

>> ALL RISE.
HEAR YE, HEAR YE, HEAR YE,
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
ALL WHO HAVE CAUSE TO PLEAD,
DRAW NEAR, GIVE ATTENTION, YOU
SHALL BE HEARD.
GOD SAVE THESE UNITED STATES,
THE GREAT STATE OF FLORIDA, AND
THIS HONORABLE COURT.
LADIES AND GENTLEMEN, THE
SUPREME COURT OF FLORIDA, PLEASE
BE SEATED.
>> GOOD MORNING.
WELCOME TO THE FLORIDA SUPREME
COURT.
THE FIRST CASE ON THE DOCKET
TODAY IS IN REGARDS TO THE
AMENDMENTS TO THE FLORIDA RULES
OF JUVENILE PROCEDURE AND
FLORIDA RULES OF APPELLATE
PROCEDURE.
SO, WHEN EVER YOU'RE READY.
>> MAY IT PLEASE THE COURT.
GOOD MORNING.
THOMASINA MOORE ON BEHALF OF THE
SELECT COMMITTEE.
THIS MORNING GIVEN LIMITED TIME
FRAMES UNLESS THE COURT ADDRESS
A DIFFERENT ISSUE, FIRST ADDRESS
THE APPLICATION OF FRAUD RULE
AND LOOK AT TIME FRAMES FOR THE
PROCESS AND TIME PERMITTING THE
DENIED ISSUE.
MY COLLEAGUE NORSE GRACIOUSLY
AGREED TO ADDRESS THE ISSUES
DURING HER PRESENTATION.
TURNING TO THE QUESTION, THE
RULE RECOMMENDED BY THE
CELEBRITY COMMITTEE SHOULD BE
ADOPTED BY THIS COURT AND
IMPLEMENTS RULE.
8.530.
AS WE KNOW FROM THIS SOUTH'S
PRIOR OPINION IN SB, TO RAISE A
COLLATERAL ATTACK ON ASSISTANCE
OF COUNSEL FIRST HAVE
CONSTITUTIONAL RIGHT TO HAVE
ASSISTANCE OF COUNSEL.
IN FLORIDA THROUGH THE DB

OPINION THE COURT ADOPTED A RULE THAT ALL INDIGENT PARENTS HAVE A CONSTITUTIONAL RIGHT TO HAVE COUNSEL IN A TERMINATION PROCEEDING, FOR THAT GROUP, THEY HAVE A SEPARATE, DISTINCT, CONSTITUTIONAL RIGHT WHICH IS NOT ENJOYED BY OTHER PARTIES TO THE PROCEEDING.

IT IS THAT CONSTITUTIONAL RIGHT WE WOULD ASSERT, AND WHICH THE COMMITTEE ADOPTED, AND, BASED ON THAT RIGHT, THAT ONLY INDIGENT PARENTS WOULD BE INCLUDED WITHIN RULE 8.530'S PROVISIONS.

THAT ADOPTION OF THAT RULE SATISFIES THE DUE PROCESS AND EQUAL PROTECTION REQUIREMENTS FOR THE FLORIDA CONSTITUTION. SATISFIES EQUAL PROTECTION FIRST BECAUSE THEY ARE NOT THE SAME GROUP OF CLASSES.

IT IS NOT A DISTINCTION THAT YOU ARE A DEFENDANT IN A TERMINATION BUT RATHER THAT THIS PARENT HAS A SEPARATE CONSTITUTIONAL RIGHT, IS NOT ENJOYED BY THE OTHER PARTIES TO THE PROCEEDING.

>> DO WE KNOW HOW MANY OF THE TERMINATIONS HAVE PARENTS.

>> I TRIED TO FIND SOME NUMBER, AND ANECDOTALLY, I UNDERSTAND, NOT VERY HELPFUL.

VERY SMALL AMOUNT.

THERE IS NO SET STATISTICS THAT I COULD--

>> MY CONCERN IS, I'M, MY WHOLE ISSUE IS, THIS IS NOT DELAYING THE FINAL ADOPTION OF THE CHILD, VERY, THAT IS SUCH A GREAT CONCERN, AS FAR AS FAIRNESS, THAT PERSON DIDN'T SHOW UP OR DIDN'T ADVISE THE, PARENT OF HEARINGS.

WOULD THERE NOT BE SOME REDRESS OR WOULD IT JUST BE AN APPEAL?

HOW WOULD YOU ADDRESS THAT.

THAT, VERY SIGNIFICANT OMISSION, BECAUSE WE'RE REALLY TALKING ABOUT SOMETHING THAT VERY

SIGNIFICANT TO HAVE ALTERED THE
OUTCOME OF THE TERMINATION
PROCEEDING.

>> YES, YOUR HONOR, I BELIEVE IT
WOULD BE REDRESS OF THIS COURT'S
PRIOR CASE LAW PROVIDES GUIDANCE
IN THE EH OPINION THIS COURT
ALLOWED A LATE APPEAL TO BE
FILED AND SAID IN THAT INSTANCE
THAT GIVEN THE UNIQUE
CIRCUMSTANCES OF THAT CASE,
THEN, WE SOUND POLICY, PROVIDE
REDRESS FOR THIS INDIVIDUAL.
I THINK IN THAT INSTANCE YOU CAN
GO BACK TO DB, WHERE DB SAID ALL
INDIGENT PARENTS GET APPOINTED
COUNSEL FOR THE REMAINDER WE
HAVE PATTON VERSUS KELLER AND
MAKE A DETERMINATION, SHOULD WE
APPOINT COUNSEL FOR THIS
INDIVIDUAL.

THE TRIAL COURT IN PENDENCY
PROCEEDINGS THE PROCESS HAS A
LOT OF PROCEDURAL SAFEGUARDS AND
ADJUDICATORY HEARINGS AND J.R.
REVIEWS.

IF THE COURT FINDS IN THAT
PARTICULAR INSTANCE THE COUNSEL
IS NOT SHOWING UP, NOT--

>> THAT IS MY WHOLE ISSUE.
THEY HAVE THAT, CERTAINLY WHERE
THERE IS COURT APPOINTED,
INDIGENT COUNSEL AND WE HAVE
CONCERNS ABOUT THE QUALITY OF
THOSE, THEY COULD, JUDGES HAVE
THAT OBLIGATION TO DO, WHETHER
IT IS A COURT APPOINTED OR A
PRIVATELY APPOINTED.

>> YES, THAT'S CORRECT.
THAT IS WHY THE MINIMAL
PROCEDURES WHICH, SOME PEOPLE
HAVE DESCRIBED AS MINIMAL WHICH
ARE, EMBODIED WITHIN THE
PROPOSED RULE 8.530 SATISFY DUE
PROCESS REQUIREMENTS.
AND THAT, INSURE THAT THE RISK
OF AN ERRONEOUS RESULT IS
SUFFICIENTLY LOW IN ORDER TO BE
CONSTITUTIONALLY SOUND.

I SEE MY TIME IS UP.

THANK YOU.

>> ASK YOU A QUESTION.

AS A SELECT COMMITTEE, DO YOU BELIEVE YOU HAD SUFFICIENT TIME TO CONSIDER THE DIFFERENT COMMENTS THAT WERE FILED, PARTICULARLY WITH REGARD TO THE TIMING ISSUES AND THOSE KINDS OF THINGS TO THOUGHTFULLY CONSIDER THOSE IN MAKING THE RESPONSE OR WAS THAT A HURRIED UP PROCESS THAT YOU HAVE, YOU, ANY DOUBTS AS TO THE PROCESS THROUGH WHICH YOU REACHED THOSE DECISIONS?

>> NO.

I DON'T THINK THE PROCESS WAS OVERLY HURRIED.

JUDGE ROBBINS WAS VERY GOOD ABOUT FACILITATING INPUT APART FROM SPECIFIC MEETINGS.

WE DID ALL HAVE THE COMMENTS AND OPPORTUNITY TO REVIEW THEM.

I REVIEWED ALL OF THEM.

I KNOW BEFORE WE HAD THE MEETING, WE HAD LENGTHY DISCUSSION ON THE CALL REGARDING SOME CHANGES, PARTICULARLY THE BEING DENIED.

ARE THERE QUESTIONS?

THANK YOU VERY MUCH.

>> GOOD MORNING.

JEFFREY DEEN.

I'M THE REGIONAL CONFLICT COUNSEL FOR THE FIFTH DISTRICT. I WAS ALSO ON THE SELECT COMMITTEE.

I'M APPEARING HERE TODAY AS CO-CHAIR OF THE JUVENILE RULES COMMITTEE.

I ALSO ALONG WITH MY COLLEAGUE WHO IS ALSO ON THE SELECT COMMITTEE.

WROTE THE MINORITY VIEW OR SO-CALLED BROAD VIEW.

I WANT TO GO RIGHT TO THE HEART OF THE MATTER.

THAT WAS JUST BROUGHT UP TO YOU. I THINK THAT, WHAT WAS JUST TOLD TO YOU MISSTATEMENT OF THE LAW TO BE FRANK.

THERE IS CONSTITUTIONAL RIGHT
PROVIDED BY CASE LAW AND U.S.
SUPREME COURT LAW, THAT PARENTS
LOSING THEIR CHILDREN DO HAVE
RIGHT TO AN ATTORNEY.
THAT IS WITHOUT LIMIT.

AND THAT IS WITHOUT
QUALIFICATION.

SO IT DOESN'T MATTER HOW IT IS
THEY GOT THEIR LAWYER.
THAT HAS BEEN THE DEBATE.
IT WAS THE DEBATE IN THE SELECT
COMMITTEE.

WHEN IT WAS RAISED.

THE FACT THAT WE WERE
DISTINGUISHING A GROUP OF
PEOPLE, THAT HAPPENED TO BE ABLE
TO HIRE THEIR LAWYER, NO MATTER
HOW THAT RULE WAS ADVANCED, OR
HOW THEY GOT THEIR LAWYER SEEMED
TO BE A DISTINCTION WITH NO
DIFFERENCE WHATSOEVER.

THE CASE LAW IN OUR CASE, J.B.,
ABSOLUTELY RECOGNIZES AND YOU
QUOTED IT, IT ABSOLUTELY
RECOGNIZES THAT EVERYONE HAS
RIGHT TO A LAWYER WHEN THEIR
FAMILY IS BEING MAYBE DISBANDED
BY THE GOVERNMENT OR THE
CHILDREN MAY BE PARENTAL RIGHTS
MAY BE TERMINATED.

YOU ALL RECOGNIZED THAT
SOVEREIGN RIGHT TO PARENT.
YOU QUOTED TWO U.S. SUPREME
COURT CASES IN YOUR OPINION THAT
ABSOLUTELY RECOGNIZE THAT RIGHT
WITH NO QUALIFICATION
WHATSOEVER.

THAT IS A CONSTITUTIONAL RIGHT.
IT WAS MADE IN THE CASE LAW AND
WHEN YOU QUOTED THOSE CASES, YOU
BROUGHT THOSE QUOTES INTO THE
J.B. OPINION, THEY SAY, WHEN THE
STATE MOVES TO DESTROY WEAK AND
FAMILIAL BONDS IT MUST PROVIDE
PARENTS WITH FUNDAMENTALLY FAIR
PROCEDURE.

THIS IS WHAT I WANT TO GO TO.
WHAT WE LOST SIGHT OF I BELIEVE
A LITTLE BIT IN THE SELECT

COMMITTEE AND WHAT THIS RULE IS ABOUT IS PROVIDING A PROCEDURE. IT IS NOT ABOUT YOU WHO YOU GOT YOUR LAWYER.

IT IS NOT ABOUT IF YOU HAVE A LAWYER.

IT IS ONLY ABOUT WHETHER OR NOT WE HAVE PROVIDED A FAIR, FUNDAMENTALLY FAIR PROCEDURE, SO THAT THE STATE MAY PROCEED IF THEY SO CHOOSE IN TRYING TO TERMINATE PARENTAL RIGHTS.

OUR OBLIGATION, OUR CONSTITUTIONAL OBLIGATION UNDER DUE PROCESS TO PROVIDE A FUNDAMENTALLY FAIR PROCEDURE.

IF WE EXCLUDE PARENTS WHO HAPPENED TO, WHO HAPPENED TO BE ABLE TO HIRE THEIR LAWYER THAT IS NOT THE ONLY CLASS OF LAWYERS WE'RE EXCLUDING.

WE'RE EXCLUDING ALL KINDS OF LAWYERS THAT MAY NOT BE COURT APPOINTED.

WHAT ABOUT THE LAWYER THAT IS LEGAL AID?

WHO TOOK A DIVORCE AND NOW UNDER UNIFIED FAMILY COURT FACED A DEPENDENCY POSITION WHO IS NOW IN COURT.

THAT LAWYER IS NOT COURT APPOINTED.

HE IS REPRESENTING AN INDIGENT PERSON.

WHAT ABOUT IN A CASE, AND I KNOW THIS COURT'S CONCERNED THAT TIME IS OF THE ESSENCE SOMETIMES, BUT WHAT ABOUT THE KIND OF CASE THAT SAYS, THE MOTHER HAS RETAINED A LAWYER.

FATHER HAS A COURT-APPOINTED LAWYER.

THEY'RE IN THERE ON THE EXACT SAME CASE.

THESE LAWYERS CONSULTED.

AT THE END OF THE CASE, ONE HAS RELIEF AND ONE DOESN'T.

WHY WOULD THAT BE OKAY?

MY ARGUMENT TO THE COURT IS, IS THAT.

WE'RE REQUIRED TO MAKE A
DISTINCTION ONLY IF THERE IS A
RATIONAL BASIS TIED WITH
GOVERNMENTAL INTEREST.
ONLY GOVERNMENTAL INTEREST WE
HAD WAS TO PROVIDE A
FUNDAMENTALLY FAIR PROCEDURE.
THIS IS ABOUT PROCEDURE, IT IS
NOT ABOUT HOW YOU GOT YOUR
LAWYER.

THANK YOU FOR--

>> THANK YOU, APPRECIATE IT.

>> GOOD MORNING.

MAY IT PLEASE THE COURSE.

MY NAME IS KRISTIN NORSE.

I'M WITH FELDMAN IN TAMPA AND
HERE AS MY ROLE AS THE CHAIR OF
THE APPELLATE COURT RULES
COMMITTEE.

I WANT TO COVER TWO POINTS.
ONE IS POINT OF CLARIFICATION.
OUR COMMITTEE HAS NOT TAKEN A
FORMAL STANCE ON THE BROAD
VERSUS NARROW THAT'S BEFORE YOU.
WE LEFT THAT TO OUR MORE
EXPERIENCED COLLEAGUES WHO WORK
IN THIS SPECIALIZED AREA OF
PRACTICE TO MAKE THOSE
RECOMMENDATIONS ON BROAD VERSUS
NARROW.

OF COURSE TO DEFER TO THIS
COURT, DEPENDING WHAT IT
ANTICIPATED OR INTENDED IN THE
J.B. DECISION.

THE POINT THAT IS OF INTEREST TO
THE APPELLATE COURT RULES
COMMITTEE IS THE SUGGESTION IN
THE SUPPLEMENTAL COMMENT THAT
THE DEAN DENIED LANGUAGE ADDED
BACK INTO THE RULE TO ALLOW
MOTION FOR INEFFECTIVE
ASSISTANCE COULD BE DEEMED
DENIED IF A JUDGE DID NOT RULE
ON IT WITHIN A CERTAIN PERIOD OF
TIME.

OUR APPELLATE CONCERN IS
RENDERITION UNDER APPELLATE RULES
IS APPLIED TO A SIGNED, WRITTEN
ORDER, THERE IS ONE DATE AT
ISSUE AND A CLEAR PATH OF ENTRY

INTO THE APPELLATE PROCESS WHICH IS PROCESS AS A MATTER OF RIGHT. SO, WE DEFINITELY UNDERSTAND THE COURT'S CONCERN ABOUT MOVING THESE CASES ALONG.

WE ADVOCATE OBVIOUSLY IN FAVOR OF THE MANDATE THAT A JUDGE ENTER AN ORDER WITHIN 50 DAYS.

>> [INAUDIBLE].

NUMBER OF CASES THAT ARE IN FACT APPEALED.

UNDER ISSUE OF INEFFECTIVE ASSISTANCE.

>> INEFFECTIVE ASSISTANCE?

NOT ON TERMINATION CASES.

WE KNOW A NUMBER IN CRIMINAL HAPPEN BUT I'M NOT SURE OF THE ACTUAL NUMBER.

>> WHAT CAN YOU SHARE WITH US FROM OTHER AREAS OF THE LAW WITH REGARD TO PROBLEMS THAT HAVE ARISEN WITH SIMILAR DEAN-DENIED KIND OF CIRCUMSTANCE?

>> RIGHT.

>> AS YOU DESCRIBE WE GENERALLY WORK FROM WRITTEN ORDERS AND AS I WAS LOOKING AT THIS, I WAS WONDERING, THESE ARE THE KINDS OF CASES THAT FALL THROUGH THE CRACKS AND AN ORDER IS NOT ENTERED NOT BECAUSE LACK OF A CONCERN BY A TRIAL JUDGE, BECAUSE I BELIEVE IN OUR TRIAL JUDGES AND I THINK THEY TRY TO DO A GOOD JOB BUT SOMETHING HAS HAPPENED, GONE AWRY, AND IS THERE SOMETHING WE CAN DRAW A COMPARISON WITH, AND LOOK TO, FOR, SOME GUIDANCE IN OTHER AREAS OF THE LAW?

>> I WILL TELL YOU THAT WHEN WE LOOKED AT THIS IN THE CRIMINAL CONTEXT, WHEN WE LOOKED AT REMOVING THE DEEM DENIED FROM THE CRIMINAL CONTEXT WE COULD NOT FIND NO EVIDENCE OF THAT THERE WAS ONGOING EVIDENCE OF JUDGES NOT ENTERING ORDERS ON REHEARING.

WE DIDN'T SEE THAT.

WE RECOGNIZED THAT CONCERN WAS A POSSIBILITY BUT THERE REALLY WASN'T ANY OF OUR MEMBERS OF THE COMMITTEE HAD NOT EXPERIENCED A JUDGE NOT ENTERING ORDERS AS REQUIRED OR NOT IN AN AREA WHERE A SIMPLE PHONE CALL TO THE JUDGE'S OFFICE OR THE ADMINISTRATIVE JUDGE WOULDN'T REMEDY THE PROBLEM.

I THINK OUR CONCERN IS WHEN YOU ALLOW RENDITION TO BE ONE OF MULTIPLE DATES AND ONE DATE CAN BE TRIGGERED BY INACTION THERE'S A CONCERN ABOUT A PARENT OR PARTICULARLY, YOU KNOW, A PARENT WHO MIGHT BE REPRESENTING THEMSELVES PROSE, IF THAT PROSEAY.

WE DON'T HAVE ANOTHER AREA OF THE LAW TO LOOK WHAT YOUR PROBLEM WILL BE.

THIS IS THEORETICAL PROBLEM THAT APPEARS, FROM NOT A PRACTICAL PROBLEM WE LOOK TO OTHER AREAS HOW IT HAS BEEN ADDRESSED?

>> RIGHT.

WE HAVE LIMITED THE DEEM DENIED BECAUSE OF THE CONCERN.

I THINK THERE IS ANOTHER CONCERN, PARTICULARLY RELATED TO THIS RULE THAT IS AN APPELLATE CONCERN.

WHEN WE DEEM DENIED LANGUAGE IN THE PAST IT IS RELATED TO A REHEARING MOTION. THE JUDGE ALREADY RULED ON THE MERITS OF THE ISSUE BEFORE THE COURT.

IN THIS INSTANCE IF YOU ALLOW A MOTION FOR INEFFECTIVE ASSISTANCE TO BE DEEMED DENIED IT GOES UP TO THE APPELLATE COURT WITHOUT ANY INITIAL RULING.

THAT IS A MOTION BEST DECIDED BY THE JUDGE WHO SAT THROUGH THE TRIAL AND WHO CONSIDERED THE ISSUE.

THAT DRASTICALLY CHANGES THE

APPELLATE COURT'S RULE.
NOW INSTEAD OF REVIEWING A
DISCRETIONARY DECISION BY THE
TRIAL JUDGE, THEY'RE CONSIDERING
THAT IN THE FIRST INSTANCE.
SO, AGAIN WE'RE CERTAINLY
UNDERSTANDING OF THE NEED TO
MOVE THESE CASES THROUGH.
THE RULE CONTINUES TO MANDATE A
RULING WITHIN 50 DAYS.
WE BELIEVE THERE IS MECHANISMS
IN PLACE TO INSURE THAT
CONTINUES, BUT WE WOULD, WE
BELIEVE THE BEST BALANCE OF THE
INTERESTS INVOLVED WOULD BE TO
NOT REINCLUDE THE DEEM DENIED
LANGUAGE THAT BACK INTO THIS
RULE.

IF THERE ARE NO OTHER QUESTIONS?
THANK YOU, YOUR HONORS.

>> THANK YOU.

OKAY.

>> GOOD MORNING, MR. CHIEF
JUSTICE AND MAY IT PLEASE THE
COURT.

MY NAME IS WHITNEY UNTIED FROM
AKERMAN IN MIAMI.

I'M HERE TODAY ON BEHALF OF
FLORIDA'S CHILDREN FIRST AND
PUBLIC SECTION LAW OF THE
FLORIDA BAR.

I WILL SPEND MY TIME DISCUSSING
WHY THIS COURT SHOULD ADOPT THE
BROAD VIEW OF THE BROAD RULES,
HOLDING IN J.B. SUPPORTS
APPLICATION OF THE BROAD VIEW
AND FAIRNESS REQUIRES ITS
ADOPTION.

WE ALL KNOW THE SPECIFIC FAXES
AND CIRCUMSTANCES IN J.B.
CENTERED AROUND AN INDIGENT
PARENT WITH COURT APPOINTED
COUNSEL.

THE COURT DISCUSSED
CIRCUMSTANCES AT GREAT LENGTH
THROUGHOUT THE OPINION BUT WHEN
IT CAME DOWN TO THE ACTUAL QUELL
THAT WAS PRESENTED AND THIS
COURT'S HOLDING IN ANSWERING
THAT QUESTION, NO DISTINCTION

WAS DRAWN.

IN ADDITION, THE FAIRNESS, FUNDAMENTAL PRINCIPLES OF EQUAL JUSTICE REQUIRE ADOPTION OF THE BROAD VIEW.

BOTH BECAUSE THERE IS SIMPLY NO SUBSTITUTE TO DUE PROCESS CONSTITUTIONAL PROTECTIONS AND BECAUSE WHEN WE PRESERVE AND PROTECT THE RIGHTS OF THE PARENTS, WE ULTIMATELY SERVE THE LONG-TERM BEST INTERESTS OF THE CHILDREN.

TO THE FIRST POINT, THERE IS NO SUBSTITUTE TO DUE PROCESS.

ONCE DUE PROCESS IS INVOKED, AND THIS COURT HAS HELD TO DATE THAT HAPPENS UPON THE FILING OF THE TPR PETITION, THERE'S NO OTHER SUBSTITUTE FOR ALLOWING AND PROVIDING THE PARENT TO BE REPRESENTED NOT JUST BY COUNSEL BUT BY EFFECTIVE ASSISTANCE OF COUNSEL.

SO CERTAINLY THE PROVISION OF SERVICES TO PARENTS IN OFFERING THEM COUNSELING AND TREATMENT PROVIDES STRUGGLING PARENTS WITH SERVICES, AND OBVIOUSLY THE WILLINGNESS OF THE COURT OR ANOTHER PARTY TO STEP IN AND ASSIST WHEN THEY SEE APPEARANCE LAWYER IS FLOUNDERING IS ADMIRABLE BUT NEITHER OF THOSE CIRCUMSTANCES RISES TO THE PROTECTIVE LEVEL OF DUE PROCESS.

AND THEN ONCE THAT DUE PROCESS RIGHT IS INVOKED, ONCE THE TPR TRIAL BEGINS IT IS NO LONGER THE COURT'S OR ANYONE ELSE'S JOB TO STEP IN TO ASSIST A LITIGANT OR A PARTICULAR LAWYER IN A CASE. THE JUDGE BECOMES THE NEUTRAL ARBITER OF FACT AND OF LAW.

>> CAN I-- YOU MADE A VERY ELOQUENT ARGUMENT BUT YOU SAID ONE THING REPRESENTING FLORIDA'S CHILDREN FIRST, YOU SAID ULTIMATELY THE PARENTS INTERESTS ARE ULTIMATELY IN THE BEST

INTERESTS OF THE CHILD.
HAVING LOOKED AT THE AREA OF
THESE CASES, OFTEN TIMES THESE
ARE PARENTS THAT HAVE NOT ACTED
IN THE BEST INTERESTS OF THE
CHILD AND THE INTERESTS OF THE
COURT IS TO INSURE THAT
EVERYBODY'S RIGHTS ARE
PROTECTED, BUT WHERE DOES THE
CHILD FIT INTO THIS?
THE CHILD AT THIS POINT DOES NOT
HAVE CONSTITUTIONAL RIGHT TO
ATTORNEY.

WE HAVE THE GUARDIAN AD LITEM
PROGRAM WHO WILL BE SPEAKING BUT
HOW DO WE BALANCE, I DON'T KNOW
IT MATTERS FOR THE BROADER OR
NARROW, I TEND TO THINK YOU'RE
CORRECT, WE OUGHT TO APPLY IT
ACROSS THE BOARD TO PREVENT ANY
CONCERNS BUT, HOW DO WE BALANCE
THAT, THE CHILD'S INTERESTS?

>> THE CHILD'S INTERESTS ARE
BALANCED IN THIS RULE BY
AUTHORIZING AND ALLOWING PARENTS
WHO HAVE BEEN REPRESENTED
INEFFECTIVELY AT THIS TPR
PROCEEDING TO HAVE A WAY TO
BRING IT BACK, TO TRY TO BRING
THEIR WHOLE FAMILY TOGETHER.

AS THE COURT NOTED IN J.B., IT
IS CERTAINLY A MISCARRIAGE OF
JUSTICE FOR THE CHILD, IF HER
RELATIONSHIP WITH HER PARENT IS
PERMANENTLY SEVERED DUE
SOLELY TO THE PARENTS'S LAWYERS
INEFFECTIVE REPRESENTATION.
IT CAN NOT BE IN THE BEST
INTERESTS OF THE CHILD IF THE
ULTIMATE TPR DECISION IS MADE
DURING AN UNJUST PROCEEDING WHEN
A PARENT' LAWYER WAS NOT
EFFECTIVELY REPRESENTING
THEIR CLIENT.

IN THAT PARTICULAR WAY THE
CHILD'S BEST INTERESTS ARE
INTERTWINED WITH THE RIGHT OF
THE PARENT TO DUE PROCESS, THE
RIGHT OF THE PARENT TO EFFECTIVE
ASSISTANCE OF COUNSEL AND THE

RIGHT OF THE PARENT TO BRING FORWARD THAT CLAIM IF THROUGH ONLY THE INEFFECTIVE REPRESENTATION OF THEIR LAWYER, THE TERMINATION OF PARENTAL RIGHT PETITION IS GRANTED. SO AS YOU KNOW, THIS IS NOT THE FIRST TIME THAT THIS COURT HAS ADDRESSED THIS PARTICULAR QUESTION OF THE BROAD VIEW VERSUS THE NARROW VIEW. BACK IN THE 1980s WE DEALT WITH THIS QUESTION WITHIN THE CONTEXT OF THE CRIMINAL JUSTICE SYSTEM AND THE COURT ISSUED A STINGING REBUKE TO KNOWS ANNOUNCED NARROW VIEW IN STATE v. MEYER, HOLDING ONE TO STANDARD OF PRACTICE DIFFERENT THAN FROM THE RIGHTS OF OTHER VIOLATES THE BASICS OF JUSTICE WHICH OUR LEGAL SYSTEM IS FOUNDED.

THE COURT SHOULD ADOPT THE BROAD VIEW BECAUSE OUR GOAL IN TPR PROCEEDINGS IS TO PROTECT THE BEST INTERESTS OF EVERY CHILD WHO COMES BEFORE THE COURT, REGARDLESS OF WHAT'S WRITTEN ON THAT CHILD'S PARENTS W-2 FORM. THANK YOU.

>> THANK YOU.

>> IF IT PLEASE THE COURT, I'M JEANNE TATE.

AS THIS COURT RECOGNIZED WHEN THEY HONORED ME WITH THE TOBIAS SIMON AWARD I LONG ADVOCATED FOR RIGHTS OF CHILDREN AND I'M HERE TO ADVOCATE FOR CHILD-CENTERED APPROACH FOR RESOLUTION OF ISSUES BEFORE THIS COURT.

WHAT THAT MEANS, WE HAVE STRICT TIME FRAMES TO PREVENT OPEN-ENDED DELAYS.

WE PROVIDE CERTAINTY OF THE PROCESS TO COME TO SPEEDY RESOLUTIONS AND WE ENHANCE PERMANENCY OPTIONS FOR CHILDREN. I BELIEVE THE NARROW SET OF RULES THAT PROPOSE TO THE COURT

ACCOMPLISH THAT OBJECTIVE AND THEY'RE CONSISTENT WITH THE DUE PROCESS.

>> NARROW VIEW IS THAT PARENTS WHO ARE REPRESENTED WHO HIRE THEIR OWN ATTORNEYS WOULD NOT HAVE THE BENEFIT OF THE INEFFECTIVE ASSISTANCE OF COUNSEL PROVISIONS?

>> JUSTICE, I DISAGREE THAT THESE RULES ADDRESS THAT ISSUE. THERE HAS BEEN ARGUMENT MADE IN THE BRIEFS THAT THESE RULES WOULD PREVENT AN ATTORNEY THAT WAS PRIVATELY RETAINED OR PARTY--

>> SO YOU DON'T, YOU DO NOT AGREE THAT IF YOU HIRE YOUR OWN ATTORNEY YOU SHOULD NOT HAVE THAT RIGHT?

>> YOUR HONOR THE RULES DON'T PRECLUDE THAT OR ADDRESS THAT. THIS COURT HAS NOT SUBSTANTIVELY DETERMINED THOSE ISSUES HAVE FUNDAMENTAL RIGHT TO COUNSEL.

I DISAGREE VEHEMENTLY THAT IS WHAT J.B. STATED.

YOUR HOLD SOMETHING VERY SPECIFIC.

>> YOU'RE ANSWERING YOUR QUESTION.

COULD YOU ANSWER THE QUESTION JUSTICE QUINCE POSED?

>> MAYBE I MISUNDERSTOOD, I DO NOT BELIEVE THIS COURT OR THE LAW OF THIS STATE REQUIRES QUESTION I ASK YOU IS WHETHER ANY PARENT WITH THEIR OWN ATTORNEY OR COURT-APPOINTED ATTORNEY HAS THE RIGHT TO BRING INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM.

DO YOU AGREE OR DISAGREE ANY PARENT SHOULD HAVE THAT RIGHT?

>> I DISAGREE THAT A PARENT RETAINS A PRIVATE ATTORNEY HAS THE CONSTITUTIONAL RIGHT TO ADVANCE AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM.

I DISAGREE THAT J.B. ADDRESSED THAT ISSUE.

I THINK THIS COURT VERY NARROWLY AND CAREFULLY TAILORED THAT DECISION.

>> YOU SUPPORT THE NARROW VIEW? THE.

>> THE NARROW VIEW.
THE NARROW VIEW.

>> OKAY.

>> COULD YOU RESPOND THEN, TO THE THOSE WHO BELIEVE THAT THE ENTIRE BASIS OR CONSTITUTIONAL BASIS FOR THIS DISPUTE THERE IS DUE PROCESS NECESSARY WHEN THE STATE BEGINS TO IMPACT THE INDIVIDUAL CITIZEN, CRIMINAL CASE, THEY HAVE CITED THE CRIMINAL CASES.

AND YOU AGREE, I WOULD HOPE, THAT IN THAT AREA, WHETHER YOU'RE INDIGENT OR WHETHER YOU HAVE A PAYING LAWYER, A PAID LAWYER, THAT THE INEFFECTIVE ASSISTANCE IS AN ISSUE, YOU AGREE WITH THAT?

>> ABSOLUTELY, YOUR HONOR.

>> AND THEY ARGUE THAT THAT'S THE UNDERLYING ANALYSIS, NOT SOME OTHER ANALYSIS AND, I WOULD WONDER OUT LOUD AS WELL, BEEN DOING THIS JOB FOR A NUMBER OF YEARS AND SEEMS TO ME AT TIMES PAID LAWYERS ARE WORSE THAN NO LAWYER AND IN THIS KIND OF SITUATION I'M WONDERING, OR I HAVE A CONCERN WITH WHETHER YOU CAN GO OUT AND FIND SOME LAWYER ON THE STREET, PAY THEM A FEW HUNDRED BUCKS, YET, IF YOU'RE INDIGENT, YOU CAN HAVE THE VERY BEST, LIKE THE PUBLIC DEFENDER SYSTEM.

I HAVE, IN THE CRIMINAL CONTEXT, THE PUBLIC DEFENDERS ARE AS GOOD OR BETTER THAN ANY OF THE LAWYERS IN CRIMINAL DEFENSE WORK.

SO WHERE DOES THAT LEAVE THE PARENT WHO'S NOT INDIGENT BUT

ONLY CAN AFFORD WHAT SOME WOULD
CONSIDER LESS THAN ADEQUATE
COUNSEL?

WHERE ARE THEY LEFT?

>> YOUR HONOR, I DON'T BELIEVE
THAT THESE RULES PRECLUDE THE
ADVANCEMENT OF THAT CLAIM BUT I
WOULD SUBMIT TO YOU THAT--

>> AGAIN, LET'S BE HONEST IN OUR
DISCUSSION.

I MAY AGREE WITH THAT BUT SOME
ARE SAYING WE NEED TO HAVE IT IN
THE RULE.

SO IT'S CLEAR.

WHY DO WE WANT TO LITIGATE THAT
FURTHER IF THAT'S THE
CONCLUSION?

>> BECAUSE IN J.B., YOUR HONOR,
YOU ASKED FOR PROCEDURAL
DIRECTION ON HOW TO IMPLEMENT AN
INEFFECTIVE OF ASSISTANCE OF
COUNSEL CLAIM WHEN RAISED BY
INDIGENT PARENTS.

THIS I BELIEVE IN THE
RULE-MAKING PROCESS NOT THE
PROPER PROCESS TO INITIATE A
SUBSTANTIVE DECISION.

>> I CAN AGREE WITH THAT.
I UNDERSTAND WHAT YOU'RE SAYING
BUT WHAT IS-- I UNDERSTAND WHAT
YOU'RE SAYING.

YOU SAY IT WOULD BE EXPANDING
WHAT WAS AUTHORIZED TO DO?

>> J.B. SAID IN TWO IMPORTANT
WAYS, RECOGNIZING NON-INDIGENT
PARENT HAS CONSTITUTIONAL RIGHT
TO COUNSEL AND NON-INDIGENT
PARENT HAS CONSTITUTIONAL
RIGHT--

>> IT HAS TO WAIT UNTIL THERE IS
CASE IN CONTROVERSY ON THAT
ISSUE TO DECIDE THE POINT?

>> EXACTLY, SO IT CAN BE FULLY
BRIEFED AFTER THE FACTS ARE
DEVELOPED AND AFTER THE LAWYERS
HAVE THE OPPORTUNITY TO PRESENT
ARGUMENT.

THE AMICUS BRIEFS IN J.B. URGED
THIS COURT TO MAKE A BROADER
RULING TO ENCOMPASS ALL PARENTS

WITH THE RIGHT TO COUNSEL AND YOU RESISTED THAT ENTREE TO DO THAT AND I THINK FOR VERY VALID REASONS.

THE STATE IS NOT ACTING WHEN A PRIVATE PARTY DECIDES TO HIRE COUNCIL.

THE STATE HAS NOTHING TO DO WITH THAT DECISION.

THE STATE DOESN'T ORCHESTRATE THAT DECISION.

THE STATE, IT IS NOT UNFAIR TO AL YOU LOU THAT PARENT TO HIRE THEIR PRIVATELY RETAINED COUNSEL AND I WOULD SUBMIT TO YOU THE BROAD RULE, SIPHONS MONEY, SIPHONS TIME OUT OF ALREADY OVERBURDENED SYSTEM.

WHEN IT DOES SO--

>> THAT IS THE DOOMSDAY KIND OF ARGUMENT.

LOOK AT ALL OF THE TERRIBLE, THE WORLD OF TERRIBLES THAT WILL COME DOWN IF YOU HAVE A BROAD RULE.

WHAT DATA IS THERE WITH REGARD TO THAT?

THE ARGUMENTS I'VE HEARD THIS MORNING IS THAT REALLY DOESN'T HAPPEN THAT OFTEN?

>> I DISAGREE WITH THAT, JUDGE, THIS RIGHT, CONSTITUTIONAL RIGHT TO COUNSEL ALSO EXISTS IN CHAPTER 63.

THE SELECT COMMITTEE DID NOT ADDRESS THAT BECAUSE THEY DID NOT FEEL IT WAS IN THE PURVIEW OF THE COURT'S DIRECTION.

I HAVE HANDLED 3,000 PRIVATE ADOPTION CASES AND AT LEAST 25 OF THOSE, 25% OF THE THOSE CASES HAVE HAD PRIVATE COUNSEL.

I SUBMIT TO YOU THIS ISSUE IS MUCH BROADER THAN THE SCOPE OF A DEPENDENCY CASE WHERE YOU MIGHT NOT TYPICALLY HAVE PRIVATE COUNSEL.

>> THANK YOU.

>> THANK YOU, YOUR HONOR.

>> GOOD MORNING, MAY IT PLEASE

THE COURT.

DENNIS MOORE FOR THE STATEWIDE
GUARDIAN AD LITEM OFFICE.

A LOT HAS BEEN DISCUSSED FOR THE
PROCEDURES NECESSARY FOR THESE
CLAIMS AND WHETHER OR NOT
THEY'RE GOING TO BE PROVIDED
OBVIOUSLY TO ONLY COURT
APPOINTED COUNSEL OR TO PRIVATE
COUNSEL AND ISSUE WE'RE DEALING
WITH IS FOCUSING ONLY ON THE
PROCEDURE AND OUTCOMES AND
OUTCOMES BEING BAD.

I THINK DESPITE THE BEST EFFORTS
OF THIS COURT YOU ARE GOING TO
HAVE BAD OUTCOMES.

BUT THE QUESTION IS, IS THERE A
VALID REASON FOR THAT
DISTINCTION.

>> WHAT DO YOU MEAN BAD
OUTCOMES?

>> DUE PROCESS, JUSTICE
PARIENTE, MY UNDERSTANDING IS
NOT DESIGNED TO PREVENT EVERY
POSSIBLE OUTCOME BUT JUST TO
MAKE SURE THAT THE PROCEDURES
ARE FUNDAMENTALLY FAIR.

SO THEN THE QUESTION IS, IF
WE DON'T APPLY THESE EXACT
PROCEDURES TO CLAIMS OF
INEFFECTIVE ASSISTANCE OF
COUNSEL FOR THOSE THAT ARE
PRIVATELY RETAINED, IS THERE A
REASON FOR THAT?

AND WOULD THAT MEAN THAT THOSE
PROCEDURES OVERALL, OR THOSE
PROCEEDINGS OVERALL ARE NO
LONGER FUNDAMENTALLY FAIR?

>> ARE YOU AS THE LAWYER FOR THE
GUARDIAN AD LITUM PROGRAM AND
HOPEFULLY YOU'RE ON MOST OF THE
CASES AROUND THE STATE, AND
REPRESENTING THE BEST INTERESTS
OF THE CHILD, HOW DO YOU RESPOND
TO THE ALLEGATION THAT HAVING
THESE PROCEDURES FOR EVERYBODY
WILL ULTIMATELY SERVE THE BEST
INTERESTS OF THE CHILD?
HOW DOES THAT WORK IN
PRACTICALITY?

BECAUSE AGAIN I'M CONCERNED AS I'M SURE YOU ARE, THAT INEVITABLY THIS ENDS UP DELAYING A CRITICAL DECISION FOR PERMANENCY, ESPECIALLY FOR THE YOUNGEST CHILDREN THAT NEED, NEED THAT RESOLUTION?

>> ABSOLUTELY.

IF I UNDERSTAND YOUR QUESTION, JUSTICE PARIENTE, I HAVE A COLLEAGUE THAT SAYS ROME IS BURNING IN THESE CASES AND I COMPLETELY AGREE WITH HIM. I WOULD RESPECTFULLY DISAGREE WITH MY COLLEAGUE WHO WOULD SUGGEST THE PARENTS AND CHILD'S RIGHTS ARE ALWAYS COEXTENSIVE. GO BACK TO CRAMER WE KNOW THAT IS NOT TRUE.

THESE PROCEEDINGS ARE DESIGNED, AND THESE ARE SAFEGUARDS INHERENT IN UNDERLYING PROCEEDINGS BEFORE YOU EVEN GET TO THIS POINT.

YOU HAVE ALL REVIEWS OF THESE CASES.

THE COURT IS ACTUALLY LOCAL PARENTIS, ACTING, PARENTS PATRI, REVIEW EVERY SIX MONTHS AT VERY LEAST.

WE HAVE CASE PLAN, ACCEPTANCE HEARING.

CASE PLAN, REVIEW HEARINGS. PERMANENCY, REVIEW HEARINGS.

>> WHAT HAPPENS IF A LAWYER IS NOT SHOWING UP WHETHER THEY'RE COURT-APPOINTED OR REGULAR? AND THE GAL IS THERE, WHAT DOES A JUDGE DO?

THIS IS THIS IDEA MAKING SURE EVERYTHING IS FUNDAMENTALLY FAIR UNTIL TERMINATION RATHER THAN HAVING THIS WHOLE SEPARATE PROCEDURE THAT BECOMES ANOTHER TRIAL?

SO AS IN THE WORLD OF DEPENDENCIES YOU SAY THERE'S ALWAYS THESE HEARINGS AND TIME FRAMES.

WHAT HAPPENS WHEN A LAWYER IS

DOING SOMETHING THAT, A JUDGE SEES OR THE GAL SEES IS REALLY NOT HELPING THE PARENTING PLAN GO ALONG?

WHAT OCCURS IN REAL LIFE?

>> LAWYER LITERALLY ISN'T PRESENT IN THE PROCEEDINGS I'VE BEEN.

THE JUDGE WILL CONTINUE TO ADVISE THE PARENT AND WOULD REAPPOINT IF IT IS A COURT-APPOINTED ATTORNEY. THEY WOULD AUTOMATICALLY REAPPOINT.

IF YOU HAVE GOT PRIVATE COUNSEL THEY'RE NOT SHOWING UP, THEY WILL ADVISE THEM OF THEIR RIGHT TO COUNSEL.

>> DO YOU HAVE ANY SITUATIONS WHERE THE PARENTS ARE NOT THERE AND THE LAWYERS ARE NOT THERE, WHAT HAPPENS WHEN NEITHER ARE THERE BECAUSE SOMEBODY, THE LAWYER HAS NOT NOTIFIED THE PARENT, WHAT HAPPENS THEN?

>> I THINK THE DEPARTMENT WOULD TAKE THE STEP OF NOTIFYING THEM. WE HAVE TAKEN STEP OF NOTIFYING THEM.

>> WHERE IS THE DEPARTMENT IN ALL THIS?

THEY HAVEN'T, HAVE THEY FILED A COMMENT?

>> NO, YOUR HONOR.

THEY CHOSE NOT TO FILE A COMMENT.

BUT THEY ARE HEAVILY REPRESENTED ON THE, ON THE SELECT COMMITTEE.

>> SO THEY FAVOR THE NARROW RULE, THE DEPARTMENT OR--

>> I'M SORRY, YOUR HONOR.

>> DID THEY, IF THEY WERE PART OF THE COMMITTEE, DID THEY FAVOR THE NARROW RULE OR THE BROADER RULE?

I'M SORRY, I'M PUTTING YOU IN THIS POSITION.

>> I BELIEVE THAT THE FOLKS THAT I KNOW FROM THE DEPARTMENT VOTED FOR THE NARROW RULE.

SO FOCUSING AGAIN ON THE
PROCEDURE, AND, AND THE
PROCEDURE THAT IS IN PLACE,
WHETHER OR NOT IT IS
FUNDAMENTALLY FAIR, OUR POSITION
IS THAT THERE WOULD BE NO DENIAL
OF DUE PROCESS IF THESE
PROCEDURES WERE NOT, WERE NOT
PROVIDED TO PRIVATE COUNSEL.
ADDRESSING THE DEEM DENIED
LANGUAGE, WE THINK IT IS
ABSOLUTELY CRITICAL THAT THE
COURT INCLUDE THE DEEM DENIED
LANGUAGE ESPECIALLY IN VIEW OF
THE CURRENT REVISION TO 9.146,
I, 4-A, I APOLOGIZE FOR NOT
POINTING THIS OUT IN OUR
COMMENT, BUT IN THAT RULE, IF
THE DEEM DENIED LANGUAGE IS
GOING TO REMAIN, THE LAST
SENTENCE OF THAT PARAGRAPH NEEDS
TO BE CHANGED BECAUSE IT
INDICATES THE PROCEEDINGS WILL
BE STAYED UNTIL SUCH TIME THE
COURT RECEIVES AN ORDER.
SO IF THE DEEM DENIED LANGUAGE
WILL BE RETAINED, THAT WOULD
NEED TO BE CHANGED, SOMETHING TO
THE EFFECT OF, IF, THE
PROCEEDINGS WILL BE STAYED UNTIL
45 DAYS FROM THE DATE OF THE
ENTRY OF THE TERMINATION OF
PARENTAL RATES ORDER.
WE THINK THERE IS CLEAR
DEBARCATION FOR APPELLATE COURTS
FOR THIS.
WE BELIEVE APPELLATE COURTS CAN
CALCULATE THE TIME FRAILS.
WE BELIEVE THE LITIGANTS CAN
CALCULATE TIME FRAMES.
AND JUSTICE PARIENTE, AS YOU
HAVE SAID IT IS ABSOLUTELY
CRITICAL WE NOT INCREASE THE
TIME FOR THESE CHILDREN IN THIS.
IF YOU ASK A CHILD TODAY, IF YOU
TELL A CHILD TODAY, YOU WILL GET
A PRESENT ON THE 25th OF
DECEMBER, THEY WILL THINK THAT
WILL TAKE FOREVER.
IN THEIR LIVES THAT'S SOMETHING

THAT WE CALCULATE IN TERMS OF THE HARM THAT HAPPENS TO THESE CHILDREN WHICH THIS COURT HAS RECOGNIZED NUMEROUS TIMES AND IS FULLY AWARE OF.

SO FROM OUR VIEW, THOSE PIECES OF THIS RULE THAT INCREASE TIME FRAMES, THE COURT SHOULD NOT INCLUDE ADDITIONAL DAYS, ADDITIONAL TIME, REGARDLESS WHAT THEY ARE, UNLESS ITS ABSOLUTELY NECESSARY FOR FUNDAMENTAL DUE PROCESS.

AND THEN, TO TWO OTHER POINTS. WE THINK THE ACTUAL STANDARD FOR DETERMINING THESE ISSUES THAT WAS LAID OUT, BUT-FOR CAUSATION STANDARD.

THAT IS CAUSATION TERM OF ART AND WE UNDERSTAND THAT THAT WAS CHANGED IN THE PIECE OF THE RULE, THE WORDING WAS CHANGED TO TRY TO MAKE IT CLEARER.

WE THINK IT DOESN'T MAKE IT CLEARER.

WE THINK ADDING MORE WORDS THERE MAKES IT MORE CONFUSING.

THE COURT SHOULD SAY, BUT FOR THE COUNSEL'S DEFICIENCIES THE RIGHTS WOULD NOT HAVE BEEN TERMINATED.

LASTLY WE WOULD URGE THE COURT TO PUT THE STANDARD, THE EVIDENTIARY STANDARD INTO THIS RULE AS IT DID IN 8.350.

THAT WILL BE ANOTHER BONE OF CONTENTION, POINT OF LITIGATION IN THESE CASE.

>> WHAT IS YOUR RESPONSE

APPLE-- APPELLATE RULES COMMITTEE RULE THAT USING DEEM DENIED PROVISION CHANGES THE APPELLATE REVIEW?

ONE, IF YOU DO NOT HAVE THE ORDER, THEN THE APPELLATE COURT WILL HAVE TO GO THROUGH TO MAKE THAT DECISION I WOULD ASSUME AND WOULD THAT NOT INCREASE THE TIME THAT WOULD BE INVOLVED IN THE APPELLATE PROCESS, RATHER THAN

SIMPLY REVIEWING AN ORDER WHICH HAS DENIED RELIEF, AND AN APPELLATE COURT IS REVIEWING THAT FOR COMPETENT SUBSTANTIAL EVIDENCE?

>> I THINK THAT THE APPELLATE COURT WOULD, AND THERE'S NO GUARANTY, JUSTICE LEWIS, THAT THE JUDGE IS GOING TO ISSUE ANY REAL ORDERS THAT HAVE TREMENDOUS FACTS IN THEM REGARDING, REGARDING FINDINGS ON THESE PARTICULAR ISSUES.

THESE ISSUES--

>> SO WE DON'T ANTICIPATE THEN THAT THE DETERMINATION ON INEFFECTIVE ASSISTANCE EVER COUNSEL WILL BE ANYTHING SIMILAR TO WHAT WE SEE IN THE CRIMINAL CONTEXT WHERE IT'S DESCRIBED AND THEN AS IT GOES UP THE PROCESS THE SCOPE OF REVIEWED IS NARROWED, NOT EXPANDED, TO JUST REVIEW ANYTHING?

>> IF I UNDERSTAND, JUSTICE LEWIS, WHAT I THINK, WHAT I WAS TRYING TO SAY IS THAT THE APPELLATE COURT WILL BE ABLE TO READILY SEE, WE BELIEVE, WITHOUT A DENIAL OF DUE PROCESS THE FACTS NECESSARY TO MAKE DETERMINATIONS ON THIS ISSUE.

>> I DON'T DISPUTE THAT BUT THE POINT BEING YOU'RE EMPHASIZING TIME.

LIKE 10 DAYS IS GOING TO TURN THE WORLD UPSIDE DOWN BUT MY CONCERN IS, WHAT THE APPELLATE RULES COMMITTEE REPORTS AND THAT IS, IT CHANGES THE POSITION OR POSTURE OF THE APPELLATE COURT IN REVIEWING WHAT HAS HAPPENED BELOW.

YOU DON'T SEE THAT?

THAT IF YOU GET AN ORDER FROM A TRIAL JUDGE, THAT HAS THOUGHT FULLY CONSIDERED INEFFECTIVE ASSISTANCE AND RENDERED AN ORDER ON FACTUAL ELEMENTS OF THAT, THAT IS DIFFERENT POSTURE THAN

IF YOU HAVE JUST A BLANK RECORD?

>> I THINK IT IS PROBABLY A DIFFERENT POSTURE BUT MIGHT BE A DISTINCTION WITHOUT A DIFFERENCE MOST OF THE TIME IS MY POINT.

>> THAT IS WHAT YOU THINK IT CITIES.

>> I THINK IT IS.

I THINK IF WE'RE GOING TO LOOK AT ISSUE OF STRICT TIME FRAMES, THEN THE CALCULATION OF THE TIME FRAMES CERTAINLY WOULDN'T BE A PROBLEM.

THEY COULD JUST CALCULATE THAT FROM THE POINT OF VIEW OF THE WHEN THE TPR ORDERED WAS RENDERED.

IF I UNDERSTAND IT, ONCE THEY HAVE THE ORDER ON THE PLATE THEY WILL LOOK AT THE FACTS IN THE CASE, THE ATTORNEYS AN APPELLANTS, FOLKS INVOLVED IN THE APPEAL, THIS HAPPENED, THAT DIDN'T HAPPEN, THAT IS A DENIAL OF FUNDAMENTAL DUE PROCESS.

>> IT'S HAPPENING AT THE SAME TIME THE APPEAL IS GOING ON, OR NOT?

IS THE APPELLATE COURT LOOKING BOTH WHETHER THE RIGHTS SHOULD HAVE BEEN TERMINATED AND WHETHER THE LAWYER CONTRIBUTED TO THE RIGHTS BEING TERMINATED BY INEFFECTIVE ASSISTANCE AT SAME TIME?

>> YES.

>> SO THEY WILL HAVE THE FULL, THEY WILL HAVE THE FULL RECORD AND A FULL ORDER FROM THE TRIAL COURT ON THAT?

IS THAT CORRECT?

>> THEY WILL.

>> THOSE ORDERS ON TERMINATION ARE USUALLY QUITE--

>> YES, MA'AM.

>> OKAY.

>> SO THEY WILL HAVE, ALL OF THOSE ISSUES, IT'S JUST LIKE ANY OTHER CONSTITUTIONAL ISSUE THAT WOULD BE RACED JUSTICE LEWIS.

>> I DON'T THINK SO AT ALL.
AT LEAST YOU HAVE THE RULING FOR
THE TRIAL COURT WITH REGARD TO
FACTUAL DETERMINATIONS.
IF YOU JUST HAVE NOTHING BUT
USUALLY IN THE NATURE OF A
REHEARING.
THIS IS NOT NATURE OF A
REHEARING.
THIS IS INEFFECTIVE ASSISTANCE
OF COUNSEL CLAIMS.
SO TO SUGGEST THAT THE APPELLATE
COURT IS IN THE SAME POSITION,
IF THERE'S NO ORDER THAN IF
IT'S, IN A POSITION WITH HAVING
A AN ORDER THAT HAS BEEN THOUGHT
FULLY CONSIDERED AND RENDERED
ARE THE SAME, I THINK IS A,
BUILT ON A LACK OF KNOWLEDGE OF
THE APPELLATE PROCESS.

>> VERY WELL.

ANY FURTHER QUESTIONS?

THANK YOU VERY MUCH.

>> [INAUDIBLE].

>> MY NAME IS LLOYD METZGER.

I'M CHAIR OF THE JUVENILE COURT
RULES COMMITTEE.

I'M ALSO COUNSEL FOR THE
DEPARTMENT.

I WOULD LIKE TO ANSWER JUSTICE
PARIENTE'S QUESTION ABOUT THE
DEPARTMENT'S ROLE IN THIS.

>> YOU WERE SCHEDULED TO SPEAK
AND YOU DID NOT?

>> MR. DEEN AND I WERE SHARING,
DEPENDING WHERE WE WENT.

>> HOW ABOUT TWO MINUTES.

>> TWO MINUTES IS FINE.

>> TWO MINUTES STRICTLY.

>> THE DEPARTMENT DOES NOT HAVE
A OFFICIAL POSITION.

WE HAD REPRESENTATIVES ON BOTH
THE SELECT COMMITTEE AND
JUVENILE COMMITTEE.

WE PARTICIPATED IN THE PROCESS.
WE'RE COMFORTABLE WITH WHAT WAS
PRESENTED IN BOTH PLACES BUT WE
DID NOT TAKE AN OFFICIAL
POSITION ON BROAD VERSUS NARROW.

>> WHAT ABOUT THE DEEMED DENIED?

>> OUR DEEM DENIED POSITION IS THERE SHOULD BE A FINAL ORDER. THERE SHOULD NOT BE A DEEMED DENIED.

>> WHAT HAPPENS IF THE JUDGE DOESN'T RULE IN 100 DAYS? JUST KEEPS ON GOING?

>> WE WOULD NOT ANTICIPATE THAT HAPPENING BECAUSE I'M QUITE SURE THAT OUR LAWYERS, SHOULD THAT BE DELAYED, WILL BE GOING TO THE JUDGE.

OBVIOUSLY THERE COULD BE A MANDAMUS SITUATION BUT LIKE JUSTICE LEWIS I BELIEVE OUR CIRCUIT JUDGES ARE CONSCIENTIOUS AND WILL GET THIS TAKEN CARE OF IN EXPEDITIOUS MANNER.

THANK YOU VERY MUCH FOR--

>> HOW LONG IN A TYPICAL PROCEEDING DOES IT TAKE TO GO THROUGH TERMINATION OF PARENTAL RIGHTS?

>> THEY HAVE GONE ON OVER A YEAR.

>> AND LONGER?

>> AND LONGER.

>> DOES THE DEPARTMENT HAVE ANY IDEA OF WHAT NUMBER OF CASES OR PERCENTAGE OF CASES ARE ACTUALLY, RAISE CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL?

>> ANECDOTALLY A HANDFUL TO THIS POINT.

>> THE PROBLEM IS WHETHER EVERY LITIGANT LOSES IS GOING TO RAISE ONE BECAUSE THEY LOST AND THAT'S MY CONCERN.

>> EXACTLY.

AS SOON AS THERE IS A RULE, I CAN TELL YOU WE'RE ALL PREPARING FOR THE FLOOD BUT AT THIS POINT I JUST DON'T KNOW.

>> THANK YOU.