

>> NEXT CASE ON DOCKET IS
GREEN V. COTTRELL.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, MY NAME
IS CHARLES US A LANDER, I'M HERE
ON BEHALF OF THE PETITIONER,
ERIC GREEN.

I WOULD ASK IS TO RESERVE THREE
MINUTES FOR REBUTTAL, YOUR HORN.
THE COURT IS HERE ON AN
EXPRESSION AND DIRECT CONFLICT
OF DECISIONS.

THE DECISION OF THE FIRST
DISTRICT COURT OF APPEAL IN
GREEN V. COTTRELL WITH THE
DECISION OF THE FIFTH DISTRICT
COURT OF APPEAL IN CALHOUN
VERSE--

[INAUDIBLE]

STATE TORT CLAIMS.

THERE IS A SECOND ISSUE I'D LIKE
TO JUST NOTE AND THEN GET BACK
TO IT.

THERE'S A SECOND ISSUE WHICH WE
BELIEVE IS THE ERRANT DISMISSAL
AND AFFIRMING OF THAT DISMISSAL
OF THE FEDERAL CLAIMS OR CLAIM
BASED ON THE AFFIRMATIVE DEFENSE
OF EXHAUSTION OF ADMINISTRATIVE
REMEDIES.

WE DO THINK THAT THAT IS CASE DO
DISPOSITIVE OF THAT FEDERAL
ISSUE AND THAT THE COURT SHOULD
CONSIDER THAT ISSUE AS WELL
UNDER ITS BROAD JURISDICTION TO
DO SO.

>> BEFORE YOU GO ANY FURTHER, I
HAVE A QUESTION ABOUT THE
PARTIES IN THIS CASE.

>> YES.

>> IS ANY GOVERNMENTAL ENTITY A
PARTY IN THIS CASE?

>> YOUR HONOR, IT'S AN IMPORTANT
QUESTION, AND I WISH IT HAD BEEN
CLEARER IN THE BRIEFS.

THERE IS ONE INDIVIDUAL
DEFENDANT WHO IS SUED IN HIS
SUPERVISORY AND INDIVIDUAL
CAPACITY, AND GIVEN THAT IT IS A
PRO SE COMPLAINT, I WOULD VIEW
IT, JUSTICE CANADY, THAT
SUPERVISORY CAPACITY FOR THE
OTHER INDIVIDUALS AS IN HIS
OFFICIAL CAPACITY.

BUT WE DO NOT HAVE-- EXCUSE ME,
WE DO NOT HAVE, FOR EXAMPLE, A
COUNTY SHERIFF SUED OR SOMEONE
ELSE.

BUT WE DO HAVE--

>> WELL, LET ME ASK YOU THIS.
WELL, SO THE STATE AND ANY
SUBDIVISION OF STATE OR ANY
AGENCY OF THE STATE HAS NOT BEEN
SUED?

>> WELL, AGAIN, MY VIEW OF THE
COMPLAINT, BROADLY READ, WOULD
BE THAT BECAUSE ONE OF THE
INDIVIDUALS WHO WAS SUED WAS
SUED ALSO IN HIS SUPERVISORY
CAPACITY OVER THE OTHER THREE
INDIVIDUALS SUED, THAT THAT
WOULD HAVE TO OF NECESSITY BE IN
THE OFFICIAL CAPACITY.

HE WAS SUED IN HIS SUPERVISORY
AND INDIVIDUAL CAPACITY WHICH
WOULD SEEM TO ME--

>> WHAT ABOUT THE, WHAT ABOUT
THE CLAIMS AGAINST THE OTHERS?

>> THE OTHERS ARE ALL SUED IN
HAIR INDIVIDUAL CAPACITIES.

>> OKAY.

WELL, LET'S JUST TALK ABOUT
THEM.

>> EACH OF THEM, THERE WERE FOUR
INDIVIDUALS SUED.

>> WELL, WITH RESPECT TO THEM AT
LEAST, HOW COULD 768.28,
SUBSECTION 14 APPLY?

>> WELL, THEY WOULD URGE,
ULTIMATELY IF IT DID APPLY F
THAT SECTION APPLIED, THAT THEY
WERE ACTING IN THE COURSE AND
SCOPE OF THEIR DUTIES AS
PUBLIC EMPLOYEES AT PRISON.
AND SO AS A CONSEQUENCE, THEY
WOULD THEN SEEK TO BE--

>> BUT IF, BUT THEN THAT MEANS
THAT-- WELL--

>> WELL, BECAUSE, YOUR HONOR,
THEY'RE BEING SUED FOR
INTENTIONAL ACTS,
AND IT'S A PRO SE PLEADING,
SOMEWHAT DIFFICULT TO READ
THROUGH IT, BUT THEY'RE BEING
SUED FOR, ESSENTIALLY, I WOULD
SAY UNDER THIS COURT'S CASE
LAW-- AND, AGAIN, NOT CITED IN
THE BRIEFS, IT WAS NOT RAISED

BELOW, THEY'RE BEING SUED,
ESSENTIALLY, FOR ABUSE OF POWER
AS THEY ARE ACTING IN THE COURSE
AND SCOPE OF THEIR EMPLOYMENT
RATHER THAN USURPATION OF POWER
SO THAT UNDER THE COURT'S CASE
LAW-- AND, AGAIN, FORGIVE ME.
THIS IS NOT IN THE BRIEFS.
FINISH BUT--

>> WELL, IT'S A QUESTION THAT
KIND OF CRIES OUT, BECAUSE WE
LOOK AT WHO THE PARTIES ARE, AND
THEN WE LOOK AT THE STATUTE.
IT'S LIKE, HOW TO WE GET TO
APPLYING THIS PROVISION THAT
APPLIES TO GOVERNMENTAL ENTITIES
TO THESE CLAIMS AGAINST THESE
INDIVIDUALS?

AND NONE OF WHOM ARE ACTUALLY,
LIKE, THERE'S NOT A SHERIFF
INVOLVED.

>> YOUR HONOR, IT'S CERTAINLY
CORRECT THAT THERE'S NOT A,
QUOTE-UNQUOTE, SHERIFF INVOLVED,
BUT AGAIN, NOT TO BE REDUNDANT,
I APOLOGIZE, I THINK I'VE
SAID IT FIVE TIMES.

I THINK THAT THE SUPERVISORY
NATURE OF ONE OF THE INDIVIDUALS
OVER OTHERS CAN ONLY BE READ AS
HE WAS ACTING IN HIS, THAT
INDIVIDUAL WAS ACTING IN HIS
OFFICIAL CAPACITY FOR THE
COUNTY, FOR THE COUNTY
DEPARTMENT.

OTHERWISE IT WOULD BE
IMPLAUSIBLE TO-- IN OTHER
WORDS, A PRO SE LITIGANT
WOULDN'T NECESSARILY KNOW TO
SAY, AHA, I NEED TO SUE-- THEY
MIGHT, BUT I NEED TO SUE THE
SHERIFF--

>> WELL, HE SUES WHO HE SUES.

>> CERTAINLY.

>> I HAVE SORT OF A SEPARATE
QUESTION ABOUT WHETHER, ABOUT
THE FOUR-YEAR VERSUS THE
ONE-YEAR.

IT APPEARS MT. BRIEF THAT YOU
CON TO SEALED-- IN THE BRIEF
THAT YOU CONCEDE THAT A TORT BY
A PRISON OFFICIAL IS A PRISON
CONDITION.

AND I'M LOOKING AT THESE PRISON

CONDITIONS MORE, AND WE SEE THEM, YOU KNOW, THE FOOD WASN'T GOOD, WE DIDN'T GET READING MATERIAL WHERE THE LEGISLATURE WAS TRYING TO REIN IN THESE FRIVOLOUS, PURELY FRIVOLOUS COMPLAINTS.

IF IN THIS CASE THE PRISON OFFICIAL HAD ACTUALLY STRUCK, BATTERED THE DEFENDANT, IS THAT STILL A PRISON CONDITION THAT WOULD OTHERWISE BE SUBJECT TO ONE YEAR?

BECAUSE I DON'T-- I KNOW, AGAIN, IN THE BRIEF IT SAYS THAT TORTS ARE PART OF THE GREATER SCOPE OF PRISON CONDITIONS. BUT I LOOK AT IT SEPARATELY WHICH IS TORTS WHERE SOMEONE'S INJURED.

BECAUSE HE WAS INJURED.

NOW, AGAIN, THERE MAY BE OTHER REASONS THAT THESE PARTIES, YOU KNOW, IT DOESN'T STATE A CAUSE OF ACTION OR, YOU KNOW, FOR THE OTHER THINGS.

BUT HELP ME ON THAT.

IS THIS WHERE WE'VE GOTTEN TO WHERE SOMEBODY'S INJURED IN PRISON, SAY THEY SLIP AND FALL.

I GUESS THAT'S A PRISON CONDITION.

WHERE THAT WAS WHAT WAS INTENDED BY THE ONE-YEAR STATUTE OF LIMITATIONS?

SO IT'S SORT OF A SEPARATE ARGUMENT, YOU SEE WHAT I'M-- >> YOUR HONOR, I UNDERSTAND, AND YOU'RE CORRECT THAT FACET WAS NOT BRIEFED.

THERE IS, AND I WOULD SAY SIMPLY OR SIMPLISTICALLY IN RESPONSE TO YOUR HONOR THAT OPEN QUESTION OF STATE LAW.

REALLY THE PRISON CONDITION INTERPRETATION COMES OUT OF FEDERAL LAW.

IT DOES NOT COME OUT OF STATE LAW.

SO THAT I DO NOT THINK THAT WE CAN POINT THE COURT TO A STATE CASE THAT REFLECTS ON THE DEFINITION OF--

>> WELL, THAT'S PRETTY IMPORTANT
HERE.

>> YES.

>> BECAUSE I DON'T, I MEAN, NO
OFFENSE TO YOUR--

>> UNDERSTOOD.

>>-- PRO BONO CLIENT, BUT, YOU
KNOW, THIS ISSUE HERE IS THAT,
YOU KNOW, PEOPLE, INMATES ARE
INJURED, YOU KNOW, VERSUS THE
PANOPLY OF COMPLAINTS THAT I
THINK GAVE RISE TO THE ONE-YEAR
STATUTE OF LIMITATIONS--

>> CERTAINLY.

>> AND TO SAY, NO, NO, IT'S 768
BECAUSE OF SOMETHING IN 95, TO
ME, GETS AROUND THE ISSUE OF
WHAT'S A PRISON CONDITION.

AND WHEN YOU'RE SUING ON A
PRISON CONDITION.

>> YEAH.

THE VAST, I WOULD SAY THE VAST
FEDERAL INTERPRETATION HAS BEEN
BROAD.

AND, AGAIN, THAT'S WHY--

>> HASN'T THE U.S. SUPREME COURT
WEIGHED IN ON THAT?

>> THEY HAVE, YOUR HONOR BUT,
AGAIN, NOT DIRECTLY IN THE FIELD
OF STATE TORT LAW WHICH I THINK
JUSTICE PARIENTE IS REFERRING
TO.

CERTAINLY, IN TERMS OF
CIVIL RIGHTS COMPLAINTS,
THEY HAVE EVOKED THE
NOTION THAT PRISON CONDITIONS IS
ESSENTIALLY AN ALL-ENCOMPASSING
ENVIRONMENTAL EFFECT OF WHAT
HAPPENS INSIDE OF A PRISON.
BUT, AGAIN, I WOULD NOTE WITH
SOME TREPIDATION SINCE IT WAS
NOT BRIEFED THAT THAT WOULD
APPEAR TO BE AN OPEN QUESTION AS
TO THE INTERPRETATION OF THAT
SAME LANGUAGE UNDER STATE TORT
LAW.

I WOULD URGE THE COURT ON, NOW
THAT I SUPPOSE I'VE DONE MY BEST
TO ARGUE TWO ISSUES THAT WEREN'T
BRIEFED--

[LAUGHTER]

PERHAPS I COULD TRY TO ARGUE ONE
THAT WAS BRIEFED.

[LAUGHTER]

ALTHOUGH I MIGHT FARE LESS WELL.
>> WELL, YOU WERE PUT ON THAT
PATH BY OTHERS, SO--

[LAUGHTER]

>> I TRY TO FOLLOW THE JUSTICES'
PATHS WHENEVER I CAN, AS
BUSY AS THEY MIGHT
BE ON OCCASION.

[LAUGHTER]

BUT THESE ARE SHARP.
BEING REALLY SERIOUS ABOUT IT,
OUR POSITION I THINK WHERE WE
CLASH WITH THE GREEN
DETERMINATION BELOW FROM THE
FIRST DISTRICT COURT OF APPEAL
IS THAT THAT COURT CONCLUDES
THERE WAS A NULLIFICATION HERE
OF THE LATER-ENACTED STATUTE
OR STATUTE OF LIMITATIONS.
AND THEN, OF COURSE, OPPOSING
COUNSEL UNDERSTANDABLY GOES INTO
THE LEGISLATIVE HISTORY BEHIND
REDUCING THE LIMITATIONS PERIOD
TO ONE YEAR.

HOWEVER, IT'S ALSO CLEAR, I
WOULD URGE, THAT EACH OF THESE
THREE STATUTES CAN LIVE IN
ORBITS TOGETHER BECAUSE ONCE THE
STATE PASSED PREVIOUS TO THE
ONE-YEAR LIMITATION PERIOD, ONCE
THEY HAD PASSED A NO SOVEREIGN
IMMUNITY FOR PRIVATE CONTRACTORS
OR OPERATORS PROVISION, THEN
THERE'S REALLY NO NEED FOR THE
EXEMPTION TO THE EXEMPTION
ARGUMENT THAT IS MADE BY THE
RESPONDENT HERE.

YOU HAVE CHAPTER 95 APPLYING TO
PRIVATE ACTORS.

IT COULD NOT APPLY.

PRIVATE ACTORS ARE NOT ENTITLED
TO SOVEREIGN IMMUNITY; HENCE,
YOU WOULD NEVER PIT IT TO 768
FOR PRIVATE ACTORS.

THOUGH I SAY HERE, YOUR HONOR,
THAT YOU DO FOR THE PUBLIC
ACTORS INVOLVED.

YOU WOULD NEVER PIVOT IT TO THE
PRIVATE ACTORS; HENCE, AS A
CONSEQUENCE YOU DON'T HAVE TO
INTERRUPT THE NATURAL OPERATION
OF ANY OF THE STATUTES.

CHAPTER 95.011 WOULD PIVOT THIS
CASE OR SEND THIS CASE TO

CHAPTER 768.2814, THAT SECTION
FOR PURPOSES OF PUBLIC ACTORS.
AND, YES, THERE WOULD BE--
CHAPTER 95 WOULD APPLY TO THE
PRIVATE ACTORS FOR WHOM
SOVEREIGN IMMUNITY DOESN'T APPLY
ANYWAY.

SO WE REALLY DON'T HAVE A
CHALLENGE OF NULLIFYING--
>> WHO WOULD GET-- WHERE IS THE
ONE-YEAR STATUTE THEN?

>> IT'S--

>> ON TORT CASES, ARE YOU
SAYING?

>> THE ONE-YEAR STATUTE OF
LIMITATIONS WOULD CLEARLY APPLY
TO PRIVATE CONTRACTORS WHO
COMMIT--

>> BUT THAT CLEARLY, I MEAN,
AGAIN, THAT'S CLEARLY NOT THE
PURPOSE FOR WHICH THIS STATUTE
WAS ENACTED.

I MEAN, I DON'T KNOW WHICH ONE
OF THEM IS MODELED AFTER THE
FEDERAL STATUTE.

THE FOOD MADE ME SICK, YOU KNOW?
I DIDN'T GET KOSHER FOOD OR I
DIDN'T WANT GET WHATEVER--

>> WELL, YOUR HONOR--

>> AND YOU'RE SUED.

THAT'S A PRISON CONDITION.

I DON'T HAVE ACCESS TO MY, THE
LAW MATERIALS.

THAT'S A PRISON CONDITION.

I'M IN A CELL WITH CRAZY PEOPLE,
AND THAT'S, YOU KNOW, A PRISON
CONDITION.

BUT I DON'T SEE THAT THE-- AND,
AGAIN, YOU KNOW, THAT'S YOUR
BEST ARGUMENT FOR THIS, I
JUST-- THAT I DON'T BUY.

>> WELL, BUT, YOUR HONOR, WE
TREAT THIS, WE TREAT THIS TO GO
TO YOUR POINT, WHILE WE DIDN'T
TREAT THIS AS NOT A PRISON
CONDITION, WE DID URGE THAT
THERE REALLY ISN'T A CONFLICT IN
THE STATUTE IS IN ANY EVENT
BECAUSE THERE ARE TORT THAT CAN
BE BROUGHT, BUT THERE ARE ALSO
NONTORT CLAIMS THAT CAN BE
BROUGHT THAT ARE ASSOCIATED WITH
A CLAIM AND, THEREFORE, THERE
REALLY DOESN'T HAVE TO BE AN

INTERFERENCE.

YOU HAVE TORT CLAIMS SPECIFIED UNDER 768.2814, YOU HAVE PRISON CONDITIONS SPECIFIED UNDER 95.11.

AND, CERTAINLY, THERE ARE PRISON CONDITIONS AS YOUR HONOR HAS RECITED TO ME, THERE ARE PRISON CONDITIONS THAT ARE NOT GOING TO BE TORT CLAIMS.

AND SO IN THAT SENSE, WE DID TREAT YOUR HONOR'S ARGUMENT-- PERHAPS NOT AS WELL AS WE COULD HAVE-- BY ACTUALLY TAKING ON NATURE OF THE PHRASE, BUT CERTAINLY AS YOUR HONOR HAS TAKEN US THROUGH THERE COULD BE, THERE COULD BE SUITS, THERE COULD BE PRISON BE CONCERNS, THERE COULD BE COMPLAINTS THAT DO NOT, THAT ARE NOT TORTS, THAT ARE NOT NECESSARILY, ARE NECESSARILY NOT TORTS.

SO TO THERE IS ROOM, AGAIN, FOR THE OPERATION--

>> WELL, I MEAN, I'M REALLY SEPARATING IT BECAUSE PRISONERS CAN CALL IT ANYTHING.

BUT WHEN IT GOES FROM A CONDITION TO INJURY WHERE, YOU KNOW, YOU COULD HAVE A PRISONER WHO ACTUALLY IS IN A COMA, YOU KNOW, THERE'S REASON FOR FOUR-YEAR STATUTES MORE INJURY. AND UNFORTUNATELY, THIS, YOU KNOW, CAN HAPPEN IN A PRISON. AND I SEPARATE THAT.

THERE'S NOTHING FRIVOLOUS ABOUT A PRISONER BEING BEATEN AND BEING ALLOWED TO BE BEATEN BY, BE THAT'S WHAT HE HAS ALLEGED--

>> ACCORDING TO THE ALLEGATIONS.

>>-- BY JAIL OFFICIALS, RIGHT? OR PEOPLE IN THE JAIL.

SO THAT'S A SERIOUS ISSUE, ASK TO ME, THE ONE-YEAR STATUTE, I DON'T THINK, WAS INTENDED TO APPLY.

BUT THAT'S JUST, THAT'S HOW I'M-- YOU KNOW, MAYBE MY PREVIOUS LIFE WAY, WAY BACK AS A TORT LAWYER WOULD LEAD ME TO THAT WHEREAS NOW AFTER 20 YEARS

OF SEEING THE PRISONER COMPLAINTS THAT COME HERE, I CAN SEE A REAL DIVIDING LINE BETWEEN THE HOST OF FRIVOLOUS CLAIMS THAT CAN BE BROUGHT VERSUS SOMEBODY'S INJURY.

>> WELL, YOUR HONOR, I WOULD, I WOULD URGE THE INVITATION OF THE COURT IF IT WANTS BRIEFING ON THAT SUBJECT--

>> WELL, THAT'S-- I'M-- IT'S JUST ME GIVING YOU SOMETHING THAT, OBVIOUSLY, WASN'T CONCEDED IN THE BRIEF.

>> YEAH.

WELL, IT WAS NOT REALLY PARKING LOT OF THE WAY THE EXPRESS-- PART OF THE WAY THE EXPRESS AND DIRECT CONFLICT CAME UP, BUT IT IS CERTAINLY FAIR GAME THAT WHILE THE FEDERAL LAW HAS CLEARLY ENVELOPED THIS KIND OF DEFINITION, IT IS, I BELIEVE-- I COULD BE WRONG, BUT I BELIEVE IT IS AN OPEN QUESTION UNDER STATE LAW WHETHER PRISON CONDITION AND TORT INJURY ARE ALWAYS EQUIVALENT.

>> WELL, BECAUSE THEY'RE BRINGING IT UNDER THE CIVIL RIGHTS, YOU KNOW, THERE'S ALL OTHER CONSIDERATIONS--

>> CORRECT.

>> IN THE FEDERAL COURTS THAT HAVE TO DO WITH THE FACT YOU CAN GET ATTORNEYS' FEES, YOU CAN GET, YOU KNOW, THERE'S NO LIMITATION IF YOU'RE SUING UNDER THE CIVIL RIGHTS ACT.

SO, BUT I HAVEN'T LOOKED EXTENSIVELY AT THE FEDERAL LAW AND WHEN THIS WAS MODELED AFTER FEDERAL LAW.

>> AT LEAST IN TOPICAL CONCLUSION ON THIS FIRST ISSUE, WE WOULD URGE THAT THERE ARE SPHERES OF OPERATION FOR EACH OF THE THREE STATUTES HERE THAT REPEAL BY IMPLICATION IS VERY MUCH DISFAVORED BY THIS COURT, THAT THE MENENDEZ AND BEARD PRECEDENTS OF THIS COURT DO CLEARLY REFLECT THAT THE LEGISLATURE KNOWS HOW TO ADDRESS

CIRCUMSTANCES WHERE THERE ARE SUITS WHERE THE SOUTHERN IMMUNITY-- SOVEREIGN IMMUNITY STATUTE OF LIMITATION BY LITERALLY REMOVING IT WITHIN CHAPTER 768 RATHER THAN DOING IT ELSEWHERE WHERE THE PROVISION OF 95.011 WOULD OTHERWISE SEND THE STATUTE OF LIMITATIONS TO AN OTHERWISE PUBLIC CHAPTER.

I WOULD LIKE TO TOUCH ON THE ISSUE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES.

I THINK THIS CAN BE BASICALLY SUMMED UP, AGAIN, JUST AT THE OUTSET TO POINT OUT THAT HERE THERE WAS NOT A STATUTE OF LIMB TAKES ISSUE RAISED.

STATUTE OF LIMITATIONS UNDER PRINCIPAL LAW IS GENERALLY A FOUR-YEAR STATUTE OF LIMITATIONS FOR THE GENERAL RUBRIC OF CIVIL RIGHTS CLAIMS.

HERE IT WAS PLED AS AN EIGHTH AMENDMENT CLAIM, BUT I THINK THAT THAT WOULD GENERALLY FALL UNDER A 1983 CLAIM.

SO THERE ISN'T A STATUTE OF LIMITATIONS ISSUE HERE, AT LEAST NOT RAISED AT THIS JUNCTURE AS TO THE FEDERAL CLAIM.

>> WELL, THIS ISSUE HAS BEEN CONCEDED BY THE OPPOSING SIDE, CORRECT?

>> YES, IT HAS, YOUR HONOR.

>> YOU MIGHT NOT LIKE SOME OF THE THINGS THEY SAY ABOUT WHAT SHOULD HAPPEN WHEN IT GOES BACK, BUT ON THE BASIC ISSUE THEY'VE CONCEDED.

>>.

AND MY POINT WAS BASICALLY TO SAY TO THE COURT THAT IT SHOULD RESPECT THE CONCESSION HERE BECAUSE THIS ISSUE CASE DISPOSITIVE AT THIS TIME, AT THIS JUNCTURE AS TO REVERSING THIS ISSUE AS TO THE FEDERAL CLAIM UNDER THE EXHAUSTION OF ADMINISTRATIVE REMEDY CANS DOCTRINE.

SO I'LL STOP THERE.

>> GOOD MORNING.

MAY IT PLEASE COURT, MY NAME'S

CARL PETERSSON, I'M HERE ON BEHALF OF THE RESPONSIBILITIES, FORMER CORRECTIONAL OFFICERS BRYANT, COOK AND COTTRELL. WE'RE HERE TODAY TO ANSWER A REAL SIMPLE QUESTION; WILL THE COURT FOLLOW THE FIRST DISTRICT'S ANALYSIS IN GREEN WHICH FOUND THAT UNDER THE FACTS PRESENTED HERE THAT IF IT WERE TO FOLLOW THE CALHOUN ANALYSIS, IT WOULD EFFECTIVELY EVISCERATE 95.115G, OR WOULD IT FOLLOW CALHOUN WHICH MAKES IT VERY DIFFICULT TO GET TO THE POINT THAT WAS CRAZED BY JUSTICE-- RAISED BY JUSTICE CANADY? JUSTICE CANADY ASKED THE QUESTION, AND I THINK, YOU KNOW, IT'S NOT OF ME, BUT I'LL CHIP IN HERE, A STATE EMPLOYEE IS SUED FOR AN ACT WHILE THEY ARE ON THEIR JOB, THE ONLY WAY THEY CAN BE HELD INDIVIDUALLY LIABLE IS UNDER 768.289A WHICH WE HAVEN'T REALLY GOTTEN TO THAT POINT IN THIS CASE. WHAT WE'RE TALKING ABOUT HERE IS STATUTE OF LIMITATIONS. 768.289A SAYS THE ONLY WAY AN INDIVIDUAL EMPLOYEE CAN BE HELD LIABLE IS WANTON AND WILLFUL, MALICIOUS-TYPE CONDUCT. BUT OTHERWISE STATUTORY ENACTMENT OF THE WAIVER OF SOUTHERN IMMUNITY SHIFTED AS VARIOUS COURTS INCLUDING THIS ONE HAVE SAID, SHIFTED THE LIABILITY FROM THE EMPLOYEE TO THE AGENCY. SO HERE WE DON'T HAVE THE AGENCY AS A, AS AN ACTUAL DEFENDANT, BUT 768.28 DOES COME INTO PLAY WHENEVER AN INDIVIDUAL EMPLOYEE IS SUED UNDER STATE LAW. THE 1996 LEGISLATURE PASSED THE 96.106 WHICH INCLUDES THE ADOPTION OF NEW SECTION, 5G, AS PART OF 95.11. IT IS OUR CONTENTION THAT THE COURT SHOULD RESPECT THE EXPLICIT LANGUAGE OF THE STATUTE AS WELL AS THE LEGISLATIVE HISTORY AND FIND THAT UNDER THE

FACTS OF THIS CASE THAT A
ONE-YEAR STATUTE OF LIMITATIONS
DOES APPLY TO THE NEGLIGENCE
CLAIMS AND THE INTENTIONAL
INFLECTION OF EMOTIONAL DISTRESS
CLAIMS--

>> I JUST, SO WOULD YOU SAY THAT
EVERY INJURY THAT OCCURS IN
PRISON WHERE THE, ANYONE
ASSOCIATE WITH THE PRISON IS
SUED IS A LAWSUIT INVOLVING A
PRISON CONDITION?

>> I WON'T SAY THAT, BUT-- I
CAN'T SAY ACROSS THE BOARD.

>> BUT ISN'T THAT REALLY WHAT,
AND, AGAIN, THIS IS GOING, I
GUESS, TO SOMETHING-- I MEAN,
IT FEELS LIKE THIS IS SOMETHING
THAT'S PRETTY CRITICAL WHICH IS
THAT IS IT BROAD THAT IT'S
EVERY, AGAIN, EVERY PRISONER
WHICH WOULD SEEM TO ME THE IF
THAT WAS WHAT THE LEGISLATURE
INTENDED, THEY SHOULD SAY
LAWSUITS BROUGHT BY PRISONERS
ARE SUBJECT TO A ONE-YEAR
STATUTE.

THAT'S IT.

I MEAN, WHETHER IT'S INJURY,
WHETHER IT'S EMOTIONAL DISTRESS,
WHETHER IT'S NOT ACCESS TO
MATERIALS, IT'S ONE YEAR.
WHY WOULD YOU CALL IT PRISON
CONDITIONS?

>> LET ME GIVE YOU THE COUNTER
TO THAT OR LET ME TRY TO RESPOND
AS DIRECTLY AS I CAN, AND THAT
IS NOT EVERY LAWSUIT FILED BY A
PRISONER INVOLVES CONDITIONS OF
CONFINEMENT.

FOR EXAMPLE, IF A PRISONER WERE
TO SAY, OKAY, I GOT CONVICTED,
BUT I GOT MYSELF BEAT UP
UNFAIRLY DURING THE ARREST,
UNFAIRLY WITH AN EXCESSIVE USE
OF FORCE DURING THE ARREST--

>> WELL, THAT'S SOMETHING
OUTSIDE.

>> BE THAT'S RIGHT.

IT'S NOT A CONDITION--

>> WELL, NO, HOW ABOUT DIRECTING
YOUR COMMENTS TO THINGS THAT
OCCUR WHILE A PRETTIER CONCERN
WHILE A PRISON IS WITHIN.

REALLY, THAT'S WHAT HAPPENED IN THE SECOND GRADE.

HE WASN'T IN PRISON.

>> I UNDERSTAND, BUT THAT'S MY POINT.

AND BE THAT WOULD NOT BE A CONDITION OF CONFINEMENT CASE. BUT IF SOMETHING HAPPENS TO THAT PRISONER, AN INTENTIONAL TORT OR A NEGLIGENT TORT, GIVEN THE LANGUAGE OF THE STATUTE, 95.11, WOULD APPLY.

>> HOW IS THAT-- WHERE IS IT? AGAIN, THE PLAIN-- IF I'M GOING TO SAY LAWSUITS BROUGHT BY INCARCERATED INDIVIDUALS AGAINST PRISON BE OFFICIALS OR JAIL OFFICIALS, PRIVATE INDIVIDUALS THAT ARE OPERATING JAILS OR PRISON ARE SUBJECT TO THE ONE-YEAR STATUTE, NOT THE FOUR-YEAR STATUTE OF LIMITATIONS THAT OTHERWISE APPLIES TO ALL OTHER TORT ACTIONS, WHY WOULD YOU CALL THEM PRISON CONDITIONS?

>> WELL, BECAUSE IF IT RELATES TO THE CONDITIONS OF CONFINEMENT, EXCUSE ME, IF IT CONCERNS THEIR--

>> WHAT IF, WHAT THE GUARD STUCK OUT HIS FOOT IN ORDER TO TRIP THE PRISON AND HE FELL AND SMASHED HIS HEAD ON A SHARP OBJECT?

?

>> OKAY.

>> THE PRISONER-- THE GUARD PUT OUT HIS LEG S. THAT A PRISON-- A CLIENT SUES S IS THAT A PRISON CONDITION?

>> IF IT'S AN INTENTIONAL ACT BY THE GUARD AND YOU'RE SUING UNDER STATE LAW, ANSWER, YES.

UNDER FEDERAL LAW, IT IS STILL CONDITIONS OF CONFINEMENT, BUT IT WOULD IS HAVE A FOUR-YEAR STATUTE OF LIMITATIONS AS MR. ALANDER SAID GIVEN PORTER V. IS THE FINISH.

[INAUDIBLE]

AND A NUMBER OF OTHER SUPREME COURT CASES THAT SAY ANYTHING THAT HAPPENS IN PRISONS RELATED TO YOUR CONDITION OF CONFINEMENT

WHETHER IT BE A SINGLE USE OF
EXCESSIVE FORCE OR--

>> BUT THE FEDERAL COUNTS SAY
FOUR YEARS, BUT THEY REQUIRE
EXHAUSTION OF ADMINISTRATIVE
REMEDIES.

>> YES.

AND THEY ALSO USE THE RESIDUAL
STATUTE OF LIMITATIONS, NOT A
SPECIFIC STATUTE OF LIMITATIONS
UP TIL NOW IS WHAT THEY'VE DONE.

>> WHAT WAS THE REASON THE
ONE-YEAR STATUTE WAS PUT INTO
EFFECT BY THE LEGISLATURE?

>> WELL, I THINK IT'S PRETTY
OBVIOUS FROM THE LEGISLATIVE
HISTORY IS THE LEGISLATURE WAS
SICK AND TIRED OF SO MANY
FRIVOLOUS LAWSUITS, AND THERE
ARE LOTS AND LOTS OF FRIVOLOUS
ONES--

>> AS WE SAID.

BUT SOMEBODY'S INJURED.

NOW, I DON'T KNOW IF THIS
DEFENDANT WENT TO THE HOSPITAL
OR WHAT HE DID.

IT MAY BE A CLAIM AGAINST THAT
OFFICIAL OR THE PERSON THAT WAS
THE ACTOR THAT MAY NOT HAVE
MERIT, BUT THERE'S NOT-- A
PERSON'S INJURED, A PHYSICAL
INJURY.

>> ISN'T THAT THE LEGISLATURE'S
POLICY JUDGMENT THAT THEY HAVE
TO MAKE TO SAY WE'VE GOT TO HAVE
A CHUTE OF LIMITATIONS THAT-- A
STATUTE OF LIMITATIONS THAT'S
ACROSS THE BOARD FOR PRISONERS'
CONDITIONS OF CONFINEMENT
CLAIMS?

AND THAT'S WHAT THEY'VE DONE,
THEY MADE THAT POLICY JUDGMENT.
AND BE THEY DID IT, AS I SAID IN
MY BRIEF, A YEAR AFTER THE
FEDERAL CONGRESS PASSED THE
CRIMINAL LITIGATION REFORM ACT.

I TO-- I DON'T THINK THAT
TIMING COINCIDENTAL.

AND SO I THINK THAT--

>>

[INAUDIBLE]

>> I THINK WOULD 768.28 COVER AN
INTENTIONAL TORT?

YES, YOUR HONOR.

>> OKAY.

[INAUDIBLE]

I'M GOING TO--

[INAUDIBLE]

>> THEN HE HAS ONE YEAR TO FILE
A LAWSUIT.

IT'S NOT AN INTENTIONAL ACT ON
THE PART OF THE OFFICIAL WHO
SAYS I DON'T HAVE SPACE, I CAN'T
MOVE YOU.

IT'S AN INTENTIONAL ACT BY THE
PERPETRATOR, USING YOUR
SCENARIO, AND UNDER THAT
SITUATION WHAT THE PRISONER
WOULD BE ALLEGING WOULD BE
NEGLIGENCE ON THE PART OF THE
PRISON OFFICIAL FOR FAILURE TO
MOVE HIM.

SO, BUT EVEN SO, LET'S ASSUME HE
WAS MOVED INTO-- HE WAS WARNED
AND SAID YOU'VE GOT AN ISSUE
WITH INMATE X, AND YOU MOVED HIM
INTO THE, INTO THE POD WITH
INMATE X.

AND THEN INMATE X BEATS HIM UP.
UNDER THOSE CIRCUMSTANCES THE
PRISONER'S INJURED, HE HAS A
RIGHT TO RELIEF, BUT IF HE'S
GOING TO CLAIM PURE STATE LAW
INTENTIONAL TORT OF THE ACT OF
THE OFFICIAL, INTENTIONAL
DISREGARD, THEN HE WOULD HAVE TO
FILE WITHIN ONE YEAR.

ORDINARILY SOMETHING LIKE THAT'S
GOING TO BE FILED, AS ALL OF YOU
HAVE BEEN ON THIS CIRCUIT BENCH
WILL KNOW THAT IT'S GOING TO BE
FILED AS A 1983 CLAIM.

AND BE UNDER THOSE CIRCUMSTANCES
IT'S GOING TO BE--

>> WAIT.

IF I GET THIS STRAIGHT--

>> DELIBERATE.

I'M SORRY.

>> VIOLENCE IN PRISON IS TO BE
REGARDED AS A CONDITION OF
CONFINEMENT?

>> YES.

ACCORDING TO THE SUPREME COURT.

>> LET ME JUST GO BACK TO ONE
THING YOU SAID.

I GAVE THE EXAMPLE OF A GUARD
STICKING HIS FOOT OUT AND THE
PERSON TRIPPING.

AND YOU SAID, WELL, THAT WOULD BE INTENTIONAL, SO THAT WOULD BE COVERED BY 768.

BUT UNDER 768 AN INTENTIONAL ACT BY AN INDIVIDUAL EMPLOYEE IS NOT COVERS.

I MEAN, THEY'RE NOT-- COVERED.

I MEAN, THEY'RE NOT, THEY DON'T GET THE PROTECTION.

AM I CORRECT ABOUT THAT?

>> YOUR-- YOU'RE CORRECT.

IF IT RISES TO THAT LEVEL OF WANTON OR WILLFUL, IF THE EMPLOYEE JUST DOESN'T BELIEVE HIM AND FALLS TO RESPOND IN THAT SENSE, THAT'S NOT WANTON AND WILLFUL, MALICIOUS CONDUCT.

IT IS STILL AN INTENTIONAL ACT BY THE EMPLOYEE.

THEY INTENTIONALLY DECIDED NOT TO MOVE HIM--

>> NO, I WAS TALKING ABOUT HOW ABOUT THE LEG OUT AND SOMEBODY TRIPPING OVER.

>> YEAH.

UNDER CIRCUMSTANCES LIKE THAT I STILL DON'T THINK THAT WOULD BE A WANTON, WILLFUL OR MALICIOUS ACT, BUT-- UNLESS THEY HAD A LONG HISTORY KIND OF THING, THAT--

>> HOW IS THAT, I GUESS IT GOES-- HOW IS THAT A CONDITION OF CONFINEMENT?

>> THE SUPREME COURT HAS SAID THAT EXCESSIVE USE OF FORCE CLAIMS AND THINGS LIKE THAT ARE A CONDITION OF CONFINEMENT. YOU'RE STUCK IN THAT JAIL WITH A JAIL GUARD WHO HAS IT IN FOR YOU OR FAILS TO TAKE A REASONABLE ACT TO PROTECT YOU.

UNDER THOSE CIRCUMSTANCES THAT IS A CONDITION OF CONFINEMENT. I THINK YOU'RE NOT TALKING JUST ABOUT FOOD.

YOU ARE TALKING ABOUT FOOD, CERTAINLY.

YOU'RE TALKING ABOUT RELIGIOUS PROGRAMS, CERTAINLY.

YOU'RE TALKING ABOUT THE DECKS IN THE HALLWAY ARE TOO SLIPPERY AND AS A RESULT, I SLIPPED AND FELL.

I KNEEL THE SHOWER.
I DIDN'T-- FELL IN THE SHOWER.
I DIDN'T GET THE RIGHT KIND OF
SOAP, AND AS A RESULT, I GOT
ITCHY SKIN.
THOSE WERE ALL KINDS OF--
>> WELL, THAT MAKES SENSE.
TO ME, THAT CERTAINLY MAKES
SENSE.
FOOD, FOOD POISONING, IT'S A
CONDITION OF CONFINEMENT.
>> YES.
>> I JUST STILL, BUT I'LL LOOK
AT THE U.S. SUPREME COURT CASE.
AND IN WHAT CONTEXT THEY WERE
DOING IT, BECAUSE THE WHOLE
FEDERAL CIVIL RIGHTS LAW HAS ALL
OTHER CONSIDERATIONS THAT MAY
NOT BE THE SAME MORE FLORIDA'S
OWN TORT SYSTEM.
WHICH HAS LIMITATIONS ON
LIABILITY, HAS ALL THESE OTHER
REQUIREMENTS OF BUTTING
OFFICIALS ON NOTICE-- PUTTING
OFFICIALS ON NOTICE IN A TIMELY
WAY.
>> YES.
AND SO IT IS UP TO THE FLORIDA
LEGISLATURE TO SET FORTH THE
STATUTE OF LIMITATIONS AND UP TO
YOU TO SET FORTH THE PROCEDURAL
ISSUES THAT RELATE TO HOW YOU'RE
GOING TO BRING LAWSUITS AND SO
FORTH.
BUT IN THIS CASE--
>> I THOUGHT IT WAS UP TO US,
WHAT WE'RE HERE TO DO IS TO
DECIDE THE STATUTORY
CONSTRUCTION ARGUMENT.
>> YES, MA'AM.
>> THAT'S--
>> AND IN THIS CASE, 95.115G IS
CLEAR, IT SAYS WE'RE GOING TO
COVER ALL CONDITIONS OF
CONFINEMENT, AND THAT WOULD
INCLUDE DECLARATORY JUDGMENTS,
THE EXAMPLE MR. AUSLANDER USED
IN HIS INITIAL BRIEF OF PERHAPS
LAW LIBRARY ACCESS OR READING
MATERIALS ACCESS.
THOSE ARE, BASICALLY, NOT
TYPICALLY COVERED IN THE COMMON
LAW OF FLORIDA.
LAW OF FLORIDA.

THEY ARE CONSTITUTIONAL RIGHTS TO FREE SPEECH UNDER THE FIRST AMENDMENT, AND THEY'RE ALSO, A LAW LIBRARY IS USUALLY COVERED UNDER THE SIXTH AMENDMENT. AND THERE YOU'VE GOT TO SHOW ALL THE KINDS OF THINGS THAT AREN'T REALLY PRESENT HERE, AND WE DON'T THESE TO GET BOO THAT. MY POINT THOUGH IS THOSE KIND OF FEDERAL THINGS ARE THE SAME KIND OF POINTS THAT WERE RAISED BY THE ELIE CASE, AND THERE THE 11TH CIRCUIT SAID WE'RE GOING TO APPLY THE RESIDUAL FOUR-YEAR STATUTE OF LIMB TAXES.

>> THIS GOES BACK TO THE ORIGINAL QUESTION JUSTICE CANADY ASKED.

YOU'RE HERE REPRESENTING WHICH OF THE DEFENDANTS, ALL OF THEM?

>> BRYANT, COOK AND COTTRELL.

>> AND THEY ARE--

>> ALL CORRECTIONAL OFFICERS.

>> THEY WERE WITH THE--

>> SANTA ROSA COUNTY JAIL.

>> OKAY.

SO JAIL OFFICIALS.

>> YES.

AND JUST, MR. GREEN WAS A D.O.C. PRISONER SENT BACK TO THE SANTA ROSA COUNTY JAIL FOR A HEARING THIS, HE WAS HOUSED THERE TEMPORARILY WHILE HE WAS A DES MOINES O.C. PRISON.

SHORTLY AFTER THE HEARING AND IN THIS INCIDENT WHERE HE GOT INTO A FIGHT WITH THE OTHER INMATES, HE WAS SENT BACK TO D.O.C., AND HE'S STILL THERE.

IF IT PLEASES THE COURT, I WOULD CAN THE COURT TO DO WHAT THE FIRST DISTRICT BASICALLY SAID IN ITS SUMMATION.

I WOULD ASK YOU TO APPLY A BRIGHT LINE RULE.

THE BRIGHT LINE RULE AS SET FORTH IN 95.115G.

PRISONER FILES A LAWSUIT.

IF THE PRISONER-- IF THE PERSON WHO FILES A LAWSUIT IS A PRISONER MEANING THEY ARE, A, CONVICTED AND, B, INCARCERATED AT TIME THE LAWSUIT IS FILED,

THEN 95.115G APPLIES PROVIDED IT RELATES TO THE CONDITIONS OF CONFINEMENT.

IF IT'S SOMETHING TOTALLY UNRELATED AS I SAID EARLIER, 768.2814 WILL APPLY.

OR IF IT'S A FEDERAL CLAIM, THEN THE FOUR-YEAR STATUTE-- THE RESIDUAL STATUTE OF LIMITATIONS GOING TO APPLY.

I WOULD ASK YOU TO AFFIRM DISMISSAL OF ALL THE STATE LAW CLAIMS IN THIS MATTER ON THE PARTICULAR FACTS OF THIS CASE. BECAUSE AS I SAID IN THE BRIEF, IF 95.115G DOESN'T APPLY HERE, IT CAN'T APPLY TO A PRISONER WHO IS SEEKING TO FILE A LAWSUIT.

I WOULD ALSO ASK YOU TO CONSIDER FINDING THAT THE CALHOUN COURT REACHED THE RIGHT RESULT BASED ON THE FACTS THAT ARE STATED IN THE CALHOUN OPINION THAT MS. PATRICIA CALHOUN WAS A PRETRIAL DETAINEE, NOT A PRISONER.

WHAT THE CALHOUN COURT SHOULD HAVE SAID WAS 95.115G DOESN'T APPLY SIMPLY BECAUSE SHE'S NOT A PRISONER.

THANK YOU--

>> MAYBE IT'S A SILLY HI QUESTION-- SILLY QUESTION, BUT, YOU KNOW, YOU CAN TAKE A VIEW THAT EVERYTHING THAT HAPPENS TO SOMEONE WHO IS INCARCERATED ARISES OUT OF THAT INCARCERATION.

HERE, FOR EXAMPLE, THERE ARE ALLEGATIONS THAT THEY DIDN'T HAVE ROOM IN THE DORMITORY SOMEPLACE FOR HIM.

TO CHANGE OR DO WHATEVER.

SO I COULD SEE THAT THAT'S MORE CLOSELY A CONDITION OF THE CONFINEMENT.

BUT HOW ABOUT OTHER INDIVIDUAL ACTS THAT OCCUR WITHIN THE CONFINES THAT ARE NOT SO THAT THE STATUTE COULD BE GIVEN EFFECT FOR THOSE THINGS THAT TRULY ARE CONDITIONS OF CONFINEMENT, BUT OTHERS WOULD FALL WITHIN SOME OTHER

STATUTORY?

IS THAT, IS THAT WORKABLE, OR IS THAT PARSING IT TOO THINLY? WHAT ARE YOUR THOUGHTS WITH REGARD TO THAT?

>> I THINK THAT THAT NEEDS TO BE DEVELOPED FURTHER UNDER OTHER CASE LAW.

BUT I THINK IN THIS PARTICULAR CASE THIS CLEARLY IS A CONDITION OF CONFINEMENT ISSUE--

>> BECAUSE OF THE NATURE OF WHAT IT IS--

>> YES.

>>-- THE BEATING AND I'M AFRAID, AND THESE PEOPLE, YOU KNOW, DON'T PUT ME BACK IN WITH THESE FOLKS.

IT JUST PERMEATES THE WHOLE CAUSE OF ACTION, IS WHAT YOU'RE SAYING.

>> YES, SIR.

DON'T PUT ME BACK IN WITH THESE FOLKS.

IT PERMEATES THE WHOLE CAUSE OF ACTION IS WHAT YOU ARE SAYING.

>> IN REBUTTAL TO JUSTICE LEWIS, YOUR QUESTION, I SUGGEST THAT LINE OF QUESTIONING GOES TO BE POINT THERE CAN BE PRESENT CONDITION SUITS THAT DON'T INVOLVE TOWARDS, 768.2814, YOU DON'T PARTICULARLY CARE FOR THIS REASONING, MORE SPECIFIC AS TO TORT SUITS AND THIS IS THE COMPLAINT ABOUT A TORT, INTENTIONAL OR GROSSLY NEGLIGENT TOWARD THAT OCCURRED HERE, THE ALLEGATIONS BEING ESSENTIALLY THAT THE INDIVIDUALS WHO ARE NAMED IN THIS COMPLAINT NEW MISTER GREEN WOULD BE BEATEN BY OTHER PRISONERS.

>> I'M LOOKING AT WHAT PRESIDENT WAS RELIED ON, THE US SUPREME COURT WAS REFERRING THESE SUITS TO THE MAGISTRATE, THE DEFENDANT WAS SAYING THIS IS EXCESSIVE FORCE, THERE WAS A POLICY ISSUE, IF YOU TRY TO UNDERSTAND THESE PRISONER COMPLAINTS WE GOT TO PUT THEM ALL IN ONE PLACE. THE QUESTION I WOULD HAVE GOES BACK TO HOW DOES AN ENTITY SUCH

AS THE DEPARTMENT OF CORRECTIONS OR JAIL OR THE COURT MAKE THAT DIVIDING LINE, SOME ARE SUBJECT TO FROM -- THE ALLEGATION OF INJURY THAT IS THE DIFFERENCE, WHAT WOULD BE -- THERE NEEDS TO BE SOME LINE, ONE OR FOUR YEARS IS A PRETTY BIG DIFFERENCE IN THE LIFE OF PRISON OFFICIALS AND PRISONERS.

>> THE LANGUAGE ESSENTIALLY RELATING TO THE CONVENTION OF PRISONERS CONFINEMENT ULTIMATELY FEDERAL LAW INCLUDING, I WOULD URGE, THE ANALYSIS OF THE SUPREME COURT OF THE UNITED STATES ON THIS PARTICULAR ISSUE WAS NOT BE THIS COURT'S INTERPRETATION OF WHAT STATE TORT LAW IS, ALMOST SILLY TO SAY THAT THE SUPREME COURT.

>> MIGHT IT NOT BE PERSUASIVE IF THE PARTICULAR LANGUAGE WE WERE INTERPRETING WAS DERIVED FROM THE SAME LANGUAGE THE SUPREME COURT WAS INTERPRETING?

>> THAT COULD ONLY BE ANSWERED YES.

>> THAT IS WHY I ASK IT THAT WAY.

CERTAINLY YOU COULD SUSTAIN AN INJURY FROM A CONDITION OF CONFINEMENT.

BUT THERE MAY BE OTHER WAYS TO SUSTAIN AN INJURY OTHER THAN CONDITIONS OF CONFINEMENT.

I'M TRYING TO SEE HOW THINLY THIS ONIONS CAN BE PEELED SO IT HAS A RATIONAL BASIS.

>> THERE IS IMMENSE DISTINCTION TO EXEMPLIFY BETWEEN A SLIP AND FALL IN A SHOWER BECAUSE THERE WAS ARRESTED PIECE OF METAL THAT CAUSED THE INJURY VERSUS A CIRCUMSTANCE LIKE THIS WHERE THERE IS AN ALLEGATION THAT YOU KNEW I WAS GOING TO BE BEATEN BUT YOU DID NOTHING ABOUT IT. THAT IS CLEARLY A TRADITIONAL TORT.

>> THE FIRST ONE --

>> MORE CLEARLY A TORT.

I SLIPPED AND FELL AND IT WAS A SLIPPERY SURFACE.

>> IT IS FAIR TO SAY SLIPPERY
SLOPE ASIDE ON MY EXAMPLE THAT
THEY ARE BOTH IN A SENSE, IN A
VERY BROAD SENSE OPERATIONALLY
PART OF PRISON CONFINEMENT, BUT
ONE IS MUCH CLOSER TO STICKING
OUT YOUR FOOT AND HAVING SOMEONE
FALL WHICH DOESN'T SEEM AS MUCH
A CONDITION OF PRISON
CONFINEMENT AS A TORTUOUS ACT.

>> THAT MAKES SENSE BUT IS THAT
WHERE THE LINE IS?

I DON'T KNOW IF IT WOULD HELP
YOUR CASE, BUT IT IS A LINE I AM
NOT PROPERLY SUPERVISED AND HAVE
PRISONERS UNDER MY CARE, I TAKE
MY NIGHTSTICK AND PUT OUT AN EYE
OR SOMETHING.

YOU NEED TO HELP US ON OUR CAN
YOU DRAW LINE WHICH WHERE IS IT?

>> IT IS LOGICAL, LEGITIMATE AND
MAKES SENSE.

>> THE LINE THAT WOULD NEED TO
BE DRAWN TO A CERTAIN EXTENT
WOULD BE BETWEEN THINGS THAT ARE
JUST BEING TRADITIONAL AND
REGULAR CONVENTIONAL OPERATIONS
OF A FACILITY SO THAT WOULD THEN
DISTINGUISH BETWEEN THE EXAMPLE
OF THE SHOWER OR THE FOOD VERSUS
THE EXAMPLE OF SOMETHING LIKE
THIS WHERE THERE IS ALLEGATION
OF INTENTIONAL AGREEMENT TO
ALLOW AN INTENTIONAL ASSAULT AND
BATTERY AND THAT IS WHY THE
TOWARD LANGUAGE OF 768.14 SHOULD
SURVIVE IT IS MORE SPECIFIC TO
THE CIRCUMSTANCE THEN THE
CONTENTIONS OF PRISON
CONFINEMENT WHICH IS HOW WE
ARGUED IT IN THE BRIEF SO THE
LINE CAN BE DRAWN.

>> THANK YOU FOR YOUR ARGUMENTS.
MY UNDERSTANDING IS YOU ACCEPTED
THIS CASE ON A PRO BONO BASIS
AND THE COURT THINKS YOU FOR
DOING THAT TAKING TIME FROM YOUR
PRACTICE AND PRESERVING OUR
JUDICIAL SYSTEM.

WE ARE IN RECESS FOR TEN
MINUTES.