

OKAY.

THE NEXT CASE ON THE DOCKET THEN
IS D'AGOSTINO V. CITY OF MIAMI.

[LAUGHTER]

>> HANG ON FOR A SECOND.

LET HIM GET READY.

OKAY.

WHENEVER YOU'RE READY.

>> GOOD MORNING.

MAY IT PLEASE THE COURT, I'M
ROBERT BUSCHEL, I REPRESENT
LIEUTENANT FREDDIE TAG SEEN KNOW
AND THE FRATERNAL ORDER OF
POLICE IN THE CITY OF MIAMI.
WHEN LAW ENFORCEMENT OFFICERS'
BILL OF RIGHTS WAS CREATED BY
THE LEGISLATURE PREEMPTED TO
ITSELF THE MANNER IN WHICH ANY
GOVERNMENT WOULD INVESTIGATE ITS
POLICE OFFICERS AND INCLUDED
WITH IT A MEANINGFUL SERIES OF I
DUE PROCESS AND REPUTATIONAL
PROTECTIONS.

THE CITY OF MIAMI'S CIVILIAN
INVESTIGATIVE PANEL DIRECTLY
ENCROACHES ON THAT PREEMPTION.

>> NOW, ARE YOU SAYING, AS IN
THIS CASE IT WAS A COMPLAINT
AGAINST YOUR CLIENT THAT WAS
REFERRED TO THE INTERNAL AFFAIRS
AND THEN THAT SAME COMPLAINT WAS
THEN BEGUN AGAIN AT THE CIP?
BUT THE CIP IS MUCH BROADER.

I MEAN, IT'S LOOKING AT, AS I
UNDERSTAND IT, IF YOU HAD A
PATTERN OF THIS THIS WAS TRAFFIC
STOP OF POLICE STOPPING
HISPANICS OR AFRICAN-AMERICANS,
YOU'RE NOT SAYING THAT THEY DO
NOT HAVE THAT AUTHORITY.

SO COULD YOU BE MORE CLEAR AS TO
WHAT YOU'RE SAYING IS PREEMPTED,
USING THAT WORD NOT EXPRESSED,
BECAUSE THERE'S NO EXPRESS
STATEMENT.

WHAT ARE YOU SAYING THAT THE CIP
CAN'T DO?

>> OKAY.

>> OR IS IT THAT THEY CAN'T DO
ANYTHING?

>> FIRST, THIS COMPLAINT WENT DIRECTLY TO THE INVESTIGATIVE PANEL.

>> WHICH IS WHAT THEY SAY THAT THEY UNDERSTAND WHEN THEY GET A COMPLAINT BE, IT GOES--

>> AND THEN IT GOES TO THE INTERNAL AFFAIRS DIVISION OF THE POLICE DEPARTMENT.

SO IT WASN'T CONCURRENT, IT WAS THE INVESTIGATIVE PANEL TO THE INTERNAL AFFAIRS DIVISION OF THE POLICE DEPARTMENT.

I DO SAY THAT THERE IS EXPRESS PREEMPTION IN THAT THE BILL OF RIGHTS OF 112532 AND THEN, OF COURSE, IT SAYS THAT THERE MUST BE-- OR 533 SAYS THERE MUST BE A SYSTEM CREATED THAT WILL BE THE PROCEDURE NOTWITHSTANDING ANY LAW OR ORDINANCE TO THE CONTRARY.

AND THAT IS THE EXPRESS--

>> LET'S TAKE SORT OF A GLOBAL VIEW HERE.

INVESTIGATION OR OVERSIGHT OR LOOKING AT AN ALLEGED PROBLEM CAN TAKE MANY DIFFERENT FORMS. YOU'D AGREE WITH THAT.

>> SURE.

>> AND HERE IT SEEMS TO ME THAT THE STATE HAS SUBPOENA POWER AND HAS ADDRESSED THAT THROUGH THIS STATUTE.

SO ISN'T IT REALLY WHAT THE PROBLEM WOULD BE IS THE NATURE OF THAT LOCAL OVERVIEW, IF YOU WILL?

>> YES.

>> I MEAN, I THINK THAT IT JUST, IT HURTS YOUR EARS WHEN YOU HEAR THAT NOBODY CAN LOOK AT WHAT HAS OCCURRED IN A CIRCUMSTANCE AND MAKE COMMENTS ABOUT IT.

YOU FOLLOW WHAT I'M SAYING?

>> ABSOLUTELY.

AND LET ME, LET ME FINISH ANSWERING JUSTICE PARIENTE'S QUESTION.

THE PROBLEM IS THE

REINVESTIGATION BY THE
INVESTIGATIVE POWER, THE
CIVILIAN-- THE SUBPOENA POWER.
AND THIS SUBPOENA ONLY COMES
AFTER APPROVAL FROM THE STATE
ATTORNEY'S OFFICE.

SO IT HAS A CRIMINAL-ESQUE TYPE
FEEL TO IT WITHOUT THE IMMUNITY
THAT THE STATE ATTORNEY OFTEN
CONFERS WHEN THERE IS A SUBPOENA
SERVED--

>> SO IF, FOR EXAMPLE, THE CITY
OF MIAMI HAD A CITIZENS REVIEW
BOARD WITHOUT ALL OF THE
SUBPOENA POWERS, THEY COULD
STILL DO WHATEVER INVESTIGATION
AND TALK TO PEOPLE WHO ARE
WILLING TO VOLUNTARILY SPEAK TO
THEM WITHOUT ALL OF THE POWERS
THAT THE STATE STATUTES HAVE
CONTEMPLATED.

>> IN FACT, YOU CHANGED THE WORD
FROM INVESTIGATIVE TO REVIEW,
AND THAT MAKES IT MORE TOWARDS
THE SIDE OF CONSTITUTIONAL.

>> OKAY.

>> NO, IT'S AN IMPORTANT WORD--

>> WELL, THAT'S WHAT I MEAN.

>> YES.

>> I THINK WHAT HAPPENS IS
PEOPLE RECOIL FROM ANY
SUGGESTION THAT YOU CAN'T LOOK
AT AND REVIEW WHAT SOMEONE HAS
DONE AND THAT THE STATE
LEGISLATURE HAS INTENDED TO JUST
PUT THIS OFF IN A STAR CHAMBER:
SO YOU'RE NOT MAKING THAT
ARGUMENT.

>> ABSOLUTELY--

>> YOU'RE TALKING ABOUT YOU
CANNOT HAVE A PARALLEL, SAME
SUBSTANTIVE KIND OF
INVESTIGATORY GROUP THAT EXISTS
THAT'S DESCRIBED IN THE STATUTE
WITH SUBPOENA POWER, ETC., ETC.,
ETC.

>> EXACTLY.

>> OKAY.

>> AND THIS IS THE MOST POWERFUL
INVESTIGATIVE PANEL IN THE STATE

THAT I COULD FIND.

I SEE NO SUBPOENA POWER OR ANYWHERE ELSE.

I SEE THEY'RE ALLOWED TO HIRE INVESTIGATORS--

>> OKAY.

>> AGAIN, SO MY INITIAL QUESTION WHICH IS THAT IF THE SCOPE OF THE INVESTIGATION WAS A GENERAL PATTERN OF DISCRIMINATORY TRAFFIC STOPS AND THEY, IN TERMS OF THAT, FIRST OF ALL, THEY HAVE YOUR CLIENT'S SWORN TESTIMONY, CORRECT?

>> THEY WOULD HAVE TO--

>> IT'S ALL, IT'S PUBLIC ONCE THE--

>> INVESTIGATION IS CLOSED.

>>-- INVESTIGATION STOPS.

SO THEY HAVE THAT, ANYTHING THAT WAS DONE IN INTERNAL AFFAIRS BECOMES PUBLIC.

>> YES, MA'AM.

>> SO THEY CAN HAVE THAT, AND THEY CAN TAKE ADDITIONAL TESTIMONY AND MAKE RECOMMENDATIONS.

YOUR OBJECTION IS THE VERY SPECIFIC ONE OF REINVESTIGATING THE SAME COMPLAINT OF MISCONDUCT BY THIS ALLEGEDLY, COMMITTED BY THIS OFFICER.

>> CORRECT.

AND BECAUSE THESE OFFICERS HAVE SPECIFIC RIGHTS THAT ARE OUTLINED IN 532.

ALSO IN THE COLLECTIVE BARGAINING AGREEMENT, SECTION EIGHT ADOPTS THE LAW ENFORCEMENT BILL OF RIGHTS.

SO--

>> TO GET EVEN MORE SPECIFIC ABOUT IT, IS YOUR COMPLAINT REALLY THAT THE OFFICER IS BEING SUBPOENAED TO COME BEFORE THIS CIVILIAN INVESTIGATIVE PANEL? IF THAT PART WERE NOT THERE, THAT YOU CAN SUBPOENA THE OFFICER, WOULD THERE BE A PROBLEM WITH THE CIVILIAN

INVESTIGATIVE PANEL?

>> IN LARGE PART, NO.

>> I'M SORRY?

>> IN LARGE PART, NO.

>> IN LARGE PART, NO?

>> BECAUSE OF THE LAW
ENFORCEMENT OFFICER BILL OF
RIGHTS, AND THE REASON I'M
HEDGING AND NOT GIVING YOU A
COMPLETE 100% IS BECAUSE OF THE
OTHER INVESTIGATIVE, NONDESCRIPT
INVESTIGATIVE POWER, THE
REINVESTIGATIVE POWER THAT
THIS--

>> WELL, IT'S CLEAR THAT THE CIP
HAS NO AUTHORITY TO DO ANY
DISCIPLINE, ANY OF THOSE KINDS
OF THINGS, RIGHT?

>> NOT, AGAIN, NOT PRECISELY.
CLEARLY--

>> THE MOST THEY CAN DO, AS I
UNDERSTAND, IS MAKE SOME
RECOMMENDATION TO THE POLICE
DEPARTMENT ABOUT PROCEDURES OR
THOSE KINDS OF THINGS.

IS THAT CORRECT?

>> IT CAN RECOMMEND DISPOSITION
WHICH IS ANOTHER WAY OF
RECOMMENDING, I BELIEVE,
DISCIPLINE TO THE CHIEF OF
POLICE WHO MUST RESPOND IN
WRITING.

SO WE DON'T BELIEVE THIS OFFICER
SHOULD BE IN S.W.A.T. ANYMORE.

A CHIEF SEES IT, HE CAN
ADMINISTRATIVELY REMOVE THE
OFFICER.

THAT IS DISCIPLINE.

IT ALSO DOESN'T ALLOW THE
OFFICER TO GET OUT FROM UNDER
INVESTIGATION.

YOU HAVE CRIMINAL
INVESTIGATIONS, CIVIL RIGHTS
INVESTS, ADMINISTRATIVE
INVESTIGATIONS--

>> BUT THE REASON FOR THIS BOARD
AS THE AMICUS SAID IS TO GIVE, I
MEAN, GIVE THE CITIZENS SOME
FEELING THAT THEY CAN BE HEARD.
AND SO IF AFTER-- THIS

INVESTIGATION ENDED WITH IT BEING INCONCLUSIVE.

I DON'T KNOW, IS THAT A NORMAL TERM?

SOMETIMES ARE THEY EXONERATED? INCONCLUSIVE IS, SEEMS LIKE, WELL, MAYBE THERE WAS SOMETHING THERE.

>> SOME FREQUENTLY IN DIFFERING HE SAID/SHE SAID TYPE SCENARIOS.

>> SO IF IT WAS JUST A-- BUT IF THEY END UP THAT THEY ARE ABLE TO SEE, AGAIN, WITHOUT YOUR OFFICER TESTIFYING THAT THEY LOOK AT THIS WHOLE SITUATION AND THERE ARE NEW WITNESSES, THERE'S A VIDEO, ARE YOU SAYING THEY COULDN'T LOOK AT THAT AND THEN RECOMMEND BACK THAT THEY NEED TO RELOOK AT THIS?

>> IF, IN FACT, IT SAYS IT IN THE STATUTE, 1125326 OR 5336 SAYS THAT IF THERE'S NEWLY DISCOVERED INFORMATION, THE INTERNAL AFFAIRS INVESTIGATION CAN BE OPENED AGAIN WHICH IS PRECISELY WHY THE BILL OF RIGHTS SHOULD APPLY WHEN AN OFFICER WHO'S SUBPOENAED TO COME THERE AND THEY DON'T GET THOSE RIGHTS, THE POSITION FROM THE CITY IS VERY CLEAR.

THIS IS THEY WANT TO SAY IT'S INDEPENDENT, BUT IT'S REALLY NOT.

IT'S ALL BEHIND THE SUR TOWN AS THE CITY.

THEY CREATED AN AGENCY, AN INVESTIGATIVE BOARD TO REINVEST. AND WHEN THE OFFICER IS COMPELLED TO APPEAR, HE IS EXPOSING HIMSELF TO ALL SORTS--

>> THIS BOARD WAS PUT INTO EFFECT IN WHAT YEAR?

>> 2002.

>> SO IT'S OPERATED FOR 14 YEARS?

>> THIS LITIGATION'S BEEN GOING ON FOR QUITE A WHILE.

INDEED, THE REHEARING AT THE

THIRD DCA WAS PENDING FOR THREE YEARS.

THE LITIGATION ITSELF WAS NINE YEARS.

I REMARKED TO MYSELF SAME THING, JUDGE.

IN THE MEANTIME, THERE HAS BEEN SORT OF A SELF-IMPOSED STAY WHERE OFFICERS HAVE NOT BEEN COMPELLED TO APPEAR.

I CAN'T COMMENT WHETHER THE--

>> THE HEARING, THE CIP IS STILL CONDUCTING THEIR

INVESTIGATION/REVIEW--

>> YES.

>>-- BUT JUST NOT SUBPOENAING THE OFFICERS.

>> CORRECT.

>> AND, AGAIN, MAKE SURE I UNDERSTAND, SO IF THAT PART WAS STRICKEN, THE SUBPOENA POWER BECAUSE IT'S IN CONFLICT, DOES THAT ALLAY YOUR CONCERNS?

>> IN LARGE PART, YES.

>> WAIT A MINUTE, IN LARGE PART.

[LAUGHTER]

I MEAN, WE NEED TO BE PRECISE HERE.

>> I'M GOING TO--

>> SO WHAT ELSE?

BECAUSE, I MEAN, THERE'S SOME OTHER THINGS.

I MEAN, IF THEY MEAN NOTHING, FINE.

BUT THAT'S TOUGH TO TELL A COURT IN LARGE PART OR THAT-- BECAUSE WE'RE TRYING TO GET IT RIGHT.

>> I DON'T KNOW WHAT INVESTIGATORS DO THAT THEY HAVE THE POWER TO HIRE.

THEY HAD A \$700,000 BUDGET LAST I CHECKED, AND THEY CAN HIRE INVESTIGATORS.

>> SO IT WOULD BE ANYTHING THAT IS PROVIDED FOR IN THE STATUTE CANNOT BE DONE BY THE LOCAL PANELS.

>> CORRECT.

>> IS THAT--

>> THAT'S OUR POSITION.

>> OKAY.
SO DOES THAT INCLUDE BOTH LARGE
PART AND THE SMALL PART?
>> IT'S THE 100%, JUSTICE LEWIS.
>> ALL RIGHT.
>> WELL, THAT'S KIND OF BROAD,
ISN'T IT?
>> I THINK--
>> WHAT, OTHER THAN A SUBPOENA
POWER, WHAT IS IT THAT YOU
CONTEND THAT THE CIP IS DOING
THAT CONFLICTS WITH THE STATUTE?
>> MAKING RECOMMENDATIONS AS TO
DISPOSITION WHICH IS ANOTHER WAY
OF RECOMMENDING DISCIPLINE.
I WOULD SAY-- THAT'S IN 11.527
SUBSECTION 9.
IF INVESTIGATORS CONTINUE TO
REINTERVIEW WITNESSES ON SOME TO
COMPELLING BASIS, I WOULD
IMAGINE THAT WOULD VIOLATE AS
WELL.
BUT THE NUMBER ONE THING IS THE
SUBPOENA POWER OF IT.
MORE.
>> WELL, I MEAN, IT'S DIFFICULT.
YOU COULD JUST HAVE A LOCAL
CITIZENS GROUP GET TOGETHER--
>> ABSOLUTELY.
>>-- AND LOOK AT WHAT'S
HAPPENED AND DECIDE AMONG
THEMSELVES, I MEAN, LEADERS OF
THE COMMUNITY THAT WHAT HAPPENED
IS NOT RIGHT.
AND THEY COULD CONTACT THE
POLICE OR LAW ENFORCEMENT AGENCY
AND SAY WHATEVER THEY WANTED TO
SAY.
I MEAN, THAT'S THE BEAUTY OF
THIS COUNTRY.
THEY CAN SAY THAT.
I MEAN--
>> THEY CAN, BUT THEY'RE NOT AN
ARM OF THE CITY OF MIAMI.
THAT'S THE DIFFERENCE.
THIS IS NOT AN OBJECTION TO ANY
FIRST AMENDMENT RIGHT OF
ASSEMBLY OR REDRESS GRIEVANCES
TO THE CITY OR POLICE DEPARTMENT
THEMSELVES.

AGREED.

A GROUP OF PEOPLE CAN GET TOGETHER AND SAY, CHIEF OF POLICE, THIS OFFICER DID BAD, AND YOU SHOULD FIRE HIM.

THAT'S FIRST AMENDMENT.

BUT WHAT THIS IS, THIS IS ANOTHER ARM-- A REINVESTIGATION BY THE CITY WHICH IS WHAT THE RULE 112 SAYS, THAT IT MUST BE A SYSTEM, THE PROCEDURE NOTWITHSTANDING ANY OTHER ORDINANCE TO THE CONTRARY.

>> SO YOU REALLY ADVOCATING FOR A BROAD, A BROAD CUT--

>> I AM, AND I'M NOT SUGGESTING THAT THEIR SEVERABILITY IS AN OPTION.

THAT'S SOMETHING FOR THE COURT. AND THE MAIN REASON IS THAT EVEN WITHIN THE ORDINANCE ITSELF, IT SAYS IT MUST BE CONSISTENT WITH 112 AND 119, 112 BEING THE BILL OF RIGHTS, 119 BEING THE PUBLIC RECORDS.

AND WHEN I SAY THE CITY INVESTIGATIVE PANEL IS GERRYMANDERING AROUND THE BILL OF RIGHTS, THIS IS A RECOGNITION THAT THOSE RIGHTS EXIST TO THOSE POLICE OFFICERS.

>> BUT, YOU KNOW, A PART OF WHAT YOU READ ABOUT THIS IS THE PROCEDURE, BUT IT ALSO SAYS FOR DETERMINING WHETHER TO PROCEED WITH DISCIPLINARY ALASKA OR TO FILE-- ACTION OR TO FILE DISCIPLINARY CHARGES.

I THINK YOU'VE GOT TO READ THAT ALL TOGETHER AND NOT JUST STOP AT SAY THIS IS THE PROCEDURE.

>> LET'S--

>> THIS IS THE PROCEDURE TO DETERMINE WHETHER OR NOT TO HAVE DISCIPLINARY ACTION OR DISCIPLINARY CHARGES, CORRECT?

>> LET'S-- TO ANSWER YOUR QUESTION, I MUST SAY LET'S WALK YOU, HOW WE GET TO 112.

A COMPLAINT IS FILED.

IF IT'S FILED DIRECTLY WITH THE INVESTIGATIVE PANEL, IT MUST GO TO THE INTERNAL AFFAIRS ACQUISITION OF THE POLICE DEPARTMENT. -- DIVISION OF THE POLICE DEPARTMENT.

>> EXACTLY.

>> NOW WE ARE IN 112.

NOW WE ARE IN THIS SECTION HERE BECAUSE YOU CAN'T GO ANYWHERE ELSE.

THIS IS WHERE THE LEGISLATURE HAS CONTEMPLATED--

>> BUT IT'S SET THAT, AGAIN, ANDS THIS IS A VERY BROAD SWEEP TO SEE WHETHER THE LEGISLATURE, AND AGAIN, I HAVE-- I UNDERSTAND THE DILEMMA THAT POLICE OFFICERS ARE IN TODAY AND THAT UNIONS TO HELP THEM, FRATERNAL ORDER OF POLICE. THE LEGISLATURE, WHAT JUDGE SHEPARD IN THE MAJORITY SAID, IS THAT THEY CHOSE TO ADDRESS INTERNAL INVESTIGATIONS FOR PURPOSES OF IMPOSING DISCIPLINE. WHAT JUDGE ROTHENBERG SAYS IN DISSENT IS THAT IT PREEMPTED THE WHOLE FIELD APPLICABLE TO ANY INVESTIGATIONS OF ANY COMPLAINTS AGAINST A LAW ENFORCEMENT OFFICER.

SO ARE YOU, YOU ARE, WOULD YOU-- YOU'RE EMBRACING THEN JUDGE ROTHENBERG'S VIEW?

>> ABSOLUTELY, YES.

>> SO IT IS MUCH BROADER THAN SAYING THEY CAN'T SUBPOENA THE POLICE OFFICERS.

YOU-- EARLIER YOU SAID TO A LARGE EXTENT, BUT NOW YOU'RE-- [LAUGHTER]

I BELIEVE THAT JUSTICE LEWIS WOULD GET THE LITTLE ESCAPE HATCH HERE--

>> THE ESCAPE HATCH IS I'M NOT SURE THERE'S AN ABILITY TO HAVE SEVERABILITY.

IF YOU WANT-- THE ONLY REASON I THINK A GROUP OF PEOPLE CAN GET

TOGETHER AND DISCUSS THINGS, BUT
IF IT'S AN ARM OF THE CITY, THEN
IN LARGE PART, NO.
THEN, NO.

>> THEY CAN'T COME BACK AND LOOK
AT AS PART OF A PATTERN AND
PRACTICE WITHIN MIAMI-DADE THAT
HAS BEEN OVERLOOKED BY THE
INTERNAL AFFAIRS OF THE POLICE
DEPARTMENT DISCRIMINATORY STOPS
AGAINST A PARTICULAR GROUP OF
CITIZENS.

ARE YOU SAYING THAT CANNOT
HAPPEN UNDER THE 112 WHICH DEALS
WITH INTERNAL INVESTIGATIONS?

>> NOT IF IT IS AN AGENCY, A
POLITICAL SUBDIVISION OF THE--

>> YOU HAVE GONE MUCH BROADER
THAN, BUT YOU'RE IN YOUR
REBUTTAL.

>> YES, OKAY.

>> BUT LET ME ASK YOU, SO IN
DEMINGS WE HAD A SITUATION WHERE
THE LAW ENFORCEMENT AGENCY AT
ISSUE WAS COMPLETELY DEPENDENT.
IT WAS AN INDEPENDENT
CONSTITUTIONAL OFFICER--

>> YES.

>>-- SO THE COUNTY COULD NOT
HAVE ANY CONTROL.

IT WAS LIKE AN INDEPENDENT
CITIZENS GROUP THAT JUST GOT
TOGETHER.

IN THAT SENSE.

AND IN DADE COUNTY, I TAKE IT
THAT THERE IS NO INDEPENDENT LAW
ENFORCEMENT OFFICER UNDER THEIR
HOME RULE PROVISIONS.

>> THE CHIEF OF-- THE CHIEF OF
POLICE IS NOT ELECTED IN MIAMI.

>> RIGHT.

>> IT IS SUBJECT TO THE CITY.
HE'S RESPONSIBLE TO THE CITY
MANAGER.

AND SO A SHERIFF, WHICH IS AN
INDEPENDENT CONSTITUTIONAL
OFFICER, WAS ANOTHER BASIS IN
DEMINGS THAT, HEY, BY THE WAY,
ALSO YOU CAN'T TELL THE SHERIFF
WHAT TO DO BECAUSE AT SOME

POINT, YOU KNOW, YOU CANNOT VOTE FOR HIM.

>> SO I GUESS THAT YOU WOULD SAY THAT THE CITY COULD, IN THEORY, CREATE A COMPLETELY INDEPENDENT BOARD THAT COULD NOT SUBPOENA, BUT THAT COULD LOOK AT WHATEVER IT WANTED TO AND MAKE WHATEVER RECOMMENDATION IT WANTED TO. BUT THE FACT THAT IT IS THE CITY THAT IS NOT INDEPENDENT AGENCY AND REQUIRES ACTION ON ITS RECOMMENDATIONS IS AN ADDITIONAL PROBLEM IN ADDITION TO THE SUBPOENA POWER BECAUSE--

>> I AGREE, AND I DON'T KNOW HOW TO FIX HOW YOU MAKE A CITY'S INDEPENDENT, HOW TO MAKE IT INDEPENDENT AND BE SOMETHING SPONSORED BY THE CITY. THANK YOU.

>> GOOD MORNING, MAY IT PLEASE THE COURT, EDWARD GUEDES ON BEHALF OF THE CITY OF MIAMI CIVIL INVESTIGATIVE PANEL. WITH ME ON BEHALF OF THE CIP IS JOHN QUICK AND ALSO JOHN GRECO WHO'S WITH THE CITY ATTORNEY'S OFFICE FOR THE CITY OF MIAMI. I'M GOING TO SORT OF DEVIATE FROM MY PLAN A LITTLE BIT AND TACKLE HEAD ON SINCE SO MANY OF THE QUESTIONS WERE DIRECTED TO THE QUESTION OF SUBPOENA POWER AND SPECIFICALLY CARVE OUT AND DISCUSS WHAT THAT REALLY MEANS HERE.

FIRST OF ALL, SUBPOENA POWER EXTENDS BROADLY TO ANY POTENTIAL WITNESSES THAT MAY APPEAR BEFORE THE CIP.

IN OTHER WORDS, IT ISN'T JUST THE OFFICER BEING INVESTIGATED. SO WHEN WE SPEAK BROADLY ABOUT WHETHER THE POLICE OFFICERS' BILL OF RIGHTS IN ANY WAY INTERFERES WITH THAT SUBPOENA POWER, WE HAVE TO RECOGNIZE THAT THE CIP'S ABILITY TO SUBPOENA CIVILIAN WITNESSES WHO MIGHT

HAVE SEEN THE INCIDENT OCCUR, A BUS DRIVER WHO MIGHT HAVE BEEN THERE, ALL THOSE OTHER FOLKS ARE NOT IMPLICATED IN ANY WAY, SHAPE OR FORM BY THE POLICE OFFICERS' BILL OF RIGHTS.

SO I WOULD CERTAINLY OPPOSE THE CONCEPT THAT SUBPOENA POWER COULD BE STRIPPED AWAY ENTIRELY FROM THE CIP TO MAKE A WHOLE HOST OF OTHER WITNESSES APPEAR AND PROVIDE TESTIMONY.

THAT'S NUMBER ONE.

NUMBER TWO, AS TO THE PARTICULAR OFFICER THAT'S BEING INVESTIGATED, THE CIP HAS INCORPORATED INTO ITS ORDINANCE A PROVISION THAT ALLOWS THE OFFICER UNDER INVESTIGATION TO REFUSE TO TESTIFY.

THERE IS A SAFEGUARD IN PLACE. IF THAT OFFICER BELIEVES THAT HIS OR HER POSSIBLE TESTIMONY MIGHT RESULT IN BEING DISCIPLINED OR BEING SUGGESTED TO CRIMINAL-- SUBJECTED TO CRIMINAL CHARGES, THE OFFICER CAN SIMPLY SAY--

>> BUT DOES THE CIP BE EVEN HAVE THE AUTHORITY, I MEAN, IT SEEMS CLEAR TO ME THAT THEY DON'T HAVE THE AUTHORITY TO DO ANY DISCIPLINE--

>> ABSOLUTELY NOT.

>>-- THEY DON'T HAVE THE AUTHORITY TO BRING ANY KIND OF CRIMINAL PROCEEDINGS.

BUT THE REAL QUESTION IS AT LEAST IN THIS CASE THEY STARTED THEIR INVESTIGATIONAL REVIEW AFTER THE INTERNAL REVIEW HAD SAID IT WAS INCONCLUSIVE. AND SO THAT REVIEW WAS OVER. THE CONFIDENTIALITY OF THAT PROCEEDING NO LONGER EXISTED. AND SO WHY COULDN'T THE CIP SIMPLY USE THE TESTIMONY THAT THE OFFICER HAD ALREADY GIVEN IN THAT PROCEEDING AS OPPOSED TO SUBPOENAING HIM-- OR HER-- TO

APPEAR AT ANOTHER PROCEEDING?

>> WELL, CONCEIVABLY IF THE QUALITY OF THE INVESTIGATION THAT WAS PERFORMED INTERNALLY, THE QUESTIONS THAT WERE ASKED FOR FULLY AND WHOLLY COMPREHENSIVE, THEN MAYBE THERE WOULD BE A SCENARIO WHERE THE CIP SAID, WELL, YOU KNOW WHAT? WE CAN JUST RELY ON THAT TESTIMONY.

BUT IN INSTANCES WHERE PERHAPS THE INTERNAL AFFAIRS INVESTIGATION WAS NOT TO THOROUGH, OBVIOUS QUESTIONS WEREN'T ASKED, ANYTHING COULD HAVE HAPPENED.

AND THE CIP SAYS, YOU KNOW WHAT? WE HAVE ADDITIONAL QUESTIONS WE WANT TO ASK--

>> ISN'T IT THE CASE THOUGH THAT THE CITY HIRES THE POLICE CHIEF--

>> YES, SIR.

>> WELL, SO THE CITY ITSELF THAT SET THIS UP HAS THE ABILITY TO HAVE THE POLICE CHIEF PERFORM TO A STANDARD THAT THEY WANT THEM TO PERFORM TO WITHOUT GETTING INTO THE PARTICULARS OF INVESTIGATIONS OF PARTICULAR OFFICERS.

IF THEY'RE NOT HAPPY WITH THE WAY THE POLICE CHIEF IN GENERAL IS CONDUCTING INTERNAL AFFAIRS, THE POLICE CHIEF CAN BE GONE, RIGHT?

>> SURELY.

THE ONLY PROBLEM, YOUR HONOR, WITH THAT IS THAT THIS IS NOT THE CITY'S ADMINISTRATIVE INVESTIGATIVE PANEL.

IT'S THE CITIZENS, THE CIVILIAN INVESTIGATIVE PANEL.

THIS WAS AN ENTITY CREATED BY REFERENDUM.

THE PUBLIC WANTED A VOICE IN THESE PROCEEDINGS.

THE PUBLIC WANTED TO HAVE SOME LEVEL OF OVERSIGHT WITHOUT

HAVING TO RELY ON WHATEVER
POLITICAL OR OTHER INFLUENCES
THAT MIGHT ARISE
ADMINISTRATIVELY WITHIN A
PARTICULAR MUNICIPALITY THAT
SAYS, WELL, YES, THE CITY
MANAGER HAS THE AUTHORITY TO
TERMINATE THE EMPLOYMENT OF THE
CHIEF OF POLICE.

>> WELL, THAT'S AN INTERESTING,
INTERESTING POINT THAT YOU MAKE.
LET'S TAKE THE MIAMI-DADE AREA.
UNDER THAT RATIONALE, THE
OFFICER COULD BE-- THE
OFFICER'S WORKING IN AN AREA
THAT'S WITHIN THE JURISDICTION
OF THE COUNTY.

IT'S IN DADE COUNTY.

>> THEORETICALLY.

>> AND SO DADE COUNTY COULD HAVE
ONE OF THESE BOARDS THAT WOULD
OVERSEE OR INVESTIGATE EVERY
POLICE OFFICER IN ALL OF DADE
COUNTY.

HIALEAH, CORAL GABLES, WHATEVER.
IN ADDITION TO THE POLICE
INTERNAL INVESTIGATION, AND THEN
YOU COULD HAVE WITHIN WHATEVER
CITY THIS OCCURRED ONE OF THE
CIVILIANS, TO THERE'S THREE--
SO THERE'S THREE THAT COULD
CONDUCT REVIEWS.

AND I WOULD ASSUME ACCORDING TO
WHAT YOU'RE SAYING IS THAT THE
CITIZENS OF A NEIGHBORHOOD WOULD
HAVE THE ABILITY, THEORETICALLY,
TO CREATE THEIR OWN AS LONG AS
THIS WAS WITHIN THE AREA,
HAPPENED WITHIN THE AREA OF THAT
NEIGHBORHOOD.

SO HOW FAR DOES THIS GO?

HOW MANY OF THESE THINGS ARE
ALLOWED WHEN THE STATUTE SAYS
WHAT IT SAYS?

THAT'S, I MEAN, THAT'S WHAT
WE'RE WORKING WITH.

WE'VE GOT A STATUTE THAT SAYS
THAT THIS IS THE PROCEDURE AND
ALL IN THIS KIND OF STUFF.

SO BUT IF WE DON'T SUPPORT THAT

STATUTE, THEN I CAN SEE IN AREAS WHERE YOU HAVE MANY OVERLAPPING BOTH GOVERNMENTAL AND GEOGRAPHIC AREAS, YOU COULD END UP WITH THREE OR FOUR OF THESE THINGS.

>> JUSTICE LEWIS, LET ME ANSWER YOUR QUESTION IN TWO PARTS.

FIRST, I DON'T BELIEVE THERE'S A DANGER FOR THAT LOCALIZED NEIGHBORHOOD CONCERN, BECAUSE THE ONLY WAY THE CIP CAME INTO EXISTENCE WAS A CITY WIDE REFERENDUM THAT HAD TO AMEND THE CHARTER.

THAT WAS THE ONLY WAY IT COULD HAPPEN.

SO THIS ISN'T A QUESTION OF A HOMEOWNERS ASSOCIATION SAYING, WELL, WE'RE JUST GOING TO SOMEHOW IMPLEMENT THIS--

>> OKAY, FAIR ENOUGH.

SO HOW ABOUT THE--

>> THAT CAN'T HAPPEN.

>>-- CITY AND THE COUNTY?

>> THE COUNTY, NOW WE GET BOO QUESTIONS OF MIAMI-DADE'S A HOME RULE COUNTY AND ITS AUTHORITY OVER ALL THE MUNICIPALITIES THAT EXIST WITHIN THE CITY.

>> RIGHT.

>> I'M NOT SURE I'M PREPARED TO CAN ANSWER THE QUESTION OF WHETHER-- I'M CERTAIN THE COUNTY CAN PREEMPT IT.

IN OTHER WORDS, IF COUNTY CAME ALONG AND SAID WE'RE GOING TO HAVE-- AND, BY THE WAY, THEY HAD FOR MANY YEARS THE CRB-- BUT IF, IF THEY WANTED TO, THEY COULD PREEMPT ALL THE OTHER CITIES AND SAY, NO, WE'RE GOING TO DO THIS.

WE'RE GOING TO HAVE SOMEHOW SOME KIND OF AUTHORITY.

>> WELL, LET'S ASSUME, I MEAN, I DON'T THINK THAT THE CITY OF MIAMI HAS SAID THAT THIS IS THE ONLY ONE, AND I DON'T KNOW THAT THERE'S ANY ORDINANCE IN METRO DADE COUNTY THAT SAYS THAT THEY

CAN OR CANNOT DO ONE OF THESE THINGS.

>> YOUR HONOR, THAT ISN'T EXACTLY WHAT WE'RE DEALING WITH HERE.

I MEAN, WE ARE DEALING WITH--

>> WELL, NO, WE'RE DEALING WITH WHAT COULD HAPPEN IF WE SAY THAT THAT STATUTE IS OF LIMITED OPERATION AND THAT LOWER GOVERNMENTAL ENTITIES CAN DO WHAT MIAMI'S DONE.

SO IF YOU'VE GOT MULTIPLE, MULTIPLE GOVERNMENTAL ENTITIES THAT HAVE GEOGRAPHIC JURISDICTION, I DON'T SEE WHY ALL OF THEM COULD NOT CONDUCT THEIR OWN, THEIR OWN REVIEW, EXCUSE ME.

>> TO ANSWER YOUR QUESTION, YOUR HONOR, YES, YOU'RE CORRECT. THEY COULD.

BECAUSE INHERENT IN THE FLORIDA CONSTITUTION AND IN STATE STATUTE IS THE HOME RULE POWER--

>> RIGHT.

>>-- OF LOCAL GOVERNMENTS.

SO, YES, CONCEIVABLY IN SOME SCENARIO WHICH I'M NOT PREPARED TO DISCUSS THE FULL PARAMETERS OF, BUT IT IS CONCEIVABLE THAT THERE MIGHT BE A COUNTY AGENCY OR A CIVILIAN BOARD--

>> RIGHT.

>>-- THAT REVIEWS SOMETHING, AND MAYBE THERE'S A MUNICIPAL ONE AS WELL.

BUT LET ME GET TO PART TWO OF THE QUESTION BECAUSE YOUR HONOR HAS RAISED THE QUESTION, SHOULDN'T WE PROTECT THE STATUTE.

THE STATUTE IS CLEAR.

THE STATUTE ONLY SPEAKS-- WHEN IT SAYS SHALL BE THE PROCEDURE, RIGHT?

IT IS SHALL BE THE PROCEDURE TO INVESTIGATE AND DISCIPLINE. IF AN INVESTIGATORY PROCESS

CANNOT RESULT IN DISCIPLINE,
THEN THE STATUTE DOESN'T APPLY.
AND WE CAN FIND CONFIRMATION OF
THAT PACT IN THE-- FACT IN THE
2003 TITULAR DESCRIPTION BY THE
LEGISLATURE WHEN THEY ENACTED
THAT SENTENCE.

BECAUSE WHEN THEY PUT THAT
PHRASE INTO THE STATUTE, IT VERY
SPECIFICALLY SAID THAT IT SHALL
BE THE PROCEDURE TO BE USED BY
LAW ENFORCEMENT AGENCIES.
THEY COULD HAVE MADE IT BROADER,
THEY COULD HAVE CHOSEN TO SAY,
YOU KNOW WHAT?

ONCE THERE'S AN I.A.
INVESTIGATION GOING ON, THERE
SHALL BE NOTHING ELSE.

>> DOES THAT APPLY TO THE
STANDARDS AND TRAINING
COMMISSION?

>> NO, BECAUSE THEY ARE A LAW
ENFORCEMENT AGENCY.

IN OTHER WORDS, THEY WERE CARVED
OUT OF THE STATUTE--

>> WHAT ABOUT THE TITLE?

>> EXCUSE ME?

>> HOW DOES THE TITLE REFLECT
THAT?

DOES THE TITLE REFLECT THAT?

>> FOR THE, THE STANDARDS, THE
CJ-- NO.

THE TITULAR ITSELF DOESN'T SAY.
THE TITULAR DESCRIPTION OF THE
2003 AMENDMENT MERELY SAYS IT
SHALL BE THE PROCEDURE TO BE
USED BY LAW ENFORCEMENT OR
CORRECTIONAL AGENCIES.

THAT'S ALL IT SAYS.

>> THE EXCLUSIVE PROCEDURE,
DOESN'T IT--

>> RIGHT.

THE EXCLUSIVE PROCEDURE TO BE
USED BY LAW ENFORCEMENT AND
IT DOES NOT SPEAK TO
SPECIFICALLY--

>> WE KNOW THAT IS INCOMPLETE
THEN?

>> IT IS NOT INCOMPLETE.
WHAT THE LEGISLATURE RECOGNIZED

THEY WERE GOING TO CARVE OUT ANYONE.

YOU KNOW, THEY PUT IT SPECIFICALLY INTO THE BODY OF THE STATUTE BUT THEY DON'T, THERE IS NOTHING IN THERE THAT TAKES OUT THE LIMITATION FOR LAW ENFORCEMENT AGENCIES.

>> LET ME ASK YOU THIS.

THERE IS NOTWITHSTANDING ANY OTHER LAW OR ORDINANCE TO THE CONTRARY.

>> YES, YOUR HONOR.

>> IF THIS IS NOT A CONTRARY ORDINANCE, WHAT WOULD IT BE?

>> THIS--

>> THIS IS THE ONE EXCLUSIVE PROCEDURE NOTWITHSTANDING ANY OTHER LAW OR ORDINANCE TO THE CONTRARY.

>> THE ANSWER TO YOUR QUESTION, YOUR HONOR, THIS IS THE EXCLUSIVE PROCEDURE FOR INVESTIGATING AND DISCIPLINING, NOTWITHSTANDING ANY OTHER LOCAL ORDINANCE AND, MY PLAUSIBLE INTERPRETATION OF THAT LANGUAGE WHICH IS THE INTERPRETATION THAT ALLOWS US TO RECONCILE MUNICIPAL HOME RULE AUTHORITY AND LEGISLATIVE AUTHORITY, IS THAT, AND WE CONCEDE THIS POINT IN OUR BRIEFS, CERTAINLY THE CITY OF MIAMI COULD NOT PASS AN ORDINANCE THAT SAID, IF LIEUTENANT D'AGASTINO IS GOING TO BE INVESTIGATED FOR SOME MISCONDUCT, THE CHIEF OF POLICE CAN PUT HIM IN A ROOM FOR SIX HOURS BY HIMSELF AND PLAY LOUD MUSIC.

IN OTHER WORDS, THE NOTWITHSTANDING ANY OTHER ORDINANCE MEANS NO LOCAL JURISDICTION MAY CONFER POWERS AND ABILITIES AND AUTHORITY ON THEIR LOCAL POLICE DEPARTMENT TO CONDUCT AN INVESTIGATION IN ANY MANNER THAT IS INCONSISTENT WITH POLICE OFFICERS BILL OF RIGHTS.

>> YOU'RE ALMOST OUT OF TIME.
IT SEEMS TO ME, WHEN WE LOOK AT
EXPRESS OR IMPLIED PREEMPTION,
THERE USUALLY IS SOME,
SOMETHING, SOME INTEREST ON THE
PART OF THE STATE, EVEN THOUGH I
DIDN'T AGREE ON RED LIGHT
CAMERAS WE NEED THIS UNIFORM.
IN THIS ONE LOOKS LIKE THERE WAS
A CONCERN BY POLICE OFFICERS
THAT THEIR RIGHTS WERE BEING
VIOLATED AND THAT THIS WAS
PASSED TO PROTECT POLICE
OFFICERS RIGHTS IN A VERY IS
NARROW CIRCUMSTANCE.

IS THERE ANYTHING IN THE HISTORY
OF IT BEING ENACTED IT MEANT TO
PREEMPT THE WHOLE AREA OF
LOOKING INTO POLICE MISCONDUCT?

>> I SEE I'M OUT OF TIME, YOUR
HONOR.

MAY I RESPOND TO YOUR QUESTION?
ABSOLUTELY NOT.

THERE IS NO INDICATION.
EVERY INDICATION IS THAT WHEN
THIS STATUTE WAS CREATED AND
WHEN IT WAS SUBSEQUENTLY AMENDED
IN 2003 AND 2007, WAS THAT IT
WAS INTENDED TO GOVERN VERY
STRINGENTLY WHAT HAPPENS TO A
POLICE OFFICER WHEN THEY ARE
SUBJECT TO THE POTENTIAL
DISCIPLINE BY THEIR OWN
EMPLOYMENT AGENCY.

AND I THINK EVEN OUR SIDE CAN
RELY ON THE 2007 AMENDMENT
BECAUSE THE PETITIONER MAKES THE
POINT, WELL IN 2007 THEY SAID
YOU SHALL FORWARD THE COMPLAINT.
YEAH, BUT NOTICE, IT IS ALSO A
COMPLAINT THAT IS EITHER
INITIATED OR RECEIVED ARGUABLY
BY THE CIP, AND WHAT'S
STRIKINGLY ABSENT FROM THAT 2007
AMENDMENT IS ANY LANGUAGE THAT
COULD HAVE READILY BEEN PUT IN
JUST AS CHAPTER 316 WITH THE RED
LIGHT CAMERAS WHERE YOU HAD THE
SCENARIO THE STATUTE SAID, NO
LOCAL GOVERNMENT SHALL LEGISLATE

IN THIS AREA UNLESS EXPRESSLY
AUTHORIZED.

WE DON'T HAVE ANYTHING REMOTELY
LIKE THAT LANGUAGE HERE.

>> YOUR ANALYSIS ONLY APPLYING
TO THOSE THAT, OR TO, THE
REFERENCE TO DISCIPLINE OR
DISPOSITION, WELL, I MEAN IT IS
OBVIOUS THAT YOUR EMPLOYER IS
THE ONLY ONE WHO CAN TERMINATE
ONE'S SERVICE.

>> CORRECT.

>> SEEMS LIKE YOUR ARGUMENT IS
CIRCULAR.

A BOARD THAT DOES EMPOWER A
POLICE OFFICER, DOESN'T HAVE THE
POWER TO FIRE A POLICE OFFICER
NO MATTER WHAT.

TO READ AS YOU ARE, THIS IS A
NOTHING STATUTE.

ALL IT IS DOING TELLING AN
EMPLOYER, YOU CAN'T DO ANYTHING.
I MEAN SEEMS, I'M TRYING TO
UNDERSTAND THAT.

IT STRIKES ME OF COURSE THAT IS
THE ONLY PERSON THAT CAN
DISCIPLINE YOU IS YOUR EMPLOYER.

>> YOUR HONOR, I'M NOT SURE I'M
NOT DISAGREEING WITH YOU, BUT
I'M NOT SURE HOW THAT VITIATES
ANY ABILITY--

>> YOU DON'T NEED THIS ABILITY
TO APPLY TO ANY OTHER LAW OR
ORDINANCE NOTWITHSTANDING
BECAUSE IT IS CLEAR ON THE FACE
THAT IT IS GOING TO, THE
DISCIPLINARY ACTIONS HAVE TO BE
TAKEN BY YOUR EMPLOYER, NOT SOME
OTHER GROUP.

>> BUT THE LAW, THE
NOTWITHSTANDING OTHER LAW OR
ORDINANCE WE READ AS MERELY IN
ESSENCE ACTING IN A WAY AS A
PREEMPTION BRING THE LEGISLATURE
OF ANY VARYING REQUIREMENTS,
AUTHORITIES, THAT MIGHT BE
LOCALLY IMPLEMENTED WITHIN A
PARTICULAR POLICE DEPARTMENT.

>> ISN'T THE ENGLISH LANGUAGE
JUST BEAUTIFUL?

>> YES, IT.
DAVID, YOUR HONOR.
>> ANY WAY I'M CONSIDERABLY OVER MY TIME.
>> AS I UNDERSTAND IT, THIS MISSION CAN AUTHORIZED TO MAKE RECOMMENDATIONS TO THE POLICE CHIEF AND HE MUST RESPOND? ISN'T THE AIM TO INFLUENCE DISCIPLINE?
>> WELL, NOT AT ALL, YOUR HONOR. AND I WANT TO BE CAREFUL, I WANT TO BE CAREFUL ABOUT GOING OUTSIDE OF THE RECORD HERE BUT--
>> THEN DON'T.
>> RIGHT.
SO THERE IS, THERE IS AT LEAST CONCEIVABLY THE POSSIBILITY, THERE IS NO INDICATION, LET'S PUT IT THIS WAY, THERE IS NO INDICATION IN THE RECORD THAT THAT IS WHAT THE CIP DOES, FIRST OF ALL.
OKAY?
THIS ISN'T A SITUATION WHERE THEY CAME FORWARD SAID, LOOK, EVERY TIME THE CIP DOES AN INVESTIGATION WHAT THEY DO THEY GO TO THE POLICE CHIEF AND THEY STRONG ARM A NEW DISCIPLINE. SO THAT'S NOT IN THE RECORD.
NUMBER TWO, I DON'T WANT THE COURT TO LOSE SIGHT OF THE FACT THAT WE'VE CONCEDED THE POINT THAT UNDER NO SET OF CIRCUMSTANCES MAY THE POLICE CHIEF OF THE CITY OF MIAMI IMPOSE DISCIPLINE ON ANY OFFICER UNLESS THAT DISCIPLINE IS THE DIRECT RESULT OF AN INVESTIGATION THAT COMPLIES WITH THE POLICE OFFICER'S BILL OF RIGHTS.
SO THE CIP, AND I SAY THIS WITH RESPECT TO MY OWN CLIENT, WANTS TO STAND ON A SOAPBOX AND COMPLAIN THAT SO-AND-SO SHOULD BE DISCIPLINED.
IT IS INCUMBENT UPON THE POLICE

CHIEF TO ABIDE BY THE LAW AND
IMPOSE DISCIPLINE ONLY IN A
MANNER CONSISTENT WITH THE LAW.

>> SO YOU WOULD HAVE ONE
INVESTIGATION AND THEN THE CIP
INVESTIGATION THAT WOULD THEN
RESULT HOPEFULLY IN A THIRD
INVESTIGATION BY THE AGENCY
BECAUSE IT DIDN'T DO THE FIRST
ONE WELL ENOUGH?

THAT IS WHAT THE SECOND ONE
DETERMINED.

SO NOW AFTER THE THIRD
INVESTIGATION THIS ONE APPLYING
THE PROTECTIONS, NOW WE CAN HAVE
MORE DISCIPLINE?

IS THAT WHAT YOU ARE SAYING
BASICALLY?

>> NO, YOUR HONOR BECAUSE THE
LEDGE YOU'RE SPECIFICALLY
CONTEMPLATED, NO, YOUR HONOR,
THE LEGISLATURE SPECIFICALLY
CONTEMPLATED THAT INVESTIGATION
MAY BE REOPENED ONLY UNDER TWO
CIRCUMSTANCES.

ONE, THE INFORMATION HAS TO BE
MATERIAL TO THE OUTCOME, AND
SECONDLY, AND THIS IS THE
CRITICAL COMPONENT, IT COULD NOT
HAVE BEEN DISCOVERED IN THE
REASONABLE COURSE OF THE
ORIGINAL INVESTIGATION.

SO THIS ISN'T JUST AN EXCUSE.
THIS ISN'T A PIGGYBACK.

IN DEMMINGS I WENT BACK AND
LOOKED AT THE BRIEFS, IN
DEMMINGS THE ISSUE WAS, YOUR
HONOR, I APOLOGIZE, I WANT TO BE
RESPONSIVE TO JUSTICE LAWSON.

>> I THINK YOU HAVE BEEN.

>> BUT, THE SHERIFF'S OFFICE
IMPOSED DISCIPLINE OR WITHHELD
DISCIPLINARY DECISION AWAITING
CRB DECISION IN THAT CASE.

>> ALL RIGHT.

NEXT TIME YOU ARGUE--

>> YOU HAVE BEEN MORE THAN
GENEROUS WITH YOUR TIME.

THANK YOU.

>> MR. GRECO.

>> MAY IT PLEASE THE COURT.
I'LL BE VERY BRIEF.
I APPRECIATE YOUR INDULGENCE IN
THE TIME TO IT BE SPLIT.
MY PRIMARY REASON FOR SPEAKING
IS TO ADVOCATE FOR THE CITY'S
ABILITY UNDER ITS HOME RULE
POWERS TO BE ABLE TO CREATE SUCH
A COMMUNITY OF REVIEW BOARD
PROVIDES THE ABILITY OF NON-LAW
ENFORCEMENT MEMBERS TO PROVIDE
TO REVIEW AND PROVIDE INPUT INTO
A VARIETY OF ISSUES INCLUDING
ISSUES OF POLICE MISCONDUCT.
I WANT TO ADDRESS A FEW POINTS,
THAT CAME FROM THE ARGUMENT.
NUMBER ONE IS, THAT AS JUSTICE
LEWIS, YOUR CONCERN WITH HAVING
TOO MANY PANELS.
HAVING PANELS CREATED ALL OVER
TOWN.

>> WELL THE POWER NOT
NECESSARILY THAT THEY HAVE BEEN
BUT THE ABILITY TO CREATE THEM
IF WE MISDIRECT THE LAW.

>> I'M SURE THERE ARE SITUATIONS
WHERE YOU MIGHT HAVE HOMEOWNERS
ASSOCIATIONS WANT TO TAKE UP AN
ISSUE WITHOUT THE TYPE OF
SUBPOENA POWER THAT THE CIP HAS
IN THIS INSTANCE TO SUBPOENA NOT
ONLY LAW ENFORCEMENT OFFICERS
BUT ALSO COMMUNITY MEMBERS.

>> HOW ABOUT THE DADE COUNTY
OVERLAP?

>> THERE IS ISSUE WITH DADE
COUNTY, DADE COUNTY WOULD HAVE
TO AMEND ITS CHARTER BECAUSE
THERE ARE PROVISIONS IN THE DADE
COUNTY CHARTER ALLOW
MUNICIPALITIES WITHIN DADE
COUNTY TO HAVE CONTROL OVER
THEIR LOCAL CONCERNS.

NUMBER ONE IT WOULD REQUIRE A
CHARTER CHANGE IN ORDER TO
PREEMPT THE CITY OF MIAMI
ABILITY TO CREATE THIS TYPE OF
REVIEW BOARD.

>> I'M NOT SAYING REPRESENT, BUT
THEY COULD CREATE THEIR OWN.

>> THEY COULD CREATE THEIR OWN,
BUT IF IT WERE TO HAVE
AUTHORITY--

>> CITY CAN'T PROHIBIT IT FROM
CREATING A PANEL.

>> I WOULD ARGUE IN ORDER TO
HAVE CONTROL OVER CITY OF MIAMI
POLICE OFFICERS IT WOULD HAVE TO
AMEND ITS CHARTER GIVEN THE
LANGUAGE IN THE DADE COUNTY
CHARTER, TWO PROVISIONS SAY
MUNICIPALITIES HAVE THEIR OWN
CONTROL OVER THEIR INTEREST
UNLESS EXPRESSLY STATED IN THE
CHARTER WHICH IT DOES NOT STATE
IN THE CHARTER.

SO I WOULD ARGUE THERE WOULD
HAVE TO BE A CHARTER CHANGE.
AN INTERESTING CASE, BACK IN,
THE NEED AND THE DESIRE FOR
COMMUNITY REVIEW BOARDS DIDN'T
JUST START IN 2001 IN THE CITY
OF MIAMI BUT BACK IN 1991, IN A
CASE, BARRY VERSUS GARCIA WHERE
THE THIRD DCA DETERMINED WHETHER
OR NOT THE CITY COULD CREATE BY
RESOLUTION A REVIEW BOARD WITH
SUBPOENA POWER.

THE THIRD DCA SAID THEY
COULDN'T--

>> THE QUESTION BEFORE US TODAY
HAS NOTHING TO DO WITH POLICY
BECAUSE I MEAN I DOUBT THAT YOU
WOULD FIND AN OBJECTOR TO
CITIZEN REVIEW BOARDS.

THE QUESTION IS, WITH THE
LEGISLATURE TAKING THE ACTION
THEY HAVE TAKEN, THAT'S THE
CONTEXT WE HAVE TO LOOK TOO.
NOT A QUESTION WHETHER WE LIKE
OR DISLIKE REVIEW BOARDS.

>> AGREED, AND I CHARACTERIZE IT
IN TERMS OF WHETHER THE CITY
UNDER ITS HOME RULE POWERS HAS
CONCURRENT JURISDICTION TO BE
ABLE TO CREATE A BOARD SUCH AS
THIS.

AND I THINK THAT, IN PART COMES
DOWN TO WHETHER THE INTERESTS AS
A LOCAL INTEREST OR AN INTEREST

THAT THE STATE SOUGHT TO PREEMPT COMPLETELY OR HAVE, YOU KNOW, UNIFORMITY.

I THINK IN THIS INSTANCE THERE IS A GAP BECAUSE THE CHAPTER 112, THE THREE SECTIONS THAT ARE RELEVANT HERE, DON'T EXPRESSLY PRECLUDE THE FORMATION OF A CITIZEN REVIEW BOARD.

>> AGAIN, I THINK, YOU MAY DISAGREE, BUT THE FLORIDA LAW ON EXPRESS PREEMPTION AND FIELD PREEMPTION AND IMPLIED PREEMPTION, THAT HAS BECOME SO MUDDLED AND I'M NOT SURE THERE ARE CLEAR DEFINING LINES BETWEEN THEM.

SO I THINK WE'RE SORT OF TALKING ABOUT WHETHER-- THIS IS FIELD PREEMPTION FOR POLICE OFFICERS AND FOR THEIR PROTECTION AND IT IS NOT A QUESTION WHETHER WE WOULD HAVE PASSED THE STATUTE. IT IS A QUESTION, WHAT'S THE OPERATIVE EFFECT OF THAT STATUTE?

>> AGREED AND I WOULD ADVOCATE A FAIR READING OF THE THREE STATUTES INDICATES THE INTENT WHEN THERE ARE INVESTIGATIONS THAT LEAD TO DISCIPLINE INTERNALLY THAT THE PROCEDURES IN 112.532 HAVE TO BE COMPLIED WITH.

INDEED I THINK THEY ARE. I WOULD ALSO POINT OUT ALONG THOSE LINES THE CITY ORDINANCE WHEN IT COMES TO DISPOSITION THERE IS NO, THE CITY ORDINANCE DOES NOT SPEAK IN ANY RESPECT TO TELLING OR RECOMMENDING TO THE POLICE CHIEF OR THE CITY MANAGER WHAT DISCIPLINE TO TAKE AGAINST AN OFFICER.

IT'S SIMPLY TALKS ABOUT THE DIFFERENT TYPES OF FINDINGS THAT CAN BE MADE AND THE FINDING THAT HAS TO DO WITH SUSTAINED SIMPLY SAYS, FINDINGS OF FACT AND CONCLUSIONS ARE MADE AS TO THE

DISPOSITION OF THE COMPLAINT THAT'S BEFORE THE CIP AND IN FACT, AND THEN IT REQUIRES THAT IT JUST BE FORWARDED TO THE POLICE CHIEF AND WITH A RESPONSE.

SO, FACIALLY, THE CITY ORDINANCE DOES NOT, IN ANY RESPECT GIVE THE CIP AUTHORITY TO TELL THE POLICE CHIEF WHAT TO DO.

UNLESS THERE ARE ANY OTHER QUESTIONS, WE WOULD ASK THAT YOU AFFIRM THE DECISION BELOW.

THANK YOU.

>> THANK YOU.

THE POLICE OFFICER BILL OF RIGHTS HAS BEEN IN EXISTENCE SINCE 1970.

IT HAS BEEN AMENDED 10 TIMES OVER THE DECADES.

THE LEGISLATURE KNOWS HOW TO EXPRESSLY CARVE OUT EXCEPTIONS TO THE BILL OF RIGHTS.

THAT BEING THE CRIMINAL JUSTICE STANDARDS AND TRAINING.

THAT ALSO BEING 112.326, WHICH IS PERMISSION TO TELL LOCAL AUTHORITIES--

>> DATES BACK TO 1970.

IS THERE ANYTHING IN LEGISLATIVE HISTORY TO INDICATE THE REASON FOR ENACTING THIS, AGAIN, YOU'RE SAYING A BILL OF RIGHTS WHICH TO ME SEEMS TO INDICATE THAT POLICE OFFICERS, AND I GUESS

FIREFIGHTERS, ARE THEY COVERED?

>> FIREFIGHTERS HAVE A SEPARATE SECTION, YES, MA'AM.

>> THEY HAVE GOT THAT, THOSE BILL OF RIGHTS.

>> CORRECT.

>> THAT WAS INTENDED TO APPLY OUTSIDE OF THE INTERNAL AFFAIRS INVESTIGATION.

>> YES.

>> WHERE THEY COULD BE REMOVED, FIRED.

>> YES.

>> THAT'S WHAT WE'RE DEALING WITH.

NOT WHETHER IT IS A GOOD IDEA FOR INTERNAL AFFAIRS TO HAVE A UNIFORM WAY OF TREATING POLICE OFFICERS.

>> RIGHT.

>> BUT WHETHER THAT EXPRESSLY OR IMPLIEDLY PREEMPTS THE ABILITY OF COUNTIES OR CITIES TO HAVE A CITIZENS INVESTIGATIVE BOARD.

>> AND THAT IS THE PROPER PARADIGM FOR THIS COURT TO TAKE AND I'M SAYING THERE ARE EXCEPTIONS THAT THE LEGISLATURE HAS DONE THAT TELLS THIS COURT WE KNOW HOW TO DO THAT.

WE AS THE LEGISLATURE KNOW HOW TO CUT OUT THE CRIMINAL JUSTICE STANDARDS AND TRAINING.

WE KNOW HOW TO ALLOW UNDER 112.326 TO ALLOW MUNICIPALITIES HAVE INCREASED ETHICAL STANDARDS IN THEIR COMMUNITIES AND THE COLLECTIVE BARGAINING AGREEMENT. AS WE ADOPT THE STATE STATUTE OF BILL OF RIGHTS WHICH IS IN THE CITY OF MIAMI'S AND FRATERNAL ORDER OF POLICE'S COLLECTIVE BARGAINING AGREEMENT, THAT IS AGREED TO.

THERE IS A SECOND ARM THAT HAS BEEN CREATED, THIS INVESTIGATIVE PANEL WHICH IS REINVESTIGATING AND THAT CONFLICTS.

IT GOES, VENTURES INTO THE FIELD THAT HAS BEEN PREEMPTED.

IF THE REASON WHY IN 112 IS BECAUSE THE COMPLAINT MUST GO INTO 112.

MUST GO INTO THE POLICE DEPARTMENT FOR ADMINISTRATIVE REVIEW.

SO I SUGGEST WHATEVER THIS COURT IS COMFORTABLE EXPRESS, IMPLIED, CONFLICT, AND I AGREE AS WELL, IT IS MUDDLED PARTICULARLY WHEN WE GET INTO FIELD AND CONFLICT PREEMPTION, I LEAVE IT AS WELL. LAST REMARK, IS IN THE AVENTURA CASE WHICH I KNOW JUSTICE PARIENTE DISSENTED, YOU FOUND

THAT THERE WAS SPECIFIC, YOU
THOUGHT THERE WERE SPECIFIC
LOCAL AUTHORIZATION FOR THE CITY
OF AVENTURA TO DO THAT.

THAT IS NOT HERE.

THERE IS A VACUUM, A COMPLETE
SILENCE AS TO THAT.

THANK YOU.

>> THANK YOU FOR YOUR ARGUMENTS.

THE COURT IS IN RECESS UNTIL
TOMORROW 9:30.

>> ALL RISE.

>> 9:00.