

>> ALL RISE.
SUPREME COURT OF FLORIDA IS NOW
IN SESSION.
YOU SHALL BE HEARD.
GOD SAVE THE UNITED STATES, THE
GREAT STATE OF FLORIDA AND THIS
HONORABLE COURT.
>> LADIES AND GENTLEMEN, SUPREME
COURT OF FLORIDA, PLEASE BE
SEATED.
>> GOOD MORNING AND WELCOME TO
THE FLORIDA SUPREME COURT, THE
FIRST CASE ON THE DOCKET TODAY
IS THE AMENDMENT TO THE FLORIDA
RULES OF CIVIL PROCEDURE,
COUNSEL?
>> MY NAME IS KARA FENLON AND
I'M HERE WITH DAVID SILVERSTEIN
MY COLLEAGUE, CURRENT BOARD OF
THE JUVENILE RULES COMMITTEE, WE
ARE HERE ON BEHALF OF THE
JUVENILE RULES COMMITTEE TO
ADDRESS A COUPLE OF OUR PROPOSED
AMENDMENTS.
I'M GOING TO BE ADDRESSING THE
PROPOSAL TO AMEND 8.80C 10 AND
THE PROPOSAL TO AMEND 8.8090
AND 3.
WITH YOUR HONOR'S PERMISSION MAY
I START WITH 8.090 M3.
THIS REGARDS RECAPTURE PERIOD
FOR SPEEDY TRIAL AFTER A MOTION
FOR DISMISSAL HAS BEEN FILED.
THIS ISSUE CAME TO OUR ATTENTION
ABOUT REVIEWING THIS RULE WHEN
THE COURT MADE ITS FINDING, THE
COMMITTEE MET, DISCUSSED THIS
ISSUE AND AGREED WITH JUSTICE
PARIENTE'S OPINION
THAT IN THE COMMITTEE NOTED
CRIMINAL RULES COMMITTEE WAS
THAT IT BE A SINGLE 15 DAY
PERIOD.
WE DECIDED THAT IS OUR INTENT AS
WELL AND WE WENT AHEAD AND
AMENDED THE LANGUAGE TO THE
PROPOSED AMENDMENT.
>> IS THE CORRECT THE CRIMINAL
RULES COMMITTEE DID NOT PROPOSE
THAT CHANGE IN THEIR CYCLE?

>> THEY DID NOT.
AS FAR AS WE KNOW, THEY DIDN'T
GET OUT OF SUBCOMMITTEE ON THAT.
>> THOSE RULES HAVE ALWAYS BEEN
IDENTICAL, RIGHT?
>> THAT WILL HAS BEEN BUT THERE
ARE MANY BUT VERY.
WE DIVERGE A LOT ESPECIALLY IN
AREAS WHERE TIME PERIODS ARE AN
ISSUE.
AS YOUR HONOR'S KNOW, JUVENILE
COURT IS VERY DIFFERENT IN
INTENT THAN ADULT COURT.
IT IS REHABILITATION.
ONE OF THE ISSUES WE TRY TO
ADDRESS OR TO ADDRESS THINGS IN
A TIMELY MANNER, MAJORITY OF OUR
CASES, GREAT PERCENTAGE OF THEM
ARE GO FROM CHARGE TO COMPLETION
IN 21 DAYS, SO 15 DAYS IS FOR A
RECAPTURE PERIOD, QUITE A GOOD
AMOUNT OF TIME IN COMPARISON
WITH JUVENILE COURT.
>> IS THE CRIMINAL COMMITTEE
CONSIDERING THIS KIND OF CHANGE
ALSO?
>> WE COULDN'T GET A CLEAR
ANSWER ON THAT.
>> ATTEMPT TO COORDINATE WITH
THEM?
>> WE ATTEMPTED TO SEE WHETHER
THEY WERE GOING TO ADDRESS STATE
THE USA.
WE WERE INTRIGUED AND BELIEVED
IT WAS AN IMPORTANT OPINION.
OUR IMPRESSION IS THEY DID NOT
TAKE IT AS SERIOUSLY AND DIDN'T
COME OUT OF SUBCOMMITTEE.
YOUR HONOR, WE BELIEVE OUR
PROPOSED AMENDMENT IS CLEAR, IT
GOES TO OUR ORIGINAL INTEND, AND
WE ASK YOUR HONOR'S TO AGREE
WITH THAT.
AMENDMENT.
ANY MORE DISCUSSION ON THAT?
WOULD YOU LIKE ME TO ADDRESS A
POINT?
>> JUST PROCEED.
>> IF I COULD ADDRESS 8.080C 10,
THE AMENDMENT WHERE WE WOULD

LIKE TO ADD IN THE PLEA
ADVISEMENT, A WARNING REGARDING
IMMIGRATION CONSEQUENCES.

>> LET ME ASK YOU THIS.
HAVE YOU SEEN DEPORTATION
BEFORE?

DEPORTATION CONSEQUENCES?
WHAT ARE WE ADDING BY USING THE
WORD IMMIGRATION AS OPPOSED TO
DEPORTATION?

SEEMS TO ME YOU ARE BROADENING,
ATTEMPTING TO BROADEN THE SCOPE
OF WHAT MUST BE TOLD.

>> WE BELIEVE THIS GETS TO THE
HONORABLE BLAISE'S COMMENTS.
WE BELIEVE THERE IS ALREADY A
BROADER MANDATE TO GIVE A
WARNING EVEN IF IT IS A GENERAL
WARNING ABOUT IMMIGRATION
CONSEQUENCES THAT ARE BROADER
THAN DEPORTATION.

WE BELIEVE CHILDREN IN
PARTICULAR ARE VULNERABLE.
THEY NEED MORE PROTECTION.
WE CAN EXPECT AN ADULT TO HAVE
CONTEMPLATED THE POSSIBLE
CONSEQUENCES OF THE PLEA IN
LIGHT OF LEGAL STATUS BUT A
JUVENILE IS GOING TO CONTEMPLATE
THAT AND THAT THE MINIMUM WE ASK
THEY BE GIVEN A WARNING THAT
WHAT THEY DO TODAY COULD HAVE
CONSEQUENCES AND IN PADILLA
1483, THERE IS A DUTY SPELLED
OUT THAT WHEN IT IS NOT AS
CLEAR-CUT, WHAT THE OUTCOME
COULD BE, THERE COULD BE A
POTENTIAL ISSUE, THAT WARNING IS
A DUTY OF THE ATTORNEY TO GIVE
NONCITIZEN CLIENT.

>> CRIMINAL DEFENSE LAWYERS ON
YOUR COMMITTEE FEEL THAT THIS IS
A SYSTEM IN ADVISING THEIR
ATTORNEY.

TO ME IT IS SINCE WE KNOW WHAT
IS GOING ON IN THIS COUNTRY
RIGHT NOW WITH ALL SORTS OF
ISSUES THAT MAY NOT HAVE BEEN
CONTEMPLATED, IS IT CORRECT THAT
THE ACTUAL ADJUDICATION OF

DELINQUENCY DOES NOT ITSELF GIVE RISE TO DEPORTATION BUT IT IS THE ACTS UNDERLYING IT THAT WOULD.

>> ABSOLUTELY.

>> WHAT IS THE VIEW FROM THE PROSECUTORS ON YOUR COMMITTEE AND CRIMINAL DEFENSE LAWYERS?

>> WE WERE IN AGREEMENT THAT THIS IS A DUTY, THIS GENERAL WARNING SHOULD BE GIVEN ALREADY AND THAT IS PART OF CASE LAW AND WE ARE NOT BRINGING IN ANYTHING BUT MAKING SURE THE MOST VULNERABLE GROUP AND THE MOST VULNERABLE COURT GETS THAT INFORMATION.

A JUVENILE PLEA IS NOT CONSIDERED CONVICTION THAT CAN LEAD DIRECTLY TO DEPORTATION, BUT THEY CAN USE THE ACTS WITHIN THAT PLEA TO POTENTIALLY DEPORT SOMEBODY OR TO DENY THEM HAVE TO CITIZENSHIP, GREEN CARDS.

AND A LOT OF CHILDREN AS OPPOSED TO ADULTS AND THEIR FAMILIES BELIEVE WHAT HAPPENS IN JUVENILE COURT STAYS IN JUVENILE COURT AND WILL NOT IMPACT THEIR ADULT LIFE AND UNFORTUNATELY THAT IS NOT THE CASE.

THEY MIGHT BE CONTEMPLATING THE NUMBER OF COMMUNITY SERVICE HOURS IN THE PLEA DEAL, THEY MAY BE ACTUALLY SETTING THEMSELVES UP FOR A MUCH MORE DIFFICULT SITUATION.

WE JUST WANT THEM TO HAVE HEARD THAT POTENTIAL AND IF THAT IS A CONCERN OF THEIRS WE CAN ASSIST THEM IN TRYING TO GET MORE INFORMATION.

>> SO THIS KIND OF WARNING IS GIVEN TO EVERY JUVENILE OR JUST JUVENILES WHO ARE NOT CITIZENS OF THE UNITED STATES?

>> IT WOULD BE GIVEN TO EVERY JUVENILE.

>> LATER ON IT SAYS SOMETHING IN THE RULE ABOUT NOT DISCLOSING

THE STATUS OF A PERSON SO EVERY JUVENILE WOULD BE GIVEN THIS MORNING.

>> THAT IS CORRECT.

I TALKING THE DEFENSE ATTORNEY MAY KNOW A LITTLE MORE INFORMATION AND BROACH THE SUBJECT A LITTLE MORE DEEPLY WITH A CLIENT THEY UNDERSTAND TO BE A NONCITIZEN BUT THAT IS NOT SOMETHING THAT WOULD BE IN FRONT OF THE COURT AND THE COURT WOULD GIVE THAT WARNING AND WOULD NOT INQUIRE REGARDING THE CHILD'S CITIZENSHIP.

SO AGAIN, THE COURTS HAVE BEEN MOVING MORE AND MORE TO RECOGNIZE CHILDREN ARE DIFFERENT, CHILDREN NEED MORE DIRECTION, MORE PROTECTION AND I BELIEVE CHILD DEPENDENTS NEED TO KNOW THAT THERE COULD BE IMPLICATIONS THAT ARE VERY SERIOUS, BUT GO BEYOND WHAT IS ON THE 4 CORNERS OF THE PLEA FORM.

>> ARE YOU GOING TO BE TALKING ABOUT THE TESTIMONY BEING TAKEN?
>> MY COLLEAGUES WILL BE TALKING ABOUT THAT.

>> WHAT WAS THE VOTE ON THIS?

>> THIS VOTE WAS UNANIMOUS.

>> HOW ABOUT FOR THE FIRST ONE WE ARE DISCUSSING?

>> I WOULD HAVE TO LOOK IT UP BUT I DON'T THINK -- I THINK THAT WAS A LARGE MAJORITY.

>> THANK YOU, YOUR HONORS.

>> THANK YOU.

MAY IT PLEASE THE COURT.

GOOD MORNING, MY NAME IS DAVID SILVERSTEIN, CURRENT CHAIR OF THE JUVENILE COURT RULES COMMITTEE.

I'M GOING TO SPEAK TO YOU REGARDING OUR PROPOSED RULE 8.25E REGARDING TESTIMONY BY COMMUNICATION EQUIPMENT.

THE COURT SPECIFICALLY ASKS ME TO COME HERE TODAY TO ANSWER

SEVERAL QUESTIONS.
ONE IS WHETHER OUR PROPOSED RULE REGARDING TESTIMONY BY COMMUNICATION EQUIPMENT IS CONSISTENT WITH EXISTING FLORIDA LIVE JUVENILE ADMINISTRATION 2.530, AND WHETHER OUR PROPOSAL SHOULD BE COORDINATED WITH THE AMENDMENTS THAT ARE CURRENTLY BEING MADE TO POOL 2.530 AND THE FLORIDA RULES OF PROCEDURE, CURRENTLY BEING DEVELOPED. AS FAR AS OUR POSITION, WE BELIEVE THAT OUR PROPOSAL IS CONSISTENT WITH 2.530.

SPECIFICALLY, RULE 2.530 SUB E SUB ONE, WE BELIEVE THAT PROVISION ALLOWED ALL THE PROCEDURAL RULES COMMITTEE SUPER CREATE THEIR OWN RULES REGARDING TESTIMONY BY COMMUNICATION EQUIPMENT.

D1 SPECIFICALLY SAYS GENERALLY A COUNTY OR CIRCUIT COURT JUDGE, GENERAL MAGISTRATE, SPECIAL MAGISTRATE OR HEARING OFFICER MAY ALLOW TESTIMONY TO BE TAKEN THROUGH COMMUNICATION EQUIPMENT ALL PARTIES CONSENT OR IF PERMITTED, BY ANOTHER APPLICABLE RULE PROCEDURE.

WHEN AMENDMENTS TO RULE 2.350 WERE CONSIDERED BY THIS COURT IN 2011, THIS COURT SPECIFICALLY ADDED THE PHRASE IF PERMITTED BY ANOTHER APPLICABLE PROCEDURE TO RULE 2.530.

SO --

>> IS THIS 8.25 BE BOTH A RULE FOR JUVENILE DELINQUENCY AND JUVENILE DEPENDENCY?

>> IT IS ONLY DEPENDENCY.

>> WE SHOULD CLARIFY THAT.

THERE IS NO RULE IN JUVENILE DELINQUENCY PROCEDURE JUST LIKE THERE WOULDN'T BE FOR CRIMINAL OR THIS KIND OF TESTIMONY?

>> THE JUVENILE COURTS RULES COMMITTEE DID CONSIDER A SIMILAR RULE FOR DELINQUENCY AND THAT IS

ON ITS WAY TO YOUR HONORS.
>> IN TRYING TO DECIDE WHAT THE
VALUE IS, MAYBE YOU COULD
EXPLAIN.

WHAT IS THE GOAL OF THIS IN A
DEPENDENCY PROCEEDING WHERE IT
IS UNLIKELY THAT YOU ARE GOING
TO HAVE WITNESSES FROM AFAR AND
THE IDEA OF THE JUDGE EYEBALLING
THOSE THAT ARE GOING TO DECIDE
WHERE THE JUDGE HAS TO TERMINATE
THE RIGHTS OR ALLOW THE PARENTS
TO BE REUNITED, WHAT TYPE OF
WITNESS WOULD IT BE THAT WOULD
BE COVERED BY THIS?

>> THANK YOU, YOUR HONOR.
AS YOU KNOW, IN DEPENDENCY
COURT, TIME IS OF THE ESSENCE.
WE HAVE MANY MANY HEARINGS IN
THE LIFE OF A CASE AND THE JUDGE
NEEDS AS MUCH INFORMATION AS
POSSIBLE TO MAKE CRITICAL
DECISIONS REGARDING THE FAMILY.
SO WE DESIGNED OUR WHOLE TO
ACCOMMODATE THIS.

YOU ARE IN COURT, YOU ARE AT A
SHELTER HERE, YOU HAVE A CASE
THAT YOU ARE CONSIDERING, A BABY
HAS A LEG FRACTURE, THE CHILD
PROTECTION TEAM DOCTOR HAS GIVEN
AN OPINION, CHILD PROTECTIVE
INVESTIGATOR, THAT THE DOCTOR
BELIEVES IT IS FROM ABUSE.
THE PARENTS WITH THEIR ATTORNEY,
THEIR ATTORNEY WANTS TO
CROSS-EXAMINE OR ASK QUESTIONS
TO THE DOCTOR, THE DOCTOR IS IN
THE HOSPITAL DOING ROUNDS, THEY
ARE RUNNING AROUND, DON'T HAVE
ACCESS TO A NOTARY AND THE JUDGE
WANTS TO GET THE DOCTOR ON THE
PHONE.

THE ALTERNATIVE IS TO CONTINUE
THE HEARING UNTIL WE CAN ARRANGE
FOR THE DOCTOR TO BE PRESENT
WHEN A NOTARY OR COME IN COURT.

>> WHO DO YOU REPRESENT?

>> I MANAGING ATTORNEY WITH THE
PERMIT OF CHILDREN AND FAMILIES.
HOWEVER, IN THE SCENARIO I AM

EXPLAINING, THE PARENTS WANT TO TALK TO THE DOCTOR, THEY WANT TO QUESTION THE DOCTOR, THE JUDGE WANTS TO QUESTION THE DOCTOR, SO WE DON'T WANT TO CREATE DELAYS AND WE WANT THE JUDGE TO HAVE THE ABILITY IF THE CHILD PROTECTION TEAM DOCTOR HAS TESTIFIED BEFORE THIS JUDGE 20 TIMES IN THE PAST, THAT THE JUDGE CAN TO GET THE DOCTOR ON THE PHONE AND RECOGNIZE THE DOCTOR AND TAKE THE DOCTOR'S TESTIMONY.

THERE IS ALSO A SITUATION WHERE WE MAY BE IN A HEARING WHERE THE JUDGE WANTS TO KNOW WHAT THE ISSUE MAY BE.

DID THE PARENT SHOW UP FOR THEIR DRUG SCREENING, THE PERSON FROM DRUG COURT THAT DOES THE SCREENS IS NOT AVAILABLE SO THE JUDGE, EVERYONE WANTS TO KNOW WHAT IS THE ANSWER?

DID THE PARENT TEST POSITIVE, WHAT, PLEASE EXPLAIN THE RESULTS AND WE CAN'T GET A RESOLUTION. MAYBE THE SITUATION IS THAT WE NEED THIS RESULT SO THE CHILD CAN BE UNIFIED.

>> A QUESTION, DID EVERYBODY ON YOUR COMMITTEE AGREE WITH THIS? YOU ARE REPRESENTING THE DEPARTMENT, JUDGES MAY WANT TO EXPEDITE IT AND THAT IS A GOOD THING BUT WHAT ABOUT ATTORNEYS FOR THE CHILDREN?

ARE THEY IN FAVOR OF THIS ALSO? >> YES.

OUR MEMBERS OF THE JUVENILE COURT RULES COMMITTEE, WE HAVE JUDGES, GENERAL MAGISTRATE'S, ATTORNEYS WHO REPRESENT DCF, PARENT ATTORNEYS, CHILDREN'S ATTORNEYS.

>> I JUST WANT TO KNOW. HERE IS THE THING THAT CONCERNS ME.

WE DO WANT TO EXPEDITE THIS BUT AS YOU KNOW SINCE YOU ARE

FAMILIAR WITH BABY COURT, THERE IS A WAY YOU DO THINGS WHERE WHAT YOU ARE TRYING TO DO IS CREATE AN ATMOSPHERE WHERE YOU CAN REUNITE A FAMILY OR TERMINATE THE RIGHTS.

I DON'T WANT THIS RULE TO BE TURNED INTO SOMEHOW WE ARE GOING TO HAVE DECISIONS BY REMOTE TELEPHONE OR VIDEO.

IS THIS UNDERSTOOD BY SAYING GOOD CAUSE, THAT IS ENOUGH TO ASSURE THE JUDGES THAT IT WON'T BE A SHORTCUT?

>> IT IS GOOD CAUSE.

>> GOOD CAUSE TO ME, I HAVE SEEN WITH OTHER RULES IS SO AMORPHOUS ABOUT WHAT GOOD CAUSE IS.

WHAT YOU ARE DESCRIBING IS AN EMERGENCY.

THE CHILD IS IN DANGER.

DO WE DEFINE GOOD CAUSE IN ANY MORE DETAIL?

>> YES.

WE DO DEFINE GOOD CAUSE.

WE HAVE OUR COMMITTEE WHERE WE EXPLAINED ABOUT GOOD CAUSE.

A PARTY SEEKING TO PRESENT SUCH TESTIMONY OVER OBJECTION MUST SATISFY THE GOOD CAUSE STANDARD IN DETERMINING WHETHER GOOD CAUSE EXISTS.

THE TRIAL COURT MAY CONSIDER SUCH FACTORS AS THE TYPE AND STAGE OF THE PROCEEDING, PRESENCE OR ABSENCE OF CONSTITUTIONALLY PROTECTED RIGHTS, GENERAL SUBSTANCE, IMPORTANCE OF THE TESTIMONY TO RESOLUTION THE CASE, THE CAUSE DURING CONVENIENCE OF REQUIRING THE PRESENCE OF THE WITNESS IN COURT, THE AVAILABILITY OF COUNSEL TO USE NECESSARY EXHIBITS OR DEMONSTRABLE WAYS, THE LIMITATIONS IF ANY PLACED ON OPPORTUNITY FOR OPPOSING COUNSEL AND OBSERVE THE WITNESS'S DEMEANOR, THE POTENTIAL FOR UNFAIR SURPRISE TO WITNESSES

AFFILIATION WITH ONE OR MORE PARTIES AND ANY OTHER FACTORS, WEIGHING THE JUSTIFICATION OF THE REQUEST PART.

>> THIS IS WHAT I DON'T UNDERSTAND.

YOU WANT A FULL THAT IS DIFFERENT FROM THE RULE OF JUDICIAL ADMINISTRATION AND CIVIL THAT WOULD WAIVE PROTECTIONS FOR PARTIES BY HAVING A NOTARY AND YOUR JUSTIFICATION IS THAT EVERYBODY IN THE COURTROOM WILL WANT THIS WITNESS, WANT TO QUESTION THIS WITNESS A WANT THE JUDGE TO TALK TO THIS WITNESS AND UNDER THE RULES, IF ALL PARTIES CONSENT, YOU CAN WAIVE ANY REQUIREMENT DESIGNED TO PROTECT THAT PERSON, THE PARTY.

I DON'T UNDERSTAND WHY IT IS A PROBLEM BECAUSE IN THE SITUATION YOU ARE DESCRIBING WHERE EVERYBODY WANTS FOR EXPEDIENCY'S TAKE THE JUDGE TO TALK TO THE DOCTOR RIGHT NOW RATHER THAN DELAY THIS, THEY DON'T HAVE TO WAIT FOR A NOTARY.

IF EVERYBODY WAVES THAT THEY CAN TALK TO THE DOCTOR, TAKE TESTIMONY.

WHY DO WE NEED TO MAKE A DIFFERENT RULE TO ACCOUNT FOR A SITUATION THAT IS HANDLED UNDER CURRENT RULES?

>> THANKS.

OUR RULES SPECIFICALLY AS FAR AS ALLOWING THE JUDGE TO SWEAR THE WITNESS REMOTELY ONLY PERTAINS WHEN ALL PARTIES AGREE AND THERE IS NO QUESTION AS TO IDENTITY OF THE WITNESS.

>> THAT IS AN IMPORTANT PROTECTION.

>> RIGHT.

BUT I HAVE BEEN IN SITUATIONS WHERE BECAUSE THERE HAS BEEN NO REGARDING THIS OR DEFAULT TO THE RULES OF JUDICIAL

ADMINISTRATION, THAT THE JUDGE WILL NOT, EVEN THOUGH THE PARTIES AGREE, THE JUDGE WILL NOT GET SOMEONE ON THE PHONE BECAUSE THERE IS NO NOTARY PRESENT.

IT DOES CAUSE DELAYS.

>> BUT YOU WOULD AGREE IF ALL PARTIES WAIVED THE REQUIREMENT, THEY ARE NOT CONCERNED THAT THE JUDGE COULD DO THAT.

>> YES.

BUT WHAT I AM SAYING IS THE REASON WE WONDERED IF IT WAS SPECIFICALLY IN THE RULE TO ADVISE THE JUDGES, THE DEPENDENCY COURT JUDGES THAT THEY HAVE THIS OPTION.

>> WOULDN'T THE RULE ALLOW WHERE ALL PARTIES DON'T AGREE?

>> NOT AS FAR AS THE NOTARY. THE WAIVER OF THE NOTARY TO BE PHYSICALLY PRESENT WITH THE WITNESS TO SWEAR THE WITNESS IN, THAT ONLY APPLIES WHEN EVERYONE AGREES AND THERE IS NO QUESTION AS TO THE IDENTITY OF THE WITNESS.

>> YOU HAVE -- I AM ALWAYS CONCERNED ABOUT THE RIGHTS OF CHILDREN WHO ARE AT THE CENTER OF THIS, YOU SAY IT DOESN'T APPLY TO PARENTS THAT CERTAIN PROCEEDINGS BUT WE HAVE RULES ABOUT WHEN CHILDREN SHOULD BE THERE AND THAT IS PART OF THE CHANGE, ENSURING CHILDREN HAVE A VOICE.

WHY ISN'T THAT, WHY DON'T WE REFERENCE THOSE RULES THAT ALREADY REQUIRE CHILDREN TO BE PRESENT?

>> AS FAR AS, YOUR HONOR --

>> ARE YOU ANTICIPATING SOMETHING HAPPENS THAT YOU CAN TELEPHONE A CHILD, INSTEAD OF THE CHILD BEING PRESENT, JUST TALK TO THEM OVER THE PHONE?

>> IF IT WOULD ALLOW THE SITUATION TO OCCUR, SAY THE

CHILD IS IN A LOCKED FACILITY,
SEVERAL HUNDRED MILES AWAY, WE
WANT TO BE ABLE TO GET THE CHILD
THERE FIRST, STATUS CONFERENCE.

>> WOULD YOU USE VIDEO, SWEAR
THE CHILD IN, MAKE SURE IF THEY
ARE IN LOCKDOWN THEY HAVE AN
ATTORNEY, YOU WOULDN'T HAVE TO
WORRY ABOUT -- I AM
UNDERSTANDING YOU ARE TALKING
ABOUT SOMETHING THAT IS AN
EMERGENCY.

IT FEELS LIKE THE SCOPE COULD BE
FAR LARGER AND YOU ARE IN YOUR
REBUTTAL.

YOU ARE SAYING CHILDREN WOULDN'T
HAVE TO BE PRESENT, BUT RIGHT
NOW, IF THEY ARE IN A FACILITY
HUNDREDS OF MILES AWAY I AM SURE
THERE ARE PROCEDURES FOR USING
VIDEO WE QUIT AND IF YOU NEED
THEIR TECHNICAL TESTIMONY, FOR
WHAT THEIR FUTURE IS GOING TO
BE.

>> YES, YOUR HONOR.

I DID WANT TO DIFFERENTIATE.
OUR RULE DEALS WITH TESTIMONY,
NOT APPEARANCE.

THANK YOU.

>> MISTER ABCA11 -- MISTER DAVID
SILVERSTEIN, I WILL AFFORD YOU
THREE MINUTES.

>> THANK YOU VERY MUCH.

>> I'M HERE ON BEHALF OF THE
RULES COMMITTEE OF THE FLORIDA
BAR, MY NAME IS PETER PERAZA.
I WAS CALLED TO ADDRESS THE LAST
TWO QUESTIONS DAVID SILVERSTEIN
ADDRESSED.

BY WAY OF BACKGROUND AS A MATTER
OF COINCIDENCE THE RULES
COMMITTEE AND THE RULES OF
JUDICIAL ADMINISTRATION
COMMITTEE HAVE BEEN JOINTLY
WORKING ON SOME PROPOSED RULE
CHANGES COVERED BY JUVENILE
COURT RULES, CHANGES TO 0.255
AND THOSE RULE CHANGES WHICH
HAVE BEEN UNANIMOUSLY APPROVED
BY THE TWO COMMITTEES SAVE FOR A

COUPLE EXTENSIONS, THEY ADDRESS COMMUNICATIONS EQUIPMENT FOR THE PURPOSES OF TAKING TESTIMONY.

THERE ARE TWO BROUGHT DISTINCTION WE DRAW.

ONE HAS TO DO WITH AUDIO COMMUNICATIONS EQUIPMENT AND THE OTHER IS AUDIOVISUAL COMMUNICATIONS EQUIPMENT.

TESTIMONY WHEN AUDIOVISUAL COMMUNICATIONS EQUIPMENT IS USED, PROPOSED RULE CHANGES WOULD ALLOW THE PARTIES TO DISPENSE WITH THE PHYSICAL PRESENCE REQUIREMENT OF THE OFFICER WHO SWEARS IN THE WITNESS.

WHY WITH AUDIOVISUAL BUT NOT AUDIO ONLY BECAUSE WITH AUDIOVISUAL COMMUNICATIONS EQUIPMENT THE OFFICER WHO SWEARS IN THE WITNESS CAN CONFIRM THE IDENTITY OF THE WITNESS.

ONE OF THE MAJOR SUBSTANTIVE DIFFERENCES BETWEEN THE JOINT PROPOSALS IN THE RULES COMMITTEE OR RULES OF JUDICIAL ADMINISTRATION COMMITTEE ON THE ONE HAND AND THE JUVENILE COURT RULES COMMITTEE ON THE OTHER HAND IS DIGITAL COURT RULES COMMITTEE PROPOSAL WOULD DISPENSE WITH THE REQUIREMENT OF THE PHYSICAL PRESENCE OF THE OFFICER IF THE PARTIES AGREED WITH.

WE BELIEVE THAT IS INCONSISTENT WITH JUDICIAL ADMINISTRATION 0.350D AS WRITTEN BECAUSE WHEN 0.350 DETOX ABOUT THE USE OF THE COMMUNICATIONS EQUIPMENT, 2.53 B3 TALKS ABOUT THE REQUIREMENT OF AN OATH AND THAT RULE ONLY STATES THE OATH MUST BE PHYSICALLY GIVEN, MUST BE GIVEN IN THE PHYSICAL PRESENCE OF THE WITNESS BY AN OFFICER WHO IS LEGALLY AUTHORIZED TO DO SO. THAT IS PRECISELY WHAT THE RULES COMMITTEE AND RULES OF JUDICIAL

ADMINISTRATION COMMITTEE ARE ADDRESSING BUT ONLY IN THE CONTEXT OF COMMUNICATIONS EQUIPMENT WHERE THE WITNESS CAN BE SEEN BY EVERYBODY.

THE OTHER QUESTION TO ADDRESS IS WHETHER THE PROPOSED CHANGE BY THE COURT RULES COMMITTEE SHOULD BE COORDINATED WITH THE POST AMENDMENT TO RULES 1.310 AND 1.451 OF THE RULES OF CIVIL PROCEDURE AND 2.530 OF THE RULES OF ADDITIONAL ADMINISTRATION. OUR POSITION IS YES, THEY SHOULD BE COORDINATED.

THIS IS A MATTER AS TO WHICH THERE SHOULD BE UNIFORMITY. LOOK AT THE EVIDENCE, SECTION 605 OF THE EVIDENCE CODE, GENERAL APPLICABILITY, REQUIRES EACH WITNESS TO BE SWORN IN. BY THE SAME TOKEN THE RULES OF COURT REGARDLESS OF LITIGATION SHOULD BE UNIFORM ON THE ISSUE OF WHEN THE OFFICER WHO SWEARS IN THE WITNESS HAS TO BE PHYSICALLY PRESENT THE WITNESS. NOW, THE CIVIL PROCEDURE RULES COMMITTEE, JUVENILE COURT RULES COMMITTEE FOR THEIR EFFORTS TO CRAFT THAT WILL FACILITATE, WE ARE AWARE OF THE CHALLENGES PRACTITIONERS FACE WITH THE FLORIDA STATUTES BUT WE NEVERTHELESS BELIEVE THIS IS A MATTER WHERE THE PROCEDURAL LAW AND SUBSTANTIVE LAW SHOULD BE UNIFORM.

THE ISSUE OF AN OATH SHOULD REMAIN CONSTANT REGARDLESS OF WHETHER YOU ARE PRACTICING AS CIVIL LITIGATION CONTEXT OR DISSOLUTION OF MARRIAGE CONTEXT OR DEPENDENCY CONTEXT.

>> ONLY THING I WOULD SAY ABOUT THAT, TAKE A CIVIL CASE, PERSONAL INJURY, COMMERCIAL CASE, YOU HAVE GOT NORMALLY TWO LAWYERS, YOU MIGHT HAVE HIGH-STAKES SO THE DECISIONS, IT

IS NOT GOING TO BE THIS
SITUATION AS DESCRIBED FOR
DEPENDENCY.

YOU HAVE GOT TO GET THIS
TESTIMONY OF THE DOCTOR WHO SAW
THE BABY AS AN EXAMPLE.

IF WE D FOR IT SO EVERYBODY CAN
GET TOGETHER THERE MIGHT BE
DIFFERENCES, DISSOLUTION OF
MARRIAGE DEPENDENCY, THEN WE
HAVE MANY CASES WHERE THEY ARE
UNREPRESENTED, VERSUS OTHER
CIVIL CASES.

HAVE YOU TAKEN THAT INTO
CONSIDERATION IN LOOKING AT THE
PROTECTIONS WE NEED TO AFFORD
THE LITIGANTS AND CONSTITUTIONAL
REQUIREMENTS?

>> WE HAVE, YOUR HONOR.

THE SENATE PROCEDURE RULES
COMMITTEE FEELS WHEN YOU TAKE
TESTIMONY THROUGH AUDIOVISUAL
MEANS THERE IS A DEGREE OF
SOLEMNITY INVOLVED AND ALSO THE
ABILITY TO HAVE THE PARTIES
CONFIRM THE IDENTITY OF THE
WITNESS IF YOU ARE VISUALLY
SEEING THE WITNESS WHO IS ABOUT
TO GIVE TESTIMONY.

YOU CAN ASK FOR PHOTOGRAPHIC ID,
BUT THAT CAPABILITY IS ABSENT
WHERE YOU ARE TAKING TESTIMONY
THROUGH PURELY AUDITORY
COMMUNICATIONS EQUIPMENT.

>> TELEPHONE TO ME IS LEAST
SATISFYING OF TRYING TO GET A
SENSE WITH AS YOU LOOK AT THIS,
YOU THINK THERE HAS GOT TO BE A
COURT REPORTER OR SOMETHING
THERE BUT WITH ALL OF THIS,
WHETHER IT IS FACE TIME OR
THINGS THAT EVERYBODY SEEMS TO
USE WHERE YOU CAN SEE SOMEBODY,
DOES THAT COUNT AS AUDIOVISUAL
IF THERE WAS A WITNESS THERE?
NOTARY TO SWEAR IN THE WITNESS?

>> IT WOULD COUNT BUT THE RULE
CHANGES, THE RULE PROPOSALS
WOULD CONDITION THAT UPON
AGREEMENT OF THE PARTIES SO FACE

TIME MAY BE AN EXTREME EXAMPLE
BUT TYPICAL TELEVISED DEPOSITION
OR TELEVISED TESTIMONY --

>> THAT REQUIRES A VIDEO
OPERATOR TO THE ACTUAL
VIDEOTAPING THE TESTIMONY SO IT
IS PRESERVED.

>> ABSOLUTELY.

>> THANK YOU.

>> THANK YOU, YOUR HONORS.

>> IN RESPONDING TO MELANIE
SURBER, THE JUVENILE RULES
COMMITTEE FIRMLY BELIEVES RULE
2.35071 THE ALLOWS FOR A LACK OF
UNIFORMITY SO THAT THE RULES
COMMITTEE COULD CREATE A RULE
FOR TESTIMONY BY COMMUNICATION
EQUIPMENT WHICH MEETS THE NEEDS
OF THEIR SPECIFIC PRACTICE
AREAS.

>> I DON'T HAVE A PROBLEM WITH
THAT BUT WHAT IS WRONG WITH
DEFERRING THIS AND LETTING THERE
BE YOUR COMMITTEE MEETING WITH
THE RULES OF JUDICIAL
ADMINISTRATION AND CIVIL
PROCEDURE TO MAKE SURE EVERYONE
HAS THOUGHT OF ALL THE
POSSIBILITIES?

JUDGES ON THOSE COMMITTEES THAT
MAY HAVE HAD OTHER EXPERIENCES,
I DON'T SEE THE DOWNSIDE OF
HAVING THAT DONE.

THEY MAY SAY THAT AND WITH THE
APPROVAL THAT THIS WOULD BE A
DIFFERENCE IN THIS NARROW
CIRCUMSTANCE.

I WANT IT TO BE A NARROW
CIRCUMSTANCE, NOT BECOME THE
RULE.

I AM VERY UNCOMFORTABLE WITH
TESTIMONY BY REMOTE.

I DON'T THINK IT EVER CAPTURES
THE REAL ESSENCE OF WHAT YOU GET
IN FACE-TO-FACE COMMUNICATION AS
A MATTER OF WHAT WE HAVE
PROGRESSED TO.

WHAT IS WRONG WITH THAT?

>> THERE IS ABSOLUTELY NOTHING
WRONG WITH THAT.

WHAT I DID ON JUNE 15TH IS I WENT TO THE MEETING OF THE RULES OF JUDICIAL ADMINISTRATION COMMITTEE AND RAISED THIS ISSUE WITH THEM, WHETHER THEY BELIEVED THIS PROVISION THAT SAYS IF PERMITTED BY ANOTHER APPLICABLE RULE AND PROCEDURE ALLOWS THE JUVENILE IS COMMITTEE TO CREATE ITS OWN RULE AND THE CHAIR, JUDSON COHEN, CONDUCTED A POLL OF THE MEMBERS AND ALL THE MEMBERS AGREED THE JUVENILE RULES WERE FREE TO CREATE THEIR OWN RULE TO MEET THE NEEDS OF LITIGANTS IN DEPENDENCY CASES. THE JUVENILE RULES COMMITTEE PASSED THIS AND THIS IS ATTORNEYS FROM ALL DIFFERENT SIDES, APPROVED THIS BY 23 IN FAVOR, ONE AGAINST, ONE ABSTENTION.

THE JUVENILE RULES COMMITTEE IS WILLING TO WORK WITH THE CIVIL RULES COMMITTEE.

WHEN I RECEIVED THE COMMENT FROM THE CIVIL RULES COMMITTEE I WAS IN CONTACT WITH THE CIVIL RULES COMMITTEE TO RESOLVE THE ISSUE. THE ISSUE IS IF I UNDERSTAND CIVIL RULES BELIEVE THERE NEEDS TO BE UNIFORMITY, JUVENILE RULES COMMITTEE DOES NOT BELIEVE THERE NEEDS TO BE UNIFORMITY IN THE RULES.

THANK YOU.

>> THANK YOU VERY MUCH.

I THANK ALL OF YOUR ARGUMENT.