

>> ALL RISE.

HEAR YE, HEAR YE, SUPREME COURT
OF FLORIDA IS NOW IN SESSION.

ALL WHO HAVE CAUSE TO PLEA, DRAW
NEAR, GIVE ATTENTION.

YOU SHALL BE HEARD.

GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA, THIS
HONORABLE COURT.

>> LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA.

PLEASE BE SEATED.

>> GOOD MORNING.

WELCOME TO THE FLORIDA SUPREME
COURT.

BEFORE WE BEGIN WITH OUR CASE
HERE TODAY, LET ME JUST INFORM
YOU THAT EACH YEAR WE HAVE HERE
BEFORE THE FLORIDA SUPREME COURT
WHAT WE CALL THE JUSTICE
TEACHING INSTITUTE, AND WE
INVITE A NUMBER OF TEACHERS FROM
AROUND THE STATE FOR ABOUT A
WEEK, WHERE THE TEACHERS LEARN
ABOUT OUR JUDICIAL SYSTEM AND

THEY PARTICIPATE IN A CASE SUCH AS THIS ONE AND THEN HOPEFULLY GO BACK AND TEACH OUR CHILDREN ABOUT OUR JUDICIAL SYSTEM.

WE HAVE 29 TEACHERS HERE TODAY WHO ARE PARTICIPATING IN THE JUSTICE TEACHING INSTITUTE, AND THEY'RE PRESENT.

IF YOU WILL STAND, PLEASE.

THANK YOU.

THANKS TO HIM, WE HAVE IT EVERY YEAR.

SO ON THAT NOTE, WE'LL PROCEED NOW WITH OUR CASE HERE TODAY, MCADAMS VERSUS STATE.

>> MAY IT PLEASE THE COURT, I'M JOHN KLAWIKOFSKY.

I REPRESENT THE STATE.

MICHAEL MCADAMS WAS CONVICTED OF FIRST-DEGREE MURDER AND CONVICTED TO LIFE SENTENCES.

ON REPEAL, THE CONFESSION WAS PLAYED FOR THE JURY, AND WHAT THE SECOND DISTRICT FOUND IS UP UNTIL HE WAS IN CUSTODY,

HALIBURTON DID NOT APPLY.

ONCE HE WAS IN CUSTODY,

HALIBURTON THEN APPLIED.

THEY REVERSED THE POST-MIRANDA

STATEMENTS.

WE'RE HERE ON A QUESTION OF

GREAT PUBLIC IMPORTANCE.

THE QUESTION IS -- IT'S A LITTLE

AWKWARD, SO I'VE TRIED TO

REPHRASE IT.

DOES A SUSPECT HAVE A DUE

PROCESS RIGHT TO BE INFORMED A

LAWYER HAS BEEN RETAINED BY HIS

FAMILY AND WISHES TO TALK TO

HIM.

NOW, WE LOOK TO THIS COURT'S IN

OPINION IN HALIBURTON FOR

GUIDANCE, BUT THAT WAS ABOUT

OFFENSIVE POLICE CONDUCT, ABOUT

IGNORING A COURT ORDER, AND

HALIBURTON DOESN'T DISCUSS

NONCUSTODIAL SETTINGS.

>> IN FAIRNESS, THERE'S THE

CIRCUMSTANCE OF A COURT ORDER

THAT'S REFERRED TO THERE,

TELEPHONIC COURT ORDER, BUT THE REASONING OF HALIBURTON IS BROADER THAN THEY SUGGESTED JUST BY THE FOCUS ON A COURT ORDER, ISN'T IT?

>> I WOULD RESPECTFULLY DISAGREE WITH THAT.

IN '97 THIS COURT IN SMITH MENTIONED THIS CONDUCT WAS NOT AS OFFENSIVE AS HALIBURTON, SO THIS COURT IN '97, A LOT MORE RECENT THAN '85, DID.

>> WHAT WAS THE CONDUCT IN SMITH?

>> SMITH WAS ACTUALLY WORSE, BUT HE WAS RETAINED -- A PUBLIC DEFENDER JUST SHOWED UP AT THE COURT AND SAID I'M REPRESENTING HIM.

HE WAS NOT IN CUSTODY YET.

>> ALSO, JUST A LAWYER WALKING UP TO GET INVOLVED IN A CASE.

>> CORRECT.

>> IN WHICH THE LAWYER WAS NOT IN THE CORRECT.

>> BUT THIS COURT IN SMITH MENTIONED THERE WAS NO OFFENSIVE CONDUCT BY THE GOVERNMENT, AS THERE WAS IN HALIBURTON.

NOW, INTERESTINGLY THE SAME DAY THAT HALIBURTON ONE CAME OUT, THIS COURT ISSUED A SIMILAR OPINION IN ROMAN VERSUS STATE.

ROMAN IS IN THE SECOND DISTRICT MCADAMS OPINION AS FAR AS CUSTODY, BUT ROMAN WAS ISSUED THE SAME DAY AS HALIBURTON ONE AND IN ROMAN THIS COURT TREATED NONCUSTODY AND CUSTODY TOTALLY DIFFERENT.

HALIBURTON WAS IN CUSTODY. WENT TO THE U.S. SUPREME COURT, CAME BACK.

THIS COURT DID DUE PROCESS.

>> I'M SORRY.

GO AHEAD.

>> ROMAN, THE SAME DAY THIS COURT ISSUED HALIBURTON, THIS COURT ISSUED ROMAN, AND THEY DISTINGUISHED ROMAN BY SAYING

ROMAN WE ALL CITE AS FAR AS
YOU'RE NOT IN CUSTODY JUST
BECAUSE YOU'RE IN A POLICE
STATION.

BUT IN READING ROMAN, ROMAN ALSO
APPLIES TO THE CERTIFIED
QUESTION, ALTHOUGH IT DOES NOT
TALK ABOUT DUE PROCESS.

IN ROMAN, ROMAN'S SISTER HIRED
AN ATTORNEY AND THIS COURT SAYS
ROMAN WAS NOT IN CUSTODY AND THE
FACT THAT THE POLICE DID NOT
NOTIFY ROMAN THAT AN ATTORNEY
WAS TRYING TO REACH HIM WAS NOT
ERROR.

>> WHAT POINT IN TIME WOULD YOU
SAY MCADAMS WAS IN CUSTODY?

>> MCADAMS WAS IN CUSTODY WHEN
HE MADE THE ADMISSION I SHOT
THEM.

>> WHAT WILL YOU DO WITH ALL OF
THE OTHER FACTORS?

HOW ABOUT STREET POLICE OFFICERS
GOING TO THE BATHROOM WITH HIM?
IS THAT NOT SOME INFERENCE OF

CONTROL?

>> THE DISSENT EXPLAINS WHAT
HAPPENS WITH THAT.

>> WELL, WHETHER THE DISSENT
AGREES OR NOT IS NOT THE POINT.
THAT'S ONE FACTOR.

DID THEY NOT CONFRONT HIM WITH
BLOOD ON HIS SHORTS?

>> WE TAKE ISSUE WITH THE
DISSENT SAYING THEY CONFRONTED
HIM.

THEY TOLD HIM ABOUT EVIDENCE,
NOT ABOUT EVIDENCE CONFLICTING
HIM.

>> HOW ABOUT WHEN THEY SAY THIS
IS REALLY, REALLY BAD.
REALLY, REALLY BAD.

>> WELL, YOU GO FROM A
REASONABLE PERSON STANDARD AND
THIS IS A REASONABLE INNOCENT
PERSON, NOT A REASONABLE GUILTY
PERSON.

MR. MCADAMS IS THINKING, OF
COURSE, I DID IT, THIS DNA IS
GOING TO TAG ME.

THE DISSENT ACKNOWLEDGES THAT
THREE OFFICERS WENT -- THIS WAS
NOT THEIR POLICE STATION, SO
THEY HAD TO BE DIRECTED TO THE
RESTROOMS, TOO.

>> SO WHEN DO YOU CONTEND THAT
CUSTODY -- THAT THIS DEFENDANT
WAS ACTUALLY IN CUSTODY?

>> HE WAS IN CUSTODY WHEN HE
MADE THE ADMISSION OF I SHOT
THEM BOTH.

>> SO WHAT WAS -- WHERE -- YOU
CONTEND THEN THAT THE POLICE
OFFICER WHO KNEW THAT A LAWYER
WAS THERE A MINUTE OR SO LATER
COMES IN, GETS RID OF ONE OF THE
OFFICERS, THEN STARTS TO
CONFRONT THE DEFENDANT WITH THE
BLOODY SHORTS, WHATEVER OTHER
EVIDENCE THERE WAS.

AND AT THAT POINT YOU DON'T
BELIEVE THAT THE DEFENDANT WAS
IN CUSTODY.

>> HE'S NOT IN CUSTODY BECAUSE
HE'S MADE NO INCRIMINATING

STATEMENTS.

THIS IS A MISSING PERSONS
INVESTIGATION SIMILAR TO PITTS.

>> WHEN HE ASKS HIM, SAY, WELL,
HE WAS ABOUT TO CONFESS, HE
SAID, WELL, CAN I THINK ABOUT IT
A FEW DAYS, WAS HE FREE TO LEAVE
AT THAT POINT?

>> HE WAS FREE TO LEAVE UP UNTIL
HE MADE THE ADMISSION OF I SHOT
THEM.

AND PITTS WAS A LOT MORE
EGREGIOUS THAN THIS CASE.

>> WELL, I WAS UNDER THE
IMPRESSION THAT HE ASKED, AM I
GOING TO BE ABLE TO GO HOME
BEFORE HE CONFESSED AND THE
OFFICER SAID WE DON'T KNOW.

HOW DO YOU SAY HE'S FREE TO GO
HOME?

THAT'S NOT DIRECTLY CONTRARY TO
WHAT THE POLICE OFFICER SAID.

>> AND THE SAME ANSWER IS GIVEN
IN PITTS, MORE EGREGIOUS,
BECAUSE IN PITTS THEY'RE EVEN

SAYING THAT I KNOW YOU WERE
THERE.

THE OFFICER NEVER SAID I KNOW
YOU WERE THERE.

>> NO.

WE'RE TALKING ABOUT FREE TO GO
HOME.

>> HE WAS FREE TO GO HOME.

>> THAT'S ONE OF THE ELEMENTS WE
LOOK TO.

>> AND THE FOUR FACTORS, YES.

>> THE MAN SAID AM I FREE TO
LEAVE?

WE'LL HAVE TO WAIT AND SEE.

THAT'S NOT A YOU'RE FREE TO GO.

>> THAT HAS ALREADY BEEN DEALT
WITH.

PITTS HAS DEALT WITH THAT.

>> HOW?

>> IN PITTS THEY'RE EVEN
CONFRONTING HIM, I KNOW YOU WERE
THERE.

>> THAT'S NOT WHETHER YOU CAN GO
HOME.

>> HE'S CONFRONTING HIM WITH THE

EVIDENCE.

WHEN THE FEMALE DETECTIVE LEAVES

--

>> IT WON'T HELP YOU TO AVOID
THE QUESTION BECAUSE I REALLY
WANT TO KNOW HOW I CAN IN GOOD
CONSCIENCE WRITE A SENTENCE THAT
SAYS WHEN A POLICE OFFICER SAYS
I DON'T KNOW WHETHER YOU CAN GO
HOME OR NOT, THAT THAT UNDER
RAMIREZ IS YOU'RE FREE TO GO.
HOW CAN I DO THAT?

>> THE CASE LAW ESTABLISHES YOU
CAN BE DECEPTIVE.

YOU JUST CANNOT CONFRONT HIM
WITH EVIDENCE OF HIS GUILT.
AND THEY DIDN'T.

THEY CONFRONTED HIM WITH THE
EVIDENCE THEY HAD.

>> IF THERE ARE NO CASES, WHY
DON'T YOU SAY THERE ARE NO
CASES.

>> I THINK PITTS IS ON POINT.

>> DOES IT HAVE IN PITTS A
QUESTION WHERE THE DEFENDANT

ASKS, AM I FREE TO LEAVE?

>> HE SAYS CAN I GO -- IN PITTS,
HE SAYS CAN I GO HOME, AND THE
DETECTIVE SAYS I DON'T KNOW.

SO THE SAME QUESTION.

>> THE SAME EXACT SCENARIO.

>> SAME.

ACTUALLY WORSE THAN THIS CASE

--

>> AND IN PITTS WE HELD THEY
WERE NOT IN CUSTODY.

>> IT WAS A SECOND DISTRICT
CASE, REVIEW DENIED.

>> LET ME ASK YOU ABOUT THE TIME
LINE AS TO WHEN THINGS OCCURRED
HERE.

THE DETECTIVE CONFRONTED HIM
ALONE IN THE ROOM AND TOLD HIM
WE HAVE, QUOTE, "WE HAVE TONS OF
BLOOD EVIDENCE."

AND TONS OF DNA.

AT THE TIME SHE SAID THAT TO
MCADAMS, WHEN WAS IT THAT THE
LAWYER CAME KNOCKING ON THE
DOOR, CAME TO THE JAIL?

>> IT WAS ABOUT THE SAME TIME.

>> ABOUT -- SO --

>> ABOUT THE SAME TIME.

THE RECORD'S NOT TOTALLY CLEAR,
BUT FROM -- WE DON'T HAVE A
TRANSCRIPT.

WE HAVE TO WATCH IT.

I'M SURE YOU HAD TO WATCH IT,
TOO.

SO WE'RE TIMING IT.

>> SO AT THE TIME THAT HE WAS
TOLD THAT THEY HAD A TON OF
EVIDENCE AGAINST HIM, THE LAWYER
WAS ALREADY TRYING TO SEE THE
CLIENT.

>> I BELIEVE SO.

I BELIEVE SO.

>> WELL, THE DETECTIVE SAYS SO.

>> YES.

>> DETECTIVE SAYS HE KNEW THAT
THE LAWYER WAS OUT THERE.

>> WAS THERE.

>> AND THAT SEEMS TO ME THAT
THAT SEEMS TO BE HIS MOTIVE FOR
GOING IN AND THEN TELLING THE

FEMALE DETECTIVE, YOU GO OUT, I WANT TO JUST TALK TO HIM ALONE. IT WAS RIGHT AFTER HE FOUND OUT THAT THE LAWYER WAS THERE WANTING TO SEE THE CLIENT.

>> WHEN YOU WATCH THE INTERVIEW, THE MALE DETECTIVE HAS A MUCH MORE BETTER RELATIONSHIP WITH THE DEFENDANT THAN THE FEMALE DETECTIVE WAS.

>> NO.

THAT'S NOT THE POINT OF WHAT JUSTICE QUINCE IS SAYING.

THE POINT IS THAT WE'RE LOOKING AT AN ISSUE OF WHETHER THIS GUY GOES THERE VOLUNTARILY.

HE WANTS TO HELP IN THE INVESTIGATION.

THE PARENTS HIRE A LAWYER.

LAWYER SHOWS UP AND SAYS, I WOULD LIKE TO SEE MY CLIENT.

I WANT ALL QUESTIONING TO STOP.

THEY ARE TOLD -- HE IS TOLD, NO, YOU CANNOT SEE HIM, AND AT THAT POINT -- AND IT LOOKS PRETTY --

I MEAN, AGAIN, 2:04 IS WHEN THIS IS HAPPENING.

2:05 ALL OF A SUDDEN THE TENOR OF EVERYTHING CHANGES BECAUSE WHAT THEY REALIZE IS THAT THEY NOW HAVE A VERY SHORT TIME TO TRY TO GET A CONFESSION OUT OF HIM.

AND WHAT HAPPENS -- AND IT HAPPENED IN ROSS AND I THINK THIS IS SIMILAR TO ROSS IN CERTAIN WAYS.

THE POLICE SEEM TO THINK THAT WHAT THEY DO IS THEY WAIT UNTIL THEY GET A CONFESSION AND THEN THEY ISSUE THE MIRANDA WARNINGS BECAUSE NOW THEY'VE GOTTEN THE CONFESSION, WHEREAS MIRANDA IS SUPPOSED TO BE GIVEN WHEN CUSTODIAL INTERROGATION BEGINS. NOW, IN THIS CASE IT THEREFORE SEEMS THAT WHAT HAS HAPPENED -- AND WE ARE ALLOWED TO BOTH REVIEW THE FACTS AND THEN DRAW OUR LEGAL CONCLUSIONS -- IS THAT

THE POLICE OBSTRUCTED THE
ABILITY OF HIS ATTORNEY TO COME
SEE HIM IN AN EFFORT TO THEN GET
THIS CONFESSION OUT OF HIM AND
THEN DECIDE THEN I NOW HAVE
ENOUGH TO ARREST YOU, NOW IT'S
CUSTODIAL.

THAT IS NOT THE PURPOSE OF
MIRANDA, AND IT SEEMS TO ME THAT
THERE IS BOTH A DUE PROCESS
VIOLATION HERE, AS WELL AS A
MIRANDA VIOLATION THAT OCCURRED
AT THE SAME TIME, WHICH WAS
AROUND 2:05, WHEN THE CUSTODIAN
INTERROGATION BEGAN.

THAT'S MUCH MORE LOGICAL THAN
SAYING WE'RE GOING TO ALLOW
POLICE TO DISREGARD ALLOWING AN
ATTORNEY TO COME IN AND THEN
LATER ON GET THE CONFESSION AND
SAY, OKAY, NOW WE'RE GOING TO
TELL YOU THERE WAS AN ATTORNEY
HERE A HALF HOUR AGO, YOU CAN GO
TALK TO YOUR ATTORNEY.

>> THIS WAS AN ONGOING MISSING

PERSONS INVESTIGATION, AND THE
TONE OF THE INTERVIEW WAS
NONACCUSATORIAL.

HE SAID, SORRY, BUDDY, I LET YOU
DOWN.

>> BUT WHAT IS IT AGAIN?

IS IT JUST COINCIDENCE THAT WHEN
THE ATTORNEY SHOWS UP AND IS
TOLD THAT HE CANNOT SEE HIS
CLIENT, THAT AT THAT POINT THE
FEMALE DETECTIVE IS TOLD TO GET
OUT AND THE MALE DETECTIVE MOVES
CLOSER AND STARTS THIS
ACCUSATORY QUESTIONING?

THAT'S JUST COINCIDENCE?

>> WHAT MATTERS IS WHAT
MR. MCADAMS IS THINKING.

>> WHAT'S WHY THE QUESTION IS HE
SAYS I'D LIKE TO THINK ABOUT
THIS FOR A COUPLE OF DAYS.

BUDDY, YOU CAN'T THINK ABOUT IT
FOR A COUPLE OF DAYS.

>> BUT, AGAIN, NOTHING
CONFRONTATIONAL IN THAT.

>> THINK ABOUT THIS LINE OF

QUESTIONING.

HE REMINDED MCADAMS THAT THE EVIDENCE WAS ALL THERE AND THE SITUATION WOULD NOT GO AWAY.

MCADAMS ASKED IF HE COULD HAVE A COUPLE DAYS TO THINK ABOUT THE SITUATION.

THE DETECTIVE REPLIED, REGRETFULLY, EVERYTHING'S ALREADY SET IN MOTION AND REITERATED, IT'S TIME, MIKE.

I MEAN, IT'S JUST NOT GOING TO GO AWAY.

WHEN MCADAMS ASKED, AM I GOING TO BE ABLE TO LEAVE HERE TODAY, THE DETECTIVE RESPONDED, I DON'T KNOW, MIKE.

I DON'T KNOW.

>> AND THE CASE LAW ALLOWS FOR INTERVIEW TECHNIQUES LIKE THAT.

>> WHAT OTHER CASE DO YOU HAVE OTHER THAN PITTS THAT YOU RELY ON WHERE -- I MEAN, MAKE MY QUESTION CLEAR -- WHERE THERE'S A STATEMENT OR A QUESTION BY THE

SUSPECT, CAN I GO HOME, OR
SOMETHING LIKE THAT, AND THEN
THERE'S AN EQUIVOCAL RESPONSE.
WHAT THE OFFICER SAID WAS
EQUIVOCAL.

IT'S NOT A YES OR A NO.

>> THAT'S WHAT HE SHOULD DO,
RIGHT.

>> BUT LET ME SAY IN PITTS IT'S
REALLY A LITTLE DIFFERENT THERE
BECAUSE WHAT HAPPENED IN PITTS
IS THE SUSPECT, MR. PITTS, SAID
CAN I GO HOME IF I TELL YOU WHAT
HAPPENED OR WILL I GO TO JAIL?
WELL, OBVIOUSLY THAT DEPENDS.
I MEAN, -- AND THAT'S WHAT THE
OFFICER SAID, DEPENDS ON WHAT
YOU TELL ME.

>> AND THAT'S THE TRUTH.

BUT THAT'S NOT WHAT HAPPENED
HERE.

>> THEY DIDN'T HAVE THIS KIND OF
QUESTION ABOUT WHAT WILL HAPPEN
IF I TELL -- WILL I BE ABLE TO
GO IF I TELL YOU WHAT HAPPENED,

WHICH REQUIRES AN EQUIVOCAL
RESPONSE.

BUT A QUESTION ABOUT CAN I GO
HOME, AM I GOING TO BE ABLE TO
GO HOME, WHICH DOESN'T
NECESSARILY REQUIRE AN EQUIVOCAL
RESPONSE.

IT'S NOT CONTINGENT ON WHAT IS
SAID SUBSEQUENTLY.

DO YOU UNDERSTAND THE
DISTINCTION?

>> I DO, BUT THERE'S NOTHING
ELSE THE OFFICER COULD HAVE DONE
AT THAT POINT THAT WOULD NOT
VIOLATE MIRANDA OTHER THAN
SAYING, I DON'T KNOW.

>> HE COULD HAVE SAID -- I'M NOT
SAYING HE'S REQUIRED TO, BUT
OBVIOUSLY THE OFFICER COULD HAVE
SAID, YOU ARE HERE VOLUNTARILY
AND YOU ARE FREE TO GO, IF THAT
WAS THE CASE.

OR MAYBE IF IT WASN'T THE CASE
HE COULD HAVE SAID THAT.

>> RIGHT.

>> SO I DON'T KNOW HOW HE --
THERE'S NO REQUIREMENT THAT HE
GIVE AN EQUIVOCAL ANSWER.
I UNDERSTAND WHY THE OFFICER,
FROM HIS PERSPECTIVE, WOULD GIVE
AN EQUIVOCAL RESPONSE.
BUT SO MY QUESTION IS OTHER THAN
PITTS, WHICH I THINK IS
DISTINGUISHABLE ON THIS POINT,
WHAT OTHER CASES DO YOU HAVE
WHERE SUCH AN EQUIVOCAL RESPONSE
WAS GIVEN IN RESPONSE TO THE
QUESTION, AM I GOING TO BE ABLE
TO LEAVE, WHERE IT HAS NOT BEEN
FOUND THAT THERE WAS A CUSTODIAL
INTERROGATION?

>> THAT'S JUST ONE RAMIREZ
FACTOR.

>> I UNDERSTAND, BUT DO YOU HAVE
ANY OTHER CASES THAT HELP YOU ON
THAT?

>> I THINK I HAVE THE CASE
THAT'S ON POINT.

I THINK PITTS IS ON POINT.

>> WELL, I WILL TELL YOU, I

DISAGREE WITH YOU ON THAT,
BECAUSE IF YOU READ IT, I DON'T
KNOW HOW YOU CAN THINK THAT IT'S
THE SAME SITUATION WHEN THE
QUESTION IS A DIFFERENT QUESTION
THAN WAS POSED HERE.

>> WELL, I THINK PITTS IS A
MISSING PERSON'S INVESTIGATION
AND ALL THE DETECTIVE KNOWS AT
THAT POINT IS SOMETHING BAD
HAPPENED IN THAT HOUSE.

I HAVE TWO MISSING PEOPLE.

THAT'S ALL I KNOW.

AND MR. MCADAMS IS INDICATING HE
WANTS TO HELP FIND HIS ESTRANGED
WIFE.

>> BUT WHEN HE ASKS THE QUESTION
ABOUT GOING HOME, IF THAT WAS
STILL A VOLUNTARY -- HE WAS --
IF HE WAS STILL AT THE POLICE
VOLUNTARILY, THEN THE ANSWER
SHOULD HAVE BEEN, YES, YOU CAN
GO.

OTHERWISE, YOU'RE IN CUSTODY.

ISN'T IT?

ISN'T THAT THE CASE?

>> HE SAID, I DON'T KNOW.

IT DEPENDS ON WHAT YOU TELL ME.

IF HE SAYS, I WAS --

>> NO.

NO.

NO.

IT WASN'T WHAT YOU TOLD ME.

HE SAID BEFORE YOU TELL ME

ANYTHING, CAN I THINK ABOUT IT,

WHETHER I SHOULD TELL YOU THIS.

I WANT TO GO HOME FOR A COUPLE

DAYS AND THINK ABOUT IT.

>> WELL, HE SAID IT SEVERAL

TIMES, YES.

IT ALL DEPENDS.

WE NEED TO TALK THIS OUT.

AND, AGAIN, AT THAT POINT THERE

WAS NOTHING INCRIMINATING

STATED.

>> WE'RE TALKING ABOUT WHERE A

CUSTODIAL INTERROGATION STARTS.

IRONICALLY, IT'S ALSO ABOUT WHEN

THE ATTORNEY WAS THERE.

MY QUESTION --

[AUDIO DIFFICULTIES]

IT SEEMS TO ME WHEN AN ATTORNEY
SHOWS UP TO REPRESENT A CLIENT
AND IT'S A VOLUNTARY
INTERROGATION, THAT THE CLIENT
OR THE DEFENDANT OUGHT TO HAVE A
RIGHT TO SEE THE ATTORNEY THAT
SHOWS UP.

I MEAN, I THINK THAT COMMON --
THAT IF IT'S TRULY VOLUNTARY,
WHY -- JUST LIKE THEY SAY
WHATEVER THEY'RE SAYING, WHY
WOULDN'T THEY TELL THE DEFENDANT
YOUR PARENTS JUST HIRED AN
ATTORNEY.

DO YOU WANT TO SEE THIS
ATTORNEY?

>> NO CASE IN THIS STATE HAS
ALLOWED FOR THAT.

>> I UNDERSTAND, BUT --

>> AND ONLY NEW YORK STATE HAS
SUCH A BRIGHT LINE RULE.

>> I UNDERSTAND, BUT I'M SAYING
WE'RE HERE LOOKING AT THIS OTHER
ISSUE WOULD BE YOU CAN TELL THEM

WHEN CUSTODIAL INTERROGATION
STARTS.

IT SEEMS THAT THE POLICE ARE A
LITTLE -- THEY DON'T THINK THIS
IS CUSTODIAL INTERROGATION AND
WE DO.

SO WE'RE TRYING TO -- IF WE
DON'T HAVE A BRIGHT LINE RULE,
IT WOULD MEAN THAT, WHAT?

THAT AT 2:00 THE ATTORNEY'S
TOLD, YOU CAN'T SEE THE CLIENT.

NOW WE'RE GOING TO START --
WE'RE PUTTING ON THE PRESSURE.

YOU CAN SEE THE CLIENT ONCE WE
HAVE A CONFESSION.

THAT'S HOW THE -- ONCE WE ARREST
HIM.

THEN YOU CAN SEE YOUR CLIENT.

>> WHEN HE'S NOT IN CUSTODY,
THERE IS NO -- YOU HAVE TO LOOK
AT HALIBURTON FOR A DUE PROCESS
VIOLATION, AND YOU NEED TO HAVE
OFFENSIVE GOVERNMENT CONDUCT
THAT INTERFERES WITH AN
ATTORNEY-CLIENT RELATIONSHIP.

>> YOU'RE INTERPRETING
HALIBURTON VERY DIFFERENTLY THAN
I READ IT.

>> AS THE SECOND DISTRICT READ
IT, AS YOU DID, TOO, FOR THE
SECOND HALF OF IT.

>> DO YOU SEE WHAT'S HAPPENING
HERE?

WHAT'S HAPPENING HERE IS THE
STATE TAKING SUCH A RIGID
POSITION THAT IT'S ALMOST
PUSHING THAT THE PRINCIPLE OF
LAW TO BE WORKABLE IS GOING TO
HAVE TO GO BEFORE YOU'RE EVEN IN
CUSTODY.

YOU HAVE A RIGHT TO -- YOU KNOW,
THE QUESTIONS HAVE BEEN COMING
ALONG THE LINES OF, OKAY, WELL,
MAYBE THIS IS A GOOD RULE OF LAW
ONCE YOU'RE IN CUSTODY.

BUT IF CUSTODY IS SO DIFFICULT
UNDER THE FACTS THAT WE SEE
AFTER LOOKING AT THE TAPE, MAYBE
IT'S UNWORKABLE TO HAVE A
PRINCIPLE OF LAW THAT SAYS

YOU'RE ONLY ENTITLED ONCE YOU'RE
IN CUSTODY TO TALK TO YOUR
LAWYER.

I'M BEGINNING TO -- I WALKED IN
THIS MORNING THINKING THAT'S
PROBABLY A GOOD RULE OF LAW WHEN
CUSTODY -- WHEN YOU ARE IN
CUSTODY, BUT AFTER HEARING THIS
ARGUMENT, I THINK AS A PRACTICAL
MATTER IT'S IMPOSSIBLE TO WORK.

>> IT'S PROCEDURALLY IMPOSSIBLE
TO WORK FOR A LAW ENFORCEMENT
PURPOSE ALSO BECAUSE YOU HAVE NO
DUE PROCESS RIGHT.

YOU COME THERE VOLUNTARILY.

YOU CAN LEAVE VOLUNTARILY.

UNTIL YOU'RE IN CUSTODY YOU HAVE
NO ATTORNEY-CLIENT RELATIONSHIP,
EITHER.

>> THE PROBLEM IS IF YOU'RE
THERE VOLUNTARILY, DO YOU HAVE
TO ASK TO GO TO THE BATHROOM?

>> HE NEEDED DIRECTIONS.

>> DO YOU HAVE TO ASK TO GO TO
THE BATHROOM?

IF YOU JUST GET UP AND GO TO THE
BATHROOM, I GO TO THE BATHROOM.
I MEAN, AT SOME POINT VOLUNTARY
BECOMES INVOLUNTARY.

>> THE KID IS --

>> HE'S NOT A KID.

>> HE'S 17 YEARS OLD AND HIS
PARENTS COME TO SEE HIM WITH AN
ATTORNEY.

>> IT'S A WHOLE DIFFERENT BALL
GAME WHEN IT'S A MINOR.

I THINK THAT'S A TOTALLY
DIFFERENT BALL GAME, TOO.

BUT OF COURSE IT'S A DIFFERENT
RULE FOR MINORS.

>> LISTEN, YOUR TIME IS UP.

YOU USED UP ALL YOUR TIME.

>> OH, WOW.

>> WELL, WE HELPED YOU USE IT
UP, SO WHAT I'LL DO IS I'LL GIVE
YOU THREE MINUTES WHEN YOU COME
BACK FOR REBUTTAL.

>> THANK YOU, I THINK.

>> MAYBE NOT.

>> MAY IT PLEASE THE COURT, I'M

WILLIAM SHARWELL.

I REPRESENT MR. MCADAMS.

FIRST OF ALL, AS TO THE ROMAN CASE, THAT WAS NOT DECIDED ON DUE PROCESS GROUNDS.

MR. ROMAN WAS READ MIRANDA BEFORE HE GAVE A STATEMENT.

THAT WOULD DISTINGUISH ROMAN.

THIS CASE WAS DECIDED ON DUE PROCESS GROUNDS.

IT'S MY DUE PROCESS SHOULD BE INTERPRETED TO REQUIRE THAT

PEOPLE IN MR. MCADAMS'

SITUATION -- I BELIEVE HE WAS IN

CUSTODY, BUT WHEN YOU'RE HELD,

WHERE YOU CAN'T GET TO THE AREA

ON YOUR OWN, YOU HAVE TO PUNCH A

KEY CODE TO GET INTO THAT

HALLWAY.

HE WENT INTO A SPECIAL ENTRANCE

FOR POLICE TO THE STATION, WHERE

MEMBERS OF THE PUBLIC CAN'T

ACCESS IT.

I BELIEVE HE SHOULD HAVE BEEN

TOLD A LAWYER WAS HIRED BY HIS

PARENTS TO REPRESENT HIM.

>> SO YOUR ARGUMENT REALLY IS AT ANY POINT -- HE'S AT THE POLICE STATION, A LAWYER REPRESENTING HIM COMES, HE SHOULD BE TOLD OF THAT.

>> YES.

>> SO WHAT ABOUT IF THE LAWYER SIMPLY CALLS THE POLICE STATION AND SAYS I'M REPRESENTING MR. MCADAMS?

>> I THINK THAT WOULD BE SUFFICIENT.

>> YOU THINK CALLING WOULD BE SUFFICIENT.

>> NOT CALLING THE POLICE, BUT HE'D HAVE TO COMMUNICATE THE FACT TO MR. MCADAMS THAT A LAWYER IS READY TO ASSIST HIM.

>> THESE ISSUES -- I MEAN, THE HALIBURTON CASE WAS PRETTY -- IN PALM BEACH COUNTY AT THE TIME, AND IT DOESN'T SEEM LIKE THAT HAPPENS A LOT.

THAT IS, THAT THERE'S AN

ATTORNEY THAT'S HIRED BY SOMEONE
THAT ACTUALLY SHOWS UP.

SO FROM YOUR EXPERIENCE -- AND
THEN WE HAVE THE SITUATION WHERE
A PUBLIC DEFENDER REALLY ISN'T
REPRESENTING THEM, BUT JUST
COMES.

DO AGREE THAT'S A DIFFERENT
SITUATION?

>> YES.

SMITH AND HARVEY ARE COMPLETELY
DIFFERENT SITUATIONS.

I DON'T KNOW HOW OFTEN THAT
HAPPENS.

I'VE BEEN A PUBLIC DEFENDER FOR
20 YEARS NOW AND I CAN'T THINK
OF A CASE WHERE --

>> SO THE ISSUE -- AND THIS IS
WHAT JUSTICE LEWIS WAS ASKING AT
THE END OF THE QUESTIONING AND
THIS IS MY PROBLEM, AND IT'S A
FRIENDLY QUESTION, IS IF A
LAWYER SHOWS UP AND SOMEONE'S
TRULY IN A VOLUNTARY
INTERROGATION, THE IDEA THAT THE

POLICE WILL SAY YOU CANNOT SEE
THIS PERSON IS -- SEEMS
OFFENSIVE TO ME, BUT I'M NOT
SURE IT'S A DUE PROCESS
VIOLATION.

YOU KNOW, I'D LIKE TO KNOW -- IF
I'M THERE AND MY PARENTS HIRED
SOMEONE FOR ME, I'D LIKE TO KNOW
THAT THERE'S A LAWYER I COULD
TALK TO.

SO HOW IS IT -- BUT HOW IS THAT
A DUE PROCESS VIOLATION UNDER
THE CONSTITUTION FOR THE CLIENT
OR THE DEFENDANT NOT TO BE TOLD
THAT THERE IS A LAWYER THERE TO
SEE HIM?

>> I THINK IT'S MISLEADING THE
DEFENDANT BY DECEPTION.

>> BY OMISSION.

>> OMISSION.

I'M SORRY.

HALIBURTON TALKED ABOUT BOTH
TYPES OF DECEPTION.

AND I THINK IN ORDER TO ENSURE A
FULL WAIVER OF THE RIGHT TO

SILENCE, YOU KNOW, THE RIGHT,
YOU'RE FREE TO LEAVE, THAT IT
WOULD BE BETTER OFF IF THE
SUSPECT IS TOLD IN THIS
SITUATION.

>> LET ME ASK YOU THIS.

WHAT IS THE RULE OF A POLICE
OFFICER IN DETERMINING WHETHER
SOMEONE HAS BEEN ACTUALLY
RETAINED TO REPRESENT THIS
DEFENDANT?

WHAT HAPPENS IN THE SITUATION,
FOR EXAMPLE, I'M A LAWYER AND I
FIND OUT THAT A FRIEND JUST GOT
ARRESTED.

NOBODY HAS CALLED ME TO
REPRESENT HIM, BUT I SHOW UP AT
THE JAIL.

I'M A FRIEND.

I WANT TO MAKE SURE, YOU KNOW,
HE'S ADVISED OF HIS RIGHTS
BEFORE HE TALKS OR WHATEVER.

I MEAN, HOW DOES THE POLICE
DISTINGUISH BETWEEN SOMEONE
WHO'S BEEN RETAINED AND NOT

RETAINED AND SOMEONE WHO JUST
WANTS TO DO THE GUY A FAVOR?

>> I THINK THE DIFFERENCE IS THE
LAWYER SAYS HE'S RETAINED BY THE
FAMILY, HE'D BE SUBJECT TO BAR
ISSUES IF HE LIED TO THE POLICE.

>> WHAT IF HE JUST SAID I'M A
FRIEND OF HIS, I JUST DROPPED
BY, I WANT TO MAKE SURE THAT HE
GETS LEGAL COUNSELING BEFORE HE
TALKS?

DOES THE POLICE HAVE A DUTY AT
THAT POINT IN TIME TO STOP
INTERROGATION, LET ME TALK TO
HIM?

>> I DON'T THINK SO.

I THINK THE DIFFERENCE IS A
LAWYER HIRED BY YOUR FAMILY,
SOMEBODY WHO HAT YOUR BEST
INTEREST AT HEART.

I MEAN, YOU COULD ALSO HAVE THE
SITUATION WHERE A CODEFENDANT OR
SOMEBODY ELSE HIRES A LAWYER,
LIKE A DRUG CONSPIRACY.

I THINK THE FACT THAT THE LAWYER

IS HIRED BY THE FAMILY, I THINK THAT'S THE DIFFERENCE.

>> I WAS A PUBLIC DEFENDER FOR A NUMBER OF YEARS, AND I DON'T REMEMBER IN HOMICIDE CASES-- THE PUBLIC DEFENDERS KNEW THAT EVENTUALLY THAT CASE WILL END UP -- THEY WOULD END UP BEING APPOINTED AND THEY KNEW HE WAS BEING INTERROGATED AND THEY WOULD TRY TO GO OVER THERE AND GET IN TO SEE HIM.

IN THAT SITUATION, DOES THE POLICE OFFICER HAVE TO LET THE PUBLIC DEFENDER, WHO'S NOT BEEN APPOINTED YET --

>> NO.

THIS COURT IN SMITH AND HARVEY SAID NO.

IT MAKES A DIFFERENCE BETWEEN AN ABSTRACT LAWYER MENTIONED IN MIRANDA AND SOMEBODY --

>> WELL, WHAT'S ABSTRACT ABOUT A LAWYER THAT -- I'M THE DEFENDANT'S FRIEND AND I GO OUT

AND FIND A LAWYER, HIRE THAT
LAWYER AND SEND THEM OVER AND
THAT LAWYER GOES OVER TO THE
JAIL.

ISN'T THAT THE SAME THING AS THE
FAMILY HIRING A LAWYER?

>> I THINK IT'S DIFFERENT.

I THINK THE FAMILY IS -- A
FAMILY DEFINITELY HAS YOUR BEST
INTEREST AT HEART.

FRIENDS USUALLY DO, BUT YOU
CAN'T ALWAYS TELL.

>> I DON'T UNDERSTAND HOW THIS
RELATES, THESE DISTINCTIONS
RELATE TO DUE PROCESS OF LAW,
WHICH IS THE THEORY UNDER WHICH
THIS IS ALL TRAVELING.

IN SOME WAYS IT'S A LITTLE
TROUBLING TO THINK THAT SOMEONE
WHOSE FAMILY'S GOT THE MONEY TO
GO GET A LAWYER CAN SEND THEM
DOWN THERE AND THEN THE LAWYER
CAN GET A MESSAGE THROUGH,
WHEREAS IF SOMEONE WHO IS NOT --
DOESN'T HAVE THE ADVANTAGE OF A

FAMILY WHO CAN GO HIRE A LAWYER
CAN'T GET THE ADVANTAGE OF A
PUBLIC DEFENDER, WHO IS IN THE
DUE COURSE OF THINGS GOING TO BE
APPOINTED, WHO WOULD TRY TO HELP
PROVIDE COUNSEL WHEN THIS
INTERROGATION IS GOING ON.

>> I WOULD HAVE NO PROBLEM IF
THIS COURT WALKED AWAY FROM
SMITH AND HARVEY, BUT I DON'T
THINK YOU HAVE TO IN THIS CASE.

>> I MEAN, WE HAVE --
UNFORTUNATELY, WE HAVE ALL
SITUATIONS HERE, ALTHOUGH WE SAY
EVERYONE'S EQUAL UNDER THE LAW.

>> YEAH.

>> IF THIS WAS A DEFENDANT WHO
HAD HAD TROUBLE WITH THE LAW
BEFORE AND THIS -- AND HIS
FAMILY WAS WHATEVER, HE PROBABLY
WOULD HAVE ALREADY HAD A LAWYER
AND WOULD HAVE NEVER GONE DOWN
TO THE STATION.

>> RIGHT.

>> SO I THINK WE GET TO THIS --

THE -- WE UNDERSTAND THE REALITY THAT POLICE, FOR GOOD REASON IN THEIR INVESTIGATION, DO NOT WANT A DEFENDANT TO SPEAK TO THE LAWYER BEFORE THEY, QUOTE, VOLUNTARILY QUESTION THEM.

NOW, LET ME ASK YOU, GOING BACK TO THE ISSUE OF WHEN -- YOUR VIEW IS WHEN CUSTODIAL INTERROGATION STARTED.

DO YOU AGREE WITH THE DISSENT IN THIS CASE?

>> YES.

>> OKAY.

>> YES.

SEE, WHAT HAPPENED IS, YOU KNOW, ABOUT 1:48 OR 1:49 THE DETECTIVE MENTIONED WE'VE BEEN AT YOUR HOUSE.

THINGS DON'T LOOK RIGHT.

>> ON THAT ONE, DID SOMETHING HAPPEN IN TERMS OF THE DEVELOPMENT OF THE EVIDENCE FROM THE TIME THEY WENT TO HIS HOUSE, BECAUSE OBVIOUSLY HE'S GOING TO

BE A MAIN SUSPECT.

THEY KNOW THAT.

THEY WERE GOING THROUGH A

DIVORCE.

AND WHEN 2:00 OR WHENEVER, WHEN

THEY START CONFRONTING HIM WITH

WHAT THEY DO HAVE.

DID SOMETHING HAPPEN?

DID THEY GET EVIDENCE BACK?

>> THEY HAD ISSUED A WARRANT

THAT NIGHT.

THE DETECTIVE SAYS I WAS AT YOUR

HOUSE UNTIL 3:30 IN THE MORNING.

>> AT WHAT TIME DID THEY TELL

HIM -- WHEN THEY GO TO THE

HOUSE, DO THEY TELL HIM AT THAT

POINT THAT THERE'S DNA EVIDENCE?

>> NO.

I MEAN --

>> AND THEY DON'T HAVE TO, BUT

--

>> NO.

MR. MCADAMS -- THE DETECTIVES

DOING THE INTERROGATION WERE

PASCO COUNTY DETECTIVES.

MR. HERNANDEZ WAS MET BY
HERNANDO COUNTY DETECTIVES.
THEY WERE ASSISTING.
AND THEY HAD ASSISTED IN
EXECUTION OF A WARRANT THE NIGHT
BEFORE.

APPARENTLY HE HAD BEEN OUT
ALLIGATOR HUNTING AND HE WAS
DRIVING POORLY.

I'M NOT SURE EXACTLY WHAT
HAPPENED, WHETHER SOMEBODY WHO
HEARD ABOUT HIS DRIVING PULLED
IN, BUT SHORTLY THERE AFTER
HERNANDO COUNTY DETECTIVES
SHOWED UP AND SAID PASCO
DETECTIVES WANT TO TALK TO YOU.
YOU CAN TAKE YOUR OWN VEHICLE OR
IF YOU WANT TO SAVE GAS, RIDE
WITH US.

>> AGAIN, HE GETS TO THE
STATION.

DOES SOME NEW EVIDENCE COME TO
LIGHT BETWEEN WHEN THEY STARTED
QUESTIONING AND WHERE THE BREAK
OCCURS WHERE THE LAWYER COMES,

THEY SAY YOU CAN'T SEE THE
CLIENT AND THE MALE DETECTIVE
STARTS THE DIFFERENTLY
QUESTIONING?

DID THEY GET MORE EVIDENCE?

>> I'M AWARE OF NOTHING.

>> SO IT REALLY WAS JUST A
CHANGE IN DECIDING TO RAMP IT
UP.

>> YES.

IT WAS LIKE A LIGHT SWITCH AT
THAT POINT.

>> LISTEN.

THEY KNOW THAT THERE NOW MAY BE
A LAWYER.

>> YEAH.

>> THIS IS AGAIN, IN ALL -- NOT
ATTRIBUTING BAD MOTIVES TO THE
-- BUT AT THAT POINT WOULD IT BE
YOUR VIEW THEY SHOULD HAVE GIVEN
HIM MIRANDA?

>> YES.

>> AND SAY YOU HAVE A RIGHT TO A
LAWYER.

YOU ACTUALLY HAVE A LAWYER HERE.

>> YEAH.

BUT THEY DIDN'T HAVE TO READ HIM
MIRANDA, BUT THEY COULD HAVE AT
THAT POINT, LIKE THEY DID IN
ROMAN.

THEY READ MR. ROMAN MIRANDA
EARLY ON.

>> WHERE IS IT -- I MEAN, THERE
ARE A LOT OF THINGS SAID TO --
THIS IS A LONG INTERVIEW THAT
GOES ON, AND THERE IS DEFINITELY
TALK ABOUT EVIDENCE, THERE'S
TALK ABOUT STRONG EVIDENCE.

BUT IS THERE ANYWHERE IN THIS
WHOLE SEQUENCE OF CONVERSATION
WHERE THE LAW ENFORCEMENT
OFFICER EVER SAYS WE'VE GOT
EVIDENCE THAT SHOWS YOU DID THIS
CRIME?

THERE'S NOTHING LIKE THAT, IS
THERE?

>> NO, BUT THEY LIST CERTAIN
CIRCUMSTANCES.

THEY DON'T TAKE THAT FINAL STEP.

>> THEY DO NOT TAKE THAT FINAL

STEP.

AND SO THEY TALK ABOUT THERE BEING STRONG EVIDENCE, I MEAN, IT'S CLEAR THAT HE WOULD HAVE UNDERSTOOD THAT THEY THOUGHT A CRIME HAD BEEN COMMITTED.

>> YEAH.

>> I THINK BASED ON THE DISCUSSION.

BUT AS FAR AS SOMETHING THAT DIRECTLY CONFRONTED HIM WITH EVIDENCE THAT THEY HAD THAT HE HAD COMMITTED THE CRIME, WHAT'S THE CLOSEST THEY GET TO THAT?

>> THERE'S BLOOD ON YOUR CLOTHES AND THEN THEY TOLD HIM THAT HIS EXPLANATION FOR THE BLOOD WAS INCORRECT.

>> NOW, WHEN DID HE MAKE THE STATEMENT ABOUT WANTING TO -- AM I GOING TO BE ALLOWED TO GO HOME?

WAS THIS AT THE BEGINNING OF THE LONE DETECTIVE'S QUESTIONING OF HIM?

>> NOT QUITE.

LET ME FIND THAT OUT HERE.

>> I GUESS -- THE DETECTIVE GOES
IN THERE, TELLS THE LADY
DETECTIVE TO LEAVE.

HE STARTS TALKING TO HIM AND
INSTEAD OF THE DEFENDANT
ANSWERING THE QUESTIONS, THE
DEFENDANT SAYS -- ASKED HIM, AM
I GOING TO BE ABLE TO GO HOME.

>> AT 2:11 --

>> THIS IS AFTER THE BLOOD,
AFTER HE CONFRONTS HIM WITH THE
BLOOD EVIDENCE?

>> YES.

YES.

THE EVIDENCE IS STRONG.

THEY SAY SOMETHING ABOUT THERE'S
BLOOD AT HER HOUSE, AT YOUR
HOUSE.

THERE'S BLOOD ON YOUR CLOTHES.

AND THEN THEY TELL HIM YOUR
EXPLANATION FOR THE BLOOD IS
WRONG.

>> SO IS THAT THE POINT WHERE

THE CUSTODY BEGINS?

I MEAN, ASSUMING THE LAWYER --
PUTTING THE LAWYER ISSUE ASIDE
FOR RIGHT NOW, BUT DID THE
CUSTODY PART OF THIS REALLY
BEGIN WHEN THE DEFENDANT IS NOW
ESSENTIALLY TOLD HE IS NOT GOING
TO BE ABLE TO GO HOME?

>> YES.

I THINK YOU COULD FIND HIM IN
CUSTODY EVEN EARLIER, WHEN HE
SAID, LOOK, -- IT'S ABOUT A
PARAGRAPH.

>> YOU MEAN A CONFRONTATION.

>> YOU MADE A STATEMENT HELPING
YOU OUT.

>> YES.

>> WITH SAYING THAT AT THE POINT
WHEN -- AT 2:04, WHATEVER IT IS,
WHICH IS WHEN THEY KNOW THERE'S
THE ATTORNEY THERE, THEY COME
BACK IN.

YOU SAY THEY ALREADY HAD KNOWN
THIS.

THE EVIDENCE IS REALLY STRONG.

WE FOUND TONS OF BLOOD EVIDENCE,
INCLUDING BLOOD ON THE T-SHIRT
BELONGING TO YOU.

THE MALE DETECTIVE STATING I'VE
ALREADY GOT A PRETTY GOOD DANG
IDEA OF WHAT WENT DOWN.

WHEN HE SAID IT WAS RAT BLOOD,
THE MALE DETECTIVE REPORTED, NO,
IT WAS DETERMINED TO BE HUMAN
BLOOD.

>> I THINK THAT'S THE POINT
WHERE YOU COULD FIND HIM IN
CUSTODY.

>> YOU COULD JUST SAY YOU AGREE
WITH JUDGE DAVIS.

>> NO.

I DEFINITELY AGREE WITH JUDGE
DAVIS.

>> IN THESE CASES, IT'S NOT
NECESSARILY LIKE ONE ALWAYS --
JUST ONE MAGIC QUESTION, BUT IT
IS A STRING OF QUESTIONS.

THE QUESTIONING BECOMES ACCUSING
HIM.

>> IT'S THE TOTALITY OF THE

CIRCUMSTANCES.

OF THE RAMIREZ FACTORS, THE
FIRST ONE IS THE ONE THAT CUTS
IN FRONT OF THE STATE.

THE FIRST PART OF THE
QUESTIONING, THE FIRST 45
MINUTES OR SO, IT'S LIKE THEY'RE
JUST TRYING TO ESTABLISH A TIME
LINE.

AND SOME OF THE CASES TALK ABOUT
CONVERSATIONAL OR
INVESTIGATIONAL.

>> RIGHT.

>> THERE'S A SWITCH TO ACCUSING
HIM.

>> RIGHT.

AS WE'RE LOOKING AT THE
PRACTICALITIES OF THIS, WE'RE
GOING TO HAVE TO COME UP WITH A
PRINCIPLE OF LAW FOR APPLICATION
IN THE COMMUNITIES ALL ACROSS
THE STATE.

AND YOU'RE TAKING THE POSITION
THAT IT IS AT CUSTODY.

WELL, IT CAN BE SEEN -- I MEAN,

HOW DIFFERENT THE VIEWS OF WHEN
CUSTODY ATTACHES CAN BE.

AND THEN WE HAVE THE QUESTION,
THE OVERLAY, OF A LAWYER COMING
INTO THAT SCENARIO.

SO ARE LAWYERS SUPPOSED TO JUST
COME AND WAIT AT THE POLICE
STATION FROM 10:00 IN THE
MORNING UNTIL 10:00 AT NIGHT
WAITING FOR WHEN THE POLICE
DECIDE, OKAY, YOU'RE IN CUSTODY
NOW?

I'M JUST -- I'M TROUBLED ABOUT
JUST THE PRACTICALITIES OF HOW
DOES THIS WORK?

WHAT IF THE LAWYER COMES, SAYS I
WANT TO TALK TO HIM, BUT HE'S
NOT IN CUSTODY YET, SO THE
LAWYER LEAVES?

THEN WE REACH CUSTODY.

THERE'S NO LAWYER THERE.

SO ARE WE JUST EXTENDING THIS
THING?

ARE WE JUST, BY PLACING IT ON
CUSTODY, ENCOURAGING MORE AND

MORE LITIGATION RATHER THAN
RESOLVING HOW A FAIR CRIMINAL
JUSTICE SYSTEM SHOULD WORK?

>> I THINK SO.

IF YOU WANT FAIRNESS IN THE
CRIMINAL JUSTICE SYSTEM --

>> ISN'T THAT WHAT WE'RE HERE
FOR?

>> YES.

THE NEW YORK RULE, IT'S
CLEAN-CUT.

THERE'S NOT A LOT OF AMBIGUITY
IN IT.

LAWYER ENTERS THE CASE BY SAYING
-- EITHER PHYSICALLY SHOWING UP
OR CALLING SAYING I'M HERE.

THEY CAN'T EVEN QUESTION
SOMEBODY IN THEIR OWN HOUSE
UNDER THAT RULE.

IT'S A BRIGHT LINE RULE.

I THINK THIS IS IMPORTANT TO
AVOID FALSE CONFESSIONS.

WE'VE SEEN A LOT OF CASES BY THE
INNOCENCE PROJECT.

I THINK THAT'S A BIG DEAL.

>> WELL, I THINK THAT, THOUGH,
AGAIN, WE'RE TALKING ABOUT, I
GUESS, THE TWO THINGS COMING
TOGETHER IN THIS CASE.

BUT I DO -- I SEE THAT THIS IDEA
THAT CUSTODIAL INTERROGATION
START AT 2:04, 2:05, 2:08.

THE POINT IS IT COINCIDED WITH
WHEN THE ATTORNEY WAS THERE.

>> YEAH.

>> AND IF THE POLICE SAY, NO,
WE'RE NOT GOING TO LET YOU SEE A
LAWYER ESSENTIALLY UNTIL YOU
CONFESS, IT SEEMS THAT THAT IN
THIS CASE ALLOWS TO A DUE
PROCESS VIOLATION.

BUT I THINK GOING FORWARD, I
WOULD TEND TO AGREE THAT THE
NEW YORK LAW MAKES MORE SENSE
FOR THE REASONS THAT YOU JUST
ENUNCIATED.

>> IT'S CLEAR AND EVERYBODY CAN
FOLLOW IT.

THERE'S NOTHING AMBIGUOUS ABOUT
IT, RATHER THAN DOING THESE

THINGS PIECEMEAL BY PIECEMEAL.

>> I MEAN, NOW, YOU SAID

SOMETHING ELSE.

I WAS LOOKING BACK AT BLAINE
ROSS, WHERE WE CONDEMNED THIS
IDEA THAT YOU WAIT UNTIL THERE'S
A CONFESSION AND THEN YOU GIVE
MIRANDA BECAUSE THEN YOU'RE
UNDERMINING THE PROPHYLACTIC
EFFECT OF MIRANDA.

SO IN THIS CASE DO YOU SEE AT
THE TIME THAT THE ONE DETECTIVE
CAME BACK IN AND THEY START
CONFRONTING HIM, WHEN DO YOU
THINK MIRANDA SHOULD HAVE --
WARNINGS SHOULD HAVE BEEN
ISSUED?

WERE THEY ISSUED PROPERLY IN
THIS CASE?

OR SHOULD THEY HAVE BEEN ISSUED

--

>> THEY SHOULD HAVE BEEN ISSUED
AS SOON AS -- WHAT I ARGUED IN
ISSUE TWO, WHEN HE WAS IN
CUSTODY, WHEN HE WAS CONFRONTED,

EITHER --

>> SO IN THIS CASE IT WOULD END
UP BEING THE SAME RESULT.

>> THEY DOVETAIL TOGETHER IN
THIS CASE.

>> PRACTICALLY SPEAKING, BEING
TOLD THERE'S AN ATTORNEY THERE,
THEY NOW HAVE TO THEN ISSUE
MIRANDA.

>> RIGHT.

RIGHT.

RIGHT.

IF THE COURT HAS NO MORE
QUESTIONS, I'LL SIT DOWN FOR
NOW.

>> OKAY.

THANK YOU.

YOU HAVE THREE MINUTES IF YOU
WANT THEM.

>> I DO.

MAYBE I DON'T.

WE'LL SEE.

AS I STATED BEFORE, THIS COURT
ALREADY ADDRESSED THE CERTIFIED
QUESTION IN ROMAN THE SAME DAY

HALIBURTON ONE CAME OUT AND THIS COURT FOUND IT WAS NOT ERROR TO HAVE A NONCUSTODIAL SUSPECT BE INFORMED AN ATTORNEY CAME.

SO IF YOU'RE NOT IN CUSTODY, YOU HAVE NOT HAD ANY GOVERNMENT INFRINGEMENT, AS HALIBURTON SAID, AND THERE IS NO ATTORNEY-CLIENT RELATIONSHIP.

SIGNIFICANTLY, THERE IS NO CUSTODY IN THIS CASE AND WE CAN DEBATE ABOUT WHEN THERE IS CUSTODY, BUT YOU'RE GIVING HIM MORE RIGHTS THAN IF SOMEBODY WAS IN CUSTODY.

AND IT'S NOT A WORKABLE RULE.

IT'S NOT A WORKABLE RULE FOR LAW ENFORCEMENT.

>> HOW WOULD WE BE GIVING THEM GREATER RIGHTS THAN SOMEONE IN CUSTODY?

I'M MISSING THAT ONE.

>> THAT ALL OF A SUDDEN -- HE DOESN'T HAVE TO BE INFORMED THAT THERE'S AN ATTORNEY YET WHEN

HE'S GIVEN HIS -- HE CAN WAIVE
IT.

AND IN THIS CASE HE DID WAIVE
IT.

>> WELL, NO, NO.

BUT THAT'S LATER, RIGHT?

HE'S TOLD THERE'S AN ATTORNEY
HERE TO SEE YOU RETAINED BY YOUR
PARENTS.

DO YOU WANT TO SEE THE ATTORNEY?

HE COULD HAVE SAID, NO.

I DON'T NEED TO SEE THE -- THIS
IS ALL -- I'M STILL TRYING TO
HELP YOU OUT.

>> WHICH HE SUBSEQUENTLY DID DO.

I UNDERSTAND.

>> WHEN WAS HE TOLD THERE WAS AN
ATTORNEY THERE?

>> AFTER HE SHOWS THEM THE
BODIES.

THEN HE'S TOLD.

>> YOU UNDERSTAND THE QUESTION.

>> I DO UNDERSTAND THE QUESTION.

I'M MAKING A COMMENT HE WAS
TOLD.

HE WAS TOLD.

BUT APPLYING A RULE LIKE THIS IS
UNWORKABLE.

THIS COURT HAS ALREADY RULED ON
IT.

>> BUT THE POINT IS IT SEEMS
VERY WORKABLE TO SAY THAT WHEN
SOMEBODY SHOWS UP RETAINED BY
THE FAMILY TO SEE SOMEBODY WHO
IS BEING QUESTIONED WHERE THEY
OTHERWISE CAN'T REACH THE
CLIENT, THAT THEY OUGHT TO TELL
THE CLIENT THEY'RE THERE.

IF HE WAS BEING QUESTIONED AT
HOME AND THE ATTORNEY CALLED ON
THE PHONE, HE'D SAY, JUST A
SECOND, HELLO?

I'M RETAINED BY YOUR PARENTS.

I WOULDN'T RECOMMEND YOU
CONTINUE TO SPEAK TO THESE
ATTORNEYS -- I MEAN TO THE
POLICE.

SO HOW -- IT SEEMS MORE WORKABLE
THAN TRYING TO DO IT THE OTHER
WAY.

>> WELL, NOT FROM A LAW
ENFORCEMENT POINT OF VIEW.
AND THIS COURT ALREADY --
>> BUT FROM A CONSTITUTIONAL --
>> IT'S NOT ERROR.
>> I REALIZE IT'S NOT HELPFUL
MAYBE TO LAW ENFORCEMENT, BUT
YOU KNOW WHAT?
THE PROBLEM IS IF CONFESSIONS
GET -- JUST LET ME FINISH -- GET
SUPPRESSED BECAUSE LAW
ENFORCEMENT DOES SOMETHING THAT
SEEMS EXPEDIENT AT THE MOMENT,
WE END UP REALLY NOT HELPING THE
INTEREST OF JUSTICE, DO WE?
>> THIS CASE HE'S NOT IN
CUSTODY.
THERE'S NO EGREGIOUS LAW
ENFORCEMENT ACTS.
HE'S COMING THERE VOLUNTARILY.
TO APPLY THIS RULE TO A
NONCUSTODIAL DEFENDANT -- THIS
COURT HAS ALREADY SAID IT'S NOT
ERROR, SO HOW COULD IT BE A DUE
PROCESS ERROR?

>> SO IT'S ALL JUST COINCIDENCE
THAT ONCE THE DETECTIVE IS TOLD
THERE'S A LAWYER HERE THAT'S
BEEN RETAINED BY THE FAMILY THAT
THE DETECTIVE THEN DECIDES --
GOES IN, CONFRONTING HIM WITH
THE EVIDENCE, SOMETHING THAT HAD
NOT BEEN DONE AND HE'D BEEN
THERE SINCE 11 SOMETHING AND
THEY'D GOTTEN THERE CLOSE TO
12:00.

SO WE'RE ALREADY INTO TWO HOURS.
THEY NEVER CONFRONT HIM WITH
ANYTHING.

BUT ONCE THEY FIND OUT THAT THE
LAWYER IS OUT THERE AND WANTS TO
TALK TO HIM, THEY THEN START TO
CONFRONT HIM WITH THE EVIDENCE.

>> THEY HAD ALREADY CONFRONTED
HIM WITH THE EVIDENCE.

AGAIN, IT'S NOT EVIDENCE OF HIS
GUILT.

>> WELL, EVIDENCE THAT WOULD
POINT TO HIM.

>> THEY NEVER CONFRONTED HIM

WITH THE EVIDENCE THAT WOULD
POINT TO HIM.

>> BY SAYING THERE WAS BLOOD ON
YOUR SHORTS?

>> I DISSENT WAS WRONG IN SAYING
THAT THE EVIDENCE CONFRONTING
HIM.

IT WAS THE EVIDENCE AND THE
DEFENDANT-- PLEASE LOOK AT THE
VIDEO.

IT'S A VERY COMPASSIONATE,
BONDING RELATIONSHIP BETWEEN THE
DETECTIVE AND THE --

>> WELL, THAT'S A NICE
PSYCHOLOGICAL WAY --

>> IT BECOMES SO BONDING THAT HE
ASKS HIM, THE DETECTIVE,
QUESTIONS HE SHOULD HAVE BEEN
ASKING HIS ATTORNEY.

WHAT AM I LOOKING AT?
GIVE ME YOUR PROFESSIONAL
OPINION.

I MEAN, WHEN THE ATTORNEY WAS
THERE.

>> BUT THAT PROVES HE WAS NOT IN

CUSTODY AT THAT POINT ALSO.

>> OKAY.

THANK YOU.

>> THANK YOU.

>> WE'RE IN RECESS.

I'M SORRY.

I THOUGHT WE WERE DONE.

>> MAY IT PLEASE THE COURT,

BRIEFLY, I JUST WANT TO

DISTINGUISH THE PITTS CASE

BEFORE THAT WE DISCUSSED.

PITTS WAS NEVER TOLD ANYTHING

LIKE WE DON'T BELIEVE YOUR

EXPLANATION.

HE SAID, I PAWNED THE PROPERTY

GIVEN TO ME BY T.J. WRIGHT.

AND IN THIS CASE MR. MCADAMS WAS

TOLD HIS EXPLANATION WAS NOT

BELIEVED BY THE OFFICER.

THE BLOOD, THAT'S NOT SNAKE

BLOOD, THAT'S REAL BLOOD.

THAT'S HUMAN BLOOD.

AND I'M ASKING YOU TO FIND --

REVERSE -- SUPPRESS THE SECOND

CONFESSION ALSO.

THANK YOU VERY MUCH.

>> NOW WE CAN GO.

I DO WANT TO COMPLIMENT THE
LAWYERS IN THIS CASE FOR THE
ARGUMENTS YOU'RE GIVING.

IT'S A DIFFICULT ISSUE.

AS YOU CAN SEE, WE'RE HAVING
TROUBLE WITH IT.

AND WE WILL HOPE TO DO THE BEST
JOB WE CAN.

THANK YOU.

>> ALL RISE.

>> WE'RE IN RECESS.