS SAYING SERIOUS AND IMMINENT THREAT UNDER C9 IS A STANDARD THAT CAN APPLY AND RESTRICTED MOTION PRACTICE CAN OCCUR.

I AM NOT PRESENTING A HEARTLESS --

>> BUT AGAIN, STATE ATTORNEYS ARE SAYING THAT IS NOT THE STANDARD, THAT WE ARE CREATING A DIFFERENT STANDARD, AS I HEAR THEIR ARGUMENTS, BY INCLUDING SOME OF THE LANGUAGE ABOUT IMMINENT THREATS AND THESE KIND OF THINGS, THAT PROTECT THIS KIND OF INFORMATION.

AS I HEARD THEIR ARGUMENT, THAT IS WHAT THE LAW IS.

YOU DISAGREE WITH THAT?

>> I CAN SAY IS THIS -- IN DEALING WITH THESE ISSUES AS THEY COME UP IN THE PUBLIC RECORD CONTEXT AND THE COURT DEALING CONTEXT, I HAVE NEVER

HEARD THAT THERE IS SOME
SEPARATE STANDARD FOR MAKING
DETERMINATIONS ABOUT CLOSURE
WITH CONFIDENTIAL INFORMANTS.
THE PUBLIC RECORD CONTEXT IS
EXEMPT AND THE PLEA AGREEMENT
CONTEXT, I DO THINK SERIOUS AND
IMMINENT THREAT, SUBSTANTIAL
INJURY TO THIRD PARTIES AND
COMPELLING GOVERNMENTAL INTEREST
PROVISIONS WORK.

I HAVE NEVER ENCOUNTERED A BODY
OF CASE LAW THAT SAYS
CONFIDENTIAL INFORMANTS AND THE
AGREEMENTS ARE AUTOMATICALLY
CLOSED.

>> YOU ARE OUT OF YOUR TIME.

>> WHAT IS THE MEDIA'S POSITION
ON WHETHER THE MOTION ITSELF IS
SEALED, IS TO BE DEEMED
CONFIDENTIAL AND WHERE DOES THE
CLERK GET THIS MOTION, WHERE IS
IT PLACED?

WHAT IS THE MEDIA'S POSITION?

>> THERE SHOULD BE SOME SORT OF
DOCKET ENTRY, NOT ONE THAT SAYS
SO AND SO'S A CONFIDENTIAL
INFORMANT.

>> ARE WE DOING A CHARADE?

LET'S JUST FILE SOMETHING.

IF NOTHING ELSE HAPPENS, WHAT
HAS HAPPENED?

DO YOU SEE WHAT I AM SAYING?

THIS IS THE RUB THAT GOES INTO
THIS.

YOU PUT SOMETHING ON THE DOCKET,

WE KNOW WHAT HAS HAPPENED.

DO YOU SEE?

IS THAT JUST MOTION?

>> THAT WOULD BE BETTER THAN
ZERO.

>> THANK YOU VERY MUCH.

>> MAY IT PLEASE THE COURT.

I AM HERE ON BEHALF OF THE
APPELLATE RULES COMMITTEE AS
WELL AS SPECIAL JOINT COMMITTEE
THAT WAS FORM PURSUANT TO THIS
COURT'S SUGGESTION THAT
COMMITTEES JOIN FORCES, WE HAVE
DONE SO ON A MORE REGULAR BASIS,
ACTUALLY FORMED COUNCIL OF ALL
THE RULES COMMITTEE CHAIRS AND
THE LIAISONS AND STAFF MEMBERS
SO THAT WE CAN ADDRESS THESE
ISSUES IN A MORE EFFICIENT
MANNER.

MOST OF THE COMMENTS OF THE
APPELLATE RULES COMMITTEE ARE
DIRECTED TO THIS COURT'S INQUIRY
AS TO HOW WE ADDRESS THOSE
APPELLATE MATTERS.

>> AT THE VERY OUTSET WHEN THIS
HAPPENED IN 2006/2007, THE
APPELLATE RULES COMMITTEE SAID
WE THINK A COMMENT TO THE
APPELLATE RULES WILL SOLVE THAT.
AT THE TIME, THE COURT SAID NO,
WE WANT RULES.

I READ PAGES AND PAGES OF RULES
KNOWING WE DO THE APPELLATE PART
OF IT.

IF YOU WERE WRITING ON A BLANK

SLATE, WAS THERE A FEELING THAT WE COMPLICATED SOMETHING MUCH MORE THAN IT NEEDS TO BE IN THE APPELLATE CONTEXT?

OR DO YOU THINK WHAT WE ARE DEVELOPING WITH THE JOINT EFFORT WILL BE WORKABLE AND WILL SPELL OUT WHAT NEEDS TO HAPPEN, AND THE RECORDS ARE GOING TO BE CONFIDENTIAL, WHERE IT WASN'T CONFIDENTIAL BELOW, IS WHAT WE ARE TALKING ABOUT.

>> THERE ARE TWO QUESTIONS YOU ARE ASKING.

ONE IS WHAT HAPPENS WHEN IT COMES TO THE APPELLATE COURT ON AN ORIGINAL PROCEEDING, THE OTHER IS WHAT HAPPENS IF THERE IS AN ORDINARY REVIEW.

IF IT HAS BEEN ADDRESSED BELOW, OUR SUGGESTION UNDER E7 AND G7 DEALS WITH PRESERVING THE FINDINGS THAT WERE MADE BY THE LOWER TRIBUNAL.

THE LOWER TRIBUNAL, THE SUGGESTIONS THAT IT SHOULD MAINTAIN THE SAME CONFIDENTIALITY.

MOST NOTABLY IN ITS 2.20 CONTEXT.

WE WANT TO MAINTAIN THE SAME STATUS ON REVIEW.

WE MONKEYED WITH THIS RULE.

WHAT WE DELETED UNDER THIS RULE, WE DIDN'T HAVE D1B, THOSE 19 EXEMPTIONS UNDER THE ABSORPTION

RULE.

PROBABLY NOT NECESSARY TO DELETE
THE RULE.

UNDER THIS RULE OR BY THE LOWER
TRIBUNAL, THIS RULE NOW HAS SOME
SELF EFFECTUATING PROVISIONS.

>> MY FIRST QUESTION IS DO WE
NEED ALL OF THESE RULES INDIA,
CONTEXT?

>> I THINK WE DO.

SOME OF THEM ARE DEALING WITH
WHAT HAPPENS WHEN THERE IS A
LOWER TRIBUNAL RULING OR IT
COMES UP FROM THE LOWER TRIBUNAL
IN TERMS OF ITS CONFIDENTIALITY,
AS OPPOSED TO 9.100D UNDER
WHICH ALL OF THE PROCEEDINGS
WOULD BE GOVERNED.

>> THE QUESTION I HAVE, IF
SOMETHING WAS CONFIDENTIAL BELOW
-- WE KEEP IT CONFIDENTIAL,
CHAPTER 39 PROCEEDING, THOSE ARE
SEALED.

THE ISSUE HAS COME UP IN THE
APPELLATE CONTEXT.

IF IT ISN'T CONFIDENTIAL BELOW
IN THE BAR CONTEXT FOR ALL THESE
THINGS TO BE SEALED, WITHOUT
LETTING YOU SEAL THINGS --

>> MOST OF THE WORK DEALT WITH
NEW REQUESTS TO THE PUBLIC
COURT.

>> ARE YOU ENVISION THAT IF
THERE WAS OPPORTUNITY TO MAKE
THE DOCUMENT CONFIDENTIAL BELOW,
THE JUDGE EITHER DIDN'T MAKE THE

DETERMINATION, OR MADE IT ADVERSELY AND THERE WAS NO APPEAL, THAT THERE WOULD BE ANOTHER OPPORTUNITY IN AN APPELLATE COURT TO MAKE THAT DOCUMENT CONFIDENTIAL SEPARATE FROM THE REVIEW PROCEEDING?

>> THERE WAS SUBSTANTIAL DISSENSION ON THAT POINT AND THE CONSENSUS, THE MAJORITY VIEW ON THAT WAS TO DELETE THE REFERENCE TO IN THE ORIGINAL PROCEEDING SO THAT THERE COULD BE AN OPPORTUNITY FOR A LITIGANT TO PRESENT THAT MATTER TO AN APPELLATE COURT FOR REVIEW IF THEY DIDN'T LIKE THE RULING BELOW, IT DIDN'T GET RULED UPON BELOW.

THAT IS WHERE THE PRESENTED OR PRESENTABLE CONTEXT.

WE DON'T NEED TO PRECLUDE THE REVIEW OPPORTUNITY BY THE APPELLATE COURT.

THERE WAS A NEW DOCUMENT TO BE PRESENTED OR IN AN ORIGINAL PROCEEDING IT WASN'T PRESENTED BELOW AND IT COULD BE PRESENTED BECAUSE THERE WOULD BE AN OPPORTUNITY UNDER A VARIETY OF DIFFERENT CONTEXTS TO PRESENT ORIGINAL PROCEEDINGS UNDER 9.100 WHERE THERE IS NO OPPORTUNITY BY A LOWER TRIBUNAL OR THERE MIGHT BE NO LOWER COURTS ON A LOWER TRIBUNAL OTHER THAN A COURT THAT

WOULD NOT HAVE MADE THAT KIND OF RULING, SO THE OPPORTUNITY WAS LEFT OPEN BY OUR DETERMINATION, AT LEAST OUR RECOMMENDATION, TO LEAVE THAT POSSIBILITY OPEN.

9G1 DEALS WITH REQUESTS TO DEAL WITH CONFIDENTIALITY OF APPELLATE RECORDS AND IN THAT CONTEXT WE SAID WE SHOULD APPLY THE SAME STANDARDS UNDER E1 PROMOTIONS, WHEN A RECORD IS PRESENTED TO A LOWER TRIBUNAL BUT NOT DETERMINED TO BE CONFIDENTIAL, WERE A RECORD IS PRESENTED TO THE ORIGINAL APPELLATE PROCEEDINGS, A REGIONAL PROCEEDINGS BEFORE THE COURT, WE DID QUERY THAT PROBLEM AS TO WHETHER OR NOT THERE WAS A SECOND BITE OF THE APPLE IN ORIGINAL PROCEEDINGS.

WE SAW THAT THERE WAS A LACK OF EQUANIMITY ON BOTH SIDES BECAUSE IN A REVIEW PROCEEDING, YOU DON'T HAVE AN OPPORTUNITY TO HAVE IT REVIEWED AGAIN, YOU WOULD ONLY BE COMING UP ON AN APPELLATE REVIEW PROCESS VERSES AN ORIGINAL PROCEEDING, AND UNDER THOSE CONTEXTS --

>> I CAN'T IMAGINE A DOCUMENT THAT STAYED OPEN, NOW WE ARE FARING THIS APPEAL AND THEY DIDN'T FILE A WRIT OF SURT, THE DEPARTURE -- HOW THE COURT IS GOING TO HAVE A SEPARATE MOTION --

>> AND A SEPARATE HEARING --
>> -- TO SAY SOMETHING THAT WASN'T
RULED ON.

WHERE IS THE NEED FOR THAT?
OPPOSED TO THE REGIONAL
PROCEEDINGS OR COMING UP FROM
THE FLORIDA BAR, BY LUMPING IT
ALL TOGETHER WE ARE TELLING
LITIGANTS TO FILE MOTIONS THAT
HAVE NEVER BEEN FILED BEFORE.

>> TO TRY TO INVOKE THE
PROCEEDINGS, THE PROCEDURES,
PROMOTIONS, WE AGREE, WE DID NOT
KNOW WHAT THE COURT'S DRUTHERS
WERE.

I DON'T PERCEIVE THE SITUATION
RECORD WOULD BE ASKED TO REVIEW
THAT OR TO CONSIDER THE
CONFIDENTIALITY UNDER E1, BUT
THAT IS LEFT OPEN AND TO THE
JOINT WORKING COMMITTEE.

>> I AM SURE THE APPELLATE
JUDGES MUST HAVE BEEN THRILLED
WITH THAT IDEA.

>> THE REST OF OUR COMMENTS FALL
ALONG THAT LINE.

IN G3 WE TRIED TO MAKE THAT
BILATERAL.

IF THE APPELLATE COURT WERE TO
DECIDE THAT SOMETHING WAS
CONFIDENTIAL, IT MET THE
STANDARDS CAN BE ANSWERED IN THE
CONFIDENTIALITY IN THE LOWER
TRIBUNAL.

IN ORDER FOR AN APPELLATE COURT
TO MAKE IT CONFIDENTIAL IN THE

LOWER TRIBUNAL, IN ANY EVENT, WE DECIDED ALL REVIEWS OF THESE ORDERS SHOULD BE UNDER 9.100D. WE ATTEMPTED TO STRIKE A BALANCE AND HAVE IT BILATERAL SO IT WOULD NOT ONLY RELATE TO WARDERS MAKING CONFIDENTIAL DOCUMENTS BUT DECLINED, GRANTING ACCESS. WE THOUGHT IT SHOULD BE A SHORT AUTOMATIC STAY PROVISIONS TO ALLOW THE APPLICANT TO REVIEW THE 9.100D RULING AND EXTEND BY FILING A SEPARATE MOTION, SO THEY COULD SEEK AN EXTENSION TO EXTEND THE STAY, THE AUTOMATIC STAY WAS APPROPRIATE. WE ALSO BROUGHT TO THE COURT ADDED TENSION IN OUR COMMENTS THAT 9.040 SHOULD DO A CROSS REFERENCE. IN OUR PRIOR CONVERSATIONS WITH JUSTICE WELLS, LIAISON TO OUR COMMITTEE, HE EXPRESSED CONCERNS THAT WITH THE REORGANIZATION OF THE RULES OF JUDICIAL LEAD MINISTRATION, PRACTITIONERS WOULD BE CONFUSED, PEOPLE WOULDN'T KNOW WHERE TO GO. OUR CONSIDERATION WAS TO PUT A REFERENCE IN 9.040 TO DETERMINE THE CONFIDENTIALITY OF THE RECORDS TO BE GOVERNED BY 2.040. >> WITH THAT, YOU HAVE USED MORE THAN YOUR TIME. ANY OTHER QUESTIONS FROM THE COURT?

THANK YOU VERY MUCH.

I WANT TO THANK ALL OF YOU FOR
THE TIME AND ATTENTION YOU HAVE
PUT IN TO THESE CASES.

WE KNOW IT HAS BEEN A REAL WORK
IN PROGRESS.

WE ARE STILL WORKING ON THIS
ISSUE.

WE WANT TO MAKE SURE THE PUBLIC
HAS ACCESS.

WE ALSO WANT TO MAKE SURE
CONFIDENTIAL MATTERS REMAIN
CONFIDENTIAL.

COURT WILL NOW TAKE ITS RECESS
FOR TEN MINUTES.

>> PLEASE RISE.