

>> THE NEXT CASE ON THE COURT'S
CALENDAR IS STATE OF FLORIDA V.
KATHY JO CABLE.

--

WHAT IS THE QUESTION?

WHAT WOULD BE THE REMEDIES AND
WHY SHOULDN'T WE SAY UNTIL SUCH
TIME AS THE LEGISLATURE MAY WANT
TO PUT SOMETHING THERE, THAT A
REMEDY THAT IS AVAILABLE IS IN
FACT EXCLUSIVE OF THE EVIDENCE?

>> TWO REASONS YOUR HONOR.

ONE IS THAT THERE ARE CIVIL
REMEDIES.

THE HUDSON CASE.

>> WHAT OTHER CIVIL REMEDIES ARE
AVAILABLE?

>> BECAUSE IT IS A
CONSTITUTIONAL VIOLATION, EVEN
THOUGH A VIOLATION EVEN THOUGH
IT DOESN'T ENTITLE YOU TO
SUPPRESSION, SOMEONE COULD BRING
A 1983 ACTION.

THAT IS DISCUSSED IN HUDSON AND
YOU ALSO HAVE-- THE PERSON HAS
THE RIGHT TO MAKE AN OFFICIAL
COMPLAINT TO THE LAW ENFORCEMENT
AGENCY, WHICH THESE DAYS
GENERALLY TAKES A COMPLAINT
SERIOUSLY AND CONDUCTS INTERNAL
AFFAIRS INVESTIGATIONS AND
DISCIPLINES ANY OFFICER WHO HAS
ACTED IMPROPERLY, RE-TRAINS ITS
PEOPLE TO MAKE SURE THIS SORT OF
THING DOESN'T HAPPEN AGAIN.

THE OTHER REASON IT IS THE KNOCK
AND ANNOUNCE STATUTE, AND GOING
BACK TO ITS COMMON LAW ROOTS WAS
NEVER INTENDED TO PROTECT A
PERSON'S INTEREST IN THE

GOVERNMENT NOT FINDING THEIR EVIDENCE.

THERE ARE BASICALLY THREE INTERESTS THAT HUDSON GOES INTO. ONE IS A CONCERN THAT THERE COULD BE VIOLENCE.

IF LAW ENFORCEMENT GOES BARGING AND WITHOUT ANNOUNCING THEIR AUTHORITY, BECAUSE THE PEOPLE INSIDE ARE AFRAID THEY ARE BEING ATTACKED BY UNKNOWN INTRUDERS, PEOPLE COULD GET HURT.

THE SECOND ONE IS WITH FORCIBLE ENTRY THERE CAN BE DESTRUCTION OF PROPERTY.

IF THE KNOCK AND ANNOUNCE STATUTE IS COMPLIED WITH, THEN THE PERSON INSIDE HAS THE OPPORTUNITY TO ANSWER THE DOOR BEFORE THE FORCIBLE DAMAGE TO THE DOOR OR THE DOORFRAME OR WINDOWS OR WHATEVER IS DONE, AND

THE THIRD IS BASICALLY TO PROTECT THE DIGNITY OF THE PEOPLE INSIDE, GIVE THEM AN OPPORTUNITY TO GET DRESSED.

YOU HAVE GOT TO WAIT SOME REASONABLE AMOUNT OF TIME FOR EITHER ADMISSION OR REFUSAL TO ADMIT THE OFFICER.

>> ANOTHER IS DETERRENT OF POLICE MISCONDUCT.

>> I AGREE WITH THE REASONING OF THE HUDSON CASE, THAT IT IS NOT A VIABLE REASON FOR DETERRENCE OF CONDUCT.

IT DOESN'T REALLY SERVE THAT PURPOSE TOO WELL BECAUSE VERY OFTEN BY THE NATURE, THERE IS SOME VAGUENESS BUILT IN.

IT DOESN'T SAY SPECIFICALLY HOW MUCH TIME YOU HAVE TO WAIT

BEFORE YOU ENTER.
AND THINGS LIKE THAT.
AND THERE CAN BE EXIGENT
CIRCUMSTANCES THAT MIGHT EXCUSE
FULL COMPLIANCE WITH A KNOCK AND
ANNOUNCE STATUTE AND HERE WE DID
HAVE--

>> THOSE ARE THE KINDS OF
THINGS, WHEN A MOTION TO SUSPEND
IS FILED IN THESE ISSUES WHEN
THEY COME BEFORE THE COURT.

>> IN THIS CASE IT WAS
DISCUSSED.

>> IT SEEMS TO ME UNDER THOSE
CIRCUMSTANCES CERTAINLY THERE
NEEDS TO BE SOMETHING MORE THAN
A SLAP ON THE WRIST TO THE
POLICE OFFICER THAT KNOW THIS
WAS BAD CONDUCT.

>> SINCE I DON'T BELIEVE THAT--
I MEAN THE CONDUCT IN THE CASE
WAS TRULY EGREGIOUS, AND I DON'T
BELIEVE THAT LAW ENFORCEMENT
OFFICERS COULD DO THAT NOW
WITHOUT ANY JUSTIFICATION WOULD
SIMPLY GET A SLAP ON THE WRIST.
WITH CIVIL REMEDIES, THE
MUNICIPALITY OR WHATEVER AGENCY
IT IS, CAN GET SLAPPED WITH A
HEFTY JUDGMENT AND THAT IS
CERTAINLY AN INCENTIVE FOR LAW
ENFORCEMENT OFFICERS TO COMPLY
WITH THE ANNOUNCED THAT SHOOT
BECAUSE OTHERWISE THEIR AGENCY
IS GOING TO HAVE TO PAY BIG
BUCKS AND NOBODY IS GOING TO BE
HAPPY WITH THEM.

THEY ARE MOST LIKELY GOING TO
LOSE THEIR JOB AND PROBABLY
WOULD HAVE DIFFICULTY GETTING
ANOTHER LAW ENFORCEMENT JOB
ANYWHERE ELSE.

>> LET'S TALK ABOUT WHETHER THERE IS ANY ROOM FOR, BESIDES AN ALL-OR-NOTHING, WHICH IT SEEMS YOU ARE ARGUING, AND I UNDERSTAND YOUR ARGUMENT THAT NO LONGER BASED ON THE DEVELOPMENT IS VIABLE, BUT IF WE SAY BENEFELD WAS EXTREME CIRCUMSTANCES.

THERE WAS NO SEARCH WARRANT, NO ARREST WARRANTS, NO ANNOUNCING, NO KNOCKING, BARGING IN, FORCIBLE ENTRY, OR WHATEVER ELSE THEY DID IN DESTRUCTION OF PROPERTY.

HERE YOU HAVE A SITUATION WHERE THE JUDGE FOUND THERE WAS A KNOCK.

THERE WAS ANNOUNCING IT WAS THE SHERIFF OR POLICE.

THEY DID NOT-- THEY OPENED THE DOOR.

IT WAS TO A MOTEL AND THAT WAS DIFFERENT FROM MY HOME IN THAT THE DEFENDANT WAS SLEEPING AT THE TIME, AND SO PRESUMABLY UNDER THE WAY WE DECIDED GM, EVEN IF THEY ANNOUNCED THEIR PURPOSE, SHE WOULD NOT HAVE HEARD IT ANYWAY BECAUSE SHE WAS ASLEEP.

SO IS THERE ANY ROOM FOR A RULE OF LAW THAT SAYS THIS CASE IS NOT LIKE BENEFELD AND THIS SHOULD BE ON A CASE-BY-CASE BASIS AND HAS THE STATE CONSIDERED THAT OTHER POSITION, AND HOW WOULD YOU APPLY IT?

>> AM I CORRECT THAT THERE WAS ANNOUNCING AUTHORITY?

>> ALL OF YOUR STATEMENTS ABOUT THE CASE ARE CORRECT.

>> APPARENTLY SHE WAS AT THE TIME.

>> PRESUMABLY, EVEN IF HE SAID MY ISSUE IS TO SERVE A WARRANT, SHE WAS ASLEEP.

SHE WOULD NOT HAVE HEARD IT.

>> PRESUMABLY, BUT ALTHOUGH SOMEONE HAS BEEN ATTEMPTING FOR MORE THAN 10 OR 15 MINUTES TO WAKE HER UP.

I WOULDN'T-- I WOULDN'T ADVOCATE A CASE-BY-CASE APPLICATION OF THE EXCLUSIONARY RULE.

NOW, BENEFELD.

>> ISN'T THE REASONABLENESS OF A SEARCH OR SEIZURE WHAT YOU LOOK AT WHEN YOU ARE LOOKING AT THE FOURTH AMENDMENT?

SO WHY WOULDN'T THAT BE PART AND PARCEL AT WHAT YOU LOOK AT FOR A STATUTORY VIOLATION?

>> WELL, IT WOULD BE.

BUT THERE IS NO PROBLEM WITH THE REASONABLENESS OF THE SEARCH DONE IN THIS CASE.

>> I ASKED YOU, IS THERE ROOM TO KEEP BENEFELD, BUT TO STILL SAY IN THIS CASE THE REMEDY OF EXCLUSION IS NOT APPROPRIATE?

>> I THINK BENEFELD AND JENKINS WOULD NOT BE INCONSISTENT IN A SITUATION WHERE THEY DON'T HAVE PROBABLE CAUSE AND THEY DON'T HAVE A WARRANT.

THAT IS THE DIFFERENCE SITUATION.

>> IF THEY DON'T HAVE PROBABLE CAUSE, THEY WOULDN'T NEED THE KNOCK AND ASSIST STATUTE.

THERE IS NO PROBABLE CAUSE TO ENTER.

THERE IS A THRESHOLD FOURTH

AMENDMENT ISSUE EVEN UNDER THE U.S. CONSTITUTION.

>> RIGHT.

I THINK, IF THERE IS ANOTHER CONSTITUTIONAL-- IF THERE IS A CONSTITUTIONAL VIOLATION OTHER THAN SIMPLY A TECHNICAL VIOLATION, THEN BENEFELD WOULD STILL BE AN APPLICABLE EXCLUSION OF THE EVIDENCE-- WOULD STILL BE APPLICABLE BECAUSE JENKINS RECOGNIZES THERE IS A CONSTITUTIONAL VIOLATION.

HERE IT GETS KIND OF A LITTLE BIT CONFUSING BECAUSE WE DO HAVE A FOURTH AMENDMENT VIOLATION BUT IT IS ONE THAT THE U.S. SUPREME COURT HAD SAID DOES NOT JUSTIFY SUPPRESSION OF EVIDENCE.

SO, IT IS TANTAMOUNT TO, NOT A CONSTITUTIONAL VIOLATION WITHIN THE CONTEXT OF CAN WE APPLY THE EXCLUSIONARY RULE FOR SIMPLY A TECHNICAL VIOLATION OF THE KNOCK AND ANNOUNCE STATUTE, AND HERE AT BEST IT WAS A TECHNICAL VIOLATION BECAUSE HE DID NOT ANNOUNCE HIS AUTHORITY, ALTHOUGH NOT HIS PURPOSE AND THEN HE DID WAIT A VERY REASONABLE AMOUNT OF TIME BEFORE HE ACTUALLY ENTERED AND THEN-- BECAUSE THE DOOR WAS UNLOCKED.

>> LET ME ASK YOU, WHAT ABOUT THE SITUATION IN WHICH HUDSON-- WOULD YOUR ARGUMENT STILL BE THE SAME IN A SITUATION WHERE THERE WAS NO KNOCK, NO ANNOUNCEMENT OF ANY AUTHORITY, NOTHING? AND WE STILL WOULD NOT HAVE AN EXCLUSION OF THE EVIDENCE UNDER THOSE CIRCUMSTANCES?

OR DO WE GET BACK UNDER THOSE CIRCUMSTANCES WE HAVE A FOURTH AMENDMENT VIOLATION?

NO COMPLIANCE AT ALL?

>> WE DO HAVE ENFORCEMENT VIOLATION AND WE ALSO HAVE A VIOLATION OF THE SANCTITY OF THE HOME UNDER THE KNOCK AND ANNOUNCE STATUTE.

THE STATE'S POSITION WOULD BE THAT THE EXCLUSION OF EVIDENCE, BECAUSE THE KNOCK AND ANNOUNCE STATUTE WAS NEVER INTENDED TO PROTECT PEOPLE FROM BEING ARRESTED PURSUANT TO A WARRANT OR FROM HAVING THE STATE DISCOVER EVIDENCE OF A CRIME AND SEIZE IT.

THAT THE CIVIL REMEDIES THAT ARE IN FACT AVAILABLE ARE SUFFICIENT.

THERE ARE SUBSTANTIAL MONETARY PENALTIES, DEPENDING ON HOW EGREGIOUS THE SITUATION IS THAT WOULD BE A DETERRENT.

>> THE ANSWER TO THE QUESTION IS THE EXCLUSION OF THE EVIDENCE WOULD NOT NEED A REMEDY?

>> UNLESS THE LEGISLATURE WERE TO AMEND THE KNOCK AND ANNOUNCE STATUTE.

>> MY QUESTION WOULD BE WHY IN THE SITUATION WOULDN'T IT BE THE OPPOSITE, WHICH IS BENEFELD, AND AGAIN I AM REALLY UP IN THE AIR ON THIS IN TERMS OF WHERE TO GO. I THINK THERE ARE GOOD ARGUMENTS ON BOTH SIDES BUT ON THE ARGUMENT OF THE BENEFELD HAS BEEN THE LAW, IT REMAINED THE LAW AFTER HUDSON AND THEREFORE IF IT IS GOING TO BE CHANGED

SHOULD BE THE LEGISLATURE THAT CHANGES IT BY BEING EXPLICIT AS TO WHAT THE REMEDY WOULD NEED AND THE EXCLUSION WOULDN'T BE THE REMEDY.

THAT WOULD BE CONSISTENT WITH PRECEDENT AND STABILITY OF THE LAW, AND GIVE DEFERENCE TO THE LEGISLATURE WHO IS NOT SEEN FIT TO AMEND THE KNOCK AND ANNOUNCE STATUTE IN THE LAST 30 OR 40 YEARS.

>> THE LEGISLATURE DIDN'T AMEND THE KNOCK AND ANNOUNCE STATUTE BECAUSE THE COURTS IMPOSED WHATEVER REMEDIES WERE SOUGHT. THE LEGISLATURE SIMPLY WANTED TO CODIFY THE COMMON LAW TO PROTECT THE SANCTITY OF THE HOME AND THAT IS WHY THE KNOCK AND ANNOUNCE STATUTE CONTAINS THE PROVISIONS THAT IT DOES.

THE LEGISLATURE DID NOT EXPRESS WHAT REMEDIES ARE AVAILABLE. THAT HAS BEEN A DECISION FOR THE COURT.

THE LEGISLATURE COULD AMEND THE STATUTE TO ALLOW FOR EXPRESSLY-- ALLOW THE REMEDY OF EXCLUSION'S EVIDENCE FOR A KNOCK AND ANNOUNCE VIOLATION BUT THEY BASICALLY SAID WE JUST WANT TO PROTECT THE SANCTITY OF THE HOME.

>> I DON'T THINK YOU ANSWERED MY QUESTION.

MY QUESTION WAS WE CAME OUT WITH BENEFELD AND NOW IT WOULD BE UP TO THE LEGISLATURE TO SAY NO, YOU GOT IT WRONG.

THEY DO THAT OFTEN AND AMEND THE STATUTE.

THAT MEANS UNDER THEORIES OF
CASE LAW THAT THEY HAVE OUR
INTERPRETATION OF THE STATUTE.

>> WE ALSO HAVE TO LOOK AT HOW
BENEFELD IS, IN OUR SOCIETY, HAS
CHANGED SINCE 1964 WHEN BENEFELD
WAS DECIDED AND EVEN 1968.

>> THAT IS A REASON TO MAYBE
RECEDE FROM IT BUT I THINK YOU
ARE IN YOUR REBUTTAL, SO I DON'T
WANT YOU TO HAVE YOU USE YOUR
LAST 40 SECONDS.

>> MAY IT PLEASE THE COURT.

MY NAME IS JOHN FISHER AND I'M
APPEARING ON BEHALF OF THE
PETITIONER, KATHY JO CABLE.

>> CAN WE START WITH THE FACTS
OF THIS CASE AND COMPARE IT WITH
THE FACTS OF BENEFELD BECAUSE I
AM STRUCK WITH THE EXTREME
CIRCUMSTANCES.

>> CERTAINLY IT WAS EXTREME IN
BENEFELD.

>> LET'S NOT TALK OVER ONE
ANOTHER.

EXTREME CIRCUMSTANCES, FORCIBLE
ENTRY, NO ARREST WARRANT, NO
SEARCH WARRANT, NO ANNOUNCING,
NO WAITING ETC.

HERE DO YOU AGREE THAT THEY
ANNOUNCED IT WAS THE SHERIFF'S
OFFICE, PLEASE COME TO THE DOOR?
THEY WAITED AND THEN DID NOT
FORCIBLY ENTER.

THEY OPENED THE DOOR AND IT WAS
UNLOCKED AND, ACCORDING TO HIM,
THIS DEFENDER WAS ASLEEP WHICH
UNDER OUR GM CASE, WHAT WOULD BE
THE DIFFERENCE FOR HER IF THEY
SENT THE SHERIFF'S OFFICE TO
SEND A WARRANT.

SHE IS ASLEEP AND SHE IS NOT

MOVING ANYWAY.

HOW IS THAT NOT LIKE 180 DEGREES AWAY FROM OUR 1964 OPINION?

>> THERE WERE OTHER PERSONS THERE, AND THE SON WAS AWAKE. THE HUSBAND WAS AWAKENED BY THE POLICE.

HAD THE OFFICER ANNOUNCED HIS PURPOSE, THEY MAY HAVE BEEN MORE FORCEFUL TO GET HER TO COME TO THE DOOR IN RESPONSE TO THE OFFICER ANNOUNCING HIS PURPOSE THAT I AM HERE WITH AN ARREST WARRANT.

>> IN TERMS OF THE ACTUAL STATUTE, WHICH IS, ALTHOUGH WE SAY, WHEN YOU LOOK AT, IT IS NOT EXACTLY A WELL-CRAFTED STATUTE. WHAT BASICALLY LOOKS LIKE WHAT AN OFFICER NEEDS TO DO BEFORE MAKING A FORCIBLE ENTRY, AND DOES IT NOT PROTECT THOSE INTERESTS THAT THE STATE SAID, WHICH IS PREVENTING THE LAW ENFORCEMENT OFFICER FROM SUFFERING FROM ANY VIOLENCE THAT THEY MAKE AN UNANNOUNCED INJURY, PREVENTING DESTRUCTION OF PROPERTY SUCH AS TEARING DOWN, COMING IN AND RANSACKING PLACES AND PROTECTING THE DIGNITY OF THOSE INSIDE WHO MIGHT BE IN THE SPACE OF UNDRESS.

IT SEEMS TO ME THOSE VALUES-- AT LEAST THAT IS WHAT HUDSON SAID-- ARE NOT THE VALUES SERVED BY THE SUPPRESSION OF THE EVIDENCE?

>> THIS COURT IN BENEFELD SAID THAT IT WAS AN ACT IN THE COMMON LAW BY PASSING THAT STATUTE AND IT WAS TO PROTECT LIBERTY AND THE SANCTITY OF THE HOME AND I

WOULD SAY THAT IS TO PROTECT
PRIVACY AS WELL.

>> DO YOU MAKE AN ARGUMENT THAT
EXCLUSION SHOULD BE A REMEDY FOR
THE FLORIDA CONSTITUTIONAL
PROTECTION OF THE PRIVACY OF ITS
CITIZENS?

>> THAT IS IN THE ALTERNATIVE TO
ARGUING THAT THIS COURT HAS
CRAFTED EXCLUSION OF EVIDENCE
THROUGH A VIOLATION OF KNOCK AND
ANNOUNCE, INCLUDING SOLELY BEING
IN VIOLATION OF FAILING TO
ANNOUNCE PURPOSE.

THERE ARE MANY CASES THAT
EVIDENCE WAS EXCLUDED FOR
FAILURE TO ANNOUNCE
IDENTIFICATION AND/OR THE
PURPOSE.

>> ALL THE DECISIONS WERE BEFORE
HUDSON.

>> THEY WERE ALL BASED ON THE
STATUTE AND NOT ON THE FOURTH
AMENDMENT.

THE LEGISLATURE IS PRESUMED TO
BE AWARE OF ALL OF THESE
OPINIONS, AND THEY HAVE NOT
AMENDED THE STATUTE IN THE FACE
OF ALL THESE OPINIONS THAT
APPLIED THE REMEDY OF THE
EXCLUSION FOR VIOLATIONS, EVEN
TECHNICAL VIOLATIONS OF KNOCK
AND ANNOUNCE.

IF THE LEGISLATURE WANTED TO
CHANGE THAT, THEY COULD HAVE,
BUT THEY HAVEN'T.

THEY HAVE PRESUMABLY ADOPTED THE
RULINGS OF ALL OF THE COURTS.

THAT EXCLUSION IS THE REMEDY FOR
VIOLATION OF KNOCK AND ANNOUNCE
STATUTE.

>> FRANKLY, I THINK THAT IS YOUR

BEST ARGUMENT.

BENEFELD HAS BEEN THE LAW SINCE 1964, THAT THIS COURT IS NOT REQUIRED BY ANY OF THE CIRCUMSTANCES THAT OCCURRED SINCE BENEFELD TO RECEIVE FROM IT-- BUT OTHERWISE OTHER THAN THAT, IF YOU WERE DECIDING ON A CLEAN SLATE, I THINK-- LET ME ASK YOU THIS.

IF BENEFELD HADN'T COME OUT AND YOU WERE ARGUING IT FOR THE FIRST TIME IN LIGHT OF JENKINS, HUDSON AND OTHER CASES, DO YOU THINK YOU COULD MAKE THE SAME ARGUMENT?

>> I COULD NOT MAKE THIS ON FOURTH AMENDMENT GROUNDS IN THE FACE OF HUDSON.

THAT IS CLEAR.

>> BUT HOW COULD YOU MAKE IT ON THE BASIS OF A JUDICIAL EXCLUSION OF A REMEDY WHEN JENKINS SAID WE ARE NOT GOING TO CREATE THE REMEDY OF EXCLUSION FOR STATUTORY VIOLATION?

>> BUT NOW THIS CREATION OF REMEDY IS SOMETHING THAT HAS BEEN STANDING FOR DECADES AND THE LEGISLATURE HAS ADOPTED THIS BY FAILING TO ADDRESS IT.

IF THEY DIDN'T LIKE IT THEY WOULD HAVE CHANGED.

THEY CERTAINLY KNOW HOW.

I WOULD SAY THE JUDICIALLY CREATED REMEDIES ARE PART OF THE STATUTE UNTIL THE LEGISLATURE ACTS TO REMOVE IT.

I WOULD SAY THAT OUR CONSTITUTIONAL RIGHTS TO PRIVACY SHOULD HAVE SOME EFFECT AND WHAT IS MORE PRIVATE THAN BEING

ASLEEP IN YOUR OWN HOME?
THE SECOND DCA BACK IN ROBINSON
NOTED THAT, UNLESS THEY KNOCK
AND ANNOUNCE, IT IS IDENTICAL IN
THE WORDING TO THE FOURTH
AMENDMENT.

THERE CAN BE GROUNDS FOR
SUPPRESSION RATHER THAN FOURTH
AMENDMENT GROUNDS.

IN SLANEY, WHICH WAS
INTERPRETING A CONSENT OFFER, A
BLOOD DRAW, THEY FOUND THERE WAS
NO FOURTH AMENDMENT VIOLATION
AND THE POLICE LYING TO THE GUY
TO CONSENT TO A BLOOD DRAW.
THAT DIDN'T VIOLATE THE FOURTH
AMENDMENT THAT IT VIOLATED THE
STATUTE.

VIOLATION OF THE STATE STATUTE,
EXCLUSION OF EVIDENCE, CAN BE,
AND IN THAT CASE, WAS THE
REMEDY.

[INAUDIBLE]

>> IS THAT MORE WORDS TO SAY
WORDS, OR IS THAT A MEANINGFUL
DISTINCTION?

IS THERE A REAL DISTINCTION OR
IS THAT JUST SOMETHING TO SAY?

>> I AM NOT SURE EXACTLY.

>> SOME DISCUSSED THE QUESTION
AS TO WHETHER THERE IS SOME
CONCEPT OF COMMON LAW THAT WOULD
LEAD TO THE EXCLUSION SEPARATE
AND APART FROM A PURE
CONSTITUTIONAL BASIS, AND MY
QUESTION IS, I MEAN WE CERTAINLY
KNOW THERE IS A CONSTITUTIONAL
FOURTH AMENDMENT BASIS, BUT IS
THERE A DIFFERENCE?

IS THERE A REAL DIFFERENCE OR IS
THAT JUST SOMETHING TO SAY?

>> I THINK THERE IS A REAL

DIFFERENCE AND BENEFELD ITSELF
WAS APPLYING EXCLUSION AS
INTERPRETING THE KNOCK AND
ANNOUNCE STATUTE IN LIGHT OF THE
COMMON LAW.

AND UNTIL OUR STATUTES ARE
SAYING DIFFERENT-- OUR CASES ARE
COMMON LAW.

WE DO FIND COMMON LAW, AND THE
COMMON LAW OF EXCLUSION OF
EVIDENCE FOR VIOLATION OF YOUR
RIGHTS IN THE ABSENCE OF STATUES
SAYING OTHERWISE IS SOMETHING
THIS CASE WOULD FOLLOW OTHER
CASES AND THAT IS WHAT WE ARE
ASKING FOR YOU TO DO HERE.

IT HAD THE CASES THAT FOLLOWED
BENEFELD.

BENEFELD WAS AN EGREGIOUS CASE
OF VIOLATION, BUT IN ITS
PROGENY, THERE HAVE BEEN CASES
THAT HAVE BEEN AS TECHNICAL AS
THIS ONE AND APPLIED THE
SUPPRESSION OF EVIDENCE AS A
REMEDY.

>> SO YOUR ARGUMENT AGAIN IS,
EVEN IF IT IS TECHNICAL,
EXCLUSION IS THE PROPER REMEDY?

>> ABSOLUTELY.

>> UNDER THE CIRCUMSTANCES OF
THIS CASE, WHO WAS REALLY
BENEFITING FROM THE SUPPRESSION
OF THE EVIDENCE HERE?

SHE WAS NOT EVEN AWARE-- EVEN
THE OFFICER ADMITS, "I HAD A
SEARCH WARRANT" I GUESS IT WAS.
SHE WAS NOT AWARE OF THAT SO
WHAT REAL BENEFIT ARE WE SERVING
BY SUPPRESSING THE EVIDENCE
HERE?

>> WHAT HAPPENED WAS THE
OFFICERS WERE IN THE PARKING LOT

AND CHECKED IT OUT, SO THAT SHE WAS REGISTERED THERE, SAW A TEENAGER AND APPROACH THE TEENAGER.

HE SAID "YES, I AM HER SON."

HE SAID, "GO WAKE HER UP."

HE WENT IN AND DIDN'T TELL THE SON THAT HE HAD AN ARREST WARRANT THAT HE WANTED TO SERVE.

HE CAME TO THE DOOR AND ANNOUNCED WHO HE WAS.

HE DIDN'T ANNOUNCE HIS PURPOSE.

APPARENTLY THE FATHER OR THE STEPFATHER OF MY CLIENT'S HUSBAND JUMPED UP ON THE OFFICER, ANNOUNCING HIS PURPOSE.

THERE ALSO WERE A COUPLE OF OTHER KIDS THERE.

ONE WAS A FRIEND AND WHEN WAS THE BROTHER OF THE TEENAGER.

HAD THE OFFICER ANNOUNCED HIS PURPOSE, THIS COULD HAVE BEEN DEALT WITH WITHOUT EVEN THE OFFICER ENTERING THAT HOME.

>> DIDN'T HE TWICE SAY-- TWICE KNOCKED AND SAID, "I AM WITH THE SHERIFF'S OFFICE."

THAT HAPPENED A COUPLE OF TIMES AND NO ONE RESPONDED AT ALL, EVEN THOUGH YOU SAY YOUR CLIENT'S HUSBAND AND OTHERS WERE IN FACT PRESENT AND HEARD THE OFFICERS?

>> THAT WAS ACCORDING TO THE SON'S TESTIMONY.

WE HAD TWO WITNESSES, THE POLICE OFFICER AND ONE OF THE SONS.

>> DID THE SON OR THE FATHER SAY, "WHAT ARE YOU DOING HERE?" SO-AND-SO IS SLEEPING AND THEN HE SAID, "I JUST WANT TO TALK." THEN IT NEVER HAPPENED.

THEY DIDN'T RESPOND AT ALL.

>> THE STATUTE DOESN'T APPLY TO SAYING THE OCCUPANTS HAVE TO PASS THE OFFICERS PURPOSE.

>> DID THIS HOTEL ROOM HAVE A BACK DOOR?

>> NOT TO MY KNOWLEDGE.

I HAVE NEVER BEEN IN A MOTEL ROOM THAT HAD A BACK DOOR, BUT THE STATE WAS ARGUING EXIGENCY AT THE HEARING, AND THE OFFICER SAID PART OF WHY HE ENTERED WAS BECAUSE HE DIDN'T WANT HER TO ESCAPE THROUGH THE BACK DOOR. NOT THAT THERE WAS A BACK DOOR BUT THERE COULD'VE BEEN A BACK DOOR.

>> I WAS GOING TO ASK YOU ABOUT THAT.

IN BENEFELD, NOT ONLY DO WE INTERPRET A STATUTE THAT WE PROVIDE EXCEPTIONS THAT AREN'T EVEN IN THE STATUTE-- SO WE HAVE ESSENTIALLY, BY CREATING THESE EXCEPTIONS, REWRITTEN THE STATUTE.

>> THERE ARE EXIGENCIES TO THE STATUTE THAT WERE CREATED BY THE COURTS.

>> BY THE COURT, SO AS FAR AS SAYING THAT WE ARE NOT GOING TO INCLUDE EVIDENCE FOR WHAT WE CONSIDER TO BE UNDER THE CIRCUMSTANCES, NOT SUBSTANTIAL VIOLATION, THAT WOULD BE NO REASON FOR US NOT TO BE ABLE TO DO THAT BECAUSE THERE IS NO GUIDANCE IN THE LEGISLATURE ANYWAY, CORRECT?

>> YES.

BASICALLY HERE I WANT TO AFFIRM THE SECOND DISTRICT COURT OF

APPEAL ON INDEPENDENT STATE
GROUNDS BASED ON THE STATUTE AND
ADDITIONALLY ANY ALTERNATIVE
BASED ON CONSTITUTIONAL RIGHT TO
PRIVACY, DO YOU ALL HAVE ANY
FURTHER QUESTIONS?

THANK YOU.

>> MS. DUNLEVY.

>> I NEGLECTED TO ASK THIS
BEFORE.

YOU SAID NOT ANNOUNCING THE
PURPOSE IS TECHNICAL BUT IF HE
HAD NO ARREST WARRANT, AND THEY
ARE IN A HOME OR A HOTEL AND
PLEASE SAY IT IS POLICE, I WOULD
LIKE TO TALK TO YOU.

IS THERE ANY LAW THAT REQUIRES
TO COME TO THE DOOR AND OPEN THE
DOOR?

>> NO YOUR HONOR.

IF IT WERE BASICALLY A KNOCK AND
TALK SITUATION, NO.

>> SO, UNLESS THEY KNOW THAT
THERE IS AN ARREST WARRANT, THEY
HAVE NO OBLIGATION TO COME TO
THE DOOR TO BEGIN WITH.

>> THAT IS TRUE.

>> SO I GUESS FROM MY POINT OF
VIEW IT IS-- WE HAVE BEEN
CALLING IT TECHNICAL OR YOU
HAVE, I AM NOT SURE IT WOULD BE
COMPLIANT WITH THE STATUTE BUT
IT COULDN'T BE CONSIDERED A
TECHNICAL VIOLATION.

>> THE DEPUTY ANNOUNCED THAT
DEPUTY SO-AND-SO, OR THE
SHERIFF'S OFFICE COME TO THE
DOOR SO HE DIDN'T-- WASN'T
MISLEADING AT THAT POINT.

>> THE DOOR HAD BEEN LOCKED.
HE JUST TURNED THE KNOB AND THE
DOOR WAS OPEN SO THERE WAS NO

ARREST WARRANT.

WHAT COULD THE POLICE OFFICER
HAVE DONE FROM THERE?

HE TRIED THE DOOR AND THE DOOR
WAS LOCKED.

>> IF HE DIDN'T HAVE AN ARREST
WARRANT UNDER THE FACTS WE HAVE
HERE, THEN HE WOULDN'T HAVE A
RIGHT TO ANSWER AT ALL BECAUSE
HE DIDN'T HAVE PROBABLE CAUSE
INDEPENDENT OF THE ARREST
WARRANT AND, NUMBER TWO, WHAT HE
WOULD HAVE DONE IF THE DOOR
WOULD HAVE BEEN LOCKED I DON'T
KNOW, AND I REALLY AM NOT IN A
POSITION TO SPECULATE.

REGARDING THE BACK DOOR, THE
DEPUTY LIVES IN THAT AREA.

THIS IS IN LAKE WALES, SO HE MAY
HAVE KNOWN THAT THIS MOTEL DID
HAVE BACK DOORS.

I DO HAVE A COLLEAGUE WHO SAYS
THAT SHE HAS SEEN MOTELS THAT DO
IN FACT HAVE BACK DOORS SO I
DON'T THINK WE CAN RULE OUT THE
POSSIBILITY THAT THERE WAS A
BACK DOOR IN THE ABSENCE OF ANY
TESTIMONY TO THE CONTRARY.

REGARDING THE RIGHT OF PRIVACY,
OUR CONSTITUTIONAL RIGHT TO
PRIVACY IS LIMITED BY OTHER
PROVISIONS OF OUR STATE
CONSTITUTION, WHICH INCLUDES
ARTICLE I, SECTION 12 ON
SEARCHES AND SEIZURES, WITH
REGARD TO SEARCH AND SEIZURE
ISSUES, OUR CONSTITUTIONAL RIGHT
TO PRIVACY DOES NOT ALLOW ANY
GREATER PROTECTIONS THAN THE
UNITED STATES CONSTITUTION
FOURTH AMENDMENT AS INTERPRETED
BY THE UNITED STATES SUPREME

COURT.

>> THANK YOU VERY MUCH.

THANK YOU BOTH FOR YOUR
ARGUMENTS.

THE COURT WILL NOW BE IN RECESS
UNTIL TOMORROW MORNING.

>> PLEASE RISE.