

>> THE NEXT CASE ON THE DOCKET
WILL BE LOPEZ VERSUS HALL.
>> WHENEVER YOU'RE READY,
COUNSEL.
>> THANK YOU, MR. CHIEF JUSTICE,
FELLOW JUSTICES.
MY NAME IS MIKE YOKAN.
MY CO-COUNSEL CHRISTOPHER
WICKERSHAM.
EARL JOHNSON REPRESENTING THE
RESPONDENT.
WE THANK YOU FOR YOUR TIME
TODAY.
IN PREPARING FOR THIS CASE I
CALLED UP MY OLD BOSS, MY FIRST
BOSS, BILL SHEPARD.
MIKE, I CAN'T HELP YOU.
I LIKE ATTORNEY'S FEES.
THEN HE PROCEEDED TO GIVE ME
SOME COACHING AS HE HAS DONE
THROUGHOUT MY CAREER.
CANDIDLY I DO A LOST CIVIL WORK
AS WELL AS CRIMINAL DEFENSE AND
I LIKE ATTORNEY'S FEES BUT THERE
ARE CERTAIN STATUTES AND CERTAIN
SCHEMES WHERE ATTORNEYS FEES
SHOULD NOT BE ALLOWED OR
DESIGNED TO BE PERMITTED.
ROUGHLY 30% OF ALL DOMESTIC
VIOLENCE FAMILY LAW FILINGS ARE
DOMESTIC VIOLENCE CASES.
WHEN THE LEGISLATURE CREATED THE
PROVISION 71.30 IN 1979 AND THE
ONE WE'RE TRAVELING UNDER,
784.06, REPEAT VIOLENCE, IN '88,
57.105 HAD ALREADY BEEN CREATED
YEARS BEFORE, IN 1978 AND THE
OVERRIDING LEGISLATIVE INTENT OF
THE DOMESTIC VIOLENCE SYSTEM
WHEN YOU'RE TALKING 741 OR 784,
LITTLE ATTORNEY INVOLVEMENT AND
PROMPT RELIEF.
THE AVERAGE DOMESTIC VIOLENCE
CASE STARTS WITH A VICTIM GOING
TO THE STATE ATTORNEY'S OFFICE
OR CLERK'S OFFICE WHO HELPS
PROCESS THE APPLICATION.
THE APPLICATION THEN GOES TO A
JUDGE WHO REVIEWS IT, THE FACIAL
VALIDITY TO SEE IF IT PASSES THE

LEGAL SUFFICIENCY FOR A
TEMPORARY INJUNCTION AND A
TEMPORARY INJUNCTION THEN
ISSUES.

>> LET'S GO TO THE SORT OF THE
CORE OF WHAT WE'RE HERE FOR
WHICH IS IT'S A STATUTORY
CONSTRUCTION CASE.

WE'RE NOT THE LEGISLATURE.
WHETHER IT IS GOOD POLICY OR NOT
GOOD POLICY, IT IS NOT FOR US.
SO DOES THE CRUX OF-- WHERE DID
THE FIRST DISTRICT GO WRONG AND
IS IT, WHETHER THIS IS A CIVIL
PROCEEDING OR ACTION?

>> I THINK WHERE THE FIRST
DISTRICT WENT WRONG, AND WE HAVE
THE FIRST DISTRICT, ARGUABLY THE
FOURTH DISTRICT WITH BERLIN
VERSUS THE SECOND DISTRICT, THE
THIRD DISTRICT AND THE FIFTH
DISTRICT WHICH SAY ATTORNEY'S
FEES NOT PERMITTED UNDER 5.10 A.
WHERE THE FIRST DISTRICT WENT
WRONG, THE EXTENT OF STATUTORY
INTENT AND LEGISLATIVE ANALYSIS,
IT DOESN'T SAY YOU CAN'T DO IT,
SO WE THINK IT'S OKAY.

AND THAT WAS THE SOLE EXPECT--
EXTENT OF THEIR ANALYSIS.

>> SO YOU-- I, FROM A POLICY
POINT OF VIEW I COULD SEE EVERY
REASON WHY THIS WOULD BE A
DISASTER FOR PETITIONERS IN
DOMESTIC VIOLENCE CASES.

HAVE A CHILLING EFFECT, OPPOSITE
WHAT WE WANT AND TIME FRAME WHEN
THESE PETITIONS IN THE 21 DAYS.
DOESN'T SEEM LIKE IT'S A FIT AT
ALL.

BUT WOULD YOU, IN YOUR CASE, DID
YOU MAKE THE ARGUMENT THAT, AND
I THINK YOU DID, THAT THIS
PARTICULAR TYPE OF PETITION IS
IN THE CRIMINAL STATUTES?

IS IT CONSIDERED A CIVIL ACTION?
IS THAT ANY WAY WE SHOULD LOOK
AT THIS STATUTE?

>> I THINK IT IS A WAY WE SHOULD
LOOK AT IT.

THE FACT THAT 784 IS CONTAIN
WITHIN THE CRIMINAL CODE DOES
LEND IT TO EVEN MORE STRICT
CONSTRUCTION.

I THINK THAT IS INDEED A FACTOR
AND IT IS SIGNIFICANT.

>> BUT THEN IT WOULD SEPARATE
PETITIONS FOR DOMESTIC VIOLENCE
INJUNCTIONS WHICH ARE NOT IN THE
CRIMINAL STATUTES BUT WE'RE NOT
HERE ON THAT.

BUT YOUR ARGUMENT BE THE SAME
FOR SOMETHING MUCH MORE
AKIN?

THOSE ARE MANY TIMES ARE
CONSOLIDATED WITH THE FAMILY
CASE AND THEN, YOU KNOW, MAY BE
TRAVELING UNDER CHAPTER 61?

>> MY ARGUMENT WOULD BE AKIN.

I THINK IT IS JUST ONE
ADDITIONAL ARGUMENT.

THE, I THINK SORT OF THE
KEYSTONE HERE WHEN YOU'RE DOING
A STATUTORY ANALYSIS FOR
LEGISLATIVE INTENT, IS LOOKING
THE TWO SYSTEMS.

THAT 57.105, ESPECIALLY WITH THE
ADDITION OF THE 21-DAY SAFE
HARBOR POSITION WHICH IS A
SUBSTANTIVE CHANGE AND
SUBSTANTIVE LAW, VERSUS BOTH 74
IS AND 784 CALL FOR HEARING TO
BE HELD, QUOTE, THE EARLIEST
POSSIBLE TIME AND MANDATE THAT
THE FULL HEARING SHALL BE HELD
WITHIN 15 DAYS UNLESS GOOD CAUSE
EXISTS FOR A CONTINUANCE.

SO YOU HAVE TWO SYSTEMS THAT
JUST AREN'T COMPATIBLE.

>> BUT IF YOU'RE TAKING THE
POSITION IS THIS IS NOT A CIVIL
PROCEEDING, WHAT IS IT?

>> I THINK IT'S A CIVIL
PROCEEDING AND ALSO ARGUABLY A
QUASI-CRIMINAL PROCEEDING.

>> IT'S A CIVIL PROCEEDING.

>> I WOULD SAY IT'S A CIVIL
PROCEEDING BECAUSE A CIVIL
LITIGANT IS INITIATING THE
PROCEEDING, YES.

IT IS SUBJECT TO CRIMINAL ENFORCEMENT MORE SO THAN MOST CRIMINAL ACTIONS.

>> THAT'S NOT UNIQUE TO THIS, IF IT'S A CIVIL PROCEEDING, I'M JUST, I THOUGHT IN YOUR BRIEF YOU ESSENTIALLY ARGUED IT WASN'T A CIVIL PROCEEDING?

>> WELL, WHAT I'M ARGUING IS IT IS A HYBRID PROCEEDING TO STATE IT MORE PRECISELY.

THAT IT'S A QUASI-CENTRAL FLORIDA PROCEEDING.

>> BUT ISN'T IT THE HALLMARK OF A CRIMINAL PROCEEDING THAT THE, THAT IT'S A PROCEEDING OF THE STATE VERSUS SOME ENTITY OR INDIVIDUAL?

>> I WOULD SAY YES BUT IF YOU LOOK--

>> WE DON'T HAVE THAT HERE. WHAT WE HAVE HERE IS A PRIVATE INDIVIDUAL VERSUS ANOTHER PRIVATE INDIVIDUAL, WHICH SEEMS TO BE BY DEFINITION WHAT A CIVIL PROCEEDING IS.

>> YOU DO HAVE, THERE IS A CASE IN REPLY BRIEF, I BELIEVE IT IS SAND HILL THE COURT IN ANOTHER ATTORNEY'S FEE PROVISION LOOKED AT BECAUSE THERE IS NO FINDING OF INTENT TO PRESENT A FALSE OR FICTITIOUS CLAIM IN REGARDS TO IMPAIRING THE TITLE OF LAND THAT IT IS NOT A PENAL STATUTE, AND THUS THERE WAS NO FINDING OF INTENT OR RECKLESS DISREGARD AND ATTORNEY'S FEES WERE PERMITTED IN THAT CASE.

IN 57.105 YOU HAVE A PENAL TYPE PROVISION, YOU DO HAVE A KNOWING OR RECKLESS INTENT TO DISREGARD TO EITHER MISREPRESENT THE LAW OR MISREPRESENT THE FACTS.

SO IT IS INDEED THIS QUASI-CRIMINAL PROVISION WITH A VERY HIGH PENAL TYPE OF STANDARD.

>> WHERE WAS THIS ACTION, WHERE DID YOU FILE THE ACTION?

>> THIS ACTION BEGAN IN CIRCUIT COURT.

>> IN CIRCUIT COURT, CRIMINAL OR CIVIL?

>> THE DOMESTIC VIOLENCE INJUNCTIONS HAVE THEIR OWN DIVISION WITHIN FAMILY LAW DB DIVISIONS.

>> FOR REPEAT VIOLENCE ALSO?

>> WHETHER REPEAT VIOLENCE OR STATE UP 741 IT GOES BEFORE THE SAME DIVISION.

>> I QUITE FRANKLY THOUGHT YOUR BEST ARGUMENT THIS WAS A CRIMINAL PROCEEDING BUT YOU SEEM NOW TO BE SUGGESTING OR SAYING IT'S A CIVIL PROCEEDING?

>> I BELIEVE IT'S A QUASI-CRIMINAL PROCEEDING WITH THE INTENT AND RECKLESS DISREGARD PROVISION.

>> IS THERE A SEPARATE STATUTE THAT PROVIDES A CRIMINAL PENALTY IF YOU VIOLATE AN INJUNCTION SUCH AS THIS ONE?

>> WITHIN, WITHIN 784 THE STATUTE ITSELF, IT PROVIDE FOR CRIMINAL, CRIMINAL SANCTIONS AS AN OPTION IF THERE IS A VIOLATION.

>> WOULD THAT BE UNDER THE CONTEMPT POWER OF THE COURT, OR IS THERE A SEPARATE STATUTE THAT CREATES A CRIME FOR VIOLATES AN INJUNCTION?

>> THERE IS ACTUALLY SEPARATE STATUTORY PROVISION OR WITHIN THE 784 ITSELF, CHAPTER 784 IT'S A CRIMINAL VIOLATION TO VIOLATE A DOMESTIC VIOLENCE INJUNCTION. WHETHER 781784.

>> WHEN A PERSON VIOLATES THE CRIMINAL INJUNCTION, CRIMINAL CHARGES CAN BE PURSUED AGAINST THE PERSON.

>> NO QUESTION.

>> BURDEN OF PROOF WILL OBVIOUSLY BE DIFFERENT IF THERE IS A VIOLATION?

>> YES.

>> BEYOND A REASONABLE DOUBT?
>> I AGREE.
YOU'RE BACK, FULL-ON MISDEMEANOR
CRIMINAL PROSECUTION.
>> BUT WOULDN'T THAT BE A
SEPARATE PROCEEDING?
>> YES.
>> IN THAT SEPARATE PROCEEDING
IT IS GOING TO BE THE STATE
VERSUS THE PRIVATE INDIVIDUAL,
RIGHT?
>> YES.
>> BACK TO 57.105, YOU
UNDERSTAND IT APPLIES TO ANY
CLAIM OR DEFENSE RAISED IN ANY
CIVIL PROCEEDING OR ACTION,
CORRECT?
THERE ARE NO EXCEPTIONS?
>> NO, I WOULD NOT AGREE TO
THAT.
THAT IT HAS BEEN RECOGNIZED AS
NOT APPLYING--
>> WHERE IN 57.105-1 DO YOU SEE
EXCEPTION TO THE PROVISION THAT
ATTORNEYS FEES ARE PROVIDED FOR
QUOTE ANY CLAIM OR DEFENSE MADE
AT ANYTIME DURING A CIVIL
PROCEEDING OR ACTION?
WHERE IS THE EXCEPTION IN THAT
STATUTE?
I'D LIKE YOU TO QUOTE IT FOR ME?
>> THERE IS NOT A EXCEPTION
PER SE IN THE LITERAL STATUTORY
LANGUAGE.
>> OKAY.
>> THERE IS NOT ONE.
>> SO IF WE'RE GOING TO APPLY
THE STATUTE AS IT'S WRITTEN, IF
THE DOMESTIC VIOLENCE INJUNCTION
PROCEED SOMETHING A CIVIL ACTION
YOU REALIZE YOU LOSE, CORRECT?
>> NO, I DO NOT, BECAUSE I THINK
WHEN YOU LOOK AT THINGS OVER THE
YEARS THERE HAVE BEEN AMENDMENTS
FROM THE STATE THE STATUTE WAS
CREATED.
IT WENT FROM ORIGINALLY JUST
APPLYING TO QUOTE A CIVIL
ACTION, TO A CIVIL PROCEEDING
FOR ACTION AND THE LEGISLATURE

SUBSEQUENTLY IN ADDITIONAL STATUTES SPELLED OUT WHEN IT APPLIES OR DOESN'T APPLY. IT APPLIES TO THE DEPARTMENT OF REVENUE.

IT, DOESN'T APPLY IN A LLC DISSOLUTION.

THERE ARE DIFFERENT PROVISION, STATUTORY PROVISIONS OVER TIME.

>> SO IS THERE A STATUTORY EXCEPTION THAT YOU'RE RELYING ON?

>> I'M NOT RELYING ON A STATUTORY EXCEPTION.

I'M RELYING ON THE STATUTORY INTERPRETATION OF THIS PROVISION SHOULD BE FOUND IT DOES NOT APPLY.

>> SO YOU WANT US TO READ IN AN EXCEPTION THAT IS NOT THERE FOR DOMESTIC VIOLENCE PROCEEDINGS EVEN THOUGH THEY ARE CIVIL PROCEEDINGS, IS THAT YOUR ARGUMENT?

>> MY ARGUMENT IS THAT 57.105 THE LEGISLATURE DID NOT INTEND IT BECAUSE IT IS CLEARLY INCOMPATIBLE WITH DOMESTIC VIOLENCE INJUNCTIONS.

IN ESSENCE, SOMEONE GIVES A 21-DAY, A DOMESTIC VIOLENCE INJUNCTION SERVED.

RESPONDENT HIRES AN ATTORNEY, WALKS INTO THE COURT AND SAYS, I'M MOVING FOR A 21-DAY CONTINUANCE BECAUSE I WANT AN ATTORNEY.

>> I RECOGNIZE THIS WON'T BE AVAILABLE BY MOTION IN MOST DOMESTIC VIOLENCE CASES FOR THE SIMPLE REASON THAT MOST OF THEM, YOU ALREADY SAID, DON'T HAVE ATTORNEYS AND EVEN SOME WITH ATTORNEYS IT WON'T BE AVAILABLE BY MOTION BECAUSE YOU CAN'T MEET THE SAFE HARBOR PROVISION JUST BASED ON THE TIME FRAME BUT THAT DOESN'T MEAN THAT THE STATUTE DOESN'T APPLY, DOES IT?

I MEAN A JUDGE COULD GIVE 57.105

FEES.

>> I THINK THE SAFE HARBOR PROVISION AND THE WHOLE STATUTORY SCHEME OF ONE SYSTEM MOVING VERY FAST AND ONE SYSTEM GIVING THE PARTY TIME TO LOOK AT THINGS AND SEE IF THEY SHOULD WITHDRAW A CLAIM OR AN ALLEGATION THAT THEY ARE TWO INCOMPATIBLE SYSTEMS AND THEY WERE NEVER INTENDED TO WORK TOGETHER.

>> IF A JUDGE WERE TO ENTER AN INJUNCTION SAY IN YOUR BASIC CIVIL CASE, SAY SOME KIND OF BUSINESS TRANSACTION PROHIBITING ONE PARTY FROM MOVING MONEY OR MOVING MONEY AROUND OR WHATEVER, IF THERE WAS A VIOLATION OF THAT INJUNCTION, IT WOULD NOT BE ANY CRIMINAL PENALTIES, WOULD THERE?

>> THAT WOULD BE CORRECT.

>> IT WOULD BE CONTEMPT SITUATION BEFORE THE COURT?

>> CORRECT.

>> VIOLATING THE COURT'S ORDER?

>> YES, SIR.

>> THAT'S STRICTLY A CIVIL CASE. IN THIS INSTANCE, IT SEEMS TO ME THAT THERE ARE CRIMINAL, CRIMINAL CONSEQUENCES FOR VIOLATING THIS ACT.

SO YOU USED THE WORD HYBRID. SEEMS TO ME THAT FITS IT PERFECTLY.

DWI IS A HYBRID.

WHILE WE HAVE CRIMINAL CONSEQUENCES FOR VIOLATING A CIVIL ACTION.

SO THIS IS WHERE I AM TROUBLED BY THIS, WHETHER IT FALLS UNDER CRIMINAL OR CIVIL OR IS THERE SOME KIND OF A HYBRID UNDERSTANDING?

>> IT IS ESSENTIALLY A HYBRID ACTION.

IT IS VERY COMMON IN THESE DOMESTIC VIOLENCE INJUNCTION CASES NOW FOR A CONDITION OF THE INJUNCTION TO BE AN ELECTRONIC

ANKLE MONITOR, DON'T COME WITHIN
A MILE OF THE RESPONDENT'S
RESIDENCE.

THERE IS ALL KIND OF MONITORING
AND SUPERVISION THAT GOES ON
WITH BOND IN A CRIMINAL CASE.
THEY'RE VERY INTERRELATED.

IF THERE IS A VIOLATION, IT
IMMEDIATELY RESULTS IN A REPORT
TO THE POLICE AND AN ARREST.

>> WHAT IS, YOU SAID THERE WAS,
IT WAS EXPANDED OVER THE YEARS.
I'M LOOKING, APPARENTLY THERE
IS, COULD APPLY TO
ADMINISTRATIVE PROCEEDINGS,
57.105?

>> YES.

THAT WOULD BE AN EXAMPLE THAT
THE LEGISLATURE SAYING, WE WANT
TO MAKE CLEAR IT APPLIES TO
ADMINISTRATIVE PROCEEDINGS.

>> WHAT ABOUT CHAPTER 61?
IS THERE AN EXEMPTION?

WE ASSUMED 57.15 WOULD NOT APPLY
IN DISSOLUTION OF MARRIAGE
PROCEEDINGS S THERE CASE LAW ON
THAT.

>> THERE IS CASE LAW THAT SAYS
IN THE DOMESTIC VIOLENCE
ATTORNEYS FEES ARE ALLOWED
EITHER PURSUANT TO CHAPTER 61
ITSELF, THE ATTORNEY'S FEE
PROVISION OR 57.105 LITIGANT NOT
FILING THE--

>> SO THERE ARE CASES THAT SAY
THAT FAMILY LAW CASES ARE
SUBJECT TO 57.10 A FEES?

>> YES.

>> SO GOING BACK TO THAT IF IN
THE FAMILY ARENA THEY HAVE A,
OFTEN TIMES AGAIN THE PETITION
FOR DOMESTIC VIOLENCE, IF
THERE'S A PENDING DISSOLUTION OF
MARRIAGE IT, WILL BE TRANSFERRED
TO THE SAME, SAME JUDGE.
SO, THEY CAN CONSIDER FEES IF
SOMETHING WAS DONE WITHOUT ANY
LEGAL BASIS, UNDER, 57.105 WHICH
WOULD REQUIRE THE LAWSUIT TO BE,
THE PETITION TO BE DISMISSED?

FIRST THEY HAVE GOT TO HAVE THAT SAFE HARBOR.

I'M TRYING TO FIGURE OUT WHAT'S THE SAFE HARBOR IN THESE CASES? IT IS DISMISSAL OF THE PETITION? >> THE, NO, I THINK THE, I THINK IN THE AVERAGE DOMESTIC VIOLENCE INJUNCTION CASE IF SOMEONE WALKED INTO THE COURTROOM AND SAID, YOUR HONOR, I WANT TO MOVE FOR A 21-DAY CONTINUANCE OR MOVE FOR CONTINUANCE OF THIS HEARING UNTIL 21 DAYS GETS THERE, THE COURT SAYS THAT IS NOT GOOD CAUSE, WE'RE GOING FORWARD WITH AN INJUNCTION HEARING TODAY.

>> I APPRECIATE WE'LL HAVE TO LOOK WHAT THE LAW WOULD SAY AND THE POLICY, BUT OFTEN TIMES YOU HAVE THESE PETITIONERS, WOMEN, WHO ARE UNREPRESENTED THEMSELVES, MAYBE THEY HAVE A SPOUSE OR A SOMEBODY ELSE WHO HAS GOT MONEY AND POWER AND THEY HAVE THE FEES.

IT SEEMS TO ME THAT THE WORST POSSIBLE THING COULD HAPPEN IN THE INTIMIDATION FACTOR BUT WOULD YOU AGREE MY FEELING ABOUT THAT CAN NOT BE THE BASIS FOR DECIDING THE STRICT STATUTORY CONSTRUCTION QUESTION?

>> I THINK STATUTORY CONSTRUCTION CAN BE LOOKING AT THE OVERALL INTENT OF THE LEGISLATURE AND WHAT THEY ENVISIONED WITH THIS SYSTEM.

>> 57.105 PREDATES THE STATUTE, IS THAT WHAT YOU SAID EARLIER?

>> 57.105 DOES, IT IS 1978. SUBSEQUENTLY OVER THE YEARS AS YOUR HONOR OBSERVED THERE HAVE BEEN IN OTHER BILLS WHERE THE LEGISLATURE SAYS, HEY, WE INTENDED TO APPLY TO ADMINISTRATIVE ACTIONS OR WE INTENDED TO APPLY TO LLC DISSOLUTIONS WHEREAS BEFORE COURTS WEREN'T SURE WHETHER THEY APPLIED OR NOT.

IF I MAY I WOULD LIKE TO RESERVE
BALANCE OF MY TIME FOR REBUTTAL.

>> ONE MORE QUESTION, I'M SORRY,
FLORIDA RULE OF CIVIL PROCEDURE,
SAYS THERE WILL ONE FORM OF
ACTION AS CIVIL ACTION.

WE HAVE PROBATE RULES BUT
THEY'RE CIVIL ACTIONS.

WE HAVE ALL SORTS OF DIFFERENT
CASES BUT THEY'RE ALL CIVIL
ACTIONS.

SO IN FLORIDA I'VE ALWAYS
THOUGHT THAT THE WAY IT WAS
STRUCTURED WE HAVE CRIMINAL AND
WE HAVE CIVIL.

DO YOU HAVE ANY AUTHORITY TO
SUGGEST THAT THERE IS ANYTHING
IN BETWEEN?

I MEAN, THERE IS AUTHORITY THAT
SAYS THERE IS NOTHING IN
BETWEEN.

EVERYTHING IS A CIVIL ACTION,
THAT IS NOT A CRIMINAL.

DO YOU HAVE AUTHORITY TO SUGGEST
THAT THERE IS SOMETHING,
SOMETHING CALLED A HYBRID, THAT
WE RECOGNIZED LEGALLY BEFORE
TODAY IN FLORIDA?

>> THE CLOSEST I HAVE THAT I CAN
PRESENT TO YOU TODAY, I WILL
WORK ON SOME SUPPLEMENTAL
AUTHORITY, THE CLOSEST I HAVE
TODAY IS THE SAMUEL CASE I
REFERENCE WHERE THEY RECOGNIZED
THAT A PROVISION, ATTORNEY FEE
PROVISION WHICH DIDN'T REQUIRE
INTENT OR RECKLESS BEHAVIOR IS
NOT PENAL IN NATURE.

THE FLIP SIDE IS 57.105 BY IT
OWN LANGUAGE IS PENAL IN NATURE.
WHEN YOU INCLUDE, WHEN YOU PAIR
THAT WITH 784 WHICH IS IN THE
CRIMINAL CODE YOU GET THIS
STRANGE MIX OF A HYBRID ACTION.

>> THANK YOU.

>> THANK YOU.

>> CHIEF JUSTICE.

JUSTICES, MAY IT PLEASE THE
COURT.

I'M ATTORNEY EARL JOHNSON, JR.,

ON BEHALF OF SEAN HALL, THE
RESPONDENT BEFORE THIS HONORABLE
COURT.

THE ISSUE IS NOT THE POTENTIAL
EXPANSION OF 57.105.

BUT IT IS THE CONTRACTION OF
THAT STATUTE TO EXCLUDE CHAPTER
784 AND 741 BY THE THIRD AND
FIFTH DISTRICTS ON FLIMSY, AND
INDEED FAULTY CASE PRECEDENT
ANALYSIS AND INDEED THOSE CASES,
MUCH OF THEM, MOST ALL OF THEM
DON'T CONSIDER 57.105 AND
CISNEROS WHICH OUTRIGHT SAYS
THAT 57.105 DOES NOT APPLY TO
THESE INJUNCTION PETITION CASES.

>> I HAVE A QUESTION ABOUT THAT
ACTUALLY.

>> YES, YOUR HONOR.

>> THE CASES UNTIL THE FIRST
DISTRICT'S CASE LAST YEAR, ALL
EITHER ASSUME, WHETHER FAULTY OR
NOT, INCLUDING OUR OWN OPINION
IN VAIN THAT 57.105 DID NOT
APPLY TO REPEAT DOMESTIC
VIOLENCE.

THE FIFTH DISTRICT CASE YOU
REFERRED TO, WHICH, YOU KNOW,
AGAIN NOT EXACTLY A STATUTORY
CONSTRUCTION CASE BUT
SPECIFICALLY SAYING IT DIDN'T
APPLY.

SO YOU HAD 10 YEARS THE
LEGISLATURE COULD FIX THIS
EASILY, RIGHT?

THEY COULD SAY EXPLICITLY WE
LOOKED AT THIS, THIS SEEMS TO BE
A QUINTESSENTIAL POLICY ISSUE.
PLUS, OF COURSE IN THE PROPER
CASE INHERENT AUTHORITY OF THE
COURT TO AWARD ATTORNEY'S FEES.
SO MY QUESTION IS, DO WE LOOK AT
ALL TO THE FACT THAT AFTER THIS
STATUTE, THAT THE DISTRICT
COURTS UNTIL THE FIRST DISTRICT
HAVE ASSUMED THAT IT DIDN'T
APPLY.

AND THERE WAS NEVER ANY, ANYBODY
ON THE OTHER SIDE SAYING IT
SHOULD APPLY, TRYING TO MAKE,

SUCCESSFUL ARGUMENT, THAT, THE LEGISLATURE DIDN'T ACT, WHY SHOULDN'T THIS BE HEFT TO THE LEGISLATURE TO SOLVE WHAT IS AN ILL-FITTING STATUTE IN THE CONTEXT OF DOMESTIC VIOLENCE PETITIONS?

>> THANK YOU VERY MUCH, JUSTICE PARIENTE.

THIS COURT, THIS HONORABLE -- IN BANE TO THE LEGISLATURE AND IN BANE BEFORE IT, THIS HONORABLE COURT HAD 57.105 IN THE CONTEXT OF DOMESTIC VIOLENCE PETITIONS. THIS HONORABLE COURT CONSIDERED ABRAHAM LEWIS AND OTHER CASES, BUT THEN MADE VERY CLEAR THAT IT WOULD NOT WOULD NOT MAKE A DECISION WHETHER 57.105 APPLIED IN DOMESTIC VIOLENCE PETITIONS BECAUSE THAT PARTICULAR ISSUE WAS NOT BEFORE THE COURT AND IN READING THIS HONORABLE COURT'S OPINION IN THAT BANE DECISION IT MADE CLEAR THAT THERE WAS A NOD TO THE STATE LEGISLATURE TO ACT. IT HAS NOT.

AND SO THE NEXT OPPORTUNITY FOR THIS HONORABLE COURT TO CONSIDER THE ISSUE WAS THE DUDLEY DECISION OUT OF THE FIFTH CIRCUIT.

DUDLEY WAS REJECTED ON JURISDICTIONAL GROUND BUT IN DUDLEY, MAYBE THE WORST OFFENDER OF THE FIFTH DISTRICT CASES DUDLEY ACTUALLY RELIES UPON BANE FOR THE PROPOSITION THAT 57.105 FEES ARE NOT AVAILABLE IN DOMESTIC VIOLENCE INJUNCTIONS, EXACTLY THE OPPOSITE OF WHAT BANE DOES.

BANE STAND SILENT.

AND SO, YOUR HONOR, WHAT THE HALL DECISION DID IN THE FIRST DCA FOR THE FIRST TIME WAS TO ACTUALLY CONSIDER THE PLAIN LANGUAGE OF 57.105.

AS RECENTLY AS OF MARCH OF THIS

YEAR THIS HONORABLE COURT,
JUSTICE CANADY WRITING FOR THE
COURT, ITERATED ITS TENETS ON
STATUTORY INTERPRETATING
LANGUAGE.

THE STATUTE IS CLEAR THE COURT
WILL NOT LIKE BEHIND THE
STATUTE'S PLAIN LANGUAGE FOR
LEGISLATIVE INTENT OR RESORT TO
RULES OF STATUTORY CONSTRUCTION
TO ASCERTAIN INTENT.

INSTEAD THE STATUTE'S PLAIN AND
ORDINARY MEANING MUST CONTROL
UNLESS THIS LEADS TO AN
UNREASONABLE RESULT OR A RESULT
CLEARLY CONTRARY TO THE
LEGISLATIVE INTENT.

WELL, OF COURSE, 5.105 APPLIES
TO ALL CIVIL CASES-- 57.105.

THE FACT THAT THE LANGUAGE WAS
CHANGED IN THE '80s FROM
QUOTE, IN ANY CIVIL ACTION TO
THE CURRENT LANGUAGE, ANY CLAIM
OR DEFENSE AT ANYTIME IS SUBJECT
TO A 57.105 MOTION AND ANY
PROCEEDING OR ACTION DOESN'T
CONTRACT OR DIMINISH THE REACH
OF THE STATUTE.

ALL CIVIL ACTIONS APPLY.

>> LET ME ASK YOU ABOUT THE
21-DAY CURE PERIOD PROVISION OF
THE STATUTE.

IN THIS CASE MISS LOPEZ, IF I'M
NOT MISTAKEN, VOLUNTARILY
DISMISSED ACTION, ONCE THE
MOTION FOR 57.105 WAS FILED, IS
THAT RIGHT?

>> YES, YOUR HONOR.

THE MOTION TO DISMISS WAS EIGHT
MONTHS AFTER THE INITIAL
PETITION AND EIGHT MONTHS AFTER
THE CONTINUANCE OF THE EXPARTE
TEMPORARY INJUNCTION.

>> HOW LONG AFTER THE MOTION WAS
FILED?

>> THE MOTION, TWO MOTIONS WERE
FILED, YOUR HONOR.

IN APRIL AND IN MAY OF 2014.
INSTEAD OF AMENDING OR ALTERING
THE OFFENDING TESTIMONY UNDER

OATH BY, UNDER OATH IN HEARING
TRANSCRIPTS AND AFFIDAVITS UNDER
OATH AND THE PETITION UNDER OATH
AND INTERROGATORY RESPONSES,
LOPEZ DOUBLED DOWN ON HIS
ALLEGATIONS.

IT TOOK THE CONTINUANCE OF A
CRIMINAL INVESTIGATION AND
EXTENSIVE THIRD PARTY DISCOVERY
TO CARRIERS, CELLULAR CARRIERS,
INTERNET CARRIERS, WIRE TRANSFER
COMPANIES.

THIS WAS AN INTERNET ALLEGATION,
HARASSMENT, STALKING FROM
JACKSONVILLE, TO LONG BEACH,
CALIFORNIA.

>> IF THE DISMISSAL WAS WAY
AFTER THE 21 DAYS EXPIRED?

>> YOUR HONOR, ABOUT FOUR MONTHS
AFTERWARD.

>> OKAY.

>> AND AT THE, AT THE HEARING ON
THE MOTION FOR FEES AND FOR
CONTEMPT AND TO DISMISS FOR
FRAUD UPON THE COURT, IT WAS AT
THAT HEARING JUDGE COAL DID
SOMETHING REMARKABLE, WHICH WAS
TOLD HER MIRANDA RIGHTS
BECAUSE JUDGE COLE WAS CONCERNED
ANY FURTHER TESTIMONY FROM THE
PETITIONER WOULD RESULT IN
CRIMINAL LIABILITY.

>> IF THE DISMISSAL HAD OCCURRED
WITHIN THE 21 DAY STATUTORY TIME
PERIOD WE WOULDN'T BE HERE.

>> NO, SIR.

>> I'M SORRY.

>> NO, SIR, WE WOULD NOT BE
HERE.

>> WE'RE NOT-- HAS THERE BEEN A
DETERMINATION THAT YOU'RE
ENTITLED TO FEES?

>> NO, YOUR HONOR, AND THAT IS
ONE POINT I WANTED TO MAKE THIS
IS NOT ABOUT WHETHER WE'RE GOING
TO PROVE OUR CASE UNDER 57.105
THAT THE, THAT THE EVIDENCE,
THAT THE ALLEGATIONS THAT THE
DOCUMENTS, THAT WERE PRESENTED
BY PETITIONER DON'T HAVE A

FACTUAL OR LEGAL BASIS.
THAT IS NOT WHAT WE'RE HERE
ABOUT TODAY.
WE'RE HERE ABOUT WHETHER 57.105
APPLIES.
WE WOULD HAVE TO GO BACK BEFORE
THE TRIAL COURT FOR ADDITIONAL
EVIDENTIARY HEARING FOR THAT
DETERMINATION.
>> WHAT IS THE STATUS OF THE
CLAIM THAT THE COURT WOULD HAVE,
IN THIS SITUATION, THE INHERENT
AUTHORITY?
IS THAT SOMETHING THAT THEY SAY
YOU REALLY DIDN'T ARGUE BELOW?
WHAT'S THE STATUS OF THAT?
>> THANK YOU, YOUR HONOR.
IN OUR BRIEF IN SUPPORT OF THE
INITIAL APPEAL BEFORE THE FIRST
DCA WE IDENTIFIED THE RECORD AT
HEARING WHERE I ASKED THE COURT
TO APPLY ITS COMMON LAW INHERENT
AUTHORITY.
AND OF COURSE THIS COURT FROM--
EXCUSE MY.
THIS COURT FROM EXREL, STEINER,
I BELIEVE IN 1954 THROUGH THE
MOCKLY v. SMALLWOOD DECISION
IN 2002 HAS MADE IT VERY CLEAR
INHERENT AUTHORITY IS ALWAYS
THERE.
SO, YOUR HONOR, WE RAISED IT IN
THE APPEAL BEFORE THE FIRST DCA.
THE FIRST DCA TREATED IT WITH A
FOOTNOTE WHICH SAID WE'LL NOT
CONSIDER THIS ISSUE AND THAT WAS
IT.
WE WILL NEVER KNOW WHAT THE
FIRST DCA MEANT BY THAT.
HOWEVER, IT SEEMS TO ME THAT OF
ALL THE ISSUES IN THIS CASE
INHERENT AUTHORITY IS A TRUISM.
AND THAT IS ALWAYS IS PRESENT
AND THAT THE FIRST DCA WAS
CERTAINLY MORE CONCERNED ABOUT
THE APPLICATION OF 57.105 AND
THE CONFLICT BETWEEN THE
DISTRICTS, AND THAT'S WHY IT
CHOSE THAT ISSUE TO WRITE UPON.
IN ADDITION TO THE

CONTRACTION--

>> WOULD YOU ADDRESS, AS HAS BEEN CLARIFIED IT APPEARS THIS MORNING, WITHOUT ANY DOUBT, YOUR OPPOSITION HAS ASSERTED AND WITH QUESTIONING FROM THE COURT, ENHANCED UPON THE IDEA THAT BECAUSE A VIOLATION OF AN ORDER IN THE UNDERLYING PROCEEDINGS WOULD THEN BE SUBJECT TO CRIMINAL ACTION.

THUS, GENERATING A HYBRID SITUATION THAT THIS IS NOT THEREFORE NOT A CIVIL PROCEEDING OR CIVIL ACTION.

WHAT IS YOUR BEST POSITION ON THAT?

>> JUSTICE, LEWIS IN ADDITION TO AN EFFORT TO CONTRACT 57.105, THE OTHER PIECE OF THIS EFFORT BY PETITIONER IS TO EXPAND, MODIFY, CHANGE, FLORIDA JURISPRUDENCE.

FLORIDA JURISPRUDENCE HAS TWO KIND OF CASES, CRIMINAL CASES AND EVERYTHING ELSE IS A CIVIL CASE.

WHETHER IT'S PROBATE, FAMILY, PERSONAL INJURY, IT IS A CIVIL CASE AND THIS COURT RECENTLY HAD THE ISSUE BEFORE IT WITH REGARD TO FLORIDA PROSECUTORIAL DISCRETION, THIS COURT KNOWS INDIVIDUALS DON'T FILE CHARGES, CRIMINAL CHARGES AGAINST INDIVIDUALS.

THAT'S DONE BY THE STATE'S ATTORNEYS IN OUR CIRCUIT. SO A CASE IS CRIMINAL WHEN INFORMATION IS FILED, A PRESENTMENT OF AN INDICTMENT IS MADE.

THAT'S HOW CASES ARE CRIMINAL IN FLORIDA, AND ONLY THOSE LAW ENFORCEMENT OFFICERS, THE STATE'S ATTORNEYS, HAVE THAT AUTHORITY.

THE NOTION THAT, IN FACT, STEP BACK FOR A MOMENT, THERE ARE SOME EXAMPLES OF OTHER

PROCEDURAL CASES IN FLORIDA THAT WOULD NOT FIT WITHIN THE 21-DAY SAFE HARBOR.

FOR EXAMPLE, IF THIS WERE A CASE IN COUNTY COURT ON AN EVICTION ACTION THIS CASE WOULD HAVE HAD A FIVE-DAY RESPONSE TIME, SHORTER THAN THE 15-DAY PERIOD WITHIN 741 AND 784 AND MOST OFTEN THOSE SMALL CLAIM EVICTION ACTIONS ARE DECIDED WITHIN A MONTH'S PERIOD, TWO WEEKS PERIOD.

THE FACT THAT THE 21-DAY SAFE HARBOR DOESN'T COME INTO PLAY MAKES SENSE.

THE FACTS BEFORE YOUR HONOR'S, THIS IS NOT A USUAL CASE OF COURSE.

WE KNOW THAT MOST LITIGANTS IN INJUNCTION PETITION CASES ARE UNREPRESENTED.

THE STATUTE ITSELF, IN 784, 741, SPECIFICALLY SAYS THAT LITIGANTS DON'T NEED TO BE REPRESENTED. PETITIONERS DON'T NEED TO BE REPRESENTED.

THE STATE LEGISLATURE, IN AN UNUSUAL FASHION, DIRECTS THE CLERKS OF COURT IN OUR STATE NOT ONLY TO PROVIDE TRAINING TO DESIGNATED STAFF, TO ASSIST PETITIONERS, IN THE PREPARATION OF THESE INJUNCTION PETITIONS, BUT DIRECTS THE CLERK, AND YOU CAN NOT GET ANY LEGAL HELP FROM A CLERK, NORMALLY, TO ASSIST THESE PETITIONERS IN THE PREPARATION, EVEN THE DICTATION AND THE INPUT ELECTRONICALLY OF A PETITION.

SO--

>> I'M HAVING TROUBLE UNDERSTANDING HOW THAT'S, COULD YOU HELP ME OR HELP JUSTICE LEWIS, JUST RESPOND TO HIS QUESTION.

>> THANK YOU, YOUR HONOR. LET ME STEP BACK FOR A MOMENT. I WAS UNDER THE IMPRESSION THAT

THE COURT WAS INTERESTED IN WHETHER OR NOT THERE WAS A QUASI, A NEW FORM OF LAW IN FLORIDA, A QUASI-FORM OF LAW, A QUASI-CRIMINAL LAW.

AND THE FACT THAT THESE CIVIL PROCEDURES WHICH ARE LAID OUT IN 784 AND 741, YOUR HONOR, THE FACT THAT THEY ARE LAID OUT WITHIN THE CRIMINAL CODE MIGHT, THE ALLEGATIONS MIGHT CERTAINLY GIVE RISE TO A CRIMINAL CASE, DOESN'T MAKE THEM NON-CIVIL. AGAIN, ONLY THE STATE'S ATTORNEY MAKES THE DECISION TO FILE CRIMINAL CHARGES IN FLORIDA.

>> BUT THE THING IS, LIKE, THE GIST OF, WHAT I THINK WE'RE TRYING TO GET AT IS LIKE, TRADITIONALLY, IN FLORIDA, YOU HAVE, YOU KNOW, CIVIL CASES AND CRIMINAL CASES.

IF IT IS NOT CRIMINAL, IT IS TYPICALLY ALL CIVIL.

BUT, SINCE HISTORY HAS BEEN CHANGED A BIT BECAUSE THE LEGISLATURE HAS BEEN CREATING CRIMINAL SANCTIONS FOR VIOLATION OF CIVIL ACTIONS WHICH IS HAPPENING HERE.

TYPICALLY, YES, AN INJUNCTION MIGHT BE CONSIDERED A CIVIL ACTION.

BUT IF YOU HAVE AN INJUNCTION IN A BUSINESS CASE, FOR EXAMPLE, SOMETHING LIKE THAT, THE ONLY, THE ONLY POSSIBLE CONSEQUENCE OF VIOLATING THAT INJUNCTION WOULD BE A CONTEMPT OF COURT BY THE JUDGE WHO ISSUED THE INJUNCTION. HERE YOU HAVE CRIMINAL SANCTIONS FOR A CIVIL ACTION.

SO, IT IS NOT THAT CLEAR WHAT, IT IS EITHER CRIMINAL OR CIVIL ANYMORE.

>> THANK YOU VERY MUCH, YOUR HONOR.

>> YOU KNOW, WHAT I'M TALKING ABOUT?

>> CHIEF JUSTICE, WHAT I WOULD

SAY IS, LOOK AT CHAPTER 61, AND WRITS OF BODILY ATTACHMENT FOR FAILURE TO PAY CHILD SUPPORT. IS THAT A CRIMINAL CASE?

A PARENT WHO IS DELINQUENT IS GOING TO JAIL.

LOOK AT THE FACT THAT THE SANCTIONS WITHIN 741 AND 784, YOUR HONOR IDENTIFIED THEM CRIMINAL IN NATURE THE SANCTIONS.

BUT I WOULD SUGGEST THEY'RE NOT CRIMINAL IN NATURE BECAUSE THEY DON'T PROVIDE FOR INCARCERATION. TO THE EXTENT YOU'RE NOT IN CONTEMPT AFTER COURT AND YOU CAN BE IN CONTEMPT OF COURT IN ANY SETTING.

AND RESULT IN ATTACHMENT, POTENTIALLY, BODILY ATTACHMENT. THERE ARE NO, THERE IS NO ARRAIGNMENT, THERE IS NO PLEA. THERE IS NO SENTENCE.

THE COURTS ARE ALWAYS EVEN, WITHIN THE, I THINK IT IS APPROPRIATE WE STAY WITHIN THE DOMESTIC ARENA.

YES, YOUR HONOR?

>> I JUST WANT, I WAS LOOKING AT DUDLEY.

>> YES, YOUR HONOR.

>> DUDLEY SAYS WITHOUT UNEQUIVOCALLY, 57.105 DOESN'T APPLY.

YOUR CO-COUNSEL OR YOUR OPPOSING COUNSEL SAID THERE HAVE BEEN CASES THAT SAY IN DOMESTIC VIOLENCE INJUNCTIONS AND 61 ACTIONS, THAT 57.105 DOES APPLY.

YOU SEEM TO BE VERY KNOWLEDGEABLE OF THE LAW. WHAT CASES HAVE SAID THAT 57.105 IS APPLICABLE IN DISSOLUTION OF MARRIAGE CASES AND PETITIONS FOR DOMESTIC VIOLENCE ATTACHED TO THEM?

>> JUSTICE PARIENTE, THE CASES THAT I HAVE REVIEWED SAY THE OPPOSITE.

>> OKAY.

I APPRECIATE YOUR CANDOR ON THAT.

HERE IS, YOU WENT THROUGH, VERY KNOWLEDGEABLE WAY THE WHOLE WAY THAT DOMESTIC VIOLENCE INJUNCTIONS WE'RE SO CONCERNED ABOUT THE PROBLEM THAT WE ACTUALLY AUTHORIZED THE CLERKS TO ASSIST AND THAT IS THE LEGISLATURE, AUTHORIZING THE CLERKS TO DO SOMETHING THAT THEY ORDINARILY ARE NOT REQUIRED TO DO, WHICH IS TO ASSIST, SO THAT INDIVIDUAL PETITIONERS CAN PROCEED WITH OUT REPRESENTATION. THE VAST MAJORITY AS YOU SAID OF THESE CASES ARE BROUGHT BY AT THAT TIME LEAST THE PETITIONER, AND MAYBE, TRYING SOME GROUPS MAY BE TRYING TO CHANGE IT, PRO SE.

NOW WE HAVE THAT-- PRO SE. NOW IN VAST MAJORITY OF CASES THE RESPONDENT MAY BE PRO SE. IF PURPOSE OF 57.105 IS TO DISCOURAGE THE FRIVOLOUS, BASELESS ACTIONS BROUGHT BY CIVIL LITIGANTS, AGAINST THE ATTORNEY-- THE ATTORNEY AND THE PARTY AND WE'RE TALKING ABOUT A SCHEME THAT NOT ONLY DOESN'T FIT IN WITH THE SAFE HARBOR, BUT A CLASS OF CASES THAT CONCEIVABLY HAVE VIRTUALLY NO LEGAL REPRESENTATION, THEN WHAT YOU'RE SAYING THE LEGISLATURE INTENDED IN THIS VERY SMALL GROUP OF CASES WHERE YOU ACTUALLY HAVE ATTORNEYS ON BOTH SIDES WHERE MAYBE THEY CAN TALK SOME REASON TO THE PARTIES, THAT THOSE ARE THE CASES WE'RE GOING TO LOOK TO AWARD ATTORNEY'S FEES.

I'M HAVING TROUBLE WITH THAT, WITH WHAT YOU SAID HOW MOST OF THESE CASES GO AND HOW 57.105 EVEN REMOTELY FITS INTO THAT SCHEME.

>> THANK YOU VERY MUCH, JUSTICE.

FIRST 57.105 APPLIES TO ALL
CASES FIRSTLY.

AND SECOND WITH REGARD HOW IT
FITS INTO THE SCHEME AND GIVEN
THE FACT THAT THE LEGISLATIVE
INTENT CLEARLY ENCOURAGES PRO
SE.

THERE IS NO CHILLING EFFECT TO
THE APPLICATION OF 57.105 AS
RELATES TO THE CASES BECAUSE
ONLY A SLIVER OF THESE CASES ARE
GOING TO EVEN APPLY TO 57.105
BEFORE WE GET TO THE SAFE HARBOR
ISSUES.

OKAY.

>> WELL, THANK YOU.

>> THANK YOU VERY MUCH, YOUR
HONOR.

>> MAY IT PLEASE THE COURT.

--

>> IF ONE WERE TO ACCEPT YOUR
PROPOSITION, YOUR PRINCIPLE AT
THAT THIS IS A HYBRID, IT
CHANGES, THE LEOPARD CHANGES ITS
SPOTS IF THERE IS A VIOLATION OF
THE ORDER?

>> YES, SIR.

>> WHY WOULD IT NOT BE THAT THE
BASIC READING OF THE STATUTORY
PROVISION WHICH DOES NOT REQUIRE
INTERPRETATION, ACCORDING TO THE
LAW OF FLORIDA, IF YOU, IF YOU
AGREE THAT THIS IS CLEAR AND
UNAMBIGUOUS.

WHY WOULD THE RESULT NOT BE IS
THAT FEE WAS APPLY, ONLY TO THE
EXTENT THAT THIS REMAINS A CIVIL
PROCEEDING AND IF SOMETHING
HAPPENS THAT CONVERTS IT INTO A
CRIMINAL ACTION, A CRIMINAL
PROCEEDING, THE RIGHT TO FEES
TERMINATES.

>> I THINK WHEN YOU LOOK AT LINE
OF CASES THAT HAVE TO THEN INTO
THIS, THE DCAs FRANKLY HAVE
NOT DONE THE STATUTORY TYPE OF
ANALYSIS THAT IS REQUIRED WHEN
YOU'RE DEALING WITH STRICT
CONSTRUCTION AND ABROGATION OF
THE COMMON LAW.

IT SIMPLY SHOULD NOT APPLY.
THAT ALL PROCEEDING, CIVIL
ACTIONS DON'T NECESSARILY
INCLUDE THIS.

THERE NEEDS TO BE, YOU NEED TO
LOOK AT THE ACT AS WHOLE, LOOK
AT WHAT THE INTENT--

>> WE WOULD HAVE TO ACCEPT THEN,
YOUR PROPOSITION, THE PRINCIPLE
THAT THE FILING OF TYPE OF
ACTION, WHATEVER YOU WANT TO
CALL IT, THE TYPE, IS NOT A
CIVIL PROCEEDING OR ACTION?

>> YOU HAVE TO ACCEPT THAT.
OR YOU COULD SIMPLY ACCEPT THAT
THE LEGISLATURE SIMPLY DID NOT
INTEND 57.105 TO APPLY TO
THESE--

>> WE HAVE TO GET BEYOND THAT IT
IS CLEAR THEN.

WE HAVE TO GET TO THE POINT IT
IS AMBIGUOUS, WE WOULD THEN HAVE
TO INTERPRET SOMETHING.

YOU DO AGREE THAT IF IT'S CLEAR
AND UNAMBIGUOUS, WE'RE NOT IN
THE BUSINESS OF INTERPRETATION,
WE'RE, WE ARE IN THE BUSINESS OF
APPLYING AND SAYING THAT THE
STATUTE APPLIES ACCORDING TO ITS
WORDS?

>> I WOULD AGREE, AND I WOULD
AGREE ALSO SAYING IN THIS CASE
IT IS NOT CLEAR AND THERE NEEDS
TO BE INTERPRETATION.

>> THE STATUTE IS NOT CLEAR?

>> CORRECT.

YES, SIR.

>> LET ME ASK YOU ABOUT THE
MECHANICS IF THERE IS FOUND TO
BE A VIOLATION, AND THEN THERE
IS GOING TO BE, SOMEONE PUT IN
JAIL OR PRISON AS A RESULT OF
THIS.

HOW DO THE MECHANICS OF THAT
WORK?

>> WHEN THAT HAPPENS
HAPPENS IT TRIGGERS A
MISDEMEANOR PROSECUTION.

>> THEN IS THAT, IN THAT CASE OR
THERE IS SEPARATELY-FILED CASE?

>> IT WOULD BE A SEPARATELY-FILED CASE. OF COURSE THE COURT THAT ISSUED THE DOMESTIC VIOLENCE INJUNCTION WOULD RETAIN JURISDICTION TO DO SANCTIONS OF ITS OWN.

>> BUT THE CRIMINAL, ACTUAL CRIMINAL SANCTIONS, AND ANY PRISON TIME, THINGS OF THAT NATURE IS GOING TO BE DONE IN A SEPARATE CASE ENTIRELY?

>> YES.

>> INITIATED BY THE STATE IN SOME WAY?

>> THAT IS CORRECT.

JUSTICE PARIENTE, I BELIEVE THE CISNEROS CASE IS A CASE WHERE THE COURT UPHELD ATTORNEYS FEES PURSUANT TO 61 BUT ALSO SIMULTANEOUSLY SAID 57.105 FEES FOR THE DOMESTIC VIOLENCE INJUNCTION PORTION OF THE WORK WERE NOT ALLOWED TO THE ATTORNEY.

>> WERE NOT?

>> WERE NOT, CORRECT.

>> SO YOU SAID IT OPPOSITE, DID YOU?

I THOUGHT YOU HAD SAID THAT THEY HAD HELD 57.105 WAS ALLOWED IN DOMESTIC VIOLENCE FAMILY CASES? OKAY, I THINK YOUR COUNSEL, AND YOU'RE OUT OF TIME.

SO DON'T WORRY.

WE'LL FIGURE IT OUT.

>> UNDERSTOOD.

I DON'T WANT TO SANDBAG EVERYONE.

I THINK 741 DURING DEPENDENCY OF THAT CASE I BECAME AWARE OF LAST NIGHT.

>> WERE YOU ABOUT TO TALK ABOUT SOMETHING YOU DIDN'T CITE IN YOUR BRIEFS?

>> I WILL WITHDRAW FROM THAT, URN, FILE SUPPLEMENTAL AUTHORITY?

>> YOUR TIME IS UP.

THANK YOU BOTH OF YOU FOR YOUR ARGUMENTS.

