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In re: Amendments to the Rules of Judicial Administration

SC08-1658

>> PLEASE RISE.

LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.
PLEASE BE SEATED.

>> THE FINAL CASE ON THE COURT
CALENDAR FOR TODAY IS AMENDMENT
TO THE FLORIDA RULES OF JUDICIAL
ADMINISTRATION AND THE FLORIDA
RULES OF APPELLATE PROCEDURE.
I NOTICE THAT WE HAVE A NUMBER
OF INTERESTED PERSONS WHO WANT
TO MAKE ARGUMENT HERE TODAY, AND
WE HAVE A LIMITED AMOUNT OF TIME
FOR THE ARGUMENT, SO I WOULD ASK
THAT YOU PLEASE FOCUS IN ON THE
ISSUE THAT YOU WANT TO ADDRESS
AND IT SEEMS TO ME THAT WHAT WE
HAVE HERE IS SOME OPPOSITION TO
MAKING THE OFFICIAL RECORD --
THE WRITTEN RECORD AND WHETHER
OR NOT PARTIES SHOULD BE GIVEN
COPIES OF THE DIGITAL RECORDINGS
THAT TAKE PLACE IN THE COURTROOM
AND IF THOSE ARE YOUR ISSUES
PLEASE FOCUS IN ON THEM SO WE
KNOW EXACTLY WHERE YOU STAND ON
THESE MATTERS.

>> THANK YOU.

MADAM CHIEF JUSTICE, MY NAME IS
BOB BENNETT.

I AM THE CIRCUIT JUDGE FROM THE
12TH JUDICIAL CIRCUIT AND I'M
THE CHAIR OF THE COMMITTEE ON
ACCOUNTABILITY.

IT IS OUR CONDITION THAT HAS
RECOMMENDED THESE RULE REVISIONS
AND AS PART OF A LARGER REPORT
TO THIS COURT, IN RESPONSE TO A
DIRECTIVE FROM JUSTICE LEWIS,
WHEN HE WAS CHIEF JUSTICE, TO DO
AN ANALYSIS AND MAKE
REPRESENTATIONS SPECIFICALLY
WITH REGARD TO LEGAL AND
OPERATIONAL ISSUES THAT MIGHT
ARISE OR HAVE ARISEN WITH REGARD

TO THE USE OF DIGITAL TECHNOLOGY FOR COURT REPORTING PURPOSES.

>> ARE THESE ISSUES MAINLY COMING UP IN COURTROOMS THAT DO NOT HAVE AN OFFICIAL COURT REPORTER?

>> WE ARE ACTUALLY USING DIGITAL -- WE ARE USING DIGITAL COURT REPORTING IN COURT REPORTING, AS WE DO NOT STAFF WITH A STENOGRAPHER.

>> SO THAT OUR CLASSIC SITUATION WHERE YOU'VE GOT THE REPORTER THAT IS TAKING DOWN WHATEVER, WHAT IS GOING ON HERE IS BEING REPLACED BY DIGITAL TECHNOLOGY?

>> THAT IS CORRECT, YES MAAM.

>> AT THE TIME THAT THE DIGITAL RECORDING IS TAKING PLACE, THERE IS OR IS NOT A COURT REPORTER OR TRANSCRIPTIONIST IN THE COURTROOM?

>> THERE IS NOT.

ORDINARILY THE DIGITAL RECORDING IS BEING MONITORED FROM A REMOTE LOCATION EITHER IN THE COURT HOUSE OR AT ANOTHER COURT FACILITY AND THE TRANSCRIPTIONIST IS NOT ON SITE.

>> BUT THERE IS SOMEONE WATCHING IT?

>> YES.

>> YOUR RULE SAYS, AND IT IS UP TO THE CHIEF JUDGE TO DECIDE WHETHER THIS IS IN THE PUBLIC PROCEEDINGS, THE RECORDING OF THE PUBLIC PROCEEDING WITH NO COURT REPORTER CANNOT BE RELEASED UNLESS THE CHIEF JUDGE SAYS SO?

>> NO MAAM.

THAT IS NOT WHAT WE ARE REQUESTING THROUGH THIS PROVISION.

WHAT WE ARE REQUESTING THROUGH THIS RULE REVISION IS SIMPLY THIS, THAT WE HAVE AN OPPORTUNITY TO REVIEW THE RAW, UNEDITED RECORDING THAT IS GOING ON TO DETERMINE WHETHER THIS COURT HAS ALREADY DETERMINED IN SECTION C OF THE RULE TO BE CONFIDENTIAL ARE CONTAINED WITHIN THE RECORDINGS SO THEY

CAN BE REDACTED OUT IN THE BALANCE OF WHAT HAS BEEN RECORDED AND RELEASED FOR PUBLIC DISSEMINATION.

>> I HAVE A QUESTION.

FIRST OF ALL LET ME THANK YOU FOR UNDERTAKING THIS.

I KNOW IT IS NOT EASY BUT LET ME ASK YOU THIS.

WHAT ARE THEIR REASONS THAT THEY HAVE FOUND AGAINST RELEASING OR MAKING THESE RECORDINGS PUBLIC? ATTORNEY-CLIENT CONVERSATIONS MAY BE INADVERTENTLY RELEASED AND SOME OTHERS, AND THE QUESTION I HAVE, HOW OFTEN DOES THAT HAPPEN?

>> I DON'T KNOW THAT IT HAPPENS ALL THAT OFTEN, BUT I KNOW THAT IT DOES HAPPEN.

PART OF THAT, THE DIGITAL TECHNOLOGY HAS PROVEN TO BE REMARKABLY EFFICIENT AND IN NEW WORK PROGRAMS AND PROGRAMS THAT HAVE BEEN RECONFIGURED, IF YOU WILL, TO ACCOMMODATE DIGITAL TECHNOLOGY, WE FOUND NOT ONLY THAT IT IS CAPABLE.

IT IS SOPHISTICATED ENOUGH TO PICK UP WHAT IS GOING ON IN COUNCIL TABLE, BUT IT IS SOPHISTICATED ENOUGH TO PICK UP WHAT IS GOING ON IN THE BACK OF THE ROOM.

>> TO ANSWER YOUR FURTHER QUESTION, WE DON'T USE DIGITAL TECHNOLOGY IN THE COURTROOM. THIS IS NOT THE COUNTY CRIMINAL DIVISIONS.

IT IS IN THE COURT HOUSE AND IN INVOLUNTARY GUARDIANSHIP PROCEEDINGS, DELINQUENCY PROCEEDINGS, DEPENDENCY PROCEEDINGS, TERMINATION OF PARENTAL RIGHTS.

>> I AM IMPRESSED THAT THE PUBLIC DEFENDER, WHO MIGHT BE MOST CONCERNED ABOUT THE CONFIDENTIALITY OF THE COMMUNICATIONS IS-- WE NEED THIS FOR A LOT OF REASONS AND YOU ARE BLOCKING SOMETHING VERY VALUABLE.

WITH ALL OF THIS GOING ON AND

ALL THESE COURTROOMS, YOU ARE SAYING THE CHIEF JUDGE WOULD HAVE TO BE REVIEWING THEM ALL TO DECIDE WHETHER THERE IS SOMETHING CONFIDENTIAL?

AS A PRACTICAL MATTER, IT SEEMS VERY CUMBERSOME.

>> WELL, I THINK WHAT YOU MIGHT ENVISION IS THE CHIEF JUDGE WOULD IMPLEMENT PROCEDURES. IT WOULD COME UP WHEN A REQUEST IS MADE FOR A COPY, WHETHER IT WOULD BE JUST FOR A CITIZEN OR A PUBLIC DEFENDER OR STATE ATTORNEY OR OTHER COURT-APPOINTED COUNSEL ENTITY, A MEDIA ENTITY, AND WE ARE NOT DENYING THEM ACCESS TO WHAT THEY ARE REQUESTING.

IN OUR PROPOSED REVISION, 2.3.5, WE MAKE PROVISIONS FOR THE COURT TO RELEASE RECORDINGS SO OFFICERS OF THE COURT, WITH RESTRICTIONS, ARE PRESERVED. IN OTHER WORDS, THEY NOT BE USED TO PREPARE AN OFFICIAL TRANSCRIPT AND NOT BE USED IN SUBSEQUENT PROCEEDINGS.

>> THIS IS BEFORE EVEN THE OPPORTUNITIES TO REPEAL. YOU ARE SAYING THEY CAN BE RELEASED TO OFFICERS OF THE COURT?

>> AT THE DISCRETION OF THE CHIEF JUDGE THEY CAN BE RELEASED, YES MAAM.

>> HOW IS IT A CHIEF JUDGE EXERCISED THAT DISCRETION WHEN THE CHIEF JUDGE MORE THAN LIKELY WAS NOT THE PERSON WHO WAS ACTUALLY IN THE COURTROOM AT THE TIME THAT THE RECORDING TOOK PLACE?

>> THE CHIEF JUDGE WOULD ALMOST CERTAINLY HAVE TO ACT IN CONCERT OR A LEAST ON THE ADVICE OF THE PRESIDING TRIAL COURT JUDGE, PERHAPS IN CONCERT WITH THE TRIAL COURT ADMINISTRATORS OFFICE.

GETTING BACK TO THE ISSUE THAT JUSTICE PARIENTE ASKED, AND WE ARE NOT SAYING YOU CAN'T HAVE ACCESS TO THIS STUFF.

WE WILL GIVE YOU PERHAPS A COPY OF THE RAW RECORDING IN INSTANCES WHERE THE TRANSCRIPT IS NOT REQUESTED.

WE ARE SIMPLY IMPOSING RESTRICTIONS ON THE USE OF THE UNEDITED RECORDING.

>> BUT ISN'T THERE A BIG DIFFERENCE BETWEEN, YOU THROUGHOUT THE BAKER ACT, DOMESTIC VIOLENCE-- I HAVE A WHOLE DIFFERENT VIEW ABOUT WHAT MIGHT BE THAT LEVEL OF HAVING AN AUDIOTAPE THERE VERSUS WHAT I'M ENVISIONING AS A CRIMINAL PROCEEDING, BUT THERE IS NO ATTEMPT IN THE RULE TO DISTINGUISH BETWEEN SUCH PROCEEDINGS.

HAS YOUR COMMITTEE LOOKED AT THAT, TO SAY WE REALLY OUGHT TO HAVE, MAYBE HAVE A DIFFERENT RULE THAT DEALS WITH PROCEEDINGS DEPENDING ON THE LEVEL OF CONFIDENTIALITY?

>> WE DIDN'T DO THAT.

I WILL TELL YOU WE DID NOT DO THAT TYPE OF ANALYSIS.

WE DID THE ANALYSIS CONSIDERING THOSE MATTERS THAT THE RULE SAYS SHALL BE CONFIDENTIAL IN SUBSECTION C, WHICH IS A PRETTY LENGTHY LIST, AND CAN ENCOMPASS VIRTUALLY EVERYTHING THAT MIGHT COME BEFORE THE COURT THAT COULD BE -- FOR INSTANCE WE USED IN A DOMESTIC VIOLENCE CASE AND WE ARE REQUIRED IN THE APPROPRIATE CASE TO MAKE CERTAIN SPOUSAL SUPPORT IS COVERED AND WHO SHALL SUPPORT IS COVERED AND THE USE OF POSSESSION ISSUES ARE COVERED, AND IT IS NOT UNUSUAL FOR ISSUES TO ARISE REGARDING BANK ACCOUNT INFORMATION, CREDIT CARD INFORMATION, PIN NUMBERS AND ALL OF THAT SORT OF THING. THE DISTINGUISHING ISSUE IN THOSE KINDS OF CASES OUGHT TO BE, THE OVERWHELMING MAJORITY OF THOSE FOLKS ARE NOT REPRESENTED BY A LAWYER.

THEY ARE SELF-REPRESENTED PEOPLE, SO IN ORDER TO FULFILL

OUR OBLIGATION, WE BELIEVE IT IS
OUR OBLIGATION TO ENSURE PUBLIC
ACCESS TO BALANCE THAT, AGAINST
THE INDIVIDUAL CITIZEN'S RIGHT
TO HAVE CERTAIN PERSONAL MATTERS
REMAIN CONFIDENTIAL, WHAT WE
HAVE DONE IS, IN ADDRESSING YOUR
QUESTION JUSTICE QUINCE, IS TO
FORMULATE THE NECESSARY POLICY
AND PROCEDURE FOR DETERMINING
WHEN, UNDER WHAT CIRCUMSTANCES A
RAW RECORDING MIGHT BE
DISSEMINATED VERSUS AN EDITED
VERSION WHICH REDACTS OUT OF--

>> CAN I GO BACK TO KIND OF THE
UNDERLYING QUESTION I HAVE ABOUT
PUBLIC ACCESS?

I UNDERSTAND THE PROVISIONS HERE
ABOUT ACCESS FOR OFFICERS OF THE
COURT AND I UNDERSTAND THERE ARE
CERTAINLY GOING TO BE
CIRCUMSTANCES WHERE IT MAY BE
NECESSARY TO PROTECT PRIVACY
INTERESTS OR OTHER INTERESTS.

THROUGH THE REDACTIONAL
MATERIALS BUT ALL THAT ASIDE, IT
SEEMS LIKE THE BASIC RULE HERE
THAT IS PROPOSED IS THAT THE
COURT, AND I AM READING FROM
WHAT IS RULE 2.535 SUBDIVISION
H5 -- -- TO NARROW IT DOWN.

THE COURT IN ITS DISCRETION MAY
REQUIRE THAT ONLY THE PUBLIC
RECORD OF A PROCEEDING BE MADE
AVAILABLE TO THE PUBLIC AND IT
GOES ON TO SAY THE COURT MAY
MAKE COPIES OF THEIR RECORD
AVAILABLE TO THE PUBLIC,
INCLUDING LITIGANTS, BUT IT
SEEMS LIKE IT BASICALLY GOES TO
THE COURT DISCRETION NOT TO MAKE
IT PUBLIC, AND WHY ISN'T THAT
PROBLEMATIC?

I AM READING WHAT I THINK IT
SAYS.

WHY IS THAT NOT RIGHT?

>> THERE IS NO ATTEMPT IN THIS
RULE TO WITHHOLD FROM PUBLIC
SCRUTINY.

>> I'M JUST READING WHAT IT
SAYS.

IT SAYS THE COURT IN ITS
DISCRETION MAY REQUIRE THAT ONLY
THE OFFICIAL RECORD FOR

PROCEEDING BE MADE AVAILABLE TO THE PUBLIC.

THAT GIVES THE TRIAL COURT DISCRETION TO SAY YOU ARE NOT GOING TO GET THIS RECORDING. YOU ARE ONLY GOING TO GET THE OFFICIAL RECORD, AND I THINK THAT IS TROUBLING, AND IF IT IS NOT THE INTENT TO DO THAT THEN IT SEEMS TO ME THE WORDS SHOULD BE CHANGED TO BETTER REFLECT THE INTENT.

>> THE PROPOSED RULE PROVIDES THAT, IN THE DISCRETION OF THE CHIEF JUSTICE, THE EDITED VERSION OF THE RECORDING ITSELF CAN BE DISSEMINATED TO THE PUBLIC.

>> MAY.

NO, NO.

IT IS ONLY GOING TO REQUIRE RELEASE AFTER REVIEW BUT IT DOES NOT GIVE THAT GUARANTEE.

>> IN ONE FORM OR ANOTHER, ANYONE THAT IS INTERESTED IN WHAT WE HAVE GIVEN OUR COURTROOM IS GOING TO HAVE ACCESS TO THAT INFORMATION.

>> BUT, THAT IS NOT WHAT THAT SAYS.

IF YOU CAN SHOW ME WHERE IT SAYS THAT, THAT WOULD BE HELPFUL. BUT, OTHERWISE IT SEEMS TO ME, BECAUSE I UNDERSTAND YOUR ASSURANCE, BUT I NEED TO SEE THE ASSURANCE IN THE TEXT.

>> LET ME ASK IT ANOTHER WAY. WOULD YOU HAVE ANY OBJECTION FROM -- TO CHANGING THE WORD MAY TO SHALL?

WHAT IS WRONG WITH SAYING SHALL THERE?

>> I WOULD HAVE TO RETHINK THAT ISSUE, BUT MY POINT IS, AS OUR RULE IS SET UP, AND I UNDERSTAND WHAT YOU ARE REFERRING TO. WE HAVE ONE SECTION THAT DEALS WITH SO-CALLED OFFICERS OF THE COURT, WHERE THEY MAY ACCESS THE UNEDITED RECORDING. WE HAVE ANOTHER SECTION WHERE IT IS THE DISCRETION OF THE CHIEF JUDGE. MEMBERS OF THE PUBLIC AT LARGE

OR THE MEDIA CAN ACCESS THE REVIEWED RECORDING AND EDIT IT IF NECESSARY.

>> YOU HAVE USED YOUR TIME AND IF YOU WOULD TAKE A LOOK AT THAT SECTION , WE WILL GIVE YOU A MINUTE OR SO FOR YOUR REBUTTAL. AND I BELIEVE, LET'S HEAR FROM THE OTHER PARTIES AND WE WILL HEAR FROM YOU AGAIN ON THAT ISSUE.

>> MAY IT PLEASE THE COURT. I AM HERE TODAY ON BEHALF OF THE CHIEF JUDGE CIRCUIT, ROBERT MORRIS IN SUPPORT OF THE RULE AMENDMENT.

>> LET'S GET IT CLARIFIED AS TO WHETHER-- IS THERE AN ABSOLUTE RIGHT AFTER IT IS REVIEWED BY SOMEBODY FOR BOTH COUNCIL, THE PUBLIC TO HAVE ACCESS TO THE AUDIO RECORDING AND WHAT GOES ON IN THE PUBLIC?

>> ESPECIALLY THE POSITION OF THE COMMITTEE, I THINK THE PROPOSED RULE LEAVES THAT TO THE DISCRETION OF THE CHIEF JUDGE AND THERE IS NOT AN ABSOLUTE RIGHT UNDER THESE PROPOSED RULES TO DO THAT.

>> ISN'T THAT WRONG? ISN'T THAT CONTRARY TO EVERYTHING WE HAVE EVER SAID ABOUT ACCESS TO COURTS AND PUBLIC PROCEEDINGS?

>> RESPECTFULLY JUSTICE PARIENTE, NO I DON'T THINK THE RULES CREATE A PUBLIC RECORD. I THINK THE COMMITTEE, WHEN CONSIDERING THESE PROPOSALS, LOOK TO THE CASE LAW FROM THIS COURT AND A LEADING CASE IN PUBLIC RECORDS.

>> LET'S GET OUT WHETHER IT IS A TECHNICAL PUBLIC RECORD. I AM TALKING ABOUT NOW WE HAVE COURTROOMS WHERE WE DO NOT HAVE A PHYSICAL HUMAN BEING RECORDING WHAT GOES ON.

WE HAVE DIGITAL TECHNOLOGY, AND THAT AUDIO RECORDING MAY ACTUALLY BE MORE HELPFUL TO THOSE THAT ARE TRYING TO FIND OUT WHAT GOES ON IN COURTROOMS

IN TERMS OF CLOSING ARGUMENT AND WHAT THE INFORMATION IS AND SOMEBODY'S CLOSING ARGUMENT, THE WAY SOMETHING IS SAID.

IT SEEMS LIKE IT IS A VALUABLE PART, WHETHER IT IS THE OFFICIAL TRANSCRIPT OR NOT.

THAT IS ANOTHER QUESTION, BUT WHAT AUTHORITY OR WHY SHOULD THIS COURT KEEP THOSE RECORDINGS BASICALLY SECRET EXCEPT ON THE DISCRETION OF THE CHIEF JUDGE?

>> THE COURT HAS RECOGNIZED IT HAS THE INHERENT AUTHORITY TO CONTROL ITS OWN RECORD. THEY STATED THE JUDICIARY HAS NOT ONLY THE INHERENT POWER BUT THE DUTY.

>> THIS IS A RECORDING THAT IS GOING ON IN THE PUBLIC COURTROOM.

IT IS NOT SOME KIND OF, SOME PRIVATE PART OF THE COURT PROCEEDING.

IT IS THE ESSENCE OF WHAT GOES ON.

IF THERE WAS A VIDEO RECORDING OF WHAT WAS GOING ON, YOU KNOW WE ALLOW CAMERAS IN THE COURTROOM.

I UNDERSTAND THAT THERE MAY BE A -- WHETHER THERE BE AN OFFICIAL TRANSCRIPT BUT I'M NOT UNDERSTANDING WHAT VALUE WE ARE AS A COURT SYSTEM PROTECTING BY KEEPING THESE SHIELDED EXCEPT UPON THE DISCRETION OF THE CHIEF JUDGE TO RELEASE THEM.

>> I THINK IT IS IMPORTANT TO CONSIDER IT IS A PHYSICAL LAYOUT AND COURTROOMS ACROSS THE STATE VARY TREMENDOUSLY, AND IN MOST CASES, SOMEONE MONITORING FROM A REMOTE LOCATION-- SOMETIMES THEY ARE IN THE COURTROOM BUT, REGARDLESS, THE EQUIPMENT IS SO SENSITIVE THAT IT IS NOT GOING TO TAKE UP JUST THE COURT PROCEEDINGS.

>> WE UNDERSTAND THAT THERE MAY BE CIRCUMSTANCES WHERE INFORMATION MAY NEED TO BE REDACTED.

THAT IS NOT AN ISSUE HERE.

WE ARE TALKING ABOUT THE BASIC RULES THAT ARE GOING TO HELP THE TRIAL COURT TO DENY PUBLIC ACCESS TO A RECORDING OF A COURT PROCEEDING.

THAT WOULD BE LIKE, WE ARE RECORDING THIS AND WE SAID, WELL, SOMEBODY SAID SOMETHING TODAY THAT WE WOULD JUST AS SOON CLEAN UP BEFORE IT GETS OUT. WE ARE NOT GOING TO RELEASE THAT.

WOULDN'T YOU THINK THAT WOULD BE OUTRAGEOUS FOR US TO DO THAT? IT JUST SEEMS LIKE TO ME THAT THE PUBLIC HAS AN INTEREST IN BEING ABLE TO HAVE ACCESS TO THESE RECORDINGS THAT ARE UNDERTAKEN PURSUANT TO THE RULES OF THE COURT OF A JUDICIAL PROCEEDING, AND FOR US TO SAY THAT WE ARE GOING TO DENY THE PUBLIC ACCESS TO THAT OR TO ALLOW PUBLIC ACCESS TO AN ACT OF DISCRETION ON A PART OF THE TRIAL COURT IS VERY PROBLEMATIC, PERHAPS UNCONSTITUTIONAL.

>> ESSENTIALLY YOUR HONOR I DON'T THINK IT IS UNCONSTITUTIONAL.

>> WHY PUT ASIDE THE CONSTITUTIONALITY ISSUE? WHY ISN'T IT PROBLEMATIC?

>> I THINK THE COURT HAS A DUTY TO ENSURE IN THE PUBLIC COURTROOMS OF THE STATE, PEOPLE CAN COME INTO THE COURTROOM. WHEN YOU'VE GOT A TRIAL COURT WITH TEN OR 20 DEFENDANTS IN THE COURTROOM TRYING TO CONSULT WITH THEIR LAWYERS AT THE SAME TIME THAT WE HAVE A DUTY TO PROTECT THAT ATTORNEY-CLIENT COMMUNICATION, AND NOT ALLOW THAT TO BE DISCLOSED.

AND THE COURT HAS RECOGNIZED THAT IN THE RULE ON CAMERAS IN THE COURTROOM.

>> BUT IT IS TAKEN CARE OF BY SAYING, AS WE SAID AT THE END OF JUDGE BENNETT'S THING, THAT THE COURT, IF THEY MAKE COPIES AVAILABLE AFTER REVIEW, TO MAKE SURE MATTERS PROTECTED FROM

DISCLOSURE ARE KEPT
CONFIDENTIAL.
SO, THERE WERE THESE
CONVERSATIONS WITH THE PUBLIC
DEFENDERS THAT DON'T SEEM TO BE
ALL THAT CONCERNED ABOUT-- THOSE
ARE REDACTED THEN?

>> I THINK ONE OF THE REASONS
THAT THEY WANT IT IS THEY
BELIEVE THAT JUST GIVING OUT THE
AUDIO WILL BE FASTER THAN
CREATING A TRANSCRIPT, BUT IF WE
ARE GOING TO TAKE A LISTEN TO IT
AND REDACT THE NON-PUBLIC PARTS
OF THE RECORDING, WE ARE GOING
TO REDACT THE ATTORNEY-CLIENT
COMMUNICATION, WE ARE GOING TO
REDACT COMMUNICATIONS DURING
COUNCIL, THAT PROCESS IS GOING
TO BE JUST AS TIME-CONSUMING AND
MORE SENSITIVE, IF NOT MORE SO,
THAN PRODUCING A TRANSCRIPT.

>> WHY SHOULD THERE EVEN BE
REDACTION FOR THE OFFICER OF THE
COURT?

THEY ARE THE ONES WHOSE
CONFIDENTIAL-- THEY ARE THE ONES
WHOSE CONVERSATIONS MIGHT BE
RECORDED.

WHY NOT GIVE THEM THE UNEDITED
VERSION IMMEDIATELY, WHICH IS I
GUESS WHAT IS GOING ON IN A LOT
OF OTHER PLACES IN THE STATE
BECAUSE--

>> WE HAVE A VARIETY OF
APPROACHES TAKEN AND IN THE 6TH
CIRCUIT WE HAVE HISTORICALLY NOT
RELEASED THE AUDIO UNTIL, EXCEPT
TO THE PUBLIC DEFENDER AND THE
STATE ATTORNEY, BUT WE HAVE DONE
SO PURSUANT TO A MEMORANDUM OF
UNDERSTANDING THAT THEY WILL NOT
USE IT IN OTHER TRIAL COURTS AND
OTHER PROCEEDINGS AND THAT THEY
WILL USE IT ONLY FOR THE PURPOSE
OF DETERMINING WHETHER THEY ARE
GOING TO LATER ORDER A
TRANSCRIPT OR NOT, SO UNDER A
VERY LIMITED SET OF
CIRCUMSTANCES DOES THE CHIEF
JUDGE IN HIS DISCRETION SET
FORWARD FOR THE USE OF THOSE
PROCEEDINGS.

THIS PROPOSAL I THINK CONTINUES

THE PROCESS OF ALLOWING THE CHIEF JUDGE TO EXERCISE ITS DISCRETION BASED ON WHAT TYPE OF PROCEEDING IT IS, WHETHER THERE ARE LIKELY OTHER CONVERSATIONS GOING ON IN THE COURTROOM, BECAUSE THERE ARE DIFFERENT ISSUES DEPENDING, ON WHAT TYPE OF PROCEEDING IT IS.

>> I UNDERSTAND THE ISSUE YOU ARE TALKING ABOUT.

IF THIS IS GOING TO BE COSTLY FOR THOSE MAKING A PUBLIC WORK REQUEST, COULD THAT COST BE PASSED ON, COPIES OF PAPERS OR ANYTHING LIKE THAT?

>> TO SOME DEGREE IT COULD BE. WE CERTAINLY HAVE THE AUTHORITY TO CHARGE FOR TRANSCRIPTS THROUGH THE COURT REPORTING PLAN, AND WE COULD MAKE THAT CHARGE BUT WHETHER THAT WOULD ACTUALLY COME BACK TO DOLLARS IS UNLIKELY.

>> THANK YOU.

>> I DON'T THINK WE WOULD BE ENCUMBERING THAT.

>> WITH THAT, YOU HAVE USED YOUR TIME. MS. GIDDINGS.

>> MAY IT PLEASE THE COURT. I AM KATHY GIDDINGS, AND I'M HERE TODAY ON BEHALF OF SCOTT DIMOND.

THIS COURT ASKED THE JUDICIAL ADMINISTRATION COMMITTEE TO LOOK AT THE COMMISSION'S REPORT AND RECOMMENDED RULE CHANGES. THE COMMITTEE LOOKED AT THOSE RULES AND IT DID MAKE A NUMBER OF SUGGESTED MODIFICATIONS, WHICH YOU HAVE BEFORE YOU. MOST OF WHAT WE SUGGESTED WERE MERELY STYLISTIC OR FOR CLARIFICATION.

>> SO, YOU AGREE WITH THE BASIC PREMISE THAT THE DIGITAL RECORDINGS SHOULD ONLY BE GIVEN TO THE PUBLIC IF THE CHIEF JUDGE AGREES THAT IT SHOULD BE?

>> THE COMMITTEE-- LET ME CLARIFY MY ANSWER IN TWO PARTS. THE COMMITTEE VOTED 15-9 ON THESE RULES BUT 16-9 DID NOT GO TO THE SUBSTANCE OF WHAT HAD

BEEN RECOMMENDED.

THE NINE PEOPLE VOTED THAT THEY FELT THAT WHAT THE COMMISSION HAD DONE SHOULD BE EXPANDED TO ADDRESS TRANSCRIPT QUALITY AND COURT REPORTER COMPETENCY, BUT ONE OF THE THINGS THAT THE COMMITTEE DID SUGGEST WAS A COMMITTEE NOTE THAT CLARIFIED THAT THE DEFINITIONS OF ELECTRONIC RECORD ARE INTENDED TO CLARIFY THAT, WHEN A COURT PROCEEDING IS ELECTRONICALLY RECORDED, IT IS ALSO RECORDED DURING A WRITTEN TRANSCRIPT PREPARED BY A COURT REPORTER. THE WRITTEN TRANSCRIPT SHALL BE THE OFFICIAL RECORD TO THE EXCLUSION OF ALL ELECTRONIC RECORDS.

I THINK IT IS IMPORTANT FOR YOU TO NOTE THAT IT HAS ALWAYS BEEN THE PREROGATIVE OF THE CUSTODIAN OF THE RECORD TO DETERMINE THE FORM IN WHICH THE RECORD WILL BE PROVIDED.

IF YOU LOOK AT RULE 2.42, IT SAYS THE CUSTODIAN SHALL DETERMINE THE FORM IN WHICH THE RECORD IS PROVIDED, SO THERE HAS ALWAYS BEEN THE DISCRETION FOR THEM TO SAY YOU ARE GOING TO GET IT IN THE WRITTEN TRANSCRIPT OR YOU ARE GOING TO GET IT IN THE DIGITAL FORMAT.

I THINK--

>> I HAVE GOT CONCERNS ABOUT THIS AND I ALWAYS THOUGHT-- AND I TELL A JUDGE WHEN WE LOOK AT CLOSING ARGUMENTS, WE ARE NOT IN THE POSITION OF A TRIAL JUDGE.

IF I HAD THE CHANCE TO ALSO LOOK AT SOMETHING THAT WOULD ENHANCE MY ABILITY TO UNDERSTAND WHAT HAS IN FACT GONE ON IN THAT COURTROOM, THAT WOULD HELP JUDICIAL REVIEW, NOT FRUSTRATE IT.

YOU ARE AN APPELLATE LAWYER, AND I AM JUST NOT SURE I UNDERSTAND WHAT IT IS WE ARE TRYING TO PREVENT BY THIS RULE.

>> I THINK THE RULE WAS DEFERRING TO THE COMMISSION ON

ITS DETERMINATION REGARDING PROVIDING THIS, AND HAVING LISTENED TO WHAT YOU SAID OBVIOUSLY I'M JUST HERE ON BEHALF OF THE RJA.

>> SO, THE COMMITTEE WAS NOT MAKING POLICY.

>> I THINK OUR COMMITTEE-- WE WERE TRYING TO CLARIFY THE CHANGES WE MADE WERE ACTUALLY LIMITED.

IT ONLY APPLIED TO COURT PROCEEDINGS PAID FOR BY THE COURT, AND DID NOT APPLY TO WHEN A COURT REPORTER COMES IN.

AND I THINK IT DOES INDICATE THAT THE COMMITTEE WAS ATTEMPTING TO MAKE SURE THAT SOMETHING WAS AVAILABLE.

HAVING AS INDIVIDUALLY, HAVING LISTENED TO WHAT YOU ARE SAYING, I THINK THAT THERE IS A -- I THINK THERE NEEDS TO BE FURTHER CLARIFICATION THAT THERE IS ALWAYS GOING TO BE SOMETHING AVAILABLE.

EITHER YOU GET THE DIGITAL OR YOU GET THE TRANSCRIPT.

>> CAN YOU IMAGINE SOMEBODY BEING HAULED OFF TO JAIL AND THAT DEFENSE LAWYER SAYS, I NEED TO BRING THIS UP IMMEDIATELY? IF WE ARE ACTUALLY SAYING WE ARE GOING TO HAVE THIS GO THROUGH SOME PROCESS OF REDACTION BEFORE WE CAN FIND OUT IF A MISCARRIAGE OF JUSTICE HAS OCCURRED IN THE COURTROOM?

>> THIS IS WHAT THEY STUDIED IN DEPTH, SO I CAN'T SPEAK TO THAT. BUT, I THINK SOMEBODY IS GOING TO HAVE TO LOOK AT IT TO MAKE SURE THERE IS NOTHING CONFIDENTIAL BEING GIVEN TO THE PROSECUTOR WHEN IT MAY HAVE PICKED UP WHAT THE DEFENDANT SAYS TO HIS ATTORNEY, WHEN THEY DETERMINE IT PICKS UP THINGS IN THE WHOLE ROOM.

SO, I THINK THERE IS GOT TO BE SOME KIND OF-- WE TALK ABOUT PUBLIC RECORDS AND GETTING THE CONFIDENTIAL STUFF BEFORE IT'S RELEASED ON THE INTERNET.

THOSE OF YOU WHO ARE NEW MAY NOT BE FAMILIAR WITH THAT.

SO, MAYBE THERE NEEDS TO BE TWEAKING, AND I'M SURE THE JUDICIAL ADMINISTRATION COMMITTEE WOULD BE HAPPY TO REVIEW THE RULES WITH ANY DIRECTION THE COURT WANTS TO GIVE US.

>> THANK YOU VERY MUCH MS. GIDDINGS FOR YOUR INPUT FROM A JUDICIAL-- RULES OF JUDICIAL ADMINISTRATION.

>> THANK YOU YOUR HONOR.

>> MR. MILLS ON BEHALF OF THE APPELLATE RULES COMMITTEE.

>> GOOD MORNING AND MAY IT PLEASE THE COURT, JOHN MILLS THE CHAIR OF THE APPELLATE COURT RULES COMMITTEE.

WE DID NOT TOUCH ON ANY OF THE HOT ISSUES. SO I'M NOT GOING TO TAKE UP MUCH TIME HERE.

I WOULD POINT OUT THAT THIS COURT IN A FEW WEEKS RECENTLY SAT FOR ORAL ARGUMENT.

ANOTHER RULES CASE INVOLVING 2.400, FIELD RECORDS, AND INCLUDED WITHIN THAT IS AN APPELLATE MECHANISM FOR CHALLENGING THESE RULINGS ON WHETHER TO SEAL A RECORD IN YOUR CONSIDERATION OF THOSE ISSUES MAY INFLUENCE HOW--

>> THIS RULE THE WAY IT IS DRAFTED, WOULD MAKE -- NOT MAKE THIS A PUBLIC RECORD.

>> AS IT IS DRAFTED, IT WOULD NOT, BUT SOME OF THE CONCERNS I HEAR FROM THE COURT SUGGEST TO ME THAT YOU MAY WANT TO LOOK AT IT A DIFFERENT WAY.

>> THAT IS, IF THERE IS NO APPELLATE REVIEW OR A JUDGE'S DECISION, A CHIEF JUDGE'S DECISION NOT TO MAKE SOMETHING AVAILABLE?

>> I THINK THERE WOULD BE. THERE IS NOT ANYTHING IN THE RULES THAT SAYS HOW THAT PROCEDURE WOULD GO, BUT I THINK THE INHERENT AUTHORITY OF AN APPELLATE COURT THAT HAS THE CASE AND RECORDS BEING PREPARED

OR IF IT IS, BEFORE THERE IS AN APPEAL A WRIT ASSOCIARI WOULD BE A MECHANISM FOR APPELLATE REVIEW TO NOT RELEASE A RECORDING.

>> THANK YOU MR. MILLS.

>> MAY IT PLEASE THE COURT. YOUR DECISION WAS THE FIRST DECISION TO ALLOW VIDEOTAPE ACCESS TO COURTROOMS.

IN 1992, THE CITIZENS OF THE STATE OF FLORIDA BY AN 87% MAJORITY CONSTITUTIONALIZED ACCESS TO JUDICIAL PROCEEDINGS.

>> LET'S GET RIGHT DOWN TO IT. WHAT IS IT THAT YOU WOULD LIKE TO SEE CHANGED IN THIS RULE?

>> NOTHING YOUR HONOR. THE RULE AS IT PRESENTLY EXISTS IS PERFECT.

IT SAYS WE HAVE ACCESS TO DIGITAL RECORDS AND WHY SHOULDN'T WE?

>> I AM TALKING ABOUT THE PROPOSED RULE.

>> AND EVERYTHING YOUR HONOR--

>> WOULD YOU AGREE THAT THE OFFICIAL RECORD-- THE OFFICIAL RECORD IS WHAT BECOMES THE TRANSCRIPT, CORRECT?

SO THE ISSUE REALLY IS THIS.

THERE IS A COURTROOM AND APPARENTLY SOME PARTS OF THE STATE-- I'M NOT SURE IF IT IS ONLY THE 2ND DISTRICT, BUT THAT IS WHERE THE LITIGATION IS.

IT IS SO SENSITIVE THAT PEOPLE ARE WHISPERING IN THE BACK AND IT IS BEING PICKED UP.

YOU CAN'T BE THINKING AS A MEDIA THAT YOU SHOULD HAVE ACCESS FOR THINGS THAT WERE NOT INTENDED TO BE PUBLIC.

>> THE CONCEPT IS PUTTING THE CART BEFORE THE HORSE.

THERE IS A WARNING LIKE THIS IN HILLSBOROUGH COUNTY.

IT IS USED IN THE COURTROOM IN CONVERSATIONS, SO GOVERN YOURSELF ACCORDINGLY.

IT HAS BEEN A NOTED PROVISION.

>> WOULD THE DEFENDANT AND COUNCIL-- ARE YOU SUGGESTING BY PUTTING UP A SIGN LIKE THAT THAT YOU HAVE TO BE WARY OF WHAT YOU

WHISPER TO YOUR CLIENT?

>> THAT TECHNOLOGY IS VERY INTERESTING.

IT HAS A BUTTON.

>> THEN IT IS COVERED THEN?

>> I THINK IT IS, AND I THINK WHAT WE ARE DOING IS WE ARE TALKING ABOUT THE STAKEHOLDERS IN THIS AS JUDGES, AND FOR JURIES AND PARTY BUT THE REAL STAKEHOLDER ARE THE CITIZENS OF THE STATE OF FLORIDA.

>> IN THE HEAT OF A TRIAL AND ALL OF THE THINGS THAT ARE GOING ON, YOU HAVE GOT THIS LITTLE BUTTON THERE THAT YOU ARE SUPPOSED TO PUSH AND IT'S SOMETHING, BUT AT ANY POINT SOMEONE COULD FORGET ALL ABOUT THAT BUTTON AND, IN FACT, SAY SOMETHING TO HIS CLIENTS, OR THE CLIENT COULD SAY SOMETHING TO HER ATTORNEY AND THAT WOULD, IN FACT, BE PICKED UP, SO YOU ARE NOT SUGGESTING-- YOU ARE SUGGESTING THERE SHOULD BE NO REDACTING OF THE CASE?

>> I THINK, YOUR HONOR, REDACTION SHOULD ONLY BE IN THE CIRCUMSTANCE OF SOMETHING THAT IS INADVERTENTLY FLIPPED IN THE RECORD.

YOUR HONORS ALWAYS ACT ON THE RECORD.

WE ARE NOT GOING TO ACT ON THE BARE POSSIBILITY THAT HARM MIGHT OCCUR.

THE COMMITTEE THAT LOOKED AT THIS SAID THE PREVALENCE OF CONFIDENTIAL COMMUNICATIONS BEING IN INADVERTENTLY CAPTURED BY DIGITAL RECORDING SYSTEMS IS UNKNOWN.

IF YOU ARE GOING TO CHANGE THIS RULE, LET'S STUDY IT AND SEE IF THERE IS A REAL PROBLEM.

WHILE IT MAY HAPPEN ON OCCASION, WHILE SOMETHING MAY BE CAPTURED I THINK WHAT YOU ARE TRYING TO DO IS THROW THE BABY OUT WITH THE BATHWATER.

>> AROUND THE STATE, WHAT IS THE PREVAILING PRACTICE OUTSIDE OF THE 6TH CIRCUIT?

IS THE MEDIA ABLE TO GET THE DIGITAL RECORDING?

>> IN SOME JUDICIAL CIRCUITS WE ARE, YOUR HONOR.

>> WHICH ONES?

>> HILLSBOROUGH YOUR HONOR, AND I BELIEVE POLK.

>> HOW ABOUT IN MIAMI-DADE?

>> YOUR HONOR, I DON'T KNOW THE ANSWER TO THAT QUESTION.

IN THE 6TH CIRCUIT, WE ASK FOR ACCESS AND WE WERE DENIED THAT AND THE JUDGE SAID I HAD TO SHOW GOOD CAUSE.

YOUR HONOR SHOULD NEVER HAVE TO SHOW GOOD CAUSE TO ACCESS SOMETHING WE THINK IS A CONSTITUTIONAL RIGHT.

>> ARE YOU SAYING IN SOME CIRCUITS, AS SOON AS THE PROCEEDING IS OVER YOU CAN GET A DIGITAL RECORDING OR IS THERE ANY KIND OF REDACTION BEING DONE PRIOR TO YOUR GIVING-- BEING GIVEN A COPY OF THE REPORT?

>> YOUR HONOR, I THINK IN SOME CIRCUITS THERE IS A SOME REVIEW.

>> SO YOU ARE GETTING IT LATER?

>> NO, NOT IN THE LITIGATION GOING ON IN THE 2ND DISTRICT.

>> THE FACT IS, IF THE RULE STAYS AS IT IS, IT IS NOT GOING TO STOP THE LITIGATION?

>> NO YOUR HONOR BECAUSE I THINK THERE IS A COURT RULING IN THAT CIRCUIT THAT SAYS THE CHIEF JUDGE HAS TO REVIEW IT AND HE MAY DETERMINE IT.

>> WE ARE NOT HERE TO DESCRIBE THE WISDOM OF WHAT MIGHT BE GOING ON.

NO ONE IS ASKING US TO AFFIRMATIVELY SAY THAT THESE SHOULD BE PRODUCED, BUT IF THE EDIT WAS PUT IN, WHY WOULD YOU BE IN FAVOR OF THAT?

>> NO YOUR HONOR, BECAUSE THE "SHALL" GOES TO THE PUBLIC DEFENDERS AND THOSE PEOPLE. THE COURTS AREN'T ADJUSTED FOR THOSE PEOPLE.

>> I THINK HE WAS REFERRING TO THE SECTION THAT REFERENCES AVAILABILITY TO THE PUBLIC.

>> ACTUALLY, YOU COULD PUT THAT IN SUBSECTION 1 FOR THE PUBLIC. WHAT WOULD BE WRONG WITH THAT?

>> YOUR HONOR, I AM NOT SURE I WOULD BECAUSE I THINK IT IS ALMOST LIKE I WALK INTO THIS COURTROOM, OR A MEMBER OF THE PRESS WALKS INTO THIS COURTROOM AND ALL OF A SUDDEN THERE IS SOME-- ON THAT PROCESS. WE SHOULD NOT HAVE COURTS THAT HAVE FILTERS. NO MATTER WHAT HAPPENS IN COURTROOMS.

>> THESE ARE ALL DUTIFUL PLATITUDES THAT WE ARE TALKING ABOUT A PRACTICAL KIND OF THING. YOU BELIEVE YOU OUGHT TO HAVE ACCESS?

>> ABSOLUTE ACCESS TO WHAT HAPPENS IN ACCORDANCE IN FLORIDA.

>> INCLUDING THE CONVERSATIONS BETWEEN THE CLIENT AND A LAWYER? THAT IS WHAT WE ARE REALLY TALKING ABOUT TODAY. YOU AGREE THERE MUST BE SOME MECHANISM TO BE ABLE TO REVIEW THOSE THINGS THAT ARE CONFIDENTIAL THAT ARE NOT TO BE DISCLOSED OR NEVER WERE INTENDED TO BE?

>> YOUR HONOR, BUT HOW DO WE GET THERE?

I DON'T KNOW, WE NEED TO UNDERSTAND THE AVAILABILITY.

>> ARE WE TALKING ABOUT 1% AND A HALF A PERCENT, AND THAT MEANS OTHER PROCEEDINGS HAVE TO GO TO THE PROCESS?

I THINK WE NEED TO DEVELOP SOME MECHANISM FOR SOMETHING INADVERTENTLY GIVEN.

>> HOW WILL WE KNOW?

>> WE HAVE THIS TECHNOLOGY.

>> IT IS AVAILABLE?

>> YOUR HONOR, IT IS AVAILABLE.

>> TO ALERT SOMEBODY OF THE COMMUNICATION?

>> WE KNOW THE TECHNOLOGY IS AVAILABILITY.

>> JUSTICE QUINCE ASKED THE QUESTION, YOU HIT THE BUTTON.

>> WE DON'T YOUR HONOR.

>> IT COULD MAKE A DIFFERENCE IN
SOMEBODY'S LIFE.

IT COULD BE A DEATH CASE, A
CAPITAL CASE AND THERE IS
SOMETHING SAID THAT IS
TREMENDOUSLY INCRIMINATING.

>> YOUR HONOR, ANYTHING THAT
SLOWS DOWN THE PROCESS, WE KNOW
WHAT ACCESS TO THIS PROCEEDING
DOES.

IT ENSURES THE PUBLIC HAS
ACCESS.

THE INTEGRITY OF THE PROCESS IS
GUARANTEED.

>> NOT IF YOU ARE DISCLOSING
CONFIDENTIAL DISCUSSION BETWEEN
A LAWYER AND CLIENT.

I BELIEVE IN EVERYTHING YOU ARE
SAYING, BUT WHEN YOU GET DOWN TO
IT YOU ARE SAYING WE DON'T HAVE
TO WORRY ABOUT THIS THING.

>> NO YOUR HONOR, I DON'T THINK
WE ARE.

THE THING THE COURT CAN DO IS
EMPHASIZE REPEATEDLY EVERYTHING
THAT HAPPENS IN HERE IS HEARD
AND I THINK ONCE THAT NOTICE IS
DONE, THAT SHOULD BE--

>> SO THEN THE ATTORNEY-CLIENT
PRIVILEGE IS GONE IF FOR SOME
REASON HE FAILED TO HIT THE
BUTTON?

THEN IT IS OUT AND WHATEVER YOU
SAY IS FREE GAME?

>> YOUR HONOR IT IS A DIFFICULT
QUESTION TO TRY TO RESOLVE.

>> I DON'T THINK IT'S
NECESSARILY THAT DIFFICULT,
UNDERSTANDING WHAT THE VALUES
ARE.

YOU HAVE A COUPLE OF DIFFERENT
VALUES, AND THE QUESTION IS HOW
YOU PLAN THEM AND WHAT IS THE
PRACTICAL WAY TO DO IT, ISN'T
IT?

>> ARTICLE I CONSTITUTIONALIZES
MY ACCESS TO THIS PROCEEDING.
WE BELIEVE THE ATTORNEY-CLIENT
PRIVILEGE IS PARAMOUNT.
I THINK THERE SHOULD BE A WAY TO
FIGURE IT OUT.

>> THAT IS EXACTLY WHAT I WAS
ASKING, SO WHAT IS THE BEST WAY
TO BLEND THEM?

>> YOUR HONOR, I SEE SO MANY PROCEEDINGS THAT SHOULD BE OPEN.

>> IT IS NOT A QUESTION OF BEING OPEN.

THE QUESTION IS HOW YOU PROTECT THOSE THINGS THAT OUGHT NOT TO BE A PRACTICAL BLENDING OF VALUES?

>> YOUR HONOR, I'M AT A LOSS TO FIGURE THAT OUT.

I DON'T THINK THE SOLUTION IS THE ONE.

>> WHAT IS THE SOLUTION?

>> THESE ARE ALL FRIENDLY QUESTIONS.

YOU TELL US WHAT YOU THINK IT SHOULD BE.

>> I THINK THAT, IF COUNCIL RECOGNIZES THAT THEY HAVE DONE SOMETHING LIKE THAT

INADVERTENTLY THEN PUTS THE COURT ON NOTICE, THAT THIS SPECIFIC PROCEEDING SHOULD NOT BE RELEASED AUTOMATICALLY, AND THEN HAVE A REVIEW BY THE CHIEF JUDGE, SOMETHING LIKE THAT.

NOT TALKING ABOUT EVERYTHING SUBJECT TO REVIEW.

>> THANK YOU VERY MUCH FOR YOUR ARGUMENT.

FLORIDA REPORTERS ASSOCIATION-- COURT REPORTERS ASSOCIATION.

>> GOOD MORNING YOUR HONOR.

MY NAME IS TOM SAUNDERS, AND I REPRESENT A FLORIDA COURT REPORTERS ASSOCIATION AS WELL AS THE FLORIDA COALITION ON COURT REPORTER CERTIFICATION.

THOSE TWO ORGANIZATIONS, BOTH OF WHICH ARE VOLUNTARY ORGANIZATIONS, REPRESENT WHAT I SUGGEST ARE ALL OF THE VARIOUS TECHNOLOGIES FOR PREPARING WHAT THE PROPOSED RULE CALLS THE OFFICIAL RECORD.

>> THIS IS A TRANSCRIPTIONIST ALSO?

>> IT IS GLOBALLY A TRANSCRIPTIONIST, YES YOUR HONOR.

>> HOW MUCH DOES IT COST PER PAGE?

>> IT DEPENDS ON THE CIRCUIT, \$4.80 OR \$5 A PAGE.

IF YOU HAD REALTIME REPORTING, IT IS INCREASED, BUT THAT WOULD BE A FAIR ESTIMATE YOUR HONOR.
>> WHETHER OR NOT YOU HAVE HANDED OUT THE DISC WITH THE DIGITAL RECORDING, SYNTHESIZED OR FILTERED, BECAUSE THE SAME DISCRETION THAT IS GIVEN IN THE PROPOSED RULE TO THE CHIEF JUDGE AS TO HOW YOU PRESENT THE TECHNOLOGY IS GIVEN TO THE CHIEF JUDGE IN EACH CIRCUIT AS TO WHO ACTUALLY PREPARES THE DEPOSITION-- THE TRIAL TRANSCRIPT, WHICH WE ARE ALL VERY FAMILIAR WITH, THOSE 22 LINES PER PAGE IN SO MANY WORDS PER PAGE AND THE ACTUAL TRANSCRIPTION OF IT IS AFTER WE HAVE HANDED OUT THE DIGITAL RECORDING.

IF SOMEBODY WISHES TO APPEAL A DECISION IN ANY OF THE VARIOUS COURTS, BE IT DOMESTIC, VIOLENCE OR CIVIL CIRCUIT, SOMEONE HAS TO PREPARE THAT.

>> WHAT IS YOUR ISSUE HERE?

>> WE ARE ON THE OPPONENT'S SIDE BUT WE HAVE ONLY THIS LIMITED DOG IN THIS FIGHT.

THE LANGUAGE THAT IS PROPOSED SAYS THAT THE TRANSCRIPT SHALL BE PREPARED BY SOMEONE WHO MEETS THE COURT'S CERTIFICATION.

>> WHICH RULE ARE YOU READING FROM?

>> I AM READING FROM RULE 2.3.5A6.

>> ALRIGHT, OKAY.

>> WHAT WE PROPOSED IS, THERE IS CURRENTLY NOTHING IN FLORIDA, DESPITE PRIOR EFFORTS OF THIS COURT, TO DETERMINE WHO ACTUALLY MEETS THE CERTIFICATION OF THE COURT REPORTER.

>> SO, WE ARE HERE IN THE PUBLIC FORUM AND WHY IS THAT?

>> DO YOU KNOW WHY THAT IS, THAT WE DON'T HAVE A CERTIFICATION PROGRAM?

>> WE HAVE NEVER RECEIVED FUNDING FROM THE LEGISLATURE.

>> EXACTLY.

BUT WE HAVE NEVER BEEN ABLE TO

FUND A PROGRAM THAT WOULD
ALLOW--

>> IT SHOULD BE WE THINK
CONSIDERED.

WE APPLAUD JUDGE BENNETT'S
EFFORTS, AND WE ARE NOT OPPOSED
TO TECHNOLOGY ADVANCING.

WE APPLAUD DIGITAL RECORDING IF
YOU CAN GET PAST THE IMPORTANT
HURDLES YOU HAVE DISCUSSED, BUT
ULTIMATELY WHAT COMES BEFORE
YOUR HONORS IS A WRITTEN
TRANSCRIPT, AND THERE MUST BE
SOME UNIFORMITY AND
CERTIFICATIONS FOR SOMEONE TO
PREPARE THAT.

WE REPRESENT EVERYBODY WHO CAN
POSSIBLY PREPARE, THAT AND WE
WELCOME MORE IN.

>> DOES THIS RULE ENCOMPASS THE
CERTIFICATION OF COURT REPORTERS
AND TRANSCRIPTIONISTS?

IT SEEMS TO ME YOU ARE GOING
BEYOND WHAT IS CONTAINED IN THIS
RULE.

>> WE ARE QUESTIONING THE
PRACTICAL EFFECT OF THE
VAGUENESS OF WHO ACTUALLY
QUALIFIES TO BE COURT CERTIFIED
AFTER PROPER TRAINING AND OTHER
QUALIFICATIONS.

YOUR HONORS, 100% CORRECT ON THE
HISTORY OF LACK OF FUNDING FOR
CERTIFICATION.

THE TECHNOLOGY HAS ADVANCED AND
WE APPLAUD THAT.

WE HAVE OUR PROPOSAL AND ARE
GOING TO SUGGEST YOUR HONORS AT
LEAST LET US GO BACK AND DWELL
ON THIS.

THIS SOLVES THE ECONOMIC CRISIS
PRESENTED HERE.

WE NEED A CERTIFICATION AND
TRAINING PROGRAM.

>> IT SEEMS LIKE YOU ARE REALLY
GOING BEYOND.

I HAVE A QUESTION, SINCE YOU ARE
HERE REPRESENTING ALL OF THOSE
PEOPLE.

IT SEEMS LIKE THE BIGGEST ISSUE
THAT IS-- TODAY IS, THERE WILL
BE CONFIDENTIAL COMMUNICATION.
YOU ARE NOW PREPARING THE
RECORD.

HOW DOES-- HOW DOES THE COURT REPORTER KNOW WHAT IS PART OF THE OFFICIAL COURT PROCEEDING AND WHAT IS CONFIDENTIAL?

>> YES YOUR HONOR, AND I'M GOING TO USE THE WORD TRANSCRIPTIONIST.

THAT IS WHAT I MEAN FOR CERTIFIED COURT REPORTER. EVERY ONE OF THOSE WHO IS A MEMBER OF OUR ORGANIZATION, WHO HAS PASSED OUR EXAMINATION AND OUR CRITERIA, EXERCISED TRAINED DISCRETION AND THE PROBLEM WE THINK IS NOT WHAT IS PROPOSED. ANY CHIEF JUDGE CAN HAVE ANYONE WHO HAS A COMPUTER AND WORD TECHNOLOGY PREPARE A DOCUMENT THAT IS NOW GOING TO BE CALLED THE OFFICIAL TRANSCRIPT.

WE THINK THAT DISCRETION AND TRAINING THAT IS GIVEN TO TRANSLATORS, NOW REGISTERED PARALEGALS AND CERTAINLY BOARD CERTIFIED ATTORNEYS FOR THE STATE OF FLORIDA, TO TAKE THIS TECHNOLOGY AND IMPOSE CERTIFICATION AND TRAINING SO WE HAVE UNIFORM--

>> ARE YOU SAYING, HOWEVER, THAT YOUR TRAINING OF THE TRANSCRIPTIONIST WOULD KNOW WHEN A CONVERSATION THAT IS THEN PICKED UP ON THE DIGITAL RECORDING IS CONFIDENTIAL?

>> WITHOUT QUESTION. IT HAPPENS IN EVERY DEPOSITION THAT GOES ON IN THE STATE. IT HAPPENS IN EVERY COURT PROCEEDING.

THESE COURT REPORTERS KNOW EXACTLY WHAT IS JOCLAR.

>> THAT IS BECAUSE THEY ARE IN THE COURTROOM?

>> BUT IT WOULD APPLY TO COURTROOMS, YES MAAM.

>> WHAT HAPPENS IF THEY ARE IN A REMOTE LOCATION?

DO THEY PICK THAT UP WHEN THEY ARE LISTENING TO IT REMOTELY?

>> AS PROPOSED, THE DISC, AFTER ITGOES THROUGH EDITING, IT WOULD BE HANDED TO SOMEONE WHO NEEDS TO PREPARE A WRITTEN RECORD.

SO, AFTERWARDS, ALL OF OUR TYPING AND TRANSCRIPTION WOULD OCCUR.

WE WOULD NOT BE INVOLVED IN THAT, EXCEPT IF THE FILTER SYSTEM FAILED.

>> IF I UNDERSTAND YOU CORRECTLY, WHAT YOU ARE SAYING, THE COURT REPORTER WILL DECIDE WHAT THEY WILL TRANSCRIBE AND NOT TRANSCRIBE BASED ON CONFIDENTIAL INFORMATION?

>> NO SIR, THAT IS FAR BROADER THAN I SUGGEST.

THE FILTER SYSTEM THAT IS PROPOSED IN THESE RULES GOES TO THE DIGITAL COURT REPORTERS WHO ARE SITTING THERE, VERY MUCH LIKE A SOUND MASTER WOULD. THEY ARE EDITING AS THEY GO. THE DISC IS ULTIMATELY PREPARED. BUT, UNDER THESE RULES, IF I WERE TO COUGH, A TRANSCRIPTIONIST COULD PUT DOWN THE WORD COUGH, WHEREAS A PERSON WHO HAS GONE THROUGH OUR TRAINING PROGRAM OR ANY OTHER SIMILAR PROGRAM WOULD NOT NECESSARILY PUT THAT DOWN THEN. WE ARE NOT TALKING ABOUT SOMEBODY YOU WOULD ADVOCATE THE DISCRETION OF WHAT VERBIAGE TO PUT IN THERE.

>> WHEN YOU ARE IN A SITUATION WHERE THERE IS A WITNESS ON THE STAND IN A SHOOTING, AND A WITNESS SAYS, I SAW HIM SHOOT THE VICTIM THREE TIMES, AND HE COMES TO THE LAWYER AND SAYS NO, IT WAS FOUR TIMES, OUT LOUD, WHO DECIDES WHETHER THAT IS WRITTEN OR NOT?

>> THAT WOULD BE ADDRESSED BY THE LAWYERS.

>> YOU MEAN THAT IS SOMETHING THE TRIAL JUDGE WOULD TELL THE TRANSCRIPTIONIST, THAT IS NOT A PART OF THE TRIAL PROCEEDINGS? WHAT PROCESS ARE YOU TALKING ABOUT?

>> THE CHIEF JUDGE UNDER THESE RULES WOULD DECIDE WHAT IS EDITED.

>> WHAT IF THE JUDGE, AFTER THE

DEFENDANT SAYS, THE JUDGE SAYS YOU KNOW, MR. SO AND SO YOU HAVE GOT TO, YOU WILL HAVE YOUR TURN. WHO DECIDES WHETHER IT WAS A QUIET WHISPER OR A LOUDER COMMENT?

IT IS JUST PART OF WHAT IS HAPPENING IN PUBLIC.

>> YOUR HONOR, I PERSONALLY, AND OUR ORGANIZATION, HAS NO POLITICAL VIEW.

WE COULD NOT AGREE WITH YOU MORE.

I THINK THAT LEVEL OF DISCRETION NEEDS GUIDANCE, SO I'D HAVE TO GO DOWN TO THE MIAMI COURTROOM AND SEE A DIFFERENT STANDARD FOR THAT THEN I DO IN POLK COUNTY.

>> WHAT IF THERE IS A-- IN THE AUDIENCE?

>> I COULD NOT AGREE WITH YOUR HONOR MORE.

[INAUDIBLE]

THE AUDIO WILL CAPTURE IT.

>> EXACTLY, SO WHAT WE ARE NOW FACING IS TECHNOLOGY IS GOING LEAPS AND BOUNDS AHEAD OF US. WE WISH TO KEEP UP, BUT WE THINK THAT IT IS IMPROPER TO INVEST IN CHIEF JUDGES FOR OUR DISCRETION, WITHOUT HAVING BOTH AT THE LEVEL YOU ARE TALKING ABOUT, WHAT GOES INTO IT, AND THE LEVEL WE ARE INTERESTED IN, WHAT GOES INTO THE WRITTEN DOCUMENT.

WE THINK UNIFORMITY SHOULD APPLY.

>> WE UNDERSTAND A LOT OF YOUR ISSUES ARE THOSE THAT REALLY ARE NOT A PART OF THESE PARTICULAR RULES THAT HAVE BEEN PRESENTED BEFORE US, AND MAYBE WE NEED TO HAVE SOME OTHER THINGS PRESENTED TO US.

YOU HAVE GONE WELL OVER YOUR TIME.

WE HAVE ONE OTHER PRESENTATION HERE.

>> GOOD MORNING, MAY IT PLEASE THE COURT.

TERRY HOWARD ON BEHALF OF THE FLORIDA PUBLIC DEFENDER'S ASSOCIATION.

WHILE WE APPRECIATE THE CONCERN

REGARDING THE CAPTURE OF CONFIDENTIAL INFORMATION, ON BEHALF OF THE 20 ELECTED PUBLIC DEFENDERS AND THE MAJORITY OF THE ACCUSED IN OUR CRIMINAL JUSTICE SYSTEM, I SAY PLEASE DON'T PROTECT US FROM OURSELVES. THE RULE DOES NOT INVOLVE THE PROBLEM YOU ARE ADDRESSING. IT IS DIRECTED STRICTLY TO THE ELECTRONIC RECORD, AND FIRST I SHOULD TELL YOU THE ELECTRONIC RECORDINGS HAVE BECOME WIDESPREAD AND VITAL TO OUR WORK AS FAR AS ACTIVE REPRESENTATION OF OUR CLIENT, OUR MANAGEMENT EDUCATION IN A TIME WHEN BUDGET CONSTRAINTS, UNFORTUNATELY, CONTROL AN AWFULLY LOT OF WHAT WE DO.

>> SO, YOU DON'T WANT THE CHIEF JUDGE OR ANYONE TO HAVE THE OPPORTUNITY TO REDACT FROM WHAT MAY BE EVEN INADVERTENT ATTORNEY-CLIENT INFORMATION? YOU DON'T CARE THAT IS GIVEN TO THE PUBLIC?

>> CORRECT.

AND I WOULD SAY THIS. I THINK THAT THE CONCERNS REGARDING THE CAPTURE OF CONFIDENTIAL INFORMATION CAN BE ADDRESSED IN SO MANY OTHER WAYS.

>> HOW DO YOU ADDRESS THIS ONCE IT IS GIVEN TO ANYONE WHO WANTS A COPY OF THAT DIGITAL RECORDING?

>> FIRST, I WOULD SAY THE RULE ONLY ADDRESSES ELECTRONIC RECORDINGS SO, AS IS REQUIRED, A COURT REPORTER HAS TO BE TAKING DOWN EVERYTHING THAT IS SAID, TRANSCRIBE IT, SO IF A TRANSCRIPT IS ORDERED, THERE IS NO SCREENING PROCESS. THERE IS NO PROCESS FOR DELETING THAT INFORMATION SO, AS IT IS CURRENTLY, THAT INFORMATION CAN BE DISCLOSED IN A TRANSCRIPT, SO THE RULE ITSELF DOES NOT CHANGE THE NATURE OF THAT.

>> AREN'T THEY JUST SUPPOSED TO TAKE DOWN WHAT IS SAID ON THE WITNESS STAND?

THEY DON'T GO AND TRY TO
OVERHEAR WHETHER THE ATTORNEY IS
TALKING TO HIS OR HER CLIENT, SO
THAT-

>> THEY SHOULD NOT BE TRYING TO
OVERHEAR, BUT I THINK THEY ARE
REALLY REQUIRED TO TAKE DOWN THE
VERBAL RECORD OF WHAT IS
OCCURRING IN THE COURTROOM, AND
I DON'T THINK IT IS FOR THE
COURT REPORTER TO DECIDE THAT IS
OR IS NOT PART OF THE RECORD,
WHEN IT IS A VERBAL STATEMENT IN
COURT.

THERE ARE OTHER PROCEEDINGS IN
WHICH THESE ISSUES HAVE BEEN
ADDRESSED.

THERE HAVE BEEN CASES FOR--
CONCERNING PEOPLE IN THE CIVIL
ARENA, WHICH I'M NOT ALL THAT
FAMILIAR WITH, BUT DISCOVERY,
INADVERTENT DISCOVERY OF
PRIVILEGED INFORMATION.

THERE ARE ETHICS OPINIONS, THERE
ARE GUIDELINES IN PLACE ON WHAT
IS THE APPROPRIATE PROCESS WHEN
THERE IS A DISCLOSURE OF
CONFIDENTIAL INFORMATION.

>> ARE YOU GETTING THESE, AND
YOU ARE GETTING THEM ON DEMAND?

>> WE GET THEM ON DEMAND.

WE HAVE NOT HAD THE ISSUE WITH
REGARD TO PRIVILEGED INFORMATION
BEING DISCLOSED.

WE GET THEM QUICKLY, WE GET THEM
CHEAPLY.

AND I SURVEYED THE OTHER PUBLIC
DEFENDERS, AND IN THE CIRCUITS
THAT IS TRUE.

AND, THERE IS NO CONCERN THAT
OUR CLIENTS ARE BEING INJURED AT
ALL BY THE DISCLOSURE OF THIS
INFORMATION.

>> I BELIEVE JUSTICE PERRY HAD A
QUESTION.

>> I UNDERSTAND HOW YOU SAY WE
SHOULD REGULATE, BUT WHAT ABOUT.

[INAUDIBLE]

>> FRANKLY, THAT IS AN IMMEDIATE
ANSWER.

>> I BELIEVE THAT IS OUR PRIMARY
CONCERN.

>> THE RULE ACTUALLY IS MORE
RESTRICTED ON THE AUSPICES OF

THE COURT THAN IT IS IN THE PUBLIC.

THE RULES ARE A PROPOSED RULE IN A PROPER CASE, WHATEVER THAT MAY BE, THE CHIEF JUDGE MADE IN THEIR DISCRETION TO ALLOW THESE RECORDINGS, AND THEN THERE ARE ALL THESE RESTRICTIONS ON COUNCIL THAT COME WITH THE DISCLOSURE OF THOSE ELECTRONIC RECORDINGS.

SO, ON BEHALF OF THE PUBLIC DEFENDER AND ATTORNEYS, WE ACTUALLY ARE MORE RESTRICTIVE.

>> DOES THAT RULE ALSO TALK ABOUT REDACTION?

I THOUGHT THAT WAS.

WHICH RULE ARE YOU REFERRING TO?

>> I AM REFERRING TO THE MAIN RULE ON ELECTRONIC RECORDS.

>> I MEAN, WHAT IS THE NUMBER? YOU DON'T HAVE THAT?

>> 2.535H5A.

>> IT DOES LOOK LIKE IT.

THAT IS WHY I WAS SURPRISED.

IT LOOKS LIKE IT IS MORE RESTRICTIVE FOR I RATHER THAN II.

>> IT IS UNCLEAR REALLY WHAT THE PURPOSE OF ALL THE RESTRICTIONS ARE.

THE RULE PROVIDES RESTRICTIONS FOR USE OF SUBSEQUENT COURT PROCEEDINGS, WHICH I WOULD THINK IS ACTUALLY MORE THAN EVIDENTIARY ISSUE AS TO WHETHER PRIOR TESTIMONY CAN BE REPLAYED.

>> THAT SEEMS TO ME THAT THAT I IS LIKE THE UNREDACTED VERSION, WHEREAS TWO I'S, WE ARE TALKING ABOUT THE REDACTED VERSION, SO THE RULE IS SAYING YOU, AS AN OFFICER OF THE COURT, CAN GET THE UNREDACTED DIGITAL RECORDING, BUT UNDERSTANDING THAT YOU ARE NOT GOING TO DISSEMINATE IT.

YOU ARE NOT GOING TO TRY TO USE IT AS THE OFFICIAL RECORD IN THOSE KINDS OF THINGS, SO I THINK WE ARE REALLY-- IT IS RESTRICTIVE BECAUSE YOU ARE GETTING AN UNRESTRICTED COPY.

>> WELL, THAT IS NOT THE

LANGUAGE USED.

THE LANGUAGE USED IS IN A PROPER CASE, WHICH I IMAGINE WOULD MEAN WE WOULD HAVE TO MAKE IT SHOWING AS TO WHETHER IT IS A PROPER CASE, THE CHIEF JUDGE IN HIS OR HER DISCRETION.

>> I UNDERSTAND THE POINT.

>> THERE ARE THREE DIFFERENT LEVELS ON THREE DIFFERENT LEVELS THAT ARE APPLIED TO OUR ACCESS TO IT, AND I THINK IT WOULD RESTRICT OUR ACCESS.

IT WOULD ADD THE ADMINISTRATIVE BURDEN OF HAVING TO GO IN AND MAKE A SPECIFIC REQUEST, MAKE A SHOWING OF THE THINGS THAT ARE SORT OF UNKNOWN AS TO WHAT IS REQUIRED, WHICH IS NOT IN PLACE TODAY.

TODAY IT IS A PHONE CALL.

WE NEED A COPY OF THE RECORDING AT THIS COURT PROCEEDING AND WE GET IT.

>> IN SUBSECTION I AND II, WHAT IF IT SAYS MAY-- SHALL?

>> I WOULD OPPOSE IN A PROPER CASE, BECAUSE I THINK THAT INDICATES THERE IS SOME REQUIREMENT THAT WE MAKE A SHOWING OF WHY WE NEED IT OR WHAT IS NEEDED.

I HAVE SOME CONCERNS ABOUT THE RESTRICTIONS OF WHETHER THEY ARE CONSISTENT WITH SUBSTANTIVE LAW AND ETHICS WITH REGARD TO WHEN RECORDINGS BECOME PART OF OUR CORE FILE, BECAUSE WE HAVE A RECORD OF THEM AS PART OF OUR OFFICE FILES OR STATE ATTORNEY FILES.

>> IT SAYS NOW IT WOULD PROHIBIT YOU FROM USING THEM IN A SUBSEQUENT COURTROOM PROCEEDING, EVEN IF SOMEBODY WANTED TO KNOW WHAT HAPPENED YESTERDAY?

>> CAN'T USE IT, WE CAN'T FIND OUT.

>> I HAVE BEEN IN A TRIAL WHERE THE STATE ATTORNEY HAS USED THEM TO REPLAY PRIOR TESTIMONY WHEN THE WITNESS IS NO LONGER AVAILABLE.

THERE IS NOTHING MORE EFFECTIVE

THAN THE ACTUAL RECORDING,
RATHER THAN READING THE
TRANSCRIPT.

SO, THEY ARE USED IN A LOT OF
DIFFERENT WAYS.

>> JUST SO I'M CLEAR AS TO WHAT
WE MEAN, I THINK IT IS MORE THAN
THE ACTUAL RECORDING OF WHAT A
PERSON IS SAYING.

THERE ARE SOME COURTROOMS THAT
HAVE THAT VIDEOTAPE, SO THERE
MAY BE LANGUAGE, BODY LANGUAGE,
THAT MAY BE USED IN THE
COURTROOM WHEN I'M NOT SAYING
ANYTHING.

IS THAT ALSO ENCOMPASSED BY WHAT
YOU ARE SAYING, THAT THAT SHOULD
BE AVAILABLE TO THE PUBLIC?

>> I THINK IT IS.

THINGS THAT ARE OCCURRING IN THE
PUBLIC COURTROOM.

IT IS THE SAME IMAGES THAT ARE
CAPTURED BY A PERSON SITTING IN
THE AUDIENCE, SO I DON'T SEE ANY
REASON FOR RESTRICTING IT.

THE SAME WITH THE CONFIDENTIAL
COMMUNICATIONS.

IF IT IS AN OUTBURST TO THE
LAWYER-- I SHOT HIM FOUR TIMES--
IF THERE WAS SOMEONE SITTING IN
THE COURTROOM, THEY CAN RECOUNT
THAT JUST AS MUCH AS THE
RECORDING.

>> THE PRIVATE CONVERSATIONS ARE
NOT DISCUSSED FOR THE COURT.
PLEASE, THIS IS GETTING A LITTLE
RIDICULOUS.

YOU HAVE BEEN A LAWYER LONG
ENOUGH TO KNOW YOU DO HAVE
CONVERSATIONS, AND TO SUGGEST
OTHERWISE IS VERY NAIVE, AND TO
SAVE YOU FROM YOURSELF, THIS
COURT HAS SAVED PUBLIC DEFENDERS
FROM THEMSELVES AND CLIENTS IN
THE PAST, SO WHO KNOWS?

MAYBE IT IS SOMETHING THAT IS
NECESSARY, BUT IF YOU DON'T SEE
A PROBLEM WITH IT UNTIL IT
ARISES AND WE GET A CASE, THEN
IT SOUNDS LIKE JUST LET IT GO.

>> I WOULD JUST SAY THERE ARE
WAYS IN WHICH WE CAN CONTROL
THIS BEING A PROBLEM.

[INAUDIBLE]

SO THAT YOU ARE NOT HAVING THOSE.

>> WE ARE GOING TO REDUCE THE RISK.

THERE IS NO GUARANTEE.

YOU ARE REDUCING THE RISK.

>> THAT IS WHAT I HAVE SEEN IN THE COURTROOMS I HAVE BEEN IN. THERE IS A REAL EFFORT TO REDUCE THOSE RISKS.

THEY KNOW ANYTHING THEY ARE SAYING COULD BE PICKED UP ON ELECTRONIC RECORDING, SO THOSE RISKS ARE REDUCED.

WE ALSO EDUCATE THEM NOT TO SPEAK TO THEIR CLIENTS IN A CROWDED COURTROOM WHERE THERE ARE OTHER PEOPLE AROUND, WHERE THERE ARE OTHER DEFENDANTS, SO THOSE ISSUES COME UP IN CONTEXT THAT ARE NOT JUST WHEN IT IS BEING RECORDED.

>> IF THERE IS A-- BE CAREFUL, YOU ARE BEING RECORDED AND THERE IS THAT KILL BUTTON ON THE MICROPHONE, AND YOU ARE TELLING US THAT YOU ARE EDUCATING YOUR ASSISTANTS TO NOT SPEAK IN THE COURTROOM BECAUSE IT MIGHT BE PICKED UP?

YET IT HAPPENS, SO CAN WE REGARD THAT AS A WAIVER?

>> I WOULD THINK, FRANKLY, THE SAME SORT OF ANALYSIS WOULD OCCUR ON ANY SORT OF DISCLOSURE LIKE THAT, WHEN THERE IS THE ATTORNEY-CLIENT CONVERSATIONS IN THE HALLWAY AND THERE ARE TWO OR THREE PEOPLE STANDING THERE THAT CAN HEAR IT.

IS THAT A WAIVER?

I THINK IT IS THE SAME LEGAL ANALYSIS.

>> IF WE ARE GOING TO FOLLOW WHAT YOU ARE SAYING, AND SOME PEOPLE, AND IT STILL OCCURS, IT SEEMS LIKE YOU NEED A DECISION TO TELL US THAT SHOULD NOT HAVE BEEN TRANSCRIBED.

>> I THINK THAT IS A LEGITIMATE QUESTION, AND I THINK THE ISSUE, AS I SAY, WOULD BE RESOLVED ON WHAT THE STATE OF THE LAW IS WITH REGARDS TO WHEN IT IS A

WAIVER.

>> YOU HAD MORE TIME THAN YOU HAVE BEEN GIVEN.

>> THE ONE THING I WOULD SAY WITH REGARD TO THE PUBLIC IS, PERHAPS NOTICE TO COUNCIL COULD BE GIVEN IF, IN FACT, THERE IS A REQUEST TO RELEASE IT TO THE PUBLIC AND THEN COUNSEL CAN RAISE WHATEVER ISSUES IT NEEDS TO.

>> THANK YOU VERY MUCH FOR YOUR ARGUMENT.

I WILL GIVE YOU A COUPLE OF MINUTES FOR REBUTTAL.

>> LET ME FIRST ADDRESS THE ISSUE THAT I STUMBLED OVER EARLIER WITH REGARD-- JUSTICE PARIENTE YOU HAD AN ISSUE WITH THAT.

THE COURT MAY REQUIRE ONLY THE OFFICIAL TRANSCRIPT OR PROCEEDING MAY BE MADE AVAILABLE TO THE PUBLIC.

THAT WAS MORE IN THE REALM OF THE PRACTICAL, ENVISIONING THE POSSIBILITY THAT IT MAY BE A CASE THAT REQUIRES SO MUCH REVIEW AT SUCH A LEVEL OF EDITING THAT IT MAY JUST FRANKLY BE MORE COST-EFFECTIVE TO DO A TRANSCRIPT.

>> JUDGE BENNETT, AND AGAIN YOU KNOW WE APPRECIATE YOUR SERVICE BECAUSE YOU DON'T GET STATEWIDE KUDOS FOR BEING CHAIR OF TRIAL COURT PERFORMANCE AND ACCOUNTABILITY.

MY CONCERN IS WE HAVE WHAT IS EITHER A SMALL OR LARGE PROBLEM, WHICH MAY BE CONFIDENTIAL COMMUNICATIONS PICKED UP, AND IT SEEMS WE HAVE REALLY, ESPECIALLY IN WHAT IS AVAILABLE TO THE PUBLIC DEFENDERS, STATE ATTORNEYS, AND THE OFFICES OF THE COURT, THE WAY IT IS RIGHT NOW IS IT SAYS PROPER CASE IN THE DISCRETION MAY BE, AND THEN IT SAYS IT CAN BE USED IN SUBSEQUENT COURT PROCEEDINGS. AN APPELLATE IS TELLING US EVEN PROSECUTORS MAY USE THE PRIOR RECORDINGS TO BE ABLE TO PLAY

THIS FOR A JURY IF A WITNESS IS NO LONGER AVAILABLE, SO DID YOU INTEND TO GO THAT FAR WITH THIS RULE?

>> WE INTENDED IN TERMS OF THE USE OF THE LANGUAGE IN A PROPER CASE.

ONE OF THE THINGS THAT WE ENVISIONED WAS THE SITUATION WHERE THERE WAS SOME IMMEDIACY TO THE NEED TO RELEASE THIS QUICKLY WITHOUT AN EDITING FUNCTION.

YOU HAVE AN ONGOING TRIAL PERHAPS NEEDED FOR REVIEW FOR THE FOLLOWING DAY'S PROCEEDINGS. YOU HAVE LITERALLY, AND YOU BROUGHT THIS UP JUSTICE PARIENTE, SOME FELLOW BEING HAULED OFF TO JAIL, AND I NEED TO BE ABLE TO LOOK AT THIS NOW AND NOT HAVE TO WAIT TWO OR THREE DAYS UNTIL THE SENTENCING FUNCTION HAS TAKEN PLACE.

>> BUT UNDER I, THERE IS NO EDITING.

>> THAT IS EXACTLY RIGHT. WE GET THE RAW END OF A RECORDING, AND THE RESTRICTIONS ARE PLACED THERE TO SIMPLY MAKE CERTAIN THAT SOME IMPROPER USE OF THAT UNEDITED RECORDING IS NOT MADE.

IT IS NOT THE INTENT OF THAT SECTION TO SOMEHOW ALTER CHAPTER 90 WITH REGARD TO THE USE OF TESTIMONY IN SOME OTHER TRIAL OR OTHER PROCEEDING.

>> SO, YOU ARE SAYING IT IS THE INTENT OF THE COMMISSION, THAT IN SITUATIONS WHERE A PROPER CASE, AS IT WERE, WHEN YOU NEED THIS FOR SOME EMERGENCY, THAT YOU NEED TO IMMEDIATELY FILE A HABEAS PETITION OR SOMETHING, YOU WOULD GIVE OFFICERS OF THE COURT AN UNEDITED VERSION OF THE DIGITAL TAPE, BUT IN OTHER SITUATIONS EVERYONE WOULD ONLY GET AN EDITED VERSION OF THE TAPE?

IS THAT WHAT YOU ARE SAYING?

>> IF THERE WAS SOME SENSE OF URGENCY OR IMMEDIACY, THERE

WOULD NOT BE THE NEED TO RELEASE
A RECORDING THAT MIGHT
OTHERWISE-- BECAUSE MANY OF
THESE THINGS MAY HAVE NO
CONFIDENTIAL INFORMATION AT ALL.
I WOULD HOPE, FRANKLY, THAT MOST
OF THEM WOULD NOT.

WE DON'T WANT THAT INFORMATION
SHOWING US THROUGH THE USE OF
ANOTHER RECORDING, WELL WE HAD
AN EMERGENCY AND THEY COULD NOT
WAIT AND SO FORTH AND SO ON.

WE ARE VERY SORRY, BUT LET THE
CHIPS MAY FALL WHERE THEY MAY.

>> THANK YOU.

WE THANK ALL OF YOU FOR YOUR
ARGUMENTS HERE TODAY.

THE COURT WILL NOW BE IN RECESS
UNTIL TOMORROW MORNING.

>> PLEASE RISE.