

>>> OKAY.
THE NEXT CASE UP IS JOHN DOE V.
STATE OF FLORIDA.
OKAY.
WHENEVER YOU'RE READY.
>> GOOD MORNING.
ROBERT YOUNG AND THE HONORABLE
KATHLEEN SMITH FOR THE
PETITIONERS.
MAY IT PLEASE THE COURT, I'LL
TRY TO BE BRIEF.
THE CASE, IN OUR VIEW--
>> YOU DO ME A FAVOR?
CAN YOU PICK THE MICROPHONE UP?
AND SPEAK CLOSER INTO IT.
IT'S HARD TO HEAR.
>> YES.
THANK YOU, SIR.
WE THINK THE CASE IS REASONABLY
SIMPLE.
FROM THE RESPONDENT'S SIDE,
HOWEVER, IT APPEARS TO BE AN
EFFORT TO GET RETROACTIVE
VALIDATION FOR AN EXCITING NEW
CONCEPT IN JUDGING WHICH THEY'VE
LABELED JUDICIAL TELEPRESENCE.
AND IT'S THE JUDICIAL
TELEPRESENCE ISSUE THAT WE'RE
HERE TODAY ABOUT.
THEY HAVE SAID IN BOTH THE
AMICUS AND THE STATE'S RESPONSE
THAT THERE IS NO LAW AGAINST
JUDGES APPEARING BY VIDEO
ANYTIME IN ANY CASE.
AND, THEREFORE, THEY'RE FREE TO
DO IT.
THAT, OF COURSE, RAISES
SUBSTANTIAL QUESTIONS ABOUT WHY
YOU WOULD ENACT A RULE OF
JUDICIAL ADMINISTRATION THAT
AUTHORIZES THE USE OF
COMMUNICATION EQUIPMENT AND
AUTHORIZES IT IN ONLY THREE OR,
I GUESS, FOUR CONSIDERING THE
FAMILY RULES, FOUR SPECIFIC
INSTANCES.
IF IT WERE GENERALLY AUTHORIZED
WITH THEIR--
>> LET ME ASK YOU THIS--
>> YES, SIR.

>> HOW ARE THEY PERFORMED TODAY?
THESE BAKER ACTS?
ARE THEY DONE, JUDGES OR THE
MAGISTRATE IS PRESENT IN THE
COURTROOM?

>> THAT'S TRUE.

AND WE HAVE A, QUITE A BIT OF
HISTORY BECAUSE THIS HAS BEEN
DONE UNILATERALLY DESPITE THE
LANGUAGE OF THE SECOND DISTRICT
COURT OF APPROVAL DISAPPROVING.
AND SO I'D BE DELIGHTED TO GIVE
YOU SOME MORE RECENT HISTORY.
IT'S NOT PART OF THE RECORD, BUT
IF THE COURT PLEASES, I'M HAPPY
TO TELL YOU HOW IT'S GOING.

>> AT THE PRESENT TIME IN MOST
INSTANCES IN OUR STATE--

>> OH, YOU MEAN MOST PLACES?

>> YES, SIR.

>> IT'S UNIQUE IN LEE COUNTY,
I'M SORRY TO SAY.

THERE IS AN ORDER THAT HAS BEEN
GIVEN TO US AS SUPPLEMENTAL
AUTHORITY BY THE CHIEF JUDGE OF
THE 15TH JUDICIAL CIRCUIT FROM
JACKSONVILLE.

>> NO, I THINK-- AGAIN, WHAT
WE'RE TRYING TO, BEFORE THESE
ORDERS OF THIS PAST YEAR OR--

>> YES.

>> WHAT, HOW ARE BAKER ACT
HEARINGS CONTEMPLATED?

HOW IS IT BEING DONE IN THE 20TH
CIRCUIT?

AS A JUDGE MAGISTRATE IN THE
COURTROOM AT THE FACILITY, IS
THAT-- YEAH.

>> OH, I'M SORRY.

>> NOT WHAT'S ABOUT TO HAPPEN.

>> THAT'S A MUCH EASIER QUESTION
THAN I WAS LOOKING FOR.

AND IT WAS DONE AS EVERY
JUDICIAL PROCEEDING HAS BEEN
DONE FOR THE LAST THOUSAND
YEARS.

THE JUDGE APPEARS TO PRESIDE IN
A PLACE CALLED A COURT, AND
PEOPLE COME TO THAT COURT, AND
THE JUDGE DISPENSES JUDGES--

JUSTICE FROM THERE.

>> BUT I THOUGHT IN THE BAKER ACT PROCEEDINGS THAT THE WHOLE IDEA IS THAT THE STATUTE MANDATES UNLESS GOOD CAUSE IS SHOWN THAT THE HEARING TAKE PLACE AT THE FACILITY WHERE THE PATIENT IS--

>> THAT'S CORRECT.

I WAS COMING TO THAT PART. AND IS SO IN THOSE CASES, THE JUDGE WOULD HOLD COURT, WOULD GO TO THE-- HOLD COURT, WOULD GO TO THE FACILITY AND PRESIDE THERE.

>> THAT'S WHAT WAS HAPPENING IN THE 20TH CIRCUIT.

>> YES.

>> WAS IT A JUDGE OR A MAGISTRATE?

BECAUSE IT LOOKS LIKE A LOT OF PLACES ARE USING MAGISTRATES FOR THESE HEARINGS.

>> MS. SMITH WOULD BE IN THE BEST POSITION TO KNOW, BUT THE, YOU KNOW, FROM THE BEGINNING OF STATEHOOD, THE CIRCUIT COURT HAS BEEN THE PLACE WHERE PEOPLE WHO WERE FRAGILE AND INJURED CAME, WIDOWS AND ORPHANS AND ABUSED AND NEGLECTED CHILDREN FROM EVERYWHERE AND INCOMPETENCE UNDER THE GUARDIANSHIP. EVERYBODY WENT TO THE CIRCUIT COURT.

BUT MORE RECENTLY, CIRCUIT JUDGES HAVE NOT BEEN-- HAVE BEEN TOO BUSY TO DO THAT, SO IT'S BEEN DELEGATED TO COUNTY JUDGES AND THEN TO NON-ELECTED MAGISTRATES.

AND SO I THINK IN MOST PLACES, ALTHOUGH I HAVEN'T DONE THE SURVEY, I THINK IN MOST PLACES IMAGINE STRAITS WERE PERSONALLY-- MAGISTRATES WERE PERSONALLY APPEARING IN THE HOSPITALS AND LISTENING AND SEEING THE PATIENTS AND GETTING ALL OF THE NONVERBAL CUES THAT

JUDGES GET FROM FAMILY AND WITNESSES.

BUT NOT SO MUCH IN LEE COUNTY. IN LEE COUNTY NO CIRCUIT JUDGE AND NO COUNTY JUDGE AND NO MAGISTRATE HAS THE TIME ON THEIR DOCKET TO DRIVE THE LESS THAN 10 OR LESS THAN 5 MILES--

>> YOU'RE BEING SARCASTIC, SO LET'S--

>> I'M TRYING NOT TO, BUT YOU'RE RIGHT.

>> SO LET'S GO BACK TO THE ISSUE.

WHAT IF THE ORDER WAS TO SAY-- AND THIS IS, AGAIN, WE'RE HERE WHETHER MANDAMUS WAS APPROPRIATE.

I REALIZE YOU WERE DEALING WITH NOT EVEN ADMINISTRATIVE ORDER--

>> SURE.

>>-- BUT E-MAIL WHICH MAKES IT EVEN MORE DIFFICULT TO CHALLENGE.

BUT WHAT IF THE RULE EVEN THOUGH THE STATUTE SAYS THAT IT SHOULD BE HELD AT THE FACILITY, THAT IF THE JUDGE SAYS LIKE THE 15TH CIRCUIT'S PROPOSED ORDER, YOU ALL CAN COME TO THE COURTHOUSE? I'M NOT GOING, WE'RE NOT GOING TO THE FACILITY, BECAUSE THESE FACILITIES REALLY DON'T LOOK LIKE COURTROOMS.

IS THAT SOMETHING THAT IS FROM THE PUBLIC DEFENDER'S POINT OF VIEW, THE HEALTH, THE MENTAL HEALTH OF PATIENT TO MAKE THESE, HAVE THESE HEARINGS AT THE COURTHOUSE?

BECAUSE I GUESS THERE THE JUDGES WOULD SAY, WELL, IT'S FINE.

YOU CAN ALL COME TO ME.

I'LL HOLD THE HEARING THERE.

>> THAT'S CERTAINLY BEEN THE HOBSON'S CHOICE THAT HAS BEEN SUGGESTED.

THE TROUBLE WITH THAT IS THEY'RE TRANSPORTED AS PRISONERS BY THE SHERIFF IN VANS, SHACKLED,

THEY'RE HELD IN HOLDING CELLS,
AND SO THESE ARE FOLKS WHO
AREN'T CHARGED WITH A CRIME--
>> I THOUGHT THE FOURTH CIRCUIT
ORDER INDICATED THAT THE
FACILITY WAS TO TRANSPORT THE--
>> IT DID.

YES, SIR.

THAT IS SOMETHING THAT'S JUST
BEEN PUT IN THE RECORD.
THE STATUTE, THE BAKER ACT LAW
ITSELF REQUIRES CONTRACTS WITH
THE SHERIFF OR SOME OTHER LAW
ENFORCEMENT AGENCY--

>> LET ME ASK YOU THIS.

IF WE DETERMINE THAT MANDAMUS
WAS NOT APPROPRIATE BUT HAD SOME
CONCERNS AND THROUGH OUR
ADMINISTRATIVE AUTHORITY WERE TO
ACT, DOES THE FOURTH CIRCUIT
ADMINISTRATIVE ORDER THAT HAS
BEEN FILED AS SUPPLEMENTAL
AUTHORITY ADDRESS YOUR CONCERNS?

>> NO, SIR.

>> AND WHY NOT?

>> FIRST OF ALL, IT IS AN ORDER.
SO IN THAT SENSE IT ADDRESSES
MUCH OF OUR CONCERNS.

ONE OF THE ISSUES FOR YOU TO
DECIDE IS WHETHER YOU SHOULD
APPLY MANDAMUS OR CERTIORARI
REVIEW, BECAUSE THE SECOND
DISTRICT COURT OF APPEAL HELD
DIRECTLY THAT THEY HAD NO
JURISDICTION TO CONSIDER
CERTIORARI REVIEW OF THE E-MAIL.

>> I'M ASKING A DIFFERENT
QUESTION.

>> I'M COMING TO THAT, I'M
SORRY.

SO THE PROBLEM WITH THE FOURTH
DISTRICT IS IT CONFLICTS WITH
YOUR RULE 2.530.

SO YOU CERTAINLY COULD DO THAT
IN THE SAME CATEGORY AS
ADMINISTRATOR OF THE BRANCH AND
AMEND THE RULE TO ALLOW THOSE
KINDS OF THINGS--

>> COULD YOU READ THAT ORDER
THOUGH?

BECAUSE I GUESS WE DON'T HAVE THE FOURTH CIRCUIT THERE, AS SAYING IF THE PATIENT OBJECTS AND THE HEARINGS WILL BE HELD WITH THE JUDGE OR MAGISTRATE IN PERSON AT THE FACILITY--

>> I ABSOLUTELY DID READ IT THAT WAY.

>> SO THAT NOT THEN-- WELL, THEN THE JUDGE WILL DECIDE ONCE THERE'S AN ELECTION.

SO, THEREFORE, JUST LIKE YOU COULD WAIVE YOUR CLIENT'S PRESENCE--

>> CORRECT.

>>-- YOU COULD ALLOW, A PUBLIC DEFENDER COULD ALLOW OR AGREE THAT VIDEO APPEARANCE WHICH, AS YOU SAY, IS SORT OF LIKE IF YOU DO IT HERE, WE'RE GOING TO HAVE TELE-- WHAT WOULD YOU SAY? TELEPRESENCE?

>> THAT'S THEIR TERM, NOT MINE.

>> OKAY.

SO IS WE'RE GOING DOWN.

WHERE ELSE ARE WE GOING TO DO THIS, IS WHAT YOUR POINT WOULD BE.

>> YES, EXACTLY.

AND WELL SAID.

BUT ANOTHER FEATURE OF THE JACKSONVILLE ORDER IS THAT IT SEEMS TO ONLY APPLY TO THREE PARTS OF BAKER ACT; APPOINTMENT OF GUARDIAN ADVOCATE, HABEAS CORPUS DECIDED BY A MAGISTRATE AND BAKER OR ACT PLACEMENT HEARINGS WHICH I READ TO BE DIFFERENT THAN BAKER ACT ADJUDICATORY HEARINGS.

BUT IT'S HARD TO TELL THAT THAT'S TRUE, BUT I THINK THAT'S THE WAY IT IS.

ANYWAY, IT'S LIMITED KINDS OF CIRCUMSTANCES, AND IT ALLOWS PATIENTS.

SO IT GOES A LONG WAY TO-- AND IT'S AN ORDER.

IT GOES A LONG WAY TO ELIMINATING OUR CONCERNS THAT WE

HAVE WITH THESE PARTIES--
>> JUST SO WE CAN BE CLEAR ABOUT
WHAT HEARING THIS IS, THERE'S
A-- AND I'M NOT FAMILIAR WITH
THE BAKER, I MEAN, I KNOW WHAT
IT IS, BUT WITH THE INTRICACIES.
YOU'VE GOT THE 72-HOUR PERIOD
WHICH IS JUST DONE, RIGHT?
THERE'S NO JUDICIAL OVERSIGHT
FOR THE 72 HOURS?
>> UNLESS IT'S A JUVENILE, YES,
MA'AM.
>> THEN AT THE CRITICAL TIME
WHERE THE DECISION IS GOING TO
BE MADE WHETHER TO COMMIT A
INDIVIDUAL NOT IN A CRIMINAL
CASE FOR ANOTHER HOW MANY DAYS,
90 PLUS?
>> YES.
>> THAT, THIS IS THE HEARING
WE'RE TALKING ABOUT THAT SOME
CIRCUITS ARE SAYING SHOULD BE
DONE OR CAN BE DONE BY VIDEO.
AND YOUR POINT IS IF THIS
KIND-- THIS IS NOT A-- THIS IS
A SIGNIFICANT HEARING THAT
DEMANDS THE UTMOST OF
PROTECTIONS FOR THE PATIENT.
>> EXACTLY.
A MASSIVE CURTAILMENT OF LIBERTY
AS YOU'VE HELD AND THE U.S.
SUPREME COURT HAS.
YES, SIR.
>> LET ME ASK YOU AS TO WHAT
GOES ON IN THESE HEARINGS.
ARE WITNESSES CALLED TO TESTIFY?
>> TYPICALLY, YES, SIR.
USUALLY HEALTH CARE PROVIDERS.
>> HEALTH CARE-- I MEAN, SO
MAYBE PSYCHOLOGISTS?
>> YES, SIR.
>> PSYCHIATRISTS?
>> YES, SIR.
>> OTHER MEMBERS OF THE HEALTH
CARE SYSTEM?
>> YES.
AND FAMILY MEMBERS.
>> FAMILY MEMBERS?
>> AND THE PATIENT.
>> ALL RIGHT.

AND THE PATIENT IS PERMITTED TO TESTIFY?

>> NOT-- IT'S THE PATIENT'S CALL.

>> IT'S THE PATIENT'S CALL.

>> UH-HUH.

AND OFTEN CHOOSES TO.

>> OKAY.

SO IF-- I'M JUST TRYING TO

PICTURE HOW THIS IS DONE.

IF WE'RE GOING TO HAVE THIS DONE REMOTELY, WHO WOULD BE AWAY, THE JUDGE?

SO EVERYBODY ELSE, THE WITNESSES, THE PERSON WHO'S ABOUT TO BE COMMITTED MAYBE, EXPERTS, THEY WOULD BE IN A DIFFERENT PLACE?

>> YES, SIR.

>> AND THE JUDGE WOULD BE WATCHING ALL THIS BY TELEVISION. I MEAN--

>> YES, SIR.

PRESUMABLY FROM CHAMBERS.

>> OKAY.

ALL RIGHT.

>> BUT ONE OF THE PROBLEMS WITH THAT IS CAMERA ANGLES, AND MOST JUDGES WANT TO GET AS MUCH INFORMATION AS POSSIBLE BEFORE MAKING A DECISION AND GET A LOT, SOME OF THEM ARE PROFICIENT AT GETTING CLUES AND CUES, NONVERBAL CUES--

>> DO YOU HAVE ANY IDEA OF WHY THE JUDGE IN THIS INSTANCE CHOSE TO SEND THE E-MAIL CONCERNING HIM, THE JUDGE, APPEARING BY VIDEO?

>> THAT'S NEVER BEEN REVEALED. IT ISN'T IN THE PLEADINGS, AND IT HASN'T BEEN TALKED ABOUT--

>> IS THIS, NOW, IS THIS A JUDGE WHO ROUTINELY DOES THESE BAKER ACT HEARINGS?

>> ROUTINELY BUT RECENTLY.

>> WHAT DO YOU MEAN?

YOU MEAN THIS WAS A NEW HI-APPOINTED JUDGE?

>> NO, A NEWLY-ASSIGNED JUDGE.

>> NEW ASSIGNMENT FOR THE JUDGE.

>>

[INAUDIBLE]

>> SO BEFORE THAT IN LEE COUNTY,
IT WAS DONE THE WAY IT WAS DONE
IN EVERY OTHER--

>> YES.

>>-- PLACE IN THE STATE, AND
THEN THE NEW JUDGE DECIDES SEND
AN E-MAIL, I'M NOT GOING TO
THESE FACILITIES?

IS IT, AGAIN, JUDGE OR
MAGISTRATE?

>> WELL, THEY SHOW UP ON A
DIFFERENT SCHEDULE.

SOME DAYS IT'S A JUDGE, SOME
DAYS IT'S A MAGISTRATE.

BUT WE ASSUME THE E-MAIL CAME
FROM THE JUDGE.

THE E-MAIL READ SOMETHING LIKE
WE'VE BEEN INFORMED THAT POLYCOM
WILL START, THAT'S A BAD
PARAPHRASE, BUT SOMETHING CLOSE
TO THAT.

>> IS THERE ANYTHING IN THIS
RECORD THAT WOULD INDICATE THERE
WAS EVER ANY PROBLEMS WITH THE
JUDGE OR MAGISTRATE GOING TO THE
FACILITY WHERE THE PATIENT WAS
BEING HELD.

>> NOT ONLY IS THERE NOTHING IN
THE RECORD, THERE'S NOTHING.

>> WHAT IS THE REASON FOR THIS
SUDDEN CHANGE IN--

>> THAT WOULD BE A WONDERFUL
QUESTION TO ADDRESS TO
MS. LEVINE.

I DON'T KNOW.

>> SO, I MEAN, I THINK WE CAN
ALL RECOGNIZE THE POTENTIAL
HARMS OR PROBLEMS FROM NOT
HAVING THE JUDGE IN THE SAME
PLACE AS WITNESSES IN THE
EVIDENTIARY HEARING.
BUT IT SEEMS LIKE THERE WOULD BE
A NUMBER OF HEARINGS OF THIS
TYPE WHERE THEY WEREN'T
PARTICULARLY CONTESTED OR WHERE
IT MIGHT NOT BE A PROBLEM WITH
CURRENT TECHNOLOGY DEPENDING ON

THE STATE OF THE PATIENT.
AND SO THE QUESTION I'M TILL
TRYING TO UNDERSTAND IS IF
THERE'S A PROCEDURE IN PLACE
LIKE THE FOURTH CIRCUIT THAT
ALLOWS FOR THE JUDGE TO BE IN
THE SAME ROOM AS THE WITNESSES
AND THE PATIENT THROUGH AN
OBJECTION PROCESS IN THOSE CASES
WHERE COUNSEL BELIEVES IT'S
APPROPRIATE AND NECESSARY,
WHAT'S THE HARM THAT REMAINS?

>> I DON'T KNOW THAT THERE IS
HARM.

THERE IS ONE HARM IN THAT YOUR
RULE SAYS THAT THEY CAN'T DO IT,
AND THEY'VE DONE IT.

SO IF YOU--

>> IF WE CHANGE THE RULE--

>> SURE.

I THINK IF YOU GOT ALL THE
PARTICIPANTS, THE STAKEHOLDERS
IN A ROOM TOGETHER IN AN HOUR,
THEY COULD WORK OUT ALL OF THE
ISSUES THAT YOU TALKED ABOUT AND
WORK OUT SOME KIND OF SYSTEM IN
GIANT COUNTIES THAT ARE OUTLIERS
THAT HAVE A LOT OF HOSPITALS AND
HAVE MORE SQUARE MILES THAN
SEVERAL STATES, THOSE KINDS OF
THINGS COULD BE ACCOMMODATED.

>> BUT BECAUSE THE DIFFERENCE IN
THIS TYPE-- BECAUSE
TELEPRESENCE.

I MEAN, IF WE'RE TALKING ABOUT
AN EVIDENTIARY HEARING AND THE
JUDGE DECIDES HERE SHE'S GOING
TO STAY IN HIS CHAMBERS OR
SOMETHING.

BUT HERE THE UNIQUE ISSUE IS
THAT THE LEGISLATURE
APPROPRIATELY AND I THINK IN
ACCORDANCE WITH WHAT'S BEST FOR
THE PATIENTS SAID THESE HEARINGS
SHOULD BE AT THE FACILITY WHERE
THE PERSON IS.

SO THAT DOES CREATE ANOTHER
ISSUE.

BUT YOUR POINT IS IT SHOULD BE
DEALT WITH BY RULE OR SOME OTHER

WAY, NOT, WE CANNOT ALLOW A
E-MAIL TO CHANGE A--
>> THAT'S EXACTLY MY POINT.
THIS COURT HAS A LONG HISTORY OF
CONSENSUS BUILDING AND
RULEMAKING BASED ON
STAKEHOLDERS' INTEREST AND
CONCERNS AND EXPERTISE.
AND NONE OF THAT HAPPENED IN
THIS CASE.

UNLESS YOU HAVE OTHER QUESTIONS,
I'LL RESERVE THE REMAINDER OR
AND HOPE YOU WOULD ANSWER THE
CERTIFIED QUESTION YES OR MORE
APPROPRIATELY FIND THAT AN
E-MAIL IS THE FUNCTIONAL
EQUIVALENT OF AN ORDER AND APPLY
CERTIORARI STANDARDS AND
MANDAMUS STANDARDS.

THANK YOU.

>> MAY IT PLEASE THE COURT, MY
NAME IS CAROLINE JOHNSON LEVINE
FROM THE OFFICE OF THE ATTORNEY
GENERAL ARE.

YOUR HONORS, WHAT WE HAVE HERE
AS A SECOND DISTRICT COURT OF
APPEAL APTLY NOTED IS THAT A
WRIT OF CERTIORARI DOES NOT
APPLY-- DOES NOT APPLY HERE,
AND IF ANYTHING SHOULD APPLY
HERE, WE WOULD HAVE A WRIT OF
MANDAMUS.

HOWEVER, LADIES AND GENTLEMEN,
THERE IS NO CLEARLY ESTABLISHED
LEGAL RIGHT TO FORCE A WRIT OF
MANDAMUS.

WHILE THE COURT MAY FIND ISSUE
WITH WHETHER OR NOT A VIDEO
CONFERENCE MAY NOT BE PREFERABLE
OR IT MAY BE, WHAT WE'RE REALLY
HERE TO DECIDE TODAY ON BEHALF
OF THE QUESTION IS WHETHER OR
NOT A WRIT OF MANDAMUS APPLIES
IN THIS CASE.

AND AS YOU CAN APTLY SEE IN THE
STATE OF THE LAW RIGHT NOW,
THERE IS NO INDISPUTABLE LEGAL
RIGHT TO FORCE THE MANDAMUS IN
THIS CASE.

NOW, A MANDAMUS BE TYPICALLY

REQUIRES A CLEAR LEGAL DUTY FOR THE JUDGE TO PERFORM SOME REQUIRED ACT AND THAT MAYBE HE HAS REFUSED TO PERFORM AN ACT. HOWEVER, WE HAVE NO REFUSAL HERE OF A REQUIRED ACT.

>> HOW DO YOU DEAL WITH THE STATUTE 394.467 PAREN FOUR THAT SAYS EXCEPT FOR GOOD CAUSE, THE HEARING MUST BE IN THE COUNTY OR FACILITY WHERE THE PATIENT IS LOCATED?

>> YES, SIR.

THAT MAY REQUIRE THAT THE HEARING BE HELD THERE, SIR. BUT AS YOU SAY NOTICE, THAT DOES NOT REQUIRE THE JUDGE-- THE JUDICIAL OFFICER TO BE PRESENT. AND AS YOU CAN SEE, WE'VE CITED SEVERAL JURISDICTIONS THROUGHOUT THE UNITED STATES THAT ARE CONDUCTING EVEN CRIMINAL HEARINGS BY VIDEO CONFERENCE. SO THE STATUTE DOES NOT REQUIRE IT.

BE I WILL POINT OUT, SIR, THAT THERE ARE THREE LEGAL REMEDIES HERE.

ONCE I HOPE YOU FIND THE WRIT OF MANDAMUS DOES NOT APPLY HERE, AND THAT WOULD BE LEGISLATIVE, AN AMENDMENT TO THE RULES, AND ALSO THERE COULD BE AN APPEAL OF FINAL ORDER, AND WE HAVE THAT PENDING RIGHT NOW IN THE SECOND DISTRICT COURT OF APPEAL WHERE THE BRIEFING HAS BEEN COMPLETED, AND THE CASE IN THAT MATTER IS D.P. V. STATE.

SECOND 2D161627 WHERE THE PUBLIC DEFENDER AT THAT TIME HAS RAISED THE ISSUE THAT MAYBE THEY FELT THE PATIENT DID NOT HAVE ALL THE PROTECTIONS IN PLACE BECAUSE MAYBE THEY HAD AUDIO, TECHNICAL DIFFICULTIES.

SO THAT WOULD BE A FINAL ORDER FOR THIS COURT TO CONSIDER WHETHER OR NOT IT WAS PROPERLY RENDERED.

>> SO LET ME ASK YOU THIS, DOES THE JUDGE REQUIRE-- IS THERE A RULE, A STATUTE, ANYTHING THAT SAYS THAT A JUDGE HAS TO BE IN THE COURTROOM WHEN A TRIAL TAKES PLACE?

>> WELL, DO YOU MEAN A TRIAL IN THIS CASE?

>> YEAH.

TO ADJUDICATE SOMEONE GUILTY OF MISDEMEANOR, A FELONY, WHATEVER? CAN A JUDGE DO THAT REMOTELY?

>> YES, YOUR HONOR.

>> OKAY--

>> THE STATE OF THE LAW AS IT IS.

>> SO ANY JUDGE CAN DECIDE FOR HIM OR HERSELF TO CONDUCT ANY PROCEEDING REMOTELY.

>> WELL, WHETHER OR NOT THERE'S WISDOM IN THAT, THE ISSUE REALLY HERE IS, YOUR HONOR--

>> NO, I'M ASKING YOU-- WHAT DID YOU SAY?

>> I'M SORRY.

>> CAN A JUDGE JUST DECIDE, ANY JUDGE DECIDE TO CONDUCT ANY KIND OF COURT PROCEEDING REMOTELY?

>> I CANNOT DETERMINE THAT.

I CAN SAY IN THIS CASE THERE IS NO WRIT OF MANDAMUS REQUIRING THE JUDGE TO BE PRESENT--

>> WAIT A MINUTE, THAT'S NOT HER QUESTION.

>> I'M SORRY.

>> HER QUESTION WAS CAN A JUDGE SIMPLY SAY I'M NOT GOING TO THE COURTHOUSE, I'M GOING TO DECIDE THIS OVER TV?

IT'S A VERY SIMPLE QUESTION.

>> YES, SIR, I WOULD SAY THE ANSWER IS, YES, IN THE STATE OF THE LAW AS IT IS TODAY.

>> IT CAN.

>> YES, SIR.

>> SO ALL OF OUR CIRCUIT JUDGES COULD SIMPLY SAY WE'RE NOT COMING TO THE COURTHOUSE, WE'RE NOT GOING TO CONDUCT THINKING IN PERSON, WE'RE JUST GOING TO SET

UP TV CAMERAS, AND I'M GOING TO SIT BY MY POOL HAVING AN ICED TEA AND ENJOYING MYSELF, AND I'LL JUST DO EVERYTHING FROM THERE, AND THERE'S NOTHING THAT REQUIRES THAT JUDGE TO BE IN PERSON CONDUCTING JUDICIAL BUSINESS?

>> WELL, SIR, THERE ARE THE TWO RULES CITED IN OUR BRIEF, 2.530 AND 1.451, THAT PROVIDES SOME GUIDANCE IN THESE VARIOUS MATTERS.

HOWEVER, IN THIS PARTICULAR CASE THOSE RULES DO NOT FORCE A WRIT OF MANDAMUS IN THIS MATTER. REGARDING REMOTE--

>> YOU KNOW, THAT'S A REMOTE ANSWER.

YOU KEEP SAYING THE SAME THINGS OVER AND OVER WITHOUT ANSWERING THE QUESTION.

>> I APOLOGIZE.

>> THAT REALLY GIVES NO HELP.

>> OKAY.

>> I'M TRYING TO DETERMINE WHETHER MY COLLEAGUES AND I CAN SIMPLY SIT BY A POOL SOMEPLACE AND ADJUDICATE EVERYTHING THAT GOES ON IN WHAT WE'VE TRADITIONALLY KNOWN AS A COURTROOM WITHOUT APPEARING THERE.

>> YES, SIR.

I WOULD SIMPLY DEFER TO SAY THAT I DON'T THINK THAT I'M IN A POSITION TO DETERMINE WHETHER OR NOT THAT IS ACCEPTABLE.

HOWEVER, I WOULD MENTION THAT THE SUPREME COURT--

>> I'M JUST ASKING YOU WHETHER THAT CAN HAPPEN.

YOU'RE HERE MAKING ARGUMENTS. THAT'S THE ARGUMENT YOU'RE MAKING WITH REGARD TO THIS PROCEEDING THAT YOU DESCRIBED TO THE CHIEF JUSTICE ABOUT TAKING EVIDENCE, HEARING WITNESSES, MAKING ADJUDICATIONS.

SO THAT'S THE ARGUMENT YOU'RE

MAKING, SO I'M JUST ASKING, CAN WE DO THAT IN ALL PROCEEDINGS? BECAUSE WE DON'T, I DON'T KNOW OF A RULE THAT ORDERS A JUDGE TO BE IN A PARTICULAR PLACE. IT'S JUST BEEN ACCEPTED, IT SEEMS TO ME, THAT JUDGES APPEAR IN COURTS TO ADJUDICATE MATTERS. I MEAN, ISN'T THAT THE WAY IT'S BEEN CONDUCTED?

>> YES, SIR.

AND IT MAY HAVE BEEN CONDUCTED, BUT AS WE CITE IN OUR BRIEF AND AS THE TASK FORCE OF THE SUPREME COURT APTLY DEMONSTRATES THROUGH INVESTIGATION IT'S DETERMINED THAT VIDEO CONFERENCING SHOULD BE PROMOTED AND PROVIDED THROUGHOUT THE STATE FOR VARIOUS POLICY REASONS, SIR.

>> WELL, THAT DOESN'T ANSWER-- DOESN'T GO TO THE QUESTION AT ALL AS TO WHETHER WE SHOULD BE THERE.

WE'RE GOING TO SUBSTITUTE THEM, YOU SAY THERE'S ALL THESE GOOD POLICY REASONS, BUT THERE'S NO LEGAL BASIS FOR IT RIGHT NOW.

>> YES, SIR.

>> OKAY.

>> AS TO THESE PETITIONERS IN THIS CASE--

[INAUDIBLE]

RECORD THAT WOULD INDICATE THAT THESE--

[INAUDIBLE]

IN ANY WAY?

>> THERE'S NOTHING, SIR, IN THE RECORD REGARDING WHETHER OR NOT THESE TYPES OF HEARINGS-- I KNOW THE PUBLIC DEFENDER HAS BEEN FILING OBJECTIONS TO THE RECORD.

HOWEVER, I'M NOT SURE I UNDERSTAND.

I HAVEN'T HEARD ANYTHING--

>> THERE WOULD BE SOME HEARINGS THAT MAY HAVE, MAY BE CONTESTED IN SOME WAY WITH WITNESSES THAT ARE CONTRARY TO CERTAIN

PSYCHIATRIC TESTIMONY, FOR
EXAMPLE, THAT SAY, NO, THEY
SHOULDN'T BE BAKER ACTED.
THERE MAY BE SOME THAT ARE NOT
CONTESTED, RIGHT?

>> YES, SIR.

>> WOULD THE-- I'M TRYING TO
DETERMINE AS TO THESE PARTICULAR
PETITIONERS.

IS THERE ANYTHING IN THE RECORD
THAT WOULD INDICATE THAT THEY
INTENDED TO CONTEST IN SOME WAY
THE BAKER ACT HEARING,
PROCEEDING OR TESTIMONY THAT WAS
COMING FORTH?

WERE THESE ADVERSARIAL HEARINGS
WITH WITNESSES THAT WERE GOING
TO CONFLICT WITH EACH OTHER?
OR ARE THEY JUST HEARINGS THAT
ARE GOING TO BE CONDUCTED IN
ORDER TO ESTABLISH AN
APPROPRIATE COMMITMENT?

>> I BELIEVE, SIR, THERE MAY
HAVE BEEN WRITTEN OBJECTIONS
FILED.

>> SORRY?

>> I BELIEVE, SIR, THERE MAY
HAVE BEEN WRITTEN OBJECTIONS
FILED, BUT I'M TRYING TO RECALL
MY MEMORY OF THE RECORD WHEN I
ANSWER THAT.

I APOLOGIZE.

>> YOU KNOW, GENERALLY-- NOT
JUST THESE PETITIONERS, BUT
GENERALLY IN BAKER ACT
PROCEEDINGS THAT ARE HELD
WHEREVER-- ARE THEY GENERALLY
CONTESTED OR ARE THE VAST
MAJORITY UNCONTESTED?
OR DO YOU KNOW?

>> SIR, WHAT I DO KNOW, IT MAY
NOT BE IN THIS RECORD, SIR, IS
THAT THE PATIENT MAY WAIVE THEIR
PRESENCE AND ROUTINELY DOES.
AND I THINK THE AMICUS CAN SPEAK
PERCENT TO THAT-- BETTER TO
THAT AS TO HOW OFTEN THE PATIENT
EVEN ATTENDS THE HEARING OR
OBJECTS TO BEING COMMITTED.

>> LET ME ASK YOU ABOUT THE

CIRCUMSTANCES HERE AND HOW ID
KIND OF FITS IN WITHIN THIS RULE
OF JUDICIAL ADMINISTRATION
2.530.

WOULD YOU AGREE THAT IN THE
CIRCUMSTANCES WE'RE CONSIDERING
THAT TESTIMONY IS TAKEN THROUGH
COMMUNICATION EQUIPMENT?

>> I'M NOT SURE I UNDERSTAND THE
QUESTION.

WOULD I DEGREE THAT THROUGH THE
RULE THAT YOU CAN TAKE TESTIMONY
IN THAT PLEAD YOUR?

>> NO, THAT'S NOT MY QUESTION.
I'M ASKING A FACTUAL QUESTION
ABOUT THE CIRCUMSTANCES HERE AND
WHETHER YOU WOULD CONCEDE THAT
THE CIRCUMSTANCES THAT YOU'RE
DEFENDING AS APPROPRIATE ARE
CIRCUMSTANCES IN WHICH TESTIMONY
IS TAKEN THROUGH COMMUNICATION
EQUIPMENT.

>> YES, I BELIEVE THAT THIS
TESTIMONY IS TAKEN THROUGH VIDEO
CONFERENCING EQUIPMENT, YES,
SIR.

>> OKAY.

WELL, IF THAT'S THE CASE, I'M
HAVING TROUBLE UNDERSTANDING WHY
THE RULE DOESN'T APPLY TO
PREVENT THIS FROM HAPPENING.
BECAUSE IT SEEMS TO ME THAT THE
IMPLICATION IS OVERWHELMING THAT
THE RULE IS SPECIFYING
PARTICULAR CIRCUMSTANCES IN
WHICH TESTIMONY CAN BE TAKEN
THROUGH COMMUNICATION EQUIPMENT
AND THAT NONE OF THOSE
CIRCUMSTANCES OR NONE OF THOSE
CONDITIONS ARE MET IN THIS CASE
IF THERE'S BEEN AN OBJECTION.
WHY AM I MISSING THAT?
NOW, I UNDERSTAND YOU'VE
PRESENTED THAT IN YOUR BRIEF,
BUT WHY WOULD ANYONE READING
THIS TEXT COME TO THE CONCLUSION
THAT THIS IS JUST ALLOWING THIS
IN CERTAIN CIRCUMSTANCES BUT HAS
NO IMPLICATIONS FOR OTHER
CIRCUMSTANCES WHERE IT IS NOT

ALLOWED UNDER THIS RULE?

>> WELL, SIR, I THINK THAT THE REASON WHY, SIR, IS THAT IT MAY SPEAK THE SOME ISSUES THAT IT CHOSE TO ADDRESS IN THE RULE; HOWEVER, DID NOT AT THE TIME THE RULE WAS CREATED ADDRESS THE ISSUE OF BAKER OR ACT VIDEO CONFERENCE HEARING.

AND I KNOW THAT THE 15TH, THE 20TH AND THE 9TH AND POSSIBLY OTHER CIRCUITS ARE FINDING THE BENEFIT OF SWITCHING TO VIDEO CONFERENCING.

AND, AGAIN--

>> WELL, THAT MAY BE A WONDERFUL REASON TO CHANGE THE RULE TO ALLOW IT AND TO HAVE SOMETHING ANALOGOUS TO WHAT WE HAVE FOR FIRST APPEARANCES WITH SUBJECT TO SOME CONDITIONS.

I WON'T GET IN-- THAT'S A POLICY QUESTION THAT REALLY IS SEPARATE FROM THE LEGAL QUESTION THAT UNDERLIES THIS PROCEEDING RIGHT NOW.

AND I'M JUST STRUGGLING TO SEE WHY THIS, WHY IT'S NOT, IN EFFECT, CLEAR FROM THIS RULE THAT THIS IS NOT PERMITTED. NOW, I UNDERSTAND THAT A COUPLE OF THE JUDGES ON THE DISTRICT COURT DISAGREED, AND I RESPECT THEIR VIEW ABOUT THAT. BUT I'M HAVING TROUBLE UNDERSTANDING IT.

HELP ME.

>> I'M SORRY, SIR?

>> I SAID I'M HAVING TROUBLE UNDERSTANDING YOUR POSITION, IF YOU COULD, WANT TO SAY SOME MORE ABOUT THAT.

>> SIR, AS RULE 2.530 AND 1.451 SPEAK TO IT, SIR, IT REALLY ALSO ADDRESSES THE ISSUE OF IT BEING WITHIN THE COURT'S DISCRETION TO DETERMINE WHETHER OR NOT TELECOMMUNICATION EQUIPMENT SHOULD BE USED.

THEREFORE, IF THE COURT CAN FIND

THAT A PATIENT CAN RECEIVE ALL
THEIR DUE PROCESS RIGHTS--
HEARING, NOTICE,
CROSS-EXAMINATION-- AND
PROPERLY BE SERVED IN THAT
MANNER, SIR, THEN THE RULE
COFFERS THAT.
COVERS THAT.

>> I'VE READ IT.

>> MAYBE A MORE COMPLETE ANSWER
WOULD BE THAT THERE'S NOTHING
THAT SPECIFICALLY PROHIBITS IT
AS A GENERAL PRACTICE, BUT IT'S
SUBJECT TO OBJECTION IN EVERY
SINGLE CASE AND THE DUE PROCESS
CONCERNS ARE SUCH THAT IF IT WAS
OBJECTED TO IN EVERY SINGLE
CASE, THERE MIGHT BE A REVERSAL
IN EVERY SINGLE CASE.

>> YES, SIR.

>> SO IT MIGHT BE UNWISE.

>> AND AT THIS TIME, I WILL
DIVIDE MY TIME WITH THE AMICUS
BRIEF AND THANK YOU VERY MUCH
FOR YOUR TIME.

>> MR. CHIEF JUSTICE, MAY IT
PLEASE THE COURT, AMY SINGER
BORMAN ON BEHALF OF THE CHIEF
JUDGE OF THE 15TH JUDICIAL
CIRCUIT.

WE ARE HERE BECAUSE A WRIT OF
MANDAMUS WAS SOUGHT FOR THEIR
USE OF JUDICIAL TECHNOLOGY IN
THE BAKER ACT HEARINGS.

WHILE THE ATTORNEY GENERAL'S
OFFICE FILED A RESPONSE ON
BEHALF OF THE STATE, THE CIRCUIT
DID NOT FILE A RESPONSE.

WE ARE HERE TO GIVE THE
PERSPECTIVE OF THE 15TH JUDICIAL
CIRCUIT AND OTHER CIRCUITS
ACROSS THE STATE.

>> LET ME ASK YOU ABOUT OTHER
CIRCUITS.

I KNOW THAT YOU ARE SOMEBODY
THAT LIKES THINGS TO BE DONE IN
A UNIFORM WAY.

THE 15TH IS CONTEMPLATING A
PILOT PROGRAM--

>> THAT'S CORRECT.

>> NOT AN E-MAIL SENT BY ONE JUDGE SAYING THIS IS HOW WE'RE GOING TO DO IT.
YOU FILED THE SUPPLEMENTAL AUTHORITY, THE 4TH CIRCUIT.
I'M ASSUMING, THEREFORE, YOU LOOKED-- DID YOU GET INFORMATION FROM ALL 20 CIRCUITS TO SEE WHETHER ANY OTHER CIRCUITS ARE, HAVE ADMINISTRATIVE ORDERS, AND I'M PARTICULARLY INTERESTED IN MIAMI-DADE WHICH WOULD BE, YOU KNOW, THE LARGEST CIRCUIT AND PROBABLY GIVEN THE HISTORY, A GREAT NUMBER OF, THAT MAY BE SUBJECT TO BAKER ACTS.
SO DID YOU, HAVE YOU BEEN ABLE TO SURVEY ALL 20 CIRCUITS?
>> WE HAVE DONE A SURVEY, AND THIS IS NOT IN THE RECORD, SO IF I CAN PROCEED WITH GOING OUTSIDE OF WHAT THE RECORD SAID, WE DID DO A SURVEY INFORMAL FROM OUR TRIAL COORDINATOR TO DIFFERENT CIRCUITS.
WE HEARD BACK FROM DIFFERENT CIRCUITS.
THE 1 19TH CIRCUIT DOES DO IT BY VIDEO AND BY GOING TO THE FACILITY--
>> IS THERE AN ORDERS IN THESE CASES?
>> NOT THAT I COULD FIND, AND THAT'S WHY I SUPPLEMENTED THE RECORD BECAUSE I DID SOME RESEARCH, AND ALL I COULD FIND WAS THE 4TH CIRCUIT'S ADMINISTRATIVE ORDER.
>> WELL, WOULDN'T YOU AGREE-- AND YOU'RE NOT HERE TO ARGUE WHETHER MANDAMUS IS PROPER OR NOT.
>> THAT'S CORRECT.
>> WHAT YOU WANT TO DO BEFORE WE JUST SAY THIS WILL NEVER HAPPEN THAT THERE SHOULD BE LIKE WE DO THOUGHTFULLY WITH SO MANY THINGS A WAY THROUGH THE RULE PROCESS OR TO LOOK AT THIS, WHETHER WE

DO A PILOT PROGRAM SO THAT WE JUST DON'T TAKE WHAT IS THE POSITION OF THE ATTORNEY GENERAL THAT JUDICIAL TELEPRESENCE IS SOMETHING THAT WE CONDONE IN THIS STATE.

SO ISN'T THAT, I MEAN, IS THAT WHAT YOU'RE ADVOCATING FOR, SOME TYPE OF A THOUGHTFUL PROCESS BEFORE WE HAUL OFF AND EITHER SAY NEVER OR OF COURSE, JUST DO IT HOWEVER YOU WANT?

>> EXACTLY.

WHILE WE SUPPORT THEIR POSITION, WE WOULD SAY THAT HOWEVER THIS COURT RULES, IT SHOULD BE SENT TO THE APPROPRIATE RULES COMMITTEE SO THERE CAN BE THE VETTING AND DISCUSSION AND INPUT FROM ALL THE PARTIES INVOLVED--

>> YOU STILL HEAD OF THE RULES ADMINISTRATION?

>> NO, YOUR HONOR.

[LAUGHTER]

I'M TURNING OFF IN JUNE.

BUT THERE ARE CIRCUITS THAT DO DO HEARINGS BY VIDEO CONFERENCE, AND I THINK BY DOING A PILOT PROGRAM, WE CAN WORK OUT THE ISSUES TO SEE WHAT WORKS AND THE OBJECTION TO PERIOD, ETC.

>> IT SEEMS LIKE YOU HAD--

LET'S GO BACK TO THIS THOUGH.

THIS IDEA THAT A JUDGE AT AN EVIDENTIARY HEARING THAT WILL DETERMINE SOMEONE'S LIBERTY CAN DO IT UNILATERALLY BY VIDEO CONFERENCE NO MATTER WHAT, WITHOUT ANY SPECIFICATIONS OF WHAT KIND OF EQUIPMENT, YOU KNOW, WHERE THEY ARE, YOU'VE GOT THIS THING WHERE THEY'LL HAVE FLAGS IN BACK OF THEM.

HOW IS THAT ANYTHING THAT COMPORTS WITH THE WAY THE JUDGES HAVE TRADITIONALLY ACTED WHICH IS PHYSICAL PRESENCE, LISTENING TO TESTIMONY THAT IS GIVEN EITHER IN PERSON OR IF AGREED TO AND UNDER THE RULES BY, YOU

KNOW, DEPOSITION OR SOME OTHER MEANS?

I JUST DON'T GET WHAT IS GOING ON THAT ALL OF A SUDDEN THIS VERY CRITICAL HEARING IS BEING LOOKED AT.

IS IT BECAUSE JUDGES ARE HAVING TO GO TO THE FACILITY, IS THAT WHAT'S MAKING IT DIFFERENT?

>> THE DIFFERENCE IS BUDGET.

AND WE'RE ASKED, WE'RE BEING ASKED TO DO MORE WITH LESS.

AND RIGHT NOW IN THE 15TH CIRCUIT, AND JUDGE KOHLBACK CAN TALK MORE ABOUT THIS.

I HAVE TWO MINUTES OF MY TIME TO PROVIDE, THE PRACTICAL IMPLICATIONS OF WHAT'S HAPPENING IN THE 15TH CIRCUIT.

BUT WE HAVE HAD TO RETURN SOME WORK TO THE CIRCUIT JUDGES BECAUSE E DON'T HAVE ENOUGH MAGISTRATES--

>> BUT SHOULDN'T THAT BE THE ISSUE, THAT WE ASK FOR ADDITIONAL MAGISTRATES TO MAKE SURE, WITH THE-- SO WE CAN DO THIS?

>> YES, YOUR HONOR.

>> RATHER THAN TRY TO TAKE THIS ONE SERIOUS TYPE OF HEARING. YOU'D AGREE THAT THIS QUESTION OF WHETHER YOU'RE GOING TO COMMIT SOMEBODY IS ONE OF THE MOST SERIOUS OR CIVIL MATTERS YOU COULD POSSIBLY HAVE.

>> I DO AGREE WITH THAT, BUT I WOULD ADD THAT IN THESE SITUATIONS IT IS THE DOCTOR, FOR THE MOST PART, THAT IS TESTIFYING.

SO FROM ARE A CREDIBILITY STANDPOINT, THERE'S LIMITED CREDIBILITY FINDINGS WHEREAS IN A CRIMINAL CASE YOU MAY HAVE MORE FACTUAL FINDINGS, AND CREDIBILITY WOULD PLAY AT ISSUE. BUT WHAT'S INTERESTING IS THAT HEARING THAT TO RECOMMIT SOMEBODY FOR LONG-TERM CARE IS

DONE BY THE ADMINISTRATIVE LAW JUDGE, AND IN THOSE SITUATIONS THEY ACTUALLY HAVE THE ABILITY TO DO THEM BY VIDEO CONFERENCE. I HAVEN'T FOUND OUT HOW MANY ARE DONE BY VIDEO CONFERENCE. BUT WHAT WE ARE TRYING TO DO IS TRY TO DO MORE WITH LESS AND TO BE ABLE TO ACCOMMODATE THE LITIGANTS THAT THE OTHER MAGISTRATES HAVE TO RESOLVE THEIR CASES.

IF WE HAD FUNDING FOR AN ADDITIONAL MAGISTRATE THAT COULD GO OUT TO THE FACILITIES, YES--

>> DO YOU CONDUCT YOUR VIDEO CONFERENCING IN MATTERS THAT ARE CONTESTED IN SOME WAY?

>> AS FAR AS I KNOW, THE ONLY MATTERS RIGHT NOW THAT WE'RE DOING BY VIDEO CONFERENCING WOULD BE THE FIRST APPEARANCES.

>> I'M TALKING ABOUT THESE BAKER ACT--

>> WE HAVE NOT DONE THAT YET. WE HAVE BEEN MEETING WITH, AND THE JUDGE CAN TALK MORE ABOUT THIS, WITH THE STATE ATTORNEY'S OFFICE, THE PUBLIC DEFENDER'S OFFICE AND THE FACILITIES, AND WE'RE GETTING EVERYBODY'S--

>> YOU DON'T VIDEO CONFERENCE ANY BAKER ACT--

>> NOT YET, YOUR HONOR.

>> YOU JUST WANT TO.

>> EXACTLY.

>> YOU DO AGREE THAT THESE ARE THE MOST FRAGILE AND THE MOST VULNERABLE OF ANY OF OUR CITIZENS.

>> YES.

>> JUST AS WE TRADITIONALLY, MAYBE CORRECTLY OR INCORRECTLY, VIEW JUVENILES.

CORRECT?

>> THAT'S CORRECT.

>> WHY IS SOMEONE WHO IS THAT FRAGILE ANY LESS IMPORTANT THAN THE JUVENILES WHO ARE PROTECTED

AT THEIR DETENTION HEARINGS FROM THIS KIND OF PROCESS?

AFTER IT WAS TRIED AND REJECTED? SO WHY, WHY SHOULDN'T-- AND ONE OF THE MAJOR REASONS IS THAT THOSE JUVENILES WALKED AWAY FROM THOSE HEARINGS NOT KNOWING WHAT IN THE WORLD HAPPENED.

>> YOUR HONOR--

>> AND SO WHY SHOULD WE BE IN FAVOR OF LEANING TOWARD PUSHING MORE PEOPLE TO GLASS AND MIRRORS AND BOXES RATHER THAN THE HUMAN DIGNITY OF A JUDGE DECIDING WHETHER SOMEONE'S GOING TO BE DEPRIVED OF THEIR LIBERTY?

>> THE WAY I WOULD ADDRESS THAT, YOUR HONOR, IS WITH THE JUVENILE PROGRAM THAT WAS DONE PRIOR TO THE TYPE OF TECHNOLOGY THAT IS AVAILABLE TODAY.

BUT WHAT IS VERY INTERESTING IN THE JUVENILE PROGRAM THAT ENDED UP NOT BEING ACCEPTED IS THAT THE JUVENILE WAS NOT PRESENT WITH THEIR COUNSEL.

WHAT WE ARE SUGGESTING, AND IF IT WAS SENT TO THE RULES COMMITTEE, IS THAT THE PATIENT WOULD BE WITH HIS OR HER ATTORNEY, THE WITNESSES WOULD BE THERE.

IT WOULD ONLY BE THE JUDGE THAT IS AWAY.

AND WHAT'S ALSO INTERESTING IS ONE OF THE OTHER REASONS THE JUVENILE RULE WAS REJECTED IS THEY DID NOT HAVE ACCESS TO THE COURT FILE, AND AS WE--

>> NOW, LET ME ASK YOU THIS.

YOU SAID ONE OF THE MAJOR THINGS ABOUT THE JUDGE IS MONEY.

I MEAN, THE LACK OF RESOURCES.

I KNOW IN THIS CASE THE FACILITY, ONE FACILITY WAS FIVE MILES AWAY, ANOTHER FACILITY WAS TEN OR ELEVEN MILES AWAY OR SOMETHING.

I'M TRYING TO THINK OF WHAT KIND OF RESOURCES CAN REALLY BE SAVED

BY THE JUDGE STAYING WHEREVER
THE JUDGE HAPPENS TO BE AND NOT
GOING THAT SHORT DISTANCE TO BE
PERSONALLY THERE WITH THE PERSON
WE'RE ATTEMPTING TO HAVE
COMMITTED?

>> JUSTICE QUINCE, CAN I JUST
CHECK WITH JUSTICE LEWIS TO MAKE
SURE I'VE ANSWERED YOUR QUESTION
SUFFICIENTLY BEFORE I ANSWER
HERS?

>> WELL, I THINK YOU PROVIDED
YOUR ANSWER.

>> OKAY, THANK YOU.

WITH REGARD TO THE 20TH CIRCUIT,
IN THE 15TH CIRCUIT-- AND I
DON'T KNOW ENOUGH ABOUT THE 20TH
CIRCUIT AND THEIR DENIES
DISTANCE, BUT IN OURS WE'RE 40
MILES WIDE BY 60 MILES LONG.
AND THE TRAVELING-- IT'S THE
OVERALL EFFICIENCY.

AND BY HAVING THE HEARINGS BY
JUDICIAL TELEPRESENCE WHERE THE
MAGISTRATE REMAINS AT THE
COURTHOUSE, THEY'RE ABLE TO DO
ADDITIONAL WORK TO HELP OTHER
LITIGANTS AS WELL.

SO IT'S AN OVERALL JEWISH
SAVINGS OF TIME-- JUDICIAL
SAVINGS OF TIME AND EFFICIENCY.

>> JUST SO WE UNDERSTAND,
THIS IS NOT BEING DONE TO
FURTHER THE DUE PROCESS RIGHTS
OF THE INDIVIDUAL, BUT IS
PURELY-- AND, AGAIN, A ISSUE OF
LACK OF RESOURCES AND COMPETING
JUDICIAL INTERESTS.

>> I SEE MY TIME IS UP.

MAY I ANSWER THE QUESTION?

I THINK IT'S MORE THAN JUST
MONEY, BECAUSE BY HAVING THIS
WE'RE ABLE TO WORK MORE
EFFICIENTLY, WE CAN HAVE THE
HEARINGS MORE FREQUENTLY.
AND WHAT'S INTERESTING IS RIGHT
NOW IN THE 15TH CIRCUIT, THE
HEARINGS ARE TOLD TUESDAYS AND
THURSDAYS-- I BELIEVE TUESDAYS
AND THURSDAYS.

BY HAVING THEM BY VIDEO
CONFERENCE, SPEAKING WITH THE
STATE ATTORNEY AND THE PUBLIC
DEFENDER, WE COULD HAVE HEARINGS
MORE FREQUENTLY--

>> WELL, THEY MAY AGREE.

AGAIN, IF NO OBJECTION--

>> EXACTLY.

>> NOW, THIS IS ANOTHER ISSUE.

IF THERE'S AGREEMENT WHETHER
IT'S TO WAIVE A PRESENCE, BUT
WE'RE NOT TALKING ABOUT
SITUATIONS WHERE EVERYONE
AGREES.

YOU WOULD AGREE WITH THAT THIS.

>> CORRECT.

>> OKAY.

>> THANK YOU VERY MUCH.

>> [INAUDIBLE]

OKAY.

TWO MINUTES, MR. COLBACK.

>> JUSTICES, JEFF KOHL BATH FROM
THE 15TH JUDICIAL CIRCUIT.

I'M HERE TO GIVE YOU THE
OVERARCHING--

>> I CAN'T HEAR YOU.

>> I'M HERE TO GIVE YOU THE VIEW
FROM 40,000 FEET, THE PRACTICAL
APPLICATION OF THIS.

WE'RE PROVIDING INFORMATION AS
THE AMICUS.

WE WANT YOU TO KNOW THE
CONSEQUENCES OF WHAT HAPPENS.
WHEN OUR MAGISTRATES GO OUT INTO
THE FIELD, WE'VE GOT SEVEN
DIFFERENT MENTAL HEALTH
FACILITIES.

WE'RE THE LARGEST COUNTY
GEOGRAPHICALLY SPEAKING EAST OF
THE MISSISSIPPI RIVER.

IT TAKES A DAY AND A HALF A WEEK
OUT OF THEIR TIME.

AND WHEN THEY DO THAT, THEY
RESOLVE MAYBE FIVE TO TEN CASES.

WHILE THEY'RE GONE, THE LINE
GETS LONGER FOR THE MOMS WHO
WERE TRYING TO CHASE DOWN
DEADBEAT DADS.

AND SO THIS IS MANAGEMENT OF
RESOURCES.

SO ALTHOUGH WE HAVE HISTORICALLY GONE OUT TO THE COMMUNITIES, WE RECENTLY HAD NATIONAL STATE COURTS COME DOWN AND DO AN EFFICIENCY STUDY WITH THE USE OF OUR MAGISTRATES TO TRY TO GET THE MOST OUT OF THEM, AND WE LEARNED IT'S SOMETHING I KNEW FROM JUST BEING IN THE STREET THAT THEY, THEY ARE OVERWORKED. SO WE TOOK WORK BACK OFF THEIR PLATE, AND THE EFFICIENCY EXPERTS FROM STATE COURT, NATIONAL STATE COURTS SAID THIS IS THE BIGGEST INEFFICIENCY. AND SO IT IS RESOURCES. THE LEGISLATURE FOR THE PAST TEN YEARS HAS ONLY GIVEN US TWO NEW JUDGES, AND THOSE WERE AT THE APPELLATE LEVEL AT THE SECOND. WE'VE NEEDED JUDGES, WE'VE NEEDED MAGISTRATES, IT IS A RESOURCE ISSUE.

>> HAVEN'T YOU INCLUDED THESE IN THE TIME STUDIES?

>> ABSOLUTELY.

>> THAT HAVE BEEN SUBMITTED TO THE STATE COURT ADMINISTRATOR? AND ALL OF THEM ACROSS THE STATE ARE SHOWING THAT CASELOADS AND WORK IS DOWN.

IT'S NOT INCREASING NOW.

>> THE NUMBER OF CASES BEING FILED, TRUE, IN CERTAIN AREAS IS DOWN.

THAT IS TRUE.

THE AMOUNT OF WORK NEEDED TO DO THAT TYPE OF WORK HAS GONE BE UP.

SO THE AMOUNT OF JUDICIAL EFFORT IN--

>> BUT ISN'T THAT WHERE THAT SHOULD GO?

I MEAN, WE-- YOU CAN STAND HERE AND COMPLAIN ABOUT NOT HAVING 14 MAGISTRATES.

BUT IF THAT INFORMATION IS NOT GIVEN TO THE STUDY GROUP THAT'S RESPONSIBLE FOR MAKING THE RECOMMENDATIONS ON NUMBERS OF

JUDICIAL OFFICERS, MAGISTRATES,
JUDGES, THEN THIS IS NOT THE WAY
TO GO ABOUT IT.

>> WELL, THAT'S TRUE, AND WE DID
GIVE THAT INFORMATION THROUGH
THAT TIME--

>> OKAY, THEN I'M-- DO WE
INCLUDE WHAT YOU'RE BRINGING TO
US TODAY?

HAVE WE ALREADY LOOKED AT THAT
WHEN THE CHIEF SIGNED THE
OPINION ON JUDICIAL NEEDS?

>> I THINK THAT WOULD BE A FAIR
THING TO CONSIDER, ABSOLUTELY.
BUT THE PALM BEACH COUNTY, WE
WERE ONE OF THE FEW COUNTY
CIRCUITS THAT WAS CERTIFIED FOR
A NEED FOR ADDITIONAL JUDGES.
WE GOT CERTIFIED FOR AN
ADDITIONAL TWO COUNTY JUDGES
THAT WE'RE DOWN RIGHT NOW.
SO WE'RE STILL UPSIDE DOWN.

>> OKAY.

AND WE HAVE OTHER COUNTIES ARE
CERTIFIED THAT THEY SHOULD BE
DECERTIFIED.

>> I AGREE.

I AGREE WITH THAT.

>> SO YOU MAKE THIS ARGUMENT
THAT MAYBE PALM BEACH--

>> YEAH.

>>-- AND SOMEONE MENTIONED DADE
HAVE SOME UNIQUE NEEDS THAT
MAYBE ARE NOT UNIFORM THROUGHOUT
THE STATE.

>> RIGHT.

I'M NOT A BIG FAN OF THE
STUDY, BUT IT DOES TELL US--

>> WELL, I UNDERSTAND.

>>-- ACCURATE VERSION OF THE
STORY.

BUT, YES, YOUR POINTS AND YOUR
QUESTIONS ARE ALL THE ONES THAT
I SIT AND GRAPPLE WITH ON A
DAILY BASIS, HOW DO I GET THESE
VULNERABLE PEOPLE THE DUE
PROCESS, THE FEEL OF HAVING
THEIR CASE HEARD?

NOT ACTUALLY HEARD, IT'S NOT
GOOD ENOUGH THAT WE ACTUALLY

HEAR IT, WHAT WE NEED TO DO IS
HAVE THE PEOPLE, THE WITNESSES,
THE LAWYERS, THE LITIGANTS,
THESE VULNERABLE PEOPLE FEEL
LIKE THEY HAD THEIR DAY IN
COURT.

AND RIGHT NOW WE'RE DOING SO
MUCH WITH SO LITTLE, AND AS WE
ALL KNOW VERY WELL, THE
LEGISLATURE IS BEING PRETTY
STINGY WITH US, AND IF I HAD A
COUPLE OF EXTRA MAGISTRATES, I
WOULDN'T HAVE HAD TO EXPLORE
THIS.

IT'S REALLY THAT SIMPLE.
THANK YOU SO MUCH FOR YOUR TIME
AND ATTENTION TODAY.

>> MR. YOUNG?

>> THANK YOU, YOUR HONOR.
AND I HOPE I MAY BE ABLE TO HAVE
AN EXTRA MINUTE OR TWO TO
RESPOND, IT'S HARD TO TELL.

>> YOU'VE GOT FOUR AND A HALF
MINUTES.

>> IT'S HARD TO TELL WHICH
CIRCUIT I SHOULD TALK ABOUT
FIRST.

LET ME--

>> I NEW YOU STICK WITH THE
20TH--

>> 20TH.

>>-- WHICH I DON'T KNOW HAS THE
SAME ISSUES AS THE 15TH--

>> WELL, IF THEY DO, WE DON'T
KNOW ABOUT IT BECAUSE NO ONE'S
EVER MENTIONED IT ONE WAY OR THE
OTHER, AND THERE CERTAINLY HAS
BEEN NO JUSTIFICATION IN BUDGET
OR TRAVEL OR ANYTHING ELSE.

AND IF I COULD OFFER
EXTRA-RECORD INFORMATION AS
WELL, I'D TELL YOU STORIES ABOUT
HOW IT'S BEEN WORKING.

AND THOSE STORIES WOULD NOT
BE GOOD STORIES.

>> WELL, YOU'RE TALKING ABOUT
SINCE, BECAUSE WE DIDN'T GRANT
THE STAY.

>> CORRECT.

>> SO THIS IS CONTINUED.

>> CORRECT.
>> WHAT IS--
>> IT'S HAPPENING EVERY DAY, AND THERE ARE APPEALS, AND I THINK MS. JOHNSON LEVINE'S POINT IS WE SHOULD APPEAL ALL THESE CASES.
>> IS THE EQUIPMENT NOT WORKING? WHAT'S THE--
>> IT'S A VARIETY OF THINGS. BUT MOSTLY YOU'RE TALKING ABOUT FOLKS WHO ARE OFTEN OVERSTIMULATED BY THEIR SURROUNDINGS AND ASKING THEM TO ATTEND TO CONVERSATIONS BOTH IN FRONT OF THEM AND ON THE SCREEN. THE MOST RECENT CASE IS A LADY WHO CAME IN FOR HER HEARING AND SAID WHY IS THE TV ON? THAT'S A TERRIBLE DISTRACTION. PLEASE TURN IT OFF. AND WHEN THEY EXPLAINED THAT THE JUDGE WOULD BE APPEARING IN TWO DIMENSIONS PIXELLY, SHE LEFT. AND HER CASE WAS DECIDED WITHOUT HER BEING THERE. AND IT ISN'T UNUSUAL FOR FOLKS IN THIS POSITION TO HAVE DIFFICULTY CONCENTRATING ON TWO THINGS, AND IT ISN'T UNUSUAL TO HAVE FOLKS WHO HAVE BEEN COMMUNICATING WITH TVs AND OTHER APPLIANCES AND ASKING THEM TO ACCEPT THE DECISION OF THIS IMAGE AS AFFECTING THEIR LIFE. BUT THERE ARE EVEN WORSE PROBLEMS. THE CAMERA ANGLE IS SUCH THAT THE JUDGE, WHEN HE COMES IN, YOU CAN TELL WHETHER HE'S WEARING FLIP-FLOPS THAT DAY OR NOT, AND HE LOOKS DOWN BECAUSE THE MONITOR IS DOWN. AND TO LOOK AT THE PEOPLE, HE'D HAVE TO RAISE HIS GAZE SKYWARD WHICH IS AWKWARD. THEN HE COULDN'T SEE THE MONITOR FOR THE PEOPLE HE'S LOOKING AT. SO HE APPEARS TO BE DOING OTHER WORK, AND PEOPLE TALK OVER HIM AND DON'T REALIZE HE'S PART OF

THEIR LIVES.

AND I COULD GO ON AND ON AND ON.
PEOPLE HAVE CALLED IT WIZARD OF
OZ TECHNOLOGY.

ONE OF THE THINGS THAT I WANTED
TO RESPOND TO IN THE 15TH
CIRCUIT IS THEIR SURVEY.

SOME OF THOSE COUNTIES THEY
REPORT AS DOING IT
ELECTRONICALLY, ARE DOING
WITNESSES ELECTRONICALLY WITH
THE JUDGE OR THE DECIDER OR AND
EVERYONE PRESENT AND THE WITNESS
IS REMOTE.

THAT'S QUITE A DIFFERENT THING
THAN THE JUDGE NOT BEING THERE.
AND I THINK MS. LEVINE FINALLY
SAID THAT THERE IS NOTHING THAT
KEEPS, THAT REQUIRES A JUDGE TO
BE PRESENT.

JUDGE CANDY IS ABSOLUTELY
CORRECT, YOUR RULE IS CLEAR.
IT SAYS THE FOUR TIMES WHEN YOU
CAN DO IT WHICH MEANS OTHER
TIMES YOU CANNOT DO IT.

THAT'S WHAT THE ANCIENT RULE OF
INTERPRETATION MEANS.

NOT ONLY THAT, YOUR OPINION
ADOPTING THAT RULE SAYS EVERY
PARTY HAS AN ABSOLUTE RIGHT TO
PREVENT THE TESTIMONY OF
WITNESSES BY ELECTRONIC MEANS.
AND IF THAT ISN'T CLEAR, I DON'T
KNOW WHAT IS.

YOU MAY NOT HAVE TO THINK ANY
FURTHER THAN BEING A PARENT AND
GOING TO, OUT TO DINNER WITH
YOUR CHILDREN, AND YOU TELL THEM
THEY CAN HAVE WATER OR MILK OR
JUICE FOR THEIR MEAL, AND WHEN
YOU COME BACK TO THE TABLE,
THERE'S A DOUBLE CHOCOLATE MILK
SHAKE THERE.

AND IF YOUR CHILDREN SAID TO
YOU, YOU NEVER SAID I COULDN'T
HAVE THE MILK SHAKE AFTER YOU
TOLD THEM THEY COULD HAVE WATER
OR TEA OR MILK, WOULD YOU ACCEPT
THEIR VIEW THAT IT'S
DISCRETIONARY AND THERE'S

NOTHING THAT PREVENTS THEM FROM HAVING THAT?

I THINK NOT.

I THINK THE ANSWER IS CLEARLY IN THE RULE.

THE RULE SAYS NO, AND I THINK A STUDIED AND CAREFUL ANALYSIS OF WHEN THIS CAN BE USED IS A GREAT IDEA.

BUT UNTIL IT IS, UNTIL THERE'S GUIDELINES, UNTIL THE CAMERA ANGLES ARE ADJUSTED AND UNTIL THERE'S A WAY FOR THE VULNERABLE FOLKS TO REALIZE THAT THE SCREEN IS PART OF THEIR LIFE AND THAT THEY'RE TO SPEAK EARNESTLY TO THE SCREEN, THEN IT SHOULDN'T HAPPEN.

WHEN YOU HEAR THAT THESE ARE PRO FORMA CASES AND IT'S ALL ABOUT THE DOCTORS AND CREDIBILITY IS NOT AN ISSUE, THAT'S REALLY NOT THE EXPERIENCE OF PEOPLE WHO HAVE BEEN THERE.

WHAT YOU'D FIND IS THAT THERE'S VERY LITTLE DISPUTE ABOUT THE PATIENT'S MEDICAL CONDITION. AND WHAT IS IN DISPUTE IS THE PATIENT'S ABILITY TO BE COMPLIANT WITH MEDICINE AND THE FAMILY'S COOPERATION WITH THAT ABILITY.

AND SO IT'S REALLY A PLACEMENT ISSUE, AND THAT INVOLVES A LOT OF THINGS INVOLVING CREDIBILITY AND REASONABLENESS AND CUES FROM THE PARENTS AND THE FAMILY, NONE OF WHICH THE JUDGE HAS THE ABILITY TO SEE.

BE SO FOR ALL OF THOSE REASONS, WE'D ASK THAT YOU ORDER THE IMMEDIATE CESSATION OF THE PROCESS FOLLOWED BY OPINION IN THE FULLNESS OF TIME THAT TALKS ABOUT THE AMENDMENT TO THE RULE TO MAKE SOME ACCOMMODATIONS FOR MODERN TECHNOLOGY AND THAT YOU AT LEAST CONSIDER THAT OTHER TECHNOLOGIES MAY CREEP THEIR WAY INTO THE COURT SYSTEM BECAUSE OF

BUDGETARY ISSUES.

NONE OF THOSE BUDGETARY ISSUES
ARE IN THE CASE BEFORE YOU.

CERTAINLY, VIRTUAL REALITY AND
ARTIFICIAL INTELLIGENCE WOULD
NOT SEEM TO BE SOMETHING THAT
YOU'D WANT TO BRING TO THE COURT
SYSTEM, AND BE YET IN SOME
COUNTIES IT MAY BE VERY
ATTRACTIVE.

SO FOR ALL THOSE REASONS, WE'D
ASK THAT YOU ANSWER THE QUESTION
IN THE AFFIRMATIVE AND STOP THE
PROCESS IMMEDIATELY.

THANK YOU.

>> THANK YOU.

THANK YOU FOR YOUR ARGUMENTS.